

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 1

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** FEBRUARY 12, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. Will the parties state their appearances for
4 the record, please.

5 ATTORNEY KRATZ: Good morning, Judge. The
6 State of Wisconsin appears by Calumet County
7 District Attorney Ken Kratz, lead counsel and
8 appearing as special prosecutor in this case.
9 Appearing with me include Tom Fallon, an Assistant
10 Attorney General from the Department of Justice and
11 Norm Gahn, an Assistant District Attorney, from
12 Milwaukee County, Wisconsin, also appearing as
13 special prosecutor.

14 ATTORNEY STRANG: And good morning. Steven
15 Avery appears in person. He's represented by Jerome
16 Buting, immediately to my left, and I am Dean
17 Strang.

18 THE COURT: All right. We're here this
19 morning, before we bring the jurors out, first of
20 all, to discuss any comments the parties have on the
21 opening instructions that have been provided by the
22 Court. Before we get to that, are there any other
23 issues that either party feels should be addressed
24 before the jurors are brought in?

25 ATTORNEY KRATZ: The one logistical issue I

1 had was during the opening statements and the
2 closing arguments the Clerk, Ms Bonin, has a switch
3 near her which is called public seating or something
4 of that nature. I'm going to ask that that switch,
5 and I got the approval of the sheriff for that --

6 Quite frankly, Judge, with PowerPoint or
7 other presentations in this area, the gallery and
8 other spectators find it much easier to see those
9 without that one bank of lights, the public
10 seating lights. If Ms Bonin would like to try
11 that at this point so the Court can see, I would
12 appreciate that.

13 THE COURT: Go ahead.

14 ATTORNEY KRATZ: I think Mr. Buting
15 indicated he had no objection. It just provides
16 less glare and an opportunity for those in the
17 public to observe what it is that we're talking
18 about. Again, I suggest that just for openings and
19 closings.

20 THE COURT: All right. Any objection?

21 ATTORNEY STRANG: There is not.

22 THE COURT: Anything else to take up before
23 we address the opening instructions?

24 ATTORNEY STRANG: My thought is that we
25 might take Mr. Avery's personal statement on

1 waiving -- or not waiving, but stipulating to the
2 second element of Count 3 of the second Amended
3 Information.

4 THE COURT: Very well. For the record, I
5 will note the Court has previously been informed
6 that the defendant intended to stipulate to the
7 second element of the possession of a firearm
8 charge; that is, the defendant's status as having
9 been convicted of a felony before November 5 of
10 2005.

11 Before I notify the jury that the
12 defendant is making that stipulation, the Court
13 has to make sure that the defendant is doing so
14 knowingly and voluntarily. So, Mr. Avery, I'm
15 going to be addressing these questions to you.

16 Before the Court accepts your
17 stipulation to one of the elements of the felon
18 in possession of a firearm charge, I'm going to
19 be asking you a few questions. If you have any
20 trouble understanding any question that I ask,
21 let me know and I will let you speak with your
22 attorneys.

23 Mr. Avery, do you understand that you
24 have the right to a jury trial in this case and
25 that includes the right to require the State to

1 prove every element of each offense charged,
2 beyond a reasonable doubt, to all members of the
3 jury? Do you understand that?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: You understand that in the case
6 of the felon in possession of a firearm charge, this
7 means that you can, if you wish, require the State
8 to prove, beyond a reasonable doubt, that you were
9 convicted of a felony before November 5 of 2005? Do
10 you understand that?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: Do you further understand that,
13 if you wish, you can stipulate; that is, you can
14 agree that you were convicted of a felony before
15 November 5 of 2005 and make further evidence on that
16 issue irrelevant; do you understand that?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: Do you wish to waive your right
19 to a jury trial on that element; that is, agree that
20 you were convicted of a felony before November 5 of
21 2005?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: Have you had adequate
24 opportunity to discuss your decision with your
25 attorneys?

1 THE DEFENDANT: Yes.

2 THE COURT: And have your attorneys
3 explained to you your right to a jury trial on this
4 element?

5 THE DEFENDANT: Yes.

6 THE COURT: Has anyone made any promises or
7 threats to you to give up your right to a jury trial
8 on this element of the firearms charge?

9 THE DEFENDANT: No.

10 THE COURT: Do you understand each of the
11 questions that I have asked you and what your
12 attorneys have told you about this matter?

13 THE DEFENDANT: Yes.

14 THE COURT: Mr. Strang, have you had
15 adequate opportunity to discuss this matter with
16 your client?

17 ATTORNEY STRANG: Yes.

18 THE COURT: And do you believe that
19 Mr. Avery is knowingly and voluntarily giving up his
20 right to a jury trial on this particular element of
21 the possession of a firearm charge?

22 ATTORNEY STRANG: On that element, yes, I
23 do.

24 THE COURT: Very well, the Court does find
25 that the defendant has knowingly and voluntarily

1 waived his right to a jury trial on the second
2 element of the felon in possession of a firearm
3 charge and the Court will accept the defendant's
4 stipulation on that element.

5 ATTORNEY KRATZ: For the record, Judge, the
6 State also acquiesces and accepts the stipulation.

7 THE COURT: Thank you. As I indicated
8 previously, I have provided the parties with a copy
9 of the Court's proposed opening instructions. And
10 it's the Court's understanding that those proposed
11 instructions are acceptable to each of the parties
12 with the exception of some language involving the
13 elements of the crime on the two counts that are
14 charged as a party to the crime. First, counsel, am
15 I correct in that understanding?

16 ATTORNEY KRATZ: Yes, Judge. Although the
17 State, as Mr. Gahn and Mr. Fallon and I have spoken,
18 and after our brief conversation in chambers, we are
19 asking the Court adopt a very similar series of
20 language that the Court has proposed in its last
21 submission. I will be happy to put our ideas on the
22 record, but you are correct, Judge, there is one
23 change that we're requesting.

24 THE COURT: All right. And Mr. Strang.

25 ATTORNEY STRANG: We were satisfied with

1 the whole of the Court's final proposed instructions
2 to be given preliminarily and we object to the
3 modification that the State has offered.

4 THE COURT: All right. I will hear from
5 the State first, then, on the proposed modification.

6 ATTORNEY KRATZ: Thank you, Judge. The
7 substantive change that we are asking is that
8 towards the bottom of page six of the preliminary
9 instructions, when the Court reads the element of
10 the offense for first degree intentional homicide,
11 as a party to the crime, the Court submit the
12 following language:

13 That Steven Avery caused the death of
14 Teresa Halbach or aided and abetted Brendan
15 Dassey in causing the death of Teresa Halbach.

16 As we have indicated throughout the jury
17 selection process and, in fact, in motions before
18 trial, whether Mr. Dassey testifies in this case
19 at all or whether Brendan Dassey is to be
20 referred to at all in this trial is still very
21 much at issue.

22 To highlight or alert the jury that
23 Brendan Dassey is the individual from which
24 Mr. Avery acted in concert, we believe to be
25 inappropriate and would, as some of the jurors

1 quite candidly indicated in jury selection,
2 suggest that the State should, for whatever
3 reason, be calling Mr. Dassey as a witness, not
4 withstanding his Fifth Amendment rights not to do
5 so, or against self-incrimination.

6 We're, therefore, Judge, asking that the
7 elements read that Steven Avery caused the death
8 of Teresa Halbach or aided and abetted another in
9 causing the death of Teresa Halbach. Similar
10 language would be inserted into the second
11 element, again, removing the words Brendan Dassey
12 and inserting the words another.

13 That provides no prejudice to the
14 defense. It is an accurate statement of the law
15 and, again, removes the suggestion that the State
16 in some way has a burden, or obligation, or even
17 practically speaking should call Mr. Dassey or
18 insert Mr. Dassey into this case.

19 Lastly, Judge, if the Court adopts that
20 change, then the statement or comment as to
21 unanimous agreement not being required, further
22 up on the page, on page No. 6, is in fact
23 appropriate, is required, and we would ask -- I
24 think that's joined by Mr. Strang -- that that
25 instruction be reinserted and added in the

1 preliminary instructions.

2 THE COURT: Mr. Strang? Well, just --
3 before I get to Mr. Strang, Mr. Kratz, what is the
4 language, I'm looking at page 6, element one, what
5 language exactly is the State proposing?

6 ATTORNEY KRATZ: Just instead of the name
7 Brendan Dassey, you are just exchanging that with
8 the word another.

9 THE COURT: Just a second.

10 ATTORNEY KRATZ: Aided and abetted another
11 in the commission of the crime. I think that's a
12 correct statement of the law and as I mentioned,
13 Judge, removes the suggestion that the State have an
14 obligation to set forth its theory of the
15 prosecution when it may very well be that Mr. Dassey
16 not testify in this case.

17 THE COURT: So, you are proposing to read
18 Steven Avery caused the death of Teresa Halbach or
19 aided and abetted another in causing the death?

20 ATTORNEY KRATZ: That's right.

21 THE COURT: And with respect to the other
22 references to Mr. Dassey in this count and the other
23 count, you are proposing that in each case it be
24 replaced with another.

25 ATTORNEY KRATZ: Yes, Judge.

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THE COURT: Mr. Strang.

ATTORNEY STRANG: How I wish that on March 2, 2006, the State had thought it as inappropriate to pair Brendan Dassey and Steven Avery in the commission of these crimes as it thinks it today. And the 11 months of prejudicial publicity that we have had, perhaps we would have been spared, if the State thought then that it was inappropriate to link these two together as co-actors, accomplices in the death of Teresa Halbach.

Today is too late to do that. To now insert the ambiguous term "another", which potentially includes the whole world, is to invite the very speculation about who an accomplice may have been or who a third party culprit may have been, that the State successfully opposed when we made a fairly elaborate proffer on possible third party actors.

Up through that motion, it was the State's position that Brendan Dassey, and Brendan Dassey only, was the possible third party or accomplice in this crime. And now, on no showing at all of the potential culpability of another, the State proposes to throw open the field of

1 possible accomplice liability to the entire
2 world.

3 That's not fair. It's not consistent
4 with the positions the State has taken to date
5 and it leaves Mr. Avery, on the one hand, unable
6 to suggest directly the liability of a third
7 person; and yet, on the other hand, defending a
8 potentially shifting or unstated theory on who
9 his accomplice or accessory may have been.

10 The State's choices on this case and on
11 the history of it before seem to me pretty clear.
12 Either stick with Brendan Dassey as the man you
13 think is the accomplice and prove it, or drop the
14 party to a crime allegation in Count 1 and Count
15 2 altogether and prove that Steven Avery
16 committed this crime without allowing him to run
17 the risk of accessory as a liability to a
18 phantom.

19 Those seem to me the two legitimate
20 choices. That's why we accepted and agreed with
21 and thought accurate the Court's final draft of
22 the preliminary jury instructions. We equally
23 would accept a redraft that struck the party to a
24 crime theory altogether, but that's the State's
25 choice to make.

1 It's allowed to decide on what theory of
2 liability it will proceed. It is not allowed on
3 the morning of opening statements to back away
4 from the man it has roped to Steven Avery for 11
5 months and say, could have been anybody. Just
6 another. Just not fair.

7 And I would ask the Court to leave the
8 instructions as they are, unless the State wishes
9 to drop the party to the crime theory of
10 liability in which case the instructions would be
11 confined to Steven Avery alone.

12 As to unanimous agreement, I don't know
13 that I have talked with the State about this at
14 all and, in fact, I don't think that unanimous
15 agreement requirement should be added back. The
16 Court had struck it; it should remain stricken.
17 And the reason is really very straight forward.

18 Understanding that there is Wisconsin
19 law to the contrary, my view of the due process
20 requirement in the 14th Amendment and the right
21 to a unanimous verdict that it embraces is that
22 the jury, all 12, must be unanimous on whether
23 the defendant is the principal, the defendant
24 directly committed the crime, or whether he was
25 an accessory, that is, an aider and abettor.

1 Now, I agree, for purposes of discussion
2 in the abstract, that which of two means of
3 aiding and abetting that Wisconsin law
4 recognizes, those, let's assume for the sake of
5 argument, jurors need not agree on unanimously.
6 Once they have decided unanimously, that it is as
7 a party to the crime rather than as the principal
8 that the defendant has been proven guilty.

9 But this instruction allows jurors to
10 differ and to return a verdict that is not
11 unanimous on the fundamental question of whether
12 one is a principal, or liable as an accessory, an
13 aider abettor, or a party to the crime.

14 Unanimity instruction, therefore, ought
15 not be given at all at this point. By final
16 instructions, I'm confident that the parties and
17 the Court, in the end, can draft an instruction
18 that treats unanimity properly.

19 THE COURT: All right. There appear to be
20 two points that separate the parties. And I'm going
21 to rule as follows: First of all, before I indicate
22 the Court's decision, I think it's important to note
23 that what we're talking about here are not the
24 closing instructions that the jury is going to get
25 when it's time to deliberate on the verdict, but

1 rather opening instructions, the purpose of which is
2 simply to make it easier for the jurors to follow
3 the evidence and understand what it is the State has
4 to prove in order to justify a guilty verdict.

5 With that thought in mind, I think it's
6 best to steer clear of controverted issues that
7 may be clarified as the evidence comes in. The
8 instructions the Court gives in the opening are
9 not necessarily the instructions that will be
10 given in the closing. It's easier to be more
11 specific at that time once the Court knows what
12 the evidence is.

13 For those reasons, I'm going to --
14 Actually, I previously changed the elements of
15 the crime language on the two party to the crime
16 charges based on a format submitted by the
17 defense. I'm going to continue to use the
18 defense format, but I will substitute another for
19 Brendan Dassey.

20 I agree that it's not a good idea at the
21 start of the trial to focus attention on
22 Mr. Dassey; although, I understand that's the
23 basis of the State's party to the crime theory.
24 When the closing instructions are given,
25 depending on how the evidence comes in, the

1 request being made by the defense may well be
2 appropriate. But for purposes of the opening
3 instructions, which are simply to outline the
4 elements that the State must prove, I don't think
5 that level of specificity is required.

6 With respect to the unanimity language,
7 as I indicated to the parties in prior
8 correspondence, while the comment to the party to
9 the crime instruction would suggest that the
10 unanimity requirement is appropriate, the Court
11 has not had a chance to fully address the defense
12 arguments and there are arguments to the contrary
13 that I believe must be addressed before the Court
14 is in a position to make a final decision.

15 It's not necessary during the opening
16 instructions to tell the jury whether or not they
17 have to be unanimous. The instructions are
18 intended to help them follow the evidence.
19 Therefore, I am not going to include the
20 unanimity language in the opening instructions.

21 I did previously reword the opening
22 language to the substantive instructions to
23 notify the jurors that the Court is going to be
24 reading portions of the specific jury
25 instructions. So certainly the possibility is

1 left open that the unanimity language can be
2 inserted in the closing instructions.

3 I believe that addresses the parties
4 comments with respect to the opening
5 instructions. Is there anything else either
6 party feels should be addressed before we bring
7 in the jurors and swear the jury?

8 ATTORNEY KRATZ: Judge, one housekeeping
9 matter, I don't know if you have reminded the jurors
10 or perhaps -- excuse me -- the public as they were
11 brought in, but without an interest in having a Mike
12 Sherman moment, perhaps all cell phones should be
13 turned off. I don't know if that was something --

14 THE COURT: Actually, the Court has ordered
15 that no cell phones be permitted in the courtroom
16 and I trust that the folks guarding the entrance to
17 the door have enforced that requirement.

18 ATTORNEY KRATZ: And the attorneys as well,
19 Judge, at least the State has taken care of that and
20 that's the only other comment we have. Thank you.

21 THE COURT: Anything else from the defense?

22 ATTORNEY STRANG: Nothing here, your Honor.

23 THE COURT: If not, we can have the jury
24 brought in.

25 (Jury panel present.)

1 THE COURT: Good morning, jurors, you can
2 be seated for a brief period of time. The Court has
3 already called this morning the case of State of
4 Wisconsin vs. Steven Avery, Case No. 05 CF 381. In
5 a minute I'm going to read to you some opening
6 instructions in this case, but before we do that,
7 the Clerk will swear you in. So at this time I will
8 ask you to all please rise.

9 THE CLERK: If you all would raise your
10 right hand.

11 (Jury panel sworn.)

12 THE CLERK: Please be seated.

13 THE COURT: Members of the jury, before the
14 trial begins, there are certain instructions you
15 should have to better understand your functions as a
16 juror and how you should conduct yourself during the
17 trial. Your duty is to decide the case based only
18 on the evidence presented and the law given to you
19 by the Court.

20 Do not let any personal feelings of bias
21 or prejudice about such things as race, religion,
22 national origin, sex, or age affect your
23 deliberations.

24 Do not begin your deliberations and
25 discussion of the case until all the evidence is

1 presented and I have instructed you on the law.

2 Do not discuss this case among
3 yourselves or with anyone else until your final
4 deliberations in the jury room.

5 We'll stop or recess from time to time
6 during the trial. You may be excused from the
7 courtroom when it is necessary for me to hear
8 legal arguments from the lawyers.

9 If you come into contact with any of the
10 parties, lawyers or witnesses, do not speak with
11 them. For their part, the parties, lawyers and
12 witnesses will not contact or speak with the
13 jurors.

14 As the Court has previously informed
15 you, the jury will not be sequestered during this
16 trial. That decision is dependent on the jurors
17 not listening to, watching, or reading any news
18 accounts of the case during the trial, nor
19 discussing it with anyone, including members of
20 your family, or other jurors.

21 For these reasons it is vital that you
22 do not listen to any conversation about the case.
23 Do not read any newspaper or internet reports or
24 listen to any news reports on radio or television
25 about this trial.

1 To assure that you are not exposed to
2 improper media coverage, the Court is ordering
3 that, for the duration of the trial, you do not
4 watch the local news on television; do not listen
5 to the local news on the radio; and do not read
6 the newspaper, unless you first have someone
7 remove any articles about this case.

8 In addition, do not visit any internet
9 websites or web logs which may include any
10 information about the case. Should you be
11 exposed to any reports or communications from any
12 source concerning the case during the trial, you
13 should report that information to the jury
14 bailiff.

15 Do not investigate this case on your own
16 or visit the scene. Do not engage in any
17 experimentation or research relating to any
18 issues, facts, or persons involved in the case.

19 Do not consult dictionaries, computers,
20 websites, or other reference materials for any
21 additional information.

22 The Court is aware that many of you have
23 been exposed to publicity concerning this case
24 before you were selected to serve as a juror.
25 Each of you has committed to base your verdict

1 only on the evidence introduced during the trial.
2 It is of vital importance to the parties and to
3 the sanctity of the court process that you remain
4 true to this commitment.

5 Anything you may see or hear outside the
6 courtroom is not evidence. You are to decide the
7 case solely on the evidence that is offered and
8 received at trial.

9 Evidence is defined as, first, the sworn
10 testimony of witnesses both on direct and
11 cross-examination, regardless of who called the
12 witness.

13 Second, the exhibits the Court has
14 received.

15 And, third, any facts to which the
16 lawyers have agreed or stipulated or which the
17 Court has directed you to find.

18 Attorneys for each side have the right
19 and the duty to object to what they consider are
20 improper questions asked of witnesses and to the
21 admission of other evidence which they believe is
22 not properly admissible. You should not draw any
23 conclusions from the fact an objection was made.
24 By allowing testimony or other evidence to be
25 received over the objection of counsel, the Court

1 is not indicating any opinion about the evidence.
2 You jurors are the judges of the credibility of
3 the witnesses and the weight of the evidence.

4 You are not required to, but you may
5 take notes during this trial except during the
6 opening statements and the closing arguments.
7 The Court will provide you with materials for
8 this purpose. In taking notes, you must be
9 careful that it does not distract you from
10 carefully listening to and observing the
11 witnesses.

12 You may rely on your notes to refresh
13 your memory during your deliberations, otherwise
14 keep them confidential. Your notes will be
15 collected by the jury bailiff after each day's
16 session and kept in a secure place until the next
17 day of trial. After the trial, the notes will be
18 collected and destroyed.

19 You will not have a copy of the written
20 transcript of the trial testimony available for
21 use during your deliberations. You may ask to
22 have specific portions of the testimony read to
23 you. You should pay careful attention to all the
24 testimony because you must rely primarily on your
25 memory of the evidence and the testimony

1 introduced during the trial.

2 It is the duty of the jury to scrutinize
3 and to weigh the testimony of witnesses and
4 determine the effect of the evidence as a whole.
5 You are the sole judges of the credibility; that
6 is, the believability of the witnesses and of the
7 weight to be given to their testimony.

8 In determining the credibility of each
9 witness and the weight you give to the testimony
10 of each witness, consider these factors:

11 Whether the witness has an interest or
12 lack of interest in the result of the trial.

13 The witness' conduct, appearance and
14 demeanor on the witness stand.

15 The clearness or lack of clearness of
16 the witness' recollections.

17 The opportunity the witness had for
18 observing and knowing the matters the witness
19 testified about.

20 The reasonableness of the witness'
21 testimony.

22 The apparent intelligence of the
23 witness.

24 Bias or prejudice, if any has been
25 shown.

1 Possible motives for falsifying
2 testimony.

3 And all other factors -- excuse me --
4 all other facts and circumstances during the
5 trial which tend either to support or to
6 discredit the testimony.

7 Then give to the testimony of each
8 witness the weight you believe it should receive.
9 There is no magic way for you to evaluate the
10 testimony. Instead, you should use your common
11 sense and experience. In everyday life you
12 determine for yourselves the reliability of
13 things people say to you; you should do the same
14 thing here.

15 To assist you in evaluating the
16 evidence, I will now read to you portions of the
17 specific jury instructions for the offenses with
18 which the defendant is charged. I will read them
19 to you in their entirety at the close of the
20 evidence.

21 Count 1 of the Information charges the
22 defendant with first degree intentional homicide
23 as a party to the crime. Section 939 of the
24 Criminal Code of Wisconsin provides that whoever
25 is concerned in the commission of a crime as a

1 party to that crime and may be convicted of that
2 crime although that person did not directly
3 commit it.

4 The State contends that the defendant
5 was concerned in the commission of the crime of
6 first degree intentional homicide by either
7 directly committing it or by intentionally aiding
8 and abetting the person who directly committed
9 it.

10 If a person intentionally aids and abets
11 the commission of a crime, then that person is
12 guilty of the crime as well as the person who
13 directly committed it. A person intentionally
14 aids and abets the commission of a crime when,
15 acting with acknowledge or belief that another
16 person is committing or intends to commit a
17 crime, he knowingly either assists the person who
18 commits the crime or is ready and willing to
19 assist and the person who commits the crime knows
20 of the willingness to assist.

21 To intentionally aid and abet the crime
22 of first degree intentional homicide, the
23 defendant must know that another person is
24 committing or intends to commit the crime of
25 first degree intentional homicide and have the

1 purpose to assist in the commission of that
2 crime.

3 Before you may find the defendant guilty
4 of first degree intentional homicide as a party
5 to the crime, the State must prove, by evidence
6 which satisfies you, beyond a reasonable doubt,
7 that the defendant directly committed the crime
8 or intentionally aided and abetted the commission
9 of the crime.

10 First degree intentional homicide as
11 defined in Section 940.01 of the Criminal Code of
12 Wisconsin is committed by one who causes the
13 death of another human being with intent to kill
14 that person or another. Before you may find the
15 defendant guilty of first degree intentional
16 homicide, the State must prove, by evidence which
17 satisfies you, beyond a reasonable doubt, that
18 the following two elements were present:

19 One, Steven Avery caused the death of
20 Teresa Halbach or aided and abetted another in
21 causing the death of Teresa Halbach. Cause means
22 that the defendant's act was a substantial factor
23 in producing the death.

24 Two, Steven Avery acted with the intent
25 to kill Teresa Halbach whether he did so directly

1 or aided and abetted another.

2 Intent to kill means that the defendant
3 had the mental purpose to take the life of
4 another human being or was aware that his conduct
5 was practically certain to cause the death of
6 another human being. While the law requires that
7 the defendant acted with intent to kill, it does
8 not require that the intent exists for any
9 particular length of time before the act is
10 committed.

11 The act need not be brooded over,
12 considered, or reflected upon for a week, a day,
13 an hour, or even for a minute. There need not be
14 any appreciable time between the formation of the
15 intent and the act. The intent to kill may be
16 formed at any time before the act, including the
17 instant before the act and must continue to exist
18 at the time of the act.

19 You cannot look into a person's mind to
20 find intent. Intent to kill must be found, if
21 found at all, from the defendant's acts, words,
22 and statements, if any, and from all the facts
23 and circumstances in this case bearing upon
24 intent.

25 Intent should not be confused with

1 motive. While proof of intent is necessary to a
2 conviction, proof of motive is not. Motive
3 refers to a person's reason for doing something.

4 While motive may be shown as a
5 circumstance to aid in establishing the guilt of
6 the defendant, the State is not required to prove
7 motive on the part of a defendant in order to
8 convict. Evidence of motive does not, by itself,
9 establish guilt. You should give it the weight
10 you believe it deserves, under all the
11 circumstances.

12 If you are satisfied, beyond a
13 reasonable doubt, at the conclusion of the trial,
14 that the defendant directly committed both
15 elements of first degree intentional homicide,
16 you should find the defendant guilty. If you are
17 not so satisfied, you must find the defendant not
18 guilty.

19 Count 2 charges the defendant with
20 mutilating a corpse, also as a party to the
21 crime. The State contends that the defendant was
22 concerned in the commission of the crime of
23 mutilating a corpse by either directly committing
24 it or by intentionally aiding and abetting the
25 person who committed it.

1 Before you may find the defendant guilty
2 of mutilating a corpse as a party to the crime,
3 the State must prove, by evidence which satisfies
4 you, beyond a reasonable doubt, that the
5 defendant committed the -- directly committed the
6 crime of mutilating a corpse or intentionally
7 aided and abetted the commission of that crime.

8 Mutilating a corpse as defined in
9 Section 940.11 (1) of the Criminal Code of
10 Wisconsin is violated by one who mutilates a
11 corpse with intent to conceal a crime or avoid
12 apprehension, prosecution, or conviction for a
13 crime. Before you may find the defendant guilty
14 of this offense, the State must prove, by
15 evidence which satisfies you, beyond a reasonable
16 doubt, that the following two elements were
17 present:

18 One, Steven Avery mutilated the corpse
19 of Teresa Halbach or aided and abetted another in
20 mutilating the corpse of Teresa Halbach.

21 Two, in mutilating the corpse of Teresa
22 Halbach or in aiding and abetting another in
23 mutilating her corpse, Steven Avery acted with
24 the intent to conceal a crime. This requires
25 that the defendant acted with the purpose to

1 conceal a crime.

2 If you are satisfied, beyond a
3 reasonable doubt, at the conclusion of the trial,
4 that Steven Avery directly committed both
5 elements of this offense, you should find the
6 defendant guilty. If you are not so satisfied,
7 you must find the defendant not guilty.

8 Count 3 charges the defendant with felon
9 in possession of a firearm. Section 941.29 of
10 the Criminal Code of Wisconsin is violated by a
11 person who possesses a firearm, if that person
12 has been convicted of a felony.

13 Before you may find the defendant guilty
14 of this offense, the State must prove, by
15 evidence which satisfies you, beyond a reasonable
16 doubt, that the following two elements were
17 present:

18 One, the defendant possessed a firearm.
19 Firearm means a weapon which acts by the force of
20 gunpowder. It is not necessary that the firearm
21 was loaded or capable of being fired.

22 Possess means that the defendant
23 knowingly had actual physical control of a
24 firearm. An item is in a person's possession if
25 it is in an area over which the person has

1 control and the person intends to exercise
2 control over the item.

3 Two, the second element, is that the
4 defendant had been convicted of a felony before
5 November 5, 2005. The parties in this case have
6 agreed that Steven Avery was convicted of a
7 felony before November 5, 2005 and you must
8 accept this as conclusively proved.

9 If you are satisfied, beyond a
10 reasonable doubt, at the conclusion of the trial,
11 that both elements of this offense have been
12 proved, you should find the defendant guilty. If
13 you are not so satisfied, you must find the
14 defendant not guilty.

15 The final count charges the defendant
16 with false imprisonment. False imprisonment as
17 defined in Section 940.30 of the Criminal Code of
18 Wisconsin is committed by one who intentionally
19 confines or restrains another without the
20 person's consent and with knowledge that he has
21 no lawful authority to do so.

22 Before you may find the defendant guilty
23 of this offense the State must prove, by evidence
24 which satisfies you, beyond a reasonable doubt,
25 that the following five elements were present:

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One, the defendant confined or restrained Teresa Halbach during her lifetime.

Two, the defendant confined or restrained Teresa Halbach intentionally. This requires that the defendant have the mental purpose to confine or restrain Teresa Halbach.

Three, Teresa Halbach was confined or restrained without her consent.

Four, the defendant had no lawful authority to confine or restrain Teresa Halbach.

Five, the defendant knew that Teresa Halbach did not consent and knew that he did not have lawful authority to confine or restrain Teresa Halbach.

Although this requires genuine restraint or confinement, it does not require that it be in a jail or prison. If the defendant deprived Teresa Halbach of freedom of movement or compelled her to remain where she did not wish to remain, then Teresa Halbach was confined or restrained.

The use of physical force is not required. One may be confined or restrained by acts, or words, or both.

You cannot look into a person's mind to

1 find out intent or knowledge. Intent and
2 knowledge must be found, if at all, from the
3 defendant's acts, words, and statements, if any,
4 and from all the facts and circumstances in this
5 case bearing upon intent and knowledge.

6 If you are satisfied, beyond a
7 reasonable doubt, at the conclusion of the trial,
8 that all five elements of this offense have been
9 proproved -- excuse me -- have been proved, you
10 should find the defendant guilty. If you are not
11 so satisfied, you must find the defendant not
12 guilty.

13 In reaching your verdict examine the
14 evidence with care and caution. Act with
15 judgment, reason and prudence. Defendants are
16 not required to prove their innocence, the law
17 presumes that every person charged with the
18 commission of an offense is innocent. This
19 presumption requires a finding of not guilty,
20 unless in your deliberations you find it is
21 overcome by evidence which satisfies you, beyond
22 a reasonable doubt, that the defendant is guilty.

23 The burden of establishing every fact
24 necessary to constitute guilt is upon the State.
25 Before you can return a verdict of guilty, the

1 evidence must satisfy you, beyond a reasonable
2 doubt, that the defendant is guilty. If you can
3 reconcile the evidence, upon any reasonable
4 hypothesis consistent with the defendant's
5 innocence, you should do so and return a verdict
6 of not guilty.

7 The term reasonable doubt means a doubt
8 based upon reason and common sense. It is a
9 doubt for which a reason can be given, arising
10 from a fair and rational consideration of the
11 evidence or lack of evidence. It means such a
12 doubt as would cause a person of ordinary
13 prudence to pause or hesitate when called upon to
14 act in the most important affairs of life.

15 A reasonable doubt is not a doubt which
16 is based on mere guesswork or speculation. A
17 doubt which arises merely from sympathy or from
18 fear to return a verdict of guilt is not a
19 reasonable doubt.

20 A reasonable doubt is not a doubt such
21 as may be used to escape the responsibility of a
22 decision. While it is your duty to give the
23 defendant the benefit of every reasonable doubt,
24 you are not to search for doubt, you are to
25 search for the truth.

1 As you know, although this is a
2 Manitowoc County case with a Manitowoc County
3 jury, the case is being tried at the Calumet
4 County Courthouse. You will learn that when
5 Steven Avery became a suspect in this case, the
6 Manitowoc County District Attorney turned control
7 of the case over to the Calumet County District
8 Attorney because Mr. Avery had a lawsuit pending
9 against Manitowoc County at the time.

10 For logistical reasons, the parties
11 jointly requested that the trial be held in
12 Calumet County and the Court granted that
13 request. You should draw no inference for or
14 against either party to this case because of the
15 location of the trial, or the fact that it is not
16 being prosecuted by the Manitowoc County District
17 Attorney.

18 In a few minutes the lawyers will make
19 opening statements. The purpose of an opening
20 statement is to give the lawyers an opportunity
21 to tell you what they expect the evidence will
22 show, so that you will better understand the
23 evidence as it is introduced during the trial. I
24 must caution you, however, that the opening
25 statements are not evidence.

1 At this time we're going to take a very
2 short break so that the State may get its
3 equipment ready to present the opening statement.
4 We'll be back in just a few minutes.

5 (Jury not present.)

6 THE COURT: Five minutes, counsel.

7 ATTORNEY KRATZ: That's fine.

8 (Recess taken.)

9 (Jury present.)

10 THE COURT: You may be seated. Members of
11 the jury, at this time we're going to hear the
12 opening statement from the State. Mr. Kratz, you
13 may begin.

14 ATTORNEY KRATZ: Thank you, Judge. May it
15 please the Court, ladies and gentlemen of the jury,
16 Mr. Strang, Mr. Buting, Mr. Avery, good morning.

17 MR. AVERY: Good morning.

18 ATTORNEY KRATZ: We're all a little nervous
19 this morning. And I think that if we admit that,
20 we, being the lawyers, and the jurors asked to
21 decide this important matter, I think we're all
22 going to be better off.

23 And on behalf of the State, let me first
24 start by thanking you, thanking you for your jury
25 service, thanking you for your attention that you

1 are about to give in this case, and thanking you
2 in detail for what in jury selection we talked
3 about may perhaps be the most important decision
4 that you will ever make, at least for the rest of
5 your lives.

6 You will note, and we have already
7 introduced, that there are three attorneys on
8 this case, myself, Ken Kratz, the Calumet County
9 District Attorney. This is my courthouse. And
10 I'm joined by Mr. Fallon who is seated directly
11 to my right. Mr. Fallon is an Assistant Attorney
12 General with the Department of Justice. And
13 joining us also is Mr. Norm Gahn.

14 ATTORNEY GAHN: Good morning.

15 ATTORNEY KRATZ: Mr. Gahn is an Assistant
16 District Attorney in Milwaukee County, Wisconsin.
17 You will learn that each of us are special
18 prosecutors in this case. But what's so special
19 about a special prosecutor? Why would some small
20 town lawyer from Chilton be in charge of this entire
21 prosecution, this big of a case? Why would Ken
22 Kratz be asked to lead up this prosecution?

23 We'll talk about how this case was
24 assigned over, but just understand, at least for
25 this person, that although we are all experienced

1 prosecutors, we're doing a favor for Manitowoc
2 County. It's a rather big favor for Manitowoc
3 County, but it's a favor nonetheless. It is
4 helping the Manitowoc County District Attorney's
5 Office in presenting this case.

6 Mr. Rohrer, your District Attorney,
7 asked me to take over the case early on. You
8 will learn about when that happened. But it is
9 still something that we were simply asked to and
10 we did, in fact, perform.

11 There's two investigators in this case.
12 Now, you are going to hear that there were
13 hundreds of law enforcement officers involved in
14 this investigation, but these kinds of cases
15 require direction. They require leadership by
16 law enforcement officials that have experience.

17 The first lead investigator in the case
18 who is seated in the courtroom is Mark Wiegert.

19 MR. WIEGERT: Good morning.

20 ATTORNEY KRATZ: Mr Wiegert is an
21 investigator with the Calumet County Sheriff's
22 Department.

23 The other lead investigator in this case
24 is Tom Fassbender. Mr. Fassbender works for the
25 Department of Justice. He works for a law

1 enforcement branch of the Department of Justice
2 which is called the Division of Criminal
3 Investigation.

4 And, again, knowing who we are, knowing
5 who the five of us are, the prosecution team, we
6 hope may help in determining what's important in
7 these cases.

8 The Judge has told you, at least in
9 brief terms, what an opening statement is. But
10 often times evidence comes in in bits and pieces,
11 especially in a six week trial. That isn't
12 something that you will expect all of the
13 evidence to come at you at once. And so if we
14 can provide a road map or an overview of what the
15 evidence is going to show, that should be helpful
16 for you.

17 Some juries that I have spoken to, it's
18 been helpful to describe this process as the
19 provision of the cover of a jigsaw puzzle box.
20 All right. You think of evidence as pieces in a
21 jigsaw puzzle. You wouldn't tell, if you were
22 handed one piece of a jigsaw puzzle, where that's
23 going to go. But if you got the box and if you
24 have the box, some of the pieces are obvious
25 where they go; some are not so obvious, but at

1 least it's a guide. It's a help for you as to
2 where these pieces all fit.

3 Now, before I go any further, I want to
4 talk to you about something that I know some of
5 you, in your specific questions, expressed as
6 some concern and that's the nature of the
7 evidence that's going to be presented. This is a
8 very, very serious crime and potentially has
9 very, very graphic kinds of details that may be
10 involved or may be presented.

11 But there is some uncertainty about how
12 much evidence is going to be presented. And I
13 wanted to assure you, as the lead prosecutor, as
14 the person responsible for the presentation of
15 the case a couple of things.

16 Number one, and perhaps most importantly
17 for you, as the jury, I'm only going to present
18 those pieces of evidence that are necessary;
19 those pieces that are necessary to tell you the
20 entire story. My job is not to present gruesome,
21 or overly graphic information for you.

22 And I think as we go through this
23 process, you are going to find that the evidence
24 is pretty straight forward. It is not
25 necessarily gruesome or graphic, isn't something

1 that you should fear at this early stage. All
2 right.

3 I understand the sensitivities not only
4 of you, but of most of the people seated on the
5 left hand side of the courtroom. And I --
6 actually, I want you to look over to the left
7 side of the courtroom. That's the Halbach
8 family.

9 You are going to see them throughout the
10 case, friends and family. And I want to assure
11 you that before the first piece of evidence is
12 ever introduced in this case, everyone of those
13 people: The mother, the father, the brothers,
14 the sisters, the friends, and any other family
15 members that wanted to, have already seen all of
16 this evidence. All right.

17 I sat down with them and as sensitively
18 as I possibly could, allowed them an opportunity
19 to review the evidence. That's just something
20 that a prosecutor should do and that's all been
21 done. So as you see photographs being presented,
22 as you see physical evidence being brought into
23 the courtroom; I want to assure you that the
24 Halbach family already has seen it.

25 They have already known the kinds of

1 evidence that are going to be presented. And I
2 think that that was necessary for you to hear and
3 necessary for you to understand that this family
4 does have that information.

5 The Judge has told you that there's four
6 charges. I'm very, very briefly going to talk
7 about those four, because I don't want to
8 reiterate what the Judge did. But there are four
9 separate charges that the defendant is charged
10 with: First degree intentional homicide,
11 mutilation of a corpse, felon in possession of a
12 firearm and false imprisonment.

13 Now, the Judge instructed you and my job
14 today in opening statement, again, this isn't
15 evidence, but it is a help for you; it's the
16 cover if you will; it's the road map; it's the
17 overview, to talk about the first legal concept
18 that you as a jury has to understand. And that's
19 the concept called being a party to the crime.

20 The Judge has told you that that can be
21 satisfied either if the defendant committed an
22 offense himself or if the defendant aided and
23 abetted another in the commission of the offense.
24 Now, the first two counts, the homicide and the
25 mutilation of a corpse are charged as a party to

1 the crime.

2 And so you will learn, at the conclusion
3 of the case, six weeks from now, if you fast
4 forward six weeks from now, that the jury
5 instructions will tell you that if the defendant
6 committed any of those elements himself, or if
7 the defendant aided in another -- another --
8 excuse me -- aided and abetted another in the
9 commission of those offenses, that you can and
10 should find him guilty.

11 Now, I can't stand up here and predict
12 what the defense is going to bring into this
13 case, what cross-examination they may encounter,
14 or if they even choose to present any kind of
15 defense, nor should I. That isn't my job.

16 My job, as the prosecutor, is to present
17 our case, to present the physical evidence that
18 we have developed, to present the witnesses that
19 we have developed to prove our case. But just
20 understand, and just remember this concept when
21 it comes time to deciding whether or not the
22 defendant is guilty.

23 The Judge also told you about something
24 called elements of the offense. The State has
25 the burden of proof here. The defense has

1 absolutely no burden. And our burden is to prove
2 the case, beyond a reasonable doubt.

3 The Judge explained to you already that
4 beyond a reasonable doubt means a doubt for which
5 a reason can be given when considering all the
6 evidence. Let me tell you what it is not,
7 though. Beyond a reasonable doubt is not beyond
8 all doubt. It's not 100 percent. And when we
9 are dealing with a human justice system, you
10 can't expect beyond all doubt, or beyond a shadow
11 of a doubt, or comments sometimes that we have
12 heard about that.

13 It's beyond a reasonable doubt. A doubt
14 for which a reason can be given. And I'm
15 standing before you, members of the jury, telling
16 you that I accept that burden. I will prove this
17 case, beyond a reasonable doubt. But we didn't
18 want you going into this case expecting one
19 hundred percent, or beyond all doubt, because
20 there are human factors or dynamics that go into
21 these cases.

22 Each charge, the Judge told you, has
23 elements of those offense, we're going to go
24 through those in just a minute. But, also, each
25 of the four charges should be considered

1 separately. You shouldn't group them together
2 and decide if he is guilty of all four or none.
3 Each of the four counts are to be considered
4 separately. And, in fact, there is separate
5 evidence for all four of those counts.

6 And, finally, the defendant is presumed
7 innocent. As Mr. Avery sits here today, because
8 you have heard no evidence in this case, he is
9 presumed by you, or should be presumed by you, to
10 be innocent. However, and this is a big however,
11 that presumption disappears at that very moment
12 when the evidence in this case satisfies you,
13 beyond a reasonable doubt, that he is guilty of
14 that offense. That presumption disappears at the
15 moment that the evidence proves that he is
16 guilty.

17 Count 1, the Judge instructed you, has
18 two elements. And why I'm telling you this and
19 why I'm showing them on the screen or on a
20 PowerPoint presentation is because these are
21 serious, serious crimes; in fact, the most
22 serious crimes that we have in the State of
23 Wisconsin.

24 The legal concepts aren't all that
25 complex. We are talking about two things that we

1 have to prove, caused the death of somebody and
2 did it intentionally. Nothing magic about that,
3 nothing complex about that and all of you should
4 be able to understand that.

5 The same thing with mutilation of a
6 corpse, just the two elements; that he mutilated
7 a corpse and that he did so to conceal a crime
8 that had been committed. You will hear evidence
9 in this case about what that crime was that he
10 was trying to conceal. The crime, as you may
11 have already guessed, is the first degree
12 intentional homicide.

13 Mr. Avery is also charged with felon in
14 possession of a firearm; again, two elements, the
15 felon in possession. First, that he possessed
16 the firearm, that seems obvious. And, number 2,
17 that some time before November of 2005, he had
18 been convicted of a felony.

19 Now, the Judge has told you that that
20 second element is stipulated. Stipulation means
21 that the facts are agreed to by the parties; that
22 you can take that as already having been proved,
23 beyond a reasonable doubt, that Mr. Avery has
24 that felony conviction. And so it's just the
25 first element of that offense that the State has

1 to prove. Do you all understand that? All
2 right.

3 Now, false imprisonment has five
4 separate elements to the offense. Those five
5 elements are that he confined or restrained, note
6 that that's in the disjunctive; he either
7 confined or restrained Teresa Halbach,
8 intentionally, without her consent. He didn't
9 have authority and he knew that he didn't have
10 authority to confine or restrain Ms Halbach.

11 All right. Enough of the civics lesson.
12 Let's talk about what the evidence is going to
13 show. On Monday, October 31st, 2005, beginning
14 at approximately 2:45 p.m., the State intends to
15 prove to you that the defendant restrained,
16 murdered, and mutilated a 25 year old
17 photographer named Teresa Halbach.

18 We're going to prove to you what
19 happened. We're going to prove to you who
20 committed this crime. We're going to prove to
21 you where it happened. We're going to prove to
22 you when, specifically, it happened. And those
23 will prove all of the elements of the offense.

24 What we're not going to prove to you,
25 what the Judge has already told you we don't have

1 to and, in fact, can't prove to you, is why. We
2 can't prove the why in a case like this. That's
3 called motive, the reason behind the killing;
4 what was in Mr. Avery's mind when he decided to
5 kill this lovely young woman.

6 I'm going to introduce you to somebody.
7 This remarkable young woman was 25 years of age;
8 she was single; she was a freelance photographer.
9 She had her own photography business that was,
10 although in its infancy, was doing quite well.

11 This woman, and I will remind you
12 several times in this opening and throughout the
13 trial, I will remind you that we're talking about
14 a real person. We're talking about somebody's
15 daughter, somebody's sister, a lot of people's
16 friend. Teresa Halbach had her whole life in
17 front of her and the evidence is going to show
18 that on Halloween of 2005, that all ended, that
19 ended in the hands of the defendant, Steven
20 Avery.

21 It's such a big case, with such a big
22 job that we have to try to present all of this
23 investigation. I'm going to start from the
24 beginning and I'm going to start talking about
25 the investigation itself.

1 Ms Halbach was reported missing on the
2 third of November, 2005. Ms Halbach worked for
3 a -- at least part of her photography business
4 was that she worked for a publication called *Auto*
5 *Trader Magazine*. You are going to learn through
6 the case and you are going to hear from several
7 witnesses from *Auto Trader* that it is a magazine
8 that, basically, is responsible for selling
9 automobiles, some other things, trailers and the
10 like, but mostly automobiles. And it's a
11 publication that Teresa supplemented her income
12 with.

13 Teresa was mostly responsible or mostly
14 enjoyed taking photographs of weddings and was
15 already developing quite a niche and quite a
16 specialty taking pictures of little kids, of
17 babies and young children. But to supplement her
18 young business, she worked for *Auto Trader*
19 *Magazine*. So to understand how this case
20 transforms from a missing person investigation
21 into what became one of the largest criminal
22 investigations in Wisconsin history, starting
23 from the beginning, we're starting from the
24 investigation, is important for you to
25 understand.

1 The investigation determined that Teresa
2 Halbach took three pictures or at least had three
3 business stops on the 31st of October. Now, one
4 of those were a person by the name of
5 Mr. Schmitz; one of those was a person by the
6 name of Mr. Zipperer. And the third and the last
7 stop that she made late in the afternoon on the
8 31st was at the Steven Avery Salvage Property.

9 The investigation early on determined
10 that this man, Steven Avery, called *Auto Trader*
11 *Magazine* at 8:12 that morning, on that very day,
12 on the 31st of October. And Mr. Avery asked,
13 specifically, that the same woman who has been
14 out here before, the same woman who on at least
15 six and perhaps more occasions had come out to
16 take pictures. Mr. Avery wanted her out there
17 the afternoon of the 31st.

18 Now, two very critical findings very
19 early on in this investigation came to light:
20 Number 1, that Steven Avery was the one who lured
21 Ms Halbach out to the property on the 31st. But
22 number 2, and perhaps as importantly, Steven
23 Avery was the last person to see Teresa Halbach
24 alive.

25 Who is this man? The Judge told you

1 that there was a lawsuit which was filed against
2 Manitowoc County and many of you, in fact,
3 virtually all of you, knew something about Steven
4 Avery before serving on this particular jury.
5 Mr. Avery achieved some degree of notoriety back
6 in 2003 when he was exonerated for a 1985 sexual
7 assault conviction.

8 You should know that that exoneration
9 was based upon DNA evidence. You should know
10 that that DNA evidence was performed by the
11 Wisconsin State Crime Laboratory and it was
12 performed by an analyst, the head of the DNA unit
13 in Madison, a woman by the name of Sherry
14 Culhane. I want you to remember that name
15 because you are going to hear that name later on
16 in this case.

17 Mr. Avery, as you already heard, later
18 filed a civil lawsuit against Manitowoc County
19 seeking compensation, seeking money for the --
20 excuse me -- for the time that -- that he was
21 wrongfully convicted. And it's that degree of
22 notoriety, that's how Mr. Avery comes to you in
23 this case. That may or may not have some things
24 to do with this case.

25 Now, we understand and the evidence is

1 going to be clear, that Mr. Avery never should
2 have been convicted in 1985 based upon
3 eyewitness -- or mistaken eyewitness testimony;
4 that there wasn't any DNA evidence, at least the
5 DNA analysis wasn't to the level or to the point
6 that it is now and certainly isn't anything like
7 you are going to hear about in this case; and, in
8 fact, should have been exonerated and was in
9 2003.

10 We'll also tell you and at the close of
11 this case I'm going to point to everyone of you
12 presenting jurors and say that that has
13 absolutely nothing to do with this case. When
14 deciding who is accountable for the death of 25
15 year old Teresa Halbach, Mr. Avery's past and his
16 past exoneration have nothing to do with this
17 case.

18 Ms Halbach, as you have heard, or she
19 comes in this case as the -- part of a missing
20 persons investigation. Now, Calumet County, and
21 Mr. Wiegert, as a matter of fact, was in charge
22 of that missing persons investigation early on.
23 That's through the 3rd and the 5th. Those parts
24 of the missing persons investigation that
25 happened in Calumet County are Calumet County law

1 enforcement's responsibility. Those parts of the
2 missing persons investigation that happened in
3 Manitowoc County necessarily and appropriately
4 are Manitowoc County's responsibility.

5 When looking for a 25 year old freelance
6 photographer, there is nothing improper about
7 Manitowoc County being involved in that case.
8 You are going to learn, however, that on the 5th,
9 on the 5th of November, at about 2:00 in the
10 afternoon, Judge Jerome Fox, another judge from
11 Manitowoc County, one of the three sitting judges
12 in Manitowoc County, assigned me to be
13 responsible for the prosecution and to assist in
14 the investigation of this particular case.

15 You have already heard that the reason
16 for that was something called a perceived
17 conflict, an apparent conflict; that is, it may
18 look bad if Manitowoc County remained involved.
19 You are going to hear evidence from many law
20 enforcement officers; in fact, the lead
21 investigators in this case, that there was no
22 actual conflict.

23 There was nothing that prohibited, or
24 precluded, or legally made it impossible for
25 Manitowoc County to keep performing or keep

1 assisting in this case. But we all felt it
2 better; myself, Mr. Rohrer, the two district
3 attorneys, Sheriff Pagel and the law enforcement
4 officials for Manitowoc, that the case be
5 transferred over to Calumet County and to DCI,
6 the Division of Criminal Investigation, with the
7 State to lead up the investigation.

8 Now, you are going to hear that
9 Manitowoc County officials remained involved in
10 the case. They remained involved in the
11 investigation that when manpower, and we are
12 going to be talking about how many police
13 officers were necessary, that they remain in a
14 helping or a support role, but the case is, in
15 fact, turned over to Calumet County.

16 This particular photograph, I want you
17 to look at for quite a bit of time as I'm
18 talking. This is the Avery Salvage Yard, located
19 in the Town of Gibson. This is a photo that you
20 are going to see a lot during the course of this
21 case. And this is, for the next six weeks, a
22 property that you are going to come to know very,
23 very well.

24 And so as Mr. Fallon and Mr. Gahn and I
25 were talking about this opening statement, we

1 thought it appropriate that we introduce you to
2 the Avery salvage property. First of all, it's a
3 40 acre property. The entire square here is 40
4 acres.

5 What you also need to understand is that
6 all of these, appear to be little dots, are cars.
7 These are all junked vehicles in the Avery
8 salvage property. And a number that you are
9 going to hear is that there are about 4,000
10 junked vehicles on the Avery Salvage property.

11 There's four residences, four places
12 where people live on the Avery salvage property.
13 The first, in the lower left hand corner, which
14 is the northwest corner of the property, is
15 Steven Avery's trailer. That's where Steven
16 Avery lived on the 31st of October.

17 Living next to Steven was his sister,
18 Barb Janda. Barb had four sons that were living
19 with her at the time. But when you kind of look
20 at this property it's important to know where
21 Barb Janda's trailer is.

22 Steven's parents, Allen and Delores
23 Avery, also had a trailer, had a residence on the
24 property. And that was up closer to what you
25 will find out are some business buildings, the

1 salvage business itself was kind of up in this
2 quadrant, or this corner of the yard.

3 And, finally, Steven's brother, Charles
4 Avery, Chuck, also had a trailer on the property.
5 All right.

6 Now, you are going to hear that
7 surrounding this property on three sides was an
8 active, working gravel quarry. And so we're
9 going to have some larger aerial photos that
10 we're going to show you in just a minute, but
11 just to give you an idea of what's around this
12 property, not just the 40 acres of search area,
13 but hundreds of acres that surrounded that that
14 were also included in the search.

15 Members of the jury, the evidence is
16 going to show and you are going to hear from
17 officers, when they talk about the search efforts
18 in this case, that a search area this size is
19 nothing short of overwhelming. All right. All
20 of the places that the officers can look is
21 absolutely overwhelming.

22 If you know anything about the case you
23 will understand this event. But on Saturday, the
24 5th of November, Pam and Nikole Sturm, two
25 citizens, two citizen searchers, were given

1 permission and did search the Avery salvage
2 property.

3 Pam and Nikole found the needle in the
4 haystack. Pam and Nikole Sturm found the one
5 vehicle on the property that all of the citizen
6 searchers that you are going to hear about were
7 looking for.

8 Now, there are several things that the
9 evidence is going to show. And as you look at
10 this photograph, several things about the
11 attempts at whoever placed this vehicle here, to
12 disguise it, to hide it, attempts to obscure its
13 detection, you are going to learn, members of the
14 jury, through this evidence in the case, that the
15 vehicle was locked, that the four doors on this
16 vehicle were locked when Pam and Nikole came upon
17 it.

18 You are going to learn that the license
19 plates were both removed, both the front and back
20 license plates were removed from the vehicle.
21 You are going to learn the battery was
22 disconnected and you are also going to learn that
23 the vehicle identification number was necessary
24 to, in fact, identify this as Teresa Halbach's
25 vehicle.

1 Now, the evidence is also going to show
2 you where on the property Teresa Halbach's
3 vehicle was found. It was found in -- not
4 accidentally -- the furthest point from the
5 defendant's trailer. Again, you are going to
6 find that it was intentionally obscured, that it
7 had immediate access to something called a car
8 crusher on the property.

9 And, again, just to orient you, Steven
10 Avery's trailer is in the lower left hand portion
11 of this particular photograph. Where it was
12 found was not an accident. We'll also tell you,
13 during the course of the introduction of the
14 testimony, that it's important where it wasn't
15 found. It wasn't found on a roadway. Wasn't
16 found in some mall parking lot. It was found on
17 the Avery salvage property, the family business
18 property.

19 I talked about the car crusher; you will
20 hear a little bit about that piece of equipment
21 that was near or right next to Teresa Halbach's
22 vehicle. You are going to learn and you are
23 going to hear evidence sometime through this six
24 weeks how this piece of equipment works, how a
25 regular looking vehicle, car, SUV, truck, starts

1 out looking like a regular vehicle and ends up
2 flattened or smashed.

3 You are going to learn why it's
4 important that Teresa's vehicle was next to the
5 car crusher and you are going to learn the
6 numbers of crushed vehicles and how easily Teresa
7 Halbach's vehicle could never have been found in
8 this case. Could have been slipped in between,
9 if you will, one of those other cars.

10 You will hear about a lot of
11 professionals that were asked to perform
12 assistance in this case. You are going to hear
13 about law enforcement professionals; you are
14 going to hear about Crime Lab analysts; you are
15 going to hear about some very, very, well
16 qualified expert witnesses.

17 And all of those professionals have two
18 legs. One of them, though, has four. It's a
19 Belgian Shepherd named Brutus. Brutus is a
20 search and rescue -- or search and recovery dog
21 that is insensitively called a "cadaver dog".

22 What Brutus does is one thing. Brutus
23 is highly trained. And you are going to hear
24 testimony from Brutus' handler, Julie Cramer.
25 Brutus does one thing and that's find where a

1 deceased person has been.

2 The first official, first professional,
3 to approach this vehicle after it's found, after
4 law enforcement secures that area so nobody else
5 can get around there, the first professional was
6 a four legged variety. It was Brutus. It was a
7 canine.

8 And Brutus, you are going to hear, was
9 asked -- not directed towards this vehicle, but
10 asked to just search around this particular
11 location. You are going to hear evidence that
12 late in the afternoon on the 5th, after the
13 vehicle was found, after a search warrant was
14 already obtained in this case, that Brutus, when
15 approaching Teresa Halbach's vehicle, alerted.

16 It's called hitting on the vehicle. It
17 was quite a dramatic alert. And you are going to
18 hear from Ms Cramer about that. Sadly and
19 unfortunately, that meant one thing to the
20 handler and that meant one thing to the lead
21 investigators in the case. Early on, they
22 suspected, because of Brutus, because of this
23 search and rescue dog, because of this cadaver
24 dog, that a deceased individual either was in the
25 back of this SUV, or at some point had been in

1 the back of that SUV.

2 Now, importantly, you are also going to
3 hear that the police decided not to touch the
4 vehicle at that time. The police decided not to
5 process it even when the Crime Lab was on the
6 scene.

7 You are going to hear that the Crime Lab
8 loaded this vehicle onto an enclosed trailer,
9 trucked the enclosed and intact SUV all the way
10 to Madison, where on a Sunday, for a very brief
11 amount of time, but mostly on Monday, that
12 vehicle was processed by the experts. Processed
13 by those state agents, by those State Crime Lab
14 expert employees, analysts, when they made some
15 very dramatic and very important findings in the
16 case.

17 I don't want to get ahead of myself.
18 Because on November 5th, on that first night, on
19 that first afternoon, there were places to look,
20 as you can imagine. After Teresa Halbach's
21 vehicle was found on the Avery salvage property,
22 Mr. Wiegert, Mr. Fassbender, directing many law
23 enforcement officials, had a job to do.

24 Now, you saw the size of the Avery
25 salvage property. You are going to hear

1 testimony from Mr. Fassbender. He's going to
2 provide you with an idea about the methodology,
3 about the plan, the search plan in this case.

4 You are going to hear Agent Fassbender
5 talk about missing persons investigations and
6 when they go from missing persons to criminal
7 investigations, how their thought process
8 changes. But at that early stage, when they find
9 the vehicle, when they don't know that there is
10 any blood in the back of the vehicle, when they
11 don't know if a body is involved in this case,
12 that Agent Fassbender and every other law
13 enforcement officer, you will hear, at that
14 scene, had one thing in mind and that was to find
15 Teresa. The job of the police at the time was to
16 find Karen Halbach's daughter.

17 And you are going to hear the evidence
18 that the officers made very, very quick work of
19 searching all of the residences on the Avery
20 salvage property, all of the four residences, all
21 of the outbuildings. They are searching for
22 Teresa Halbach and the search plan, again, is to
23 find the victim, find the victim's body.

24 But a secondary obligation of theirs is
25 also to look for obvious signs of evidence,

1 right? You don't have to watch CSI to know that.
2 At least a first kind of sweep, or a first kind
3 of look through, or a first kind of search of all
4 of these residences are to try to find obvious
5 signs of a crime if, in fact, a crime did occur,
6 or something that is going to help law
7 enforcement find Teresa Halbach. Why I say all
8 that is because Steven Avery -- With search
9 warrant in hand, Steven Avery's residence was
10 searched on the 5th.

11 Now, again, we're looking for Teresa's
12 body, hopefully alive, but if not, it is
13 important to find if she's on that property.
14 Steven Avery's garage is searched, other
15 residences, all of the other buildings on the
16 residence are searched, the salvage business
17 itself. But the 4,000 vehicles, in what you will
18 hear was a torrential downpour, were also
19 examined for the first time on the evening of the
20 5th.

21 Now, law enforcement officers were
22 involved in that, but Brutus' friends were also
23 involved in that, other canines, the rest of the
24 team, the other search and rescue animals, the
25 canines, were taken in a downpour, in the pitch

1 dark, out on a 40 acre property. And everyone of
2 these cars was encircled by one of those dogs
3 trying to find Teresa Halbach.

4 Please recall, at this early stage, the
5 police don't know what they are looking for yet.
6 They don't really have an idea yet of the kinds
7 of things that they are looking for. So when you
8 remember this search plan, you will hear evidence
9 and some officers may even call it the funnel
10 approach, nothing fancy about calling it the
11 funnel approach, it makes sense.

12 It's a way to describe search efforts.
13 It is actually an interviewing technique as well.
14 But it's a way to find evidence in a funnel type
15 of approach. We're looking for the body first.
16 Then we're looking for obvious signs of evidence.
17 Then as you get closer and closer into more
18 detail, more thorough, more directed searches,
19 because you are able to go back into all of those
20 places and all of those properties, that's the
21 methodology.

22 And as you hear officers testify
23 throughout this case, when they testify on the
24 witness stand, remember that funnel approach.
25 Remember that kind of methodology as they talk

1 about these kinds of things. But make no
2 mistake, that on the first night, they are
3 looking for Teresa and they are hoping to find
4 Teresa alive.

5 When that was unsuccessful, the next
6 morning, on the 6th, Mr. Fassbender, Mr. Wiegert,
7 were able to secure some help. They needed
8 bodies. They needed some cops. They needed some
9 volunteers. And so they got volunteer
10 firefighters from all over the Manitowoc and
11 Calumet County areas.

12 And they all showed up in force, en
13 masse, on the morning of Sunday, November 6th.
14 And for the first time, everyone of those 4,000
15 vehicles was opened up. Everyone of those 4,000
16 trunks was opened by a firefighter with a police
17 officer with them, looking for the body of Teresa
18 Halbach.

19 Also on Sunday, November 6th, a firearm
20 was found, or recovered; it was actually found
21 the evening before. But it was seized; it was
22 recovered. It was hanging over the bed of the
23 defendant, Steven Avery. He thought it was
24 appropriate to recover that as a piece of
25 evidence and, in fact, it was.

1 You are going to hear that the brand
2 name of this semi-automatic .22 caliber rifle is
3 Marlin. You are going to hear that it is
4 something called tube loaded. Not that any of
5 these things are going to mean much to you at
6 this point, but there are a number of bullets
7 that are able to be loaded into this
8 semi-automatic rifle.

9 You are going to hear, by the way,
10 although hanging over Mr. Avery's bed and his
11 exercising control over that, should be obvious
12 that on the 31st of October, Mr. Avery exercised
13 a great deal more control.

14 A deserving piece of evidence was seized
15 on the -- Sunday, the 6th of November. And it
16 is, what we believe, the last recorded voice of
17 25 year old Teresa Halbach. When Mr. Avery, the
18 evidence will show, made arrangements to have
19 this young woman come out to his property that
20 afternoon, he didn't use his own name.

21 He didn't use the name Steven Avery.
22 Even though Ms Halbach had been out to the
23 property, as I told you, on a number of occasions
24 before; Mr. Avery used a different person's name.
25 He used the name B. Janda, the initial B. Janda,

1 J-a-n-d-a. That's Barb Janda, can be Barb Janda,
2 but when we called the *Auto Trader Magazine*
3 people in Milwaukee, and you are going to hear
4 from Ms Schuster and Ms Pliszka, two employees of
5 *Auto Trader*, Mr. Avery used the name and used the
6 number for B. Janda.

7 Teresa Halbach doesn't know who B. Janda
8 is. You are going to hear evidence that Ms
9 Halbach called back the telephone number for Barb
10 Janda and she left this voice mail. This voice
11 mail was recovered, was retrieved. You are going
12 to hear this voice mail.

13 And you are going to hear from Teresa in
14 her own words, in this courtroom, that she got
15 the message, that she knows that you want me to
16 come out to the property. Teresa Halbach tells
17 B. Janda that she's going to be out there
18 sometime after 2:00 p.m., that very day, on the
19 31st of October.

20 This will be important for you in
21 determining a timeline. Where was Teresa all
22 that day; was this before or after she went to
23 the Schmitz photo shoot and the Zipperer photo
24 shoot. That's going to be uncontroverted.
25 Absolutely, this is the last stop that she made

1 on the 31st of October.

2 Two days into this, folks, we're now on
3 Monday, the 7th of November, and the first
4 results come from the Wisconsin State Crime
5 Laboratory. The first results find several
6 things.

7 First of all, in the back cargo area of
8 Teresa's SUV, they find that there's female
9 blood. They find there is a lot of female blood
10 in the back of Teresa's SUV. But they also
11 found, interestingly, male blood, at least at
12 that early stage with their early typing, they
13 could find that it was male blood.

14 And interestingly and importantly that
15 already on Monday, the 7th of November, there is
16 male blood found in the victim's vehicle in at
17 least six different locations. Six different
18 places they find male blood. Mr. Wiegert,
19 Mr. Fassbender, all of the investigators don't
20 understand the significance of the male blood
21 being in six different places. They do, however,
22 understand the significance of a lot of female
23 blood. And they suspect early on that something
24 horrible has come to Teresa Halbach.

25 Also on Monday, a burn barrel was

1 discovered, not just any burn barrel. Again,
2 here's a picture, an overview, a part of the
3 aerial photograph of the Avery property itself.
4 There is Steven Avery's trailer and located
5 outside of Steven Avery's trailer was a burn
6 barrel that was recovered.

7 Now, again, not just any burn barrel,
8 but Steven Avery's burn barrel. And you will
9 hear later in my opening and you will hear a lot
10 of evidence about the trial, about what critical
11 pieces of information were found from that burn
12 barrel. But put it in perspective, on Monday,
13 that was found.

14 I provide this slide just as another
15 example for you of where that burn barrel was in
16 relationship, not only to the proximity of Steven
17 Avery's trailer, but the proximity to this red
18 Dodge Caravan. You may also have guessed, this
19 is the car that Steven Avery asked Teresa Halbach
20 to come take a picture of. All right. So the
21 proximity of the burn barrel to his front door
22 and also to the Dodge Caravan will be important
23 in the determination at the close of this case
24 when you decide who was responsible for these
25 crimes.

1 The next day, three critical pieces of
2 evidence are found on Tuesday, the 8th. Now, we
3 talked about these more detailed searches. On
4 Tuesday, one of these more detailed searches
5 occurred in Mr. Avery's trailer.

6 You are going to hear evidence that this
7 bookcase was pulled out, was jostled about. You
8 are going to hear evidence about this particular
9 binder having been pulled out of the bookcase.
10 And after the officers looked through it, how it
11 was slammed back in as the book case was actually
12 pulled out from the wall.

13 And after jostling and after searching
14 it, after slamming things around and after
15 putting the bookcase back in its location, you
16 are going to hear this is what the officers saw.
17 They saw a Toyota vehicle key in the bedroom of
18 Mr. Avery. You are going to hear evidence that
19 it had obvious evidentiary value, that the
20 officers at that time stopped what they were
21 doing and Investigator Dan Kucharski of the
22 Calumet County Sheriff's Department seized or
23 took control of that key during that more
24 detailed search.

25 More detailed searches were also

1 occurring at the same time of the entire Avery
2 Salvage Yard, which included now officers,
3 volunteer firefighters, going through all of the
4 cars again; 4,000 searches occurred again, on
5 Tuesday. But you are going to hear this time
6 they weren't looking for a body, at this time
7 they were looking for stuff. They were looking
8 for evidence.

9 After the body wasn't found in their
10 first search, they are going back and they are
11 looking for items of obvious evidentiary value.
12 You are going to hear testimony they found
13 something of obvious evidentiary value; they
14 found the victim, Teresa Halbach's, license
15 plates crumpled up in a station wagon.

16 I just show you this slide to show you
17 what the vehicle looked like, the station wagon
18 that the license plates were found in. And also
19 provide this aerial photograph to give you an
20 idea of the vehicle that the license plates were
21 found in.

22 Very quickly, I want to remind you of
23 Steven Avery's trailer is down in the lower left
24 hand corner; that the access road leading to
25 Mr. Avery's trailer comes from the top of this

1 figure down towards the right. Teresa Halbach's
2 vehicle is found in the first vehicle (sic) next
3 to the access road on its way to Steven Avery's
4 trailer. Again, the evidence is going to show,
5 not by accident, the proximity to the defendant's
6 roadway, the proximity to the defendant's
7 trailer, all becoming important.

8 Now, I told you that there were three
9 important discoveries on the 8th. And the third
10 and perhaps the most important discovery that day
11 is something that's being referred to as a burn
12 area. Again, just to orient you, it's the same
13 kind of picture that we have been looking at:
14 Steven Avery's trailer; Steven Avery's garage.
15 The Dodge Caravan, the van that Ms Halbach was
16 taking pictures of, was located right there; and
17 there's the burn area.

18 The proximity of this burn area to the
19 garage is obvious; the proximity of this burn
20 area to Mr. Avery's trailer itself is obvious.
21 To provide you with another view of this burn
22 area, again located -- you can see his trailer,
23 you can see the garage on the right.

24 But, importantly, that burn area
25 contained human remains. It contained obvious

1 bone fragments. Even to the untrained officers
2 that stumbled upon this particular burn area,
3 even when they called over the Crime Lab to
4 process this particular location, it was obvious
5 that there were human remains in this particular
6 burn area.

7 Now, this next picture is particularly
8 important because it was taken before any
9 processing begins. There's the burn area that
10 we're talking about. That's the burn area that
11 contained the obvious human remains. You will
12 see and you will hear from the officers who were
13 at the scene, that this burn area, from the first
14 night, was guarded, was guarded by Mr. Avery's
15 German Shepherd. I believe his name was Bear.

16 But this particular German Shepherd, not
17 of the friendly sort, did not allow law
18 enforcement officers to get close to this burn
19 area. Did not allow any of the canine help that
20 was out there to get close to that area. And any
21 time -- excuse me -- law enforcement even got
22 close to the burn area, Bear made sure that they
23 were shooed away.

24 But I think it's also important about
25 this case, when we talk about proximity, there

1 isn't any question who exercises control over
2 this burn area. And in the background, just --
3 just see how close it is to that van that Teresa
4 Halbach was asked to take a picture of.

5 The next day, Wednesday, November 9th,
6 was the first time that recovered bone fragments
7 from that burn area are identified by an
8 anthropologist. An anthropologist is a
9 professional who looks at bones and can identify
10 whether they are human, or that they are
11 non-human, where they go. We'll talk about that
12 a little bit later.

13 But even though these fragments are
14 small, even though they are burned almost beyond
15 recognition, on Wednesday, the 9th, they
16 determined that those were, in fact, adult female
17 remains found right behind the defendant's
18 garage.

19 All right. This is the first image that
20 is not a photograph that I'm showing you. This
21 is computer generated. And we're going to hear
22 from a man who created these images. His name is
23 Tim Austin. He works for the State patrol, the
24 State of Wisconsin, in scene reconstruction.

25 And what Tim Austin will tell you is

1 that he was out at the scene -- and we'll talk
2 about this a little bit later -- but he was out
3 at the scene and took over 4100 measurements out
4 at the scene. And after taking his own
5 photographs and after taking over 4100 images --
6 excuse me -- measurements, he was able to
7 recreate some of these scenes for you, for the
8 jury.

9 And these are created for the jury so
10 that you can see things that the naked eye can't
11 see; so that you can see things that photographs
12 can't show; so that you can see relationships
13 between some evidence and fixed objects or other
14 evidence that's found. And so as you see this
15 perspective you will see that you are up, you
16 know, dozens of feet above the ground. And it's
17 something, again, unless you are that tall, you
18 are not going to be able to see this kind of
19 location.

20 But this particular computer generated
21 animation is important to embrace or to -- for a
22 jury to look at in the case because the burn area
23 is clearly visible. How close it is to
24 Mr. Avery's garage; how close it is to the
25 trailer; how close it is to the other area,

1 what's called the curtilage, that is the area
2 that surrounds Mr. Avery's property, all becomes
3 important.

4 All right. So these are -- And when
5 something is not a picture, when it, in fact, was
6 created through computer animation or computer
7 generation, I will let you know that.

8 One of the bones that was recovered was
9 a long bone. And I'm showing you this for a
10 reason, in my opening statement, so that you
11 understand what we're looking at here. That we
12 aren't just looking at some bone in abstract.
13 We're not just looking at some DNA profile.

14 It's Teresa Halbach's shinbone. All
15 right. It's Karen Halbach's daughter's tibia.
16 And attached to Teresa Halbach's tibia was some
17 tissue. Now, despite Mr. Avery -- The evidence
18 will show, that despite Mr. Avery's effort to
19 completely obliterate all these bones, by
20 burning, to incinerate these bones completely,
21 this bone survived.

22 This tissue that was on the bone
23 survived, which allowed a DNA match, which
24 allowed the State of Wisconsin analyst, guess
25 who, Sherry Culhane, when she performed an

1 analysis on that tissue, to match it with the
2 blood found in the back of the SUV; with a soda
3 can that is found in the front of the SUV; and
4 with a standard.

5 Now, the standard is also called an
6 exemplar. You are going to hear those two
7 statements, but Teresa Halbach, before the 31st
8 of October, had a Pap smear performed, a cervical
9 swab that was performed. And thankfully for us,
10 that was kept at Bellin, up in Green Bay. Well,
11 Sherry, also -- Ms Culhane, also, was able to
12 develop a DNA profile from the Pap smear.

13 We know that's Teresa. And from that
14 exemplar, from that example, matches the tissue
15 on the leg bone; matches the blood; matches the
16 soda can. We can say with 100 percent certainty
17 that those human remains are those of Teresa
18 Halbach.

19 The first 11 days of this case become
20 extremely important. And for just about five
21 minutes here, I want to give you those 11 days
22 in. And what you have just heard, that part of
23 the investigation, you have only heard 11 days
24 worth of investigation, which has gone on 15
25 months now. But the first 11 days are important

1 and I want to just run through those for you.

2 Ms Halbach is killed on the 31st of
3 October, at the Steven Avery salvage property,
4 sometime after 2:45 p.m. You are going to hear
5 from a gentleman by the name of Tom Pearce, who
6 is Teresa Halbach's business partner, that she
7 doesn't show up for work on the 1st or 2nd.

8 And on the 3rd, Teresa Halbach is
9 reported missing to law enforcement authorities.
10 That's when the missing persons investigation,
11 from a law enforcement standpoint, begins. I
12 think, if you will, as to the feelings of the
13 Halbach family and friends and how worried they
14 are even on the 3rd.

15 But on the 4th, you are going to hear
16 from a witness named Ryan Hillegas who helped
17 coordinate the citizen search efforts.

18 You are going to hear that there was
19 something called cell tracking. We're going to
20 hear a little bit about that. A cell phone
21 actually is almost a transmitting device and it
22 pings or beeps, if you will, off of cell towers
23 all over the state, whenever you carry it in your
24 pocket, whether it's on or not. You are going to
25 hear evidence about attempts to find Teresa's

1 cell phone; if we find her cell phone, we can
2 find Teresa.

3 We also looked at those early stages for
4 whether or not she used any of her credit cards.
5 Where is Teresa Halbach? We try to find that
6 out.

7 You are going to hear that a gentleman
8 by the name of Curt Drumm, a pilot in the
9 Manitowoc area, volunteered his airplane and
10 helped law enforcement fly over Mr. Zipperer's
11 residence and Mr. Schmitz's residence and the
12 Avery compound and any of the roads that may have
13 led to and from there to try and find Teresa
14 Halbach.

15 On the 5th, we know that Teresa's
16 vehicle was found at the Avery salvage property.
17 You will hear that search warrants were obtained.
18 You will hear during the course of this case that
19 a search warrant is nothing more than a piece of
20 paper. It's a judicial authorization; a judge
21 authorizes law enforcement officers to search the
22 property, in private areas. And we got many,
23 many search warrants in this case and searched
24 for her body.

25 You have heard already, that on the 6th,

1 firearms are obtained or taken from Mr. Avery's
2 bedroom; his garage is searched, at least the
3 first search of the garage for those items of
4 obvious evidentiary value. But remember, on that
5 Sunday we don't have any results yet, from the
6 Crime Lab. Those don't come until sometime on
7 Monday, when the Crime Lab determines that both
8 male and female blood is located in the SUV.

9 We search, for the first time, all of
10 the junked vehicles, at least all of the trunks
11 are searched.

12 And Mr. Avery's burn barrel is
13 discovered and searched.

14 And other things will happen and you are
15 going to hear from other officers that the
16 surrounding areas, not just the 40 acres, but
17 hundreds of acres of gravel pits and the like are
18 being searched in these early days.

19 On Tuesday, perhaps the most important
20 of all the days as far as discoveries go, those
21 three critical discoveries are made: The Toyota
22 key, the license plates, and the burn area behind
23 the defendant's property.

24 On Wednesday, the 9th, there is an
25 identification made of male blood in the victim's

1 vehicle. That blood matches the DNA profile of
2 the defendant, Steven Avery. And bones are
3 recovered and determined to be that of an adult
4 female.

5 You will hear on the 10th, on Thursday,
6 the burn area is further excavated by arson
7 investigators and other Crime Lab and other types
8 of officials but, interestingly, the defendant's
9 DNA is now found on the key.

10 And, finally, on Friday, the 11th, the
11 female blood that was found, the great pool, if
12 you will, of female blood, in the cargo area, is
13 now matched. It is determined to match the soda
14 can -- the saliva from the diet Wild Cherry
15 Pepsi, I believe, soda can in the front of
16 Teresa's car. The blood is now presumed to be
17 that of the victim, Teresa Halbach.

18 You have heard the term that they told
19 me there would be no math, well, there is going
20 to be some science. And here's where I have to
21 at least give you an overview of what the science
22 of this case is going to be.

23 The science, the blood part of the
24 science, the DNA analysis and explanation of this
25 case is going to come from this gentleman right

1 here, Norm Gahn. Mr. Gahn, you will learn by his
2 examination, is quite knowledgable in DNA and DNA
3 from a prosecution standpoint. And in all
4 honesty and in all candor, that's why he was
5 added to the prosecution team, because this is
6 such an important part of the case. The science
7 becomes very, very important.

8 You are going to hear about a DNA
9 analyst from the Wisconsin Crime Lab named Sherry
10 Culhane. Again, Ms Culhane, almost unbelievably,
11 is the very analyst that exonerates Mr. Steven
12 Avery several years earlier. She's the same
13 analyst that does the detailed DNA work on
14 Mr. Avery's work with the Innocence Project and
15 frees Mr. Avery from his incarceration.

16 Well, that same woman, Sherry Culhane,
17 processes this vehicle. Because she's the unit
18 head, because this is such an important case, she
19 does the work herself. She does all of the
20 analysis of all of the blood that's found in
21 these cases.

22 You are going to hear from Ms Culhane,
23 through the assistance of Mr. Gahn, what DNA is,
24 that it is a genetic fingerprint, if you will.
25 Provides an opportunity, as most of you may

1 already know, to take a sample and to take a
2 unknown sample, something like blood that's found
3 in the back of an SUV and to take a known DNA
4 sample, since our DNA is all the same in all of
5 our bodily fluids.

6 Our blood has the same DNA as our
7 saliva, as our semen, as the skin cells, as our
8 tissue; it's all the same DNA. So once you
9 develop a profile, each of us all has different
10 DNA; it's unique to each of us. And Mr. Gahn
11 will explain all of that for you.

12 But with that as the background, Ms
13 Culhane was able to establish all of the places
14 in that SUV that had Teresa Halbach's DNA. You
15 are going to learn that they found a large
16 quantity of the blood and DNA in the cargo floor
17 and the side panel. The back cargo door, you are
18 going to hear that there were splatters, spatters
19 of Teresa's blood in the back cargo door.

20 You are going to hear that on the rear
21 tailgate there were droplets of Teresa's blood;
22 her DNA is found on the door handle; and, also,
23 as I have already alluded and you might expect,
24 the saliva from the soda can, Ms Culhane will
25 find DNA evidence.

1 I told you about male blood that was in
2 the SUV. On Wednesday, the 9th of November,
3 Steven Avery subjected to a very thorough medical
4 examination, again, as result of a warrant, as a
5 result of a judicial authorization to do that
6 particular kind of examination. And what they
7 found was a very, very deep cut to Mr. Avery's
8 right middle finger but, importantly, on the
9 outside of his right middle finger. And that's
10 where the cut was.

11 This cut was actively bleeding on the
12 31st of October. And I guess, thankfully, for
13 the State. And as a jury, I hope at the
14 conclusion of this case you will say thankfully
15 for you. Because DNA analysis was then possible
16 because of his actively bleeding, of his leaving
17 his DNA behind, inside of Teresa's vehicle.

18 Ms Culhane will tell you that the
19 defendant's blood was found in at least six
20 places in Teresa Halbach's SUV including the rear
21 passenger door, smeared or wiped on the rear
22 passenger door. Okay. There's a front door;
23 there's a back door; kind of like a four door
24 car. It was in the backdoor and it's along the
25 edge or along the metal of the rear passenger

1 door. That's Steven Avery's blood. That's how
2 much blood he left on the side of the door.

3 We have heard about the defendant's
4 blood on the ignition. That positively matched
5 that of Steven Avery. As you think about this
6 case and I will argue at the end of the case, but
7 there isn't any secret and the defense
8 understands this is as well, an actively bleeding
9 middle right finger. And when you look at the --
10 excuse me -- When you look at the smear, kind of
11 visualize turning the ignition and how that can
12 smear from the outside of the middle finger and
13 leave that particular kind of DNA evidence.

14 Other places that the defendant bled
15 inside of the victim's car included blood on her
16 CD case in her front seat. Both front seats had
17 droplets of Mr. Avery's blood on it. The rear
18 tailgate, remember I told you there was a droplet
19 of Teresa's blood; because Mr. Avery is actively
20 bleeding, there is a droplet of his blood as
21 well. And also on the front console floor, is
22 kind of up in that particular area.

23 Sherry Culhane and Mr. Gahn are better
24 able to explain all those for you, but it's
25 important for you to know. Now, again, the

1 jigsaw puzzle, when you hear the evidence and
2 when you have to decide who killed Teresa
3 Halbach, this evidence points to one person.

4 Now, Mr. Gahn and his questioning, and
5 Ms Culhane is going to tell you, that DNA
6 evidence, again, is not just from blood. It can
7 be from skin cells which are left through
8 perspiration, sweat, okay, saliva and sweat and
9 all those other kinds of bodily fluids that we
10 talked about. So when somebody's hands are
11 sweating and you handle something, it's possible
12 that you can leave your DNA on that thing that
13 you handled.

14 You heard a suggestion already in which
15 there will be evidence in this case that the
16 battery was disconnected on Ms Halbach's vehicle.
17 We'll tell you, or at least we'll argue as to why
18 that happened. But importantly, in reaching up
19 underneath the hood, to open up Teresa Halbach's
20 vehicle, Mr. Avery was kind enough to leave his
21 DNA on the hood latch. Okay. That will come
22 from Sherry Culhane as well.

23 In handling Ms Halbach's key that starts
24 the ignition and putting it into his bedroom,
25 Mr. Avery was kind enough to leave his DNA on

1 that portion of the Toyota key that was found.

2 So that's part of the science.

3 Other science is going to include things
4 like teeth, teeth that were recovered from the
5 burn area. This part of the science, by the way,
6 will be handled by Mr. Fallon, and other expert
7 witnesses, but most importantly, through somebody
8 called a forensic odontologist.

9 That's a big word, kind of scared me
10 when I first heard it. Gentleman's name is
11 Dr. Donald Simley. Mr. Simley is a odontologist.
12 From a forensic standpoint, it's kind of a
13 dentist who matches stuff up.

14 So Mr -- or Dr. Simley, the dentist, the
15 odontologist, will show you a -- what's called a
16 panorex x-ray. We went to Teresa's dentist. We
17 got her x-rays from when she had work being done
18 and Dr. Simley will show you tooth number 31,
19 which is the second last tooth in the bottom left
20 jaw.

21 Dr. Simley will also tell you that
22 x-rays were taken of teeth that were found from
23 the burn area. He will show you tooth number 31
24 that was actually recovered from the burn area
25 and will allow the jury to make their own

1 comparisons.

2 We talked about an anthropologist. Our
3 anthropologist is Dr. Leslie Eisenberg.

4 Dr. Eisenberg will tell you about her
5 credentials, about how she does this -- this
6 whole kind of work. And although, unfortunately,
7 the bones that she had to deal with and, again,
8 we aren't talking about a full skeleton that was
9 found in that -- that bone (sic) pit.

10 If we did, by the way, we may not be
11 including a charge against Mr. Avery for
12 mutilation of a corpse. But mutilation of this
13 little girl -- excuse me -- not this little girl,
14 but this young woman, absolutely occurred.
15 Because this is what's left, small tiny pieces of
16 bone fragment.

17 And when you talk about a jigsaw puzzle,
18 when you talk about trying to put all of this
19 together; it's a very, very difficult process.
20 And when I asked -- And the testimony, actually,
21 of Dr. Eisenberg is going to allude to this
22 jigsaw puzzle kind of analogy and we don't even
23 have a box or a cover to go on. Luckily for us
24 and luckily for you, Leslie Eisenberg is your
25 jigsaw puzzle covered box.

1 In other words, Dr. Eisenberg knows
2 where everyone of these bones goes.
3 Dr. Eisenberg will identify all of these bone
4 fragments. She'll identify, from a female
5 skeleton and from examples that are used, all of
6 the different parts of Teresa that were found.
7 Okay. And it will help you as far as
8 identification processes go, as to what parts of
9 Teresa's bones and what parts of the body were
10 actually recovered in this case.

11 Now, not all evidence is of equal
12 weight. And two really important pieces of bone
13 were found. And those were two pieces of what
14 are called the cranium, the skull, that were
15 burned very, very badly but were identified as
16 such by Dr. Eisenberg.

17 The parts of the skull, this picture
18 that you are looking at is actually a part of the
19 skull now. This brilliant woman is going to tell
20 you that this isn't just part of the skull, but
21 this is a little piece of the skull that's just
22 on top of or over somebody's left ear.

23 How do you tell that kind of thing
24 looking at a bone like that, but that's what an
25 anthropologist apparently -- apparently does.

1 And that's why she's an expert, and we're not, in
2 this area. But, importantly, the damage, the
3 defect that's caused, the evidence is going to
4 show that you are looking at the inside, from the
5 inside out, the inside of Teresa's skull out;
6 that the circular or half circle -- because this
7 isn't the full piece, this is half of the
8 important piece here -- is extremely important.

9 The defect, the damage here, the
10 testimony will be, is caused by a high velocity
11 projectile. We take this same bone fragment and
12 you are going to hear evidence about other
13 experts and it allows some other analysis of this
14 particular piece of bone, this particular piece
15 of cranium.

16 You are going to hear from a gentleman
17 by the name of Ken Olsen from the Crime Lab; he
18 is an expert in trace evidence, the CSI kind of
19 stuff, but the trace from an elemental
20 standpoint. When you x-ray something, the
21 evidence is going to show bone and other kinds of
22 vascular or veins and things show up after you
23 x-ray even a burned piece of bone.

24 But what also shows up are things that
25 don't burn up. All right. When Mr. Olsen

1 testifies, he's going to point to these little
2 bright dots. See those okay from there? These
3 little bright dots that are right on the lip of
4 the cranial defect.

5 Those little bright dots he's going to
6 say he examined. He recovered those and he did
7 his analysis on them, elemental analysis, and
8 found that they are lead. These little dots are
9 lead, what's called lead spray. You are going to
10 hear testimony that there's only one thing, only
11 one item that can travel fast enough, as a
12 projectile, to cause this kind of a defect and
13 also leave lead. And as you might predict,
14 that's a bullet. All right. Lead spray is left
15 by bullets.

16 Dr. Eisenberg, then, with the assistance
17 of a gentleman by the name of Jeffrey Jentzen, is
18 the Milwaukee County Medical Examiner.
19 Dr. Jentzen, has -- and you will hear he has a
20 great deal of experience nationally, a national
21 expert in things like gunshot wounds.

22 Dr. Jentzen and Dr. Eisenberg will
23 render two expert opinions: First of all, that
24 the left parietal region, the region just above
25 the left ear, the thing that you just saw, the

1 combination of the projectile and the lead spray,
2 leads these two experts -- and especially the
3 pathologist -- especially Dr. Jentzen, who will
4 tell you that that's an entrance wound, just
5 above the left ear of Teresa Halbach.

6 They will also find a second and we will
7 show you a second entrance wound, similar kind of
8 defect that's found in a recovered bone that is
9 on what's called the occipital region of the
10 skull. That's to the back and just to the left
11 side of the back of the skull and that was a
12 second entrance wound.

13 Finally, their opinion, when they put
14 together -- when you ask of the State, what was
15 the cause of death, what was the mechanism of
16 death, at the conclusion of this case I will be
17 able to tell you, this was a homicide and it
18 included at least two gunshot wounds to the head
19 of 25 year old Teresa Halbach.

20 I'm almost done so hang on. Remember
21 this burn barrel, remember found outside of
22 Mr. Avery's trailer, well, this burn barrel, as I
23 told you, was examined. And although Mr. Avery,
24 the evidence will show you, attempted to burn up
25 all of the stuff that was in the burn barrel, it

1 didn't burn. It didn't burn up.

2 And the things that didn't burn up were
3 electronic components. All of these electronic
4 components were found in Mr. Avery's burn barrel.
5 This is other evidence. This is more evidence,
6 not just the science, not just the DNA, not just
7 the blood, but at the conclusion of the case will
8 be other evidence that will be able to assist you
9 in pointing to who killed Teresa Halbach.

10 Of those electronic components, included
11 Teresa's cell phone. You will hear evidence that
12 Teresa had a Motorola V3 RAZR cell phone. And
13 when we look at and when the experts show you
14 those electronic components that are found within
15 the burn barrel, you will recognize or some of
16 you might, the Motorola sign.

17 But for those of you that don't, we're
18 going to have a gentleman by the name of
19 Mr. Thomas from the FBI come here from Virginia
20 and he's going to show you all those components
21 and he's going to show you what they looked like
22 when they were recovered from Mr. Avery's burn
23 barrel and what they used to look like on a
24 Motorola V3 RAZR cell phone. All right. So you
25 are going to be able to match up the components

1 itself and what it used to look like before Mr.
2 Avery's attempts to destroy that evidence as
3 well.

4 You are going to hear about a digital
5 camera that Teresa Halbach had; digital camera
6 that she used to take pictures was a Canon A310,
7 PowerShot A310. You are going to hear all kinds
8 of interesting evidence about how a digital
9 camera -- and some of you may know this and
10 certainly our media friends know this. But when
11 you take a picture with a digital camera, that
12 photo, that image that you take with a digital
13 camera leaves a signature. It leaves an
14 electronic imprint on the image itself.

15 And so, if you put that picture on a
16 laptop computer or your home computer and you
17 take your little mouse and put what's called the
18 cursor, the little arrow thing, over the picture
19 itself, it gives you an incredible amount of
20 information. Gives you the date that that
21 picture was taken. It tells you things about the
22 picture itself, including what kind of camera was
23 used.

24 And you are going to learn and you are
25 going to see at least six different pictures that

1 were taken at Steven Avery's property by Teresa
2 Halbach. And all six of those include that
3 little imprint, include that signature, will tell
4 you conclusively that Teresa uses the Canon
5 PowerShot A310. All right.

6 We'll have these even more blown up for
7 you, but that says PowerShot A310. There isn't
8 going to be any question at all about whose
9 camera it was that Mr. Avery burned in his burn
10 barrel on the 31st of October.

11 You are going to hear about those other
12 electronic components, by the way. I don't know
13 if you use a palm pilot or a PDA, a personal data
14 assistant. Teresa had one of those. That was
15 also burned up and found in that burn barrel with
16 some other information.

17 But when on the topic of what other
18 evidence, what additional evidence, we're not
19 done there folks. All right. We have other
20 evidence that we have developed in the last 15
21 months. You are going to learn that in
22 Mr. Avery's garage, after shooting the bullets
23 into 25 year old Teresa Halbach, they ejected
24 what are called shell casings.

25 Those are the little brass casings that

1 come out of a gun after you shoot the gun. Well,
2 it's possible for experts, for toolmark experts
3 from the Crime Lab to match up those shell
4 casings with a specific gun. And they will, in
5 fact, match that .22 caliber rifle that's hanging
6 over Mr. Avery's bed.

7 Now, March 1st and 2nd, 2 bullets were
8 found, also, in Mr. Avery's garage. Through a
9 more detailed search, you will find out why that
10 happened. Through a more detailed search of the
11 garage, two bullet fragments were found in
12 Avery's garage. One of those bullet fragments,
13 after going through Teresa Halbach, included
14 Teresa's DNA.

15 And so as a matter, through Mr. Gahn and
16 through his experts, you will learn that Teresa
17 helped you too, that she left behind some
18 evidence for you to consider in this case.
19 Teresa left behind her DNA for you to consider on
20 one of the bullets that's found in the defendant,
21 Mr. Avery's, garage.

22 You will hear about things like phone
23 calls. You'll hear about how phone calls can't
24 be changed in the records and we can provide a
25 timeline as to when certain things happened; when

1 Mr. Avery called for Teresa; when he called her
2 two times before she ever got there; and when he
3 places a -- what we're going to be called an
4 alibi call, two hours after she's already at the
5 property. You are going to hear about all those
6 kinds of phone calls.

7 And as I mentioned, at least briefly,
8 before other analysis of bone and tissue, other
9 things to point to, if in fact the State even
10 question whose bones and whose tissue it is
11 behind Mr. Avery's property.

12 Lastly, I just want to remind you of the
13 kinds of exhibits that you are going to hear in
14 this case. You are going to see items that were
15 seized, stuff that was seized from the scene,
16 from Mr. Avery's property. You are going to get
17 photographs from out at the scene, but you are
18 also going to see photographs after the evidence
19 was already obtained so that you have a more
20 pristine or a better view of some of this
21 evidence.

22 You are going to look at documents and
23 records. You are going to hear from experts.
24 And they will provide some written expert reports
25 and also summary and demonstrative exhibits.

1 Just a little bit on summary exhibits.
2 When there's lots of evidence like documents;
3 lots of things in documents, phone records, you
4 know, things like this; when it's hard for you to
5 digest, we'll try to create a one or a two page
6 summary of all that information to help the jury
7 and find out exactly what all of it means.

8 And, finally, audio and videotaped kinds
9 of evidence, you would expect to find those kinds
10 of things.

11 Remember I told you before, just talking
12 about different kinds of photos, about those
13 pictures that Teresa took, those six different
14 pictures; this is one of them. It was taken on
15 June 20th, by Teresa Halbach.

16 I use this as the example because --
17 because I wanted to. But it shows very clearly
18 Mr. Avery's trailer, his garage. It's clear
19 through *Auto Trader Magazine*, when Mr. Avery, in
20 June of this year tried to sell this particular
21 trailer, Teresa Halbach took this picture, again,
22 with a Canon PowerShot A310. You will hear all
23 those kind of things.

24 But the reason, at least for this part
25 of the presentation, I'm showing you this, is it

1 tells you a difference between a scene photo and
2 things that I mentioned at least briefly before;
3 computer generated scene models. Again, this
4 isn't a picture. This is a -- provided by
5 Mr. Austin, but you will note that it's something
6 that you couldn't see with your eye.

7 Again, usually there's elevations that
8 are involved. These kinds of models are, by the
9 way, within an inch, you will hear, accurate.
10 Every measurement is within an inch. So this
11 isn't some blackboard that was taken down and you
12 just do the best you can.

13 And these are 4100 measurements that
14 make everything geometrically perfect,
15 geometrically accurate to within an inch. But
16 these kinds of models should assist you. Since
17 it's the middle of February, we're not going to
18 be traipsing off to the Avery property.

19 These kinds of things may help you in
20 understanding better and getting a better tour of
21 the Avery property. But just this model, as an
22 example, shows you how close Mr. Avery's burn
23 barrel is to his front door; how close it is to
24 the vehicle that Ms Halbach took pictures of.
25 And even things like after taking the pictures,

1 the path that Teresa Halbach took as she walked
2 towards Mr. Avery's property.

3 For those of you big picture people, not
4 detail oriented people, you all were asked that
5 question, we'll have aerial photographs for you.
6 Again, when we look at all of the surrounding
7 gravel pits on at least three sides of the Avery
8 property and how that may fit into some of those
9 kind of things.

10 We have interior photos as well. Photos
11 of the inside of Mr. Avery's garage. Now, you
12 will note a couple things about this photo.

13 First of all, you will note how cluttered, to say
14 the least, that it is. And this might help you
15 understand how difficult it was for officers, not
16 knowing what they are looking for, in November,
17 to kind of go through this garage, not knowing
18 that the shooting -- not knowing that the
19 shooting happened in this garage. The officers
20 didn't really know what they were looking for.

21 But in March, when this picture was
22 taken, and they know what they are looking for
23 and they know where to look in the garage, these
24 kind of pictures should be able to help you. But
25 Mr. Austin also will help you in giving you a

1 geometric perspective, ripping the roof off, if
2 you will, of the garage and show you models of
3 the insides of the garage.

4 By the way, just so there isn't any
5 question why I'm showing you this exhibit, one of
6 the bullets, number 9, which was found in the
7 crack of a -- the cement, that was not cleaned up
8 in this case. And tent number 23A, underneath
9 what was a air compressor, the evidence is going
10 to show, is the bullet that Teresa left her DNA
11 for you. Underneath that air compressor is where
12 they recovered that second bullet.

13 Other interior photos, you are going to
14 see photos of the interior of Mr. Avery's
15 bedroom, the gun rack that hangs over Mr. Avery's
16 bed with two firearms, one was a .50 caliber
17 muzzleloader and on top of that was a .22 caliber
18 automatic -- semi-automatic rifle.

19 But Mr. Austin, again, provides you
20 with, ripping off the roof, if you will, interior
21 scene models, where you are going to be able to
22 look at the living room of Mr. Avery and his
23 spare bedroom and his bathroom and Mr. Avery's
24 master bedroom, be able to kind of walk around
25 within that space. So it will help you

1 understand where some of these evidence -- or
2 some of this evidence was found.

3 Finally, the kinds of witnesses that you
4 are going to hear from, include citizens and law
5 enforcement officers and records kinds of people;
6 although, most of those will be agreed to between
7 Mr. Strang and us, as well as expert witnesses.

8 You will hear from various kinds of
9 citizens like Bobby Dassey, who is one of the
10 sons of Barb Janda, who you will hear testimony
11 about, that at about 2:45 on the 31st of October,
12 Bobby saw a young girl drive up to the Avery
13 property.

14 Bobby Dassey saw this young girl, later
15 identified as Teresa Halbach, get out of her
16 teal, or blue, or green colored SUV and actually
17 take pictures of the van that her mom had for
18 sale. Bobby Dassey is going to tell you, that
19 after looking out the window and after seeing
20 Teresa Halbach take these photographs of this
21 vehicle and finish her job, that Teresa walked
22 towards Steven Avery's trailer.

23 You will hear evidence that she was
24 walking towards the main entrance of Steven
25 Avery's trailer and that Bobby thereafter took a

1 shower and left to go deer hunting, bow hunting,
2 about 15 minutes later. You are going to hear
3 from Bobby that when he left 15 minutes later,
4 Teresa's SUV was there, but Teresa was nowhere to
5 be found.

6 You are going to hear that Bobby Dassey
7 was the last person, the last citizen that will
8 have seen Teresa Halbach alive. You are going to
9 hear from other citizens like that, other people
10 that will help place this case into context for
11 us.

12 Juries are triers of fact. You don't
13 decide what the law is, the judge does that. But
14 you decide what the facts of the case are. And
15 the facts in this case aren't just going to point
16 to who did it; it's not just a who done it case.
17 It's a what happened and where it happened and
18 when it happened.

19 But we're also going to provide you
20 evidence, not just that Steven Avery did it, but
21 to the exclusion of other people as well. In
22 other words, positive evidence about who done
23 know it, but also negative evidence of why that
24 necessarily excludes others. And so you get to
25 find those facts and at the end of this case, you

1 will search for the truth. You are not to search
2 for doubt, you are to search for the truth.

3 I told you when you started this case
4 and when this opening statement started, that
5 this may, in fact, be the most important decision
6 that you will ever -- going to make.

7 That leaves us, then, with the end. I'm
8 going to remind you through this case, I'm not
9 going to apologize about it, but this is Teresa
10 Halbach. I'm not going to apologize about the
11 fact that this is not a DNA profile number. This
12 isn't a box of recovered bones, but as I have
13 mentioned before, remembering the humanity of
14 Teresa Halbach. Remembering who she is, what she
15 meant to these people, is an important part of
16 this process.

17 Ultimately, this process includes
18 assigning accountability. It will require you to
19 assign responsibility for the murder and
20 mutilation of an innocent 25 year old young lady.
21 I'm confident, members of the jury, that after
22 the conclusion of this, what could in fact be a
23 six week trial, that you are going to agree with
24 me. You are going to agree with the State that
25 we have met our burden, that is, beyond a

1 reasonable doubt. I will ask at the conclusion
2 of this case, that you return verdicts of guilty.
3 Thank you. Thank you, Judge.

4 THE COURT: Thank you, Mr. Kratz. Members
5 of the jury, it's quarter to 12. It's a little
6 earlier than we normally take our lunch break, but I
7 don't believe there is time enough to get started
8 with anything else before lunch.

9 During the course of the trial the Court
10 will attempt to give you a break every hour and a
11 half or so, because I realize that your attention
12 is required and sitting for much longer than that
13 can impair your attention.

14 I do want to remind you at this time, as
15 I will periodically throughout the trial, that
16 you are not to begin your deliberations and
17 discussion of the case until all of the evidence
18 is presented and I instruct you on law at the
19 conclusion of the case.

20 Do not discuss the case among
21 yourselves, including the opening statement given
22 today, or with anyone one else, until you begin
23 your final deliberations in the jury room. We'll
24 take our lunch break now and resume at 1:00.

25 (Jury not present.)

1 THE COURT: You may be seated. Counsel, in
2 terms of the schedule for this afternoon, is the
3 State going to have some evidence to present after
4 the opening statement?

5 ATTORNEY KRATZ: We will, Judge, we'll have
6 as many witnesses as the Court wants to proceed with
7 this afternoon.

8 THE COURT: All right. We'll see you back
9 at 1:00.

10 ATTORNEY STRANG: I have just one quick --

11 THE COURT: Go ahead.

12 ATTORNEY STRANG: -- matter if I might.

13 I decided against interrupting
14 Mr. Kratz's opening statement because I thought
15 this could wait, honestly, and I don't like to
16 interrupt someone's opening. But probably in the
17 first 20 minutes of his opening, Mr. Kratz
18 explained to the jurors that the presumption of
19 innocence persists only until that moment when
20 the evidence overcomes it and proves guilt,
21 beyond a reasonable doubt.

22 I understand -- I understand the
23 argument. I understand what was meant, no ill
24 intent was meant, but that's enough of a
25 variation from the actual instruction that the

1 presumption of innocence attends the defendant
2 until after closing arguments and deliberations
3 begin, that I simply would ask the Court to
4 repeat part of that presumption of innocence
5 instruction this afternoon, before I start.

6 We don't have to make a big deal out of
7 it; I just thought an abbreviated reminder might
8 help. I also noted in the State's Power Point
9 slide that explained the element of false
10 imprisonment that the language, during her
11 lifetime, was omitted.

12 That's, I think, the kind of thing that
13 the Court already has covered and can cover
14 again, but it might be a good idea, and this
15 covers me too, for the Court simply to remind the
16 jury that all legal instructions come from the
17 Court in the end.

18 THE COURT: All right. I did -- I do
19 recall the statement regarding the presumption of
20 innocence that you referred to. And I do agree that
21 the precise extemporaneous statement for Mr. Kratz
22 is not technically correct. I'm going to grant your
23 request and repeat the presumption of innocence
24 instruction before you give your opening.

25 The other item about during the victim's

1 lifetime, I think I covered in the initial
2 instructions, again, and I'm confident that six
3 weeks from now the jury will have forgotten any
4 subtle distinction that may have taken place in
5 the opening. But I will repeat the presumption
6 of innocence instruction without giving any
7 specific reason why --

8 ATTORNEY STRANG: No.

9 THE COURT: -- because I doubt that the
10 jury caught the significance of it, but it was
11 technically incorrect.

12 ATTORNEY STRANG: Right. And it was
13 unintended and there doesn't have to be a big deal
14 made about this.

15 THE COURT: All right. Anything else
16 before we break?

17 ATTORNEY KRATZ: No, that's fine, Judge,
18 thank you.

19 (Noon recess taken.)

20 THE COURT: Members of the jury, a question
21 came up during break concerning the definition of
22 presumption of innocence, so I'm going to read that
23 excerpt to you again at this time, from the opening
24 instructions I gave you earlier. Then we'll hear
25 the opening statement from the defense.

1 Defendants are not required to prove
2 their innocence. The law presumes every person
3 charged with the commission of an offense to be
4 innocent. This presumption requires a finding of
5 not guilty unless in your deliberations you find
6 it is overcome by evidence which satisfies you,
7 beyond a reasonable doubt, that the defendant is
8 guilty. Mr. Strang, at this time you may begin.

9 ATTORNEY STRANG: Thank you, your Honor.
10 Good afternoon. This summer it will be 22 years, 22
11 years since a woman running on the beach in
12 Manitowoc was raped and beaten nearly to death. The
13 Manitowoc County Sheriff's Department investigated
14 those awful crimes and they charged Steven Avery
15 with rape and attempted murder on that Manitowoc
16 beach, 22 summers ago.

17 He said consistently that he was
18 innocent, that he had not done it. No one
19 believed him, no one but his own family believed
20 him.

21 And as that case was making its way
22 through the Manitowoc County Circuit Court, just
23 one county over, Teresa Marie Halbach was five
24 and was starting kindergarten. Somewhere else,
25 somewhere we don't know, a man named Gregory

1 Allen, presumably, was laughing and planning his
2 next violent rape.

3 Eleven years later, in 1996, Steven
4 Avery was trying, still, to make people
5 understand that he was innocent. DNA testing was
6 in its infancy. It was beginning to move into
7 courtrooms, out of scientific laboratories. But
8 we have come a long way, just a few years since
9 1996, and it was not as advanced as it is today.

10 But in 1996, Steven Avery took a chance
11 and had blood drawn, a little vial of blood. It
12 was sent off, through the help of his lawyers,
13 for early DNA testing. It couldn't clear him
14 entirely. It helped, but it did not conclusively
15 prove Steven Avery's innocence of the attempted
16 murder and rape on the Manitowoc beach.

17 And when the tests failed to prove him
18 entirely innocent, that blood was sent back, in a
19 box sealed with evidence tape, to the Manitowoc
20 County Clerk of Court. And there, in 1996, that
21 blood vial, sealed in the box with evidence tape,
22 took up residence in the now 11 year old file of
23 the 1985 case; in a box, in the open, in the
24 Manitowoc County Clerk of Court's Office. And
25 there it sat.

1 And in 1996, here, just a few miles
2 north of here, Teresa Marie Halbach was learning
3 to drive at age 16, I assume. And the irony --

4 Could you hear me before? Can you hear
5 me now?

6 THE COURT: We can hear you better now.

7 ATTORNEY STRANG: All right. Is it the
8 Verizon guy who says that?

9 Teresa was learning to drive, I assume,
10 at age 16. And the irony -- the irony is that
11 the blood vial in the Clerk's Office probably is
12 what ends up in her car, eventually.

13 And time moves forward, though, to 2002.
14 Science also has moved forward. DNA testing has
15 improved, and a new effort is made to exonerate
16 Steven Avery.

17 Now, the blood in the vial, in the box,
18 under the evidence tape, in the Clerk's Office,
19 is not, you will learn, what is used for the 2002
20 and 2003 DNA testing. But, some materials from
21 that box, that file, the overall file from the
22 1985 case, some are sent to the Wisconsin State
23 Crime Laboratory in Madison, to Sherry Culhane,
24 to whom Mr. Kratz introduced you.

25 And the person from the Manitowoc County

1 Sheriff's Department involved, low these many
2 years later, the department was, but a person
3 from the Manitowoc County Sheriff's Department
4 who documented the things that were sent from
5 that old court file to the Crime Laboratory and,
6 therefore, presumably looked at the box and
7 assisted in deciding what to send. That person
8 was, by that time, a lieutenant -- or a
9 detective, now a lieutenant, named James Lenk.

10 Now, Detective Lenk was with the
11 Manitowoc County Sheriff's Department, had his
12 office in the Sheriff's Department that adjoins,
13 or is connected by a small courtyard, to the
14 Manitowoc County Circuit Court and the Clerk's
15 Office, by a small courtyard to the south of the
16 courthouse. He was, as I say, a detective with
17 the Sheriff's Department. Today he is the
18 lieutenant of the detectives and leads the
19 Detective Unit.

20 He documented, in 2002, what was sent to
21 the State Crime Laboratory from that file. 2002
22 is the year that Teresa Halbach graduated from
23 the University of Wisconsin at Green Bay and came
24 home a short distance back, here to Calumet
25 County, to start off a promising career.

1 In 2003, nearly a year after the
2 necessary DNA samples were sent, the Wisconsin
3 State Crime Laboratory was able to establish that
4 Steven Avery did not rape and beat the woman on
5 the Manitowoc beach, as he had been saying all
6 along. And because of the advance of science,
7 the Crime Lab was better -- was able to do better
8 than that. It was able to establish that Gregory
9 Allen did.

10 Now, unfortunately, in the time that
11 passed, Mr. Allen had raped violently, again,
12 because he had his liberty while that man did his
13 time. But in the fall of 2003, as the weather
14 was cooling, the State of Wisconsin at long last
15 joined Steven Avery in a motion to set aside his
16 conviction, and an innocent man also went home.

17 Home for Steven Avery, home is the
18 salvage yard of which you have seen, now, many
19 glorious pictures, from up high, from down low,
20 from angles all over. The pictures are a good
21 deal more glorious looking than the salvage yard
22 itself, but this was home. It's the only home
23 that would take him back after this time.

24 Allen Avery, Steven's father, back there
25 in the working shirt, just as you might expect;

1 Allen Avery started that business nearly 40 years
2 ago on the 40 acres that he scrimped to buy. He
3 raised sons and a daughter. And they didn't
4 wander far from the business.

5 Chuck and Earl joined it, Barb works
6 elsewhere, works a factory job, but lives on the
7 property. And this is the sort of business where
8 the family, as you saw, shares the perimeter of
9 this property with the 4,000 rusting, decaying
10 cars that are the refuse, the wreckage of other
11 people's lives.

12 This is not a glamorous business, but it
13 is a necessary business. It is a good business.
14 And, yes, as you will learn, you have got to get
15 your hands dirty if you're going to be in the
16 salvage business. Not just dirty, you get your
17 hands bloody, because you are working with
18 rusted, jagged metal disassembling cars. And the
19 dirt that grinds into your palms and that you
20 find under your fingernails doesn't wash off at
21 night.

22 But this was his family's business and
23 this was home. And he rejoined his brother's,
24 Chuck and Earl; and his father, Allen; his
25 mother, Delores, on the family's property and at

1 the business. He became, again, one in the Avery
2 clan, one man in the Avery clan. And tried to
3 resume some normalcy of life, sharing the
4 perimeter of that salvage yard, not in a pretty
5 house in town, on a nice stone foundation, but in
6 a trailer home, down from his sister's trailer
7 home. Both of them down from the doublewide that
8 mom and dad have, and Chuck's trailer toward the
9 back, on the path toward the crusher.

10 And it is, although not glamorous, a
11 worthwhile business and it's work with its own
12 dignity. What would we do, if we didn't have the
13 salvage yards in which to find spare parts. I
14 guess we would be reliant entirely on the big
15 corporations that make the cars, to continue to
16 make spare parts for them and sell them at such
17 prices they might see fit.

18 So it would be pretty tough without the
19 Allen Averys and the Steven Averys of the world.
20 It would be pretty tough for the guy who is
21 restoring the 1968 Pontiac GTO hard top, in his
22 garage, to do that economically. It would be
23 pretty tough for the guy working on a 1965
24 Mustang convertible, in his spare time, to do
25 that.

1 Maybe more importantly, it would be
2 pretty tough for the woman who's got young kids
3 to feed, and a job to hold down, and medical
4 bills, and she just has to get another
5 50,000 miles out of that 1988 Oldsmobile. And
6 for these people, maybe for you, for many of us,
7 it's a good thing that that young woman's father,
8 or brother, or maybe she, can go to the salvage
9 yard and keep the 1988 Oldsmobile running a
10 little while longer.

11 Now, in 2003, when Steven went home,
12 Teresa Halbach also was home. Her photography
13 business was flourishing and things were going
14 reasonably well. In 2004, Steven Avery filed a
15 lawsuit seeking some recompense for the hole in
16 his life, the time he had spent as an innocent
17 man, for the crimes that Gregory Allen committed.

18 This was a serious lawsuit. It was in
19 federal court, down in Milwaukee, and there was
20 no question but that a Manitowoc County Sheriff's
21 Department and, in the end, the court system, had
22 gotten the wrong guy.

23 And as that lawsuit crept forward, as
24 lawsuits do, we came to October 2005. In October
25 2005, about the middle part of the month, James

1 Lenk and another ranking officer of the Manitowoc
2 County Sheriff's Department, Sergeant Andrew
3 Colborn, Mr. Lenk and Mr. Colborn both were
4 pulled into the lawsuit, not as defendants or
5 parties to the lawsuit, but as witnesses,
6 witnesses who had their depositions taken in the
7 middle of October, 2005.

8 Now, a deposition, typically in a civil
9 lawsuit, is an event where you get a subpoena as
10 a witness; you come normally to a lawyer's
11 office, the conference room, the library, the
12 lawyer's office; lawyers from both or all sides
13 are there.

14 A court reporter is there; these days
15 often a videographer as well. And the court
16 reporter swears the witness under oath, the
17 lawyers ask questions of the witness under oath
18 and they are recorded, much as Mrs. Tesheneck is
19 recording what we're saying here. There's no
20 judge; it happens, as I say, typically in a
21 lawyer's office.

22 And these two men, Lenk and Colborn,
23 were witnesses. They were witnesses about their
24 own conduct. Neither had been with the Manitowoc
25 County Sheriff's Department in 1985, but an event

1 in 1995 or 1996 came up in that lawsuit. And as
2 to that event, both of them were witnesses being
3 questioned about their own activity and conduct
4 with respect to Mr. Avery's imprisonment.

5 By the end of that month, unfortunately,
6 those depositions would begin to matter. And
7 indeed, from the time it was filed in 2004, you
8 will learn, the lawsuit itself mattered. This
9 sort of lawsuit, or the public cry of the
10 innocent man wrongly convicted and imprisoned has
11 to be, as you will see here I think, it has to
12 be, as you get into the heads of law enforcement
13 and begin to understand the process of law
14 enforcement, this kind of thing has to be a
15 nightmare for every good law enforcement officer.

16 These folks do not want to put innocent
17 people in prison. They want to put guilty people
18 in prison. And when they get it wrong, when the
19 whole system gets it wrong, there understandably
20 are feelings of shame, of embarrassment, anger,
21 humiliation, conflicting feelings about this.

22 This is a good cops worst nightmare,
23 made all the more worse by the fact that Gregory
24 Allen, free, thanks to Steven Avery being
25 convicted instead, Gregory Allen went on to rape

1 and beat again.

2 This lawsuit kindled real difficult
3 emotions. And the focal point of those emotions,
4 naturally, was the Manitowoc County Sheriff's
5 Department which had investigated the rape many
6 years ago on the Manitowoc beach.

7 And so when October 31, 2005, Halloween,
8 rolls along, Lieutenant Lenk and Sergeant Colborn
9 not only have the lawsuit to contemplate, but
10 now, within the last three weeks, have been made
11 witnesses in it and had their depositions taken.

12 October 31, 2005, began at the Avery
13 Auto Salvage Yard, much as any workday would.
14 This was a Monday, the yard was open. Not long
15 after 8:00 in the morning, about 8:12 in the
16 morning, Steven Avery called *Auto Trader* down
17 in -- actually I think in Hales Corners, Highway
18 100 down on the southwest side of Milwaukee,
19 called *Auto Trader*, as he had done a number of
20 times before, and said, we need a photographer,
21 we have a car for sale.

22 Now, the car belonged to Barb Janda, the
23 van, the mini van you saw computer images of and
24 actual photographs of. It was there. It was
25 hers. It was for sale. I don't expect there

1 will be any dispute about that. And it was
2 Barb's to sell. The calls about it were Barb's
3 to take, the price was Barb's to dicker or
4 negotiate with people interested in making an
5 offer, on the used van.

6 Steve left B. Janda as the name because
7 that was the name of the seller. But Barb works
8 during the day at a factory in town. She does
9 not work at the salvage yard as Steven did. He
10 leaves her telephone number because that's where
11 the phone calls have to go if there's an
12 interested buyer.

13 And this, you will find out, is not at
14 all unusual or sinister. It doesn't involve
15 luring anyone anywhere. There was a car for
16 sale. There were photographs to be taken. And,
17 indeed, on that day alone, for Teresa Halbach,
18 with the three appointments we know about; this
19 was not the only appointment where the seller of
20 the car was not the person whose name was given
21 to *Auto Trader*.

22 The Schmitz car was called in by and
23 listed as an appointment for a Craig Sippel
24 (phonetic). And that little bit of confusion was
25 quickly cleared up by the police. Wasn't really

1 Sippel's car; it was Schmitz's car, no big deal.
2 But she thought she was going to see a Craig
3 Sippel, not a Steven Schmitz.

4 She thought that she was going to see a
5 B. Janda, I suppose, not a Steven Avery. But
6 here's what she knew, she knew the address.
7 Steven gave the address. This is an address, as
8 Mr. Kratz explained to you and I agree, to which
9 Teresa Halbach had been a number of times,
10 probably about a half dozen, five, six, maybe
11 more times, to take photographs of cars or the
12 trailer for sale, for example, the photograph you
13 saw.

14 She knows the address. She knows where
15 she's going. As you will see, this is not a
16 surprise, or a secret to her or to anyone else.
17 And at 11:45 that morning, she called Barb
18 Janda's number and evidently left a voice mail
19 message saying that she would be able to get
20 there that day, sometime after 2:00.

21 Now, this Manitowoc County area was
22 Teresa's territory so to speak, for *Auto Trader*.
23 This was her freelance work as I understand, not
24 her main source of income. Her photography
25 studio work I think probably was her passion and

1 this was a side job for a young photographer to
2 generate some more money.

3 She has a territory for Auto Trader.
4 Steven Avery wouldn't necessarily know what her
5 territory is or whether she's the only
6 photographer working it. And sometime close to
7 2:30, he's obviously getting fidgety. He makes
8 two phone calls to her cell phone from his cell
9 phone and he uses the *67 feature, you will find
10 out, which as I understand it on the -- on
11 Teresa's telephone, then, no telephone number
12 would come up; come up is unavailable, or
13 something like that, or blocked.

14 But he is on his own cell phone and he
15 may not want, not being entirely sure whose
16 number he is calling, he may not want to be
17 giving out his cell phone number. At least the
18 second of those calls goes unanswered.

19 And the time frame gets fuzzy here.
20 Mr. Kratz said that it was late afternoon that
21 Teresa arrived and I'm inclined to agree with
22 that; although it is difficult to nail down. But
23 I think the best evidence you will hear is that
24 although Teresa Halbach is in the neighborhood of
25 the Zipperers, who are really just -- I don't

1 know how far, but not too far down Highway 147
2 and then south toward Manitowoc a little bit. So
3 they are in the general vicinity.

4 And I think at about 2:15 she's near the
5 Zipperers, trying to figure out exactly where
6 she's going to get to the Zipperers to take that
7 photograph of their car. But I think the best --
8 the best estimate we'll get out of the evidence
9 of when she actually arrives at Avery Road, which
10 is that gravel road that leads down towards,
11 first, Barb Janda's trailer and then Steven
12 Avery's trailer, which you saw on the north edge
13 of the 40 acre parcel; the best estimate of when
14 she swings her Toyota down that gravel road is
15 probably shortly before 3:30, probably not 2:45,
16 as one of Barb Janda's sons, Bobby Dassey,
17 recalls it.

18 Why do I say the best estimate, because
19 there is a school bus driver. Two of Barb
20 Janda's boys, Brendan and Blaine, are still in
21 Mishicot High School and it's Monday, as I said.
22 And they ride the school bus. And school
23 schedules being what they are, of course, unless
24 there is really terrible weather or something,
25 school lets out at the exact same time every day,

1 the bell rings and kids run out the door.

2 The bus is going to be leaving about the
3 same time and the bus driver will be driving the
4 same route every day. So this bus driver, who's
5 no relation to the Avery family, or the Halbachs,
6 or anybody else for that matter, just happens to
7 be the school bus driver; her name is Lisa
8 Buchner.

9 Lisa Buchner, when interviewed by the
10 police says, you know, about 3:30 when I dropped
11 the Dassey boys off at the head of Avery Road, I
12 looked down the road and I saw a young woman
13 taking a photograph, or photographs, of a van.
14 Now, Buchner actually isn't sure when she's
15 questioned about this whether it's Monday,
16 Tuesday, or Wednesday of that week.

17 But Monday is the day that a young woman
18 would have been taking a photograph of the van,
19 down near the end of Avery Road. So she's got a
20 pretty good reason to have a good bead on the
21 time. She's going to know her route, this is
22 something she's doing five days a week. And it's
23 about 3:30 that she sees this young woman down
24 the road, taking a photograph of the van.

25 Teresa Halbach does her business. And

1 the way this works is the person selling the car
2 then gives the photographer \$40. The
3 photographer makes out a receipt for the
4 transaction, typically also offers the customer
5 the current copy, current edition of the *Auto*
6 *Trader Magazine* and leaves.

7 And that's what Teresa Halbach did.
8 Steven Avery last sees her going back out Avery
9 Road and about to turn left to go back out to
10 Highway 147.

11 Now, somebody clearly sees her later.
12 We don't know who, I don't know where, I don't
13 know when. And I, like Mr. Kratz, don't know
14 why.

15 I do know this and can tell you that you
16 will hear this about the evidence. One of the
17 things that the photographers who freelance or
18 work for *Auto Trader* do, is to go take
19 photographs on appointments that have been set
20 for them through the *Auto Trader* office.

21 But there is another thing they can do,
22 they get some money for that, obviously. Some of
23 the \$40 goes to the photograph. But there's
24 another thing they can do and that's called a
25 hustle shot. The hustle shot is exactly that,

1 it's business that the photographer hustles up
2 for herself, or for himself.

3 And as an incentive for the
4 photographer, to hustle a little bit and, you
5 know, thicken the *Auto Trader Magazine* with new
6 customers selling cars, or boats, or trailers, or
7 whatever, as an incentive for their photographers
8 to do that, *Auto Trader* gives the photographer a
9 little bigger cut on a hustle shot.

10 You are going to learn that Teresa
11 Halbach was good at hustle shots. She drummed up
12 a lot of these. She was likeable. She was hard
13 working. She was good at getting hustle shots.

14 I have no idea -- I have no idea at all
15 and I don't think you will either, unfortunately,
16 whether she had a hustle shot, or two, or three,
17 that day or not. It would not have been
18 uncommon. But if, in fact, she's near the
19 Zipperers at 2:15 and as I think is probable from
20 the evidence, she doesn't show up to the Averys
21 until about 3:30, it's possible there's a hustle
22 shot in there or I suppose stopping for lunch or
23 something, we don't know.

24 It's possible there are hustle shots
25 that are not scheduled through *Auto Trader* after

1 the Avery shot. Because after all, I mean, if
2 we're at 3:30, there's a good bit of daylight
3 left in the working day, I suppose. But we don't
4 know.

5 What we do know is that someone sees her
6 later. And Steven Avery calls her later, as a
7 matter of fact, from his cell phone. Again, he
8 calls her cell phone at about 4:35 that
9 afternoon. Why, because he thought, I have got
10 another car I would like to sell. I might as
11 well, if she's still around, or if she can swing
12 back, I might as well have her shoot that one
13 too.

14 But he doesn't get an answer from her,
15 doesn't answer the phone, when he calls at 4:35.
16 He sticks around. And at that point his
17 girlfriend, Jodi Stachowski, is in jail serving
18 some time for a drunk driving conviction. She's
19 in the Manitowoc County Jail.

20 Jodi, you will learn, calls Steven
21 regularly. Because she's in jail, she has to
22 call collect. And you can't call collect from a
23 jail to a cell phone. I don't know if you can
24 call collect to any cell phone from anywhere.
25 But in any event, you can't call a cell phone

1 from the jail, calling collect. So you have got
2 to call a land line.

3 So that's exactly what Jodi Stachowski
4 does, first a little bit after 5:30 in the
5 evening she calls. And jail systems, I don't
6 know if you know this, but jail systems,
7 typically, and the Manitowoc County Jail clearly
8 does this, cut off phone calls after 15 minutes.
9 Inmates have a lot of time on their hands,
10 sometimes people they are calling don't. So the
11 call just ends at 15 minutes.

12 So Jodi calls about a little bit after
13 5:30 on the land line. And then she calls again
14 just shortly before 9:00 p.m. And Steven is
15 home. Steven answers the phone in his little red
16 trailer there, both times. And both of those
17 conversations go 15 minutes, almost to the
18 second.

19 He tells her that he's been doing a
20 little cleaning. He tells her that Brendan, his
21 nephew, Brendan Dassey, is over. They hassle.
22 These are inane conversations, honestly, but they
23 are tape recorded, because every phone call out
24 of the jail is tape recorded, so we know they
25 happen.

1 Does it sound like he's just killed
2 someone, no. Does he hide the fact that his
3 nephew, Brendan, from 50 yards away, or whatever
4 it is, Barb's trailer, has come over, no.
5 Doesn't have to tell Jodi that, if they were up
6 to something no good, but he does. Brendan is
7 around.

8 And for all the world, as I say, these
9 conversations simply are inane, they don't ring
10 of someone who has committed a murder or in the
11 midst of committing a murder, or in the midst of
12 mutilating a corpse or falsely imprisoning
13 anyone, no screaming in the background. They are
14 just inane telephone conversations between a
15 squabbling boyfriend and a squabbling girlfriend.

16 And October 31 comes to a close. It's
17 about three days later, Thursday evening about
18 5:00, November 3, when Mrs. Halbach reports
19 Teresa missing. Teresa lives almost next door to
20 the elder Halbachs; I mean, the two houses, you
21 can see the one from the other, on the dairy
22 farm, up north of here, in Calumet County.

23 So the report goes to the Calumet County
24 Sheriff's Department. It's a missing person
25 report. No one has seen Teresa since Sunday,

1 actually. And the Calumet County Sheriff's
2 office responds, interviews the family, a couple
3 of close friends, and learns very quickly about
4 these three appointments that Teresa had on
5 Monday. Now, at least two of those -- at least
6 two, maybe the third even, but at least two, are
7 in Manitowoc County; Zipperers and Avery, or B.
8 Janda.

9 So the Calumet County Sheriff's
10 Department calls for help from the Manitowoc
11 County Sheriff's Department on this missing
12 person report; that very night, 5:00, the report
13 is made. By the end the of the dinner hour,
14 Calumet County is calling the Manitowoc County
15 Sheriff's Department for a little bit of help.

16 And who do we get? We get Sergeant
17 Andrew Colborn. And he's told, look, two places
18 we would like to sort of check out and see if
19 Teresa Halbach showed up on Monday, the Zipperer
20 residence and Steven Avery. Well, that's a name
21 that rings a bell, you better believe; less than
22 three weeks, or about three weeks, after his
23 deposition.

24 And it is interesting that of those two
25 places that Sergeant Colborn is asked to check

1 out and inquire after Teresa Halbach, he only
2 goes to one. He goes to Steven Avery's home and
3 Steven cooperates with him. Tells him
4 essentially what I have told you about Teresa
5 Halbach coming to take the picture of Barb
6 Janda's van. Doesn't clam up, doesn't seem
7 nervous, isn't uncooperative; that very night,
8 November 3, around 7:00, when Sergeant Colborn
9 knocks on his door.

10 Out of the blue, the same night,
11 Lieutenant James Lenk, now the head of the
12 Detective Unit in Manitowoc County Sheriff's
13 Department, calls Calumet about this missing
14 person report. Now, at this time, on Thursday
15 night, November 3, this is -- let's be clear,
16 this is just a missing person report, a young
17 woman who hasn't been seen for three days.

18 It's in another county. It's not even
19 Manitowoc County at all. And nobody has called
20 for Lieutenant Lenk. And nobody's called looking
21 for him. But the chief detective of Manitowoc
22 County takes it upon himself, that night, to call
23 Calumet and offer to get involved in the missing
24 person investigation where one of the
25 appointments that was to be kept was Steven

1 Avery.

2 And the next morning, Lieutenant Lenk
3 does one better than that, he goes out himself to
4 Steven Avery's trailer with another officer from
5 Manitowoc. And he knocks on the door again, just
6 as Sergeant Colborn had done the night before,
7 inquiring after Teresa Halbach. Again, Steven
8 Avery is cooperative.

9 Lieutenant Lenk asks, could I take a
10 walk through your trailer, can I look around, do
11 you mind? No, I don't mind. Come on in.
12 Lieutenant Lenk walks through Steven's trailer,
13 sees nothing amiss, thanks him for his
14 cooperation and leaves.

15 November 5, Saturday, Steven has left to
16 go to the family cabin up in Crivitz, early that
17 morning, where Allen goes every weekend and most
18 of the family goes up too. Steven has gone up on
19 Saturday morning. But about 10:30 on Saturday
20 morning, Pam and Nikole Sturm find the Toyota
21 they suspect, correctly, as it turns out, is
22 Teresa's. As it turns out, is Teresa's, in the
23 far diagonal corner of the salvage yard from
24 Steven Avery's trailer.

25 As you might expect, law enforcement

1 officers descend on the property and the first to
2 arrive are Manitowoc County Sheriff's Department
3 officers at just about 11:00, in the morning, on
4 the nose. And, folks, from that point forward,
5 from 11:00 a.m. on Saturday, November 5, 2005,
6 this is not so much a funnel approach, as you
7 will see. It is a tunnel approach. It is a
8 tunnel vision approach to this case.

9 All of the feelings about Steven Avery,
10 all of those churning emotions, all of that,
11 within the Manitowoc County Sheriff's Department,
12 floods out. You can call it tunnel vision, you
13 can call it investigative bias, but from that
14 point on, this investigation is about Steven
15 Avery and not much else.

16 From 11:00 in the morning on Saturday,
17 November 5, 2005, before the police say they have
18 even opened the car; before they say they know of
19 any blood of any sort in or on the car; before
20 anybody even knows whether this young woman has
21 been hurt or killed, the focus is on Steven
22 Avery.

23 Other people are asked, her male
24 roommate; former boyfriend and current friend,
25 Ryan Hillegas; others are asked: Do you know

1 anything about her disappearance? Did you have
2 anything to do with it? All of them say no. And
3 those denials, those statements are accepted.

4 Not Steven Averys, not Steven Avery's
5 denials or expressions of innocence. Time and
6 again the police go back to Steven Avery and ask
7 the same questions. And he talks to them every
8 time.

9 Even by the time his lawyers in the
10 civil lawsuit down in federal court in Milwaukee
11 find out about it and are trying to encourage him
12 not to the talk to the police, he talks. On the
13 3rd to Colborn, on the 4th to Lenk, on the 5th to
14 officers up in Crivitz, on the 6th, on the 9th,
15 he talks. And he is not believed. Do they want
16 to go through his house, sure, come on in my
17 house, on November 4, Lieutenant Lenk.

18 After the Toyota is found and the police
19 arrive at about 11:00, that Saturday morning,
20 Lieutenant Lenk and Sergeant Colborn come in to
21 work and they too arrive at the Avery property.
22 You will hear that Lieutenant Lenk now has
23 changed his sworn version of when he arrived that
24 afternoon.

25 And he has the ability to change his

1 sworn story about when he arrived that afternoon
2 at the Avery property, because somehow he avoided
3 signing in on the log, the log sheets that the
4 Calumet County Sheriff's Department was keeping
5 of that potential crime scene. He signed out,
6 but somehow he managed not to sign in.

7 And on that 40 acre parcel, after the
8 Toyota has been turned over to the Division of
9 Criminal Investigation in Madison, now, as search
10 efforts are to be begin on that parcel, now the
11 Manitowoc County Sheriff's Department nominally
12 turns over control of the investigation to
13 Sheriff Jerry Pagel of the Calumet County
14 Sheriff's Department, this county's sheriff's
15 department. Nominally, that afternoon, control
16 of this investigation was turned over to Calumet
17 from Manitowoc because of the apparent conflict
18 of interest that Mr. Avery's lawsuit represents
19 for the Manitowoc County Sheriff's Department.

20 Now, if you are thinking, though, that
21 the evidence will show you that Manitowoc County
22 bowed out because of the conflict of interest
23 after it turned the investigation over to Calumet
24 County; if you are thinking that, it's
25 reasonable, but you are wrong. Manitowoc County

1 Sheriff's Department stays very much involved in
2 this investigation.

3 And what does Lieutenant Lenk and what
4 does Sergeant Colborn do by way of volunteering
5 to help, that very afternoon, Saturday
6 November 5. Do they volunteer to help look in
7 the 4,000 cars? No. Do they volunteer to search
8 Allen and Delores Avery's home? No. How about
9 the pole barns or the outbuildings of the salvage
10 property's business itself? No. They volunteer
11 to search Steven Avery's trailer. And they do,
12 on November 5.

13 And once they get into that trailer with
14 the search warrant, well, then, what these two
15 do -- and there are two other officers with them,
16 one from Manitowoc and one from Calumet -- what
17 Lenk and Colborn do is, they say, don't worry,
18 we'll take Steven's bedroom. And they search
19 this bedroom.

20 Now, this is a mobile home. If the
21 bedroom itself is 10 by 12, or 12 by 12, or 10 by
22 10, I would be surprised if it was much bigger
23 than that. From me to the wall in front of you
24 is about the depth and roughly the width of that
25 bedroom in the small trailer in which Steven

1 Avery lives.

2 They search, that is, Lenk and Colborn
3 search his bedroom on the night of November 5.
4 And they find nothing of interest. They see the
5 guns; they stay on the wall. But don't bother
6 seizing guns on the 5th, come back to those the
7 next day. And it is Lenk and Colborn who come
8 back the next day, not somewhere on the property,
9 but to Steven Avery's trailer.

10 On November 6, they search his garage,
11 garage is actually between him and his sister
12 Barb's trailer, but for our purpose here, let's
13 call it his garage. You will find out that the
14 Dassey boys have access to the garage, Barb has
15 access, the family has access to this garage.

16 But it's Lenk and Colborn and another
17 detective from Manitowoc County named Dave
18 Remiker who searched the garage on Sunday, the
19 6th. They find 10, maybe it's 11, something, 10
20 or 11 spent .22 casings. And they pick all of
21 those up.

22 But remember -- remember the bullet
23 that's found under little tent number 9 on the
24 picture that Mr. Kratz showed you? The bullet
25 that's apparently in a crack in the floor, right

1 smack in the middle of the garage near the front
2 where the door is? That, no one sees or picks up
3 on November 6th, November 7th, November 8th and
4 so forth through November 12th.

5 Neither does anyone see a bullet back
6 under the air compressor. But you will see
7 photographs of that garage as it was in
8 November 2005, not as it was in March, 2006,
9 when, finally, low and behold, why there's
10 bullets, why don't we pick up these bullets.

11 You will see the garage in photographs,
12 not computer simulations, photographs, as it was
13 in November, 2005. You will be able to see, that
14 although the garage is very cluttered, there's no
15 clutter under the air compressor. There's no
16 clutter there, where four months later someone
17 finds a magic bullet, there, as you walk into the
18 garage, looking at the floor.

19 November 7, Steven Avery's trailer is
20 searched again, guess who; Lenk and Colborn. Now
21 there probably -- There certainly are over 50 law
22 enforcement officers on this property, 24 hours a
23 day, well before November 7th, probably by
24 sometime late the night of the 5th, certainly by
25 the 6th. There may be over 100 law enforcement

1 officers working this property.

2 They have got the family excluded. They
3 have got a perimeter around the entire 40 acres
4 and more. They are controlling traffic and
5 entry. They are logging in who comes and goes.
6 They control this place.

7 And as you heard Mr. Kratz say, they
8 have got any number of people searching, but it's
9 Lenk and Colborn, again, who are searching
10 Mr. Avery's trailer, there in the northwest
11 corner of that salvage yard. And on November
12 7th, they find nothing of interest in his home.

13 Tuesday, November 8, they are back.
14 They are back in Mr. Avery's home, back in that
15 small bedroom. And now, Lieutenant Lenk, on what
16 you will hear is probably the seventh search of
17 that small bedroom, Lieutenant Lenk, now, when
18 he's the only one in that room, says, why, my
19 gosh, there's a key sitting in plain view, next
20 to the night stand.

21 There is, you saw a picture of it as he
22 says he found it, one solitary key on a ring,
23 connected to a fob. That key fob is just like,
24 and probably is, the one that Teresa Halbach's
25 younger sister bought her as a little present.

1 One key, and one key only, on the ring connected
2 to that fob, it's a Toyota key.

3 And the man whom the State would have
4 you believe bled all over Teresa's car, manages
5 not to bleed on her key. His blood isn't found
6 there, although, apparently, somehow his DNA is,
7 but not his fingerprints. And more
8 interestingly, although this is a 1999 Toyota and
9 I gather she's been using this key, the State
10 believes, every day to start her car and turn it
11 off, Teresa Halbach's DNA and fingerprints are
12 not found on her key.

13 For good measure, on November 8,
14 Lieutenant Lenk and Sergeant Colborn searched
15 Steven Avery's garage yet again. No bullets, no
16 nothing. And the case against Steven Avery,
17 largely, is made at that point. And a whole lot
18 of it, as you will see, depends on lieutenant
19 James Lenk, Sergeant Andy Colborn.

20 And they, both of them, have elected
21 never to tell Sheriff Jerry Pagel, the man in
22 charge of the investigation for Calumet County;
23 they have elected not to tell him that they had
24 their depositions taken in Steven Avery's case
25 probably three weeks earlier. They didn't tell

1 anybody in the Calumet County Sheriff's
2 Department that.

3 November 8 is also the day that the bone
4 fragments are found in a burn area hardly 20
5 yards outside Steven Avery's master bedroom
6 window. Hardly 20 yards. Small burnt bone
7 fragments, human burnt bone fragments. But what
8 you will learn and you do not hear this morning,
9 what you will learn is that burnt human bone
10 fragments also apparently are found in one of the
11 burn barrels behind Barb Janda's house.

12 Burnt the same way, fragmented about the
13 same way, and apparently human in origin. Not
14 Steven Avery's burn barrel, not the one you heard
15 about, but there are four burn barrels to the
16 southeast, that is the most distant corner of
17 Barb Janda's trailer, from Steven Avery's
18 trailer. Four burn barrels back there for Barb
19 Janda and the Dassey boys. Burnt bone fragments.

20 And there are what seem to be probable
21 human burnt fragmented bones found in the Radandt
22 Gravel Quarry, probably a quarter mile south of
23 Steven Avery's property.

24 Now, I don't think that the State has
25 been able to link, through DNA analysis, those

1 burnt bone fragments conclusively to Teresa
2 Halbach.

3 But how many burnt human bone fragments
4 are there supposed to be, and when you only have
5 one person missing. And the burnt human bone
6 fragments in the Janda burn barrel, about which
7 you did not hear this morning, those are
8 fragments from bones that are not connected, not
9 part of one limb, not connected to one another
10 within the human body. Sort of a random mix of
11 bone fragments, as apparently are those that are
12 found a quarter mile to the south in the Radandt
13 gravel pit.

14 And as you piece this evidence together,
15 here's what you are going to have to conclude,
16 bone fragments, parts of this body were found
17 where they were not burned. They were burned and
18 moved because, again, the fragments aren't
19 connected to one another.

20 It's not that, you know, it's not that
21 an arm could have been removed and burned one
22 place and the rest of the body another place. We
23 have got the fragments themselves mixed up and
24 found in three different places. The body
25 couldn't have been burned in that way, in three

1 different places or even two, if you set aside
2 the Radandt gravel pit. These bone fragments
3 were moved.

4 The question then becomes, the question
5 you will have to decide eventually is, were they
6 moved from Steven Avery's burn area to the Janda
7 burn barrel or the gravel quarry, or were they
8 moved from somewhere else to Steven Avery's burn
9 area and maybe to one of the other places where
10 bone fragments, burnt, are found.

11 At least, did they start in the burn
12 area and get moved somewhere else, or did they
13 start somewhere else, burned somewhere else and
14 get moved to the burn area. Now, an expert --
15 experts here, in what scientists will call
16 thermal injuries to bodies, cremation, an expert
17 or two, to the extent you hear that, may be able
18 to give you some help on that question, some
19 help, but I'm not sure that an expert can answer
20 this conclusively.

21 In the end, you folks are going to have
22 to do the hard work and the hard thinking on
23 that. But I think when you have heard it all,
24 you will conclude that it's at least most likely,
25 more probable, that the bones were moved to

1 Steven Avery's burn area, not burned there and
2 moved from that area to another place or two.

3 Why? You are going to find out that
4 there are better places, even on the Avery
5 salvage yard property, in which to incinerate a
6 body. The burn area is relatively flat and
7 scooped out a little bit, but it's relatively
8 flat and open. It's a burn area, like many farms
9 or rural homes have, just folks have burn
10 barrels.

11 It doesn't have well developed sides to
12 focus heat back inward on the fuel or things
13 being burned. Neither does it have a ready
14 external source of fuel. But the aluminum
15 smelter, the aluminum smelter at the Avery Auto
16 Salvage property does. Big propane jets, an
17 enclosed area, it will take an aluminum
18 transmission down to liquid in a few minutes.

19 The wood furnace that heats the
20 outbuildings of the Avery Auto Salvage business;
21 Chuck's home; Allen and Delores' home, that's an
22 enclosed area that will incinerate fuel in it
23 very quickly.

24 And because we have got probable human
25 burnt bone fragments found on the adjoining

1 property, the gravel quarry to the south, we
2 can't rule out other possible burn sites. And an
3 expert won't be able to tell you what other
4 possible burn sites there are. Expert or not,
5 that's not something he or she will be able to
6 tell you.

7 But once it's more likely, as I think
8 you will find it to be more likely, that the body
9 is burned somewhere else and bone fragments then
10 are brought to Steven Avery's burn area, then
11 he's not guilty. Because if he's the one who
12 burned the body somewhere else, he's not going to
13 bring the bones back to dump them 20 yards
14 outside his bedroom window.

15 Neither is he going to dump a cell phone
16 and a digital camera and a palm pilot in his own
17 burn barrel. Too many other places where these
18 things could be disposed of out in the salvage
19 yard, whether the retention pond, whether the
20 gravel quarry, or some other burn barrel in the
21 woods. So once you understand that those bones
22 probably were not burned in that burn area, the
23 fact that they are found there, you will see
24 tends to suggest he's not guilty, not that he is.

25 It is perfectly clear to anyone around

1 this investigation on whom the focus of the
2 Manitowoc County Sheriff's Department and the
3 other investigators, to the extent that tunnel
4 vision, that investigative bias bled over, it's
5 perfectly clear on whom the focus of this
6 investigation is.

7 The police didn't kill Teresa Halbach,
8 obviously, they have that in common with Steven
9 Avery, but they wanted to believe he did. They
10 very much wanted to believe that he did. And
11 whoever did kill her, or burned that body,
12 exploited that tunnel vision pretty skillful.

13 Suggesting this sort of tunnel vision,
14 suggesting this kind of investigative bias,
15 planting blood in her car, fairly serious
16 allegations to make. In fact, I will take away
17 the fairly, they are serious allegations.
18 Understand them, that bias and tunnel vision are
19 human anomalies.

20 And if you conclude, reluctantly, that
21 Mr. Lenk or Mr. Colborn, in addition to all the
22 other interests they took in searching and
23 focusing on Steven Avery, planted blood in her
24 car, you will also conclude that they put it
25 there because they figured it had to be there.

1 It should be there. It must be him.

2 This wasn't so much, I think the
3 evidence will show you, an effort to frame an
4 innocent man, it was an intense, intense desire
5 to conclude that he, in fact, was the guilty man;
6 all other possible leads for information not
7 withstanding. It was an immediate focus on this
8 man, starting shortly after 11:00, Saturday,
9 November 5, 2005. But you do not have to take my
10 word for that.

11 I can make this work; I'm not as adept
12 at it as I should be. I'm going to play for you,
13 two tapes, a part of it, just excerpts, short
14 excerpts of two tapes.

15 The first one is Saturday, November 5,
16 2005, at 11:35 in the morning, 35 minutes give or
17 take a minute or two, after the Manitowoc County
18 Sheriff's Department first has arrived at the
19 Avery property, because that Toyota has been
20 found; well before the police say they opened the
21 Toyota; well before they say they knew of any
22 blood; well before Brutus, the friendly cadaver
23 dog comes along and hits; 35 minutes after the
24 first officers arrived when the Sturm's called
25 and said, hey, we think we found something.

1 What I'm going to do is scroll through a
2 transcript that we prepared and then I will play
3 the excerpt of the tape for you. It is not a
4 great recording. The transcript is not evidence,
5 the tape will be, I expect. So if you think my
6 transcript is wrong, listen to the tape; it's the
7 evidence, or it will be. That's the tape that
8 matters. The transcript may help you in
9 understanding it or hearing it.

10 Detective Remiker is calling in, he's
11 asking for dispatch. Dispatch responds, I put
12 unintelligible, I think it's go ahead, but I'm
13 not sure, you can decide. Maybe you won't
14 understand it for sure either.

15 Detective Remiker says to the
16 dispatcher, you will need to get ahold of the
17 Crime Lab for their evidence response team to
18 start responding to this location. Now, he's out
19 at the Avery Salvage Yard. As you will hear.
20 Dispatch says, 10-4, Crime Lab out of Madison,
21 Milwaukee, where?

22 Our Crime Lab has branches in Wausau,
23 Madison and Milwaukee. The main one is in
24 Madison. Detective Remiker says, it's going to
25 be the Madison response team and he was right.

1 Now, Detective Jacobs joins in, this
2 radio traffic, radio conversation. Calls in with
3 his badge number, his squad number, I'm in code,
4 you will find out what that means, anything you
5 need other than a portable for Schetter. And
6 what you'll find out is he's talking about a
7 portable radio for Deputy Inspector Greg Schetter
8 of the Manitowoc County Sheriff's Department who
9 is, I think, the number two or three ranking
10 officer in the Department and who's probably also
11 going out to the Avery property. Detective
12 Remiker, not that I can think of right now,
13 Dennis. Dennis Jacobs. Let's see if this work.

14 (Tape recording played.)

15 DETECTIVE REMIKER: Yeah, need to get a
16 hold of the Crime Lab for their evidence response
17 to start responding at this location.

18 DISPATCH: 10-4. Crime Lab out of
19 Madison, Milwaukee, where?

20 DETECTIVE REMIKER: Madison response
21 team.

22 DETECTIVE JACOBS: 278, I'm in code,
23 anything you need other than a portable for
24 Schetter.

25 ATTORNEY STRANG: It cut off. Sorry about

1 that, you will hear -- You will get a chance to hear
2 the whole conversation. And it continues, Dennis
3 Jacobs says, okay, other than the car, do we have
4 anything else. He's talking to Remiker here. Dave
5 Remiker says, not yet. Detective Jacobs, Okay. Is
6 he in custody? Detective Remiker, Negative, nothing
7 yet.

8 Not who, not is who in custody, but
9 negative. He is not in custody, nothing yet.
10 Detective Jacobs, Okay. I'll gather my stuff and
11 head out.

12 (Tape recording played.)

13 DETECTIVE JACOBS: Okay. Other than the
14 car do we have anything else?

15 DETECTIVE REMIKER: Not yet.

16 DETECTIVE JACOBS: Is he in custody?

17 DETECTIVE REMIKER: Not yet, nothing
18 happening.

19 DETECTIVE JACOBS: Okay. I will gather
20 my stuff and head out.

21 ATTORNEY STRANG: Now, that's 11:35, is he
22 in custody yet. Detective Remiker, clearly, I
23 gather, as I hear it, knows who Detective Jacobs is
24 talking about, but we don't, 35 minutes after the
25 police have arrived.

1 And to get a better feel for that
2 conversation at 11:35, we have to go back five
3 minutes earlier when Detective Jacobs is calling
4 in on the land line, 5 minutes earlier, 30
5 minutes, 30 minutes after the police have arrived
6 at the Avery property after Teresa's car has been
7 found there.

8 Dispatcher answers the phone. Detective
9 Jacobs, Katie -- the name of the dispatcher --
10 just rolled into the parking lot. Can you tell
11 me, do we have a body or anything yet? Do we
12 have a body or anything yet? This is 30 minutes
13 after they found the car.

14 I don't believe so. I believe they
15 wouldn't find the first bone fragment for three
16 days. Do we have Steven Avery in custody,
17 though? I have no idea. You can hear it
18 yourself.

19 (Tape recording played.)

20 DISPATCH: Good morning. Manitowoc
21 County Sheriff's Department, Katie speaking.

22 DETECTIVE JACOBS: Katie, I just rolled
23 into the parking lot. Can you tell me, do we
24 have a body or anything yet?

25 DISPATCH: I don't believe so.

1 DETECTIVE JACOBS: Do we have Steven
2 Avery in custody?

3 (Tape recording starts playing again.)

4 DISPATCH: Good morning. Manitowoc
5 County Sheriff's Department, Katie speaking.

6 DETECTIVE JACOBS: Katie, I just rolled
7 into the parking lot, can you tell me do we have
8 a body or anything yet?

9 DISPATCH: I don't believe so.

10 DETECTIVE JACOBS: Do we have Steven
11 Avery in custody at all?

12 DISPATCH: I have no idea.

13 ATTORNEY STRANG: Now, I will finish it out
14 so you can link it up to the call -- the discussion
15 with Detective Remiker 5 minutes later. Oh, I heard
16 him say pick up that party. Oh no, the dispatcher
17 says, Pete, who is just another Manitowoc County
18 Sheriff's officer, is sitting up there waiting and
19 stopping people from going in and that. He found
20 someone with a body only warrant for our department.

21 A body only warrant is an arrest warrant
22 or a bench warrant where they are going to take
23 the person into custody, rather than immediately
24 grant him bail. Okay. Do we have -- All right.
25 I will talk to Remiker. Yeah, your best bet is

1 to talk -- because nothing has come through. We
2 have the vehicle, that I know. But more than
3 that, I don't know. All right. Bye. Bye.

4 (Tape recording played.)

5 DETECTIVE JACOBS: Oh, I heard him say
6 pick up that party.

7 DISPATCH: Oh, no. We have -- Well,
8 Pete is sitting up there waiting and stopping
9 people from going in and that. He found somebody
10 with a body only warrant for our department.

11 DETECTIVE JACOBS: Okay. Do we have --
12 All right. I will talk to Remiker.

13 DISPATCH: Yeah, your best bet is to
14 talk to -- Nothing has come through. We have the
15 vehicle, that I know.

16 DETECTIVE JACOBS: All right. Thank
17 you.

18 DISPATCH: But what more, I don't know.
19 All right. Bye.

20 DETECTIVE JACOBS: Bye.

21 ATTORNEY STRANG: So you can take the
22 tunnel vision and investigative bias from them, not
23 from me. Now, in the end here, in the end, when you
24 have heard it all, there's not a speck of Teresa
25 Halbach's blood anywhere in Steven Avery's trailer.

1 There's not a piece of hair, nothing, nothing to
2 suggest she's ever been in the trailer. And only
3 the magic bullet found 4 months later to suggest
4 she's ever been anywhere near the garage.

5 And when you consider the forces, the
6 emotions, the very human failings at work here,
7 it's no surprise that the blood from that
8 unsecured vial, in the box, in the Clerk's
9 Office, that Lieutenant Lenk examined back in
10 2002, ends up in that Toyota. Because that's
11 where it ought to be. Is he in custody yet?

12 Jerome Buting and I will not ask you to
13 make that kind of snap judgment here. The
14 Halbachs deserve better than that. The police
15 deserve better than that. You owe it to
16 yourselves, in making this decision, to do better
17 than a snap judgment, a snap judgment 30 minutes
18 after that Toyota is found.

19 Jerome Buting and I are going to ask you
20 to do your job right. Think long and hard about
21 all of the evidence. But in the end, after the
22 full and fair consideration of everything and
23 everyone, the full and fair consideration that
24 Steven Avery did not get in 2005, from the
25 Manitowoc County Sheriff's Department; we're

1 going to ask you to send him home. We're going
2 to ask you to send him home, again. We're going
3 to ask you to get it right this time. We're
4 going to ask you to set it right when this case
5 is over.

6 THE COURT: Thank you, Mr. Strang. Members
7 of the jury, we're going to take an afternoon break
8 now. We'll resume in 15 minutes and the State will
9 begin the presentation of evidence. I will remind
10 you again, as I will a number of times throughout
11 the trial, do not discuss the case during the break
12 or at any other time until all the evidence has been
13 received.

14 (Jury not present.)

15 THE COURT: All right. Counsel, we should
16 be ready to go promptly at 2:45.

17 (Recess taken.)

18 THE COURT: At this time the State may call
19 its first witness.

20 ATTORNEY KRATZ: State will call Mike
21 Halbach, your Honor.

22 THE CLERK: Please raise your right hand.

23 **MICHAEL D. HALBACH**, called as a witness
24 herein, having been first duly sworn, was
25 examined and testified as follows:

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

3 THE WITNESS: Michael Daniel Halbach,
4 H-a-l-b-a-c-h.

5 **DIRECT EXAMINATION**

6 BY ATTORNEY KRATZ:

7 Q. Mr. Halbach, did you know a young woman by the
8 name of Teresa Halbach?

9 A. I did.

10 Q. Describe, who was Teresa, please.

11 A. Teresa was -- or is my sister. She was born on
12 March 22nd, 1980. Grew up with my family on a
13 dairy farm near Hilbert.

14 She loved travel; she had been to Spain,
15 Mexico, New Zealand, Australia.

16 She had many friends. She loved doing
17 things with her friends. She was a good friend
18 of mine, as well.

19 She was my big sister, someone I could
20 go to talk to about any problems I would have.
21 We would go to lunch, talk about her business
22 which she ran, called Photography by Teresa.

23 And in August of 2005, she coached her
24 sister's 7th grade volleyball team to second
25 place in their league. So I know that that's

1 something she really loved doing, was working
2 with those kids. That was the main focus of her
3 photography business as well.

4 And she graduated from the University of
5 Wisconsin, Green Bay, in 2002, major in
6 photography and she graduated summa cum laude.

7 Q. I'm going to hand you a couple of exhibits.
8 First exhibit is that which is marked as Exhibit
9 No. 1. Could you tell us what that is, please.

10 A. It's a photo of Teresa.

11 Q. Do you know when that photo was taken?

12 A. Not exactly, but by the looks of it, it was
13 fairly recent. I would say 2005.

14 Q. Does that particular photo accurately depict your
15 sister, Teresa, and as it did the last time that
16 you saw her?

17 A. Yes.

18 Q. By the way, when was the last time that you saw
19 her; do you recall?

20 A. The last time I saw my sister was October 30th,
21 2005, the day before she went missing. We were
22 at my grandparents house. It was my grandpa's --
23 Halloween was my grandpa's birthday. And the day
24 before we went to their house, the entire family
25 was there, aunts, uncles.

1 Q. Mr. Halbach, I'm sure we'll get better at this
2 with the jury, but I'm going to direct your
3 attention to the large screen in the courtroom,
4 is that another version or a larger version of
5 what's been marked as Exhibit No. 1?

6 A. Yes, it is.

7 Q. You mentioned that Teresa was part of your
8 family, can you tell us who else was involved in
9 your immediate family, please?

10 A. I have an older brother, Tim; and then Teresa
11 would be the second oldest; myself; and two
12 younger sisters, Katie and Kelly; parents, Tom
13 and Karen.

14 Q. Directing your attention to Exhibit No. 2, I'm
15 also putting that on the screen for the jury; can
16 you tell us what that is, please.

17 A. It's a photo we took outside my parents farm. I
18 believe it was in 2004, that summer, early fall.
19 It's a photo we used for our Christmas cards that
20 year. And it's a photo of my family.

21 Q. And as you are pointing to Exhibit No. 2, please,
22 could you tell us, or tell the jury, who all is
23 in that photo?

24 A. Tom, Teresa's, I guess legally would be her step
25 dad, standing in the back with the jean shirt; to

1 his left is, Katie, younger sister; and to her
2 left is Kelly, the youngest of the family. In
3 front from left to right is the oldest brother,
4 Tim; and then my mom, Karen; then myself holding
5 our dog, Eddy; and Teresa is on the end.

6 Q. All right. How often would you get to see
7 Teresa; how often would you interact with her?

8 A. Every few days I would probably talk to her
9 either on the phone, or if it was a weekend, we
10 would probably see each other, if I was at my
11 parent's house if she would stop over during the
12 week, or over the weekend. So I would see her --
13 see her or at least talk to her every three days
14 or so.

15 Q. Are you familiar with Teresa's electronic devices
16 that she owned?

17 A. Yes, I am.

18 Q. Could you tell us about those, please.

19 A. She owned a cell phone, a Motorola RAZR, and I
20 know this because she talked on it a lot. She
21 also had a palm pilot. I believe it was -- the
22 brand was Palm 1, I believe.

23 She had tons of photography equipment,
24 obviously. Hasselblad is one camera; Canon is
25 another; and through one of her jobs she had a

1 little snapshot camera for the job. She worked
2 through *Auto Trader Magazine*. She had this
3 little snapshot camera to do that job.

4 Q. Do you know what kind of vehicle Teresa drove?

5 A. It was a Toyota RAV4. It was bluish-green in
6 color.

7 Q. We're going to have the actual photo marked as an
8 exhibit, but I'm going to direct your attention
9 up to the large screen. Could you tell us what
10 it is we're looking at there.

11 A. Could you repeat that.

12 Q. Sure, I'm about to have this photo made part of
13 the -- or to complete the record, but could you
14 tell us and can you look at the large screen and
15 tell us what it is that we're looking at.

16 A. That's Teresa holding one of her cameras she had
17 with her professional photography business,
18 standing outside the driver's side door of her
19 Toyota RAV4.

20 Q. Mr. Halbach, could you -- regarding Teresa's
21 RAV4, could you tell us how often you had contact
22 with that vehicle?

23 A. I would say I have ridden in it a few times, but
24 I would see it whenever I saw her. It was her
25 only vehicle, so when she would drive it or when

1 she would drive around, she would be in that
2 vehicle. So I was very familiar with it and had
3 ridden in it a few times.

4 Q. Teresa's license plate said -- as you sit here
5 today, did you know or were you familiar with
6 what Teresa's license plates were?

7 A. Yes, I was.

8 Q. And how are you familiar with that?

9 A. One of Teresa's jokes and how she remembered her
10 license plate, her license plate numbers -- or
11 letters and numbers were SWH-582. She remembered
12 those letters because she would joke that it
13 stood for single white Halbach.

14 (Exhibits No. 3 & 4 marked for identification.)

15 Q. Mr. Halbach, I provided you with two exhibits
16 Exhibit No. 3 and Exhibit No. 4, can you tell us,
17 though, what those are, please?

18 A. Pictures of Teresa's license plate.

19 Q. And which one of them has the sticker on it.

20 A. Exhibit No. 3.

21 Q. All right. Just so the jury is shown Exhibit
22 No. 3, I'm going to direct your attention to the
23 large screen, again; what is it that we're
24 looking at?

25 A. Teresa's license plate?

1 Q. SWH-582, is that right?

2 A. That's correct.

3 THE COURT: Excuse me, Mr. Kratz, just for
4 the record, I think the photo of Teresa Halbach with
5 the RAV4 was referred to as an exhibit, but we
6 haven't marked it yet; are you still looking for the
7 original?

8 ATTORNEY KRATZ: We are, Judge. Although
9 we have the original, Judge, we'll be referring to
10 it either with this witness or the next witness who
11 also has familiarity with that.

12 THE COURT: Just, I think, to keep the
13 record straight, it should be reflected that while
14 it may have been referred to as an expected exhibit
15 number, it has yet to be numbered.

16 ATTORNEY KRATZ: All right, judge.

17 THE COURT: You may proceed.

18 Q. (By Attorney Kratz)~ And the other vehicle, or
19 what I guess would be considered the front
20 license plate, you said that was Exhibit No. 4;
21 is that right?

22 A. Yes, that's correct.

23 Q. And I have now directed your attention to that on
24 a large skween -- screen, excuse me, once again,
25 Exhibit No. 4, the large screen photo here,

1 accurately reflects Exhibit No. 4; is that
2 correct?

3 A. Yes, it does.

4 Q. All right. I have now handed you what's been
5 marked for identification as Exhibit No. 5, tell
6 us what that is, please.

7 A. It is the picture we looked at not too long ago
8 with Teresa standing outside the driver side of
9 her Toyota RAV4.

10 Q. Just for the record, Exhibit No. 5, then, would
11 be the image that we're looking at on the screen
12 now; is that correct?

13 A. Yes.

14 Q. All right. By the way, Mr. Halbach, did you have
15 an idea as to when this photo was taken? Did I
16 ask you this?

17 A. You didn't ask me that. I mean, I would guess
18 sometime maybe 2004, maybe early 2005.

19 Q. I guess the question that the jury needs to know
20 is, was this Toyota RAV4, the vehicle in which
21 your sister is standing in front of, the same
22 vehicle that she was driving at the end of
23 October of 2005?

24 A. Yes, it is.

25 Q. You mentioned that Teresa was involved in the

1 photography business; can you tell us about that
2 a little bit?

3 A. Yeah, through college she developed a passion for
4 photography and, hence, why she declared that as
5 her major. I would say her sophomore and junior
6 year she worked at Bay Park Square Mall in Green
7 Bay at Picture People taking photos of children,
8 mainly families.

9 After she got done doing that, during
10 her last semester at Wisconsin, Green Bay, she
11 started this internship with Tom Pearce of Pearce
12 Photography in Green Bay, doing many of the same
13 things, taking pictures of children, families,
14 some, and also doing weddings on the weekends.
15 So she continued working with him and then later
16 on in 2002, she started her business, which she
17 named Photography by Teresa, which continued up
18 until Halloween of 2005.

19 Q. Now, you indicated that you are familiar that at
20 least one of her clients was *Auto Trader*
21 *Magazine*; is that what you told us?

22 A. Yes, that's correct. She in, I think it was
23 October of 2004, she started working for *Auto*
24 *Trader Magazine* as a way to supplement her income
25 for her professional business. Since she was

1 just starting out with her own business, she
2 wouldn't always have clients. So. Yeah, just as
3 a way to have some steady income, she got this
4 job with the *Auto Trader Magazine* to take
5 pictures of vehicles in people's yards, that they
6 were selling themselves.

7 Q. First photo I'm showing you has been marked as
8 Exhibit No. 7, can you tell us what that is,
9 please?

10 A. Exhibit No. 7 is Canon PowerShot A310; it's the
11 box for the Canon camera. It's not the camera
12 itself.

13 Q. And, once again, were you familiar that that was
14 one of the cameras that Teresa had used in her
15 employment?

16 A. Yes, I am, in her employment with *Auto Trader*,
17 yes.

18 Q. The other exhibit, I think it was Exhibit No. 6;
19 is that correct?

20 A. That's correct.

21 Q. Can you tell me what that is, please?

22 A. It's a box for a Palm 1 Zire 31 palm pilot.

23 Q. And, once again, the large screen, does that
24 accurately depict the box, again, recovered from
25 your sister's home, the box that she saved for

1 her palm pilot?

2 A. Yes, it does.

3 Q. Was your sister kind of a pack rat; did she save
4 this kind of stuff?

5 A. Having gone through her stuff, yeah, she saved a
6 lot of stuff, yes.

7 Q. Was your sister married?

8 A. No, she's not.

9 Q. Who did she live with?

10 A. She lived with a friend of hers from high school,
11 named Scott Bloedorn. He lived in the upstairs
12 of the apartment -- or of the house she was
13 renting from my parents.

14 Q. How close was this to your parents' house?

15 A. Down the road a short ways, eighth mile, roughly
16 quarter mile. Not too far.

17 Q. Okay. Mike, did you ever have an opportunity to
18 see or talk with your sister as she either went
19 to work for the *Auto Trader Magazine* or as she
20 went to work at her own studio?

21 A. As she went there?

22 Q. Yes. In other words, were you familiar with how
23 she dressed to go to work?

24 A. Yes.

25 Q. Can you tell us about that.

1 A. She would always dress professionally, especially
2 when she was going to her professional
3 photography business, you know, black pants, a
4 nice shirt. And if she happened to be doing *Auto*
5 *Trader* that same day, she would go in those same
6 clothes.

7 But if it was -- if she wasn't going to
8 her job that day, she would dress comfortably,
9 not necessarily in professional clothes, but nice
10 clothes nonetheless. Might be a nice pair of
11 jeans and a nice shirt or, you know, maybe khakis
12 and a shirt, sweatshirt.

13 Q. Mike, as long as we have the photos, again, what
14 we're looking at here, that's a picture -- which
15 picture is that, No. 6?

16 A. That is Exhibit No. 6.

17 Q. We're going to have the actual exhibit marked so
18 that we don't just have a photo of it?

19 ATTORNEY KRATZ: Janet, is that going to be
20 No. 8?

21 THE CLERK: Yes.

22 (Exhibit No. 8 marked for identification.)

23 ATTORNEY KRATZ: Mr. Wiegert, could you
24 provide that to the witness.

25 Q. (By Attorney Kratz)~ Mr. Halbach, we're showing

1 you what's marked for identification as Exhibit
2 No. 8; can you show the jury and tell them what
3 that is, please?

4 A. This is the same box as in the Exhibit No. 6,
5 it's the box for Teresa's Palm 1 Zire 31 palm
6 pilot.

7 Q. And if I'm not mistaken, Exhibit No. 7, I think,
8 was the box for the Canon PowerShot A310; is that
9 right?

10 A. That's correct.

11 Q. We're going to have that box, actually, marked
12 for identification as Exhibit No. 9.

13 (Exhibit No. 9 marked for identification.)

14 Q. Once, again, Mr. Wiegert will be providing that
15 to you. If you could show it to the jury and
16 tell them what Exhibit No. 9 is, please?

17 A. Exhibit No. 9 is the box for the Canon PowerShot,
18 the A310, that Teresa used for her *Auto Trader*
19 job.

20 Q. Once again, after your sister's disappearance and
21 after investigators began contacting you,
22 specifically, and your family, these items were
23 found in her personal effects and turned over; is
24 that right?

25 A. That's correct.

1 Q. Can you tell me who Pam Sturm is?

2 A. Pam Sturm, to me, would be my first cousin once
3 removed. She would be my grandma's sister's
4 daughter.

5 Q. Okay. The involvement of Pam and her daughter,
6 Nikole, after your sister was missing, could you
7 describe that for the jury?

8 A. You said her involvement?

9 Q. Yes.

10 A. Pam Sturm was the person who ended up finding
11 Teresa's vehicle on the Avery salvage yard. I
12 recall coming home that day, after I had been
13 with my brother driving, in her -- being inside
14 my parents' house crying and my mom telling me
15 that we found the vehicle -- or Pam found the
16 vehicle, Pam and her daughter, Nikole. So, I
17 guess that would be her involvement.

18 Q. All right. Let's go back just a little bit,
19 Mike, if we can. After your mom reported your
20 sister missing on the 3rd of November, how was it
21 that you were informed of that?

22 A. On Thursday, November 3rd, I was working. I got
23 a call from my mom that afternoon at about 2:00
24 or 2:30 wondering if I knew where -- or if I had
25 talked to my sister in the previous, you know,

1 since Sunday. And I said that I hadn't.

2 And so I went on to call one of Teresa's
3 good friends at her work and asked her if she had
4 known where Teresa could be. Because it was
5 completely unlike her to go somewhere without
6 telling anyone, especially a family member, a
7 good friend, her roommate, or her boss.

8 So, I guess after we made those calls it
9 became very evident to me that something was
10 seriously wrong and I expressed that to my mom.
11 Then shortly after -- and she was, you know, she
12 was in agreement, obviously; she knew something
13 was wrong, just like everyone else did.

14 Q. Did the family ask for some assistance and did
15 you receive it from some of Teresa's friends
16 regarding searching for her?

17 A. In searching for her we, you know, all we had to
18 do was make a couple phone calls to some of
19 Teresa's friends and they would call numerous
20 other people. We needed help passing -- passing
21 out posters on Friday, November 4th and also
22 doing searches by car on Saturday, the 5th and
23 doing searches by foot a few days following that.
24 So, whenever we needed help, we had help from
25 Teresa's friends, family members, community

1 members. Anyone who wanted to help, who had
2 time, would help us out in searching for Teresa.

3 Q. Who is Ryan Hillegas?

4 A. Ryan Hillegas is -- he was Teresa's ex-boyfriend.
5 They were together a few years and then were off
6 a few years once they went to college. And he,
7 basically, organized most or probably all the
8 search efforts that we did for Teresa. Him,
9 along with Scott Bloedorn, did the majority of
10 getting people together and telling people where
11 to go to search for Teresa.

12 Q. I ask you to refer back to this photo, can you
13 tell me what exhibit that is, again?

14 A. Exhibit No. 5.

15 Q. Okay. I can see by your sister's physical
16 stature, but if you can just verify for us, was
17 Teresa in good physical condition?

18 A. Yes, she was. She had a -- she went to a gym. I
19 don't know how regularly, but she had a
20 membership at a gym and was -- seemed physically
21 fit, yes.

22 Q. Mike, I think you talked about, on the 3rd,
23 meeting with your family, and on the 4th, really,
24 the citizen efforts for Teresa's search kind of
25 ramped up; but can give you us any more details

1 about that?

2 A. Yeah, on the -- Well, the day we reported Teresa
3 missing, that Thursday, we had got a call from a
4 man named Jay Breyer who offered his services at
5 Youth Educated in Safety, which is a missing
6 persons organization. He offered to make copies
7 and make up a missing persons poster.

8 So we took him up on that offer that
9 night, finalized the poster and then the
10 following afternoon we had got copies made. He
11 had made the copies and around 2:00 or 2:30 in
12 the afternoon was when we were meeting with
13 whoever had the time and the vehicle to drive
14 across all of northeast Wisconsin to put up these
15 posters, which basically said, you know, missing
16 person, Teresa Halbach, height, weight, what she
17 was wearing that day. So that's what happened on
18 Friday afternoon.

19 Q. Mike, Mr. Fallon is going to hand you what's been
20 marked for identification as Exhibit No. 10. I'm
21 going to put it up on the screen for the jurors.
22 Can you tell us what we're looking at, please?

23 A. That's the missing persons poster that Jay Breyer
24 helped us make that we put up on the 3rd -- or
25 the Friday, the 5th -- or, yeah -- the 4th,

1 Friday, the 4th. That's right.

2 Q. Indicates that your sister was 5 feet 6 inches
3 tall, 135 pounds; is that approximately accurate?

4 A. Yes.

5 Q. Now, after -- First of all, let me ask you
6 where -- where these posters distributed, if you
7 recall?

8 A. It would have been a very large area of northeast
9 Wisconsin including Appleton, Green Bay,
10 Manitowoc, Chilton, south towards Milwaukee, east
11 to the Lakeshore. And I recall semi-drivers
12 wanting to, you know, stop at the house, pick up
13 some fliers because they were concerned as well.
14 And they were going to Madison, Milwaukee and
15 further. So they had volunteered to put up
16 posters for us on their routes.

17 Q. Mr. Halbach, let me ask you this, did you try to
18 recreate, from the 31st of October, routes that
19 Teresa may have taken?

20 A. Yes. Yeah, so those were our main areas we
21 wanted to put up these posters, as well as to
22 search by vehicle and by foot, because we could
23 trace her whereabouts to, you know, a certain
24 location. That's where you want to focus most of
25 your efforts. So that's what we did.

1 Q. All right. Perhaps you answered this and I
2 apologize if you did, but do you recall how many
3 thousands of these posters you distributed?

4 A. I guess I can't recall specifically, but it would
5 be, you know, probably a couple thousand.

6 Q. All right. Now, we're going to hear from Mr.
7 Hillegas a little bit later in the trial
8 regarding the specifics of the missing persons
9 investigations, but did those search efforts
10 include actually walking around or looking in
11 roadways or ditches?

12 A. Yeah, that Saturday morning, the 5th, that
13 morning, it was about 7:00 a.m., a group of
14 volunteers met at my sister's house and we set
15 out by vehicle to -- to basically trace the
16 routes that she may have taken that Monday.

17 And certain people were given different
18 areas, not necessarily the places she definitely
19 traveled, but perhaps she drove down to Milwaukee
20 to meet with someone, or drove up to Door County,
21 so we had people driving in those areas as well.
22 But myself, specifically, I went with my brother
23 to the places where we -- and the routes that we
24 thought for sure she could have taken, you know.
25 Since we were her brothers, we can get it in her

1 mind better than anyone. So we drove over there.

2 I can recall specifically driving down
3 Highway 147, getting out, looking down
4 embankments where, if you would drive by
5 casually, you wouldn't be able to see down there.
6 So, we thought maybe she had gotten in an
7 automobile accident, was trapped, you know,
8 unconscious, whatever it may be. So we wanted to
9 do what we could to eliminate that possibility.

10 So, you know, we looked wherever we
11 could, drove around as many roads as we could,
12 side roads, back roads, whatever, just looking
13 for signs of her vehicle or Teresa herself.

14 Q. And until that call came, or until the news came
15 on the 5th, that Teresa's vehicle had been found,
16 was that your hope that there had been some
17 accident or something?

18 A. Yeah, I mean, from the start I think it's just
19 the way my family is, is we're strong,
20 optimistic, also, you know, realistic too. But,
21 yeah, we hoped to find some sign and we hoped we
22 would find Teresa alive.

23 So when we found her vehicle, it was
24 good because we were getting closer to finding
25 Teresa. So we were happy to find the vehicle,

1 but we didn't find Teresa, so that half the goal
2 was missing. We didn't accomplish half the goal
3 when we found the vehicle.

4 Q. All right. Mike, I had mentioned at the early
5 stages of the presentation of this case, in fact,
6 to the jury, about meetings that you had with law
7 enforcement, meetings you had with me,
8 individually, throughout this case. Have you
9 been kept informed as to the developments and the
10 evidence, not just that was found, but the
11 evidence that was going to be presented at this
12 case?

13 A. Yes, we had always -- were informed in advance of
14 anything, whether it be a news conference,
15 whether it be information that would be submitted
16 to the courthouse and available to the media,
17 shortly thereafter. We would always be aware of
18 what was going to be said in the media or what
19 not. And in advance of every court hearing, we
20 have been kept informed of what we would hear
21 that day, just so there were no surprises; so we
22 could prepare ourselves emotionally for those
23 events.

24 Q. That includes the physical evidence that is going
25 to be presented at this trial?

1 A. Yes, that's correct.

2 Q. The last question I have, Mike, and I'm going to
3 apologize in advance as to the insensitivity of
4 it, but at any time after the 31st of October,
5 had you ever seen, spoken from, or heard from
6 your sister, Teresa Halbach?

7 A. No, I have not.

8 ATTORNEY KRATZ: I would move the admission
9 of Exhibit 1 through 10.

10 THE COURT: Any objection?

11 ATTORNEY STRANG: No objection at all.

12 THE COURT: Those exhibits are admitted.

13 ATTORNEY KRATZ: No further questions.

14 THE COURT: Mr. Strang.

15 ATTORNEY STRANG: Is this working now?

16 THE COURT: Yes, it is.

17 ATTORNEY STRANG: All right.

18 **CROSS-EXAMINATION**

19 BY ATTORNEY STRANG:

20 Q. Thanks for coming. And I don't have a lot of
21 questions. I don't want to make this any harder
22 a day for you than it's already been. But, we
23 have established that Teresa was 5 foot 6, about
24 135 pounds, back in October of 2005?

25 A. Yes.

1 Q. Give or take. You said she was fit. She was an
2 athlete to some extent?

3 A. To some extent, she played a little in high
4 school, but I know she would exercise at our home
5 as well.

6 Q. Sure. Little volleyball, was that her sport, or
7 basketball, or both?

8 A. Well, she coached her sister's 7th grade
9 volleyball team, so there was definitely an
10 interest there.

11 Q. Was that her sport in high school?

12 A. She played some. I don't think she played past
13 her sophomore year, but ...

14 Q. Okay. But, you know, I mean, somebody who was at
15 least reasonably athletic and fit?

16 A. Right.

17 Q. In addition to working out at home, she belonged
18 to some private gym somewhere?

19 A. Correct.

20 Q. Okay. You guys were all raised on a dairy farm;
21 did you grow up there?

22 A. Yeah, for the most part, yeah.

23 Q. Working a dairy farm?

24 A. Yes.

25 Q. And when you say for the most part, is that not

1 when you were a little bitty boy, or ...

2 A. Up until I was eight years old on, I was on the

3 dairy farm, yes.

4 Q. Okay. Sure. And you, the kids, helped out with

5 chores, I assume?

6 A. Correct.

7 Q. Like all farm kids have to?

8 A. Yes.

9 Q. That included Teresa?

10 A. She didn't help out in the barn as much as she

11 helped out in the house, babysitting for our

12 sisters and taking care of chores in the house.

13 Q. She did get acquainted with milking, though, at

14 some point, I assume?

15 A. Very seldomly.

16 Q. Was that mostly the boys?

17 A. Yeah. Yes.

18 Q. She was someone who had a good sense of humor?

19 A. Yes.

20 Q. Also could stand up for herself, though?

21 A. Absolutely.

22 Q. Little bit feisty in a good way?

23 A. Yes.

24 Q. Yeah, and I don't mean in a bad way, but I mean

25 she was personable?

1 A. Yes, independent.

2 Q. And your family, I take -- I take it is
3 tightknit, your immediate family?

4 A. Yes.

5 Q. By that, I mean Tom and Karen, your folks, or you
6 and Tim, Katie and Kelly and Teresa?

7 A. Yes.

8 Q. But you guys also have a pretty good extended
9 family in this area, as I understand it?

10 A. Yes, we do.

11 Q. Has the family been in Calumet County or this
12 area for generations?

13 A. Yes. Yeah.

14 Q. Okay. I mean, in other words, you know Pam
15 Sturm, you were saying is a first cousin once
16 removed?

17 A. Correct.

18 Q. I couldn't possibly tell you how you got there
19 but, I mean, you have got all kinds of cousins,
20 aunts, uncles?

21 A. Yes.

22 Q. That kind of thing, in the area?

23 A. Yes.

24 Q. So, in addition to Teresa's friends, you had a
25 lot of family to pull on when looking for her?

1 A. Correct.

2 Q. This -- this effort to retrace her steps on
3 October 31, did that -- did that get going,
4 Mr. Halbach, pretty much right away, the evening
5 that you all reported her missing.

6 A. Yeah. Yeah, we had talked about where we knew
7 Teresa was on the 31st; what appointments she
8 had, where she was supposed to be before then,
9 you know, where she was supposed to be after then
10 and the days following, as well.

11 Q. Okay. On the 31st, were you able to nail down
12 appointments?

13 A. Yes.

14 Q. So, I mean, do you think it was that Thursday
15 night that you figured out that Avery Auto
16 Salvage was one of the appointments; if you
17 remember?

18 A. I don't remember exactly if it was that night, or
19 if it was the next day, or -- it was one of those
20 two.

21 Q. Either Thursday night or Friday morning, the 4th?

22 A. Yes.

23 Q. Okay. And at some point pretty quickly, the
24 media all got interested in this; am I recalling
25 that correctly?

1 A. Yes.

2 Q. Was it Friday, already on the TV they were
3 talking about the Avery Auto Salvage or flying
4 over it, that kind of thing?

5 A. I don't recall, specifically, myself, you know,
6 seeing the media involvements saying Steven
7 Avery, but I know that they reported on the
8 missing persons case involving my sister, that
9 Thursday night.

10 Q. Oh, right away Thursday night?

11 A. Correct.

12 Q. And then Friday and I know by Saturday, there was
13 a lot of media coverage?

14 A. Yes.

15 Q. Not that you were watching but, I mean, you were
16 out -- that you were just sort of aware of it?

17 A. Yes.

18 Q. Did you -- Did you have access to her computer
19 passwords or account information for, like, her
20 cell phone, for example, or bills, that kind of
21 thing?

22 A. Cell phone, yes; computer password, yes.

23 Q. She had shared that with you at some time
24 earlier?

25 A. I did business work for her, website graphics,

1 so --

2 Q. Oh.

3 A. I, yeah, I just knew it through that.

4 Q. So, you knew it through that --

5 A. Correct.

6 Q. -- because you would have a reason to get on to
7 her computer to help her with her website?

8 A. Well, I didn't have to go on her computer, but I
9 had to connect to a web host --

10 Q. Sure.

11 A. -- just to put stuff for her website, so.

12 Q. Okay. I'm nodding like I know what you are
13 talking about and I really don't. But the point
14 is you had -- you had access to her password
15 information so you could check her cell phone
16 bill?

17 A. I never did. I don't know -- So since I never
18 did, I wouldn't know if I had the right password
19 for her cell phone bill. I knew --

20 Q. Okay.

21 A. -- her password for her voice mail.

22 Q. And that's where I was going. I think -- I think
23 on Thursday evening, November 3, somebody was
24 able to get at her cell phone records on the
25 computer, but that was not you?

1 A. I don't think on her computer, no.

2 Q. Okay. And you didn't have her voice mail?

3 A. I said I did -- did have her voice mail password.

4 Q. You did have her voice mail password. Okay. Did

5 you check voice mails?

6 A. I did.

7 Q. Do you remember when you did that?

8 A. It was probably Thursday evening, early evening.

9 Q. After your mom --

10 A. Yes.

11 Q. -- had --

12 A. Yes.

13 Q. -- filed a missing persons report?

14 A. Yes.

15 Q. Okay. So I take it you were at work earlier that

16 day?

17 A. Correct.

18 Q. And the missing person report was sort of at the

19 end of the day, 5:00 or something?

20 A. Correct.

21 Q. Were you familiar enough with Teresa Halbach's

22 everyday stuff to know what -- what she carried

23 keys to?

24 A. I mean, yes, I think I would have an idea of what

25 keys she would have, yes.

1 Q. Okay. Let's just -- Let's start with the house
2 that she and Scott Bloedorn were sharing, this
3 was the older farmhouse?

4 A. At one point it was a farmhouse.

5 Q. Okay. Is it actually on the Halbach farm or just
6 next door or ...

7 A. It's next door, my parent's home, the house and
8 the land.

9 Q. Okay. But it --

10 A. It's not -- It doesn't share a driveway at all.

11 Q. Yeah.

12 A. It has its own driveway.

13 Q. Separate parcel, but next door.

14 A. Correct.

15 Q. Can you see the two houses from one another?

16 A. You have to look through a line of evergreens and
17 there's a big shed a little further back, but you
18 can see it through the trees, yes.

19 Q. But they are next door neighbors, essentially;
20 although it's a rural area?

21 A. Correct.

22 Q. Okay. And I take it there was -- there was a
23 house key to the house? Go ahead.

24 A. Yes, there was.

25 Q. Do you know whether there was a separate garage

1 key?

2 A. I believe that's correct.

3 Q. Okay.

4 A. I would imagine there was.

5 Q. And do you have -- do you have any way of knowing
6 whether Teresa would also have had keys to your
7 folk's house?

8 A. I don't think she did.

9 Q. You told us the Toyota was the only car she was
10 driving, so she didn't have keys to other cars,
11 as far as you know?

12 A. Correct, she didn't, no other keys.

13 Q. Swipe card for the gym?

14 A. I can't recall if she specifically had a swipe
15 card. She must have had something to get into
16 the gym. I forget what it would have been.

17 Q. Okay. And if you know, was she someone with,
18 like, a lot of people, I guess, who would have
19 had some doodads, or charms, or that kind of
20 thing on the key chain?

21 A. I don't ever recall her having any of that, a lot
22 of fancy stuff on her key chain, no.

23 Q. Okay. The gathering at -- was at grandpa's house
24 on Sunday, October 30?

25 A. That's correct.

1 Q. For his -- for his birthday?

2 A. Correct.

3 Q. And then, I think -- Were there, if you know, did

4 she -- had she had plans to go to a Halloween

5 party the Saturday night right before that?

6 A. I believe so. Earlier in the evening she was

7 helping me with a wedding, shooting a wedding

8 video. After that I think she would have went to

9 a Halloween party. I believe that's correct.

10 Q. Okay. Saturday night, October 29?

11 A. Right. Yeah, it would have been later on in the

12 night.

13 Q. Let's just sort of help the jury with that.

14 You're -- You're a videographer. You're in the

15 video business?

16 A. Correct.

17 Q. So not only would she be a photographer for

18 weddings, but you also videotape weddings as a

19 business, or a side business at times.

20 A. Well, that was the only one that I had. That was

21 my first time and I haven't done one since then.

22 Q. Okay. But the two of you were helping each other

23 out with that one?

24 A. Right.

25 Q. I didn't notice one in the picture, whichever

1 number it is, where Teresa is standing next to
2 her Toyota when she has got her camera; I didn't
3 notice there, but did she ordinarily carry a
4 purse?

5 A. I don't recall her having a purse -- well -- I
6 can't say for sure.

7 Q. That's okay. That's all right. How about, I
8 mean, did you -- did you notice, was she a
9 jewelry person, bracelets, necklaces?

10 A. Not a whole lot of jewelry, really, at all. I
11 don't -- maybe a couple of rings.

12 Q. Not bracelets, though, or necklaces.

13 A. Probably not too often.

14 Q. How about earrings?

15 A. I don't recall her wearing earrings very often
16 either.

17 ATTORNEY STRANG: That's all I have. Thank
18 you.

19 THE COURT: Mr. Kratz, any redirect?

20 ATTORNEY KRATZ: Not for this witness,
21 Judge. Thank you.

22 THE COURT: Very well, you are excused.

23 ATTORNEY KRATZ: Next witness, Judge?

24 THE COURT: You may call your next witness.

25 ATTORNEY KRATZ: Tom Pearce.

1 THE CLERK: Raise your right hand, please.

2 **THOMAS PEARCE**, called as a witness

3 herein, having been first duly sworn, was

4 examined and testified as follows:

5 THE CLERK: Please be seated.

6 THE COURT: You may proceed, Mr. Kratz.

7 THE CLERK: Please state your name and

8 spell your last name for the record.

9 THE WITNESS: Thomas Pearce, P-e-a-r-c-e.

10 **DIRECT EXAMINATION**

11 BY ATTORNEY KRATZ:

12 Q. Mr. Pearce, how are you employed?

13 A. I'm sorry?

14 Q. How are you employed?

15 A. I'm self-employed.

16 Q. Can you tell the jury in what capacity?

17 A. I'm a professional photographer. I have my own
18 studio.

19 Q. Did you know a young woman by the name of Teresa
20 Halbach?

21 A. Oh, yes, I did.

22 Q. Can you tell the jury how you first became
23 knowledgable about Ms Halbach?

24 A. It was in January of 202 (sic), through an
25 internship program through the university. She

1 approached me to do an internship through the
2 university and I took her on as an intern. And
3 from there on, through the internship program
4 which ends when she graduates, I saw that she was
5 an exceptional person in photography and for her
6 age, that I asked her to stay on and work through
7 my studio or with me doing weddings and
8 portraits.

9 Q. What university was this?

10 A. University of Green Bay.

11 Q. I think you mentioned that you had seen something
12 in her that actually made you offer her a job;
13 can you tell us what that was?

14 A. Well, you know, in this field, you see -- and I
15 have worked with other interns and some of them
16 do have the drive, the passion, the want and
17 knowing that -- Being a photographer, a lot of
18 people think it's very easy. It's a lot of
19 hours. It's a lot of dedicated work.

20 And she had that and I haven't seen that
21 in many people in a lot of years. And I was
22 impressed with that. She knew the
23 responsibility, the sacrifices it took. And she
24 was eager to learn. She was consistently asking
25 questions and from -- doing different projects

1 and so on. So I was very impressed with her and
2 that's why I asked her to stay on.

3 Q. Was she technically good at what she did?

4 A. Yes. The university -- I also went to school,
5 but not here in Green Bay. They teach you the
6 book. And how should I say, you should know the
7 rules before you know how to break them. And
8 that's part of out in the field.

9 And that's why I think the internship
10 program is a good program. Because it has -- In
11 many different fields, people come out and see
12 what it's really like in everyday life and not so
13 much how the book says it. But you have got to
14 know the book, but you have to break the rules
15 when you are out there.

16 Q. After offering Teresa a job, or employment
17 through your studio; how long did that last and
18 did that evolve into some other business
19 relationship.

20 A. As far as working for me, or I should say really
21 with me, she was a go-getter, like I said, she
22 had that passion. And I looked and as a -- when
23 you are a staff photographer for someone, you
24 have got to abide by their ways of doing things,
25 their policies, because you are working for them,

1 so you have to do stuff their way.

2 Well, I didn't want to hold her back
3 because she was incredibly involved and had that
4 passion for this. So, on the other hand, I
5 didn't want to not lose her, but have her go out
6 and go, hit and miss, hit and miss, which a lot
7 of young photographers do.

8 I had a full studio, plenty of room for
9 both of us. So we sat down and we talked and we
10 did something that no one has done before. She
11 started her own business, not be in competition,
12 but complimenting each other.

13 So she worked out of my studio; she used
14 all the facilities of the studio, but she ran her
15 own business through that -- through my studio.
16 Meanwhile, we cooperated in doing advertising
17 together, promotions, learning, helping one
18 another. I would book weddings for her, she
19 would book for me. There was never any
20 competition between us. And it was something
21 unusual, but it worked out very well for both of
22 us.

23 Q. Did she call upon you for advice?

24 A. Many times, yes. And it was, basically, not only
25 the technical end of it, the photography end of

1 it, but on how to run a business, what is needed
2 behind the scenes. And that's where in this
3 business a lot of the people that get into the
4 photography business, they know photography but
5 they don't know the business end of it.

6 So, yes, I did mentor her in a lot of
7 different areas. Thirty-eight years of
8 experience, and I wanted to share that with her,
9 because I could see that she was, basically, like
10 me when I came out of college -- school. I was
11 eager. I had the passion. We had a lot of
12 similarities. I graduated from -- with a degree
13 in photography.

14 I was the -- also worked the photo
15 school newspaper and she did. And I worked at
16 many different studios before I moved up here in
17 the Green Bay market. So we had that same
18 background. And I think it's a duty for any of
19 us to share what we have learned, our experiences
20 with someone up and coming.

21 Q. I think, Mr. Pearce, you talked about weddings
22 and portraits and the like, that was -- or at
23 the -- by the fall of 2005, had Teresa been
24 developing a particular niche within the
25 photography business?

1 ATTORNEY STRANG: Your Honor, I wonder if
2 we could approach the side bar for just a moment.

3 THE COURT: Sure.

4 (Side bar taken.)

5 Q. (By Attorney Kratz)~ Mr. Pearce, could you
6 discuss whether or not Teresa had developed a
7 particular niche within the photography business?

8 A. I think if there was any one area, it was
9 children. She loved to photograph children of
10 all ages. She had a knack for that. But as far
11 as a niche, I mean, we all -- that would be her
12 certain niche, but she was well versed at doing
13 weddings, and good at doing weddings and
14 portraits and family. But her love was doing
15 children, from all ages of children.

16 Q. Now, as part of that business, as part of
17 Teresa's photography business, were you aware of
18 a particular client that she serviced, which was
19 *Auto Trader Magazine*?

20 A. There was a time when she had told me about, that
21 she had picked up a client, which was *Auto*
22 *Trader*, and she would be running around taking
23 pictures of cars, yes, I was aware of that.

24 Q. All right. And had she ever asked your opinion
25 or advice about working for *Auto Trader* or that

1 kind of photography?

2 A. I don't think she asked my advice, but I think I
3 may have suggested something to her. Her
4 photography business was picking up for studio
5 wise a lot. And it seemed like when she -- It
6 seemed when she first started with *Auto Trader*
7 was just on Mondays. Mondays we're typically
8 closed in the industry, because we worked a lot
9 of Saturdays.

10 So, it seemed all of a sudden that she
11 not only had to do *Auto Trader* on Monday, but
12 possibly Wednesdays and some Saturdays. She was
13 constantly telling me that she was running doing
14 *Auto Trader*. And I could see that she was
15 starting to burn the candle at both ends.

16 And at one time, I sat her down and I
17 said, gee, you know, you are running here, you
18 are running here, you're running and I didn't
19 want her to get to a burn out point. So I just
20 asked her, how is *Auto Trader*, is it a good
21 client, blah, blah, blah.

22 We never talked on how much she was
23 making, or whatever. That -- that was never
24 discussed. I mean, that was where we drew the
25 line in our business end of it, but I was more

1 concerned about her well being of running, of the
2 constant running. She was constantly running and
3 that's what she enjoyed. So that was the only
4 time I really had any discussion with her about
5 *Auto Trader*.

6 Q. Let me ask you this, Mr. Pearce, are you familiar
7 with the defendant, Steven Avery?

8 A. As far as familiar with him, as far as what?

9 Q. Have you heard the name before the 31st of
10 October?

11 A. Just one time and I think it was the spring, late
12 spring or early summer, Teresa had mentioned to
13 me, she said kind of matter-of-factly, you will
14 never guess whose cars I was taking pictures of.
15 And she told me the name and it didn't ring a
16 bell.

17 She actually had to remind me or say,
18 oh, that was the guy that was wrongfully
19 convicted and so on and so forth. And we had a
20 little discussion and then I remembered the case
21 and so on and so. We talked about -- a little
22 bit about her being out and about, running around
23 all over the county, by herself, and her safety
24 and so on and so forth. And that was basically
25 it. That was the only time she ever mentioned it

1 to me.

2 Q. All right. We have learned that Teresa Halbach
3 drove a 1999 Toyota RAV4 SUV, picture's in front
4 of you. Would you look on the back; what exhibit
5 number is that?

6 A. 05 CF 381, Exhibit 5.

7 Q. All right. Have you ever seen that vehicle
8 before?

9 A. Oh, sure. She was working with me when she
10 purchased it. Actually, I took that picture.
11 And she was happy as a lark to have her first
12 car. She used to have a beater that was an older
13 car, not a beater. And now this allowed her
14 freedom to go. Yeah, she was very happy with
15 that car.

16 Q. Turning now to a more serious series of topics,
17 Mr. Pearce, sometime after the 31st of October,
18 after that Monday, after the Halloween; did you
19 see Teresa the next day at work, Tuesday, the 1st
20 of November?

21 A. No, like I said earlier, Mondays we were closed.
22 Actually, the last time I saw Teresa was
23 Saturday, before the 31st. When Tuesday came,
24 she had her own hours because she had her own
25 business. Since I'm there like 60 hours a week;

1 she may have been there one week 20 hours. All
2 depended on her schedule and so on. But she
3 always kept me informed of was she going to be
4 gone for a day; did she have appointments; was
5 she going to take off for a weekend; etc. She
6 was very responsible in that sense, extremely
7 responsible for a young person.

8 Well, Tuesday came and by noon she
9 wasn't there. I didn't think too much, oh, okay,
10 I know she was there Saturday working, did *Auto*
11 *Trader*. So I'm going through my mind, well,
12 what -- I knew Wednesday, because every Wednesday
13 morning, she actually was one of the founders of
14 a BMG Group, BMG marketing group, Business
15 Marketing Group that meets once a week. Business
16 leaders, they go over leads and what's going on
17 in Green Bay and so on.

18 She was one of the founders and very
19 active in it. She usually would come in, oh,
20 about, sometimes 11:00, 11:30 on that Wednesday,
21 religiously. Because she would be in town for
22 that meeting. So Wednesday around noon, she
23 didn't show up. I thought, okay, this is a
24 little strange. I tried calling her and I got
25 her cell phone, but her phone book and it was

1 full, where I couldn't even leave a message.

2 Q. Her voice mail?

3 A. Her voice mail box, that's it, yes, it was full.

4 I couldn't even leave a message. I thought this
5 was a little strange, because typically you get
6 right through to her. She was very good at
7 returning calls; very good at leaving messages
8 and letting me know. So kind of, well, maybe
9 she's sick, you know, with the flu, flu season,
10 covered up under the covers, turn the cell phone
11 off, just go and doing that.

12 Q. Sure.

13 A. So I thought, well, for sure she'll be in
14 Thursday. And I had called, a couple times, her
15 cell phone. So by Thursday, now, I haven't heard
16 from her.

17 Q. This is Thursday the 3rd of November.

18 A. Right. Yes.

19 Q. Okay. What did you do then?

20 A. I tried to call her again, same thing, with the
21 phone. Now, some of her work was coming in,
22 being shipped in to be processed. And I knew
23 that she knew, she kept track of that. So, if
24 she was out of town or sick, I think she would
25 have called me by this time. And I started

1 getting really, really worried.

2 I didn't know who to call, her friends,
3 etcetera, so I think was around 1:00, somewhere
4 in that time period. I called Karen, Teresa's
5 mother, seeing if she knew. That was the only
6 phone number I had, other than Teresa's. I
7 didn't have any of her friend's. And talked to
8 Karen about it. And she was going to call some
9 of her friends, or she already had. And the next
10 thing I know it was 10:00, on the news, I heard
11 it was, officially, that Teresa was missing.

12 Q. Perhaps you can help us, Mr. Pearce. Are you
13 familiar with use of digital cameras, digital
14 film and how a digital camera can imprint or
15 create an electronic signature on photos that are
16 taken there from?

17 A. I'm not a real good expert on digital, but I know
18 some of what the digital cameras do, if that's
19 what you're --

20 Q. I'm going to direct you to some images and when
21 you take the cursor for a computer over a digital
22 image, as an example, this image gives the
23 dimensions, gives the date the picture taken is
24 10/10/05 at 3:18 p.m. Camera model, it indicates
25 Canon PowerShot A310 to JPEG image and the size

1 of that. Are you familiar with the taking, or
2 production of digital photography, that those
3 kinds of details are provided right in the image
4 itself? Do you understand the question?

5 A. Yes. Yes, sir. Absolutely true, they are.
6 Unless you get a 10 or \$15 or \$20 digital camera,
7 the nicer cameras, even the smaller ones, will do
8 that automatically in their programing for that.

9 Q. All right. Same question I have asked another
10 witness and I will ask you Mr. Pearce, after
11 the -- well, really after the 29th of October,
12 2005, had you ever heard or spoken to Teresa
13 Halbach?

14 A. No.

15 ATTORNEY KRATZ: That's all I have for this
16 witness, Judge. Thank you.

17 THE COURT: Mr. Strang.

18 **CROSS-EXAMINATION**

19 BY ATTORNEY STRANG:

20 Q. Mr. Pearce, the Teresa Halbach you knew was
21 someone you described once as feisty?

22 A. Well, depends on how you mean feisty.

23 Q. How did you mean it?

24 A. Full of energy.

25 Q. Someone who was in good shape and could fight

1 back?

2 A. I would think so.

3 Q. She carried a cell phone regularly?

4 A. I'm sorry, I can't hear you.

5 Q. She carried a cell phone regularly?

6 A. As far as I know, yes, that was her life line.

7 Q. But that wasn't something she would hook on a
8 belt or do one of these things, she would keep it
9 in her purse?

10 A. Well, most of the time when I would see her, she
11 would have it out of her purse and on the
12 counter.

13 Q. If she were out somewhere, though, the cell phone
14 was always in her purse, I think you have said
15 before?

16 A. I couldn't answer that 100 percent. I would
17 think so. She was in her car, maybe it would be
18 on the driver's seat. I know it went with her
19 wherever she went.

20 Q. And when she was at Pearce Photography, she
21 frequently would leave the cell phone out on the
22 counter. If she was out somewhere else, it was
23 in her purse, typically, that was your experience
24 with her?

25 A. Well, I know when she was at work it was always

1 out in the open on the counter, just like this
2 picture sitting here, because that was her
3 business line. When she was out -- out of the
4 studio, I really don't know what she did with her
5 cell phone.

6 Q. I'm going to show you a report of an interview
7 that you had with an agent named Alan Hunsader;
8 do you remember talking with him?

9 A. Sure.

10 Q. I'm going to offer it as an exhibit, I'm just
11 hoping it might refresh your recollection about
12 the cell phone. I invite you to look at the last
13 paragraph on that page. Just to yourself.

14 A. Yeah, I guess.

15 Q. Does that help --

16 A. Yeah.

17 Q. -- refresh your recollection about your
18 experience with Teresa Halbach and her cell
19 phone?

20 A. When we would shoot a wedding together she would
21 have her cell phone in her purse. Through her --
22 When -- When we would go to -- give an example,
23 we did a lot of work in a park which was 5
24 minutes away from us, doing weddings, even in her
25 training time she would keep her cell phone in

1 her purse. That was my oversight.

2 Q. You described it as her lifeline just a few
3 minutes ago.

4 A. Right.

5 Q. Was that the only number you had for her?

6 A. Yes.

7 Q. You don't know whether she had a land line phone
8 in her home?

9 A. I don't think so.

10 Q. You were aware that she evidently shared her cell
11 phone number with *Auto Trader* customers.

12 A. I knew at one time she said to me that she was
13 able to give out her business cards to the *Auto*
14 *Trader*. So in that respect I guess, yeah,
15 because her cell phone number would be on that.

16 Q. And indeed there was -- there were at least a few
17 occasions on which you were aware that she was
18 getting calls on her cell phone from customers or
19 dissatisfied customers of *Auto Trader* and she
20 would refer those to the *Auto Trader* office?

21 A. She mentioned to me a couple times that people
22 were calling her direct. They had a problem with
23 *Auto Trader*, or whatever the case may be.

24 Q. She said, don't bother me, call the *Auto Trader*
25 office?

1 A. Yes, sir.

2 Q. What -- What day was it, as best as you can
3 recall, and I'm going to chase the time to, if
4 you can, that you first called Teresa's cell
5 phone the week of October 31 and found the voice
6 mailbox full?

7 A. I think it would have been Tuesday afternoon and
8 that -- somewhere in that time period.

9 Q. And the voice mail box was full?

10 A. Yes.

11 Q. Okay. And then Wednesday, before this marketing
12 group luncheon, after she didn't show up; did you
13 try that again?

14 A. Yes, sir.

15 Q. Still full voice mailbox?

16 A. Still full.

17 Q. And if I understood you correctly, you said you
18 tried again Thursday?

19 A. Mm-hmm, yes, sir.

20 Q. So full voice mailbox Tuesday, Wednesday and
21 Thursday?

22 A. I believe, I'm almost positive all three times,
23 because I thought that was very unusual.

24 Q. Starting Tuesday, mid-afternoon.

25 A. Yes, sir.

1 Q. This studio, it was your studio, but she was
2 sharing space, if I understood you --

3 A. Yes.

4 Q. -- correctly?

5 A. Yes.

6 Q. Keys, keys to the studio, one, more than one?

7 A. She had a set of keys, yes, sir.

8 Q. What is a set of keys, meaning to the studio?

9 A. Well, as myself, we always carry two, so that --
10 I mean, it's the same key, but in case we drop
11 it. And Teresa had a funny thing about not
12 losing her keys, but misplacing her keys all the
13 time. So I gave her two, one to put on her key
14 chain and one to put in her purse somewhere, so
15 she always has it. So, two keys.

16 Q. If she mislaid the key chain?

17 A. Yes.

18 Q. Okay. So the office key was one of the keys on
19 that key chain?

20 A. I would think so.

21 Q. Is it a key chain you saw?

22 A. I'm sorry?

23 Q. Is it a key chain that you ever saw?

24 A. Laying on the counter or something, yes.

25 Q. Okay. It had a number of keys on it?

1 A. I would think maybe three or four.

2 Q. Okay. About three weeks before she disappeared,
3 Teresa Halbach, you were aware, had been getting
4 a lot of telephone calls that she was not
5 answering on the cell phone?

6 A. Yes, sir.

7 Q. They would leave no message?

8 A. If you are referring to the same thing, I think,
9 she was standing almost right next to me, in a
10 day, and she got this phone call. And she looked
11 at it and went, said, oh, not them again, or not
12 him again, and just kind of forgot about it.

13 She looked a little upset, so I
14 questioned her a little bit about this and she
15 told me, just forget about it. Somebody keeps
16 calling her all different hours, a nuisance call.
17 And that was about two or three weeks and she had
18 mentioned that she had been getting them for
19 awhile and I had said, well, why don't you give
20 me the number and I will call and find out
21 instead of her dealing with it and she said, no,
22 don't worry about it. But that's, I think, what
23 you're talking about.

24 Q. Right. And whatever the number was that came up
25 on the phone, she recognized it?

1 A. Yeah, she knew what it was, but she wouldn't let
2 me know.

3 ATTORNEY STRANG: Thank you.

4 THE COURT: Any other questions, Mr. Kratz?

5 ATTORNEY KRATZ: Just one area of inquiry
6 of Mr. Pearce.

7 **REDIRECT EXAMINATION**

8 BY ATTORNEY KRATZ:

9 Q. Mr. Pearce, would you have considered yourself as
10 long -- or together with a mentor, being a friend
11 of Teresa's?

12 A. A good friend and a good colleague, yes.

13 Q. In that regard, had you ever admonished or warned
14 Teresa about her behavior, if she was alone with
15 somebody in a home?

16 ATTORNEY STRANG: Relevance.

17 THE COURT: Mr. Kratz.

18 ATTORNEY KRATZ: Judge, it actually will be
19 relevant to the false imprisonment charge. The
20 issue of being restrained or confined. If
21 admonished by an individual that that shouldn't
22 occur, it goes to that particular element of that
23 offense.

24 THE COURT: Mr. Strang.

25 ATTORNEY STRANG: I don't know that we

1 ought to be arguing the point here. I'm not at all
2 convinced of the relevance.

3 THE COURT: I don't know about the
4 relevance, but I think its beyond the scope of
5 redirect. I'm going to sustain the objection.

6 ATTORNEY STRANG: We can't hear the Court.

7 THE COURT: It's beyond the scope of
8 redirect. I'm sustaining the objection.

9 ATTORNEY KRATZ: That's all I have of
10 Mr. Pearce then, Judge. Thank you.

11 THE COURT: You're excused.

12 ATTORNEY KRATZ: Could we approach just
13 briefly, Judge.

14 THE COURT: Sure.

15 (Side bar taken.)

16 THE COURT: For the benefit of the jurors,
17 I informed counsel that I really didn't want to go
18 beyond 4:30 today. I'm aware of the fact that you
19 have not only been sitting in the jury box most of
20 the day, but also the fact that there's travel to
21 and from Manitowoc each day. So unless it is really
22 important, I'm going to do my best to get you out of
23 here at 4:30 all the time. But I have been told
24 that there is a witness who isn't going to take very
25 long. So, Mr. Kratz, you may call your witness.

1 Q. On Friday, the 4th of November, did you make any
2 stops, or what was your -- or what did your
3 search efforts entail?

4 A. I met up with my sister and our search effort was
5 to look for her vehicle. So we got some
6 information from the Halbachs about what her
7 schedule was, where she had -- the area that she
8 was going to and we just tried to track down the
9 Toyota.

10 Q. All right. In that effort, Mr. Beach, did you
11 find your way to the Avery Salvage Yard property?

12 A. Yes.

13 Q. And could you tell the jury, please, what
14 occurred once you got to that property.

15 A. We came to the property. I was the passenger in
16 the vehicle. I stepped out, I went into the
17 garage. There was a lone desk. There was a
18 person sitting at the desk talking on the phone.

19 Another person came to the desk to greet
20 me and then at that time point I asked the person
21 if -- if they ever had any photographers come to
22 the salvage yard to take pictures of vehicles.
23 And he said he didn't know. And then I came back
24 and I mentioned that my cousin was missing. She
25 was a photographer. And that was the reason for

1 my visit.

2 Q. All right. Let me ask you, Mr. Beach, do you
3 know the defendant, Steven Avery, the gentleman
4 seated in the courtroom today?

5 A. At the time I did not; today I do.

6 Q. When you got to the salvage yard on the 5th of --
7 excuse me -- on the 4th of November, that Friday;
8 was Steven Avery one of the people that you
9 talked to at the office or in what you call the
10 garage?

11 A. Yes, he was the second person.

12 Q. Did you specifically ask Mr. Avery whether or not
13 your cousin, Teresa, had been to the salvage
14 yard?

15 A. Yes.

16 Q. What did Mr. Avery tell you?

17 A. He said that she was there; roughly about 2:00 in
18 the afternoon.

19 Q. All right. Just, back up just a second.
20 Mr. Avery himself told you that Teresa was there
21 that day or the day that she had come to take
22 pictures?

23 A. Yes.

24 Q. At 2:00 in the afternoon, right?

25 A. Yes.

1 Q. This would have been three days after her
2 appearance there; is that right?

3 A. Yes, this was a Friday.

4 Q. Okay. Mr. Avery give you any more details about
5 what Teresa had done while at the property?

6 A. He told me that she was there, there was a
7 vehicle behind the office garage and she was
8 taken to the vehicle to be photographed. That
9 was about -- That was her purpose for being
10 there.

11 Q. Let me ask you, Mr. Beach, upon your stopping at
12 this *Auto Trader* or -- excuse me -- at the Avery
13 salvage lot, did you provide any information or
14 any literature to the -- either Mr. Avery himself
15 or to the Avery salvage business?

16 A. No, I did not.

17 Q. How long was it that you discussed your cousin
18 with Mr. Avery?

19 A. Five minutes.

20 Q. Finally, Mr. Beach, did Mr. Avery know who you
21 were talking about; in other words, did he
22 indicate whether or not this woman had been there
23 before?

24 A. Yes, I described her build, her -- what she
25 looked like, what she drove. And he confirmed

1 all that. And he confirmed that she was there to
2 take photographs.

3 Q. Had she been there before?

4 A. Had she been there before?

5 Q. Did he tell you?

6 A. Yes.

7 Q. What did he say, if you can remember?

8 A. In my line of questioning about my cousin, she
9 was missing, he said that, yes, Teresa Halbach
10 came there on a regular basis.

11 Q. So that the jury is clear, Mr. Beach, after that
12 five minute -- that brief contact with Mr. Avery;
13 did you return to the Avery salvage property or
14 did you have any other conversation with
15 Mr. Avery?

16 A. No.

17 ATTORNEY KRATZ: That's all I have of this
18 witness, then, Judge.

19 THE COURT: Mr. Buting.

20 ATTORNEY BUTING: Thank you, Judge.

21 **CROSS-EXAMINATION**

22 BY ATTORNEY BUTING:

23 Q. Now, Mr. Beach, do you know what time it was that
24 you came to see Mr. Avery at the Avery Salvage
25 Yard?

1 A. About 4:00.

2 Q. On Friday afternoon?

3 A. Yes.

4 Q. And by that time, of course, there had been
5 reports about your sister in the media, right --
6 I'm sorry, your cousin, with the media about her
7 being missing and all of that?

8 A. I do not know; I did not hear that.

9 Q. So you didn't see any of the news report about
10 your cousin?

11 A. Correct.

12 Q. Okay. So how was it that you ended up at the
13 Avery salvage lot?

14 A. Friday morning, I received a phone call from my
15 parents. They told me about my cousin, Teresa,
16 was missing. I -- Later that afternoon, I came
17 up, I met up with my sister. We then got
18 information from the Halbachs. After that we
19 just drove around and we started from Mishicot
20 and we worked our way north.

21 Q. Okay. My question, I guess is, did somebody give
22 you information about what her appointments were
23 that day?

24 A. The Halbachs told me the general area she had
25 work in, but they did not give me any idea of

1 where her stops were.

2 Q. So no one told you that she had an appointment on
3 Monday, the 31st, at the Avery salvage lot --
4 yard?

5 A. Correct.

6 Q. You just stumbled on that?

7 A. Yeah, by incident. It was incidental.

8 Q. Okay. And when you got there, Steven Avery, the
9 person sitting to my left, who you now know, came
10 up and seemed concerned about what you were
11 asking about, right?

12 A. Yes.

13 Q. Seemed calm?

14 A. Correct.

15 Q. Did not appear to be holding anything back?

16 A. No.

17 Q. Correct?

18 A. Correct.

19 Q. In fact, I think you described him as being very
20 forthright, didn't you?

21 A. Correct.

22 Q. Expressing genuine concern about, you know, what
23 happened to your cousin?

24 ATTORNEY KRATZ: Objection, Judge, calls
25 for speculation, how genuine it may be.

1 THE COURT: Well, he can testify as to his
2 impression.

3 THE WITNESS: He said that he was
4 concerned.

5 Q. (By Attorney Buting)~ Okay. And you accepted
6 that?

7 A. Yes.

8 Q. And he told you -- You described his vehicle --
9 I'm sorry, you described her vehicle, the RAV4?

10 A. Yes.

11 Q. And he said, yes, I do recall, she was driving
12 that. And she came -- he actually said she came
13 some time mid-afternoon, didn't he?

14 A. Yes, he said that she was at his garage, salvage
15 yard, around 2:00.

16 Q. But he actually -- he qualified that by saying
17 approximately mid-afternoon?

18 A. Correct.

19 Q. Okay. Wasn't exact on the time?

20 A. Correct.

21 Q. And he said that she did take photo of the
22 vehicle, right?

23 A. Correct.

24 Q. And that he did not know her next stop, right?

25 A. Yes.

1 Q. And he told you that when the RAV4 pulled out of
2 the driveway, that it went to the left from the
3 Avery property?

4 A. Correct.

5 ATTORNEY BUTING: All right. I have no
6 further questions.

7 THE WITNESS: Thank you.

8 THE COURT: Anything else? Very well, you
9 are excused.

10 Members of the jury, that's going to
11 conclude the court proceedings for today. I will
12 remind you again not to discuss this case with
13 anyone, before we resume tomorrow. And we'll see
14 you tomorrow morning.

15 (Jury not present.)

16 THE COURT: Counsel, I would just ask that
17 tomorrow morning the attorneys meet in chambers at
18 8:20 before the day begins, just to let me know
19 what's coming.

20 ATTORNEY BUTING: What time did you say the
21 jury is coming, 8:45?

22 THE COURT: Okay. Meet at 8:30. We'll
23 find out from experience what time they normally get
24 here. I believe you are right, meet at 8:30.

25 ATTORNEY FALLON: Excuse me, Judge, did you

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want to take up that other matter today or tomorrow morning?

THE COURT: I have a number of other matters listed, I'm not sure which one you want, but we'll discuss that tomorrow morning.

ATTORNEY FALLON: All right.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 5th day of October, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,
4 PLAINTIFF, JURY TRIAL
5 vs. TRIAL - DAY 2
6 STEVEN A. AVERY, Case No. 05 CF 381
7 DEFENDANT.

8 **DATE:** FEBRUARY 13, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
12 Special Prosecutor
On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
14 Special Prosecutor
On behalf of the State of Wisconsin.

15 DEAN A. STRANG
16 Attorney at Law
On behalf of the Defendant.

17 JEROME F. BUTING
18 Attorney at Law
On behalf of the Defendant.

19 STEVEN A. AVERY
20 Defendant
Appeared in person.

21 *****

22 **TRANSCRIPT OF PROCEEDINGS**

23 Reported by Diane Tesheneck, RPR

24 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. Will the parties state their appearances for
4 the record, please.

5 ATTORNEY KRATZ: State appears by Calumet
6 County District Attorney Ken Kratz and Assistant
7 Attorney General Tom Fallon, appearing as special
8 prosecutors.

9 ATTORNEY STRANG: Steven Avery is here in
10 person. Jerome Buting and Dean Strang on his
11 behalf.

12 THE COURT: Very well, we are outside the
13 presence of the jury at this time. It is my
14 understanding the State has a matter it wishes to
15 bring up before we bring the jurors in.

16 ATTORNEY KRATZ: There are several matters,
17 Judge. One of them is addressing an area of
18 stipulations, but the other issue is making a record
19 and expressing our concern regarding Mr. Strang's
20 opening statement.

21 On three different occasions in
22 Mr. Strang's opening statement we believe that
23 Mr. Strang either announced the introduction of
24 what would otherwise be inadmissible testimony or
25 either overtly, or at least mistakenly, violated

1 previous rulings of this Court.

2 First, Judge, was on the area of third
3 party liability. This Court had previously
4 excluded any mention of a possible third person,
5 pursuant to the **Denny** analysis that the Court
6 announced in its ruling, other than that of
7 Brendan Dassey.

8 During Mr. Strang's opening statement,
9 Mr. Strang asked the jury to consider the fact
10 that somebody saw Ms Halbach after she left the
11 Avery property on the 31st of October.
12 Mr. Strang had even discussed that she may have
13 been taking some other photos and may have made
14 another stop, but invited the jury to believe
15 that somebody had seen the victim and, at least
16 by inference, that somebody else was involved in
17 taking the life of Teresa Halbach; again,
18 contrary to the Court's ruling as to third party
19 liability.

20 I do not intend to raise objection and
21 ask for a curative instruction with the jury, but
22 should there be testimony, certainly elicited to
23 that fact, the State would be issuing objection.
24 And if Mr. Strang would like to respond, that's
25 fine, but I would ask the Court reiterate its

1 ruling prohibiting any evidence of third party
2 liability other than that of Mr. Dassey.

3 THE COURT: All right. Before I hear from
4 Mr. Strang, do I understand there were a couple
5 other items?

6 ATTORNEY KRATZ: There were, Judge. The
7 State also -- excuse me -- The Court, also, in
8 pretrial rulings, dealt with the issue of bias of
9 witnesses, especially as it related to Manitowoc
10 County Sheriff's deputies. That bias that the
11 defense had, in a pre-trial posture, attempted to
12 elicit, was something that they referred to as
13 institutional bias; that is, a bias that could be
14 attributed to the entire department or every member
15 of the Manitowoc County Sheriff's Department,
16 irrespective of their involvement in Mr. Avery's
17 prior investigation or the civil lawsuit that was
18 filed.

19 This Court specifically rejected that
20 theory of admissibility, rejected Mr. Strang's
21 offer at that time of something that he called
22 institutional bias in a pre-trial manner. I was
23 astounded yesterday to hear Mr. Strang stand
24 before this jury and not only talk about the term
25 institutional bias, talking about the Manitowoc

1 County officers in general rushing to judgment,
2 inviting this jury to make up, if you will, for
3 what the last jury did in finding Mr. Avery
4 guilty before.

5 But when invited or when given the
6 opportunity to show, well, who are we talking
7 about with institutional bias, who rushed to
8 judgment, Mr. Strang played a tape of somebody
9 named Detective Jacobs and somebody named
10 Detective Remiker. Nothing about Colborn or
11 Lenk, each of which this Court had authorized
12 that by way of bias evidence and, in fact,
13 specifically limited Mr. Strang to that of
14 Mr. Lenk and Mr. Colborn.

15 And so, despite the Court's pre-trial
16 admonitions and rulings, apparently the defense
17 has, at least to this moment, ignored those
18 prohibitions and at the very first opportunity;
19 that is, during their opening statement,
20 exploited the idea of institutional bias with the
21 jury.

22 Lastly, Judge, the defense, on a number
23 of occasions, attributed statements to Mr. Avery.
24 On one specific occasion, Mr. Strang indicated
25 that he, meaning Mr. Avery, said that he saw the

1 victim drive down the dirt road and turn left on
2 to 147, apparently towards Interstate 43.

3 Those statements being attributed to the
4 defendant are, in fact, hearsay. If Mr. Strang
5 can tell me today that Mr. Avery is going to
6 testify, then I will withdraw my objection,
7 thankfully, or -- or very appropriately.

8 However, to inject or to assert what
9 Mr. Strang knows or should knows (sic) would
10 otherwise be hearsay and inadmissible testimony
11 at an opening statement is, in fact, improper.
12 I, again, simply alert the Court that if there is
13 going to be, through this trial, any attempts to
14 get Mr. Avery's statements in through somebody
15 other than Mr. Avery, or absent some other
16 hearsay exception, then the State will be
17 interposing those objections when necessary.
18 That's all I have regarding the opening
19 statements, Judge. Thank you.

20 THE COURT: Mr. Strang.

21 ATTORNEY STRANG: I will take them in the
22 order that Mr. Kratz has raised his concerns.
23 First, the matter of third party liability.

24 (A) **Denny** concerns only the situation
25 which a defendant wishes to offer the specific

1 identified person as the alternate culprit and
2 try to prove that person's liability. My opening
3 statement was very, very different than that.

4 What I did was perfectly legitimate,
5 which was to point out that if he didn't kill
6 her, but she's dead, then someone else did and we
7 don't know who did that. That's an entirely
8 legitimate prediction of where the evidence will
9 go and an entirely legitimate theory of defense,
10 if you will, to say, I didn't kill her; if they
11 prove someone did, then it's someone else and we
12 don't know who it is.

13 So quite apart from violating the **Denny**
14 ruling and quite contrary to violating the **Denny**
15 ruling, I'm entirely outside of **Denny** here and
16 this was a wholly proper explanation of what we
17 expect the evidence to show.

18 (B) Yesterday morning the State was
19 backpedaling away from Brendan Dassey and wants
20 the opportunity itself to suggest that just
21 another person, some other person, another out
22 there, assisted in the killing, or participated
23 directly in the killing of Ms Halbach and
24 Mr. Avery aided and abetted.

25 It's beyond irony to hear now, this

1 morning, that while the State has the 5 billion
2 people on this planet to whom it might point as
3 possible culprits, the defendant can point only
4 to Mr. Dassey. I'm squarely within the jury
5 instruction that the Court gave, at the State's
6 persuasion and over our objection, yesterday
7 morning.

8 And (C) nothing I said, I think, would
9 be inconsistent with Ms Halbach having run into
10 Brendan Dassey after leaving Mr. Avery's
11 presence, yesterday. Now, that's not what we're
12 going to be arguing in closing argument, but as a
13 matter of opening statement, I'm squarely within
14 proper balance here both of a good faith
15 prediction of the evidence and outlining
16 Mr. Avery's defense that he didn't do it and
17 doesn't know who did.

18 The second question was institutional
19 bias. Again, several points (A) I never used the
20 term institutional bias in my opening statement.
21 The transcript will show that I used the term
22 investigative bias; once, twice, or maybe more
23 than twice.

24 (B) As I argued earlier, the question is
25 bias. And bias is an issue that's relevant to

1 each and every witness called by the State or,
2 for that matter, by the defense, if the State
3 wants to point out that witness' bias.

4 Pattern Instruction 300, Wisconsin
5 Criminal Jury Instructions, concerns the
6 assessment of credibility of witnesses. I think
7 refers specifically to considering bias or
8 possible reasons or motives to falsify for every
9 witness. So the question here is bias of each
10 and every witness, not institutional bias of a
11 department.

12 And there were a number of Manitowoc
13 County Sheriff's Department employees involved in
14 this investigation. The bias of any one of them
15 who appears as a witness is relevant. It may be
16 proven by extrinsic evidence because bias is not
17 a collateral issue. That was settled in
18 Wisconsin not later than 1978 with the Wisconsin
19 Supreme Court decision of ***State v. Williams***.

20 (B) Both Dennis Jacobs and David Remiker
21 are on the witness list. Indeed, Dennis Jacobs
22 is on the defense witness list. I reasonably
23 anticipate Detective Remiker and/or Detective
24 Jacobs will appear as witnesses in this trial.

25 It would be difficult to imagine how the

1 State could prove its case without calling
2 Detective Remiker. So there's a tone of
3 tinniness here when Mr. Kratz says, someone named
4 Detective Remiker. I can't imagine the State
5 would not be calling him, given his role in the
6 investigation.

7 And the conversations that I played,
8 really go to Remiker's bias alone. He knows who
9 the "he" is that Detective Jacobs is talking
10 about. So, although I suspect both of them
11 probably will be witnesses and their bias clearly
12 an issue, even if Remiker only testified here,
13 the excerpts I played would be relevant extrinsic
14 evidence of bias, indeed, through at least one
15 conversation which Detective Remiker himself was
16 a party.

17 The third and final issue was statements
18 of the defendant. It is true that, at least over
19 objection, one cannot offer the out of court
20 statements of his own client for the truth of the
21 matter asserted, because 908.01 (4) ordinarily is
22 limited to statements of the party opponent.

23 It is also true here that I reasonably
24 anticipated what the evidence in this trial will
25 be and that would include some of the statements

1 of Mr. Avery. Indeed, my prediction proved
2 pretty good, because by the third witness, David
3 Beach, we had unobjected to testimony
4 establishing the very statements of Mr. Avery
5 that I included by reference in my opening
6 statement.

7 Mr. Beach, according to my notes,
8 testified without objection from the State, that
9 when he talked to Mr. Avery, Mr. Avery said he
10 didn't know where Teresa Halbach was going next
11 and that when she pulled out she turned left from
12 the Avery property.

13 That's almost verbatim what he said
14 about turning left at the end of Avery Road as
15 she left. Mr. Beach's testimony also included
16 recitations of Mr. Avery's statements that she
17 came first at about 2:00 in the afternoon and
18 then later, approximately then or mid-afternoon,
19 elicited on cross-examination by Mr. Buting.
20 Again, all without objection of the State.

21 So, not only was it a fair prediction of
22 the evidence, the prediction came true. The
23 statements of the defendant that I suggested the
24 jury would hear in opening statement, it has
25 heard admissibly and without objection.

1 THE COURT: Anything else, Mr. Kratz?

2 ATTORNEY KRATZ: No, thank you, Judge.

3 THE COURT: All right. First of all, with
4 respect to the third party liability issue, there's
5 a difference between a party introducing extrinsic
6 evidence that a specific third party is guilty of
7 the crime versus just saying, my defendant didn't
8 commit the crime so somebody else might have. I do
9 not believe that the statements made by the defense
10 in its opening statement fall into the prohibited
11 category there.

12 I don't believe there was any reference
13 to a specific third party who was the responsible
14 third party. Obviously, if the defendant is
15 pleading not guilty and saying I didn't do it,
16 somebody else has to have done it, and I don't
17 think that the defense went further than that.

18 With respect to the bias suggestion, the
19 Court's previous rulings in this case have dealt
20 with the introduction of extrinsic evidence on
21 the issue of bias. There are specific standards
22 that apply to the introduction of such evidence.

23 It was my understanding from what I
24 heard in the defense opening, that essentially
25 they are relying on not extrinsic evidence, but

1 evidence that is actually part of this case, to
2 make their argument. And I cannot say at this
3 stage of the proceedings that that's
4 objectionable.

5 With respect to the statements of the
6 defendant, as Mr. Strang indicated, those
7 statements can become admitted at trial through
8 means other than the defendant testifying
9 himself; and, in fact, to this point in the trial
10 it's pointed out by defense counsel that's
11 already happened. And so I can't say at this
12 stage that there was anything prohibited about
13 the references in the defense opening.

14 Just in general, I would note the
15 following: The Court instructs the members of
16 the jury that the opening statements themselves
17 are not evidence. They will get instructed that
18 again at the close of the case.

19 If either party makes a representation
20 in their opening that some evidence will be
21 introduced and it turns out that the evidence
22 does not get introduced, the party who made the
23 statement in the opening statement runs the risk
24 that the other side will bring it up in closing;
25 that is, remind the jury that the other side told

1 you they would hear this evidence and this type
2 of evidence was never introduced.

3 So I think to the extent that anything
4 mentioned by the defense in its opening was not
5 from the past, the State will have adequate
6 opportunity to address that in closing argument.

7 Is there anything else to take up before
8 we bring the jury back?

9 ATTORNEY KRATZ: There is, Judge, although
10 there were no stipulations to note yesterday in our
11 first testimony, there will be witnesses that are
12 scheduled to begin today that may be the subject of
13 agreements between the parties. I thought, unless
14 the Court wants to get going, I thought this might
15 be an opportunity to provide the Court with those
16 agreements.

17 We alerted the Court that we had made
18 some agreements regarding stipulations. And I
19 wish to take a few minutes to put those on the
20 record, if I can, at this time. If Mr. --
21 Mr. Strang has recommended that perhaps at this
22 time, since our first witness may not be the
23 subject of any of these stipulations, but later
24 witnesses today might, perhaps we can give you
25 our written list of stipulations.

1 Some of them just won't be objections by
2 the defense and may not need to be in writing.
3 And if that satisfies the Court, then perhaps
4 after our next break or sometime before the close
5 of the day we can put the rest of those on the
6 record.

7 THE COURT: I think that would be helpful.

8 ATTORNEY STRANG: If we could take just a
9 moment to photocopy, this is an email that I sent to
10 Mr. Kratz going paragraph by paragraph through
11 proposed stipulations. If we could have just a
12 moment to let Mr. Kratz photocopy that and we'll
13 keep a copy here at our table so that, you know, I
14 don't, you know, inadvertently forget --

15 THE COURT: All right.

16 ATTORNEY STRANG: -- we agreed not to
17 object.

18 THE COURT: I believe the copying is being
19 done as we speak. We'll bring the jury in now and
20 then take our first witness today.

21 (Jury present.)

22 THE COURT: You may be seated. Good
23 morning, members of the jury. Before we get started
24 today, I want to apologize for the fact that I
25 understand the bus was late yesterday. Doesn't do

1 much good to release you at 4:30 if you have got to
2 wait for the bus until 5:00. We'll be addressing
3 that situation to make sure that the bus is here on
4 a timely basis.

5 THE BAILIFF: The bus was here on time,
6 your Honor; it was at 4:30.

7 THE COURT: Oh, it was. Because when I
8 called the courthouse back, they told me it was not.
9 At any rate, that's good news. I was also told
10 there was some concern about the temperature on the
11 bus on the way over; is that being addressed?

12 THE BAILIFF: It was fine last night and it
13 was fine this morning.

14 THE COURT: Okay. Finally, I note that one
15 of the jurors in the back row does not appear to be
16 as tall as the rest of them and I don't think that's
17 because of your stature. We're having the
18 courthouse folks address that to put you up on a
19 riser so that all the jurors in the back row will be
20 seated on the same level.

21 With that, I believe we're ready to
22 begin. Mr. Kratz, you may call your first
23 witness.

24 ATTORNEY KRATZ: Thank you. We'll call
25 Angela Schuster to the stand.

1 THE CLERK: Please raise your right hand.

2 **ANGELA SCHUSTER**, called as a witness

3 herein, having been first duly sworn, was

4 examined and testified as follows:

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

7 THE WITNESS: Angela Schuster,
8 S-c-h-u-s-t-e-r.

9 **DIRECT EXAMINATION**

10 BY ATTORNEY KRATZ:

11 Q. Ms Schuster, could you tell the jury how you are
12 employed, please.

13 A. I'm employed with *Auto Trader Magazine*.

14 Q. You will either have to speak up or perhaps,
15 Judge, the microphone ...

16 A. *Auto Trader Magazines*.

17 Q. What are your duties with *Auto Trader*?

18 A. Well, right now, I'm the district circulation
19 manager. At the time, I was the operations.

20 Q. When you talk about "at the time", are you
21 talking about during the fall of 2005?

22 A. Yes.

23 Q. Ms Schuster, if you could tell the jury, please,
24 what were your duties during the fall of 2005?

25 A. Took care of the daily office functions,

1 complaints, reports, all office staff, all
2 photographers.

3 Q. As a -- You were in a supervisory capacity?

4 A. Yes.

5 Q. As a supervisor, did you supervise a young woman
6 by the name of Teresa Halbach?

7 A. Yes.

8 Q. Can you tell the jury, please, how did you know
9 Ms Halbach?

10 A. Well, I brought Ms Halbach on as a photographer
11 through a reference from one of our circulation
12 outlets. She applied for the job that we had
13 open into the Green Bay area.

14 Q. How long had Ms Halbach been working for *Auto*
15 *Trader*?

16 A. About a year.

17 Q. Could you tell the jury, please, how
18 photographers for *Auto Trader* got compensated for
19 their work?

20 A. They were paid per shot. Most of their
21 appointments were prescheduled. We have a
22 telemarketing service that telemarkets to get
23 prospects or what we call leads for our
24 photographers and otherwise people that schedule
25 appointments over the internet or phone in the

1 office.

2 Q. You said that Ms Halbach had been working for you
3 for about a year, did she have a particular
4 district that she was responsible for?

5 A. When she was brought on, she was responsible for
6 Green Bay. And then mid-year, 2005, she had
7 taken over the Manitowoc/Sheboygan area, one day
8 a week, on Mondays, for us.

9 Q. Now, Ms Schuster, as manager of the *Auto Trader*
10 office, at least for this region, are you
11 familiar with the records, the business records
12 within that office?

13 A. Yes.

14 Q. As a custodian of the business records, were you
15 also asked to review previous photographs, or
16 previous images that Teresa Halbach had taken?

17 A. Yes.

18 Q. And were you asked, Ms Schuster, specifically, to
19 review previous visits or images that Ms Halbach
20 had taken at a property known as the Avery
21 Salvage Yard?

22 A. Yes.

23 Q. And have you done that?

24 A. Mm-hmm.

25 Q. I'm going to ask you to look at the six different

1 images that are in front of you. And I believe
2 -- Ms Schuster, just so that we can get through
3 these images, I believe they are -- they are
4 without -- they are without objection.

5 I'm first going to have you look at
6 Exhibit No. 11. This is an image taken on
7 June 20th at the Avery Salvage property; do you
8 see Exhibit No. 11 there?

9 A. Mm-hmm.

10 Q. And, in fact, all of those six exhibits, Exhibits
11 11 through 16; is it your understanding that all
12 of them were taken at the Avery salvage property?

13 A. Yes.

14 Q. I'm first going to show you Exhibit No. 11, which
15 I believe was taken on June 20th at the Avery
16 salvage property. Please look at the large
17 screen that is noted to your right; is that a
18 accurate depiction of Exhibit No. 11, as well?

19 A. Yes.

20 Q. Second image, image No. 12 --

21 ATTORNEY BUTING: Counsel, do you want to
22 indicate the year, you said June 20th.

23 ATTORNEY KRATZ: I'm sorry, June 20th of
24 2005.

25 Q. (By Attorney Kratz)~ That's the year that she was

1 taking these photos; is that right?

2 A. Yes.

3 Q. Second image, image No. 12, taken on August 22nd,
4 once again, I will have you look at the large
5 screen to your right; is that a true and accurate
6 depiction of what is noted as Exhibit No. 12?

7 A. Yes.

8 Q. And, again, August 22nd of this year, that's
9 2005; is that correct?

10 A. Right.

11 Q. Third image, that will be image No. 13, taken on
12 August 29th, 2005; is that correct?

13 A. Yes.

14 Q. And, again, looking to your right, showing on the
15 screen, is that a photo taken by Teresa Halbach,
16 again, at the Avery salvage property on the 29th
17 of August?

18 A. Yes.

19 Q. Fourth image, that is image No. 14, taken on
20 September 19th, 2005 at the Avery salvage
21 property. Again, Exhibit No. 14 on the large
22 screen; is that a true and accurate depiction of
23 the image that's in front of you?

24 A. Yes.

25 Q. Image No. 15, again, a photo taken also on

1 September 19th, the Avery salvage property; is
2 that an image that is that on the large screen, a
3 true and accurate depiction of image No. 15
4 that's in front of you?

5 A. Yes.

6 Q. And, finally, image No. 16, taken on
7 October 10th, 2005, again, at the Avery --
8 actually, Steven Avery's residence, right outside
9 of his garage. Exhibit No. 16 appear to be a
10 true and accurate depiction of what's being shown
11 on the screen to your right?

12 A. Yes.

13 ATTORNEY KRATZ: I would, at this time,
14 Judge, move the admission of Exhibits 11 through 16.

15 ATTORNEY BUTING: No objection.

16 THE COURT: Those exhibits are admitted.

17 Q. (By Attorney Kratz)~ Ms Schuster, you had
18 mentioned that Ms Halbach had a territorial
19 responsibility for up this way. And I'm not sure
20 if you mentioned the Manitowoc and Sheboygan
21 area; did you testify about that before?

22 A. Yes.

23 Q. All right. Just so we're clear, during late
24 October of 2005, did Ms Halbach remain
25 responsible for that particular district?

1 A. Yes.

2 Q. Were you aware that Ms Halbach had outside
3 photography employment other than for *Auto*
4 *Trader*?

5 A. Mm-hmm, yes.

6 Q. Is that typical or is that usual for
7 photographers that you employ?

8 A. To have a second job, yes.

9 Q. They are not discouraged or anything from working
10 at their own studio, are they?

11 A. No.

12 Q. Ms Schuster, was Ms Halbach provided with any
13 equipment from *Auto Trader* itself to perform
14 these shots?

15 A. Yes, she was provided with everything that she
16 needed to do her business right from her home.

17 Q. Did that include being provided with a camera?

18 A. Yes.

19 Q. Do you know what kind of camera Ms Halbach was
20 provided by *Auto Trader*?

21 A. I don't recall specifically offhand, but we
22 usually use Kodak or Canon.

23 Q. All right. Let me ask you, were you asked, Ms
24 Schuster, to determine in this case what camera
25 Ms Halbach was given?

1 A. Yes.

2 Q. And as you sit here, can you remember it?

3 A. No.

4 Q. Would there be anything that could refresh your
5 recollection, perhaps being shown a photograph of
6 the box that she was given, or something like
7 that, or what might refresh your memory about
8 that?

9 A. A box. When we determined, when Mr. Fassbender
10 came to the office and was going through items,
11 the camera that we had purchased versus the
12 camera used to take these pictures, were used on
13 a camera that we had purchased.

14 Q. All right. Ms Schuster, I'm showing you what has
15 been marked as Exhibit No. 9 can you tell us what
16 that is, please?

17 A. It's a Canon PowerShot A310 digital camera.

18 Q. And does that now refresh your recollection as to
19 the camera provided to her by *Auto Trader*
20 *Magazine* for her use?

21 A. Yes.

22 Q. In fact, was she provided with --

23 A. Yes.

24 Q. -- that box, that camera?

25 A. Yes.

1 Q. All right. So the jury can see a picture of that
2 box, I will put that up on the screen; does that
3 photograph to your right appear to be a
4 photograph of what's included in Exhibit No. 9?

5 A. Yes.

6 Q. Now, Ms Schuster, can you tell the jury, after a
7 digital image is taken by one of your
8 photographers, one of your employees, how does
9 that physically get into the magazine? Can you
10 just tell us about that process.

11 A. Sure. The photographers hand in their discs
12 along with their paperwork. The discs are then
13 downloaded at the office onto our software system
14 and then sent over to our production department
15 that places the ads into the book.

16 Q. When a photographer like Teresa was scheduled to
17 take a shot or a photo for *Auto Trader*, how would
18 that typically be set up?

19 A. How would the picture be set up?

20 Q. Yeah, how would the appointment be set up?

21 A. By phone, by email, mail.

22 Q. All right. Was there an employee, somebody in
23 your office, other than you, who would typically
24 make those appointments or set up those photo
25 shoots?

1 A. Yes, the staff in the office handle most of the
2 phone calls that come into the office.

3 Q. Would it be fair that the support staff, the
4 receptionist or secretaries, would have more
5 contact with the photographers than you would?

6 A. Yes.

7 Q. Do you know a woman by the name of Dawn Pliszka?

8 A. Yes.

9 Q. Who is Dawn Pliszka?

10 A. Dawn Pliszka was our receptionist in 2005.

11 Q. As custodian of the records for *Auto Trader*, were
12 you able to determine Ms Halbach's first trip to
13 the Avery Auto Salvage property?

14 A. No, not by photo. We had the actual appointment
15 information, but the photo had been purged from
16 our system.

17 (Court reporter couldn't hear.)

18 A. The photo was purged from our system.

19 Q. I understand that, but what I'm asking is, do you
20 also keep records, or calendars, or things of
21 that nature to recreate appointments or things
22 like that with your photographers?

23 A. Our customer's information is kept in our data
24 base, by phone number.

25 Q. Were you aware that Steven Avery, or another, or

1 under another name, was one of *Auto Trader's*
2 customers?

3 A. Not before this, no.

4 Q. That's what I'm asking you, after this, were you
5 asked to find that out?

6 A. Yes. Yes.

7 Q. And did you find that out?

8 A. Yes.

9 Q. And could you tell us about Steven Avery's
10 contacts with *Auto Trader*?

11 A. Well, he would phone in his requests for the
12 photographer to come out to his property to take
13 pictures. All of our customers are given the
14 option to prepay, or pay with the photographer
15 when he or she gets there. They would normally
16 pay when the photographer got to this property.

17 Q. By the way, how much does each photo shoot cost?

18 A. We have several different packages, so anywhere
19 about from twenty-four ninety-five to fifty-nine
20 ninety-five.

21 Q. You said Mr. Avery typically paid the
22 photographer, paid in cash when he was there?

23 A. Mm-hmm.

24 Q. You have to say yes or no?

25 A. Yes.

1 Q. All right. And, again, back to my earlier
2 question, Ms Schuster, were you able, then, to
3 determine the first time that Ms Halbach had gone
4 to the Avery property, through those records, or
5 is that something that you couldn't recreate?

6 A. Yes, we were.

7 Q. And what was that date?

8 A. In June.

9 Q. Was that the June 20th photo that we saw?

10 A. Yes.

11 Q. Do you know how many times Ms Halbach was asked
12 to go out to the -- Steven Avery's property?

13 A. With the June, there was five times she was out
14 there -- four times she was out to his property.

15 Q. That's not counting the 31st of October; is that
16 right?

17 A. Right.

18 Q. And, again, Exhibits 11 through 16 are the photos
19 or the product from those trips; is that correct?

20 A. Yes.

21 Q. Now, you said that your photographers generally
22 would either contact you by phone or perhaps by
23 fax or email. Do you know, specifically, how Ms
24 Halbach made her connections or contacts with
25 *Auto Trader*?

1 A. Through fax and phone.

2 Q. And so if a customer had made an appointment,
3 even a last minute appointment; how would that
4 typically be relayed to Ms Halbach?

5 A. If it was a last minute appointment, then the
6 staff would write up the customer's information
7 on a -- we have what was called a shoot or
8 reshoot form, gather as much of the information
9 from the customer and let the customer know that
10 the photographer may or may not be out that same
11 day, depending on his or her schedule.

12 Once they gather the information, then
13 they call the photographer and ask if they had
14 been to the area, or if they can possibly fit
15 that shoot into their day. And, then, depending
16 on if they get a hold of them or what they say,
17 either a photographer will call the customer
18 directly, or the office will call and let them
19 know if they can make the shoot.

20 Q. Ms Schuster, I have now placed in front of you
21 what's marked as Exhibit No. 17, you talked about
22 some shoot or reshoot form. What is Exhibit 17?

23 A. The photo shoot/reshoot form.

24 Q. Now, did you fill out Exhibit No. 17 or did
25 somebody else do that?

1 A. Somebody else did.

2 Q. And will we hear from that person later on this
3 morning; is that right?

4 A. Yes.

5 Q. Ms Schuster, was their typically a time frame or
6 a amount of time that you, as the manager, and
7 the photographers, specifically wanted by way of
8 lead time before they would go out to shoot any
9 of these photos?

10 A. Typically it's a 24 hour lead time, if the
11 customer wants an appointment. However, we do
12 have areas such as the Manitowoc/Sheboygan that
13 is typically not a busier area for us, so it is
14 open one day per week. So if we do get customers
15 that will call from our shorter service area, so
16 to speak, we will try to get the photographer
17 there that day, if they call on that day that
18 they are there. So ...

19 Q. Do you know, back in late October -- You are
20 talking about this being Teresa's district, back
21 in late October of '05; do you know the one day
22 of the week that *Auto Trader* would service that
23 county?

24 A. Mondays.

25 Q. So if somebody would call on Monday, let's say

1 Monday, October 31st, would it be possible that
2 if called during that same day that the photo
3 could be taken that same day?

4 A. Yes.

5 Q. Ms Schuster, when were you first informed or when
6 were you asked about the whereabouts of Ms
7 Halbach?

8 A. Thursday evening, her mother had called the
9 office.

10 Q. And any time after the 31st of October, had you
11 heard from Teresa Halbach?

12 A. No.

13 Q. Let's talk about the 31st, then, of October. And
14 I'm going to ask you, specifically, whether you
15 had any contact with Teresa Halbach, whether you
16 did, any time that day?

17 A. Yes.

18 Q. Can you tell us when, please?

19 A. Teresa called in shortly after 11:00.

20 Q. 11:00 a.m.?

21 A. 11:00 a.m.

22 Q. What was the purpose of that?

23 A. The purpose was, she was returning Dawn's call
24 from this morning; Dawn had left her a message to
25 see if she was able to take a shoot. And Dawn

1 had already left for lunch and I had answered the
2 phone. And Teresa had said -- asked if Dawn was
3 there. I said, no, she was at lunch. And she
4 said, can you just let her know that I will be
5 able to get that shoot; she can fax the
6 information over to me.

7 Q. Verifying that she would be able to take the
8 photo; is that right?

9 A. Yes.

10 Q. Was that the -- Again, based upon your records,
11 was that the photo shoot that you later
12 determined to be at the Steven Avery residence?

13 A. Yes.

14 Q. Or property. We'll hear from Dawn a little bit
15 later this morning, but other than that call,
16 sometime just after 11:00 a.m.; did you have any
17 other contact with Teresa?

18 A. No.

19 Q. Finally, Ms Schuster, after law enforcement
20 became involved in the search efforts, did you
21 provide those digital images that we have
22 referred to, as well as the information regarding
23 the activities on the 31st and the information
24 regarding the Canon PowerShot A310?

25 A. Yes.

1 ATTORNEY KRATZ: That's all I have of Ms
2 Schuster, Judge. Thank you.

3 THE COURT: Mr. Buting.

4 ATTORNEY BUTING: Thank you. See if I can
5 get this thing working; can you hear me?

6 THE WITNESS: Yes.

7 **CROSS-EXAMINATION**

8 BY ATTORNEY BUTING:

9 Q. Good morning, ma'am.

10 A. Good morning.

11 Q. We haven't actually met before, have we?

12 A. No, we have not.

13 Q. I want to step back a little bit and clarify just
14 how some of these procedures work, if we may.
15 *Auto Trader* headquarters is actually in Hales
16 Corners, in the Milwaukee area, right?

17 A. We're a satellite office, yes --

18 Q. Okay.

19 A. -- in Hales Corners.

20 Q. Okay. And out of that office, you run
21 photographers all over the state, right?

22 A. Correct. Yes.

23 Q. And the state is kind of divided up in regions.
24 And one of these regions is the northeastern area
25 of Manitowoc, Sheboygan, Brown County area,

1 right?

2 A. Yes.

3 Q. And most of the contact with the photographers in
4 those more distant regions, not right in the
5 Milwaukee area, are done by emails, fax and
6 phone?

7 A. Yes. And they also have overnight packages that
8 they send.

9 Q. Okay. So in Ms Halbach's case, for instance, did
10 she come down and interview for the job in Hales
11 Corners?

12 A. No, I actually went to Green Bay and interviewed
13 her.

14 Q. Okay. And that was about a year or so before
15 October, 2005?

16 A. Yes.

17 Q. And was that the only time you actually met her?

18 A. Yes.

19 Q. From that point on, for the next year, to your
20 knowledge did she ever come down to Hales
21 Corners?

22 A. No.

23 Q. So all of her -- Well, for instance, let me ask
24 you this, do you know whether she ever met Dawn
25 Pliszka, the receptionist?

1 A. Not that I'm aware.

2 Q. Okay. So, really, her communication was with
3 your office by phone, fax; did she use email with
4 you?

5 A. She did.

6 Q. Okay. And most of those communications were
7 fairly brief, I take it?

8 A. Yes.

9 Q. We got -- We got a call for you, or we got a job
10 for you, here's the information, name, address,
11 phone number; that's pretty much it?

12 A. I think -- I think the staff had more
13 conversation with her. How was your weekend,
14 that sort of thing, but for the most part,
15 probably brief.

16 Q. Small talk kind of things?

17 A. Mm-hmm, yes.

18 Q. And your communication with Teresa Halbach was
19 probably less even than the staff who were
20 answering the phone?

21 A. Yes.

22 Q. Okay. Now, what you would typically do, when
23 somebody would call in, or when the telemarketers
24 -- Telemarketers were based in Florida, I think;
25 is that right?

1 A. Yes, they were at the time.

2 Q. And what they would do is, they would comb
3 newspapers or other publications for people who
4 already put ads in and call them and say, hey,
5 you know, why don't you put an ad in our
6 publication as well?

7 A. Correct. Yes.

8 Q. Sort of cold calls --

9 A. Yes.

10 Q. -- right? And in fact, that's -- if you know,
11 isn't that how *Auto Trader* made the contact with
12 this George Zipperer later the same day, on
13 October 31st?

14 A. Yes.

15 Q. It was a telemarketing call, right?

16 A. Yes.

17 Q. Okay. Now, so what your office would do is, it
18 would either get the information from your
19 telemarketers saying here's an address, phone
20 number, we want you to go take a photograph of;
21 or that person -- customer would call in or use
22 the internet to call in themselves and say, we
23 want this appointment, right?

24 A. Yes.

25 Q. And then your office -- Someone in your office

1 would prepare some kind of a form to fax to the
2 photographers their appointments?

3 A. Yes.

4 Q. Who did that; was that you?

5 A. That was Dawn.

6 Q. So Dawn would do that. Did you bring any of
7 those records with you today; any of those kind
8 of appointment sheets?

9 A. No, I did not.

10 Q. I'm going to show you one so we know what we're
11 talking about.

12 ATTORNEY BUTING: Mark this.

13 (Exhibit 18 marked for identification.)

14 Q. Now, this one, if I understand it, is from a
15 couple months earlier. We'll talk about some
16 more recent ones in a minute. But if you could
17 just identify for us what this is?

18 A. That is the photographer's detailed appointment
19 report for that day.

20 Q. And it's been marked as Exhibit 18 now, right?

21 A. Yes.

22 Q. Your Honor, could I use the ELMO?

23 THE COURT: Sure.

24 Q. (By Attorney Buting)~ A little hard to see
25 because this is a white sheet, but showing you

1 what's up on the screen now; is -- that's what we
2 just referred to as Exhibit 18?

3 A. Yes.

4 Q. And at the top there is a fax line that says from
5 *Auto Trader*. It's got the fax number that you
6 would fax it to the photographer, in this case
7 Teresa, right?

8 A. Yes.

9 Q. And, then, it's also got a faxed back one from
10 Teresa, correct?

11 A. Right.

12 Q. Now, this one has a lot of handwriting on it. It
13 doesn't come to the photographer, in this case
14 Teresa, like that, right?

15 A. No, it does not.

16 Q. It would initially come with just the typed out
17 information of date, name, address and phone
18 number on the right column, right?

19 A. Correct. Yes.

20 Q. And, then, over -- You would get these from, not
21 just Teresa, but from all the photographers, and
22 you would go through them in terms of figuring
23 out what to pay them, right?

24 A. Yes.

25 Q. So these were regular records that you use in

1 your business to determine how to -- not only
2 keep track of appointments, but pay the
3 photographers?

4 A. Yes.

5 Q. And what Teresa would do, you became familiar
6 with her custom and practice, right?

7 A. Yes.

8 Q. Which was that she would take these forms and
9 then in handwriting she would put along the side,
10 done, done, done, no pay, done pay, those kinds
11 of things?

12 A. Yes.

13 Q. And then at the top, if we could see the very top
14 of it a little bit. In this instance, she
15 circled 8 and she put 6 completed and 2 no
16 payment, right?

17 A. Yes.

18 Q. And then she has, plus one hustle?

19 A. Yes.

20 Q. And then P form, what's that?

21 A. The P form is a form that photographers use when
22 they get a shot that might be a referral, or a
23 second shot at a customer's home. And so how
24 they are numbered, it starts with a P; that's why
25 we call it a P form.

1 Q. Okay. All right. And so from this, then, you
2 would figure that you would pay her 8 -- for 8
3 shots plus this hustle one?

4 A. Correct.

5 Q. And we'll talk about the hustle in just a minute.
6 Now, normally, Teresa's practice, as all of the
7 photographers' practice would be, that you would
8 not get this form back from them until after the
9 day's appointments had been completed; is that
10 right?

11 A. Correct.

12 Q. So that, for instance, let's take October 31st.
13 Or, actually, let me clarify something. The
14 deadline for getting your ads into the magazine,
15 is what?

16 A. Mondays and Tuesdays.

17 Q. Okay. So Teresa's day for that part of the
18 state, which was Monday, she would be expected to
19 get that information to *Auto Trader* by the very
20 next day in order to make it into the deadline?

21 A. Yes.

22 Q. The way she would do that, in fact, you provided
23 discs, little digital camera discs for each
24 photographer, right?

25 A. Yes.

1 Q. And she would -- she would go around, take all
2 the pictures for that day, collect the paperwork
3 from the customer, put it all in an overnight Fed
4 Ex, UPS, something like that, and overnight it to
5 *Auto Trader* in Milwaukee for the next day?

6 A. Yes.

7 Q. Okay. And along with the money?

8 A. Yes.

9 Q. Okay. So from the customer, Teresa would collect
10 -- She would take the photograph. She would also
11 fill out a form that included, what, a copy,
12 written part, should be the description of the
13 vehicle?

14 A. Yes.

15 Q. And the money and all of that would go to you,
16 overnight?

17 A. Yes.

18 Q. But even before that arrived at your office, she
19 would fax this kind of a sheet to you at the end
20 of the day?

21 A. Right. Yes.

22 Q. But now, there's something kind of unusual about
23 October 31st of 2005, and the way that works,
24 wasn't there?

25 A. Yes. We actually received a fax from Teresa

1 earlier in the day.

2 Q. Okay. And, in fact, you received it, if I
3 recall, it was shortly after midnight on the
4 30th; that is, very early, you know, 12:30 or
5 12:18 a.m., early morning hours of the 31st?

6 A. Right. Yes. Correct.

7 Q. And that was faxed from her?

8 A. Correct.

9 Q. And it involved the shoots for that upcoming day?

10 A. Yes.

11 Q. That hadn't even -- Appointments hadn't even been
12 made yet, or kept yet, right?

13 A. No, if it was faxed back to us, it would be
14 anything that she had completed.

15 Q. Okay. But the one that you received on the 31st,
16 correct me if I'm wrong, actually contained the
17 appointments for the day of the 31st; did it not?

18 A. No. No, we don't print their appointment reports
19 or their actual leads until 7:00 a.m. in the
20 morning. So on the 31st, on that Monday, her
21 leads would not have been printed until after
22 7:00 a.m.

23 Q. Okay.

24 A. So she couldn't have had them at 12:30.

25 Q. So the one that she sent back to you at 12:30

1 a.m. was --

2 A. It was from Friday, or Saturday or Thursday.

3 Q. Okay. But in it, it included some information
4 about appointments that had been actually
5 rescheduled for the coming week?

6 A. Yes, photographers do reschedule appointments as
7 well.

8 Q. Okay. Now, you mentioned that most of the leads
9 for photographers come from *Auto Trader* itself,
10 either the telemarketing or customers who called
11 in?

12 A. Yes.

13 Q. About 90 percent of the shoots that the
14 photographers do, come from -- from *Auto Trader*
15 to the photographer?

16 A. Yes.

17 Q. But there's something else where maybe 10 percent
18 on average of a photographer's shoots are called
19 hustle shots, right?

20 A. Yes.

21 Q. And those are where leads come, not from *Auto*
22 *Trader*, but from the photographer him or herself?

23 A. Yes.

24 Q. And there is an incentive for photographers to do
25 that because they get paid more on hustle shots,

1 don't they?

2 A. Yes.

3 Q. What was the pay for a *Auto Trader* lead,
4 typically?

5 A. Typically, eight seventy-five.

6 Q. \$8.75 for one photo.

7 A. One photo.

8 Q. Okay. And what about a hustle shot?

9 A. Eighteen seventy-five.

10 Q. Okay. And when the photographer would -- would
11 schedule a hustle shot, it would not be on your
12 list of appointments that were faxed to the
13 photographer the morning of each day, whatever
14 you said, 7:00 a.m., right?

15 A. Correct.

16 Q. In fact, your office would not even know about
17 any hustle shots, unless and until the
18 photographer sent that information back to you at
19 the end of the day; isn't that right?

20 A. Yes.

21 Q. And like, for instance, let's take this one
22 that's up there. She specifically says 8 of the
23 appointments that you gave her -- your office
24 gave her, were completed, right?

25 A. Yes.

1 Q. But there was an additional one that's not listed
2 anywhere on that sheet, right?

3 A. Right. It's probably handwritten on the bottom.

4 Q. Well, let's look and see. Okay. That would be
5 considered the hustle, the one that's
6 handwritten?

7 A. Yes. Actually, we would not have considered that
8 a hustle, a hustle shot she confirmed with the
9 office. That was a rescheduled appointment that
10 she had taken that day.

11 Q. Okay. So the hustle shot is not even on this
12 form yet?

13 A. It's a three us (phonetic). It does not.

14 Q. Okay. In fact, that was often Teresa's practice,
15 is that you didn't know -- For instance, you
16 didn't really care on this particular form, when
17 you get this back, you didn't care about the
18 information from those hustle shots yet, right?

19 A. Correct.

20 Q. What you cared about is making sure that when the
21 Fed Ex came the next day, that's when you needed
22 to know the information of the name, address,
23 photo, copy information for these hustle shots,
24 right?

25 A. We like to have them on the forms, but they don't

1 often write them on there.

2 Q. Very often, yes. And in Teresa's case, she often
3 didn't, right?

4 A. I would have to look at her sheets to be sure if
5 it was often or not.

6 Q. Okay. I'm going to let you do that in just a
7 couple minutes, but I wanted to get a few other
8 things about the way this business works down
9 first. Repeat customers are very common for *Auto*
10 *Trader*, right?

11 A. Yes.

12 Q. In fact, you like those kinds of customers,
13 right?

14 A. Yes.

15 Q. The first time someone calls in you set up an
16 account for them, right?

17 A. Yes.

18 Q. And then, they can either be billed or they pay
19 as you go kind of approach, from that point on,
20 right?

21 A. Right. We don't bill. They will pay when the
22 photographer comes out or they can prepay.

23 Q. Okay. And Mr. Avery was one of those repeat
24 customers, was he not?

25 A. Yes.

1 Q. You mentioned -- It was a little unclear, you
2 mentioned four times that he had been there, then
3 you mentioned five. Counting, starting with June
4 and going up through October 31st, that was
5 actually six times that he had used your
6 business; isn't that right?

7 A. October 31st would have been her 5th visit to his
8 property.

9 Q. Well, let's -- Do you have those exhibits still
10 up there in front of you, photographs? Exhibit
11 11, you said was a June 20th shot; do you see
12 that?

13 A. I have to find 11. Yes, that was June.

14 Q. Exhibit 12 was August 22nd?

15 A. Yes.

16 Q. Exhibit 13 was August 29th?

17 A. Okay.

18 Q. Exhibit 14 and 15 were from the 19th -- I'm
19 sorry, September 19th; is that right?

20 A. Yes.

21 Q. And then the last one you have up there is
22 October 10th of '05, that's Exhibit 16?

23 A. Okay.

24 Q. So that's five that you have up there, right?

25 A. Five through -- Yes.

1 Q. So the 31st of October would have been the 6th
2 visit?

3 A. Okay.

4 Q. Okay. And your records had Mr. Avery's address,
5 correct, your office records?

6 A. Yes.

7 Q. As an account, an open account that you have,
8 right?

9 A. Yes.

10 Q. It had his phone number, right?

11 A. Yes.

12 Q. And, in fact, you had more than one phone number
13 associated with that particular account, correct?

14 A. I do believe so, yes.

15 Q. Now, the name Janda, J-a-n-d-a, that also was a
16 name that was used on a prior visit to Teresa to
17 the Avery salvage property was it not?

18 A. I'm not sure.

19 (Exhibit No. 19 marked for identification.)

20 Q. I'm going to show you Exhibit 19, see if you can
21 identify that.

22 A. Exhibit 19, okay.

23 Q. It's another one of her fax?

24 A. Reports.

25 Q. Appointment sheets?

1 A. Yes.

2 Q. Okay. If you look at the first, very first name
3 on the list there.

4 (Court reporter couldn't hear.)

5 Q. Say it again.

6 A. Tom Janda.

7 Q. J-a-n-d-a, right?

8 A. Yes.

9 Q. Can everybody see that, the first name there?
10 And right next to that name is a phone number,
11 right?

12 A. Yes.

13 Q. And an address, 12930A Avery Road, correct?

14 A. Yes.

15 Q. And that's the very same address and phone number
16 that was given by Mr. Avery when he called in
17 your office on October 31st, right?

18 A. Yes.

19 Q. And so your office knew that this Janda, B.
20 Janda, was associated with the Avery salvage
21 property?

22 A. I'm not sure if Dawn had recognized that at all.
23 The phone numbers are different, so that's why
24 another account was created under B. Janda.

25 Q. But the very name of the road is Avery, correct?

1 A. Correct.

2 Q. So that's a little bit of a hint that it's
3 associated with Mr. Avery, right?

4 A. Sure.

5 Q. Okay. This one by the way is?

6 ATTORNEY BUTING: Maybe you could unzoom
7 it.

8 Q. (By Attorney Buting)~ This is the appointment, I
9 believe, for September 19th. And if you could
10 just read the bottom of that note.

11 ATTORNEY BUTING: Push it up a bit, Dean.

12 Q. (By Attorney Buting)~ It says 9/19 at the top.
13 She says, I also did one hustle shot. It's the
14 first one on the disc, but I forgot to send the
15 sheet with the info. Is that right?

16 A. Yes.

17 Q. Okay. Now, when Mr. -- Mr. Fassbender,
18 Investigator Fassbender from the DCI, met with
19 you, he had you go through a number of the
20 records that you had on Mr. Avery's involvement
21 and Teresa Halbach's entire photo shoot history,
22 correct?

23 A. Yes.

24 Q. And you actually printed out a list of all of
25 these -- or copies of each one of these forms

1 that -- like Exhibit 18 and 19 that we're
2 referring to here today, right?

3 A. Yes. Anything that we had in our files, yes.

4 Q. Any of these that Teresa had done, you printed
5 out?

6 A. Yes.

7 Q. And you looked through them when you talked with
8 him, right?

9 A. We didn't look through everything.

10 Q. Okay. Well, would it be fair to say that from
11 your review of the records, it was clear to you
12 that Teresa did have a history of these hustle
13 shots, of using these hustle shots for some extra
14 income?

15 A. Sure. Yes.

16 Q. And maybe you will need to take a moment to look
17 at these, but I believe in the last 16 or 17
18 visits -- I'm sorry, 16 or 17 days that Teresa
19 did any of these shoots of any kind, she did 12
20 hustle shots; does that ring a bell?

21 A. I would have to look.

22 Q. All right.

23 ATTORNEY BUTING: Mark this whole stack of
24 reports.

25 Q. (By Attorney Buting)~ But if you could just take

1 a moment. Just ignore my post-its, but
2 count through how many days of shoots that is.
3 It's starting with September 19th of 2005, and
4 then count up how many actual hustle shots she
5 reports?

6 A. Okay.

7 Q. Count the days first.

8 A. All right. Fifteen days.

9 Q. Fifteen days, okay. Count up how many hustle
10 shots she did during that 15 day period.

11 A. Okay. It appears five.

12 Q. Let's look at this again, please. There's one
13 there, right?

14 A. Okay, but listed here, this does not -- this does
15 not tell me that there's a hustle on this sheet.

16 Q. That's right.

17 A. So I did not count that.

18 Q. Well, she puts down that she did a hustle?

19 A. Right. When these sheets would come back, if she
20 would mark down that there's a hustle shot on
21 here, before payroll, after they hand in their
22 papers, I would go through the sheet and if I
23 wouldn't see a hustle on here, I would have to
24 call them.

25 Q. Right.

1 A. And say on this date you have a hustle; I don't
2 see anything for a hustle. You know, unless they
3 would specify, that's how they would be paid for
4 the hustle.

5 Q. But she wouldn't -- On these forms that she faxes
6 back to you, she doesn't always put the names of
7 the hustles, that comes in later?

8 A. Right.

9 Q. But here she's just telling you that she did do
10 another hustle, it's just not reflected on these
11 records.

12 A. Right. Yes.

13 Q. So she says she did one hustle on this form,
14 right?

15 A. Right.

16 Q. Okay.

17 A. And this one she does a hustle.

18 Q. Okay. So that's two.

19 ATTORNEY KRATZ: Judge, could I ask what
20 the relevance of this is --

21 ATTORNEY BUTING: I will get to that.

22 ATTORNEY KRATZ: -- about this homicide; if
23 she did 9, or 11, or 13 hustle shots.

24 ATTORNEY BUTING: I will get to that.

25 THE COURT: I will give him a little

1 latitude.

2 Q. (By Attorney Buting)~ So there's 3, you saw that
3 one there, right?

4 A. Yes.

5 Q. So there's 8 on that one, right? That's 11,
6 another one there, that's 12; do you agree?

7 A. Yes. If you count what she wrote up on top.

8 ATTORNEY FALLON: I couldn't hear the
9 witness' response.

10 ATTORNEY BUTING: If you count what she
11 wrote up top.

12 Q. (By Attorney Buting)~ So what Teresa told you on
13 these forms, is that she did 12 hustles in these
14 15 days?

15 A. Correct.

16 Q. And, again, she wouldn't -- you wouldn't know
17 about those hustles that she did in advance,
18 correct?

19 A. Correct.

20 Q. And so, on October 31st of 2005, if Teresa
21 Halbach had done a hustle shot, you would not
22 have known it in advance, would you?

23 A. No.

24 Q. So if Teresa Halbach, after 3, 3:30, 4, whatever,
25 later in the day on October 31st, went to do one

1 of these hustle shots, you wouldn't know it?

2 A. Correct.

3 Q. Because you never got a completed fax like this
4 back after October 31st?

5 A. Correct.

6 Q. Or anything in the mail with the information from
7 that hustle shot, correct?

8 A. Correct.

9 Q. So the bottom line is, from your records, you
10 don't know and cannot tell this jury, whether or
11 not Teresa Halbach left Mr. Avery's property on
12 October 31st and went somewhere else to do a
13 hustle shot; isn't that right?

14 A. That's correct.

15 Q. Thank you.

16 THE COURT: Mr. --

17 **REDIRECT EXAMINATION**

18 BY ATTORNEY KRATZ:

19 Q. One follow up question, Ms Schuster, the real
20 bottom line is, if Ms Halbach was killed by Mr.
21 Avery, she couldn't have done any hustle shots
22 after that, could she?

23 A. That would be correct.

24 ATTORNEY KRATZ: That's all.

25 ATTORNEY BUTING: Nothing.

1 THE COURT: All right. The witness is
2 excused.

3 Members of the jury, we'll take our
4 morning break at this time. The attorneys, I
5 believe, have something to take up outside the
6 presence of the jury, so I can't tell you exactly
7 when you will be coming back. But as soon as
8 we're ready, we'll call you back.

9 ATTORNEY BUTING: Judge, I would move
10 Exhibit 18 and 19 in.

11 THE COURT: Any objection?

12 ATTORNEY KRATZ: No.

13 THE COURT: Those are admitted.

14 ATTORNEY KRATZ: When would you like us
15 back, Judge.

16 THE COURT: Let's report back at 25 to 11.

17 ATTORNEY KRATZ: That's fine. Thank you.

18 (Recess taken.)

19 (Jury not present.)

20 THE COURT: Mr. Kratz, do I understand that
21 the State wishes to address a matter outside the
22 presence of the jury before the next witness?

23 ATTORNEY KRATZ: I do, Judge. We do have
24 Dawn Pliszka, who is our next witness. The Court
25 had previously ruled on an admissibility issue. I

1 believe the Court contemplated a very brief offer of
2 proof that would require some brief testimony. I'm
3 prepared to call Ms Pliszka. And I think it
4 probably best we excuse Ms Pliszka from the
5 courtroom so that counsel can argue admissibility on
6 that one.

7 THE COURT: Does the defense agree?

8 ATTORNEY STRANG: Sure.

9 THE COURT: Okay. Very well. You may call
10 your next witness.

11 ATTORNEY KRATZ: Dawn Pliszka.

12 THE CLERK: Please raise your right hand.

13 **DAWN PLISZKA**, called as a witness
14 herein, having been first duly sworn, was
15 examined and testified as follows:

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

18 THE WITNESS: Dawn Pliszka, P-l-i-s-z-k-a.

19 **DIRECT EXAMINATION**

20 BY ATTORNEY KRATZ:

21 Q. Ms Pliszka, this is not your testimony before the
22 Court, but this is -- excuse me -- before the
23 jury, but this is simply retrieving from you some
24 very narrow information about a conversation that
25 you had with Teresa; do you understand that?

1 A. Yes.

2 Q. You were a receptionist with *Auto Trader* during
3 the fall of 2005; is that right?

4 A. Yes.

5 Q. And what kind of relationship did you have with
6 Teresa; in other words, did you and Ms Halbach
7 have occasion to discuss matters of a more
8 personal nature?

9 A. Yes, we did.

10 Q. During the course of those discussions, did Ms
11 Halbach ever describe for you a contact or
12 incident that she had with the defendant, Steven
13 Avery?

14 A. Yes.

15 Q. Could you describe, first of all, the words that
16 she used and then we will describe the
17 circumstances surrounding that. So first tell us
18 what she told you.

19 A. After she was out there, around October 10th, it
20 was like about a week or so after that, she had
21 stated to me that he had come out in a towel.

22 Q. He meaning whom?

23 A. Steven Avery.

24 Q. Had come out where?

25 A. She didn't specify, she just said that he had

1 come out, just in a towel.

2 Q. All right. Did Ms Halbach describe for you
3 anything else about that, any other details about
4 seeing Mr. Avery in a towel?

5 A. The only -- I just said, really, and she said,
6 yeah, and she said, yeah, and she laughed and
7 just said kind of, ewww, you know.

8 Q. Okay. You said kind of what?

9 A. Ewww.

10 Q. Ewww.

11 A. Yeah, just that.

12 Q. I guess not in a positive way?

13 A. Not in a positive way, no.

14 Q. Did Ms Halbach -- or was she seeming to describe
15 a specific event; in other words, was she
16 remembering that event when she was describing it
17 for you?

18 A. Yes.

19 ATTORNEY KRATZ: At least as far as my
20 offer of proof, the rest is argument. I don't have
21 anything further from Ms Pliszka for this offer of
22 proof.

23 THE COURT: Mr. Strang.

24 CROSS-EXAMINATION

25 BY ATTORNEY STRANG:

1 Q. Hi. Do you think this was a week or more after
2 October 10th?

3 A. Yes, that I talked to her. I don't know when the
4 incident exactly was.

5 Q. Okay. But you're probably talking to Teresa
6 Halbach October 17, or some time shortly after
7 that?

8 A. Mm-hmm. Yes.

9 Q. She did not say that this had happened on October
10 10 or any specific date?

11 A. She did not specify the date, no.

12 Q. She didn't call you to tell you about this
13 incident?

14 A. Not specifically, no, it just came up in
15 conversation.

16 Q. You were chitty chatting with her?

17 A. Yeah. Mm-hmm.

18 Q. And the reaction was ewww?

19 A. Yeah, it was unfavorable.

20 Q. Yeah. And then she sort of laughed it off?

21 A. Right.

22 Q. This was 10 -- 10, 15 seconds of conversation?

23 A. I would say, yes.

24 Q. How long was the phone call, roughly?

25 A. Altogether, probably a couple minutes at that

1 time.

2 Q. What sorts of other subjects did you two cover in
3 that conversation?

4 A. Probably just work related. I don't really
5 remember all the details of the conversation. I
6 just remember her saying that.

7 Q. Do you remember whether she called you or you
8 called her?

9 A. I think that time she called me, probably she had
10 a question on one of her photos, I think.

11 Q. Okay. So she had some more immediate work
12 purpose for the call?

13 A. Mm-hmm. Yes.

14 Q. And the two of you got sort of chatting and this
15 is one of the things she brought up?

16 A. Right.

17 Q. She did not give you any sense of time on when
18 this had occurred?

19 A. No, she did not.

20 ATTORNEY STRANG: Okay. Thanks. That's
21 all I have.

22 ATTORNEY KRATZ: Judge, one follow up.

23 **REDIRECT EXAMINATION**

24 BY ATTORNEY KRATZ:

25 Q. In the interim, that is, between October 10th and

1 October 17th, or really around that period of
2 time, would you have these kinds of conversations
3 often with Teresa, personal chit chatty
4 conversations?

5 A. Pretty much every time she called in. I talked
6 to her a couple times a week because I sent out
7 the photo leads and everything, so we talked
8 quite a bit.

9 ATTORNEY KRATZ: That's all I have. If we
10 could excuse Ms Pliszka, Judge, then I'm prepared to
11 make my argument.

12 THE COURT: All right. I just have a
13 couple of follow up questions.

14 **EXAMINATION**

15 BY THE COURT:

16 Q. You said that the conversation took place a week
17 or so after October 10th?

18 A. Yes.

19 Q. And is it your understanding that October 10th is
20 the day that she was describing that this
21 happened?

22 A. I really can't say for sure.

23 Q. All right. So you don't know if she was talking
24 about a visit to Mr. Avery's property on October
25 10th or at some previous unspecified visit?

1 A. Yeah, I would not know that for sure.

2 Q. And do you remember how the comment -- or what
3 prompted the comment, what background
4 conversation led up to it?

5 A. I don't really remember, no. I just remember --
6 We used to talk about different things that had
7 happened during our day that were unusual, or
8 funny, or different customers and things like
9 that, so.

10 THE COURT: All right. You are excused
11 from the courtroom for a few minutes. Mr. Kratz.

12 ATTORNEY KRATZ: Thank you, Judge. As this
13 Court knows, this statement is being offered
14 pursuant to the hearsay exception of a statement of
15 a recent perception. It is important, Judge, to
16 note the different admissibility standards for
17 recent perception, compared to present sense
18 impression, or even excited utterance where time is
19 important; that being time -- the time sensitive
20 nature.

21 Because of the nature of this particular
22 conversation, it's clear that the three factors
23 that are required for recent perception have been
24 established. First of all, the issue of whether
25 or not the event or condition that's being

1 described was recently perceived is a factor, but
2 recently is in a much, much broader term.

3 1988 Court of Appeals decision of
4 ***Kluever vs. Evangelical Reform Congregation,***
5 cited at 143 Wis. 2d, 806, was a 8 to 10 week
6 period between the event and its description.
7 The recent perception admissibility theory was
8 satisfied by that 8 to 10 week period.

9 But here, Judge, I think we can infer
10 that the -- because it only occurred a short time
11 after the October 10th meeting, that it was of
12 recent perception; at least more recent or recent
13 enough to satisfy that particular prong.

14 Again, Judge, the statement -- or,
15 secondly, I should say, the statement must be
16 made where the declarant is recalling something
17 clearly and that it's not in response to some
18 litigation or investigation.

19 The second and third prongs aren't
20 really, I believe, at issue in this case. So I
21 believe the State has met, through this offer of
22 proof, the foundation under 908.045 (2) with the
23 declarant, that is, Ms Halbach, being
24 unavailable, that this is a statement of recent
25 perception and would ask the Court allow its

1 admissibility.

2 THE COURT: Mr. Strang.

3 ATTORNEY STRANG: Thank you, your Honor. I
4 agree that if this statement fits anywhere it would
5 fit under Section 908.045 (2). Wisconsin's unusual,
6 I think not taken directly from a uniform rules of
7 evidence or model rules of evidence, but Wisconsin's
8 exception for statements of recent perception.

9 Clear out the under brush first.

10 There's -- if there's no gainsay in the fact that
11 Teresa Halbach is unavailable, so the State meets
12 that threshold requirement. And I, like
13 Mr. Kratz, view this statement as not in
14 contemplation of litigation.

15 I have no reason to question Teresa
16 Halbach's recollection being clear at the time.
17 And this statement was not in response to
18 instigation of a person who was investigating or
19 litigating a claim. So the question does come
20 down to the recency requirement.

21 Going to back up just a little bit, if
22 you think about the basic rationales of hearsay
23 exceptions, most of them are either because the
24 out of court statement is of a type that's
25 extraordinarily reliable and courts have

1 recognized that over the last several centuries.
2 Or that the hearsay statement is of a type where
3 we have a high necessity to have something like
4 that. And, of course, reliability and necessity
5 are not poles.

6 All of the exceptions, at least where
7 un -- unavailability are concerned, have both a
8 necessity component and then some assurances of
9 reliability. And because we're under the
10 unavailability exceptions, the necessity interest
11 presumably would be higher. And that's why we
12 see a relaxation of the reliability requirement,
13 with a little bit more expansive tolerance for a
14 period of time than, for example, under the
15 excited utterance exception where there's a lower
16 presumptive necessity showing because the
17 availability of the declarant doesn't matter.

18 So, with that focus, let's look, first,
19 at necessity. Very, very low necessity here.
20 The State originally sought this type of evidence
21 because it had added a sexual assault allegation
22 to the Information. That now has been dismissed,
23 so sexual assault is not in play.

24 And the State conceded, in its opening
25 statement, that it can't answer the motive

1 question, can't explain for a jury why and won't
2 attempt to prove motive here. So even where
3 sexual assaults go into play, the original
4 reasons the State offered in pursuing this bit of
5 evidence originally as uncharged misconduct, both
6 have fallen away and necessity is very low.

7 Reliability, though, also is quite low
8 here. As -- as my question suggested and I think
9 the Court's question cemented, we have no way of
10 knowing here whether this statement related back
11 as far as June 20 or as recently as October 10,
12 which itself would have been about a week or
13 perhaps more after the incident.

14 Mr. Kratz cited **Kluever**, K-l-u-e-v-e-r,
15 **vs. Evangelical Reformed Immanuel Congregation**.
16 And it's true that there was an 8 to 10 week
17 period of time at issue in **Kluever**, but the facts
18 of **Kluever** are worth noting. The statement was
19 made while the declarant was in a hospital bed
20 recovering from a bad fall.

21 And the Court noted, in accepting the 8
22 to 10 week time period that the statement was one
23 of his few "islets", i-s-l-e-t-s, of memory in
24 the time period since his fall. So there was
25 sort of a compression, or at least an amorphous

1 quality of time for the declarant there, kind of
2 a foreshortening, if you will, of recency given
3 the injuries that the man had sustained and was
4 recovering from in the hospital bed.

5 So, I don't know in the end that **Kluever**
6 gives a whole lot of help here. I do concede
7 that we don't need the immediacy or quite the
8 recency that an excited utterance would require
9 for the reasons I explained concerning the
10 underlying rationale for these hearsay
11 exceptions.

12 But I don't think the State has shown
13 that this had any real recency. It certainly
14 wasn't the purpose of the call, no sense of
15 immediacy, casual chit chat, at least a week and
16 perhaps four months after the incident at issue.

17 So coupled with a very low necessity for
18 this, at this point, and a dubious showing of
19 recency, whether we look just to 908.045 (2) or
20 the Court also considers the 904.03 analysis,
21 again, with necessity and how -- how probative
22 really, is this of any relevant or material
23 issue; I think for both those reasons this just
24 ought not be admitted.

25 There is some prejudice to it too. It's

1 got a little bit of a salacious quality. I'm not
2 saying it couldn't be dealt with on cross, but I
3 don't think the State has met the threshold to
4 fit it within this hearsay exception. The State
5 has offered no other; and, on balance, I also
6 think that 904.03 would suggest exclusion.

7 THE COURT: Mr. Kratz.

8 ATTORNEY KRATZ: Just very briefly, Judge.
9 The uniqueness of this statement, that is, the event
10 of a man of Mr. Avery's stature showing up, or
11 coming out, as the term is, in just a towel, we can
12 infer would have drawn some comment if it would have
13 happened sooner, perhaps as early as June 20th as
14 counsel may have suggested.

15 But I think the fact that this was in
16 the course of business chit chat and this
17 statement comes out of the blue, if you will, as
18 far as Mr. Avery goes, adds to its reliability
19 and to its credibility. And for those reasons,
20 Judge, and for the other reasons that I have
21 mentioned, we'll ask the Court allow this as
22 admissible.

23 THE COURT: All right. I'm going to take a
24 few minutes to check a few things. I will be back,
25 probably within about 10 minutes with a decision.

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(Recess taken.)

(Jury not present.)

THE COURT: The Court has previously ruled that the statement regarding the brief statement of Teresa Halbach that Mr. Avery had come out in a towel could be admissible subject to appropriate foundation. The appropriate hearsay exception reads in relevant part as follows: The following statements are not excluded, the statement which describes an event or condition recently perceived by the declarant, not in contemplation of pending or anticipated litigation and while the declarant's recollection was clear.

In this case, it's not disputed that the statement was not made in contemplation of any litigation. There does not seem to be a dispute that the statement was made while the declarant's recollection was clear. There is an issue as to whether or not the statement described an event or condition recently perceived.

The situation is complicated somewhat in this case by the fact that, as the Court understands the testimony of the witness, we don't know precisely when the date was that the statement was alleged to have been made.

1 In the Court's opinion, this is a very
2 close decision. As the parties recognize, the
3 recency requirement does not, in this case,
4 necessarily mean a day or two before. But the
5 Court feels that some specificity is required,
6 and in this case we don't really know within the
7 range of weeks or months exactly when the
8 statement was made. Presumably it could have
9 been -- or when the observation was made,
10 presumably it could have been any time from the
11 middle of June until October 10th.

12 I'm also concerned by the lack of
13 context in which the decision was made, or it's a
14 very short one sentence description of an event
15 or condition, without any qualifiers, or any
16 solid explanation. And in the Court's opinion,
17 that makes its relevance and certainly potential
18 for prejudice -- relevance, less; potential for
19 prejudice greater.

20 And for that reason, while the decision
21 is admittedly a close one, the Court is not going
22 to allow the evidence in for the reasons I gave.
23 The lack of specificity and the uncertainty as to
24 exactly when the statement was made and the fact
25 that different inferences could be drawn from it

1 because there is so little information about its
2 background.

3 Anything else before we bring the jury
4 back in?

5 ATTORNEY KRATZ: No.

6 THE COURT: Very well, we'll bring in the
7 jury.

8 (Jury present.)

9 THE COURT: You may be seated. Mr. Kratz,
10 at this time the State may call its next witness.

11 ATTORNEY KRATZ: State will call Dawn
12 Pliszka, Judge.

13 THE CLERK: Raise your right hand.

14 **DAWN PLISZKA**, called as a witness
15 herein, having been first duly sworn, was
16 examined and testified as follows:

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

19 THE WITNESS: Dawn Pliszka, P-l-i-s-z-k-a.

20 **DIRECT EXAMINATION**

21 BY ATTORNEY KRATZ:

22 Q. Ms Pliszka, I want to direct your attention to
23 the fall of 2005 and ask if you can tell the jury
24 how you were employed at that time?

25 A. I was a receptionist at *Auto Trader*.

1 Q. And what were your duties as a receptionist?

2 A. I sent out the photography leads. I took
3 incoming phone calls. Sent out t-shirts. Mailed
4 out catalogs.

5 Q. As part of that employment, did you have the
6 privilege of knowing a young woman named Teresa
7 Halbach?

8 A. Yes, I did.

9 Q. Could you tell the jury, please, how you knew Ms
10 Halbach?

11 A. She was one of our photographers. She started
12 just a little after I did, so we were fairly
13 close.

14 Q. Ms Pliszka, I'm going to direct your attention,
15 specifically, to October 31st of 2005, ask if you
16 were working on that day?

17 A. Yes, I was.

18 Q. Do you remember about what time you started work?

19 A. I started at 7:00.

20 Q. Seven in the morning?

21 A. Mm-hmm. Yes.

22 Q. At or about 8:12 a.m., do you recall receiving a
23 call that day?

24 A. Yes, I do.

25 Q. And could you tell the jury about that call,

1 please.

2 A. It was from a man. He said that he wanted the
3 photographer who had been out there before. He
4 was selling a mini van and he needed her to take
5 photos.

6 Q. Did this man identify what name the photography
7 job would be under?

8 A. I couldn't quite make him out because he was very
9 hard to understand. The closest I got was the
10 initial B. Janda.

11 Q. This man said that he wanted the photographer who
12 had been out there before; did he identify by
13 name that person?

14 A. No, he did not.

15 Q. Did he provide you an address where he wanted
16 this photo to be taken?

17 A. Yes, he did.

18 Q. Do you remember what that was?

19 A. I don't remember the exact number, but it was
20 something B Avery Road.

21 Q. If I showed you a document from that morning,
22 would that help refresh your recollection of
23 that?

24 A. Yes.

25 ATTORNEY KRATZ: Exhibit 17, Janet, do you

1 have that?

2 Q. (By Attorney Kratz)~ I have now handed you what
3 has been marked for identification as Exhibit
4 No. 17. Tell the jury, first of all, what is
5 that?

6 A. This is a photo shoot lead. It's for a same day
7 appointment, which we don't normally do. But if
8 the photographer is able to, we could have
9 written them up and sent them to them.

10 Q. Whose handwriting is on that form?

11 A. That's mine.

12 Q. Would that form have been filled out at the same
13 time that you received this call from this
14 person?

15 A. It was actually filled out later on, after I had
16 left a message for Teresa to see if she could
17 make it out there that day.

18 Q. But does that sheet help refresh your
19 recollection as to the information provided by
20 this man?

21 A. Yes.

22 Q. What was the address that was given for the photo
23 shoot?

24 A. 12930A Avery Road.

25 Q. Now, when this man said that he -- Let me start

1 again. Remind me of the language, the specific
2 language the man used in requesting the
3 photographer?

4 A. He had wanted the photographer that had been out
5 there before.

6 Q. Did he say why he wanted that same photographer?

7 A. Because he had a mini van for sale.

8 Q. Was a phone number provided?

9 A. Yes, it was.

10 Q. Could you tell us what that phone number was,
11 please.

12 A. It is 920-755-8715.

13 Q. Now, did you know the district or the area from
14 whom this call had come; in other words, what
15 photographer you were going to assign to do this
16 shoot?

17 A. Yes.

18 Q. How did you know that?

19 A. They were assigned by location. When you would
20 type it in the system, it would automatically pop
21 up the photographer's next available date.

22 Q. Who was the photographer that had that district?

23 A. Teresa Halbach.

24 Q. I think that you had said that same day
25 appointments were unusual; is that right?

1 A. Yes.

2 Q. Can you tell the jury about that, please.

3 A. Normally, we had a 24 hour notice for photos, but
4 sometimes if someone wanted to make a deadline
5 and the photographer was in the area, we would
6 leave a message for them and then they would go
7 out to that person's residence, if they could
8 make it.

9 Q. Ms Pliszka, I'm now going to direct your
10 attention to approximately 9:46 a.m. and ask if
11 you tried to call Teresa Halbach at that time?

12 A. Yes, I did.

13 Q. Could you tell the jury about that call, please.

14 A. I wasn't able to get a hold of her, so I left her
15 a message saying that someone said -- I'm sorry
16 -- that she had been out there before. I
17 couldn't find a record of him in the system, but
18 if she could make it today, that would be fine,
19 otherwise I had scheduled it for the following
20 Monday, which would have been her next available
21 appointment.

22 Q. Were you notified, Ms Pliszka, any time later
23 that day that Ms Halbach was able to make that
24 appointment?

25 A. When I came back from lunch, there was a note

1 from Angie Schuster that -- it was said that she
2 had wanted me to fill out one of these lead
3 sheets and fax it to her because she would be
4 able to make it that same day.

5 Q. She, meaning Ms Halbach?

6 A. Ms Halbach, yes.

7 Q. Finally, Ms Pliszka, were you able to and did
8 you, in fact, speak with Teresa Halbach later
9 that day?

10 A. Yes, she called me at 2:27 and we talked --

11 Q. Who?

12 A. Teresa. Called me at 2:27 and we talked for a
13 little while and she said, yeah, I'm able to go
14 get that photo. By the way, it was the Avery
15 brothers and I'm on my way out there right now.

16 Q. So 2:27 p.m. she told you she was on her way to
17 the Avery property?

18 A. Yes.

19 Q. Let me ask you this, Ms Pliszka, how do you
20 remember that call?

21 A. I remember because I looked at the time, because
22 she didn't normally work, I think, past 1:00 and
23 I thought it was kind of late for her to be going
24 out there. So I happened to look at the clock at
25 that time, so.

1 Q. All right. Just as an aside, do you remember
2 what else you guys talked about at that time?

3 A. She needed UPS labels and then I was telling her
4 about my son going trick or treating.

5 Q. So you remember that being Halloween?

6 A. Yes.

7 Q. Finally, Ms Pliszka, after that call, after you
8 hung up and concluded that call with Teresa, did
9 you ever have occasion to talk with her again?

10 A. We tried to get a hold of her, on I think
11 Thursday morning, but we weren't able to.

12 Q. Let me ask that again, did you ever talk to
13 Teresa Halbach again after that time?

14 A. No, I did not.

15 ATTORNEY KRATZ: I would move the admission
16 of Exhibit 17, Judge, and that's all the questions I
17 have for this witness.

18 THE COURT: Any objection to the exhibit?

19 ATTORNEY BUTING: No objection.

20 THE COURT: Exhibit 17 is admitted. Who
21 will be doing cross?

22 ATTORNEY BUTING: I will, Judge.

23 THE COURT: Mr. Buting.

24 **CROSS-EXAMINATION**

25 BY ATTORNEY BUTING:

1 Q. Good morning.

2 A. Good morning.

3 Q. Is it Ms Pliszka?

4 A. Pliszka.

5 Q. Pliszka, okay.

6 ATTORNEY BUTING: Judge, could you maybe
7 explain to the jury that it's your request that we
8 wear these mikes when we move around?

9 THE COURT: That's right, the attorneys who
10 stand, we require the attorneys to use these mikes
11 so everybody can hear.

12 ATTORNEY BUTING: So forgive me if I fumble
13 with them a little bit.

14 Q. (By Attorney Buting)~ All right. Now, you still
15 have Exhibit 17 up in front of you, do you not?

16 A. Yes.

17 Q. All right. Now, I will refer to that in just a
18 minute. But, you mentioned that your duties are
19 answering incoming phone calls?

20 A. Yes.

21 Q. Calling out to photographers and assignments?

22 A. Yes.

23 Q. Also faxing out these appointment sheets?

24 A. Yes.

25 Q. You actually prepare them sometimes yourself,

1 too?

2 A. Yes.

3 Q. And how many photographers -- And you work in the

4 Hales Corners office, right?

5 A. I'm no longer employed there.

6 Q. I'm sorry, back in October of 2005 --

7 A. Yes.

8 Q. -- you were -- Will you wait till I answer --

9 finish the question so that the reporter is not

10 tripping over us here. October of 2005, you

11 worked in Hales Corners?

12 A. Yes.

13 Q. And how many photographers did you deal with at

14 that time, around the state?

15 A. Probably around six.

16 Q. Okay. And most of your communication with them

17 was by email, or fax, or phone?

18 A. Mostly by fax and phone.

19 Q. Mostly fax and phone, okay.

20 A. Yes.

21 Q. In fact, did you ever meet Teresa Halbach?

22 A. No, I did not.

23 Q. You never met her face to face at all?

24 A. No.

25 Q. So your relationship with her, when you say you

1 were close, it was just from phone conversations?

2 A. From phone conversations, yes.

3 Q. And these phone conversations were usually just a
4 couple of minutes or so as you would -- because
5 you had other duties, other calls coming in and
6 all of that?

7 A. Yes.

8 Q. Okay. So you didn't really know much,
9 personally, about her, other than what would be
10 transmitted in these very brief phone calls?

11 A. Yes.

12 Q. All right. Now, this phone call that you got on
13 October 31st, you knew the name -- you recognized
14 the name Janda, J-a-n-d-a, right?

15 A. That's what I could make out --

16 Q. Okay.

17 A. -- from what he had said.

18 Q. And in fact, you know, then the man gave you the
19 address and it was on Avery Road, right?

20 A. Yes.

21 Q. And you knew that the Jandas and the Averys were
22 basically the same people, same area, right?

23 A. No, I did not.

24 Q. You didn't?

25 A. No.

1 Q. Were you interviewed by an Investigator Wiegert
2 of the Calumet County Sheriff's Department about
3 this incident?

4 A. I'm not sure. I believe so.

5 Q. Okay. Let's say at about 8:00 or 9:00 on
6 November 3rd, that would be Thursday, do you
7 remember getting a call from an investigator at
8 the Sheriff's Department?

9 A. Yes.

10 Q. Yes?

11 A. Yes.

12 Q. And he asked you some questions of what you knew
13 about this phone call on the 31st of October?

14 A. Yes.

15 Q. And did you tell him that you knew that the
16 Jandas are basically the Avery brothers, that you
17 have done -- they have done work for them before,
18 but does not know why they give the name B.
19 Janda; did you tell him that?

20 A. No, I did not.

21 Q. So if he wrote that in his report, he was just
22 making it up?

23 A. I did not know that it was -- she told me --
24 Teresa told me it was the Avery brothers. At the
25 time I took the call, I had no idea who it was.

1 Q. Okay. Exhibit 17, in front of you there, has an
2 account number, right?

3 A. Yes.

4 Q. That's the Avery's account, isn't it?

5 A. I believe that was one that I had just created
6 for this lead.

7 Q. So you created this as a whole new account?

8 A. Because I couldn't find it in the records. I
9 checked by phone number and the last name and I
10 couldn't find the person in there -- or him in
11 there.

12 Q. I'm going to show you Exhibit 19, see if maybe
13 this refreshes your recollection a little bit.
14 Is that one of the appointment sheets that you,
15 or somebody in your office, prepares and faxes to
16 the photographers?

17 A. Yes.

18 Q. And at the very, very top, there's a little code
19 that says run by?

20 A. Yes.

21 Q. And it says D. Plisz -- D. P-l-i-s-z-k, (sic)
22 that would be you, right?

23 A. Yes.

24 Q. So you actually ran this report yourself?

25 A. Yes.

1 Q. On --In this particular instance, September 19th,
2 2005, right?

3 A. Yes.

4 Q. And the very first name listed there is Tom
5 Janda, is it not?

6 A. Yes, it is.

7 Q. And the address there, would you read that off,
8 please?

9 A. It's -- I'm sorry I can't see.

10 Q. I'm sorry.

11 A. 12930A Avery Road.

12 Q. Is that the same address that you have here on
13 Exhibit 17, the photo shoot that you filled out
14 on October 31st?

15 A. Yes.

16 Q. So, on October 31st, you did, in fact, know -- or
17 those were records that you had taken an
18 appointment for the Janda's on a prior date?

19 A. That's not necessarily from me. There were three
20 or four of us that would run appointment photos.
21 It would depend. I ran the reports in the
22 morning. I didn't necessarily read them
23 thoroughly; I just would fax them out to the
24 photographer.

25 Q. (By Attorney Buting)~ If you would look at the

1 screen right there; I'm showing you a zoomed in
2 picture of this Exhibit 19. The date is
3 September 19 of 2005, right?

4 A. Yes.

5 Q. And that is -- It does indicate that you ran
6 that?

7 A. I ran the report, but that does not mean that I
8 had taken the original lead.

9 Q. Sure. But you ran the report and the report
10 included Tom Janda, the very first one, very same
11 phone number, very same address, that you have in
12 front of you on the October 31st exhibit,
13 correct?

14 A. No, the phone number is different.

15 Q. All right. But the address is the same?

16 A. Yes, but I didn't search by address in the
17 system.

18 Q. You just searched by phone?

19 A. Right, because we had tried to get people off the
20 phone as quickly as possible. So if I couldn't
21 find it by phone number and last name, and for
22 some reason it didn't come up in the system.

23 Q. For some reason, but it should have because you
24 did have a record of Janda's, correct?

25 A. From what that is, yes.

1 Q. Okay. And I realize it's been a long time, so
2 you may not remember everything as well 15 months
3 later, but the record speaks for itself.

4 ATTORNEY KRATZ: I'm going to object to
5 this, it's argumentative. It says Tom Janda, not B.
6 Janda, not the phone number. She's answered this.
7 It's argumentative.

8 THE COURT: I don't know if it's
9 argumentative, but the last thing the attorney said
10 was a statement, not a question.

11 ATTORNEY BUTING: I will move on, Judge,
12 sorry.

13 Q. (By Attorney Buting)~ Now, you said that the same
14 day appointments that would be called in, were
15 unusual?

16 A. Yes.

17 Q. Not that unusual, though, they happened, right?

18 A. Yes, they did.

19 Q. You have a form that's made for that purpose?

20 A. Or for reshoots, if someone had already had a
21 photo, the same --

22 Q. So particularly repeat customers who knew the
23 photographer's route, knew what day they would be
24 in the area; those are the kind of people that
25 would call the same day. They knew they could

1 still get in before the deadline?

2 A. Sometimes. Sometimes people just weren't aware
3 of the deadlines and they would see. We could
4 have also ran it for a week, without a photo, and
5 just extended his ad as well.

6 Q. Okay. So, when you got this phone call, though,
7 that morning, there was nothing that unusual
8 about it, about getting this call from this
9 gentleman saying he wanted a photograph taken of
10 the car, was there?

11 A. No.

12 Q. Okay. And you just followed your regular
13 routine, which is to call, in this case Teresa,
14 leave a message with the name, address, see if
15 she was available, right?

16 A. I left the name and the phone number and the
17 addresses, yeah; if she could make it that would
18 be great, if not, we could always call the
19 customer back and he was scheduled for the next
20 week after.

21 Q. And that's something that she had done before,
22 right?

23 A. Yes.

24 Q. You had done same day ones with her, right?

25 A. Yes.

1 Q. And in your experience, it also would not be
2 unusual that the person calling may not be the
3 person who actually owned and selling the
4 vehicle, right?

5 A. Yes.

6 Q. In fact, that very day, October 31st, there was a
7 gentleman that called in, left the name, Sippel,
8 I believe; does that ring a bell?

9 A. No, it does not.

10 Q. Well, you sent out --

11 ATTORNEY BUTING: Let me do this, let me
12 mark this as an exhibit.

13 (Exhibit No. 20 marked for identification.)

14 Q. (By Attorney Buting)~ Can you identify Exhibit 20
15 for us, please.

16 A. This is one of the leads that would have printed
17 because it was done before 24 hours. That would
18 have been one of her normally scheduled leads for
19 the day of the 31st.

20 Q. Okay. And that was run by you?

21 A. Yes.

22 Q. Once again.

23 (Exhibit No. 21 marked for identification.)

24 Q. And could you exhibit -- or identify Exhibit 21
25 also, please?

1 A. That is also another lead; it appears to be the
2 29th of October.

3 Q. And at the very top there is a fax date and time;
4 do you see that?

5 A. Yes.

6 Q. What is it?

7 A. It says 10/31, 2005, 0093 (sic).

8 Q. So like 12:13 a.m.?

9 A. Yes, this appears -- I think this is from Teresa
10 because it says rescheduled for Monday.

11 Q. Right. The handwriting. Let me just put these
12 up on the screen for a minute, so we know what
13 we're talking about. Exhibit 20 is the report
14 that you did -- that you ran at 7:08 a.m. on
15 Monday, October 31st, right?

16 A. Yes.

17 Q. And that's what you would have then faxed to
18 Teresa for her schedule for the day, right?

19 A. Yes.

20 Q. And that only has one appointment on it, a
21 Mr. George Zipperer, right?

22 A. Yes.

23 Q. But, in fact, you knew she had more than one
24 appointment on that day, right?

25 A. Yes.

1 Q. And Exhibit No. 21, which I'm showing you now, is
2 the report that you indicated she faxed on
3 October 31st at 0013 hours, right?

4 A. Yes.

5 Q. And on that, this is actually an appointment
6 scheduled for a previous day, Saturday, the 29th,
7 I think, right?

8 A. Yes.

9 Q. On that, she wrote another appointment that was
10 to be rescheduled for Monday, right?

11 A. Yes.

12 Q. And the name of that individual, can you read --
13 I don't know if you can read the first name, but
14 the last name is Sippel, right?

15 A. Yes.

16 Q. So I have one other one I want to show you. I
17 haven't marked this yet, but maybe you can tell
18 me from looking at this; do you know what kind of
19 a form this is?

20 A. This is the actual lead form that prints along
21 with their schedule.

22 Q. So this is something that you prepare?

23 A. Yes, or I edit it.

24 ATTORNEY BUTING: I better mark this
25 actually.

1 (Exhibit No. 22 marked for identification.)

2 Q. And this is Exhibit 22?

3 A. Yes. This was the one I had originally done.

4 And I believe I changed it for the Monday, the
5 same day appointment for the 31st. I was
6 originally going to schedule it for the following
7 week.

8 Q. Okay. But what's the difference between
9 Exhibit 22 and Exhibit 17?

10 A. She -- That wouldn't print until the next day.
11 This one here, Exhibit 22, would not have printed
12 until Tuesday.

13 Q. Okay.

14 A. Because that's why we usually don't do same day
15 appointments, because they don't print until the
16 following day.

17 Q. Okay. So by print, you mean enter the
18 information in your computer and do what? You
19 fax within -- that's not what you fax to the
20 photographers usually, is it?

21 A. Yes.

22 Q. It is?

23 A. It is, yes.

24 Q. Okay.

25 A. They got that actually, as well too, so they

1 could put information on there pertaining to the
2 ad and then photo number and everything so it
3 would match up.

4 Q. Okay. And this, specifically, is for B. Janda,
5 right?

6 A. Yes.

7 Q. Is that the address, 12930A Avery Road?

8 A. Yes.

9 Q. It's got phone numbers over there on the right,
10 correct?

11 A. Yes.

12 Q. Even got information about the vehicle, 1989
13 Dodge mini van?

14 A. Yes.

15 Q. And that is to be -- What is it, run --

16 A. Run till sold.

17 Q. What does that mean?

18 A. The ad will run until -- it will run as long as
19 the person needs to, as long as they would have
20 called every three weeks to renew it.

21 Q. Okay. So, all of this information was given to
22 you by the caller on October 31st at 8:12 a.m.,
23 right?

24 A. Yes, it was.

25 Q. Now, did you know that Mr. Avery had -- You did

1 know that Mr. Avery had Teresa's direct phone
2 number, right?

3 A. No, I did not.

4 Q. Were you aware that he had done a privately
5 arranged shoot with her on October 10th?

6 A. I wasn't -- Those are called hustle shots and I
7 didn't have any information about those, so I
8 wouldn't have known.

9 Q. Well, let me show you a couple more exhibits.

10 (Exhibit No. 23 & 24 marked for identification.)

11 Q. (By Attorney Buting)~ I'm showing you Exhibit 23;
12 can you identify that, please.

13 A. It's another -- It's one of her lead sheets. And
14 it looks like it has -- I think that's her
15 writing on there. This is when she was done with
16 photos.

17 Q. Right.

18 A. She would fax them in so she could get paid for
19 them.

20 Q. Sure. I understand. And this one also was
21 prepared by you?

22 A. Yes.

23 Q. Okay. And the date of this one is?

24 A. 10/10/2005.

25 Q. Okay. And what this does is this lists -- Well,

1 let me put it up on the screen once and we'll
2 talk about what it says. Can you also identify
3 Exhibit 24?

4 A. This appears to be one of the logs that the
5 photographers did on their own, like a hustle
6 shot, or maybe a call in or something that they
7 would have written up themselves. So this is
8 Teresa's writing.

9 Q. That's looks like Teresa's writing?

10 A. That looks like Teresa's writing, yeah.

11 Q. And can you tell what date this is at all or
12 where it came from or if it's in anyway
13 associated with Exhibit 23?

14 A. I really can't be certain.

15 Q. Okay. Well, let me -- let me put them up on the
16 bigger screen and we'll talk about them from
17 there, please. All right. First, Exhibit 23,
18 let's see here. This is the exhibit you
19 mentioned you prepared on October 10th, right?

20 A. Yes.

21 Q. It's a little bit hard to see there, but there
22 you go, October 10th. And this was a list of
23 Teresa's scheduled appointments that had been
24 made through *Auto Trader* on that day, right?

25 A. Yes.

1 Q. And there are just three -- Actually, looks to me
2 like the second one is crossed off; it's a Robert
3 Beaudry?

4 A. Yes.

5 Q. First one is Robert Beaudry; second one is Roger
6 Poegle, or something like that.

7 A. Yes.

8 Q. But Mr. Avery is not on here, correct? He was
9 not a scheduled appointment that day?

10 A. No, he was not.

11 Q. Yet down below she has written Steve Avery,
12 right?

13 A. Yes.

14 Q. And done, next to it, right?

15 A. Right.

16 Q. And, in fact, in your records, you are aware
17 that -- that there's actually a photograph that
18 she took, on that date, of a Pontiac Grand Prix,
19 from Mr. Avery; are you aware of that?

20 A. I wasn't certain of the vehicle; I did know she
21 had an appointment on the 10th, but I wasn't sure
22 of what the vehicle was.

23 Q. Okay. So that was an appointment that she --
24 that Mr. Avery apparently arranged privately with
25 her, rather than through your office, correct?

1 A. It appears to be, yes.

2 Q. And the hustle shot document that you are
3 referring to -- let me zoom out first so the jury
4 can see -- these are forms that the photographers
5 have that they fill out or they may fill out if
6 they are doing hustle shots?

7 A. Yes.

8 Q. Privately arranged shots, right?

9 A. Yes.

10 Q. In fact, it says at the top, private party, photo
11 log, right?

12 A. Yes.

13 Q. I'm sorry, little hard to see. And in this she
14 has got Steve Avery's name?

15 A. Yes.

16 Q. You recognize this to be her handwriting?

17 A. Yes.

18 Q. Because you have seen it many times. And then
19 she also says Steve Avery, \$45, paid cash, right?

20 A. That looks like the account number 45800.

21 Q. Oh, okay.

22 A. That's the account number.

23 Q. I'm sorry. Just says paid cash?

24 A. Right.

25 Q. And it lists the 1984 Pontiac Grand Prix, T-tops,

1 and Oldsmobile engine, 5.0, make offer? And it
2 has got a phone number, right?

3 A. Yes.

4 Q. So, would it be fair to say, then, that the
5 records show Mr. Avery must have had some phone
6 number for Teresa in order to make this private
7 arrangement with her on that date?

8 ATTORNEY KRATZ: Objection, speculative,
9 Judge.

10 THE COURT: I'm going to sustain the
11 objection.

12 ATTORNEY BUTING: All right.

13 Q. (By Attorney Buting)~ This is an example of these
14 hustle shots that are made privately between the
15 photographer and the customer, right?

16 A. Yes.

17 Q. And you know that that does happen frequently
18 with photographers, correct?

19 A. Yes, it does.

20 Q. And that it did happen with Teresa?

21 A. Yes.

22 Q. In fact, more than just this one time we
23 mentioned with Mr. Avery; there were many hustle
24 shots she did, correct?

25 A. Yes.

1 Q. And when she would do those, you would have no
2 way of knowing that she had gone to one of these
3 private party hustle shots until she faxed back
4 the report at the end of the day; isn't that
5 right?

6 A. Yes.

7 Q. And, unfortunately, though, on October 31st, you
8 never got a form back that said where she had
9 gone, right?

10 A. No.

11 Q. So you don't know whether or not Teresa had any
12 hustle shots, privately arranged shots on
13 October 31st, do you?

14 A. No, I do not.

15 Q. And this phone conversation that you had with her
16 at 2:27 p.m. you had some brief discussion and
17 she said that she was on her way to the Avery's?

18 A. Yes, she did.

19 Q. She said the Avery brothers; is that what she
20 said?

21 A. She said the Avery brothers, yes.

22 Q. She seemed very familiar with them?

23 A. Yes, she did.

24 Q. You don't know whether she meant she was on her
25 way directly or whether she intended to make

1 another stop before she got there?

2 A. No, I do not. I just assumed -- She said she was
3 on her way there right now, so, I assumed.

4 Q. Okay. So, if she was not there for another hour,
5 you don't know whether she would have made
6 another stop, get a bite to eat, something like
7 that?

8 A. No, I would not.

9 Q. Or if she had another hustle shot in between?

10 A. No, I would not.

11 Q. More importantly, you don't know whether after
12 Mr. Avery, Teresa had a private hustle shot where
13 she was going, where she was planning to go to,
14 do you?

15 A. She didn't mention it but, no, I did not.

16 Q. And she wasn't in the habit of mentioning when
17 her hustle shots were with you, right?

18 A. Sometimes she would, sometimes she wouldn't, so.

19 Q. Okay. Now, these hustle shots, by the way,
20 sometimes they would be where she would go to a
21 customer for one car and she would hustle a
22 second one while she's there, right?

23 A. Yes.

24 Q. And, in fact, that happened in this Tom Janda
25 case where she got two photos on the same date;

1 September 19, right?

2 A. I'm not certain.

3 Q. All right. Well, that was something that
4 happened and those were considered hustle shots
5 too, right?

6 A. Yes.

7 Q. So, you don't know whether somebody hailed her as
8 she was leaving Steven Avery's residence,
9 somebody else on the Avery salvage property, a
10 brother, customer, whatever, who hailed her and
11 said, hey, let's take a picture, private hustle
12 shot of another vehicle, do you?

13 ATTORNEY KRATZ: Judge, objection, that
14 does calls for speculation.

15 ATTORNEY STRANG: My question was, she
16 doesn't know, I'm trying to establish.

17 THE COURT: That objection is overruled.

18 Q. (By Attorney Buting)~ Is that correct?

19 A. I would not know.

20 Q. All right. Now, just a couple of final -- one
21 other point I want to make here. Since it
22 appears that Mr. Avery had made a private hustle
23 arrangement with Teresa Halbach in the past, you
24 don't know of any reason why he couldn't have
25 also done that on October 31st, do you?

1 A. Unless he would have lost her phone number, no.

2 Q. Okay. And, of course, if he was going to do that
3 -- put it this way, if he had wanted to kill
4 Teresa Halbach, he could have simply called her
5 directly instead of calling your office and
6 leaving a red trail -- easy trail right to his
7 house, couldn't he?

8 A. Yes.

9 ATTORNEY BUTING: Thank you. I have
10 nothing further.

11 THE COURT: Mr. Kratz, any other questions?

12 ATTORNEY KRATZ: No.

13 THE COURT: Very well, you are excused.

14 Members of the jury, that takes us to
15 noon, so we'll take our lunch break at this time
16 and resume at 1:00. I will remind you, again, do
17 not discuss the case or any of the testimony you
18 have heard this morning or anything else about
19 this case during the noon hour.

20 (Jury not present.)

21 THE COURT: All right. Counsel, are there
22 going to be any other outside the presence of the
23 jury matters to address this afternoon that you are
24 aware of?

25 ATTORNEY BUTING: No, Judge.

1 ATTORNEY KRATZ: Not that I can think of.

2 ATTORNEY BUTING: I would and I should
3 have, I move the admission of all those exhibits
4 that I referred to, which are -- looks like 20, 21,
5 22, 23, 24.

6 ATTORNEY KRATZ: Well, 24 she said she
7 couldn't identify, so we'll object to that. Doesn't
8 seem that he posted it to the jury when she said she
9 couldn't identify it, but it should not be received;
10 it was not identified.

11 ATTORNEY BUTING: She did identify it as
12 Teresa's handwriting. She identified it as a
13 private party log that's used in their business.
14 The only thing she couldn't identify was the date,
15 but that will be linked up by the prior witness who
16 testified that, on October 10th, 2005, a photograph
17 was taken of that very car that's listed there --

18 THE COURT: Mr. Kratz.

19 ATTORNEY BUTING: -- which is Exhibit 16.

20 ATTORNEY KRATZ: I don't object to the
21 relevance in that it appears to link up, but she
22 couldn't identify it.

23 THE COURT: I think she identified some
24 elements of it. The date, she couldn't identify,
25 but that's by the nature of the exhibit; though,

1 actually, I think the date's repeated again a little
2 higher where it's easier to see. At any rate, I'm
3 going to move all the exhibits.

4 ATTORNEY KRATZ: Thank you.

5 THE COURT: See you at 1:00.

6 ATTORNEY BUTING: At 1:00, you said?

7 THE COURT: Yes.

8 (Noon recess taken.)

9 THE COURT: At this time we are back on the
10 record. Mr. Kratz, you may call your next witness.

11 ATTORNEY KRATZ: State would call Curt
12 Drumm, your Honor.

13 THE CLERK: Raise your right hand.

14 **CURTIS DRUMM**, called as a witness
15 herein, having been first duly sworn, was
16 examined and testified as follows:

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

19 THE WITNESS: Curtis W. Drumm, D-r-u-m-m.

20 **DIRECT EXAMINATION**

21 BY ATTORNEY KRATZ:

22 Q. Mr. Drumm, if you could sit back just a little
23 bit, you are a little loud. Tell the jury,
24 please, where are you from?

25 A. I live in Manitowoc.

1 Q. And were you asked, on the 4th of November, of
2 2005, to assist law enforcement officers in
3 search efforts for Teresa Halbach?

4 A. Yes, I was.

5 Q. And what were you asked to help with?

6 A. At that point I didn't know the name or anything
7 else, just that I was asked to help search for a
8 missing person.

9 Q. Sometime on the 4th, then, of November,
10 Mr. Drumm, did you assist law enforcement?

11 A. Yes, we went up that afternoon for about two and
12 a half hours.

13 Q. You probably might want to tell the jury what you
14 mean by we went up?

15 A. I'm sorry, we -- they had called and asked if we
16 had an aircraft available. I operate the pilot
17 services at the Manitowoc airport. And our run
18 was called the fix base operator. We rent
19 airplanes, provide flight instruction, things
20 like that.

21 The Sheriff's Department called and
22 noted that they had a missing person and would we
23 have an airplane and pilot available to go up and
24 search several locations that they thought she
25 might have been at. And I said, yes, and we set

1 up a time. They came out in the afternoon.

2 We went up for about two and a half
3 hours starting around 1:30, 2:00 and flew until
4 sometime around 5:00. Went to two different
5 locations in the Manitowoc County area. And then
6 followed a path that took us up toward Green Bay
7 and then back down toward this area here where
8 the home was and then back over to the Manitowoc
9 area.

10 Q. One of the first witnesses that answered all my
11 questions before I even asked them, so.

12 A. I'm sorry, I didn't know what order you wanted
13 it.

14 Q. Trust me, it's pleasant this way, Mr. Drumm. I'm
15 going to have to go back, though. The
16 investigators that you went up with, did those
17 include Sheriff Jerry Pagel from the Calumet
18 County Sheriff's Department, as well as
19 Investigator Wendy Baldwin from the Sheriff's
20 Department?

21 A. Yes, sir.

22 Q. Were you told where to fly; in other words, were
23 you told what locations they were interested in?

24 A. They gave me, I think some latitude longitudes,
25 which I programmed into a GPS. And, of course, I

1 knew nothing of the nature of the investigation.
2 They just told me to go there, that they were
3 looking for a possible car or a person. The
4 first location was relatively near the airport.
5 Am I getting ahead of myself?

6 Q. No, you are doing great. Why don't you tell us
7 that first location -- By the way, do you know
8 whose home, or whose residence, or where that was
9 located?

10 A. They did not tell me, no. It was the vicinity of
11 Highway 310 and Q I believe, about a mile and a
12 half from the airport. We circled over that
13 property and a radius of a couple miles around
14 that area.

15 Q. Let me stop you there, Mr. Drumm. The residence
16 around Highway 310 and Q, was that the first
17 location that they instructed you to look at?

18 A. Yes, sir.

19 Q. Are you familiar, Mr. Drumm, with the Avery Auto
20 Salvage property?

21 A. I was not until following, everything had
22 happened.

23 Q. But are you now, familiar?

24 A. Oh, yes, sir.

25 Q. And was that the first property that they asked

1 you to go search around?

2 A. No, that was the second.

3 Q. All right. So Avery's wasn't even the first
4 place that they asked you to look?

5 A. No, sir.

6 Q. All right. After that first residence, then you
7 were asked to search a second property; is that
8 right?

9 A. That's affirmative. That ended up being the
10 Avery property. We followed roads. Again, they
11 weren't sure why she was missing, so we followed
12 roads and the smaller county highways to see if
13 she had maybe gone off the road or into the ditch
14 or had an accident that wasn't reported or
15 otherwise found. Eventually worked our way up to
16 what's the Avery property.

17 Q. When you say that we were searching, what's all
18 included in an aerial search or a search with an
19 airplane?

20 A. You know, they were the investigators, so they
21 knew what they were looking for. As a pilot, I'm
22 more used to looking at things from the air, so
23 they gave me a description of the vehicle we were
24 looking for, the color and the make and model.

25 And we tried to see if there was any

1 place where that car might have been in a ditch,
2 or an area where it may have been involved in an
3 accident, or if it had been hidden some place, or
4 behind a garage or in front of some trees, or
5 whatever.

6 From above, you have got a lot better
7 perspective of areas, being able to look down
8 through the trees and through different areas.
9 So we tried to find the car.

10 Q. Mr. Drumm, then, not just residences, but you
11 also searched roadways and ditches.

12 A. Roadways, ditches, area farms, behind barns, any
13 place that, you know, she may have gone either on
14 purpose or otherwise. We just tried to identify
15 any places we might assist in finding the car.

16 Q. There's an exhibit in front of you, Exhibit
17 No. 25. I'm going to have the jury look at this
18 at the same time you are. Why don't you tell us
19 what this is, what are we looking at?

20 A. Looks like the salvage yard.

21 Q. And, again, does Exhibit 25, at least from an
22 aerial view, which are views that you are
23 familiar with, does this look the same or similar
24 as it did on or about the 4th of November, of
25 2005?

1 A. Yes, it does. Yeah, there was several adjacent
2 gravel pits to it, forest areas, farm areas.
3 This appears to be the private property we looked
4 at.

5 Q. Okay. Now, I assume, Mr. Drumm, that as we zoom
6 in a little bit on this photograph, is it fair
7 that it would be difficult to pick out a specific
8 car in that location?

9 A. We tried to fly over different aisles and the
10 size of the yard was -- was so expansive and so
11 many vehicles there, it was difficult really to
12 pick out anything of any detail. We were at
13 about 500 feet, which is the FAA minimum for a
14 flight over unpopulated areas. But even from
15 500 feet, it's tough to pick out a specific car.

16 Q. All right. Did you find any vehicle that looked
17 like a blue, or teal, or greenish Toyota RAV4.

18 A. Not that I'm aware of. If the investigators saw
19 something, they didn't tell me.

20 Q. After the Avery property was searched, you said
21 that you went someplace else, could you describe
22 that.

23 A. They had indicated that she might have had some
24 friends up in Green Bay that she might have been
25 meeting with. And we followed primarily the

1 county roads east of I-43, because that's where
2 she would have been coming from, from this, if
3 this had been her last stop. And worked our way
4 up toward Green Bay, again, looking to see if
5 there was anything in ditches or side roads or
6 anything.

7 I questioned why, they said, well, maybe
8 she had an accident, or something hadn't been
9 reported, or was at the side of the road. So we
10 followed the roads all the way up, almost to
11 Green Bay, then turned around and followed the
12 roads on the west side back toward her residence.
13 And, again, searching all the side roads and
14 looking for anything that might have been out of
15 the ordinary.

16 Q. So you were told that the area on or adjacent to
17 the Halbach, that is, the Teresa Halbach
18 residence was also searched; is that right?

19 A. Yes, we spent a fair amount of time in that
20 vicinity, again, looking to see if the car was
21 around, if we could find anything that might help
22 them find the girl.

23 Q. Was there also another property; that is, another
24 residence in Calumet County that you were asked
25 to search around? Do you remember?

1 A. We may have gone -- They may have -- We flew over
2 a lot of areas. Basically, I just flew the
3 airplane and the investigators asked me to go
4 left or go right, to different areas. I didn't
5 question where exactly they were looking, but we
6 spent a fair amount of time in this area
7 looking -- looking at different areas, just
8 points of interest of theirs.

9 Q. And to get right to the question, Mr. Drumm, at
10 least based upon what the investigators told you,
11 was the Avery salvage property the focal point,
12 or the only place that you were looking for
13 Teresa's car?

14 A. No. We spent substantial time looking at other
15 locations.

16 ATTORNEY KRATZ: I would move the admission
17 of Exhibit 25. That's all the questions I have.

18 ATTORNEY STRANG: No objection.

19 THE COURT: Very well. The exhibit is
20 admitted. Mr. Strang.

21 **CROSS-EXAMINATION**

22 BY ATTORNEY STRANG:

23 Q. Good afternoon, Mr. Drumm.

24 A. Hi.

25 Q. Do you know now what the first place was that you

1 flew over near the intersection of 310 and Q?

2 A. They mentioned a name and I don't really recall.

3 They just said that these were locations where

4 she had appointments.

5 Q. Okay. There was a residence?

6 A. There was a residence and several outbuildings,

7 several trees.

8 Q. Rural sort of residences?

9 A. Pardon me?

10 Q. Rural sort of residences?

11 A. Yes.

12 Q. Okay. So you went there, then you flew

13 essentially north to the Mishicot area, to the

14 Avery property?

15 A. Correct.

16 Q. From there, continued north to the Green Bay

17 area?

18 A. Correct. We didn't do the city of Green Bay, we

19 got to the southern outskirts.

20 Q. Following what, 42 or 57?

21 A. We basically followed the east side of I-43.

22 Q. Okay. Back down along the lakeshore?

23 A. No. We came back down on the west side of I-43

24 back toward --

25 Q. Toward Chilton.

1 A. -- toward Chilton.

2 Q. Past Hilbert, St. John?

3 A. Again, kind of zigzagged around from an airplane
4 at 500 to a thousand feet, clear day, you have
5 pretty good visibility.

6 Q. This was on November 4?

7 A. Yes, correct.

8 Q. The plane wasn't equipped with aerial photography
9 equipment?

10 A. No, sir.

11 Q. And, obviously, you were piloting the plane?

12 A. Yes.

13 Q. So, someone else in the plane was taking photos?

14 A. I believe one of the investigators was taking
15 pictures.

16 Q. I mean, not you?

17 A. No.

18 Q. And were these just sort of regular snapshot kind
19 of cameras out the window as you banked?

20 A. Yes.

21 Q. Any videotaping going on on November 4th?

22 A. I'm sorry, I don't recall that.

23 Q. Fair enough.

24 A. I was looking out the front window.

25 Q. I understood that. And, then, as you flew back

1 from Chilton, Hilbert, and the area north of
2 here, back to Manitowoc; was it back to the Avery
3 Auto Salvage, or back to the airport?

4 A. Back to the airport.

5 Q. Okay. Now, the photograph that we have up here
6 is Exhibit 25. As it is set up now, that's a
7 view from substantially above 500 feet above
8 ground level, true?

9 A. From that perspective we would have been -- that
10 looks like higher than 500 feet.

11 Q. Fifteen hundred feet above ground level, probably
12 something like that?

13 A. Depends on the angle of the lens you use, that
14 could have been much lower, if you use a wide
15 enough lens and made it look like that.

16 Q. I'm --

17 A. It's hard to tell.

18 Q. I'm just -- I'm just looking at the size of the
19 buildings and the size of cars. You -- you've
20 been flying for how long?

21 A. Fifteen, twenty years.

22 Q. Okay. Familiar with something called pattern
23 altitude?

24 A. Yes.

25 Q. Ordinarily that's a thousand feet above ground

1 level?

2 A. Correct.

3 Q. Okay. Pattern meaning when you are in a pattern
4 over the airport?

5 A. Right.

6 Q. You have done a lot of flying in the pattern, as
7 they say, at a thousand feet above ground level?

8 A. Correct.

9 Q. You are familiar with the general view of terrain
10 at approximately that altitude?

11 A. Correct.

12 Q. This looks a little bit higher than that?

13 A. If you were at a thousand looking with the naked
14 eye, that -- that's -- that's higher.

15 Q. Okay.

16 ATTORNEY STRANG: Now, maybe with
17 Mr. Kratz's help, we can zoom in just a little bit.

18 ATTORNEY KRATZ: Where would you like me to
19 zoom in?

20 ATTORNEY STRANG: Let's -- Let's go up to
21 the pond. Can we go to -- a little further or do we
22 lose resolution? Okay. Let's work with that.

23 Q. (By Attorney Strang)~ Just give us a perspective
24 of about 500 feet above ground level?

25 A. That's approximately 500.

1 Q. Okay. Which is considered the minimum safe
2 altitude for flying over sparsely populated
3 areas.

4 A. Correct.

5 Q. Now, if -- if -- if -- I realize the window is in
6 the photograph, but this area here, can you see
7 me and see it?

8 A. Yes.

9 Q. Why don't you tell our jurors what you recall
10 this area as being, if you do?

11 A. I don't exactly recall if that's a gravel pit
12 area. There were a lot of gravel pit areas,
13 either active or abandoned. I don't recall what
14 that area was.

15 Q. Just for orientation, though, you recall this as
16 being south; that is, the right edge of this
17 photo as being south?

18 A. I believe so.

19 Q. Okay. What you do remember is there were a lot
20 of gravel pits around the Avery Auto Salvage?

21 A. That's correct.

22 Q. Or quarries?

23 A. Correct.

24 Q. Okay. And whether that's one of them or not, you
25 just don't remember?

1 A. Again, I don't know what I was looking for, so,
2 other than a car.

3 Q. You went up again on November 5 -- or no, on
4 Saturday, November 5, or no?

5 A. Not with law enforcement.

6 Q. Not with law enforcement?

7 A. No, I made other flights, subsequent, once it
8 became apparent what was going on, but not with
9 any law enforcement.

10 Q. With whom did you make other flights over the
11 Avery Auto Salvage property?

12 A. I don't recall.

13 Q. But, I mean, just as a matter of interest while
14 the search for Teresa Halbach was going on?

15 A. The area north of the airport, in that vicinity,
16 is a regular practice area we use with students.
17 It's off the airways. It's not near the airport.
18 It's -- It's an area we use for practicing flying
19 over unpopulated areas.

20 Q. Okay.

21 A. So that wouldn't be in the path of going to some
22 place on a training flight.

23 Q. And, in other words, the flights you did later,
24 to the extent they took you over the Avery Auto
25 Salvage, were unrelated to the search for Teresa

1 Halbach?

2 A. Right, they had nothing to do with it.

3 Q. How much time did you spend in the general
4 vicinity of the Avery Auto Salvage Yard?

5 A. Oh, I would say maybe 15 minutes, 20 minutes.

6 Q. How much time, roughly, over the first residence,
7 Highway 310 and Highway Q?

8 A. Five or ten.

9 Q. And mostly, then, transit time, other than some
10 time circling over Hilbert, St. Johns, that area?

11 A. Correct. And when we did our transit, they
12 weren't straight lines necessarily, we flew
13 around again surveying the side roads trying to
14 see if we could see anything.

15 ATTORNEY STRANG: That's all I have. Oh,
16 I'm sorry, just a moment. That's it. Thank you.

17 THE COURT: Mr. Kratz, any redirect?

18 ATTORNEY KRATZ: No, Judge. Thank you.

19 THE COURT: Very well, the witness is
20 excused.

21 ATTORNEY KRATZ: Steve Schmitz, please.

22 THE COURT: Please raise your right hand.

23 **STEVEN SCHMITZ**, called as a witness

24 herein, having been first duly sworn, was

25 examined and testified as follows:

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

3 THE WITNESS: Steven Schmitz,
4 S-c-h-m-i-t-z.

5 **DIRECT EXAMINATION**

6 BY ATTORNEY KRATZ:

7 Q. Mr. Schmitz, where are you from, sir?

8 A. New Holstein, Wisconsin.

9 Q. I'm going to direct your attention to the 31st of
10 October, 2005, ask if you remember that day?

11 A. Yes, I do.

12 Q. And did you make any contact that day with a
13 young woman that you later learned was Teresa
14 Halbach?

15 A. Yes, I did.

16 Q. Tell the jury, please, how it was that you made
17 contact with Ms Halbach?

18 A. I had a car for sale. She contacted me that day.
19 She was going to be here about 1:30. She showed
20 up. She did a photograph of my car. I gave her
21 a check. She gave me a receipt with a bag with
22 information in it and then she left.

23 Q. I'm going to show you what's been received as
24 Exhibit No. 5, ask you if you can direct your
25 attention to the large screen; is this the woman

1 that you made contact with the afternoon of the
2 31st?

3 A. Yes, it is.

4 Q. Mr. Schmitz, how long was it that this
5 transaction occurred; in other words, how long
6 did it take for Ms Halbach to take the
7 photographs, get paid, give you the information
8 and be on her way?

9 A. Ten to fifteen minutes, max.

10 Q. Where did this transaction take place?

11 A. In my driveway.

12 Q. In New Holstein?

13 A. Yeah.

14 Q. You're quite sure it was around 1:30 p.m.?

15 A. Yes, I am.

16 Q. The vehicle that's depicted here in Exhibit No.
17 5, the bluish green SUV, was that the vehicle
18 that Ms Halbach was driving, if you remember?

19 A. Yes.

20 Q. Can you tell the jury, please, how Ms Halbach was
21 dressed that day, if you remember?

22 A. She had blue jeans on, button up white blouse and
23 a spring jacket, waist length. I believe it was
24 blue in color.

25 Q. I don't expect you to know this, Mr. Schmitz, but

1 I will ask it any way. Do you know what kind or
2 what brand of blue jeans she was wearing?

3 A. No.

4 Q. How long did you say the jacket was that she had
5 on?

6 A. I would say about waist length. It was like a
7 summer jacket.

8 Q. How was she paid, if you remember?

9 A. I gave her a check.

10 Q. After Ms Halbach concluded her transaction with
11 you, do you know which way she left, which way
12 she drove?

13 A. She headed north on Highway A.

14 Q. And for those of us not familiar with the New
15 Holstein area, does going north on Highway A
16 intersect with any large roads that we would
17 know?

18 A. It was formerly Highway 149, now I believe it's
19 HH.

20 Q. What's north of that, is what I'm asking?

21 A. 151, if you keep going north.

22 Q. 151 would be the main road or the main trunk road
23 between would be Chilton and the Calumet County
24 area and Manitowoc; is that right?

25 A. Yes.

1 Q. Ms Halbach appear upset to you when you met with
2 her?

3 A. No. Very friendly and very polite.

4 Q. The information or the papers that she left with
5 you; do you recall those? Can you describe them?

6 A. Yeah, one was a for sale sign. There was a book
7 that was the *Auto Trader* and then there was like
8 a contract, if you were to sell your vehicle, how
9 to fill it out properly, like a sales receipt.

10 Q. So a receipt and an *Auto Trader Magazine*; is that
11 right?

12 A. Right.

13 Q. Do you recall what this receipt looked like?

14 A. It was a larger white thing probably 6 by 8
15 square, just a common receipt.

16 Q. Do you know what it was called? You didn't keep
17 it, did you?

18 A. No. No.

19 ATTORNEY KRATZ: I think that's all I have
20 of Mr. Schmitz. Thank you, Judge.

21 THE COURT: Mr. Strang.

22 **CROSS-EXAMINATION**

23 BY ATTORNEY STRANG:

24 Q. Mr. Schmitz, just generally, where is New
25 Holstein in relation to, let's say the city of

1 Manитowoc?

2 A. Oh, quite a ways away, I would say probably
3 35 miles.

4 Q. Is it west, southwest?

5 A. West, yeah, southwest.

6 Q. That is, New Holstein is west and a little south
7 of Manitowoc?

8 A. I'm actually south of New Holstein.

9 Q. Okay. Fair enough. The car you had was at your
10 house, as you said?

11 A. Yes.

12 Q. But you owned that jointly with another
13 gentleman?

14 A. Yes, I did.

15 Q. His name is Craig Sippel?

16 A. Yes.

17 Q. Mr. Sippel is the one who actually called and
18 made the appointment with Auto Trader?

19 A. Yes.

20 Q. And gave your address presumably --

21 A. Yes.

22 Q. -- as the place for the photo shoot?

23 A. Right.

24 (Court Reporter couldn't hear.)

25 A. The car is stored in my shed.

1 Q. In your shed?

2 A. Yes.

3 Q. You may need to swing your mike a little closer
4 to you, or you a little closer to it. If you get
5 too close it gets too loud, a delicate balance.
6 Mr. Sippel is a friend of yours?

7 A. Yes.

8 Q. You know him well?

9 A. Yes.

10 Q. He wasn't trying to lure a photographer to your
11 house by using his name when he called *Auto*
12 *Trader* asking for someone to come to your
13 residence?

14 A. No.

15 Q. Thanks.

16 ATTORNEY STRANG: That's all I have got.

17 THE COURT: Very well.

18 ATTORNEY KRATZ: Judge, if I could ask one
19 follow up question.

20 THE COURT: Yes.

21 **REDIRECT EXAMINATION**

22 BY ATTORNEY KRATZ:

23 Q. Mr. Schmitz, do you recall the date that law
24 enforcement came and asked you questions
25 regarding your contact with Ms Halbach?

1 A. Like a day or so after. I'm not positive. They
2 contacted me to make sure that she was there and
3 I said, yes, she was.

4 ATTORNEY KRATZ: That's all I have. Thank
5 you, sir.

6 THE COURT: You are excused.

7 THE WITNESS: Thank you.

8 ATTORNEY KRATZ: State will call JoEllen
9 Zipperer to the stand.

10 THE CLERK: Please remain standing, raise
11 your right hand.

12 **JOELLEN ZIPPERER**, called as a witness
13 herein, having been first duly sworn, was
14 examined and testified as follows:

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

17 THE WITNESS: My name is JoEllen Zipperer,
18 Z-i-p-p-e-r-e-r.

19 **DIRECT EXAMINATION**

20 BY ATTORNEY KRATZ:

21 Q. Good afternoon, Mrs. Zipperer. The questions
22 that I have for you relate to incidents that
23 occurred on the 31st of October of last year,
24 2005. Let me first ask you, Mrs. Zipperer, where
25 do you live?

1 A. 4433 County Trunk B in Manitowoc.

2 Q. Is that residence near any intersections, any
3 major roads?

4 A. Near 310 and B.

5 Q. So your residence is near Highway 310; is that
6 right?

7 A. Yes.

8 Q. Who do you live there with, Mrs. Zipperer?

9 A. My husband and my daughter and my grandson.

10 Q. If we all promise not to call you, Mrs. Zipperer,
11 could you give us your home telephone number,
12 please?

13 A. 682-5719.

14 Q. Thank you. On the 31st of October, 2005, do you
15 remember having contact with a young lady at your
16 residence?

17 A. Yes, I do.

18 Q. First of all, could you tell the jury about what
19 time you had contact with this young lady?

20 A. Mid-afternoon.

21 Q. Do you know any closer time to that, anything
22 more specific, or do you not recall?

23 A. Not exactly, I think it was maybe around 3:00.
24 I'm not sure exactly. I was outside working, so.

25 Q. Do you know for sure, or are you guessing, Mrs.

1 Zipperer?

2 A. I'm just estimating that it was around
3 mid-afternoon.

4 Q. Okay. Could you tell me what this young lady
5 looked like?

6 A. She was shorter than I am. She was slender,
7 petite, young.

8 Q. Did you have any conversation with this young
9 lady?

10 A. Yes, I did.

11 Q. Do you know why she was there or can you tell the
12 jury why she was there?

13 A. She was taking a picture of a car that we had for
14 sale.

15 Q. Did this young lady identify herself; did she
16 tell you what her name was?

17 A. I don't remember that she told me her name.

18 Q. After watching the news, or a couple days after
19 having contact with this young woman, did you
20 find out or figure out who it was that was at
21 your residence?

22 A. Yes.

23 Q. And do you remember who that was?

24 A. Yes.

25 Q. Who was that?

1 A. It was Teresa Halbach.

2 Q. I show you a picture which has been received as
3 Exhibit No. 5, just so that we're all sure, if
4 you look to your right, is that the young lady
5 that was at your residence on the 31st?

6 A. Yes, it was.

7 Q. Mrs. Zipperer, can you tell the jury if you
8 remember what this young lady was wearing?

9 A. She was wearing a dark jacket, waist length. I
10 think she had jeans and she had brown hiking
11 boots. Hiking shoes, not boots. They were
12 shoes.

13 Q. All right. When you had contact with this young
14 lady, how long was it that you spoke with her?

15 A. About 15 minutes she was there.

16 Q. After taking the pictures or after finishing her
17 business there, can you tell me what she did?

18 A. She came to talk to me, with some papers. She
19 told me that I should give them to my husband and
20 he should look them over and decide if he wanted
21 to go ahead and put the car in the magazine. And
22 if he did, the picture would be already taken and
23 then all he had to do was call her the next day
24 or whenever he decided to put it in the paper,
25 the magazine.

1 (Exhibit No. 26 marked for identification.)

2 Q. Mrs. Zipperer, I have handed you what's been
3 marked for identification as Exhibit No. 26.

4 It's a bag full of materials; do you recognize
5 that bag?

6 A. Yes.

7 Q. And do you recognize the materials or the papers
8 that are inside of it?

9 A. Yes.

10 Q. Were those the materials or the papers that
11 Teresa Halbach left for you or gave to you after
12 you had your transaction with her?

13 A. Yes.

14 Q. You can just kind of pick one of those things up.
15 First of all, let's start with the *Auto Trader*
16 *Magazine*; is there a magazine in there? Is that
17 right?

18 A. Mm-hmm.

19 Q. Would you show that to the jury, please.

20 (Witness shows the jury.)

21 Q. Is there something in those papers called a bill
22 of sale?

23 A. Yes.

24 Q. Would you show that to the jury, please.

25 (Witness shows the jury.)

1 Q. And is there also a for sale sign in there?

2 A. Yes.

3 Q. Could you show us that, please.

4 (Witness shows the jury.)

5 (Exhibit No. 27 marked for identification.)

6 Q. You can put them back into the bag, if you will.

7 I have now given you what's been marked as

8 Exhibit No. 27. It's a photograph, but it may be

9 a little easier for the jury to see what we're

10 talking about. Can you tell us what Exhibit 27

11 is, please.

12 A. I'm not sure what this is.

13 Q. You don't know what that's a photograph of?

14 ATTORNEY STRANG: I don't have any quarrel

15 that it's a photograph of the items in Exhibit 26.

16 Q. (By Attorney Kratz)~ You were just holding those

17 items, weren't you, in Exhibit 26; isn't this a

18 picture of the things that are in Exhibit 26?

19 A. Oh, yes.

20 Q. A for sale sign, a bill of sale and an *Auto*

21 *Trader Magazine*?

22 A. Yes.

23 ATTORNEY KRATZ: Thank you, counsel.

24 Q. (By Attorney Kratz)~ Mrs. Zipperer, after

25 speaking with this young woman, did she tell you

1 where she was going, where she was heading next?

2 A. No, she didn't.

3 Q. How long was she there?

4 A. About 15 minutes.

5 Q. This young lady seem upset to you?

6 A. No.

7 Q. How was her demeanor; in other words, how did she
8 act towards you?

9 A. She was very nice. She was pleasant and
10 friendly. She smiled, a couple things we talked
11 about, she smiled.

12 Q. Now, prior to her arrival, Mrs. Zipperer, do you
13 recall receiving a phone call from this young
14 lady?

15 A. That day?

16 Q. Yes.

17 A. She left a message that she was having trouble
18 finding our house, but I was outside so I didn't
19 hear it until later, after she was gone. But she
20 found the place. She just told me that she was
21 having trouble finding it. And then she asked me
22 if that was the right house. I said, yes. And
23 she asked me if it was okay if we took a picture
24 of the car. And then I showed her how to get to
25 it. And then she went by herself to take the

1 picture.

2 Q. When she told you that she found the place or
3 when she indicated that she had been lost before
4 she got there; did she indicate how long she was
5 looking for your residence or how long she had
6 called you before she got there, anything like
7 that?

8 A. No, she didn't.

9 Q. Now, was this a vehicle that you were selling or
10 somebody else?

11 A. My grandson was selling it.

12 Q. So you didn't have anything to do with the sale
13 of this car; is that right?

14 A. No.

15 Q. You were just the one that spoke with Ms Halbach;
16 is that right?

17 A. Yes.

18 Q. Did you see her leave?

19 A. No, I did not see her leave.

20 Q. Mrs. Zipperer, after your brief contact with Ms
21 Halbach, did you have any further discussion with
22 her or did you ever talk to this young lady
23 again?

24 A. No, I did not.

25 ATTORNEY KRATZ: I think that's all I have,

1 Q. I'm sorry. This is a strange place, nods of
2 heads don't work as well here as they do outside.
3 So you didn't hear the message until sometime
4 later, after she left?

5 A. In the evening I heard it.

6 Q. So I guess mid-afternoon could have been 2, 2:30
7 possibly?

8 A. Could have been.

9 Q. Could have been 3:00?

10 A. Could have been.

11 Q. Could have been 3:30 or a little after that,
12 something like that, but sometime in the middle
13 of the afternoon?

14 A. Yes.

15 Q. That's the best you can do for us today?

16 A. Yes.

17 Q. Okay. Fair enough. And what sort of yard work
18 was keeping you busy that afternoon?

19 A. I was outside raking.

20 Q. So it's the kind of thing where either you
21 weren't wearing a watch or you weren't worrying
22 about the time?

23 A. No, I don't wear a watch.

24 Q. Now, you folks are -- your address is actually on
25 County Highway B?

1 A. Right.

2 Q. County road B. Okay. Mr. Kratz may have asked
3 you this and I was jotting a note and maybe
4 didn't hear it, but if you continue going north
5 on county road B; do you come to Highway 147?

6 A. Right.

7 Q. Not too far away, right?

8 A. It's about 10 minutes from our house.

9 Q. To the north of B, right?

10 A. Yes.

11 Q. And if you go left on 147, before too long, do
12 you come to the Avery Auto Salvage on your left?

13 A. I don't know where that is. I was never there.

14 Q. Okay. All right. Are you -- At county road B
15 and Highway 147; is that roughly the Mishicot
16 area?

17 A. Right.

18 Q. And you are pretty much due north of the City of
19 Manitowoc?

20 A. Right.

21 Q. All right. Now, you didn't see from which
22 direction this young woman came to your house?

23 A. No, I didn't.

24 Q. You didn't see which direction she left your
25 house from?

1 A. I did not.

2 Q. Okay. You came in for supper time?

3 A. I did?

4 Q. Yes, back to the house.

5 A. Yes.

6 Q. And your husband, George, came home?

7 A. Yes.

8 Q. Your grandson, this was his car?

9 A. Yes.

10 Q. His name is Jason?

11 A. Yes.

12 Q. He was home too?

13 A. I'm not sure when he came home.

14 Q. Sometime that evening, or in any event he stays
15 with you?

16 A. Yes.

17 Q. Okay. Were you -- Were you there, nearby, on the
18 evening of November 3, 3 days after this,
19 Thursday, November 3, sometime shortly after
20 supper when your husband, George, got a telephone
21 call from a sheriff's detective?

22 A. I could have been.

23 Q. Do you remember that call?

24 A. I think so.

25 Q. Actually -- And then later on in the evening,

1 pretty late, about 9:40 at night, a second call
2 came in from a sheriff's detective?

3 A. Yes.

4 Q. Someone in Calumet County both times? Do you
5 remember that?

6 A. I don't remember which one it was.

7 Q. But George was on the phone both times?

8 A. Yes.

9 Q. And the first one, do you remember George raising
10 his voice and getting angry?

11 A. At the first one?

12 Q. Yes.

13 A. He could have.

14 Q. When you say he could have, I'm wondering whether
15 you remember that or that just sounds like
16 something George might do on a bad day?

17 A. Yes, he does raise his voice sometimes.

18 Q. Do you remember that occasion when the sheriff's
19 detective called from Calumet and George raised
20 his voice on the phone?

21 ATTORNEY KRATZ: Judge, I'm sorry, I didn't
22 know that Mrs. Zipperer was involved in this call.
23 Did she testify that she knew who was on the phone?

24 ATTORNEY STRANG: Yes.

25 THE COURT: I believe she did.

1 ATTORNEY STRANG: Right.

2 Q. (By Attorney Strang)~ And Mrs. Zipperer, you

3 weren't on the phone yourself?

4 A. No.

5 Q. But you were near George on his end, I mean, you

6 were in the room or near George while he was on

7 the phone?

8 A. I could have been in the house. I don't remember

9 exactly which call. I don't listen always to

10 what he talks to.

11 Q. Mm-hmm. But do you remember a time when there

12 was a great deal of news about Teresa Halbach

13 being missing?

14 A. Yes.

15 Q. All right. So this would have been that very

16 night that it first made the news, three days

17 after she was to your home, that Thursday; do you

18 have that --

19 A. Yes.

20 Q. -- evening in mind?

21 A. Yes.

22 Q. And I take it it's not often that a detective

23 calls from the sheriff's department to your home?

24 A. No.

25 Q. Do you remember hearing your husband, George,

1 after he raised his voice into the telephone,
2 threatening that he was going to call his
3 attorney?

4 ATTORNEY KRATZ: I'm going to object; this
5 is clearly hearsay.

6 THE COURT: Let's -- Mr. Strang.

7 ATTORNEY STRANG: I'm not offering it for
8 the truth; I'm offering it for the fact that it was
9 said.

10 THE COURT: I'm not sure I discern the
11 difference. You are offering it for -- because of
12 the fact it was said.

13 ATTORNEY STRANG: Yeah, the verbal acts.
14 In fact, I intend to show these were not the truth
15 -- were not being offered for the truth.

16 THE COURT: Well, let's -- I'm not -- Let's
17 step back a second. Foundationally, I know the
18 witness testified about being aware of some calls,
19 but I'm not sure if I'm tracking that she remembers
20 a specific caller being there. So why don't you
21 step back.

22 ATTORNEY STRANG: Sure. That's fair
23 enough.

24 Q. (By Attorney Strang)~ And I understand this is
25 the better part of a year and a half ago, but do

1 you remember your husband receiving a call on
2 Thursday evening, November 3, 2005, which was the
3 night that the news first reported Teresa Halbach
4 missing?

5 A. I don't remember a specific date, no.

6 Q. Do you remember the phone call that I'm
7 describing?

8 A. I remember him talking to someone, but I don't
9 know when.

10 Q. Okay.

11 (Court reporter couldn't hear answer.)

12 A. I don't know if I know who he was talking to.

13 Q. Okay. And I'm not asking for the name of the
14 other person. I understand you weren't on the
15 phone. But this was the night that he would have
16 received two phone calls, two separate phone
17 calls from an investigator --

18 ATTORNEY KRATZ: Judge, I'm going to
19 object. I want to be heard outside the presence of
20 the jury. Counsel is testifying.

21 THE COURT: All right. We'll excuse the
22 jury for a few minutes.

23 (Jury not present.)

24 THE COURT: All right. Mr. Kratz.

25 ATTORNEY KRATZ: Thank you, Judge. This is

1 clearly a hearsay. And counsel injecting the facts
2 in front of this jury, making comments like this is
3 the night that the two investigators called you, not
4 only calls for a hearsay response, but Mr. Strang is
5 offering the testimony in lieu of this witness.

6 I don't see any exception to the hearsay
7 rule. It is for the truth of the matter
8 asserted, even if Mr. Strang's relevancy, if
9 there is any, is the fact that an investigator
10 called suggesting the fact that it was an
11 investigator on the phone, elicits that hearsay
12 response. It is improper, Judge.

13 THE COURT: Mr. Strang.

14 ATTORNEY STRANG: Why don't we excuse the
15 witness so that we're not tainting her testimony by
16 my response.

17 THE COURT: All right. Mrs. Zipperer, can
18 you step out in the hall for a minute.

19 (Witness leaves the courtroom.)

20 THE COURT: Mr. Strang.

21 ATTORNEY STRANG: Thank you. First of all,
22 I am leading the witness, this being
23 cross-examination I'm suggesting to her the answer.
24 The basis, a good faith basis, for the questions is
25 indisputable.

1 I have one report from Corporal Lemieux
2 of the Calumet County Sheriff's Department
3 documenting her phone call. She doesn't give a
4 time of the actual call; she only tells us that
5 about 5:00 on Thursday, November 3, 2005, is when
6 she begins working on the missing person
7 investigation and then writes a report that sort
8 of logs her activities that -- that evening. One
9 of them being a call with Mr. Zipperer in which
10 he becomes belligerent on the telephone.

11 And then I have the report of
12 Investigator John Dederling of the Calumet County
13 Sheriff's Department documenting his call later
14 that same evening. He places the call at
15 approximately 9:40 p.m. on Thursday, November 3,
16 2005, and describes, verbatim. His report says
17 George was extremely belligerent initially and
18 goes on from there.

19 I don't intend to offer Mr. Zipperer's
20 comments for their truth. Indeed, the intent is
21 to show that Mr. Zipperer told, first, Corporal
22 Lemieux and, then, Investigator Dederling, a
23 series of lies about his own activities; about
24 Jason's activities; about whether the *Auto Trader*
25 photographer was a trespasser on the property.

1 Threatened to have the dog eat anyone who would
2 come on the property; wanting Teresa Halbach
3 arrested even after being told that she was a
4 missing person; denying that he had contacted
5 *Auto Trader* or arranged for photographs of the
6 car.

7 So what I'm interested in is eliciting,
8 not for the truth, but as relevant verbal acts,
9 these statements that I believe she would have
10 overheard.

11 THE COURT: Mr. Kratz.

12 ATTORNEY KRATZ: Judge, the fact that
13 Mr. -- Well, first of all, the fact that Mr. Strang
14 has to ask this witness who she was talking to, that
15 alone calls for a hearsay response, so there isn't
16 any foundation. But the relevance, even if there
17 was a hearsay exception, to the fact that
18 Mr. Zipperer flies off the handle or indicates that
19 Ms Halbach was a trespasser, or some other reason, I
20 fail to see. And for both of those reasons, would
21 ask that this question be excluded.

22 ATTORNEY STRANG: Now, she herself meets
23 with Investigator Dederling later that evening at
24 what he marks as 9:53 p.m. So he physically, then,
25 comes to the residence, Investigator Dederling does.

1 He talks with her, as well as her husband. So,
2 again, that's why I believe she's there. And that's
3 the background.

4 THE COURT: I think I understand the --
5 your objection to the hearsay exception being that
6 you are not offering the statements for the truth of
7 the matter asserted. But what's the relevance?

8 ATTORNEY STRANG: The issue here is whether
9 the people investigating Teresa's death investigated
10 without bias, investigated objectively, sort of
11 followed the evidence where it led them.

12 When somebody who was, essentially,
13 evenly placed with Mr. Avery, that is, both known
14 to be appointments on the afternoon that Teresa
15 Halbach is last seen; when that person becomes
16 belligerent and uncooperative with the police,
17 continues to be bellicose and uncooperative when
18 told that this is a missing person and that the
19 police need help; and then tells the police a
20 series -- not one, not two, but a whole series of
21 lies; it's relevant to whether the police, then,
22 pursued that and said, gosh, we have somebody who
23 would have been one of the last people to see her
24 and he's lying to us about just about everything
25 that's coming out of his mouth.

1 He is hostile. He is uncooperative.
2 Perhaps he is worthy of some further
3 investigation. I intend to show later that, in
4 fact, Mr. Zipperer got little or no further
5 investigation.

6 THE COURT: Mr. Kratz.

7 ATTORNEY KRATZ: He can ask the police
8 that, Judge. It shouldn't come in through
9 Mrs. Zipperer, or call George Zipperer.

10 ATTORNEY STRANG: I don't know that I --
11 that I need to call witnesses to do this. Now, if
12 he would rather I ask the police -- and, obviously,
13 if Mrs. Zipperer really does not remember her
14 husband's end of the conversation, then I will do
15 it, with Investigator Dederling. I mean, I'm not --

16 THE COURT: Is the investigator going to be
17 testifying for the State?

18 ATTORNEY KRATZ: He's right outside the
19 door, Judge. He is probably going to be my next
20 witness, with this line of questioning.

21 THE COURT: Given how little the witness
22 appears to remember about the conversation, I'm not
23 sure that it's necessary for the Court to rule on
24 the objection. And if we have got other people here
25 who are firsthand, maybe, Mr. Strang, if they say

1 something that you feel this witness somehow might
2 be in a position to clear up, you can consider
3 bringing her back. But I don't see at this stage,
4 based on what I have heard so far, that she
5 remembers enough about it to offer anything
6 probative.

7 ATTORNEY STRANG: And I will understand
8 completely and entirely accept Mr. Kratz's polite
9 refusal to answer this question, but I will ask -- I
10 will put it to the Court and the Court can require
11 Mr. Kratz, if it wishes, whether the State expects
12 to call Corporal Lemieux.

13 ATTORNEY KRATZ: I don't know.
14 Mrs. Zipperer is not done and I have some questions
15 as well, so.

16 THE COURT: Is Mr. Zipperer scheduled to be
17 testifying?

18 ATTORNEY KRATZ: He's on the witness list;
19 I don't intend to call him. It would be cumulative
20 for what Mrs. Zipperer is saying.

21 THE COURT: Well, at any rate, at this
22 stage, Mrs. Zipperer doesn't seem to remember enough
23 about the conversation. I think it's time to move
24 on.

25 ATTORNEY STRANG: And that's fair and I

1 understand I can do this through Investigator
2 Dederling. I didn't have anything else for
3 Mrs. Zipperer, so I can pass this back to redirect
4 when the jury --

5 THE COURT: Very well.

6 ATTORNEY STRANG: -- is called back.

7 THE COURT: Mr. Kratz, you do have a few
8 questions?

9 ATTORNEY KRATZ: Just since Mr. Strang
10 brought up her memory about the time, she does have
11 a written statement about that.

12 THE COURT: All right. We'll bring the
13 jury back in. We can bring the witness back in.
14 Mr. Strang, I will ask you, for the record when the
15 jury comes back in, if you have any further
16 questions.

17 ATTORNEY STRANG: Sure.

18 (Jury present.)

19 THE COURT: You may be seated. Mr. Strang,
20 do you have any further questions for this witness.

21 ATTORNEY STRANG: I do not have any further
22 questions on cross-examination. Thank you, your
23 Honor.

24 THE COURT: Mr. Kratz.

25 ATTORNEY KRATZ: Just briefly.

REDIRECT EXAMINATION

1
2 BY ATTORNEY KRATZ:

3 Q. Mrs. Zipperer, after Teresa Halbach went missing,
4 do you recall being interviewed yourself by an
5 investigator with the Calumet County Sheriff's
6 Department whose name was John Dederer?

7 A. I don't remember his name, but I was interviewed.

8 Q. A bald fellow, remember being interviewed by?

9 A. I can't remember if he was bald.

10 Q. All right. Mr. Strang asked you if today you
11 recall the approximate time that Teresa was at
12 your residence. And I believe, with Mr. Strang,
13 you indicated that it was sometime in the
14 afternoon, sometime in the later afternoon. Is
15 that what you told him today?

16 A. Mid-afternoon.

17 Q. Do you recall providing Investigator Dederer
18 with a written statement wherein you indicated
19 the time that Teresa was out to your property?

20 A. I remember that day, yes.

21 Q. Do you remember what you wrote in that statement?

22 A. Not everything.

23 Q. If I showed you that statement, would that help
24 refresh your memory about the time that she was
25 there?

1 A. Right. I think I have to have my other glasses,
2 though.

3 Q. I'm sorry?

4 A. Julie has my reading glasses.

5 ATTORNEY KRATZ: We'll get those. In come
6 the reading glasses.

7 THE WITNESS: I'm sorry.

8 Q. (By Attorney Kratz)~ Now, Mrs. Zipperer, I don't
9 want you to say anything, but I want you to just
10 look at your written statement, that's Exhibit
11 No. 28 that's been put in front of you. I want
12 you to just read it to yourself.

13 Mrs. Zipperer, my associate is going to
14 take that exhibit from you, going to take that
15 away from you. And now I'm going to ask you, if
16 after reading that statement if that refreshes
17 your recollection about when Teresa was out to
18 visit you that day?

19 A. Yes, it does.

20 Q. And what time, then, was she out to see you that
21 day?

22 A. Between 2 and 2:30.

23 ATTORNEY KRATZ: That's all I have got,
24 Judge. Thank you.

25 THE COURT: Mr. Strang, anything on

1 recross?

2 ATTORNEY STRANG: I do.

3 **REXCROSS-EXAMINATION**

4 BY ATTORNEY STRANG:

5 Q. The piece of paper that the prosecution just
6 showed you, that actually was something written
7 by the police officer, correct?

8 A. Right. I just told him and he wrote it down.

9 Q. He wrote it down and then you signed it at the
10 bottom?

11 A. Yes.

12 Q. And you wrote the date on it?

13 A. Yes.

14 Q. And that was, oh, six days or so after the young
15 woman had come to your house?

16 A. I don't remember the date that was on there.

17 Q. Okay. It says November 6th, you don't have any
18 reason to doubt that, do you?

19 A. No.

20 Q. Okay. And when the police officer asked you
21 about time, were you doing what you were doing
22 today, which is giving your best estimate of when
23 this young woman showed up while you were raking
24 leaves in the yard?

25 A. No, I probably -- I was -- That was right because

1 I was -- I just couldn't remember right today
2 what exactly time it was.

3 Q. Okay. But as I understood, you don't wear a
4 watch?

5 A. No, I don't.

6 Q. You weren't wearing a watch on Halloween, 2005?

7 A. No.

8 Q. You were out in the yard raking leaves?

9 A. Right.

10 Q. And at that time, do you remember whether he
11 suggested 2 to 2:30 or do you know why he wrote
12 that down?

13 A. That's what I thought it was on that day.

14 Q. And as you sit here today, is that your best
15 recollection, or mid-afternoon?

16 A. What was on the paper, 2 to 2:30.

17 Q. Okay. You are going to go with the paper?

18 A. Right.

19 Q. Okay. Thank you.

20 ATTORNEY KRATZ: Thank you.

21 THE COURT: All right. Mrs. Zipperer, you
22 are excused.

23 ATTORNEY KRATZ: May we approach, Judge.

24 THE COURT: Yes.

25 (Side bar taken.)

1 ATTORNEY KRATZ: State will call Ryan
2 Hillegas, your Honor.

3 Janet, has 27 been received?

4 THE CLERK: Yes.

5 ATTORNEY KRATZ: I move 28, Judge, although
6 I'm quite certain it won't be received in its
7 entirety, but to complete the record I think that it
8 needs to be.

9 THE COURT: That is the last witness'
10 written statement?

11 ATTORNEY STRANG: Yeah, it was just used to
12 refresh recollection.

13 ATTORNEY KRATZ: Just -- Just for the
14 purposes that it was used, Judge.

15 ATTORNEY STRANG: I don't think it gets
16 admitted, but the record is clear that it was used;
17 it was Exhibit 28.

18 THE COURT: So I'm not being asked to admit
19 it, correct?

20 ATTORNEY KRATZ: Not -- No, not in its
21 entirety, you are asked to receive it not to admit.

22 THE COURT: Very well, I will receive it.

23 THE CLERK: Please raise your right hand.

24 **RYAN HILLEGAS**, called as a witness
25 herein, having been first duly sworn, was

1 examined and testified as follows:

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

4 THE WITNESS: Ryan Hillegas, last name is
5 H-i-l-l-e-g-a-s.

6 ATTORNEY KRATZ: You can back up just a
7 little bit, Mr. Hillegas, since the microphone is
8 certainly loud enough for you.

9 **DIRECT EXAMINATION**

10 BY ATTORNEY KRATZ:

11 Q. Mr. Hillegas, did you know a woman by the name of
12 Teresa Halbach?

13 A. Yes.

14 Q. How did you know Teresa?

15 A. I guess she was a long time friend. We had dated
16 for five years or so, end of high school and
17 early part of college.

18 Q. At some point, did you and Ms Halbach stop being
19 boyfriend/girlfriend?

20 A. Yes.

21 Q. Did you remain on friendly terms with her?

22 A. Yes.

23 Q. How often would you speak with her?

24 A. Maybe once every week, sometimes every couple,
25 but definitely kept in touch every week or two.

1 Q. During the time period of October, 2005, were you
2 aware of Ms Halbach's living arrangements?

3 A. Yes.

4 Q. And what were they, if you recall?

5 A. She lived in a house with a friend of ours, Scott
6 Bloedorn.

7 Q. Scott was also a friend of yours; is that right?

8 A. Yes.

9 Q. And was it your understanding that Scott and
10 Teresa had any kind of a romantic relationship?

11 A. No, no romantic relationship.

12 Q. Just roommates?

13 A. Just roommates.

14 Q. Mr. Hillegas, are you familiar with how close the
15 residence that Teresa lived in was to her
16 parents' house?

17 A. Yes.

18 Q. Where was it?

19 A. Her parents lived roughly a quarter mile down the
20 road.

21 Q. And are you also familiar with the vehicle that
22 Teresa drove at the time?

23 A. Yes.

24 Q. Could you tell us about that vehicle, please?

25 A. It was a Toyota RAV4, a blue-green color,

1 combination blue-green.

2 Q. I show you what's been received as Exhibit No. 5;
3 it's on the large screen. Is that the -- both
4 the photograph of Teresa Halbach and also her
5 RAV4?

6 A. Yes.

7 Q. Mr. Hillegas, when was the first time that you
8 heard that your friend, Teresa, had gone missing?

9 A. It was Thursday, after Halloween, which would
10 have made it the 3rd, I believe, of November,
11 then.

12 Q. And on November 3rd, can you tell the jury what
13 you did, please?

14 A. Yeah, in the afternoon, I believe it was, I'm
15 going to say around 3:00 or so, Scott had called
16 me and said that Teresa's dad had went over and
17 asked if he had seen Teresa. And Scott called me
18 and I went over to the house that afternoon.

19 Basically, tried digging up any
20 information on where she might be. We started
21 calling her friends. We found a list of her
22 friends on her computer with all their numbers.
23 So we started calling all them to see if anybody
24 had whereabouts. And then after that we printed
25 off her cell phone records off the internet, just

1 to see what calls she had made, or other numbers
2 of friends we could find on there.

3 Q. Let me just stop you at that point.

4 Mr. Hillegas, finding her cell phone records, how
5 does something like that occur? How did you do
6 that?

7 A. Well, there were a couple of us that tried
8 figuring it out. Basically figured out her
9 password and made up a user name that worked and
10 got into her phone records and printed it right
11 off.

12 Q. Had you known at that time that she hadn't been
13 seen since the 31st of October?

14 A. Basically, I knew that she was missing. I didn't
15 know she hadn't been seen by anybody. But I knew
16 that -- knew that she was missing or decided that
17 she was missing at that point.

18 Q. After printing off or getting access to her cell
19 phone records, I assume to her account, through
20 her cell phone provider; were you able to provide
21 that information to law enforcement authorities?

22 A. Yes.

23 Q. You said that you had called some people; what
24 kind of calls were you making?

25 A. Well, the -- I mean, we called all her friends

1 and basically just said that, you know, we
2 haven't seen her, and wondering whereabouts.
3 None of those people really turned anything up
4 for us. And, then, we had called a good list of,
5 like, the last numbers she had called and numbers
6 on her phone.

7 Q. Now, on the 3rd -- By the way, that would be the
8 first day that she had been reported missing; is
9 that your understanding?

10 A. Yes.

11 Q. On the 3rd, were there other friends or other
12 family members who were assisting you in the
13 search effort?

14 A. Yes. Yeah, it was me, Scott Bloedorn, one of her
15 girlfriends, Kelly Bitsen (phonetic) came over.
16 I believe a little later another friend, named
17 Lisa, was over as well.

18 Q. About how long that evening did you work on this
19 project?

20 A. Well, for the good portion of the night,
21 probably, I guess, until midnight, 1:00. We were
22 calling friends and other people we didn't get a
23 hold of and people that were finally returning
24 calls later. Better portion of the night.

25 Q. The next day, the 4th, Friday, the 4th of

1 November; did you become, again, actively
2 involved in the search for Teresa?

3 A. Yes.

4 Q. Tell the jury what you did, please.

5 A. Yeah, that afternoon, you know, it was probably
6 late morning, but I had talked to the family.
7 And they had arranged with the missing persons
8 organization out of Appleton; they were printing
9 up fliers, missing person fliers. And they just
10 asked me if I could pick them up and arrange, you
11 know, how we would get them out.

12 That was kind of the afternoon. I went
13 and picked up the posters, probably early
14 afternoon, noon, 1:00. And when I had gotten
15 back, then, to Teresa's house, there was a good
16 number of family members and friends who were
17 waiting to, basically, find out what they can do
18 and go pass the fliers out.

19 Q. I will show you what's been received as Exhibit
20 No. 10; are these the missing person posters that
21 you are talking about?

22 A. Yes.

23 Q. About how many of those posters did you assist in
24 not only having produced, but in distributing?

25 A. I'm going to estimate, but probably, geez,

1 somewhere -- I don't know, probably between a
2 thousand and 2,000, maybe 3,000. They were all
3 over the place, I guess.

4 Q. Did you receive assistance from her employer, or
5 at least one of her employers, *Auto Trader*
6 *Magazine*?

7 A. To handle the fliers?

8 Q. Just to get information from them.

9 A. I never spoke with anybody from *Auto Trader*.

10 Q. Okay. An organization that did help you, though,
11 and it's up in the top left hand corner of this
12 exhibit, is something called YES, Youth Educated
13 in Safety; is that right?

14 A. Yes.

15 Q. This missing persons search organization, did
16 they provide you with some technical and other
17 assistance?

18 A. Yes.

19 Q. The distribution efforts, that is, getting these
20 posters out; who was in charge of that?

21 A. I guess I was kind of the unofficial leader,
22 coordinator, of the effort, if you could call it
23 that.

24 Q. How many people did you have to help?

25 A. Well, when I got back to the house that day,

1 there were -- I'm estimating here, but probably
2 between 30 and 45 people. That was on just the
3 first afternoon, when we handed them out. But
4 then we had contacted truck stops and faxed
5 fliers.

6 We had people just stopping by
7 throughout the day to pick up fliers. Just to
8 put them out anywhere we could. I know there
9 were people out pretty late on Friday night and
10 still putting up fliers and driving city to city.

11 Q. Did your efforts, Mr. Hillegas, include the
12 media?

13 A. A little bit, yes.

14 Q. And this information -- information about the
15 missing person, where she was last seen and those
16 kind of things, was that distributed to the
17 media, as far as you know?

18 A. Yeah. And they had fliers too, so ...

19 Q. Now, with you being the -- whether you want to
20 call it official or unofficial, being the
21 coordinator of this citizen search effort on that
22 Friday, that is, the day after Teresa was
23 reported missing; what other efforts were being
24 developed to try to find Teresa?

25 A. Well, after Friday and we had got the posters out

1 basically kind of through the instruction of the
2 YES Foundation and their recommendations, first
3 they wanted us to get fliers out and make as many
4 people aware as we could, all about Teresa and
5 that she was missing. After that, it was kind of
6 to go a little more and basically to search.

7 Friday night after the posters were done
8 being handed out, we had gotten back and me and
9 Scott, for most of the night decided -- we kind
10 of planned a road search, I guess you could call
11 it, where everybody got in their vehicles and
12 drove certain parts of roads and maps that we had
13 plotted out for them, just to make sure we
14 covered everything, but ... So Friday night we
15 pretty much planned on an all day road search
16 that went on Saturday, with volunteers again.

17 Q. Well, Friday night you said that you were making
18 some maps; how was that done?

19 A. Satellite imagery off the internet mostly,
20 otherwise just Map Quest.

21 Q. Maps of what?

22 A. Maps of, you know, the areas we wanted to search.
23 We kind of blew up smaller portions so you could
24 see the roads better and county highways out in
25 the Manitowoc area near the Averys, any kind of

1 county highway. Basically, we tried to cover
2 anything from Hilbert to Green Bay, all the way
3 to the lake. Pretty much covering as much land
4 as we could.

5 Q. Well, this was a citizen search effort; is that
6 right?

7 A. Yes.

8 Q. In other words, family members and friends and
9 very -- very much so just a citizen effort
10 coordinated by you; is that right?

11 A. Yes.

12 Q. Let me ask you something, Mr. Hillegas, why would
13 you center or why would you direct some of your
14 search efforts around the Avery property?

15 A. Well, mostly for the fact that, you know, the
16 media had covered so much of it. You know, all
17 you heard about was around the Avery property.
18 And I believe at that point we had known that,
19 you know, her last kind of whereabouts were in
20 that neck of the woods.

21 Q. So even as an untrained law enforcement officer,
22 you knew to look for the last place she was seen
23 alive; is that right?

24 A. Yes.

25 Q. Okay. It didn't strike you as being unfair to

1 Mr. Steven Avery, did it?

2 A. No.

3 Q. All right. Now, these physical searches, you
4 said the road searches and things like that; how
5 many people were involved in that effort?

6 A. Well, throughout the day on Saturday there were
7 people kind of coming and going, people getting
8 up, work late in the morning, still wanted to
9 help. Estimate, say probably Saturday's effort
10 was a little bigger than Friday, probably between
11 80 and 110 people, I would guess.

12 Q. All right. So over 100 of Teresa's friends and
13 family and relatives were gathered to look for
14 her Saturday morning; is that right?

15 A. Yes.

16 Q. What time did you all convene and where did this
17 happen?

18 A. Everybody met at Teresa's house. I believe
19 everybody was there early, probably 6, 6:30, a
20 good portion of them were there by about that. I
21 would say between 6 and 7 is when everybody got
22 there.

23 Q. Tell us about that morning; what happened that
24 morning.

25 A. Well, everybody pretty much met in the driveway.

1 Me and Scott, by that point in the morning, had
2 all the maps arranged. But we had a large map
3 that we printed out with kind of smaller
4 sectioned areas that we had printed smaller maps
5 out for everybody to use.

6 Basically had everybody line up and come
7 in the back of the house. And they were to walk
8 through, once they got in the kitchen, we kind of
9 gave them an assignment, groups of one car or
10 two, we would give the same map to and have them
11 all cover the same area to make sure all the
12 roads were all covered.

13 But everybody had an assignment. When
14 they were done with their assignment, pretty much
15 instructed to call back and we would give them a
16 new assigned area to cover, one that hadn't
17 been -- that we hadn't sent any people to yet.

18 Q. Just kind of a grid search?

19 A. Basically, yes.

20 Q. All right. Do you know Pam Sturm or her
21 daughter, Nikole Sturm?

22 A. Yes.

23 Q. How do you know Pam and Nikole?

24 A. I had met them Saturday morning. They showed up
25 after the good majority of everybody else had

1 left. But that was the first time I had met
2 them.

3 Q. After, then, the first wave, if you will, of
4 citizens got their maps and they went off to do
5 their search; what did you and Pam Sturm discuss?

6 A. Well, Pam had showed up after pretty much the
7 whole group of everybody had already left to
8 search in the morning. And we had a good -- you
9 know, so many people, we had a good portion of
10 everything that we had divvied up. Good portion
11 of that was already handed out to other people.
12 Wasn't much area left to search yet.

13 And she just asked, basically came out
14 and said, had anybody gone to the car yard yet,
15 the Avery Salvage Yard. We just said, no, that
16 we hadn't been sending anybody in there and she
17 offered to and said she would be willing to
18 and --

19 ATTORNEY BUTING: Objection, your Honor,
20 hearsay.

21 THE COURT: Mr. Kratz.

22 ATTORNEY KRATZ: Not offered for the truth,
23 Judge. It's where Pam eventually goes. I can
24 certainly go on to another question. I'm not
25 inquiring any further into conversations.

1 THE COURT: Assuming that witness is going
2 to be testifying later, I will agree; I will allow
3 it.

4 Q. (By Attorney Kratz)~ Before Pam left, then, to
5 travel to the Avery Salvage Yard, was she
6 provided a map or any other information?

7 A. Yes. Yes, I gave her a map.

8 Q. What other information was she provided, if you
9 know?

10 A. I gave her a map about the area out there and how
11 to get out there. Scott had borrowed her his
12 camera just in case they were to find something.

13 Q. Do you know what kind of camera it was?

14 A. A digital camera, I don't know what brand.

15 Q. When you say provided them, who was with Pam?

16 A. Pam and her daughter.

17 Q. Nikole?

18 A. Nikole, yes.

19 Q. All right. Do you know about what time Pam and
20 Nikole left, then, for the Avery property?

21 A. I'm going to estimate, but I would probably say
22 somewhere between quarter to 8 and 8:00 maybe.

23 Q. Sometime later that day, without telling us the
24 words or what you heard, but did you hear some
25 results of what Pam and Nikole Sturm had found

1 out at the location?

2 A. Yes.

3 Q. Even after Pam and Nikole's discovery, later on
4 the 5th, did you and other citizens remain
5 involved in search efforts?

6 A. Yes.

7 Q. Can you describe those for the jury, please.

8 A. Well, the car search on Saturday went all day,
9 pretty much into the night again. And Saturday
10 night, then, once everybody was done searching,
11 we met back at the house and started planning our
12 next endeavor to go on, I guess you could say.

13 Q. Let me -- Let me just stop you. After the car --
14 After the SUV was found, in this case; you kept
15 searching, you kept your search efforts going?

16 A. Yes.

17 Q. Why?

18 A. Well, we hadn't found Teresa.

19 Q. Do you remember what locations your citizens
20 searched for Teresa?

21 A. Yeah. You know, we went through all the cities,
22 neighboring cities around Manitowoc County.
23 Sunday, we had started doing fields and parks and
24 ditches next to the highways, any place that, I
25 guess, something could or somebody could be put

1 and, you know, not be visibly seen. But Sunday
2 we started doing actual walk-throughs of land and
3 property near the Averys.

4 Q. It's a hard question, Ryan, but you were looking
5 for Teresa's body; is that right?

6 A. Yes.

7 Q. Did you continue to receive technical assistance
8 in assigning citizens to this effort?

9 A. Yes.

10 Q. Who did you get assistance from?

11 A. Well, basically, the YES Foundation, again. We
12 took any advice from them that we could, since
13 Jay Breyer, who was, I guess, the leader of it,
14 or the guy who runs it, he had seemed to have a
15 lot of experience in missing person cases.

16 Q. Did you personally proceed near the Avery salvage
17 property and did you engage in searches of that
18 area?

19 A. Yes.

20 Q. Do you remember where you -- where you looked
21 around there --

22 A. Yes.

23 Q. -- just briefly.

24 A. Yeah, we -- we did, like Maribel County Park is
25 near there. We did some private -- or public

1 land that was pretty much adjacent to Avery
2 property, but behind it all. Any field somewhere
3 around there that were outside the police bounds
4 that we could get to, basically we searched.

5 Q. Mr. Hillegas, was this all before human remains
6 were found on the Avery property itself?

7 A. I believe so, yes.

8 Q. After you learned -- I assume you learned at some
9 point that human bones and human remains were
10 found; is that right?

11 A. Yes.

12 Q. After that point, did you continue with your
13 search efforts or did you call them off?

14 A. No, we called the search off then.

15 ATTORNEY KRATZ: That's all I have of
16 Mr. Hillegas, Judge. Thank you.

17 THE COURT: All right. I think at this
18 time we will take our afternoon break. We'll come
19 back in 15 minutes.

20 Members of the jury, I will remind you,
21 again, not to discuss the case during the break.
22 We'll see you in 15 minutes.

23 (Jury not present.)

24 THE COURT: Ten to three, counsel.

25 ATTORNEY KRATZ: Thank you, Judge.

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(Recess taken.)

(Jury present.)

THE COURT: Mr. Buting, at this time you may begin your cross-examination of the witness.

ATTORNEY BUTING: Thank you, your Honor.

CROSS-EXAMINATION

BY ATTORNEY BUTING:

Q. Mr. Hillegas, can you give me a little bit of background on how long you knew Teresa?

A. Sure. I met Teresa, I believe, when I was a freshmen in high school and I have known her ever since.

Q. And did you grow up in the same general town, then, I take it?

A. She lived in St. John; I lived in Hilbert. We went to the same high school.

Q. And then you went off -- How are you employed by the way?

A. I'm a registered nurse.

Q. And where are you working right now?

A. In Milwaukee.

Q. At various hospitals?

A. At Froedert Hospital.

Q. Okay. And back in October of 2005, where were you working?

1 A. I was currently unemployed. I had just finished
2 school.

3 Q. Okay. So on October 31st, you were not working
4 at all?

5 A. That's correct.

6 Q. And where were you living?

7 A. At home with my parents.

8 Q. Which is?

9 A. In Hilbert.

10 Q. In Hilbert, okay. Now, you said that you used to
11 date Teresa kind of on and off, or for how long
12 were you on and how long were you off?

13 A. Well, we dated for a total of five years, I
14 think. We broke up two or three times in the
15 middle for short periods, maybe for a month at a
16 time.

17 Q. So when was the last time you would say when you
18 broke up?

19 A. 2001, I believe.

20 Q. Was that your initiative or hers?

21 A. Just kind of a general understanding, kind of
22 both of us. We were just going separate ways,
23 so.

24 Q. Okay. And after that time, did you have any
25 interest in renewing that nature of that kind of

1 a relationship with her?

2 A. No.

3 Q. Now, Scott Bloedorn, was also a friend of yours,
4 right?

5 A. Yes.

6 Q. Was he, back in October of 2005, your best
7 friend?

8 A. One of them, yes.

9 Q. Okay. Would you -- When did he move in with
10 Teresa?

11 A. I don't know that.

12 Q. Well, was it less than a year?

13 A. It was less than a year before that Halloween.

14 Q. Eight or nine months sound about right?

15 A. It might be. I guess I'm not sure.

16 Q. Okay. You have been over to that house before I
17 take it, right?

18 A. Yes.

19 Q. What's the layout of the house? How is it set
20 up? How was it set up back then?

21 A. Well, Scott had -- Scott's room was upstairs.
22 Teresa's was downstairs. It was kind of an --
23 almost an understanding; all Scott's stuff was
24 upstairs and Teresa's was downstairs. They kind
25 of had it split, shared a kitchen and the

1 bathroom.

2 Q. So they had sort of their own floors and separate
3 bedroom on each floor?

4 A. Yes.

5 Q. But they shared the kitchen and you said the
6 bathroom, there was one bathroom they shared?

7 A. Yes.

8 Q. So they would see each other frequently,
9 presumably, during the day? Is that a yes?

10 A. Sure. Yes.

11 Q. Okay. And did you come over and visit Scott
12 various times while he was living with Teresa?

13 A. Yes.

14 Q. And did you spend time over there; dinner,
15 watching TV, or a movie or something?

16 A. Occasionally, yes.

17 Q. Was it -- Well, I take it, then, from -- when you
18 say that you talked with her at least every other
19 week, or every week even?

20 A. Yes.

21 Q. On the phone, or would you actually get together
22 with her, or what?

23 A. Either on the phone, or I would see her at the
24 house when I would go visit Scott.

25 Q. Okay. So you were over there quite a bit during

1 that last six months or so?

2 A. I wouldn't say quite a bit.

3 Q. Once a week?

4 A. Occasionally, once a week, maybe.

5 Q. Okay. Okay. Over that time, would it be fair to
6 say that you became accustomed with Teresa's
7 habits and routines, generally?

8 A. No, I wouldn't say that.

9 Q. Well, did you know, for instance, was she a
10 homebody; did she like to go out?

11 A. She kind of did what she wanted. Sometimes I
12 would go over there and, you know, not see her
13 the three times that I stopped that week. And
14 the following week I could go there and I would
15 be there three nights in a row when she would be
16 there every night, just depended.

17 Q. Were you familiar with her circle of friends?

18 A. Most of them, yes.

19 Q. For instance, she went to UW Green Bay, right?

20 A. Yes.

21 Q. And she worked in Green Bay?

22 A. Yes.

23 Q. So she had a lot of friends in Green Bay?

24 A. Yes.

25 Q. And would she go out, socializing with those

1 friends, if you know?

2 A. Yes.

3 Q. Did you ever go with her when she would socialize
4 with that group of friends?

5 A. When we were dating, yeah. She was in Green Bay
6 the first -- the last two years when we were
7 dating, so, occasionally, then, I would go out
8 with her and her friends, but other than that,
9 not really.

10 Q. Would you say she was a sociable person,
11 generally?

12 A. Yes.

13 Q. She liked to be around people?

14 A. Yes.

15 Q. She liked to go to parties?

16 A. Yes.

17 Q. Liked to go to bars?

18 A. Yes.

19 Q. Particularly karaoke bars, I think, was one of
20 her favorites?

21 A. I believe so, yes.

22 Q. Okay. And in 2005, were there times when you
23 would also go out with her to those kinds of
24 places, either parties or bars?

25 A. I don't think I -- I think the only bar -- I

1 maybe only went out with her once that whole
2 year, probably just didn't share that with her.

3 Q. And do you know whether Scott ever went out with
4 her to bars or parties?

5 A. A few times. I don't believe it was too often.

6 Q. Okay. And when she would be home, do you know
7 whether she would have dinner there or whether
8 she would eat out? You know, what did she do at
9 home?

10 A. Occasionally she did both.

11 Q. Did she and Scott have dinner together?

12 A. Not that I'm aware. I mean, maybe they sat down
13 and ate a meal together, but.

14 Q. So you are not that familiar with what the
15 evening routine was; is what you're saying?

16 A. No.

17 Q. Okay. Do you know whether it was unusual for her
18 to be out overnight during those last six months
19 or so?

20 A. Occasionally she would. I know she would go to
21 Green Bay and stay at a friend's house overnight.

22 Q. Okay. Let me ask you about the weekend of
23 October 29th and 30th, 29th being Saturday; did
24 you see her or talk with her that day?

25 A. I don't believe I talked to her on Saturday. I

1 don't think so.

2 Q. Okay. Did you talk with her or see her on

3 Sunday?

4 A. Yes.

5 Q. And where was that?

6 A. At her house.

7 Q. And how did that come about?

8 A. I had just stopped briefly. I was dropping

9 something off for Scott and she was sitting there

10 at her computer.

11 Q. Do you know about what time that was?

12 A. I don't know.

13 Q. I mean, are we talking morning, afternoon, night?

14 A. I don't know.

15 Q. You don't remember at all?

16 A. No.

17 Q. And she was just sitting at the computer?

18 A. Yes.

19 Q. Did you talk to her at all?

20 A. A little bit, yes.

21 Q. Now, the night before, Saturday night, was sort

22 of Halloween weekend; there would be parties, bar

23 parties, house parties, whatever. Did you chit

24 chat at all, talk about that?

25 A. On Sunday we had just talked and she had

1 mentioned that she had a cowgirl hat and she was
2 going to dress up like a cowgirl. And that was
3 pretty much the extent of it.

4 Q. This was, I'm sorry, Saturday or Sunday?

5 A. Sunday.

6 Q. Okay. Did she talk about having gone out the
7 night before, Saturday night at all?

8 A. No.

9 Q. Do you know from any other information whether
10 she did go out Saturday night?

11 A. I don't know.

12 Q. Or Sunday night?

13 A. I don't know that either.

14 Q. You said that you distributed 1,000 to 3,000
15 posters?

16 A. Roughly.

17 Q. And that she had all these friends and helping
18 out, including friends in Green Bay calling. You
19 called some friends; is that right?

20 A. Yes.

21 Q. This was on November 3rd, when you called the
22 friends, right?

23 A. That was Thursday, yes.

24 Q. Yeah, Thursday. But you said none of those
25 people were particularly helpful, giving you any

1 information about her. Most of them hadn't seen
2 her for awhile?

3 A. That's correct.

4 Q. With all those posters out, all that publicity,
5 did anybody ever come forward and talk to you,
6 tell you where Teresa was on Saturday night?

7 A. No.

8 Q. October 29th?

9 A. Not that I remember.

10 Q. So that night is an unknown in her life; is that
11 right?

12 A. I don't know of what happened that night with
13 her.

14 Q. Be fair to say that Teresa had a private side as
15 well, that you didn't know about?

16 A. No, I don't think so. I don't think she had a
17 private side that I didn't know about. We were
18 pretty open with each other. We talked a lot.

19 Q. Well, if she had gone out Saturday night with
20 somebody, or some place, and you know nothing
21 about it, would that surprise you?

22 ATTORNEY KRATZ: Objection relevance,
23 Judge.

24 THE COURT: Mr. Buting.

25 ATTORNEY BUTING: I will withdraw it.

1 THE COURT: Very well.

2 Q. (By Attorney Buting)~ So the last time you
3 actually saw Teresa was Sunday?

4 A. Yes.

5 Q. You never talked with her on the phone after
6 that?

7 A. No.

8 Q. Monday, Tuesday, Wednesday, Thursday, you never
9 called her?

10 A. No. Well, that's not correct. I did call her
11 somewhere in the middle of the week and I did not
12 get an answer and her voice mailbox had said that
13 it was full.

14 Q. Okay. Do you remember what day that was?

15 A. No, I don't.

16 Q. Thursday, Wednesday?

17 A. I called her on Thursday when I realized she was
18 missing, but I believe I called her once earlier
19 in the week.

20 Q. Okay. So when you first learned, you said it was
21 Scott that came over; did he come over, or call
22 you, or what did he?

23 A. He called me.

24 Q. Called you and said that -- he said that he
25 wanted your assistance, or what?

1 A. He just called and said that Teresa's dad had
2 came over to his work site and asked him if he
3 had seen her recently. And Scott had called me
4 on his way home just asking if I had talked to
5 her. Asking if I could come over and help.

6 Q. Now, you said that -- Scott's work site? What is
7 that?

8 A. Scott worked construction. I don't know where
9 his work site was, but usually they did kind of
10 local house work.

11 Q. Okay. Did you ask Scott if he had tried to call
12 Teresa at all during the Monday, Tuesday,
13 Wednesday, Thursday?

14 A. I don't know.

15 Q. May have called, is that what you are saying?

16 A. I don't know.

17 Q. Did you think that it was odd that three or four
18 days had gone by without Scott coming forward and
19 saying, where is she?

20 A. No.

21 Q. That didn't strike you as odd at all?

22 A. No.

23 Q. Why not?

24 A. Well, they were kind of on differing schedules.
25 Teresa worked for herself and Scott worked

1 construction. So he would be up and out of the
2 house by 5:30, 6 in the morning. A lot of times
3 I know Teresa didn't get up and go to work until
4 9 or 10.

5 Q. So did you know Scott's schedule?

6 A. Fairly well, yes.

7 Q. But you didn't know where he was working, is what
8 you are saying?

9 A. I didn't know what site they were on that day.

10 Q. On any given day?

11 A. On any given day, for that matter. Occasionally
12 I would know, just from driving by and seeing him
13 on the side of the road working on a house, but.

14 Q. Okay. What kind of construction did he do?

15 A. Rough work, rough framing.

16 Q. Rough carpenter?

17 A. Yeah.

18 Q. Now, when you went over there, to her house, on
19 Thursday; you said Scott had already found some
20 kind of information or no?

21 A. No.

22 Q. What did you do first; how did you start to
23 gather information about who to call?

24 A. I just started looking through all her records.
25 She had filing cabinets set next to her computer.

1 Kind of her business workstation, I guess. Just
2 started looking through the files. Turned her
3 computer on and there was actually a -- She had
4 an icon that was named Teresa's friends. Clicked
5 on that and her friend's basically popped right
6 up with phone numbers.

7 Q. Was this a laptop?

8 A. It was.

9 Q. Okay. And what did you do first? You talked
10 about going online with her phone records, or did
11 you call friends first?

12 A. Well, we got the phone list of her friends and
13 started calling them. And I guess you could
14 probably say it kind of all went down at the same
15 time. We were calling friends; it was me and
16 Scott, and Kelly Bitsen was calling friends as
17 well. And we were kind of working on getting her
18 phone records at the same time.

19 Q. How soon did Kelly Bitsen arrive? How long were
20 you and Scott there together before she arrived?

21 A. I'm going to estimate and say between --

22 Q. Six, something like that?

23 A. What's that?

24 Q. She arrived like 6 or 7, something like that?

25 A. Yeah, she was there a few hours after I got

1 there, I believe. She was one of the first
2 people --

3 Q. Okay.

4 A. -- that we called of her friends.

5 Q. Now, tell me about this online search. You tried
6 calling her phone and it was full, right?

7 A. Yes.

8 Q. Did you know her voice mail password?

9 A. No.

10 Q. Did you ever -- So you didn't call and listen to
11 her voice mail at all?

12 A. No.

13 Q. Never?

14 A. No.

15 Q. Never did that day, or before?

16 A. No.

17 Q. Or since? Okay. And she had never shared her
18 password with you for the online records either?

19 A. No.

20 Q. So you just went online to Cingular Wireless, or
21 whatever, .com and just guessed her password.

22 A. Well, we -- me and Kelly Bitsen had just kind of
23 figured that it would fairly be something
24 relating to her sisters. I believe -- I think it
25 was their birthdays that got into it for us. I'm

1 not exactly sure about what the password was.

2 Q. But you didn't know what her user name was.

3 A. No, I believe that automatically came up when you
4 entered her phone number in, you just need the
5 password.

6 Q. Okay. And that's the first time you ever tried
7 to search her phone record or use that password?

8 A. Yeah.

9 Q. Do you know if -- if anybody else knew her voice
10 mail password?

11 A. I don't know that.

12 Q. Or if anybody else listened to her voice mails?

13 A. I don't know that either.

14 Q. All right. By the time that Calumet county
15 investigators arrived, I take it you guys were
16 pretty concerned about Teresa's well being, where
17 she was?

18 A. Yes.

19 Q. And you knew that it was important that you
20 provide as much information, as accurate
21 information as you could?

22 A. Yes.

23 Q. Did the police interview you and Scott together,
24 or did they put you in separate rooms when they
25 talked to you, or how did they do that?

1 A. I believe we were -- I believe we were in the
2 same room.

3 Q. Okay. Now, did the investigators ask you any
4 questions about the nature of your relationship
5 with Teresa?

6 A. Yeah.

7 Q. And they learned that you were a former
8 boyfriend, stayed good friends with her?

9 A. Well, I believe I just said that I was a friend
10 of hers. I don't think I mentioned that I was an
11 ex-boyfriend.

12 Q. Okay. And they didn't pursue that and ask if you
13 had ever had anything more than a friendship is
14 that what you are saying?

15 A. I believe so. It came out eventually, I just
16 didn't feel that it mattered.

17 (Court reporter coughing, asked him to repeat.)

18 Q. Let me try again.

19 A. Ask it again, please.

20 Q. Did the police ever probe further and ask if you
21 had -- the nature of your relationship with her
22 beyond whether there was ever anything more than
23 friendship?

24 A. I don't think they really probed into that. I
25 mean, I don't remember when it came out or who

1 was the one that mentioned that we used to date.

2 Q. Okay. But it wasn't talked about that night?

3 A. I don't believe so.

4 Q. When they were trying to find out what was
5 happening -- or what had happened to this missing
6 person, right?

7 A. Yeah.

8 Q. And if Scott was there with you, then, did they
9 ask Scott the nature of his relationship with
10 Teresa?

11 A. Yeah.

12 Q. Did they ask any kind of probing questions about
13 whether he was ever intimately involved with her?

14 ATTORNEY KRATZ: Objection relevance,
15 Judge. Is this a Calumet County bias; that's my
16 question?

17 THE COURT: Mr. Buting.

18 ATTORNEY BUTING: Investigative biases are
19 relevant no matter who is doing the investigation
20 involved in the case.

21 THE COURT: I don't know if this really
22 falls under bias; I will allow the question.

23 THE WITNESS: Please ask me again.

24 Q. (By Attorney Buting)~ Did the investigators probe
25 the nature of Scott's relationship at all to see,

1 you know, as to whether or not there was any kind
2 of intimate relationship between the two of them?

3 A. I don't believe they probed into it. I believe
4 he just said that he was a roommate and a friend.

5 Q. Okay. So a single man living in a house with a
6 single woman, but that was the extent of it, just
7 roommates?

8 A. Yes.

9 Q. And as far as you knew, that was the extent of
10 their relationship as well?

11 A. Yes.

12 Q. Scott never told you otherwise?

13 A. That's correct.

14 Q. Teresa never told you otherwise?

15 A. That's correct as well.

16 Q. And your recollection is that you don't know when
17 your former boyfriend status ever came up; it was
18 sometime down -- some several days later?

19 A. That's correct.

20 Q. Wasn't like the next day?

21 A. May have been. Like I said, I don't know when it
22 came up.

23 Q. Okay. So, going to the next day for a minute,
24 now, let's just go to November 4th. You
25 mentioned that -- Well, let me go back for a

1 minute. You mentioned that you had this meeting,
2 sort of on Friday -- on Thursday night, the 3rd.
3 And that was you and Scott and Kelly, and is that
4 it, or do other friends come over?

5 A. I believe her friend, Lisa, was over, but not
6 until quite a bit later that night.

7 Q. Okay. And so the plan was made to contact this
8 organization, YES, the next day, make posters?

9 A. No, actually the family was in contact with YES.

10 Q. Okay. So that was something that came up later?

11 A. Yes.

12 Q. On the 4th, after you had all these posters made
13 up; you had another meeting that -- that late
14 afternoon or evening, Friday, to talk about where
15 to go from here?

16 A. Yeah, Friday -- Friday night, after the posters
17 were done being handed out.

18 Q. Okay. And you said that you downloaded satellite
19 images and maps and were kind of trying to figure
20 out how to divide up different areas, right?

21 A. Yes.

22 Q. And you were asked about why you directed any
23 efforts towards the Avery area, on direct, by
24 Mr. Kratz; do you recall that?

25 A. Yes.

1 Q. And I believe you said it was because the media
2 had the information and the media was already
3 seeming to focus on Mr. Avery; is that right?

4 A. I don't think it was Avery himself. I believe
5 that it was just that we knew her last
6 whereabouts were out in Manitowoc County.

7 Q. Okay. And had you seen any interviews with
8 Mr. Avery at that point, or any news people
9 coming down and talking to people on the Avery
10 property?

11 A. I don't know if I had seen any interviews. I
12 guess I was out putting posters up most of the
13 day.

14 Q. But you did know that by that time the word was
15 out in the media that the last known place, at
16 least that they thought the last known place had
17 been at the Averys, right?

18 A. Yes.

19 Q. And so that would have been true for anybody's
20 knowledge, not just yours, anybody watching the
21 media?

22 A. Yes.

23 Q. Now, the next morning, then, when you started
24 dividing up things, Scott was with you, right?

25 A. Yes.

1 Q. And was Scott helping to assign people different
2 places?
3 A. Yes.
4 Q. And when the Sturm's arrived, you said that Scott
5 had borrowed Pam Sturm a camera; is that right?
6 A. Yes.
7 Q. Had lent, had lent her, given her a camera?
8 A. Yes.
9 Q. A digital camera?
10 A. Yes.
11 Q. He didn't give everyone of those members,
12 Saturday morning, a camera, did he?
13 A. No.
14 Q. He just gave it to Pam Sturm, who he knew was
15 going to go out to the Avery Salvage Yard?
16 A. That's correct.
17 Q. The only person he gave a camera to, right?
18 A. Yes.
19 Q. And during this entire missing person period,
20 that is, before the RAV4 was found, did the
21 police ever ask you for any kind of alibi for
22 October 31st?
23 A. No.
24 Q. They never asked your whereabouts whatsoever?
25 A. I don't believe so.

1 Q. Okay. Anybody, point blank, ever ask you, if you
2 had any knowledge about her disappearance, or
3 were involved in it?

4 A. I don't know if they did it like that, like they
5 were accusing me but, of course, people asked me
6 if I had talked to her, or knew anything. And
7 that's why I was there to help.

8 Q. Okay. And, to your knowledge, did you ever hear
9 the police ever ask Mr. Bloedorn, Scott Bloedorn,
10 if he had an alibi for Monday, October 31st in
11 the evening, late afternoon hours?

12 A. I don't know that.

13 Q. So it would be fair to say that you weren't in
14 any way treated like a suspect, that you could
15 tell?

16 A. That's correct.

17 Q. And even on the 5th, and thereafter, when the
18 search narrowed into the Avery's area and
19 surrounding areas, the police actually let you
20 through some check points, along with some other
21 searchers, you leading them to come and search
22 the area, right?

23 A. Yes.

24 Q. Within the perimeter of the area around the Avery
25 property that they had made off limits to the

1 general public, right?

2 A. Yes.

3 Q. And was that true of Scott as well?

4 A. Yes.

5 ATTORNEY BUTING: That's all I have.

6 THE COURT: Any redirect?

7 REDIRECT EXAMINATION

8 BY ATTORNEY KRATZ:

9 Q. Just so we're clear Mr. -- I'm sorry. Just so
10 we're clear, Mr. Hillegas, the area that you were
11 allowed access to was the outside of the Avery
12 property itself, in other words, the surrounding
13 properties, not within the salvage property; is
14 that true?

15 A. Yes.

16 ATTORNEY KRATZ: That's all I have, Judge.
17 Thank you.

18 THE COURT: All right. You are excused.

19 ATTORNEY KRATZ: I call Pam Sturm, Judge.

20 THE CLERK: Please raise your right hand.

21 **PAMELA STURM**, called as a witness

22 herein, having been first duly sworn, was
23 examined and testified as follows:

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

1 THE WITNESS: My name is Pamela Sturm,
2 capital S-t-u-r-m.

3 **DIRECT EXAMINATION**

4 BY ATTORNEY KRATZ:

5 Q. Good afternoon, Ms Sturm. Describe for the jury,
6 if you will, whether you knew a young woman named
7 Teresa Halbach.

8 A. Yes, I did. She is my second cousin. Her
9 father, Tom Halbach, is my first cousin.

10 Q. Ms Sturm, sometime after the 3rd of November,
11 after Teresa was reported missing, did you
12 volunteer to become involved in search efforts
13 for Teresa?

14 A. Yes, I did.

15 Q. Can you describe for the jury how you first
16 became involved.

17 A. On November 4th, I saw a news release at like
18 10:00 in the morning and it was a Friday morning.
19 And it said that -- They showed Teresa's picture
20 and it said Teresa was missing. And as soon as I
21 got home from work, I called my sister and she
22 didn't know anything about it. So I waited until
23 night and I called my other first cousin, Betty
24 Halbach, who is Tom Halbach's sister. And I
25 asked her if that was correct and she said, yes,

1 Teresa is missing.

2 Q. All right. When was it, Ms Sturm, then, that you
3 first became involved in actually searching for
4 Teresa?

5 A. Well, that Friday night, when I had talked to
6 Betty, I said, anything I can do for you,
7 anything I can help you with, I will certainly
8 help. And she had called back like an hour later
9 and said there's going to be a search tomorrow
10 morning starting at probably 9:00. And I said,
11 well, I would be happy to help.

12 Q. That next morning, then, on Saturday, the 5th of
13 November, did you go to the rendezvous place; in
14 other words, the place where everybody else was
15 meeting?

16 A. Yes, I did. It's an old farmhouse that Teresa
17 was renting. And I met with two gentlemen, Ryan
18 and Scott. And they were organizing a search
19 team.

20 Q. Just so I can complete the record, that would be
21 Ryan Hillegas and Scott Bloedorn?

22 A. That's correct.

23 Q. All right. Who did you go there with?

24 A. My daughter, Nikole Sturm, came with me.

25 Q. How old is Nikole?

1 A. Twenty-nine years old.

2 Q. About what time did you arrive at the residence,
3 if you recall?

4 A. I estimated it at around 9:00 a.m.

5 Q. When you got there Pam, what happened?

6 A. Well, we got their late; the search team was
7 already gone. Ryan and Scott were still there.
8 And I asked them if I could help out. And they
9 said, yes, they have maps for the area that they
10 were going to search. And he showed me the map
11 and then he showed me the picture of Teresa and
12 all the details regarding Teresa.

13 And I indicated that I would like to go
14 to the Avery Salvage Yard where Teresa was last
15 seen. And he said, well, if you want to, it's
16 not part of, you know, the search, but if you
17 wish to do that, go ahead.

18 Q. Okay. About what time, then, did -- Let me back
19 up just a minute. Prior to going to the Avery
20 salvage property, did you receive anything from
21 either of those gentlemen?

22 A. I received a map and I received a bulletin that
23 showed Teresa's picture and all her details.

24 Q. Did you get anything else, that you can recall?

25 A. I also forgot my camera, so I thought I should,

1 you know, try to get a camera and see if Scott or
2 Ryan had a camera, in case we came across
3 something on the property. And I believe it was
4 Scott's camera and he lent it to us.

5 Q. Do you remember what kind of camera it was?

6 A. It was just a digital camera as far as I know.

7 Q. So the jury understands, it was you that asked
8 for a camera?

9 A. Yes, I did.

10 Q. Ms Sturm, were you familiar with the Avery
11 salvage property?

12 A. No, I'm not -- I wasn't at all. All I knew it
13 was a 40 acre plot salvage yard for vehicles.

14 Q. Did you proceed to that location?

15 A. Yes, we did.

16 Q. About what time did you and Nikole arrive at that
17 location?

18 A. I approximate the time about 10 minutes to 10,
19 right around that area.

20 Q. Okay. I'm showing you what's been marked and
21 received as Exhibit No. 35, Ms Sturm. It is
22 directly to your right on the large screen, do
23 you see that?

24 A. Yes.

25 Q. Will that aerial photograph assist you in

1 explaining for the jury where you and Nikole went
2 upon your arrival?

3 A. Yes.

4 Q. And are you oriented pretty well there; do you
5 recognize that location?

6 A. I recognize the buildings and the approximate
7 area that I found the vehicle.

8 Q. I think I misspoke. I think it's -- It's Exhibit
9 25, I'm sorry. I'm going to take a laser
10 pointer. Do you recognize the road that comes in
11 from Highway 147 and this is --

12 A. Yes.

13 Q. -- the business itself; that is, the office
14 building and the like. Now, do you recognize the
15 orientation?

16 A. Yes.

17 Q. All right. About 10 to 10, sometime before
18 10:00 in the morning, could you tell the jury
19 what happened?

20 A. Well, we drove in and we noticed that there were
21 three driveways to the salvage yard. And it
22 appeared to be the center driveway was probably
23 the one we should take. So we did take that one.

24 Q. Ms Sturm, you are going to have to back up just
25 about three inches from the microphone, okay.

1 Because it is distorting you just a little bit.

2 We can hear you just fine. Go ahead, tell us.

3 A. I was in my car and we pulled up in front of the
4 main building.

5 Q. And on Exhibit No. 25, can you tell what that is?
6 Can you point with that with the laser pointer?

7 A. I believe it's that one.

8 Q. When you got to that location, what did do you?

9 A. When we got to that location, there were a few
10 cars parked to the right of us and we saw two
11 gentlemen conversing. But we went into the
12 building to see if we could find any of the
13 owners of the property. And there was no one
14 inside so then we exited.

15 Q. After exiting, did you, in fact, find one of the
16 owners of the business and did you, in fact, talk
17 to him?

18 A. Yes, we did. The two gentlemen that were
19 conversing by the vehicle, they stopped
20 conversing and I walked up to them and I said, is
21 anyone of you an Avery, an owner of this
22 property? And he said, yes, and he walked over
23 to us and he said his name was Earl.

24 Q. Just very quickly going to show you a photograph;
25 is this the gentleman that you spoke with, Earl

1 Avery?

2 A. Yes, that's correct.

3 Q. Okay. I'm sorry to interrupt you; go ahead, what
4 happened then?

5 A. Well, I told them that we were from -- we were
6 volunteers from the search party. And I said it
7 would relieve Karen and Tom's mind if we could go
8 through the property and make sure that the
9 vehicle, Teresa's vehicle, wasn't there.

10 And Earl said, yeah, I know how it is
11 because I just lost a nephew and I know how they
12 are feeling. They must feel awful that she's
13 missing. We just had a conversation and then I
14 asked him if we could go and search the property,
15 the whole property, for a sign of Teresa, or her
16 vehicle. And he gave us permission.

17 Q. Now, Ms Sturm, prior to your arrival at that
18 location, had you had any contact or direction
19 from any law enforcement officials?

20 A. No, sir, we didn't.

21 Q. After obtaining permission or consent from Earl
22 Avery to search the property, what did you do?

23 A. Earl said that the roads were very muddy in the
24 salvage yard and it would be better if you would
25 walk. So, you know, we locked up our vehicle and

1 walked to the left.

2 We decided we were going to sweep from
3 the left to the right. So we walked down in
4 between the buildings, I believe it was, and
5 started on the left and swepted to the right.

6 Q. Do you want to show us with the pointer what you
7 did, if you can recall?

8 A. So we were parked here -- I'm sorry. And then we
9 walked, I believe we walked through here and we
10 searched these vehicles first.

11 Q. Just so the record is clear, on Exhibit No. 25
12 here, you are pointing to vehicles that would be
13 just to the south of the Avery business itself
14 and just as you would be walking, I guess, almost
15 directly south from the property; is that
16 correct?

17 A. That's correct.

18 Q. All right. How long did that take you; do you
19 remember?

20 THE COURT: Maybe we should ask the witness
21 a few questions to orient direction.

22 ATTORNEY BUTING: Judge, before we do that,
23 could we approach side bar for a minute, please?

24 THE COURT: Sure.

25 (Side bar taken.)

1 Q. (By Attorney Kratz)~ I'm sorry, Ms Sturm, do you
2 know -- do you know -- Orienting yourself to
3 Exhibit No. 25; do you know which way is north or
4 south or east or west?

5 A. Well, actually, I didn't before, but I looked on
6 a map and it appears that the car was in the
7 southeast corner.

8 Q. So which way is south on the -- on Exhibit No.
9 25, if you know? You are pointing to what would
10 be the southeast corner of the 25 -- or the 40
11 acre parcel; is that right?

12 A. Right.

13 Q. South, do you know, would south be to the right
14 or to the left of the diagram?

15 A. No.

16 Q. Pointing at Exhibit No. 25, Ms Sturm, do you
17 remember where you and Nikole walked?

18 A. Yes.

19 Q. Okay. Let me just ask a clarifying question.
20 Does this photo, does this exhibit help you
21 explain to the jury where you folks looked and
22 searched?

23 A. Yes.

24 Q. If I zoomed in a little bit on the diagram, would
25 that help --

1 A. I think that would help.

2 Q. Does that help you some more?

3 A. Oh, yes.

4 Q. Why don't you show us, then, and then as you
5 explain, where did you and Nikole start looking?

6 A. That's the building and then I believe I went in
7 between and she went around here. And then we
8 searched all these vehicles here and we went down
9 here and right here. And then we found it up
10 here.

11 Q. All right. Now, there's a lot of heres there,
12 so --

13 A. I'm sorry.

14 Q. That's all right.

15 A. I'm not good at directions.

16 Q. I'm going to take you through this and help you
17 explain, for the record, what you were talking
18 about. You continued in a southerly direction,
19 you and Nikole, basically walking south, looking
20 through the vehicles; is that right?

21 A. Right.

22 Q. Now, which batch of vehicles did you search, if
23 you can -- if you can explain the kind of
24 searching that you were doing; I'm sure the jury
25 is going to be interested in that as well.

1 A. Okay. I started up here. And up here are
2 trucks, cars, RVs. And we had tried to look in
3 each and every one of them. And you can see
4 there are rows here.

5 Q. Again, you are pointing to an area what would be
6 just south of the business outbuildings; is that
7 right?

8 A. Right.

9 Q. Okay.

10 A. Right.

11 Q. And you moved to a different batch of cars; is
12 that right?

13 A. Right. So we had searched all of these. Then we
14 went down here south and there were, like, you
15 can see there's two rows here. So I searched the
16 first row. My daughter was on the second row.

17 Q. I'm going to stop you right there, Pam. Can you
18 tell the jury what you were looking for.

19 A. We were looking for any trace of Teresa, be it
20 the car or herself.

21 Q. Did you find, by the way, when you searched those
22 two rows of cars, any vehicle that either matched
23 the description of Teresa's, or anything that you
24 thought was obvious?

25 A. No.

1 Q. Where did you go then?

2 A. Then we continued south and I searched these
3 vehicles. And my daughter was right around here.

4 Q. I'm going to stop you there. You are pointing to
5 an area just north of what looks like a body of
6 water or small pond; is that correct?

7 A. That's correct, there's a --

8 Q. Point to the pond.

9 A. There's a little pond right here.

10 Q. Okay.

11 A. Okay.

12 Q. And after looking at those rows of cars, where
13 did you then look?

14 A. Okay. Then my daughter went to this row and I
15 had continued up here. And I saw these vehicles
16 up here. And this is like a ridge up here.

17 Q. Okay.

18 A. And it's shaped like a bowl, the quarry. So up
19 on the top, there was a little car path up there.
20 Just a path, I would say. But I had to climb up
21 this little hill here. And you could see there
22 are some vehicles here. And I thought, I have to
23 search up there. I have to search each and every
24 one.

25 Q. All right. And did you do that?

1 A. So I went up there and I went through, like,
2 three cars. And I came upon this car that had
3 all these branches on the top of it, leaning
4 against it. And there was an old hood of a car
5 there, up against it. And it was kind of bluish
6 green. And I thought this is really strange.
7 This is really strange.

8 And it looked like a little SUV, like I
9 was looking for, a RAV4 Toyota SUV. And I went
10 around to the back of the vehicle. And, again,
11 there were branches leaning up against it. And I
12 noticed that it said RAV4. Well, my heart
13 started going, you know, oh, my goodness, maybe
14 this is it.

15 Q. Let me stop you right there.

16 A. All right. Sorry.

17 Q. Ms Sturm, I have showed you what has now been
18 marked as Exhibit No. 385; that's the first --

19 A. Yes.

20 Q. -- first vehicle?

21 ATTORNEY BUTING: What was the number?

22 ATTORNEY KRATZ: Three -- I'm sorry,
23 Exhibit 29. I'm sorry.

24 Q. (By Attorney Kratz)~ Do you see that?

25 A. Yes.

1 Q. It's 385 on my list. All right.

2 A. Correct.

3 Q. Now, looking at the large screen; is that the
4 photo, 385?

5 A. Yes, that's correct.

6 Q. Now, you spoke to the jury just before about
7 seeing the back of this vehicle and seeing the
8 word RAV4 on it. Is Exhibit No. 385 -- excuse me
9 -- Exhibit 29, does that look the same or similar
10 as it looked on the morning of October -- excuse
11 me -- November 5th?

12 A. Yes.

13 Q. In fact, Ms Sturm, were these photos; that is,
14 the next 6 photos that we are going to see, Nos.
15 29 through 35, were those taken by your daughter,
16 Nikole, with your assistance, on the morning of
17 the 5th of November?

18 A. Yes, that's correct.

19 Q. And do Exhibits 29 through 35 -- 34, I'm sorry,
20 all appear the same, or similar, as they did on
21 the 5th of November?

22 A. Yes.

23 Q. We're going to go through those in just a minute,
24 but since you mentioned the back of the vehicle,
25 I want to show this picture. What else did you

1 see?

2 A. I looked for license plates on the front and on
3 the back and I couldn't find any. I noticed
4 LeMieux Toyota was on the back, but I didn't know
5 if that was on Teresa's car.

6 Q. Let me just stop you. In fact, on Exhibit 29,
7 you can see the LeMieux Toyota sticker on the
8 back of this exhibit; is that right?

9 A. Right.

10 Q. All right. You mentioned, I think, that part of
11 your observations were that the vehicle had some
12 other debris on it. Let me just show you this
13 exhibit. Which number is that? I think -- Is it
14 31, Exhibit 31?

15 A. Thirty-one.

16 Q. All right. I'm going to have you describe
17 Exhibit No. 31, tell us what we're looking at,
18 please.

19 A. Well, that's the front of the vehicle. And it
20 appears to be some kind of door frame up against
21 the vehicle. And then you will see on the
22 bottom, there's a piece of plywood propped
23 against the front passenger side.

24 Q. Why don't you -- I'm sorry to stop you, why don't
25 you do the best you can and take the laser

1 pointer and show me that door frame that was
2 propped up against it.

3 A. I thought this was a door frame here.

4 Q. All right.

5 A. And then there was a piece of plywood. That's
6 plywood there. And there's an old hood of a car,
7 not from the Toyota, propped against the car
8 right here. And you can see all these branches
9 against the car too, and then on top of the car
10 too.

11 Q. Now, in this exhibit, that is, Exhibit No. 31,
12 you can see there's no front license plate; is
13 that what you saw on that morning as well?

14 A. That's correct.

15 Q. By the way, these exhibits, 29 through 34, are
16 they identical to what you and Nikole saw that
17 morning?

18 A. They are identical.

19 Q. How do you know that?

20 A. Because we actually took the photos of this car.

21 Q. So Exhibits 29 through 34 were taken with what?

22 A. With the digital camera I got from Scott. My
23 daughter, Nikole Sturm, took the pictures of the
24 vehicle.

25 Q. And how close were you when she took them?

1 A. I was right next to her.

2 Q. So all of these photos were images that you saw?

3 A. Yes.

4 Q. Now, Ms Sturm, I know that you are no expert and
5 I'm not going to ask for an expert opinion at
6 all. But from what you saw, especially on
7 Exhibit 31, did it appear that those items had
8 been intentionally placed there?

9 A. I thought so. I thought it was obscuring the
10 view of the car, or even like a camouflage on the
11 car. That's what I thought.

12 Q. Let me go through the rest of the images here.
13 We saw the back of the car. Again, this is
14 Exhibit No. 29; is that right?

15 A. Yes.

16 Q. Exhibit No. 30 is the side of the car?

17 A. Yes.

18 Q. Thirty-one is the -- what would be the front
19 right corner of the car?

20 A. Yes.

21 Q. Thirty-two is one of the tires, looks like the
22 left rear tire, or that area of the vehicle?

23 A. Yes.

24 Q. Is this No. 33?

25 A. Yes, that's correct.

1 Q. A left side, in fact, the driver's door and the
2 left or driver's rear door; is that an accurate
3 description?

4 A. That's correct.

5 Q. And, finally, Exhibit No. 34, would be looking
6 from the left side, but the top of the vehicle
7 showing some branches and some other debris; is
8 that right?

9 A. Yes, that's correct.

10 Q. When you saw this, Ms Sturm, what did you do?

11 A. My daughter was still searching to the right of
12 me. I couldn't see her. I became very, very
13 worried for our safety, because 90 percent this
14 was probably Teresa's car and we're in danger.

15 So I called Nikole's name. I think I
16 maybe even screamed. I shouldn't have, but I
17 did, and I went running to the area where she
18 was. I said, Nikole, Nikole, you have to come
19 and see this car. It must be her car. So she
20 came up by me and she looked at it and she said,
21 mom, it does look like her car. It's got that
22 LeMieux Toyota, and it's RAV 4. And she thought
23 perhaps it was too.

24 Q. Ms Sturm, after making these observations, did
25 you attempt to verify the identification of this

1 vehicle?

2 A. Yes.

3 Q. And how was that done?

4 A. My daughter, Nikole, brought her cell phone along
5 and we -- I should back up. Ryan gave us a
6 direct line to Sheriff Pagel in case we found
7 something. So I dialed Sheriff Pagel's number
8 and at that point I got voice mail.

9 I thought, oh, no, I need to talk to the
10 sheriff. And it said something about if you want
11 to go back to the dispatcher, dial 0, so we did.
12 And we came back to the dispatcher. And I said,
13 we need to talk to Sheriff Pagel, now. I think I
14 found the vehicle. So she switched us over
15 directly to Sheriff Pagel.

16 Q. Exhibit No. 35, Ms Sturm, is a audio recording.
17 I'm going to have you listen to that. And I'm
18 going to ask you if this is, in fact, the phone
19 call that you placed just about 10:30 in the
20 morning on Saturday, November 5th. I hope it is
21 loud enough and audible and we'll give it a try.

22 (Tape playing.)

23 DISPATCH: Dispatch.

24 PAM STURM: Okay. I called to --
25 Mr. Pagel's answering service is on.

1 DISPATCH: Okay.

2 PAM STURM: Okay. We are at Avery
3 Salvage.

4 DISPATCH: Okay.

5 PAM STURM: Okay. And we're searching
6 for the vehicle.

7 DISPATCH: Right.

8 PAM STURM: For Teresa Halbach. We have
9 found a RAV4. What color, specifically, was her
10 RAV4 and do you have a VIN number?

11 DISPATCH: Um --

12 PAM STURM: This vehicle --

13 DISPATCH: Inaudible.

14 PAM STURM: Okay. This -- I don't know,
15 this is like a --

16 DISPATCH: Do you know --

17 PAM STURM: -- bluish green. Okay. Do
18 you have a -- Do you have the ID number?

19 DISPATCH: Hold on. Hold on.

20 PAM STURM: -- the ID number.

21 DISPATCH: Hold on. 801, can you call
22 dispatch right away. Do we have a VIN number, a
23 VIN number?

24 PAM STURM: It's not on the side, Nick,
25 go on the other side.

1 DISPATCH: Hold on. Here's Jerry.

2 SHERIFF PAGEL: Hi, this is Sheriff

3 Pagel.

4 PAM STURM: Oh, Sheriff Pagel, hi. This

5 is Pam Sturm. I'm on the search for Teresa

6 Halbach and we found a RAV4.

7 SHERIFF PAGEL: You did?

8 PAM STURM: It's a bluish green, more

9 blue than green. We just wanted to know if you

10 have the VIN number for that vehicle.

11 SHERIFF PAGEL: Yes, we do. We do have

12 a VIN number. Have you got the VIN number?

13 PAM STURM: I can't find it on the --

14 SHERIFF PAGEL: Where is the vehicle at?

15 PAM STRUM: I'm at Avery salvage.

16 SHERIFF PAGEL: Okay.

17 PAM STURM: It is all covered up.

18 SHERIFF PAGEL: It's all covered up?

19 PAM STURM: Not all covered, but it has

20 got a lot of stuff on it, branches.

21 SHERIFF PAGEL: I don't have my glasses.

22 Okay. It's got branches over it?

23 PAM STURM: Yeah. Where is the VIN

24 number on something like this?

25 SHERIFF PAGEL: The VIN number would

1 probably be on the windshield -- or underneath by
2 the -- on the dash, driver's side.

3 PAM STURM: Dash, driver's side, Nick.

4 SHERIFF PAGEL: Look through the front
5 window.

6 PAM STURM: Through the front window.

7 SHERIFF PAGEL: Mm-hmm. I will give you
8 Investigator Wiegert, he's got the VIN number
9 here.

10 INVESTIGATOR WIEGERT: Hi, are you
11 looking at it right now?

12 PAM STURM: Yeah, and you know we can't
13 find that VIN number.

14 INVESTIGATOR WIEGERT: What color is it?

15 PAM STURM: It is bluish green.

16 INVESTIGATOR WIEGERT: Does it look like
17 a newer one?

18 PAM STURM: Yes, it's a '99 to 2000.

19 INVESTIGATOR WIEGERT: Is there --

20 PAM STURM: More of a bluish green,
21 though, that's why we don't want to put, you
22 know --

23 INVESTIGATOR WIEGERT: Is there any
24 license plates on it?

25 PAM STURM: No plates on it, but it's a

1 little covered up. It's weird, it's covered up.

2 INVESTIGATOR WIEGERT: Okay.

3 PAM STURM: Some of it's --

4 INVESTIGATOR WIEGERT: Can you get to
5 the front of the car?

6 PAM STURM: Yeah, I will. It's a
7 LeMieux Toyota sticker on it. But I haven't --

8 INVESTIGATOR WIEGERT: I don't know if
9 they had a LeMieux Toyota sticker on it. I don't
10 know about that.

11 PAM STURM: Is it okay if I go in the
12 car?

13 INVESTIGATOR WIEGERT: No, do not go in
14 the car. Do not touch the car.

15 PAM STURM: Yeah.

16 INVESTIGATOR STURM: Stay on the outside
17 of the car. Go over to the front, on the
18 driver's side.

19 PAM STURM: Yeah, I realize that. I'm
20 in the business. I kind of know, but I can't
21 find the VIN number. I'm picking up the wiper.

22 INVESTIGATOR WIEGERT: Okay.

23 PAM STURM: There is -- Can't find the
24 VIN number. Can't find it. Oh, here it is,
25 Nick. I don't have my glasses.

1 INVESTIGATOR WIEGERT: You don't have
2 your glasses either?

3 PAM STURM: My daughter is with me.

4 INVESTIGATOR WIEGERT: Okay.

5 PAM STURM: Okay. Now hang on. The
6 first -- the last four digits, 3044.

7 INVESTIGATOR WIEGERT: Okay. Hold on.
8 I have to find it here again. 3044?

9 PAM STURM: Yes.

10 INVESTIGATOR WIEGERT: Okay. Can you go
11 even more in?

12 PAM STURM: I don't know. Nick, can you
13 look at any other numbers? There are some people
14 out here. So we have to be careful. And, you
15 know, there's some -- I don't know if they are
16 employees or --

17 INVESTIGATOR WIEGERT: Okay.

18 PAM STURM: -- who they are, but they
19 are like -- Okay, Nickie, just --

20 INVESTIGATOR WIEGERT: Can you see any
21 other numbers?

22 PAM STURM: Yeah. Say it real slow,
23 Nick. Can't see the very beginning number, but
24 here goes, T0Z5F7, a 1 or a T, a 1 or a T --

25 INVESTIGATOR WIEGERT: Okay. Where are

1 you?

2 PAM STURM: 30 -- Is that the number?

3 INVESTIGATOR WIEGERT: Where are you?

4 PAM STURM: No, you just tell me if this
5 is the car.

6 INVESTIGATOR WIEGERT: Okay. Stop. I
7 can't tell you anything. Where are you?

8 PAM STURM: I'm at Avery salvage.

9 INVESTIGATOR WIEGERT: Okay. Are you on
10 their property?

11 PAM STURM: Yes, I am.

12 INVESTIGATOR WIEGERT: With their
13 permission or not?

14 PAM STURM: Yes, sir. Yes, sir.

15 INVESTIGATOR WIEGERT: Okay. Stay right
16 where you are. Do not touch anything. Do not go
17 anywhere around that vehicle. Stay right
18 where --

19 PAM STURM: Are you --

20 INVESTIGATOR WIEGERT: What's your phone
21 number?

22 PAM STURM: Is this it?

23 INVESTIGATOR WIEGERT: I don't know
24 that.

25 PAM STURM: Okay.

1 INVESTIGATOR WIEGERT: What's your phone
2 number?

3 PAM STURM: What's your phone number,
4 Nick? 920-941-0211.

5 INVESTIGATOR WIEGERT: I'll call them on
6 the way.

7 PAM STURM: This is long distance. You
8 need to dial the entire number.

9 INVESTIGATOR WIEGERT: Okay. Stay where
10 you are. Do not touch the vehicle. Do not let
11 anybody else touch the vehicle.

12 PAM STURM: Don't touch it. Don't touch
13 it, Nick.

14 INVESTIGATOR WIEGERT: And I will be
15 calling you shortly, okay?

16 PAM STURM: Well, I hope you can get me,
17 you know.

18 INVESTIGATOR WIEGERT: Just stay where
19 you are; I will find you.

20 PAM STURM: Well, we asked this guy real
21 nice to come in here. But --

22 INVESTIGATOR WIEGERT: If you have a
23 problem you dial 911.

24 PAM STURM: That's --

25 INVESTIGATOR WIEGERT: We'll be on our

1 way. We're going to have somebody over there as
2 soon as possible.

3 PAM STURM: All right.

4 INVESTIGATOR WIEGERT: Okay. Thank you.

5 PAM STURM: All right.

6 (Tape concluded.)

7 (Tape transcribed to the best of my ability.)

8 Q. (By Attorney Kratz)~ Let me ask you, again, Ms
9 Sturm, Exhibit No. 35, that audio conversation
10 that you heard, between yourself, Sheriff Gerald
11 Pagel and Investigator Mark Wiegert; is that a
12 true and accurate version of the conversation or
13 representation of the conversation as it occurred
14 the morning of the 5th of November?

15 A. Yes, it is.

16 ATTORNEY KRATZ: We would move the
17 admission of Exhibit 35, Judge.

18 ATTORNEY BUTING: No objection.

19 THE COURT: Exhibit 35 is admitted.

20 ATTORNEY KRATZ: And as they have been
21 identified, Judge, I am going to move the admissions
22 of Exhibit 29 through 34.

23 ATTORNEY BUTING: No objection to those
24 either.

25 THE COURT: Exhibits 29 through 34 are

1 admitted as well.

2 Q. (By Attorney Kratz)~ Ms Sturm, were any other --
3 At about this time, were any other investigative
4 behaviors or actions taken with this SUV? Do you
5 understand my question?

6 A. I don't understand.

7 Q. Did you or your daughter, Nikki, attempt to
8 determine whether or not this vehicle was open or
9 locked?

10 A. Nikole attempted to open the doors.

11 Q. Did she do so with a bare hand, or did you see
12 her doing this?

13 A. I told her to use the sleeve of her sweatshirt,
14 but evidently she used tissue. You know, I saw
15 her reach in, but I'm not sure if it was -- you
16 know, I didn't exactly see the tissue. So, yes,
17 she did try the doors, but you will have to ask
18 her which specific doors.

19 Q. I will do that, but if you -- did you or your
20 daughter determine whether or not the doors were
21 opened or locked.

22 A. They were all locked.

23 Q. Did you or your daughter ever otherwise enter
24 that vehicle?

25 A. No.

1 Q. Did you or your daughter otherwise touch that
2 vehicle?

3 A. No, just the windshield wiper.

4 Q. After Investigator Wiegert told you to step away
5 from the vehicle and to not touch it further, did
6 you and Nikki do that?

7 A. Yes, we did. We probably went -- I don't know,
8 probably about a thousand yards -- again, on
9 directions I'm terrible.

10 Q. Well, at this point we're not going to --

11 A. Right.

12 Q. -- ask you to guess. Back to Exhibit No. 25,
13 then, Ms Sturm, let's go back just very briefly.
14 Could you show us, again, or show the jury again,
15 the location to the best that you can recall
16 where this vehicle was discovered?

17 A. It was up on this ridge.

18 Q. And you are pointing to a ridge or a berm area to
19 the immediate south of that pond; is that right?

20 A. That's correct.

21 Q. That would be the area farthest -- or furthest
22 southernmost point of the Avery property; is that
23 your understanding?

24 A. That's my understanding.

25 Q. On Exhibit No. 25, just so that we're not talking

1 south or north, be to the right of the pond; is
2 that right?

3 A. That is correct.

4 Q. You mentioned that after calling dispatch, after
5 reporting the discovery of this vehicle, you and
6 your daughter went to a location on the property;
7 is that right?

8 A. Yes, that's correct.

9 Q. Where was that?

10 A. Well, I was up here, okay, because that's where I
11 found the vehicle. And you can look over to this
12 quarry over here. So I went to the highest
13 point -- and that was almost the highest point
14 anyhow, but I just had to look to see if Teresa
15 was over there.

16 So then I looked over there and then we
17 proceeded down here. And over here is a car
18 compacter and we -- we were over there. And I
19 put my daughter behind a car because I thought we
20 were in danger and I just stayed out here.

21 Q. All right. You are pointing to an area near what
22 we have been calling the car crusher, but there
23 is an open -- an open area where there aren't any
24 junk vehicles; is that what you are pointing to?

25 A. There are some vehicles here and there's

1 compacted vehicles here and here's the compacter
2 itself, but, yeah, right in here there aren't any
3 cars.

4 Q. Is that where you waited?

5 A. Yes.

6 Q. Now, tell us what happened then?

7 A. Well, we waited about 20, 25 minutes before
8 someone arrived. Before they arrived, we saw a
9 man up on the ridge. By the buildings up here,
10 there's a ridge. And I got a little concerned so
11 I -- like I said, I put Nikki behind a car so
12 nothing would happen to her. And we just waited
13 and waited. And it seemed like forever, you
14 know.

15 Q. In 20 or 25 minutes, did somebody arrive?

16 A. Yes. A Sheriff Remiker arrived first.

17 Q. Was he a plain clothes officer or an officer in
18 uniform; do you remember?

19 A. No, I don't recall if it was.

20 Q. Do you know what department responded first?

21 A. I believe it was Manitowoc County.

22 Q. Okay. After the law enforcement officers got
23 there, did they, then, basically, take over that
24 area?

25 A. Yes, he had another patrolman go back to the car

1 and just, like, you know, stay by the car so no
2 one else would go by the car.

3 Q. Tell us what you saw; did you see anybody going
4 by the car?

5 A. He stayed by the car and then other officers
6 arrived sheriff, Sheriff -- Deputy Wiegert.

7 Q. Now, these are Calumet deputies; is that right?

8 A. Yes. Yes, Deputy Wiegert.

9 Q. Slow down --

10 A. I'm sorry.

11 Q. Ms Sturm, slow down just a second. Before any
12 other police officers arrived on the scene, after
13 you and Nikki had called in to dispatch, did you
14 notice any other individuals going up or near
15 that vehicle?

16 A. No one went near that vehicle. We watched to
17 make sure no one went over there.

18 Q. You were watching just for that; isn't that
19 right?

20 A. Yes.

21 Q. And after the law enforcement of -- the Manitowoc
22 County law enforcement officers got there, did
23 any of those law enforcement officers enter or
24 approach that vehicle?

25 A. Only one deputy went up by the vehicle, just to

1 guard. He was just guarding the vehicle. He
2 never went in the vehicle. He never touched the
3 vehicle.

4 Q. That's what I'm asking you. And you were
5 watching for that, weren't you?

6 A. Yes, I was. Yes.

7 Q. So nobody from the time -- Listen to my
8 question --

9 A. All right.

10 Q. -- before shaking your head. Nobody from the
11 time that you discovered that vehicle, until
12 Calumet County law enforcement officials,
13 including Investigator Wiegert, nobody touched or
14 entered that vehicle, to your knowledge; is that
15 true?

16 A. That's correct.

17 Q. After the police officers arrived, did you have a
18 chance to speak with Investigator Wiegert?

19 A. Yes, I did. I explained to him, you know, how we
20 found the vehicle. And he said that we would
21 have to give a statement at that time.

22 Q. Did you give an oral and a written statement
23 then?

24 A. We gave an oral statement to Deputy Wiegert and
25 then we gave a written statement and an oral

1 statement to Deputy Dederling.

2 Q. Also from Calumet County?

3 A. Yes.

4 Q. I want you to look at Exhibit No. 25 again, how
5 long from when you entered that property did it
6 take you to find Teresa's vehicle?

7 A. I believe we entered at 10 to 10 and by 10:20 to
8 10:25 we had found the vehicle.

9 Q. So within the first 40 minutes?

10 A. Correct.

11 Q. Ms Sturm, do you know how many vehicles are on
12 this property?

13 A. I didn't at that time. I had no idea.

14 Q. Looking at it now, do you think you got lucky?

15 A. Yeah. Well, not lucky, God showed us the way; I
16 do believe that.

17 Q. Do you think, looking at this exhibit now, that
18 you and your daughter Nikki could have searched
19 that entire salvage yard?

20 A. We would have tried. We would have came back the
21 next day if we had to.

22 Q. After giving your statements, after both the oral
23 and written statements were provided to law
24 enforcement, after assuring them that you hadn't
25 touched or entered the vehicle, where did you go?

1 A. One of the deputies brought us back to the main
2 building, in his vehicle, because I was kind of
3 afraid to walk back up there. And then we left.

4 Q. Where did you go then?

5 A. Actually, we went to Karen and Tom's house and
6 talked to them for a while.

7 Q. Who's Karen?

8 A. Karen is Teresa's mother.

9 Q. Did you tell her what you found?

10 A. Yes.

11 Q. Ms Sturm, about what time, then, did you get to
12 the Halbach residence; if you know?

13 A. You know, I think it was --

14 ATTORNEY BUTING: What's the relevance of
15 this?

16 THE COURT: Just a minute. Mr. Kratz.

17 ATTORNEY KRATZ: I'm just wondering if she
18 went anywhere in between; I can ask it that way.

19 THE COURT: Go ahead.

20 Q. (By Attorney Kratz)~ Did you go anywhere in
21 between the Avery salvage property and the
22 Halbach residence?

23 A. No, we didn't.

24 Q. Went straight there?

25 A. Yes.

1 ATTORNEY KRATZ: That's all the questions I
2 have of this witness, Judge. Thank you.

3 THE COURT: All right. We'll get started
4 on cross-examination today, go until 4:30.
5 Mr. Buting.

6 ATTORNEY BUTING: Thank you, Judge. We may
7 get done if we're lucky.

8 **CROSS-EXAMINATION**

9 BY ATTORNEY BUTING:

10 Q. Now, ma'am, you -- on the dispatch tape, we heard
11 you say, I know, I'm sort of in the business. By
12 that you mean you have private investigator
13 experience, right?

14 A. That's correct.

15 Q. You used to be a licensed private investigator,
16 right?

17 A. That's correct.

18 Q. So you had some idea what to do and how to do
19 this search, right?

20 A. Some idea.

21 Q. Is it your testimony that before Saturday
22 morning, November 5th, you had not done anything
23 in terms of investigating or searching for Teresa
24 or her vehicle?

25 A. No, I haven't -- hadn't.

1 Q. And after that, did you also do any additional
2 investigation on your own?

3 A. Yes, I did.

4 Q. And did you, in fact -- Were you, in fact, called
5 to an area near Mishicot by some individuals who
6 had found what they thought might be some
7 evidence?

8 A. I don't recall being called by someone, no.

9 Q. Well, did you -- Were you with somebody looking,
10 in the area of Mishicot?

11 A. We were in the area of Mishicot and I spoke with
12 some of the business owners in Mishicot.

13 Q. Those were bars, right?

14 A. That's correct.

15 Q. And they were down near the river?

16 A. No, this was about -- the river is about a
17 quarter mile from the actual town.

18 Q. Okay. And what day was that?

19 A. I'm not sure.

20 Q. Well, was it Saturday night -- Was it nighttime
21 or daytime?

22 A. No, it was during the day. So it was, you know,
23 Sunday, Monday, Tuesday, one of those days, that
24 I had a day off and I wanted to help out.

25 Q. And what was your purpose in going to those bars

1 and talking to those --

2 A. To see --

3 Q. -- business owners?

4 A. To see if anyone knew anything about Teresa or

5 had seen Teresa.

6 Q. Okay. And were you passing out your name and

7 phone number or anything like that for people?

8 A. I don't recall doing that, no.

9 Q. Do you remember being called to an area near the

10 river, a turn around area near the river, by one

11 of those individuals from the bar area, to look

12 at some --

13 A. I know we had searched around the river area and

14 then at that point, we, meaning one of the bar

15 owners in town, said he would come down and help

16 me out. And on the search we had found a cell

17 phone.

18 Q. And what was that bar owner's name?

19 A. I don't recall.

20 Q. Do you remember -- Do you know an individual by

21 the name of John Champion (phonetic)?

22 A. I'm not sure if that was his name or not.

23 Q. Okay. And you found a cell phone down by the

24 river?

25 A. Yes.

1 Q. And also some business papers, some sort of
2 papers nearby?

3 A. I don't recall any papers.

4 Q. But that cell phone, you thought, might be
5 important?

6 A. I thought perhaps it was important.

7 Q. For all you know, it could have been Teresa's,
8 right?

9 A. Could have been.

10 Q. So what did you do?

11 A. I called the sheriff's department and someone
12 came down and photographed the cell phone.

13 Q. And who was that; Mr. Wiegert?

14 A. No, I'm not sure -- exactly sure who that was. I
15 believe I got his card, though.

16 Q. Was he plain clothes?

17 A. No.

18 Q. He was wearing a deputy's brown uniform?

19 A. That is correct.

20 Q. Which county sheriff are we talking about?

21 A. I'm not sure.

22 Q. Well, this is Mishicot, so that's Manitowoc
23 County, right?

24 A. I would assume.

25 Q. So you would assume that it was probably a

1 Manitowoc County sheriff deputy that came down
2 there, right?

3 A. There were so many police officers at the Avery
4 salvage yard at that time, it could have been
5 anyone.

6 Q. This wasn't at the Avery salvage yard, was it?

7 A. No.

8 Q. This was miles away over in Mishicot?

9 A. Couple miles away, yeah.

10 Q. And the cell phone, you said somebody took
11 pictures of it?

12 A. That's right.

13 Q. And did that individual also take possession of
14 the cell phone?

15 A. Yes.

16 Q. And what happened next?

17 A. We met up with the search party again. And I
18 described the cell phone to one of the Halbachs,
19 I believe, and they said it wasn't Teresa's.

20 Q. Well, did you make any notes of what kind of cell
21 phone it was?

22 A. I did at that time, I knew what it was. Now I
23 can't recall.

24 Q. Okay. But you didn't take any pictures of your
25 own, though?

1 A. No.

2 Q. And you don't know what day this was; it could
3 have been Sunday, the 6th?

4 A. It was after the 5th.

5 Q. Okay. So it could have been the 6th, right?

6 A. No, I don't think I worked on the 6th. I think I
7 had off on Monday or Tuesday and I went back to
8 help out.

9 Q. Okay. Now, you are not a private investigator at
10 this point, right?

11 A. No, I'm not.

12 Q. And you weren't back in October of 2005?

13 A. No, I wasn't.

14 Q. You were just helping out as a volunteer for the
15 Halbach family at that time?

16 A. Yes.

17 Q. And you said that Ryan, when you met on Saturday
18 morning, Ryan Hillegas gave you a direct phone
19 number for Sheriff Pagel?

20 A. Yes.

21 Q. So he had -- Evidently he had Sheriff Pagel's
22 direct line?

23 A. It was either the direct line or the line into
24 that department.

25 Q. Well, when you called it, it got right to Sheriff

1 Pagel's voice on his voice mail, right?

2 A. Voice mail, yes.

3 Q. Okay.

4 A. But we did talk to the dispatch too.

5 Q. I know, that's later, though. The number you
6 called just put you right to Sheriff Pagel's
7 voice mail, correct?

8 A. Yes.

9 Q. When you saw the vehicle there, up on that ridge,
10 and you said you thought it was 90 percent in
11 your own mind that this might be, in fact,
12 Teresa's vehicle you, of course, looked inside
13 for Teresa as well, right?

14 A. Correct.

15 Q. And you got a decent look inside there because
16 you actually saw some soda bottles too, I think,
17 right?

18 A. We did see some soda bottles.

19 Q. Okay. And you didn't see Teresa, right?

20 A. No.

21 Q. And you didn't see any blood, right?

22 A. Not that we could visually see, no.

23 Q. Okay. Well, you didn't see any blood, period.

24 A. No.

25 Q. Okay. And you were looking. What else did you

1 see besides soda bottles? See anything with her
2 name on it?

3 A. No, I can't remember anything, no.

4 Q. Okay. If I understood you correctly, did you say
5 that you actually found this vehicle within 10
6 minutes of your search?

7 A. No, sir.

8 Q. I thought you said you went in at 10:10 and you
9 found it at -- or 10 minutes to 10; is that
10 right?

11 A. That's correct?

12 Q. Okay. I misunderstood. I apologize. So you
13 found it within about 30, 35 minutes or so?

14 A. That's correct.

15 Q. And when you walked up on that ridge, it was the
16 only car with any kind of branches, or wood, or
17 debris put on top of it, right?

18 A. That I saw, yes.

19 Q. All the other ones looked like they did -- they
20 do in this photograph here. They are generally
21 visible, not camouflaged, or anything of that
22 sort, right?

23 A. I guess I didn't look any further down the line
24 so I can't really say absolute, you know.

25 Q. Okay. But of the vehicles -- of the area you did

1 look through, which would have been from the
2 buildings in the upper left corner, where
3 actually is the northeast corner, south all the
4 way to that edge of the Avery property, you
5 didn't see any other vehicles that were --
6 appeared to have been obscured, or covered with
7 anything?

8 A. No.

9 Q. So this one was unique of all of the vehicles
10 that you saw?

11 A. Right. And it was about the right color and it
12 was a RAV4.

13 Q. And to you, it looked pretty obvious that this
14 was somebody just trying to camouflage this,
15 right?

16 A. It appeared to be that way.

17 Q. But it was actually double parked along that
18 ridge of vehicles, on the left -- or I'm sorry,
19 on that car path you mentioned behind the pond,
20 right?

21 A. Right.

22 Q. Those were a single line of cars and this one was
23 double parked right next to one?

24 A. Right.

25 Q. On the tape, I heard you say something, I think

1 about there were people nearby, while you were at
2 the scene and calling in to report this?

3 A. When we first walked down the quarry --

4 Q. That's a simple yes or no; were their people --
5 you said something about their being people
6 nearby, right?

7 A. Yes.

8 Q. And these appeared to be what, other customers or
9 something, milling about?

10 A. I can't say for sure, but I thought perhaps they
11 were getting parts off of vehicles.

12 Q. Okay. Like customers would do there, right?

13 A. Right.

14 Q. And Steven Avery wasn't one of them, I assume,
15 right?

16 A. No.

17 Q. And you mentioned a man up on the ridge, or not
18 on the ridge, but up on the hill, kind of back
19 towards the buildings, when you were sitting
20 there waiting for 20 minutes?

21 A. Correct.

22 Q. And Steven Avery wasn't that man either, was he?

23 A. I don't know for sure.

24 Q. Well, who was that man; do you know?

25 A. I don't know.

1 Q. Do you have any description of him?

2 A. No, sir.

3 Q. Was it the same -- Was it Earl Avery?

4 A. It could have been. It's just too far away to
5 see.

6 Q. So you just -- wasn't anything in particular
7 about that man, or what he was doing, that caused
8 you concern; it was just the overall feeling you
9 had that maybe this wasn't the safest place to
10 be; is that fair?

11 A. That's fair, yes.

12 Q. Okay. And until the police arrived, you were --

13 ATTORNEY BUTING: We're about to finish up,
14 Judge.

15 Q. (By Attorney Buting)~ Until the police arrived,
16 you were trying to keep an eye on that vehicle,
17 make sure none of these other customers or
18 anybody else would walk near, right?

19 A. That's correct.

20 Q. But once the police arrived, then that was their
21 job, right?

22 A. No, we kept our eye on it.

23 Q. Once Manitowoc arrived, you were concerned about
24 Manitowoc police approaching that vehicle?

25 A. About anyone approaching or touching that

1 vehicle.

2 Q. And so you kept a good eye to make sure none of
3 the Manitowoc people would do it?

4 A. That anyone would do it.

5 Q. But if you were about a thousand -- What did you
6 say, a thousand yards away, a thousand feet away?

7 A. I'm not very good at distance; right by the car
8 compacter.

9 Q. Okay. But then after Wiegert -- after Detective
10 Remiker arrived, you went back over by the -- to
11 the left, on this picture, did you not? I think
12 you said you went about a thousand yards away?

13 A. Could you rephrase that.

14 Q. I believe, maybe I misunderstood you, but I
15 thought -- I thought you said that you walked
16 about a thousand yards away from where the
17 vehicle was, when Detective Wiegert arrived?

18 A. Like I said, I'm not very good at distance. I
19 would say three football fields. Now, I'm trying
20 to judge the distance that way.

21 Q. Okay. Nine hundred yards, a thousand yards,
22 close enough. And you weren't paying attention
23 at that point, then, to what was going on with
24 the car, from that big of distance away once --
25 once Investigator Wiegert arrived, right?

1 ATTORNEY KRATZ: Judge, I'm sorry, I know
2 this is late, but a football field is only
3 100 yards, three of them wouldn't be 900? If my
4 math --

5 (Attorneys talking over each other.)

6 ATTORNEY BUTING: You are right. I'm
7 sorry. I'm sorry, it is late, 900 feet.

8 Q. (By Attorney Buting)~ But after Wiegert arrived,
9 you were talking to Investigator Wiegert, gave an
10 oral statement to him, right?

11 A. Right.

12 Q. And you talked to Dederling and gave an oral and
13 written statement to him, right?

14 A. Correct.

15 Q. So, you weren't paying attention to what was
16 going on with the car at that point; you were
17 giving statements oral and written, right?

18 A. We were facing the vehicle.

19 Q. While you are sitting there writing a statement,
20 or did you not write it?

21 ATTORNEY KRATZ: Objection, argumentative,
22 Judge. She said she watched the vehicles the whole
23 time. I don't know how many times she has to say
24 that?

25 THE COURT: Well, he's allowed to ask a

1 question about writing and watching the vehicle at
2 the same time. I will allow the question.

3 Q. Did you hand write the statement yourself?

4 A. Yes.

5 ATTORNEY BUTING: Thank you, no further
6 questions.

7 THE COURT: Attorney Kratz?

8 ATTORNEY KRATZ: Not for today, Judge.
9 That's fine.

10 THE COURT: Okay. You are excused -- Well,
11 before I say that, when you say not for today, are
12 you intending to ask questions on redirect tomorrow?

13 ATTORNEY KRATZ: No, I'm sorry.

14 THE COURT: Very well, you are excused for
15 today.

16 Members of the jury, that concludes the
17 portion of the trial for you today. I will
18 remind you again not to talk to each other about
19 this matter. Also, make sure that you do not
20 listen to any news accounts. Don't read the
21 newspaper. Don't listen to the local news on the
22 radio. Don't watch the local news on TV. We
23 will see you tomorrow, tomorrow morning.

24 (Jury not present.)

25 THE COURT: Now, you may be seated.

1 Counsel, before we leave today, did you wish to take
2 up the issue of these stipulations on the record?

3 ATTORNEY KRATZ: We certainly can, Judge --

4 ATTORNEY BUTING: Judge, before we do that,
5 I do want to clear up a couple of things. And it's
6 a -- I want to make a specific renewed discovery
7 request on two items. Because until today, I was
8 not aware, have not actually received any reports
9 from any Manitowoc or Calumet County sheriffs about
10 this search that Ms Sturm was involved in down by
11 the Mishicot river area, where a cell phone was
12 found, photographs apparently were taken, the phone
13 was seized. There's no reports of that activity
14 anywhere in any of the discovery we have received.

15 Secondly, Mr. Sturm -- I'm sorry,
16 Mr. Drumm testified about Exhibit 25, and perhaps
17 it wasn't clear, because he was asked maybe two
18 different things on direct and cross, but I
19 understood him to say that Exhibit 25 was a
20 picture of a photograph taken on November 4th.

21 And as I looked at it more carefully,
22 it's obvious that it was not. It was something
23 taken long after the vehicle was discovered.
24 There's all sorts of police vehicles around,
25 Command Posts, the RAV is not there. The RAV 4

1 is not there.

2 But he did testify that he did not
3 recall video -- whether video was being taken
4 during the flight, but he did recall photographs
5 being taken. And we did not receive any
6 photographs from that flight. All we have
7 received was a video and so I would renew a
8 discovery request for those photographs as well.

9 THE COURT: All right. And before I ask
10 for a response from the State, I did want to note
11 for the record that the side bar that was requested
12 during the testimony of Pamela Sturm related to that
13 photo and the issue that Mr. Buting just raised.

14 And as I understand it, both parties
15 acknowledge that Exhibit 25 is an aerial photo of
16 the Avery Salvage Yard property, but one that was
17 taken some time after at least the victim's
18 vehicle was removed from the property. And how
19 long after that, I'm not exactly sure. But is
20 that correct, counsel?

21 ATTORNEY KRATZ: It is, Judge, and in fact,
22 there are a couple of very important points to
23 raise. First, the question that I asked of
24 Mr. Drumm was whether or not Exhibit No. 25 looked
25 the same or similar as to what he observed on the

1 4th. I think that is not at all the same question
2 as, was this photo taken on the 4th.

3 Perhaps as importantly, the Court will
4 note in the proposed stipulations and agreed upon
5 stipulations by the parties, that aerial photos
6 are one area that before we even walked into
7 court we had agreed would be admissible without
8 objection. And this might be a good segue to put
9 that on the record.

10 Lastly, this cell phone down by the
11 river is the first I have heard of this.
12 Certainly never came through our office. Never
13 was provided by our office as part of discovery,
14 because I don't have anything from that.

15 Mr. Drumm's testimony about a video
16 being taken from his plane is accurate. That was
17 already provided to defense and I can also assure
18 the Court that I am unaware of any photographs
19 that were taken therefrom.

20 So although the video has been provided
21 from that flyover, from that aerial search, I
22 don't understand there to be any still photos
23 from there; although, they did get the video.

24 THE COURT: So what you are saying is that
25 your understanding is, from what I take it, exactly

1 the opposite of Mr. Drumm's understanding. I think
2 he said he thought there were photos taken, but was
3 not aware of video, though, he wasn't personally
4 involved in either one, he was flying the plane.
5 You are telling me that what actually happened was
6 video was taken, but no photos. The video has been
7 turned over.

8 ATTORNEY KRATZ: I'm sure the camera he saw
9 was a video camera and that has been turned over to
10 the defense.

11 ATTORNEY BUTING: I would ask, if counsel
12 is just discovering this cell phone incident today,
13 and the way she described it, obviously there was
14 some sort of police involvement, that perhaps
15 overnight he should check with probably Manitowoc
16 and see what's up with that.

17 ATTORNEY KRATZ: Perhaps Mr. Buting would
18 like to do that; it's not in my possession, Judge.

19 THE COURT: How did this come to light?
20 How did you know how to ask the questions about it,
21 Mr. Buting? I guess I'm at a loss. I don't know
22 how it got started.

23 ATTORNEY BUTING: We get tips too, just
24 like they do. Sometimes useless, sometimes not.
25 This one sounded like maybe it might be more

1 legitimate, so I thought I would ask her about it.
2 But I had no confirmation of it, until today.

3 And she clearly describes a police
4 action of some sort. They -- To say that it's
5 not in his possession, Manitowoc officers are
6 testifying for the State. They have been
7 involved in critical parts of this case in terms
8 of evidence that was discovered, so I think he
9 does have an obligation under **Brady**, potentially,
10 to get to the bottom of this and find out is this
11 something that was never even documented,
12 Manitowoc never even wrote a report or did they
13 write a report and we just haven't received it.

14 ATTORNEY KRATZ: Wait a second, Judge.
15 When throwing the word **Brady** around, it sounded
16 through this witness that inquiry was made that very
17 day. Was this Teresa's cell phone? The Halbach
18 family assured them it wasn't her cell phone at all.
19 I don't know what could ever be considered
20 exculpatory, potentially exculpatory, relating to
21 relevant evidence.

22 That notwithstanding, I just asked
23 Investigator Wiegert, he hasn't heard of this
24 either. We can certainly check our reports and
25 we're happy to do that for Mr. Buting. And more

1 thoroughly check that and also make some
2 inquiries, but it's quite certain, at least to
3 me, that it isn't something in our possession.
4 And even if it were, would have very little, if
5 any, relevance to this particular case.

6 THE COURT: Well, I don't know if it has
7 any **Brady** implication or not, but it sounds like
8 something that would be in at least the possession
9 of the State, this case being State of Wisconsin vs.
10 Mr. Avery, not Calumet County. So I'm going to ask
11 the State to determine whether there are any reports
12 of the incident and if there are any, share them
13 with the defense.

14 ATTORNEY KRATZ: We'll do that, Judge.

15 ATTORNEY BUTING: Thank you.

16 THE COURT: I did not understand Mr. Drumm
17 to be testifying that the aerial photo on the screen
18 was one that he necessarily thought was taken the
19 day he flew over the salvage yard property. It
20 might -- If it's going to come up as an issue in any
21 way because of, for example, the line of police cars
22 that are on the property, it might be helpful for
23 the parties to notify the jury when the photo was
24 taken. I don't think anything about that's come in
25 yet, or if it has, I haven't caught it.

1 ATTORNEY BUTING: I think we should because
2 we did zoom in on it a little bit. And I don't know
3 if they saw, but I mean I knew what I was looking at
4 and the RAV4 was clearly not there. I don't want
5 them back in deliberations, you know, not knowing
6 what's going on, looking at this. You know, if they
7 misunderstood that it was taken when Mr. Drumm was
8 flying on the 4th, before the vehicle was even
9 discovered, it just may confuse things.

10 THE COURT: As I watched the evidence
11 myself, I wondered if anybody was going to zoom in
12 and show where the RAV4 was because I was not aware
13 of when the photo was taken. So I think the jury
14 should be informed of that.

15 Anything else before we get to the
16 stipulations? Have I missed anything that's been
17 placed in issue?

18 ATTORNEY KRATZ: No.

19 THE COURT: If not, let's move on to the
20 stipulations. Who is going to speak?

21 ATTORNEY KRATZ: I certainly can, Judge.
22 Mr. Strang, I'm sure, will correct me if there's a
23 problem. First of all, there is one stipulation
24 that came up this afternoon. As Mr. Schmitz was
25 leaving the witness stand, I had neglected to

1 inquire of him what his telephone number was.

2 I'm simply doing that because there's
3 going to be a summary exhibit contemplated later
4 that each of the witnesses, rather than
5 calling -- a custodian of Mr. Schmitz's phone may
6 have been called, rather than recall him for that
7 purpose, Mr. Strang was gracious enough to agree
8 to a stipulation. His phone number, Judge, is
9 894-3912. I believe that's a 920 area code. And
10 that should be included as a fact and provided to
11 the jury.

12 As the Court knows, Mr. Strang,
13 Mr. Buting, and the prosecution team had worked
14 for several weeks on proposed stipulations of
15 fact. We have tried to eliminate witnesses that
16 were either unnecessary or would provide
17 testimony or evidence that was not really
18 contested or at consequence to the real issues in
19 this lawsuit.

20 And so in an exchange of emails,
21 Mr. Strang and I came up with these following
22 stipulations. Most of them, Judge, I will tell
23 you do not have to be provided to the jury by way
24 of affirmative comment by the Court, but simply
25 as an agreement as happens in most trials,

1 between attorney's, that objections will not be
2 made or an agreement as to admissibility of
3 evidence.

4 And so from that perspective, the
5 parties have agreed as follows:

6 First, that the DNA exemplar of the
7 victim in this case, Teresa Halbach, which
8 consisted of a Pap smear, a cervical sample,
9 would be admitted without the necessity of
10 providing witnesses as to its -- how it was
11 obtained, how it was stored, or the transport
12 thereof.

13 There will be testimony as to the DNA
14 analysis performed by the Wisconsin Crime Lab,
15 but authentication and transport witnesses,
16 Mr. Strang has agreed, will not be required. If
17 the Judge wants to inquire of Mr. Strang as we do
18 these one at time, that's fine, or I can do them
19 en masse. I don't care how the Court wants to
20 proceed.

21 THE COURT: Mr. Strang.

22 ATTORNEY STRANG: I think the much more
23 efficient way to do this would be just to make a
24 part of the record my February 4, 2007, email to
25 Mr. Kratz which lays out in writing just exactly

1 what's stipulated and what's not. I think, you
2 know, these go paragraphs A through W and not all of
3 them are stipulations, but most of them are.

4 THE COURT: Do I understand that these are
5 not, for want of a term of art, Jury Instruction 162
6 stipulations that are going to be read to the jury,
7 these are simply items pertaining to evidence that
8 the parties are going to agree to as we go along?

9 ATTORNEY STRANG: That's right. And that's
10 a good distinction between these and the Steven
11 Schmitz stipulation. On the Steven Schmitz
12 stipulation, the stipulation is that, had he been
13 asked, he would have testified that his telephone
14 number is 920-894-3912. So that's a stipulation
15 about what evidence would have been given by a
16 witness. Most of these --

17 THE COURT: Just a minute. If there's
18 another written document, or something that's going
19 to be received with his telephone number on it and
20 it's not objected to, I don't know that I have to
21 instruct the jury in --

22 ATTORNEY STRANG: Right.

23 THE COURT: -- closing instructions, the
24 parties can agree that's his phone number, right?

25 ATTORNEY STRANG: Correct, if there were a

1 written document and it's not objected to, then
2 there is no Pattern Instruction 162 stipulation
3 instruction to give. And most -- most of these
4 paragraphed stipulations are of the latter nature.
5 In other words, we just agreed among us that I won't
6 make an authenticity objection, you know, you still
7 have to prove up relevance, or I, you know, I may or
8 may not object under 904.03. But I don't have a
9 problem with authenticity.

10 Some of them go -- Some of them go
11 further than that; for instance, just as an
12 example, we're stipulating that Teresa Halbach
13 purchased a Motorola RAZR V3 phone in August,
14 2005. And we're going to allow admission of the
15 contract and receipt without the calling of any
16 witness, so.

17 THE COURT: I have no problem with simply
18 accepting a written copy of the email; though I have
19 already marked up the copy that was circled by, I
20 believe, Mr. Kratz or someone and given to me, so I
21 will need a clean one, but I won't require the
22 parties to put the agreement further on the record
23 if they don't feel a need for it.

24 ATTORNEY KRATZ: Judge, what I will do,
25 since what you have, dated the 4th of February, is

1 actually a response to an email that I wrote to Mr.
2 Strang on the 25th of January, I'm going to attach
3 both of these as one exhibit. I will have it
4 marked, I will have it received by the Court. And
5 this, together, is an accurate reflection, then, of
6 what both parties agree to. I don't have any
7 problem with the procedure.

8 ATTORNEY STRANG: And that's ideal because
9 my February 4 email says see your January 25, 2007,
10 email. I will also just make crystal clear that
11 we're not walking away from the stipulation to the
12 authenticity of the aerial photographs. There is no
13 objection to Exhibit 25.

14 The issue is -- and I fully accept
15 Mr. Kratz's explanation of what question he
16 actually asked Mr. Drumm. Once he repeats it, I
17 think it rings a bell with me. All I can say is
18 that sitting here, as one attentive observer, in
19 my own mind, when I heard Mr. Drumm testifying, I
20 was -- I guess assuming that Exhibit 4 --
21 inferring that Exhibit 25 was taken on
22 November 4. And if I made that mistake then
23 jurors may have. So that's why we just need to
24 clear up the date. It doesn't affect the
25 admissibility or the authenticity of Exhibit 25.

1 We have no quarrel with that.

2 THE COURT: Well, again, I think perhaps
3 the primary reason to clear up the date is not have
4 the jury wondering whether or not the RAV 4 is in
5 that photo. The parties have already demonstrated
6 to the jury that they have the capability to zoom in
7 on these photos. So I think it will help the jury
8 and everyone, to know exactly when it was taken.
9 Anything further this afternoon?

10 ATTORNEY KRATZ: It's a digital photo,
11 Judge. I'm just telling the Court because just
12 something that I learned about the signature on a
13 digital photo. It was taken, at least if the time
14 in the camera is correct, on November 8th, 2005, at
15 7:15 a.m., using a Canon EOS Digital Rebel XT
16 camera. I don't know what the Court wants by way of
17 information, but we'll try to verify that time and
18 any other information. And I think it's a very
19 valid point and we'll alert the jury to that.

20 ATTORNEY STRANG: I don't think the State
21 needs to spend anymore time verifying that. I mean,
22 November 8, I don't have any reason to doubt and the
23 photo is perfectly plausible for having been taken
24 on November 8.

25 THE COURT: Okay.

1 ATTORNEY STRANG: So I'm happy with that.

2 ATTORNEY KRATZ: Judge, if I may, page 185
3 of the Calumet County Sheriff's Department
4 discovery, on the third last paragraph, actually
5 talks about this very image, how it was taken and
6 when and why and those kind of things. So, page
7 185.

8 THE COURT: All right.

9 ATTORNEY KRATZ: That not withstanding,
10 Judge, we will -- Oh, I'm sorry. I'm sorry, Judge.
11 I misspoke. I was hearing two things, page 185, the
12 third last paragraph is the information regarding
13 the other cell phone that was found, that mystery
14 one down by the river.

15 THE COURT: The Mishicot cell phone?

16 ATTORNEY KRATZ: Yeah, page 185 of the
17 Calumet County Sheriff's Department report, third
18 from the bottom paragraph, that should be the
19 information that Mr. Buting has been looking for.

20 I'm sorry. But the other information,
21 as to the time and date of the aerial photo, all
22 seems accurate as well. That's all I have for
23 today.

24 THE COURT: All right. I will ask the
25 attorneys to meet in chambers again at 8:30 just to

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give me the agenda for the day. See you tomorrow morning.

ATTORNEY KRATZ: All right. Thank you.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 8th day of October, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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1 STATE OF WISCONSIN CIRCUIT COURT MANITOWOC COUNTY

2 STATE OF WISCONSIN,

3 Plaintiff,

4 -vs-

5 STEVEN A. AVERY,

6 Defendant.

TRANSCRIPT OF DAY 3 OF

12-PERSON JURY TRIAL

Case No. 05-CF-381

7 PATRICK L. WILLIS
8 JUDGE PRESIDING

9 APPEARANCES:

10 ATTY. KENNETH R. KRATZ, Special
11 Prosecutor, from Calumet County,
12 Wisconsin, ATTY. THOMAS FALLON,
13 from State of Wisconsin Attorney
14 General's Office, and ATTY.
15 NORMAN GAHN, from Milwaukee
16 County, appearing on behalf of
17 the Plaintiff.

18 ATTY. JEROME F. BUTING, of the
19 firm, Buting & Williams, of
20 Brookfield, Wisconsin, and ATTY.
21 DEAN A. STRANG, of the firm,
22 Hurley, Hurish, & Stanton, of
23 Madison, Wisconsin, appearing on
24 behalf of the Defendant.

25 Date of Proceedings: February 14, 2007

Steven J. Platkowski
Court Reporter

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(- 1 -)

MANITOWOC COUNTY
CIRCUIT COURT
FILED

FEB 14 2007

RECORDED & INDEXED

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1 (Proceedings commenced at approximately 9:00 a.m.)

2 THE CLERK: All rise.

3 THE COURT: You may be seated. At this time
4 the Court once again calls the case of State of
5 Wisconsin versus Steven Avery, case 05-CF-381.
6 Would the parties state their appearances for the
7 record?

8 MR. KRATZ: Is the sound system not on?

9 THE COURT: Nope. It's not on at all?

10 MR. KRATZ: No.

11 THE COURT: Okay. It's on now. Terrific.
12 Mr. Kratz, appearances for the State?

13 MR. KRATZ: Your Honor, the State appears by
14 Calumet County District Attorney Ken Kratz,
15 appearing as special prosecutor. Also appearing in
16 this case is Mr. Fallon, Assistant Attorney General,
17 and Mr. Gahn, Assistant District Attorney from
18 Milwaukee County.

19 MR. BUTING: Good morning, your Honor.
20 Attorney Jerome Buting, and Attorney Dean Strang,
21 appearing with Mr. Avery, who is present.

22 THE COURT: All right. Mr. Kratz, are you
23 going to call your next witness?

24 MR. KRATZ: I don't know if this is working,
25 Judge.

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THE COURT: Does that help at all? Check the plug under the desk.

(At which time the sound system started working after the electric cord for the microphone was plugged into a different outlet under the District Attorney's table.)

MR. KRATZ: That is probably going to be a little loud. But the State calls Nicole Sturm, Judge.

THE CLERK: If you would raise your right hand?

NICOLE STURM, being first duly sworn on oath to tell the truth, the whole truth, and nothing but the truth, testified as follows:

THE CLERK: Please state your full name and spell your last name please.

THE WITNESS: Nicole Sturm, S-T-U-R-M.

DIRECT EXAMINATION BY MR. KRATZ:

Q Good morning, Ms. Sturm. Thank you for coming this morning. Let me first ask you if you know a woman by the name of Pam Sturm?

A Yes.

Q Who is Pam?

A She is my mother.

Q And were you with Pam on the morning hours of

1 November fifth of 2005?

2 A Yes, I was.

3 Q Would you tell the jury where you went that
4 morning please?

5 A We first went to Teresa's house, to enter the
6 search, to become volunteers for the search.

7 Q All right. Thereafter, Ms. Sturm, did you
8 accompany your mother to a property which is
9 known as the Avery Auto Salvage Yard?

10 A Yes, I did.

11 Q And after arriving at that scene, we understand
12 from your mother that you received, you and she,
13 that is, received permission to search for the
14 vehicle on that property; is that correct?

15 A Yes. We received permission from Earl Avery.

16 Q Tell the jury, as best you can remember, what
17 efforts you made to search for Teresa's car that
18 morning?

19 A We started out heading toward the south of the auto
20 salvage yard. We went through, looking inside
21 vehicles, looking for anything that we could
22 distinguish, anything to do with Teresa, whether it
23 be Teresa herself, or any articles that would be "as
24 to her".

25 Q Sometime just before 10:30 that morning, I

1 understand you found something; is that right?

2 A Yes, my mom indicated that she found a RAV-4 Toyota
3 vehicle that didn't exactly match the description on
4 the search form that we had, but looked very
5 similar, and was distinguishing because it was
6 covered up with auto salvage materials, as well as
7 branches. So, she definitely called me over, and I
8 went running.

9 Q All right. When you ran toward your mother's
10 location, can you tell the jury what you saw
11 please?

12 A I saw a blueish green RAV-4 with salvage parts up
13 against it, and branches over the top and on other
14 areas, definitely a vehicle that looked like someone
15 was trying to hide.

16 Q Now, there is an exhibit which has been marked in
17 this case and received as Exhibit Number 31. I
18 direct your attention to the large screen here
19 to your right, and ask if that, in fact, is the
20 vehicle that you saw that morning?

21 A Yes, that is the vehicle.

22 Q Now, your mother explained --

23 MR. BUTING: Objection, counsel is leading
24 the witness by saying "your mother did this, your
25 mother did that". She should be asked open-ended

1 questions, and let the witness explain what she saw
2 and what she did.

3 THE COURT: I will sustain the objection to
4 the form of the question.

5 MR. KRATZ: That's fine, Judge.

6 BY MR. KRATZ:

7 Q Ms. Sturm, who took the photographs of these
8 vehicles?

9 A I took the photographs.

10 Q And, other than taking the photographs, can you
11 tell the jury what else you did around that
12 vehicle?

13 A With a tissue, I checked all four doors to see if
14 any of the doors were open. They were all locked.
15 So, none of the four doors were open. I also used
16 my cell phone to call the Sheriff's Office.

17 Q Can you describe this "tissue" a little bit
18 better?

19 A Sure. Because it was a cold November day, I brought
20 tons of tissues with me, because my nose was
21 running, and "what not". I had clean tissues within
22 my pockets. My mom stated, "Please use -- I don't
23 want to disturb anything, so please use your shirt
24 sleeve, or whatever you have to avoid touching the
25 vehicle. I thought I better, that I had clean

1 tissues in my pocket, so I used that. I did check
2 all four doors to see if anything was open. They
3 were all locked.

4 Q Ms. Sturm, you did have occasion to look inside of
5 this; correct.

6 A Yes, I did look in at every angle, and saw a Wild
7 Cherry Pepsi in the front, and a bottle of Aquafina,
8 but I didn't see Teresa, or anything that I could
9 identify that it was definitely Teresa's vehicle at
10 that point.

11 Q Could you describe the lighting conditions inside
12 of the vehicle please?

13 A Well, the area that the vehicle is in, you can see
14 there are trees, and "what not". It was a rather
15 cloudy day. It was definitely dark. You couldn't
16 visably see. We did not have flashlights to be able
17 to intricately look at details within the vehicle.

18 Q Did you check for a vehicle identification
19 number?

20 A Yes, I did look. I didn't know exactly where they
21 were located. So, it did take a little while to
22 locate the VIN number. But we be did find the VIN
23 number on the driver's side, near the windshield.
24 It was a black interior, and a black dashboard, but
25 also the metal that the VIN number was on was black

1 metal, as well. It was a little difficult to
2 actually read the VIN number, as well as the fact
3 that I am a little bit short, so I had to try to
4 reach over the top of the vehicle to read the VIN
5 number, without touching the vehicle, or actually
6 touching or rubbing up against the vehicle.

7 Q After the telephone call was made to law
8 enforcement authorities, where did you go?

9 A I stayed right near my mom, right near the vehicle,
10 and, after law enforcement was contacted, we moved a
11 little bit away from this vehicle, but we kept our
12 eyes on the vehicle at all times, just to make sure
13 that no one else was coming. We didn't want to draw
14 attention to ourselves, in case someone would come
15 after us, because we did find the vehicle.

16 Q Was there any fixed object or any place that you
17 were standing, while you waited for law
18 enforcement to arrive?

19 A We were near a car crusher, the machinery that
20 crushes cars in the salvage yard.

21 Q While you were waiting for law enforcement,
22 did any individuals approach that vehicle?

23 A No. No one was near the vehicle.

24 Q How long was it before law enforcement arrived, if
25 you can remember?

1 A I would say approximately 20 minutes, at the most.

2 Q After law enforcement's arrival, can you tell us
3 what you did please?

4 A When law enforcement arrived, we pointed to where
5 the vehicle was, and we stayed on the scene to be
6 able to give statements.

7 Q When law enforcement arrived, where were you
8 looking, and what were you doing?

9 A We stayed right near the car crusher area, and we
10 were waiting for the actual identification that it
11 was Teresa's vehicle, and for them to come back and
12 identify it as Teresa's vehicle, because at that
13 point in time we still were unaware, if it was her
14 vehicle or not.

15 Q When law enforcement arrived, were you also
16 watching the vehicle?

17 A Yes, we kept our eyes on the vehicle at all times.

18 Q Did anybody enter the vehicle?

19 A No one entered the vehicle.

20 Q Did anybody touch the vehicle, that you saw?

21 A No one touched the vehicle.

22 Q Ms. Sturm, did you know the difference between the
23 Manitowoc County Sheriff's Deputies and the
24 Calumet County Sheriff's Deputies?

25 A Yes, they did identify themselves, with their names

1 and which department they were from.

2 Q Do you know which department was the first to
3 arrive on the scene?

4 A The first to arrive on the scene was Manitowoc
5 County. However, they had an officer that stood
6 near the vehicle and did not touch the vehicle. He
7 did not really approach the vehicle. He just "stood
8 guard", to make sure it was not touched until
9 Calumet County did arrive.

10 Q About how long after Manitowoc's arrival did
11 Calumet arrive?

12 A Just a few minutes. They were right behind.

13 Q After the Calumet County officers arrived, did you
14 continue to watch the vehicle?

15 A Yes, we did.

16 Q Once again, Ms. Sturm, did anybody either
17 approach, touch the vehicle, or enter the vehicle,
18 while you were there?

19 A No. No one touched the vehicle, or entered the
20 vehicle while we were there.

21 Q How long were you there before you actually
22 left that scene?

23 A We were there until like noon or "12:30-ish" before
24 we left the scene. So, two hours, or two and a half
25 hours.

1 Q In that two hours that you were there, or two
2 and a half hours that you were there, that entire
3 time, did you see anybody enter or touch that
4 vehicle?

5 A No. No one entered or touched the vehicle.

6 Q Ms. Sturm, you mentioned that you had checked the
7 four doors. What four doors are you talking
8 about?

9 A The driver's side, front and passenger doors, and
10 the actual passenger, front and back.

11 Q All four were locked?

12 A All four were locked.

13 Q Were you asked to give either a verbal or a
14 written statement to law enforcement that day?

15 A Yes, I gave a written statement to law enforcement.

16 Q Did you tell law enforcement that you checked the
17 doors and they were locked?

18 A Yes, and I indicated that I did use a tissue, that I
19 didn't use my bare hands to check the doors.

20 MR. KRATZ: I believe that's all I have.

21 Thank you.

22 THE COURT: Mr. Buting?

23 MR. BUTING: Thank you, your Honor.

24 CROSS EXAMINATION BY MR. BUTING:

25 Q Good morning, ma'am?

1 A Good morning.

2 Q Now, you talked about when you first arrived, that
3 you began looking through some vehicles before
4 your mom discovered this SUV; is that right?

5 A That's correct.

6 Q And, in fact, before you did that, were you there
7 when she asked permission, or did you ask
8 permission yourself of anybody who appeared to be
9 on the property?

10 A I wasn't there when my mom asked Earl Avery for
11 permission to search the property.

12 Q And he gave permission; right? Freely?

13 A Yes, he gave permission.

14 Q Is there some reason you look at them every time
15 you answer, other than looking at me?

16 A No.

17 Q Have you been told to do that by somebody from the
18 District Attorney's office?

19 A No.

20 Q Did you prepare for your testimony today?

21 A No, I did not.

22 Q Okay. So, he gave you permission; right?

23 A Yes. He gave us permission.

24 Q Did you get his name?

25 A Yes.

1 Q What was it?

2 A Earl.

3 Q Okay. He didn't hesitate to give you permission
4 to check anywhere you wanted; right?

5 A No, he did not hesitate.

6 Q Okay. It didn't appear as if he had anything to
7 hide from you?

8 A No.

9 Q Okay.

10 A Not to my knowledge.

11 Q You said as you were going through the beginning
12 vehicles, you were looking for either Teresa, or
13 any articles that would appear to be
14 hers; right?

15 A Correct.

16 Q So, you were looking carefully inside each
17 vehicle, not just looking at the outside of the
18 vehicles; right?

19 A We were trying to glance into the vehicles, and look
20 anywhere that was open. Some of the trunks were
21 open.

22 Q Did you open any doors?

23 A No.

24 Q You never opened up any doors of the other
25 vehicles?

1 A No.

2 Q Okay. But you were looking inside those vehicles,
3 even though they are were not, obviously, not
4 Teresa's vehicle; right?

5 A No, they didn't fit the description of Teresa's
6 vehicle.

7 Q I understand. Even though they didn't fit the
8 description, you were looking inside those
9 vehicles, as well, to see if you could see
10 anything; right?

11 A Correct.

12 Q Anything like "Teresa herself"; right? Her body?

13 A Correct.

14 Q Or anything that would look like hers?

15 A Correct.

16 Q Okay. Then, when you got to the RAV-4, your mom
17 was not sure if it was the same one or not?

18 A Correct.

19 Q And so you were looking inside that vehicle to
20 see, again, if there was anything that would
21 indicate to you any articles of Teresa's?

22 A Correct.

23 Q Okay. So, you were looking carefully inside
24 there, because you were trying at that point
25 to make some determination of whether that was,

1 really was Teresa's vehicle; right?

2 A I was looking for things like the license plate, or
3 anything that we could look at, that we had
4 information about, to be able to identify if the
5 vehicle was hers, or not.

6 Q Or anything, any writing that might have her name
7 on it; right?

8 A Yeah.

9 Q Any personal effects that you could use to help
10 you identify that vehicle was actually Teresa's;
11 right?

12 A Correct.

13 Q So, it was important to look inside the vehicle,
14 not just at the outside; right?

15 A Correct.

16 Q You saw no blood whatsoever, did you?

17 A It was a dark, or "very dark" interior.

18 Q Ma'am, did you see any blood?

19 MR. KRATZ: Judge, I will object as
20 "argumentative". She is trying to answer the
21 question. If it's not "yes" or "no", she should be
22 able to explain.

23 THE COURT: That is a "yes" or "no"
24 question. If the explanation is not sufficient on
25 cross, you can ask it on redirect.

1 MR. KRATZ: I will do that, Judge.

2 BY MR. BUTING:

3 Q So, "yes" or "no"? Did you see any blood?

4 A No.

5 Q You didn't have a flashlight with you, you said;
6 right?

7 A No. I said I did not have a flashlight, yes.

8 Q Nevertheless, we are talking about a Saturday
9 morning; right? It was daylight?

10 A Correct.

11 Q In fact, it was 10:30 in the morning, something
12 like that?

13 A Correct.

14 Q It was not raining?

15 A No, it was not raining.

16 Q It was not terribly dark? It was a typical cloudy
17 November day, at 10:30 in the morning; right?

18 A It was a cloudy day at 10:30 in the morning.

19 Q Okay. And the trees that you mentioned were
20 around it, none of the trees had leaves on them,
21 did they?

22 A No, but it was a very brushy area with trees, versus
23 the other flat area that we were looking at, where
24 there was nothing blocking the other vehicles.

25 Q All right. Now, you knew that, in fact, your

1 mother warned you that it was important that you
2 not touch the vehicle, the RAV-4 that you found;
3 right?

4 A Correct.

5 Q You were doing your best not to alter the scene;
6 correct?

7 A Correct.

8 Q And not only did you not want to touch the
9 vehicle, you didn't want to touch any of the
10 branches, or debris, or anything else up against
11 it either, did you?

12 A Not with my bare hands, no.

13 Q Okay. The only thing you ever touched, even with
14 a tissue, were the door handles; is that right?

15 A To reach one of the door handles, I did have to pull
16 back, I believe it was a salvage part, to be able to
17 reach the door handle. I did that with the tissue,
18 as well.

19 Q All right. So, did you move something that was
20 against the vehicle itself?

21 A I just took the tissue and pulled it back, so I
22 would be able to reach the door handle.

23 Q That would be the hood, that was propped up
24 against it?

25 A I would have to see the picture to identify it.

1 MR. BUTING: Would you put up Exhibit 30,
2 Counsel?

3 (At which time Exhibit 30 was shown on the
4 big screen in the courtroom.)

5 BY MR. BUTING:

6 Q I think that is it, right there up on the screen?

7 A Yes.

8 Q Okay. It was some salvage part, that in order for
9 to you get at the door handle on that right rear
10 door, you had to move that panel?

11 A I did not necessarily physically move it. I just
12 pulled it back and checked the door.

13 Q And reached over?

14 A Right.

15 MR. BUTING: Okay. Let's go to Exhibit 29
16 please.

17 (At which time, Exhibit 29 was shown in the
18 courtroom on the big screen.)

19 BY MR. BUTING:

20 Q Do you see Exhibit 29 up there?

21 A Yes.

22 Q That is a photo of the rear of the RAV-4?

23 A Yes.

24 Q And there is a door handle on that door too;
25 correct?

1 A Correct.

2 Q You didn't check that one, to see if it was
3 locked, did you?

4 A No, I did not.

5 MR. BUTING: And if you could go to Exhibit
6 33 please? Thank you.

7 (At which time Exhibit 33 was shown in the
8 courtroom on the big screen.)

9 BY MR. BUTING:

10 Q Thank you. That is a picture -- By the way, you
11 are the one who took all of these pictures?

12 A That's correct.

13 Q Okay. That is a picture of -- It shows sort of
14 the driver's side area of the RAV-4; right?

15 A Correct.

16 Q There is sort of a walkway, or a walk area I
17 suppose, between the RAV-4 and this red vehicle,
18 whatever it is?

19 A Correct.

20 Q By the way, just so we're clear, this RAV-4 was
21 found up along the ridge area, of the border of
22 the property; right?

23 A I wouldn't know whether it was the border.

24 Q Okay. Well, there is a single row of cars up
25 along that area; right?

1 A Correct.

2 Q And there they were all sort of "bumper to
3 bumper", lined up like you would parallel park a
4 bunch of cars along a street; is that correct?

5 A Correct.

6 Q This was the only one that was sort of "double
7 parked", where it was next to, or where it was
8 "two by two"; right?

9 A I don't recall at this time if it was the only one
10 that was doubled parked.

11 Q Okay. But it was the only one with any kind of
12 debris piled on it; right?

13 A Correct.

14 Q It was the only one with any kind of branches
15 piled on it; correct?

16 A Correct.

17 Q You said to us that it was obvious that it
18 appeared that somebody was trying to conceal it;
19 is that correct?

20 A Correct.

21 Q In that sense then, that made it very different
22 than any of the other vehicles; right?

23 A It made us suspicious, yes.

24 Q It made it stand out, the fact that it was,
25 because it was the only one that was covered like

1 that; right?

2 A That, and the fact that it was similar to the
3 description of the vehicle that was Teresa's.

4 Q Okay. So, it was not so concealed that you
5 couldn't tell what it was when you got near it;
6 right?

7 A Can you rephrase that?

8 Q It was not so covered up with items that, when you
9 got anywhere near it, that you were unable to
10 determine it was even a RAV-4, was it?

11 A No, I could tell it was a RAV-4.

12 Q Okay. So, it was just sitting there, for anyone
13 to find, who would be looking through the salvage
14 area; right?

15 A If you were on foot searching, yes.

16 Q Okay. Now, from Exhibit 33, you said that you
17 you were trying to get the VIN number off of the
18 vehicle; right?

19 A Correct.

20 Q And the VIN number, for this particular vehicle,
21 in fact, or for most, I think, are, it's on the
22 dash, kind of at the very end of the windshield,
23 kind of down by the windshield wipers; is that
24 correct?

25 A That was where we were looking on this vehicle, yes.

1 Q I don't know if you knew that before, but you
2 learned it that day; is that correct?

3 A Yes.

4 Q You were told by the officers, that your mom was
5 talking to on the phone, that is where you should
6 direct your attention?

7 A After searching elsewhere on the vehicle, yes.

8 Q Okay. By the way, that VIN is stamped?
9 It's in the dash, in black, right there in black
10 metal?

11 A Correct.

12 Q The VIN itself is a black number, just kind of
13 raised?

14 A Correct.

15 Q Or recessed, bumps, something like that; right?
16 So, to see it, you have to get pretty close, don't
17 you?

18 A Within, you know, eyesight, yes.

19 Q In order to do that, you have to walk around to --
20 Where did you walk along, from the rear? Did you
21 approach it from the rear, or did you approach it
22 from the front?

23 A I don't recall that at this time, which way I
24 approached the vehicle, to check the VIN number.

25 Q Can you get to it either way?

1 A (Pause)

2 Q I mean, could you come around to the front, and
3 lean over, and look from there? Or did you have
4 to go around the rear, and come up alongside
5 of the vehicle, in order to get to the front?

6 A I don't recall at this time.

7 Q Okay. That's fair. Now, you said you waited
8 around 20 minutes or so, before the first officers
9 arrived?

10 A Approximately 20 minutes.

11 Q But during that time you had retreated over near
12 where the crusher was?

13 A Yes, correct.

14 Q That is what, about 900 feet, or a thousand feet
15 away, or something like that?

16 A I can only make an approximation. I would say it
17 would probably be, by blocks, maybe four blocks,
18 city blocks.

19 Q Okay. Then the first to arrive were the Manitowoc
20 officers?

21 A That's correct.

22 Q And did you see a Manitowoc officer walk up toward
23 the vehicle?

24 A Correct.

25 Q More than one?

1 A I recall one officer --

2 Q Okay.

3 A -- approaching the vehicle.

4 Q How many Manitowoc officers arrived first?

5 A (Pause)

6 Q One or two?

7 A I don't recall the exact number of officers that

8 arrived.

9 Q Several?

10 A I made contact with the one officer, and I remember

11 the other officer walked to the vehicle.

12 Q Well, you were watching carefully, you said, to

13 see what was going on; right?

14 A Correct.

15 Q Were you watching because you were concerned that

16 the police might somehow plant something in that

17 vehicle?

18 A No.

19 Q That thought never occurred to you, did it?

20 A No.

21 Q Of course not. So, your only concern was if

22 anybody other than police officers would come to

23 the scene of the RAV-4 and disturb it in any way;

24 right? That was your focus?

25 A That, and the focus that we needed to make sure it

1 was her vehicle.

2 Q Sure. So, once the Manitowoc police officers
3 arrived, you were put at ease a little bit, that
4 at least some law enforcement was there; correct?

5 A I wouldn't say we were "put at ease".

6 Q Well, you were no longer alone at this strange
7 auto salvage yard, with other people milling
8 about; correct?

9 A Correct.

10 Q Now, there was law enforcement there; right?

11 A Correct.

12 Q And they had guns; right?

13 A I would assume they had their guns.

14 Q So, your real interest at that point was if this
15 was really Teresa's car? That is what you were
16 concerned about?

17 A Correct.

18 Q And at some point did one of the officers come
19 back and tell you that? One of the Manitowoc
20 officers?

21 A I don't recall if it was a Manitowoc officer, or
22 Calumet, at that time.

23 Q Okay. How long was it before the Calumet
24 officers arrived on the scene, if you know?

25 A I can only make an approximation. I would say it

1 was a few minutes.

2 Q Okay. How many of them arrived?

3 A I don't recall the exact number of officers that
4 arrived.

5 Q Were they in marked squads? Or unmarked squads?

6 A I don't recall if it was unmarked or marked.

7 Q Were they uniformed? Or not uniformed?

8 A The detective that I spoke to was an un-uniformed
9 officer.

10 Q "Un-uniformed", did you say?

11 A Yeah.

12 Q Plain clothes? Did you see any marked Calumet
13 squads arrive there in the area of the RAV-4?

14 A I don't recall if it was marked or unmarked.

15 Q So, you don't know whether any officers that were
16 coming or going were Manitowoc or Calumet; right?

17 A Not unless they identified themselves. The plain
18 clothes detective identified himself as Calumet.

19 Q So, the one detective identified himself; right?

20 A Yes.

21 Q And the others didn't? Or they did?

22 A I did not have direct contact with all of the
23 officers who arrived at the scene.

24 Q So, you don't recall if they were marked cars, and
25 you don't remember seeing any Calumet uniforms?

1 You don't know if the officers who arrived were
2 from Calumet or Manitowoc; right?

3 A They don't have distinguishing uniforms. They were
4 all brown.

5 Q So, they were just "police officers"; right?

6 A Correct.

7 Q But at some point, I believe, on direct, you said
8 that you did see some -- Well, let me go back and
9 ask it this way: Did you see any Manitowoc
10 uniformed officers at the scene?

11 A As I said, I didn't distinguish based on their
12 uniforms. They are all brown. So, at that point in
13 time, the people that I spoke to had identified
14 themselves as Manitowoc, or Calumet. But I didn't
15 speak with every officer that was there.

16 Q When you say "the people that you spoke to", it
17 was one person that you spoke to; right?

18 A No, I spoke to both Manitowoc and Calumet County
19 officers.

20 Q You did?

21 A Correct.

22 Q Maybe I am misunderstanding. I apologize. Were
23 they wearing uniforms? Or plain clothes?

24 A Plain-clothes detectives.

25 Q So, you talked to two plain-clothes detectives?

1 One said he was from Manitowoc, and one said he
2 was from Calumet?

3 A That's right.

4 Q So, you saw somebody that was uniformed approach
5 the RAV-4 or not?

6 A A uniformed officer did approach the RAV-4.

7 Q Okay. Did you ever see somebody that you could
8 readily discern was a Calumet County officer, as
9 opposed to a Manitowoc officer, come up and
10 relieve the Manitowoc officer, who was near the
11 RAV-4?

12 A I couldn't discern whether they were Manitowoc or
13 Calumet.

14 Q Okay. So, you don't know if or when any Calumet
15 officers took over responsibility for that RAV-4
16 itself, do you?

17 A No.

18 Q You said you were there at the property, the Avery
19 salvage property until about noon or 12:30?

20 A That's correct.

21 Q But before that time, you and your mother had
22 sort of retreated from the car crusher area,
23 farther north, over toward the entryway, didn't
24 you?

25 A No, we stayed near the car crusher area.

1 Q So, you stayed near the car crusher, when you
2 gave your statements?

3 A Yes.

4 Q And the entire time you were on that property,
5 you were just right near the car crusher?

6 A Yes.

7 Q You never went anywhere else further away to talk
8 with officers by any other vehicles?

9 A By what vehicles?

10 Q By any other vehicles, on any other area of the
11 lot?

12 A No.

13 Q You were standing next to your mother the whole
14 time?

15 A Yes.

16 Q Okay. Now, Ms. Sturm, have you ever locked
17 yourself out of your car?

18 A Yes.

19 Q Did you call the police to help you get in?

20 A No.

21 Q Do you know anybody else who has?

22 A No.

23 Q Do you know, if you needed to, if you couldn't find
24 anyone else to get your keys, to get into your
25 vehicle, you could call a police officer, and

1 he would help you get into your vehicle; right?

2 A I called a locksmith.

3 Q Okay. But do you know you could call an
4 officer? Many times people do call officers for
5 that purpose?

6 A No. When it happened to me, I called the locksmith.

7 MR. BUTING: Okay. Thank you. No further
8 questions.

9 THE COURT: Mr. Kratz?

10 REDIRECT EXAMINATION BY MR. KRATZ:

11 Q Ms. Sturm, the defense attorney had asked you
12 about looking in the vehicle, and whether you
13 could see inside the vehicle. Do you remember
14 those questions?

15 A Yes.

16 Q Was it easy to see into those windows?

17 A No, it was not easy.

18 Q I will have you take a look at Exhibit 33,
19 although we will be looking at some others. Is
20 there anything different about the rear windows,
21 than the front driver's windows?

22 A The rear windows had a tint to them, and, as you can
23 see from the picture here, as I'm sure other people
24 have done, there is glare in the windows. So, if
25 you really wanted to see inside, and if you weren't

1 concerned about not trying to disrupt the scene at
2 all, you would have to cup your hands over the
3 vehicle, to make sure you were blocking out the
4 glare, and the shadows, which we didn't do.

5 Q You did not do?

6 A No.

7 Q I will show you Exhibit number 30, and ask you to
8 describe the tint on the back windows?

9 A The rear and back windows were darkly tinted. The
10 front windshield and the driver's and passenger's
11 doors were not. So, once again, you can see there
12 is definitely a "glare".

13 Q Ms. Sturm, whether the officers were Calumet
14 County or Manitowoc County, did any officer
15 approach that vehicle?

16 A No officer touched the vehicle while we were
17 present.

18 Q Did you see any officer pull out a device, or try
19 to pry open the door, or anything like that, while
20 you were there?

21 A No.

22 Q If that would have happened, would you have
23 seen it?

24 A Yes, definitely.

25 MR. KRATZ: Okay. That's all I have of Ms.

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Sturm.

MR. BUTING: Nothing further.

THE COURT: Very well, you are excused.

MR. KRATZ: The State will call Bobby Dassey to the stand.

BOBBY DASSEY, being first duly sworn on oath to tell the truth, the whole truth, and nothing but the truth, testified as follows:

THE CLERK: State your full name and spell your last name please.

THE WITNESS: Bobby Dassey, D-A-S-S-E-Y.

DIRECT EXAMINATION BY MR. KRATZ:

Q Mr. Dassey, how old are you?

A 20.

Q Can you tell us where you live please?

A Right outside of Michicot on Avery Road.

Q Do you know the defendant, Steven Avery?

A Yes, he is my uncle.

Q You have to speak up just a little bit please?

A Yes, he is my uncle.

Q Is he in the courtroom here at this time?

A Yes, he is.

Q Would you point him out for the record, and tell the Judge where he is seated?

A Right over there, to my right.

1 Q Sitting next to his two attorneys?

2 A Yes.

3 MR. KRATZ: Judge, I would ask the record to
4 reflect the defendant's identification.

5 THE COURT: The record will reflect the
6 witness identified Mr. Avery.

7 BY MR. KRATZ:

8 Q Mr. Dassey, do you know where, at least during the
9 fall of 2005, prior to November fifth, where your
10 uncle lived?

11 A Yes. He lived right next door to us.

12 Q I will ask you to describe the kind of residence
13 that, first of all, that you live in?

14 A We live in, I would say, a mobile home, a
15 three-bedroom house, mobile home.

16 Q On October thirty-first, 2005, who all lived in
17 your home?

18 A My mom, my step-dad, and my two younger brothers.

19 Q What were the names of your younger brothers?

20 A Blaine and Brendan.

21 Q Blaine and Brandon?

22 A Brendan.

23 Q Bobby, do you recall October thirty-first of 2005?

24 A Yes.

25 Q Could you tell the jury if you were employed

1 at that time?

2 A Yes, I was. I worked at Fischer Hamilton's, third
3 shift.

4 Q What time would you start work on any day?

5 A I would start at ten at night and work until six in
6 the morning.

7 Q On October thirty-first of 2005, could you tell
8 the jury if you were home during the daytime
9 hours?

10 A Yes, I was.

11 Q And how late, or how long were you home until?

12 A I was home until 2:30 that day.

13 Q What were you doing before 2:30?

14 A I was sleeping.

15 Q When you say "2:30", are you talking about the
16 afternoon or morning?

17 A In the afternoon.

18 Q To your knowledge, Bobby, was anybody else at home
19 with you?

20 A No.

21 Q Do you remember anything unusual that happened at
22 about 2:30 that afternoon?

23 A A vehicle had drove up, and started taking pictures
24 of the van.

25 Q All right. Let's back up just a minute. Were you

1 still sleeping? Or did you wake up?

2 A I was up by 2:30, yeah.

3 Q At 2:30, did you see something?

4 A Yes.

5 Q What did you see?

6 A I seen a vehicle pull up in our driveway.

7 Q Do you recall which window you were looking from?

8 A Through the front window, in front of the kitchen
9 table.

10 Q Bobby, could you describe that vehicle for the
11 jury please?

12 A It was a light green SUV, like a "teal" color.

13 Q How do you know that it was about 2:30 in the
14 afternoon?

15 A Because I was going hunting that night, so that was
16 the time I wanted to get up. I got up at "two".

17 Q All right. From which way did this blue or teal
18 SUV drive in, as you were looking out the window?

19 A Toward the west it would be.

20 Q Can you tell the jury please from which
21 direction your uncle's trailer is from your house?

22 A The west.

23 Q Did you know what kind of SUV it was?

24 A Not at the time.

25 Q All right. After seeing that vehicle driving up

1 the roadway, tell the jury what you saw then?

2 A I seen Teresa Halbach get out of the vehicle, and
3 started taking pictures.

4 Q What was she taking pictures of?

5 A A maroon van.

6 Q A what?

7 A A maroon van.

8 Q Can you tell us about this vehicle? Where was it
9 parked?

10 A It was parked right in front of our house.

11 Q Now you told this jury it was Teresa Halbach that
12 had taken the pictures. How do you know that?

13 A Now, I know that. At the time, I didn't.

14 Q What did this woman look like?

15 A She was about maybe five-eight. She had brown,
16 shorter-like hair. She had a black coat on, that
17 went past the hips.

18 Q Was she wearing pants, or a skirt?

19 A She was wearing pants.

20 Q Now, about this van, what can you tell the jury
21 about that van?

22 A It was a 1989 Plymouth Voyager. It had lots of
23 miles on it. It was my mom's van. She had it for
24 a couple of years. I don't know really much more
25 about it.

1 Q All right. As you were looking out the window,
2 you said that you saw a woman taking pictures.

3 Can you describe that please?

4 A Well, I seen her take one picture of the front of
5 the van. Then I went in and took a shower.

6 Q Okay. After seeing her taking some pictures, did
7 you see her do anything else?

8 A She started -- Before I got in the shower, she
9 actually started walking over to Steven's trailer.

10 Q You could see that from your location?

11 A Yeah. Through the window, yeah.

12 Q You said, "walking toward Steven's trailer". What
13 does that mean?

14 A She walked toward it, to the door.

15 Q How close to the door did she get, before you
16 stopped watching?

17 A Maybe 25 yards.

18 Q Did you see her enter your uncle's trailer?

19 A No.

20 Q Why not?

21 A Because I wanted to take a shower. I didn't pay no
22 attention to it.

23 Q All right. Was there anybody with her at that
24 time?

25 A No.

1 Q Was there anybody outside, or making contact with
2 her, outside by the vehicle?

3 A No.

4 Q After seeing this woman walking toward your Uncle
5 Steven's trailer, did you ever see this woman
6 again?

7 A No.

8 Q How long was it that you were in the shower? Do
9 you remember?

10 A Maybe three minutes, or four minutes.

11 Q Okay. What did you do then?

12 A Got dressed, and left, to go hunting.

13 Q Now, when you left to go hunting, did you have a
14 vehicle on the premises?

15 A Yes.

16 Q Can you tell the jury what kind of vehicle it was?

17 A A black Chevy Blazer.

18 Q Where was that parked?

19 A It was parked right between the house and the
20 garage.

21 Q About what time do you think you left to go
22 hunting?

23 A Probably twenty to three, quarter to three.

24 Q Quarter to three? Bobby, how do you know that
25 was the time? Why is that time important as it

1 relates to hunting?

2 A Well, that is when the deer start moving. They go
3 on their feeding patterns then.

4 Q Pardon?

5 A They go on their feeding patterns then.

6 Q Where did you go hunting that day?

7 A It was actually maybe two miles up the road from my
8 house.

9 Q What kind of hunting was it?

10 A Deer hunting. Bow hunting.

11 Q Mr. Dassey, when you walked out to your vehicle
12 to go bow hunting, did you notice if that teal or
13 blue SUV was still in the driveway?

14 A Yes, it was.

15 Q It was?

16 A Yes.

17 Q Did you see Ms. Halbach?

18 A No.

19 Q Did you see any signs of her at all?

20 A Nope.

21 Q What did you do then?

22 A I proceeded to leave. I got in my vehicle and I
23 left.

24 Q Did you hunt that day?

25 A Yes.

1 Q Did you get anything that day?

2 A No. I seen two deer. I didn't get anything, no.

3 Q All right. After deer hunting, what did you do?

4 A Came home, and I laid down, and I went to sleep

5 again.

6 Q What time did you get home? Do you recall?

7 A It was "five-ish".

8 Q Now, when you drove back home at about five

9 o'clock in the afternoon, was Ms. Halbach's

10 vehicle still visible?

11 A No.

12 Q What did you do when you got home?

13 A I watched TV for a little bit, then I went to bed.

14 Q Did you go to sleep?

15 A Yes.

16 Q How long did you sleep?

17 A Probably three hours.

18 Q Let me back up just a few minutes, Bobby. At any

19 time during the morning or early afternoon hours,

20 did you receive any phone calls at your residence?

21 A No. Not that I am aware of.

22 Q Why don't you tell us what that means, "not that

23 you are aware of"?

24 A I am a real deep sleeper. When I sleep, I don't

25 hear nothing.

1 Q If the phone rings, would you have heard it?

2 A No.

3 Q After getting up that afternoon, did you check for
4 any messages, or check the answering machine?

5 A No.

6 Q Now, you mentioned that, while you were home that
7 day, you didn't think anybody was home when you
8 got up and when you left. After you went bow
9 hunting, was anybody home at that time?

10 A No.

11 Q Are you familiar with your brothers' schedules,
12 that is, your brothers that were at school?

13 A Yes.

14 Q What brothers went to school at that time?

15 A Blaine and Brendan.

16 Q Are you familiar with when Blaine and Brendan
17 usually got home from school?

18 A They usually got home at quarter to four.

19 Q That would be 3:45?

20 A 3:45, yeah.

21 Q So, about an hour after you would have left to go
22 deer hunting?

23 A Yes.

24 Q When you got home at about five o'clock, Bobby,
25 were Blaine and Brendan home?

1 A I can't recall.

2 Q All right. Now, you have a fourth brother, or a
3 third brother; is that correct?

4 A Yes.

5 Q What is his name?

6 A His name is Brian.

7 Q Do you know where Brian was at the time?

8 A He was at work.

9 Q Now, was Brian living at your home at the time
10 too?

11 A No.

12 Q Where was Brian staying at the time?

13 A He lived in Manitowoc with his girlfriend.

14 Q What is your mother's name?

15 A Barb.

16 Q And is Barb related to Mr. Avery, if you know?

17 A Yes.

18 Q How?

19 A Sister. Brother and sister.

20 Q When you got up and went bow hunting, and left for
21 bow hunting, was your mother home at that time?

22 A No, she was at work.

23 Q When you got home from deer hunting, was your
24 mother home yet?

25 A No.

1 Q Do you recall your mom coming home, or seeing
2 her that night?

3 A When I got up at nine o'clock, I seen her.

4 Q All right. I think I asked this, Bobby. I'm
5 sorry. But what time did you start work?

6 A I started work at ten.

7 Q Ten p.m.?

8 A Yep, ten p.m.

9 Q Where is the place that you work? What city is it
10 located in?

11 A Two Rivers.

12 Q Bobby, the rest of that week, after the
13 thirty-first of October, do you recall the rest of
14 that week?

15 A Some of it.

16 Q That weekend, that Friday and Saturday, the fourth
17 and fifth, did other family members go somewhere
18 that weekend?

19 A Yeah, they went up north.

20 Q What does "up north" mean?

21 A Up to Crivitz.

22 Q Do you know what is up in Crivitz?

23 A My grandpa has a cabin up there.

24 Q Do you know what family members went up north that
25 weekend?

1 A Steven, Brendan went, and Brian went, and my grandma
2 and grandpa were up there.

3 Q Steven, Brendan, and Brian? You didn't go?

4 A Nope.

5 Q Do you remember why you didn't go?

6 A I had to work that Sunday night.

7 Q Let's go back to the thirty-first, your work
8 schedule. You said that you worked at ten
9 o'clock; is that right?

10 A Yes.

11 Q Do you remember what time you left home for work?

12 A Probably about 9:30.

13 Q At 9:30 p.m. on the thirty-first of October, did
14 you see anything when you left your house?

15 A Not that I recall.

16 Q Did you see anything by your uncle's?

17 A I didn't even look.

18 Q Now, that weekend, the Saturday, the fifth of
19 November, do you recall that day at all?

20 A No.

21 Q Do you remember something being found on the Avery
22 property that Saturday?

23 A Her vehicle.

24 Q That is the day I'm talking about. Do you now
25 remember that day?

1 A Not really.

2 Q All right. Do you remember where you were when
3 that vehicle was found?

4 A I was by my friend's house.

5 Q What is your friend's first name?

6 A Mike.

7 Q How were you notified, if you remember, that
8 Teresa's vehicle was found on the Avery property?

9 A The TV and my mom.

10 Q Now, Bobby, at the time, back on the thirty-first
11 of October, did you have any pets?

12 A Yes, I had just got a black lab. She was two months
13 old.

14 Q Was that an "inside", or "outside" dog?

15 A Inside dog.

16 Q On the thirty-first of October, when you went
17 hunting, did you take your dog with you?

18 A No.

19 Q When you went to your friend Mike's house on
20 Saturday, the fifth, did you take your black lab
21 with you?

22 A No.

23 Q Were you able to get back home on the fifth of
24 November?

25 A No.

1 Q Tell us why not?

2 A They had the road all blocked off. They wouldn't
3 let anybody in there.

4 Q Who is "they"?

5 A The police officers.

6 Q How about your dog? What happened to your black
7 lab?

8 A I had to wait, like, three hours, in order to get
9 her.

10 Q In order to get her?

11 A Yeah.

12 Q How did you get her?

13 A I had to give my statement and everything. Then the
14 investigator went in and got her.

15 Q They got your dog for you?

16 A Basically, yeah.

17 Q Now, Bobby, on the third of November, that would
18 be a Thursday, I believe, do you recall having a
19 conversation with your Uncle Steven regarding a
20 body?

21 A Yes.

22 Q Could you tell us what your Uncle Steven told you
23 that day?

24 A Well, my buddy, Mike, was over too, and he asked us,
25 it sounded like he was joking, honestly, he asked us

1 if we wanted to help get rid of a body.

2 Q Your Uncle Steven asked you if you wanted to help
3 get rid of a body?

4 A Yeah.

5 Q What was your response?

6 A "No".

7 Q Bobby, are you familiar with a Suzuki Samurai, a
8 gray Suzuki Samurai?

9 A Yes.

10 Q Where was that vehicle please?

11 A That was in Steven's garage. He was going to fix it
12 up.

13 Q On the thirty-first of October, do you recall
14 where that Suzuki Samurai was?

15 A I don't even know.

16 Q Do you remember, generally, where it was parked?

17 A No.

18 Q If you don't know, that's fine.

19 A I don't know.

20 Q All right. Bobby, have you ever seen a fire, like
21 a bonfire, by your Uncle Steven's?

22 A Yes.

23 Q Do you remember the last time you saw a bonfire by
24 your Uncle Steven's?

25 A Maybe two weeks before that, before this all

1 happened.

2 Q There is -- Let me just ask you: Is there some
3 place where your Uncle Steven would have fires?

4 A Yes, right behind his garage.

5 Q Can you describe that area for us?

6 A It was just a mound of gravel that he, basically,
7 burned stuff on.

8 MR. KRATZ: If I could have a moment with
9 counsel, Judge?

10 (AT WHICH TIME MR. KRATZ CONSULTED WITH
11 other counsel about some photographs.)

12 BY MR. KRATZ:

13 Q Bobby, we have had some photographs marked. I
14 will have you identify some of these, in fact,
15 all of them, to help the jury understand what we
16 are talking about. The first exhibit I want you
17 to take a look at is Exhibit Number 37. Can
18 you tell us what that is please?

19 (While the witness was looking at the
20 exhibit, and before he began his answer, Mr.
21 Strang made the following statement.)

22 MR. STRANG: While he is doing that, your
23 Honor, I have a concern that I want noted now, and
24 that I would like the raise outside of the jury's
25 presence, between the direct and cross of Mr.

1 Dassey.

2 THE COURT: Are you saying you would like to
3 raise it out of the jury's presence now? Or later?

4 MR. STRANG: No, not now. If we can take
5 that up between the direct and the cross, that would
6 be fine.

7 THE COURT: Very well.

8 BY MR. KRATZ:

9 Q Tell us what Exhibit 37 is please?

10 A That is Steven's trailer.

11 Q Steven --

12 A -- Avery's trailer.

13 (At which time Exhibit 37 was shown in the
14 courtroom on the big screen.)

15 Q I will let the jury now see Exhibit 37. Can you
16 tell us kind of what else is shown there? What
17 are we looking at?

18 A Well, the red thing is Steven's trailer. The garage
19 is to the left. That is his truck sitting there,
20 and that is his burning barrel right in front of the
21 house.

22 MR. KRATZ: If I could have one moment,
23 Judge?

24 (At which time Mr. Kratz had a brief
25 discussion with Mr. Strang, in low tones, off the

1 record, out of the hearing of everyone else in the
2 courtroom.)

3 BY MR. KRATZ:

4 Q I will give you a laser pointer. There is a
5 button there. Using the laser pointer, again,
6 Bobby, can you show us where Steven's trailer is?

7 A Steven's trailer is right there.

8 Q Okay. You mentioned a burning barrel?

9 A The burning barrel would be right there.

10 Q Whose burning barrel is that?

11 A That would be Steven's burning barrel.

12 Q Where is Steven's garage?

13 A Right there.

14 Q All right. The next exhibit is number 38. Can
15 you tell us what that is please?

16 A (Pause).

17 Q It's in front of the next picture, 38?

18 A Just another picture of Steven's trailer and his
19 garage.

20 Q It's a little different angle; is that right?

21 A Yes.

22 Q I will now let the jury look at Exhibit 38.

23 Tell us what we are looking at please?

24 A Basically, just looking at Steven's trailer again,
25 and his garage, and his truck.

1 Q What is Exhibit 39 please?

2 A It's a closer shot of Steven's trailer.

3 Q Now we're letting the jury see Exhibit 39. Where
4 would Steven's main entrance be? How do you get
5 in the trailer?

6 A Through the door right by the step right there.

7 Q The record will reflect that you are pointing to
8 the entrance furthest to the right of this
9 trailer; is that correct?

10 A Yes.

11 Q Does the photograph help you, or could you
12 describe for the jury about how close Ms. Halbach
13 was to that trailer, when you stopped watching her
14 approach?

15 A She was probably right about there.

16 Q Looking which way?

17 A Toward the trailer, west.

18 Q Exhibit 40 is the next exhibit. Would you
19 describe what that is please?

20 A Just a closer view of Steven's front door.

21 Q That is the door we were talking about?

22 MR. KRATZ: We lost our batteries here,
23 Judge.

24 (The photographs which had been shown on the
25 large screen in the courtroom, were not able to be

1 seen, until new batteries could be installed in the
2 remote control device.)

3 BY MR. KRATZ:

4 Q While we are getting new batteries for our remote
5 control, I will ask you some other questions,
6 Bobby. First of all, how often would your Uncle
7 Steven have fires at his property?

8 A Maybe one or two every month.

9 Q You mentioned that Steven -- Or you identified, at
10 least, Steven's garage. Who uses Steven's garage?

11 A Steven does.

12 Q Does anybody else have access to it?

13 A At that time, no.

14 Q All right. Even though the batteries are not
15 changed yet, or they are kind of going bad, we
16 will do the best we can until we get some new
17 ones. This is Exhibit 40, that you have
18 identified. What are we looking at here?

19 A That is Steven's front door, the main entrance.

20 Q There is what looks like a deck that goes around
21 the trailer. Can you explain that please?

22 A Yes, it is basically a deck that runs around the
23 whole trailer. He has got a little "plateau" at the
24 end.

25 Q All right. Do you see the next picture in front

1 of you, Exhibit 41?

2 A Yes.

3 Q Can you tell us what that is please?

4 A That is just a picture of the door to the far left
5 of the trailer.

6 Q All right. We are now letting the jury look at
7 Exhibit 41. Again, what are we looking at?

8 A That is just another door to Steven's trailer.

9 Q Now, on the left there, the left-most edge of
10 Exhibit Number 41, is that the door that you are
11 talking about?

12 A Yes.

13 Q Do you know where that door goes?

14 A It goes into the hallway of the trailer, closest to
15 the bedroom in the back.

16 Q Have you been in Steven's trailer before?

17 A Yes.

18 Q On the thirty-first of October, did you have
19 keys to Steven's trailer?

20 A No.

21 Q Do you know if anyone else from your home had
22 keys to his trailer?

23 A No.

24 Q No, "you don't know"? Or, no, "they didn't"?

25 A No one did.

1 Q All right. The next exhibit in front of you is
2 Exhibit 42. Tell us what that is?

3 A This is a picture of the back of Steven's trailer.

4 Q Do you want to take the laser pointer, now that
5 the jury can see Exhibit 42? Why don't you tell
6 us what we are looking at?

7 A This is the back side. This side faces north. That
8 is the back of Steven's trailer. That is his pool.

9 Q Now, there is a back patio door on that trailer?

10 A Yes.

11 Q Can you show us that please?

12 A That would be right there.

13 MR. KRATZ: Just so the record is clear,
14 Judge, he is pointing at what would be just about
15 the very middle of the trailer.

16 BY MR. KRATZ:

17 Q That is the patio door; is that correct, Bobby?

18 A Yes.

19 Q What kind of pool is that?

20 A Just a pool that is like four feet deep.

21 Q Okay. Exhibit 43 is the next exhibit in front of
22 you. Can you tell us what that is?

23 A Just another view of the back of Steven's trailer.

24 Q Now we will let the jury take a look. It's a
25 different angle, pretty much the same as Exhibit

1 42?

2 A Yes.

3 Q Which way have we moved around? Or the camera?

4 A Which way?

5 Q Yeah.

6 A It has moved to the right, south.

7 Q Exhibit 43 shows Steven's back patio door?

8 A Yes.

9 Q Could you show us that please?

10 A Right there.

11 Q Now, behind Steven's trailer, Exhibit -- Excuse

12 me. Behind Steven's garage, did Steven have a

13 dog house?

14 A Yes.

15 Q Does Exhibit 43 show that?

16 A Yes.

17 Q If you could point out the dog house for us

18 please?

19 A Right there.

20 Q Directly behind the dog house, what is that area?

21 A That would be the burning pit.

22 Q You had mentioned, Bobby, before about seeing the

23 fires at Steven's. Where on this property did you

24 see those fires?

25 A Right there.

1 Q Directly behind this garage?

2 A Yes.

3 Q The next exhibit that we are asking you to
4 identify is Exhibit 44. Tell us what that is
5 please?

6 A This is another shot of Steven's house and the
7 garage.

8 Q Now the jury can see Exhibit 44. What are we
9 looking at?

10 A Basically, you are looking at Steven's trailer
11 again, the garage, and the dog house, and his truck.
12 Again, right there is where he had his burning pit.

13 Q His burning pit?

14 A Yeah.

15 Q Now, this exhibit, that is Exhibit 44, do you know
16 about where this was taken from?

17 A This actually was taken right in front of our house.

18 Q Is this east, or west, or north, or south of
19 Steven's trailer? Do you know?

20 A It would be east.

21 Q Okay. The next exhibit is Exhibit 45. Can you
22 tell us what that is please?

23 A That is a picture of Steven's garage.

24 Q Again, now that the jury can see Exhibit Number
25 45, why don't you take the laser pointer and

1 tell us what we are looking at?

2 A Basically, that is just Steven's garage again, and
3 his truck. That is the door he mainly used to the
4 garage.

5 Q That is what? You have to speak up.

6 A That is the door he mainly used for the garage.

7 Q Kind of a service door?

8 A Yeah.

9 Q All right. The next exhibit is Number 46. Can
10 you tell us what that is please?

11 A Another picture of Steven's garage.

12 Q All right. Exhibit 46, now that the jury can
13 see it, again, can you explain what we are looking
14 at?

15 A Just another picture of Steven's garage.

16 Q Is the service door open, or closed?

17 A It's open.

18 Q That burning pit, or burn area, can you tell us
19 where that is on this picture?

20 A It would be right there, where that white gravel is.

21 Q Right behind the garage?

22 A Yes.

23 Q What is Exhibit 47?

24 A A picture of Steven's burning pit.

25 Q All right. Now that the jury can see Exhibit 47,

1 why don't you tell us what we are looking at?
2 A You are just looking at Steven's burning pit,
3 directly behind the garage.
4 Q Do you recognize anything else in this picture?
5 A There is a seat.
6 Q What do you mean, "a seat"?
7 A From a vehicle, right there, and his trailer is
8 there. The dog coop is there.
9 Q Bobby, had you seen that seat out by there by your
10 Uncle Steven's house?
11 A Not that I recall.
12 Q Now on Exhibit Number 47, if you can show us, more
13 specifically, where the burning happened, where
14 the burn area is?
15 A Right around there.
16 Q There is a blackened area, which would be just
17 west and just right of the car seat. Is that the
18 place that you are pointing?
19 A Yes.
20 Q What is the next exhibit?
21 A The picture directly behind Steven's garage.
22 Q That is Exhibit 48; is that right?
23 A Yes.
24 Q Now that the jury can see Exhibit 48, tell us what
25 we're looking at?

1 A Basically, the back of Steven's trailer. There is
2 the dog coop again. That is where his burning pit
3 would be.

4 Q The dog "what"?

5 A The dog "coop".

6 Q The dog coop, C-O-O-P?

7 A Yeah, or dog house.

8 Q Where is Steven's garage?

9 A Right there.

10 Q That is the building to the very right of the
11 exhibit; is that correct?

12 A Yes.

13 Q Where is Steven's trailer?

14 A Right there.

15 Q So, the red building, just to the west; is that
16 correct?

17 A Yes.

18 Q Again, where is the burn area?

19 A This is partially shown in the picture, to the far
20 south of the picture.

21 Q The next exhibit is Number 49. Tell the jury
22 what this is please?

23 A Another picture of behind Steven's garage.

24 Q Now that the jury can see Exhibit 49, would you
25 again tell us what we are looking at?

1 A Just looking at the same picture as before, that dog
2 house, the garage, his trailer. That is where the
3 burning pit would be.

4 Q What is the next exhibit, 50?

5 A A picture of the burning pit, just at a different
6 angle.

7 Q There is something else in this picture, as well;
8 is that correct?

9 A Yes.

10 Q What is that?

11 A That is his dog.

12 Q Do you know the name of that dog?

13 A His name is "Bear".

14 Q "Bear"?

15 A Yes.

16 Q Whose dog was that?

17 A Steven's.

18 Q Pointing to Exhibit 50, can you show us the area
19 where things were burned?

20 A Right there.

21 Q That would be directly in front of the dog?

22 A Yes.

23 Q Can you tell us about "Bear"? Would the animal,
24 the dog of Steven Avery, usually be an inside dog
25 or an outside dog?

1 A Outside dog.

2 Q Do you know how long Bear's chain was, where

3 Bear would be able to wander?

4 A Fifteen feet.

5 Q Okay. Now in the back of this picture, the

6 background of Exhibit 50, do you see any vehicles?

7 A Yes.

8 Q What do you see?

9 A The maroon Plymouth Voyager.

10 Q Can you point that out?

11 A Yes, right there.

12 Q That car is not far, or just to the right of the

13 garage?

14 A Yes.

15 Q That is the same vehicle you saw Teresa Halbach

16 taking photos of?

17 A Yes.

18 Q I don't know if you are able to answer this,

19 Bobby, but I will ask you. What was Bear's

20 personality, or demeanor like, if you know? Do

21 you know what I'm asking you?

22 A He was really calm.

23 Q The next picture is Exhibit 51. What is that

24 please?

25 A That is a picture of Steven's burn barrel.

1 Q Where was this burn barrel located?
2 A Northwest of Steven's trailer.
3 Q In the background of that picture, you also see
4 a vehicle; is that correct?
5 A Yes.
6 Q What vehicle is that?
7 A That is the Plymouth Voyager again.
8 Q You also see a road between the burn barrel and
9 the vehicle; is that correct?
10 A Yes.
11 Q Can you describe that road for us please?
12 A That would be the driveway leading down to Steven's
13 trailer.
14 Q Now, Mr. Dassey, does Exhibit 51 help you, or
15 could you help explain or show the jury where you
16 saw Ms. Halbach walking, before you took your
17 shower?
18 A She was walking right about there, walked right
19 through there.
20 Q Walking in a westerly direction toward Steven's?
21 A Yes.
22 Q The next exhibit is Exhibit 52. Tell us what that
23 is please?
24 A That would be a picture of our burning barrels.
25 Q What do you mean "our burning barrels"?

1 A My mom's burning barrels.

2 Q How many were there?

3 A Three.

4 Q Are you sure?

5 A I don't know. I thought there was three.

6 Q Okay. Where were the burn barrels located?

7 A In our back yard, right behind our garage.

8 Q And this picture has some people in it. Do you
9 know who those people are?

10 A No.

11 Q Now, to the left, or behind the burn barrels are
12 some vehicles. Do you know how far away those
13 are? In other words, how close to your property
14 we are looking at?

15 A (Pause)

16 Q That's a bad question. Let me try it again. The
17 burn barrels, how close were they to the edge of
18 what would be your mom's property?

19 A 25 yards, or 30 yards.

20 Q The next exhibit is Exhibit 53. This is going to
21 look familiar, but what is that?

22 A Just another view of Steven's trailer.

23 Q From a little different angle; is that right?

24 A Yes.

25 Q What is Exhibit 54?

1 A That is a picture of our house, my mom's house.

2 Q Let's talk about that a little bit, now that the
3 jury can see Exhibit 54. Please take the laser
4 pointer and tell them what they are looking at?

5 A This is, basically, my mom's house. That is our
6 golf cart.

7 Q Your what?

8 A Our golf cart.

9 Q Okay.

10 A This would be the side of the house to the
11 farthest west. The burning barrels would be right
12 back there. You can't see them on there.

13 Q Could you tell us, or show us in this picture, the
14 window that you were looking out when you watched
15 Ms. Halbach?

16 A That window right there.

17 Q Okay. And I know that the vehicle for sale is not
18 shown on this picture, but which direction was it?
19 Can you kind of show us?

20 A It would be right over there.

21 Q To the right, off screen?

22 A Yes.

23 Q The next exhibit is Exhibit 55, can you tell us
24 what that would be?

25 A That would be my mom's answering machine.

1 Q Where was that located?

2 A In our living room.

3 Q Again, now that the jury is able to see Exhibit
4 55, what kind of answering machine was it? Do you
5 know?

6 A No.

7 Q Is there a phone that went with it?

8 A Yes.

9 Q Where did the phone go?

10 A I don't know.

11 Q But, what I mean is, was the phone placed on
12 a cradle, or something, on this phone?

13 A Yes.

14 Q Where is that?

15 A It's not on there.

16 Q Okay. Had you ever used that answering machine?

17 A No, I don't use it at all.

18 Q Have you ever retrieved a message from that
19 answering machine?

20 A Yes.

21 Q How do you retrieve a message from it?

22 A You just hit "play".

23 Q The next exhibit for the jury is Exhibit 56.
24 Have you ever seen that before?

25 A Yes. That would be my grandmother's.

1 THE COURT: Just a second. I think, Mr.
2 Kratz, it's 10:30. I think we will take our morning
3 break.

4 MR. KRATZ: We can certainly do that, Judge.

5 THE COURT: I will remind you, again,
6 members of the jury, not to discuss the case at any
7 time during the course of the trial, including
8 during any breaks. We will see you in 15 minutes.

9 (At which time the jury left the courtroom.
10 Then the following proceedings continued immediately
11 in the courtroom, out of the presence of the jury.)

12 THE COURT: You may be seated. Mr. Kratz,
13 did you have something first?

14 MR. KRATZ: Yes. Since there are several
15 photos, I believe we have received a stipulation as
16 to their admissibility. I understand that each
17 should be shown one at a time, but I think the Court
18 knows the technological limitations that we are
19 having, trying to toggle through this remote
20 control, so that only one is shown at a time, or
21 only after Mr. Dassey identifies what it is.

22 I'm wondering if there is a better way, or
23 if there is an opportunity that we may show these in
24 a more efficient fashion, perhaps one photo after
25 another, without having to go to a blue screen every

1 time.

2 I can certainly do that. It's Mr. Strang's
3 call. I understand that, Judge. This is simply a
4 request to make it a little easier for the jury to
5 watch these, and look at these exhibits, which I
6 believe had been stipulated as to their
7 admissibility.

8 THE COURT: Mr. Strang?

9 MR. STRANG: I think we should continue to
10 do it this way. There is a concern, or I imagine
11 there are many witnesses, who will have as many
12 photographs to go through. The concern is not the
13 authenticity of the photographs, or their
14 admissibility, but rather the kind of things that
15 appear on the screen.

16 When Mr. Kratz has the lap top on his desk,
17 he can stop the projecting of them up there before
18 one exhibit has been selected, and, you know, this
19 is just a good method to do it, because we may get
20 some photographs where, for some reason or not, they
21 ought not to be published to the jury, whether
22 because the witness can't identify it, or whatever
23 reason.

24 THE COURT: All right.

25 MR. KRATZ: That's fine. All I can do is

1 ask, Judge. I understand.

2 THE COURT: Mr. Strang, was there something
3 else you wished to take up?

4 MR. STRANG: There was. There is the matter
5 that I raised, and noted that I wanted it recorded,
6 that I had raised the matter, but it could wait for
7 our break to raise it. I wanted to do some checking
8 through the discovery too, before I did it.

9 My recollection of Bobby Dassey's testimony
10 was that he said that on Thursday, November 3, 2005,
11 in the presense of Bobby Dassey, and his friend,
12 Mike -- he didn't identify him further than as
13 "Mike" -- that Steven Avery asked if they wanted to
14 help get rid of a body, or "the body". I'm not
15 clear. I didn't write this down better.

16 But at the time Bobby said that he thought
17 Steve was joking about that, and it was shortly
18 after that testimony that I interjected briefly, as
19 I did.

20 We have no written summary of an interview
21 of Bobby Dassey, in which that statement is recited.
22 So, the immediate concern was disclosure of oral
23 statements of the defendant, that the State intends
24 to use at trial, I think, under Section
25 971.23(1)(b).

1 We do have a Calumet County Sheriff's
2 Department report of a contact with Michael
3 Osmunson, O-S-M-U-N-S-O-N, where, for counsel's
4 benefit, and the Court's, is page 259 of the Calumet
5 County Sheriff's Department report. That report,
6 which is not an interview of Bobby Dassey, recites a
7 statement of this Michael Osmunson, that he and
8 Bobby were inside the Dassey garage, when Steven
9 came over, and he goes on from there.

10 I think probably here, the best thing for
11 me to do is, what I will do is just read this for
12 the Court's benefit now, and make this a Court
13 Exhibit, page 259 of the report. The first chance I
14 get, we will make a copy of it. I will read the
15 relevant paragraph in its entirety.

16 "Michael indicated the only time he had been
17 at the Avery property between 10-31-05 and 11-14-05
18 was on Thursday, 11-10-05. He stated he and Bobby
19 were inside the Dassey garage when Steven came over.
20 Michael indicated he was aware Steven was one of the
21 last people to see the missing girl, and jokingly
22 asked Steven if Steven had her (the missing girl) in
23 a closet. At this point Steven asked Michael if
24 Michael wanted to "help bury the body", and they
25 laughed about this together. Michael stated he had

1 just learned about the missing girl on the Tuesday
2 prior to that. He once again indicated he thought
3 Steven might have been the last one to see the
4 missing girl." End of the relevant paragraph.

5 Although the following one sentence
6 paragraph says, "According to Michael, Steven stated
7 people go missing all the time and this girl may
8 have left, or may, quote, "have left for Mexico."
9 Period, close quote.

10 Now, although we have been told that Bobby
11 is in the garage at the same time, there is no
12 indication that Bobby overhears the statement.
13 Moreover, there was a different context for the
14 statement laid out here than what Bobby gave. That
15 is, Michael himself is joking with Steven, jesting
16 with him about having the girl in the closet. This
17 is clearly a joking response to the jest.

18 We have "help bury the body", instead of
19 "help get rid of the body". But, most significant
20 of all, this conversation clearly takes place on
21 Thursday, November tenth, 2005, not Thursday,
22 November 3, 2005. And Michael Osmunson says he had
23 just learned about the missing girl on the Tuesday
24 prior to that. Well, that has to be Tuesday,
25 November eighth, because on November 1, no one had

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reported Teresa Halbach missing.

I was not concerned about Michael Osmunson being a witness in this case. Why? Because Steven Avery was arrested on November 9, 2005, and he has been continuously in custody since then, and was not in the Dassey garage, or Janda garage, or anyone else's garage, on Thursday, November 10, 2005.

Now we have a different witness, to whom this statement has never been attributed, of which we have no summary identifying him as someone who overheard the statement, or identifying a statement, as having been Bobby Dassey, as the individual identified, or critically identifying the statement as having been made on November 3, as a time when Steven Avery was not in custody, was at home, or in the salvage yard property, and the implication is this may have been before Teresa Halbach even is reported missing.

In large part, that implication arises because we didn't have the joke that was made to Steven Avery as the precursor of this. So, what I'm left with is this jury having heard testimony from the first blood relative of Mr. Avery to testify here, his nephew and next-door neighbor, that amounts to a confession of a crime, and under

1 the circumstances, although, technically, because
2 Bobby is listed in the report of contact with
3 Michael Osmunson, technically, the discovery statute
4 here may have been complied with. I have not looked
5 at the case law under the discovery statutes, but,
6 setting that aside, this comes as an unfair
7 surprise.

8 It's materially different than the summary
9 or the statement of which we have been given notice.
10 There is no way to unwind this from the juror's
11 minds. It has enormous unfair prejudicial impact.
12 I can think of no remedy, short of asking for a
13 mistrial, on the introduction of this testimony by
14 the State on the direct examination of Bobby Dassey,
15 without having been invited by the defense, or the
16 defense otherwise having opened the door, or done
17 anything to which you could say this would be an
18 invited response.

19 I move, therefore, for a mistrial on the
20 grounds I have explained.

21 THE COURT: Mr. Kratz?

22 MR. KRATZ: Well, Judge, after Mr. Strang
23 concedes that the discovery statute was complied
24 with, or I guess in his words, "may very well have
25 been complied with", I will leave the legal analysis

1 to the Court. A summary of this conversation was
2 provided, and although it appears that this Michael
3 fellow got the Thursday wrong, as far as being the
4 third versus the tenth, because Mr. Strang is
5 correct, that as of the tenth, Steven Avery was in
6 custody.

7 This witness did testify consistently with
8 what the story was, that he believed his Uncle
9 Steven was joking, that it was said in a joking
10 manner, and, if Mr. Strang wishes to inquire as to
11 the context of it, he may do so on cross
12 examination. That is what cross examination is for.

13 It certainly does not rise to the level of
14 material that requires a mistrial. We would ask
15 that the Court not do that.

16 THE COURT: Before I go back to Mr. Strang,
17 did I understand that the State indicated they gave
18 that to the defense, not only the Michael Osmunson
19 statement, but also information that Mr. Dassey
20 would testify as he did today? I thought that is
21 what I heard you start to say.

22 MR. KRATZ: No, he got it from -- He got
23 page 259, with all of the other discovery, including
24 Mr. Dassey's. I don't know if the conversation is
25 included in Mr. Dassey's report, but it was in Mr.

1 Osmunson's on page 259.

2 MR. STRANG: This page 259 is the only
3 notice I had of any discovery, any conversation, of
4 anything at all in any form. Indeed, I had asked
5 for any statements of Bobby Dassey. I see no
6 mention of a Mike, or Michael, or Michael Osmunson,
7 anywhere in the report itself, that concerns what
8 Bobby Dassey had to say. So, there, I will tell you
9 this caught me completely unaware.

10 THE COURT: Mr. Kratz, I guess I am not
11 sure, what was the State expecting, that Mr. Dassey
12 was going to testify to a different date today, to
13 the tenth, rather than the third?

14 MR. KRATZ: I don't understand the question,
15 Judge. It was the third. This witness testified
16 that this conversation with Mike, because Steven was
17 not in custody then, this witness testified it was
18 on the third.

19 THE COURT: Right. But it's my
20 understanding, from what I have been told, and you
21 folks have the benefit of that here, I have not seen
22 the report, that is the report from Mr. Osmunson,
23 that indicated the conversation took place on the
24 tenth.

25 MR. KRATZ: We will probably have to get

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page 259. I don't have that in here. Perhaps I can make a better record about that. Perhaps the Court can read all of page 259.

MR. STRANG: Mr. Buting, I think, can go across the hall to the Clerk's office, and get copies of page 259 for everyone, including the Court, and counsel for the State.

THE COURT: All right. We will take our break. Somebody can have the document brought back to my chambers. I will take a look at it.

MR. KRATZ: That's fine. Thank you.

(After a short recess, the following proceedings took place in the courtroom, outside of the presence of the jury.)

THE COURT: You may be seated. Is there anything further from either party concerning the defense motion?

MR. STRANG: I have one thing to add, Your Honor. This is because this is serious, and I want to get it right. I did not say this until I double-checked on the break.

But the further reason that I was not concerned, and set aside the possibility of the Osmunson statement, or the oral statement of the defendant, through Osmunson coming in, is that the

1 State does not list Michael Osmunson on their
2 witness list. Neither did the defense. His name,
3 nowhere, appears on either party's witness list, and
4 what we have here then, on reviewing this, is a
5 materially different statement, made at an entirely
6 different time, and impossible to have been made on
7 the day that Mr. Osmunson says it was made that day.

8 So, it's not entirely consistent, in the
9 sense that he expresses no uncertainty about it
10 having been November tenth, Thursday, and says that
11 is because he had learned of Teresa Halbach being
12 missing on the preceding Tuesday, which only could
13 mean not earlier than Tuesday, November eighth, as
14 the Court notes. On that record, I can stand.

15 THE COURT: Mr. Kratz?

16 MR. KRATZ: Thank you, Judge. First of all,
17 the Court needs to note there was no violation, at
18 least a statutory discovery violation. The fact
19 that Mr. Strang indicates the impossibility of
20 November tenth, '05, as being the date of this
21 conversation, actually plays in the State's favor,
22 and does beg the question: Why the defense is
23 claiming surprise?

24 Why didn't they do something with this
25 statement? The defense had this information

1 available to them. If the context, and the subject
2 matter, and if the dates are wrong, there are many
3 remedies available to the defense. They could have
4 interviewed Osmunson, and apparently have chosen not
5 to. They certainly have had access to Bobby Dassey,
6 and the entire Dassey family, and I don't know if
7 Mr. Strang has indicated, or is representing that
8 they did not interview Bobby Dassey, but that, I
9 think, should be part of the record, as well.

10 Secondly, and next, it's important to note,
11 the jury is not going to be misled at all in this
12 case. A mistrial is reserved, as this Court knows,
13 in serious cases of prosecutorial misconduct, or
14 breach, or when some other remedy is not going to be
15 available. Given the fact there is no violation, no
16 discovery violation, certainly a mistrial is not at
17 all appropriate.

18 Let me offer, if there are concerns that the
19 Court still has, if the Court believes that, on
20 cross-examination, cannot be dealt with, Mr. Strang
21 still has available to him, either: To interview
22 Mr. Dassey, if the Court wants to grant a brief
23 continuance. Or to have Mr. Dassey come back, to
24 shore this up. Or interview Mr. Osmunson. Or to
25 secure Mr. Osmunson's appearance.

1 But the notice of the conversation was
2 provided. The fact that defense did nothing with
3 it, the fact that defense failed to interview, or
4 failed to appreciate, even if every belief was that
5 it was in a joking manner, the poor joke, that the
6 off-color remark that Mr. Avery apparently made,
7 regarding the remains of Ms. Halbach, I think that
8 is something perhaps that the defense should have
9 done. But it's not something the Court should
10 attribute to the State. Nor should a mistrial be
11 the remedy that the Court chooses in this case.
12 That is all I have, Judge. Thank you.

13 THE COURT: Mr. Strang?

14 MR. STRANG: First, we have not interviewed
15 Bobby Dassey. Second, the report, which the Court
16 now has a copy of, and I ask to be made part of the
17 court record as a Court Exhibit, again, is that he,
18 Michael, and Bobby were inside the Dassey garage,
19 but, from that point forward, describes this as a
20 conversation between Michael and Steven.

21 So, the remedy here is not to repeat this
22 statement, again and again in front of the jury, or
23 call another witness to change the date. The remedy
24 here is a mistrial, or something that effectively
25 would erase this testimony from the jury's

1 consideration, because, again, it's a materially
2 different statement, under different circumstances,
3 on a different date. That has an all-together
4 different meaning, and it becomes something a killer
5 would have done, as we sit here.

6 As the statement was presented to us, it was
7 impossible to have been made. It was false on its
8 face. So, if there were a remedy, short of a
9 mistrial, and I don't think that there is. But if
10 there were a remedy, short of that, it would be
11 something like the Court instructing the members of
12 the jury that testimony was given concerning a
13 statement that Mr. Avery supposedly made to Bobby
14 and Mike, his friend, on November 3, and that the
15 statement was not made, the testimony was false.

16 It was not made, and the testimony about it
17 was false, and at that point, the Court, I think, if
18 it were going to adopt a remedy, short of a
19 mistrial, would roll into it, with that instruction,
20 and connect it with the Falsus in Uno Instruction,
21 about Bobby Dassey's testimony, inviting, but not
22 instructing the jury that it may disregard, as
23 false, all of Bobby Dassey's testimony because of
24 his false testimony on this point.

25 I don't know if that would suffice, but

1 that comes much closer to a remedy than repeating
2 it, and, you know, remaking the statement over and
3 over, again, on cross examination, or with another
4 witness, in front of the jury.

5 I don't have case law at hand, on whether
6 the page 259 of the Calumet County Sheriff's
7 Department report, technically, suffices under
8 Section 971.23(1)(b) or not. I'm assuming here, for
9 the sake of argument, because we are told that Bobby
10 is somewhere in the garage when the statement
11 purportedly is made, I'm assuming, for the sake of
12 argument, that the State is just on the right side
13 of the line on discovery.

14 But, I have also laid out the practical
15 problems, and a good argument could be made, and I
16 will make it, if there is case law to support it, a
17 good argument can be made that the statement
18 testified to here is so materially different in
19 date, time, and content, than the statement of which
20 we were given notice, that they are not the same
21 oral statement. But, in any event, I don't think
22 the Court has to resolve that. The damages and the
23 problems are clear, and are serious.

24 THE COURT: All right. The starting point
25 here is the discovery statute, Section 971.23(1)(b).

1 That statute requires that the prosecution provide
2 to the defense a written summary of all oral
3 statements of the defendant. That would be
4 statements of Mr. Avery, which the District Attorney
5 plans to use in the course of the trial, and the
6 names of witnesses, who the defendant made the oral
7 statements to.

8 In this case, the Court is satisfied that,
9 at least, literally, that statute has been complied
10 with, that the disputed testimony involves a
11 statement attributed to the defendant, and there is
12 no dispute that the discovery information provided
13 by the State to the defense included information
14 indicating that both Mr. Osmunson and Bobby Dassey
15 were present at the time the defendant made the
16 statement.

17 What is different is the date on which the
18 statement was made, and as noted by defense counsel
19 in his argument, that can have a significant
20 difference here, because it can affect the
21 credibility of the statements themselves.

22 I would note at the outset that, in terms of
23 assessing the problems presented to the defense
24 here, both from page 259 which was presented to the
25 Court, and based on the testimony of Mr. Dassey,

1 both of the witnesses to the defendant's statement
2 indicated that they thought he was just joking at
3 the time. That is another element in which the
4 information provided to the defense and the
5 testimony given today on the witness stand are
6 consistent with each other.

7 I do agree that I would not fault the
8 defense, saying they didn't take the opportunity to
9 simply follow up on the information on page 259,
10 because by reading page 259, they would have been
11 led to believe that the information contained could
12 have been easily attacked, on the basis the
13 defendant could not have made that statement on
14 November tenth.

15 But they did have information to suggest the
16 statement was made. It's not unusual for a witness
17 to be mistaken about dates.

18 In the Court's opinion, I think that the
19 defense is entitled to some consideration in the
20 form of having an adequate opportunity to prepare to
21 cross examine the witness about the statement that
22 was made today.

23 I don't believe, first of all, there was,
24 strictly speaking, a violation. And, secondly,
25 given the nature of the testimony, that the

1 statement was made in jest, it would not rise to the
2 level of something that would warrant the granting
3 of a mistrial.

4 The Court would be inclined to grant the
5 defense an opportunity, first of all, to cross
6 examine the witness, in an attempt to attack the
7 statement today, if the defense wishes. The Court
8 will also require the State to make the witness
9 available for the defense to consult at a later
10 date, if the defense feels it needs additional time
11 in which to prepare to cross examine the witness on
12 this issue.

13 The Court may also consider giving an
14 instruction to the jury at some later point, if it
15 is deemed to be warranted. But I think it's
16 premature at this stage to speculate as to whether
17 or not such an instruction may be required, or what
18 the content of such an instructions might be.

19 So, I am giving the defense an alternative
20 opportunity. You are free to cross examine the
21 witness today. You are free to also, if you cross
22 examine him today, to have him brought back at a
23 later date, after you have had more time to digest
24 the testimony today. You can also postpone your
25 cross examination of the witness, if you wish.

1 MR. STRANG: I understand the Court's
2 rulings. Those are three choices that present some
3 complicated weighing for us to do. I guess, as a
4 first step, what I would like to do is have 30
5 minutes, or something, to talk with Mr. Buting about
6 that.

7 And I would like at this point the Court to,
8 until Mr. Dassey has completed whatever testimony he
9 is going to give in this case, I would like the
10 Court to order that the State, and any agent of the
11 State, including members of the Calumet County
12 Sheriff's Department, or either of the two lead
13 investigators, or anyone acting on their behalf,
14 not discuss with Bobby Dassey any aspect of his
15 testimony, have no contact with him about his
16 testimony actually given already, or anticipated
17 further, on direct or cross examination.

18 So, in other words, I would like him
19 sequestered. That agents of the State would include
20 the District Attorney's office, anyone involved on
21 the prosecution's side of the case, or acting at the
22 prosecution's direction, and I also will not talk to
23 Mr. Dassey either, without approaching the Court,
24 and telling the Court and counsel that we intend, or
25 we are asking to be able to interview him, while his

1 testimony is ongoing, in the sense that he has not
2 been released from his appearance here.

3 But I would like to, at a minimum, to
4 "freeze the frame", so to speak, where it is, and to
5 start with, like I said, I think 30 minutes for Mr.
6 Buting and I to talk about which, of the three
7 options the Court has afforded us immediately, we
8 best should choose in representing Steven Avery.

9 THE COURT: Mr. Kratz?

10 MR. KRATZ: I do have a suggestion, Judge.
11 My direct examination of Bobby, as the Court may
12 have already predicted, will be concluded with Bobby
13 identifying the balance of the photos that are in
14 front of him. I don't intend to ask him any other
15 questions. That seems to be seamless enough that it
16 would allow Mr. Strang an opportunity over the lunch
17 hour.

18 Perhaps the Court could even grant a
19 little extension over the lunch hour for the defense
20 to discuss their strategy, so the jury could at
21 least hear the rest of the direct testimony, which
22 is just the identification of the other photographs
23 and exhibits. I think that would be fair for Mr.
24 Strang, to give him an opportunity to discuss that.

25 MR. STRANG: Well, if it's really just

1 finishing identifying the photographs, and there is
2 no summary or windup at the end, then that is a
3 reasonable suggestion. I think we could, if I could
4 get 90 minutes for lunch today, Mr. Buting and I
5 could incorporate the discussion, I'm suggesting we
6 need to have, over the lunch hour. So, I don't have
7 any quarrel, if I understand Bobby Dassey really
8 does end on direct examination, when the last
9 photograph is identified and explained.

10 MR. KRATZ: Counsel has just reminded me,
11 Judge, that if, during the course of Bobby's
12 identification of some photographs, he says
13 something, I may ask a clarifying question. That
14 may raise some areas of inquiry.

15 So, although my intent is to ask about these
16 photographs, and what is depicted in them, it's
17 possible that it could go into other areas of
18 information, on the property and the like. But I
19 don't envision, certainly don't envision revisiting
20 this "statement issue". But I was just trying to
21 come up with a suggestion that could at least
22 complete the direct examination before lunch.

23 MR. STRANG: Perhaps it would be useful to
24 know, your Honor, how many photographs we have left
25 to go, and about what time the prosecution expects

1 its continued direct examination will consume.

2 THE COURT: Mr. Kratz?

3 MR. KRATZ: I think we have 20 pictures
4 left, Judge. I think the questions will be what you
5 heard so far, is what we are looking at.

6 THE COURT: Why don't we finish up on that
7 and take a lunch break at that point?

8 MR. STRANG: And I do I think I would like a
9 ruling about -- I know I would like a ruling on my
10 request that Mr. Dassey, at this point, until a
11 further order of the Court, not be questioned in any
12 way by any agent of the State.

13 He will have to have some incidental contact
14 with Julie Leverenz, who is the Victim-Witness
15 Coordinator from the Calumet County District
16 Attorney's Office. I odn't have any practical
17 objection to that, "When does he need to back?", or
18 whatever.

19 THE COURT: Any objection from the State?

20 MR. KRATZ: No.

21 THE COURT: All right. The Court will order
22 that no attorney or representative of either side
23 have any contact with Mr. Dassey until his testimony
24 is completed. And the Victim-Witness Coordinator is
25 not to discuss any aspect of his testimony with him.

1 With that, I believe we can bring the jury back
2 in and complete the direct examination of Mr.
3 Dassey.

4 MR. KRATZ: The record should reflect that I
5 have instructed the Victim-Witness Coordinator as to
6 what to do.

7 THE COURT: Thank you.

8 (The jury was brought back to the courtroom,
9 and the following proceedings continued in the
10 courtroom, in the presence of the jury.)

11 THE COURT: You may be seated.

12 Mr. Kratz, at this time you may resume your
13 direct examination.

14 MR. KRATZ: Thank you.

15 BY MR. KRATZ:

16 Q Bobby, we left off on Exhibit Number 56, that was
17 in front of you. I think you started to tell us
18 what Exhibit 56 was. Can you tell us again
19 please?

20 A That is my Grandma's house.

21 Q Now that the jury can see exhibit 56, where is
22 your Grandma's house located in relationship to
23 you?

24 A To the east.

25 Q Okay. We will see an overview, or at least the

1 jury has. But how far down that road is your
2 Grandma's trailer located? Do you know?

3 A Maybe six tenth's of a mile.

4 Q And then they have a road, or more of a "long
5 driveway"; is that correct?

6 A Yes, it is a long driveway.

7 Q The next exhibit is Number 57. Can you tell us
8 what that is please?

9 A It's another picture of my Grandma's house.

10 Q From a different angle?

11 A Yes.

12 Q And, again, now that the jury can see Exhibit
13 number 57, how are we looking at her trailer?

14 A That would be, if you are coming into the driveway,
15 that would be the east side of it, the northeast
16 side of it.

17 Q So, if you are coming from the main road, on
18 Highway 147, you are coming toward the end of it?

19 A Yes. That would be the front.

20 Q What is the next exhibit, Exhibit 58?

21 A That is the office area, inside the shop, of the
22 salvage yard.

23 Q Now, as I get that picture up, if I can, in fact,
24 do that, you are talking about the shop?

25 A Where they do all of their business. Where they fix

1 the cars.

2 Q On the Avery Salvage property, this is other than
3 just residences; is that correct?

4 A Yes.

5 Q Do you know how many other buildings there are,
6 other than residences?

7 A Three.

8 Q Exhibit Number 58, is that one of them?

9 A Yes.

10 Q The main office area, if somebody did business
11 with the salvage place, he would come into this
12 room here?

13 A Yes.

14 Q All right. Tell us what Exhibit 59 is?

15 A Just another picture of the Plymouth Voyager van.

16 Q Now, Exhibit 59, where was that taken from? Do
17 you know?

18 A From the driveway.

19 Q Do you still have the laser pointer up there?

20 A Yes.

21 Q Can you show us with the laser pointer where your
22 mother's and your home would be located in
23 relationship to this picture?

24 A It would on this side of the picture.

25 Q The left side?

1 A Yes.

2 Q And that is the maroon van, again, the van that
3 you saw Teresa taking pictures of?

4 A Yes.

5 MR. STRANG: Objection, asked and answered.
6 The testimony is getting cumulative, Your Honor.

7 THE COURT: Mr. Kratz?

8 MR. KRATZ: Judge, although I understand I
9 have asked the questions, these are all different
10 angles. They will have a use later in the trial. I
11 suspect, with this picture, that is
12 self-explanatory.

13 THE COURT: I will allow the one question,
14 to put the picture in context.

15 BY MR. KRATZ:

16 Q That was the vehicle that Teresa was taking a
17 picture of?

18 A Yes.

19 Q All right. The next exhibit is Exhibit Number 60?

20 A That is another picture of the van, just a different
21 angle.

22 Q What we are showing on the screen is Exhibit 60?

23 MR. STRANG: Objection, cumulative and a
24 waste of time, under Section 904.03.

25 THE COURT: Are you referring to the

1 description of the photo, or the photo itself?

2 MR. STRANG: The photo and the description
3 of it.

4 THE COURT: It's my understanding at this
5 time we are going through these photos because they
6 may be used later. It's a bit difficult for the
7 Court to say, in advance, that a photo may be a
8 waste of time, since I don't know the purpose for
9 which it may be used. So, I'm not going to rule on
10 the objection for now.

11 MR. KRATZ: All right.

12 BY MR. KRATZ:

13 Q Exhibit 61?

14 A Another picture of the van at a different angle.

15 Q What is in the background of Exhibit 61?

16 A My mom's house.

17 Q When looking at Exhibit 61, could you again point
18 out the picture, or, excuse me, the window that
19 you looked out and watched things from?

20 A It would be that window there.

21 Q The left-most window on the trailer; is that
22 correct?

23 A Yes.

24 Q Exhibit 62 is the front of -- What is that?

25 A That would be Steven's car.

1 Q What kind of car is that?

2 A Pontiac Grand Am.

3 Q You mentioned that Steven had a truck, as well?

4 A Yes.

5 Q We saw that in a previous picture; is that
6 correct?

7 A Yes.

8 Q This blue car, that Grand Am, is, obviously, a
9 different vehicle. Did Steven drive this car?

10 A Yes.

11 Q What is Exhibit 63?

12 A That would be the yard's flatbed, the salvage yard
13 flatbed.

14 Q What is a flatbed, for those of us, who don't
15 know?

16 A For hauling cars, for picking up cars.

17 MR. STRANG: Your Honor, I would like to be
18 heard briefly at side bar, if I may?

19 THE COURT: Very well.

20 (At which time a bench conference was held
21 off the record, in low tones, between the Court and
22 the attorneys, out of the hearing of everyone else
23 in the courtroom.)

24 BY MR. KRATZ:

25 Q What is the next picture of, in front of you,

1 Exhibit 64?

2 A The would be my Grandma's golf golf.

3 Q Your Grandma's what?

4 A Golf cart.

5 Q And, again, on the large screen, that is a
6 representation of the photo that is in front of
7 you?

8 A Yes.

9 Q Do you know where that golf cart was normally
10 kept?

11 A In her garage.

12 Q What is Exhibit 65?

13 A My mom's golf cart.

14 Q Again, directing your attention to the large
15 screen, where was that normally kept?

16 A Mostly outside.

17 Q Outside of what?

18 A Our house.

19 Q The next photo is Exhibit 66. Can you tell us
20 what that is?

21 A That would be the car crusher.

22 Q Where on the property was that located? Do you
23 know?

24 A Down in the pit.

25 Q What does "down in the pit" mean?

1 A It would actually be on the east side of the pit,
2 the far side.

3 Q The east side of the property?

4 A Yes.

5 Q Bobby, did you ever operate this piece of
6 equipment?

7 A No.

8 Q Okay. I think he have this on a couple of
9 different angles, but can you tell us about
10 Exhibit 67?

11 A Just the front view of the crusher, again.

12 Q Actually, I am not even going to post these to the
13 jury. Just tell me we what it is.

14 A Just a front view of the crusher.

15 Q And 68?

16 A A back view of the crusher.

17 Q And Exhibit 69?

18 A A picture of the whole background.
19 Q Of the pit that you were talking about?

20 A Yes.

21 Q Okay. I will show this one. Tell us what we are
22 looking at here.

23 A There is the far east side of the property.

24 Q Can you show us, with the laser pointer, the
25 crusher please?

1 A The crusher is right there.

2 Q Is there a body of water, or a pond, right there?

3 A Yes. That would be right around there.

4 Q Now, do you know what is on the other side of that

5 pond?

6 A Just an embankment.

7 Q Are there vehicles on the other side?

8 A There is, a little lower, and there is the

9 embankment.

10 Q Could you show us that, with your laser pointer,

11 what you are talking about?

12 A There is the embankment, and there is the road that

13 runs on this side of the pond.

14 Q Okay. What is Exhibit 70?

15 A Crushed cars.

16 Q Had you seen any crushed cars on the property?

17 A No.

18 Q You were not involved in the business at all?

19 A No.

20 Q What is the next picture, number 71?

21 A A picture of tires.

22 Q And what are picture 71, the tires, or where were

23 they located?

24 A Just north of the crusher.

25 Q What is Exhibit 72?

1 A A pile of tires.

2 Q Do you know where those tires were located?

3 A That is just southwest of Steven's trailer, in the
4 back corner.

5 Q Exhibit 73, what is that?

6 A Just the Avery Salvage sign.

7 Q Where was that sign located, now that the jury is
8 seeing it on Exhibit 73?

9 A At the end of Avery's Road.

10 Q What does Avery Road connect with?

11 A Highway 147.

12 Q So, this sign, that is on Exhibit 73, would be at
13 that intersection; is that correct?

14 A Yes.

15 Q The next exhibit is Exhibit 74. What is that?

16 A Just an overview of the salvage yard.

17 Q Can you describe that any further?

18 A Directly south from Steven's trailer.

19 MR. KRATZ: I think this will be the last
20 picture I will show. There are some others up
21 there.

22 THE COURT: All right.

23 BY MR. KRATZ:

24 Q Exhibit 74, what are you looking at?

25 A This is maybe half of the salvage yard, with cars.

1 Q Those vehicles are located throughout the salvage
2 property?

3 A Yes.

4 Q And, in fact, what is Exhibit 75?

5 A More pictures of cars in the junk yard.

6 Q And Exhibit 76?

7 A Just another picture of an overview of the yard.

8 Q And 77?

9 A The same thing, another picture of the overview.

10 Q More junk cars?

11 A Yes.

12 Q More junk cars? Finally, Exhibit 78, in front of
13 you?

14 A More junk cars.

15 MR. KRATZ: With that, Judge, I will move
16 admission of Exhibits 37 through 78, as identified
17 by Mr. Dassey.

18 THE COURT: Mr. Strang?

19 MR. STRANG: Number 70, I think he said he
20 has never seen these crushed cars before. So, I
21 don't think that we even got to the relevancy of
22 number 70. I think many of the others are
23 cumulative. But as a practical matter, some of
24 that we can address later. I don't have any
25 questions about their authenticity.

1 THE COURT: All right. The Court will at
2 this time allow all of the exhibits in, except for
3 Exhibit 70, based upon laying a foundation.

4 THE COURT: Mr. Kratz, do you have any
5 further questions for this witness?

6 MR. KRATZ: No, not at this time, Judge.

7 THE COURT: All right. Members of the jury,
8 counsel and I have a few things to take up before we
9 continue. So, we are going to take a break at this
10 time, early for lunch, and resume at one o'clock.
11 Again, I will remind you not to discuss the case in
12 any fashion during the break.

13 (The jury left the courtroom. The following
14 proceedings continued in the courtroom, outside of
15 the presence of the jury.)

16 THE COURT: You may be seated. We are now
17 outside of the presence of the jury. Mr. Strang,
18 you requested a brief side bar during the witness'
19 testimony. Did you wish to put that on the record?

20 MR. BUTING: Yes, I do. We had two
21 photographs identified and published to the jury.
22 These were, by my notes, numbers 22 and 63, in which
23 obvious police crime-scene evidence yellow tape is
24 wrapped around, first, what was identified as Mr.
25 Avery's Grand Am, and, secondly, the witness

1 identified a flatbed truck. The implication of the
2 evidence tape, obviously, is that there is something
3 of evidentiary value, inculpatory presumably, since
4 the State is offering these, and it appears to be
5 police tape.

6 That is an unfair implication as to both the
7 Grand Am and the flatbed truck. I cannot imagine
8 what the probative value of the photographs of these
9 two vehicles is. In any event, certainly the State
10 has photographs of the Grand Am, without evidence
11 tape, or other suggestions there is something to be
12 preserved, or something incriminating, or
13 inculpatory, about it.

14 So, I think those ought not come in, for
15 those reasons. That is a much longer version of
16 what I said at the side bar, but that was the issue
17 I was raising at side bar, off the record, and I
18 will note that, although I am aware, under State
19 versus Miniero, M-I-N-I-E-R-O, and other cases, the
20 Appellate Courts of the State are not fond at all of
21 off-the-record side bars, I'm the one who requested
22 the side bar, and I knew that it would be off the
23 record. So, I will try to make clear, what I think
24 I said, and the side bar, then immediately, has to
25 be on the record, but I appreciate the Court giving

1 me a chance now to elaborate much further on the
2 issue I raised in summary at side bar.

3 THE COURT: All right. I will say the Court
4 is aware, we have been admonished by the Appeals
5 Courts to avoid side bars, whenever possible, and
6 whenever one is held, to make a record of it. I try
7 the remember to do that, as best I can.

8 Mr. Kratz, any response to the defense's
9 concern about the two exhibits?

10 MR. KRATZ: Just briefly, Judge. Those
11 items were, in fact, as soon as both of them were
12 inspected, one of them, the blue Pontiac was
13 processed, and the items therein tested by the
14 Wisconsin State Crime Laboratory, and a DNA profile
15 was developed from within, the fact that Steven
16 Avery's blood is near the console of that vehicle,
17 as well as in Ms. Halbach's vehicle, the State
18 intends to include in evidence in this case.

19 Especially, if the defense intends to pursue
20 their "planting of Mr. Avery's blood" evidence, and
21 the Court, I'm sure, on its own, can surmise the
22 argument that the State may make, if, in fact,
23 "planting evidence" is going to continue to be
24 advanced in this case.

25 The negative evidence, that is, the lack of

1 evidence in the flatbed, has similar evidentiary
2 value, and whether the State intends to argue
3 directly the implication of negative evidence, or
4 just the fact that the State looked, the fact that
5 the State, in fact, did a thorough investigation,
6 all has at least some relevance in this case, and
7 the showing of these two photographs are not, in and
8 of themselves, prejudicial.

9 They will both be referred to later in this
10 trial, and at this time I think it's proper for the
11 Court to not reject or exclude those photographs as
12 exhibits. Thank you.

13 THE COURT: All right. I'm satisfied that,
14 at least at this stage of the trial, both of the
15 photos offered have at least the potential for
16 probative value, for the reasons stated. Among
17 other things, the thoroughness of the State's
18 investigation can be put into play later in this
19 case.

20 I do have one question, however. Does the
21 State have photos of either the Pontiac Grand Am or
22 the flatbed, that doesn't have evidence tape
23 involved?

24 MR. KRATZ: I can check, Judge. I don't
25 know that we have the flatbed. The Grand Am, we may

1 have photos at the crime lab, and that is something
2 that I can certainly inquire into. But these were
3 the first photos. I don't know that evidence tape,
4 in and of themselves, since the jury will hear they
5 were processed, is anything prejudicial at all. But
6 I will check for the Court.

7 THE COURT: All right. Let's have the
8 parties report back at one o'clock. Then the first
9 order of business will be hearing from the defense?

10 MR. STRANG: Yeah. I would like a little
11 more time than one o'clock. If I could get 90
12 minutes, I think that would be enough.

13 THE COURT: All right. We will give you
14 until 1:15.

15 MR. STRANG: Okay.

16 (After the noon recess, the following
17 proceedings resumed in the courtroom, outside of the
18 presence of the jury.)

19 THE COURT: You may be seated. At this time
20 we're back on the record, outside of the presence of
21 the jury. I will indicate for the record that I met
22 with counsel briefly in chambers before we began.
23 It's my understanding, I believe that we have an
24 agreement on how we are going to proceed this
25 afternoon, and that involves, specifically, taking a

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witness out of order. Is that correct, counsel?

MR. KRATZ: The state understands, Your Honor, that the defense has asked for an opportunity to defer its cross examination of Bobby Dassey until the beginning of court tomorrow. We understand that the State, excuse me, the defense, wishes an opportunity to interview Mr. Dassey sometime yet this afternoon, and the State is prepared to call Trooper Austin, and have him present his testimony before the cross-examination begins, which, as I understand, the defense has asked for leave to commence that tomorrow morning.

THE COURT: Mr. Strang?

MR. STRANG: I had suggested in chambers that our conclusion and the defense's statement was that we did need to interview Bobby Dassey before cross examining him, and that we wish to cross examine him only once, so as not to draw undue attention to him, or to any part of his testimony. Because that is an interview that is of unpredictable length, and will take us in different possible directions, some of which I can predict as possibilities, and I'm not sure I can predict all of the possibilities, I had asked that we have the balance of the day to do that, and that we start

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tomorrow morning with the cross examination of Bobby Dassey, so that, for the jury, this just flows sequentially, and, you know, the fact that the Court had to resolve some issues is all the jury would know.

In chambers, as I understood the Court, it was unwilling to adjourn for the afternoon and start up again tomorrow morning. I object to taking another witness, out of order, because I expect that, as I understand this trial, then Bobby Dassey will be the only witness, whose cross examination did not immediately follow in order with his direct examination. That is, it was broken up by another witness.

The Court, of course, controls the mode and the order of the interrogation of witnesses. But this does tend to highlight him, and also it leaves us attending to Trooper Austin, which that time probably would be better used and should be used in interviewing Bobby Dassey, and adjusting the cross examination of Bobby Dassey.

Accordingly, doing a one-and-a-half, or one-hour witness, is better than having no time to interview Bobby Dassey at all, to be sure. But I don't think this is an adequate remedy, and as I

1 forecasted in chambers, and won't repeat here, there
2 are a number of possible issues that we may need to
3 visit or revisit, depending on the results of the
4 conversation with Bobby Dassey.

5 But, in any event, I do ask the Court then
6 to exempt us, or to carve an exception for Mr.
7 Buting, and myself, and our defense investigator,
8 this afternoon, so that we can talk to Bobby Dassey
9 here, during the midst of his testimony, so to
10 speak.

11 But we would ask that the Court's earlier
12 order remain in place, for agents of the State,
13 other than Ms. Leverenz, who, of course, as a
14 practical matter, has to have some communication
15 with Bobby Dassey about the Court's schedule and
16 plans.

17 THE COURT: Mr. Kratz?

18 MR. KRATZ: Thank you, Judge. As the Court
19 know, in chambers it was the State's request that
20 the defense proceed directly with cross examination.
21 I will have an exhibit marked for the Court, which I
22 alerted the Court, and reminded counsel that they
23 already had in their possession, pages 516 and 517
24 of the Sheriff's Department discovery, which is now
25 a second place within the material that Mr. Strang

1 already had, which alerted the defense counsel to
2 the substance of, and the surrounding circumstances
3 of the interview that Mr. Dassey mentioned in his
4 direct testimony.

5 To suggest to this Court, at this time, that
6 it was not until this very moment that the defense
7 realized the significance of Bobby Dassey, when they
8 have known for well over a year that Bobby Dassey
9 was the last person, other than their client, to see
10 Ms. Halbach alive, and walking toward Mr. Avery's
11 trailer, to suggest it's only now that they believe
12 it important to interview Mr. Dassey, the State
13 believes to be disingenuous.

14 That not withstanding, Your Honor, we
15 understand why the defense has made this request.
16 We do disagree that, after Mr. Strang and Mr. Buting
17 have an opportunity to interview Mr. Dassey, that
18 the State should somehow be prohibited or precluded
19 from, ourselves, interviewing or speaking with Mr.
20 Dassey. That is a separate issue, of course.

21 And with that exhibit now having been
22 provided to the Court, we don't believe that we have
23 any further need to make any further record on this
24 issue. Thank you, Judge.

25 MR. STRANG: I acknowledge that I have had

1 in my possession pages 516 and 517 of the Calumet
2 County Sheriff's Department report. It's not well
3 over a year, of course, because Mr. Buting and I
4 have first entered our appearances less than a year
5 ago in this case. But we have had those, that
6 report, and those two pages, for months, and, in any
7 event, I wish that the question of the interviewing
8 of Bobby Dassey were as easy as whether he is
9 important or not.

10 That is not the question. There are a whole
11 lot of other dynamics at work here, such as the
12 availability of witnesses, and the allocation of
13 resources, and some of those things. We don't need
14 to rehash all of the arguments about why the defense
15 had wanted a trial date later than February 5, 2007.
16 But it's not all that easy.

17 I can say, and should say, that we have not
18 interviewed Bobby Dassey at any time, and we hope to
19 be able to do that today. And the issue, in the
20 end, I think under Section 971.23(1)(b) comes down
21 to the meaning of "witness", and whether here we
22 were provided notice by the State that Bobby Dassey
23 will be a witness to testify to the oral statement
24 at issue, materially different as it is from Mr.
25 Osmunson's rendition, and some differences from the

1 second-hand rendition from another witness, in pages
2 516 and 517, in just recounting to a law enforcement
3 agent what Bobby Dassey supposedly said to him,
4 about what Steven Avery said, in Bobby Dassey's
5 presence.

6 So, I think we have got a record. I have
7 made, and I will renew the mistrial motion, and the
8 request for lesser relief, with the least-favored
9 alternative being given the afternoon here to attend
10 just to Bobby Dassey, and resuming the trial with
11 the jury tomorrow morning, with Bobby Dassey's
12 cross-examination.

13 I understand the Court has ruled on that. I
14 just wanted to make our position clear.

15 THE COURT: All right. First of all, the
16 Court has already denied the motion for a mistrial,
17 and I have heard nothing to make me change that.
18 Since the matter was brought up on the record this
19 morning, the State has presented the Court with
20 another piece of discovery, which makes reference a
21 little more directly to the statement that was the
22 subject of the defense motion here.

23 Given the fact, never the less, that the
24 witness himself, in his own statements, apparently,
25 did not make reference to the information contained

1 in the other two documents, that highlighted the
2 witness' exposure to this alleged statement on the
3 part of the defendant, I agree that the defendant
4 should be permitted some time to explore this issue
5 and to interview the witness.

6 I have not been presented a reason why
7 such an interview should require hours of
8 preparation, since the defense has had the
9 opportunity to interview this witness for as long as
10 this case has been pending. There is only one
11 narrow issue, specifically, the witness' testimony
12 as to one statement on the part of the defendant,
13 that gives rise to the need for another interview.

14 I'm confident, if we break a little earlier
15 today, and the defense has an opportunity to
16 interview the witness, that should be sufficient to
17 address any problem that may exist.

18 I do agree, under the circumstances, that
19 the defense should have the right to interview Mr.
20 Dassey first. But, under the circumstances, I see
21 no reason to prohibit any representative of the
22 State from interviewing Mr. Dassey later.

23 Again, for those reasons that have been
24 stated earlier, we are talking about one fairly
25 narrow statement here, that is referenced in at

1 least two different spots in the discovery that was
2 admittedly provided to the defense. I think the
3 remedy the Court has ordered should be sufficient to
4 address this issue.

5 Likewise, I don't believe -- The Court will
6 simply inform the jury, for the convenience of the
7 parties and the witnesses, we are going to hear from
8 Officer Austin, and the cross examination of Mr.
9 Dassey will be completed tomorrow morning. That
10 happens on a fairly routine basis in many trials for
11 a variety of reasons, and the Court has never known
12 that to be something that is likely to influence the
13 jury in any way.

14 So, at this time we will bring the jurors
15 back in. Then, Mr. Kratz, you can call your
16 witness.

17 MR. KRATZ: Thank you

18 THE COURT: What was the exhibit number of
19 pages 516 and 517?

20 THE CLERK: Exhibit 89.

21 THE COURT: Okay.

22 MR. STRANG: Don't we have another issue?

23 THE COURT: There is another issue that I
24 will take up tomorrow morning. I don't believe it
25 was required to be taken up now.

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MR. STRANG: Okay.

MR. KRATZ: Judge, regarding Mr. Austin, I told the Court that Mr. Austin intends to explain his process through a power point demonstration, which, after we're concluded, I will mark and make part of the record. I do have a hard copy for the Court to follow along. I have provided Mr. Buting and Mr. Strang with a copy, as well, so they can follow along.

And, finally, as I alerted the Court, later in this trial, some of these computer images may be, in fact, referred to in a small sub-set of these images. I also have some four-by-six images made to complete the record. I will provide those and have those marked, as well, to be identified by this witness, at the conclusion of his testimony.

But I will give the Court and the Clerk the exhibits here, and the Court can follow along with the power point demonstration, as well.

We are prepared to proceed then.

THE COURT: Very well.

(At which time the jury came into the courtroom. The following proceeding continued in the courtroom, in the presence of the jury.)

THE COURT: You may be seated. Members of

1 the jury, for reasons relating to availability of
2 witnesses, we are going to take a witness out of
3 order at this time. The defense will be conducting
4 its cross examination of Mr. Dassey tomorrow
5 morning, and the State is going to call another
6 witness at this time.

7 Mr. Kratz?

8 MR. KRATZ: We will call Trooper Tim Austin
9 at this time.

10 TIMOTHY AUSTIN, being first duly sworn on
11 oath to tell the truth, the whole truth, and nothing
12 but the truth, testified as follows:

13 THE CLERK: State your full name and spell
14 your last name please.

15 THE WITNESS: My name is Timothy Austin,
16 A-U-S-T-I-N.

17 DIRECT EXAMINATION BY MR. KRATZ:

18 Q Mr. Austin, how are you employed?

19 A I am employed as a trooper with the Wisconsin State
20 Patrol. I'm assigned to the Wisconsin State Patrol
21 Academy, to the Technical Reconstruction Unit.

22 Q Can you tell us what the Technical Reconstruction
23 Unit is?

24 A The Technical Reconstruction Unit is a specialized
25 unit, if you will, of persons that work with crash

1 reconstructions and crime scene reconstructions for
2 the Division of the State Patrol.

3 Q Could you briefly set forth your education,
4 training, and experience in the areas of scene
5 modeling?

6 A Yes, sir. I have been trained and certified as an
7 instructor in the field of forensic diagramming,
8 which includes the use of computer-aided drafting or
9 drawing software, and a Geodimeter, which is,
10 basically, an electronic surveying device for
11 collecting measurements.

12 Q Now, Trooper Austin, we will be referring to the
13 large screen here in the courtroom. This is what
14 is known as a "power point presentation", or PC
15 presentation software. Could you, first of all,
16 just tell the jury what we will be looking at
17 during your testimony, and how this was created?

18 A Yes. To assist with my testimony, under the
19 direction of Mr. Kratz, I created a power point
20 presentation. What you will see is a series of
21 slides that will help to bring us through the
22 forensic mapping project that I did in this
23 particular case. You will see some images in two
24 dimensions, and some three-dimensional computer
25 scenes that I generated.

1 Q All right. What is forensic mapping?

2 A Forensic mapping is the science, if you will, of
3 collecting measurements at a crash or crime scene,
4 and then putting them together later, in either a
5 two-dimensional diagram or three-dimensional models.
6 Such was my objective in this particular case, to
7 collect measurements at the given property, and
8 later to bring those measurements into the office to
9 create two-dimensional diagrams and some
10 three-dimensional models.

11 Q Specifically, Trooper Austin, on November fifth of
12 2005, were you asked to proceed to, and did you,
13 in fact, proceed to a property known as the Avery
14 Salvage Yard?

15 A Yes. On November fifth of 2005, I was requested by
16 local law enforcement to go to the Avery property in
17 Manitowoc County for the purpose of forensic
18 mapping.

19 Q How long were you at that property?

20 A The forensic mapping activities went from November
21 fifth through November twelfth of that year.

22 Q You mentioned, I think, earlier that this forensic
23 mapping process requires the taking of
24 measurements. Can you describe that process, and
25 how many measurements were involved?

1 A Yes. As I said before, we utilized an electronic
2 measuring device, in addition to recording some
3 measurements by hand, with tape measures, if you
4 will. But the bulk of the measurements were taken
5 using an electronic device known as the Geodimeter,
6 G-E-O-D-I-M-E-T-E-R, or the total station. In
7 total, we documented over 4100 measurements at the
8 Avery property.

9 Q Tell us about the "total station" process please?

10 A Certainly. The total station, as I said before, is
11 an electronic device composed of an electronic
12 distance measuring system, which essentially
13 measures distance, distance from the total station
14 to a given evidentiary point. It also has a
15 theodolite, which measures angles. It also has a
16 data collector and a prism.

17 Q Just for the record, and for the reporter's
18 benefit, a hard copy of this will be provided for
19 the spellings of everything you said. This is
20 a picture of the Geodimeter; is that correct?

21 A Yes.

22 Q And those other devices that are used to create
23 these measurements are included within the total
24 station package itself; is that correct?

25 A Yes, that is correct. Hence, the name, "total

1 station". It measures not just angles. Like a
2 transit would, it also measures distance, and that
3 is because we have a Theodolite and a distance
4 measuring system in there. We have a total package,
5 or, hence, a "total station".

6 Q I'm sure Mr. Platkowski would like you to slow
7 down just a little more. That would be terrific.
8 Can you tell us about the information storage and
9 retrieval?

10 A Certainly. Again, what the total station does is
11 measures the distance and angles to a particular
12 location. For example, if I were measuring an item
13 of evidentiary value where Mr. Kratz is, I would ask
14 him to hold the prism over that item of evidentiary
15 value. The total station would recognize the angle
16 to Mr. Kratz, both horizontally and vertically. It
17 would then measure the distance. What it will
18 document is that particular point's location in 3-D
19 space. In other words, along an X-axis, a Y-axis,
20 and a Z-axis, based on where the total station is
21 located. If there is another point on the other
22 side of the courtroom, it would do the same thing,
23 distance and angle to that particular point. It
24 stores that data in an on-board data collector,
25 which you see in the lower pictures.

1 Q Is that basically a computer?

2 A Yes, it is, and it does convert these horizontal and
3 vertical angles to X, Y, and Z coordinates, for
4 later retrieval.

5 Q All right. Let's talk about the total station's
6 accuracy. Can you tell the jury: Just how
7 accurate is this process?

8 A This particular total station has a maximum angular
9 error or induced error from instruments of three
10 seconds. So, what that means, as I said before, it
11 measures in angles. If I take a circle, that circle
12 is divided into 360 degrees. Each degree is divided
13 into 60 minutes. Each minute is divided into 60
14 seconds. So, this particular instrument is accurate
15 to within three of those seconds.

16 Mr. Kratz, at this particular scene, the
17 longest shot distance was about 1200 feet. If I
18 calculate it out mathematically, that means our
19 maximum error induced by the instrument is less than
20 a half inch.

21 Q All right. Let's talk about the location, the
22 Avery salvage property itself. I have put your
23 next slide on the screen, and feel free to use
24 the laser pointer, or whatever you may need, to
25 explain or describe for this jury please the

1 mapping locations?

2 A In this slide I put an aerial photograph of the
3 Avery property. The purpose of this was to show
4 that we had actually forensically mapped out this
5 entire location. That is, everything that you see
6 here on the screen was mapped out, using that
7 Geodimeter total station.

8 This second slide, Mr. Kratz, shows us a
9 different view, another aerial photograph of the
10 same property. This time we have changed it, so
11 north is to the left side of the screen, and in the
12 box is where it shows the Avery salvage property.
13 That map was created, and I put this slide up
14 because, in addition to mapping the Avery salvage
15 property, we also completed some forensic mapping at
16 what is best described as the "deer camp".

17 I was not privy as to who owns the deer
18 camp. I know it's an unrelated person. We did
19 forensic mapping at this location too, and also a
20 cul-de-sac at the end of Kuss Road. The areas we
21 mapped were somewhat considerable in terms of
22 geographic location, if you will.

23 Q Are you familiar with a term called "CAD" drawing?

24 A Yes, sir.

25 Q From a two-dimensional stand point, describe that

1 for the jury please?

2 A What Mr. Kratz is referring to as "CAD", is
3 "computer-aided drawing". In addition, we are doing
4 all of our diagraming on the computer, and we refer
5 to two-dimensional drawings. What that is is an
6 orthogonal view, meaning looking from the top
7 straight down. That is how most of the Avery
8 property was diagramed, so that when you look at the
9 computer drawing, it's essentially as if you were
10 way above that scene, looking straight down at it.

11 What that allows you to do is take specific
12 locations and "zoom in on it", if you will, to look
13 at those locations in detail.

14 Q Let's look at some of the two-dimensional
15 drawings. What are we looking at now?

16 MR. KRATZ: By the way, Judge, I will, as
17 we go through this, I will refer to the hard copy.
18 This will be the bottom of page 7, just so the
19 record is clear, as this witness testifies.

20 BY MR. KRATZ:

21 Q Go ahead, Mr. Austin.

22 A What we are looking at here is that two-dimensional
23 CAD drawing that was created, showing the Avery
24 property that we saw in the aerial photographs, and,
25 again, we have the ability to zoom in on specific

1 areas, if we wanted to see the details of a
2 different location in that entire over-all salvage
3 property.

4 Q Were you able, with your total station measuring,
5 are you able to tell the jury the perimeter, if
6 you will, in distances?

7 A Yes. Not directly with the total station, Mr.
8 Kratz. However, once we bring it into the computer
9 environment, we can take measurements to be able to
10 determine the extent of that. In this case here, I
11 want to say the "rough measurements", because the
12 property is not perfectly square. But north and
13 south, the measurement is approximately 1260 feet,
14 and east and west, the measurement is approximately
15 1300 feet. That comes out to be just under 40
16 acres.

17 Q All right. Let's talk about some of the
18 two-dimensional views that you created then. This
19 image, again, which would be on the bottom of page
20 8, is the entire Avery property; is that correct?

21 A Yes, sir. And I will put this image back in here
22 again to show you that we're going to zoom in, if
23 you will, on certain sections on those
24 two-dimensional diagrams. So, with this portion of
25 that drawing, we are now going to look at the

1 two-dimensional drawing, which shows the
2 northeastern corner of the property. In that
3 northeastern corner of the property are the business
4 buildings, if you will, for the Avery Salvage Yard.

5 What we are looking at here, sir, there are
6 blue-colored buildings down here, is the main
7 business or main shop. There are also some other
8 storage locations. This would be private residences
9 located here.

10 Q Were you also asked to do a two-dimensional view
11 of where Theresa Halbach's vehicle was located?

12 A Yes. The scene we were just at, was at the
13 northeastern corner. We are now going to go down,
14 where you see a yellow box, to the southeastern
15 corner of the property. The very first night of
16 forensic mapping, the RAV-4 was there. Therefore,
17 we did, forensically, map its location, and a
18 two-dimensional diagram was generated, and we can
19 zoom in on that area on the two-dimensional diagram,
20 to see that location.

21 Q Then on the top of page 11 now, the screen that
22 the jury is viewing, why don't you tell us what we
23 are looking at?

24 A What we are looking at here are details of that
25 southeastern corner of the property, and what we see

1 here is the RAV-4, that Mr. Kratz has asked me
2 about, positioned here. Now, we did, actually,
3 using the total station, locate pieces of wood or
4 other debris that was leaning up against or on top
5 of the vehicle. That is why you see, in this
6 two-dimensional drawing, there are some items on
7 that view of the car.

8 Q Were you asked to determine the location and the
9 distance between the RAV-4 and a fixed object
10 which is known as a "car crusher"?

11 A Yes. To assist with that, I will put the aerial
12 photo back on, to, again, show that. The RAV-4 was
13 located down there in this location, and the vehicle
14 crusher is located where you now see the yellow
15 square. If you look at the CAD drawing of this, we
16 can see where the vehicle crusher is related to the
17 position of the RAV-4. Now, if I take a direct, "as
18 the crow flies", measurement, if you will, from the
19 RAV-4 straight across, and there is a pond area
20 here, but straight across to the vehicle crusher is
21 about 380 feet away.

22 Q Again, for the jury, when you say about 380 feet
23 away, you can actually tell them within a half
24 inch how far away that is, can't you?

25 A If you were to ask me, Mr. Kratz, specific

1 locations, say this spot on the RAV-4 to this spot
2 on the crusher, we could get very accurate. I
3 rounded this off to the nearest foot, just because
4 I'm taking an approximate position on the RAV-4 to
5 an arbitrary position on the vehicle crusher.

6 Q Were you also asked to do two-dimensional views of
7 the area closer to Steven Avery's residence
8 itself?

9 A Yes, sir. Mr. Kratz, if we move from the vehicle
10 crusher here to the northwestern area of the salvage
11 yard, there are two private residences in that area,
12 one belonging to Mr. Avery, and we can, again, on
13 the two-dimensional drawings, zoom in, if you will,
14 on this location to view a scaled scenic
15 representation of that area.

16 Q On the top of page 14 then is our first
17 two-dimensional view. Why don't you show us what
18 you are looking at?

19 A Again, the northwestern portion of that property,
20 what we are seeing here is a private residence.
21 This would be Mr. Avery's residence. There is a
22 garage next to it, and a little further east is
23 another private residence and garage.

24 Q I think you may have testified, just in passing,
25 but so the jury understands, were you personally

1 involved in taking all of these measurements?

2 A Yes, sir.

3 Q How many measurements did you take?

4 A For the Avery salvage property, there are over 4100
5 measurements that were documented.

6 Q How long were you there? How many days?

7 A It would be November fifth through the twelfth,
8 about a week. This slide, Mr. Kratz, shows that
9 two-dimensional CAD drawing of the Avery salvage
10 yard, and I have highlighted or labeled, if you
11 will, these areas that we just saw details of, the
12 location of the RAV-4 in the southeastern corner,
13 the vehicle crusher, the business office we saw
14 first in the northeastern corner, and in the
15 northwest, this is Mr. Avery's residence.

16 Q Were you asked to determine some distances for
17 us?

18 A Yes, I was asked to determine some general
19 distances. Again, as we saw earlier, these are
20 point-to-point measurements. They do not account
21 for the fact that we could not really walk from the
22 business office to the RAV-4. There are some
23 obstructions in here. But if you took a direct
24 measurement, you would see it's about almost 1100
25 feet from the RAV-4 to the business office.

1 Q I will just move forward a couple of slides,
2 because the last slide, the slide on the bottom of
3 page 16, shows all of those measurements. Why
4 don't you go head, Mr. Austin, and tell us what
5 all of those measurements are?

6 A Yes, sir. The other measurements I added on here,
7 like the distance from the RAV-4 to Mr. Avery's
8 residence, again straight across the property, is
9 approximately 1480 feet. The distance back from Mr.
10 Avery's residence to the business office is about
11 1100 feet.

12 For the final measurement, what I did is
13 take the "driving distance", if you would, if we
14 were to go from Mr. Avery's residence, drive around,
15 and come around from the eastern portion of the
16 property, down to the RAV-4 location, would be about
17 2600 feet of distance.

18 I have to add, Mr. Kratz, this doesn't
19 account for changes in "grade". In other words, the
20 Avery property is not just a flat surface. There
21 are some elevations in there. That doesn't account
22 for traveling down a hill, or traveling up a hill.
23 So, the actual distance might be slightly greater
24 than 2600 feet.

25 Q How far is that in miles?

1 A Well, a mile is 5,280 feet, so this would be close
2 to a half mile.

3 Q Now, these two-dimensional views, the charts or
4 the diagrams, if you will, have been used in
5 trials. But are you able, with this software, are
6 you able, with your training and experience, to
7 convert these measurements, and to convert
8 these two-dimensional images into more
9 three-dimensional scenes or models?

10 A Yes. As I mentioned before, the total station
11 actually records measurements in 3-D space, that is
12 not just our flat X and Y axis, but also a Z axis,
13 up and down, so we can come up with the elevations,
14 or the height of specific objects, which was done in
15 this case using a different software package.

16 Q Let's talk about that software.

17 A The software package utilized is known as Forensic
18 3-D. It's a computer-aided drawing program. It's
19 powered by a CAD engine called Rhinoceros. It's
20 typically used in the marine industry, and the
21 jewelry-design industry.

22 What this does is allows a user to actually
23 draw in 3-D space. With the three-dimensional
24 drawings, it allows us to better understand, as I
25 wrote up here, the spacial and geometrical

1 relationships between objects. In other words, we
2 are not just looking straight down, and it's
3 something where we can examine another vantage point
4 or perspective.

5 Q So the jury understands, eventually where we are
6 going, I know I'm fast-forwarding, and we will get
7 there, but will this allow us to go through an
8 animation, to actually do a tour or walk-through
9 of various locations?

10 A Yes. As we work our way through enough of the
11 slides I have here, we will eventually get to using
12 the software to create an animation or walk-through,
13 if you will, of the physical scene.

14 Q All right. Let's talk about assigning texture
15 maps?

16 A With the software package, the user utilizes a
17 process called texture mapping to create a drawing
18 like the one you see here. What that means is, if I
19 create a three-dimensional model from this software,
20 I can apply a texture to that, to make it more
21 realistic looking, if you will.

22 In this case, for example, what was done is
23 a photograph was taken of the siding of Mr. Avery's
24 residence. Using that photograph of the siding, it
25 was pasted onto a three-dimensional model, so that

1 actual siding is what you see in this model that was
2 rendered.

3 Now, when we look at things such as grass or
4 wood, that was taken from a personal library that I
5 had, if you will. That way, I can make something
6 look similar to grass or look similar to wood. But
7 there are certain aspects of this property that the
8 texture mapping was done by using the actual
9 photographs that we had of the siding of the
10 residence, the siding of the garage, the floor in
11 the bathroom, and the floor in the bedroom.

12 Q All right. What areas were you asked to do
13 three-dimensional modeling in?

14 A Although the entire property, again, was
15 forensically mapped, the three-dimensional modeling
16 was done in the northwestern area, as that area is
17 the area of the two residences that we have
18 discussed earlier.

19 Q The first scene model is from the bottom of page
20 19. Why don't you walk us through this
21 briefly?

22 A What we are looking at here is an overview of the
23 entire area that was done in three dimensions. For
24 what we are seeing here, north would be to the
25 bottom of the image. In other words, we are looking

1 to the south, and on the right-hand side we see Mr.
2 Avery's residence. We see the garage next to that,
3 and we have to talk about these other residences
4 too, private residences here, and then the garage
5 and the vehicles and the other items that were in
6 place when the forensic mapping was completed.

7 Q You talked about Mr. Avery's residence, and I
8 think you also mentioned this residence. Do you
9 know what that is?

10 A This residence that we are seeing on the left side
11 of the screen, which would be to the east, is the
12 residence of, I believe, Barb Janda, and Mr. Dassey.
13 Here we have that previous slide that we showed,
14 with a box around that, and next we have essentially
15 zoomed in, if you will, or moved closer, to get a
16 close-up view of that Janda-Dassey residence.

17 Q Is this view the front of that residence?

18 A Yes. This would be the front of that residence.
19 Again, we are at "north", looking south. What is
20 nice about using the forensic or three-dimensional
21 models here, we can actually take that and go around
22 to view the back side. We are not limited just to
23 certain views of this location.

24 Q Let me ask you, Trooper Austin, the advantage,
25 recognizing it's not a photograph, but is the

1 advantage of incident scene mapping that it does
2 allow perspective, or views, that perhaps the
3 naked eye can't see?

4 A Yes. The first part of the question is very
5 important. These are not photographs. These are
6 again, scene models that were created and compiled
7 based on the measurements taken at the scene. But
8 where they are advantageous, we can change the views
9 and change the perspective.

10 This one, for example, I don't know how high
11 up the camera is in the air, probably somewhere
12 around 50 to 75 feet. But, obviously, it's not a
13 view that I could take or obtain from being out
14 there at the scene.

15 Q What are we looking at now?

16 A As I stated before, with these models, we can
17 actually change our location to gain a different
18 perspective. In this case, we moved behind the
19 Janda-Dassey residence just to get a good look at
20 the back side of that house, to see the geometric
21 relationships of objects there.

22 Q We are talking about the Janda property. Were you
23 also asked to do a scene model for the Avery
24 property, and what is called the curtilage, the
25 area around it, as well?

1 A Yes. Just as we did with the Janda property, we can
2 do the same thing with the Mr. Avery's residence,
3 over on the west side. What you are seeing here is
4 another view of the larger model, where we are
5 zooming in on Mr. Avery's residence. Just as we did
6 previously, we can move around to the back side, to
7 view the spacial relationships there. So, again,
8 the advantage is that we can take any particular
9 view or perspective we want, to look at it, and see
10 that, using the three-dimensional models.

11 Q Now, these are exterior views, that is, on the
12 outside of the property. Were you asked to, in
13 effect, do the same process inside of the
14 buildings?

15 A Yes, that is correct. Exterior models were created
16 of Mr. Avery's residence and the garage next to it.
17 It's the same process that I did for the exteriors.
18 Most of the measurements that we talked about were
19 taken inside the residence. What I can do with this
20 software is actually go in closer on that residence,
21 fade in or out, or remove the roof, so that we can
22 see all of the various rooms inside the residence.
23 Again, it's a view that we could not have through
24 normal photographs of the buildings.

25 Q At the bottom of page 24, the first interior scene

1 model, why don't you tell us what we are looking
2 at?

3 A This particular model shows Mr. Avery's residence,
4 and, again, what we have done here, the roof was
5 hidden, which allows us to gain a perspective of how
6 the house is laid out, where these various rooms are
7 in relationship to each other, and where some of the
8 main pieces of furniture that were measured are
9 located.

10 Q Are you able, and can you, in fact, take specific
11 rooms and give us better views of a particular
12 room?

13 A Yes. Actually all of the rooms to the one side I
14 had originally created images showing the interiors
15 of the rooms. For example, in this case, we can
16 look at the back bedroom, which you can see outlined
17 here in yellow. We can zoom in closer from another
18 angle to gain a perspective of how that particular
19 room is laid out.

20 Q What I'm showing you is the bottom of page 25.
21 Is that the layout, or more details of the images
22 of Mr. Avery's master bedroom, or what you called
23 the back bedroom?

24 A Yes. However, I wouldn't say "more details" because
25 it's the same model that we saw before. All we have

1 done is changed our perspective, moved a little
2 closer, to see the objects that were placed in the
3 room. It's not necessarily any more detailed. It's
4 just that we have moved to a new perspective. We
5 can now see the spacial relationships of the objects
6 in that location.

7 Q You said you were asked to do the same interior
8 modeling with the garage? Can you tell us about
9 that?

10 A Yes, sir. The exact same process was utilized with
11 the garage. However, these measurements here were
12 also documented using that total station, and when
13 this was mapped, we picked out the main or the
14 larger items that were in the garage to place them
15 into the model, and what you are seeing here is an
16 overview of the garage with the roof removed, so we
17 can see what is in that garage.

18 Q On March first and second of 2006, additional
19 information was brought to your attention, and the
20 prosecution then, that is, myself, Mr. Gahn, and
21 Mr. Fallon, asked you to include or create some
22 additional images; is that correct?

23 A Yes, that is correct, Mr. Kratz. Additional
24 measurements were recorded by other law enforcement
25 officers in March of 2006, and I was asked to

1 include two of those evidentiary items in the scale
2 model, and those items were denoted by what is
3 described as being "evidence markers".

4 So, to help show those locations, using
5 their measurements, I placed the evidence markers in
6 the model, so that we can see where the items were
7 positioned.

8 Q Now, so that the jury understands the later use of
9 these in the coming weeks, this image we are
10 looking at, from the bottom of page 27, although
11 not a photograph, does provide, again, a
12 perspective that the naked eye cannot see; is that
13 correct?

14 A That's correct, Mr. Kratz, because, if you recall, a
15 few slides ago, as you showed what was in the
16 garage, there was a Suzuki Samurai in this position,
17 and in the middle there is a snowmobile in this
18 particular view. That Suzuki Samurai and the
19 snowmobile were removed. That was done by me with
20 the intention of being better able to view the
21 locations of these items of evidentiary value.

22 In addition, we see one marked as 23A.
23 Previous to this slide, there was an air compressor
24 over that particular location. To help to be able
25 to see that location better, I hid or "turned off",

1 if you will, that air compressor, so you don't see
2 it in this particular view.

3 Q Now, you have made a point before to distinguish
4 between these models and photography. Your
5 next slide attempts to describe that distinction a
6 little bit further. Why don't you go ahead and do
7 that?

8 A Yes. Again, as in the previous question from Mr.
9 Kratz, he asked me if these were photographs. They
10 are not photographs. They should not be taken as
11 being photographs. What they are, are
12 three-dimensional models.

13 All that a photograph is going to show you
14 is the scene as it was observed when the picture was
15 taken. In the models, what you are seeing is a
16 scaled geometric perspective, where we can remove
17 the roof. We can hide the air compressor, or gain
18 different views to better see particular items.

19 Q All right. The next area I would like you to
20 discuss is an area behind the garage of Mr.
21 Avery's. Were you asked to provide some modeling
22 of that?

23 A Yes. As we did with the two houses, we can take a
24 particular area. In this case, you see, again, a
25 yellow box showing an area behind the garage. We

1 can, essentially, zoom in, or change our perspective
2 to see what some of the items are behind that
3 garage.

4 Q Again, this is an image, which is at the bottom of
5 page 29. Do those include observations not only
6 that you made, but measurements that you were
7 involved in taking sometime between the fifth and
8 the twelfth of November?

9 A Yes. This particular slide shows some items behind
10 Mr. Avery's garage, that were based on measurements
11 that were recorded by me or other observations.

12 Q Now, you said we were able to kind of shift
13 things around to get different perspectives, and
14 the top of page 30 and 31 are examples of that; is
15 that correct?

16 A Yes. What we have done is essentially stayed in the
17 same area, but we have shifted our "camera", if you
18 will, or our position, so you can gain another
19 perspective, or another view of the items located
20 behind the garage.

21 Q Were you asked, Mr. Austin, to provide the jury
22 with some perspective between the areas behind Mr.
23 Avery's garage and some of the back yard areas of
24 the Janda property?

25 A Yes, I actually moved over the location from that

1 area about behind the garage to this area behind the
2 Janda-Dassey residence. Again, it was the same
3 thing we have seen before. We can shift our
4 perspective, and our view, to show this location
5 behind that particular residence. This view here is
6 one that is an elevated view, looking to the -- This
7 would be the northwest, and we see not just the area
8 behind the Janda-Dassey property, but also Mr.
9 Avery's residence, further into the image.

10 Q Once again, were you asked to create the same
11 separate angle, if you will, or separate
12 perspective about what would be the north of Mr.
13 Avery's property?

14 A Yes. If I move our focal point, if you will, to
15 this particular location, that is being shown on
16 this screen, we can gain yet another perspective
17 showing the northern areas, if you will, the areas
18 in front of Mr. Avery's residence.

19 Q Can you show us -- This is the top of page 33.
20 What are we looking at here?

21 A What you are looking at is the view looking from the
22 north to the southwest, and we see Mr. Avery's
23 residence here, and the garage that we looked at
24 previously. Up, from the main portion of the image,
25 we are seeing a Dodge Caravan, and there was also a

1 burn barrel positioned over here.

2 Q Finally, Trooper Austin, were you asked to provide
3 some additional measurements in this quadrant, or
4 this area of the property?

5 A Yes. I was asked to provide some measurements to
6 gain an understanding of the distances here. What
7 you are seeing in this view is that
8 three-dimensional model, but we are looking straight
9 down on it. Again, the original view is very
10 similar to the two-dimensional drawings we saw
11 previously.

12 But this helps us to better show the
13 measurements, and the measurements that we have in
14 here also is the distance from the main entrance of
15 Mr. Avery's residence to the burn barrel. That is
16 approximately 106 feet, and the measurements taken
17 from the burn area behind the garage to some burn
18 barrels behind the Janda-Dassey residence were a
19 distance of about 236 feet.

20 Q It's your understanding, or at least your
21 directions came from the prosecution, to explain
22 or to indicate those measurements for the jury on
23 this diagram; is that correct?

24 A Yes, that's correct.

25 Q The last area of inquiry, Mr. Austin, has to do

1 with skeletal models. Although they are clearly
2 not within your area of expertise, and you will
3 not be testifying about these models, would you
4 tell the jury at least what you were asked to
5 do and how this may come into play later in this
6 trial?

7 A I was asked to assist the forensic anthropologist,
8 Dr. Leslie Eisenberg, in the creation of models of a
9 human skeleton, to help identify the location of
10 various bones. Now, to accomplish this, I met with
11 Dr. Eisenberg, and worked with her, directly under
12 her supervision, to create the models as to these
13 bone locations.

14 The initial skeletal model I obtained from
15 the FBI in Quantico, Virginia. I took that model's
16 texture, and as I said before, with the property, I
17 made it look more of a bony texture, if you will,
18 and under Dr. Eisenberg's supervision, again, I
19 created various models showing that human skeleton,
20 and I saw some of the bones on it.

21 (Plaintiff's Exhibits 91 through 116 marked
22 for identification.)

23 Q Trooper Austin, as I have asked you before, and
24 with the witnesses that will come after you, that
25 are going to be using your animation, or, excuse

1 me, your skeletal and scene models, have you been
2 asked to create 4 by 6 prints of the models?

3 A Yes, I was asked to create that for most of the
4 images that we saw on the power point, to create 4
5 by 6 prints of these renditions; yes.

6 Q The first image that I have for you is, I think,
7 Exhibit 91; is that correct?

8 A Yes, sir.

9 Q And it goes through image, or, excuse me, Exhibit
10 116?

11 A Yes, sir.

12 Q Exhibit 91, if you can just take a moment,
13 through Exhibit 116, are those the scene model
14 images, both being included in your power point,
15 and that you created as part of this total station
16 project?

17 A Yes, sir, with the exception of, there are several
18 aerial photographs that were utilized in my initial
19 report that are shown here. Those are not scene
20 models. They are photographs taken from aircraft.

21 Q Those are actually identical to some that were
22 already received from other law enforcement? Is
23 that your understanding?

24 A Yes, sir.

25 MR. KRATZ: I would move admission of

1 Exhibits 91 through 116.

2 MR. STRANG: No objection.

3 THE COURT: Those exhibits are admitted.

4 BY MR. KRATZ:

5 Q Then, Trooper Austin, we are going to move on to
6 your animation. That is the culmination of all of
7 these scene models. Tell the jury please how this
8 animation was created?

9 A The intention here was to create an overview or a
10 walk-through of the scene from the models that we
11 saw previously. Now, to create motion, what we have
12 is a series of these images. In fact, it shows 30
13 of them per second to show or to make it appear as
14 if we're moving through that scene. To create the
15 animation, that I believe we're about to see, over
16 5,250 pictures were brought together at 30 per
17 second to move us through the location in question.
18 I saved these and made a DVD, which was turned over
19 to Mr. Kratz.

20 (Plaintiff's Exhibit 117 marked for
21 identification.)

22 Q What we are going to show then, Trooper Austin,
23 is Exhibit Number 117, which I believe is the
24 animation that you are referring to. I would ask
25 that during the presentation of this animation

1 that you not interrupt, that you remain silent,
2 and I will ask you just a few follow-up questions
3 after that?

4 A I understand.

5 MR. KRATZ: If I may, Judge, the only thing
6 left in my direct examination was the playing of the
7 animation.

8 (The animation CD was attempted to be
9 played, but the equipment did not work properly, and
10 the CD was not able to be shown.)

11 MR. KRATZ: It appears that it won't play on
12 this laptop. With my apologies to Mr. Strang, if he
13 could begin his cross examination. Then if I could
14 play it at the end, I would appreciate that.
15 Otherwise, I have no further questions of this
16 witness.

17 THE COURT: Mr. Strang, are you in agreement
18 with that procedure?

19 MR. BUTING: Why are we playing the
20 animation at all?

21 THE COURT: Mr. Kratz, is that something
22 that the State intends to use later in the trial?
23 So, you need some foundation, to get it accepted?

24 MR. KRATZ: This is actually, Judge, to
25 assist the jury in understanding the relationship of

1 these objects. I did intend to play it now. If you
2 want to take just a couple of minutes for a break,
3 we can certainly have that set up, and I can play it
4 now.

5 MR. STRANG: I don't mind starting my cross.
6 I think we will see the animation later. We have
7 had the foundation for it. I don't know that we
8 need to play it now. I can begin my cross.

9 THE COURT: Very well.

10 CROSS EXAMINATION BY MR. STRANG:

11 Q Good afternoon.

12 A Good afternoon, sir.

13 Q I will turn my "mike" on. How is that? All
14 right. So, on November 5 you get to the Avery
15 Salvage Yard; right?

16 A Yes, sir.

17 Q And one of the first orders of business is to map
18 the area around the Toyota RAV-4?

19 A Yes. The first place we mapped was around the
20 RAV-4.

21 Q All right. That involved taking the little prism,
22 and going up, and putting that on or over certain
23 objects around the Toyota?

24 A Yes, sir. Yes, that's correct.

25 Q Did it also involve putting the little prism,

1 sometimes sticking it in a certain area on the
2 Toyota, or over it directly?

3 A Over it directly. Not directly on that particular
4 item.

5 Q Okay. And then somebody else stood somewhere else
6 with the "total station", as you call it, and it
7 shined the little laser and bounced it back to the
8 prism; is that correct?

9 A Yes.

10 Q And so this was a two-person process?

11 A Yes, it is a two-man operation.

12 Q And you took a number of measurements around the
13 Toyota?

14 A Yes.

15 Q And objects around it?

16 A Yes.

17 Q Then a number of measurements of the Toyota
18 itself?

19 A The Toyota itself, we would have had four
20 measurements.

21 Q Just the four corners?

22 A No, when we map the location of vehicles, we utilize
23 the position of the wheels. We can get data showing
24 us later the exact size of a particular vehicle, for
25 axle 1 and axle 2.

1 Q Okay. Then what you do is you later give the
2 computer some information about the model of the
3 vehicle?

4 A No, I will look up that elsewhere, to get the
5 dimensions. I will use the dimensions to draw the
6 vehicle. I don't tell the computer, "It's this
7 particular vehicle", and it draws it. I have to do
8 a little research to get some information about it.

9 Q Then the computer fills in a "Toyota", in effect?

10 A Either I draw that, or I use an existing Toyota, and
11 specify which items to fill in. There is a lot more
12 manual work than there is that the computer does by
13 itself.

14 Q All right. The point is, what you are doing here
15 is, you have already said this, but let's explore
16 it a little bit. There is no camera involved
17 in any of this; correct?

18 A No.

19 Q Not an old-fashioned camera, or a digital camera?

20 A No camera.

21 Q There are a couple of prisms and a laser?

22 A Yes.

23 Q And you have a computer that calculates angles and
24 distances?

25 A The total station does that.

1 Q Then at your desk top, you probably have a laptop
2 computer, something sort of like this; right?

3 A Yes, I use a computer.

4 Q And you can open various files, and the computer
5 allows you to add a color?

6 A Yes.

7 Q And a texture?

8 A Yes.

9 Q And to pick standard sorts of objects that might
10 be included?

11 A Yes.

12 Q Like a tree?

13 A Yes.

14 Q Your computer even has a little file you can open
15 up and pick the type of tree you want?

16 A That's correct.

17 Q Whether it has leaves, or does not have leaves?

18 A I can pick the global season, yes.

19 Q You can turn the sun on?

20 A That's correct, I can.

21 Q You can turn the sun off?

22 A Yes.

23 Q If you want to put the sun in the northern sky, on
24 November 5, or the northern hemisphere, you can do
25 that?

1 A Yes, I could.

2 Q You could put it in the eastern sky, if that is
3 where you felt like putting it?

4 A Yes.

5 Q You could have the sun rise in the west, if that
6 was your choice on a given day; is that correct?

7 A If it was my intention to change science, yes, I
8 could move the sun.

9 Q Okay. So, what we have got here is a model;
10 right?

11 A Yes, a three-dimensional model, yes.

12 Q Actually, it's a two-dimensional model; right, that
13 looks three-dimensional, by the use of
14 perspective? Everything I saw was projected on
15 this surface? Am I right?

16 A Well, the screen, yes, is two-dimensional.

17 Q Right. The model itself looks three-dimensional,
18 by the use of perspective?

19 A Well, it's not a physical model, like the cups here.
20 I can't bring it in to you. It's a computer model,
21 but I'm drawing it in 3-D space, and assigning it to
22 an X and Y axis, but I don't have a physical axis to
23 give you.

24 Q In that sense, it's not three-dimensional? It's
25 two-dimensional, but by using the vanishing point

1 and the principles of perspective, we can give it
2 the illusion of three-dimensional space on a flat
3 screen?

4 A It's difficult for me to follow you. We do our work
5 in 3-D, but you could say the same is true of
6 photography, that photography is two-dimensional.

7 Q Sure.

8 A If that is what you are saying, I will agree with
9 you.

10 Q When you say you do your work in three-dimensions,
11 you are not actually building a model, in any
12 event? I mean that you didn't use something like
13 this box for Barb Janda's trailer, I assume?

14 A No, it's not a physical stick-built model, if you
15 will, or plastic model. It's a virtual computer
16 environment.

17 Q Okay. Got it. Now, we are in the virtual
18 environment. Let's go back to what you and I both
19 agree is two-dimensional space. Okay? We will go
20 to what you call your orthogonal views. Got me?

21 A Sure. Orthogonal.

22 Q "Looking straight down", in other words?

23 A Yes.

24 Q Orthogonal is a fancy, \$64 word, for looking
25 straight down at something?

1 been of evidentiary value in surrounding quarries.
2 Those were not done by me, but I have knowledge of
3 that.

4 Q That is -- These maps were -- Mapping coordinates
5 were provided to you; correct?

6 A I do have GPS coordinates for other items, yes, I
7 do.

8 Q All right. Let's back up. Probably half of
9 our jury knows what "GPS" is. The other half
10 doesn't. That is "Global Positioning Satellite"?

11 A That's correct. The other instrument uses a total
12 station also, but that also utilizes a GPS, global
13 positioning satellite system. Those were specific,
14 I believe, 11 or 12 points out in the quarries
15 identified by the search teams.

16 Q And someone else did that mapping, I understand,
17 using a different technology?

18 A Yes, sir. That is correct.

19 Q Using actually satellites that have
20 geo-synchronized orbits; is that correct?

21 A Yes.

22 Q To use a fancy term, that allows anybody who gets
23 access to the system to know where you are, by
24 degrees of latitude and longitude, down to a
25 matter of seconds anywhere on the globe?

1 A Yes, that's correct, sir.

2 Q All right. And the purpose of taking these GPS
3 measurements was to provide them to you for your
4 forensic mapping project?

5 A Yes. Should they become necessary later for
6 mapping, we had it available to us, if such was
7 needed.

8 Q I will show you figure 50 from your report. Okay.
9 I will put that up here. But first I will just
10 ask you: That is your figure 50?

11 A Yes.

12 Q That is a page of your report, labeled figure 50?
13 You have seen it before?

14 A Yes.

15 Q Indeed, you made it; is that correct?

16 A Yes, sir, I did.

17 Q All right. Now, that is up on the little gizmo
18 called an "Elmo". Tell us what you see. Tell us
19 what you have in your figure 50?

20 A This is a map, I believe from Microsoft Streets, or
21 maybe from Delorme Atlas. I would have to see what
22 program I used. It shows the roads in the vicinity
23 of the Avery property. What I have done here, I
24 indicated with a red box the approximate location of
25 the Avery Salvage Yard, and the approximate location

1 of Steven Avery's residence. There is also a
2 reference to GPS coordinates, which I believe is for
3 the surrounding quarry.

4 Q Okay. And you put in a little red flag?

5 A Yes. What I did, in this mapping program, I gave
6 it the GPS coordinates, and it gave me a little red
7 flag, that is seen on the screen in that particular
8 location. Then, using Microsoft Word, I generated
9 my report. I labeled that flag as being those
10 particular GPS coordinates.

11 Q Okay. You gave the jury a little lesson before
12 about degrees, minutes, and seconds. If I read
13 the coordinates that you have given us here, or
14 not given by you, but which were included here, we
15 have longitudinal 44 degrees north; right?

16 A Yes.

17 Q In the northern hemisphere; right?

18 A Yes.

19 Q And 14 minutes right?

20 A Yes.

21 Q And 51 seconds?

22 A Yes, sir.

23 Q And a latitude of 87 degrees west?

24 A Yes, sir.

25 Q West of the Greenwich Mean line?

1 A That is my understanding, sir.

2 Q 41 minutes and 51 seconds?

3 A Yes, sir.

4 Q Okay. And you got only one of these areas, but
5 did I understand you, that you actually were
6 provided 11 or 12 specific GPS sites, GPS
7 coordinates outside of the Avery Salvage Yard
8 property?

9 A This one that you are showing is not one of the ones
10 that was provided to me by the GPS mapping team.
11 This is one that was provided to me when I was
12 working with Dr. Eisenberg. So I don't want any
13 confusion, or to imply or suggest to you this is
14 from the team that used the GPS total station.

15 Q Okay. Thank you. I didn't understand that. I
16 don't want any confusion either. So this is one
17 you got from or with Dr. Eisenberg?

18 A Yes.

19 Q But there were 11 or 12 other GPS coordinates?

20 A From that other team, yes. When the search teams
21 located things they thought could be "something",
22 those were indicated to me.

23 Q Something of interest?

24 A Yes.

25 Q Okay. Do you have any way of knowing, as you sit

1 here today, what the distance is from the red flag
2 site, or the site represented by the red flag
3 here, to either the salvage yard or Mr. Avery's
4 residence?

5 A I do not. But if you would like me to, I can
6 certainly figure it out for you.

7 Q I will bet you can. (Laughing) If anything, I bet
8 you can. Is that a lot of trouble?

9 A No. If you want to bring me back later, I can
10 certainly give you that number.

11 Q I don't know if I will or not. But do you have a
12 sense at all, as of now, just ball-parking?

13 A No, I don't. I wouldn't feel comfortable.

14 Q Okay. Fine. North is "up" in this figure?

15 A Yes, sir.

16 Q Okay. So, the flag looks like it is southwest,
17 essentially, of the Avery Salvage property?

18 A Yes.

19 Q Now, let's go back to what we are calling the
20 three-dimensional or perspective images that give
21 us the illusion of depth and height and width.
22 Okay. The virtual environment of three dimensions
23 on those, you couldn't possibly map with your
24 total station and its prism stick, every little
25 item that a photograph might pick up; correct?

1 A No, sir.

2 Q It's just a matter -- I guess you could,
3 possibly, but there it becomes an issue of time
4 and manpower resources; right?

5 A Yes, I agree.

6 Q And how did the decision get made on what things
7 to map and what not to map?

8 A I can give you a particular location, in reference
9 to the garage, for example, I really didn't have
10 guidance. With the garage, I picked, or at least I
11 wrote in my report, a page of the larger items that
12 were there.

13 In terms of the interior of the house, I was
14 told "main pieces of furniture", bed, dresser, desk,
15 that type of thing.

16 Q And once you have mapped them, things can be
17 taken out, so to speak, just "pheeew" (sound
18 effect noise) out of the computer model?

19 A Yes. They can be hidden, or as I said, "turned
20 off", so we no longer see it in that model.

21 Q You gave one example of the air compressor in the
22 garage. Do you remember that?

23 A Yes. The thing is, Mr. Strang, there are layers
24 over objects, separate layers. We can, essentially,
25 turn off one layer, so we don't see it in our model.

1 That was done in the garage with the air compressor,
2 the Suzuki Samurai, and the snowmobile.

3 Q Okay. "Now it's here. Now it's not." That is a
4 matter of a few strokes or clicks of a mouse --

5 A Yes.

6 Q -- for you? I think I have it. Who gives you
7 directions as to what actual items that were
8 present should be included in the model and what
9 are not?

10 A Guidance was given from the lead team of
11 investigators for the prosecution.

12 Q They wanted the compressor out, so you took it
13 out?

14 A Yes.

15 Q They wanted the Samurai in, so you left the
16 Samurai in?

17 A Yes.

18 Q Okay. Now, I will show you a photograph. I don't
19 think that we have seen this before. I will ask
20 if you recognize it?

21 A It's very possible that I may have taken this
22 photograph. This appears to be the southeastern
23 area of the salvage yard, the location where the
24 RAV-4 was located. It appears that is either in the
25 process of covering or uncovering it, with the large

1 blue tarp.

2 Q Very good. Whether you took it or not, you
3 recognize the photograph?

4 A Yes.

5 Q There is a good old-fashioned photograph, this
6 photo?

7 A Yes.

8 MR. STRANG: I will mark this as an exhibit.

9 (Exhibit 118 marked for identification)

10 BY MR. STRANG:

11 Q It's now Exhibit 118. I would like to let the
12 jury see it. Okay. That is the tarp over the
13 Toyota RAV-4?

14 A Yes, that is my recollection that night, that the
15 vehicle was covered.

16 Q So, what we are seeing under the blue tarp is the
17 car right where it was when you arrived on
18 November 5?

19 A Yes.

20 Q And are we looking, generally, "toward the car
21 crusher", or "from the car crusher"?

22 A In this position, sir, we are looking to the west.
23 The car crusher would be off to our right and
24 perhaps slightly behind us to the northeast.

25 Q Okay. So the car crusher is back off this way?

1 If we are standing here, snapping the picture,
2 back off behind us?

3 A No. It would be more to our right. If we are
4 looking straight at that photograph, as we're
5 looking straight to the west, it's not far to the
6 right, just slightly behind. That is the direction
7 the crusher would be.

8 Q All right. What we would see is, there is a whole
9 lot of trees, it looks like, and underbrush, and
10 that kind of thing, that extends along this line
11 of cars?

12 A Yes. There are some smaller, if you will, "trees",
13 kind of along the other side of the pond. The pond
14 would be off to our right also.

15 Q Okay. We are up on a ridge, if you will, above
16 the pond?

17 A Yes. The pond is pretty -- set down pretty low.
18 So we're higher in elevation than the pond.

19 Q There is actually sort of a berm here, behind to
20 the left of the Toyota and that line of cars; is
21 that correct?

22 A Yes. You can actually see that in the photograph
23 there. I'm just pointing to the berm. Over on the
24 opposite side of this begins some of the quarry type
25 property.

1 Q To the south of the Avery property?

2 A Yes. South would be to our left in this particular
3 image.

4 Q All right. So, when, for example, you mapped the
5 area around the Toyota and the car crusher in the
6 southeastern corner of the property, and created
7 models of it, you simply omitted most or all
8 of the trees that we see in the photographs of the
9 area?

10 A I, actually, perhaps -- I don't want to be a
11 stickler on verbiage. I didn't create models. We
12 have the two-dimensional orthogonal diagrams, but
13 "models" usually refers to the three-dimensional
14 model, for which we use the prism of the total
15 station to essentially trace the exterior of the
16 tree line. So each individual tree was not
17 collected. But we do see on the two-dimensional
18 view just what that width would be, as far as we can
19 go to the trees.

20 Q Okay. I think you essentially outlined the area
21 where there would be trees?

22 A Correct. Just to better explain that, if I may. If
23 the walls on the sides of the courtroom were the
24 trees, I would probably take a point in the back and
25 a point in the front just to show that is the tree

1 line, as opposed to every individual tree.

2 Q And where you did that, let's see. We are looking
3 at one of your orthogonal views of the rear area
4 we have been discussing?

5 A Yes.

6 Q All right. What you have shown us is some
7 representation of the trees to the south?

8 A Yes. That is the best way to describe the squiggly
9 line that you just referred to. That would have
10 been taken along that south tree line that you are
11 referring to now. If you look just north of that,
12 there is another squiggly line that is tougher to
13 see.

14 Q This image right here that I'm referring to?

15 A Right. That would be the edge of the other trees
16 there.

17 Q It's very faint, but you are saying you provided
18 some line indicating there were trees along there?

19 A Yes. It might be better if I had the color version
20 of this. The ground, if you will, I believe is two
21 separate colors here, which helps us to observe that
22 difference. But that is how the mapping was done
23 also on the eastern side here, along the tree line.
24 That is another tall berm there.

25 Q But if one were standing on the crusher in the

1 spot where the arrow comes down, you would get the
2 impression, from this orthogonal diagram, you may
3 be able to see straight to at least the car that
4 seems to intersect the line of sight in front of
5 the Toyota. This would look like a line of sight
6 on your drawing; correct?

7 A That was not my intention at all, Mr. Strang. I
8 just wanted to show the distance from the RAV-4 to
9 the crusher.

10 Q Absolutely. I understand that was not your
11 intention. I understand. In fact, my point
12 is: This would not represent the line of sight;
13 correct?

14 A No. I don't -- I would have to go back and look at
15 the other photographs to see how thick the tree line
16 is. I don't want to infer that I could see the
17 RAV-4 from the crusher, which is 380 feet. There
18 are smaller trees that you would have to look
19 through. I just don't know.

20 Q So, there is no way to know, because, really,
21 other than showing a squiggly line, you left out
22 the trees and underbrush and anything else in the
23 way?

24 A That's correct, I did.

25 Q Okay. Was this the only car, if you will, on the

1 north side of that line, or near the north tree
2 line?

3 A Based on looking at the diagram, it appears that it
4 was. I would like to go back and review the
5 photographs, but I don't recall leaving out any
6 vehicles on here that were, specifically, mapped.
7 Just to point out these areas over here, these are
8 all of the vehicles over here. Obviously, we didn't
9 map any of those. We just traced around that row of
10 cars.

11 But down in this area, I believe I mapped
12 out the location of all of the vehicles here, except
13 where you see where we have this pattern again.

14 Q Blank spots, so to speak?

15 A Yeah. They appear to be blank here.

16 Q Again, I'm not a witness. I don't have a perfect
17 memory. I am not just saying I think you left
18 any cars out. I don't think you did either. But
19 I just wondered if you had a recollection, if that
20 was, in fact the only car on the north side of
21 that little lane?

22 A I can't -- Just looking at the drawing, I would say
23 it was the only car right there.

24 Q Okay.

25 A I would feel more comfortable referring to some of

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the photographs, but I believe that is it.

Q Mr. Buting just indicated there appears to be a second car, kind of hidden by the label of the RAV-4?

A Yes, there is.

Q Okay. All right. If we were going to get a real line of sight, we would really want to use photographs, not something that you and your computer generated?

A If we wanted to look at this and say: Could you see the RAV-4 from the crusher? No, this, right now, in this form, is probably not the best medium to use. If you wanted to see: What is the distance? That is why I had it here.

Q As the crow flies?

A Right.

Q I will not pester Mr. Kratz to go back to the power point presentation, but I will just use my black and white copy of the sheet that you folks provided me.

A What page are you on, sir?

Q 27, at the bottom.

THE COURT: Mr. Strang, just for break purposes, do you know how much time you have left?

MR. STRANG: Five minutes, something like

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that.

THE COURT: Mr. Kratz, what about the State?

MR. KRATZ: My presentation is about a minute and a half, Judge.

THE COURT: All right. Members of the jury, after we are done with this portion of the proceedings today, we are going to let you go early. That why I kept it going. But if you want a break now, you can have a break now.

THE JURY: No.

THE COURT: I see heads nodding "No", so we will plunge ahead. All right. Mr. Strang?

BY MR. STRANG:

Q All right. Our jury has already seen a slide of this, that garage, sort of; right?

A Yes. This is my model of the garage.

Q And what you have done for us is help us make believe that the garage had no roof?

A I don't like the words "make believe", but, yes. The roof was removed so we could see inside the garage.

Q Then we can also see it as if we were hovering 20 or 30 feet up, something like that, whatever this is?

A Yes.

1 Q Taller than any of us?

2 A Yes.

3 Q Okay. And this is a pretty clean looking
4 garage, the model; is that correct?

5 A Yes.

6 Q You have got a view of a John Deere tractor?

7 A Yes, it is.

8 Q And it's a vivid, electric green in color; is that
9 correct?

10 A Yes.

11 Q But if people look at the garage, the John Deere
12 tractor is there? If we look at an actual picture
13 of the garage, we see the John Deere tractor?

14 A Yes.

15 Q With some other things; right?

16 A Yes.

17 Q A whole lot of clutter?

18 A Yes. A snowmobile is in there. There is a table
19 with the items in the back. I know we are seeing a
20 lot more clutter in the actual scene or the
21 photograph than we have seen in the model, but we
22 have two different purposes for this too.

23 Q Okay. Is this thing down here the seat, and then
24 the wind screen of one of the snowmobiles?

25 A Yes.

1 Q Does the photograph show the garage as you
2 actually saw it the week of November 5 to November
3 12?

4 A Yes, it does.

5 Q And how about this? Does that take us to the
6 other side of the garage, the east side of the
7 garage?

8 A Yes, that shows the east wall of the garage. We see
9 a snowmobile, some tables. There is a freezer back
10 over here too. That is how I recall the garage.

11 Q There is a snowmobile under there somewhere?

12 A Yeah. Do you see this green stripe here? That is
13 the wind screen that you saw on the other one.

14 Q Okay. What is the gray thing on the right side of
15 the photo?

16 A Are you referring to this here, sir?

17 Q Yes?

18 A That is the Suzuki Samurai.

19 Q All right. That is the garage as it actually
20 looked to you November 5 through November 12?

21 A Yes, that is how I recall the garage.

22 Q Let's look at the south wall of the garage, or
23 part of the south wall. That is how it looked to
24 you, November 5 through November 12?

25 A Yes, it does. Again, I see a tool chest, the air

1 compressor we talked about before. There is a
2 weeder, with a waste basket. That definitely fits,
3 my recollection of the garage.

4 Q So, if you use the laser pointer, the air
5 compressor is gone?

6 A It's this green item down here near the center of
7 the photograph.

8 Q That thing that you took out of the photo is the
9 little evidence tent that said "23-A"?

10 A Yes, I did.

11 Q Now, the photograph, actually, you can see pretty
12 well under the compressor in the photograph, can't
13 you?

14 A Yes.

15 Q That is one of the few places in the garage that
16 appears not to be cluttered?

17 A With the exception we cannot see behind the wheel.
18 I can see some flooring under it from this view.

19 MR. STRANG: All right. I'm going to mark
20 the photographs that you have just shown us and then
21 I'm done.

22 (Exhibits 119 through 121 marked for
23 identification.)

24 BY MR. STRANG:

25 Q Okay. Real quick, just so the record is clear,

1 I'm doing them in the same order I just showed
2 them to you. Exhibit 119 has the John Deere
3 tractor in it; is that correct?

4 A Yes, it does.

5 Q Exhibit 120 is the side of the garage with the
6 snowmobile that you pointed out and part of the
7 gray Samurai?

8 A Yes.

9 Q And Exhibit 121 is the south part, the south wall
10 of the garage, with the air compressor?

11 A Yes, sir.

12 MR. STRANG: Okay. I move the exhibits that
13 have been offered with Mr. Austin, Your Honor, and
14 that's all I have.

15 THE COURT: Any objection to the exhibits?

16 MR. KRATZ: No.

17 THE COURT: Very well. The exhibits are
18 admitted. Mr. Kratz?

19 (At which time Mr. Kratz made an attempt to
20 show the video presentation to the jury again, but
21 it was not successful.)

22 MR. KRATZ: Judge, we seem destined to not
23 have this work today. We will put it in through
24 another witness. I will have this animation marked,
25 however, and if it is received without objection,

1 then I have no further questions of this witness.
2 Thank you.

3 THE COURT: All right. Mr. Strang?

4 MR. STRANG: That's fine. We can mark it
5 and I think it can be received for purposes of
6 today.

7 THE COURT: Very well. The Court will order
8 it received, but not admitted. Is that it, counsel?

9 MR. STRANG: Yes, I think, for now.

10 THE COURT: All right. Members of the jury,
11 that is all the jury work we have for you today. So
12 I'm excusing you for today.

13 Before we do that, I will remind you that
14 the Court has previously ordered that you do not
15 watch the local news on television, or listen to the
16 local news on the radio, or read the newspaper,
17 unless you have someone first remove any articles
18 related to the case from the newspaper. In addition
19 to videos, internet web sites, or web logs, which
20 includes any information about the case.

21 If you are involuntarily exposed to any
22 information about the case from any source, please
23 take steps to immediately avoid any further
24 exposure.

25 With that, you are excused for today.

1 (At which time the jury left the courtroom
2 for the day. The following proceedings continued in
3 the courtroom, outside of the presence of the jury,
4 with the attorneys and the defendant being present.)

5 THE COURT: You may be seated. Counsel, is
6 there anything to put on the record before we
7 conclude today?

8 MR. STRANG: What exhibit number did you
9 give the animation?

10 MR. KRATZ: The animation was Exhibit 117.
11 Judge, we did offer that, but the power point
12 itself, although the hard copy was previously
13 marked, I alerted the Court that I was going to ask
14 that the actual disk be received. For purposes of
15 the record, that is Exhibit 122, and I will offer
16 that at this time.

17 THE COURT: Are there any exhibits, that
18 either party may move admission for, that we should
19 address at this time?

20 MR. KRATZ: I have moved all of them, Judge.
21 I think they have been authenticated and identified.

22 MR. STRANG: I think we have addressed all
23 of them. I know I moved Exhibits 118 through 121,
24 and those were admitted. My notes suggest that Mr.
25 Kratz has moved his exhibits, and the Court has

1 ruled on everything that he discussed or has shown
2 today.

3 MR. FALLON: Can I ask the Clerk what
4 Exhibit 90 was?

5 THE REPORTER: Is this on the record? I
6 don't know who is speaking right now.

7 MR. KRATZ: That's Mr. Fallon.

8 THE REPORTER: Okay. Thank you.

9 THE CLERK: Mr. Austin's report is Exhibit
10 90, and the power point is Exhibit 122.

11 MR. FALLON: Okay.

12 THE COURT: Mr. Kratz, has the State moved
13 admission of the animation disk?

14 MR. KRATZ: Yes.

15 THE COURT: I think that was viewed in the
16 motion hearing before we started. Does the defense
17 agree that can be admitted? That was the thing they
18 didn't get to work today. But I believe it
19 previously has been shown in court as part of a
20 motion hearing.

21 MR. STRANG: Right. That is Exhibit 117.
22 It was offered and received. I don't think that it
23 was admitted yet, because nobody identified it or
24 has seen it. Isn't that Exhibit 117?

25 MR. KRATZ: Yes.

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THE COURT: I take it, authentication is not going to be a problem. So, it will be admitted when it is viewed in front of the jury.

MR. STRANG: Right.

THE COURT: All right. Very well. Anything else today? If not, I would like to see counsel for just a couple minutes in chambers before you leave.

(Proceedings concluded for the day.)

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 4

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** FEBRUARY 15, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

I N D E X

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1				
2	79-86		86	86
	123		45	45
3	124	35		
	125	107	109	
4	126	135		
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(Jury not present.)

THE COURT: At this time the Court calls State of Wisconsin vs. Steven Avery, Case No. 05 CF 381. We are here this morning for the continuation of the trial in this matter. Will the parties, again, state their appearances for the record.

ATTORNEY KRATZ: State appears by Calumet County District Attorney Ken Kratz, Assistant Attorney General Tom Fallon, and Assistant D.A. Norm Gahn, all appearing as special prosecutors.

ATTORNEY STRANG: Good morning. Steven Avery is here in person, again, and Jerome Buting and Dean Strang representing him.

THE COURT: All right. I will indicate for the record that before we began, I met in chambers with counsel, briefly, to discuss the agenda for the day. It's my understanding that after we bring the jury out, the State is going to first complete the demonstration associated with the last witness yesterday, in the form of an animation, and that the parties are agreeable to the State presenting that animation, without Mr. Austin being recalled to the stand.

ATTORNEY STRANG: That's right. I understand it's just going to be played once

1 straight through, without narration, and that's
2 fine.

3 THE COURT: Okay. And the parties were
4 also discussing a potential stipulation for the
5 Court relating to the testimony of the next witness.

6 ATTORNEY KRATZ: Judge, the prosecution
7 team has discussed that. We would entertain such a
8 stipulation, but only after we hear what the
9 cross-examination is of this next witness. The
10 State is unwilling to enter into a stipulation at
11 this time, but I will candidly tell the Court that
12 if the cross goes as expected and as represented, it
13 is very likely that we will agree to that request,
14 yeah.

15 THE COURT: All right. Mr. Strang.

16 ATTORNEY STRANG: I can't force a
17 stipulation.

18 THE COURT: Okay. Very well. We'll
19 address that matter, then, after we complete
20 Mr. Dassey's testimony. Anything else to take up
21 before we bring in the jury? Anything else before
22 we bring in the jury, counsel?

23 ATTORNEY STRANG: No, your Honor.

24 ATTORNEY KRATZ: I don't think so, Judge.

25 THE COURT: All right. The jury can be

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called in.

(Jury present.)

THE COURT: You may be seated. Members of the jury, before we get started with the first witness today, you may recall that there was a short animation scheduled to be shown at the end of Mr. Austin's testimony yesterday. I'm informed that the technical difficulties have now been ironed out and counsel has agreed to present the animation to the jury without recalling Mr. Austin to the stand; is that correct, counsel?

ATTORNEY KRATZ: Yes, Judge.

THE COURT: All right. Mr. Kratz, you may proceed.

(Animation viewed.)

ATTORNEY KRATZ: For the record, Judge, that was Exhibit No. 117, 1-1-7. That's all we have for Trooper Austin. Thank you, Judge.

THE COURT: Thank you. And before we took the testimony of Mr. Austin yesterday, I believe we left off with cross-examination of Bobby Dassey. So at this time, you can bring Mr. Dassey in and the defense can begin their cross-examination.

ATTORNEY KRATZ: Can we approach just briefly?

1 THE COURT: Sure.

2 (Side bar taken.)

3 THE COURT: Members of the jury, as you can
4 see, the picture on the computer screen there is
5 little out of kilter. We have a technical person
6 who is going to adjust the projector.

7 ATTORNEY KRATZ: It sounds like it's a
8 setting on the projector. It's something during the
9 break that the techs can take care of.

10 THE COURT: All right.

11 ATTORNEY STRANG: Can you switch that over
12 to ELMO?

13 ATTORNEY KRATZ: Sure.

14 THE CLERK: Please raise your right hand.

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

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

20 THE WITNESS: Bobby Dassey, D-a-s-s-e-y.

21 **CROSS-EXAMINATION**

22 BY ATTORNEY STRANG:

23 Q. Good morning. Welcome back.

24 A. Good morning.

25 Q. Did you grow up on the salvage yard that you

1 described living at yesterday?

2 A. Just my high school years in school.

3 Q. That is, you were living with your mom?

4 A. Yes.

5 Q. With Barb Janda?

6 A. Yes.

7 Q. You described your step dad, yesterday, right?

8 A. Yeah, Tom.

9 Q. His name was Tom -- is Tom Janda?

10 A. Yes.

11 Q. Your mom is now married to another fellow named

12 Scott Tadych?

13 A. Yes.

14 Q. You are the second of four boys?

15 A. Yes.

16 Q. All of you have the last name Dassey?

17 A. Yes.

18 Q. From Pete Dassey?

19 A. Yes.

20 Q. Your natural father?

21 A. Yes.

22 Q. And Brian is older than you?

23 A. Yes.

24 Q. Then there is you, Bobby?

25 A. Yup.

1 Q. All right. Then we have got Brendan -- no, I'm
2 sorry, we have got Blaine?

3 A. Yup.

4 Q. And Brendan is the youngest of the four brothers?

5 A. Yes.

6 Q. So Brian, the oldest boy, oldest son, already was
7 out of Barb's house back on Halloween, 2005?

8 A. Yes, he would come and go once in awhile.

9 Q. He lived nearby, but didn't sleep there most
10 nights?

11 A. Yeah.

12 Q. So you and your two younger brothers were still
13 living with your mom, Barb Janda?

14 A. Yes.

15 Q. You have been there since about the time you
16 began high school?

17 A. Yes, 2001 we moved in.

18 Q. Were you living in the mobile home?

19 A. Yes.

20 Q. Same one, same place?

21 A. Yes.

22 Q. Steven Avery, who lived just to the west of you,
23 is your uncle?

24 A. Yes.

25 Q. Your mom's brother?

1 A. Yes.

2 Q. And then you also had an Uncle Chuck living on
3 the salvage yard property?

4 A. Yes.

5 Q. That's also your mom's brother?

6 A. Yes.

7 Q. And he lives back around to the southeast, sort
8 of behind the office buildings and the other
9 buildings of the business, right?

10 A. Yes.

11 Q. In a trailer home there?

12 A. Yes.

13 Q. Grandpa and grandma live there?

14 A. Yes.

15 Q. That is your mom's mother and father?

16 A. Yes.

17 Q. Allen and Delores?

18 A. Yes.

19 Q. Them in the back?

20 A. Yup.

21 Q. Okay. And they live up, right off the parking
22 lot, in the main area of the business?

23 A. Yes.

24 Q. They have a doublewide trailer?

25 A. Yes.

1 Q. And a garage attached?

2 A. Yes.

3 Q. Or at least next --

4 A. Next, yeah.

5 Q. -- to the trailer. You also have an Uncle Earl,

6 your mother's brother, Earl, don't you?

7 A. Yes.

8 Q. Earl is married to a woman named Candy?

9 A. Yes.

10 Q. Earl and Candy don't live on the salvage yard --

11 A. No.

12 Q. -- property? They live nearby too?

13 A. Yes.

14 Q. And Earl, in fact, you know, works at the salvage

15 yard?

16 A. Yes.

17 Q. Chuck works at the salvage yard?

18 A. Yes.

19 Q. And after Steve got out of prison, he came to

20 work at the salvage yard?

21 A. Yes.

22 Q. Your Grandpa Allen had started the salvage yard?

23 A. Yes.

24 Q. But he is not quite as active, the adult boys are

25 basically running the business?

1 A. Yes.

2 Q. Your mom works elsewhere?

3 A. Yes.

4 Q. And back about Halloween of 2005, she had a
5 factory job?

6 A. Yes.

7 Q. Did she work first shift?

8 A. Yes.

9 Q. So she's up and out of the house pretty early in
10 the morning?

11 A. Yes.

12 Q. About the time you are getting home probably --

13 A. Before.

14 Q. -- back then? Before you even got home?

15 A. Yeah.

16 Q. Okay. So you are getting off work at 6 in the
17 morning from your third shift?

18 A. Yup.

19 Q. And by the time you are home at 6:15, 6:30, she's
20 already gone?

21 A. Yeah.

22 Q. She would then come home mid-afternoon?

23 A. Yes.

24 Q. What goes on at a salvage yard business,
25 Mr. Dassey?

1 A. Well, they sell used parts for cars, the people
2 that need these parts.

3 Q. Okay. Do they also do some car repair?

4 A. Once in a while, yeah.

5 Q. Okay. Did you ever work for the salvage yard?

6 A. For one summer.

7 Q. I mean for wages?

8 A. Yeah.

9 Q. Okay. What did you do that summer you worked at
10 the salvage yard?

11 A. I just changed colors -- I mean, changed tires,
12 and stripped cars.

13 Q. What do you mean by stripping cars?

14 A. Taking all the stuff that you can get money for
15 off of them.

16 Q. After you have stripped the car, taken all the
17 valuable spare parts off, where do the things you
18 stripped off go?

19 A. Into piles.

20 Q. Where does the rest of the car go?

21 A. It goes down to be crushed.

22 Q. Okay. And some of the cars now look like they
23 are lined up in rows, and they are not crushed;
24 is that the area you guys call the pit?

25 A. Yes.

1 Q. And why are some of the cars not crushed, but
2 just lined up in rows down there?

3 A. Because them are the cars that are still good,
4 that they can still sell stuff off of.

5 Q. You can still strip some parts off of?

6 A. Yes.

7 Q. Some of them pretty old?

8 A. Yes.

9 Q. Others pretty new?

10 A. Yes.

11 Q. How do cars get to come to the salvage yard? How
12 is it that a car would end up there?

13 A. People call them, they go pick it up.

14 Q. The Avery salvage business runs a wrecker?

15 A. Yes.

16 Q. Or towing service?

17 A. Yes.

18 Q. Okay. So let's say there is a car crash and one
19 or both of the cars is totaled, might those end
20 up at the salvage yard?

21 A. Yes, if they are called.

22 Q. By a police department, or a fire department, or?

23 A. Yeah.

24 Q. Or private people?

25 A. Yeah.

1 Q. Any of those?

2 A. Yeah.

3 Q. Okay. You saw wrecked cars, and that is cars
4 that have been in a crash, come in, the summer
5 you worked there?

6 A. Yes.

7 Q. Some of those cars, because there's been a car
8 crash, some of them have blood in them?

9 A. Yes.

10 Q. And are there -- are there any parts from a car,
11 when you are stripping it, that you might melt
12 down?

13 A. Yes.

14 Q. What would that be?

15 A. Like aluminum.

16 Q. What's aluminum on a car?

17 A. Like rims, transmission, all that stuff.

18 Q. Transmission is probably the biggest cast
19 aluminum --

20 A. Yes.

21 Q. -- piece on a car? Does the Avery Salvage Yard
22 have a place to melt down aluminum rims?

23 A. Yes.

24 Q. Or aluminum transmissions?

25 A. Yes.

1 Q. Where is that?

2 A. It is in the old shop building.

3 Q. Up around that parking lot area?

4 A. Yes.

5 Q. And what -- what is this thing that melts down
6 the aluminum transmission?

7 A. It's called a smelter.

8 Q. Okay. Big thing, small thing? Have you ever
9 seen how it works?

10 A. It's pretty big.

11 Q. Do you know how it works?

12 A. It is heated by propane. That's all I really
13 know.

14 Q. There's a big outdoor propane tank next to it?

15 A. Yup.

16 Q. And you say people would come there to buy spare
17 parts. Are these just -- just people who are
18 maybe fixing their own car in the garage?

19 A. Yes.

20 Q. Or restoring an older car, or something like
21 that, hobby type people?

22 A. Yes.

23 Q. Independent small repair garage people, do they
24 ever come to buy parts, to put on cars that they
25 may be fixing for customers of theirs?

1 A. Yes.

2 Q. One of the cars that we have seen over and over
3 again, I think that you talked about, was this
4 maroon, I think you said 1989 Plymouth Voyager
5 mini-van?

6 A. Yes.

7 Q. That was your mom's car and you know that?

8 A. Yes.

9 Q. It was for sale back around Halloween, 2005?

10 A. Yes.

11 Q. That Steven was helping her sell it?

12 A. Yes.

13 Q. Did it eventually sell?

14 A. No.

15 Q. At the same time that one was for sale, were you
16 aware of other cars that may have been for sale,
17 or on and off, you know, for sale, whether they
18 were actively advertised or not?

19 A. Yes.

20 Q. Such as?

21 A. Steven had a Chevy Blazer for sale and a Monte
22 Carlo.

23 Q. Where were those kept, if you know?

24 A. Up at the end of our driveway.

25 Q. This was back around Halloween of 2005?

1 A. Yes.

2 Q. At the end of your driveway, do you mean there's
3 a road that comes down, if you take a right
4 instead of going into the salvage yard business,
5 there is a road --

6 A. Yes.

7 Q. -- that runs east west there near the north side
8 of the property?

9 A. Yes.

10 Q. Is that the driveway you are referring to?

11 A. Yes.

12 Q. That actually goes down to a little loop driveway
13 in front of your house?

14 A. Yes.

15 Q. And then sort of goes into Steve's garage?

16 A. Yes.

17 Q. So it would have been up toward the main road so
18 to speak?

19 A. Yes.

20 Q. By the --

21 A. By the --

22 Q. -- entrance to the business?

23 A. -- mailbox.

24 Q. Or the entrance to the office?

25 A. Yes.

1 Q. Now, yesterday, Mr. Kratz asked you about a
2 conversation that happened in your garage, with
3 a -- your friend Mike was there?

4 A. Yes.

5 Q. Is Mike, Mike Osmunson?

6 A. Yes.

7 Q. Or Michael Osmunson, but you call him Mike?

8 A. Yes.

9 Q. How do you know you were in the garage, your
10 garage, when this conversation happened?

11 A. Because we just arrived home and we entered the
12 garage.

13 Q. What was going on in the garage?

14 A. We bought some climbing sticks that night for
15 hunting and we were putting them together.

16 Q. Climbing sticks are little sticky pads you put on
17 the rungs to climb up a deer stand?

18 A. Yes.

19 Q. So your boots don't slip and you fall off and
20 break your neck?

21 A. Yes.

22 Q. You were doing that with Mike in the garage.

23 A. Yes.

24 Q. Roughly what time, do you remember, you guys were
25 doing this?

1 A. Probably 6:30, 7:00.

2 Q. Somewhere in that range?

3 A. Yes.

4 Q. And was there a deer?

5 A. Yes.

6 Q. Okay. What was -- This was a deer that was
7 hanging at that point?

8 A. Yes.

9 Q. In the garage. Was the deer skun out?

10 A. No, not at that time.

11 Q. The time of this conversation had not been
12 skinned yet?

13 A. Yes.

14 Q. Or had been?

15 A. It hadn't.

16 Q. When did you get this deer?

17 A. That night.

18 Q. And how long or how did you get the deer?

19 A. It was a road kill. It was hit right up the road
20 from our house.

21 Q. Now, when you get a road kill, you can't just
22 take that home and eat it necessarily, can you.

23 A. No.

24 Q. You have got to get a tag in this state?

25 A. Yes.

1 Q. From the DNR?

2 A. Yes.

3 Q. You had not hit the deer?

4 A. No.

5 Q. But you saw it hit?

6 A. Yes.

7 Q. And knew it was a fresh kill?

8 A. Yes.

9 Q. So you put it in your truck?

10 A. Yes.

11 Q. Brought it home?

12 A. Yes.

13 Q. And it was too late at that point to get the tag?

14 A. Yes.

15 Q. Did you hang it up that first night?

16 A. Yes.

17 Q. Who called to get the tag?

18 A. My mom did.

19 Q. And do you remember whether she called to get the

20 tag, called about the tag, the night you first

21 found the deer or the next day?

22 A. The night that we found the deer.

23 Q. But you didn't get the tag until the next

24 morning?

25 A. Yes.

1 Q. Okay. I'm going to show you Exhibit 123. Can
2 you make out what that is?

3 A. That's a tag.

4 Q. A tag for the deer that was hanging in your
5 garage --

6 A. Yes.

7 Q. -- when you had this conversation with Mike?

8 A. Yes.

9 Q. Okay. While you are putting the climbing sticks
10 on?

11 A. Yes.

12 Q. All right. Now, the tag is dated November 4 or
13 11/4/05, isn't it?

14 A. Yes.

15 Q. Okay. So where did you get the tag?

16 A. From 310 Mobile.

17 Q. You will have to explain that. At least some of
18 the jurors may not understand this. It's a DNR
19 tag, right?

20 A. Yes.

21 Q. But the DNR sets it up so that there are local
22 agents or places you can go?

23 A. Gas stations.

24 Q. Gas stations where you can get the tag?

25 A. Yes.

1 Q. So you don't have to run to Madison or something?

2 A. Yes.

3 Q. Okay. And there's a Mobile gas station on
4 Highway 310, near your house?

5 A. Yes.

6 Q. That's what you call the Mobile 310?

7 A. Yes.

8 Q. Did you take the deer to the Mobile 310 to get it
9 tagged?

10 A. Yes.

11 Q. So you had to take it down from where it was
12 hanging in your garage?

13 A. Yes.

14 Q. For anybody who doesn't know, why do you hang a
15 deer?

16 A. It helps cure the meat.

17 Q. And do you hang it before you skin it, or after
18 you skin it, or both?

19 A. I usually hang it and skin it, then you let it
20 hang for a day.

21 Q. Okay. But you didn't skin it the first night you
22 had it?

23 A. No.

24 Q. Because you had to get it tagged?

25 A. Yes.

1 Q. So you took it down the morning of the 4th of
2 November?

3 A. Yes.

4 Q. Went and got it tagged yourself?

5 A. Yes.

6 Q. And I want to be clear about that, even though
7 your mom had called about the tag, you actually
8 took the deer to get it tagged?

9 A. Yes.

10 Q. Because she was off to work on a Friday morning?

11 A. Yes.

12 Q. November 4 was Friday?

13 A. Yes.

14 Q. Now, you bring the deer back and you have the
15 deer tagged, I assume, right?

16 A. Yes.

17 Q. What did you do with the deer at that point?

18 A. I hung it up again and scun it out.

19 Q. Okay. And was it that night that you hung it up
20 again and scun it out, that you had this
21 conversation with Mike?

22 A. No, it was the night before.

23 Q. The night before?

24 A. Yes.

25 Q. Okay. You remember talking to us last night?

1 A. Yes.

2 Q. And telling us that it was the second time you
3 hung the deer, and the deer was scun out, when
4 you were doing the climbing sticks?

5 A. Yes.

6 Q. The -- You remember that the conversation with
7 Mike happened after the news of Teresa Halbach's
8 disappearance had been on TV?

9 A. Yes.

10 Q. That you are certain of?

11 A. Yes, it was that day.

12 Q. After it was on TV?

13 A. Yes.

14 Q. Okay. Now Thursday night, November 3rd, you
15 would have gone to work?

16 A. Yes.

17 Q. You would have left for work about 9:30?

18 A. Yes.

19 Q. To be there a little bit before your 10:00 shift?

20 A. Yes.

21 Q. Friday nights you don't have to work?

22 A. No.

23 Q. That is, for you, the workweek ends at 6:00 on
24 Friday morning, right, but it starts up again at
25 10:00 on Sunday night?

1 A. Yes.

2 Q. Actually Friday night and Saturday night are your
3 -- it's your weekend?

4 A. Yes.

5 Q. So Friday night, 6:30 or 7, Mike's over and you
6 don't have to go to work that night?

7 A. Yes.

8 Q. But you have heard the night before -- or not you
9 I guess but -- the night before the news has been
10 on the TV about Ms Halbach disappearing?

11 A. Yes.

12 Q. The -- Let me -- Let me just get that up on the
13 screen so the jury can see the date on it. Boy,
14 that's tough it washes out. This isn't a picture
15 you took?

16 A. No.

17 Q. That's deer blood on the left --

18 A. Yes.

19 Q. -- side? We can't do it this way, but what I'm
20 looking at is way over on the right side of this
21 tag. It says date of issuance of the permit/tag;
22 do you see that?

23 A. Yes.

24 Q. And what is the date of issuance of the
25 permit/tag?

1 A. 11-04-05.

2 ATTORNEY STRANG: Your Honor, maybe I will
3 just, if I may, just pass this around the jury in
4 the old-fashioned way.

5 THE COURT: Any objection?

6 ATTORNEY KRATZ: No.

7 THE COURT: Go ahead.

8 Q. (By Attorney Strang)~ As you and Mike were
9 putting these climbing sticking pads on the deer
10 stand, your Uncle Steven walked over to the
11 garage?

12 A. Yes.

13 Q. Came in. He and Mike had some conversation?

14 A. Yes.

15 Q. You didn't catch the first part of the
16 conversation, I gather?

17 A. Yes.

18 Q. That is, I mean you did not catch?

19 A. No, I didn't.

20 Q. So you don't personally know whether Mike started
21 the conversation or Steve did?

22 A. No, I don't.

23 Q. What you caught was Steve making a joke about,
24 want to help me get rid of a body, or dispose of
25 a body, something like that?

1 A. Yes.

2 Q. That was clear to you it was a joke?

3 A. Yes.

4 Q. Mike laughed?

5 A. Yes.

6 Q. You laughed?

7 A. Yes.

8 Q. And Steve followed that up by saying something
9 like, people go missing all the time, and this
10 girl may have left for Mexico?

11 A. Yes.

12 Q. Did you guys laugh about that too?

13 A. Yes.

14 Q. Was this the first you learned that Teresa
15 Halbach was missing?

16 A. Yes.

17 Q. But one or both of them, from a conversation, had
18 seen it on TV?

19 A. Yes.

20 Q. What the TV had said -- well, I guess you hadn't
21 seen the TV, but you eventually did see TV
22 reports?

23 A. Yes.

24 Q. Of Ms Halbach missing? And it described her as
25 missing?

1 A. Yes.

2 Q. At least for the first several days?

3 A. Yes.

4 Q. Now, you, I think beginning on November 5, which
5 is the day you tried to come home and found Jambo
6 Creek Road blocked off?

7 A. Yes.

8 Q. Saturday?

9 A. Yes.

10 Q. Okay. Beginning that day, you were coming home
11 to try to get your labrador puppy back after
12 goose hunting?

13 A. Yes.

14 Q. In the morning?

15 A. Yes.

16 Q. With Mike, again, actually, right?

17 A. Yes.

18 Q. Okay. So you come back and you can't get to your
19 house because the police have the road blocked
20 off?

21 A. Yes.

22 Q. Beginning that, right then and there, for
23 probably over three hours that Saturday,
24 November 5, you've talked to the police a number
25 of times?

1 A. Yes.

2 Q. About the investigation into Teresa Halbach's
3 disappearance and death?

4 A. Yes.

5 Q. It was a little over three hours, as you recall,
6 that first day, Saturday, before you could get
7 your dog back?

8 A. Yes, it was about three and a half hours.

9 Q. Okay. And then, at least two other times, you
10 were interviewed in the weeks, or days, weeks,
11 months following Teresa Halbach's disappearance?

12 A. Yes.

13 Q. In any one of those conversations with the
14 police, did any police officer ever ask you about
15 this joke that you overheard between Mike and
16 Steve in the garage?

17 A. No.

18 Q. If we go back to Friday, November 4, again, later
19 in the night, do you remember either yourself or
20 your Uncle Steven getting a call, probably on a
21 cell phone, from your Uncle Chuck?

22 A. No.

23 Q. Something about having seen headlights back by
24 his house?

25 A. Not that I remember.

1 Q. And asking you guys to check it out?

2 A. Not that I remember.

3 Q. You have no recollection at this point, now, of
4 having driven down in the pit to see if you and
5 Steve could find the source of these headlights
6 Chuck was talking about?

7 A. Not that I remember.

8 Q. Okay. But you stayed home that weekend, you did
9 not go up to Crivitz?

10 A. Yes.

11 Q. You were asked yesterday, by Mr. Kratz, about --
12 I'm sorry, I'm going to go back to Monday,
13 October 31. I'm hopping around a little bit, but
14 we're back to Monday, October 31. You were asked
15 whether you heard a telephone call come in from
16 Teresa Halbach at about 11:45 in the morning?

17 A. No.

18 Q. That is, you were sleeping then?

19 A. Yes.

20 Q. And you are a sound sleeper?

21 A. Yes.

22 Q. The answering machine is in the living room?

23 A. Yes.

24 Q. Which is sort of next to and west of your
25 bedroom?

1 A. Yes.

2 Q. But it's not in your room?

3 A. No.

4 Q. That answering machine is the kind that, I mean
5 you have heard calls come in to the answering
6 machine, I take it?

7 A. Yes.

8 Q. Just not this one?

9 A. No.

10 Q. When a call comes in and you don't answer and it
11 goes to the answering machine, this is the kind
12 of answering machine where you hear the caller
13 leaving the message?

14 A. Yes.

15 Q. It's like a speaker phone, it broadcasts, so to
16 speak?

17 A. Yes.

18 Q. Okay. But even with that, you didn't hear Teresa
19 Halbach leave her message?

20 A. No.

21 Q. You had I think said, yesterday, that on
22 Halloween, you had no reason to be in your Uncle
23 Steven's garage?

24 A. Yes.

25 Q. That's true.

1 A. (No verbal response.)

2 Q. Now, you had been in that garage on various times

3 before?

4 A. Yes.

5 Q. Been in there since?

6 A. Yes.

7 Q. Typically, if you were going to go in Steven's

8 garage, it would be because he was asking for

9 your help on fixing a car or a snowmobile or

10 something?

11 A. Yes.

12 Q. He would ask your help occasionally?

13 A. Yes.

14 Q. Ask for Brendan's help occasionally?

15 A. Yes.

16 Q. Ask for Blaine's help occasionally?

17 A. Yes.

18 Q. Maybe Brian, your older brother, when he still

19 lived there?

20 A. Yes.

21 Q. When you got up that afternoon, on Halloween, and

22 you happened to look out the window, you see the

23 woman you now know as Teresa Halbach?

24 A. Yes.

25 Q. Your recollection is that she was wearing a black

1 coat?

2 A. Yes.

3 Q. It came down below her hips?

4 A. Yes.

5 Q. That she was wearing trousers?

6 A. Yes.

7 Q. They were black?

8 A. I do not know the color.

9 Q. It's been a while since then, but one of the
10 times you talked to the police, specifically a
11 Calumet County investigator named John Dederling,
12 was back in February, February 27 of 2006, coming
13 up on a year ago?

14 A. Yes.

15 Q. Back then, when you were talking to Investigator
16 Dederling, the events of Halloween, 2005, were a
17 little fresher in your mind?

18 A. Yes.

19 Q. Did you try to tell Investigator Dederling the
20 truth as best you recalled it when you talked
21 with him?

22 A. Yes.

23 Q. Not just on February 27, but each time you talked
24 to him?

25 A. Yes.

1 Q. You knew it was important to give him accurate
2 details if you could?

3 A. Yes.

4 Q. You think reviewing his report might help refresh
5 your recollection about what exactly Ms Halbach
6 was wearing that day you saw her?

7 A. Yes.

8 (Exhibit No. 124 marked for identification.)

9 ATTORNEY STRANG: Just going to put an
10 exhibit sticker on this so we know what we're
11 talking about.

12 Q. (By Attorney Strang)~ I'm going to show you
13 Exhibit 124, which is just Investigator
14 Dederling's report. And I want you just to read
15 this to yourself. You are welcome to look at all
16 of it, or any of it, if you want to. I thought
17 that this paragraph on Page 2 of the report might
18 be the most helpful. But you look at whatever
19 you want, just read it to yourself. All done?

20 A. Yes.

21 Q. Okay. Does that help you remember today a little
22 better what Ms Halbach was wearing back on
23 Halloween, 2005?

24 A. Yes.

25 Q. When you saw her? Was it black trousers you saw?

1 A. I honestly don't remember now.

2 Q. You don't. What did this help you remember?

3 A. That she was wearing black trousers.

4 Q. Okay. That's at least what you told Investigator

5 Dedering, back when this was fresher in your

6 mind?

7 A. Yes.

8 Q. But you cannot recall what color her top was?

9 A. No.

10 Q. What you saw Ms Halbach do, as you were looking

11 out that kitchen window you described, or the

12 window near the kitchen, you saw her taking a

13 photograph or two of the van, right?

14 A. Yes.

15 Q. And then you go hop in the shower?

16 A. Yes.

17 Q. Very quick shower you told us yesterday?

18 A. Yes.

19 Q. Three, four minutes?

20 A. Yes.

21 Q. Okay. And then the next time you can look out

22 the window, presumably you have put some clothes

23 on?

24 A. Yes.

25 Q. So that takes a minute or two, or what?

1 A. Yes.

2 Q. Do you look out the same window then again?

3 A. Yes.

4 Q. And now you see her sort of walking towards your
5 Uncle Steven's trailer?

6 A. Yes.

7 Q. Not too long after that, you leave the house with
8 your bow to go hunting?

9 A. Yes.

10 Q. Her SUV is still there?

11 A. Yes.

12 Q. But you don't see her?

13 A. No.

14 Q. And you don't see your Uncle Steven at the
15 moment?

16 A. No.

17 Q. You are not looking for either one of them?

18 A. No.

19 Q. You are just going out to get in your truck?

20 A. Yes.

21 Q. Your truck is the other direction, so to speak,
22 it's away from Steven's house?

23 A. Yes.

24 Q. Tell -- I guess tell the jury, did you hear a lot
25 of horrible screaming when you came walking out

1 with the bow?

2 A. No, I didn't hear anything.

3 Q. Anybody crying for help?

4 A. No.

5 Q. Was there any background noise, that you
6 remember, that would have blocked out those sort
7 of sounds?

8 A. Not that I remember.

9 Q. Did you, as you drove off then to go deer
10 hunting, it's what, 2:45, or 3, somewhere in
11 that --

12 A. Yes.

13 Q. -- range?

14 A. Yes.

15 Q. The deer I guess probably, in general, aren't
16 going to be up out of their beds and feeding,
17 looking around for food in November until close
18 to dusk?

19 A. Yes.

20 Q. You are just driving 2 miles to your little
21 hunting area?

22 A. Yes.

23 Q. By yourself?

24 A. Yes.

25 Q. Is it that you like to get up in the stand

1 especially early?

2 A. Yes.

3 Q. So you don't spook the deer or something?

4 A. Yes.

5 Q. Okay. Even if you are going to have to wait a
6 couple hours for dusk?

7 A. Yes.

8 Q. Anybody see you --

9 A. Yes.

10 Q. -- as you are going hunting? Who?

11 A. Scott Tadych.

12 Q. Scott Tadych?

13 A. Yes.

14 Q. Okay. Was he a friend of your mom's at that
15 point?

16 A. Yes.

17 Q. How do you know he saw you?

18 A. Because I passed him on the highway.

19 Q. Okay. And what you told Investigator Dederling is
20 that Mr. Tadych would be available to verify
21 precisely what time he had seen you?

22 A. Yes.

23 Q. Why did you think that?

24 A. Maybe he looked at his clock in his truck.

25 Q. You hadn't -- Had you talked with him about --

1 with Mr. Tadych, about whether he could verify
2 precisely when he saw you?

3 A. No.

4 Q. You were just kind of hoping or guessing that
5 maybe he could?

6 A. Yes.

7 Q. What -- What sort of -- Well, you were bow
8 hunting that day, do you also participate in the
9 gun season for deer?

10 A. Yes.

11 Q. What do you use as a deer rifle?

12 A. .30-06.

13 Q. Is that yours?

14 A. Yes.

15 Q. Do you have any other guns?

16 A. Yes.

17 Q. What other long guns?

18 A. I have shotguns, mostly all shotguns.

19 Q. Mostly all shotguns. But back at the end of
20 October, 2005, you also had a .22 caliber rifle?

21 A. Yes.

22 Q. Marlin?

23 A. Yes.

24 Q. Semi-automatic?

25 A. Yes.

1 Q. And then your mom had a bolt action .22 rifle in
2 her bedroom, right?

3 A. Yes.

4 Q. You kept your Marlin .22 semi-automatic in your
5 bedroom?

6 A. Yes.

7 Q. Mr. Dassey, just to finish, are you quite sure
8 now whatever details you don't remember of
9 Halloween, 2005, today, are you quite sure now
10 that you woke up and got up sometime by 2:30, or
11 a little before?

12 A. Yes.

13 Q. You said yesterday that Blaine and Brendan were
14 still in high school, got home usually what,
15 3:40, 3:45, somewhere in there?

16 A. Yes.

17 Q. And that was regular every day?

18 A. Yes, every day.

19 Q. Because they took a school bus to and from
20 school?

21 A. Yes.

22 Q. School lets out at the same time, the bus runs
23 the same route, that they were pretty regular.

24 A. Yes.

25 Q. And are you quite sure that Blaine and Brendan,

1 coming home that Halloween, 2005, were not the
2 ones who found you still asleep and awakened you?

3 A. No.

4 Q. And if Blaine told the police that you were still
5 sleeping at 3:40, or 3:45, when he got home from
6 the school bus, and that you awoke after he got
7 home, Blaine is just mistaken?

8 A. Yes.

9 ATTORNEY STRANG: That's all I have.
10 Thanks.

11 **REDIRECT EXAMINATION**

12 BY ATTORNEY KRATZ:

13 Q. Mr. Dassey, you stated today on cross-examination
14 that you believe that you saw Teresa walking
15 towards your Uncle Steve's trailer after your
16 shower; is that right?

17 A. Yes.

18 Q. But you had seen her arrive before your shower?

19 A. Yes.

20 Q. Did you see where Ms Halbach parked her SUV?

21 A. Yes.

22 Q. Where was that?

23 A. Just in front of the van, on the north side of
24 the driveway.

25 Q. No obstruction to your view of that?

1 A. No.

2 Q. Mr. Strang showed you a police report, an
3 investigative report prepared by Investigator
4 Dederling; did you get a chance to look at that
5 today?

6 A. Yes.

7 Q. Have you had a chance to look at that before
8 today, that you can recall?

9 A. Yes.

10 Q. When I asked yesterday, when the last time you
11 saw a fire at Steve's burn area was --

12 ATTORNEY STRANG: Scope.

13 Q. -- do you recall what your answer was?

14 ATTORNEY STRANG: Scope.

15 THE COURT: Just a second, there's an
16 objection that it's beyond the scope of redirect; is
17 that correct?

18 ATTORNEY STRANG: Of cross, yes. Beyond
19 the scope of cross, so it's not proper redirect.

20 ATTORNEY KRATZ: It's what else he told
21 Investigator Dederling. He showed him the very
22 exhibit that I'm intending to refer to.

23 THE COURT: No. I don't think that's
24 enough. It wasn't something that was dealt with on
25 cross, so I'm going to sustain the objection.

1 ATTORNEY KRATZ: All right.

2 Q. (By Attorney Kratz)~ You said that you saw Scott
3 Tadych on the way to deer hunting. About what
4 time was it that you saw him; do you recall?

5 A. Quarter to three.

6 Q. About 2:45 p.m.?

7 A. Yes.

8 Q. So you had already seen Teresa Halbach by 2:45
9 and, in fact, had already left your residence; is
10 that right?

11 A. No, she was still there.

12 Q. What I'm saying is, you had already seen her?

13 A. Oh, yes.

14 Q. And had left your residence --

15 A. Yes.

16 Q. -- by 2:45?

17 A. Yes.

18 Q. Mr. Strang, asked if you heard any screaming or
19 if you heard any other noises when you got into
20 your truck; were you listening for anything like
21 that?

22 A. No.

23 Q. How long does it take from exiting your trailer
24 until you get into your truck; how far of a
25 distance was that?

1 A. Maybe 10 feet. I had it parked right in front of
2 the door.

3 Q. How long would it take to get into your car?

4 A. Maybe 10 seconds.

5 Q. Oh, so in those 10 seconds, you didn't hear any
6 screaming or any calls for help --

7 A. No.

8 Q. -- is that right?

9 ATTORNEY KRATZ: I think that's all, Judge.
10 Thank you.

11 ATTORNEY STRANG: No recross, your Honor.

12 THE COURT: Very well. Mr. Dassey you are
13 excused.

14 ATTORNEY STRANG: Your Honor, I will move
15 Exhibit 123 -- or Exhibit 123, 124 was used only to
16 refresh.

17 THE COURT: Any objection?

18 ATTORNEY KRATZ: No.

19 THE COURT: Very well, the exhibit is
20 admitted.

21 ATTORNEY STRANG: And we could probably
22 have just a quick minute at side bar.

23 THE COURT: All right.

24 (Side bar taken.)

25 THE COURT: Members of the jury, I'm going

1 to excuse you for a couple minutes. I don't believe
2 this is going to turn into our morning break, so I
3 will excuse you for a few minutes and we'll call you
4 back as soon as we're ready to proceed. Again, as
5 always, do not discuss the case during the break.

6 (Jury not present.)

7 THE COURT: You may be seated. Mr. Strang.

8 ATTORNEY STRANG: As I understand the
9 narrow point of disagreement of the unreported side
10 bar, Mr. Kratz is under the belief that I had asked
11 all the questions that -- on which we sought a
12 stipulation on Michael Osmunson's testimony and that
13 he left them go by without hearsay objection so that
14 there was no need for a stipulation.

15 And I did not ask all the questions,
16 there remains a couple of important points that I
17 did not inquire about and that I do want the
18 stipulation on. I did ask one important one and
19 we could leave that off now. I agree there is no
20 need for a cumulative stipulation on that. The
21 point I did not go into, because Mr. Dassey
22 testified here on cross that he didn't hear the
23 beginning of the conversation. And I think he
24 said he doesn't -- or agreed he didn't recall
25 whether Michael started it or Steve started the

1 conversation.

2 So what I -- what I would need is,
3 Michael indicated he was aware of Steven was one
4 of the last people to see the missing girl and
5 jokingly asked Steven if Steven had her, the
6 missing girl, in a closet. That's the -- that's
7 the chunk of it, the start of the conversation
8 that I didn't cover and could not cover with
9 Brendan Dassey because --

10 ATTORNEY KRATZ: Bobby Dassey.

11 THE COURT: Bobby Dassey, you meant?

12 ATTORNEY STRANG: I'm sorry, Bobby Dassey,
13 yes. Because he -- he did not hear it. I did cover
14 the Mexico statement. Steven stated that people go
15 missing all the time and the girl may have left for
16 Mexico. I think I did cover that. Mr. Kratz didn't
17 object. We can omit that from the stipulation at
18 this point. Again, I'm not looking to make it
19 cumulative.

20 THE COURT: All right. I should note,
21 before I hear from Mr. Kratz, that the purpose of
22 the side bar was counsel asking the Court for an
23 opportunity to bring this matter to the Court's
24 attention. Very short side bar. I heard no
25 argument from either party during the side bar, but

1 simply excused the jury so that I could hear
2 argument at this time.

3 ATTORNEY STRANG: That's right. And,
4 again, that side bar was at defense request.

5 THE COURT: Mr. Kratz.

6 ATTORNEY KRATZ: Judge, I have no objection
7 to the Court reading those, which would now be those
8 three sentences that were asked by stipulation,
9 omitting the paragraph that starts with, "according
10 to Michael". And also, as Mr. Strang had alerted
11 the Court early this morning, the sentence that
12 begins, "Michael stated he had just learned", that
13 sentence to be omitted.

14 But the balance of that paragraph,
15 beginning with, "he stated he and Bobby", and
16 ending with the phrase, "missing girl", with the
17 one sentence being omitted. If that's going to
18 end this issue, Judge, I don't have any objection
19 to agreeing that that be provided to the Court.
20 Make sure that the Court has omitted or crossed
21 out that one line, Michael stated he had learned.
22 But other than that, Judge, we'll agree to that
23 stipulation.

24 THE COURT: I'm going to ask someone to
25 read to me what it is you do want presented to the

1 jury, because I'm having trouble following this.

2 ATTORNEY STRANG: I will read it just as I
3 would propose to read it to the jury. If he were
4 called to testify, Michael Osmunson, the parties
5 agree, would testify that he stated he and Bobby
6 were inside the Dassey garage when Steven came over.
7 Michael indicated he was aware Steven was one of the
8 last people to see the missing girl and jokingly
9 asked Steven if Steven had her, the missing girl, in
10 a closet.

11 At this point, Steven asked Michael if
12 Michael wanted to help bury the body, and they
13 laughed about this together. He once again
14 indicated, that is, Mr. Osmunson once again
15 indicated he thought Steven might have been the
16 last one to see the missing girl.

17 THE COURT: And that's what the State is
18 agreeing?

19 ATTORNEY KRATZ: That's just fine, Judge.

20 ATTORNEY STRANG: And -- Well, okay.
21 Mr. Buting points out that the next sentence,
22 according to, is different than the testimony that I
23 elicited from Mr. Dassey. I did -- I did -- I don't
24 remember exactly the words now, I got into something
25 about maybe she went to Mexico, as I recall, but ...

1 THE COURT: Well, I'm not going to, from
2 the bench, impose a stipulation on the parties.

3 ATTORNEY STRANG: Right.

4 THE COURT: If you folks have an agreement
5 and you wish to read something to the jury and each
6 of you agrees to it, I will allow you to do that.

7 ATTORNEY KRATZ: Counsel asked the question
8 about, she may have gone to Mexico, we do object to
9 that. We don't object to the other part of the
10 stipulation, once again, as I indicated, to put this
11 matter to rest.

12 THE COURT: And, Mr. Strang, you are going
13 to present that to the jury as a stipulation.
14 Mr. Kratz will agree on the record. I will let the
15 jury know that it's a stipulation and they can take
16 it as evidence.

17 ATTORNEY STRANG: Okay. No problem with
18 my, in the last sentence there, for context, saying
19 Mr. Osmunson once again, instead of he once again?

20 ATTORNEY KRATZ: That's fine.

21 THE COURT: Very well. All right. We'll
22 bring the jurors back in. Mr. Kratz, I would like
23 to take the morning break about 10:30, so if you are
24 still in your direct --

25 ATTORNEY KRATZ: I will stop.

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THE COURT: -- stop.

(Jury present.)

THE COURT: You may be seated. Members of the jury, before we proceed to the next witness, the parties have a stipulation to put on the record. Mr. Strang.

ATTORNEY STRANG: Thank you, your Honor. The parties, I think, have agreed that if -- if he were called to testify, a man named Mike Osmunson would testify that he stated he and Bobby were inside the Dassey garage when Steven came over. Michael indicated he was aware Steven was one of the last people to see the missing girl and jokingly asked Steven, if Steven had her, the missing girl, in a closet.

At this point Steven asked Michael if Michael wanted to help bury the body, and they laughed about this together. Mr. Osmunson once again indicated he thought Steven might have been the last one to see the missing girl.

THE COURT: Mr. Kratz, is that the State's understanding of the stipulation?

ATTORNEY KRATZ: It is, Judge.

THE COURT: Very well. Members of the jury, based on that stipulation, you may accept the

1 facts read by Mr. Strang as evidence in this case.
2 At this time, Mr. Kratz, you may call your next
3 witness.

4 ATTORNEY KRATZ: The State would call Brett
5 Bowe.

6 THE CLERK: Please raise your right hand.

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

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

12 THE WITNESS: Brett James Bowe, B-o-w-e.

13 **DIRECT EXAMINATION**

14 BY ATTORNEY KRATZ:

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

16 A. Patrol lieutenant with Calumet County Sheriff's
17 Department.

18 Q. How long have you been so employed?

19 A. Two years.

20 Q. And prior to that particular rank, could you tell
21 the jury how you were previously employed?

22 A. I started with the Sheriff's Department as a
23 jailer, became a patrolman, then a patrol
24 lieutenant -- patrol sergeant and then eventually
25 a lieutenant.

1 Q. What are your duties, currently, as a lieutenant?

2 A. I supervise the patrol staff.

3 Q. Sometime after November 5th of 2005, did you
4 become involved in the investigation that brings
5 us here to court today?

6 A. Yes, I did.

7 Q. When did you first become involved in that
8 investigation?

9 A. Sunday morning, the 6th.

10 Q. And would you tell the jury how you first became
11 involved?

12 A. I was contacted Saturday night and asked to come
13 to the scene to assist with taking control of the
14 Command Post.

15 Q. What is a Command Post?

16 A. It's a central location in a crime scene that we
17 utilize for staging and organizing the activities
18 that we're going to carry out during the day.

19 Q. Are there duties or were there, I should say.
20 The week of the 5th through the 12th, were there
21 duties in assuming responsibility for the Command
22 Post that you performed?

23 A. Yes, there were.

24 Q. And why don't we talk about, generally, those
25 duties. We'll talk specifically in just a few

1 minutes, but talk about generally what those
2 duties include.

3 A. The primary duty was scheduling and making sure
4 that there was security around the property
5 during the evening hours and during the day.
6 There were also numerous large scale searches
7 that went on at the property, or around the
8 property. And we were provided personnel to do
9 that and then we organized that.

10 Q. The Avery salvage property itself, that 40 acre
11 parcel, were you one of the officers responsible
12 for securing that area, again, between the 5th
13 and 12th of November?

14 A. Yes, I was.

15 Q. Describe for the jury, if you will, the security
16 on the perimeter, that is, the 40 acres. We're
17 going to talk a little bit outside of that in
18 just a minute, but let's first talk about the 40
19 acre perimeter. Could you describe for the jury
20 how that area was secured?

21 A. We stationed an officer at the four corners of
22 the property. One of the corners was the Command
23 Post, so there were always several people in that
24 position. And then we had an officer in the
25 remaining three corners with a squad car.

1 Q. I'm showing you what's first been marked as
2 Exhibit No. 79; can you tell us what that is
3 please.

4 A. This is an overview photo of a majority of the
5 40 acres.

6 Q. All right. I think we have a better way to show
7 these today. I'm hoping at least. Actually,
8 Officer, we're going to, because there's a couple
9 of technical issues that we're going to do during
10 the break, I'm just going to talk through this
11 and then after our morning break we'll be able to
12 look at some exhibits.

13 You talked about the four corners,
14 though, of the 40 acre property and that you had
15 people posted there. During what period of time
16 were they posted and was this a around the clock
17 thing, or describe that for the jury?

18 A. Most of the time it was around the clock. During
19 the day when there were a large number of people
20 in a certain area, we may utilize that security
21 person to assist those people in the area,
22 because they really hadn't left that area any
23 way.

24 At night those people stayed in their
25 positions through the entire night. And then if

1 there was no activity in that area they stayed in
2 that position also.

3 Q. We have talked about the 40 acre property, then,
4 let's go beyond that. Can you describe the area
5 that surrounds the Avery property?

6 A. To the north of the Avery property is State
7 Highway 147; running to the east of it would be
8 Jambo Creek Road; and to the west of it was
9 County Q. The Avery property is south of 147 and
10 there's a small dead end road, Avery Road, that
11 leads into the 40 acres.

12 Q. Were you familiar that sometime after 10:30 in
13 the morning, on Saturday the 5th of November,
14 that law enforcement officers took control of the
15 Avery property?

16 A. Yes, they did.

17 Q. Was there a law enforcement presence or security
18 perimeter set up outside of the 40 acres?

19 A. Yes, there was. There was an officer at the
20 intersection of 147 and Q, that when I arrived
21 Sunday morning was in place. There was also an
22 officer -- Between that and Avery Road, there is
23 a road that runs north off 147. There was an
24 officer there keeping individuals from coming
25 down onto 147. And then there was an officer at

1 Jambo Creek Road with the intersection of 47
2 (sic). There was also an officer at the end of
3 Avery Road that was checking people in and out of
4 the property.

5 Q. This responsibility for security, was that yours
6 alone or was that shared?

7 A. The security on the property was shared with
8 Lieutenant Sippel.

9 Q. So the jury knows, who is Lieutenant Sippel.

10 A. He would be the dispatch lieutenant for the
11 Calumet Sheriff's Department.

12 Q. Works for Calumet --

13 A. Yes.

14 Q. -- County? At that scene, Lieutenant Bowe, who
15 did you take direction from?

16 A. I took direction from Sheriff Pagel and
17 Investigator Wiegert and Agent Fassbender.

18 Q. And Investigator Wiegert and Special Agent
19 Fassbender, what was their role, if you know, at
20 the scene?

21 A. I believe they were lead investigators.

22 Q. I know you talked about security, or the
23 perimeter security, were you also involved of
24 security within the 40 acres? I mean, not just
25 the four corners, but also other security issues?

1 A. Generally, no. If there was something specific,
2 I would make arrangements to get people for them,
3 but then they would place them where they needed
4 them.

5 Q. You may not know this, Lieutenant Bowe, but how
6 many law enforcement officers were involved in
7 this search effort; do you know?

8 A. Total?

9 Q. Yes.

10 A. I don't know.

11 Q. All right. Other than security, your other
12 responsibility, you talked about coordinating
13 some of the searches; is that right?

14 A. Correct.

15 Q. Which areas of search responsibility did you
16 have?

17 A. Any time there was a large scale search, we
18 coordinated that. There were two large scale
19 searches inside the salvage yard and there were
20 two large scale searches outside the property.
21 There was also -- the Winnebago Dive Team was on
22 scene, so we coordinated that.

23 Q. Let's take them in reverse order. Talking about
24 the dive team, what was the dive team asked to
25 do?

1 A. The dive team was called in on Sunday, the 6th
2 and Monday the 7th. They were asked to dive any
3 of the surrounding bodies of water. There was
4 several gravel pits or stone quarries around this
5 property and there was water collecting in those.
6 So they were asked to come in and search those
7 areas.

8 Q. Do you know what they were searching for?

9 A. Evidence, anything, a body, any property that may
10 have belonged to Ms Halbach.

11 Q. All right. And what kind of -- you talk about
12 the surrounding property, what kind of acreage or
13 area are we talking about?

14 A. Inside the roadways that we were talking about,
15 there's over 500 acres. And we did search
16 outside that to some extent, too.

17 Q. So were all 500 acres searched?

18 A. There were probably portions of it that were not
19 searched. There were some wooded areas that were
20 searched with dogs, but didn't get the massive
21 search that we did in some other areas.

22 Q. Other than the heavily wooded areas, would you
23 say the other, or the balance of the 500 acres
24 was searched --

25 A. Yes.

1 Q. -- by law enforcement?

2 A. Yes, it was.

3 Q. The coordination of these large scale efforts
4 like the dive team that you mentioned; who would
5 you directly speak with? Would it be the
6 searchers or was there an intermediary usually?

7 A. What we would do is we would put a representative
8 from the Sheriff's Department, one of our
9 deputies, with each group. We would break them
10 down into 10 man groups.

11 Q. Let me stop you there. When you say our
12 deputies, who are you talking about?

13 A. Calumet Sheriff's Department.

14 Q. Go ahead.

15 A. We would communicate with our deputies which area
16 we wanted to search, if we were looking for
17 anything in particular. And they would relay
18 that to the individuals that were in their group.
19 They would notify us when they were going out,
20 when they were searching, and when they completed
21 their search. So we communicated directly with
22 the Calumet officer that was with the team.

23 Q. You talked about the dive team, let's talk about
24 the search areas outside of the 40 acres. I'm
25 talking -- I'm excluding the Avery property

1 itself. And can you describe those large scale
2 searches for us, please.

3 A. A majority of that was either open field or
4 quarries. What we would do is we would take a
5 section of it and we would send our teams out to
6 search that area. They would let us know when
7 they were completed and then we would determine
8 which additional area to send them to.

9 The dive team searched four ponds
10 directly around the Avery property on Sunday.
11 And then on Monday they moved to a another quarry
12 that was south of Jambo Creek Road and they
13 searched two large ponds there.

14 Q. Were the ponds left intact or were the ponds
15 disturbed at all to due to the searching?

16 A. The ponds that the dive team searched were left
17 intact.

18 Q. Were there other ponds that were examined?

19 A. There were.

20 Q. Tell us about that, please.

21 A. There were five silt ponds that were located at
22 Radandt's main headquarters for their quarry.
23 They utilized those for washing rock. The water
24 would run into one pond and it would kind of go
25 from pond to pond until it got to the last one

1 and most of the dirt would be gone and they would
2 pump it out and use it again. The dive team
3 determined that they couldn't dive those because
4 they were -- there was too much sludge in them
5 from the dirt they had washed off. So Radandt
6 agreed to dig two of those ponds out while we
7 watched them do it.

8 Q. All right. I think I may have interrupted you
9 about the other outlying property searches. You
10 said that they were open field searches. Then
11 you mentioned the dive team and I think that's
12 where I interrupted you. What other kind of
13 searches were in the outlying areas?

14 A. Included in the open field, there were also
15 quarries. There's quarries all over in that
16 area. So our teams would go from an open field
17 and then they would have to work their way into a
18 quarry and they would search the quarry.
19 Probably half of them were inactive at the time,
20 or even more. So they would cover that area.

21 Q. How many officers were involved in those large
22 scale searches, if you know?

23 A. It varied by day. One day we had 60 troopers
24 that were involved. On Sunday when we did the
25 initial exterior search, we had 30 officers

1 accompanied by 60 firemen.

2 Q. All right. So anywhere between 60 and 90 people
3 searching at a time; is that right?

4 A. Correct.

5 Q. And, again, for how many days did these searches
6 occur?

7 A. On two separate days we searched the exterior of
8 the property. And on two days we searched the
9 interior of the property.

10 Q. All right.

11 A. So four days total.

12 Q. When we come back from the break, we'll talk
13 about the interior of the property. But is there
14 anything that we have left out on the exterior,
15 any searches that you haven't described on the
16 exterior of the Avery property?

17 A. Other than the searching with the dogs. On the
18 first three days that I was involved, we had dogs
19 on scene. So we would couple those up with
20 Calumet officers and we would send them to
21 different areas around the property and just have
22 them run their dogs through that property. The
23 majority of what they ran through, we searched by
24 hand again, later.

25 Q. Were those the --

1 A. Search and rescue dogs.

2 Q. Searching for evidence, or searching for body, or
3 both?

4 A. Searching for body.

5 ATTORNEY KRATZ: This might be a good time
6 then for our morning break. Thank you.

7 THE COURT: All right. Members of the
8 jury, we'll take our morning break at this time.
9 We'll resume in 15 minutes. Again, do not discuss
10 the case during the break.

11 (Jury not present.)

12 THE COURT: Counsel, we'll resume, then, at
13 10:45.

14 ATTORNEY KRATZ: Thank you.

15 (Recess taken.)

16 THE COURT: Mr. Kratz, you may continue
17 your direct examination.

18 ATTORNEY KRATZ: Thank you.

19 **DIRECT EXAMINATION, CONTD**

20 BY ATTORNEY KRATZ:

21 Q. Lieutenant, in front of you is Exhibit No. 79.
22 Could you tell us what that is, please.

23 A. This is an overhead photo of a partial view of
24 the Avery property.

25 Q. And you recognize that aerial photograph?

1 A. Yes, I do.

2 Q. And as I mentioned, I think this will work better
3 today. I'm hopeful anyway. The jury is now
4 seeing Exhibit No. 79; is that correct?

5 A. Correct.

6 Q. And will this photograph help you explain some of
7 the interior, or at least large scale searches
8 from within that property?

9 A. Yes, it will.

10 Q. All right. How were search teams assembled?

11 A. As I said, the personnel would be provided to me,
12 be it State troopers, or deputies, or firemen.
13 We would then break them down into groups of
14 about 10 individuals and we would have a leader
15 for that group who would normally be a deputy
16 from the Calumet Sheriff's Department. We would
17 coordinate everything through that officer and
18 then he would give the people under him the
19 information that they needed. And they would
20 report to him anything that they found.

21 Q. I know that you mentioned law enforcement and
22 some others, but what other type of individual
23 were utilized in these search efforts?

24 A. Volunteer firemen.

25 Q. Referring then to Exhibit No. 79, describe, if

1 you will, the first large scale search operation?

2 A. The first large scale search operation was in the
3 salvage yard. It was on Sunday afternoon. We
4 utilized approximately 50 firemen. We utilized
5 approximately 50 firemen along with at least a
6 dozen officers, broke them into groups.

7 There are approximately 4,000 salvaged
8 vehicles on the property. We had the firemen go
9 through the salvaged vehicles, opening the trunks
10 and hoods of every vehicle.

11 Q. That first search was when, I'm sorry?

12 A. That was Sunday.

13 Q. The 6th?

14 A. Yes.

15 Q. What were you looking for?

16 A. We were looking for a body.

17 Q. Referring, again, to Exhibit No. 79, could you
18 show us the cars that you are talking about?

19 A. Everything down in this area up through here,
20 around. It actually extends a little further
21 back to this side, but these are all salvaged
22 vehicles. There's a couple up in this area here.

23 Q. Were you present during that large scale search?

24 A. Yes, I was.

25 Q. And what was required to look in these vehicles?

1 A. As far as what, to open them?

2 Q. Yes.

3 A. The firemen used crowbars or they used their
4 hooligan tools that they had with them. And they
5 would open the trunks and the hoods, just verify
6 that there wasn't a body inside the vehicle.

7 Q. On the 6th of November, was every vehicle
8 searched; that is, all 4,000 vehicles?

9 A. Yes, they were.

10 Q. Was some method that you or somebody else
11 developed for how a vehicle -- how you knew a
12 vehicle was searched or not?

13 A. The individual groups had crime scene tape or had
14 caution tape. They would either mark the
15 individual vehicles as they searched them, or as
16 you can see, the vehicles are in fairly big
17 groups; one group would start on the end. They
18 would work their way to the other end and then
19 they would mark the two ends with caution tape so
20 that everybody would know that that group of
21 vehicles had been searched.

22 Q. All right. What was the next large scale search
23 that you were involved in coordinating?

24 A. On the property?

25 Q. Yes.

1 A. The next large scale search was on Tuesday, it
2 involved 60 State troopers and approximately 35
3 volunteer firemen. They went through all of the
4 vehicles again. This time they were doing a
5 thorough search of the entire vehicle.

6 Q. This is a different kind of search, then, on the
7 6th?

8 A. Yes, it is.

9 Q. What was the scope of the search?

10 A. This search, they were looking for particular
11 items. They were looking for the license plates
12 from Teresa Halbach's vehicle. They were looking
13 for a tool. She had a tool kit in her vehicle
14 and there was a tool missing from it; they were
15 looking for that. And then they were looking for
16 any specific items that may have belonged to her,
17 or would be of evidentiary value. So they were
18 doing a much more thorough search.

19 Q. And, again, are you aware that all 4,000 vehicles
20 were searched?

21 A. Yes, they were.

22 Q. Exhibit No. 79 shows parts of the entryways. How
23 is it that vehicles could travel from within or
24 throughout the inside of the salvage yard? Do
25 you understand that question?

1 A. You mean once they were in the yard?

2 Q. Yeah, talk about the roadways within the yard
3 itself.

4 A. Okay. In between each group of vehicles, you can
5 see, these are all roadways through here. They
6 kind of work their way through the property.
7 It's just a dirt road that you can drive on.

8 There's a gap between the vehicles. You
9 can drive through it. That's what they used for
10 their roads. So, it's no formal road, the roads
11 could change depending on where they put the
12 vehicles. But it was an opening through the dirt
13 that was used to drive on.

14 Q. Are you familiar with a surrounding property
15 which is called Radandt's Quarry?

16 A. Yes, I am.

17 Q. Again, referring to Exhibit 79, if you could tell
18 us where that is located.

19 A. Radandt has -- Let's see. This is the north on
20 this end. Radandt has an active quarry from here
21 down, which would be to the west. They also had
22 a quarry on the south end, which would be in this
23 area here.

24 Q. From Radandt's Quarry, or from at least the
25 access corner, the corner that would attach

1 Radandt's to Avery's, did you go to that corner,
2 to that location? Did you physically stand in
3 that location?

4 A. Yes, I did.

5 Q. And are you able, and were you able, to see
6 Mr. Avery's trailer and garage from that corner?

7 A. Yes, you can.

8 Q. I'm going to show you what has been -- or have
9 you look at what's marked as Exhibit No. 80; tell
10 us what that is.

11 A. This is a view of Mr. Avery's residence from the
12 south.

13 Q. Would that be near Radandt's property line?

14 A. Yes. Yes, it's actually -- His property, his
15 residence is right there. This view is from
16 somewhere in this area, I would believe.

17 Q. All right. Have the jury look at Exhibit No. 80.
18 Tell us what we're looking at here, please.

19 A. This is the backside of Mr. Avery's residence and
20 his detached garage.

21 Q. Now, I note that, and tell me if I'm correct or
22 not, is there a grade difference between Mr.
23 Avery's and Radandt's property?

24 A. There's a berm between the two properties. And
25 then on Radandt's side, it goes straight down

1 into the quarry. It's probably a 15 to 20 foot
2 drop into the quarry.

3 Q. All right. I'm just going to have you mark -- or
4 describe these next exhibits, some aerial photos;
5 what is Exhibit No. 81?

6 A. This is a view, an aerial view of the Avery
7 property from the northeast. It would be Avery
8 Road coming into the northeast corner of the
9 property.

10 Q. We'll have the jury take a look at Exhibit 81; is
11 that a picture of 81?

12 A. Yes.

13 Q. With your laser pointer, could you describe the
14 buildings that we're looking at. By the way, let
15 me put in a foundational question. Did you
16 become, in that seven or eight days, familiar
17 with all of the buildings on this property?

18 A. Yes, I did.

19 Q. All right. Looking at Exhibit No. 81, can you
20 tell us -- identify the buildings that are
21 located therein?

22 A. Starting at the top, there's a fenced in area in
23 here. It's an impound area. There is a large
24 shed in there that is an impound storage. I
25 believe it's a metal shed. And then there's a

1 smaller garage down in this area. It's also used
2 for storage.

3 This is a longer narrow shed that was
4 used for heavy equipment storage. Down in the
5 trees here would be Allen and Delores Avery's
6 residence and there's also a detached garage in
7 there to. I believe it would be right there.

8 This is an office area and a work area.
9 We referred to it as the new office. And then
10 there's another work area back in here that was
11 referred to as the old office area that was used.

12 Q. Beginning your testimony, Lieutenant Bowe, you
13 talked about a Command Post being established.
14 Does Exhibit No. 81 show that area?

15 A. Yes, it does.

16 Q. Could you describe that for the jury, please.

17 A. The Command Post that we utilized was in this
18 area. That's where we organized our large scale
19 searches. We also had debriefings there. There
20 was also a Command Post located up here that was
21 used by the Investigative Team. So it was more
22 of a work area for them.

23 Q. Does Exhibit No. 81 also show an access road;
24 that is, how you would get to the Avery property
25 from Highway 147?

1 A. Yes, it does. This road right here is Avery
2 Road; that's a paved road coming in that dead
3 ends at the property.

4 Q. And if you turn right on that road, where does
5 that take you?

6 A. This is a gravel driveway that runs the length of
7 the property and it would end at Steven Avery's
8 residence.

9 Q. Lieutenant Bowe, are you familiar with the corner
10 of the property that not only has a pond, but
11 from which Teresa Halbach's vehicle was found?

12 A. Yes, I am.

13 Q. Have you look at Exhibit No. 82, please, and tell
14 us what that is, please.

15 A. This is an aerial view from the east of the
16 southeast corner of the property where the pond
17 was and where Teresa Halbach's vehicle was found.

18 Q. And does it accurately depict that corner?

19 A. Yes, it does.

20 Q. I will have the jury, then, look at No. 82. With
21 your laser pointer, tell us what we're looking
22 at, please.

23 A. This is Radandt's Quarry to the south. There is
24 an open field to the east. The view is from the
25 east. This is probably a little more than half

1 of the property.

2 This is a low area in the salvage yard
3 where a lot of the run off collects into a small
4 pond. There's a berm up behind that and Teresa
5 Halbach's vehicle was found up in this area.

6 Q. Does this exhibit also show the car crusher?

7 A. Yes, it does. It's down right here.

8 Q. All right. Are you familiar with what would be
9 the northwest corner of the property, that is,
10 the area where Mr. Avery's residence was?

11 A. Yes, I am.

12 Q. And could you look at Exhibit No. 83, please, and
13 tell us what that is?

14 A. This is an aerial photo from the north, looking
15 south on to the Avery property and the Radandt
16 Quarry that's directly west to it.

17 Q. I will have the jury now look at Exhibit No. 83.
18 Tell us what we're looking at.

19 A. Once again, this is one of Radandt's quarries.
20 This was an active quarry at the time. This is
21 Steven Avery's residence and garage. And this
22 would be Barb Janda's residence and garage. And
23 we have got about half of the salvage yard
24 included.

25 Q. Does this photograph, that is, Exhibit No. 83,

1 show a second entry way into the Avery property?

2 A. Yes, it does.

3 Q. Could you describe that for the jury, please.

4 A. There's a gravel road that comes up through here
5 that connects all the quarries and runs down to
6 Radandt's processing plant. There is a conveyor
7 that runs along the middle of that road and then
8 runs into the Avery property. Where the Avery
9 property and Radandt's meet, there is a passage
10 way to drive a vehicle through there.

11 Q. You talked about security being maintained on
12 four corners of the property. How many corners
13 of the property in which security was maintained
14 24 hours does this exhibit show?

15 A. Two.

16 Q. And could you tell the jury, please, where law
17 enforcement officers were stationed?

18 A. There was an officer stationed down in this area
19 at the end of the road in front of Steven Avery's
20 residence. And there was also an officer
21 stationed down in this area, just before it
22 splits to go into the two quarries, securing this
23 corner.

24 Q. I don't know if I asked this well enough when you
25 described the purpose, but why were you

1 attempting to secure the four corners of the
2 property?

3 A. One, we had taken custody of the property, we
4 wanted to continue that through the entire time
5 that we were there. We also wanted to assure
6 that nobody else came into the property.

7 Q. The corner of the Avery property that includes
8 Mr. Avery's residence, is that depicted also in
9 Exhibit No. 84, the next exhibit?

10 A. Yes, it is.

11 Q. Can you describe what Exhibit 84 is, please.

12 A. This is an aerial photo from the southeast
13 showing the northwest corner of the Avery
14 property. And then the outside properties from
15 there.

16 Q. I will have the jury look at Exhibit 84. And if
17 you would be so kind as to tell them what we're
18 looking at.

19 A. This is the same quarry for Radandt that we had
20 looked at. This is an open field. This would be
21 Steven Avery's residence. This would be Barb
22 Janda's residence. And then we're seeing the
23 beginning of the salvage yard.

24 Q. At least as to the west and as to the northwest,
25 does Exhibit 84 show the surrounding or adjacent

1 properties?

2 A. Yes, it does.

3 Q. Now, there was something yesterday that we heard
4 from Trooper Austin; it was called a deer camp.
5 Does Exhibit 84 show that?

6 A. Yes, it does. The deer camp is right in this
7 area.

8 Q. Just for the record, you are pointing to what
9 would be to the almost uppermost and leftmost
10 corner of the exhibit; is that right?

11 A. Yes.

12 Q. What did that consist of and what are we looking
13 at, if you can tell us?

14 A. That was a camp that Radandts used. They own
15 most of the land around this area and they used
16 that for deer hunting. It consisted of three
17 mobile homes that they had set up for deer
18 hunting or something of that nature.

19 Q. All right. Lieutenant Bowe, you talked about the
20 different berms or the different grade around
21 Mr. Avery's property. When referring to Exhibit
22 No. 84, could you describe that a little bit
23 further, please.

24 A. The berm on the west, you just want me to refer
25 to?

1 Q. If there's other -- other differences in
2 elevation that this wouldn't show, I would
3 appreciate if you would explain that what
4 surrounds Mr. Avery's.

5 A. There's a small berm that starts in this area,
6 Mr. Avery's property. Most of the salvage yard
7 is in what appears to be an old quarry.
8 Mr. Avery's property and the rest of the
9 residence were up on where the normal grade would
10 have been. So there's a small berm between his
11 property and Radandt's quarry. The further you
12 get to the south, the higher that berm gets,
13 between the two properties.

14 Q. Lieutenant Bowe, from within the 40 acres itself,
15 is there also a difference in grade?

16 A. Yes, there is.

17 Q. Can you describe that for us, please.

18 A. As I said, where the residence and the buildings
19 are, they appear to be on what was the original
20 grade. As you go into the quarry, you have to go
21 down hills into the quarry and then you reach a
22 bottom grade where it appears is where they hit
23 the -- the rock bed.

24 So it all slopes down as you go south.
25 And then it kind of levels out in the bottom.

1 And then when you get to the south end of it,
2 there is a large berm separating that property
3 from the next quarry.

4 Q. What's the next exhibit that you have in front of
5 you, what number?

6 A. Eighty-five.

7 Q. Okay. Could you just tell us what that is,
8 please.

9 A. This is an aerial photo from the south of the
10 entire Avery property.

11 Q. We're going to go through these rather quickly,
12 but I'm going to show you, now, Exhibit 85; does
13 that show the entirety of the 40 acre Avery
14 salvage property?

15 A. Yes, it does.

16 Q. If you can just very briefly orient us, what are
17 the four corners that we're talking about?

18 A. This is the north. This would be Steven Avery's
19 property to the northwest. This is where the
20 Command Post was set up. This would be Al and
21 Delores' residence. This is the southeast, this
22 is where the small retention pond is and where
23 the vehicle was found. And this would be the
24 southwest, this is where the conveyor would exit
25 the property.

1 Q. Does Exhibit No. 85 allow you to show the jury
2 all four locations where you had officers posted
3 throughout the day?

4 A. Yes, it does.

5 Q. And if you could just briefly point to those
6 areas.

7 A. There would be one officer in this corner, at the
8 end of the road.

9 Q. Let me just stop you there. Would that officer
10 be with a squad?

11 A. Yes.

12 Q. A marked squad?

13 A. Yes. Most of time, yes.

14 Q. Go ahead.

15 A. There was an officer down in this area under the
16 conveyor. There was an officer stationed in this
17 area, watching the top of the berm in this area
18 up here. And then we had officers up here at the
19 Command Post.

20 Q. Now, other than those four corners, if you will,
21 are there other access points? In other words,
22 is there other ways in which an individual or a
23 vehicle could enter this property?

24 A. The only way for a vehicle to enter the property
25 would be through the conveyor belt down here, or

1 through the main driveway up on the top.

2 It splits, you can get down through the
3 buildings, or you can come down this edge and
4 come down into it. There's a fence that runs
5 along here and is a pretty steep grade through
6 here. So you couldn't access it with a vehicle.
7 There's also berms that run down this side and
8 then around the bottom and then up this side.

9 Q. To the west of Steven Avery's, it does show a
10 body of water; do you see that on this exhibit?

11 A. Yes, I do.

12 Q. And can you point to that, please. What is that?

13 A. It's a low spot in the quarry where the water
14 gathers.

15 Q. Okay. This is a good -- good segue to talk about
16 the weather that week. Do you recall the
17 weather, the week beginning the 5th of November?

18 A. I wasn't there the 5th of November. I was
19 informed it rained through most of the evening.
20 When I got there on Sunday, the 6th, it was cold
21 and windy during the morning. We had a snow
22 shower that came in through the morning, which is
23 one reason why we didn't start opening the
24 vehicles until the afternoon. Through the rest
25 of the day -- or through the rest of the week, it

1 was normally cloudy and cold.

2 Q. The roadways from within the Avery property, when
3 you got there on the 6th, would you describe that
4 condition for us, please.

5 A. In the salvage yard?

6 Q. Yes.

7 A. They were very muddy. They were covered in
8 water. Some of them had as much as a foot of
9 water on them. So we had to be very careful
10 where we drove inside the salvage yard. For the
11 first few days, we didn't take squads down in
12 there. We would use four wheel drive vehicles if
13 we had to get in there, or walk through it.

14 Q. I think there's only three exhibits left. Why
15 don't you tell us, what's the next exhibit you
16 have?

17 A. Eighty-six.

18 Q. What does that show?

19 A. The aerial photo of the entire property from the
20 north.

21 Q. So what would be the exact opposite of 85; is
22 that right?

23 A. Correct.

24 Q. Opposite end?

25 A. Correct.

1 Q. Now, I am going to show Exhibit No. 86.
2 Virtually the same view as 85, just from the
3 north instead of the south; is that right?
4 A. Correct.
5 Q. You had mentioned that there were some searches
6 on areas that surrounded the Avery property,
7 including some gravel pits. Exhibit 87 and 88,
8 are those related to any of those searches?
9 A. These are photos that would have been taken
10 inside of one of the gravel pits.
11 Q. All right. Do you know, by looking at 87 and 88
12 which pit, or is that too difficult to testify
13 to?
14 A. Yeah, I wouldn't be sure.
15 Q. All right. Are you able to identify Exhibits 87
16 and 88 or not?
17 A. No.
18 Q. All right. We'll save those for another witness.
19 What was your schedule? In other words, how
20 often were you there; and were you ever relieved;
21 and did you ever go home from that location?
22 A. I arrived Sunday morning, approximately at 7:30.
23 Lieutenant Sippel had been there since Saturday.
24 I stayed through Sunday, stayed Sunday night.
25 Lieutenant Sippel went home Sunday night and came

1 back Sunday (sic) morning. I stayed until Monday
2 afternoon, actually Monday evening. I think I
3 left around 7:30 at night. And then I returned
4 the following morning again at about 7:00. So we
5 were both there during the day and then we took
6 turns being there at night.

7 Q. So how many hours straight would you be there and
8 then how many hours would you be off?

9 A. Generally, between 30 and 36 hours we would be
10 there. And then we would be off the property
11 roughly 12 hours.

12 Q. All right. How long did that last, again, for?

13 A. I left Friday night and didn't return to the
14 property. Lieutenant Sippel had returned Friday
15 morning and then I believe he was the last one
16 off the property Saturday when they left.

17 Q. The 12th?

18 A. Yes.

19 Q. Referring to Exhibit 86, which is the last
20 exhibit and the one that's shown, the buildings,
21 both the residences and the outbuildings, who was
22 responsible for coordinating the searches of
23 those?

24 A. That was coordinated by Investigator Wiegert and
25 Agent Fassbender.

1 Q. Okay. So the cars and the property itself was
2 your responsibility; is that right?

3 A. Correct.

4 Q. The buildings, that is, the interior searches,
5 was the lead investigator's; is that right?

6 A. Correct.

7 Q. Did you participate in any of those interior
8 searches or was your responsibilities limited to
9 exterior or vehicle searches?

10 A. The only participation I would have had with the
11 interior searches is if Investigator Wiegert or
12 Agent Fassbender required one of the teams from
13 inside one of the buildings to move somewhere
14 else. I may advise them of that or send somebody
15 to assist them in moving, but that was my only
16 involvement.

17 Q. All right. Finally, Lieutenant Bowe, I'm going
18 to direct your attention to March 1st and 2nd of
19 2006; did you return to the property on those two
20 days?

21 A. Yes, I did.

22 Q. And what were your responsibilities on March 1st
23 and 2nd?

24 A. On the 1st and 2nd, they executed a search
25 warrant for Mr. Avery's residence and his

1 detached garage. I was keeping track of the
2 individuals entering and exiting Mr. Avery's
3 residence.

4 Q. Is there a term for that?

5 A. I was logging them in and out.

6 Q. Okay. You weren't involved, however, in any
7 active searching?

8 A. No, I was not.

9 ATTORNEY KRATZ: All right. I would move
10 admission of Exhibits 79 through 86 at this time,
11 Judge.

12 ATTORNEY STRANG: I don't have any
13 objection.

14 THE COURT: Very well, those exhibits are
15 admitted.

16 ATTORNEY KRATZ: I'm sorry. That's all I
17 have of this witness.

18 THE COURT: Mr. Strang.

19 ATTORNEY STRANG: I would like to start
20 with Exhibit 85, if we could.

21 **CROSS-EXAMINATION**

22 BY ATTORNEY STRANG:

23 Q. Good morning, Lieutenant.

24 A. Good morning.

25 Q. I have got Exhibit 85 up on the screen, for no --

1 Well, I picked this one only because at least
2 north is to the top, which is where we're used to
3 looking at on maps. And you told us where the
4 security points, the 24 hour security points --
5 that's my term not yours --

6 A. Yes.

7 Q. -- but you know the four corners --

8 A. Four corners, yes.

9 Q. -- that you described. Before I get to those for
10 just a moment, you were logging people in and out
11 of this whole 40 acre area from November 6th, for
12 you, through the 11th or the 12th, as well,
13 weren't you?

14 A. Yes. Are you referring to the entrance?

15 Q. Well, that's where I'm going to go. And when I
16 say you logging, I don't mean you personally
17 necessarily, but that was one of the tasks you
18 were overseeing?

19 A. I did not oversee that, but there was an
20 individual logging people in and out of the
21 property.

22 Q. Okay. And where was that done?

23 A. Primarily, that was done where Avery Road met
24 147. There was a squad car parked right on Avery
25 Road, at the entrance.

1 Q. Okay. So, although -- although Avery Road, which
2 runs north to 147 and 147 was roughly east/west
3 at that point?

4 A. Yes.

5 Q. Although Avery Road is paved, it -- it really
6 only goes one place?

7 A. Correct.

8 Q. Dead ends at a cul-de-sac just outside the
9 business entrance?

10 A. Yeah, the pavement just ends right about in this
11 area. And then everything else is gravel
12 driveways from there, so.

13 Q. So when you, for example, would come for one of
14 these 30 to 36 hour shifts, you would get checked
15 in or logged in up north of this photo where you
16 turn off 147 --

17 A. Yes.

18 Q. -- to come down Avery Road?

19 A. Yes, I would.

20 Q. The logging in would involve somebody visually
21 identifying you and either you writing your name
22 on a log sheet or the officer with the log sheet
23 writing your name down?

24 A. Correct.

25 Q. Now, once you became familiar to the officers

1 keeping the log, that's pretty quick in terms of
2 identifying you.

3 A. We still had to identify who we were, the
4 officers weren't familiar with us at all, so.

5 Q. And it was a rotating group of officers who
6 were --

7 A. Yes.

8 Q. -- doing the logging?

9 A. Yes, it was.

10 Q. Okay. And you weren't necessarily coming in
11 uniform as you are today?

12 A. I always wore my work jacket so I had my patches
13 and my badge.

14 Q. Okay. But even there, yes, we can see you are
15 from the Calumet County Sheriff's Department, but
16 we want your name.

17 A. Right. Right.

18 Q. The purpose for -- Well, first of all, when --
19 when -- You are familiar with that sort of
20 logging operation?

21 A. Yes, I am.

22 Q. In fact, you did it on March 1st and 2nd?

23 A. Yes.

24 Q. At the smaller area of Mr. Avery's house?

25 A. Yes, I did.

1 Q. When you are logging people in and out, the
2 purpose is to log everyone in and out, correct?

3 A. Yes, it is.

4 Q. I'm sorry?

5 A. Yes, it is.

6 Q. Okay. Now -- And in general, if there's an
7 ongoing search or law enforcement effort, in
8 general, the idea would be to keep the public
9 out; that's one idea, right?

10 A. That's one aspect of it, yes.

11 Q. And in general, another aspect would be to know
12 which law enforcement officers are in?

13 A. Right. The primary purpose is to keep track of
14 who came onto the property.

15 Q. Now, this isn't to say that some members of the
16 public might not be allowed in. I mean, someone
17 who had a trade purpose or someone who needed to
18 pick up medication; if there was some particular
19 good reason for a member of the public to come
20 in, somebody at that perimeter logging point
21 either can make the decision or could radio back
22 and decide whether to let someone in for a
23 particular purpose or not?

24 A. Yes, they could.

25 Q. Law enforcement officers, it's not so much that

1 you are trying to keep them out, but you want --
2 you want to know who's in and who's leaving?

3 A. Correct.

4 Q. Just to keep track of bodies and personnel and
5 some control over the scene?

6 A. Correct.

7 Q. Was that the -- During a week in November,
8 roughly a week in November when you were out
9 there Sunday through Friday, was the log check in
10 point you have described the only place that
11 people were being logged in and out?

12 A. Yes, it was.

13 Q. Now, let's go, as I said, to the four security
14 points. Do you still have the laser?

15 A. Yes, I do.

16 Q. Okay. The one at the northwest corner, 24 hours
17 a day somebody -- and I assume they changed
18 shifts -- but someone would be in the squad car
19 sitting up there?

20 A. Yes, they would be in the area.

21 Q. Either in their squad car or wandering around?

22 A. Around on foot, yes.

23 Q. Somewhere close. All right. And the squad
24 car -- I don't know if you ever went over there
25 to see this personally, but the squad car

1 presumably would be parked near the end of that
2 gravel road?

3 A. Yes.

4 Q. Within yards, really, of the one burn barrel that
5 stands -- that stands, you know, east and a
6 little bit north of Steven Avery's trailer?

7 A. Are you talking the one on the other side of the
8 driveway?

9 Q. Yeah, we -- we -- we have seen the burn barrel
10 that's -- I don't know how to describe it other
11 than east and a little bit north.

12 A. Up in this area.

13 Q. Yeah, somewhere up in that area.

14 A. Yes.

15 Q. Okay. That's -- that's the general area where
16 that perimeter guard would be posted?

17 A. Correct.

18 Q. And then you did the other four corners. These
19 folks would get out of their cars from time to
20 time and walk the perimeter a little bit?

21 A. They would get out of their vehicles; they would
22 stretch their legs, walk around their car, yeah.

23 Q. And overnight, you know, 11 at night until 7:00
24 in the morning, in general, less searching, less
25 active searching was going on?

1 A. Generally, when it got dark, we didn't search.

2 Q. So other than folks at the Command Post and these

3 perimeter guards, many of the law enforcement

4 personnel on the scene would go home or go

5 somewhere?

6 A. Correct.

7 Q. And come back the next day with daylight?

8 A. Yes.

9 Q. So I understand you don't know how many or what

10 the total number of law enforcement officers

11 involved were, but the numbers sound to me like

12 dozens and dozens.

13 A. During the day?

14 Q. Yes, during the day, I'm sorry.

15 A. Depending on which day it was, yeah.

16 Q. Could have been something close to a hundred, a

17 little above, a little below?

18 A. I think a hundred would probably be the max.

19 Q. At peak?

20 A. At one day, yeah.

21 Q. In any event, though, at night, after dark, we

22 would drop down to the four perimeter guards and

23 then maybe a handful of people at one or both

24 Command Posts?

25 A. Correct.

1 Q. Now, if I understood you, on the search
2 assignment responsibility, was sort of a -- kind
3 of a simple division. You were -- You and
4 Lieutenant Sippel were responsible for
5 assignments on open area searches and car or
6 vehicle searches in the salvage yard?

7 A. Yes, we were.

8 Q. And then Investigator Wiegert and Special Agent
9 Fassbender were in charge of assignments for
10 searches within buildings, so to speak, on the
11 Avery property?

12 A. Yes.

13 Q. There were plenty of tasks available for people
14 in either your area of responsibility or the area
15 of responsibility covered by Mr. Wiegert and
16 Mr. Fassbender?

17 A. I'm not sure what you are asking.

18 Q. Well, I mean, there were a number of officers
19 involved in searching inside buildings and then a
20 number of people involved searching the open
21 areas?

22 A. Yes, there were.

23 Q. Okay. Now, at -- This scene, I think we know
24 this, but you know this scene is in Manitowoc
25 County, not Calumet County?

1 A. Yes, it is.

2 Q. So this was -- this was an atypical investigation
3 for you?

4 A. Because of the location?

5 Q. For a number of reasons, but specifically the
6 location. I mean, you are -- you are out of
7 county?

8 A. Yeah, I'm not familiar with the roads.

9 Q. Right. It's just -- it's atypical in the sense
10 that it's out of county for you?

11 A. Somewhat.

12 Q. And you knew -- you knew the reason for that, in
13 general, was that a decision had been made the
14 day before you got there, to turn over
15 investigative control to Sheriff Pagel, who runs
16 your department?

17 A. Yes.

18 Q. And then, of course, the department under him,
19 the Calumet County Sheriff's Department.

20 A. Yes.

21 Q. That -- Your understanding was the decision was
22 because there might be an appearance of a
23 conflict of interest involving the Manitowoc
24 County Sheriff's Department?

25 A. Possibly. I was not in part of that discussion

1 at all.

2 Q. Okay. All right. But you were told that Sheriff
3 Pagel was in charge?

4 A. Yes.

5 Q. And then Investigator Wiegert?

6 A. Yes.

7 Q. And, of course, Mr. Fassbender is from the
8 Division of Criminal Investigation, not either
9 one of the sheriff's departments?

10 A. Correct.

11 Q. Okay. You were aware of a lawsuit that Steven
12 Avery had pending against Manitowoc County at the
13 time?

14 A. Yes, I was.

15 Q. A federal lawsuit, was your understanding?

16 A. Just what I heard on the news. I really didn't
17 keep track of it.

18 Q. Sure. You -- You had contact, though, with a
19 number of Manitowoc County Sheriff's Department
20 officers during the six days that you were there?

21 A. Yes, I did.

22 Q. And -- And officers from all kinds of departments
23 in the area, right?

24 A. Correct.

25 Q. Two Rivers Police Department, Mishicot Fire

1 Department, all kinds of different departments
2 assisted?

3 A. Yes.

4 Q. Wisconsin State Patrol sent a large complement of
5 troopers?

6 A. Yes.

7 Q. So this was a collaborative effort of a large
8 number of law enforcement officers from a variety
9 of agencies?

10 A. Yes.

11 Q. You were aware that some of the Manitowoc County
12 Sheriff's Department officers, in particular, had
13 strong feelings about Mr. Avery and his lawsuit?

14 A. I'm not aware of that. Nobody voiced that to me.

15 Q. You didn't discuss the lawsuit of Mr. Avery --

16 A. No.

17 Q. -- one way or the other?

18 A. No.

19 Q. You met, during your time there, another --
20 actually someone of your rank, a lieutenant from
21 the Manitowoc County Sheriff's Department named
22 James Lenk?

23 A. Yes, I did.

24 Q. Had you known Lieutenant Lenk before?

25 A. No.

1 Q. But met him sometime during that week?

2 A. Sometime, yeah.

3 Q. He was in and out, involved in this effort?

4 A. Yes.

5 Q. You had also met Sergeant Andrew Colborn from the
6 Manitowoc County Sheriff's Department?

7 A. Yes.

8 Q. Again, he too had some role and was in and out at
9 various times?

10 A. Correct.

11 Q. Neither one of those two gentleman told you, as
12 one of the assigning officers of open field and
13 car searches, that they had been deposed, had
14 their depositions taken in Mr. Avery's lawsuit,
15 did they?

16 A. No.

17 Q. And no one else told you that either?

18 A. No.

19 Q. Did you meet a Manitowoc County Sheriff's
20 Department detective named Dave or David Remiker?

21 A. Yes.

22 Q. He had some role too, during the course of the
23 six days?

24 A. Yes.

25 Q. An investigator from Manitowoc County Sheriff's

1 Department named Dennis Jacobs?

2 A. Yes.

3 Q. Same thing, in and out --

4 A. Yes.

5 Q. -- with some role in this? Were -- Were -- At
6 any time were Mr. Lenk, Mr. Colborn, Mr. Remiker,
7 and Mr. Jacobs in your area of responsibility;
8 that is, involved in open field or car searches?

9 A. No, they were not.

10 Q. Is it fair to conclude, then, if you know, that
11 they were in Investigator Wiegert and Special
12 Agent Fassbender's area of search responsibility?

13 A. Yes, they were.

14 Q. Had you been asked to give up a couple of your
15 guys and take, let's say, Lenk and Colborn, for
16 open field and vehicle searches, you could have
17 done that?

18 A. Yes, I could have.

19 Q. I mean, to some extent, the bodies were
20 interchangeable?

21 A. I was provided with a group of people and I put
22 them in a place.

23 Q. Right.

24 A. Yes.

25 Q. And I guess it was a poorly phrased question, but

1 you were aware that there were some very
2 specialized, trained people from the Wisconsin
3 State Crime Laboratory in Madison who were among
4 the people involved in the search efforts?

5 A. I was aware the Crime Lab was on scene; I'm not
6 sure what they were -- what their function was.

7 Q. Okay. But -- But you are aware that -- that the
8 Crime Lab has people with some specialized
9 talents, whether that's fingerprints or --

10 A. Correct.

11 Q. -- trace evidence recovery, that kind of thing?

12 A. Correct.

13 Q. Okay. When you -- If you now go forward to
14 March 1st and March 2nd, 2006.

15 A. Okay.

16 Q. So we're not quite four months, but going on four
17 months later. That's the next time, actually,
18 that you were back to the Avery salvage property?

19 A. Yes.

20 Q. And this is the time when, in connection with a
21 search warrant, your role is to log people in and
22 out of Mr. Avery's trailer, his home?

23 A. Correct.

24 Q. There was someone else logging people in and out
25 of his garage right next door?

1 A. Correct.

2 Q. So these positions, logging people, it's a fairly
3 small area that you were responsible for?

4 A. Yes.

5 Q. The idea being to be quite careful or meticulous
6 about logging who comes and who goes?

7 A. Yes.

8 Q. I mean, in other words, essentially, you would
9 have a visual on the area that you are
10 responsible for logging?

11 A. Yes.

12 Q. While you were there on March 1 and March 2,
13 2006, you were in a position to see and I think,
14 actually, to log much of this. But you at least
15 saw carpeting removed from the hallway in Steven
16 Avery's home?

17 A. I saw them carry carpeting out, yes.

18 Q. And -- and you were back in the trailer yourself,
19 after the carpeting was removed.

20 A. Yes, I was. I believe I helped them remove some
21 stuff.

22 Q. Okay. So what you know is that the hallway that
23 runs back to the extra bedroom and the bathroom
24 and the master bedroom to the south, that hallway
25 there had all the carpeting removed and carried

1 out by law enforcement?

2 A. I believe so, yes.

3 Q. You saw the carpet removed, similarly, from the
4 entire master bedroom?

5 A. Yes.

6 Q. Sort of wall-to-wall carpet that was just
7 removed?

8 A. Yes.

9 Q. You saw the mattress removed from the master
10 bedroom?

11 A. Yes.

12 Q. The box springs.

13 A. Yes.

14 Q. And the entire bed frame in pieces?

15 A. Yes.

16 Q. Rails, head board, foot board, that kind of
17 thing?

18 A. Correct.

19 Q. Pillows, you saw taken?

20 A. They may have been; I believe they were bagged.

21 Q. And then you were -- you were aware, in your role
22 of logging the trailer, that actually the wood
23 paneling in the master bedroom, or Steven's
24 bedroom, was pulled off the walls and taken out?

25 A. Yes, it was.

1 Q. All of it, from that bedroom?

2 A. I'm not sure if all of it was taken or not; I
3 wasn't in there when they did that. But they
4 took out several pieces, yes.

5 Q. Okay. And I'm trying to remember if, you know,
6 if the inside of the closet was and I don't
7 either, but you saw a number of --

8 A. I saw pieces --

9 Q. -- pieces --

10 A. -- come out of the residence, yes.

11 Q. -- of the paneling on the walls?

12 A. Yes.

13 Q. Right down to the septic trap being removed from
14 below that, beneath that residence?

15 A. I didn't see that come out, but I'm aware that
16 they took that, yes.

17 Q. You were not aware of what was going on in the
18 garage?

19 A. No.

20 Q. That was not your responsibility?

21 A. No, other than what I could see from my vantage
22 point, I didn't know what was happening in there.

23 Q. Okay. Lieutenant Lenk and Sergeant Colborn were
24 not in the residence on March 1 and March 2; is
25 that your best recollection?

1 A. I don't recall them being in there at all, no.

2 Q. But do you recall them there and involved in the
3 garage search?

4 A. I don't recall them. I would have to check the
5 log.

6 Q. Okay. Well -- And one way or the other, you just
7 don't recall now?

8 A. I don't recall. I'm familiar with them, but I
9 don't know that I have really even talked to them
10 much.

11 Q. Fair enough.

12 ATTORNEY STRANG: That's all I have got.
13 Thank you. Oh, I'm sorry. I'm sorry.

14 Q. (By Attorney Strang)~ For the moment, I'm not
15 going to mark these five pages that I'm showing
16 you, because I don't know whether you will
17 recognize them or not, but I will ask you. What
18 do you say?

19 A. I haven't seen them before. I believe they are
20 going to be a log in for March 1st and March 2nd
21 for entering the property.

22 Q. But you haven't seen them before?

23 A. I haven't seen these before, no.

24 Q. None of it is your writing.

25 A. No.

1 Q. Or the log sheets you kept for the house on
2 March 1 and 2?

3 A. No. No. In fact, I'm on here.

4 Q. Very good. Was there a separate log point just
5 to get on the property on March 1 and March 2?

6 A. Yes, there was.

7 Q. So someone actually had to log in twice, then, if
8 he was involved --

9 A. If you entered --

10 Q. -- in the search?

11 A. If you entered -- Yeah, if you entered the garage
12 or the residence, we -- we would keep track of
13 people entering and leaving those parts. But
14 anybody who entered the property also logged in
15 when they got there and when they left the
16 property.

17 Q. And was that out, again, at Highway 147 and Avery
18 Road?

19 A. I believe that was down around Barb's residence.

20 Q. Closer in, because this was a smaller search
21 area?

22 A. It was a much smaller search area.

23 Q. This page, on its face, says it was cut by a Gary
24 Schultz of your department. And I'm curious, is
25 that -- is that form the sort of log sheet that

1 you were keeping on March 1 and 2?

2 A. This is the form that we used. These were
3 actually created for our large scale searches.
4 The top has the group leader listed and that's
5 how we broke it down and kept track of them that
6 way. We used these to log people in and out of
7 the residence because we had them available.

8 Q. Have you seen this page before?

9 A. I don't recall seeing this page before. This was
10 kept by Officer Schultz.

11 Q. You recognize the form, though?

12 A. Yes, I do.

13 Q. Same type of form you used on March 1 and 2?

14 A. Yes, it is.

15 Q. The form, then, is kept in the ordinary course of
16 the business of the Calumet County Sheriff's
17 Department?

18 A. This was something that was created on scene for
19 our large -- like I said, our large scale
20 searches.

21 Q. Right.

22 A. And when we came back, we had these left over, so
23 we decided to use them because they were set up
24 with the in and the out and we could keep track
25 of.

1 Q. Sure. And then the person keeping track is
2 simply recording observations he or she makes at
3 about the time he or she is observing who is
4 coming and going?

5 A. Yes.

6 Q. And then you folks kept these in the regular
7 course of the business of the sheriff's
8 department?

9 A. Yes.

10 Q. Okay.

11 (Exhibit No. 125 marked for identification.)

12 Q. (By Attorney Strang)~ So now that we have Exhibit
13 125 --

14 ATTORNEY KRATZ: Judge, could -- could I
15 inquire of counsel whether he intends to ask any
16 specific information on that form? If he does, then
17 I do need to be heard. If he is just showing the
18 form, the kind of form, I don't have any objection.

19 ATTORNEY STRANG: I have no -- no objection
20 to going to side bar for a moment --

21 THE COURT: All right.

22 ATTORNEY STRANG: -- if Mr. Kratz wishes.

23 (Side bar taken.)

24 Q. (By Attorney Strang)~ So we have the first page
25 that you looked at and then Mr. Buting was kind

1 enough to gather up the rest of the pages of
2 that. So I think we have got five pages now.

3 ATTORNEY KRATZ: What was the exhibit
4 number, Mr. Strang?

5 ATTORNEY STRANG: It's 125.

6 ATTORNEY KRATZ: Thank you.

7 THE COURT: Is this the first page, been
8 marked as 125?

9 ATTORNEY STRANG: But I'm going to staple
10 it so we have a complete exhibit.

11 Q. Okay. And so there is no mystery, pages two
12 through five are just like page one. I mean,
13 it's the same form, running log, and page five
14 where it ends is a partial page?

15 A. Correct.

16 Q. Okay. This isn't something that you recall ever
17 seeing before, this specific document, or is it?

18 A. Not this first page, no.

19 Q. The other pages you do or ...

20 A. There's one page, page number 3, where I have
21 initialed off on it, that would have been a lunch
22 break. Officer Schultz and I, we had a pickup
23 truck parked between the residence and the
24 garage.

25 Q. Mm-hmm.

1 A. We stayed in that truck and we watched our
2 perspective posts.

3 Q. Sure. Okay.

4 A. When we took a lunch break, everybody was cleared
5 out. He took his lunch break. I took over the
6 log and just verified that nobody entered and
7 then I initialed off that everybody was out of
8 the garage.

9 Q. You had reason to know that -- that Gary Schultz
10 was doing the same job for the garage that you
11 were doing for the trailer?

12 A. Correct.

13 Q. Log --

14 A. Yes.

15 Q. -- people --

16 A. Yes.

17 Q. -- into the garage?

18 A. Yes.

19 Q. And, again, in general, I mean, this is a form
20 you recognize and you yourself used the same form
21 on the same days, but for the trailer rather than
22 the garage?

23 A. Correct.

24 ATTORNEY STRANG: Okay. I will -- I will
25 move the exhibit -- admission of Exhibit 125. I

1 will just staple the five pages together so it's
2 complete.

3 THE COURT: All right. Mr. Kratz, do I
4 understand the State wishes to be heard?

5 ATTORNEY KRATZ: Yes, Judge. But that can
6 be after -- after examination of this witness.

7 THE COURT: All right. The Court will
8 reserve ruling at this time on the request for
9 admission.

10 ATTORNEY STRANG: And that is all I have.

11 THE COURT: Mr. Kratz, anything on
12 redirect?

13 ATTORNEY KRATZ: Just two questions.

14 **REDIRECT EXAMINATION**

15 BY ATTORNEY KRATZ:

16 Q. Lieutenant Bowe, Mr. Strang asked you, at night,
17 if there were -- it was dark in the -- in the
18 salvage area. Is that completely accurate?

19 A. No, it is not. Through most of the time, we had
20 a light set up in the southeast corner of the
21 salvage yard. They would be set up down in this
22 area where her vehicle was found.

23 Q. Her being Ms Halbach's?

24 A. Yes.

25 Q. What kind of lights are we talking about?

1 A. We're talking floodlights that are run off of a
2 generator.

3 Q. So that quadrant, the southeast quadrant, would
4 be lit up even during night time hours; is that
5 true?

6 A. Yes, it was.

7 Q. And the final area of inquiry I have, Lieutenant
8 Bowe, is the search responsibilities in your
9 unit, that is, open fields and vehicle searches;
10 did that include citizen searches?

11 A. There was one group of citizen searchers that
12 requested to assist. We allowed them to search
13 the open field north of the residence. They
14 actually started from 147, worked their way down.
15 They were told to stay out of the line fence
16 along the edge of the property and they were
17 watched to make sure that they didn't go near
18 that. And they worked back and worked their way
19 back up to the highway.

20 Q. They never entered the 40 acre perimeter?

21 A. Correct. I believe they had two representatives
22 that came into the property and spoke with the
23 investigators and myself. And that was the only
24 involvement they had inside the property.

25 Q. Now, within the 40 acre perimeter, individuals

1 who may have been involved in searching vehicles;
2 did those include non-sworn law enforcement
3 officers?

4 A. Yes, they did.

5 Q. And did those individuals, then, have any
6 specialized training, to your knowledge, in
7 either evidence collection or evidence
8 processing?

9 A. No, they did not.

10 Q. Now, conversely, the officers who searched the
11 interior, that is, those that Mr. Fassbender and
12 Mr. Wiegert had responsibility for; was it your
13 understanding that those officers required a
14 higher level of expertise?

15 A. The individuals that they were utilizing were
16 evidence techs, which means that they have been
17 specifically trained to preserve and gather
18 evidence.

19 Q. All right. Obviously, a different kind of
20 expertise than a volunteer firefighter; is that
21 right?

22 A. Yes, sir.

23 ATTORNEY KRATZ: That's all I have for this
24 witness, Judge. Thank you.

25 THE COURT: Mr. Strang.

1 ATTORNEY STRANG: Thank you.

2 RECROSS-EXAMINATION

3 BY ATTORNEY STRANG:

4 Q. When we were talking about dark out before, we
5 were -- we meant the sun going down --

6 A. Mm-hmm.

7 Q. -- correct? Teresa Halbach's Toyota already had
8 been removed from the scene before you came on
9 Sunday morning, November 6th?

10 A. Correct.

11 Q. But if I understood you, nevertheless, you kept
12 generators and some bright lights down in that
13 southeast corner of the property anyway?

14 A. Yes.

15 Q. The rest of the property was not similarly
16 illuminated at night?

17 A. My understanding was they had initially set the
18 lights up where her vehicle was.

19 Q. Mm-hmm.

20 A. Once her vehicle was removed, they kept the
21 lights running at night. They would reposition
22 them from night to night. Most of the time they
23 illuminated this corner. Sometimes they
24 illuminated out into this area. But they would
25 move them around.

1 ATTORNEY STRANG: Great, thanks.

2 THE COURT: All right. You are excused.

3 Members of the jury, at this time we'll
4 take our lunch break. Again, I remind you not to
5 discuss the case during the break and we'll
6 resume after lunch.

7 (Jury not present.)

8 THE COURT: You may be seated. Mr. Kratz,
9 the State wishes to be heard on the defense request
10 to admit Exhibit 125?

11 ATTORNEY KRATZ: We do, Judge. Actually,
12 Mr. Fallon has asked for an opportunity to discuss
13 that. Again, in candor to the Court, we believe
14 eventually this exhibit is going to be received,
15 just not through this particular witness. We may be
16 withdrawing our rejection, but we would ask to be
17 allowed to inform the Court of that after the lunch
18 break.

19 THE COURT: Oh. All right. We'll take our
20 lunch break now and resume at 1:00.

21 ATTORNEY KRATZ: Thank you.

22 (Noon recess taken.)

23 THE COURT: At this time we're back on the
24 record, outside the presence of the jury. I will
25 indicate for the record that before resuming this

1 afternoon I met with counsel in chambers concerning
2 a request that had been made to the Court from a
3 juror for permission to ask a question.

4 And it's the Court's policy, at least in
5 criminal cases, not to permit jurors to ask
6 questions, for a variety of reasons. I have
7 prepared a statement to read to the jury when
8 they return and I provided a copy of that
9 statement to the attorneys.

10 And, counsel, I just wish to confirm for
11 the record that the parties are in agreement with
12 the statement the Court proposes to read.

13 Mr. Kratz.

14 ATTORNEY KRATZ: Yes, Judge. Your Honor,
15 the State has received the Court's anticipated
16 response and we have no objection.

17 THE COURT: Mr. Strang.

18 ATTORNEY STRANG: We think it's a good
19 response.

20 THE COURT: All right. At this time, then,
21 we'll bring the jurors in.

22 (Jury present.)

23 THE COURT: You may be seated. Members of
24 the jury, before we begin with the first witness, I
25 have a statement I wish to read to you.

1 The Court has received a request from a
2 juror that the Court ask a -- an additional
3 question of the last witness. The Court
4 appreciates the jury's interest and attentiveness
5 in this case, but in criminal cases, the Court
6 does not permit jurors to submit questions to
7 witnesses, for a variety of reasons.

8 In our adversary system, it is the duty
9 and responsibility of the attorneys for each side
10 to ask the questions. Sometimes a juror may ask
11 a question about evidence which is inadmissible
12 and the Court does not want the jury to speculate
13 about why a question may not be allowed to be
14 asked.

15 Other times the jury may be anticipating
16 evidence that will be introduced later. The
17 parties have the right to control the order in
18 which the evidence is received.

19 To assist you in performing your
20 important task, you are allowed to take written
21 notes during the trial. At the end of the trial
22 each juror will receive a written copy of the
23 Court's final instructions. However, for the
24 reasons that I have stated, among others, I must
25 tell you that the jury will not be allowed to

1 pose questions for witnesses in this case. You
2 are to draw no inference for or against either
3 party, because of that restriction.

4 Mr. Kratz, you may call the State's next
5 witness.

6 ATTORNEY KRATZ: Thank you, Judge. State
7 will call Pete O'Connor to the stand.

8 **DEPUTY PETER O'CONNOR**, called as a
9 witness herein, having been first duly sworn, was
10 examined and testified as follows:

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

13 THE WITNESS: Peter O'Connor,
14 O-'C-o-n-n-o-r.

15 **DIRECT EXAMINATION**

16 BY ATTORNEY KRATZ:

17 Q. Good afternoon, sir. Could you tell us how you
18 are employed, please.

19 A. I'm employed as a deputy with the Manitowoc
20 County Sheriff's Department in the Patrol
21 Division.

22 Q. How long have you been so employed?

23 A. Just over 18 years.

24 Q. And were you employed on that capacity on
25 November 5th of 2005?

1 A. Yes, I was.

2 Q. Deputy O'Connor, on November 5th, were you asked
3 to respond to a call at the Avery Salvage Yard?

4 A. Yes, I was.

5 Q. Can you tell us where that is located, please.

6 A. It would be off of Highway 147 and Avery Road. I
7 believe it's in the Town of Gibson, in Manitowoc
8 County.

9 Q. Is that also in the State of Wisconsin?

10 A. Yes, it is.

11 Q. Did you, in fact, respond to that scene?

12 A. Yes, I did.

13 Q. And about -- First of all, when did you get the
14 call to go to that property?

15 A. It would have been approximately 10:50 a.m.

16 Q. Did you proceed to that scene?

17 A. Yes, I did.

18 Q. About what time did you get there?

19 A. I arrived at approximately 10:54.

20 Q. At 10:54 a.m., then, could you tell the jury what
21 you did and what, if anything, you saw?

22 A. At first I took up a position on what would be
23 the north side of Highway 147 at the intersection
24 of Avery Road. I was instructed by Detective
25 Remiker to monitor the scene and see if anyone

1 was attempting to leave the scene.

2 A short time later I did notice some
3 vehicles driving down Avery Road onto Highway
4 147. I did advise Detective Remiker of this, at
5 which point he instructed me to go onto Avery
6 Road, just off of 147, and put up a roadblock and
7 detain anyone who was attempting to leave off of
8 Avery Road.

9 Q. Were you able to perform that duty?

10 A. Yes, I was.

11 Q. About what time did you set up this roadblock?

12 A. Approximately 10:56 a.m.

13 Q. So within the two minutes from when you arrived
14 and when you set up the roadblock, had you
15 observed any vehicles leaving or entering the
16 Avery salvage property itself?

17 A. There were none that entered. I believe there
18 were two that had left.

19 Q. All right. At 10:56, then, could you tell the
20 jury what you did.

21 A. I set up the roadblock on Avery Road, just off of
22 Highway 147. The primary duty at that time was
23 to prevent anyone from leaving the property and
24 prevent anyone, other than law enforcement
25 personnel, from entering the property. During

1 the time I was there, I did detain six vehicles
2 in total.

3 Q. Six vehicles entering or leaving?

4 A. They were -- They would have been leaving the
5 property.

6 Q. All right. And at that time, at least at that
7 early stage, did you individually know what was
8 happening; in other words, did you know what the
9 purpose of the call was?

10 A. Not totally. Detective Remiker apparently had
11 some information that there was an individual, or
12 individuals, on the property and they had
13 possibly found the vehicle belonging to Teresa
14 Halbach.

15 Q. All right. Deputy O'Connor, the road, Avery Road
16 itself, can you describe that for the jury?

17 A. It's a small town road. I believe it's paved.
18 It runs basically south off of Highway 147. Runs
19 back to the Avery property. It's a small two
20 lane road.

21 There's also some large LP gas tanks
22 just off of Avery Road. I believe they use it as
23 a filling station for trucks.

24 Q. All right. Deputy O'Connor, to your knowledge,
25 were you the first law enforcement officer of any

1 county to arrive at that scene?

2 A. Yes, I was.

3 Q. Did you observe any other law enforcement
4 officers arrive at that location?

5 A. A short time later, probably within a couple of
6 minutes of my arrival, Sergeant Orth of our
7 department arrived, followed shortly thereafter,
8 probably by a minute or two, by Lieutenant
9 Hermann. And he was followed almost immediately
10 by Detective Remiker.

11 Q. All right. The location that you were stationed
12 at, how far is that from the Avery salvage
13 property itself; in other words, the 40 acre
14 salvage yard, if you know?

15 A. I'm not real sure how far up the property comes
16 to Highway 147; however, based upon, like, where
17 the office area would be and the residences, I
18 was probably, I'm going to just guess, a quarter
19 of a mile.

20 Q. All right. You said Sergeant Orth would have
21 been the second to arrive; is that right?

22 A. Yes.

23 Q. Would he have been the first officer to actually
24 drive into the property itself?

25 A. Yes, he would have.

1 Q. And you didn't do that?

2 A. No, I did not.

3 Q. You stayed on the highway?

4 A. I stayed up at that position until I was relieved
5 by Deputy Haese at approximately 2:02 p.m.

6 Q. All right. You said after Sergeant Orth and
7 Lieutenant Hermann and then Detective Remiker
8 arrived; did you see any other law enforcement
9 presence?

10 A. There was various people coming at various times.
11 I recall yourself being there eventually.
12 Investigator Wiegert, I believe his name is, with
13 your department, came by. Assistant District
14 Attorney Griesbach from our District Attorney's
15 Office arrived. So there was -- I remember your
16 sheriff from this county arriving, Deputy
17 Inspector Greg Schetter.

18 Q. All right. Let me just -- Let me just stop you
19 there. The Calumet presence, that is Calumet
20 County Sheriff's investigative staff; do you know
21 about how long after Detective Remiker got there
22 that they arrived at that location?

23 A. No, but I wouldn't think it was very long,
24 probably within a half an hour or so.

25 Q. All right. Lastly, Deputy O'Connor, other than

1 that first late morning and into the afternoon of
2 Saturday, the 5th of November, did you have any
3 other involvement in either search efforts or any
4 other law enforcement efforts at that location?

5 A. I was not involved in any search efforts. After
6 I was relieved by Deputy Haese, I did go back to
7 Manitowoc. I was instructed to pick up some
8 supplies and bring them back. I arrived back on
9 scene at approximately 3:23 p.m. to drop off the
10 items. I left approximately 20 minutes later.

11 Q. Let me just stop you. What kind of supplies are
12 we talking about?

13 A. I was instructed to take some ropes, bungee
14 cords, and tent stakes out to the scene.

15 Q. All right.

16 A. And then on November 10th, I was instructed to do
17 basically the same thing I had done. I set up on
18 Avery Road. This time, however, I was keeping a
19 log of the personnel coming in and leaving the
20 scene. I arrived there at approximately
21 7:00 a.m., leaving at approximately 5:00 p.m.
22 that day.

23 Q. Other than logging individuals coming in and
24 going out, did you have any other involvement
25 that day?

1 A. No, I did not.

2 ATTORNEY KRATZ: That's all I have of
3 Deputy O'Connor, Judge.

4 THE COURT: Mr. Strang.

5 ATTORNEY STRANG: Thank you.

6 **CROSS-EXAMINATION**

7 BY ATTORNEY STRANG:

8 Q. When you arrived on November 5, you actually go
9 no further than just off of Highway 147?

10 A. Correct.

11 Q. And during your time there, you are not keeping
12 any log of who's coming or going at that time?

13 A. No, I'm not.

14 Q. Okay. You -- You suggested that there may have
15 been two vehicles that left before you started
16 stopping people coming or going. Could that have
17 been -- Are you referring maybe to three pickup
18 trucks?

19 A. I recall one of them being a pickup truck. I
20 don't recall what the other vehicle would have
21 been.

22 Q. This may help. Let's see if I can make a short
23 tape play for you. We should hear it if things
24 work right. And it's on a CD. I'm just going to
25 suggest to you that it's a -- it's a radio

1 dispatch tape from November 5. Let's see if I
2 can make it go and see if that helps.

3 "10858, just received a call from Cal
4 County, there's an individual on the property off
5 of 147 -- "

6 "Mm-hmm."

7 "-- that may be out with that vehicle
8 (inaudible).

9 Q. Let me just stop it right there. Do you -- do
10 you recognize any of the voices we have?

11 A. The primary one sounds like it's Detective
12 Remiker and 496 would have been Lieutenant
13 Hermann.

14 Q. What is -- what's 496?

15 A. That's our call numbers, when dispatch assigns a
16 call, our numbers are given to the officer to
17 respond.

18 Q. Is this like a badge number?

19 A. Correct.

20 Q. Okay. And are you reasonably familiar with who
21 is who by call number?

22 A. Pretty much.

23 Q. So we heard Detective Remiker who is 278, right?

24 A. Correct.

25 Q. And I'm sorry, 496 was Lieutenant Hermann?

1 A. Correct.

2 Q. There are two Hermann's in your department,
3 right?

4 A. Correct.

5 Q. The lieutenant is Todd, if I'm remembering right?

6 A. He was lieutenant at that time; he's since been
7 promoted to deputy inspector but, yes, that would
8 be Todd.

9 Q. And there's a Robert, who was the deputy
10 inspector that is now the elected sheriff, is it?

11 A. At that time he was the inspector and now he is
12 the elected sheriff.

13 Q. Okay. And this is Todd, the lieutenant, we're
14 hearing?

15 A. Correct.

16 Q. Okay.

17 (Inaudible.)

18 "Dispatch, copy."

19 "405-278."

20 Q. (By Attorney Strang)~ 405 is you?

21 A. That's me.

22 "147" (Inaudible.)

23 "Okay. Get over there, don't have a lot
24 of details. Got a call, Cal County is heading
25 that way also."

1 Q. (By Attorney Strang)~ Now, what are you getting
2 there?

3 A. Well, 405 is me. And I was just saying where I
4 was. I was not real far from the Avery property
5 at that time. The other officer was Detective
6 Remiker and he was just informing me that they
7 didn't have a lot of information, but I should
8 head that way.

9 Q. Okay. You essentially answered my question, but
10 let's just nail down, you recognize the tape?

11 A. Correct.

12 Q. I mean, this comes back to you as events --

13 A. Correct.

14 Q. -- of about the time on November 5 you have
15 described?

16 A. Yes.

17 Q. Okay.

18 (Inaudible.)

19 "I will set up by the entrance across
20 the street."

21 "10-4."

22 "278, can you give me a 21?"

23 Q. (By Attorney Strang)~ That's the dispatcher
24 calling?

25 A. Correct.

1 Q. To Detective Remiker?

2 A. Yes.

3 Q. Asking for a 21, which is a location?

4 A. No, 21 is a telephone call.

5 Q. Telephone call. 1021.

6 A. 1020 would be location. 1021 is a telephone
7 call.

8 Q. Okay.

9 "278."

10 (Inaudible.)

11 "I have a pickup truck coming out of
12 there."

13 Q. (By Attorney Strang)~ That's Remiker.

14 "Why don't you go in and try and make
15 contact. Unknown who she is, female party,
16 possibly just a citizen who is out there. She
17 received permission from the property owner to
18 look around. We're not even sure where she is.
19 I'm going to give her a call; I just got a cell
20 phone number.

21 Q. (By Attorney Strang)~ Okay. So you are the one
22 who says there's a pickup truck coming out of
23 there?

24 A. I remember saying that, yes.

25 Q. And then Detective Remiker is saying, why don't

1 you go in and try to make contact with the
2 citizen?

3 A. Correct.

4 Q. Is that -- I mean, that's the gist of what we're
5 hearing?

6 "So this is a private party that's
7 supposed to be back there?"

8 "It might be, I didn't get a lot of
9 information from Cal County. That's all they
10 could give me."

11 "10-4."

12 Q. (By Attorney Strang)~ That's you?

13 (Inaudible.)

14 "405, get in there to get more
15 information, looks like it might be the vehicle."

16 (Inaudible.)

17 "I have three pickup trucks coming out
18 of there."

19 (Inaudible.)

20 Q. (By Attorney Strang)~ That was you?

21 A. Saying the pickup truck is coming out, yes.

22 Q. I got three pickup trucks coming out of there
23 sometime. And this is Remiker, right before
24 that, telling you get in there?

25 A. Correct.

1 Q. Meaning go onto the property?

2 A. Correct.

3 Q. But you didn't?

4 A. No, I did not.

5 Q. Okay. And just tell us -- tell us why that is?

6 A. I believe once I said that those pickup trucks

7 were leaving, I believe that he said that I

8 should stop the traffic and identify.

9 Q. Yeah, and actually, you're exactly right.

10 "As of right now, block off that road;

11 nobody goes in, nobody comes out. Get license

12 plates. Coming into Mishicot."

13 "405, dispatch."

14 "I copy."

15 "Ford Lincoln 38152."

16 (Inaudible.)

17 Q. (By Attorney Strang)~ Now, that's exactly what I

18 think we heard Remiker say, as of right now block

19 off that road?

20 A. Correct.

21 Q. Nobody goes in, nobody comes out, get license

22 plates?

23 A. Correct.

24 Q. And then the next thing we hear is you calling

25 dispatch with a license plate?

1 A. Correct.

2 Q. Okay. And it goes from there and then within
3 just a few minutes, is it Sergeant Orth and
4 Detective Remiker and Lieutenant Hermann all
5 arrive?

6 A. Correct.

7 Q. In something like that -- Orth, Hermann, Remiker,
8 in that order?

9 A. Correct.

10 Q. Okay. So -- So we got our -- one pickup truck
11 coming out of there earlier and then you say
12 there have been three pickup trucks coming out
13 there sometime?

14 A. The one that I ran the plate on, I believe got
15 out before I was able to get set up. So I just
16 ran the plate as he went by me.

17 Q. Okay.

18 A. There was other vehicles that I could see coming
19 down Avery Road; those I do believe I was
20 successful in stopping.

21 Q. And did there come a time shortly after this
22 where you -- one of the people you stopped you
23 found had something called a body only warrant?

24 A. Correct.

25 Q. What's a body only warrant?

1 A. It's put out by the Courts. Generally speaking,
2 it's for if they don't show up for a court
3 appearance or some sort of a matter. They will
4 put out a body only, which means that they cannot
5 bail themselves out, they have to go before the
6 court to satisfy the warrant.

7 Q. Right. So you have got an active open warrant
8 for someone; you as a sworn law enforcement
9 officer are allowed to take them into custody
10 once you have them and you know there is a
11 warrant for them?

12 A. Correct.

13 Q. Okay. And that just -- that was somebody who was
14 coming out?

15 A. Yes, it was.

16 Q. Not a member of the Avery family?

17 A. No.

18 Q. Just somebody who happened to be there?

19 A. Just somebody who happened to be there and coming
20 out.

21 Q. And, in general, were these -- did these appear
22 to be customers coming out that Saturday morning?

23 A. Yes.

24 Q. The business was open?

25 A. I believe it was open until noon that day.

1 Q. And so I'm just -- I'm not entirely clear. You
2 think it's four pickup trucks that left before
3 you started stopping the traffic or is a total of
4 three? Are you clear anymore?

5 A. I thought it was only one that actually got -- I
6 think it was two that got past me. I could not
7 get the first one's license plate. The second
8 one was the one that I called out, I believe. I
9 believe anything else I was able to stop before
10 they were able to get out, as best as I can
11 recall.

12 Q. Maybe I misunderstood. I'm going to go back just
13 a little bit.

14 "As of right now, block off that road;
15 nobody goes in, nobody comes out. Get license
16 plates."

17 Q. Going back a little more.

18 (Inaudible.)

19 "405, get in there to get more
20 information, looks like it might be the vehicle."

21 (Inaudible.)

22 "I have three pickup trucks coming out
23 of there."

24 (Inaudible.)

25 Q. (By Attorney Strang)~ Am I hearing that right,

1 that's you saying, I have had three pickup trucks
2 come out of there sometime?

3 A. Sounds garbled to me on this end, so I can't tell
4 what number I'm saying.

5 Q. Okay. And in any event, though, first you are
6 being told to get in there. And then, now,
7 immediately after this, you are being told, as of
8 right now, block off that road?

9 A. Correct.

10 "As of right now, block off that road.
11 Nobody goes in, nobody comes out. Get license
12 plates. Coming in to Mishicot."

13 Q. And that's what you do?

14 A. Correct.

15 Q. And I'm sorry, what was the second day when you
16 were out there for 10 hours, 7 to 5 and did keep
17 a log?

18 A. That would have been the 10th, I believe.

19 Q. Your job that day was simply maintain a log?

20 A. Just maintaining a log, logging people coming in,
21 logging people going out, and making sure nobody
22 comes in who wasn't supposed to be in.

23 Q. All right. Very well. So that includes checking
24 law enforcement officers' identification?

25 A. Correct.

1 Q. And certainly checking citizens and probably
2 screening and keeping most of them out?

3 A. Correct.

4 ATTORNEY STRANG: That's all I have.

5 ATTORNEY KRATZ: Just one moment, counsel.

6 THE COURT: Mr. Strang, the court reporter
7 was just telling me she had trouble hearing
8 everything that was coming through on the audio. Is
9 that an exhibit or is it going to become one?

10 ATTORNEY STRANG: Probably make sense to
11 make it an exhibit.

12 THE COURT: I think that would be good,
13 because otherwise I'm not sure that the record will
14 be accurate.

15 ATTORNEY STRANG: Why don't -- Why don't we
16 call it 126.

17 THE COURT: Okay.

18 ATTORNEY STRANG: And I -- it's on a CD
19 with four tracks. I will dupe it overnight, burn a
20 copy and we can leave this one with the Court.

21 THE COURT: Very well. Is that acceptable
22 to the State?

23 ATTORNEY KRATZ: It is, in fact, we're
24 about to do that with a photo, Judge. That's just
25 fine.

1 THE COURT: Okay.

2 REDIRECT EXAMINATION

3 BY ATTORNEY KRATZ:

4 Q. This photo Deputy O'Connor, we're going to be
5 calling Exhibit 127. We're going to be replacing
6 the electronic version with a 4 by 6, but to help
7 the jury understand what we're looking at, why
8 don't you tell us what Exhibit 127 is.

9 A. Looks like an aerial photo of the -- partially
10 the Avery property. Looks like that would be
11 Highway 147 there and Avery Road.

12 Q. There's a laser pointer up right next to you
13 there.

14 A. Okay.

15 Q. If you can show us Highway 147 and what would be
16 Avery Road.

17 A. I believe this would be Highway 147 here, the
18 diagonal, and then this would be Avery Road
19 coming in here.

20 Q. But 147 will be to the top of that exhibit --

21 A. Correct.

22 Q. -- and Avery Road goes from pretty much left to
23 right towards the top of the exhibit; is that
24 correct?

25 A. Correct.

1 Q. And that exhibit really shows the entirety of the
2 Avery Road, that is, what would be a service road
3 or the entrance to the Avery salvage property; is
4 that correct?

5 A. Correct.

6 Q. In other words, as we look at this exhibit from
7 left to right, that's the whole road?

8 A. Yes.

9 Q. All right. And the furthest right point on that
10 exhibit, that's where the business is and, in
11 fact, some of the residences --

12 A. Correct.

13 Q. -- is that right? Now, could you just show the
14 jury, just so they are oriented, where was it
15 that you were stationed and where were you
16 stopping the vehicles?

17 A. This area right here would be the propane tanks I
18 was talking about.

19 Q. All right.

20 A. So it would have been just to the Highway 147
21 side of those tanks, right in this area.

22 Q. All right. So you are actually south of Highway
23 147 a ways, a couple hundred feet maybe?

24 A. That would be a fair estimate, yes.

25 ATTORNEY KRATZ: Very good. That's all I

1 have, then. And, Judge, when we get the hard copy
2 of this, which may already be in the court file, but
3 we will replace and have received Exhibit 127, I
4 believe as admission.

5 ATTORNEY STRANG: That's works just fine.
6 That works just fine.

7 THE COURT: All right. The exhibit is
8 admitted.

9 ATTORNEY STRANG: I just will nail this
10 down with one last question.

11 **REXCROSS-EXAMINATION**

12 BY ATTORNEY STRANG:

13 Q. So, between 10:56 and when you leave at about
14 2:00 p.m on November 5, there is no log of law
15 enforcement people coming into or leaving the
16 Avery property?

17 A. I did not start one. I don't know if one of the
18 other officers that were down below started one
19 or not.

20 THE COURT: Very well, Mr. O'Connor, you
21 are excused.

22 ATTORNEY KRATZ: My next witness, Judge?

23 THE COURT: Yes.

24 ATTORNEY KRATZ: State would call Sergeant
25 Orth to the stand.

1 THE COURT: Members of the jury, you can
2 stand up and stretch a bit if you wish before the
3 next witness comes in.

4 **SERGEANT JASON ORTH**, called as a witness
5 herein, having been first duly sworn, was
6 examined and testified as follows:

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

9 THE WITNESS: Jason Orth, O-r-t-h.

10 **DIRECT EXAMINATION**

11 BY ATTORNEY KRATZ:

12 Q. Mr. Orth, could you tell us how are you employed,
13 sir?

14 A. Patrol sergeant with Manitowoc County Sheriff's
15 Department.

16 Q. How long have you worked for Manitowoc County?

17 A. Just under 10 years.

18 Q. And were you employed in a law enforcement
19 capacity before that?

20 A. No.

21 Q. What are your duties with the department at this
22 time?

23 A. As I mentioned, I'm a Patrol Sergeant for the
24 Patrol Division.

25 Q. General -- general traffic and --

1 A. Traffic and criminal investigations.

2 Q. All right. Sergeant Orth, I'm going to direct
3 your attention to November 5th of 2005, ask if
4 you were employed with Manitowoc County at that
5 time?

6 A. Yes, I was.

7 Q. Were you in roughly the same capacity?

8 A. Correct.

9 Q. On that date, in fact, sometime just before
10 11:00 in the morning, were you called to a
11 property known as the Avery Salvage Yard?

12 A. Yes, I was.

13 Q. And did you proceed to that scene?

14 A. Yes, I did.

15 Q. Do you recall about what time you arrived at that
16 scene?

17 A. Approximately 10:59 hours, 10:59 a.m.

18 Q. Tell the jury what you did when you got to that
19 scene, please.

20 A. I proceeded down to the southernmost portion of
21 the property, the southeastern portion of the
22 property where I was flagged down by two white
23 females who were later identified as Pamela and
24 Nikole Sturm.

25 Q. As you testify, I'm going to show you an exhibit

1 which has already been received as Exhibit
2 No. 86. There's a laser pointer in front of you
3 and you should feel free to, if you believe it
4 will assist your testimony or the jury's
5 understanding, to use that laser pointer.

6 First of all, Exhibit 86, does that look
7 familiar to you; are you oriented all right when
8 you look at that?

9 A. That would be the residence on the lower left
10 hand corner, trailer?

11 Q. Yes, the business, the entrance, I believe it's
12 uncontested, is in the lower left hand corner.
13 Avery Road would be towards us if you're looking
14 from north to south.

15 A. Over here is where you are saying the main
16 entrance is?

17 Q. If you come towards us, down on the exhibit,
18 Highway 147 would be off the screen to the
19 bottom.

20 A. Okay. All right. Then I would have proceeded
21 down the eastern side here, down to the lower
22 area.

23 Q. All right. Sergeant Orth, were you the first law
24 enforcement officer, at least that you observed,
25 that was on the Avery property itself?

1 A. Yes, I was.

2 Q. Now, you are using the pointer and you were
3 showing, I think, the jury that you were
4 traveling from what would be a generally
5 northerly direction south along what would be the
6 east side or the left side of the property; is
7 that right?

8 A. Correct.

9 Q. Can you show us the road that you traveled on
10 please?

11 A. (Witness demonstrates.)

12 Q. All right. And, again, the record should reflect
13 that you showed us that service road or driveway
14 on the easternmost edge of the property. Where
15 was it that you stopped your vehicle?

16 A. I stopped the vehicle right where Pamela and
17 Nikole Sturm were standing, which is in the
18 southeastern portion of the property.

19 Q. Do you recall any piece of equipment being close
20 to that location?

21 A. There was a vehicle crusher in that general area.

22 Q. Did you see these women when you got there?

23 A. Yes, I observed them -- actually, they were
24 attempting to get my attention. They were
25 flagging me down.

1 Q. Let me ask, Sergeant Orth, whether you were
2 driving a marked or an unmarked patrol unit?

3 A. It was a fully marked patrol car.

4 Q. Tell the jury what you saw when you arrived.

5 A. About that time I saw Pamela and Nikole Sturm
6 both physically upset, as they were crying. They
7 immediately directed my attention to the
8 southernmost row of junked vehicles. And one of
9 the two had indicated that the vehicle in
10 question was approximately 10 vehicles in.

11 Q. Now, when you say the southernmost road, can you
12 tell us what you are talking about?

13 A. On the picture?

14 Q. Yeah, if I zoom in a little bit here, tell me if
15 that helps?

16 A. There we go. They were positioned right around
17 this area and they were directing my attention to
18 this southernmost row of vehicles.

19 Q. And the record should reflect that you are
20 pointing to an area south of the pond or what
21 appears to be a body of water which is also south
22 of the crusher; is that right?

23 A. Correct.

24 Q. From -- And maybe with this more zoomed in
25 version of Exhibit No. 86, could you once again

1 show us where you parked, and if you proceeded on
2 foot, which way you walked?

3 A. I parked the squad car right in this general area
4 near the crusher. I asked both Pamela and Nikole
5 to remain at this location. And then I walked
6 down this overgrown access road, which led to the
7 southernmost row of vehicles.

8 Q. Did you walk around the pond, that would be
9 around the left of the pond?

10 A. Correct, the southeast side.

11 Q. And, again, Sergeant Orth, were there any other
12 law enforcement officers at that location?

13 A. No, I was the only one at that time.

14 Q. And were there citizens that were meeting with or
15 speaking with either of the Sturm women at that
16 time?

17 A. No.

18 Q. Tell us where you walked and tell the jury what
19 you saw.

20 A. I walked down this overgrown access road towards
21 the vehicle in question, a green or blue RAV4. I
22 observed that the vehicle did not have any
23 registration plate on the rear, as I was
24 approaching.

25 It had two branches covering the back of

1 the vehicle. It had a old wooden fence post
2 propped up against the passenger side rear
3 taillight. It had an old vehicle hood resting up
4 against the passenger side rear fender. It had a
5 piece of plywood propped up against the front
6 passenger side fender.

7 It had at least one branch covering the
8 roof and at least one branch covering the hood of
9 the vehicle. So it was quite obvious somebody
10 attempted to conceal it.

11 Q. Was there anybody in that area or location when
12 you got there?

13 A. No one was in that area at all.

14 Q. Did you approach the vehicle?

15 A. I did approach the vehicle on the passenger side
16 and immediately glanced in the front passenger
17 side window looking for persons.

18 Q. Looking for what?

19 A. Looking for Teresa.

20 Q. Was she in the vehicle?

21 A. Teresa was not in the vehicle; it appeared to be
22 unoccupied.

23 Q. Did you attempt to open any of the doors?

24 A. No, I did not.

25 Q. Did you in any other way touch or disturb the

1 vehicle?

2 A. No, I did not.

3 Q. After looking in the vehicle and not finding a
4 body, what did you do?

5 A. At that time my next goal was to positively
6 identify the vehicle; therefore, I walked around
7 the rear of the vehicle to the driver's side and
8 attempted to read the VIN number. However, with
9 it being overcast and shadows and so forth, I was
10 unable to clearly read the VIN number.

11 Q. What did you do then?

12 A. At that time I observed Detective Remiker and
13 Lieutenant Hermann approaching the vehicle.
14 Therefore, I met them several feet behind the
15 vehicle.

16 Q. Again, referring to Exhibit No. 86, could you
17 direct the jury to approximately -- first of all,
18 approximately where the RAV4 was and then where
19 did you meet with Detective Remiker?

20 A. Okay. Detective Remiker and Lieutenant Hermann
21 parked in the same general area of my squad car
22 back by the crusher area. They walked the same
23 exact path I did up and over and the vehicle was
24 in this general area.

25 Q. All right.

1 A. And I met them approximately seven feet behind
2 the vehicle.

3 Q. Upon Detective Remiker and Lieutenant Hermann's
4 arrival, did you note whether either of those
5 individuals touched, entered, or otherwise
6 disturbed the vehicle?

7 A. No, they did not. Lieutenant Hermann remained
8 approximately seven feet behind the vehicle.
9 Detective Remiker and I then re-approached the
10 vehicle in attempts to positively ID it.

11 Q. How?

12 A. Detective Remiker walked up the passenger side.
13 I believe he had a flashlight. He started
14 viewing the VIN number. While he was viewing the
15 VIN number, I looked in the back window, once
16 again to verify Teresa was not in the vehicle.
17 While looking in the back window, I observed --
18 it turns out it was a photo memory card that had
19 Teresa's name written on it. Moments later
20 Detective Remiker informed me the VIN number also
21 matched.

22 Q. After obtaining a positive identification for the
23 vehicle, what did you do then?

24 A. I proceeded approximately 30 feet behind the
25 vehicle and started providing security.

1 Detective Remiker and Lieutenant Hermann
2 immediately proceeded back to the staging area
3 where we parked our squad cars to once again talk
4 to Pamela and Nikole Sturm.

5 Q. What do you mean by staging area?

6 A. The area where we were parking our vehicles and
7 later in the investigation where other officers
8 started parking when they arrived.

9 Q. Could you show us, again, on the overview?

10 A. Which would be where I'm pointing is where I
11 parked near the crusher, which is I would say at
12 least 100 yards away from where the vehicle in
13 question was located.

14 Q. All right. Sergeant Orth, from your arrival,
15 being the first officer that was there, would you
16 have been in a constant position to determine
17 whether any law enforcement officer or citizen
18 entered or disturbed that vehicle?

19 A. Yes, I was. I had constant visual of the
20 vehicle.

21 Q. And I want you to tell the jury whether any
22 police officer or any citizen entered or
23 otherwise disturbed that RAV4?

24 A. No police officer or citizen approached or
25 touched that RAV4.

1 Q. How long did you remain as a primary security
2 officer for that vehicle, in that location?

3 A. I would have to look in my report to see the time
4 I ultimately left. However, I know I received my
5 first break at about 1:00. Lieutenant Hermann
6 proceeded up to my location, approximately
7 30 feet behind the vehicle, at which time he
8 focused on the vehicle.

9 I went to the staging area where I took
10 a short break; however, even at the staging area
11 there was still a clear view of the vehicle. So
12 even during my short breaks I was able to
13 observe; no one approached.

14 Q. Let's go back to that just a minute. You said
15 there was a clear view of the vehicle from the
16 staging area; is that where Pam and Nikole Sturm
17 were standing?

18 A. Correct.

19 Q. When you stood in the exact location that Pam and
20 Nikole Sturm were standing, could you see the
21 RAV4 from that location?

22 A. Yes.

23 Q. So if anybody disturbed or entered the vehicle,
24 would you have been able to see that?

25 A. Yes.

1 Q. You said that some other police officers and
2 other law enforcement types arrived at the scene;
3 is that right?

4 A. Mm-hmm, yes.

5 Q. All right. Who else came to the scene? Who else
6 was there?

7 A. Deputy Cummings from the Manitowoc Sheriff's
8 Department. Are you talking through the entire
9 time I was there?

10 Q. Yeah, I'm talking really about whether other
11 departments, other agencies had arrived.

12 A. Calumet County sheriff's office had officers
13 arriving.

14 Q. About how long after your arrival before Calumet
15 showed up?

16 A. An hour, that would be an estimated time.

17 Q. I suspect there's logs or better information for
18 that; is that fair?

19 A. Correct.

20 Q. Nevertheless, between the time that you arrived
21 and when Calumet County got there, were there
22 other Manitowoc County officials that were
23 responsible for scene security or was that your
24 responsibility?

25 A. That would have been myself; Lieutenant Hermann,

1 when he gave me a short break; and Deputy
2 Cummings, when he gave me a short break.

3 Q. Again, these short breaks, did you maintain
4 visual connection with the vehicle at that time?

5 A. Yes. As I mentioned, I was over near the staging
6 area where I could still see the avenues of
7 approach for the vehicle. I just want to
8 clarify, there were some small trees in this area
9 around the pond; however, due to the time of
10 year, there was no foliage upon the trees,
11 therefore, you could still see through.

12 Q. Okay. I'm going to come right out and ask you,
13 any time before Calumet County arrived, did you
14 see a gentleman who works for your department
15 named Lieutenant James Lenk?

16 A. I did not see him.

17 Q. At any time before Calumet County arrived, did
18 you see a gentleman who works for your department
19 named Andrew Colborn?

20 A. No, I did not see him.

21 ATTORNEY KRATZ: That's all I have of this
22 witness, Judge.

23 THE COURT: Mr. Buting.

24 ATTORNEY BUTING: Thank you, Judge.

25 CROSS-EXAMINATION

1 BY ATTORNEY BUTING:

2 Q. Good afternoon.

3 A. Good afternoon.

4 Q. Sergeant, you said that when you would take your
5 break you would go directly to the location where
6 Nikole and Pam Sturm were, right?

7 A. Correct.

8 Q. And you said -- and that was near -- right next
9 to the crusher, right?

10 A. Near the crusher.

11 Q. Okay. Well, I don't know if you can see there,
12 maybe it's because this photo is kind of far away
13 from you, but you have been pointing to this area
14 around here, just very close to the pond, as the
15 area where the crusher is, right?

16 A. Actually, I believe that crusher may be more to
17 the left and down. That's a -- that's a focal
18 point for me to say we were near that area;
19 however, when we parked, the staging area --

20 Q. I assume.

21 A. -- if that's the crusher, we were parked in front
22 of the crusher closer to the pond area, but
23 that's one --

24 Q. Do you want to walk --

25 A. -- specific area.

1 Q. -- up a little closer to see if this is the
2 crusher down here at the very bottom of the
3 picture?

4 A. If you would like me to, I could.

5 Q. Well, I would like to clear this up. I want -- I
6 want to be -- I want the jury to understand the
7 distances and where exactly you were situated.
8 And would you please tell us whether you were
9 down here at the crusher or whether you were up
10 there --

11 A. I was up here.

12 Q. -- closer to the pond? You were up here?

13 A. Right.

14 Q. That's right where -- You were standing right
15 next to Pam and Nikole Sturm when you would take
16 those breaks, right?

17 A. I'm not sure if they remained at that area. I'm
18 referring to that area because that is where I
19 met them. That is where I parked. And then when
20 I would take a break, I would remain -- return to
21 that area.

22 Q. Well, sir, didn't you just say that you stood in
23 the exact location that Pam and Nikole Sturm
24 stood in and could see the vehicle from that --
25 from that spot, right?

1 A. I was in the same general area; I did not stand
2 in the exact spot.

3 Q. Oh, so you never stood in the exact spot where
4 Pam and Nikole Sturm stood, is that what you are
5 now telling us?

6 A. That would be impossible, if they were standing
7 there, to stand in the exact spot.

8 Q. All right. Were you standing in almost the exact
9 spot that Pam and Nikole Sturm -- I believe
10 counsel said the word exact spot, but you
11 understand what we're talking about? I'm not
12 saying you are standing on top of them,
13 obviously.

14 A. I was standing in the same general area.

15 Q. Okay. And by same general area, you consider --
16 Let me ask you this, if we heard testimony that
17 the distance from the crusher to the vehicle,
18 which was -- we have heard testimony that the
19 distance from the crusher to the vehicle is 379
20 feet, would you disagree with that or agree with
21 that?

22 A. That's probably accurate.

23 Q. Okay. And so the distance from where the crusher
24 is to about to where you are saying you were, by
25 my estimation would be at least 100 feet, 75

1 maybe?

2 A. Possible.

3 Q. So you consider standing 75 or 100 feet away from
4 somebody to be in the same general area; is that
5 what your testimony is?

6 A. When we're talking this is such a big area here,
7 I was considering this the same general area.

8 Q. Okay. Just wanted to clarify how precise you
9 are, okay. Now, when you first walked up to the
10 vehicle, you said that you approached on the
11 passenger side, right?

12 A. Correct.

13 Q. And you didn't have a flashlight with you?

14 A. No, I did not.

15 Q. But you looked in which window to see if there
16 was a body?

17 A. The front passenger side window.

18 Q. Okay. And you saw none, right?

19 A. Correct.

20 Q. And did you look around to see if there was any
21 keys or anything like that in the vehicle?

22 A. No.

23 Q. You weren't looking for anything but a body at
24 that occasion -- on that occasion, right?

25 A. Correct.

1 Q. And then you walked around the rear over on the
2 driver's side?

3 A. Correct.

4 Q. All the way up to where the VIN number would be?

5 A. Yes.

6 Q. But you couldn't see any of them?

7 A. It wasn't clear.

8 Q. Okay. So you -- The question is, could you see
9 any of the VIN numbers?

10 A. Yes.

11 Q. Okay. Did you report that, call it in, I can see
12 you know, VIN number -- the first four, or the
13 last four, or anything like that?

14 A. No, I did not because as soon as I realized it
15 was not clear and I could not read the entire
16 VIN, at that time I already observed Detective
17 Remiker and Lieutenant Hermann approaching.

18 Q. Okay. And then, they were on foot, is that what
19 you are saying, or did you see them driving up?

20 A. I saw the last of them driving up, but what I'm
21 referring to is they were literally walking down
22 the path while I was trying to look at the VIN.

23 Q. Well, did you see them when they were walking or
24 did you see them when they were driving?

25 A. Both.

1 Q. Okay. So you watched them park and then you
2 watched them walk the whole way to where you
3 were?

4 A. Not the entire time, but I observed them.

5 Q. And did they park up here in this area that you
6 have been circling, or did they park down here
7 closer to the car crusher, lower part of this
8 photograph?

9 A. As we were the first responding officers, we were
10 up here more. And the more officers that would
11 arrive would end up being further to the north,
12 which would be closer to the crusher.

13 Q. Okay. And then, Detective Remiker had a
14 flashlight?

15 A. I believe so.

16 Q. And you said that he walked over and was shining
17 the flashlight; was he on the driver's side when
18 he was shining the flashlight in or ...

19 A. He would have been on the driver side, by the
20 front driver side fender, looking at the VIN
21 number.

22 Q. And you were looking in the back window when you
23 saw this photo memory card?

24 A. Correct.

25 Q. What side of the car were you on at that point?

1 A. I was in the back of the vehicle. I don't recall
2 if I was closer to the driver side or the
3 passenger side.

4 Q. Well, what window did you look through?

5 A. The back window.

6 Q. The very rear tailgate window?

7 A. Correct.

8 Q. Okay. And you didn't have a flashlight?

9 A. No, I did not.

10 Q. But you were able to see a photo memory card?
11 About how big was that?

12 A. I don't recall. I recall the name Teresa
13 sticking out.

14 Q. Okay. But we're talking about an item maybe an
15 inch and a half, two inches big, something like
16 that?

17 A. Probably about that size, yes.

18 Q. You're talking about those little square things
19 that you stick in the small digital cameras; is
20 that right?

21 A. I glanced in. I don't know exactly what type of
22 item it was; however, I did clearly see her name.

23 Q. I understand that. I'm getting to that. But I
24 would like to make it clear, just about the size
25 of this object that you were looking at. Can you

1 tell me --

2 A. No, I cannot.

3 Q. I mean, you know what a floppy disc is, the old
4 floppy disc that used to go in computers?

5 A. Yes, I do.

6 Q. It was smaller than that, right?

7 A. I believe so.

8 Q. So it was one of the real small scan discs, or
9 whatever they are, that you use in cameras,
10 right?

11 A. In my report, I indicated that I observed a
12 smaller piece of paper with Teresa's name on it.
13 After reviewing Detective Remiker's report, that
14 is when I learned it was some type of digital
15 camera card.

16 Q. Okay. And on that little card, you were able to
17 see her name, right?

18 A. I saw the name Teresa.

19 Q. Okay. Did you look in any other windows?

20 A. No.

21 Q. The entire time that you were there, guarding, or
22 standing over the vehicle, or looking into it,
23 you never saw any blood inside the vehicle, did
24 you?

25 A. I was approximately 30 feet behind the vehicle, I

1 could not see inside.

2 Q. Sir, we have established that you looked in the
3 passenger side window, first, the front passenger
4 side window when you first arrived, right?

5 A. Correct.

6 Q. You didn't see any blood, right?

7 A. I glanced in for a body.

8 Q. Did you see any blood, sir?

9 A. No, I did not.

10 Q. Thank you. Then, we know at least one other time
11 you looked in the rear tailgate window, right?

12 A. Correct.

13 Q. Are those the only two times you have ever looked
14 inside the vehicle?

15 A. Correct.

16 Q. Okay. And you didn't see blood on that occasion
17 either, did you?

18 A. No, I did not.

19 Q. But you were able to see something as small as a
20 handwritten Teresa on a little computer disc,
21 right?

22 A. Correct.

23 Q. And if you had seen blood, of course, that would
24 have been something you would have made a note
25 of, wouldn't it?

1 A. I would imagine if I saw blood, yes.

2 Q. Okay. Did you ever see Lieutenant Lenk that day?

3 A. No, I did not.

4 Q. And you left at 2:00?

5 A. Excuse me?

6 Q. You said you left at 2:00?

7 A. I would have to read from my report.

8 Q. Okay. You didn't actually keep a log of -- or

9 you didn't actually start preparing a log of

10 anybody coming to and from that scene of the RAV4

11 until 2:45; isn't that right?

12 A. No.

13 Q. You did prepare a report, right?

14 A. Yes.

15 Q. And you try and be truthful and complete and

16 accurate when you make those reports?

17 A. Correct. As soon as I stood behind the vehicle,

18 approximately 30 feet, I used the small notepad

19 out of my shirt pocket. That was a rough log

20 that I started. When I proceeded back to the

21 staging area is where I prepared a final log,

22 which is probably what you are referring to.

23 Q. All right. If you would just read what you say

24 for the entry that says 14:45 hours; that is

25 2:45, is it not?

1 A. Correct. You want me to read this?

2 Q. Sure, read the last sentence.

3 A. I started a log to document the names of

4 individuals approaching the immediate area around

5 the vehicle.

6 Q. Okay. I started a log, right?

7 A. Correct.

8 Q. Is there any place earlier in your report where

9 you mention that you ever took any notes,

10 anywhere else, about who was coming and going,

11 other than this entry right here, that says it's

12 2:45 p.m.?

13 A. No, my rough field notes is when I started

14 previously.

15 Q. Do you still have those?

16 A. No, I do not.

17 Q. So we just have to rely on your memory; is that

18 right?

19 A. As far as the time of breaks and the time I

20 approached.

21 Q. And who came and went, right?

22 A. Correct.

23 Q. You are a sergeant?

24 A. Yes.

25 Q. And you were a sergeant then --

1 A. Yes.

2 Q. -- October 31st? Lieutenant Lenk is above you in
3 rank?

4 A. Correct.

5 Q. And was on that day?

6 A. Correct.

7 Q. Lieutenant Lenk was in the hierarchy, what,
8 fourth highest ranking officer?

9 A. At the department?

10 Q. Yeah.

11 A. I'm not sure.

12 Q. Did it ever enter your mind that one of your
13 superior officers might want to plant evidence
14 inside that RAV4?

15 A. Absolutely not.

16 Q. Nothing you would have been, in your wildest
17 imagination, thinking of?

18 A. Absolutely not.

19 Q. So when you were watching that RAV4, it was not
20 with the thought in mind that, I better make sure
21 none of my superiors are coming in here and
22 touching this vehicle planting evidence, right?

23 A. I'm not sure what you mean.

24 Q. That wasn't -- That wasn't a purpose of you
25 watching the vehicle, to make sure that one of

1 your superiors couldn't gain access to it and do
2 something with it, was it?

3 A. I was securing the vehicle for any persons.

4 Q. Okay. By the way --

5 ATTORNEY BUTING: Would you put that back
6 up there for a moment, please. I'm sorry it keeps
7 cutting out. Can you zoom out?

8 ATTORNEY KRATZ: Sure.

9 ATTORNEY BUTING: Not quite that far, one
10 more in please. That's good. That's good.

11 Q. (By Attorney Buting)~ The veh -- The direction
12 that you approached, which is now the upper left
13 hand corner, was to the southeast of the pond,
14 right?

15 A. You're asking where I approached?

16 Q. Yeah, I think you showed us that you approached
17 from the southeast corner?

18 A. Proceeded from the north, traveling southeast.

19 Q. There's actually other ways to get to that RAV4
20 vehicle; aren't there, from the west?

21 A. Correct.

22 Q. From the south?

23 A. Correct.

24 Q. Or anyone of these rows on the right hand side of
25 the photograph leading -- again, approaching from

1 the west?

2 A. Correct.

3 Q. And just --

4 ATTORNEY BUTING: That's all, thank you.

5 THE COURT: Any redirect?

6 ATTORNEY KRATZ: If I could have just a
7 moment, Judge.

8 THE COURT: Sure.

9 **REDIRECT EXAMINATION**

10 BY ATTORNEY KRATZ:

11 Q. Sergeant Orth, do you recall the color of the
12 memory card or the paper that had the writing on
13 it?

14 A. I'm not certain. I believe it was white, because
15 the name seemed to jump out at me.

16 Q. My point is, what was the other general color in
17 the back of the vehicle; was it light or dark?

18 A. Darker colored background.

19 Q. Was there something about the memory card or the
20 writing that stood out or was a contrast in color
21 to the surrounding location?

22 A. If I remember correctly, it was like a white
23 background with blue or black ink. I think blue.
24 I just glanced in real -- like when I looked in
25 the front window, it was just glancing in to look

1 for a person. And when I looked in the back, it
2 was just a glance, for the most part, but it did
3 jump out.

4 Q. So you didn't see dark blood on the dark
5 interior?

6 A. No, I did not.

7 ATTORNEY KRATZ: That's all I have, Judge.
8 Thank you.

9 ATTORNEY BUTING: Nothing further.

10 THE COURT: All right. You are excused.

11 Mr. Kratz, I think we'll have you get
12 started on your next witness.

13 ATTORNEY KRATZ: State would call
14 Lieutenant Hermann to the stand.

15 THE COURT: If the jury wishes to stand, I
16 will give you that privilege.

17 THE CLERK: Please raise your right hand.

18 **DEPUTY INSPECTOR TODD HERMANN**, called as
19 a witness herein, having been first duly sworn,
20 was examined and testified as follows:

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

23 THE WITNESS: My name is Todd Hermann,
24 H-e-r-m-a-n-n.

25 **DIRECT EXAMINATION**

1 BY ATTORNEY KRATZ:

2 Q. Mr. Hermann, how are you employed?

3 A. I'm employed with the Manitowoc County Sheriff's
4 Department.

5 Q. And what rank do you hold?

6 A. At this present time, I'm a deputy inspector for
7 the department.

8 Q. On September -- excuse me -- November 5th of
9 2005, what rank did you hold at that time?

10 A. I was a patrol lieutenant in charge of the
11 4:00 a.m. to noon shift.

12 Q. On November 5th, do you recall receiving a
13 dispatch call or direction to proceed to a
14 property known as the Avery Salvage Yard?

15 A. Yes.

16 Q. Did you proceed to that location?

17 A. Yes, I did.

18 Q. And do you recall about what time you arrived at
19 that location?

20 A. It was approximately 11 -- 11:03 in the morning.

21 Q. At 11:03 on the 5th of November, tell the jury
22 what you did and what you saw.

23 A. At that point, I traveled down Avery Road, had
24 information about the Halbach vehicle missing and
25 that it was located by a search party in the

1 Avery Salvage Yard. I drove down into the
2 salvage yard near a vehicle car crusher where
3 Sergeant Orth's vehicle was parked. And that's
4 where I stopped with my squad.

5 I met with Detective Remiker and we
6 proceeded down a path to where Sergeant Orth was.
7 We proceeded towards the Halbach vehicle to
8 identify it, to identify if there was anything in
9 the vehicle.

10 Detective Remiker and Sergeant Orth
11 walked up to the vehicle and I stayed just a
12 short distance behind them, away from the
13 vehicle.

14 Q. About how far from behind the vehicle did you
15 stop?

16 A. I was out of reach of the vehicle anywhere from
17 three to seven feet or so.

18 Q. My question is, were you close enough to see what
19 Detective Remiker and Sergeant Orth were doing?

20 A. Yes.

21 Q. Did you maintain constant visual connection with
22 both the vehicle and with those two gentlemen at
23 that time?

24 A. Yes, I did.

25 Q. Did you see either Sergeant Orth or Detective

1 Remiker either enter the vehicle or otherwise
2 disturb the vehicle?

3 A. No, they did not.

4 Q. If they did, would you have seen it?

5 A. Yes, I would have.

6 Q. Now, Mr. Hermann, on the property or on -- at
7 your location at that time, did you see a
8 gentleman by the name of Lieutenant Lenk?

9 A. No, I did not.

10 Q. Did you see a gentleman by the name of Sergeant
11 Colborn?

12 A. No, I did not.

13 Q. You certainly know those two individuals?

14 A. Yes, I do.

15 Q. If they would have been there, would you have
16 recognized them?

17 A. Yes, I would have.

18 Q. After Sergeant Orth and Detective Remiker
19 completed their inspection of the vehicle; did
20 you see what they did?

21 A. Yes, they walked back out away from the vehicle
22 towards me and we walked away from the vehicle.

23 Q. Okay. What did you do then?

24 A. Sergeant Orth -- As we were walking out, I had
25 Sergeant Orth stay within view of the vehicle.

1 He was approximately 30 feet away from the rear
2 of the vehicle, so he could maintain visual
3 contact with the vehicle and make sure it wasn't
4 disturbed.

5 Myself and Detective Remiker walked up,
6 away from the scene, back towards where the squad
7 cars were parked by the vehicle crusher.

8 Q. Are you familiar with the term "scene security"?

9 A. Yes, I am.

10 Q. And which officer was primarily responsible for
11 securing the RAV4, or maintaining scene security,
12 at that time?

13 A. When we left Sergeant Orth there to maintain
14 visual contact, he was mainly in charge of
15 watching that vehicle.

16 Q. I guess what I'm asking, I'm asking to clear up
17 for the jury is, that was Sergeant Orth's primary
18 responsibility, from what you knew, at that
19 location?

20 A. At that point, yes.

21 Q. That's what I'm asking, at that point.

22 A. Yes.

23 Q. Was that responsibility, that is, scene security,
24 sometime shortly thereafter turned over to a
25 different department?

1 A. Yes, it was.

2 Q. Which department was that?

3 A. Calumet County Sheriff.

4 Q. And after being turned over to Calumet County
5 Sheriff, did your department, that is, the
6 Manitowoc County Sheriff's Department, ever
7 reassume responsibility for the scene or scene
8 security?

9 A. No.

10 Q. Mr. Hermann, were you involved in the decisions
11 or the discussion of turning over responsibility
12 of this investigation to Calumet County, or was
13 that done by somebody else?

14 A. Yes, I was present during this exchange when we
15 spoke with Sheriff Pagel.

16 Q. Let me just ask, about how long after your
17 arrival at that scene was it that Calumet County
18 officials arrived?

19 A. Approximately 40 to 45 minutes, 11:40, 11:45, I
20 believe it was.

21 Q. Anytime within that 40 or 45 minutes that you
22 were there, before Calumet County arrived, did
23 you see any officers, or any citizen for that
24 matter, either enter or in any way disturb that
25 vehicle?

1 A. No, nobody disturbed that vehicle during that
2 time.

3 Q. That was something that was important to you; is
4 that right?

5 A. That is correct, yes.

6 Q. Why?

7 A. Because it is a vehicle we were looking for,
8 potential evidence; we didn't want to disturb it.

9 Q. Did you have occasion, Mr. Hermann, to meet with
10 and speak with either Pam or Nikole Sturm on
11 scene?

12 A. Yes, I did.

13 Q. Describe their demeanor generally, if you recall.

14 A. They were very shook up, very upset, that they
15 found the vehicle.

16 Q. Now, do I understand that Sergeant Orth was
17 already on scene when you got there?

18 A. Yes.

19 Q. Who was the second officer to arrive; was that
20 you, or was that somebody else?

21 A. Me and -- Myself and Detective Remiker were there
22 right at the same time, you know, shortly. We
23 would have been the second officer -- officers on
24 the scene, within minutes we were there, after
25 Sergeant Orth.

1 Q. Can you tell the jury, please, who, other than
2 Sheriff Jerry Pagel of the Calumet County
3 Department, in fact, the sheriff; other than
4 Mr. Pagel, who was involved in ultimately
5 deciding whether this investigation or the scene
6 would be transferred to another agency?

7 A. Deputy Inspector Schetter, I spoke with. He in
8 turn would have been in contact with Inspector
9 Hermann of the Manitowoc County Sheriff's
10 Department. I had gotten that information from
11 the deputy inspector, basically he discussed that
12 matter with me.

13 Q. All right. So you had some input into that
14 decision; is that right?

15 A. Yes, I did.

16 Q. Lastly, Mr. Hermann, the scene or integrity of
17 the SUV being Sergeant Orth's responsibility, was
18 Sergeant Orth provided with any relief or any
19 breaks while he was on that location?

20 A. Yes, he was.

21 Q. And who provided breaks or break relief for him?

22 A. I did provide two breaks for Sergeant Orth,
23 during his visual observation of the vehicle.

24 Q. While providing those breaks, did you maintain
25 constant visual contact, then, with the vehicle?

1 A. Yes, I did.

2 Q. At any time during those two brief breaks, again,
3 did any individual, citizen, or law enforcement
4 officer enter or disturb that vehicle?

5 A. No, nobody disturbed the vehicle.

6 ATTORNEY KRATZ: That's all the questions I
7 have of this witness, your Honor.

8 THE COURT: Mr. Buting.

9 **CROSS-EXAMINATION**

10 BY ATTORNEY BUTING:

11 Q. Mr. Hermann, or do you go by Deputy Inspector
12 Hermann, is that ...

13 A. That is my current title, correct.

14 Q. I will call you Deputy Inspector Hermann, thank
15 you. Are you inspector now?

16 A. Deputy Inspector.

17 Q. Deputy Inspector. Okay. Now, on November -- I'm
18 sorry -- yeah, November 5th of 2005, you were a
19 lieutenant, right?

20 A. That is correct.

21 Q. And you obviously knew Lieutenant James Lenk,
22 right?

23 A. Yes, I did.

24 Q. He was also a lieutenant in your department?

25 A. Yes.

1 Q. Would you explain to me a little bit about the
2 hierarchy back then; who was at the top? Who was
3 the top sheriff at that time?

4 A. Sheriff Ken Peterson.

5 Q. Okay. And immediately below him, second in
6 command, would be who?

7 A. Inspector Hermann.

8 Q. Okay. And then -- That's Robert Hermann, right?

9 A. Correct.

10 Q. Brother or relative?

11 A. That's brother.

12 Q. That's your brother, okay.

13 A. Yes.

14 Q. And then does it branch down into one or more
15 deputy inspectors?

16 A. Yes.

17 Q. How many?

18 A. There are -- There's a deputy inspector in charge
19 of the jail, deputy inspector in charge of Patrol
20 and Investigative Division and deputy inspector
21 in charge of our support.

22 Q. Okay. And so on November 5th of 2005, who were
23 those three deputy inspectors? Schetter?

24 A. Deputy Inspector Schetter was in charge of
25 operations at that time.

1 Q. Okay.

2 A. Deputy Inspector Larry Welnicke was in charge of
3 the jail. And I believe Deputy Inspector Bill
4 Beck was in charge of support.

5 Q. Okay. And then the next level below that is
6 lieutenants?

7 A. Yes.

8 Q. And how many lieutenants were there?

9 A. Three lieutenants.

10 Q. That would be yourself?

11 A. In charge of -- As far as the Patrol Division is
12 concerned, there's three lieutenants: Myself,
13 Lieutenant Seim, and I believe it was Lieutenant
14 Bessler at the time.

15 Q. Okay. And that's -- your division was the Patrol
16 Division, right?

17 A. Yes.

18 Q. And then is there also a lieutenant of the
19 Detective Bureau?

20 A. That's correct, Lieutenant James Lenk.

21 Q. So, he would have been the top dog in the
22 Detective Bureau at that time, basically, right?

23 A. Yes.

24 Q. And you have already mentioned that -- his
25 decision to transfer authority, but let me just

1 make sure we're clear. You were aware about Mr.
2 Avery's civil lawsuit against your department and
3 Manitowoc County for the years that he spent on
4 the wrongful conviction case, right?

5 A. Yes.

6 Q. And the concern was pretty obvious to you, as
7 soon as this vehicle was discovered on his
8 family's property, that maybe there might be an
9 appearance of a conflict, if not an actual
10 conflict, for your department to be investigating
11 this case; isn't that right?

12 A. Yes.

13 Q. By the way, were you deposed in that lawsuit; did
14 you go through any depositions yourself?

15 A. No, I did not.

16 Q. Do you know whether -- And did you know at that
17 time whether or not Lieutenant James Lenk had
18 gone through any depositions in that lawsuit?

19 A. I'm not aware of that.

20 Q. I'm talking about November 5 right now, okay?

21 A. Yes.

22 Q. You weren't aware of that, right?

23 A. Whether or not Lieutenant Lenk had been disposed
24 in any --

25 Q. Deposed, yes.

1 A. Deposed in any of the civil litigation?

2 Q. Right.

3 A. I'm not aware of it.

4 Q. And you were not aware of it then?

5 A. No.

6 Q. What about Sergeant Andrew Colborn; were you
7 aware he had been deposed as a witness in that
8 lawsuit?

9 A. Not to my recollection. I don't recall if he was
10 or if he was not, the same as far as Lieutenant
11 Lenk; I don't recall if he was or if was not --

12 Q. So it's --

13 A. -- at that time.

14 Q. -- it's possible that you were aware of it, you
15 are just not sure right now; is that what you are
16 telling me?

17 A. I don't recall at this point; I don't recall if
18 he was or was not.

19 Q. Okay. But at any rate, it was pretty common
20 knowledge, would you say pretty much every member
21 of the Manitowoc Sheriff's Department was aware
22 of Mr. Avery's lawsuit against them?

23 A. Yes.

24 Q. Okay. Now, you talk about this decision to turn
25 over the lead of this investigation of this case

1 on November 5, 2005. And you said that was about
2 45 minutes after the first officer arrived,
3 right?

4 A. Yes.

5 Q. So by 11:45 in the morning the decision had
6 already been made that you should pass this off
7 to Calumet, right?

8 A. Yes.

9 THE COURT: Excuse me. Mr. Buting, I think
10 you are just starting to get into something that I'm
11 sure is going to continue for a while, so to help
12 with the flow of things --

13 ATTORNEY BUTING: It might not, but that's
14 okay, we can take a break now.

15 THE COURT: We'll take our afternoon break
16 at this time.

17 Again, members of the jury, do not
18 discuss the case in any way during the break.

19 (Jury not present.)

20 THE COURT: Counsel, then let's report back
21 at five minutes to three.

22 ATTORNEY BUTING: Okay. Thank you.

23 (Recess taken.)

24 (Jury present.)

25 THE COURT: Okay. Mr. Buting, at this time

1 you may resume your cross-examination of the
2 witness.

3 ATTORNEY BUTING: Thank you, your Honor.

4 CROSS-EXAMINATION CONTD

5 BY ATTORNEY BUTING:

6 Q. I think we were talking about the decision to
7 transfer the lead authority in the investigation
8 to Calumet. Was it about 11:45: a.m., right?

9 A. Yes.

10 Q. Actually, I'm going to come back to that in just
11 a moment, but let me ask you this first. You
12 parked -- When you first pulled up into the
13 southeast area of the salvage yard, you parked
14 near the crusher; is that right?

15 A. Yes. Somewhere in that general area, yes.

16 Q. Okay. And did you look at that crusher? Did it
17 appear to be in operating order, or could you
18 tell?

19 A. I don't know what -- how it op -- I know -- I
20 have a idea of how it operates, whether or not it
21 was working at the time, it was not running when
22 I arrived.

23 Q. Did you see a bunch of flattened crushed cars
24 stacked nearby.

25 A. Yes, I did.

1 Q. Okay. And when you walked up to the Toyota RAV4,
2 did you see any indication at all that maybe
3 somebody had tried to crush it and failed or had
4 started to crush it and failed?

5 A. No, I did not.

6 Q. It was completely intact, as far as you could
7 tell?

8 A. Yes.

9 Q. Even though there was a crusher nearby that could
10 have -- if someone knew how to use it, could have
11 been flattened -- flattened that RAV4 to a
12 pancake, right?

13 A. If the crusher was working, yes, correct, they
14 could. The vehicle could have been crushed.

15 Q. Okay. And if that would have been done to that
16 RAV4, it would have been a pretty unrecognizable
17 vehicle at that point, right, unless you start
18 ripping it apart?

19 A. I don't know. As far as emblems or whatever
20 would be visible, I guess I can't make
21 assumptions unless you see a vehicle like that
22 crushed.

23 Q. It would be a lot less recognizable than it was
24 when you saw it.

25 A. Yes, it would definitely change the appearance of

1 it.

2 Q. Okay. And this -- By that time, the news, or
3 word had been out on the media, the news, missing
4 persons, posters spread all over the place, that
5 Teresa's vehicle was a Toyota RAV4, right?

6 A. Yes.

7 Q. And you said, I think as you walked up to the --
8 Maybe I'm confusing you with the prior witness.
9 But as you approached the vehicle, it appeared as
10 if somebody had been trying to conceal it?

11 A. Yes. I did not testify to that, but it did
12 appear that way to me.

13 Q. I'm sorry, I may be morphing you into the prior
14 witness, but. In fact, the effort to conceal it,
15 this Toyota RAV4, wasn't that good, was it? I
16 mean it wasn't covered?

17 A. No, not completely.

18 Q. And, in fact --

19 ATTORNEY BUTING: Counsel, if you could put
20 up that one right now, appreciate it.

21 Q. (By Attorney Buting)~ As you walked up to the
22 rear of it, this is what you see, great big
23 letters, RAV4 Toyota, right?

24 A. Yes.

25 ATTORNEY KRATZ: Exhibit 29, counsel?

1 ATTORNEY BUTING: Exhibit 29 we're showing
2 to the jury right now.

3 Q. (By Attorney Buting)~ The hood that was leaning
4 up against the side of the vehicle is over here
5 on the right side of the picture, right? I'm not
6 sure this is even in here, but there was a big
7 vehicle hood leaning up against the passenger
8 side, right?

9 A. Yes.

10 Q. An old rusty piece of junk, correct?

11 A. An old hood, yes. I believe it may be in the
12 photo, just to the right of the post.

13 Q. All the way over here?

14 A. I believe that --

15 Q. Part of it there.

16 A. -- would be part of it, yes. Yes, it was right
17 up against it.

18 Q. Now, if that hood had been pulled up against the
19 back of this vehicle, you wouldn't be able to see
20 the tire cover that says RAV4 Toyota, would you?

21 A. No, you would not have been able to.

22 Q. Okay. And this vehicle was along that little
23 ridge where all of the other vehicles were single
24 file parked, nose to bumper, nose to bumper. And
25 this was the only one that was double parked,

1 right? Two deep, sticking out?

2 A. I'm not sure how many vehicles were double parked
3 or single parked, but this one was double parked,
4 correct.

5 Q. Okay.

6 ATTORNEY BUTING: Could we maybe put up
7 that -- No. 89, what we were looking at before?
8 That one, the aerial view -- Any aerial of that area
9 is fine. There we go. Thank you.

10 ATTORNEY KRATZ: Want me to zoom in?

11 ATTORNEY BUTING: One more.

12 Q. (By Attorney Buting)~ Okay. So looking at that
13 line of vehicles that is parked along the berm on
14 the north -- or south side of the pond there; all
15 the rest of those vehicles look like they are
16 single -- any other double parked?

17 A. Yes, it appears that way, that they are single
18 parked.

19 Q. Okay.

20 ATTORNEY BUTING: This is Exhibit 86 for
21 the record. Thank you.

22 THE COURT: Counsel, excuse me for a
23 second, can at least one attorney from each side
24 approach.

25 (Side bar taken.)

1 Q. (By Attorney Buting)~ We better clear something
2 up, Lieutenant. This photograph was taken after
3 the Toyota RAV4 had already been removed from the
4 scene, correct?

5 A. I don't know when it was taken.

6 ATTORNEY KRATZ: Actually, Judge, we'll
7 stipulate to that fact. We'll complete the record
8 later, but that is a stipulation that we're willing
9 to not only alert the jury, but the witness, at this
10 time.

11 THE COURT: For the benefit of the record
12 and the jurors, counsel, do I understand -- and I
13 know there's been a series of aerial photos
14 introduced -- do I understand that all of those
15 photos were taken after the date that the vehicle
16 was removed from the scene?

17 ATTORNEY KRATZ: Yes.

18 ATTORNEY BUTING: That's correct.

19 THE COURT: Both party's understanding?

20 ATTORNEY BUTING: Yes, there are no -- at
21 least that we have seen so far, we have not seen any
22 aerial shots with the RAV4 still in this location.

23 THE COURT: Thank you.

24 ATTORNEY BUTING: Okay.

25 Q. (By Attorney Buting)~ But you do recall where it

1 was -- well, actually we'll leave that for
2 another witness. So after you approached that 3
3 to 7 feet, you said, from the vehicle; you didn't
4 actually look inside the vehicle yourself, right?

5 A. I did not, no.

6 Q. Okay. And then you retreated back to where the
7 cars were parked?

8 A. Yes.

9 Q. And then you had some other duties that you
10 attended to. You mentioned that you -- you gave
11 Sergeant Orth a couple of breaks, I think?

12 A. Yes, I did.

13 Q. But in between those times, there was an hour or
14 more in between that, you were doing other
15 things, right?

16 A. I was standing by in that area, yes.

17 Q. Okay. But, for instance, you were talking with
18 Deputy Inspector Schetter?

19 A. Yes.

20 Q. And I believe you said --

21 A. Detective Remiker.

22 Q. -- Detective Remiker and Sheriff Pagel. And you
23 were going through that whole decision making
24 process about transferring authority, lead
25 authority, over to Calumet, right?

1 A. Yes.

2 Q. And so there was a meeting going on down there
3 and you guys were fucused on that, right?

4 A. Yes, we were in that discussion, correct.

5 Q. And you also, for a period of time, spoke with
6 Earl Avery, right?

7 A. Yes, I did.

8 Q. He -- After seeing all the congregation down
9 there, whatever; he started coming down on a four
10 wheel -- what do you call those, ATV's?

11 A. Yes, he did.

12 Q. Okay. And then, so you asked him some questions
13 about the crusher?

14 A. Yes, I did.

15 Q. And then at some point -- First, do you know how
16 long it was before you left the car crusher area
17 and retreated to the Command Post that was being
18 set up over by the entrance way to Avery Road
19 and ...

20 A. Without looking at a report, I do not recall the
21 time that I left the area of the car crusher.

22 Q. Well, I'm not sure that the report will help, but
23 I will let you take a look at it, maybe it will
24 refresh your recollection. It's page 10 and 11
25 of 22.

1 A. I did not have a time listed as to what time we
2 left that area and went back to the car -- or the
3 end of Avery Road.

4 Q. Okay. But do you think it was an hour, two
5 hours, three hours; you don't have any
6 recollection today about how long that was?

7 A. No.

8 Q. At some point you did, though, retreat to the
9 area that later a Command Post was put up there
10 right at the entrance to the business area,
11 right?

12 A. Yes.

13 Q. Okay. But before that, there was an incident
14 that occurred --

15 ATTORNEY BUTING: If you could put No. 86
16 back up for just a moment. Just at that distance is
17 fine, I think.

18 ATTORNEY KRATZ: Like this?

19 ATTORNEY BUTING: Yeah, just leave it that
20 way.

21 Q. (By Attorney Buting)~ There was an incident that
22 occurred where it turned out that there were
23 some -- a number of civilians who had somehow
24 managed to find their way onto the Avery
25 property, right?

1 A. I don't believe it was onto the Avery property;
2 it was into the car area. It was to the south of
3 the car area.

4 Q. But it turned out there was like four or five
5 people walking in, approaching from the south
6 through the gravel pit, right?

7 A. Yes.

8 Q. Is that right?

9 A. Yes.

10 Q. And it turned out that these were friends of
11 Teresa trying to help. Nothing wrong with that,
12 they were just seeing if they could help, right?

13 A. They were part of a search team, yes.

14 Q. Okay. And they actually got all the way up to
15 the southwest area there of the -- there was no
16 perimeter guard at the southwest area of the 40
17 acre lot at that time, right?

18 A. Correct, there was not.

19 Q. And when you talked to them, they were all the
20 way over by the gravel conveyor by that time,
21 correct?

22 A. Yes.

23 Q. All right. Did you put a guard in there at that
24 point, on the southwest area, or did that come
25 later?

1 A. I did not and I'm not aware of any guard that was
2 placed there. I did not put anybody up there.

3 Q. Okay. That wasn't your responsibility, somebody
4 else may have, but you had nothing to do with any
5 of that?

6 A. Correct.

7 Q. Okay. Just a couple of other things to clear up.
8 Even though the decision was made to transfer
9 lead authority at 11:45, of the overall
10 investigation, that's not when your department
11 transferred security supervision of the RAV4
12 area, is it?

13 A. No, it is not.

14 Q. In fact, that didn't take place until 2:45, when
15 Sergeant Orth was replaced by -- I'm sorry, that
16 didn't take place until 3:04 p.m., when Calumet
17 Sergeant Tyson relieved Deputy Cummings of your
18 department; is that right?

19 A. Correct, yes.

20 Q. So for the first four hours that that vehicle was
21 sitting on the Avery property, after having been
22 discovered by a member of your department -- or,
23 I'm sorry. After a member of your department
24 arrived, it was under the control, immediate
25 control of members of the Manitowoc Sheriff's

1 Department, correct?

2 A. Yes.

3 ATTORNEY BUTING: All right. Thank you.

4 THE COURT: Mr. Kratz.

5 ATTORNEY KRATZ: I just have got a few.

6 **REDIRECT EXAMINATION**

7 BY ATTORNEY KRATZ:

8 Q. I'm just going to clear up one thing, Mr.
9 Hermann, Exhibit No. 86, I'm going to zoom into
10 the area. Do you recall where the RAV4 was
11 parked as you look at this exhibit, or if I show
12 you a picture of the RAV4 as Ms Sturm took it,
13 would that assist you?

14 A. That would assist me.

15 Q. I will show you what has been received into
16 evidence as Exhibit 33. I will just find it and
17 we will be all set. Exhibit 33, you see a red
18 truck to the left, which would be to the south of
19 that vehicle; is that correct?

20 A. That is correct, yes.

21 Q. Now, I want to go back to Exhibit No. 86 and zoom
22 in again. You can see the red truck, kind of in
23 the middle of that lane; is that right?

24 A. Yes, that's where it would be parked.

25 Q. Does that refresh your recollection?

1 A. Yes.

2 Q. That the RAV4 would have been closest to the pond
3 or south of that location about where my cursor
4 for my computer is at this time; is that right?

5 A. Correct.

6 ATTORNEY KRATZ: With that clarification,
7 then, Judge, that's all I have of this witness.

8 THE COURT: Anything else from the defense?

9 ATTORNEY BUTING: None, your Honor.

10 THE COURT: All right. The witness is
11 excused.

12 Members of the jury, at this time
13 counsel and I have a matter to take up in
14 chambers, so we're going to take a break at this
15 time. I will have to let you know whether we'll
16 be resuming with additional testimony today or
17 whether you will be excused early. But we'll get
18 the message to you in the jury room as soon as we
19 know.

20 If this is our final farewell for the
21 day, I remind you, again, not to watch any news
22 media accounts of this case, or discuss it with
23 anyone in any manner. Thank you.

24 (Jury not present.).

25 THE COURT: Before we go off the record, I

1 want to reflect that the Court asked the parties for
2 a brief side bar conference. And the sole purpose
3 of that conference was to clarify what the Court had
4 previously understood to be the agreement of the
5 parties; and that is, that all of the aerial photos
6 which have been shown to the jury to date were, in
7 fact, taken after the RAV4 had been removed from the
8 property.

9 I had brought that issue up to the
10 attorneys earlier because I didn't think it had
11 been made clear to the jurors when the photos
12 were taken. And I didn't want to have them
13 looking for something that wasn't there. And I
14 believe that the parties indicated previously at
15 some point that would be placed on the record and
16 I just asked the attorneys if today was the day.
17 Anything else, counsel, before we break?

18 ATTORNEY KRATZ: No.

19 ATTORNEY BUTING: To.

20 THE COURT: I will see you in chambers.

21 (Proceedings concluded.)
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1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 8th day of October, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 5

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** FEBRUARY 16, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. We're here this morning for a continuation of
4 the trial in this matter. Will the parties state
5 their appearances for the record, please.

6 ATTORNEY KRATZ: Good morning, your Honor,
7 State appears by Calumet County District Attorney
8 Ken Kratz, Assistant Attorney General Tom Fallon,
9 Assistant District Attorney Norm Gahn, all appearing
10 as special prosecutors.

11 ATTORNEY STRANG: Good morning, as well.
12 Steven Avery is here in person; Jerome Buting and
13 Dean Strang on his behalf.

14 THE COURT: Thank you. Mr. Kratz, at this
15 time you may call the State's next witness?

16 ATTORNEY KRATZ: Thank you, Judge. The
17 State would call Julie Cramer to the stand.

18 THE CLERK: Please raise your right hand.

19 **JULIE CRAMER**, called as a witness
20 herein, having been first duly sworn, was
21 examined and testified as follows:

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

24 THE WITNESS: Julie Cramer, last name is
25 C-r-a-m-e-r.

1 ATTORNEY KRATZ: Ms Cramer, if you could be
2 so kind as to pull the microphone a little bit
3 closer, we'll probably be able to hear you a little
4 bit better. Good morning, Ms Cramer.

5 **DIRECT EXAMINATION**

6 BY ATTORNEY KRATZ:

7 Q. Tell the jury, if you would, please, what, if
8 any, involvement you were asked to have in the
9 search for Teresa Halbach.

10 A. I'm with Great Lakes Search and Rescue Canine and
11 I handle a search and rescue dog. And we were
12 asked to come and help with the search for Teresa
13 Halbach.

14 Q. How long have you been involved in search and
15 rescue?

16 A. I started training search dogs in 1989.

17 Q. Do you know how many search dogs you have
18 trained?

19 A. I'm handling, currently, my sixth and seventh
20 dog. The dog that I work now is my fourth human
21 detection or cadaver dog.

22 Q. Do you work with a specific organization?

23 A. Our organization, Great Lakes Search and Rescue,
24 is a group of volunteers. We respond to any --
25 any agency request, whether it's law enforcement,

1 fire rescue, emergency management.

2 Q. How long has that organization been together?

3 A. Great Lakes was founded in 1992 and incorporated
4 in 1993, so we have been together 14 years.

5 Q. The agencies that you assist, including law
6 enforcement; do you assist any civilians in
7 civilian type searches?

8 A. We never respond to civilian requests. If a
9 family member of a missing person calls us, we
10 refer them to their agency. We get involved with
11 civilians on search scenes, but we always assist
12 agencies.

13 Q. Let's talk about the dogs themselves. Are there
14 different kinds of dogs for different kinds of
15 searches?

16 A. Sure, within the scope of search and rescue dogs
17 there are tracking dogs, like bloodhounds. There
18 are area search dogs that pick up the scent of a
19 person in clear areas. And then there are
20 cadaver dogs or human remain detection dogs.
21 They have two different names. And we have all
22 the types of dogs within our search team.

23 Q. Do different kinds of breeds need -- Let me ask
24 you this way, is a specific kind of breed
25 selected most often for these different kinds of

1 searches?

2 A. Yes, usually you select a breed that is most
3 adaptable to that kind of search. Bloodhounds
4 are known for their ability to track people. A
5 lot of the German Shepherd breeds are used for
6 area searches. Within the human remains
7 detection, you want a dog that's very high drive
8 and able to do the work. I handle a Belgian
9 Shepherd.

10 Q. What does high drive mean?

11 A. A dog that will keep working in spite of bad
12 weather, will find the same thing over and over,
13 or if you look for very small scent sources,
14 because we also look for evidence, not just whole
15 bodies.

16 Q. Is there a certification procedure for dogs?

17 A. Yes, there is. Within our dog team we have a set
18 of credentials that the dog has to train for a
19 year and then pass testing to show that they
20 are -- are qualified to do the work. And then,
21 depending on what part of the country you live
22 in, there's various testing that you need. We
23 have met all the testing available to us at this
24 time.

25 Q. What kind of training goes into a specific kind

1 of dog; in this case, a human remains detection
2 dog?

3 A. A lot of time. A lot of hours. Brutus, the dog
4 that I worked on this case has about 6,000 -- had
5 about 6,000 logged hours at the time that he
6 responded to this case.

7 So it's a weekly, monthly, daily
8 commitment of our handlers to work with their dog
9 in the area of expertise.

10 Q. The certification -- or to obtain a
11 certification, does that require some field
12 testing; in other words, that you actually go out
13 in the field and have to demonstrate the
14 reliability of the dog?

15 A. Yes, it does. And that has to be recertified
16 annually to a set of standards. The dog has to
17 be able to perform in different environments:
18 Wilderness, human contamination. They have to
19 work set up problems set by an outside evaluator
20 and they have to show that they can reliably
21 locate the source that was set up for them, both
22 on land and water, depending on your
23 certifications.

24 Q. There is a photo in front of you; it's Exhibit
25 No. 128. Can you tell us what Exhibit 128 is.

1 A. That is a picture of my dog, Brutus, and I. This
2 was our team picture taken this past year.

3 Brutus is a 10 year old Belgian Malinois, which
4 is one of the types of Belgian Shepherds. And he
5 is certified in human remains detection, both
6 land and water.

7 Q. All right. You said that Brutus was 10 years
8 old, can you give the jury a little background on
9 Brutus.

10 A. I obtained Brutus when he was about 18 months
11 old, from a dog shelter. We do a lot of
12 recycling of dogs. I started working with him as
13 my partner then. He and I have been certified
14 within our team here in Wisconsin and in northern
15 Illinois for the last eight years.

16 Q. Now, even though he had been certified eight
17 years ago, you had mentioned that the
18 certification process, especially for Brutus, is
19 an annual event; is that right?

20 A. Yes.

21 Q. Does Brutus have a track record or history that
22 you can explain to the jury?

23 A. Brutus has an extensive track record. He seems
24 to find the detection of human remains to be
25 something easy for him, like a labrador with

1 ducks. And he has worked hard at it for all
2 these years.

3 We have been on numerous searches and
4 he's established a track record in northern
5 Illinois and Wisconsin as a dog that works in
6 blood evidence and human remains detection.

7 Q. How many human remains detection cases has Brutus
8 been asked to assist on?

9 A. He's been out -- I have been out myself on about
10 200 human remains detection cases. Brutus has
11 accompanied me -- he is my third cadaver dog --
12 on about 150 of those. We have been successful
13 in about 70 cases.

14 Q. All right. When you mean -- or when you mention
15 the word successful, what does that mean?

16 A. That there's actually been something located in
17 the area we search. Establishing credibility for
18 a dog is a little bit hard because sometimes
19 we're not in an area where there is anything. So
20 sometimes you search really hard and there is
21 nothing there.

22 But Brutus does both land and water.
23 And he's worked hard and there have been about
24 approximately between 70 and 80 documented cases
25 where he has correctly indicated at something

1 that's later been determined to be part of a case
2 or human remains.

3 Q. On the flip side of that, has Brutus ever
4 indicated human remains when they weren't there;
5 in other words, has -- I don't know how to gently
6 ask this. Has Brutus ever been wrong?

7 A. We have not found Brutus to be wrong in that we
8 were able to say that he just barked to bark.
9 There have been times where what he has found is
10 not related to a case.

11 For instance, if he's working septic
12 systems, sometimes there have been barks where we
13 have learned over the years and through training
14 that we take things that you watch for with dogs.
15 He has to -- He is alerting not to a specific
16 person, but to the source that he is trained to
17 find.

18 One time we searched an area where there
19 were more than one -- there was more than one
20 source. We did locate three different sources;
21 the agency was only looking for one.

22 Q. All right. Now, Brutus isn't the only dog that
23 you have handled in the human remain detection
24 area; is that right?

25 A. That's correct.

1 Q. And Brutus -- Do you have other dogs, or are you
2 aware of other human remain detection dogs?

3 A. Yes. On our team -- On our team, Great Lakes
4 Search and Rescue Canine, there are three
5 certified human remain detection dogs right now
6 and three dogs in training that actually hope to
7 certify this year for the first time.

8 We also affiliate with a team out in
9 northern Illinois that has four dogs that have
10 passed their testing. So, if we were called
11 today to a search, we would have access to seven
12 human remain detention dogs that we know to be
13 qualified.

14 Q. And you are familiar with not only the
15 credentials, but the track record of all those
16 dogs; is that right?

17 A. Yes.

18 Q. What's the rank for Brutus among those human
19 detection dogs?

20 A. It sounds like a bias, because he's mine, but
21 right now he is the most experienced human
22 remains detection dog that we have available to
23 us.

24 Q. All right. In front of you, also, is an exhibit,
25 Exhibit No. 129. It's a piece of paper. Can you

1 tell us what that is, please.

2 A. That was Brutus' testing; that was his land
3 cadaver evaluation testing in 2005, which would
4 have been the last evaluation test he took prior
5 to the call on this case where he did pass.

6 Q. And, again, indicating a certification as to his
7 ability to perform these human remain detection
8 functions; is that right?

9 A. Correct. And there's both an area of wilderness
10 and urban. Urban, in the human remains detection
11 dog, is an area of human contamination: down
12 buildings, interiors. So he passed both his
13 wilderness and his urban human remain detection
14 testing in 2005.

15 Q. I'm going to ask you to just explain that a
16 little bit further. What are wilderness
17 detections and is that easier to do; then, let's
18 talk about the urban. All right.

19 A. Okay. Usually, when you start to train a dog,
20 you start with wilderness because it's a natural
21 environment. And to pass that test, the dog goes
22 out and finds a person, for instance, someone who
23 would be hiking in the woods and would be
24 deceased, or in a natural environment.

25 Normally, that's done first and then you

1 proceed into urban, which is the -- if you follow
2 urban the whole way, you could actually look at,
3 like, collapsed structure dogs. But Brutus and I
4 haven't worked that far into it. We have
5 maintained in this area rather than going to the
6 national response for hurricanes and disasters
7 and that kind of thing.

8 We do urban human remain detection. It
9 means he was certified to go into a building to
10 find people, go into piles of rubble. He's
11 worked in landfill and junkyard areas that have
12 contamination and he's still able to find
13 remains.

14 Q. All right. Before we get into this case, there
15 is one area that I found interesting and perhaps
16 the jury might, is you said water detection.
17 What is that?

18 A. Dogs are very successful in helping locate
19 drowning victims. And too many times people
20 think dogs can't find in water, but they can.
21 When a subject is underneath the water, they are
22 still giving off scent and so we train dogs to be
23 placed in boats and go out. And when they smell
24 the correct scent, they give an indication, in
25 most cases a trained bark indication. And that

1 helps assist divers in locating where to dive to
2 find -- to recover the body.

3 Q. How is a human remain detection dog, or the scent
4 given off, different than, let's say a
5 bloodhound, a live scent search that we do?

6 A. The scent isn't given off any differently, but
7 the difference is when a person is alive. Your
8 scent is very specific. Each of us smells
9 differently. It's almost as individual as a
10 fingerprint would be.

11 And so a live dog, a bloodhound, is
12 given an article of clothing and they go out and
13 follow that scent as it comes off a person. When
14 a person dies, your body begins to decompose.
15 And it's that -- that chemical and gas changes in
16 the body that a human remains detection dog is
17 trained to find.

18 And that human remains smell the same.
19 We all start to smell the same after we're
20 deceased. And so a human remains detection dog
21 is trained to find that smell as opposed to dead
22 animals, dead fish, or other smells. So it's a
23 similar type of training, but they are trained on
24 different sources.

25 Q. All right. Let's move, then, to the 5th of

1 November of 2005. Was your organization asked to
2 assist in this search effort?

3 A. Yes.

4 Q. And did you respond to the -- what's now known
5 as, or what the jury now knows as the Avery
6 Salvage Yard?

7 A. Yes, we did.

8 Q. Tell the jury what happened when you got there?

9 A. We were paged at approximately 1:00 in the
10 afternoon. We arrived on scene at 2:30 and we
11 were held at the roadblock. At approximately
12 3:30, they requested a dog team trained in human
13 remains detection to come and clear an area
14 within the Avery Salvage Yard; specifically, they
15 wanted us to check a car crusher.

16 Q. There's an exhibit, Ms Cramer, that's been
17 received as Exhibit No. 86, that the jury has
18 seen before. This is a larger version of that.
19 Will this exhibit allow you or help you explain
20 what you and Brutus did on the evening of -- of
21 the fifth?

22 A. On this -- At this first time, we were asked to
23 just bring one dog team down, so we took our most
24 advanced dog, our most experienced dog, which
25 would be Brutus. And we responded what would be

1 kind of from the bottom left corner of that
2 photo. We came up the roadway to the area that
3 would be a car crusher. We would have entered
4 this way and we came in and, I believe -- is this
5 the car crusher?

6 Q. Yes.

7 A. We were asked, first, to clear that location.

8 Q. What does clear that mean?

9 A. Take the dog through and determine if he's giving
10 any trained indication of human remains. When
11 Brutus smells what he believes is human remains,
12 he barks; he gives me a bark indicator. So we
13 did check this car crusher and we did not get any
14 indicator at the car crusher.

15 Q. All right. Where did you then take Brutus?

16 A. They then asked us to proceed through the area of
17 cars that were crushed, right in here. And we
18 did do that.

19 Q. Was there any indication of human remains?

20 A. He did not give any indicators there.

21 Q. Where did you go then?

22 A. Then they asked us to clear along this ridge way
23 down there.

24 Q. I need to stop you, Ms Cramer. When you say
25 they, who are you talking about?

1 A. There were investigators with us and I don't have
2 names, without referring to a report, but several
3 law enforcement investigators that went with
4 Brutus and I. My husband, Bob, served as my
5 backup.

6 Q. When a officer asks you, generally, or in this
7 case, specifically --

8 A. Mm-hmm.

9 Q. -- were they hinting to you or giving you any
10 indication of what it is that they wanted Brutus
11 to look for?

12 A. No. No. They are very careful not to do that.
13 Again, here, at this time, on the 5th of
14 November, we had no information for -- to
15 ourselves, other than we were helping with a
16 missing person case.

17 So we first checked the car crusher
18 here. We worked up here. Then there was a line
19 of cars up along a ridge, that's actually kind of
20 a elevated ridgeway, and they asked us to clear
21 that group of cars next.

22 Q. And did you and Brutus do that?

23 A. Yes. And in that area, Brutus did give a trained
24 indication. It was a vehicle that was underneath
25 some brush and there was a blue tarp there. And

1 he did indicate. He went to this vehicle very
2 quickly. He came back to me and sat and gave his
3 trained indication, which was a bark. I asked him
4 to show me again. He went back to the same
5 vehicle, barked and returned to me again.

6 Q. You asked him to show you again; what does that
7 mean?

8 A. Sometimes when a dog is in a big area, they bark,
9 we ask them to pinpoint. He had initially
10 approached this vehicle that was -- That is the
11 vehicle that we approached.

12 Q. Let me just stop you there. I put on the screen
13 and I didn't mean to interrupt you. But Exhibit
14 No. 31 has now been placed on the screen for the
15 remainder of your testimony. Why don't you go
16 ahead and tell us what, specifically, Brutus did.

17 A. We would have been approaching from the back.
18 The manner in which we were clearing, we're
19 coming this way. And Brutus works off leash, so
20 he ranges a distance from me.

21 He ran up to a vehicle that looked like
22 that and he was at the back doorway, kind of
23 where the wheel was, where the wheel cover was.
24 He came back to me and he barked. And the law
25 enforcement back there with me asked if he was

1 alerting and I said yes. And normally, when he
2 alerts, I ask him to show me; he returns to the
3 source that he has found.

4 He then came back and he was very
5 interested in this area. I recall because I was
6 worried he was going to knock this piece of
7 plywood over. He was alerting on the side of the
8 vehicle, barking, placing his paw on the vehicle.

9 Q. Now, alerting on a vehicle, as his trained
10 handler and working with him in 150 of these
11 cases, what if anything did that tell you?

12 A. That told me that Brutus felt that he smelled
13 blood or some type of human remain at that
14 vehicle. I did ask backup, the law enforcement,
15 if they wanted us to clear the interior of the
16 vehicle. They said, no, please secure your dog.
17 So, called him to me and secured him.

18 Q. So Brutus alerted twice on this vehicle; is that
19 right?

20 A. Mm-hmm. From the back, behind the piece of
21 plywood and from the side here.

22 Q. I don't know if you are able to answer this, Ms
23 Cramer, but is there a level of confidence that
24 you can attribute to Brutus; in other words, how
25 he was barking at you, confidence as far as his

1 alert?

2 A. There is. Sometimes the dogs will -- they
3 will -- they will have a scent. For instance,
4 they might be downwind of a scent and they will
5 bark, but it will be kind of a -- you can tell
6 they are smelling something, but it means you
7 need to investigate further. Other times they
8 definitely have a source.

9 This was definitely an indicator where
10 he wanted -- What he wanted me to do, what Brutus
11 wanted me to do was open this door for him. We
12 did not do that, but in some cases, you know, he
13 would proceed into the source. So he was
14 confident that he wanted me to come right there.
15 That's as close as he felt he could get to what
16 he was smelling. So he pawed the vehicle and
17 barked.

18 Q. All right. You said law enforcement asked you to
19 secure your dog; what does that intend?

20 A. That just means put him on a leash. Whenever we
21 respond, we aren't investigators, so we do what
22 we're told. Sometimes they simply want to see
23 what a dog does in an area. Other times they
24 need to do other things.

25 In this case, I asked if they wanted me

1 to approach the vehicle; they said no, secure
2 your dog. I put him on a leash. And then we
3 were actually taken back, away from the vehicle
4 at that time.

5 Q. Your team, that is the team of cadaver dogs, or
6 human remain detection dogs, were they used later
7 that evening?

8 A. Yes, we were used, actually, for five days. We
9 were used later that evening. Brutus and I were
10 redeployed. We had other dogs deployed into the
11 salvage yard, so, yes.

12 Q. Let's talk about you and Brutus. After Brutus
13 alerted -- By the way, do you remember the
14 weather that night?

15 A. Yes, it was getting uglier and uglier. There was
16 sleet. It was windy. And as darkness approached
17 it really got -- the visibility got bad. It was
18 freezing rainy snow.

19 Q. All right. By the way, does that weather
20 condition affect Brutus' reliability or ability
21 to find the scent?

22 A. It would depend on the area. It definitely cuts
23 down the distance from which a dog can work.
24 Because, obviously, if it's snowing and rain is
25 coming down, the dog can't find something from

1 far away. One of the reasons I have selected him
2 is he is really durable. So he doesn't care if
3 it's raining or snowing; he just has to get in
4 closer to his source to be able to find it
5 because he can't smell something on the breeze
6 like he would have on a nice day.

7 Q. The question, Ms Cramer, what was the weather
8 like when Brutus first alerted on this vehicle;
9 was that a factor at all?

10 A. The first alert, it was still just threatening.
11 It worsened as the evening went on. I don't
12 recall that at the time we first worked, that it
13 had started to sleet yet. It was just looking
14 ugly.

15 Q. You said that Brutus, with your assistance, then
16 was asked to check some other areas; can you tell
17 us about that, please.

18 A. That evening?

19 Q. Yes.

20 A. The next assignment, we did work some more in
21 that particular area of the salvage yard. We did
22 work around. There was a pond right there, so we
23 checked the perimeter of the pond and we checked
24 a few rows of vehicles there. Then we were
25 returned to base. And then we began to check

1 some buildings.

2 Q. Let me go back to Exhibit No. 86 and ask if you
3 recognize the trailer in what would be the
4 northwest corner of the Avery salvage property?

5 A. This trailer?

6 Q. Yes.

7 A. Yes. We did search that building, that evening.

8 Q. Who is we?

9 A. Brutus and I.

10 Q. All right. And were there any alerts that Brutus
11 found from within the building itself?

12 A. Within that building, we did get one trained
13 alert in a bathroom area.

14 Q. Thereafter, Ms Cramer, was Brutus taken outside
15 of the trailer?

16 A. Yes. The intention had been to work the
17 perimeter outside the trailer. Brutus proceeded
18 toward -- between this garage and this trailer
19 and was extremely agitated. But there was a
20 dog -- By this time it had gotten dark and it was
21 sleeting. There was a dog barking. I leashed
22 Brutus as to not engage the dog. I wasn't aware
23 of how long the dogs chain was or what type of
24 interaction the two dogs would have.

25 Q. Specifically, Ms Cramer, behind the garage, do

1 you see a darkened area on the photo or Exhibit
2 No. 86?

3 A. Yes.

4 Q. Could you point to that with your laser pointer,
5 please. Did Brutus ever, or was he allowed to
6 ever search behind that garage, in that area?

7 A. Not that evening. The marker that I used was
8 this white tank. He was at that tank and was
9 barking. But beyond the tank, I couldn't tell
10 where the German Shepherd reached, so I called
11 him back to me and leashed him at that time.
12 Then what he did is he ran -- he was pushing to
13 go this way and he actually ran kind of back in
14 this direction, toward another dog.

15 Q. Ms Cramer, I'm going to show you what's been
16 received for identification as Exhibit No. 50,
17 5-0; do you recognize that dog?

18 A. That would be the dog, that I believe, that was
19 barking at us that night in the dark.

20 Q. And this area, what appears to be a burned out
21 area, was this dog near the location that is seen
22 in Exhibit 50?

23 A. From my recollection, that's very similar to
24 where the dog was located. If I'm orientated to
25 this picture, the white tank would be somewhere

1 right over here. That's as far as my dog and I
2 approached right then. We weren't aware how long
3 his chain was.

4 Q. So the night of the 5th of November, Brutus
5 wasn't able to check this area for human remains;
6 is that right?

7 A. That's correct.

8 Q. The last question that I have for you is the
9 training that Brutus may have had in detection of
10 burned or incinerated human remains. First of
11 all, is it possible for a human remain detection
12 dog to be trained in that field?

13 A. Yes, it is. And prior to this case, we had
14 obtained cremated remains for training purposes.
15 One of the sources used in Brutus' 2005 test was
16 cremated remains.

17 At that time we had not worked that in
18 the field, but we had used it in certification.
19 Since the time of this case, Brutus has
20 successfully located some cremated remains on
21 another case.

22 Q. All right. And so although not given an
23 opportunity to find cremated remains that
24 evening, if given the opportunity, do you have an
25 opinion as to whether Brutus would have been able

1 to do that?

2 ATTORNEY STRANG: Objection, speculation.

3 Q. (By Attorney Kratz)~ Not talking about the
4 results, but would he have been certified or
5 trained in those detections?

6 A. Yes.

7 THE COURT: Just a second. Mr. Strang.

8 ATTORNEY STRANG: Speculation.

9 THE COURT: Parties wish to argue?

10 ATTORNEY KRATZ: Judge, the dog is
11 certified in that area, that's all I'm asking.

12 ATTORNEY STRANG: And I think the testimony
13 was he wasn't then.

14 (Court reporter couldn't hear.)

15 ATTORNEY STRANG: I believe the testimony
16 was, or the implication was, that he was not
17 certified at the time.

18 THE COURT: Mr. Strang, why don't you ask
19 some additional foundation questions.

20 ATTORNEY KRATZ: Mr. Kratz, you mean?

21 THE COURT: I'm sorry, Mr. Kratz.

22 Q. (By Attorney Kratz)~ Was Brutus certified at that
23 time in the detection of cremated human remains?

24 A. There is no specific test for that. One of the
25 sources on his 2005 evaluation was cremated

1 remains. He did successfully locate that in an
2 evaluation setting.

3 Q. So, let me ask it this way: In the past, that
4 is, prior to November 5th, 2005, Brutus has been
5 successful in identifying cremated human remains;
6 is that right?

7 A. Yes.

8 ATTORNEY KRATZ: Your Honor, I will move
9 the admissions of, I think it's Exhibit 128 and 129
10 at this time, otherwise I have no further questions.
11 Thank you.

12 THE COURT: Any objection to admission of
13 the exhibits?

14 ATTORNEY STRANG: I don't.

15 THE COURT: Very well, the exhibits are
16 admitted.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY STRANG:

19 Q. Good morning, Ms Cramer.

20 A. Good morning.

21 Q. Several minutes ago, you commented that at the
22 moment you can't remember the name of law
23 enforcement officers without looking at your
24 report; when did you prepare a report of this
25 case?

1 A. I prepared a report of this case in November of
2 '05.

3 Q. And do you have that with you today?

4 A. I don't have it with me.

5 ATTORNEY STRANG: Maybe we should just
6 approach, your Honor, briefly.

7 (Sidebar taken.)

8 Q. (By Attorney Strang)~ Would you bear with me just
9 a second and we'll see if this is helpful or it
10 may be of some use in refreshing your
11 recollection. I will just leave it with you. I
12 don't know that we'll need it, so we won't mark
13 it for the moment, but you can have it if you
14 need it.

15 Now, I gather that you have got at least
16 two -- two living beings you describe as a
17 partner; one is your husband Bob?

18 A. Yes.

19 Q. And the other is Brutus?

20 A. Yes.

21 Q. And it sounds like maybe you handle some other
22 four legged partners as well?

23 A. Yes.

24 Q. Where do you and your various partners live?

25 A. We live in Cedar Grove, Wisconsin.

1 Q. Give me a rough idea, is that Sheboygan County?

2 A. Sheboygan County.

3 Q. Do you have a TV? Do you have a television?

4 A. Yes.

5 Q. You do, okay. And you are responding here on
6 November 5, 2005?

7 A. Yes.

8 Q. Do you suppose you had had your television on at
9 any time between -- let's say 10:00 on
10 November 3, 2005 and the time you came up to
11 Manitowoc County from Cedar Grove?

12 A. Actually, we were at a map and compass training
13 in Milwaukee and we were not at home at the time
14 of the call. We responded from the nature center
15 in Milwaukee County.

16 Q. Okay. That was a conference that you were
17 attending?

18 A. It was map and compass training for the canine
19 team.

20 Q. When you arrived, up in Manitowoc, or actually in
21 what I will call the Avery salvage property --

22 ATTORNEY STRANG: And I'm going to ask
23 Mr. Kratz if he would put exactly that one back up
24 on the screen, 86; is that right? Maybe we'll --
25 What I'm interested in is, I want to have the

1 crusher and the pond and the southern ridge.

2 ATTORNEY KRATZ: How's that?

3 ATTORNEY STRANG: Sure, just great.

4 Q. (By Attorney Strang)~ So by the time you got up
5 here, it's 2:30 and you are detained out at the
6 check in point back up by Highway 147 for about
7 an hour?

8 A. Yes.

9 Q. Come in, and you describe for us the route you
10 went, and I don't need to repeat that, but I did
11 want to pick up on the car under the tarp, okay?

12 A. Okay.

13 Q. Was the car under the tarp when Brutus approached
14 that particular car?

15 A. Wasn't really under a tarp. There was a blue
16 tarp near the vehicle. It had wood on it and
17 there was a series of cars in a row, but the blue
18 tarp is how I recollected where that car was.

19 Q. Sort of tented over the car?

20 A. Yes, kind of on the side.

21 Q. What do you mean by on the side?

22 A. Tented partially over that car on the front end
23 of the car.

24 Q. But Brutus didn't have to go under the tarp to
25 get to the rear passenger wheel well, for

1 example?

2 A. No, he did not.

3 Q. He did not have to go under the tarp to get to
4 the rear cargo door area?

5 A. No, he did not.

6 Q. And those were the two places where he barked?

7 A. Yes.

8 Q. And at that point, the sleet probably had not
9 started, is your recollection?

10 A. That's my recollection.

11 Q. The wind hadn't picked up yet?

12 A. No.

13 Q. And then, what you went, then, is, further --
14 South is up in this picture, okay. We all know
15 that. I'm just going to suggest that to you. So
16 to the right is west?

17 A. Yes.

18 Q. You sort of worked further west along that line
19 and then around the perimeter of the pond a
20 little bit?

21 A. Yes.

22 Q. Now, setting aside partner Bob and the other --
23 any other partners in your life. Let's talk
24 about partner Brutus for just a minute. Brutus
25 is a dog?

1 A. Yes.

2 Q. Does Brutus get some time to just be a dog?

3 A. Yes.

4 Q. Does he live with you?

5 A. Yes.

6 Q. Inside dog?

7 A. Yes.

8 Q. And does -- When Brutus is off duty and just kind
9 of hanging out being a dog, does he ever behave
10 like a lot of other dogs?

11 A. Yes.

12 Q. Does he bark?

13 A. Rarely.

14 Q. But he will sometimes bark?

15 A. Yes.

16 Q. For example, when he's telling you things, when
17 he's telling you, please, open the door for me on
18 the Toyota; he's doing that by behaviors,
19 correct?

20 A. Right.

21 Q. He hasn't mastered English?

22 A. No.

23 Q. Or any other language you speak?

24 A. No.

25 Q. So barking is one of the things he does that will

1 tell you, as his partner, what it is he wants.

2 A. Barking is the behavior we have reinforced for
3 cadaver recovery, yes.

4 Q. And you described even, for the jury, that
5 sometimes -- my word now -- you get sort of a
6 tentative bark when something is in the wind, so
7 to speak, and sometimes, again my word, more of a
8 definitive or determined sort of bark?

9 A. Yes.

10 Q. And the art of this is interpreting -- your
11 interpretation of the gradations between those
12 two sort of barks?

13 A. Yes, and proving it in evaluation.

14 Q. And will Brutus tend to bark when he's confronted
15 with, say a German Shepherd?

16 A. Yes.

17 Q. Is he interested in other dogs?

18 A. Not primarily, if the dog barks at him, he will
19 bark back.

20 Q. Mm-hmm. And does he like to sniff other dogs in
21 the way that dogs introduce themselves
22 particularly?

23 A. He's not as interested in dogs as some but, yes.

24 Q. When you are working him, he gets a break from
25 time to time?

1 A. Yes.

2 Q. Probably every hour or so?

3 A. Depending on circumstances, yes.

4 Q. He gets some sort of a reward at a break time?

5 A. Yes, water.

6 Q. Water. And by reward, I don't necessarily mean a
7 dog bone or something, but a scratch on the ear,
8 some -- some sort of reinforcement that he's
9 appreciated?

10 A. Yes.

11 Q. And that would include water, typically, for
12 Brutus?

13 A. Yes.

14 Q. Now, you -- I'm going to use a sort of a fancier
15 word than Mr. Kratz did, but you just straighten
16 me out if you don't understand me, because I sort
17 of suspect you will. In handling canines or
18 trained dogs, one of the things you are
19 interested in is false positives, true?

20 A. Yes.

21 Q. A false positive here would mean an alert that
22 the dog gives when, in fact, there is no source
23 on which the dog would have been trained to
24 alert?

25 A. That would be a false positive.

1 Q. Okay. You are also interested in false
2 negatives, true?

3 A. Yes.

4 Q. A false negative would be when, for example, as a
5 matter of a training exercise, you know, or
6 someone knows, because usually this would be done
7 blind to you, correct?

8 A. Correct.

9 Q. But someone who has set up the training exercise
10 knows that there is a scent source on which the
11 dog has been trained, correct?

12 A. Correct.

13 Q. If the dog covers the area in which the scent
14 source is hidden, but fails to give an indication
15 or alert, that would be considered a false
16 negative?

17 A. Correct.

18 Q. In other words, the dog missed it?

19 A. Yes.

20 Q. And that was a mistake, because we know it's
21 there?

22 A. Right.

23 Q. All right. What is, or now doesn't matter so
24 much, but as of November 5, 2005, what was
25 Brutus' rate of false negatives?

1 A. Brutus' rate of false negative would be very low.
2 I would have to refer to a lot of logs because
3 it's about 6,000 hours of training. He very
4 rarely has missed a source. I can't say never,
5 but very rarely.

6 Q. And, indeed, the false negative rate is not
7 something you have ever calculated for Brutus?

8 A. No.

9 Q. What was his rate of false positives in November,
10 2005?

11 A. False positives are, when you are training a
12 cadaver dog, the bigger concern because the dog
13 is trying to please a handler.

14 Q. Yes.

15 A. But Brutus worked through that about five years
16 earlier. His rate of false positive has also
17 been very low as his training progressed with his
18 age.

19 Q. So, up until about five years before this, let's
20 say 2000, roughly, Brutus had a noticeable and
21 unacceptable rate of false positives?

22 A. Not unacceptable. When you shape a behavior with
23 an animal, any animal, you are always building
24 toward that perfect behavior. And so with a dog
25 that is very intense in what they are doing, a

1 false negative -- a false positive, I'm sorry,
2 would be initially an attempt to please a
3 handler.

4 And that's what you train for. And
5 until that reaches an acceptable level, you
6 normally can't pass an evaluation. That's the
7 reason that we pass certification testing, is
8 when we feel that the dog is at a level that is
9 reasonable. And Brutus did that a long time ago,
10 at his age.

11 Q. About five years ago?

12 A. He has actually passed that for eight years;
13 seven years at the time of the case.

14 Q. All right. But you have not calculated a false
15 positive rate for him, either?

16 A. No.

17 Q. So as you sit here today, you don't know what the
18 false positive rate is, other than your sense is
19 that it's very low.

20 A. Correct.

21 Q. To be entirely fair, it's very difficult with
22 task dogs like this to know what's a false
23 positive out in the field?

24 A. That's true.

25 Q. Because sometimes you may not necessarily find

1 the scent source that the dog correctly is
2 finding?

3 A. That's correct.

4 Q. So the falseness, so to speak, may be the human
5 inability to find a scent source that the dog
6 does smell?

7 A. Right.

8 Q. Okay. Now, in that regard, these dogs have just
9 enormously sensitive capacity for smell?

10 A. Yes.

11 Q. This is called the olfactory sense, correct?

12 A. Yes.

13 Q. People like you who, for 18 years, have been
14 training dogs like this, have no idea how it is
15 that this olfactory smell -- or sense of the dog
16 gets so well developed?

17 A. That's true.

18 Q. What you know is, that it is, correct?

19 A. Yes.

20 Q. So if you are working a human remains dog, if you
21 are working a human remains dog in specific, in
22 this part of the world, let's say Wisconsin,
23 northern Illinois, you sometimes have to go back
24 and try to learn, if you can, are their native
25 American Indian burial grounds in the area, for

1 example?

2 A. Yes.

3 Q. Because the dog may pick up on human remains that
4 are 1,000, conceivably 2,000, years old, true?

5 A. That would be possible.

6 Q. You have to be aware of, maybe from the local
7 historical society, was there a 19th century
8 cemetery or family burial plot in the area that
9 I'm working, because the dog may be picking up
10 those remains?

11 A. Yes.

12 Q. You have to be aware of the locations of
13 mortuaries and, for example, whether you are
14 downstream, as a matter of the water table, from
15 the septic system of a mortuary or crematorium?

16 A. Yes.

17 Q. But all that said, what the dog really is
18 smelling is decomposing human remains, correct?

19 A. Yes.

20 Q. Human remains meaning human tissue, skin, bone,
21 muscle, ligament, that sort of thing?

22 A. We train on that and blood, bone.

23 Q. And exactly, very good, and that's exactly where
24 I was going. So we have human tissue and also
25 human bodily fluids, correct?

1 A. Yes.

2 Q. A dog will hit on decomposing blood, or should,
3 if properly trained, correct?

4 A. Yes.

5 Q. Other human bodily fluids, a dog will hit on
6 conceivably --

7 A. Yes.

8 Q. -- correct? And so what happens is, the minute
9 tissue comes off us, for whatever reason, or
10 lands on the ground, a process of decomposition
11 begins, correct?

12 A. Correct.

13 Q. This is an ordinary biochemical process?

14 A. Yes.

15 Q. There are bacteria in the human body at all times
16 and then other bacteria on the ground, or grass,
17 or in the environment, that will begin to
18 breakdown human tissue?

19 A. You are sort of speaking, though, of life scent,
20 scent coming off a live person. A human remain
21 detection dog needs a source of either blood, or
22 teeth, or hair, to give off that scent.

23 Q. Correct.

24 A. What's coming off you is live scent.

25 Q. I understand that. That's why I'm saying the

1 minute human tissue hits the ground or is no
2 longer connected to me, for whatever reason,
3 that's what I'm talking about, okay?

4 A. Okay.

5 Q. Are you with me? I'm not talking about while my
6 tissue is on me or in me? Okay?

7 A. Right.

8 Q. But let's say now that -- that I have cut myself,
9 okay? Badly enough to be dripping blood all
10 over. After I faint, and you folks have to
11 revive me, we can worry about the dog. But let's
12 say I'm doing that, and at that point the -- the
13 blood drips on the floor are going to begin to
14 decompose?

15 A. Yes.

16 Q. And we don't think of that immediately, but
17 that's biochemically what's going on at that
18 point, correct?

19 A. Yes.

20 Q. And if it were a good day or a normal day, the
21 typical day for Brutus, if you brought him into
22 this courtroom a day, or two, or a week, or a
23 year after I had bled all over the carpet,
24 assuming no one had, you know, been successful in
25 so cleaning the carpet as to remove all scent of

1 my decomposing blood, you would expect an alert?

2 A. Yes, I would.

3 Q. In training these dogs, it is not uncommon for
4 you to use, I guess what politely could be called
5 medical waste?

6 A. We obtain it from a coroner, but I think that's
7 what you are asking me.

8 Q. Yeah. That is, actual human remains?

9 A. Yes.

10 Q. Although, not necessarily an entire cadaver?

11 A. No.

12 Q. Or corpse?

13 A. No.

14 Q. Other than a sort of specialized farm in
15 Tennessee, under the control of the University of
16 Tennessee, there really isn't a training or
17 proving ground in this country where an entire
18 corpse or cadaver would be used for the purpose
19 of training dogs?

20 A. That is correct.

21 Q. There are essentially three ways to train the
22 human remains dogs that you have described for us
23 here. One would be to use something like a pig
24 carcass.

25 A. We do not do that.

1 Q. Right. And most responsible human remains dog
2 trainers no longer use a pig carcass or parts of
3 a pig, correct, in training?

4 A. Correct.

5 Q. Because although pigs are very similar to humans
6 in some ways, the fact is that there will be --
7 or a dog may be able to detect differences in
8 decomposing pork or pig carcass as opposed to
9 decomposing human remains?

10 A. That's correct.

11 Q. Another, if we go up the scale then in
12 reliability, another way to train or test or
13 prove these dogs is to use something called
14 pseudo corpse, true?

15 A. That's correct.

16 Q. That's a chemical compound that's produced
17 commercially and available for sale?

18 A. We do not use that, but I'm aware of the product.

19 Q. And the trend, you know, in your business, is
20 moving away from using pseudo corpse, or this
21 chemical product, correct?

22 A. Correct.

23 Q. But at least the idea of pseudo corpse is that
24 it's supposed to mimic very closely the
25 collection of gases that emit from decomposing

1 human tissue?

2 A. Yes.

3 Q. That's at least the theory, correct?

4 A. Mm-hmm. Yes.

5 Q. And then the most reliable and third or final

6 means of training or proving a human remains dog

7 would be to use actual human remains of some

8 kind, correct?

9 A. Correct.

10 Q. Now, these might be obtained lawfully from a

11 coroner's office.

12 A. All of our sources are obtained lawfully.

13 Q. Right. And that's why -- that's why I said that.

14 I understand you do this lawfully. And that's

15 off the table, okay. So when I say obtaining

16 human remains, it's understood you are doing this

17 lawfully.

18 A. Yes.

19 Q. Fair enough. But a coroner's office might be one

20 source.

21 A. Yes.

22 Q. Hospitals might be another source?

23 A. Not for us, but I'm sure you could.

24 Q. For other people in this business?

25 A. Mm-hmm.

1 Q. Okay. But what is obtained, then, without
2 becoming completely indelicate, is some small
3 quantity of some sort of human remain, not a
4 corpse or a cadaver?

5 A. That's correct.

6 Q. The dog, then, is alerting to, or is trained to
7 recognize the package, if you will, of gases and
8 scents that are released in the decomposition or
9 the breaking down of this sort of human tissue.

10 A. Yes.

11 Q. If we were chemists we would be talking about
12 esters and alchemies as the source of these
13 odors.

14 A. Okay.

15 Q. Is that --

16 A. You are okay. I'm not a chemist.

17 Q. Okay. I mean is that something you heard --

18 A. Yes.

19 Q. -- or ever been taught?

20 A. Yes.

21 Q. Okay. I couldn't begin to tell you which esters
22 and which alchemies, but this is the chemist's
23 name for the molecular structure of these gases
24 that are given off.

25 A. Okay. Yes.

1 Q. One of the gases that decomposing human tissue
2 gives off actually is very common, commonly
3 understood, and that's methane?

4 A. Yes.

5 Q. But that's only one of the gases, correct?

6 A. Right.

7 Q. So one of the challenges if you are going to work
8 a dog in a landfill, for example, is to train him
9 not to hit only on methane.

10 A. Correct.

11 Q. Correct, because landfills give off all kinds of
12 methane --

13 A. Correct.

14 Q. -- true? That's because any sort of living
15 tissue in either the animal or plant kingdom, as
16 it decomposes, will release methane gas?

17 A. Yes.

18 Q. You are not interested in that, per se, you are
19 interested in methane only to the extent that
20 that is part of the cocktail of odors and gases
21 that decomposing human tissue gives off?

22 A. That's correct.

23 Q. But a landfill is a challenging site --

24 A. Yes, very.

25 Q. -- for a human remains dog, for this reason?

1 A. Yes.

2 Q. Likewise, a salvage yard, have you ever worked a
3 salvage yard before?

4 A. Not this large a salvage yard, no.

5 Q. But you have been to that type of scene?

6 A. Yes.

7 Q. Okay. And one thing you know that you have in
8 salvage yards is some number of cars.

9 A. Yes.

10 Q. Some of those cars are just old and they went
11 kaput and stopped running and somebody towed them
12 off to the salvage yard?

13 A. Yes.

14 Q. But some of them, though, were wrecked or ruined
15 in car accidents?

16 A. Yes.

17 Q. Car accidents, unfortunately, sometimes cause
18 human beings to bleed?

19 A. Yes.

20 Q. Sometimes profusely bleed?

21 A. Yes.

22 Q. When the car is towed off after the wreck,
23 ordinarily no one has made any effort to clean up
24 the blood, or worse, of the human remains in that
25 wrecked car.

1 A. That's true.

2 Q. So a salvage yard, particularly one this size,
3 with over 4,000 wrecked cars, is also a
4 challenging environment for a dog?

5 A. Yes.

6 Q. You had here, as a matter of fact, a number of
7 alerts from Brutus to cars in the salvage yard?

8 A. Yes, we did.

9 Q. Most of those, I'm just going to set aside the
10 Toyota that you described, most of those human
11 beings later decided, didn't have any relevance
12 to the investigation, correct?

13 A. That would be up to the investigators.

14 Q. Right. I mean, your job was simply to say,
15 Brutus is barking, he is alerting on the trunk of
16 this car, or the backseat of this other car.

17 A. That's right.

18 Q. The investigators take it from there?

19 A. Yes.

20 Q. But it would not surprise you to learn that
21 investigators, then, may have decided there is
22 another source of human remains here and it means
23 nothing?

24 A. Yes.

25 Q. This dog, Brutus, never was scented, if you will,

1 for Teresa Halbach?

2 A. No, you don't scent human remains detection dogs.

3 Q. Right. And this "scent" is normally a noun, not
4 a verb, as we just used it. Let's explain that a
5 little bit. By scenting a dog, what that means,
6 in your special field, is if we have a search and
7 rescue dog, a bloodhound typically, but not
8 necessarily exclusively, could be a beagle or
9 something, correct?

10 A. Correct.

11 Q. What we would do is give an article of clothing;
12 a shoe, a shirt, something that's known to belong
13 to the missing person?

14 A. Yes.

15 Q. Let the dog smell that or get the scent of that
16 item of clothing, correct?

17 A. Yes.

18 Q. And then ask the dog, on leash or off, whether he
19 can find the scent?

20 A. That's correct.

21 Q. And then to follow the scent.

22 A. Yes.

23 Q. So it's not -- So for those dogs, it's not so
24 much an alert process as it is being trained in
25 the process of leading a handler along the path

1 of the scent, if the scent is detected?

2 A. Yes.

3 Q. Brutus was not given Teresa Halbach's scent?

4 A. No.

5 Q. Because you don't do that with the human remains
6 dog?

7 A. That's correct.

8 Q. Brutus, then, to the extent he was alerting on
9 the Toyota, could not tell you whether he was
10 smelling the remains of Teresa Halbach?

11 A. That's correct.

12 Q. He could not tell you whose remains, obviously,
13 he might have been smelling?

14 A. That's right.

15 Q. He could not tell you whether it was human bodily
16 fluid or human tissue that he was smelling?

17 A. That's right.

18 Q. He could not tell you whether the person who left
19 the body tissue or the bodily fluid was alive or
20 dead?

21 A. That's right.

22 Q. What he could tell you was that someone has left
23 some sort of human remains here?

24 A. That's correct.

25 Q. In the example I gave of my cutting my hand and

1 bleeding all over the floor, presumably I could
2 be rendered first-aid, or I could put a little
3 bandage on, or something, and I would go on just
4 fine.

5 A. That's correct.

6 Q. Some people might not be happy that I'm going on
7 just fine, but I would go on just fine, right?

8 A. Right.

9 Q. But, nonetheless, Brutus would alert on human
10 remains on the floor?

11 A. Yes.

12 Q. So the label of a cadaver dog is one that you
13 rightly tend to shy away from a little bit and
14 prefer human remains detection dog?

15 A. I prefer it, because sometimes we're looking for
16 evidence not corpses.

17 Q. Not corpses, exactly. And in any event, unless
18 you find a corpse, there is no way to know that
19 an alert means a corpse?

20 A. You would normally look for what source the dog
21 was hitting, whether it was a corpse or material.

22 Q. Tissue or fluid.

23 A. Mm-hmm.

24 Q. And by fluid, let's -- let's get specific about
25 that. Menstrual blood?

1 A. Yes.

2 Q. Semen?

3 A. Yes.

4 Q. How about saliva?

5 A. Yes.

6 Q. By tissue, let's get a little more specific;

7 skin?

8 A. Yes, the only -- the only thing I guess I want to

9 say is, in a way you seem to cross over into live

10 scent. You know, I'm sloughing skin off.

11 Q. Right.

12 A. My cadaver dog isn't going to hit on that. There

13 has to be a piece of a finger, a pool of blood.

14 So, that's like with saliva, if somebody talks

15 and spits saliva, my dog isn't going to hit on

16 it. Now, if there was a large quantity of saliva

17 that was allowed to sit long enough, I may or may

18 not get a hit. I haven't actually tested that.

19 Q. But -- But you might.

20 A. Correct.

21 Q. Yeah. And it's a very good point. So there is a

22 volume issue here?

23 A. Yeah. You can't just -- Live scent would be skin

24 sloughing off. That would be something that a

25 bloodhound would be much more interested in than

1 a cadaver dog.

2 Q. Or -- Or even if he we don't think of it as live,
3 I mean, sloughed off skin cells aren't dead?

4 A. Plus, they stop. There's only a life span on
5 that. If you would have -- That's why a tracking
6 dog needs to be brought on scene, they like to
7 say within 72 hours, because at some point that
8 stops being an effective source for that dog.

9 But if there is an actual tooth, or a
10 finger, or a pool of blood, that, then, is going
11 to give off a source -- a scent that the dog will
12 hit on.

13 Q. And lasts much longer --

14 A. Yes.

15 Q. -- conceivably?

16 A. Yes.

17 Q. Right down to the example we started with, you
18 know, the native American who died a thousand
19 years ago?

20 A. Correct.

21 Q. But the -- What I guess the point is, again, as
22 you said, a tooth; it could be bone material; it
23 could be skin, if in sufficient quantity; could
24 be muscle tissue, correct?

25 A. That's correct.

1 Q. The dog will alert to all of these things,
2 regardless of whether the person who left it is
3 alive or dead?

4 A. That's correct.

5 Q. Did I understand you correctly -- and we're
6 probably -- probably done with Exhibit 86 -- I
7 don't know, let's find out if we need another
8 photo. You -- You were shown on direct
9 examination a photo that had a trailer down in
10 sort of a diagonal opposite corner of this
11 property?

12 A. Yes.

13 Q. If we call that Steven Avery's trailer, is that
14 something you recognize?

15 A. I worked in that trailer, yes.

16 Q. And you know it -- you know it to have been the
17 home of Steven Avery?

18 A. I do now.

19 Q. Okay.

20 A. I did not at the time I searched it.

21 Q. Fair enough. But you do now. Did you work
22 Brutus through that entire trailer?

23 A. Yes. We entered in through the door and worked
24 the interior.

25 Q. From stem to stern?

1 A. As much as investigators asked me to search, yes.

2 Q. Well, and was that from one end to the other?

3 A. Yes.

4 Q. The one alert that you got was in the bathroom?

5 A. Yes.

6 Q. The bathroom of a home is a place where one would
7 not uncommonly find human bodily fluid?

8 A. That's true.

9 Q. Traces of urine, for example.

10 A. Yes.

11 Q. Not -- If there's a man living and using the
12 bathroom, one would not uncommonly find traces of
13 blood, at least if he's someone who shaves in the
14 morning?

15 A. That's true.

16 Q. So what the source, again, of the alert was, you
17 are not able to say?

18 A. No.

19 Q. Neither was Brutus?

20 A. No.

21 Q. Did you work to the master bedroom, the bedroom
22 at the far --

23 A. Yes.

24 Q. -- upper left here?

25 A. Yes.

1 Q. No alerts in the master bedroom?

2 A. No.

3 Q. Did you have a chance to work Brutus in the --

4 inside the attached -- or the detached garage,

5 that's about square in the middle of the portion

6 of Exhibit 86 that we have on the screen?

7 A. No, we did not. We only worked as far as the

8 tank where he was barking and then he skirted

9 around to another area.

10 Q. Meaning he ran up along to the east here, to the

11 left?

12 A. Yes, he ended up proceeding behind the next

13 building.

14 Q. Where did he go?

15 A. There was an area of four burn barrels which he

16 barked at.

17 Q. Oh. This is what you now know to be the Janda

18 trailer?

19 A. I don't know whose trailer that is.

20 Q. But it was a blue trailer --

21 A. Yes.

22 Q. -- just east of Mr. Avery's garage?

23 A. Yes.

24 Q. And there were four burn barrels in the back?

25 A. Yes.

1 Q. He alerted on those?

2 A. Yes.

3 Q. Where did he go from there?

4 A. There was another dog barking. The weather at
5 this point was very bad so they asked me to
6 secure him. And we then returned to base.

7 Q. And the other dog was over by this blue trailer?

8 A. Yes. And we exited the property off site of this
9 picture. We came out to the road.

10 Q. Were you actually handling dogs before 1989?

11 A. Not in the search and rescue capacity.

12 Q. Understood, but were you working with trained
13 dogs, guide dogs --

14 A. Yes.

15 Q. -- or other human assistance dogs?

16 A. Yes.

17 Q. Okay. Dogs have been a passion of yours for a
18 long time?

19 A. Yes.

20 Q. You have worked with hundreds of dogs?

21 A. Yes.

22 Q. Maybe thousands?

23 A. Maybe.

24 Q. Those have included all kinds of shepherds?

25 A. All breeds.

1 Q. And specifically a range of shepherds, correct?

2 A. Specifically shepherds, yes.

3 Q. Okay. A Belgian Shepherd here; you have worked
4 with German Shepherds?

5 A. Yes.

6 Q. And if someone asked you, do you think you could
7 have approached and handled the dog behind
8 Mr. Avery's garage?

9 A. I didn't have enough contact to know that. The
10 weather really was a factor.

11 Q. Sure.

12 A. And I -- I was concerned about my working partner
13 at that time. The dog was sounding off, whether
14 that was aggressive or not, we didn't really stop
15 to make that determination.

16 Q. Fair enough. So I guess the answer is maybe,
17 maybe not?

18 A. We could not have worked that area without
19 removing that dog from the site. I won't work my
20 dog with somebody else's dog chained in the area.
21 So we couldn't work the area, but I could make a
22 determination on whether I could have handled
23 that dog or not.

24 Q. Okay. Have you met dogs you couldn't handle?

25 A. Oh, yeah.

1 Q. Okay.

2 ATTORNEY STRANG: That's all I have. Thank
3 you. Thank you, very much.

4 THE COURT: Mr. Kratz, any redirect?

5 ATTORNEY KRATZ: If I could have just a
6 moment, Judge.

7 **REDIRECT EXAMINATION**

8 BY ATTORNEY KRATZ:

9 Q. Mr. Strang asked about false positives and false
10 negatives, have you had an experience,
11 specifically with Brutus, where Brutus alerted,
12 found a scent that was originally believed to
13 have been a false positive that actually turned
14 out to be an accurate reflection of some
15 evidence?

16 A. We had two, both in 2005, that come to mind. In
17 one case we were called to a drowning situation
18 where it was believed a driver and his vehicle --
19 the driver had Alzheimer's -- had entered a canal
20 in northern Illinois. Brutus gave a very
21 definitive alert in an area that would have been
22 logical where the vehicle could have been gone
23 in. Divers looked without success for two days.
24 We cleared scene.

25 I was very concerned about that as a

1 false positive. Bothered me a lot in training.
2 Some weeks went by and we received a call from
3 the agency that as a barge had gone through
4 taking corn in this canal, they had struck
5 something and in finding out, it was the vehicle.
6 It had obviously gone in with enough force it was
7 silted into the river. They were able pull to
8 the vehicle out and the driver was within the
9 vehicle.

10 That was an example of what looked to be
11 a false positive that was true. We also had an
12 evidence kind of case, same kind of thing.

13 Q. Let me just -- My point is that Brutus has been
14 found --

15 A. Yes.

16 Q. -- before, to be accurate, when even humans --

17 A. When we thought --

18 Q. -- couldn't find what --

19 A. -- he was wrong, yes.

20 ATTORNEY KRATZ: That's all I have of Ms
21 Cramer, Judge.

22 ATTORNEY STRANG: I'm just taking one last
23 look at the report. I probably will have no further
24 questions, but if I could just have a moment or two.

25 THE COURT: Go ahead.

1 RECROSS-EXAMINATION

2 BY ATTORNEY STRANG:

3 Q. The area of the four burn barrels, Brutus
4 actually alerted on two of the barrels?

5 ATTORNEY KRATZ: Objection, beyond the
6 scope of redirect.

7 ATTORNEY STRANG: It is, I'm just getting a
8 chance to look at the report. It is beyond the
9 scope of redirect.

10 THE COURT: All right. How many questions
11 are you looking to ask?

12 ATTORNEY STRANG: I think two.

13 ATTORNEY KRATZ: That's fine, Judge, he
14 can.

15 THE COURT: Very well.

16 Q. (By Attorney Strang)~ I have asked one already;
17 he alerted on two of the barrels?

18 A. Yes.

19 Q. And the alerts go with extreme animation and
20 excitement?

21 A. Yes.

22 ATTORNEY STRANG: That's all I have.
23 Thanks.

24 ATTORNEY KRATZ: Nothing further. Thank
25 you.

1 THE COURT: Very well, the witness is
2 excused.

3 THE WITNESS: Thank you.

4 ATTORNEY KRATZ: Can we approach, just
5 briefly, Judge?

6 THE COURT: Sure.

7 (Side bar taken.)

8 THE COURT: Members of the jury, we're
9 going to get started on the next witness, but if you
10 want to stand up and stretch a bit now, you can,
11 that's fine.

12 All right. At this time, Mr. Kratz, you
13 may call your next witness.

14 ATTORNEY KRATZ: State will call Tom
15 Fassbender, your Honor.

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

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

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

23 **DIRECT EXAMINATION**

24 BY ATTORNEY KRATZ:

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

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

3 Q. How long have you been a law enforcement
4 official?

5 A. Almost 27 years.

6 Q. What is the Department of Justice?

7 A. The Wisconsin Department of Justice run under the
8 auspices of the Attorney General in Wisconsin.

9 Q. There's a law enforcement branch to that division
10 or department; is that right?

11 A. Yes, that's the Division of Criminal
12 Investigation, DCI.

13 Q. Do you have a specific area of authority with
14 DCI?

15 A. Yes, I'm currently with Special Assignments
16 Bureau within DCI. DCI is broken up into several
17 different areas and bureaus, and that is where I
18 am. And the primary purpose of Special
19 Assignments Bureau, amongst other things, would
20 be homicide investigations or death
21 investigations.

22 Q. And why does DCI typically assist, or why are
23 they assigned homicide investigations?

24 A. Due to the complexity of those types of
25 investigations at times, and with the size of

1 them, and a lot of times you have counties that
2 maybe have one detective or two detectives, and
3 DCI is there to assist in those instances.

4 Q. Is it common for DCI to take over an entire case
5 or does DCI typically help other agencies?

6 A. DCI typically assists.

7 Q. I'm going to direct your attention, Agent
8 Fassbender, to November 5th of 2005, ask if the
9 Division of Criminal Investigation received a
10 call on that day to assist in an investigation?

11 A. Yes, we did.

12 Q. Could you describe for the jury how that
13 happened.

14 A. A sheriff from Calumet County, Jerry Pagel,
15 contacted DCI, I believe the administrator for
16 DCI, and asked for our assistance at that time,
17 which was still a missing persons investigation
18 being conducted.

19 Q. Did you personally respond?

20 A. Yes, I did.

21 Q. And where did you go and what time did you get
22 there?

23 A. I received a call at home. I probably departed
24 that area, or my residence, about 1:00. Picked
25 up another Special Agent and headed to the Avery

1 Salvage Yard, the Avery properties, and probably
2 got there just a little after 2:00 p.m. that day.

3 Q. Sometime at or about 2:00 p.m., were you involved
4 in, that is, did you participate in discussions
5 regarding who was going to lead up or be in
6 charge of this investigation?

7 A. Yes.

8 Q. And could you recount those discussions for the
9 jury, please.

10 A. Upon arrival at that scene, I met with -- I know
11 for sure, Jerry Pagel, the Sheriff of Calumet
12 County. And I was advised that the Manitowoc
13 County Sheriff's Department had asked the Calumet
14 County Sheriff's Department to take the lead role
15 in the investigation.

16 And let me advise that the investigation
17 pertained to Teresa Halbach. And the reason we
18 were at the Avery Salvage Yard was that her
19 vehicle had been found on that property.

20 Q. Did you, on behalf of the Department of Justice,
21 agree to assist and participate in this
22 investigation?

23 A. Yes.

24 Q. As the investigation unfolded, could you identify
25 for the jury other law enforcement officers --

1 excuse me -- other law enforcement agencies that
2 were involved in this investigation?

3 A. Of course Calumet County Sheriff's Department,
4 DCI, Manitowoc County Sheriff's Department,
5 Manitowoc Police Department, Two Rivers Police
6 Department. Some smaller police departments in
7 Calumet County, New Holstein, I think Brillion, I
8 think Kiel. Winnebago County Sheriff's
9 Department with a dive team. Brown County
10 Sheriff's Department assisted in a capacity. I'm
11 not real sure what capacity that was at this
12 moment. FBI has assisted with technical
13 assistance. Marinette Sheriff's Department.

14 Q. That's just the law enforcement agencies?

15 A. Yes.

16 Q. Were there other support agencies that assisted?

17 A. Yes.

18 Q. Name some of those, if you can recall.

19 A. Various fire departments, volunteer fire
20 departments from both Calumet County and
21 Manitowoc County, Great Lakes Search and Rescue,
22 would be an example of who we just heard from.

23 Wrecker services, implement dealerships,
24 citizen search groups, pilots. I -- I imagine I
25 could go on for a little while yet, but I can't

1 think of them.

2 Q. I guess my question, Agent Fassbender, in the
3 over 25 years of experience that you have had,
4 especially in homicide investigations; have you
5 been involved in an investigation with this many
6 agencies and this many resources being assigned
7 to one case?

8 A. No, sir, I have not.

9 Q. You mentioned the Manitowoc County Sheriff's
10 Department's role. As lead investigator, or as
11 one of the two individuals assigning
12 responsibility to allocate all of these resources
13 that we're talking about, could you describe what
14 Manitowoc's role was contemplated to be.

15 A. Yes, it was decided that they would assist in the
16 investigation in a support capacity or an
17 assistance capacity. It was their county. They
18 knew the resources. They had the contacts for
19 such things as wrecker services, implement
20 dealerships, if we needed equipment, and various
21 other things that would have come up, many other
22 things that probably came up during this
23 investigation on scene.

24 Q. Were you able, and have you been able, to attach
25 a number, that is, how many different

1 individuals, both the law enforcement and support
2 services, that were involved in this
3 investigation from start until today?

4 A. A total number?

5 Q. Are you able to do that or not?

6 A. I can get close day by day, but I have never
7 attached a total number, no.

8 Q. The allocation of the resources, the assignment,
9 your decision to assign specific officers to
10 specific duties, how were those decisions made?

11 A. Basically, it was a group decision, as team work.
12 And we had two lead investigators on the case,
13 so-called, myself and Investigator Mark Wiegert
14 from the Calumet County Sheriff's Department.
15 The sheriff was out there. We had other
16 detectives and investigators out there. And what
17 commonly would happen is, like when I got there
18 initially on Saturday, there was a briefing.

19 And I was briefed as to what was
20 happening, what had happened. We would get
21 together and make decisions on where we want to
22 go and what we want to do. After activities are
23 completed, for example, like at the end of the
24 day, we would have a debriefing session where we
25 would meet and we would talk to the

1 investigators, searchers, interviewers,
2 neighborhood canvassers, and try and get a report
3 back on the information that they may have come
4 across or evidence that they may have found. And
5 we digest that, and as a group or as a team, we
6 try and decide what do we want to do next, where
7 we want to go with this.

8 Q. The resources that were available to you, again,
9 whether it's law enforcement, for now let's limit
10 it to law enforcement resources. Did officers
11 that were presented to you, and law enforcement
12 assets that were presented to you, have different
13 levels or degrees of experience in various law
14 enforcement areas?

15 A. Certainly, yes.

16 Q. And was that factored into your decision on who
17 to assign to what task?

18 A. Most definitely.

19 Q. Can you give some examples.

20 A. Obvious example is, if we were going to search
21 for evidence, the location of evidence, which may
22 involve the collection and processing of
23 evidence, I want someone that's trained and
24 experienced in that area to do those searches.

25 In this instance, we had the Crime Lab

1 there on and off at this scene. We utilized them
2 to go to some various areas, or spots where
3 evidence was found, because obviously their
4 people are trained in that area.

5 Q. Are there other -- or are you familiar, as a law
6 enforcement officer and homicide detective, are
7 you familiar with evidence technicians, or law
8 enforcement officers that have that specialized
9 training also?

10 A. Certainly, with most departments, counties,
11 police departments, they have individual officers
12 on their department that have received additional
13 and specialized training in the collection,
14 processing, preservation, etcetera, of evidence.
15 And those are the types of people that -- or
16 officers, excuse me, that we're going to want
17 doing that task.

18 Q. What kind of a case did this start out as?

19 A. Missing person case.

20 Q. And in those very early stages of this
21 investigation, what was your primary goal in the
22 missing persons investigation? Do you understand
23 my question?

24 A. I imagine the primary goal in a missing persons
25 investigation would be to find the missing

1 person.

2 Q. Was that your goal in this case?

3 A. Yes.

4 Q. Now, at some time -- and we're going to hear
5 about the first 11 days or so, in fact, we're
6 going to hear about 15 months worth of
7 investigation, but for the first day, the first
8 hours of this investigation, was your goal
9 different than it became throughout the rest of
10 the week and, in fact, for the last 15 months?

11 A. Yes.

12 Q. How was it different?

13 A. In the fact that we were searching for, and
14 hoping to find, Teresa Halbach alive.

15 Q. Agent Fassbender, decisions that you made in this
16 case, would those decisions, and were those
17 decisions in this case, different when this was a
18 missing persons or searching for Teresa alive and
19 did that change sometime over time? That's a
20 really awkward way of asking that, but are there
21 different decisions that are made when you are
22 looking for a live body, rather than being
23 involved in a criminal ongoing investigation?

24 A. It depends on when you're talking and when I got
25 there, or as opposed to Thursday, when she was

1 first reported missing, there's differences.
2 When I got there, even though we were still in a
3 missing persons capacity, I'm taking on a little
4 different light to this and I'm coming in
5 thinking that something bad had happened.

6 And we do that because we don't -- we
7 don't want to miss anything. We may get one
8 chance at this, and it's easier to prove or
9 disprove that maybe something bad happened than
10 to go the other way and not have the evidence or
11 the scene to work with.

12 Q. I understand. Let's talk kind of globally or big
13 picture about a search plan. First of all, were
14 you one of two law enforcement officials that
15 were directing search efforts in this case?

16 A. Yes.

17 Q. Did you have an overall plan, or an overall
18 search plan for not just the first day, but the
19 first week of this investigation?

20 A. Generally, I think you can have an outline or an
21 overall search plan to start with, but as I
22 mentioned before, it's fluid. It may change
23 depending on evidence found, or information from
24 interviews brought back, or neighborhood
25 canvasses, stuff like that. It needs to remain

1 fluid, you can't have that lock and load
2 mentality and say this is what we're going to do.
3 It may change.

4 Q. Let's talk specifically, then, about your search
5 plan the first day, or even the first hours.
6 What was your first search plan, or your first
7 plan of attack, just after search warrants were
8 obtained from, I think it was Judge Fox in this
9 case?

10 A. Well, number 1, in any investigation, a homicide
11 or death investigation, I should say, is life is
12 first and foremost, always. Check for life, find
13 life, and treat it, even at the cost of maybe
14 losing evidence. So, in this case it was no
15 different. We needed to find, to see if Teresa
16 is on that property and if she's alive.

17 So we organize a sweep. Law enforcement
18 officers, we call it a sweep, but basically what
19 they are doing is sweeping through the buildings
20 on the property to see if Teresa is in any of the
21 buildings. Along with that is also a concern for
22 officer or other people's safety. That's a
23 secondary concern on a sweep, is there anyone
24 else on the property that could be a concern for
25 law enforcement safety. So the sweeps were

1 organized with the law enforcement officers we
2 had present.

3 Q. Is that the first thing that law enforcement does
4 is sweep through these -- talking about the
5 residences now?

6 A. Most always, yes, that's the first thing we do.

7 Q. And what kind of distinction is a sweep versus a
8 search of a property?

9 A. Well, this property was a little different. On a
10 normal death scene, you are sweeping there to
11 check for life and for safety. And maybe you
12 have to bring EMT's in, and other people, a
13 coroner. You can't bring them into that scene
14 unless you know that scene is secure and safe.
15 The same thing here, essentially, to make sure,
16 to the best of our ability, a scene that size,
17 that it's safe and to determine why or if --
18 check to see if we could find Teresa.

19 Q. Was that done in this case?

20 A. Yes.

21 Q. Were all of the residences on the Avery property
22 swept?

23 A. Yes.

24 Q. Were all of the business buildings and other
25 outbuildings swept?

1 A. Yes, sir.

2 Q. After that sweep was performed, and we may get
3 into this after the break, but my last question
4 at least for this part of your examination is,
5 did your search efforts then become more directed
6 or more detailed?

7 A. I'm going to add to my answer here. We had the
8 sweeps, and as we heard already, the dogs were
9 brought in, and a dog was utilized specifically
10 in certain areas, the car crusher, the line of
11 cars along the south berm, some of the
12 residences, and the buildings.

13 Not just one dog, I believe nine dogs
14 were brought in. And then they were also
15 utilized to sweep the property, the vehicles, the
16 salvage yard property, 4,000 plus vehicles. They
17 were working and they were accompanied with law
18 enforcement officers at this time. And then,
19 yes, then we started talking about where are we
20 going to go from here. Are we going to get more
21 detailed or what are we going to do.

22 ATTORNEY KRATZ: With that, then, Judge, I
23 think this is a good time for our morning break.

24 THE COURT: All right. The Court agrees.
25 Members of the jury, at this time we'll take our

1 morning break. I remind you, again, not to discuss
2 the case in any manner during the break. And we'll
3 resume in about 15 minutes.

4 (Jury not present.)

5 Before breaking, the record should
6 request (sic) that the parties requested two
7 brief side bars this morning. The first one was
8 a defense inquiry as to whether or not the State
9 had a copy of Julie Cramer's report, which it
10 turned out they did and that was used.

11 The second more brief side bar was
12 Mr. Kratz asking the Court if we should hold a
13 break or begin Mr. Fassbender's testimony, and we
14 did. Does that reflect counsel's understanding
15 of what transpired?

16 ATTORNEY STRANG: It does. And just so
17 it's clear, we have -- the defense has a copy of
18 that report. I just didn't happen to put it in my
19 file so it's not that it hadn't been turned over, it
20 was.

21 THE COURT: All right. We'll resume with
22 Mr. Fassbender's testimony in 15 minutes.

23 (Recess taken.)

24 (Jury present.)

25 THE COURT: Okay. Mr. Kratz, you may

1 resume your questioning of the witness.

2 ATTORNEY KRATZ: Thank you.

3 **DIRECT EXAMINATION CONTD.**

4 BY ATTORNEY KRATZ:

5 Q. Agent Fassbender, you had previously told us
6 about a search plan or methodology that first
7 includes a sweep securing the area, looking for a
8 live body. And that was, in fact, performed in
9 this case; is that correct?

10 A. That's correct.

11 Q. In your search methodology, after that is
12 completed, that is, after that sweep is
13 completed, what's the next level of searching
14 that you had performed on the 5th?

15 A. At this point, we're probably back at the command
16 center taking in information and briefing each
17 other. I know we still had dogs searching the
18 salvage yard, perimeters of buildings, at that
19 time.

20 The Wisconsin State Crime Laboratory
21 from Madison, Wisconsin, had been called earlier
22 on and had arrived at the scene, somewhere around
23 4:00 in the afternoon probably. And they were --
24 although they went to some different areas on the
25 property there, their primary purpose was to

1 process and take care of the RAV 4 that was found
2 on the property, Teresa's SUV.

3 While that was going on, a decision was
4 made to start the search of the buildings,
5 residences, and a team, a evidence location
6 collection processing team, was put together to
7 start that process. With the individuals we had
8 -- or the personnel we had on site, we were able
9 to come up with one team of four individuals to
10 start that process. And they started at Steven
11 Avery's trailer down at the end of the driveway
12 to the west, and they started that about 7:30.

13 Q. Before we get into individual searches, Agent,
14 I'm wondering if we can talk, at least in more
15 general terms, as to your search plan, or your
16 search methodology, not necessarily where
17 specific places were searched, but if there was,
18 in fact, a generalized search plan?

19 A. Well, certainly. And in death investigations
20 normal scenes, generally, like I said before, we
21 determine if there's life and if there's a
22 deceased or a corpse on the scene.

23 After that, you secure the scene and
24 limit, generally, the number of people that go
25 into that scene. Secure evidence, look for

1 evidence, possible witnesses at the scene that
2 you may want to speak to or detain immediately,
3 so you don't lose them, and get a search warrant.

4 And in this case, we basically did those
5 things, maybe a little different. We got the
6 search warrant. And, again, generally, in a lot
7 of these scenes, you don't necessarily know
8 exactly what you're looking for, maybe on the
9 first search.

10 This scene is definitely that way. We
11 don't even have a body, so to speak. So we're
12 not real sure, exactly, what we're looking for.
13 It behooves us to send investigators into these
14 searches because they are familiar with these
15 types of investigations a lot times and they may
16 have a better knowledge about things that might
17 be evidentiary in value.

18 I think about an investigation I did not
19 too long ago where we did the same thing. And
20 this death investigation there was a corpse on
21 the scene, and we got a search warrant, we went
22 in and did a search of this building. It was a
23 trailer, very similar to the ones that we were
24 dealing with on this scene. And the deceased --

25 ATTORNEY BUTING: Your Honor, I'm going to

1 object if we're going to be talking about a
2 different case. I think we need to focus on this
3 case rather than start describing what searches do
4 or don't occur in other cases.

5 THE COURT: Mr. Kratz.

6 ATTORNEY KRATZ: Judge, certainly the
7 methodology, I expect there's going to be questions
8 by defense counsel as to why this took so long. If
9 they aren't going to question, then I will stop
10 right now with this line. If there is going to be
11 cross about that, I think the jury is entitled to
12 know.

13 THE COURT: Because the question relates to
14 why the witness did what he did, I'm going to allow
15 a little latitude and allow him to answer the
16 question.

17 ATTORNEY KRATZ: Thank you, Judge.

18 Q. (By Attorney Kratz)~ Go ahead.

19 A. I'm just using this as an example, when you have
20 a piece of evidence. Well, the body is a piece
21 of evidence, it gets sent to autopsy. We get a
22 search warrant, we hold the scene, we conduct a
23 search, not necessarily knowing what we are
24 looking for for sure. We get intelligence back.
25 And this example, we get information back from

1 the pathologist.

2 And in this case the pathologist told us
3 to look -- it was a bludgeoning death and a
4 stabbing death -- to look for this type of knife,
5 with this many serrations and a crowbar that was
6 used, this type of information that they can find
7 out. And thus we ended up holding this scene
8 three or four days because we're getting
9 information back. We like to do that because it
10 can assist in our search. It can narrow our
11 scope of search. So a lot of times what I'm
12 getting at is a search may start out fairly broad
13 and maybe not knowing exactly what we're looking
14 for, but it narrows as we move along. Hopefully
15 get more intelligence and information.

16 Q. Is there a term that goes along with this kind of
17 a search methodology?

18 A. You could call it funneling, a funnel approach.

19 Q. Exhibit 86, which is on the board, do you
20 recognize that scene?

21 A. Yes, I do. That's the Avery Salvage Yard, along
22 with some residences.

23 Q. Was one of the residences on the salvage yard
24 that residence of Steven Avery?

25 A. Yes, 12932 Avery Road.

1 Q. Do you know what township that's located in?
2 A. Gibson?
3 Q. Gibson?
4 A. Gibson Township.
5 Q. Do you know what county that's in?
6 A. Manitowoc.
7 Q. And State of Wisconsin?
8 A. Yes.
9 Q. At the early stage of this proceeding, that is on
10 the fifth of November, when you arrived on the
11 scene, and when you were directing the searches;
12 was Mr. Avery, the defendant, Steven Avery, a
13 person of interest in this investigation?
14 A. When I arrived on scene on Saturday?
15 Q. Yes, and throughout the rest of the 5th?
16 A. Yes.
17 Q. Why?
18 A. Because of a lot of things, information that had
19 been developed. First and foremost, an
20 investigation like this, when I go in, who last
21 saw the person. That's just common sense, who
22 last saw the person. So that was the primary
23 reason that he would have been a person of
24 interest.
25 Q. All right. You talked about the specialization

1 that some law enforcement officers needed. I
2 think you mentioned both evidence detection or
3 collection, or processing. After that occurs, is
4 it common for evidence to be sent elsewhere for
5 further examination?

6 A. Yes.

7 Q. What kinds of places is evidence sent for further
8 examination?

9 A. Any number of places. The primary place that we
10 would send evidence to is the Wisconsin State
11 Crime Laboratory in Wisconsin, either Madison,
12 Milwaukee, or Wausau. The FBI laboratories could
13 be used, private laboratories could be used,
14 specialists like forensic anthropologists could
15 be used.

16 Q. Agent Fassbender, you used the term that I have
17 been asked to have you further explain, and
18 that's a search warrant. Tell the jurors or
19 those of them that may not know, what is a search
20 warrant?

21 A. A search warrant is, essentially, an order signed
22 by a judge, directing law enforcement to search,
23 essentially, a person, a place, or a thing, for
24 items of property, or items, and then forthwith
25 bring those items back before the court. On a

1 search warrant, you have five days to execute the
2 search warrant from the date it was delivered,
3 and returned.

4 And after the search warrant is
5 executed, you have 48 hours, normally it's looked
6 at as business hours, to return that search
7 warrant to said court with an inventory of items
8 that were seized as evidence.

9 Q. And you mentioned in this case that a search
10 warrant had been obtained, in fact, more than
11 one?

12 A. Yes. And I neglected to say search warrants
13 based on probable cause by a law enforcement
14 officer to believe that those items of property
15 are where you are looking. And that's through a
16 written affidavit, or testimony, or even
17 telephone or radio.

18 Q. As one of the lead investigators, I think you
19 said that you were involved in directing search
20 efforts on this property; is that right?

21 A. Yes.

22 Q. Were there areas that you were directing
23 searches?

24 A. Yes.

25 Q. Other than search efforts, this -- I mean,

1 globally, this investigation, did it include
2 things other than searching the Avery property?

3 A. Yes. We had not only the Avery property and the
4 size that we were dealing with there, and the
5 items that we were dealing with there, we also
6 had, up in Marinette County, where Mr. and
7 Mrs. Avery have land in that area, and some of
8 the family was up there that first weekend, that
9 we were dealing with.

10 Some of our DCI agents went up there,
11 and Marinette County detectives were also up
12 there. We were down in Milwaukee dealing with
13 Auto Trader. We were running around, even
14 Manitowoc County, or other counties, to some
15 salvage yards. So, it could -- and a lot of
16 investigations do that -- they can stretch, you
17 know, from one end of the state to the other at
18 times.

19 Q. All right. Were interviews being conducted in
20 those various locations?

21 A. Interviews were being conducted in many
22 locations.

23 Q. Now, this is all happening at the same time as
24 the search efforts; is that right?

25 A. Yes.

1 Q. Though some of the resources that you had to
2 allocate, in other words, direct?

3 A. Yes.

4 Q. Steven Avery, the only person being investigated?

5 A. No.

6 Q. Explain that.

7 A. We go into an investigation and, like I said, I
8 think I used the term before, you are not going
9 to lock and load. You are going to listen to all
10 the intelligence and information being brought
11 in. Look at all the evidence. You are there to
12 find the truth. That's what we go there for, is
13 to find the truth.

14 And the object is to allow the evidence,
15 and the facts that are uncovered as you go along,
16 to lead you to the most logical suspect. So, I
17 don't go in with necessarily one person I think
18 definitely did it. There's definitely reasons
19 and intelligence to point maybe in a direction
20 and you follow that direction.

21 Q. I think you mentioned before, the last person to
22 see her alive, obvious place to start; is that
23 right?

24 A. Well, certainly.

25 Q. We heard yesterday, or perhaps it was the day

1 before, about perimeter or scene security. Can
2 you mention that just briefly, or discuss that
3 just briefly?

4 A. When you get to a scene like that, or a death
5 scene, it behooves you to secure the scene right
6 away, to allow, or to not allow, let's say
7 citizens or even officers that shouldn't be
8 coming into that scene. We put on a desk
9 investigation school, one of the things we always
10 say is, you know, the sheriff, the chief is going
11 to want to get into that scene, they always want
12 to.

13 Don't let them in. The less people you
14 have in that scene, most often the better,
15 because you are not affecting evidence that might
16 be in that scene. So you secure that scene, you
17 put up a perimeter, and you try and protect it.

18 Q. You talk about scenes, and I just want to
19 distinguish this case from a typical -- if there
20 can be a typical homicide investigation or a
21 homicide that occurs in somebody's apartment.
22 Can you distinguish this kind of case from that?

23 A. I don't know if I really have to. It's an
24 outdoor scene, with indoor locations, with
25 buildings and stuff, and you have 15 buildings on

1 that property. You have got 40 acres to search.
2 Forty acres in and of itself is going to be very
3 difficult, but add 4,000 plus cars to that, 54
4 crushed cars, multiple individuals and people to
5 interview, it is not a normal scene.

6 Q. All right. Agent Fassbender, Lieutenant Bowe
7 talked about a command center; are you familiar
8 with the command center that was established
9 here?

10 A. Yes.

11 Q. Can you describe how that was set up.

12 A. Initially, a Manitowoc County -- I think maybe a
13 HazMat Unit, it's kind of like a big RV, in a
14 sense, with an office in it and capable of
15 setting up phones and computers and fax, I
16 imagine, was brought to that scene. And then
17 after that, Calumet County brought a trailer, and
18 their Command Post to that scene and then we were
19 operating out of both of those locations. And
20 that location being at the end of Avery Road,
21 right in that area where the road ends, the
22 pavement ends, right in that area.

23 Q. Being one of the lead investigators, were you
24 familiar with the efforts, not only the search
25 efforts, but the investigative efforts that

1 occurred during the first eight days of this
2 case?

3 A. Yes.

4 Q. Let's start then with the first day, on
5 November 5th. We have heard about how you became
6 involved, how a search warrant was obtained, how
7 a sweep occurred. We heard briefly about the
8 dogs that were brought in. But you said that
9 there were nine canine units. Can you tell the
10 jury where they were deployed or where they were
11 searching?

12 A. The canine units were a mix. They weren't all
13 so-called cadaver dogs. Some were mixed trained,
14 some were more like bloodhounds, live search
15 dogs. Initially, just one was brought in, but
16 then after Brutus got done with his initial
17 search, the rest were brought in. And the
18 primary focus to start with, was to search the
19 salvage yard in and around the vehicles, in that
20 40 acre area.

21 Q. Can you show, in Exhibit No. 86, what you are
22 talking about?

23 A. Well, essentially, what I'm talking about is the
24 salvage yard area where these dogs had to search.
25 That may have included these cars, may have

1 included the impound area also. Due to weather
2 concerns and darkness, they actually came back to
3 complete that search.

4 Q. Let's talk about the weather. Do you remember
5 the weather on the 5th?

6 A. Oh, yes.

7 Q. Tell -- Tell the jury about that.

8 A. Initially, it was predicting -- the weather was
9 predicted to be bad. Rain, storms moving in. As
10 a result I was in contact with the Crime
11 Laboratory, and we decided to try and place a
12 tarp over the RAV 4 SUV, not touching it, but
13 place it over and suspend it, which we did.

14 And then it started to sleet, maybe a
15 light rain, but the wind really picked up at this
16 time. And we ultimately ended up removing that
17 tarp because it was starting to let loose and it
18 appeared that it was going to affect the debris
19 that was used to conceal the car and we didn't
20 want to do that. So we just had to live with it.

21 Then it stopped raining. But then
22 somewhere -- my best guess right now is right
23 after dark, or after dark, it stormed. It was
24 torrential downpour the rest of the night. We
25 got some rain. It filled up that pond down there

1 by the SUV, which was dry at the time, and it
2 stormed very bad.

3 Q. Were you involved in observing Brutus and Brutus
4 working that area that Ms Cramer talked about?

5 A. Yes, I was.

6 Q. Tell us what you recall seeing?

7 A. Brutus came down and started near the car crusher
8 in the salvage yard and worked that area first.
9 And then Brutus worked to the south, southeast
10 corner of the salvage yard, in that area.

11 And then along the southernmost edge of
12 the property or berm there. There's a row of
13 cars along that area and Brutus worked along that
14 area. We were advised by Brutus' handler, prior,
15 what Brutus would do if he was alerted on a
16 vehicle. And when Brutus approached the RAV 4
17 SUV, it became apparent, even to me, that Brutus
18 had alerted on that vehicle, going to the vehicle
19 and going back and sitting in front of Julie and
20 barking.

21 Q. Agent Fassbender, you testified that you got
22 there about 2:00 in the afternoon; is that right?

23 A. About, yes.

24 Q. And we have heard other law enforcement officers
25 testify to this, but I'm going to ask you the

1 same questions. Any time after 2:00 p.m., did
2 you see any law enforcement officer or citizen
3 enter that RAV 4 vehicle?

4 A. No.

5 Q. Did you see any law enforcement officer disturb
6 or tamper with anything around there that would
7 have been of obvious evidentiary value?

8 A. No.

9 Q. Is that important to you?

10 A. Yes.

11 Q. Why?

12 A. Because that's probably, right now, our main
13 piece of evidence in this case.

14 Q. You mentioned that the Crime Lab was called in;
15 is that right?

16 A. Yes.

17 Q. How come?

18 A. I didn't request the Crime Lab, but if I go to
19 death scenes, I always request, or request the
20 agents I'm working with, to bring the Crime Lab
21 in. They are essentially our evidence techs.

22 Q. In front of you, Agent, are some photos. We're
23 going to walk through those for the jury. First
24 photo is Exhibit No. 395. Tell us what that is,
25 please.

1 A. Exhibit 130 you mean?

2 Q. I'm sorry, yes.

3 A. Exhibit 130, it's almost dark, looks duskish, and
4 it's a photograph of the condition of the RAV 4
5 SUV when it was found. There's some people near
6 the scene, one of them is myself, one is a deputy
7 with Calumet County, and one of them is, the ones
8 I can see, and one of them is a forensic
9 scientist with the Crime Laboratory.

10 Q. You are in that photo?

11 A. Yes.

12 Q. And do you recognize that scene?

13 A. Yes.

14 Q. I'm showing the jury, now, Exhibit No. 130. Tell
15 the jury what we're looking at, please.

16 A. Again, that's the -- Teresa's RAV 4 SUV, parked
17 facing in a westerly direction along that
18 southern berm of the salvage yard. With the
19 debris, trees, pieces of wood, cardboard,
20 plywood, a vehicle hood on, or around, or leaning
21 against the SUV, and then the individuals there.
22 Myself is in that red jacket. We're law
23 enforcement or Crime Lab personnel.

24 Q. Point to the Crime Lab people, if you can?

25 A. Right there, the nice way to say it, the person

1 with less hair, was a Crime Lab person, and then
2 myself.

3 Q. Do you know what his name is?

4 A. John Ertl. And then the deputy from Calumet
5 County. And I think that's a Crime Lab personnel
6 also, I'm not sure.

7 Q. When you got there, again, we have heard this
8 before, but was this vehicle being watched or
9 guarded?

10 A. Yes.

11 Q. To your knowledge, from your arrival, since
12 that's all you can testify to, from 2:00 p.m.
13 until the Crime Lab arrived, was it continuously
14 watched by law enforcement officers?

15 A. I arrived and I went to the Command Post first,
16 right after 2. I probably got down into the area
17 by the crusher a little later, maybe 2:20, 2:25.
18 From that point on I could say, yes, it was.

19 Q. Why didn't you or other law enforcement officers
20 on the scene enter that vehicle or process it
21 there?

22 A. Much safer to really, especially with a vehicle,
23 an outside setting like that, with pending
24 weather, to just secure the vehicle, put it in a
25 closed trailer, let the Crime Lab do their thing.

1 Take it down to the Crime Lab and process it
2 there, rather than trying to process this out in
3 those conditions outside.

4 Q. Is that what was done?

5 A. That's what was done.

6 Q. Did anybody, Crime Lab members included, enter
7 that vehicle out at the scene?

8 A. Not that I'm aware of, no.

9 Q. What was done with the vehicle, if you know, and
10 were you involved in that?

11 A. Yes, I was involved in that, to a degree.

12 Probably about 7:30-ish, that evening, with the
13 rain coming down, I was asked to take the wrecker
14 service, Rabas Wrecker Service, down to the area
15 by the car crusher. Another, I guess, wrecker
16 service was also there, Pethan -- Pethan, out of
17 Calumet County. They had an enclosed trailer
18 that could carry vehicles. They were also there,
19 came down to that location.

20 At that point, the Crime Lab personnel
21 that were there accompanied the wrecker operator
22 over to the RAV 4 location where they hooked up
23 the RAV 4 and towed it back to the location by
24 the car crusher, where the enclosed trailer was
25 waiting, and they backed it into that enclosed

1 trailer and secured it in that enclosed trailer.

2 They also took some of the items like
3 the vehicle hood and put that in there. They
4 examined a lot of the remaining items to see if
5 there was any obvious evidentiary value on those
6 items, and ended up not taking most of those
7 items.

8 Q. I'm going to show you some of those things.
9 What's Exhibit 131? Let's get through these
10 pictures first.

11 A. 131 is a photograph of the hood and windshield
12 area of the RAV 4 SUV. It depicts the branches,
13 and trees, and a cardboard box that had been
14 placed on top of the hood of that vehicle.

15 Q. Now that the jury can see 131, is that debris the
16 way it looked the evening of the 5th of November.

17 A. Essentially, the wind may have moved some things,
18 or the rain may have moved some things a little.

19 Q. What's 132?

20 A. That's a photograph, again, of the SUV. This
21 photograph is taken toward the passenger front
22 quarter panel or quarter area of the vehicle,
23 again, showing -- looks like a fence post or two
24 and a piece of cardboard up against the RAV 4.

25 Q. Now see Exhibit 132, is that the image that you

1 are looking at?

2 A. Yes.

3 Q. What's 133?

4 A. 133 is a picture of the RAV 4. This would be the
5 driver's side rear quarter panel area of that
6 vehicle.

7 Q. Is that Exhibit 133?

8 A. Yes.

9 Q. Now, these appear to be taken after darkness; is
10 that right?

11 A. Yes.

12 Q. What's 134?

13 A. A picture of the RAV 4 SUV, similar to two
14 exhibits ago, the passenger side a little more
15 inclusive showing, again, the fence post,
16 plywood, and debris.

17 Q. And here is 134. And I understand that this gets
18 a little bit tedious or monotonous, but do some
19 of these angles or the different shots become
20 important in not only this investigation, but in
21 most investigations?

22 A. Certainly.

23 Q. What's 135?

24 A. 135 is a picture of the rear portion of the RAV
25 4, again, showing some of the debris, fence post,

1 trees, leaning up against the RAV 4 and that is
2 it.

3 Q. 136?

4 A. A picture of the RAV 4 coming at the passenger
5 rear corner so you can see the rear of the RAV 4.
6 And then the passenger side, although you can't
7 see most of it because of the fence post and a
8 vehicle hood leaning up against that portion.

9 Q. Before I leave 136, I'm sorry, if you can refer
10 to this exhibit, do you see any rear license
11 plates if you look at the screen, Agent
12 Fassbender?

13 A. No.

14 Q. Where would the license plates be?

15 A. Where would they be?

16 Q. No, I mean, where should they be on this vehicle?

17 A. To the left of the spare tire there and just
18 below it.

19 Q. Can you point with the laser pointer.

20 A. Certainly, right there.

21 Q. It's obvious from 136 that they are missing?

22 A. Yes.

23 Q. Here is 137. I think you described that. What's
24 138?

25 A. I don't know if I did do 137. I thought I had

1 done 136. 137 is a picture of the passenger side
2 of the RAV 4 and, again, depicting the hood, the
3 plywood, and some tree material, branch material.

4 Q. So this is 137?

5 A. Yes.

6 Q. All right. What's 138?

7 A. 138 is the passenger side front fender area of
8 that same RAV 4 and, again, you can see some of
9 the debris and articles apparently used to
10 conceal it.

11 Q. Is that 138?

12 A. Yes.

13 Q. And, finally, 139?

14 A. I don't know that I have a 139.

15 Q. I'm sorry, it goes to 138. All right. After the
16 RAV 4 was loaded onto the enclosed trailer, was
17 that trailer secured to your knowledge?

18 A. Yes.

19 Q. How was the vehicle -- By the way, were you
20 present for the loading of the vehicle?

21 A. Yes.

22 Q. How was it loaded on the vehicle, was it started
23 up or something?

24 A. No, the wrecker operator backed it into that
25 trailer. There was a ramp set out and the

1 wrecker operator backed it right up into that
2 trailer and then it was secured.

3 Q. Agent Fassbender, you talked about some residence
4 searches occurring that first night, that is, the
5 5th; were those occurring while this SUV was
6 being processed?

7 A. Yes, sir.

8 Q. Do you know, or can you tell the jury, what
9 residence searches were ongoing?

10 A. The residence at 12932 Avery Road, which was the
11 residence of Steven Avery.

12 Q. Back to Exhibit 86, which I'm sure we'll use a
13 lot, in the lower right hand corner of that
14 exhibit?

15 A. Yes, the lower right hand corner right there,
16 which would be the northeast section of the
17 entire property.

18 Q. Now, you talked about a sweep --

19 A. Northwest.

20 Q. I'm sorry. You talked about a sweep of that
21 residence; is this search that you are now
22 describing something different?

23 A. Yes.

24 Q. How is it different?

25 A. This search is a search that's organized more for

1 the location or finding of things of apparent or
2 obvious evidentiary value, things that are in the
3 search warrant, or asked for in the search
4 warrant. Again, we're not exactly sure,
5 precisely sure, what we might be looking for at
6 this time either.

7 Q. Was a search team put together to search that
8 residence?

9 A. Yes.

10 Q. And do you know how individuals were selected for
11 that search team?

12 A. Yes.

13 Q. Tell us about that.

14 A. We were looking for individuals who preferably
15 were investigators or detectives and who had
16 training, experience, and expertise in the
17 location of and the processing of evidence.

18 Q. Were some of those officers or evidence techs on
19 scene; in other words, were they at the location?

20 A. Yes.

21 Q. Were some of them Calumet County officers?

22 A. Yes.

23 Q. Were some of them Manitowoc County officers?

24 A. Yes.

25 Q. We might as well address this right now, Agent

1 Fassbender, did you, as a lead investigator in
2 this case, have hesitancy in assigning any
3 Manitowoc County sheriff's officer to any tasks
4 at that scene?

5 A. No, absolutely not.

6 Q. Tell the jury why.

7 A. They were there to assist us. In fact, some of
8 the people that actually worked on those teams, I
9 have trained and I have worked with. And the
10 people that we're talking about that would have
11 worked on these scenes, were law enforcement
12 officers, were very professional and did a good
13 job.

14 Q. You talked about resource allocation, were
15 evidence techs at a premium at that scene?

16 A. Yes.

17 Q. What does that mean?

18 A. People who -- Again, officers who have been
19 trained and have experience in processing,
20 locating, preserving evidence. You know, a lot
21 of departments may have only one of those people,
22 two of those people. We had a huge scene here
23 and most officers don't have that level of
24 expertise. And at a homicide scene, that is the
25 level of expertise I want processing my evidence.

1 Q. You had mentioned, just previously, that after
2 the weather turned really nasty, efforts were
3 suspended that evening?

4 A. The majority of the outside efforts were
5 suspended, that's correct.

6 Q. All right. The search inside of Steven Avery's
7 residence that -- or that continued?

8 A. That continued to about 10, if I remember right.

9 Q. After 10:00 p.m., what happened?

10 A. Most people -- I shouldn't say most of the
11 people, people involved in the searches met back
12 at the command center where we debriefed, where
13 we talked about what had happened, what we
14 learned that day, what was found for evidence.

15 Q. Anything else happen on the 5th, of substance?

16 A. The RAV 4 was transported to the Crime Lab in
17 Madison, Wisconsin.

18 Q. All right. Let's move to the next day, then,
19 Sunday, the 6th; do you recall that day?

20 A. Yes.

21 Q. Could you just, in an outline form, tell the jury
22 what investigative efforts occurred on Sunday,
23 the 6th?

24 A. Dogs came back to the scene. There was a lot
25 more to search, but they were concerned that

1 because of the rain, that they wanted to do it
2 again, or make sure they covered every place in
3 this property.

4 So they came back. I believe eight dogs
5 this time, came back to that scene, finished the
6 salvage yard area, went around the
7 perimeter building -- perimeters of buildings,
8 etcetera. Also brought in that day were
9 somewhere in the vicinity of 45 to 50
10 firefighters. And we utilized them to get into
11 the salvage yard and look into locked areas or
12 locked containers: Trunks, hoods, any other
13 places that we needed to get open to look, to see
14 if there was a person in there, a body.

15 Those teams were formed with law
16 enforcement presence; in other words, there's a
17 law enforcement officer with each team of
18 firefighters that went into the salvage yard.

19 Q. Was it your understanding that all 4,000 of these
20 vehicles were individually searched, that is, the
21 trunks were searched that Sunday?

22 A. Yes. So that was -- the main manpower went to
23 that purpose. Also on Sunday, we had the luxury
24 of forming essentially two, three, evidence
25 processing teams. We had a similar team that we

1 had the night before.

2 We had an additional team utilizing some
3 Manitowoc police -- Manitowoc City Police
4 evidence technicians and investigators, and we
5 were able to get the Crime Lab to come back that
6 afternoon, also, for additional processing.

7 Also during this time, just like
8 Saturday, there were numerous interviews and
9 follow-ups going on at the same time.

10 Q. Were there any firearms or guns seized that day?

11 A. Yes. The previous evening, the search of Steven
12 Avery's residence, during the debriefing at the
13 end of the evening, the technicians that were in
14 his trailer informed us that they had seen some
15 guns in there, informed us what they had taken
16 and what they had seen. They didn't seize the
17 guns.

18 They informed that there was a vacuum
19 cleaner. They took the bag out of the vacuum
20 cleaner. They informed us about a carpet cleaner
21 and some other things. It was determined at that
22 time we're going to go back in there and get some
23 of those items, the guns, the two rifles. We
24 wanted the vacuum cleaner because of the rotating
25 brush, the carpet cleaner, some bedding. So,

1 yes, there was, and we did reenter that trailer
2 to get those items.

3 Q. I think Officer Bowe, yesterday, talked about
4 dive teams or teams searching ponds; did that
5 occur that day?

6 A. Yes. We had the Winnebago County Sheriff's
7 Department Dive Team on that day also.

8 Q. Are you familiar with the residence of
9 Mr. Avery's sister, Barb Janda?

10 A. Yes, I am.

11 Q. I'm going to have you look at Exhibit 86 again,
12 tell the jury where is that property.

13 A. That property is right here, which would be
14 almost directly east of the Steven Avery
15 property. And then next to that residence is her
16 unattached garage.

17 Q. On that Sunday, that is, on the 6th, was any
18 property recovered or seized from outside of, or
19 near, Ms Janda's property?

20 A. Yes.

21 Q. What was that?

22 A. That was some burn barrels, four burn barrels,
23 that were located behind her residence.

24 Q. About where, can you show us?

25 A. I think right there, which would be from her

1 residence, in a southeasterly direction, about --
2 I don't know, 100 feet maybe.

3 Q. All right. Let me just stop you right here.
4 This is the first full day, but the second day of
5 search. Did you have an idea, as a lead
6 investigator, yet, what you were looking for?

7 A. No, not entirely. If I might?

8 Q. Go ahead.

9 ATTORNEY BUTING: Judge, objection to the
10 witness narrating on his own.

11 THE COURT: I guess it depends if what he's
12 about to say is in additional response to the last
13 question, or simply random thought.

14 ATTORNEY KRATZ: I suspect this isn't
15 random, is it?

16 THE WITNESS: No.

17 ATTORNEY BUTING: The proper way would be
18 to place a question to the witness.

19 THE COURT: Mr. Kratz.

20 Q. (By Attorney Kratz)~ Can you elaborate on your
21 last answer, Investigator?

22 A. I believe you asked me about knowing what we were
23 looking for. And elaborating on that answer, we
24 had reason, sometimes, to go where we went. The
25 barrels for example, the dogs had alerted on the

1 barrels, so we knew that we wanted to go there.

2 Q. All right. Now, were all of these items, that
3 is, the items that were seized, and the places
4 that were searched -- or searched, included in
5 this judicial authorization, this thing that you
6 called a search warrant?

7 A. Yes.

8 Q. You said the Crime Lab remained on the scene, or
9 came back to the scene on Sunday; is that right?

10 A. They came back to the scene Sunday afternoon.

11 Q. Were they given some specific responsibilities or
12 specific places to search?

13 A. Yes. They were essentially kind of like a roving
14 evidence team, places where the dogs may have hit
15 on, or where searchers found what they thought
16 might be evidence. A lot of times, that's where
17 we would send them, to look at that, or process
18 it, if necessary.

19 Q. All right. Were there other residences and
20 buildings searched that day?

21 A. Yes.

22 Q. Can you tell us about those.

23 A. We had a search team search the garage, the
24 unattached garage next to Steven Avery's house.
25 We had a team that went through Barb Janda's

1 house and her garage. We had a team go through
2 the unoccupied or abandoned trailer along the
3 driveway going toward Ms Janda and Steven's
4 house. A team went through Mr. and Mrs. Avery's
5 residence and garage.

6 Q. Allen and Delores?

7 A. Yes. A team went through Charles Avery's
8 residence and garage. And teams also went
9 through all of the outbuildings, in the northeast
10 section of the property, associated with the
11 business.

12 Q. All of that happening at the same time that the
13 law enforcement and firefighters are opening
14 every trunk?

15 A. Yes.

16 Q. Is there anything happening on Sunday, off site;
17 in other words, off of this property included in
18 your investigation?

19 A. Yes. Up in Marinette, we were interviewing
20 members of the family up there. I believe it was
21 Sunday that two vehicles were seized up there. A
22 flat bed truck from the business, and Steven
23 Avery's car, were seized and taken to the police
24 department or the sheriff's department up there.

25 We had agents and detectives doing

1 interviews, neighborhood canvasses. Neighborhood
2 canvasses are essentially someone going around to
3 residences in the neighborhood, businesses,
4 whatever might be, and asking questions about
5 whether they saw or heard anything.

6 Q. So all this is happening at the same time?

7 A. Yes.

8 Q. It's your responsibility to kind of coordinate
9 all this at once?

10 A. Myself and Investigator Wiegert.

11 Q. So the jury is clear, did you receive assistance
12 and direction, not only from other law
13 enforcement, but other legal authority at that
14 time?

15 A. Yes.

16 Q. Who else was involved?

17 A. Well, we were working with the District
18 Attorney's Office, Calumet County District
19 Attorney's Office.

20 Q. Me?

21 A. Yes.

22 Q. Okay. The search warrants, that is, the request
23 and the authorization by judges, when you
24 received them, is that something that you
25 prepared, or something that somebody else

1 prepared?

2 A. That's something that someone else prepared.

3 Q. Who typically would prepare them?

4 A. Either the District Attorney, Assistant District
5 Attorney, or their staff.

6 Q. All right. Agent Fassbender, then, did anything
7 else, at least that sticks out in your mind,
8 occur on that Sunday, the 6th?

9 A. That night, before the Crime Lab retired for the
10 evening, we asked them to go back into the
11 residence of Steven Avery. The reason we did
12 that is, we had found what appeared to be blood
13 in there, the previous evening.

14 And they went in there to look at the
15 blood patterns. As a result of doing that, they
16 identified some potential blood that needed to be
17 processed yet, and they advised us of that during
18 the debriefing that evening.

19 Q. This was a Sunday; is that right?

20 A. Sunday, yes.

21 Q. Is anything else going on at the State Crime Lab
22 as far as you know, on that Sunday?

23 A. Yes.

24 Q. What was that?

25 A. The RAV 4 vehicle had already been down there --

1 ATTORNEY BUTING: Objection, your Honor.
2 This witness can't testify what's going on some
3 place two hours away.

4 ATTORNEY KRATZ: It's certainly not for the
5 truth, Judge, it's did this officer do anything in
6 response to that.

7 ATTORNEY BUTING: That's fine.

8 THE COURT: All right. For that purpose, I
9 will allow it.

10 A. I was informed that day, that to an initial
11 processing of that vehicle, that they had
12 received a positive test for the presence of
13 blood in that vehicle.

14 Q. All right. And did that further direct your
15 search efforts and where to look and what you
16 were looking for?

17 A. Yes, certainly, to a degree.

18 Q. Let's move to Monday, the 7th of November. Tell
19 the jury how this search effort progresses,
20 please.

21 A. Okay. Monday, again, we started early in the
22 morning. Volunteer firefighters are utilized,
23 again. I believe we have about 60 of them on the
24 scene this day. Coupled with about 20 law
25 enforcement officers, the majority being from the

1 Manitowoc Police Department, some from Two Rivers
2 Police Department, a few from Manitowoc County,
3 DCI agents, and Calumet County. Calumet County
4 had -- this was a day that they brought over
5 jailers and dispatchers to assist in the search
6 effort.

7 And, again, what happened this day was a
8 good majority of the -- I believe the Mishicot
9 Fire Department volunteers, along with DCI agents
10 and possibly some law enforcement officers, went
11 down by the crusher. And there were about 54
12 crushed cars down there. And they methodically
13 went through everyone of those crushed cars,
14 apparently ripping off the roof of those cars and
15 any closed areas to search those cars.

16 After searching them, they had like a
17 front end loader down there with forks on the
18 front, I believe. And they moved the cars from
19 the south side of that car crusher over to the
20 north side, when they were done searching it.
21 They had these tools to get into this and enable
22 them to do this, whether it was Jaws of Life or
23 cutting tools.

24 Q. You said that 54 crushed cars were near the car
25 crusher; is that right?

1 A. That's my knowledge, yes.

2 Q. And understanding that all 54 were searched?

3 A. Yes.

4 Q. Do you know what they were looking for?

5 A. Well, obviously, a body, or any indications of
6 such, clothing or other things that were in the
7 search warrant.

8 Q. Was anything at least brought to your attention,
9 as the lead investigator, found in the search of
10 those 54 crushed vehicles?

11 A. No, sir. May I continue with Monday then?

12 Q. Counsel may want me to do this a little bit more
13 question and answer, so I will interject a couple
14 of questions. Were there on site and off site
15 teams that were formed that day?

16 A. Yes.

17 Q. Did any of the off site teams move towards, at
18 least in their search efforts, towards the 40
19 acre Avery property?

20 A. I'm not sure I understand. But along with the
21 teams that did the crushed cars, firefighters and
22 law enforcement, again, coupled up into teams.
23 And there was law enforcement with each team of
24 firefighters and they were searching the
25 perimeter of this area, this 40 acre area, just

1 outside the perimeter and in that area, and
2 working their way either toward, depending where
3 they started, or away from the property. Again,
4 looking for anything that might be of obvious
5 evidentiary value.

6 Q. Did they find anything, that you are aware of,
7 that had obvious evidentiary value?

8 A. Yes.

9 Q. What was that?

10 A. Toward the northwest section of the property,
11 just north of Steven Avery's residence, there was
12 a burn barrel located. One of these search teams
13 found that burn barrel. Inside that burn barrel
14 was a wheel -- not the tire, but the axle -- or
15 the rim part of the wheel. They looked under
16 that.

17 ATTORNEY BUTING: Judge, objection, to what
18 they did or didn't do, if he is not there. These
19 witnesses will be testifying later. I think he can
20 describe this without getting into that kind of
21 detail.

22 ATTORNEY KRATZ: I think that's fair,
23 Judge. I will have him refer to the exhibit and
24 tell me what he saw.

25 THE COURT: I agree. The objection is

1 sustained.

2 Q. (By Attorney Kratz)~ In looking at Exhibit 37
3 that's on the screen, is this the burn barrel
4 that you are talking about?

5 A. Yes.

6 Q. Can you point to it with the laser pointer.

7 A. Yes, right there.

8 Q. So that was discovered on Monday, the 7th?

9 A. Yes.

10 Q. Did you direct officers to take control, that is,
11 to seize and otherwise process the contents of
12 that burning barrel?

13 A. Yes. DCI agents went down there and took control
14 of that and, ultimately, released it to one of
15 the evidence collection teams and it was,
16 ultimately, seized and taken in -- again, in an
17 enclosed trailer, to the Calumet County Sheriff's
18 Department for subsequent processing.

19 THE COURT: Excuse me. I'm not sure, are
20 you talking about the burn barrel was seized?

21 THE WITNESS: Yes, the whole burn barrel.

22 Q. (By Attorney Kratz)~ You spoke earlier of, Agent
23 Fassbender, about some weapons, some firearms
24 having been seized from Mr. Avery's property;
25 were there other firearms on the Avery Salvage

1 Property itself?

2 A. Yes, sir, there were.

3 Q. Were those ever taken or seized?

4 A. Yes.

5 Q. When did that happen?

6 A. I think that ended up being a multi day effort.

7 Probably started on Monday and maybe even went
8 through two or three days, because firearms were
9 located in each residence, in vehicles, in shops.
10 So, there was a multitude of firearms to take.

11 And involved with were safes, gun safes, that had
12 to be opened.

13 Q. Now, we're going to hear from Crime Lab witnesses
14 perhaps in the next week or two, but on that
15 Monday, without telling us what they told you, on
16 that Monday, the 7th of November, did you receive
17 a preliminary report from the Crime Lab regarding
18 the processing of the SUV?

19 A. I was in contact with the Crime Lab pretty much
20 every day and, yeah, I received information on
21 Monday.

22 Q. All right. We'll get from them what it is that
23 they found on each day. The question, though, is
24 when you would receive updates, daily updates,
25 from the Crime Lab, would that further direct

1 your search efforts?

2 A. Most definitely.

3 Q. Anything else happen on Monday that stands out in
4 your mind of significance, either search efforts
5 or off site investigative efforts?

6 A. Winnebago County Dive Team was there, again, to
7 conclude or finish their search of ponds. And by
8 ponds, I'm talking about adjacent property,
9 quarries, gravel pits.

10 Also, on Monday, one of the teams -- I
11 believe one of the teams, or an individual
12 officer -- no, probably one of the teams -- was
13 directed to go into Steven Avery's trailer and
14 obtain the serial number off of a computer in
15 that trailer because he wanted to get a search
16 warrant for that computer.

17 Q. All right. Let's move to the next day, then,
18 Tuesday, the 8th of November; do you remember
19 that day?

20 A. Yes, I do.

21 Q. Now, again, after receiving information from
22 interviews, as well as Crime Lab and other
23 analysis; were more directed searches to happen
24 that day?

25 A. Yes.

1 Q. Where were those?

2 A. Residences, Steven Avery's being one, Charles
3 Avery being one. I believe some vehicles, maybe
4 some of the other residences and buildings.

5 Q. Now, Agent Fassbender, I have counted, just by
6 listening to your broad overview, of several
7 times that officers have already, by this point,
8 been into Steven Avery's residence; is that
9 right?

10 A. Yes.

11 Q. On Tuesday, the 8th, did you send them in there,
12 again?

13 A. Yes.

14 Q. Tell the jury why.

15 A. On Tuesday morning, we formed another evidence
16 collection team and search team. What we were
17 looking for at that time was, again, we're
18 getting more intelligence and more information to
19 come -- that were coming in. And we sent them in
20 there to look for some of that stuff.

21 One of the primary things was, if you
22 recall, I talked about Sunday evening and the
23 Crime Lab identifying some more blood in that
24 trailer. Well, Monday, we had, again, an
25 opportunity to do that, to get back into that

1 trailer. Because we were busy with other things,
2 including a potential burial site that we found
3 off the Avery property, which took a lot of our
4 resources for a good part of the day, so one of
5 the primary purposes we went in there was to
6 analyze and collect that blood, to also serve a
7 search warrant on the computer and take that.
8 And also under our direction, to conduct a
9 complete and thorough search of that, being more
10 detailed.

11 Q. What's a thorough search? What are you talking
12 about?

13 A. What I would like, when I'm directing someone to
14 do that, that they are moving things, looking
15 under things, looking in books, in between
16 things, a complete and thorough search.

17 Q. Is that a different kind of search than you
18 understood occurred up to that point?

19 A. Yes, to a degree. The first one, they are not
20 necessarily knowing what they are looking for,
21 obvious evidentiary value, on that first one.
22 Trace evidence, like blood and stuff like that,
23 that you don't want to lose, because you can lose
24 that fairly quickly. So, I want them to take
25 that on the first one. But now, you know, we're

1 getting along in the week here, and I don't know
2 how long we're going to be holding this scene
3 after that. Let's do our complete and thorough
4 search here and make sure that we're not missing
5 anything.

6 Q. During that thorough search were you called to
7 the Avery trailer?

8 A. Yes.

9 Q. And did they, meaning the evidence techs in that
10 trailer, show you something that they believed
11 had obvious evidentiary value?

12 A. That's correct.

13 Q. What did you see?

14 A. They showed me a Toyota car key with a blue fob
15 attached to it.

16 Q. Did you direct anything be done with that Toyota
17 car key?

18 A. Yes. That would be preserved, packaged. And
19 then one of our agents, DCI agents, took ultimate
20 possession of that and transported it directly to
21 the Crime Laboratory.

22 Q. Why?

23 A. To get processed, number one, and number two, to
24 see if it worked in the RAV 4.

25 Q. What is worked in the RAV 4 mean?

1 A. If it went into the ignition and would turn the
2 key, turn the ignition of the RAV 4.

3 Q. Other than the Toyota -- Other than a Toyota RAV
4 key -- a Toyota key being found that day, that
5 is, on Tuesday, were there any other discoveries
6 that you were directed to or that you were asked
7 to come and look at?

8 A. Yes.

9 Q. What was that?

10 A. We also, that morning, we had -- not a -- on that
11 day we did have approximately 60 troopers,
12 Wisconsin State Patrol troopers come to the
13 scene. Now, the State Patrol was present from
14 day one here, doing the mapping, or helping with
15 scene security. I may have failed to mention
16 that.

17 But on that day, we had 60 troopers
18 come. The reason we had them come, is for the
19 same concept. We wanted to do more of a detailed
20 search of that entire salvage yard. And all
21 those vehicles in that salvage yard, looking now
22 for obvious evidence. And during that search
23 they were, again, coupled with some firefighters,
24 volunteer firefighters, 25, 30 maybe. And during
25 that search, two license plates were located in a

1 salvaged vehicle. Those two license plates
2 turned out to be the license plates for Teresa's
3 vehicles.

4 Q. All right. Was there a third major discovery on
5 that day, that is, Tuesday, the 8th?

6 A. Yes.

7 Q. What was that?

8 A. Directly behind the garage that's adjacent to
9 Steven Avery's residence where the dog had been
10 located, or was located, there was a burn area
11 found. And discovered in that burn area were
12 pieces of bone.

13 Q. Looking at Exhibit No. 86, can you tell the jury
14 where that burn area was located?

15 A. Yes. This is the garage for Steven Avery. And
16 then just south of that garage, this darkened
17 area, would have been a dug out area from a berm
18 or pile of dirt and gravel and that's the area
19 where the bones were discovered.

20 Q. Were some individuals with some expertise asked
21 to come take a look at that location?

22 A. Yes, the Crime Lab was on scene that day and they
23 were asked to come and help process that area.

24 Q. Any DCI agents?

25 A. Yes.

1 Q. What kind of agents, if that's a fair question?

2 A. Arson investigators or former arson
3 investigators.

4 Q. Why would you send an arson investigator to an
5 area like this?

6 A. Because it's a burn area and they were trained in
7 fires and burns and they deal with, many times,
8 finding bodies in burned buildings or wherever,
9 they are trained in that area.

10 Q. Was it your understanding that the Crime Lab,
11 with the assistance of these arson investigators,
12 began to process the scene that day?

13 A. Yes.

14 Q. By the way, Agent Fassbender, were you called to
15 look at that burn area that Tuesday?

16 A. I believe so, but I just don't recall.

17 Q. You had other things going on that day as well?

18 A. Yes.

19 Q. Other than those three major discoveries,
20 anything else occur on site that day that you can
21 recall?

22 A. I believe that evening, before the Crime Lab
23 left, we asked them to go back into Steven
24 Avery's trailer and Charles Avery's -- Charles
25 Avery's trailer and do some luminal testing

1 involving a chemical that can illuminate the
2 presence of blood, amongst other compounds or
3 chemicals, but they usually use that for
4 determining if there was any blood in that area,
5 blood that may not be visible to the naked eye.
6 So we have them do that that evening, yet.

7 Q. Now, Agent Fassbender, the next several days
8 Wednesday, Thursday, Friday, and into Saturday,
9 did you and other law enforcement agents maintain
10 control of the Avery Salvage Yard?

11 A. Yes, sir.

12 Q. And I know that we are going to hear from each of
13 the individual officers, but if you could just
14 tell us, generally, what happened for the balance
15 of the week. What kinds of additional
16 investigative efforts were made for those last
17 three days?

18 A. Crime Lab was there Tuesday and I believe
19 Wednesday. And their primary duties that they
20 were doing was just processing. I know they were
21 at the Calumet County Sheriff's Department
22 processing the barrels and stuff like that. On
23 Wednesday we obtained search warrants for
24 fingerprints and DNA from the adult members that
25 were commonly associated with the Avery salvage

1 yard, or residents, the Avery family pretty much,
2 or the members who worked on that salvage yard.
3 Did interviews of those individuals, or attempted
4 to.

5 We had, I think, one small evidence
6 collection team, or evidence technicians that
7 were doing follow-up stuff that needed to be done
8 that day. For example, we knew that there was a
9 garage door opener in Teresa's car. And then
10 they found a tool that was like an emergency
11 roadside tool. We learned that and we were
12 looking to see if we could find that anywhere, to
13 determine whether that was taken from the scene,
14 or it was actually Teresa's property. Things
15 like that. So some people went back into the
16 buildings and then did some searching that day.

17 Q. When was it that the property was turned back
18 over to the Avery family?

19 A. Saturday morning.

20 Q. The 12th?

21 A. Yes, November 12th.

22 Q. Now, although we're going to hear from Crime Lab
23 experts, I think you mentioned that each day
24 additional findings were made; is that fair?

25 A. That's correct.

1 Q. And with those additional findings, further
2 interviews and further investigation was
3 completed?

4 A. Yes.

5 Q. Now, other than this site, the balance of the
6 week, could you tell the jury, just briefly, what
7 kinds of things were happening off site?

8 A. Continued -- We would continue to do interviews
9 off site. We did records exams. Records exams
10 can consist of the business records of the Avery
11 Salvage Yard, and can go to financial records,
12 can go to telephone toll records that have been
13 subpoenaed, that type of stuff, that had to be
14 analyzed.

15 Neighborhood canvasses, again, were
16 ongoing. We tried to do traffic surveys which,
17 basically, are identifying vehicular traffic or
18 people who commonly go through that area, to see
19 if they might have seen anything, activities such
20 as that.

21 ATTORNEY KRATZ: Judge, although I'm
22 virtually finished, I do have one or two more areas
23 of inquiry. I don't know if the Court wants to take
24 our afternoon break at this time.

25 THE COURT: All right. It's just about

1 noon, so we'll take our lunch break at this time and
2 resume at 1:15. Members of the jury, I will remind
3 you, again, not to discuss this case over the lunch
4 hour. We'll see you after lunch.

5 (Jury not present.)

6 THE COURT: You may be seated. Counsel, is
7 there anything else to take up outside the presence
8 of jury before we resume after lunch?

9 ATTORNEY KRATZ: No.

10 ATTORNEY BUTING: Yes, there is, Judge. I
11 have a couple things I need to make a record on. We
12 have -- First of all, we had a request out from the
13 prosecution -- to the prosecution, for discovery,
14 for a long time, and had no response, as to any
15 citizen complaints, fire and police commission
16 complaints, anything that -- regarding Lieutenant
17 Lenk and Sergeant Colborn. And that has not been
18 complied with yet.

19 Further, we have received some
20 information from what appears to be a reliable
21 source that one or more of these burn barrels
22 were lost at some point, while in custody. That
23 is, the chain of custody apparently may have a
24 break in it, and that they were discovered, I
25 believe at the State Patrol custody rather than

1 Calumet, or DCI, or whatever. We received
2 nothing like that in our discovery. I don't know
3 if there is any such evidence. I would ask that
4 the State comply with the discovery and turn that
5 over immediately.

6 THE COURT: Mr. Kratz.

7 ATTORNEY KRATZ: Other than the defense
8 having received all of our evidence logs, we can
9 certainly make some more directed inquiries that
10 they have everything that we have, at least that I'm
11 aware of.

12 Regarding the issue of the citizen or
13 other personnel records kinds of complaints,
14 that's something I'm sure that we'll need a more
15 extended hearing on and something that we're not
16 prepared to address at this time. Of course,
17 since those witnesses aren't testifying now, it
18 doesn't become ripe yet. But I would suggest the
19 Court set aside at least some period of time
20 between now and when those witnesses testify, to
21 address those personnel records issues, which I
22 assume counsel understands what's necessary to
23 secure those -- those items.

24 But regarding the chain of custody, not
25 only can that be addressed by cross-examination,

1 but I believe we have complied, as has been noted
2 throughout this case, with discovery, that the
3 defense has things perhaps that they don't even
4 know they have. But that notwithstanding,
5 Judge, we'll make sure, once again, that
6 everything has been turned over. And if there's
7 a further problem, we can alert or address the
8 Court at that time.

9 THE COURT: All right. I will ask the
10 attorneys to discuss this matter further. If there
11 is still an area of disagreement that requires a
12 hearing, let the Court know and I will schedule it.

13 ATTORNEY KRATZ: All right. Thank you.

14 (Noon recess taken.)

15 (Jury present.)

16 THE COURT: Mr. Kratz, at this time you may
17 resume your direct examination of the witness.

18 ATTORNEY KRATZ: Thank you, your Honor.

19 **DIRECT EXAMINATION CONTD.**

20 BY ATTORNEY KRATZ:

21 Q. Agent Fassbender, we left off talking about the
22 last three or four days of the search, bringing
23 us to the 12th of November. On the 12th of
24 November, how was this scene returned to the
25 Avery family?

1 A. I met with Charles Avery and, I believe, Barb
2 Janda was also present, and it was turned over to
3 Charles.

4 Q. Between the 5th and the 12th of November, had you
5 received requests from Avery family members to
6 retrieve some personal belongings within the
7 salvage yard and the residences?

8 A. Yes, we had quite a few requests and, actually,
9 contacts with the Avery family members. They had
10 pets or animals on the scene; medicine, I
11 believe; mail on one occasion, where we had Barb
12 Janda come in and get some mail. We were
13 dealing, both Investigator Wiegert and myself,
14 with them consistently.

15 Q. Were attempts made, when at all practical, to
16 meet those needs, whether for business or
17 personal reasons?

18 A. Yes, I understand that we had this -- their
19 homes, their businesses, for a week. And I
20 understand that it is an extreme hardship. I
21 have empathy for that. When we go to these
22 scenes, we try to process them as quickly as
23 possible because of that.

24 Q. The last area of inquiry, Agent Fassbender, you
25 mentioned limiting access to the scene itself

1 from the outside, that is, from citizens or at
2 least knowing who was on that property; did you
3 testify about that?

4 A. Did I, yes.

5 Q. Was there a method created to insure that you
6 could keep track of that kind of information?

7 A. Yes, logs are created on crime scenes such as
8 this, to record officers, law enforcement
9 personnel, or whoever else, whether it be a
10 coroner, whoever, that comes into the scene. In
11 fact, when I got there on Saturday, ultimately, I
12 got down by the car crusher, that staging area
13 down there, and about 2:25 I think it was. And
14 the officers that were staged there, I told them,
15 I recommended that they start a log there also.

16 Q. Was that done to your knowledge?

17 A. I believe so.

18 Q. And do you know about what time a log was started
19 for entry on to the Avery property?

20 A. I'm not sure.

21 Q. Again, about what time was it that you arrived?

22 A. About 2:00.

23 Q. And was a log begun yet at that time?

24 A. I believe so, but I just don't recall.

25 Q. That would have been somebody else's area of

1 involvement or decision; is that right?

2 A. Yes, sir.

3 ATTORNEY KRATZ: Judge, I would move the
4 admission of Exhibits 130 through 138 at this time.

5 THE COURT: Any objection?

6 ATTORNEY BUTING: None.

7 THE COURT: Very well, those exhibits are
8 admitted.

9 ATTORNEY KRATZ: That's all I have of this
10 witness. Thank you.

11 THE COURT: Mr. Buting.

12 ATTORNEY BUTING: Yes, Judge.

13 **CROSS-EXAMINATION**

14 BY ATTORNEY BUTING:

15 Q. Good afternoon, Mr. Fassbender.

16 A. Good afternoon.

17 Q. Let me go back to the beginning of your
18 testimony, about some of your experience, for a
19 few minutes, okay?

20 A. Yes.

21 Q. Twenty-seven years as a law enforcement officer
22 is a long time; would you agree?

23 A. Yes.

24 Q. Not that you are old yet, but it's a lot of
25 experience. And I'm not sure that we got clear,

1 was all of that with DCI?

2 A. Five years of that was with the State patrol.

3 Q. Okay. But always for the State, pretty much?

4 A. Correct.

5 Q. And you did say that one of the functions of DCI
6 is to help out other law enforcement departments,
7 all over the state, particularly smaller ones,
8 that may not have as many detectives, right?

9 A. Certainly.

10 Q. And, you know, coming from outside of an area,
11 you kind of have a different perspective perhaps
12 than the local people who have been, you know, in
13 individual local departments?

14 A. Yes, possibly.

15 Q. I mean, you are somewhat at a disadvantage when
16 you talked about knowing local vendors and
17 resources if you need tow trucks and that sort of
18 thing, right?

19 A. Yes.

20 Q. So it's helpful to have those local departments
21 available for that kind of assistance, certainly?

22 A. Yes, sir.

23 Q. Okay. But in smaller departments sometimes, you
24 know, you realize that there's probably some
25 history between certain suspects and certain

1 police departments?

2 A. Certainly that could be.

3 Q. Okay. You have the advantage of, though, coming
4 on the scene without that kind of problem. You
5 don't have any prior history with anybody who may
6 be a suspect or person of interest, right?

7 A. Yes, I like to think so.

8 Q. And in this case, when you were called in, you
9 live in the Fox Cities area?

10 A. Correct.

11 Q. Okay. So you watch the television stations from
12 Green Bay, and that's where you get most of your
13 media news?

14 A. Yes, sir.

15 Q. And Appleton news, of course. So you knew this
16 Teresa Halbach case, missing person case, had
17 already gotten quite a bit of publicity, right?

18 A. I had seen bits and pieces, yes.

19 Q. Okay. And when you were called into this case,
20 you knew that this was going to be pretty high
21 profile; would that be fair?

22 A. Just based on Teresa missing, or where I was
23 being sent?

24 Q. Where you were being sent?

25 A. The possibility, yes, existed.

1 Q. Okay. So you wanted -- You knew that your
2 performance as an officer -- You didn't at that
3 point know you would be a lead investigator, did
4 you?

5 A. No.

6 Q. But you knew that, obviously, your performance
7 could be under the microscope, so to speak, of a
8 high profile case?

9 A. My performance is always under a microscope, but
10 more people may see it, yes.

11 Q. Okay. Sure. So you wanted to make sure that it
12 was a thorough investigation that you undertook,
13 right?

14 A. Yes.

15 Q. As complete an investigation as you could?

16 A. Yes.

17 Q. And as you described it, this funnel approach,
18 you wanted to be as thorough and get all leads
19 and everything carefully investigated before you
20 narrowed down to the bottom of that funnel, that
21 one man, right?

22 A. Generally, yes.

23 Q. Okay. Now, you also knew -- well, maybe you
24 didn't. Did you know, before you got assigned to
25 the case and you went over to the Avery property,

1 were you aware of Mr. Avery, who he was?

2 A. Yes.

3 Q. You knew about the wrongful conviction, and all
4 the years in prison, and all of that, right?

5 A. Yes.

6 Q. And you knew that he had filed a lawsuit against
7 Manitowoc County after that, right?

8 A. I believe so.

9 Q. Well, was there talk in the law enforcement
10 community, in this whole area, you know,
11 northeastern Wisconsin, about this lawsuit, at
12 all?

13 A. No, not from my experience.

14 Q. Okay. So what you knew was not insider
15 knowledge, it was just from the news?

16 A. Essentially, I know DCI looked at something
17 related to that.

18 Q. In fact, the Attorney General commissioned a
19 report by your department?

20 A. Yeah, the Attorney General.

21 Q. Okay. And she looked and focused on the wrongful
22 conviction of Mr. Avery to try and see what, if
23 anything, went wrong, that could be determined?

24 A. Although I wasn't involved in that, I believe so.

25 Q. Okay. And you knew, then, that after all that

1 was done, and all the information was gathered,
2 and additional facts were learned, Mr. Avery
3 filed a lawsuit against Manitowoc County?

4 A. Yes, I believe so.

5 Q. And against Manitowoc County sheriff or former
6 sheriff?

7 A. I'm not sure about that. I know it was Manitowoc
8 County. I believe Manitowoc sheriff too, yes.

9 Q. Okay. All right. And then you arrive, with that
10 background and that knowledge, and you come to
11 the scene, and the first thing you do is you go
12 to the Command Post, which is right at the
13 entrance way to the Avery property, right?

14 A. Yes, sir.

15 Q. And you go through a debriefing -- or a briefing,
16 I should say, with those in command, right?

17 A. Yes.

18 Q. You mentioned Sheriff Pagel, Deputy Inspector
19 Schetter perhaps, was he one of the ones you
20 spoke with?

21 A. Perhaps, I can't recall.

22 Q. Was Investigator Wiegert there?

23 A. I don't think he was. I think he was obtaining a
24 search warrant.

25 Q. Okay. Lieutenant Hermann, maybe?

1 A. I don't know.

2 Q. All right. But some upper brass, so to speak, in
3 the Manitowoc -- I'm sorry, in the Manitowoc
4 County Sheriff's Department, as well as the head
5 of the Calumet.

6 A. I definitely remember speaking with Sheriff
7 Pagel. And I know I saw Deputy Inspector
8 Schetter there.

9 Q. Okay. And Schetter is with Manitowoc Sheriff's
10 Department and Pagel is with Calumet?

11 A. Correct.

12 Q. And so you knew, then, that a determination had
13 already been made, before you arrived, that there
14 was a conflict of interest, or an appearance of a
15 conflict of interest, for Manitowoc County to
16 investigate Mr. Avery?

17 A. Correct.

18 Q. So for that reason, Calumet had been turned --
19 the lead investigation authority had been turned
20 over to Calumet?

21 A. Yes.

22 Q. And you, of course, wanted to do everything you
23 could, within your knowledge, to try and make
24 this investigation a fair one, right?

25 A. Yes, sir.

1 Q. You didn't want to go into this and set up some
2 kind of investigation that would have an
3 appearance of unfairness, right?

4 A. I didn't want to set up an investigation that was
5 unfair.

6 Q. Okay. Much less the appearance. And this was a
7 high profile case, you didn't want the public to
8 think that you were leading an investigation that
9 appeared to be unfair or biased in some way,
10 against the gentleman who had sued Manitowoc
11 County?

12 A. I don't know if I agree with that. I was
13 concerned about finding the truth, not about the
14 press, not about what people thought. And I made
15 my decisions based on that.

16 Q. All right. At any rate, in order to try and
17 ensure that there was a fair investigation, you
18 kind of looked around and made some decisions
19 that a few things had to be -- had to be changed,
20 that hadn't been done yet, right?

21 A. I'm not sure what you are asking.

22 Q. All right. I will be more specific, I'm sorry.
23 When you arrived at the property at 2:25 p.m.,
24 you drove right in to the Command Post and didn't
25 have to sign in or sign out, initially, did you?

1 A. As I answered before, I don't recall.

2 Q. All right. But let me just mark something and
3 show it to you.

4 (Exhibit No. 142 marked for identification.)

5 Q. All right. Showing you what's marked now as
6 Exhibit 142, does that look at all familiar to
7 you?

8 A. Yes, I have seen this.

9 Q. Okay. And can you tell the jury what that is.

10 A. That's one of the logs I was talking about, a
11 sign-in log, sign-out log --

12 Q. Okay.

13 A. -- at the scene.

14 Q. Okay. And this particular one, I think actually
15 says -- no this one doesn't, doesn't say exactly
16 where it is. But does this one appear to be one
17 that was taken up at the intersection of Highway
18 147 and Avery Road, or does this look like one
19 from somewhere else?

20 A. This looks like one that was started down by the
21 car crusher, I believe, that staging area down
22 there.

23 Q. Okay. So everybody who came down in that area
24 had to sign in there?

25 A. I would hope so.

1 Q. Okay. The very first entry is what?

2 A. DCI Agents Hunsader and Fassbender at 2:25 p.m.

3 in and then some initials.

4 Q. Okay. So this log, in any event, appears to have

5 been started right with your arrival?

6 A. Yes.

7 Q. And that's good police practice to do that,

8 right?

9 A. Certainly.

10 Q. You then have a record of everybody who comes and

11 goes, right?

12 A. Yes.

13 Q. And it has got an exact date and time that

14 someone comes, right?

15 A. Correct.

16 Q. And that applies to officers?

17 A. Yes.

18 Q. No matter what their rank?

19 A. Yes.

20 Q. Even the top dog sheriff has to sign a log like

21 this, right?

22 A. They should.

23 Q. In order to get past that checkpoint, you would

24 have to sign in, if you were going in in the

25 normal way, right?

1 A. You should, yes, if you are going by that
2 checkpoint, yes.

3 Q. Well, unless you were eluding the checkpoint in
4 some way, and coming in at a different location,
5 you would really have to sign in, wouldn't you?

6 A. Yes.

7 Q. The guard or the officer who's there says -- you
8 know, doesn't let anybody by without signing in?

9 A. Correct.

10 Q. And, now, you said you have seen this document
11 before. Have you had a chance, in the past, to
12 go through it with much detail?

13 A. No, probably not.

14 Q. I'm going to show it to you for a minute, if you
15 could look at it, please, and --

16 THE COURT: Is this still Exhibit 142,
17 Mr. Buting?

18 ATTORNEY BUTING: Yes it is.

19 Q. All right. Would you make note of the last page,
20 which is toward the end of the day when people
21 are signing off. You said around 10:00 people
22 were knocking off on -- this is the first Friday,
23 November 5th -- I'm sorry, Saturday,
24 November 5th?

25 A. Yes.

1 Q. Most of the investigation detectives were leaving
2 around 10-ish, something like that?

3 A. Ten, eleven, sure.

4 Q. Okay. And towards the bottom there, it says --
5 would you read that line, please.

6 A. In military time, 2241 hours, Lieutenant Lenk,
7 Detective Remiker, Sergeant Colborn, out. And,
8 then, must be a call number of the officer that
9 was in control of the log, 492.

10 Q. Okay. And 2241, what is that in regular
11 civilian?

12 A. 10:41.

13 Q. Okay.

14 A. P.M.

15 Q. All right. So the log shows that Lieutenant Lenk
16 signed out, from that checkpoint, at 10:41 p.m.
17 on November 5th, correct?

18 A. Yes. If this is all November 5th, yes.

19 Q. Okay. Well, if you take a minute and look
20 through there and show me where Lieutenant Lenk
21 signed in, if at all.

22 ATTORNEY KRATZ: Judge, I'm going to
23 object. That assumes a fact that's not into
24 evidence, that Lieutenant Lenk was there before
25 2:25.

1 ATTORNEY BUTING: Well, we're establishing
2 this.

3 ATTORNEY KRATZ: Well, if you're
4 establishing that at all, that would be hearsay. If
5 that's what he's using it for, he's assuming a fact
6 that's not in evidence.

7 THE COURT: I understand the question to
8 relate simply to whether or not there is a sign in
9 for Mr. Lenk at some earlier point in time.

10 ATTORNEY KRATZ: With respect to the Court
11 and counsel, then, he should ask that question,
12 Judge, not show me where Lieutenant Lenk signed in,
13 if he's on that form.

14 THE COURT: I will allow you to go into
15 that on redirect.

16 ATTORNEY KRATZ: Thank you, Judge.

17 A. And the question was?

18 Q. The question is, do you see an entry that
19 Lieutenant Lenk signed in anywhere on that log on
20 November 5th?

21 A. No, sir, I did not.

22 Q. All right. Now, correct me if I'm wrong, feel
23 free, but there's a couple of possibilities of
24 why that might be. One is that Detective Lenk
25 bypassed the checkpoint somehow, right?

1 A. Yes, that checkpoint.

2 Q. And we have -- You have testified already that
3 that is the checkpoint to get in that area and no
4 one is supposed to come and go without getting
5 checked in, right?

6 A. In that particular area down by the car crusher,
7 yes.

8 Q. Okay. And the car crusher is the closest
9 checkpoint -- one of the closest check areas to
10 the RAV 4, right?

11 A. Correct.

12 Q. Another possibility is that he was -- Lieutenant
13 Lenk arrived and was at the scene before that log
14 was even begun, right?

15 A. Right.

16 Q. Do you know Detective Lenk before this
17 investigation?

18 A. No.

19 Q. So, did you know him by sight at all before this
20 investigation? Would you be able to recognize
21 him if he showed up at Avery salvage?

22 A. No, I don't believe so.

23 Q. Okay. Do you know whether you saw this person,
24 now known as Lieutenant Lenk, at the Avery
25 Salvage when you arrived at about 2:00?

1 A. I don't recall.

2 Q. Okay. So you have no recollection of seeing him
3 arrive yourself?

4 A. No recollection.

5 Q. Or recollection of him even being there when you
6 arrived?

7 A. Correct.

8 Q. Okay. By the way, if I may divert for just a
9 second, you said -- When you talked about putting
10 together some teams, you said that you had
11 actually trained certain individuals in one of
12 these evidence processing teams from Manitowoc?

13 A. A couple of them.

14 Q. Would you just tell me who, the names of those
15 people?

16 A. Detective Remiker and Sergeant Colborn.

17 Q. Okay.

18 A. Not in evidence collection.

19 Q. Not in evidence collection?

20 A. No.

21 Q. So whatever personal knowledge you had about
22 their training had nothing to do with their skill
23 in that specific field of collecting evidence?

24 A. Correct.

25 Q. Okay. When you came into this case, I assume you

1 were not considering the possibility that some
2 law enforcement officer would actually plant
3 evidence against Mr. Avery, were you?

4 A. No.

5 Q. Have you ever encountered a case where you had to
6 deal with that issue?

7 A. I worked in public corruption for 12 years with
8 white collar crime, and planting evidence, I
9 don't believe I have ever had a police officer do
10 that.

11 Q. All right. So when you came to the scene, your
12 focus was not on making sure that no police
13 officer would do something that bad, like plant
14 evidence, right? That wasn't part of your focus
15 when you arrived?

16 A. Certainly.

17 Q. Okay.

18 ATTORNEY BUTING: I'm sorry, counsel, could
19 we put up Exhibit 86 again, our most common exhibit
20 so far.

21 Q. All right. Could you show us, again, where this
22 checkpoint area was or -- Strike that. Show me
23 where, when you drove down to the RAV 4 area, or
24 the southeast corner of that property, show me
25 where you parked? Or did you drive, or walk, I'm

1 sorry?

2 A. I believe, the first time I went down there I
3 drove.

4 Q. Okay. And show me about where you parked. Could
5 you maybe zoom it up one level? Okay. That's
6 good.

7 A. I believe it was probably right in this area,
8 right here.

9 Q. Kind of right next to the crusher? Like here's
10 the crusher, right?

11 A. You know, I can't remember exactly, but I would
12 say a little south of the crusher. Probably be
13 just -- not halfway in between that pond area and
14 the crusher, but further south of the crusher a
15 bit.

16 Q. Well, did you do a report that sort of summarized
17 your involvement during that week?

18 A. Yes.

19 Q. I'm not going to mark this right now, unless we
20 later need it. But for the record, is this one
21 of your reports?

22 A. Yes, it is. It's a DCI report, report No. 180,
23 Case File 051776.

24 Q. Okay. And this is a report that you prepared
25 when, back in November of 2005?

1 A. Report date 12/9/05.

2 Q. Okay. But closer in time to the events than we
3 are today, obviously?

4 A. Certainly.

5 Q. I want you to take a moment and read this to
6 yourself, this paragraph to yourself, and see if
7 that refreshes your recollection about where you
8 parked.

9 A. Okay.

10 Q. Okay. I will leave it here in case we need it
11 again, but does that help refresh your
12 recollection a little bit?

13 A. It does. It's similar to what I said.

14 Q. Where it says just west of the crusher, right?

15 A. Near and just west of the crusher.

16 Q. So, in this area, but now you're thinking maybe a
17 little bit further down here?

18 A. Maybe not. I thought I was a little further
19 south to the crusher when I look at the pictures.
20 Whether it was just west of the crusher, I'm not
21 sure. It may have been.

22 Q. In any event, from the crusher, from where you
23 parked, would be at least somewhat closer to the
24 location of the RAV 4 than it would be if you
25 were all the way at the crusher itself, by

1 however many feet you parked away?

2 A. Yes.

3 Q. Okay. And from that distance you indicated you
4 were still quite a distance away, right?

5 A. Yes.

6 Q. And so much so that you pulled out some
7 binoculars to be able to view the RAV 4 from that
8 distance?

9 A. I didn't pull out some binoculars, I think
10 someone at the scene had some and they let me use
11 them.

12 Q. Okay. Well, at this time you think it was 2:25,
13 so your understanding was that the first officers
14 arrived at 11?

15 A. I believe so.

16 Q. And this was, as you described it, at that point,
17 I think you said this on direct, this RAV 4 was,
18 at that point, the major piece of evidence on
19 this property, that you knew of?

20 A. Yes.

21 Q. That was it. That's the focus. That's the
22 big -- That's the missing woman's car --

23 A. Yes.

24 Q. --right?

25 A. Yes.

1 Q. And when you arrived up there, having already
2 been briefed at the Command Post, you knew about
3 this issue with the appearance of a conflict for
4 Manitowoc County, right?

5 A. Correct.

6 Q. And then, yet, you discovered that it wasn't
7 until 3:00, approximately, that a Calumet deputy
8 took over responsibility for trying to secure
9 that major piece of evidence?

10 A. I don't know that for sure as I sit here, but it
11 may have been.

12 Q. Well, maybe just so the record is clear, you have
13 one advantage of being a witness here today in
14 that you haven't been sequestered, right?

15 A. Correct.

16 Q. You have been able to sit here at the trial along
17 with Mr. -- or Investigator Wiegert, and hear
18 most of the testimony, right?

19 A. Correct.

20 Q. And you heard, I think it was with Sergeant Orth,
21 testimony that there was at 3:04 p.m. -- or maybe
22 it was Lieutenant Hermann, I may be mistaken,
23 that it was 3:04 p.m. that Manitowoc Deputy
24 Sheriff Cummings transferred responsibility for
25 security of that vehicle to a Calumet County

1 deputy?

2 A. I'm not disputing it, I just don't independently
3 recall that bit of testimony.

4 Q. You don't recall the time, or don't recall the
5 testimony?

6 A. When he said what time he turned it over.

7 Q. So, you wouldn't disagree with me that it was
8 3:00?

9 A. I have no reason to.

10 Q. Okay. So did it cause you concern that for four
11 hours the major piece of evidence in this case
12 was under the control of the very department that
13 had already been determined to have a conflict of
14 interest in this case?

15 ATTORNEY KRATZ: Objection, Judge. I think
16 it's a mischaracterization. The word conflict is,
17 in fact, a mischaracterization.

18 ATTORNEY BUTING: I will rephrase it. I
19 know what counsel is talking about.

20 Q. Did it cause you concern that, for four hours,
21 the major piece of evidence in this case was
22 under the control and security of the one
23 department that, itself, determined to have an
24 appearance of a conflict of interest?

25 A. No, it didn't. I was not involved in that

1 decision making. I knew that officers were on
2 that scene, protecting that scene.

3 Q. You weren't involved in that decision making at
4 all, because that took place before you got
5 there?

6 A. Correct.

7 Q. Okay. And the fact, you were trying to shape
8 things up a bit and make sure that logs were
9 taken and all of that when you arrived?

10 A. I suggested a log be kept.

11 Q. Okay. So it didn't concern you that there was
12 going to be an appearance that the fox was
13 guarding the hen house, so to speak; is that
14 right?

15 A. Absolutely not.

16 Q. Okay. Well, did you suggest that Manitowoc back
17 off and that the Calumet deputy take over? Was
18 that part of your decision?

19 A. I don't believe so. It happened, but I don't
20 believe that was specifically my decision.

21 Q. So it was just coincidental that it happened
22 around the time you arrived?

23 A. Probably, yes.

24 Q. All right. Now, at that point, you were already
25 designated as co-leader?

1 A. No, I don't think so. I think that happened when
2 Detective Wiegert got back and we -- I can't
3 remember when exactly, if it was after Brutus
4 alerted, or before, but we were having a briefing
5 at the command center and a determination was
6 made and we were asked to do that.

7 Q. Okay. So, that's -- All right. That's fine. So
8 that was after Investigator Wiegert came back
9 with the search warrant?

10 A. Yes.

11 Q. And that was about 3:35, I believe, right?

12 A. I believe so, 3:25, 3:35 and it was even later
13 than that, I believe.

14 Q. The designation was later than that?

15 A. Yes.

16 Q. Sure. I understand. So, then, just so we're
17 clear, when you got there, the leader of the
18 investigation, Investigator Wiegert, was not
19 present on the property?

20 A. He was not present. I don't even know if he was
21 the leader or not, but he was not present.

22 Q. And there were no prosecutors present?

23 A. When I got there, I can't remember. I know they
24 were there at some time, I just can't remember if
25 they were there then.

1 Q. Well, if you look at Exhibit 142, see if that
2 refreshes your recollection as to when any of the
3 district attorneys involved returned to the
4 property.

5 A. I see an indication at what appears to be
6 3:32 p.m.

7 Q. 3:32?

8 A. 3:32 p.m. Manitowoc County District Attorney and
9 Assistant District Attorney on the scene. That
10 is not saying whether they were there earlier
11 than 2:25 or not.

12 Q. Okay. What about Mr. Kratz or his assistant?

13 A. 4:03 p.m., Assistant District Attorney from
14 Calumet County, Jeff Froehlich. And then there's
15 an entry at 4:17 for both district attorneys
16 returned.

17 Q. All right. That's good enough for now, I guess.
18 So during that period of time, then, until
19 Investigator Wiegert came -- or came back with a
20 search warrant, or until the district attorneys
21 came, did you view yourself as sort of an agent
22 in control, or not; you were still an outsider,
23 so to speak?

24 A. Yes, I did not view myself as an agent in control
25 of anything.

1 Q. Okay. That's fine. At some point, though, that
2 did happen. And Sheriff Pagel, I believe it was,
3 requested you to be a co-leader?

4 A. Probably, yes.

5 Q. And then, you mentioned that you had some
6 meetings and discussions about trying to develop
7 some kind of a search plan?

8 A. Yes.

9 Q. And the first thing you did was this, you called
10 it a sweep of all the properties, right?

11 A. Correct.

12 Q. And like you said, this was a missing person case
13 still, but you came into this thinking something
14 more, didn't you.

15 A. Yes, based on what I knew at the time, plus, to
16 me just good practice to do that.

17 Q. Okay. Something more, even including a homicide,
18 right?

19 A. True.

20 Q. And, in fact, the search warrant applications
21 that were prepared told the Court they were
22 looking for evidence, including evidence of a
23 possible homicide, right?

24 A. Correct.

25 Q. And that was -- that took place even before you

1 got to the scene?

2 A. Yes.

3 Q. Okay. And so, in part, because of that, I
4 believe you testified on direct that you wanted
5 to make sure that you didn't miss anything in
6 this investigation, that it could be a lot more
7 than just a missing person, it could be homicide.
8 So you wanted to make sure that nobody missed
9 anything, right?

10 A. You try to do that, as a concept, to go in with
11 that mentality.

12 Q. All right. Let me go through some of these
13 searches, briefly, with you. If I told you that
14 on November 5th, at 3:48 p.m., the first entry
15 was made to Mr. Avery's trailer for this sweep
16 type search; does that fit with your
17 recollection?

18 A. That sounds right.

19 Q. Detective Remiker and Deputy Steier?

20 A. Yes.

21 Q. Two of them went in, it was a quick 10 minutes in
22 and out of the building, looking to see if there
23 was a live person there, Teresa, right?

24 A. Yes.

25 Q. And then they went on to other buildings and, you

1 know, doors were being kicked in, if necessary to
2 get in, because you were looking for, hopefully,
3 still a live person?

4 A. Yes, there were multiple teams, not just that one
5 team, I think.

6 Q. Okay. And then immediately after they left
7 Mr. Avery's residence, the trailer, the same team
8 immediately went right into the detached garage
9 sitting next to his trailer as well?

10 A. I think so, yes.

11 Q. Again, a quick entry, look around to see if
12 there's anybody there, alive or otherwise?

13 A. Yes.

14 Q. But in neither instance was anything seized?

15 A. Not that I know of.

16 Q. Okay. And, then, you did mention that, I think,
17 the next level of searches sort of right after
18 the sweep, and the sweep was also to make sure
19 that there's nobody there that could harm the
20 officers, some gunmen, armed gunmen, or something
21 like that, right?

22 A. For our protection, yes.

23 Q. That's routine procedure?

24 A. Correct.

25 Q. Okay. But the next level of search after that

1 was these dogs. You said there were like nine
2 cadaver or human remains type dogs?

3 A. A combination of human remains, mixed, and live.

4 Q. So all different kinds of dogs, but search dogs?

5 A. Yes.

6 Q. And they started going through everything, right,
7 as quickly as they could?

8 A. Primarily the vehicles in the salvage yard.

9 Q. Okay. And we -- we heard about this indication
10 or alert that this dog, Brutus, did in the
11 bathroom of Mr. Avery's trailer, right?

12 A. Yes.

13 Q. You heard that testimony today?

14 A. Yes.

15 Q. But you were aware that there were other alerts,
16 many alerts, all over that property, right?

17 A. There were other alerts, yes.

18 Q. Including right at the front door of Chuck
19 Avery's trailer, residence, right?

20 A. Correct.

21 Q. Now, Chuck Avery, Mr. Avery's brother, also lived
22 on the property, right?

23 A. Yes.

24 Q. And in fact, his trailer is the closest trailer
25 to the RAV 4 that was discovered, closest

1 residence, right?

2 ATTORNEY BUTING: Maybe if you could zoom
3 out one --

4 A. Yes.

5 ATTORNEY BUTING: -- degree, please,
6 counsel?

7 Q. Could you point where Chuck Avery's residence was
8 on there, or is?

9 A. I will have to squint a little bit here, but I
10 think it's right there.

11 Q. Okay. And there were other hits, other buildings
12 and cars, and kind of all over the place,
13 initially, right?

14 A. Yes.

15 Q. So it's not like Steven Avery's bathroom, where
16 he shaves, is the only place that any dog alerted
17 on that 40 acre property?

18 A. Yes, sir, that's correct.

19 Q. All right. Okay. Then you broke up into teams.
20 Well, actually, let me go back for just a minute
21 before I -- A number of times, let me just
22 clarify that. A number of times you said this
23 was a general search plan you were trying to put
24 together at that stage, right?

25 A. Beginning with the sweeps?

1 Q. Yeah, the whole plan from when you got there.

2 A. Trying to put a plan together, certainly, yes.

3 Q. And that it was fluid, that it adjusted based on
4 information, new information, you might get or
5 not get, right?

6 A. Throughout the entire time we had that property,
7 yes.

8 Q. Okay. Well, I think you said on direct, though,
9 that you weren't -- when you set up that very
10 first plan, that you really weren't sure what you
11 were searching for.

12 A. We had a search warrant that indicated items that
13 we were searching for.

14 Q. Right. And in that search warrant -- I mean, you
15 took us off a little with an example of a case
16 where some pathologist told you, maybe look for a
17 knife with a serrated blade or something, right?

18 A. Correct.

19 Q. In this case, though, you didn't have that kind
20 of information yet.

21 A. That's right.

22 Q. You said you were looking at this investigation
23 already as a homicide, potentially?

24 A. Yes.

25 Q. And your search warrant told you to look for any

1 kind of instrumentologies (sic) that could cause
2 a homicide, including knives, right?

3 A. Yes.

4 Q. Firearms, right?

5 A. Yes.

6 Q. Whatever else could be used, items to bludgeon
7 someone, anything like that, right?

8 A. Correct.

9 Q. So the officers did know to look for all those
10 kinds of items, at least?

11 A. They should have, yes.

12 Q. All right. So -- So, then, after the first
13 entries, after the very first brief sweep of
14 Mr. Avery's trailer, you then sat down to put
15 together a team who could actually start
16 collecting evidence -- search and collect
17 evidence, not just do these sweeps?

18 A. Yes.

19 Q. And, again, I'm assuming that foremost in your
20 mind was that you wanted to make sure that this
21 was going to be a fair investigation and a fair
22 search of anyone's property on that 40 acre
23 parcel, right?

24 A. Of course.

25 Q. And so you would not knowingly have assigned

1 officers to certain duties, if you had known that
2 they might be in a situation where there's an
3 appearance of a conflict of interest, right?

4 A. Again, I have trouble with the word appearance.
5 If there's a definite conflict of interest, that
6 would be a concern of mine.

7 Q. All right. Well, let me ask it this way, sir.
8 Did you know, on that day, November 5th, when you
9 are putting this team of searchers together, did
10 you know that Lieutenant Lenk had been deposed as
11 a witness in Mr. Avery's civil lawsuit, just
12 three weeks earlier?

13 A. No, I didn't.

14 Q. Did you know that Sergeant Colborn, Sergeant
15 Andrew Colborn, had also been deposed as a
16 witness just three weeks earlier?

17 A. No, I didn't.

18 Q. And neither Sergeant Colborn nor Lieutenant Lenk
19 told you those -- that fact, did they?

20 A. Not to my recollection, no.

21 Q. As a matter of fact, when did you first learn
22 that they had been deposed; was it at my behest?

23 A. It may have been. I don't know if I knew before
24 then, at a hearing.

25 Q. A hearing in August?

1 A. That may have been.

2 Q. That was your first -- the first time anybody
3 told you, hey, these guys were deposed as
4 witnesses, with Mr. Avery sitting right there?

5 A. I don't remember if that was the first time.

6 Q. All right. But, surely, you didn't know it
7 anyway on November 5th?

8 A. Correct.

9 Q. And if you had known that, if you had known that
10 these two officers who you were assigning to go
11 into Mr. Avery's residence, a person of interest,
12 if you had known that those two officers had been
13 deposed as witnesses in that civil case, you
14 would not have assigned them to that duty would
15 you?

16 A. That's not correct. Based on what I know now --

17 Q. I'm asking you your knowledge then. Are you
18 telling me that you would have, even if they had
19 -- if they had told you, and if you had known,
20 that they were witnesses in that civil case, you
21 would have still assigned Lenk and Colborn, to
22 the evidence team that went into Mr. Avery's
23 residence?

24 A. Number one, I needed evidence technicians.

25 Number two, I would have asked --

1 ATTORNEY BUTING: Your Honor --

2 A. -- them what it related to.

3 ATTORNEY BUTING: -- this is a yes or no
4 answer. He can explain it on redirect.

5 THE COURT: That's correct, it is a yes or
6 no answer.

7 A. Based on -- I guess repeat the question again.
8 I'm saying yes.

9 Q. You are saying that even if you had known that
10 Lenk and Colborn had been witnesses in the civil
11 lawsuit, three weeks earlier deposed in
12 Mr. Avery's civil lawsuit, you would have still
13 assigned them to go search Mr. Avery's residence?

14 A. There's more to the answer. You want yes, I will
15 tell you yes right now, but there's more to that
16 answer.

17 Q. All right. Well, let me talk about what your
18 resources were. You, by that time, had other
19 people who could go in that -- Mr. Avery's
20 residence and search, didn't you?

21 A. We were looking for trained evidence technicians
22 and we put a team together with them. I don't
23 know of any other people that I would have used
24 for that.

25 Q. Well, you had another team, didn't you? You had

1 another team search other areas, other buildings
2 on that property?

3 A. On Saturday, no. The Crime Lab was there, but
4 they were busy with the vehicle.

5 Q. All right. You had the property for a week?

6 A. Yes.

7 Q. You went in and out of this trailer -- we'll get
8 into how many times during that week -- there
9 would have been no reason for you to rush to
10 search Mr. Avery's trailer, without waiting a few
11 more moments for the Crime Lab specialists to
12 come and search it?

13 A. On Saturday, or another day?

14 Q. Saturday, or even wait until another day. I mean
15 you already knew that Teresa wasn't inside.

16 A. I had a capable and qualified team that could go
17 in there and do the job.

18 Q. All right.

19 A. I sent them in there.

20 Q. And there were certainly other buildings on that
21 property, where other people resided, that did
22 not have a civil lawsuit that required the
23 testimony, at a deposition, of Mr. Lenk and
24 Mr. Colborn, right?

25 A. Yes.

1 Q. Chuck Avery, let's just look at him for a second.
2 It's another residence where the dog alerted,
3 right?

4 A. Yes.

5 Q. Could have sent Lenk and Colborn in there and
6 have someone else go into Mr. Avery's residence
7 to, again, make sure that there's no appearance
8 of some funny business going on?

9 A. Saturday?

10 Q. Yes.

11 A. A possibility. I'm looking at other bits of
12 information also when I'm determining where we're
13 sending in our first team.

14 Q. Well, you sent the first team to Mr. Avery's,
15 because you said that was the obvious place to
16 start.

17 A. Based on several reasons.

18 Q. All right. Let's look at those a little bit. I
19 think right before that, if I recall, you said
20 that Mr. Avery was not the only person being
21 investigated?

22 A. Correct.

23 Q. But that you felt he was the most obvious place
24 to start.

25 A. I had to pick a place to start. The person who

1 last saw that person alive was a pretty logical
2 place to start.

3 Q. But you have done many homicide investigations
4 over the years, right?

5 A. That depends on what you term as many. I'm not
6 going to say I have done hundreds of homicide
7 investigations.

8 Q. But you have done enough, you know about certain
9 patterns, for instance, often the most obvious
10 suspect in a homicide is a spouse, you look at
11 the spouse, right?

12 A. Yes, the people we love the most.

13 Q. Or you look at a boyfriend or an ex-boyfriend,
14 don't you?

15 A. Yes.

16 Q. Or how about a roommate?

17 A. Yes.

18 Q. How about a roommate who doesn't report the
19 victim missing for three, almost four days?

20 A. Yes.

21 Q. That would be somebody you would want to
22 investigate?

23 A. That's a possible area to look at.

24 Q. That would be somebody you want to ask for an
25 alibi?

1 ATTORNEY KRATZ: Judge, I'm going to
2 interpose an objection. If counsel really wants to
3 get into a true motive, I think this going to
4 require advance rulings. I would like to either be
5 heard outside the presence of the jury, or I would
6 object to this line of questioning as it deals
7 directly with the -- (Inaudible.)

8 THE COURT: All right. The Court is going
9 to excuse the jurors for a few minutes.

10 (Jury not present.)

11 THE COURT: You may be seated.

12 ATTORNEY KRATZ: If I may be heard, Judge?

13 THE COURT: Yes.

14 ATTORNEY KRATZ: Thank you, your Honor.

15 The defense has now introduced into this trial
16 motive, that is, asking this officer, why what
17 Mr. Buting has now identified as several individuals
18 who might have an obvious motive to kill Ms Halbach.
19 The State, as this Court knows, earlier in this
20 case, offered specific evidence, it's called other
21 acts evidence, 904.04 (2), to prove Mr. Avery's
22 motive.

23 Now that the defense has opened the
24 door, now that the defense has suggested that
25 other people have motive, the inferences that

1 Mr. Avery does not, that is a reasonable
2 inference for the jury to draw, based upon Mr.
3 Buting's questioning of this witness. I am at
4 this time, then, Judge, going to ask the Court
5 revisit, or at least allow additional argument on
6 the issue of other acts evidence.

7 If Mr. Buting, who now believes that
8 motive is at issue, Mr. Buting and the defense
9 now believes that motive should be considered by
10 this jury as part of the case, and at least by
11 the inference that Mr. Avery does not have a
12 motive, the State would, once again, reoffer
13 those items, which we specifically offered in
14 pre-trial attempts, to address Mr. Avery's motive
15 directly.

16 This Court has heard, through our
17 opening statement, that we were not going to
18 raise motive as an issue, that we had stayed away
19 because of the Court's previous ruling on this
20 entire issue. But now that Mr. Buting, and now
21 that the defense has raised the issue of motive,
22 I'm going to ask the Court revisit those issues.

23 THE COURT: Mr. Buting.

24 ATTORNEY BUTING: Judge, I have done
25 nothing of the sort. What we're doing here is

1 cross-examination of this officer, who testified
2 that Mr. Avery was the obvious choice of where to
3 start the investigation. All we're talking about is
4 what's going through his mind, at that day, that
5 time, in terms of where to allocate his resources.
6 And I'm demonstrating his bias towards Mr. Avery,
7 and focus on Mr. Avery, to the exclusion of others.
8 That's all this is going into. There's no motive
9 otherwise being introduced.

10 THE COURT: All right. I will make a
11 couple of comments. First of all, the Court, by
12 denying the State's other acts motion, did not
13 prohibit the State from introducing any evidence
14 relating to motive. Rather, the Court simply denied
15 the particular mechanisms, if you will, that were
16 proposed by the State, for other reasons related to
17 the law involving the admission of other acts
18 evidence.

19 With respect to the questions posed by
20 the defense at this point, they don't involve an
21 offer of extrinsic evidence and, therefore, at
22 least at this point, do not raise a **Denny** issue.
23 The Court is well aware of its prior ruling and I
24 will keep my ears open in the event that happens,
25 but I don't believe it's happened to this point.

1 The focus of the questioning, as I understand it
2 to this point, rather goes to decisions that the
3 officer made in the investigation of this matter
4 and other paths of investigation that could have
5 been followed.

6 So I'm going to overrule the objection
7 at this point. If the State believes it's going
8 too far, again, I will reconsider it, again, but
9 I'm only ruling on what I heard to this point.
10 You can bring the jury back in.

11 (Jury present.)

12 THE COURT: You may be seated. Mr. Buting,
13 you may resume.

14 ATTORNEY BUTING: Thank you.

15 BY ATTORNEY BUTING:

16 Q. I believe we left off with you saying, yes, you
17 would certainly like to investigate it. These
18 are the people you were talking about, the
19 roommate or ex-boyfriend?

20 A. That is an avenue that would be approached,
21 absent other circumstances.

22 Q. All right. And wouldn't you also want to, so you
23 don't miss anything, as you said, investigate an
24 employer who doesn't report an employee missing
25 for three days?

1 A. In relation to the employer reporting, related to
2 this case?

3 Q. Yeah, this case.

4 A. That would be something you would look into
5 possibly, yes.

6 Q. All right. But at any rate, you decided that the
7 first place you would start would be Mr. Avery's
8 trailer, residence?

9 A. Based on information that I had, yes.

10 Q. All right. And you put together, actually, a
11 team of four officers, correct?

12 A. A team of four officers was put together, yes,
13 whether I did it specifically, I don't recall.

14 Q. Three of those four officers are Manitowoc
15 Sheriff's Department employees, right?

16 A. Two investigators and one officer -- or sergeant,
17 yes.

18 Q. And they are Lieutenant Lenk, Sergeant Colborn,
19 and Detective Remiker?

20 A. Yes.

21 Q. And then you also had a Calumet Sergeant Tyson?

22 A. Yes.

23 Q. As part of that team. And that team entered
24 Mr. Avery's residence at 7:30 p.m. on November
25 5th, Saturday?

1 A. Yes.

2 Q. And they didn't leave until 10:05 p.m.?

3 A. That's correct.

4 Q. Those four officers, searching Mr. Avery's
5 residence, for over two and a half hours?

6 A. Yes.

7 Q. Both sides are having trouble with the
8 electronics in this courtroom, I'm afraid. Let
9 me try something else, we'll see if I can put on
10 one of the slide exhibits. I'm showing you
11 what's Exhibit 102, I think, yes. We heard
12 testimony about this animation before, right?

13 A. That's correct.

14 Q. And this is accurate, I guess, to the inch, or
15 half inch, or something like that; is that what
16 we heard.

17 ATTORNEY BUTING: Zoom out just a bit,
18 there we go.

19 Q. This is the sum total --

20 ATTORNEY BUTING: Zoom out one little bit
21 to show the whole --

22 Q. This is the sum total of residences that you had
23 four officers in for two and a half hours, on the
24 evening of November 5th, correct?

25 A. Yes.

1 Q. And at that time, they were looking for any
2 evidence, including evidence of a possible
3 homicide, right?

4 A. Yes, sir.

5 Q. They were looking for blood, right?

6 A. Yes.

7 Q. Certainly any indication, maybe, that Teresa
8 Halbach had been in that residence?

9 A. Correct.

10 Q. It's a rather small area to search, as residences
11 go, don't you think?

12 A. I suppose, yes.

13 Q. And they seized 50 some items on that occasion,
14 right?

15 A. I don't know how many items they seized on that
16 occasion.

17 Q. And from your knowledge of the investigation
18 later, none of those items were in anyway linked
19 to Ms Halbach, were they?

20 A. That's probably true. I'm not positive.

21 Q. Okay. We'll follow through with that in a
22 minute. And then they left and quit for the
23 night, and the next day they went to search
24 Mr. Avery's garage; is that right?

25 A. Yes. Make up of the team was a little different,

1 though, I think.

2 Q. I'm sorry, you're right. It was Lieutenant Lenk,
3 Sergeant Colborn, Remiker, the same three
4 Manitowoc officers, right?

5 A. Correct.

6 Q. At this time with Deputy Kucharski -- I believe
7 is the way you pronounce it -- from Calumet?

8 A. Yes.

9 Q. So four more officers, this time searching this
10 one room garage; is that right?

11 A. Yes.

12 Q. For 1 hour and 47 minutes, does that sound right?

13 A. I don't know, sounds right.

14 Q. If I told you they entered at 8:00 a.m. and left
15 at 9:47 a.m. on November 6, Sunday morning, would
16 you disagree with that?

17 A. No, I wouldn't.

18 Q. You also mentioned that later that day, on
19 Sunday, after briefing with you, you determined
20 that the officers had seen a couple of firearms
21 in Mr. Avery's residence, and you wanted to send
22 them back in to retrieve those items, right?

23 A. They talked about several items and, yes, we did
24 want to.

25 Q. And so the same team of four, four officers,

1 Remiker, Lenk, Colborn, and Kucharski, went back
2 into Mr. Avery's residence at 12:25 p.m. on
3 November 6th and left at 12:48 p.m.; would you
4 disagree with that?

5 A. No, I wouldn't.

6 Q. So 23 minutes in his residence, again, right?

7 A. Correct.

8 Q. That's now the third -- I'm sorry, the fourth
9 entry to Mr. Avery's trailer?

10 A. Yes, sir.

11 Q. By law enforcement officers?

12 A. Correct.

13 Q. And then later that evening, Sunday evening?

14 ATTORNEY BUTING: You can put the trailer
15 back on.

16 Q. Later that evening, you had a team from the Crime
17 Lab go back into Mr. Avery's residence, the 5th
18 entry, right?

19 A. Yes.

20 Q. Okay. And that's when you said that they came in
21 with alternate light sources and things of that
22 nature, to try and see if there might be other,
23 you know, bloodstains, or something like that,
24 that might have been missed?

25 A. That night they were looking for blood patterns.

1 It's a different night that they used the
2 luminal.

3 Q. And they indicated a few areas that they thought
4 your officers should at least collect. Maybe
5 they are important, maybe they are not?

6 A. Correct.

7 Q. But they didn't themselves collect it, they left
8 it for your officers?

9 A. To my knowledge, yes.

10 Q. And then you said the next day, which would have
11 been Monday, November 7th, Lieutenant Lenk and
12 Sergeant Colborn, and Sergeant Tyson went back
13 into Mr. Avery's residence again, for the
14 computer?

15 A. To take the serial number off the computer.

16 Q. If I told you that they were in for 7 minutes at
17 9:57 a.m. to 10:04 a.m.; would that fit with your
18 recollection?

19 A. Yes.

20 Q. Now, that's now the sixth entry?

21 A. Yes.

22 Q. By law enforcement to Mr. Avery's residence,
23 right?

24 A. Yes.

25 Q. The following day, the team comes in a little bit

1 smaller. At this time it's just Lieutenant Lenk,
2 and Sergeant Colborn, and Deputy Kucharski,
3 right?

4 A. Yes.

5 Q. This is Tuesday morning, November 8th. If I told
6 you then that they entered at 8:25 a.m. and left
7 at 12:18 p.m.; would that fit with your
8 recollection?

9 A. 8:25. I'm not sure about when they left.

10 Q. All right. And that was the 7th entry to
11 Mr. Avery's residence, and that's the entry that
12 this key was supposedly discovered by Lieutenant
13 Lenk, right?

14 A. Yes, sir.

15 Q. That had been missed in six other entries,
16 correct?

17 A. Yes.

18 Q. And we will hear how it was discovered and how
19 obvious it was, later. I'm not going to ask you
20 about that because you weren't present for the
21 discovery of the key, were you?

22 A. That's correct.

23 Q. You arrived and they said, hey, we have got this
24 key, it's a Toyota key. And you rushed to --
25 Strike that. You come immediately to take a look

1 at the key and see whether or not something else
2 should be done with it, right?

3 A. What should be done with it, yes.

4 Q. Okay. And you mentioned, let's send it to the
5 Crime Lab and see if it will start the ignition
6 of the Halbach vehicle?

7 A. That's right.

8 Q. And then, I'm just going to go through this
9 quickly, on November 9th, you sent Lieutenant
10 Lenk, Sergeant Colborn and Calumet Deputy,
11 Wendling, back into Mr. Avery's residence, again,
12 looking for a garage door opener I think you said
13 it was, or some things like that?

14 A. Yes, garage door opener.

15 Q. Because, what was it, there was a garage door
16 opener found in Teresa Halbach's RAV 4?

17 A. Yes.

18 Q. And there was some concern that maybe that was
19 the killer's, right?

20 A. That was a thought, and so we looked around the
21 property, not just Steven's residence, to see if
22 we could locate whether they were. In fact, we
23 actually brought that thing up, I think the next
24 day or the day after, to see if it opened any
25 garage door.

1 Q. And it turned out to open Teresa's own garage
2 door?

3 A. Yes.

4 Q. So it was unrelated to the crime?

5 A. Yes.

6 Q. And then, again, later on November 9th, Lenk and
7 Colborn and Wendling went back in for 10 minutes,
8 from 11:40 to 11:51, looking for some missing
9 tool; does that ring a bell?

10 A. That I don't recall. They went in a garage.

11 Q. Okay. That was November 8th when they were
12 looking for a garage -- I'm sorry, they were
13 looking for a tool that was missing from a kit
14 that was in Teresa Halbach's car, right?

15 A. Right. That was -- My recollection is that kind
16 of ran together, this tool was discovered
17 earlier, and that was kind of ongoing. And they
18 went in Steven's trailer to look for the garage
19 door opener and saw some pair of women's gloves,
20 I believe. Then they went into the garages, I
21 think they went into Barb's, in her garage, to
22 look for this tool.

23 Q. Okay. So, let me just finish up with the
24 residence first, and then go back to the garage.
25 You do recall, though, that there was an entry,

1 another entry, which would now be the 8th, 9th
2 entry to Mr. Avery's residence, on November 9th?

3 A. November 9th being Wednesday?

4 Q. Yes.

5 A. And that was the garage door opener, yes.

6 Q. Okay. And then you obtained a second warrant,
7 right?

8 A. Yes.

9 Q. And, then, thereafter, Mr. Avery's residence was
10 again entered, three more times, on
11 November 12th, for two hours and four minutes, by
12 Trooper Austin, to take measurements for these
13 helpful animated computer diagrams, right?

14 A. Yes.

15 Q. And, again, on November 12th, this time,
16 yourself, entering briefly, looking for some kind
17 of document, right?

18 A. I think myself and two of the other
19 investigators, looking for some documents, yes.

20 Q. And, then, I think you did one more quick run
21 through at 9:30 on November 12th, shortly before
22 the property was re-released to the Avery's,
23 right?

24 A. Yes, generally you do a final -- a final sweep.

25 Q. I count 12 entries to Mr. Avery's trailer during

1 that week, by law enforcement; would you disagree
2 with that?

3 A. No.

4 Q. Okay. Going back to the garage, I'm not sure, I
5 think I said that after -- that there was the
6 first sweep entry of the garage, right?

7 A. Yes.

8 Q. On the 5th. And then the next morning, when the
9 four officers spent almost two hours in that
10 little garage, on November 6, right?

11 A. Yes.

12 Q. And then there was also one looking for the tool,
13 on November 8th?

14 A. Yes.

15 Q. Lasted about 24 minutes, would you agree with
16 that?

17 A. I'm not sure if that was the 8th or the 9th.

18 Q. One of those two days?

19 A. I thought it was the 9th when they were looking
20 for that emergency roadside tool.

21 Q. Okay. And it wasn't found, right?

22 A. They found a bag that had tools like that in it
23 on a Samurai in there, but did not, ultimately,
24 match up to what we were looking for.

25 Q. And then, without belaboring the point here too

1 much, the garage, Mr. Avery's garage, was entered
2 again on November 9th, for 19 minutes,
3 November 10th, briefly, looking for a hacksaw
4 blade; do you remember that?

5 A. Yes, I believe Agent Sturtivant had done that.

6 Q. And on November 12th, one final time before you
7 released the property?

8 A. Yes.

9 Q. So I count six entries to his garage by law
10 enforcement during that week; would you agree
11 with that?

12 A. Five or six, I wasn't counting along.

13 Q. All right.

14 ATTORNEY BUTING: Judge, do you want to
15 take an afternoon break. Might be a good time.

16 THE COURT: All right. We'll take our
17 afternoon break at this time. Resume at five
18 minutes to three.

19 (Jury not present.)

20 (Recess taken.)

21 THE COURT: Mr. Buting you may resume your
22 cross-examination.

23 ATTORNEY BUTING: Thank you, your Honor.

24 CROSS-EXAMINATION CONTD.

25 BY ATTORNEY BUTING:

1 Q. Couple things I wanted to clear up. You
2 mentioned that some firearms -- one of the
3 entries to Mr. Avery's residence was to secure
4 the couple firearms, and a vacuum brush, or
5 something like that; do you remember that?

6 A. Yes.

7 Q. And that there were other firearms also on the
8 other buildings, other residences?

9 A. Yes, buildings, residences, cars.

10 Q. Including one of the firearms taken from
11 Mr. Avery's residence was a .22 Marlin rifle?

12 A. From Steve's residence?

13 Q. From Steve's -- I'm sorry, from Steven Avery's
14 residence, yes.

15 A. Yes.

16 Q. There were also two other .22 Remington -- I'm
17 sorry, .22 Marlin rifles found elsewhere on the
18 property, right?

19 A. Did you say two others?

20 Q. Right.

21 A. I know there is like another Marlin Glenfield or
22 something.

23 Q. That was in Bobby Dassey's bedroom?

24 A. I'm not even sure if that's where that one was.
25 I'm not aware of the other Marlin, if there was

1 one.

2 Q. Barb Janda's?

3 A. No.

4 Q. No. All right. You also mentioned at one point,
5 I think on November 8th, that the Wisconsin Crime
6 Lab had to be diverted to some potential burial
7 site?

8 A. Yes, some searches that were being conducted off
9 on the perimeter off the Avery properties had
10 come across a suspicious area that they
11 thought -- and I think the dogs actually went by
12 it -- that it could have been a clandestine
13 burial site.

14 Q. Just to clear up, so the jury is not speculating
15 about that, that turned out to be nothing, right?

16 A. That's correct.

17 Q. Okay. All right. Now, one of the things that
18 you did, let's go back to the 5th, to the RAV 4
19 site again.

20 ATTORNEY BUTING: Could we put up No. 86,
21 please.

22 ATTORNEY KRATZ: Me?

23 ATTORNEY BUTING: I'm sorry, is it on ours
24 now?

25 Q. All right. You mentioned that it was -- it

1 looked like it was threatening, like it might
2 rain, and so you were concerned about the
3 elements of the RAV 4 and all that, right?

4 A. Yes.

5 Q. And I'm going to show you Exhibit 118 that you
6 identified yesterday. Just take a look and then
7 I'm going to put that one up on the screen for
8 the jury along with these two. Also, show you
9 Exhibit -- that's a picture -- 118, is when the
10 tarp is just being started to be put over the
11 RAV; is that right?

12 A. It's either when it's being put over or taken
13 off.

14 Q. Okay. It's not completely off, right? You are
15 actually in it, right?

16 A. Yes.

17 Q. You are wearing the red?

18 A. Yes. I just don't know if it's on or off, coming
19 on or off.

20 Q. Okay. And let me put that up on the screen while
21 you take a look at those two exhibits and see if
22 you can identify those. All right.

23 ATTORNEY BUTING: Zoom in on that, that
24 southeast corner, please.

25 Q. Okay. Now, once again, just so no one is

1 confused here, especially the jury, this picture
2 is taken -- Exhibit 86 is after the RAV 4 had
3 been removed from the scene entirely, this is
4 like a different day, right?

5 A. Yes.

6 Q. Could you point where the RAV 4 was, right next
7 to that red vehicle, right?

8 A. Yes.

9 Q. Okay. And Exhibits -- what are they, 143 and
10 144, in front of you?

11 A. Yes.

12 Q. Those are what we're going to put up on the ELMO
13 in a second, but those are photos taken from some
14 place on the north side of this pond, looking
15 towards the RAV 4, while it was still there on
16 November 5th, right?

17 A. I believe so.

18 Q. All right. Then let's try the ELMO, if you don't
19 mind. All right. Just for the benefit of the
20 jury, when we were talking about 118, where we
21 were saying that the tarp is part way on or part
22 way off, whatever, that this is the photo we were
23 talking about, right?

24 A. Yes.

25 Q. And this one is apparently taken from a position

1 somewhere east of the vehicle looking west?

2 A. That's right.

3 Q. Now, at some point, though, the RAV 4 was almost
4 completely covered by this tarp contraption
5 right?

6 A. It was a tarp that we tried to put over the
7 vehicle without touching it, so we were using
8 surrounding trees, or whatever, or cars --

9 Q. Sure.

10 A. -- to do that. So it was more like a cover,
11 canopy type thing that we were trying to
12 accomplish.

13 Q. Okay. And so, we haven't seen any pictures yet
14 of what it looked like when it had -- I think it
15 was probably more than one tarp?

16 A. Not that I remember.

17 Q. You think it's just all one tarp?

18 A. I thought it was. If we used two, I don't
19 recall.

20 Q. Okay. I'm showing you 144 first. And, again, as
21 you testified a moment ago, this is a picture
22 that's taken from some position apparently looks
23 like it's about just on the other side of that
24 detention pond, looking kind of southwest?

25 A. Yes.

1 Q. Okay. And that's what it looked like after the
2 tarp was completely placed on it?

3 A. I would have to agree, only the tarp doesn't look
4 blue there.

5 Q. Okay.

6 A. Might just be the camera.

7 Q. Was the tarp maybe two colored, one side blue,
8 one side gray?

9 A. Possibly, but the first picture showed that the
10 blue side was out.

11 Q. Okay. And so an individual standing -- This
12 appears to be a picture taken, actually, closer
13 to the RAV 4 than one would be if they were
14 standing at the car crusher; would you agree?
15 Isn't that the pond in the foreground right
16 there?

17 A. It looks like it, yeah.

18 Q. Okay. Now, Exhibit 143, looks like maybe is a
19 little bit farther back. I'm going to show you
20 that one right now. Do you see the pond in the
21 foreground there?

22 A. Yes.

23 Q. And the Toyota RAV 4 enclosed or covered by the
24 tarps?

25 A. Yes.

1 Q. So, again, one standing over in this area,
2 watching what might have been going on, or just
3 taking a look at the scene, wouldn't have been
4 able to see the RAV 4 at all, because it was
5 covered; is that right?

6 A. Yes.

7 Q. So the tarps --

8 ATTORNEY BUTING: Your Honor, would it be
9 alright if I published these to the jury, since it's
10 not all that easy to see on the ELMO.

11 THE COURT: We don't have slides of these?

12 ATTORNEY KRATZ: Sure. You didn't ask me
13 to do that.

14 ATTORNEY BUTING: I couldn't find any. I
15 don't know.

16 THE COURT: Why don't the two of you get
17 together, off the audio, and see if you can find
18 them quickly. If not --

19 ATTORNEY KRATZ: Which one do you want up
20 first, counsel?

21 (Off record.)

22 Q. (By Attorney Buting)~ Okay. That is 144, now
23 we're looking at the screen, it has a 144 on it,
24 I believe, doesn't it. Yeah. And then could you
25 -- Just leave it there for a minute. So the

1 purpose for the tarp, at least as far as you were
2 concerned, was to try and protect the vehicle
3 from the elements, if it started raining, right?

4 A. The vehicle, the items covering or concealing it,
5 yes.

6 Q. Okay. And so you tried to drape these over
7 branches and things to not actually touch it?

8 A. Correct.

9 Q. So that there was room around it like,
10 particularly in between the vehicles and --
11 almost looks like that's a tent type opening or
12 something on the one side of it, right?

13 A. I don't know.

14 Q. All right.

15 ATTORNEY BUTING: Well, that's okay. Just
16 show the other one and then we'll be done with this
17 topic.

18 ATTORNEY KRATZ: Which exhibit number,
19 counsel?

20 ATTORNEY BUTING: That one is 143, isn't
21 it, Special Agent Fassbender?

22 THE WITNESS: Yes.

23 ATTORNEY BUTING: All right.

24 Q. (By Attorney Buting)~ All right. Now, when you
25 searched the property, I mean, you walked around

1 the property over the course of a week, right,
2 and you became familiar yourself with various
3 buildings and their locations?

4 A. To a degree. We were quite busy in the command
5 center that we didn't do that a lot, but to a
6 degree.

7 Q. Well, were you aware from your searches that
8 there was an aluminum smelter located on the
9 property?

10 A. I was informed of that, I never saw it
11 personally.

12 Q. Could we -- Let me mark this and see if this
13 refreshes your recollection.

14 (Exhibit No. 145 marked for identification.)

15 Q. (By Attorney Buting)~ I'm showing you Exhibit
16 145, tell me if you have ever seen that, or ever
17 saw that during that week?

18 A. No.

19 Q. No. Okay. Well, we'll save this exhibit then.
20 Nevertheless, you were told that there was an
21 aluminum smelter on the property?

22 A. Yes.

23 Q. And that, in fact, at some point during the
24 investigation you were aware that there was
25 someone sent an anonymous letter, that was found

1 at the Green Bay Post Office, that said, body was
2 burnt up in aluminum smelter, 3 a.m., Friday
3 morn, right?

4 A. I'm aware of that letter. The exact verbiage,
5 I'm not sure, but something to that effect, yes.

6 Q. All right. And it was contained in an envelope
7 from the Green Bay Police Department, that had a
8 big sticker on it, flourescent green, that said
9 check for latents, right?

10 A. I believe so, yes.

11 Q. Now, that letter sat in the property department
12 of Calumet Sheriff's Department until I
13 discovered it, just this past November; isn't
14 that right?

15 A. Until you discovered it?

16 Q. Until I pointed it out to you?

17 A. That's where it was, yes.

18 Q. You and Mr. -- Investigator Wiegert were present
19 when I found this particular letter in the
20 property inventory, right?

21 A. Yes.

22 Q. And was only then that it was sent to the Crime
23 Lab to be analyzed for any sort of prints or
24 anything, right?

25 A. I believe so, yes.

1 Q. Is that because the body being burnt in the
2 smelter didn't fit your theory that Mr. Avery was
3 guilty of this crime?

4 A. I felt it didn't fit the facts and the evidence.
5 That smelter was examined by arson investigators
6 and they determined that it didn't appear to have
7 been used for a while.

8 Q. Did you suggest any DNA or the anthropologist
9 examine it to see if there were any bone
10 fragments?

11 A. The particular arson investigator that examined
12 that is the one that found most of the bone
13 fragments in the burn area.

14 Q. And if that smelter had been used to burn the
15 body, though, that would really tend to indicate
16 that Mr. Avery wasn't guilty of this crime,
17 because it would not make sense to burn the body
18 in the smelter, take the bones and place them on
19 your own backyard, would it?

20 ATTORNEY KRATZ: Objection, speculation.
21 Judge, we're not getting into what makes sense about
22 what Mr. Avery did, are we?

23 THE COURT: I will sustain the objection.

24 ATTORNEY BUTING: All right. I will move
25 on.

1 Q. (By Attorney Buting)~ Let me just fast forward a
2 little bit here to February and March of 2006,
3 okay. Are you with me?

4 A. Yes.

5 Q. All right. By that time, through all of your
6 investigation, you knew that as of that time, you
7 had found no physical evidence linking Teresa
8 Halbach to Mr. Avery's trailer or garage right up
9 to February 28th?

10 A. I don't believe that's accurate.

11 Q. What did you find?

12 A. We found shell casings in the garage that did
13 match up to the rifle in the house.

14 Q. This is a junkyard, people shoot guns all the
15 time, right? I mean, you found shells all over
16 the place, 40 acres, right?

17 A. Oh, certainly, yes.

18 Q. Junkyard, these people were sighting rifles, you
19 knew that, shooting rabbits, the mere existence
20 of shells, without a link to a particular body,
21 doesn't prove anything, does it?

22 A. I don't know if at that time our anthropologist
23 had indicated -- I can't -- indicated that there
24 was possible bullet holes in the skull or not,
25 but that would be --

1 Q. But if there were, the shells didn't link to that
2 anyway, did they?

3 A. The shells linked to a rifle found in the
4 trailer, that's all it was.

5 Q. Right, which could have had nothing to do with
6 this offense, as far as you knew, at that time?

7 A. It could have been, you know, we just -- No, we
8 didn't know.

9 Q. Okay. And you mentioned on direct, something
10 about blood stains, and the Crime Lab finding
11 little extra areas. So the jury is not left
12 speculating for the next week, about whether
13 those were ever found to be Teresa Halbach, they
14 were not; isn't that right?

15 A. That's correct.

16 Q. None of those blood stains matched anyone except
17 Mr. Avery?

18 A. Yes.

19 Q. All right. And it was only on a subsequent
20 search, around March 1st and 2nd, that a bullet,
21 any bullets, any fragments of bullets, or bullets
22 themselves, were found in Mr. Avery's garage,
23 right?

24 A. Yes, sir.

25 Q. Now, were you present for the execution of search

1 warrants for Mr. Avery's trailer and garage,
2 again, on March 1st and March 2nd?

3 A. March 1st only, I believe, and just the
4 beginning, the execution of it and maybe half
5 hour, hour.

6 Q. Okay. And you are aware that they were doing
7 more of these logs, checking people in and out of
8 the scene, as should be standard procedure,
9 right?

10 A. Yes.

11 Q. And you are probably on here somewhere, there you
12 are. If you could identify Exhibit 147 for me,
13 please.

14 A. This looks like a entry log dated March 1, 2006,
15 at 3:30, 1530 hours, Avery Road, State Trunk
16 Highway 147. This would have been a log-in sheet
17 out away from the two scenes of the residence and
18 the garage. More of an entry type log-in
19 sheet --

20 Q. All right.

21 A. -- for everyone coming down that road.

22 Q. So anybody who is coming back on the Avery
23 salvage property, that 40 acre area; is that
24 right?

25 A. I believe so, yes.

1 Q. And Exhibit 146 -- I had those backwards, sorry.

2 A. And this is March 2 appearing to be the same type
3 of log -- sign-in log, probably in the same area,
4 more of entry log --

5 Q. Okay.

6 A. -- for that area.

7 Q. All right. You arrived at 1735, 5:35 p.m.,
8 right?

9 A. Yes.

10 Q. Can you tell me who arrived at 6:10?

11 A. 1810 hours, Lieutenant Lenk from Manitowoc County
12 Sheriff's Department.

13 Q. Lieutenant Lenk. Did you ask him to come to the
14 scene?

15 A. I don't recall if I personally asked him to come
16 to the scene or not.

17 Q. This was now five months after the original
18 searches for that week of November,
19 approximately?

20 A. About four months, yes.

21 Q. Certainly wasn't necessary, on that occasion, for
22 Mr. Lenk to arrive, to be somebody who would help
23 search Mr. Avery's residence or garage again, was
24 it?

25 A. No, I don't believe he did search there. I think

1 some of his personnel were there. And he, as
2 their supervisor, I don't know if that's why he
3 stopped out there.

4 Q. Is that his name squeezed in there, almost as an
5 afterthought, on the second to the last line?

6 ATTORNEY KRATZ: I'm going to object. It's
7 argumentative, Judge, as afterthought, it's
8 absolutely improper.

9 ATTORNEY BUTING: I'm sorry, counsel is
10 right.

11 THE COURT: All right. I take it the
12 question is being withdrawn.

13 ATTORNEY BUTING: I will withdraw the
14 question, yes, thank you, sir.

15 Q. And do you see Mr. Lenk again at the scene the
16 following morning?

17 ATTORNEY KRATZ: I'm going to object,
18 didn't Mr. Fassbender say he wasn't there the next
19 day?

20 THE COURT: Mr. Buting, you might want to
21 rephrase the question.

22 Q. (By Attorney Buting)~ Did you see Mr. Lenk's name
23 on Exhibit 146 as having logged in and entered
24 the scene, again, the morning of March 2nd?

25 A. Yes.

1 Q. And at what time would that be?

2 A. 8:49 a.m.

3 Q. All right. I will put it up quickly on the ELMO.

4 Now, this search is the search that -- that --

5 where a couple of bullet fragments were

6 discovered, right?

7 A. Yes.

8 Q. Five months after the previous searches, four

9 months, my math is bad I guess, four months?

10 A. Yes.

11 Q. Okay. And it's not like you weren't looking in

12 the first search, or having your officers look in

13 that first -- what was it, five entries to his

14 garage, the week of November 1st, or 5th to the

15 12th, they were looking for small items like

16 that, right?

17 A. Some of those searches were very specific for

18 items, some were not. Some were overall

19 searches.

20 Q. Okay. And, in fact, in one of the searches, one

21 of those five entries at least, police did

22 recover, you said, a number of shells to a .22

23 rifle?

24 A. Shell casings laying on the floor.

25 Q. Okay. So, not much bigger than the bullet

1 fragments that were found on March 1st and 2nd?

2 A. Actually, probably quite a bit bigger, in
3 comparison. If you have a bullet fragment like
4 that, and a shell casing like that.

5 Q. But this was your crack team of searchers, right,
6 the best you had out there?

7 A. This is the team I sent there, yes.

8 Q. Okay. And they did bring shells back, but no
9 bullets, right?

10 A. The shells were laying in the middle of the
11 floor, basically.

12 Q. At that time, though, none of the investigators
13 knew that there would be evidence from the
14 anthropologist that suggested that perhaps Teresa
15 Halbach had actually been shot in the head, with
16 cranial pieces, did they? That information came
17 later?

18 A. True, yes.

19 Q. Shortly before this March 1st and March 2nd
20 search?

21 A. I don't know. I'm not sure when that information
22 came.

23 Q. So -- Well -- Let me just see if I can refresh
24 your recollection. Well, I don't want to waste
25 time right here, but -- At any rate, I will move

1 on. By that time you did know, though, that --
2 and that is, what I'm talking about here is, by
3 March 1st and March 2nd, of 2006, which are
4 important dates in this investigation, you know
5 this, right?

6 A. Yes.

7 Q. Additional search warrants were issued, right?

8 A. Yes.

9 Q. By that time, you knew that the mattresses, both
10 bedroom mattresses had been thoroughly examined
11 by -- visually and otherwise, for blood, and no
12 blood was found, right?

13 A. By March 1st and 2nd?

14 Q. Yeah, before that date. You know officers had
15 gone into the -- stripped the bedding, right?

16 A. Yes, I just don't recall if we took the
17 mattresses.

18 Q. Okay.

19 THE COURT: Mr. Buting, can you specify
20 what mattresses we're talking about?

21 ATTORNEY BUTING: Okay.

22 THE COURT: I'm not sure that was done.

23 Q. (By Attorney Buting)~ All right. Let me put it
24 this way, in the first -- What did we have, 12
25 entries to Mr. Avery's residence, no blood was

1 seen on the mattress in Mr. Avery's bedroom,
2 right?

3 A. I don't believe so.

4 Q. And no blood was seen on any of the sheets or
5 bedding?

6 A. I believe that's correct.

7 Q. And you have been to the murder -- I don't know
8 how many murder scenes you have been to, but you
9 have been to bloody murder scenes before, right?

10 A. Yes.

11 Q. Stabbings?

12 A. Yes.

13 Q. You are familiar with castoff blood spatter?

14 A. Yes.

15 Q. That is, if somebody is stabbing a person who's
16 laying on a mattress in the middle of Mr. Avery's
17 bedroom, repeatedly, there may be blood spatter
18 on the ceilings and walls from the knife?

19 A. There may be.

20 Q. And there was none in this case, right?

21 A. None that we found.

22 Q. And no clumps of a woman's hair that were found
23 cut off anywhere in the bedroom?

24 A. That's correct.

25 Q. No trail of blood as one would expect if you

1 carry a body that's been stabbed, on the mattress
2 of Mr. Avery's bedroom, through the house and out
3 the backdoor?

4 A. Unless it was cleaned up, no, we didn't see
5 anything.

6 Q. And outside on the back porch or on the front
7 porch, that wooden deck, no blood trail dripping,
8 right?

9 A. If they would have went that way. They could
10 have went out the backdoor also.

11 Q. All right. Which has a little stoop, concrete
12 steps?

13 A. Yes.

14 Q. No blood in their, right?

15 A. Not that I know of.

16 Q. No blood trail leading into the garage of
17 Mr. Avery, or out?

18 A. Into the garage, or out? Outside the garage, no,
19 not that I know of.

20 Q. Okay. And inside the garage, a few blood stains,
21 but not Teresa Halbach's blood, right?

22 A. Correct.

23 Q. So, in short, then, by March 1st and March 2nd,
24 when those search warrants were issued, four
25 months of investigation had found not one shred

1 of Teresa Halbach's DNA anywhere in Mr. Avery's
2 trailer or garage; isn't that right, sir?

3 A. Yes.

4 Q. Thank you.

5 THE COURT: All right. Redirect, Mr.
6 Kratz?

7 ATTORNEY KRATZ: Absolutely.

8 **REDIRECT EXAMINATION**

9 BY ATTORNEY KRATZ:

10 Q. Agent Fassbender, describe for the jury the
11 circumstances surrounding what Mr. Buting now
12 calls the discovery of this letter from Green
13 Bay; why were you with Mr. Buting?

14 A. Mr. Buting was being allowed to look at the
15 evidence that was in our possession or in the
16 Calumet County's possession.

17 Q. Do you remember who else was present?

18 A. I believe Attorney Strang was there also.

19 Q. Do you remember Mr. Gahn being there?

20 A. Yes.

21 Q. Do you remember Mr. Buting asking the prosecution
22 if that letter could be dusted for prints?

23 A. Yes.

24 Q. Do you remember agreeing to do that for
25 Mr. Buting?

1 A. Yes.

2 Q. Not forcing Mr. Buting to go to his own lab, but
3 you would do it for him; is that right?

4 A. That's correct.

5 Q. And even though this letter had to do with the
6 smelter, had you already eliminated the smelter
7 as a place where Ms Halbach could have been
8 burned in this case?

9 A. Yes.

10 Q. Now, wait a second, you have already eliminated
11 the smelter and this letter has nothing to do
12 with the case, why did you send it off for prints
13 for Mr. Buting?

14 A. Because he asked us to do it.

15 Q. Mr. Buting also asked you to look at some photos
16 today. I think it's Exhibit 142 and 143, of some
17 tarps; do you still have them up here?

18 A. No, I don't.

19 ATTORNEY KRATZ: Do you know where those
20 exhibits are?

21 ATTORNEY BUTING: I will get them, I think
22 I put them back. Just 142 and 143?

23 ATTORNEY KRATZ: For now.

24 Q. Is this Exhibit 142, Mr. Fassbender?

25 A. No, I have got 143 and 144 here.

1 Q. Well, look at the screen here. I want to know
2 which exhibit this is.

3 A. That -- I believe that's 144, yes, 144.

4 Q. All right. Mr. Buting asked if, from this
5 vantage point, if a law enforcement officer would
6 be able to see the SUV; do you remember that
7 question?

8 A. Yes.

9 Q. What was your answer?

10 A. Well, I can see where the SUV was tarped.

11 Q. All right. You can't see the SUV, though, can
12 you?

13 A. No.

14 Q. Do you know where you were when this picture was
15 taken?

16 A. I may have been by the SUV doing the tarping.

17 Q. That's 143 and 144. This was the second exhibit
18 that Mr. Buting showed you. Do you have this up
19 there, Mr. Fassbender?

20 A. 143, yes.

21 Q. Once again, the suggestion that if you were from
22 this location you couldn't see if somebody was
23 approaching or tampering with the vehicle?

24 ATTORNEY BUTING: I object to that specific
25 suggestion. That wasn't my question.

1 ATTORNEY KRATZ: Certainly the inference,
2 Judge, that's why he showed it, otherwise it has no
3 relevance.

4 THE COURT: Why don't you rephrase the
5 question?

6 ATTORNEY KRATZ: All right.

7 Q. Do you remember Mr. Buting's line of questioning
8 about not being able to see this vehicle?

9 A. Yes.

10 Q. Okay. Now, as we learned earlier in this trial,
11 you put your cursor over a digital photo, says
12 the date that it was taken, 11/5 and 4:16 p.m.;
13 do you see that on the screen?

14 A. Yes.

15 Q. Okay. And exactly the same time and date as the
16 previous picture; do you see that?

17 A. Yes, I do.

18 Q. The picture right before that that Mr. Buting did
19 not want you to see --

20 ATTORNEY BUTING: Objection to that.

21 THE COURT: Sustained.

22 ATTORNEY KRATZ: I will rephrase it.

23 Q. (By Attorney Kratz)~ The picture that Mr. Buting
24 did not show the jury shows a bunch of people
25 walking up at the same time, the same location,

1 towards the SUV; do you see that picture?

2 A. Yes, I do.

3 Q. And whether or not Mr. Buting has it in his
4 possession, are you one of those people?

5 A. Yes.

6 Q. Are you walking towards that tarped SUV that
7 Mr. Buting suggested you couldn't see?

8 A. Yes.

9 Q. One picture after, that Mr. Buting didn't show,
10 you see some other officers walking towards that
11 tarped vehicle?

12 A. Along with myself, yes.

13 Q. Same time, same location, same tarped vehicle; is
14 that right?

15 A. Yes.

16 Q. Let me ask you, Agent Fassbender, do you believe
17 that at the time that these photos were taken you
18 were in a position to see if anybody either
19 tampered with or entered that vehicle?

20 A. Almost certainly.

21 Q. Under whose control was that particular vehicle
22 at that particular time?

23 A. The Calumet County deputy.

24 Q. Agent Fassbender, the defense attorney,
25 Mr. Buting, asked -- and, in fact, I wrote down

1 his question -- whether or not on the 5th of
2 November, the first search by Messrs. Tyson and
3 Remiker, whether or not there was any evidence
4 that was found that was linked to Ms Halbach; do
5 you remember that question?

6 A. Yes.

7 Q. Do you remember what your answer was?

8 A. I believe it was no.

9 Q. Okay. Do you remember, on that first search, a
10 note with Ms Halbach's phone number being seized
11 from Mr. Avery's computer table?

12 A. Yes, I do.

13 Q. And that note, with Ms Halbach's phone number,
14 had the words "back to patio door"; do you see
15 that?

16 A. Yes, I do.

17 Q. Do you recall, now, that that was seized on
18 November 5th?

19 A. Yes.

20 Q. Would you say that that is some evidence that was
21 seized on the 5th that is obviously linked to Ms
22 Halbach?

23 ATTORNEY BUTING: Your Honor, I'm sorry.
24 Do you have a copy that we could mark, please.

25 ATTORNEY KRATZ: I do. I can have this

1 marked. What I will do, Judge, is state for the
2 record that it is Item No. 041. That item number
3 corresponds to discovery that defense was sent.
4 Unless there is an objection by counsel, I will
5 replace it with an exhibit number. We can certainly
6 do that, your Honor.

7 THE COURT: What is the next exhibit
8 number?

9 THE CLERK: 148.

10 (Exhibit No. 148 marked for identification.)

11 THE COURT: All right. Let's make it 148.

12 ATTORNEY BUTING: That's fine. I just
13 wanted it marked for the record.

14 ATTORNEY KRATZ: I appreciate it. Thank
15 you, counsel.

16 (Exhibit No. 149 marked for identification.)

17 Q. What will be Item No. 149, seized from the same
18 computer table, is another sign with Ms Halbach's
19 phone number; is that correct?

20 A. That's correct.

21 Q. Was that seized on the 5th of November as well?

22 A. Yes, it was, sir.

23 Q. This address, 3302 Zander Road, we'll get into
24 that with other witnesses, but do you now believe
25 that this is connected to Ms Halbach? It's her

1 phone number, isn't it?

2 A. That's her phone number, yes.

3 (Exhibit No. 150 marked for identification.)

4 Q. Now, what will be Item 150, do you recall, now,
5 that an Auto Trader Magazine was seized from
6 Mr. Avery's residence that evening?

7 A. Yes, I do.

8 Q. This is the identical Auto Trader Magazine that
9 Ms Zipperer received, that she had testified
10 earlier; you were in court when that was
11 testified to, wasn't it?

12 A. Yes.

13 (Exhibit No. 151 marked for identification.)

14 Q. Also identically to Ms Zipperer, what will be
15 Exhibit No. 151, was a bill of sale also found on
16 Mr. Avery's computer table, again, identical to
17 that received by Ms Zipperer. Do you recall that
18 now being seized on the 5th of November, don't
19 you?

20 A. Yes, I do.

21 Q. Let me ask you, Mr. Fassbender, do you know how
22 many items of physical evidence were seized in
23 this case alone, the Avery homicide
24 investigation?

25 A. Upwards of 970.

1 Q. Can you remember all 970 items of evidence that
2 were seized?

3 A. No, I can't.

4 Q. Mr. Buting asked you if knowing that Mr. Lenk and
5 Mr. Colborn was involved in a deposition, whether
6 or not you would assign them to search
7 responsibilities; do you remember that question?

8 A. Yes, I do.

9 Q. Do you remember answering yes to that question?

10 A. Yes.

11 Q. Do you have an explanation for that answer?

12 A. Yes.

13 Q. What is that explanation?

14 A. My explanation is, if they told me that, I would
15 have asked them what the circumstances
16 surrounding that were. Upon them telling me, and
17 what I know now of those circumstances to be, I
18 know there was no direct conflict of
19 interest with those two individuals.

20 They weren't working when he was charged
21 and convicted on the original charge. And when
22 they got deposed, Mr. Colborn was a jailer in
23 that jail and he received a call from another
24 jail that an anonymous person said something
25 about them having the wrong person in jail and

1 they have the right one. Didn't identify who it
2 was, what it was about.

3 Mr. Colborn did the right thing and
4 forwarded that phone call to the Detective's
5 Bureau. Mr. Colborn was not even a sworn
6 officer. Mr. Lenk wasn't even a detective at the
7 time. He was working the road. That call went
8 up to the Detective Bureau and was handled by
9 whoever was up there at that time. And, then,
10 when Mr. Avery was exonerated, Mr. Colborn made a
11 comment to Mr. Lenk, something to the effect
12 that, boy, I wonder if that call they took way
13 back when was Mr. Avery. They had nothing to do
14 with this.

15 Q. So that, as far as you know, was Lenk and
16 Colborn's connection, this mysterious connection
17 to this civil lawsuit; is that right?

18 A. Yes.

19 Q. Knowing that, as you sit here today, as the lead
20 investigator in the case, have any problems at
21 all with Lenk or Colborn's involvement in this
22 case?

23 A. Absolutely not.

24 Q. Do you know how many law enforcement officers,
25 how many citizens, and how many other witnesses

1 were deposed as part of that lawsuit?

2 A. No, I don't.

3 Q. Finally, Agent Fassbender, whenever a Manitowoc
4 County Sheriff's deputy was asked to assist in
5 this entire investigation, that is, when any
6 search was done out at the scene, were they
7 accompanied by a Calumet County or State DCI
8 agent?

9 A. Yes.

10 ATTORNEY KRATZ: That's all the redirect I
11 have, Judge.

12 THE COURT: Any recross, Mr. Buting?

13 ATTORNEY BUTING: Just a bit.

14 **RECROSS-EXAMINATION**

15 BY ATTORNEY BUTING:

16 Q. Now, you weren't deposed in this civil lawsuit
17 yourself, right?

18 A. That's correct.

19 Q. You had nothing to do with it, you were a truly
20 independent, objective investigator at that
21 scene?

22 A. Yes.

23 Q. Okay. Lenk and Colborn, though, were deposed
24 about their own conduct, in 1996, regarding a
25 phone call that might have resulted in

1 Mr. Avery's spending eight more years in prison
2 because of the way they handled it, right?

3 A. I believe the way they handled it was correct.

4 Q. Well, what you believe, sir, isn't really the
5 issue. The question is what they believe.

6 A. And I can't speak to what they believed.

7 Q. That's right, you can't. Thank you. The point
8 of the matter is, also, that neither one of them
9 told you about this connection.

10 ATTORNEY BUTING: You can take that -- or
11 leave it on for a minute.

12 Q. Neither one of them told you that they had been
13 witnesses in a civil lawsuit, did they?

14 A. That's correct.

15 Q. And both of them volunteered to go search
16 Mr. Avery's residence, didn't they?

17 A. I don't know if they volunteered or they were
18 asked, but they did it.

19 Q. All right. They did, though?

20 A. Yes.

21 Q. Yeah. And both of them knew, or you could tell
22 us if you thought that they knew, that their boss
23 had already found enough of a conflict, or
24 appearance of conflict, with Mr. Avery's lawsuit,
25 to turn over authority to a neighboring county.

1 They knew that?

2 A. I would assume they knew that.

3 Q. Okay. And with that knowledge, they still didn't
4 say, oh, hey, by the way, we should tell you
5 about this deposition that we both had three
6 weeks earlier, did they?

7 ATTORNEY KRATZ: Objection, asked and
8 answered, three times now, Judge.

9 THE COURT: I'm going to sustain the
10 objection.

11 ATTORNEY BUTING: All right.

12 Q. (By Attorney Buting)~ You recall my questions to
13 you about whether any items linked to Teresa
14 Halbach, was whether any physical evidence linked
15 her inside his trailer or garage, right?

16 A. Possibly, I don't remember if it was physical
17 evidence or not.

18 Q. All right. This bill of sale has no date, could
19 have been any time, right?

20 A. Correct.

21 Q. The phone number for Teresa Halbach being in his
22 residence is certainly not a surprise, because we
23 know from the records that he had her phone
24 number and had called and arranged a sale just a
25 few weeks earlier, right?

1 the question and the answer because it's not the
2 testimony. Bobby Dassey never said he saw her in
3 the trailer.

4 THE COURT: I'm not sure I understood the
5 question, the question that's being objected to.

6 ATTORNEY BUTING: That was a clear
7 inference on counsel's question, if not the direct.

8 THE COURT: I'm going to sustain the
9 objection. I think it's beyond the scope of
10 redirect. Witness is excused.

11 Mr. Kratz, we'll let the State get
12 started on the next witness.

13 ATTORNEY KRATZ: If you would like, Judge,
14 we will call Mr. Brandes to the stand.

15 THE COURT: The jurors may stand up and
16 stretch, if you wish, before the next witness takes
17 the stand.

18 THE CLERK: Please raise your right hand.

19 **WILLIAM BRANDES, JR.**, called as a
20 witness herein, having been first duly sworn, was
21 examined and testified as follows:

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

24 THE WITNESS: William Brandes, Jr.,
25 B-r-a-n-d-e-s.

DIRECT EXAMINATION

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BY ATTORNEY KRATZ:

Q. Mr. Brandes, thank you for coming. And can you tell the jurors, please, from what community you come?

A. Brillion, Wisconsin.

Q. And I think everybody knows where Brillion is, but in case they don't, tell the jurors, where Brillion is located.

A. Right near the Manitowoc/Calumet border, right in Calumet County, about 15 miles from here.

Q. Mr. Brandes, on the 8th of November of 2005, were you asked and did you in fact participate in a volunteer search of the Avery Salvage Yard?

A. Yes, I did.

Q. And in what capacity did you assist in that search?

A. I was with a group of State troopers and other volunteer firemen, I believe, searching a search section of the Avery junkyard.

Q. Were you assigned or paired up with somebody?

A. I don't know about paired up, but there was a group of maybe 10 of us, maybe a few more.

Q. Were there -- Again, from what organization were you volunteering?

1 A. The Brillion Fire Department.

2 Q. Were there any sworn law enforcement officers in
3 your group?

4 A. Yes, the Wisconsin State troopers were with us.

5 Q. All right. And, again, about how many people
6 were in your search team?

7 A. Roughly 10, maybe a few more.

8 Q. Do you know how many volunteer or firefighter and
9 law enforcement searchers were involved on the
10 8th?

11 A. Quite a few, not offhand.

12 Q. Okay. What were your responsibilities that day;
13 what did you do?

14 A. We were just given a section to search and search
15 every vehicle, very thoroughly, around it, and
16 see if there was anything that looked out of
17 place or might seem suspicious. And we were also
18 instructed that they were looking for certain
19 items, what the victim had been wearing, a
20 certain shirt and jeans, you know, that might be
21 that. And license plates they were looking for.
22 And there was some -- I think that was about it.

23 Q. All right. Did you assist and did you help
24 perform searches of these vehicles?

25 A. Yes.

1 Q. Tell the jury what kind of searches these were;
2 how did you search the vehicles?

3 A. You just slowly go over each vehicle. And there
4 were multiple people going over them. Go inside
5 them. If you couldn't get the trunk open, some
6 of them they pried the trunk open. Or you just
7 looked through them real good. Anything like
8 clothing or something, you actually took it out
9 and probably handled it. Looked around, you
10 know. Looked under stuff, if you could, just to
11 find out what you could find.

12 Q. About how many vehicles did you search that day,
13 personally; do you recall?

14 A. Yeah, quite a few, maybe 50.

15 Q. All right.

16 A. Maybe more.

17 Q. I'm sorry to interrupt you. Do you remember the
18 area or was there a specific area that you were
19 assigned to search?

20 A. Yes.

21 Q. What area was that?

22 A. As you went in, it was more to the right, around
23 the back of a shed and toward, kind of like a
24 fence line that was on the Avery property.

25 Q. You have some photos in front of you; is that

1 right?

2 A. Yes.

3 Q. First photo, I think it's Exhibit 139; is that
4 right?

5 A. I have no numbers.

6 Q. Let's look on the back?

7 A. Oh, sorry.

8 Q. There you go.

9 A. Yup, 139.

10 Q. Thank you. Can you tell the jury, what is
11 Exhibit 139, please.

12 A. That is the station wagon I found the license
13 plates in.

14 Q. You recognize the photo in 139; is that right?

15 A. Yes.

16 Q. We're just going to talk about that one first,
17 for a minute. Going to show the jury, now,
18 what's been identified as Exhibit No. 139. And
19 if you could refer to the large screen up here
20 for us; tell us what we're looking for? There's
21 a laser pointer, if that will help you.

22 A. You are actually looking -- I don't know what the
23 direction is, I think it's toward the south. But
24 there's a road they are standing on, that's the
25 edge of the property. And it's right along a

1 fence line that kind of contains the property.

2 And from where you are standing, to your
3 left would be the entrance to the property. You
4 would actually go through that and around that
5 blue building to come in; that's the way we came
6 in.

7 Q. Do you recognize this station wagon?

8 A. Yes.

9 Q. Did you search or look in this station wagon?

10 A. Yes.

11 Q. Tell the jury how you did that, please.

12 A. I was just walking along. I was actually on the
13 driver's side searching. And there were a bunch
14 of weeds. We crawled through the weeds and
15 looked in.

16 And I looked -- I peered in the back and
17 behind what would be the passenger side seat.
18 The back seat was folded down flat. And behind
19 the passenger side seat was a set of what ended
20 up to be license plates, but at that time were
21 folded like in three different -- folded twice
22 inward, so you could not see a number or the --
23 anything on them.

24 Q. The license plates were folded, describe that for
25 me.

1 A. Like, if you take them and fold them in with one
2 thumb and then fold the other one on top again so
3 they were like pinched together.

4 Q. The plates were folded?

5 A. Yes.

6 Q. Were you wearing any protective items on your
7 hands at the time?

8 A. I -- Just gloves that I had owned.

9 Q. All right. You had gloves on?

10 A. Yeah.

11 Q. What did you do when you found that item in this
12 vehicle?

13 A. I picked them up. And when I figured out they
14 were license plates, I had slowly peeled them
15 open. And I wasn't quite sure with the number on
16 them, but I thought I had something, so there was
17 a State trooper next to me and I asked her what
18 the number was. She repeated it because she had
19 written it down.

20 Q. That number, what number are you talking about?

21 A. The license plate number inside. Because they
22 were folded in, you couldn't read them until I
23 unfolded them. And when she confirmed that them
24 were the license plates we were looking for, I
25 gently set them back down inside the car.

1 Q. Did you call over the law enforcement officer,
2 the trooper, to then take over or take control of
3 the plates?

4 A. Yes, she was actually, like, standing right next
5 to me.

6 Q. Okay. After the plates were set back down, do
7 you recall a photograph being taken of those?

8 A. Yes.

9 Q. And how did that occur; do you know?

10 A. They rode in and there were a bunch of people
11 that came in. We actually didn't move and I
12 think an investigator came in and photographed
13 it.

14 Q. Okay. We have put another picture in front of
15 you; what is that? It's No. 140; is that right?

16 A. Yes. That was taken from the -- I believe the
17 passenger side, kind of right over the fence.
18 And that's where they were laying, right in there
19 in the back of the seat -- or on the seat in the
20 back.

21 Q. Does that show the interior of the vehicle, the
22 location where you found the plates?

23 A. Yes.

24 Q. And now, I will have the jury look at Exhibit No.
25 140. Referring to the large exhibit, then, can

1 you tell us what that is?

2 A. That's on -- like -- like, right under that fence
3 wire would be where the plates were located.

4 Q. Why don't you take that laser pointer -- and I
5 know this may not be comfortable for you, but
6 show us where you found the plates.

7 A. Right in that general area there.

8 Q. And they were folded in thirds?

9 A. Yes.

10 Q. And when you looked in that vehicle, could you
11 see the license plate number, or did you have to
12 open them to see it?

13 A. They had to be opened to be seen.

14 ATTORNEY KRATZ: I think, for this witness,
15 Judge, that's all I have. Thank you Mr. Brandes.

16 THE COURT: Mr. Strang.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY STRANG:

19 Q. Let's go back to, how about Exhibit 86, just for
20 old times sake, I guess. I'm going to show you
21 an aerial -- show you a aerial view of a property
22 Mr. Brandes.

23 A. All right.

24 Q. Now, yeah, I will take the laser printer -- or
25 pointer. Could we -- Well, do you recognize

1 Exhibit 86?

2 A. Yes.

3 Q. Aerial view of the Avery property, south is up?

4 A. Yes.

5 Q. Okay. And the area you are describing is
6 somewhere down here?

7 A. Yes.

8 Q. I'm probably blocking people, but at least I'm
9 not blocking you.

10 ATTORNEY KRATZ: Mr. Strang, do you want me
11 to zoom in at all?

12 ATTORNEY STRANG: I will.

13 Q. (By Attorney Strang)~ Can you see this?

14 A. Well, I have to look around you, but I can make
15 it out.

16 Q. Like my dad said, I would make a better door than
17 a window. How's that?

18 A. Sure.

19 Q. Okay. Now we both can see. So, that's the
20 little blue building that we saw in the two
21 photos you have, or in the first photo that you
22 have; does that seem right or is it actually down
23 like that?

24 A. I think the one you have, yeah, that's the
25 building.

1 Q. So that station wagon is somewhere right there?

2 A. Yes.

3 Q. Okay.

4 ATTORNEY STRANG: And why don't we zoom in
5 on that, if we can, Mr. Kratz.

6 Q. (By Attorney Strang)~ Is it possible to pick the
7 station wagon out from here or no?

8 A. I believe so. I believe it's next to.

9 Q. I will let you do that.

10 A. I think that's it right there.

11 Q. Okay.

12 A. Shaking it.

13 Q. Everybody does. And what we have got, running --

14 ATTORNEY STRANG: If we go back to -- let's
15 do 139 and then we'll go to 140, if you don't mind,
16 Mr. Kratz. These are the two you just had.

17 Q. What you have got there is a barbed wire fence --

18 A. Yes.

19 Q. -- is that right? And the fence is between the
20 road or the little gravel road. The photography
21 appears to be on the station wagon in which you
22 found the license plates.

23 A. Yes.

24 Q. And then 140 --

25 ATTORNEY STRANG: Any chance of 140 or are

1 you on strike? Thank you.

2 Q. (By Attorney Strang)~ We have got the barbed wire
3 fence, again?

4 A. Yes.

5 Q. So you actually, to get to the station wagon, you
6 would go in the entrance to the building, or the
7 business, I'm sorry.

8 A. Yeah, we would have gone around the building.

9 Q. And come around. You didn't come at this from
10 that roadway?

11 A. No.

12 Q. Okay. Have you ever seen a -- ever seen a men's
13 wallet called a tri-fold wallet?

14 A. Yes.

15 Q. Was that sort of how the license plates --

16 A. Exactly.

17 Q. -- were? And you were saying on direct that, you
18 know, probably as you looked at these license
19 plates, the most likely way to do that would be
20 to take your thumb and bend it over from one end
21 and then bend it over from the other again --

22 A. I guess.

23 Q. -- with your hands?

24 A. Yes.

25 Q. That's what it looked like to you?

1 A. Yeah.

2 Q. Okay. And maybe you don't remember the license
3 plate number, but so there's no mystery; did you
4 recall the license plate number being the one
5 that you were told was on Teresa Halbach's car?

6 A. I didn't have it written down. I had to ask the
7 State trooper. And she had it written in a book.
8 And when she looked, that's when I confirmed it
9 was it.

10 Q. Maybe Trooper Cindy Paine?

11 A. I believe that was her name.

12 Q. Okay.

13 ATTORNEY STRANG: That's all I have for
14 you.

15 THE COURT: Anything else, Mr. Kratz?

16 ATTORNEY KRATZ: No. We'll call Trooper
17 Cindy Paine next.

18 THE COURT: All right. The witness is
19 excused. Counsel, how much time are we anticipating
20 for the next witness?

21 ATTORNEY KRATZ: How much do I anticipate
22 or Mr. Strang? I will be five minutes, Judge.

23 THE COURT: I'm going to be asking each of
24 you.

25 ATTORNEY STRANG: I can't imagine I would

1 be any longer than I was.

2 THE COURT: All right. We'll take the
3 trooper.

4 THE CLERK: Please raise your right hand.

5 **TROOPER CINDY PAINE**, called as a witness
6 herein, having been first duly sworn, was
7 examined and testified as follows:

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

10 THE WITNESS: It's Cindy Paine, P-a-i-n-e.

11 **DIRECT EXAMINATION**

12 BY ATTORNEY KRATZ:

13 Q. Ms Paine, how are you employed?

14 A. I'm with the Wisconsin State Patrol.

15 Q. And what do you do with the State Patrol?

16 A. I'm a trooper with the patrol.

17 Q. What do troopers do?

18 A. We're -- Generally do traffic and traffic
19 enforcement and we enforce the state laws of
20 Wisconsin, the traffic laws.

21 Q. Do you on occasion assist with and are you asked
22 sometimes to assist in other general criminal
23 investigative matters?

24 A. Yes, we are asked by other agencies to assist
25 with either perimeter searches, perimeter -- we

1 secure perimeter or we do searches.

2 Q. Trooper Paine, were you employed as a State
3 Trooper on the 8th of November, 2005?

4 A. Yes, I was.

5 Q. And on the 8th of November, were you asked to
6 participate and assist in some search efforts at
7 a property that you have come to know as the
8 Avery Salvage Yard?

9 A. Yes, I have.

10 Q. Could you describe what your duties were at that
11 Avery Salvage Yard that day.

12 A. We were divided into several groups. And each
13 individual group had an area to search. And I
14 remained with this group and I had searched the
15 area.

16 Q. Do you recall what your group was comprised of;
17 in other words, how many people were in your
18 little group?

19 A. I don't remember how many people, but I know
20 there were troopers, there were deputies, there
21 were firefighters, citizen volunteers. It wasn't
22 one particular group.

23 Q. What kind of searches were you doing?

24 A. We were searching -- We were looking for,
25 specifically, a license plate, jewelry and camera

1 equipment.

2 Q. Okay. A more directed, a more specific kind of
3 search; is that ...

4 A. Correct.

5 Q. All right. And in part of that search, do you
6 remember how many vehicles you, individually, or
7 your group searched?

8 A. I would guess around 20.

9 Q. Do you remember how many volunteers and law
10 enforcement officials were there to help in that
11 effort that day?

12 A. The whole day?

13 Q. That day.

14 A. I mean -- I mean, the whole --

15 Q. The whole search?

16 A. No, I don't.

17 Q. How many people were involved in the search
18 effort; do you remember?

19 A. I would guess over 90 troopers --

20 Q. Okay.

21 A. -- and inspectors.

22 Q. A lot of people?

23 A. A lot of people.

24 Q. Were there a lot of cars?

25 A. A lot of cars.

1 Q. All right. As part of this search, Trooper
2 Paine, do you recall a person in your group being
3 a gentleman by the name of William Brandes?

4 A. Yes, I do.

5 Q. At some time during that search, do you recall
6 being summoned by Mr. Brandes to a specific car?

7 A. Yes, I was.

8 Q. Tell the jury what you saw, please.

9 A. He had pointed out that he had found a license
10 plate and he said that it had -- it was the
11 license plate we were looking for and he had
12 pointed it out to me.

13 Q. Did you look at the license plates?

14 A. Yes, I did.

15 Q. We're going to have those marked, in fact, right
16 now. Mr. Wiegert has been kind enough to put on
17 a pair of gloves for us and we're going to have
18 these exhibits marked.

19 (Exhibit No. 141 marked for identification.)

20 Q. But while he's doing that, tell me what you saw.

21 A. I saw a license plate that had a bend in it and
22 it was in the back of a station wagon. You have
23 got the driver compartment and then where it
24 would be from the driver's seat back is where the
25 license plate was found.

1 Q. Did Mr. Brandes tell you what condition those
2 plates were in when he found them?

3 A. He told me that they were folded; he had to
4 unfold them to verify -- to see the plate number.

5 Q. Were you told and did you know, specifically, the
6 license plate number for Teresa Halbach's vehicle
7 that you were looking for?

8 A. Yes.

9 Q. And did the license plates that you saw match the
10 tag number or license plates of Teresa Halbach?

11 A. Yes.

12 Q. I'm just going to show you a photo; it's
13 Exhibit 141. Tell the jury what that is, please.

14 A. This is a photograph of the license plate the way
15 I saw it when it was pointed out to me.

16 Q. Who took that photo?

17 A. I did.

18 Q. Showing the jury, now, what's been identified by
19 you as No. 141; what are we looking at?

20 A. We're looking at the license plate as it sat in
21 the back part of that station wagon, in the
22 condition that Bill had left it at.

23 Q. Bill Brandes?

24 A. Yes.

25 Q. Who took this photo?

1 A. I did.

2 Q. And so do you know that to be what you saw that
3 day?

4 A. Yes.

5 Q. The license plate, SWH-582, is that depicted in
6 Exhibit No. 141?

7 A. Yes, it is.

8 Q. And, in fact, are those -- was that a match with
9 the license plates that you were told you were
10 looking for?

11 A. Yes.

12 Q. Mr. Wiegert is going to hand you and show you two
13 exhibit numbers now. I will bet they are 142 and
14 143.

15 DETECTIVE WIEGERT: I wouldn't touch
16 them, though.

17 ATTORNEY KRATZ: I'm wrong again.

18 THE CLERK: 152 and 153.

19 Q. (By Attorney Kratz)~ 152 and 153. I'll first
20 show you what is marked 152 and ask you to
21 identify that, if you can and tell the jury what
22 it is?

23 A. That would be the license plate that we were
24 looking for, the registration number.

25 Q. All right.

1 ATTORNEY KRATZ: Mr. Wiegert, could you
2 show us and show the jury, please.

3 Q. (By Attorney Kratz)~ Now, the differentiation
4 between these two, this 152, that actually has a
5 expiration tag on it; is that correct?

6 A. That is correct.

7 Q. That would usually be the back plate or the front
8 plate?

9 A. That would be the rear plate, yes.

10 Q. Show you No. 153 now, tell us what that is.

11 A. And that would also be the license plate for --
12 the license plates we were looking for.

13 Q. Would that be the front plate or the back plate?

14 A. That would be the front plate.

15 Q. And you are able to identify those and they look
16 the same or similar, other than being separated,
17 as they did on the 8th of November; is that
18 correct?

19 A. That is correct.

20 ATTORNEY KRATZ: Judge, we will move the
21 admission of the photos and the two license plates
22 at this time.

23 (Exhibits 139, 140, 141, 152 & 153.)

24 THE COURT: Any objection?

25 ATTORNEY STRANG: No objection.

1 THE COURT: Very well. The exhibits are
2 received.

3 ATTORNEY KRATZ: That's all I have. Thank
4 you.

5 THE COURT: Mr. Strang.

6 ATTORNEY STRANG: Ma'am, I don't mean to
7 make you feel left out, but I'm not going to ask you
8 any questions.

9 THE WITNESS: Okay. Thank you.

10 THE COURT: All right. The witness is
11 excused. And I think with that witness, we're going
12 to adjourn for today.

13 Members of the jury, since you are
14 leaving for the weekend, I'm going to read the
15 usual admonishment to you, but in a little more
16 detail. As I have previously informed you, the
17 Court's decision not to sequester the jury in
18 this case is dependent on the jurors not
19 listening to, watching, or reading any news
20 accounts of the case, nor discussing it with
21 anyone including members of your family or other
22 jurors.

23 For these reasons, it is vital that you
24 do not listen to any conversation about this
25 case. Do not read any newspaper or internet

1 reports, or listen to any news reports on the
2 radio or television, about this case.

3 To assure that you are not exposed to
4 improper media coverage, the Court has ordered
5 that for the duration of the trial you do not
6 watch the local news on television. Do not
7 listen to the local news on radio. And do not
8 read the newspaper unless you first have someone
9 remove any articles about this case. In
10 addition, do not visit any internet websites or
11 web logs which may include any information about
12 the case.

13 The Court understands that some of you
14 may be working at places of employment during the
15 weekend; do not discuss the case with any
16 employers, employees, or patrons.

17 Do not volunteer your status as a juror
18 to anyone. If anyone attempts to discuss the
19 case with you, politely but firmly notify them
20 that you are prohibited from discussing this
21 case.

22 If you are involuntarily exposed to
23 information about the case from any source, take
24 steps to immediately avoid any further exposure.
25 Should you be exposed to any reports or

1 communications from any source concerning the
2 case during the trial, you should report that
3 fact to the jury bailiff.

4 With that, you are excused at this time
5 and we will see you Monday morning.

6 (Jury not present.)

7 THE COURT: Counsel, I would like you to
8 stop very briefly in chambers before leaving today.

9 ATTORNEY KRATZ: We'll do that.

10 THE COURT: Just a second, the Clerk has a
11 few questions.

12 THE CLERK: Clerk, I think this was --

13 ATTORNEY BUTING: This was not marked,
14 right?

15 THE CLERK: And I am --

16 THE COURT: All right. Just a minute, if
17 you're going to say this is not marked and we're on
18 the record, let's identify it.

19 ATTORNEY BUTING: This being DCI Report
20 No. 180, which was Special Agent Fassbender's report
21 that he refreshed his recollection on. It's not
22 been admitted -- or not offered as an exhibit. It
23 just got mixed in here.

24 THE COURT: So you -- you do not wish it --
25 not only do you not want it admitted, you do not

1 want it marked?

2 ATTORNEY BUTING: At this time, I don't see
3 any need to.

4 THE COURT: Any objection?

5 ATTORNEY KRATZ: No, it was just used to
6 refresh recollection, doesn't have to be an exhibit.

7 ATTORNEY BUTING: 145 was marked and not
8 able to be identified. I guess we leave that.

9 THE COURT: It will stay marked.

10 ATTORNEY BUTING: We'll see if another
11 witness identifies it or not.

12 THE CLERK: And my own question is, I know
13 Attorney Strang is making a copy of that CD for one
14 of the exhibits and the other exhibit, 127, I think
15 a copy of -- let me find that one -- it was a photo
16 of the aerial view of Avery Road and that I'm
17 waiting for.

18 ATTORNEY KRATZ: That you could not find
19 from the previous hearing and that's the one that
20 you wanted us to make another copy of.

21 THE CLERK: That's right.

22 ATTORNEY KRATZ: We promise to do that,
23 Judge.

24 THE CLERK: And then one the 148, 149, 151,
25 which were all photographs, am I getting copies of

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those too?

ATTORNEY KRATZ: Yes.

ATTORNEY STRANG: I burned a copy of the CD which is Exhibit 126. And then when I opened it to make sure that the computer duped it as it said, it had all of about three seconds on it. So I'm going to do that again this weekend. So that's why we don't have that yet.

THE COURT: All right. We're adjourned for today.

ATTORNEY KRATZ: Thank you.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 8th day of October, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 6

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** FEBRUARY 19, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. Will the parties state their appearances for
4 the record.

5 ATTORNEY KRATZ: Your Honor, the State once
6 again appears by Calumet County District Attorney
7 Ken Kratz, Assistant Attorney General Tom Fallon and
8 Assistant District Attorney Norm Gahn, appearing as
9 special prosecutors.

10 ATTORNEY BUTING: Good morning, your Honor.
11 Attorney Jerome Buting and Dean Strang appearing
12 with Mr. Steven Avery this morning.

13 THE COURT: Very well. At this time the
14 State may resume the presentation of its case.
15 Mr. Fallon.

16 ATTORNEY FALLON: Yes, good morning. Thank
17 you.

18 THE COURT: You may call your first
19 witness.

20 ATTORNEY FALLON: State at this time would
21 call John Ertl.

22 THE CLERK: Please raise your right hand.

23 **JOHN ERTL**, called as a witness herein,
24 having been first duly sworn, was examined and
25 testified as follows:

1 THE CLERK: You may be seated. Please
2 state your name and spell your last name for the
3 record.

4 THE WITNESS: My name is John Ertl. Last
5 name is spelled E-r-t-l.

6 **DIRECT EXAMINATION**

7 BY ATTORNEY FALLON:

8 Q. How are you employed?

9 A. I work for the State Crime Laboratory in Madison.
10 I'm a forensic scientist. I work for the DNA
11 Analysis Unit and I also do crime scene evidence
12 location, recovery, and collection.

13 Q. How long have you been employed with the
14 Wisconsin State Crime Lab in Madison?

15 A. I began there in January of 2000.

16 Q. Had you had any previous employment as a Crime
17 Lab analyst prior to that?

18 A. My first job as a forensic scientist was with the
19 State Crime Laboratory in Milwaukee. I started
20 there in '97. I moved from there, after about a
21 year and a half, to the State Laboratory in
22 Austin, Texas. And then I moved to the Madison
23 Laboratory in 2000.

24 Q. As a DNA analyst, what do you do for them,
25 generally?

1 A. I examine evidence collected at crime scenes.
2 And whether we have collected it or the police
3 agency has collected it, it's brought to the
4 laboratory for analysis. So I will look for
5 biological materials and I will attempt to
6 extract DNA from them and type the DNA, get a
7 genetic profile.

8 Then we take samples from known
9 individuals; it's usually a blood sample or a
10 swab from inside your cheek. Extract the DNA
11 from that; get the genetic profile; match up the
12 profiles, if I can; determine whether or not the
13 DNA from the crime scene item stains is the same
14 as, or different than, the DNA from known
15 individuals.

16 Q. Mr. Ertl, what other roles or duties have you
17 been assigned or volunteered to perform for the
18 Crime Lab?

19 A. Well, in addition to my -- my major role as a DNA
20 analyst at the laboratory, we have a volunteer
21 system where we do crime scene -- process crime
22 scenes. So if any agency in the State feels
23 uncomfortable or needs help or assistance that we
24 can offer, whether it's just a phone call, get
25 some advice, or whether we actually go to the

1 scene and help them, we'll go. We'll document
2 the scene, photographs. We'll do sketches. But
3 our main job is to find the evidence and collect
4 it and bring it back to the laboratory.

5 Q. Is there a name for that particular unit or task
6 that you perform?

7 A. That's the Field Response Team.

8 Q. How long have you been a member of the Field
9 Response Unit?

10 A. About six months after I arrived at the
11 laboratory. So, it was about June of 2000, I
12 began going out with them on field responses.
13 Prior to that, I had also done field response
14 work in the Texas lab.

15 I began training as a crime scene
16 photographer at the Madison Laboratory and I
17 completed that training in about December of
18 2000. But during that whole time, since about
19 June of 2000, I have been going out to crime
20 scenes with the Madison teams.

21 Q. Let's talk a little bit about your education,
22 Mr. Ertl. Do you have --I take it you have an
23 undergraduate degree.

24 A. Undergraduate degree in chemistry from the
25 University of Wisconsin, Parkside. That's in

1 Kenosha.

2 Q. Do you have any graduate degrees?

3 A. Graduate degree from the same institution; that's
4 in molecular biology.

5 Q. All right. When did you receive that degree?

6 A. The undergraduate degree, I completed in '84 and
7 the master's degree I completed in '92.

8 Q. Now, generally, again, returning to your work
9 with the Field Response Unit; what kinds of cases
10 does the Field Response Unit become involved in?

11 A. Generally, it's any case where the agency is
12 uncomfortable, number one, whether they don't
13 have the experience or whatever. Generally
14 involved in some sort of homicide. Could be
15 bones found in the woods, you know. Might not be
16 a homicide, may be a missing person. Might be an
17 accidental shooting, hunter shooting, that sort
18 of thing. We get involved. But it's at the
19 request of the agency where it's happening and
20 that they would request us to come and help.

21 Q. Well, that was my next question. Generally,
22 then, how does one request the services of the
23 Field Response Unit from the Crime Laboratory?

24 A. The agency just calls the laboratory and requests
25 that the Field Response Unit come and help. And

1 that's basically how we get involved.

2 Q. All right. So assuming there is a request and it
3 involves some type of death?

4 A. Generally, yes.

5 Q. All right. Are there any other types of cases
6 that the Field Response Unit may become involved
7 in?

8 A. I have done several where it was just -- it was a
9 missing persons case, the person had gone
10 missing. And they didn't know whether they were
11 dead or alive, but they had some reason to
12 believe there might be some evidence in a
13 particular place.

14 And in both of those instances I'm
15 thinking about, one was in Milwaukee and one was
16 in Menasha, they were quite old, the person had
17 gone missing. And then much later, years later
18 even, you know, they get some idea, well, he was
19 in the basement and I saw him shot, somebody
20 telling him this; or the landlord remembers there
21 being blood on the wall when a tenant moved out
22 25 years prior. So we go and look under the
23 paint, see if we can find any blood.

24 But, generally, there's a body involved.
25 They know someone has been killed. It's more --

1 more immediate than a missing person.

2 Q. All right. All right. Mr. Ertl, I would like to
3 direct your attention to Saturday, November 5th,
4 2005, and ask, how did you become involved in
5 this particular case?

6 A. It was a Saturday, so I wasn't at work, but I was
7 on call. So the Manitowoc County Sheriff's
8 Department called the laboratory number and our
9 answering service forwarded the call to me. And
10 it was Detective Dave Remiker, asked that --

11 Well, he explained to me that he had a
12 missing persons case out of Calumet County they
13 were getting involved with, but the vehicle
14 belonging to that person had been located in
15 Manitowoc County. And he would like for the lab
16 to come and look at the area around the vehicle
17 and to recover the vehicle and bring it back to
18 the laboratory.

19 Q. About what time did you receive that call or did
20 you make contact with Detective Remiker?

21 A. That was around noon on Saturday.

22 Q. All right. Did you subsequently respond?

23 A. Yes.

24 Q. About what time did you leave Madison?

25 A. It was about 1:15 p.m. I had contacted the

1 photographer to take with me and we have a field
2 response vehicle, looks like a ugly colored
3 yellow ambulance, and we headed for Manitowoc
4 County.

5 Q. Who, if anyone, assisted you in this initial
6 response?

7 A. My photographer for that was Guang Zhang?

8 Q. And for the benefit of everyone, could you spell
9 Mr. Guang Zhang's name?

10 A. It's G-u-a-n-g Z-h-a-n-g.

11 Q. Thank you. Approximately what time did you
12 arrive at the location?

13 A. It was about 4:00 p.m.

14 Q. And who did you meet at that location?

15 A. I was looking for a Detective Remiker and that he
16 escorted me to an area near a fire truck where
17 they had a canopy out --

18 (Court reporter couldn't hear.)

19 A. A canopy off the side of a fire truck. And it
20 was a kind of a stormy day and it was windy and
21 loud. And I was introduced to Investigator Mark
22 Wiegert, Calumet County Sheriff's Department; and
23 also, Special Agent Tom Fassbender of the
24 Wisconsin Department of Criminal Investigation.
25 And those two were my main contact people

1 throughout the rest of my involvement at the
2 scene.

3 Q. Did you at all, briefly, meet Detective Remiker?

4 A. I believe I did.

5 Q. All right. But your direction came from
6 Investigator Wiegert and Agent Fassbender?

7 A. Yes.

8 Q. All right. After you checked in with them, what
9 did you do?

10 A. They were at the end of the road leading into the
11 salvage yard. And the -- that RAV4 vehicle, the
12 victim's vehicle, had been located maybe a
13 quarter mile into the salvage yard, down an
14 embankment.

15 And so they got somebody to lead us down
16 to a flattened area that was just in front of a
17 pond and there was a car crusher nearby. But it
18 was quite an open gravelly area and we were able
19 to park there. And then we proceeded on foot.

20 Q. I'm going to stop you right there, if I may, and
21 this might assist. I would like to direct your
22 attention to the screen and show you what has
23 been received as Exhibit 86.

24 A. That's an aerial view.

25 Q. All right. I'm going to have my colleague hand

1 you a laser pointer here. And that may be of
2 some assistance to you. And if you could, then,
3 briefly describe, first of all, where the fire
4 truck with the canopy was and then your general
5 direction.

6 A. I don't want to get the court reporter. Okay.
7 So, right there is where the fire truck was.

8 Q. Let the record reflect the witness is directing a
9 laser pointer to the lower left hand corner of
10 Exhibit 86.

11 ATTORNEY BUTING: No, objection.

12 THE COURT: Record will so reflect.

13 ATTORNEY FALLON: Thank you.

14 Q. (By Attorney Fallon)~ And from there, sir, where
15 did you proceed?

16 A. Down this road. And this is the flat area where
17 we parked.

18 Q. All right.

19 ATTORNEY FALLON: May the record reflect
20 the witness has directed the laser pointer to the
21 area immediately to the right of the area previously
22 identified as the car crusher.

23 ATTORNEY BUTING: No objection.

24 THE COURT: The record will reflect that as
25 well.

1 Q. (By Attorney Fallon)~ All right. Now, when you
2 went to that area you described as the flat area,
3 Mr. Ertl, what did you do from there?

4 A. We then proceeded on foot down this kind of
5 grassy, overgrown gravel and dirt road. And this
6 is the pond. Goes around the pond and you can
7 sort of see cars lined up along the edge of the
8 road that goes around the pond. Right about
9 there, a little more than half way down to the
10 pond there was a --

11 Q. I'm going to show you a close up there. Just so
12 you know, sir, this exhibit, as previously
13 identified, was taken after the car was removed.

14 A. All right.

15 Q. But for purposes of illustrating the area and the
16 path you took, if you would now demonstrate with
17 the pointer what you did?

18 A. All right. So this is the flat level area.
19 That's the car crusher. We proceeded down this
20 road to right there.

21 Q. All right. Thank you.

22 A. There's a red vehicle and two white vehicles.
23 The RAV4 was a blue vehicle, was parked parallel
24 to the red vehicle. Its nose was facing this
25 direction.

1 ATTORNEY FALLON: And the record should
2 reflect he directly pointed to a westerly direction.

3 THE COURT: The record will so reflect.

4 Q. (By Attorney Fallon)~ All right. Very well.
5 Thank you, Mr. Ertl. If you would please, then,
6 describe further the line of cars and the
7 particular Toyota RAV4 that you examined or first
8 observed.

9 A. Okay. These cars parked along here were kind of
10 older looking, the paint was faded; they looked
11 like they belonged there in the salvage yard.
12 The RAV4 looked a little different, it was shiny.
13 And it had an old Rambler hood leaned up against
14 the back panel. It had a piece of plywood up
15 against the front end, on the side.

16 It had several tree branches up against
17 the back. Had a cardboard box sitting on the
18 hood. And had quite a large 12 to 15 foot tall
19 tree that kind of looked like it had been ripped
20 out of the ground, still had roots attached, was
21 leaning up against and over the hood. The other
22 vehicles there had been parked there and there
23 were saplings growing up around them. But this
24 one had detached tree limbs and things around it.

25 The Rambler hood and some fence posts

1 were leaned up against the car. The other cars
2 didn't have that sort of stuff around them; the
3 car was sitting there and there was vegetation
4 growing up around them. So it looked a little
5 odd.

6 Q. All right. And before we go further, tell us
7 about the weather conditions upon your arrival.

8 A. When I first got the call at noon, I was informed
9 that the weather was threatening. It was early
10 November. It was kind of cold, but it was rain
11 that we were having. It had rained and they were
12 afraid that it was going to rain on the vehicle.
13 I advised them they should cover it in some way,
14 if they could, because of the rain if there were
15 fingerprints or anything, handprints in the dust
16 on the car, that would get rinsed away by the
17 rain water.

18 So I believe they had put a tarp over
19 the vehicle when it did begin to rain and they
20 had removed the tarp just as we arrived. It
21 wasn't raining when we arrived, but it was still
22 dark and cloudy. And during my course of my stay
23 there that evening, at times it did. We had an
24 actual thunderstorm. And that flat area, then, I
25 talked about, I can remember stepping out of the

1 van at one point into a puddle. Not just a
2 puddle, but the general area where the water was
3 pretty deep and we had quite a torrent of rain.

4 ATTORNEY FALLON: Let the record reflect
5 the witness put his hands together and gave us an
6 apparent estimate of what looked like about 4 to 6
7 inches of water?

8 A. Two to three.

9 Q. Two to three?

10 A. Inches of standing water.

11 Q. Now, as you arrived to examine this vehicle, was
12 it raining at that particular point?

13 A. Maybe misting, wasn't really raining.

14 Q. How long before it began to rain, relative to
15 daylight, darkness?

16 A. I believe it was just after dark that it really
17 started to pour. The lightening was very
18 dramatic.

19 Q. All right. Now, directing your attention more
20 specifically to the Toyota RAV4, what was the
21 condition of the vehicle itself? Describe it's
22 appearance. In addition to the camouflage
23 materials you already talked about, but what else
24 about the vehicle can you tell us?

25 A. Well, it was newer looking. I examined all the

1 items that were around it. The thought there, if
2 somebody put them there, they had to have touched
3 them somehow. You know, the tree branches, there
4 may have been places where something would snag
5 on it, might be some clothing fibers.

6 If there was any blood involved, there
7 might be bloodstains on them. I looked at them
8 for that sort of material. I didn't find any.
9 The cardboard box and the Rambler hood, I
10 thought, had surfaces that maybe would hold
11 fingerprints if you had touched it with your
12 fingers. It was a smooth enough surface that it
13 would hold a latent print. So I decided to
14 collect those and return those to the laboratory.
15 And we were going to return the RAV4 to the
16 laboratory.

17 We couldn't get into the vehicle, all
18 the doors were locked. So the extent of my
19 examination of the inside was shining a
20 flashlight through the windows and just looking
21 inside.

22 Q. All right. And how much time did you say you
23 spent looking inside the vehicle with a
24 flashlight?

25 A. Oh, there were several of us around the vehicle

1 at that time looking inside. Once all the
2 materials had been removed from around it, that
3 was pretty much the first time anyone could get,
4 you know, close enough to peer inside.

5 Q. All right. Let me ask you then, what were you
6 looking for or attempting to see when you
7 examined inside the vehicle?

8 A. Well, it was a missing persons case, so the first
9 thing I wanted to know, was the missing person
10 inside the missing person's car. And I didn't
11 see any evidence of that.

12 Q. All right. Now, before we go any further, I
13 would like to direct your attention to the
14 screen, again, showing you Exhibit 130 and ask,
15 does -- does that scene strike any memories with
16 you?

17 A. Yes, that's me standing there, right there.
18 That's the RAV4. And that's a bit of a fence
19 post. That's the Rambler hood. That's a piece
20 of plywood. This is part of the tree that was
21 against the front end. And those are bits of the
22 branches that were against the back end.

23 Q. And who is that in the red coat?

24 A. That's Special Agent Tom Fassbender.

25 Q. And what does he have under his arm?

1 A. I can't quite make that out, kind of looks like
2 he is holding a tarp?

3 Q. A tarp.

4 ATTORNEY BUTING: What exhibit is that,
5 counsel?

6 ATTORNEY FALLON: 130.

7 Q. (By Attorney Fallon)~ And the gentleman
8 immediately behind Investigator Fassbender is
9 whom?

10 A. That's Guang Zhang. That's my photographer.

11 Q. All right. Thank you. The vehicle, you said you
12 saw -- you were looking for evidence of a person;
13 was there anything else you were looking for?

14 A. At that point, not really.

15 Q. Could you describe the ease or difficulty it was
16 to see in the vehicle when you were working with
17 the flashlight?

18 A. Well, at that point the glass was wet from the
19 rain. There was a lot of glare, so you kind of
20 had to, you know, get the light and not have it
21 bounce right back in your face. You can see the
22 front windows are clear, but the back windows
23 were all tinted, so it was kind of hard to see
24 through that, to see what was in the back end.

25 Q. How many people were flashing flashlights into

1 the back of that car?

2 A. I think there were at least two of us, because I
3 was looking through the side and I could see
4 another light moving around inside the vehicle.
5 And there was somebody standing on the opposite
6 side of the car.

7 Q. Now, as you were -- How much time would you say
8 you spent looking into the vehicle?

9 A. Oh, probably not more than 5 or 10 minutes.

10 Q. During that time, did you see any evidence of any
11 blood in the vehicle?

12 A. No, I didn't.

13 Q. All right. Were there any license plates affixed
14 to the vehicle?

15 A. No, the license plates had been removed.

16 Q. Did you notice whether there was any damage to
17 the vehicle at all?

18 A. Yes, once we got the debris away from it, there
19 was a scratch behind the Rambler hood. And then
20 this front end had a little bit of collision
21 damage, the lens on the light was cracked or
22 broken and there was some denting to the window.

23 Q. Did you examine the debris that was on the car
24 for the presence of any trace or biological
25 evidence?

1 A. Yes, I did.

2 Q. And what did you find?

3 A. I didn't see anything that I felt was unusual. I
4 didn't see any bloodstain. I didn't see any
5 hairs affixed to anything. I didn't see any
6 fibers attached to any of it.

7 Q. And for the benefit of all here, could you
8 briefly explain, what do we mean when we use the
9 phrase trace evidence?

10 A. Well, trace is a different unit than I worked in.
11 They are pretty all encompassing. Trace gives
12 you the idea that it's just a tiny bit of
13 something.

14 When any two objects are in contact, a
15 little bit of one transfers to the other. If you
16 back into a car with your car, you may get a
17 little bit of the paint from that car onto your
18 car, and vice versa. That would be trace
19 evidence, scratch the paint off the car and
20 collect that.

21 If you're wearing clothes and you are
22 handling these tree branches, you may snag your
23 clothes and some of the fibers may get lodged on
24 the tree branch. That would be trace evidence.

25 Or if one of my hairs comes out, lands

1 on the tree branch, or I get my hair caught in
2 the tree branch and it pulls some of it out, that
3 would be trace evidence.

4 Q. Were any efforts undertaken at that time to
5 process the vehicle?

6 A. No.

7 Q. Why not?

8 A. No. Well, the weather was threatening and the
9 best thing we could do is protect it from the
10 weather at that point and then to get it back to
11 the laboratory where we could put it in the
12 garage and we would have all the experts in trace
13 evidence and blood collection at the lab to do
14 their jobs.

15 Q. All right. What efforts did you make to protect
16 the integrity of this evidence?

17 A. At that point, I suggested that we get it back to
18 the laboratory and that we use a covered trailer
19 to put the vehicle in. The trip to Madison in a
20 rainstorm traveling at highway speeds would
21 pretty much scour anything off the outside of the
22 car. We wanted to put it inside of a trailer, so
23 I asked for that to be brought to the scene.

24 Q. And did that, in fact, occur?

25 A. Yes, it did.

1 Q. Approximately how long did you wait before making
2 the request for that type of equipment and its
3 arrival on the scene?

4 A. I believe I made that request pretty early on.
5 I'm not exactly sure how long it took to get that
6 to the scene. There was a wrecker truck was
7 called and that was a separate company, I
8 believe, that had the trailer. In the meantime,
9 I got involved with other areas at the salvage
10 yard.

11 Q. All right. Let's talk about those. While you
12 waited for the wrecker service to arrive with the
13 enclosed trailer, what was the first thing that
14 you did after leaving the SUV?

15 A. There was a team working with a cadaver dog. And
16 I kind of wanted to get a bigger feel for where I
17 was. So I kind of hooked up with them. We
18 proceeded down the road, around the pond, and
19 then down a steep embankment into, like, a gravel
20 pit.

21 Q. I'm going to direct your attention again to
22 Exhibit 86; does that assist you in explaining
23 what you did?

24 A. Sure. The RAV4 was parked here. We walked down
25 this way a ways and then down this embankment

1 into this gravel pit area.

2 Q. How much of a pitch, or a bank, or embankment was
3 that; in other words, what's the difference in
4 the terrain as best you can describe.

5 A. Oh, it was kind of loose footing. So it was kind
6 of step and slide to get down. Once we were
7 down, you couldn't see up out the top. It was
8 maybe a 20 foot embankment.

9 Q. All right. Was steep or ...

10 A. It was pretty steep, yeah. It took some effort
11 to come back up, too.

12 Q. All right. And after -- So approximately -- At
13 this particular point, was it still daylight or
14 had dark set upon the scene?

15 A. It was getting to be twilight. While we were --
16 While we were down in here, we could still see
17 each other pretty well; and the dog, you could
18 see it working.

19 We didn't stay down here for a real long
20 time. I came back up, met back up with my
21 photographer. And then, I believe, we proceeded
22 back to our van. And then, at some point we were
23 escorted back up to the command base.

24 Q. Where was your van parked?

25 A. In this flat area here.

1 ATTORNEY FALLON: Let the record reflect,
2 he's again pointing to the area to the right of the
3 car crusher and somewhat south of that between the
4 crusher and the pond.

5 THE COURT: The record will so reflect.

6 ATTORNEY FALLON: Thank you.

7 Q. (By Attorney Fallon)~ Then what did you do, sir?

8 A. Well, from there we were escorted up to a place
9 where there were four burn barrels behind a
10 residence.

11 Q. All right.

12 A. So back up to the command area and then down this
13 road, behind this residence here.

14 ATTORNEY FALLON: I'm going to ask the
15 record reflect that the witness is pointing to the
16 area behind the residence previously identified as
17 the Janda residence.

18 ATTORNEY BUTING: No objection.

19 THE COURT: Very well, the record will
20 reflect that.

21 Q. All right. And --

22 A. Somewhere back here -- And at this point it was
23 completely dark and it was raining.

24 Q. All right. How much rain or how hard was it
25 raining?

1 A. At that point, I think it was a pretty steady,
2 moderate rain.

3 Q. What happened at that particular location?

4 A. I watched the cadaver dog work around the
5 barrels. And it had interest in the two of them
6 to the south. Then there were two more next to
7 it. I advised, with the rain, you probably want
8 to cover those with a tarp, prevent whatever is
9 inside from getting soaked.

10 Q. All right. What occurred next?

11 A. From here, we went back to the command station
12 and we worked inside of a -- one of the large
13 shed garages from the salvage yard. It was a
14 golf cart type vehicle in there and the dogs were
15 working in there and one of them had hit on the
16 back end of that.

17 Q. Could you describe that golf cart for us, please.

18 A. It was kind of a cross between an all terrain
19 vehicle and a golf cart; kind of had -- was more
20 truck like than a golf cart. Had a canopy over
21 the top. And sort of like a little pick up truck
22 bed in the back. There were some stains on the
23 back. I tested those for the presence of blood.
24 We have a presumptive test for blood; it doesn't
25 discriminate human from animal. And it's called

1 phenolphthalein.

2 Q. And for the benefit of our reporter here, can you
3 spell phenolphthalein, please.

4 A. P-H-E-N-Y-L-T-H-A-L-E-I-N (sic).

5 (Witness corrected the spelling off the record.)

6 Q. And what result, if any, did that testing yield?

7 A. There were a couple of dark colored stains on the
8 back end and up on the canopy. And they all
9 tested negative, indicating it was not blood. We
10 had the photographer with us and he photographed
11 that.

12 Q. And where -- where did you go next?

13 A. I'm not sure which of those large service garages
14 it was that we were in, where the golf cart was.
15 At that point I believe we went back down,
16 informed that the wrecker had arrived. And we
17 proceeded back down to the flat area and then
18 back to the RAV4.

19 Q. And prior to stopping at the RAV4, had anything
20 changed in the area, specifically with respect to
21 the car crusher?

22 A. At some point, and I'm not sure whether it was
23 while the wrecker -- before the wrecker -- before
24 we arrived at the scene where the wrecker was, or
25 after we had secured the RAV4, but at some point

1 there was talk about a car in the car crusher and
2 how that was quite unusual. The crusher was
3 operated by a different outfit, sort of a
4 portable unit. They bring it into a salvage
5 yard, crush some cars, kind of like a
6 subcontractor, but they operated it.

7 ATTORNEY BUTING: Objection to that; that's
8 beyond the scope of his knowledge.

9 A. That was just what I had heard.

10 ATTORNEY BUTING: He's not going to know
11 who operates it.

12 THE COURT: The objection is sustained.

13 Q. (By Attorney Fallon)~ What -- My point for you,
14 sir, is what did you do when you examined the
15 crusher at this particular point?

16 A. There was a car crushed in the crusher. And the
17 ramp of the crusher was still on top of the car,
18 so you could just see the side of a crushed car.
19 And you could sort of see into where the windows
20 had been, but you couldn't see much.

21 So somebody made contact with the people
22 who knew how to operate the crusher to raise up
23 the ramp so we could get in and look -- try to
24 get a better look at the car that was in the
25 crusher.

1 Q. And did you get a better look?

2 A. Yes, at some point people came and started it up
3 and raised the ramp. Then we were able to climb
4 up on top of the car. Still couldn't get a real
5 good look because the roof of the car was down --
6 crushed down on top of it too. So I advised if
7 you want to get inside, you will have to get the
8 roof and the metal off of there, then you could
9 see what was actually in the car before it was
10 crushed.

11 Q. Showing you on the screen what has been received
12 as Exhibit 66; is that the crusher vehicle that
13 you have been talking about?

14 A. Yes.

15 Q. And there was a vehicle in that when you arrived?

16 A. Yes.

17 Q. All right. Returning, again, to the RAV4, the
18 SUV, when the wrecker arrived, what did you do?

19 A. The person with the covered trailer, he had
20 attached to a pickup truck, he helped direct the
21 wrecker truck. It was a really large one, looked
22 like you could probably pull a semi.

23 He backed it down along that road
24 between the row of cars and the pond. I waited
25 for them down at the RAV4. The wrecker operator

1 then examined the vehicle, trying to determine
2 how he was going to best get it of there, because
3 there was no way they were going to get the
4 pickup with the trailer in there and along that
5 narrow road with the pond. So the plan was to
6 pull the RAV4 out into that flat area near the
7 crusher and then put it into the trailer there,
8 where they had room to maneuver.

9 So the wrecker operator determined that
10 the RAV4 wasn't just going to roll; it was either
11 in gear, or it had a parking break on. For
12 whatever reason, it wouldn't roll on its own
13 wheels. So he wanted to try to put the vehicle
14 in neutral and it was locked; he couldn't get in.

15 So he crawled underneath and tried to
16 reach the linkage for the transmission; he
17 couldn't reach that. Then he tried to access
18 that from under the hood, but the hood release
19 and everything was also inside. Couldn't pop the
20 hood.

21 So what he ended up doing was crawling
22 underneath and unbolting one of the drive shafts.
23 It was a four wheel drive vehicle. He unbolted
24 the drive shaft to the front end.

25 He then used his lifter from the wrecker

1 to pick up the back wheels and then rolled it on
2 the front wheels and he pulled it out from around
3 the pond, into that flattened area where the
4 trailer was waiting. And then he rolled it up
5 into the trailer and then we strapped it down
6 into the trailer.

7 Q. And who was involved in this project?

8 A. I was there, the wrecker operator, and the person
9 that brought the trailer.

10 Q. Once the vehicle was secured, what did you do?

11 A. We then prepared -- and I'm not sure if this is
12 the point where they actually had the ramp raised
13 now and we then looked at the crushed vehicle in
14 the crusher, or if that had occurred right prior
15 to moving the RAV4 out. But at any point, at
16 some point Tom Fassbender said that we don't need
17 you any more right now, get the RAV4 back to the
18 lab.

19 Q. All right. During your exposure to the SUV, how
20 many law enforcement officers were in the
21 immediate vicinity of that vehicle?

22 A. When I first arrived, I would guess three to
23 four. There was always one standing away from
24 it. And the person was there just to make sure
25 that no one who didn't belong there was there.

1 That was like the security guy. When I first
2 arrived, they were removing the tarp; I think
3 there were three or four there. Tom was there
4 with me; my photographer; there was another --
5 Q. You mentioned Tom?
6 A. Tom Fassbender.
7 Q. Agent Fassbender who is seated here?
8 A. Yes.
9 Q. All right.
10 A. And I don't know all the people involved.
11 Q. All right. And how about after your tour of the
12 general area. You came back to the area where
13 the SUV was; were there officers, then, present
14 as well?
15 A. The one on guard was still there.
16 Q. Same person?
17 A. That I don't know.
18 Q. Okay. Approximately what time did you leave the
19 scene that Saturday night?
20 A. I believe it was about quarter to nine.
21 Q. What time did you arrive in Madison?
22 A. It was about 1:15 a.m.
23 Q. And what time did you finish securing the RAV4?
24 A. It was about 2:00 a.m.
25 Q. All right. And where was the vehicle secured?

1 A. In the garage at the Crime Laboratory in Madison.

2 Q. Did you need the assistance of any other
3 professional help to secure the vehicle?

4 A. Yes.

5 Q. Tell us about that?

6 A. When we arrived in Madison, I called the local
7 wrecker company to come and do the opposite of
8 what the wrecker had done at the scene in
9 Manitowoc, to lift up the back end, pull the
10 vehicle out of the trailer, and then put it into
11 the garage, because the back wheels were still
12 locked.

13 Q. Directing your attention to Sunday, November 6,
14 were your services again requested in this
15 investigation?

16 A. Yes. About 9:00 a.m., Special Agent Tom
17 Fassbender called me and requested that we come
18 up to the salvage yard again. And at that point
19 they hadn't any specific area they wanted our
20 assistance, they just wanted our general
21 assistance to be available in case they came
22 acrossed anything.

23 Q. Okay. Did you then make plans to travel to the
24 salvage yard?

25 A. Yes.

1 Q. And what time did you, in fact, go to the salvage
2 yard?

3 A. We left Madison, I think it was just before noon.

4 Q. And what time did you arrive at the salvage yard?

5 A. I believe it was around 3:30.

6 Q. When you arrived at the scene, with whom did you
7 meet?

8 A. Investigator Wiegert and Special Agent
9 Fassbender.

10 Q. What assignments were you asked to perform?

11 A. Well, we were told of three areas where cadaver
12 dogs had been interested. One of them was on the
13 east side of Avery Road, at the corner with 147;
14 there was a gravel yard, gravel quarry. And
15 there was a maybe 30 foot tall mound of gravel
16 and sand. And about 6 to 8 feet up the pile, the
17 dog got excited about something. They said they
18 would put an orange flag there. And they had
19 seen a pinkish substance. So that was one place.

20 The dogs were also interested in two
21 wrecked vehicles that were parked on the
22 perimeter of that pond, near where the RAV 4 had
23 been.

24 And then they talked about the burning
25 barrels that I had seen the night before. The

1 dogs were interested in those. We began working
2 at the gravel yard.

3 Q. All right. And was anything of significance, in
4 your determination, found at that gravel yard
5 location?

6 A. We found some reddish staining on some pieces of
7 gravel. They tested presumptive positive for the
8 presence of blood. We located a pinkish
9 substance, perhaps three quarters of an inch in
10 largest dimension, looked like flesh.

11 We found another piece of material about
12 the same size; it was reddish and white in color.
13 Both of those items also tested presumptive
14 positive for the presence of blood.

15 We collected those. And then we
16 proceeded to excavate that area under where those
17 materials had been. So we dug 4 to 6 feet of
18 gravel out of that area and placed it on a tarp,
19 shovel by shovel, looking to see if we could find
20 anything more. And we worked until dark; it was
21 about 5:00.

22 Q. And did you find anything else?

23 A. We didn't find anything more.

24 Q. Was there any evidence whatsoever that that was
25 any kind of burial site, or any wrongdoing had

1 occurred there?

2 A. Other than the presence of possibly blood and
3 some flesh. And at that point we didn't know if
4 it was animal or human. And collected it and
5 didn't find any more. That was the extent of it.

6 Q. And that's because the test does not distinguish
7 between human or animal?

8 A. That's correct.

9 Q. Okay. And after completing that particular task,
10 what was your next assignment or task on the
11 agenda?

12 A. At that point we were asked to go in and look at
13 Steven Avery's residence. It had previously been
14 examined by others and things had been taken. So
15 at that point we just went in and we were asked
16 to look for any evidence of blood spatter
17 patterns.

18 It's one thing to find blood, a blood
19 stain, that can tell you some information. But
20 we were looking more for patterns of bloodstain.
21 If you cut your finger and do this, the blood
22 will come off your finger and leave little specks
23 in a line and you can tell something about how
24 that blood came to be in little specks in a line.

25 ATTORNEY BUTING: Can the record reflect

1 when he said, do this, he was moving his index
2 finger sort of out to the side and kind of flicking
3 it?

4 ATTORNEY FALLON: That's fine.

5 THE COURT: That's an accurate reflection
6 of the actions he took.

7 Q. (By Attorney Fallon)~ Did you find any evidence
8 of bloodstain pattern?

9 A. No, we didn't.

10 Q. Now, what, if anything, did you find in your
11 examination of the residence that Sunday evening?

12 A. We found some bloodstains on both entry doors and
13 on the floor of the vanity and in the sink in the
14 bathroom.

15 Q. What equipment were you utilizing as you examined
16 his residence that evening?

17 A. We used flashlights with white light and blue
18 light. The blue light helps to give contrast to
19 the blood, makes it turn black so it helps to see
20 blood. And we used white light to see the
21 reddish color of blood.

22 Q. Who was assisting you in this task?

23 A. I was with Guang Zhang, the photographer. And
24 also Chuck Cates. When we returned on Sunday,
25 there were three of us.

1 Q. What was the next -- Approximately what time did
2 you wrap up your examination of the defendant's
3 residence?

4 A. I believe we were in there until about 5:30.

5 Q. When you start at the residence, was it dark or
6 still light out?

7 A. We were losing light. When we left the gravel
8 yard, it was not productive to be looking for
9 things without supplemental lighting. And
10 flashlights and a large gravel pile and
11 shoveling, that wasn't productive anymore. By
12 the time we left the residence, it was completely
13 dark, 5:30.

14 Q. After -- Just so that we're clear, you mentioned
15 Mr. Zhang's name before. Mr. Cates accompanied
16 you on this trip?

17 A. Yes.

18 Q. Just so that we're clear, who was Mr. Cates
19 again?

20 A. He is another member of the field response crew.
21 His normal duties involve fingerprint work.
22 That's his specialty. He was also, at that time,
23 the field response training coordinator.

24 Q. After examining the defendant's residence, what
25 was the next task you performed that Sunday

1 evening?

2 A. May I look at my notes to refresh my memory
3 there?

4 Q. If need be, sure.

5 A. Okay. After we looked at the residence, then we
6 moved on to the two vehicles that the cadaver
7 dogs were interested in, down near the pond. One
8 of the agencies had set up some very impressive
9 lighting down there, so we were able to examine
10 those vehicles even though it was dark outside.

11 We found apparent blood staining in both
12 vehicles. We collected those bloodstains. We
13 did not do fingerprint analysis -- or we did not
14 process the vehicles for latent prints at that
15 time because it was starting to form dew on them.
16 And the way we look for fingerprints is to take a
17 fine powder with a feather brush and dust
18 acrossed. And if it's wet, that just does not
19 work. So we just left that for a later time
20 after it dried off again.

21 Q. And these vehicles, what were they?

22 A. One was a gold colored Honda and one was a silver
23 colored Renault.

24 Q. Do you know if they had any prominent roll in
25 this case after your examination?

1 A. I do not know.

2 Q. Very well. Directing your attention, then, to
3 Monday, November 7th, 2005, did you again
4 participate in processing of the salvage yard?

5 A. Arrangements on Sunday evening were that we would
6 meet up with a Jeremy Hawkins here in Chilton at
7 the Calumet County Sheriff's service garage. The
8 four burn barrels had been transported to the
9 service garage and we were to examine those.

10 Q. And did you start examining the burn barrels?

11 A. Yes. Approximately 8:00 a.m., we met with Jeremy
12 Hawkins. He let us into the garage, got us into
13 the trailer where the burn barrels were. Got
14 them out into the garage. Set up our sifting
15 equipment and bit by bit went through the
16 contents of the barrels, sifting, looking for any
17 kind of bones, teeth, hair, any metallic type
18 items.

19 Q. Did you find any of that evidence?

20 A. There was. In each barrel examined we collected
21 a box full of that sort of material.

22 Q. All right. Now, was that task at all interrupted
23 on Monday?

24 A. Yes. Just after we had our lunch break and we
25 had just started sifting the barrels again,

1 around 12:30, we were requested to return to the
2 area near the scene. Some volunteer searchers
3 had discovered in some area -- a forested area
4 with some disturbed soil. They were thinking
5 this could be a potential burial site. So we
6 proceeded to that location. It's just west of
7 the salvage yard, at the end of Kuss road.

8 Q. What did you find when you arrived at that
9 location?

10 A. We were taken out into the woods a little bit and
11 was indeed an area with disturbed soil. To me it
12 didn't look like a grave site. It looked more
13 like a rotten stump to me, where the wood had
14 just turned into like humus. There were no
15 plants growing up through it really. So it was a
16 barren spot. So it kind of looked like it was
17 disturbed.

18 The normal grasses and moss and stuff
19 growing in the area around it weren't here, so it
20 did look odd. There was some whitish colored
21 plastic sticking up out of the ground in sort of
22 a perimeter, maybe 3 feet in diameter. The
23 plastic to me looked like it was decomposing,
24 getting brittle and just flaking off on to the
25 ground, on its own. Those little flakes were

1 still there right under the plastic.

2 Q. What does that signify with respect to the age of
3 that plastic and that particular site?

4 A. Well, the fact that little bits were directly
5 below the plastic that was sticking out of the
6 ground indicated to me that it hadn't been
7 disturbed recently and that that plastic had been
8 there for quite some time.

9 Q. Perhaps years?

10 A. Perhaps.

11 Q. So your conclusion, with respect to the
12 possibility of any type of burial site, was what?

13 A. Well, at that point I was also informed that they
14 had been working a blood hound with a scent
15 from --

16 ATTORNEY BUTING: Objection as to hearsay
17 at this point.

18 ATTORNEY FALLON: That's fine.

19 Q. (By Attorney Fallon)~ Mr. Ertl, just in terms of
20 based on all the knowledge you had available to
21 you, and in particular your examination of this
22 location; what did you conclude regarding the
23 possibility, or no possibility, of a burial site?

24 A. My preliminary indication was that this was not a
25 burial site.

1 Q. Approximately how long did your examination of
2 that particular site take?

3 A. Well, the first thing, they wanted to get
4 permission from whoever owned that property.
5 They needed to figure out who owned that
6 property. They got written permission from that
7 person. Guang and I, then, went in and
8 photographed the area.

9 We sent Chuck back, then, to the salvage
10 yard, to do the latent fingerprint processing on
11 the two vehicles from the night before. This is
12 about 3:00 in the afternoon. So it was dry,
13 wasn't raining at that point. So we sent him out
14 to do that.

15 A warrant was then obtained for the
16 burial area, to search that. And then I began
17 the excavate this humus like material, moving it
18 on to a tarp, digging down. I dug down a little
19 ways and the white plastic perimeter was actually
20 underneath all of that humus material on the flip
21 side of the white plastic, was the label peat
22 moss. It was an old bail of peat moss.

23 Under that plastic was the remnants of
24 an old wooden pallet that was decomposing into
25 the soil. I picked the pieces of wood out, dug

1 down into the soil a little bit and ran into
2 roots, fine root mat from the surrounding plants
3 was well under the entire peat bag.

4 And where there were little slits, small
5 perforations in the peat bag, there were little
6 shoots starting to come up through it. So,
7 again, indicating to me that this area had not
8 recently been disturbed.

9 I then dug down past the roots and
10 looked at the soil layering. It looked like it,
11 again, had not been disturbed. But at that point
12 I concluded this was not a burial site.

13 Q. I'm going to have the screen project Exhibit 84
14 for us and ask if you recognize that general
15 vicinity, and in particular drawing your
16 attention to the top of the photograph displayed
17 there; does that look familiar to you?

18 A. I can't orient to that.

19 Q. Okay.

20 A. I know there were some ponds, but I had never
21 gotten to the ponds.

22 ATTORNEY BUTING: I have no objection if
23 counsel points out the locations that you are
24 referring to and see if he can identify it that way.

25 ATTORNEY FALLON: It's not necessary.

1 Thanks for the offer.

2 ATTORNEY BUTING: Okay.

3 A. Okay. I see something I recognize.

4 Q. What do you recognize? Take your pointer and
5 tell us what you recognize.

6 A. This is the residence of Steven Avery.

7 Q. Right.

8 A. This is the garage. And this is the road to the
9 command center. And this is a field. And I
10 didn't walk that field myself, but I was informed
11 somebody had.

12 ATTORNEY BUTING: Objection, hearsay.

13 A. Looks like that's the --

14 THE COURT: Hold on a second.

15 ATTORNEY BUTING: "I was informed", he
16 should avoid that.

17 A. Okay.

18 ATTORNEY FALLON: It's just his way of
19 explaining how he got from point A to point B. It's
20 not offered for the truth of the matter. It's just
21 the effect on the listener as he investigated, did
22 his job.

23 THE COURT: Based on what he said, I can't
24 tell if it's hearsay or not because I don't know the
25 purpose for which it's being offered. So I reserve

1 ruling at this point. Mr. Fallon, you may proceed.

2 Q. (By Attorney Fallon)~ All right. Mr. Ertl, if
3 you would just confine your opinions and -- or
4 your observations to what you saw and what you
5 did. Again, you were explaining your orientation
6 to Exhibit 84.

7 A. I had been here, Steven Avery's residence, and I
8 was here, if that is the end of Kuss Road.

9 Q. All right.

10 A. I was not in this area here.

11 Q. Okay.

12 A. We drove around on the highway to get here.

13 Q. So that the top of the exhibit that you pointed
14 to, the end of Kuss Road, is that where this
15 examination took place, generally?

16 A. Yeah. The suspected burial site was in this
17 wooded area just to the left.

18 Q. So the record should reflect that he's directing
19 a laser pointer to the area immediately to the
20 left of the cul-de-sac identified as Kuss Road?

21 ATTORNEY BUTING: No objection.

22 THE COURT: Record will so reflect.

23 ATTORNEY FALLON: Thank you.

24 Q. (By Attorney Fallon)~ When you finished the
25 examination of that particular area, did you

1 still have daylight or was it dark?

2 A. No, it was about 4 -- or 5:45 and it was dark at
3 that point.

4 Q. And when you completed the examination of that
5 area; what did you do?

6 A. We went back to the Calumet County Sheriff's
7 Department and continued the sifting of the burn
8 barrels. We worked on that until about 9:30 that
9 night.

10 Q. Okay. And directing your attention, again, then,
11 to Tuesday, November 8, did you resume work with
12 respect to the burn barrels?

13 A. Yes.

14 Q. What time did you start that day?

15 A. 8:00 a.m.

16 Q. All right.

17 A. We finished up with the burn barrels about
18 quarter to 11.

19 Q. And how many barrels did you, in fact, examine
20 that day?

21 A. Three. There were two from the original four.
22 And then there was a fifth barrel that had been
23 recovered and brought to the garage.

24 Q. Tell us about the fifth barrel, would you please.

25 A. We were informed that it had come from --

1 ATTORNEY BUTING: Objection again, hearsay.

2 ATTORNEY FALLON: One second.

3 Q. (By Attorney Fallon)~ Mr. Ertl, all I want you to
4 do is describe the fifth barrel?

5 A. Okay.

6 Q. Don't tell us what you know about the barrel,
7 just what you saw and what you did with the
8 barrel. All right.

9 A. It looked very much like the first four barrels.
10 It was a steel 55 gallon drum, with the top cut
11 off, apparently to burn things in. The fifth
12 barrel didn't have much in the way of unburned
13 material in it, where as the other ones had.

14 This one had a car wheel and what looked
15 to be the remnants of a tire; the steel cords
16 wrapped around the wheel on top of the barrel,
17 inside the barrel. We took that out and there
18 was mostly just ash and debris.

19 We began sifting that and we recovered
20 what looked like electronic components, little
21 circuit boards, a couple of which had the
22 Motorola M emblem on them, that we could see
23 that. And several of those type of things were
24 found in the sifting. There was also what looked
25 like to be remnants of batteries, that sort of

1 thing. We collected all that material.

2 Q. And what did you do with it?

3 A. Well, as with all the materials we collected,
4 they were eventually turned over to Calumet
5 County Sheriff's Department.

6 Q. I will have my colleague show you exhibit marked,
7 I believe, 156; do you recognize that?

8 A. It looks like the fifth burn barrel, based on the
9 lack of any other materials, besides mostly burnt
10 materials. And you can sort of identify the
11 square corners of what looked like the circuit
12 boards being recovered from there.

13 Q. Okay. I'm showing you the exhibit on the screen
14 right now. In terms of the contents, as you
15 began to sift the barrel; did those contents look
16 very similar to that?

17 A. Yeah.

18 Q. And with respect to those contents, can you
19 identify anything in the exhibit that you
20 recognize?

21 A. From the photograph, I can't really identify
22 anything they look like.

23 Q. All right.

24 A. But they have square corners, but -- like the
25 things we collected out of the barrel.

1 Q. Okay.

2 A. The right shape and size.

3 Q. There's another close up there, in terms of this
4 particular photograph. And, again, just for the
5 general idea, is that how the barrel looked when
6 you began the sifting process that you just told
7 us about?

8 A. Yes.

9 Q. All right. Very well. Thank you. After you
10 finished examining the barrel, the fifth barrel,
11 what did you do next?

12 A. We then returned to the salvage yard.

13 Q. What did you do when you returned to the salvage
14 yard?

15 A. At that point we were directed to one of the
16 wrecked vehicles in the yard. We were told that
17 one of the searchers had found vehicle license
18 plates within the vehicle. They had taken them
19 out. They had been folded or rolled in such a
20 way that he couldn't read the number on the
21 plate. So he unrolled it or unfolded it and was
22 able to read the plate. And it was the license
23 plate number for the RAV4 vehicle.

24 Q. So what did you and the rest of your team do with
25 respect to the vehicle?

1 A. We went over and photographed the position of the
2 vehicle, the surrounding area. We examined the
3 inside of the vehicle, we processed it for latent
4 prints. And we collected the license plates.

5 Q. All right. And what was the next task that you
6 were asked to perform that day?

7 A. Well, Guang Zhang and I left that immediate area
8 to take some general overall photographs of the
9 salvage yard, while Chuck was doing the latent
10 print processing on that vehicle. When we
11 arrived back, we were requested -- We had the
12 request for the use of our sifting equipment.
13 There was a burn pit behind the garage that they
14 wanted to use our sifting equipment on.

15 Q. And who was asking for your assistance, and in
16 particular, your sifting equipment?

17 A. That was Special Agent Tom Sturdivant.

18 Q. Can you describe this sifting equipment for us?

19 A. It's three aluminum poles to hook together to
20 form a tripod, stands about 6 feet tall. There
21 are chains coming down from the center top of the
22 tripod to which we attach an aluminum frame, so
23 it kind of can swing within the tripod. And on
24 that aluminum frame, we can put different size
25 mesh. You put the materials on top of the mesh

1 and you can use a trowel, or a broom, or just
2 shaking, whatever works best for the material.

3 And then the particles or bits that
4 won't fall through the screen, you can collect
5 and examine. The bits that fell through the
6 screen, we put a tarp under there and saved those
7 for later analysis, if needed.

8 Q. Do you use different types of screens?

9 A. In this case, I believe we used two different
10 types of screens.

11 Q. And approximately what time did you begin to
12 assist with the sifting of the material from the
13 burn pit.

14 A. That was about 3:00 p.m.

15 Q. All right. And generally, would you describe for
16 us how you worked the particular scene there?

17 A. There were -- In addition to Tom Sturdivant there
18 were some other uniformed officers present at the
19 scene. Our team got our sifting equipment, set
20 it up. And I have had some experience with
21 excavating grave sites before so I knew how to
22 dig into the material we wanted to sift without
23 bashing it up and ruining it.

24 So we have a small square nosed, flat
25 shovel. And the ground under the ash in this

1 area was very hard and packed. And so I moved
2 material onto the shovel, onto the sifter. The
3 other officers and Chuck Cates were there picking
4 through the materials. Quite often they would
5 ask me, does this look like a bone. I said, if
6 there's any question, put it in the box. So we
7 collected a lot of material from that --

8 Q. All right.

9 A. -- sifting.

10 Q. Tell us about your experience, in terms of
11 excavating a particular site like this?

12 A. Earlier that summer, we had had a case where it
13 was a homicide and the body had been attempted to
14 be burned in a fire ring. It wasn't a complete
15 destruction of the body and then pieces of it had
16 been buried. So I had, earlier that summer, been
17 involved with excavating the ash material in that
18 pit and also with the excavation of the burial
19 site. And I had previously done at least two
20 other just straight burial sites, without burning
21 involved. Tom Sturdivant indicated to me that he
22 had been also involved in some burn where victims
23 had been burned.

24 Q. In terms of your experience, then, how --
25 describe for us how the material was actually

1 taken from the pit and what efforts you made so
2 as not to unduly disturb the site or to damage
3 any of the material that you were removing. Tell
4 us how you managed that.

5 A. Well, we used the flat shovel to slide underneath
6 it on the hard ground to collect things. We also
7 used a mason's trowel to gently excavate --
8 excavate and loosen the material and then place
9 it onto the screen. And at that point we had
10 additional mason's trowels and whisk brooms
11 available to move the material to let the smaller
12 materials fall through the screen and then you
13 could examine the material that remained on top
14 of the screen.

15 Q. All right. Who actually did the shovel work, as
16 it were, and who did the actual picking through
17 what was placed in the sifter?

18 A. I believe I did most of the shovel work. My
19 photographer also did some shoveling. I don't
20 recall anyone else doing shovel work.

21 Q. And did you have -- or were you aided with lights
22 to conduct this task on that?

23 A. No, we didn't have any lights.

24 Q. What time did you --

25 A. We used flashlights.

1 Q. Thank you. What time did you cease that work?

2 A. It was about 5 p.m.

3 Q. I would like to show you Exhibit No. 50. With
4 the exception of the presence of the dog, I think
5 previously identified as Bear, is that a true and
6 accurate portrayal of the pit?

7 A. Yeah. This is the area where we excavated that
8 grayish colored material and sifted it.

9 Q. May the record reflect the witness has identified
10 a darkened gray area he used, which is depicted
11 in the bottom part of Exhibit 50.

12 THE COURT: Does the defense agree?

13 ATTORNEY BUTING: Yes.

14 THE COURT: Very well, the record will so
15 reflect.

16 Q. (By Attorney Fallon)~ To whom were the items
17 given that were recovered from this sifting
18 process on Tuesday evening?

19 A. To the Calumet County Sheriff's Department
20 evidence technicians.

21 Q. Do you recall any non-biological material of
22 interest that you may have seen that Tuesday
23 evening during the process?

24 A. There were some metallic items present also.
25 Maybe -- I don't recall specifically, but things

1 like zipper pulls, snaps, rivets. Certainly
2 there was a lot of the cording from tires
3 present. There was a large -- looked like this
4 bench seat from a vehicle that had been burned.

5 Q. We're going to zoom out on Exhibit 50 here. When
6 it became dark and you ceased operations on the
7 burn pit; what did you do next?

8 A. At that point, we turned over all the evidence
9 that we had collected thus far to the Calumet
10 County Sheriff's Department. We were preparing
11 to leave the scene. But before we left, it was
12 requested that we do a luminol treatment of a
13 couple of residences on the property. Luminol is
14 a --

15 Q. Let me stop you there and ask those questions, if
16 I may. First of all, what is luminol?

17 A. Like phenolphthalein, luminol is a chemical test
18 that reacts with blood. It's more sensitive than
19 phenolphthalein. It can detect blood that you
20 can't see, if it's been washed or diluted, or if
21 the specks are so small you can't really notice
22 them, Luminol will allow you to see them.

23 Q. How do you spell luminol, please?

24 A. L-u-m-i-n-o-l.

25 Q. And how did it work?

1 A. You need to have the area you are treating dark.
2 When luminol is sprayed onto a bloodstain, it
3 gives off light so it glows. Anything that's
4 glowing here in the dark, we circle with a piece
5 of chalk and then go back with the lights on;
6 look at the areas we have circled, to see if we
7 can see anything. And then attempt to swab that
8 area and test it again with phenolphthalein.

9 Phenolphthalein is also presumptive for
10 blood. It's more specific than luminol. Some
11 things will react with luminol such as a copper
12 penny, the lead seals we use. Bleach reacts very
13 strongly with luminol. Those sorts of things,
14 cleaning reagents, chemicals.

15 Q. What types of cleaning -- Did you say reagents?

16 A. I did say reagents.

17 Q. What type of -- First of all, what is a reagent?

18 A. You buy a bottle of Bo Peep Ammonia -- Reagent is
19 a word that we use in the laboratory to mean some
20 sort of concoction that you come up with for some
21 specific use.

22 Q. Okay.

23 A. Something you put on your sink to clean with.

24 Q. I was going to say, can you give us a common
25 every day example of a reagent.

1 A. Clorox Bleach.

2 Q. Okay. You were saying -- You were about to
3 explain more on the reagents.

4 A. So luminol is more sensitive, but it's less
5 specific than phenolphthalein. So if it glows
6 with luminol, then we would want to go back and
7 retest that area with phenolphthalein, it's more
8 specific. To be useful for later analysis, we
9 would want it to be phenolphthalein positive.

10 Q. Now, which residences were you asked to conduct
11 this luminol process?

12 A. Steven Avery's and Charles Avery's.

13 Q. And this was Tuesday evening?

14 A. Yes.

15 Q. All right. And let's start with Steven Avery's
16 residence, what if anything did you find there
17 that had previously not been examined, or
18 determined, or observed?

19 A. There were some visible bloodstains on the couch
20 that we had previously not found, that we found
21 with luminol. Other than that, there was nothing
22 that we hadn't already seen.

23 Q. And when you found these stains on the couch
24 react to the luminol, what did you do?

25 A. Circled them with chalk, then we looked at them.

1 They were obviously red brown color, but within
2 the pattern of the couch material, we hadn't seen
3 them previously. So we took cuttings of the
4 couch material and collected the stains.

5 Q. And how about with respect to Charles Avery's
6 residence, what if anything did you find there?

7 A. Again, we found bloodstains on the couch.

8 Q. And what did you do?

9 A. We cut the fabric to collect the stain.

10 Q. Approximately what time did you conclude your
11 investigative work that evening?

12 A. Well, the luminoling went on from about 5:30 till
13 9:30, but in between Steven's residence and
14 Charles' residence, we also did the garage next
15 to Steven's residence.

16 Q. I was going to ask about that. So what did you
17 do inside the garage?

18 A. We had been informed that others had been there
19 before us; there were chalk circles on the floor
20 already. We luminoled, made our own chalk
21 circles, found one spot that was confirmed
22 positive with phenolphthalein, but we were
23 informed that that had already been collected.

24 There was another area that wasn't just a spot on
25 the floor, it was more of a smear.

1 Q. Can you describe this smear in greater detail.

2 A. Roughly 3 to 4 foot diameter area. Faintly
3 glowing under the luminol. No specific spots or
4 stains. Couldn't see anything with the lights
5 on. Just swabbed several places where the
6 luminol had been reacting, tested with
7 phenolphthalein and did not get a reaction with
8 the phenolphthalein.

9 Q. All right. So this is that large area you were
10 talking about?

11 A. Yes.

12 Q. So what did that tell you, as a forensic
13 scientist, about that large area and its reaction
14 to luminol but did not react to the more specific
15 phenolphthalein test?

16 A. Well, there was something that had been spread
17 out in a large area that was reacting. I don't
18 know what. And what cross reacts, cleaning
19 chemicals dilute blood, would react, but it may
20 not show up with phenolphthalein if it was
21 diluted enough. So there was really nothing for
22 us to collect from there.

23 Q. All right. Now, as you think about that
24 particular garage examination, do you have a
25 picture in your mind as to approximately where in

1 the garage this larger spot which reacted to the
2 luminol was?

3 A. Yes, I do.

4 Q. And tell us about that.

5 A. As you face the garage, there was a large
6 overhead door. There was a smaller entry door to
7 the right of that. We went in through that door.
8 Immediately in front of you was an inaccessible
9 area because of the amount of stuff that was in
10 the garage, you know, parts of whatever, I don't
11 know what. And the first stall to the left of
12 the main door was a snowmobile. And then in the
13 further stall away from that door was a small SUV
14 type vehicle.

15 This smeared area was, if you walk in
16 the door, move a little bit to the left around
17 that material, between the material that's on the
18 floor and the snowmobile and then walk straight
19 back toward the back wall until you run into the
20 clutter. It was right in that area in the corner
21 of the clutter, at the rear of the snowmobile.

22 Q. All right. I'm going to have my colleague show
23 you what has been received as Exhibit 107. Is
24 Exhibit 107, would that be of some assistance to
25 you in pointing out the general location of this

1 larger spot?

2 A. There's less clutter than I remember there being
3 but, yes, the vehicle, the snowmobile and some
4 amount of clutter is there.

5 Q. All right. Is it sufficient for purposes of
6 giving you -- giving all of us here a general
7 location of that?

8 A. Yes.

9 Q. All right. I will have that projected on the
10 screen then. Showing Exhibit 107, you have the
11 laser pointer.

12 A. To the rear of this tractor, to the rear of the
13 snowmobile.

14 Q. So you are pointing -- the record will reflect
15 the witness is taking the laser pointer and
16 pointing to the area immediately in front of the
17 green tractor and to the right and behind the
18 snowmobile. Would that be accurate, Mr. Ertl?

19 ATTORNEY BUTING: I would not agree with
20 that.

21 THE COURT: Is that to the front or the
22 rear of the tractor?

23 ATTORNEY BUTING: You are pointing to the
24 rear of the tractor?

25 Q. (By Attorney Fallon)~ The rear of the tractor?

1 A. Right.

2 ATTORNEY BUTING: Okay. An area just to
3 the rear of the green tractor would be accurate.

4 THE COURT: All right. The record will so
5 reflect.

6 ATTORNEY FALLON: Very well.

7 Q. (By Attorney Fallon)~ And, again, would you give
8 us an approximate size of this box?

9 A. Three to four foot diameter.

10 Q. Was it circular in shape or oddly shaped?

11 A. It was irregularly shaped.

12 THE COURT: Excuse me. For clarification,
13 when you say 3 to 4 feet do you mean 3 to 4 feet in
14 diameter, or radius, or what?

15 ATTORNEY FALLON: I think he said 3 to 4
16 foot diameter.

17 THE COURT: Okay.

18 THE WITNESS: Edge to edge.

19 THE COURT: Okay.

20 Q. (By Attorney Fallon)~ Now, is there -- is there a
21 longer measurement that you could somehow use; I
22 know you said a diameter suggests to us across of
23 3 to 4 feet. Is there a general length
24 measurement that you can estimate for us, or not?

25 A. No, I didn't use a measuring tape to measure this

1 area.

2 Q. All right. After completing your examination of
3 the two residences and the garage with the
4 luminol process, what did you do then?

5 THE COURT: Excuse me, Mr. Fallon.

6 ATTORNEY FALLON: Two questions and I'm
7 done.

8 THE COURT: Very well.

9 Q. (By Attorney Fallon)~ What did you do?

10 A. We had collected the cuttings from the couches in
11 both residences, turned those over to Calumet
12 County. And then talked with Investigator
13 Wiegert and Special Agent Fassbender and were
14 released from the scene.

15 Q. About what time did you clear the scene?

16 A. It was about 9:30 p.m.

17 Q. Very well. Were you called back at all or was
18 that your last trip?

19 A. That was the last.

20 ATTORNEY FALLON: Thank you. We have no
21 further questions for the witness.

22 THE COURT: Very well. Members of the
23 jury, at this time we'll take our morning break. I
24 will remind you as usual that you are not to discuss
25 the case or this morning's testimony during the

1 break. Thank you.

2 (Jury not present.)

3 THE COURT: Counsel, then, please report
4 back at 10 minutes to 11.

5 ATTORNEY KRATZ: Thank you.

6 (Recess taken.)

7 THE COURT: At this time we're back on the
8 record, Mr. Buting, you may commence your
9 cross-examination.

10 ATTORNEY BUTING: Thank you, your Honor.

11 **CROSS-EXAMINATION**

12 BY ATTORNEY BUTING:

13 Q. Good morning, Mr. Ertl.

14 A. Good morning.

15 Q. You have an interesting background and what I
16 would like to do is introduce your curriculum
17 vitae or -- I'm not sure exactly what you call
18 it, statement of qualifications. See if you can
19 identify that for us.

20 A. Yes.

21 Q. That's Exhibit 159 and that is a statement of
22 your qualifications, your training and
23 experience; is that right?

24 A. That's right.

25 Q. Okay. I will leave it here in case you need to

1 refresh your recollection on it. And by the way,
2 you were referring to some notes --

3 A. Yes.

4 Q. -- you mentioned that you -- Could I see those
5 please so that I may -- Just show me what it was
6 you were refreshing your recollection with.

7 A. I have my case notes, I believe you have those,
8 my reports. And this is a sheet I just wrote up
9 last night while I was --

10 Q. Okay. Thank you. If I can just take these with
11 me for a few minutes and I will leave that with
12 you there. Now, in terms of education, I'm not
13 sure that we got the degree out; you are actually
14 -- you have a bachelor of science in ...

15 A. Chemistry.

16 Q. Chemistry, okay. And then you also have a
17 master's in applied molecular biology, right?

18 A. Correct.

19 Q. So it seems like you were on your way to a career
20 as a -- in fact, some of your articles in there
21 look like you were on a career to be a plant
22 biologist of some sort, career path originally?

23 A. I spent a lot of time doing that, yes.

24 Q. In fact, you were a researcher for 10 years with
25 UW Parkside, right?

1 A. Yes.

2 Q. And then you worked at Abbott Labs for a period
3 of time?

4 A. Yes.

5 Q. How long was that?

6 A. About a year.

7 Q. And why did you leave that job?

8 A. I got a call from the Crime Laboratory in
9 Milwaukee; they had an opening and wanted to know
10 if I was interested, and I was.

11 Q. Okay.

12 A. I had applied for a Milwaukee job at the same
13 time as Abbott, but didn't hear back from them.

14 Q. Okay. So you at some point decided to change
15 from being a researcher to being an actual
16 forensic scientist?

17 A. Correct.

18 Q. Okay. And so, in essence, with your field
19 response kind of duties -- I'm sure I'm
20 oversimplifying this, but you are sort of like
21 those guys on CSI who come to the scene and look
22 for evidence, right?

23 A. Yeah, those guys are portraying what -- some of
24 what I do.

25 Q. Some of what you do?

1 A. Yes.

2 Q. You are the guy that goes there and finds
3 whatever?

4 A. Right.

5 Q. Okay. Now, I do want to ask about a couple of
6 things, though. Apparently your forensic science
7 career got interrupted when you went to Texas for
8 a period of time?

9 A. Right.

10 Q. You went from the Milwaukee Crime Lab to M.D.
11 Anderson, which is a world renowned cancer
12 treatment and research facility?

13 A. Yes.

14 Q. And you kind of got back into that field for a
15 short while?

16 A. Yes.

17 Q. Why is that, you just didn't like the forensics
18 field in Milwaukee?

19 A. No, I had got engaged to a woman who dearly
20 wanted to move to Texas and I went along with
21 that.

22 Q. I see. I see.

23 A. The M.D. Anderson job was the job -- first job I
24 could get that I was qualified for down there.

25 Q. Sure.

1 A. The Crime Laboratory job then came about three
2 months thereafter.

3 Q. And you are talking about the Texas Crime
4 Laboratory?

5 A. Texas Crime Laboratory.

6 Q. And you were there for about -- what, not quite a
7 year, 10 months, or something?

8 A. Right.

9 Q. And then you moved back to Milwaukee?

10 A. Yes.

11 Q. Or to Madison, or where?

12 A. To Madison.

13 Q. Okay. And that's when you got your job -- your
14 current job with the Crime Lab in the Madison
15 unit?

16 A. Yes.

17 Q. Okay. Now, during that period of time when you
18 have been a forensic scientist, did you have
19 training in how to go to a scene, properly
20 collect, mark, preserve evidence?

21 A. We had on-the-job training in Texas.

22 Q. All right.

23 A. I attended scenes in Texas. When I got back to
24 Madison, I again attended scenes. I went through
25 the State Crime Laboratory's Evidence Technician

1 School where the fleet put on a school to train
2 law enforcement officers how to collect evidence
3 at the scene, properly process the scene, collect
4 the evidence. And then let them know what we're
5 interested in as far as getting it back to the
6 laboratory, how to properly package it and seal
7 it.

8 Q. So would it be fair to say, then, that you view
9 yourself and your employer, the Wisconsin Crime
10 Lab, view yourself as a highly skilled,
11 competent, evidence collector at the scene?

12 A. Yes.

13 Q. All right. One of the things I noticed on your
14 qualifications, a course you took was called
15 courtroom testimony techniques?

16 A. Yes.

17 Q. And that's where you are taught how to properly
18 present yourself, right?

19 A. Yes.

20 Q. How to look at the jury when you are giving
21 answers?

22 A. Yes.

23 Q. I'm not saying anything is wrong with that, it's
24 just specialized, that's training that you get as
25 part of your job?

1 A. Right. Coming to court is part of my job. I
2 have had training at that -- on that.

3 Q. Training that ordinary people, citizens who get
4 up here, usually wouldn't know, to turn and look
5 at the jury and answer questions and stuff like
6 that?

7 A. That's correct.

8 Q. Unless they are coached to do so by somebody,
9 right?

10 ATTORNEY FALLON: Objection to the term,
11 coached to do so.

12 THE COURT: Sustained.

13 ATTORNEY FALLON: Ask that it be stricken.

14 THE COURT: Court will order that it be
15 stricken from the document.

16 Q. (By Attorney Buting)~ Your current title is
17 senior forensic scientist; is that right?

18 A. Yes.

19 Q. Okay. And you do a lot of DNA testing?

20 A. Yes.

21 Q. The unit you are attached to is a serology unit?

22 A. That's an historical name, yes.

23 Q. Okay. Serology, meaning a broader range of
24 bodily fluid testings, right?

25 A. Correct.

1 Q. Include blood, semen, saliva?

2 A. Yes.

3 Q. And in the old days, before DNA, that's where

4 people would do ADO typing of blood and that sort

5 of thing?

6 A. That's correct.

7 Q. That's not done so much any more in your lab?

8 A. That's also correct.

9 Q. All right. But it does include some training to

10 be able to use these presumptive tests for blood?

11 A. Yes.

12 Q. Like phenolphthalein, right?

13 A. Yes.

14 Q. Or luminol?

15 A. Yes.

16 Q. And, actually, luminol is not what you would

17 consider a presumptive test for blood?

18 A. It's an aid in identifying the location of blood.

19 Q. Okay. But it also identifies so many other

20 agents that its not specific to blood?

21 A. That's correct.

22 Q. It's really just something to help you visualize

23 some areas so that you can then later go and do

24 the real presumptive tests for blood?

25 A. That's correct.

1 Q. Okay. Now, in your training and your experience
2 with evidence collection, would you agree that
3 it's important that -- that if you are collecting
4 evidence at the scene that you have an objective,
5 disinterested status with regard to that crime
6 scene?

7 A. Yeah. As a scientist, that's typically the way
8 we like to think of ourselves.

9 Q. Sure. So you wouldn't want somebody who has got
10 some personal involvement with the suspect even,
11 to be going to the suspect's house, that could
12 taint whatever objectivity you might otherwise
13 have when you collect evidence; is that right?

14 ATTORNEY FALLON: Objection, speculation
15 and relevance.

16 THE COURT: I'm going to sustain the
17 objection.

18 Q. (By Attorney Buting)~ Let me ask it this way, as
19 part of your training and your experience with
20 the Crime Lab collecting evidence, are there any
21 kind of rules that say only disinterested parties
22 should collect evidence at a scene?

23 A. I think there are -- I don't know if there are
24 formal rules, but there are sort of informal
25 rules. I have not ever had it come up with, in

1 regards to a scene, but cases that are submitted
2 to the laboratory, if an analyst happens to know
3 the suspect, or the victim, or even their
4 relatives, they will excuse themselves and ask
5 not to be involved in that case.

6 Q. Sure. And that's just -- that's just common
7 practice, custom and practice in your lab, right?

8 A. Yes.

9 Q. And with regard to collection of scene material,
10 biological type material, that may have DNA in
11 them, there's a very specialized -- well, I
12 shouldn't say that -- but there is a specialized
13 training to go through -- that people go through
14 in order to collect that kind of evidence?

15 A. Yes, there is.

16 Q. DNA evidence, although it's very helpful to
17 scientists, it also has the drawback that it's
18 very sensitive and potentially contamination can
19 affect the results, right?

20 A. I believe that's a possibility.

21 Q. Okay. And, for instance, you know how DNA
22 processing works, but one of the things that's so
23 good about DNA is that you can get profiles from
24 very tiny, little amounts of DNA that may be left
25 at a scene, right?

1 A. That's true.

2 Q. And the way that's done is, you take what
3 otherwise would be a very tiny amount and then
4 it's amplified, it's multiplied, through this
5 process in the lab, to the point where it's
6 testable, correct?

7 A. That's true.

8 Q. And so when it's in that very small stage, or
9 status, if it's contaminated in some way, then
10 the contaminate is multiplied along with it,
11 right?

12 A. Yes, it is.

13 Q. So that has a great potential, then, to give you
14 unreliable results if that would happen?

15 A. I would agree.

16 Q. And should that happen, should some evidence come
17 to your lab that's been contaminated at the
18 scene, you wouldn't necessarily know that when
19 you do the test, right?

20 A. That's correct.

21 Q. And so, have you heard of a phrase, garbage in,
22 garbage out, from a science perspective?

23 A. In regards to computers usually.

24 Q. Okay.

25 A. I guess.

1 Q. But in your field that would also apply to
2 whatever is brought to your lab for DNA testing;
3 if it's contaminated at the beginning, the
4 results will also be contaminated, or I should
5 say, unreliable?

6 A. Yes. Nothing that we do at the lab is going to
7 decontaminate it.

8 Q. All right. Thank you. And, in fact, in your
9 lab, then, there is another risk, items may be
10 contaminated at the scene when they are
11 collected, if they are not collected properly,
12 right?

13 A. Right.

14 Q. They may be contaminated at some point from that
15 -- from the scene until they reach your lab,
16 conceivably?

17 A. Possibly.

18 Q. And then there is also the risk of contamination
19 of an item once it gets to your lab, right?

20 A. That's also possible.

21 Q. In fact, during the test process, contamination
22 may occur in your lab?

23 A. Yes.

24 Q. And, in fact, does occur in your lab?

25 A. Yes.

1 Q. Any lab?

2 A. Yup.

3 Q. All crime labs have that risk and reality that
4 materials, test materials, do sometimes become
5 contaminated, correct?

6 A. That's correct.

7 Q. And, in fact, that's something that's of such
8 concern to your lab that you -- you keep a record
9 of such contamination incident, whenever it's
10 discovered?

11 A. Yes.

12 Q. What's that called?

13 A. Contamination log.

14 Q. Okay. And that relates to incidents where the
15 contamination has been able to be discovered by
16 the scientist who's working on it, right?

17 A. That's right.

18 Q. If some contamination occurs in your lab, though,
19 and it's not discovered by the analyst, there is
20 no record of that, right?

21 A. There's no knowledge and no record, right.

22 Q. All right. Now, sir, you mentioned that you
23 were, on November 4th or 5th, I'm going to direct
24 your attention to that, the first day, you said
25 your answering service got a call; did you

1 actually speak directly, yourself, with Detective
2 Remiker?

3 A. Yes, I called him back.

4 Q. Okay. And he gave you what information at that
5 point?

6 ATTORNEY FALLON: Objection, hearsay.

7 ATTORNEY BUTING: Not for the truth of the
8 matter, simply to establish what his perspective
9 was.

10 THE COURT: I think before I can rule on
11 the objection, I have to hear the answer to know the
12 nature for which it's being offered.

13 A. He told me his name, what agency he was with,
14 that he was working in conjunction with another
15 agency and with the state agency and that he was
16 requesting our assistance with regard to a
17 missing persons case. And he told me the
18 location of the place and he told me who owned
19 the property.

20 Q. And then you said you -- by the time you arrived,
21 it was about 4:00?

22 A. I believe so.

23 Q. Are you sure of that?

24 A. I'm not real good at keeping track of time in my
25 head and you now have my notes on times at the --

1 Q. I will give those back to you, sir.

2 A. -- at the scene.

3 Q. I'm sorry.

4 A. I will make notations as I do things throughout
5 the day and I will note the time.

6 Q. Sure. Take your time and refresh your
7 recollection, if you will, please.

8 A. Yes. Arrived at the scene at 4:00 p.m.

9 Q. All right. And the first place you went, though,
10 was to the Command Post. I think you described
11 it as a firetruck with a canopy over it.

12 A. Yeah.

13 Q. And was that down at sort of the entrance to this
14 salvage yard area where there were some -- some
15 business buildings and that sort of thing?

16 A. It was just before that.

17 Q. Before you even got to that you said?

18 A. Yes.

19 Q. Right down along Avery Road?

20 A. I would say where Avery Road first forked.

21 Q. Okay. And you spoke with Mr. Wiegert and
22 Mr. Fassbender, right?

23 A. Yes.

24 Q. Was anybody else briefing you at that point?

25 A. Not really briefing me, but when we first

1 arrived, you know, you go through a checkpoint,
2 tell them who you are, who's in the vehicle with
3 you. And they record that. And then you are
4 directed to go down the road to where you see the
5 firetruck.

6 And then someone met us there. I don't
7 know who. I told them who I was with, who I was
8 looking for at that point, Detective Remiker.
9 And then I was directed to under the canopy, next
10 to the firetruck. I was introduced to
11 Investigator Wiegert and Tom Fassbender at that
12 point, but there were many other people present.

13 Q. Sure. And then did you go down from that point,
14 directly to where the RAV4 had been located?

15 A. Yes.

16 Q. So how long would you say you spend -- how long
17 would it take from when you got there at 4:00,
18 until you got to the spot where the RAV4 was, 15
19 minutes maybe.

20 A. Fifteen minutes to a half an hour.

21 Q. Okay. And when you got there, the RAV4 was no
22 longer covered with a tarp?

23 A. That's correct.

24 ATTORNEY BUTING: Counsel, could you please
25 put up that photograph?

1 ATTORNEY KRATZ: I have been unplugged.

2 ATTORNEY BUTING: We're still not set up,
3 right?

4 ATTORNEY KRATZ: Can you use the ELMO?

5 ATTORNEY BUTING: No, I would like to use
6 this, please.

7 Q. (By Attorney Buting)~ You are sure, though, that
8 the vehicle was not covered with a tarp when you
9 first arrived?

10 A. They were in the process of removing the tarp.
11 The tarp was present. I was told that some of
12 the branches that were now lying on the ground
13 had been on top of the vehicle, but fell off when
14 they had pulled the tarp.

15 Q. Okay.

16 A. But I don't believe I was present for the
17 unveiling.

18 Q. You don't recall ever seeing the vehicle
19 completely enclosed, covered with this tinted
20 tarp thing?

21 A. No, I don't.

22 Q. All right.

23 THE COURT: Members of the jury, at this
24 time I should let you know that the technical
25 problems we have been experiencing are not the

1 result of any actions by either party to this action
2 and I'm told that, hopefully over the noon hour,
3 they are going to be addressed and things will be
4 cleaned up.

5 ATTORNEY BUTING: We hope. I believe 144
6 exhibit. I don't know if you have it marked yet, 80
7 or 81 would do fine.

8 Q. (By Attorney Buting)~ All right. We'll come back
9 to this in a minute. He's going to have to
10 reboot the thing and get us in a position where
11 you can to look at this photo. So I will move
12 on. We'll come right back to that in a few
13 minutes.

14 You, I believe, said that you took some
15 photographs that we saw, right, one of the first
16 things you did was take photographs?

17 A. Yes.

18 Q. And looked at the debris and things that were
19 piled up against it, to see if there might be any
20 biological evidence you could collect?

21 A. Yes.

22 Q. And did you remove those -- that debris at that
23 point?

24 A. Yes.

25 Q. So you actually moved the Rambler hood away

1 completely?

2 A. Yes.

3 Q. And that fence post, we'll show you in just a
4 moment, but we have seen it many times already,
5 that sort of fence post that's leaning up against
6 the right of the car, that was pulled away?

7 A. Yes.

8 Q. The branches were uncovered?

9 A. (No verbal response.)

10 ATTORNEY BUTING: Could we have a quick
11 side bar, your Honor?

12 THE COURT: Sure.

13 Q. (By Attorney Buting)~ All right. Mr. Ertl,
14 during the break we were able to get this exhibit
15 that we saw yesterday, Exhibit 143, up on the
16 screen for you. Do you see this area in the
17 center of the screen where there appears to be
18 something covered by a tarp?

19 A. Yes, I do.

20 Q. Did the RAV4 look like that to you when you first
21 arrived?

22 A. No.

23 Q. You never saw it in that condition at all?

24 A. No.

25 ATTORNEY BUTING: Counsel, could you just

1 minimize it back to the desktop and then show us,
2 again, the electronic signature for that, please.

3 Q. Can you see that counsel has put his cursor over
4 this photograph now. I don't know if you can
5 read that, it says date picture taken, 11/5/2005,
6 at 4:16 p.m.?

7 A. Yes.

8 Q. All right. Now, it's your testimony that you got
9 to the scene of this RAV4 right around 4:16 or
10 4:15 p.m., right?

11 A. I arrived on the scene around 4 p.m., 15 minutes
12 to a half hour later we were escorted down to the
13 RAV4.

14 Q. Well, if it was 4:15 when you got to the RAV4,
15 then the date or the time stamp on this
16 particular photograph is either an error or your
17 memory is an error, right, because it wasn't like
18 that when you got there?

19 A. Well, I gave you a window of time. I'm not
20 saying I arrived at 4:15; I do not know that. I
21 estimated, roughly 15 minutes to a half an hour,
22 talking with the investigators under the canopy.
23 I don't have a record of exactly when we
24 proceeded to the RAV 4.

25 Q. All right. And you -- you mentioned that it was

1 sort of misting at that point, but it wasn't
2 really raining very hard, or at all?

3 A. Yes.

4 Q. Had it -- Did it appear that it had been raining
5 before you got there?

6 A. It seemed to have been; there were puddles.

7 Q. All right. So you -- Tell me for a minute, maybe
8 I misunderstood the sequence here. At some point
9 you talked about it being lightening and very
10 dramatic, I think were your terms?

11 A. Right.

12 Q. When was that?

13 A. That was near the time we were leaving.

14 Q. So more like 8:00 or 8:30, something like that?

15 A. Yes.

16 Q. But at some point before that, was it also
17 raining while you were there?

18 A. Yes.

19 Q. Do you know when that started?

20 A. I didn't keep track of the weather.

21 Q. I think you said just after dark it began to
22 pour?

23 A. I remember it was raining pretty steady while we
24 were looking at the burn barrels. It was dark
25 out.

1 Q. All right. And just after dark at that time of
2 year would have been 5:30?

3 A. Yeah.

4 Q. All right. So when that was going on and it was
5 raining, the tarp -- I'm sorry -- the vehicle was
6 untented, uncovered?

7 A. Yes.

8 Q. And you didn't stay, you testified you did not
9 stay with the RAV4 that entire time you were at
10 the scene, you moved around to different
11 locations, right?

12 A. That is correct.

13 Q. Your partner, Mr. Zhang, is that how it's
14 pronounced?

15 A. It's pronounced many ways. I say Zhang. He says
16 more like Zhang.

17 Q. Zhang, okay. Does Mr. Zhang also have field
18 response training?

19 A. Yes, he does.

20 Q. Does he also have training in collection of
21 evidence?

22 A. I believe he does. He's been at the lab much
23 longer than I have. He's been on field response
24 much longer than I have.

25 Q. All right.

1 A. I don't know the extent of his training.

2 Q. In fact, his responsibilities are more field
3 response than yours typically are, right?

4 A. No, he's a toxicologist normally.

5 Q. Oh, I see. So the way it works for field
6 response is, they take different people from
7 different units who are ...

8 A. Willing.

9 Q. Willing. All right. Anybody ask you to go in
10 Steven Avery's residence that first night,
11 November 5th?

12 A. I don't believe so.

13 Q. You and your partner, Mr. Zhang, would certainly
14 have been a qualified evidence collection team to
15 go into Mr. Avery's residence, wouldn't you, that
16 night?

17 A. Yes.

18 Q. This is Saturday, November 5th, correct?

19 A. Yes.

20 Q. And so there's no reason why Mr. Fassbender
21 couldn't have used you and Mr. Zhang to search
22 Mr. Avery's residence on Saturday night instead
23 of the people that he did use, right?

24 A. He could have.

25 Q. And you actually have a master's degree, right?

1 A. In molecular biology.

2 Q. Okay. And years of experience as a Crime Lab
3 field response analyst, right?

4 A. Yes.

5 Q. And instead, Mr. Fassbender had you going around
6 and taking photographs and looking through
7 garbage; isn't that right?

8 ATTORNEY FALLON: Objection, argumentative.

9 THE COURT: Sustained, to the form of the
10 question.

11 Q. (By Attorney Buting)~ In any event, no one asked
12 you to go into Mr. Avery's house or garage that
13 first night, November 5, 2005?

14 A. That's true.

15 Q. And while it was raining very hard, you obviously
16 couldn't do much outside?

17 A. Right. We were basically waiting for the wrecker
18 crew and trailer to arrive.

19 Q. So you had time to kill. And rather than use you
20 to search Mr. Avery's residence, they directed
21 you to a golf cart, right?

22 A. Yes.

23 Q. And I think there was something -- oh, there were
24 some burn barrels, right?

25 A. Correct.

1 Q. And by the way, that golf cart, I just want to
2 make it clear, you -- that was in a completely
3 different building, you mentioned a shed or
4 something?

5 A. Yes.

6 Q. Business building?

7 A. Yes.

8 Q. And these dark stains that you found, you did
9 test, and they proved not to be blood, right?

10 A. Correct.

11 Q. Sometimes on something that may be reddish brown
12 in color, may look to the human eye as possible
13 blood, but when you later test it with one of
14 your presumptive tests, you find out otherwise,
15 right?

16 A. That's correct.

17 Q. And that happened a number of times in this
18 particular case?

19 A. Yes, it did.

20 Q. And when you went back to the scene with the
21 wrecker, after that was completed, around 8:30 I
22 think you said?

23 A. Yes.

24 Q. Mr. Fassbender told you that your services
25 weren't needed any more, for that night, right?

1 A. It wasn't immediately thereafter but, yes,
2 eventually around 8:45.

3 Q. He didn't tell you that there was a search
4 ongoing right that moment in Mr. Avery's
5 residence, did he?

6 A. I didn't know that.

7 Q. Didn't ask you to go assist the people that he
8 selected to do the search of Mr. Avery's
9 residence, did he?

10 A. No, he didn't ask that.

11 Q. Okay. And you certainly would have been
12 available, right, you testified to that?

13 A. Yes.

14 Q. You also mentioned that when you got to the area
15 of the RAV, there were some other officers or
16 other people around?

17 A. Yes.

18 Q. But you don't know what the circumstances of the
19 access to that RAV was before you arrived on the
20 scene, right?

21 A. No, I don't.

22 Q. That's not something in your knowledge, so you
23 don't know, really, what if anything happened to
24 that RAV before you arrived, at 4:15 or so?

25 A. That's correct.

1 Q. Okay. Now, Sunday, November 6th, is when you
2 arrived -- you went all the way back to Madison
3 the prior night, and it's about a four hour
4 drive; is that right?

5 A. It's about a three and a half hour drive, but the
6 drive back, due to the reaction of the trailer,
7 we weren't able to go over 50 miles per hour.

8 Q. Okay.

9 A. So took closer to four and a half hours to get
10 back.

11 Q. All right. But, actually, I'm -- I'm on Sunday
12 now, when you are coming back.

13 A. Okay.

14 Q. So you drove up and you got back to the Avery
15 Salvage yard about 3:15 or 3:30 you said?

16 A. Yes.

17 Q. And there were three areas that they wanted you
18 to look at when you first got there, right?

19 A. That's correct.

20 Q. And none of those three, when you first arrived,
21 included Mr. Avery's residence, or the detached
22 garage next to Mr. Avery's residence, did it?

23 A. No.

24 Q. Instead they sent you off to this quarry, a
25 gravel -- I don't know what you want to call it

1 -- to the east of Avery Road, right?

2 A. Yes.

3 ATTORNEY BUTING: I don't know if we have a
4 photograph of that layout, maybe we could identify
5 where this is. Counsel, do you know if you have one
6 of those areas?

7 ATTORNEY KRATZ: I don't know what you are
8 asking for.

9 ATTORNEY BUTING: An aerial photograph far
10 enough out to show this east of the Avery Road area.
11 Actually, let me see the book.

12 ATTORNEY KRATZ: Maybe 86, counsel.

13 ATTORNEY BUTING: I don't think 86 goes out
14 far enough, but we could try that. Let's see. How
15 about 85, put that one up. Or even better, 91, 91
16 shows it I think.

17 ATTORNEY KRATZ: 91 is a diagram.

18 ATTORNEY BUTING: 92. 91 is a -- I will
19 show you.

20 Q. (By Attorney Buting)~ All right. We have got
21 Exhibit 91 on the screen. If you could just
22 orient yourself for a moment, with that, if you
23 can.

24 A. Okay. I have got it.

25 Q. Is this the gravel area that you were first sent

1 to on this photograph?

2 A. Yes.

3 Q. Could you please point at it with the pointer?

4 A. It was right about in there.

5 Q. Okay. Record should reflect left side -- upper
6 left quarter of the screen is being pointed at.
7 And it's a -- looks like a whole excavated block
8 almost?

9 A. Yes, it was a quarry.

10 ATTORNEY FALLON: Your Honor, if counsel is
11 willing, I believe it will be or we could stipulate
12 that it will be identified as Michels' Quarry.

13 ATTORNEY BUTING: Michels, M-i-c-h-e-l-s.

14 ATTORNEY FALLON: I believe that's correct.

15 ATTORNEY BUTING: That's fine.

16 THE COURT: Parties agree?

17 ATTORNEY KRATZ: Yes.

18 THE COURT: Very well.

19 Q. (By Attorney Buting)~ All right. And then at
20 this -- there was some searcher had apparently
21 been there before because there was a -- was it
22 an orange flag or something?

23 A. Right.

24 Q. And you began working that and you found
25 something did test positive for blood of some

1 sort, right?

2 A. Yes.

3 Q. Again, you didn't know whether it was animal or
4 human?

5 A. Right.

6 Q. And to your knowledge, did that, whatever you
7 found over there, eventually have anything at all
8 to do with this case?

9 A. I don't know what happened to that sample after I
10 collected it.

11 Q. Okay. So you don't know whether that turned out
12 to be flesh and blood that had anything to do
13 with this case or not?

14 A. No, I don't.

15 Q. Okay. Well, we'll deal with it later, then.
16 Then you also, then, after you had finished those
17 three tasks, the other two being searching two
18 other vehicles nearby where the RAV was; is that
19 right?

20 A. Well, the three tasks they had in mind for us
21 when we arrived weren't the three tasks we
22 actually completed that day.

23 Q. Okay. So you didn't actually do the vehicles
24 that day?

25 A. We did do the vehicles.

1 Q. All right.

2 A. We did the gravel quarry, then we went into
3 Steven Avery's residence, and then we did the
4 vehicles.

5 Q. So the third task, being the burn barrels, you
6 didn't get to that day?

7 A. Right.

8 Q. So instead they called you into Mr. Avery's
9 residence for some sort of blood spatter
10 examination, right?

11 A. Correct.

12 Q. Now, I notice on your statement of
13 qualifications, you actually had some blood
14 spatter analysis training, right?

15 A. Yes.

16 Q. Are you one of the people that's presented by the
17 lab, to courts and juries, to testify about blood
18 spatter analysis?

19 A. No, I'm not.

20 Q. Someone else in your lab does that?

21 A. Yes.

22 Q. But you have general knowledge that -- that there
23 -- as you demonstrated before, that if someone
24 has a cut and they flip their finger, the drops
25 will fly off, right?

1 A. Yes.

2 Q. And, likewise, you have been to a number of
3 homicide scenes, right?

4 A. Yes.

5 Q. And often times blood spatter is present at the
6 scene?

7 A. Correct.

8 Q. And there's such a thing as high velocity blood
9 spatter, right?

10 A. Correct.

11 Q. And that's something that's often found when
12 someone is shot, with a gun --

13 A. Correct.

14 Q. -- right? The speed of the bullet, without being
15 too graphic here, but causes blood to fly off at
16 a high velocity when it hits a wall, or ceiling,
17 or whatever, an object, it leaves a pattern that
18 can be distinguished from other types of spatter,
19 right?

20 A. Correct.

21 Q. And when you went to Mr. Avery's residence, you
22 saw no such high velocity spatter, right?

23 A. Correct.

24 Q. And when you looked in his garage, you saw no
25 high velocity blood spatter, right?

1 A. Correct.

2 Q. And, then, there's also other types of spatter,
3 lower velocity, like if someone -- if there's a
4 beating and someone is bleeding, you know, head
5 jerking back and forth, something like that,
6 right?

7 A. Correct.

8 Q. And then there's also something called cast off
9 spatter, right?

10 A. Correct.

11 Q. And that would occur if somebody is taking a
12 knife, if someone is, let's say, laying on a
13 mattress, a victim is laying on a mattress, a
14 victim is laying on a mattress and being stabbed
15 repeatedly with a knife, as they come up and
16 down, the knife may cast off blood spatter,
17 right?

18 A. Yes.

19 Q. And you saw no evidence of that in Mr. Avery's
20 residence, did you?

21 A. No, I did not.

22 Q. And you saw no evidence of that in Mr. Avery's
23 garage either, did you?

24 A. That's correct.

25 Q. And none of this low velocity stuff that I talked

1 about that can be from when someone is being
2 beaten either?

3 A. Right.

4 Q. No blood spatter at all in Mr. Avery's residence,
5 of any kind?

6 A. Just bloodstains. No recognizable patterns.

7 Q. Right. And those bloodstains were scattered,
8 more isolated, right?

9 A. There were a grouping in the bathroom and then
10 the entry door directly across the hallway from
11 the bathroom.

12 Q. Okay. One spot?

13 A. I would say the other one on the other door would
14 have been more isolated from those.

15 Q. Okay.

16 A. And the ones on the couch were near the second
17 entry.

18 Q. But, for instance, the ones in the bathroom,
19 there's one on the floor, right?

20 A. Not just one, but several.

21 Q. Okay. And also one on the sink?

22 A. Some in the sink, some on the vanity.

23 Q. All right. Consistent with somebody who may have
24 cut their finger or cut themselves shaving in a
25 bathroom?

1 A. Possibly. The ones on the floor and the vanity
2 looked like they had been diluted down with
3 water. So, yeah, cut yourself and then cleaned
4 up.

5 Q. Okay. But still there, where you could see them?

6 A. Yes.

7 Q. In fact, it was obvious to you that somehow you
8 were informed that all of those had been sampled
9 prior to your arrival on Sunday evening,
10 November 6th?

11 A. No, not all of them.

12 Q. Okay. Some of them had apparently, though,
13 right?

14 A. The ones on the entry door in the bathroom had.

15 Q. The one on the floor?

16 A. None in the bathroom had been sampled yet.

17 Q. Okay. All right. So you identified the ones in
18 the bathroom that had not yet been identified,
19 but the other ones had been identified and
20 sampled before?

21 A. Except for the ones on the couch and the second
22 entry door.

23 Q. Well, the ones on the couch you didn't notice
24 that night, I thought it was ...

25 A. That was later.

1 Q. We're just talking about Sunday night for now,
2 okay.

3 A. Okay. So the ones on the entry door across from
4 the bathroom had been sampled previously. The
5 one on the other entry door and the ones in the
6 bathroom had not.

7 Q. Okay. So you went to the entry door of
8 Mr. Avery's bedroom and looked at that --

9 A. Yes.

10 Q. -- that area? Did you actually go inside of his
11 bedroom?

12 A. Yes.

13 Q. Did you see a Toyota key sitting on the floor in
14 plain view?

15 A. No, I didn't.

16 Q. Did you see a key anywhere in that bedroom on the
17 night of November 6th?

18 A. I don't recall seeing any keys. I wasn't looking
19 for keys.

20 Q. You talked about trace evidence as being things
21 like fibers and hairs and those sorts of things,
22 right?

23 A. That's correct.

24 Q. Trace evidence can also, occasionally, be left
25 just by handling something, correct?

1 A. Sure.

2 Q. If you know? If you are not -- if it's beyond
3 your qualifications just please tell me.

4 A. Well, you could consider DNA as trace evidence
5 and that can be left by just handling items.

6 Q. And, particularly, if somebody uses an item
7 daily, one would expect handling something daily
8 that there would be their DNA left on there,
9 right?

10 A. Yes.

11 Q. Such as a car key?

12 A. Sure.

13 Q. Somebody who had had a car key for five or six
14 years, handling it every single day, if you were
15 to test that in your lab, you would likely find
16 their DNA, wouldn't you?

17 A. I would think that would be a good possibility.

18 Q. Unless somebody had wiped it off, cleaned it up
19 in some way, before you got to it, right?

20 A. Yeah.

21 Q. Okay. Now, you mentioned that Mr. Cates was with
22 you, also on Sunday evening, correct?

23 A. Correct.

24 Q. And his specialty is fingerprints?

25 A. Yes.

1 Q. Was he asked to look in Mr. Avery's residence to
2 see if there were any fingerprints of note?

3 A. No, we were sent in mostly to look for blood
4 spatter pattern. But as a fingerprint analyst,
5 when he sees a fingerprint, he will look at it.

6 Q. If someone is wearing gloves, they may not leave
7 fingerprints, right?

8 A. Correct.

9 Q. But if someone is wearing -- is not wearing
10 gloves, they might very well leave fingerprints
11 when they touch items, right?

12 A. Yes.

13 Q. And for instance, let's go to the RAV4 a minute
14 and imagine that this is the hood, this desk
15 right in front of you. All right.

16 A. Okay.

17 Q. To open a hood such as the RAV4, which you know
18 how to do that, right?

19 A. Well, if it's like my car, you have to pull a
20 lever inside the vehicle --

21 Q. Right. Okay.

22 A. -- that releases it a little bit. Then you have
23 to reach in under the hood --

24 Q. Sure.

25 A. -- and release another lever.

1 Q. So then you release another lever and then your
2 fingers in some way come in contact with the hood
3 as you lift it, right?

4 A. Right.

5 Q. And let's talk about the tailgate of this RAV4 a
6 moment, okay? You looked at that carefully?

7 ATTORNEY BUTING: Do you want to put up
8 that exhibit for me for a moment, please. It's
9 Exhibit 29.

10 ATTORNEY KRATZ: You want the one Mr. Ertl
11 looked at, or you want the one Ms Sturm looked at?

12 ATTORNEY BUTING: Twenty-nine, I think, is
13 Sturm's.

14 ATTORNEY KRATZ: Not the Crime Lab one?

15 ATTORNEY BUTING: Is there a rear view one?

16 ATTORNEY KRATZ: Absolutely, 135.

17 ATTORNEY BUTING: That's fine. That would
18 do.

19 Q. (By Attorney Buting)~ Can you locate the handle
20 or the lever that one would use to open that rear
21 tailgate door?

22 A. I'm not real familiar with that vehicle, I would
23 assume ...

24 Q. All right.

25 ATTORNEY BUTING: This one is taken at

1 night, if we might look at 29, please, counsel.

2 Q. (By Attorney Buting)~ Does that give you a little
3 bit better view?

4 A. I can see the lock there. I would imagine it's
5 built into that area.

6 Q. And so if somebody is going to open that tailgate
7 door, they have to put their hands right near the
8 lock lever and in some way pull it open with
9 their fingers, right?

10 A. That would be the way I would do it.

11 Q. And if they are not wearing gloves, they might
12 leave fingerprints, correct?

13 A. Correct.

14 Q. If they are wearing gloves, they might not leave
15 fingerprints, or would not, right?

16 A. Depending on the type of glove, you can get some
17 surgical gloves where fingerprints do pass
18 through.

19 Q. All right. But if you are wearing gloves, you
20 are also not bleeding all over the place, are
21 you, if the bleeding -- If you have got a cut on
22 your finger and you are wearing gloves inside of
23 that vehicle, you are not going to be dripping
24 blood into the vehicle, are you?

25 A. If the -- If you are not bleeding enough to soak

1 the glove and then seep through the glove.

2 Q. Sure. If you're bleeding that much, it would be
3 obvious, you would have blood on the steering
4 wheel and everything, right?

5 A. It's hard to say. I don't know the extent of the
6 bleeding. It would depend what you would touch.

7 Q. Well, if you were bleeding and not wearing
8 gloves, inside the vehicle, you would also be
9 touching and operating things like the steering
10 wheel and the -- whatever else you might be
11 touching, the door, the door handle, that sort of
12 thing, right?

13 ATTORNEY FALLON: Objection, highly
14 speculative. There's just too many variables
15 unaccounted for in that hypothetical.

16 THE COURT: Sustained.

17 Q. (By Attorney Buting)~ You have seen cases where
18 people do leave fingerprints, right?

19 A. Yes.

20 Q. And you take photographs of those?

21 A. Yes.

22 Q. Did you take any photographs, or see any
23 fingerprints anywhere inside this vehicle?

24 A. I only looked inside the vehicle, through the
25 glass, with a flashlight, at night. I did not

1 see any fingerprints.

2 Q. And did Mr. Cates process the vehicle at all for
3 any kind of fingerprints?

4 A. Mr. Cates wasn't at the scene when the vehicle
5 was at the scene.

6 Q. Okay. So there was no fingerprint processing
7 done of the vehicle at the scene, right?

8 A. That's correct.

9 Q. That would have occurred later, at the Crime Lab?

10 A. Correct.

11 Q. All right. Well, we'll talk with those people
12 later. Going back to Sunday, you mentioned that
13 Mr. Cates was with you and you said something
14 about these two other vehicles, near the pond,
15 that he processed the fingerprints; do you recall
16 that?

17 A. He did not process them on Sunday; he processed
18 them later.

19 Q. Oh, that's right, you said there was dew on it?

20 A. There was dew on it.

21 Q. Okay. But there was some bloodstains in the
22 other two vehicles?

23 A. Yes.

24 Q. And these are the two vehicles that were junk
25 salvage vehicles, right?

1 A. Yes.

2 Q. Many of which get there because they have been in
3 automobile accidents, right?

4 A. I assume so, yes.

5 Q. Where sometimes people are injured and bleeding,
6 right?

7 A. That's correct.

8 Q. So that might, in fact, account for the blood
9 that was in those other two vehicles, right?

10 A. Yeah. I got that impression when -- just
11 thinking about the number of sites the cadaver
12 dogs were interested in and then thinking about
13 this as a salvage yard and some of these vehicles
14 were probably in accidents and they have may have
15 been -- blood put in them at that point.

16 Q. Totally unrelated to this case?

17 A. Correct.

18 Q. And to your knowledge, did the -- did anything
19 that Mr. Cates found, either blood or
20 fingerprints, on those other two vehicles, have
21 anything at all to do with this case?

22 A. To my knowledge, I do not know.

23 Q. Okay. Now, November 7th, that's a Monday, right?

24 A. Yes.

25 Q. Did you stay overnight in the area, I assume?

1 A. Yes.

2 Q. So you weren't back at the lab, you don't know
3 what was going on with the RAV4 that was at the
4 lab?

5 A. That's right.

6 Q. Okay. You started doing -- Did you actually
7 complete the burn barrels? No, you started them,
8 then got interrupted?

9 A. Right.

10 Q. And then you went off to this -- turned out to be
11 nothing, but at the time you thought might be a
12 possible burial site, right?

13 A. Right.

14 Q. And that took up a good part of your day, sounds
15 like?

16 A. Correct, from about 12:30 to quarter to 6.

17 Q. Okay. So did you do anything else later that
18 evening, then?

19 A. We went back to the garage in Chilton and
20 continued sifting the barrels.

21 Q. Now, by sifting the barrels, are you talking
22 about using that same contraption you mentioned
23 earlier?

24 A. Yes.

25 Q. Is that something you always have with you, in

1 your van?

2 A. Yes.

3 Q. Yes?

4 A. Yes.

5 Q. Okay. Not something you brought specifically for
6 this case?

7 A. No.

8 Q. And then the next day, November 8th, you started
9 off back at the sheriff's department, right?

10 A. Yes.

11 Q. We're talking about here in Chilton?

12 A. Yes.

13 Q. These barrels, where were they kept?

14 A. In the service garage behind the sheriff's
15 department.

16 Q. And when you got there, was there -- were they in
17 any kind of container or were they just sitting
18 out in the garage?

19 A. When we first arrived they were in an enclosed
20 trailer.

21 Q. That's the day before?

22 A. Right.

23 Q. And was that sealed with any kind of evidence
24 tape?

25 A. I believe the door to the garage had been sealed

1 with evidence tape. And the trailer had a
2 padlock on it. I don't recall if that had
3 evidence tape on it or not.

4 Q. And there's no other door to the garage from the
5 interior; this is a detached garage?

6 A. Detached garage.

7 Q. Okay. And the gentleman that you said was
8 helping you was Jeremy Hawkins; is that right?

9 A. (No verbal response.)

10 Q. And to your knowledge is -- he is employed with
11 Calumet County Sheriff's Department, right?

12 A. Yes.

13 Q. And to your knowledge, he is certainly qualified
14 to be evidence collection specialist, right?

15 A. I believe he presented himself as their evidence
16 caretaker.

17 Q. He is the main guy, right?

18 A. I believe so.

19 Q. Did you see him out at the scene on November 5th?

20 A. No, I did not.

21 Q. Or 6th?

22 A. No.

23 Q. All right. This fifth barrel that you examined
24 was on the morning of Tuesday, November 8,
25 correct?

1 A. Correct.

2 Q. And the photograph, I think is still in front of
3 you, that you discussed before, that's the --
4 that's a photograph you took before searching it?

5 A. No, we didn't take that photograph.

6 Q. Who took that photograph; do you know?

7 A. I don't know.

8 Q. Did you take photographs of it before you started
9 searching?

10 A. No.

11 Q. Why not?

12 A. Because it had been removed from where it had
13 been, transported, and then our goal was to sift
14 it and recover what --

15 (Court reporter couldn't hear.)

16 A. Our goal there was to sift the contents. Any
17 documentation of the barrels at the scene, that's
18 -- that was done by somebody else.

19 Q. It may or may not be the way it looked, you don't
20 know?

21 A. No, I don't know. I was presented this this
22 morning and asked if that looked like the fifth
23 barrel, and it does to me.

24 Q. All right. But in terms of it -- it's -- what it
25 looked like out there on the scene; have you seen

1 -- have you ever seen a photograph that shows
2 that?

3 A. He showed me several photographs, one of them was
4 further away and it had the wheel that was in the
5 barrel when I saw it, because this photograph
6 doesn't have the wheel in it.

7 Q. Right.

8 A. So I asked about the wheel. He said, oh, yeah,
9 there's another photograph that shows the wheel.
10 They took the wheel, out looked inside.

11 Q. And that photograph shows the wheel on the
12 ground, next to it, right?

13 A. Right.

14 Q. All right. So you were never brought to the
15 scene of wherever that burn barrel was, yourself?

16 A. No.

17 Q. So, you never actually saw it, you know, in situ,
18 so to speak, wherever it was located, and that's
19 why you didn't take photographs of it?

20 A. Well, they -- I recall that there was a burn
21 barrel on the driveway and that's where I was
22 told this one had been.

23 Q. But you didn't go up and examine it?

24 A. No, did not examine it.

25 Q. The -- One of the things you say that you do is

1 scene photography, right?

2 A. Yes.

3 Q. And, generally, that's supposed to be one of the
4 first things that's done at the scene before
5 anybody starts searching, right?

6 A. Right.

7 Q. So, for instance, had you been asked to go into
8 Mr. Avery's residence on the night of
9 November 5th, very first thing you would have
10 done, before anybody looks anywhere, is take
11 photographs, right?

12 A. Correct.

13 Q. And had you been asked to go into Mr. Avery's
14 garage first, the very first thing you would have
15 done would be to take photographs showing exactly
16 what it looked like, right?

17 A. Correct.

18 Q. Before there's any kind of markings, or chalk
19 circles, or anything like that, right?

20 A. Sure.

21 Q. You want to get a nice good photograph that
22 really captures everything that's in there, all
23 the junk that you mentioned?

24 A. Yes.

25 Q. And the location of all the items, right?

1 A. Correct.

2 Q. And only then, after you photographed and
3 documented the scene, do you start moving things
4 around, collecting, whatever?

5 A. Correct.

6 Q. Because once you do that, you have altered the
7 scene?

8 A. That's correct.

9 Q. And when you were called over to this burn area,
10 behind the garage, you didn't take any
11 photographs then either, did you? And that's
12 because the scene had been altered before you
13 arrived; isn't that right?

14 A. Yes.

15 Q. And, in fact, you expressed concern at one point,
16 to the investigators in this case, that you had
17 been unable to make a more thorough record
18 because you were not used for the complete scene
19 processing; isn't that right?

20 ATTORNEY FALLON: Objection to the term
21 concern; it's speculation.

22 ATTORNEY BUTING: All right. We'll get
23 more specific then.

24 THE COURT: All right.

25 Q. (By Attorney Buting)~ Mr. Ertl, showing you

1 Exhibit No. 160, can you identify that, please.

2 A. It's an email to and from Tom Fassbender and
3 myself. He emailed me and I replied to him.

4 Q. All right. And in this email, I don't know that
5 we need to put it up on the ELMO, you are
6 explaining why you did not take photographs of
7 either the burn pit area or where the license
8 plate vehicle was; is that right?

9 A. Correct.

10 Q. And in that you -- you state, in regards to the
11 burn pit, our involvement began with a request to
12 use our sifting equipment; the scene had
13 obviously been altered at that point; is that
14 right?

15 A. Correct.

16 Q. And, then, would you go on and read the next
17 sentence, please. Read it out loud.

18 A. I'm trying to find it; I was not following along,
19 I was recollecting.

20 Q. Second paragraph on the top there, had we.

21 A. Had we been working any of these scenes from
22 start to finish, there would likely have been
23 more thorough photo records, done by us.
24 However, under the circumstances, we were merely
25 able to provide technical assistance rather than

1 complete scene processing.

2 Q. Okay. So, more typically, if you are called to
3 the scene to process ev -- potential evidence,
4 you are able to do so from start to finish,
5 right?

6 A. I would say the majority of cases, when we arrive
7 at the scene, we are given over control and we
8 take the lead.

9 Q. Okay.

10 A. And process it according to the way we would
11 normally process.

12 Q. Okay. And Mr. Fassbender didn't let you do that
13 in this case, did he?

14 A. In this case, I don't believe that would have
15 been possible, due to the size of the scene.

16 Q. Sure, but -- Because of the 40 acres or whatever?

17 A. Yes.

18 Q. But with regard to this, Mr. Avery's residence,
19 Mr. Fassbender didn't let you do that, right?

20 A. He didn't request that we do that?

21 Q. By the time you went into Mr. Avery's residence,
22 it was clear someone else had already been
23 through it, right?

24 A. Yes.

25 Q. And with regard to Mr. Avery's garage, or

1 detached garage next to his residence,
2 Mr. Fassbender didn't allow you to do that
3 complete scene processing there either, did he?

4 ATTORNEY FALLON: Objection to the use of
5 didn't allow. The question is -- it's improper as
6 to --

7 ATTORNEY BUTING: I will rephrase.

8 THE COURT: Thank you.

9 Q. (By Attorney Buting)~ He didn't ask you to do
10 that?

11 A. He did not.

12 Q. Okay. And, likewise, with this burn area, by the
13 time you arrived, it was impossible for you to do
14 a complete scene processing because someone else
15 had been altering it, right?

16 A. Correct.

17 ATTORNEY BUTING: Judge, I have a lot to go
18 yet; we may want to take a break?

19 THE COURT: All right. We'll take our
20 lunch break at this time. Members of the jury,
21 again, do not discuss this case during your lunch
22 hour and we'll see you after lunch.

23 (Jury not present.)

24 THE COURT: We're now outside the presence
25 of the jury. You may be seated. I will indicate,

1 for the record, there was a request by the defense
2 for a side bar earlier and that was for the purpose
3 of raising an issue as to whether or not the defense
4 had all of the pages from this witness' report.
5 It's my understanding the parties are going to
6 explore that issue over the noon hour?

7 ATTORNEY STRANG: It's not really even an
8 issue your Honor. I suspect that the State doesn't
9 have the last 14 pages either, because otherwise we
10 would. If it turns out that we both have them
11 already, that's fine. There is no issue. I don't
12 expect these will affect the cross-examination or
13 that there's been any tendency to hamper the
14 cross-examination if, in fact, we don't have -- it's
15 just the last 14 pages of the Crime Lab evidence log
16 form.

17 THE COURT: All right. And I also asked if
18 -- I had Exhibit 89 as I was coming back in here.
19 Along those lines, counsel, there was a question
20 raised late last week as to whether Exhibit 89 had
21 been admitted, I checked with the court reporter
22 from Wednesday and he indicated toward the end of
23 the day, I think the Court asked if all the exhibits
24 that had been marked were to be admitted and there
25 was no objection from the parties.

1 But it's -- My recollection is that this
2 may not be the only exhibit that's been marked,
3 but was not intended by the parties to be
4 admitted. So I would ask, over the noon hour, if
5 you could go over your list of exhibits and make
6 sure we determine whether or not there were any
7 other exhibits that had been listed as admitted
8 but were not intended by the parties to be
9 admitted. I think Exhibit 89 here may be one of
10 those. We'll deal with that at the end of the
11 day. Anything else before we break for lunch?

12 ATTORNEY STRANG: I think the State
13 prepared an order for your Honor's signature on
14 personnel records that we have requested. That
15 order is in acceptable form to the defense.

16 THE COURT: All right. Let's resume at
17 1:15.

18 (Noon recess taken.)

19 (Jury present.)

20 THE COURT: At this time, Mr. Buting, you
21 may resume your cross-examination.

22 ATTORNEY BUTING: Thank you, your Honor.

23 **CROSS-EXAMINATION CONTD**

24 BY ATTORNEY BUTING:

25 Q. All right. Mr. Ertl, I'm not exactly sure where

1 we left off, but let's talk about luminol for a
2 minute?

3 A. All right.

4 Q. Luminol is this substance that reacts to a number
5 of different things besides just blood, right?

6 A. That's correct.

7 Q. Other kinds of chemicals, you mentioned cleaning
8 agents, bleach reacts real highly to that, very
9 strong?

10 A. Yes.

11 Q. Which means very bright?

12 A. Bright and fast, yes.

13 Q. Okay. What about other kinds of things,
14 transmission fluid perhaps, oils, things of that
15 nature?

16 A. I know it reacts with some metals, copper and
17 lead in particular. Transmission fluid might
18 have some metals ground into it, so it's
19 possible.

20 Q. Okay. Maybe it would not be as strong a
21 reaction, maybe some -- a faint reaction,
22 something like that?

23 A. Perhaps.

24 Q. Okay.

25 A. I'm not sure.

1 Q. And this is a garage -- Let's go to the garage
2 floor for a minute, where you said you had a
3 faint reaction in this little area, 3 X 4 area.
4 A. Right.
5 Q. Not a real bright, quick reaction like you get
6 with bleach, for instance?
7 A. Right.
8 Q. And the area, then, you then sampled and tested
9 with phenolphthalein, after that, right?
10 A. That's correct.
11 Q. You turn the lights and then you used these very
12 sensitive phenolphthalein tests to see if there's
13 any possible blood?
14 A. Correct.
15 Q. And that would be human or animal, right?
16 A. That's correct.
17 Q. And that particular area, you didn't find any --
18 any kind of blood reaction at all?
19 A. That's correct.
20 Q. But there were some other samples of blood that
21 had been recovered earlier, as far as you could
22 tell?
23 A. That's what I was told.
24 Q. And do you know, did you ever find out what the
25 results of those blood -- whose blood it was or

1 wasn't?

2 A. No.

3 Q. That comes later, not part of your
4 responsibilities; is that right?

5 A. That's correct.

6 Q. Okay. All right. Let me switch and talk with
7 you for a few minutes about the burn pit, okay.
8 You talked about some experience that you had
9 being called out to the woods to look at bones or
10 something of that nature?

11 A. There had been a couple of burial sites and one
12 in particular earlier that year that it involved
13 burning.

14 Q. Okay. And so you're -- you have enough
15 experience to be able to recognize bones?

16 A. Yes.

17 Q. Not necessarily distinguish human bone from
18 animal bone, but you can kind of tell what's bone
19 and what's rock and that sort of thing?

20 A. Yeah, I could -- maybe not all kinds of rock, but
21 bone from say plant materials, piece of bark.

22 Q. Bone from -- you mean you can distinguish bone
23 from plant materials or bark?

24 A. I have a -- as you pointed out, I have a
25 background in plant biology, so I feel

1 comfortable with plant materials versus bone, but
2 not so comfortable distinguishing, say, some
3 limestone versus a piece of bone.

4 Q. Okay. And, you know, you are not actually a
5 forensic anthropologist?

6 A. No, I'm not.

7 Q. Did -- To your knowledge, did Mr. Fassbender call
8 a forensic anthropologist out to the scene of the
9 burn pit?

10 A. Not to my knowledge.

11 Q. Or Mr. Wiegert?

12 A. No, not to my knowledge.

13 Q. Okay. Now, you talked about excavating this site
14 a little bit. Do you know how a possible bone
15 site is supposed to be searched by, you know,
16 what an archaeologist or forensic archaeologist
17 or anthropologist would do?

18 ATTORNEY FALLON: Objection, compound
19 question, which is it?

20 Q. (By Attorney Buting)~ Archeologist.

21 A. I have no training in archaeology. We do
22 excavate burial sites differently than we
23 excavated this ash pile.

24 Q. Okay. And when you do that, one of the very
25 first things you do is make sure that you

1 documented, with photographs, before the site has
2 been altered, right?

3 A. That would be the first step.

4 Q. And that, in fact, you take numerous photographs,
5 throughout the process, documenting it before,
6 during and after, right?

7 A. Quite often, yes.

8 Q. And that you -- The proper way is to sort of
9 establish a contamination path, let's call it, an
10 area outside of the area that you think might be
11 worthy of excavation, where you are allowed to
12 walk back and forth and back and forth and not
13 worry about contaminating anything; is that
14 right?

15 A. Well, that's generally true with most crime scene
16 items.

17 Q. All right.

18 A. You want to limit the access to the site in some
19 way.

20 Q. Okay. But when it comes to excavating one of
21 these sites where there might be a burial site,
22 for instance?

23 A. Yes.

24 Q. You divide it up into -- either with string, or
25 something, you ideally would have four posts

1 outlining the area with strings and then dividing
2 it up into various squares or quadrants; are you
3 familiar with that?

4 A. I'm familiar with that, in my little knowledge of
5 archaeology, I have seen that done. I have
6 worked with forensic anthropologists at burial
7 sites and they have not done that.

8 Q. All right. But one of the things, when you do
9 that is, you work from the outside in. In other
10 words, from where the outer edge is, where your
11 path is, you work your way -- the outer edges
12 first and then you work your way into the center
13 so that you can do the entire area?

14 A. Well, usually with a burial site, your first goal
15 is to define the extent of the hole. So, once
16 you have defined the perimeter, then you work
17 outside of that and dig down alongside of where
18 you think the burial site actually is. And then
19 you excavate from down and sides and underneath
20 to the core --

21 Q. Okay.

22 A. -- to where the body would be.

23 Q. Sort of outside, into the middle, right?

24 A. Correct.

25 Q. Generally. And when you do recover an item, in

1 the course of that excavation, it's important
2 that you make note of exactly where in that --
3 within that perimeter area you find that bone or
4 that item, right?

5 A. In my past experience, we would, if the body is
6 intact, we would locate where the head is, where
7 the shoulders, the joint, and the hands would be,
8 where the hips are, the knees, and the feet, just
9 to get the orientation of the body in the grave.

10 Q. Okay. Now, at this site, you didn't have a
11 perimeter with a containment path around it,
12 right? I mean, it was being worked on by the
13 time you got there, right?

14 A. Well, it wasn't a burial, per se, so it wasn't a
15 great perimeter; there was a scooped out area of
16 dirt with ashes.

17 Q. Right.

18 A. So the ashes was our perimeter.

19 Q. Okay. But somebody would use the shovel -- you
20 said mostly you, but sometimes others -- and dig
21 up a portion, then bring it over to be sifted,
22 right?

23 A. Right.

24 Q. And this area, the whole area that was excavated,
25 was about how big?

1 A. Probably roughly the size of this table I'm
2 sitting at.

3 Q. And nobody -- When you would bring over a shovel
4 here or shovel there, nobody made or kept track
5 of where exactly in that -- I guess we should
6 identify it for the record. The area is what,
7 maybe 5 X 4?

8 A. 5 X 4 feet, yeah.

9 Q. Okay. Nobody made or kept track of where, within
10 that area, any particular suspected bone may have
11 been, right?

12 A. No.

13 Q. And if any -- any suspected bone was found
14 outside of that area, nobody made specific note
15 of just where, outside of that area, that came
16 from either, did they?

17 ATTORNEY FALLON: Objection, calls for
18 hearsay knowledge. And it's non-specific as well in
19 term of who, what, and where.

20 THE COURT: Well, as far as hearsay, I
21 understand you to be questioning this witness -- I'm
22 assuming he's asking the witness, based on his own
23 knowledge. What was the remainder of your
24 objection?

25 ATTORNEY FALLON: It's non-specific in

1 terms of what was found where, when, by whom. If
2 he's asking the witness what he may have done and
3 what he may have documented, that's certainly
4 appropriate. But what anyone else may have found,
5 done, or documented is ...

6 THE COURT: I will ask you to rephrase the
7 question for clarification.

8 Q. (By Attorney Buting)~ All right. I guess the
9 point here is that various items of suspected
10 bone were brought to you to be sifted. I mean
11 various areas of dirt, or whatever, were brought
12 to you to be sifted, and then suspected bone
13 fragments were found, right?

14 A. Correct.

15 Q. But to your knowledge, neither you nor anyone
16 else would specifically identify where in this
17 area that particular piece of bone came from?

18 A. No. Everything that was collected in this area
19 was placed together in a box.

20 Q. This area being that 4 X 5 feet ...

21 A. 4 X 5 foot ash pile was placed together in a box,
22 just as we had done with the burn barrels.

23 Q. And did you find anything -- Did you sift
24 anything outside of that pit area, on the grass,
25 or farther over above where the dog was in that

1 picture, on the mound, or anything like that?

2 A. No, we were restricted to the ash pile.

3 Q. Okay. And you just worked on it that one
4 evening?

5 A. Yes.

6 Q. You didn't come back the next day to do any
7 further work?

8 A. No, that was the last day I was there.

9 Q. And that was done, actually, at night, you said?

10 A. Well, we worked up until it got dark.

11 Q. Was it daylight when you got there?

12 A. It was approximately from 3:00 p.m. to 5:00 p.m.

13 Q. Okay. So it was daylight for part of it and then
14 you kept working until it got too dark?

15 A. Got too dark.

16 Q. And you went walking around the -- during your --
17 your -- how many days was it there, three days,
18 four days?

19 A. Saturday, and came back for Sunday, Monday,
20 Tuesday.

21 Q. Okay. So during your four days there, you walked
22 around different areas and looked at different
23 buildings on the 40 acre property, right?

24 A. Yes.

25 Q. Testified to that. Did Mr. Fassbender or

1 Mr. Wiegert ever escort you to a aluminum smelter
2 on the property?

3 A. No.

4 Q. You never saw the smelter on the property at all,
5 did you?

6 A. No, I didn't.

7 Q. And you are the one who has the experience
8 finding bones, right?

9 A. I have some, yes.

10 Q. So if somebody had brought you over to the
11 smelter, you would have been able to look
12 carefully, with your experience, to see whether
13 there was any evidence, fragments of bones, or
14 whatever, in or around that smelter area,
15 couldn't you?

16 A. I don't know much about aluminum smelters. If
17 there were something to look at, I could have
18 looked at it.

19 Q. Okay. But you did not, because no one escorted
20 you there, no one showed you the smelter?

21 A. I didn't know anything about an aluminum smelter.

22 Q. What about a big wood furnace?

23 A. No, I don't know anything about that.

24 Q. Never looked inside of a wood furnace that was on
25 the property, to see if there was evidence of

1 bone, or --

2 A. No, I did not.

3 Q. -- zippers, pulls, anything like that?

4 A. No.

5 ATTORNEY BUTING: All right. Thank you
6 very much, sir.

7 THE COURT: Any redirect?

8 ATTORNEY FALLON: Yes, Judge. Thank you.

9 **REDIRECT EXAMINATION**

10 BY ATTORNEY FALLON:

11 Q. Couple of points, Mr. Ertl. First of off --
12 First all -- First of all, I would like to ask
13 you about this question, relative to the
14 transportation of the SUV. Counsel asked you if
15 you could have remained and helped with other
16 searches, instead of going with the vehicle to
17 Madison. What is the protocol, what is the
18 recommended procedure for the Crime Lab analyst
19 when there are two of you there with a critical
20 piece of evidence like the SUV?

21 A. Well, I was asked if we could get the vehicle
22 back to the laboratory and asked to see if I
23 could expedite getting work done on it, prior to
24 Monday morning.

25 Q. Who asked you to do that?

1 A. It was either Investigator Wiegert or Special
2 Agent Fassbender.

3 Q. All right. Now, in terms of transportation of a
4 key piece of evidence like that, is there a
5 concern on the part of the analyst that the
6 evidence be transported safely?

7 A. Well, definitely. I wanted it enclosed. It is
8 now in my custody. We could have turned it over
9 to Calumet County and they could have taken
10 custody and dealt with getting to it to the
11 laboratory.

12 Q. But you took control of the SUV, correct?

13 A. Correct.

14 Q. All right. And to ensure that it was safely
15 transported to the Crime Lab, without incident,
16 took two of you to do it?

17 A. Correct.

18 Q. All right. Now, counsel asked you a couple of
19 hypotheticals about the presence of a certain
20 Toyota key and the possibility of DNA on that
21 key. Well, Mr. Ertl, we have person number one
22 who's the owner of the key; person number two who
23 does not own the key, but at some point obtains
24 possession of the key. And during the course of
25 obtaining possession of the key, actively bleeds

1 on the key, wipes the bleed off the key.

2 It's not entirely unexpected that you
3 would find the DNA profile of the person who
4 possessed the key and who wiped the blood off the
5 key, that's not an unusual finding, would it not?

6 A. Well, in that situation, you would have two
7 activities promoting finding the second person
8 rather than the first person. If you bleed on
9 the key, now you are supplying a large quantity
10 of your own DNA. And even if the other person's
11 DNA is there, you may mask them because now you
12 have actual bodily fluids rather than stray skin
13 cells.

14 So there's more DNA in blood than I
15 would expect to find from something that had been
16 touched. So you could cover over the other DNA.
17 And if you then wiped it off, now you are
18 physically removing potentially all the DNA
19 that's present, the first person and the second
20 person.

21 Q. And if the second person, not the original owner
22 of the key, had possession of that key for four
23 days, one would expect that you are most likely
24 going to find the profile of the person who last
25 possessed the key; isn't that true?

1 A. As you explained it, I would expect, yes, to find
2 the second persons.

3 Q. And it would not be unusual at all to find no
4 other DNA profile on that key, would it?

5 A. No, that would be not unusual.

6 Q. In fact, the likelihood of that occurring is
7 enhanced by the fact that person number two
8 actually had possession of the key for say four
9 days at a minimum?

10 A. The longer the time you would expect more contact
11 more possibility for DNA being deposited.

12 Q. Now, let's talk a little bit about this
13 contamination issue. The fact that certain bits
14 of evidence can become "contaminated", is not all
15 that unusual is it?

16 A. The fact that it can happen?

17 Q. Yes.

18 A. It is not unusual and it is expected and we take
19 precautions to prevent that.

20 Q. And, as a matter fact, contamination can occur,
21 as counsel said, during the collection of the
22 evidence, during the transport of the evidence,
23 and during the analysis of the evidence, as I
24 understood your answer; is that correct?

25 A. Yes.

1 Q. All right. Well, it's also possible that
2 contamination of a crime scene could occur before
3 law enforcement even arrives?

4 A. Correct.

5 Q. And, as a matter of fact, in your experience,
6 it's not unusual at all for perpetrators of
7 crimes to take efforts to alter crime scenes, is
8 it?

9 A. That's quite common to -- to see attempts being
10 made to clean up.

11 Q. All right. And what types of efforts have you
12 seen certain suspects undertake to clean up, as
13 you say, a crime scene?

14 ATTORNEY BUTING: Objection, now we're
15 getting too far afield of this case.

16 ATTORNEY FALLON: I disagree heartily,
17 counsel went down this road, we're entitled to
18 respond.

19 THE COURT: I'll give you a little
20 latitude.

21 Q. (By Attorney Fallon)~ Continue.

22 A. I have seen cases where it was a shooting in a
23 carpeted area, we saw some of the blood spatter
24 pattern we talked about previously, up on the
25 ceiling, on some of the furniture. And there was

1 absolutely no apparent blood on the carpeting.
2 So we saw a fine, hard to see mist of blood. And
3 you would expect to see, then, something on the
4 carpeting, if someone had been shot there. There
5 was a Rug Doctor sitting next to it, this area.
6 They had rented the Rug Doctor and shampooed the
7 carpet. When we ripped up the carpet, a large
8 blood pool, on the floor under the carpeting, had
9 soaked into the padding. So they had obviously
10 attempted to clean the blood pool from the
11 shooting.

12 Q. And is it possible to clean up blood with certain
13 reagents such as bleach?

14 A. Yes. Bleach is very effective. We use bleach in
15 the laboratory to clean our work areas. It
16 actually destroys DNA. Destroys the blood. It
17 decontaminates it. It's very useful for that.

18 Q. All right. Now, another thing about this
19 contamination issue, just so we're clear; does
20 contamination transform one person's DNA profile
21 into that of another?

22 A. It cannot change a DNA profile. It can hide a
23 DNA profile, though.

24 Q. So what you would have, then, is a mixture?

25 A. You could have a mixture, or you could fail to

1 see the first person, if the second person
2 deposited a much greater quantity of DNA.

3 Q. But it's still interpretable, is it not?

4 A. Yeah, you would see DNA types and you would be
5 able to interpret them.

6 Q. So, I take it it's still possible, then, to have
7 reliable findings, notwithstanding that type of
8 contamination?

9 A. It's possible.

10 Q. Now, returning, again, to the question counsel
11 asked about actively bleeding; if a suspect was
12 actively bleeding and entered a vehicle, you
13 would expect to find an impact bloodstain, would
14 you not; that would not be uncommon?

15 A. If they were actively bleeding and blood was
16 dripping from them, then an impact stain would be
17 the blood falling off of the person and gravity
18 pulling it to the floor and hitting, that would
19 be the impact.

20 Q. All right. And what is a contact stain?

21 A. That's where I'm bleeding, have blood on an item,
22 and the item touches another item. And now I
23 leave some blood on the second item.

24 Q. And you would expect to find that as well, if a
25 person was actively bleeding and had been in a

1 particular vehicle that was -- that is now
2 undergoing an examination?

3 A. If they had touched something with a bloodied up
4 hand or whatever, then you would expect some
5 transfer of blood.

6 Q. Even if it was just a cut on the finger?

7 A. Sure.

8 Q. Is it possible -- Well, before I get there, what
9 is -- are you familiar with a phrase called a
10 transfer stain?

11 A. Well, that's a transfer of blood from one item to
12 another --

13 Q. So --

14 A. -- by contact.

15 Q. -- you are thinking that contact and transfer is
16 one in the same concept?

17 A. Yes. And I am not a blood spatter pattern
18 expert. I have just -- I have been to some
19 training. I am able to recognize it when I see
20 it, but I don't interpret it. So I don't know
21 all the specific jargon about swipes and wipes;
22 and contacts and transfers; high impact,
23 immediate impact, and low impact castoff. I'm
24 familiar with the terms, but I couldn't
25 necessarily tell you that that's a transfer not a

1 contact, or a swipe not a wipe.

2 Q. Well, returning, again, to our example of the
3 person one and person number two and person one
4 being the owner of the key and person two being
5 the last one to possess the key. Well, if person
6 number two had been actively bleeding, entered a
7 vehicle holding the ignition key in their right
8 hand and then attempted to start the vehicle, it
9 would not be unusual at all to find a contact
10 stain near the ignition in that vehicle?

11 ATTORNEY BUTING: Objection to the
12 characterization of not unusual. There's no factual
13 distinction as to how that would occur.

14 THE COURT: I will sustain the objection
15 based on the form of the question.

16 Q. (By Attorney Fallon)~ Would you expect to find a
17 contact stain on the ignition?

18 A. If the person were bleeding with their right
19 hand --

20 Q. A cut on the --

21 A. -- operating a key with the right hand and trying
22 to start the ignition, I wouldn't think it would
23 be unusual at all to find blood on the key and on
24 the ignition.

25 (Court reporter couldn't hear.)

1 A. And on the ignition.

2 Q. Now, counsel asked you a series of questions and
3 I want to talk a little bit more about this blood
4 spatter issue. You can have a crime scene, and
5 let's just take something like a stabbing, in
6 which there was blood at the scene; are you
7 always going to find evidence of a blood spatter
8 stain?

9 A. No, it would depend on circumstances?

10 Q. What types of circumstances?

11 A. I can think of a case, not too long ago, where a
12 woman had been stabbed in her bed and there was,
13 you know, the blankets and the comforter over her
14 and was stabbed through that, repeatedly, and yet
15 there was no evidence of blood in the room, other
16 than bleeding out of her.

17 And the idea was that the knife going
18 through the bedding and then being pulled out
19 again, it wiped off the blood. It went in, came
20 out, came out clean. And so there was no chance
21 for the blood to fly off the knife and end up on
22 the ceiling or on the floor. So it was a very
23 clean scene. All the blood was contained just to
24 the bedding and to the victim and under the
25 sheets.

1 Q. And if you wanted to further cover up the crime,
2 then you could certainly burn all the bedding,
3 couldn't you?

4 A. Certainly.

5 Q. So in effect, then, it is possible to clean up a
6 crime scene?

7 A. Most certainly. Most crime scenes do get cleaned
8 up and people continue to live in them, the
9 houses or whatever.

10 Q. But it would be -- Is it possible, based on your
11 training and experience, for instance, to have a
12 pool of blood and, say, on a garage floor, have
13 it cleaned up to such an extent that you would
14 not get a reaction to a phenolphthalein test?

15 A. Well, knowing what I know, I could probably do
16 it. Bleach would be a good thing, some sort of
17 peroxide would be a good way to get rid of the
18 red color. The bleach would destroy the blood
19 and the DNA.

20 Q. So it's possible?

21 A. It's possible, yes.

22 ATTORNEY FALLON: Your witness.

23 THE COURT: Mr. Buting.

24 ATTORNEY BUTING: Sure.

25 **RE-CROSS-EXAMINATION**

1 BY ATTORNEY BUTING:

2 Q. This other case you mentioned, where the
3 gentleman -- find it on my notes for a second,
4 please. Yeah, where there was a shooting, body
5 on the carpet or something and you were surprised
6 that there was no evidence of blood on the
7 carpet?

8 A. Correct.

9 Q. But that was explained because the Rug Doctor Was
10 there, right?

11 A. Right.

12 Q. But there was blood on the ceiling.

13 A. Correct.

14 Q. And blood on the wall?

15 A. Yes.

16 Q. And when you rip up the carpet, there's a pool of
17 blood underneath the carpet, right?

18 A. That's right.

19 Q. So cleaning a carpet, blood soaks through fabrics
20 pretty well, doesn't it?

21 A. Yes.

22 Q. So, in that instance, whatever the gentleman or
23 defendant did, was not good enough. He didn't
24 rip up the carpet and clean the pad underneath
25 it, right?

1 A. Right.

2 Q. Now, in this case, are you aware that they ripped
3 all the carpet out and the pad out of Mr. Avery's
4 house?

5 A. I didn't know that.

6 Q. Okay. So you don't know what's -- whether the
7 carpet and the pad and all that was tested for
8 blood in his house or not?

9 A. I don't know.

10 Q. Okay. Well, we'll get to that later. But in any
11 event, you did not see any blood spatter on his
12 ceiling, right?

13 A. That's correct.

14 Q. Or on the walls of the bedroom?

15 A. That's correct.

16 Q. And the walls are paneling, right?

17 A. I believe so.

18 Q. Are you aware that they ripped the paneling out
19 of -- off the walls and took all that out to the
20 Crime Lab too?

21 A. No, I wasn't aware of that either.

22 Q. That came later in the case and you weren't
23 involved in that; is that right?

24 A. Right.

25 Q. Okay. You also told us a story about the guy who

1 apparently stabbed some woman on the mattress and
2 there was no cast off because he was stabbing her
3 through the bedding, right?

4 A. Correct.

5 Q. In other words blankets and comforter on top of
6 the body as it's being stabbed --

7 A. Correct.

8 Q. -- right? But -- And so in that instance, there
9 wasn't cast off blood that would hit the ceiling,
10 or walls, or other objects in the room; is that
11 what you are saying?

12 A. That's correct.

13 Q. But, I assume the person did bleed down into the
14 mattress, right?

15 A. Yes.

16 Q. And there was a blood soaked mattress in that
17 case, wasn't there?

18 A. Yes.

19 Q. And Mr. Fallon asked you if someone would be able
20 to get rid of that evidence in that instance by
21 burning the bedding, right?

22 A. That's correct.

23 Q. Any evidence that a mattress was burned in this
24 case?

25 A. Not that I recall.

1 Q. Did you see any bed springs in the burn pit?
2 A. No.
3 Q. Or in the burn barrel?
4 A. No.
5 Q. In fact, when you went to the Avery's bedroom
6 there was a mattress there, wasn't there?
7 A. There was.
8 Q. And a box spring?
9 A. Yes.
10 Q. And there was no bloodstain on it was there?
11 A. No, there wasn't.
12 Q. Are you familiar with any of the studies of the
13 transfer of trace DNA from one's fingers to
14 objects they pick up?
15 A. Yes.
16 Q. Are you familiar with Dr. Lee's reports, study?
17 A. Not in particular.
18 Q. Okay. Trace isn't really your specialty?
19 A. No.
20 Q. So you are not aware of whether they have done
21 tests that have -- that have determined what the
22 likelihood is of the person number one's DNA
23 still being on it when person number two handles
24 it; is that right?
25 A. I do know that it varies from person to person,

1 how much DNA you deposit on things.

2 Q. Okay. But, in fact, when using the hypothetical
3 Mr. Fallon had, person number two is handling the
4 key after person number one, the more common
5 finding would be two people's DNA, wouldn't it?

6 A. If they were each just handling.

7 Q. Okay. Any evidence of blood on the key in this
8 case, that you are aware of?

9 A. I know nothing of the key; I didn't ever see the
10 key.

11 Q. Okay. And you said you were looking for blood,
12 but you knew this was -- by then, by the time you
13 went into the house, you knew that there was a
14 Toyota RAV4 that had been seized and taken to the
15 Crime Lab, right?

16 A. Yes.

17 Q. So if you had walked in that bedroom and seen,
18 right in plain view, a car key that looked like a
19 Toyota car key, you would have made note of that,
20 wouldn't you?

21 ATTORNEY FALLON: Objection, beyond the
22 scope of redirect.

23 ATTORNEY BUTING: You talked about the key.

24 ATTORNEY FALLON: Not in that context.

25 THE COURT: I'm going to sustain the

1 objection.

2 ATTORNEY BUTING: All right.

3 THE COURT: I think that question has
4 already been asked and answered, as well.

5 ATTORNEY BUTING: Okay. That's all I have.
6 Thank you, sir.

7 THE COURT: All right. The witness is
8 excused. Mr. Fallon, you can call the next witness.

9 ATTORNEY FALLON: We will move Exhibit 156
10 into evidence, please.

11 THE COURT: Any objection?

12 ATTORNEY BUTING: I'm sorry, which one is
13 that -- I have no objection to that. And I would
14 move Exhibit 159, 160 in as well.

15 ATTORNEY FALLON: 159 is the statement of
16 qualifications.

17 ATTORNEY BUTING: Correct.

18 ATTORNEY FALLON: And 160 was the emails.
19 I don't have any objection.

20 THE COURT: All right. Those exhibits are
21 all admitted.

22 Jurors, if you want to stand up and
23 stretch a minute before we hear our next witness,
24 you may. And those of you in the audience, if
25 you wish, you may.

1 County Sheriff's Department on the 7th of
2 November, 2005?

3 A. Yes, I was.

4 Q. Could you tell us, please, what your areas of
5 responsibility were that day?

6 A. Myself, along with Sergeant Scott Senglaub,
7 Deputy Mike Bushman, and Sergeant Jason Jost
8 responded to 12930 Avery Road, would be the Avery
9 Salvage Yard, to assist Calumet County Sheriff's
10 Department searching the property.

11 Q. I'm guessing our court reporter would like you to
12 slow down a little bit too.

13 A. Okay.

14 Q. If you could do that, I would appreciate that.
15 What were your responsibilities upon arrival at
16 that scene?

17 A. We were to make contact with the officer in
18 charge at the scene to get the daily duties.

19 Q. Okay. Were you given a specific job that day?

20 A. Yes.

21 Q. What was that?

22 A. We were informed by the OIC to get in search
23 groups.

24 Q. By the what?

25 A. Officer in charge.

1 Q. All right.

2 A. To get into a search group. The search group I
3 was in was search group A. Our team leader of
4 that search group was Deputy Mike Bushman of the
5 Manitowoc County Sheriff's Department.

6 We were to search the property west of
7 the Avery residence along White Cedar Road and
8 property north of the Avery residence, this would
9 be a corn field just north of Avery property.

10 Q. It's that open field that I'm most concerned
11 about today, Deputy. I'm going to direct your
12 attention to the large screen.

13 ATTORNEY KRATZ: This is Exhibit No. 85,
14 counsel.

15 Q. (By Attorney Kratz)~ Are you able to orient
16 yourself as you look at that location?

17 A. Yes.

18 Q. There's a laser pointer that's right in front of
19 you, Deputy Siders. If you take that laser
20 pointer, please, and first tell me whether or not
21 you and other search team members, on the 7th of
22 November, did, in fact, search that open field
23 north of the Avery salvage property?

24 A. Yes, the team I was in, we searched starting here
25 and worked our way across.

1 Q. All right. And you are pointing, what would be
2 just north of the road that travels basically
3 east and west, which would be on the north edge
4 of the Avery salvage property itself; is that
5 accurate?

6 A. Correct.

7 Q. Let me ask you, Deputy Siders, were you given
8 specific instruction as to what you were looking
9 for?

10 A. Yes, we were basically looking for any type of
11 clothing, whether it be a shirt, pants, shoes,
12 any kind of object such as a cell phone, a
13 camera, or even possibly a body.

14 Q. So at that time, that is, as of the 7th of
15 November, a body or any human remains had not yet
16 been found; is that correct?

17 A. That's correct.

18 Q. While searching in the area north of the Avery
19 property, had you, yourself, made any discovery?

20 A. Yes, I did.

21 Q. And can you tell the jury what that was, please?

22 A. When we started to search the corn field or the
23 field north of that property, I came across a
24 burning barrel which was in my section of
25 searching. I walked up to the burning barrel and

1 I looked inside, at which time I saw a metal rim
2 with wires wrapped around it. It appeared to be
3 a vehicle rim with the remains of a -- steel
4 belts from a rubber tire.

5 Q. Deputy Siders, Exhibit No. 37, which has already
6 been introduced into evidence in this case, it is
7 now being shown on the screen, can you tell us
8 what we're looking at here, please?

9 A. Yeah, this burning barrel right there is the one
10 that I approached. And I looked inside and saw
11 the metal rim inside.

12 Q. All right. As we look at Exhibit No. 37, as we
13 look at that burn barrel, can you describe for
14 the jury a little bit more specifically where
15 your team had been searching?

16 A. Okay. My team had been searching starting from
17 -- there's a road here, starting from back behind
18 here and was working toward the burning barrel.
19 I was positioned right along this area here. And
20 the rest of the team was in a line, going across
21 to the north.

22 Q. Now, you told the jury that upon approach of this
23 burning barrel, that you looked inside; is that
24 right?

25 A. Correct.

1 Q. And I think you mentioned something about a rim;
2 what -- what is that?

3 A. It appeared to me to be like a vehicle rim, or
4 like maybe a trailer rim to some type of vehicle.

5 Q. I'm going to show you what's already been
6 introduced as Exhibit No. 51; can you tell us
7 what we're looking at here?

8 A. This object here is what I observed lying on top,
9 inside the burning barrel.

10 Q. All right. I see that the rim is outside of the
11 burn barrel in this photograph; can you tell me,
12 if you know, who removed the rim from inside the
13 burn barrel?

14 A. Yes. I removed the rim from inside the barrel.

15 Q. Okay. And when you looked inside of that burn
16 barrel, can you tell us what you saw, please.

17 A. Inside the burn barrel I saw a lot of ashes and I
18 saw a lot of burnt, melted plastic parts. As I
19 looked closer at these plastic parts, it appeared
20 to be parts of a cell phone that were actually
21 melted inside the burning barrel.

22 Q. Before I show the rest of those pictures, there's
23 one other photo, just to orient us a little bit
24 better. In the back of Exhibit No. 51, and now
25 what we're looking at is Exhibit 59; do you see a

1 maroon S -- or excuse me, a maroon van?

2 A. Yes.

3 Q. Was that van there when you found the burn barrel
4 and removed the rim from inside of it?

5 A. I can't recall if it was or not.

6 Q. Okay. Your observations were directed towards
7 the inside; is that right?

8 A. Yes.

9 THE COURT: Deputy, actually, you can stay
10 that distance from the microphone, I will just turn
11 your volume down --

12 THE WITNESS: Okay.

13 THE COURT: -- if it's too loud.

14 Q. (By Attorney Kratz)~ The first exhibit that I
15 placed in front of you has already been
16 introduced as an exhibit. Can you tell us what
17 number that is, please.

18 A. It's Exhibit 156.

19 Q. I'm sorry?

20 A. 156.

21 Q. Tell us what that is.

22 A. This here is the inside of the burn barrel. This
23 is what I would actually have been looking at
24 when I lifted the rim out of the burn barrel.

25 Q. Okay. You talked about seeing some items inside

1 of there, does Exhibit 156 look the same, or
2 similar, as it did on the 7th of November as you
3 looked inside that burn barrel?

4 A. Yes, it does.

5 Q. There's three other exhibits in front of you.
6 Why don't you grab them, one at a time, tell me
7 what exhibit number they are and what it is that
8 you are looking at.

9 A. Next exhibit would be 154; again, this would be
10 the plastic remains I was looking at inside the
11 burning barrel. Parts to a cell phone.

12 Q. All right. Deputy Sider, take a look at the
13 large screen; is that Exhibit 154?

14 A. Yes, it is.

15 Q. And, again, that's the same exhibit that's in
16 front of you; is that correct?

17 A. Yes, it is.

18 Q. Tell me what the next exhibit in front of you is,
19 please.

20 A. Exhibit 155.

21 Q. And what is that?

22 A. Again, that's looking inside the burning barrel
23 at the parts that I located belonging to a cell
24 phone.

25 Q. We're now going to show the jury Exhibit 155;

1 again, is that the same as the exhibit that's in
2 front of you?

3 A. Yes, it is.

4 Q. Now, Deputy Siders, you mentioned that you could
5 tell, just on your observation, that at least one
6 of the electronic components that you were
7 looking at in the bottom of this burn barrel, you
8 believed to be a cell phone; is that right?

9 A. Yes.

10 Q. How did you know that?

11 A. Closer look at the piece of plastic, I note -- I
12 notice an M emblem on the cell phone. This M
13 emblem as known to me to be a Motorola emblem for
14 the company of Motorola.

15 Q. All right. There's one more exhibit in front of
16 you, tell me what that is, please.

17 A. Exhibit 157.

18 Q. And what is that?

19 A. That's also looking inside of the burning barrel,
20 looking at parts -- parts of a camera.

21 Q. All right.

22 A. Excuse me, cell phone.

23 Q. These four exhibits, and now that the jury is
24 looking at 157, these four exhibits are really
25 pretty much the same, different degrees of

1 magnification or angle, but is that fair?

2 A. That's correct.

3 Q. Now, Deputy Siders, after witnessing or
4 discovering this burn barrel, were other law
5 enforcement officers summoned to that location?

6 A. Yes, they were.

7 Q. Do you know if -- or let me just ask you this, do
8 you know agents from what's known as the Division
9 of Criminal Investigation?

10 A. Yes.

11 Q. The scene, that is, the burn barrel itself, was
12 that scene maintained by you; in other words, did
13 you make sure that, at least while you were
14 there, nobody fooled around with the stuff that
15 was inside of it, or tampered with the evidence?

16 A. That's correct, I maintained custody of the
17 barrel.

18 Q. And was there anybody from the Division of
19 Criminal Investigation that you turned over
20 custody of that burn barrel to?

21 A. Yes, there was.

22 Q. Who was that?

23 A. Kevin Heimerl.

24 Q. Kevin Heimerl?

25 A. Correct.

1 Q. Now, were you in charge of either seizing, that
2 is, securing the burn barrel, or later searching
3 its contents?

4 A. No, I was not.

5 Q. That was turned over to somebody else; is that
6 right?

7 A. Correct.

8 Q. All right.

9 ATTORNEY KRATZ: With the offer of those
10 four photographs, Judge, that's all the questions I
11 have of this witness. Thank you.

12 ATTORNEY STRANG: I have no objection to, I
13 think they were 154, 155, 156 already is in, and
14 then 157.

15 THE COURT: All right. The remaining
16 exhibits, then, will be admitted.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY STRANG:

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. Let's go back, if we could, to Exhibit 51. When
22 you folks were assigned to start looking through
23 the farm field north of the Avery property your
24 assignment also included part of the Avery
25 property?

1 A. Yes.

2 Q. So this was, really, the very beginning of the
3 search of the field to the north?

4 A. Yes, this would be at the beginning of the search
5 of the field.

6 ATTORNEY STRANG: Now, that's actually not
7 the one I thought. Where was the picture right
8 before, which had the burning barrel from a greater
9 distance, with the trailer in the background. I'm
10 sorry. What is the one you showed right before?

11 ATTORNEY BUTING: Thirty-seven.

12 ATTORNEY STRANG: Thirty seven, that's it.
13 There it is.

14 Q. (By Attorney Strang)~ Now, that red trailer in
15 the back, that's Steven Avery's house?

16 A. Correct.

17 Q. This burn barrel, it's a little hard to tell from
18 here, but the burn barrel looks like it's sort of
19 sitting right out in the open, in a grassy area?

20 A. Correct.

21 Q. But -- Although we can't see the blue, doublewide
22 that would be to the left off this photo, there
23 is another house there; do you remember that?

24 A. Yes. Correct.

25 Q. House trailer. The burn barrel would be closer

1 to the red trailer than to the other trailer?

2 A. I don't know the distance. I didn't measure the
3 burning barrel from either trailer; I couldn't
4 answer that.

5 Q. You know, I know you didn't measure it, but no
6 recollection of which one, to the eyeball, it
7 looked closer to?

8 A. I couldn't tell.

9 Q. Okay. But in any event, it's sort of sitting
10 right off the gravel road, essentially becomes a
11 driveway into the garage.

12 A. Correct.

13 Q. When you walked up and you looked down and you
14 see this rim in there, you were able to just
15 reach in and pull the rim out?

16 A. Yes.

17 Q. That's a heavy enough item, you -- even you had
18 to use two hands?

19 A. Yes.

20 Q. What looked to you like maybe the remains of a
21 steel belted radial, was that intertwined with the
22 rim?

23 A. Yes.

24 Q. So that came out with the rim?

25 A. Yes.

1 Q. You set that down, did the whole assembly look to
2 you like somebody might simply have burned an
3 entire tire and wheel assembly?

4 A. Yes.

5 Q. Once you then had the rim and the belt out, you
6 noticed that these things were rusty?

7 A. What was rusty, the rim or --

8 Q. The rim.

9 A. Yes.

10 Q. If there was a steel belted radial, whatever the
11 wiring was?

12 A. Yes.

13 Q. That was rusty?

14 A. Yes.

15 Q. All right. And then looked in there, and one
16 thing we can't tell from -- or I can't tell, at
17 least from Exhibits 154 through 157 in front of
18 you, is how -- about how deep does it look like
19 the ash and crud at the bottom of that can was?

20 A. If you could bring up a closer view of that
21 burning barrel.

22 Q. Sure, we'll go back to the one I thought I
23 wanted, 51; how is that?

24 A. Okay. It's not an exact measurement; my
25 estimation would have been that the top of the

1 rim would have been sitting right around there.

2 Q. So -- So maybe, roughly, two thirds of that
3 barrel would have been full of ash and other
4 material?

5 A. Correct.

6 Q. You were able to reach in easily, had -- had you
7 wanted to, and you could have touched these
8 melted cell phone parts that you saw?

9 A. You would have to actually lean -- probably lean
10 over to touch the ...

11 Q. Okay. But they were probably above the -- my
12 vocabulary is going to fail me now, but the
13 crease -- ridge or crease, the higher ridge or
14 crease on the barrel?

15 A. I would say that the parts were probably -- give
16 you another estimation -- right around this area
17 there.

18 Q. Okay.

19 A. They weren't at the bottom, they were more,
20 somewhere right in here.

21 Q. All right. So if those -- those ridges roughly
22 divide this barrel into thirds, give or take, the
23 barrel was about two thirds full of this junk and
24 ash?

25 A. Correct.

1 Q. But the cell phone parts you saw, were lying on
2 top --

3 A. Correct.

4 Q. -- of the other junk and ash? In looking in
5 there, did it look to you as if a sort of crust
6 had formed over the ash in the barrel?

7 A. The ash was more -- It had rained heavily, so it
8 was kind of like a muck --

9 Q. Mm-hmm.

10 A. -- type of ash. I couldn't say that there was
11 actually a film, I just noted that it was all wet
12 and damp.

13 Q. It had the look of ashes after they had been
14 rained on --

15 A. Correct.

16 Q. -- and then begun to dry?

17 A. Yes.

18 Q. I mean, they still would have been mucky --

19 A. Yeah.

20 Q. -- but you know the look I'm talking about, where
21 eventually, as it dries, appear almost a crust on
22 the ash?

23 A. Correct.

24 Q. The cell phone pieces were atop that?

25 A. Kind of not -- or kind of mixed in with the ash,

1 they weren't just, like, laying on top. They
2 were kind of mixed in.

3 Q. Because it still looked mucky to you?

4 A. Correct.

5 Q. The entire time you spent at that barrel before,
6 let's say -- say, boy, that looks like the
7 Motorola emblem, or the insignia for Motorola,
8 the entire time was give or take, roughly, how
9 long?

10 A. That I stood there to observe that?

11 Q. Yeah, before you said, boy, I think I see the
12 Motorola emblem.

13 A. I don't know, approximately four to five minutes,
14 just looking at it.

15 Q. Just looking at it?

16 A. Yes.

17 Q. But not touching things?

18 A. I didn't touch anything in there.

19 Q. But 4 to 5 minutes is a long time, actually, if
20 you just -- I mean, if we were to stand silent
21 for 4 to 5 minutes, it would seem like an
22 eternity, but you think it may have been that
23 long?

24 A. Give or take.

25 Q. And then you called somebody else over?

1 A. Yes, I did.

2 Q. Was there anything -- other than being burned,
3 was there anything obscured about the Motorola
4 emblem?

5 A. Other than that it was melted plastic.

6 Q. Right. And all of this, as the photos showed,
7 sort of takes on a -- various shades of gray.

8 A. Correct.

9 Q. Maybe we could go back to -- Was there one in
10 particular there where you can see that Motorola
11 emblem?

12 A. I'm not going to be able to tell with these
13 photographs here; it's just not that clear.

14 Q. So, the photographs, you cannot see a Motorola
15 emblem?

16 A. No, I can't.

17 Q. But you were able to, with the naked eye,
18 standing over this?

19 A. Correct.

20 Q. The six, now going on seven years, I guess, that
21 you have been with the Manitowoc County Sheriff's
22 Department, have you been on the Dive Team the
23 entire time?

24 A. I have been on the Dive Team for the last three
25 years.

1 Q. Did you do any diving here?

2 A. No, I did not.

3 Q. Weren't asked to participate in any of the dives?

4 A. No, we were not.

5 Q. Do you know who did the dives?

6 A. I believe it was Outagamie Sheriff's Department
7 Dive Team.

8 Q. Did you say, gosh, you know, I'm -- I'm a member
9 of a dive team and my department has one; did you
10 volunteer to do that?

11 A. No, I did not.

12 Q. Why not?

13 A. We weren't asked to. Our dive team was usually
14 requested by either our sheriff or another
15 outside agency to assist with a dive; if we're
16 not asked, we don't dive.

17 Q. And in this situation, the people running the
18 search looked over across Lake Winnebago, to the
19 top of Lake Winnebago, to the Outagamie County
20 Sheriff's Department?

21 A. That's what I can guess. They were the ones that
22 contacted them.

23 ATTORNEY STRANG: That's all I have.

24 THE COURT: Any redirect?

25 ATTORNEY KRATZ: Not of this witness,

1 Judge, no.

2 THE COURT: Very well, the witness is
3 excused.

4 ATTORNEY KRATZ: Could we approach just
5 briefly, Judge.

6 THE COURT: Sure.

7 (Side bar taken.)

8 ATTORNEY KRATZ: I'm going to call Bill
9 Tyson to the stand.

10 THE CLERK: Please raise your right hand.

11 **SERGEANT WILLIAM TYSON**, called as a
12 witness herein, having been first duly sworn, was
13 examined and testified as follows:

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

16 THE WITNESS: William Tyson, T-y-s-o-n.

17 **DIRECT EXAMINATION**

18 BY ATTORNEY KRATZ:

19 Q. Mr. Tyson, how are you employed?

20 A. I am a sergeant with the patrol staff with the
21 Calumet County Sheriff's Department.

22 Q. As a sergeant with Calumet County, were you asked
23 to assist in search efforts at what's now called
24 the Avery Salvage Yard?

25 A. Yes.

1 Q. How was it that you were called out in this case?

2 A. It was on November 5th. It was approximately 20
3 after 1 in the afternoon. I received a telephone
4 call at my residence from the Calumet County
5 Dispatch Center. They informed me that Teresa
6 Halbach's vehicle was located at the Avery
7 property and that my assistance was needed at the
8 property.

9 Q. I'm sorry, Sergeant Tyson, you said that you were
10 called out at your home. Let me ask you, as a
11 member of the Calumet County Sheriff's
12 Department, had you been made aware, before that
13 date, of Ms Halbach's disappearance?

14 A. Yes, being the patrol sergeant, I do the shift
15 brief things and things like that. I know our
16 department did take a phone call, I believe it
17 was early days of November, where the information
18 was that Corporal Leslie Lemieux had taken a
19 complaint of a missing person, that being Teresa
20 Halbach.

21 So we were told to look for her, also
22 her vehicle, and the plate number that belonged
23 on her vehicle. Prior to me getting that call on
24 Saturday, the 5th, yes, I was aware of the fact
25 that our agency, as well as other agencies, were

1 looking for her and her vehicle.

2 Q. Sergeant Tyson, after getting the call at home,
3 where did you proceed to?

4 A. I responded to the Sheriff's Department. I was
5 standing by at the Sheriff's Department waiting
6 for another deputy that was in route, also, to
7 the Sheriff's Department, to arrive. I waited at
8 the Sheriff's Department until she arrived. Upon
9 her arrival, we did proceed over to the Avery
10 property.

11 Q. Now, together with being a patrol sergeant, do
12 have any other areas of specialization within the
13 Calumet County Sheriff's Department?

14 A. Yes, back in 1994 I was promoted from a
15 corrections officer to a patrolman; along with
16 that I was sent to an evidence technician school
17 in 1994. So throughout the years of 1994 until
18 March of 2005, I would respond to crime scenes in
19 the county, to process the crime scenes. Those
20 were, you know, some of my responsibilities.

21 Q. Okay. About what time did you arrive at the
22 Avery salvage property, if you remember?

23 A. If I recall correctly, I think it was quarter to
24 3 in the afternoon.

25 Q. Upon arrival at the Avery salvage property, do

1 you recall what your first duty was?

2 A. I was met by Investigator Wiegert and Steier.
3 They directed me to go down into the junkyard
4 area and made contact with officers down in that
5 area.

6 I proceeded down into the junkyard area
7 where I met with several law enforcement officers
8 that were down there. And they were keeping a
9 crime scene log. I did introduce myself and I
10 was talking with them briefly and was instructed
11 to relieve a deputy that was standing by Teresa
12 Halbach's vehicle.

13 Q. All right. We have heard testimony from several
14 Manitowoc County Sheriff's deputies as to being
15 first on the scene. Do you recall what
16 department, that is, from what agency you were
17 asked to relieve what's now known as the scene
18 security?

19 A. It was a Manitowoc County sheriff's deputy that
20 was standing by the vehicle when I arrived.

21 Q. All right. To your knowledge, Deputy Tyson, were
22 you the first Calumet County officer -- I guess,
23 to state it more succinctly, were you the
24 individual who relieved Manitowoc County from
25 scene security responsibilities?

1 A. Yeah, my understanding is, I was the first
2 Calumet County deputy to take custody of the
3 vehicle.

4 Q. All right. At some point -- and I don't expect
5 you were involved in this decision, but at some
6 point were you made aware that security for the
7 RAV4 and for that general area of the Avery
8 property was to be either coordinated or taken
9 over by Calumet County?

10 A. Yes.

11 Q. I'm going to show you what's been received as
12 Exhibit No. 86. There is a laser pointer in
13 front of you. Could you tell the jurors, if you
14 remember, about what time it was that you took
15 over security of the RAV4, or security of that
16 area of the scene?

17 A. According to the crime scene log, when I checked
18 in with them, it was 5 minutes to 3, I believe.

19 Q. Can you show us about where this transition took
20 place and where were you standing that you took
21 over security of this area?

22 A. On the display over here?

23 Q. Sure.

24 A. All right.

25 Q. Do you need me to zoom in a little?

1 A. Maybe just a little bit, I'm sorry.

2 Q. I'm sorry. Let me -- I think -- I think even
3 defense counsel would agree that the lower left
4 hand corner now of this exhibit is what we have
5 now known as the car crusher. There's a pond
6 that's just about in the middle of the exhibit.
7 Does that orient you to the scene?

8 A. If the car crusher is right down there --

9 Q. Yes.

10 A. -- I think that would be going down the hill.
11 And it would be right about in this area over
12 here, I believe, is where I was requested to
13 stand by with the vehicle.

14 Q. How close to the vehicle were you standing; do
15 you recall?

16 A. Within a foot or two, just that I was not
17 touching it, brushing up against it, but standing
18 right there.

19 Q. Now, I'm going to fast forward just a minute and
20 I think you will see why, but later on that day,
21 were you given other responsibilities at that
22 crime scene location?

23 A. Yes.

24 Q. Any time between taking over security of the RAV4
25 and the time that you were relieved to perform

1 other duties, did you see any individuals, any
2 police officers, or any citizens, either tamper
3 with or enter this RAV4?

4 A. No. Several officers did come close to it,
5 because of the weather conditions; it had gotten
6 really dark, there was a mist in the area. Our
7 concern was, any evidence that could be on the
8 exterior of the vehicle. An agent, later
9 identified as Agent Fassbender, was concerned
10 about that as well. A tarp was located in an
11 attempt to protect it from the elements, from the
12 incoming storm. But extreme care -- and I mean
13 extreme care -- was used to make sure no officer
14 touched it, or even the tarp touched the vehicle.

15 Q. And that was one of your responsibilities?

16 A. Yes.

17 Q. Sergeant Tyson, do you know what a search warrant
18 is?

19 A. Yes.

20 Q. And sometime that afternoon, were you made
21 aware that a search warrant for the Avery
22 property itself, for the vehicles there on, the
23 residences, and the outbuildings, had been
24 obtained by a Manitowoc County judge?

25 A. Yes.

1 Q. Were you made aware that the search warrant
2 needed to be executed, that is, that searches had
3 to be performed that day?

4 A. Yes.

5 Q. In that regard, Sergeant Tyson, were you asked to
6 assist in any of those searches?

7 A. Yes.

8 Q. Who asked you or directed you to assist in those
9 searches?

10 A. The decisions were being made by Investigator
11 Wiegert from the Sheriff's Department in Calumet
12 and DCI Agent Fassbender. They informed me,
13 after everything was sorted through, and figured
14 out which teams were going to go where, they told
15 me I should go with Manitowoc County Sheriff's
16 Department over to Steven Avery's residence.

17 Q. Now, Sergeant Tyson, prior to being assigned to
18 this team, this search team, had anybody on the
19 scene asked you or discussed with you your levels
20 of expertise in evidence collection or
21 processing?

22 A. Investigator Wiegert is fully aware of, I guess,
23 my experience. He just informed me that I would
24 be requested to go with them to execute the
25 search warrant.

1 Q. All right. Now, you said that you were teamed up
2 with, or that you joined other officers; do you
3 remember who was in your team?

4 A. Yes, it was Lieutenant Jim Lenk, from the
5 Manitowoc County Sheriff's Department; Sergeant
6 Andy Colborn, from the Manitowoc County Sheriff's
7 Department; and Detective Dave Remiker, from the
8 Manitowoc County Sheriff's Department.

9 Q. Was there any discussion about what each of your
10 responsibilities were going to be and, I guess,
11 more specifically, was there a discussion about
12 who was in charge of this team?

13 A. It was told to me that no Manitowoc County deputy
14 should be alone on the property. Investigator
15 Wiegert told me my responsibility would be to go
16 with them into the Steve Avery trailer and to
17 document what they were doing, take notes, and if
18 evidence was seized by them, to take custody of
19 all the evidence at the end of the search
20 warrant.

21 Q. Do you know why a Calumet County deputy was put
22 in charge of the custody of any physical evidence
23 that might be obtained.

24 A. It was told to me that Investigator Wiegert would
25 be the lead investigator and that the

1 investigation was turned over to Calumet County
2 versus Manitowoc County.

3 Q. All right. Going into that scene, that is, going
4 into that first search effort that you did, was
5 that made clear to you?

6 A. Yes.

7 Q. And from your knowledge, or were you present, was
8 that made clear to the other members of your
9 team?

10 A. Yeah, there was no misunderstanding as far as who
11 was taking custody. There was no discussions, no
12 arguments, I should say, from anybody that I was
13 with. It was clear understanding of what was to
14 happen.

15 Q. All right. Were there other search efforts going
16 on, or were you made aware of other search
17 efforts in this entire location at the same time
18 that you and this team had been developed?

19 A. My understanding was there was a number of things
20 that were going on at the same time. You know,
21 our team was just designated to go down to
22 Steven's trailer, but there were other officers
23 being assigned different duties as well. What
24 those were, I really don't know. My
25 responsibility was my team and where we were

1 going to be going.

2 Q. Now, the kind of search that you were asked to
3 perform, were you given direction about that?

4 A. I guess I wouldn't really say direction; we were
5 to execute the search warrant. And talking with
6 the Manitowoc officers, it was more of a quick,
7 anything in the obvious, let's go through the
8 residence, see if we can find Teresa; anything to
9 do with Teresa, anything at all. But that's kind
10 of how the first search, I would classify it as.

11 Q. Let me ask you this, Sergeant Tyson, did you have
12 an understanding that either you or other police
13 officers would be reentering this residence?

14 A. Yes, it was commonly known that this was a scene
15 that was going to be held. And, you know, it was
16 7, I think 7:30 when we went through the front
17 door of Steven's residence and --

18 (Court reporter couldn't hear.)

19 A. I guess I'm not sure what was I -- where was I
20 going. I started with we were heading down to
21 the Steve Avery trailer.

22 Q. Right.

23 A. Right. It was raining out. It was pouring. We
24 were all drenched. But we got inside the
25 trailer. You know, it was 7:30 in the afternoon.

1 And, you know, the search had started at quarter
2 to 8. And it was a quick search, you know. We
3 were out of there within three hours.

4 Q. Now, for 16 people that have never probably done
5 a search, or excuse me, search warrant, you just
6 called a three hour search a quick search. Could
7 you explain that to the jury, what -- what's
8 quick about a three hour search?

9 A. Not knowing a lot of the information that was
10 later learned, you know, we're looking at this
11 whole area. Where is the crime scene? What
12 is -- is there a location exactly on the
13 property.

14 So when we're going through the house,
15 we're looking for things that are obvious to us,
16 any blood or anything like that. So to say that
17 you can search someone's bedroom within 30
18 minutes, okay, well, that's a quick search. And
19 you are talking the closet areas; you are talking
20 desk draws; you are talking under the bed. You
21 are talking a whole area.

22 And if you are looking for things in
23 specific, you know, that would mean, basically,
24 you would have to go through the closet, every
25 article of clothing removed, through the pockets.

1 It's going to take you a whole lot longer than
2 that to say that you thoroughly -- did a thorough
3 search.

4 Q. Let me ask you then, Sergeant Tyson, have you
5 been involved in thorough searches, searches that
6 you were looking for smaller items of evidence,
7 or trace evidence, or things like that before in
8 your career?

9 A. Yes. Working in the drug unit, you know, execute
10 search warrants, you are looking for a small pipe
11 or something, you have to be very thorough. You
12 have to go into areas where something like that
13 small could be. So it's a very detailed, very
14 thorough search when you are dealing with like
15 drug materials and things like that.

16 Q. And that first search, that is, the first search
17 that you and Lieutenant Lenk and Sergeant Colborn
18 and Detective Remiker did, would you have
19 considered that a thorough search, one of these
20 thorough searches that you are describing?

21 A. No. Like I said, half hour to go through a
22 bedroom and be out of that whole residence within
23 two and a half to three hours, that's a quick
24 search.

25 Q. All right. We're going to go through each of the

1 specific rooms that were searched by you that
2 evening.

3 ATTORNEY KRATZ: Judge, if you would like
4 me to do that I can, otherwise this might be a good
5 time to break.

6 THE COURT: Sounds like this might be a
7 good time to take our afternoon break, so we will do
8 so. Members of the jury, again, do not discuss the
9 case while you are on your break. We'll resume at 5
10 minutes to 3.

11 ATTORNEY KRATZ: Thank you.

12 (Jury not present.)

13 THE COURT: Counsel, you are going to get
14 some exhibits marked during the break?

15 ATTORNEY KRATZ: Yes, I would like to do
16 that, so it works a little quicker.

17 THE COURT: If it takes a little longer, it
18 takes a little longer, but I told the clerk you
19 would be doing it.

20 ATTORNEY KRATZ: Thank you.

21 (Recess taken.)

22 THE COURT: Mr. Kratz, you may continue
23 with your direct examination.

24 ATTORNEY KRATZ: Thank you, Judge.

25 DIRECT EXAMINATION CONTD

1 Q. Sergeant Tyson, you mentioned that you had gone
2 into the Avery trailer to commence a search of
3 that property; did all four team members enter
4 the residence at the same time.

5 A. Yes.

6 Q. Now, you mentioned that you were in charge of
7 both documentation as well as seizure or
8 collection of property; is that a fair
9 representation?

10 A. Yes. After it was collected, it would be turned
11 over to me for transport back to our facility.

12 Q. Before an item was recovered, were you called to
13 the location where it may have been found.

14 A. Yes, for example, when they were searching the
15 bedroom, if Sergeant Colborn located something,
16 he would immediately draw my attention, I'm
17 standing right there. So I could see what they
18 were doing. If he found something, I could see
19 that he found it. And I would document the exact
20 time that he found it and, you know, and then it
21 was seized.

22 Q. What was the first room that you searched?

23 A. After the photography of the inside of the
24 residence was complete, the decision was made to
25 start in the south bedroom. And that was later

1 identified as Steven Avery's bedroom.

2 Q. You mentioned after the photography was complete,
3 it sounds like something first happened before
4 the search; is that right?

5 A. Yeah. Upon entry into the residence, Sergeant
6 Colborn had a 35 mm camera and Detective Remiker
7 had a digital camera. And they just -- once we
8 got in there, they just began photographing each
9 of the rooms. And every room inside the trailer
10 was photographed. After that was finished, then
11 the decision was made to start the search in
12 Steven's bedroom.

13 Q. Did you accompany them through that search?

14 A. Yes.

15 Q. Did you enter the bedroom as well?

16 A. Yes.

17 Q. Could you describe this bedroom for us, please.

18 A. Sure. You walk in through the doorway.
19 Immediately to the right there was a night stand
20 and then the bed. Straight ahead of that, to the
21 left, there was a small bookcase, a desk. There
22 was windows on the back wall. You go along the
23 bed, there was a dresser in the corner and the
24 closets were up against the opposite wall from
25 where the door was.

1 Q. How large was this bedroom?

2 A. Rather small bedroom, actually.

3 Q. Four grown men were in this room; is that right?

4 A. Yes.

5 Q. Describe that for the jury, if you can.

6 A. Well, as we walked in, Detective Remiker and
7 Lieutenant Lenk, they said, well, because it was
8 a small confined area, we're going to start over
9 on the side where the closet sat. We will start
10 going through that stuff.

11 Sergeant Colborn concentrated his search
12 on the book shelf and the desk on the opposite
13 side of the room. So the bed was in the middle,
14 two on that side, two on this side. I'm standing
15 directly inside the doorway, watching what they
16 were doing.

17 Q. Were they in constant view of you?

18 A. Yes.

19 Q. All right. Let's talk about some of the things
20 that were observed in the bed -- excuse me -- in
21 the bedroom. First exhibit I'm going to ask you
22 to take a look at is Exhibit No. 163. Can you
23 tell us what that is, please.

24 A. The very first picture here?

25 Q. Yes.

1 A. Okay. This would be a view of Steven Avery's
2 bed.

3 Q. Go ahead.

4 A. This is a view of Steven Avery's bed and the
5 night stand directly next to the bed.

6 ATTORNEY KRATZ: And just so the -- the
7 record is clear, unless something unusual occurs or
8 is alerted, your Honor, by counsel, so that this
9 witness doesn't have to talk about evidence twice,
10 Mr. Strang has been kind enough to allow the item to
11 be projected at the same time as the witness
12 testifies about it, so I appreciate that very much.

13 THE COURT: All right. Is that correct,
14 Mr. Strang?

15 ATTORNEY STRANG: Yes, it's actually
16 Mr. Buting.

17 THE COURT: Mr. Buting.

18 ATTORNEY BUTING: That's correct.

19 ATTORNEY KRATZ: Oh, I'm sorry.

20 Q. (By Attorney Kratz)~ Sergeant Tyson, the bed in
21 Steven Avery's bedroom, the exhibit that is 163,
22 looks like it has some bedding on it; is that
23 correct?

24 A. Yes.

25 Q. And there seems to be something above the bed,

1 can you tell what you that is.

2 A. Directly above the bed was a gun rack, and it did
3 house two long barreled firearms inside the
4 mounting brackets.

5 Q. Can you describe those firearms for us, please.

6 A. They were long guns. They weren't hand guns.
7 They were long guns. I didn't walk up and remove
8 them or physically check them out or anything,
9 but I could see that they were firearms up on the
10 wall.

11 Q. All right. Did you later come to have either a
12 closer inspection, or to become familiar with
13 those guns?

14 A. I never personally looked at the firearms after
15 they were collected. They weren't collected that
16 evening with the officers that I was with. There
17 was a different officer, I believe, that
18 collected those firearms.

19 Q. What were the guns on?

20 A. The gun rack, they were hanging on the wall.

21 Q. And Exhibit No. 166, which is actually a little
22 bit of a gap, if you would set 164 and 5 to the
23 side, I would appreciate it; 166 is being
24 projected, can you tell us what that is, please.

25 A. That was the gun rack that was hanging directly

1 above the bed.

2 Q. Also going to have Investigator Wiegert help me
3 through this process since there's lots of
4 evidence to show the jury. Investigator Wiegert
5 is going to hand you what's been marked for
6 identification as Exhibit 196; can you show that
7 and tell the jury what that is, please.

8 A. This is the gun rack that was mounted on the wall
9 directly above the headboard of Steven's bed.

10 Q. And, again, were those the -- was that the rack
11 in which those two long guns were located?

12 A. Yes.

13 Q. And the last photo I want you to look at is
14 Exhibit 167. It's in front of you and now the
15 jury can see that. Can you tell us what 167 is?

16 A. Looks like it's the same gun rack that's in front
17 of me right now.

18 Q. Just an evidence photo that is taken here at the
19 sheriff's department?

20 A. Yes.

21 ATTORNEY KRATZ: Set that over there.

22 Thank you, Investigator.

23 Q. (By Attorney Kratz)~ In this bedroom, did you
24 notice other pieces of furniture?

25 A. There was the bookcase; there was the desk; there

1 was a dresser.

2 Q. Okay. Let's do these one at time. First, the
3 bookcase, and I'm going to do this in two
4 different areas of inquiry. As an evidence
5 technician, were you not only responsible to
6 observe items on the 5th of November, but did you
7 later return to Mr. Avery's residence with the --
8 with a search warrant to seize this very item.

9 A. Yeah, I believe that was December 9th.

10 Q. The first thing I'm going to have you do is look
11 at Exhibit 166, which is on the board -- I'm
12 sorry, 168, which is on the wall here, tell the
13 jury what that is, please.

14 A. That's the bookcase that was up against the wall
15 as you walked into the bedroom. It was the very
16 first piece of furniture, I believe, on the
17 floor. It was sitting right next to the desk,
18 which was in the corner.

19 Q. You said that was seized at some time?

20 A. Yes.

21 Q. When was that?

22 A. That particular piece, I believe, was seized on
23 December 9th.

24 Q. All right. And were you involved in the seizure
25 of it; in other words, did you go to the Avery

1 residence and take possession of this piece of
2 furniture?

3 A. Yes, C.I. Agent Fassbender, myself, and there
4 was, I think, two more agents from the Department
5 of Criminal Investigations. We did go out there
6 on the 9th and did seize that particular piece of
7 evidence.

8 Q. Now, Sergeant Tyson, there's going to be some
9 testimony, I expect, in the next couple of days
10 about this but, did you have occasion to make
11 observations at Mr. Avery's bedroom of the back
12 panel or the rear of this particular piece of
13 furniture?

14 ATTORNEY BUTING: Objection as to time of
15 these observations, it's unclear.

16 ATTORNEY KRATZ: I can -- I can ask
17 specifically when, Judge.

18 THE COURT: Very well.

19 Q. (By Attorney Kratz)~ On the 9th of December, did
20 you have occasion to observe the back panel of
21 this piece of evidence?

22 A. Yes. We got into the bedroom to seize it. I did
23 photograph it prior to seizing it. I did a side
24 view, front view. And the side view, you can see
25 the backing of it was coming out, the nails were

1 protruding from the backing of the cabinet.

2 Q. You said that you took a photo of that. In fact,
3 Exhibit 169, is that a photo of that back panel?

4 A. It appears to be that, yes.

5 Q. If you take your laser pointer, please, and tell
6 the jury what it is that we're looking at.

7 A. This here would be the backing to the bookcase.
8 And you can see the distance here where it's
9 pulled away from the back of the bookcase.

10 Q. Now prior to taking this particular photo and
11 prior to making that observation, in fact, did
12 you in any way manipulate this piece of
13 furniture, or pull the panel out, or anything
14 like that?

15 A. No, we didn't touch the back of it at all, didn't
16 even move it. I just started photographing it
17 prior to collecting it.

18 Q. I notice in the bedroom that there was a night
19 stand. I'm showing you Exhibit No. 170, does
20 that show a picture of the night stand?

21 A. Yes, it's right there.

22 Q. And after having been seized, was an evidence
23 photo taken; in other words, at the sheriff's
24 department of that night stand, Exhibit 171?

25 ATTORNEY BUTING: Objection, as to the

1 timing of all this. If he could maybe -- if we're
2 going back and forth with those from November, to
3 December, or later, I think we should identify when
4 these are taken.

5 THE COURT: I agree.

6 Q. (By Attorney Kratz)~ Do you know when this photo
7 was taken, No. 171?

8 A. I don't know the exact date. The person that
9 assisted me with the evidence, his name is Deputy
10 Jeremy Hawkins, he was responsible for all the
11 photography. So I did assist him, but the exact
12 date, I would have to refer back to my report.

13 ATTORNEY KRATZ: I think, Judge, this is
14 the only item that wasn't seized on that day, from
15 what I see after that. Let me just see if there's
16 going to be an objection to this one.

17 Q. (By Attorney Kratz)~ Sergeant Tyson, do you know
18 when the night stand -- when this piece of
19 furniture was seized?

20 A. I believe that was after the search warrant on
21 March 1st or 2nd.

22 Q. Of 2006?

23 A. Correct.

24 Q. This bedroom of Steven Avery --

25 ATTORNEY BUTING: Counsel, could we just --

1 the prior photograph, could we, please, just get a
2 date as to when that was taken. You showed the
3 night stand in the room.

4 ATTORNEY KRATZ: Sure.

5 Q. (By Attorney Kratz)~ The night stand in the room,
6 did that look the same or similar as it did on
7 the 5th of November? The prior picture, that
8 would be Exhibit No. 170?

9 ATTORNEY BUTING: Can you put that up?

10 ATTORNEY KRATZ: If I could, I would.
11 There you go.

12 Q. (By Attorney Kratz)~ That's Exhibit 170, does
13 that look the same or similar as it did when you
14 first searched it on the 5th of November?

15 A. Yes, it's in the same location, looks about the
16 same.

17 Q. All right. Mr. Avery's bedroom carpeted, or have
18 a rug, or hardwood floors, or what kind of
19 flooring was that?

20 A. It was carpeted.

21 Q. I'm going to show you Exhibit No. 172, ask you to
22 take a look at the carpeting. Does that look the
23 same or similar as the carpeting did on
24 November 5th?

25 A. Yes.

1 Q. Sergeant Tyson, Exhibit 172, do you know when
2 that picture was taken?

3 A. That picture would have had to have been taken
4 after December 9th, because the bookcase is not
5 there. So that would have had to have been
6 March 1st.

7 Q. And as far as law enforcement involvement, that
8 was, as far as you were concerned, December 9th,
9 you folks were there; is that right?

10 A. Yes.

11 Q. And March 1st, were you also the individual that
12 was in charge of the evidence collection and
13 technician responsibility inside of Mr. Avery's
14 trailer?

15 A. Yes.

16 Q. So it's your understanding that this photo, that
17 is 172, was taken on March 1st?

18 A. I said it would have to be after December 9th,
19 so, yeah, next time we were there was, I believe,
20 March 1st.

21 Q. And the question, at least for this photo is, did
22 the carpet look the same on November 5th and
23 December 9th and March 1st?

24 A. Yeah, looks to be the same carpeting that was in
25 the room in November of 2005 as it was March of

1 2006.

2 Q. While searching Mr. Avery's bedroom, were there
3 any items of restraint that were found?

4 A. Yes. Sergeant Colborn located leg shackles and
5 handcuffs.

6 Q. Did -- Were those items seized?

7 A. Yes.

8 Q. Let me first show you what's been marked as
9 Exhibit No. 204. Tell the jury what that is,
10 please.

11 A. Appears to be the handcuffs that would have been
12 seized by Sergeant Colborn on November 5th, 2005.

13 Q. Did you see where these items were seized from?

14 A. If I recall correctly, Sergeant Colborn found
15 them in the bookcase in Steven's bedroom.

16 Q. All right. You said that there was another item
17 of restraint that was found as well?

18 A. Yes, leg irons.

19 Q. Let me show you what's been marked for
20 identification as Exhibit No. 203; tell the jury
21 what that is, please.

22 A. That would be the leg irons that were also found
23 by Sergeant Colborn. And I believe they were
24 found in the same location as the handcuffs, in
25 this bookcase in his bedroom.

1 Q. All right. Sergeant Tyson, after their seizure,
2 and so that we don't have to bring these items
3 into court, do you know if photographs were
4 taken, that is, evidence photographs were taken
5 of these two items?

6 A. Yes.

7 Q. I show you Exhibit No. 173, ask if you recognize
8 that photograph.

9 A. It would be an evidence photograph. I know that
10 because of the white paper in the background.
11 All the evidence that we took care of at the
12 sheriff's department we used freezer paper and
13 that would be consistent with what I see.

14 Q. Of the handcuffs?

15 A. Yes.

16 Q. And 174, what is that?

17 A. That would be the leg irons.

18 Q. Anything else seized that first evening from
19 Mr. Avery's bedroom, as far as you recall?

20 A. Yes.

21 Q. Well, let -- let me just -- let me just
22 specifically ask about -- about something called
23 identifiers. This is more of a search term and
24 please bear with my clumsy question. But are
25 efforts made to identify whether or not a certain

1 person lives in a particular residence when you
2 search it?

3 A. Yes. When we search residences, you have to show
4 that a person lives in that residence. So we
5 look for any piece of mail that would have the
6 person's name, along with their mailing address;
7 could be a magazine, could be a phone bill, could
8 be any kind of correspondence you get through the
9 mail with your address on it.

10 Q. Investigator Wiegert is going to hand you what's
11 been marked Exhibit No. 200, I need you to tell
12 the jury what Exhibit 200 is, please.

13 A. It's a University of Wisconsin Law School
14 envelope addressed to Steven Avery at 12390 Avery
15 Road, Two Rivers, Wisconsin.

16 Q. Was that the residence that you were searching on
17 the 5th of November?

18 A. Yes.

19 ATTORNEY BUTING: I'm sorry, what's the
20 number, exhibit number?

21 INVESTIGATOR WIEGERT: The exhibit
22 number is 200.

23 ATTORNEY KRATZ: Oh, 200?

24 ATTORNEY BUTING: Is that just an envelope?

25 A. That would be the correct address for Steven,

1 12932, or something like that. So that envelope
2 right there, I think would have the Avery --
3 maybe his mother and father's address on it, but
4 it was found inside the trailer.

5 Q. All right. But it had Steven's name on it and
6 found inside the trailer?

7 A. Yes.

8 Q. After searching the bedroom, what was the next
9 room that the four of you searched?

10 A. The bathroom.

11 Q. And could you tell the jury what, if anything,
12 was found in the bathroom?

13 A. Sure. There was a blood -- possible bloodstain
14 on the linoleum floor that Sergeant Colborn had
15 located. Just back up a little bit here, because
16 as they were working in Steven's bedroom,
17 Lieutenant Lenk and Detective Remiker were
18 finishing up with what they had to do. Sergeant
19 Colborn was finding all the stuff that we have
20 just seen.

21 Lieutenant Lenk told me he was going to
22 leave the bedroom and go into the bathroom, just
23 to see what was in the bathroom. So I
24 repositioned myself into the hallway. I could
25 see Detective Remiker and Sergeant Colborn; I

1 could also see Investigator Lenk in the bathroom.

2 Q. As the individual documenting what was now a
3 transition from one room to the other, you were
4 in a position to see both; is that right?

5 A. Yes.

6 Q. The bathroom, can you tell us where it is
7 located, compared to the bedroom.

8 A. The very next room. If you were to walk out of
9 the bedroom, go out in the hallway a couple feet,
10 if that, and it's right there.

11 Q. The hallway that you positioned yourself in,
12 would you be able to see both rooms?

13 A. Yes.

14 Q. Tell me what, if anything, was found in the
15 bathroom?

16 A. The possible blood spot on the linoleum floor, as
17 I said, was found by Sergeant Colborn. He
18 photographed it and it was collected with a swab.

19 Q. Collected with a swab, well, let's talk about
20 that a little bit. As an evidence tech, what
21 does collection of something like a blood spot
22 entail?

23 A. Because it's dried, and it's on the floor, what
24 you do is you can use distilled water and use a
25 sterile swab, which is evidence material that we

1 get. You know, they are sealed, you open them
2 up, take the distilled water, you drop two to
3 three drops on the cotton applicator at the end
4 of the swab. And then you take that swab and you
5 go into the blood stain itself and you are able
6 to pick up the bloodstain by just dampening the
7 end of the sterile swab.

8 Q. Was that done once or more than once in the
9 trailer?

10 A. There were several swabs that we took inside the
11 trailer.

12 Q. By the way, Sergeant Tyson, does that process,
13 that is, the collection of blood or other fluids,
14 does that take some training or experience on an
15 evidence tech's part?

16 A. Yes. You have to know certain things. For
17 example, if you have got the distilled water
18 applicator, it cannot touch the cotton swab. You
19 cannot make contact with it. If so, the swab is
20 no good, your bottle of distilled, throw it in
21 the garbage. It's useless at that point. So you
22 have to have a little bit of training and know
23 exactly what you are doing to avoid possibly
24 tainting the swab.

25 Q. All right. After searching the bathroom, where

1 did you folks go?

2 A. The bathroom was being searched by Lieutenant
3 Lenk and the bedroom was being completed by
4 Sergeant Colborn and Detective Remiker. I had
5 noticed some spots on the door directly behind
6 me, which was an interior/exterior door to go out
7 of the residence. So I drew the attention to
8 Detective Remiker and Sergeant Colborn,
9 Investigator Lenk, to that area. And they did
10 concentrate their efforts, then, photographing
11 the door. And swabs were taken of some of the
12 stains that were on that door as well.

13 Q. What did you do then?

14 A. After that was done, the search then continued
15 and they entered the bedroom, which was the only
16 other bedroom in the residence. And that would
17 be located between the living room and the
18 bathroom.

19 Q. That would be called the -- what bedroom did you
20 call that?

21 A. We referred to it as the spare bedroom. It was
22 used more for -- wasn't being slept in, I guess
23 you could say, more of a storage room, but there
24 was a bed in the room.

25 Q. All right. After that room was searched and

1 processed, what room was next?

2 A. Then it was the living room.

3 Q. Were there any items, prominent items of

4 furniture in the living room?

5 A. You got your couch and then there was a computer

6 desk in the room.

7 Q. I'm going to direct your attention to Exhibit

8 No. 175, can you tell us what that is, please.

9 A. That's the computer desk area in the living room.

10 Q. Now, there's a lot to look at in Exhibit 175, can

11 you just generally orient us to what we are

12 looking at, please, using the laser pointer.

13 A. Sure. He's got his television, box on top of

14 there, and here you got your computer, printer.

15 Q. Speak up a little bit.

16 A. I'm sorry. You have got the television right

17 here. Then you got your computer monitor,

18 printer. Okay. I think the tower was down

19 underneath it on the floor.

20 Q. All right. I'm going to hand you what's been

21 marked for identification as Exhibit No. 198;

22 show that to the jury and tell them what that is.

23 A. That's a pocket size notebook. Detective Remiker

24 had located this item, was in one of the drawers

25 inside the desk. He had pulled it out, opened it

1 up to the second page and this is what he saw.

2 Q. This has already been introduced as Exhibit 148,
3 let me just get to that. Tell us what that
4 reads.

5 A. It's 920-737-4731.

6 Q. And that's in what color ink, if you know?

7 A. Green.

8 Q. And black ink, is there something else written on
9 there?

10 A. Right below that, in black ink, are the words,
11 back to patio door.

12 Q. Did you become aware of whose phone number that
13 was?

14 A. Yes. Detective Remiker stated he immediately
15 recognized that number to be the cell number for
16 Teresa Halbach. After he told me that, I said,
17 yeah, that does look familiar. It is, that is
18 the number.

19 Q. And then a photograph of that having been taken
20 at the sheriff's department, that's Exhibit
21 No. 176, I believe; can you tell us what that is,
22 please.

23 A. That's exactly what you saw. That's an evidence
24 photo taken at the sheriff's department.

25 Q. I'm going to hand you now what's been -- Well, we

1 might as well get these two out of the way,
2 Exhibit 197 and 199. Tell the jury what those
3 are, please.

4 A. Two pocket notebooks.

5 Q. Also seized from the computer desk area?

6 A. I believe that would be correct.

7 Q. Sergeant Tyson --

8 ATTORNEY BUTING: Wait, slow down, can you
9 identify that?

10 ATTORNEY KRATZ: I'm sorry.

11 Q. (By Attorney Kratz)~ They are two different
12 colors, which color is 199?

13 A. The red one would be 199, the green one being
14 197.

15 Q. All right. Thank you, very much. I will have
16 Investigator Wiegert hand you what's been marked
17 as Exhibit 194; can you tell us what that is,
18 please.

19 A. That's a for sale sign that was found by
20 Detective Remiker in the desk that was located in
21 the living room.

22 Q. Can you show us the for sale sign. Is there
23 something written on the back?

24 A. On the back there is an address of 3302 Zander
25 Road. And directly underneath it, once again,

1 shows telephone number 920-737-4731, which
2 Detective Remiker once again said, that's Teresa
3 Halbach's number.

4 Q. Exhibit 149, which I'm showing now, is already
5 part of the case and has been admitted into
6 evidence. I'm now showing you what's Exhibit
7 177; what is that?

8 A. Looks like a scene photograph taken by either
9 Colborn or Remiker. And, obviously, I think it
10 was pulled out a little bit so you can see what
11 it was, but I think it was in further. I think
12 it was just pulled out and photographed it, to
13 show that it was found there.

14 Q. And Exhibit 178, is that a picture of what we saw
15 was the front of the for sale sign?

16 A. Yes.

17 Q. And 179, would be the back; is that right?

18 A. That's correct.

19 Q. Once again, 737-4731 was Teresa Halbach's
20 telephone number; is that right?

21 A. Yes.

22 Q. Now, without going into any details at all, was
23 it readily apparent to you what the address 3302
24 Zander Road was?

25 A. No.

1 Q. Sergeant, I'm now going to hand you what's been
2 marked for identification as Exhibit 202, ask if
3 you can tell us what that is, please.

4 A. It's an Auto Trader Magazine.

5 Q. Where was that found?

6 A. Detective Remiker located this on top of the
7 computer desk in the living room.

8 Q. Is it opened to a particular page?

9 A. Yes, page 114.

10 Q. And does that have any significance or does it
11 just happened to be open to that page?

12 A. I guess I'm not exactly sure what the
13 significance is.

14 Q. That's fine. The -- Exhibit No. 150, this is
15 already in evidence, is this how that particular
16 Auto Trader looked on the computer desk?

17 A. I believe that's -- yeah, that's the scene
18 photograph.

19 Q. And Exhibit 180 -- By the way was there more than
20 one Auto Trader Magazine on that desk?

21 A. I believe there were a couple.

22 Q. All right. Is Exhibit 180 one of those pictures?

23 A. Yes.

24 Q. And, finally, Exhibit 181, we talked about some
25 scene -- or excuse me, evidence photos; is that

1 181?

2 A. Yes, that would be an evidence photo.

3 Q. And I'll have Investigator Wiegert hand you
4 Exhibit No. 201, tell us what this was and where
5 was it found, please.

6 A. Number 201 is a bill of sale for Auto Trader
7 Magazine. I believe this was found by Detective
8 Remiker and this was also either on or in the
9 computer desk. I'm not exactly sure.

10 Q. I'm going to show you Exhibit No. 182, is that a
11 photo of that bill of sale on the desk?

12 A. Yes.

13 Q. Exhibit 151, already in evidence, does that look
14 like one of those evidence photos, again?

15 A. Yes.

16 Q. Sergeant Tyson, about what time of night was it
17 that this is getting to be; in other words, when
18 you got through the bedroom and the bathroom, and
19 through the living room, about what time were
20 those rooms all completed?

21 A. It was approaching the 10:00 hour at night.

22 Q. Investigator Wiegert is now going to hand you
23 what's been marked as Exhibit No. 195; and ask
24 you to identify that, if you can.

25 A. It's a bleach bottle.

1 Q. And have you seen that before?

2 A. Looks like possibly the one that was in the
3 bathroom up on a shelf.

4 Q. Whose bathroom and whose shelf?

5 A. I'm sorry, Steve Avery's bathroom, on a shelf.

6 Q. All right. We'll talk about evidence photos
7 again so we don't have to lug these things into
8 the courtroom. I'm showing you what's been
9 marked as Exhibit 183. Tell us what that is,
10 please.

11 A. It's a evidence photo of the bleach bottle.

12 Q. What's Exhibit No. 184?

13 A. The carpet cleaner.

14 Q. Have you seen that before?

15 A. I did. I believe this was in that spare bedroom
16 in Steven's residence.

17 Q. And after being seized, was a photo taken of that
18 at the sheriff's department?

19 A. Yes, that would be an evidence photo right here.

20 Q. 184; is that right?

21 A. Yes.

22 Q. Just to complete the next six pictures, although
23 we talked about them, these photos were a little
24 bit out of order. We talked about some blood
25 spots in the bathroom. I just want to show the

1 jury some pictures of those, tell them about
2 Exhibit 185, please.

3 A. Exhibit 185 appeared to be the linoleum floor in
4 the bathroom. And see a dried stain on the
5 floor, right there.

6 Q. Was that one of those spots that was swabbed or
7 collected from what you talked about?

8 A. Yeah, I believe Detective Remiker did swab that
9 stain.

10 Q. We'll hear from him later in this case, but you
11 were present when all that processing was going
12 on?

13 A. Yes.

14 Q. What's Exhibit 186?

15 A. 186 looks like it's a close up of the same stain.

16 Q. All right. And 187?

17 A. Looks like there's some stains on the -- if
18 that's the door? I'm not exactly sure. Looks
19 like some stains on a dark colored surface.

20 Q. I tell you what I'll do, I will save that for
21 Detective Remiker. Does that sound like a good
22 idea?

23 A. Yeah.

24 Q. All right. And you talked about those
25 identifiers before. I show you Exhibit 188, tell

1 us what that is, please.

2 A. This would be the letter that was inside of the
3 envelope that you saw, which wears the
4 identifiers from the University of Wisconsin Law
5 School, addressed to Steven Avery.

6 Q. Exhibit 189?

7 A. Also an envelope showing the address of
8 Mr. Avery, but being 12930.

9 Q. Does that look like it's taken at the scene?

10 A. Yes.

11 Q. Now, looks like somebody is wearing gloves in
12 that scene, maybe describe that for the jury.
13 What's that for?

14 A. All of us that were inside the residence, before
15 you even make entry, you put gloves on your hands
16 as to try not to leave any of your stuff behind,
17 is what it's called. You don't want to be
18 touching things with, you know, your bare hands.
19 So you wear gloves to make sure you are not
20 tainting the scene.

21 Q. And, finally, we have been talking about evidence
22 photos, Exhibit No. 190, what is that?

23 A. This would be the envelope from the University of
24 Wisconsin Madison Law School, addressed to Steven
25 Avery.

1 Q. All right. Now, at any time during the search,
2 at least when you entered the search sometime --
3 about what time was it that you entered, I'm
4 sorry?

5 A. We entered his residence, it was 7:30 p.m.

6 Q. And from 7:30 p.m. until you left the
7 residence -- What time did you leave?

8 A. We left at 10:05 p.m.

9 Q. Any time between 7:30 and 10:05, did either you,
10 Detective Remiker, Lieutenant Lenk, or Sergeant
11 Colborn ever leave that residence?

12 A. No.

13 Q. At any time during the search of the residence on
14 the 5th of November, did Lieutenant Lenk,
15 Sergeant Colborn, or Detective Remiker, ever take
16 any items of property from that location?

17 A. No, they may have assisted carrying the stuff out
18 at the end of the evening to place it in
19 Detective Remiker's squad; I was with them. So
20 they may have assisted carrying stuff out,
21 putting it in the backseat, but it was with me.
22 And they did give me a ride back up to the
23 Command Post and I personally unloaded all the
24 objects and put them in my squad car.

25 Q. What the record hasn't reflected and what the

1 jury hasn't seen, each one of these evidence
2 items were in a sealed bag; is that right?

3 A. Yes. Lieutenant Lenk had -- was in charge of
4 putting everything inside the bags, so they were
5 secured, each individual piece. Those items were
6 then taken out to the squad and turned over to me
7 to be taken to the sheriff's department.

8 Q. All right. Sergeant Tyson, I'm going to direct
9 your attention -- this is a little bit out of
10 order, but since it's next on my photo list,
11 that's where I'm going. On April 3rd of 2006,
12 were you asked to make contact with Teresa
13 Halbach's RAV4 vehicle?

14 A. Yes.

15 Q. Can you tell the jury the purpose of that
16 contact, please.

17 A. Sure. Investigator Wiegert and Agent Fassbender
18 requested that Deputy Hawkins and myself go out
19 to where Teresa's vehicle was. They wished for
20 us to do DNA swabs of the driver's door, the
21 passenger door. They wanted a swab done of the
22 hood latch to the vehicle, as well as the battery
23 cables under the hood.

24 Q. All right. And DNA swabs, what exactly is that;
25 what are you talking about?

1 A. Pretty much the same as swabbing for blood, only
2 you can't see anything. You are looking for any
3 type of DNA, be it skin cells, or any kind of
4 sweat, you know, anything that's DNA.

5 So what we're doing is kind of the same
6 procedure. We're taking distilled water,
7 dropping it on the end of the cotton swabs. And
8 you just swab the area to hopefully pick up DNA,
9 if it's there.

10 Q. Okay. We're going to hear from the analyst that
11 is on the other side of that process, but did
12 you, in fact, do that on the 3rd of April?

13 A. Yes.

14 Q. We're going to have Investigator Wiegert have
15 marked, actually, a package. I'm not going to
16 have it opened, but we'll have the package
17 marked.

18 (Exhibit No. 205 marked for identification.)

19 ATTORNEY KRATZ: What's the number?

20 INVESTIGATOR WIEGERT: 205.

21 Q. (By Attorney Kratz)~ He's going to hand you
22 Exhibit No. 205, can you tell us what that is,
23 please.

24 A. Number 205 is the actual swab containing possible
25 DNA evidence that was taken from the hood latch

1 of Teresa Halbach's vehicle on April 3rd.

2 Q. Can you tell us where a hood latch is, especially
3 on a RAV4?

4 A. It's right underneath the hood itself. You pop
5 the hood latch thing inside and you have to undo
6 it.

7 Q. Pop the hood latch thing inside, that sounds like
8 a law enforcement term. What are talking about?

9 A. You have to go inside the vehicle to release the
10 hood latch so you can get in to manipulate the
11 actual hood latch lever to get the hood open.

12 Q. I'm going to show you Exhibit No. 191; tell us
13 what we're looking at here.

14 A. Looks like the front of Teresa Halbach's vehicle.

15 Q. And 192 is a close up of something; what is that?

16 A. The hood latch.

17 Q. And using your laser pointer, can you tell the
18 jury what you did on April 3rd with exhibit -- or
19 what's depicted on Exhibit 192.

20 A. Sure. This area right here would be the
21 releasing mechanism for the hood latch. So what
22 I had done is took my swab, placed some distilled
23 water on it, and I swabbed the front and back of
24 this piece right here.

25 Q. Now, to get at that particular release lever or

1 that latch, how do you do that?

2 A. You had to go into the vehicle, pull the release.

3 And once the hood goes up a little bit, you are

4 able to get in there and make the hood go up.

5 Q. To get in where?

6 A. To that area.

7 Q. Do you have to reach inside of something?

8 A. Yes, you have to go in between the hood and the

9 frame to release the lever and make the hood go

10 up.

11 Q. What time did you finish your search

12 of Mr. Avery's trailer?

13 A. On November 5th?

14 Q. Yes, I'm sorry?

15 A. 10:05 p.m.

16 Q. And after 10:05 p.m., then, were you given any

17 further responsibilities at the Avery salvage

18 property?

19 A. After I cleared, we went back to the command

20 center. I off loaded all the evidence that was

21 seized out of Steven's trailer, secured it into

22 my squad car, made contact with Agent Fassbender

23 and Investigator Wiegert, and told to transport

24 it back to the sheriff's department and to be

25 back at the scene the next morning for further

1 instructions.

2 Q. Kind of a long day?

3 A. Yes.

4 Q. The next day, that is, Sunday, the 6th of
5 November, Sergeant Tyson, did you return to that
6 scene?

7 A. Yes.

8 Q. And what were your duties on the 6th of November?

9 A. On the 6th of November, I made contact with
10 Investigator Wiegert and Agent Fassbender. My
11 responsibilities on the 6th, I was teamed up with
12 Detective Sergeant Brian Swetlik, Detective Jeff
13 Tech, and Patrol Officer Rob Block from the city
14 of Manitowoc Police Department. Our duties that
15 day were to search a trailer that had not been
16 searched yet. They didn't believe anybody lived
17 in it, it was more for housing vehicle -- vehicle
18 parts and things like that, so.

19 Q. I'm sorry to interrupt you, Sergeant, but these
20 three city of Manitowoc officers, did they have
21 any specialized training that you knew?

22 A. Yes. Rob Block was a patrol officer with the
23 city of Manitowoc. He was an evidence technician
24 and Jeff Tech was a detective and Brian Swetlik
25 was also a sergeant detective.

1 Q. By the way, I don't think we mentioned this, but
2 do lieutenant Lenk, Sergeant Colborn and
3 Detective Remiker have any specialized training
4 that you know of?

5 A. Detective Remiker I know for sure did; he had all
6 the evidence supplies consistent with being an
7 evidence technician.

8 Q. And the others, we'll wait till they testify to
9 their qualifications; is that right?

10 A. (No verbal response.)

11 Q. Okay. On the 6th, then, matched up with these
12 other evidence techs, what were you asked to
13 search on the 6th?

14 A. Was the trailer that was situated between Barb
15 Janda's residence and Steven's parents'
16 residence. We did go into that trailer. It was
17 relatively quick because there was nothing of
18 evidentiary value that we could see inside the
19 trailer.

20 We were then requested to concentrate
21 our efforts in the fenced in areas of the Avery
22 property; check the outbuildings, there were I
23 think three different buildings; look for any
24 possible evidence in those outbuildings. And,
25 then, the final thing was -- to do was to execute

1 the search warrant in Delores and Al Avery, their
2 residence.

3 Q. Did you do anything else on the 6th?

4 A. I believe it was the outbuildings and the search
5 warrant at Steven's mother and father's
6 residence.

7 Q. And although we hear about a lot of people doing
8 a lot of things in a lot of different places, is
9 there anything that you can note for the jury
10 that had any substantial evidentiary value found
11 in any of those searches?

12 A. There was nothing -- nothing that was found to be
13 of evidentiary value.

14 ATTORNEY BUTING: Objection as to the form
15 of the question, is he talking about searches that
16 he was involved in?

17 ATTORNEY KRATZ: Yes, just him, sorry.

18 ATTORNEY BUTING: Okay.

19 Q. (By Attorney Kratz)~ And we're not going to waste
20 any more time on the 6th, let's move to the 7th,
21 ask what your responsibilities were that day?

22 A. The morning of the 7th, I was paired back up
23 again with Sergeant Colborn and Lieutenant Lenk.
24 We were originally assigned, first thing was to
25 go down to a maroon colored van, which was parked

1 outside of Barb Janda's residence.

2 I was informed that that van was the van
3 that Teresa Halbach had come onto the property to
4 photograph. What was requested of us was to take
5 a look inside the van to see if we could find
6 anything of evidentiary value inside the van or
7 outside the van.

8 We did search the van, found nothing of
9 evidentiary value. I did collect a belt and that
10 was seized as possible evidence. And so, the van
11 itself didn't provide nothing of evidentiary
12 value.

13 Q. Before we leave that topic, I'm going to show you
14 a photograph, already been admitted, Exhibit
15 No. 59. Tell us what we're looking at here,
16 please.

17 A. Here we have got Steven's trailer, the garage.
18 Here is the van that I was just talking about.
19 And Barb Janda's residence, this would be her
20 driveway right here.

21 Q. We talked about searching a van with Lieutenant
22 Lenk, does Exhibit No. 59 document that exact
23 activity, or don't you know?

24 A. I'm sorry, what was the question.

25 Q. You talked about searching this van with

1 Lieutenant Lenk, does Exhibit 59 document that?

2 A. Yes, this shows the van, shows the door being
3 open; there's me and there's Mr. Lenk.

4 Q. All right. What were your next duties on the
5 7th?

6 A. After we were finished with that, it was my
7 understanding, although I didn't see it,
8 apparently the fire departments had been called
9 out to the scene. They were going through the
10 junkyard, I think the day before, using their
11 equipment to pry open all the trunks on all the
12 vehicles in the junkyard.

13 So on the morning of the 7th, our
14 responsibility was to find any remaining vehicles
15 that did not have the trunk popped by the fire
16 department. And if we located those vehicles,
17 our responsibility was to open the trunk areas of
18 all those vehicles.

19 Q. Who did you do that with?

20 A. Lieutenant Lenk and Sergeant Colborn.

21 Q. Did you do all those things?

22 A. Yes. We found numerous vehicles that were not
23 taken care of, so we did use crowbars, wherever
24 necessary, to get them trunk lids open.

25 Q. Did you find anything in any of those vehicles?

1 A. No.

2 Q. By the way, the three of you didn't plant any
3 blood while you were doing that, did you?

4 A. No.

5 Q. All right. What else did the three of you do
6 that day?

7 A. I'm trying to think. After, I think we did all
8 the trunks, we were then requested to go through
9 the houses and collect firearms from any of the
10 houses that still had firearms in them. So we
11 started -- I think I was told that Steven's
12 firearms were collected already, so we started at
13 Barb Janda's residence and we just started
14 collecting all the firearms that were inside the
15 residence.

16 Q. Do you know about how long that project took?

17 A. There were quite a few firearms. It took a long
18 time to document all the different firearms
19 inside the bedroom area.

20 Q. In whose residences did you go to collect the
21 firearms?

22 A. We were in Barb Janda's residence pretty much the
23 whole day.

24 Q. All right. Were you asked, on the 7th, to
25 perform any duties with Mr. Avery's computer?

1 A. Yeah, I believe it was the morning hours,
2 Investigator Wiegert telephoned me and asked me
3 to make entry into Steven Avery's residence. He
4 told me that he did need the serial numbers, make
5 and model off of the computer that was sitting on
6 the computer desk in the living room.

7 Sergeant Colborn, myself, and Lieutenant
8 Lenk did make entry and we were in there for all
9 of about 3 or 4 minutes, I believe. I telephoned
10 Investigator Wiegert with the information he
11 needed and we immediately left the residence.

12 Q. Lieutenant Lenk and Colborn -- I'm sorry, did you
13 say that they were both with you?

14 A. I believe all three of us were together.

15 Q. Did they leave your location at all at that time?

16 A. No.

17 Q. And then you left?

18 A. Yes, went back to, I believe, Barb Janda's to
19 finish with the firearms.

20 Q. I'm going to hurry just a little bit with you
21 Sergeant Tyson so that we can get through, at
22 least your direct testimony for the day. Let me
23 just move forward to the 8th of November, that
24 would be on Tuesday, were you on site at all that
25 day?

1 A. I didn't go out to the scene on the morning hours
2 of the 8th. My responsibilities were at the
3 Calumet County Sheriff's Department, taking care
4 of all the evidence that had been collected over
5 the course of the past two days. Forms had to be
6 filled out, property tags assigned, that evidence
7 to be secured for the evidence custodian, so he
8 could move them to his location and free up some
9 of the lockers that I was currently taking up
10 with all the stuff that I had downstairs. So
11 that was a lot of my day.

12 I did clear from there and did respond
13 back out to, I think the Avery property, just to
14 see if I was needed in some other capacity. I
15 think there were some officers that were
16 collecting burn barrels. I know I probably
17 assisted with picking up one or two, helping them
18 get them on trailers and things like that. But
19 that was the extent of my involvement on the 8th.

20 Q. All right. Are you familiar with something
21 called a buccal swab?

22 A. Yes.

23 Q. What is that?

24 A. It's a swab that's taken by a medical
25 professional. And how it's taken is, it's a long

1 cotton applicator and it's put inside the
2 person's cheek and rubbed back and forth
3 collecting skin cells, I believe, off of the
4 inside of that person's mouth.

5 Q. Do you know what a buccal swab is used for?

6 A. DNA identification.

7 Q. Do you know what an exemplar is, a DNA exemplar?

8 A. Probably a known DNA substance.

9 Q. All right. On the Wednesday, the 9th of
10 November, were you asked to assist medical
11 professionals in obtaining what are called DNA
12 exemplars, or known DNA samples, from Steven
13 Avery and some other Avery family members?

14 A. Yes.

15 Q. Did you do that on that day?

16 A. Yes.

17 Q. Now, were you just asked, and were there search
18 warrants just for Steven Avery's DNA, or were
19 there others that were involved as well?

20 A. There were others. In the morning of the 9th, I
21 think Agent Fassbender and Investigator Wiegert,
22 they told me that they needed me to go up to the
23 Aurora Medical Clinic in Two Rivers. They
24 explained that there were search warrants for
25 Steven Avery, Bobby Dassey, Chuck Avery, Earl

1 Avery, Delores Avery, Barb Janda.

2 They said each would be transported to
3 the Aurora Clinic in Two Rivers and then my
4 responsibility would be to photograph any
5 injuries that they may have had and to collect
6 all buccal swabs taken by the registered nurse.

7 Q. Did you do that?

8 A. Yes.

9 Q. Regarding Steven Avery, the defendant, do you see
10 him seated in the courtroom here today?

11 A. Yes.

12 Q. Were you present, Sergeant Tyson, when a physical
13 examination was performed of Steven Avery on the
14 9th of November?

15 A. Yes.

16 Q. And were you able to observe any injuries,
17 specifically any injuries to Mr. Avery's right
18 hand?

19 A. Yes.

20 Q. I'm going to show you what's been marked for
21 identification as Exhibit No. 193, tell us what
22 that is, please.

23 A. We were measuring the cut here to his finger,
24 right there. That's just a close up.

25 Q. Was this photo taken by you; is that right?

1 A. Yes.

2 Q. Who was assisting you in that process?

3 A. Fay Fritsch, she would be the registered nurse at
4 Aurora Medical Clinic; and the Medical Director
5 Dr. Laura Vogel-Schwartz, was also present in the
6 room, and I think the two investigators assigned
7 to Mr. Avery were also present.

8 Q. I'm sure we'll hear from Ms Fritsch, but do you
9 recall where this cut, that is, that we're seeing
10 on Exhibit 193, was located?

11 A. Looks like it's his middle finger.

12 Q. Okay. We see it here in the photos, but was it
13 visible to you to the naked eye?

14 A. Yes.

15 Q. Sergeant Tyson, the next day, that is, on the
16 10th of November, do you recall if you had any
17 responsibilities in this investigation?

18 A. On the 10th, I believe I responded out to the
19 Avery property. State patrol, I think, had
20 hundreds of state patrol officers canvassing the
21 quarries and the surrounding area. I was sent
22 out when they found something, down in the quarry
23 areas, just to see if I could identify what it
24 was. Nothing of evidentiary value was found.

25 Q. All right. On the 12th, then, that would be

1 Saturday, were you asked to perform one final
2 responsibility at that location?

3 A. Yeah. Sheriff Jerry Pagel instructed me to grab
4 a camcorner -- camcorder and to go through every
5 single residence on the property to show the
6 condition of which we were leaving the property
7 before we released the scene back to the family.

8 Q. Did you do that?

9 A. Yes, I was with corrections officer Larry
10 Schroeder at that time.

11 Q. Very briefly, Sergeant Tyson, we talked about the
12 9th of December and the execution of a search
13 warrant where you seized a bookcase; did you also
14 return to the Avery property on March 1st and 2nd
15 of 2006?

16 A. Yes.

17 Q. Did you participate in the execution of yet
18 another search warrant at the Avery residence,
19 that is, his trailer?

20 A. Yes.

21 Q. During March 1st and 2nd who was in charge of the
22 evidence documentation and seizure inside of
23 Mr. Avery's trailer?

24 A. We had Investigator Wendy Baldwin taking notes
25 and Patrolman Rick Reimer was an evidence

1 technician in our department, him and myself were
2 doing most of the searching. She was documenting
3 all evidence that was recovered by Deputy Reimer
4 and taken out to the secured trailer, which was
5 parked in the driveway.

6 Q. All right. My last area of inquiry, Sergeant
7 Tyson, has to do with human remains or other
8 kinds of materials; were you asked to
9 participate, not only with other law enforcement
10 officers, but with a forensic anthropologist in
11 sifting and sorting some ashes and remains?

12 A. Yes. On December 20th of 2005, I did go down to
13 the Wisconsin Crime Lab with Investigator
14 Dederling to assist numerous Department Of
15 Correction -- or Department of Criminal
16 Investigation agents there. Deputy Reimer was
17 there and we sorted through contents of burn
18 barrels. And I think later in April, the
19 following year, I think we had -- April 11th, I
20 believe it was, I did assist at the sheriff's
21 department and the Wisconsin Crime Lab was at our
22 facility. We had stations out in the garage
23 behind our department and we had gone through a
24 lot of materials, burnt.

25 Q. Sergeant Tyson, on November 5th of 2005, and in

1 fact, that entire week that you worked
2 specifically with Lieutenant Lenk and Sergeant
3 Colborn, did you witness anything, from either
4 one of those law enforcement professionals, that
5 in any way questioned either their reliability or
6 their ability to perform their law enforcement
7 duties on that scene?

8 A. No.

9 ATTORNEY KRATZ: Judge, I am going to move
10 for the admissions of Exhibit 163 through 205, with
11 the exceptions of Exhibit 164, 165, 187, and I think
12 that's it. Those were the three that this officer
13 was unable to identify. The rest I believe he has
14 and would move their admission at this time.

15 THE COURT: Any objection to the admission
16 of those exhibits?

17 ATTORNEY BUTING: No objection.

18 THE COURT: All right. The exhibits
19 listed, then, by Mr. Kratz will be admitted.
20 Mr. Kratz, do you have any further questions of the
21 witness?

22 ATTORNEY KRATZ: No.

23 THE COURT: Members of the jury, we have
24 got a few things to take up with counsel before
25 leaving today, so I think given that, it's probably

1 a little late to get into cross-examination. So at
2 this time I'm going to excuse you for today. I will
3 remind you not to discuss this case with anyone else
4 at any point during the trial and do not watch any
5 news accounts of the case. You are excused for
6 today. We'll see you tomorrow morning.

7 (Jury not present.)

8 THE COURT: You may be seated. Officer
9 Tyson you are excused.

10 Counsel, I had mentioned earlier this
11 morning that there was at least one exhibit,
12 Exhibit 89, that I believe the parties both felt
13 had not been admitted but the clerk's records
14 show that it had been and based on the
15 information I got from the court reporter, it
16 appears it may have been inadvertently marked as
17 admitted in conjunction with a number of other
18 exhibits at the end of the day back on the 14th.
19 First of all, let's address Exhibit 89; do I
20 understand that -- am I correct that both parties
21 feel that this exhibit was introduced but not
22 admitted?

23 ATTORNEY STRANG: Is that pages 515 and 516
24 of the --

25 THE COURT: Correct.

1 ATTORNEY STRANG: -- Calumet county
2 Sheriff's --

3 THE COURT: Yes.

4 ATTORNEY STRANG: -- Department report?
5 Yes, that was intended only as a Court's exhibit,
6 not -- not for evidentiary consideration of the
7 jury.

8 THE COURT: Mr. Kratz.

9 ATTORNEY KRATZ: It would certainly never
10 be considered by the jury, Judge, and was meant, as
11 I understood, to complete the record.

12 THE COURT: All right. The Court will
13 treat it as such and direct that the record shows
14 that it has not been admitted into evidence.

15 Counsel, are there any other exhibits
16 that either party believes fall into this
17 category, that is, that they have been shown as
18 being admitted but parties -- neither party
19 requested there admission.

20 ATTORNEY KRATZ: I have one that's just --
21 or two that are just the opposite, Judge. If I may,
22 I'm showing the Court now Exhibit 161. There were
23 two photographs that Agent Fassbender identified.
24 One is Exhibit 161 and the next is Exhibit 162, that
25 I asked the Clerk to please mark, and for whatever

1 reason that didn't occur.

2 I assured the Court that I would have
3 them marked and put into evidence. I had moved
4 them at the time, but these are the two
5 photographs that go along with Mr. Buting's
6 submissions. They have now been marked and I now
7 show them once again to remind the Court and
8 counsel, Exhibits 161, 162. I will tender them
9 and offer them at this time.

10 THE COURT: Mr. Strang.

11 ATTORNEY STRANG: These we think were the
12 two photographs used by Mr. Kratz on his redirect
13 examination of Special Agent Fassbender. I believe
14 we recreated that as best we can. They are out of
15 order. I don't know how they were described, if at
16 all, by exhibit number on redirect examination. But
17 we just -- when we talked about this, Nos. 161 and
18 162 were the next two available exhibit numbers, so
19 we agreed to give them those numbers. And as we
20 recall, they relate back to the redirect examination
21 of Mr. Fassbender.

22 ATTORNEY KRATZ: That's correct, Judge.

23 THE COURT: All right. And are these a
24 couple of -- they were slides for which photos
25 weren't readily available at the time?

1 ATTORNEY KRATZ: That's exactly correct,
2 Judge.

3 THE COURT: I believe I recall those. All
4 right. Any objection to their admission today?

5 ATTORNEY STRANG: No.

6 THE COURT: Very well. 161 and 162 will be
7 deemed admitted. Are there any other items that
8 need clarification?

9 ATTORNEY STRANG: Well, maybe. The only
10 two I came up with and I don't know if they are
11 received or not received, but Exhibit No. 70, I
12 think, was tendered to a witness. It's a photo of
13 crushed cars, but as I recall the witness must not
14 have been able to identify it, or there was a
15 foundation objection. I don't think that one was,
16 or has been, admitted yet.

17 ATTORNEY KRATZ: I think that's No. 70.

18 THE CLERK: We have that one as denied.

19 ATTORNEY KRATZ: That one, Mr. -- Bobby
20 Dassey could not identify that. We're going to put
21 that in through another officer later on in the
22 trial, Judge.

23 THE COURT: All right. So as of this point
24 it's been marked and neither party is asking for its
25 admission at this time?

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ATTORNEY KRATZ: Not yet.

THE COURT: The State is anticipating asking that it be admitted at a later date.

ATTORNEY KRATZ: Yes.

ATTORNEY STRANG: Right.

THE COURT: All right.

ATTORNEY STRANG: And then, Exhibit 28, which is a written statement of JoEllen Zipperer, I have labeled as used only to refresh recollection, so that -- that would not be -- it would be marked, but not offered and received.

THE COURT: That one is shown as being received.

ATTORNEY STRANG: Should have been marked only.

THE COURT: My recollection is that that was marked but not received.

ATTORNEY FALLON: I'm not sure that's the case, your Honor.

THE COURT: That was a statement of Mrs. Zipperer?

ATTORNEY KRATZ: It was, Judge, if you remember, it had to do with the time that Teresa was out there.

THE COURT: Okay.

1 ATTORNEY KRATZ: The statement had said
2 between 2:00 and 2:30, as she in fact read from
3 that. She said that now refreshes -- that's a
4 better estimate of the time that she was out there.
5 In fact, it is a much more recorded recollection
6 than that, that was just used to refresh
7 recollection. And it undoubtedly is not going to go
8 back to the jury, because I'm sure you are not going
9 to send written statements back, but it was offered
10 and it should be received.

11 ATTORNEY STRANG: I don't think so, whether
12 it's a -- something used to refresh recollection
13 under Section 906.12, or whether it's actually a
14 past recollection recorded, under 908.03 (5) maybe,
15 if memory serves. I think either way it doesn't --
16 the document doesn't come into evidence. What does
17 is the testimony either refreshed recollection, or
18 the reading of the past recollection recorded.

19 THE COURT: I think it can only get in if
20 she's unable to refresh her memory from it. But
21 which is not what I understood her testimony to be.

22 ATTORNEY STRANG: Correct. If she was
23 unable to, it could come in as a prior inconsistent
24 statement under 906.13, or conceivably --

25 THE COURT: Yeah, 908.03 (5) says a record

1 concerning a matter about which a witness once had
2 knowledge but now has insufficient recollection to
3 enable the witness to testify fully and accurately,
4 but if it refreshed her memory, then it doesn't fall
5 into that one.

6 ATTORNEY STRANG: Right.

7 ATTORNEY KRATZ: I'm never going to ask
8 that it go to the jury, so this is just fine.

9 ATTORNEY STRANG: That's fine, from this
10 standpoint.

11 ATTORNEY KRATZ: That's just fine.

12 THE COURT: My recollection is that it was
13 marked, but I don't remember it being admitted. And
14 my suspicion is that it may have been marked as
15 admitted under one of these globals, does anybody
16 have any objection to admitting a whole bunch of
17 exhibits.

18 ATTORNEY STRANG: And the real issue is it
19 oughtn't go to the jury. And since the State has
20 conceded that, you know, again, this becomes a bit
21 academic.

22 ATTORNEY KRATZ: Marked, but not received,
23 is just fine.

24 THE COURT: Yeah, at this point, I don't
25 think it should be received.

1 ATTORNEY KRATZ: That's fine.

2 THE COURT: Is that it for the exhibits?

3 THE CLERK: I have just a couple more.

4 This is a day when I wasn't here, but there was --
5 there were two photos, 87 and 88, that were marked
6 but nothing was ever said about them.

7 ATTORNEY STRANG: And I don't even have
8 those written down. So I'm wondering if they were
9 ever even identified by a witness.

10 THE CLERK: I think they were regarding the
11 Avery property. There was a whole line of photos
12 marked. Janet just has a big arrow drawn through
13 them.

14 ATTORNEY STRANG: Certainly was a series of
15 aerial shots from 79 on.

16 ATTORNEY KRATZ: Eighty-seven and
17 eighty-eight, Judge, were two that Lieutenant Bowe
18 was unable to identify. And like other exhibits in
19 that category, I intend to show them to another
20 witness who's actually in those pictures and I will
21 be putting them in through them. So they are marked
22 but not received.

23 THE COURT: So they are properly noted as
24 not received at this point.

25 THE CLERK: And then there's just one --

1 I'm sorry -- there's just one other section, 142
2 through 151, which were from Friday. And I know a
3 lot of those were duplicates from today. There's a
4 sign in sign out log, car crusher check point,
5 photos of the RAV4, the aluminum smelter photo, some
6 more sign in sheets.

7 THE COURT: Those have been marked but not
8 yet admitted.

9 THE CLERK: Right.

10 THE COURT: And I believe the State still
11 has witnesses to come that will identify those?

12 ATTORNEY KRATZ: I offered 148, 149, 150
13 and 151 at the time. And if you haven't, Mr. Tyson
14 just looked at those and they are the same.

15 ATTORNEY STRANG: There's no objection to
16 the admission of Exhibits 142 through 151 inclusive.

17 THE COURT: All right. So the Court will
18 order those admitted then?

19 ATTORNEY KRATZ: Yes, we don't have any
20 objection.

21 THE CLERK: I just have one more photo
22 marked as 158, that was ...

23 ATTORNEY KRATZ: That will get in through
24 Mr. Heimerl, actually, who is yet to come.

25 THE CLERK: That's it.

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THE COURT: Marked but not admitted.

I also want to note for the record that this afternoon there were two side bar conferences. The first one was at about 2:19. Mr. Kratz asked the Court at that time, I think, to take a break in order to permit the marking of a series of exhibits that were introduced through Officer Tyson and I indicated I preferred to proceed with more testimony before the break. That was the extent of what happened then. Counsel, is that your understanding, or recollection of what the side bar was?

ATTORNEY KRATZ: Yes.

ATTORNEY STRANG: That's mine too.

THE COURT: And then there was a second one after the break this afternoon when counsel approached and raised some issues with the Court concerning some objections Mr. Buting had made before that about photos being discussed without dates attributed to them. And I indicated to the parties that if there was any dispute about the date a photo was taken, that the defense had a right to have that information presented to the jury so that the jury could fully assess the probative value of whatever was in the photo. And I believe that was

1 the extent of that side bar.

2 ATTORNEY KRATZ: That's right, Judge, and
3 -- and I think from that point forward I did that
4 and it was a legitimate point and I hope I covered
5 it from that point.

6 THE COURT: Mr. Buting, is that your
7 recollection?

8 ATTORNEY BUTING: That is correct, Judge.

9 THE COURT: Very well. Is there anything
10 else that either party wishes to take up today
11 outside the presence of the jury before we resume
12 tomorrow?

13 ATTORNEY BUTING: Has the Court had any
14 response to the other matter that was ...

15 THE COURT: Oh, not yet.

16 ATTORNEY STRANG: I'm looking for one
17 exhibit, 189, your Honor.

18 ATTORNEY KRATZ: It's a photo of an
19 envelope. That should be in here.

20 ATTORNEY STRANG: Is the envelope itself
21 something?

22 ATTORNEY KRATZ: That's on the desk, that's
23 two something.

24 ATTORNEY STRANG: That's a different
25 envelope.

1 ATTORNEY FALLON: 189 was the envelope.

2 ATTORNEY KRATZ: It's a photo of an
3 envelope.

4 ATTORNEY STRANG: The photo I'm talking
5 about is Federal Defender Services of Wisconsin.

6 ATTORNEY KRATZ: I understand that. It's a
7 photo of the envelope.

8 ATTORNEY BUTING: So the actual envelope is
9 not here.

10 ATTORNEY KRATZ: We aren't offering --

11 THE COURT: Just a second. Diane.

12 COURT REPORTER: Yes.

13 THE COURT: We're off the record right now.
14 I'm not going to ask you to try to follow that.

15 (Off record discussion.)

16 THE COURT: All right. Let's go back on
17 the record. Mr. Strang, you raised a question about
18 Exhibit 189.

19 ATTORNEY STRANG: I did. And I just was
20 curious about the postmark date of that letter,
21 because it's from Federal Defender Services of
22 Wisconsin, which I had run for five years, was one
23 of the three offices that I ran. But I don't know
24 why it would be an issue in any event, but the
25 postmark is about two months after I left that

1 office. So I just can't imagine that there's any --
2 any issue.

3 THE COURT: All right. Anything further
4 today?

5 ATTORNEY KRATZ: Just that I think,
6 briefly, we need to meet in chambers. We may have
7 something in our office.

8 THE COURT: All right. We'll see you in a
9 few minutes.

10 ATTORNEY KRATZ: Thank you.

11 (Proceedings concluded.)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 7th day of 11, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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11th [1] 226/19
12 [1] 14/18
12390 [1] 195/14
12930 [2] 149/8 208/8
12932 [1] 196/1
12:30 [2] 41/1 108/16
12th [1] 224/25
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150 [2] 204/14 236/12
151 [5] 2/16 205/13 236/2 236/13
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156 [7] 2/17 49/7 147/9 154/18
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL
5 vs. TRIAL - DAY 7
Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** FEBRUARY 20, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the defendant.

19 ATTORNEY JEROME F. BUTING
Attorney at Law
20 On behalf of the defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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(Jury present.)

THE COURT: The Court calls State of Wisconsin vs. Steven Avery, Case No. 05 CF 381. We're here this morning for the continuation of the trial in this matter. Will the parties state their appearances for the record, please.

ATTORNEY KRATZ: Good morning, Judge, the State appears by Calumet County D.A. Ken Kratz, Assistant Attorney General Tom Fallon, Assistant D.A. Norm Gahn, appearing as Special Prosecutors.

ATTORNEY BUTING: Good morning, your Honor, Attorney Jerome Buting and Dean Strang appearing with Mr. Avery today.

THE COURT: All right. I believe when we left yesterday the State had completed it's direct examination of Officer Tyson and the Defense will begin cross-examination today. Is the witness here?

THE CLERK: Please raise your right hand.

SERGEANT WILLIAM TYSON, called as a witness herein, having been first duly sworn, was examined and testified as follows:

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

THE WITNESS: William Tyson, T-y-s-o-n.

CROSS-EXAMINATION

1 BY ATTORNEY BUTING:

2 Q. Good morning, Sergeant.

3 A. Good Morning.

4 Q. Let me start right off by directing your
5 attention to November 5th, first arrival at the
6 scene, okay, remember that?

7 A. Yes, sir.

8 Q. You testified yesterday that you arrived at, I
9 believe about 2:45. It was about five minutes to
10 three by the time you got up to where the RAV4
11 was located; does that fit with your
12 recollection?

13 A. Correct.

14 Q. All right. And I don't know if you need to
15 refresh your recollection with your report, just
16 let me know if you do, okay?

17 A. Okay.

18 Q. But from what I understand, it appears that you
19 left that area at 3:10 p.m., just 15 minutes
20 later?

21 A. Correct.

22 Q. You were called back to the command center to do
23 some other assignments?

24 A. Correct.

25 Q. And during that 15 minutes, when you first

1 arrived, was the RAV4 covered with a tarp or was
2 it uncovered?

3 A. It was uncovered.

4 Q. Okay. But during that 15 minutes is the period
5 of time when the tarps were put over the RAV;
6 isn't that right?

7 A. Yes, they were attempting to get that tarp in
8 place.

9 Q. Okay. And you testified about that and you were
10 actually one of the people who helped put it over
11 the RAV4?

12 A. I never physically touched the tarp. I did
13 assist with getting some objects, I believe, from
14 a vehicle that was right next to it.

15 Q. Okay.

16 A. To secure it down, to prevent it from blowing
17 away.

18 Q. Okay. So you were just helping as others were
19 building this, like, tent, like, object over the
20 RAV?

21 A. That would be accurate, yes.

22 Q. Okay. And you were taking extreme care,
23 everybody was taking extreme care so that it
24 wouldn't actually -- the tarp wouldn't actually
25 touch the RAV4 itself?

1 A. Yes, all the officers were very conscious of that
2 fact.

3 Q. So there was space around it, underneath the
4 tarp, right?

5 A. They were trying to do the best they could to
6 make sure that the top of the vehicle was not
7 touched by the tarp.

8 Q. Okay. And that was completed, that operation of
9 putting the tarp over it was completed by the
10 time you were called away to the command center,
11 right?

12 A. They were still working on it when I was relieved
13 of my duties. There were some issues, the winds
14 were picking up. I know they were trying their
15 best to get that situated. I don't believe, to
16 the best of my recollection, that that was
17 totally finished by the time I was released.

18 Q. Okay. But largely covered, being able to weigh
19 it down still; is that the gist of it?

20 A. I think that would be accurate.

21 Q. Making some adjustments, perhaps?

22 A. That would be accurate.

23 Q. Okay. So, if -- if we heard other testimony that
24 showed that the RAV4 was still completely covered
25 with the tarp at 4:16 p.m., then that would mean,

1 for at least one hour, that RAV4 was covered;
2 would that be right?

3 A. Yeah, it was, you know, like I said, I left at 10
4 minutes after three, they were still doing some
5 adjustments to it. So, yeah, if you heard
6 testimony at 10 after 4, I was not down there so
7 I don't know for sure.

8 Q. So you never went back to that site?

9 A. Correct.

10 Q. The rest of the night you never went back to see
11 the RAV4 yourself?

12 A. I believe later on in the evening, after the
13 canine dogs had searched the area, I was down in
14 that area, but not near the RAV4. I was down by
15 the pond area and through the lanes, but never
16 really directly by the RAV.

17 Q. By the way, did you see -- Can you -- can you
18 tell me when you first saw Lieutenant Lenk at the
19 Avery salvage that day?

20 A. My recollection, the first time I saw Lieutenant
21 Lenk would have been up at the command center on
22 the top of the hill.

23 Q. All right. Well, would that have been the first
24 time you got there, or would that have been
25 later, which time?

1 A. It would have been after I cleared from the
2 Toyota RAV. We were up at the command center.
3 There were officers who I did not know at that
4 time. I never met these officers, was introduced
5 to those officers.

6 Q. Okay. So around 3:15 or so is when you think you
7 were introduced to Lieutenant Lenk up at that
8 command center?

9 A. I can't be sure if he was on scene immediately
10 when I got there, or if he showed up a half hour
11 later. I really don't know for sure what time he
12 showed up on scene.

13 Q. Okay. What about Sergeant Colborn?

14 A. Same would apply to him, I never met Sergeant
15 Colborn before so I didn't know who he was. I
16 was introduced to him, but I can't be certain
17 what time they actually showed up at the scene.

18 Q. All right. Now, when you first arrived at the
19 RAV4 location at approximately 3:00, you were
20 actually the first Calumet officer to relieve any
21 Manitowoc officer from security in that immediate
22 area, right?

23 A. That's my understanding.

24 Q. All right. So that if the first officers --
25 Manitowoc officers arrived at about 11:00 a.m. to

1 3:00 p.m., that means the first four hours that
2 that vehicle was in that location Calumet was not
3 securing it, Manitowoc was securing it, right?

4 A. I don't know exactly who was securing it. All I
5 know is I believe the Manitowoc deputy, if there
6 were other DCI officers there, I really don't
7 know.

8 Q. So you don't know what happened before you came,
9 you just know as far as Calumet goes -- Calumet
10 officers, you were the first?

11 A. That's what I was told.

12 Q. All right. Now, when you went to the Command
13 Post, the first time, when you first checked in
14 at 2:45 or so, you had the -- were you introduced
15 to who was in charge at that point?

16 A. No, my recollection is, is when I arrived with
17 Deputy Bass, I was met by Investigator Wiegert
18 and Steier and they informed me to respond
19 directly down into the junkyard area. I don't
20 believe I got out and socialized with the group
21 at all. It was just, you need to go down there
22 and take care of whatever they need your
23 assistance with.

24 Q. So you weren't told at that time about this
25 decision to transfer authority away from

1 Manitowoc to Calumet County, or were you?

2 A. I was not.

3 Q. All right. That didn't come until later when you
4 went back to the Command Post and were given some
5 search assignments?

6 A. Yes.

7 Q. And you have been with Calumet for how long?

8 A. Approximately 15 years.

9 Q. So you are pretty familiar with the officers in
10 your -- the other deputies and sergeants and
11 detectives on your staff, right?

12 A. Right.

13 Q. And you know which ones are evidence collection
14 people and which ones aren't, right?

15 A. Yes.

16 Q. Some have training in that and some don't, right?

17 A. Correct.

18 Q. But in your department, you mentioned yourself,
19 that you had had some kind of training or
20 experience since 1994?

21 A. Yes.

22 Q. Let me go through a list of some people and see
23 if these aren't evidence collection qualified
24 members of your department. All right.

25 A. Okay.

1 Q. Deputy Kucharski?

2 A. Yes.

3 Q. Deputy Riemer?

4 A. Yes.

5 Q. Investigator Wiegert?

6 A. I don't believe Investigator Wiegert ever had any
7 evidence --

8 Q. Really?

9 A. -- technician class. He did some work with
10 arsons and things like that. He was an arson
11 investigator. He did collect all the evidence at
12 arson scenes.

13 Q. What about Detective Dederling?

14 A. I don't believe Detective Dederling ever had the
15 official evidence class. He may have had some
16 on-the-job training from other officers, but
17 officially I can't testify that he did.

18 Q. Okay. Gary Steier?

19 A. Yes.

20 Q. Jeremy Hawkins?

21 A. Yes.

22 Q. How about Wendy Baldwin?

23 A. I don't believe she had any evidence technician
24 training.

25 Q. Any other evidence technician training officers

1 that you can think of on your force?

2 A. Yes.

3 Q. Who?

4 A. Keith Ristow and Nick Sablich.

5 Q. Okay. So Ristow, Sablich, Hawkins, Steier,
6 Riemer, Kucharski, and yourself?

7 A. Maybe a correction on that, Deputy Sablich didn't
8 obtain his training until after the Avery case,
9 the initial time on scene. He first went through
10 the class after that.

11 Q. All right. So we'll take one away. Six, right?
12 Six evidence qualified technicians, just on the
13 Calumet Sheriff's Department, right?

14 A. That would be correct, with the exception that,
15 like, Investigator Steier, for example, when you
16 are promoted to, like, an investigator position,
17 you have different responsibilities, he doesn't
18 do -- not called out to things like that, for
19 crime scenes for that part. But he is more of an
20 investigator than an evidence collector.

21 Q. Well, hold on just one second there, sir. Let's
22 fast forward here to March 1st and 2nd here for a
23 second. Who was the officer who was collecting
24 evidence on those two days?

25 A. Inside the residence, it was myself.

1 Q. And inside the garage was Gary Steier, was it
2 not?

3 A. He was present. I'm not sure what his
4 responsibilities were in the garage.

5 Q. Well, we'll deal with him later. Anyway moving
6 back, so there's six officers on your force who
7 were evidence collection qualified on November
8 5th, right?

9 A. Correct.

10 Q. And we also know, the very next day, you went out
11 with a team of Manitowoc city police by the name
12 of Jeff Tech, T-e-c-h?

13 A. Correct.

14 Q. Brian Swetlik?

15 A. Correct.

16 Q. And Robert Block?

17 A. Correct.

18 Q. All of whom were evidence collection technicians
19 for that department, right?

20 A. I don't know what their qualifications were. It
21 was explained to me when I first was introduced
22 to them that Brian Swetlik was a detective
23 sergeant; and Jeff Tech was a detective; and Rob
24 Block was a patrol officer and evidence
25 collection --

1 Q. Right.

2 A. -- officer.

3 Q. And they were part of your team the very next
4 day?

5 A. Yes.

6 Q. And they were going around and they were
7 collecting evidence, right?

8 A. Yes.

9 Q. And you wouldn't let somebody collect evidence
10 who wasn't trained to do so, would you?

11 A. Well, I wasn't in charge of calling those people
12 to assist me. If the investigators felt
13 comfortable with them, they would have made that
14 decision. They would know better than I would at
15 that time what their qualifications were. I
16 trusted the decisions that were being made at the
17 command center.

18 Q. All right, sir. So you watched those three
19 officers all day when you were with them, right?

20 A. Which day?

21 Q. November 6th, that's the Manitowoc officers that
22 we're having a little dispute about here:
23 Mr. Tech, Swetlik and Block.

24 A. I was with them.

25 Q. You were them. You never had any concerns about

1 whether they were collecting evidence properly,
2 did you?

3 A. I had no concerns of their abilities.

4 Q. So those three were competent evidence collection
5 people, right?

6 A. They appeared to be, yes.

7 Q. Okay. So, in addition to those two departments,
8 there were numerous other law enforcement
9 officers on site on November 5th; isn't this
10 right?

11 ATTORNEY KRATZ: I'm going to object,
12 Judge. We're assuming a fact that's not in
13 evidence. Mr. Buting is assuming that those three
14 officers were there on the 5th, perhaps you should
15 ask that question before who else was on site on the
16 5th.

17 THE COURT: All right. Mr. Buting, I will
18 ask you to rephrase.

19 Q. (By Attorney Buting)~ All right. You don't know
20 who all was on site, but you know some of the
21 officers on site?

22 A. Yes.

23 Q. You know that there were numerous departments
24 represented on site on the 5th, right?

25 A. Yes, there were several.

1 Q. Okay. And you knew that there were Crime Lab
2 specialists on site on November 5th, right?

3 A. Yes.

4 Q. You didn't have any decision making
5 responsibility yourself as to how these teams
6 were put together?

7 A. That is correct.

8 Q. So, specifically, when you went back to the
9 Command Post at around 3:15 or 3:30 on
10 November 5th, that's the time when you were given
11 the assignment to go search places; you were
12 paired up with Lenk, Colborn, and Remiker?

13 A. No.

14 Q. That came later?

15 A. That was later.

16 Q. That's right, you went out with some dogs for
17 awhile, right?

18 A. Well, at 3:00, when I got back, they were
19 orchestrating teams to go do the initial entries
20 into the residences. My responsibility was to
21 find out who was going with who, document the
22 times as they reported back.

23 So when the deputies, our officers,
24 returned back to the command center, they would
25 check in with me, tell me the times that they did

1 entry, if it was forcible entry, non-forcible
2 entry and the time that they exited the
3 residence. So I was keeping a log for them and
4 their times were given to them.

5 Q. Okay. And those were what we heard earlier
6 described as the sweep searches?

7 A. Right.

8 Q. The brief entries?

9 A. Yes.

10 Q. Okay. Then after that, you had a brief period of
11 time where you were with some dog handlers,
12 right?

13 A. I met with the dog handlers, assigned officers to
14 go with the handlers, to take their dogs out,
15 yes.

16 Q. And then you came back and is that when you were
17 then assigned to go to with Lieutenant Lenk,
18 Colborn and Remiker?

19 A. Yes, it was after all that was done.

20 Q. Now, is that the first time that you -- Well, let
21 me ask you this, before November 5th even dawned,
22 did you know about Mr. Avery's lawsuit against
23 Manitowoc County and the sheriff's department?

24 A. Yes.

25 Q. And that -- Would it be fair to say that that was

1 fairly general knowledge among law enforcement
2 officers in the northeast Wisconsin area?

3 A. I don't know if law enforcement officers watch
4 the news like I do, but I was well aware of it.
5 I can't speak for any other officer --

6 Q. All right.

7 A. -- if they were following that story.

8 Q. So, at any rate, before you even got there, you
9 knew about that. And when were you first advised
10 that the -- because of that, the Manitowoc
11 sheriff had transferred authority over to
12 Calumet?

13 A. It was shortly after arriving back at the Command
14 Post around, 3:10. I know the district attorney
15 from Manitowoc County was there; I believe his
16 name is Mark Rohrer; and our district attorney
17 was there; sheriff; and I think there were some
18 high management people within the Manitowoc
19 County Sheriff's Department.

20 Q. All right. And then when you were given the
21 assignment to go into Mr. Avery's residence, this
22 was about 7:30 p.m. on Saturday evening,
23 November 5th?

24 A. Yes, we made entry at 7:30.

25 Q. Okay. So you were assigned shortly before that I

1 assume, right?

2 A. Correct.

3 Q. Who was making that assignment, Mr. Fassbender or
4 Mr. Wiegert?

5 A. To tell you the truth, I don't know which one
6 came up with that assignment. I don't know.

7 Q. Okay. Were they both present?

8 A. They were both in the command center area, yes.

9 Q. All right. And you said on direct that you were
10 advised to watch them, make sure that none of
11 Manitowoc officers were alone in the property?

12 A. That was the initial instruction from the
13 district attorney of Manitowoc County. He made
14 an announcement to all Manitowoc officers, that
15 you are not to be alone on the property, period.

16 Q. Were you there when that was made?

17 A. Yes.

18 Q. Okay. And so was there a discussion of that
19 again with Mr. Wiegert or Mr. Fassbender when you
20 were signed up, paired up with these three
21 Manitowoc officers?

22 A. I don't think that was reiterated; it was well
23 understood.

24 Q. Well, your assignment inside that trailer, the
25 residence, was to, as I recall, was to not

1 actually do the searching yourself, you were just
2 watching, making notes, documenting, right?

3 A. Yes.

4 Q. So of the four officers in that little trailer,
5 only the Manitowoc officers were the ones
6 actually doing the searching, right?

7 A. Right.

8 Q. You were doing the watching, right?

9 A. I was doing the documentation.

10 Q. And the watching, right?

11 A. Yes.

12 Q. You never let them out of your eye sight, did
13 you?

14 A. I cannot sit up here and look at you guys and
15 tell you that three hours inside that residence
16 that I didn't turn my back, walk away, glance
17 away; so I can't say that every second of the
18 close to three hours I was making direct eye
19 contact with them or watching every move they
20 made.

21 Q. Well, you did, I think at one point, describe an
22 incident or moment when --

23 ATTORNEY BUTING: Actually, let's put up --
24 Counsel, I am going to need your indulgence on this,
25 please, because I don't have the computer animated

1 diagram. Would you be able to put that up?

2 ATTORNEY STRANG: I do.

3 ATTORNEY BUTING: Do we? Let me figure out
4 the exhibit number.

5 ATTORNEY FALLON: What exhibit numbers,
6 counsel?

7 ATTORNEY BUTING: We're going to start with
8 102.

9 ATTORNEY FALLON: On the ELMO.

10 ATTORNEY BUTING: Yes.

11 Q. (By Attorney Buting)~ Okay. I'm showing you up
12 on the screen here Exhibit 101, previously
13 marked, does that look familiar to you, sir, at
14 least what it depicts?

15 A. Appears to be the Steve Avery residence.

16 Q. And if you could go look at the bedroom area --
17 Actually, I'm going to put up a different one to
18 show you that; 104 is next. Okay. Do you see
19 that?

20 A. Yes.

21 Q. And is that a representation of the bedroom, back
22 bedroom, Mr. Avery's bedroom, and the hallway
23 bathroom area?

24 A. Yes.

25 Q. All right. I apologize for that delay. But, I

1 believe you said that at one point you were
2 watching them so carefully that Mr. Lenk,
3 Lieutenant Lenk, excuse me, walked out of the
4 bedroom into the bathroom area, right?

5 A. Correct.

6 Q. Through this hallway. And you were standing
7 right here at the doorway while they were
8 searching, right?

9 A. Originally, yes.

10 Q. In other words, this bedroom really wasn't even
11 big enough for four grown men to be walking
12 around and doing things, was it?

13 A. With the bed, you know, as I previously had
14 testified, Detective Remiker and Lieutenant Lenk
15 were by the closet area. Sergeant Colborn was up
16 by the desk and bookcase area?

17 Q. All right. So you are indicating the lower part
18 of the --

19 A. Yes.

20 Q. -- is the closet; lower part of this screen here.
21 And the upper is the desk bookcase area?

22 A. Correct.

23 Q. And you were standing in the door?

24 A. Just inside the doorway.

25 Q. Just inside the doorway, right. Okay. But you

1 mentioned that when Lieutenant Lenk went out into
2 the bathroom, you repositioned yourself in the
3 doorway so you could see him in the bathroom and
4 those in the bedroom, right?

5 A. Yes.

6 Q. You were keeping an eye on what was going on with
7 Mr. Lenk and -- Lieutenant Lenk and the other
8 officers?

9 A. I would say I was positioning myself to see if
10 they had located any evidence.

11 Q. Well, and you were also trying to abide by the
12 directive that Manitowoc officers should not be
13 alone in any of this property, right?

14 A. It was more of a documentation type thing. I
15 mean, I did not treat these guys like I did not
16 trust them, okay.

17 Q. Well, let me ask you this, sir. You knew that
18 the district attorneys told those officers not to
19 be alone on any property, right?

20 ATTORNEY KRATZ: Mischaracterization,
21 Judge, he said the Manitowoc County district
22 attorney, if he could rephrase the question.

23 ATTORNEY BUTING: I don't particularly care
24 which district attorney, it's a district attorney.
25 All right.

1 Q. (By Attorney Buting)~ You knew that?
2 A. Yes.
3 Q. You knew that it was important to the
4 prosecution, or some attorneys on site, that
5 these officers not be alone anywhere on that
6 Avery property, right?
7 A. Yes.
8 Q. And you knew that this was Mr. Avery's trailer?
9 A. Yes.
10 Q. And that if anything, of all the places that they
11 should not be alone, it would be in Mr. Avery's
12 trailer, right?
13 A. We did not know that on that day.
14 Q. Mr. Avery was the one who was suing them, right?
15 You knew that?
16 A. I was aware of that fact, yes.
17 Q. You knew that, that's right. And you knew that's
18 why Manitowoc recused themselves, or transferred
19 authority over to Calumet, right?
20 A. Yes.
21 Q. It was because of this man right here, right?
22 A. I believe that's correct.
23 Q. And it was this man right here's trailer that you
24 were in?
25 A. Yes.

1 Q. And so that, of all places, you knew was
2 important that you make sure that these Manitowoc
3 officers not be alone?

4 A. Correct.

5 Q. And so you kept an eye on them, didn't you?

6 A. I was watching what they were doing, yes.

7 Q. Had you ever, in any other search in your entire
8 career, had to act like a babysitter, or a
9 watchdog, for the officers who were conducting a
10 search?

11 A. I did not treat this as if I was babysitting.

12 Q. Had you ever, in any of your years as an officer,
13 had to watch the officers who were searching
14 where you were, to make sure that they weren't
15 alone?

16 A. No.

17 Q. This was a first for you, wasn't it?

18 A. Yes.

19 Q. And you made sure, because you were the watchdog
20 here, you were the custodian, the representative
21 of Calumet, you made sure that none of those
22 officers could have planted anything, right?

23 A. I watched them to the best of my ability, within
24 those three hours.

25 Q. And to the best of your ability meant you did

1 everything you could to make sure that they knew
2 they were being watched and that they couldn't
3 plant any evidence if they wanted to?

4 A. They were told the same instructions that I were,
5 that I was going into that residence to document
6 and recover all evidence that was seized.

7 Q. Well, and you did a good job doing that, didn't
8 you?

9 A. I believe to the best of my ability, yes.

10 Q. All right. And would you agree with me that it
11 was -- would have been very difficult for
12 Lieutenant Lenk or Sergeant Colborn to have
13 planted a Toyota key in that residence, under
14 your watch?

15 A. I believe it would have been difficult.

16 Q. Extremely difficult, right?

17 A. It would have been difficult, yes.

18 Q. Because you were watching them?

19 A. To the best of my ability, yes.

20 Q. Did you ever suggest to Mr. Fassbender or
21 Mr. Wiegert that maybe you would like to have
22 some of your own officers in there doing this
23 search that night, to Mr. Avery's residence?

24 A. We didn't have all those officers that you
25 mentioned at the scene that day.

1 Q. You could call them in, right?

2 A. They were in charge of making those decisions. I
3 didn't know what information they were privy to.

4 Q. You were off duty, right? You weren't working
5 that day?

6 A. I don't recall if that was my scheduled day or
7 not.

8 Q. I believe that was your testimony.

9 A. I was at home when I got the phone call.

10 Q. So you were called in?

11 A. Yes.

12 Q. And there's no reason that other officers that we
13 went through that were evidence collection
14 officers on your force also couldn't have been
15 called in for this assignment, was there?

16 ATTORNEY KRATZ: Objection, both
17 argumentative and assuming a fact not in evidence.
18 This officer wouldn't know that.

19 ATTORNEY BUTING: I will withdraw it.

20 Q. (By Attorney Buting)~ So your testimony, then, is
21 that you never questioned Fassbender or Wiegert
22 about their decision --

23 A. Absolutely not.

24 Q. -- to send Manitowoc officers in.

25 A. I did not question them or doubt their judgments,

1 no.

2 Q. Of course, they out rank you, don't they? They
3 were the leaders of this entire investigation at
4 that time, right?

5 A. Yes.

6 Q. And you take orders from them?

7 A. That's the way I looked at it, yes.

8 ATTORNEY BUTING: I'm going to take this
9 down.

10 Q. (By Attorney Buting)~ You testified about a
11 number of these exhibits that you found, right?

12 A. Yes.

13 Q. And you mentioned that you found this bottle of
14 bleach, which is Exhibit 195, in the bathroom; is
15 that right?

16 A. I didn't find it, that was recovered by Deputy
17 Riemer.

18 Q. On a different search, then?

19 A. I believe so.

20 Q. Wasn't even recovered on November 5th?

21 A. I don't believe so.

22 Q. Okay. But your -- but your testimony was that it
23 was found in the bathroom?

24 A. I recalled seeing a bleach bottle in the
25 bathroom, if that's the very same exact one, I

1 believe it was.

2 Q. All right. Showing you Exhibit 206 and 207,
3 could you take a minute and just orient yourself
4 with that and tell me what those are?

5 A. Sure. Number 207 appears to be the washing
6 machine in the bathroom.

7 Q. In the bathroom, right? And what is 206?

8 A. 206 would be the sink in the bathroom.

9 Q. Okay. And this is the bathroom in Steven Avery's
10 residence, right?

11 A. Yes.

12 Q. Putting up Exhibit 207 in just a moment here.
13 That's what you have identified as Mr. Avery's
14 bathroom, right?

15 A. Yes.

16 Q. And you note the floor, the tiling -- linoleum on
17 the floor, the hamper. And does that appear to
18 be a shower in the background there?

19 A. Yes.

20 Q. So when you say that you found -- or that someone
21 found a bottle of bleach in the bathroom, it was
22 actually in the laundry room, right?

23 A. If you want to consider that front area to be a
24 laundry room, sure.

25 Q. Well, that's where the washer and dryer is,

1 right?

2 A. Yes, but it's part of the bathroom.

3 Q. Okay.

4 A. It's not in the hallway.

5 Q. Would it surprise you to find a bottle of

6 household bleach in someone's bathroom?

7 A. No.

8 Q. Do you have bleach in your bathroom?

9 A. I believe it's under the sink in the kitchen.

10 Q. Okay. But certainly bleach is where people --

11 The laundry room is where people use bleach,

12 isn't it --

13 A. Yes.

14 Q. -- typically?

15 A. Yes.

16 Q. And no bleach was found in the garage, was it?

17 A. I don't know, I never searched the garage.

18 Q. I'm putting up now, on the screen, 206, which is

19 the other side of Mr. Avery's bathroom, right?

20 A. Yes.

21 Q. You recognize the floor, the linoleum, and the

22 hamper sitting there?

23 A. Yes.

24 Q. I'm just going to zoom in on this for a minute.

25 You see a toothbrush?

1 A. Yes.

2 Q. Do you see more than one toothbrush?

3 A. I see the one.

4 Q. All right. And razor, looks like a razor?

5 A. Yeah.

6 Q. We'll get to this again in a minute. But you
7 mentioned buccal swabs. You know what buccals
8 are, right?

9 A. I didn't on that day. When I got to the hospital
10 it was explained.

11 Q. All right. So now you know what buccal swabs
12 are?

13 A. Yes.

14 Q. And buccal swabs are basically like a Q-tip that
15 you take and swab inside someone's mouth, their
16 cheeks?

17 A. Yes.

18 Q. And from that you get DNA samples, right?

19 A. Yes.

20 Q. And it's a very good way of collecting DNA,
21 correct?

22 A. That's what they tell me, yes.

23 Q. Much like a toothbrush would be, right?

24 A. I don't know what the capabilities are from a
25 toothbrush?

1 Q. Well, you know that people put toothbrushes in
2 their mouth all the time, right?

3 A. With toothpaste, yes.

4 Q. Okay. And so that it would be a fertile source
5 of one's DNA?

6 ATTORNEY KRATZ: Objection, Judge, beyond
7 the scope of this witness' expertise.

8 THE COURT: The objection is sustained.

9 Q. (By Attorney Buting)~ Did you ever work any
10 missing person cases besides this?

11 A. Yes.

12 Q. Did you ever have to go to the missing person's
13 house to try and get some personal items that
14 might have their DNA on it for future use?

15 A. I don't think it ever got to that level.

16 Q. Never got to, in your experience?

17 A. Yeah, they were located prior to a full-blown
18 investigation.

19 Q. Okay. Sure. All right. I'm showing you what I
20 believe is previously marked in your direct as
21 163; is that -- does that appear right?

22 A. Yes.

23 Q. And that's a photograph of Mr. Avery's bedroom
24 that was taken on the night of November 5th,
25 right?

1 A. I believe so.

2 Q. And you can see the gun rack that you just
3 identified, right?

4 A. Yes.

5 Q. And there's a -- some sort of a firearm in the
6 lower tier of that -- right -- in this photo,
7 right?

8 A. Yes.

9 Q. That's a black muzzleloader?

10 A. I never identified what type of firearm.

11 Q. Okay. Well, I don't know if you know guns and,
12 frankly, I don't know them that well, but this
13 thing that's hanging down here, do you know what
14 that is?

15 A. I believe they refer to that as a powder horn.

16 Q. A powder horn. So that's what you used,
17 presumably, with a powder rifle, to load it,
18 right?

19 A. I don't own one; I would assume that would
20 probably be correct.

21 Q. Okay. I just want to be clear, that's not some
22 sort of bizarre sexual device or anything, is it?

23 A. Not that I'm aware of.

24 Q. Or any kind of torture device, right?

25 A. I don't believe so.

1 Q. All right. Well, just in case not everybody
2 knows that, I wanted to make that clear. You did
3 mention finding some handcuffs and leg irons,
4 right?

5 A. Sergeant Colborn found those items, yes.

6 Q. But you were watching and taking note?

7 A. Yes.

8 Q. I believe on direct you testified that it was
9 found in the bookcase; in fact, it was found on a
10 night stand; isn't that right?

11 A. I believe it was the bookcase.

12 Q. You wrote a report of your investigation that
13 day, right?

14 A. Yes.

15 Q. Would that refresh your recollection, if you took
16 a moment to review that?

17 A. I think I know where you are going with this and
18 I don't think I need to see it. When I did my
19 report, what is now known as the bookcase, I
20 looked at it to be a night stand. I would use it
21 as a night stand myself. So in my report I did
22 refer to it as being a night stand.

23 Q. Okay. All right. So you cleared that up. At
24 any rate, these handcuffs and leg irons, these
25 are novelty items that are sold at places like

1 Intimate Treasures and things of that nature,
2 right?

3 A. Yes, you can get them from stores, I guess. I
4 never ...

5 Q. And they are meant for consenting adults, for
6 whatever kind of experimenting or play they may
7 do, right?

8 ATTORNEY KRATZ: Objection, Judge, I'm sure
9 they have a lot of uses.

10 THE COURT: Well, I think if he knows he
11 can testify as to what he understands their intended
12 use to be, if he knows.

13 ATTORNEY KRATZ: It's the term consenting
14 adults that I have objection with.

15 ATTORNEY BUTING: Well, I think he can tell
16 us, what is it?

17 ATTORNEY KRATZ: It could be unconsenting
18 adults, as well.

19 THE COURT: Well, that's something you can
20 take up on redirect.

21 Q. (By Attorney Buting)~ Isn't that right, I mean,
22 they are sold at these adult novelty type places
23 where their intended use is consenting adults
24 engaged in whatever kind of role playing, or
25 whatever, right?

1 A. Sure.

2 Q. Okay. And I'm going to put back up that
3 photograph from -- No. 163 again. There's a
4 headboard in that photograph, right?

5 A. Yes.

6 Q. And that headboard was later seized by somebody
7 and put into your department's property room,
8 right?

9 A. Yes.

10 Q. And there came a time when you and some other
11 officers took that headboard out from the
12 property room to examine it, right?

13 A. That would be myself and Deputy Hawkins.

14 Q. And also Mr. Fassbender, correct?

15 A. Not originally, I don't think.

16 Q. Well, did you do a report of that day?

17 A. Yes.

18 Q. Would it refresh your recollection if you
19 reviewed that?

20 A. Sure.

21 Q. Page 936. This report, by the way has --

22 A. Yes.

23 Q. -- Deputy Jeremy Hawkins name on it.

24 A. Right.

25 Q. It reads as if it was written by you.

1 A. It is written by me, it was a typo by the
2 secretarial staff.

3 Q. Okay. And it says -- Just take a minute and
4 review that, those first two paragraphs and then
5 we'll --

6 A. I know where you're going with this as well.

7 Q. Okay. So you don't need to review it?

8 A. I don't believe so.

9 Q. All right. Then I will put it aside and ask you
10 some questions. This is Monday, April 3rd,
11 right, 2006?

12 A. That would be the second day that we looked at
13 the headboard. The first day we looked at the
14 headboard would have been March 28.

15 Q. Okay. Well, we're talking about this day.

16 A. Okay. That was the confusion then, when you
17 mentioned --

18 Q. All right.

19 A. -- Fassbender.

20 Q. All right. I understand. So I apologize for
21 that. On this day, though, you did have a
22 meeting with, actually, Sheriff Pagel, right,
23 Mark Wiegert, John Dederling, and Mr. Fassbender?

24 A. Yes.

25 Q. Special Agent Fassbender?

1 A. Yes.

2 Q. And a decision was made for you and Deputy
3 Hawkins to take a very good look at the
4 headboard, right?

5 A. We had looked at it previously, which is why we
6 had consulted with those persons, to get further
7 direction.

8 Q. All right. And so you took it out and put it on
9 freezer paper, examined it like any other piece
10 of evidence, right?

11 A. Yes.

12 Q. And didn't you, in fact, note, from your
13 observations, that we could not see any
14 striations around the spindles of the headboard
15 consistent with that of having handcuffs or leg
16 irons secured to the spindles of the headboard?

17 A. That would be correct.

18 Q. Meaning, you looked very, very closely at these
19 spindles depicted in Exhibit 163, on the
20 headboard, and saw no scratches. When you say
21 striations you mean scratches, right?

22 A. Yes.

23 Q. Scratches you might see from somebody who is
24 chained, arms out, to that headboard, right?

25 A. Correct.

1 Q. Somebody struggling for their life, you would
2 expect to see some scratches?

3 A. I would think so.

4 Q. And you saw none, right?

5 A. Nothing consistent with that going around the --

6 Q. All right.

7 A. -- entire spindle.

8 Q. Going back, for just one moment. Sergeant
9 Colborn, you mentioned, was --

10 ATTORNEY BUTING: You can take that back,
11 please.

12 Q. (By Attorney Buting)~ Sergeant Colborn, you
13 mentioned, was searching the desk and bookcase
14 area?

15 A. Yes.

16 Q. And at no time did Sergeant Colborn ever say,
17 hey, look at this, this -- the back of this
18 bookcase is loose?

19 A. No.

20 Q. Well, there's a gap here, right?

21 A. No, I never saw him physically go behind and look
22 at it, he was going through the contents inside.

23 Q. And he never mentioned, and you never saw, the
24 back of that moving as he was going through,
25 right?

1 A. No.

2 Q. Okay. You mentioned some small blood drops or
3 bloodstains that were found in Mr. Avery's
4 bathroom; do you recall that?

5 A. Yes.

6 Q. Are you aware that none of those drops of blood
7 ever proved to be Ms Halbach's?

8 A. I was told that; I read a report.

9 Q. All right. In fact, that no blood anywhere, from
10 Teresa Halbach, was found on any of these
11 bloodstains you made note of that night?

12 A. I was told that, yes.

13 Q. Okay. So, do you know whose they did turn out to
14 be?

15 A. I can't testify --

16 Q. Well, we'll get to that. You testified about
17 this Exhibit 200, which is an envelope that was
18 found?

19 A. Yes.

20 Q. You saw this recovered?

21 A. I don't believe that was recovered on the 5th of
22 November during the initial search.

23 Q. Oh, okay. But you identified it, so you must
24 have recognized it as an identifier?

25 A. I saw it, yes.

1 Q. You saw it. Okay. And the letter is from --
2 ATTORNEY BUTING: Put the ELMO back on,
3 please.

4 Q. (By Attorney Buting)~ The letter is from UW
5 Madison Law School, right?

6 A. Yes.

7 Q. The envelope itself?

8 A. Yes.

9 Q. And it actually contained a letter from the law
10 school dated November 1, 2005, right?

11 A. Yes.

12 Q. And it's an invitation --

13 ATTORNEY KRATZ: Objection, hearsay, Judge.

14 ATTORNEY BUTING: Well, this has been
15 introduced as an exhibit.

16 ATTORNEY KRATZ: I don't care, it's
17 hearsay, Judge, it's being offered for the truth of
18 the matter.

19 THE COURT: I'm going to sustain the
20 objection.

21 ATTORNEY KRATZ: Thank you, Judge.

22 Q. (By Attorney Buting)~ You also introduced a
23 number of notebooks?

24 A. Yes.

25 Q. Just for the record, 199, 197, and 198, right?

1 A. Yes.

2 Q. And these are pocket notebooks, right?

3 A. Yes.

4 Q. We only talked about the one page here that had
5 Teresa Halbach's number on it, right?

6 A. Yes.

7 Q. But, in fact, all or most of these notebooks have
8 numerous other phone numbers on them too, don't
9 they? Need to look through them?

10 A. I never paged through them, so.

11 Q. Well, take just a moment. Tell me if you see
12 other people's phone numbers, names, things of
13 that nature jotted down.

14 A. I would like to also clarify something in
15 reference to my testimony yesterday as well.
16 These two notebooks right here, I did see them on
17 the night of the 5th. Detective Remiker was
18 looking at them. I'm not sure if my testimony
19 yesterday was that he collected them. But
20 reviewing my stuff, he didn't collect these on
21 the night of the 5th. A different officer would
22 have collected these on a day thereafter. I just
23 wanted to correct that.

24 Q. Okay. That's just fine. Thank you. And when
25 you say these, just so the record is clear, you

1 were holding up Exhibit 199, the red notebook?

2 A. And 197.

3 Q. And 197, the green notebook. Okay. Just take a
4 moment and see if there's other phone numbers and
5 names in some of these?

6 A. Okay.

7 Q. Is that a fair statement?

8 A. I see numerous different phone numbers, but it's
9 in somebody's handwriting.

10 Q. Well, are you a handwriting expert, sir?

11 A. Well, it's obviously not the one that had the
12 same writing as on there.

13 Q. Can you identify whose handwriting is it, back to
14 the door?

15 A. No.

16 Q. But there are different phone numbers so if --
17 these are as if someone was using these to keep
18 -- just jot down phone numbers and names, right?

19 ATTORNEY KRATZ: Objection, speculation.
20 I'm sure counsel doesn't want us to read everything
21 that's in that notebook. It's hearsay, Judge, and
22 it's speculation.

23 ATTORNEY BUTING: You can read everyone of
24 them if you want to.

25 THE COURT: It's a fair summary question

1 based on what he already testified to; I will allow
2 it.

3 Q. The exhibit that has the note that has Teresa
4 Halbach's phone number in it -- Well, first of
5 all, it's not torn out from the notebook, right?

6 A. Correct.

7 Q. Not as if this was posted on the door as a note
8 for somebody is it?

9 ATTORNEY KRATZ: Objection, speculation,
10 Judge.

11 Q. (By Attorney Buting)~ Do you see any tape on it,
12 scotch tape?

13 THE COURT: I'm going to allow the
14 question.

15 A. I don't see any tape.

16 Q. Okay. And there's two different colored inks,
17 too, correct?

18 A. Yes.

19 Q. Her phone number is in green ink and this
20 other -- whatever this other writing means, is in
21 a different color ink?

22 A. Back to patio door is in black.

23 Q. Okay. As if maybe it was even written at
24 different times?

25 ATTORNEY KRATZ: Objection, speculation,

1 Judge.

2 THE COURT: Sustained.

3 Q. (By Attorney Buting)~ You also introduced a sign,
4 a for sale sign, that -- I don't see the exhibit
5 number here, but I will just show it to you.

6 ATTORNEY STRANG: 194.

7 Q. (By Attorney Buting)~ All right, 194. This is --
8 On one side it has a for sale sign, like you
9 would buy at a hardware store or something,
10 right?

11 A. Yes.

12 Q. It's got 1995 Pontiac Grand Am listed, right?

13 A. Yes.

14 Q. And then, on the back it has got some other
15 writing, 3302 Zander Road, correct?

16 A. Correct.

17 Q. And then it's got the phone number here that
18 turns out to be Teresa Halbach's cell phone
19 number, right?

20 A. Yes.

21 Q. Are you aware that Teresa Halbach's never lived
22 at 3302 Zander Road.

23 A. I'm not aware of any significance to the address.

24 Q. So, as far as you know, there's no connection
25 whatsoever between this address and that phone

1 number, right?

2 A. I don't know that.

3 Q. You don't know that or you do know that?

4 A. I do not know that.

5 Q. Now, you do know, I assume, that Teresa Halbach
6 had seen Mr. Avery on several occasions before
7 October 31st?

8 A. I was told that by Investigator Wiegert in
9 advance.

10 Q. Okay. Part of your briefing, right?

11 A. Yes.

12 Q. They sit down and they explain some of the
13 background so you know what's going on, right?

14 A. Yes.

15 Q. Okay. And in fact, before October 31st,
16 Mr. Avery had Teresa Halbach's phone number
17 already because he had arranged a private sale
18 with her; do you recall that?

19 A. No, I don't recall him having her cell number,
20 what time he had it. I don't know that
21 information.

22 Q. So you didn't know that information, okay. But,
23 if that were the case, finding her phone number
24 in his house on November -- or trailer, on
25 November 5th, would have meant nothing, would it?

1 ATTORNEY KRATZ: Objection, Judge, calls
2 for a conclusion, that's probably what the jury --

3 THE COURT: The objection is sustained.

4 Q. Well, when you collected those pieces of
5 evidence, you didn't -- you don't know when those
6 notes -- phone numbers were written, right?

7 A. Detective Remiker collected them, but I did not
8 know when they were written.

9 Q. All right. They could have been written weeks
10 ago, for all you know?

11 A. True.

12 Q. By the way, you said you weren't collecting the
13 evidence, you were just standing their watching
14 and writing down notes as to the times that
15 things were collected?

16 A. Yes.

17 Q. But the actual collection itself was done by --
18 or the bagging was done by Lieutenant Lenk?

19 A. Yes.

20 Q. Did you watch him seal every single bag?

21 A. I can't say with 100 degree certainty every
22 single bag, but he was doing his duties, I was
23 there, yes.

24 Q. Okay. So when you say that you were --
25 ultimately you collected the evidence, it was at

1 the end of the night?

2 A. Yes.

3 Q. After all the bags were sealed and completed,
4 right?

5 A. Yes.

6 Q. Then it's turned over to you?

7 A. Yes.

8 Q. All right. And you never saw a Toyota key
9 anywhere in Mr. Avery's bedroom that night, did
10 you?

11 A. I did not, no.

12 Q. And if you had seen a Toyota key anywhere in that
13 bedroom that night, you would have made note of
14 that, wouldn't you?

15 A. Personally, I would not have known what a Toyota
16 key looked like. I'm not too familiar with
17 automobiles and their keys.

18 Q. Well, all right. Let me ask it this way, you
19 knew that Teresa Halbach's vehicle was a Toyota
20 RAV4?

21 A. Yes.

22 Q. You went and looked at it, right?

23 A. Yes.

24 Q. And so if you found -- if someone had located a
25 key, a car key, inside that residence, you would

1 have either seized it or at least made note of it
2 as possible evidence in the case, right?

3 A. Absolutely.

4 Q. Particularly if it was a Toyota key, because that
5 may be the key that would fit the victim's
6 vehicle?

7 A. Absolutely.

8 Q. And you made no such note, right?

9 A. Correct.

10 Q. And you stood in the doorway for at least a half
11 hour?

12 A. Yes.

13 Q. Of his bedroom?

14 A. Yes.

15 Q. All right. I just have one question about this
16 -- another exhibit here and then I will move off
17 of these exhibits. You identified Exhibit 205 as
18 a hood latch swab, right?

19 A. Yes.

20 Q. I just want to make it clear here, this is
21 actually a swab that's dated -- or a piece of
22 evidence that's dated April 3rd, 2006?

23 A. That's correct.

24 Q. And that it was -- it was collected not at the
25 Crime Lab?

1 A. Correct.

2 Q. So whatever is in this little package is not
3 something that the Crime Lab found when they went
4 over it very, very carefully on November 8th, or
5 7th, whatever day they had it, right?

6 A. I was just informed that they did request myself
7 and Deputy Hawkins to --

8 Q. Who requested?

9 A. Investigator Wiegert.

10 Q. Okay. So Investigator Wiegert told you to go do
11 this, right?

12 A. Yes.

13 Q. All right. Let's move to the next day,
14 November 6th, you are paired with a different
15 team on that day, right?

16 A. Yes.

17 Q. And we talked about that, those were the three
18 Manitowoc city police officers?

19 A. Right.

20 Q. And you weren't given any kind of instruction
21 that you had to watch those three officers like a
22 hawk while you were doing the search, did you?

23 A. Right.

24 Q. There was no concern about whether or not you had
25 to leave those officers alone in any part of the

1 buildings that we're looking at, right?

2 A. Right.

3 Q. Because Mr. Avery wasn't suing them, right?

4 A. To the best of my knowledge.

5 Q. All right. And then the next day, November 7th,
6 you were paired, again, with Lenk and Colborn,
7 right?

8 A. That's correct.

9 Q. But not Mr. -- not Detective Remiker on this
10 occasion?

11 A. His wife was having a baby, or had a baby.

12 Q. Okay. Good for him, good for her. So on that
13 occasion, though, you didn't do a thorough search
14 with Lenk and Colborn of Mr. Avery's residence,
15 right?

16 A. That's correct.

17 Q. They -- The two of them were only in that
18 residence briefly, with you, when you were trying
19 to get a serial number from a computer, right?

20 A. Yes.

21 Q. Just a few minutes I think you said?

22 A. Yes.

23 Q. So it would have been difficult for them to have
24 planted any evidence in front of you at that
25 occasion -- on that occasion, right?

1 A. Yes.

2 Q. And besides, they were with you, the watchdog,
3 right?

4 A. I wouldn't call myself a watchdog, but they were
5 with me, yes.

6 Q. Okay. And no key was discovered on that occasion
7 was it?

8 A. By the computer, no.

9 Q. Anywhere in the house?

10 A. We didn't search the house. We just got the
11 serial number from the computer.

12 Q. So no key -- no Toyota key was recovered on
13 November 7th when you were in there with
14 Mr. Colborn and Mr. Lenk, right?

15 A. No key was recovered by the computer, no.

16 Q. All right. November 8th, I believe you testified
17 that you weren't even at the Avery Salvage Yard
18 on that day, right?

19 A. Not until late in the day. I was at the Calumet
20 Sheriff's Department, logging evidence.

21 Q. So the watchdog wasn't there.

22 ATTORNEY KRATZ: Judge, I am going to
23 object. We hear that, Judge, one more time, we're
24 going to approach with a side bar.

25 THE COURT: The objection is sustained.

1 Q. (By Attorney Buting)~ In any event, you were not
2 with Mr. Lenk and Mr. Colborn when they reentered
3 Steven Avery's residence on November 8th, were
4 you?

5 A. That's correct.

6 Q. And that is the occasion when a key was found,
7 right?

8 A. That is my understanding.

9 Q. When you weren't with them?

10 A. That's my understanding.

11 Q. November 9th, you testified about having some
12 different duties and that was the DNA exemplars
13 were taken from people, right?

14 A. Yes.

15 Q. And fingerprints were taken?

16 A. Yes.

17 Q. And palm prints were taken?

18 A. Yes.

19 Q. And those items were taken for the purpose of
20 trying to see if they might match with some
21 fingerprints that the Crime Lab had found on the
22 RAV4; is that your understanding?

23 A. I had no information as to what the Crime Lab had
24 found at that time. We were just executing a
25 search warrant based on the specific information

1 within those search warrants.

2 Q. All right. And the search warrant included
3 taking those buccal swabs from each individual
4 that had been -- Well, let me just name them, the
5 ones you were involved with, okay. Mr. -- Was
6 Mr. Avery one of them; he was, wasn't he?

7 A. Yes.

8 Q. Yes. You testified about that?

9 A. Yes.

10 Q. Also Delores Avery, right?

11 A. Yes.

12 Q. Barb Janda?

13 A. Yes.

14 Q. Chuck Avery?

15 A. Yes.

16 Q. Earl Avery?

17 A. Yes.

18 Q. And Bobby Dassey?

19 A. Yes.

20 Q. And these are what are called elimination type
21 exemplars?

22 A. Yes.

23 Q. To see if you can eliminate somebody from
24 something that may be found in a crime scene?

25 A. Yes.

1 Q. Or match them?

2 A. Sure.

3 Q. Okay. And it included DNA fingerprints and palm
4 prints, for all of them, right?

5 A. Yes.

6 Q. But at the end of that day, though, you received
7 information from a special agent, Joseph
8 Kapitany, I believe is the way you pronounce his
9 name?

10 A. Yes.

11 Q. That the Crime Lab only wanted the palm prints
12 and fingerprints of Mr. Steven Avery right away?

13 A. Immediately, yes.

14 Q. And so efforts were made to transfer Steven
15 Avery's palm prints and fingerprints immediately
16 to the Crime Lab, right?

17 A. Agent Kapitany approached me and stated those
18 words, that the Crime Lab wanted those items
19 immediately. I did give them to him. He signed
20 off on the document --

21 Q. Okay.

22 A. -- for those items.

23 Q. So he went off to the Crime Lab as far as you
24 know, with those items?

25 A. He left the Aurora Clinic; I assume, yeah, he was

1 in route to Madison.

2 Q. But all the other ones you took and just booked
3 into the Calumet Sheriff's Department?

4 A. Yes.

5 Q. Do you know the results of any of the comparisons
6 of fingerprints; Mr. Avery's fingerprint
7 standards to any fingerprints found on the RAV4?

8 A. No.

9 ATTORNEY KRATZ: I'm also going to object
10 as beyond the scope of this witness' expertise.
11 Probably hearsay as well.

12 ATTORNEY BUTING: I wasn't asking for the
13 results, I just wondered if he knew it.

14 ATTORNEY KRATZ: It seemed like that was
15 the question, do you know the results.

16 THE COURT: As phrased, the objection is
17 overruled.

18 ATTORNEY BUTING: He's answered. That's
19 fine.

20 Q. (By Attorney Buting)~ All right. Just a few more
21 questions, sir. You talked about -- or we talked
22 about this April 3rd date, when you were -- I
23 think your report called it processing evidence,
24 right?

25 A. Yes.

1 Q. And there was actually a number of days, you
2 mentioned one in March, but there was a number of
3 days over the next several weeks, March, April,
4 May, when you were going through various items
5 that had been seized from Mr. Avery's residence,
6 or garage, on one of the searches, either
7 November or March, right?

8 A. Yes.

9 Q. And your purpose in going through these items of
10 evidence was to see if there was any way you
11 could determine if any of these items of evidence
12 had any link or importance to this crime, right?

13 A. Yes.

14 Q. And so you were doing things like testing,
15 examining it for blood, items for blood, right?

16 A. Yes.

17 Q. The bleach bottle, for instance, that's been
18 marked as whatever exhibit it was. This was one
19 of the things that you examined to see if there
20 might be any blood on it, right?

21 A. Yes.

22 Q. Just a little brown mark on the bottom somewhere
23 that you weren't sure about?

24 A. Right.

25 Q. This is Exhibit 195. And so you tested this with

1 these presumptive tests that are very sensitive
2 to blood, right?

3 A. Yes.

4 Q. And it proved negative, right?

5 A. Correct.

6 Q. No blood. All right. You also looked at foot
7 boards for the bed, right?

8 A. Yes.

9 Q. You looked at a number of pieces of brown
10 paneling, right?

11 A. Yes.

12 Q. Paneling marked number one, number two, number
13 three, and each of those was negative for any
14 kind of blood, right?

15 A. Correct.

16 Q. And it's your understanding this is -- these are
17 the panels taken off the walls of Mr. Avery's
18 bedroom, right?

19 A. Yes.

20 Q. No blood, correct?

21 A. We did not find any.

22 Q. And there's also some molding, wooden molding
23 also taken from his room somewhere?

24 A. Yes.

25 Q. Tested for blood, negative, right?

1 A. Right.

2 Q. There were also some paint thinner cans -- cans
3 that apparently were recovered from the garage;
4 do you recall that?

5 A. I recall examining them, yes.

6 Q. You weren't there when they were seized, but you
7 examined them?

8 A. Yes.

9 Q. And it was determined that those cans had no
10 evidentiary value whatsoever, right?

11 A. We did some presumptive tests on them, I believe,
12 and got negative results, correct.

13 Q. And there was also some gas tank -- or a number
14 of gas cans and I guess snowmobile gas tanks, or
15 things of that nature?

16 A. Correct.

17 Q. You tested all of those, right?

18 A. Yeah, we swabbed a lot of those gas cans,
19 anything that we saw that was suspicious, we
20 would do.

21 Q. And they were are all negative?

22 A. Yes.

23 Q. No blood, right. Then you also took -- and this
24 would have been on May 1st, a piece of carpeting
25 that was ripped out of the whole hallway of

1 Mr. Avery's residence, right?

2 A. It was a small piece of carpeting that was,
3 correct, cut from the entrance door by the
4 bathroom to the entrance to the bedroom.

5 Q. Okay. In that hallway right outside his bedroom?

6 A. Yes.

7 Q. Okay. And you actually did a luminol?

8 A. Yes.

9 Q. And we have heard testimony about luminol. I'm
10 not going to go over it in detail, but that's
11 something that can highlight anything that is
12 of -- could be blood, could be a lot of other
13 things, right?

14 A. Yes.

15 Q. And you found no heavy concentrations anywhere in
16 the carpet indicating any drops of blood had
17 fallen, right?

18 A. There was no pattern, nothing that was consistent
19 with what you were talking about, correct.

20 Q. All right. And you even looked at the back of
21 that carpet, right?

22 A. Yes.

23 Q. That was actually a later date, June 23rd, right?

24 A. I don't recall that.

25 Q. You were told to pull the carpeting out of -- I'm

1 sorry this was a different piece of carpeting?

2 A. Okay. That would be consistent.

3 Q. Okay. You pull the carpeting that was ripped out
4 of the bedroom of Mr. Avery, right?

5 A. Yes.

6 Q. And you actually looked at the very -- at the
7 back of it?

8 A. Yes.

9 Q. The backside. And you did presumptive tests for
10 blood?

11 A. Yes.

12 Q. And found nothing?

13 A. Correct.

14 Q. No blood?

15 A. Nothing consistent with blood, correct.

16 Q. You also, a number of times, I won't go into all
17 of them, but there were a number of knives,
18 kitchen knives, pocket knives, things like that,
19 that were seized either in the residence or the
20 garage, right?

21 A. Yes.

22 Q. And you looked at all of those, right?

23 A. Some were sent to the Crime Lab; some we kept at
24 the office and processed ourselves.

25 Q. All right. And the ones you processed you looked

1 for blood, right?

2 A. Yes.

3 Q. None, correct?

4 A. Correct.

5 ATTORNEY BUTING: All right. Thank you.

6 THE COURT: Mr. Kratz, are you going to be
7 doing redirect?

8 ATTORNEY KRATZ: I am.

9 THE COURT: How much time do you think?

10 ATTORNEY KRATZ: I just actually, I think I
11 have two questions, Judge, so.

12 THE COURT: All right. Go ahead.

13 **REDIRECT EXAMINATION**

14 BY ATTORNEY KRATZ:

15 Q. Sergeant Tyson, Mr. Buting asked you about
16 that -- that sign that mentioned a Zander Road
17 address; do you recall him showing you that?

18 A. Yes.

19 Q. Do you know where that Zander Road address is?

20 A. No.

21 Q. Do you even know if it's in Calumet County?

22 A. I heard Zander Road a couple of times on our
23 department radios, Manitowoc County either having
24 a crash or something like that, so I'm familiar
25 with Zander Road probably being in Manitowoc

1 County, I know it rang a bell, but I don't know
2 where it is.

3 Q. Something a Manitowoc officer might be better
4 able to answer?

5 A. Yes.

6 Q. And lastly, Mr. Buting asked you about somebody
7 relieving you from the scene security, that is,
8 from watching over the SUV; do you remember those
9 questions?

10 A. Yes.

11 Q. Do you remember what department relieved you; in
12 other words, the scene security from the point
13 that you took over, thereafter, do you know what
14 department was responsible?

15 A. Calumet County Sheriff's Department.

16 ATTORNEY KRATZ: I think that's all I have
17 for redirect.

18 ATTORNEY BUTING: No questions.

19 THE COURT: Very well, the witness is
20 excused, and at this time we'll take our morning
21 break. Members of the jury, again, do not discuss
22 this case among yourselves during the break. We'll
23 resume in about 15 minutes.

24 (Jury not present.)

25 ATTORNEY BUTING: Your Honor, could I move

1 206 and 207 into evidence?

2 THE COURT: Any objection?

3 ATTORNEY KRATZ: No.

4 THE COURT: They are admitted.

5 (Recess taken.)

6 (Jury present.)

7 THE COURT: Mr. Kratz, at this time you may
8 call your next witness.

9 ATTORNEY KRATZ: State will call Andrew
10 Colborn to the stand.

11 THE CLERK: Please raise your right hand.

12 **SERGEANT ANDREW L. COLBORN**, called as a
13 witness herein, having been first duly sworn, was
14 examined and testified as follows:

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

17 THE WITNESS: Andrew L. Colborn,
18 C-o-l-b-o-r-n.

19 ATTORNEY KRATZ: You don't have to be quite
20 so close.

21 **DIRECT EXAMINATION**

22 BY ATTORNEY KRATZ:

23 Q. Mr. Colborn, can you tell us, how are you
24 employed, please.

25 A. I'm a patrol sergeant with the Manitowoc County

1 Sheriff's Department.

2 Q. How long have you been a law enforcement officer?

3 A. Since 1996.

4 Q. Prior to 1996, what did you do?

5 A. I was a Corrections Officer from 1992 to 1994,
6 also with the Manitowoc County Sheriff's
7 Department.

8 Q. What does a Corrections Officer do?

9 A. A Corrections Officer is a non-sworn, non-law
10 enforcement officer, that is a responsibility for
11 security of the jail.

12 Q. All right. How was it that you became a sworn
13 law enforcement officer?

14 A. When a position opened up at the Manitowoc County
15 Sheriff's Department, I did perform the State
16 written test, performed an agility test, went on
17 an eligibility list, and eventually I was
18 selected.

19 Q. What are your current duties with the Manitowoc
20 County Sheriff's Department?

21 A. I'm a assistant shift commander for the noon to 8
22 shift so I have some administrative duties and
23 then I have some patrol duties.

24 Q. Prior to being selected as a law enforcement
25 officer, did you have any duties in your prior

1 life that in any way prepared you for being a law
2 enforcement officer?

3 A. No.

4 Q. Sergeant, you hold the rank of sergeant?

5 A. Yes, sir.

6 Q. And in early November of 2005, did you hold that
7 same rank?

8 A. Yes, sir.

9 Q. What were your duties back in early November of
10 '05?

11 A. Essentially the same duties that I hold today. I
12 was a patrol supervisor on -- I work a six day
13 on, three day off rotation. So on the days that
14 the lieutenant that's assigned to the shift is
15 off, I would be the shift commander.

16 Q. So you have supervisory responsibilities as well?

17 A. Yes, sir.

18 Q. I'm going to direct your attention to
19 November 3rd of 2005, ask if you were employed on
20 that evening?

21 A. Yes, sir.

22 Q. Do you recall what your duties were on
23 November 3rd?

24 A. I was the shift commander for the noon to 8
25 shift, that's the shift I'm assigned to.

1 Q. Sometime during that shift, Sergeant Colborn,
2 were you informed of a Calumet County missing
3 persons investigation that was ongoing?

4 A. Yes, sir.

5 Q. And being involved in that -- or excuse me, being
6 aware of that investigation, were you asked to
7 assist in any way?

8 A. Yes, sir.

9 Q. Tell the jury how you were asked to assist?

10 A. I was contacted by, I believe it was inspector or
11 Investigator Mark Wiegert from the Calumet County
12 Sheriff's Office, who contacted the dispatch
13 center by telephone, who then transferred the
14 call to my patrol car.

15 He asked if I could respond to, I
16 believe he gave me the address of 12928 Avery
17 Road. He asked if I knew where that was and I
18 told him, yes, I believe that that was the
19 address of Avery Auto Salvage. And he asked if I
20 could go there and check for a missing person
21 because they had a missing person report that had
22 generated in Calumet County and it had been
23 determined, through the course of their
24 investigation, that she had been out at the Avery
25 Salvage Yard, taking pictures of a vehicle that

1 was for sale.

2 Q. At the time that Investigator Wiegert asked for
3 your assistance, did Investigator Wiegert tell
4 you other places within Manitowoc County that Ms
5 Halbach had known to have been on the 31st of
6 October?

7 A. I don't believe in the -- in the initial phone
8 call that he did.

9 Q. All right. Some time later that evening you
10 heard?

11 A. Yes, sometime later that evening he gave me
12 another address on County Highway B and another
13 name and asked me to check there as well.

14 Q. What name was that, just so -- we're going to
15 eventually get there?

16 A. I believe the first name was George; I know the
17 last name was Zipperer.

18 Q. Sergeant Colborn, are you at all familiar with
19 the Avery salvage business itself?

20 A. Yes.

21 Q. Tell the jury how you are familiar with that
22 business.

23 A. I have been, personally, a customer of the Avery
24 Auto Salvage business; as well as, I have had
25 contacts there through with law enforcement. And

1 I have children that are the same age as some of
2 the owners of Avery Auto Salvage, so I had
3 contact with them through the course of school
4 events.

5 Q. All right. Let's take those -- Well, when we
6 discuss this, I'm going show you what's been
7 received as Exhibit 86, can you tell us what that
8 is, please.

9 A. That's an overhead, like an airplane view,
10 birds-eye view of the Avery Auto Salvage.

11 Q. Prior to the 3rd of November, 2005, had you been
12 to that property?

13 A. Prior to 2005?

14 Q. Prior to November 3rd of 2005, had you been to
15 that property?

16 A. Yes.

17 Q. And under what circumstances, can you tell the
18 jury about that?

19 A. Again, as a customer.

20 Q. Let's talk about that, first. What do you mean
21 as a customer.

22 A. I have several older vehicles, one, as a matter
23 of fact, is a 1950 Chevrolet pickup truck. And
24 I -- in the process of tinkering around with it,
25 I have gone to several auto salvage and I have

1 always been referred to the Avery Auto Salvage as
2 the place to go if you are looking for an older
3 model vehicle parts -- or parts for an older
4 model vehicle.

5 Q. Was there one person in particular that you would
6 normally have contact with at the Avery Auto
7 Salvage?

8 A. No, actually, usually there were two; either I
9 had contact with Charles Avery or Earl Avery.

10 Q. All right. They are brothers and, in fact, the
11 owners of the business; is that right?

12 A. Yes, sir.

13 Q. Let me ask you this, Sergeant Colborn, if you
14 know, prior to the 3rd of November, 2005, when
15 was the last time you were at the Avery Auto
16 Salvage business?

17 A. I think the last time I was at the Avery Auto
18 Salvage business would have been 1999.

19 Q. All right. So at least six years previously?

20 A. Yes, sir.

21 Q. But you knew where it was?

22 A. Yes, sir.

23 Q. Then, on November 3rd, after Mr. Wiegert asked
24 for your help; did you proceed to this scene?

25 A. Yes, sir.

1 Q. And that's 2005; is that right?

2 A. Yes, sir.

3 Q. Can you tell the jury, please, what happened when
4 you got there on November 3rd?

5 A. Again, I knew that Earl Avery, who was probably
6 the person that I have had the most contact with
7 or know the best, doesn't live on the Avery Auto
8 Salvage property, so my initial -- what I was
9 initially trying to do was to make contact with
10 Charles Avery, who does reside on there.

11 I knew Charles to -- I didn't know if he
12 owned the business, but I certainly knew that he
13 managed the business. So I was going to make
14 contact with him and ask him if he had seen
15 someone on the property taking pictures of a
16 vehicle that was for sale.

17 Q. In looking for Charles Avery, do you remember
18 what building you went to?

19 A. Well, initially, I was kind of surprised when I
20 drove in, because the shop area, a lot of --
21 there were new buildings and things had changed
22 since the last time I was there. But I was
23 attempting to make contact at his residence,
24 which I believe is right behind that large,
25 square shaped building.

1 Q. We're handing you a laser pointer to assist you
2 in your --

3 A. I believe that --

4 Q. -- testimony.

5 A. I thought that was his residence right there.

6 Q. And you were pointing actually to the residence
7 which would be just the south of the --

8 A. That one right there.

9 Q. You have to wait until I finish my question, sir.
10 You are pointing to a trailer or a residence just
11 south of the Avery business itself. And I think
12 counsel is willing to stipulate that is Charles
13 Avery's residence.

14 ATTORNEY STRANG: Certainly my
15 understanding.

16 THE COURT: All right. The record will
17 reflect the stipulation.

18 Q. (By Attorney Kratz)~ Did you drive or walk into
19 this property?

20 A. I drove.

21 Q. Can you tell the jury where you came in from,
22 please.

23 A. There is -- To my knowledge there is only one
24 entrance onto the property and that's off Avery
25 Road, which the whole of Avery Road isn't

1 pictured on that picture. But I ended up coming
2 down that dirt road there and parking almost
3 where there is a vehicle parked right now.

4 Q. Why don't you show us where you parked. If I
5 zoomed into that location would that help us?
6 All right. We have now zoomed in to Exhibit 86,
7 could you, again, show the jury about where it
8 was that you parked.

9 You are pointing which would be just to
10 the north of the large building, which is
11 something we have been calling the new office or
12 the new shop building; is that correct?

13 A. Yes, sir.

14 Q. All right. After parking at that location, tell
15 the jury what happened. By the way, about what
16 time was this that you got there?

17 A. I'm guessing around 7:00, between 6:30 and 7:30.

18 Q. Was it light out or was it dark?

19 A. It was dark.

20 Q. After parking there, Sergeant Colborn, what
21 happened?

22 A. I got -- I exited my squad car and I was going to
23 walk down the road, that road right there, in
24 order to access Charles' residence. Almost as
25 soon as I got out of my car I heard something

1 behind me. I turned and Steve Avery was walking
2 towards me and he had come out of that residence
3 right there.

4 Q. Do you know whose residence that is?

5 A. I believe that's Al and Delores Avery's
6 residence.

7 Q. Did you have any conversation with Steven Avery
8 at that time?

9 A. Yes, I did.

10 Q. And could you describe that conversation for the
11 jury, please?

12 A. I think Steve initiated the conversation with me
13 by asking me what I wanted, what I was doing
14 there.

15 Q. Were you dressed similar to what you are dressed
16 today?

17 A. Yes, I was in uniform.

18 Q. Did you have a marked squad car?

19 A. Yes, I did.

20 Q. What did you tell Mr. Avery?

21 A. I told Avery -- Mr. Avery, that there was -- I
22 had received a call from Calumet County and that
23 they had informed me that there was a girl
24 missing from Calumet County and asked him if she
25 had come out to their property to photograph a

1 vehicle that they were selling.

2 Q. Did Mr. Avery have a response for you?

3 A. Yes, he said that she had been there.

4 Q. Did he tell you what day she had been there?

5 A. I think I might have told him that, what day that
6 she should have been out there. I don't recall
7 if we mentioned a date, but I do remember asking
8 him what time she had been out there.

9 Q. Did Mr. Avery recall this young woman?

10 A. Yes.

11 Q. Did he name her for you?

12 A. No.

13 Q. Did he tell you what she had done at his property
14 that day?

15 A. He said that she was taking some pictures of a
16 van that his sister was selling.

17 Q. Mr. Avery tell you how long the woman had been on
18 his property?

19 A. He said 5 or 10 minutes.

20 Q. Did you inquire of Mr. Avery whether or not he
21 had personal contact with this woman on the date
22 she was out there?

23 A. I asked Mr. Avery if she had said where she was
24 going. And he said, I never talked to her. She
25 was only here 5 or 10 minutes and she left.

1 Q. But he never talked to her?

2 A. That's what he told me, he never talked to her.

3 Q. Did he describe that further, how he knew she was

4 there?

5 A. He said he saw her out the window taking the

6 pictures.

7 Q. Okay. Did you complete that conversation with

8 Steven Avery? Do you recall that conversation?

9 A. I told Mr. Avery that her parents and her family

10 were getting worried and was he sure that she

11 didn't mention where she might have been going

12 after she left. And he said, no, I didn't talk

13 to her. She was only here a few minutes and then

14 she left.

15 Q. What was Mr. Avery's demeanor like as he was

16 talking to you; was he cooperative?

17 A. Yes, he was very cordial.

18 Q. Mr. Avery indicate to you the time, that is, when

19 this young woman had been on his property?

20 A. He said he thought between 2:00 or 2:30.

21 Q. What did you do then?

22 A. I believe I thanked him for talking with me and I

23 started to get back in my car. And I believe

24 Mr. Avery told me that he hoped she turned up

25 soon.

1 Q. What did you do then?

2 A. I left. I left the property and I contacted --
3 he is the under sheriff of our department now,
4 but at the time he was the deputy inspector of
5 the operations division. I called him.

6 Q. What's his name?

7 A. Greg Schetter. And I let him know that Calumet
8 County was investigating a missing persons case
9 and that one of the places that it had been
10 mentioned that this party was at was on -- at the
11 Avery Salvage Yard and I just left there and made
12 contact and that I was unable to locate that
13 person. And he suggested that I probably contact
14 Lieutenant Lenk and see if he wanted -- if
15 Lieutenant Lenk wanted any of our detectives to
16 assist Calumet County in searching any place
17 else.

18 Q. Did you do that?

19 A. Yes, I did.

20 Q. And did you speak with Lieutenant Lenk that
21 evening?

22 A. Yes, by phone. And then when I got into the
23 department, because prior to going into the
24 department I went past the other residence. I
25 must have also contacted Investigator Wiegert and

1 let him know that I hadn't located.

2 And he, I believe, at that time told me
3 of the other address. So I purposely drove past
4 that residence. I saw it was dark, but that
5 there were cars in the driveway. But the
6 residence was dark. I didn't see any lights on
7 there. So I ended my tour of duty for patrol.

8 Q. Let me just stop you. Whose residence was this
9 that you drove past?

10 A. George Zipperer's.

11 Q. Go ahead. What did you do?

12 A. I ended my patrol tour of duty, but I remained on
13 duty to assist Calumet County Detective Dederling
14 and Detective Remiker in making contact at George
15 Zipperer's residence.

16 Q. Was that done at that time?

17 A. It was done, you know, within probably a half
18 hour or 45 minutes of my getting back to the
19 department.

20 Q. The question, Sergeant Colborn, did you assist in
21 that process?

22 A. Yes, sir.

23 Q. You mentioned that there was a Calumet detective
24 that was involved, as well as Manitowoc; is that
25 right?

1 A. Yes, sir.

2 Q. In meeting with the Zipperers?

3 A. Yes, sir.

4 Q. And, again, do you remember who they were?

5 A. I believe his name is John Dederling.

6 Q. All right. When you -- I'm just going to go back
7 just briefly to your contact with Mr. Avery. You
8 mentioned that he was cooperative; is that right?

9 A. Yes, sir.

10 Q. I want you to remember back, as best you can,
11 Sergeant Colborn, at that initial meeting with
12 Mr. Avery, you, Sergeant Andy Colborn, did you
13 have any feelings or any inclination that
14 Mr. Avery may have been involved in Ms Halbach's
15 disappearance?

16 A. Not at that time, no.

17 Q. Did you do anything on the 3rd of November to
18 further investigate Mr. Avery?

19 A. On November 3rd?

20 Q. Yes.

21 A. No, sir.

22 Q. Did you ever go back onto his property on the
23 3rd?

24 A. No, sir.

25 Q. After going to the Zipperers with Detective -- I

1 think it was Remiker and Dederling, what did you
2 do after that?

3 A. After we were done, completed at the Zipperers?

4 Q. Yes.

5 A. I went home. I was done with -- you know, I was
6 already on overtime. I checked out and went
7 home.

8 Q. Do you know about what time that was?

9 A. 10:30, 11:00 at night, maybe.

10 Q. All right. Do you remember what you did the rest
11 of that evening?

12 A. Just probably fell asleep on the couch. I went
13 to bed and, you know, fell asleep.

14 Q. The next day, on the forth of November, were you
15 working that day?

16 A. No, sir, I was off that day.

17 Q. It's a Friday; is that right?

18 A. Yes, sir.

19 Q. Do you remember what you did on the 4th? We'll
20 get back to that, but do you recall, generally,
21 your day on the 4th of November?

22 A. Yes, sir.

23 Q. Move your attention one day further, on the 5th,
24 Saturday, the 5th of November; do you recall what
25 you were doing that day or that morning?

1 A. That was also a regularly scheduled day off for
2 me. Yes, I recall what I did on that day.

3 Q. We'll get into the morning, but let me just jump
4 right to this investigation. Were you contacted
5 at all by any supervisors or superiors that day
6 and asked to participate in this case?

7 A. I was contacted by the noon to 8 shift commander
8 for that day, and he did ask me to come into work
9 and pick up a patrol vehicle and respond out to
10 the Avery Salvage Yard.

11 Q. Did you do that?

12 A. Yes.

13 Q. In a marked vehicle?

14 A. Yes, I did take a marked vehicle out there.

15 Q. And about what time was it that you arrived at
16 the Avery scene itself; do you recall?

17 A. I know I left my house between 4:00 and 4:30. I
18 probably got out to the Avery Salvage Yard
19 between 5:15, 5:30 maybe.

20 Q. To your best recollection?

21 A. Yes.

22 Q. What happened when you got to the Avery salvage
23 business?

24 A. I made contact with the same supervisor who had
25 called me and I asked him, what do you want me to

1 do. And he informed me that there was a deputy
2 there that had some personal business or matters
3 to attend to. She had been out there since
4 apparently earlier in the day. And he asked me
5 to transport that deputy back to the department
6 so that she could get her own private vehicle and
7 go home. And then come back out to the Avery
8 Salvage Yard and provide security.

9 Q. Did you do that?

10 A. Yes.

11 Q. What did you do when you got back to the Avery
12 business?

13 A. Tried to stay in the car as much as possible
14 because it was pouring rain. But they directed
15 my attention to a place way off in the salvage
16 yard where I could see some lights. And
17 somewhere up in this area here they just told me
18 to sit in the car and not let anyone go down any
19 of these roads.

20 Q. Providing scene security up near what would be
21 the business buildings?

22 A. Yes.

23 Q. Did you do that?

24 A. Yes.

25 Q. How long did you have that responsibility.

1 A. Maybe like an hour, hour and a half. And I was
2 then told that, actually, I could go home. So I
3 was preparing to do that. I was checking all my
4 equipment to make sure I had everything that I
5 got out there -- came out there with. And then I
6 was told that I was going to be needed in a
7 different capacity and not to go home.

8 Q. All right. Let me ask you this, Sergeant
9 Colborn, any time that day, any time on the 5th
10 of November, did you ever make your way down
11 towards the pond, or down towards the southeast
12 quadrant of the Avery salvage property?

13 A. No, sir.

14 Q. Could you point to that area for us, with the
15 laser pointer. Point to the northeast corner of
16 the property. I'll specifically ask you about
17 that area, did you go near that area at all on
18 the 5th of November?

19 A. No, sir.

20 Q. How about on the 3rd when you were there 2 days
21 earlier, talking to Steven Avery?

22 A. No, sir.

23 Q. And were you down there at all on the 4th of
24 November?

25 A. No, sir.

1 Q. When initially being told that you could leave,
2 or that you were in effect packing up to leave,
3 who was it that approached you with other duties?

4 A. Detective Remiker.

5 Q. Do you know what you were being asked to do then?

6 A. He just said, you may want to check in with
7 Inspector Wiegert -- Detective Wiegert, before
8 you go home, because you can see the huge area
9 here, it's going to have to be checked, and we
10 don't have a lot of people here to do that.

11 Q. Do you know how many sworn law enforcement
12 officers were on scene at that time, or is that
13 something that you wouldn't even have a guess on?

14 A. No, I didn't take a head count. I don't know. I
15 would ball park it at 50 or less, but I don't
16 know.

17 Q. All right. Now, 50 sounds like a lot of police
18 officers; do you think that's a lot for that size
19 scene?

20 ATTORNEY STRANG: Irrelevant.

21 THE COURT: Sustained.

22 Q. (By Attorney Kratz)~ Did you check in with
23 Investigator Wiegert before you left?

24 A. Yes.

25 Q. And can you tell the jury, please, what -- what

1 that conversation was?

2 A. I believe he asked me if I was an evidence
3 technician and I said, yes, I am. And --

4 Q. Let me stop you there. What all goes into being
5 an evidence technician?

6 A. It's an investigative portion, it's an
7 investigative duty some police officers are
8 trained to do and some who may not be interested
9 in that are not. Not every police officer is an
10 evidence technician. You do get special training
11 on how to do photographing, how to identify
12 evidence, how to collect evidence without
13 destroying it.

14 Q. All right. And you had been through that
15 training?

16 A. Yes, sir.

17 Q. With Manitowoc County, that is, with the
18 sheriff's department, had you performed evidence
19 collection duties prior to November 5th of 2005?

20 A. Yes, sir.

21 Q. How long had you been an evidence tech?

22 A. Since 1997.

23 Q. Have you ever executed a search warrant or
24 collected evidence in that capacity before?

25 A. Yes, sir.

1 Q. After Investigator Wiegert asked you if you were
2 an evidence tech, what were you told to do?

3 A. I was just told to stand by, not to go home. So
4 I went back out to my patrol car.

5 Q. And, again, where was that parked, if you can
6 show us?

7 A. I may, you know, have moved it closer to the
8 Command Post, but initially I was parked right in
9 this area here.

10 Q. Again, near the business buildings?

11 A. Yes, sir.

12 Q. How long did you wait for further assignment?

13 A. Maybe 5, 10 minutes.

14 Q. Now, Sergeant Colborn, did you know what
15 assignment you were going to be given; in other
16 words, did you know where you were going to be
17 directed that night?

18 A. No, sir.

19 Q. What's the next direction that you recall
20 receiving?

21 A. I believe the next person I made contact with was
22 Sergeant Bill Tyson from the Calumet County
23 Sheriff's Department. And he was with Lieutenant
24 Lenk and Detective Remiker. I believe he came
25 out of the Command Post. They kind of motioned

1 to me. So walked up to them and Sergeant Tyson
2 said, you are going to be working for me and we
3 are going to be going to Steve Avery's trailer.

4 Q. What did working for me mean, or what do you
5 believe it meant?

6 A. Well, I had been told by this time that the
7 Calumet County Sheriff's Department was leading
8 up this investigation. So I interpreted working
9 for me as, you are the boss and you are going to
10 tell me what to do.

11 Q. Okay. Were you okay with that?

12 A. Yes.

13 Q. Did you then proceed with Deputy Tyson to the
14 Steven Avery trailer?

15 A. Yes, sir.

16 Q. Do you remember how you got there, how you got
17 down there?

18 A. I believe we took two cars. I believe Sergeant
19 Tyson took his Calumet County patrol car and we
20 probably -- I don't think we took my marked unit,
21 I think I got in Detective Remiker's car, or
22 Lieutenant Lenk's car, whichever. It was an
23 unmarked Manitowoc County car.

24 Q. All right. Tell us again, if you can look at
25 Exhibit 86, now where did you drive, where did

1 you guys go then?

2 A. I had never been to Steve Avery's trailer before
3 so I really didn't know where it was. But we
4 drove down this road to that trailer right there.

5 Q. I will zoom in again on Exhibit 86; do you recall
6 where the cars were parked?

7 A. I believe we parked them in this driveway here
8 that goes up to that garage.

9 Q. Do you recall that particular search that
10 evening?

11 A. Yes, sir.

12 Q. How is it that you have a independent memory of
13 that first search of Steven Avery's trailer?

14 A. Because I was involved in it.

15 Q. Okay. Did each of the search team members have a
16 specific responsibility within that trailer, if
17 you know?

18 A. Not really. I did have the specific
19 responsibility of photographing. But as far as
20 collecting, I mean, we all worked as a team. It
21 wasn't like one person went here and one person
22 went there. We were always -- worked together as
23 a team, always within arm's length of one
24 another.

25 Q. Was that by design, do you know?

1 A. I don't know if it was by design, per se, but it
2 just seemed that this would be the best way for
3 things to work and that we could be the most
4 careful and concise, working together as a team.

5 Q. All right. Let me ask you, Sergeant Colborn, did
6 you know the kinds of things that you were
7 looking for in Steven Avery's trailer?

8 A. Not specific -- specifically, no.

9 Q. Was there generally a term of things that you
10 were looking for?

11 A. I was looking for any evidence that would
12 substantiate or eliminate her having been there.

13 Q. Who's her?

14 A. Teresa Halbach.

15 Q. What rooms were it that the four of you searched?

16 A. I believe that first night we did search the
17 entire trailer. We started in what I term to be
18 the master bedroom or the largest bedroom.

19 Q. All right. We have already heard from Sergeant
20 Tyson so what responsibilities -- I'm just
21 talking about you now, not the others -- but what
22 responsibilities did you have in the search of
23 that bedroom?

24 A. Again, initially, I did all the photographing
25 that night with a 35mm camera. And then I was

1 looking in -- there was a bookcase type piece of
2 furniture next to the bed and a desk next to
3 that.

4 And while I say it's the larger bedroom,
5 it's still kind of a small bedroom so those
6 pieces of furniture were almost tight together.
7 And there was very little distance between the
8 bed and those pieces of furniture, I mean, maybe
9 2 foot. And that's the area that I was
10 specifically searching --

11 Q. How many --

12 A. -- in that bedroom.

13 Q. I'm sorry. How many men were in that bedroom?

14 A. There was myself, Detective Remiker, Lieutenant
15 Lenk and Sergeant Tyson.

16 Q. I'm going to put on the screen an exhibit which
17 has already been received; it's Exhibit 103.
18 It's a computer generated exhibit. Zoom in,
19 specifically, into the bedroom; does that help
20 you better orient yourself to Steven Avery's
21 bedroom?

22 A. Yes.

23 Q. Take the laser pointer, please, and tell the
24 jurors in what area you had initial
25 responsibility to search on the 5th of November.

1 A. This cabinet right here, I guess we could call
2 that a bookcase, and this desk right here.

3 Q. All right. And did you -- Let's talk about the
4 cabinet first. Mr. Wiegert is going to hand you
5 what's been marked as Exhibit No. 203 and on 204,
6 ask if you found those items in Mr. Avery's
7 bedroom on the 5th of November?

8 A. Yes, sir.

9 Q. Tell the jury where you found them, please.

10 A. That's a shelf right there, there's a little
11 space between that shelf and the top of the
12 cabinet. I found them inside there, inside that
13 area.

14 Q. Now, after finding or locating a piece of
15 physical evidence during this search, that is, on
16 the 5th, what did you do with that evidence?

17 A. As soon as I located something that, in my
18 opinion, was of evidence, which doesn't
19 necessarily make it evidence, but if it was, in
20 my opinion, to be of evidentiary value, I stopped
21 what I was doing. I informed Sergeant Tyson,
22 hey, I found some leg irons and handcuffs in
23 here.

24 Then Sergeant Tyson would come over. I
25 would photograph them, then he collected them and

1 put them -- you know, went through the
2 administrative duties that the Calumet County
3 Sheriff's Department requires for logging
4 evidence.

5 Q. The actual seizure, or the collection of them,
6 was whose responsibility?

7 A. Calumet County's.

8 Q. Sergeant Tyson?

9 A. Well, on that evening, yes, Sergeant Tyson,
10 sorry.

11 Q. When you look at Exhibit 103, this computer
12 generated diagram, other than the roof being
13 ripped off, for obvious reasons, does that look
14 the same or similar as it did on the 5th of
15 November?

16 A. Yes, sir.

17 Q. You see on the wall above the bed, the headboard,
18 there is a gun rack; do you see that?

19 A. Yes.

20 Q. Is that how it looked on the 5th of November as
21 well?

22 A. Yes.

23 Q. Did you see any firearms on that gun rack that
24 aft -- that evening?

25 A. There were two firearms on that gun rack, just

1 pretty much like it is in the picture.

2 Q. Were you able, Sergeant Colborn, to identify
3 those guns, or at least what kind of guns they
4 were?

5 A. I know as soon as we walked into the room we
6 noticed the guns right away. I probably stood
7 right about here and I could see that one of the
8 guns, I believe it's this lower one, was a
9 muzzleloader, and it had a piece of masking tape
10 on the stock that said Steve.

11 Q. What about the gun on top; is that a long gun as
12 well?

13 A. It's a .22 caliber rifle.

14 Q. Now, let me ask you, to the best of your
15 recollection, Sergeant Colborn, were those guns,
16 were those firearms seized from Mr. Avery's
17 bedroom on the 5th of November?

18 A. I don't think we did take them on the 5th of
19 November, no.

20 Q. So the jury understands, at that time, that is,
21 that first day, that first night that you guys --
22 you guys meaning the law enforcement -- got
23 there, had Teresa Halbach's body or any of her
24 remains been located?

25 A. No, sir.

1 Q. Did you even know that you were dealing with a
2 crime at that time?

3 A. I -- Initially, we were still treating this more
4 or less as a missing person.

5 Q. All right. But you were looking for items that
6 had obvious evidentiary value; is that right?

7 A. Yes, sir.

8 Q. What were some of the other rooms that -- or let
9 me just -- let me just make this clear, while in
10 that room, while in that bedroom searching, did
11 you notice any -- anything on the floor;
12 specifically, did you notice any car key on the
13 floor?

14 A. No, sir.

15 Q. In looking at, or on top of, either the desk or
16 the bookcase, did you notice any car key or
17 something that may have had obvious evidentiary
18 value in that regard?

19 A. Not really, no.

20 Q. Okay. What other rooms were searched that night?

21 A. I believe we searched every -- every room in the
22 trailer that evening.

23 Q. Try to get to a overview here. This has been
24 received as Exhibit No. 102, does this appear to
25 be an overview of the Avery trailer, again, a

1 computer generated diagram?

2 A. Yes, sir.

3 Q. Lists both bedrooms, the bathroom, living room,
4 dining room and kitchen area; is that right?

5 A. Yes, sir.

6 Q. Each of those rooms searched that evening?

7 A. Yes, sir.

8 Q. You said you were taking 35mm photography in that
9 trailer; is that correct?

10 A. Yes, sir.

11 Q. Were there other photographs also being taken?

12 A. I believe Detective Remiker had brought a small
13 digital camera in as well and he was taking some
14 digital photos as well.

15 Q. I show you a photo that's been received as
16 evidence. This is Exhibit No. 163 and ask if you
17 recognize this particular photo.

18 A. That's a photograph of the master bedroom area I
19 was just talking about in Steve Avery's trailer.

20 Q. Is that how it looked on the 5th of November?

21 A. Yes, sir.

22 Q. Exhibit No. 175, again, which has been received,
23 could you tell us what this is, if you know.

24 A. That's in the living room area of that same
25 trailer, the same residence. And this is like a

1 corner of the living room that was set up as a
2 computer work area.

3 Q. Was that an area that you and your colleagues
4 searched that evening?

5 A. Detective Remiker was the primary officer that
6 looked at that area, but he did call me over a
7 couple times to have me take pictures of items
8 that he had found.

9 Q. You can't fit four grown men into that --

10 A. No, sir.

11 Q. -- corner; is that right? After the search was
12 completed, or when the search was wrapping up,
13 could you tell us how that search ended, how that
14 effort ended?

15 A. The items that we had decided were of evidentiary
16 value that night were placed in Sergeant Tyson's
17 patrol vehicle and he stayed with the evidence.
18 We all went back to the Command Post. And not
19 exactly sure which Calumet County officer told us
20 what time to be there the next day, but we were
21 instructed to return the next day; myself,
22 Lieutenant Lenk, and Detective Remiker. And we
23 all left at the same time.

24 Q. After leaving the residence on the 5th, can you
25 tell the jury where you went, please.

1 A. I would have gone back to the Manitowoc County
2 Sheriff's Department, which is in the city of
3 Manitowoc and to get my personal vehicle, so I
4 could go home.

5 Q. Do you know about what time you cleared the
6 scene; in other words, about what time you left,
7 if you remember?

8 A. I'm sorry, I don't. I know it was late, that's
9 all.

10 Q. The next day, that is, on the 6th of November,
11 were you asked to come back to the scene?

12 A. Yes, sir.

13 Q. And what were you asked to do on the 6th?

14 A. On the 6th, when I came out there, again, with
15 Detective Remiker and Lieutenant Lenk and I
16 believe just -- this time just Lieutenant Lenk
17 went into the Command Post to make contact with
18 who we would be working with with Cal County that
19 day.

20 And Detective Remiker and I just kind of
21 waited until he came back out. And we were
22 introduced to Deputy Kucharski. And then Deputy
23 Kucharski informed us what our assignment would
24 be for that day.

25 Q. Okay. Prior to arriving on the scene, once

1 again, did you know what your assignment was
2 going to be?

3 A. No, I had no idea.

4 Q. Was an evidence collection team formed or
5 developed that morning, on the 6th?

6 A. Yes, sir.

7 Q. Do you remember who was involved in that team?

8 A. It was myself, Lieutenant Lenk, Detective
9 Remiker, and Deputy Kucharski, who's a employee
10 of the Calumet County Sheriff's Department.

11 Q. Once again, was it determined who would be in
12 charge of that group of search individuals?

13 A. After the first day, we didn't, you know -- I
14 didn't need to be told who was in charge, I knew.
15 But Deputy Kucharski told me that he would be
16 responsible for collecting and maintaining
17 security on any evidence that was located that
18 day.

19 Q. All right. What areas, then, of search were you
20 involved with, if any, on the 6th of November?

21 A. Initially, we started at the garage, at Steve
22 Avery's residence.

23 Q. Tell me about this garage, please?

24 A. It's a wooden, frame structure, maybe like a car
25 and a half garage. Not -- Not attached to the

1 residence. It had a vehicle parked out in front
2 of it, a black Ford pickup truck.

3 Q. I show you what's been received in evidence as
4 Exhibit No. 38, can you tell us what we're
5 looking at here, please.

6 A. That's Steve Avery's residence. That's his
7 garage. That's his pickup truck.

8 Q. All right. And that garage was searched; is that
9 right?

10 A. Yes, sir.

11 Q. Who was that searched by?

12 A. The aforementioned team; myself, Lieutenant Lenk,
13 Detective Remiker, and Deputy Kucharski.

14 Q. Do you remember the interior of that garage on
15 the 5th of November?

16 A. Yes, sir.

17 Q. Can you briefly describe that for the jury?

18 A. There was a smaller sport utility vehicle parked
19 in one half of the garage. It was a Suzuki
20 Samurai. There was a snowmobile also parked in
21 there, a Skidoo snowmobile. And there were some
22 other benches and tools that kind of went all the
23 way around the garage. There wasn't a lot of
24 room in there, with all the other apparatus that
25 was in there.

1 Q. In this case, already, and I think the defense
2 had asked and has been admitted, Exhibit No. 119,
3 ask you to take a look at Exhibit No. 119. Tell
4 us what we're looking at here.

5 A. That would be the interior of Steve Avery's
6 garage.

7 Q. Fair to say there's a lot of stuff in there?

8 A. Yes, sir.

9 Q. What kind of search was performed of that garage?

10 A. Well, the same type of, you know, search that we
11 had performed the night before in his residence.
12 We were looking for anything that would lead us
13 to believe that there was a missing person in
14 there.

15 Q. Each of the items that we see, and we can even
16 zoom into some of these things, was each and
17 every one of those items removed from the garage
18 and thoroughly searched, or searched under each
19 and every one of these items?

20 A. No. No, sir.

21 Q. Wasn't that kind of search?

22 A. No.

23 Q. In a very broad way, that is, in a overview
24 fashion, because we're going to hear from Deputy
25 Kucharski, but in a very broad sense, can you

1 tell us the kinds of things that were recovered
2 or viewed while you were in that garage?

3 A. Almost as soon as we stepped in the garage I
4 noticed, as did everyone else, that there were
5 several spent shell casings lying on the floor of
6 the garage.

7 Q. What's a shell casing?

8 A. It's the brass portion of a bullet. After the
9 bullet has been expended or fired, the casing is
10 usually ejected through from the firearm and
11 lands in close proximity to the shooter, usually
12 on the ground.

13 Q. Let me ask you this, Sergeant Colborn, are you
14 familiar with shell casings for different kinds
15 of, or different calibers of firearms?

16 A. Yes.

17 Q. By visual inspection, that is, without picking
18 them up or without even taking a look at those
19 shell casings, were you able to determine what
20 caliber weapon was used to fire those bullets?

21 A. Yes.

22 Q. How were you are able to determine that?

23 A. The shell casings that were laying on the ground
24 were small, for one. They were brass and they
25 didn't have a center primer. They had been fired

1 on the corner of the bottom of the casing; in
2 other words, the rim of the casing. And a
3 .22 caliber weapon is one of the only weapons
4 that is a rim fire weapon. Most weapons have a
5 primer in the center of the bullet. This does
6 not; it's fired off the rim.

7 Q. How many, what you believed were .22 caliber
8 shell casings, were readily apparent or viewable
9 to the naked eye as you entered that garage?

10 A. There were quite a few, 12 maybe, 12 plus.

11 Q. Do you know for sure?

12 A. No, sir, I don't.

13 Q. During the course of that search, were the shell
14 casings that were at least out in plain view
15 seized by Deputy Kucharski?

16 A. Yes, we photographed them first, where they were
17 lying. Initially, Deputy Kucharski and I were
18 both doing photographs, but then we thought
19 perhaps that was a bit redundant. So I just
20 let -- Deputy Kucharski felt more than
21 comfortable taking the photographs so I just
22 stopped taking pictures and assisted with
23 locating.

24 Q. About how long did the search of this garage
25 take?

1 A. One hour, one and a half hours.

2 Q. Looking at the stuff, I will call it junk; I
3 don't know if I will get an objection about that,
4 but probably not. Looking at the junk that we
5 see here, in a one hour search, were you able to
6 thoroughly search this garage?

7 A. No. I mean, if we were looking for something
8 minute, you could spend easily an hour just in
9 this area right here.

10 Q. All right. Were you given other search
11 assignments that day?

12 A. Yes, sir.

13 Q. Can you tell us where you were next assigned to
14 search?

15 A. I believe the next assignment, I believe, was the
16 Ford pickup truck that was parked right in front
17 of the garage.

18 Q. And that was Steve's black truck that we had seen
19 before?

20 A. I do have to mention, there were several times,
21 and I believe this was one of them, where we
22 would be searching a specific area, somebody from
23 Cal County would come and say, I need your
24 assistance doing this. So we would stop what we
25 were doing and assist them with another project

1 and then go back. So I believe before we started
2 searching that Ford pickup truck, I was asked to
3 photograph some burning barrels and assist in
4 loading them up into a covered trailer.

5 Q. All right. Did you do that?

6 A. Yes, sir.

7 Q. Just as long as we have this picture up, first,
8 we're going to go back to Exhibit 38; was that
9 the truck that you assisted in searching?

10 A. Yes.

11 Q. Now, you talked about some burn barrels, where
12 were these located?

13 A. Behind or to the side of Steve's garage. There
14 was three or four of them.

15 Q. Did you know whose burn barrels those were?

16 A. No, I didn't.

17 Q. You said that there were others that were
18 assisting in the recovery of those; do you know
19 who those other individuals were?

20 A. I didn't know, you know, everyone's name from the
21 Calumet County Sheriff's Department, or the
22 Department of Criminal Investigations that was
23 working there. I just recognized that some of
24 the officers were not at all connected with
25 Manitowoc County, but they were uniformed. And I

1 saw Calumet County, you know, Sheriff's
2 Department patches on their uniforms, but I do
3 not know them by name.

4 Q. There were some Manitowoc officers also involved?

5 A. Yes.

6 Q. Those burn barrels, I think a picture of them has
7 been received as Exhibit 52, I'm going to show
8 you that picture; do you recognize that?

9 A. Yes, I took that picture.

10 Q. Who is that we see in the picture?

11 A. That's Detective Dave Remiker from the Manitowoc
12 Sheriff's Department.

13 Q. These are the four burn barrels that you assisted
14 in recovering and loading; is that right?

15 A. Yes, sir.

16 Q. Looks like it's raining here again; is that
17 right?

18 A. Yes. I wanted to get a picture to show that we
19 were trying our best to protect the contents of
20 the barrel; that's the reason that tarp is on
21 there.

22 Q. After those barrels were loaded, did you proceed
23 to complete the search of Steve's black truck?

24 A. Yes, sir.

25 Q. All right. After that effort, what did you do

1 then?

2 A. Again, this is going to be one of those times
3 that I was pulled away for another project. We
4 were almost completed with the search of Steve's
5 truck when I was -- again, another Calumet County
6 supervisor told me -- or asked me where the
7 Maribel Caves Park was. And I said, you know, I
8 described where it was, but not being from
9 Manitowoc County, he didn't really know where it
10 was. And he said, well, some searchers have
11 found some things at the Maribel Caves Park, can
12 you go out there; see what they have, if you
13 think it's evidence, pick it up. So myself and
14 Detective Remiker went out to Maribel Caves Park
15 where we made contact with a civilian search
16 party. And they showed us some things that they
17 had found and we ended up bagging them up and
18 turning them over to the Calumet County Sheriff's
19 Department.

20 Q. What did do you then?

21 A. When I got back, then, I believe, the search of
22 Steve's truck, I think, had been completed then.
23 You know, in my absence, Deputy Kucharski had
24 completed the search and then I would have to
25 take a look at his report to see what our next

1 assignment was. I believe we were sent to Chuck
2 Avery's residence -- no, either Chuck's or
3 Steve's sister. And I'm not positive which one
4 was next.

5 Q. Who's Steve's sister?

6 A. Her first name is Barb. I believe at that time
7 her last name was Janda.

8 Q. All right. Did you assist in the search of Barb
9 Janda's trailer?

10 A. Yes.

11 Q. And we're going to hear from Detective Remiker
12 later, but do you recall being present when a
13 telephone answering machine was located.

14 A. Yes.

15 Q. This has been received as Exhibit No. 55, can you
16 tell us what we're looking at, please.

17 A. I believe that's the answering machine that was
18 in Barb Janda's residence.

19 Q. Who else was present when this answering machine
20 was investigated or searched?

21 A. It was the same search team that had gone into
22 Steve Avery's garage; Lieutenant Lenk, myself,
23 Detective Remiker, and Deputy Kucharski.

24 Q. Were the messages on this machine examined?

25 A. When we -- When we found the answering machine, I

1 saw that there were messages on there. I said,
2 let's unplug it and take the answering machine.
3 And, of course, the conversation between all of
4 us, we said, well, what if somehow in the
5 unplugging process we lose the messages. So,
6 yes, we hit the play button and listened to the
7 messages and Detective Remiker recorded the
8 messages as they were being played.

9 Q. Did you have occasion that day to reenter Steven
10 Avery's trailer?

11 A. I believe that was the day that I was asked to --
12 our whole team was asked to go back into Steve's
13 trailer and obtain serial number -- I think that
14 was the day -- that we were asked to obtain a
15 serial number off Steve's computer, the tower
16 portion of his computer.

17 Q. Are you sure about that, or are you guessing?

18 A. I'm not positive if that was the day or not. I
19 know that was one of the assignments that I
20 completed. I thought it was that day, but I'm
21 not positive. I do know, also, that that day we
22 had to go back into Steve Avery's trailer and
23 collect his weapons.

24 Q. Can you, again, describe those weapons.

25 A. He had a, like a two place or gun rack over his

1 bed. There were two weapons on the gun rack; one
2 was a .22 caliber rifle, and the other was a --
3 if I remember correctly -- was a .50 caliber
4 muzzleloader.

5 Q. We're going to have these marked, actually.

6 ATTORNEY KRATZ: Mr. Fallon, if you could
7 have them marked.

8 ATTORNEY FALLON: They're marked.

9 ATTORNEY KRATZ: Oh, I'm sorry.

10 Q. (By Attorney Kratz)~ Do you see a picture of the
11 .22 caliber rifle?

12 A. Yes, sir.

13 Q. And what exhibit number is that?

14 A. It is Exhibit 164.

15 Q. See if I can find that here. Do you recognize
16 Exhibit No. 164?

17 A. Yes, it's a .22 caliber rifle that we located in
18 Steve Avery's bedroom.

19 Q. I have put up a photograph of Exhibit No. 164;
20 again, does that .22 caliber rifle look the same
21 or similar as it did when it was seized on the
22 6th of November?

23 A. Yes, sir.

24 Q. Did you, by the way, that day, on the 6th, have
25 occasion to, at all, inspect or further inspect,

1 that rifle?

2 A. When we collected the rifle, in order to manage
3 an evidence room, we first needed to make sure
4 that the weapon wasn't loaded. So I did pull the
5 action back to see if it was going to eject a
6 round. And I believe I pulled the tube out,
7 which is under the barrel there.

8 Q. Why don't you show you us with the laser pointer.

9 A. That portion of the weapon is the magazine. To
10 load it, you pull a tube out, I believe, an
11 insert rounds through that notch right there.

12 This is the action of the magazine; it's
13 a semi-automatic weapon. So I pulled this action
14 back to see if there was a round inside the
15 barrel. And I believe the safety is right there
16 on the weapon and I would have checked to make
17 sure that the safety was on, because if someone
18 handling the weapon, obviously, if it was loaded
19 with the safety off, it could fire.

20 Q. Sure. Are you familiar with a semi-automatic
21 rifle such as Exhibit No. 164?

22 A. Yes, sir.

23 Q. Now, a tube loaded or a tube fed magazine, for
24 those on the jury that aren't gun enthusiasts,
25 can you tell us just -- just generally how that

1 works?

2 A. This portion of the weapon right here is where
3 it's loaded. At the very end here, you can twist
4 a knob and you pull out like a plastic plunger
5 and you load -- you would have to turn the weapon
6 almost upside down. But if you can see that,
7 there's a little notch there, that's where you
8 put the rounds in and then you just slide this
9 tube back in until it locks.

10 And if it doesn't lock, you put too many
11 rounds in. You have to get it so that that
12 locks. As you fire the weapon, there's a spring
13 on there and it just keeps pushing the rounds
14 back to the chamber.

15 Q. After a .22, you mentioned a rim fire bullets,
16 but after the shell casings are ejected, where do
17 they come out of?

18 A. Out of that area right there, that silver area.

19 Q. And with a semi-automatic weapon, do you have to
20 reload it, or cock it, or do anything that any --
21 any action like that that we might hear with
22 other weapons?

23 A. No, sir. A semi-automatic weapon will continue
24 to fire as fast as you can pull the trigger. You
25 must release the trigger to its sear each time,

1 but it will continue to fire as fast as you can
2 pull the trigger, until all the shells are
3 expended.

4 Q. By the way, Sergeant Colborn, I don't know if you
5 know this, but do you know what kind of weapon
6 this is; what brand name weapon?

7 A. I know when we catalogued the weapon, when we
8 took it, and when Deputy Kucharski took it in as
9 evidence, I read the manufacturer name to him,
10 but I don't recall who manufactured that weapon.

11 Q. That's fine. Thank you. You said there was a
12 second weapon that was seized; is that right?

13 A. Yes, sir. You gave me a photograph that's marked
14 Exhibit 165.

15 Q. Why don't you tell us what that is?

16 A. That's a muzzleloading weapon, similar to like a
17 musket from the Revolutionary War or frontier
18 period. It's called muzzleloading because that's
19 where you load it, through the muzzle.

20 Q. Where were these items seized from?

21 A. Steve Avery's bedroom, on a gun rack that was
22 hanging above his bed.

23 Q. Is there anything else that was seized from
24 Mr. Avery's trailer that day, that is, on the 6th
25 of November, that you can recall?

1 A. Not that I recall, no, sir.

2 Q. Any other buildings that you were asked to search
3 that day?

4 A. Not that I specifically recall, no.

5 Q. All right.

6 ATTORNEY KRATZ: Judge, before going into
7 the next day's search for the 7th, this might be a
8 good time for a lunch break.

9 THE COURT: All right. The Court agrees.
10 Members of the jury, we're going to take our lunch
11 break at this time. Again, do not discuss the case
12 in any fashion and during the break and we'll resume
13 at 1:00.

14 (Jury not present.)

15 THE COURT: You may be seated. Go off the
16 record at this time.

17 (Off the record discussion.)

18 THE COURT: At this time we'll go back on
19 the record. Mr. Kratz.

20 ATTORNEY KRATZ: Judge, before we break for
21 lunch, Mr. Strang was kind enough to alert me that
22 this witness may be cross-examined with the
23 assistance of a audio CD. Mr. Strang gave me a CD
24 that has 24 tracks on it. I don't know if he
25 intends to play all 24 tracks in the

1 cross-examination, but it would certainly assist us
2 in orienting as to the time and the context of those
3 conversations, if those could be identified. If
4 they can't, that's fine, but if the tracks
5 themselves, rather than listen to all 24 during the
6 lunch hour, could be identified, we would appreciate
7 that.

8 THE COURT: Mr. Strang.

9 ATTORNEY STRANG: Well, I provided the CD
10 out of an abundance of caution. I think these --
11 these taped calls are all calls that the State, like
12 the defense, received during the hearing on
13 August 9, 2006, from the Manitowoc County Sheriff's
14 Department. We should probably excuse the witness.

15 THE COURT: I was just thinking about that
16 myself. Mr. Colborn, if you can step out of the
17 courtroom for a minute, we'll continue here. The
18 witness has now left the courtroom.

19 ATTORNEY STRANG: Right. As I say, I'm
20 quite confident that when we received the CD's from
21 the Manitowoc County Sheriff's Department on
22 August 9, 2006, the State also received the very
23 same recorded calls, both radio transmissions and
24 some land lines at the sheriff's department that are
25 answered by dispatchers. Out of an abundance of

1 caution, I gave Mr. Kratz another copy of the disc
2 I'm going to mark today. But I'm not interested in
3 disclosing my cross-examination over the lunch hour
4 while, you know, the State is free to prepare
5 including with the witness.

6 THE COURT: All right. If it's information
7 that the parties already have, I don't know what's
8 going to come in but, Mr. Kratz, if you need a break
9 before redirect, I will take up a request at that
10 time.

11 ATTORNEY KRATZ: That's fine and counsel
12 may hear the very same response later in the trial.
13 That's fine. Thank you, Judge.

14 THE COURT: Okay.

15 (Noon recess taken.)

16 THE COURT: Mr. Kratz, at this time you may
17 resume your direct examination of Mr. Colborn.

18 ATTORNEY KRATZ: Thank you, Judge.

19 **DIRECT EXAMINATION**

20 BY ATTORNEY KRATZ:

21 Q. Sergeant Colborn, we left off with the next day,
22 I believe, of your involvement with the -- on
23 Monday, the 7th of November; do you remember that
24 day?

25 A. Yes, sir.

1 Q. Were you asked to return to the Avery property?

2 A. Yes, I was.

3 Q. And, by the way, who were you asked to return
4 there by?

5 A. The Calumet County Sheriff's Office, or
6 Department of Criminal Investigation, one of
7 those officers.

8 Q. If you could speak up just a little bit,
9 Sergeant, I would appreciate it.

10 A. I was either asked to return by the Calumet
11 County Sheriff's Department, one of their
12 supervisors, or by the Department of
13 Corrections -- or Department of Criminal
14 Investigations, Agent Tom Fassbender.

15 Q. Were you, for lack of a better word, volunteering
16 for this service, or these duties?

17 A. No.

18 Q. On the 7th of November, then, do you recall about
19 what time you returned to the salvage yard?

20 A. Somewhere between 6:30 in the morning and 7:30 in
21 the morning, I believe.

22 Q. Sergeant Colborn, what were you asked to do on
23 the 7th, if you recall?

24 A. On the -- On Monday, I was informed that -- by
25 Sergeant Tice that I -- Tyson, that I would be

1 working with him, again. This would be the same
2 Sergeant Tyson that I had worked with on
3 Saturday.

4 And he informed us that our assignment
5 that day was to go into the Avery Salvage Yard
6 and open any trunks of vehicles that had not yet
7 been searched, because the trunks, apparently,
8 they couldn't find the keys for these vehicles
9 and we were to look inside the trunks of these
10 vehicles.

11 Q. Were there any other members of your team, other
12 than you and Sergeant Tyson?

13 A. Also Lieutenant Lenk was with me that day.

14 Q. And did you, in fact, assist in opening up or
15 searching trunks that hadn't yet been opened?

16 A. Yes, I did.

17 Q. What else happened on the 7th?

18 A. That took the better part of the morning. I
19 believe in the afternoon we were instructed to
20 start collecting -- you know, specifically
21 instructed to collect -- I take that back. At
22 some point we were also asked to get a -- I
23 believe this was the day that we were asked to
24 get the serial number off Steven Avery's
25 computer.

1 Q. Did you assist Sergeant Tyson in that regard?

2 A. Yes, I did.

3 Q. Can you tell the jury what you did, please.

4 A. The serial number is on the back of the computer.

5 And the portion of the computer that we needed

6 the serial number was underneath a desk that had

7 been shown earlier, the photograph that was shown

8 earlier. So I crawled underneath the desk and

9 used a flashlight to obtain the manufacturer and

10 the serial number of the computer, which Sergeant

11 Tyson wrote down.

12 Q. All right. How long did that process take?

13 A. At the most, 10 minutes.

14 Q. Did you go in any other part of the residence, or

15 did you confine yourself to the living room area?

16 A. I just confined myself to the area where the

17 computer was that day.

18 Q. What else did you do then?

19 A. I believe then we were instructed to -- I believe

20 we were instructed, then, to start collecting

21 some firearms from the other residences that were

22 on the Avery property. I believe, specifically,

23 Barb Janda's residence.

24 Q. And did you do that?

25 A. Yes, sir.

1 Q. All right. What's the next thing you did on the
2 7th?

3 A. I know at one point I was asked to take some
4 photographs, I believe, of a burning barrel that
5 was on Steve Avery's property. I did do that.

6 Q. Which -- Which burn barrel did you take
7 photographs of?

8 A. It was a burn barrel that was on, I would -- that
9 was in close proximity to Steve's trailer. And I
10 remember it had a car wheel by it.

11 Q. To orient us to that, there's an exhibit which
12 has been received, it's Exhibit 114. It's,
13 again, an exterior computer animation. If you
14 take your laser pointer up there, tell us what
15 we're looking at, and what burn barrel you were
16 asked to examine and photograph?

17 A. That burn barrel right there. I remember right
18 on one -- either this side or this side of it
19 there was a car wheel standing on its edge with a
20 tire missing.

21 Q. Did it appear to you, at least as you went to
22 that scene and as you look at Exhibit 114, who
23 that burn barrel is attached to?

24 A. Yes, it's the burn barrel for that residence,
25 right there, Steve Avery's residence.

1 Q. Now, Sergeant, you talked about some different
2 kinds of photography. I think you talked about
3 digital as well as 35mm photography; do you
4 remember that day, the 7th of November, what kind
5 of photography you were performing?

6 A. 35mm, I did not do any digital photography the
7 entire time I was out there, personally.

8 Q. That way you talked about a wheel next to the
9 burn barrel, I'm going to show you what's been
10 marked as Exhibit No. 158, in fact, Mr. Fallon is
11 going to hand it to you, but I would ask you if
12 you could tell us what this is an image of.

13 A. That is a car wheel, that's at the very edge of
14 Steve Avery's burn barrel. And those wires, I
15 believe, that are around the wheel are actually
16 part of the make up of the tire, probably like
17 portions of the steel belt.

18 Q. As we get closer, do a little bit of a close up,
19 can you see that better now on the screen?

20 A. Yes, sir.

21 Q. By the way, Exhibit 158, is that a photo that you
22 took or likely took?

23 A. Yes, sir.

24 ATTORNEY KRATZ: In all honesty, Judge, so
25 that I don't forget, I'm going to move the admission

1 of Exhibit 158 at this time.

2 THE COURT: Any objection?

3 ATTORNEY STRANG: None.

4 THE COURT: 158 is received.

5 Q. (By Attorney Kratz)~ Were you asked to do
6 anything else on the 7th, Sergeant?

7 A. I believe I was also -- At some point, apparently
8 the Command Post received word that some
9 searchers had located an area that -- it looked
10 suspicious, there was plastic poking up from the
11 ground and it looked like the ground had been
12 disturbed. So I was asked to go to that area
13 along with the Wisconsin State Crime Lab,
14 Sergeant Tyson, and Lieutenant Lenk and help the
15 Crime Lab, if they requested it, to excavate that
16 area.

17 Q. Do you know on what roadway this was?

18 A. I believe it was off Kuss, White Cedar Road.

19 Q. This is something that Mr. Ertl, yesterday,
20 talked about a potential burial site but what
21 wasn't; was that your understanding, that it
22 turned out not to be?

23 A. Yes, it turned out to be nothing.

24 Q. Did you do anything else on the 7th.

25 A. I think by the time we were down with that, that

1 consumed the rest of the day.

2 Q. Let's move on then to the 8th, which would be
3 Tuesday, the 8th of November, were you asked to
4 return to the property?

5 A. Yes, sir.

6 Q. Again, who were you asked to return there by?

7 A. By -- No, I didn't get the -- the -- wasn't told
8 to me directly. Usually Lieutenant Lenk met with
9 members of the Calumet County Sheriff's
10 Department and Department of Criminal
11 Investigations at the completion of each day and
12 then I would just check with Lieutenant Lenk, are
13 we needed tomorrow or no.

14 Q. I see.

15 A. And then he said, we're needed tomorrow.

16 Q. Did you show up then on the 8th?

17 A. Yes, sir.

18 Q. And who were you attached to, or who were you
19 assigned to that day?

20 A. I was assigned to Deputy Dan Kucharski from the
21 Calumet County Sheriff's Department.

22 Q. Do you know what you were asked to do on the 8th?

23 A. Yes, Deputy Kucharski, Lieutenant Lenk, and
24 myself were instructed, by Special Agent
25 Fassbender, to look for some specific printed

1 material inside Steven Avery's residence.

2 Q. Okay.

3 A. And to collect same.

4 Q. Did you have occasion to enter Steven Avery's
5 bedroom on the 8th of November?

6 A. Yes, sir.

7 Q. Who did you enter that bedroom with.

8 A. Deputy Kucharski and Lieutenant Lenk.

9 Q. How long did you spend in that bedroom on the
10 8th, if you recall?

11 A. An hour or so.

12 Q. Were you directed to perform any search of that
13 trailer, specifically of that bedroom?

14 A. Before -- Actually, before we started on the
15 bedroom, I was instructed to, with Deputy
16 Kucharski, to remove the computer and to wait
17 until the computer was picked up by another law
18 enforcement officer.

19 Q. Okay. Did you do that?

20 A. Yes, sir.

21 Q. Then, moving to the bedroom, my question is,
22 whether you were to perform a search that day?

23 A. Yes, sir.

24 Q. I'm showing you what's been marked for
25 identification as Exhibit No. 208; can you tell

1 us what that is, please.

2 A. These are photographs of a cabinet that's right
3 next to the desk in Steve Avery's bedroom, that
4 would be the same bedroom where the firearms were
5 that I described before and --

6 Q. We're just talking about the first one now,
7 Exhibit 208.

8 A. That's this photograph here. It's a picture
9 of -- this is a desk.

10 Q. I'm actually going to put a view up for the jury
11 so that we can -- Okay. If you want to use your
12 laser pointer where everybody can see what you
13 are talking about then.

14 A. This is a desk. There's an open area, that's the
15 picture. This is a cabinet, you can see how
16 closely it is positioned to the desk there.

17 Q. Let me just stop you, is this something that you
18 earlier called a bookcase.

19 A. This cabinet, I'm sorry, yes, I called it a
20 bookcase and that's actually, I guess, what it
21 is, a bookcase.

22 Q. Just so that the jury understands, was this the
23 item from which the handcuffs and the leg irons
24 were seized a couple days earlier?

25 A. Yes, sir. It's easier to see now, with this

1 picture, the leg irons and handcuffs were located
2 in this area here.

3 Q. Now, this particular photograph, you can see a
4 pair of slippers, bedroom slippers next to it; is
5 that right?

6 A. Yes, sir.

7 Q. You can see a electrical outlet or a socket; is
8 that right?

9 A. Yes, sir.

10 Q. Can you point to that, please. Were you asked,
11 or at least as part of your responsibilities of
12 searching the bedroom, were you asked to do a
13 thorough search of this piece of furniture?

14 A. Yes.

15 Q. And did you do that?

16 A. Yes.

17 Q. In performing that search, Sergeant Colborn, did
18 you move or manipulate this piece of furniture at
19 all?

20 A. Yes, sir.

21 Q. Can you describe that for the jury, please.

22 A. As I stated before, we were looking for specific
23 printed or photographs. There is a narrow area
24 between this bookcase and this desk, right there.
25 And in order to make sure that there was no

1 evidence or anything else that we needed lodged
2 between there, I actually tipped this to the side
3 and twisted it away from the wall.

4 Q. If you can describe that further, I don't know if
5 you can do it with your words, or show us with
6 your hands, how you did it?

7 A. I will be the first to admit, I wasn't any too
8 gentle, as we were, you know, getting
9 exasperated. I handled it rather roughly,
10 twisting it, shaking it, pulling it.

11 Q. And that's the bookcase that you are talking
12 about?

13 A. Yes, this piece of furniture right here, a
14 bookcase.

15 Q. I'm sorry. Sergeant, in shaking and twisting
16 that particular bookcase, did you pull it away
17 from the wall itself, that you can see behind
18 there?

19 A. Yes, I did.

20 Q. After that process was complete, were the
21 items -- The binder that we can see in the lower
22 left hand corner of the bookcase; can you point
23 to that, please. Was that, and the other items
24 within that bookcase, removed and examined by
25 yourself and your -- other members of your team?

1 A. Yes, sir.

2 Q. Did you have occasion to replace those items into
3 that bookcase after having pulled it from the
4 wall?

5 A. Yes, sir.

6 Q. What was done with the bookcase after that
7 thorough search of the -- of those materials was
8 completed?

9 A. The items that we didn't use -- or collect as
10 evidence, that binder and some of the other
11 things there were kind of stuffed, rather
12 forcefully, back in there. And other items that
13 we were going to collect as evidence were -- we
14 had so many that we didn't have a container in
15 the room large enough to hold them all. So
16 Lieutenant Lenk exited the bedroom to get a
17 larger container and I began to search this desk
18 here.

19 Q. By a larger container, what are you talking
20 about?

21 A. A box.

22 Q. Now, at this time, that is, as the search was
23 completed, what was done with that piece of
24 furniture; what was done with the bookcase
25 itself?

1 A. It was still kind of away from the wall, but it
2 was more or less stuffed back into its original
3 position.

4 Q. The next exhibit, Exhibit No. 209, describe what
5 that is, please.

6 A. That's just a different photograph of the same
7 bookcase.

8 Q. I'm going to allow the jury to see that as well.
9 Is this the photo that you are talking about
10 of -- of the bookcase?

11 A. Yes, sir.

12 Q. The next exhibit, No. 210, can you describe what
13 that is for us, please.

14 A. 210 is a picture, a photograph of the -- Well,
15 you can see that we have some materials there
16 stuffed in a bag. Then there's the bedroom
17 slippers. And now there is a key with a fob,
18 lying between the bedroom slippers.

19 Q. Sergeant Colborn, I'm going to direct your
20 attention, then, to the large screen. I would
21 like you to carefully take the laser pointer and
22 describe for the jury what it is that we're
23 looking at?

24 A. These were some items that we had bagged up. I
25 don't recall what that is. These were the same

1 bedroom slippers that were in the other
2 photograph, but you can see that they have been
3 jostled. That's the electrical outlet. And now
4 there is a key and with this connecting canvas or
5 nylon fob and a black plastic buckle, lying on
6 the floor.

7 Q. The piece of furniture, that is, the bookcase
8 that we see in Exhibit 210, has that been removed
9 or replaced to its original position?

10 A. I can't say we have got it exactly 100 percent
11 where it was, but it's very close to its original
12 position, yes.

13 Q. So the jury understands the timing of these,
14 Exhibit No. 208 shows the slippers right next to
15 the outlet. And this exhibit, 210, shows the
16 slippers pushed to what would be the left and
17 actually a little bit closer to the photographer;
18 is that fair?

19 A. That's correct.

20 Q. Do you recognize this image, that is, did you see
21 this image on the 8th of November?

22 A. Yes.

23 Q. Can you describe that moment, or that event, for
24 the jury, please.

25 A. As I had mentioned earlier, Lieutenant Lenk had

1 exited -- That is the door coming into the
2 bedroom; he had gone through that door to get a
3 bigger container. I was searching the desk here.
4 Deputy Kucharski was sitting on the bed, which
5 also isn't in the photograph, but is in very
6 close proximity to this piece of furniture, the
7 bookcase, filling out paperwork.

8 Lieutenant Lenk got about right here,
9 his feet would have been right here, so he was in
10 the room, and said something to the effect of,
11 there's a key on the floor here, or, look,
12 there's a key. I don't know what his exact
13 verbiage was but he identified that there was a
14 key on the floor.

15 I turned around, as I wasn't very far
16 away, I turned around and looked and I observed
17 this key, lying right where it is. And I
18 observed this key had this black rubberized or
19 plastic end on it, which they didn't -- you know,
20 that's a newer model car key, due to that plastic
21 or rubberized end. And I also observed that
22 embossed on there was a Toyota emblem.

23 And we told Deputy Kucharski, get a
24 photograph of this, right away, which he did,
25 which is this photograph. I did not take this

1 photograph.

2 Q. By the way, as you and Deputy Kucharski and
3 Lieutenant Lenk observed this, did any of the
4 three of you approach or touch this piece of
5 evidence at that time?

6 A. I may have been standing in this area here, you
7 know. This piece of furniture is only 2 and a
8 half, 3 feet tall, maybe. So I could easily see
9 over it to see the key.

10 I did not approach the key. Lieutenant
11 Lenk did not come into the room. Deputy
12 Kucharski photographed the key from, you know,
13 from whatever angle this picture was taken at.
14 That's as close as we got.

15 Q. My question, again, was, did either yourself,
16 Lieutenant Lenk, or Deputy Kucharski, prior to
17 this photo was taken, touch that key?

18 A. No, sir.

19 Q. Why not?

20 A. I think all three of us knew at the same time
21 that there was a very good chance, seeing a
22 Toyota emblem embossed on that key, knowing that
23 Teresa Halbach's vehicle was a Toyota, that this
24 was a very important piece of evidence. And, you
25 know, none of us were going to taint that.

1 Q. Let me ask you, Sergeant Colborn, you guys -- you
2 specifically, Lieutenant Lenk, and now Deputy
3 Kucharski, had been in this room for quite some
4 time before this key appears in this position;
5 isn't that right?

6 A. Yes, sir.

7 Q. Did this surprise you, that you saw this key
8 there?

9 A. Yes, I was very surprised.

10 Q. Did the three of you talk about that, we hadn't
11 seen it before, anything like that?

12 A. I -- I believe I said to myself, damn, how did I
13 miss that.

14 Q. Now, other than the bedroom slippers being pushed
15 to the side, had anything else changed, other
16 than the pulling out and the twisting and the
17 jostling of the cabinet?

18 A. As we looked at the cabinet, it appeared that in
19 the process of us stuffing everything back into
20 the cabinet, we had separated the back of the
21 cabinet, the small piece of paneling that would
22 be the back of the cabinet, from the frame of the
23 cabinet itself.

24 Q. Let me stop you there. Did you have occasion,
25 then, to go look at the back of this piece of

1 furniture, the back of the cabinet, after this
2 key was processed?

3 A. Yes.

4 Q. I know I'm jumping ahead just a little bit, but
5 could you describe what you saw; could you
6 describe the back panel of the cabinet?

7 A. It would be made out of a -- I'm trying to think
8 of the right word, like a piece of wood, the same
9 thickness maybe as a piece of paneling that one
10 would put on a wall. You know, it's a thin piece
11 of wood, it's not -- it's not like it's a quarter
12 inch piece of plywood nailed to the back of the
13 cabinet. It's a thin piece of wood.

14 The piece of furniture itself is old and
15 not in the best state of repair. And I believe
16 it was just very small, short brads or nails that
17 held the piece of paneling or the piece of wood
18 to the back of the cabinet. And I'm sure that
19 when we were putting things in we exercised more
20 than enough force to push it away. And there was
21 a gap now between the back of the -- the piece of
22 paneling on the back of the cabinet and the frame
23 of the cabinet itself.

24 Q. I'm going to show you an exhibit that's been
25 received as Exhibit No. 169; although taken on a

1 different day, we're all in agreement about that,
2 does Exhibit 169 look the same as when you
3 witnessed the back of this cabinet on the 8th of
4 November?

5 A. Yes, sir.

6 Q. What was done with the key, if you remember?

7 A. Initially, it was photographed and Lieutenant
8 Lenk and I both -- when I say told, it was not
9 like we were ordering him, but we just
10 communicated to Deputy Kucharski that he needed
11 to make sure he put on a fresh set of gloves;
12 pick up that key, put it in a separate container,
13 totally by itself; and we needed to contact the
14 Command Post right away and let them know that we
15 had located a key that could possibly be a key to
16 Teresa's vehicle.

17 Q. Did somebody from the Command Post come to your
18 location then?

19 A. Two people from the Command Post came to our
20 location. Special Agent Fassbender and
21 Investigator Wiegert.

22 Q. Were you present when the lead investigators were
23 shown this key that was discovered?

24 A. Yes. We packaged the key and we went into the
25 living room and that's where we remained until

1 the two investigators came and looked at the key.

2 ATTORNEY KRATZ: What exhibit number is
3 next, Madam Clerk?

4 THE CLERK: 211.

5 Q. (By Attorney Kratz)~ Sergeant Colborn --

6 ATTORNEY KRATZ: And, Judge, the record
7 should reflect that the evidence bag is being opened
8 with the assistance of Investigator Wiegert.

9 Q. (By Attorney Kratz)~ But Sergeant Colborn, you
10 are going to be shown the contents of what is
11 being marked as Exhibit No. 211.

12 (Exhibit No. 211 marked for identification.)

13 ATTORNEY KRATZ: Deputy Wiegert, if you
14 would be so kind as to show it to this witness.

15 Q. (By Attorney Kratz)~ Sergeant Colborn, please
16 don't -- don't touch this exhibit. But an
17 exhibit that has now been marked for
18 identification as Exhibit 211 is being shown to
19 you.

20 ATTORNEY KRATZ: If you stand to the side a
21 little bit, Investigator Wiegert, I would appreciate
22 it.

23 Q. (By Attorney Kratz)~ Tell the jury what that is,
24 please.

25 A. That appears to be the exact same key as pictured

1 right there on that photograph. It's a long key,
2 with a black plastic end, with a Toyota emblem on
3 the end of it. And that same nylon, actually, I
4 think corresponds to something that someone would
5 wear around their neck and clip to the other
6 plastic end.

7 ATTORNEY KRATZ: With permission, Judge,
8 may Investigator Wiegert post it or at least show
9 the jurors?

10 THE COURT: Any objection?

11 ATTORNEY STRANG: Nope.

12 THE COURT: Yes, you may do so.

13 ATTORNEY KRATZ: Hold it up by one end,
14 Investigator, and show the jurors, please.

15 THE COURT: The record should probably also
16 reflect he's wearing rubber gloves at this time, or
17 unless you can describe them more accurately.

18 ATTORNEY KRATZ: Latex gloves. And
19 although Mr. Kucharski will be testifying as well,
20 Judge, I don't believe there is any contest as to --
21 as to this exhibit and I will move its admission at
22 this time.

23 THE COURT: Any objection?

24 ATTORNEY STRANG: Well, there's plenty of
25 contest as to that exhibit, but not as to it having

1 been authenticated and identified. And I don't have
2 any objection to it being received.

3 ATTORNEY KRATZ: Thank you.

4 THE COURT: All right. The exhibit will be
5 received.

6 ATTORNEY KRATZ: Thank you.

7 Q. (By Attorney Kratz)~ After Special Agent
8 Fassbender and Investigator Wiegert were shown
9 that key, do you know what happened to that key?

10 A. Just -- excuse me, we decided, between the three
11 of us, just to wait in the living room. Special
12 Agent Fassbender and Investigator Wiegert said
13 that another law enforcement officer would be
14 coming down to take possession of the key.

15 So we all three just waited until he got
16 there. We turned the key over and I believe we
17 were told that it would be going to Madison, to
18 the Crime Lab, where Teresa's vehicle already
19 was.

20 Q. Sergeant Colborn, after this search, after this
21 thorough search of Mr. Avery's residence was
22 completed, were you asked to perform a similar
23 thorough search of somebody else's residence that
24 day?

25 A. Yes, I believe it was Charles Avery's residence.

1 Q. And was that search performed by the same team;
2 that is, yourself, Lieutenant Lenk and Deputy
3 Kucharski from Calumet County?

4 A. Yes, sir.

5 Q. Sergeant Colborn, we have heard some references
6 this week, and even last, to your involvement in
7 this case. And now that you are here, now that
8 you are in court, I have some questions regarding
9 your knowledge of Mr. Avery.

10 First of all, prior to November of 2005,
11 had you been involved at all in the
12 investigation, testifying against, or prosecution
13 of Steven Avery in any previous criminal
14 proceedings?

15 A. No, sir.

16 Q. Had you ever been personally named in any civil
17 lawsuits, or ever personally been accused of any
18 wrongdoing regarding Mr. Steven Avery?

19 A. No, sir.

20 Q. You were asked, as I understand, as part of a
21 civil lawsuit, to provide what's called a
22 deposition, to be questioned by some lawyers; is
23 that right?

24 A. Yes, sir.

25 Q. Do you recall when that occurred?

1 A. I believe it was in October of 2005.

2 Q. Do you remember how long that deposition, how
3 long that -- that process took?

4 A. I thought it was less than an hour, but an hour
5 or less.

6 Q. All right. You were asked some questions, is
7 that right, under oath?

8 A. Yes, sir.

9 Q. Did you answer those questions to the best of
10 your knowledge and ability?

11 A. Yes, I did.

12 Q. Do you recall the context in which you were asked
13 those questions; in other words, do you recall
14 what you were asked about?

15 A. Yes, sir.

16 Q. Can you tell the jury what you were asked about?

17 A. In 1994 or '95 I had received a telephone call
18 when I was working as my capacity as a
19 corrections officer in the Manitowoc County Jail.
20 Telephone call was from somebody who identified
21 himself as a detective. And I answered the
22 phone, Manitowoc County Jail, Officer Colborn.

23 Apparently this person's assumption was
24 that I was a police officer, not a corrections
25 officer, and began telling me that he had

1 received information that somebody who had
2 committed an assault, in Manitowoc County, was in
3 their custody, and we may have somebody in our
4 jail, on that assault charge, that may not have
5 done it.

6 I told this individual, you are probably
7 going to want to speak to a detective, and I
8 transferred the call to a detective, to the
9 Detective Division, at the Manitowoc County
10 Sheriff's Department. That's the extent of my
11 testimony.

12 Q. That's it? That's your connection to Mr. Avery?

13 A. Yes, sir.

14 Q. Well, did that cause you enough embarrassment and
15 enough angst in which to set up Mr. Avery for a
16 charge of murder?

17 A. No.

18 Q. Did that deposition cause you such problems from
19 within your department that you obtained and
20 planted blood, so that it would be found and
21 Mr. Avery would be wrongfully accused of a
22 homicide case?

23 A. No, sir.

24 Q. Have you ever planted any evidence against
25 Mr. Avery?

1 A. That's ridiculous, no, I have not.

2 Q. Have you ever planted any evidence against
3 anybody in the course of your law enforcement
4 career?

5 A. I have to say that this is the first time my
6 integrity has ever been questioned and, no, I
7 have not.

8 ATTORNEY KRATZ: That's all I have for
9 Sergeant Colborn, Judge.

10 THE COURT: Mr. Strang.

11 **CROSS-EXAMINATION**

12 BY ATTORNEY STRANG:

13 Q. This is the first time your integrity has been
14 questioned?

15 A. As it applies to being a police officer, yes.

16 Q. Okay. And it's not the first time Mr. Avery's
17 has been, so I have some questions for you. You
18 were, in November of 2005, in the Road Patrol
19 Division of the Manitowoc County Sheriff's
20 Department?

21 A. Yes, sir.

22 Q. You were a sergeant in that division?

23 A. Yes, sir.

24 Q. Were there other sergeants in that division?

25 A. Yes, sir.

1 Q. How many?

2 A. There's one lieutenant and two sergeants assigned
3 per shift; there's three shifts. We're looking
4 at six sergeants, three lieutenants.

5 Q. Your shift particularly was noon to 8:00 p.m.?

6 A. Yes, sir.

7 Q. That made you the assistant shift commander as
8 opposed to the other sergeant?

9 A. Yes, sir.

10 Q. And the shift commander, himself, when the
11 lieutenant had a day off?

12 A. Yes, sir.

13 Q. The Road Patrol Division does exactly that, it
14 patrols the roads of Manitowoc County?

15 A. Yes, sir.

16 Q. Typically in marked squad cars?

17 A. Yes, sir.

18 Q. Speeding and other traffic law enforcement?

19 A. Yes, sir.

20 Q. Calls for help from citizens, a variety of calls?

21 A. Yes, sir.

22 Q. You might be the first to respond to a domestic
23 violence call, let's say?

24 A. Yes, sir.

25 Q. You might respond to a flat tire on the side of

1 the road?

2 A. Yes, sir.

3 Q. This division, during the noon to 8:00 shift,
4 back in, let's say, November, 2005, had
5 approximately how many officers out on the road
6 during that noon to 8:00 shift?

7 A. Well, I believe that par -- four or five officers
8 counting the shift commander.

9 Q. Roughly?

10 A. Yes, sir.

11 Q. I understand. And the shift commander had some
12 administrative duties, but also had some road
13 patrol duties?

14 A. Yes, sir.

15 Q. Collection of evidence was not typically a duty
16 of the Road Patrol Division?

17 A. Yes, it is.

18 Q. That is, some members of the Road Patrol Division
19 may be trained in the collection of evidence,
20 correct?

21 A. Correct.

22 Q. Just as some members of the other divisions of
23 the Manitowoc County Sheriff's Department may
24 have special training as evidence technicians or
25 in evidence collection?

1 A. Correct.

2 Q. The Sheriff's Department includes as one of its
3 divisions, or bureaus, units, if you will, an
4 Investigative Unit?

5 A. Yes, sir. To make it easier, both patrol and
6 investigations are assigned to the Operations
7 Division of the Manitowoc County Sheriff's
8 Department.

9 Q. Very well. Thank you. But they are separate
10 units within the operations division?

11 A. Yes, sir.

12 Q. You had been trained in evidence collection as a
13 technician?

14 A. Yes, sir.

15 Q. That went back to, I think, 1997?

16 A. Yes, sir.

17 Q. That was something for which you volunteered?

18 A. Yes.

19 Q. You were accepted or someone accepted your offer
20 and you got some special training?

21 A. Yes, sir.

22 Q. One of the people from whom you got that special
23 training is seated right over there, second to my
24 right in the back, true?

25 A. Evidence tech training?

1 Q. Yes.

2 A. No, sir.

3 Q. Didn't get that kind of training from Special
4 Agent Fassbender?

5 A. No, I did not.

6 Q. What training did you get from Special Agent
7 Fassbender? I'm talking about well before
8 November, 2005 now.

9 A. Special Agent Fassbender was my DAT, which is
10 defense and arrest tactics, instructor during the
11 recruit academy at Fox Valley Tech.

12 Q. All right. Having nothing directly to do with
13 evidence collection?

14 A. That's correct, sir.

15 Q. But you went through a recruit academy?

16 A. Yes, sir.

17 Q. As do all police recruits or candidate officers?

18 A. Yes, sir.

19 Q. How long did that academy last?

20 A. It was 400 hours when I went through the academy.
21 Ten weeks, roughly.

22 Q. Roughly 10 weeks full-time?

23 A. Yes, sir.

24 Q. All right. We'll come back to that a little bit
25 later in a different context. Did you have any

1 training as an evidence technician from
2 Lieutenant James Lenk?

3 A. Yes.

4 Q. He, you know, to be a lieutenant in charge of the
5 Detective Unit within the Operations Division?

6 A. Yes, sir.

7 Q. Are there more than one lieutenant in the
8 Detective Unit?

9 A. No, sir.

10 Q. So he's the chief detective, in fact, of
11 Manitowoc County?

12 A. Yes, sir.

13 Q. Within the Sheriff's Department. He was involved
14 in training you as an evidence technician?

15 A. I am not exactly sure how to answer that without
16 elaborating somewhat.

17 Q. Well, let's start with a yes or a no.

18 A. Yes, he has given me training material during the
19 course of my career.

20 Q. Okay. And has he given you anything more formal
21 than that; in other words, I'm going to let you
22 elaborate here, but we'll do this in a question
23 and answer format.

24 A. Lieutenant Lenk personally hasn't trained me on
25 any specific issue. We would have semi-annual,

1 or sometimes quarterly meetings, of all the
2 evidence techs, where Lieutenant Lenk might
3 present some new information or somebody who had
4 recently gone to training might present some new
5 information. But Lieutenant Lenk never took me
6 one-on-one and trained me in any sort of specific
7 application of being an evidence technician.

8 Q. But you have sort of in house, in service,
9 programs --

10 A. Yes, sir.

11 Q. -- if you will? Sharing information on new
12 techniques or new teaching?

13 A. Yes, sir.

14 Q. Sometimes that comes from Lieutenant Lenk?

15 A. Yes, sir.

16 Q. Other times he may simply be involved in
17 overseeing the meeting?

18 A. Yes, sir.

19 Q. You have known Lieutenant Lenk, personally, how
20 long?

21 A. Since 1996, so 10, 11 years.

22 Q. Was it '96 that you actually became a sworn
23 officer?

24 A. Yes, sir.

25 Q. And if I understood you, the period as a

1 corrections officer in the Manitowoc County Jail
2 was '92 to '94?

3 A. '92 to '96.

4 Q. I'm sorry, then I misunderstood you. You went
5 directly from the jail to the recruit academy and
6 then as a sworn officer?

7 A. Yes, sir.

8 Q. It was 1996, then, when you joined the department
9 as a sworn officer, that you met the man who is
10 now Lieutenant Lenk?

11 A. Yes, sir.

12 Q. He, at that time, was also in the road unit or
13 the Road Patrol Unit?

14 A. Yes, sir.

15 Q. You became friendly with Lieutenant Lenk?

16 A. Yes.

17 Q. Let's call him James Lenk and not worry about his
18 rank, at any given time, all right. Do you call
19 him Jim?

20 A. Yes, I do.

21 Q. You worked closely with him for several years?

22 A. Yes. I have worked with him several times, yes.

23 Q. He is one of the people on the department to whom
24 you feel personally close?

25 A. We don't do anything together socially, but I

1 feel he is an experienced officer and if I have a
2 investigative type question, I feel comfortable
3 talking with him about it.

4 Q. All right. And the time came in 2005 or 2006
5 when you decided that you aspired to some rank
6 higher than sergeant within the department, true?

7 A. I'm sorry, could you repeat.

8 Q. The time came in 2005, or perhaps in 2006, I
9 don't know when, but at some point, certainly
10 before the elections in 2006, you began to aspire
11 to a rank higher than sergeant in your
12 department?

13 A. Yes.

14 Q. You decided to run for sheriff?

15 A. That's correct.

16 Q. Of Manitowoc County?

17 A. That is correct.

18 Q. Another officer, within the department, at the
19 same time, also was running for sheriff in the
20 same 2006 election?

21 A. Yes.

22 Q. That created a situation in which two officers
23 from the same department were running against
24 each other?

25 A. Yes.

1 Q. There was some tension, at least, in that
2 situation?

3 A. Are you talking about in 2006, last summer?

4 Q. Well, whenever the campaign began to heat up.

5 A. I don't really think the campaign ever got
6 heated, but I didn't really feel any tension.

7 Q. Okay. But, one of the things you both were
8 interested in doing, and the other gentleman is a
9 man named Robert Hermann, correct?

10 A. Yes.

11 Q. The brother of Todd Hermann?

12 A. Yes.

13 Q. One of the things that you and Robert Hermann
14 both did was sort of see who would support you
15 and who might support the other fellow in the
16 race for sheriff?

17 A. No.

18 Q. Weren't interested who was on your side?

19 A. No, I wasn't.

20 Q. Do you know whether Lieutenant Lenk was on your
21 side?

22 A. I have no idea how Lieutenant Lenk voted during
23 the sheriff's campaign. I would hope that he
24 supported me, but it wouldn't change my feeling
25 one iota if he didn't.

1 Q. I understand that. But how long was it between
2 the time you declared your candidacy publicly and
3 the time of the election?

4 A. I thought we had to have our nomination papers
5 filed in May of 2006 and the election was in
6 November of 2006.

7 Q. Okay. So let's call it five, six months,
8 roughly. I'm just trying to get a rough time
9 frame here, okay. Lieutenant Lenk's working
10 hours, you know, to overlap in part with your
11 own, on the days you are both at work?

12 A. Yes.

13 Q. That is, he would typically work something like
14 an 8 to 5 kind of shift?

15 A. I'm not sure what his duty hours are, but
16 somewhere in that time frame.

17 Q. In other words, in the afternoon, you two would
18 be on duty at the same time?

19 A. Yes, sir.

20 Q. And in all that time, he never approached you and
21 gave you an attaboy, or told you he was in his
22 corner -- in your corner, or that he couldn't be,
23 nothing?

24 ATTORNEY KRATZ: Judge, I'm going to object
25 as irrelevant. Is this sometime after November of

1 2005?

2 ATTORNEY STRANG: It is.

3 ATTORNEY KRATZ: I can't see the relevance,
4 then, to what happened at the Avery salvage
5 property; I will interpose that objection then.

6 THE COURT: Mr. Strang.

7 ATTORNEY STRANG: Well, I'm happy to be
8 heard out of the presence, if the Court wishes that.

9 THE COURT: All right. I think what I will
10 do at this time is excuse the jury for a few
11 minutes.

12 ATTORNEY STRANG: We can excuse the witness
13 as well.

14 THE COURT: Mr. Colborn, you are excused as
15 well.

16 (Jury not present.)

17 (Witness not present.)

18 THE COURT: Mr. Strang.

19 ATTORNEY STRANG: This isn't a long line of
20 inquiry, your Honor, but clearly this is relevant to
21 Sergeant Colborn's bias or potential for bias here.
22 Lieutenant Lenk was his partner through several days
23 of searching. Consistently, as the testimony has
24 shown, they were paired together, usually with
25 Detective Remiker as well.

1 Together they were deposed, within 48
2 hours, in Steven Avery's lawsuit. I expect to
3 elicit testimony that they discussed their
4 depositions. Now, together, it is the two of
5 them who, in Sergeant Colborn's words, had their
6 integrity questioned.

7 Whether these two stood together and had
8 each other's back during a race for a higher
9 office that well could have been affected by the
10 lawsuit that Steven Avery had filed, by further
11 developments in that lawsuit, I think is directly
12 relevant to this witness' credibility and bias.

13 THE COURT: Mr. Kratz.

14 ATTORNEY KRATZ: We're talking about two
15 different things, Judge. Testimonial bias, which
16 would be today, and is this witness prepared to
17 shade his testimony to the benefit that perhaps of
18 Lieutenant Lenk or somebody like that, Mr. Strang's
19 area of inquiry is appropriate, if in fact the Court
20 finds that to be relevant.

21 However, what Mr. Strang is really
22 talking about is having each other's back, or
23 motive, or being in partnership, for lack of a
24 better term, in planting evidence or being
25 involved in criminal behavior and activity. Then

1 that only becomes relevant if they had this
2 connection, if they had this friendship or this
3 bond, before November of 2005.

4 So, if that is in fact the dual purpose
5 of this, then I would ask Mr. Strang to confine
6 his bias inquiry, at least as it regards
7 Lieutenant Lenk and the election, and to that
8 which might affect his testimony today; it would
9 have no relevance as to what occurred in November
10 of 2005.

11 THE COURT: How do you propose that that be
12 conveyed to the jury, what the purpose of his
13 questioning is?

14 ATTORNEY KRATZ: Well, as asked, then,
15 Judge, it is -- it is irrelevant and should be
16 inadmissible. If we direct it more towards
17 testimonial, that is, if he wants to get into, would
18 you do something to help your buddy, Jim Lenk,
19 today, in testifying, I think that's -- that that's
20 appropriate, but that should be made clear.

21 And if we're getting into more than
22 that, that is, as Mr. Strang, using his words, I
23 have your back, if we're talking about back in
24 November of 2005, their previous friendship may,
25 in fact, be relevant and all those kind of

1 things, but not what happened in the 2006
2 election.

3 ATTORNEY STRANG: Let's bring us back to
4 the actual line of questioning, because I don't know
5 that we need to slice the salami that thin. What
6 I'm doing now is simply following up on and
7 exploring his claim that he has no idea whether Jim
8 Lenk supported him or not for sheriff. He hopes he
9 did, but if Mr. Lenk did not vote for him, it
10 wouldn't affect, by one iota, his view of Mr. Lenk.

11 And I'm following that up, since he's
12 already acknowledged that he thinks well of Mr.
13 Lenk and has worked with him and known him since
14 1996. I'm also going to ask him when it is that
15 becoming sheriff popped into his head, since
16 presumably that was some -- some day before the
17 day in May, 2006, when he had to file his
18 candidacy papers. And that's really,
19 essentially, all the farther I'm going with this.

20 THE COURT: All right. It seems to me of
21 marginal probative value, but if you are telling me
22 you are almost done, I will let you ask a few more
23 questions and then move on. All right. We can
24 bring the jurors back. And then if the
25 Victim/Witness Coordinator is here, she can bring

1 Mr. Colborn in.

2 (Jury present.)

3 THE COURT: You may be seated. And
4 Mr. Strang, you may resume your questioning.

5 ATTORNEY STRANG: Thank you.

6 Q. (By Attorney Strang)~ So the question was,
7 Sergeant Colborn, in the months leading up to
8 this election, are you telling this jury that
9 there wasn't any time when Lieutenant Lenk
10 approached you and told you either that he was in
11 your corner or couldn't support you, for sure?

12 A. No, I'm not saying that.

13 Q. Well, what did he tell you about whether he was
14 supporting you?

15 A. We did not have -- I tried my hardest not to have
16 any discussions about the election at work
17 because I didn't want it to distract from work.
18 Privately, Lieutenant Lenk gave me every
19 indication that he was supporting me.

20 Q. Privately, you took him to be in your corner?

21 A. Yes.

22 Q. You may want to get just a little bit closer to
23 the mike, the mike is sort of touchy. When was
24 it that you began to think seriously about
25 running for sheriff, yourself?

1 A. January or February of 2006.

2 Q. Had the idea occurred to you back in 2005?

3 A. I can't recall, specifically. I may have thought
4 about it, but ...

5 Q. But at least by January or February, 2006, you
6 had a building sense that, maybe I could do the
7 top job in this department?

8 A. Yes, sir.

9 Q. Maybe I could do some things a little bit
10 differently than I see them being done?

11 A. Yes, sir.

12 Q. Maybe I could bring something important to the
13 job of sheriff and serve the citizens of
14 Manitowoc County?

15 A. Yes, sir.

16 Q. By May that idea had become strong enough to
17 cause you to go through all the steps necessary
18 to declare a candidacy?

19 A. Yes, sir.

20 Q. You had not run for an elected office before?

21 A. Actually, yes, I had.

22 Q. Okay. At a countywide level?

23 A. Yes.

24 Q. All right. So at least that process you were
25 familiar with and willing to undergo again?

1 A. Yes.

2 Q. Knocking on doors, speaking at Lion's Club
3 dinners, that kind of thing?

4 A. Yes, sir.

5 Q. Now, it was, I think, October 13, 2005, in
6 specific, in which your deposition was taken in
7 Mr. Avery's lawsuit?

8 A. Yes, sir.

9 Q. Was this the first time you had ever had your
10 deposition taken?

11 A. Yes, sir.

12 Q. New experience for you?

13 A. Yes.

14 Q. You were not so much asked to attend a deposition
15 as you were the recipient of a subpoena to do so?

16 A. I believe so, yes, sir.

17 Q. That deposition process involved being sworn,
18 same oath you took today, essentially?

19 A. Yes, sir.

20 Q. But in a conference room or library of a lawyer's
21 office?

22 A. Yes, sir.

23 Q. You were questioned by Mr. Avery's lawyers at
24 that deposition?

25 A. Yes, sir.

1 Q. You sat across the table from Mr. Avery, himself,
2 that day, October 13, 2005?

3 A. I know Mr. Avery was in the room, I don't -- no,
4 it wasn't like I was directly across from him.

5 Q. No.

6 A. He was down at the end of the table.

7 Q. Yeah, and I didn't mean directly across, but the
8 two of you shared this conference room and the
9 table?

10 A. Yes, sir.

11 Q. Along with other people?

12 A. Yes, sir.

13 Q. Court reporter?

14 A. Yes, sir.

15 Q. Various lawyers?

16 A. Yes, sir.

17 Q. Some of the questions concerned a telephone call
18 that you had taken?

19 A. Yes.

20 Q. You understood the call, which today you can
21 place only as 1994 or 1995?

22 A. That's correct, sir.

23 Q. You understood the call to be coming from someone
24 who was a detective?

25 A. Yes, sir.

1 Q. Detective with a law enforcement agency?

2 A. Yes.

3 Q. In an adjoining or nearby county?

4 A. I believe so, yes, sir.

5 Q. You don't remember the details today?

6 A. No, I don't, sir.

7 Q. And, indeed, on October 13, 2005, you didn't

8 remember many of the details either?

9 A. No, sir.

10 Q. But the gist of it was, we have got somebody here

11 in custody who we think maybe did an assault in

12 Manitowoc County, that was part of it?

13 A. Yes, sir.

14 Q. And we further think that you may have someone in

15 jail for the assault?

16 A. That was the gist of the phone conversation, yes.

17 Q. Right. And I understand you don't remember the

18 exact words, but that was the gist?

19 A. Yes, sir.

20 Q. Now, as a corrections officer in the jail, this

21 was not directly your responsibility?

22 A. No, sir.

23 Q. You passed, or tried to pass the call, to the

24 Detective Unit?

25 A. Yes, sir.

1 Q. But you understood that you were being told, by a
2 law enforcement officer, that Manitowoc County
3 may have someone locked up, who didn't commit the
4 crime for which he was imprisoned; that much you
5 understood?

6 A. Yes, sir.

7 Q. Was that a matter to shrug off for you?

8 A. I didn't shrug it off, sir. I did what the
9 caller asked me to do, connect him to a
10 detective.

11 Q. I think, actually, you suggested that perhaps the
12 caller should talk to a detective?

13 A. No, he specifically asked for a detective.

14 Q. How he happened to call the jail and get to you,
15 you have no idea?

16 A. No, I don't, sir.

17 Q. Lieutenant Lenk, you were aware, also was
18 deposed, had his deposition taken, in this same
19 lawsuit?

20 A. Yes, sir.

21 Q. This was a federal lawsuit?

22 A. I don't even know enough about it to know whose
23 jurisdiction it was.

24 Q. Okay.

25 A. I know there was a lawsuit.

1 Q. All right. Do you know if it was down in
2 Milwaukee?

3 A. The deposition? My deposition?

4 Q. Or the lawsuit, either one?

5 A. My deposition was in the City of Manitowoc. I
6 don't know where the lawsuit -- I don't know.

7 Q. Fair enough. But you did -- you did have an
8 opportunity to talk to Lieutenant Lenk about the
9 fact that he, too, was having his deposition
10 taken?

11 A. I don't recall discussing the deposition portion
12 of it with Lieutenant Lenk.

13 Q. What did you discuss, about the civil lawsuit,
14 with Lieutenant Lenk?

15 THE COURT: Excuse me, Counsel, are you
16 referring to some time before the deposition or
17 after?

18 Q. I'm referring to the time immediately before the
19 deposition, after you would have gotten your
20 subpoena.

21 A. Okay. Yes, I knew that Lieutenant Lenk had a
22 subpoena for the same deposition that I did, yes.

23 Q. Okay. And I'm not interested in the content of
24 your conversation, which probably would be
25 hearsay, but the two of you established that one

1 another had subpoenas for depositions in that
2 lawsuit?

3 A. Yes, sir.

4 Q. And, again, without going into the content,
5 aft -- shortly after your depositions were taken,
6 the two of you talked about the fact that your
7 depositions had been taken?

8 A. Not really, not beyond the fact of, you know, did
9 you go on the day that you were supposed to, yes,
10 and that was pretty much it.

11 Q. Okay. Fair enough. Did you have any concern
12 that you would be added as a defendant in that
13 lawsuit?

14 A. I don't know if concern is the correct word, I
15 know I expressed that I didn't have any knowledge
16 of that case. I wasn't a Manitowoc County
17 resident at that time.

18 Q. My question, though, was whether you had concern,
19 the thought crossed your mind, that you might be
20 added as a defendant in that civil lawsuit?

21 A. Yes, the thought crossed my mind that I might be
22 added as the defendant.

23 Q. You had never been the defendant in a lawsuit
24 before?

25 A. Not that I recall, no.

1 Q. Do you think you would recall?

2 A. I would think, but ...

3 Q. This isn't something you were relishing?

4 A. No.

5 Q. How do you think having been a defendant in
6 Mr. Avery's lawsuit, for his wrongful conviction,
7 would have affected your prospects in the race
8 for sheriff?

9 ATTORNEY KRATZ: Objection, speculation.

10 Q. (By Attorney Strang)~ Did you consider that?

11 THE COURT: Just a second. I'm going to
12 sustain the objection.

13 Q. (By Attorney Strang)~ Did you consider the
14 prospect of an effect on your race for sheriff,
15 if you were added to that lawsuit?

16 A. No, I didn't, sir.

17 Q. I would like to shift off the lawsuit and talk to
18 you about reports, police reports, for a little
19 bit. And I promised you we were going to get
20 back to the recruit academy, and we will.

21 Reports are something that police
22 officers, and by that I mean broadly; sheriff's
23 deputies, municipal police officers, special
24 agents of the Division of Criminal Investigation,
25 just law enforcement officers generally. All

1 right. Reports are something that is common to
2 the work of policemen?

3 A. Is that a question?

4 Q. It is.

5 A. Yes, reports are common to policing.

6 Q. That is one of the things you learned to do in
7 the recruit academy, was to prepare a report?

8 A. That's correct, sir.

9 Q. It is a regular routine, in policing, to prepare
10 reports of your activities, as they bear on a
11 criminal investigation?

12 A. Yes, sir.

13 Q. You were taught in the academy the basics of how
14 to prepare such a report?

15 A. Yes, sir.

16 Q. Reports have several purposes, I guess, one would
17 be to assure accurate collection of facts; that
18 would be one purpose of a police report?

19 A. Yes, sir.

20 Q. Another purpose would be to set down, on paper,
21 your memories before they begin to fade?

22 A. Yes, sir.

23 Q. A third purpose would be to allow others in the
24 department to benefit from knowing what facts you
25 had learned or steps you had taken in an

1 investigation?

2 A. That I don't -- that I don't know. Sometimes
3 reports are confidential and no other officers
4 view them.

5 Q. Sometimes, but let expands on that. In any sort
6 of a larger jurisdiction, let's use Manitowoc
7 County, the sheriff's department, policing is a
8 24 hour a day business?

9 A. Yes, sir.

10 Q. 365 days a year?

11 A. Yes, sir.

12 Q. That is, there may be very small towns that have
13 only a part-time police officer, constable,
14 police department, correct?

15 A. Yes, sir.

16 Q. But with the Manitowoc County Sheriff's
17 Department, it's around the clock, 24/7, 365 days
18 a year?

19 A. Yes, sir.

20 Q. Obviously, no single officer can work 24 hours,
21 seven days a week, so you divide the day into
22 shifts.

23 A. That's correct, sir.

24 Q. A criminal investigation that happens to begin on
25 one shift, may be carried over on another?

1 A. Yes, that's possible.

2 Q. Officers who actually don't work the same shift,
3 may be working on the same investigation?

4 A. Yes, sir.

5 Q. Witnesses may have to be interviewed and their
6 working hours may require officers who work on
7 the late shift, or the overnight shift, to
8 conduct the interviews?

9 A. Correct.

10 Q. So by preparing reports, officers on one shift
11 can share their information with officers on the
12 other shifts?

13 A. Absolutely.

14 Q. And in this sense, there is a collective benefit
15 that allows the department to continue its
16 criminal investigative duties, around the clock?

17 A. Yes, sir.

18 Q. Yet another purpose of police reports is to
19 report upward, to supervisors, what it is you are
20 doing?

21 A. Yes, sir.

22 Q. Reports typically are reviewed by supervisors?

23 A. Yes, they are.

24 Q. For accuracy?

25 A. Yes.

1 Q. For thoroughness?

2 A. Yes.

3 Q. For completeness?

4 A. Yes.

5 Q. Preparing reports is something that a thorough
6 police officer does?

7 A. Yes.

8 Q. Preparing reports is something that a police
9 officer should do in a timely fashion, true?

10 A. Yes.

11 Q. Because, again, one of the first purposes is to
12 get the facts down on paper accurately while they
13 are fresh in your mind?

14 A. Yes, sir.

15 Q. And preparing reports in a timely and thorough
16 way is something that a fair police officer does,
17 isn't it?

18 A. I would imagine, yes, sir.

19 Q. That is, you want the report to be objective?

20 A. Yes.

21 Q. Accurate in the sense of fair and factually
22 correct?

23 A. Yes.

24 Q. Not tilted or biased in any fashion?

25 A. Correct.

1 Q. The idea is to lay out the facts and see where
2 they lead?

3 A. Yes, sir.

4 Q. You prepare reports, then, and as they go up the
5 stream, for a supervisors review, the supervisor
6 typically will sign off or indicate approval in
7 some fashion?

8 A. Yes, sir.

9 Q. Or may send the report back for further work?

10 A. Yes, sir.

11 Q. You are a supervisor, yourself, in the Road
12 Patrol Unit?

13 A. Yes, sir.

14 Q. You fill this function. That's one of your
15 administrative duties, is to review reports
16 prepared by deputies under you, in the Road
17 Patrol Unit?

18 A. Yes, sir.

19 Q. You encourage them to file timely reports?

20 A. Yes.

21 Q. Thorough reports?

22 A. Yes.

23 Q. And fair reports?

24 A. Yes, sir.

25 Q. The reports, you know, after now 10, going on 11

1 years as a sworn law enforcement officer, then
2 sometimes will go further, to a prosecutor?

3 A. Yes, sir.

4 Q. Prosecutors rely on those police reports in
5 making charging decisions?

6 A. Yes, sir.

7 Q. If they elect to charge a case, you know as well,
8 in your criminal justice system, that the
9 reports, then, go to the defense, once a case has
10 been charged in court?

11 A. Yes, sir.

12 Q. The defense lawyers then rely on the thoroughness
13 of those reports?

14 A. Yes, sir.

15 Q. The accuracy of those reports?

16 A. Yes, sir.

17 Q. The timeliness of those reports?

18 A. Yes, sir.

19 Q. And at a very practical level, if later, you, as
20 the officer involved in some activity, have
21 forgotten exactly what happened, you can turn
22 back to your report?

23 A. Yes.

24 Q. Use it to refresh your recollection?

25 A. Yes, sir.

1 Q. Sometimes use the report of other officers to
2 refresh your recollection?

3 A. Yes, sir.

4 Q. Which, again, is you relying on the accuracy and
5 the thoroughness and the timeliness of reports by
6 other officers?

7 A. Yes, sir.

8 Q. And if you were to change your explanation of
9 what happened, either the prosecution or the
10 defense might use the report to show that you had
11 said something different in the report?

12 A. Yes, sir.

13 Q. If you don't prepare a report, then you haven't
14 committed anything to paper, correct?

15 A. Correct.

16 Q. And someone who doesn't commit anything to paper,
17 then, can't be pinned down on the details as
18 would someone who had put the details on paper?

19 A. Okay. I mean, that makes sense.

20 Q. Makes sense to you?

21 A. Mm-hmm.

22 Q. Now, let's go to this investigation, the
23 activities concerning this investigation, are you
24 with me?

25 A. Yes, sir.

1 Q. November 3, 2005, when you learned from
2 Mr. Wiegert that Teresa Halbach was missing, was
3 just about exactly, to the day, three weeks after
4 your deposition in Steven Avery's lawsuit?

5 A. Yes, sir.

6 Q. You were the shift commander that day, as we have
7 established?

8 A. Yes, sir.

9 Q. You learned about Ms Halbach being missing at
10 about what time?

11 A. Somewhere between 6:30 and 7:30.

12 Q. You were scheduled to get off shift at eight?

13 A. Yes, sir.

14 Q. Nearing the end of your day?

15 A. Yes, sir.

16 Q. As shift commander, you could have assigned
17 anyone in road patrol to go out to the address on
18 Avery Road?

19 A. Yes.

20 Q. You chose to do it yourself?

21 A. Yes.

22 Q. Did you go alone?

23 A. Yes, I did.

24 Q. At that time, all you knew is that this address
25 on Avery Road was one of the appointments that Ms

1 Halbach evidently had the day she was last seen
2 by family or friends?

3 A. Yes, sir.

4 Q. You happened to meet Steve Avery -- or not meet
5 him for the first time, but run into him, so to
6 speak, when you went out there that evening?

7 A. Yes, sir.

8 Q. You talked with him?

9 A. Yes, I did.

10 Q. He was very cordial?

11 A. Yes, he was.

12 Q. And as you followed through, you saw events
13 unfold, eventually it was Steven Avery who was
14 charged with killing Teresa Halbach?

15 A. Yes, sir.

16 Q. That came a week, roughly, after your first
17 conversation with him on Thursday, November 3rd?

18 A. Yes, sir.

19 Q. Mr. Avery then was charged with the most serious
20 crime someone can commit in this state?

21 A. Yes, sir.

22 Q. When, sir, did you first make a written report of
23 anything having to do with the November 3, 2005,
24 meeting with Mr. Avery?

25 A. June of '06 I believe.

1 Q. Does June 29, 2006 sound correct?

2 A. Yes.

3 Q. A few days short of the 4th of July?

4 A. Yes, sir.

5 Q. Not quite 8 months after the conversation with
6 Mr. Avery?

7 A. Yes, sir.

8 Q. Was that a timely report?

9 A. I wasn't even aware that Manitowoc County had our
10 own report. I didn't find out about it till
11 then.

12 Q. You were aware that Manitowoc County sheriff's
13 deputies had played a substantial role at the
14 Avery property for a week, from November 5 to
15 November 12?

16 A. Yes.

17 Q. You saw literally dozens of fellow officers from
18 the Manitowoc County Sheriff's Department during
19 that week?

20 A. Yes.

21 Q. And your testimony today is you aren't aware that
22 any of them ever wrote any report?

23 A. No, I wasn't. I knew Calumet County Sheriff's
24 Department was handling the report portion of it.

25 Q. And somebody finally suggested to you, in June,

1 more than 7 months later, that maybe you ought to
2 write a report about that first interview with
3 Steven Avery?

4 A. They informed me that there was indeed a report
5 and that I should make an entry on it, yes.

6 Q. You made an entry on it?

7 A. Yes, I did.

8 Q. And that entry was all of about a page?

9 A. I guess it was a few paragraphs; I don't know how
10 many.

11 Q. Did you happen to notice when you were with
12 Mr. Avery on November 3, a big, fresh gash or cut
13 on his right middle finger?

14 A. No, I did not notice that.

15 Q. Didn't notice him bleeding?

16 A. No, sir, I didn't.

17 Q. Or notice anything that looked like it had been
18 recently bleeding or recently a fresh, open cut?

19 A. No, sir, I didn't notice any injury.

20 Q. That's why there is no mention of such an injury
21 in your report, true?

22 A. Correct.

23 ATTORNEY STRANG: What time does the Court
24 wish to take the afternoon break, for my purposes,
25 your Honor?

1 THE COURT: We'll go another 10 minutes.

2 ATTORNEY STRANG: Thank you.

3 Q. (By Attorney Strang)~ Now, did I understand you
4 correctly, in your testimony earlier today,
5 Sergeant Colborn, that today you remember what it
6 is you were doing on your day off, Friday,
7 November 4, 2005, the day after you first talked
8 to Steven Avery?

9 A. Yes.

10 Q. We were talking about timely and thorough and
11 accurate reports before. And I wonder if you
12 recall, oh, a little over a month ago, not quite
13 six weeks ago, in fact, January 11, 2007, being
14 interviewed by Investigator Steier of the Calumet
15 County Sheriff's Department; do you remember
16 that?

17 A. Yes.

18 Q. And you knew that Investigator Steier was
19 interviewing you in connection with this case?

20 A. Yes.

21 Q. You know, as a law enforcement officer, that it's
22 important, if one speaks to another -- to a
23 police officer, to give accurate information to
24 the officer?

25 A. Yes, sir.

1 Q. You know, in fact, that it's a crime in the state
2 of Wisconsin, intentionally to give false
3 information to a police officer?

4 A. Yes, sir.

5 Q. And on January 11, 2007, you recall Investigator
6 Steier asking you if you could recall what you
7 had done on Friday, November 4, 2005, your day
8 off; do you recall him asking you that?

9 A. Yes.

10 Q. And what you told him was, that you could not
11 recall what you had done on your off day; that's
12 what you told Investigator Steier?

13 A. Yes, at that precise second that he asked me, I
14 could not recall everything that I had done on
15 that day.

16 Q. You recalled later?

17 A. Yes.

18 Q. And when, sir, when did you call up Investigator
19 Steier and say, I'm sorry, I was wrong, I now
20 remember what I did on my day off, Friday,
21 November 4, 2005?

22 A. I didn't call Investigator Steier.

23 Q. One of the things the road patrol officers, under
24 your supervision, frequently do, is look for cars
25 that appear out of place?

1 A. Yes, sir.

2 Q. Or if they made a traffic stop, they will inquire
3 about the license plate or the registration
4 plates on an automobile?

5 A. Yes, sir.

6 Q. And they will call into dispatch and give the
7 dispatcher the license plate number of a car they
8 have stopped, or a car that looks out of place
9 for some reason, correct?

10 A. Yes, sir.

11 Q. And the dispatcher, very quickly these days, with
12 his or her computer screen, can get information
13 about who -- to whom a license plate is
14 registered?

15 A. Yes, sir.

16 Q. Also, the dispatcher can give you, right over the
17 phone or the radio, the information about what
18 car the license plate is registered to?

19 A. Yes, sir.

20 Q. This is useful so that you know who you may be
21 approaching, if there's a driver of the car
22 that's stopped?

23 A. Yes, sir.

24 Q. It's also useful to know whether the license
25 plate appears to be on the car for which it is

1 registered?

2 A. Yes, sir.

3 Q. If the car is abandoned or there's nobody in the
4 car, the registration tells you who the owner
5 presumably is?

6 A. Yes, sir.

7 Q. Are you the only Andy, to your knowledge, in the
8 Manitowoc County Sheriff's Department?

9 A. The only officer with the first name Andy?

10 Q. Yes.

11 A. No, I'm not.

12 Q. All right. I'm going to ask you to listen, if
13 you would, to a short phone call. And I will ask
14 you, first, if you are the Andy speaking. All
15 right?

16 A. Mm-hmm.

17 ATTORNEY KRATZ: Judge, before counsel does
18 this, could we have it identified as to the date and
19 time.

20 ATTORNEY STRANG: Absolutely, I will do the
21 best I can. In fact, I should mark it.

22 (Exhibit No. 212 marked for identification.)

23 ATTORNEY STRANG: This is a CD Rom that we
24 obtained from the -- or a copy of the CD Rom that we
25 obtained from the Manitowoc County Sheriff's

1 Department, Exhibit 212, counsel. Thank you.

2 For counsel's benefit this will be track
3 three. All I'm told by the sheriff's department
4 is that these are calls between November 3 and
5 November 12, 2005.

6 ATTORNEY KRATZ: Judge, we don't know
7 when -- what he is about to play them is within a 9
8 day period?

9 ATTORNEY STRANG: If the witness made the
10 call, I'm going to ask him when he made the call.

11 THE COURT: All right. Go ahead.

12 Manitowoc County Sheriff's Department.

13 This is Lynn.

14 Lynn.

15 Hi, Andy.

16 Can you run Sam William Henry 582. See
17 if it comes back to (Inaudible.)

18 Sam William Henry 582.

19 ATTORNEY STRANG: Let me just stop it right
20 there. In fact, I'm going to go back, because it
21 was so soft at the beginning.

22 Manitowoc County Sheriff's Department.

23 This is Lynn.

24 Lynn.

25 Hi Andy.

1 Can you run --

2 Q. (By Attorney Strang)~ Is that you?

3 A. It sounds like me. I believe it's me.

4 Q. Okay. I'll --

5 Sam William Henry 582. See if it comes
6 back to (Inaudible.)

7 Lynn.

8 Hi Andy.

9 Can you run Sam William Henry 582. See
10 if it comes back to (Inaudible.)

11 Sam William Henry 582. I (Inaudible.)
12 All righty. You speak any Spanish there, Andy?
13 I just a call at the top of the list, is my on
14 call didn't call me back. If I want to get in
15 trouble, Andy, I get in trouble. You know, what
16 am I supposed to do?

17 Well --

18 My favorite one is in the city of
19 Manitowoc. Okay. Shows that she's a missing
20 person. And it lists to Teresa Halbach.

21 All set.

22 Okay. Is that what you're looking for,
23 Andy?

24 '99 Toyota.

25 Yup.

1 Okay. Thank you.

2 You're so welcome. Bye, bye.

3 Q. Okay. That's the entire call. Hangs up. That's
4 your voice?

5 A. Yes, I believe that's my voice. Yes.

6 Q. When did you make that phone call inquiring about
7 a license plate?

8 A. I don't know.

9 Q. Do you have any recollection of making that phone
10 call?

11 A. It would have had to have been 11/03/05 or -- I'm
12 guessing 11/03/05.

13 Q. Okay. But let's -- let's ask -- establish this
14 first, do you remember making the call?

15 A. Not really, no.

16 Q. What you're asking the dispatcher, whose name is
17 Lynn, is to run a plate that's Sam William Henry
18 582; did I hear that correctly?

19 A. Yes, sir.

20 Q. Sam William Henry is a phonetic code that law
21 enforcement officers use, because sometimes it's
22 hard to tell just a letter over radio?

23 A. Yes, sir.

24 Q. Sam William Henry would be SWH-582.

25 A. Yes.

1 Q. This license plate?

2 A. Yes, sir.

3 Q. I'm showing, for the benefit of the record, this
4 is either Exhibit 152 or 153?

5 THE CLERK: It's on the plate itself.

6 ATTORNEY STRANG: This one happens to be
7 153.

8 Q. (By Attorney Strang)~ And the dispatcher tells
9 you that the plate comes back to a missing person
10 or woman?

11 A. Yes, sir.

12 Q. Teresa Halbach. Mispronounces the last name, but
13 you recognize the name?

14 A. Yes, sir.

15 Q. And then you tell the dispatcher, Oh, '99 Toyota?

16 A. No, I thought she told me that.

17 Manitowoc County Sheriff's Department.

18 This is Lynn.

19 Lynn.

20 Hi Andy.

21 Can you run Sam William Henry 582, see
22 if it comes back to (Inaudible.)

23 Sam William Henry 582. I (Inaudible.)

24 All righty. Do you speak any Spanish there,

25 Andy? I just got a call that the top of my list,

1 is my on call didn't call me back. If I want to
2 get in trouble, Andy, I get in trouble. You
3 know, what am I supposed to do?

4 Well --

5 My favorite one is in the city of
6 Manitowoc. Okay. Shows that she's a missing
7 person. And it lists to Teresa Halbach.

8 All set.

9 Okay. That's what you're looking for,
10 Andy?

11 '99 Toyota?

12 Yup.

13 Okay. Thank you.

14 You are so welcome. Bye, bye.

15 Q. Actually you who suggests this is a '99 Toyota?

16 A. I asked if it was a '99 Toyota, yes.

17 Q. And the dispatcher confirmed that?

18 A. Yes.

19 Q. Were you looking at these plates when you called
20 them in?

21 A. No, sir.

22 Q. And your best guess is that you called them in on
23 November 3, 2005?

24 A. Yes, probably after I received a phone call from
25 Investigator Wiegert letting me know that there

1 was a missing person.

2 Q. Investigator Wiegert, did he give you the license
3 plate number for Teresa Halbach when he called
4 you?

5 A. I don't remember the entire content of our
6 conversation but, obviously, he must have because
7 I was asking the dispatcher to run the plate for
8 me.

9 Q. Did you not trust that Investigator Wiegert got
10 the number right?

11 A. I don't -- That's just the way I would have done
12 it. I don't -- It's not a trust or distrust
13 issue.

14 ATTORNEY STRANG: I'm about to move to a
15 different area, your Honor.

16 THE COURT: All right. We'll take our
17 afternoon break at this time. Members of the jury,
18 do not discuss the case during break. And we'll
19 resume in about 15 minutes.

20 (Jury not present.)

21 THE COURT: Counsel, you should report back
22 a little before 3:00.

23 ATTORNEY STRANG: Thank you.

24 (Recess taken.)

25 THE COURT: Mr. Strang, you may resume your

1 cross-examination.

2 CROSS-EXAMINATION CONTD

3 BY ATTORNEY STRANG:

4 Q. So as you sit here today, Sergeant Colborn, you
5 don't recall whether Investigator Wiegert gave
6 you Ms Halbach's telephone number when he called
7 you that Thursday evening?

8 A. He never asked me anything about a telephone
9 number.

10 Q. But you think he must have given you her license
11 plate number? Did I say telephone number?

12 A. Yes, you did.

13 Q. I'm sorry. I apologize. What I meant is, you
14 don't recall, as you sit here today, whether
15 Mr. Weigert gave you Teresa Halbach's license
16 plate number when he called you on November 3?

17 A. No, I just don't remember the exact content of
18 our conversation then.

19 Q. But --

20 A. He had to have given it to me, because I wouldn't
21 have had the number any other way.

22 Q. Well, and you can understand how someone
23 listening to that might think that you were
24 calling in a license plate that you were looking
25 at on the back end of a 1999 Toyota; from

1 listening to that tape, you can understand why
2 someone might think that, can't you?

3 ATTORNEY KRATZ: It's a conclusion, Judge.
4 He's conveying the problems to the jury.

5 THE COURT: I agree, the objection is
6 sustained.

7 Q. This call sounded like hundreds of other license
8 plate or registration checks you have done
9 through dispatch before?

10 A. Yes.

11 Q. But there's no way you should have been looking
12 at Teresa Halbach's license plate on November 3,
13 on the back end of a 1999 Toyota?

14 ATTORNEY KRATZ: Asked and answer, your
15 Honor, he already said he didn't and was not looking
16 at the license plate.

17 THE COURT: Sustained.

18 Q. (By Attorney Strang)~ There's no way you should
19 have been, is there?

20 A. I shouldn't have been and I was not looking at
21 the license plate.

22 Q. Because you are aware now that the first time
23 that Toyota was reported found was two days later
24 on November 5?

25 A. Yes, sir.

1 Q. You were aware that it was found, without its
2 license plates?

3 A. Yes, sir.

4 Q. You are aware that the license plates weren't
5 reported found until November 8, 2005?

6 A. Yes, sir.

7 Q. Now, you spent a good bit of your time, your
8 working hours at least, between November 5 and
9 November 9, at the Avery salvage property.

10 A. Yes, sir.

11 Q. You were asked on direct examination if you
12 remembered when you first arrived on Saturday,
13 November 5, at that property; do you recall that?

14 A. Yes, sir.

15 Q. And if I heard you correctly, which you said is
16 you thought somewhere between 5 and 5:15?

17 A. That's what I thought, yes.

18 Q. Is that your recollection as you sit here now?

19 A. Yes.

20 Q. Okay. Now, that's a question that you have been
21 asked at a prior hearing in this case, correct?

22 A. Yes.

23 Q. Back on August 9, 2006, you testified at a
24 hearing?

25 A. Yes.

1 ATTORNEY STRANG: Page 42, counsel.

2 Q. (By Attorney Strang)~ And on August 9, 2006, you
3 were asked the following question and gave this
4 answer?

5 QUESTION: Okay. Now, moving onto
6 Saturday, November 5th, did you -- can you tell
7 me what time you arrived at the Avery property?

8 And your answer was:

9 ANSWER: Sometime between 6 and 6:30, in
10 the evening.

11 And I will show you the transcript. Is
12 that the question you were asked and the answer
13 you gave on August 9?

14 A. Yes, it is.

15 Q. Now, since then, you have had a chance to get
16 prepared to testify for this trial?

17 A. Yes, sir.

18 Q. One of the things you have had the benefit of
19 doing is sitting down with the gentleman to my
20 right, at the prosecution table?

21 A. Yes, sir.

22 Q. And they ran through some of the areas they
23 expected to cover with you in your testimony?

24 A. Yes, sir.

25 Q. You did not have the benefit of doing that on, or

1 shortly before, August 9, 2006?

2 A. Yes, I did. Actually, we did it on 6/29/06, the
3 date you previously mentioned.

4 Q. Okay. Five or six weeks earlier?

5 A. Yes, sir.

6 Q. Specifically, have you had a chance, though,
7 since August 9, to look at the log sheet for
8 November 5, 2005, at the Avery property?

9 A. I have not.

10 Q. How is it that your memory improved or changed
11 and that you now think it was between 5 and 5:15
12 that you arrived, not 6 or 6:30?

13 A. I -- I don't know. I did review my time cards
14 for that pay period and I saw what time I went on
15 duty, so I -- when I answered Mr. Kratz's
16 question, I didn't think it would have taken me
17 from 6 or 6:30 to get there.

18 Q. Okay. So it's not so much that you actually
19 remember now, it's just that you have spent some
20 time trying to reconstruct time from your house
21 and when you got the call and what your time
22 records show?

23 A. Yes.

24 Q. Okay. And we have got Exhibit 142 in evidence
25 and I would say today you did pretty well. I

1 will show you Exhibit 142. I have got it open to
2 the page where I think you will find yourself
3 signing in; is that right?

4 A. Yes, sir.

5 Q. 5:12 p.m.?

6 A. Yes, sir.

7 Q. That would be the sign in out by the Command
8 Post, true?

9 A. I don't know. I -- I have never seen this form
10 before today. That's what it looks like.

11 Q. Well, the question really is, where do you
12 remember logging in?

13 A. I thought we logged in out by Avery Road and 147,
14 but if you say it's by the Command Post, that
15 could be.

16 Q. No, no, no, I wasn't there. Avery Road and 147,
17 in other words, even farther out from the Command
18 Post?

19 A. Yes, sir.

20 Q. To get anywhere near the property you had to log
21 in?

22 A. Yes, sir.

23 Q. All right. 5:12 p.m. you log in?

24 A. Yes, sir.

25 Q. Do you recall, now, whether Lieutenant James Lenk

1 was there when you arrived, on November 5?

2 A. I don't know if he was there or came later. I
3 don't know.

4 Q. Okay. And you do know that you logged out with
5 him and with Detective Remiker that evening; do
6 you recall that?

7 A. Yes, sir.

8 Q. And, indeed, we can see that if you flip forward
9 a couple three pages, can you find where you have
10 logged out, on Exhibit 142?

11 A. Yes, sir.

12 Q. The three of you, Lenk, Colborn, Remiker log out
13 another 10:41 p.m.?

14 A. Yes, sir.

15 Q. Now, you were, as I say, spending most of your
16 working hours out there, somewhere on the Avery
17 property, from November 5 through at least
18 November 9?

19 A. Yes, sir.

20 Q. You -- As you told us already, you went into
21 Steven Avery's trailer a number of different
22 times during those several days?

23 A. Yes, sir.

24 Q. You said on direct examination that, you know, at
25 least initially, you still viewed this as a

1 missing persons case?

2 A. Yes, sir.

3 Q. You also knew that by the time you entered
4 Mr. Avery's trailer at 7:30 on Saturday,
5 November 5, you were doing so with a search
6 warrant?

7 A. Yes.

8 Q. A search warrant in which a fellow law
9 enforcement officer had sworn that you were
10 looking for evidence of murder, among other
11 things?

12 A. I didn't know what the content of the search
13 warrant was or how they obtained it.

14 Q. Search warrants, though, you do know, are used in
15 criminal investigations?

16 A. Yes, sir.

17 Q. Not in missing person investigations?

18 A. I can't really answer that. I could imagine the
19 Court would give a search warrant for a missing
20 person if we could prove probable cause that that
21 missing person was at a certain spot.

22 Q. Isn't a search warrant ordinarily used --

23 A. Yes, it is.

24 Q. -- when there is probable cause to believe you
25 will find evidence of a crime?

1 A. Yes, it is.

2 Q. All right. And you were looking for evidence of
3 a crime, beginning on the evening of November 5,
4 true?

5 A. Yes, sir.

6 Q. One of the things you do, as an evidence
7 technician, is you wear latex gloves, just like
8 those that Mr. Wiegert had on earlier, when you
9 searched someone's home, or garage, or whatever
10 it is?

11 A. Yes, sir.

12 Q. You wear those, everybody involved, every law
13 enforcement officer involved in the search wears
14 them?

15 A. Yes, sir.

16 Q. That way you can't leave your own fingerprints at
17 the scene or on evidence?

18 A. Yes, sir.

19 Q. And in theory, you shouldn't be leaving your own
20 DNA on the scene or on evidence?

21 A. Correct, sir.

22 Q. So you're in the house on November 5, November 6,
23 November 7, November 8, true?

24 A. Yes, sir.

25 Q. And, finally, on November 8, Mr. Kratz asked you,

1 were you doing a thorough search of the master
2 bedroom of Mr. Avery's trailer; do you remember
3 that?

4 A. Yes.

5 Q. Now, that thorough search, had you working on the
6 bookcase and on the desk?

7 A. Yes, sir.

8 Q. You described yourself as being, I think you said
9 none too gentle?

10 A. That's true.

11 Q. With the bookcase. And explained, I wasn't any
12 too gentle, as we were getting exasperated?

13 A. Yes, sir.

14 Q. What was exasperating you about the bookcase, or
15 that bedroom, on November 8, 2005?

16 A. The content of the material that we were
17 collecting.

18 Q. So you felt exasperated and that caused you to
19 take it out on the bookcase?

20 A. Didn't exactly take it out on the bookcase, it
21 just caused us to not be gentle in the handling
22 of the material.

23 Q. You were back in again on November 9, I don't
24 know that you covered that on direct, but you
25 actually were back into Mr. Avery's trailer,

1 briefly, on November 9, to look for a garage door
2 opener?

3 A. Yes, sir.

4 Q. That was also with Lieutenant Lenk, correct?

5 A. And a Calumet County deputy, yes, sir.

6 Q. Named Wendling, Deputy Wendling?

7 A. Yes, sir.

8 Q. From Calumet County? There was no time that you
9 went in Mr. Avery's home during November of 2005
10 when you were not also with Lieutenant Lenk?

11 A. Not that I recall.

12 Q. No time you went into Mr. Avery's garage when
13 Lieutenant Lenk was not also with you?

14 A. Not that I recall, no, sir.

15 Q. This case, you would describe as the largest
16 investigation in which you personally had
17 participated as a law enforcement officer?

18 A. Yes, sir.

19 Q. Some of the lengthiest searches, if we take
20 November 5 through November 9 as a whole, in
21 which you have participated?

22 A. Yes, sir.

23 Q. Led to very serious charges against Mr. Avery?

24 A. Yes, sir.

25 Q. You now know that the law enforcement agencies

1 involved, principally Calumet County Sheriff's
2 Department and the Division of Criminal
3 Investigation, have generated hundreds or
4 thousands of pages of police reports?

5 A. Yes, sir.

6 Q. Your total contribution to those reports, is
7 what, a little bit under half a page, as of
8 November 8, 2005?

9 A. That's correct, sir.

10 Q. And then about another page as of June 29, 2006?

11 A. Correct.

12 Q. The report that you filed on, or shortly after,
13 November 8, 2005, makes no mention of the Toyota
14 key?

15 A. That's correct, sir.

16 Q. Would you like to see it?

17 A. No, I believe you.

18 Q. In fact, the only thing you discuss in your
19 report is that on November 8, 2005, you were
20 using these cotton swabs, about which we have all
21 heard a lot, and distilled water, to collect some
22 blood spots in the bathroom and laundry room of
23 Mr. Avery's trailer?

24 A. Yes, sir.

25 Q. Were there things that you did not want to commit

1 to paper, in a report?

2 A. No, sir.

3 Q. And it all began, I guess, your involvement in
4 this investigation began, that Thursday night,
5 November 3, 2005?

6 A. Yes, sir.

7 Q. And that's the -- that's the report that we
8 established you wrote more than 7, nearly 8
9 months later?

10 A. Yes, sir.

11 Q. That is, it was almost 8 months after that
12 conversation with Steven Avery, the first
13 conversation with him in this investigation, that
14 you wrote down what you say he said to you, back
15 on November 3?

16 A. Yes, sir.

17 Q. Did you have any rough notes, note pad, anything
18 to work off when you wrote that report in the
19 heat of June, 2006?

20 A. No, I did not, sir.

21 Q. Well, about 8 months, but then, again, while
22 we're on Steven Avery and your reports about him,
23 that phone call, the phone call you took way back
24 in 1994 or 1995, when you were working in the
25 jail, the phone call where a detective from

1 another law enforcement agency told you you may
2 have the wrong guy in jail, that one?

3 A. Yes, sir.

4 Q. Did you ever write a report about that?

5 A. No, sir.

6 Q. Well, actually you did, didn't you? It was about
7 8 years later, wasn't it?

8 A. I wrote a statement on it, yes, sir.

9 Q. You wrote a statement after Sheriff Peterson
10 suggested that maybe you should?

11 A. Yes, sir.

12 Q. You wrote that statement in 2003, about the 1994
13 or 1995 telephone call?

14 A. Yes.

15 Q. You wrote that statement in 2003, the day after
16 Steven Avery finally walked out of prison, didn't
17 you?

18 A. I don't know what day Steve was released from
19 prison, but I wrote the statement in 2003.

20 Q. September 12, 2003 sound right?

21 A. I said, I don't know the date that I wrote the
22 statement, but I know it was in 2003.

23 Q. Well, I think I do know the date you wrote it and
24 I'm a happy to show it to you.

25 ATTORNEY STRANG: I will mark it for

1 identification.

2 (Exhibit No. 213 marked for identification.)

3 Q. (By Attorney Strang)~ What do you know as

4 Exhibit 213?

5 A. That's the statement I wrote after speaking with

6 Detect -- or Sheriff Peterson.

7 Q. What's the date of your statement?

8 A. September 12, 2003.

9 Q. Do you remember that now as the day after Steven

10 Avery finally walked out a free man?

11 A. Sir, I already said I didn't know what day he got

12 released.

13 ATTORNEY STRANG: That's all I have.

14 THE COURT: Mr. Kratz.

15 ATTORNEY KRATZ: I do have a issue outside

16 the presence of the jury, Judge. I ask that I be

17 able to be heard.

18 THE COURT: All right. At this time we'll

19 excuse the jurors for a few minutes.

20 (Jury not present.)

21 ATTORNEY KRATZ: I think the witness should

22 be excused as well.

23 THE COURT: All right. Mr. Colborn, you

24 may step outside. Mr. Kratz.

25 (Witness not present.)

1 ATTORNEY KRATZ: Thank you, Judge. As this
2 Court may know, this was a cross-examination which
3 was much anticipated. It was the subject of a great
4 deal of pre-trial litigation. It was the point in
5 the trial where the defense had represented to this
6 Court, in something that's called an offer of proof,
7 which is a lawyer's obligation, at least as this
8 Court presented it to the defense, to tell the Court
9 what the defense intended to show at trial.

10 When submitting the defense theory of
11 the case, in response to the State's motion to
12 exclude evidence of blood vial, of planting
13 evidence, the defense, in their offer of proof,
14 told this Court, promised this Court, that the
15 defense would -- with evidence, would show that
16 this witness, Mr. Colborn, or the next witness,
17 Mr. Lenk, somehow obtained a vial of blood from
18 the Clerk of Court's Office in Manitowoc County
19 and planted that evidence, or planted that blood
20 in Teresa Halbach's SUV.

21 Now, we have had heard Mr. Strang's
22 opening statement where planted evidence has been
23 eluded to. We have heard cross-examination of
24 other law enforcement witnesses, by Mr. Buting,
25 specifically, where he asked whether those

1 officers expected that their superiors would be
2 planting evidence in this case.

3 But now, when it would logically come up
4 in trial, now when evidence would logically be
5 presented, or when the very witness in the
6 defense offer of proof comes before this Court
7 and is able to be asked regarding sneaking into
8 the Clerk's Office, or stealing a vial of blood,
9 or planting evidence, we hear nothing.

10 And despite the contamination by the
11 defense throughout the entire jury selection
12 process, which this Court I think can take
13 judicial notice of, you heard all the questioning
14 about the vial of blood in the Clerk's Office in
15 jury selection, you heard the contamination in
16 press releases, you heard the contamination in
17 opening statements.

18 Now, for the first time, when evidence
19 should be placed into -- into the record, or at
20 least placed into this particular case, we hear
21 nothing. And so, Judge, I'm asking for
22 alternative direction, or rulings from the Court,
23 first, if the defense is abandoning their
24 planting evidence theory. The State needs to
25 know that and we need to know that now.

1 Because there shouldn't be any more --
2 any more questions of, are you friends with
3 Mr. Lenk, or any questions of any other witnesses
4 about a planting or about blood vials, if they
5 intend not to honor their offer of proof, if the
6 defense now intends not to, as they told this
7 Court in response to the State's motion to
8 exclude this very evidence, that they would prove
9 that evidence from the Clerk's Office, by way of
10 vial of blood would be brought into this case.

11 If they do, in fact, that is, if the
12 defense does in fact intend to abandon that
13 defense, then I will be asking for curative
14 instructions of this jury, at this time, that up
15 to this point in the trial they should disregard
16 Mr. Strang's opening statement, when he talked
17 about further evidence of planting evidence, of
18 any other witnesses that have been asked about
19 planting evidence, or any reference at all to
20 blood vial type evidence.

21 If, in fact, I'm mistaken, if I am
22 jumping the gun, if you will, if this is all
23 going to be Lieutenant Lenk now, rather than
24 Sergeant Colborn, then I am happy to be the first
25 one to stand corrected. But, if this defense is

1 going to be abandoned, before I redirect this
2 particular witness, the State is entitled to that
3 ruling and we're entitled to that information.

4 THE COURT: Mr. Strang.

5 ATTORNEY STRANG: I will stand on the
6 written materials we made, we tendered to the Court
7 and filed, with respect to a proffer of evidence and
8 reasonable inferences from evidence as to the blood
9 vial. I will stand on the transcript that our
10 capable court reporter has made of my opening
11 statement and simply note that, while he means no
12 inaccuracy and he is simply trying to give the Court
13 a summary, Mr. Kratz's description of our written
14 materials and my opening statement are not exactly
15 correct, and I will simply stand on them rather than
16 characterize them.

17 Second, just by the by, we haven't
18 gotten to the defense case-in-chief yet at all.
19 We're in the prosecution case-in-chief. So all
20 of this, at some level, would be wildly
21 premature. But, beyond that, to confront it most
22 directly, I'm idealistic. I'm certainly naive at
23 times. I am not so naive to think that someone
24 who may have planted blood evidence, who may have
25 been involved in planting a key, would come into

1 this courtroom, and simply, because asked under
2 oath, did you do it, say, oh, yes, I did it. We
3 are not going to have a *Perry Mason* moment here.

4 We will at some point have to establish
5 the existence of the blood vial in the Clerk's
6 Office and its state of being there so to speak.
7 And that could be done in the defense
8 case-in-chief; it could be done on
9 cross-examination in the State's case-in-chief,
10 if the opportunity should present itself with an
11 appropriate witness.

12 But I do not expect anyone, Lieutenant
13 Lenk, Sergeant Colborn, anyone else, to make an
14 admission, that you would see in the *Perry Mason*
15 show, on the witness stand. And the suggestion
16 that we should be held to getting one from such a
17 witness is preposterous. This jury will be
18 asked, in the end, by both sides, to rely on
19 reasonable inferences and common sense and on all
20 of the evidence.

21 So I don't think there's any relief to
22 be granted at the moment and there's no point in
23 discussing now what reasonable inferences may be
24 available at this point, since neither the jury
25 nor the parties know what the whole of the

1 evidence will be when the evidence is closed.

2 THE COURT: Mr. Kratz, anything else?

3 ATTORNEY KRATZ: Just -- I'm sure, Judge,
4 just one moment, if I could. I appreciate
5 Mr. Strang's response, Judge. And when Mr. Strang,
6 and I believe I wrote these words down correctly, we
7 will establish the blood vial in the Clerk's Office,
8 perhaps not through these witnesses; but it is, what
9 I have heard, that they are not abandoning that
10 defense.

11 That was my concern, because there's
12 nothing that requires Mr. Strang or Mr. Buting to
13 keep planting these little nuggets, if you will,
14 and then when the defense part comes, from them
15 saying, defense rests, or saying, now we have
16 abandoned it, when there is further contamination
17 of the jury.

18 That's our concern, Judge. We're able
19 to meet this defense and we intend to meet this
20 defense. But we have to do that in good faith
21 reliance, upon pre-trial rulings of this Court,
22 by pre-trial representations by the defense as to
23 where this trial is going, so that we don't
24 interrupt the flow of this case.

25 I don't want to object every time I hear

1 the word planting. I don't want to object every
2 time I hear the word, are you friends with
3 Lieutenant Lenk, or anything that might go down
4 that road. In fact, the defense intends to, as
5 their offer of proof, indicates to prove that up
6 at some point, or to embrace that as one of their
7 defenses.

8 And I know that's a clumsy term, and
9 with my apology to Mr. Strang, but I still
10 believe that we're entitled to know that. We're
11 entitled at some point, before there is further
12 contamination, if in fact this defense is going
13 to be abandoned at some point, the State is
14 entitled to know that. That was my point in
15 putting it on the record at this very moment,
16 before I proceed with my redirect examination.

17 THE COURT: I don't know that the defense
18 disagrees that if they should abandon that defense
19 that you would be entitled to some notice, but I
20 don't understand the defense to be saying that they
21 are abandoning that defense.

22 ATTORNEY STRANG: The Court is right on
23 both counts. And this is, you know, I would like to
24 know too whether the State is abandoning the false
25 imprisonment charge, but until we at least get to

1 the point where the State rests its case-in-chief,
2 that's all premature.

3 And I understand Mr. Kratz's concerns.
4 I don't know that if we were abandoning any
5 defense that I would have done the same
6 cross-examination, or for that matter, that
7 Mr. Colborn would have been called on direct at
8 all.

9 ATTORNEY KRATZ: What I would, just as a
10 final point, Judge, I would ask then, that before
11 the State rests, before the State concludes its part
12 of the case, that we be allowed a hearing, that we
13 be allowed an opportunity on an admissibility
14 hearing, or to meet what at least has been presented
15 to this point.

16 We have heard about vials of blood. We
17 have heard -- the jury has at least heard,
18 substantially during the voir dire process, about
19 a vial of blood in the Clerk's Office. We don't
20 have, obviously, any results from the FBI at this
21 particular point yet. But if and when we do get
22 those, I know that there is some disagreement as
23 to what's rebuttal evidence and can rebuttal, or
24 reply evidence, be put in even in the State's
25 case-in-chief.

1 Because if the defense, technically,
2 wouldn't call one single witness and the State
3 relied upon the defense representation that they
4 intended to put this in and the defense changed
5 their mind, we would be precluded from meeting
6 the challenges, or at least meeting the
7 assertions that have been made up to this point.

8 So, perhaps more by way of prediction
9 between now and the close of the State's case, we
10 will be asking for a hearing on this very issue.
11 I don't intend to have this conversation again.
12 Mr. Strang is right, we'll wait to see how the
13 case plays out.

14 But prior to the State being precluded
15 from meeting this defense, or at least from
16 presenting evidence relevant to this particular
17 topic, and before the State rests, we will be
18 asking for a more extensive opportunity to be
19 heard, even if it's just in writing, Judge. We
20 will submit something, but we will need some kind
21 of a ruling before the State does rest its case.

22 THE COURT: All right. If I'm reading your
23 comments correctly, you are not asking the Court to
24 do anything at this point in time, but you are
25 indicating that you may be asking for relief of some

1 kind at the close of the -- or before the close of
2 the State's case, pending whatever action the
3 defense takes between now and then.

4 ATTORNEY KRATZ: This was the earliest
5 opportunity and, in fact, the first obvious
6 opportunity to have heard that kind of evidence.
7 Since I didn't hear it, I'm putting the Court and
8 defense on notice of our position.

9 THE COURT: Mr. Strang.

10 ATTORNEY STRANG: Fair enough. And I -- I
11 think I should, you know, in the spirit of the
12 disclosure that Mr. Kratz has struck, add joining
13 part of what -- part of what he said. I mean,
14 clearly, because about half, I think, of the blood
15 vial sample has been sent off to the FBI for
16 testing, and we expect testing is ongoing, clearly
17 there will have to be a hearing. Mr. Kratz may have
18 one type of hearing in mind; we have another.
19 Certainly a **Walstad** hearing and there are a variety
20 of other issues that may arise with the FBI testing.

21 We are no closer to being able to
22 conduct any independent testing or to have an
23 expert to meet and assess the FBI's testing, than
24 we were when we first addressed this issue. We
25 have received a protocol from the FBI, thanks to

1 Mr. Gahn for that; we got that, I don't know, at
2 the end of last week, I think.

3 And we'll be filing a motion addressing,
4 in writing, the issues that this testing and the
5 denial of defense opportunity for independent
6 testing or even for a reasonable chance to find
7 an expert to meet and help us assess, possibly
8 contradict the FBI test results. It raises a
9 whole field of fair trial and due process issues
10 here. I will address those in writing.

11 I hope to file that before the end of
12 this week. I expect the State would want a
13 chance to respond in writing and, you know,
14 whatever I see as heading, is the Court needing
15 to schedule, conceivably. I mean, on Wednesday,
16 gets FBI results and what they are, the Court
17 needing to set a fair amount of time aside to
18 address the whole cluster of issues surrounding
19 that FBI testing.

20 THE COURT: All right. Anything else
21 before we bring the jury back in and allow the State
22 to redirect?

23 ATTORNEY KRATZ: No. And Mr. Strang's
24 comments are certainly well stated and we actually
25 join that, Judge; we will need a day and whether

1 it's going to be on a weekend or whether the Court
2 is going to allow a day or the better part of a day,
3 that the jury gets a probably much needed day off,
4 we'll need to schedule that within the trial. But I
5 am prepared with my redirect at this time, Judge.

6 THE COURT: Very well. We can bring the
7 witness back in and the jurors.

8 (Jury present.)

9 You may be seated. Mr. Kratz, at this
10 time you may begin your redirect.

11 ATTORNEY KRATZ: Thank you, Judge.

12 REDIRECT EXAMINATION

13 BY ATTORNEY KRATZ:

14 Q. Sergeant Colborn, just a very few follow-up
15 questions. Mr. Strang asked you if you had
16 written a report about that telephone call that
17 you had sometime in 1994 or '95; do you remember
18 that question?

19 A. Yes, sir.

20 Q. Do you remember your response?

21 A. My response was, no, that I did not write a
22 report about it.

23 Q. As you look back, back in 1994 or '95, if you
24 would have written a report, what would it have
25 been about?

1 A. That is why I didn't do one, I don't know what it
2 would have been about, that I received a call and
3 transferred it to the Detective Division. If I
4 wrote a report about every call that came in, I
5 would spend my whole day writing reports.

6 Q. Did this person ever identify the individual that
7 they were talking about?

8 A. No, sir. There were no names given.

9 Q. Let me ask you this, as you sit here today,
10 Sergeant Colborn, do you even know whether that
11 call was about Mr. Steven Avery?

12 A. No, I don't.

13 Q. Mr. Strang also played a telephone call for you,
14 a call to the dispatch center, wherein you asked
15 to verify a license plate; do you recall that?

16 A. Yes, sir.

17 Q. Do you know if you made that inquiry of the
18 dispatch center before or after you went to the
19 Avery property on the 3rd of November?

20 A. I did not, no, sir. I would think -- I don't
21 know.

22 Q. Mr. Strang asked whether or not it was common for
23 you to check up on other agencies, or perhaps
24 I'm -- I'm misphrasing that, but when you are
25 assisting another agency, do you commonly verify

1 information that's provided by another agency?

2 A. All the time. I'm just trying to get -- you
3 know, a lot of times when you are driving a car,
4 you can't stop and take notes, so I'm trying to
5 get things in my head. And by calling the
6 dispatch center and running that plate again, it
7 got it in my head who that vehicle belonged to
8 and what type of vehicle that plate is associated
9 with.

10 Q. All right. Mr. Strang also asked you about a
11 interview that you had with a Investigator Steier
12 from the Calumet County Sheriff's Department
13 sometime in January of this year; is that
14 correct?

15 A. Yes, sir.

16 Q. Mr. Strang asked you if, when Investigator Steier
17 asked if you were able to, at that time, back in
18 January, to recreate your day, if you will, on
19 your day off on the 4th of November; is that the
20 substance?

21 A. Yes, sir.

22 Q. And in January, were you able to do that?

23 A. No, sir.

24 Q. Have you since been asked to recreate or to
25 reexamine your comings and goings on the 4th of

1 November?

2 A. Yes, sir.

3 Q. And have you now been able to do that?

4 A. Yes, sir.

5 Q. At any time during the 4th of November, were you
6 anywhere near the Avery salvage property?

7 A. No, I was not.

8 Q. At any time other than what we have heard about
9 on the 3rd, were you anywhere near that salvage
10 property.

11 A. No, I was not.

12 Q. Again, before arriving there on the 5th of
13 November, had you gone near or approached
14 anywhere around the Avery salvage property
15 itself?

16 A. No, sir, I had not.

17 ATTORNEY KRATZ: That's all the redirect I
18 have of this witness. Thank you, very much, sir.

19 THE COURT: Mr. Strang.

20 **RE CROSS-EXAMINATION**

21 BY ATTORNEY STRANG:

22 Q. How many calls have you ever gotten in your law
23 enforcement career, from another police officer,
24 suggesting you had the wrong guy in jail?

25 A. I don't know. I can't recall any others.

1 ATTORNEY STRANG: That's all I have.

2 THE COURT: All right. You are excused.

3 Mr. Kratz, the State may call its next witness.

4 ATTORNEY KRATZ: The State would call
5 Lieutenant James Lenk, then.

6 THE CLERK: Please raise your right hand.

7 **LIEUTENANT JAMES M. LENK**, called as a
8 witness herein, having been first duly sworn, was
9 examined and testified as follows:

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

12 THE WITNESS: James M. Lenk, L-e-n-k.

13 **DIRECT EXAMINATION**

14 BY ATTORNEY KRATZ:

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

16 A. I'm employed with the Manitowoc County Sheriff's
17 Department.

18 Q. In what capacity, sir?

19 A. I'm a lieutenant of detectives.

20 Q. What are your duties as lieutenant?

21 A. To distribute work amongst the other detectives,
22 to supervise other detectives, also to take cases
23 myself.

24 Q. So, together with the supervisory responsibility,
25 you have an active case load; is that right?

1 A. That's correct.

2 Q. How long have you been a law enforcement officer?

3 A. Total of approximately 24 years.

4 Q. And where did your law enforcement career begin?

5 A. At the Detroit Police Department in Detroit,

6 Michigan.

7 Q. How long were you employed in Detroit?

8 A. Just over four years.

9 Q. After your -- By the way, what did you do with

10 the Detroit Police Department?

11 A. I started out at as a patrol officer. I worked

12 undercover, vice unit. And I also worked

13 juvenile investigations.

14 Q. All right. What was the next law enforcement

15 position that you held?

16 A. I worked for Michigan Bell, Corporate Security,

17 Michigan Bell Telephone.

18 Q. How long was that?

19 A. Approximately two to three years; I don't recall

20 specifically.

21 Q. All right. Thereafter, what did you do?

22 A. I moved to Wisconsin and applied for the

23 Manitowoc County Sheriff's Department.

24 Q. And were you successful in obtaining that

25 position?

1 A. Yes, I was.

2 Q. When did that start?

3 A. It started December, 1988.

4 Q. Tell the jury, if you would, what your
5 responsibilities first were with the Manitowoc
6 Sheriff's Department?

7 A. When I first got hired on the Manitowoc County
8 Sheriff's Department, I worked as a jail officer
9 for a year.

10 Q. Did you move from that to something else?

11 A. Yes, I moved from that to patrol officer.

12 Q. How long were you a patrol officer?

13 A. I was a patrol officer for a short period of time
14 and then I went to the Metro Drug Unit.

15 Q. How long were you with the drug unit?

16 A. Approximately a year and a half.

17 Q. Could you describe your progression, then,
18 through the Manitowoc Sheriff's Department?

19 A. After the Metro Drug Unit, I became a sergeant
20 and I was assigned to the jail division; that
21 lasted a couple months. Then I was reassigned to
22 the Patrol Division as a sergeant.

23 Q. At some point, did you move out of the patrol
24 status?

25 A. Yes, I did.

1 Q. And did you move into investigations or into the
2 Detective Bureau?

3 A. Yes, I did.

4 Q. When did that happen, do you recall?

5 A. That was in February of '98, I believe.

6 Q. All right. At some point, Lieutenant Lenk, did
7 you move into a supervisory capacity within the
8 Detective Bureau?

9 A. Yes, I did.

10 Q. When was that; do you recall?

11 A. That was May of 2003.

12 Q. Lieutenant Lenk, I'm going to direct your
13 attention to November 3rd of 2005, ask if you
14 were first employed in the same capacity that you
15 hold now, at that time?

16 A. Yes, sir.

17 Q. And as the lieutenant in the Detective Bureau,
18 were you made aware of a missing persons
19 investigation that Calumet County had begun?

20 A. Yes, I was.

21 Q. How were you made aware of that?

22 A. I received a phone call from Investigator Wiegert
23 asking for assistance on a missing female.

24 Q. Is that something you worked on yourself on the
25 3rd, or assigned other officers?

1 A. I actually assigned the work to the other
2 officers. I stayed in the headquarters building
3 and did miscellaneous follow-up and paperwork.

4 Q. You did what, I'm sorry?

5 A. Miscellaneous follow- up and paperwork.

6 Q. Regarding this case or just other work?

7 A. This case and other work.

8 Q. All right. Is there an individual from the
9 Detective Bureau that you assigned to lead the
10 Manitowoc part of this investigation?

11 A. Yes, it would have been Detective Remiker.

12 Q. And does he have a first name?

13 A. Dave.

14 Q. If you can assist the jury, Lieutenant Lenk, that
15 first day, that is, the first day of the missing
16 persons investigation, the 3rd of November, what
17 was it that your agency, that Manitowoc, was
18 asked to assist with?

19 A. We were asked to assist with the missing female,
20 Teresa Halbach, to assist the Calumet County
21 officer that was coming to our county, to go to a
22 couple locations. I believe at least one
23 location, to see if they could gain information
24 to her possible whereabouts.

25 Q. As supervisor within the Detective Bureau, did

1 you speak directly with Detective Remiker
2 regarding those assignments?

3 A. Yes, I did.

4 Q. And were you informed. Were you briefed, I think
5 is the term, by Detective Remiker, regarding his
6 findings that day?

7 A. Yes, I believe I was.

8 Q. Did you have any conversation, direct
9 conversation, with Calumet County that first day?

10 A. Not direct conversation. I talked to Investigator
11 Dedering, who was also the one that came over to
12 our county.

13 Q. All right. Anything else happen on the 3rd,
14 other than what you have described regarding
15 the -- Manitowoc's limited role that day?

16 A. No, sir.

17 Q. All right. On the 4th, that would be on Friday,
18 the 4th of November, did you personally become
19 involved in the Manitowoc County portion of this
20 investigation?

21 A. Yes, sir.

22 Q. Could you tell the jury how you became involved?

23 A. Again, I received a telephone call from
24 Investigator Wiegert requesting that we go out
25 and reinterview Steven Avery.

1 Q. And did you proceed to Mr. Avery's property that
2 day?

3 A. Yes, I did.

4 Q. Who did you go with?

5 A. Detective Dave Remiker.

6 Q. Now, Lieutenant Lenk, had you ever been to the
7 Avery Salvage Yard as of the 4th of November?

8 A. No, I hadn't.

9 Q. Did you know where you were going on the
10 property?

11 A. No.

12 Q. When you got to -- Or did you proceed to that
13 scene?

14 A. Yes.

15 Q. When you got to the scene, where did you and
16 Detective Remiker go?

17 A. We turned to the right on Avery Lane, I guess it
18 is, towards Steven's trailer.

19 Q. To assist in your testimony, I'm going to show
20 you a much referred to exhibit, it's Exhibit No.
21 86; do you recognize that exhibit?

22 A. Yes, I do, sir.

23 Q. What is that?

24 A. That's the Avery Salvage Yard.

25 Q. And when you and Detective Remiker got to this

1 location, tell the jury where you went. There's
2 a laser pointer, if you need it, just to your
3 right, if that would assist you.

4 A. We came in -- It's hard to tell the area here.
5 We came in this road and we turned to the right.

6 Q. Why did you turn right?

7 A. Habit, I guess, just turned to the right.

8 Q. All right. Tell the jury where you went, please.

9 A. We went down to the -- almost to the end of the
10 road and we exited the vehicle. Detective
11 Remiker went up to the house trailer to knock on
12 the door, with no response; after which he went
13 to, I believe, the Janda trailer, again, knocked
14 on the door, no response.

15 As we were getting ready to leave, there
16 was a golf cart coming down the lane towards us.

17 Q. And who was on the golf cart?

18 A. Steven Avery and his mother.

19 Q. Did you have occasion to make contact with both
20 Steven and his mother at that time?

21 A. We talked to Steven, yes.

22 Q. Upon speaking to Mr. Avery, did you and Detective
23 Remiker ask for an opportunity to look in the
24 inside of his trailer?

25 A. Yes. Detective Remiker asked permission to look

1 inside his trailer.

2 Q. And was that done?

3 A. Yes, it was.

4 Q. How long did that take?

5 A. Approximately five minutes.

6 Q. Mr. Avery cooperative during that entire process?

7 A. Yes, he was.

8 Q. As you think back to that specific time,

9 Lieutenant Lenk, do you have an independent

10 memory of your sense of whether Mr. Avery may

11 have been involved in Ms Halbach's disappearance?

12 A. My memory at that point was that I did not think

13 there was any involvement with Mr. Avery.

14 Q. So you, Lieutenant James Lenk, the head of the

15 Detective Bureau, on the 4th of November, didn't

16 even think Steve was involved; is that what you

17 are telling us?

18 A. That's correct.

19 Q. Let me ask you this, Lieutenant Lenk, with that

20 having been said, did you take any steps from

21 that point forward to either plant evidence or to

22 ensure that Mr. Avery would be falsely accused of

23 that homicide?

24 A. No, sir, I definitely did not.

25 Q. Is that something that you have ever done in your

1 law enforcement career?

2 A. No, sir, I have never planted any evidence at any
3 time.

4 Q. Would you ever do something like that?

5 A. No, sir, I would not.

6 Q. The next day, on Saturday, the 5th of November;
7 do you remember that day?

8 A. Yes, sir.

9 Q. What were you doing that day, if you recall?

10 A. I was with my wife over near Menasha, looking for
11 a trailer for camping.

12 Q. Do you remember getting a call that day?

13 A. Yes, sir. I believe it was a page, initially.

14 Q. Did you speak with somebody?

15 A. Yes, I did.

16 Q. Who was that?

17 A. Detective Remiker.

18 Q. After getting the call from Detective Remiker,
19 did that affect your activities that morning?

20 A. Yes, sir. We stopped looking for the trailer and
21 I advised my wife, I have to get back, I have to
22 go to work.

23 Q. What did you do then?

24 A. We left the trailer sales, started to head home.
25 We got to Oneida and 441, my wife insisted that I

1 get something to eat because she knew that I
2 wouldn't eat the rest of the day, so we stopped
3 at Wendy's.

4 Q. Was that your idea?

5 A. No, it was not.

6 Q. But you stopped any way?

7 A. Yes, sir.

8 Q. All right. Where did you go then?

9 A. After we had a quick lunch at Wendy's, I went
10 directly home. And then from home, I went to the
11 department, to pick up my vehicle and my
12 supplies.

13 Q. And when you talk about picking up a vehicle, can
14 you describe that vehicle for us, please.

15 A. It's an unmarked police vehicle owned by
16 Manitowoc County Sheriff's Department.

17 Q. What kind of supplies did you pick up at the
18 Sheriff's Department?

19 A. Briefcase with various papers in it, radio, that
20 type of thing.

21 Q. Okay. Where did you go then?

22 A. I went from there to the Avery Salvage Yard.

23 Q. And, again, that's Exhibit No. 86; is that right?

24 A. That's correct.

25 Q. As you sit here today, Lieutenant Lenk, do you

1 recall about what time you arrived at that scene?

2 A. It was just shortly after 2:00, 2:05, somewhere
3 in there.

4 Q. Now, when you got to the scene, the Avery salvage
5 scene, had there been any kind of log in or check
6 in procedure put in place yet?

7 A. I don't recall a log in at that point.

8 Q. All right.

9 A. I just don't recall.

10 Q. What did you do when you got to the scene?

11 A. I met with the officers that were at the scene,
12 some from Manitowoc County, some from Calumet
13 County.

14 Q. Where did you meet with them?

15 A. Right at the beginning of the roadway where the
16 command center would have been set up.

17 Q. Can you show us on the diagram -- or excuse me,
18 the photo?

19 A. Would have been right in this area.

20 Q. Be an area just to the south of what we now know
21 are the business buildings; is that right?

22 A. That's correct, sir.

23 Q. I'm sorry, the north of. When you got there
24 Lieutenant Lenk, were there other members of your
25 department already on scene?

1 A. Yes, there were.

2 Q. Do you remember who you met with or who you saw
3 at that time?

4 A. I know I talked to Deputy Inspector Schetter.
5 I'm not real sure who else was there from our
6 department that I talked with, quite a few
7 officers there.

8 Q. From a hierarchy standpoint, or who's the boss
9 kind of a standpoint, is Deputy Inspector
10 Schetter, or was he at the time, ahead of you or
11 on top of you, regarding authority or rank within
12 the department?

13 A. Yes, sir, he was.

14 Q. Do you recall, Lieutenant Lenk, being involved,
15 or overhearing discussions regarding who should
16 lead up this investigation?

17 A. I believe, by the time I got there, that they had
18 already decided that Calumet County would lead
19 the investigation.

20 Q. All right. Were there Calumet County officers on
21 scene?

22 A. Yes, sir, I believe there were.

23 Q. At some point later that afternoon, do you recall
24 other officials arriving at the scene, including
25 myself, with the signed search warrant?

1 A. Yes, sir, I do.

2 Q. After D.A.'s and lead investigators got to the
3 scene, were you asked to perform any duties at
4 that scene?

5 A. Yes, sir. We were asked to assist Calumet
6 County.

7 Q. From Manitowoc County, other than Deputy
8 Inspector Schetter, was there any individual of
9 higher rank than you at the scene?

10 A. I'm not sure. You mean from the sheriff's
11 department?

12 Q. Yes.

13 A. No, sir. I don't think so.

14 Q. All right. Now, looking at Exhibit No. 86 and
15 remembering back to that first late afternoon; do
16 you remember whether manpower issues were a
17 factor that afternoon?

18 A. Yes, sir, they were a factor.

19 Q. Could you describe that for the jury. What does
20 that mean?

21 A. That means that there was a very large area. The
22 search warrants were already obtained and there
23 was limited manpower to search that area.

24 Q. I'm sure most, if not all of these potential --
25 or these jurors have not been to a crime scene;

1 is this a typical crime scene by way of size or
2 scope?

3 A. No, sir, it's not.

4 Q. Can you describe better or explain that for the
5 jury, please.

6 A. Most crime scenes are a smaller area, either a
7 house or a small yard, or a room, this area was
8 immense.

9 Q. When you arrived, did you appreciate the size or
10 the scope of this effort?

11 A. Yes. I also got a further appreciation the more
12 I looked around the property.

13 Q. All right. What did you believe Manitowoc County
14 Sheriff's Department involvement was going to be
15 at that scene?

16 A. Our involvement was to be part of the search
17 team, basically extra eyes and hands to do the
18 searching.

19 Q. Are you familiar with the term evidence tech?

20 A. Yes, sir.

21 Q. What is that?

22 A. It's an individual on the police department, or
23 sheriff's department, that has had some training
24 in how to gather evidence and package evidence,
25 at a crime scene.

1 Q. You talked about manpower before, was there an
2 abundance of evidence techs at that scene?

3 A. No, sir, there was not.

4 Q. Are you an evidence tech, or were you?

5 A. Yes, sir.

6 Q. Do you know, at that scene, what other members of
7 Manitowoc County Sheriff's Department would have
8 similar training or experience as an evidence
9 tech?

10 A. Yes, sir. Sergeant Andy Colborn and Detective
11 Dave Remiker.

12 Q. Now, Lieutenant Lenk, prior to your arrival at
13 the Avery Salvage Yard on the 5th, had you had
14 previous dealings or contact with Steven Avery?

15 A. Just the contact on the 4th of November.

16 Q. Do you recall being one of many individuals
17 involved in what's called a deposition, for
18 Mr. Avery?

19 A. Yes, sir.

20 Q. And can you tell the jury about that process,
21 please.

22 A. Well, the process was, I received a subpoena to
23 give a deposition in the Avery lawsuit case
24 against Manitowoc County.

25 Q. Did you respond to that subpoena, did you provide

1 testimony?

2 A. Yes, sir, I did.

3 Q. And so the jury understands, when Mr. Avery was
4 wrongfully convicted back in 1985, were you a
5 member of the Manitowoc County Sheriff's
6 Department?

7 A. No, I was not.

8 Q. Then, what involvement did you have; in other
9 words, what was your part of the deposition?

10 A. The part of the deposition was that I received a
11 statement from Sergeant Colborn, in 2003, I
12 believe, September, that he had taken a phone
13 call back in 1997, from another department, I
14 believe he said it was Brown County Sheriff's
15 Department, that they had in custody an
16 individual that had committed an assault in
17 Manitowoc County and that Manitowoc County had
18 someone in custody for that assault.

19 Q. Is that all?

20 A. That's all.

21 Q. Did you even receive that call back in the
22 mid-nineties?

23 A. No, sir, I did not.

24 Q. So your deposition was that you heard that Andy
25 Colborn got such a call; is that right?

1 A. Yes, sir, I received that information from Andy,
2 himself.

3 Q. Did that lawsuit cause you any personal or
4 professional embarrassment?

5 A. No, sir, it did not.

6 Q. Did that lawsuit create any angst or ill feelings
7 on your part?

8 A. No, sir, it did not.

9 Q. Did the fact of that lawsuit cause you any upset,
10 or aggravation, or anger?

11 A. No, sir, it did not.

12 Q. Did that lawsuit cause you or compel you to -- to
13 plant any evidence in this case?

14 A. No, sir, definitely not.

15 Q. What did you feel about that lawsuit; do you
16 remember?

17 A. I pretty much didn't care, one way or the other.

18 Q. All right. How were individuals assigned
19 responsibilities out at the Avery salvage
20 property?

21 A. I believe the assignments came through the two
22 officers in charge, Agent Fassbender and
23 Investigator Wiegert.

24 Q. Was this a situation where you volunteered for a
25 particular search or an area that you wanted to

1 become involved?

2 A. No, sir.

3 Q. Did you even know when you got your assignments
4 -- and we'll be talking about a couple later that
5 week -- but did you know where you were going to
6 be assigned?

7 A. No, sir.

8 Q. Lieutenant Lenk, were you made aware that search
9 teams were being assembled?

10 A. Yes, sir.

11 Q. And was there anything unique about the law
12 enforcement officers that were being selected for
13 those search teams, if you know?

14 A. I don't know, specifically, other than that they
15 were to have a Calumet officer in charge of the
16 team.

17 Q. What I'm asking, though, is the other -- other
18 than a Calumet County lead person involved, the
19 others that were chosen to be on that team, did
20 they have any unique or similar quality about
21 them?

22 A. Yes, sir. They were requesting anyone that had
23 evidence technician experience.

24 Q. As a supervisor and as a long time law
25 enforcement officer, do you have an opinion as to

1 why that was being done?

2 A. My opinion is they wanted the best people that
3 they could get, at the scene, to do the
4 searching.

5 Q. All right. That first night, were you made a
6 part of one of those teams?

7 A. Yes, sir.

8 Q. Who was in charge or who was the lead officer in
9 your search team?

10 A. Sergeant Bill Tyson.

11 Q. Now, you are a lieutenant and he was a sergeant;
12 is that right?

13 A. That's correct, sir.

14 Q. Did you have any concern or problem with taking
15 directional orders from Sergeant Tyson?

16 A. No, sir.

17 Q. Did you believe at that time, or actually
18 throughout this entire investigation, that rank
19 had anything to do with who was calling the
20 shots?

21 A. No, sir, I did not.

22 Q. Tell the jury, if you recall, when that first
23 team was assembled, if there were particular
24 responsibilities that each officer had?

25 A. Each officer was assigned a certain area of

1 searching. It was done as a team, but each
2 officer was assigned a certain particular area of
3 a room, or living room, or kitchen, of an area
4 that he was responsible for, or a team of
5 officers would be responsible for.

6 Q. All right. Was there direction that your team
7 received about items of evidentiary value and who
8 should take them into custody or who should seize
9 them?

10 A. Yes, we were told that all evidence would be
11 collected by Calumet County officers. All
12 reports would be done by Calumet County officers.
13 And basically we were there just to assist in the
14 searching process.

15 Q. Let's talk about reports for a minute. Wouldn't
16 it be typical for each individual officer at a
17 scene like this to do their own reports?

18 A. Normally, yes.

19 Q. Are you saying this was different or you were
20 given different direction?

21 A. We were given different directions, yes.

22 Q. The first area that you were involved personally,
23 in searching on the 5th, was what?

24 A. Steven Avery's trailer.

25 Q. Can you tell us who the other members of your

1 search team were?

2 A. Sergeant Tyson, Sergeant Colborn and Detective
3 Remiker.

4 Q. The jury has already heard this a couple of times
5 so we're not going to go piece by piece, I'm sure
6 thankfully; but could you just tell us the rooms
7 that were searched by the search team, please.

8 A. The rooms that were searched would be the
9 southernmost bedroom, that would be Steven
10 Avery's bedroom; the hallway; the bathroom that
11 is next to the bedroom; next to the bathroom area
12 is a second bedroom that was searched; next to
13 the bath -- or the second bedroom is the living
14 room area; followed by the kitchenette area; and
15 the kitchen.

16 Q. I'm not sure my math is that great, Lieutenant,
17 but how long have you been a police officer, just
18 total number of years?

19 A. Around 24 year.

20 Q. In 24 years of law enforcement experience, have
21 you been involved in searches of residences and
22 property before?

23 A. Yes, I have.

24 Q. Are there different kinds of searches?

25 A. I'm not sure what you mean.

1 Q. Well, if a property, a residence, as an example,
2 is to be searched by you or another law
3 enforcement officer; are you familiar with the
4 detail in which some of those searches are
5 performed in?

6 A. Yes, sir.

7 Q. Was this first search of the Avery property
8 intended to be a thorough, tear the place apart,
9 type search?

10 A. No, sir, it was not. It was more of a general
11 search.

12 Q. All right. I guess that's my question, maybe
13 tell the jury what you believed a general search
14 was?

15 A. At that time, a general search was looking for
16 any obvious signs for the missing Teresa Halbach,
17 in that trailer. It's pretty generalized at that
18 point.

19 Q. Do you know about how long you guys took in that
20 trailer?

21 A. I believe it was around two and a half hours.

22 Q. All right. During that initial search, did you
23 notice any firearms in Mr. Avery's bedroom?

24 A. Yes, sir.

25 Q. Can you describe what you saw, please.

1 A. There was a gun rack above the head of the bed,
2 in the bedroom area. There were two firearms in
3 there. I believe one was a .22 and one was a
4 muzzleloader firearm.

5 Q. You said that you searched the entire trailer.
6 After that first search was complete, of Steven's
7 trailer, can you tell the jury what you did,
8 please.

9 A. After that search was completed, I think we ended
10 for the day.

11 Q. Was there some meeting or something that occurred
12 before you left?

13 A. Yes, there was a meeting at the command center.

14 Q. What's the purpose of that?

15 A. To discuss what had been done and what needs to
16 be done the next day.

17 Q. Lieutenant Lenk, any time on the 5th of November,
18 did you have any contact with Teresa Halbach's
19 SUV?

20 A. No, sir, I did not.

21 Q. Did you have any contact with her SUV on the 4th
22 of November, or the 3rd of November, or in fact
23 any time there before?

24 A. No, sir, I did not.

25 Q. Were you asked to return to the property the next

1 day, the 6th?

2 A. Yes, sir, I was.

3 Q. And can you describe for the jury what your
4 responsibilities were on the 6th, please.

5 A. On the 6th we met at the command center. We were
6 assigned to Deputy Kucharski. And I believe we
7 were to search the garage on Steven Avery's
8 portion of the property.

9 Q. Describe the kind of search that was, please.

10 A. Again, that was a general search for any
11 indications of Teresa Halbach.

12 Q. Where did you go after that?

13 A. I believe we went -- got -- either went back to
14 the command center or received information from
15 them for the next place to search.

16 Q. Do you remember how long you were in the garage,
17 roughly?

18 A. Maybe an hour, hour and a half, I'm not exactly
19 sure.

20 Q. Now, the question, Lieutenant Lenk, is searching
21 that garage for an hour, or an hour and a half,
22 do you believe that you found, or would have
23 found everything of any evidentiary value in that
24 garage?

25 A. At that time we thought we found everything that

1 was of evidentiary value, yes.

2 Q. All right. Do you remember the interior of that
3 garage, as you think back?

4 A. Yes, I do.

5 Q. Was there a lot of things in that garage?

6 A. Yes, sir, it was full of things.

7 Q. All right. Were you informed, Lieutenant Lenk,
8 of how long, that is, the estimated time that law
9 enforcement was going to keep control of this
10 scene? Did you know that first day?

11 A. No, I didn't know that first day.

12 Q. Did you know whether you were going to do
13 additional searches of either residences, or
14 garages, or outbuildings, or anything like that?

15 A. Yes, we planned on doing additional searches of
16 the buildings.

17 Q. Let me ask you, Lieutenant Lenk, on the 6th, that
18 is, on that Sunday, did you have occasion to
19 assist other officers in a search of the
20 defendant's sister's home, that's Barb Janda?

21 A. Yes, sir.

22 Q. Could you describe that search, generally, for
23 us, please.

24 A. That was, again, a general search looking for
25 items that might relate to Teresa Halbach.

1 Q. Do you remember Detective Remiker noticing and
2 investigating an answering machine at that time?

3 A. Yes, sir.

4 Q. Were you asked to return to Steve Avery's trailer
5 at all?

6 A. Yes, sir, I think we were.

7 Q. And do you remember the scope of that?

8 A. I believe we were asked to go back, as a team, to
9 collect the firearms, a vacuum cleaner and the
10 bedding, I believe, off the spare bedroom.

11 Q. Again, who was in charge of seizing and taking
12 control of the evidence on that day?

13 A. Calumet County officer Deputy Kucharski.

14 ATTORNEY KRATZ: I just have two other
15 points, Judge, and then I will recommend that we
16 quit for the day, but let me finish this day, if I
17 may.

18 Q. On the 6th, Lieutenant Lenk, were there other
19 buildings that you were asked to search?

20 A. Yes, sir, there were.

21 Q. What were those buildings?

22 A. There was a large business office area building,
23 I believe they called it the office. And we also
24 searched, I believe it was Mr. Chuck Avery's
25 residence.

1 Q. All right. And the same search team that is
2 headed by Kucharski was involved in those
3 searches as well?

4 A. Yes, sir.

5 Q. All right.

6 ATTORNEY KRATZ: I do recommend, Judge, and
7 this may be a good time to break for the day and
8 call this witness tomorrow morning.

9 THE COURT: All right. Members of the
10 jury, I will remind you, again, that you are not to
11 discuss this case at all and make sure you don't
12 watch any news accounts about the case this evening.
13 We'll see you tomorrow morning.

14 ATTORNEY STRANG: Your Honor?

15 THE COURT: Yes.

16 ATTORNEY STRANG: While we still have the
17 jury, I forgot to move in Exhibit 212, Sergeant
18 Colborn; 213 was only marked and need not be moved
19 in.

20 ATTORNEY KRATZ: No objection.

21 THE COURT: 212, you are asking for
22 admission?

23 ATTORNEY STRANG: Yes.

24 THE COURT: Court will admit 212. Very
25 well, you are excused for the day.

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(Jury not present.)

THE COURT: All right. Counsel, we'll see
you tomorrow morning.

ATTORNEY STRANG: 8:30?

THE COURT: Yes.

ATTORNEY KRATZ: Thank you, Judge.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 7th day of NOVEMBER, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

5 TRIAL DAY 8

6 vs.

Case No. 05 CF 381

7 STEVEN A. AVERY,

8 DEFENDANT.

9
10 **DATE:** FEBRUARY 21, 2007

11 **BEFORE:** HON. PATRICK L. WILLIS
12 Circuit Court Judge

13 **APPEARANCES:**

14 KENNETH R. KRATZ
Special Prosecutor
On behalf of the State of Wisconsin.

15 THOMAS J. FALLON
16 Assistant Attorney General
On behalf of the State of Wisconsin.

17 NORM GAHN
18 Special Prosecutor
On behalf of the State of Wisconsin.

19 DEAN A. STRANG
20 Attorney at Law
On behalf of the Defendant.

21 JEROME F. BUTING
22 Attorney at Law
On behalf of the Defendant.

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

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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

I N D E X

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(Reconvened at 9:03 a.m., Jurors present.)

THE COURT: At this time Court calls the case of State of Wisconsin vs. Steven Avery. Case No. 05 CF 381. Will the parties state their appearances for the record?

ATTORNEY KRATZ: Once again, Judge, the State appears by Calumet County District Attorney Ken Kratz. Assistant Attorney General Tom Fallon, Assistant District -- Excuse me -- Assistant District Attorney Norm Gahn appearing as special prosecutor.

ATTORNEY STRANG: And good morning. Steven Avery's in person. Jerome Buting represents him. Dean Strang as well.

THE COURT: All right. I believe when we left off yesterday the, uh, State was in the process of conducting direct examination of Mr. Lenk. Uh, Mr. Kratz, you may call your witness.

ATTORNEY KRATZ: We'll do that. Detective James Lenk.

THE CLERK: Please raise your right hand.

JAMES LENK,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please be seated. Please state

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

2 THE WITNESS: James M. Lenk, L-e-n-k.

3 **DIRECT EXAMINATION**

4 BY ATTORNEY KRATZ:

5 Q Good morning, Lieutenant, and, uh -- and welcome
6 back. We left off yesterday having completed the
7 search efforts, um, that, uh, you and other law
8 enforcement officers did on the 6th of November,
9 which was Sunday. We're going to move to Monday,
10 now, the 7th of November, ask if you were asked
11 to return to the Avery salvage property?

12 A Yes, I was.

13 Q Upon your return on the 7th, uh, who were you
14 assigned to work with?

15 A On the 7th it was Sergeant Bill Tyson.

16 Q And can you describe for the jury, please, your
17 role on the 7th? That is, what, um,
18 responsibilities and duties were you given that
19 day?

20 A I believe Sergeant Tyson was given the information to
21 open all the trunks of the cars near the buildings or
22 in the buildings on the property that hadn't already
23 been opened, and to collect firearms from all the
24 buildings.

25 Q Did you assist Sergeant Tyson in that effort?

1 A Yes.

2 Q About how long did that take? At least your part
3 of the trunks of the vehicles that you were
4 searching through?

5 A My guess would probably be an hour-and-a-half to two
6 hours.

7 Q After that effort, uh, what did you do then?

8 A I believe Sergeant Tyson -- or we went back to the
9 command center to get another assignment.

10 Q Do you remember what your next assignment was?

11 A I think at some point we were told to go back to the
12 Avery trailer and get some, uh, numbers off a
13 computer, I believe.

14 Q All right. Did you do that with Sergeant Tyson?

15 A Yes.

16 Q Thereafter, were you asked to do something else?

17 A I'm sure. I don't recall right now.

18 Q All right. Nothing that sticks out in your mind?

19 At least nothing of a substantial evidentiary
20 nature; is that right?

21 A That's correct.

22 Q The next day, then, on Tuesday, the 8th, uh,
23 Lieutenant Lenk, did you once again return to the
24 Avery salvage property?

25 A Yes, sir, I did.

1 Q And on Tuesday, the 8th of November, who were you
2 assigned to assist?

3 A I was assigned to assist, uh, Deputy Kucharski.

4 Q And, again, for the jury's benefit, since they
5 haven't met Deputy Kucharski yet, who does he
6 work for?

7 A He works for the Calumet County Sheriff's Department.

8 Q Were there any other members of your search team
9 that day?

10 A Myself, Sergeant Colborn and Deputy Kucharski.

11 Q And where did you guys first go?

12 A We first went to a yellow vehicle that was parked in
13 front of the office area to retrieve a couple
14 firearms out of the trunk.

15 Q Now, once again, uh, Lieutenant, I asked you
16 this, uh, yesterday, but on the 8th of November,
17 and in every other day, did you know what your
18 responsibilities were going to be when you got to
19 the Avery salvage property?

20 A No, sir.

21 Q Did you know in which buildings you were going to
22 be assigned?

23 A No, sir.

24 Q Did you even know if you were going into any
25 buildings?

1 A No, sir.

2 Q What was the next assignment you received on the
3 8th?

4 A After we retrieved the firearms from that vehicle,
5 um, Deputy Kucharski received, uh, information to go
6 back to the Steven Avery trailer.

7 Q And what was the nature of this particular
8 assignment?

9 A That was to specifically collect, uh, magazines and
10 pictures, um -- Trying to think. The computer,
11 computer-related items. I'm not sure if there was
12 anything else, specifically, that --

13 Q Was there a -- a search to be performed of other
14 rooms within that home as well?

15 A That's correct.

16 Q Can you describe that kind of search and whether
17 or not that was different than one that was
18 performed earlier in the week?

19 A This would have been a much more specific search. We
20 were given items to look for. Uh, we were also told
21 to do a thorough search of the dwelling besides the
22 items that were given.

23 Q This thorough search, did it include the bedroom
24 of Steven Avery?

25 A Yes, sir, it did.

1 Q I'm going to show you what's been, um, received
2 as Exhibit No. 103. It's a computer animation.
3 I'm going to zoom into the bedroom area. Ask if
4 that's going to assist you in describing your
5 search of that bedroom that day?

6 A Yes, sir, it will.

7 Q Okay. Was this bedroom thoroughly searched by
8 yourself, uh, Sergeant Colborn, and Deputy
9 Kucharski from the Calumet County, uh, Sheriff's
10 Department?

11 A On 8th?

12 Q Yes.

13 A Yes, sir.

14 Q Sometime towards, uh -- Well, let me back up
15 just -- just a minute. Were you in close enough
16 proximity that you were able to see Sergeant
17 Colborn in that bedroom?

18 A Yes, sir.

19 Q Uh, referring to Exhibit 103, is this a large
20 bedroom?

21 A No, sir, it is not.

22 Q Were you able to see Deputy Kucharski?

23 A Yes, sir.

24 Q Do you recall, Lieutenant Lenk, a pair of bedroom
25 slippers being in this bedroom?

1 A Yes, sir, I do.

2 Q Could you just, using the laser pointer, and just
3 point to the, um -- for the jurors, about where
4 those were located?

5 A Approximately right in there.

6 Q Right next to what we now know as a bookcase?

7 A Yes, sir.

8 Q Did you have occasion to inspect or look at those
9 bedroom slippers?

10 A Yes, I did.

11 Q Describe that for the jury, please.

12 A When we first came into the bedroom, the slippers
13 were sitting there. I just picked them up, looked
14 inside, and put them back down.

15 Q Did you look underneath them?

16 A Yes, I did.

17 Q Did you notice anything underneath the slippers
18 when you looked under them?

19 A No, sir. There was nothing there.

20 Q Thereafter, or sometime during the search, uh,
21 were you aware of, and did you, uh, see, Sergeant
22 Colborn manipulating or moving a piece of
23 furniture now known as the bookcase?

24 A Yes, sir.

25 Q After replacing or pushing back the bookcase,

1 what did you do?

2 A After the magazines and a binder were pushed back
3 into the bookcase, I advised Deputy Kucharski that I
4 would go out into the living room and retrieve bags
5 or try to get boxes to put the items that we had
6 recovered.

7 Q Did you do that?

8 A Yes, I did.

9 Q On your return to the bedroom, tell the jury what
10 you saw?

11 A When I entered the bedroom, I caught my eye, I saw a
12 key laying in front of the slippers by the back
13 corner of that cabinet.

14 Q Now, before Sergeant Colborn's manipulation or,
15 um, banging around of that piece of furniture,
16 had that key been there?

17 A No, sir, it was not.

18 Q If you could use your laser pointer again, tell
19 the jury about where in that bedroom you were
20 standing when you saw the key and where was the
21 key?

22 A I was coming in that door, and the key was right at
23 the back corner of that cabinet on the floor.

24 Q There's been another exhibit which has been
25 admitted into evidence. It's Exhibit No. 210.

1 Actually a photograph. I'm going to show that to
2 you at this time and ask you to tell the jury
3 what we're looking at.

4 A You're looking at the cabinet with the slippers and
5 the key that was laying on the floor.

6 Q And that -- that image, that view, uh, is that
7 what you saw on the 8th of November?

8 A Yes, sir, it is.

9 Q After seeing that key, um, did you direct, um,
10 any activity or was any activity decided between
11 the three of you?

12 A I informed the other two officers that there's a key
13 laying on the floor and it was not there before.
14 They all looked at it. At that point Deputy
15 Kucharski photographed it and subsequently collected
16 it.

17 Q How did he collect it? Did you witness that?

18 A He had, uh, gloves on. He collected it. I believe
19 he put it into a evidence bag.

20 Q Now, Lieutenant Lenk, let me just ask you, were
21 you surprised to see that key?

22 A Yes, sir, I was.

23 Q Why?

24 A It wasn't there before.

25 Q At that time, and at that early time in observing

1 the key, did you believe that it had obvious
2 evidentiary value?

3 A When we looked at the key, it appeared to have a
4 Toyota emblem on the key itself. At that point we
5 thought it may have some significant value.

6 Q After Deputy Kucharski photographed and collected
7 the key, do you know what was done with it?

8 A Deputy Kucharski contacted the officers in charge of
9 the case, uh, Agent Fassbender and Investigator
10 Wiegert, told them what he had found, and they
11 subsequently came to the trailer.

12 Q Was the key provided to them if you know?

13 A I believe at that time it was shown to them and they
14 said they would send someone back to collect the key.

15 Q All right. Now, Lieutenant Lenk, at -- at that
16 moment, that is, after the collection of the key,
17 did you, Deputy Kucharski, and Sergeant Colborn
18 attempt to ascertain where the key had come from
19 or do some further investigation?

20 A Yes, we did.

21 Q Tell the jury what kind of investigation you did,
22 please.

23 A We looked at the cabinet, um, at the back corner of
24 the cabinet. We saw that there was an opening
25 between the back of the cabinet and the, um, side,

1 approximately a half to an inch, and we believed that
2 that's where the key had fallen from the cabinet.

3 Q Can you point on Exhibit No. 210 the back corner
4 where the cabinet had been pulled away?

5 A Right back in there.

6 Q Let me show you another exhibit. Exhibit 169.
7 It's already been admitted into evidence. Ask if
8 you recognize that exhibit?

9 A Yes, sir. That is the cabinet we're talking about.

10 Q Could you point to the area of, uh, the back
11 panel being pulled away that you've been
12 describing?

13 A Right there.

14 Q And, again, recognizing that this photo was taken
15 on a different day, uh, other than the, uh, 8th,
16 uh, does Exhibit No. 169 look the same as it did,
17 uh, that, uh -- that morning on the 8th of
18 November?

19 A Yes, sir, it does.

20 Q Lieutenant Lenk, after noting the, um -- the
21 defect or the abnor -- abnormality to the camera,
22 did you have any further discussion with your,
23 um, fellow searchers as to finding this key?

24 A Yes. We discussed the fact that it had to have come
25 from that cabinet and probably from all the jostling

1 and tipping of the cabinet.

2 Q After completing the search, uh, what you now
3 described a thorough search of the interior of
4 the Avery, um, trailer, what was your next
5 responsibility?

6 A I'm not exactly sure what we did after that.

7 Q Do you remember searching any other buildings
8 that day?

9 A Yeah. We had searched other buildings. I'm not
10 exactly sure which ones they were.

11 Q Um, let's talk about timing, or at least time
12 frames the, um, rest of your day. Um, do you
13 know what you did, at least generally, the rest
14 of your day. In other words, what general
15 responsibilities were you given?

16 A Whatever responsibilities were given to Deputy
17 Kucharski that day, we assisted him. Uh, our primary
18 responsibility were searching buildings.

19 Q I see. And just so that jury's not left to
20 wonder, was there anything, at least that you
21 believed, that was of substantial evidentiary
22 value found in the rest of your searches, uh,
23 that day or that afternoon?

24 A No, sir.

25 Q On the 9th, that is the day -- next day,

1 Wednesday, were you asked to return to the Avery
2 salvage property?

3 A Yes, sir, we were.

4 Q And what were your responsibilities that day?

5 A I was assigned with, also, Sergeant Colborn to Deputy
6 Wendling to assist him in searching.

7 Q Who's Deputy Wendling?

8 A He's an officer with the Calumet County Sheriff's
9 Department.

10 Q As part of Deputy Wendling's team on the 9th of
11 November, were you asked to perform any searches
12 that day?

13 A Yes, we were.

14 Q Do you remember where you searched that day?

15 A We went back to the Steven Avery trailer and we also
16 searched his garage.

17 Q Were you looking for something specific in the
18 trailer?

19 A We were looking for a garage door remote and a pair
20 of woman's gloves.

21 Q Did you find either of those items?

22 A There was a pair of woman's gloves found in a paper
23 bag underneath the desk.

24 Q The last area of inquiry, um, I have, uh,
25 Lieutenant Lenk, actually relates to other

1 connections or other, um, items that may be
2 located in Manitowoc County. Let me specifically
3 ask you, uh, whether you have ever seen, uh, any
4 vial of Mr. Steven Avery's blood in possession
5 anywhere in, Cal -- in, uh, Manitowoc County?

6 A No, sir, I have not.

7 Q Did you ever, before the 5th of November, have
8 knowledge of a vial of Mr. Avery's blood in the
9 Manitowoc County Clerk of Court's Office?

10 A No, sir, I did not.

11 Q Did you ever see a vial of blood in the clerk's
12 office?

13 A No, sir.

14 Q Between the 3rd and 5th of November, were you
15 ever in the Manitowoc County Clerk of Court's
16 Office?

17 A No, sir, I was not.

18 Q Lieutenant Lenk, did you ever, um, obtain any
19 blood from the clerk's office or did you obtain
20 any blood from any location and plant it anywhere
21 on the Avery salvage property?

22 A No, sir, absolutely not.

23 Q Did you ever plant it anywhere in Teresa
24 Halbach's vehicle or anywhere where it could be
25 found as part of this investigation?

1 A No, sir, definitely not.

2 Q Did you ever assist any other officer so that
3 another officer could either plant evidence, uh,
4 or try to in some way frame Mr. Avery for this
5 homicide?

6 A No, sir.

7 Q And, lastly, uh, had you ever heard from any
8 member of the, uh, Manitowoc County law
9 enforcement community, uh, that they had
10 participated in some frame-up or planting of
11 evidence?

12 A No, sir, there was not.

13 Q And just to make sure, since we've gone through
14 the, uh -- the key evidence, um, did you have any
15 occasion to plant the -- Teresa Halbach's key or
16 place her key in Mr. Avery's residence?

17 A Absolutely not.

18 ATTORNEY KRATZ: That's all the
19 questions I have of Lieutenant Lenk, Judge.
20 Thank you.

21 THE COURT: Mr. Strang?

22 ATTORNEY STRANG: Thank you, Your Honor.

23 **CROSS-EXAMINATION**

24 BY ATTORNEY STRANG:

25 Q Next year it will be quarter century that you've

1 been involved in policing in one department or
2 another, Lieutenant Lenk?

3 A Close to a quarter, yes.

4 Q You have, in the Manitowoc County Sheriff's
5 Department, obtained, what, the fourth highest
6 rank in that Department?

7 A Yes, sir.

8 Q Mr. Kratz, just a minute ago, asked you whether
9 you had ever heard from any member of the
10 Manitowoc County Sheriff's Department, any
11 member, that they had participated in a -- in a
12 frame-up or planting evidence, concocting a case
13 against Mr. Avery. Remember that question?

14 A Yes, sir.

15 Q And your answer was, no, you had not heard from
16 any member of the Manitowoc County Sheriff's
17 Department that they had done anything of the
18 sort?

19 A That's correct.

20 Q That includes about the 1985 case against
21 Mr. Avery, doesn't it?

22 A I'm not sure.

23 Q Not one of the officers of that Department has
24 ever told you that they had anything to do with
25 the wrongful conviction in 1985 either, have

1 they?

2 A No one's ever told me they had anything to do with
3 the wrongful conviction.

4 Q You worked with Sheriff Peterson for a number of
5 years?

6 A Yes, sir.

7 Q You knew him to be directly involved in that
8 earlier case?

9 A Yes, sir.

10 Q And no one ever admitted doing anything wrong in
11 connection with that earlier case to you, did
12 they?

13 A Not to me. No, sir.

14 Q Now, do you suppose, Lieutenant Lenk, that if an
15 officer -- let's use you -- do you suppose that
16 if you had taken a vial of blood from the Clerk
17 of Court's Office, planted it, or caused it to be
18 planted in Teresa Halbach's vehicle, and told no
19 one before today, do you suppose that if -- if a
20 defense lawyer stood up and asked you, did you
21 plant blood in Teresa Halbach's car, do you
22 suppose you'd tell me?

23 A Yes, sir.

24 Q You would?

25 A I did not.

1 Q And if you had done it, do you think you'd admit
2 it here under oath?

3 A I didn't do that. It's ridiculous.

4 Q Would you admit it under oath if --

5 A Under oath, I would admit it, yes.

6 Q I'm sorry?

7 A If I did it, I would admit it.

8 Q You would admit. Now, you know that planting
9 that blood would have at least been a crime under
10 Wisconsin law?

11 A Yes, sir.

12 Q It probably would have been a federal crime as
13 well; correct?

14 A I'm not positive to that. I don't know.

15 Q To the extent that you were seeking to deprive
16 someone, Mr. Avery, for example, of his civil
17 rights, it would have been a federal crime as
18 well?

19 A I wasn't trying to do anything to deprive him of his
20 civil rights.

21 Q I understand that's your testimony. If you or
22 someone else had planted evidence, you expect
23 that would have been a federal crime as well?

24 A If it had been planted, yes.

25 Q All right. And your testimony is that you'd come

1 in here, and because some defense lawyer asked
2 you, you'd confess this to 12 jurors had you done
3 it?

4 A I probably would if I had done it.

5 Q All right. Would you expect every member of the
6 Manitowoc County Sheriff's Department to do the
7 same thing?

8 ATTORNEY KRATZ: Objection. Speculation,
9 Judge.

10 THE COURT: Sustained.

11 Q (By Attorney Strang) You ran briefly through
12 your history with the Manitowoc County Sheriff's
13 Department. I think you started in the jail?

14 A Yes, that's correct.

15 Q Became a sworn officer?

16 A I was sworn when I started in the jail.

17 Q Oh, I'm sorry. Was that a sworn position, not an
18 unsworn position when you started in the jail?

19 A Yes, sir, at that time.

20 Q Okay. It changed later before Sergeant Colborn
21 started in the jail?

22 A Yes.

23 Q All right. Do you know a woman in the Clerk of
24 Court's Office by the name of Theresa Shebesta?

25 A No, I don't know that name.

1 Q Teresa in the Clerk of Court's Office. I'm
2 talking about the Manitowoc County Clerk of
3 Court's Office?

4 A No, sir.

5 Q All right. Did you at anytime during the course
6 of your, probably, early career, uh, serve, at
7 times, as a bailiff for the Manitowoc County
8 Circuit Court?

9 A No, sir, I don't think I've ever served as a bailiff.

10 Q All right. Uh, if -- if she says that you had,
11 she's simply mistaken?

12 A To my knowledge, I don't believe I served as a
13 bailiff.

14 Q Well, you would know, wouldn't --

15 A Right.

16 Q -- you? Okay. And you don't recall ever serving
17 as a bailiff --

18 A No. I don't recall.

19 Q -- at anytime? All right. Now, um, in 2002, uh,
20 you had moved into the Detective's Bureau about
21 four years before that?

22 A Yes, sir.

23 Q Okay. Uh, in 2002, while serving in the
24 Detective Bureau, you were, uh, something called
25 a designated evidence custodian for the entire

1 Department?

2 A I was an evidence custodian, yes.

3 Q And by evidence custodian, what that means, uh,
4 is that you had overall responsibility for
5 keeping custody or track of all evidence that the
6 Manitowoc County Sheriff's Department may have in
7 its possession?

8 A All evidence that was actually in the evidence room,
9 yes, sir.

10 Q Okay. And -- and we're going to explain that.
11 Your Department maintains an evidence room?

12 A Right.

13 Q Which is a locked area of the Sheriff's
14 Department?

15 A Yes, sir.

16 Q Only the custodian and probably the sheriff, or
17 somebody immediately under the sheriff, has a key
18 to that evidence room?

19 A Yes. There's actually, uh, myself, and another
20 officer, and the sheriff.

21 Q But it's -- it's a separate locked area within
22 the Department?

23 A That's correct.

24 Q You know, while any deputy may have a key to the
25 front door, so to speak, access to the evidence

1 room is closely limited?

2 A That's correct.

3 Q The custodian is one of a small number of people
4 with keys to that room?

5 A Correct.

6 Q There are also things called evidence lockers in
7 the Sheriff's Department?

8 A Yes, sir. They're called temporary evidence lockers.

9 Q And the way those are used is if somebody -- if
10 an evidence technician, or some other officer, is
11 out at a scene, collects one or more pieces of
12 evidence, for temporary safekeeping they will
13 bring those back and lock them in a temporary
14 evidence locker; correct?

15 A That's correct.

16 Q At the first reasonable opportunity to turn them
17 over to the evidence custodian, those items will
18 be turned over to the evidence custodian?

19 A Actually, those items are locked into the temporary
20 locker. That key is placed into a lock box which is
21 retrieved by the custodian who's able to do that.

22 Q And -- and the custodian actually, then, takes
23 the evidence out of the locker?

24 A That's correct.

25 Q All right. There's some paperwork completed to

1 document that chain of who's got their hands on
2 the evidence so to speak?

3 A That's correct.

4 Q Or who's responsible for it?

5 A Yes.

6 Q The evidence custodian prepares that paperwork to
7 document, you know, the evidence away from
8 tinkerers, to reverers, to chance?

9 A That's correct.

10 Q All right. And then the evidence goes into the
11 evidence room?

12 A Correct.

13 Q Where it's cataloged in some fashion, or some
14 record is kept of what shelf it's on, or its
15 location, and the door is locked?

16 A Correct.

17 Q That was your responsibility in 2002?

18 A Yes.

19 Q That's the year that a judge, uh, Judge
20 Hazlewood, of the Manitowoc County Circuit Court,
21 uh, signed an order that some evidence from the
22 1985 case against Mr. Avery should be transferred
23 to the State Crime Lab in Madison. Do you recall
24 that?

25 A Yes.

1 Q As part of that process, uh, evidence had to be
2 obtained from the 1985 file at the Clerk of
3 Court's Office?

4 A Correct.

5 Q Your best recollection is that you did not do
6 that directly?

7 A No, sir, I did not.

8 Q You think, perhaps, a deputy named Mike Shallue
9 was the person who went over to the Clerk's
10 Office to pick up the evidence?

11 A Yes, sir, he was.

12 Q You were the person who checked the evidence room
13 in the Sheriff's Department for any remaining
14 items from the 1985 case file against Mr. Avery?

15 A On that particular date?

16 Q In 2002.

17 A I think on that particular time I was -- just filled
18 out a transmittal form for the evidence that was in
19 the Clerk of Courts.

20 ATTORNEY KRATZ: Judge, I am going to
21 request a sidebar if we're going into this issue.
22 Or, perhaps, maybe a hearing outside the presence
23 of the jury might be more appropriate.

24 THE COURT: All right. Let's, uh, excuse
25 the jury for a few minutes.

1 (Jury out at 9:31 a.m.)

2 THE COURT: Mr. Kratz.

3 ATTORNEY KRATZ: Thank you, Judge. I am
4 going to interpose an objection. Uh, based upon
5 pretrial hearings, uh, this particular piece of
6 evidence, or the transmittal of this evidence, did
7 not include the blood vial. Mr. Strang knows that.

8 I believe that this is an intentional
9 attempt by Mr. Strang to mislead the jury. That
10 is to suggest that the blood vial was part of
11 this transmittal. It's not the blood vial. The
12 blood vial's not involved in this particular
13 transmittal, or if this witness had nothing to do
14 with the blood vial, it is irrelevant.

15 I'm asking for an offer of proof. I'm
16 asking that this Court make a ruling at this time
17 as to whether or not this is relevant. If it --
18 uh, if it is, and if Mr., uh, Strang has a good
19 faith belief as an officer of the court that, in
20 fact, the blood vial was part of any transmittal
21 or part of this witness', uh, connection to it,
22 uh, then I will happily withdraw my objection.
23 But --

24 THE COURT: Just a second.

25 ATTORNEY KRATZ: -- before --

1 THE COURT: Mr. Lenk, I'm going to ask
2 you to be excused from the courtroom as well.

3 ATTORNEY STRANG: That's fine. But it's
4 probably -- That's fine. It's not worth the
5 candle --

6 THE COURT: All right. I think the
7 victim/witness coordinator will --

8 THE WITNESS: Okay.

9 THE COURT: -- escort you out. Mr. --

10 ATTORNEY KRATZ: And --

11 THE COURT: -- Strang -- Oop, sorry.

12 ATTORNEY KRATZ: I'm sorry. And just --
13 just to conclude it, then, Judge, I am just
14 asking for, uh, that, uh -- that pretrial ruling.
15 And, if necessary, and before any, uh, further
16 contamination or infection of this jury, uh,
17 occurs, uh, with, uh, irrelevant evidence, uh,
18 I'm asking for a, uh -- a ruling by the Court.
19 An evidentiary ruling. That's all I have, Judge.
20 Thank you.

21 THE COURT: Are you -- are you referring to
22 the exhibit that I -- you just received a copy of?

23 ATTORNEY KRATZ: I suspect this is the
24 first of several, uh, exhibits where -- or at least
25 the first of, uh, a line of questioning where

1 Mr. Strang is going to ask, uh, about this
2 particular evidence which Mr. Strang knows, or
3 should know, uh, included some hair and some
4 fingernail clippings, and that was it.

5 Uh, if he has other information or
6 something that, uh, we haven't, uh, litigated ad
7 nauseum yet to this point, then I'd be, uh, very
8 happy to hear about that.

9 THE COURT: Mr. Strang?

10 ATTORNEY STRANG: I'm going to specifically
11 establish that the blood did not go to the Crime Lab
12 in 2002. That it's hair and fingernail cuttings
13 that went, and I'm going to explore, uh, Mr. Lenk --
14 I believe it would be Mr. Lenk's writing, he'll
15 acknowledge, that the items that were sent were
16 exhibits held by the court since the end of the
17 trial.

18 Not only I'm not going to suggest that
19 that blood went, I'm going to establish that the
20 blood was not sent to the Crime Lab because it
21 wasn't.

22 THE COURT: Uh, addressing the issue of
23 relevance, what is going to be the relevance of the
24 evidence?

25 ATTORNEY STRANG: In 2002, either Detective

1 Lenk, or someone working under his direction, went
2 to the court file, looked through it, extracted hair
3 and fingernail cuttings which were exhibits held by
4 the court since the end of the trial and were
5 contained in one box. These -- those were to be
6 tested for DNA procedures.

7 ATTORNEY KRATZ: Mr. Strang knows
8 District Attorney FitzGerald went through the
9 file and Mr. Shallue was nowhere there.

10 I want to know if there's going to be a
11 witness that connects the Manitowoc County
12 Sheriff's Department with that vial of blood.
13 That's my objection, Judge, because I think that
14 our pretrial hearings on this, the pleadings that
15 we have filed, uh, and the responses either by
16 Mr., uh, Strang, uh, admit exactly that chain of
17 events.

18 ATTORNEY STRANG: Well, I -- I don't know
19 at all, uh, that Mr. FitzGerald, to the exclusion of
20 Deputy Shallue, was there, um, in 2002. And,
21 indeed, um, I've got a report of Mr. Fassbender of
22 his interview with Lieutenant Lenk on December 8,
23 2006, where he tells Mr. Fassbender that from
24 looking at the documents and from his memory, Deputy
25 Shallue obtained the items from the Clerk of Court's

1 Office and brought them over to the Sheriff's
2 Department where Lieutenant Lenk prepared the
3 transmittal of criminal evidence.

4 So, in terms of a good faith basis, I've
5 got this witness saying the documents and his
6 memory suggest that's exactly what happened and
7 that, indeed, did former District Attorney
8 FitzGerald was not the only person in the clerk's
9 office or in that loop. If that's wrong, I guess
10 the witness can retract it.

11 THE COURT: Mr. Kratz?

12 ATTORNEY KRATZ: To retract what? A guess
13 as to what happened across the -- the street? This
14 witness can't clear up anything. Mr. Strang knows
15 that. If Mr. Strang interviewed Mr. Shallue, uh,
16 then, perhaps he can make that offer of proof. If
17 he didn't, I guess this Court might want to know
18 why. But not from this witness, Judge.

19 This witness cannot, by his own -- at
20 least where the state of the record is -- cannot
21 clear that up at all. My point in stopping it at
22 this point is I believe Mr. Strang knows that.

23 ATTORNEY STRANG: I -- I -- I know nothing
24 of the sort. And, indeed, relying on
25 Mr. Fassbender's report of his interview with

1 Mr. Lenk, Mr. Lenk is describing a memory that
2 Detec -- that Deputy Shallue obtained the items from
3 the Clerk of Court's Office.

4 THE COURT: All right. It's -- it's
5 actually Mr. Shallue, is the way you pronounce his
6 name.

7 ATTORNEY STRANG: Oh, thank you.

8 THE COURT: Um, all right. So the
9 testimony you're looking to elicit is that, uh,
10 Mr. Lenk was under the impression that Mr. Shallue
11 went to the clerk's office, picked up the items that
12 were transmitted for which Lenk signed, but they
13 didn't include the blood vial.

14 ATTORNEY STRANG: Correct. They included
15 hair and fingernail cuttings.

16 THE COURT: The question the Court has
17 is, um, the blood vial, I take it, is what's of
18 importance here. How does the -- how does the
19 evidence you're looking to elicit tie in,
20 somehow, to the blood vial?

21 ATTORNEY STRANG: One who goes through that
22 court file looking for boxes of physical evidence
23 should, or well may have seen, the box of physical
24 evidence that was marked Steven Avery's blood. You
25 know, I don't know whether Lieutenant Lenk himself

1 did or didn't go over to the clerk's office in 2002.
2 I expect he'll say he did not. But he's got Deputy
3 Shallue evidently doing that, going over and
4 examining this court file just four years ago, or
5 three years, before the relevant time.

6 THE COURT: Right. Um, I have some
7 notes of my own the last time this came up back
8 there in my chambers. I'm going to take just a
9 couple of minutes to go get them and then I'll
10 come back.

11 (Wherein the Court exits the courtroom)

12 THE COURT: As the Court, uh,
13 understands the line of questioning that the, uh,
14 defense wishes to undertake, uh, the defense is
15 hoping to establish that, uh, Mr. Lenk may have
16 gained knowledge of the existence of the blood
17 vial in the clerk's office through information he
18 may have received from Officer, uh, Shallue.

19 At this point, it's true, there's a lot
20 of unknowns as to whether the defense, uh, can
21 link that chain, uh, but, uh, the Court believes
22 that on cross-examination it's something that the
23 defense is entitled to attempt, and the, uh,
24 State can address it on, uh, redirect, uh, if it
25 wishes. So I'm going to allow the questioning.

1 ATTORNEY KRATZ: Judge, if -- if I may,
2 is -- is the Court, um -- is the Court allowing this
3 for the purpose of the existence itself of the vial
4 of blood in the clerk's office? In other words,
5 that this witness was aware that there was a vial of
6 blood in the clerk's office?

7 THE COURT: Well, if he says he was
8 aware of the existence of such vial -- vial, yes.
9 If he does not, then, no.

10 ATTORNEY STRANG: Well, it's a -- it's a --
11 it's a peculiar question, because Mr. Kratz's entire
12 last series of questions clearly implied the
13 existence of a vial of blood in the clerk's office.
14 Clearly im -- implied that it was available there,
15 and elicited from Mr. Lenk his denial that he ever
16 went to the clerk's office or obtained any blood
17 there. But --

18 THE COURT: I don't know that I would agree
19 with that characterization. The questions mentioned
20 a vial of blood and whether or not the witness was
21 aware of the existence of it. Uh, but at this point
22 in the trial, I don't think we've received any
23 evidence that there was such a vial.

24 Um, at any rate, I'm going to, uh, allow
25 the, uh, defense to, uh, pursue its line of

1 questioning. So at this point we can have the
2 witness brought in and the jurors can be brought
3 back in.

4 ATTORNEY KRATZ: Thank you, Judge.

5 (Jury in at 9:43 a.m.)

6 THE COURT: You may be seated. Mr. Strang
7 you may, uh, resume your cross-examination.

8 ATTORNEY STRANG: Thank you, Your Honor.
9 I, uh -- I will do that by marking, I think, Exhibit
10 214.

11 (Exhibit No. 214 marked for identification.)

12 Q (By Attorney Strang) Lieutenant Lenk, what is
13 Exhibit 214?

14 A It's a evidence transmittal form that goes to the
15 State Crime Lab.

16 Q Whose writing is on it?

17 A That is mine.

18 Q When did you prepare that evidence transmittal
19 form?

20 A September 19, 2002.

21 Q This relates to the 1985 case against Steven
22 Avery?

23 A Yes.

24 Q This is the, uh, evidence we were discussing just
25 before, uh, the break that Mr. Kratz requested?

1 A Yes.

2 Q All right. Now, uh, this is a form that you
3 would have prepared, or you did prepare, to
4 document, again, when a -- an item of evidence is
5 moving from place A to place B; correct?

6 A Correct.

7 Q And then if it comes back from place B to place
8 A, you would document that as well?

9 A If it came back to the evidence room, yes.

10 Q Correct. And this is part of something that you,
11 as an evidence custodian, or former evidence
12 custodian, know as maintaining the chain of
13 custody?

14 A Yes.

15 Q So, by chain, the -- the metaphor is that, uh,
16 from the moment you see or gather evidence, every
17 person who touches that evidence along the way is
18 a link in the chain and you want to make sure
19 that all the links are there?

20 A That's correct.

21 Q So that when the evidence comes to court, there's
22 an unbroken chain, if you will. All the links
23 are present, back to the time the evidence was
24 seized?

25 A That's correct.

1 Q This document, Exhibit 214, is a document
2 intended to establish one of those links,
3 essentially?

4 A That's correct.

5 Q Now, the items that were sent, uh, on or about
6 September 19, 2002, to the State Crime Lab, uh,
7 included hair and fingernail cuttings?

8 A That's correct.

9 Q It was one box of items containing those things;
10 correct?

11 A Correct.

12 Q To be tested by use of DNA procedures according
13 to a circuit court order; correct?

14 A Correct.

15 Q You did not transmit a vial of blood to the State
16 Crime Lab on September 19, 2002?

17 A I didn't transmit anything.

18 Q You didn't cause to be transmitted or document
19 the transmittal of a vial of blood on Exhibit
20 214?

21 A No, I had no knowledge of a vial of blood.

22 Q That is, sir, as evidence custodian, did you go
23 over to the Clerk of Court's Office to examine
24 that 1985 court file and take from it the things
25 that were to be sent to the State Crime Lab?

1 A No, sir, I did not.

2 Q You did not personally do that?

3 A No, sir.

4 Q Although you were the evidence custodian of the
5 Department?

6 A Correct.

7 Q But these items were exhibits held by the court
8 since the end of the trial?

9 A Yes, sir.

10 Q Which is exactly what you wrote on Exhibit 214;
11 correct?

12 A Correct.

13 Q So you were aware on September 19, 2002 that the
14 court was holding exhibits in Mr. Avery's earlier
15 case since the end of the trial?

16 A I was aware of this exhibit, yes.

17 Q Actually, you used the plural as exhibits;
18 correct? Presumably, you mean hair and
19 fingernail cuttings?

20 A Yes.

21 Q All right. When a, uh -- when a court pulls
22 evidence after a trial, where is that held?

23 A I don't know.

24 Q Suppose that's what the Clerk of Court does?

25 A I would -- Yes, I would guess so.

1 Q All right. Uh, who did you send over to the
2 Clerk of Court's Office to obtain the hair and
3 fingernail cuttings described in Exhibit 214?
4 A Sergeant Mike Shallue went over.
5 Q All right. I'm sorry, I -- I was calling him
6 deputy and I didn't mean to take him down a rank.
7 Uh, so to your knowledge, Sergeant Mike Shallue
8 went over to the Clerk of Court's Office;
9 correct?
10 A Correct.
11 Q Under your direction?
12 A Yes.
13 Q And then brought these items back to you in the
14 sheriff's office?
15 A No, sir, he did not.
16 Q How did you come to compare the form?
17 A The form was prepared and given to him before he went
18 to the Clerk of Court's Office.
19 Q So you didn't -- you were signing this form as a
20 transmittal of criminal evidence and didn't --
21 didn't document what he actually obtained or
22 sent?
23 A That's true.
24 Q Trusted -- entrusted him with the task?
25 A Him and the Court, yes.

1 Q And, then, presumably, that went off to the State
2 Crime Lab?

3 A Yes, sir.

4 Q Were you still the evidence custodian when it
5 came back?

6 A Yes. But I had no knowledge of when it came back.

7 Q Okay. Do -- do you even know that it did come
8 back?

9 A I don't know if it did come back.

10 Q You have no reason to doubt it?

11 A I would assume it came back. I don't know that.

12 Q So would I. I mean, but you just don't know one
13 way or the other. Um, in relation -- Well,
14 the -- the Sheriff's Department in Manitowoc
15 County, and let's use 2002 as our time reference,
16 September of 2002, uh, was located in the same
17 building that houses the jail?

18 A Correct.

19 Q Just south of -- What is it? Eighth and
20 Washington?

21 A Actually, it's on Ninth Street.

22 Q Or between Ninth and Eighth?

23 A Ninth and Eighth.

24 Q Okay. But south of Washington Street, if I have
25 my directions right?

1 A Yes, sir.

2 Q All right. And what's that -- what's that large
3 building that stands just to the north of the
4 Sheriff's Department and the jail, I don't know,
5 50 yards to the north or something?

6 A It's the courthouse.

7 Q Right across, sort of, a courtyard or a --
8 there's a -- some walkways or a monument there?

9 A Yes, sir.

10 Q And where is the Clerk of Court's Office?

11 A Would be on the first floor.

12 Q Of the courthouse?

13 A Yes, sir.

14 Q Now, you were interviewed by the gentleman over
15 farthest to the right in the back, uh, Special
16 Agent Tom Fassbender, uh, on December 8, 2006.
17 Does that sound right?

18 A Sounds about right, yes.

19 Q Uh, you knew that a question had been raised
20 about this vial of blood that Mr. Kratz referred
21 to?

22 A I was informed that day by Agent Fassbender that the
23 blood vial existed.

24 Q And he wanted to ask some questions of you about
25 that blood vial?

1 A Yes.

2 Q Explained to you that an issue had been -- had
3 been raised about integrity of this
4 investigation?

5 A Yes.

6 Q Uh, and you wanted to answer his questions?

7 A Yes.

8 Q You wanted to answer them truthfully?

9 A Yes.

10 Q To clear up any questions about the blood vial or
11 the integrity of the investigation?

12 A Correct.

13 Q You would be truthful, in any event, when
14 answering the law enforcement officer's
15 questions?

16 A Is that a question, sir?

17 Q Yes.

18 A Yes, I would.

19 Q Uh, lying to a law enforcement officer who's
20 performing his duties is, itself, a crime --

21 A Yes.

22 Q -- in the state of Wisconsin? Sir, you are --
23 you told Special Agent Fassbender on -- on
24 December 8 that, um -- that you had filled out
25 this Evidence Transmittal Form? Exhibit 214?

1 A Correct.

2 Q Just as you told us today, uh, that you wrote on
3 the transmittal form that, uh, the exhibits had
4 been held by the court since the end of the
5 trial?

6 A That's what I was told. Yes.

7 Q That's what you told Special Agent Fassbender?

8 A Correct.

9 Q And, uh, you -- you told him -- you told Special
10 Agent Fassbender, as well, that, uh, it was your
11 memory that -- that, uh, Sergeant Shallue had
12 obtained the items from the clerk's -- Clerk of
13 Court's Office and transmitted them from there?

14 A That's correct.

15 Q Were you interviewed just about a month later,
16 um, by an Investigator Steier from the Calumet
17 County Sheriff's Department?

18 A Could be. I don't -- I believe so. I'm not sure.

19 Q Which -- which part are you not sure about?

20 A I'm not sure of the date. I know I did talk to
21 Investigator Steier.

22 Q Fair enough. Um, I'll show you -- I guess I'll
23 mark this, but I'm just going to use this to try
24 to refresh your recollection.

25 (Exhibit No. 215 marked for identification.)

1 Q (By Attorney Strang) I suggest the date of that
2 interview may have been January 11, 2007, but I
3 will show you Exhibit 215 just to see whether or
4 not it refreshes your recollection about
5 Investigator Steier interviewing you?

6 A Yes, sir, it does.

7 Q Was that interview in person?

8 A Yes, sir.

9 Q Investigator Steier also, obviously, is a law
10 enforcement officer?

11 A Yes, sir, he is.

12 Q And on January 11, 2007, did you tell
13 Investigator Steier that you had no idea the
14 Steven Avery file was kept in the Manitowoc
15 County Clerk of Court's Office?

16 A I didn't know there was a file over there, no. All I
17 knew about is what I had sent out. I didn't know
18 there was a file there.

19 Q You didn't know there was a file, but you knew
20 that there were exhibits from the file?

21 A I didn't know there were other exhibits over there
22 other than the one that I had dealt with.

23 Q So you thought that perhaps the hair and
24 fingernail cuttings were the -- the only exhibits
25 that the court had held since the end of the

1 trial?

2 A I didn't know.

3 Q I mentioned earlier that you're, in terms of
4 rank, probably the fourth ranking person today in
5 the Sheriff's Department?

6 A I'm one of four lieutenants that is fourth ranking,
7 yes.

8 Q Okay. And -- and that's where I was going.
9 You're fourth in terms of rank, but some of the
10 positions above you or parallel with you have
11 more than one person filling or with that rank;
12 correct?

13 A Yes.

14 Q So that -- In other words, there may be two
15 deputy inspectors?

16 A Correct.

17 Q Both of whom outrank you?

18 A Correct.

19 Q You're one of four lieutenants?

20 A Yes, sir.

21 Q But are you part of the scene or management team
22 of the Sheriff's Department?

23 A I'm not sure I understand your question.

24 Q Okay. And I -- it may -- that may not be a term
25 you -- you folks use. So let's start with, are

1 you -- are you part of management, so to speak?

2 A Yes.

3 Q Uh, are you included in meetings about the
4 overall operation of the Department?

5 A Not most of the time, no, sir.

6 Q Simply responsible, most of the time, for the
7 operation of the Detective Bureau?

8 A That's correct.

9 Q You are the only lieutenant of detectives?

10 A Yes, sir.

11 Q Do you know, as you sit here today, Lieutenant
12 Lenk, uh, how many keys the Manitowoc County
13 Sheriff's Department has to the Clerk of Court's
14 Office?

15 A No, sir, I have no idea.

16 Q Do you know that the Sheriff's Department is
17 responsible for security in the Manitowoc County
18 Courthouse?

19 A Yes, sir.

20 Q That courthouse, of course, includes the Clerk of
21 Court's Office; right?

22 A Correct.

23 Q And a number of other offices in the courthouse?

24 A Correct.

25 Q The Sheriff's Department has overall

1 responsibility for security in that entire
2 building?

3 A Yes, sir.

4 Q And its offices?

5 A Correct.

6 Q To maintain security, or to discharge that duty,
7 the Sheriff's Department needs access to the
8 courthouse?

9 A Correct.

10 Q Needs access to all the offices in the
11 courthouse?

12 A Yes.

13 Q Has one or more master keys to your knowledge?

14 A I would assume so. I have no idea.

15 Q And, in any event, you don't know how many such
16 master keys your Department may have?

17 A That's correct.

18 Q I want to move to Mr. Avery's civil lawsuit, all
19 right? Uh, and the backdrop on that is -- is
20 Mr. Avery being released from prison. You
21 remember that?

22 A Yes, sir.

23 Q That made big news?

24 A Yes, it did.

25 Q 2003?

1 A Yeah, I believe it was 2003.

2 Q Uh, and by "big news" I mean, this was something
3 that was on the televisions?

4 A Yes, it was.

5 Q You recall it being in the newspapers?

6 A Yes, sir.

7 Q You recall the newspapers, uh, shining a light,
8 so to speak, on your Department?

9 A Yes, sir.

10 Q Examining the way that earlier conviction had
11 been handled?

12 A Correct.

13 Q You understood that your Department had been the
14 investigating agency in the 1985 case?

15 A Yes, sir.

16 Q You understood that that investigative process
17 led to serious charges being brought against
18 Mr. Avery?

19 A That's correct.

20 Q Ultimately, led to his conviction?

21 A Correct.

22 Q And that it turned out he hadn't committed the
23 crimes?

24 A According to the release, yes, apparently he had not.

25 Q Do you have any question about that?

1 A No, sir, I don't.

2 Q Any doubt in your mind about whether Mr. Avery
3 was innocent of the crimes for which he was
4 convicted?

5 A No, sir, I have no knowledge of the case. I would
6 not hazard a guess one way or the other.

7 Q Simply a matter on which you have no opinion?

8 A Pretty much.

9 Q Is this another one of these things that you
10 didn't care about one way or another?

11 A I would say other than the fact that it involved my
12 Department, I really didn't care one way or the
13 other.

14 Q Okay. And that was a phrase you -- you recall
15 using just yesterday when Mr. Kratz asked you how
16 you felt about or what you cared about
17 Mr. Avery's lawsuit?

18 A Correct.

19 Q Now, you remember -- not the exact time, of
20 course -- but you remember the general event of
21 Mr. Avery filing a civil lawsuit?

22 A Yes, sir.

23 Q Filed it against Manitowoc County?

24 A Yes.

25 Q Relating to the actions of the Manitowoc County

1 Sheriff's Department?

2 A Yes, sir, I believe that's what it was.

3 Q That is a sheriff's office in the state of
4 Wisconsin as a county office; correct?

5 A Yes.

6 Q Uh, so you understood that the lawsuit put in
7 issue the actions of your Department?

8 A Yes.

9 Q Did you care when that lawsuit was filed?

10 A I'm not exactly sure what you mean by that, sir.

11 Q Did you care about the lawsuit being filed?

12 A No, sir, I did not.

13 Q Didn't care at all that the county was being sued
14 over the actions of your Department?

15 A I didn't have any involvement in the case and I
16 really didn't have an opinion one way or the other.

17 Q And you didn't care one way or the other who won
18 the lawsuit, if I understood your testimony?

19 A I didn't say anything about caring who won or not, I
20 just said I didn't really care about the lawsuit.

21 Q Didn't care about the lawsuit. If you didn't
22 care about the lawsuit, then I guess you didn't
23 care one way or the other who won or lost?

24 A No, sir.

25 Q You didn't or -- or are you agreeing or --

1 A No, sir, I didn't care one way or the other.

2 Q All right. And do I understand you to be saying
3 that you didn't care one way or the other, then,
4 whether someone who had been wrongfully convicted
5 got some compensation for that?

6 A I felt if he was wrongly convicted then, yes, he
7 should have some compensation.

8 Q Then how is it that you didn't care one way or
9 the other?

10 A I didn't really have a strong opinion one way or the
11 other.

12 Q All right. But if he happened to get some
13 compensation, that would be all right for you?

14 A That would be fine.

15 Q All right. Uh, do you think somebody who goes to
16 prison for a long time for a crime he didn't
17 commit ought to get some compensation?

18 A I believe so.

19 Q But you didn't have a strong opinion about that
20 one way or the other?

21 A No, sir.

22 Q Uh, did you have a strong opinion one way or the
23 other about the fact that the man your Department
24 missed back in 1985 was out free on the streets
25 because Mr. Avery was doing his time?

1 ATTORNEY KRATZ: Objection, relevance, Your
2 Honor.

3 THE COURT: Uh, Mr., uh, Strang?

4 ATTORNEY STRANG: I'm -- I'm exploring
5 his attitudes about the lawsuit and its
6 consequences.

7 ATTORNEY KRATZ: This isn't a consequence
8 of the lawsuit at all, Judge.

9 THE COURT: Yeah. I'm going to sustain the
10 objection.

11 Q (By Attorney Strang) Do you care one way or the
12 other, Lieutenant Lenk, about whether your
13 Department gets the right guy in a criminal
14 investigation?

15 A Definitely.

16 Q That you do care about?

17 A Yes, sir.

18 Q And what's your preference?

19 A I'm not sure what your question is, sir.

20 Q Well, since you cared about whether they do or
21 don't get the right guy, what's your preference?

22 A My preference is you always try to get the right
23 person.

24 Q Now, this was the lawsuit that eventually led to
25 your deposition?

1 A Yes, sir.

2 Q Your deposition on, I think, October 11, 2005?

3 A I believe that's the date. I'm not positive.

4 Q I won't even bother to mark this, but I don't
5 want to have you have any questions about it.
6 I'm showing you the transcript of your
7 deposition. What's the date of that deposition?

8 A October 11, 2005.

9 Q That's you with your picture on the front?

10 A Yes, sir.

11 Q Lieutenant Lenk, was October 11, 2005, the first
12 time you had ever had your deposition taken?

13 A Regarding this lawsuit?

14 Q Regarding anything.

15 A No, sir. I believe I've had done it at least once
16 before.

17 Q Had -- had a deposition before. All right. Uh,
18 this was, though, something unusual for you?

19 A Yes.

20 Q You were subpoenaed?

21 A Is that a question, sir, or --

22 Q Yes.

23 A Yes, I was.

24 Q And, uh, you asked, uh -- or you were asked a
25 number of questions?

1 A That's correct.

2 Q You under -- you un -- you understand that this
3 process here that we're doing, I'm the one asking
4 questions? So I'm speaking to you. I'm asking
5 you a question?

6 A Yes, sir.

7 Q Okay. And you're providing answers?

8 A Yes, sir, I am.

9 Q Uh, you provided answers at the deposition in
10 much the same format, didn't you?

11 A Yes, sir, I did.

12 Q And I think you told us that one -- sort of the
13 major topic of this deposition was the telephone
14 call that Sergeant Colborn, in fact, when he was
15 in the jail, had received some years earlier?

16 A That's correct.

17 Q Sergeant Colborn told you about that telephone
18 call, didn't he?

19 A Yes, in 2003.

20 Q That is, he told you about it on the very day of
21 Steven Avery's release or the very next day,
22 didn't he?

23 A I don't recall. It could have been, yes.

24 Q But you all were having a conversation about
25 Mr. Avery being released from prison; right?

1 A I don't know if we were having a conversation about
2 that specifically, no.

3 Q But, in any event, uh, whether there was a
4 conversation or not, uh, Officer Colborn had
5 given you this information, uh, and you thought
6 it may or may not be relevant?

7 A That's correct.

8 Q And, uh, you should -- you -- you told Officer
9 Colborn he ought to pass it along to the sheriff?

10 A Yes, sir.

11 Q And the two of you went to Sheriff Peterson
12 together about it?

13 A Yes, sir, I believe we did.

14 Q And, uh, Sheriff Peterson suggested that maybe
15 the two of you ought to prepare a short report or
16 statement about that?

17 A That's correct.

18 Q You prepared that statement on September 12,
19 2003?

20 A I believe it was that same day, yes.

21 Q Do you recall that, or do you not, as being the
22 day after Steven Avery was released from prison?

23 A I don't specifically recall if that was the same day.

24 Q Did you consider the possibility that you might
25 be added as a defendant to that civil lawsuit?

1 A No, sir, I did not.

2 Q Never crossed your mind?

3 A No, sir.

4 Q Now, Teresa Halbach. It's November 3, 2005 when
5 you first learned that she is missing?

6 A That's correct, sir.

7 Q She's reported missing by another county? Not
8 Manitowoc County?

9 A Yes, it was Calumet County.

10 Q The adjoining county, but a different county
11 altogether?

12 A That's correct.

13 Q Uh, this is, at that point, their missing person
14 investigation?

15 A Yes, sir.

16 Q You at -- at the time, November 3, 2005, uh, were
17 then, as you are now, the chief detective, if you
18 will, for Manitowoc County?

19 A Lieutenant of detectives, yes, sir.

20 Q That is in charge of all of the other detectives
21 in the Manitowoc County Sheriff's Department?

22 A Correct.

23 Q You also have some duties as a detective yourself
24 in the field, so to speak?

25 A Yes, sir.

1 Q Is it true, sir, that within two hours after that
2 missing person report to Calumet County, you, on
3 your own, were calling Investigator Mark Wiegert
4 asking about it?

5 A No, sir, that's not true.

6 Q Well, how did you learn about it?

7 A Investigator Wiegert called me and told me that he
8 needed assistance.

9 Q I'm saying Investigator Wiegert --

10 (Exhibit No. 216 marked for identification.)

11 ATTORNEY KRATZ: I'm sorry. Could we
12 approach, please?

13 (Discussion off the record.)

14 Q (By Attorney Strang) When you say Investigator
15 Wiegert, you're -- you're referring to the
16 gentleman behind me with the neatly trimmed
17 goatee?

18 A Yes, sir.

19 Q You know him to be one of the two lead case
20 investigators on this investigation?

21 A Yes, sir.

22 Q Had you known Investigator Wiegert before, uh,
23 Ms. Halbach was reported missing?

24 A I had met him on a couple of occasions, yes, sir.

25 Q Professionally?

1 A Professionally, yes, sir.

2 Q Some collaboration between your two departments
3 is not unusual?

4 A That's right.

5 Q Because you're adjoining counties?

6 A Correct.

7 Q And you're quite sure that it was Investigator
8 Wiegert who called you, not the other way around?

9 A All I know is that I did talk to Investigator
10 Wiegert. I don't know who called who --

11 Q Oh.

12 A -- at this point.

13 Q All right. So if Investigator Wiegert says that
14 you were the one who called him, you're now
15 prepared to accept that?

16 A I would have had to had some reason to call him. Uh,
17 I may have been paged by dispatch or some other
18 reason, but that would have been the reason --

19 Q May have --

20 A -- I would have called him.

21 Q -- may have heard about this missing person from
22 Detective Remiker? Someone else under you?

23 A That's possible.

24 Q All right. It is possible, then, that you were
25 the one who placed the call to Investigator

1 Wiegert?

2 A That's possible.

3 Q You wouldn't disagree with him if that's the way
4 he put it on paper?

5 A If that's how he put it on paper, he's probably
6 right.

7 Q While we're on that subject, could -- did I
8 understand you correctly that -- I'm jumping
9 ahead here a couple of days to November 5 -- that
10 it was your understanding that Calumet County
11 Sheriff's Department would write all the reports
12 in this case?

13 A Yes, sir, that was my understanding.

14 Q How many Manitowoc County sheriff's officers were
15 involved in this investigation?

16 A There were a number of officers involved.

17 Q A number. Meaning over a dozen probably?

18 A I don't know. I don't know the exact number.

19 Q Well, you were out at the Avery property
20 yourself, weren't you, from November 5 through at
21 least November 9?

22 A Yes, sir.

23 Q During, essentially, all of your working hours?

24 A Yes, sir.

25 Q Did you see more than a dozen of your fellow

1 officers from Manitowoc there?

2 A I know there was a lot of them out there. I don't
3 know if it's more than a dozen, you know.

4 Q You've described working directly with at least
5 two of them; right?

6 A Correct.

7 Q Sergeant Colborn and Detective Remiker?

8 A Correct.

9 Q You -- you people were actively searching
10 buildings, cars, garages, all sorts of places on
11 that property?

12 A Yes, sir.

13 Q You were identifying evidence?

14 A Yes, sir, we were attempting to identify evidence.

15 Q You interviewed people?

16 A I think the only interview was on the fourth with
17 Mr. Avery.

18 Q That -- in which you personally participated?

19 A Yes, sir.

20 Q And it was your understanding that you weren't
21 going to prepare any reports as a -- as a
22 Department about any of that?

23 A We were told when we were assigned to do searching to
24 let them do the report writing, to take the evidence,
25 and, basically, we're -- we were just there as

1 support to do the searching.

2 Q Have you ever been involved in an investigation
3 before in which it was decided beforehand that
4 you would not write reports about what you were
5 doing?

6 A No, sir.

7 Q Have you been involved in one since when it was
8 decided you would not write reports about what
9 you were doing?

10 A No, sir.

11 Q You understand that when you write a report,
12 you're committing yourself to paper on what the
13 facts are that are described in the report? You
14 understand that, don't you?

15 A That's correct.

16 Q And if you don't write a report, I guess you're
17 not committed to any version of the facts, are
18 you?

19 A We're committed to the facts. We just didn't write
20 the reports.

21 Q Ah. But how would one know what it is that you
22 say the facts are if you haven't put them down on
23 paper? How would we learn that?

24 A From the officer that wrote the reports.

25 Q From the officer who wrote the reports or by

1 hearing you testify in court?

2 A That's correct.

3 Q Well, as it happens, you eventually did prepare
4 something of a report here, didn't you?

5 A Yes, sir, I did.

6 Q A page or two?

7 A I believe it was a page, yes.

8 Q Now, you mentioned just a moment ago the
9 November 4 interview with Mr. Avery?

10 A Yes, sir.

11 Q This is the morning after Ms. Halbach has been
12 reported missing?

13 A Yes, sir.

14 Q And you, personally, as the lieutenant of
15 detectives, took it upon yourself to go out and
16 interview Mr. Avery?

17 A As I had said before, we were requested by
18 Investigator Wiegert to go out and reinterview
19 Mr. Avery.

20 Q Did Mr. Wiegert request that you, personally, go
21 out and interview Mr. Avery?

22 A I don't recall. I don't -- I don't recall if it was
23 specific or just asked someone to go out and
24 interview him.

25 Q All right. And you decided that one of those

1 people would be you?

2 A Yes, sir.

3 Q And, then, you took Detective Remiker with you?

4 A Yes, sir.

5 Q He's a detective working under you, obviously?

6 A Yes.

7 Q Experienced detective?

8 A Yes.

9 Q Uh, number of years of service as a detective in
10 the Manitowoc County Sheriff's Department?

11 A I don't know how many years he's got. Probably three
12 or four.

13 Q Was he capable of, uh, interviewing somebody at
14 10:30 on a Friday morning?

15 A More than capable, yes, sir.

16 Q At that point, uh, Steven Avery was just a person
17 of interest?

18 A Yes, sir.

19 Q So the two of you went out to Mr. Avery's?

20 A Yes, sir.

21 Q He was cooperative?

22 A Yes, he was.

23 Q Uh, when Detective Remiker asked if you folks
24 could take a walk through his house, he said,
25 sure, or words to that effect?

1 A Correct.

2 Q Gave you his consent, as they say?

3 A Yes, sir.

4 Q You walked through the entire house quickly?

5 A Detective Remiker walked through the house, yes, sir.

6 Q You stayed outside?

7 A I stayed in the living room with Mr. Avery.

8 Q Did you have any information on the morning of

9 November 4 about the, uh -- the sort of car that

10 Ms. Halbach was driving when last seen at least?

11 A I believe, uh, we had the information that it was a

12 Toyota Rav 4.

13 Q Did you have a license plate number?

14 A I didn't. No, sir. I don't recall having a license

15 plate number.

16 Q All right. You don't know if anyone else did or

17 did not?

18 A No, sir.

19 Q You worked, though, a number of years in the road

20 patrol division yourself?

21 A Yes, sir, I did.

22 Q It was common, uh, in road patrol to call in a

23 license plate?

24 A Yes, sir.

25 Q That might be a traffic stop; correct?

1 A Correct.

2 Q Where -- where you would then call into dispatch
3 with the license plate that you were seeing and
4 dispatch could tell you to whom the plate was
5 registered?

6 A Correct.

7 Q Dispatch could also tell you what car the plate
8 ought to be on?

9 A Yes, sir.

10 Q And this would be done, typically, over the
11 radio?

12 A Yes, sir.

13 Q Road patrol officers have a radio unit in their
14 car? Their squad car?

15 A Correct.

16 Q And then, also, have a collar mike?

17 A Some wear the collar mike, yes.

18 Q Some do. Others have a portable?

19 A That's correct, sir.

20 Q But -- but all of the road patrol officers have
21 both a radio in the squad car and some sort of
22 portable radio that goes with them?

23 A That's correct.

24 Q Typically, when you're calling in a license
25 plate, you would use the radio when you're on

1 duty?

2 A Yes, sir.

3 Q A radio, uh, though, is something that citizens,
4 if they have a police scanner, can overhear?

5 A Yes, sir, if it's a regular frequency, yes.

6 Q Right. I mean, it's -- it's -- it's a -- a
7 broadcast frequency?

8 A Correct.

9 Q I want you to -- to listen to Exhibit 212.

10 ATTORNEY KRATZ: I'm sorry, Judge. Is
11 this -- is this witness involved in this call? If
12 not, it will be hearsay.

13 ATTORNEY STRANG: I -- I'm not offering it
14 for the truth.

15 ATTORNEY KRATZ: Then what's the relevance,
16 Judge?

17 THE COURT: Um --

18 ATTORNEY STRANG: First of all, I can't get
19 it to make noise at all.

20 THE COURT: All right. It's, uh, 10:30.
21 Let's do this; uh, we'll take our morning break at
22 this time. Uh, the jury can be excused. Uh,
23 members of the jury, do not discuss this case, uh,
24 during the break. Uh, we'll resume in approximately
25 15 minutes.

1 (Jurors out at 10:25 a.m.)

2 THE COURT: The record should reflect at
3 this time the court jury is outside of the courtroom
4 and I've ex -- excused the witness as well. Uh,
5 Mr. Kratz? Uh, just -- I -- I assume that what,
6 Mr. Strang, you're about to play is the, um, radio
7 transmission involving Mr. Colborn, uh, confirming a
8 plate number?

9 ATTORNEY STRANG: Well, um, yes and no.
10 I'm -- What I'm trying to establish here is that
11 this is not a radio transmission, but this is a
12 telephone call.

13 THE COURT: All right. And the purpose for
14 which you're offering it?

15 ATTORNEY STRANG: Um, the -- the purpose is
16 to show that the ordinary thing, if one is on duty,
17 would have been to use the radio, not a telephone,
18 for such an inquiry.

19 THE COURT: Okay. Are you going to ask the
20 witness whether it was standard practices or
21 something to that effect?

22 ATTORNEY STRANG: I al -- that I think I
23 already -- I just did, I believe.

24 THE COURT: Okay. Mr. Kratz?

25 ATTORNEY KRATZ: And I think he has. If

1 that's the only purpose, he can ask him: Isn't
2 it typical to, uh -- to use the radio? He
3 already played this for Mr. Colborn. With this
4 witness, it is, in fact, hearsay, uh, and we're
5 objecting.

6 ATTORNEY STRANG: I just need to identify
7 it as a -- as a phone call not a -- not a radio
8 call. Uh, that probably could be done without
9 playing the whole thing that is --

10 THE COURT: You're going to ask this
11 witness to confirm it was a -- was a telephone call
12 and not a radio call?

13 ATTORNEY STRANG: Correct.

14 THE COURT: How's he going to know that?

15 ATTORNEY STRANG: Oh, I can raise some
16 foundation on the taping system there and I
17 suppose he should know it because of the ringing
18 sound at the beginning.

19 THE COURT: Oh.

20 ATTORNEY STRANG: Or the way the dispatcher
21 answers the phone.

22 THE COURT: All right. Mr. Kratz?

23 ATTORNEY KRATZ: There's probably some
24 reason he didn't do this with Mr. Colborn when it
25 was played to him. I don't know what. So he can

1 play it again? I -- I don't understand, Judge. If
2 he has some specialized knowledge in listening to
3 telephone calls versus radio --

4 THE COURT: Well, we won't know until we
5 hear the witness' answer whether he knows it or not.
6 Um, so I -- um, may be that I -- I believe that
7 they're entitled to ask the question.

8 Uh, I also wanted to put on the record
9 that, uh, we did hold a brief, uh, sidebar, uh,
10 during the -- Mr. Lenk's testimony requested by
11 Mr. Kratz. That involved, uh, an anticipated
12 hearsay exception that I believe did not develop
13 because of the nature of the questioning which
14 followed.

15 Uh, that's the type of discussion that,
16 really, the appeals courts tell us we're not
17 supposed to have in a sidebar. So I'm going to
18 ask the attorneys at this point, if you've got
19 some short procedural matters that you want to
20 ask the Court to deal with, that doesn't require
21 excusing the jury, I'll entertain that during the
22 sidebar and make a record of it later. Uh, but
23 if it's going to be a substantive, uh, objection
24 of some kind or something, uh, even though it may
25 slow us down a bit, I'm going to ask that you ask

1 if we can excuse the jury, and then I'll hear you
2 outside the presence of the jury.

3 ATTORNEY KRATZ: We'll do that, Judge.

4 ATTORNEY STRANG: Agreed. Thank you.

5 THE COURT: All right. We'll resume at,
6 uh, 10 to 11 on that clock.

7 (Recess had at 10:29 a.m.)

8 (Reconvened at 10:52 a.m.; jurors present.)

9 THE COURT: Do we have, uh, Mr. Lenk
10 available? Mr. Strang, you may resume your
11 questioning.

12 ATTORNEY STRANG: Thank you, Your Honor.

13 Q (By Attorney Strang) Lieutenant Lenk, when we
14 took our break, I think you had just explained to
15 the jurors that, uh, certainly the typical
16 procedure in calling in a license plate check
17 would be for the road patrol officer to use the
18 radio?

19 A That's correct, sir.

20 Q Now, are you familiar with the -- the taping
21 system on telephone lines at the Sheriff's
22 Department?

23 A Vaguely familiar, yes.

24 Q Okay. You know that dispatch radio traffic is
25 tape recorded? All of it? The radio traffic?

1 A Yes, sir.

2 Q All right. Some of the telephone lines that the
3 dispatchers answer also are tape recorded?

4 A Yes, sir.

5 Q That's not something known by every officer in
6 the Department?

7 A I wouldn't know if they all know about it. I mean,
8 the majority probably know about it.

9 Q Okay. Something you've learned in your
10 management position?

11 A Yes.

12 Q Now, I'm going to -- I'm going to play Exhibit
13 212 for you. Uh, your voice is not on here.
14 We've heard testimony about this. But I -- I
15 want you to listen to whether you can identify,
16 uh, whether this appears to be a radio call or a
17 call on a telephone line. Okay?

18 A Yes, sir.

19 (Where in recording is played.)

20 "Manitowoc County Sheriff's Department.

21 This is Lynn."

22 "Lynn."

23 "Hi, Andy.

24 (Unintelligible) "Henry 582. See if it
25 comes back (unintelligible).

1 (Unintelligible) "Henry 582. I -- I
2 (unintelligible) All righty. Do you speak any
3 Spanish there, Andy?"

4 "No."

5 "I just got a call (unintelligible) call
6 me back. (Unintelligible) If I get in trouble,
7 Andy, I get in trouble. You know, what am I
8 supposed to do?"

9 "Well --

10 "My -- my favorite one is in the city of
11 Manitowoc. It is. Um, okay. Shows that she's a
12 missing person. And it was to Teresa Halbach."

13 "Okay."

14 "Okay. That's what you're looking for,
15 Andy?"

16 "'99 Toyota?"

17 "Yep."

18 "Okay. Thank you."

19 "You're very welcome. Bye-bye."

20 Q Okay. First of all, did you -- did you recognize
21 the voices?

22 A Yes, sir, I did.

23 Q Lynn is a dispatcher at the Sheriff's Department?

24 A That's correct.

25 Q Andy is Andy Colborn?

1 A Yes, it sounded like Andy Colborn.

2 Q Sergeant Andy Colborn?

3 A Yes.

4 Q And were you able to tell, in listening to

5 Exhibit 212, this -- this sounds like a -- a

6 routine license plate check?

7 A It sounds like a license plate check. Uh, it sounded

8 like it was over the telephone.

9 Q Okay. Not over the radio?

10 A No, sir.

11 Q Okay. Now, if -- if it's over the telephone,

12 this is, in a sense, private from anybody with a

13 police scanner?

14 A Yes, sir.

15 Q When you're off duty, uh, in the road patrol

16 division, I take it you do not carry a police

17 radio?

18 A I don't. No, sir.

19 Q Others don't either?

20 A I wouldn't know if everybody doesn't.

21 Q Okay. Well, the -- the -- the, uh, portable

22 radios are Sheriff's Department equipment?

23 A Yes, sir, they are.

24 Q They're not to be taken home ordinarily?

25 A Uh, they can be taken home. There's chargers that

1 are kept at home also.

2 Q In case you get called in from home?

3 A That's correct.

4 Q All right. Squad cars are not taken home?

5 A No, sir.

6 Q So, obviously, the radio in the squad car
7 wouldn't -- wouldn't be available to somebody,
8 uh, when he's off duty?

9 A No, sir.

10 Q Now, um, let's go back to November 5. You, um --
11 you get a call while you're off duty, uh,
12 sometime that morning?

13 A Yes, sir.

14 Q And, uh, you, uh, tell your wife you're sorry but
15 you got to go in to work?

16 A That's correct.

17 Q There's -- there's this stop at Wendy's, um, on
18 the way?

19 A Yes, sir.

20 Q And, um, from Wendy's, essentially, you go home
21 and then off to work?

22 A That is correct, sir.

23 Q Now, what you testified, uh, yesterday, as I
24 understood you, is that you arrived at the Avery
25 salvage property just shortly after 2:00, 2:05 or

1 something like that?

2 A That's correct, sir.

3 Q That was your testimony? That's your best
4 recollection?

5 A That was my recollection after reviewing some tapes
6 from dispatch.

7 Q I see. Uh, tapes like the ones we just listened
8 to?

9 A Yes. These would have been radio logs.

10 Q As opposed to telephone line tapes like this?

11 A Correct.

12 Q You can tell the difference between a -- a radio
13 tape and a telephone tape?

14 A I can't, but I -- it would be on the way it's handled
15 as far as, uh, calling you, using your call numbers
16 as opposed to --

17 Q Right. I mean, so, in effect, you can tell the
18 difference if you're listening to a tape?

19 A Right.

20 Q First of all, any number of people could be
21 calling in and conversing with the dispatcher?

22 A Correct.

23 Q You folks use your squad numbers?

24 A We use our employee numbers.

25 Q Or a -- a three-digit number?

1 A Correct.

2 Q Um, and in that radio traffic, you -- you -- we
3 sometimes hear the, uh, term "I'm in code." Are
4 you familiar with that term?

5 A Yes, sir.

6 Q What does that mean?

7 A It's a separate radio frequency that is not normally
8 monitored by the general public.

9 Q But what -- we're hearing it while the person's
10 in code, or is that telling the dispatcher to go
11 to a separate radio frequency?

12 A That's telling the dispatcher to go to a separate
13 frequency.

14 Q And is that frequency also taped?

15 A Yes, sir, I believe it is.

16 Q Now, so you -- you had a chance to review some of
17 this radio traffic on the tapes?

18 A No, sir, I didn't review it. I just -- times.

19 Q I'm sorry?

20 A I just didn't review the tapes. All I did review is
21 the time that I arrived.

22 Q All right. That -- that helped you decide that
23 probably 2 or 2:05, somewhere in there, you
24 arrived at the Avery property?

25 A Correct. The tape actually -- or the report actually

1 said 2:06.

2 Q The, uh, subject of when you arrived, uh, at the
3 Avery property that day has, uh -- has come up
4 before in this case, hasn't it?

5 A Yes, sir.

6 Q In fact, you've given testimony about that very
7 topic before?

8 A Yes, sir.

9 Q You gave testimony under oath back on August 9,
10 2006?

11 A I believe that was the date, yes.

12 Q In any event, you remember one event, a hearing
13 in which you were under oath?

14 A Correct, sir.

15 Q Now, the oath, of course, was the same you took
16 today?

17 A Correct.

18 Q And were you asked on that occasion, uh, the
19 follow questions and did you give these answers?

20 ATTORNEY STRANG: Page 197, Counsel.

21 Q (By Attorney Strang)

22 "And did you, in fact, arrive at the
23 Avery property?"

24 Your answer: "Yes."

25 "Question: Do you know what time?"

1 "Answer: I'm not sure of the exact
2 time. Somewhere, 6:30 or 7 that evening. I'm
3 not positive."

4 Were you asked those questions and did you give
5 those answers?

6 A Yes, sir, I did.

7 Q I'm sorry?

8 A Yes, sir, I did.

9 Q Uh, and, then, a few moments later, uh, in the
10 same hearing, were you asked, again, this time I
11 think by one of the prosecutors, uh --

12 "Question: All right."

13 ATTORNEY STRANG: Page 216, Counsel.

14 I'm sorry.

15 Q "All right. And when did you arrive at
16 the property, the morning or the afternoon?"

17 Your answer: "Late afternoon."

18 "Question: Late afternoon?"

19 "Answer: Yes."

20 Did you give that testimony?

21 A Yes, sir, I did.

22 Q Now, uh, you don't recall signing in on a log
23 when you arrived at the Avery property on
24 November 5, do you?

25 A No, sir, I don't recall signing in.

1 Q You do recall signing out?

2 A I believe by then there was an officer at the end of
3 the road, yes.

4 Q So if we were to look through the log sheets, we
5 would look in vain for any spot where you're
6 signed in that day?

7 A As far as I know. I -- I don't have access to the
8 loggings.

9 Q Right. I -- I'm just -- I do, and I don't see
10 your name. That's your understanding?

11 A Yes, sir, I understand.

12 Q I do see you signing out at 10:41 p.m. That
13 sound right?

14 A Sounds about right, yes.

15 Q Okay. We are -- we have this. I can offer you
16 the exhibit if you'd like.

17 ATTORNEY STRANG: One forty-two. Ms.
18 Bonin?

19 Q (By Attorney Strang) I show you Exhibit 142.
20 Let's see. We can probably take these away so
21 that -- got good housekeeping. That look like
22 the log from the Avery property from November 5,
23 2005?

24 A Yes. It looks like that, yes.

25 Q And if you flip through to 10:41 p.m.? I don't

1 remember if it's military, or a.m./p.m. time,
2 but --

3 A Yes, sir.

4 Q You, and Detective Remiker, and Sergeant Colborn
5 are signing out at the same time?

6 A That's correct, sir.

7 Q Now, you understand that, um, if you had arrived
8 at 6:30 or 7 at the Avery property, it would be a
9 little hard to explain why -- why you're not on
10 the log signing in; wouldn't it?

11 A Yes, it would.

12 Q If you arrived, though, uh, even in the late
13 afternoon, that would be hard to explain why you
14 hadn't signed in?

15 A That's correct.

16 Q But if you arrived at about 2, or 2:05, 2:06,
17 then that may have been before anyone started
18 keeping a log?

19 A That's correct.

20 Q Under those circumstances, the fact that you
21 didn't sign in, would not look strange or odd?

22 A No, sir.

23 Q Sometime shortly after you arrived at the Avery
24 property, uh, you did go down to the southeast
25 corner of that property?

1 A Yeah, I went -- Yes, sir, I went down to that area.

2 Q We've all seen the picture until we -- we're blue
3 in the face, and you -- but do you need it to
4 help you?

5 A I went down to the area where the squad cars were
6 sitting.

7 Q Okay. And there was a pond there and -- lying in
8 front of you?

9 A Yeah. I'm not sure if it was a pond, but there was a
10 depression of some sort.

11 Q Sure. And a car crusher off to the left
12 somewhere?

13 A Correct, sir.

14 Q And did you go up onto the ridge behind the
15 depression, uh, to get closer to the Toyota?

16 A No, sir, I did not.

17 Q How far -- how close to the Toyota did you go?

18 A Where those vehicles were parked. The, uh, squad
19 cars.

20 Q And your testimony is that you approached no
21 closer than that parking area sort of to the --
22 to the right of the, uh -- of the car crusher?

23 A That's correct, sir.

24 Q It was, uh, getting dark by the time you went
25 down to that area?

1 A I don't know exactly what time. I don't think it was
2 getting quite dark. I could still fairly see, but it
3 was getting dark.

4 Q Well, you were, uh, asked, again, at that -- at
5 that August 9 hearing, uh, pages 197 to 198:

6 "Did you go down to the area where it,
7 meaning the Toyota, had been located?"

8 And your answer was: "I went down there
9 with another officer. He showed me the location
10 where it was, but I didn't get -- I didn't really
11 see it. I mean, from what I seen, it was getting
12 dark, and it was hidden, but I didn't get a good
13 look at it."

14 Is that your testimony on August 9?

15 A Yes, it is.

16 Q I can show you the transcript if you have any
17 questions.

18 A No, that's fine.

19 Q Okay. Uh, now, later that evening, or afternoon,
20 you, um -- you volunteered to be one of the
21 officers who searched Steven Avery's residence?

22 A We were asked to assist in searching the residence,
23 yes.

24 Q Well, all right. Page 203. Do you recall being
25 asked this question and did you give this answer?

1 "So you volunteered to be one of the
2 officers who searched Steven Avery's residence?"

3 Your answer: "Yes, sir."

4 Was that your testimony?

5 A Yes, sir.

6 Q And, then, uh, as far as you know, Lieutenant
7 Lenk, Sergeant Colborn also volunteered to be one
8 of the searchers of Steven Avery's residence?

9 A Yes, sir, I believe so.

10 Q And, uh, Detective Remiker?

11 A Yes, sir. Correct.

12 Q Now, that first search on November 5, uh, started
13 about 7:30 in the evening?

14 A Yes.

15 Q When I say the first search, the first in which
16 you were involved under a search warrant?

17 A Correct.

18 Q Lasted a little over two-and-a-half hours?

19 A That's -- that's about right. Yes, sir.

20 Q And, um, actually were four of you in that search
21 party; isn't that right?

22 A That's correct, sir.

23 Q Lenk, Colborn, Remiker, and Mr. Tyson?

24 A Correct, sir.

25 Q Tyson was from Calumet County of course?

1 A Yes, sir.

2 Q The rest of you from Manitowoc County?

3 A Correct.

4 Q Now, you -- I guess as you described it here
5 today, that was -- or -- and yesterday, was -- I
6 don't know if these were your words exactly, but
7 that was more of a general search? Not as
8 thorough as a later search?

9 A It was a general search, yes.

10 Q But with four of you? Not just three as there
11 were on November 8?

12 A That's correct, sir.

13 Q And a full two-and-a-half hours? Not just about
14 an hour on November 8?

15 A I thought November 8 was a little longer.

16 Q A little longer than an hour?

17 A Yes.

18 Q All right. But you know that, uh, November 5 was
19 two-and-a-half hours or maybe a shade over?

20 A Correct.

21 Q And, uh, the fact is, when you -- when you left
22 on November 5, you did believe that you had
23 seized everything of evidentiary value at that
24 time?

25 A At that time, yes, sir.

1 Q Sergeant Tyson, uh, was there for the, um,
2 purpose of collecting evidence on November 5?

3 A Yes, sir.

4 Q He also kept an eye on all of the searchers?

5 A Yes, sir.

6 Q You understood that, uh, a Calumet officer was to
7 be with all searchers at all times on that
8 property?

9 A Yes, sir.

10 Q He stuck close to you as you searched on
11 November 5?

12 A We were all in the same trailer. We were close to
13 each other, yes, sir.

14 Q Were you ever out of Sergeant Tyson's eyeshot?
15 Eyesight?

16 A I don't believe so, no.

17 Q No. He stuck pretty close to all three of you at
18 all times, didn't he?

19 A Yes, sir.

20 Q It would have been hard for you to do anything
21 unobserved by Sergeant Tyson on November 5?

22 A I would believe so, yes, sir.

23 Q One of the things that, uh, he saw you doing was
24 bagging up some evidence near the end, wasn't it?

25 A Yes, sir, it was at his direction.

1 Q So he didn't actually collect everything? He
2 directed you to bag some of the evidence?

3 A The evidence was already bagged. I was directed on
4 putting numbers on the bags from his identification
5 numbers.

6 Q All right. Uh, if he described you as being the
7 one who bagged the evidence, you would disagree
8 with that?

9 A I would disagree. I think my function at that point
10 was recording numbers on the bags and identification.

11 Q Then, turning things, ultimately, over to
12 Sergeant Tyson?

13 A That's correct, sir.

14 Q Now, I won't go through all of the searches in
15 any great detail, but you're back in the house on
16 November 6; correct?

17 A Yes, sir.

18 Q Uh, you're in the -- Steven Avery's garage on
19 November 6?

20 A Yes.

21 Q You described that here today, if I recall right,
22 as being about an hour, maybe an hour-and-a-half,
23 you were in Steven's garage?

24 A I believe so.

25 Q Hour and 47 minutes sound more like it?

1 A That could be right, yes.

2 Q Uh, on the morning of the 6th, when you searched

3 Mr. Avery's garage, you also seized everything

4 that you saw that you thought had evidentiary

5 value that day, didn't you?

6 A Yes, sir, at that time.

7 Q The, uh, 7th, you're back in his house?

8 A Correct.

9 Q And, of course, the 8th. And, uh, this is the

10 one you say was the thorough search?

11 A Yes, sir.

12 Q The thorough search with three people, not four?

13 A Correct.

14 Q And, uh -- let's see. If you'll bear with me

15 while I change disks here. Let's see if we can

16 make this work good. That's a little

17 catty-wampus, but I don't know that we've seen

18 this before, but this is a -- a computer-

19 generated image?

20 A Yes, sir.

21 Q Okay. So not a photograph. It's a little bit of

22 make-believe as the computer has it, but do you

23 recognize the, uh -- the model or the -- the

24 image here?

25 A Yes, it looks like the, uh, bedroom for Steven Avery.

1 Q You, uh -- you told us, uh, when, uh, Mr. Kratz
2 was asking you questions that this is a pretty
3 small bedroom?

4 A Yes, sir, it is.

5 Q Other people have said that, too, and I'm
6 wondering, can you give me a rough approximation
7 of the -- of what small means? How big that
8 bedroom is?

9 A Nine by twelve. I don't know. It would be a guess.

10 Q Okay. Um, and that -- that's a guess. I
11 understand that. So, roughly 9 by 12. If that's
12 a standard size or queen bed, one or the other,
13 it fills up -- the bed fills up a good bit of the
14 room?

15 A Quite a bit, yes.

16 Q Now, this November 8, uh, search, was at least
17 your third time into Mr. Avery's bedroom?
18 Searching it; right?

19 A The third time searching his bedroom?

20 Q Yeah. Or is it just the second? There's
21 certainly November 5 --

22 A November 5, yes, sir.

23 Q -- November 6 and November 7. Maybe the 6th
24 you're just taking the guns?

25 A Yes, sir. I believe --

1 Q One of those two days you --

2 A Right.

3 Q So you go in the bedroom to take the guns?

4 A I didn't take them. I believe I was with whoever

5 took the guns, yes.

6 Q Fair enough. Um, so you may not have been in the

7 bedroom the day the guns were taken?

8 A I'm not sure if I was in there or not.

9 Q All right. In any event, you are back in the

10 bedroom on the 8th?

11 A Correct.

12 Q Now, um, you guys are in there almost an hour?

13 Something like that?

14 A I would think -- not sure of the time. I think

15 possibly an hour.

16 Q Okay. What you do know is that you left that

17 bedroom, uh, to go to the living room at some

18 point?

19 A That's correct.

20 Q To get boxes or bags for evidence?

21 A That's correct.

22 Q You see the key immediately after your return

23 from the living room?

24 A When I walked into the room, yes, sir.

25 Q That's when you first see the key?

1 A Correct, sir.

2 Q Another computer animation or computer image?

3 A Yes, sir.

4 Q You see that little, uh -- little item up in the
5 corner next to the bookcase there?

6 A Yes, sir.

7 Q That's supposed to be the key?

8 A Yes, sir.

9 Q That's about where you saw it?

10 A In that general area. Yes, sir.

11 Q Yeah. But when you saw it, there were a number
12 of things sort of cluttering the room that aren't
13 in the computer image?

14 A There was a pair of slippers there. Yes.

15 Q Pair of slippers, and some sort of a -- looks
16 like a -- a Fu Dog or little Ty lion sort of
17 figure as a doorstep?

18 A Something like that.

19 Q Something like that? Um, a notebook, some other
20 miscellaneous junk in the -- the little bookcase
21 there?

22 A Correct, sir.

23 Q And a number of other things that just aren't in
24 the computer pictures?

25 A Correct.

1 Q But the basic location of the key? That's
2 correct?

3 A Generally speaking, yes.

4 Q Now, that key had a -- had a blue -- part of a
5 blue (unintelligible) on it, didn't it?

6 A Yes.

7 COURT REPORTER: Excuse me. A blue
8 what, sir?

9 Q Lanyard, l-a-n-y-a-r-d, uh, attached to the ring
10 on the key?

11 A Yes, sir, I believe so.

12 Q And then, uh, at the end of that little lanyard
13 strap was a, uh -- maybe the male end of a -- a
14 black plastic clasp?

15 A I don't know if it was the male end or the female
16 end.

17 Q Neither do I. Maybe a male end, it could have
18 been the female end, but it was one or the other;
19 right?

20 A Correct.

21 Q The point is, there was some -- some sort of a
22 black chunky half of a clasp at the end of the
23 little lanyard?

24 A Yes, sir.

25 Q And, um --

1 ATTORNEY STRANG: Do we have Exhibit No.
2 169 handy?

3 Q (By Attorney Strang) See if we can find a
4 picture that you were shown on your direct
5 examination. A photograph this time. On
6 November 8 -- while we're waiting for the
7 computer to open these -- these things, um, on
8 November 8, did you have any reason to go into
9 Mr. Avery's bathroom? You know, the bathroom,
10 laundry room combination?

11 A I think there was a -- some items that had to be
12 collected there. I think it was some suspected blood
13 spatter or something.

14 Q Blood drops? Something --

15 A Yeah.

16 Q -- something like that? So you were involved in
17 that as well?

18 A No, sir, I did not collect that.

19 Q Uh, were you in the bathroom?

20 A I don't recall. I may have been in the bathroom.

21 Q Certainly, you know you were in there on
22 November 5, the night you did the full, general
23 search of the house?

24 A Correct.

25 Q The bathroom, uh, you recall as having Mr.

1 Avery's toothbrush?

2 A Could be. Yes, sir.

3 Q Or a toothbrush?

4 A Could be. Yes.

5 Q Razor? Those kinds of --

6 A Yes.

7 Q -- ordinary toiletry items?

8 A I'm -- I'm assuming if they were there, yes. I don't
9 recall that, but --

10 Q All right. Now, we've got Exhibit 169 up on the,
11 uh, screen. Let's see. That's not Exhibit 169.
12 That's something else. Um, but this is -- this
13 is the -- the key as you first observed it?

14 A Correct, sir.

15 Q If I may take the laser pointer here.

16 ATTORNEY KRATZ: It's No. 210, Counsel.

17 ATTORNEY STRANG: Two-ten. Thank you,
18 Mr. Kratz.

19 Q (By Attorney Strang) So I've got Exhibit 210 up
20 on the screen, and what we've got here is --
21 is -- is this -- what we're calling bookcase --
22 is that in the -- in the position it was when you
23 walk in from the living room and see the key
24 lying there?

25 A Yes, sir, I believe so.

1 Q Not quite flush against the wall, but close?

2 A Yes.

3 Q And, um, I don't know that we can get any better

4 angle on that, but, um, if -- it looks like the

5 cord running off the, uh, power pack for the

6 phone or whatever that is?

7 A Yes, sir.

8 Q Looks like the -- the cord is pressed up against

9 the wall?

10 A I don't know, sir. I can't tell.

11 Q Okay. What you do -- what you do see is the --

12 the -- the key there, uh, looks like it's, I

13 don't know, a few, two, three-something inches

14 away from the wall?

15 A Yes, sir.

16 Q Something like that; right?

17 A Yes, sir. That's correct.

18 Q And then maybe something like a similar distance

19 off to the side of the bookcase?

20 A Yes.

21 Q Now -- now that we have that zoomed in, Exhibit

22 210, tell me, um, there's a key ring; is that --

23 is that right?

24 A That looks like the key ring. Yes.

25 Q I mean, there was a key ring in other words?

1 A Yes, it's that blue whatever it is.

2 Q All right. Um, and then that -- the -- the

3 blue -- that -- that's blue fabric? The lanyard

4 we were talking about?

5 A Correct.

6 Q And the -- I guess it's the -- the female end of

7 the clasp?

8 A Right.

9 Q All right. Now, uh, you see a house key on

10 there?

11 A No, sir, I do not.

12 Q Garage key?

13 A No, sir.

14 Q Um, how about even one work key?

15 A No, sir.

16 Q Swipe card for a gym?

17 A No, sir.

18 Q Or athletic club?

19 A No, sir.

20 Q Just the long Toyota key?

21 A Yes, sir.

22 Q That's all that was on it when you saw it?

23 A Yes, sir.

24 Q Mr. Buting's going to go back to work and see if

25 he can find this Exhibit 169, which was the

1 picture of the -- the back panel -- the veneer
2 panel on the bookcase?

3 A Yes, sir.

4 ATTORNEY STRANG: We don't have that.
5 Um, Counsel, is -- is there a -- a regular
6 photograph of Exhibit 169?

7 ATTORNEY KRATZ: Sure. That's where the
8 exhibits are.

9 ATTORNEY STRANG: As opposed to just on the
10 screen?

11 ATTORNEY KRATZ: Yes.

12 Q (By Attorney Strang) One sixty-nine?

13 A Yes, sir.

14 Q You were shown that on direct?

15 A Yes, sir.

16 Q Okay. See if we can do it this way. All right.

17 ATTORNEY STRANG: Mr. Buting, we need
18 the gizmo. And then there's a second gizmo.
19 There we go. Lights, camera, action. All right.

20 Q (By Attorney Strang) How's that? Pretty good?
21 Can you see that?

22 A Yes, sir.

23 Q All right. Now, this photograph, whenever it's
24 taken, is taken after someone has pulled the
25 bookcase away from the wall a little bit?

1 A That's correct, sir.

2 Q That is, in -- in Exhibit 169, the bookcase, is
3 farther away from the wall than it was when you
4 first saw the Toyota key?

5 A Correct, sir.

6 Q And we can see that back veneer panel, or part of
7 the board, whatever the panel is on the back?

8 A Yes, sir.

9 Q All right. Did you -- did you touch this
10 bookcase at some point?

11 A I had been searching the front of the bookcase. Yes,
12 sir.

13 Q Okay. And, I mean, was it collected as evidence?

14 A The bookcase?

15 Q Yes.

16 A At this time, no, sir.

17 Q It wasn't?

18 A No, sir.

19 Q Uh, did -- did you, uh -- did you have a chance
20 to sort of touch the back panel there after --
21 after you noticed it sticking out like that?

22 A I don't believe so. No, sir.

23 Q So you -- you don't know whether it, uh -- it's
24 being held out there now and wanted to spring
25 back toward the frame or whether that's its sort

1 of resting position at this point?

2 A My estimate would be that's its resting position.

3 Q So it -- it -- it -- it's tendency there is to
4 spring open, not to spring shut?

5 A I wouldn't know. I would think so, but I wouldn't --

6 Q Well, okay. That's -- that's at least the way
7 you saw and perceived the bookcase after you
8 noticed the back panel loose like that?

9 A Yes, sir.

10 Q Now, you had been the first one to empty out that
11 bookcase?

12 A No, sir, I was not. Are we still talking about
13 November 8?

14 Q Uh, no, I'm just talking the first, uh --

15 A No, sir, I was not.

16 Q -- in general. On the 5th, you were not?

17 A No, sir.

18 Q All right. Did someone empty out that bookcase
19 in your sight?

20 A I believe -- yes, it was searched. I don't recall
21 watching them search it. I was on the other side of
22 the room.

23 Q Okay. But -- but you know that somebody searched
24 it on November 5?

25 A Yes, sir.

1 Q Took all the stuff out?

2 A I don't know if they took it all out. No, sir.

3 Q Or not. All right. Uh, how about on -- on

4 November 8? Do you know whether, uh, Mr. Colborn

5 took all of the stuff out of the bookcase?

6 A All the magazines, and the photos, and that type of

7 thing were taken out of the bookcase.

8 Q So that he could look in the bookcase?

9 A I suppose.

10 Q The bookcase doesn't have cabinet doors on it?

11 A No, sir.

12 Q It's a relatively small piece of furniture?

13 A Yes.

14 Q Maybe yea high?

15 A Yes, sir.

16 Q I don't know, 18 inches square on the top?

17 Something like that? Give or take?

18 A Approximately.

19 Q All right. Um, and, uh, did you get a chance to

20 look into the bookcase when it was empty of its

21 contents?

22 A I may -- I glanced in there. I didn't really take a

23 hard look in there. No, sir.

24 Q You didn't see a, uh -- a blue lanyard, and a

25 black clasp, and the Toyota key in the back in

1 that bookcase, did you?

2 A No, sir, I did not.

3 Q That's something you would have seen if the
4 bookcase was empty and you'd looked in it?

5 A Had I looked closely, yes, sir.

6 Q And, um, you're not -- you're not suggesting that
7 the key, and the lanyard, and the ring, and the
8 clasp were, uh -- were somehow wedged up into the
9 space where the back veneer separates from the
10 frame, are you?

11 A That's a possibility, yes.

12 Q And nobody saw a blue lanyard hanging down?

13 A Apparently not, sir.

14 Q Uh, and if that -- if that board tends to want to
15 rest at that position, how would somebody have
16 wedged something up in there and kept it there?

17 A I have no idea, sir.

18 Q Uh, did you look under the bookcase?

19 A I'm sure it was looked under when it was tilted to
20 the side. Yes, sir.

21 Q All right. You -- you didn't notice any -- any
22 tape or any secret compartment down there to hold
23 something?

24 A No, sir.

25 Q What you did notice is that the, um -- back to

1 the 210. What you did notice is that the, uh --
2 the key is found not behind the bookcase, is it?

3 A No, sir, it was not.

4 Q Uh, not flush with the wall, was it?

5 A No, sir.

6 Q But to the sides of the bookcase?

7 A Back by the corner to the side. Yes, sir.

8 Q And with -- with all of this which you've
9 described, and I won't even go to later
10 November 8 or November 9, but with all of this,
11 we've got a page or page-and-a-half of police
12 reports from you, didn't we?

13 A From myself, sir?

14 Q Yes.

15 A Yes, sir.

16 Q Now, November 5, when you, uh -- you volunteered
17 with Mr. Colborn and Mr. Remiker to search Steven
18 Avery's trailer, uh, as of that time you
19 previously had talked with Sergeant Colborn about
20 the depositions the two of you gave?

21 A I believe we did at some point. Yes, sir.

22 Q Talked before the depositions, didn't you?

23 A He asked me if I got a -- a deposition subpoena, and
24 I said, yes.

25 Q And the two of you had a little conversation

1 about that?

2 A Yes. I had no idea what I was getting subpoenaed
3 for, and he said it was because of a statement he had
4 made.

5 Q A statement -- you know, a phone call he had
6 gotten?

7 A Correct, sir.

8 Q From a Brown County law enforcement agency?

9 A That's what he said, sir.

10 Q From a detective?

11 A Yes, sir.

12 Q They had someone in custody?

13 A Yes, sir. I believe so.

14 Q Someone who had committed a Manitowoc assault
15 some years prior?

16 A It was a Manitowoc assault. I don't know if there
17 was a time attached to it. I'm not sure.

18 Q At least what Sergeant Colborn told you was there
19 was a few years prior. The detective from the
20 other Brown County agency was telling him.

21 A Yes, if that's what's on there.

22 Q And, uh, the detective also told Colborn that he
23 believed someone already was arrested for the
24 crime?

25 A That's correct, sir.

1 Q So Sergeant Colborn fills you in on what he
2 thinks the depositions are about and, uh, the two
3 of you don't talk about the depositions after
4 them?

5 A After the depositions?

6 Q Right.

7 A We may have mentioned it to each other.

8 Q Okay. But it's less than four weeks later,
9 November 5, and one thing you do know is that you
10 didn't mention that deposition to Special Agent
11 Fassbender?

12 A That's correct, sir.

13 Q You didn't mention it to Investigator Mark
14 Wiegert?

15 A That's correct.

16 Q Didn't hear Sergeant Colborn mention the
17 depositions to either of those two gentlemen
18 either?

19 A Not to my recollection. No, sir.

20 Q Didn't tell Sheriff Pagel that you'd been deposed
21 three, four weeks earlier?

22 A No, sir.

23 Q Had Steven Avery actually been sitting there
24 during your deposition?

25 A He came in after I had started giving my deposition.

1 Yes, sir.

2 Q And, um, without you telling Mr. Fassbender, and
3 Mr. Wiegert, Sheriff Pagel about the deposition,
4 there's really no way they would have known about
5 it, would they have?

6 A No, sir.

7 Q So that's not information they could consider in
8 deciding whether to accept your offer to
9 volunteer to search Mr. Avery's trailer?

10 A They didn't have that information, sir.

11 Q Because you didn't give it to them?

12 A No, sir, I did not.

13 Q In effect, you took the decision upon yourself
14 that this was information they didn't need to
15 have?

16 A At that time I didn't even think about the
17 deposition.

18 Q Would it have been a little bit fairer to
19 Mr. Fassbender if you had given him this
20 information so that he, as the lead -- one of the
21 two lead investigators, could have considered it?

22 A It would have been more information for him. I don't
23 know if it would have changed his decision.

24 Q I don't know either, but would it have been fair
25 to give him that information?

1 A Had I thought of it, yes, sir.

2 Q Would it have been fair to give that to

3 Mr. Wiegert or Sheriff Pagel?

4 A Same answer. Yes, sir.

5 Q And before you went rummaging through Steven

6 Avery's bedroom once, twice, three times,

7 whatever it was, for hours, would it have been

8 fairer to Steven Avery if someone other than a

9 person who had been deposed in his lawsuit had

10 done that search?

11 A No, sir, I don't think it would have been.

12 ATTORNEY STRANG: That's all I've got.

13 Oh. I'm -- I'm sorry.

14 Q (By Attorney Strang) You came back to

15 Mr. Avery's four months later? Not quite four

16 months later?

17 A Yes.

18 Q March 1 and March 2 of 2006?

19 A That's correct, sir.

20 Q Much smaller search this time, wasn't it?

21 A Yes, sir. I believe it was just the garage.

22 Q The entire rest of the property was not closed

23 off to the public?

24 A No, sir, it was not.

25 Q The rest of the property was not closed off to

1 the Avery family?

2 A I believe it was not. Yes, sir.

3 Q A search was going on in the garage?

4 A That's correct.

5 Q You came back?

6 A Yes, sir.

7 Q Did you participate in that search?

8 A No, sir, I did not.

9 Q Why were you back?

10 A I came back to see if they needed any, uh, food, any
11 assistance with supplies, see if I could help out.

12 Q Both days?

13 A I'm not -- I believe I was there both days. I'm not
14 sure.

15 ATTORNEY STRANG: That's all.

16 THE COURT: All right. Mr. Kratz?

17 **REDIRECT EXAMINATION**

18 BY ATTORNEY KRATZ:

19 Q Lieutenant Lenk, I'll start at the -- at the end
20 Mr. Strang's last line of questions. On March 1
21 or 2 did you ever enter any building on the Avery
22 property?

23 A No, sir, I did not.

24 Q Did you ever enter the trailer or the --
25 especially garage?

1 A No, sir, I did not.

2 Q Mr. Strang asked a series of interesting
3 questions about people that are wrongfully
4 accused of crimes and getting compensation for
5 that. Do you remember that?

6 A Yes, sir, I do.

7 Q When's the first time, Lieutenant Lenk, that you
8 learned in this case that you were being accused
9 of a crime?

10 A After I first observed the key and that came out into
11 the media.

12 Q Do you recall your name being on the front page
13 of the newspaper?

14 A I believe at some point it was. Yes, sir.

15 Q Do you recall being not so subtly suggested that
16 you committed a crime planting evidence in this
17 case?

18 A Yes, sir, I do.

19 Q How did you feel about that?

20 A I was upset, sir. Actually, I was mad.

21 Q Did you feel that Mr. Strang or Mr. Buting
22 wrongfully accused you of a crime?

23 A I did not commit a crime. If they said I did, then
24 they wrongfully accused me.

25 Q Mr. Strang asked you whether evidence that goes

1 to the Crime Lab, uh, comes back or how that
2 process works. Do you generally know how that
3 process works?

4 A Generally, the evidence that leaves the Manitowoc
5 County Evidence Room is sent to the Crime Lab. It
6 will come back from the Crime Lab to our Department
7 which will subsequently be put back into the evidence
8 room.

9 Q Well, the evidence sent in 2002 left the Clerk of
10 Court's Office; is that right?

11 A That's correct, sir.

12 Q Was that ever, to your knowledge, in the
13 Manitowoc County Sheriff's Department?

14 A Not to my knowledge.

15 Q Was it ever in your possession or under your
16 control?

17 A No, sir, it was not.

18 Q Do you ever recall seeing that evidence coming
19 back to your possession or control?

20 A No, sir, I did not.

21 Q Did you ever see a receipt for that evidence
22 coming back as one of the evidence custodians?

23 A No, sir.

24 Q Mr. Strang played a -- sounded like a telephone
25 call from Mr. Colborn. Do you know when that

1 call was made?

2 A No, sir, I do not.

3 Q Is there anything on that phone call that can
4 reflect whether it was before or after
5 Mr. Colborn went to Mr. Avery's house?

6 A I didn't hear anything on that call. No, sir.

7 Q You had mentioned that in the course of your
8 professional duties you've used a -- a cell phone
9 or some means to contact the Sheriff's Department
10 other than a radio; is that correct?

11 A That's correct, sir.

12 Q Just talking about you, personally, Lieutenant
13 Lenk, what are some of the reasons that you would
14 use a cell phone rather than an open air radio?

15 A One of the reasons would be, um, privacy of an issue
16 that we're working on. Uh, we wouldn't want it over
17 the general radio. Another reason would be it's
18 probably more of a -- a personal nature, um, get
19 information from the dispatcher. Um, it's not
20 unusual to use cell phones. They're becoming more
21 and more prevalent.

22 Q Mr. Strang suggested on cross-examination that
23 some citizens actually listen to radio traffic
24 that was called scanners. Remember that
25 question?

1 A Yes, sir, I do.

2 Q Do you know if Mr. Avery had a scanner in early
3 November of 2005?

4 A I know there was a scanner in the business area and
5 shop area. I don't know if Mr. Avery had a scanner.
6 (Exhibit No. 217 marked for identification.)

7 Q I show you what's been marked for identification
8 as Exhibit No. 2-1-7. Do you recognize that
9 location?

10 ATTORNEY BUTING: Sorry. What's the
11 exhibit number?

12 ATTORNEY KRATZ: Two-one-seven. Two
13 seventeen.

14 THE WITNESS: It looks like the living room
15 area of Mr. Avery's trailer.

16 Q (By Attorney Kratz) Do you see an item located on
17 the bar in Mr. Avery's living room?

18 A Yes, sir, I do.

19 Q Do you know what that item is?

20 A It looks like a scanner.

21 Q I'm going to show the jury what you've now
22 identified as Exhibit 217. That black item right
23 there, is that what you're talking about?

24 A Yes, sir, that's it.

25 Q Now, let me ask you, Lieutenant Lenk, if you were

1 doing a missing persons investigation and you had
2 some information that you wanted to verify, might
3 that be the kind of information that you'd use a
4 cell phone rather than open air radio?

5 A Yes, it could be.

6 Q Mr. Strang asked about the number of searches
7 that occurred inside of Mr. Avery's trailer.
8 Have you been involved in your career as a
9 detective in searches that, um, have required you
10 to go back and search some more for some other
11 items?

12 A Yes, sir.

13 Q Tell the jury, generally, what -- why that
14 happens? Why would you have to go back and
15 search a second time or a third time in -- in a
16 location?

17 A That would happen because you would get -- as you're
18 investigating, you come with more information that
19 would lead you to look for other items of evidence.

20 Q In those circumstances, would you think that your
21 first search was sloppy or unprofessionally done?

22 A No, sir.

23 Q You talk about additional information causing a
24 more detailed or directed search. Is that what
25 happened here?

1 A Yes, sir.

2 Q You think that there was any search that you
3 performed, any search that you individually were
4 involved in, that was unnecessary or was
5 frivolous?

6 A No, sir.

7 ATTORNEY STRANG: Actually, what he --
8 what he thinks about that is irrelevant, but we
9 can let the answer stand. That's fine.

10 THE COURT: Very well.

11 Q (By Attorney Kratz) Mr. Strang showed you Exhibit
12 No. 210 and asked whether or not you saw any,
13 um -- I wrote this down -- any house key, any
14 business key, or an athletic club or gym card,
15 you don't see any of that in Exhibit 210, do you?

16 A No, sir, I did not.

17 Q Assuming the evidence later in this case is going
18 to establish that this, in fact, was Ms.
19 Halbach's key, and, in fact, was found in
20 Mr. Avery's bedroom, do you know why Mr. Avery
21 kept Ms. Halbach's car key?

22 ATTORNEY STRANG: Object, Your Honor.
23 That's way beyond and speculative.

24 THE COURT: I'll sustain the objection.

25 Q (By Attorney Kratz) Well, let me ask you this:

1 Do you think Mr. Avery, uh, at any time had any
2 use for Ms. Halbach's athletic fitness card?

3 ATTORNEY STRANG: Speculation. Well beyond
4 his personal knowledge. And argument.

5 THE COURT: Sustained. I think that's a
6 question for the jury.

7 Q (By Attorney Kratz) Finally, Lieutenant Lenk,
8 the, um, defense attorneys have -- or excuse --
9 excuse me -- Mr. Strang has asked, um, how many
10 pages of reports you individually prepared in
11 this case. Do you remember that question?

12 A Yes, sir, I do.

13 Q Do you know how many pages of reports,
14 Lieutenant -- excuse me -- Sergeant Bill Tyson
15 prepared in this case?

16 A I'm not sure. I -- couple pages. I don't know.
17 More than that. He was there at least twice.

18 Q Mr. Tyson? Do you know how many pages of reports
19 he's prepared in this case?

20 A No, I don't.

21 Q Do you know how many pages of reports Deputy
22 Kucharski or Deputy Wendling has prepared?

23 A No, sir, I don't.

24 Q There was a -- a report that you were asked to
25 prepare; is that right?

1 A That's correct, sir.

2 Q And what, specifically, did that entail or
3 involve? Do you remember?

4 A It was -- involved the, uh, finding or locating of
5 that key. How that came about.

6 Q Okay.

7 ATTORNEY KRATZ: If I could have just one
8 moment, Judge, I'd appreciate it. I think that's
9 all for Lieutenant Lenk. Thank you, Judge. Thank
10 you very much.

11 THE COURT: Mr. Strang, anything on
12 recross?

13 ATTORNEY STRANG: I do. Just briefly.

14 **RECCROSS-EXAMINATION**

15 BY ATTORNEY STRANG:

16 Q Um, scanners are -- are things that all kinds of
17 people have, actually now, including Mr. Avery,
18 apparently; right?

19 A That's correct, sir.

20 Q Uh, the Averys, you know, are in the salvage
21 business?

22 A Yes, sir.

23 Q They run a wrecker or wreckers?

24 A That's correct, sir.

25 Q One would -- one reason to have a police scanner

1 would be to find out when there is a wreck on the
2 roads in the area; right?

3 A I believe that could be used for that, sir.

4 Q Sure. As -- nothing -- nothing unlawful about
5 having a scanner, is there?

6 A No, sir.

7 Q Here, um, in terms of radio calls being picked
8 up, Teresa Halbach's disappearance wasn't a
9 secret, was it?

10 A No, sir.

11 Q And we had Chop -- Chopper 4 and all kinds of
12 media coverage of this by the night of November 3
13 and November 4, didn't we?

14 A I believe so, yes.

15 Q Yeah. Uh, in fact, there were efforts to enlist
16 the public's help in finding her, weren't there?

17 A Yes, sir.

18 Q Uh, in any missing persons investigation, it
19 might be helpful to have the general public
20 involved?

21 A Yes, sir.

22 Q Would there have been any reason that her license
23 plate was something of a personal nature as you
24 say?

25 A No, sir. I would think not.

1 Q Any reason to keep that private?

2 A I don't know. I wasn't there when the call was made.

3 Q Any reason you can think of to keep it a secret?

4 A Other than to keep it from being too public.

5 Q Uh, the -- the stuff from the Clerk's Office, I
6 think this is clear, but regardless where it was,
7 or who got it, or who sent it, you're the guy who
8 filled out the evidence transmittal form, aren't
9 you?

10 A That was my job. Yes, sir.

11 Q A Manitowoc County Sheriff's Department Evidence
12 Transmittal Form.

13 A Correct, sir.

14 Q And, um, reports, as you've said, you got no idea
15 how many pages of reports, uh, Mr. Tyson, or
16 Mr. Wendling, or Mr. Kuchar -- Kucharski
17 prepared, do you?

18 A No, sir, I do not.

19 Q But, if they're witnesses, then we can -- we can
20 learn from them what they reported, and we'll
21 have the benefit of those reports when they
22 testify, won't we?

23 A Correct.

24 Q You don't have any idea how many pages of reports
25 Investigator Wiegert prepared either, do you?

1 A No, sir, I do not.

2 Q But he was one of the two lead investigators?

3 That you knew?

4 A Yes, sir.

5 Q So when we hear from him, we'll get to find out
6 about all of his reports?

7 ATTORNEY KRATZ: Objection, Judge, assuming
8 a fact not in evidence.

9 ATTORNEY STRANG: Um, I said when we
10 hear from him.

11 THE COURT: I'll sustain the objection.

12 Q (By Attorney Strang) Uh, finally, in, uh -- in
13 our system, uh, of criminal justice here in this
14 country, um, which side is it that brings
15 accusations of crime?

16 A Normally, the law enforcement, prosecutor side.

17 Q The -- the prosecution would be the lawyers, uh,
18 who are involved, formally, in accusing people of
19 crime?

20 A Yes, sir.

21 Q And, uh, what -- what do we do over here at the
22 defense table? What's our role in this system?

23 A Providing representation for the defendant.

24 Q We defend people accused of crimes, don't we?

25 A Yes, sir.

1 ATTORNEY STRANG: That's all I have.

2 THE COURT: Anything else?

3 ATTORNEY KRATZ: Not for this witness.

4 Thank you.

5 THE COURT: Very well. Mr. Lenk, you are
6 excused. Members of the jury, at this time we're
7 going to take our lunch break. I'll remind you not
8 to, uh, discuss the case among -- among yourselves
9 during the lunch break, and, uh, we'll resume at one
10 o'clock.

11 (Recess had at 11:57 a.m.)

12 (Reconvened at 1:01 p.m.)

13 THE COURT: Mr. Kratz, you may call your
14 next witness.

15 ATTORNEY STRANG: Your Honor, I wonder
16 before we do that, if I might just, uh, move in,
17 uh, exhibits from the last witness. Uh, I think
18 it's 214.

19 THE COURT: Any objection?

20 ATTORNEY KRATZ: Which is the -- Oh, no,
21 that's fine.

22 THE COURT: Very well. Exhibit 214 is
23 admitted.

24 ATTORNEY STRANG: And Mr. Kratz had 217,
25 and I won't have any objection to that either if

1 he wishes that in.

2 ATTORNEY KRATZ: Perhaps at the end of the
3 day, Judge, we can do a -- an accounting of what
4 hasn't been received yet, and we'll make that
5 motion, but we are prepared with our next witness.

6 THE COURT: All right. You may call
7 your next witness.

8 THE COURT: Dave Remiker.

9 **DAVE REMIKER,**

10 called as a witness herein, having been first duly
11 sworn, was examined and testified as follows:

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

14 THE WITNESS: Dave Remiker,
15 R-e-m-i-k-e-r.

16 **DIRECT EXAMINATION**

17 BY ATTORNEY KRATZ:

18 Q Mr. Remiker, how are you employed, sir?

19 A I'm a detective with the Manitowoc County Sheriff's
20 Department.

21 Q How long have you been involved in that kind of
22 work?

23 A Uh, since May 8 of 2003.

24 Q Prior to 2003, did you have other law enforcement
25 duties?

1 A Yes.

2 Q What was that?

3 A Um, January of, uh, 1993, I was hired as a, uh,
4 deputy jailer until October of 1993. Um, that lasted
5 until about January of 1999, which I was promoted to
6 the Narcotics Division, the Manitowoc County Metro
7 Drug Unit, and I was then promoted to detective in
8 May of 2003.

9 Q Who is your immediate supervisor?

10 A Uh, Lieutenant James Lenk.

11 Q Detective Remiker, um, do you also have, or have
12 you had in the past, responsibilities with the
13 Department as something called an evidence
14 custodian?

15 A Yes.

16 Q Could you tell the jury what that is, please?

17 A Uh, since about May of 2003, uh, as my assignment --
18 as I was given the assignment as a detective, I then
19 took on the, um, responsibility of being the evidence
20 custodian at the Sheriff's Department, which is, um,
21 a lot of evidence handling. Basically, handling all
22 the evidence that comes into and leaves, uh, the
23 Sheriff's Department, uh, which includes a temporary
24 evidence locker area and main evidence room area.

25 Q All right. We're going to talk about, uh, your

1 role, um, as a detective. What kinds of
2 responsibilities do you have as a detective?

3 A Uh, right now I work on, uh, property crimes, white
4 color crimes, fraud, sex assaults. I'm kind of the
5 individual that works on just about anything and
6 everything. Um, I really don't have any primary
7 focus in a certain type of investigation, uh, and a
8 lot of my focus is working in the evidence room also.

9 Q Um, normally, um, your investigative
10 responsibilities involve criminal behavior?

11 A Definitely. Yes.

12 Q Let me ask you, uh, Detective Remiker, on the 3rd
13 of November, 2005, uh, whether you were informed
14 of a Calumet County investigation that was
15 ongoing?

16 A Yes, I was.

17 Q And how were you informed of that investigation?

18 A I was off that day. Um, I believe I got paged, um,
19 probably by my supervisor, Lieu -- Lieutenant Lenk.
20 I responded to the Sheriff's Department and, uh, met
21 with, uh, some of our investigators, and Investigator
22 Dedering was at our Department, and he provided us
23 with -- with that information about, uh, the missing
24 female.

25 Q From what agency was, uh, Detective Dederling?

1 A Uh, Calumet County Sheriff's Department.

2 Q Let me ask you, that first day, the 3rd of
3 November, was your Department asked to provide
4 any insist -- any assistance in that
5 investigation?

6 A Yes.

7 Q And who was the person who had gone missing?

8 A Uh, Teresa Halbach.

9 Q What kind of investigation were you asked to
10 assist with?

11 A Um, we had received information that, uh, Teresa was
12 missing, and that there were some individuals that
13 they believed, uh, Teresa may have had contact with,
14 uh, and both of those, uh, locations were in
15 Manitowoc County.

16 Q And who were those individuals?

17 A I believe one of the residents was on County Trunk
18 Highway B, as in boy, um, and that was, uh, George
19 Zipperer residence, and the other residence or
20 location was the Avery property.

21 Q Were you personally involved that evening, that
22 is the 3rd of November, in visiting either one of
23 those residences?

24 A Yes. I went to the, uh, George Zipperer residence.

25 Q Do you know if anybody had gone to the Avery

1 residence?

2 A I believe Sergeant Colborn had gone to that location.

3 I was -- I was advised of that.

4 Q So it was somebody other than you?

5 A Yes.

6 Q But you were involved in visiting the Zipperer
7 residence?

8 A Yes.

9 Q Detective Remiker, in, uh, visiting the Zipperer
10 residence on the 3rd of November, um, just in
11 very broad terms, broad brush strokes, did you
12 perform somewhat of an investigation to see if
13 Ms. Halbach had been there on the 31st?

14 A Yes.

15 Q All right. After those events, that is, after
16 Sergeant Colborn was at Avery's, and after you
17 had gone to Zipperer's, um, did you, um, have
18 a -- a get-together or a meeting?

19 A After we made contact at the Zipperer residence, uh,
20 I recall I was driving my squad car, uh, Investigator
21 Dederling was in the passenger seat, and if I recall
22 correctly, I think it was about 10:30 at night.

23 It was getting a little bit late, and I
24 had some concerns about going out to the Avery
25 property at that time of the night and -- and

1 questioning people or start asking more
2 questions, so we made a decision that it was
3 getting a little late, we'll -- we'll re -- uh,
4 return, maybe, um, do some further investigation
5 the following day.

6 Q The next day, then, did you, together with
7 Calumet County, decide to do some further
8 investigating?

9 A Yes. We received a call from Calumet County, uh,
10 Sheriff's Department, Investigator Wiegert, and he
11 indicated that he wanted us to, uh, go make contact
12 with, uh, Steve to see if we could obtain any more
13 information.

14 Q By Steve, you mean the defendant, Steven Avery?

15 A Yes.

16 Q Did you do that on the 4th?

17 A Friday, the 4th, I did. Correct.

18 Q And could you describe that contact for us,
19 please?

20 A Uh, Lieutenant Lenk advised me that, uh, Investigator
21 Wiegert had contacted us and wanted us to go make
22 contact with Steve, um, and -- and see if we could
23 get consent to search his residence. See if Teresa
24 was there.

25 Um, Lieutenant Lenk drove the vehicle.

1 Uh, I was in the passenger seat. We drove out to
2 the Avery property. We turned onto Avery Road.
3 We had no idea where we were going. Uh, we had
4 no idea where Steve's residence was. Uh, we kind
5 of got to a fork in the road and we decided to
6 turn right.

7 Uh, we went down that roadway and we
8 came to, um, a red trailer house, and the numbers
9 on the house were 12932, and that was -- that was
10 the address of Steven Avery, so we figured that
11 was the residence.

12 Q All right. Did you exit your vehicle at that
13 time?

14 A Yes.

15 Q Eventually, Detective Remiker, you made contact
16 with Mr. Avery and his mother? Is that what --

17 A Yes.

18 Q Describe that, uh, encounter briefly, please?

19 A Uh, tried at Steve's residence. No answer. Then I
20 went over to the next residence. Um, found out later
21 that's Barb Janda's residence. I tried contact
22 there. Nobody answered.

23 We got back into our car. We started
24 driving down the driveway, and there was a golf
25 cart that started driving down the road towards

1 us, and we stopped our vehicle. Um, I got out,
2 Lieutenant Lenk got out, and, um, Steven was
3 seated in the passenger side of the golf cart,
4 and I think Delores was driving the golf cart,
5 and we -- we stopped and identified ourselves to
6 them, and we then began a conversation.

7 Q Did you ask for, uh, something called consent or
8 permission to enter Mr. Avery's residence,
9 itself?

10 A Yes.

11 Q And did Mr. Avery give you that consent?

12 A Yes.

13 Q Um, why don't -- Excuse me. Why don't you tell
14 the jury what you did then?

15 A After we received consent?

16 Q Yes.

17 A Um, uh, Steve, uh, told us that we could go into his
18 residence to take a look. I said, I want you to come
19 with me. I don't want to just go in there alone.
20 So, um, he followed us. Uh, we drove our vehicle up
21 to the residence, and I think Steve and Delores drove
22 up in the golf cart, and we went to the door, and
23 Steve opened the door and allowed us in.

24 Um, Lieutenant Lenk stayed kind of in
25 the living room area with Steve. I -- I don't

1 recall if Delores was in the residence or not.
2 And I went to the back bedroom. I was --
3 obviously, at that point, I'm looking for Teresa.
4 I'm looking for a body. I'm looking for a human
5 being. And I walked around, uh, the residence to
6 see if I could find a person.

7 Q Did you find any persons in that residence?

8 A No.

9 Q About how long did this entire encounter take, if
10 you recall?

11 A We arrived on the property, uh, my notes indicate,
12 1020 hours, and we were completed with the consent
13 search, being out of the residence, done searching,
14 at 10:35. I was in his residence for five minutes.

15 Q All right. At that time, Detective Remiker, did
16 you have any reason to believe that, uh,
17 Mr. Avery had been involved in this missing
18 persons case? In other words, other than
19 information that you'd received from Calumet
20 County?

21 A No. He -- he said he had contact with her. He said
22 that, um, she had been in his residence where he paid
23 her for the services, and said, hi, how are you
24 doing? Some small talk. Other than that, I had no
25 reason to believe that Steve had anything to do with

1 anything.

2 Q Did you and Lieutenant Lenk talk about that very
3 thing?

4 A Yes.

5 Q What did -- what did you two talk about?

6 A I think my comments were, I think Calumet County is
7 barking up the wrong tree. I don't remember my exact
8 words. Um, I -- I just -- at that time I didn't have
9 any reason to believe that Steve had anything to do
10 with it.

11 Q Did Lieutenant Lenk make any comments to you
12 about, well, we've got to make sure that Steve's
13 involved, or that he did it, or anything like
14 that?

15 A I think we both were in agreement at the time that
16 Steve had nothing to do with it. That was just our
17 feeling.

18 Q All right. My question, though, is, did you note
19 from Lieutenant Lenk any animosity towards
20 Mr. Avery? Just -- The defendant, Steven Avery?

21 A No.

22 Q Okay.

23 A None at all.

24 Q Where did you go then?

25 A On the way back to the Department, I called

1 Investigator Wiegert. Um, I told him that we made
2 contact with Steve. Uh, that he gave us consent to
3 search his residence. I went inside. I didn't find
4 Teresa, and he -- he thanked me for, uh -- for giving
5 him a hand, and I told him he could just recontact us
6 if he needed anything else.

7 Q Now, I think that at least by inference you've
8 answered this question already, but let's just
9 make sure. Prior to that date, had you ever been
10 to the Avery Salvage Yard?

11 A I have never been on Avery Road in my entire life.

12 Q And in asking Lieutenant Lenk, or in observing
13 his driving habits, did you note that he'd ever
14 been there before?

15 A We had no idea where we were going. We drove down
16 Avery Road, we got to that fork in the road, and
17 there's buildings, there's shops, there's all kinds
18 of things there, and we, um -- luckily we took the
19 right turn and went down the -- to the right and
20 located the trailer.

21 Q What's the next part of this case that you were
22 personally involved in?

23 A Um, that would have been Saturday, the 5th. That was
24 my, uh, weekend to work, uh, which meant I came in at
25 eight o'clock in the morning, and, um, at one point I

1 called Investigator Wiegert. I think that was about
2 9:03 a.m., and I just, uh, made contact with him.

3 We had received some information that
4 somebody seen a car, a Toyota Rav 4, driving
5 northbound on -- near De Pere. Very generic,
6 generalized, description, or tip, and I told him
7 about that, and then we just discussed what the
8 game plan was for -- for that day.

9 Q Why did you share that -- that vague tip with
10 Investigator Wiegert?

11 A I'm sure he asked me if we had received any
12 information at that time. I -- I think this was in
13 the media. It was broadcasted. People were looking
14 for that vehicle or that license plate. Just made
15 contact to see how things were going, see if they had
16 obtained any more information, and I just mentioned
17 to him that, uh, there was -- we got maybe this call,
18 or maybe somebody said this, or somebody said that.

19 Q Sometime later that morning, uh, specifically at
20 about 10:30 that morning, Saturday, the 5th, did
21 you receive some additional information?

22 A Yes.

23 Q Can you tell the jury what that was, please?

24 A Well, I got a -- a call from, uh, Investigator
25 Wiegert, and he said that he just got a call from a

1 female, or two females that, um, they were out on the
2 Avery property, and they found a car that may be
3 Teresa's, and the comments were, you -- you need to
4 get out there. That was the first phone call.

5 Q Since this was in Manitowoc County, that is, the
6 Avery salvage property, um, were you still at
7 this point actively involved in at least that
8 part of the investigation?

9 A Yes.

10 Q Okay. What did you do?

11 A Um, after I received the phone call, I grabbed a
12 bunch of my evidence bags and kits, and I, uh, ran
13 outside, went to my squad car, and I got in. Um, I
14 started, uh -- I let dispatch know, I let the shift
15 commander know, and I started responding to Mishicot.
16 That's about 10:49, 10 to 11 in the morning.

17 Q Did you proceed to the Avery salvage business
18 then?

19 A Yes.

20 Q About what time was it that, uh, you got to the
21 Avery salvage business, if you recall?

22 A 10:59 a.m.

23 Q Were you the first to arrive or were there other
24 people there?

25 A There were other people there.

1 Q Do you know from which department those were?

2 A They were from our Department, the Sheriff's
3 Department.

4 Q Who was there?

5 A On my way there, as I was getting more information, I
6 told -- I asked if somebody was in the vicinity, if
7 anybody was close to Avery Road. Uh, Deputy O'Connor
8 was close. And I was getting more information that
9 sounded like this may be her vehicle. I instructed
10 Deputy O'Connor to park at the end of Avery Road and
11 147, and I told him not to let anybody in and don't
12 let anybody out until we have some more information.

13 So he was parked at the end of the road.
14 Um, Sergeant Orth arrived just before me, and
15 Lieutenant Hermann arrived, um, right around the
16 same time I did.

17 Q On your arrival, where did you go?

18 A I wasn't sure where I was going to go. Uh, at one
19 point I called one of the Sturm -- I think Nikole or
20 Pam -- and she told me where to go. Just keep going
21 straight as you come in on Avery Road. And that's
22 what I did. And come in on Avery Road, and then you
23 go down into a gravel pit area. And I seen Pam and
24 Nikole standing, um, down in that area, and I parked
25 my squad right down there.

1 Q If you want to look at the, uh, exhibit, Exhibit
2 No. 86, as you're coming in, and when you get to
3 this fork --

4 A Yes.

5 Q -- instead of going right to Steven's, you were
6 instructed to go straight; is that right?

7 A Straight. Yes.

8 Q Did you do that?

9 A Yes.

10 Q And where did you go next?

11 A Um, if you continue to go straight, uh -- yeah, just
12 proceed a little -- There you go. Right there.

13 Right -- Good. The bottom left-hand corner, uh, is
14 where we drove in. And then you can kind of see the
15 light-colored, uh, gravel, um, between the mass of
16 cars. My car parked right about where, uh, the end
17 of the light-colored gravel is, towards -- towards
18 the top -- right -- right before that pond area.

19 Q Detective Remiker, we're going to provide you
20 with a laser pointer so that you can --

21 A That will help.

22 Q -- better explain your testimony.

23 A Yes. Thank you. I parked right about there.

24 Q So that would be north of the, um -- the pond
25 area; is that right?

1 A Yes.

2 Q Now, do you know where the -- uh, something
3 called the car crusher is?

4 A Yes.

5 Q Where's that?

6 A That is right there.

7 Q So orange --

8 A Yes.

9 Q -- piece of equipment?

10 A Correct.

11 Q And what's next to the car crusher along the --
12 that edge if you -- if you know?

13 A I believe there were crushed cars along that -- right
14 alongside that car crusher.

15 Q My question is: Did you see that at that time?

16 A Yes.

17 Q I'm just -- So that I don't forget, I'm going to
18 show you one exhibit that has yet to be
19 identified. Have you take a look at Exhibit No.
20 70 and tell us what we're looking at there?

21 A Those are crushed vehicles that are in the vicinity
22 of the car crusher on one side or the other.

23 Q Is that how they looked on the 5th of -- of
24 November?

25 A Yes.

1 ATTORNEY KRATZ: I move the admission of
2 Exhibit 70 so I won't forget to do that, Judge.

3 THE COURT: Any objection?

4 ATTORNEY STRANG: No objection.

5 THE COURT: All right. The exhibit is
6 admitted.

7 Q (By Attorney Kratz) All right. Who else was at
8 that location when you got there?

9 A Pam and Nikole Sturm were standing down there. Um,
10 eventually more people arrived. I don't know at what
11 point you're talking.

12 Q Well, that -- that's the point that I'm -- I'm --
13 I'm discussing. You had some contact with Pam
14 and Nikole Sturm; is that right?

15 A Yes.

16 Q Uh, did they point out for you the Rav 4 or its
17 location?

18 A Yes.

19 Q What did you do after they pointed that out to
20 you?

21 A I looked in that area. I couldn't really see the Rav
22 4, and I then began walking. Uh, there's kind of a
23 path here, and then I took a right and I walked in,
24 and Sergeant Orth had just arrived, and I went
25 towards him, and there was a vehicle, and it was all

1 covered up. It was a Toyota Rav 4, no license
2 plates.

3 Q All right. What were your responsibilities then?

4 What -- what did you do when you saw that Rav 4?

5 A Well, I -- The best way to first identify whether it
6 was Teresa's was -- it didn't have license plates, so
7 you couldn't identify it that way, so the next best
8 thing would be to, uh, look at the VIN number, and I
9 had -- I carried along a manila envelope, and in that
10 envelope I had, uh, a printout of the missing or
11 endangered, um -- printout that had Teresa's name on
12 it and the vehicle, and I had that with me, and I
13 walked up to the vehicle and started looking at the,
14 uh -- the VIN number.

15 Q The VIN number -- the VIN number is a Vehicle
16 Identification Number; is that right?

17 A Yes.

18 Q And where is it located on this vehicle?

19 A This was located, um, right by, um, the front
20 driver's side window. The lower left-hand corner, I
21 guess, if you're seated inside the driver's seat of
22 the vehicle.

23 Q All right. You said you had a flashlight with
24 you?

25 A Not at first.

1 Q Oh, I'm sorry. Uh, uh, I jumped ahead. Did you
2 come in possession of a flashlight?

3 A Yes. I couldn't read all the VIN numbers and I asked
4 either Lieutenant Hermann or Sergeant Orth for a
5 flashlight because I -- I thought that would help
6 with glares and different -- the lighting conditions
7 weren't the greatest to see, plus the VIN plate was
8 moved or tampered with.

9 Q All right. Were you then able to identify this
10 vehicle?

11 A Yes.

12 Q And whose vehicle was it?

13 A Um, all 17 numbers matched the VIN number of the
14 vehicle that was registered to Teresa Halbach.

15 Q Now, while you were there, we've heard from other
16 deputies that were on scene, but let me ask you,
17 specifically, did you, uh, touch or otherwise
18 disturb that vehicle?

19 A That vehicle wasn't touched at all. I looked at the
20 VIN number, glanced in the back window. That vehicle
21 was not touched.

22 Q How can you be so sure?

23 A Because I -- The way it was concealed, the suspicious
24 nature of it, I knew we had something on our hands
25 here. And I very specifically instructed nobody to

1 even touch the vehicle. Don't check the doors.

2 Nothing.

3 Q All right. That was important to you that nobody
4 touched the vehicle?

5 A That was very important.

6 Q Did you make that fact known to the other
7 deputies that were on the scene?

8 A Yes. In fact, I told Sergeant Orth that he should
9 watch the vehicle, but don't even get close to it.
10 In fact, he probably stood 10, 15 yards from the
11 vehicle just to make sure.

12 Q Being a detective, did you do some initial
13 investigative work around that vehicle or just
14 some cursory investigation?

15 A I checked the VIN number. Uh, I remember peeking
16 into the backseat. There was a, uh, digital camera,
17 photo card, like a memory card, that you put in a
18 digital camera. That was in the back area.

19 Um, I remember seeing the letters,
20 T-E-R-T-H-E-R-E-S. Looked like Teresa --

21 Q Okay.

22 A -- or Terese written on it. Um, I looked under the
23 vehicle real quickly to see if maybe Teresa was under
24 there and, um, that was it.

25 Q You didn't see any body?

1 A No.

2 Q Was your purpose, uh, Detective Remiker, to
3 verify anything other than that that was Teresa's
4 vehicle on the scene?

5 A That's all I felt was necessary at the time, and
6 then -- and I had contacted, Lieu -- uh, Investigator
7 Wiegert and told him the VIN was confirmed.

8 Q Okay. Make sure you speak up nice and loudly --

9 A I'm sorry.

10 Q -- so that we can all -- we can all hear you.
11 Um, other than Manitowoc County authorities being
12 on scene, was there anybody else that was either
13 there or en route?

14 A I called Investigator Wiegert on our radio on the
15 Sheriff's frequency. Uh, and I think he was
16 monitoring at that time, in fact, I know he was, and
17 I told him -- I think the word I used was
18 "confirmed." The VIN was confirmed.

19 Um, he was on his way with Sheriff
20 Pagel. Um, eventually some other investigators
21 showed up. Um, Earl Avery showed up on a
22 four-wheeler.

23 Q Did you speak to Earl Avery? One of the, uh,
24 Avery brothers?

25 A Yes.

1 Q About how long was it before Calumet County
2 authorities arrived, if you recall?

3 A I got there roughly 11 a.m. and I think they arrived
4 at 11:06 is what my notes say.

5 Q All right.

6 A Six minutes. Five. Within ten minutes.

7 Q Five or six minutes is what Manitowoc was there;
8 is that right? How long?

9 A Oh, yes. Very shortly. Yes.

10 Q Thereafter, it was Calumet County, to your
11 knowledge, continuously at that scene from that
12 point, actually, through the 12th of November?

13 A Yes.

14 Q In that five or six minutes that Manitowoc
15 County, uh, was there alone, would you have been
16 in a position to see if anybody either entered
17 that vehicle or tampered with that vehicle?

18 A Nobody entered that vehicle or did anything to that
19 vehicle other than watch it.

20 Q All right. Let me ask you, Detective, uh,
21 Remiker, at some point shortly thereafter, were
22 you joined by your district attorney, Mr. Rohrer,
23 and Mr. Griesbach, an Assistant D.A., from, uh,
24 Manitowoc County?

25 A Eventually, those individuals came to that location.

1 Yes.

2 Q After their arrival, do you recall a discussion
3 regarding who should head up both this
4 investigation and, if necessary, uh, any, um,
5 lawyer involvement, any D.A. involvement, in the
6 case?

7 A There was a lot of discussion about that, yes.

8 Q Can you recount that for the jury, please?

9 A Um, obviously, uh, there were Calumet County people
10 there. There were, um, Manitowoc County, uh,
11 investigators, administrative staff there. In fact,
12 um, at one point, uh, Deputy Inspector Schetter
13 arrived, and, um, he had, obviously, more knowledge
14 or -- or understanding of what was going -- his
15 perception of maybe a conflict of inter -- interest
16 in some ongoing litigation between, uh, Steven Avery
17 and Manitowoc County.

18 And there was a decision made and a
19 discussion made amongst Manitowoc County
20 individuals, Calumet County individuals, and
21 individuals from each District Attorney's Office
22 that it was probably in the best interest to have
23 Calumet County officers, um, work on the
24 investigation, and, uh, they would even also, uh,
25 ask the State of Wisconsin or DCI to assist also.

1 Q All right. That's from a law enforcement
2 standpoint. Did you also understand that
3 something called a search warrant had to be
4 applied for with a judge?

5 A Yes.

6 Q And were you informed as to, uh, which lawyers
7 might be involved in securing that search
8 warrant?

9 A Yes. Um, it was decided that the Calumet County, uh,
10 District Attorney's Office, in fact, yourself, would,
11 um, take over as, um, special prosecutor in the case
12 or -- or handle the case.

13 Q All right.

14 A And the search warrants would go through Calumet
15 County.

16 Q The search warrant application process, are you
17 familiar with that, generally?

18 A Yes.

19 Q Were you involved that day in applying for a
20 search warrant from, uh, Judge, uh, Fox, of, uh,
21 Manitowoc County?

22 A I was specifically given instructions to go get, um,
23 descriptions of different buildings or residences for
24 the application of a search warrant.

25 Q And did you assist in that process?

1 A Yes.

2 Q In fact, uh, Mr., uh, Remiker, did you accompany
3 some lawyers and some other law enforcement
4 officers to Judge Fox's house, to his residence,
5 in which to secure the search warrant?

6 A I did.

7 Q Was a search warrant obtained that morning? Or,
8 excuse me, that afternoon?

9 A Yes. Between, uh, probably 2 and 3:30, we had, uh,
10 obtained the search warrant signed by Judge Fox.

11 Q All right. After receiving the search warrant,
12 after receiving judicial, uh, authority --
13 authorization to search that premises, tell the
14 jury what you did, please?

15 A We returned -- We got back to the Avery property, uh,
16 about 3:25 in the afternoon. Uh, we all got
17 together. It was -- I believe it was starting to get
18 dark, and we then discussed amongst, um, Investigator
19 Wiegert and Agent Fassbender how we were going to
20 carry out the different tasks that we knew we needed
21 to carry out.

22 And we discussed that. We talked about
23 it. We tried to figure out who was going to do
24 what. Who was going where. What was I -- what
25 was our priority at that time, and, uh, at -- at

1 some point, based on our discussion, we decided
2 that certain individuals would go check certain
3 areas.

4 We -- we were very concerned that Teresa
5 was still out there and hopefully alive, uh, was
6 what we were hoping for. So we needed to do some
7 checks to see if she was somewhere on that
8 property.

9 Q Was there somewhat of a time crunch involved in
10 that decision?

11 A Obviously, if Teresa was out there, and she was
12 injured or hurt or something, we were urgent -- I
13 mean, we had that urgency to see if we could find
14 her. Um, I mean, we were all under the gun out
15 there. We had a lot of work to do.

16 Q All right. Let me ask you -- I -- I forgot to
17 ask. On your return with the search warrant, um,
18 do you recall that a system had been set up to
19 log officers in and out of that property?

20 A Yes.

21 Q And did you then log in when you came back with
22 the search warrant?

23 A Yeah. I don't know how many layers were -- there
24 were. I know there was a vehicle parked at the end
25 of Avery Road and 147 log -- uh, logging people in

1 and out. Um, and then I believe there were
2 additional checks at each portion of the driveway
3 where -- where it kind of forked out. I think there
4 were people there also.

5 Q Let me ask you this, uh, Detective Remiker, when
6 you got this information from Investigator
7 Wiegert, did you, um, keep your boss informed of
8 what was going on out there?

9 A Yes. Right -- right after I confirmed the VIN number
10 on her car, I contacted dispatch and told them to
11 page Lieutenant Lenk and Detective Jacobs.

12 Q When you left, that is, before the search warrant
13 was applied for, was Lieutenant Lenk there yet?

14 A No.

15 Q Upon your return with the ex -- or, excuse me,
16 with the actual search warrant having been signed
17 and authorized by Judge Fox, uh, was Lieutenant
18 Lenk then at the property?

19 A Yes.

20 Q Any question, Detective Remiker, who had command
21 or control authority over this scene?

22 A Uh, definitely Investigator Wiegert and Agent
23 Fassbender. Everything went through them.

24 Q In other words, there's no question in your mind
25 that this wasn't a Manitowoc County case anymore?

1 ATTORNEY STRANG: Leading, and asked and
2 answered.

3 ATTORNEY KRATZ: I -- I -- I can move on,
4 Judge. I just --

5 THE COURT: All right.

6 ATTORNEY KRATZ: This witness', uh,
7 perception is what I would ask, but I'll move --
8 I'll move on.

9 Q (By Attorney Kratz) Were you aware and, in fact,
10 did you provide services, assistance, to
11 Misters Fassbender and Wiegert?

12 A Yes.

13 Q And what, uh, role were you specifically going to
14 provide and, if you know, that of Manitowoc
15 County?

16 A Well, in a case like this, uh, probably the most
17 important people are evidence technicians. Those are
18 people who have specialized training in, um,
19 identifying, collecting, packaging, labeling,
20 sealing, securing, uh, evidence. So those are --
21 those people are very important.

22 And I'm an evidence tech, uh, Lieutenant
23 Lenk is an evidence tech, Sergeant Colborn is an
24 evidence tech. Two individuals that I -- I trust
25 and individuals that I felt would be very

1 thorough and very -- be very competent and
2 professional. So I offered them, um, the
3 services of myself, and Lieutenant Lenk, and
4 Sergeant Colborn to -- to give them a hand. Plus
5 we had all our equipment out there.

6 Q So it was you that volunteered those services?
7 Is that your testimony?

8 A Oh, yes. Definitely.

9 Q Let me ask you this, Detective Remiker, were you
10 familiar at that time that Lieutenant Lenk or
11 Sergeant Colborn had been involved or that
12 provided a deposition in some civil lawsuit by
13 Mr. Avery?

14 A I'll tell you this, when we were out there, and the
15 magnitude of what we all had to do, and the fact that
16 it was very overwhelming, that was never even thought
17 of.

18 ATTORNEY STRANG: That wasn't my
19 question, Your Honor, so I can't move to strike
20 as non-responsive, but it is a narrative.

21 THE COURT: Uh, I'm going to sustain the
22 objection. The answer is unresponsive.

23 ATTORNEY KRATZ: All right. We'll break
24 it into -- into specific, uh -- into specific
25 points.

1 Q (By Attorney Kratz) You talked about the size of
2 this undertaking. Can you put that into context
3 for the jury, please?

4 A Thirty, forty acres, thousands of cars, buildings,
5 outbuildings, residences, shops, garages, uh, there
6 was a lot of searching to do.

7 Q Did you recognize any resource allocation issues
8 or problems?

9 A I felt that myself and -- and the individuals that --
10 that, um, I asked to accompany me could carry out
11 certain tasks. There were other tasks that needed to
12 be done by a lot of other people.

13 Q No. Let me ask you this: The evidence techs, or
14 people that you knew had specialized training
15 in -- in collection, packaging, um, and, uh,
16 processing of evidence, were those individuals
17 put into search teams?

18 A Yes.

19 Q Were you made part of one of those search teams?

20 A Yes.

21 Q Who else was involved in your search team?

22 A Which search?

23 Q That very -- that -- that -- the first day. On
24 the 5th. Or were there more than one searches on
25 the -- on the 5th?

1 A Well, initially, myself and, um, Investigator Steier,
2 Gary Steier from Calumet County Sheriff's Department,
3 we initially went in to Steve's residence for the
4 very first time on that Saturday to see if Teresa was
5 in there. So it -- that was, I guess, in some terms
6 a search. A search for Teresa, and then there was
7 another search done in Steven's trailer a little bit
8 later.

9 Q Is there another term for that, uh, first kind of
10 search?

11 A It was -- I -- we were looking for Teresa. It was
12 a -- it was a -- I wouldn't say it was a forensic
13 search. It was a search rescue-type thing. See if
14 she was in there.

15 Q How long were you in the -- in the residence?

16 A Ten minutes.

17 Q After that initial walk-through of Steve's
18 trailer, were there other teams then that were
19 assembled?

20 A Yes.

21 Q Uh, just so the jury understands, were other
22 residences and outbuildings also gone through
23 quickly that very first time?

24 A Yes.

25 Q So it wasn't just Steve's trailer?

1 A No.

2 Q And thereafter, were you put into a search team?

3 A Yes.

4 Q And who was that search team comprised of?

5 A Myself, um, Lieutenant Lenk, Sergeant Colborn, and
6 Sergeant Bill Tyson from Calumet County Sheriff's
7 Department.

8 Q I don't intend, since we've had three other
9 witnesses talking about the searches, to go
10 through item by item, but I do want to go
11 through, uh, at least some of these things in --
12 in a broad sense. Did you accompany Sergeant
13 Tyson, uh, and those other two Manitowoc
14 individuals to Steve's trailer?

15 A Yes.

16 Q Could you describe that search effort that night,
17 please?

18 A Um, Sergeant Tyson was assigned to, uh, pretty much
19 document as much as he possibly could in that
20 trailer. And then once we, uh, went into the
21 trailer, we had decided that we were going to first
22 go to that back bedroom, uh, which we eventually
23 identified as being the bedroom of Steven Avery.

24 I discussed it with the other officers,
25 and we determined that each officer would take a

1 specific area of that bedroom. I had the closet,
2 the dresser area, which is on one side of the
3 bed, and, um, Sergeant Colborn kind of had the
4 other side of the bed where, um, there was some
5 cabinets and drawers and stuff like that. And,
6 then, uh, I think Lieutenant Lenk helped me, um,
7 in the closet area.

8 Q All right. Was each room of Steve's trailer
9 searched that night?

10 A Yes.

11 Q Were photographs taken?

12 A Yes.

13 Q Um, who was involved in the photography, if you
14 recall?

15 A Um, I took digital photographs and Sergeant Colborn
16 took 35mm photographs.

17 Q About how long did that first search take, if you
18 recall? The second search.

19 A I believe it was from about 7:30 until about
20 10:00 p.m.

21 Q In that two-and-a-half-hour time frame, um, were
22 you aware -- or was it decided whether your
23 search team had a -- a leader or who was
24 directing the search?

25 A Sergeant Tyson was documenting everything. Um, we

1 were -- You know, we discussed everything before we
2 did it. You know, let's now go to this room. You do
3 this, you do that. We all were in agreement. I
4 don't know if there was anybody who was really -- who
5 really stood out or was a commander, I guess.

6 Q Okay. Which individual or which agency took
7 control of the physical items that were seized?

8 A Uh, Calumet County Sheriff's Department took
9 everything.

10 Q By the way, do you remember the weather that
11 night?

12 A Cold. Um, Saturday. I know it was cold. I don't
13 remember if there was precipitation, or rain, or
14 snow. Sunday, there wasn't. I know that.

15 Q After the search was completed in Mr. Avery's
16 trailer with your search team, um, where did you
17 go?

18 A Um, we were done for the night after the, uh -- We
19 did -- we did Steven's trailer, and then, um, I think
20 we went back to the command post, and all the
21 evidence was given to Calumet County, and they --
22 they secured it.

23 Q Do you have any discussions at the end of the day
24 kind of thing?

25 A Yes. What all had -- what had to be done the next

1 day. Um, what our priority was. Um, who needed to
2 be back on the property the next day.

3 Q And who made that decision, if you recall?

4 A Um, Calumet County Investigator Wiegert and Agent
5 Fassbender.

6 Q Agent Fassbender's actually not Calumet County;
7 is that right?

8 A Correct.

9 Q The next day, then, on Sunday, the 6th, can you
10 tell the jury what you did?

11 A Uh, we arrived early in the morning. Our next
12 priority was to search the garage, which we believed
13 was Steven Avery's garage, and, uh, at that point,
14 um, we had a team that got together; myself, um,
15 Sergeant Colborn, Lieutenant Lenk, and Deputy
16 Kucharski from Calumet County Sheriff's Department.

17 And, again, we would designate who did
18 what, what each individual had to do and what
19 their duties were, and, um, I believe it was
20 right at eight o'clock in the morning we went
21 into the garage and started doing our search of
22 the garage.

23 Q Whose garage?

24 A Steven Avery's garage. The detached garage.

25 Q After completing that search, can you tell the

1 jurors where you went next?

2 A Uh, we were done with that about ten to ten with the
3 garage, and we had received some information that
4 there was -- there were some burning barrels. There
5 were four burning barrels behind Barb Janda's
6 trailer, and they wanted to, um, grab those barrels
7 and put them in a -- an enclosed trailer.

8 It was starting to rain, sleet. It
9 was -- it was pretty miserable out there at the
10 time, and I think we got some tarps on the
11 barrels, and then I had told them before we moved
12 them, before we load them out -- load them up,
13 we're going to have to itemize them or designate
14 a number, and then take photographs so we know
15 their exact position prior to them being moved.

16 Q Exhibit 52 that's now being shown in the
17 courtroom. Does that document that event?

18 A Yes.

19 Q And who is that in the orange jacket?

20 A That's myself.

21 Q What are you doing in this picture?

22 A It was windy. Um, to me it looks like I'm holding
23 the tarps down. Um, I may have been moving the tarps
24 so that photographs could be taken of the numbers
25 that I put on the side of the barrels.

1 Q All right. After securing those four burn
2 barrels, tell the jury where you went, please?

3 A After that, we went to Barb's trailer.

4 Q I show you what's been received as Exhibit No.
5 54. Tell the jury if you recognize this picture?

6 A That's, uh -- that's standing outside of Barb's
7 trailer. Uh, the front of -- of the trailer, 12930,
8 I believe, is the address on the house.

9 Q And did you enter this trailer?

10 A Yes.

11 Q What did you do upon entry of this trailer?

12 A Um, we identified ourselves. Um, verbally announced,
13 search warrant. Went into the residence. Um, right
14 when we walked into that side door on the left --
15 It's a linoleum floor. There was what looked to be,
16 um, um, dried, red liquid substance on the floor.
17 Um, so we -- we identified that spot, and then,
18 again, we designated each individual to go to certain
19 areas to, uh -- to search and take -- we took
20 photographs before, um, and then we did our search
21 after that.

22 Q Within the residence and upon completion, uh, of
23 the search, did you have occasion to come across
24 an item which is depicted in an exhibit, which
25 has been received, which is Exhibit No. 55?

1 A Yes.

2 Q Tell the jury what this is, please?

3 A That was, uh -- that was in the residence. Um, it
4 was, I would say, between the kitchen and the living
5 room area. It was on a table or a stand. It's a --
6 it's a digital answering machine.

7 Q Was this answering machine examined by you at
8 that time?

9 A Yes.

10 Q And how was it examined, if you recall?

11 A I was interested in what was on the answering
12 machine. I believe there was, uh, the number 12, or
13 indicated that there were 12 messages on the machine.
14 And I started going through the messages to see if
15 they were of any importance. And then I found, uh,
16 message No. 6 on the answering machine.

17 (Exhibit No. 218 marked for identification.)

18 Q There's a, um -- a -- a video clip, a -- a -- a
19 CD, that's in front of you, um, an exhibit
20 number. Can you tell us what exhibit number that
21 is, please?

22 A Uh, 218, 2-1-8.

23 Q Exhibit No. 218 -- and for the record and
24 Mr. Strang's benefit -- uh, is the video clip
25 of -- of this particular phone call? Is that

1 your understanding?

2 A Yes. This is recorded on my digital camera, which
3 also has the ability to record movies and audio.

4 Q Now, let me ask you this, uh, um, Detective,
5 Remiker, have you been asked to compare this
6 particular phone call that we're about to hear
7 with some, um, business records and determine the
8 date and time of this call?

9 A Yes.

10 Q And have you been able to do that?

11 A Yes.

12 Q What is the date and time of the call that we're
13 about to hear, if you -- if you know?

14 A That phone call, um, was placed on October 31, 2005
15 at 11:43 a.m., I believe.

16 Q All right. I'm going to play this, uh, video
17 clip, and then I'm going to ask if you can
18 identify it.

19 A Okay.

20 Q "Hello. This is Teresa with *Auto Trader*
21 *Magazine*. I'm the photographer, and just giving
22 you a call to let you know that I could come out
23 there today, um, in the afternoon. It would --
24 will probably be around two o'clock or even
25 longer, but, um, if you could please give me a

1 call back and let me know if that will work for
2 you, because I don't have your address or
3 anything, so I can't stop by without getting a
4 call back from you. And my cell phone is
5 737-4731. Again, it's Teresa, 920-737-4731.
6 Thank you."

7 "Monday, 12:25 a.m."

8 Detective Remiker, is that the, um, recording,
9 the answering machine message, that you heard at
10 that time?

11 A Yes.

12 Q From an individual identifying herself as Teresa
13 from *Auto Trader Magazine*. Uh, did you believe
14 that was important and did you, in fact, retain a
15 copy of that message?

16 A Yes.

17 ATTORNEY KRATZ: I will move the
18 admission of Exhibit 218, please.

19 THE COURT: Any objection?

20 ATTORNEY STRANG: None at all. And, um,
21 you know, we -- we consider that the voice of
22 Teresa Halbach to be established.

23 THE COURT: Very well. The exhibit is
24 admitted.

25 ATTORNEY KRATZ: Thank you, Judge.

1 Q (By Attorney Kratz) Detective Remiker, uh, how
2 long did the search of Barb Janda's -- and --
3 and -- and that's where this was found; is that
4 right? In Barb Janda's trailer?

5 A Yes.

6 Q How long did the search of Barb Janda's trailer
7 take?

8 A From about 10:15 until about 12:25, I believe.

9 Q Thereafter, that is, after this answering machine
10 message was recorded, uh, by you, uh, were you
11 asked to assist in other searches that day as
12 well?

13 A Yes.

14 Q And, just generally, since we've been through
15 this several times, and you don't know that but
16 we have, can you tell us the places that were
17 searched?

18 A Uh, we were asked to go back into Steve's trailer,
19 uh, to retrieve some additional items; including some
20 firearms, some bedding, um, I believe either vacuum
21 cleaner or -- or carpet shampooer. Um, so we went
22 back into Steve's -- this would be myself, Lieutenant
23 Lenk, Sergeant Colborn, and Deputy Kucharski -- went
24 back into Steve's trailer to specifically retrieve
25 those items. We were in there for about a half hour.

1 Q Where else did you go then?

2 A After that, we -- I believe the next search would
3 have been, um, the auto shop building.

4 Q All right. Was anything of significance found in
5 that -- in that building?

6 A No. There was a -- there was a car up on a hoist,
7 and we -- In fact, I, physically, I think, climbed up
8 there. We brought the hoist down a little bit to
9 check to see if maybe Teresa was in that car. We
10 searched the office area. Nothing in there.

11 Q Do you recall, was it the Crime Lab, uh, Response
12 Unit -- Field Response Unit, uh, there that day
13 as well? On Sunday, the 6th?

14 A I'm sure they were. I don't ever recall seeing them,
15 specifically.

16 Q Well, my question is, uh, were there other law
17 enforcement officials, not just from Manitowoc or
18 Calumet, but from other agencies, in different
19 parts of this 40-acre salvage yard?

20 A Yes.

21 Q Do you know what all of them were doing?

22 A I -- my focus was on what I had to do. I wasn't
23 really concerned about where everybody else was at
24 the time.

25 Q All right. Let's skip to the -- the end of that

1 day. Detective Remiker, at the conclusion of the
2 day on the 6th of November, um, were you asked to
3 return at all to the Avery salvage property to
4 complete searches in that November?

5 A On that Monday was I asked to return?

6 Q Yes.

7 A I was asked. I wasn't able to return.

8 Q Can you tell us why?

9 A Um, my wife was pregnant and, uh, she had some issues
10 overnight, so I called Lieutenant Lenk and told him
11 that it probably wasn't the best for me to come. She
12 was going to be induced on that Wednesday, so it was
13 best for me to just be done.

14 Q All right.

15 A I had a big day ahead of us.

16 Q And did you then, um, return at all those next
17 following days?

18 A No.

19 Q I'm going to direct your attention, however, to
20 March 1 and 2 of, uh, 2006 at about four months,
21 maybe, after, uh, these initial searches began,
22 ask if you assisted and would ask to assist in
23 some additional searches at the Avery salvage
24 property?

25 A I was.

1 Q And, um, where were you asked to assist? In
2 other words, in what building were you assigned
3 responsibilities for?

4 A On -- on March 1, that first day we got out there, my
5 assignment was to videotape, um, prior to the search
6 of Steven Avery's residence and after the completion
7 of the search. Um, as I was there, as we were, um,
8 standing by, as other people were doing their search,
9 I was asked numerous times about certain pieces of
10 equipment, or what they should do, or how they should
11 collect that, or if I had this, or if I had that and,
12 um, I would then just provide them with whatever they
13 needed.

14 Q You were inside of, uh, Mr. Avery's trailer then
15 on the 1st and 2nd of March?

16 A I believe -- Yes. Both days, yes.

17 Q Were you inside of Mr. Avery's garage on those
18 days?

19 A On the 1st, um, I wasn't in the garage. I may have
20 been near the garage to give them supplies. Um, on
21 the 2nd I was then asked if I could come into the
22 garage and help them.

23 Q All right. Well, it's on the 2nd that I -- I had
24 my next series of questions. Uh, did you, um,
25 assist other law enforcement officers in a

1 thorough search of Mr. Avery's garage on March 2?

2 A Yes.

3 Q And during that thorough search, do you recall
4 coming across any, uh, item of particular
5 interest?

6 A Well, we found some, uh -- some additional shell
7 casings. Um, we were searching on our hands and
8 knees. At one point I remember, um, DCI Agent Kevin
9 Heimerl located what looked to be a bullet fragment
10 near the -- the air compressor, kind of in the back
11 left corner of the garage. And, for the most part, I
12 was specifically -- once stuff was located, my job
13 was to specifically collect that item and make sure
14 it was collected properly.

15 Q Were there a lot of items in this garage at the
16 time?

17 A It was -- it was full. Um, I think every wall was
18 lined with stuff, and -- and this time we physically
19 moved everything from one location to the next.

20 Q During the course of this search, um, did, um --
21 and towards the back wall, which would be towards
22 the south wall of the garage, uh, was any item of
23 particular interest noted by you?

24 A There were -- there was a bullet fragment that was
25 located. Um, there was, um, some fibers, I think off

1 of a glove, or -- or some hair samples that we --
2 that we took off a glove.

3 Q Let me show you an exhibit which has been
4 received into evidence. Exhibit 108. It's a --
5 it's not a photograph, but it's a
6 computer-generated, um, exhibit. Will this help
7 you explain for the jury where that bullet
8 fragment was found?

9 A Yes.

10 Q Tell us what we're looking at, please?

11 A Um, Item No. 23-A, um, is -- right in between there
12 was a large, uh, tool box. Um, to the left of 23-A,
13 I believe, is a car creeper, is what I call it, and
14 that bullet fragment --

15 Q What's a car creeper, before we go any further?

16 A It's -- it's a device that you use -- that you lay
17 on. Usually lay on your back. It's got wheels on it
18 and you can roll yourself underneath a vehicle, um,
19 for whatever reason.

20 Q Was there an item, if you recall, that was
21 between those two -- uh, that is, between the
22 creeper and the tall tool box?

23 A Yes. There was a small, um, lead or a bullet
24 fragment that was located at that spot. That
25 location.

1 Q Now, we'll hear from, um, a gentleman by the name
2 of Kevin Heimerl. By the way, who is
3 Mr. Heimerl?

4 A He is a, uh, agent with, um, the Department of
5 Criminal Investigation. It's a state agency. A
6 state law enforcement investigative agency.

7 Q Was that bullet fragment, uh, photographed and
8 thereafter, uh, collected by state agents at that
9 time?

10 A It was photographed. It was collected by myself.

11 Q Okay. After you collected that bullet fragment,
12 what did you do with it?

13 A Um, I believe Investigator Gary Steier, from Calumet
14 County Sheriff's Department, was in the garage with
15 us. So after it was collected, labeled, sealed, and
16 packaged, then it would go over to, uh, Investigator
17 Steier and he would make his log entries.

18 Q All right. Now, you mentioned Mr. Heimerl. What
19 was his duties that night, if you recall?

20 A He was taking photography. Um, he was one of the
21 individuals on their hands and knees searching,
22 looking, um, identifying different stuff. Uh, we'd
23 find stuff and then we'd look at it to see if it had
24 any significance. So we were -- we were searchers, I
25 guess.

1 Q By the way, how long did the search of this
2 garage take? You said that you moved -- you
3 physically moving every item. How long did that
4 take you?

5 A March 2? Or --

6 Q Well, if you recall? If -- if -- You said you
7 weren't involved on March 1?

8 A Correct. Um, I was in the garage probably around
9 9:00 a.m. on the 2nd and we were done in the garage
10 maybe around 2:00 p.m. on the 2nd.

11 Q And we'll hear from these other individuals, or
12 at least some of them, but you understood that
13 the search had been occurring the day before as
14 well on the 1st?

15 A Definitely, yes.

16 Q I just wanted to, um, clarify one point before I,
17 uh -- I -- I allow Mr., well, Buting or Strang to
18 ask you some questions. The -- Exhibit 218,
19 the -- the, um, recording of the voice message,
20 uh, do you hear a -- a time at the end of it?

21 Uh, twelve-something a.m.?

22 A 12:25 a.m.

23 Q All right. Do you know how that got on there, or
24 can you explain for the jury? If you know.

25 A I don't know. I wasn't -- I wasn't able to determine

1 the exact date stamp on the answering machine at the
2 time. I didn't want to, obviously, erase that
3 message. So, um, how far off it was, uh, according
4 to the date stamp on the answering machine, I don't
5 know.

6 Q But you later come to know that it was 11:43?

7 A A.m., yes.

8 Q The last question. That Exhibit No. 20 -- or,
9 excuse me, Exhibit No. 108, where we now see
10 what's depicted as a -- a evidence tent, 23-A,
11 um, was there a, uh, piece of equipment or an
12 item there?

13 A I believe there was a air compressor in that general
14 vicinity also.

15 Q My question is: Did that have to be moved before
16 you found the bullet?

17 ATTORNEY STRANG: He -- he didn't find
18 the bullet.

19 ATTORNEY KRATZ: I can ask it a different
20 way, Judge.

21 Q (By Attorney Kratz) Before you saw the bullet,
22 did that air compressor have to be moved or --
23 What happened with the air compressor?

24 A I -- I don't know. I can't recall.

25 Q Let's do it this way. I'm showing you what's

1 been received as Exhibit 121, ask if you can tell
2 us what we're looking at here?

3 A That's the area where the bullet fragment was
4 located, and that should be between the, um -- the
5 car creeper that says Black Jack on it and the tool
6 box. It was under that air compressor.

7 Q Use the laser pointer, please. Tell me what --
8 For those of us that don't know what a air
9 compressor looks like ...

10 A It's the green object with the -- the yellow label on
11 it with the tire.

12 Q Where was the bullet fragment?

13 A Under that air compressor. I mean, to the left, to
14 the right, I'm not -- I don't recall. But under that
15 air compressor.

16 Q All right. Under that piece of equipment?

17 A Yes.

18 ATTORNEY KRATZ: That's all I have of
19 Detective Remiker, Judge.

20 THE COURT: All right. Mr. Strang?

21 ATTORNEY STRANG: Yes, Your Honor.

22 Actually, it would be very useful to take about,
23 oh, probably five minutes without the jury, um,
24 before I start my cross.

25 THE COURT: All right. Members of the

1 jury, we'll take a short break at this time.

2 (Jury out at 2:10 p.m.)

3 THE COURT: You may be seated.

4 ATTORNEY STRANG: Uh, why don't we
5 excuse the witness, too, just to be on the -- the
6 safe side.

7 THE COURT: All right. Mr. Remiker, if
8 you could step out in the hall for a few minutes?
9 Mr. Strang?

10 ATTORNEY STRANG: One thing I want to do
11 is make sure the sound works. But, there were --
12 there were also three -- I thought there were
13 three things to bring up, uh, out of the jury's
14 presence with Detective Remiker. Turns out I --
15 I -- I've already talked to Mr. Kratz and checked
16 one off that list.

17 I -- Mr. Remiker's report does not refer
18 to finding a hair, a glove, or a fiber, and I
19 just wanted to make sure that that -- that wasn't
20 going anywhere, and it's not. Um, that's a
21 non-issue I'm -- I'm informed by the State.

22 The two remaining issues -- I don't want
23 to make a big deal about this. It wasn't, uh,
24 worth interrupting the direct, but I -- I think
25 when I explain them, Your Honor will understand

1 why we need to do a little bit of, um, you know,
2 correcting here, for want of a better word.

3 Um, we have -- Detective Remiker wrote
4 reports. Fairly lengthy reports. And on
5 November 4, 2005 we have his report of his
6 meeting with Mr. Avery, and, uh, he recounts
7 Mr. Avery as stating then that the -- the female
8 subject has been on the property numerous times.

9 Now, today, it -- what we heard today
10 was Steve said that she had been in the
11 residence. That gets to be -- you know, the
12 witness wouldn't have known that necessarily, but
13 that gets to be a fairly significant difference
14 and, um, I -- I -- I expect he did not mean to
15 alter or deviate from his report, um, if -- if he
16 did, and that -- and that's an all together
17 different statement, um, than the one disclosed
18 to us.

19 Again, I'm assuming it's -- what he
20 meant was Mr. Avery said she'd been on the
21 property. Um, but, you know, the Court's -- the
22 Court's heard the evidence, under -- understands
23 the importance of the distinction of statements.

24 Um, and then, um, we have his report on
25 the November 6 search where he -- he's asked to

1 retrieve the guns and the vacuum cleaner. And
2 the report, in fact, says -- this is page 15 of
3 the 24-page Manitowoc County, uh, report. Re --
4 report says that they collected the entire vacuum
5 cleaner.

6 Today what he says is, I don't remember
7 if it's a vacuum cleaner, or a carpet cleaner, or
8 carpet shampooer. I don't remember if it's a
9 shampooer or cleaner. But he's, you know -- he's
10 now offering the possibility that this wasn't a
11 normal vacuum cleaner, but was a -- a carpet
12 cleaner, and I'm assuming in the sense of
13 suggesting something wet.

14 Um, the potential importance of that is
15 obvious and, you know, our belief is that this
16 was just a vacuum cleaner, and I thought maybe we
17 ought to take these two points up out of the
18 jury's presence and try to streamline, um, the
19 cross and not create any more problems than we
20 have to.

21 As I say, the third point I've already
22 cleared up with Mr. Kratz.

23 THE COURT: Mr. Strang?

24 ATTORNEY STRANG: That -- that --

25 THE COURT: Or that's Mr., uh, Kratz?

1 Sorry.

2 ATTORNEY KRATZ: Well, Judge, uh, if there
3 are any inconsistencies, obviously Mr., uh, Strang
4 can, uh -- can go into them. Certainly with the
5 vacuum cleaner issue.

6 Uh, regarding the, uh, defendant's
7 statement, if Mr. Strang wanted to take a -- a
8 minute or two with Mr. Remiker outside the
9 presence of the jury, I don't have any problem
10 with that. That may be the easiest way to do
11 that --

12 ATTORNEY STRANG: Yeah.

13 ATTORNEY KRATZ: -- so that there's no
14 question.

15 ATTORNEY STRANG: That's -- that's a
16 good suggestion. Or if it's a non-issue, then we
17 don't have to belabor it.

18 THE COURT: All right. Why don't we bring
19 Mr., uh --

20 ATTORNEY STRANG: Or I -- I can just go
21 to the wit -- witness room. However you want
22 to --

23 THE COURT: Oh.

24 ATTORNEY STRANG: -- do it, Your Honor.

25 ATTORNEY KRATZ: He's got some AV issue

1 as well, Judge, that we thought --

2 THE COURT: Oh.

3 ATTORNEY KRATZ: -- we could take a few
4 minutes here, so--

5 THE COURT: All right.

6 (Wherein Attorney Strang speaks to Detective Remiker.)

7 ATTORNEY STRANG: Your Honor, this is
8 going to wind up taking a few more minutes. Um,
9 sorry about that. I -- I didn't expect the --

10 THE COURT: All right.

11 ATTORNEY STRANG: -- the issue.

12 THE COURT: We'll take about another
13 five minutes then and come back.

14 (Recess had at 2:21 p.m.)

15 (Reconvened at 3:10 p.m.; jurors not present)

16 THE COURT: At this time we are on the
17 record outside the presence of the jury. Uh,
18 Mr. Strang?

19 ATTORNEY STRANG: Thank you, Your Honor.
20 Um, we -- we've addressed, um, a number of issues
21 here in the break, and I appreciate the Court's
22 consideration. The, um -- the witness, Detective
23 Remiker, testified on direct examination by the
24 State to a statement of the defendant that was
25 not disclosed, uh, in discovery materials to the

1 defense, uh, so created a problem of
2 non-compliance with Section 971.23 (1)(b).

3 However, um, the State -- the State,
4 meaning the prosecution team, also did not have
5 that statement. Uh, for whatever reason the
6 Manitowoc County Sheriff's Department did not
7 share with the prosecution this statement or the
8 report document.

9 Uh, we -- we now, uh, have been able to
10 obtain copies of that report. Both sides have
11 it. Um, taking the whole of Detective Remiker's
12 testimony in context, uh, the defense is not
13 moving for a mistrial. Um, we discussed that
14 with Mr. Avery. Uh, I believe he understands why
15 we're not seeking a mistrial and accepts that
16 decision.

17 Uh, collaboratively with the
18 prosecutors, uh, we have agreed on a curative
19 measure, uh, that we think will suffice here in
20 these circumstances, and, um, of course, that
21 handles today's issue.

22 If -- if, uh, an issue of an undisclosed
23 statement of the defendant elicited by the State
24 should arise again, we, of course, may be in a
25 position of seeking other relief. But, uh, I

1 think we've addressed today's issue, um, with the
2 time that we've had and I appreciate it.

3 THE COURT: Anything, uh, from the State?

4 ATTORNEY KRATZ: No, Judge. Just that
5 the inconsistency in, uh, Mr. Remiker's, uh,
6 testimony compared to the reports that the
7 defense did have, uh, as Mr. Strang indicates,
8 is, uh, minimal, uh, especially as, uh, related
9 to Mr. Remiker's statement as a whole.

10 Uh, the curative measure that, uh, we've
11 jointly, uh, come up with, uh, is, um, very
12 acceptable to, uh -- to the State, uh, and we are
13 prepared to have Mr. Strang commence his
14 cross-examination.

15 THE COURT: All right. Before we bring the
16 jury in, let me ask that the, uh, ELMO light be
17 turned off. I would imagine it's stronger to the
18 jurors sitting next to it than it is here and it's
19 got some glare.

20 All right. We'll bring in the jurors at
21 this time and, uh, Mr., uh, Remiker can be
22 brought back into the courtroom as well.

23 (Jury in at 3:15 p.m.)

24 THE COURT: You may be seated. At, uh,
25 this time, Mr. Strang, you may commence your

1 cross-examination of the witness.

2 ATTORNEY STRANG: Thank you, Your Honor.

3 **CROSS-EXAMINATION**

4 BY ATTORNEY STRANG:

5 Q Detective Remiker, when you, uh -- when you
6 explained to counsel, uh, at the prosecution
7 table on direct examination that, uh, Lieutenant
8 James Lenk is your -- is your boss or your
9 supervisor, I believe is the term you used, he
10 is, first of all? I understood you correctly?

11 A Yes.

12 Q All right. Uh, and what you mean by that is
13 that, uh, he's one of the people who reviews your
14 work performance?

15 A Yes.

16 Q Does an annual review? That type of thing?

17 A Annual evaluation.

18 Q Evaluation?

19 A Sure.

20 Q Has some input on whether you get a salary
21 increase and how much?

22 A I don't know about that.

23 Q You know one way or the other?

24 A No.

25 Q Okay. But, you know, I mean, he's your

1 supervisor. He's the one who -- who controls
2 your assignments or passes out assignments to
3 you?

4 A Correct.

5 Q You work with him on the same shift?

6 A Yes.

7 Q The, um -- the meeting on -- on the evening of
8 November 3, after you were paged, you first
9 learned about the missing person report from
10 Calumet County?

11 A Yes.

12 Q You get paged? You come in?

13 A Correct.

14 Q Uh, sometime in the evening?

15 A Yes.

16 Q That, uh -- you -- you told us, uh, that
17 Investigator John Dederling from Calumet County
18 Sheriff's Department was at the meeting?

19 A Yes.

20 Q As was Lieutenant Lenk?

21 A Yes.

22 Q Uh, Detective Dennis Jacobs from your Department?
23 Or no?

24 A Yes.

25 Q He was there. Obviously, you were there. Anyone

1 else you recall being present at that
2 November 3 -- the Thursday night meeting?

3 A At one point we, uh, got with, um, Sergeant Colborn,
4 also. That initial meeting Sergeant Colborn wasn't
5 there.

6 Q Okay. But he -- but Colborn comes back to the
7 Sheriff's Office at some point and you folks
8 touch base with him as well?

9 A Yes.

10 Q Um, the, um -- Detec -- Detective Dennis Jacobs
11 is someone who's a relatively new name here. Uh,
12 colleague of yours?

13 A Yes.

14 Q Was he in the Detective's Unit or Detective
15 Bureau before you joined in May, 2003?

16 A Yes.

17 Q You also worked same shift with him?

18 A Yes.

19 Q You -- you two, uh, frequently worked together?

20 A Yes.

21 Q That evening, then, you joined Investigator
22 Dederling in going out to the Zipperers?

23 A Correct.

24 Q And, um -- and what, uh, had caused me to chuckle
25 in reading the report of yours, which I thought

1 it might have been the understatement of the
2 year, you -- you, uh -- you found that initially
3 George Zipperer was not real cooperative?
4 A It took them a while to answer the door and not real
5 cooperative.
6 Q Yeah. I mean, that's -- that's the way you
7 described it, is it not, in your report?
8 A Uncooperative?
9 Q I think your, uh -- I think your exact words
10 were, uh, initially George was not real
11 cooperative?
12 A That's accurate.
13 Q Does this look like your report from November 3?
14 A Yes.
15 Q You can look at whatever you want to help refresh
16 your recollection, but I -- I highlighted that.
17 A That's what it says. George was not real
18 cooperative.
19 Q That's true, isn't it? Initially?
20 A Yes.
21 Q Took 15 or 20 minutes even to answer the door
22 with sheriff deputies outside?
23 A Yes.
24 Q Uh, wouldn't allow the police to enter the house
25 even then?

1 A Initially, no.

2 Q You had to do it out -- sort of a lengthy
3 interview with his wife, JoEllen, through a
4 window before anybody would let you in the house?

5 A Yes.

6 Q George was belligerent?

7 A I would say a good word to use probably would be a
8 little abrasive.

9 Q A little abrasive. Some hostility?

10 A I'm sure he wasn't real happy to have law enforcement
11 on his property at that time.

12 Q What time was it?

13 A I would say about -- between nine and ten, possibly.

14 Q All right. Uh, this -- this abrasive attitude,
15 and not real happy to have law enforcement on his
16 property, continued even after you told him that
17 a young woman was missing?

18 A He calmed down as we talked to him a little bit
19 further.

20 Q But at one point he told you that he wanted
21 Teresa Halbach arrested?

22 A I don't know if he said that.

23 Q Well --

24 ATTORNEY KRATZ: I'll just inter --
25 interpose a -- a relevance objection, Judge.

1 THE COURT: Um, Mr. Strang?

2 ATTORNEY STRANG: This was -- this was
3 the other person whom they knew -- or they had
4 been told that Teresa had appointments with, and
5 the cooperation, or lack of cooperation, I think,
6 goes to, uh, whether these people merited further
7 investigation, Your Honor.

8 THE COURT: I'll allow the question.

9 Q (By Attorney Strang) Did -- This statement about
10 wanting her arrested is not in your report so
11 that's -- I'm getting that from Detective
12 Dederling. You, in -- you, in any event, don't
13 necessarily remember that comment of George
14 Zipperer?

15 A I don't recall George Zipperer saying that he wanted
16 Teresa Halbach arrested.

17 Q You do not recall that? Or you do?

18 A No.

19 Q I'm sorry. Okay. Uh, you do recall Mr. Zipperer
20 denying that he had contacted *Auto Trader*?

21 A Yes, I believe so.

22 Q Although, you learned that it was his car or a
23 family member's car that she had come to
24 photograph?

25 A I believe it was his son, Jason's, vehicle.

1 Q Uh, Jason denied that he had called to have his
2 car photographed initially, too?

3 A I believe so, yes.

4 Q That was a false denial.

5 A Is that a question or a statement?

6 Q It's a question.

7 A Okay. Um, no, I don't recall that.

8 Q Well, you did talk to JoEllen Zipperer?

9 A Yes.

10 Q And she said, yes, of course, the young woman was
11 out here to photograph a car?

12 A Correct.

13 Q My son, Jason, owns the car?

14 A Yes.

15 Q And the best that JoEllen Zipperer could do is
16 say that Ms. Halbach -- she didn't have a name --
17 Ms. Halbach; right? Just the -- the female
18 photographer?

19 A Yes.

20 Q Uh, that the female photographer may have been on
21 the property some time between noon and 1500
22 hours? No precise time could be obtained from
23 JoEllen?

24 A Correct.

25 Q Fifteen hundred hours is three p.m.?

1 A Three p.m.

2 Q Now, the next morning you and Detective -- or,
3 I'm -- I'm sorry, Lieutenant Lenk go back out to
4 see Mr. Avery again?

5 A Again? That was the first time we seen --

6 Q I -- I --

7 A -- Steve Avery.

8 Q I understand, but -- and I -- I'm sorry.
9 Sergeant Colborn had testified that he saw
10 Mr. Avery the night of the 3rd?

11 A Yes.

12 Q So he had gone there. That's why you went to the
13 Zipperers?

14 A Yes.

15 Q The night of the 3rd?

16 A Correct.

17 Q You go out the 4th, and that's the first time you
18 see Steven Avery yourself?

19 A Yes.

20 Q With Lieutenant Lenk?

21 A Yes.

22 Q Uh, Mr. Avery, by comparison, was very
23 cooperative?

24 A Yes.

25 Q Uh, you had this conversation with him in which

1 he said, you know, she -- she was here a few
2 minutes. Some talk. Hi, how are you doing? I
3 paid her. She left.

4 A Correct.

5 Q He also told you that she'd been on the property
6 several times before?

7 A Yes.

8 Q Photographing vehicles?

9 A Yes.

10 Q Consented to the search of his house?

11 A Correct.

12 Q And that's all -- that -- that's -- that's the
13 sum -- you know, that's what happens November 4,
14 as I understand it?

15 A Yes.

16 Q With you?

17 A Yes.

18 Q Now, November 5, Saturday, um, you -- you may
19 have said this and I -- you know, and I didn't
20 hear it, I apologize, but my recollection is you
21 get out -- you actually arrive at the Avery
22 property right about 11 in the morning?

23 A Yes.

24 Q Give or take a minute?

25 A Correct.

1 Q Something like that. Um, had you met -- Between
2 the short discussion with Mr. Avery on the 4th
3 and 11:00 on the 5th, had you met with Detective
4 Jacobs, Dennis Jacobs, at anytime there? Between
5 those two?

6 A Not on Saturday, the 5th, until he came out there.
7 We may have been working on the 4th, that Friday. He
8 may have been working that same day.

9 Q On shift together, but...

10 A Yes.

11 Q Okay. Now, I'm going to play you, um, part of a
12 taped conversation from November 5. It's Exhibit
13 126. And it's here. And I think he's
14 actually -- you were -- you were the one who
15 physically gave us these CD-ROMs back in the
16 summer?

17 A Yes.

18 Q Okay. Uh, I'm going to play part of this and,
19 um, ask you if you recognize the voices? So I
20 may stop it.

21 A Definitely.

22 Q Okay.

23 (Wherein CD is played.)

24 "10-4." (Unintelligible) "4-0-5."

25 "Go ahead."

1 "I have warrant in hand."

2 "Body only; correct?"

3 (Unintelligible)

4 Q (By Attorney Strang) Now, do you recognize the
5 voices here?

6 A Yes.

7 Q 4-0-5 is Deputy Pete O'Connor?

8 A Correct.

9 Q Okay. And the dispatcher? Is this Katie?

10 A Correct.

11 Q Okay. Um, I -- I only know that because she says
12 her name at some point, but you recognize it as
13 Katie?

14 A Yes.

15 Q All right. Uh, Deputy O'Connor is talking about
16 a body warrant in hand?

17 A That's accurate.

18 Q We just heard him say that?

19 A Correct.

20 Q Uh, a body warrant is something where you have a
21 warrant to pick somebody up and they aren't going
22 to be released on bail until they physically see
23 a judge?

24 A Correct.

25 Q That's what a body warrant means?

1 A Body only warrant means you take that person in
2 custody.

3 Q And -- and a judge sets bail if at all?

4 A Correct.

5 Q Okay. So, typically, that might be something
6 like a missed court appearance where there's
7 what's called a bench warrant?

8 A That could very well be.

9 Q Could -- could be other reasons, but... And so
10 what -- what's happening here is Deputy O'Connor
11 is out at the intersection of Highway 147, Avery
12 Road, somewhere near there?

13 A He is, yes.

14 Q Yeah. I mean that -- that's where you saw him
15 when you -- or later?

16 A Correct.

17 Q Okay. And, in fact, you had told him to stop
18 people coming in and out?

19 A Correct.

20 Q So that's what he's doing, and he's running
21 checks on people, and he comes up with a body
22 only warrant?

23 A I believe so, yes.

24 Q Okay. That's what it will -- sounds like is
25 going on here?

1 A Yes.

2 Q All right. I was just going to continue playing
3 a little more.

4 (Continuation of CD being played.)

5 "409 dispatch."

6 "409."

7 "I'm now 76 to 147 Avery Road, pick up
8 that party."

9 Q (By Attorney Strang) Now, I'm now 76, which is a
10 10 Code?

11 A Uh-huh. Yes.

12 Q 1076?

13 A En route.

14 Q En route to Avery road to pick up the party with
15 the body warrant? Body only warrant?

16 A I believe he says to pick up the party.

17 Q Correct.

18 A Yes.

19 Q And that's -- were you on -- were you on the
20 radio at about this time?

21 A It's after 11 p.m.?

22 Q Um-hmm. Yeah, 11:00 a.m.

23 A A lot of things going on at that time.

24 Q Okay. No, I understand. I'm not asking if you
25 remember but --

1 A Yes.
2 Q -- this is -- this is generally familiar to you?

3 A That's the first time I've heard that.

4 Q Okay.

5 (Continuation of CD being played.)

6 "10-4."

7 "10-3-23, Manitowoc, you can put me
8 10-23."

9 "10-4."

10 "4-8-7-4-9-6?"

11 "Go ahead."

12 "When you get a chance, give me a 21 on
13 that 4-2-2-4."

14 (Unintelligible)

15 "2-7-8 dispatch code."

16 "Go ahead."

17 "You're going to need to get a hold of
18 the Crime Lab for their Evidence Response Team to
19 start responding at this location."

20 Q (By Attorney Strang) Okay. Now, that's you;
21 right?

22 A Absolutely.

23 Q Okay. You're -- you're 2-7-8?

24 A 2-7-8.

25 Q Uh, there's this reference to being in code?

1 A Yes.

2 Q Uh, which -- which means that you're on a
3 non-publicly monitored frequency?

4 A For the most part, yes.

5 Q Okay. Um, and what you're saying here is you're
6 telling the dispatcher she -- she'll need to get
7 a hold of the Crime Lab Evidence Response Team to
8 start responding to this location?

9 A Yes.

10 Q Okay. This, by the way, is -- is a radio tape;
11 correct?

12 A Correct.

13 Q We're listening to radio transmissions here?

14 A Correct.

15 (Continuation of CD being played.)

16 Q "10-4. Crime Lab out of Madison?
17 Milwaukee? Where?"

18 (Unintelligible) "Madison Response
19 Team."

20 "2-7-8. I'm in code. Anything you need
21 other than a portable for Schetter?"

22 "Not that I can think of right now,
23 Dennis."

24 Okay. That's -- that's Detective Dennis Jacobs
25 calling in?

1 A Yes.

2 Q And you're -- you're responding to him?

3 A He's asking me if I need anything besides a portable
4 radio for Deputy Inspector Schetter, and I say, right
5 now I can't think of anything.

6 Q Yeah. Exactly. The portable for Schetter is a
7 portable radio?

8 A Correct.

9 Q And deputy inspector. Okay.

10 (Continuation of CD being played.)

11 Q "Okay. Um, other than the car, do we
12 have anything else?"

13 "Not yet."

14 "Okay. Is he in custody?"

15 "Negative. Nothing yet."

16 "Okay. I'll gather my stuff and, uh,
17 head out."

18 Okay. Now, that's -- that's you and Jacobs going
19 back and forth again; right?

20 A Yes.

21 Q And, um, he asks you, okay, other than the car,
22 do we have anything else, and you tell him, not
23 yet.

24 A Nothing yet.

25 Q He's referring to the -- the Toyota is what he

1 means by the car?

2 A I'm assuming, yes.

3 Q That's how you understood him?

4 A Yes.

5 Q And then he says, okay, is he in custody; right?

6 A That's what he says.

7 Q And you say, negative, nothing yet?

8 A Yes.

9 Q You're not asking who is in custody? Did you
10 know who he meant by "he"?

11 A I'm assuming he meant -- I mean, based on listening
12 to that conversation, it sounds to me like he's
13 indicating Steve Avery, yes.

14 Q Okay. And this is -- this is shortly after
15 you've arrived on Saturday, November 5?

16 A I don't know what -- what time that radio
17 transmission is.

18 Q Okay. Um, I -- but this is -- this is when
19 you're first telling the dispatcher that she's
20 going to need to call the Crime Lab?

21 A Yeah. Crime Lab was probably contacted about 11:30,
22 somewhere around there. Yes.

23 Q Right. And I'll tell you, I think that's
24 actually very close to the time stamp --

25 A Yes.

1 Q -- on this. But somewhere in that ball park --

2 A Okay.

3 Q -- any way; right?

4 A That makes sense.

5 Q Because we do hear you saying you're going to
6 need to contact the Crime Lab?

7 A Correct. That would be about 11:30.

8 Q Okay. Now, track four on the, uh -- on the same
9 exhibit, 126.

10 (Continuation of CD being played.)

11 Q "Good morning, Manitowoc County
12 Sheriff's Department, Katie speaking."

13 "Katie, uh, just rolled into the parking
14 lot. Can you tell me..."

15 Now, this is not a radio call; is that right?

16 A Sounds like an incoming call into dispatch.

17 Q The -- the phone ringing sound at the beginning?

18 A Yes.

19 Q Okay. And do you recognize the -- the voice of
20 the man who says he just rolled into the parking
21 lot?

22 A Yes. That's Detective Jacobs.

23 Q Okay. I'm going to back it up just a little bit
24 here.

25 ATTORNEY KRATZ: Judge, once again, I'm

1 going to interpose a hearsay objection. I know I've
2 made the same objection before with a similar call,
3 but I'm interposing that again at this time.

4 ATTORNEY STRANG: And the -- the jury
5 should understand I'm not offering this for the
6 truth. Just that it was said.

7 ATTORNEY KRATZ: Then it has no relevance,
8 Judge.

9 THE COURT: I'm going to overrule the
10 objection.

11 Q "Good morning, Manitowoc County
12 Sheriff's Department, Katie speaking."

13 "Katie, uh, just rolled into the parking
14 lot. Can you tell me, uh, do we have a body or
15 anything yet?"

16 "I don't believe so."

17 "Do we have Steven Avery in custody,
18 though?"

19 "I have no idea."

20 "Oh, I've heard them say, pick up that
21 party. I --"

22 "Oh, no. We have -- Well, Pete is
23 sitting up there waiting and stopping people from
24 going in and that. He found somebody with a body
25 only warrant for --

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"Oh."

-- our Department."

"Okay. Do we have a -- All right."

"I --"

"Do we have" (unintelligible)

"Yeah. Your best bet is to talk to --
Nothing has come through. We have the vehicle.
That I know."

"All right. Thank you."

"But what more, I don't know. All
right. Bye."

"Bye."

He's talking about Steven Avery? He's asking --

A That's what he says.

Q -- asking if Steven Avery's in custody? This is
when he's rolling into the parking lot before
he's called you on the -- the call we listened to
first?

A That's what the call says. I can't testify to what
he said.

Q The day before, you're thinking Calumet County is
barking up the wrong tree? And the next day, a
car's been found and you two are talking about,
is he in custody yet?

A Those questions are being asked of me. Yeah.

1 Q Okay. Now --

2 A I believe my responses were --

3 Q Negative.

4 A Negative. No.

5 Q I -- I -- I understand.

6 A I can tell by the tone of my voice it even sounds
7 like it's a silly question.

8 Q Okay. And -- and, indeed, I mean, when you got
9 out to the Avery property on November 5, there
10 were customers there?

11 A Yes.

12 Q People -- you know, customers in the pit or the
13 salvage yard part of the business?

14 A Correct.

15 Q Uh, Earl Avery was there?

16 A Yes.

17 Q Uh, you know, this was a -- a business that was
18 open?

19 A Yes.

20 Q Or had been until, you know, law enforcement
21 officers closed off the -- the property?

22 A Correct.

23 Q You knew that a number of Avery family members
24 lived on this roughly 40-acre parcel? And look,
25 I -- you may not have known that then?

1 A I can't say I -- I did.

2 Q But -- but you learned, during the course of the
3 next several days, that there were a number of
4 family members who lived on this property?

5 A I asked Earl when I talked to him down there who all
6 lived there, and where, and what house.

7 Q Right. And I'm not worried now so much about
8 November 5, but in the next several days, you
9 came to learn that Chuck Avery lived on the -- in
10 a trailer on the property?

11 A Yes.

12 Q Allen and Delores lived on the property?

13 A Yes.

14 Q Steven Avery's sister, Barb Janda, about whom you
15 testified, she lived on the property?

16 A Correct.

17 Q Her four sons? Or at least three of them at the
18 time?

19 A I don't know about the sons.

20 Q Okay.

21 A I can't testify to that.

22 Q All right. But there were a number of people,
23 other than Steven Avery, living on the property?

24 A Correct.

25 Q And your understanding was that Ms. Halbach had

1 been there sometime on a Monday, October 31?

2 A Yes.

3 Q Or had an appointment there?

4 A Yes.

5 Q Um, Monday would have been a business day on the
6 Avery salvage property?

7 A I have no idea.

8 Q Okay. But, I mean, in -- in general, Monday's a
9 commercial -- a commercial day?

10 A It was Halloween. I don't know if they close for
11 Halloween. I -- I don't know.

12 Q Okay. It's a business property in any event?

13 A Yes.

14 Q Little later in the morning of the 5th, you're
15 involved in this conversation that you described
16 about that ultimately results in the decision to
17 turn the investigation over to the Calumet County
18 Sheriff's Department?

19 A I was involved in some discussions. Yes.

20 Q This was -- Was this still a missing persons
21 investigation not withstanding the comment --
22 comment about whether we have a body yet?

23 A I wouldn't consider it a missing person, although
24 looking at that vehicle, and the fact that it was
25 concealed, the license plates removed, I was very

1 suspicious at that time. I obviously thought we had
2 something more.

3 Q Um-hmm. And, indeed, um, arrangements were made
4 at part of that conversation to appoint a special
5 prosecutor?

6 A Yes.

7 Q In a missing persons investigation, one wouldn't
8 ordinarily expect a prosecutor for a criminal
9 case if somebody's just gone away for a few days
10 and then shows up later?

11 A I think everybody's thought at that time, based on
12 the events that have tran -- that had transpired, and
13 the fact that we found that vehicle at that location
14 in that condition, I think everybody thought that
15 we -- we had a criminal investigation.

16 Q If there was a criminal investigation --

17 A Yes.

18 Q -- that wouldn't be -- there would be need for a
19 prosecutor?

20 A Yes.

21 Q And there would be a need for search warrants?

22 A Yes.

23 Q Which are used in criminal investigations?

24 A Yes.

25 Q You were part of the group that went to obtain

1 the initial search warrant for the Avery
2 property?

3 A Yes.

4 Q You obtained that about 3:10 in the afternoon?

5 A Yes.

6 Q You know that a search warrant is something
7 that's obtained, in part, by a sworn statement or
8 affidavit typically of a law enforcement officer?

9 A Yes.

10 Q You were present when the application for that
11 search warrant was sworn out?

12 A Yes.

13 Q By Mr. Wiegert?

14 A Yes.

15 Q The search warrant application declared -- and
16 you heard this -- under oath that you folks
17 expected to find evidence of a homicide?

18 A Yes.

19 Q Among other potential offenses?

20 A Correct.

21 Q At the time that search warrant was sworn out
22 before Judge Fox, what you had recovered was the
23 Toyota?

24 A Yes.

25 Q Your testimony is that no one had even opened a

1 door to the Toyota?

2 A I know the officers there did not open a door.

3 Correct.

4 Q As far as you knew, the doors had not been
5 opened?

6 A Correct.

7 Q All right. You had seen, or you and another
8 officer had seen, a white piece of paper with
9 something like the word or the name "Teresa" on
10 it?

11 A I think there was a digital camera photo card.

12 Q Later that evening, then, you acted on -- you and
13 others acted on the search warrant that had been
14 obtained at 3:10?

15 A Yes.

16 Q Two-and-a-half hours in Mr. Avery's house,
17 roughly, give or take? Seven-thirty to ten or
18 thereabout?

19 A Seven-thirty to ten-o-five. Correct. Yes.

20 Q I'm sorry. I didn't mean that to be a trick
21 question. Um, you -- you saw bedding and pillow
22 cases eventually seized, bagged, and removed from
23 Mr. Avery's house?

24 A Yes.

25 Q You saw no blood at all on that bedding or those

1 pillow cases?

2 A I don't -- I didn't observe any at the time we took
3 it. No.

4 Q Mr. Lenk -- Lieutenant Lenk and others searched
5 the bathroom?

6 A Myself, Sergeant Colborn searched the bathroom after
7 we were done with the bedroom. Um, Lieutenant Lenk
8 may have done some searches in the bathroom,
9 initially, too.

10 Q Was it you who found in the living room at the
11 computer desk area that -- the two documents with
12 Teresa Halbach's cell phone number on it? On
13 them?

14 A Yes.

15 Q Uh, I got Exhibit 198 and Exhibit 194 for you.
16 One ninety-eight is the little notebook?

17 A Yes.

18 Q Where -- where did you find that?

19 A There is a desk in the living room of the trailer and
20 that was on top of the desk. I think it was -- it
21 was actually closed, and I opened it up and paged
22 through it and seen it.

23 Q But just sitting on -- on top of the desk much as
24 it is now?

25 A I believe so. Yes.

1 Q Okay.

2 A I think it was like that, initially.

3 Q With the cover --

4 A Yes.

5 Q -- folded? All right. And this sign, that's a
6 "for sale" sign with writing on the back; is --

7 A Yes.

8 Q -- that right?

9 A Correct.

10 Q Where'd you find the "for sale" sign?

11 A That was also on the desk. Um, as I'm facing the
12 desk in the living room, the right side of the
13 fence -- right side of the desk. It was pushed into
14 a slot, or amongst other papers, pushed into an upper
15 portion of the desk area. I pulled it out.

16 Q It was sort of a mail slot --

17 A Yes.

18 Q -- kind of thing --

19 A That's accurate.

20 Q -- with a number of other papers --

21 A Yes.

22 Q -- in there? So you pulled all of them out --

23 A Yes.

24 Q -- looked at them --

25 A Um-hmm.

1 Q -- and decided that since this had Ms. Halbach's
2 cell phone number, it may be worth taking?

3 A Correct.

4 Q Both of those things, I suppose, could have been
5 relatively easily burned in a burn barrel, for
6 example?

7 A I suppose.

8 Q I mean, if somebody was looking to hide them or
9 get rid of them, there were better places than
10 lying out on top of the desk or in the mail slot
11 in the desk?

12 A I guess. Yes.

13 Q The -- the actual page with, uh -- in Exhibit 198
14 with, um, Ms. Halbach's -- Ms. Halbach's, uh,
15 telephone number, is written in two different
16 colors of ink?

17 A I believe so. Yes. Green and blue or black, I
18 believe, is the phone number. Or, I'm sorry, the --
19 the words.

20 Q Whatever. We'll -- we'll go back to it.

21 A Yes. Phone number is in a -- a green, and back to
22 patio doors --

23 Q The green looks to you -- to your eye like a fine
24 point felt sort of -- or rollerball kind of ink?

25 A Yes.

1 Q And the black looks like an -- an ordinary
2 ballpoint pen?

3 A I would say that's accurate.

4 Q No way to know, then, whether there's any
5 connection between the -- the two different
6 things and the two different inks written on the
7 same page?

8 A I have no idea.

9 Q The, uh, obvious that -- it's obvious the page
10 isn't torn out? No tape on the page, that kind
11 of thing?

12 A It looks like it got wet at one time and maybe dried.

13 Q But it's not -- it's not torn out of the --

14 A No.

15 Q And there's no -- as I say, no tape or other --
16 anything to hang it up?

17 A No.

18 Q The search of the garage on November 6, I think
19 that's the first time you actually searched the
20 garage, rather than simply sweeping through it to
21 look for Ms. Halbach?

22 A Correct.

23 Q Uh, you folks found some empty shell casings
24 for -- looked like .22 caliber rounds?

25 A Yes.

1 Q Uh, ten of these? Something like that?

2 A I think 11.

3 Q Eleven?

4 A I believe so.

5 Q On the floor?

6 A Yes.

7 Q Uh, where there are shell casings, there may be

8 bullets?

9 A We found shell casings.

10 Q Were you looking for bullets?

11 A We were looking for everything.

12 Q Found no bullets in the search on November 6 of

13 the garage?

14 A Correct.

15 Q Found no bullets any other time in Steven Avery's

16 garage anytime in November of 2005?

17 A Correct.

18 Q It was March 2, 2006, and you were present when

19 bullets or bullet fragments were found in that

20 garage?

21 A On March 2, yes.

22 Q I'm sorry.

23 A One --

24 Q I'm sorry.

25 A -- bullet fragment.

1 Q What did -- did I say March 6?

2 A I believe so.

3 Q Sorry. March 2, 2006?

4 A Correct.

5 Q One bullet fragment?

6 A Yes.

7 Q I think same name -- uh, same date, November 6,
8 back to November, is when you go into the Janda
9 trailer and you get the answering machine?

10 A Yes.

11 Q Could you tell -- and -- and I don't know, I
12 haven't seen the machine -- but could you tell
13 whether it appeared that those messages had been
14 listened to before you listened to them?

15 A My indication, if that was the case, is that the
16 number would have been blinking, and I don't remember
17 if it was or not. I -- I don't know.

18 Q And I'm not -- I'm not sure I understood what you
19 just said. If they had been listened to, the
20 number would be blinking?

21 A I'm making a comparison to my answering machine,
22 which is a digital answering machine. If there's a
23 mess -- a message on there that needs to be listened
24 to, it would probably blink a number. And once you
25 listen to it, the number stays on. I don't remember

1 if it was blinking or if it was on.

2 Q So you're not able to say whether anyone had

3 reviewed message No. 6?

4 A I don't know that.

5 Q What you do know is that -- is that the digital

6 display suggested there were 12 messages?

7 A Yes.

8 Q Uh, you listened to all 12 of them?

9 A Yes.

10 Q Number 6 was the one that you thought had

11 anything to do with anything?

12 A Correct.

13 Q Again, March 1 and 2 as -- as I move forward

14 there, you were physically present both days?

15 A Yes.

16 Q Did you see Lieutenant Lenk there on site at the

17 Avery's on either day?

18 A In March?

19 Q Yes. March 1 and March 2.

20 A Yeah, he was there. He was, um -- yeah, he was

21 there.

22 Q Both days?

23 A I believe so. Yes.

24 Q Sergeant Colborn?

25 A I don't believe Sergeant Colborn was out there. If

1 he was, it may have been for some security away from
2 the garage area, the residence.

3 Q You just don't know?

4 A I don't know.

5 Q I don't know if you're able to help with this
6 again?

7 A I'll try.

8 Q If you can't, you can't. Okay? Um, 3302 Zander
9 Road. Manitowoc County address? Any idea?

10 A Don't know.

11 Q Don't know of any connection between 3302 Zander
12 Road and Teresa Halbach?

13 A I do not know that.

14 Q Okay. That's all I've got. Thanks.

15 THE COURT: Uh, Mr. Kratz, any redirect?

16 ATTORNEY KRATZ: Yes, Judge. But I do have
17 one issue outside the presence of the jury that I
18 must raise.

19 THE COURT: Very well. We'll excuse the
20 jury here.

21 (Jurors out at 3:56 p.m.)

22 THE COURT: Mr. Kratz.

23 ATTORNEY KRATZ: Thank you, Judge. The
24 record should reflect that this witness has been
25 asked and has, in fact, left the -- the courtroom.

1 Mr. Strang, now, for, uh, at least the second time,
2 uh, and the, uh, first time with this witness, has
3 been allowed to introduce the subject of
4 investigative bias. That is, uh, been allowed with
5 this witness to suggest that there was better reason
6 for the law enforcement officials to be looking at
7 Mr. Zipperer rather than that of Mr. Avery.

8 Apparently, Mr. Strang's suggestion to
9 this witness was because Mr. Avery was seemingly
10 more polite, uh, that the officers, uh, still
11 focused on Mr. Avery. As this Court knows, uh,
12 the State had, uh, asked the Court to, um, reject
13 the notion of, uh, institutional bias, uh, and I
14 think, uh, with specific witnesses, that has been
15 addressed.

16 But this investigative bias, or the
17 distinction that Mr. Strang now makes, is
18 something that the State feels, uh, unable to
19 meet. Feels unable to address. Uh, I suspect
20 that this witness, if asked and if allowed to
21 testify truthfully, would give good reasons why
22 Mr. Avery was a suspect.

23 As between Mr. Zipperer and Mr. Avery,
24 only one of those two people was sent to prison
25 for a violent felony offense, pointing a firearm

1 at a woman. That seems relevant, Judge.

2 And with Mr. Strang and his suggestion
3 now that there was, uh, seemingly no reason to
4 look at Mr. Avery compared to Mr. Zipperer, I
5 want to ask this witness that question. I want
6 to be able, with Mr. Strang having opened that
7 door, uh, to be able to allow Mr., uh, Remiker,
8 on behalf of his Department, to suggest why they
9 might be asking is Mr. Avery in custody, or why
10 Mr. Avery was being, uh, uh, interviewed or
11 investigated. Uh, I think that's going to be the
12 answer.

13 If we ask the Court if I'm allowed, uh,
14 to ask that question, we certainly wouldn't have
15 done it, and I've abided by the Court's pretrial
16 ruling regarding the other acts evidence, but on
17 that specific count, that is, that specific
18 felony offense for which we know, uh, included,
19 uh, imprisonment for Mr. Avery, that now becomes
20 relevant, and the State should be allowed at this
21 time, uh, to inquire, in a limited fashion, as to
22 what these detectives knew of Mr. Avery's violent
23 history.

24 THE COURT: Mr. Strang?

25 ATTORNEY STRANG: Thank you, Your Honor.

1 Uh, and I -- I appreciate Mr. Kratz raising this,
2 uh, out of the jury's presence. Um, I still
3 don't think there's any linkage at all here in
4 this trial, uh, between the 1985 felony
5 conviction involving different people and
6 different conduct, or a different victim, if you
7 will, and different conduct all together, and
8 this investigation, particularly where the visit
9 to the Zipperers, and the evidence about the
10 Zipperers, is limited to November 3.

11 And we have both Detective Remiker and
12 Lieutenant Lenk going out of their way on direct
13 examination to testify that, boy, on November 4,
14 you know, we either thought Calumet County was
15 barking up the wrong tree, or we thought Mr.
16 Avery had nothing to do with -- with it, so I
17 don't think I've opened any back door to bringing
18 in, um, a 22-year-old felony conviction.

19 I -- I just -- I just don't think any
20 door to that has been opened at all. Um, I don't
21 anticipate there'll be further in evidence about
22 the Zipperers, but I don't know that it -- it
23 even matters.

24 THE COURT: Mr. Kratz?

25 ATTORNEY KRATZ: Well, Judge, uh, I -- I

1 can't -- and -- and with -- with apol -- apologies
2 to the Court in oversimplifying this term, uh, I
3 can't see how else to address the concept of poor
4 Steven Avery. Why would you be looking at poor
5 Steven Avery, uh, to have committed this offense?

6 There's very, very good reasons why law
7 enforcement, because of what they knew about his
8 prior violent felony history -- there my be other
9 reasons, Judge, and, perhaps, we'll need an offer
10 of proof for me to do that outside of the
11 presence of the jury, but we should at least be
12 allowed to inquire.

13 THE COURT: Well, maybe I'm missing
14 something here, but, um, seems to me, as I
15 understood the testimony of this witness, it may be
16 that, uh, Mr. Jacobs thought for some reason that
17 the State should be focusing on Mr. Avery. But as I
18 understood Detective Remiker's testimony, at least
19 at the time, he was not. He attempted to distance
20 himself from any, uh, suggestion that at the -- at
21 the time of the -- of the, um, conversation that was
22 from which we heard the audio today, that, um --
23 that, uh, Mr. Remiker had, uh, focused on Steven
24 Avery.

25 ATTORNEY KRATZ: I'm -- I'm heartened

1 that the Court may not have bought into
2 Mr. Strang's cross-examination. I'm not sure
3 that the jury's in the same position, though.
4 They -- they certainly may have, Judge, when
5 Mr. Strang was allowed on cross-examination to
6 continue to talk about, um, how uncooperative
7 Mr. Zipperer was, and why would you then be going
8 back to talk to Mr. Avery?

9 THE COURT: Well, you know, on redirect
10 you can heighten that if you wish. But that was
11 my understanding. Uh, uh, I don't remember the
12 exact quotes that Mr. Remiker gave, but I just --
13 at this point this witness didn't support the
14 premise that, uh, at least he, as a member of the
15 Manitowoc Sheriff's Department, was locked in on
16 Steven Avery.

17 Um, if there's nothing else, we'll bring
18 the jurors back in and bring, uh, the witness
19 back in for redirect.

20 ATTORNEY KRATZ: I -- I assume the Court's
21 denying my request, then, to go into those other
22 matters --

23 THE COURT: Yes, I am.

24 ATTORNEY KRATZ: -- what -- what they
25 knew about his history?

1 THE COURT: Yes.

2 ATTORNEY KRATZ: All right.

3 ATTORNEY STRANG: Um, maybe we could get
4 a sense of the timing of the rest of the day?

5 THE COURT: Mr. Kratz, how much time do you
6 think you'll be, uh, doing your redirect?

7 ATTORNEY KRATZ: Can't be any more than ten
8 minutes, Judge.

9 THE COURT: And, uh, who's the next
10 witness?

11 ATTORNEY KRATZ: Uh, Deputy Kucharski, who
12 has, um, lots of photos and evidence that's going to
13 be introduced. I don't know if the Court wants to
14 break at -- I don't know if there's going to be
15 any -- any recross, but...

16 THE COURT: Well, we'll see what time we
17 have left after, Mr., um, Remiker, but I don't know
18 that it will pay to start another witness by that
19 time.

20 ATTORNEY KRATZ: That's fine. Thank you,
21 Judge.

22 (Jurors in at 4:04 p.m.)

23 THE COURT: You may be seated. Uh,
24 Mr. Kratz, does the State have any redirect?

25 ATTORNEY KRATZ: Yes, Judge.

REDIRECT EXAMINATION

1
2 BY ATTORNEY KRATZ:

3 Q Detective Remiker, on the evening of the 4th of
4 November and the morning hours of the 5th of
5 November, that is, prior to the time that we
6 heard those calls from Detective Jacobs, was your
7 Department informed that Steven Avery was, uh, if
8 not the last, one of the last people to see
9 Teresa Halbach alive?

10 A Yes.

11 Q If this would have been your investigation at
12 that particular moment, would Steven Avery have
13 been a person of interest in your investigation?

14 A Absolutely.

15 Q And so when Detective Jacobs asks, uh, questions
16 about Steven Avery, and is he in custody, were
17 you surprised with Detective Jacobs' request
18 or -- or comments?

19 A Not really. Uh, I mean, he -- definitely, Steve was
20 a person that, um, um, could have been a suspect. He
21 saw her. Um, was the last person to see her.

22 Q Now, when we hear Detective Jacobs' call, and I
23 know that's not your call, and it's hard to ask
24 you, really unfair to ask you, to speak for
25 another person, but what I heard was that two

1 different things were going on, uh, and correct
2 me if I'm wrong, first, was that Teresa's car was
3 found on the Avery property; is that right?

4 A That's what's said. Yes.

5 Q What's going on, also, at almost the identical
6 time, is dispatch is announcing that some party
7 was taken into custody; is that right?

8 A Yes.

9 Q Now, those two things, as it so happens, are
10 unrelated; is that right?

11 A Correct.

12 Q Now, unless Detective Jacobs would have asked if
13 those two events were related or not, is there
14 any way he would have known if they were
15 unrelated?

16 A He wouldn't have known that. Based on the radio
17 traffic, it sounds like somebody was taken into
18 custody. Somebody was taken into custody.

19 Q And Dennis Jacobs asked if that was Steve Avery?

20 A That's what's said. Yes.

21 Q Mr. Strang asked you about Mr. Zipperer, uh, and
22 asked about, um, Mr. Avery, and that both of
23 those individuals were persons of interest to
24 you. That's fair, isn't it?

25 A Definitely.

1 Q On the 4th, that is, the night before Teresa's
2 vehicle is found, was one person -- that is,
3 Mr. Zipperer compared to Mr. Avery -- was one
4 person given more attention than the other
5 person?

6 A I would say it was fairly equal at that point.

7 Q Well, let me just ask by -- by time frame, who
8 did you guys spend more time with, Mr. Avery or
9 Mr. Zipperer?

10 A I spent a lot more time with Mr. Zipperer and
11 JoEllen.

12 Q Are you familiar with, uh, Sergeant Colborn's
13 contact with Mr. Avery earlier? Uh, that'd be on
14 the -- on the 3rd?

15 A Yes.

16 Q And then your contacts on the 4th with Mr. Avery;
17 is that right?

18 A Correct.

19 Q Uh, as between the two, are you able to ascertain
20 which was given more of your time or attention?

21 A We were at the Zipperer property longer than I was at
22 the Avery property on Friday. I think the Avery
23 property was a total of 15 minutes total. I know for
24 a fact we were at the Zipperer property longer than
25 that speaking with George, speaking with JoEllen,

1 speaking with Jason.

2 Q Okay. What was your goal on the 4th? What was
3 your investigative goal that night?

4 A That night? The day of the --

5 Q The -- I'm -- I'm sorry.

6 A The 4th during the --

7 Q Yeah.

8 A -- morning hours?

9 Q Yeah. Day of and -- and evening of the 4th?

10 A My goal was to find Teresa Halbach or to come up with
11 some answers as to where she was. Um, and,
12 obviously, we -- you know, we made contact with
13 Steve, and -- and Steve was cooperative, and at that
14 point I had no reason to believe that Steve was a
15 suspect based on what we had at the time. My goal,
16 entirely, from Thursday, Friday, Saturday, Sunday was
17 to find Teresa. Bottom line.

18 Q Thank you, Detective.

19 ATTORNEY KRATZ: That's all I have,
20 Judge.

21 ATTORNEY STRANG: Nothing more. Thanks.

22 THE COURT: All right. The witness is
23 excused.

24 ATTORNEY KRATZ: Call our next witness,
25 Judge?

1 THE COURT: I think we'll get started, yes.

2 ATTORNEY KRATZ: We'll call, uh, Deputy
3 Kucharski to the stand. Can we approach just for a
4 housekeeping matter, Judge?

5 THE COURT: Yes.

6 (Discussion off the record)

7 THE CLERK: Please raise your right hand.

8 **DANIEL KUCHARSKI,**

9 called as a witness herein, having been first duly
10 sworn, was examined and testified as follows:

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

13 THE WITNESS: Daniel Kucharski,
14 K-u-c-h-a-r-s-k-i.

15 **DIRECT EXAMINATION**

16 BY ATTORNEY KRATZ:

17 Q It's pronounced Kucharski?

18 A Yes, it is.

19 Q Mr. Kucharski, how are you employed?

20 A I work for the Calumet County Sheriff's Department.

21 Q What are your duties with the Sheriff's
22 Department?

23 A I work in the patrol division on routine patrol. I
24 also have, uh, additional duties of the armor for the
25 county and evidence tech for the county.

1 Q What kind of, uh, training goes into being an
2 evidence tech?

3 A It's a two-week course, I believe, um, concentrating
4 on the, um, identification of locating, preserving,
5 and collecting evidence.

6 Q How long have you been a evidence tech?

7 A I went through the school, um, August of 2005.

8 Q And could you tell us, Deputy, uh, Kucharski, how
9 long you've been a law enforcement officer?

10 A Approximately five years.

11 Q I'm going to direct your attention to November 5
12 of 2005 and ask if you were employed in the
13 capacity as a deputy sheriff on that day?

14 A Yes, I was.

15 Q On the 5th of November, 2005, do you recall
16 being, um, summoned into work?

17 A Yes. I was, uh, asked to respond to, uh,
18 intersection of Highway 147 and Avery Road to assist
19 in, uh, evidence collection and searching.

20 Q Did you proceed to that scene?

21 A Yes, I did.

22 Q And upon your arrival at the intersection of 147
23 and Avery Road, tell the jury what you first
24 found when you got there?

25 A The first thing was, uh, the command post. I went up

1 to the command post, met with Lieutenant Sippel. Um,
2 Lieutenant Sippel -- There were other officers on
3 scene already. Lieutenant Sippel directed me to, uh,
4 go with direct -- Detective Remiker, pick up a couple
5 of pieces of evidence, and then the remainder of my
6 evening was spent, uh, searching the, um, salvage
7 yard with a cadaver dog. I'm a dog handler.

8 Q All right. Now, the cadaver dog, or search and
9 rescue K-9 part of this case was a rather big
10 undertaking; is that right?

11 A Absolutely.

12 Q Can you describe that, uh, for the jury as I put
13 up Exhibit No. 86? Go ahead. Just -- just tell
14 us about that undertaking?

15 A Well, I -- I was paired up with a single handler and
16 a dog, and we, uh, started out in the, uh -- the
17 actual portion of the salvage yard that held the car.
18 It's kind of on a lower grade than the rest of the,
19 uh -- the rest of the property, and we proceeded to
20 go up and down the rows, um, with the dog, searching,
21 uh, for a body.

22 Q How long did that take you?

23 A The whole evening. I -- I think I cleared from there
24 somewhere around 11:00 that night.

25 Q Do you know about how many cars, uh, the Avery

1 salvage property, uh, holds?

2 A I would say thousands.

3 Q Okay. When you say it took you the whole evening
4 with these, uh -- with these dogs and their
5 handlers, uh, about what time did you complete
6 your duties that first evening?

7 A Uh, I think approximately about 11 o'clock.

8 Q The next day, then, on the 6th of November, were
9 you asked to return to the Avery salvage
10 property?

11 A Yes. I was scheduled to return early in the morning,
12 and, uh, again assist in, uh, searching for evidence.

13 Q What, uh -- what were your responsibilities, and
14 where and from whom did you receive these, um,
15 directions?

16 A Um, the chain of command for me is, uh -- Lieutenant
17 Bowe was my direct supervisor. Um, I knew -- I knew
18 Investigator Wiegert and a -- a agent from the DCI
19 were in charge of the investigation, but I would
20 always go to Lieutenant Bowe to get my assignments.
21 I believe he would get the assignments from the
22 investigators and would trickle down to me.

23 Um, and that morning -- uh, the first
24 morning I was, uh, set to -- we were searching
25 the garage, um, at the Steven Avery residence.

1 That was the first, uh, undertaking that we did.

2 Q Were you teamed up with anybody at that time?

3 A Yes. I was teamed up with, uh, Sergeant, uh,
4 Colborn, Detective Remiker, and Lieutenant Lenk from
5 the Manitowoc County Sheriff's Office.

6 Q Can you describe this garage for us, please?

7 A Two-car detached garage. Um, single side door,
8 service door. A single overhead, uh, car door.

9 (Exhibit Nos. 221-229 marked for identification.)

10 Q Okay. I'm going to show you -- I'm sorry about
11 that. I didn't know that was happening. I'm
12 going to show you an exhibit. It's Exhibit No.
13 227. Mr. Fallon's going to show that to you so
14 we can begin. Tell us what that is, please?

15 A That is a, uh, picture of the overhead garage door of
16 the garage that I searched that morning. It would
17 be, uh, from the, uh, north side of the garage facing
18 south.

19 Q There's a laser pointer, Deputy Kucharski, up,
20 uh, with you. If you can refer to the larger
21 exhibit that we have, uh, up here for the jury,
22 since this is the first view, at least, of the
23 interior from the 6th of November. Use the laser
24 pointer and tell us, uh -- tell us what we're
25 looking at?

1 A Well, this is the interior of the garage. Um, like I
2 said, we're facing south from the north. Um, we're
3 looking at, um -- This is after we had already been
4 searching for awhile. I think you can see down here,
5 uh, some circled spots we had been searching. Uh, we
6 took this photo after -- Um, I took this photo after
7 we removed a, uh, um -- a snowmobile that was parked
8 here.

9 Q We'll show that in just a minute. But what are
10 some of the other major items just so we can
11 orient ourselves to this garage?

12 A Items that we found or --

13 Q Just -- just items in the garage so that we --
14 when we, uh, refer to some areas that you found
15 things, we'll -- we'll be able to know where they
16 were found near.

17 A On the -- on the back wall, um, obviously, a -- a --
18 a tool chest, uh, miscellaneous other tools. There
19 was a lot of, uh -- a lot of clutter, especially
20 outside of this, uh -- this picture -- on this side
21 of the, uh, picture was several feet deep with
22 clutter.

23 Q Okay. Deputy Kucharski, could you, uh, tell us,
24 um, upon your search of this garage -- By the
25 way, whose garage is this?

1 A It's a garage at Steven Avery's residence.

2 Q Based upon your search of the garage, could you
3 tell us the, um -- the first series of items
4 that, uh -- that you found that were noteworthy?

5 A As we walked through the door, the door -- the
6 service door is on this side, and, uh, that's the
7 door we walked in, and we immed -- immediately
8 noticed, uh, several .22 long rifle shell casings
9 sitting on the, uh, concrete in this area.

10 Q Mr. Fallon is going to hand you some exhibits.
11 Actually, they are -- they begin with Exhibit No.
12 221. Tell us what's Exhibit 221?

13 A Two twenty-one is a, uh, empty .22 long rifle shell
14 casing.

15 Q I'm going to put that up for the -- for the jury
16 so they can follow along. There is a -- a
17 number, or a, I think, what's called an evidence
18 tent next to that. Uh, what number is that?

19 A That's No. 11.

20 Q What does No. 11 mean? Just so as we look at
21 some of these, um -- of these photos...

22 A As we're going along, um, identifying evidence, the
23 tents help us, uh, first of all, keep the evidence in
24 sight, meaning that there's a tent there. We know
25 there's ev -- evidence right next to it. Help us --

1 helps us in, uh, um, logging the numbers, also, so
2 that we know, as we're logging them onto the evidence
3 sheets, we can go by number.

4 Q I'm going to come up with a little closer or
5 zoomed-in view of, uh, Exhibit 221. You
6 mentioned for the jury that, uh, you believed
7 that to be a .22 caliber shell casing. Uh, how
8 did you know that?

9 A Through my training and ex -- experience. I'm the
10 armor for the county. I can recognize a .22 long
11 rifle shell casing.

12 Q And that's what this is?

13 A Yes, it is.

14 Q All right. Tell us what Exhibit 222 is, please?

15 A Two twenty-two is another .22 long rifle shell
16 casing. Uh, exhibit with the tent of 12 there.

17 Q Now that the jury can see Exhibit 222, is that
18 what, uh -- what that exhibit depicts?

19 A Yes.

20 Q All right. By the way, where were these items
21 found?

22 A On the floor in the garage.

23 Q Exhibit 223?

24 A Yes.

25 Q Can you tell me what that is, please?

1 A It's another .22 long rifle shell casing with a tent
2 number of 13, found on the floor in the garage.

3 Q And we'll show the jury 223. Is that a picture
4 of what you've just described?

5 A Yes, it is.

6 Q Two twenty-four?

7 A Two twenty-four is another picture of a, uh, .22 long
8 rifle shell casing, uh, found in the garage with tent
9 number of 14.

10 Q Seems to have a worm next to it; is that right?

11 A Yes. Yes.

12 Q You take these pictures kind of as you find them?

13 A Absolutely. As we find them, uh, if we can take a
14 photo of it, we, uh, try not to disturb it. We
15 circle where it was and -- and take a photo before we
16 collect it, so...

17 Q And so the -- the record reflects, that has tent
18 number 14 next to it?

19 A Yes.

20 Q All right. Next shell casing? Tent number 15.

21 What, uh, exhibit?

22 A Exhibit 225. Again, another .22 long rifle shell
23 casing found on the, uh, floor in the garage. Tent
24 number 15.

25 Q Okay. And, finally, Exhibit 226?

1 A Be tent number 16, another .22 long rifle shell
2 casing found on the, uh, floor in the garage.

3 Q Now, Deputy Kucharski, um, I think we've seen --
4 is it six photos of shell casings?

5 A Yes. Six photos.

6 Q How many .22 long rifle shell casings did you
7 find that morning?

8 A Um, 10 or 11 we found.

9 Q And could you tell the jury where they were
10 located? In other words, were they close to each
11 other, or spread around, or give us some kind of
12 a description of where they were?

13 A These were the ones that were out in the open that
14 were able to be photographed. They were spread all
15 over, um, in that portion of the garage. Um, some of
16 them were underneath things. Can't -- couldn't take
17 a picture of it underneath it once we collected it.
18 So these were the ones we could take photos of.

19 Q Mr. Kucharski, before we show you these -- these
20 next photos, I want to talk a little bit about,
21 um, the rest of your team. Who else was with
22 you, uh, at the time, and what responsibilities
23 each of you had? Can you --

24 A Sure.

25 Q -- describe that for us?

1 A Well, I was given the -- basically a team leader
2 position from, uh, Lieutenant Bowe, who said -- told
3 me to take control of the team and -- and give
4 assignments as needed. Uh, Lieutenant Lenk, Sergeant
5 Colborn, and Detective Remiker were on my team. So
6 came up with a plan, um, of what to do. They were
7 searching. Uh, I was photographing, and collecting,
8 and bagging, and tagging evidence.

9 As a piece of evidence would come into,
10 uh -- would be found, they would, uh, point it
11 out to me. Um, I would collect it, I would
12 photograph it, and -- and put it in the bags.

13 Q Okay. I'm going to show you Exhibit 227 again,
14 the open garage door, and I'm going to zoom in
15 and actually show you what appears to be some
16 wires hanging from the rafters. Do you see that?

17 A Yes. Uh, they appear to be some type of, uh -- some
18 type of electrical wires that were tied up there.

19 Q All right. And I'll direct your attention to
20 Exhibit No. 228. Tell the jury what that is,
21 please?

22 A Two twenty-eight, that's a closer up photo of the,
23 uh, um -- of the electrical wires tied there on the
24 rafter.

25 Q And by the way, do all of these photos accurately

1 depict how each of these items looked on the 6th
2 of November?

3 A Yes, they do.

4 Q What's Exhibit 229, please?

5 A Two twenty-nine is a, uh, picture of the, uh -- of
6 the electrical cords after they had been cut down.

7 Q So after they were, um, recovered, seized, put
8 into evidence, this, like all the other evidence,
9 was photographed by somebody; is that right?

10 A Yes.

11 Q And that's 229?

12 A Yes.

13 ATTORNEY KRATZ: Judge, I'm happy to
14 continue if you want me to. Otherwise, we can
15 take our break at this point.

16 THE COURT: No, I think they -- Or this
17 is probably a good time to break, uh, for today.
18 Um, members of the jury, uh, we're going to
19 conclude proceedings for today. I'm going to
20 remind you again not to discuss the case, uh,
21 with yourselves, with each other, any member
22 that's of your family, and, uh, make sure that
23 you're not exposed to any media coverage about
24 the case. Uh, we will resume at the normal time
25 tomorrow morning.

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(Jurors excused at 4:28 p.m.)

THE COURT: You may be seated, counsel. I do have a few matters to take up in chambers before you leave today. I'd like you to stop in.

ATTORNEY BUTING: Do you want to put any of the side bars on the record or...

ATTORNEY KRATZ: The last one was a -- a -- a court administration. I asked how long you wanted to go and --

THE COURT: Yeah. There was just one side bar, I think, we haven't accounted for, which was after four o'clock, and that was Mr. Kratz, uh, asking how far we were going to go today, basically.

ATTORNEY BUTING: Thank you.

(Wherein Court stands adjourned at 4:29 p.m.)

1 STATE OF WISCONSIN)
)SS.
2 COUNTY OF MANITOWOC)

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I, Jennifer K. Hau, Official Court Reporter for Circuit Court Branch 3 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this ___ day of _____, 2007.

Jennifer K. Hau, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 9

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** FEBRUARY 22, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. We're here this morning for a continuation of
4 the trial in this matter. Will the parties state
5 their appearances for the record, please.

6 ATTORNEY KRATZ: I will, Judge. Once
7 again -- Good morning, Judge. Once again, the State
8 appears by Special Prosecutors Kratz, Fallon and
9 Gahn.

10 ATTORNEY STRANG: Good morning, your Honor.
11 Attorney Jerome Buting and Dean Strang appearing
12 with Mr. Avery.

13 THE COURT: Thank you. I believe when we
14 left off yesterday the State was conducting direct
15 examination of Mr. Kucharski.

16 ATTORNEY KRATZ: We were, Judge, and we'll
17 recall him at this time.

18 THE COURT: You may do so.

19 **DEPUTY DANIEL KUCHARSKI**, called as a
20 witness herein, having been first duly sworn, was
21 examined and testified as follows:

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

24 THE WITNESS: Daniel Kucharski,
25 K-u-c-h-a-r-s-k-i.

1 DIRECT EXAMINATION CONTD

2 BY ATTORNEY KRATZ:

3 Q. Deputy Kucharski, good morning and welcome back.
4 We left off yesterday morning discussing a search
5 of Mr. Avery's garage on the sixth of November;
6 do you remember those conversations and
7 questions?

8 A. Yes, I do.

9 Q. Yesterday afternoon you described for the jury
10 the location and seizure of some .22 caliber
11 shell casings on the floor; do you recall that?

12 A. Yes.

13 Q. I have handed you what's been marked for
14 identification as Exhibit 220. I ask you to tell
15 the jury what that is, please.

16 A. That's a photo of the box and the shell casings
17 that I recovered from the scene. I put the shell
18 casings into the box; I brought the box into the
19 scene.

20 Q. After shell casings were found and recovered,
21 they are brought to the Sheriff's Department and
22 photographed; is that right?

23 A. Yes.

24 Q. And that's what Exhibit 220 is, it's a photograph
25 of those shell casings?

1 A. Yes.

2 Q. Now, Deputy Kucharski, you didn't perform any
3 kind of examination; in other words, you don't
4 have the qualifications to examine the shell
5 casings for distinctive markings, or tool marks,
6 or anything like that?

7 A. That's correct. I don't have that expertise.

8 Q. That happened by somebody else or somebody other
9 than you?

10 A. If it happened, yes.

11 Q. All right. Deputy Kucharski, the next area of
12 inquiry inside of the garage has to do with a
13 vehicle, or actually two vehicles, that were in
14 the garage when you got there on November 6th; do
15 you recall any vehicles being on the -- or in the
16 garage?

17 A. There was a Suzuki Samurai in the garage and also
18 a snowmobile.

19 Q. Exhibit 230, which I'm showing you and showing
20 the jury as well, tell the jury what it is that
21 we're looking at.

22 A. This is the rear of the Suzuki Samurai that was
23 inside the garage.

24 Q. And at least Exhibit No. 230, you can see the
25 garage door, that is, that it's backed in or

1 facing, if you will, what would be the main
2 garage door; is that right?

3 A. Correct. This picture is taken from the back of
4 the garage, on the south, facing north, towards
5 the large overhead door.

6 Q. Tell us what Exhibit 231 is, please.

7 A. 231 is a picture of the Suzuki. And also in the
8 foreground is the snowmobile, this would be taken
9 more from the northeast corner of the garage.

10 Q. And, once again, both the Suzuki Samurai and the
11 snowmobile seem to be facing outward, that is,
12 towards the main overhead garage door; is that
13 right?

14 A. That's correct.

15 Q. Once again, Deputy Kucharski, as with these other
16 photos that have been identified, does this
17 appear the same or similar as what you observed
18 on the 6th of November of 2005?

19 A. Yes, it does.

20 Q. You spoke yesterday about some other stuff being
21 in the garage. And so the jury can -- excuse
22 me -- so the jury can see a better depiction of
23 the rest of the inside of the garage as it looked
24 in November, we are going to be showing you some
25 other photographs.

1 ATTORNEY KRATZ: I do want to alert counsel
2 that Exhibit 236 is very similar to a photograph
3 which has already been received, which is
4 Exhibit 120. It looks a lot a like, I just wanted
5 to show you that. It's going to be the same type of
6 angle.

7 Q. (By Attorney Kratz)~ Nonetheless, let me show you
8 what is first marked as Exhibit 232. Tell us
9 what we're looking at, if you could.

10 A. This would be the rear of the garage, south side,
11 taken from looks like kind of the center of the
12 garage.

13 Q. The south side would be the back wall of the
14 garage; is that right?

15 A. Correct. Back wall, there's no doors or anything
16 on that wall.

17 Q. Now, those items that you see in the picture, not
18 only of the larger items, meaning the tool box or
19 the compressor or the refrigerator freezer or
20 other large items, but even the smaller items on
21 the workbench or on top of some of those other
22 things, on the 6th of November, were all of those
23 items removed, or taken out, or thoroughly
24 searched?

25 A. They weren't removed on the 6th, that wasn't the

1 depth of the search that we did on the 6th.
2 Things weren't taken out of place, or out of the
3 garage, or anything. It was more of a looking
4 into for obvious things.

5 Q. All right. What's Exhibit No. 232, please --
6 excuse me 233?

7 A. 233 would be another picture of the rear of the
8 garage, more towards the west corner of it.

9 Q. This looks more of a straight back view; is that
10 right?

11 A. Correct.

12 Q. You can see the John Deere tractor and still see
13 the upright toolbox in this shot; is that right?

14 A. Correct.

15 Q. What is Exhibit No. 234?

16 A. 234 would be a picture of the west side of the
17 garage. That would be the side with the service
18 door, all the way up towards the front.

19 Q. Now, that side of the garage and as we're looking
20 at Exhibit No. 234, appears to be the most
21 cluttered, for lack of a better term; is that a
22 fair representation?

23 A. Yes, it was actually -- it's hard to see the
24 depth, but it was actually several feet of
25 clutter there.

1 Q. And, once again, Deputy Kucharski, were all of
2 those items removed and thoroughly searched or
3 was this still more of a general search?
4 A. More of a general search. Those items weren't
5 all removed.
6 Q. What is Exhibit 235, please?
7 A. 235 is that west wall, again, to the north,
8 showing that service door.
9 Q. And what do you mean by service door?
10 A. You have got the main overhead door for the
11 garage. And then I would call it a service door,
12 just a regular turn the knob and open the door of
13 your garage.
14 Q. This would be, ostensibly, the front right corner
15 of the garage; is that right?
16 A. Correct.
17 Q. Finally, again, at an angle very similar to
18 Exhibit No. 120, but this is Exhibit 236; can you
19 tell us you what that is, please.
20 A. This is the east side of the garage, next to the
21 Suzuki, from the north facing the back of it.
22 Q. So we see the Suzuki facing us. On the very
23 right edge of this picture, you see the left
24 wall, or what would be the east wall of the
25 garage, and then the junk or stuff in between; is

1 that right?

2 A. Correct.

3 Q. Now, Deputy Kucharski, the garage itself, we saw
4 a picture yesterday of the interior of the
5 garage, or I guess what could best be described
6 as a picture from the threshold of the garage
7 looking at the floor and looking at some other
8 things that were inside; do you recall that
9 picture?

10 A. Yes.

11 Q. Did you also have occasion to take a look at and,
12 in fact, photograph some -- some of the floor,
13 some of the concrete floor of the garage?

14 A. Yes, as we entered the garage, the first things
15 we saw were the shell casings. And we also
16 immediately found, in that same general area, we
17 found reddish brown stains on the concrete, that
18 we believed to be possibly blood.

19 Q. All right. Before we get into what you thought
20 was blood and the collection of those items,
21 first just want you to describe the floor.

22 A. The floor was a concrete floor, dirty with normal
23 garage materials on it, that you would think,
24 miscellaneous fluid stains on it; scrape marks
25 from the snowmobile being pulled in and out, you

1 could tell that. The floor did have a -- The
2 concrete did have a crack in it, running north
3 and south, pretty much the full length of the
4 slab.

5 Q. Let's first look at Exhibit No. 237. Do you see
6 that picture in front of you?

7 A. Yes, I do.

8 Q. And as I place it on the large screen, tell the
9 jury what we are looking at here, please.

10 A. This is at the threshold of the overhead door.
11 We're looking at the, with the snowmobile
12 removed, that west bay of the garage.

13 Q. You described for us before a crack that
14 basically runs the entire length of the garage,
15 from generally a north to south direction, can
16 you point that out with the laser pointer,
17 please.

18 A. This would be the overhead door, where the
19 overhead door starts, you can see the crack here.
20 And it runs south, almost the whole slab of the
21 garage.

22 Q. All right. You talked about some fluids, or what
23 I guess on this exhibit looks like darker areas
24 on the floor, could you just describe those or
25 point those out for the jury, please.

1 A. Correct. There is a fluid stain here. Also over
2 on the west side, by the clutter, there's fluid
3 stains and older stains here that have been
4 dried, another stain here.

5 Q. What's photo number 238, please?

6 ATTORNEY BUTING: You want to just note for
7 the record what he is ...

8 ATTORNEY KRATZ: I'm sorry, Judge, the
9 record should reflect that with the laser pointer,
10 this witness had pointed out what looks like some
11 kind of fluid stains on the concrete floor. There
12 isn't a particular area of the floor; in other
13 words, it's both to the left and to the right and
14 actually to the center of this exhibit, but they are
15 markedly darker in color than what the other floor
16 might be, or what's at least depicted in this image.

17 ATTORNEY BUTING: Why don't you just point
18 to those again and I will note where it is on the
19 photo you are. You did one or two at a time, do the
20 first one.

21 THE WITNESS: Sure.

22 ATTORNEY BUTING: The record should reflect
23 he's pointing to a darker stain area which appears
24 to be near the left front wheel of the Suzuki
25 Samurai as it's parked. He's also pointing to

1 another one on the right side of the photograph,
2 upper right corner near a red cooler, with some
3 thermos type mugs or something. And a lighter
4 colored gray, more in the lower center of the
5 photograph.

6 ATTORNEY KRATZ: That's sounds accurate,
7 Judge.

8 THE COURT: All right. The Court will
9 accept that characterization.

10 Q. (By Attorney Kratz)~ What's photo 238, please?

11 A. 238 is another picture of the garage floor, more
12 towards the center of the floor.

13 Q. Now, these different angles, just so we are clear
14 for the jury, as you were taking these photos,
15 did you understand the significance of either
16 some of the items that were being depicted, or
17 some of the stains that you were taking photos
18 of?

19 A. Well, some of the stains, obviously, if it's
20 something that we believed was blood, that would
21 be something important. If it was something that
22 we thought was transmission fluid, we wouldn't
23 think that would be important.

24 Q. All right. But you took pictures of the whole
25 floor, basically; is that right?

1 A. Correct. Correct.

2 Q. What's Exhibit 239, please?

3 A. 239 is another picture of the floor, more towards
4 the rear of the Suzuki. I think in this one we
5 were really trying to get the scrape marks from
6 the sled.

7 Q. What's a sled?

8 A. I'm sorry, a snowmobile that was in there.

9 Q. On this photo, you can see visible scratch or
10 scrape marks right into the concrete itself; is
11 that right?

12 A. That's correct.

13 Q. What's Exhibit 240, please?

14 A. 240 is a photo from the -- would be the south
15 side of the garage facing out towards the
16 overhead door, again, of the floor in that area.
17 We get a better look at the cracks, actually
18 seeing cracks that are running east and west
19 also.

20 Q. This photo also depicts some of those
21 discolorations or stains as well as the scratch
22 and scrape marks?

23 A. Correct.

24 Q. Now, you mentioned, Deputy Kucharski, that there
25 were some items of interest that you wished to

1 take a closer look at and did some more
2 investigation or inspection of, can you describe
3 those for the jury, please.

4 A. Well, the blood spots that we -- probable blood
5 spots that we saw, we photographed those and
6 collected those with swabs.

7 Q. All right. Let's talk about the swabbing process
8 before we show you the photos. What does
9 swabbing blood spots mean?

10 A. It comes in a kit from the State. I open up the
11 kit, it's a sealed kit. We take the swab out of
12 the kit; the swab is in a sealed package. You
13 open up the swab and you have -- in the package
14 comes a small sealed bottle of distilled water.

15 You put a couple of drops of distilled
16 water onto the swab. And then you take the swab
17 and you rub it on the suspected spot. And you
18 have got a special container to dry it and house
19 it, put it back in there. Put everything back
20 together and everything back into the kit and
21 that kit gets put into evidence.

22 Q. What kind of stains did you swab, please. I want
23 to know what they visually looked like.

24 A. They were reddish brown in color. They were
25 dried at that time. They were circular in

1 pattern. They were smaller, I would say some
2 place from dime size up to quarter size.

3 Q. During this process, that is, during the
4 identification of what you thought were blood
5 spots, did you use some more of these evidence
6 tents that we saw yesterday?

7 A. That's correct. As we identified the spots that
8 we were going to take swabs of, we put the tents
9 by the spots.

10 Q. If you look at that first photograph,
11 Exhibit 241, tell us what that is, please.

12 A. This is an overall picture of the area where we
13 found the suspected blood spots showing the
14 tents.

15 Q. I will show the jury now Exhibit 241. And if you
16 could use your laser pointer, tell us what it is
17 that we're looking at, please.

18 A. These would be the blood spots here, pointed out
19 next to the tent.

20 Q. What I see are photo -- or tents, one through
21 eight; is that right?

22 A. That's correct.

23 Q. What does that mean, why did you use eight
24 different tents?

25 A. That was identifying eight separate areas that we

1 were going to swab.

2 Q. And, in fact, was that done?

3 A. Yes, it was.

4 Q. What's Exhibit 242?

5 A. 242 is a closer up photo of 4, 5, 6, 7, and 8
6 tents and the blood spots -- suspected blood
7 spots next to them.

8 Q. As we look at Exhibit No. 242, and actually since
9 it's a digital photo, I'm able to zoom in to tent
10 number six, as an example; do you remember this,
11 these spots and this image in particular and what
12 is it that we're looking at?

13 A. You can see a few spots here to the left of the
14 tent. And then also some type of pattern in the
15 suspected blood spot there.

16 Q. Now, those stains, whatever they were, these were
17 collected all by the same method, that is, by
18 using what's called swabs, or these -- it's a
19 large Q-tip is what it looks like; is that right?

20 A. Yes.

21 Q. What's Exhibit 243, please?

22 A. 243 is a closer up picture of tents 4, 5, and 6
23 and the corresponding blood spots, suspected
24 blood spots there.

25 Q. Again, these were all on the floor of what was

1 later to be determined to be Mr. Avery's garage;
2 is that right?

3 A. That's correct.

4 Q. What is Exhibit 244?

5 A. 244 is a closer up picture of tent 7 and 8 and
6 the suspected blood spots there.

7 Q. And we'll just take a look at that. In this
8 photo, you note a -- or I note, anyway, what
9 looks like a piece of paper, a chart indicating
10 some kind of a ruler or measuring device, as well
11 as a color pallet. Can you tell us what that is
12 and what it's used for.

13 A. That's something that we brought into the scene.
14 That's a scale, basically, something that if that
15 was going to be attempted to be processed,
16 that -- that transfer there, that pattern would
17 have been processed. They would have needed a
18 scale, so they can blow up the picture and
19 process it. That's why we added it on that
20 picture.

21 Q. On the 6th of November, did you have any -- This
22 is just the first full day of searching, did you
23 have any idea of the significance of any of these
24 spot or patterns?

25 A. No, we were just generally looking for items that

1 jumped out at us. No one sent us looking for .22
2 long rifle shell casings. They sent us looking
3 for patterns of anything. It was just a general
4 search.

5 Q. Deputy, we're not going to open these exhibits
6 since it contains biohazardous materials, but we
7 are going to show you --

8 ATTORNEY BUTING: Objection, to that
9 characterization. I don't believe one of these
10 is -- First of all, assumes facts not in evidence as
11 to whether there is any biohazard on any of these
12 items, but certainly not all of them.

13 THE COURT: The objection is sustained.
14 We'll do it item by item.

15 ATTORNEY KRATZ: All right. We have
16 Mr. Wiegert here to assist. I'm asking that
17 Exhibits 252, I think it's through 261, be showed
18 too, your Honor.

19 INVESTIGATOR WIEGERT: 252 through 261?

20 ATTORNEY KRATZ: Mm-hmm. I think so. The
21 swabs, if that's what they are. All right.
22 Mr. Wiegert, please, if Mr. Buting can see those
23 before you show them.

24 INVESTIGATOR WIEGERT: Sure.

25 Q. (By Attorney Kratz)~ While they are looking at

1 the exhibits, if I can ask you just a couple of
2 procedural questions. After obtaining samples of
3 these swabs, or any kind of evidence, can you
4 tell the jury what happens to that after you are
5 done with it.

6 A. Well, immediately after it's sealed, it's put in
7 a package. It's sealed. We close up packages
8 with evidence tape; it's a tamper resistance
9 tape. What it is, is a very thin tape; if you
10 try and open it, it tears very quickly, so you
11 can tell that it's been tampered with. We
12 initialed the tape so we know that someone didn't
13 pull the tape off and put a new piece on. It's
14 our initials on it. And depending on how -- what
15 the circumstances are, they stay in your
16 possession until you -- until we enter them into
17 the evidence storage at the sheriff's department.

18 Q. Mr. Kucharski, Mr. Buting has been kind enough to
19 allow me to refer to these as a group of
20 exhibits. We will show you now what are Exhibits
21 252 through 261; can you identify those?

22 A. Yes, these are the packages that we put the swabs
23 in for the suspected blood that we collected in
24 Steven Avery's garage.

25 Q. And you identify -- or can you identify those

1 packages themselves?

2 A. The evidence tags I filled out myself, the -- it
3 has been opened. It looks like by the State
4 Crime Lab.

5 Q. Let me just stop you, that's my next question.
6 You don't actually analyze the material or you
7 don't do any kind of forensic analysis on these
8 things, you just collect them; is that right?

9 A. Correct. Once we collect them, then, that's all
10 our expertise is in, collecting them.

11 Q. Exhibit 252, however, through 261 appears to not
12 only all bear your initials and evidence tape,
13 but what you believe are those 10 separate swabs
14 that were taken from Mr. Avery's floor?

15 A. Yes.

16 Q. Garage floor; is that right?

17 A. Yes.

18 Q. All right.

19 ATTORNEY KRATZ: You can put them back.

20 Thank you.

21 Q. (By Attorney Kratz)~ Yesterday, Deputy
22 Kucharski --

23 ATTORNEY KRATZ: If you could stay up there
24 Mr. Wiegert, I would appreciate it.

25 Q. (By Attorney Kratz)~ Yesterday, you saw a

1 exhibit, it was 228, an exhibit of some hanging
2 wires. We're showing that you to now; do you
3 remember that?

4 A. Yes, I do.

5 Q. You also saw a second exhibit, what we have now
6 come to know are evidence photos. This is
7 Exhibit No. 229; do you recognize that?

8 A. Yes, I do.

9 Q. All right. Mr. Wiegert is going to hand you an
10 exhibit which is identified as No. 249.

11 ATTORNEY KRATZ: If you can find that
12 Mr. Wiegert.

13 Q. (By Attorney Kratz)~ It is a tagged exhibit, if
14 you could tell the jury what Exhibit 249 is,
15 please.

16 A. These are the electrical wires that were hanging
17 on the rafters in Steven Avery's garage on the
18 6th when we were in their searching.

19 Q. The same questions as far as the collection and
20 the tagging of those, that was a process that you
21 yourself completed; is that correct? Or is that
22 something that other officers complete as the
23 week goes on?

24 A. We did not collect these out of the garage. They
25 stayed in the garage after we completed our

1 search.

2 Q. Okay. But the identification, at least you're
3 looking at those, those appear to be the same as
4 when you saw them; is that right?

5 A. That's correct.

6 ATTORNEY KRATZ: We'll deal with their
7 admissibility, just for the record, Judge, perhaps
8 during the break. But Mr. Wiegert you can put them
9 back on the cart.

10 Q. (By Attorney Kratz)~ Now, Investigator -- excuse
11 me -- Deputy Kucharski, how long did this search
12 take, if you recall?

13 A. I don't remember the exact times; it took several
14 hours.

15 Q. On the 6th of November, were there other law
16 enforcement officers, other than your search
17 team, on the Avery property?

18 A. Yes, there were other search teams.

19 Q. And do you know, or did you have an intimate
20 knowledge of what everybody else was doing?

21 A. No, not at all.

22 Q. I'm going to show you again, Exhibit No. 227.
23 You may have mentioned this yesterday, but you
24 said that this looks different, or at least
25 there's one thing missing from when you first saw

1 it?

2 A. Correct. This is a picture of after we removed
3 the snowmobile from next to the Suzuki.

4 Q. Will you tell the jury why you removed the
5 snowmobile?

6 A. We wanted to look underneath and get a better
7 look underneath the tracks and the skis to see if
8 there was any other possible evidence underneath
9 it.

10 Q. Let me ask you, Deputy Kucharski, and there's a
11 specific question for this, see this green
12 compressor on the back wall?

13 A. Yes, I do.

14 Q. On the 5th of -- excuse me -- the 6th of
15 November, was that compressor ever taken out?
16 Was it ever removed and was a thorough search of
17 that area ever completed?

18 A. It wasn't removed. It was just a general search.
19 It was never removed or looked behind, anything
20 like that.

21 Q. All right. After the search of this garage, can
22 you tell us where you went, please.

23 A. After the search of this garage, I was called
24 over behind the garage and to the east to assist
25 in the loading of some burn barrels and tagging

1 the burn barrels for evidence.

2 Q. After the processing or the loading of those burn
3 barrels, where did you guys go then?

4 A. After they were taken away and custody was turned
5 over, we went to -- we were assigned to search
6 Barb Janda's house, which would be the residence
7 due east of the garage.

8 Q. Mr. Wiegert is going to hand you, before we get
9 too far from the garage search, a one last
10 exhibit from the garage, Exhibit No. 250.

11 ATTORNEY KRATZ: Record should reflect,
12 Judge, that Mr. Wiegert is opening the evidence bag
13 with a cutting device.

14 Q. (By Attorney Kratz)~ Now, although the bag itself
15 is marked as the exhibit, I'm interested in
16 what's inside of it; if you could tell the jury
17 what that is.

18 A. These are the .22 long rifle shell casings that
19 we recovered.

20 Q. All right. And, again, you did not examine those
21 further; in other words, you weren't the one to
22 look for any markings, or scratches, or the
23 striations on those; is that correct?

24 A. That's correct.

25 ATTORNEY KRATZ: Thank you, Mr. Wiegert.

1 You can put them back on the cart.

2 ATTORNEY BUTING: Which exhibit is that,
3 again?

4 ATTORNEY KRATZ: 250.

5 ATTORNEY BUTING: Is that all 10 or 11
6 together?

7 ATTORNEY KRATZ: I think they are all in
8 there. You can look at them. It's the whole pill
9 box full of them.

10 ATTORNEY BUTING: We'll let the witness
11 tell us.

12 Q. (By Attorney Kratz)~ Would you count the number
13 of shell casings that's in the box, please.

14 A. These have been repackaged in there in and they
15 are in little glassine envelopes, presumably by
16 whomever processed them. There's three in one
17 package and eight in the another package.

18 Q. That's 11 shell casings?

19 A. Yes.

20 Q. All right. Thank you. I think you left off with
21 the burn barrels, after that was completed where
22 did you guys go?

23 A. I don't remember if it was after or before, we
24 did a search around the garage area. And
25 sometime in there we attempted to search a area

1 behind the garage, myself and Dep -- Investigator
2 Remiker attempted to search a burn pit, what was
3 later described as, but we were unable to because
4 there was a dog there.

5 Q. A dog where?

6 A. There was a dog tied up behind the garage and its
7 chain was long enough to get to us if we were
8 trying to search that area.

9 Q. And where was this area?

10 A. This was behind the garage, behind Steven Avery's
11 garage.

12 Q. I will orient the jury here. I will show you
13 what's been received as Exhibit No. 111; it's a
14 computer animated representation of that area; do
15 your recognize that?

16 A. Yes.

17 Q. What is it that we're looking at?

18 A. That's the rear of the garage that we searched
19 and that's the burn pit area that Detective
20 Remiker and myself attempted to search.

21 Q. Could you show the jurors where you walked and
22 how it was that you were unable to get to that
23 area?

24 A. Well, this was the area that we were attempting
25 to search and this is a doghouse here behind the

1 garage. And the dog pretty much had free rein of
2 this area. The dog was not letting us into that
3 area.

4 Q. All right. Why not, what was the dog acting
5 like?

6 A. Basically, the dog was vicious. It came at us,
7 barked. I actually stood by with my weapon drawn
8 as Detective Remiker attempted to get into there.

9 Q. To search that area with that behavior of that
10 dog, what were your options at that point?

11 A. We -- After our attempts, we pretty much seen, we
12 had to get the dog out of there some way if we
13 were going to search it. There was no way to
14 search it with that dog there.

15 Q. So you chose not to search it?

16 A. Correct.

17 Q. Did you destroy the dog or kill the dog?

18 A. No, we didn't want to do that.

19 Q. Where did you go then?

20 A. We -- I was sent to tag the burn barrels. And
21 then after the burn barrels, we were sent to
22 search Barb Janda's house.

23 Q. We heard from Detective Remiker yesterday about a
24 answering machine, or a message that was on an
25 answering machine; were you present while that

1 was played in the residence?

2 A. Yes, I listened to the tape as it was played.

3 Q. After completing the search of Barb Janda's
4 trailer, where did you go?

5 A. After that, searching that trailer, we were given
6 the assignment to pick up several items, specific
7 items, in Steven Avery's trailer.

8 Q. And what specific items were you asked to
9 retrieve from Mr. Avery's trailer?

10 A. We were sent there to retrieve two firearms;
11 bedding out of a middle bedroom, or spare
12 bedroom; a vacuum cleaner, I believe that's it.

13 Q. Mr. Wiegert is going to hand you what's been
14 marked as Exhibit 247, once he puts new gloves
15 on. Mr. Kucharski, when looking at Exhibit and
16 Tag No. 247 -- and as Mr. Wiegert holds it up and
17 shows us -- tell us, what is Exhibit 247?

18 A. This is the Glenfield Model 60, semi-automatic
19 rifle that we took out of Steven Avery's bedroom.

20 Q. Where was it found in his bedroom?

21 A. It was above his bed, hanging on a gun rack, that
22 would be the north wall of his bedroom, above
23 his -- above the headboard of the bed.

24 Q. Now, you pointed yesterday to a couple of areas
25 on the gun, I think one was the -- Was that you

1 or was that a different -- different witness?

2 A. This is the first I have seen the weapon in
3 court.

4 Q. Okay. I'm sorry, that was a different witness,
5 then, that's fine. Was there another firearm
6 that was retrieved?

7 ATTORNEY KRATZ: You can put that back,
8 Investigator. Thank you.

9 Q. (By Attorney Kratz)~ Was there another firearm
10 that was retrieved from the bedroom?

11 A. Yes, we also retrieved a Connecticut Valley Arms
12 Hawkin Model, .50 caliber muzzleloading rifle.

13 Q. Mr. Wiegert is going to show you what's been
14 marked for identification as Exhibit No. 248.
15 Tell us what that is, please.

16 A. That is the rifle that we took out of Steven
17 Avery's bedroom. Again, it was in the rifle rack
18 above the bed. Also noted in my report the
19 masking tape with the handwritten name on it, of
20 Steve, that was on the weapon when we found it.

21 Q. And the masking tape with the name Steve,
22 S-t-e-v-e; is that right?

23 A. That's correct.

24 Q. And that you left on. And do you recall that
25 being on that weapon when you first observed it

1 in the bedroom; is that right?

2 A. That's correct.

3 ATTORNEY KRATZ: You can put it back,
4 Investigator.

5 Q. (By Attorney Kratz)~ You told us that -- or maybe
6 you didn't. I apologize, I'm confusing you with
7 perhaps another witness. How long did this visit
8 to Mr. Avery's trailer take?

9 A. This didn't take very long. We were sent there
10 to specifically pick up these items. We just did
11 a quick sweep of the residence, located the
12 items, tagged the items, and returned to the
13 Command Post. Less than a half an hour, I would
14 think.

15 Q. You had a specific purpose to go in there?

16 A. Correct.

17 Q. Deputy Kucharski, do you recall where your next
18 search or visit was to the Avery property that
19 day?

20 A. We -- I don't remember if it was next, but we --
21 we searched the Ford F350 that was parked outside
22 of Steven Avery's garage. I believe we also went
23 into Charles Avery's trailer that day. I don't
24 remember which one was which.

25 Q. All right. Do you remember going into any other

1 buildings, any business buildings that day?

2 A. On the 6th, we also would have searched what I
3 would call the new shop building. It was a metal
4 building that was on the property had a type of
5 automotive shop in it and offices.

6 Q. Within this shop building -- By the way what kind
7 of -- what kind of a building did that appear to
8 be?

9 A. It was a metal building, kind of like you would
10 call a pole building, I guess; warehouse type.

11 Q. I have handed you what's been marked as Exhibit
12 No. 245 and ask if you found this within the shop
13 building?

14 A. Yes. In one of the offices, this was posted.

15 Q. On one of the walls, there appears to be a
16 missing persons poster; is that right?

17 A. That's correct.

18 Q. Appear to be Ms Halbach's missing persons poster?

19 A. That is correct.

20 Q. Deputy Kucharski, after the seizure of all of
21 these items, and after the packaging and whatever
22 processing that you might have done, what were
23 your duties later that day?

24 A. Well, after all the searching was concluded, all
25 the evidence that had been taken was brought back

1 to the sheriff's department and then entered into
2 evidence storage.

3 Q. Now, we have heard a little bit about that
4 process, but just generally, what does putting
5 something into evidence storage entail?

6 A. Normally, we have a evidence room in the basement
7 that we put -- we, as in the road deputies or
8 whomever collects the evidence, puts the evidence
9 into a locker. We take the key out of that
10 locker and we place it into a drop box. That's
11 the only key for that locker that I know of.

12 It goes into the drop box. And, then,
13 when the evidence custodian has time to enter
14 that into his storage, in the evidence room,
15 actual evidence room, he opens -- he has the key
16 to open the drop box. He takes the key for our
17 locker, takes the evidence out of there and
18 enters it into storage.

19 For this case, though, it was so many
20 things we were putting into evidence, we had too
21 many things for our locker. So the actual
22 evidence custodian was there and he was taking
23 things -- a lot of the things, directly into his
24 evidence storage.

25 Q. The next day, Deputy Kucharski, that would be on

1 Monday, the 7th of November, were you asked to
2 return to the property?

3 A. Yes, I was.

4 Q. And were you assigned a specific search team on
5 that day?

6 A. No, on the 7th I worked alone.

7 Q. Okay. Do you remember what you did on the 7th?

8 A. I was sent to specifically pick up a few items.
9 I remember a rifle out of Charles Avery's
10 residence. I took some more weapons out of a
11 vehicle that was parked near the new shop
12 building.

13 Q. The next day, on the 8th, Tuesday, the 8th of
14 November, did you return to the Avery salvage
15 property?

16 A. Yes, I did.

17 Q. And on that date, were you assigned a search
18 team?

19 A. Yes, on that date I was searching with Lieutenant
20 Lenk and Sergeant Colborn.

21 Q. Do you remember where the three of you went to
22 search that day?

23 A. We searched several places including we were sent
24 to Steven Avery's trailer to do a thorough
25 search.

1 Q. During that thorough search, did you have
2 occasion to search the bedroom of Mr. Avery's
3 trailer?

4 A. Yes, we did.

5 Q. And we have heard about a lot of that search, but
6 I'm specifically going to direct your attention
7 to the key and the finding of the key in that
8 bedroom. Do you recall how that occurred?

9 A. Yes, I do.

10 Q. Why don't you tell the jury how that occurred,
11 please.

12 A. We were concluding the search in the bedroom.
13 We, as Lieutenant Lenk, Sergeant Colborn and I.
14 I was mostly doing the photographing, and logging
15 in and packaging of evidence. However, I did
16 search the nightstand. I was sitting on the bed
17 and the nightstand was right there, so when I had
18 time between my duties, I would search the
19 nightstand. We were just wrapping up the search
20 and Lieutenant Lenk left the room to get some
21 more boxes for some of the things that we were
22 taking into evidence.

23 Sergeant Colborn was searching --
24 finishing up his search of an area on the east
25 wall, next to the bookcase. And I was sitting on

1 the bed near the nightstand. Lieutenant Lenk
2 came back into the room, stopped at the doorway,
3 pointed at the floor, just a couple of feet away
4 from where my feet were sitting on the floor, and
5 said there was a key there.

6 Q. I'm going to show you, just as you describe this,
7 Exhibit No. 210, ask if this image looks familiar
8 to you?

9 A. That's the key, that's where the key was sitting
10 when we found it.

11 Q. How far was this key away from you as you were
12 sitting on the bed?

13 A. Just a of couple feet.

14 Q. Had you seen that key, either before Lieutenant
15 Lenk left the room, or at any time actually prior
16 to Lieutenant Lenk's return?

17 A. No, I did not.

18 Q. Now, when Lieutenant Lenk said, there's a key,
19 where was he standing when he said that.

20 A. He was standing in the doorway.

21 Q. Had he gotten to that area yet when he said that?

22 A. No.

23 Q. I'm just going to ask you, Deputy Kucharski, were
24 you surprised to see that on the floor?

25 A. Yes.

1 Q. What happened after you saw that key on the
2 floor?

3 A. Lieutenant Lenk pointed out the key; we all
4 looked at it. We all decided it was a Toyota
5 emblem on it. Stopped all searching. I had
6 everybody stop the searching. Immediately took a
7 photograph of it. I had taken my gloves off to
8 finish up my -- tough to write and take pictures
9 with the rubber gloves on. So I had taken the
10 gloves off, so I put on a fresh pair of gloves. I
11 took out a new evidence bag out of the --

12 Q. Let me just stop you. A fresh pair of gloves,
13 does that mean that it had touched any other
14 pieces of evidence in that room?

15 A. No, it did not. It came directly out of the
16 package.

17 Q. All right. So you put fresh gloves on, what did
18 you do then?

19 A. I took a new evidence bag out of the stack of
20 bags, picked up the key with the -- with my
21 gloved hand, put it into the new evidence bag and
22 then I contacted the Command Post.

23 Q. Deputy Kucharski, the jury has already seen the
24 actual key, itself, but I'm going to show you
25 something that's been marked as Exhibit 219, can

1 you tell us what that is, please.

2 A. That's the key that we found on the 8th.

3 Q. Photograph, isn't it?

4 A. Sorry, that's a photograph of the key.

5 Q. Okay. As you look at No. 219, so we don't have
6 to pass the key itself around, is that one of
7 those evidence pictures that's taken after it's
8 received?

9 A. Correct.

10 Q. You said that you had contacted members of the
11 Command Post; do you recall who came to that
12 location?

13 A. Special Investigator Fassbender and Investigator
14 Wiegert came to the Avery trailer. I showed them
15 the key. They said that they would be sending a
16 special agent back to take custody of the key.

17 Q. All right. The next photo that I'm going to show
18 you, Deputy Kucharski, is photograph number 246;
19 I want you to tell us what that is, please.

20 A. This is a photo of some of the ammunition that we
21 took out of Steven Avery's bedroom.

22 Q. And now that the jury can see Exhibit 246, does
23 it say on the box of ammunition what caliber of
24 ammunition that is?

25 A. Yes, it does. It's .22 long rifle ammunition.

1 Q. And just -- you said, I think, that you are
2 familiar with firearms; is that right?

3 A. Yes, I am.

4 ATTORNEY KRATZ: Excuse me, just one
5 moment, Judge.

6 Q. (By Attorney Kratz)~ Is this the kind of bullet
7 that would fit into the .22 caliber rifle that
8 you previously identified as Exhibit 247?

9 A. Yes, it is.

10 Q. After completing the search of the Avery bedroom,
11 was the rest of the trailer thoroughly searched
12 as well?

13 A. Yes. We were -- We searched the rest of the
14 trailer thoroughly and then we -- also assigned
15 to specifically take into evidence some of the
16 computer and computer storage devices.

17 Q. All right. Deputy Kucharski, I'm going to ask
18 you, based upon your positioning a couple of feet
19 away from that key; did you believe that either
20 Lieutenant Lenk or Sergeant Colborn had an
21 opportunity, out of your eyesight to place, or
22 what's called plant, that key there?

23 A. No, they did not.

24 Q. How can you be so sure?

25 A. Well, first of all they would have had to have

1 the key. I think the only person that would have
2 had the key would be the person that killed
3 Teresa --

4 ATTORNEY BUTING: Objection, speculation.

5 THE COURT: Sustained.

6 ATTORNEY BUTING: Move to strike.

7 THE COURT: Court will order the answer
8 stricken.

9 Q. (By Attorney Kratz)~ I want you to limit your
10 comments to your observations. What about your
11 observations do you believe it was impossible or
12 improbable for them to plant that key?

13 A. My actual observations, I would have to say
14 that -- that it could be possible, as in I was
15 doing other things. I was taking photographs. I
16 was searching the nightstand. So, if we're just
17 limiting it to if it was possible that they could
18 do it without me seeing it, I would say, yes, I
19 guess it is possible.

20 Q. All right. And is that in the sense of anything
21 is possible?

22 A. That's in the sense of it's possible aliens put
23 it there, I guess.

24 Q. All right. And in that regard, though, Deputy
25 Kucharski, while you were working with these

1 gentlemen that week, in fact, you worked with
2 them more than one day, didn't you?

3 A. Yes.

4 Q. Is there anything that either led up to that
5 moment, or anything from that moment forward that
6 caused you any concern, either about their
7 integrity as law enforcement officers, or about
8 the performance of their duties out at the scene?

9 A. No.

10 Q. After that particular moment, that is, after the
11 key was found, were you continued to be assigned
12 to Lieutenant Lenk and Sergeant Colborn; in other
13 words, did you have further responsibilities that
14 day?

15 A. Yes.

16 Q. Did you perform any other of what you are now
17 calling thorough searches that day?

18 A. Yes. We made a thorough search of Charles
19 Avery's trailer.

20 Q. Now, the kind of search and, again, we have
21 talked about different kinds of searches, but
22 could you describe the search of Charles Avery's
23 trailer?

24 A. I would believe that would be the most thorough
25 search that we did. I think we attempted to look

1 in every place in Charles Avery's trailer. We
2 actually even went underneath the trailer. We
3 went into the -- I wouldn't call it an attic, but
4 on the top of the trailer there's a -- some type
5 of crawl space. Sergeant Colborn actually
6 crawled up in there.

7 Q. You weren't targeting or limiting your search
8 efforts to just Steven Avery's trailer; is that
9 right?

10 A. That's correct.

11 Q. At the conclusion of that day, Deputy, that is,
12 on the 8th, did you once again return to the
13 sheriff's department and enter or log in all of
14 this evidence?

15 A. Yes, I did.

16 ATTORNEY KRATZ: Judge, I will be moving at
17 this time to admit, not only the physical evidence
18 but the photographs that have been identified by
19 this witness. I can list those if --

20 ATTORNEY BUTING: I object to --

21 ATTORNEY KRATZ: -- Court or counsel want
22 me to.

23 ATTORNEY BUTING: The only one I object to
24 is the wire which this witness testified he did not
25 collect.

1 ATTORNEY KRATZ: I didn't intend to offer
2 that through this witness, Judge.

3 ATTORNEY BUTING: Just one moment, then.

4 THE COURT: Can we clarify what number that
5 particular exhibit is.

6 ATTORNEY KRATZ: Sure, that was Exhibit
7 No. 249. That was the only one that we haven't
8 offered, your Honor.

9 ATTORNEY BUTING: What is -- What are 251
10 and 236?

11 ATTORNEY KRATZ: 251 was not identified by
12 this witness.

13 ATTORNEY BUTING: Okay.

14 ATTORNEY KRATZ: That will be a different
15 -- different matter.

16 ATTORNEY BUTING: 236?

17 ATTORNEY KRATZ: 236 is a photograph, one
18 of the photos of the inside of the garage.

19 (Court reporter couldn't hear.)

20 ATTORNEY KRATZ: Photograph of the garage
21 is 236.

22 THE COURT: Mr. Kratz, can you list the
23 exhibit numbers of the exhibits that you are seeking
24 the admission of?

25 ATTORNEY BUTING: That's probably a good

1 way to do that.

2 ATTORNEY KRATZ: I can certainly try.

3 THE COURT: You can say, like 241 through
4 250, or whatever. You don't have to identify them
5 all individually, but specify the numbers.

6 ATTORNEY KRATZ: I think I'm able to do
7 that. I think it's Exhibit No. 221 is what I'm
8 starting with and it goes through -- goes through
9 261, with the exceptions, your Honor, of 251, and
10 249.

11 ATTORNEY BUTING: No objection to that,
12 then.

13 THE COURT: All right. Exhibits 221
14 through 261, with the exception of Exhibits 249 and
15 251 are admitted.

16 ATTORNEY KRATZ: Thank you, Judge.

17 THE COURT: Mr. Buting.

18 ATTORNEY BUTING: Yes.

19 **CROSS-EXAMINATION**

20 BY ATTORNEY BUTING:

21 Q. Good morning, Deputy.

22 A. Good morning.

23 Q. We have a lot to cover here. Let me maybe start
24 towards the end here. When you were asked by Mr.
25 Kratz if it was possible that Lenk or Colborn

1 could have planted, let's say the key, without
2 your seeing them, your answer was possible,
3 right?

4 A. That's correct.

5 Q. And it wasn't -- There weren't any aliens in the
6 room, right?

7 A. Not that I know of.

8 Q. So your later comment about it being possible in
9 the same way that aliens are possible, really
10 isn't a fair characterization of what you meant,
11 is it?

12 A. Are you asking my opinion on ...

13 Q. I'm asking you to characterize your answer. When
14 you said it's possible, you didn't mean that it
15 was possible in the same sense that aliens are
16 possible, did you?

17 A. I don't understand.

18 Q. All right. Let me try it this way. You were a
19 collections officer, evidence collections
20 officer?

21 A. Yes.

22 Q. That was part of your role?

23 A. Yes.

24 Q. You also were documenting?

25 A. Yes.

1 Q. And photographing?

2 A. Yes.

3 Q. Taking gloves off, putting gloves on?

4 A. Yes.

5 Q. And, in addition to that, you were a searcher?

6 A. Yes.

7 Q. You actually opened drawers or took things out

8 yourself?

9 A. Yes.

10 Q. And in the process of doing that, you looked at

11 the items that you would take out, right?

12 A. Yes.

13 Q. And your attention and your focus would be on

14 those items, right?

15 A. Yes.

16 Q. And you were not told at the beginning of that

17 shift, that your function was to be a watchdog

18 for Mr. Lenk and Mr. Colborn, were you?

19 A. That's correct.

20 Q. You were not told to keep your eyes on those two

21 officers at all times?

22 A. Correct.

23 Q. In fact, this was a lieutenant and a sergeant,

24 right?

25 A. Yes.

1 Q. Both of whom clearly out rank you, right?

2 A. No.

3 Q. You were a deputy?

4 A. They weren't in my chain of command; I work for
5 the Calumet County Sheriff's Department.

6 Q. Okay. In terms of officer rank, they out ranked
7 you though, right?

8 A. They held a higher rank in Manitowoc's --

9 Q. Okay.

10 A. -- Sheriff's Department, yes.

11 Q. And did you ever know them before?

12 A. Never met them before.

13 Q. Never met them before, okay. But you knew their
14 rank?

15 A. Yes.

16 ATTORNEY KRATZ: And I'm going to object as
17 irrelevant. And so does General Schwartzkopf, but
18 that has nothing to do with this witness.

19 ATTORNEY BUTING: This is
20 cross-examination.

21 THE COURT: This is cross, I will give him
22 a little latitude.

23 Q. You knew their rank?

24 A. Yes.

25 Q. Sergeant and lieutenant.

1 A. Yes.

2 Q. And I take it that it never occurred to you that
3 a fellow law enforcement officer would do
4 something like plant evidence, did it; on that
5 day, in that room?

6 A. No.

7 Q. That was not on your radar, was it?

8 A. No.

9 Q. You were not watching Lenk and Colborn to be sure
10 that they did not plant evidence, right?

11 A. That's correct.

12 Q. What we do know is, that when you came into that
13 bedroom the first time, there was no key on the
14 floor, was there?

15 A. That's correct.

16 Q. And you had been in that bedroom searching with
17 Lenk and Colborn for about an hour, close to an
18 hour, by the time that key was discovered, right?

19 A. Approximately, yes.

20 Q. Three people in that little bedroom, right?

21 A. Yes.

22 Q. And Colborn and Lenk were both searching the desk
23 and bookcase in that area, right?

24 A. Yes.

25 Q. The two of them --

1 ATTORNEY BUTING: I think I will put up
2 that ELMO photo again.

3 Q. (By Attorney Buting)~ I'm showing you Exhibit --
4 I'm sorry -- 104, which is now up on the screen;
5 do you recognize that?

6 A. Appears to be some type of model of the bedroom
7 in Steven Avery's residence.

8 Q. All right. And it's missing a lot of items
9 though, right?

10 A. Looks like just the furniture, and the walls and
11 windows and that type of thing is missing.

12 Q. But over in the -- what would be the top right
13 photo -- or corner of this photo, there's a desk
14 and a chair, right?

15 A. Yes.

16 Q. And a bookcase with some sort of vertical slots?

17 A. Yes.

18 Q. And there were lots of things on and in those
19 items, right, at that time?

20 A. Yes.

21 Q. We're talking November 8th?

22 A. Yes.

23 Q. And that's the area that both Lieutenant Lenk and
24 Sergeant Colborn were searching, among others?

25 A. Among others, yes.

1 Q. But during that one hour, they were searching in
2 that area, right?

3 A. Yes.

4 Q. (By Attorney Buting)~ Do you remember the key
5 picture, Exhibit No. -- Do you have the
6 photograph up here with the key on the floor?

7 A. Oh, on the floor, I don't think so.

8 ATTORNEY STRANG: It's 210.

9 ATTORNEY BUTING: 210.

10 Q. (By Attorney Buting)~ Showing you 210, again, up
11 on the screen, that's what you were looking at
12 earlier and that's -- you took this photo, didn't
13 you?

14 A. Yes, I did.

15 Q. And that's exactly the way the key looked when
16 you first saw it?

17 A. That's correct.

18 Q. And there's also an evidence -- some sort of like
19 an -- looks to me like a grocery bag, but a brown
20 corrugated sack or something like that, right?

21 A. Correct, in the foreground.

22 Q. And was that there when Lieutenant Lenk left the
23 room or did he bring that back in with him?

24 A. He didn't bring it back in with him. I don't
25 remember it's exact placement as he left the

1 room.

2 Q. All right. And you were actually very nearby
3 searching the nightstand?

4 A. Yes, my feet would have been just on the other
5 side of that -- that paper bag.

6 Q. And so bear with me for a minute, I don't know if
7 my shadow can be on here, but -- so you were
8 turned like this with your back to where the key
9 is, searching the nightstand, weren't you?

10 A. No.

11 Q. You were seated on the bed doing it then, right.

12 A. Yes.

13 Q. But your body is turned so that this key is
14 slightly behind you or over your shoulder?

15 A. No.

16 Q. Well, do you see the nightstand in there?

17 A. No.

18 Q. The nightstand is off -- off the screen
19 altogether, isn't it?

20 A. Yes.

21 Q. So if you are able to reach the nightstand, you
22 have got to be over here somewhere, to the left
23 side of this photo? Or were your feet hanging
24 over in top of the bag?

25 A. No, they were just on the other side of the bag.

1 My feet were actually pointing directly towards
2 the key. It was sitting there and the nightstand
3 would have been to my left hand, the key would
4 have been directly in front of me.

5 Q. Okay. Well, but you didn't see the key?

6 A. That's correct.

7 Q. The key was right, smack, dab in front of you and
8 you didn't see it until Lenk pointed it out to
9 you?

10 A. That's correct.

11 Q. And yet you immediately recognized this key as
12 something of importance, right?

13 A. As soon as we saw it was a Toyota key, yes.

14 Q. Now, sometime earlier than that --

15 ATTORNEY BUTING: I don't know, Judge, do
16 you want to take a break yet?

17 THE COURT: I was going to let you finish
18 this line of questioning, then take a break.

19 ATTORNEY BUTING: Why don't we take a
20 break, because I may want to do something; and I
21 would consider that before.

22 THE COURT: All right. Members of the
23 jury, we'll take our morning break at this time. I
24 will remind you, again, not to discuss the case in
25 any fashion during the break.

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(Jury not present.)

THE COURT: You may be seated.

ATTORNEY BUTING: I don't have anything else for the record. I just want to look through the exhibits before I show them to this officer.

THE COURT: Very well, we'll report back in 15 minutes.

(Recess taken.)

(Jury present.)

THE COURT: At this time, Mr. Buting, you may resume your cross as soon as we get a witness.

CROSS-EXAMINATION CONTD

BY ATTORNEY BUTING:

Q. All right. Deputy, we were talking about this key when we left off. And if I understand -- and I'm not sure if it was in your testimony -- but if I understand your report, just before Lieutenant Lenk left the room, he and Sergeant Colborn were searching that cabinet that's displayed here on the screen, right next to the key, right?

A. Yes, before he left the room, they were searching -- Lieutenant Lenk was assisting Sergeant Colborn move it around and stuff.

Q. And Lieutenant Lenk was about one foot from you

1 when he was doing that, right?

2 A. Yes.

3 Q. So his body would have been between you and this
4 particular area?

5 A. Yes.

6 Q. All right. And you guys talked, after it was
7 found, like, geez, where did that come from,
8 right?

9 A. Yes.

10 Q. Did you examine the back of this bookcase cabinet
11 at that time?

12 A. Not directly after it was found. After it was
13 found, I was pretty much married to it and I
14 stayed with it until Special Agent Joy took it.
15 And then we went back into the bedroom and
16 completed a search. We took a look at that
17 cabinet and tried to figure out where it came
18 from.

19 Q. Did you seize the cabinet at that time?

20 A. No, we did not.

21 Q. You didn't do that for like another month, right?

22 A. I never did.

23 Q. You didn't have anything to do with that. Well,
24 let me show you a photo. I'm going to tell you
25 that it's not the same day. Apparently you

1 didn't take any photographs that same day of what
2 the back of this cabinet looked like, did you?

3 A. No, I did not.

4 Q. But you theorized, between you and Lenk and
5 Colborn, that perhaps the key had fallen out of
6 the rear panel of this cabinet?

7 A. Well, we had several theories.

8 Q. Let's talk one at a time.

9 A. Okay. Yes, one of the theories was it came out
10 of the back of the cabinet. That's what we
11 decided was the most likely.

12 Q. All right. You also theorized that maybe there
13 was a hidden compartment or something, in the
14 cabinet?

15 A. No, we didn't find any hidden compartment.

16 Q. Oh, you looked, right, you looked for any hidden
17 compartments?

18 A. Not me personally, no.

19 Q. Well, when you say, we didn't find any, how do
20 you know that you didn't find any?

21 A. Lieutenant Lenk and Sergeant Colborn looked.

22 Q. Okay.

23 A. While I was there.

24 Q. And while they were there, they didn't find any
25 hidden cabinets, or compartments in that cabinet?

1 A. Correct.

2 Q. And another theory was that perhaps it had been
3 underneath, somehow caught up underneath the
4 cabinet, right?

5 A. Yes.

6 Q. And that was ultimately discarded and you guys
7 settled on this theory, that somehow the key just
8 managed to get around, through that gap?

9 A. In my mind, it was a general, that it came from
10 this -- this cabinet. We also -- There was some
11 thought of in a door area, there was something on
12 the wall, that it possibly could have come from
13 there. But it was pretty quickly dismissed.

14 Q. Right. Because there is a outlet right next to
15 it and a electrical cord, right?

16 A. Right. That's not what I was talking about on
17 the wall. Something higher up on the wall.

18 Q. All right.

19 A. You know, several feet off the floor, there was,
20 but it was pretty obvious that it couldn't have
21 come from there.

22 Q. Okay. So then, your theory that you came up with
23 on that day, to explain why no one had found this
24 key, was that -- And, by the way, the cabinet was
25 up against -- pretty close to up against the

1 wall, right? Wasn't sitting out 3 inches or so,
2 was it?

3 A. It wasn't sitting out noticeably. I can't really
4 say as how close it was to the wall, but it
5 wasn't -- it wasn't a foot away from the wall?

6 Q. Okay. So, at any rate, I don't know if I need
7 these gloves, but since I saw Detective Wiegert
8 use them, I will use them as well. The theory
9 was, then, that this key and the cloth fob and
10 the plastic buckle, somehow managed to come out
11 that back corner, walk around the side, and lay
12 like that, right?

13 ATTORNEY KRATZ: Object, Judge, that's a
14 mischaracterization of the evidence.

15 THE COURT: Well, that's up to the witness
16 to answer. I will allow the question.

17 A. As we were searching that bookshelf, the
18 bookshelf was --

19 Q. Let me just -- Hold on.

20 A. -- pulled away --

21 ATTORNEY KRATZ: Objection. He asked for
22 an explanation.

23 ATTORNEY BUTING: I asked if that was his
24 theory; he can say yes or no. And then we'll go
25 from there. This is cross-examination.

1 THE COURT: No, I'm going to allow him to
2 give his answer.

3 ATTORNEY BUTING: Okay. Go ahead.

4 A. The bookcase was pulled away, turned, searched,
5 and it was reasonable that while it was turned
6 away it fell into that area.

7 Q. But this key --

8 ATTORNEY BUTING: Can I show this to the
9 jury?

10 THE COURT: Yes.

11 ATTORNEY BUTING: Is there some reason
12 we're keeping gloves on with this, that the jury
13 can't just handle it themselves or ...

14 THE COURT: From what my understanding is
15 there may be, but --

16 ATTORNEY BUTING: All right. We'll deal
17 with that if need be. I will hold it up so
18 everybody can see it. Okay.

19 Q. (By Attorney Buting)~ You didn't hear it hit the
20 floor, whenever it got there, right?

21 A. Correct, the floor is carpeted.

22 ATTORNEY BUTING: Well, can I drop it on
23 the floor here, or do we not want to do that?

24 ATTORNEY KRATZ: What are we doing, Judge?

25 ATTORNEY BUTING: We're testing --

1 ATTORNEY KRATZ: Is this an experiment in
2 front of the jury? If it is, then we need to
3 replicate the conditions. I object to any
4 experimentation at this time.

5 ATTORNEY BUTING: That's fine. We'll hold
6 off on that. The bookcase hasn't come in, so I
7 don't know if they intend to introduce it or not,
8 but it's not here.

9 Q. In any event, you did not hear it hit the floor,
10 carpet or otherwise?

11 A. Correct.

12 Q. And as you, not Lieutenant Lenk and Colborn, but
13 as you were sitting there, thinking, my gosh, how
14 did this key get here, one of the theories that
15 did not occur to you was that Lieutenant Lenk or
16 Colborn perhaps put it there, was it?

17 A. Did not occur to me, no.

18 Q. But as you testified before, because you were
19 busy and occupied with other duties, it is
20 possible that that might have happened without
21 you seeing it, isn't it?

22 A. Possible.

23 Q. Thank you. The electrical wire that we saw a
24 photograph of and that you saw a picture of as
25 well, right?

1 A. Yes, I saw a photograph.

2 Q. You know what we're talking about?

3 A. Yes.

4 Q. It was up on the rafters?

5 A. Yes.

6 Q. Are you a hunter?

7 A. Yes.

8 Q. Do you hunt for deer?

9 A. Yes.

10 Q. Are you familiar with what people do when they
11 catch a deer and bring it home.

12 ATTORNEY KRATZ: I'm going to object,
13 Judge, assuming a fact not in evidence. I suspect
14 Mr. Avery is not a deer hunter. If he is, we have
15 got some other issue.

16 THE COURT: Well, he may or may not be, but
17 I'm going to allow the question.

18 Q. (By Attorney Buting)~ Do you typically hang a
19 deer in a garage after you have done something to
20 it, dressed it, gutted it?

21 A. We hang it outside.

22 Q. Okay. But you know that some people do hang a
23 deer in the garage, right?

24 A. I would assume.

25 Q. In fact, there was a deer in the neighboring

1 garage that very day?

2 A. Yes.

3 ATTORNEY KRATZ: Objection, irrelevant.

4 ATTORNEY BUTING: It's completely relevant.

5 ATTORNEY KRATZ: Brendan Dassey can be a
6 deer hunter, Steven Avery can't.

7 ATTORNEY BUTING: If we're going to argue
8 this in front of the jury, I think that's a problem.

9 THE COURT: I'm overruling the objection.

10 Q. (By Attorney Buting)~ There was a deer hung from
11 the rafters in the garage right next door, right?

12 A. Yes.

13 Q. And so you don't know whether this wire was used
14 to hang deer in that garage, on some occasions,
15 either, do you?

16 A. I don't know what the wire was used for.

17 Q. Do you know whether wire was ever sent to the
18 Crime Lab for any kind of test?

19 A. I don't know.

20 Q. Okay. I suspect we'll hear, if it was.

21 ATTORNEY KRATZ: I ask that that be
22 stricken, Judge.

23 THE COURT: The Court will order that that
24 remark be stricken, the jury is instructed to
25 disregard it.

1 Q. (By Attorney Buting)~ Okay. We looked at a few
2 photographs of the garage. Let me move to the
3 garage for a minute. Were you taking the
4 photographs?

5 A. I took photographs.

6 Q. All right. Did you take any photographs before,
7 before anything had been moved out of that
8 garage, completely as is?

9 A. I took a lot of photographs, I would have to go
10 through my photo line up to see if I did.

11 Q. None come to mind, do they?

12 A. No.

13 Q. And so, we don't really have a complete
14 photographic record of what Mr. Avery's garage
15 actually looked like with all of the items in,
16 before anything was moved out, correct?

17 A. I'm not sure.

18 Q. You said it was pretty cluttered, right?

19 A. Yes.

20 Q. Not a whole lot of room in there even when you
21 got there, right? For instance, Exhibit 231
22 shows the snowmobile and the Suzuki Samurai?

23 A. Yes.

24 Q. Together. We can't see what's to the right of
25 the snowmobile, though, right, in this photo?

1 A. Correct.

2 Q. Do you know what an engine hoist is?

3 A. Yes.

4 Q. Have you ever seen one before?

5 A. Yes.

6 Q. I show you what's been marked --

7 ATTORNEY BUTING: Actually, I will show it
8 to counsel first, I'm sorry.

9 Q. (By Attorney Buting)~ I'm just going to show you,
10 I'm not going to have you identify these. I'm
11 just going to -- but for the record, I will say
12 it's Exhibit 262 and 263. You said you are
13 familiar with what an engine hoist looks like,
14 right?

15 A. Yes.

16 Q. Can you just tell me whether or not that large
17 black item is an engine hoist?

18 A. That is an engine hoist as I know it.

19 Q. Now, just so we're clear, this photograph was not
20 taken in November; this was taken later in March,
21 right?

22 A. I have no idea when this photo was taken.

23 Q. Does the garage look familiar to you, though?

24 A. It's Steven Avery's garage, yes.

25 Q. Okay. And in it is a large hoist?

1 A. Yes.

2 Q. Where in the garage was it on November? Right as
3 you walk in; do you recall it?

4 A. I don't recall.

5 Q. Do you recall that this was behind the tractor as
6 you walk into the garage?

7 A. No, I don't recall.

8 Q. Is it possible that it was?

9 A. Yes.

10 Q. All right. Because we don't have a picture of
11 that area to the immediate right, before items
12 start getting moved in and out of the garage,
13 correct?

14 A. Yes. Yes, we do.

15 Q. We do?

16 A. The only item we removed was the snowmobile.

17 Q. Okay.

18 A. Besides the items that we collected for evidence.

19 Q. We looked through these photographs of the
20 tent -- little tent things, a little quickly the
21 first time around. I just want to go through
22 them with you again for a moment. You mentioned
23 items one through eight, I think, along the right
24 side of the photo, right?

25 A. Yes.

1 Q. There's another item, No. 16 down here, a little
2 tent?

3 A. Yes.

4 Q. What was that?

5 A. I don't recall.

6 Q. And do you see that crack that begins from where
7 item 16 is and runs, what would be north/south,
8 along the left side of the photograph?

9 A. Yes.

10 Q. That's the crack that you were saying was the big
11 crack, that went the full length of the garage,
12 right?

13 A. Approximately.

14 Q. And you're down on your hands and knees, or
15 squatting or something, in order to find these
16 little bloodstains, aren't you?

17 A. The bloodstains were pretty evident. No one --

18 Q. Well, you get down --

19 A. -- was down on their hands and knees --

20 Q. You get down in a squat position --

21 COURT REPORTER: I'm sorry, you're going
22 to have to talk one at a time. No one was down
23 on their hands and knees?

24 A. Not that I saw, it was a dirty floor.

25 Q. Okay. But you would have to squat down, at least

1 squat down in order to make your circles and put
2 your tents and all that stuff, right?

3 A. Yes.

4 Q. So you are getting your face within just a couple
5 of feet or so from the floor?

6 A. Yes.

7 Q. And you are looking for any evidence, at that
8 time, of a possible homicide, aren't you?

9 A. We were -- There was a general search. We were
10 looking for evidence that stood out. Didn't have
11 anything specific at that time that we were
12 looking for.

13 Q. Well, Officer, you picked up some shells, right?

14 A. Yes.

15 Q. And you thought that maybe those were relevant,
16 right?

17 A. Yes.

18 Q. And that they may, in fact, be -- have possibly
19 been involved with a homicide, that's why you
20 took them, isn't it?

21 A. Yes.

22 Q. So you were looking for evidence of a homicide?

23 A. Yes.

24 Q. Including shells, right?

25 A. Yes.

1 Q. And any bullet's that you might come across,
2 right?

3 A. Yes.

4 Q. And you are also, at the same time, looking for
5 bloodstains on the floor, which can be very
6 small, dime or smaller, right?

7 A. Yes.

8 Q. And you are looking all along this crack,
9 virtually every area that is open floor in this
10 whole area, you are looking for bloodstains, or
11 anything that might be evidence of a homicide,
12 right?

13 A. Yes.

14 Q. Pointing now to the left lower side of this
15 photograph, where there's a crack; did you see a
16 bullet on November 6th, 2005?

17 A. No.

18 Q. Because if you had, you would have collected it,
19 wouldn't you?

20 A. Yes.

21 Q. That would have been extremely important
22 evidence, right?

23 A. Yes.

24 Q. And you did not?

25 A. I did not see it, a bullet there.

1 Q. Who else was searching with you?

2 A. On the 6th, in the garage, was Lieutenant Lenk,
3 Sergeant Colborn and Detective Remiker.

4 Q. So four of you, in that garage, right?

5 A. Yes.

6 Q. And none of you found a bullet, or bullet
7 fragment, did you?

8 A. That's correct.

9 Q. Now, let's look at Exhibit 243 for a moment.

10 A. Counsel, kind of zoomed in on it before, so let
11 me do that with the ELMO.

12 Q. Actually, looks to me like it may be slightly
13 different, but you mentioned that there were two
14 little areas that you thought might be
15 bloodstains there?

16 A. Correct, there's spots and then it appears to be
17 some type of pattern.

18 Q. Do you have the laser up there?

19 A. Yes.

20 Q. Could you point to where those two are exactly.

21 A. The two that the tent for six was identifying
22 were these spots and this is the pattern.

23 Q. So when you use your swab, did you swab them
24 separately or did you swab this one, put it in a
25 bag or whatever, swab, what, this one, put it in

1 a bag, what did you do?

2 A. I wasn't taking the swabs.

3 Q. Oh, you weren't?

4 A. No.

5 Q. Who was?

6 A. Detective Remiker, Lieutenant Lenk, and Sergeant
7 Colborn were taking the swabs, or giving them to
8 me, and I was packaging them.

9 Q. All right. You were watching, you were seeing
10 how it was done, right?

11 A. Yes.

12 Q. So you don't know, or do you, whether this swab
13 from No. 6 pertains to this spot, this spot, this
14 spot, or this big blotch, do you?

15 A. No.

16 Q. If they thought they were separate items, they
17 probably would have swabbed them separately;
18 would that be the procedure?

19 A. Well, the procedure that we decided -- that I
20 decided, we had several drops of blood and
21 patterns. You normally take several swabs of
22 them. And we decided to take many swabs of them,
23 pretty much as many as we could. I had a limited
24 amount of swabs in my kit, so we used what we
25 had, but we took many swabs from there.

1 Q. Okay. But just so we're clear here, when you
2 said, I think it was items one through eight that
3 were swabs of possible blood, you didn't know it
4 was blood, just possible?

5 A. Correct.

6 Q. And we entered a whole bunch of these exhibits
7 together, they all say -- I will let you look at
8 a couple of them. I think they are all pretty
9 much the same. Well, maybe not, let me look
10 here. I'm going to show you Exhibit 659, which
11 is one of these little paper bags, take a look at
12 that for a moment, would you, please?

13 A. Yes.

14 Q. And that says -- description of it is -- Well,
15 why don't you just read it?

16 A. Test/control, possible blood drop.

17 Q. Okay. So control, what does that mean; do you
18 know?

19 A. Yes. When we're trained, there is some debate
20 right now as to whether a control is even
21 necessary. When I was in school, they said that
22 it was basically up to us. A control would be --
23 You have the suspected spot, and then a control
24 would be a relatively uncontaminated area. The
25 reasoning behind it is -- I think the reasoning

1 behind it is to try and pick up any type of
2 contaminates that may be in that area besides
3 suspected blood, but, again, it was something
4 that they said was optional at this point in
5 time.

6 Q. Who was telling you it was optional?

7 A. The trainers at Fox Valley Technical College.

8 Q. When did they tell you it was optional, when you
9 were there, or since?

10 A. When I went to school in 2005.

11 Q. Okay. So, this exhibit in front of you, Exhibit
12 259, does that have more than one swab in it, or
13 should it?

14 A. Yes.

15 Q. Just what two, three, five, or do we have any way
16 of knowing?

17 A. Open it up.

18 Q. Well, I mean is it practice to put in more than
19 one swab in each little bag.

20 A. Inside the bag, they are in separate containers.

21 Q. Okay. So there could be more than one swab in
22 each one of these bags?

23 A. Yes.

24 Q. And the fact that there is a control taken, there
25 should be, right?

1 A. Correct.

2 Q. Looking at 651, read what that says, please.

3 A. It says test/control and then control is crossed
4 out, and then continues, possible blood drop.

5 Q. So, with control being crossed out, does that
6 mean there is no control, most likely, in this
7 one?

8 A. I would assume so.

9 ATTORNEY KRATZ: What exhibit was that, you
10 said 600 something?

11 ATTORNEY BUTING: 6 -- I'm sorry, it's 255,
12 the tag number is 651.

13 Q. (By Attorney Buting)~ And, actually, this is your
14 handwriting, isn't it?

15 A. No, that's not my handwriting.

16 Q. Doesn't it say Officer Kucharski on it?

17 A. Yes, it does.

18 Q. I'm sorry, Kucharski?

19 A. Yes.

20 Q. All right. You didn't fill this out, but it has
21 your name on it?

22 A. That's correct.

23 Q. Okay. Do you know who did?

24 A. No, I don't.

25 Q. Hmm. All right. You don't know who sealed it

1 either?

2 A. I would have to look at the package to see if
3 there's initials on it.

4 Q. Well, probably not important, so let's move on.
5 Let me just clear up a couple things here. When
6 you do these swabs and you're looking for
7 possible areas of blood, do you do a
8 phenolphthalein test? Do you know what that is?

9 A. I'm thinking that's some type of presumptive
10 test.

11 Q. Correct. And do you do those -- Did you do those
12 on this day?

13 A. I think we -- at the beginning we may have done
14 one, just to make sure that what we were looking
15 at was blood. I'm not positive on that, though.

16 Q. All right. So you may not have. But in any
17 event, you are picking out spots on the garage
18 floor that may or may not be blood, right?

19 A. Correct.

20 Q. Because you mentioned that there's a number of
21 big areas of fluid and that sort of thing, like
22 you often find on garage floors, right?

23 A. Correct.

24 Q. And like this exhibit right there -- I'm going to
25 put up a different one to show a little bit

1 more -- perhaps the untrained eye -- had a lot of
2 red spots just above the exhibit or the evidence
3 tent number six, correct?

4 A. Correct.

5 Q. But that's not blood is it?

6 A. I don't know.

7 Q. Well, did you swab it?

8 A. I don't know.

9 Q. Have you ever seen transmission fluid?

10 A. Yes.

11 Q. Have you ever seen it stain a floor?

12 A. Yes.

13 Q. Is transmission fluid red?

14 A. Reddish brown tinge if I remember, yes.

15 Q. Okay. And there were literally -- there's lots
16 of stains like this particular red one in that
17 garage; is that fair to say?

18 A. I didn't hear, a lot of scenes --

19 Q. A lot of stains like this, these reddish?

20 A. Yes.

21 Q. Sort of brighter red stains?

22 A. Yes.

23 Q. You're looking more for dark brownish red, right,
24 when you are looking for blood?

25 A. Yes.

1 Q. And this -- Let me just go back for one minute.
2 You mentioned right under the six, there's
3 almost, there's what's commonly called a contact
4 type of a stain, right there, right? Shows a
5 little bit of a pattern?

6 A. Yes, it's some type of pattern.

7 Q. Did you ever make a determination of what that
8 was?

9 A. I'm not trained in blood patterns.

10 Q. Well, did that look like a blood pattern to you?

11 A. It's a pattern.

12 Q. Looks like some sort of a -- something contacted
13 it with, circles, like a footprint perhaps?

14 A. Something like that.

15 Q. And, similarly, No. 8 -- I'm sorry, this is
16 Exhibit No. 244, by the tent. You have that
17 little measuring stick or whatever next to some
18 sort of a contact pattern there, right?

19 A. Some kind of pattern, yes.

20 Q. You never -- Do you have any information as to
21 whether that was ever identified as anything of
22 relevance?

23 A. I don't know.

24 Q. Okay. Could have been just, again, totally
25 unrelated to anything in this case, as far as you

1 know?

2 A. I don't know if it was related or unrelated.

3 Q. All right. Exhibit 245 is the missing poster for
4 Teresa Halbach that you found in the office of
5 the Avery property, right?

6 A. I found it -- We found it in one of the offices
7 of what I call the new shop building.

8 Q. Well, this isn't going to do what I want it to do
9 so I'm going to just show it to you instead.
10 Actually, I think we have one of these better.
11 Okay.

12 Okay. Again, I'm going to just show you
13 Exhibit 10, which has already been identified and
14 introduced as an exhibit. That's a color version
15 of the same thing we just saw on the prior
16 exhibit, right?

17 A. Yes.

18 Q. And it has information about the missing woman,
19 right?

20 A. Yes.

21 Q. And also about her vehicle, does it not?

22 A. Yes, it does.

23 Q. And does it have a license plate on there?

24 A. Yes, it does.

25 Q. SW William 582?

1 A. SWH-582.

2 Q. SWH, okay.

3 A. H as in Henry.

4 Q. And how would you say that if you are calling in
5 a license number; what's your code for those
6 letters?

7 A. S, Sam, W, William, H, Henry.

8 Q. Okay. And it also has the year of the vehicle,
9 does it not?

10 A. Yes, it does.

11 Q. 1999?

12 A. Yes.

13 Q. All right. So if you had this information ahead
14 of time, would there be any reason for you to
15 have to call into your department to ask them to
16 identify the owner of SWH-582?

17 ATTORNEY KRATZ: Objection, Judge, calls
18 for speculation, especially with this witness.

19 THE COURT: I'm going to sustain the
20 objection.

21 Q. (By Attorney Buting)~ Now, you said you are not a
22 blood pattern expert, right?

23 A. That's correct.

24 Q. But you have been to the academy and you have had
25 training, correct?

1 A. I don't think I have been to any academy.

2 Q. I'm sorry, Fox Valley, you mentioned?

3 A. I went to evidence school there, yes.

4 Q. Okay. And have you ever been at any -- you have
5 been at a number of crime scenes I assume,
6 correct?

7 A. Yes.

8 Q. Including ones where there are shootings?

9 A. No, I have not been to a shooting crime scene
10 that I can remember.

11 Q. Okay. But part of your evidence collection
12 training, were you taught about how to collect
13 evidence from the scene of a shooting?

14 A. I think it was more general. I don't think they
15 specifically said this is what you do at a
16 shooting scene.

17 Q. Well, for instance, we looked at a number of
18 these exhibits, No. 234 being -- First, I want to
19 direct your attention to -- this one you said was
20 of the west wall of the garage?

21 A. That's correct.

22 Q. The wall right as you come in the door, the
23 service door?

24 A. Correct. Coming in the service door, it would be
25 to your right.

1 Q. And you mentioned that there's even -- this is
2 even more cluttered with junk than it looks like
3 here because it's really quite deep.

4 A. It's hard to tell the depth in this photo, yes.

5 Q. It really fills up probably 4 feet from the wall,
6 or more?

7 A. I would approximate 4 feet, sure.

8 Q. Okay. Lots of items there. Also, Exhibit 233,
9 which shows kind of part of the right -- that
10 would be the southwest corner and then the
11 southern wall of the garage, right.

12 A. Yes.

13 Q. You can't actually see the corner, but you can
14 see stuff is piled all the way out that far?

15 A. Correct.

16 Q. And also the big John Deere tractor?

17 A. Yes.

18 Q. So there really was not very much open floor
19 space in that garage when you walked in; isn't
20 that true?

21 A. I guess approximately maybe -- do you want me to
22 approximate the size of this space?

23 Q. Well, we probably have it to the half inch on our
24 computer animation, but why don't you just tell
25 us what you think the overall interior size of

1 the garage is?

2 A. Of the entire garage, it's a typical two car
3 garage, you know. And then that west side is
4 like a storage area where you have got 4 or
5 5 feet of storage inside your 2 car garage.

6 Q. And the east bay of the garage was completely
7 filled except for maybe a couple of feet behind
8 the Suzuki Samurai, is that fair?

9 A. You could walk around the Suzuki on all sides.

10 Q. But the Suzuki largely filled up that west --
11 that east bay, correct?

12 A. Yes, it filled up the east bay.

13 Q. But the Suzuki, because it's a smaller SUV, there
14 is -- was some space behind it --

15 A. Yes.

16 Q. -- that was open?

17 A. Yes.

18 Q. And then there's a snowmobile next to it in the
19 west bay, right?

20 A. In the center portion of the west bay, yes.

21 Q. And then there's a tractor, so there's -- really,
22 the only open space in that whole garage was sort
23 of maybe 3 or 4 feet in the east bay, going back
24 towards the rear?

25 A. Yes, a portion of the east bay that wasn't taken

1 up by the snowmobile was open.

2 Q. And then right next to that open area is all of
3 this clutter, many, many items, right?

4 A. To the west of it, yes.

5 Q. Many, many items that would be difficult to wipe
6 clean of any blood spots, if there was any blood
7 spatter, isn't that right?

8 ATTORNEY KRATZ: Objection, calls for
9 speculation and he said he wasn't an expert in that
10 field?

11 THE COURT: Sustained.

12 Q. (By Attorney Buting)~ Did you see any little
13 spots of blood all over things?

14 A. Just on the floor.

15 Q. Just on the floor. And those looked like drops,
16 right, I mean, not like -- Well, strike that, you
17 are not a blood spatter, I won't ask you.

18 Of course, if you had seen anything that
19 looked like blood spots on any of the items
20 surrounding that confined open area, you
21 certainly would have made note of that, wouldn't
22 you?

23 A. Yes.

24 Q. And you did not make note of it?

25 A. Correct.

1 Q. Let me ask you just briefly, after you were done
2 with the garage, you went -- you and Remiker went
3 around to the -- attempted to go around to the
4 rear of the garage?

5 A. I'm not positive on when, exactly, we did that,
6 if it was before or after I take the burning
7 barrels.

8 Q. But it was sometime after the garage had been
9 searched; is that your recollection?

10 A. Correct, we were finishing up the garage and we
11 took a look around the outside along with the
12 inside.

13 Q. Okay. And you said that you were unable to
14 approach because this dog was barking?

15 A. Barking and coming at us, yes.

16 Q. Okay. And you knew the dog would have to be
17 removed in order to search that area?

18 A. Yes.

19 Q. And this is November 6th, right?

20 A. Yes.

21 Q. Let me move back to the prior day, November 5th.

22 A. Yes.

23 Q. One of your duties was actually working with dog
24 handlers, wasn't it?

25 A. Yes.

1 Q. In fact, you spent almost your entire duty at the
2 Avery property on November 5th, going around with
3 dog handlers?

4 A. Yes.

5 Q. And dogs?

6 A. Yes.

7 Q. And dog handlers are experts at handling dogs,
8 right, to your knowledge?

9 A. I would assume they are experts at handling their
10 dogs.

11 Q. All right. Did you ask any of those dog handlers
12 to come and remove that dog from behind the rear
13 of Mr. Avery's garage so you could search that
14 area?

15 A. We actually -- That night, we came up that berm
16 there, in the -- from the area that the cars were
17 stored, with the dog handler. And the dog was on
18 top and it was barking. And I don't remember if
19 I decided, or if she decided, that she didn't
20 want her dog being distracted by the other dog so
21 we stayed away from that area.

22 Q. You are talking about the previous night, now,
23 November 5th, right?

24 A. That was the 5th, yeah.

25 Q. Okay. So did you -- Knowing that and having seen

1 that dog, behind Mr. Avery's garage on the 5th,
2 did you make any effort to have one of these dog
3 handlers, or someone else, remove the dog?

4 A. No. No.

5 Q. How about the 6th, didn't do that either?

6 A. Absolutely not.

7 Q. Let me move to the firearm shells for a moment.

8 You testified here today that you, on November
9 6th, seized 10 or 11 shells, correct?

10 A. Yes.

11 Q. You testified before in this case, though,
12 haven't you, at a preliminary hearing?

13 A. Yes.

14 Q. You were under oath then, right?

15 A. Yes.

16 Q. Just as you are today?

17 A. Yes.

18 Q. Do you recall testifying on that occasion that
19 you seized 10 shells?

20 A. Yes.

21 Q. Never said 10 or 11, did you?

22 A. Correct.

23 Q. And, in fact, the item -- the exhibit that was
24 shown to you, which is marked as Exhibit 250,
25 this is the one that -- the bag that has the

1 little pill box with shells in it, right?

2 A. Yes.

3 Q. And we had you count how many shells were in
4 there, earlier, correct?

5 A. Yes.

6 Q. Eleven is what you came up with?

7 A. Yes.

8 Q. You don't know how they got in this bag, these
9 two glassine bags?

10 A. No, I don't.

11 Q. But one has three and one has eight?

12 A. Yes.

13 Q. If, in fact, you seized 10 shells from the garage
14 and we have 11 in this pill box, how do you
15 explain that, or can you?

16 A. In my report, I put that we took 10 shell casings
17 from the garage. On the evidence sheet, I put 10
18 shell casings from the garage. When I reviewed
19 the photos there were 11. I miscounted.

20 (Exhibit marked for identification.)

21 Q. You said you reviewed the photos and you counted
22 11.

23 A. Correct.

24 Q. You told us earlier that you didn't take photos
25 of all the shells; do you recall that?

1 A. Correct.

2 Q. Because some of them were under items and so you
3 couldn't photograph them in their location.

4 A. Correct.

5 Q. You actually moved -- lifted up items in the
6 garage, some of that junk in order to find some
7 of those shells?

8 A. I didn't lift anything up. It would have been
9 Lieutenant Lenk, Sergeant Remiker or -- Detective
10 Remiker or Sergeant Colborn.

11 Q. Okay. One of the four of you actually had to
12 move some of that junk in order to find the
13 shells; they were not all laying out in the open
14 somewhere?

15 A. They weren't all laying out in the open. I can't
16 really testify to what they did. I don't know if
17 it was inside of something or --

18 Q. Okay.

19 A. -- if it was underneath or what.

20 Q. All right. But in any event, you don't have
21 photographs that show 11 shells, do you?

22 A. Just this photo here, Exhibit 220.

23 Q. All right. Now, I'm showing you Exhibit 264, will
24 you look at that for a moment and identify that.

25 A. This is the evidence property document that I

1 filled out -- a copy of it that I filled out for,
2 among other things, the .22 long rifle casings
3 that we collected.

4 Q. All right. And it has got these swabs of these
5 garage stains, unknown stains, right?

6 A. Correct.

7 Q. And it has also got item No. 11, it says 10 .22
8 LR empty casings from garage floor, correct?

9 A. Yes.

10 Q. Now, underneath that is item 12?

11 A. Yes.

12 Q. That says 1 .22 empty case?

13 A. No.

14 Q. What does it say?

15 A. 223 empty case.

16 Q. Oh, so that's a completely different type of
17 bullet or --

18 A. Case.

19 Q. -- shell?

20 A. Yes.

21 Q. Okay.

22 A. That's a Remington 223.

23 Q. So that was -- that could not explain why there's
24 11; is that what you are telling me?

25 A. Right.

1 Q. Couldn't be that those were mixed up?

2 A. Not in the package, but I'm thinking that's where
3 it got -- that it was mixed up that it's between
4 10 and another one, the 11. I think that's where
5 it got mixed up, not the actual cases got mixed
6 up, just the number of count.

7 Q. Well, Exhibit 220, which you identified earlier
8 as a box that has some -- do you know when that
9 photograph was taken?

10 A. No, I don't.

11 Q. Do you know whether that was before or after it
12 went to the Crime Lab?

13 A. I don't know when it was taken.

14 Q. All right. So you didn't open it? I mean, this
15 used to be, if this was evidence that was seized
16 at the garage, I assume that it would have been
17 in one of these nice little bags all sealed up
18 with tape, right?

19 A. Yes. Well, it was in the box, for sure, sealed
20 -- the box was sealed. I don't remember if I put
21 it in another.

22 Q. Okay. So the box could have been a box like
23 this, that was inside the paper bag that has a
24 seal on it, right?

25 A. Correct.

1 Q. But there's no tape on that particular box, that
2 we can see, right?

3 A. No, it's been opened.

4 Q. That's what we're referring to, correct?

5 A. That's the picture, yes.

6 Q. And did you ever amend your report to indicate
7 that there were 11 casings instead of 10?

8 A. No, I didn't.

9 Q. Did you ever amend that property inventory sheet
10 which we just marked as exhibit --

11 A. 264.

12 Q. -- 264?

13 A. No, I did not.

14 Q. And, in fact, you came to the conclusion that,
15 oh, maybe there really were 11 instead of 10,
16 when somebody showed you this exhibit that's now
17 on the screen; isn't that right?

18 A. Yes.

19 Q. Somebody else who had opened the evidence after
20 you?

21 A. I don't know who opened the evidence.

22 Q. Who showed you this photograph?

23 A. District Attorney Kratz.

24 Q. And that's when you determined that you had
25 miscounted and that there were really 11 instead

1 of 10, right?

2 A. Yes.

3 Q. Okay. This rifle, you indicated that you have
4 some expertise of sorts because you are a -- work
5 for the armory?

6 A. I'm the armorer for the county.

7 Q. Okay. This item here that's the .22, marked as
8 Exhibit 247; it's a pretty common firearm,
9 wouldn't you say?

10 A. Yes.

11 Q. It's pretty cheap?

12 A. Yes, relatively, I don't think too many guns are
13 cheap any more.

14 Q. Well, maybe between 100 and \$200, something like
15 that.

16 A. I would have to look up what the price is.

17 Q. Buy it at Wal-Mart, or places like that?

18 A. I believe Wal-Mart stopped selling guns now. I
19 don't know what they used to carry or do carry.

20 Q. But it's the kind of gun that many people have?

21 A. Yes.

22 Q. Many. It's a standard cheap .22?

23 A. Yes.

24 Q. Used for hunting rabbits, things like that?

25 A. Used for a lot of things, yes.

1 Q. In fact, you found another one, very similar to
2 that, on the Avery property; did you not?

3 A. Yes, I did.

4 Q. And that one was also a Marlin Model 60SS .22
5 caliber, semi-automatic rifle, found in the --
6 you found a Marlin Model 60SS .22 caliber
7 semi-automatic rifle in another residence?

8 A. Yes.

9 Q. Sort of next to a refrigerator?

10 A. Yes, I thought I heard you, the exact rifle,
11 there are some differences between the rifles.

12 Q. But they are similar?

13 A. Yes.

14 Q. Same class, certainly?

15 A. Same model.

16 Q. Same model even. Okay. Do you remember where
17 you got that?

18 A. That was out of Charles Avery's residence.

19 Q. Also known as Chuck?

20 A. Chuck, yes.

21 Q. Did you test that rifle to see if it had been
22 recently fired?

23 A. That's beyond my scope of expertise.

24 Q. Did you test this rifle --

25 A. That's beyond my --

1 Q. -- from Mr. Avery's residence?

2 A. That's beyond my scope of expertise.

3 Q. Are you aware of whether anybody tested it, to

4 see if it had been recently fired?

5 A. No, I'm not aware.

6 Q. And you also found some .22 rifles in the Janda

7 trailer right next to Mr. Avery, didn't you?

8 A. We found weapons in the Janda trailer; I don't

9 remember exactly which ones were where. I seized

10 quite a few weapons out of Chuck Avery's, Steven

11 Avery's, the Janda's, shop building, vehicles

12 that were there. But placing all the other ones,

13 I don't know.

14 Q. When you say weapons, these are basically hunting

15 rifles?

16 A. Firearms.

17 Q. Basically rifles?

18 A. Rifles, shotguns, pistols.

19 Q. All right. But the majority appeared to be the

20 kind people would use to hunt?

21 A. Some, yes.

22 Q. Okay. And the ammunition that you identified --

23 Do you still have that photograph up there, or

24 did I take it away from you?

25 A. I have Exhibit 246 of the .22 long rifle

1 ammunition.

2 Q. That's also very common ammunition, right?

3 A. Yes.

4 Q. It fits in any .22?

5 A. No.

6 Q. Any .22 long rifle?

7 A. Yes.

8 Q. And would have fit in any of those other .22 long
9 rifles that you seized on the Avery general 40
10 acre property?

11 A. Yes.

12 Q. And the two rifles that are introduced here in
13 court that are sitting over on this evidence
14 table, the muzzleloader and the .22 long rifle;
15 those are the only two firearms that you found in
16 Mr. -- in the trailer in which Mr. Avery resided,
17 right?

18 A. Yes.

19 Q. Do you know who owns that trailer?

20 A. I don't know who owns the trailer.

21 Q. Do you know who owns those firearms?

22 ATTORNEY KRATZ: Objection, irrelevant,
23 your Honor, possession not ownership.

24 ATTORNEY BUTING: Ownership goes to
25 possession as well.

1 THE COURT: I will allow the question.

2 Q. (By Attorney Buting)~ Do you know who owns --

3 THE COURT: There's a difference between
4 determinative and relevance.

5 ATTORNEY KRATZ: Correct. Hearsay, Judge.

6 THE COURT: That's too early for that; the
7 question is, if he knows.

8 ATTORNEY BUTING: Yeah.

9 Q. (By Attorney Buting)~ Do you know who owns those
10 firearms?

11 A. I would have to assume; I don't know.

12 Q. You don't know?

13 A. Correct.

14 Q. You are assuming just because you found them in
15 that trailer?

16 A. I assume Steven Avery owns them because they were
17 found in his bedroom, because the one has tape on
18 it that says the name Steve.

19 Q. Tape on it, kind of like a neon sign, right here,
20 Steve, right?

21 A. Yes.

22 Q. Pretty obvious, isn't it?

23 A. Yes.

24 ATTORNEY BUTING: Thank you. That's all I
25 have.

1 THE COURT: Any redirect?

2 ATTORNEY KRATZ: Not of this witness,
3 Judge, thank you.

4 THE COURT: All right. The witness is
5 excused.

6 ATTORNEY BUTING: I would move -- No, I'm
7 not moving it yet, sorry.

8 THE COURT: Okay. It's 10 to 12, I don't
9 know if it pays to get into another witness at this
10 time.

11 ATTORNEY BUTING: I would -- I'm sorry,
12 your Honor, but the property inventory sheet up
13 there, I would move that into evidence; the other
14 two photographs, I'm withholding for the moment.

15 THE COURT: 264?

16 ATTORNEY BUTING: 264.

17 THE COURT: Any objection?

18 ATTORNEY KRATZ: No, Judge. But I -- I
19 wanted to remind the Court there was maybe something
20 before lunch that we might want to put on the record
21 unless we were going to do that after.

22 THE COURT: I don't remember if it was
23 before or after; I thought it was after. Maybe I'm
24 mistaken. Does either party have anything they wish
25 to put on the record, outside the presence of the

1 jury, before lunch.

2 ATTORNEY BUTING: No, your Honor.

3 THE COURT: I'm going to take that as a no
4 for now.

5 ATTORNEY KRATZ: Other than there would be
6 something right after lunch.

7 THE COURT: Yes. All right. Members of
8 the jury, we were going to take our lunch break a
9 few minutes early today. I will remind you not to
10 discuss the case among yourselves in any fashion
11 during the lunch break.

12 There may be an item we have to take up
13 outside of the jury's presence immediately after
14 lunch, so I can't promise you exactly when we'll
15 be resuming. But we'll let you know as soon as
16 we're ready. You are excused for lunch at this
17 time.

18 (Jury not present.)

19 THE COURT: You may be seated. Counsel,
20 I'm going to ask you to report back to chambers a
21 little before 1:00, to let me know what your plans
22 are after lunch.

23 ATTORNEY KRATZ: That's fine, thank you.

24 THE COURT: All right.

25 (Noon recess taken.)

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(Jury not present.)

THE COURT: At this time we're on the record, outside the presence of the jury. We're going to begin by taking up a matter which was brought to the Court's attention yesterday; that is, the Court received a note from the jury bailiff that one of the jurors raised a question indicating that, after Deputy Remiker testified, the juror realized that the juror did not know him by name, but had been a juror in a jury trial some years ago in which Detective Remiker was involved, and conscientiously raised the question whether that was a problem in this case.

I presented the note to the attorneys. And at this time, before taking further action, the Court wishes to hear the position of the parties on this matter. Mr. Kratz, I will allow you to go first -- or excuse me -- Mr. Fallon.

ATTORNEY FALLON: Thank you. Good afternoon, Judge. The appearances of the State are Ken Kratz and Tom Fallon, Special Prosecutors. Our position on this, after having been made aware of this, is that the Court individually question the juror regarding her specific knowledge and recollection of the events involving that lawsuit.

1 Most notably, what, if anything, she
2 remembers of the suit; what, if anything, she
3 remembers of the length of the trial, the number
4 of witnesses; more importantly, what, if
5 anything, she remembers regarding Detective
6 Remiker's involvement in the suit, whether he
7 testified in the suit, whether she was called
8 upon, in her capacity as a juror, to evaluate his
9 credibility in that case, and if so, to what
10 extent and what circumstances.

11 Based on the information that we have,
12 it was a case that centered on damages received
13 by Mr. Remiker while in the performance of his
14 duties, apparently he was in a squad car and was
15 rear-ended by another driver. So the question of
16 liability was not prominent in that particular
17 case and rather was a question of damages.

18 So if that is in fact the case, I think
19 we should question the juror to see what, if
20 anything, she remembers; and what, if any,
21 conclusions or opinions that she reached then
22 that she may have now, in terms of being called
23 upon to evaluate the credibility of Detective
24 Remiker in this case.

25 And most importantly, whether or not any

1 information, or opinions, or knowledge that she
2 would have gained from the lawsuit filed in 1999
3 would have any impact in her ability to perform
4 her required duties as a juror in this particular
5 case.

6 I think it would be premature to excuse
7 her for cause at this particular point, without
8 more information being made available to the
9 Court and the parties to make an informed
10 assessment. And it may turn out that she has to
11 be excused, and that would be fine with the
12 State. But our position is that there should be
13 a more adequate record made before that measure
14 is indeed selected. Thank you.

15 THE COURT: Mr. Strang.

16 ATTORNEY STRANG: Thank you, your Honor. I
17 would like to start with the easiest points first.
18 First, the juror did the right thing in bringing
19 this to the Court's attention with a note to the
20 bailiff.

21 Second, I have no information that the
22 juror's mistake about knowing Detective Remiker
23 was anything other than an innocent mistake, that
24 she didn't recognize the name at the time,
25 recognize the face when she saw him here. Again,

1 I have no reason to question the good faith of
2 the juror through the voir dire process or
3 filling out the jury questionnaire.

4 Those two easier points made, I think
5 that the right thing for the Court to do is to
6 excuse Ms Temme, and I say that for several
7 reasons. One, again, the easiest point first,
8 we're almost two solid weeks of testimony into
9 the trial, probably somewhere near a halfway
10 point, certainly of the State's case, I would
11 think. And we have four alternate jurors, four
12 extra jurors.

13 So the cost to the parties or the Court
14 of discharging any one juror seems not very high,
15 at least if we play the probabilities on how many
16 alternates we really would need. We have got
17 four spare jurors at the moment.

18 Second, the problem this presents is a
19 first for me. And although we have not had a
20 chance to do any serious research on it, I would
21 be surprised if we found much in the reported
22 case law in Wisconsin, or in any other
23 jurisdiction, that gave a whole lot of guidance
24 here.

25 But the way I see it, is this. We have

1 a juror here who doesn't just know a witness in
2 the case from outside of the courtroom, we have a
3 juror who knows a witness in this case from
4 filling a very special role in an earlier case,
5 in which that witness also filled a special role.

6 And by that I mean, the juror here is,
7 in fact, and will be told, that she is a judge in
8 this case, a judge of the facts; as important a
9 judicial role as your Honor's, although in a
10 separate realm. She also filled that role in an
11 earlier case as a juror.

12 This is a role that many citizens go
13 their entire life and never get to fill. And
14 others, once, twice, maybe three times, in a
15 lifetime, serve as a juror in our system. So
16 it's an atypical role, and a serious one, and one
17 that involves some artificiality in weighing
18 evidence, in weighing the credibility of human
19 beings who testify in a courtroom.

20 One has to set aside what one knows, or
21 thinks she knows, about facts from outside the
22 courtroom. One has to follow specific
23 instructions in how to weigh credibility. And
24 one has to weigh credibility collaboratively with
25 11 other judges of the facts.

1 So it's a very specialized, as I say,
2 role that she's filled, as to Detective Remiker,
3 in the past. He too had a special role. He was
4 not just a witness, or a visitor to the courtroom
5 whom she may have met during the trial, he was
6 both witness and a party, as I understand, in the
7 earlier lawsuit. He probably testified.

8 In ordinary life, at the diner, or at a
9 dinner party, or at school, wherever we may meet
10 people, we don't put one another under oath to
11 engage in conversation and to decide what we
12 believe and what we don't, of what someone else
13 tells us.

14 And, of course, if you are a witness in
15 a trial, you are under oath. If you are a party,
16 as well, almost unavoidably your credibility is
17 at stake and you have an interest, certainly, in
18 the outcome of the litigation. That's why I say,
19 almost unavoidably, your credibility is at stake.

20 So both have had special roles. And
21 while in day-to-day discourse we might have a
22 positive initial impression of a casual
23 acquaintance and come to change our mind about
24 that when we get an incite or glimpse into
25 character that causes us to question the initial

1 good impression we had, or vice versa, this
2 happens in everyday life.

3 As a juror, or a judge of the facts,
4 this juror has committed her judgment to the
5 credibility, to assessing the credibility of a
6 witness here, based on his role as a sworn
7 witness and a party on an earlier proceeding. It
8 is human nature for any judge, including one, a
9 judge of the law who wears a black robe, to be
10 reluctant to reconsider or set aside judgments
11 one's made.

12 Wisconsin law recognizes this in a very,
13 I concede, a loosely analogous way when, for
14 example, if a case is reversed and remanded by an
15 appellate court, sent back to a trial court, my
16 recollection of Wisconsin law is that the parties
17 have a renewed or revived right to substitute
18 on the judge of the law who first heard that case
19 and now has had his or her judgment vacated or
20 reversed and remanded.

21 That has to be a tacit recognition that,
22 in the special role of judging, it is harder to
23 set aside a considered judgment drawn from sworn
24 testimony and under the well-crafted and
25 instructed rules by which judges of the facts

1 decide credibility of witnesses, and ultimately
2 decide facts in a case.

3 So I think that this is such an unlikely
4 task for a juror to be able to undertake; that
5 is, to set aside, not just what do I know
6 casually about this witness in this trial, but to
7 set aside my experience with that witness as a
8 sworn witness in an earlier lawsuit of which I
9 was a judge of the facts.

10 I think it's so unlikely that a juror
11 will do that successfully, excuse me, that this
12 presents a question of objective bias. The
13 closest case we have in Wisconsin clearly is
14 ***State v. Kiernan***, K-i-e-r-n-a-n, 227 Wis. 2d,
15 736, a Wisconsin Supreme Court decision of about
16 7 or 8 years vintage, 1999, affirming a Court of
17 Appeals decision which I think was reported at
18 226 -- or 221 Wis. 2d, 126.

19 It's not a perfect match, but there we
20 had jurors in trial number two who had rejected
21 the defense presented in trial number one, by the
22 same lawyer, and it was to be the very same
23 defense in the second trial, both of them being
24 operating while intoxicated cases.

25 As I understand ***Kiernan***, the trial judge

1 in trial number two refused to strike for cause
2 jurors who had served in trial number one and
3 rejected the same lawyer's presentation of the
4 same defense.

5 That was held to be a matter that made
6 the jurors objectively biased in trial number
7 two. And the judgment was set aside by the Court
8 of Appeals; and then the Court of Appeals, in
9 turn, affirmed by the Supreme Court, as I
10 understand the history of the case.

11 Again, not a perfect match. Trial
12 number one and trial number two were very close
13 in time, in **Kiernan**; here we have a period of
14 six, seven years between trials. But, in some
15 ways, this is a stronger case for objective bias
16 because we're talking about the same witness in
17 trial number one and in trial number two and a
18 witness whose credibility clearly was at stake in
19 trial number one and clearly will be at stake in
20 trial two, here.

21 Detective Remiker is a member of
22 Manitowoc County Sheriff's Department. He is a
23 detective. He was actively involved in this
24 investigation. He may have been the most
25 prolific report writer among the entire Manitowoc

1 County Sheriff's Department retinue.

2 He works directly for, and is supervised
3 by, Lieutenant James Lenk, a critical figure in
4 this case. And he was -- he, that is, Detective
5 Remiker -- was involved and testified to most of
6 the significant searches in which physical
7 evidence that the State has introduced, and will
8 continue to seek to introduce, was seized and
9 gathered.

10 Moreover, Detective Remiker was one of
11 just two law enforcement officers who have
12 testified to date, in this trial, to statements
13 of the accused. And indeed there were only three
14 witnesses who have offered any statements of the
15 accused, if my memory serves; one, a citizen,
16 Bobby Dassey, and then two law enforcement
17 officers, Sergeant Colborn and Detective Remiker.

18 So his credibility is important here,
19 probably quite important. Of the witnesses so
20 far, the voice of Detective Remiker is the only
21 witness voice these jurors heard in either
22 parties opening statement, and that was in mine,
23 when I played part of what is now Exhibit 126.

24 He's an important witness. Because I
25 think the issue primarily is objective bias, it

1 makes no sense, in the view of the defense, to
2 question the juror. If the issue were subjective
3 bias, then the juror's answers would be
4 dispositive, in all likelihood, unless the Court
5 had reason to question the voracity of the juror,
6 by demeanor or statements.

7 But when the question is objective bias,
8 as the scheme in Wisconsin for juror
9 qualification is broken down, then it really
10 doesn't matter if the juror denies a subjective
11 bias. With objective bias we say, no, from a
12 reasonable person's vantage point, this would not
13 be considered an unbiased juror.

14 So, while with an objective bias issue
15 we don't gain anything by questioning a juror, we
16 certainly do put something at risk if we do that
17 and the juror has not been excused. The things
18 at risk are this, as I see:

19 (A) Because we are mid-trial, we risk
20 meddling, in a subtle way, with the deliberate
21 process of this juror and potentially with the
22 entire jury. Because this juror specifically
23 will be instructed to set aside both her prior
24 experience with Detective Remiker, in a virtually
25 identical role, sworn as a witness, and that she

1 may not discuss with the other 11 jurors, if
2 she's among the 12 who deliberate in this case,
3 what she knows of, or brings to the courtroom of,
4 Detective Remiker.

5 Now, it's one thing to extract that kind
6 of a process in voir dire, before a jury is
7 sworn. It is quite another, I think, mid-trial,
8 with a sworn jury, and a member of that sworn
9 jury, to start parsing what can and cannot be
10 considered in deliberating on the credibility of
11 the witness.

12 Now, understand me clearly, if she were
13 to remain a member of this jury, she would have
14 to be told that she cannot consider Detective
15 Remiker's earlier role and that she cannot share
16 that with these jurors, in this case. She would
17 have to be told that.

18 But the likelihood that she understands
19 that and that that doesn't chill her deliberative
20 -- her proper deliberative process, or affect the
21 deliberative process of the jury as a whole, it
22 seems to me is low, or questionable. So there
23 is, at least, that risk, (A), as I say.

24 (B) The risk of doing this is that, the
25 fact that she's been pulled out, singled out,

1 will either be understood by the jury or
2 understood by her, and as being singled out, and
3 as an instance that resulted in her being put
4 under some special instructions that the other
5 jurors are not under, and that -- that presents
6 its own obvious problems, I think.

7 So, I think for -- for all of the
8 reasons I have explained, this is not something
9 the Court ought to undertake; that is,
10 questioning the juror is not something the Court
11 ought undertake. I also think that, on these
12 circumstances, there is, at this point, on the
13 information we have, reason to find objective
14 bias and that the juror ought to be relieved of
15 her further duties, with the thanks of the Court
16 and the parties because, again, she's done the
17 right thing by reporting to the Court the
18 problem. And that's -- that's the view of
19 counsel for Mr. Avery.

20 THE COURT: All right. Well, I'm going to
21 make a couple comments at this time. First of all,
22 with respect to the supply of alternate jurors we
23 have; it's true that we still have four jurors more
24 than we need to deliberate. But we also have a case
25 which is receiving a great deal of publicity.

1 Jurors can be inadvertently exposed to
2 things that they should not hear, that could
3 result in disqualification. And the Court does
4 not feel at this point, being less than halfway
5 through the trial, that we have so many extra
6 jurors that we can easily dispose of them.

7 With respect to the issue of
8 individually voir diring a juror in a situation
9 like this, I believe that's exactly what the
10 appeals courts expect a trial court to do in this
11 type of a situation.

12 For the Court to, at this time, say that
13 this juror should be disqualified on grounds of
14 objective bias, I would be having to make a lot
15 of assumptions about things that may or may not
16 exist. The only thing the Court knows at this
17 point is that the juror apparently was involved
18 in a civil case six to seven years ago, in which
19 the witness was a party.

20 I don't believe, based on the standards
21 of objective bias as they have developed in the
22 courts over recent years, that I can say on that
23 fact alone, no reasonable person in this juror's
24 position could be a fair and impartial juror in
25 this case. It may be, based on answers to

1 further questions, that that's the situation, but
2 I cannot find that at this point in the
3 proceedings.

4 The juror was conscientious enough to
5 raise the issue on the juror's own initiative and
6 I am very reluctant to, on what would amount
7 essentially to speculation, determine that
8 without questioning the juror, the juror should
9 be excused for cause on objective bias grounds at
10 this stage in the proceedings.

11 So I do believe it is necessary to
12 conduct an individual voir dire of this
13 particular juror. For that reason, the Court is
14 going to take a short break in the proceedings at
15 this time. I have alerted the news media,
16 through their representative, yesterday, of the
17 possibility that a portion of today's proceedings
18 would not be open to cameras and audio and video
19 coverage, for essentially the same reason as the
20 Court handled things that way when we went
21 through individual voir dire.

22 Where a juror's name can be known, where
23 a juror's voice can be heard, those things are
24 entitled not to be carried over the airways and
25 I'm going to, therefore, at this point, take a

1 short break to make sure that there's no audio
2 and video coverage of the proceedings going on.

3 I will indicate that the court
4 proceedings themselves will be open. The public
5 and members of the media are more than welcome to
6 be present in the courtroom. But the Court will
7 not be allowing camera coverage of the individual
8 voir dire, or any audio coverage in any fashion.
9 Mr. Fallon.

10 ATTORNEY FALLON: Yes. On behalf of the
11 State, I think it would be the Court's intention and
12 the defense as well, if you would kindly ask the
13 media not to reference the juror by name in their
14 reporting of this matter.

15 THE COURT: That is the next item that I'm
16 addressing and I'm making that request, that the
17 media -- and the media has been pretty good and
18 responsible in that regard in not identifying jurors
19 by name. I'm sure they will honor the request in
20 this case.

21 In order to give the media an
22 opportunity to be prepared for this short portion
23 of the trial, we'll take a short break at this
24 time and check with the media room to make sure
25 everything is in order. We will resume in

1 probably five minutes or less.

2 (Recess taken.)

3 THE COURT: At this time, we are back on
4 the record, outside the presence of the jury. I
5 will indicate that during the break I spoke to a
6 representative of the media to make sure that this
7 individual voir dire portion of the proceedings was
8 not being televised or the audio portion being
9 broadcast in any way.

10 I will indicate for the record that I
11 did speak to an attorney for one of the media
12 representatives over the noon hour to explain the
13 reason for this brief portion of the trial not
14 being accessible to audio and video coverage.
15 And I believe the explanation was to the
16 attorney's satisfaction, since I have not heard
17 anything back.

18 I also indicated to the media
19 representative that I would grant their request
20 to take a short break after the questioning of
21 the juror is completed so that the media can get
22 their equipment back up and ready to go again.

23 At this point, I will -- Oh, I should
24 also indicate for the record that I met with
25 counsel in chambers over the noon hour and

1 informed counsel of the questions the Court would
2 be asking of the juror and took suggestions from
3 counsel as to additional questions to ask. At
4 this point, we'll have the juror brought in.

5 (Juror present.)

6 THE COURT: You may be seated. I was going
7 to invite you to sit in the front row, but I see you
8 feel at home where you are.

9 Ms Temme, the Court has received a note
10 from the bailiff with the question that you
11 raised yesterday regarding Deputy Remiker. And,
12 first of all, I want to thank you for your
13 conscientiousness in raising this issue for the
14 Court.

15 And at this time I would like to ask you
16 a few questions in order to determine if the
17 issue that you raised poses a problem in your
18 service as a juror. At the outset, I want to let
19 you know that for this portion of the
20 proceedings, because I'm going to be questioning
21 you, the cameras have been turned off. This
22 portion of the proceedings is not being carried
23 on the air, or on the internet, or anywhere else;
24 although, the proceeding is, like all court
25 proceedings, open to the public.

1 As I understand the note I received from
2 the bailiff, you, before the start of the trial,
3 did not recall David Remiker by name, but when
4 you saw him testify, you recognized him as a
5 party in a civil trial for which you served as a
6 juror a number of years ago; is that correct?

7 MS TEMME: Correct.

8 THE COURT: And I did take the opportunity
9 to look up his name on CCAP, I believe the trial
10 involved was a civil trial that occurred in the year
11 2000; does that sound correct?

12 MS TEMME: Correct.

13 THE COURT: Okay. And it's also my
14 understanding that you brought this matter to the
15 bailiff's attention at the break we took during
16 Detective Remiker's testimony.

17 MS TEMME: Right.

18 THE COURT: Have you discussed your
19 concerns with any other members of the jury; that
20 is, this issue?

21 MS TEMME: No.

22 THE COURT: You have not. Okay. I'm going
23 to preface the next series of questions by making
24 clear that I am not going to be asking you for, and
25 I do not want you to say, anything about your

1 impressions of Mr. Remiker's testimony in this case.
2 I'm simply asking information about the previous
3 case that you referred to, in the note I received
4 from the bailiff.

5 Do you remember whether or not
6 Mr. Remiker testified in that case? Did he
7 testify as a witness?

8 MS TEMME: I don't remember.

9 THE COURT: Okay. As I understand it, he
10 was the plaintiff in the case, the person asking for
11 damages?

12 MS TEMME: Correct.

13 THE COURT: And the jury awarded him some
14 damages; is that correct?

15 MS TEMME: Correct.

16 THE COURT: Did you vote with the majority
17 in that jury verdict; do you remember?

18 MS TEMME: Yes.

19 THE COURT: Do you remember how long the
20 trial was, approximately?

21 MS TEMME: I believe it was one week.

22 THE COURT: One week?

23 MS TEMME: Approximately one week.

24 THE COURT: And do you recall anything, for
25 example, about the number of witnesses in the case?

1 MS TEMME: No, I don't.

2 THE COURT: Okay. And if I understand it
3 correctly, you can't say for sure whether or not
4 Mr. Remiker actually testified in the case?

5 MS TEMME: I can't remember. I can't
6 say for sure.

7 THE COURT: Would your experience as a
8 juror in that case cause you to give any more or
9 less weight to his testimony in this case?

10 MS TEMME: No.

11 THE COURT: You indicated that you have not
12 discussed this matter with any other members of the
13 jury; is that correct?

14 MS TEMME: Yes.

15 THE COURT: Will you be able, during the
16 remainder of this trial, including deliberations,
17 not to tell any other members of the jury about this
18 tie you have with Mr. Remiker?

19 MS TEMME: Of course.

20 THE COURT: Counsel, it's my understanding
21 that the parties may request a side bar at this
22 point.

23 (Side bar taken.)

24 THE COURT: Ms Temme, I would like to ask
25 you just a few follow-up questions. You have told

1 me some of the things that you didn't remember about
2 the case; can you tell me what you do remember about
3 it, other than the fact that Mr. Remiker was a
4 plaintiff?

5 MS TEMME: What I remember about it is a
6 lot of discussion about the lower left lumbar of
7 the back, and that it involved an accident down
8 on the I-system with a couple of other vehicles.
9 That's about it.

10 THE COURT: Do you remember anything about
11 the witnesses who testified at the trial?

12 MS TEMME: I don't.

13 THE COURT: Do you remember, at the
14 conclusion of the trial, how you felt about it?

15 MS TEMME: I felt that the plaintiff
16 should receive some monetary value for the
17 problems he was having.

18 THE COURT: Okay. Do you remember anything
19 about the amount of damages that was awarded?

20 MS TEMME: I'm guessing, but I think it
21 was medical bills and maybe like \$100,000.

22 THE COURT: Do you remember if you were in
23 agreement, or not, with the amount of damages that
24 were awarded?

25 MS TEMME: I was in agreement.

1 THE COURT: Is there anything else you can
2 tell us that you remember about your experience as a
3 juror in that case?

4 MS TEMME: I listened to the information
5 from both sides. I know there was a lot of
6 medical information provided. I think that's why
7 I remember the lower left lumbar of the back
8 information. But, it was a good experience.

9 THE COURT: Is there anything at all about
10 your experience as a juror in that case that you
11 feel could have any affect whatsoever on your
12 service as a juror in this case?

13 MS TEMME: No.

14 THE COURT: Okay. Thank you. I'm going to
15 excuse you at this time.

16 (Juror not present.)

17 THE COURT: I forgot one last thing I was
18 going to talk to her about, so I'm going to have the
19 bailiff bring her back out.

20 (Juror present.)

21 THE COURT: You may be seated. Ms Temme,
22 one thing I forgot, that I wanted to tell you, and
23 it sounds like you followed it so far, but I want to
24 make sure that you do not discuss either the fact
25 that you were on a juror (sic) in that case, or any

1 of the questions I asked you here, or any of the
2 answers you gave, with any other member of the jury
3 in this case.

4 MS TEMME: Of course.

5 THE COURT: Okay. Very well. You are
6 excused now.

7 (Juror not present.)

8 THE COURT: All right. Counsel, we're
9 going to take a very short break at this time for me
10 to give the media the break I promised them. And,
11 then, in five minutes, we'll go back on the record,
12 outside the presence of the jury.

13 (Recess taken.)

14 THE COURT: At this time, we are back on
15 the record, outside the presence of the jury. I
16 will hear from the parties at this time concerning
17 their position on the juror, following the voir
18 dire. Mr. Fallon.

19 ATTORNEY FALLON: Yes, thank you, Judge.
20 Quite frankly, we were not surprised by any of the
21 answers obtained from the juror here. I have
22 extensive notes from the jury selection process in
23 terms of the information that we obtained from her
24 and many notes regarding her demeanor.

25 She was questioned about her prior jury

1 experience. She said at that time it was a -- a
2 interesting, good experience, much like she
3 described it today. She just strikes me as an
4 individual who doesn't take things -- I should
5 say, she takes them as she sees them, or as she
6 finds them. And I think it's important to
7 highlight the fact that, here it is 2007 and this
8 trial was at least six years ago, perhaps close
9 to seven years ago, and when asked about what
10 does she remember about the case, I found it
11 rather telling that all she could focus and
12 clearly remember was the lower left lumbar, as
13 being a point of interest to the particular trial
14 at hand.

15 And, if she doesn't recall, equally
16 important, whether Mr. Remiker, in that case,
17 testified, I think that's also a telling fact.
18 Because ordinarily you would expect the plaintiff
19 in a civil case and, quite frankly, I wouldn't be
20 surprised if further review suggests that
21 Detective Remiker did testify.

22 But she doesn't have a clear
23 recollection of that particular incident or his
24 testimony, or any -- or anything else about the
25 case other than the injury to the lower left

1 lumbar and how significant or severe it was.

2 While some may argue that thousands of
3 dollars in special damages for medical bills and
4 perhaps \$100,000, or maybe she's thinking 100,000
5 total, for all the other injuries associated for
6 an accident like that, is not an overwhelming
7 amount of money.

8 She indicated she voted in favor,
9 thought the plaintiff carried the day. But there
10 was nothing about the particular process, or the
11 deliberation, or the evaluation of the testimony,
12 of the evidence and all of that, which is of
13 critical interest to us here today, that suggests
14 that she couldn't perform that same function
15 today.

16 And more importantly, there was no
17 indication in any of the information provided by
18 her that she would not be able to perform that
19 function today, in this case, in setting aside or
20 disregarding any of what occurred in 2000. And I
21 think that's the critical fact here, is there a
22 chance or a likelihood -- I don't mean a chance,
23 but I mean a realistic likelihood, a realistic
24 chance that something about that case would
25 interfere or cause her to unduly sway the

1 evaluation and the credib -- the evaluation of
2 the credibility of Detective Remiker. And we saw
3 no indication of that in this particular voir
4 dire of the juror.

5 So we're not bringing a motion for
6 cause. I don't think there's a sufficient basis
7 to strike for cause on objective bias, because
8 she happened to be a juror in a case six years
9 ago. And the fact that one of the witnesses in
10 this particular case was the plaintiff, again,
11 doesn't seem to be that significant a point or a
12 fact with this juror. Again, as I said, there's
13 nothing that we learned today that would
14 seriously cause us to suggest that she could not
15 perform the duties in this case. So we do not
16 have an objection.

17 THE COURT: Mr. Strang.

18 ATTORNEY STRANG: The defense moves to
19 strike the juror for cause. We adhere to all of my
20 earlier comments and I will add now, after hearing
21 the juror, something on subjective bias and
22 something more on objective bias. The Court, of
23 course, has the province of assessing the juror's
24 credibility and demeanor.

25 I thought it worthy of note that the

1 juror, who is middle-aged -- that's going to get
2 me in trouble with someone, but she certainly is
3 a young person, not an elderly person -- and is
4 describing a trial that, let's assume, happened
5 in 2000 -- if it happened in 2000, it's really
6 not so long ago, that's the year that President
7 Bush first was elected, that's not a long time
8 ago -- and professes here today not to remember,
9 one way or the other, whether the plaintiff in
10 the lawsuit was a witness at some point, during
11 what she's thinks was about a one week trial;
12 it's worth raising, just as a -- as a subjective
13 matter. But I continue to see this primarily as
14 a matter of objective bias.

15 And what I can add, to my comments
16 earlier, is just the exclamation point that, when
17 we have sitting in this jury, at a time when we
18 have ample extra jurors and opportunity to err on
19 the side of caution, when we have someone sitting
20 as a juror, who previously has voted to award
21 \$100,000 to a witness in this case, there is not
22 the reasonable appearance of impartiality and
23 fairness. That just simply doesn't look fair.

24 So, if the Court can -- concludes that
25 subjectively she's not biased, I think there's a

1 real objective bias concern here, and that she
2 ought to be relieved of further duty as a juror
3 in this case.

4 THE COURT: All right. First of all, with
5 respect to the Court's findings in this matter, I
6 find this particular juror to be very credible for a
7 number of reasons. Probably goes back to my
8 recollection of her answers during individual voir
9 dire, which I agree with the State, were similar to
10 what I heard today.

11 She certainly didn't have to alert the
12 Court to the fact that she had been on a jury
13 involving one of the witnesses, seven years ago.
14 I have given no instructions to the jurors that
15 would require them to report that type of
16 information, at least specifically.

17 I have instructed them that if they are
18 exposed to any reports or communications from
19 other parties they should report it, but she did
20 it on her own and I believe she did so
21 conscientiously. Given that fact, I find no
22 reason she would have to be untruthful when she
23 tells the Court today that she simply has no
24 recollection of remembering that Mr. Remiker
25 testified at the trial during which she served as

1 a juror.

2 That's not the same as saying that she
3 believes he did not testify, she simply doesn't
4 remember. If she doesn't remember that he
5 testified, there doesn't appear to be a serious
6 danger that somehow, because she found him
7 credible as a witness in that trial, she will be
8 more likely to find him credible as a witness in
9 this trial. She doesn't even have a recollection
10 of him testifying.

11 Her most vivid recollections of that
12 trial are related more to the injuries, the fact
13 she feels that the person, as a plaintiff, was
14 injured and was entitled to damages and she went
15 along with an award that was given by the rest of
16 the jurors in that case.

17 She indicated to the Court that she did
18 not believe her experience as a juror in that
19 case would have any impact on her ability to be
20 fair and impartial in this case and I'm not aware
21 of any information that would call that into
22 question.

23 In terms of objective bias, the question
24 boils down to whether a reasonable person, in the
25 individual juror's position, could be impartial.

1 That is, I have to ask, could somebody be
2 impartial in her position. The defense suggests
3 that the mere fact that she was on a jury that
4 awarded this witness, approximately seven years
5 ago, a verdict in a civil case, I mean, she can't
6 be partial in this case.

7 She didn't remember the individual's
8 name at the time of original individual voir
9 dire. And I saw nothing in her demeanor to
10 suggest that she was somehow favorably inclined
11 toward Detective Remiker because he was the
12 plaintiff in that prior suit. It appears she
13 simply participated in the award because she
14 thought the plaintiff in that case was entitled
15 to the award.

16 I just don't see anything nor any reason
17 why someone who was a juror in a case six or
18 seven years ago would, of necessity, be unable to
19 be fair and impartial in a case such as this.
20 She's an intelligent person, I think she can
21 separate and tell the difference between the two
22 and I don't think, more importantly, that there's
23 any particular motivation, simply because she
24 participated in a civil trial that long ago, any
25 objective reason why she should be more or less

1 inclined to believe him in his testimony in this
2 case. So the Court is going to deny the motion
3 to strike this juror for cause.

4 Counsel, is there anything else to take
5 up before we bring in the jury and resume with
6 the next witness?

7 ATTORNEY KRATZ: Just one matter, Judge.
8 The next witness, like some law enforcement officers
9 that come before the Court, is a member of a Metro
10 Drug Unit, as part of his responsibilities and is
11 actively involved in undercover narcotics
12 investigations. He has asked this Court, although
13 we believe that his audio poses no threat to either
14 himself or his investigations, that the Court direct
15 that video of this officer not be taken.

16 He is a relatively short officer. I
17 have spoken to Mr. Buting about that and,
18 obviously, audio of this officer will be
19 permitted, but pursuant to statute, Judge, I
20 believe the Court has the authority and I would
21 ask for this officer, and I think in the case,
22 this officer alone, that videotape not be taken
23 of his testimony.

24 THE COURT: Mr. Buting.

25 ATTORNEY BUTING: I have no problem with

1 that; that's fine.

2 THE COURT: I assume that it's sufficient
3 if I simply direct the camera man to just focus on
4 the attorneys, or the board, or something else, that
5 they just be instructed not to show the camera on
6 the witness.

7 ATTORNEY KRATZ: Anything else, Judge, that
8 would be just fine.

9 THE COURT: All right. I think that should
10 be sufficient to most narrowly meet the State's
11 request, while still allowing for the public
12 coverage of this trial. So, Mr. Camera Man, I
13 assume you can follow that directive. And although
14 I can't make eye contact with who is ever behind the
15 glass, I will ask the same of the camera man in the
16 media room. Is that you?

17 REPORTER: No, I'm a reporter, but I'm
18 standing up and I would like to make a record to
19 the Court. Our attorney from WISN-TV, Attorney
20 Flynn, has left a message in the back for the
21 Court, he would like to be heard on this issue.

22 THE COURT: On this issue here?

23 REPORTER: Yes, involving the DCI agent.

24 THE COURT: Oh. Okay. Well, we'll take a
25 short break and I will take the phone call in

1 chambers and see if anything further is necessary.

2 REPORTER: Thank you.

3 (Recess taken.)

4 (Jury not present.)

5 THE COURT: At this time, I will indicate
6 for the record, and we're outside the presence of
7 the jury, I spoke to Attorney Matthew Flynn, who
8 represents WISN in Milwaukee. I believe his call
9 was prompted in anticipation of the Court completely
10 prohibiting coverage of the trial during the
11 testimony of the next witness.

12 When I explained to him that I felt the
13 needs of the media and the needs of the Court
14 could be accommodated by allowing the proceedings
15 to continue to be televised during the testimony
16 of the next witness, but simply instructing the
17 camera man not to show his face, Mr. Flynn
18 indicated that was satisfactory to he and his
19 client. So that's what the Court will do.

20 I have received a nod from the camera
21 man that he understands the instructions. And
22 with that, we'll bring in the jury at this time
23 and then allow the State to call its next
24 witness.

25 ATTORNEY KRATZ: That's fine. Thank you,

1 Judge.

2 (Jury present.)

3 THE COURT: You may be seated. Members of
4 the jury, before we begin, I just want you to rest
5 assured that the attorneys and I did not take a
6 three hour lunch today. We had a number of matters
7 to address, that had to be addressed, outside the
8 presence of the jury. I believe we are ready to go
9 now and at this time we're going to have the State
10 call its next witness.

11 ATTORNEY KRATZ: Thank you, Judge. The
12 State will call Gary Steier to the stand. I have
13 two exhibits, Janet.

14 THE CLERK: Raise your right hand.

15 **SPECIAL INVESTIGATOR GARY STEIER**, called
16 as a witness herein, having been first duly
17 sworn, was examined and testified as follows:

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

20 THE WITNESS: Gary Steier, S-t-e-i-e-r.

21 **DIRECT EXAMINATION**

22 BY ATTORNEY KRATZ:

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

24 A. I'm a special investigator with the Calumet
25 County Sheriff's Department.

1 Q. Do you also have special responsibilities with a
2 multi-jurisdictional organization?

3 A. Yes, I do.

4 Q. Could you describe that just briefly, please.

5 A. I'm assigned to the four county drug unit, Lake
6 Winnebago Drug Unit.

7 Q. With Calumet County, what are your
8 responsibilities?

9 A. Special investigator position is 50 percent
10 investigations, 50 percent Lake Winnebago Area
11 Metropolitan Enforcement Drug Group Unit.
12 Investigations into the four counties around Lake
13 Winnebago, as far as drug investigations and then
14 50 percent other investigations pertaining (sic)
15 into Calumet County.

16 Q. Mr. Steier, in your general investigative
17 responsibilities, were you asked, on November 5th
18 of 2005, to proceed to the Avery Salvage Yard?

19 A. Yes, I was.

20 Q. And that first evening, that is, on the 5th of
21 November, did you actively participate in the
22 first search, what we have come to know as a
23 sweep of several residences on the property?

24 A. Yes.

25 Q. Can you describe that just briefly for us,

1 please.

2 A. Myself and Detective Remiker were assigned to
3 execute the search warrant on Steven Avery's
4 property, specifically looking for Teresa
5 Halbach. I believe we were the two investigators
6 that entered the residence and did an initial
7 sweep looking for Teresa Halbach.

8 Q. As I understand, Investigator Steier, that
9 through the rest of that week, that is, between
10 the 5th and the 12th of November, you were
11 actively involved in other search as well as
12 investigative efforts in this case?

13 A. Yes.

14 Q. In fact, Investigator Steier, after the
15 completion of that first weeks worth of
16 investigation, you continued to be asked to
17 perform investigative functions in this case; is
18 that true?

19 A. Yes.

20 Q. I will now direct your attention to March 1st and
21 2nd of 2006, ask if you were once again asked to
22 participate or cooperate in investigative
23 efforts.

24 A. Yes.

25 Q. Could you tell the jury, on March 1st and 2nd,

1 what you were asked to do.

2 A. On March 1st and 2nd, I was asked to be the
3 evidence custodian for the search warrant, when
4 it was executed; more particularly, to the garage
5 of the residence of Steven Avery.

6 Q. Directing your attention, first, to March 1st,
7 what were your responsibilities in searching
8 Steven Avery's garage?

9 A. My responsibilities were to collect -- or make
10 sure that the evidence collected in the garage
11 was packaged; had a officer who discovered the --
12 or who had collected the items and had dated
13 that, a date and time that that item was
14 collected; and that all the evidence was taken
15 out of the garage; and made sure that the chain
16 of custody was intact.

17 Q. Do you know a agent with the Division of Criminal
18 Investigation named Kevin Heimerl?

19 A. Yes.

20 Q. Was he also involved in both search and
21 collection efforts on March 1st and 2nd?

22 A. Yes, he was.

23 Q. On March 1st, Investigator Steier, upon a search
24 of the garage of Steven Avery, was any particular
25 item of interest located?

1 A. There were several items that were collected that
2 were of interest. Two of the items were bullet
3 fragments collected inside the garage.

4 Q. These are the bullet fragments that I'm going to
5 ask you, at least for the next several questions,
6 direct your attention on March 1st, that is, the
7 first day of a two day search project or
8 procedure. Could you tell us how that fragment
9 was located and what you personally did after
10 that fragment was located.

11 A. Day 1 of the search warrant, a bullet fragment
12 was located. The item was located by Agent
13 Heimerl and was collected by myself. Day 2 of
14 the search warrant, a second bullet fragment was
15 also located by Agent Heimerl and was collected
16 by Detective Remiker.

17 ATTORNEY BUTING: Judge, just so the record
18 is clear, as to the actions of Agent Heimerl, he's
19 going to be testifying. It would be hearsay, that's
20 why I'm not objecting, because he is coming.

21 THE COURT: All right. Thank you.

22 ATTORNEY KRATZ: He will be our next
23 witness. And thank you, counsel.

24 Q. (By Attorney Kratz)~ I'm showing you what has
25 been marked for identification as Exhibit No. 276

1 and 277, are you able to identify or recognize
2 those exhibits?

3 A. Yes, the exhibit with the plastic bag with
4 initials GS was collected by myself.

5 Q. That's 276?

6 A. That's correct.

7 Q. And was that found on the first day or the second
8 day?

9 A. It was found on March 1st.

10 Q. Okay. Do you remember, generally, within the
11 garage, where that bullet fragment was located?

12 A. Would be in the northwest corner of the garage.

13 Q. I'm going to show you, Investigator, what has
14 been previously received as Exhibit No. 108, ask
15 if this computer diagram assists you in
16 describing to the jury where this bullet fragment
17 was found?

18 A. The evidence photograph marker No. 9.

19 Q. As far as the collection, packaging, and then
20 taking control of that first bullet fragment,
21 could you explain once again, for the jury, who
22 it was that found the fragment, which I'm sure
23 we'll hear about, but, then, who both packaged
24 and took control of?

25 A. The bullet fragment, Exhibit 276, in the paper

1 bag, was located by Agent Heimerl and collected
2 by myself. All the photography, photographs
3 inside the trailer, were done by Agent Heimerl.

4 Q. You mean inside the garage?

5 A. I'm sorry, inside the garage, yes.

6 Q. Just so the jury knows, there was another search
7 going on inside of Mr. Avery's trailer at the
8 same time; is that right?

9 A. That's correct. We were divided into teams, a
10 team of five. We were assigned the garage and a
11 diff -- another team was assigned inside the
12 trailer at the same time.

13 Q. Okay. Now, the next day, that is, on March 2nd,
14 directing your attention to Exhibit No. 277,
15 where was that found?

16 A. That would have been located on the evidence
17 photograph, tent marker 23A.

18 Q. After it's detection, again, which we're going to
19 hear about in just a couple minutes, what
20 happened with that bullet fragment?

21 A. The bullet was turned over to me, from Detective
22 Remiker.

23 Q. After taking custody, I understand on two
24 separate days, but of each of these items of
25 evidence, could you describe for the jury what

1 was done with them; what happened after you
2 retained possession of them?

3 A. The items were packaged or were collected in a
4 package and turned over to me and then evidence
5 tape surrounding the package was placed on the
6 item collected. And then from there, the items
7 were transported to a trailer, which was housing
8 the other items that were collected from the
9 same.

10 ATTORNEY KRATZ: I think it's 125,
11 Mr. Fallon.

12 Q. (By Attorney Kratz)~ Finally, Investigator
13 Steier, were you familiar with a log, that is, a
14 check in and check out procedure or document that
15 was being utilized on those days?

16 A. I was aware that there was a log being taken of
17 our entry and exit times in and out of the garage
18 and the surrounding area.

19 Q. Now, the garage and the surrounding area, are
20 those the same logs or the same kind of place?

21 A. Day 1, the log reflected inside the trailer --
22 inside -- I'm sorry, inside the garage. Day 2,
23 reflected the garage and the evidence tape, which
24 was just outside the garage.

25 Q. All right. Either on March 1st or March 2nd, had

1 you witnessed either Lieutenant James Lenk or
2 Sergeant Andrew Colborn, come inside of the
3 garage itself?

4 A. No.

5 Q. If either Lieutenant Lenk or Sergeant Colborn had
6 come inside of the garage, is that something that
7 you would have noticed?

8 A. Probably, it was only five or six of us inside
9 the garage at that time.

10 Q. All right. And, Mr. Fallon, as soon as he finds
11 it, is going to show you the actual log.

12 ATTORNEY KRATZ: Is it 125, counsel; is
13 that the right log?

14 ATTORNEY FALLON: There's three
15 possibilities, counsel, 125, 147 and 146.

16 ATTORNEY KRATZ: Perhaps Mr. Buting can ...

17 Q. (By Attorney Kratz)~ We're going to show you what
18 has been marked as Exhibit 146 and 147. First of
19 all, I will ask if you recognize those documents?

20 A. I have not seen these particular documents, no.

21 Q. Well, then, what I'm going to do is go by your
22 independent recollection. Do you know if
23 Lieutenant Lenk had, on either day, come inside
24 of the outer perimeter, that is, the outer check
25 in area?

1 A. To answer your question, the Day 1, no Lieutenant
2 Lenk did not enter the garage area. I believe
3 these records are for the trailer not for the
4 garage.

5 Q. All right. But what I'm asking, though, is do
6 you know if, on either day, Lieutenant Lenk
7 entered the -- what would be the outer perimeter,
8 not the garage itself, but was he in the general
9 vicinity of those search efforts?

10 A. Yes. On Day 2, he was near the tape line of the
11 evidence, but not inside the garage.

12 Q. All right. And I guess that's the point that I'm
13 asking you. Although inside of the -- where the
14 general public couldn't get, he wasn't in the
15 garage itself; is that your testimony?

16 A. Yes.

17 Q. At any time, Investigator Steier, did you see
18 Lieutenant Lenk provide any other officer who may
19 have come into the garage with any kind of
20 evidence or anything to secrete, or to plant, or
21 to hide in there?

22 A. No.

23 Q. My last question is, if that would have happened,
24 is that something that you would have seen?

25 A. I probably would have noticed something unusual,

1 but to answer the question, I don't know if I
2 would have actually been able to determine that.

3 Q. We have now found Exhibit No. 125, which, in
4 fact, is that outer perimeter log. Is that
5 something that you do recognize?

6 A. Yes.

7 Q. And you notice Lieutenant Lenk's name on that
8 outer perimeter log; is that correct? It's on
9 page one.

10 A. Yes.

11 Q. All right.

12 A. For March 2nd.

13 ATTORNEY KRATZ: And recognizing, Judge,
14 that we are going to hear about the discovery and
15 photography of Exhibits No. 276 and 77, I still
16 will, at this time, move their admission.

17 THE COURT: Any objection?

18 ATTORNEY BUTING: No.

19 THE COURT: All right. Those exhibits are
20 admitted.

21 ATTORNEY KRATZ: That's all I have of this
22 witness. Thank you, Judge.

23 THE COURT: All right. You are excused,
24 sir.

25 ATTORNEY BUTING: No.

1 THE COURT: Oh, sorry, jumping the gun.

2 ATTORNEY BUTING: Not so fast.

3 THE COURT: Okay.

4 ATTORNEY BUTING: Okay.

5 **CROSS-EXAMINATION**

6 BY ATTORNEY BUTING:

7 Q. I'm sorry, is it detective or investigator?

8 A. Investigator.

9 Q. Okay. Investigator Steier, your involvement, you
10 had some involvement in this case, back in
11 November, November of '05?

12 A. Yes.

13 Q. During that week when it first started, right?

14 A. Yes.

15 Q. And you work for Calumet Sheriff's Department,
16 right?

17 A. Yes.

18 Q. And I'm sure that you were aware that on the
19 very, very first day, November 5th of 2005, the
20 Manitowoc County Sheriff's Department had decided
21 to turn over this investigation to Calumet,
22 right?

23 A. That's correct.

24 Q. Because of this possible conflict of interest
25 over the fact that Mr. Avery, here, was suing

1 Manitowoc County, right?

2 A. That's correct.

3 Q. And, then, after the property was held for that
4 week, November 5th to the 12th, Manitowoc didn't
5 really have much else to do in this case
6 investigation, to your knowledge, did they,
7 initially?

8 A. After that, no, not that I believe so.

9 Q. So, it was primarily Calumet, represented by
10 Mr. Wiegert, who's not here at the moment, and
11 DCI, led by Mr. Fassbender who were running the
12 investigation of the case, as far as you knew?

13 A. Yes.

14 Q. Okay. So four months go by, and now we're up to
15 March 1st, 4 months when Manitowoc County had
16 really had nothing to do with this case; would
17 that be fair?

18 A. Yes.

19 Q. Suddenly there's another search warrant at
20 Mr. Avery's trailer and garage and we see
21 Manitowoc back in the case; isn't that right?

22 A. As far as I know, yes.

23 Q. You have all the logs up there with you or just
24 one?

25 A. I just have the second, I believe.

1 ATTORNEY BUTING: Okay. Let me have that
2 one, please.

3 Q. (By Attorney Buting)~ Now, the first day, this
4 was actually sort of a two day search of those
5 properties, right, 1st and 2nd?

6 A. Yes, that's correct.

7 Q. And somebody with your department maintained
8 overall security of that scene, during that time?

9 A. Yes.

10 Q. 24 hours?

11 A. Mm-hmm.

12 Q. Sorry, we're talking over each other here. And
13 those people who maintained security of the
14 scene, do you know whether they were Manitowoc or
15 Calumet?

16 A. They were Calumet.

17 Q. All right. And they were maintaining a log of
18 people who would come and go from the property
19 during this two day search, right?

20 A. Yes.

21 Q. And that's what Exhibit 147 is, if you would take
22 a look at that. It appears to be a log that was
23 being kept by one of your colleagues, of
24 everybody that came and went, right?

25 A. Yes.

1 Q. Okay. And do you see Detective Lenk's name? To
2 make it easier for you, direct your attention to
3 the bottom of the page, Lieutenant Lenk, I
4 believe that ...

5 A. Yes, I do.

6 Q. It shows Lieutenant Lenk arriving at 1810, right?

7 A. That's correct.

8 Q. And there does not appear to be a similar log
9 like this other one that's Exhibit 125, that's
10 dated March 2nd; have you seen one like this for
11 March 1st?

12 A. Yes, there is a --

13 Q. Okay.

14 A. -- log like this for March 1st.

15 Q. Okay. So maybe we just haven't found it.
16 Exhibit 125 is a different kind of a log; it's
17 more specific to location on that property, would
18 that be fair?

19 A. Yes.

20 Q. It specifically says garage and roped off --
21 roped off area or something, right?

22 A. Yes.

23 Q. And do you see Lieutenant Lenk's name on that?

24 A. Yes.

25 Q. Do you actually remember him being there?

1 A. I do.

2 Q. Do you remember him passing out food and drinks?
3 Yes or no?

4 A. No.

5 Q. He wouldn't do that, he's a lieutenant, right?

6 A. He may have been passing out food or drinks, I
7 just can't recall at this time.

8 Q. Okay. Do you know who asked Manitowoc County to
9 rejoin this investigation on March 1st and 2nd?

10 ATTORNEY KRATZ: Objection, irrelevant,
11 Judge.

12 THE COURT: Mr. Buting.

13 ATTORNEY BUTING: I think it's directly
14 relevant; it's been a central part of this case.

15 ATTORNEY KRATZ: Is there still a conflict
16 on March 1st and 2nd, that's my objection, your
17 Honor.

18 THE COURT: Well, he can ask him if he
19 knows. I will allow it.

20 Q. Do you know?

21 A. Could you repeat the question?

22 Q. You may not know, that's fine. But I'm just
23 asking if you know who asked -- Well, let me ask
24 you this, who asked you to come and be the
25 evidence custodian?

1 A. Investigator Mark Wiegert.

2 Q. Okay. Do you know whether Mr. Wiegert or
3 Mr. Fassbender invited Manitowoc County back into
4 this investigation, so that they would be at the
5 scene of this search of Mr. Avery's trailer and
6 garage on March 1st and 2nd?

7 A. Do I know that they asked Manitowoc County?

8 Q. Do you know who asked them?

9 A. Do I know who specifically, no.

10 Q. Okay. But Mr. Wiegert and Mr. Fassbender, as far
11 as you know, were the leaders of the
12 investigation, still at that time?

13 A. That's correct.

14 Q. And Mr. Kratz asked if you were -- if you noted
15 Sergeant Colborn or Lieutenant Lenk in the garage
16 area itself. You didn't at that time have any
17 particular concern about the fairness or
18 objectivity of either of those two officers, did
19 you?

20 A. No, I did not.

21 Q. As of March 1st and 2nd, you didn't know, or did
22 you, that Lieutenant Lenk had been deposed as a
23 witness in the Avery lawsuit?

24 A. No, I did not know that at that time.

25 Q. So there was nothing about those two officers

1 that would have put you on guard, or to watch
2 out, make sure they don't do something like plant
3 evidence, right?

4 A. That's correct.

5 ATTORNEY BUTING: That's all I have of this
6 witness, thank you.

7 THE COURT: Mr. Kratz, any redirect?

8 ATTORNEY KRATZ: Not of this witness,
9 Judge.

10 THE COURT: All right. Very well, the
11 witness is now excused. Mr. Kratz, you may call
12 your next witness.

13 ATTORNEY KRATZ: Thank you, Judge. And
14 just for the record, we're not asking for any
15 special indulgence from this point forward from the
16 media and I will call Mr. Kevin Heimerl to the
17 stand.

18 THE COURT: Thank you.

19 THE CLERK: If you would raise your right
20 hand.

21 **SPECIAL AGENT KEVIN HEIMERL**, called as a
22 witness herein, having been first duly sworn, was
23 examined and testified as follows:

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

1 THE WITNESS: Kevin Heimerl, H-e-i-m-e-r-l.

2 DIRECT EXAMINATION

3 BY ATTORNEY KRATZ:

4 Q. Mr. Heimerl, how are you employed, sir?

5 A. I'm a special agent with the Wisconsin Department
6 of Justice, Division of Criminal Investigation.

7 Q. How long have been a special agent?

8 A. Three years.

9 Q. Prior to that employment responsibility, did you
10 have other law enforcement experience?

11 A. Yes, sir.

12 Q. Could you describe that for the jury, please.

13 A. I worked for the Columbia County Sheriff's
14 Department for approximately 14 years. I began
15 as a non-sworn jailer and dispatcher for
16 approximately one and a half years, then worked
17 in a uniform patrol deputy sworn position for
18 approximately one and a half years. And I, then,
19 was promoted to a detective investigator position
20 for the remainder of 11 to 12 years.

21 Q. During November of 2005, did you work for the
22 Division of Criminal Investigation?

23 A. Yes, I did.

24 Q. And is one of your colleagues, Special Agent
25 Fassbender?

1 A. Yes.

2 Q. Sometime after the 5th of November, 2005, were
3 you asked to participate in an investigation at
4 the Avery salvage property?

5 A. Yes, I was.

6 Q. And let's start with an overview, first of all,
7 what days were it that you were actually on that
8 property, if you recall, that week?

9 A. I was initially assigned to assist with the
10 investigation on Sunday, November 6th, I believe
11 it was. And I remained active and involved in
12 the initial investigation there at the scene for
13 approximately the first week.

14 Q. All right. Were there specific responsibilities
15 that you were given, and if so, who were those
16 directed to you by?

17 A. Yes, I was given assignments and responsibilities
18 by the lead investigator, Special Agent
19 Fassbender, or Detective Wiegert.

20 Q. The first day that you were there, I think you
21 said was Sunday, the 6th of November, could you
22 tell the jury what your responsibilities were
23 that day.

24 A. My first assignment was to follow up on an
25 investigative lead. And I traveled into the city

1 of Manitowoc to interview a citizen regarding a
2 previous contact that citizen had had with Teresa
3 Halbach.

4 Q. Now, I think you are the first law enforcement
5 officer that we have heard about that was
6 actually doing interviews of people off site; in
7 other words, off the Avery property. Was that a
8 responsibility, or series of responsibilities,
9 that you were aware that other law enforcement
10 officials had, as well as you?

11 A. Yes, I was aware that other investigators were
12 doing interviews elsewhere.

13 Q. Are you familiar with the term neighborhood
14 canvas?

15 A. Yes, I am.

16 Q. What does that mean?

17 A. Neighborhood canvas is something that is quite
18 often done in investigations of all magnitude, if
19 you will. And it essentially involves contacting
20 all individuals who reside in homes, or work in
21 businesses, within the immediate vicinity of the
22 crime. To make contact with all of those people
23 and interview them to see if they had information
24 that may be relevant to the investigation or may
25 assist in the investigation.

1 Q. During that first week of involvement in this
2 investigation, were many of your responsibilities
3 involving those kinds of interviews, the
4 neighborhood canvasses?

5 A. Yes, it was.

6 Q. Agent Heimerl, I am going to direct your
7 attention to Monday, the 7th of November, and ask
8 if you were on the Avery property on the 7th?

9 A. Yes, I was.

10 Q. On the 7th of November, do you recall having
11 contact with and actually taking control of a
12 burn barrel located outside of Mr. Avery's
13 trailer?

14 A. Yes, I do.

15 Q. Let me show you what's been received as Exhibit
16 51; can you tell us what we're looking at here,
17 please.

18 A. That is a steel burn barrel.

19 Q. Does this look familiar to you?

20 A. Yes, it does.

21 Q. What steel burn barrel is this?

22 A. This is a steel burn barrel that is essentially
23 in the front yard of Steven Avery's trailer.

24 Q. After initially being discovered, were you asked
25 to take control of, or begin, what's commonly

1 referred to as the processing of this piece of
2 evidence?

3 A. Yes.

4 Q. Describe what that entailed for the jury, please.

5 A. At the time, I was present at the Command Post
6 and was contacted by Agent Fassbender and
7 informed that a burn barrel in front of Steven
8 Avery's residence had been found to potentially
9 contain items of evidence. Myself and Special
10 Agent James Sielehr were assigned to walk down to
11 the trailer, meet with the law enforcement
12 officers that had discovered it, and to begin --
13 basically to secure it and to begin documenting.

14 Q. All right. Now, evidence this burn barrel
15 included eventually was taken off site or to a
16 central repository, or a central place where it
17 was held; is that your understanding?

18 A. Yes.

19 Q. Do you know where evidence in this case, after it
20 was taken off site, was retained?

21 A. I believe it was either transferred to the
22 Calumet County Sheriff's Department; in some
23 instances, I believe that some items went
24 directly to the State Crime Lab. I do not
25 specifically know where this one went.

1 Q. All right. Agent Heimerl, were you also, later
2 in the week, made aware of an area behind
3 Mr. Avery's garage, which has been referred to as
4 a burn area, or a burn pit?

5 A. I was told of it.

6 Q. The questions that I have of you, though, were
7 after processing, that is, after that burn area
8 was processed by agents of DCI Crime Lab and
9 others, in the weeks thereafter, were you asked
10 to assist in examination of the contents of that
11 particular burn area?

12 A. Yes, I was.

13 Q. So that the jury knows what we're talking about
14 and, although a little bit out of order, we'll be
15 hearing from witnesses about this, but do you
16 recognize Exhibit No. 47?

17 A. I have seen that photograph before, yes.

18 Q. Now, the items seized therefrom, in other words
19 the items that were recovered from this burn
20 area, you mentioned that you participated in
21 examination of; could you tell us where that
22 occurred, please.

23 A. Yes, it occurred on two separate occasions. The
24 first occasion was at the Wisconsin State Crime
25 Laboratory in Madison. And the second occasion,

1 that occurred here at the Calumet County
2 Sheriff's Department.

3 Q. Could you describe, just generally, and, again,
4 we're going to hear more specifically about this,
5 but to get your part of the case in, for lack of
6 a better term, can you describe, generally, what
7 you did or what you were asked to do, in that
8 examination?

9 A. Yes, myself and several other investigators were
10 given the assignment or the responsibility to
11 examine all of the debris that was removed from
12 the burn area or the burn pit. And that debris
13 was collected by other investigators and was
14 packaged and, ultimately, brought to the State
15 Crime Laboratory in Madison.

16 There we set up a processing station, if
17 you will, which simply involved table top
18 platforms that were covered with tarps. We had
19 all of this loose debris, material, that was a
20 mixture of soil and ash and burned items.

21 We would take a quantity of it and place
22 it on the table in front of you, on the tarp, and
23 using various instruments, begin sifting through
24 it and layering it out very thinly in front of
25 you and visually examining the material,

1 attempting to locate any items that you feel may
2 be items of evidence, such as human remains, bone
3 material, items of metal that you feel may, in
4 some way, shape, or form, be related as an item
5 of evidence.

6 Q. Let me ask you, Agent Heimerl, as part of your
7 law enforcement training, in addition to general
8 investigative training, do you have any specific
9 or specialized training in areas of arson or
10 arson investigations?

11 A. Yes, I do.

12 Q. Can you just, generally, tell us about that
13 training or experience, please.

14 A. My assignment at the Department of Justice, DCI,
15 is in the Arson Bureau. My primary assignment is
16 to conduct fire arson investigations. And I have
17 received rather extensive training through --
18 both at local, state, and national levels, in
19 fire investigation aspects and determining the
20 origin and cause of fire incidents.

21 But that also includes fatal fire
22 investigations. I believe that some of the --
23 probably the most important experience or
24 training that I have received has been on the job
25 training, if you will, in processing fire death

1 scenes, where people have perished in fires. Our
2 office is frequently called to fatal fire
3 investigations and we often have to recover human
4 remains from fire scenes.

5 Q. All right. So you are familiar with this
6 process, it's term I call sifting and sorting,
7 but that's a clumsy term, but is that, generally,
8 part of the process of what you engaged in in
9 this case?

10 A. Yes, it is. And you are exactly right, there are
11 different terms to use. And in some cases
12 sifting is actually done with sifting screens.
13 In this case, we did not use the sifting screens,
14 but it was more just a thin layering out and a
15 visual examination. If an item strikes you as
16 possibly being something that you may need to
17 collect. It's maybe brushed clean, or cleaner,
18 to remove some of the debris that's attached to
19 it, to allow for a better examination.

20 Q. During this examination process -- and by the
21 way, I would ask you to look at some of the
22 photographs that are in front of you. I want you
23 to first find Exhibit 273; it is one of the last
24 pictures, I think, that we have given you. Tell
25 me if you recognize that, please.

1 A. Yes, I do.

2 Q. What is that?

3 A. This is a photograph of several individuals, to
4 include Investigator Wiegert, myself; I recognize
5 Special Agent Rodney Pevytoe. And this was taken
6 in the basement of the State Crime Laboratory, as
7 we were going through this processing of this
8 debris.

9 Q. The processing, or the sifting or sorting
10 activity, is that a quick process, or does that
11 take a lot of time? Is it time intensive?

12 A. It is very time and labor intensive. It is a
13 very tedious process. It cannot be done quickly,
14 otherwise you miss things, because it's all being
15 done visually.

16 And in this instance, this task was
17 completed over the course of four full days.

18 Q. Do you know if that was under the direction or
19 supervision of any other professionals, any
20 degreed professionals?

21 A. Yes.

22 Q. Who is that, do you know?

23 A. Dr. Leslie Eisenberg, a forensic anthropologist
24 for the State of Wisconsin was present on two of
25 the days. And in my -- in my opinion, Special

1 Agent Pevytoe, is one of the leaders in this
2 field --

3 ATTORNEY BUTING: Objection to that.

4 A. -- who was present as well.

5 ATTORNEY KRATZ: We'll actually hear from
6 him and his qualifications, later in the trial,
7 Judge, but I appreciate the objection.

8 THE COURT: I'll sustain the objection with
9 respect to the comment about the individual's
10 qualifications.

11 ATTORNEY KRATZ: Thank you, Judge.

12 ATTORNEY BUTING: Move to strike.

13 THE COURT: And I move to strike that
14 portion of the answer.

15 ATTORNEY KRATZ: That's fine. Thank you.

16 Q. (By Attorney Kratz)~ I'm showing you Exhibit 274,
17 just another photo of the same event. What is
18 this that we're looking at here?

19 A. Again, this is a similar process occurring;
20 however, I believe this occasion is probably in
21 April of 2006 here at Calumet County Sheriff's
22 Department.

23 Q. All right. I will go back to the other exhibit
24 then, since it included you -- or at least a
25 photo of you. You said during this process you

1 look for not only items of human remains, bone
2 fragments, to be specific, but also non-human
3 items; is that correct?

4 A. Correct.

5 Q. During this sifting and sorting process, did you
6 individually detect and observe any of these
7 non-human items that were within those burn area
8 remains, or materials that were collected?

9 A. Yes, I did.

10 Q. Could you -- Do you have an independent
11 recollection of what it is that you found?

12 A. Yes.

13 Q. Could you tell the jury about that, please.

14 A. As I look at this photograph, if I could explain
15 further, I see an object, a black rectangular
16 object, which is a magnet. And one of the tools
17 that we used in this process as well was a
18 magnet, to move it through the debris, to pull
19 out all non-combustible metal objects. We would
20 then remove all of those items from the magnet
21 and visually examine those items, looking for
22 additional items that may be --

23 (Court reporter couldn't hear.)

24 THE WITNESS: I'm sorry.

25 INVESTIGATOR WIEGERT: I just got one

1 more bag to open and I'll be done with that
2 noise. Sorry.

3 THE COURT: Let's do the bag first and then
4 we'll continue.

5 INVESTIGATOR WIEGERT: Okay.

6 Q. Go ahead.

7 A. Yes, all of the metallic objects that stuck to
8 the magnet were then removed and they were
9 visually examined to determine if they were
10 potentially of evidentiary value.

11 Q. Now, these metallic items, or at least some of
12 the items that you found, were you able to
13 visually identify them; in other words, to
14 visually make a determination of what these items
15 were?

16 A. Yes.

17 Q. Could you describe the kinds of items that you
18 found, please.

19 A. Well, there were many different types and variety
20 of metal objects, but to include hardware:
21 Screws, nails, wires, many wires from what
22 appeared to be from tires. We found rivets,
23 clothing rivets, normally associated with denim
24 jeans.

25 I believe that we were able to find and

1 identify teeth from a zipper, ammunition casings,
2 shell casings, a large variety of different types
3 of objects.

4 Q. The items that were associated with clothing, the
5 clothing rivets and the zippers, or parts of the
6 zippers, were these metallic items mixed within
7 the human remains, or the other items that you
8 were examining?

9 A. Yes.

10 ATTORNEY KRATZ: Mr. Wiegert, have we
11 marked that exhibit?

12 (Exhibit No. 279 marked for identification.)

13 INVESTIGATOR WIEGERT: Just working on
14 it, it will take just two seconds here.

15 ATTORNEY KRATZ: Show it to Mr. Buting
16 first, please.

17 INVESTIGATOR WIEGERT: 279.

18 Q. (By Attorney Kratz)~ Mr. Wiegert is going to hand
19 you what's been marked for identification as
20 Exhibit No. 279. Tell us what that is, please.

21 A. That appears to be a clothing rivet, similar to
22 what I described that you would find on a pair of
23 denim pants, for instance.

24 Q. And was this clothing rivet that was identified,
25 easily identified, or at least identified with

1 writing right on the rivet?

2 A. Yes.

3 Q. And what does the rivet say?

4 A. The rivet is stamped Daisy Fuentes.

5 Q. I'm going to ask you to look at Exhibit No. 275,
6 ask if you recognize that photo?

7 A. Yes, I do.

8 Q. What is that?

9 A. This is a photograph of one of those very rivets
10 that has been cleaned and brushed to remove the
11 debris.

12 Q. Now that we're showing the jury, are you able to
13 read the inscription on that clothing rivet?

14 A. Yes.

15 Q. What does it say?

16 A. It says Daisey Fuentes.

17 Q. At least 275 actually shows the inscription, or
18 lettering, Daisy Fuentes, in two different
19 places, one on either side of the rivet; is that
20 a fair characterization?

21 A. Yes, sir.

22 Q. Now, Mr. Heimerl, these non-human remains, or
23 these metallic items, after they were sorted,
24 were they removed from the -- what were thought
25 to be human remains?

1 A. Yes.

2 Q. Do you know what was done with them then?

3 A. If I recall correctly, there were metallic
4 objects that would be found that investigators
5 felt relatively confident were not going to be
6 items of evidence, whether they were wires from a
7 tire, those would -- we would collect those
8 separately and place them back into a plastic bag
9 and it would then be returned into the original
10 container that the material was contained in.

11 Q. I see. Were some items that investigators
12 believed had specific evidentiary value removed
13 or separately packaged?

14 A. Yes, sir.

15 Q. And would something like Exhibit No. 275, or 274,
16 the actual item -- or excuse me, 279, the actual
17 item itself, the rivet, would be one of those
18 items that would be separately packaged?

19 A. Yes.

20 Q. How many law enforcement individuals do you
21 believe were involved in this sorting or sifting
22 process, that you were personally accompanied?

23 A. Over the course of the first two days, in
24 Madison, I believe there was approximately eight
25 or nine. On the second two days, here in

1 Chilton, I believe there was a similar number.

2 Q. All right.

3 ATTORNEY KRATZ: That's all for this
4 witness. I meant the investigator, and not you,
5 Judge. I'm sorry.

6 Q. (By Attorney Kratz)~ Mr. Heimerl, do you recall
7 also being asked to participate in investigative
8 efforts on March 1st and 2nd of 2006?

9 A. Yes, I do.

10 Q. And tell the -- tell the jurors, if you would,
11 what it was that you were asked to do on those
12 two days.

13 A. I was asked to assist with the search of Steven
14 Avery's garage.

15 Q. And did you, in fact, assist in that process?

16 A. Yes, I did.

17 Q. Could you tell the jury what your role in that
18 search project was, please.

19 A. I worked with several other investigators. We
20 worked as a team to search the garage -- I'm
21 sorry, initially to document the garage through
22 photographs and video; and to search the entire
23 garage and contents for any additional items of
24 potential evidence; to document the location of
25 those items through photography and measurements;

1 and to package, label and preserve those items of
2 evidence for ultimate retention by the Calumet
3 County Sheriff's Department.

4 Q. And did you do that on the 1st and 2nd?

5 A. Yes, we did.

6 Q. Steven Avery's property, or at least his
7 curtilage, includes a trailer and a garage; is
8 that your understanding?

9 A. Yes.

10 Q. And in which of those buildings did you have
11 responsibility?

12 A. In the detached garage.

13 Q. Let's talk about that search effort, or March 1st
14 and 2nd, the search of the garage. First of all,
15 could you describe the interior of the garage;
16 how did it look to you?

17 A. It was very cluttered, with a large amount of
18 miscellaneous property, a lot of it associated
19 with automobile repair and just general garage
20 storage items. It was not clean. It was quite
21 dusty.

22 Q. Who performed the photography on the inside of
23 the garage on that two day search?

24 A. I did.

25 Q. I'm going to have you take a look at an item in

1 front of you, Exhibit 265, tell the jury what
2 that is, please.

3 A. This is a photograph that I took on the evening
4 of March 1st, after certain items of evidence had
5 been found, or areas on the floor had been
6 documented with a grease pencil and then
7 subsequently labeled with these photo markers.
8 And this is a general overview photograph of the
9 interior of the garage, standing, which you can
10 see outside the open overhead garage door.

11 Q. And the very foreground, what is that we see
12 that's white?

13 A. A snow bank.

14 Q. All right. So this is actually taken outside the
15 threshold of the garage itself; is that fair?

16 A. Correct.

17 Q. Now, these yellow markers, again, what
18 significance, if any, do those have, at least in
19 this photo?

20 A. The yellow markers in the rear of the garage,
21 were placed near white circles that were on the
22 concrete floor when we entered the garage on that
23 day. I believe that they were as a result of a
24 previous search.

25 And additional -- some of those

1 additional markers were identifying areas that we
2 felt may be areas of potential further
3 examination, based on an evidence process that
4 was completed under dark.

5 And finally, one additional evidence
6 marker in the foreground was identifying the
7 location of a specific item of evidence. That
8 had already been found when this photograph was
9 taken.

10 Q. We will talk about that in just a minute. There
11 are some other photos I just want you to identify
12 and we will talk about them. What's Exhibit 266,
13 please.

14 A. That is a photograph of a Blackjack brand
15 creeper. A piece of equipment normally used by
16 someone who wants to work under a automobile.

17 Q. To the immediate right of the creeper, do you see
18 a piece of equipment?

19 A. Yes, I do.

20 Q. And do you know what that piece of equipment is?

21 A. The green cylindrical item with the wheel, I
22 assume you are referring to, is an air
23 compressor.

24 Q. We'll talk about that much more in just a moment,
25 but tell us what Exhibit 267 is, please.

1 A. That's a photograph of a plastic jug with the
2 label identifying it as paint thinner.

3 Q. As part of this search, were you asked to
4 identify either cleaning products or items of --
5 or having properties that could mask or destroy
6 evidence?

7 A. Yes.

8 Q. And were paint thinner and bleach and other
9 reagents like that the type of items that you
10 were asked to identify and photograph?

11 A. Yes.

12 Q. What's Exhibit 268? Oh, before we get to that --
13 I'm sorry. You had mentioned previously that
14 there was a tent, or an evidence tent number or a
15 marker that was closer in the foreground in
16 Exhibit 265, and I rudely interrupted you, but
17 let's go back to 265. What marker was it that
18 you were talking about?

19 A. Marker No. 9.

20 Q. Describe, if you will, for the jurors, what, if
21 anything, was found at or near marker No. 9?

22 A. In that location, we found a -- what appeared to
23 be a flattened or -- a flattened bullet.

24 Q. Could you tell the jury from where that was
25 found; do you recall how it was found?

1 A. Yes. This was on the evening of March 1st, after
2 we had made entry into the garage. The
3 videotaping had been completed, I believe. I had
4 -- I'm sorry -- done initial overall photography
5 in the interior of the garage. And we then spent
6 some time just kind of walking around the garage,
7 looking for anything that we saw that stood out,
8 things that we knew that we were going to collect
9 as evidence.

10 I was standing in the garage and I
11 looked down at the floor, in front of me there
12 was a crack in the concrete, and I observed this
13 round, gray object that resembled a -- like the
14 head of a roofing nail.

15 Q. I'm going to have you take a look at Exhibit No.
16 268; tell the jury what we're looking at here,
17 please.

18 A. That is the crack in the concrete with what
19 ultimately was found to be a bullet. It's the
20 round gray object directly in front of the front
21 edge of the photo marker.

22 Q. Is Exhibit No. 268 similar to how you found what
23 you believed to be a bullet fragment near tent
24 no. 9?

25 A. Yes.

1 Q. I assume tent no. 9 was placed there after you
2 found this?

3 A. Yes.

4 Q. In other words, you didn't just get lucky and put
5 the tent marker there, did you?

6 A. No.

7 Q. I'm going to show you a closer version of that
8 Exhibit 269; what are we looking at, please?

9 A. As you just stated, it's a close up view of the
10 same photograph from 268, it, again, depicts that
11 bullet fragment in that crack in the concrete.

12 Q. Using the laser pointer that you have with you,
13 Investigator Heimerl, could you show the jury
14 where the bullet fragment is at what we are
15 looking at?

16 A. That would be it right here.

17 Q. That fragment appears to be within a crack in the
18 concrete; am I viewing that correctly?

19 A. Yes.

20 Q. What was done, if you recall, to process or
21 collect that item of evidence?

22 A. We took measurements to document it's physical
23 location within the garage. And it was then
24 collected or packaged by Investigator Steier.

25 Q. I'm going to go back to Exhibit No. 266. We can

1 just look on the large screen, that's fine. This
2 green compressor that we're viewing here, on the
3 next day, that is, on March 2nd of 2006; did you
4 and other investigators begin or continue the
5 process of actually moving items within this
6 garage?

7 A. Yes.

8 Q. And so that I can allow you to completely explain
9 that process, describe this search, how thorough
10 was this search of this garage?

11 A. If you recall from the first photograph, the
12 overview photograph of the interior of the
13 garage, the majority of the contents of the
14 garage was around the exterior perimeter of the
15 garage, along the walls.

16 And that included a couple of
17 snowmobiles, which would then have multiple tools
18 and boxes and items just stacked on top of the
19 snowmobile. And there were chests, their were
20 containers, their were large items of equipment.

21 And basically started in the northeast
22 corner of the garage and began to remove items,
23 look at them, turn them over, look inside them,
24 examine them visually to see if there was any
25 obvious sign of some type of potential trace

1 evidence on them, or biological evidence.

2 And it would be set down, out of the
3 way. We would move to the next item, whether it
4 was large or small, whether it was a box. If it
5 was a box you would open the box and remove
6 everything from it. And it was a very slow
7 process. And we worked south along the east wall
8 and continued around until we finished the
9 garage, late in the day on the 2nd.

10 Q. Looking, again, at Exhibit No. 265, are you
11 telling this jury that every one of those items,
12 in fact, around the entire perimeter and, in
13 fact, in the middle of the garage, was handled by
14 law enforcement and examined?

15 A. Virtually every item, yes.

16 Q. Let's go back, then, to item 266. During this
17 process then and, specifically, on the second
18 day, the 2nd of March, you were again involved in
19 search of this garage?

20 A. Yes.

21 Q. And during those efforts, that is, on the second;
22 did you generally have the same searching
23 responsibilities that you did on the first?

24 A. What do you mean by searching responsibilities,
25 my responsibilities?

1 Q. Yeah. Were you still the guy taking the photos?

2 A. Yeah. Yes.

3 Q. All right. And, also, were you actively
4 searching, were you one of the investigators
5 who's actively searching for items of evidence?

6 A. Yes.

7 Q. On the 2nd of March, then, and specifically
8 looking at Exhibit No. 266, did you find any
9 items of evidence that was noteworthy?

10 A. I'm sorry, that was noteworthy?

11 Q. That you believed was noteworthy. As you look at
12 this picture, did you find anything near that
13 compressor that you thought was interesting?

14 A. Yes.

15 Q. Tell the jury about that.

16 A. We had been processing this garage, searching
17 this garage. As you look at this photograph, we
18 approached the compressor from its left. And it
19 was a large object. As we reached this area, I
20 had to get onto my hands and my knees in front of
21 the compressor and utilized a flashlight to look
22 under the compressor. And I found -- I saw what
23 appeared to be a bullet.

24 Q. What did you do then?

25 A. I told the other investigators that I may have

1 found a bullet.

2 Q. What happened then?

3 A. We then removed, basically from the top down, we
4 unstacked the things and items that were on top
5 of the air compressor, pulled the air compressor
6 out so that we could adequately document and
7 photograph what we found.

8 Q. Before I move on to other photos, I want to
9 orient the jury, that red item immediately to the
10 right and to the right edge of Exhibit 266; do
11 you know what that is?

12 A. Yes, I do.

13 Q. What is that?

14 A. That is the edge of a large upright tool chest.

15 Q. After the compressor was removed and all the
16 items thereon, was that tool chest moved at all?
17 That you recall.

18 A. I don't recall that we needed to move it.

19 Q. Okay. Let's look at Exhibit No. 270, please.
20 Tell us what we're looking at here.

21 A. This is generally a medium view photograph of
22 what was ultimately identified with marker no.
23 23, as the bullet that was found underneath the
24 air compressor.

25 Q. Can you identify the individuals in this

1 photograph, please.

2 A. The individual on the left is Detective Dave
3 Remiker, from Manitowoc County Sheriff's
4 Department.

5 Q. Do you know who is kneeling on the right?

6 A. I would have to guess, but I do not know
7 specifically.

8 Q. All right. Well, it can only be one of a couple
9 people; is that right?

10 A. Right.

11 Q. I mean, you don't have to -- You would still have
12 to guess who it was?

13 A. I believe that it's Investigator Dederling.

14 Q. We see a yellow tent, exhibit tent no. 23. I
15 have actually zoomed into that area. Tell the
16 jury what we're looking at here, please.

17 A. As I stated, this is after the air compressor has
18 been removed. The linear object here is a metal
19 photographic scale. And right in this area it's
20 very difficult to pick out in this photograph,
21 but the bullet was right between the tent and the
22 scale.

23 Q. Now, as the tent -- the evidence tent is placed
24 near the bullet, was the bullet moved at all?

25 A. No.

1 Q. This photography was done before any manipulation
2 or movement of the bullet?

3 A. That's correct.

4 Q. I'm going to show you a better photo,
5 Exhibit 271; tell me what that is, please.

6 A. That is a closer view of that bullet, in the same
7 location.

8 Q. Can you take your laser pointer and show the jury
9 what we're looking at.

10 A. The laser pointer is on the end of the bullet.

11 Q. Once again, Exhibit 271, that photograph, does
12 that depict the bullet in the same or similar
13 view as you saw it on the 2nd of March?

14 A. Yes.

15 Q. Actually, I'm going to leave that Exhibit up for
16 just a minute. When you observed this particular
17 item, did it appear to be a full, that is, an
18 intact bullet or a bullet fragment?

19 A. I guess that depends on what a person were to
20 consider a bullet fragment. That being, if a
21 very tiny part of that bullet has come off of the
22 main bullet, is the main bullet then a fragment.
23 I considered this -- When I recognized this and
24 looked at this, I recognized it as what appeared
25 to be a nearly intact bullet.

1 Q. So it was something other than just a little chip
2 of a bullet.

3 A. Exactly.

4 Q. Investigator, was care taken to process and
5 recover this bullet?

6 A. Yes.

7 Q. And tell the jury what care was taken to do that?

8 A. Well, it was handled only to the amount -- or to
9 the degree to which it needed to be handled. As
10 much as I myself wanted to pick it up and
11 visually examine it, it wasn't done. It was
12 picked up, I believe, with tweezers and placed
13 into a box and sealed.

14 Q. Now, are you familiar with a term called DNA?

15 A. Yes, sir.

16 Q. At that time, in processing of evidence, were you
17 familiar with the process by which DNA could be
18 extracted, especially from items such as bullet
19 fragments?

20 A. Yes.

21 Q. Was care taken not destroy or eliminate whatever
22 DNA might be on this bullet?

23 A. Yes.

24 Q. As I understand from the last witness, after this
25 bullet was packaged, it was provided to

1 Investigator Steier, from Calumet County, for
2 transport and receipt into evidence; is that your
3 understanding?

4 A. Yes, it is.

5 Q. I feel compelled to ask these next two questions
6 and so I will. At any time, inside of that
7 garage, on the 2nd, or even on the 1st, did you
8 see an individual by the name of James Lenk?

9 A. No.

10 Q. At any time on the 1st or on the 2nd, did you see
11 an individual by the name of Andrew Colborn?

12 A. No.

13 Q. By the way, do you know those people, and if they
14 were in that garage or rummaging around or
15 placing something in that garage, would you have
16 seen it?

17 A. Yes.

18 ATTORNEY KRATZ: I will move the admission,
19 Judge, of exhibits -- I will have to -- I will have
20 to identify them or ask the clerk, the photographs
21 and the physical evidence that has been marked and
22 identified by this witness and Investigator Steier.
23 And I will pass the witness to Mr. Buting.

24 THE COURT: All right.

25 ATTORNEY BUTING: Do we have 272 and 278?

1 You don't have that, do you?

2 THE CLERK: No.

3 ATTORNEY BUTING: Okay.

4 THE COURT: You're moving which exhibits,
5 Mr. Kratz?

6 ATTORNEY KRATZ: I'm moving everything
7 that's been identified. Let me just have this
8 witness look at 272, since he has that right in
9 front of him.

10 Q. (By Attorney Kratz)~ It's just a photograph; can
11 you tell us what 272 is.

12 A. By the tag, it's identified as number 19, a
13 bullet fragment.

14 Q. The actual item of that is actually, I think,
15 right in front of you; is that right? It's an
16 evidence tech photo; is that right?

17 A. Yes, it is.

18 Q. And do you have Exhibit 278?

19 ATTORNEY BUTING: Just so the record is
20 clear, your Honor, there's also a number FL or
21 identification in yellow, FL, in the center of that.
22 Would you agree?

23 ATTORNEY KRATZ: Yes, that's a Crime Lab
24 designation, Judge.

25 THE COURT: It is.

1 right?

2 A. Yes, on Sunday.

3 Q. Sunday.

4 A. November 6th.

5 Q. And I appreciate your professionalism, because
6 you must have done close to 50 reports, I would
7 say; does that sound about right?

8 A. I believe so.

9 Q. You were out investigating, doing this
10 canvassing, this neighborhood canvas, on the 6th,
11 7th, maybe even part of the 8th; does that sound
12 right?

13 A. Yes. And it continued for a few days afterwards.

14 Q. Okay. And in the process of doing that you
15 interviewed -- you are going around to all the
16 surrounding properties and interviewing door to
17 door, basically, everybody, to see if they heard
18 anything, saw anything, that kind of
19 investigation, right?

20 A. Correct.

21 Q. You did come to the scene, the Avery property
22 scene, though, on the 7th, as I recall your
23 testimony, right?

24 A. Yes.

25 Q. And that's when you took custody, or did you just

1 examine this burn barrel that we saw up on the
2 screen awhile ago?

3 A. I did not take custody -- custody of it; I
4 photographed it.

5 Q. All right. At any time on the 6th, 7th, 8th, or
6 any time after that, actually; did anyone ask you
7 to participate in a search of Mr. Avery's
8 residence?

9 A. No.

10 Q. Or garage?

11 A. No.

12 Q. You work for DCI?

13 A. Correct.

14 Q. Have you ever met Mr. Avery before that day?

15 A. I'm sorry?

16 Q. Did you ever meet Mr. Avery before November 6th?

17 A. Never.

18 Q. Have any contact with him at all?

19 A. Never.

20 Q. Not involved in his lawsuit?

21 A. No, sir.

22 Q. Completely independent and objective, right?

23 A. Correct.

24 Q. And you are very well trained in searches of
25 scenes, for evidence collection, correct?

1 A. Yes.

2 Q. All right. Now, I know that you -- if I
3 understood correctly, you did not actually see
4 the interior of Mr. Avery's garage on
5 November 5th, 6th, or any of those days when you
6 were there in November?

7 A. That's correct.

8 Q. I'm going to first have you identify Exhibit 262
9 and 263. These were kind of left hanging from
10 the prior witness. Do you recognize those?

11 A. Yes, I do.

12 Q. And are those photographs that you took on
13 March 1st or 2nd?

14 A. Yes, they are.

15 Q. And they show the -- the interior of the garage,
16 pretty much as you found it when you first got
17 there?

18 A. That's correct.

19 Q. Okay. These are interior shots that you are
20 already standing, looks like inside the garage,
21 and you don't have the full view, right?

22 A. Correct.

23 Q. I'm going to use the ELMO. I don't have as much
24 digital stuff, I'm afraid. All right. Thank
25 you, very much. We'll go through this quickly,

1 but I just want you to identify, so the jury can
2 see what it is you are identifying. This is a
3 photograph of Mr. Avery's -- or the detached
4 garage on March 1st or 2nd, probably March 1st,
5 right?

6 A. Yes.

7 Q. And there's a vehicle in there, some sort of an
8 automobile. And it's not in one of the later
9 photographs you were shown, right?

10 A. Correct.

11 Q. And, then, what's that large item in the front of
12 it.

13 A. That is an engine hoist.

14 Q. Okay. And that's something that you use to be
15 able to lift up a full engine, right out of a
16 car, or into it, right?

17 A. I believe so.

18 Q. That was 263. And now I'm showing you 262, just
19 a little bit of a different view, but the -- also
20 inside of his garage on March 1st, showing the
21 automobile and that large hoist, right?

22 A. Correct.

23 Q. Okay. Actually, I think I will just do it right
24 here from the ELMO, since you identified them
25 already. I want to show you some photographs

1 quickly, from November, that were taken by
2 somebody else, that are in evidence. So I just
3 want you to -- I don't know if you had an
4 opportunity to look at these before, but the
5 first one is Exhibit 232; do you recognize that
6 as the same garage?

7 A. It appears to be, yes.

8 Q. All right. Do you see an engine hoist anywhere
9 in this photograph? I should say, the same
10 engine hoist that we saw in those March
11 photographs; do you see one here?

12 A. No, but this photograph does not depict the
13 entire garage.

14 Q. I understand. Let's look through some more.
15 Does that appear to be the same garage?

16 A. Yes, sir.

17 Q. Now, there's a Suzuki Samurai that's been
18 identified that's in there and also a snowmobile,
19 right?

20 A. Yes.

21 Q. And neither one of those vehicles were in the
22 garage when you came on March 1st?

23 A. Correct.

24 Q. They were both gone and there was some kind of a
25 maroon sedan, right?

1 A. Correct.

2 Q. And, again, any engine hoist that you see?

3 A. Not in this photograph, no.

4 Q. How about in -- Oh, I showed you that one. How
5 about in 233? Look like the same garage?

6 A. Yes.

7 Q. No engine hoist?

8 A. Not in this photograph.

9 Q. How about this one?

10 A. Again, it appears to be the same garage.

11 Q. No engine hoist visible?

12 A. Not visible in this photograph.

13 Q. And that last one was 234. 235, do you recognize
14 the entrance service door there?

15 A. Yes, I do.

16 Q. No engine hoist in that one?

17 A. Not visible in the photograph.

18 Q. Or in 236, which appears to be the east wall?

19 A. That's correct, not visible.

20 Q. Okay. And just one more, 241, appear to be the
21 same garage, no engine hoist, would you agree?

22 A. Yes, I would agree. Little bit dark but.

23 Q. Okay. So from those pictures alone, would you
24 agree with me that the scene had been altered
25 between November and March 1st when you came.

1 A. Yes.

2 Q. Now, you did a very nice professional job of
3 taking measurements of everything that was found,
4 right, everything you had anything to do with?

5 A. Yes, we took measurements of the items of
6 evidence that were collected.

7 Q. All right. And very thorough measurements, for
8 instance, the tent 23, that marker there, 23, you
9 measured as 8' 9" west of the east wall; 12' --
10 actually later changed to 12", that was a typo --
11 12" north of the south wall, right?

12 A. Correct.

13 Q. So you did a very nice job of measuring where
14 every item was found by coordinating its distance
15 from one wall to the next, right?

16 A. That's what we did, yes.

17 Q. And that's how you have been trained to
18 investigate a crime scene, potential crime scene,
19 right?

20 A. Well, that's one of the methods to use.

21 Q. All right. Problem is, you came four months
22 later, after the scene had been altered, right?

23 A. I was there four months later, yes.

24 Q. So none of these measurements tell us where any
25 of these items were on November 5th, 2005; isn't

1 that right?

2 A. That's correct.

3 Q. Including the location of that bullet, number 23,
4 that you showed, right?

5 A. Correct. The measurements that we took were of
6 the location of the bullet on March 2nd.

7 Q. All right. You also were looking for, I believe,
8 Mr. Kratz said, any agents of -- reagents, I
9 guess was the term, that could in some way
10 destroy or damage that evidence, right?

11 A. Correct.

12 Q. And he mentioned specifically paint thinner or
13 bleach, right?

14 A. Correct.

15 Q. And there was a photograph of a bleach bottle,
16 which I don't see here. Do you still have that
17 up there?

18 A. I only have one photograph here.

19 Q. Oh, I have got it, sorry. I'm showing you 267.
20 This is actually a paint thinner bottle, I'm
21 sorry. So you found no bleach any where in the
22 garage?

23 A. At this time, I don't recall if we found bleach
24 or not.

25 Q. Well, do you need to refresh your recollection

1 with anything or ...

2 A. Yes, the report that was completed concerning the
3 garage search would refresh my memory.

4 Q. Okay. Now, you didn't actually prepare a report
5 of that search, right, of your own?

6 A. I did a very brief report regarding the fact that
7 I photographed the garage during the course of
8 this search.

9 Q. Okay. All right. But Investigator Steier was
10 the one who was documenting the times and, you
11 know, he was kind of following along with you
12 when you were doing those searches, right?

13 A. Correct.

14 Q. I'm not going to mark this, but it's page 702 and
15 708, through 708. If you would just take a
16 moment maybe this will refresh your recollection
17 as to whether there was any bleach in the garage.

18 A. I'm completed, sir.

19 Q. Did you see any entry of any recovery of bleach?

20 A. No, I did not.

21 Q. Okay. But you did find this paint thinner.

22 Would you agree with me that this paint thinner
23 appears to be an older bottle, not a brand newly
24 purchased item?

25 A. Well, that bottle is dirty; I guess I can't

1 comment as to its age.

2 Q. Nothing about it that looks like it was just
3 bought and used a few days before it was -- the
4 search?

5 A. I guess that would depend on what kind of
6 conditions it would be used in.

7 Q. All right.

8 A. It appears as though it's quite dirty.

9 Q. Okay. We'll stick with that. And, finally,
10 paint thinner, in someone's garage, is not at all
11 unusual, is it?

12 A. I would say that is not unusual.

13 Q. It's a very common item that many people have and
14 use around the house, especially in a garage;
15 wouldn't you agree?

16 A. Yes.

17 Q. Exhibit 265, this is a photograph that you took,
18 very helpful photograph, now that is taken after
19 the maroon automobile was removed?

20 A. Yes, sir.

21 Q. Were any other items moved before that photograph
22 was taken, to your knowledge?

23 A. Did you say moved or removed?

24 Q. I'm sorry. Were any other items moved on that
25 day, March 1st, before that photograph was taken,

1 other than just taking the car out?

2 A. Will you step to the side, please.

3 Q. I'm sorry.

4 A. In an early photograph, specifically the previous
5 photograph of the paint thinner, I know in the
6 foreground of that photograph, the yellow
7 stepladder was present and that is in the back
8 right corner directly in front of the ceiling
9 mounted furnace. But I don't see it in this
10 photograph. So it may have been moved out of the
11 way or collapsed and leaned somewhere so that we
12 could collect the paint thinner.

13 Q. All right. But I guess my point is, this
14 photograph was -- was taken largely before you --
15 you altered the scene as you saw it. And other
16 than putting these items, these markers there,
17 for -- for items already found, or were these
18 some of the ones that you found? Perhaps I have
19 this wrong. Was this taken later, during the
20 search?

21 A. This was taken on the evening of March 1st.

22 Q. Okay.

23 A. Obviously after the vehicle was removed. And it
24 was taken after, I believe, the first initial few
25 items of evidence had been found.

1 Q. I see. Yeah, there's a 9, a 10, and an 11 in
2 there that wasn't there before?

3 A. Correct.

4 Q. Okay. I'm going to show you that right now.
5 Exhibit 284 and 282. I'm sorry, 283, can you
6 identify those?

7 A. Yes, I can.

8 Q. And what are they?

9 A. I believe that's 283.

10 Q. It is, yes.

11 A. It's a photograph of evidence -- or I'm sorry
12 photographic marker No. 10, in the crack in the
13 concrete in front of it is what was later found
14 to be a shell casing.

15 Q. All right.

16 A. 284 is photo marker No. 11. And directly in
17 front of the front edge of that, again, is a
18 shell casing.

19 Q. All right. Now, I'm going to put these up here
20 for a moment, but if you could, first, use your
21 laser pointer and show us, on the exhibit that's
22 on the screen, where 9, 10, and 11 are.

23 A. There's 9, 10, and 11.

24 Q. Showing you 283, that is a close up view of where
25 No. 10 is -- or what you found in No. 10?

1 A. Correct.

2 Q. Pretty obvious shell casing, empty shell casings
3 laying right there in the open, in the crack?

4 A. I don't know if I would say it's obvious.

5 Q. Well --

6 A. It's a relatively small shell casing as far as
7 shell casings go and ...

8 Q. Let me ask you this, if you searched this garage
9 before and found 11, or 10, shell casings, do you
10 think you would have found this one, given its
11 location?

12 ATTORNEY KRATZ: Objection, speculation,
13 Judge. And I would ask him to show the picture of
14 how it looked on the 5th, so we can see the Suzuki
15 Samurai right over this location.

16 THE COURT: I will sustain the objection.

17 Q. (By Attorney Buting)~ So Exhibit No. 265, counsel
18 is correct, we haven't had any testimony about
19 whether the Samurai was ever moved during their
20 search so we'll move on. That is No. 10, it
21 appears to be in the eastern bay of the garage,
22 correct?

23 A. Marker No. 10?

24 Q. Yes.

25 A. Yes.

1 Q. Now, let's move over to marker No. 11; do you see
2 where that is?

3 A. Yes, I do.

4 Q. Pretty much right in your pathway as you walk
5 into -- through the service door; would you
6 agree?

7 A. Well, it's at the edge of the pathway.

8 Q. Okay. Let's look at a close up of that one.
9 Now, there's another shell, empty shell, right?

10 A. Yes, sir.

11 Q. Just laying right out in the open, not in a
12 crack, just sitting right on the surface of the
13 concrete, right?

14 A. Yes.

15 Q. Now, that was either not there on November 5th,
16 or somebody completely missed a shell sitting
17 right out in the open, because it's not in any of
18 the other photographs?

19 ATTORNEY KRATZ: Objection, speculation,
20 and there would be other explanations.

21 THE COURT: Sustained, I think that's a
22 question for the jury.

23 Q. (By Attorney Buting)~ Well, would this be an
24 indication that perhaps -- another indication
25 that the scene had been altered from November, if

1 you're finding a shell casing pretty much right
2 out in the open of this garage?

3 A. I don't know if I can draw that conclusion
4 because I don't know the condition of the scene
5 in November; I was never in the garage, so.

6 Q. No. 9, that snow bank is kind of hiding it, but
7 would you agree with me that it's pretty much
8 right in the middle of the opening to the -- to
9 that bay of the garage, right? Do you want me to
10 zoom back out?

11 A. No, that's okay. What are you referring to as
12 that bay?

13 Q. Well, this is a two car garage, we would be
14 referring to an east bay and a west bay. This
15 would be the west bay of the garage. And it's
16 really just a couple feet or so inside the big
17 overhead garage door?

18 A. Correct.

19 Q. And the close up that you showed of this, I will
20 do the not the close up one, 268. This isn't so
21 good on the ELMO. This is the other bullet that
22 you found, in the garage, the only other bullet,
23 correct?

24 A. Correct.

25 Q. You found just these two bullets, No. 9 and No.

1 23?

2 A. Correct.

3 Q. And this one you found just walking around, but
4 still in the early stages of the search, after
5 you had taken photographs of everything, just
6 kind of walking around and looking down and there
7 you see this, right?

8 A. Yes.

9 Q. You weren't on your hands and knees?

10 A. No, I was not.

11 Q. Okay. Now, this very thorough search also
12 included a jackhammer, didn't it?

13 A. I don't understand your question, sir.

14 Q. The search of the garage, on March 1st or 2nd,
15 included the use of a jackhammer?

16 A. Yes, the use of a jackhammer, correct.

17 Q. I'm sorry I was maybe not clear. And what they
18 actually did with that jackhammer was to remove
19 an entire area, 15 feet or so, where the crack
20 runs north and south down the middle of that
21 eastern most bay of the garage, right?

22 A. Correct.

23 Q. And all of those pieces of concrete were broken
24 into sort of chunks all the way down the line,
25 right?

1 A. Correct.

2 Q. They were all collected?

3 A. Correct.

4 Q. And they were all preserved?

5 A. Correct.

6 Q. For testing, if possible?

7 A. Yes.

8 Q. To your knowledge, were they sent to the Crime
9 Lab?

10 A. I do not know.

11 Q. Okay. All right. Just a couple of other quick
12 things. You showed us the rivet that you had
13 found through the processing, not the sifting,
14 but the stirring up of materials on -- you
15 mentioned two occasions, right?

16 A. Correct.

17 Q. Do you remember those dates? I don't know that
18 we ever established that.

19 A. Yes, December 19 and 20, of 2000 --

20 Q. Five?

21 A. Five. Thank you. Occurred in Madison. And the
22 Chilton dates were April 10 and 11, of 2006.

23 Q. Okay. And the materials that you were going
24 through on both days were -- was debris that had
25 been removed from the so-called burn pit area; is

1 that right?

2 A. Yes. And, actually, I believe it was the burn
3 pit as well as other areas from around the
4 property where burned debris had been found.

5 Q. Okay. But all in that same general area and not
6 a burn barrel or anything; you weren't mixing the
7 two together?

8 A. No, the burn barrel was searched on those
9 dates -- or on one of those dates in Madison, but
10 I was not involved in the search of the burn
11 barrel.

12 Q. Okay. But as far as the burn pit area goes and
13 the immediate surrounding vicinity, all that
14 debris that you went through, you said you found
15 a rivet?

16 A. I'm sorry?

17 Q. You say you found a clothing rivet; how many?

18 A. I believe there were five rivets found.

19 Q. Okay. You did not find a button, the clasp of a
20 big button that you use to button your jeans at
21 the waist, did you?

22 A. I know from reviewing evidence documents and
23 reports regarding that, that there were items
24 found that were described as close snaps, but I
25 don't specifically recall that they were --

1 Q. Right.

2 A. -- what you were referring to.

3 Q. Okay. Well, for instance, you mentioned the
4 rivet that says Daisy Fuentes, sort of stamped
5 into it, a brand name of some sort, right?

6 A. Yes, sir.

7 Q. You have never seen a button that would be used
8 to clasp the waist of a pair of jeans or denim
9 that says Daisy Fuentes on it, did you?

10 A. I don't recall seeing that, no.

11 Q. And that's through your entire search of the burn
12 pit area, right?

13 A. Well, the material that came from that burn pit
14 area.

15 Q. That's what I mean, yes. Okay. And, finally,
16 you mentioned that investigators basically
17 handled, picked up, looked at, and moved every
18 single -- almost every single item in that
19 garage, if not every single item?

20 A. Yes, almost every item there.

21 Q. March 1st and March 2nd, right?

22 A. Yes, sir.

23 Q. And though not one single piece of those items,
24 not one single item, showed any evidence of any
25 blood spatter, did it? Or did they?

1 A. To my knowledge, as to what conclusions could be
2 drawn at the end of March 2nd, no. But I know
3 that additional items of evidence removed from
4 that garage were sent to the laboratory and I may
5 not be privy to that.

6 Q. You may not be privy to that.

7 A. Correct.

8 Q. But, as far as you know, no physical items showed
9 evidence of blood spatter; do you know what blood
10 spatter is?

11 A. Yes, I do.

12 Q. Do you know what high velocity blood spatter is?

13 A. Yes.

14 Q. That's what we get when someone is shot with a
15 bullet?

16 A. Correct.

17 Q. And you saw no evidence of it at this scene at
18 all, did you?

19 A. No.

20 ATTORNEY BUTING: Thank you, very much,
21 sir.

22 THE COURT: Mr. Kratz?

23 ATTORNEY KRATZ: Just one area of
24 follow-up.

25 **REDIRECT EXAMINATION**

1 BY ATTORNEY KRATZ:

2 Q. Because we have heard that this was a two day
3 search, do you know if that garage had been
4 secured between Day 1, that is, the 1st of March
5 and Day 2, the 2nd of March?

6 A. Are you saying over the evening hours between our
7 two day search?

8 Q. Yes.

9 A. Yes, I do.

10 Q. And how was that secured, do you remember?

11 A. It was secured with a padlock.

12 Q. Is that a picture of the padlock, the locked
13 garage, between the 1st and 2nd of March?

14 A. Well, that's either the picture of the padlock on
15 the morning that we arrived, on March 2nd, or
16 it's a picture of the padlock that we found on
17 the garage on March 1st, when we arrived to do
18 the search.

19 Q. In any event, the garage was secured; in other
20 words, people couldn't just walk in and out of
21 the garage in between those two days; is that
22 right?

23 A. That's correct.

24 ATTORNEY KRATZ: That's all I have of Mr.
25 Heimerl for today, Judge.

1 ATTORNEY BUTING: Just one last follow-up,
2 then.

3 **RECROSS-EXAMINATION**

4 BY ATTORNEY BUTING:

5 Q. With regard to the security of the garage and who
6 could have come and gone, Mr. Avery certainly
7 couldn't have been one of those who came and went
8 into that garage, right?

9 A. When, sir?

10 Q. Well, let's just -- we'll just talk about it.
11 Mr. Avery was arrested in November of 2005,
12 right?

13 A. That's my understanding and that's why I asked
14 you to clarify the dates.

15 Q. And you understand that he was in jail
16 continuously from that date, at least through
17 March 1st and 2nd, right?

18 A. That's my understanding.

19 Q. So anybody who may have been in and out of that
20 garage during that time period, could not have
21 been Steven Avery?

22 A. That's what I would conclude.

23 ATTORNEY BUTING: Thank you.

24 THE COURT: All right. The witness is
25 excused for the day. Members of the jury, that

1 concludes our proceedings today. I will remind you
2 again at this time that you are not to discuss the
3 case with anyone, watch any news media accounts
4 about it, or discuss it with anyone in any way. You
5 are excused for today. We'll see you tomorrow
6 morning.

7 ATTORNEY BUTING: Your Honor, I always
8 forget to move the exhibits. Could I move in the
9 last two exhibits?

10 THE COURT: Any objection?

11 ATTORNEY KRATZ: No. That's fine.

12 THE COURT: Those exhibits are admitted.
13 They are numbers ...

14 ATTORNEY BUTING: 283 and 284.

15 THE COURT: Very well.

16 ATTORNEY BUTING: Thank you.

17 ATTORNEY KRATZ: I keep promising, Judge,
18 to ask for an accounting of what exhibits aren't in
19 yet. Perhaps the Clerk, then tomorrow morning,
20 first thing, we can discuss that, make sure that
21 they're all in.

22 THE COURT: All right. We'll do that then.

23 ATTORNEY BUTING: Judge, as long as
24 everybody is still here, could we -- I guess 262 and
25 263 were marked and not admitted earlier. I had

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this witness identify them. Now I would like to
move them as well.

THE COURT: 262 and 263?

ATTORNEY BUTING: Those are photographs
with the engine hoist, that he took in March.

ATTORNEY KRATZ: That's fine.

THE COURT: Okay. Those two exhibits are
admitted.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 7th day of November, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 10

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** FEBRUARY 23, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. We are here this morning, outside the presence
4 of the jury, for the continuation of the trial in
5 this matter. Will the parties state their
6 appearances for the record, please.

7 ATTORNEY KRATZ: Good morning, Judge. The
8 State appears by Calumet County District Attorney
9 Ken Kratz, Assistant Attorney General Tom Fallon,
10 Assistant D.A. Norm Gahn, appearing as Special
11 Prosecutors.

12 ATTORNEY STRANG: Good morning. Steven
13 Avery is here in person, and Jerome Buting
14 immediately to his right, and Dean Strang.

15 THE COURT: All right. I met with counsel
16 in chambers this morning before beginning. There
17 are a few matters to take up before we bring in the
18 jury. First of all, during yesterday afternoon's
19 proceedings, in which the Court conducted individual
20 voir dire of a juror, there was a side bar
21 conference during the questioning of the juror and
22 nothing has been put on the record yet about that
23 conference.

24 The Court had previously met with the
25 parties in chambers and the parties asked, before

1 the Court excused the juror, for a chance for a
2 side bar conference in order to request that
3 additional questions be posed to the juror. That
4 conference did, in fact, take place and each of
5 the parties requested that the Court ask some
6 additional open-ended follow-up questions, which
7 I did. Counsel, is that an accurate
8 representation of the side bar conference?
9 Mr. Kratz?

10 ATTORNEY KRATZ: Yes.

11 THE COURT: Mr. Strang?

12 ATTORNEY STRANG: Yes, it is.

13 THE COURT: I also noted, in announcing the
14 Court's decision denying the defense motion to
15 strike the juror, I did not recall, as I went home
16 last evening, whether I expressed the Court's
17 opinion specifically under the criteria of
18 subjective bias and objective bias, as Court's are
19 now required to do. So I wanted to add some points
20 of clarification to the Court's decision.

21 On the question of subjective bias, the
22 Court, first, was satisfied that all of the
23 answers given by the juror during the individual
24 voir dire were credible. The juror indicated
25 that she did not recognize Detective Remiker by

1 name; in fact, his name was listed on the
2 original jury questionnaire that all of the
3 jurors completed. She did not indicate on that
4 questionnaire that she recognized Detective
5 Remiker by his name. She only realized, when she
6 saw him testify that, in fact, he had been the
7 plaintiff in a civil trial in which she sat as a
8 juror approximately seven years ago. She could
9 not recall whether or not he testified in that
10 trial, which the Court does not find to be that
11 unusual, given the passage of time.

12 And what that indicates to the Court is
13 that she could not -- or she did not have a
14 recollection as to whether or not she made any
15 judgments of his credibility because she could
16 not even remember if he testified.

17 The negligence of Detective Remiker was
18 not an issue in that case; apparently it was a
19 rear end collision case involving a couple of
20 other vehicles. So the juror was not required,
21 as part of her duties, to assess negligence that
22 would have involved Detective Remiker. The sole
23 issue with respect to Detective Remiker would
24 have been damages.

25 There was nothing presented to the Court

1 to suggest that the case involved any unusually
2 emotional issues; that is, there does not appear
3 to be any traumatic injuries involved. The
4 juror's most vivid memory of the trial was that
5 it involved an injury to the lower left lumbar
6 region. She seemed to remember that more than a
7 lot of other details.

8 And, in conclusion, the juror said
9 nothing about the case would cause her to give
10 Detective Remiker's testimony any more or less
11 weight in this case. She expressed no doubts
12 about that fact and the Court finds her
13 explanation to be credible and reasonable.

14 On the issue of objective bias, the law
15 is that the focus of the inquiry into objective
16 bias is not upon the individual prospective
17 jurors, or in this case, the individual juror's
18 state of mind, but rather upon whether a
19 reasonable person, in the individual juror's
20 position, could be impartial. That is, even if
21 the juror says she can be impartial, there can be
22 situations in which a reasonable person would
23 have trouble doing that, and the court system
24 does not ask it.

25 In this case, the Court is satisfied

1 that there's nothing about the facts that have
2 been presented to the Court to suggest that a
3 reasonable person could not be objectively
4 biased. There's been a significant passage of
5 time since the last trial. As the Court has
6 already indicated, the juror knew Detective
7 Remiker only as a party in the case, not in any
8 other capacity.

9 And the passage of time had been such
10 that she did not even remember his name when
11 filling out the questionnaire. She has no
12 recollection as to whether or not he testified,
13 and that tells the Court that while he may or may
14 not have testified in the case, there's no
15 indications that any recollection of his
16 credibility is present in her mind.

17 As I indicated earlier, his negligence
18 was not an issue in the case and the injuries
19 were not particularly traumatic or emotional,
20 such that a juror in this juror's position could
21 not be expected to be able to put aside any
22 opinions from the case. For those reasons, the
23 Court is satisfied that the juror should be
24 permitted to stay on the jury.

25 There's one last item for the Court to

1 take up before we proceed to hear from the
2 parties, and that is, I have informed the
3 attorneys earlier this morning that the Court was
4 notified earlier this morning that a close family
5 member of one of the jurors apparently died
6 overnight. The family member resides in another
7 state and the juror has requested permission to
8 leave the State to attend the funeral.

9 The Court finds that that is a very
10 reasonable request. I'm not going to give the
11 name of the juror on the record, because I don't
12 even know if all the immediate family members
13 have yet been notified. But given the fact that
14 travel is required to a state in a far part of
15 the country, the juror could not reasonably be
16 expected to come back with even a one day absence
17 for postponing the trial and the Court has
18 decided that it's necessary that the juror be
19 excused. Counsel, does either party disagree
20 with that determination?

21 ATTORNEY KRATZ: Not by the State, Judge.

22 THE COURT: Mr. Strang.

23 ATTORNEY STRANG: No, we agree that the
24 juror with the family tragedy ought to be excused
25 and we continue to believe that the juror who served

1 on Detective Remiker's jury also should be excused
2 for the reasons we explained yesterday.

3 THE COURT: And your objection is duly
4 noted for the record.

5 Before we bring in the jury, then, the
6 Court has also been informed that I believe the
7 defense has a matter it wishes to take up before
8 we bring the jurors in.

9 ATTORNEY STRANG: We do. Thank you, your
10 Honor. I renew at this time the earlier motions to
11 suppress that Mr. Avery pursued with respect to
12 execution of the search warrants as -- in so far as
13 they affected his privacy interests.

14 And I'm particularly concerned here this
15 morning with his own trailer, his residence, the
16 detached garage that consistently has been
17 identified in this trial as Steven Avery's
18 garage, and the area behind it described as the
19 burn area, as well as the burn barrel in the
20 front, again, consistently described in this
21 trial as associated with Steven Avery's house.
22 All of these areas were what -- or within what
23 Mr. Kratz rightly described yesterday, in
24 passing, as the curtilage of Steven Avery's
25 residence.

1 And I renew the motion on both Fourth
2 Amendment grounds under the United States
3 Constitution and on State Constitutional grounds,
4 reliance specifically on Article 1, Section 11,
5 of the Wisconsin Constitution. Because the
6 evidence adduced to date in the trial casts a new
7 light, or adds some additional relevant fact --
8 relevant facts on the reasonableness of the
9 searches between November 5 and November 12th,
10 2005.

11 The protective sweeps, or the initial
12 two entries, very brief entries on November 5,
13 are not at issue. We aren't challenging those,
14 neither have we ever challenged the consent
15 search on November 4 and, again, don't challenge
16 that today.

17 But the search of Mr. Avery's private
18 areas beginning at about 7:30 p.m. on Saturday,
19 November 5, 2005, and then every search after
20 that time appear unreasonable, not just for the
21 reasons we explored at length this summer in the
22 evidentiary hearings, but for additional reasons
23 developed here at trial.

24 The State's witnesses, first, have
25 described the searches of the house trailer and

1 the garage, in specific, as starting with sort of
2 general searches -- I'm making no effort to
3 repeat verbatim any particular witness'
4 testimony, but I'm synthesizing the testimony as
5 I have heard it. Sort of general or quicker,
6 less thorough searches, initially, and then
7 proceeding a matter of days later to what's been
8 described here repeatedly has a thorough search.

9 Typically, I think the witnesses have
10 ascribed the thorough search of the house trailer
11 and the garage to November 8, although, there may
12 be some disagreement among the witnesses on
13 whether November 6 or November 7, November 8, or
14 November 9 are the thorough search of the house
15 trailer and the garage.

16 Now that's, of course, in some conflict
17 with the testimony that the Court took in July
18 and August, 2006, where searchers testified that,
19 with each search they seized all of the relevant
20 items and searched the entire area to be
21 searched.

22 But, you know, moving past the
23 inconsistency, if we accept on its face the
24 testimony adduced here in trial, we have an
25 approach to searching a citizen's most private

1 places, his home, his garage, his yard, within
2 the curtilage, and excluding him for many days
3 from his home. We have an approach that suggests
4 that somehow the Fourth Amendment and the
5 correlative provision of the Wisconsin
6 Constitution allow sort of warm up searches,
7 calisthenics, dry runs.

8 And I -- You know, we're at the right
9 time of the year for Cactus League exhibition
10 games, if this were baseball, but it's not. It's
11 searching and seizing people's private effects
12 and people's private places. And I know of no
13 theory of reasonableness of a search under either
14 the Federal or State Constitutional provisions
15 that allows for this sort of warm-up exercise, or
16 moving from the general to the thorough with
17 repeated entries over a span of days.

18 This gets to sound, as a matter of fact,
19 if we just look at the reasonableness
20 requirement, just the touchstone, as I understand
21 it, of the Fourth Amendment, this gets to sound
22 and awful lot like the Writs of Assistance of the
23 18th Century, that caused people living over here
24 in the New World to resent and ultimately rise up
25 against the British Monarch and his agents in

1 what was then the American Colonies. Sort of a
2 roving, we'll get around to it when we're good
3 and ready or when we feel like it, approach to
4 rummaging through someone's private places and
5 private effects.

6 I don't think it's reasonable. And the
7 record here, at great length, has laid out why.
8 So, in addition to the reasons we argued earlier,
9 this is a first further reason on which I ask the
10 Court to suppress everything taken from
11 Mr. Avery's house, his garage, the burn area or
12 the burn barrel, beginning at about 7:30 p.m. on
13 Saturday November 5, 2005. And suppressing as
14 well the visual impressions of searching agents
15 in those places, testimony about that, and
16 evidence derived from observations, or from items
17 seized, during the searches I have described.

18 Second, we have further testimony that I
19 think sheds light on the motion earlier heard and
20 communicated under *Franks* against *Delaware*. It
21 is now clear, from a fuller record at this trial,
22 that search warrants were obtained from Judge Fox
23 at about 3:10 in the afternoon on November 5,
24 2005. And maybe I shouldn't be using plural, at
25 least a search warrant relevant to here.

1 With the application, saying that the
2 affiant believed there was probable cause to
3 believe that evidence of several crimes would be
4 found, murder, sexual assault, I think false
5 imprisonment was on the list, I think theft was
6 on the list. There may have been a fifth crime,
7 I don't know.

8 But what I do know is that the evidence
9 we have heard here is that the State's witnesses,
10 at least, insist that nobody knew of any blood in
11 the Toyota, nobody had opened the Toyota, nobody
12 had found anything more than the Toyota concealed
13 under trees and branches and rubbish, old car
14 parts.

15 And that's where the factual knowledge
16 related to Ms Halbach's disappearance or fate
17 stood at the time the State applied for that
18 search warrant and Judge Fox issued it on
19 November 5, 2005; at least the factual basis as
20 it relates to the places on the Avery property as
21 to which Mr. Avery really has a privacy interest.

22 So I think the fuller record here adds
23 to the record the Court has before it on the
24 **Franks** issue, and that's the second additional
25 basis for the motion to suppress that I'm now

1 renewing. I have described before the relief
2 that we seek here, just a few moments ago, and
3 it's the same specific items, impressions, and
4 derivative evidence that I wish suppressed on
5 that second basis.

6 Third, and finally, there's newly
7 adduced evidence that bears on the search of the
8 burn area. Here, let me concede,
9 parenthetically, that we have not heard all of
10 the testimony yet about the search of the burn
11 area and seizure of items in that area. I think
12 as to the other searches that I have discussed
13 here this morning, I think we have heard all, or
14 almost all, of the testimony that the State will
15 present bearing on Fourth Amendment or search and
16 seizure issues.

17 But we heard enough about the dog and
18 the burn area to say this, the reason given for
19 not searching the burn area, pursuant to this
20 search warrant, earlier than November 8, which I
21 think is when the evidence will show, or has
22 shown, that a search of the burn area finally
23 began, is that there was a dog, on a chain, and
24 that the dog -- the dog's chain allowed it to
25 roam the entire burn area and to -- presumably to

1 scare off searchers.

2 Now, the record is replete with evidence
3 about how successful a whole group of law
4 enforcement agencies were in excluding the public
5 from the metes and bounds of this roughly 40 acre
6 parcel for about a week, a week or eight days.
7 We have security people at the four corners. We
8 have got a, you know, a command -- two command
9 stations. We have got a check in point out at
10 Avery Road and Highway 147.

11 We have complete law enforcement control
12 over this property, on this record, for that
13 time. We have people on the property who are
14 trained to handle dogs. And it's not reasonable,
15 as a matter of searching and seizing, with that
16 kind of law enforcement control of the property,
17 to say that one dog kept us from searching an
18 area covered by the warrant.

19 Presumably the dog was fed during the
20 three days that passed, under law enforcement
21 control, before the burn area was searched.
22 Presumably the dog was given water during that
23 time. And indeed, even if none of the people
24 there were capable of handling one dog and
25 getting the dog out of the area, we have got

1 testimony here that a family member, namely Bobby
2 Dassey, who lived on the property, from which the
3 public and all family members were excluded, was
4 able to retrieve his dog, with the assistance of
5 law enforcement officers.

6 So it was feasible to get a dog to a
7 family member, or to someone, presumably, was
8 familiar to the dog and could handle the dog.
9 This was something that the police demonstrated
10 they could do, before November 8.

11 They were in contact with the Averys, as
12 the record shows, the Jandas, the Dasseys, during
13 that time. Indeed, Mr. Avery himself was
14 interviewed, up in Crivitz, by law enforcement
15 officials, at some length on November 5 and
16 November 6.

17 Earl Avery was on the property for at
18 least some time while law enforcement officers
19 were there, shortly after 11 o'clock. I don't
20 know when Earl Avery was removed from the
21 property, but we know from the record at trial
22 that he was there at least for a time.

23 So it's really just not reasonable to
24 say that one dog kept this army of law
25 enforcement officers from searching the burn area

1 for three days or more. And that's the third
2 plank upon which I renew the suppression motion.
3 There, the relief I seek is the suppression of
4 observations made upon a search or examination of
5 the burn area and items seized in the burn area,
6 or within the area that fell within the range of
7 the dogs reach.

8 THE COURT: All right. Before I hear from
9 the State, the one question I had was, I thought at
10 the time of the original motion the defense conceded
11 that the search, which started at 7:30 on the 5th,
12 would have been the execution of the warrant, that
13 the initial sweep searches were just cursory
14 searches that were not the execution of the warrant,
15 but I understand from what you have said today that
16 that position has changed.

17 ATTORNEY STRANG: I didn't -- I don't mean
18 to change the position, and I'm sorry if I did that.
19 And I -- Let me sort of get back to trying to recall
20 how we argued this sequence. I think there are -- I
21 think there are two initial sweeps of Mr. Avery's
22 home, the first without a dog, and the second even
23 shorter and with a dog. So, yes, I think the Court
24 is right, the 7:30 search would be the first
25 execution of the search warrant. And that was not

1 unreasonably delayed from, you know, in terms of the
2 passage of time between the execution of the warrant
3 and beginning that search.

4 So, I do -- I don't mean to change my
5 position, and I think the Court is right that
6 this squares up better as the first search --
7 well, the 7:30 p.m. to 10:05 p.m. search on
8 November 5 being an execution of the warrant.

9 Now, the second plank that I raised,
10 **Franks**, of course, would affect even that search.
11 But the first point that I made here, the warm up
12 or Cactus League exhibition searches, would not
13 affect that first search of the home.

14 And the third argument I made, about the
15 dog, has no bearing on the trailer that was
16 searched on Saturday night, between 7:30 and 10,
17 because nobody -- nobody has said the dog
18 affected that search.

19 THE COURT: All right. The **Franks** argument
20 you mentioned, clarify again for me briefly what --
21 or how that argument has been affected by the course
22 of the trial, as supplementing your original
23 argument.

24 ATTORNEY STRANG: Sure. I explained what
25 we now have as a matter of testimony as the

1 collective knowledge of law enforcement about the
2 Toyota. We also have law enforcement people saying
3 that, you know, at about the time the Toyota was
4 discovered and the hours immediately after, they had
5 dark suspicions. They suspected the worst. You
6 know, they were gearing up for a criminal
7 investigation. But they still viewed this as a
8 missing persons investigation and still hoped to
9 find Ms Halbach alive.

10 And, indeed, it's that hope, or that
11 expectation, that makes reasonable at all, the
12 protective sweeps. At least on an emergency
13 doctrine argument, which I understand the State
14 to rely on as justification for, for example,
15 taking dogs through places after an initial sweep
16 through.

17 So the testimony here is consistent with
18 the actions of the officers in that they are
19 pursuing a missing persons investigation, at
20 least through the first two quick searches of
21 Mr. Avery's house and garage on November 5.
22 That's really -- That's inconsistent with the
23 claim that, you know, you ought to give us a
24 warrant and let us go search, because we are
25 going to find evidence of a murder, and a sexual

1 assault, and theft, false imprisonment, if that
2 was the other crime. The search warrant
3 applications and search warrant, of course, are a
4 matter of record and the Court can take notice of
5 those.

6 THE COURT: All right. Who will be
7 responding for the State? Mr. Fallon.

8 ATTORNEY FALLON: Good morning. Thank you,
9 I will be responding for the State. Naturally, we
10 have a different view of the evidence adduced to
11 this point in the trial. And quite frankly, would
12 offer the opinion at the outset that the arguments
13 made during the July and August hearing, in
14 particular the August argument on the 10th, followed
15 up with the brief, has not necessarily been
16 substantiated, but I would say overwhelmingly
17 supported, and the reasonableness of the searches
18 engaged has been demonstrated to a degree that
19 should remove not only a reasonable doubt but any
20 doubt.

21 I begin with this point, I have heard
22 nothing in the record so far that establishes the
23 defendant's right of standing to challenge the
24 search of anything on that 40 acre parcel,
25 outside of his trailer or garage, that includes

1 the burn barrel and the burn pit.

2 Case law clearly says that although
3 items such as the burn pit and its location may
4 well be within the curtilage, which is a somewhat
5 arcane term from the common law which has
6 relatively fallen out of use in Fourth Amendment
7 analysis these days, but it still has some
8 benefit for purposes of claiming an argument.

9 The law is quite clear that while
10 something may be within what had traditionally
11 been perceived as a curtilage, does not
12 automatically establish that one has standing to
13 object to a search of that particular item. So
14 nothing in the record has changed that.

15 Secondly, there's been no evidence
16 whatsoever that there was any joint venture or
17 agency relationship established between the
18 volunteer searchers and law enforcement. It was
19 their entry into the property that commenced the
20 investigation.

21 Third, it's quite clear, and there's
22 been no evidence to the contrary, in fact, even
23 more evidence now, that there was consent for the
24 original entry by the searchers as well.

25 Fourth, the theory upon which the State

1 proceeded at the time of the motion, and
2 continues until this very day, is that this was
3 one continuous search. There was no violation of
4 the one warrant, one search principle originally
5 argued, and continued to be argued today.

6 In that context, a warrant was in fact
7 obtained, as counsel notes, at approximately
8 3:10, Saturday, November 5th. They returned to
9 the property at 3:25 to commence execution of the
10 warrant. And as counsel has conceded under the
11 Court's questioning, there were two original
12 entries in the concept of a sweep, actually just
13 looking for a person or a body of Teresa Halbach,
14 and/or any other civilian or family member who
15 ought not to be present, should be located. So
16 that was the dual purpose of those searches. I
17 think that's conceded.

18 And as the Court notes, there was an
19 execution of the -- The commencement of the
20 execution of the full search at 7:30 that
21 evening. But before we get into the details, let
22 us not lose sight of several critical facts
23 omitted from counsel's argument.

24 And this is where the testimony at the
25 trial does nothing but enhance, not detract, from

1 the findings the Court made in August, and the
2 arguments the State made then and in its written
3 submission thereafter. The area to be searched
4 was a 40 acre crime scene. It had 3800 to 4,000
5 cars. I believe the testimony is there was 11 to
6 15 buildings. Included in that number were four
7 residences.

8 We heard from one witness in this case,
9 admittedly through lengthy cross-examination by
10 the defense, which only highlighted the testimony
11 of Special Agent Fassbender back in August and
12 again during this trial, that there was an awful
13 lot going on, not only within the 40 acre parcel,
14 but within the surrounding areas, most notably
15 the two or three gravel pits owned by the
16 Radandts.

17 As Mr. Ertl explained, they had a number
18 of sites to investigate, both on the property --
19 the 40 acre site and other, including this
20 potential burial site, other areas in the gravel
21 pits, and the surrounding, which admittedly took
22 resources away from the attempted search, or from
23 the ongoing search at the property. So those
24 facts must be kept clearly in perspective.

25 Again, there's a safety issue, there was

1 a weather issue that delayed the onset of the
2 search. There were limited number of officers
3 that first day. More and more officers arrived
4 to assist in executing the search warrant signed
5 by Judge Fox.

6 So it's within that backdrop that we now
7 begin to clearly scrutinize and examine both the
8 evidence introduced then, during this trial, and
9 the arguments of counsel.

10 As reflected by the testimony of the
11 officers and those who supported him -- and when
12 I say the officers, I'm talking specifically of
13 Special Agent Fassbender, who was coordinating,
14 along with Investigator Wiegert, this
15 investigation. It's quite clear that there were
16 a number of teams, in a number of places, being
17 searched simultaneously.

18 This wasn't just four guys who were
19 going from one place to the next. There were
20 several search teams involving the Crime Lab,
21 involving Manitowoc Police Department, involving
22 some members of the Manitowoc Sheriff's Office,
23 the Calumet County Sheriff's Office, the
24 Department of Justice, Division of Criminal
25 Investigation.

1 As indicating, the search started out in
2 a funneling effort, a sweep looking for persons
3 and bodies on the property, and then slowly
4 funneled down into more specific evidentiary
5 searches, in support of a missing person/criminal
6 investigation. And I will elaborate on that in a
7 moment.

8 But I did want to make this particular
9 point first, again, as a legal backdrop to the
10 factual backdrop just provided. Article 1,
11 Section 11 of the Wisconsin Constitution, has
12 been and continues until this very day, to be
13 interpreted the same way as any attack or as any
14 interpretation of the Fourth Amendment to the
15 United States Constitution. And our case law has
16 consistently held that.

17 And while I compliment counsel on his
18 argument of raising a State Constitutional basis
19 or challenge, for now, the law in terms of
20 interpreting, applying, and assessing that
21 challenge, the analysis is the same under the
22 Fourth Amendment to the United States
23 Constitution and under Article 1, Section 11, of
24 the Wisconsin Constitution.

25 As such, the touchtone for the Court's

1 analysis is reasonableness. So within those two,
2 that factual backdrop and the legal backdrop, we
3 examine the searches.

4 Now, counsel seeks to suppress a number
5 of items, conveniently not designating those
6 items. But let's look at the evidence that was
7 taken during that first search. First search is
8 conceded, so there's nothing that was taken out
9 of her (sic) home on Saturday night, which is
10 subject to the suppression motion in the first
11 place. So in effect, with respect to the home,
12 the only items of evidentiary -- that jump in my
13 head right now, based on the testimony, are the
14 weapons seized on Sunday, and the key, and a few
15 other miscellaneous items on Tuesday.

16 Now, in examining the searches on those
17 particular days, what do we have. We have a
18 specific description, those weapons were observed
19 on Saturday night during the search, they were
20 looking for other biological trace evidence to
21 show the existence, or non-existence, of Teresa
22 Halbach within that residence, anything that
23 would show or connect her to the particular case.

24 The weapons were observed. They were
25 seized the next day, hey, go get those weapons,

1 after all, we do have an individual with a felony
2 record. They are in constructive possession,
3 that's evidence of a crime, take that. So they
4 were sent back in, as part. They were observed
5 there, but they had other duties that night. It
6 was 7:30. There was a torrential rainfall going
7 on. And they were looking, at that time, for
8 evidence of a missing person/criminal
9 investigation. In other words, her missing
10 person could very well be the result of a crime.

11 And while we're on that point, let's
12 make this abundantly clear, nowhere is it said,
13 and counsel cites no case, because there is no
14 case for the proposition that on the one hand we
15 have a missing person, and then you draw a line
16 in the sand and say, oh, well, you crossed the
17 line, now you are in a crime.

18 Probable cause is defined as something
19 that would excite an honest belief in the minds
20 of an officer that perhaps a crime or criminal
21 activity is afoot. That's the basis to get a
22 probable cause determination.

23 Now, it's quite clear that many missing
24 person cases may very well fall into that
25 category. Missing person concepts and probable

1 cause for a crime overlap, frequently overlap.
2 And there is a large difference between probable
3 cause in a missing person case and proof beyond a
4 reasonable doubt that the missing person is
5 missing because of a crime.

6 So let's not confuse the concepts. They
7 overlap. They are clear. Sometimes they have
8 two operating different spheres entirely, but
9 frequently they overlap. And in the analysis of
10 the searches underway here, there was nothing
11 that was unreasonable in the steps taken by
12 Investigators Wiegert and Fassbender in directing
13 the searches here.

14 With respect to the garage, the first
15 entry to the garage was on Sunday. So I'm still
16 waiting for the argument as to why anything that
17 was taken, including the shell casings and the
18 other material on the search of the garage on
19 Sunday morning, is subject to the search, subject
20 to suppression.

21 It's their first enter, other than the
22 sweep that occurred the day before looking to see
23 if there is the person or the body of Teresa
24 Halbach, or the person or a body of somebody else
25 who shouldn't be there.

1 Now, let's further examine, again,
2 returning briefly to the burn pit and the burn
3 barrel argument. I can think of no other act
4 that is quite so clearly supportive of the
5 concept of abandoned property than the act of
6 throwing something in a fire and burning it.

7 The burn barrel is clearly -- anything
8 in that barrel is subject to search by any person
9 driving up and down that driveway. That's
10 clearly evidence of property discarded, unwanted,
11 and thrown away.

12 The quintessential act of abandonment is
13 burning it, consuming it, chopping it up, what
14 have you. The same can be said for the burn pit
15 as well. Anything in there is abandoned
16 property. It is burned. It's evidence of the
17 owner or the possessor, the constructive
18 possessor of that property has shown his intent
19 to discard it and not care about it. It burned.

20 With respect, again, to the searches of
21 this particular property, I would also point out
22 that the original warrant signed by Judge Fox on
23 Saturday, November 5th, was renewed on Wednesday,
24 the 9th, I believe, as the evidence in the motion
25 hearing was, some time late that afternoon,

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memory strikes me, about 4:00.

And the warrant was reused for the follow-up entries on Thursday, Friday, and Saturday, most notably by Mr. Austin of the State Patrol, Agent Fassbender, and one or two others as they were doing their final go through the premises, and Mr. Austin was taking his copious measurements that we have heard quite a bit about. So, clearly, there's nothing to undermine the inevitable discovery argument that the State made as a fall or drop back position.

Finally, there's one argument that we didn't make earlier that we could make now since the motion is renewed, and that is, I think you also have a good faith belief, as exhibited by the officers, in reliance on a warrant that was issued by Judge Fox, that probable cause was established and then the warrant was reissued. And I would submit to the Court that they had no obligation to reissue that warrant, but just as a safety precaution, they went back to the judge, renewed the warrant, with additional information that had been discovered during those days.

And that takes me, by the way, to another analysis on the reasonableness component,

1 is that each day, each hour, additional
2 information became available to the officers that
3 justified continuous operations here that say,
4 well, we have got to go back in. Let's look at
5 that. We just got this call from the Crime Lab,
6 we have got presumptive positive for blood here
7 in the SUV, better go back and look for that.
8 Better go back in there and luminol Mr. Avery's
9 trailer and Charles Avery's trailer, and the
10 other places, to see if there is any blood
11 evidence there.

12 Each hour passed, more information
13 became, probable cause was not only enhanced, it
14 was increased, justifying continued searches and
15 continued investigation by law enforcement
16 officers, further support of the one warrant and
17 one continuous search, which was under way.

18 Now, with respect to this **Franks**
19 argument, again, I find that rather disingenuous.
20 Again, nothing has been shown here to show a
21 false or material statement that was false that
22 was introduced or established by virtue of the
23 testimony, that hadn't already previously been
24 discussed.

25 The only argument is the concept of

1 while the missing crime and missing person and a
2 missing -- missing person and a criminal
3 investigation analysis. And I think we have
4 already discussed how they overlap.

5 But there's nothing that has been
6 introduced, to this point in the trial, that
7 suggests that there was any material or false
8 statement or any reckless disregard for the truth
9 by the affiants of that warrant or the
10 information provided them, that being Detective
11 Remiker and Investigator Wiegert.

12 Again, I'm still waiting for the
13 standing to be established by the defense as to
14 how they are going to search or complain about
15 searching the SUV of Teresa Halbach. Again,
16 there is no basis upon which the defense can
17 challenge the search, the seizure of that SUV, or
18 any of the evidence obtained therein.

19 Next, again, returning to the burn area
20 and the interesting analysis for the dog
21 argument. While one may be trained to handle a
22 bloodhound, one may be trained to handle a human
23 remains detection dog, commonly referred to as a
24 cadaver dog, doesn't mean that one is established
25 and trained to handle all kinds of situations.

1 And we all know, from our common sense, that
2 there are many people who are good with animals,
3 some are very professional, some do it for a
4 living, many of us are casual pet owners, some
5 are not.

6 Well, regardless of that, there are
7 animals out there who have such character and
8 demeanor that it doesn't really matter much, for
9 the professional. And the fact that one may be
10 well trained to handle a bloodhound, or human
11 scent detection, or human remains detection, is
12 of no consequence and of no meaning here, doesn't
13 help us at all.

14 Finally, I think it's very important to
15 note that the -- that the evidentiary
16 significance, as it were, to this burn pit area,
17 wasn't determined at all until Tuesday afternoon.
18 There was no need to remove or do anything with
19 the dog. In fact, we credit Deputy Kucharski for
20 exercising common sense in not shooting the dog
21 when they wanted to search it. They waited.
22 They finally did have somebody remove the dog
23 when the evidentiary significance of the burn pit
24 became clear.

25 The fact that Bobby Dassey was allowed

1 to return to get his puppy is an entirely
2 different concept than the junkyard dog in the
3 back of the yard, who lives outside, and a fully
4 grown adult animal and a puppy, in terms of their
5 care, and responsibility, and their needs,
6 etcetera. That's an argument without any merit
7 whatsoever. I don't even need to go further.

8 So, again, what is it that they are
9 asking to suppress. The guns were seized, as I
10 said, on Sunday. There was the shell casings and
11 some blood spatter on the first search of the
12 garage. Where's the challenge to the
13 significance of that? How is that in violation
14 of the warrant? It was their first entry.
15 Again, there's not much at issue. And what is at
16 issue, there is no basis whatsoever, in fact or
17 law, to suppress that evidence. So we would ask
18 the Court to affirm its previous ruling. Thank
19 you.

20 THE COURT: All right. I'm not going to
21 hear further from the parties on the issue at this
22 time. As Mr. Strang indicated, I think we haven't
23 heard all the evidence that may come in yet with
24 respect to the burn pit. I will give the parties an
25 opportunity to argue further later. I'm not going

1 to decide it from the bench at this time.

2 Before we bring the jury in I'm going to
3 take a quick five minute break, and I mean no
4 more than five minutes. I'm going to ask the
5 bailiffs to keep Mr. Avery here. We'll be back
6 out in a few minutes and bring in the jury.

7 (Recess taken.)

8 (Jury present.)

9 THE COURT: Mr. Kratz, at this time you may
10 call the State's first witness this morning.

11 ATTORNEY KRATZ: Thank you, Judge, the
12 State will call Katie Halbach to the stand.

13 ATTORNEY STRANG: Your Honor, may we just
14 take a procedural moment at side bar.

15 THE COURT: Yes.

16 THE CLERK: Raise your right hand.

17 **KATIE HALBACH**, called as a witness
18 herein, having been first duly sworn, was
19 examined and testified as follows:

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

22 THE WITNESS: Katie Halbach, H-a-l-b-a-c-h.

23 **DIRECT EXAMINATION**

24 BY ATTORNEY KRATZ:

25 Q. Katie, how old are you?

1 A. I'm 15.

2 Q. I'm sorry?

3 A. 15.

4 Q. And do you go to school?

5 A. Yup.

6 Q. What grade are you in?

7 A. I'm a sophomore.

8 Q. In what community do you live? What city do you
9 live in?

10 A. I live in Hilbert, Wisconsin.

11 Q. And who do you live with, Katie?

12 A. I live with my family, Tom and Karen Halbach, and
13 my sister, Kelly Halbach.

14 Q. All right. Before October 31st of 2005, did you
15 have another sister?

16 A. Yes.

17 Q. Tell the jury who that was, please?

18 A. It was Teresa Halbach.

19 Q. Let me show you a picture of what has been
20 received as Exhibit #1, tell us who that is?

21 A. That would be my sister, Teresa Halbach.

22 Q. Katie, can you describe your relationship with
23 your sister? Where did she live, first of all?

24 A. Um, first, she lived in Green Bay, when she went
25 to college. Then, later, she moved next door to

1 us.

2 Q. Okay. When she lived next door to you, did you
3 have occasion to meet with her, or see her a lot?

4 A. Yeah, she would come over sometimes and hang out
5 with us, or sometimes on the weekend, me and
6 Kelly would go over to her house.

7 Q. All right. Who's Kelly?

8 A. She's my little sister.

9 Q. How much younger is Kelly than you?

10 A. She's two years younger than me.

11 Q. And how much older was Teresa than you?

12 A. She was 11 years older than me.

13 Q. As sisters, and especially as sisters who lived
14 literally next door to each other, what kind of
15 things would you guys do when you hung out
16 together?

17 A. We would watch movies, or watch TV, or like play
18 card games, or just hang out.

19 Q. All right. Let me ask you, Katie, like most
20 sisters, would you ever talk about shopping, or
21 clothes, or things like that?

22 A. Yes.

23 Q. Did you ever go shopping with your sister,
24 Teresa?

25 A. Yes.

1 Q. And were you aware of the clothes that Teresa
2 wore?

3 A. Yes.

4 Q. I'm going to specifically ask you about Teresa's
5 blue jeans, okay? Let me first ask you, Katie,
6 if you were aware of any specific pairs of blue
7 jeans that Teresa owned that she had at her
8 house?

9 A. Well, she had a lot of Weatherly (phonetic) jeans
10 just because she really liked their jeans and I
11 know she had a pair of Daisy Fuentes jeans.

12 Q. Let me stop you there. How do you know that she
13 had a pair of Daisy Fuentes jeans?

14 A. Well, one day she showed me a new pair of jeans
15 she had. And I noticed that the brand was Daisy
16 Fuentes. And I knew that Daisy Fuentes was an
17 older person, so I told Teresa that she has old
18 person jeans.

19 Q. As those of us that are my age, do you think
20 Daisy Fuentes is a older person; is that what you
21 told her?

22 A. Well, she's not old, but she's not young.

23 Q. But you commented, in fact, you teased your
24 sister about wearing an old person's jeans; isn't
25 that right?

1 A. Yes.

2 Q. After your sister's disappearance, and after you
3 learned that your sister had died, did you have
4 occasion to go back to her house and look through
5 some of her stuff?

6 A. Yes, we did.

7 Q. When you looked through her stuff, Katie, did you
8 find her Daisy Fuentes jeans?

9 A. We did not.

10 Q. Sometime during this investigation, were you
11 asked to join, or accompany, a police officer, I
12 think it was Officer Fassbender, in trying to
13 find that pair of jeans, or trying to find a pair
14 that was just like those jeans?

15 A. I did.

16 Q. Where did you go to get those?

17 A. We went to Kohls.

18 Q. And do you know if Kohl's Department Store is a
19 place that carries Daisy Fuentes jeans?

20 A. Yes, they do.

21 Q. Do you know if Daisy Fuentes jeans are carried
22 anywhere other than Kohl's?

23 A. I do not know.

24 Q. Katie, I have handed you what's been marked as
25 Exhibit No. 288. Can you tell the jury what that

1 is, please?

2 A. They are a pair of Daisy Fuentes jeans.

3 Q. And have you seen those before?

4 A. Yes, I have.

5 Q. Tell the jury how you have seen those before?

6 A. I went with Mr. Fassbender to Kohl's one day and

7 he asked me to pick out a pair of Daisy Fuentes

8 jeans that I thought Teresa would have worn.

9 Q. The same style, the same brand; is that right?

10 A. Yes.

11 Q. Did you try to also pick out the same size that

12 she would have worn?

13 A. Yes, I did.

14 Q. Why don't you hold those up and show the jury. I

15 want you to hold up and show the jury the front

16 and the back of those jeans, if you would, okay.

17 Now, on the back pocket of those jeans, there's

18 some stitching; do you see that?

19 A. Yes.

20 Q. Do you know what that stitching is called on the

21 back pocket?

22 A. No, I don't.

23 Q. Okay. Katie, let me ask you, do you know what

24 holds a pair of jeans together?

25 A. Rivets maybe.

1 Q. Okay. When looking at Exhibit No. 288, does --
2 do those jeans have rivets?

3 A. Yes, they do.

4 Q. And on those jeans, do those rivets say anything?

5 A. They say Daisy Fuentes.

6 Q. Mr. Wiegert is going to grab those from you, as I
7 ask you one or two other questions. Do you know
8 when the last time when you saw Teresa wearing
9 her Daisy Fuentes jeans was?

10 A. I don't remember.

11 Q. Do you remember what size jeans your sister,
12 Teresa, wore?

13 A. She probably would have worn anywhere between
14 like a five or an eight.

15 Q. Some clothes, I don't know much about girls
16 clothes, but they run different sizes; is that
17 right?

18 A. Yeah, depends on like the store, whatever.

19 Q. I'm going to have Mr. Wiegert turn on a machine
20 which is called an ELMO machine. Mr. Fallon is
21 going to help him as well.

22 ATTORNEY KRATZ: You can probably zoom in a
23 little bit more, too.

24 Q. (By Attorney Kratz)~ Katie, is that one of those
25 rivets that you saw?

1 A. Yes, it is.

2 Q. What does it say on it?

3 A. Daisy Fuentes.

4 ATTORNEY KRATZ: Thank you, Mr. Wiegert.

5 Q. (By Attorney Kratz)~ Katie, the other thing that
6 I want to talk to you about is an exhibit that I
7 have handed you. It's blue, in front of you. I
8 think it's Exhibit No. 287. Have you ever seen
9 that before?

10 A. Yes, I have.

11 Q. And unwrap that, please, and show it to the jury
12 and tell the jury what it is.

13 A. It's a blue lanyard.

14 Q. Does it say anything on it?

15 A. It says Air National Guard.

16 Q. Katie, does that look familiar to you?

17 A. Yes, it does.

18 Q. And how does that look familiar?

19 A. I was at the EAA convention two summers ago, and
20 I was at an exhibition building. And it was the
21 Air National Guard had like a little stand, and
22 they had free lanyards and I picked it up.

23 Q. Now, a lanyard -- or at least that part of the
24 lanyard, and I'm going to show you a picture of
25 it here, there are two pictures in front of you,

1 let's just identify those real quickly. Do you
2 see those pictures in front of you?

3 A. Yes.

4 Q. Can you look at Exhibit No. 285, and tell me if
5 that's what we're looking at up on the big
6 screen?

7 A. Yes, it is.

8 Q. That lanyard that you got at the Air National
9 Guard, was there another part that went with it?

10 A. Yes, there was a little clip that clipped on, on
11 the end.

12 Q. Do you know what went on that little clip?

13 A. A key chain.

14 Q. Now, a couple summers ago, Katie, when you picked
15 up that -- that lanyard and that key chain, did
16 you give that to anybody?

17 A. I gave it to my older sister, Teresa.

18 Q. Let's look at the next picture. Okay. That's
19 Exhibit No. 286, do you see that picture?

20 A. Yes.

21 Q. Tell the jury what that is, please?

22 A. It is a picture of the lanyard and the connecting
23 piece that was with it.

24 Q. I'm going to show the jury, now, Exhibit No. 286.
25 Do you recognize the piece -- or the other piece

1 of the lanyard, the thing that's called the fob?

2 Do you know that that's called a fob?

3 A. Yeah.

4 Q. All right. Do you recognize that?

5 A. Yes, I do.

6 Q. And what is that?

7 A. It's the little connecting piece with the key
8 chain and a key on it.

9 Q. All right. Mr. Wiegert is finally going to hand
10 you an exhibit.

11 ATTORNEY KRATZ: What's the exhibit number,
12 Mr. Wiegert?

13 DETECTIVE WIEGERT: 211.

14 ATTORNEY KRATZ: All right. I'm going to
15 ask Mr. Wiegert if he would be so kind as to, if it
16 will, if those items could be placed together.

17 Q. (By Attorney Kratz)~ Now, Katie, just touching
18 the lanyard; that is, just touching the blue
19 area, which would be to your left, could you hold
20 up that entire key for us, please. Hold it up
21 nice and high so we can see it. Is that
22 lanyard -- or does that fob fit into that
23 lanyard?

24 A. Yes, it does.

25 Q. And does that look the same as when you gave it

1 to your big sister, Teresa?

2 A. It does.

3 ATTORNEY KRATZ: I would move the admission
4 of Exhibits 287, 288, 285 and 286 at this time. And
5 I have no further questions.

6 THE COURT: Any objection?

7 ATTORNEY STRANG: I don't think so. I
8 missed 285, though.

9 THE COURT: That is a photo, I believe, of
10 the lanyard, without the key fob.

11 ATTORNEY STRANG: Thank you, no objection
12 to any of those four.

13 THE COURT: Very well, those exhibits are
14 admitted. Mr. Strang, are you going to be doing the
15 questioning?

16 ATTORNEY STRANG: I am. Thank you.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY STRANG:

19 Q. And good morning. I'm going to call you Ms
20 Halbach.

21 A. Okay.

22 Q. Because we don't know each other and we're in a
23 formal sort of place, okay? And I'm Mr. Strang,
24 you probably figured that out long ago.

25 The jeans, Exhibit 288, now when guys

1 buy jeans, typically, it's by waist size and then
2 an inseam -- yeah, an inseam length. And --
3 Okay. And these things look like they just have
4 a Size 6.

5 A. Yeah.

6 Q. Okay. When -- I don't know if you can answer
7 this, give it a whirl. When women, or for that
8 matter, girls, buy blue jeans like these Daisy
9 Fuentes jeans, does the leg always just come in
10 one length?

11 A. Sometimes there could be a 6 short, 6 regular,
12 and a 6 long.

13 Q. Okay. And do you know what your sister, Teresa,
14 wore in terms of a short, regular, or long?

15 A. Probably a regular.

16 Q. Okay. And, then, sometimes, then, you know, if
17 it's you, or another woman, or girl, do you have
18 to hem the pants or change the length of them?

19 A. Sure.

20 Q. Because there's just the three sizes,
21 basically --

22 A. Yeah.

23 Q. -- of length, in the leg?

24 A. Yeah.

25 Q. Okay. And you don't know whether on the Daisy

1 Fuentes jeans Teresa had to either roll up the
2 pants leg, or hem it, or something?

3 A. No, I don't know.

4 Q. Okay. So, you showed us the rivets. What --
5 What do you close the waist with on these jeans?

6 A. A button.

7 Q. Does that kind of look like -- more or less, like
8 the rivet, except a little bit bigger.

9 A. Yeah.

10 Q. Okay. It seems to be metal; does that seem
11 right?

12 A. Yeah.

13 Q. Is that the button you just described?

14 A. Yeah.

15 Q. Okay. What -- Did you ever see Teresa use the
16 lanyard you bought her?

17 A. Yes, I did.

18 Q. Did she keep any other keys on there?

19 A. I'm not sure.

20 Q. One way or the other?

21 A. She might have, I don't know.

22 Q. Do you know, did she -- did your sister, Teresa,
23 typically carry a purse when she was going
24 somewhere in her car?

25 A. I believe she did.

1 Q. But you don't know where she carried keys or other
2 things that might go on a key chain?

3 A. No, I don't.

4 Q. Ms Halbach, do you have any -- any memory at all
5 of about how long ago you would have seen this
6 pair of old person's jeans, you know, the pair of
7 Daisy Fuentes jeans that you actually saw Teresa
8 have?

9 A. Um, it was probably more recent because it was
10 fresh in my memory.

11 Q. Mm-hmm. But you didn't -- I mean, you don't
12 remember now what year, or what time of year,
13 that kind of thing.

14 A. No, I don't.

15 Q. I assume at the time it didn't make a big
16 impression on you, this was just a new pair of
17 jeans or something?

18 A. Yeah.

19 Q. Okay. You weren't with Teresa when she bought
20 them?

21 A. I wasn't.

22 ATTORNEY STRANG: Okay. That's all the
23 questions I'm going to ask you. Thanks.

24 ATTORNEY KRATZ: I have got nothing
25 further, Judge. Thank you.

1 THE COURT: Very well, you are excused.

2 And, Mr. Kratz, you may call your next witness.

3 ATTORNEY KRATZ: Actually, it's Mr. Gahn.

4 THE COURT: Sorry, Mr. Gahn.

5 ATTORNEY GAHN: Thank you, your Honor.

6 State would call Ron Groffy to the stand.

7 THE CLERK: Raise your right hand.

8 **RONALD L. GROFFY**, called as a witness

9 herein, having been first duly sworn, was

10 examined and testified as follows:

11 THE CLERK: Please be seated. Please state

12 your name and spell your last name for the record.

13 THE WITNESS: My name is Ronald, middle

14 initial L. Groffy, G-r-o-f-f-y.

15 **DIRECT EXAMINATION**

16 BY ATTORNEY GAHN:

17 Q. Are you how employed, sir?

18 A. I'm employed as a forensic scientist with the
19 Wisconsin Department of Justice, Crime Laboratory
20 Bureau, stationed in Madison, Wisconsin. My
21 working title is Forensic Imaging Specialist.

22 Q. And how long have you been employed at the
23 Wisconsin State Crime Lab?

24 A. I have been with the Crime Lab for about 32
25 years.

1 Q. And what are your duties, currently, at the Crime
2 Lab?

3 A. My primary duty is the technical unit leader for
4 the Forensic Imaging Unit and responsibility
5 includes administration of the unit,
6 photographing evidence that may be brought into
7 the laboratory, and also doing whatever imaging
8 analysis might be requested of our unit.

9 Q. And could you explain, or describe for the jury,
10 exactly what is a Forensic Scientist Imaging
11 Specialist.

12 A. Again, as I previously stated, my duty is to
13 examine photographic evidence, take pictures of
14 evidence that is submitted to the laboratory,
15 evidence that may be used as part of analysis.
16 There might be things on evidence that needs to
17 be imaged before other analysts, also, or
18 scientists can look at it. That's our primary
19 duty.

20 THE COURT: Excuse me, Mr. Groffy, can you
21 move the microphone over closer?

22 THE WITNESS: Sorry, your Honor.

23 THE COURT: That's good.

24 THE WITNESS: Okay. I don't think it likes
25 me.

1 Q. (By Attorney Gahn)~ Mr. Groffy, on November 6 of
2 2005, did you take photographs of a 1999 Toyota
3 RAV4 that belonged to Teresa Halbach?

4 A. Yes, I did.

5 Q. And where did you take those photographs?

6 A. That would have been at the Wisconsin State --

7 THE COURT: Mr. Groffy, you can move it
8 over closer. The feedback was because I had the
9 volume turned up to high.

10 THE WITNESS: Is this better, your Honor?

11 THE COURT: Go ahead.

12 A. That would have been at the Wisconsin State Crime
13 Lab located in Madison, Wisconsin.

14 Q. And also on November 8, 2005, did you take
15 photographs of a blue 1993 Pontiac Grand Am that
16 belonged to Steven Avery?

17 A. That is correct, I did.

18 Q. And what I'm going to ask now is for Mr. Fallon
19 to bring up to you a pack of photographs.
20 Mr. Groffy, if you would just quickly look
21 through those photographs and tell me when you
22 are finished looking at each one of them.

23 A. I'm done, sir.

24 Q. And did you take those photographs?

25 A. Yes, I did.

1 Q. And as you look at those photographs today, do
2 they accurately portray the condition of both of
3 those vehicles as you photographed them back in
4 November of 2005?

5 A. Yes, they do.

6 Q. Mr. Groffy, on the back of each of those
7 photographs, there's an exhibit number. They are
8 sequentially numbered Exhibit 289 through 305. I
9 would like you to take the top photograph, which
10 would be Exhibit 289. And I'm going to ask you
11 to describe what that photograph is of. And
12 please tell the jury that, and then we're going
13 to show that -- well, here it is up on the
14 screen. Describe what that photograph is,
15 please.

16 A. State's Exhibit 289 is the exterior view of the
17 RAV4 from the driver's side of the vehicle.

18 Q. And that photograph that you have in your hand,
19 that's the same photograph that is up on this big
20 screen?

21 A. That is correct.

22 Q. Sir, will you please take the next photograph and
23 describe that. Tell us what the exhibit number
24 is and describe it for the jury.

25 A. That's State's Exhibit 290. That is the front

1 interior portion of the RAV4 looking from the
2 driver's side of the vehicle.

3 Q. And is that photograph the same photograph that
4 we have up on the big screen?

5 A. Yes, it is.

6 Q. And please continue.

7 A. State's Exhibit 291 is a photograph of the
8 interior of the RAV4 looking at part of the
9 driver's side, I guess you would call it,
10 instrument panel, near the ignition switch.

11 Q. And is this photograph -- is that photograph
12 represented up on the big screen?

13 A. Yes, it is.

14 Q. Mr. Groffy, I would like to ask you, is there
15 anything about this photograph that you did any
16 further processing of this vehicle with?

17 A. Yes, the area that shows the red stain, I did a
18 presumptive test on that area.

19 Q. And what is a presumptive test?

20 A. This is a presumptive test for the presence of
21 blood. It's known as phenolphthalein.

22 Q. Could you describe a little more for the jurors
23 just how that stain appeared to you.

24 A. It was a reddish color stain on the dash.

25 Q. You did the presumptive test for blood?

1 A. Yes, I did.

2 Q. I'm sorry, sir, what were the results for that?

3 A. It was positive.

4 Q. Next exhibit, please.

5 A. State's Exhibit 292, that is some items that were
6 discovered on the front passenger seat of the
7 RAV4.

8 Q. And is that photograph represented on the big
9 screen?

10 A. Yes. It is.

11 Q. Next exhibit, sir.

12 A. State's Exhibit 293, that is a view, again, of
13 the front passenger area, looking through the
14 front passenger door, of the seat and the floor
15 area and part of the dash.

16 Q. And, again, where were these photographs taken?

17 A. At the Wisconsin State Crime Lab in Madison.

18 Q. And is the photograph that you just described
19 accurately represented up here on the big screen?

20 A. Yes, it is.

21 Q. The next exhibit, please.

22 A. This would be State's Exhibit 294. This is the
23 frame area of the RAV4 toward the passenger side,
24 backseat.

25 Q. And what was the purpose of taking this

1 photograph?

2 A. This was to show a reddish stain that was on that
3 frame area.

4 Q. When you were taking these photographs, was
5 anyone suggesting areas of the RAV4 for you to
6 take photographs of?

7 A. Yes, in this particular area, I was actually
8 directed to make this photograph by our blood
9 stain pattern analyst, Nick Stahlke.

10 Q. Mr. Groffy, I'm going to ask Mr. Fallon here or
11 Mr. Kratz perhaps, to bring up a laser pointer.
12 I would like you to just point out to the jury
13 this area that the blood spatter expert,
14 Mr. Stahlke, wanted you to photograph.

15 A. It would have been approximately in this area
16 right here.

17 Q. And, again, could you just describe for the
18 jurors where exactly is that located?

19 A. That was on the passenger side of the vehicle,
20 toward the rear seat.

21 Q. Okay. And the next line, please?

22 A. That would be State's Exhibit 295, that's a view
23 looking into the cargo area of the RAV4, toward
24 the passenger side of the cargo area.

25 Q. And did anyone direct you to take this

1 photograph.

2 A. This particular photograph would have been taken
3 as part of our standard overall photographs of
4 the vehicle. At a later time, I was also told by
5 Nick Stahlke, again, to get some medium -- what
6 we call medium using and close up extra
7 photographs of those areas also.

8 Q. Why, what was in the back of this cargo area of
9 the RAV4 that you wanted photographed?

10 A. There appeared to be stain patterns that
11 contained blood and he was interested in
12 recording the pattern information.

13 Q. Could you take the laser point and point out
14 those areas.

15 A. That would have been approximately in this area
16 here. And then later on, there was also some
17 area in here that he had me photograph.

18 Q. Did you do any presumptive testing in this area
19 of the vehicle?

20 A. Yes, I also did a presumptive test in
21 approximately this area and the test was
22 positive.

23 Q. And positive for what, sir?

24 A. For blood.

25 Q. Next exhibit.

1 A. This would be State's Exhibit 296. This is a
2 closer view of that stained area in the back
3 cargo portion of the RAV4, behind the passenger
4 seat, passenger's rear seat, excuse me.

5 Q. And is this the area that you stated that you did
6 a presumptive test for blood?

7 A. Yes, that's correct, sir.

8 Q. Next photograph, please.

9 A. This would be State's Exhibit 297. This, again,
10 is another -- a closer view of that stained area
11 within the cargo portion area of the RAV4, behind
12 the rear seat.

13 Q. And could you just describe for the jurors, when
14 you looked at this stain, what did you observe?
15 What was the condition of the stain?

16 A. It was pretty much what you see on the
17 photograph. It was reddish in color, it appeared
18 to be over a -- an area of that particular rear
19 quarter panel.

20 Q. Next exhibit, please.

21 A. This would be Exhibit 298. This is the molding
22 and the metal frame area as you opened the cargo
23 door of the RAV4. Where the carpeting ends
24 toward the back of the cargo area, that's the
25 molding. And, again, the metal trim area and we

1 were documenting some reddish stains that are on
2 that molding.

3 Q. Could you take the laser pointer, and just point
4 out to the jurors these reddish stains that you
5 were documenting in this photograph.

6 A. I believe the areas of interest were right about
7 in here.

8 Q. Next exhibit, please.

9 A. This would be State's Exhibit 299. This is the
10 interior portion of the rear cargo door. Okay.
11 The panel that's on that cargo door. And, again,
12 we were photographing this to show stain
13 patterns.

14 Q. And, again, could you take the laser pointer and
15 just point out those stained areas that you were
16 trying to document?

17 A. Yes, there's some over here, and I believe there
18 were a few over here.

19 Q. Next exhibit, please.

20 A. This would be Exhibit 300. This is a more of
21 what we would consider an overall view of the
22 whole cargo area of the RAV4.

23 Q. And could you point out for the jurors, again,
24 that area that you did your presumptive test for
25 blood?

1 A. Yes, it would have been approximately in this
2 area here.

3 Q. Next exhibit, please.

4 A. This would be State's Exhibit 301. This would be
5 the driver's side of the cargo area of the panel
6 and the portion of the floor and the rear seat.

7 Q. Next exhibit, please?

8 A. State's Exhibit 302, this is showing that the
9 battery cable was disconnected from the battery.

10 Q. And on which vehicle is this photograph?

11 A. This is on the RAV4.

12 Q. Next exhibit.

13 A. This would be State's Exhibit 303. This is of
14 the Grand Am, which was our Item B. This is the
15 front of the Grand Am, showing the condition of
16 the vehicle.

17 Q. And this is the vehicle that belongs to Steven
18 Avery?

19 A. That is correct.

20 Q. And the next slide, please.

21 A. This would be State's Exhibit 304, this is a view
22 from the passenger side of that Grand Am showing
23 the passenger seat, the front dash, the floor,
24 and part of the counsel area.

25 Q. And would you go on to the final exhibit.

1 A. Yes, sir. And that would be State's Exhibit 305.
2 This is just a closer view of that middle console
3 area in the front seat. The gear shift knob and
4 some of the surfaces of that console area.

5 Q. Was there any particular reason to take this
6 photograph?

7 A. If I remember correctly, I believe Nick Stahlke
8 wanted me to show some stains that were located
9 near or on, that -- or that he perceived to be
10 stains.

11 Q. All right.

12 ATTORNEY GAHN: Thank you. That's all I
13 have.

14 THE COURT: Mr. Buting.

15 ATTORNEY BUTING: Thank you, Judge.

16 **CROSS-EXAMINATION**

17 BY ATTORNEY BUTING:

18 Q. Good morning, Mr. Groffy.

19 A. Good morning, sir.

20 Q. I won't be very long with you, but just bear with
21 me one moment. We'll mark a few other exhibits.
22 I will put these up here for the moment and then
23 I'll get right back to them. Let me just start,
24 though, you said that your -- these photographs
25 were taken on November 6th, right?

1 A. Some of them were, that's correct, sir.

2 Q. And that was a Sunday, correct?

3 A. That is correct, sir.

4 Q. Now, you actually were called in some time early
5 on Sunday, right?

6 A. My supervisor called me approximately mid-morning
7 and asked if I could come in and assist --

8 Q. Okay.

9 A. -- that's correct.

10 Q. You don't normally work on Sundays?

11 A. Normally, no. No, I do not.

12 Q. Okay. It was your understanding, though, that
13 this Toyota RAV4 had arrived at your Wisconsin --
14 I'm sorry -- Madison Lab sometime very, very late
15 the night before, Saturday night, early morning,
16 Sunday?

17 A. I don't know that for sure, sir.

18 Q. Okay. Well, when she called you in, your
19 supervisor, would that be Lucy Meier?

20 A. That's correct.

21 Q. Did she tell you that this had just arrived and
22 that you were going to be one of the first people
23 to see it?

24 A. She had conveyed to me that they had received a
25 vehicle at the laboratory for processing. And

1 she was wondering if I could come in and assist
2 and do the photography on the vehicle.

3 Q. Okay. And when you arrived, it was parked in the
4 garage that was displayed in that first
5 photograph.

6 A. That's correct.

7 Q. And when you approached, the -- were the doors
8 standing open or were they closed?

9 A. The doors to the vehicle, sir?

10 Q. Yes.

11 A. The doors to the vehicle were closed.

12 Q. Okay. Did you have gloves on as you approached
13 the vehicle?

14 A. As I approached the vehicle?

15 Q. Yes.

16 A. Not as I approached the vehicle, no. There's a
17 large area around the vehicle.

18 Q. Okay. At some point you touched portions of the
19 vehicle, though, right?

20 A. That is correct, I did.

21 Q. And before you did that, you put gloves on?

22 A. I put a laboratory coat on and gloves, that's
23 correct, sir.

24 Q. Okay. And did you, with your gloved hands, try
25 the driver's door handle?

1 A. Yes, I did.

2 Q. It was locked or unlocked?

3 A. The driver's door was unlocked when I got there.

4 Q. Okay. The other doors were locked?

5 A. Yes, the other doors were locked.

6 Q. And that would be actually four more doors,
7 correct, including the rear?

8 A. That's correct, four doors.

9 Q. Now, if I understand, what you did was, by
10 opening the driver's side door, you were able to
11 sort of reach over and, with your gloves, unlock
12 the front passenger side door first, right?

13 A. That's correct, I did that.

14 Q. And then from that location, that position on
15 either side, front and passenger, you were able
16 to easily reach around and unlock the rear driver
17 and passenger side doors.

18 A. That's correct, I unlocked those doors.

19 Q. And then you were able to open all four of those
20 doors, wide open, for taking pictures and what
21 not?

22 A. That is absolutely correct.

23 Q. And that's how it got to the appearance that we
24 see in those photographs that you showed earlier,
25 taking pictures of the side, the front, and the

1 rear side passenger and driver's side doors?

2 A. That's correct.

3 Q. And then you, and another individual by the name
4 of Steve Harrington, he was also there.

5 A. That's correct, Steve was also there at that
6 time.

7 Q. He's another forensic scientist with the Crime
8 Lab?

9 A. He is currently retired.

10 Q. Okay. But was he employed then?

11 A. At that time he was employed, yes, sir.

12 Q. Okay. And the two of you then did this
13 presumptive test for blood?

14 A. That is not correct. I did the presumptive test
15 for the blood.

16 Q. Okay. Was that a phenolphthalein test or was
17 that some other test?

18 A. That is what we called a phenolphthalein test.

19 Q. Okay. So is it specific for human and animal, or
20 just any kind of blood?

21 A. I do not have that knowledge, sir.

22 Q. Okay. But, you did get a positive on the
23 ignition stain and that larger area that you
24 mentioned over in the cargo area, kind of on the
25 passenger side?

1 A. That's correct I had a positive test for those
2 two areas.

3 Q. Those are the only two areas that you tested,
4 though?

5 A. That is correct.

6 Q. Did you do any other tests that day or take any
7 other pictures?

8 A. My activities were limited to photographing the
9 exterior portions of the RAV4. And then the
10 interior portions that we could get photographs
11 of without actually having to go inside the
12 vehicle and get those pictures before other
13 analysts could have a chance at processing the
14 vehicle.

15 Q. Okay. And then a decision was made with you and
16 your supervisor, Lucy Meier, not to process the
17 Toyota any more that day and that you would
18 instead wait until morning when the forensic DNA
19 analyst and other types of people would be
20 normally working; is that right?

21 A. That is correct.

22 Q. Okay. The photographs that you displayed,
23 though, do you still have those up in front of
24 you?

25 A. Which ones are you referring to sir?

1 Q. All the ones that you introduced --

2 A. Yes, I do.

3 Q. -- on direct. Okay. With the exception of the
4 ones of the Pontiac Grand Am; I'm not directing
5 your attention to those right now at all. But
6 with respect to the RAV4 pictures, do you know,
7 were all of those taken on November 6th, or were
8 some of them also taken on the 8th? And if so,
9 do you know which ones were on the 6th and which
10 ones were on the 8th? That's my question.

11 A. This may take a moment.

12 Q. That's fine.

13 A. I believe I'm ready.

14 Q. Okay. Could you just tell us which ones, if any,
15 were taken on the 6th?

16 A. That would be State's Exhibit 289, 290, 292, and
17 293, of the ones that I have.

18 Q. Okay. With Mr. Gahn's indulgence, I'm going to
19 use -- I have got duplicates of those exhibits,
20 they are just larger. So I'm going to use those
21 on the ELMO. So this is 290, right?

22 A. I believe --

23 Q. 289?

24 A. 289, that's correct.

25 Q. 290 is that picture of the -- sort of looking in

1 the driver's door, across to the passenger side,
2 with the passenger door open?

3 A. That's correct.

4 Q. 291 was not one of them you said, right?

5 A. That's not one that I have here with me. Hang on
6 a second, sir. That's correct that is not one of
7 them.

8 Q. So what was the next one you mentioned?

9 A. 292.

10 Q. Okay. That's this one here?

11 A. That's correct.

12 Q. And that's looking in at the front passenger
13 seat, right?

14 A. That is correct.

15 Q. Shows a black case of some sort, a Aquafina
16 bottle and some other nail polish or something,
17 right?

18 A. Yes.

19 Q. Okay. And then, I'm sorry, was there just one
20 more?

21 A. 293.

22 Q. That's really the same direction, it's just
23 farther back, right?

24 A. That's also correct.

25 Q. Looking through the passenger door, front

1 passenger door. Is that it?

2 A. That would be it for that date, of these pictures
3 that I have, sir.

4 Q. Okay. So then, I just want to clarify something
5 here. Turning your attention to No. 300, which
6 is this kind of overall view of the cargo area?

7 A. Yes, sir.

8 Q. This shows very little in there, in the --
9 basically shows an empty cargo area, with the
10 exception of a crumpled piece of paper of some
11 sort and what looks like a parking light lens
12 assembly or something?

13 A. That could be, yes.

14 Q. Did you notice whether there were ever more items
15 in the rear of this area, or was it always, when
16 you first saw it, did it look like this?

17 A. When I opened up the cargo door and took this
18 photograph, that was what was in the back of that
19 vehicle, sir.

20 Q. Okay. Did you ever see any other items in this
21 -- or maybe let's turn to the rear seat. Do you
22 have a picture of that looking in? I don't know
23 if you do. Do you ever recall finding other
24 stuff in the interior of this RAV4, other than
25 the few items, loose items that we seem to see

1 here in this photograph and in Exhibit 293?

2 A. I did not physically process the vehicle, sir.

3 All I did was photograph it. Other analysts

4 might have, but I did not.

5 Q. Okay. So you don't know whether, for instance,

6 there was any cardboard boxes, or other soda

7 bottles, or clothing items, or anything like that

8 found in the vehicle?

9 A. If I saw them, I don't recall it.

10 Q. And would you have -- would you have been asked

11 to take photographs of any of those kinds of

12 items before they had been removed or touched in

13 anyway?

14 A. I may or may not have been, it would have been at

15 the discretion of the analyst processing the

16 vehicle whether or not they wanted that

17 photographed.

18 Q. Okay. And to your recollection today, do you

19 recall seeing any other pictures that you may

20 have, that you didn't bring with you today, that

21 would show those items?

22 A. I have contact sheets of all the photographs that

23 I took of the vehicle, but I would have to look

24 at those.

25 Q. Okay. You don't have any recollection right now

1 of that, though?

2 A. No, I do not.

3 Q. All right. Just a couple more things. There's
4 three new exhibits that I have given you; would
5 you take a look at those. Oh, by the way, just
6 so we're clear, all of the other photographs that
7 we didn't discuss as having been taken on
8 November 6; were those taken on November 8th?

9 A. They would have been taken on November 7th and
10 8th.

11 Q. Okay. Two days.

12 A. Yes.

13 Q. All right. Can you identify Exhibit 306, 7 and
14 8.

15 A. State's Exhibit 3-0-6, 306, is the front of the
16 vehicle, the bumper area where there is the
17 headlight and it appears to be a missing light
18 fixture.

19 Q. Okay. I will put these up in a moment. Go ahead
20 and identify all three of those. And you took
21 these photographs?

22 A. That is correct, sir. This is State's Exhibit
23 307. This is an overall photograph of the back of
24 the RAV4.

25 Q. Okay.

1 A. This is State's Exhibit 308. This is a view
2 primarily of, I guess you would call it the wheel
3 cover of the spare tire that's on the back of the
4 RAV4.

5 Q. Okay. Let me just quickly put this up on the
6 screen. The first one you mentioned was, this
7 would be the driver's side bumper, front bumper,
8 appears to have some damage to it?

9 A. That is correct, sir.

10 Q. And that's the parking, running light assembly
11 that's missing?

12 A. If that's the correct terminology, yes.

13 Q. Okay. And do you know if that item that we saw
14 in the rear cargo area is from here or not?

15 A. I do not know that, sir.

16 Q. Okay. And then this was the -- No. 307 is the
17 sort of wide shot of the rear of the vehicle?

18 A. That is correct.

19 Q. Would you just please indicate with the pointer
20 where the cargo -- rear cargo door handle is to
21 open the door. If you can use that laser
22 pointer.

23 A. If I remember correctly, I believe it's right in
24 this area here.

25 Q. Let the witness reflect -- or the record should

1 indicate that the witness is pointing to what
2 looks to be the far left side of the cargo door,
3 over by the taillight assembly.

4 THE COURT: The record will so reflect.

5 Q. (By Attorney Buting)~ And we'll zoom in on that
6 just so it's a little clearer. It's also next to
7 what looks like a dealer sticker that says
8 LeMieux Green Bay?

9 A. That's correct, sir.

10 Q. And does that look like that's where the key goes
11 in, as well?

12 A. I believe that's the position where the key was
13 put in, yes.

14 Q. Okay. Now, showing you the last one, 308, this
15 is a closer up view of what we were just looking
16 at, so I don't have to have it zoomed as much.
17 That's the wheel cover you are talking about?

18 A. That is correct.

19 Q. I notice it looks kind of dusty; is that because
20 it had already been fingerprinted by the
21 fingerprint people?

22 A. No, this is the condition that we received the
23 vehicle in. It is -- One of my duties is to
24 photographically document this before it is
25 processed. So that would have been the condition

1 that the RAV4 was received at the laboratory.

2 Q. Are you entirely sure about that? Let me just
3 direct your attention to the far left side there,
4 above the RAV4. Do you see, isn't that some sort
5 of a sticker, oblong white sticker up there?

6 A. Yes, that appears to be one of the scales that we
7 used for denoting where fingerprints are.

8 Q. Okay. So, it appears, then, that perhaps the
9 fingerprint people had already been through here,
10 or at least looked at some of the vehicles?

11 A. When this particular photograph was taken, yes.

12 Q. Okay. So that looks -- Is that the sort of thing
13 that people -- the fingerprint people put on when
14 they find what they think might be a usable or a
15 latent print, fingerprint or palm print?

16 A. They usually use those stickers to identify areas
17 that they want us to photograph.

18 Q. Okay. Do you know if you took a closer up
19 picture of that particular area?

20 A. I did take some photographs of fingerprints that
21 were on the RAV4, at the direction of forensic
22 scientist, Michael Riddle. So those negatives
23 would probably be in his possession.

24 Q. Okay. And when you take those, those are just
25 negatives, you don't print them out like this?

1 A. No, our common procedure is that we put them on
2 photographic film and then we also supply a
3 negative to the examiner to work off of.

4 Q. Okay. And on the wheel cover, this -- do you see
5 some markings that almost look like fingers,
6 there and there, that is, on the upper surface of
7 that wheel cover of the RAV4?

8 A. One of reasons I took a photograph similar to
9 that before it was dusted for fingerprints was
10 because I did observe what looked like to be two
11 handprints on that wheel cover.

12 Q. Okay. And then a little bit lower on that, there
13 also appears to be some other sort of markings.
14 I don't know if you can describe what those are
15 at all. Do those appear to be handprints to you
16 as well or no?

17 A. That I don't know, sir.

18 Q. Okay. But you don't believe -- I mean, you
19 believe this is the way it actually looked
20 without adding any kind of fingerprint dust to
21 it?

22 A. That is correct, sir.

23 Q. That being the wheel cover, right?

24 A. That is correct.

25 Q. Okay. Did you happen to notice, as you were

1 taking photographs of this portion of the cargo
2 door where the door handle is and the key goes
3 in, it looks like on this prior photograph I
4 don't see that little scale you mentioned?

5 A. It doesn't appear to be in that photograph, no,
6 sir.

7 Q. Okay. Did you happen to notice, though, as you
8 were taking those close up photos of the
9 negatives that you said you gave to Mr. Riddle;
10 did you happen to notice whether there was
11 anything that appeared to be a blood stain in
12 that area?

13 A. I don't recall.

14 Q. Okay. Do you recall Mr. Riddle directing your
15 attention to anything, saying, hey, let's take a
16 picture of this, this looks like this might be a
17 blood stain of some sort or a dark reddish type
18 stain?

19 A. I don't recall that conversation. No, I don't.

20 Q. Okay. All right. Now, last area of questioning
21 is, you also took some measurements of the
22 vehicle, correct?

23 A. That is correct, I did.

24 Q. And those measurements were done at the request
25 of Mr. Fassbender, who is sitting in court today,

1 right?

2 A. That is also correct.

3 Q. You were in phone contact with him when he was
4 out at the scene, up in the Mishicot area?

5 A. I don't know if he was at the scene when he
6 contacted me, but ...

7 Q. Okay.

8 A. But he did contact me by phone.

9 Q. Okay. And he suggested that you take some seat
10 measurements of the, I guess the front driver's
11 seat, right?

12 A. That's correct.

13 Q. Let's just see if those -- if that area -- maybe
14 I have it up there. And those seat measurements
15 are done sometimes just to -- just to document
16 before anybody touches -- touches it, to see just
17 how close up or how far back that driver's seat
18 is, right?

19 A. That is correct, sir.

20 Q. All right. Showing Exhibit 290 to you, I believe
21 it's up on the screen. As I understand it, you
22 take -- you don't actually see the break pedal
23 here, but what you do is, you measure from the
24 break pedal up to the front curvature of the
25 driver's seat?

1 A. Yes. In this particular case, that is one of the
2 measurements that I took.

3 Q. And you came up with 18 inches, right?

4 A. Yes, I did.

5 Q. You also measure from the floor, directly down
6 underneath the front of the seat, right up to the
7 top curvature of the seat and take that
8 measurement as well?

9 A. I wouldn't say underneath the seat, but it would
10 have been on the same plain as the front of the
11 seat to the floor.

12 Q. Okay. And so that would give you the seat height
13 off of the floor?

14 A. The approximate height, yes.

15 Q. And in this instance you got 12 and a half
16 inches, right?

17 A. That's correct.

18 Q. And then you also measure from the center of the
19 steering wheel to the back of the driver's seat,
20 the seat back?

21 A. That's correct, I also did that.

22 Q. And in this instance, you got 23 and a quarter
23 inches?

24 A. That is correct.

25 Q. And that's without adjusting the angle of the

1 seat back, tilting it forward or ... That's
2 leaving it the way it was, right?

3 A. That's with the seat in the position as we
4 received it; that is correct.

5 Q. Okay. And then you also, in addition to taking
6 those measurements, at some point, I guess just
7 so I'm clear, this was actually on November 8th,
8 right?

9 A. Yes.

10 Q. So this was after the vehicle had been processed
11 for DNA, right?

12 A. I believe Ms Culhane had finished her
13 examinations at that point.

14 Q. So it was okay for you to lean inside of it and,
15 you know, touch things at that point, right?

16 A. Yes, but we still wore the appropriate clothing.

17 Q. Okay. But then you actually sat inside, in the
18 driver's seat, in the position that it was,
19 correct?

20 A. Yes, we did that.

21 Q. And you did that and you are 5 foot 11, right?

22 A. Yes, that's pretty close.

23 Q. And you found that it was very uncomfortable,
24 cramped, for you, with the seat in that position,
25 right?

1 A. That's correct, it was a very tight fit for me.

2 Q. Your knees hit the console when you tried to
3 break, for instance?

4 A. Yes.

5 Q. And you also had Mr. Nick Stahlke, your blood
6 spatter guy, do that?

7 A. Yes, Nick also did that because he's smaller in
8 stature than I am.

9 Q. He's about five-seven?

10 A. About five-seven and a half, round it off,
11 five-seven.

12 Q. And -- just one moment. I won't ask you for
13 Mr. Stahlke's characterization of whether he
14 could fit or not, but did you see him sit in?

15 A. Yes, I did.

16 Q. Did it look like his foot or his knee was also
17 hitting the console at all?

18 A. He conveyed to me --

19 Q. No, don't.

20 A. Oh, I'm sorry.

21 Q. Don't tell me what he conveyed, that would be
22 hearsay, we'll deal with that, just what you
23 could observe.

24 A. It appeared to me that it was also a close fit
25 for Mr. Stahlke.

1 Q. All right.

2 ATTORNEY BUTING: That's all I have. Thank
3 you.

4 THE WITNESS: You're welcome.

5 THE COURT: Mr. Gahn, any redirect?

6 ATTORNEY GAHN: No, your Honor.

7 THE COURT: Very well, the witness is
8 excused. We started with the witnesses a little
9 late this morning, so we'll take our morning break
10 at this time and try to make it about 10 minutes.

11 ATTORNEY GAHN: Your Honor, before the jury
12 leaves, I would like to move in the Exhibits 289 to
13 305, photographs.

14 THE COURT: Any objection?

15 ATTORNEY BUTING: No, objection. I also
16 would like to move in exhibits 306, 7, and 8, which
17 I'm returning.

18 THE COURT: Any objection from the State?

19 ATTORNEY GAHN: No, your Honor.

20 THE COURT: Very well, all of those
21 exhibits are admitted. Members of the jury, I will
22 remind you again not to discuss this matter with
23 yourselves during the break and we'll see you in
24 about 10 minutes.

25 (Recess taken.)

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(Jury present.)

THE COURT: Who will be calling the next witness for the State?

ATTORNEY GAHN: I will, your Honor.

THE COURT: Mr. Gahn, you may call your next witness.

ATTORNEY GAHN: State would call Sherry Culhane.

SHERRY CULHANE, called as a witness herein, having been first duly sworn, was examined and testified as follows:

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

THE WITNESS: Sherry Culhane, last name, C-u-l-h-a-n-e.

DIRECT EXAMINATION

BY ATTORNEY GAHN:

Q. Ms Culhane, what is your occupation?

A. I work as a Forensic Scientist in the DNA Unit, a Technical Unit Leader in the DNA Unit at the Wisconsin State Crime Laboratory in Madison.

Q. And how long have you been employed with the State Crime Laboratory in Madison?

A. 23 years.

Q. And could you expand a little bit more on what

1 your duties and responsibilities are at the Crime
2 Lab.

3 A. As a Forensic Scientist in the DNA Section, I'm
4 primarily responsible for the examination of
5 physical evidence for the presence of biological
6 material. We examine these items of evidence and
7 try and identify the biological material and
8 develop DNA profiles from those samples.

9 We're also submitted reference samples
10 from specific individuals. And, again, we
11 attempt to develop DNA profiles from those
12 samples and simply compare the two to see if a
13 specific person could or could not be the source
14 of the evidence sample.

15 In addition to those duties, I also have
16 technical leader responsibilities. And those
17 include things like training new analysts,
18 monitoring our quality control procedures,
19 monitoring proficiency tests of the analyst. I'm
20 also responsible for any new techniques, new
21 equipment that is brought on line at the
22 laboratory, for signing off on those procedures
23 and making sure that they are tested properly.

24 And I'm also responsible for case flow,
25 making sure that we meet court dates, our cases

1 are prioritized, and we get them out in a timely
2 fashion.

3 Q. And how many people work in the DNA Unit at the
4 Madison Crime Lab?

5 A. Currently we have 10 trained analysts.

6 Q. And how long have you been conducting DNA
7 testing?

8 A. Since 1996.

9 Q. And is your full workday solely devoted to DNA
10 analysis?

11 A. Yes, it is.

12 Q. And can you tell us approximately how many DNA
13 tests have you, yourself, run?

14 A. Since 1996, a conservative estimate would be
15 around 5,000.

16 Q. And what education do you have that qualifies you
17 to perform DNA testing?

18 A. I have a bachelor of science degree in biology.
19 My training program in 1996, the original
20 training program, consisted of a series of
21 lectures, written tests, written exams, that were
22 all specifically related to the DNA typing
23 process.

24 I have also had course work in molecular
25 biology, statistics and biochemistry class at the

1 UW Madison. I have also attended numerous
2 schools and work shops that are specifically
3 related to DNA typing methods and interpretation
4 of those results.

5 Q. How long does it take to become qualified to
6 become a DNA analyst?

7 A. It depends on the experience of the person
8 training, but anywhere from nine months to a
9 year.

10 Q. And do you have hands-on training during this
11 training period?

12 A. Yes.

13 Q. And could you describe that a little bit for the
14 jurors.

15 A. Part of the training process is to run many,
16 many, many samples through the system from start
17 to finish. Those samples are processed exactly
18 as you do case work. And those samples are
19 interpreted by the trainee in exactly the same
20 way.

21 Q. Who makes the decision when you are capable to
22 perform case work analysis?

23 A. In my case, it was the person who trained me,
24 which was my supervisor, Marie Verielle. I make
25 that decision in training new analysts.

1 Q. And what role do professional societies and
2 organizations play in the science of DNA
3 technology?

4 A. The primary reason for those organizations is for
5 scientists to get together and basically exchange
6 information. All of those professional meetings
7 are -- there's an agenda, there are people who
8 present information about new technologies, about
9 new instrumentation. It's also a place for
10 scientists to get together and discuss problems
11 that they have had, how they solved those
12 problems. So it's a really good forum for
13 exchange of information.

14 Q. And on a regular basis, do you read scientific
15 literature in the area of DNA typing?

16 A. Yes, I do.

17 Q. And why do you do that?

18 A. For basically the same reason we go to
19 professional meetings, to keep up with new
20 technologies that are coming along, and to find
21 out any new information that we need.

22 Q. Ms Culhane, have you testified before in court?

23 A. Yes, I have.

24 Q. How many times?

25 A. Ninety-one times.

1 Q. And have you ever qualified in court as an expert
2 in DNA identification testing?

3 A. Yes, I have.

4 Q. And how many times?

5 A. Thirty-one.

6 Q. Has the court ever rejected you as an expert in
7 DNA identification testing?

8 A. No.

9 ATTORNEY GAHN: I'm going to ask if --
10 Mr. Wiegert, would you please obtain Exhibit No. 309
11 and hand that to Ms Culhane.

12 Q. Would you identify that document, please.

13 A. This is a copy of my curriculum vitae, which has
14 all of the classes and educational background
15 that I have.

16 Q. And, basically, does that summarize the
17 qualifications that we have talked about thus
18 far?

19 A. Yes.

20 Q. At this point, I would like to talk a little bit
21 about DNA itself and just what it stands for. We
22 have prepared a power point presentation, a
23 number of slides. Have you seen them before?

24 A. Yes, I have.

25 Q. And will they assist you in your testimony today

1 in front of this jury?

2 A. Yes.

3 Q. Okay. Ms Culhane, will you just take a moment
4 and explain to the jurors what DNA stands for and
5 what it is?

6 A. DNA stands for deoxyribonucleic acid. And,
7 basically, it's the information storage system of
8 the cell. It's the way the cells in your body
9 store information. This slide is a short segment
10 of DNA. And it illustrates the fact that DNA is
11 composed of smaller units that are strung
12 together in a specific order. The order of those
13 units is what determines the information and how
14 that information is stored.

15 Q. Could you tell us about some of the
16 characteristics of DNA and how it is inherited?

17 A. The easiest way to think of DNA is to compare it
18 to a blueprint. Just like when you are building
19 a house or a building, you have a blueprint that
20 gives you all the information that you need, all
21 the components that are necessary to build that
22 house or that building.

23 DNA is exactly the same way except it's
24 on a cellular level. All the information that
25 your cells need to function, to produce proteins,

1 and enzymes, all the things that make your body
2 work, that information is contained in the DNA.

3 And you can see here, this structure is
4 referred to as a gene. That information is
5 stored in these structures referred to as genes.
6 From the time of conception, all the way through
7 your life, your DNA is responsible for the
8 cellular development. It's responsible for how
9 your cells develop. And many of our physical
10 characteristics such as eye color, hair color,
11 predisposition to certain diseases, all of those
12 things are controlled by the information in your
13 DNA.

14 Forensically, we are more interested in
15 the portions of DNA that really do not function
16 as a gene. They don't really do anything.
17 Scientists aren't sure why they are there. And
18 in the forensic application, there's a huge
19 amount of variation within those portions of DNA.
20 And so that's what we're really interested in.

21 DNA is inherited from your biological
22 parents. You receive 50 percent from your mother
23 and 50 percent from your father. And you,
24 consequently, pass on 50 percent of your DNA to
25 your offspring. And these regions of DNA that

1 we're interested in forensically are inherited in
2 exactly the same way.

3 Q. Now, Ms Culhane, you have used the word
4 forensically a number of times, and in a forensic
5 context. Would you explain to the jurors what
6 you mean when you say in a forensic science
7 capacity.

8 A. The word forensic is simply applying science to
9 matters of law. So it's applying scientific
10 principles to matters of law.

11 Q. And is it fair to say that the scientific
12 underpinnings that you have just described are
13 the reason why you can make DNA comparisons in
14 your laboratory?

15 A. Yes, it is.

16 Q. I would like to just return now to what goes on
17 in your laboratory and ask you, when you are
18 performing DNA testing, is there a specific or
19 particular protocol that you follow?

20 A. Yes, it is.

21 Q. And what is a protocol, please explain that?

22 A. A protocol is a detailed description of every
23 step in the process of DNA testing. The protocol
24 has all the components that you need for the
25 reactions to work properly, all of the parameters

1 for your instrumentation. All of that
2 information is contained in the protocol. In our
3 protocols, we also have interpretation guidelines
4 that set up parameters and rules by which we
5 interpret our results.

6 Q. Does your protocol cover every step from the
7 receipt of evidence, through the testing process,
8 to the writing of reports in a DNA case?

9 A. Yes, it does.

10 Q. And has your protocol been approved by any
11 outside agency or organization?

12 A. Our protocols are reviewed during the process of
13 accreditation. Our laboratory is an accredited
14 lab and during that process our protocols are
15 reviewed and examined by the auditors.

16 ATTORNEY GAHN: And I'm going to ask,
17 Detective Wiegert, if you would just obtain
18 Exhibit 310 and would you, please, hand that to Ms
19 Culhane.

20 Q. And you have now, in your hand, what has been
21 marked as Exhibit 310. Would you please tell the
22 jurors what that is?

23 A. This is a copy of the protocols that we're
24 currently using in the laboratory.

25 Q. And is it that protocol that you follow in

1 performing the tests in this case that you are
2 about to testify about today?

3 A. Yes.

4 Q. Do you and other members in your lab undergo
5 what's called proficiency testing?

6 A. Yes, we do.

7 Q. Would you describe that for the jurors and tell
8 them what proficiency testing is.

9 A. A proficiency test is designed to evaluate a
10 laboratory system as well as individual analysts.
11 The proficiency tests are designed to mimic
12 actual case work samples. We purchase our
13 proficiency tests from an outside company called
14 Collaborative. And we're required to perform
15 those tests, each analyst, twice a year.

16 Most of the proficiency tests come to
17 the laboratory, we treat them just like case
18 samples. We take notes on them, we make
19 documentation, and treat them just like a case.
20 And most of them consist of two reference
21 standards from a victim and a suspect, and two
22 samples that are designed to mimic forensic
23 samples. So they may be blood samples, they may
24 be semen samples, they may be saliva samples, or
25 they may be a combination, a mixture of those

1 samples.

2 When we look at those samples, we do
3 preliminary tests and presumptive tests on them,
4 to determine what type of fluid they are. And we
5 develop DNA profiles from them. We also develop
6 DNA profiles from our reference standards and
7 compare the two just like we would in an actual
8 case, and we make interpretations.

9 All of those types are recorded and sent
10 back to the company. And then, after a period of
11 time, we receive documentation back from the
12 company whether we passed or whether we got all
13 the types correct or not.

14 Q. Now, I believe you stated that -- you said the
15 company name is Collaborative?

16 A. That is correct.

17 Q. And is that an outside agency, outside the State
18 of Wisconsin?

19 A. Yes, it's a company that provides proficiency
20 tests to many labs all across the country.

21 Q. And they have no affiliation with the Madison
22 Crime Lab except to provide tests for you?

23 A. That's correct.

24 Q. And have you -- Well, let me ask you this, what
25 are the results of all the proficiency tests that

1 you have taken?

2 A. They have all been correct.

3 Q. In other words, you passed all of your
4 proficiency tests?

5 A. Yes.

6 Q. And what does it mean to say that a laboratory is
7 accredited?

8 A. The specific type of accreditation that we have
9 in the forensic lab is a certificate of
10 accreditation by the laboratory accreditation
11 board of ASCLD. ASCLD stands for the American
12 Society of Crime Lab Directors. And it's a group
13 of Crime Lab directors from all over the country
14 that come into your laboratory and audit that
15 laboratory once a year. I'm sorry, once every
16 five years.

17 This is a voluntary program. And it's
18 available to forensic labs who are doing case
19 work. So the laboratory agrees to go through
20 this accreditation process and these individuals
21 come in and audit every aspect of your
22 laboratory.

23 They look at -- Before they get to our
24 laboratory they have all of our protocols and all
25 of our procedures. So before they get there,

1 they know what we should be doing. So when they
2 come into the lab, they check everything from
3 security, to the physical layout of the lab, to
4 evidence handling, sealing of evidence, and how
5 the evidence is tracked through the system.

6 And then, anywhere from one to two
7 auditors are assigned to each section in the lab.
8 And they look through things like proficiency
9 tests, quality control documentation. They pull
10 case -- actual case files, and look through, make
11 sure we're documenting everything correctly and
12 that we're interpreting things according to our
13 protocol.

14 Q. Has the Madison Crime Lab undergone this
15 accreditation process?

16 A. Yes.

17 Q. How long ago was that?

18 A. The last time we went through accreditation was
19 in May of 2006.

20 Q. And did this ASCLD or outside organization, did
21 they accredit the Madison Crime Lab?

22 A. Yes.

23 Q. And when you say that you are accredited, is
24 accreditation -- is that an indicator of the
25 quality of work that a laboratory does?

1 A. In my opinion, it is. What it does is, when
2 these auditors come in, they use an audit
3 document that is authored by the FBI. And that
4 document contains specific standards that a
5 forensic lab must adhere to if they are going to
6 do case work.

7 So it ensures the quality of the work.
8 It ensures that you are following accepted
9 protocols in the community, and that your
10 interpretations are correct. So, yes, in my
11 opinion, I believe it does.

12 Q. And besides the five year accreditation process,
13 are there any other inspections, shall we say, or
14 audits, that happen at your Crime Lab?

15 A. Yes, and as part of the accreditation, DNA
16 Section is required to be accredited by an
17 outside individual from another Crime Lab once
18 every two years. And it's usually a team of
19 anywhere from two to three individuals from other
20 crime labs that come into the lab and really
21 audit many of the same things as the ASCLD
22 auditors.

23 They look at case jackets. They look at
24 all of our documentation. They look at our
25 interpretations and our protocols and make sure

1 we're doing everything like we should. In
2 addition to that, we do an internal audit. The
3 Madison Lab goes -- sends people to the Milwaukee
4 Lab, and they send people to our lab, to do an
5 internal audit of many of the same things. So
6 the DNA Section is essentially audited by
7 someone, once a year.

8 Q. Does the Madison Crime Lab do DNA testing solely
9 for law enforcement and for the prosecution?

10 A. By state statute we are required to provide
11 services for authorized submitters. Authorized
12 submitters are defined as law enforcement
13 agencies, or District Attorney's Offices.
14 However, defendants can request testing to be
15 done that has to go through the District
16 Attorney's Office, or it has to be through a
17 court order.

18 Q. When you use the words, defendants can request
19 this, are you referring to convicted offenders,
20 perhaps people who are serving time in prison,
21 can they request DNA testing?

22 A. Anyone can request DNA testing as long as they go
23 through the proper channels and as long as they
24 have a court order that tells us we have to do
25 it.

1 Q. Are you familiar with the Innocence Project --

2 A. Yes, I am.

3 Q. -- which is run out of the University of

4 Wisconsin Law School in Madison?

5 A. Yes, I am.

6 Q. Can you tell the jurors about that a little bit.

7 A. The Innocence Project, as I understand it, is a
8 group of law students at the UW Law School in
9 Madison and they review post-conviction cases for
10 the possibility of reexamining evidence, or
11 perhaps it's new evidence that's come along, or
12 it is evidence that technology wasn't available
13 at the original conviction and now technology of
14 some sort is available and that evidence can be
15 retested.

16 Q. And do they ever request testing from the Madison
17 Crime Lab?

18 A. Yes.

19 Q. Have you, yourself, ever performed any DNA
20 testing for the Innocence Project on behalf of a
21 convicted person?

22 A. Yes.

23 Q. The jury has been informed that Mr. Steven Avery
24 was convicted of an offense in 1985, and he went
25 to prison for that offense; are you aware of

1 that?

2 A. Yes.

3 Q. Did some time come in the year 2003 when you were
4 asked to review that case and look at the
5 evidence again?

6 A. Yes, it was.

7 Q. And were you asked to perform any type of DNA
8 testing in that case?

9 A. Yes.

10 Q. And it was your -- Was it your understanding that
11 Mr. Avery had maintained his innocence in that
12 1985 case?

13 A. Yes.

14 Q. Do you remember exactly what were the evidentiary
15 items that you examined in that case?

16 A. Yes, I do.

17 Q. Could you tell the jury about those?

18 A. In that case I examined 11 pubic hairs that were
19 taken from a victim's pubic hair combings. Those
20 were taken in a sexual assault case to recover
21 any hairs that had been transferred during
22 contact.

23 There were 11 pubic hairs -- yeah, 11
24 pubic hairs. And I attempted DNA analysis on all
25 11. Only two of those hairs gave me a DNA

1 profile. In a hair sample, we're actually
2 looking at the root portion of the hair with
3 cells attached to it.

4 Two of those hairs gave me results. One
5 hair was from a male, one hair was from a female.
6 The hair from the male was entered into the CODIS
7 System and hit on an individual.

8 Q. Now, you are going to have to explain for the
9 jurors a little bit. What do you mean by the
10 CODIS System and what do you mean by hit on an
11 individual?

12 A. The CODIS System is a data base of DNA profiles
13 that is maintained by the FBI. Forensic labs
14 contribute samples, evidence samples, to these
15 data bases. They are also a data base of
16 convicted offenders. And anyone who has been
17 convicted of a felony, it's different rules in
18 different states, has to submit samples to this
19 data base.

20 So, when we have an evidence sample,
21 it's entered into the data base, and it's
22 searched against this index. And in this case,
23 that male profile was entered into that system
24 and searched.

25 Q. And what was the result of that search?

1 A. It hit on another individual.

2 Q. When you say another individual, you mean someone
3 other than Steven Avery?

4 A. That's correct.

5 Q. And you, yourself, performed this testing?

6 A. Yes, I did.

7 Q. And because of the testing that you performed,
8 and because of the search of the CODIS data bank,
9 what happened to Mr. Avery?

10 A. I believe he was freed from prison.

11 Q. And that was because of the testing that you did?

12 A. Correct.

13 Q. Basically, did you follow the same protocol that
14 you did in testing that case, testing the 1985
15 case, that you followed in this case?

16 A. Yes, I did.

17 Q. Did you basically follow the same steps and
18 procedures in the DNA testing?

19 A. Yes.

20 Q. What is it meant in terms -- the terms called
21 quality control and quality assurance in a
22 laboratory?

23 A. The term quality assurance refers to system-wide
24 or lab-wide measures that are in place to assure
25 the quality of the work that's put out. Quality

1 control refers to everyday routine checks that we
2 do on things like our equipment, our balances,
3 our instrumentation, our reagents.

4 Everything that is used that is critical
5 to the process of DNA typing, we do quality
6 control checks to make sure that they are working
7 properly, that they are calibrated, and that they
8 are performing the way that the manufacturers
9 tell us they are going to perform. That's what
10 is referred to as quality control.

11 Q. And are quality control measures, as you just
12 described, in place and implemented in the
13 Madison State Crime Lab?

14 A. Yes, they are.

15 Q. And are they described in the protocol that you
16 just identified?

17 A. Yes.

18 Q. Now, I would like to shift out of the laboratory
19 just for a moment. And I would like to ask you
20 to describe for the jury where DNA is found in
21 the human body. And we'll put up this slide.

22 A. This slide illustrates many of the sources that
23 we find biological evidence. When we're
24 developing a profile, any cell in the body that
25 has a nucleus, the center portion of the cell,

1 has DNA in it. So, what we're looking for is
2 nucleated cells to develop a profile. Blood,
3 semen, and saliva are probably our most common
4 types of biological evidence.

5 If we're looking at a blood sample,
6 we're looking at the white blood cells, because
7 that's where the nucleus is.

8 If we're looking at a semen sample,
9 we're trying to determine whether the DNA is in a
10 sperm cell.

11 In a saliva sample, there is really
12 nothing in saliva except the cells that are in
13 your mouth that are sloughed off in your saliva.
14 And that's where the source of DNA is in a saliva
15 sample.

16 The same with urine, cells that are
17 sloughed in the process of urination, those would
18 be our source of DNA in that sample.

19 Hair, the type of DNA testing that we're
20 doing is referred to as nuclear DNA. And it's --
21 again, it's only present in cells with a nucleus.
22 In the hair, the only place we can find that are
23 cells that may be attached to the root of the
24 hair.

25 Teeth, the portion of the tooth that you

1 would find DNA would be in the pulp, the soft
2 portion of the tooth.

3 And the last two, bone and tissue, both
4 of those, what you are looking for is cells. In
5 a bone, it's usually the center portion of the
6 bone, and any part of the tissue that has
7 nucleated cells would be a very good source of
8 DNA.

9 Q. You talked about cells that are sloughed off, I
10 believe you said. Can skin cells be sloughed off
11 and can you obtain DNA from them?

12 A. Yes.

13 Q. Could you just talk about that a bit and tell the
14 jurors how those profiles can be determined.

15 A. During the process of the day, usually when you
16 are touching things, you are sloughing off cells
17 and your body is making new cells all the time.
18 Some individuals slough off or shed more cells
19 than other individuals.

20 So, in the process of touching things
21 you are, in some instances, leaving your DNA
22 behind. We can develop profiles from that DNA if
23 the quantity is sufficient and the levels are
24 high enough for our systems to detect.

25 Q. In a person's body, is the DNA the same from

1 whatever biological fluid or tissue it comes
2 from?

3 A. Yes, it is.

4 Q. Now, the jurors have heard testimony about buccal
5 swabs being taken. Can you just briefly remind
6 them what a buccal swab is?

7 A. A buccal swab, we use as a standard. And it's
8 the swabbing of the inside of the cheek. So, you
9 take a cotton swab and swab the inside of the
10 cheek. And those cells are a source of DNA. And
11 that's what we use as a standard in some cases.

12 Q. And when a buccal swab is obtained, you can get,
13 through the testing process, a DNA profile from
14 that, correct?

15 A. Correct.

16 Q. The DNA profile that you would get from a buccal
17 swab, can you compare that profile to a DNA
18 profile that perhaps you obtained from a
19 biological substance at a crime scene?

20 A. Yes.

21 Q. And does the technology allow you to make
22 comparisons?

23 A. Yes, it does.

24 Q. And does the technology allow you to determine
25 whether a particular person was the source of the

1 DNA that was at that crime scene?

2 A. Yes.

3 Q. And is there a typing process that you use at the
4 Madison Crime Lab to make those determinations
5 and comparisons that we just talked about?

6 A. Yes. The current technology that we're using is
7 referred to as STR typing.

8 Q. And could you tell the jurors a little bit about
9 the DNA STR testing technique and the
10 characteristics involved?

11 A. STR typing is a PCR based system that allows us
12 to specifically amplify, or make a lot of copies,
13 of specific target regions of DNA. These target
14 regions of DNA are referred to as STR markers, or
15 genetic markers. And they are interspersed
16 throughout all of your DNA.

17 The actual process that we use to make
18 all these copies that I'm talking about, is
19 referred to as PCR. And that's the basis for
20 this entire system. It allows us to copy these
21 specific pieces of DNA to get a profile. When we
22 develop a final profile that characterizes our
23 stain, we look at 15 different target regions
24 like this all throughout your DNA. So the final
25 profile reflects the types at all 15 different

1 locations on the DNA.

2 Q. Now, this technology that you used to date, this
3 PCR STR typing, how long have you been using that
4 at the Madison Crime Lab?

5 A. Since 1999.

6 Q. And before using this technology, or going online
7 with it, did you do anything to make sure that
8 you can do this technology in your laboratory?

9 A. Yes, we did.

10 Q. And what did you do?

11 A. We go through a process referred to as
12 validation. And that simply means that any time
13 we are adding a new technology or new procedure,
14 we have to make sure that it performs like we
15 think it will.

16 So we -- Same goes for a new piece of
17 equipment. We always have to validate and prove
18 that it performs like we think it does. So it
19 goes through a very lengthy testing process. We
20 test the sensitivity. We test the reagents, all
21 the components that are used in the reaction.

22 We test whether it is appropriate for
23 forensic use, whether -- A lot of our samples are
24 very small samples and very compromised samples.
25 They may be degraded. And those types of samples

1 are what we use in the forensic -- or what we
2 have in the forensic setting. So we have to make
3 sure that all of these techniques we're using are
4 appropriate for those types of samples.

5 Q. This DNA testing that you do at the Madison Crime
6 Lab, is this used in other fields besides
7 criminal cases?

8 A. Yes, it is.

9 Q. Could you explain some of those for the jurors.

10 A. The basis of STR typing, like I said, is the PCR
11 reaction. And PCR is used in many, many
12 different applications. It's used in the medical
13 community to diagnose diseases. It's used for
14 medical research. It is used to detect genetic
15 diseases or predisposition to certain diseases.

16 It's also used in anthropology to type
17 very old remains or old artifacts.

18 It's also used for mass disasters such
19 as Katrina, 911, all of those types of disasters.
20 It's used to identify individuals that may have
21 been involved in that.

22 So it has many, many applications. The
23 basic reaction, the system we're working with,
24 has many different other applications besides
25 forensics.

1 ATTORNEY GAHN: Your Honor, I don't know
2 what your preference would be, but I'm about to
3 enter an area that I would not like to break up.
4 And it probably would go about 20 minutes. And
5 we're getting close to the results in this case. We
6 could do that and take a late lunch or would you
7 prefer to break now?

8 THE COURT: Well, is there a consensus on
9 the jury? Would you like to break now or continue.
10 Continue? All right. Seems to be a consensus to
11 continue.

12 ATTORNEY GAHN: Thank you.

13 Q. All right. Ms Culhane, are there -- there are
14 certain procedures or steps in the DNA STR typing
15 process?

16 A. Yes, there are.

17 Q. Would you explain these to the jurors.

18 A. This shows all of the different steps that are
19 involved from start to finish, how we come up
20 with a DNA profile. The first thing we need to
21 do -- and all of these steps are -- each sample
22 is treated to all these steps. So, in other
23 words, our evidence samples and our reference
24 samples that are taken from specific individuals,
25 are processed in exactly the same way.

1 The first step we need to do is extract
2 DNA. We need to remove DNA from the sample,
3 whether it's a reference sample, or an evidence
4 sample. We need to get it out, extract it, and
5 remove it. And then we need to find out how much
6 DNA we have. And the next step is what does
7 that.

8 And that's referred to as quantitation.
9 We need to quantitate, or find out what the
10 concentration of DNA is in our sample. Some
11 samples have lots of DNA. Some samples have very
12 small amounts of DNA. And that's important
13 information for us to have.

14 The next step of the process is known as
15 amplification. And remember, I was talking about
16 all of these different target regions that we
17 make copies of and that we amplify. This is the
18 process by which we do that. We take our sample
19 and we subject it to amplification. And all of
20 these different fragments of DNA are amplified so
21 that in the end we have a sample with all of our
22 fragments and lots of DNA to look at.

23 The next step is to develop a DNA
24 profile and to interpret that. When we interpret
25 DNA profiles, we have an evidence sample and we

1 have a reference sample. And our interpretation
2 involves deciding whether the person who the
3 reference sample is from could or could not be
4 the source of the evidence sample. And that's
5 the basis of our interpretation.

6 If that person -- If the DNA profile
7 from the evidence sample is different from the
8 reference sample, that would be considered an
9 exclusion and that person is excluded as the
10 source of that evidence DNA. If the evidence
11 profile matches or is consistent with the
12 reference sample from a person, then we can say
13 that person could be the source of that DNA. So
14 that's what we refer to as interpretation.

15 If we have an exclusion, we're finished,
16 that's the end of it. But if we have an
17 inclusion, if we include someone as the source of
18 the DNA, then we have to determine how common or
19 how rare that type is in the population. And
20 that's the last part of our process, is a
21 statistical analysis to tell us how common or how
22 rare that evidence profile is in the general
23 population.

24 Q. Now, you have talked about a reference sample and
25 an evidence sample. When you are talking about a

1 reference sample, is that like the buccal swabs
2 you described that they take from the cheek of an
3 individual?

4 A. Yes, it is.

5 Q. And it would be that reference sample that you
6 would make comparisons with the crime scene
7 samples?

8 A. That's correct.

9 Q. Now, suppose that you have, in the laboratory, a
10 suspect's reference sample, say this buccal swab,
11 and you have an evidentiary sample. Will you --
12 and I'm going to look here now at the extraction
13 step, the first step, do you extract them at the
14 same time?

15 A. No, we don't.

16 Q. And why not?

17 A. We always try to keep those samples separate
18 during extraction. And the primary reason is to
19 avoid contamination, or switching of samples, the
20 contamination of the evidence sample with the
21 reference sample.

22 Q. And after you have completed a sampling, or the
23 extraction, or one case, is there anything you do
24 to your work area in between cases or the
25 instruments that you use in the DNA process?

1 A. Yes, we clean down all of our instruments, our
2 bench tops, all of the scissors, the forceps,
3 pipettes, everything we use, with bleach. And we
4 do that several times a day. We do that in
5 between cases. We clean our forceps and our
6 instruments, our scissors.

7 Anything we're touching the items of
8 evidence with is done between each item of
9 evidence. That way it allows us to make sure
10 that we're not cross-contaminating samples, one
11 with the other. So all of our scissors, and our
12 forceps, everything that touches the evidence is
13 cleaned in between each piece of evidence.

14 Q. And do you wear any special type of clothing to
15 protect against any type of contamination of
16 samples?

17 A. Well, we always wear gloves. Any time we're
18 touching anything, we wear gloves. And we wear
19 lab coats and safety goggles.

20 Q. And when you perform -- Let me ask you, and I
21 want to look at the extraction and the
22 amplification, those two steps, step one, the
23 extraction, step three, the amplification, are
24 those steps performed in the same area or
25 location?

1 A. No, they are not.

2 Q. And would you explain to the jurors why you keep
3 those steps separate.

4 A. Our extraction procedures are set up and done at
5 our lab bench. The amplification process is done
6 in a completely different room. The reason is
7 because once you amplify those target regions of
8 DNA, there's a lot of DNA in that sample. And
9 it's a perfect template to amplify more DNA. So
10 it's very important to keep that DNA confined
11 into your amplification rooms and not let it get
12 out into the general lab space.

13 So everything that goes into that
14 amplification room, stays in there. All the test
15 tubes, and all the equipment, everything stays in
16 there. If it has to be brought out, it's cleaned
17 down with bleach. So, once it goes into that
18 room, it stays in there.

19 Q. Now, you say you cleaned down these rooms, or
20 your work station with bleach; why do you use
21 bleach?

22 A. Because it basically chews up the DNA and it
23 destroys the DNA into a form where we can't get a
24 type from it.

25 Q. When you perform these steps, are any type of

1 controls used with the performance of each step?

2 A. Yes.

3 Q. Would you describe what -- First of all, what is
4 a control?

5 A. Controls are samples that we run along with our
6 evidence samples and our reference samples. And
7 we have several different kinds of controls. And
8 each one of these controls serves a different
9 purpose.

10 The purpose of the controls, depending
11 on what they are, is to, one, make sure that our
12 system is working correctly. And, two, to make
13 sure that we can monitor any contamination that
14 might be introduced into the sample or into the
15 evidence, during the process.

16 Q. Would you describe for the jury what you in the
17 forensic community, the science community, refer
18 to as contamination. What is contamination?

19 A. In the laboratory, obviously we can't control any
20 evidence until it comes into the lab. Once it's
21 into the laboratory, we have many steps that try
22 and minimize the chance of contamination. When
23 we use the word contamination, we are referring
24 to the unintentional introduction of DNA into a
25 sample or into a control.

1 Q. And what steps do you take to deal with the
2 possibility of contamination?

3 A. As you mentioned earlier, separating standards
4 from evidence samples is one. We make sure that
5 when we are opening the top -- opening our tubes
6 that have DNA in them, we spin them down first in
7 a centrifuge so that all the liquid on the top of
8 the tube goes to the bottom. We use special
9 sterilized tips when we're pipetting and removing
10 liquid to make sure it's clean. We autoclave all
11 of our reagents to make sure our reagents are
12 clean and free of DNA. All of these steps are
13 taken in order to minimize that risk.

14 Q. If contamination were to occur, does that
15 necessarily mean you cannot interpret a DNA
16 profile?

17 A. Not necessarily, it depends on what it is.

18 Q. Do you maintain a log of instances of
19 contamination in your laboratory.

20 A. Yes, we do.

21 Q. And why do you maintain that log?

22 A. We maintain that log to -- it helps us
23 troubleshoot in a lot of instances to find out
24 where the contamination came from, where it was
25 introduced, and what we can do to solve the

1 problem.

2 We have a data -- We have a list of
3 everybody's DNA type in the laboratory so all the
4 analysts know what their DNA type is. So it
5 allows us, if we see any contamination, to see
6 what the source of it is. Sometimes we can't
7 determine the source of it. Sometimes it's very
8 easy to see the source of the contamination.

9 We can also tell if we have DNA that may
10 have been introduced from the manufacturer, may
11 have been introduced into our reagents. So the
12 contamination log is a learning tool. And it
13 helps us determine where that contamination may
14 have come from.

15 Q. Do you know, do all laboratories maintain
16 contamination logs?

17 A. All accredited laboratories are required to
18 maintain a contamination log. As far as -- And
19 like I said, yes, we have one. And ours is
20 because of as a learning tool and also because
21 we're required by accreditation.

22 Q. Ms Culhane, do you know -- and I'm going to give
23 you the date of January 1st of 2001 -- since
24 January 1st of 2001, how many instances of
25 contamination have you logged at the Madison

1 Crime Laboratory?

2 A. I believe it was 89.

3 Q. And that's been since January 1st of 2001?

4 A. Correct.

5 Q. I would like to also ask you, do you know how
6 many samples of DNA you have processed at the
7 Madison Crime Lab during that same period of
8 time, January 1st, 2001, to the present?

9 A. A conservative estimate would be a little over
10 50,000.

11 Q. And of those 50 -- over 50,000 cases, samples,
12 that you have analyzed, you have documented 89
13 instances of contamination?

14 A. Correct.

15 Q. And how many analysts do you have working at any
16 given time in the DNA unit?

17 A. Anywhere from 8 to 12.

18 Q. And are those 89 instances of contamination over
19 the past five years spread out among those
20 analysts?

21 A. Yes, they are.

22 Q. I would like to go back just a little bit before
23 the date of January 1st of 2001. I think you
24 stated that you went online with this DNA STR
25 testing methodology in 1999, did you say?

1 A. Yes.

2 Q. Can you tell the jurors how many samples of DNA,
3 using this technology, that you have tested at
4 the Madison Crime Lab, since going online?

5 A. Again, this is an estimate, but a conservative
6 estimate would be a little over 60,000.

7 Q. And the last step in your DNA STR typing steps is
8 the statistical analysis. How do you go about
9 determining this statistic to determine how rare
10 or how common a particular profile would be in
11 the population?

12 A. We use a data base that is maintained by the FBI.
13 And that data base tells us the frequency of each
14 one of these types in the entire DNA profile.
15 So, by looking at that data base, we can
16 determine the frequency of the entire profile in
17 the general population.

18 Q. And why is this important?

19 A. Because this -- If you have a match between an
20 individual and an evidence sample, and it occurs
21 in 50 percent of the population, that's not very
22 discriminating. That includes a lot of people.
23 But if you have a match between an evidence
24 sample and a reference sample, and it occurs one
25 out of a trillion people, that's a very

1 discriminating match. And the statistical
2 analysis allows us to do that, to tell whether we
3 have a very common match, or whether we have a
4 very rare match.

5 ATTORNEY GAHN: Your Honor, we're sort of
6 on the cusp here of getting into the results of this
7 case. And this may be a good time to break for
8 lunch.

9 ATTORNEY BUTING: Your Honor?

10 THE COURT: Yes.

11 ATTORNEY BUTING: Why don't we do something
12 else. I don't believe Mr. Gahn has actually offered
13 Ms Culhane as an expert yet. And I have no
14 objection to that, subject to my cross of her
15 qualifications, perhaps doing that now, if you like.

16 THE COURT: Mr. Gahn.

17 ATTORNEY GAHN: I have no objection.

18 THE COURT: All right. So you don't object
19 to her being qualified as a witness.

20 ATTORNEY BUTING: I don't, no. She's been
21 testifying at length already. I think it's just an
22 oversight probably.

23 THE COURT: All right. I did make a note,
24 I was wondering when that was going to be asked.
25 But I will, then, based on the representations of

1 the parties, accept this witness as an expert in the
2 field of DNA testing.

3 ATTORNEY BUTING: Thank you, Judge.

4 THE COURT: All right. Members of the
5 jury, at this time we'll take our lunch break.
6 Let's plan on resuming at 1:15. Again, do not
7 discuss the case or anything about it during your
8 lunch break.

9 (Jury not present.)

10 THE COURT: You may be seated. Counsel, I
11 don't think we have anything else to take up before
12 resuming this witness at 1:15, correct?

13 ATTORNEY BUTING: Correct.

14 THE COURT: Very well, we'll see you at
15 1:15.

16 (Noon recess taken.)

17 THE COURT: Mr. Gahn, at this point you may
18 resume your direct examination.

19 ATTORNEY GAHN: Thank you, your Honor.

20 **DIRECT EXAMINATION CONTD.**

21 BY ATTORNEY GAHN:

22 Q. Ms Culhane, would you describe for the jury what
23 procedures your Crime Lab has in place for the
24 documentation and processing of evidence that is
25 brought to your lab for analysis?

1 A. When evidence is brought into the lab for
2 analysis, whether it's through the mail or
3 directly from an officer, we have individuals
4 known as evidence specialists who take that
5 evidence into the lab. They check to make sure
6 it is packaged properly, that it's sealed
7 properly. And then they give an item designation
8 and a case designation to each piece of evidence.

9 We have a computerized tracking system
10 in the laboratory that works on a bar code system
11 and a bar code is printed that identifies that
12 piece of evidence as belonging to a specific case
13 with a number and it also gives it a item
14 designation.

15 Q. When you perform testing on items or evidence
16 that is brought to you by the law enforcement
17 agency, do you create some type of case file?

18 A. Yes, we do.

19 Q. And do you have that file with you today?

20 A. Yes.

21 Q. Do you need it with you to testify today in this
22 matter?

23 A. Yes, I do.

24 Q. And does that file indicate whether you received
25 evidence in the case of State of Wisconsin vs.

1 Steven Avery?

2 A. Yes.

3 Q. And does your file indicate what items and how
4 many items of evidence were brought to the State
5 Crime Lab for testing?

6 A. Yes, it does.

7 Q. Can you tell the jury approximately how many
8 submissions of evidence came to the Crime Lab as
9 a whole, not just specific to the DNA Unit but to
10 the whole Crime Lab, for examination and
11 analysis?

12 A. I believe there was around 345.

13 Q. And what other units are there at the Crime Lab
14 besides DNA that would be examining this type of
15 evidence?

16 A. We have a full service lab in the Madison Lab and
17 we have a section that does fingerprints for
18 identification. We have an imaging unit that
19 takes photographs. We have a firearms section.
20 We have a trace section. We have a drug analysis
21 section, and a document section.

22 Q. And, specifically, for the DNA Unit, how many
23 items, how many submissions were sent to you in
24 this case at the DNA Unit?

25 A. 180.

1 Q. Is that normal for a case?

2 A. No, that's very large.

3 Q. For you, yourself, is this the largest number of
4 submissions you have ever encountered in a case?

5 A. Yes, it is.

6 Q. And how about for the Crime Lab as a whole, were
7 the submissions of 345 or 46 items the largest
8 number of submissions the crime lab has received
9 for one case?

10 A. I believe so.

11 Q. Now, did you perform DNA testing on all 180 of
12 those submissions to you?

13 A. No, I did not.

14 Q. Tell the jurors what you do when an item of
15 evidence is submitted to you; what's the first
16 thing you do?

17 A. The first thing we do is a visual examination of
18 the item. We're looking, as I stated earlier,
19 for a biological material. And a lot depends on
20 what type of case it is. So, we basically make a
21 visual examination of the item.

22 We take notes and we document the
23 packaging of the item, what the item looked like,
24 and exactly what we did. Depending on what
25 biological material we're looking for, we have

1 what's referred to as a presumptive test, or
2 preliminary test.

3 And these tests give us a good
4 indication of what kind of biological fluid that
5 we're looking for. We perform these preliminary
6 or presumptive tests on the evidence, or on the
7 stain. And from that point we make decisions as
8 to which direction we should go, whether we
9 should continue with the analysis to take it to
10 the final step, which is DNA, or do we stop.

11 If we do a visual exam and there is no
12 indication of a biological material, and it's not
13 an item that was submitted specifically to be
14 examined for touch, DNA that's left by touching,
15 then that's the end of our analysis. If the
16 presumptive test that we do for whatever
17 biological fluid we're looking for is negative,
18 then that's also the end of our analysis.

19 Q. Did you conduct presumptive tests on any of these
20 180 submissions to you?

21 A. Yes, I did.

22 Q. Basically, Ms Culhane, what were you looking for
23 in this case?

24 A. The bulk of the evidence in this case I was
25 looking for bloodstains.

1 Q. Do you know how many submissions of this evidence
2 that you submitted to presumptive tests for
3 blood?

4 A. Yes.

5 Q. Tell me.

6 A. 41.

7 Q. And did you get positives in those presumptive
8 tests?

9 A. Yes, they were all positives.

10 Q. What -- How do you decide what to test and how to
11 test it?

12 A. A lot depends on the piece of evidence it is, the
13 results of our presumptive testing and, also, we
14 have information as to what the alleged incidents
15 are. Police officers and law enforcement that
16 submit items of evidence will request certain
17 testing based on whether they believe the item
18 we're looking for is probative, whether it's
19 going to provide information or not. So that
20 plays into the decision that we make as to what
21 type of analysis and how far to go.

22 Q. So you rely upon the investigators in the field
23 and what they are finding; is that correct?

24 A. Correct.

25 Q. And they will make recommendations to you on the

1 probative value of a particular piece of
2 evidence?

3 A. Yes.

4 Q. Do they ever ask you to prioritize an item of
5 evidence and put it at the top of the list for
6 testing?

7 A. Yes.

8 Q. And why does that happen?

9 A. A lot of times we're not really sure. That's
10 information that they have. They may want
11 results on a particular item of evidence sooner
12 than the additional items of evidence. Usually
13 it's prioritized based on what is the most
14 probative and what is most important to their
15 investigation.

16 Q. Now, you have spoken a number of times about
17 standards and about reference samples. And once
18 again, so the jury is clear, what is a standard?

19 A. A standard is a known sample from a specific
20 individual. And in most cases we request buccal
21 swabs, which is the swabbing of the inside of the
22 cheek, because that's a rich source of DNA. So
23 the inside of someone's cheek is swabbed and that
24 sample is used as a reference for their DNA
25 types.

1 Q. Now, these are called, also, reference samples?

2 A. Yes.

3 Q. Are they sometimes called exemplars?

4 A. Yes.

5 Q. Did you receive standards in this case for
6 testing?

7 A. Yes, I did.

8 ATTORNEY GAHN: I'm going to ask Detective
9 Wiegert if he would bring up to you standards that
10 were received and I'm going to ask you to identify
11 them for the jury.

12 DETECTIVE WIEGERT: Which number?

13 ATTORNEY GAHN: Exhibits 317 through 325,
14 please.

15 Q. Ms Culhane, I'm going to ask you to look at those
16 exhibits and tell the jury what the exhibit
17 number is, and if you can, identify from whom the
18 standard is from.

19 A. The first one is Exhibit No. 319, item --
20 laboratory item designation KL. It's buccal
21 swabs from Barb Janda. And I received this in
22 the laboratory. I have markings, my initials and
23 dates, that I received this.

24 Q. Thank you.

25 A. Exhibit No. 320, item designation -- lab item

1 designation KM, buccal swabs from Bobby Dassey.
2 And, again, these have markings, my initials, and
3 the date. My markings are on this packaging.

4 Exhibit 321, Crime Lab number -- or item
5 designation KN, buccal swabs from Earl Avery.
6 And, again, my markings are on here with my
7 initials.

8 Exhibit 322, Crime Lab item designation
9 KO. These are buccal swabs from Charles Avery.
10 And, again, my markings and initials are on the
11 -- this is the bar code that we put on it when it
12 comes into the laboratory, with the case number
13 and the item designation.

14 ATTORNEY BUTING: The record should reflect
15 the witness was pointing to -- it's a yellow label,
16 is it not?

17 THE WITNESS: Yes.

18 ATTORNEY BUTING: Bar code.

19 THE WITNESS: Yes.

20 A. Exhibit 323, Crime Lab item designation KP, and
21 these are buccal swabs from Delores Avery.

22 Exhibit No. 324, item designation BU,
23 and these are buccal swabs from Steven Avery.
24 And, again, my initials and markings are on the
25 packaging.

1 Exhibit No. 251, Crime Lab item
2 designation EM. And, again, my initials and
3 markings are on the packaging.

4 ATTORNEY GAHN: And, Detective Wiegert, if
5 you could find Exhibits 317 and 318. These would be
6 the buccal swabs of Allen and Brian Dassey -- I'm
7 sorry, Allen Avery and Brian Dassey.

8 THE COURT: I'm sorry, did we hear what 251
9 was?

10 ATTORNEY BUTING: She didn't finish
11 identifying 251. You just said the designation EM.

12 THE WITNESS: Oh, I'm sorry, I apologize.
13 These are buccal swabs from Brendan Dassey.

14 DETECTIVE WIEGERT: This is 318, you
15 want 317 as well?

16 ATTORNEY GAHN: Correct.

17 Q. Would you identify what's been handed to you as
18 Exhibit 318?

19 A. These are buccal swabs, item designation BS, from
20 Brian Dassey.

21 ATTORNEY GAHN: We're also looking,
22 Detective Wiegert, for Exhibit 325.

23 Q. While he is looking for that, Ms Culhane, you
24 state that they contain what's called a item
25 designation number; what is that number?

1 A. That's a number that we assign to that item when
2 it comes into the laboratory. We start with a
3 case with item designation A and then we go
4 through the alphabet. And so that is the item
5 designation that we assign the item.

6 Q. And would you please identify that exhibit.

7 A. This is Exhibit 317, Crime Lab item designation
8 AY, and these are buccal swabs from Allen Avery.
9 And, again, my markings and initials are on the
10 packaging.

11 This is marked as Exhibit 325, item
12 designation from the Crime Lab as EF. And this
13 is a slide holder that contains Pap smear from
14 Teresa Halbach. And, again, my initials are on
15 the packaging.

16 ATTORNEY GAHN: And, your Honor, I might
17 add that I believe there is a stipulation as to the
18 Pap smear for Teresa Halbach, that that was taken at
19 the Bellin Hospital in Green Bay, Wisconsin, in the
20 year 2002.

21 THE COURT: Is that correct, Mr. Buting?

22 ATTORNEY BUTING: That is correct.

23 THE COURT: Very well. The Court will
24 accept that stipulation.

25 Q. Now, Ms Culhane, did you develop DNA profiles

1 from each of these standards that you just
2 identified?

3 A. Yes, I did.

4 Q. And did you compare the DNA profiles from the
5 standards with DNA profiles that you developed
6 from evidentiary samples in this case?

7 A. Yes.

8 Q. Now, did you issue reports in this case?

9 A. Yes, I did.

10 Q. How many reports did you issue?

11 A. Five.

12 ATTORNEY GAHN: I would ask Detective
13 Wiegert to bring you Exhibits 311 through 315.

14 Q. I would ask you to identify each of those
15 exhibits and tell the jury what they contain.

16 A. Exhibit 311 is a copy of the first report that I
17 wrote in the Crime Lab and the findings as of
18 that point in time. Exhibit 312 --

19 Q. I'm sorry, could you please -- did you give the
20 date of that?

21 A. I'm sorry, no, that was issued on November 14,
22 2005.

23 The second report is listed as
24 Exhibit 312, that was issued on December 5th,
25 2005. And that was additional testing and my

1 results of that testing.

2 Third report is a marked as Exhibit 313,
3 it was issued on March 31st, 2006. And, again,
4 it contains the findings in this group of
5 analysis.

6 The fourth report is marked as Exhibit
7 314. It was issued May 8th of 2006. And this is
8 a copy of my report.

9 The final report is marked as Exhibit
10 315, and it was issued December 4th, 2006.

11 Q. Now, do each of those reports have your findings
12 and conclusions that you came to after completing
13 your DNA testing?

14 A. Yes. Yes, they do.

15 Q. And do those reports describe the comparisons
16 that you made between the DNA profiles developed
17 from the standards compared to the DNA profiles
18 developed from the crime scene samples?

19 A. Yes, they do.

20 Q. I'm going to show you what has been marked as
21 Exhibit 298 -- I'm sorry -- 289, and previously
22 identified as the 1999 Toyota RAV4 of Teresa
23 Halbach. Do you recognize that?

24 A. Yes, I do.

25 Q. When was the first time you saw that vehicle?

1 A. On November 7th of 2005. And when I first saw
2 the vehicle it was in the garage bay at the
3 Wisconsin State Crime Laboratory.

4 Q. And what action did you take at that time?

5 A. I was assigned to this case to process the case,
6 to process the car for biological materials.

7 Q. How did you go about processing the vehicle and
8 tell the jurors, like what did you do first and
9 then next in your process?

10 A. The first step processing a vehicle, or any item
11 of evidence, is like I said before, is to do a
12 visual examination. When I saw the vehicle, it
13 had already been photographed, the doors were
14 open. I looked inside the car and it was obvious
15 there were numerous reddish brown stains that
16 were consistent with the appearance of blood.

17 I began to go through and sample each
18 one of these areas of staining and take notes and
19 document where the stains were, and what my
20 preliminary tests indicated. I performed
21 preliminary tests of all the stains that were --
22 the appearance of bloodstains, reddish-brown
23 stains. And, again, I sub-designated each one of
24 these stains. The item designation of the
25 vehicle was item A. And as I recovered stains

1 from that, I numbered them A-1, A-2, until I
2 recovered the number of stains.

3 ATTORNEY GAHN: I'm also going to ask that
4 Detective Wiegert bring you what has been marked as
5 Exhibit 326. I'm also going to ask Detective
6 Wiegert if he would open that envelope and remove
7 the contents and hand that to Ms Culhane, or show it
8 to her.

9 A. It's marked as Exhibit 326. This is the first
10 thing that I recovered from the vehicle and it's
11 my item designation A-1.

12 Q. And how can you tell that?

13 A. I have -- This is the coin envelope that I placed
14 the swabbing of the stain into. And my markings,
15 my initials and date is on it.

16 Q. And that envelope contains the actual swab that
17 you took?

18 A. Yes.

19 Q. And you state that you gave that Crime Lab item
20 designation number A-1; is that correct?

21 A. Yes.

22 ATTORNEY GAHN: And I'm going to ask
23 Mr. Fallon if he would bring you what has been
24 marked as Exhibit 296.

25 Q. And ask you if you recognize that photograph?

1 A. Yes, I do.

2 Q. And what is it?

3 A. This is a large reddish-brown stain in the rear
4 cargo area of the vehicle. And this is where I
5 sampled for presumptive test, which was positive
6 for blood. And then I sampled additional
7 staining to continue with DNA typing.

8 Q. Do you have the laser pointer up there?

9 A. Yes, I do.

10 Q. Just point to the area of where you did your
11 presumptive test for blood?

12 A. The presumptive test, and then very close to
13 that, I sampled my actual sample that I tested
14 for DNA.

15 Q. And would you describe for the jurors exactly how
16 you did the presumptive test?

17 A. Presumptive test is a color test. And it
18 basically reacts positively with blood. I took a
19 cotton swab, moistened it with sterile water. I
20 swabbed just a tiny bit of the stain and I put
21 reagents on it. If it's blood, it turns bright
22 red -- or pink, bright pink. And a negative
23 reaction is no color change. So that I performed
24 on this stain.

25 Because it was positive, it gave me a

1 good indication that this was probably a
2 bloodstain. So from that point I sampled the
3 stain that I was actually going to do my typing
4 from.

5 Q. And tell the jurors how you sampled that.

6 A. I took another clean cotton swab, put sterile
7 water on it, and basically just removed some of
8 the stain onto the cotton swab and then allowed
9 it to air dry.

10 Q. And then what did you do with that cotton swab?

11 A. I put it in -- I had a -- In the space where I
12 was working, I have a test tube rack. And I had
13 a test tube and I put the swab in there and
14 allowed it to air dry.

15 ATTORNEY GAHN: I would ask Detective
16 Wiegert, if you would remove the standards from the
17 desk in front of Ms Culhane, and also you can bring
18 back item A-1 exhibit.

19 Q. And could you also describe for the jurors as how
20 this stain appeared to you and the general size
21 of the stain. Can you do that?

22 A. It was a reddish-brown stain, probably about that
23 big.

24 Q. And you are -- May the record reflect --

25 A. Six inches.

1 Q. -- you're holding your hands about 6 inches --

2 A. Six inches.

3 Q. -- apart? Was this a large stain that you
4 sampled?

5 A. Comparatively speaking, most of the other
6 reddish-brown stains were much smaller than that.

7 ATTORNEY GAHN: Now, I would ask Detective
8 Wiegert to bring you what has been marked as Exhibit
9 327.

10 Your Honor, I had a talk with defense
11 counsel, Mr. Buting, before we resumed this
12 afternoon, and I have opened up the first
13 exhibit, which was Exhibit 326, and Ms Culhane
14 identified the coin envelope that had her swab in
15 it. We have a number of swabs for her to
16 identify. And Mr. Buting is not going to require
17 us to open every envelope and pull it out and
18 identify it with her initials. If something
19 comes up, they are here, we can open them. But I
20 believe that's the understanding that we have.

21 ATTORNEY BUTING: That is correct, your
22 Honor.

23 THE COURT: Very well.

24 Q. (By Attorney Gahn)~ Ms Culhane, you have in front
25 of you what has been marked as Exhibit 327. And

1 does that envelope contain -- can you tell what
2 item designation number is contained in that
3 envelope?

4 A. Yes, Item A-2.

5 Q. A-2. And can you tell the jurors where it was
6 that you collected the swab in A-2 from.

7 A. It was collected from the plastic panel across
8 the back cargo area of the vehicle. Like when
9 you are stepping up into the cargo area, there is
10 a plastic strip there. And A-2 was collected
11 from that plastic strip?

12 ATTORNEY GAHN: Mr. Fallon is going to show
13 you an exhibit which has been marked as Exhibit 298.

14 Q. I would like you to examine that. And also tell
15 the jurors whether that photograph is depicted on
16 the large screen as well.

17 A. Yes, this is a photograph of the swabbing I took,
18 A-2. And it was actually located in this area
19 here.

20 ATTORNEY GAHN: I would ask if Detective
21 Wiegert would bring to you what has been marked as
22 Exhibit 328.

23 Q. I will ask you, Ms, Culhane if you can identify
24 Exhibit 328?

25 A. Yes, the item designation is A-4.

1 Q. And what is A-4?

2 A. That's a swabbing that was recovered from this
3 area here, this metal around the frame of the
4 opening of the cargo door area.

5 Q. And prior to swabbing those areas, did you also
6 do presumptive tests?

7 A. Yes, I did.

8 Q. And what were the results of your presumptive
9 tests on those two stains?

10 A. Both A-2 and A-4 were positive.

11 Q. For what?

12 A. For blood.

13 ATTORNEY GAHN: I'm going to ask Detective
14 Wiegert if he would bring you Exhibit 329.

15 Q. Could you identify that exhibit, please.

16 A. This is item designation A-3.

17 Q. What is that?

18 A. This is a cotton swab from a reddish-brown stain
19 that was taken from the inside surface of the
20 rear cargo door.

21 ATTORNEY GAHN: Mr. Fallon is going to
22 bring you a photograph marked as Exhibit 209.

23 Q. And I will ask if you can -- if you recognize
24 that. And tell the jurors whether that
25 photograph is depicted on the large screen.

1 A. Yes, I do. This is the photograph I'm holding
2 here, A-3, was recovered from this area here.

3 Q. And did you also perform a presumptive test on
4 A-3?

5 A. Yes, I did.

6 Q. And what were the results of that test?

7 A. It was positive for blood.

8 Q. And similar to item designation No. A-1, did you
9 take additional swabbings from A-2, A-4, and A-3?

10 A. Yes, I did.

11 Q. And what did you do with those?

12 A. Those were taken in exactly the same manner that
13 I took A-1. I took a cotton swab and moistened
14 it with sterile water, and I swabbed a portion of
15 the stain and put it in a rack so it could dry,
16 air dry.

17 Q. And what was the purpose of taking the swabs;
18 were you going to be conducting any further
19 testing?

20 A. Yes. My intention was to attempt to develop a
21 DNA profile from those samples.

22 ATTORNEY GAHN: I'm going to ask Detective
23 Wiegert if he would bring you Exhibit 330. I'm also
24 going to ask, Detective Wiegert, if you will open
25 that bag.

1 Q. Ms Culhane, I'm going to ask you to handle this
2 item. Would you like some gloves for that?

3 A. Yes, please.

4 ATTORNEY GAHN: I'm sorry, Detective
5 Wiegert.

6 DETECTIVE WIEGERT: That's all right.

7 Q. Can you identify that item?

8 A. This is item designation A-14. And this was a
9 Pepsi can that was recovered from the cup holder
10 by the front driver's side of the RAV4.

11 ATTORNEY GAHN: I'm going to ask Mr. Fallon
12 if he would bring you a photograph that has been
13 marked as Exhibit 293.

14 Q. And I'm going to ask you to tell the jury whether
15 that photograph is depicted on the large screen.

16 A. Yes, it is.

17 Q. And can you use the laser pointer and show the
18 jurors where you found that Pepsi can.

19 A. Right here.

20 Q. And you, yourself, found this Pepsi can there,
21 correct?

22 A. That's correct.

23 Q. And what did you do to process that can? Will
24 you explain that and show the jurors.

25 A. I collected this can with the intention of

1 developing a profile, to see if I could determine
2 who may have drank out of the can. There is no
3 visible staining on the can, so what I did was, I
4 took a cotton swab, a sterile cotton swab, just
5 like I did in all the other stains, except in
6 this particular case I was only swabbing a
7 particular area, not necessarily a stain. And I
8 swabbed around the opening here where your mouth
9 would touch if you drank out of this can.

10 Q. And just for the record, that exhibit is more
11 properly described as a Wild Cherry Pepsi can?

12 A. Yes, sir.

13 Q. And you didn't do any presumptive tests on that?

14 A. No, I didn't.

15 Q. And why not?

16 A. There were no visual indications that there were
17 blood stains of any kind.

18 Q. And what did do with the swabs that you took from
19 the Wild Cherry Pepsi can?

20 A. I also put them in a rack, and allowed them to
21 air dry, and eventually developed a DNA profile
22 from that.

23 ATTORNEY GAHN: I would ask, Detective
24 Wiegert, if you could remove those items from that
25 area. Detective Wiegert, I would ask you if you

1 would please take to Ms Culhane Exhibit 331 and
2 Exhibit 332. And I'm also going to ask Mr. Fallon
3 if he will bring you a photograph which has been
4 marked as Exhibit 292.

5 Q. Firstly, can you tell us what Exhibit 331 is?

6 A. Yes, it's a -- my item designation A-9.

7 Q. And what is A-9?

8 A. It's a cutting that was taken from this area of
9 the front passenger seat, of a reddish-brown
10 stain.

11 Q. And did you tell us what Exhibit 332 is?

12 A. 332 is my item designation A-10 and that was a
13 reddish-brown stain that I recovered here from a
14 CD case in the front passenger seat.

15 Q. Now, you stated that A-9 was a cutting; how does
16 a cutting differ from a swab?

17 A. Any time we have a biological material on a hard
18 surface like glass, or wood, or that can, the
19 best way to recover the most amount of DNA is to
20 swab it with a cotton swab. If we have a stain
21 that appears to be a reddish-brown stain like
22 blood, or any biological material that's on
23 fabric, we simply cut that stain completely out.

24 Q. And what did you do with the cutting and the
25 swab? I'm sorry, back up. Referring now to Item

1 A-10, which is Exhibit 332; what is that?

2 A. That was the swab from the CD case, right here.

3 Q. And describe for the jurors what you observed on
4 that CD case?

5 A. There was a reddish-brown stain on the case. I
6 performed a presumptive positive, or presumptive
7 test and got positive results. And, therefore, I
8 sampled a portion of that stain to be further
9 tested for DNA.

10 ATTORNEY GAHN: I would ask that Detective
11 Wiegert would bring you Exhibits 333 and 335.

12 Q. And can you identify what Exhibit 333 is.

13 A. Yes, this is my item designation A-6.

14 Q. And can you identify 335?

15 A. It's my item designation as A-7.

16 ATTORNEY GAHN: And I'm going to ask
17 Mr. Fallon to bring you a photograph that has been
18 marked Exhibit 290.

19 Q. And ask you if this photograph is depicted on the
20 large screen?

21 A. Yes, it is.

22 Q. And would you tell the jurors what Item A-6 is,
23 which is Exhibit 333?

24 A. That's a cutting of a stain that was taken from
25 this area. It's a stain on -- actually the

1 fabric of the front driver's seat.

2 Q. And can you show the jurors what A-7 is and where
3 you obtained it.

4 A. A-7 were some reddish-brown crust that I found
5 here on the floor beside the console.

6 Q. And did you perform any presumptive test on each
7 of those samples?

8 A. Yes, I did.

9 Q. And what test did you perform?

10 A. I performed a preliminary test for blood. Both
11 of them were positive. So, therefore, I took the
12 cutting of A-6 from here and I removed the blood
13 crust of A-7 from this area.

14 Q. And what did you do with those?

15 A. The cutting I put in a coin envelope and sealed
16 it up. And the blood crust I put into a tube, a
17 small plastic tube and sealed that and put that
18 in a coin envelope.

19 ATTORNEY GAHN: I'm going to ask Detective
20 Wiegert if he would bring you Exhibit 334. And I'm
21 going to ask Mr. Fallon to bring you a photograph
22 that has been marked as Exhibit 294.

23 Q. And I ask you if Exhibit 294 is the photograph
24 that is depicted on the large screen?

25 A. Yes, it is.

1 Q. And can you identify what Exhibit 334 is?

2 A. It's my item designation A-12 and that was this
3 reddish-brown stain here that I sampled. It's on
4 the metal door frame between -- on the passenger
5 side, between the backseat and the cargo area.

6 Q. And did you conduct any presumptive tests on that
7 stain?

8 A. Yes, I did. I tested -- preliminary test for
9 blood and it was positive.

10 Q. And then what did you do?

11 A. I, again, sampled that in a clean cotton swab
12 with sterile water. And I took another portion
13 of the stain, I let it air dry. And that's what
14 I used for my DNA analysis.

15 ATTORNEY GAHN: I'm going to ask Detective
16 Wiegert to bring you Exhibit 336. And I'm going to
17 ask Mr. Fallon to bring you a photograph that has
18 been marked as Exhibit 291.

19 Q. And I ask you if Exhibit 291 is the photograph
20 that is depicted on the large screen?

21 A. Yes, it is.

22 Q. And will you identify for the jurors what exhibit
23 336 is?

24 A. It's my item designation A-8. And it was a
25 sample that I recovered from this reddish-brown

1 stain here, right by the ignition.

2 Q. Did you conduct a presumptive test for blood on
3 that stain?

4 A. Yes, I did, and it was positive.

5 Q. Then, after you conducted your presumptive test,
6 what did you do?

7 A. I sampled another portion of that stain on
8 another cotton swab and that's what I retained
9 for my DNA testing.

10 Q. And after you collected all these stains, then
11 what did you do with them?

12 A. I processed the car down in the garage area of
13 our laboratory. We have like a work space, a
14 work bench there. And that's where I had all of
15 my samples set up. When I was completed
16 processing the car, those were taken to my work
17 bench and the cotton swabs were put into small
18 coin envelopes to keep them until I began my
19 analysis on them.

20 Q. And when you say begin your analysis, are you
21 talking about the DNA testing procedures?

22 A. Yes, I am.

23 Q. In other words, you are going to begin those five
24 steps that you described to the jurors before
25 lunch?

1 A. Correct.

2 ATTORNEY GAHN: I would ask if Detective
3 Wiegert would bring you Exhibit 325. It's the Pap
4 smear of Teresa Halbach.

5 Q. Now, we have already identified that exhibit as
6 the Pap smear of Teresa Halbach; is that correct?

7 A. Yes.

8 Q. What is a Pap smear?

9 A. As I understand it, it is a sample of cells from
10 a woman's cervix. It is used for medical testing
11 to check for abnormal cells.

12 Q. And where would the DNA come from in a Pap smear?

13 A. As I stated earlier, any cell that -- any
14 nucleated cell is going to have DNA. So any of
15 the cells from the Pap smear, cervical area,
16 tissue cells, it will come from the nucleus of
17 those epithelial cells that are on that smear.

18 Q. Now, using the DNA technology that you described
19 before lunch time, did you develop a DNA profile
20 for Teresa Halbach, from that Pap smear?

21 A. Yes, I did.

22 Q. And I'm going to ask you, if according to your
23 reports, does the slide we will put up next
24 display your results?

25 A. Yes, it does.

1 Q. I would like you to take the laser pointer and at
2 this point explain to the jurors exactly what
3 they are looking at.

4 A. This series of numbers and letters on this side
5 are referred to as genetic markers. And all of
6 this information pinpoints where those genetic
7 markers are found throughout your DNA. Earlier I
8 talked about the target regions of DNA that are
9 amplified, and we make a whole lot of copies of
10 them.

11 This is what I was referring to. We
12 looked at 15 different target areas of DNA that
13 are amplified. These numbers on the right side
14 are the types at each one of those locations. So
15 for instance, at D3S1358, Teresa Halbach's type
16 is a 16 18.

17 Q. Are there other possible types at that genetic
18 location of D3S1358?

19 A. Yes.

20 Q. Do you know how many different types there are at
21 that location?

22 A. Not exactly, but probably something like 11 to
23 20.

24 Q. Can you compare, for the jurors, when you talk
25 about types, how these would be like ABO types?

1 A. These types are actually the different fragment
2 sizes, those different target sizes that we
3 amplified. The ABO system is a type of genetic
4 marker, but the discriminating power of ABO
5 systems, which is what we used many years ago, is
6 much less than the discriminating power of the
7 combined -- all of these combined types.

8 Q. Now, you previously testified that you collected
9 your swab A-1 from the rear cargo area --

10 A. Yes.

11 Q. -- of the RAV4; is that correct?

12 A. Yes.

13 Q. Can we go to the next one, please. And, again,
14 please show the jurors where you collected your
15 A-1 from.

16 A. In this area right here.

17 Q. And that was a blood stain that tested positive
18 in this presumptive test, correct?

19 A. Right.

20 Q. You also testified that you collected swab A-2
21 from across the panel of the rear cargo area.
22 Show the jurors, again, where that was.

23 A. Yes, that was right in this area here.

24 Q. And you also testified that you collected your
25 swab A-4 from the metal frame. Show the jurors

1 where that was.

2 A. Right along here.

3 Q. And you also testified that you collected A-3
4 from the cargo door itself; is that correct?

5 A. Yes.

6 Q. And can you show the jurors where that is?

7 A. Right here.

8 Q. And, again, all of these stains, you had a
9 presumptive positive test for blood?

10 A. That's correct.

11 Q. And you also testified that you collected a swab
12 from the Wild Cherry Pepsi can which you labeled
13 at A-14; is that correct?

14 A. Yes, right here.

15 Q. And, again, show the jurors. Thank you. Now,
16 did you develop DNA profiles from each of these
17 swabs?

18 A. Yes, I did.

19 Q. And according to the reports that you have, does
20 the following slide correctly depict your
21 results?

22 A. Yes, it does.

23 Q. And, again, would you explain to the jurors what
24 this slide shows.

25 A. Again, these are the genetic markers, these are

1 the 15 different markers we're looking at. And
2 these are the types that were developed from each
3 one of these evidence samples.

4 Q. And each one of those evidence samples came from
5 the RAV4 of Teresa Halbach, correct?

6 A. Correct.

7 Q. Now, can you tell whether this particular DNA
8 profile is from a male or a female?

9 A. Yes.

10 Q. How can you do that?

11 A. This marker here, referred to as amylogen, is a
12 gender marker. If you are female, you are only
13 going to have an X chromosome. If you are a
14 male, you will have a X and a Y chromosome.

15 Q. So this profile is from a female?

16 A. Correct.

17 Q. I notice that after genetic marker D7SA20 there
18 is an 11?

19 A. Correct.

20 Q. Why is there only one number there?

21 A. As I stated earlier, these genetic markers are
22 independently inherited, just like genes. So you
23 inherit 50 percent from your mom and 50 percent
24 from your dad. Now, the fact that this is an 11
25 means that she is a homozygote at this marker.

1 And that means she got the same type from her mom
2 and the same type from her dad. At D-3 there are
3 two markers. This is referred to as a
4 heterozygote. And she received one from her mom
5 and one from her dad.

6 Q. And this DNA profile that you developed from the
7 cuttings and the swabs from the RAV4, did you
8 compare that profile to the DNA profile that you
9 developed from Teresa Halbach's Pap smear?

10 A. Yes, I did.

11 Q. And according to your reports, does this slide
12 correctly display your findings?

13 A. Yes, sir, it does.

14 Q. Would you please point out to the jurors your
15 findings and conclusions?

16 A. Again, these are all the genetic markers. And
17 you can see that the types from the evidence
18 samples are consistent with the types from the
19 Pap smear of Teresa Halbach. So at this genetic
20 marker, the evidence sample is 16 18, Teresa is
21 16 18. At this marker it's 69.3, Teresa is a
22 69.3. And all of these markers are consistent
23 with the ones from Teresa Halbach.

24 Q. And did you calculate a statistic to determine
25 how rare or how common this particular DNA

1 profile would be in the population?

2 A. Yes, I did.

3 Q. And I'm going to show you a slide and ask you if
4 this correctly depicts the statistical analysis
5 that you performed?

6 A. Yes, it does.

7 Q. And would you explain to the jurors what this
8 slide means.

9 A. Remember earlier I said that we do a statistical
10 analysis when we have a match between an evidence
11 sample and a reference sample. If we have an
12 exclusion, we're finished, that's the end of it.
13 But if you have a match between an evidence
14 sample and a reference sample, then you have to
15 determine how common or how rare that match -- or
16 I mean that profile from the evidence sample is
17 in the population.

18 This first number here tells me that the
19 probability of finding someone in the Caucasian
20 population, some unrelated, random person that
21 has the same profile as the evidence sample, the
22 probability of that is 1 person in 416
23 quadrillion in the Caucasian population, 1 person
24 in 642 quadrillion in the African-American
25 population, 1 person in 641 quadrillion in the

1 southeastern Hispanic population, and 1 person in
2 1 quintillion in the southwestern Hispanic
3 population.

4 Q. And why do you look at these different
5 populations when you are estimating the frequency
6 of these genetic markers?

7 A. When we are calculating and estimating these
8 frequencies, we use a data base that's maintained
9 by the FBI. And that data base has samples from
10 individuals in these four different population
11 groups. This slide illustrates that even though
12 the rarity of the profile is different, in these
13 four population groups, there's not a lot of
14 difference between population groups. There are
15 some differences, but this profile is extremely
16 rare across all four populations.

17 Q. What does this number -- What do these numbers
18 mean, Ms Culhane?

19 A. This number means that the probability of finding
20 a person, random person, unrelated, in the
21 population, that has the same profile as the
22 evidence sample, is 1 person in 416 quadrillion.

23 Q. Do you have an opinion, to a reasonable degree of
24 scientific certainty, whether Teresa Halbach is
25 the source of the blood that you found on A-1,

1 A-2, A-3 and A-4, and the source of the
2 biological fluid on the Wild Cherry Pepsi can?

3 A. Yes, I do.

4 Q. And what is that opinion?

5 A. That Teresa Halbach is the source of the DNA from
6 those items.

7 ATTORNEY GAHN: I'm going to ask Detective
8 Wiegert to bring you what has been marked as Exhibit
9 337.

10 Q. Again, I have spoken with defense counsel before
11 we began this afternoon and, Ms Culhane, does
12 that container, which is Exhibit 337, contain
13 some charred remains that you examined in this
14 case?

15 A. Yes, it does.

16 Q. And did you assign a Crime Lab designation number
17 to that?

18 A. Yes, I did.

19 Q. What is that?

20 A. Item BZ.

21 Q. And I'm going to ask you to look on the slide on
22 the big screen. And what is contained in that
23 box there in front of you, which is Exhibit 337,
24 is this the piece of charred remains that you
25 examined?

1 A. Yes, it is.

2 Q. And when did you receive this; do you know?

3 A. I can refer to my notes.

4 Q. Please.

5 THE COURT: Do we have a number for the
6 photo exhibit?

7 ATTORNEY GAHN: Your Honor, we don't have
8 that with us, but you will get one.

9 A. Item BZ was taken into the laboratory on November
10 11th, 2005.

11 Q. And was this -- When you examined this, was this
12 a combination of bone and tissue?

13 A. It appeared to be, yes.

14 Q. And what is shown on the big screen here, which
15 we will later get an exhibit for and mark it, is
16 that the bone and tissue fragment sample that you
17 examined?

18 A. Yes, it is.

19 Q. How did you go about processing this for DNA?

20 A. Because this sample was compromised, it had been
21 subjected to -- appeared to be subjected to
22 intense heat, I needed to find an area that I
23 felt was the least damaged. So I chose a portion
24 of the tissue, which I believe was in this area
25 here, close to the bone. And sampled a portion

1 of that to continue my extractions and to
2 continue my typing.

3 Q. Were you able to develop a DNA profile from this
4 piece of charred remains?

5 A. Yes, I was.

6 Q. And according to your reports, does the next
7 slide correctly display your findings of your
8 test?

9 A. Yes, it does.

10 Q. Would you explain to the jurors what this is.

11 A. Again, these are the genetic markers that we're
12 looking at. And these are the types. You will
13 notice here there are no numbers at these
14 positions, these markers. And the reason is
15 because this was a fairly degraded sample of DNA.
16 DNA is a very stable molecule; however, it breaks
17 down and is degraded and broken up into pieces by
18 several things, heat being one, sunlight,
19 nucleases in the environment that chew it up.

20 But this was obviously a sample that had
21 been subjected to intense heat. And so,
22 therefore, on these fragments, these STR markers,
23 which are fairly large, the fragments -- there
24 was not enough DNA at those positions to develop
25 a type.

1 Q. Did you compare this partial profile with the DNA
2 profile that you obtained from the Pap smear of
3 Teresa Halbach?

4 A. Yes, I did.

5 Q. And does this slide accurately depict your
6 findings?

7 A. Yes.

8 Q. And would you please explain what your findings
9 were, to the jury?

10 A. In the -- At the marker positions where I did get
11 results, these types are consistent with Teresa.
12 Obviously, I don't know what the types are here
13 because there were no results. But for
14 everything else, all the types that I actually
15 developed, they were consistent with Teresa
16 Halbach.

17 Q. Now, you stated previously, when you made your
18 comparisons to Teresa Halbach's DNA profile with
19 the samples of blood that you found in the RAV4,
20 you were able to determine that Teresa Halbach
21 was the source of that blood; is that correct?

22 A. Yes.

23 Q. Can you say that in this case?

24 A. No.

25 Q. Why not?

1 A. This was a partial profile. When we have a
2 partial profile, we can only do a statistical
3 interpretation on the markers that we have
4 results for. In order to get very large numbers
5 and very rare profiles, what gives us those large
6 numbers is results, at all 15 different markers.
7 When we have less than that, then the frequency
8 of that profile becomes a little more common than
9 it would if it was a complete profile.

10 Q. Were you able to develop a statistic to tell you
11 how rare or how common the DNA profile on Item
12 BZ, the charred remains, would be in the
13 population?

14 A. Yes, I was.

15 Q. And does the next slide depict the frequency in
16 the population of the DNA profile on the charred
17 remains?

18 A. Yes.

19 Q. And would you explain to the jury these numbers
20 and what they mean.

21 A. This calculation was done exactly like the
22 calculation from the blood stains. The
23 difference is, this was not a full profile, it
24 was only a partial profile. So if you do a
25 statistical analysis of the types that you got,

1 and calculated the frequency of those types, the
2 probability of another random, unrelated person,
3 in the population, having the profile, the
4 partial profile of the remains, is 1 person in
5 1 billion in the Caucasian population, 1 person
6 in 2 billion in the African/American population,
7 1 person in 2 billion in the southeastern
8 Hispanic population; and 1 person in 3 billion in
9 the southwestern Hispanic population.

10 Q. And, again, can you break this down for the
11 jurors, exactly what that number, one billion,
12 would mean, as it relates to this DNA profile
13 from the charred remains?

14 A. That is the frequency that that partial profile,
15 those results at just the markers that I got
16 results from, the frequency of that partial
17 profile, that is the frequency that it occurs in
18 the population.

19 Q. Are there a billion people in the State of
20 Wisconsin?

21 A. I don't believe so.

22 ATTORNEY GAHN: Your Honor, I have now what
23 has been a photograph that has been marked as
24 Exhibit 338. I will ask Mr. Fallon if he will give
25 that to Ms Culhane.

1 Q. And Ms Culhane, would you look at that
2 photograph, and is that a photograph of the piece
3 of charred remains that we previously put up on
4 the large screen.

5 A. Yes, it is.

6 ATTORNEY GAHN: I would ask if Detective
7 Wiegert would bring you Exhibit 237 -- I'm sorry,
8 277. This would be the bullet fragment.

9 Q. And can you identify that exhibit that's in front
10 of you, Ms Culhane?

11 A. Yes, this is Crime Lab item designation FL. And
12 it is a lead bullet fragment. My initials and
13 markings are on the packaging.

14 Q. And can you tell when you received that exhibit?

15 A. That came into the laboratory on May 16 -- I'm
16 sorry, March 16th, 2006, and I took custody on
17 March 28th, 2006.

18 Q. And how did you process that bullet?

19 A. The first thing I did was, just like every item
20 of evidence, it was a visual examination. There
21 was nothing visual on the fragment. There didn't
22 appear to be any stain. So in order to remove
23 any residual DNA that might have been on the
24 bullet, I washed it. I put it in a test tube and
25 washed it with some buffer that we use to extract

1 the DNA. And the washing of that bullet, the
2 washing liquid is what I performed the rest of my
3 procedure on.

4 Q. And were you able to develop a DNA profile from
5 that washing on Item FL, the bullet?

6 A. Yes.

7 Q. And according to your reports, does the next
8 slide correctly display your findings?

9 A. Yes, it does.

10 Q. And would you please explain your results to the
11 jurors?

12 A. Again, I was looking at all of these. These are
13 the different markers. And these are the types
14 at each one of these markers. You will notice at
15 D-16 and at TPOX I am -- there's an asterisk
16 there. That indicates that there was a visible
17 peak there which represents a type. But it was
18 below our parameters for including that in the
19 final analysis. So it -- I'm missing a peak here
20 and a peak at TPOX.

21 Q. And did you compare this profile that you
22 obtained from the bullet fragment with the DNA
23 profile you obtained from the Pap smear of Teresa
24 Halbach?

25 A. Yes, I did.

1 Q. And according to your reports, does this slide
2 correctly display your findings?

3 A. Yes, it does.

4 Q. And would you explain them to the jury.

5 A. The profile from the bullet is consistent with
6 all of the types from Teresa Halbach. You will
7 notice at D16 she's missing the 13 type, and at
8 TPOX she is missing the 10 type. And, again,
9 those peaks were visible, but they were below our
10 threshold for calling those types.

11 Q. Did that have any impact on your match criteria
12 in this interpretation?

13 A. The impact is that I cannot use the information,
14 the frequencies at this marker, and at this
15 marker, to figure out my final frequency. In
16 other words, I had to calculate the frequencies
17 at all of the other markers except D16 and TPOX.

18 Q. But nothing about those two asterisks that you
19 have on your -- on the chart here excluded Teresa
20 Halbach as being on the bullet?

21 A. That's correct.

22 Q. Did this match differ in any way from the
23 previous matches that you called?

24 A. Yes, it did.

25 Q. And could you explain to the jury what happened.

1 A. During the extraction of this item of evidence,
2 as I talked about earlier, we set up controls
3 that we run with all of our samples. When we
4 begin an extraction, whether it is an evidence
5 sample or a reference sample, when we begin the
6 extraction, we begin what's called a manipulation
7 control. And it's, basically, a negative blank
8 control. And it helps us monitor if any
9 unintentional DNA is introduced into the sample
10 or into the process.

11 In this particular case, there was a
12 trace amount of -- a trace amount of DNA showed
13 up in the quantitation portion where I had to
14 quantitate and find out how much DNA I had.
15 There was a trace amount of DNA in the negative
16 control. I took the profile to completion and I
17 developed the profile on it. And the profile in
18 the negative control turned out to be consistent
19 with my own DNA type.

20 Q. What did that mean?

21 A. That means that during the extraction procedure I
22 inadvertently introduced my own DNA into the
23 negative control.

24 Q. Did that have any impact on your interpretation
25 of your results?

1 A. It did not have any impact as far as the profile
2 from the evidence sample. It's just the fact
3 that I introduced my own DNA into the
4 manipulation control.

5 Q. Were there any other profiles developed on the
6 bullet besides Teresa Halbach?

7 A. No.

8 Q. Was Teresa Halbach's profile the only profile
9 that you found on that bullet?

10 A. Yes.

11 Q. Were there any mixtures?

12 A. No.

13 Q. And your profile was found where?

14 A. In the negative control, which should have had
15 just reagents in it. It should not have had any
16 DNA at all in it.

17 Q. And how do you think your DNA profile got into
18 that control?

19 A. I believe my DNA profile was introduced during
20 the extraction procedure when I was talking. At
21 the time when I was setting up these samples, I
22 was training two analysts, newer analysts, in the
23 lab. And they were watching me. This sample was
24 not an average sample, simply because we handled
25 it a little different. It wasn't a swabbing and

1 it wasn't a cutting. The washing part of it was
2 a little bit different than what we usually do.

3 So I was explaining to them what I was
4 doing and as I was setting it up. And
5 apparently -- I felt as if I was far enough away
6 from my workbench not to introduce my DNA, but
7 apparently I was incorrect.

8 Q. Now, your DNA did not come up on the bullet, did
9 it?

10 A. No.

11 Q. It only was in the control?

12 A. That's correct.

13 Q. Do you have an opinion, to a reasonable degree of
14 scientific certainty, whether Teresa Halbach is
15 the source of the DNA on Item FL, the bullet?

16 A. Yes.

17 Q. And what is that opinion?

18 A. I believe she is the source of the DNA on that
19 bullet.

20 ATTORNEY GAHN: I would ask if Detective
21 Wiegert would, please, bring to Ms Culhane what's
22 been marked as Exhibit 324, and this would be the
23 buccal swab of Steven Avery.

24 Your Honor, before I go any further, I
25 think we have some considerable more testimony

1 for the rest of these samples. Would you like to
2 break now?

3 THE COURT: I think we'll go another 15
4 minutes to kind of split the afternoon equally in
5 two.

6 ATTORNEY GAHN: Okay.

7 Q. (By Attorney Gahn)~ Detective Wiegert has brought
8 you what has been marked as Exhibit 324, and that
9 is what you identified as the buccal swab of
10 Steven Avery?

11 A. Yes.

12 Q. And once again, that's what's called a standard,
13 correct?

14 A. Correct.

15 Q. And what are standards used for?

16 A. As reference samples to compare to the evidence
17 samples.

18 Q. Using the DNA testing procedures that you
19 described this morning, did you develop a DNA
20 profile from the buccal swab of Steven Avery?

21 A. Yes, I did.

22 Q. And does the next slide correctly depict the DNA
23 profile that you developed from Steven Avery's
24 buccal swab?

25 A. Yes, it does.

1 Q. And would you describe for the jurors your
2 findings?

3 A. These are the same genetic markers that I
4 examined when I looked at the evidence samples
5 and the standard from Teresa Halbach. And,
6 again, at each one of these markers, Steven
7 Avery's sample had a specific type. The
8 amelogenin marker is XY, which is different from
9 Teresa because this is a male individual. And he
10 has the X and Y chromosome.

11 Q. We heard testimony yesterday that a number of
12 swabs were taken from the garage floor of Steven
13 Avery. And did you receive, at the Crime Lab,
14 swabs that were taken from the garage floor of
15 Steven Avery's garage?

16 A. Yes, I did.

17 Q. And did you assign Crime Lab designation numbers
18 G, I1, J, K, O, and P to six of the swabs from
19 the stains on the garage floor of Steven Avery's
20 garage?

21 A. Yes, I did.

22 Q. And did you test those swabs from Steven Avery's
23 garage floor --

24 A. Yes.

25 Q. -- for a DNA profile? And did you obtain a DNA

1 profile?

2 A. Yes, I did.

3 Q. And does the next slide correctly show the DNA
4 profile that you obtained from the six swabs of
5 blood from the garage floor?

6 A. Yes, it does. And, again, you can see that the
7 types are consistent throughout all of the
8 markers that we looked at.

9 Q. Now, did you receive other items? We have had
10 testimony in this case that blood stains from the
11 sink or the vanity in the residence of Steven
12 Avery were taken and sent to the Crime Lab; do
13 you recall that?

14 A. Yes.

15 Q. And do you recall submitting those to DNA
16 testing?

17 A. Yes.

18 Q. And did you develop a profile from those
19 submissions?

20 A. Yes, I did.

21 Q. And what was the profile you developed?

22 A. It was consistent with Steven Avery's profile.

23 Q. And I'm going to show you the next slide. And
24 this has been identified as the Grand Am, the
25 1993 Grand Am owned by Steven Avery. Did you

1 also examine this at your Crime Lab?

2 A. Yes, I did.

3 Q. And on the next slide, can you point out to the
4 jurors, did you locate any bloodstains in that
5 vehicle?

6 A. Yes, there were bloodstains on the gear shaft
7 here and along the console.

8 Q. And did you do presumptive tests on those
9 bloodstains?

10 A. Yes, I did.

11 Q. And did you eventually do DNA testing on those
12 bloodstains?

13 A. Yes.

14 Q. And what were your results?

15 A. The types were consistent with Steven Avery.

16 Q. We had testimony a few days ago that there was a
17 swab taken of the release lever of the hood latch
18 of Teresa Halbach's RAV4. That was identified as
19 Exhibit 205.

20 ATTORNEY GAHN: Will you find that exhibit,
21 please, Detective Wiegert.

22 Q. Can you identify that exhibit, Ms Culhane?

23 A. Yes, this is our item designation ID, and it has
24 our laboratory bar code item designation and my
25 initial and date on it.

1 Q. And that contains a swab from the hood latch of
2 Teresa Halbach's RAV4?

3 A. Yes.

4 Q. And did you perform DNA testing on that hood
5 latch --

6 A. Yes.

7 Q. -- swab? Do you recall, when you looked at the
8 swab, did you notice any condition to it, as far
9 as color?

10 A. It was discolored, but it did not have the
11 appearance -- it was not a reddish-brown
12 discoloration consistent with blood.

13 Q. So it did not appear to have blood on the swab?

14 A. Correct.

15 Q. But you proceeded with DNA testing on the swab,
16 nevertheless?

17 A. Yes.

18 Q. And did you develop a profile from the swab of
19 the hood latch of Teresa Halbach's RAV4?

20 A. Yes, I did.

21 Q. And I'm going to show you the next slide and ask
22 you, do your notes and your records reflect these
23 as your findings?

24 A. Yes, they do.

25 Q. Could you explain what your findings were to the

1 jury.

2 A. Looking at the same genetic markers, these are
3 the types that were developed from the swab that
4 was reportedly taken from the hood latch of the
5 RAV4.

6 Q. And this is what you would call a full profile;
7 is that correct?

8 A. Yes.

9 Q. What does that mean when you say it is a full,
10 complete profile?

11 A. A full profile indicates that you have gotten
12 results at all 15 different markers that we look
13 at. If this was a partial profile, such as in
14 the charred remains, I would be missing types at
15 some of these markers.

16 Q. Did you compare this profile that you found on
17 the swab of the hood latch of Teresa Halbach's
18 RAV4 with the DNA profile that you developed from
19 the buccal swab of Steven Avery?

20 A. Yes, I did.

21 Q. And does this next slide correctly display your
22 findings?

23 A. Yes, it does.

24 Q. And would you please describe your findings to
25 the jurors?

1 A. At each one of the markers, the types from the
2 swabbing on the hood latch were consistent with
3 the types from Steven Avery's buccal swab. If
4 you look at all the numbers for all of the
5 markers, they are consistent with the entire
6 profile.

7 Q. Now, you testified before that you received a
8 number of standards at the Crime Lab, did you?

9 A. Yes.

10 Q. In other words, you received buccal swabs from
11 Allen Avery, Brian Dassey, Brendan Dassey, Barb
12 Janda, Bobby Dassey, Earl Avery, Chuck Avery and
13 Delores; is that correct?

14 A. Yes.

15 THE COURT: Mr. Gahn, excuse me, after you
16 wrap up this portion of the hood latch, I think
17 we'll take our break.

18 ATTORNEY GAHN: Yes, your Honor. Fine.
19 Thank you.

20 Q. (By Attorney Gahn)~ Did you develop DNA profiles
21 from all those standards of reference samples?

22 A. Yes, I did.

23 Q. When you would come up with a profile from an
24 evidentiary item like the hood latch, did you
25 compare the profile from the hood latch with all

1 the other standards?

2 A. Yes, I did.

3 Q. And what were the results?

4 A. They were inconsistent. The profile from the
5 hood latch was not consistent with any of the
6 other standards that I examined.

7 Q. But the profile from the hood latch matches
8 Steven Avery?

9 A. That's correct.

10 Q. And do you have an opinion, to a reasonable
11 degree of scientific certainty, whether the DNA
12 profile that you developed from the swab of the
13 hood latch of Teresa Halbach's RAV4, that Steven
14 Avery is the source of that profile?

15 A. Yes.

16 Q. And what is that opinion?

17 A. That he is the source of that profile.

18 ATTORNEY GAHN: Thank you.

19 THE COURT: All right. Thank you. Members
20 of the jury, we're going to take our afternoon break
21 at this time. We'll resume a little before 3:00. I
22 will remind you, again, not to discuss the case at
23 any time during the break.

24 (Jury not present.)

25 THE COURT: Counsel, let's report back a

1 little before 3:00.

2 (Recess taken.)

3 THE COURT: Counsel, before we bring the
4 jury back in, I just wanted to get some idea of the
5 agenda for the rest of the day. Mr. Gahn, how long
6 do you think you will be with direct?

7 ATTORNEY GAHN: I think at least a half
8 hour, possibly 40, 45 minutes. But I don't think
9 not before a half hour, I don't believe.

10 THE COURT: All right. And, Mr. Buting, I
11 take it you may well not complete your
12 cross-examination, but you wish to get started?

13 ATTORNEY BUTING: I wouldn't even come
14 close to completing the examination. Normally, I
15 guess I wouldn't mind starting and finishing it if
16 it was the next day, but I think with a whole break
17 of a weekend, it might be easier, if the Court
18 didn't mind ending a little early today, if we would
19 just start fresh with cross on Monday morning.

20 THE COURT: Okay. Before I answer that,
21 does the State have any shorter, quicker witnesses.

22 ATTORNEY KRATZ: I'm finding out right now,
23 Judge. We have some examination with Mrs. Halbach,
24 Karen Halbach, that we would be happy to put in
25 today.

1 ATTORNEY BUTING: Could we approach for a
2 moment, please.

3 THE COURT: Go ahead.

4 (Side bar taken.)

5 THE COURT: All right. Before we go back,
6 I should announce we just had a side bar conference
7 and I think the feeling is that if the direct
8 examination ends a little early today, we'll
9 probably simply let the jury go home a little early.

10 There was a side bar earlier this
11 morning where counsel asked the Court if the
12 other jurors knew why one of the jurors was
13 missing today. And the answer to that is, yes,
14 they learned that this morning when they were
15 leaving on the bus. And that was the purpose for
16 that brief side bar we had earlier today. All
17 right. At this point we'll bring in the jury.

18 (Jury present.)

19 THE COURT: You may be seated. And,
20 Mr. Gahn, you may resume your direct examination of
21 the witness.

22 ATTORNEY GAHN: Thank you, your Honor.

23 **DIRECT EXAMINATION CONTD.**

24 ATTORNEY GAHN: I would ask if Detective
25 Wiegert could retrieve Exhibit 211, which is the

1 Toyota key. Please take that to Ms Culhane.

2 BY ATTORNEY GAHN:

3 Q. We have presented you with an exhibit that has
4 previously been marked as Exhibit 211, and
5 previously identified as a Toyota key that was
6 found in Steven Avery's residence. And I ask
7 you, do you recognize that key?

8 A. Yes, I do.

9 Q. And how do you recognize that key?

10 A. It's the Toyota key that I examined. There was a
11 -- This is the same keyring that it was attached
12 to.

13 Q. We also have, on the next slide, a photograph
14 that -- is that key that you have in front of
15 you, Exhibit 211, the key that is in this
16 photograph?

17 A. Yes, it is.

18 Q. There is also another item in that photograph,
19 and does that help you identify the key?

20 A. Yes, it does.

21 Q. And, please, explain that to the jury.

22 A. This is the packaging that the key was brought to
23 the laboratory in. Again, this is our bar code
24 tracking system in the laboratory. And this is
25 our item designation C, and my initials, and the

1 date.

2 Q. I'm going to show you what has been marked as
3 Exhibit 316 and ask you if this photograph, which
4 you are being shown, is the photograph that is
5 depicted on the large screen?

6 A. Yes, it is.

7 Q. And now, I would like to go to the next slide.
8 And this is a slide of the key that you have in
9 front of you; is that correct?

10 A. It appears to be, yes.

11 Q. When you received this key, how did you process
12 it, Ms Culhane?

13 A. I received the key. It was in a sealed brown
14 paper bag. I opened it up. I had gloves on.
15 And I held the metal part of the key in one hand
16 and I swabbed the black -- I should show you up
17 here -- this black rubberized part of the key,
18 with a sterile cotton swab. And I did it in very
19 much the same way that I swabbed the Pepsi can
20 that we looked at earlier.

21 At this point, there were no visible
22 indications of any staining, so I was primarily
23 interested to see if I could recover DNA that had
24 been left behind by possibly touching. So I
25 swabbed all of the surfaces, the front and back,

1 and the edges of the key, and that's what I did
2 my analysis on.

3 Q. After you did the swabbing of the key, did you do
4 anything else with the key?

5 A. Yes, I did.

6 Q. Please explain to the jurors what you do with the
7 key.

8 A. I took the key to see if it fit the vehicle. So
9 I put the key into the ignition. I still had, of
10 course, gloves on, during this entire process. I
11 put the key into the ignition and turned the
12 ignition. It did turn the ignition, but it did
13 not crank the car. And I later learned that that
14 was because, I believe, the battery had been
15 disconnected. But it did actually turn
16 completely over. I also locked, I believe it was
17 the front driver's side door, and used the key to
18 unlock the door.

19 Q. The buccal swab that you took of this key, did
20 you submit that to DNA testing?

21 A. Yes, I did.

22 Q. And were you able to develop a profile from the
23 swabbing of Item C, the key to Teresa Halbach's
24 car?

25 A. Yes.

1 Q. And does this slide clearly and correctly show
2 your findings?

3 A. Yes, it does.

4 Q. Would you explain to the jury your findings.

5 A. Again, we looked at the same 15 markers. And at
6 each one of these markers I developed a type.
7 And that is the profile that characterizes the
8 swabbing that I took from the key.

9 Q. And, again, this profile that you developed from
10 the key, is that a profile that came from a male
11 individual?

12 A. Yes, it is. And that's -- We have an X and a Y
13 chromosome which indicate the male individual.

14 Q. And did you compare the profile that you
15 developed from your swabbing of this key with the
16 DNA profile that you developed from the buccal
17 swab of Steven Avery?

18 A. Yes, I did.

19 Q. And does this next slide correctly show your
20 findings?

21 A. Yes, it does.

22 Q. And, again, would you explain your findings to
23 the jury.

24 A. The same 15 markers, these are the types at each
25 one of these markers. And you can see at every

1 type, the type from the evidence -- or the
2 profile from the evidence sample is consistent
3 with the profile from Steven Avery.

4 Q. And, again, Ms Culhane, the profile that you
5 developed from Item C, the key, is that what you
6 refer to as a full, complete DNA profile?

7 A. Yes.

8 Q. And why is that, again?

9 A. Because we have types at each one of these
10 markers. There are types present at each one of
11 the markers.

12 Q. And, again, did you compare this profile with the
13 DNA profiles that you developed from all the
14 standards that were submitted in this case?

15 A. Yes, I did.

16 Q. In other words, did you compare the DNA profile
17 that you found on Item C with the DNA profile
18 from the buccal swab of Allen Avery?

19 A. Yes.

20 Q. And Brian Dassey?

21 A. Yes.

22 Q. And Brendan Dassey?

23 A. Yes.

24 Q. And Barb Janda?

25 A. Yes.

1 Q. And Bobby Dassey?

2 A. Yes.

3 Q. And Earl Avery?

4 A. Yes.

5 Q. And Chuck Avery?

6 A. Yes.

7 Q. And Delores Avery?

8 A. Yes, I did.

9 Q. And did the DNA profile that you developed from
10 Item C, the key, match any of those standards?

11 A. No, it did not.

12 ATTORNEY GAHN: At this time, I'm going to
13 ask Detective Wiegert if he can, please, retrieve
14 for me the photograph of the RAV4 -- I'm looking for
15 the photograph, I'll give you a exhibit number in
16 just one second -- Exhibit 290, 294, 291, and 292,
17 please.

18 Q. Ms Culhane, would you find Exhibit 290.

19 A. 290?

20 Q. 290.

21 A. No, I have 291, 292 and 294.

22 Q. Do you have that?

23 A. Yes, I do.

24 Q. And I apologize for the delay here. Is that
25 photograph depicted on the large screen here?

1 A. Yes, it is.

2 Q. Now, you previously testified that you took
3 cuttings which you identified as Item A-6 from
4 the RAV4?

5 A. Correct.

6 Q. Can you show the jurors where it was you took the
7 cuttings?

8 A. In the front driver's seat, right about here.

9 Q. And those were the cuttings of a stain that you
10 had tested for blood with the presumptive test?

11 A. Yes.

12 Q. And I also believe that you testified earlier
13 that you collected your Item No. A-7 from the
14 center console area of the RAV for, would you
15 point that out to where that was for the jurors.

16 A. Right along the floor here by the console.

17 Q. Okay. And did you perform DNA testing on those
18 two evidentiary samples?

19 A. Yes, I did.

20 Q. And did you develop a DNA profile for the blood
21 stain on Item A-6?

22 A. Yes, I did.

23 Q. And according to your reports, does the next
24 slide correctly depict the DNA findings?

25 A. Yes, it does.

1 Q. And, again, would you explain those to the
2 jurors.

3 A. Again, these are the same 15 markers and these
4 are the types at each one of these markers that
5 were developed from the cutting of the stain in
6 the driver's seat of the RAV4.

7 Q. And, again, is this what you consider to be a
8 complete full DNA profile?

9 A. Yes.

10 Q. And did you also compare this profile to the DNA
11 profile that you developed from the buccal swab
12 of Steven Avery?

13 A. Yes, I did.

14 Q. And does this slide correctly display your
15 findings?

16 A. Yes, it does.

17 Q. And would you explain your findings to the jury?

18 A. Again, this is the profile developed from the
19 evidence sample. You can tell it's from a male
20 individual. All of the types are consistent with
21 each one of the types, at each marker, from the
22 reference standard of Steven Avery.

23 Q. And the DNA profile that you found in Item A-6,
24 the bloodstain, did you compare that to the other
25 standards that you received at the lab?

1 A. Yes, I did.

2 Q. And how did this profile compare to the other
3 standards?

4 A. It was not consistent with any of the other
5 standards that I examined.

6 Q. It was only consistent with the DNA profile of
7 Mr. Steven Avery?

8 A. That's correct.

9 Q. Did you develop a DNA profile from your Item No.
10 A-7, which were the blood crusts by the center
11 console?

12 A. Yes.

13 Q. And does the following slide show your findings?

14 A. Yes, it does.

15 Q. And would you explain those to the jurors.

16 A. Again, at each genetic marker, these are the
17 types. At D-5, this asterisk here indicates that
18 there was a peak there, a visible peak, but it
19 was below the parameters of our system. So that
20 would not be included in the statistical
21 interpretation of this sample -- of this profile.

22 Q. Now, that's only not included in the statistical
23 analysis, correct?

24 A. Correct.

25 Q. Now, the fact that that asterisk was there, did

1 not have any impact in your interpretation of
2 this profile as it compared to Steven Avery, did
3 it?

4 A. No.

5 Q. And did you compare this profile to Steven
6 Avery's profile?

7 A. Yes, I did.

8 Q. And does this slide correctly show your findings?

9 A. Yes, it does. And, again, you can see that the
10 profile is consistent with Steven Avery at every
11 genetic marker.

12 Q. Do you have an opinion, to a reasonable degree of
13 scientific certainty, whether Steven Avery is the
14 source of the blood stain on Item A-6, which was
15 the stain found on the driver's passenger seat?

16 A. Yes, I do.

17 Q. And what is that opinion?

18 A. That Steven Avery is the source of that profile.

19 Q. And do you have an opinion, to a reasonable
20 degree of scientific certainty, whether Steven
21 Avery is the source of the DNA profile that you
22 found on Item A-7, the blood crusts by the center
23 console?

24 A. Yes, I do.

25 Q. And what is that opinion?

1 A. That Steven Avery is consistent with that
2 profile.

3 Q. Do you have Exhibit 293 in front of you?

4 A. No, I'm sorry, I don't.

5 Q. I'm sorry. Do you have that now?

6 A. Yes.

7 Q. Is that photograph the same photograph that is up
8 on the big screen?

9 A. Yes, it is.

10 Q. Now, you previously testified that you collected
11 a cutting which you identified as Item A-9 of a
12 bloodstain from the front passenger seat of
13 Teresa Halbach's RAV4. Can you show the jurors
14 where that cutting was, once more.

15 A. Yes, right in this area here.

16 Q. And did you perform a DNA test on that cutting?

17 A. Yes, I did.

18 Q. And according to your reports, does the following
19 slide correctly display your results?

20 A. Yes, it does.

21 Q. Could you explain them to the jurors.

22 A. These are the exact same markers that we looked
23 at in each sample. And, again, there are types
24 at each one of these markers, and XY depicting a
25 male individual.

1 Q. And, again, is this what you call a complete full
2 profile?

3 A. Yes, it is.

4 Q. And did you compare the profile that you
5 developed from the bloodstain from the front
6 passenger seat of Teresa Halbach's car with the
7 DNA profile that you obtained from the buccal
8 swab of Steven Avery?

9 A. Yes, I did.

10 Q. And does this next slide show your findings?

11 A. Yes, it does.

12 Q. And would you explain them to the jury, too,
13 please.

14 A. This is the profile developed from the cutting in
15 the passenger -- the front passenger seat. And
16 this is the profile from Steven Avery's buccal
17 swab. And you can see it's consistent at all of
18 the 15 genetic markers.

19 Q. Do you have an opinion, to a reasonable degree of
20 scientific certainty, whether Steven Avery is the
21 source of the bloodstain that was found on Item 9
22 on the front passenger seat of Teresa Halbach's
23 RAV4?

24 A. Yes, I do.

25 Q. And what is that opinion?

1 A. That Steven Avery is the source of that stain,
2 A-9.

3 Q. All right. Now, you also previously testified
4 that you collected the swab from what was Item
5 A-10, that is the CD case that was on the front
6 seat of Teresa Halbach's car, correct?

7 A. Yes.

8 Q. And did you develop a DNA profile from the blood
9 stain on the CD case?

10 A. Yes, I did.

11 Q. And does the next slide correctly show your
12 findings?

13 A. Yes, it does.

14 Q. Did you compare this profile with the profile
15 that you developed from the buccal swab of Steven
16 Avery?

17 A. Yes, I did.

18 Q. And does this next slide correctly show your
19 findings according to your reports?

20 A. Yes, it does. Again, you can see all of the
21 types are exactly the same through all the
22 genetic markers.

23 Q. And do you have an opinion, to a reasonable
24 degree of scientific certainty, whether Steven
25 Avery is the source of the blood that you found

1 on the CD case in Teresa Halbach's SUV?

2 A. Yes, I believe he is the source of the blood
3 stain, Item A-10.

4 Q. Ms Culhane, do you have Exhibit 294 in front of
5 you?

6 A. Yes, I do.

7 Q. And does that photograph -- is that depicted on
8 the large screen here?

9 A. Yes, it is.

10 Q. Now, you previously testified that you collected
11 a bloodstain from the paneling of the rear
12 passenger door. And would you point out to the
13 jurors, one more time, where that bloodstain was?

14 A. This area right here.

15 Q. Yes. And you designated that as Crime Lab
16 designation Item A-12; is that correct?

17 A. Yes.

18 Q. And did you perform DNA testing on Item A-12?

19 A. Yes, I did.

20 Q. And did you develop a DNA profile from the
21 testing of that bloodstain?

22 A. Yes, I did.

23 Q. And does the next slide correctly show your
24 findings?

25 A. Yes, it does.

1 Q. And, again, did you compare the profile, the DNA
2 profile that you developed from the bloodstain on
3 the rear passenger door of Teresa Halbach's RAV4,
4 with the DNA profile that you obtained from the
5 buccal swab of Steven Avery?

6 A. Yes, I did.

7 Q. And does this slide correctly show your findings?

8 A. Yes, it does. And, again, you can see, at each
9 one of the markers, the types are consistent.

10 Q. I would ask you if you have in front of you
11 Exhibit 291.

12 A. Yes, I do.

13 Q. And is that photograph shown on the big screen
14 now?

15 A. Yes, it is.

16 Q. Now, you previously testified that you collected
17 this bloodstain on the dashboard of Teresa
18 Halbach's RAV4, by the ignition switch; is that
19 correct?

20 A. Yes.

21 Q. And this -- you did a presumptive test for blood
22 on that stain?

23 A. Yes, I did.

24 Q. And did you perform DNA testing on this
25 bloodstain in Teresa Halbach's vehicle?

1 A. Yes.

2 Q. And did you develop a DNA profile from that
3 bloodstain?

4 A. Yes, I did.

5 Q. And does this next slide correctly show your
6 findings?

7 A. Yes, it does.

8 Q. And did you compare the DNA profile from that
9 bloodstain with the DNA profile of Steven Avery?

10 A. Yes, I did.

11 Q. And does this next slide show your results?

12 A. Yes, it does.

13 Q. And, again, would you explain what those were to
14 the jury.

15 A. This is the profile from A-8, which is the stain
16 by the ignition. And this is the profile from
17 Steven Avery's buccal swab. And you can see at
18 each one of the markers, the types are
19 consistent.

20 Q. And, once again, is this what you consider a full
21 complete DNA profile?

22 A. Yes, it is.

23 Q. And the DNA profile that you developed from Item
24 A-8, the blood stain found near the ignition of
25 Teresa Halbach's SUV, did you compare that

1 profile with the profiles that you developed from
2 all the other standards in this case?

3 A. Yes, I did.

4 Q. And what were your results?

5 A. It was not consistent with any of the other
6 standards.

7 Q. It was only consistent with the DNA profile of
8 Steven Avery?

9 A. Correct.

10 Q. Did you arrive at a statistical number for this
11 profile that would reflect how often, or how
12 rare, or how common, this profile would be in the
13 population?

14 A. Yes, I did.

15 Q. And I would ask if this slide correctly displays
16 that statistic?

17 A. Yes, it does.

18 Q. And could you explain to the jurors what that
19 statistic is?

20 A. This number tells me that the probability of
21 another unrelated, random person in the
22 population, having the same profile as the
23 evidence samples that we just talked about, is 1
24 person in 4 quintillion in the Caucasian
25 population, 1 person in 898 quintillion in the

1 African/American population, 1 person in 25
2 quintillion in the southeastern Hispanic
3 population, and 1 person in 123 quintillion in
4 the southwestern Hispanic population.

5 Q. And does that statistic also apply to the other
6 bloodstains that you found in the RAV4 that were
7 attributable to Steven Avery?

8 A. Yes, it does.

9 Q. Do you have an opinion, to a reasonable degree of
10 scientific certainty, whether Steven Avery is the
11 source of the bloodstain found on the dashboard
12 by the ignition in Teresa Halbach's RAV4?

13 A. Yes.

14 Q. And what is that opinion?

15 A. My opinion is that Steven Avery is the source of
16 that stain.

17 ATTORNEY GAHN: That's all I have. Thank
18 you, your Honor.

19 THE COURT: Counsel, will you approach,
20 please.

21 ATTORNEY BUTING: Sure.

22 (Side bar taken.)

23 THE COURT: All right. Members of the
24 jury, at this time, since we kept you late
25 yesterday, we're going to give you a break today.

1 The cross-examination is going to take more time
2 than we have left today, so we're going to adjourn.
3 I do have a notice, the weekend notice, to read to
4 you. It's going to be a repetition of some
5 information you have heard thus far, and also some
6 new information.

7 As I previously informed you, the
8 Court's decision not to sequester the jury during
9 the trial is dependent on the jurors not
10 listening to, watching, or reading any news
11 accounts of the case, nor discussing it with
12 anyone, including members of your family, or
13 other jurors.

14 For these reasons, it is vital that you
15 continue not to listen to any conversation about
16 this case. Do not read any newspaper or internet
17 reports, or listen to any news accounts on the
18 radio or television about the trial.

19 To assure that you are not exposed to
20 any improper media coverage, the Court has
21 ordered that, for the duration of the trial, you
22 do not watch the local news on television, do not
23 listen to the local news on the radio, and do not
24 read the newspaper, unless you first have someone
25 remove articles about the case.

1 In addition, do not visit any internet
2 websites or web logs, which include any
3 information about the case. The Court
4 understands that some of you may be working at
5 places of employment during the weekend. Do not
6 discuss the case with any employers, employees,
7 or patrons. Do not volunteer your status as a
8 juror to anyone.

9 If anyone attempts to discuss this case
10 with you, politely but firmly notify them that
11 you are prohibited from discussing the case in
12 any way. If you are involuntarily exposed to any
13 information about the case, from any source, take
14 steps to immediately avoid any further exposure.

15 Should you be exposed to any reports or
16 communications from any source concerning the
17 case during the trial, or should you become aware
18 of anything you believe may affect your ability
19 to serve as a juror, you should not discuss your
20 concerns with any other jurors, or anyone else,
21 but should report any such concerns to the jury
22 bailiff immediately.

23 Now, we have received some reports of
24 stormy winter weather this weekend. Based on the
25 latest information the Court has, whatever we get

1 should be over by Sunday. But in the event that
2 weather would cause a postponement of Monday's
3 proceedings, you will be called by the jury clerk
4 sometime before 8:00 p.m. on Sunday evening. If
5 you do not receive a call, it means that Court is
6 scheduled to go on as normal on Monday.

7 Finally, I wanted to let you know that
8 since the Court is prohibiting you from watching
9 any news accounts, or learning anything about the
10 case through the news media, at the conclusion of
11 the trial, each of you will receive a DVD that
12 has a summary of news accounts of the trial as
13 it's gone on. I do that so in the event you are
14 curious about that type of thing, you are not
15 tempted to violate the order I have issued now,
16 but you will have a chance to see it when the
17 trial is over.

18 And with those admonitions and
19 information about Monday's proceedings, you are
20 excused for the weekend.

21 (Jury not present.)

22 THE COURT: You may be seated. Ms Culhane,
23 you may step down, if you wish.

24 ATTORNEY BUTING: Before she does --

25 THE COURT: Oh.

1 ATTORNEY BUTING: I'm sorry. Before she
2 does, maybe we could just -- since she testified
3 about the contamination log that goes back to 2001,
4 I don't know if she -- if you brought it with you
5 today, but if she could be instructed to bring that
6 with her Monday, or if Mr. Gahn has a copy already,
7 he could give it to me. I only have one that goes
8 back to 2004.

9 THE COURT: Mr. Gahn.

10 ATTORNEY GAHN: That is fine. We'll
11 produce that, yes.

12 THE COURT: That's something that can be
13 produced, very well.

14 ATTORNEY BUTING: And you have the rest of
15 the file, I think, with you and you would bring it
16 on Monday?

17 MS CULHANE: Yes.

18 ATTORNEY BUTING: All the bench sheets and
19 what not.

20 THE COURT: All right. I believe there
21 were a couple other matters the parties wanted to
22 address before we adjourn today.

23 ATTORNEY GAHN: At this time, your Honor,
24 the State would like to move in some exhibits. I
25 would like to move in Exhibit 309, which is the CV

1 of Sherry Culhane; Exhibit 310, the protocol for the
2 Crime Lab; Exhibits 311, 312, 313, 314, and 315,
3 which are the five Crime Lab reports.

4 Also, I move in Exhibit 316, which is
5 the photograph of the key. And I would move in
6 Exhibits -- Exhibit 317, buccal swab of Allen
7 Avery; 318, buccal swab of Brian Dassey; 251, if
8 it's not moved in already, buccal swab of Brendan
9 Dassey; 319, buccal swab of Barb Janda; 320,
10 buccal swab of Bobby Dassey; 321, buccal swab of
11 Earl Avery; 322, buccal swab of Chuck Avery, 323,
12 buccal swab of Delores Avery; 324, buccal swab of
13 Steven Avery; and 325, the Pap smear for Teresa
14 Halbach.

15 I would also move in Exhibit 326, which
16 is the bloodstain A-1; 327, blood stain A-2; 328,
17 bloodstain A-4; 329, bloodstain A-3; and 330,
18 bloodstain -- I'm sorry, 330 is A-14, the Wild
19 Cherry Pepsi can; Exhibit 331, which is
20 bloodstain A-9; 332, bloodstain A-10; 333,
21 bloodstain A-6; 335, bloodstain A-7; 334,
22 bloodstain A-12; 336, bloodstain A-8; Exhibit 337
23 the bone and tissue material; Exhibit 277 -- I'm
24 sorry, that is already in, that's the bullet
25 fragment. And I think -- Exhibit 338, which is a

1 photograph of the bone and tissue.

2 I would like to move in Exhibit 339,
3 which is a CD Rom of the power point presentation
4 that we used during the testimony. And also a
5 printout, which is Exhibit 340, of the power
6 point -- the slides in the power point
7 demonstration. I would move those into evidence
8 at this time.

9 And I would further ask that
10 Exhibit 337, which is the bone and tissue, that
11 we be allowed to remove that from the courtroom
12 and allow Deputy Wiegert to return that to the
13 Sheriff's Department to be kept in the freezer.

14 ATTORNEY BUTING: Couple of things, 316,
15 did we have that one? Did you miss that one?

16 ATTORNEY GAHN: If not, I would move in
17 316, which is the photograph -- which is the
18 photograph of the key with the bag.

19 ATTORNEY BUTING: Okay. I have no
20 objection to any of those exhibits coming into the
21 record. I have no objection to the 337, charred
22 remains, bone and tissue, being withdrawn to be
23 properly stored.

24 I do want to make clear, though, as to
25 the five reports, 311 through 315, that I'm

1 not -- by not objecting to them going into the
2 record, I'm not suggesting that I think they
3 should be sent to the jury for any part of their
4 deliberations. So, with that limitation, I have
5 no objection to their admission.

6 THE COURT: Very well. The Court will
7 order those exhibits admitted. As long as we have
8 got some time left today, do we have an inventory of
9 the exhibits that have been marked but not admitted,
10 and is everyone in agreement?

11 ATTORNEY KRATZ: Yes, I would like us to do
12 that, Judge. And those that have been identified
13 and not offered, the State intends to do that at
14 this time. Janet, are you able to tell us which
15 ones have not been offered?

16 THE CLERK: There was an Exhibit 187 that I
17 don't think has been even offered at this point. I
18 don't know what it even is. It was by the State.

19 ATTORNEY KRATZ: That has not been offered
20 yet?

21 THE CLERK: Right.

22 ATTORNEY KRATZ: That's some bloodstains on
23 a door. It's a photograph that has not yet been
24 offered, and I don't offer it at this time.

25 THE CLERK: For the defense, Exhibits 206,

1 207, which are two photos.

2 ATTORNEY BUTING: I thought those were
3 received and offered at the end of the day; if not,
4 I would move them in.

5 ATTORNEY KRATZ: We have no objection, it's
6 of the vanity and of the washing machine. We have
7 no objection to those photos.

8 THE COURT: All right. 206 and 207 will
9 then be admitted.

10 THE CLERK: For the State, 208, 209, 210.

11 ATTORNEY KRATZ: Those are the three photos
12 of the cabinet, the bookcase. Those have been
13 referred to numerous occasions, identified by
14 several witnesses, I would offer 208, 209, and 210.

15 ATTORNEY BUTING: No objection.

16 THE COURT: Those exhibits are admitted.

17 THE CLERK: Defense, a copy of the
18 statement of Sergeant Colborn, 213.

19 ATTORNEY KRATZ: 213?

20 ATTORNEY BUTING: No, we don't offer that,
21 that was simply to be identified for refreshing his
22 recollection, I believe.

23 THE CLERK: And I think that's the same
24 thing with 216, copy of the report of Investigator
25 Wiegert.

1 ATTORNEY BUTING: Yes, same for that.

2 THE CLERK: Then 219 and 220, two
3 photographs, one of the key.

4 ATTORNEY KRATZ: Yes, we'll offer both.
5 219 is a photograph of the key, 220 is a photograph
6 of shell casings in a box, both of which were
7 identified by Deputy Kucharski. We would offer
8 both.

9 THE COURT: Any objection?

10 ATTORNEY BUTING: As the photographs of the
11 box, I'm not sure he identified them, but I guess
12 maybe he did, but he qualified it as he wasn't sure
13 when it was taken. So with that limitation, yes,
14 they can be received.

15 THE COURT: All right. Those exhibits are
16 received.

17 ATTORNEY BUTING: Could we just go back,
18 though, for a minute, to 214 and 15; were those
19 admitted already?

20 THE CLERK: I have -- Oh, I have 214
21 admitted, the transmittal.

22 ATTORNEY BUTING: Yes.

23 THE CLERK: 215, I don't have.

24 ATTORNEY BUTING: Okay. 215, we did not
25 offer, so it should not be admitted. 217, I don't

1 have marked on here either way.

2 THE CLERK: That one also has not been
3 offered.

4 ATTORNEY KRATZ: We did have that
5 identified by Mr. Lenk, that was a picture of the
6 scanner on top of Mr. Avery's bar in his living
7 room. That was identified and we would ask that it
8 be received.

9 ATTORNEY BUTING: No objection.

10 THE COURT: All right. That exhibit is
11 received.

12 THE CLERK: 249, I go to next, but I don't
13 believe that's been offered, that's the electrical
14 cord.

15 ATTORNEY KRATZ: 249, that's correct, and
16 that has not been offered yet, Judge, nor is it
17 going to be at this time.

18 THE COURT: All right.

19 THE CLERK: Then Exhibits 278, 280, 81 and
20 82 have all been marked and not referred to yet.

21 ATTORNEY KRATZ: I don't even know what
22 they are.

23 THE CLERK: They were in the paper bags. I
24 don't know what they were either.

25 ATTORNEY KRATZ: 278, 280, and 281?

1 THE CLERK: And 282. They were marked
2 yesterday.

3 ATTORNEY KRATZ: And I have blanks in my
4 list. So I don't know what they are. We can check
5 before the next session, Judge. That's fine.

6 THE CLERK: 279 was the rivet.

7 ATTORNEY KRATZ: 279?

8 THE CLERK: I have a series of photographs
9 starting at 289 through probably 309, that have not
10 been -- 308 -- have not the been offered or
11 received.

12 ATTORNEY KRATZ: Mr. Gahn just did that.
13 Those are the photos that were referred to by Ms
14 Culhane, identified by Mr. Groffy this morning, up
15 through 305 at least.

16 THE COURT: Have those been offered?

17 ATTORNEY KRATZ: Yes.

18 ATTORNEY BUTING: I believe they were.
19 That was the photographs with Mr. Groffy this
20 morning, right before lunch.

21 THE CLERK: Okay.

22 ATTORNEY BUTING: Certainly, if we
23 haven't--

24 THE COURT: So those are received?

25 ATTORNEY BUTING: I think right before

1 lunch we did move them in.

2 THE COURT: All right. Those are in.

3 ATTORNEY KRATZ: That should be it, Judge,
4 that's my list.

5 ATTORNEY BUTING: Counsel, is there a
6 photograph associated with those electrical wires.
7 I believe that there was something.

8 ATTORNEY KRATZ: There's two.

9 ATTORNEY BUTING: Two?

10 ATTORNEY KRATZ: One is what Mr. Kucharski
11 identified that he saw at the scene, that's been
12 received. And one is what we have been referring to
13 as an evidence photo. And although that was
14 identified and received, I have no objection should
15 counsel want that withdrawn at this time. And until
16 and unless we put in the actual exhibit, that that
17 can be withdrawn at this time. That seems to make
18 the most sense, Judge.

19 ATTORNEY BUTING: Do you know which photo,
20 227 and 228?

21 THE CLERK: I have 228 and 229.

22 ATTORNEY BUTING: 228 and 229. All right.
23 Let's leave them as is for now. I will probably
24 refer to them with Ms Culhane, and then as I
25 anticipate, when she's unable to link them up in any

1 way, then we'll probably move to have them
2 withdrawn.

3 ATTORNEY KRATZ: I'm not suggesting another
4 witness isn't going to eventually get those in. We
5 haven't offered them.

6 THE COURT: So at this point they have been
7 marked. They are not in.

8 ATTORNEY KRATZ: That's right.

9 ATTORNEY BUTING: Okay.

10 THE COURT: Is there anything else that
11 either party wishes to take up today?

12 ATTORNEY BUTING: I don't think so.

13 ATTORNEY KRATZ: Judge, just a moment.

14 ATTORNEY BUTING: Is there a phone number
15 we could call on Sunday evening? We don't have to
16 say it on the record, I'm just saying ...

17 THE COURT: We have a number we can give
18 you before you leave today that you can call.

19 ATTORNEY BUTING: Okay. Great. Thank you.

20 THE COURT: Actually, let's do this. I
21 think I have an email list for all of you. If I
22 just emailed it to you, will that do it?

23 ATTORNEY BUTING: That would be great.

24 ATTORNEY KRATZ: Sure.

25 THE COURT: Let's do that.

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ATTORNEY BUTING: Okay.

THE COURT: All right. If there's nothing further, we're adjourned for today.

(End of proceedings.)

1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 7th day of NOVEMBER, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 11

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** FEBRUARY 26, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 the State of Wisconsin vs. Steven Avery, Case No. 05
3 CF 381. We're here this morning for a continuation
4 of the trial in this matter. Will the parties state
5 their appearances for the record, please.

6 ATTORNEY KRATZ: Good morning, Judge. The
7 State appears by Special Prosecutors Ken Kratz, Norm
8 Gahn and Tom Fallon.

9 ATTORNEY STRANG: Good morning. As well,
10 Steven Avery is in person and Dean Strang and Jerome
11 Buting representing.

12 THE COURT: All right. Before we begin, I
13 would like to commend the jurors for all getting
14 here on time this morning. When I called the Clerk
15 to notify you last night that we would be having
16 court today, I didn't expect as much snow as I found
17 when I got up this morning. I appreciate the fact,
18 I'm sure you made an effort to get to the bus stop
19 on time.

20 When we left off on Friday, I believe
21 the defense was about to begin its
22 cross-examination of Ms Culhane; is that correct?

23 ATTORNEY BUTING: That is correct, your
24 Honor.

25 THE COURT: All right. You can have the

1 witness brought in and begin.

2 **SHERRY CULHANE**, called as a witness
3 herein, having been first duly sworn, was
4 examined and testified as follows:

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

7 THE WITNESS: Sherry Culhane,
8 C-u-l-h-a-n-e.

9 THE COURT: All right. Mr. Buting, you may
10 begin.

11 ATTORNEY BUTING: Thank you, Judge.

12 **CROSS-EXAMINATION**

13 BY ATTORNEY BUTING:

14 Q. Good morning, ma'am.

15 A. Good morning.

16 Q. I want to pick up on where you left off on
17 Friday, and that is your opinions, series of
18 opinions about the stains that you found in the
19 RAV4. Okay, are you with me?

20 A. Mm-hmm.

21 Q. Your opinion, over and over to Mr. Gahn was, do
22 you have an opinion to a reasonable degree of
23 scientific certainty as to whether Mr. Avery is
24 the source of the DNA found in stains one, two,
25 three, whatever it was, right?

1 A. Right.

2 Q. And what you are really saying is, that as far as
3 you can tell, Mr. Avery is the original source of
4 the DNA that you find in those stains, correct?

5 A. I'm saying that his profile was consistent with
6 what I found in the stains.

7 Q. Right. But what you are not saying is anything
8 about how his DNA found its way inside the RAV4,
9 are you?

10 A. No.

11 Q. Your tests aren't designed to tell us how his DNA
12 found it's way into the location where you
13 ultimately swabbed, are they?

14 A. No.

15 Q. What you are looking for is a DNA profile, and if
16 you find it, then you compare it to a known
17 reference sample, in this case, Mr. Avery, right?

18 A. Right.

19 Q. But if someone else planted Mr. Avery's DNA, or
20 blood, or both, inside that vehicle, you wouldn't
21 know that from these tests, would you?

22 A. No.

23 Q. So you cannot tell this jury, with any degree of
24 certainty, scientific or otherwise, that Steven
25 Avery was, himself, ever inside that vehicle, can

1 you?

2 A. No.

3 Q. No meaning correct?

4 A. That's correct.

5 Q. All right. You also talked about contamination,
6 and I think you used the word unintentional
7 contamination; do you recall a discussion about
8 that?

9 A. Yes, I do.

10 Q. All of the quality controls that you set up
11 inside the Wisconsin Crime Lab are designed to
12 deal with evidence after it arrives at your lab,
13 correct?

14 A. That's correct.

15 Q. You can't do anything about contamination that
16 might occur to evidence before it gets to your
17 lab, right?

18 A. That's correct.

19 Q. And that would be true for unintentional
20 contamination such as an officer who's sloppy at
21 the scene when he's picking up whatever evidence
22 it may be?

23 A. That's correct.

24 Q. Your tests and your quality control doesn't --
25 can't account for that, right?

1 A. Right.

2 Q. And that also would be true as to intentional
3 contamination that occurred before it gets to
4 your lab as well, right?

5 A. Correct.

6 Q. Once again, so you have no way, through your
7 quality control tests, controlling whether or not
8 there's some intentional, deliberate tampering
9 with the evidence that goes -- that takes place
10 before it gets to your lab?

11 A. That's correct.

12 Q. So if the evidence had been intentionally
13 contaminated or tampered with, before it got to
14 your lab, your tests will not show that; isn't
15 that right?

16 A. That's correct.

17 Q. Now, I'm assuming that you would agree with me on
18 this, that normally evidence that you receive
19 from a -- an agency that is police is -- you are
20 assuming that when you get it that the -- that
21 there's good integrity with that evidence, right?

22 A. Correct.

23 Q. That is, you trust the police to be honest and
24 fair in an investigation, generally, right?

25 A. Correct.

1 Q. Just as we and the jury would trust you and other
2 members of the Wisconsin Crime Lab to be honest
3 and fair in your investigation?

4 A. That's correct.

5 Q. And the reason that we can normally be
6 comfortable with that assumption, with regard to
7 your Crime Lab, is that you would never knowingly
8 assign an analyst to examine case evidence who
9 had some connection to a suspect, would you?

10 A. No.

11 Q. And I'm sure, for instance, you, yourself, if you
12 had been deposed as a witness in a lawsuit
13 brought by a suspect, you would not volunteer to
14 be the person who runs the tests in that case,
15 would you?

16 A. No.

17 Q. And you would -- If you knew that one of your
18 other analysts was also similarly situated with
19 regard to a suspect, you would not assign that
20 analyst to be handling the evidence and making
21 the tests that are done in the case, would you?

22 A. Not if they had a personal attachment to anyone
23 in the case, no.

24 Q. Sure. Because it's important for you that your
25 lab be objective in its results, correct?

1 A. Correct.

2 Q. And you are aware -- you said that you go to
3 meetings, forensic scientists test meetings and
4 that sort of thing, right?

5 A. Correct.

6 Q. You are aware that some labs in other parts of
7 the country have had trouble with that, right,
8 where analysts have been actually accused of
9 falsifying results?

10 ATTORNEY GAHN: Your Honor, I will object
11 at this time to the relevancy of other labs.

12 ATTORNEY BUTING: Well, I think it goes to
13 her procedures here.

14 THE COURT: I'm going to sustain the
15 objection. I think the point has been made.

16 Q. (By Attorney Buting)~ Well, would you agree with
17 me that if somebody in your lab was so
18 predisposed, it would be very easily -- very easy
19 for that person to frame a suspect?

20 ATTORNEY GAHN: Objection, your Honor, to
21 the form of the question and it calls for
22 speculation.

23 THE COURT: I'm going to sustain the
24 objection. I will allow this line of questioning,
25 but the hypothetical fact scenario will have to be a

1 little bit more specific.

2 Q. (By Attorney Buting)~ If somebody in your lab
3 wanted to monkey with the evidence and plant it
4 in a way that deliberately framed a suspect, that
5 could be done, couldn't it?

6 ATTORNEY GAHN: Objection, your Honor, as
7 to what he means by monkeying with the evidence.

8 THE COURT: It's sustained.

9 Q. (By Attorney Buting)~ If somebody wanted to take
10 and deliberately contaminate evidence, once it
11 got to your lab, deliberately contaminate
12 evidence, and let's say, put or mix a reference
13 sample from the suspect, with actual evidence in
14 the case, that could be done, couldn't it?

15 A. It's possible that that could be done, but --

16 Q. Sure.

17 A. -- in my opinion that wouldn't happen.

18 Q. Of course not. Because you take steps to be sure
19 that the person assigned to the case would have
20 no such inclination to do so; isn't that right?

21 A. That's correct.

22 Q. And you take steps to be sure that the person
23 assigned to the case has no stake in the outcome
24 of the testing itself or the case?

25 ATTORNEY GAHN: Objection, your Honor,

1 vague question.

2 ATTORNEY BUTING: If she needs
3 clarification she can ask.

4 THE COURT: Yeah, she can answer that.

5 THE WITNESS: I'm sorry, could you repeat
6 that.

7 Q. You take steps to be sure that the person
8 assigned to a case has no stake in the outcome of
9 the case or the test?

10 A. That's correct.

11 Q. All right. And, indeed, it's your assumption
12 that when evidence comes to you from a police
13 agency, it's your assumption that the police have
14 also taken similar stakes -- or similar steps to
15 make sure that nobody connected with the suspect
16 has been involved in the collection of the
17 evidence, isn't it?

18 ATTORNEY GAHN: Objection, your Honor,
19 speculation.

20 ATTORNEY BUTING: Asking for her
21 assumption.

22 THE COURT: She can answer.

23 A. Okay. Obviously, I don't know any of this for a
24 fact, but I would make the assumption that
25 evidence came in from the police agency was --

1 maintained integrity.

2 Q. And collected from somebody who had no connection
3 to the case, you would hope?

4 A. Yes.

5 Q. Okay. Now, in this case, I believe you said that
6 some of your duties involve case flow and case
7 management, right?

8 A. Correct.

9 Q. Does that also involve assigning particular
10 analysts to a particular case?

11 A. Yes.

12 Q. But in this case, you assigned yourself?

13 A. Correct.

14 Q. All right. And that's a decision that you make,
15 and yours alone?

16 A. Most of the time, sometimes my supervisor makes
17 that decision but, in this case, I made the
18 decision.

19 Q. All right. Mr. Gahn pointed out that you were
20 actually the analyst who did the tests that
21 resulted in exoneration of Mr. Avery in 2003,
22 right?

23 A. Correct.

24 Q. And you did that because -- in part, because
25 newer, more accurate DNA results -- or tests had

1 been developed that actually excluded Mr. Avery
2 as the source of a pubic hair?

3 A. Correct, at the time the original case was
4 worked, DNA was not available.

5 Q. Okay. But I want to get into just a little bit
6 about what that involved. What you tested were
7 pubic hairs that were found, essentially, on --
8 in the area of the victim's privates, right?

9 A. From her pubic area, yes.

10 Q. These are combings that are done to find any
11 possible pubic hairs from the assailant?

12 A. Correct.

13 Q. And your test in 2003 absolutely, positively,
14 excluded Mr. Avery as the source of one of those
15 hairs, right?

16 A. Correct.

17 Q. There was no question about that, right?

18 A. Correct.

19 Q. And it included -- or matched, a fellow by the
20 name of Gregory Allen, right?

21 A. Yes.

22 Q. And you knew that Allen was no friend of the
23 victim, so that his pubic hair shouldn't be found
24 where they were, right?

25 A. I really didn't have any knowledge of whether she

1 knew him or not, no.

2 Q. Okay. But you knew that his hairs -- or that his
3 DNA profile was registered in CODIS.

4 A. That's correct.

5 Q. And that, in fact, he was already in prison at
6 the time of 2003 when you did this test?

7 A. That's correct.

8 Q. In prison for a rape that he committed after, or
9 while Mr. Avery sat in prison for Mr. Allen's
10 crime.

11 A. That's correct.

12 Q. Now, what Mr. Gahn didn't have you point out,
13 though, let's get into a few other things;
14 although you were the one who exonerated -- or
15 whose test exonerated Mr. Avery, the evidence sat
16 at your lab for more than a year before you got
17 around to doing the test that did exonerate him,
18 right?

19 A. That's correct.

20 Q. And one of the things that you in fact said you
21 do is control priorities and case flow of what
22 gets tested when, right?

23 A. Correct.

24 Q. So, had you done that test as soon as it came in,
25 the evidence being in September of 2002, I

1 believe, Mr. Avery would have been exonerated
2 then, wouldn't he?

3 A. Correct.

4 Q. So Mr. Avery sat for another year, in prison,
5 because of the delays that resulted in your Crime
6 Lab; isn't that right?

7 A. Correct.

8 Q. Another thing Mr. Gahn didn't point out is
9 another irony in this case. Not only were you
10 involved in the 2003 exoneration of Mr. Avery,
11 but you were also involved in the 1985 conviction
12 of Mr. Avery, weren't you?

13 A. I worked evidence on that case, yes.

14 Q. And you testified as a witness for the
15 prosecution at trial in that case, didn't you?

16 A. Yes, I testified.

17 Q. In fact, the trial where he had 16 alibi
18 witnesses and was convicted included your expert
19 opinion regarding some hairs that had been found
20 and were offered by the prosecution to somehow
21 link Mr. Avery to that crime; isn't that right?

22 A. To be perfectly honest, I do not remember my
23 entire testimony from 1985.

24 Q. Well, I have it here, if you need to refer to it.
25 But I don't know that we'll get into that much

1 detail.

2 A. Okay.

3 Q. I just want the jury to understand a little
4 background, okay?

5 A. Sure.

6 Q. You do recall that you testified, generally, in
7 those terms, right?

8 A. Yes.

9 Q. Okay. And just so we understand, there were no
10 DNA tests back in 1985?

11 A. Correct.

12 Q. You were testifying about a type of so-called
13 science known as microscopic hair comparison
14 analysis, right?

15 A. Correct.

16 Q. And the theory behind that science, in 1985, was
17 that you could take a microscope with two fields
18 and that you could put one hair underneath one
19 microscope field and another hair under the
20 other, and you could examine the two of them
21 together, correct?

22 A. Correct.

23 Q. And the theory being that you could -- you
24 present this to the jury anyway, that you could
25 make some conclusions about how similar,

1 dissimilar, or consistent one hair was to the
2 other?

3 A. Correct.

4 Q. And I don't mean to be jumping all over you, you
5 were not the only person in the country doing
6 this kind of testimony in 1985, right?

7 A. That's correct.

8 Q. Forensic labs all over the country were bringing
9 in experts to testify to juries about this kind
10 of science, right?

11 A. Correct.

12 Q. Including the FBI, right?

13 A. Yes.

14 Q. Now, with the advent of DNA, the forensic
15 community discovered something about those tests,
16 right?

17 A. Correct.

18 Q. They discovered that those conclusions or
19 opinions that were being drawn by the experts,
20 such as yourself, were really not all that
21 reliable, didn't they?

22 A. Correct. They have been proven to be much less
23 specific than DNA analysis.

24 Q. All right. And even wrong on occasions, right?

25 A. Correct.

1 Q. So, for instance, in the 1985 trial of Mr. Avery,
2 there were some hairs found, head hairs I think,
3 found on a T-shirt that he was wearing on the day
4 of this poor woman's rape, right?

5 A. I don't recall exactly.

6 Q. Well, okay. Do you recall giving an opinion that
7 one hair found on Mr. Avery's T-shirt appeared to
8 be similar to or consistent with a head hair
9 standard of the victim in that case?

10 A. No, I don't recall exactly. I'm assuming it's in
11 my report, but I don't have independent
12 recollection of that.

13 Q. Would you like to take a moment to review --

14 A. Yes, sir.

15 Q. -- a portion of your transcript?

16 A. Yes, sir, I can.

17 ATTORNEY GAHN: Your Honor, at this time I
18 just question the relevancy of this to the testimony
19 that Ms Culhane gave in this case, the relevancy in
20 this 1985 case.

21 THE COURT: Mr. Buting.

22 ATTORNEY BUTING: Mr. Gahn tried to present
23 her as a totally unbiased witness for them, in the
24 event that because she -- her test in 2003 resulted
25 in the exoneration, I think the jury needs to hear

1 that she's also testified the other way for the
2 prosecution at the beginning of the trial.

3 THE COURT: As I understand your line of
4 questioning, it's an attack on the methodology that
5 was used at the time, not on her credibility.

6 ATTORNEY BUTING: Also a question on her
7 opinion and the validity of her opinions.

8 THE COURT: No, I'm going to sustain the
9 objection.

10 ATTORNEY BUTING: All right.

11 Q. (By Attorney Buting)~ Let's do it this way.
12 Would you agree with me that at least -- that
13 hair comparison, microscopic hair comparison,
14 so-called forensic science, is one example of how
15 science is not necessarily or -- or our
16 understanding of science is not necessarily
17 infallible, is it?

18 A. No. With respect to hair analysis, that was a
19 much less objective criteria than what we use
20 today. That was more subjective and open to
21 interpretation -- personal interpretation. The
22 science that we use now, today, with DNA, is much
23 more objective and much more reliable.

24 Q. Okay. But at the time you were presenting
25 testimony you expressed it in terms of a

1 reasonable degree of scientific certainty, didn't
2 you?

3 A. In 1985, I do not remember how I stated that.

4 Q. Well, in general, whether in Mr. Avery's case or
5 any of the other cases where you presented this
6 kind of hair comparison testimony, you presented
7 opinions to juries or to Courts, to a reasonable
8 degree of scientific certainty, didn't you?

9 ATTORNEY GAHN: Objection, your Honor,
10 relevancy and asked and answered.

11 THE COURT: Sustained.

12 ATTORNEY BUTING: As to which, asked and
13 answered or relevance?

14 THE COURT: To relevancy.

15 ATTORNEY BUTING: All right.

16 Q. (By Attorney Buting)~ When you talked about DNA
17 and what it is and how it's examined, you
18 mentioned -- Oh, by the way, before I leave that,
19 to your knowledge, your lab isn't going around
20 doing those kind of -- providing that kind of
21 testimony anymore, hair comparison testimony
22 anymore, are you?

23 A. No.

24 Q. And neither is the FBI, right?

25 A. I'm not sure about that.

1 Q. Okay. But going back to DNA, you said that --
2 and I don't have your -- the power point slides,
3 but I think the jury can probably recall them --
4 you showed this double helix kind of spiral thing
5 being unwound and bracketing off certain areas of
6 it, right?

7 A. Correct.

8 Q. And you talked about a part that was considered a
9 gene and a part that is not a gene, or something
10 like that?

11 A. I referred to the parts that do not function as
12 genes, and they are referred to as genetic
13 markers.

14 Q. Okay. And -- Well, I don't know if you got into
15 this or not, but let's just briefly touch on
16 this. When we're talking about genetics, you
17 recognize that certain genes are inherited by
18 everybody, right? The genes, for instance, that
19 make humans have two eyes instead of one, right?

20 A. Correct.

21 Q. Two arms instead of one?

22 A. Correct.

23 Q. Or two legs, right?

24 A. Yes.

25 Q. There were certain genes that are common to

1 everybody, unless there is some sort of birth
2 defect or genetic mutation, right?

3 A. Correct.

4 Q. And so, if you find a gene that says -- that
5 determines that this individual should have two
6 eyes, or two legs, or two arms, that's kind of
7 meaningless in terms of identifying a suspect,
8 isn't it?

9 A. Well, first of all, we don't even look at those
10 portions at all.

11 Q. I understand.

12 A. So it's irrelevant.

13 Q. But if you were to look at genes that everybody
14 has and find them in a profile, that would be
15 meaningless?

16 A. Correct.

17 Q. For your purposes?

18 A. Yes.

19 Q. As you would say, that would have zero
20 discriminating power?

21 A. Correct.

22 Q. Okay. And other more common types of genes,
23 however, are sort of individually inherited.
24 Like the gene that would say what color your hair
25 should be, may be different from what someone

1 else has, right?

2 A. Yes.

3 Q. Or what your eye color may be, right?

4 A. Correct.

5 Q. Or how tall or how short you are, ultimately,

6 going to be when you grow up?

7 A. Correct.

8 Q. Those are sort of more individual genetic

9 characteristics that are inherited at different

10 rates in the population?

11 A. Correct.

12 Q. Same thing with whether you are Type A, or Type B

13 blood, or Type O positive, or whatever?

14 A. Correct.

15 Q. And there are data banks, then, statistics that

16 can say, you know, what are the odds, or what are

17 the chances of finding, you know, a random man

18 population, somebody with blue eyes?

19 A. I don't know about that. I don't know if there's

20 a --

21 Q. You are a serologist, so let me focus on that.

22 There are statistics that talk about -- that tell

23 you what percentage of the population is Type A

24 blood?

25 A. Correct.

1 Q. And type B and so forth, right?

2 A. Yes.

3 Q. And those are well-known statistics that have
4 been developed over years of study?

5 A. Yes.

6 Q. Now, in fact, we know, or we're learning, what
7 genes actually determine someone to be -- to have
8 certain characteristics, physical or biological
9 characteristics, right?

10 A. Yes.

11 Q. Some diseases we're finding are based on a
12 particular gene someone may have, for instance?

13 A. Yes.

14 Q. Now, with DNA tests, you talked about this area
15 that's not really what you call a gene, but you
16 called it a genetic marker, right?

17 A. Correct.

18 Q. And it's an area of the DNA that's -- appears to
19 be, I think you used the term hyper variable; do
20 you recall that?

21 A. I don't recall using that term, but it is -- it's
22 extremely variable in those regions, that's
23 correct.

24 Q. Okay. But you also said that we don't know what
25 those -- what that portion of the DNA is even

1 about, why it's there, do we?

2 A. No.

3 Q. We don't know what it does, why we would have a
4 marker that would be the D21, blah, blah, blah,
5 number that you come up with in these tests?

6 A. That's correct.

7 Q. These are just things that we think, at our
8 current level of scientific knowledge, are rather
9 unique from one person to the next, when you put
10 them altogether?

11 A. Well, they are variable and that's the important
12 part of them, they vary from individual to
13 individual. Scientists don't know what their
14 function is, but for forensics, the important
15 part is that they are different from person to
16 person.

17 Q. Okay. But if science later determines that they
18 are not completely, independently inherited, that
19 they are linked together, that would really make
20 a difference for you, wouldn't it?

21 A. Yes.

22 Q. Because all of these 1 in a quintillion, or 1 in
23 a billion numbers you come up with are based on
24 the assumption that each one of those 16 numbers
25 on your power point slides are inherited

1 completely independent of each other?

2 A. That's correct.

3 Q. That is, if someone has a D21 16, they are not
4 necessarily going to be -- also have a VWA 12?

5 A. That's correct.

6 Q. All right. Let's talk about the testing process
7 just a little bit first, then we'll get into it
8 in more detail. The jury, I think, needs to
9 understand that the tests that you do in your
10 lab, or anyone does in your lab, are not what we
11 would call double blind tests?

12 A. Could you define what you mean by that.

13 Q. Or even blind tests, you never heard that term?

14 A. I have heard the term before, I'm not exactly
15 sure how you are using the term. If you could
16 define that for me.

17 Q. Well, okay. Let's say, on a proficiency test
18 that you get, that's sent to you from some lab,
19 outside lab, you have no idea what you are
20 testing, right?

21 A. Correct.

22 Q. You have no idea what's the suspect sample,
23 what's the elimination sample. You don't know
24 any of that when you do the tests, right?

25 A. Well, on a proficiency test, we know what the

1 suspect and we know what the victim are.

2 Q. Okay. So, those aren't completely blind either.

3 Let me give you an example what I mean by blind.

4 Someone gives you a sample, two reference

5 standards. And you have no idea who the suspect

6 is and who the extremely unlikely elimination

7 sample is?

8 A. Okay.

9 Q. All right. And then you get an evidence sample,

10 that's also unknown at that time?

11 A. Correct.

12 Q. If you just got those three samples and you are

13 just testing them, you have no idea which is

14 which, that's what I mean by blind testing?

15 A. Okay.

16 Q. All right. That's not what you do in your lab?

17 A. No.

18 Q. In your lab, when you get a reference sample, you

19 know -- in fact, you usually know the name of the

20 person whose reference sample you are dealing

21 with?

22 A. Yes.

23 Q. So when you test Mr. Avery's DNA sample, you knew

24 it was Mr. Avery who you were testing?

25 A. Yes.

1 Q. Or Delores Avery in her case?

2 A. Yes.

3 Q. Or Allen Avery in his case, right?

4 A. Correct.

5 Q. And you know that, and not only do you know who

6 it is you are testing, but you have some idea

7 whether they are considered a suspect in the case

8 or not?

9 A. That's correct.

10 Q. You know that because you talk with police and

11 prosecutors?

12 A. That in part and it comes into the laboratory

13 with a suspect and a victim's name.

14 Q. Oh, okay. So when you get it, you already know

15 who the suspect is?

16 A. If there is a suspect, yes.

17 Q. And in this case, there was a suspect and the

18 name given to that person was Steven Avery, when

19 it came to your lab; isn't that right?

20 A. Yes.

21 Q. Not only that, you get messages, phone messages

22 and phone conversations, in this case with

23 Mr. Fassbender, right?

24 A. Yes.

25 Q. And he kind of gives you a heads up on what to

1 look for and, you know, what happened, what they
2 think happened in the case, or at the scene?

3 A. Correct.

4 Q. And in this case, you got a number of phone calls
5 and messages from Mr. Fassbender, kind of early
6 on in the testing, right?

7 A. Yes.

8 (Exhibit No. 341 marked for identification.)

9 Q. I'm showing you Exhibit 341, does that look --
10 does that form look familiar to you?

11 A. Yes.

12 Q. This is something that's called a case
13 communication record?

14 A. Yes.

15 Q. Something that you use in your lab?

16 A. Correct.

17 Q. And what you do is, when you get a phone call
18 from somebody, you will keep jotting notes as to
19 the gist of the conversation?

20 A. That's correct.

21 Q. And did you do that in this case?

22 A. Yes.

23 Q. Is that your initials at the top?

24 A. Yes.

25 Q. Let me put this up on the ELMO. There we go.

1 All right. I apologize for the delay. Up on the
2 screen, now, is Exhibit 341. And this is one of
3 those phone messages that you got from, in this
4 case, Mr. Fassbender, correct?

5 A. Yes.

6 Q. You've got a place to indicate that, where it
7 says you check incoming, Fassbender's name, and
8 the date of this is November 11th of 2005,
9 correct?

10 A. Yes.

11 Q. And the very first thing that is indicated on
12 here is, he is telling you that there's some
13 evidence that is going to be coming or is already
14 here, right?

15 A. Yes.

16 Q. Here meaning at your lab?

17 A. Correct.

18 Q. And he says there's going to be a couple of items
19 from the house and the garage, right?

20 A. Right.

21 Q. And then he says -- or you wrote down, I assume
22 that's him telling you -- try to put her in his
23 house or garage, correct?

24 A. Correct.

25 Q. So you are being told, before you do any of these

1 tests, that Mr. Fassbender wants you to come up
2 with results that put Teresa Halbach in
3 Mr. Avery's house or garage; isn't that right?

4 A. I had that information, but that had no bearing
5 on my analysis at all.

6 Q. Of course not, but that's what you are being told
7 to do?

8 A. That was information in the investigation.

9 Q. That's what Mr. Fassbender told you he hoped you
10 would be able to do with your tests; isn't that
11 right?

12 A. Yeah, I assume so.

13 Q. Okay. You also had some emails with Mr. Kratz,
14 correct?

15 A. Yes.

16 Q. Actually, before we get to that, let me do one
17 more here.

18 (Exhibit No. 342 marked for identification.)

19 Q. I'm showing you Exhibit 342, would you be able to
20 identify that for us?

21 A. Yes.

22 Q. That's another one of those case communication
23 records?

24 A. Yes.

25 Q. But this one, though, is dated December 15th?

1 A. Correct.

2 Q. Concerns another phone conversation with
3 Mr. Fassbender?

4 A. Yes.

5 Q. Mind if I put it up on the ELMO now?

6 A. No.

7 Q. This is, again, an incoming call where
8 Mr. Fassbender is calling you, right?

9 A. Yes.

10 Q. Now, the first entry we should clarify a little
11 bit, it says swab keys and collect swabs, no need
12 to analyze at this time, right?

13 A. Correct.

14 Q. Just so we're not confused, the jury is not
15 confused, that is not in reference to this Toyota
16 key that was brought to you earlier, right?

17 A. Correct.

18 Q. That was a completely separate test that was
19 done. This is some other keys that they brought
20 to you?

21 A. Yes, this was referencing some additional keys.

22 Q. It also says, like a couple days later, four days
23 later, that Mr. Fassbender wants you to swab
24 handcuffs and leg irons, right?

25 A. Yes.

1 Q. As well as the license plates from the RAV 4 and
2 to check the .22 caliber gun, Item DD, for any
3 indication of the victim's blood on the barrel,
4 right?

5 A. Yes.

6 Q. And also to swab the trigger guard area to
7 compare with Steve Avery?

8 A. Correct.

9 Q. And we'll get into this with a little more detail
10 with some of the other things first, but as long
11 as we're at these phone messages, let me just
12 clear this up. You did do that in this case,
13 right?

14 A. Yes.

15 Q. You swabbed the handcuffs and the leg irons?

16 A. Yes.

17 Q. And you found no DNA of Teresa Halbach on those
18 items, did you?

19 A. No.

20 Q. And you swabbed the license plates and you found
21 no usable DNA that you could draw any conclusions
22 from, right?

23 A. Right.

24 Q. And you checked the Item DD, .22 caliber gun,
25 that's a rifle, right?

1 A. Yes.

2 Q. You looked for any blood of the victim on the
3 barrel, right?

4 A. Correct.

5 Q. You found no DNA of Teresa Halbach on that
6 barrel?

7 A. Correct.

8 Q. You looked at the trigger guard as well, not just
9 the trigger guard, but the trigger itself?

10 A. Yes.

11 Q. You swabbed both, right?

12 A. Yes.

13 Q. And you found no DNA of Mr. Avery, right?

14 A. Correct.

15 Q. Okay. And as to the handcuffs and leg irons, you
16 did find some DNA on it, though, didn't you?

17 A. Yes, I did.

18 Q. You found Mr. Avery's own DNA?

19 A. In a mixture sample, yes.

20 Q. In a mixture with some other male, right?

21 A. I can't tell for sure whether it was a male or a
22 female.

23 Q. Well, it wasn't a mixture with Teresa Halbach?

24 A. Correct.

25 Q. And the fact that you found DNA of any kind on

1 the handcuffs, is an indication to you that they
2 hadn't been wiped down with bleach, isn't it?

3 A. That would be correct.

4 Q. Okay. And you, of course, had no idea, way of
5 knowing how old that DNA that you did find, from
6 Mr. Avery, on those handcuffs or leg irons was,
7 right?

8 A. Right.

9 Q. That's one thing about DNA, when you find a
10 profile, you can't tell when it is -- or when it
11 was originally deposited, correct?

12 A. Yes, that's correct.

13 Q. You find DNA sometimes in mummies thousands of
14 years old.

15 A. That's correct.

16 Q. Okay. Now, I have used the term elimination
17 samples today. I don't believe you used that
18 term yesterday -- or Friday; do you recall?

19 A. I don't recall.

20 Q. With Mr. Gahn, you referred to samples as
21 exemplars or reference samples, correct?

22 A. Correct.

23 Q. That's because the term elimination samples has a
24 meaning behind it, that the others don't?

25 A. That's correct.

1 Q. Elimination sample is something that you refer to
2 when you are just trying to eliminate somebody as
3 a source?

4 A. Correct. That would be -- excuse me -- that
5 would be a situation where it was a case and
6 perhaps you knew that someone's DNA was there
7 ahead of time, and the elimination sample, for
8 instance in a sexual assault case, and someone
9 had consensual sex, then you would have an
10 elimination standard from that consensual sex
11 partner.

12 Q. Right. So in that circumstance, there would
13 be -- it's just sort of assumed, there's really
14 no question or doubt, that the sample that you
15 are looking at has nothing to do with the case?

16 A. It just helps us sort that out if we find a
17 mixture of DNA. An elimination sample would help
18 us sort out who the possible contributors are.

19 Q. Right. With the understanding that that person
20 you are trying to eliminate is not a suspect?

21 A. Correct.

22 Q. Okay.

23 ATTORNEY GAHN: Your Honor, the State would
24 like to be heard on this outside the presence of the
25 jury.

1 THE COURT: Very well, at this time we'll
2 excuse the members of the jury for the Court to hear
3 argument. Again, members of the jury do not discuss
4 the case or any portion of the testimony you heard
5 today, on your break. You are excused.

6 (Jury not present.).

7 THE COURT: You may be seated.

8 ATTORNEY BUTING: May I go ahead and mark
9 this so we know what we're talking about. I will
10 mark this one because it's not highlighted.

11 (Exhibit No. 343 marked for identification.)

12 ATTORNEY BUTING: Just by way of
13 explanation, what I'm attempting to do at this point
14 is show Ms Culhane an email that she received. I
15 guess it's from Mr. Kratz. I do not intend to
16 actually offer this into -- Well, I don't intend all
17 the content of this email to come into this case, or
18 to be sent to the jury, but I do wish one particular
19 line of it where Mr. Kratz is telling the witness
20 certain samples that he refers to as elimination
21 samples. That's my only purpose. I don't know if
22 counsel objects to that limited use.

23 THE COURT: Mr. Gahn.

24 ATTORNEY GAHN: Can I see that again,
25 please.

1 ATTORNEY BUTING: I don't know if we need
2 to send the witness out at this point. If there's
3 any lengthy argument, we will otherwise.

4 THE COURT: I guess I'm anticipating the
5 objection, if it's what I'm thinking it's going to
6 be I don't know that it's necessary to send the
7 witness out, but I will defer to the attorneys on
8 that one.

9 ATTORNEY GAHN: Our position, your Honor,
10 is that this email is dated February 7, 2006, and
11 this is well after charges being brought in the
12 Criminal Complaint against Mr. Avery. This is
13 clearly work product on the part of Mr. Kratz. He's
14 talking to his witness, Ms Culhane, and basically
15 talking trial strategy, how to go about the case,
16 testing certain exemplars, or items of evidence, and
17 it's just clearly a work product.

18 ATTORNEY BUTING: Judge, first of all, if
19 it is work product, that privilege is waived by
20 turning it over in discovery, in my view. But I'm
21 not really getting into work product. And I'm
22 sensitive to that concern and I don't usually like
23 to use emails in court at all. But here, I'm simply
24 using it for one limited purpose, and that is her
25 understanding of the characterization of specific

1 samples as being elimination samples.

2 Those are Chuck, Earl, and Bobby. And
3 that's really all I want to get into with this
4 particular document.

5 THE COURT: Seems to me that point can be
6 made without reference to this document.

7 ATTORNEY BUTING: If she can recall it and
8 if she can say she's aware that they were described
9 in those terms, sure, we can do that.

10 THE COURT: Does the State have any
11 objection of letting the witness take a look at the
12 email before she testifies and then we can bring the
13 jury back in without introducing the email?

14 ATTORNEY GAHN: That's fine.

15 THE COURT: All right.

16 ATTORNEY GAHN: As long as Mr. Kratz is not
17 going to be mentioned in your question that Chuck,
18 Earl, and Earl's samples were -- could be considered
19 elimination samples. That's all you want to say?

20 ATTORNEY BUTING: We could just say
21 submitted by the State, whether it's police or
22 prosecution is -- is not disclosed.

23 THE COURT: I may be wrong, but I thought
24 there's been evidence already about elimination
25 samples taken from other members of the Avery

1 family. So I don't think the subject matter is a
2 problem. And I don't see a need to phrase the
3 question such that it would involve any
4 attorney/client work product. So let's have the
5 witness take a look at the email, if she needs it to
6 refresh her memory, and I then think the question
7 can be asked without suggesting that it involves a
8 conversation with the attorneys.

9 All right. Mr. Buting, I think you can
10 retrieve the document now, I believe the witness
11 has reviewed it.

12 ATTORNEY BUTING: Okay. Are we ready to
13 go?

14 ATTORNEY GAHN: Are there additional emails
15 that you intend --

16 ATTORNEY BUTING: No, this is all.

17 ATTORNEY GAHN: Could I just look at that
18 one more time?

19 ATTORNEY BUTING: Sure. There are other
20 items that I'm not going to introduce.

21 ATTORNEY GAHN: We're ready to proceed,
22 your Honor.

23 THE COURT: All right. Mr. Buting, do you
24 want to retrieve the document you gave the witness.

25 ATTORNEY BUTING: Yes. And just so the

1 record is clear, I'm not going to offer this as an
2 exhibit. It's been marked, for the record, but this
3 will be one of those where it's just part of the
4 record, but it's not evidence in this trial.

5 THE COURT: Very well.

6 ATTORNEY BUTING: Is that fair? Okay.

7 (Jury present.)

8 THE COURT: You may be seated. Mr. Buting,
9 you may continue.

10 ATTORNEY BUTING: Thank you, your Honor.

11 Q. (By Attorney Buting)~ Now, Ms Culhane, you
12 received a number of samples, not just
13 Mr. Avery's, to compare the various pieces of
14 possible evidence in the case, right?

15 A. Correct.

16 Q. And when you received a sample -- that is a DNA
17 standard of Chuck Avery -- first let me establish
18 that you did. You received an exemplar standard
19 of Chuck Avery, Earl Avery, and Bobby Dassey,
20 right?

21 A. Yes.

22 Q. Among some others?

23 A. Yes.

24 Q. Like the parents, Mr. and Mrs. Avery --

25 A. Yes.

1 Q. -- right? And when you received those samples,
2 you were asked to do a profile for each of them,
3 right?

4 A. Yes.

5 Q. And when you were asked to do a profile for each
6 of them, those samples were referred to you as
7 elimination standards, correct?

8 A. Yes.

9 Q. Which to your mind, and your understanding, would
10 seem to indicate that you were not to consider
11 any one of those three, Chuck, Earl, or Bobby, as
12 suspects?

13 A. That's not entirely correct. When I'm submitted
14 a standard, it doesn't really matter if you call
15 it an elimination standard, or a reference
16 sample, if it fits the profile, the evidence
17 sample, then it's reported on. If it's a match,
18 it's reported on. Whether it's submitted as an
19 elimination sample or as a reference standard,
20 it's interpreted in exactly the same way.

21 So, if any of those elimination samples,
22 or reference samples, are excluded, no matter
23 what the evidence is, and no matter what you call
24 them, then that's how it would be reported.

25 Q. Sure. So if you get something that is told to

1 you by the police as an elimination standard, and
2 it hits, it matches some kind of crime scene
3 evidence, you are going to report that, of
4 course, right?

5 A. Yes.

6 Q. But the very fact that the items come to you with
7 that designation, elimination standard, tells you
8 something about what the police theory, or what
9 they believe those samples relate to, whether
10 they are a suspect or not?

11 A. Correct.

12 Q. Okay. Let me go back for a minute and talk about
13 your background. I don't recall what exhibit it
14 is that is your curriculum vitae, but I just want
15 to clarify a few things. You have got a
16 bachelor's degree in biological science; is that
17 right?

18 A. Yes.

19 Q. And you actually went to two colleges, though.
20 Your first college was Millsaps, M-i-l-l-s-a-p-s,
21 College in Jackson, Mississippi?

22 A. Yes.

23 Q. You went there for just two years?

24 A. Yes.

25 Q. And then you transferred to Mississippi College

1 to complete your undergraduate education, right?

2 A. Correct.

3 Q. Are you originally from that area, is that why
4 you were going to school down there?

5 A. Yes, I'm from Jackson.

6 Q. Okay. And then you got your bachelor of science
7 in 1978?

8 A. Yes.

9 Q. You did not go on and get a master's degree,
10 right?

11 A. Correct.

12 Q. Never in all your years since, have you gone back
13 to try and get a master's?

14 A. That's correct.

15 Q. I don't see anything in your CV that shows that
16 you worked as a research scientist, right?

17 A. No, I didn't.

18 Q. You have little or no publications in the field?

19 A. No, I have no publications.

20 Q. Okay. And I don't see in here that you do any
21 kind of public speaking, or teaching to other
22 forensic scientists, outside of your own lab, in
23 Wisconsin?

24 A. Actually, I did present a paper at one of the
25 Promega User's Meetings, because we were involved

1 in the original validation of the Power Point 16
2 Kit. And I did present a paper at that meeting.

3 Q. Okay. But that's the only time?

4 A. That's correct.

5 Q. And we'll talk a little bit more about validation
6 in a few minutes. It's not really clear to me
7 what jobs you had before you came to Wisconsin.
8 Was it just working at the Jefferson Parish
9 Sheriff's Office Crime Lab, or did you have some
10 other employment between 1978 and 1984?

11 A. No, I worked at the Jefferson Parish Crime Lab
12 for two and a half, three years, I don't remember
13 exactly, then I came to Wisconsin. And then
14 after a year I was in Wisconsin, I was hired by
15 the Crime Lab.

16 Q. Okay. And now it's been 23 years that you have
17 been on the job at the Wisconsin Crime Lab?

18 A. That's correct.

19 Q. And your current title is DNA Technical Unit
20 Leader?

21 A. Yes.

22 Q. A position that you were appointed to in 1997?

23 A. Yes.

24 Q. Now, is that a position that requires -- Well,
25 obviously, doesn't require a master's degree,

1 right?

2 A. Actually, it does. At the time -- time frame
3 when I was appointed to this position, the DNA
4 Advisory Board offered, was referred to as a
5 waiver for individuals who had a certain amount
6 of experience in forensics. In order to get that
7 waiver, I had to go back to school and take
8 molecular biology, statistics, and bio-chemistry
9 classes, which were all at UW Madison or online.

10 Q. Okay.

11 A. So those requirements were filled. Now, anyone
12 after a certain period of time, it does require a
13 masters.

14 Q. Okay. So you were sort of grandfathered in with
15 this other way of getting some additional
16 educational miles, right?

17 A. Right. And because of my experience.

18 Q. Okay. So it's kind of a seniority thing, too,
19 because you have been there longer than most
20 people?

21 A. Because I have experience, that's correct.

22 Q. Okay. Now, this current position as technical
23 leader, you discussed as having some
24 administrative duties, right?

25 A. Yes.

1 Q. And also some training duties?

2 A. Yes.

3 Q. And then, also, some actual DNA testing?

4 A. Correct.

5 Q. Can you tell me what percentage of your job
6 involves each?

7 A. Probably 70 percent is actual case work. The
8 duties with training varies according to how many
9 people we have in training. When everyone is
10 trained and there are no new analysts, then I
11 don't have any training responsibilities. But
12 when we hire a new analyst, then I do spend a
13 considerable amount of time training them.
14 Overall, I would guess 70 percent is spent on
15 case work.

16 Q. So about 30 percent less case load, generally,
17 than the other analysts?

18 A. That's correct.

19 Q. Okay. Let's talk about quality control, what you
20 know about it in your lab, and just in general.
21 You talked a lot about accreditation, right?

22 A. Yes.

23 Q. How important that is?

24 A. Yes.

25 Q. How rigorous the process is, right?

1 A. Yes.

2 Q. And one part of that is -- in fact, a big part of
3 it, is these outside auditors, whatever you want
4 to call them, outside overseers, look at the
5 protocols that you are using to do certain tests,
6 right?

7 A. Yes.

8 Q. And the -- there's various, I assume, accrediting
9 type boards in different forensic fields?

10 A. I believe there are several different accrediting
11 institutions depending on what type of work.
12 There's one for paternity testing. Most forensic
13 labs have an ASCLD accreditation.

14 Q. Okay. And certainly part of that is DNA
15 protocols, right?

16 A. Yes.

17 Q. But more than that, it's also what other kind of
18 test protocols your lab is following?

19 A. Are you referring to other sections?

20 Q. Yes, other sections.

21 A. Yes, each section has their own protocols. And
22 then we have lab-wide quality control standards
23 that everyone follows, basically the same.

24 Q. Okay. So, for instance, fingerprints, whatever
25 that's called, identification division?

1 A. Yes.

2 Q. They have a specific protocol or number of steps
3 they follow in order to come to a conclusion,
4 right?

5 A. Correct.

6 Q. Ballistics the same way?

7 A. Yes.

8 Q. DNA, the same way?

9 A. Yes.

10 Q. And like trace -- let's say, one subsection of
11 the trace division seems to be like volatile
12 chemicals?

13 A. I believe so.

14 Q. So, in other words, there's -- in order for --
15 let's say someone comes -- brings in evidence
16 from an arson, and the Crime Lab is asked to do
17 these chemicals tests to determine whether there
18 might be volatile chemicals like gasoline or
19 something like that?

20 A. I believe so.

21 Q. Okay. And there's a protocol that they have to
22 follow in order to do that test?

23 A. Yes.

24 Q. And these protocols are developed after a lengthy
25 process, right?

1 A. Correct.

2 Q. They are peer reviewed?

3 A. Yes.

4 Q. And peer reviewed means that they are published
5 so that other scientists, even in other parts of
6 the country or world, can also try the same
7 protocol and see if they get the same result?

8 A. Yes.

9 Q. They want to replicate, they want to be able to
10 do the very same tests elsewhere and find that
11 the results are valid and reliable?

12 A. That's correct. And it also allows laboratories
13 to compare results and exchange information.

14 Q. Okay. And that's really -- that's part of the
15 scientific process?

16 A. Right.

17 Q. Just in general, the whole idea that someone
18 comes up with a theory, until it can be tested
19 and repeated by others, it's just a theory,
20 right?

21 A. Yes.

22 Q. And it becomes science after others have been
23 able to test the theory over and over and
24 replicate it, right?

25 A. Yes.

1 Q. And sometimes that can take years before
2 something rises to the level where it's
3 considered science in the community, right?

4 A. That would be correct.

5 Q. And that's true of protocols, a protocol is a
6 plan, basically, a plan or method in which to
7 test some item to get to a particular end result;
8 would that be fair?

9 A. Yes.

10 Q. And those can take years, certainly months,
11 sometimes years, to test over, and over, and
12 over, to be sure that others can get the same
13 results?

14 A. Well, most of the time, when we're introducing a
15 new protocol, it has been tested by -- like if
16 the company that would provide the reagents and
17 the equipment that we use to test it. And that
18 would be a development validation.

19 In our laboratory, we don't necessarily
20 go through a developmental validation, which
21 would be more like research. We basically test
22 it to make sure that it works in our laboratory.
23 And that doesn't really take years.

24 Q. Sure. But the development by the -- in your
25 example was a reagent, or use of a reagent. But

1 development by that chemical lab can take quite a
2 while?

3 A. Yes.

4 Q. And you don't pick it up as something to use in
5 your lab until it's already been -- until you are
6 satisfied that it's been tested, retested, and
7 it's a valid reagent.

8 A. Correct.

9 Q. Now, these audits you mention, these audits are
10 something that are done for government labs as
11 well as private labs, right?

12 A. I believe so.

13 Q. So, it's not like government labs are somehow
14 exempt from the usual examination of auditors
15 just because they are government, right?

16 A. Right.

17 Q. We don't just say, you know, we're the
18 government, trust us?

19 A. That's correct.

20 Q. You guys have to prove your validity, your
21 reliability, scientifically, like any other lab?

22 A. Correct.

23 Q. That's true of the Wisconsin State Crime Lab,
24 right?

25 A. Yes.

1 Q. It's true of all government labs that you are
2 aware of?

3 A. If you're accredited -- We all have to follow the
4 same rules if you are accredited by ASCLD.

5 Q. Okay. And this whole accreditation process
6 involves auditors at the very beginning getting
7 the protocols, the test plans, and reviewing
8 those before they ever get to your lab, right?

9 A. That's correct.

10 Q. And only then, if those protocols pass the peer
11 review, at least that level of peer review from
12 outside auditors, do they even take the next step
13 of coming to your lab?

14 A. Well, our protocols are set in place and they are
15 given to the auditors so that they are familiar
16 with our procedures before they come to the lab.
17 And then, when they come to the lab, they verify
18 that we're following our protocols.

19 Q. So if you came up with a brand new protocol,
20 never before done anywhere in the country, and
21 you sent it off to these auditors and it had
22 never been peer reviewed, what do you think they
23 would say?

24 ATTORNEY GAHN: Very speculative, no
25 foundation.

1 THE COURT: I'm going to sustain the
2 objection. I think this might be more related to
3 some other issue that doesn't involve this witness.

4 ATTORNEY BUTING: Well, I think this
5 witness can testify, she's a scientist that was
6 involved with quality control in her lab. I think I
7 should be allowed to explore her understanding and
8 knowledge of the development of protocols.

9 THE COURT: I don't think it's specifically
10 related enough for the topic for which it's being
11 introduced to be relevant, so I'm sustaining the
12 objection.

13 Q. (By Attorney Buting)~ Okay. Have you ever, in
14 your lab, submitted a brand new protocol for a
15 test that had never been done anywhere else in
16 the country?

17 A. I can only speak to what's been done in DNA. I
18 don't have knowledge of any of the other sections
19 or what they have done. In DNA, the protocols
20 that we use have been peer reviewed and
21 validated, developmental as well as the internal
22 validation.

23 Q. All right. And so you are comfortable with the
24 protocols because of that.

25 A. Yes.

1 Q. And you would not submit a brand new protocol,
2 never done before, for your DNA test, and expect
3 to pass accreditation with that, would you?

4 ATTORNEY GAHN: Objection, your Honor, to
5 the form of the question.

6 THE COURT: Sustained.

7 Q. (By Attorney Buting)~ All right. So let me move
8 on a little bit. Your auditors come after they
9 get the protocols and they check out the lab,
10 right?

11 A. Yes.

12 Q. They check out the analysts, by way of
13 proficiency tests?

14 A. Correct.

15 Q. And they also check out security and that whole
16 process?

17 A. Yes.

18 Q. Like chain of custody?

19 A. Correct.

20 Q. Let's talk about that for a moment. Wisconsin's
21 Crime Lab's chain of custody procedure, I believe
22 you testified the agency submits it, usually
23 police, bring it into your lab, some central
24 gathering person, right?

25 A. Yes.

1 Q. What do you call them?

2 A. We have three evidence specialists.

3 Q. And what they do is, they look at the evidence.

4 You said they make sure it's sealed, right?

5 A. Yes.

6 Q. They give it one of these numbers, or you call

7 them numbers but they are often letters, right?

8 A. Well, a lab number refers to the whole case, and

9 then an item designation and a letter.

10 Q. Okay. So the lab number in this case is -- well,

11 I don't expect you to have it memorized, but it's

12 M05-2467.

13 A. Yes.

14 Q. Okay. Then you do have it memorized. And then

15 as the items come in they get named, or

16 designated, item A, B, C, all the way through the

17 alphabet?

18 A. Right.

19 Q. Then they start getting called AA, AB, AC all the

20 way through the alphabet that way?

21 A. Yes.

22 Q. Where do they go after that, B?

23 A. BA.

24 Q. BB, BC, BD, and you keep on going.

25 A. Right.

1 Q. And in this case, probably you got higher
2 designations than any other case that's ever come
3 to your lab?

4 A. I believe that's correct.

5 Q. Three hundred fifty you said, right?

6 A. About that, yes.

7 Q. And when that happens, when it first comes in,
8 this evidence specialist not only gives it a
9 designation, but then fills out some kind of form
10 that verifies the evidence has come into the lab,
11 right?

12 A. Yes.

13 Q. And at the end of the case, or whatever, at
14 whatever point your lab decides to send the
15 evidence back to the submitting agency, they
16 submit another -- or fill out another form,
17 right?

18 A. Yes.

19 Q. And that form is called an Evidence Release
20 Return Form?

21 A. Yes.

22 ATTORNEY GAHN: Again, your Honor, we're
23 going to have to be heard on this.

24 THE COURT: All right. Members of the
25 jury, I think what I will do at this time is excuse

1 you for your morning break. And we'll resume with
2 testimony after the break is complete. I will
3 remind you, again, not to discuss this matter during
4 the break. Jury is excused.

5 (Jury not present.)

6 THE COURT: You may be seated.

7 ATTORNEY BUTING: Excuse the witness,
8 please.

9 THE COURT: I'm going to excuse the witness
10 right now. You are excused. Mr. Gahn.

11 ATTORNEY GAHN: Your Honor, Mr. Buting has
12 presented a form here from the -- used by the Crime
13 Lab. It's an Evidence Release Return Form. But,
14 again, I guess I would like to see an offer of proof
15 of where are we going with this 1985 case. This had
16 to do with the 1985 case, when that evidence was
17 returned, to whom it was returned, and I just fail
18 to see the relevancy of going down this road at this
19 point.

20 THE COURT: Can somebody give me a copy of
21 the offered exhibit?

22 ATTORNEY BUTING: Should I mark it?

23 THE COURT: I think we should mark it.

24 ATTORNEY GAHN: My understanding, your
25 Honor, is they have stated their defense, it's this

1 planting of the blood vial. And this has nothing to
2 do with the blood vial, or anything remotely
3 connected.

4 ATTORNEY BUTING: Judge, what it is is a
5 record regularly kept in the course of her business.
6 She's going to be able to easily identify it. She's
7 talked about the 2003 exoneration. It shows that
8 Mr. Avery's buccal swabs --

9 THE COURT: Is your microphone on?

10 ATTORNEY BUTING: Yes. It shows that
11 Mr. Avery's buccal swabs, that used to be in the
12 custody of the Crime Lab, were sent back to the
13 Manitowoc County Sheriff's Department in 2003.

14 THE COURT: All right. I had understood
15 that the blood that was in the Clerk's Office was
16 going to be the subject of the defense. How does
17 this exhibit relate to that defense?

18 ATTORNEY BUTING: Well, this witness has
19 testified that there's DNA found on items that she
20 said she didn't see any blood, which could have come
21 from buccal swabs. So she's already testified to
22 that, so it's in play, whether or not the Manitowoc
23 Sheriff's Department had any of Mr. Avery's DNA in
24 another form, which they did.

25 THE COURT: Do we know if these items,

1 which on their face at least, say they are sealed,
2 are still sealed somewhere in the Sheriff's
3 Department Office?

4 ATTORNEY BUTING: That would be the subject
5 of testimony later, I suspect. But at this point,
6 all I'm doing is showing that they are not still at
7 the Crime Lab, that they were sent back to the
8 submitting agency, in this case, Detective Remiker.

9 THE COURT: Mr. Gahn.

10 ATTORNEY GAHN: Well, your Honor, I guess I
11 don't understand what's happening here. Is -- Now,
12 are we switching that the planting did not come from
13 the blood, but the planting now came from the buccal
14 swabs of Steven Avery? Is that what the defense is
15 stating now? Are they switching and changing their
16 theory of defense, that it's no longer from the
17 blood vial that's in the Clerk's Office, but now the
18 planting took place with buccal swabs of Steven
19 Avery? Now this is new --

20 ATTORNEY BUTING: Judge, this is not new.
21 We have alleged -- Look, they brought up, on direct,
22 that there was DNA that she discovered that she said
23 did not appear to come from blood. So it had to
24 come from another source. This is another source,
25 that according to this record at least, was sent

1 back to Manitowoc County Sheriff's Department. And
2 we will tie it up later when we establish that it is
3 in fact still in the Manitowoc Sheriff's Department,
4 or at least it was as of October -- or November 5th,
5 whatever, 2005.

6 ATTORNEY GAHN: Your Honor, I guess their
7 offer of proof in this case, which the Court
8 required, and in their offer of proof, it was the
9 planting was done by the blood vial. Simple as
10 that. That was it. Now they are going off on this
11 buccal swab now, that the planting may have come
12 from there. And I don't --

13 ATTORNEY BUTING: Judge, I don't mean to
14 cut counsel off, but it is in response to testimony
15 they elicited here, that some of it, some of the DNA
16 apparently did not come from blood. Now, we have a
17 right to respond to that and this is a response. It
18 is not an explanation for the blood in the RAV 4.

19 THE COURT: Right.

20 ATTORNEY BUTING: Maybe an explanation for
21 some of the other.

22 THE COURT: My recollection is that the
23 previous contested hearing involved the blood vial.
24 I don't know that I was asked to rule on anything
25 other than the vial. I believe the evidence first

1 came up at that point, that there was some DNA
2 evidence of Mr. Avery, apparently not from blood,
3 that was found, if I recall correctly, on the Toyota
4 key and on the hood latch.

5 And so I don't think I can say that this
6 exhibit would not be relevant. The State is free
7 to show in rebuttal or as part of it's
8 case-in-chief that these samples are still sealed
9 somewhere in the Sheriff's Office. I think it is
10 relevant. So after we get back from our break, I
11 will allow the defense to pursue this matter.

12 ATTORNEY BUTING: Thank you. What time did
13 you say?

14 THE COURT: Let's come back in 15 minutes.

15 ATTORNEY BUTING: All right. Thank you.

16 (Recess taken.)

17 (Jury present.)

18 THE COURT: At this time the witness can be
19 brought back into the courtroom. Attorney Buting,
20 you may resume.

21 ATTORNEY BUTING: Thank you, your Honor.

22 **CROSS-EXAMINATION CONTD.**

23 BY ATTORNEY BUTING:

24 Q. Now, Ms Culhane, we were talking about, before
25 the break, about this process that you go through

1 when -- your lab goes through when evidence is
2 brought in from the agency and, actually, also,
3 when it's returned to the agency, correct?

4 A. Yes.

5 Q. I'm showing you Exhibit 344, can you identify
6 that?

7 A. Yes, this is a copy of our -- the forms that we
8 fill out when we send evidence back to the
9 agency.

10 Q. Okay. And this is a regular record that's used
11 by your lab in the course of business,
12 day-to-day?

13 A. Yes.

14 Q. Okay. And it's meant, as part of a chain of
15 custody, to document where evidence goes, who has
16 it at any given time?

17 A. Right.

18 Q. When you're done with it, you want to make sure
19 it's clear you are done with it, it is no longer
20 your responsibility, from that point on?

21 A. Right.

22 Q. All right. I'm just going to put up here, on the
23 ELMO, Exhibit 344. And this has a case number on
24 it, rather old case number, right?

25 A. Yes, that's actually the agency number. I would

1 recognize it by our lab number, which is on the
2 other side.

3 Q. I'm sorry, let's move over here.

4 A. There you go.

5 Q. And the 85 -- M85, 85 refers to the year of the
6 case that it's submitted to you?

7 A. Yes.

8 Q. So that would be 1985?

9 A. Yes.

10 Q. So this is actually an Evidence Release Form
11 relating to Mr. Avery's 1985 conviction, right?

12 A. Correct.

13 Q. And the last item number, W, designated W, at the
14 bottom there, says one sealed envelope
15 containing -- I always call it buccal, is it
16 buccal?

17 A. Buccal.

18 Q. Buccal. Containing buccal swabs reportedly
19 recovered from Steven Avery, right?

20 A. Yes.

21 Q. And by this form, what you are saying is that --
22 moving it to show the date here -- the date is
23 October 13th of 2003, right.

24 A. Could you slide it over just a little bit?

25 Q. Sure. Let me zoom out of it, maybe we can see.

1 Does that help?

2 A. Yeah. It was released from our lab on September
3 25th, 2003.

4 Q. Okay.

5 A. And it was signed for at Manitowoc Sheriff's
6 Department on 10/13/03?

7 Q. And the name of the person who is signing it is
8 Detective Remiker, or Dave Remiker?

9 A. It appears to be.

10 Q. Manitowoc Sheriff's Department, right?

11 A. Yes.

12 Q. That's the printed name and then there's a
13 signature next to it, which I assume you can't
14 identify yourself?

15 A. No.

16 Q. Do you know Mr. Remiker?

17 A. No.

18 Q. Okay. So, what this document tells you, then, is
19 that on -- in September of 2003, you returned
20 Mr. Avery's buccal swab reference sample to the
21 Manitowoc County Sheriff's Department?

22 A. Yes.

23 Q. Okay. Now, back to the internal chain of
24 custody. When the evidence first comes in to
25 this evidence specialist; we saw a name up there,

1 Sue Glitchel, I think it was?

2 A. Gitchel, yes.

3 Q. G-l-i --

4 A. G-i-t-c-h-e-l.

5 Q. G-i-t-c-h-e-l. Fran Lutz is another one?

6 A. Mm-hmm.

7 Q. L-u-t-z?

8 A. Yes.

9 Q. Anyway, they take it and they put it in some sort
10 of communal storage room; is that what happens?

11 A. Yes.

12 Q. And that's a locked room?

13 A. Yes.

14 Q. That only certain people can come and go?

15 A. That's correct.

16 Q. Those people include the individual DNA analysts,
17 right?

18 A. No.

19 Q. No?

20 A. No, it's only evidence specialists, the
21 supervisors, and our director.

22 Q. So when you need to go work on something that's a
23 part of evidence that's been brought in, you have
24 to go check in with the evidence custodian?

25 A. Yes. And we request evidence and then they bring

1 it to -- there's a window there, they bring it to
2 us, and then we take custody of it.

3 Q. Okay. And somewhere it's marked that you now
4 have custody of it, rather than the central
5 storage?

6 A. Yes.

7 Q. Okay. And then when you take it, you or any of
8 the analysts take it into your possession, you
9 bring it over to your lab bench?

10 A. Yes.

11 Q. Do you have some sort of storage lockers there?

12 A. Yes, in the front part of our lab bench.

13 Q. And can you just describe what those are, what
14 they look like?

15 A. The front of our lab bench, they are probably
16 about this deep and maybe, I don't know, 3,
17 6 feet long. And they have shelves in them.

18 Q. The lab benches are about 6 feet long?

19 A. Well, I don't remember. There's shelving inside
20 there and they are on the front of our lab bench
21 where we do our work space. And then on the
22 front we have cabinets that we can put evidence
23 in.

24 Q. Okay. And is there more than one on each bench?

25 A. The benches in the lab are T-shaped. There's one

1 analyst on each side. I have -- Each analyst has
2 two cupboards for storage.

3 Q. Okay. When you say cupboards for storage, these
4 are like drawers?

5 A. No, you just open the door and there's shelving.

6 Q. Okay. There's shelves underneath the bench you
7 are actually working on?

8 A. Yes.

9 Q. That's the lab bench where you are doing certain
10 tests?

11 A. Yes.

12 Q. Extractions usually?

13 A. Yes.

14 Q. Okay. And are these cupboards or these shelves
15 you are talking about, are they -- they have
16 doors on them?

17 A. Yes.

18 Q. Are they like open wire mesh kind of doors?

19 A. No, they are regular locked wooden doors.

20 Q. Solid doors?

21 A. Yes.

22 Q. And they have locks on them?

23 A. Yes.

24 Q. And there's two separate shelves, or two separate
25 cupboards?

1 A. There's two shelves in each cupboard and there's
2 two separate cupboards.

3 Q. Okay. And each analyst has two of those?

4 A. Yes.

5 Q. And that's so that if you are working on one big
6 case, you don't mix up the items from that case
7 with some other case you are working on?

8 A. Yes, it's just storage space for evidence that's
9 being worked.

10 Q. So you wouldn't mix one case -- evidence from one
11 case that you are working and put it in the same
12 cupboard with another?

13 A. No. We do store several cases, but the cases
14 are -- the items of evidence within the case are
15 packaged and sealed.

16 Q. Sure. All right. So you -- you do try and keep
17 the evidence from one case all together?

18 A. We try, yes. But we have several cases in that
19 area at the same time.

20 Q. Okay. And so in this case, when you would be
21 working on any of the evidence in this case, you
22 would try and keep all of the evidence that's not
23 up on the bench, you would try and keep it all in
24 one cupboard?

25 A. Yes.

1 Q. All right. And is the key that only you have to
2 the cupboard, or do all the analysts keys work on
3 the same cupboard?

4 A. All the analysts have a key.

5 Q. And the key works for all of these cupboards?

6 A. Yes.

7 Q. So you could open up someone else's cupboard?

8 A. Yes.

9 Q. Or they could open up yours?

10 A. Yes.

11 Q. Okay. Not that you would want to, but I'm just
12 trying to establish that for the record?

13 A. Right.

14 Q. Now, when you take evidence out of your cupboard
15 and start working it on your bench, is it always
16 put back at the end of the day and locked in the
17 cupboard?

18 A. No.

19 Q. Sometimes you have tests and things that work
20 overnight, right?

21 A. Yes.

22 Q. All right. Now, in this case, you worked a
23 little bit differently with regard to the RAV 4
24 stains, because you are the one who actually took
25 them in?

1 A. That's correct.

2 Q. So instead of the police department delivering
3 swabs of these stains, that you would then check
4 out from the evidence custodian, it didn't work
5 that way?

6 A. Right.

7 Q. What happened was, on November 7th, I believe?

8 A. Yes.

9 Q. Monday, you come down to the garage and you see
10 there's this RAV 4 there, Toyota RAV 4?

11 A. Right.

12 Q. And you are there after Mr. Groffy, right?

13 A. Yes.

14 Q. He's already done his photographs and processing
15 before you ever touch it?

16 A. Right.

17 Q. And you testified that you took a number of those
18 swabs, a number of stain swabs. You mentioned a
19 -- I forget what the last number -- actually the
20 last number was A-23, right?

21 A. I believe so, yeah.

22 Q. So you actually took 23 swabs in different areas,
23 some of them the same areas?

24 A. No. I only took -- someone else was processing
25 it for ident, I believe. And that's where the

1 23, I didn't take 23 swabs.

2 Q. I see what you are saying. So what you are
3 saying is, you took A-1, A-2, A-3, A-4, up to
4 where, 12?

5 A. A-12, I believe.

6 Q. Okay. And then Mr. Riddle, Michael Riddle?

7 A. Yes.

8 Q. He's the fingerprint guy?

9 A. Right.

10 Q. He examined it. And when he would find
11 fingerprints on it, he would give those a
12 designation like A-13 or A-14.

13 A. Right. Actually, I worked up through A-14.

14 Q. Okay. And then there is a stain, a swab that you
15 took, though, that's designated A-23?

16 A. Correct.

17 Q. And that's because Mr. Riddle found something he
18 thought maybe you should take a look at and swab.

19 A. Yes.

20 Q. So Mr. Riddle found something, fingerprints or
21 whatever, that he designated A-15 through A-22?

22 A. I assume so.

23 Q. Okay. And you came in and did this last one?

24 A. Yes.

25 Q. Okay. And then you took all these swabs, you

1 said they were in like a test tube holder, to
2 dry?

3 A. Yes.

4 Q. Did you package them there at the bench in the
5 garage, or did you take it back to your
6 department, your bench, to package?

7 A. I believe I packaged them in the garage.

8 Q. So they were dry already?

9 A. No, I put them in the coin envelope and I left
10 the envelope open.

11 Q. Okay. And these swabs, just so we're clear,
12 they're like Q-tips?

13 A. Yes.

14 Q. Longer?

15 A. Essentially, yes.

16 Q. Okay. So then you took the swabs that you found
17 from the RAV 4, the 14, and you brought them
18 directly to your lab bench?

19 A. Yes.

20 Q. And then into your storage locker?

21 A. Actually, they were on my lab bench while they
22 air dried -- or they were in the coin envelopes
23 on my lab bench, overnight, while they air dried.

24 Q. Okay. And, then, once they were dried and you
25 were -- Well, you did some tests with them, I'm

1 sure. But once you were done with doing those
2 first round of tests in November, you put them in
3 your storage locker?

4 A. Yes, they were sealed up and put away.

5 Q. You didn't return them or place them in central
6 storage?

7 A. I can look. I don't recall exactly when I --

8 Q. Why don't you look. Why don't you look at -- you
9 have the Chain of Custody Report?

10 A. Yes.

11 Q. Look at Page 1 of 50?

12 A. I'm sorry, what items?

13 Q. It's the Chain of Custody Report, just look at
14 the first page.

15 A. Okay.

16 Q. First page lists A, A-1, 2, 3, 4, 5 -- I'm sorry,
17 4-A.

18 A. Yes.

19 Q. Right?

20 A. Right.

21 Q. And A-1, A-2, A-3, were all determined to be
22 Teresa Halbach's DNA, if you recall?

23 A. That's correct.

24 Q. Those were the swabs from the blood in the back,
25 and the rear of the cargo?

1 A. And four.

2 Q. And four as well. Okay.

3 A. Yes.

4 Q. And those were in your custody until when?

5 A. April 3rd, 2006.

6 Q. Okay. And so, then, on that date, you returned

7 them to the central storage area with the

8 evidence specialist?

9 A. Correct.

10 Q. But from November up to April 3rd, they were

11 sitting in your storage area of your lab bench?

12 A. Sealed, yes.

13 Q. Yes. But in that same compartment all together?

14 A. That's correct.

15 Q. With whatever other evidence you had on the Avery

16 case, all in that same cupboard, right?

17 A. Correct.

18 Q. Okay. Then, if you look ahead maybe to Page 38

19 of your Chain of Custody Report, directing your

20 attention to Item FL as in Larry, FL?

21 A. Yes.

22 Q. Now, you previously testified about that, that's

23 the bullet fragment?

24 A. Yes.

25 Q. Right?

1 A. Yes.

2 Q. That's the one that you say you found Teresa
3 Halbach's DNA on?

4 A. Correct.

5 Q. That came into your lab on what date?

6 A. March 16, 2006.

7 Q. And it came into your custody from that central
8 room on what date?

9 A. March 28, 2006.

10 Q. Okay. And then you actually started working on
11 it the next day, March 29th; isn't that right?
12 Do you need to refer to your case notes?

13 A. Yes, I do.

14 Q. That's fine.

15 A. I began -- I began -- I screened the evidence on
16 March 29th, '06.

17 Q. Okay. And, then, one of the things you do in
18 that -- first thing is you open it up and take a
19 look at it, right?

20 A. Yes.

21 Q. You unseal the -- whatever it is, and in this
22 case it was like a little plastic bag, right?

23 A. Right.

24 Q. And you then began -- we'll talk about it more
25 later, but at that point you began the process of

1 extraction amplification and, ultimately,
2 figuring out a profile?

3 A. Yes.

4 Q. And that's the test that we later -- we heard
5 later, at some point in the process, was
6 contaminated with your DNA?

7 A. That's correct.

8 Q. Proficiency tests are something that you take
9 about every year or so?

10 A. Twice a year.

11 Q. Twice a year. And they involve you doing --
12 testing a sample that's sent to you by some
13 outside private company?

14 A. Yes.

15 Q. And those are just pass/fail, right?

16 A. No.

17 Q. You get a grade, A, B, C?

18 A. Well, you -- I suppose they are pass/fail, but
19 it's not -- you are required to put the types
20 down and they are -- also you are required to
21 actually record the types that you develop and
22 then there are several interpretation questions
23 on there. Could the sample contribute to this
24 evidence sample? Could the sample from the
25 victim contribute to the evidence sample? So we

1 actually have to record our types and do some
2 interpretation.

3 (Exhibit No. 345 marked for identification.)

4 Q. I'm showing you now Exhibit 345, can you identify
5 that for the record?

6 A. Yes. This is a copy of the -- Once we sent our
7 answers back to the company, then they send us
8 documentation as to whether our types are
9 consistent with the types that should be on the
10 case --

11 Q. All right.

12 A. -- test.

13 Q. And, then, this actual report that you have in
14 your hand is something that's filled out by
15 supervisors in your lab?

16 A. Well, yes.

17 Q. Okay. That report isn't prepared by this outside
18 company, that's prepared by someone in your lab,
19 right?

20 A. Yes.

21 Q. And on this particular one, it has a number of
22 boxes -- in fact, they all have a number of boxes
23 where they say -- well, let's look at the main
24 ones. Technical performance on this one was
25 accepted, right?

1 A. Right.

2 Q. But on this particular one, it also has some
3 comments. What does that mean? What are the
4 comments on this?

5 A. I'm not sure. I don't recall that test, so I
6 really -- I'm not sure what is meant by that.

7 Q. Let's look at the date for a minute. The date is
8 April 7th of '06?

9 A. Correct.

10 Q. Actually, if you look up here, the test is --
11 looks like you completed the test on March 1st?

12 A. Yes.

13 Q. And then it was received -- compilation received
14 by the a lab or something on --

15 A. Yes.

16 Q. -- on April 4th?

17 A. Yes.

18 Q. So this is really right about the time that you
19 are doing this test on the alleged bullet
20 fragment in Mr. Avery's case, right?

21 A. Yes.

22 Q. And often these results or comment sections are
23 blank. They don't say anything. They just check
24 acceptable or not acceptable, right?

25 A. Sometimes. Sometimes there's a comment.

1 Q. And this one indicates some what, a mistake that
2 you made?

3 A. I don't believe so, no.

4 Q. It's referring to a non-sperm fraction with a
5 mixture of victim and semen donor is what that
6 says.

7 A. Like I said, I can't really comment because I
8 don't remember the specific proficiency test.

9 Q. And that's not your handwriting?

10 A. No.

11 Q. But it is your -- also your supervisor's
12 signature at the bottom?

13 A. Yes.

14 Q. And your signature on April 10th of '06?

15 A. Right.

16 Q. Okay. But you don't ever recall seeing this?

17 A. Well, obviously I saw it, because I signed it.

18 Q. Sure.

19 A. But, no, I don't independently recall.

20 Q. Okay. Would it be fair to say that the Wisconsin
21 Crime Lab has a pretty heavy case load of DNA,
22 your section, the DNA unit?

23 A. Yes.

24 Q. You have gotten a lot of publicity about it
25 lately?

1 A. Yes.

2 Q. Became an issue in the last election for the
3 Attorney General for the State of Wisconsin,
4 right?

5 A. Apparently.

6 Q. Well, you were in the lab and you are part of
7 management to some degree, right?

8 A. Not really. I'm not really part of management.
9 I have some management duties, but I'm not really
10 considered management.

11 Q. Okay. But part of those duties are case work,
12 case flow, and case management?

13 A. Right.

14 Q. And priority, right?

15 A. Yes.

16 Q. So you are certainly aware that the case load has
17 been going up, and up, and up, at the Crime Lab?

18 A. Yes.

19 Q. And that you are getting calls from prosecutors
20 and police all the time, asking you to, please,
21 do these -- get these results in yesterday?

22 A. Correct.

23 Q. They want them fast?

24 A. Yes.

25 Q. And so there's some pressure on the analyst to

1 get the job done?

2 A. Of course.

3 Q. Okay. And that's important for a number of
4 reasons, for instance, you don't want a suspect
5 in a case, who's DNA has already been sent to
6 you, to be out running around committing new
7 crimes, when if you can get to your tests
8 quicker, you might be able to link him to
9 something and get him off the streets?

10 A. That's correct.

11 Q. It's also important, because you do some
12 post-conviction tests as well?

13 A. Yes.

14 Q. And you don't want an innocent man sitting in
15 prison longer than necessary, while his DNA
16 sample sits in your office, unanalyzed, because
17 of backlog?

18 A. Correct.

19 Q. And just to give the jury some estimate or some
20 understanding of the numbers here, correct me if
21 I'm wrong, but my understanding is that your --
22 the DNA Unit's backlog of work, approximately
23 tripled between 2003 and 2005; would that be
24 about right?

25 A. I believe that's right.

1 Q. If I gave you the number that your backlog of
2 cases that you were working on in 2003 was 478,
3 and as of 2005 it had gone to 1,375; does that
4 sound about right?

5 A. I don't remember the exact numbers, but when you
6 are talking about DNA cases, you are talking
7 about the Madison Lab and the Milwaukee Lab.

8 Q. Sure.

9 A. So, we're not just talking about one laboratory.
10 And if those numbers were what was quoted, I
11 assume that's correct. I don't recall exactly.

12 Q. So when Mr. Avery's case came to your lab, it
13 came to your lab at a time when there was already
14 this huge backlog that had just ballooned or
15 exploded over the last two years, or tripled?

16 A. That's correct.

17 Q. This case, then, put an enormous demand on your
18 resources, right?

19 A. Yes.

20 Q. Three hundred and fifty submissions to the
21 overall Crime Lab, all the different sections,
22 right?

23 A. Correct.

24 Q. One hundred eighty just to the DNA Unit?

25 A. That's correct.

1 Q. And so while all these -- while these 180 pieces
2 of evidence were in your lab to be analyzed in
3 the Avery case, your analysts were also working
4 very hard to reduce that backlog and deal with
5 all the other submissions that kept coming in?

6 A. That's correct.

7 Q. Would you agree that there was, given the case
8 load, there was a shortage of analysts, in 2005,
9 in your lab?

10 A. Yes.

11 Q. The Madison Lab?

12 A. Yes.

13 Q. And that you were trying to bring new ones on
14 board, that's part of the idea was to -- your
15 function, was to help train new people?

16 A. That's correct.

17 Q. But you said that takes some time, nearly a year,
18 to train somebody new, right?

19 A. Right.

20 Q. And the way you trained them, let's talk about
21 2005 and 2006, you had a number of new analysts
22 that were sort of under your wings, right?

23 A. Yes.

24 Q. And you would train them by -- kind of like you
25 see on doctor shows, where you have the main

1 doctor and the interns following along, right,
2 like ducklings?

3 A. Sure.

4 Q. They follow you around to wherever you go?

5 A. Part of their training --

6 Q. Okay.

7 A. -- involved that.

8 Q. And part of that training would mean they would
9 follow you when you went up to your lab bench to
10 do something?

11 A. Sometimes.

12 Q. Okay.

13 A. Not that often. Most -- A lot of their training
14 revolves around lectures, and reading, and
15 running their own samples. And some of the
16 trainees in this case were coming from other
17 laboratories, so they had quite a bit of training
18 already. So it wasn't totally following me
19 around.

20 Q. All right. But there were some -- certainly some
21 aspects of the training that required them, these
22 trainees, to be with you when you are actually
23 doing tests at your lab bench?

24 A. Yes.

25 Q. And so you could demonstrate for them how to do

1 it, right?

2 A. Yes.

3 Q. Okay. Now, that means, however, that there were
4 more people than usual surrounded around a lab
5 bench when you are doing your tests?

6 A. Yes, on a limited basis.

7 Q. Sure. You try and limit it, and you are not
8 trying to contaminate anything, of course, right?

9 A. Right.

10 Q. But the more people around an evidence bench, or
11 lab bench with evidence on it, the greater the
12 risk of contamination, right?

13 A. Yes.

14 Q. Did you ever have any trainee actually do a hands
15 on test in this case?

16 A. No.

17 Q. Even under your supervision?

18 A. No.

19 Q. You did it all?

20 A. Yes.

21 Q. And they just watched?

22 A. Yes.

23 Q. And that was especially true on the day that you
24 were testing the bullet?

25 A. Yes.

1 Q. Item FL?

2 A. Yes.

3 Q. The trainee's were around you.

4 A. Well, there were two -- two trainees sitting by
5 my work space watching the beginning portion of
6 the extraction.

7 Q. Okay. We'll talk more about that in a moment.
8 All right. I apologize for the delay. I'm going
9 to show you what's marked Exhibit 308 and 307.
10 Just take a moment to orient yourself.

11 A. Okay.

12 Q. Okay.

13 A. Mm-hmm.

14 Q. Let me put these up on the screen. Tell me what
15 these are pictures of. Can you tell me what this
16 Item 307 is a picture of?

17 A. That's the rear of the RAV 4, our item A.

18 Q. Okay. And that is in the Crime Lab garage?

19 A. Yes.

20 Q. And you recognize the location?

21 A. Yes.

22 Q. And this particular photograph shows the rear of
23 the RAV 4, with the wheel cover and the cargo
24 door, right?

25 A. Yes.

1 Q. And if I zoom in on this a little bit, does this
2 depict the door handle for the tailgate, or
3 whatever you want to call it, the rear door?

4 A. Yes.

5 Q. Cargo door. That's the area that Mr. Riddle was
6 working on for fingerprints, correct?

7 A. I believe so, yes.

8 Q. And that's the area where he said, hey, maybe --
9 there's something here maybe you want to take a
10 look at that?

11 A. Yes.

12 Q. That's the item, then, that became A-23?

13 A. Yes.

14 Q. And you tested that, with a swab, for DNA, right?

15 A. Yes.

16 Q. And you did not find Mr. Avery's DNA on that
17 swab, did you?

18 A. No.

19 Q. And, so, if Mr. Kratz, in his opening statement,
20 told this jury, with a power point slide, right
21 up here showing that, with the circle around that
22 rear door, and said that that would -- there
23 would be evidence that Mr. Avery's DNA was on
24 that door handle, that would be wrong, wouldn't
25 it?

1 A. Based on my results, I didn't find Steven Avery's
2 DNA on that sample.

3 Q. In fact, you found Mr. Avery's DNA nowhere on the
4 rear of that vehicle at all, correct?

5 A. Correct.

6 Q. Even more so, you never found Mr. Avery's DNA
7 anywhere around the outside of any of the door
8 handles of that vehicle, did you?

9 A. No. But I -- I didn't test any of the exterior
10 doors.

11 Q. And you later received some swabs of the interior
12 door handles, didn't you?

13 A. Yes.

14 Q. And you did not find Mr. Avery's DNA on that, did
15 you?

16 A. No.

17 Q. You found Teresa Halbach's DNA on at least one of
18 them, right?

19 A. Right.

20 Q. You testified, though, to finding six apparent
21 blood stains, and all of them were, essentially,
22 in the passenger compartment area. This is in
23 November we're talking about. Okay.

24 A. Mm-hmm.

25 Q. All of those were in that passenger compartment

1 area of the RAV 4, right?

2 A. Exactly which ones are you referring to, because
3 there were several -- there were stains
4 throughout the car.

5 Q. Sure. And that's why I want to get clear.

6 A. Okay.

7 Q. Would you go to your -- Do you have some
8 handwritten notes of --

9 A. Yes, I do.

10 Q. -- where you found those stains on November 7th?

11 A. Yes.

12 Q. You want to take a moment and refresh your
13 recollection on those.

14 A. Are we talking about stains throughout the car,
15 or stains consistent with each individual, or --
16 I'm not sure what your question is.

17 Q. Let's talk about the stains that you say your
18 tests showed were Mr. Avery's DNA, or had Mr.
19 Avery's DNA on them?

20 A. Okay.

21 Q. You found them several places in the driver's
22 seat?

23 A. Yes.

24 Q. And the ignition on the dash?

25 A. Yes.

1 Q. And the seat right next to the driver's seat, the
2 front passenger seat, right?

3 A. Yes.

4 Q. And then you found one in the rear passenger
5 door, on the right side, as you open the door.
6 There's a little ledge.

7 A. Panel, yes.

8 Q. Okay. But you found none of Mr. Avery's DNA on
9 any stains in the rear cargo area of that
10 vehicle, did you?

11 A. No.

12 Q. None on the outside handle of the cargo door?

13 A. That's correct.

14 Q. None on the inside handle of the cargo door?

15 A. Correct.

16 Q. And, in fact, where you found those six stains in
17 November, of 2005, November 7th --

18 A. Yes.

19 Q. -- the ones that were attributed later, to
20 Mr. Avery's DNA, one could have planted simply by
21 opening two doors in that vehicle?

22 A. I really can't comment on that.

23 Q. Okay. You have got -- if someone was to plant
24 Mr. Avery's blood in that vehicle, to get to
25 those six stains, they would need to open the

1 driver's door, right?

2 A. Yes.

3 Q. Likely, or the passenger door on the front?

4 A. Yes.

5 Q. From either one, but more likely the driver's
6 door, you could reach the location where all of
7 the stains were found in that front seat area?

8 A. Except for the rear passenger door.

9 Q. I'm getting to that. Okay? The first five that
10 you found were all in that front compartment?

11 A. Yes.

12 Q. Front seat compartment?

13 A. Yes.

14 Q. Reachable by opening one door, right?

15 A. Yes.

16 Q. And, then, the only other stain that you found
17 there was in the rear passenger door that could
18 also be accessed simply by opening that one door?

19 A. Yes.

20 Q. So if somebody was to plant Mr. Avery's blood in
21 that vehicle, before you got it on November -- in
22 November, all of those stains you found could
23 have been done by simply opening two doors?

24 A. Yes.

25 Q. Now, many months later, April I believe it was,

1 you got a swab that was told to you was a hood
2 latch swab?

3 A. Correct.

4 Q. That was not tested, or did not come from your
5 test in November?

6 A. Right.

7 Q. And you weren't present when it was taken, by
8 whomever, sometime before it arrived at your lab?

9 A. No, I was not.

10 Q. And you didn't do a presumptive test for blood,
11 right?

12 A. Correct.

13 Q. You didn't see any blood particularly visible on
14 the swab, right?

15 A. Right.

16 Q. But it was discolored?

17 A. Yes.

18 Q. Dirty, might possibly have had some residue of
19 blood mixed in with the dirt and grime and
20 whatever else was on the swab, right?

21 A. It's possible, but there was no visual
22 indication.

23 Q. And you often -- well, not often, but you do
24 sometimes find blood without visibly seeing it,
25 right?

1 A. Yes.

2 Q. And your presumptive tests will usually indicate
3 that?

4 A. Correct.

5 Q. But you didn't actually do one here, on this hood
6 swab, right?

7 A. Correct.

8 Q. So you can't rule out the source of that DNA
9 being a blood drop or a blood smudge of some
10 sort, can you?

11 A. No. I can --

12 Q. That's fine.

13 A. I can say that it wasn't a visible --

14 Q. Sure. But you can't rule out that blood may have
15 been the source?

16 A. A very trace amount, yes.

17 Q. Because this was a low amount, you say, right?

18 A. Well, the entire swab was a low amount of DNA and
19 that's why I didn't test it for presumptive,
20 because I didn't want to waste any of the sample
21 on a presumptive test.

22 Q. Okay. We'll get to that in just a moment here.
23 You also testified very, very briefly, I think,
24 about Item B, which is Mr. Avery's own Pontiac
25 Grand Am --

1 A. Yes.

2 Q. -- right?

3 A. Yeah.

4 Q. And you did test a number of stains or swabs that
5 came to you, or did you actually get them
6 yourself?

7 A. I collected them.

8 Q. You collected them, okay. And overall you found
9 Mr. Avery's DNA on those swabs, right?

10 A. Yes.

11 Q. Not at all unusual to find one's own DNA on one's
12 own possessions?

13 A. Correct.

14 Q. You didn't find Teresa Halbach's DNA on any of
15 those items, or anywhere in Item B, the Pontiac
16 Grand AM, did you?

17 A. No.

18 Q. And you certainly were looking for that if that
19 was -- right, that was part of your test, part of
20 your examination?

21 A. Well, I just processed the blood samples and they
22 were what they were.

23 Q. And they were not Teresa's?

24 A. Correct.

25 Q. Okay. Let's turn to the key. Would this be

1 something that you would consider that had trace
2 levels of DNA?

3 A. I guess it depends on how you define trace.

4 Q. Let's say a relatively low amount of DNA in this
5 particular instance?

6 A. Yes.

7 Q. If you could look at your notes maybe, refresh
8 your recollection. I'm going to ask you in a
9 moment about that. If you can give me some
10 estimate, from your records, about just what the
11 volume or level of DNA you found on that key was?
12 Okay?

13 A. Yes.

14 Q. Now, I believe you testified that there was no
15 blood visible on this item either?

16 A. Correct.

17 Q. But, again, you didn't do a presumptive test?

18 A. No, I did not.

19 Q. What you did was, you took a swab, a Q-tip,
20 moistened with this distilled water, right?

21 A. Yes.

22 Q. And you rubbed it all the way around, both sides,
23 top, bottom, whatever, of the black plastic part
24 of the key?

25 A. Correct.

1 Q. And the swab, I think in this instance you said
2 was not discolored?

3 A. That's correct.

4 Q. Now, when you tested this swab from the key, you
5 used the entire amount. You used the entire
6 swab, didn't you?

7 A. Yes.

8 Q. Normally, you will try and just cut a swab in
9 half, use half, save half?

10 A. Yes, if there's enough, yes.

11 Q. But this particular test, just by looking at it,
12 looking at the item you were dealing with, you
13 thought you couldn't do that.

14 A. Well, I felt that being what we refer to as a
15 touched item, and there being no visible
16 indication of a biological fluid like blood,
17 that, yes, I would probably have a low amount to
18 start with.

19 Q. Okay. So when I call something trace, I'm
20 talking about this small amount of DNA that may
21 be transferred by something less than the usual
22 bodily fluids of blood, or -- well, let's just
23 stick with blood.

24 A. Yes. I mean, it all depends on the stain. There
25 are touched items that have lots and lots of DNA

1 present. Some touched items don't have that
2 much. It just depends on who touches them and
3 what the item is. So to generalize all touched
4 items with the term trace amounts, I'm not sure
5 that's accurate.

6 Q. All right. You said you keep up with the
7 literature in your field, right?

8 A. I try.

9 Q. And I take it, then, that you have read a report,
10 a study by Ray Wickenheiser?

11 A. I don't remember the name, may I see it.

12 Q. Sure. I'm not going to actually mark it, but
13 take a moment and look at it and see if you maybe
14 recognize this article, or the study it refers
15 to.

16 A. Yes, I believe I have read this.

17 Q. Okay. And this -- basically, this is an article
18 published in 2002, says at the bottom, right?

19 A. Yes.

20 Q. And the title is, Trace DNA: A Review Discussion
21 of Theory and Application of the Transfer of
22 Trace Quantities of DNA Through Skin Contact,
23 right?

24 A. Yes.

25 Q. This article, among other things, talks about

1 some of the different theories about how one
2 actually transfers DNA by touch or by skin.

3 A. Yes.

4 Q. And there's different theories. Some people
5 think that it's really just a transfer of some
6 bodily fluids, somebody who rubs their eyes, like
7 this, maybe gets some tears on it, then picks
8 something up, right?

9 A. Well, anytime you touch your body and you have
10 cells on your hands, then that would be a way to
11 transfer it.

12 Q. Sure. Or if you touch your mouth, you know,
13 something like that, you have got your fingers to
14 your mouth and then you touch something, you may
15 be transferring DA (sic) through little bits of
16 saliva, right?

17 A. Well, again, you are talking about skin. I mean,
18 even just your hands are going to slough off
19 skin, so you don't have to really touch your
20 face, you just touch something with your hands
21 you will leave --

22 Q. But you are aware, though, that there is kind of
23 a dispute in the field of people that are
24 studying this, as to whether or not the cells,
25 just the epithelial cells that you are shedding

1 from your fingers alone is enough to produce a
2 DNA result or profile, or whether, in fact, what
3 really is happening is you are transferring some
4 bodily fluid to your fingers and then touching it
5 and transferring it that way?

6 A. I understand there's probably different opinions,
7 but the bottom line is, if you touch something
8 with your hand, or any part of your body, and you
9 leave cells, it has the potential for our DNA
10 profile.

11 Q. Okay. And I don't know if you had a chance to
12 look at your notes yet?

13 A. Yes.

14 Q. Can you tell me approximately -- if I told you
15 that the amount recovered in that swab of the key
16 was somewhere between -- somewhere around 20
17 nanograms of DNA, would that be a ballpark?

18 A. No.

19 Q. What do you come up with?

20 A. Well, actually, in the whole sample, you may be
21 right. My quantitation is .17 for one
22 microliter.

23 Q. Sure. But you have to add volume to it and --

24 A. And the total amount of the extract was probably
25 around 30 to 35 microliters.

1 Q. Okay. So a little bit more than what I said.

2 A. Yes.

3 Q. You are familiar with tests of liquid blood would
4 have DNA in the amount of over 20,000 nanograms,
5 something like that?

6 A. I don't recall exact numbers, no.

7 Q. And how about buccal or buccal swabs, are you
8 aware that they have, generally, anywhere from
9 couple thousand maybe, 2,000, 3,000?

10 A. Again, I don't recall exact numbers.

11 Q. Let me show you another study, see if you
12 recognize that. It's a study by Henry Lee
13 (phonetic), Karl Ladd (phonetic), does that look
14 at all familiar?

15 A. No, I have never read this.

16 Q. Okay. Have you read anything that tells you, or
17 that's made some kind of determination of what
18 the volume of -- or in terms of nanograms, what
19 the amount of DNA one would typically find in a
20 buccal swab.

21 A. Sure. I just don't recall the exact number.

22 Q. Okay.

23 A. But it's obviously much more DNA in a buccal swab
24 or a blood sample. Those are rich sources of
25 DNA, so there's going to be a lot of DNA there.

1 Q. Sure. And if one was to take a buccal swab and
2 rub it on the key in this case, it might transfer
3 30, 35 nanograms of DNA?

4 A. I have no idea.

5 Q. Well, would that be an unreasonable amount, or
6 reasonable?

7 A. I really -- There's no way for me to comment on
8 that. And there's no -- you may transfer a lot
9 of DNA, you may not transfer very much at all.

10 Q. Okay.

11 A. There's really no way to answer that.

12 Q. Would it be fair to say that the DNA volume or
13 amount that you found on that key was not very
14 much?

15 A. No, it was a low level, yes. That's correct.

16 Q. Low level. If one was to rub a toothbrush up
17 against a key, that might also transfer some low
18 level amount of DNA to the key, right?

19 A. That would be possible, however, in my experience
20 toothbrushes are not a real good source of DNA.
21 It's very difficult to get a profile from a
22 toothbrush.

23 Q. That's when you test the toothbrush itself. But
24 in terms of transferring just 30 to 35 nanograms
25 of DNA, that could be done by rubbing a

1 toothbrush on it, potentially?

2 A. Like I said, it's possible but.

3 Q. And it's also possible to get that amount by
4 rubbing a buccal swab against the key as well,
5 right?

6 A. Yes.

7 Q. There are many ways, many personal items that
8 someone might rub against a key that might also
9 shed and deposit a low amount of DNA like such as
10 you found on this key?

11 A. Yes, it's possible.

12 Q. Okay. And from looking at this key, and your
13 swab, and the evidence you found, you cannot tell
14 whether the DNA that was found on that key was
15 planted there by somebody or not, can you?

16 A. No.

17 Q. And, indeed, if somebody did plant the DNA on
18 that key that you determined -- that you found in
19 your tests, it would look much like what you
20 found?

21 A. Yes.

22 Q. Okay. Now, you found no mixture of DNA on that
23 key, right?

24 A. Right.

25 Q. You did not find any DNA of Teresa Halbach on

1 that key, did you?

2 A. That's correct.

3 Q. A car key that presumably she handled and used
4 daily, right?

5 A. Correct.

6 Q. And you did swab all the way around the key?

7 A. Yes.

8 Q. Now, there are some studies in the Wickenheiser
9 report, for instance, that talk about how the
10 last person who touches an item may leave the
11 major portion of DNA that's left on there?

12 A. Yes.

13 Q. But most often when that happens, there's still a
14 mixture and there's a minor contributor as well,
15 right?

16 A. No, I -- I would disagree with that. In some
17 cases, yes. It's very difficult. There's no way
18 to really predict that. If you have someone
19 who's a good shedder and sheds a lot of DNA, when
20 they touch something, a lot of studies show that
21 that is going to be --the last person is going to
22 be the DNA you pick up. If you don't shed a lot
23 of DNA, then you may not find any at all.

24 Q. What you found on this key was not a lot of DNA,
25 right?

1 A. Correct.

2 Q. Turn to page 448 of that article, I'm going to
3 ask you to agree or disagree with this.

4 A. Yes.

5 Q. Paragraph begins, as the sensitivity, do you see
6 that?

7 A. Yes.

8 Q. About half way down?

9 A. Mm-hmm.

10 Q. Do you agree or disagree with this statement:
11 Although case experience has found that the
12 handled object bears the profile of the most
13 recent handler, many more mixed profiles will be
14 recovered if commonly handled objects are
15 examined, doorknobs, handles, light switches,
16 ignition switches, and doorbells have all yielded
17 DNA profiles. And then there's a table that's
18 referred to.

19 A. Yes.

20 Q. You agree with that?

21 A. In many of the cases, yes, but not all the time.

22 Q. Okay. Let's go to the bullet for a minute, just
23 to clear up a couple of things. The bullet that
24 you, tested you didn't get it until April, or
25 March actually. right?

1 A. Yes, that's correct.

2 Q. And to the eye, you didn't see any blood visible?

3 A. That's correct.

4 Q. But you didn't do a presumptive test?

5 A. Right.

6 Q. And, in fact, did you do a swab at all?

7 A. No.

8 Q. This is one where you put it into a buffer and
9 sort of dissolved the amount, right?

10 A. Yes, I washed it.

11 Q. So you can't really say whether the DNA on that
12 bullet came from blood or some other source, can
13 you?

14 A. All that I can say is it was nucleated cells.

15 Q. Which could mean blood or any other sources?

16 A. Right.

17 Q. Let's talk about some specific results that you
18 did get and we haven't heard. Out of all the
19 tests that you did, 180 items that you looked at,
20 came into your lab, right?

21 A. Yes.

22 Q. No DNA of Teresa Halbach's was ever found on any
23 item that was indicated it came from Mr. Avery's
24 house, correct?

25 A. That's correct.

1 Q. No DNA of Teresa Halbach was ever found on any
2 swabs of Mr. Avery's car?

3 A. Correct.

4 Q. No DNA of Teresa Halbach was ever found on any
5 item, or on the surface inside his Ford F350
6 pickup?

7 A. I don't believe I examined the pickup.

8 Q. Okay. And no DNA was found of Teresa Halbach's
9 on any item, any item in that garage, detached
10 garage next to Steven Avery, with the exception
11 of that one bullet, FL?

12 A. Correct.

13 Q. In a test that you admit showed contamination,
14 correct?

15 A. In the control, not the evidence.

16 Q. In the test, correct?

17 A. As I said, in the control, not the evidence.

18 Q. All right. We'll pursue that later, but it will
19 probably have to be after lunch. But let's go
20 through some of the items. You never found any
21 of Teresa Halbach's DNA on any kind of mattress
22 or bedding, did you?

23 A. I don't believe I examined any mattress or
24 bedding.

25 Q. Okay. So none of that was even sent to you,

1 right?

2 A. Correct.

3 Q. You never found any DNA of Teresa Halbach's on
4 any carpet in his house, did you?

5 A. No.

6 Q. There were some stains that were sent to you that
7 I want to make clear the jury isn't confused
8 about, though. There was a stain that was found
9 that appeared to be a blood drop on the bathroom
10 floor, right?

11 A. There were several items on the bathroom floor.
12 I don't know which one you are referring to.

13 Q. Let's put them all together. All the bathroom
14 items, the floor, the vanity, the sink, whatever,
15 right?

16 A. Mm-hmm.

17 Q. You tested all of those?

18 A. Correct.

19 Q. None of them had Teresa Halbach's blood on them,
20 did they?

21 A. No.

22 Q. You also tested, there were some drops that were
23 found on a molding of a door near the bathroom or
24 bedroom, right?

25 A. Yes.

1 Q. No DNA of Teresa Halbach, right?

2 A. Correct.

3 Q. You tested the headboard of a bed, right?

4 A. Yes.

5 Q. You tested the footboard of a bed?

6 A. Just the headboard, I believe.

7 Q. Do you have your reports with you?

8 A. Yes, I do.

9 Q. All right. I stand corrected, looks like you

10 tested several items, several areas of the

11 headboard, right?

12 A. Yes.

13 Q. The legs, the spindle things, right?

14 A. Yes.

15 Q. No DNA of Teresa Halbach?

16 A. Correct.

17 Q. You tested stains that were recovered from the

18 nightstand in Mr. Avery's bedroom, right?

19 A. I don't recall if I looked at stains from a

20 nightstand.

21 Q. May 8th report, second page, Item HX and Z.

22 A. That's correct, you're right.

23 Q. No DNA from Teresa Halbach?

24 A. Correct.

25 Q. You also tested outlet covers, and light

1 switches, from Mr. Avery's house?

2 A. Yes.

3 Q. No DNA from Teresa Halbach?

4 A. That's correct.

5 Q. And you tested the handcuffs and leg irons?

6 A. That's correct.

7 Q. None of Teresa Halbach's DNA found on either of
8 those items?

9 A. That's correct.

10 Q. Which we decided -- which you said earlier,
11 clearly had not been cleaned off with bleach or
12 something because they had a mixture of other
13 people's DNA on it?

14 A. That's correct.

15 Q. Then you examined many knives that were sent to
16 you, right?

17 A. Yes.

18 Q. I see at least seven just in the May 8th report,
19 right?

20 A. Yes.

21 Q. No DNA of Teresa Halbach's?

22 A. Correct.

23 Q. In the garage -- Actually, Judge, I don't know
24 what time you want to break for lunch. I may
25 have yet another 10 or 15 minutes on this part of

1 it before I move so.

2 THE COURT: All right. I didn't know how
3 long this part was going to go. If that's the case,
4 we'll take our lunch break at this time. Members of
5 the jury, do not discuss the case or any of this
6 morning's testimony during your lunch break.

7 (Jury not present.)

8 THE COURT: You may be seated. Counsel,
9 let's report back about 1:00 then.

10 ATTORNEY BUTING: Okay. Thank you.

11 (Noon recess taken.)

12 (Jury present.)

13 THE COURT: Mr. Buting, you may resume your
14 cross-examination.

15 ATTORNEY BUTING: Thank you, your Honor.

16 **CROSS-EXAMINATION CONTD.**

17 BY ATTORNEY BUTING:

18 Q. All right. Ms Culhane, you were talking about
19 all of the items in the house that you looked at.
20 And would it be fair to say that you were not
21 able to -- as Mr. Fassbender requested -- put her
22 in his house?

23 A. That's correct.

24 Q. So then you looked at the garage as well, not
25 sequentially, but at some point you were looking

1 at the garage?

2 A. Yes.

3 Q. And they sent you a number of stains. I'm going
4 to show you a couple of exhibits that were
5 introduced earlier, take a look at them and then
6 I will put them up on the screen.

7 A. Okay.

8 Q. Okay. I'm showing you Exhibit 247 first, a
9 number of evidence markers there. We had
10 testimony that -- where all those one, two,
11 three, up to eight, I believe, swabs were taken?
12 Okay?

13 A. Yes.

14 Q. And you tested those swabs, right?

15 A. I assume so.

16 Q. Well, if you need to refer to your notes, you did
17 find some DNA on garage floor stains in this
18 case, right?

19 A. Yes, I was submitted a number of swabs and I gave
20 them my item designations when they came in. I
21 was not -- I didn't actually collect them.

22 Q. Okay. I understand. But you did indicate,
23 looking now at your March 31st report -- if you
24 need to refer to it that's fine -- a number of
25 items, question stain, reportedly recovered from

1 the garage floor, right?

2 A. Yes.

3 Q. You have got Item G through P described that way?

4 A. Yes.

5 Q. And they have different tag numbers associated
6 with them. Those are the tag numbers from the --
7 presumably the law enforcement people who
8 submitted them?

9 A. Correct.

10 Q. And when you tested those, you found out that six
11 of them had DNA -- had Mr. Avery's own DNA?

12 A. Yes, that's correct.

13 Q. Now, if you are getting a DNA reading off of
14 swabs, that must mean -- or correct me if I'm
15 wrong -- that no one had tried to clean that area
16 with bleach before the swabs were taken, right?

17 A. I really -- I don't know.

18 Q. Okay. Let me ask it this way, that was poorly
19 phrased. Looking at this exhibit on the screen
20 right now, which is a photograph of the garage,
21 if somebody had cleaned that garage floor with
22 bleach before the police came, you would not
23 expect to find any DNA would you?

24 A. If it was cleaned thoroughly enough and the
25 bleach destroyed all the DNA, no, I wouldn't.

1 Q. Okay. But in this case, you did find DNA. You
2 found Mr. Avery's own DNA?

3 A. That's correct.

4 Q. And, again, it's not unusual, nothing sinister
5 about finding one's own DNA in one's own
6 property, is it?

7 A. No.

8 Q. And then later in the case, return to your
9 December report, and, actually, you can see part
10 of it in this exhibit up there, you see that
11 crack that runs along the left side?

12 A. Yes.

13 Q. I will put on Exhibit 237 right now, to show it a
14 little better. See that crack that sort of runs
15 north/south in this garage?

16 A. Yes.

17 Q. It's your understanding that law enforcement
18 actually took a jackhammer into this garage and
19 tore up concrete chunks, right?

20 A. That was my understanding.

21 Q. And they did that because they thought, well, if
22 the victim had been killed here, perhaps her
23 blood would have soaked into those cracks, right?

24 A. I assume so.

25 Q. And so this crack was divided into a bunch of

1 different concrete chunks, that were later sent
2 to you?

3 A. The swabs from the chunks were, yes.

4 Q. Okay. I apologize, the swabs from the chunks.
5 And in your December report, there was actually
6 -- my gosh, almost three full pages of swabs,
7 right?

8 A. Correct.

9 Q. Did you find Teresa Halbach's DNA on any of those
10 swabs?

11 A. No, I did not.

12 Q. You did find Mr. Avery's DNA on one of them
13 though, right?

14 A. Correct.

15 Q. Now, you also looked, or asked to look, we saw
16 that message earlier, at the -- at .22 rifle
17 swabs that were taken from it, right?

18 A. Yes.

19 Q. And the purpose there was not to see if you would
20 find Teresa Halbach's DNA, but to see if you
21 would find Mr. Avery's DNA, right?

22 A. Was that item DD?

23 Q. Yes.

24 A. I believe I was requested to look for possible
25 blood on the barrel part and DNA from the trigger

1 area.

2 Q. And you found neither, correct?

3 A. That's correct.

4 Q. You did not find Mr. Avery's DNA on that weapon
5 anywhere, did you?

6 A. On the trigger guard is the only place I swabbed,
7 but, no, I didn't.

8 Q. And you did not find Teresa Halbach's DNA
9 anywhere on the barrel either?

10 A. Correct.

11 Q. Are you familiar with close -- close, almost
12 contact-type shootings?

13 A. I don't know what you mean by that.

14 Q. Are you familiar with the term blow back?

15 A. Yes.

16 Q. You know that if someone shoots another human
17 being with a gun, that's very close to them,
18 there may be blow back spatter of blood onto that
19 weapon?

20 A. I assume that's possible.

21 Q. Well, that's what you were looking for?

22 A. I was simply looking for blood stains, yes.

23 Q. On the barrel?

24 A. Correct.

25 Q. And you found none?

1 A. Correct.

2 Q. You also were asked to look at license plates
3 that were recovered?

4 A. Yes.

5 Q. Two of them, right?

6 A. Yes.

7 Q. Two of them that, at least your understanding
8 was, were the license plates originally on that
9 RAV 4?

10 A. That was my understanding, yes.

11 Q. And you didn't find Mr. Avery's DNA on that, did
12 you?

13 A. No, I did not.

14 Q. By the way, in all of this evidence that you have
15 tested, all of it, some of it we heard you found
16 Mr. Avery's DNA, things in his own garage or his
17 own house, right?

18 A. Yes.

19 Q. Did you ever find any DNA of a gentleman named
20 Brendan Dassey, anywhere, in all of your tests?

21 A. No, I did not.

22 Q. Not one shred, right?

23 A. No, I did not find his DNA.

24 Q. And you had his profile?

25 A. Yes, I did.

1 Q. All right. I want to talk about contamination.
2 All right?
3 A. Yes, sir.
4 Q. You are aware it can happen?
5 A. Yes.
6 Q. In a lab. It's happened in your lab, you know
7 that?
8 A. Yes.
9 Q. And we talked about contamination that may occur
10 before it ever gets to your lab, intentional or
11 otherwise, right?
12 A. Right.
13 Q. But you are involved in quality control at your
14 own lab?
15 A. That's correct.
16 Q. Are you like the head honcho there, in charge of
17 quality control?
18 A. No, I just monitor the quality control in our
19 unit.
20 Q. The DNA unit?
21 A. Correct.
22 Q. So, you are responsible for making sure that the
23 quality that comes out of your DNA unit is good?
24 A. Correct.
25 Q. And because DNA is very small, and relatively

1 easily contaminated, you take steps to try and
2 prevent that, right?

3 A. Yes.

4 Q. You mentioned a couple of them, but, for
5 instance, you have seen instances where, during a
6 test, material from one case may end up getting
7 contaminated into another case?

8 A. Yes, that's happened.

9 Q. Okay. You try to minimize that. That last one,
10 idea or example I gave you, would be called
11 cross-contamination, right?

12 A. Yes.

13 Q. Okay. So the analysts wear, you mentioned,
14 gloves?

15 A. Yes.

16 Q. Um, lab coats?

17 A. Yes.

18 Q. Glasses?

19 A. Yes.

20 Q. And you said you bleach down the instruments in
21 the test areas before -- in between tests?

22 A. That's correct.

23 Q. At least you try to. And you try and -- You
24 mentioned this amplification room, you try and
25 stay out of that, or you know, or when you are

1 working in there, stay in there, and do your
2 test, and be done, right?

3 A. Correct.

4 Q. And despite all this, all these precautions, the
5 Wisconsin Crime Lab still experiences the
6 phenomena of contamination, does it not?

7 A. Correct.

8 Q. Now, there's some things -- other things you
9 could do. For instance, you could wear masks,
10 like surgeons do, right?

11 A. Correct.

12 Q. You don't?

13 A. No.

14 Q. You could use disposable lab coats that you throw
15 out once you move from one room to the next,
16 right?

17 A. We do have different lab coats that we use from
18 one room to the next. We have a different lab
19 coat for the amplification room than our work
20 area.

21 Q. Okay. All right. But you don't change lab coats
22 when you work from one case to the next?

23 A. No, we don't.

24 Q. And you don't use -- are you familiar with
25 something called biological containment hood?

1 A. Yes.

2 Q. They're like a -- almost like a range that you --
3 that someone would see in their home, with a hood
4 bent over it?

5 A. Yes.

6 Q. And it's got a work space inside of it?

7 A. Yes.

8 Q. And it has filtered air circulating through it?

9 A. Yes.

10 Q. And it's designed to prevent outside contaminants
11 from coming in?

12 A. Yes, and we have two of those hoods that we use
13 to set up our amplification. After our samples
14 were processed, we set those up in a hood very
15 much like that.

16 Q. Okay. But when you are working on extractions
17 and that sort of thing you don't --

18 A. Correct.

19 Q. -- use those kinds of hoods, right?

20 A. Correct.

21 Q. It's just out on your table or your bench as you
22 are working, right?

23 A. Right.

24 Q. And right next to you in this T, at the other
25 end, may be one more analyst or two more

1 analysts?

2 A. One more analyst.

3 Q. Okay. Now, since you know that there's a
4 potential for contamination, you use what's
5 called controls, to try and minimize that, or
6 catch it if it happens, right?

7 A. Right.

8 Q. These are internal controls, right?

9 A. Well, yes, they are controls that we set up with
10 each -- with different phases of the examination.

11 Q. Okay. And just want to take a moment to explain
12 to the jury how this works. You actually have,
13 when you run any kind of a DNA test, start to
14 finish, you run what's called a positive control
15 at the same time, goes through the whole
16 sequence?

17 A. No, sir. We have -- The positive control that
18 you may be referring to is our amplification
19 control. And that's only introduced in the
20 amplification part of the process.

21 Q. Okay. I stand corrected. But that positive
22 control, basically, is a known DNA profile that
23 you expect to get as it goes through the test,
24 right?

25 A. Yes.

1 Q. And you go through the test and you don't get
2 that profile, you know something is wrong?

3 A. Correct.

4 Q. And then you also have what is called a negative
5 control, which is supposed to go through and do
6 what?

7 A. Well, we have two samples that could be
8 considered negative controls. We call the first
9 one a manipulation control. And that's the one
10 we set up with the extraction. And that is
11 carried through the entire procedure. We have an
12 additional negative control that is introduced in
13 the amplification process. And that's carried
14 through the last part of the procedure.

15 Q. Okay. Well, let's talk about that one just for
16 the moment, just to get rid of it. That negative
17 control you introduced in the amplification
18 process only?

19 A. Yes.

20 Q. And if it goes all the way through and comes up
21 with something other than zero, you know
22 something is wrong?

23 A. Correct.

24 Q. But back at the extraction part, you motioned
25 with your hands, there's sort of like an item

1 that's about the size of a brick maybe, that you
2 put these samples in and run it through?

3 A. Well, we set our samples up in a test tube rack,
4 and they are different sizes.

5 Q. Okay. And so they are altogether sitting in a
6 rack, and go through some machine, is that it,
7 when you extract them?

8 A. No, these extractions are all done manually, by
9 the analyst. And you set them up, your evidence
10 samples, one in each tube, and then at the end of
11 the process you add a tube that is a negative
12 control with all of the reagents that you added
13 into your sample.

14 Q. Okay. And that negative control you are talking
15 about is what you call manipulation control?

16 A. Yes.

17 Q. But what I'm getting at is, when you run this
18 whole block of samples through, whatever machine
19 it is you do, there's more than one case in it,
20 right? Often?

21 A. In the extraction procedure, no. When we amplify
22 -- or I mean, I'm sorry, when we quantitate,
23 there can be more cases batched together. And
24 then when we amplify, we amplify them singly in a
25 set, and then it's put on the instrument in

1 batches.

2 Q. Okay. So the first thing, this extraction thing
3 that you do by -- manually, you then get a
4 reading and it tells you whether there's any DNA
5 that's worth even pursuing, right?

6 A. That's part of the quantitation, yes.

7 Q. Okay. Well, if there is enough, then you
8 quantify it, do that test, and then go into
9 amplification?

10 A. The quantitation part tells us if there is
11 enough. If there is enough, then we continue.
12 If not, we stop there.

13 Q. Okay. So this manipulation control that you are
14 talking about is supposed to be zero, right?

15 A. Yes.

16 Q. It's supposed to be -- When you go through the
17 test, it is supposed to show no human DNA
18 whatsoever, correct?

19 A. Correct.

20 Q. And the reason you call it a control is because
21 if you do the test, and at the end you find out,
22 hey, there's something in here, then that's a
23 clue that there is contamination, right?

24 A. Yes.

25 Q. Okay. Now, contamination of evidence samples is

1 harder to detect than these contaminations of the
2 controls, right?

3 A. Not necessarily, depends.

4 Q. Well, with the control, if it comes back anything
5 other than zero, you know there's something
6 contaminating it, right?

7 A. Right.

8 Q. With an evidence sample, if it comes back with
9 DNA, if that DNA had been contaminated, you
10 wouldn't necessarily know that?

11 A. Correct. If it had been contaminated with the
12 same type of DNA, that's correct. However, if
13 it's been contaminated with another type, or the
14 analyst, or another source of the DNA, it would
15 show up as a mixture of DNA and we would be able
16 to separate that out.

17 Q. Well, it would show up as a mixture if the
18 original piece of evidence had any DNA that was
19 testable -- detectable, right?

20 A. Yes.

21 Q. A lot of these samples you will test and you
22 don't find any DNA on them, right?

23 A. Right. And at that point, we wouldn't go any
24 further.

25 Q. Sure. But if that sample that has really no DNA

1 on it, gets contaminated in this process, with
2 some other DNA, from it's own case or another
3 case, you wouldn't necessarily know it when you
4 go through this test, would you?

5 A. No.

6 Q. Meaning correct?

7 A. Yeah, that's correct.

8 Q. Because at the end, you would get a profile, on
9 the piece of evidence, and you would assume that
10 that profile must be from the suspect, or must
11 somehow be related to the case, right?

12 A. Correct.

13 Q. You wouldn't know that it had been contaminated
14 before it even went through?

15 A. Correct.

16 Q. Okay. Now, you keep a log of these kinds of
17 contamination incidents, correct?

18 A. Yes.

19 ATTORNEY BUTING: I'm going to mark this.

20 I have already shown counsel.

21 (Exhibit No. 346 marked for identification.)

22 Q. We'll call this Wisconsin Crime Lab's
23 Contamination Log. I think you changed the names
24 a couple times, but that's Exhibit 346. Can you
25 identify that.

1 A. Yes, these are copies from the logs that we keep
2 in the lab.

3 Q. Okay. And the first few pages are in a different
4 format. They are like a full page, each deals
5 with one incident, correct?

6 A. Yes.

7 Q. But as you get back a little bit farther, really,
8 just before August of this past year, August '06,
9 it's more of a log with numerous incidents on
10 each page --

11 A. Yes.

12 Q. -- right?

13 A. Yes, we changed our forms.

14 Q. Okay. You will need this with you so you can
15 refer to it. Did you bring a copy of that with
16 you, by the way, in your own file?

17 A. No.

18 Q. Okay. You don't normally keep that in your files
19 when you come to court?

20 A. No.

21 Q. Now, what your policy at the lab is, whenever you
22 run through these tests and you find a
23 contamination such as a manipulation control
24 contamination, you make a note of it in this log?

25 A. Yes.

1 Q. And you put the date, the case number, the type
2 of error detected, the analyst, and then there's
3 some corrective action that's taken?

4 A. Yes.

5 Q. But, again, that, of course, is only in those
6 manipulation or those control cases where you can
7 see clearly that there's contamination because
8 it's something other than zero?

9 A. Correct.

10 Q. Now, despite the best efforts of the analysts and
11 their supervisors, sometimes no explanation can
12 be found for the contamination; is that fair?

13 A. Yes.

14 Q. Sometimes it's rather obvious, like in your case
15 in this instance, that your DNA is found in a
16 control and then it's assumed that somehow you
17 contaminated it yourself, the analyst, right?

18 A. Right.

19 Q. But other times it's baffling, somehow or
20 another, something was contaminated and no one
21 can figure out how or why?

22 A. Correct.

23 Q. I want you to take a minute and look at this
24 exhibit that's in front of you. It's a 24 month
25 period, basically, from November of '04 --

1 actually, December of '04 to December of '06.

2 Could you count the number of errors -- You said
3 earlier that you believe there were 89 errors
4 since 2001.

5 A. Right.

6 Q. Do you remember that?

7 A. Yes.

8 Q. Would you count how many contamination incidents
9 are recorded in that 24 month period from 2004 to
10 2006.

11 A. Fifty.

12 Q. All right. Take a minute and count how many you
13 have, how many errors, contamination errors, you
14 report, yourself, in that 2 month period -- 24
15 month period? I believe I counted 44 errors, but
16 you must have found some more.

17 A. Seven.

18 Q. Actually, if you look at the third to the last
19 page, begins, it has three there, starting March
20 of '04. That's all right, never mind. So you
21 count 7, 7 out of 50.

22 A. Yes.

23 Q. I counted 8, but maybe I miscounted. You said
24 there's about 10 analysts?

25 A. Anywhere from 10 to 12.

1 Q. Okay. So, if there's 50 errors, the average, if
2 spread evenly, should be five errors a person,
3 right?

4 A. That depends on how many cases each analyst
5 works.

6 Q. That's true. You, though, have 7 out of 50,
7 which is more than the average, if you divide it
8 evenly, correct?

9 A. But not all those analysts work the same number
10 of cases.

11 Q. That's true. However, some of them are
12 full-time --

13 A. They are all full-time.

14 Q. -- doing nothing but DNA. All of them.

15 A. They are all full-time.

16 Q. They are all full-time, and you are not. You are
17 70 percent; 70 percent of your time is doing DNA
18 testing, that's what you told us, right?

19 A. That's correct.

20 Q. So we have all these other analysts who are
21 working full-time, more cases than you, and yet
22 you have a higher error rate than anyone.

23 A. No, actually, I believe if you look at the
24 numbers, I'm one of the higher producing analysts
25 as far as number of cases.

1 Q. Well, I don't see those numbers, but I do see
2 that you are the highest producing contamination
3 person in this log; isn't that right?

4 ATTORNEY GAHN: Objection, your Honor, this
5 is argumentative.

6 THE COURT: Sustained. I will ask that you
7 rephrase the question.

8 Q. (By Attorney Buting)~ Isn't it true that for this
9 two month -- two year period, you have one of the
10 highest contamination records of anybody at the
11 Wisconsin Crime Lab in Madison?

12 A. I don't know, I haven't counted up all the other
13 instances of other people. So I really don't
14 know how many each analyst has.

15 Q. Well, take a moment and look if you like.

16 A. Do you want me to count up for each analyst?

17 Q. I want you to see if there's anybody who has more
18 errors in that 20 more -- 24 month period than
19 you?

20 ATTORNEY GAHN: Your Honor, I'm going to
21 object at this point to the relevancy of this,
22 number one. But, also, I think, foundationally,
23 what the other analysts -- I don't know how this
24 witness can testify to the causes or why there was
25 contamination in other analyst's cases.

1 THE COURT: I think that's a matter for
2 redirect. I'm going to allow the question.

3 Q. (By Attorney Buting)~ Would you agree with me
4 that you have more errors in that 20 month -- 24
5 month period than anybody?

6 A. If you counted them up and your numbers are
7 correct, then I agree with you.

8 Q. Now, let's look at -- Why don't you look at just
9 the months of September and August of 2006, count
10 how many errors there are total and how many of
11 them are yours?

12 A. September and August?

13 Q. Yes.

14 A. 2006.

15 Q. These are all the big sheets, right, full page
16 ones?

17 A. Yes, there's only one.

18 Q. There's eight errors in September and August
19 total for the lab, right?

20 A. Oh, I thought you said for me.

21 Q. Well, let's just talk about first for the lab?

22 A. Oh, for the lab. Five.

23 Q. Go to the next page that has a log of several,
24 August 1st, August 3rd --

25 A. I'm sorry, you're at five, okay.

1 Q. August 1st, August 3rd, August 28th, 29th,
2 September 6th, September 14th. And on the second
3 page, another on August 3rd and another on
4 August 29th.

5 A. Seven.

6 Q. Okay. You come up with seven, two of which are
7 yours. Look at September 6th.

8 A. Yes.

9 Q. And look at August 1st?

10 A. I don't have that.

11 Q. I'm sorry. You're right, there's a page missing
12 from this exhibit. I'll correct that, but here's
13 a photocopy of apparently a page I didn't have in
14 this exhibit, shows an August 1st entry.

15 A. Okay.

16 Q. With an error from you, right?

17 A. Yes.

18 Q. So in that two month period, two of the seven
19 errors were made by you?

20 A. Yes.

21 Q. And in October and November of 2006, I count
22 eight of these sheets, eight errors?

23 A. Total.

24 Q. Total, right? So in the lab, in the four month
25 period of October, November, September, and

1 August, you have got 15 errors already, just in
2 that one little period of time, right?

3 A. Yes.

4 Q. Would you agree with me that the contamination
5 error rate has been going up in the Crime Lab
6 over the last few years?

7 A. Yes.

8 Q. Okay. Now, look, just for a moment, at some of
9 these contaminations so we can talk about what
10 kind of contaminations there are. Would you turn
11 to one that's entered on October 18th of 2006.
12 Do you see the October 18th?

13 A. Yes.

14 Q. Case No. W06-1209?

15 A. Yes.

16 Q. Okay. Now, this is not a mistake or an error
17 contamination by you, but you did sign off at the
18 bottom of it as the DNA Technical Unit leader,
19 right?

20 A. Correct.

21 Q. So you are familiar with what happens here when
22 your analysts make -- do a test; they find
23 contamination; they have to do one of these
24 reports; you review it and the supervisor reviews
25 it, right?

1 A. Correct.

2 Q. And this is an instance of cross-contamination
3 between two completely different cases, is it
4 not?

5 A. Yes.

6 Q. And the corrective measure for this particular
7 analyst is that she or he, I don't know who it
8 is, is going to try not to extract high level DNA
9 samples near in space in time to low level DNA
10 samples?

11 A. Correct.

12 Q. So that one was apparently explained. Now, if
13 you look at the very next page, different case
14 W05-1876?

15 A. Yes.

16 Q. Do you see that one?

17 A. Yes.

18 Q. Description of the contamination here is believed
19 to have been a problem with labeling. Hold on,
20 I'm sorry, it's the next page, W05-140?

21 A. Yes.

22 Q. This is a contamination where it was concluded
23 that it's possible the samples were actually
24 switched or mislabeled during the test process?

25 A. Yes, it's possible.

1 Q. And the corrective measure is specifically to
2 limit distractions and to limit cases working at
3 one time in order to prevent errors, correct?

4 A. Yes.

5 Q. Distractions like you faced when you tested that
6 bullet with trainees around you?

7 A. No, I believe she was referring to distractions
8 like phone calls and questions and.

9 Q. Okay. There's also something called carryover,
10 as another kind of contamination, right?

11 A. Yes.

12 Q. And that's referred to in the very next incident.
13 And that's where it's possible for DNA from a
14 prior test, to actually carryover into the one
15 you are doing, through the instruments somehow,
16 right?

17 A. No. Are you talking about the one dated 10/8?

18 Q. Well, yeah, but there's a number that talk about
19 carryover. I'm just asking in general.

20 A. Carryover in this instance would be to carryover
21 in the same case, not case to case, into the
22 control, from one sample to another into the
23 control.

24 Q. Okay. Let's turn to your error noted on
25 September 6 of '06?

1 A. Yes.

2 Q. This is another one where you developed your
3 profile from a swabbing of evidence, Item A?

4 A. Yes.

5 Q. This was evidence, not a control?

6 A. That's correct.

7 Q. You contaminated evidence in this instance, did
8 you not?

9 A. With my own DNA.

10 Q. With your own DNA?

11 A. Correct.

12 Q. And you even entered it into CODIS, which is the
13 big national data base?

14 A. Right.

15 Q. As a female DNA that somebody could hit on?

16 A. Right. And because we have a system in the lab
17 to catch this, we have profiles of everybody in
18 the lab, my profile included. So this was
19 resolved because it obviously hit on myself and
20 it was removed.

21 Q. But it wasn't even detected until you ran your
22 own profile through CODIS, as if you were some
23 suspect, right?

24 A. It was detected when we ran it through the
25 system, yes.

1 Q. That's right. And so you had to then remove it
2 from the whole CODIS system, otherwise you would
3 look like you are some suspect?

4 A. That's correct.

5 Q. Let's turn to two pages further down,
6 August 28th, analyst is K.W., right?

7 A. Yes.

8 Q. This is an example where a partial female profile
9 was developed in a control and the analyst was
10 completely unable to determine the origin of that
11 profile, right?

12 A. Correct.

13 Q. It wasn't her -- I'm sorry, I'm assuming it's a
14 her, looks like, do you know K.W.?

15 A. Right.

16 Q. Okay. It was not her DNA, right?

17 A. Correct.

18 Q. And it was not carryover, right?

19 A. Correct.

20 Q. It was determined as contamination that simply is
21 unexplainable?

22 A. That's correct.

23 Q. The very one right before that, I believe it's
24 Karen Daily; is that right? August 29th?

25 A. Yes.

1 Q. This one is actually a duplicate. If you look at
2 the page, the first page of the running log.
3 A. Okay.
4 Q. I'm sorry, it's the second page of the running
5 log that starts June 6th?
6 A. Yes.
7 Q. See, at the very bottom there, it says
8 August 29th?
9 A. Yes.
10 Q. It says K.D.D., that's Karen Daily?
11 A. Yes.
12 Q. Another contamination in which she's finding
13 alleles, some of which are similar to her and
14 some of which are not?
15 A. Correct.
16 Q. A source that is completely unknown?
17 A. That's correct.
18 Q. And, finally, turn to March 16th of '06; do you
19 see this page?
20 A. Yes.
21 Q. This is not you, right?
22 A. Correct.
23 Q. It's initialed M.R.S., it's a completely
24 different case, right?
25 A. Yes.

1 Q. You weren't involved in the testing of that -- in
2 that experiment at all?

3 A. Not that I recall, no.

4 Q. And yet this analyst found a partial profile in
5 the control that was consistent with you?

6 A. That's correct.

7 Q. You ended up contaminating someone else's test?

8 A. That's correct. My profile, partial profile,
9 wasn't complete, so I'm assuming it was
10 consistent with mine throughout.

11 Q. All right. Now, your big profile, I'm sorry,
12 protocol, that I think was entered even, as an
13 exhibit, it recognizes that there may be some
14 contamination in these tests, right?

15 A. Yes.

16 Q. And it says, it's got specific rules about what
17 you can do, when you get a contamination?

18 A. Yes.

19 Q. And one of those rules in the protocol is, if you
20 get a contaminated control, it forbids you from
21 making a call to include somebody as the person
22 in that DNA, right?

23 A. Yes.

24 Q. It tells you, that if you go through these tests
25 and the manipulation control is contaminated,

1 that you are to report it as inconclusive for
2 matched purposes?

3 A. Correct.

4 Q. Now, here, you ran this test on the bullet and
5 you got a result that shows the manipulation
6 control was contaminated, right?

7 A. Correct.

8 Q. And according to protocol, you should have not
9 said that that was Teresa Halbach's DNA on the
10 bullet, your protocol told you that you were to
11 report it as inconclusive; isn't that right?

12 A. Yes.

13 Q. But if that happens, usually what you do is you
14 try and re-extract it and run it again?

15 A. Yes.

16 Q. But in this case, it was a one time deal, you put
17 that bullet into a buffer and you took whatever
18 sample there was and you ran it off?

19 A. Yes.

20 Q. So you could not redo the test?

21 A. That's correct.

22 Q. And if the test came back inconclusive, you would
23 not be able to put Teresa Halbach in Mr. Avery's
24 garage at any time, right, like Mr. Fassbender
25 asked?

1 A. There were reasons why --

2 Q. I will get to that.

3 A. There were reasons why this profile was reported
4 on.

5 Q. We'll talk about that. But my point is this, out
6 of all these tests that you have done --

7 A. Right.

8 Q. -- not one single test put Teresa Halbach in Mr.
9 Avery's garage?

10 A. That's correct.

11 Q. Except for this bullet.

12 A. That's correct.

13 Q. And this is the only one, right?

14 A. Yes.

15 Q. And you couldn't retest it, so you either had to
16 call it inconclusive or else deviate from your
17 protocol.

18 A. That's correct.

19 ATTORNEY BUTING: Let's mark this exhibit.

20 (Exhibit No. 347 marked for identification.)

21 Q. I now show you Exhibit 347, can you identify
22 that?

23 A. Yes.

24 Q. And what is it?

25 A. It's a copy of our deviation request form in our

1 laboratory.

2 Q. Okay. And this is a form that, if you want to
3 deviate from your protocol in any way, you have
4 to -- or any analyst has to fill out this form
5 and it's to be reviewed by two people, right?

6 A. It's to be reviewed by the Technical Unit Leader
7 and approved by the supervisor.

8 Q. Okay. And the Technical Unit person is who?

9 A. Myself, in our lab, and Gretchen DeGroot in the
10 Milwaukee lab.

11 Q. Okay. So you had one person sign this, one
12 person review this, and that is Gretchen DeGroot,
13 right?

14 A. That's correct.

15 Q. You went all the way to the Milwaukee Lab to get
16 approval to deviate from your protocol in order
17 to make a call that says Teresa Halbach's DNA is
18 on that bullet, right?

19 A. No, sir. I discussed this with my supervisor in
20 the laboratory. In fact, I discussed it with
21 numerous analysts in the laboratory. And, yes, I
22 did talk to Gretchen about it. Since this was a
23 technical matter, and Gretchen and I are more in
24 tune to the technical issues, she is the one I
25 would have, as well as the peer reviewer who

1 reviewed my case, that I would have talked to
2 first, and I did talk to Marie, my supervisor.

3 Q. You are familiar with the protocol?

4 A. Yes, I am.

5 Q. Record should reflect you are looking at Exhibit
6 310, right?

7 A. Yes.

8 Q. There you go. All right. In this section of
9 your protocol, it says interpretation of STR
10 results, right?

11 A. Yes.

12 Q. That's the heading and it talks about how it's a
13 matter of professional judgment and expertise,
14 right?

15 A. Yes.

16 Q. And it recognizes that maybe some situations may
17 not fit a preset rule?

18 A. Correct.

19 Q. Gives some latitude for that, right?

20 A. Right.

21 Q. But it also says, any deviations must be
22 documented in written form, prior to peer review;
23 in those situations any deviations must be
24 approved by the technical leader and the
25 supervisor, right?

1 A. Correct.

2 Q. The exhibit in front of you, which is the unit
3 deviation form, does not have any approval from
4 the supervisor, does it?

5 A. It has no signature, but I did discuss it with
6 her and she did approve it.

7 Q. But she didn't sign anything, is that what you
8 are saying?

9 A. Apparently it was an oversight.

10 Q. Okay. All right. Thank you. Now, this kind of
11 a deviation from protocol is a pretty unusual
12 thing in your lab, right?

13 A. Yes.

14 Q. You don't do it very often?

15 A. Right.

16 Q. Twenty-three years you have been there, right?

17 A. Yes.

18 Q. This is the only time in your entire career you
19 have ever filed a deviation of protocol so that
20 you could make a call and include somebody, isn't
21 it?

22 A. Yes.

23 Q. This case is the only time, right?

24 A. Yes.

25 Q. So, when Mr. Gahn asked you on direct whether --

1 when you did the exclusion of Mr. Avery in 2003,
2 whether you followed the same steps there that
3 you followed here, that's not entirely true, is
4 it?

5 A. I don't understand what you mean.

6 Q. When you did the test that excluded Mr. Avery,
7 proved he was wrongly convicted in 2003, you did
8 not have to deviate from any protocol to make
9 that call, did you?

10 A. No, because our protocol doesn't require any
11 deviation for an exclusion --

12 Q. That's right.

13 A. -- no matter what.

14 Q. I'm sorry?

15 A. No matter what.

16 Q. Right. But there was no -- you didn't have to
17 deviate anyway, you had no contamination in his
18 test?

19 A. Right. The protocols that I followed were all in
20 the same -- I mean, they were all in place. That
21 deviation was available if I had needed it. The
22 request to make it was available.

23 Q. But you didn't need to?

24 A. No, I didn't.

25 Q. But in this case you did?

1 A. That's correct.

2 Q. The one and only case in 23 years you did, right?

3 A. This kind of deviation, first of all, in this
4 context, we're talking about DNA evidence. And
5 we haven't been doing DNA evidence for 23 years.
6 So --

7 Q. Well, you have been doing it since 1997?

8 A. No. 19 -- Yeah, 1996, you are right.

9 Q. Okay. Ten years, then, 50,000 -- 60,000 tests is
10 what you have told Mr. Gahn, in your lab?

11 A. Yes.

12 Q. And whatever portion of that is yours, you have
13 never filed a request to deviate from the
14 protocol in order to make a call and say that's
15 her DNA, until this case?

16 A. That's correct, because we have never -- I have
17 never had this situation before.

18 Q. Turn to your reports, please. Do you have those
19 in front of you?

20 A. Yes.

21 Q. I'm showing you Exhibit 314. Let's talk about it
22 in terms of exhibit numbers, okay. Is that your
23 report that's dated May 8, 2006?

24 A. Yes, it is.

25 Q. And that is the report that says -- gives a

1 result of this test of the bullet?

2 A. Correct.

3 Q. Correct?

4 A. Yes.

5 Q. Now, these reports are very important, right?

6 A. Yes.

7 Q. These are your final reports?

8 A. Yes.

9 Q. For that test? They are signed by yourself?

10 A. Correct.

11 Q. And by Marie Beth Varriale?

12 A. Correct.

13 Q. Who's the supervisor of the lab, your unit?

14 A. Yes.

15 Q. And she's signing it as the designee for the

16 Attorney General of the State of Wisconsin,

17 correct?

18 A. Yes.

19 Q. That's how important these reports are. They are

20 from the Attorney General.

21 A. That's correct.

22 Q. And you know how these reports are used, correct?

23 A. Yes.

24 Q. Courts rely on them?

25 A. Yes.

1 Q. Juries rely on them?

2 A. Yes.

3 Q. Prosecutors and police rely on them?

4 A. Yes.

5 Q. Defense attorneys rely on them?

6 A. That's correct.

7 Q. Now, on Page 2 of your report -- I'm sorry, it's
8 page 4, you have a sentence in there, at the end
9 of the first paragraph, that says -- Actually,
10 the first paragraph says the profile is developed
11 from the bullet fragment --

12 (Court reporter asked the attorney to repeat.)

13 ATTORNEY BUTING: I'm sorry.

14 Q. The profiles developed from the bullet fragment,
15 Item FL, in the interior driver's door handle,
16 Item IG, are consistent with the profile
17 developed from the Pap smear, Item EF, reportedly
18 collected from Teresa Halbach. And then it
19 refers to a prior report.

20 And then the last sentence, the
21 manipulation control extracted with the bullet
22 fragment, Item FL, contains DNA that is
23 consistent with this analyst?

24 A. Correct.

25 Q. All right. At no time, in this report, do you

1 ever disclose, that in order to make that
2 finding, you had to deviate from a protocol, did
3 you?

4 A. No.

5 Q. Anyone reading this report would never know that,
6 in order for you to make that call and say that
7 that's Teresa Halbach's DNA, you had to do
8 something you have never done in your career as a
9 Crime Lab analyst, right?

10 A. Without discovery, no.

11 Q. So, if a defense attorney, or Court, didn't dig
12 through all of those mass of papers that you have
13 there and find this unit one page report, no one
14 would ever know that, in order for you to make
15 that call in this case, you had to do something
16 you have never done before?

17 A. The deviation that I requested was appropriate
18 for this situation. And the results that I
19 reported were correct. And that's why the
20 deviation was requested. All my data supported
21 the deviation, it was okayed --

22 Q. But --

23 A. -- and it was reported.

24 Q. -- ma'am, you did not disclose, in that report,
25 that official report, that Courts, and juries,

1 and judges, and lawyers, and everybody else
2 relies on, you did not disclose that in order to
3 make that call you had to do something so rare
4 you have never done it before, did you?

5 A. No, I did not.

6 Q. And you didn't put that in there because if you
7 did, you wouldn't be able to satisfy
8 Mr. Fassbender's request that you put Teresa
9 Halbach in Steven Avery's garage, right?

10 A. That's not correct.

11 Q. Let's close with this. Other than that bullet,
12 all your other tests, none of them put Teresa
13 Halbach, ever, in his garage, or his house, or
14 any of his vehicles, right?

15 A. Correct.

16 Q. Thank you.

17 THE COURT: We're going to take a 10 minute
18 break at this time. And then we'll resume.

19 (Jury not present.)

20 THE COURT: You may be seated. All right.
21 Counsel, I will see you in 10 minutes.

22 ATTORNEY BUTING: Ten, you said?

23 THE COURT: Yes, I'm giving the court
24 reporter a break. We'll take another one before the
25 afternoon is over.

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(Recess taken.)

THE COURT: Mr. Gahn, do you have any questions on redirect?

ATTORNEY GAHN: Yes, your Honor.

THE COURT: You may begin.

ATTORNEY GAHN: Thank you, sir.

REDIRECT EXAMINATION

BY ATTORNEY GAHN:

Q. Ms Culhane, will you explain to the jurors exactly what it is that goes into a report, a final report that you file in a case?

A. The content of the report is usually everything that we examined, of all the items submitted, exactly what we examined; a description of the technology that we're using; the types -- sometimes, not always -- the actual types go into the report; and then our results, with reference to our profiles we developed, whether they are inconsistent or consistent; and a final conclusion.

Q. You indicated in your report when you read about the bullet, Item FL, that Teresa Halbach's profile was contained on that bullet, correct?

A. That's correct.

Q. And you also indicated in your report that your

1 profile was contained in the control; is that
2 correct?

3 A. Yes.

4 Q. And your request for deviation, was that in all
5 of your notes?

6 A. Yes.

7 Q. Were you hiding anything from anyone?

8 A. No.

9 Q. And anyone reading your report would have seen
10 that your profile was in the control, correct?

11 A. Yes.

12 Q. And wouldn't that cause them to ask further
13 questions about that?

14 ATTORNEY BUTING: Objection, speculation.

15 THE COURT: Sustained.

16 Q. (By Attorney Gahn)~ But further information about
17 your profile in the control was contained in all
18 of your notes?

19 A. That's correct.

20 Q. And did you turn your notes over to the defense
21 in this case?

22 A. Yes.

23 Q. Similarly, with the contamination log that
24 Mr. Buting showed you, you turned your
25 contamination log over to the defense, correct?

1 A. Correct.

2 Q. And, again, what is the purpose of the
3 contamination log?

4 A. Several different purposes, actually. We use it
5 to troubleshoot, to find out if we're having a
6 systemic problem in the lab, to make sure that
7 our reagents are clean, to make sure that we
8 haven't inadvertently contaminated our reagents
9 or something and that way we would be introducing
10 DNA into our samples. That's one function.

11 The other function is to troubleshoot
12 each situation as it happens. If you further
13 look at that contamination log, I would guess
14 99 percent of the instances that we had were
15 resolved, either by reworking the case, or by the
16 fact that the evidence was actually an
17 elimination or it excluded someone. So it,
18 basically, provides us with the information to,
19 if we have those instances, to troubleshoot and
20 try and find out what happened in that particular
21 case.

22 Q. Do the inspectors see the contamination log?

23 A. Yes.

24 Q. And I think you testified that every five years
25 you are up for your accreditation?

1 A. Yes.

2 Q. And when was the last time you received your
3 accreditation?

4 A. May of 2006.

5 Q. And did the accrediting board members see your
6 contamination log?

7 A. Yes.

8 Q. And did they express any concerns about it?

9 A. No.

10 Q. Every two years you have an audit?

11 A. Yes.

12 Q. And did the auditors see your contamination log?

13 A. Yes.

14 Q. Did anyone express any concerns at that point?

15 A. Not to my knowledge.

16 Q. Why is it good practice to keep a contamination
17 log?

18 A. Because it happens. Any type of lab work where
19 you have human beings doing the work, the
20 possibility for these types of contamination are
21 going to happen. It's unavoidable.

22 The techniques that we're working with
23 are extremely sensitive. And, actually, that's
24 why they are so useful. They are very sensitive
25 because they do pick up on small amounts of DNA.

1 But taking that into account, you also
2 have to realize that contamination is going to
3 happen. And it's interpreted and dealt with on a
4 case by case basis.

5 Q. Does the scientific community recognize that
6 contamination is a possibility or a risk in the
7 DNA PCR testing process?

8 A. Yes.

9 Q. And have studies been conducted about the
10 contamination risks using this type of
11 methodology?

12 A. Yes.

13 Q. Is it well documented that there are risks of
14 contamination with this type of technology?

15 A. Yes.

16 Q. Do the manufacturers of the kits and the
17 equipment that you have in your laboratory
18 recognize contamination?

19 A. Yes, they do.

20 Q. Have they conducted validation studies about
21 this?

22 A. I assume so, I'm not 100 percent familiar with
23 that.

24 ATTORNEY BUTING: Objection, I move to
25 strike the answer.

1 THE COURT: Court will order the answer
2 stricken.

3 Q. (By Attorney Gahn)~ And, again, would you explain
4 to the jurors why this testing methodology is so
5 sensitive and the ability to -- the ability it
6 has to pick up trace amounts of DNA?

7 A. The PCR reaction that we use to copy all of these
8 genetic markers that I'm talking about works on
9 very small pieces of DNA. So, if you have DNA
10 that has been compromised by environmental
11 factors such as heat, UV light; if you have
12 substrates like soil, or wood, or things like
13 that that may compromise the sample; PCR is very
14 good for that. Because even though the DNA is
15 chewed up a little bit, there's still usually
16 enough there to amplify or make a whole lot of
17 copies. So this amplification process gives us a
18 lot of material, after it's completed, to work
19 with.

20 Because of that fact, it also amplifies
21 very, very small amounts of DNA, so, such as in
22 this case, my DNA -- my DNA being introduced into
23 the negative control, even though it was a very,
24 very small amount, the technique was sensitive
25 enough to pick that up.

1 Q. Would you explain to the jurors the exact set up
2 of your evidence and your control during an
3 extraction?

4 A. I have a test tube rack in front of me. And say,
5 for instance, I'm doing three evidence samples,
6 so I'm going to have three separate tubes labeled
7 with the number and the item designation for each
8 item of evidence. And then I'm going to have a
9 fourth tube that's referred to as the
10 manipulation control.

11 As I sample each one of my samples,
12 depending on whether it's a cutting or what the
13 evidence is, if it's a cutting, I will cut a
14 portion of the swab or material off, put it into
15 the tube and close the cap; clean my scissors and
16 forceps off; go to the next item, put it in the
17 tube, close the cap. I do that for all the
18 evidence items.

19 And, then, the control, I actually just
20 add to the liquid the buffers that cause the
21 reaction to happen. And that all takes place on
22 my bench top, in a test tube rack; I have a piece
23 of white paper down on my desk.

24 Q. Now, while you were performing this extraction
25 what else were you doing? Were you training

1 anyone?

2 A. Concerning the bullet, right?

3 Q. Yes, concerning the bullet.

4 A. Concerning the bullet, this was a little bit
5 unusual, because there was nothing to cut. And
6 there was nothing -- I didn't feel like, by
7 swabbing it, that I would get enough DNA off of
8 the item, so I actually put the entire bullet
9 into the tube, with my reagents, and washed all
10 the DNA off that was on that tube.

11 Because this was a little unusual, most
12 of our samples are swabbings or cuttings, I had
13 two of our newer analysts sit next to my
14 workbench and watch me. And as I was doing it, I
15 was explaining what I was doing and why I was
16 doing it. And I felt like I was far enough away
17 from my workbench so that my talking wouldn't
18 interfere; but, obviously, that was incorrect.

19 Q. If when -- If your DNA profile had been on the
20 bullet, would that have changed anything?

21 A. Yes.

22 Q. Please explain that to the jurors?

23 A. If my DNA had been on the evidence sample, I
24 would have reported that as a mixture of DNA from
25 myself and Teresa Halbach and I would have done a

1 statistical analysis referred to as a likelihood
2 ratio. That type of contamination is different
3 than what actually happened.

4 Q. If your -- If the control in this case had
5 contained a DNA profile that was unrecognizable
6 to you, would that have changed anything?

7 A. Yes.

8 Q. Please explain that to the jury.

9 A. I would not have requested a deviation because it
10 would not have been appropriate; it would have
11 been inconclusive, just like our protocol calls
12 for.

13 Q. Explain to the jurors why you felt that deviation
14 was appropriate in this situation.

15 A. First of all, there were a couple of reasons, my
16 DNA was in the control, not the evidence sample.
17 And because I was the analyst using it --
18 processing it, I knew what the source of the DNA
19 was. And I felt this was probative evidence, and
20 I felt it was appropriate simply -- primarily
21 because it was my own DNA and it was in the
22 evidence sample.

23 Had it been any other profile, had it
24 been mixed with the sample, again, I would have
25 reported it, but I would have reported it as a

1 mixture, and all the information would have been
2 in my report just like it was in this report.

3 All the information was there, but I
4 felt it was appropriate because I could not go
5 back and re-extract. I was stuck with what I
6 had; I couldn't redo anything to remedy the
7 situation. And I felt it was probative evidence,
8 so I reported it.

9 Q. Did the presence of your DNA profile in the
10 control, in any way, cause the presence of Teresa
11 Halbach's DNA profile on the bullet?

12 A. No.

13 Q. Was there any mixture on the bullet?

14 A. No.

15 Q. Who's profile did you find on the bullet?

16 A. It was a single source of DNA, meaning from one
17 person, and it was consistent with Teresa
18 Halbach.

19 Q. And the control in this case contained your
20 profile?

21 A. Correct.

22 Q. I believe you testified on direct examination
23 that since January 1st of 2001, the Crime Lab has
24 analyzed -- was it over 50,000 samples?

25 A. Correct.

1 Q. And did you also testify that you have logged,
2 since that time, 89 instances of contamination?

3 A. That's correct.

4 Q. Mr. Buting asked you about the work that you did
5 on the exoneration of Steven Avery?

6 A. Yes.

7 Q. Explain, again, to the jurors, what samples you
8 were analyzing for that exoneration?

9 A. I was examining pubic hairs that were originally
10 submitted back in '85. In 1985 we did a
11 microscopic comparison of hairs. That was
12 state-of-the-art, that's what every crime lab
13 did.

14 At the time, I made no statement about
15 the pubic hair combings because, microscopically,
16 I could not tell the difference between the
17 victim and the suspect's pubic hairs. So if I
18 couldn't tell the difference I certainly couldn't
19 tell if any of these pubic hairs were foreign, so
20 that was inconclusive.

21 When I was asked by Project Innocence to
22 go back and look at these hairs, they were all
23 mounted on microscope slides that I had
24 originally mounted them on in 1985. I removed
25 the cover slip; I took the hairs off; I washed

1 the hairs; and I attempted to extract DNA from
2 them.

3 You probably remember me telling you
4 that the type of DNA testing that we're doing is
5 only appropriate if you have nucleated cells. So
6 the hair shaft, we couldn't get DNA from, it had
7 to be the root of the hair, if there was some
8 skin attached to it.

9 And in this case I extracted 11 hairs,
10 two of them did have cellular material; one was
11 consistent with a woman and one was consistent
12 with a male.

13 Q. In 2003, were you qualified to do DNA testing?

14 A. Yes.

15 Q. Tell the jurors about the potential for getting a
16 DNA profile from the root of a single hair?

17 A. Traditionally --

18 ATTORNEY BUTING: Objection, this is
19 irrelevant, I think.

20 THE COURT: Well, there were some questions
21 on cross about it, I will allow her to explain what
22 she did.

23 A. In most cases, again, unless there is cellular
24 material attached to the root of the hair, we
25 don't have a lot of success with nuclear hair --

1 I mean nuclear DNA off of -- which is the type of
2 DNA we're doing, off of hair, in general. To get
3 DNA off of a hair that old, that was mounted on a
4 microscope slide, was pretty unusual.

5 Q. And is this sort of a one shot chance when you
6 are doing one hair?

7 A. Yes.

8 Q. There are no second chances going back?

9 A. No.

10 Q. And you developed a DNA profile from that one
11 single hair didn't you?

12 A. Yes.

13 Q. Mr. Buting stated that the profile you developed
14 from that one single hair was responsible to free
15 Mr. Avery; is that correct?

16 A. Yes.

17 Q. And you ran that profile through the data bank
18 and it hit on an individual by the name of
19 Gregory Allen; is that correct?

20 A. Yes.

21 Q. Ms Culhane, if by chance your DNA profile had
22 been in the control of that case, would you have
23 not reported Gregory Allen as the person with the
24 profile on the hair?

25 A. No, I would have requested a deviation from our

1 protocol because --

2 ATTORNEY BUTING: Objection, speculation
3 here.

4 THE COURT: No, I think there actually were
5 some questions about this on cross, so I'm going to
6 allow it.

7 A. I would have requested a deviation in that
8 particular case too because I couldn't go back
9 and redo that hair. I had one shot, and if I got
10 contamination, and it would have been my DNA in
11 the manipulation control, I would have requested
12 a deviation.

13 Q. So requesting deviations are very rare, aren't
14 they?

15 A. Yes.

16 Q. But the circumstances of this case required you
17 to request a deviation, correct?

18 A. Yes.

19 Q. There was no going back, a second chance, was
20 there?

21 A. No.

22 Q. Just like when you analyzed the one hair in 2003,
23 that resulted in Steven Avery's freedom?

24 ATTORNEY BUTING: Objection, no comparison.

25 THE COURT: It's been asked and answered.

1 Sustained.

2 Q. (By Attorney Gahn)~ Now, Ms Culhane, Mr. Buting
3 handed you, before, Exhibit 344, and I will have
4 it brought up to you in just a moment. But this
5 was an exhibit that listed the buccal swab of
6 Steven Avery being returned to the Manitowoc
7 County Sheriff's Department; is that correct?

8 A. Yes.

9 Q. I would like you to take another look at that.

10 A. Yes, this is a copy of our receipt.

11 Q. And first off, did you ever have a vial of Steven
12 Avery's blood in your laboratory?

13 A. No.

14 Q. So what did you use to make your comparisons, the
15 standard that you used in 2003?

16 A. A buccal swab.

17 Q. Of Steven Avery?

18 A. Yes.

19 Q. And it's listed on that exhibit?

20 A. Yes.

21 Q. And what happens when you are finished with a
22 case, explain to the jurors how it's packaged up
23 and how it is sent back to the submitting agency?

24 A. When I finish with a case, it's put pack in the
25 original container and it's sealed with evidence

1 tape, or whatever tape we have in the laboratory,
2 usually evidence tape. And our initial -- my
3 initials are across the seal.

4 Q. And if that envelope that you returned the buccal
5 swabs in was still in that condition today, would
6 you be able to recognize it?

7 A. I believe so.

8 (Exhibit No. 348, marked for identification.)

9 Q. By looking at the envelope, will you be able to
10 tell whether your initials are on it?

11 A. If my initials are on there, I will recognize
12 them.

13 ATTORNEY BUTING: Can I see it, please?

14 ATTORNEY GAHN: What's the exhibit number?

15 DETECTIVE WIEGERT: 348.

16 Q. (By Attorney Gahn)~ Detective Wiegert is going to
17 hand you what has been marked as Exhibit 348 and
18 ask if that has any markings on the outside of
19 the envelope that you recognize?

20 A. Yes, it does.

21 Q. Explain what the markings are for the jury.

22 A. This is the evidence tape we use in the
23 laboratory. Those are my initials. And this is
24 also the label for our case number.

25 Q. May the record reflect that she's pointing to the

1 blue label on the exhibit.

2 THE COURT: Mr. Buting, I'm going to have
3 to ask you if you agree, since I really can't see
4 very well.

5 ATTORNEY BUTING: Point to it.

6 THE COURT: It is a blue label. Looks like
7 a blue label.

8 ATTORNEY BUTING: Sure.

9 THE COURT: All right. The record will so
10 reflect.

11 A. And my initials are also across that label.

12 Q. Would you open up that envelope?

13 ATTORNEY BUTING: Objection, hold on, I
14 don't want --

15 THE COURT: I'm going to sustain the
16 objection. The defense may have the right to ask
17 questions on recross that might pertain to the
18 current state of the envelope. I will let you
19 address opening it after recross is finished. Fair
20 enough?

21 ATTORNEY BUTING: Sure.

22 THE COURT: Okay.

23 Q. (By Attorney Gahn)~ Does the case number on that
24 exhibit correspond to the case number on the --
25 on Exhibit, is it 344, the transmittal evidence

1 form?

2 A. Yes, it does.

3 ATTORNEY GAHN: Your Honor, at this point,
4 I will turn Ms Culhane over to Mr. Buting, if he
5 wishes to voir dire the witness on this point. And
6 I would like to have the opportunity to resume this
7 line of questioning.

8 ATTORNEY BUTING: No, I think he can finish
9 his cross (sic) and if there's any --

10 THE COURT: Stop. I'm going to excuse the
11 jury for a couple minutes here. We'll bring you
12 back in a few minutes.

13 (Jury not present.)

14 THE COURT: All right. You may be seated.

15 ATTORNEY BUTING: Can I take a look at this
16 a little bit closer?

17 THE COURT: By all means.

18 ATTORNEY BUTING: Okay. Do you want me to
19 discuss this now?

20 THE COURT: Well --

21 ATTORNEY BUTING: I can --

22 THE COURT: The reason I excused the jury
23 was, I assume that this is the envelope that the
24 buccal swabs were sent back to the sheriff's
25 department, you are asking to open it so she can say

1 that, presumably, yes, these are the buccal swabs,
2 they are in the same condition they were when I sent
3 them back?

4 ATTORNEY GAHN: No, there will be inside
5 this, the envelope that she packaged them in, which
6 will be all completely sealed with her initials on
7 it from the Crime Lab and show that it has not been
8 opened or tampered with.

9 THE COURT: Okay. So her initials aren't
10 on the --

11 ATTORNEY BUTING: They are.

12 THE COURT: -- Federal express?

13 ATTORNEY GAHN: They are.

14 THE COURT: There was testimony earlier
15 about her sealing something, putting her initials on
16 it. I guess what I'm getting at is, is this the
17 document she sealed, or is there another document
18 inside that's the document that's sealed?

19 ATTORNEY GAHN: Yes, inside.

20 ATTORNEY BUTING: Well, Judge, let me just
21 make a point, for the record. I don't know what's
22 inside, I haven't opened this document. But I can
23 tell that as you face the -- as you are looking at
24 the front with the label on it, the left edge of it
25 has been slit open at some point. The cardboard you

1 can see is cut and there is a piece of tape.

2 I don't know if we should excuse the
3 witness at this point. Well, I think -- that's
4 okay. There is a piece of larger tape sealing
5 it, but if you look closely, there's also just
6 another little piece of scotch tape that could
7 very easily be peeled back without any damage
8 noted and potentially gain access to the inside
9 of that.

10 I don't know what's inside, but that
11 left hand seal, or left hand side of the
12 envelope, does not appear to be sealed with any
13 kind of evidence tape. Do you see the little
14 piece of scotch tape I'm referring to?

15 THE COURT: I see a piece of scotch tape on
16 there.

17 ATTORNEY GAHN: Your Honor, we could open
18 this outside the presence of the jury. Open it right
19 now, see what's inside there.

20 ATTORNEY BUTING: I want the jury to see
21 that it's just sealed with a piece of scotch tape,
22 just like what they are going to see a little later.
23 When does scotch tape become proper evidence sealing
24 material? To me this looks like yet another exhibit
25 with Mr. Avery's DNA in it, that has a seal of

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nothing more than scotch tape.

ATTORNEY GAHN: Your Honor, what's happening here is what we tried to work out, I think, in our pre-trial motions. We're getting back into this **Richardson** frame-up, the defense initially gives an offer of proof that the planting was done by the blood vial in the Manitowoc County Clerk of Court's Office. And that changes today and now the implication is the buccal swab of Steven Avery was used to do the planting of the evidence.

This causes us to have to respond to this. This is outside the scope of what his offer of proof was. I believe it all was outside the scope of what the Court ruled would be the parameters in this case under **Richardson** and under **Denny**. And we have to respond to this.

THE COURT: All right.

ATTORNEY BUTING: With regard to that. Can I just quickly respond. The difference here is that this witness has testified that some of the DNA appears to have come from a non-blood source. Now, given that, we have a right to respond and show what other sources might be, that's what this is.

THE COURT: I have already allowed you to pursue that. I'm looking at the address label on

1 this document and this is from the Department of
2 Corrections, Stanley Correctional Institution, to
3 Marie Beth Varriale at the Crime Lab. You know, if
4 that's the case, it's not very surprising that it
5 was opened. I thought, initially, that this was the
6 envelope from which it was sent from the Crime Lab
7 back to the Sheriff's Department.

8 ATTORNEY BUTING: It is.

9 THE COURT: Before I rule on whether or not
10 the jury should see it in its current condition or
11 make any conclusions about it, I think we have to
12 know what it is, if it came from -- if this is the
13 original label, and it came from the crime lab.
14 It's not going be too surprising that it's been
15 opened and closed again.

16 ATTORNEY GAHN: Correct. The critical
17 piece of evidence is what is going to be inside that
18 envelope and that will be the buccal swabs that Ms
19 Culhane used to do the exoneration testing for the
20 Innocence Project in 2003. And what we want to
21 show, your Honor, is that these were not reopened
22 and used to wipe on a key or a hood latch.

23 THE COURT: Is this -- So this isn't the
24 envelope that you're attempting to show to the jury
25 was sealed with her initials on it and has never

1 been opened since?

2 ATTORNEY GAHN: No, your Honor.

3 THE COURT: Does that change anything for
4 the defense, Mr. Buting?

5 ATTORNEY BUTING: Well, in order to get to
6 whatever is inside, one would have to first open
7 that envelope, as I understand it. And what I'm
8 saying, as I look at it right now, is that that
9 envelope appears, yeah, it's been opened. And I
10 understand that what happened is that probably came
11 from the Crime Lab -- I'm sorry, from the prison, to
12 the Crime Lab, they tested it, put it back in the
13 same envelope, and returned it to Mr. Remiker.

14 THE COURT: All right. Let's do this. Let
15 me suggest this, what if you present this to the
16 witness, as is, ask her questions, and have her
17 explain anything about its condition. And before it
18 gets opened, I will give Mr. Buting an opportunity
19 to provide a description to the jury of its current
20 condition, including the scotch tape, and you can
21 be -- the State can be asked if you agree with that
22 description.

23 ATTORNEY BUTING: Okay.

24 THE COURT: Fair enough, Mr. Buting?

25 ATTORNEY BUTING: Sure, no problem.

1 THE COURT: All right. Someone can come
2 back up and pick up the envelope. We'll bring the
3 jurors back in. Mr. Wiegert.

4 DETECTIVE WIEGERT: Would you like me to
5 give it to the witness, Judge?

6 THE COURT: Sure.

7 (Jury present.)

8 THE COURT: You may be seated. And,
9 Mr. Gahn, you may resume your redirect.

10 Q. (By Attorney Gahn)~ Ms Culhane, could you explain
11 and describe to the jurors exactly what is on
12 that envelope and how it is packaged and what
13 information will be helpful in determining its
14 basic chain of custody?

15 A. It's an express mail package that was sent to the
16 Crime Lab. Again, when it came into the
17 laboratory, it got a case number and our bar
18 coding system, and it was signed by whoever
19 receipted the case. And, then, at some point was
20 opened and I believe resealed with my initials
21 and evidence tape.

22 Q. And when that arrived at the Crime Lab and you
23 opened it, it contained evidence to be analyzed
24 in the case of the exoneration of Steven Avery?

25 A. Yes.

1 Q. Do you know what that evidence was?

2 A. No, I don't. I would have to open this.

3 Q. Can you tell by your seal whether it has an item
4 number?

5 A. No, it doesn't have an item number; I have a case
6 number.

7 Q. But contained inside that envelope, you believe,
8 is the exhibit that you examined?

9 A. Yes, I believe so.

10 ATTORNEY GAHN: If Mr. Buting has any
11 questions.

12 THE COURT: Are you about to ask the
13 witness to open the envelope?

14 ATTORNEY GAHN: Yes, I would like her to
15 open the envelope.

16 THE COURT: All right. I think before she
17 does that, I believe Mr. Buting wanted some
18 information placed on the record about its
19 condition. And after he gives that description, I
20 will ask if the State agrees.

21 ATTORNEY BUTING: All right.

22 THE COURT: Perhaps, Mr. Buting, you can
23 take it to the prosecution table, so as you are
24 describing it, all attorneys will have a chance to
25 look at it.

1 ATTORNEY BUTING: Well, I think -- isn't
2 the witness going to -- can't I ask her to explain
3 what it is, so I'm not the witness who is
4 testifying.

5 THE COURT: If you wish to ask some
6 questions now, I believe that was the State's
7 original request. I thought you objected to it, but
8 if you want to and the State agrees, go right ahead.

9 ATTORNEY BUTING: Sure, I mean, I would
10 rather do it that way so that --

11 THE COURT: Counsel, is that correct?
12 Mr. Gahn?

13 ATTORNEY GAHN: That's fine, your Honor.

14 THE COURT: All right. Mr. Buting, go
15 ahead.

16 ATTORNEY BUTING: Okay. Just, we don't
17 know what's inside at this point, but on the left
18 side of the envelope, as you are facing the label.

19 THE WITNESS: Mm-hmm.

20 ATTORNEY BUTING: Does it appear at some
21 point it was opened?

22 THE WITNESS: Yes.

23 ATTORNEY BUTING: And then there's a piece
24 of tape, sort of a wide piece of tape that says
25 State Crime Lab?

1 THE WITNESS: Yes.

2 ATTORNEY BUTING: And it has an initial
3 over it?

4 THE WITNESS: Yes.

5 ATTORNEY BUTING: Would you look on top of
6 that -- By the way, this tape that says State Crime
7 Lab, it's a clear tape?

8 THE WITNESS: Yes.

9 ATTORNEY BUTING: But it has your label in
10 red?

11 THE WITNESS: Yes.

12 ATTORNEY BUTING: And that's your little
13 initials?

14 THE WITNESS: Yes.

15 ATTORNEY BUTING: That little black thing
16 right there?

17 THE WITNESS: Yes.

18 ATTORNEY BUTING: If you look on top of
19 that, doesn't it appear that there's a piece of
20 small scotch tape that appears to be closing it?

21 THE WITNESS: Yes, it does.

22 ATTORNEY BUTING: And, your Honor, I would
23 ask, if she's going to open it, rather than cut it
24 with a knife, I would ask that she peel off that
25 piece of scotch tape and see if its accessible that

1 way.

2 THE COURT: Any objection?

3 ATTORNEY GAHN: No, your Honor.

4 THE COURT: All right. Do you understand
5 the request?

6 THE WITNESS: I think so.

7 THE COURT: All right. If you can peel
8 off --

9 THE WITNESS: Peel this tape off?

10 THE COURT: Just the thin piece of
11 scotch --

12 ATTORNEY BUTING: Just the scotch tape, not
13 your evidence tape.

14 THE WITNESS: All right. I can't really
15 get it all off.

16 THE COURT: Do you prefer it peeled off or
17 use a letter opener that would leave the scotch tape
18 on, in two pieces, one on each side?

19 ATTORNEY BUTING: Well, what I would rather
20 see is, is if by taking the scotch tape off one can
21 open it. It looks like -- Is that what you have
22 done.

23 THE WITNESS: That's what I just took off.

24 ATTORNEY BUTING: Okay. And if you peel
25 off this last little bit, does it appear to -- I

1 don't know if we're going to be able to tell if this
2 is torn off. Just go ahead and open it. I would
3 just slit it along that edge.

4 THE WITNESS: Should I cut it along this
5 opening here?

6 THE COURT: Do you want us to use a letter
7 opener or something?

8 ATTORNEY BUTING: She has a little knife.

9 THE WITNESS: I do have this.

10 THE COURT: All right. Sounds like both
11 parties are agreeable, so go ahead.

12 ATTORNEY BUTING: Record should reflect
13 inside of the postal envelope is another manila
14 envelope that appeared to be unsealed. And now you
15 have pulled out something that was inside of that.

16 THE WITNESS: Would you like for me to
17 describe it?

18 THE COURT: Mr. Gahn?

19 Q. (By Attorney Gahn)~ Yes, if you would describe
20 what's in the envelope.

21 THE COURT: Go ahead.

22 A. This is a manila envelope, says Marie Beth
23 Varriale. These are my markings, my initials,
24 the lab number and the item designation. This is
25 actually samples that are used to collect data

1 bank samples. It's just a kit that we have.

2 Inside the kit is a sealed white
3 envelope with the laboratory case label and item
4 designation, W, my initials. And then this is
5 the -- this is a cut that I made when I took the
6 sample out and it's been resealed with my
7 initials across it.

8 Q. Explain a little more to the jury exactly what
9 that contains and when you sealed it and how you
10 sealed it.

11 A. When samples are collected for the Wisconsin
12 State -- the CODIS System, the data base,
13 convicted offender samples, these preprinted kits
14 are used. It says Wisconsin DNA Data Bank. and
15 sometimes there are also other police agencies
16 will sometimes use these to collect standards
17 from individuals.

18 So there's some paper -- there's some
19 documentation here as to where this kit came from
20 and there's some instructions here if you were
21 going to submit this to the data bank. There is
22 a place for a fingerprint on here, which I really
23 don't know anything about.

24 But I received it in this condition,
25 with this -- this was completely sealed. And we

1 placed our bar code from the lab across the top
2 here and I signed and initialed and dated it.
3 And, then, when I took my sample out, I cut along
4 the top edge here.

5 The swabs are actually inside this white
6 envelope here. This is just a piece of paper
7 that's stuck to the envelope. So the swabs are
8 inside this envelope.

9 When I took my sample, I split the top
10 and pulled out the swabs, sampled the swabs, put
11 it back, and sealed -- resealed it, this is the
12 evidence tape in the lab, and initialed it.

13 Q. And can you tell if that is the buccal swab that
14 corresponds to, I believe, Exhibit 344, where the
15 evidence was turned over, signed for by Detective
16 Remiker?

17 A. Yes. They both have the same Lab No. M85-1051,
18 and they both have the item designation of W.

19 Q. I would like you to describe the condition of
20 those buccal -- of the buccal swabs, right now.

21 A. I can feel in here, there appears to be one swab
22 in here. And all the edges are sealed and this
23 is the seal -- this was cut open at one time when
24 I took my sample and then I resealed it back.
25 And this is the seal that I placed on it. And

1 appears to be exactly the way it was when I put
2 it on there.

3 Q. Has that been -- Does it appear to be tampered
4 with in any way?

5 A. No.

6 Q. Are there any seals broken that where someone
7 could remove that buccal swab and use it to rub
8 on a key and plant evidence of Steven Avery?

9 A. None of the seals are broken.

10 Q. And can you tell on what date you sealed that
11 envelope and sent it back to the Manitowoc County
12 Sheriff's Department?

13 A. Not by the markings on here, no.

14 Q. Can you tell when you sealed it yourself?

15 A. Not by these markings, no.

16 Q. Does Exhibit, is it 344, tell you when you sent
17 it back -- or 348, I'm sorry?

18 A. 344 is the evidentiary release form and it was
19 returned on September 25, 2003.

20 Q. And it would have been returned on September 25,
21 2003, in the condition that you just described
22 for the jurors?

23 A. Yes.

24 Q. And today, as you look at that, does it appear to
25 have been tampered or opened in any way?

1 A. No.

2 ATTORNEY GAHN: Thank you, that's all I
3 have.

4 THE COURT: Mr. Buting, any recross?

5 ATTORNEY BUTING: Sure. There's always
6 something.

7 **RECROSS-EXAMINATION**

8 BY ATTORNEY BUTING:

9 Q. Back to this deviation request form for a moment,
10 you said -- you didn't go through the
11 contamination log, but you just said you would
12 guess that maybe 90 percent get resolved, meaning
13 90 percent of the contamination errors can be
14 determined?

15 A. Actually I said, or I meant to say, everything is
16 resolved somehow. Probably 99 percent are
17 resolved by re-extracting. There are several
18 instances that samples were not re-extracted,
19 simply because they were exclusions; in other
20 words, the evidence sample excluded the alleged
21 suspect, so if it's an exclusion then that's the
22 end of it.

23 Q. Yes. As a matter of fact, the protocol does
24 specifically allow, when there's a contamination
25 in a manipulation control, it does still allow

1 you to make a exclusion?

2 A. Correct.

3 Q. But not an inclusion?

4 A. Right.

5 Q. Explain the difference between an inclusion and
6 exclusion?

7 A. When you are excluding someone, like if I have a
8 evidence sample and I have a reference sample,
9 and the profiles do not match, they are not the
10 same, then, that reference sample is excluded.
11 That person is not the source of the evidence
12 sample. An inclusion is, if I have an evidence
13 sample and a reference sample, and the profiles
14 are the same, they are consistent with one
15 another, that's referred to as an inclusion.

16 Q. All right. And the reason why you can still use
17 these contaminated tests to exclude somebody is
18 because an exclusion is the absence of something,
19 that is lacking, the evidence does not have the
20 profile that the defendant or the suspect would
21 be, right?

22 A. Right.

23 Q. Whereas, an inclusion, when there is a
24 contamination, there's concern that there's
25 something may be added to it that shouldn't be

1 there, and that it may be because it's added that
2 it includes somebody?

3 A. Correct.

4 Q. So they are treated differently in the protocol?

5 A. Correct.

6 Q. And page, the very next page from where we were
7 looking before in the protocol, the E2 -- for
8 some reason my pages aren't numbered. Starts on
9 the top of evaluation of controls?

10 A. Yeah.

11 Q. Okay.

12 A. This page, right.

13 Q. Yeah, okay. Very first paragraph says that -- it
14 talks about how manipulation controls may reveal
15 the presence of contamination, right?

16 A. Correct.

17 Q. And what it specifically says is if -- if you're
18 -- if this control -- manipulation control
19 exhibits identifiable allele peaks, that means,
20 basically, a DNA profile, right?

21 A. Right.

22 Q. Then the DNA specimens that are extracted along
23 with that control, in other words, the evidence
24 sample that's being done, along with your
25 control?

1 A. Correct.

2 Q. The DNA specimen will be considered inconclusive
3 for match purposes, right?

4 A. Correct.

5 Q. That's the rule that your lab has?

6 A. Right.

7 Q. And you said about 99 percent of the time they
8 are re-extracted. In fact, do you know whether
9 you might be the only lab analyst ever, at the
10 Crime Lab, to ask for a deviation from the
11 protocol in order to include somebody?

12 A. No, I'm not.

13 Q. Do you see any in that control -- in that
14 contamination log?

15 A. No, but this was before that. We did have a
16 deviation before the instances in the
17 contamination log.

18 Q. Okay. Before you started keeping track?

19 A. Yes.

20 Q. From your memory you recall that?

21 A. Yes, I do.

22 Q. Okay. But there's no record of it.

23 A. Not in this documentation, no.

24 Q. Okay. And you said that you felt that it was
25 appropriate to deviate because you felt this was

1 probative evidence, right?

2 A. Correct.

3 Q. That means you make a judgment -- a value
4 judgment about whether this evidence is important
5 in this case, right?

6 A. We do that every piece of evidence we look at, on
7 every case.

8 Q. That's right, because it's not a blind test, like
9 we talked about earlier, right?

10 A. That's the way we work. That's the way any Crime
11 Lab works cases.

12 Q. That's the way you work. And in this case
13 Mr. Fassbender asked you to try to put Teresa
14 Halbach in the defendant's garage or house,
15 right?

16 A. As I said before, in your request from the
17 investigator, had no bearing whatsoever on my
18 examination or my results.

19 Q. No bearing whatsoever?

20 A. That's correct.

21 Q. And yet, for the first time in your career, you
22 deviate from a protocol to include -- to find one
23 piece of evidence, the only piece of evidence in
24 this entire case that links Teresa Halbach to
25 Mr. Avery's garage or house, you deviated from

1 the protocol so that you could call her on that
2 one piece of evidence, right?

3 ATTORNEY GAHN: Your Honor, argumentative.

4 THE COURT: The objection is sustained.

5 Q. (By Attorney Buting)~ You contaminated -- Your
6 results showing that you contaminated this
7 bullet, you got the results on April 3rd; is that
8 right?

9 A. I would have to check. Actually, April 6th.

10 Q. Okay. April 6th. And you were aware, I believe,
11 because your lab objected to it, that the defense
12 filed a motion to assure fair forensic testing to
13 allow the defense to have a witness there when
14 you do any tests that would result in using up
15 all the evidence?

16 ATTORNEY GAHN: Objection, your Honor,
17 relevancy.

18 THE COURT: I'm sustaining the objection,
19 not on relevancy, but on the grounds it's beyond the
20 scope of recross.

21 Q. (By Attorney Buting)~ Well, in any event, because
22 you used up all of the sample, not only could you
23 not re-extract it, the defense had no opportunity
24 to retest that, did we?

25 A. You didn't have any opportunity to test the

1 original item, but my extracts are available for
2 retesting.

3 Q. Did you retest them?

4 A. No.

5 Q. Why not?

6 A. Because my results from my quantitation show that
7 there was DNA in the manipulation control --

8 Q. You're telling me --

9 A. I would have gotten the same thing.

10 Q. You are telling me that you get a test that
11 requires that you go to so far as to deviate from
12 the protocol when you could have simply retested
13 the same extract?

14 A. There was nothing different about it. Retesting
15 it would not have changed anything.

16 Q. Because it was contaminated already.

17 A. Because the DNA was introduced during the
18 extraction process.

19 Q. Because it was -- That's right, therefore, the
20 extract was contaminated already; isn't that
21 right?

22 A. The control was contaminated with the my DNA, not
23 the extract.

24 Q. So, rather than retest, you went out on a limb
25 and made this request, that you have never made

1 before in your life, so that you could give
2 Mr. Fassbender what he wanted, some evidence that
3 would link Teresa Halbach to that --

4 ATTORNEY GAHN: Objection, your Honor, to
5 the form of the question.

6 THE COURT: Objection is sustained.

7 Q. (By Attorney Buting)~ You talked about 50,000
8 samples, I think you brought that up again. The
9 thing about contamination is, once you find a
10 contaminated sample, it doesn't matter what the
11 percentage of other cases that you -- where you
12 have contamination, does it?

13 A. Yes.

14 Q. Well, it doesn't matter whether this is one in
15 50,000, or whether this is the 89th in 50,000,
16 it's a test that you know is contaminated, right?

17 A. Are you referring to the bullet?

18 Q. Yeah.

19 A. Yes, I know it's contaminated with my DNA.

20 Q. So whether it is a unusual or rare circumstance
21 in the big picture or not, doesn't matter because
22 you have a case where you know there was
23 contamination; it's one of the incidents that
24 need to be reported?

25 A. Correct.

1 Q. The 2003 case, just so nobody is confused, the
2 pubic hair that you found comingled with the
3 victim's pubic hairs was not just a man, it was
4 Gregory Allen, right?

5 A. Correct.

6 Q. And you knew, from discussions with the police,
7 that Gregory Allen, in fact, was a suspect in
8 that very case, from the very beginning?

9 A. No, I did not.

10 ATTORNEY GAHN: Your Honor, this is
11 beyond -- far beyond the scope of our redirect.

12 THE COURT: Mr. Buting?

13 ATTORNEY BUTING: It's not beyond the
14 scope, he just brought it up, he talked about it.

15 THE COURT: He did bring it up, but the
16 question about whether he's a suspect is beyond the
17 scope, so I'm going to sustain the objection on that
18 basis.

19 Q. (By Attorney Buting)~ In any event, he was in the
20 data bank and it hit on him, right?

21 A. Correct.

22 Q. And it excluded Mr. Avery, right?

23 A. Yes.

24 Q. Without any kind of deviation from protocols,
25 right?

1 A. Yes, that's correct.

2 Q. It was a standard test that proved he was
3 excluded?

4 A. That's correct.

5 Q. The bottom line is, in this case, if you had
6 followed the protocol of your own lab, and you
7 would have had to file a report that says any DNA
8 tests on that bullet were inconclusive, right?

9 A. Without a deviation, which our protocol does
10 allow for, yes.

11 Q. Ma'am, the question is, if you had followed the
12 protocol and not requested a deviation, your
13 report would have said, the DNA on that bullet
14 was inconclusive?

15 A. Correct.

16 ATTORNEY BUTING: That's all your Honor.

17 THE COURT: Anything else Mr. Gahn?

18 ATTORNEY GAHN: Just a couple questions,
19 your Honor.

20 **FURTHER REDIRECT EXAMINATION**

21 BY ATTORNEY GAHN:

22 Q. Ms Culhane, why do scientists allow for deviation
23 in protocols?

24 A. Because every situation, each case that we work
25 and every situation, is different. And sometimes

1 there are circumstances that warrant deviating
2 from the stated protocol.

3 Q. And did this situation with the bullet warrant
4 deviation from the protocol?

5 A. In my opinion, yes.

6 Q. And why?

7 A. Because my DNA was not in the evidence sample, it
8 was only in the control, and it was a source that
9 I could track. It was me. It was introduced
10 when I was handling the tubes. It had no
11 bearing, no scientific bearing on the type of the
12 evidence sample at all. It was no mixture. It
13 was a single source sample that was consistent
14 with Teresa Halbach, and for those reasons I felt
15 it was appropriate.

16 Q. And did the fact of your profile being in the
17 control in this case have any impact whatsoever
18 on Teresa Halbach's DNA being on the bullet?

19 ATTORNEY BUTING: Objection, been asked and
20 answered.

21 THE COURT: Sustained.

22 ATTORNEY GAHN: I have no further
23 questions.

24 ATTORNEY BUTING: Just one quick response
25 here.

FURTHER RECROSS-EXAMINATION

1
2 BY ATTORNEY BUTING:

3 Q. So, now we understand that you know how that
4 bullet -- how that control test was contaminated,
5 because it was you handling the tubes; is that
6 your testimony? Didn't you say earlier that you
7 were training and talking and were too close to
8 the bench?

9 A. That's correct. And I believe that's why it was
10 introduced.

11 Q. You just said --

12 A. By handling --

13 Q. -- a moment ago --

14 A. -- I meant handling the evidence, and that
15 includes everything I did in reference to that
16 evidence.

17 Q. And that includes the bullet sample too, right?
18 Handling that, the evidence you are talking about
19 is the sample with the bullet in it -- DNA in it,
20 right?

21 A. Of course I had to handle it --

22 Q. Of course.

23 A. -- to extract it.

24 Q. Of course. So when you say you know where this
25 came from, you don't know where this came from.

1 You don't know whether it came because you were
2 spitting too close as you were talking, or
3 whether you were handling it and got it off on
4 your hands; you don't know how that control was
5 contaminated, do you?

6 A. The fact is, it was my DNA.

7 Q. Ma'am, you don't know how that control became
8 contaminated, do you?

9 A. Not 100 percent for sure, no.

10 Q. Just like many other incidents reported in the
11 log, where it is undetermined how contamination
12 occurred --

13 ATTORNEY GAHN: Objection, argumentative.

14 THE COURT: Court is going to sustain the
15 objection. And we're just plowing the same ground
16 here so I'm going to excuse the witness.

17 ATTORNEY BUTING: I'm done anyway. Thank
18 you, Judge.

19 THE COURT: Members of the jury, we'll take
20 our afternoon break at this time. Again, I will
21 remind you not to discuss the case during the break.

22 (Jury not present.)

23 ATTORNEY BUTING: Judge, I would move the
24 introduction of all the exhibits that we filed.

25 THE COURT: All right. I think there were

1 some exhibits produced by both sides; do -- are both
2 parties asking for their exhibits to be admitted?

3 ATTORNEY GAHN: Yes, your Honor.

4 THE COURT: All right. Everything that was
5 introduced today, then, is admitted.

6 ATTORNEY BUTING: With the exception of
7 343, which I think we just marked.

8 THE COURT: That's right there was one that
9 was specifically requested not to be admitted.
10 Okay.

11 (Recess taken.)

12 THE COURT: At this time the State may call
13 its next witness.

14 ATTORNEY GAHN: The State will call Nick
15 Stahlke to the stand.

16 THE COURT: All right.

17 THE CLERK: Please raise your right hand.

18 **NICK STAHLKE**, called as a witness
19 herein, having been first duly sworn, was
20 examined and testified as follows:

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

23 THE WITNESS: Nick Stahlke, Stahlke is
24 spelled, S-t-a-h-l-k-e.

25 **DIRECT EXAMINATION**

1 BY ATTORNEY GAHN:

2 Q. Mr. Stahlke, how are you employed?

3 A. I'm a forensic scientist with the State of
4 Wisconsin Crime Laboratory?

5 Q. Which Crime Laboratory is this?

6 A. Madison.

7 Q. And what is your position there?

8 A. Currently I'm the forensic science training
9 coordinator.

10 Q. And could you tell the jurors a little bit about
11 your formal educational background, please.

12 A. Yes, I have a bachelor's in science degree and
13 medical technology, with a minor in chemistry.

14 Q. And what are your current duties and
15 responsibilities at the Crime Lab?

16 A. As a forensic science training coordinator, I'm
17 responsible for a course that the Crime Lab puts
18 on, which is the evidence -- basic evidence
19 technician course. It -- I also then am
20 responsible for coordinating the instructors, the
21 curriculum, and I critique those particulars,
22 those particular trainers.

23 I also am responsible for the Field
24 Response Training Program within the State of
25 Wisconsin. I make sure that we have an on call

1 roster to cover the statewide program for -- on a
2 24 hour basis.

3 I also examine bloodstains for -- for
4 the interpretation of those stains and I am a
5 team leader with the field response program where
6 we trans -- or we will respond to crime scenes.

7 Q. As to the bloodstain patterns that you said was
8 one of your duties and responsibilities, have you
9 attended any specialized schools dealing with
10 bloodstain pattern analysis?

11 A. Yes, it's a requirement that anybody that does
12 any bloodstain pattern analysis has a minimum of
13 40 years -- 40 hour course. And in 1988, I
14 attended a 40 hour course. I, again, attended a
15 course that was entitled Advance Crime Scene
16 Examination; however, it was also a bloodstain
17 course, or ultimately was a bloodstain course.
18 So, I have attended two 40 hour bloodstain
19 courses.

20 Q. And what experience do you have in the area of
21 bloodstain pattern analysis?

22 A. Well, I got my first training -- or 40 hour
23 course in '88, so I have had 19 years of
24 experience looking at stains and interpreting
25 those stains.

1 Q. Have you given lectures or taught on subjects
2 related to bloodstain pattern interpretation?

3 A. Yes, I have.

4 Q. And have you conducted workshops related to that
5 field?

6 A. Yes, I have.

7 Q. Could you explain some of those to the jurors?

8 A. There was a Wisconsin Association of
9 Identification, asked me to present a lecture on
10 that subject and I also had a workshop associated
11 with that lecture. I also gave a -- taught at
12 the North Idaho College, which was a program for
13 incoming or new recruits as far as law
14 enforcement recruits. It was a Criminal Justice
15 Program there in the North Idaho College.

16 I routinely monitor or -- crime scenes,
17 then, also at the Death Investigation School,
18 which is put on by the Department of Justice's
19 Division of Criminal Investigation.

20 Q. I believe you stated that you had been involved
21 in the interpretation of blood stain patterns for
22 19 years; is that correct?

23 A. Yes.

24 Q. Have you testified in courts of law in Wisconsin
25 as an expert in interpreting bloodstain patterns?

1 A. Yes, I have.

2 Q. And how many times have you done so?

3 A. About 10 times.

4 Q. Have you ever been rejected as an expert in
5 bloodstain pattern analysis?

6 A. No, I have not.

7 Q. What I would like you to do is, could you just
8 describe to the jurors the different types of
9 determinations that can be made from bloodstain
10 patterns.

11 A. Bloodstains, when they are present at a scene,
12 basically freezes that scene on that particular
13 moment in time when blood is shed. You can
14 determine the position of the bleeding victim, if
15 the victim is bleeding.

16 You can possibly determine the movement
17 of that victim. You can determine the possible
18 position of the assailant or the attacker. You
19 might possibly be able to determine movement of
20 the attacker as well.

21 In some cases, you can determine the
22 type of weapon that was used. If it was a
23 bludgeoning or a beating, you may be able to
24 determine the minimum number of blows that was
25 inflicted to the victim.

1 Some of the reasons for looking at
2 stains is not only to determine those positions,
3 or those things that I already described, but you
4 might be able to confirm or refute statements
5 given by witnesses, using the analysis of
6 bloodstain patterns. Or you can determine the
7 difference between, and distinguish the
8 difference between, suicide or homicide,
9 possibly.

10 Q. Are there different types of bloodstain patterns?

11 A. Yes, there is.

12 Q. Will you please explain to the jury what they
13 are?

14 A. Well, basically there's three categories of
15 bloodstains. There are the passive stains. You
16 have the projected stains. And you also have
17 the -- I forget the third category. Passive
18 contact -- oh, excuse me -- contact type transfer
19 stains.

20 Q. And can you determine by looking at a bloodstain
21 pattern how it was deposited?

22 A. Yes, you can.

23 Q. And what specific experiments or tests have you
24 yourself conducted and performed in bloodstain
25 pattern analysis?

1 A. Well, in the 40 hour course, it's very heavy in
2 practical exercise, because the whole idea of the
3 course is to give you experience in seeing these
4 types of stains. And so the practical experience
5 is, then, you use different types of weapons; you
6 put victims in different positions; and you try
7 all the possible scenarios you can imagine or
8 think of that you might run into or encounter at
9 a crime scene.

10 Q. And by performing these tests or experiments
11 yourself, how do these help you perform your job?

12 A. Well, obviously, if you have seen these types of
13 stains before and you know how they were
14 constructed, or how they were manufactured,
15 through practical experience, you can then relate
16 those same experiences to a crime scene itself.

17 Q. I'm going to show you what has been marked
18 previously as Exhibit 289 and ask if you -- it's
19 a photograph -- recognize that photograph?

20 A. Yes, I recognize this.

21 Q. And how do you recognize that?

22 A. This is the '99 -- blue '99 RAV4 that was in our
23 second bay, or middle bay, in our Crime
24 Laboratory in Madison.

25 Q. When did you first observe it?

1 A. Monday, November 7th, 2005.

2 Q. And what involvement did you have with the
3 examination of this RAV4?

4 A. I was asked to analyze the bloodstain patterns
5 that may have been present in this vehicle.

6 Q. What was the first thing you did, when you saw
7 the vehicle and began your processing?

8 A. Well, the first thing I do is an external -- on a
9 vehicle such as this, I do an external
10 examination of the vehicle. So, I typically will
11 find a point on a car. It may be the front, left
12 corner, or the driver's door and I do a walk
13 around, typically in a counter clockwise pattern,
14 looking for any possible stains that are on --
15 present on the exterior. And what I look for is
16 anything that appears to be a bloodstain. But if
17 it's the proper color and shape, then I have a
18 presumptive test done to determine that it
19 probably is blood, then.

20 Q. And did you make any observations during your
21 external view and examination of the RAV4?

22 A. I did not observe any stains on the exterior.

23 Q. Then after the exterior examination, what would
24 you do next?

25 A. Then we move to the interior of the vehicle.

1 Q. And did you make any observations in the interior
2 of the vehicle?

3 A. Yes. I typically will start at the driver's
4 compartment. And inside a driver's compartment,
5 I saw what appeared to be three contact stains.

6 Q. Mr. Stahlke, Mr. Fallon is going to bring you a
7 pile of photographs that have already been marked
8 as exhibits in this case. And if you could keep
9 them in that order and I would ask you to take
10 the first photograph and read off what exhibit
11 number it is, please.

12 A. Exhibit No. 290.

13 Q. And is that photograph that you have being shown
14 on the big screen here that the jurors are
15 looking at?

16 A. Yes, it is.

17 Q. Could you describe for the jurors what you
18 observed in this photograph?

19 A. This is an intermediate view of the passenger's
20 compartment. On this particular photograph, you
21 can see a red brown stain on the driver's seat.

22 Q. Would it be helpful if we were to zoom in on that
23 for you?

24 A. Sure.

25 Q. And do you have a laser pointer up there?

1 A. No, I do not.

2 Q. We'll have one in a moment. And could you point
3 out to the jurors where you observed this
4 particular stain. Is there anything else that
5 you observed in the -- this compartment of the
6 vehicle?

7 A. Yes. Well, this particular stain, however, it is
8 a bit of a thick stain, so it's a little thicker
9 than your normal contact transfer stain. There
10 were two other areas in this passenger
11 compartment that I saw stains.

12 Q. Before we go to those, could you describe the
13 type of stain this is?

14 A. This is -- I would call this a contact transfer
15 type stain; however, it was thicker than your
16 average transfer stain. So I'm kind of bordering
17 on that being a passive drop, which is a drop
18 that falls to that surface. And it's thicker
19 because it's -- it's -- it has fallen there, as
20 opposed to a bloody surface contacting that
21 particular unstained surface.

22 Q. Is this what you call an individual stain, did
23 you say?

24 A. It can be, yes.

25 Q. And could you explain, just amplify a bit more

1 for the jurors what you mean by contact transfer
2 stain?

3 A. A contact transfer stain is the transfer of blood
4 from a bloody object, or bloody item, or blood
5 source, onto an unstained surface.

6 Q. Would you look at the next exhibit that we have
7 and just read the exhibit number and describe
8 what that is for the jurors.

9 A. Exhibit 292, this is the -- yes, there's a --
10 this is the passenger's front seat or the front
11 seat on the passenger side of the vehicle. And
12 in this seat, or on this seat is a water bottle,
13 a cassette -- or excuse me -- a CD holder, hard
14 plastic, and I believe that's a perfume bottle, I
15 can't tell you for sure.

16 Q. Did you observe any bloodstain patterns in this
17 area of the RAV4?

18 A. Yes, I did.

19 Q. And could you describe them for the jurors and
20 where they are?

21 A. The CD box or container would have had
22 bloodstains on the surface of it.

23 Q. Would it be helpful for you if we were to zoom in
24 on this for you to identify it?

25 A. Sure.

1 Q. Can you use your laser pointer to point out the
2 area that you observed these bloodstains.

3 A. Well, you can see some here, but there were
4 stains throughout, basically covering 50 percent
5 of the surface of this CD box, but you can see
6 this is the most obvious stain on this photo.

7 Q. Was there anywhere else that you observed
8 bloodstain patterns?

9 A. In the vehicle, yes.

10 Q. No, in this photograph. Let's zoom back out now,
11 please.

12 A. There was another stain on the front, left
13 portion of that seat cushion.

14 Q. And can you point out where that was located?

15 A. Yes.

16 Q. And we could zoom up to that area?

17 A. If you can, it's right in this area here.

18 Q. You may not --

19 A. More to the right, yeah, right there.

20 Q. And could you describe for the jurors what type
21 of stain that was that you observed?

22 A. Contact transfer.

23 Q. Again, what do you mean by a contact transfer
24 stain?

25 A. Again, a bloody source, a bloody item, a bloody

1 object coming in contact with an unstained
2 surface.

3 Q. I would like you to look at the next exhibit and
4 identify it and describe it for the jurors.

5 A. This is Exhibit 291.

6 Q. And did you observe any -- Sorry, let me back up
7 here. Is the photograph on the large screen a
8 photograph that you have in your hand?

9 A. Yes, it is.

10 Q. Could you describe -- point out, on the large
11 screen, the bloodstain pattern that you observed
12 here?

13 A. Right here.

14 Q. And would you describe that for the jurors and
15 tell what type of stain that is.

16 A. And this is a contact transfer stain; again, a
17 bloody object, or item, coming in contact with an
18 unstained surface.

19 Q. We'll zoom in on this so the jurors can get a
20 good look at that. And, again -- Once again,
21 what do you mean by a bloody contact transfer?

22 A. It would be an object that has blood on it, that
23 transferred that blood from that surface onto a
24 non-stained or unstained surface.

25 Q. I would like you to look at the next photograph

1 and identify the exhibit number?

2 A. Exhibit 193.

3 Q. And I would like you to tell the jurors whether
4 this -- the photograph you have in your hand is
5 being shown on the big screen?

6 A. Yes, it is.

7 Q. And this -- I would like to ask you whether you
8 have an opinion, to a reasonable degree of
9 scientific certainty, whether this cut to the
10 hand is consistent with being the bloody object
11 that came in contact with the dashboard, by the
12 ignition switch of the RAV4?

13 ATTORNEY STRANG: Objection, foundation,
14 personal knowledge, and entirely speculative. He
15 has no idea on the timing of this.

16 THE COURT: I'm going to sustain the
17 objection. I think at this point the witness has
18 testified about expertise in blood transfer, but I
19 don't think anything has been established about this
20 photo.

21 Q. (By Attorney Gahn)~ Could the bloodstain that you
22 observed on the dashboard of Teresa Halbach's
23 RAV4, have come from a cut to a finger?

24 A. Yes.

25 ATTORNEY STRANG: Objection, this is beyond

1 the scope of the disclosure under 971.03 as well,
2 your Honor.

3 THE COURT: I'm going to have to ask you to
4 elaborate on that, Mr. Strang.

5 ATTORNEY STRANG: This is -- the opinion he
6 is being asked to express is not one included in the
7 report or otherwise disclosed pursuant to discovery
8 request.

9 ATTORNEY GAHN: Your Honor, I believe that
10 the witness has testified what a contact transfer
11 bloodstain pattern is, that being a bloody source
12 coming into contact with a surface that doesn't have
13 blood on it. I'm simply asking if a cut such as
14 this is consistent with being the bloody source
15 coming in contact with the dashboard.

16 ATTORNEY STRANG: Well, your Honor, I mean,
17 to the extent that if someone is bleeding they can
18 drop blood or brush it, we don't need an expert to
19 tell the jury that; that's entirely within the canon
20 of ordinary experience and nothing from an expert is
21 helpful on that point.

22 THE COURT: I guess I would like to hear a
23 few more questions about his experience in this
24 area. So far we have heard something about three
25 kinds of blood transfers, but that's about when you

1 observe a transfer on another surface. But I think
2 that's all I heard.

3 Q. (By Attorney Gahn)~ Mr. Stahlke, could you
4 explain, what is your experience with examining
5 contact transfer bloodstains.

6 A. Contact transfer bloodstains is a -- it can be a
7 transfer of a pattern. You can see in some
8 stains the outline of a particular -- of the
9 particular item that is bloody contacting a --
10 the unstained surface. And in some cases, you
11 can see the pattern or detail from the bloodied
12 item that has been transferred, then, onto an
13 unstained surface.

14 Q. And have you been to crime scenes and examined
15 contact transfer stains?

16 A. Yes, I have.

17 Q. Do you know how many you have been to?

18 A. Well, I have been to approximately 200 field
19 responses. Of those, then, over 100 crime
20 scenes. And in every scene that has blood
21 present, I examine the stains to determine
22 whether or not there would be any additional
23 information that would be gained from those
24 stains that would be helpful in this
25 investigation.

1 Q. Do you also examine photographs of bloodstains?

2 A. Yes.

3 Q. And do those help, are you able to interpret
4 bloodstain patterns from the photographs?

5 A. Yes. Many times we're asked by agencies that
6 have processed their own scenes and taken their
7 photographs and then realized that maybe they
8 could gain some knowledge or some valuable
9 information from those stains. And this would be
10 after the fact and we have been often asked to
11 look at photographs to analyze this bloodstain.

12 Q. And will those photographs include contact
13 transfer stains?

14 A. Yes, they do.

15 ATTORNEY STRANG: Your Honor, this may be a
16 good time to take up a subject out of the jury's
17 presence.

18 THE COURT: All right. The Court is going
19 to excuse the jury for a few minutes.

20 (Jury not present.)

21 THE COURT: Are you asking for the witness
22 to be excused? You can step outside. Mr. Strang.

23 ATTORNEY STRANG: Your Honor, I will tender
24 the Court a copy of the report that we received from
25 Mr. Stahlke and a copy of his resume as well. It's

1 a two page report. Nothing in that report suggests
2 that the State intended to elicit from this proposed
3 expert an opinion tying any particular injury to the
4 blood patterns that he's testifying he observed.

5 I don't know how he possibly could do
6 that either without knowing personally, A, when
7 this photograph was taken and, B, the likelihood
8 that it was actively bleeding at any relevant
9 time, which I think is probably well beyond his
10 expertise. So, this goes beyond disclosure that
11 the State has provided and gets into something
12 both of which we don't have notice and of which
13 his own expertise or even personal knowledge is
14 questionable.

15 And, finally, the point is simply that,
16 you could get a cut and may drop -- you may be
17 dripping blood, or you may leave a bloodstain if
18 you brush your cut against something. Again,
19 that's -- that's not a subject requiring expert
20 testimony at all.

21 THE COURT: Mr. Gahn.

22 ATTORNEY GAHN: Well, your Honor, I think
23 the report speaks for itself. If you look under
24 observations on page one of Mr. Stahlke's report.
25 States that on the second -- beginning with the

1 second sentence, contact transfer stains were
2 present on the driver's seat cushion, the passenger
3 seat cushion, and on the dashboard near the ignition
4 switch.

5 ATTORNEY STRANG: And that's fine, nobody
6 questions his ability to describe what a contact
7 transfer stain or, you know, a passive stain, or
8 swipe, or any other type of pattern looks like. The
9 issue is tying it to any particular source.

10 ATTORNEY GAHN: If I may finish, the next
11 sentence states that these stains are the result of
12 a bloody source coming into direct contact with
13 those surfaces. That's what I asked him in his
14 opinion. Is this cut consistent with the bloody
15 source coming in contact with it. That's all I
16 asked.

17 ATTORNEY STRANG: Not when that photo taken
18 it's not.

19 THE COURT: Yeah, I think the -- reading
20 the report, the conclusion is that the bloodstains,
21 or at least a couple of them, were consistent with
22 an individual who was actively bleeding. I haven't
23 heard the answer yet, from the witness, so I wasn't
24 sure where you were going. But if the witness was
25 going to say that the particular pattern of the

1 stain near the ignition matched this particular cut,
2 it appears to me that would be going beyond what I
3 see here in the report.

4 If you want to ask the witness if
5 whoever this is, if this person had been sitting
6 in the vehicle and had that cut at a time when it
7 was actively bleeding, could that have caused the
8 bloodstains, I think that's something that's
9 within his expertise, that is contained -- or
10 that is within the conclusions that he drew in
11 the report. But I think that's about as far as
12 he can go.

13 ATTORNEY GAHN: We did not intend to go any
14 further, your Honor.

15 THE COURT: And, Mr. Strang, I don't know
16 if you object to that, or if that's inconsistent
17 with what you are saying or not.

18 ATTORNEY STRANG: No, if he is trying to
19 link the blood patterns he saw, to this photograph,
20 we don't have notice of that and he is not qualified
21 to do it. Neither does he have the foundation,
22 since that doesn't appear to be something that's
23 bleeding. And, you know, he has no idea when the
24 photo was taken or when the cut may have been
25 actively bleeding, none that I know of. And that

1 would have been the purpose of notice.

2 THE COURT: What exactly are you proposing
3 to ask him, Mr. Gahn?

4 ATTORNEY GAHN: Just when I asked him the
5 questions, whether he has an opinion, to a
6 reasonable degree of scientific certainty whether
7 this cut is consistent with being the bloody object
8 that came in contact with the dashboard by the
9 ignition switch. And I can add, if it were actively
10 bleeding, if this cut were actively bleeding, could
11 this be the source, the bloody source, coming in
12 contact with the dashboard.

13 THE COURT: Mr. Strang.

14 ATTORNEY STRANG: Again, there's just
15 nothing in the report that suggests that this
16 witness was going to try to link a stain to any
17 possible injury on Steven Avery or anyone else. And
18 I -- Again, I don't know how he would possibly do
19 that, other than a hypothetical, if it were actively
20 bleeding. Sure, but he doesn't know. Beyond -- I
21 can't -- What hand is this, this looks to me like a
22 left hand. Is that what that is?

23 ATTORNEY GAHN: Sergeant Bill Tyson
24 testified that this was the right hand of Steven
25 Avery.

1 ATTORNEY STRANG: Where's the thumb. Maybe
2 if it's being held like this, I suppose if the cuts
3 on the outside of the right finger. Sure looks like
4 a left hand from here. The point is, your Honor, we
5 don't have any foundation for any of this, from this
6 witness let alone notice.

7 THE COURT: All right. As I think about
8 it, I think I agree with the defense on this one.
9 He can testify -- he's already testified that it
10 came from a cut that was actively bleeding, the jury
11 has already seen this photo. They can determine if
12 it looks like a cut that was at one time actively
13 bleeding.

14 I just don't think for the witness'
15 level of expertise there is really much he can
16 add to that so I'm going to sustain the defense's
17 objection. Anything else before we bring the
18 jury back in? If not, if someone can bring the
19 witness back in, we'll bring in the jurors.

20 THE COURT: Mr. Gahn, before they come in,
21 any idea how long your direct is likely to go? Are
22 you hoping to finish it today?

23 ATTORNEY GAHN: Yes. We would also like
24 to -- hopefully we can finish the cross today too
25 because Mr. Stahlke has a appointment tomorrow

1 morning.

2 ATTORNEY STRANG: I don't know -- I don't
3 know where this is --

4 THE COURT: Well, we'll wait and see.

5 ATTORNEY STRANG: -- this is going, so.

6 (Jury present.)

7 THE COURT: You may be seated. And
8 Mr. Gahn you may continue.

9 **DIRECT EXAMINATION CONTD**

10 BY ATTORNEY GAHN:

11 Q. Mr. Stahlke, this pattern that you observed on
12 the dashboard of Teresa Halbach's RAV4, is this
13 pattern consistent with someone who could be
14 actively bleeding on their right hand?

15 A. Yes, it's consistent with that.

16 Q. I would ask if you could pick up the next
17 exhibit, please, and identify it for the jurors?

18 A. Exhibit 294.

19 Q. And what does that show, please?

20 A. This is the passenger side, rear entry, or the
21 threshold of the door frame.

22 Q. And does the photograph on the big screen
23 accurately reflect that photograph?

24 A. Yes, it does.

25 Q. And did you observe any bloodstain patterns to

1 this area?

2 A. Yes, I did.

3 Q. Would it be helpful if we zoom in?

4 A. Sure.

5 Q. Could you describe for the jurors what type of
6 bloodstain this is?

7 A. This is a stain that is indicative of passive
8 bleeding; it's a passive drop.

9 Q. And what do you mean by passive drop?

10 A. Passive drop is a particle of blood, or a drop of
11 blood that is only influenced by the gravity, or
12 the force of gravity.

13 Q. And is this type of drop consistent with being
14 left by a person who is actively bleeding?

15 A. Yes, it is.

16 Q. I'm going to ask you to look at the next exhibit,
17 identify the exhibit number.

18 A. Exhibit 295.

19 Q. And does the photo on the big screen reflect that
20 exhibit?

21 A. Yes, it does.

22 Q. Describe for the jurors what you observed here?

23 A. This is the rear cargo area of the Toyota RAV4.
24 This would be a view looking through the back
25 entry door and looking at the passenger side just

1 behind the right rear seat. In this area, there
2 are numerous stains and they all are basically
3 described as contact transfer stains.

4 Q. Would you look at the next exhibit, please,
5 identify it.

6 A. Exhibit 296?

7 Q. Yes.

8 A. This view is a close up view depicting the same
9 stains that we saw on the previous exhibit,
10 Exhibit 295.

11 Q. And describe these stains that you observed to
12 this portion of the vehicle.

13 A. These are contact transfer stains, a bloody
14 object coming in contact with an unstained
15 surface. And there is a stain in this grouping
16 of stains that is a classic stain for as far as a
17 transfer contact stain.

18 Q. Would you describe that for the jurors.

19 A. This stain right here has a wave like appearance
20 to it. It is indicative of bloody hair
21 transferring the blood from those -- from that
22 head here onto this surface.

23 Q. And how can you tell that?

24 A. Well, it has this crescent shaped or wavy
25 appearance to it. And this is just a classic

1 example of bloody hair transferring onto an
2 unstained surface. It is -- has enough blood
3 there that it also shows a bit of a flow pattern
4 off of the bottom of that. But you can see that
5 it is thicker here and it -- as it -- the length
6 draws out, it comes to a point. This is -- is
7 indicative of blood hair -- bloody hair transfer.

8 Q. Would you look at the next exhibit, please?

9 A. Exhibit 297.

10 Q. And does this photograph show what you're -- the
11 exhibit that you have in your hand?

12 A. Yes, it is.

13 Q. And, again, did you observe any other bloodstain
14 patterns?

15 A. Yes, I did.

16 Q. Would you please describe those for the jurors.

17 A. These stains here, as well, are all contact
18 transfer variety of stains. And along the base
19 of this is a flow patterns which is indicative of
20 a passive stain -- or type of a passive stain,
21 whereas gravity is the only thing that is
22 influencing it.

23 So there's enough blood that has
24 contacted this surface that it will drain on its
25 own, with the gravity, only gravity influencing

1 that stain. Along the base of this is pretty
2 heavily stained and it appears that it's all
3 contact transfer.

4 Q. Based upon the combination of these stains, that
5 you observed in the rear cargo area, are they
6 consistent with a body with bloody hair being
7 present?

8 A. Yes, they are.

9 Q. Did you examine the threshold area of the RAV4?

10 A. Yes, I did.

11 Q. And when I ask you to pick up the next exhibit,
12 next photograph, identify the exhibit, please.

13 A. Exhibit 298.

14 Q. And is that the exhibit that is being shown on
15 the big screen?

16 A. Yes, it is.

17 Q. Would you describe for the jurors your
18 observations of the threshold area of the RAV4?

19 ATTORNEY STRANG: Maybe we can -- Where are
20 we? What threshold area? I wonder if we can orient
21 it.

22 A. I can explain that. It's the cargo door, or the
23 rear door of the RAV4. So, if this is the cargo
24 area at the top of the -- this photograph, this
25 would be the opening to the rear -- rear end of

1 this vehicle. And this being the threshold, and
2 I will use this as the general term, as far as
3 the threshold, but this -- this threshold had not
4 only transfer contact stains, but it also had
5 impact stains.

6 Q. Could you point out for the jurors the -- we can
7 even zoom in here for you -- where you observed
8 the different stains and describe them again,
9 please.

10 A. This is an example of an impact stain.
11 There's -- this is transfer. If you want to
12 rotate more to the right. More staining right in
13 here that would be indicative of a transfer. And
14 then right -- as -- right there, more contact
15 transfer. And these stains actually are -- this
16 stain right here can be caused by -- as a swipe
17 pattern, which is a bloody object that has come
18 in contact with an unstained surface that is
19 showing motion. So a swipe will show motion of
20 that bloody source.

21 Q. Just for the record, Mr. Stahlke, I would like
22 you to identify each of these stains. Could you
23 point out the impact stain that you observed?

24 A. The most obvious impact stain would be this stain
25 right here. Impact stains are generally circular

1 or elliptical. They show that a particle of
2 blood or a drop of blood that has been in flight,
3 has been airborne, and when it contacts a surface
4 or impacts that surface, it leaves a stain that's
5 either circular or elliptical indicating the
6 angle of impact. This is a transfer stain.

7 Q. Just stop for one moment. May the record reflect
8 that when Mr. Stahlke pointed to the impact
9 stain, it was a bloodstain that was at the top of
10 what he referred to as the threshold area and to
11 the left of what appears to be a screw or a bolt
12 in that threshold area.

13 THE COURT: Does the defense agree?

14 ATTORNEY STRANG: Sure. But, you know,
15 really all of this is for the jury.

16 THE COURT: All right. All right. The
17 record will so reflect.

18 A. Additional stains are present are contact
19 transfer variety. Here to the left of that bolt
20 and to the right of the bolt here.

21 Q. And I think you also indicated that you observed
22 what were swipe patterns?

23 A. Yes. And that's down and to the right, in
24 relationship to that bolt.

25 Q. Thank you. Did you also -- Would you look at the

1 next exhibit, identify it, please.

2 A. Exhibit 299.

3 Q. And does the photograph you have in your hand,
4 that exhibit, is that being displayed on the big
5 screen?

6 A. Yes, it is.

7 Q. And did you observe any bloodstain patterns to --
8 I'm sorry, please, describe what this photograph
9 shows.

10 A. This is the rear door of the RAV4. And when --
11 This is the type of door that has a hinge on its
12 side so it opens like a regular car door, but on
13 the rear end of the vehicle. This is the
14 interior panel of that door.

15 Q. And did you observe any bloodstain patterns on
16 the interior panel of the rear cargo area?

17 A. Yes, I did.

18 Q. And could you explain those for the jurors and we
19 would be more than happy to zoom in on any stains
20 you would like.

21 A. There were a number of impact stains on the rear
22 panel of this door and some of the stains had
23 associated flow patterns.

24 Q. Could you use the laser pointer and point these
25 out for the jurors and describe them.

1 A. If you want to zoom in right here. This is some
2 of the better stains as far as groupings. Okay.
3 That's good. You can see here, these are impact
4 stains; they are circular or near circular. And,
5 then, some of these stains have a flow pattern,
6 meaning they had enough quantity or volume that
7 once they impacted the surface, gravity
8 influenced them and drew that blood down -- down
9 toward the ground. So this is an example of a
10 impact stain with an associated flow pattern and
11 this one as well and these are all impact stains.

12 Q. Were there any other type of stains on the door
13 area that you observed?

14 A. No.

15 Q. And are you able -- Were you able to determine
16 how those would be deposited, the ones that you
17 observed, the impact stains with the flow
18 pattern?

19 A. Yes, I have seen these stains at other scenes
20 where -- where we assume that a bloody object was
21 being handled and that these stains -- or this
22 blood was -- was -- appeared to have been flung
23 off or released from a bloody object.

24 Q. Would that be consistent with a body with bloody
25 hair being put into the back of this vehicle?

1 A. Yes, it would. And in this particular case,
2 this -- these stains don't necessarily require
3 the -- the bloody hair component; however, it is
4 consistent with a bloody object such as a body
5 being comploded (phonetic) into the rear end of
6 this vehicle.

7 Q. If you would look at your next exhibit, please,
8 and identify that.

9 A. Exhibit 300.

10 Q. And is the photograph on the big screen, is that
11 the same one you have with you?

12 A. Yes, it is.

13 Q. Could you describe what this is?

14 A. This is an overall view of the rear cargo area or
15 storage area of this RAV4.

16 Q. Did you make any measurements to this rear cargo
17 area?

18 A. Yes, I did.

19 Q. What area did you measure and could you give
20 those dimensions to the jury.

21 A. I measured from door frame to door frame. And it
22 was 42 inches.

23 Q. And would a five-foot-six slender woman fit in
24 the back in the cargo area?

25 A. Yes, it would.

1 Q. Did you do any other examination or processing of
2 this vehicle, besides the bloodstains?

3 A. We were asked to give the odometer reading on the
4 vehicle.

5 Q. And what did you do to obtain the odometer
6 reading?

7 A. Well, looking at the instrument panel, we
8 couldn't determine what the odometer reading was,
9 since there appeared to have been a dead battery.

10 Q. And what -- Did you check any further as to
11 whether there was a dead battery?

12 A. Yes. We thought we needed to charge the battery
13 so we opened up the hood of the vehicle and
14 discovered that the battery cables had been
15 disconnected.

16 Q. Would you look at the next exhibit that you have,
17 identify it, please.

18 A. Exhibit 302.

19 Q. And what does that exhibit show?

20 A. This is the disconnected battery cable.

21 Q. Is that how you observed it when you opened up
22 the hood?

23 A. Yes, it is.

24 Q. It was you who opened up the hood, correct?

25 A. That's correct.

1 Q. How did you do that?

2 A. Released the interior latch on the vehicle and
3 then opened up the hood, releasing the latch on
4 the hood, or the front of the vehicle. And
5 propped it open with its -- its a -- with a prop,
6 I guess, on the hood itself and saw this battery.

7 Q. And what did you determine by looking at the
8 battery?

9 A. Well, that -- that was the reason for the problem
10 with no power to the instrument panel, is that
11 the battery was disconnected.

12 Q. And when you opened up the hood of the RAV4, were
13 you wearing gloves?

14 A. Yes.

15 Q. What type of gloves were you wearing?

16 A. Latex.

17 Q. I would like you to look at the next exhibit,
18 please, identify it.

19 A. Exhibit 303.

20 Q. And is this the exhibit that you have in your
21 hand, being shown on the big screen?

22 A. Yes, it is.

23 Q. And has this been identified to you as the
24 vehicle owned by Steven Avery, a 1993 Grand Am?

25 A. Yes.

1 Q. Did you process this vehicle for any blood stain
2 pattern analysis?

3 A. Yes, I did.

4 Q. And did you find any bloodstains in it?

5 A. Yes, I did.

6 Q. Will you look at the next exhibit, please,
7 identify it.

8 A. Exhibit 305.

9 Q. And is Exhibit 305 reflected on the big screen?

10 A. Yes, it is.

11 Q. And could you point out for the jurors any
12 bloodstain patterns that you observed in this
13 vehicle?

14 A. This seems to be zoomed in a bit, can we zoom
15 out. Yes, there's stains present in this
16 particular photograph. There's some stains on
17 the backside of this gear shift here. And two
18 circular stains, one here and one here. Now, off
19 this photo, that you can't see, are additional
20 stains, right along here, on the passenger side
21 of the center console.

22 Q. Do the blood stain patterns that you observed in
23 this 1993 Grand Am, are they consistent with the
24 operation of this Grand Am by a person who was
25 actively bleeding?

1 A. Yes, they are.

2 Q. And the bloodstain patterns that you observed in
3 Teresa Halbach's RAV4, are those consistent with
4 the operation of the RAV4 by a person who is
5 actively bleeding?

6 A. Yes, they are.

7 ATTORNEY GAHN: That's all I have. Thank
8 you, Judge.

9 THE COURT: All right. Members of the
10 jury, it's almost 4:30, since I'm sure you got up a
11 little early this morning, it's a good enough reason
12 to let you go a little early today. I will remind
13 you not to discuss this matter among yourselves or
14 with anyone else and we'll see you tomorrow morning.

15 (Jury not present.)

16 THE COURT: You may be seated. Counsel, I
17 will ask you to see me in chambers a little after
18 8:30 again tomorrow morning to let me know what we
19 will be doing.

20 ATTORNEY FALLON: Yes, Judge, could we put
21 another matter on the record at this time.

22 THE COURT: Sure.

23 ATTORNEY FALLON: In light of this
24 afternoon, or should I say this morning's
25 developments, the State would like to renew a motion

1 previously made and ruled upon by the Court. And
2 that is, again, we would renew our **Richardson** motion
3 for disclosure and evidence, if there is to be any
4 more frame-up allegations, or should we say wild
5 speculation, that we at least be given notice and a
6 new offer of proof with respect to that type of
7 evidence.

8 This morning's example, the buccal swabs
9 or buccal swabs, is a perfect example of evidence
10 not covered by the original offer of proof and
11 the Court had already noted that any such
12 evidence should be the subject of at least
13 pre-trial notice. Obviously, that's not possible
14 since we're in trial at the moment. But the
15 existence of those swabs and those conditions was
16 well known to the defense and disclosed.

17 So if there was to be any more
18 **Richardson** evidence, then we would demand a
19 notice, and an offer of proof, and a ruling
20 outside the presence of the jury, before it is
21 presented to the jury. We have that ruling from
22 the Court. It did not include the buccal swabs,
23 it included only the blood vial. We will be
24 certainly hearing more about that in the next
25 couple of days.

1 But any other evidence, we renew our
2 motion to exclude and prohibit that evidence. As
3 this morning's example demonstrated, there was no
4 basis and no reason to present that evidence
5 today. It's entirely irrelevant. Conjecture,
6 speculation, and wild accusation, that's all it
7 was. We object.

8 THE COURT: Mr. Buting.

9 ATTORNEY BUTING: Judge, then the State has
10 to give advance notice of any of their theories and
11 any type of evidence that their expert will testify
12 ahead of time. And in this instance they elicited
13 an opinion from an expert, that was not in the
14 report, in which she was saying -- they had her try
15 to say that this DNA on the key, for instance,
16 was -- she didn't like my use of the word trace, I
17 can't remember what word she used -- but they tried
18 to raise an issue that somehow it could not have
19 come from a blood source.

20 So they brought into the trial a
21 completely different issue. We were simply
22 responding to that, and that's going to happen,
23 if they bring in, you know, additional opinions
24 like this one. You know, this is not irrelevant
25 the jury can draw from it what they want, but it

1 was a relatively minor point, given the length of
2 the whole cross-examination, so I don't see that
3 it's worth arguing too much about.

4 I don't know that there's going to be
5 anything else at this point, that I'm aware of,
6 but if some other witness comes up here and
7 presents some kind of testimony that may require
8 it, then I think it's fair game.

9 THE COURT: All right. Mr. Fallon, I'm not
10 going to hear from you, because you are going to win
11 this one. I know from conferences in chambers
12 before that the State had already made the point
13 when the blood vial thing came up first, that the
14 key, and I believe the hood latch, were alleged to
15 involve DNA that did not consist of blood.

16 I let the defense evidence in today
17 about the buccal swabs, but I agree with the
18 State that although -- although I would have
19 determined it was relevant had we had a
20 **Richardson** hearing about it, that if there is any
21 other **Richardson** type evidence that the defense
22 intends to introduce, I'm going to require from
23 this point forward that the State get advance
24 notice of it. And that if the State objects, the
25 Court has a chance to evaluate it for whether or

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not it is admissible as frame-up evidence.

I think that the defense had notice ahead of time that the State was claiming that there was some DNA evidence which the State could not say didn't come from blood, as we heard from the expert witness today, but didn't appear to be. I assume that was the reason why the defense sought to introduce the buccal swab evidence, which I did let in.

But I think the State's point is well taken, they are entitled to notice if there's any other evidence like that that the defense will be seeking to introduce. Anything else before we adjourn today?

ATTORNEY KRATZ: You wanted us in chambers, Judge, is that what you said?

THE COURT: Before trial tomorrow morning.

ATTORNEY KRATZ: Oh, I'm sorry. That's fine. Thank you.

THE COURT: All right. We'll see you tomorrow morning.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 21st day of November, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 12

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** FEBRUARY 27, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. We're here this morning, outside the presence
4 of the jury at this time, for a continuation of the
5 trial in this matter. Will the parties state their
6 appearances for the record, please.

7 ATTORNEY KRATZ: State appears by Special
8 Prosecutors Ken Kratz, Norm Gahn, and Tom Fallon,
9 your Honor.

10 ATTORNEY BUTING: Good morning, your Honor.
11 Attorneys Jerome Buting and Dean Strang appearing on
12 behalf of Mr. Avery, who is present.

13 THE COURT: All right. And I understand,
14 Mr. Buting, that you wish to be heard outside the
15 presence of the jury before we commence
16 cross-examination of the State's last witness.

17 ATTORNEY BUTING: I do, Judge. At this
18 time I'm making a motion to suppress and to move to
19 strike any of the testimony and evidence regarding
20 the results of the bullet fragment FL that was
21 testified to about yesterday. The reasons are, I'm
22 renewing the motion that I filed in this court
23 entitled Defendant's Motion to Assure Fair Forensic
24 Testing, which was filed on March 6 of 2006.

25 In that motion I, ironically, or maybe

1 not so ironically, predicted that there would be
2 potential of contamination and complete
3 consumption of evidence that would potentially
4 hamper the defense ability to get a fair trial
5 and to be able to meet the State's evidence.

6 The motion was filed on March 9th. The
7 State replied, ironically, arguing that the State
8 Crime Lab was unlike other Crime Labs that I had
9 cited from other parts of the country that had
10 had problems with contamination or outright
11 fraud. The State replied arguing that there's no
12 evidence of any contamination history or record
13 in the State of Wisconsin's Crime Lab and that
14 having a defense expert present, again
15 ironically, would make a -- would increase the
16 risk for contamination.

17 Now, here we hear that the State Crime
18 Lab brought in new trainees, which increased the
19 risk of contamination, during that critical test.
20 When we could have very easily had a defense
21 expert also there and observing, at a minimum, if
22 she was going to use up all the sample and
23 thereby prevent the defense from retesting it
24 itself.

25 The motion was heard on March 17th,

1 2006, and that's before that bullet even arrived
2 at the Crime Lab. Now we hear, two weeks later,
3 two to three weeks later, Ms Culhane does this
4 extraction on the bullet, uses it all up,
5 contaminates the testing process, and we have no
6 recourse other than relying on cross-examination
7 to try and point out those mistakes.

8 The -- In the motion hearing, which we
9 heard on -- which was heard on March 17th,
10 Mr. Gahn made a point of saying -- one of the
11 things we had talked about is that our expert had
12 in prior cases been able -- particularly in
13 Illinois Crime Lab -- been able to be present
14 when there is an instance of sort of a one time
15 test where there is not going to be enough for
16 both sides to later test.

17 And Mr. Gahn says, in all candor -- I'm
18 quoting from the transcript -- In all candor, I
19 will admit to the Court I have heard of cases
20 where that is done, or there is an agreement
21 between the defense and the prosecution to send
22 the item for independent testing. But those
23 generally are cases where there's one critical
24 piece of evidence and there will be total
25 consumption of that evidence.

1 Skipping down a little bit. Where it's
2 just one piece of evidence that could be
3 inculpatory or exculpatory and the defendant has
4 no other comparable means of getting that
5 evidence analyzed.

6 Clearly, Mr. Gahn was on notice that if
7 that situation arise -- arose in this case, and
8 that a critical piece of evidence was going to be
9 completely consumed by the State's tests, that
10 some effort should have been made to assure fair
11 forensic testing, which is what we ask for in our
12 motion. Instead, we heard what happened
13 yesterday. The Crime Lab analyst consumed the
14 entire sample and denied us the opportunity for a
15 retest, which all along Mr. Gahn has been arguing
16 is the solution, you know, just retest. We're
17 happy to have you retest.

18 But we can't retest when there's been an
19 extraction that's contaminated and that was made
20 clear yesterday. So, the Court, by the way,
21 also, in its decision, made a point of noting
22 that the Court was not aware that our State Crime
23 Lab has been involved in incidents of mistakes,
24 and contamination, things of that sort, unlike
25 other crime labs.

1 Now, it turns out that the State knew,
2 back then, that the Crime Lab was keeping a
3 contamination log. And they knew that, at least
4 by then, there was probably 75 incidents that
5 they had recorded of contamination. And that
6 wasn't disclosed to the Court or to the defense.
7 It was only -- In fact that wasn't disclosed even
8 in our original discovery request for the bench
9 notes and lab sheets and all of that stuff. We
10 had to make a separate independent request for a
11 contamination log, if one existed, before we got
12 that information.

13 So I think the decision that the Court
14 made in March was based on faulty information. I
15 think the State should bear the penalty for that.
16 I think that shows bad faith, both in the failure
17 to disclose that there was a history of
18 contamination at the time we made this motion and
19 argument, and bad faith in that, even after it
20 was made clear to the Court that the defense had
21 concerns about a single one shot test that would
22 consume everything, the State, nevertheless, went
23 ahead and did that and did it while training
24 somebody, resulting in a contamination.

25 So, for all those reasons, I think the

1 Court doesn't have to decide this today, but I
2 want to put it on the record today. For all
3 those reasons I am renewing my motion and asking
4 that the test results be suppressed, that the
5 jury be instructed accordingly, and we can decide
6 this at a later date, but certainly, obviously,
7 before the case is sent to the jury.

8 THE COURT: Who's going to be responding
9 for the State?

10 ATTORNEY GAHN: I will, your Honor. I
11 would ask to be given some time to reply to this.
12 Just hearing this now, I need to review the
13 transcripts and review the motions that were filed.

14 THE COURT: All right. Very well. The
15 Court will then take the renewal of the motion under
16 advisement at this time and give the State a chance
17 to reply later. I will just make some notes here.

18 Anything else before we bring out the
19 jury? If not, we can bring the jurors at this
20 time.

21 (Jury present.)

22 THE COURT: You may be seated. Members of
23 the jury, we did have a matter to take up on the
24 record outside the presence of the jury before
25 starting today. That has now been completed. At

1 this point, we'll have Mr. Stahlke return to the
2 witness stand and the defense may begin its cross.

3 THE CLERK: Please raise your right hand.

4 **NICK STAHLKE**, called as a witness
5 herein, having been first duly sworn, was
6 examined and testified as follows:

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

9 THE WITNESS: Nick Stahlke, Stahlke is
10 spelled, S-t-a-h-l-k-e.

11 **CROSS-EXAMINATION**

12 BY ATTORNEY STRANG:

13 Q. Good morning, Mr. Stahlke.

14 A. Good morning.

15 Q. I have got your curriculum vitae, fancy word for
16 resume, with me and it looks to me that you have
17 had what we might agree is broad experience as a
18 forensic analyst?

19 A. That's correct.

20 Q. Before you went into work at crime laboratories
21 or forensic analysis, you spent several years as
22 a pharmacy technician?

23 A. Correct.

24 Q. Got a basic familiarity with pharmaceuticals and
25 controlled substances?

1 A. Yes.

2 Q. Your first job as a forensic analyst was for the
3 State of Idaho?

4 A. That's correct.

5 Q. Hence, the work you described doing teaching at
6 the Northern Idaho college.

7 A. That's correct.

8 Q. You did a broad range of forensic analysis with
9 the State of Idaho?

10 A. The State of Idaho has criminalists and
11 criminalists are basically generalists, they have
12 more than one specific duty in a crime lab.

13 Q. Maybe not quite close enough to the mike there,
14 but the word is criminalist?

15 A. Correct.

16 Q. Okay. So, and as you say, sort of a general
17 range of forensic analytic tasks that would be
18 assigned to a criminalist, generally?

19 A. Correct.

20 Q. Wisconsin specializes a little bit more than
21 that, correct?

22 A. That's true.

23 Q. But you became what is called a principal
24 criminalist for the State of Idaho?

25 A. Yes, I did.

1 Q. Meaning you had obtained some experience across a
2 range of forensic topics.

3 A. Yes.

4 Q. And got a promotion, in effect?

5 A. That's correct.

6 Q. When you joined the Wisconsin State Crime
7 Laboratory, drug identification was your first
8 area of work?

9 A. Yes, that's true.

10 Q. Drug identification, we don't need to do a lot on
11 this, but what -- what that means is that in
12 cases where someone is charged with possessing or
13 distributing illegal drugs, what we call
14 controlled substances, you would be the one who
15 would analyze an unknown white powder, let's say,
16 and give an opinion on whether that contained,
17 for example, cocaine?

18 A. That's correct.

19 Q. Or whether a leafy green material contained
20 marijuana or the active chemical in marijuana?

21 A. Also correct.

22 Q. And after a stint doing that sort of drug
23 identification work, you moved in to what are
24 called questioned documents in your line of work?

25 A. That's correct.

1 Q. A questioned document would be what we might
2 think of sort of in every day life as handwriting
3 analysis?

4 A. That's right.

5 Q. So in a case where someone was alleged to have
6 forged a check, let's say, you might compare the
7 handwriting on the allegedly forged check to some
8 known handwriting of the checking account holder?

9 A. Or a suspect in the case, yes, that's correct.

10 Q. And or a suspect in the case, correct. And
11 render an opinion on whether the handwriting
12 looked to be more like the suspects or more like
13 the innocent account holder, for example?

14 A. Correct.

15 Q. That's been -- That sort of examination of
16 questioned documents has been the largest or
17 longest area of your work for the Wisconsin State
18 Crime Laboratory?

19 A. On a full-time basis, yes, that's true.

20 Q. Something like oh, gosh, what are you going on,
21 13 years now of that?

22 A. Just under 12, I believe.

23 Q. Okay. 1994, thereabouts?

24 A. '94 is when I started my two year training. It's
25 basically an apprenticeship program. So, it was

1 two years of that before I could actually examine
2 the actual cases and questioned documents. So I
3 have been working cases independently since '96,
4 under 12 years.

5 Q. And then somewhere along the line you picked up
6 some training and experience in blood spatter?

7 A. Yes, I did.

8 Q. Or blood patterns, bloodstain patterns?

9 A. Correct.

10 Q. Now, here in this case, you weren't called on to
11 look at questioned documents, I assume, right?

12 A. No, that's correct.

13 Q. You weren't called on to look at drug
14 identification?

15 A. That's correct.

16 Q. But your bloodstain experience and knowledge was
17 called upon?

18 A. Yes, it was.

19 Q. Now, in approaching potential bloodstain and
20 bloodstain pattern evidence, this is closeup,
21 eyeball sort of examination, as a starting point?

22 A. Yes, it does take some close examination.

23 Q. You don't do this, in other words, typically from
24 photographs, if you have access to the actual
25 object to be examined?

1 A. Look -- We look at photographs only when we do
2 not have the item to actually examine.

3 Q. Right. And this will require, as I say, sort of
4 close work, at least at times, getting up
5 literally close to a stain or suspected stain?

6 A. Yes.

7 Q. Now, in doing that, you have a concern, not
8 specific to any case, but in general, good
9 practice would suggest a concern that you not
10 contaminate the bloodstain, or suspected
11 bloodstain, you may be examining?

12 A. Yes, that's true.

13 Q. Further, on any given object, blood staining the
14 object may be only one of the possible trace
15 types of evidence available on the object,
16 correct?

17 A. Sure.

18 Q. All right. There may be fingerprints, on some
19 objects, true?

20 A. Yes, that's true.

21 Q. Or may be DNA?

22 A. Also true.

23 Q. Any number of possible things that could be on
24 the object as well as the stains that are of
25 interest to you?

1 A. Yes.

2 Q. So you take precautions to try to reduce the risk
3 that you would accidentally, unintentionally,
4 contaminate the surface or the object, the area
5 you are examining?

6 A. Our goal is not to contaminate the scene, no.

7 Q. Among the precautions you take are wearing the
8 latex gloves you described?

9 A. Correct.

10 Q. And this sort of thing over here?

11 A. Yes.

12 Q. Surgical type gloves. You also wear a lab coat
13 or smock?

14 A. Correct.

15 Q. Do you wear a face mask?

16 A. Not always, no.

17 Q. All right. Booties?

18 A. When in a scene, yes.

19 Q. When at an actual suspected crime scene?

20 A. Correct.

21 Q. Okay. And these things, then, tend to keep you
22 from inadvertently transferring anything from
23 your body, so to speak, to the scene or the
24 surface you are examining up close?

25 A. That, as well as transferring something from the

1 scene onto our bodies, correct.

2 Q. That's exactly where I was going, actually.

3 A. Correct.

4 Q. And I'm glad you brought that up, because the
5 second purpose, then, is that you don't want to
6 be contaminated either.

7 A. Correct.

8 Q. Correct? And it would not be uncommon, at a
9 crime scene, for you to be walking into an area
10 where there may be unknown hazards?

11 A. Correct.

12 Q. I'm not talking about hazards from an armed
13 person, presumably law enforcement officers sweep
14 and secure a crime scene before you would arrive?

15 A. Yes, they do.

16 Q. But there maybe what you could call biohazards?

17 A. Correct.

18 Q. Viruses, conceivably?

19 A. Yes.

20 Q. I mean, you, in particular, are working in close
21 proximity to blood?

22 A. Correct.

23 Q. Blood from unknown sources?

24 A. Correct.

25 Q. So things like Hepatitis C, or HIV, you know, any

1 number of possible biohazards are something you
2 have to be aware of?

3 A. Yes.

4 Q. There may be other dangerous chemicals or what
5 have you at a given scene?

6 A. That's possible.

7 Q. And one of the things that is true about your
8 work is, you are coming in dealing with a range
9 of possible unknowns and trying to make some of
10 them known?

11 A. Yes.

12 Q. You are trying to recover evidence and assign
13 some meaning to it, if you can?

14 A. Yes.

15 Q. So the protective clothing and gear you wear is
16 designed both to reduce the likelihood that you
17 would contaminate the scene and to reduce the
18 likelihood that you would be contaminated by the
19 scene?

20 A. That's correct.

21 Q. Now, blood in specific, sometimes is present in
22 very minute quantities?

23 A. Yes, it is.

24 Q. For example, you described yesterday, and I
25 don't -- I don't have these available to show you

1 on the screen, unless I really need to bother
2 Mr. Kratz, I won't, but you showed us what you
3 described as some impact staining on the rear
4 cargo door of the Toyota RAV4 here?

5 A. Correct.

6 Q. Some of those spots, of course, were visible to
7 the eye, particularly when we zoom in on the
8 photograph, correct?

9 A. Yes.

10 Q. But -- but even those, many of them are just very
11 small, sort of pinpoint specks of blood, correct?

12 A. Many of them were, yes.

13 Q. And when you have blood being flung, or cast off,
14 so that it has an impact with a surface, these
15 can be very small droplets, some of them?

16 A. Yes, they may.

17 Q. Some are larger?

18 A. Absolutely.

19 Q. But in looking at a surface like the cargo door,
20 you are aware of the quite real possibility that
21 there actually are small specks of blood, too
22 small for you to see?

23 A. The stains that are not visible to the eye would
24 not necessarily have any significance to the
25 pattern.

1 Q. But they may be there?

2 A. There may be.

3 Q. Particularly, let's again talk about these sort
4 of impact stains. Your experience, or from your
5 experience, you know that if, for example, a
6 bloody head, somebody with blood in their hair,
7 if the hair is being flung and droplets are being
8 cast off, you may get a range of size of those
9 droplets?

10 A. Yes.

11 Q. Right down to droplets so small that you wouldn't
12 see them unaided with the human eye?

13 A. We would look at any stains with magnification,
14 if necessary. But I don't know of any, I have no
15 experience with the stains that are not visible,
16 unless they are -- they have been -- there have
17 been removed, either through washing, or wiping,
18 and then those would be considered latent stains
19 and those stains, then we can visualize through
20 the use of other chemicals.

21 Q. Well, let's, before we get to other chemicals,
22 and I will, let's go back, remember the CD case?

23 A. Yes.

24 Q. I don't have an exhibit number on the CD case.

25 ATTORNEY STRANG: Is that something you

1 have here, Mr. Kratz?

2 ATTORNEY KRATZ: Yes, 92.

3 ATTORNEY STRANG: Terrific. Is that
4 something you could pop up there?

5 Q. (By Attorney Strang)~ Let's go back to Exhibit
6 292, with Mr. Kratz's help. What you told us
7 about yesterday is that we could see part of the
8 stain there?

9 A. Correct.

10 Q. You still have your laser pointer?

11 A. No, I do not.

12 Q. I don't know that you will need it. But you told
13 the ladies and gentlemen in the jury box to your
14 left, yesterday, that something like 50 percent
15 of the surface area of that CD case was covered
16 in blood?

17 A. My recollection is that a large portion of this
18 CD case had a light coat of what appeared to be
19 red brown stains.

20 Q. All right. Now, if we don't see those, we don't
21 see 50 percent of that CD case covered in a light
22 coat of red brown stains, that's because the
23 stains are very small?

24 A. No, in fact, in this particular case, it was more
25 of a wipe pattern or a smearing of that -- of

1 blood on that -- the rest of that CD case. That
2 is not observable on this photo. So, in other
3 words, it's a very light coat of what appeared to
4 be a red brown stain.

5 Q. And if that were not observable to the naked eye,
6 but you suspected it, or wondered about it for
7 some reason, you have at least one chemical that
8 will assist you in seeing something you otherwise
9 might not see, true?

10 A. Correct.

11 Q. Luminol would be the typical chemical?

12 A. Yes.

13 Q. That's just something you spray on and then
14 observe under ultraviolet light?

15 A. No, it's a chemu -- chemalum -- chemiluminescence
16 that gives a light, faint, yellowish-green glow
17 in complete darkness, so you don't need
18 additional mechanical help.

19 Q. Okay. But you do need darkness?

20 A. That's correct.

21 Q. And then you will see this glowing where the
22 naked eye may not pick up blood?

23 A. Correct.

24 Q. Luminol, of course, is not specific for blood?

25 A. No, it is not.

1 Q. Bird droppings and a number of other things will
2 luminesce with luminol, correct?

3 A. Yes, there are other things that will give it a
4 false positive, yes.

5 Q. But what it does is, it signals you to look
6 harder, or do a little bit more examination of
7 the surface?

8 A. Typically we use luminol only as a last resort
9 when we feel that there was some attempt to clean
10 up some blood. So, in a particular examination,
11 when we're initially looking for bloodstains, we
12 won't use luminol as long as we can visibly see
13 them.

14 Q. You did not use luminol in examining the Toyota?

15 A. That's correct.

16 Q. At any time?

17 A. Not that I know of, no.

18 Q. That you know, or on any part of the Toyota?

19 A. Correct.

20 Q. That is, you saw no indication that anybody had
21 tried to clean up, or wipe away, bloodstains?

22 A. Well, there was enough visible blood that
23 wouldn't require that we use the luminol in
24 this -- for the examination of this vehicle.

25 Q. You also saw no evidence that anyone tried to

1 clean up or wipe away bloodstains?

2 A. I can't say that that's necessarily true. The
3 amount of blood that was on the molding, or the
4 side of that back storage area would indicate
5 that there should have been additional stains on
6 the carpeting that I did not see.

7 Q. And are you here telling us that someone cleaned
8 up the carpet in the rear cargo area?

9 A. There's a possibility of that, but I have no --
10 there's nothing that indicates that occurred.

11 Q. Nothing at all that indicates that occurred, is
12 there?

13 A. Only the fact that there -- the lack of a lot of
14 staining on the carpeting area would indicate
15 there is a possibility that there may have been
16 some attempts to clean up the blood.

17 Q. All right. And do you think it would have been
18 easier to clean up carpeting in the rear cargo
19 area, so that no blood was visible, than it would
20 have been to wipe plainly visible blood off the
21 plastic wheel well?

22 A. That would make sense, yes.

23 Q. Easier to clean the carpet?

24 A. No, I would say that if you are making attempts
25 to clean all the blood in a particular scene, or

1 a vehicle, you would -- you would try to clean up
2 all the blood and not just those areas that are
3 on carpeting.

4 Q. You mean, the plastic -- That was sort of a
5 plastic composite, the wheel well cover on the
6 inside of the cargo area --

7 A. Correct.

8 Q. -- correct? That presumably could have been
9 wiped off, with a rag, a towel, a paper towel,
10 something?

11 A. Right, it could have.

12 Q. The carpet would have taken something that would
13 get into an absorptive surface, like carpet?

14 A. I don't understand your question.

15 Q. Some sort of cleaning solvent or something to get
16 in -- I mean the carpet was an absorptive
17 surface.

18 A. Yes, it was.

19 Q. All right. And, in any event, you have no idea
20 at all whether anyone tried to clean blood off
21 the carpet in the cargo area or not?

22 A. No, I do not.

23 Q. No idea whether anyone tried to clean blood from
24 any other surface in the car?

25 A. No obvious evidence of that.

1 Q. What you do know is that the total blood you saw
2 inside the car, forward of the rear cargo area --
3 okay, so I'm talking about the passenger
4 compartment of the car, if you will?

5 A. Okay.

6 Q. The total blood you saw there was, you know, if
7 we could somehow put it in a little jar, was a
8 tiny quantity of blood?

9 A. If you try to quantitate the amount of -- the
10 number of stains you could get from a small
11 amount of blood, it can be a large number of
12 actual stains.

13 Q. From a very small amount of blood?

14 A. That's correct.

15 Q. And you have no way to give us an accurate
16 quantity of the blood that made the stains you
17 observed in the passenger compartment of the car?

18 A. About the only thing I can tell you is that a
19 natural stain would -- or a drop of blood
20 contains about a .05 milliliters.

21 Q. And do you think .05 milliliters could have made
22 every stain you observed in the passenger
23 compartment of that car?

24 A. No.

25 Q. Twice that?

1 A. It would have been much more than that.

2 Q. And what do you mean by much more?

3 A. It probably would have been -- If you want me to
4 quantitate the amount of blood that was required
5 to use those -- or produce those stains, I would
6 have to guess between one and two milliliters.

7 Q. One and two milliliters?

8 A. Correct.

9 Q. Okay. That's a guess?

10 A. That's a guess.

11 Q. But based on your experience?

12 A. Yes.

13 Q. And your training?

14 A. Right.

15 Q. You -- You did, at various places in the
16 passenger compartment --

17 ATTORNEY STRANG: We can take that down
18 now. We can probably take that photo, Exhibit 292
19 down now, if you want.

20 Q. (By Attorney Strang)~ Just to be clear here,
21 Mr. Buting reminds me, when you say one to
22 two milliliters of blood, you are not including
23 the blood staining in the cargo area?

24 A. That's correct.

25 Q. So just the passenger seats forward to the

1 ignition area?

2 A. That's correct.

3 Q. All right. Now, you did do some phenolphthalein
4 testing?

5 A. I did not, no.

6 Q. Did you see that done by someone?

7 A. Yes.

8 Q. All right. Done in your presence?

9 A. Correct.

10 Q. And what does phenolphthalein testing involve,
11 physically, what is one doing when testing with
12 phenolphthalein?

13 A. Physically, you use a -- typically a cotton tip
14 applicator and collect a small portion of what
15 you think is a probable blood stain. You then
16 add a drop of phenolphthalein and a drop of
17 hydrogen peroxide within the oxidation process,
18 or reduction process, and with that, then, the
19 combination of those chemicals you see a color
20 change, a pinkish purple color.

21 Q. Right, on the head of the swab?

22 A. Correct, for positives -- probable positives.

23 Q. And you are adding the phenolphthalein and the
24 peroxide with an eye dropper or something like
25 that?

1 A. Correct.

2 Q. So this process, again, requires actually getting
3 up to the stain and swabbing part of it with a
4 swab?

5 A. Yes.

6 Q. Did you physically have to get into the car here
7 to examine the bloodstains you have described;
8 and let's start, again, with the passenger
9 compartment, forward of the rear cargo area?

10 A. I did not have to crawl into the vehicle; I had
11 to lean into the vehicle in order to see some of
12 the stains, yes.

13 Q. All right. For example, which stains did you
14 have to lean in to see?

15 A. The stains on the front of the passenger
16 driver -- excuse me -- the driver's front seat
17 and the passenger's front seat and also to get a
18 good look at the stain just underneath the
19 ignition, I had to lean in and look around the
20 steering wheel in order to see it.

21 Q. In leaning in, you took care to prop yourself at
22 places where you did not see any bloodstain?

23 A. That's correct.

24 Q. And, of course, you had the latex gloves on?

25 A. And coveralls, yes.

1 Q. Now, eventually, you discovered that either one
2 or both battery cables were disconnected?

3 A. Correct.

4 Q. Under the hood?

5 A. That's true.

6 Q. You were the one who opened the hood?

7 A. Yes.

8 Q. Which required releasing a lever inside, near the
9 driver's left leg?

10 A. Yes.

11 Q. And then popping the hood latch when that
12 appeared through the grill, at the front of the
13 car?

14 A. Correct.

15 Q. Lifted the hood, propped it up with the metal
16 rod, and looked at the battery posts?

17 A. Correct.

18 Q. One or both of those was disconnected?

19 A. If I recall, they both were disconnected, but I
20 know for sure one was.

21 Q. And the one that we saw in the photo yesterday, I
22 saw some reddish or reddish brown discoloration
23 on or near the battery post?

24 A. Correct.

25 Q. Was that something you tested?

1 A. No.

2 Q. That, you decided, was not suspected blood?

3 A. Well, I believe there was actually a

4 phenolphthalein test done on that, but there was

5 no -- it was not positive.

6 Q. Okay. So whatever that was, wasn't blood.

7 A. Correct.

8 Q. Now, you were still wearing the same latex gloves

9 when you opened the hood?

10 A. The same latex gloves that I put on prior to

11 opening the hood?

12 Q. Yes.

13 A. Yes.

14 Q. Okay. One of the things -- You know, in going

15 back now, when you are doing your visual

16 examination of the car, okay; one of the things

17 you were aware of was the possibility of latent

18 fingerprints?

19 A. Correct.

20 Q. A latent fingerprint is a fingerprint that is

21 left on a surface?

22 A. It's a fingerprint that is not visible to the

23 naked eye until after it's been actually raised

24 through some type of a process.

25 Q. And you were aware that this car was processed

1 for fingerprints?

2 A. It was in the process of being examined for
3 fingerprints, as I was looking at it, yes.

4 Q. And this was Mr. Riddle?

5 A. Correct.

6 Q. Mike Riddle --

7 A. From our lab.

8 Q. -- from your lab?

9 A. Yes.

10 Q. So he and you are working on the Toyota
11 simultaneously?

12 A. That's my recollection, yes.

13 Q. And what he does is examine the car and treat it
14 with some substance to try to make, as you say,
15 these latent or invisible fingerprints appear to
16 the naked eye?

17 A. There's a number of processes that the
18 identification uses to do that, yes.

19 Q. And you may have had some experience with that as
20 a criminalist in Idaho, but that's not your field
21 today?

22 A. That's correct.

23 Q. Did you -- Were you able to see, though, as you
24 did your walk around of the car, or spent your
25 time around that car, whether Mr. Riddle raised

1 latent fingerprints on the top of the spare tire
2 wheel cover, outside the rear cargo door?

3 A. I don't recall.

4 Q. One way or the other?

5 A. No.

6 Q. You do remember him, in circling the car and
7 processing it for latent prints?

8 A. I know that he was present while I was working on
9 the vehicle.

10 Q. One of the things that -- One of the limitations
11 on what you do is, in assessing a bloodstain, if
12 the blood is dry, at least, you ordinarily cannot
13 give an opinion on when the bloodstain was left?

14 A. Not absolutely, no.

15 Q. Can't give an age of the bloodstain?

16 A. I can give a feeling, as far as the age of the
17 bloodstains, because the bloodstains change in
18 color after a period of time.

19 Q. But that's, as you say, a feeling?

20 A. Well, there's some basis for it, as far as -- I
21 don't have any examples of it, but the longer a
22 stain is exposed to the atmosphere, the darker
23 that stain becomes. So, if you have a bright red
24 stain you are examining, you can have a good
25 assurance that that stain is rather fresh.

1 Q. At some point, the darkening stops?

2 A. At some point, yes, it does.

3 Q. And beyond that point?

4 A. Then you have no feel for the time.

5 Q. Right.

6 A. Correct.

7 Q. And when -- when, approximately, does the

8 darkening of a bloodstain stop?

9 A. I don't know the exact absolutes on that.

10 Q. Are we talking days?

11 A. Probably more like weeks -- weeks. It has a lot

12 to do with the environmental conditions as well.

13 Q. You, here, made no effort to determine the age of

14 any stain that you saw in the Toyota?

15 A. There was no requirement for that.

16 Q. You made no effort to determine the age of the

17 stain you saw in the Pontiac Grand Am, for that

18 matter?

19 A. No, there was no requirement. These stains were

20 rather fresh looking.

21 Q. You say rather fresh looking, they were dry?

22 A. Correct.

23 Q. They were reddish brown?

24 A. Reddish, yes. And we use reddish brown as a

25 general term. They were probably more red than

1 brown.

2 Q. None of them bright red?

3 A. That's correct.

4 Q. The other -- I guess another thing that you can't
5 say in examining a bloodstain is, when it's a
6 contact or transfer stain, you are not able to
7 say what surface with blood touched the clean
8 surface without blood, with any reliability?

9 A. Without any reliability. There's rare occasions
10 that you may be able to determine that, a fabric
11 impression would leave an impression that appears
12 to have the -- the weave of the fabric that
13 touched that surface. But, otherwise, you might
14 be able to get the transfer, or the -- of a -- or
15 the outline of a weapon, like on a -- if somebody
16 is wiping the blood off of a knife blade, you
17 might be able to see the outline of that knife
18 blade. But it is only consistent with that
19 object coming in contact, because you can't
20 necessarily identify it completely.

21 Q. Right. And let's use an even better example.
22 When you get it, every once in awhile, at a crime
23 scene, you will actually get a fingerprint or a
24 thumbprint that's left in blood?

25 A. You will have some ridge detail in blood, yes.

1 Q. All right. So, in that circumstance, you either
2 can tell that it was the bleeding finger, or at
3 least that somebody put a finger in fresh, wet
4 blood?

5 A. It would be the surface of a -- the ridge -- the
6 area that contains ridge detail has contacted the
7 surface, yes.

8 Q. So, again, either that finger, thumb, whatever,
9 is bleeding, or it's not, but it contacts the
10 fresh blood?

11 A. I guess I don't understand your question.

12 Q. If there's a bloody fingerprint, okay?

13 A. Mm-hmm.

14 Q. Either the finger that left it is itself
15 bleeding --

16 A. Oh.

17 Q. -- right? Or the finger is not, but the finger
18 is put into wet, fresh blood?

19 A. It would be the blood transferred from that
20 particular finger. So that finger either is
21 bleeding, in your case, or it has contacted blood
22 and then transferred it onto another surface.

23 Q. You didn't see any bloody fingerprints here?

24 A. I don't recall seeing any, no.

25 Q. No. And if what you see is a -- what you called

1 a passive drop, passive stain, that could be a
2 drop of blood from some part of a person's body
3 that's bleeding?

4 A. Correct.

5 Q. It could be a drop of blood from sort of eye
6 dropper that's used for phenolphthalein?

7 A. It could be, yes.

8 Q. It could be a drop of blood from a pipette?

9 A. Well, yes, it could be.

10 Q. Could be a drop of blood from anything that's
11 capable of producing a drop that gravity will
12 call -- cause to fall to the surface?

13 A. Yes.

14 Q. Likewise, when you see a swipe, that could be
15 from a bloody elbow, a bloody finger, correct?

16 A. It's a bloody object, anyway, that has blood on
17 its surface and is moving across an unstained
18 surface.

19 Q. So, again, whether that's part of a person's
20 body, or a Q-tip, or a stick of wood, or anything
21 else that's a bloody surface and moves across the
22 clean surface, you can't say?

23 A. Well, if it was the difference -- if you are
24 trying to distinguish between a Q-tip and a -- an
25 elbow, let's say, there's a -- you are looking at

1 a much difference in surface area that would have
2 caused such a stain.

3 Q. Sure. But, by the same token, if it's the tip of
4 a pinkey and it's about the same as the tip of a
5 swab, you wouldn't necessarily be able to tell
6 the difference between what left the contact or
7 the swipe?

8 A. Not necessarily.

9 Q. Now, if a person were actively bleeding, the term
10 you used yesterday, a person were actively
11 bleeding, from a hand, okay, and had contact with
12 this car in various places; ignition, door
13 threshold, whatever, you might well see
14 fingerprints, wouldn't you?

15 A. No, not necessarily.

16 Q. Not necessarily, but you might expect to see
17 fingerprints?

18 A. I wouldn't -- I have no expectation to see
19 fingerprints from somebody that is just actively
20 bleeding. In fact --

21 Q. Including if there's --

22 A. I don't know that I have ever seen -- been to a
23 scene where there's been active bleeding or
24 passive drops in the same scene, seeing bloody
25 foot -- bloody fingerprints.

1 Q. All right. But you described more than passive
2 bleeding, haven't you, in that passenger
3 compartment of this car?

4 A. Oh, there's contact stains and passive bleeding
5 as well, yes.

6 Q. Right. The contact stain, which is what you
7 called it, over the ignition area, for example?

8 A. Below the ignition, yes.

9 Q. That was not what you called passive bleeding?

10 A. No. No.

11 Q. That was actual contact?

12 A. Correct.

13 Q. And if someone was actively bleeding enough so
14 that the surface of his skin rubbed against the
15 surface of the car and left that contact stain,
16 then you might be at risk of leaving a
17 fingerprint in the car as well?

18 A. I would not have any expectations of a
19 fingerprint left there, depending on the
20 orientation of the cut. If the cut is on the
21 backside of a hand, or on the elbow, I wouldn't
22 expect that that person that is, then, actively
23 bleeding, leaving bloody fingerprints.

24 Q. Sure, understood. But, when you see -- If you
25 assume that a contact stain is left by someone

1 who is actively bleeding, one of the things you
2 can say, is that the person may not have had a
3 glove on, or something covering the active source
4 of bleeding, correct?

5 A. That's probably true.

6 Q. All right. So there may not have been a bandaid?

7 A. Correct.

8 Q. Or a bandage?

9 A. Correct.

10 Q. There may not have been a glove?

11 A. Probably not.

12 Q. All right. There also could have been a glove,
13 correct?

14 A. If he is bleeding profusely, there is a
15 possibility that the glove has a hole in it or a
16 cut in it and they are bleeding through the
17 glove.

18 Q. Or just soaks through the glove?

19 A. Sure.

20 Q. But now we're talking about probably profuse
21 bleeding, as you say?

22 A. More than likely.

23 Q. Now, tell us what blood you found on the exterior
24 door handles of the Toyota?

25 A. I did not find any blood on the exterior door

1 handles.

2 Q. Tell us about the blood you found on the interior
3 door handles?

4 A. I did not find any blood on the interior door
5 handles.

6 Q. How about the blood you found on the steering
7 wheel?

8 A. I did not observe any blood on the steering
9 wheel.

10 Q. Did you look?

11 A. Yes.

12 Q. No blood at all on that steering wheel?

13 A. I didn't see any visible blood on there, no.

14 Q. See any blood on the gear shift lever?

15 A. I don't recall that I did, no.

16 Q. This was an automatic transmission Toyota, as you
17 remember?

18 A. Right.

19 Q. So there's a lever somewhere in the center
20 console?

21 A. Yes.

22 Q. With something that one has to squeeze to take
23 the vehicle out of park?

24 A. Correct.

25 Q. You examined that closely?

1 A. Yes.

2 Q. Saw no sign of blood?

3 A. Not that I recall, nothing observable or visible.

4 Q. When you're examining a pattern of blood

5 staining, this is -- this is something that

6 requires some judgment; is that fair?

7 A. Yes.

8 Q. Because it's a matter of interpretation?

9 A. Correct.

10 Q. I mean, you are typically not fortunate enough to

11 have a videotape of what actually happened to

12 leave bloodstain patterns at a scene?

13 A. Not at a scene, no.

14 Q. So one is sort of reconstructing, based on

15 judgment?

16 A. Based on training and experience, yes.

17 Q. Right, training, experience, judgment?

18 A. Right.

19 Q. And trying, then, to interpret what you are

20 seeing or may be seeing?

21 A. That's true.

22 Q. There is a subjective quality to this in the end?

23 A. The subjectivity of the examination of

24 bloodstains is only from -- from -- based on --

25 based upon your experience and training.

1 Q. One has to start with examining bloodstains
2 somewhere; you described a 40 hour course
3 required?

4 A. Right.

5 Q. So, if for example, I were to enroll in a 40 hour
6 course in bloodstain analysis, that might be one
7 full week out of my life?

8 A. Yes.

9 Q. Eight hours of classroom time for five days?

10 A. Correct.

11 Q. And after that I, conceivably, could be
12 accredited as a bloodstain examiner?

13 A. Yes, that's true.

14 Q. But you wouldn't -- As someone in a supervisory
15 position at the State Crime Lab, wouldn't
16 necessarily send me out to a crime scene, alone,
17 to do bloodstain analysis the following Monday,
18 would you?

19 A. That's correct.

20 Q. You would want me to get some on-the-job
21 experience?

22 A. Yes.

23 Q. Tagging along behind more experienced bloodstain
24 pattern analysts?

25 A. Yes.

1 Q. And that would go on for some period of time
2 before I was flying solo?

3 A. Correct.

4 Q. And if -- if after a year, if I was an apt pupil,
5 I was able to be out on my own, examining
6 bloodstain patterns, would that seem about a
7 reasonable sort of progression in, let's say, the
8 Wisconsin State Crime Laboratory?

9 A. I suppose that's an adequate amount of time.

10 Q. Okay. But then if we checked in with me five
11 years later, and I had been doing bloodstain
12 pattern analysis all five years, you would expect
13 me to have more experience at the end of five
14 years?

15 A. True.

16 Q. And perhaps, then, better interpretive skills?

17 A. True.

18 Q. More experience with seeing a wider variety of
19 staining?

20 A. Yes.

21 Q. So, you know, we could go on, but it's --
22 experience plays a large part in the judgments or
23 interpretations that you ultimately reach?

24 A. Correct.

25 Q. Now, even there, you -- you were very careful on

1 direct examination to use the term "consistent
2 with"; did I recall that correctly?

3 A. When it comes to the contact stains?

4 Q. Yes.

5 A. And also the paths of stains.

6 Q. Yes. And the patterns that you see?

7 A. That's correct.

8 Q. So, for example, although the -- one of the
9 stains in the cargo area, now, on the wheel well,
10 you describe as sort of a classic hair contact or
11 transfer stain?

12 A. Yes.

13 Q. Again, what you are telling us is, that's
14 consistent, what you saw was consistent with a
15 hair contact or transfer stain?

16 A. That's correct.

17 Q. When something is consistent with something else,
18 it's a possibility that cannot be excluded?

19 A. That's right.

20 Q. And some of these things, like for example a hair
21 transfer stain, you personally have enough
22 experience to say, I'm quite confident that this
23 was bloody hair that left that transfer stain?

24 A. Yes.

25 Q. Other transfer stains may be -- what's the word I

1 want -- more generic, if you will?

2 A. That's a good term.

3 Q. Less classic?

4 A. Right.

5 Q. And what you can say there is, well, that would
6 be consistent with, for example, a bloody finger
7 being swiped acrossed a surface just, I mean,
8 just to pick an example?

9 A. That's a possibility, yes.

10 Q. But you could not, and would not, say that it is
11 consistent only with a bloody finger being swiped
12 across --

13 A. No --

14 Q. -- a surface?

15 A. -- I would not.

16 Q. There are other explanations that also may be
17 consistent with the appearance of such a contact
18 stain?

19 A. There can be, yes.

20 Q. You, in your line of work, avoid assigning
21 probabilities to the one, or two, or three, or
22 more different consistent explanations with the
23 source of a stain?

24 A. I don't know that you can establish a
25 probability.

1 Q. So you don't try?

2 A. Correct.

3 Q. Now --

4 A. The only thing I can say, is when I use

5 consistent, it's probably more likely that that

6 stain was caused by a certain action.

7 Q. All right. But, again, you can't get into

8 specifics often, whether it's an elbow, whether

9 it's a finger, whether it's whatever?

10 A. Correct.

11 Q. Okay.

12 A. I mean you can exclude certain things. If you're

13 talking about a very small stain, you can see

14 that the pattern goes from left to right and it

15 doesn't get any larger, then you can narrow it

16 down to a smaller item rather than a larger item.

17 Q. Right. All right. And that's -- And that's --

18 Some of this gets to be fairly common sense?

19 A. Absolutely.

20 Q. If it's the sort of stain you have described,

21 this is probably not someone who's had their

22 jugular vein cut?

23 A. Correct.

24 Q. There are, though -- You can, though, sort of

25 rule out some stain patterns and say that a stain

1 pattern you see is inconsistent with something,
2 correct?

3 A. You certainly may be able to do that, yes.

4 Q. You're familiar with something called high
5 velocity spatter?

6 A. Yes, I am.

7 Q. High velocity spatter typically would be the
8 spatter you get from a bullet passing through a
9 human being, an animal, something that has blood?

10 A. High velocity impact spatter is consistent with
11 gunshot wounds.

12 Q. There are also things called low velocity
13 spatter?

14 A. Correct.

15 Q. And give us the classic example with which that
16 would be consistent.

17 A. Passive drop falling to the surface.

18 Q. Okay.

19 A. Generated only -- Only caused -- Only influenced
20 by gravity. So it would be a drop separating
21 from the end of a finger and impacting the
22 surface, that would be a low velocity stain.

23 Q. What would you -- What would you typically
24 describe a stain as if you had, let's say, a
25 knife stabbing someone in the back and being

1 taken out and struck into the back over and over
2 again?

3 A. Stabbings are -- I have seen between medium to
4 high velocity impact stains caused from a
5 stabbing and it really has a lot to do with the
6 vigorous stabbing of that victim.

7 Q. In this Toyota, and I will include the rear cargo
8 area, you saw nothing that you would describe as
9 high velocity spatter?

10 A. No, that's correct.

11 Q. Did you see any medium velocity spatter?

12 A. Yes, I would say the stains that were on the rear
13 door, cargo door, surface would be defined as
14 medium velocity spatter.

15 Q. Again, from maybe a body in motion and blood sort
16 of splaying off the body?

17 A. That's correct.

18 Q. All right. As to the stains against the
19 passenger side wheel well in the cargo
20 compartment?

21 A. Okay.

22 Q. Which included the classic hair transfer that you
23 described?

24 A. Yes.

25 Q. That's probably the stain area where you have the

1 greatest confidence about the probable source of
2 the pattern?

3 A. As far as the pattern that -- yes, that's -- I
4 would have a better, or a good feel for the
5 source of that stain, yes.

6 Q. Right. Even there, you are not able to venture
7 an opinion on whether the person who left that,
8 with the bloody hair, was alive or dead at the
9 time?

10 A. No, I could not determine whether or not that
11 person was alive or dead.

12 Q. Are you -- Are you actually part of the Field
13 Response Team, or do you just coordinate it? I
14 wasn't clear at the beginning of your testimony
15 yesterday.

16 A. No, I'm the coordinator, but I also serve as a
17 team leader as well.

18 Q. So you will go out into the field and respond if
19 asked?

20 A. Yes, that's true.

21 Q. You were not asked to respond to the Avery Auto
22 Salvage property?

23 A. No, I was not on call at that particular time.

24 Q. Never went to that property yourself?

25 A. No, I did not.

1 Q. Your first work on this case was on Monday,
2 November 7th?

3 A. Yes.

4 Q. Right in the garage at the Crime Lab in Madison?

5 A. That's correct.

6 Q. Had you come -- Had you been asked, you would
7 have come to the Avery Salvage scene?

8 A. I don't know that I would have been allowed to,
9 no.

10 Q. Because you weren't on call then?

11 A. Correct.

12 Q. All right. But as you come here now, you have no
13 way of knowing, for example, where on the Avery
14 property this Toyota supposedly first was seen?

15 A. No clue.

16 Q. No clue how far away from where the Toyota was
17 supposed to have been, any bone fragments may
18 have been found?

19 A. No, I do not.

20 Q. You do know enough to say that, once those
21 battery cables were disconnected, the key to the
22 Toyota wouldn't have done you any good in
23 starting the car?

24 A. That's true.

25 Q. Unless you reconnected the battery cables?

1 A. Correct.

2 ATTORNEY STRANG: That's all I have. Thank
3 you.

4 THE WITNESS: You're welcome.

5 THE COURT: Mr. Gahn, any redirect.

6 ATTORNEY GAHN: Just one moment, your
7 Honor. No questions, your Honor.

8 THE COURT: All right. The witness is
9 excused. And the State may call it's next witness.

10 ATTORNEY KRATZ: State would call Blaine
11 Dassey to the stand, Judge.

12 THE CLERK: Please raise your right hand.

13 **BLAINE DASSEY**, called as a witness
14 herein, having been first duly sworn, was
15 examined and testified as follows:

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

18 THE WITNESS: My name is Blaine Dassey.

19 ATTORNEY KRATZ: Blaine, you don't have to
20 be quite as close to the microphone as you are, so
21 just sit back and relax and testify from there.

22 **DIRECT EXAMINATION**

23 BY ATTORNEY KRATZ:

24 Q. How old are you Blaine?

25 A. 18.

1 Q. Do you go to school?

2 A. Yes.

3 Q. Could you tell the jury where you go to school,
4 please.

5 A. Mishicot High School.

6 Q. Have you gone to Mishicot High School your entire
7 high school career?

8 A. No.

9 Q. Last year, that is, in 2005, can you tell the
10 jury what school you went to then?

11 A. Reedsville.

12 Q. Blaine, I'm going to direct your attention to
13 October 31st, Halloween of 2005, ask if you
14 remember that day?

15 A. Yes.

16 Q. Can you tell the jury where you were living then?

17 A. Avery Road.

18 Q. Okay. You don't have to give me the exact
19 address, but who did you live there with?

20 A. My mom and my step-dad.

21 Q. Okay. Now, this Avery Road property, can you
22 kind of describe this property for us?

23 A. It's a salvage yard.

24 Q. All right. I'm going to put on the screen to
25 help you, an exhibit that's already been

1 received. It's called Exhibit No. 25. When you
2 look at that exhibit, Blaine, does that help you?
3 Do you recognize that exhibit?

4 A. Yes.

5 Q. Tell the jury what that is, please.

6 A. That's a salvage yard.

7 Q. And is that the salvage yard that you lived at on
8 October 31st of 2005?

9 A. Yes.

10 Q. All right. Now, Blaine, do you recognize, when
11 you look at that picture, and I know that it's
12 from an airplane, but do you recognize what house
13 you live in?

14 A. Yes.

15 Q. I'm going to give you something called a laser
16 pointer; have you ever held one of these before?

17 A. Yeah.

18 Q. Just push that button right there, okay.

19 A. Okay.

20 Q. Blaine, I want you to take the laser pointer and
21 I want you to circle or point on the exhibit, for
22 the jury, what your house is; if you can -- if
23 you can tell us?

24 A. Right there.

25 Q. All right. And you are pointing to a property,

1 and I think it is uncontested that that's the
2 Barb Janda trailer; is that right?

3 A. Yes.

4 Q. All right. Now, Blaine, on the 31st of October,
5 did you go to school that day?

6 A. Yes.

7 Q. And could you tell the jury how you get to, and
8 how you get home, from school?

9 A. The bus.

10 Q. What kind of bus is this?

11 A. School bus.

12 Q. And looking, again, at Exhibit No. 25, can you
13 tell me where the school bus picks you up?

14 A. At the end of the road, right there.

15 Q. You are pointing to an intersection, or the end
16 of what would be Avery Road, just up near the
17 office building and your grandparents trailer; is
18 that right?

19 A. Yes.

20 Q. In the afternoon, after school is over, how do
21 you get home?

22 A. The school bus.

23 Q. And can you tell me where the school bus drops
24 you off, please?

25 A. At the intersection, at the end of the road, by

1 my grandma's house, right there.

2 Q. Same place?

3 A. Mm-hmm.

4 Q. You have to say yes or no.

5 A. Yes.

6 Q. Now, your trailer is a little bit west, or a
7 little bit further down from that intersection;
8 do you know why the bus picks you up and drops
9 you off up near your grandma's trailer?

10 A. I'm not sure.

11 Q. They just do?

12 A. Yeah.

13 Q. Blaine, how do you get to and from the bus from
14 your house?

15 A. I walk down the road.

16 Q. Okay. Now, back in October of 2005, was there
17 somebody else in your house who also went to
18 school with you?

19 A. Yes.

20 Q. Who was that?

21 A. Brendan.

22 Q. And who's Brendan?

23 A. My brother.

24 Q. At Mishicot School, Blaine, do you know about
25 what time school lets out?

1 A. 3:05.

2 Q. And after school lets out, and I'm going to
3 specifically ask you about October 31st of 2005;
4 do you remember what time you came home that day?

5 A. 3:40.

6 Q. 3:40? That's 20 to 4 in the afternoon; is that
7 right?

8 A. Yup.

9 Q. You have to answer out loud?

10 A. Yes.

11 Q. Do you remember coming home that day, Blaine?

12 A. Yes.

13 Q. And could you tell the jury how you got home that
14 day?

15 A. The school bus.

16 Q. And did anybody come home on the school bus with
17 you?

18 A. Yes, Brendan.

19 Q. After you and Brendan got home, at about 3:40,
20 can you tell the jury what you did, please?

21 A. We walked down the road.

22 Q. And why don't you use your laser pointer again
23 and tell the jury, when you walked down the road,
24 where did you walk?

25 A. Down here, right there.

1 Q. Okay. Just so the record is clear, you are
2 pointing that you are walking in what would be a
3 westerly direction from where the bus dropped you
4 off down to your trailer; is that right, Blaine?

5 A. Yes.

6 Q. Blaine, as you were -- Let me just stop, let me
7 go back and ask a couple of follow-up questions
8 first. First of all, is there anybody else, any
9 other people that live on this property, or that
10 did, at the end of October of 2005?

11 A. No.

12 Q. There's nobody else that lived on this property?

13 A. Oh, yeah. Yeah.

14 Q. Are you a little nervous this morning?

15 A. Yeah, I am.

16 Q. That's fine. Tell me who lived on -- Who lived
17 on this property -- Who else, other than you,
18 lived on this property at that time?

19 A. On our property?

20 Q. Well, anywhere on the Avery property itself,
21 anywhere on the salvage yard?

22 A. Me, my brother, Bobby, Brian, Brendan.

23 Q. Let me just stop you right there. Bobby, and
24 Brian, and Brendan, who are they?

25 A. Those are my brothers.

1 Q. And are any of them older than you, or any of
2 them younger than you?

3 A. Yes, Bobby and Brian are older and Brendan
4 younger.

5 Q. Okay. And at that time, you know the day I'm
6 talking about, don't you?

7 A. Yes.

8 Q. At that time, you said that Brendan went to
9 school?

10 A. Yes.

11 Q. Do you know what Bobby did at that time?

12 A. No.

13 Q. Do you know if he was working, or if he was going
14 to school, or something like that?

15 A. I'm not sure.

16 Q. How about your other brother, Brian; do you know
17 what he was doing at the time?

18 A. No.

19 Q. Okay. Did anybody else -- And in that trailer
20 that you pointed to, you talked about your mom,
21 what's her name?

22 A. Barb Janda.

23 Q. Barb Janda?

24 A. Tadych, now.

25 Q. I'm going to show you an exhibit. It's a

1 photograph. It's No. 354, that's in front of you
2 right now. Can you tell us what that is, please?

3 A. That's my mom.

4 Q. First of all, is that a photograph?

5 A. Yes.

6 Q. And who's it a photograph of?

7 A. Barb Janda, or Tadych.

8 Q. I'm going to let the jury look at that picture.

9 ATTORNEY BUTING: What's the exhibit
10 number?

11 ATTORNEY KRATZ: 354.

12 Q. If you want to look on the back of the exhibit,
13 you can see the number on it. Why don't you do
14 that. Do you see that that's Exhibit 354?

15 A. Yup.

16 Q. All right. And the picture on the big screen, is
17 that a picture of your mom, Barb?

18 A. Yes.

19 Q. Now, you were starting to tell us that there were
20 other people who lived at the Avery salvage
21 property at that time?

22 A. Yes.

23 Q. Who else lived there then?

24 A. My grandpa and my grandma.

25 Q. Okay. Let's talk about them. Do you know their

1 names?

2 A. Yes.

3 Q. What are their names?

4 A. Allen Avery and Delores Avery.

5 Q. The exhibit on your right is Exhibit 350, 3-5-0,

6 can you tell the jury who that is, please?

7 A. That's my grandpa, Allen Avery.

8 Q. I'm going to show the jury a larger picture of

9 that; that's your grandpa Allen; is that right?

10 A. Yes.

11 Q. And who lives with Allen?

12 A. Delores.

13 Q. And who's Delores?

14 A. That's my grandma.

15 Q. And Exhibit 351 that's next to you, do you see

16 her picture, too?

17 A. Yes.

18 Q. And I'm going to show you Exhibit 351; is that a

19 picture of your grandma?

20 A. Yes.

21 Q. Now, Blaine, before we finish the description of

22 your family, do you have any uncles?

23 A. Yes.

24 Q. And who are your uncles?

25 A. Earl Avery, Chuck Avery, and Steven Avery.

1 Q. I'm going to, first, hand you a picture that's
2 Exhibit 353. You mentioned your uncle, Earl, is
3 that a picture of your Uncle Earl?

4 A. Yes.

5 Q. And I'm showing the jury that big picture; is
6 that the picture in front of you?

7 A. Yes.

8 Q. Okay.

9 ATTORNEY STRANG: Your Honor, I have no
10 objection to the photos of the other family members,
11 but as Steven Avery is sitting right here, I don't
12 know if we need a photograph of him.

13 THE COURT: Mr. Kratz.

14 ATTORNEY KRATZ: I need a photo of him for
15 later in the trial, Judge. And so this is the best
16 witness to identify that photo.

17 THE COURT: All right. I will allow it.

18 ATTORNEY KRATZ: Thank you, Judge.

19 Q. (By Attorney Kratz)~ Who's -- Who's the next
20 picture that you have in front of you?

21 A. Chuckie.

22 Q. Chuckie, who's Chuckie?

23 A. He's my uncle.

24 Q. And that is Exhibit No. 352; is that right?

25 A. Yes.

1 Q. I'm showing the jury and is that a picture of
2 your Uncle Chuck?

3 A. Yes.

4 Q. The last picture in front of you is Exhibit No.
5 349. Tell us what that is, please.

6 A. That's Steven Avery.

7 Q. Now that the jury sees that picture; is that your
8 Uncle Steve?

9 A. Yes.

10 Q. That's also the person, as Mr. Strang pointed
11 out, that is sitting at counsel table, who is
12 sitting in the courtroom today; is that right?

13 A. Yes.

14 Q. Now, Blaine, you talked about getting home at
15 about 3:40 p.m.; do you get home at the same time
16 every day?

17 A. Yes.

18 Q. That day, that is, Halloween of 2005, did you
19 have some plans that night?

20 A. Yes.

21 Q. Could you tell the jury what your plans were that
22 night?

23 A. My plans were to go trick or treating with my
24 friend.

25 Q. And who is your friend?

1 A. Jason Crisco (phonetic).
2 (Court reporter couldn't hear.)
3 A. Jason Crisco.
4 Q. Jason. Did you go trick or treating with your
5 friend Jason that night?
6 A. Yes.
7 Q. And do you remember, after you got home sometime
8 after 3:40 p.m., do you remember what time you
9 left the house to go trick or treating?
10 A. Yes.
11 Q. What time was that?
12 A. About 5:25, 5:30.
13 Q. 5:25 p.m.?
14 A. Yes.
15 Q. How did you leave the house, or how did you leave
16 the property; do you remember?
17 A. I walked up the road.
18 Q. Did somebody pick you up?
19 A. Yes.
20 Q. Who was that?
21 A. Carmen Weinsch.
22 Q. Who is that?
23 A. She's my friend's mom.
24 Q. Okay. And did you go trick or treating that
25 night?

1 A. Yes.

2 Q. And so from 5:25 p.m. until some other time, were
3 you gone; that is, were you off the property?

4 A. Yes.

5 Q. Do you remember what time you got home that
6 night?

7 A. 11.

8 Q. I'm sorry?

9 A. 11.

10 Q. 11:00 p.m.?

11 A. Yes.

12 Q. Let me back up a little bit. And I apologize for
13 kind of jumping around. But you talked about
14 your Uncle Steve; do you know if he lives on that
15 property as well?

16 A. Yes.

17 Q. Can you tell me, on October 31st, that is, on
18 Halloween of 2005, where he lived?

19 A. He lived in that trailer house.

20 Q. How close to your house did he live?

21 A. Like, right next to us.

22 Q. All right. I will give you a picture that's
23 going to help, I think. You already looked at
24 this, it's Exhibit No. 25. Can you show us,
25 again, where you live, show us your trailer?

1 A. Right there.

2 Q. And the laser pointer is pointing at the Janda
3 trailer. And where does your Uncle Steve live?

4 A. Right there.

5 Q. Be the trailer that would be directly to the west
6 of you; is that right?

7 A. Yes.

8 Q. Now, on the 31st of October, as you were
9 approaching your house, as you got off the bus,
10 and you said you were walking down towards your
11 house; did you see anything as you were walking
12 towards your house?

13 A. Yes.

14 Q. Can you tell the jury what you saw, please.

15 A. I seen Steven Avery bringing a plastic bag to the
16 burning barrel.

17 Q. What burn barrel are you talking about?

18 A. The one, the burn barrel.

19 Q. Whose burn barrel?

20 A. Steven's.

21 Q. I'm going to show you what's been admitted in
22 evidence as Exhibit No. 114, which is a computer
23 drawing. It's a view that -- or a angle that
24 might help you. Do you think this will help you
25 explain to the jury what you saw?

1 A. Yes.

2 Q. Okay. As you are walking towards your house, use
3 the laser pointer, tell the jury what you saw,
4 please.

5 A. Okay. I seen Steven walking this way and he
6 threw the plastic bag into there, the burn
7 barrel.

8 Q. Okay. Did you see what kind of plastic bag he
9 threw into the burning barrel?

10 A. No.

11 Q. Did you see how big the bag was?

12 A. No.

13 Q. Did you see what was going on inside the burning
14 barrel; in other words, did you see that it was
15 burning in there.

16 A. Yes.

17 Q. Tell the jury what you saw about it that it was
18 burning. Describe that for them.

19 A. There was smoke and flames coming out of the
20 burning barrel.

21 Q. About what time was this that you saw that?

22 A. About 3:46, 7.

23 Q. Okay. It was right after you got off the bus; is
24 that right?

25 A. Yes.

1 Q. Now, when your Uncle Steve put a bag, or put
2 something into that burning barrel, that was
3 actively burning at the time; did you have any
4 conversation with him?

5 A. No.

6 Q. Now, I'm going to have you look at this
7 particular drawing or this particular exhibit,
8 114; did you see anything else as you were at,
9 about quarter to 4, walking towards your house?

10 A. No.

11 Q. About what time do you think that you got into
12 your house?

13 A. Roughly 3:50.

14 Q. Okay. From 3:50, until you left to go trick or
15 treating, sometime a little after 5:00, can you
16 tell the jury what you did that day?

17 A. I was on the computer.

18 Q. Did you leave your trailer at all that day?

19 A. No.

20 Q. I mean, until you went trick or treating?

21 A. No.

22 Q. Do you remember who else was home that day?

23 A. Yes.

24 Q. Who is that?

25 A. Brendan.

1 Q. Were you doing anything with Brendan that
2 afternoon?

3 A. No.

4 Q. Do you know what Brendan was doing while you were
5 home, between 10 to 4 and a little after 5:00
6 that day?

7 A. Yes, he was playing video games.

8 Q. Okay. So at least until 5:00, Brendan was still
9 at home; is that right?

10 A. Yes.

11 Q. Now, when you saw your Uncle Steve burning in his
12 burning barrel; did you see what kind of smoke
13 was coming out of there, or did you know what he
14 was burning in his burning barrel?

15 A. No.

16 Q. All right. You told this jury that you went
17 trick or treating with your friend and his mom
18 picked you up; is that right?

19 A. Yes.

20 Q. How did you get home from your mom's (sic) that
21 day?

22 A. His mom's?

23 Q. How did you get home from your friend's house
24 that day?

25 A. Oh, Carmen drove me.

1 Q. Carmen?

2 A. Yeah.

3 Q. Is that your friend's mom, still?

4 A. Yes.

5 Q. And can you remind us, again, about what time you
6 got home?

7 A. About 11.

8 Q. Okay. Now at 11:00, when you got home, Blaine;
9 do you remember walking to your house?

10 A. Yes.

11 Q. And when you walked to your house, did you see
12 anything over by your Uncle Steve's house?

13 A. Yes.

14 Q. Tell the jury what you saw at your Uncle Steve's
15 house, at about 11:00 that night?

16 A. I seen Steven Avery sitting there watching the
17 fire.

18 Q. Watching what?

19 A. Watching the fire, the bonfire.

20 Q. There was a bonfire at your Uncle Steve's?

21 A. Yes.

22 Q. Can you tell the jury where that bonfire was,
23 please.

24 A. Behind the garage.

25 Q. Why don't you look at Exhibit No. 114. Can you

1 point on Exhibit 114 where you saw that fire that
2 night?

3 A. Right there.

4 ATTORNEY KRATZ: We'll have the record
5 reflect, Judge, that the defendant -- excuse me --
6 that the witness is pointing directly to the south,
7 or just behind the garage area of the diagram in
8 Exhibit 114?

9 THE COURT: The record will so reflect.

10 Q. (By Attorney Kratz)~ Blaine, tell the jury how
11 big that fire was.

12 A. It was about 4 or 5 feet.

13 Q. What was 4 to 5 feet?

14 A. The flames.

15 Q. So 5 foot flames you could see at 11:00 at night;
16 is that right?

17 A. Yes.

18 Q. Now, how did you know that it was your Uncle
19 Steve out there; did you see him?

20 A. No.

21 Q. Okay. What did you see out there?

22 A. I just seen a person.

23 Q. Did you know who that person was?

24 A. No.

25 Q. How many people did you see back by that fire?

1 A. Just one.

2 Q. Blaine, the friend that you went with, his name
3 is what, Jason?

4 A. Yes.

5 Q. Is that right? His mom's name was Carmen?

6 A. Yes.

7 Q. Do you know where she dropped you off that night
8 to come home?

9 A. Yes.

10 Q. Where did she drop you off?

11 A. At the end of the driveway.

12 Q. Same place that the bus drops you off?

13 A. Yes.

14 Q. When you started walking, or when you walked
15 toward your house that night, at about 11:00,
16 when was the first time that you saw these
17 flames, or when you saw what you described as a
18 bonfire behind Steve's garage?

19 A. I seen the flames when I left, to go trick or
20 treating.

21 Q. Okay. That's two different times, let me just
22 stop you there. I'm talking about when you came
23 home?

24 A. Oh.

25 Q. When -- How close were you before you could see

1 the flames?

2 A. I don't know.

3 Q. Let's go back to just before you left, or as you
4 were leaving to go trick or treating, I think you
5 are now going to tell the jury that you saw
6 something else; is that what you are saying to
7 us?

8 A. No. What?

9 Q. Before you left, or as you left to go trick or
10 treating --

11 A. Yeah.

12 Q. -- did you see anything else by your uncle
13 Steve's?

14 A. No.

15 Q. All right. When was the first time that you saw
16 that fire?

17 A. When I came home.

18 Q. So you didn't see it before you left?

19 A. No.

20 Q. The first time you saw it was at about 11:00; is
21 that right?

22 A. Yes.

23 Q. I just want you to be sure about your testimony;
24 is that true?

25 A. Yes.

1 Q. Okay. Good. Now, the flames, or what was
2 creating these 5 foot high flames; could you see
3 them clearly? I mean, could you see them behind
4 the garage?

5 A. Yes.

6 Q. Could you see anything that was on the fire, or
7 that -- what was in the bonfire?

8 A. No.

9 Q. Did you go back behind your Uncle Steve's garage
10 and see what the bonfire was all about that
11 night?

12 A. No.

13 Q. Blaine, I have a couple other questions. Before
14 testifying in here, in court today, before being
15 asked to come to court, do you remember being
16 interviewed by members of police, that is a law
17 enforcement officer?

18 A. Yes.

19 Q. And when you were interviewed by the police; do
20 you remember the police asking you who you saw
21 back by the fire?

22 A. Yes.

23 Q. Do you remember what you told the police?

24 A. Yes.

25 Q. What did you tell them?

1 A. I said Steven Avery.

2 Q. Now, you know your Uncle Steven; is that right?

3 A. Yes.

4 Q. Let me ask you, Blaine, are you a little nervous
5 testifying in front of your Uncle Steven today?

6 A. Not really.

7 Q. All right. The next day -- Well, let me go back,
8 just before that night ends, when you got home at
9 about 11:00; what did you do?

10 A. I went into the house and I fell asleep.

11 Q. Okay. Do you have a bedroom inside of this
12 house?

13 A. Yes.

14 Q. And does anybody stay with you in your bedroom?

15 A. Yes.

16 Q. Who is that?

17 A. Brendan. Brendan, my brother.

18 Q. All right. About what time did you go to bed
19 that night?

20 A. At 11.

21 Q. Okay. So, right when you got home?

22 A. Yes.

23 Q. When you got home that night, at 11:00; do you
24 remember talking to anybody that night?

25 A. No.

1 Q. Do you remember seeing your brother, Brendan,
2 that night?

3 A. No.

4 Q. If Brendan would have been in your bedroom with
5 you; do you think you would have seen him?

6 A. Yes.

7 Q. And did you see him in the bedroom?

8 A. I don't remember.

9 Q. Okay. Blaine, I'm going to show you a couple
10 other pictures here.

11 THE COURT: Mr. Kratz, can you tell me
12 about how much time you have got left?

13 ATTORNEY KRATZ: Five minutes, Judge.

14 THE COURT: I think we're going to take our
15 break at this time. Members of the jury, I'm going
16 to remind you not to discuss the case at all during
17 the break. And we'll resume in about 15 minutes.

18 (Jury not present.)

19 THE COURT: All right. Counsel, let's be
20 back at 11:00.

21 ATTORNEY KRATZ: Thank you, Judge.

22 (Recess taken.)

23 THE COURT: Mr. Kratz, you may resume.

24 **DIRECT EXAMINATION CONTD**

25 BY ATTORNEY KRATZ:

1 Q. Blaine, when you got home that day, on
2 October 31st, on Halloween night, and you walked
3 with your brother to your house, was there
4 anybody else that was with you, anybody else that
5 walked with you?

6 A. No.

7 Q. I'm going to show you what's been marked for
8 identification -- excuse me -- has been received
9 as Exhibit No. 230, ask if you recognize that
10 vehicle at all?

11 A. Yes.

12 Q. What is that vehicle?

13 A. A Suzuki.

14 Q. A what?

15 A. A Suzuki.

16 Q. A Suzuki. Do you know whose vehicle that is?

17 A. My grandpa's. I think that is.

18 Q. Now, as you look at this picture, do you know
19 where this picture is taken? Do you know where
20 the Suzuki is being stored here?

21 A. In Steven's garage.

22 Q. All right. Let me ask you something, Blaine.
23 When you walked home on the 31st of October,
24 towards your house, did you see where your Uncle
25 Steve had the Suzuki parked that day?

1 ATTORNEY STRANG: Could we get a time
2 frame?

3 ATTORNEY KRATZ: I can do that, Judge.

4 THE COURT: Okay.

5 Q. (By Attorney Kratz)~ At about 3:45 p.m., did you
6 see where this Suzuki was parked that day?

7 A. Yes.

8 Q. Tell the jury where that was, please?

9 A. It was on the right side, outside of the garage.

10 Q. On the outside of the garage?

11 A. Yes.

12 Q. I'm going to show you now what's been received as
13 another exhibit, to help you. It's Exhibit No.
14 98, it's a diagram, kind of a diagram with both
15 residences. Do you see where it says Steven
16 Avery's residence?

17 A. Yes.

18 Q. And the Janda/Dassey residence; do you see that?

19 A. Yes.

20 Q. Will this diagram -- Well, first of all, do you
21 recognize these two properties?

22 A. Yes.

23 Q. And, again, show the jury where it is that you
24 lived?

25 A. Right there.

1 Q. You are pointing to the Dassey/Janda residence;
2 is that right?

3 A. Yes.

4 Q. And show the jury where Steven Avery lived at the
5 time?

6 A. Right there.

7 Q. You are pointing to a trailer which is called the
8 Steven Avery residence; is that right?

9 A. Yes.

10 Q. Now, when you walked home, or walked from the bus
11 to your house, you told the jury that you saw the
12 Suzuki parked outside; is that right?

13 A. Yes.

14 Q. Can you point to the diagram and tell the jury
15 where you saw that Suzuki parked that day?

16 A. Right there.

17 Q. And you are pointing to the outside of what would
18 be Steven Avery's garage, just to the left side,
19 as you look at the diagram; is that right?

20 A. Yes.

21 Q. Did you notice any other things, or any other
22 vehicles, out there, when you walked home that
23 day?

24 A. There was a snowmobile.

25 Q. Do you know whose snowmobile was outside?

1 A. Yes, Steven's.

2 Q. Where was the snowmobile parked, if you remember?

3 A. In back -- In the back of the -- or behind the

4 Suzuki.

5 Q. Can you show us where that would be, please.

6 A. Like, right there.

7 Q. So, near or right next to the Suzuki, on the left

8 side, or on the outside, of the garage; is that

9 right?

10 A. Yes.

11 Q. Now, I'm just asking you about your observations,

12 Blaine, I don't know -- I don't care who you

13 talked to, or what somebody might have said, but

14 just what you saw with your own eyes, okay?

15 A. Okay.

16 Q. Do you remember seeing, with your own eyes, or

17 remembering your own observations, whether or not

18 that Suzuki and that snowmobile were moved

19 somewhere else, at some point after the 31st of

20 October?

21 A. I'm not sure, no.

22 Q. Okay. You just remember the 31st, that they were

23 next to the garage; is that right?

24 A. Yes.

25 Q. Let me finally go back to one other diagram that

1 we have been looking at, Exhibit 114, kind of
2 shows us an overview. Can you, again, point to
3 the burn barrel of Steve Avery, where you saw him
4 burning?

5 A. Right there.

6 Q. Now, can you describe for the jury the smoke or
7 anything else that you saw coming out of that
8 burn barrel when you got home that day?

9 ATTORNEY STRANG: Asked and answered,
10 twice.

11 ATTORNEY KRATZ: I want him to describe, if
12 he can, I want to know if he can describe the color,
13 or if there were flames, or more descriptive of what
14 he saw, Judge. That has not been answered.

15 ATTORNEY STRANG: It's been asked and
16 answered, twice.

17 THE COURT: I know the question has been
18 answered if there was something coming out of it. I
19 don't remember if there was a request for a
20 description, so I will allow the question.

21 Q. (By Attorney Kratz)~ If you remember, Blaine, do
22 you remember anything coming out of that burn
23 barrel?

24 A. Yeah, white smoke.

25 ATTORNEY KRATZ: All right. Judge, I will

1 move the admission of Exhibits 349 through 354. And
2 I don't have any further questions of Blaine at this
3 time.

4 THE COURT: Any objection to the exhibits?

5 ATTORNEY STRANG: Ask the Court to reserve
6 on 350. No objection to the others.

7 THE COURT: All right. The Court will
8 receive the others, reserve ruling on Exhibit 350.
9 Which exhibit was 350?

10 ATTORNEY STRANG: I'm sorry, 349.

11 THE COURT: 349.

12 ATTORNEY STRANG: My mistake.

13 THE COURT: That's the photo of Steven
14 Avery.

15 ATTORNEY STRANG: Yes.

16 THE COURT: All right. The Court will
17 allow the rest of them and reserve ruling on 349.

18 **CROSS-EXAMINATION**

19 BY ATTORNEY STRANG:

20 Q. Good morning.

21 A. Good morning.

22 Q. I'm going to call you Mr. Dassey, even though you
23 -- I guess you are 18 now, you turned 18?

24 A. Yes.

25 Q. Since this is a little bit of a formal place; do

1 you mind if I address you as Mr. Dassey?

2 A. Yes.

3 Q. Yes, you do mind?

4 A. Or no.

5 Q. All right. Mr. Dassey, you have been approached
6 by the police a number of times, I think, since
7 October 31, 2005, haven't you?

8 A. Yes.

9 Q. Started probably a week later, on November 7?

10 A. Yes.

11 Q. And on November 11?

12 A. Yes.

13 Q. November 15?

14 A. Yes.

15 Q. And times after that, right?

16 A. Yes.

17 Q. Right up through today, when you talked to
18 Mr. Fassbender during the break?

19 A. Yes.

20 Q. And the police have asked you the same questions
21 over, and over, and over, about October 31,
22 haven't they?

23 A. Yes.

24 Q. You give them an answer?

25 A. Yes.

1 Q. And if they don't like the answer, they ask you
2 again?

3 A. Yes.

4 Q. Now, at the time, on Halloween, 2005, there was
5 nothing really special about that day, to you,
6 other than that it was Halloween, right?

7 A. Yes.

8 Q. I mean, you had plans to go trick or treating?

9 A. Mm-hmm.

10 Q. But no big deal about October 31, 2005, other
11 than that, right?

12 A. No.

13 Q. All right. It was another school day, was a
14 Monday?

15 A. Yes.

16 Q. Every day you get picked up by the bus at about
17 the same time in the morning, for school?

18 A. Yes.

19 Q. In fact, probably like any other kid in high
20 school, you know just how long you can stall
21 before going out the door?

22 A. Yes.

23 Q. All right. So you know that the bus comes
24 between 7:08 and 7:13 in the morning, right?

25 A. Yes.

1 Q. All right. And the school -- The bell letting
2 you out of school happens at the same time every
3 day?

4 A. Yes.

5 Q. 3:05 in the afternoon?

6 A. Yes.

7 Q. School bus is there?

8 A. Yes.

9 Q. Back -- Back in October, 2005, you had sort of a
10 nice female bus driver?

11 A. Yes.

12 Q. She was the same bus driver every day?

13 A. Yes.

14 Q. And then every day she takes the same route home,
15 dropping kids off?

16 A. Yes.

17 Q. So you know that -- you know, almost to the
18 minute, roughly, when you get off the bus every
19 day, right?

20 A. Yes.

21 Q. You get off the bus every day with Brendan,
22 assuming he's not sick or something?

23 A. Yeah.

24 Q. Now, that's why you are really pretty sure that
25 you got off this bus at about 3:40, something

1 like that?

2 A. Yes.

3 Q. On Halloween, 2005?

4 A. Yes.

5 Q. You and Brendan walked down the road together and
6 you both go into your house?

7 A. Yes.

8 Q. You remember, because you were asked just a week
9 later, that when you walked in, Bobby was home?

10 A. Yes.

11 Q. Bobby was sleeping.

12 A. Yes.

13 Q. Bobby was not out deer hunting?

14 A. Yes.

15 Q. You and Brendan woke Bobby up?

16 A. Yes.

17 Q. You remember doing that?

18 A. Yeah.

19 Q. And then you kind of hung out and you were on the
20 computer until it was time to go trick or
21 treating?

22 A. Yes.

23 Q. Brendan was there?

24 A. Yes.

25 Q. He stayed in the house playing video games?

1 A. Yes.

2 Q. The whole time you were there working on the
3 computer, he was playing video games?

4 A. Yeah.

5 Q. You guys have the computer and the video games in
6 the same room?

7 A. Yes.

8 Q. Bobby, at some point, left, or do you remember?

9 A. I'm not sure. I don't remember.

10 Q. Okay. But he wasn't out deer hunting; he was in
11 bed sleeping, when you got home?

12 A. Yes.

13 Q. Now, you, then, go off trick or treating at, you
14 said 5:25 or 5:30, you thought, something like
15 that?

16 A. Yes.

17 Q. But before then, Brendan hasn't left to go get
18 mail for anybody?

19 A. No.

20 Q. You go trick or treating, Brendan does not go
21 with you?

22 A. No.

23 Q. So -- But when you went trick or treating, 5:25,
24 5:30, whatever it was; it's getting dark?

25 A. Yes.

1 Q. Or dark already?

2 A. Yes.

3 Q. Okay. You are going into Two Rivers, I think?

4 A. Yes.

5 Q. I'm pronouncing that wrong, I know. It's more

6 like Two Rivers?

7 A. Two Rivers.

8 Q. All right. And so you are walking all the way up

9 that driveway to where Carmen is going to pick

10 you up, where the bus turns around?

11 A. Yes.

12 Q. Now, whether it was when you were walking down

13 that driveway from the bus, or when you are

14 walking back up to get in the car with Carmen and

15 go trick or treating; did you hear any woman, any

16 young woman's voice screaming for her life?

17 A. No.

18 Q. Do you hear any gunshots?

19 A. No.

20 Q. If you had heard gunshots, or someone screaming

21 for their life, that's something you would

22 remember?

23 A. Yes.

24 Q. All right. And one thing that the police asked

25 you over and over, if you did remember, is

1 whether you saw a fire that day?

2 A. Yes.

3 Q. Do you remember that?

4 A. Yes.

5 Q. They asked you that the first time they talked to
6 you on November 7, didn't they?

7 A. Yes.

8 Q. Which was the next Monday, right?

9 A. Yes.

10 Q. And you told them there was no fire, you didn't
11 see a fire, that's what you told them on
12 November 7, isn't it?

13 A. No.

14 Q. Well --

15 ATTORNEY KRATZ: I will need to be heard
16 outside the presence of the jury, Judge.

17 THE COURT: All right. Members of the
18 jury, we'll take a short break at this time.

19 (Jury not present.)

20 ATTORNEY STRANG: We also should excuse the
21 witness.

22 THE COURT: You may be seated. And the
23 witness will be excused out in the hallway.
24 Mr. Kratz.

25 ATTORNEY KRATZ: This is at least the

1 second time, and probably more than that, that a
2 witness in this case is going to be impeached with
3 somebody else's exhibit; that is, to be shown a
4 police report or an exhibit from somebody other than
5 the witness themselves, other than the declarant,
6 and that is hearsay.

7 If the attempt here is to refresh
8 recollection, then you can do that with the
9 witness' own statement. If the attempt is to
10 impeach the witness, then you can ask, did you
11 tell Investigator Fassbender, or whoever, such
12 and such. If they say no, then the procedure is
13 to call Investigator Fassbender to impeach, with
14 a prior inconsistent statement.

15 But using this procedure, to show a
16 witness a police report, a document that this
17 witness did not author and presumably has no
18 ability to determine its reliability or
19 authenticity, I think is improper. I have made
20 this objection before in this trial, Judge, and I
21 raise it again, because it appears that the same
22 procedure is being attempted at this time.

23 THE COURT: Mr. Strang.

24 ATTORNEY STRANG: Well, first of all, if I
25 understand the objection, the document I'm intending

1 to show him is an interview of Blaine Dassey. It is
2 not an interview of someone else. And I intend to
3 show it to him and ask him if that refreshes his
4 recollection.

5 If it does not refresh his recollection
6 about what he said, then I intend to ask him, and
7 I can read it verbatim, did you tell, you know,
8 two agents of the Division of Criminal
9 Investigation, on November 7, that there was not
10 any bonfire.

11 If he denies it and, you know, if at
12 first doesn't have his recollection refreshed and
13 then if he denies saying it, yes, you know,
14 eventually, I suppose, we would have to perfect
15 the impeachment by calling one of the reporting
16 agents or one of the agents present. But there
17 is nothing in the world wrong with showing this
18 to him to refresh his recollection, or ask him to
19 tell me whether the agent's got it wrong.

20 THE COURT: Mr. Kratz.

21 ATTORNEY KRATZ: I disagree, Judge. I
22 think he can be shown his statement. If there's a
23 written statement that this witness generated,
24 perfectly -- perfectly reasonable to show him his
25 own statement.

1 That happened with Ms Zipperer, show her
2 her statement, does that refresh your
3 recollection, she can say yes or no. But to show
4 a police report from a collateral source, from a
5 third party, and asking if this refreshes a
6 person's recollection, when they didn't create
7 it, is absolutely improper and is hearsay.

8 ATTORNEY STRANG: 906.12 allows the use of
9 anything that may refresh recollection. And
10 certainly a report of a law enforcement interview
11 with the very person falls well within the term of
12 anything.

13 THE COURT: Well, doesn't the first step
14 have to be to ask the witness if looking at the
15 document would refresh the witness' recollection.

16 ATTORNEY STRANG: I can do that, sure.

17 THE COURT: And what if he says no?

18 ATTORNEY STRANG: Well, then, I will --
19 then, I will ask him if he said it.

20 THE COURT: Do we know whether or not the
21 witness has ever seen this document before?

22 ATTORNEY STRANG: I have -- I have no idea.
23 Now, if Mr. Kratz is suggesting that there's a
24 handwritten statement from Blaine Dassey, then I
25 should look again.

1 ATTORNEY KRATZ: No, I said if there was,
2 he could use it as in Mrs. Zipperer's refreshing
3 recollection.

4 THE COURT: So there's not a statement of
5 this witness.

6 ATTORNEY KRATZ: That's correct. No
7 handwritten statement.

8 THE COURT: What is the State's authority
9 for the proposition that a witness' recollection can
10 only be refreshed by looking at a statement of the
11 witness, him or herself.

12 ATTORNEY STRANG: Well, 906.12 starts with,
13 if a witness uses a writing to refresh the memory
14 for the purpose of testifying, an adverse party is
15 entitled to have it produced at the hearing. That's
16 not what we're talking about here, Judge.

17 This witness hasn't said, there's some
18 writing that can refresh my recollection, there's
19 some business records, there's some document that
20 I know of that exists in the world that can
21 refresh my recollection. That's 906.12.

22 THE COURT: Maybe I'm missing something
23 here, but I'm not sure the parties disagree.
24 Mr. Strang asked the witness if looking at a police
25 report, a police interview with the witness, would

1 refresh the witness' recollection. The witness may
2 say yes or no.

3 It's possible the witness may remember
4 that somebody was taking notes and maybe looking
5 at the document would refresh the recollection,
6 in which case the document doesn't get introduced
7 as evidence, but the witness can look at it. If
8 the witness says, no, I don't think that would
9 refresh my recollection, then Mr. Strang doesn't
10 get to show it to the witness and moves on to the
11 next question.

12 ATTORNEY STRANG: Well, then we go to
13 906.13 and I ask him -- he gets an opportunity to
14 admit or deny that he made the statement, and then
15 impeachment would be perfected by calling someone
16 else who was present or heard it.

17 THE COURT: You mean you would call
18 Mr. Fassbender or someone else later?

19 ATTORNEY STRANG: It wasn't Mr. Fassbender,
20 but --

21 THE COURT: Whoever.

22 ATTORNEY STRANG: Right. Someone who was
23 present, one of the two authors of the report,
24 hopefully.

25 THE COURT: All right. Well, let's -- If

1 there is an objection to that, it's an objection for
2 a later time, I believe. All right. It seems to me
3 that Mr. Strang can ask the witness whether or not
4 reviewing the report, if he knows of its existence,
5 would refresh his recollection.

6 If it does, the witness can look at it.
7 Doesn't mean the report becomes evidence. If
8 not, then, Mr. Strang moves on to the next
9 question. Let's bring the jurors back in.

10 (Jury present.)

11 THE COURT: You may be seated. Mr. Strang,
12 you may proceed.

13 ATTORNEY STRANG: Thank you.

14 Q. (By Attorney Strang)~ Let's go back where we were
15 when we left off. Do you suppose that if you
16 looked at a police report from your November 7,
17 that first interview with some agents, that it
18 might help you remember today, what you told them
19 then?

20 A. Yes.

21 Q. I have marked this with an exhibit number for
22 you; it's Exhibit 355. It's a DCI report. The
23 only page numbers here are ones that I have
24 added, but I'm going to show you the sixth page.

25 THE COURT: Mr. Strang, I'm going to ask

1 that you show Mr. Kratz which page you are going to
2 be looking at.

3 ATTORNEY STRANG: Sure. Absolutely. All
4 the pages are unnumbered, it's the sixth page of the
5 report. And specifically, counsel, I'm going to be
6 inviting him to look at the second paragraph on page
7 six.

8 Q. (By Attorney Strang)~ So now I will show it to
9 you. You can look at anything you want in here,
10 but I thought that that second paragraph right
11 there might help refresh your recollection. Now,
12 don't read it out loud, just read it to yourself
13 and see if that helps you remember. Is that any
14 help?

15 A. Yeah.

16 Q. Okay. Now, on Monday, November 7, 2005, when the
17 officers asked you --

18 THE COURT: Just a second, Mr. Strang, can
19 you pick up the document.

20 ATTORNEY STRANG: I would be happy to,
21 sure.

22 Q. So, Monday, November 7, Monday after Halloween,
23 when the officers asked you if there was any
24 bonfires last week, you told them there was not;
25 is that right?

1 A. Yeah.

2 Q. And you said you would know if there was a
3 bonfire because you always like to have bonfires.

4 A. Yes.

5 Q. Steve would have bonfires back in that burn area,
6 occasionally?

7 A. No.

8 Q. Didn't Steve have fires in his burn area once in
9 a while?

10 A. Which burn area?

11 Q. Behind the garage that you were telling Mr. Kratz
12 about?

13 A. No.

14 Q. Never any bonfires back there? No?

15 A. No.

16 Q. Just this one time?

17 A. Yes.

18 Q. Didn't Steve invite you later that week to bring
19 some friends over for a bonfire?

20 A. Yes.

21 Q. But that never happened?

22 A. No.

23 Q. Your friends didn't want to come?

24 A. No.

25 Q. But Steve, when I say Steve, your Uncle Steve,

1 made the invitation to you to bring other kids,
2 other high school students over, right?

3 A. Yes.

4 Q. Invitation that, had it been accepted, would have
5 had a bunch of kids standing around that burn
6 area?

7 A. Yes.

8 Q. Maybe poking around in the fire?

9 A. Yes.

10 Q. Or watching it for some hours?

11 A. Yes.

12 Q. And you didn't tell the police on November 7
13 anything about any fire in this burn barrel
14 either, did you?

15 A. Yes.

16 Q. Yes, you did tell them about a fire in the burn
17 barrel?

18 A. Yes.

19 Q. Do you think that would be in the report or maybe
20 they forgot that?

21 A. I don't know.

22 Q. Okay. You do remember eventually telling the
23 police about a fire in the burn barrel, right?

24 A. Yes.

25 Q. Was that the second or third time they asked you

1 about it?

2 A. Yes.

3 Q. Not the first time they asked you?

4 A. No.

5 Q. Now, sometimes when Steve has a fire, he burns
6 wood, you know that?

7 A. Yes.

8 Q. Sometimes he burns tires?

9 A. Yes.

10 Q. And you guys all have burn barrels out by your
11 houses?

12 A. Yes.

13 Q. When you were interviewed on November 7, 2005,
14 you told the police that you actually hadn't seen
15 Steve, your Uncle Steve, at all when you walked
16 down the lane from the school bus to your house,
17 didn't you?

18 A. No.

19 Q. We'll go back to Exhibit 355 again. And now I'm
20 going to be going to page four. And I will show
21 you that again; do you think that might refresh
22 your recollection, again, about whether you were
23 asked if you saw Steve at all when you were
24 walking home from school and what you told the
25 police on November 7?

1 A. Yes.

2 Q. Now, Mr. Dassey, around page four of that same
3 exhibit, 355, look at anything you like but,
4 again, the second paragraph on the page is the
5 one that I thought might help refresh your
6 recollection. Does that help?

7 A. Yes.

8 Q. I will take it back from you, no cheat sheets.
9 Now that you have had a chance to refresh your
10 recollection about what you told the police, it's
11 true that they had asked you if anything happened
12 between 3:30 and 5 on that Halloween afternoon
13 and you said that nothing happened, right?

14 A. Yes.

15 Q. And they asked you specifically if you saw Steve
16 during that time period and you said that you did
17 not?

18 A. Yes.

19 Q. And you also were asked if Steve had asked you to
20 help move this Suzuki or the snowmobile and you
21 said, no, he hadn't asked you to help move the
22 Suzuki or the snowmobile, right?

23 A. Yes.

24 Q. And you told them that was something you would
25 remember if Steve had asked you?

1 A. Yes.

2 Q. So, same thing happened again on Friday,
3 November 11, same sort of questions from the
4 police, weren't there?

5 A. Yes.

6 Q. And, again, you told them that you did not see a
7 fire in a burn barrel, or Steve with a white
8 plastic bag; that's what you told the police that
9 Friday, November 11, right?

10 A. Yes.

11 Q. And finally, then, on the 15th of November, they
12 came back and they asked you again and that's --
13 that's when you said you saw Steve putting a
14 white plastic bag in the burn barrel; is that
15 right?

16 A. Yes.

17 Q. Now, if you saw Steve put a white plastic bag in
18 his burn barrel on Halloween, as you told the
19 police, then, on November 15, that's what 15, 16
20 days later?

21 A. Yes.

22 Q. Something -- something memorable about seeing
23 your uncle put trash out in the burn barrel?

24 A. Yeah.

25 Q. Really?

1 A. Yes.

2 Q. He doesn't put trash in the burn barrel?

3 A. Yes, he does.

4 Q. Okay. No special reason you would have been
5 paying attention to that on Halloween, is there?

6 A. No.

7 Q. No. And when you were asked by Mr. Kratz, you
8 said, yeah, I think that was at 3:46 or 3:47
9 p.m.; do you remember saying that?

10 A. Yes.

11 Q. No special reason you would have remembered today
12 whether Mr. Avery put a white bag of trash in his
13 burn barrel at 3:46 or 3:47 p.m., is there?

14 A. No.

15 Q. Now, this -- this Suzuki, you were not asked to
16 help move the Suzuki or the snowmobile around?

17 A. No.

18 Q. No. And that Suzuki actually had been outside
19 Steve's garage for a week or two before
20 Halloween, right?

21 A. Yes.

22 Q. Do you remember, Mr. Dassey, being interviewed by
23 the police, oh, I don't know, I guess the third
24 time, that November 15 interview; do you remember
25 that interview taking place in a restaurant?

1 A. Yes.

2 Q. The Cedar Ridge Restaurant?

3 A. Yes.

4 Q. Over in Maribel, near you?

5 A. Yes.

6 Q. Okay. Was your mom there for that?

7 A. Yes.

8 Q. Just you and your mom?

9 A. Yup.

10 Q. And then a couple of officers or agents?

11 A. Yes.

12 Q. And did you guys sit across the table from the

13 agents, in the restaurant?

14 A. Yes.

15 Q. Did there come a time in that discussion between

16 you and your mom and the agents, when the agents

17 sort of got in your face a little bit?

18 A. Yes.

19 Q. What were they doing to get in your face?

20 A. They were arguing.

21 Q. They were arguing?

22 A. Yes.

23 Q. They raised their voices?

24 A. Yes.

25 Q. They got angry?

1 A. Yes.

2 Q. They accused you guys of not accepting that Steve
3 was guilty, didn't they?

4 A. Yes.

5 Q. They accused you of embarrassing yourselves by
6 believing in your uncle, didn't they?

7 A. Yes.

8 Q. They tried to convince you that Steven Avery was
9 guilty, didn't they?

10 A. Yes.

11 Q. And they got loud about it, at the restaurant?

12 A. Yes.

13 Q. And then they stomped off and left you there,
14 when you wouldn't turn on your uncle, didn't
15 they?

16 A. Yes.

17 Q. And that was back in November 15 of 2005.

18 A. Yes.

19 ATTORNEY STRANG: That's all I have.

20 **REDIRECT EXAMINATION**

21 BY ATTORNEY KRATZ:

22 Q. Blaine, at that November 15 meeting, before they
23 stomped off, did they tell you to tell the truth?

24 A. Yes.

25 Q. Were they upset at you because they thought that

1 you weren't being honest with them and telling
2 the truth?

3 A. No.

4 Q. During that day, during the 15th, as Mr. Strang
5 has mentioned, do you recall telling the police
6 officers that, in fact, you did see your Uncle
7 Steven burning in his burn barrel, putting this
8 white plastic bag in there?

9 A. Yes.

10 Q. Do you recall at that same interview, telling
11 these same officers, that you saw a fire, a
12 bonfire the night of the 31st of October?

13 A. Yes.

14 Q. And is that the time that you identified that it
15 was your Uncle Steven, and Steven alone, that you
16 saw standing by the fire?

17 A. Yes.

18 Q. How old were you at the time, Blaine?

19 A. 17.

20 Q. And as a 17 year old young boy, was there a lot
21 going on in your household at the time?

22 A. Yes.

23 Q. Was there a lot of pressure being put on you by
24 family members on what to say or what not to say?

25 A. No.

1 Q. Was there any pressure, or did you have any
2 concerns about your Uncle Steven at that time?

3 A. No.

4 Q. Do you recall telling investigators that you were
5 scared of your Uncle Steven, that's the word you
6 used, scared; do you remember saying that?

7 A. Yes.

8 Q. Yes?

9 A. Yes.

10 Q. What were you scared about with your Uncle
11 Steven; why were you afraid to tell the truth
12 about your Uncle Steven?

13 ATTORNEY STRANG: Object to the State's
14 testimony, argumentative.

15 ATTORNEY KRATZ: I can rephrase, Judge.

16 Q. (By Attorney Kratz)~ What were you scared about
17 with your Uncle Steven?

18 A. Because he used to boss us around.

19 Q. Who's us?

20 A. Me and my brothers.

21 Q. Were you afraid what your Uncle Steven might do
22 to you if you told the statement or testified
23 against him?

24 A. No.

25 Q. You were just generally scared of him?

1 A. Yes.

2 Q. All right, Blaine, that's all I have for you.

3 ATTORNEY KRATZ: Thank you, Judge.

4 THE COURT: Mr. Strang.

5 **RECROSS-EXAMINATION**

6 BY ATTORNEY STRANG:

7 Q. Well, Mr. Dassey, when you -- when you finally
8 told the police on November 15 that there was
9 this bonfire going and you saw it when you came
10 home from trick or treating?

11 A. Yes.

12 Q. As Mr. Kratz said, you said you saw only one
13 person there?

14 A. Yes.

15 Q. You went in your house?

16 A. Yes.

17 Q. And you told them, too, that you remembered
18 seeing Brendan and that you talked with Brendan
19 about trick or treating, in your house, when you
20 got home, didn't you?

21 A. Yes.

22 Q. And then you went to bed?

23 A. Yes.

24 ATTORNEY STRANG: That's all I have.

25 THE COURT: All right. This witness is

1 excused.

2 ATTORNEY KRATZ: State will call Bob Fabian
3 to the stand, your Honor.

4 THE CLERK: Raise your right hand.

5 **ROBERT FABIAN**, called as a witness
6 herein, having been first duly sworn, was
7 examined and testified as follows:

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

10 THE WITNESS: Robert Fabian, F-a-b-i-a-n.

11 **DIRECT EXAMINATION**

12 BY ATTORNEY KRATZ:

13 Q. Mr. Fabian, do you know the defendant, Steven
14 Avery?

15 A. Yes, I do.

16 Q. He's the gentleman seated in the courtroom next
17 to his lawyers; is that right?

18 A. That's correct.

19 Q. On October 31st of 2005, do you remember seeing
20 Mr. Avery?

21 A. Yes, I do.

22 Q. Now, do you know any of the other members of the
23 Avery family?

24 A. Yes, I do.

25 Q. And is there one of the Avery's that you know

1 better than the others?

2 A. Probably Earl.

3 Q. Who is Earl Avery?

4 A. Would be Steven's brother.

5 Q. On October 31st of 2005, do you recall being with
6 Earl Avery that day?

7 A. Yes, I do.

8 Q. Now, are Earl and you friends?

9 A. Yes.

10 Q. On the 31st of October, that would be Halloween;
11 is that right?

12 A. That's correct.

13 Q. On that date, were you and Earl doing something
14 together?

15 A. Yes, we went rabbit hunting.

16 Q. And where did you go rabbit hunting?

17 A. In the junkyard.

18 Q. By the junkyard, are you referring to the Avery
19 Salvage Yard?

20 A. That's correct.

21 Q. And was there a mode of transportation or a way
22 that you were getting around the junkyard while
23 you and Earl were rabbit hunting?

24 A. Yes, we were using a golf cart.

25 Q. Do you know whose golf cart that was?

1 A. I believe Mrs. Avery.

2 Q. You mean Delores?

3 A. Yes, correct.

4 Q. Earl's mom?

5 A. Yes.

6 Q. When did you begin rabbit hunting that day; do
7 you remember?

8 A. I believe I got there, it was about 10 to 5
9 quarter to 5, something like that.

10 Q. All right. Do you know about what time it gets
11 dark or got dark around the 31st of October?

12 A. I do remember when I got home it was like quarter
13 to 6.

14 Q. Was it getting dark or was it dark by about
15 quarter to 6?

16 A. I believe it was, yes.

17 Q. Just before getting dark, or just before your
18 rabbit hunt was completed, did you find your way
19 up towards Steven Avery's trailer?

20 A. Yes, we did.

21 Q. I'm going to show you an exhibit which has been
22 received. It's No. 114. It's a computer
23 animation, a drawing, but will this exhibit help
24 you describe or explain the rest of your
25 testimony?

1 A. I believe so.

2 Q. Do you recognize that general area?

3 A. Yes, I do.

4 Q. What is that area, generally?

5 A. Steven Avery's residence.

6 Q. All right. Now, do you see both a burn barrel

7 there, a garage, a trailer, and a reddish maroon

8 either Voyager or Caravan?

9 A. Yes, I do.

10 Q. All right. Now, on the 31st, that is, on

11 October 31st of '05, did that area generally look

12 like that?

13 A. Somewhat, yes.

14 Q. Were there some differences on the 31st of

15 October?

16 A. Yes, I believe there was a snowmobile trailer

17 hooked up to the truck. And I don't believe the

18 garage doors were open. And I don't remember the

19 van sitting there.

20 Q. All right. Let's talk about each of those things

21 individually. First of all, let me talk about

22 the garage door itself. About what time -- If

23 you can place, as best you can recall, about what

24 time were you in that general vicinity?

25 A. I would say maybe 20 after 5.

1 Q. This is p.m.?

2 A. Correct.

3 Q. And at 5:20 p.m., did you have occasion to look
4 at Mr. Avery's garage door?

5 A. I didn't specifically look at it, but it was
6 closed, I believe, at the time.

7 Q. All right. With the garage door being closed,
8 were you able to see what was in the garage door
9 at the time?

10 A. No.

11 Q. There's some other things on this diagram,
12 specifically the burn barrel; do you remember
13 that barrel on the 31st of October?

14 A. Yes, I do.

15 Q. Tell the jury what you remember about that burn
16 barrel at about 5:20 p.m. on the 31st of October?

17 A. When me and Earl had pulled up on the golf cart,
18 we had stopped in between the house and the
19 garage. And the smoke from the burn barrel was
20 blowing right in my face. So I told Earl to move
21 ahead.

22 Q. You have got a laser pointer right in front of
23 you. I don't know if you know how to work that
24 thing. There's a button on it. If you can point
25 that at the exhibit. First of all, point out the

1 burn barrel; what are you talking about?

2 A. Right there.

3 Q. All right. You and Earl were both on the golf
4 cart?

5 A. That's correct.

6 Q. Where were you parked at first with the golf
7 cart?

8 A. When we had pulled up, we had come from this
9 direction, and we had pulled up in here,
10 somewhere up in here.

11 Q. You are pointing to an area which is still on
12 what would be the driveway area, but just south
13 of, or south-ish, of the burn barrel; is that an
14 accurate description?

15 A. That is correct.

16 ATTORNEY STRANG: From the east to the
17 west, I think the witness was showing.

18 ATTORNEY KRATZ: Yes, I'm sorry.

19 Q. (By Attorney Kratz)~ You were pointing from the
20 east to the west?

21 A. Yes.

22 Q. Towards Steven's trailer?

23 A. Correct.

24 Q. Did you actually stop in the golf cart? Did you
25 have -- Did the golf cart come to a complete

1 stop?

2 A. Yes, we had stopped. And that's when the smoke
3 was blowing in my face.

4 Q. Okay. Let's talk about the smoke and where was
5 it coming from?

6 A. It was coming from the burn barrel.

7 Q. Can you show us again where that was coming from?

8 A. Over there, it was coming from there and coming
9 this way.

10 Q. All right. Describe for the jury, as best that
11 you can remember, if you can remember, at about
12 5:20 p.m.; what was the smoke like?

13 A. It was kind of a heavier smoke. And it smelled
14 like plastic. It didn't smell like regular
15 garbage.

16 Q. Well, let's talk about that a little bit. Have
17 you smelled plastic, or plastic components being
18 burned before?

19 A. As a kid growing up in the country, yes, I burned
20 a lot of garbage.

21 Q. All right. Is it your testimony that burning
22 plastic smells different than just regular
23 burning garbage?

24 A. That's correct.

25 Q. And what did you smell that day?

1 A. It was plastic.

2 Q. Now, did you ever get out of the golf cart and
3 look in the burn barrel and see what kind of
4 plastic things were burning in there?

5 A. No, I did not.

6 Q. When you stopped the golf cart up towards
7 Steven's trailer, did you actually have occasion
8 to see Steven Avery?

9 A. Yes, we did.

10 Q. And can you describe where you saw him, or where
11 he was coming from?

12 A. The first we had seen him is, we were pulling up
13 here, on the golf cart, we were not stopped yet.
14 And he had came out of the door of the house, and
15 come down the steps, and was headed towards the
16 garage.

17 Q. All right. Did he make it all the way to the
18 garage?

19 A. No, he did not.

20 Q. What happened then?

21 A. I believe Earl asked him what he was doing, and
22 he came walking over to the golf cart.

23 Q. Did you have a conversation with him at that
24 time?

25 A. Yes.

1 Q. All right. How long were you in the golf cart?
2 How long was this smoke coming toward you at the
3 time?

4 A. The smoke was only bothering me for a few seconds
5 or so, and I had told Earl to pull ahead, made
6 him pull ahead so it wouldn't bother me. So
7 that's when he had pulled ahead.

8 Q. Mr. Fabian, could you describe, I know you said
9 it was 20 after 5, but could you describe the
10 lighting conditions; what time of day was it?
11 How close was it getting towards dusk?

12 A. It was getting towards dark, getting relatively
13 hard to kind of see already.

14 Q. All right.

15 ATTORNEY KRATZ: Good enough. That's all I
16 have for this witness, Judge. Thank you.

17 THE COURT: I think at this point we'll
18 take our lunch break and start back with
19 cross-examination after lunch. We'll resume at
20 1:00. Members of the jury, I will remind you again
21 not to discuss the case in any fashion over the
22 lunch break. You are excused at this time.

23 (Jury not present.)

24 THE COURT: You may be seated. Counsel, I
25 just want to check the agenda for this afternoon.

1 Mr. Kratz.

2 ATTORNEY KRATZ: Yes.

3 THE COURT: Who's on your witness list for
4 this afternoon?

5 ATTORNEY KRATZ: After Mr. Tadych, Judge,
6 we do have the two telephone records custodians.
7 Excuse me. We also have available two law
8 enforcement officials who searched what we now know
9 as the burn area. So we can proceed with any of
10 those. Because the records custodians are
11 relatively short. And they have come here today, I
12 would like to put in those records and their
13 testimony. And so if I had a preference in order, I
14 would call Mr. Tadych, the two records custodians,
15 and then we would move on to the burn area search.

16 THE COURT: Mr. Strang.

17 ATTORNEY STRANG: Probably we would be
18 better off discussing scheduling off the record.
19 Would that make sense?

20 THE COURT: All right. We'll go off the
21 record at this time.

22 (Noon recess taken.)

23 (Jury present.)

24 THE COURT: Mr. Strang, you may begin your
25 cross-examination of the witness.

1 CROSS-EXAMINATION

2 BY ATTORNEY STRANG:

3 Q. The following afternoon, you get to the Avery
4 Salvage property to see your friend, Earl, at
5 about 4:45, 4:50?

6 A. That's correct.

7 Q. Quarter to 5, 10 to 5, something like that?

8 A. Yeah.

9 Q. The two of you are planning in advance to do some
10 rabbit hunting?

11 A. I think I showed up unannounced.

12 Q. Showed up with a rifle though, to do some
13 hunting?

14 A. Correct.

15 Q. Earl had a rifle to do some hunting?

16 A. I believe he was working at the time when I
17 arrived.

18 Q. I'm sorry?

19 A. He was working at the time I arrived.

20 Q. Mm-hmm.

21 A. Which would have been at closing time.

22 Q. But he also participated in the rabbit hunt?

23 A. Correct.

24 Q. That required a rifle?

25 A. Yes, I believe.

1 Q. You weren't snaring rabbits?

2 A. No.

3 Q. Or trying to shoot them with a bow and arrow?

4 A. No.

5 Q. Okay. The two of you then do that, and I take it

6 you have to break off rabbit hunting before it's

7 dark out?

8 A. Correct.

9 Q. You have to be able to see the rabbit?

10 A. Correct.

11 Q. The time over at -- near Steven Avery's trailer,

12 then, is as darkness is approaching?

13 A. That's correct.

14 Q. You are nearing the end of your hunt?

15 A. That is correct.

16 Q. It has taken you about 15 minutes to drive from

17 your house to the Avery Salvage Yard?

18 A. Approximately 15.

19 Q. It will take you about 15 minutes to get back,

20 give or take?

21 A. That's correct.

22 Q. And you think you are back by quarter to 6?

23 A. That's correct.

24 Q. That is, back at your house?

25 A. At my house, yes.

1 Q. What's your -- What's your rabbit gun?

2 A. I have a .22.

3 Q. Okay. Standard sort of small game gun?

4 A. Yes.

5 Q. Did you guys get any rabbits that day?

6 A. No, we did not.

7 Q. The smoke that you smell near the burn barrel,

8 you are in the path of it for a few seconds?

9 A. That's correct.

10 Q. You get out of the path of it?

11 A. That's correct.

12 Q. You know that from living in the country

13 yourself, that burn barrels are for burning

14 garbage, typically?

15 A. Yes.

16 Q. Garbage may include plastic milk cartons?

17 A. That's correct.

18 Q. Plastic cartons from other things from the

19 grocery store?

20 A. That's correct?

21 Q. Maybe a plastic garbage bag itself?

22 A. That's correct.

23 Q. All kinds of plastic items that may be in

24 garbage, when you are burning it?

25 A. Yes.

1 Q. You didn't look in the burn barrel?
2 A. No, I did not.
3 Q. You noticed that the barrel was already burning,
4 obviously?
5 A. Yes.
6 Q. Didn't see anybody put anything in the burn
7 barrel?
8 A. No, I didn't.
9 Q. Saw at the side that there was -- Well, let me
10 ask you, you didn't smell a tire burning?
11 A. No.
12 Q. You know the smell of a burning rubber tire?
13 A. Yes.
14 Q. Didn't see heavy black smoke coming out?
15 A. No.
16 Q. All right. Didn't see a tire or a rim assembly
17 lying next to the burn barrel either?
18 A. No, not that I recall.
19 Q. You certainly saw no larger fire going in a burn
20 area?
21 A. No, I did not.
22 Q. Didn't hear any screaming?
23 A. No, I did not.
24 Q. Didn't hear any gunshots coming from that area?
25 A. No, I did not.

1 ATTORNEY STRANG: That's all I have. Thank
2 you.

3 THE COURT: Any redirect?

4 ATTORNEY KRATZ: Not of this witness,
5 Judge.

6 THE COURT: Very well. You are excused.

7 THE WITNESS: Thank you.

8 ATTORNEY KRATZ: State would call Scott
9 Tadych to the stand.

10 THE CLERK: Please raise your right hand.

11 **SCOTT TADYCH**, called as a witness
12 herein, having been first duly sworn, was
13 examined and testified as follows:

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

16 THE WITNESS: Scott Tadych, T-a-d-y-c-h.

17 **DIRECT EXAMINATION**

18 BY ATTORNEY KRATZ:

19 Q. Mr. Tadych, I'm going to ask you some questions
20 regarding October, 2005. Let me first ask if you
21 remember that particular day?

22 A. Yes.

23 Q. And can you tell the jury how is it that you
24 remember that day, how that day sticks out in
25 your mind?

1 A. Um, it was the fire that I remember the most of
2 that day.

3 Q. You said the fire that you remember most, can you
4 tell the jury what fire you are talking about?

5 A. The fire by Steven's trailer.

6 Q. Let's back up just a little bit. Sometime on the
7 31st, that afternoon of the 31st of October,
8 2005, do you remember what you were doing?

9 A. Yes.

10 Q. Could you tell the jury what you did that
11 afternoon, please.

12 A. That afternoon -- or that morning, I was up by my
13 mother, she had surgery. Then I left her and I
14 went to the woods hunting. I went to my trailer
15 and then I went to the woods hunting.

16 Q. What kind of hunting did you do that day, Mr.
17 Tadych?

18 A. Archery hunting. Bow hunting, archery.

19 Q. About what time was it that you got out into the
20 woods, or that you got to your deer hunting
21 stand?

22 A. About 3:00.

23 Q. On your way to deer hunting, that would be just
24 before 3:00 p.m., did you observe anybody on the
25 roadway?

1 A. Yes, I did.

2 Q. Could you tell the jury who you saw on the
3 roadway before 3:00 that afternoon?

4 A. I saw Bobby Dassey on Highway 147.

5 Q. Which way were you going and which way was Bobby
6 going, if you recall?

7 A. I was going west and he was going east.

8 Q. Where is it, Mr. Tadych, that you hunt, or at
9 least that day, where was it that you were going
10 hunting?

11 A. In Kewaunee.

12 Q. Now, at that time, that is on the 31st of
13 October, of 2005, did you know anybody who lived
14 on what is known as the Avery Salvage Property?

15 A. Yes, I did.

16 Q. Who did you know on that property?

17 A. Everybody that lived there.

18 Q. Okay. Is there anybody there that you knew
19 better than somebody else?

20 A. Barb Janda, I guess.

21 Q. All right. Well, who is Barb Janda now to you?

22 A. My wife.

23 Q. I suspect you weren't married to anybody else on
24 that property?

25 A. No.

1 Q. All right. I'm going to show you what's been
2 marked for and received as Exhibit No. 98. It's
3 a computer generated diagram; do you recognize
4 this area of the Avery Salvage Property?

5 A. Yes.

6 Q. And will this diagram assist you in describing
7 for the jury what you saw that afternoon and
8 early that evening?

9 A. Yes.

10 Q. Mr. Tadych, after your hunt was completed, about
11 what time was that?

12 A. About 5, 10 after 5 or so, 5:00, whenever dark
13 was.

14 Q. Do you remember if you had gotten anything that
15 day?

16 A. No.

17 Q. At 10 after 5, or sometime after 5:00 p.m., tell
18 the jury where you went, please.

19 A. I went back to the Janda's residence, the Dassey
20 residence, to pick up Barb to go back to Green
21 Bay to see my mother.

22 Q. All right. Do you remember what kind of surgery
23 your mother had that day?

24 A. She had back surgery.

25 Q. Barb, at that time, Barb Janda, what was your

1 relationship with her?

2 A. We were friends, I guess.

3 Q. All right. Were you dating at the time?

4 A. Yes.

5 Q. Do you remember about what time you got to Barb

6 Janda's house to pick her up that night?

7 A. Which time? What do you mean, after 5:00?

8 Q. Well, after you went hunting; did you stop?

9 A. Yes, I did.

10 Q. Was Barb home?

11 A. Yup.

12 Q. Do you remember, did she have work at that time?

13 Was she employed?

14 A. Yes, she was working.

15 Q. About what time was it that you got to her house,

16 if you remember?

17 A. Between 5 and quarter after, quarter after 5, 5,

18 something like that, around in there.

19 Q. Sometime around 5:15 then, when you got to her

20 house -- By the way, what kind of a vehicle were

21 you driving; do you recall?

22 A. A green Ford Ranger.

23 Q. When you got to her vehicle in the green Ford

24 Ranger, can you tell us where you parked?

25 A. When I got to her home?

1 Q. Yeah. Mr. Fassbender is going to give you a
2 laser pointer to help you describe for the jury
3 where you parked.

4 A. Right about there.

5 Q. And you are pointing which would be just to the
6 west --

7 A. Yup.

8 Q. -- of a purplish vehicle in what would be a
9 circle driveway; is that right?

10 A. Yup.

11 Q. And that's on Exhibit No. 98. Mr. Tadych, when
12 you parked that vehicle there sometime at about
13 5:15 p.m.; did you notice anything, or observe
14 anything unusual around that property? If you
15 recall, if not, we'll move on.

16 A. I don't recall at that time.

17 Q. Did you pick up Barb then?

18 A. Yes, I did.

19 Q. And where did you guys go?

20 A. Back to Green Bay.

21 Q. Did you visit your mother in the hospital?

22 A. Yes.

23 Q. How long did that visit last; do you recall?

24 A. I was up there until probably -- I don't know,
25 7:30, quarter after 7, 7:30.

1 Q. Sometime after 7:30 p.m., then, did you return to
2 the Janda property?

3 A. Yes, I did.

4 Q. And were you still with Barb at the time?

5 A. Yes, I was.

6 Q. When you got back to the Janda property, was it
7 light out or dark out --

8 A. It was dark.

9 Q. -- at the time? Okay. Mr. Tadych, I'm going to
10 have to remind you to wait until my questions are
11 done so that the court reporter can write it all
12 down; is that okay?

13 A. Fine.

14 Q. All right. When you got back -- By the way, why
15 did you go back to the Janda property at that
16 time?

17 A. To drop Barb off at her house.

18 Q. And can you tell the jury why, please.

19 A. Drop her off at the house?

20 Q. Yes.

21 A. That's where she lived, I was going home.

22 Q. Were you going to see her later that night?

23 A. Yes, I was.

24 Q. So why did you stop at Barb's house?

25 A. To drop her off so she can get her vehicle.

1 Q. All right. In dropping Barb off so she could get
2 her vehicle, can you tell us where you parked at
3 that time?

4 A. Right about -- I come in and I parked right about
5 there.

6 Q. And if you can just use the laser point and tell
7 us from which way did you come in; do you
8 remember?

9 A. (Witness demonstrating.)

10 Q. All right. There's a purplish vehicle in front
11 of the residence; was that purple vehicle in that
12 circle driveway when you got there on the 31st?

13 A. I don't remember.

14 Q. But you came in from what would be a generally
15 easterly direction, you were generally going
16 west; is that right?

17 A. Yes.

18 Q. Did you park your vehicle?

19 A. Just long enough for her to get out of my
20 vehicle.

21 Q. And who is her?

22 A. Barb Janda.

23 Q. Did Barb get out of your vehicle?

24 A. Yes, she did.

25 Q. Where did Barb go, if you saw her?

1 A. She went towards the house.

2 Q. Towards whose house?

3 A. To her house.

4 Q. All right. At the time that you dropped Barb
5 off, do you know about what time it was?

6 A. 7:30, quarter to 8, something like that.

7 Q. About 7:30 to 7:45 p.m., did you notice anything
8 unusual around the property at that time?

9 A. Yes, I did.

10 Q. Could you tell the jury what you saw at that
11 time, please.

12 A. I saw a big fire.

13 Q. Can you tell the jury where you saw the fire,
14 please.

15 A. Right there.

16 Q. You are pointing to an area just south of the
17 garage known as the Steven Avery garage; is that
18 right?

19 A. Yeah.

20 Q. Could you describe that fire for us, Mr. Tadych.

21 A. It was a big fire. It was bigger than normal.

22 Q. That's got a couple aspects to it. I'm going to
23 go one at time. First of all, you said that it
24 was a fire; did you see flames?

25 A. Yes, I did see flames.

1 Q. Did you notice if anybody was standing in the
2 area or around the fire? Did you notice somebody
3 back there?

4 A. Yes, I did.

5 Q. Do you know the defendant, Steven Avery?

6 A. Yes, I do.

7 Q. And did you see Steven Avery standing next to or
8 near that fire?

9 A. Yes, I did.

10 Q. Did you see what Steven Avery was doing at the
11 time?

12 A. Standing there, standing by the fire.

13 Q. All right. Are you able to estimate, from your
14 observations, how high or how tall the flames
15 were as you were watching there about 7:45?

16 A. They were almost as tall as the garage.

17 Q. All right. So --

18 A. Eight, ten feet. I don't know, ten feet maybe,
19 ten feet tall the flames were.

20 Q. It was a big fire?

21 A. It was a big fire.

22 Q. All right. Did you ever get out of your vehicle
23 at that time?

24 A. No, I did not.

25 Q. Did you ever approach the fire, or approach

1 Mr. Avery at that time?

2 A. No, I didn't.

3 Q. Where did you go then, Mr. Tadych?

4 A. I went back to where I was living at the time,
5 the trailer house on 147.

6 Q. I'm sorry, could you tell us what community that
7 was.

8 A. Mishicot.

9 Q. About how far away was your trailer from your
10 girlfriend Barb's trailer?

11 A. About 2-miles, 2 miles away.

12 Q. Sometime shortly after you got to your house,
13 that is sometime -- By the way, when did you get
14 to your house?

15 A. About quarter to 8.

16 Q. Okay. Do you know if it was before 8:00 or --

17 A. Before 8:00.

18 Q. -- how do you remember that?

19 A. Because I wanted to go home and watch a TV show.

20 Q. Which show did you want to go watch?

21 A. It was *Prison Break*, actually.

22 Q. Started at 8:00?

23 A. Yeah, it did.

24 Q. Did you get home before the show started?

25 A. Yes, I did.

1 Q. Sometime shortly after you got home, Mr. Tadych,
2 were you joined at your house by anybody?

3 A. Barb Janda.

4 Q. Do you know about what time Barb got to your
5 house?

6 A. I don't recall what time she got there, but it
7 was shortly after.

8 Q. Do you remember that night how long Barb stayed
9 at your house or how long she visited?

10 A. A couple hours, she was there.

11 Q. Did she spend the evening or did she leave to go
12 home at some point?

13 A. She left and went home.

14 Q. And do you have an estimate, as you think back,
15 as to when she left?

16 A. About 10:30, 11:00.

17 Q. That's your best estimate as you sit here today?

18 A. Yes.

19 ATTORNEY KRATZ: I think that's all I have,
20 Mr. Tadych. Thank you, sir.

21 THE COURT: Mr. Strang.

22 **CROSS-EXAMINATION**

23 BY ATTORNEY STRANG:

24 Q. Mr. Tadych, you remember October 31, 2005,
25 because you skipped work entirely that day?

1 A. I did not skip work, I took vacation that day to
2 go be with my mother.

3 Q. That is, you were not at work.

4 A. Right, I wasn't at work.

5 Q. I didn't mean to suggest it was unexcused, but
6 you did not go to work on October 31?

7 A. No, I didn't.

8 Q. You went to Green Bay to see your mother?

9 A. Yes, I did.

10 Q. She had recently had surgery, you say?

11 A. Yes.

12 Q. Other than your mother, who would have seen you
13 on October 31st before you say Bobby Dassey saw
14 you as the two of you drive past one another on
15 Highway 147?

16 A. Nobody, just -- I went from the hospital to my
17 trailer.

18 Q. Now, you got home from the hospital at about 3:15
19 that afternoon, you say, to your home?

20 A. No.

21 Q. When do you tell us today you got home from the
22 hospital?

23 A. I got home from the hospital -- for the first
24 time I got home from the hospital was between
25 2:30 and quarter to 3.

1 Q. And that's your recollection today, oh, 15, 16
2 months after the events?

3 A. Yes.

4 Q. All right. You remember talking to a couple of
5 law enforcement officers about this back on
6 November 29, 2005?

7 A. Yes.

8 Q. And do you remember what you told them then about
9 when you got home from the hospital?

10 A. Which time are you asking me, first time or
11 second time?

12 Q. November 29, the first time you talked to them.

13 A. No, I don't recall.

14 Q. Do you suppose that reviewing a report one of
15 them prepared might help refresh your
16 recollection about that?

17 A. It might.

18 (Exhibit No. 356 marked for identification.)

19 Q. I show you Exhibit 356, which is a Division of
20 Criminal Investigation Report, and invite you to
21 look at Page 3. The second paragraph may be the
22 most helpful in refreshing your recollection, but
23 you are welcome to read to yourself any or all of
24 that report.

25 THE COURT: I think the witness is done,

1 Mr. Strang.

2 ATTORNEY STRANG: Very well.

3 Q. (By Attorney Strang)~ Did that help refresh your
4 recollection?

5 A. Yeah, it did.

6 Q. Did you tell the police on November 29 that you
7 arrived home at 3:15.

8 A. I may have.

9 Q. Well, do you remember telling them that or not?

10 A. No, I don't remember telling them that. It's
11 been such a long time.

12 Q. Do you think that maybe back on November 29 your
13 recollection was a little better than it is
14 today --

15 A. Yup.

16 Q. -- about events happening at that point, just one
17 month earlier?

18 A. What was that, sir?

19 Q. Do you think maybe your recollection back on
20 November 29, 2005, was maybe a little better than
21 it is today?

22 A. Yes.

23 Q. It was just one month after the events in
24 question at that point?

25 A. Right.

1 Q. Now, you then -- you get home, you very quickly
2 get ready to go off deer hunting?
3 A. Yes.
4 Q. You are going to drive west from your home to go
5 deer hunting?
6 A. Yes.
7 Q. Down Highway 147?
8 A. Yes.
9 Q. It's a 15 minute drive or something like that to
10 your hunting spot?
11 A. Approximately, yeah.
12 Q. And this is when, on your way to hunting is when
13 you see Bobby Dassey?
14 A. Correct.
15 Q. He's going east in the other direction on Highway
16 147?
17 A. Correct.
18 Q. Now, Highway 147 at that point, if you know,
19 is -- what's the speed limit?
20 A. Speed limit on 147?
21 Q. Yeah, if you know?
22 A. 55.
23 Q. 55. All right. And the two of you, obviously,
24 are going in different directions?
25 A. Yes.

1 Q. And so you pass each other and you are later able
2 to tell the police that Bobby was going deer
3 hunting?

4 A. Yes.

5 Q. How did you know that?

6 A. How do I know that is because Bobby Dassey was
7 going to the trailer where I live to hunt behind
8 it.

9 Q. Let me understand, he's going to hunt deer right
10 behind your trailer?

11 A. Yes.

12 Q. But you don't hunt deer right behind your
13 trailer?

14 A. Occasionally, yes.

15 Q. And when did he tell you about this hunting trip
16 that he planned right behind your trailer?

17 A. I don't recall him telling me. He had permission
18 from the landlord to hunt there.

19 Q. So you figured since you saw him driving east on
20 Highway 147 he must be going hunting?

21 A. Yes.

22 Q. Anybody else see you going west on 147 to go
23 hunting, so far as you know?

24 A. Bobby Dassey.

25 Q. Uh-huh, and had you told him that you were going

1 hunting?

2 A. No.

3 Q. How would he have known that you were going
4 hunting?

5 A. Because I was in my camouflage clothes.

6 ATTORNEY KRATZ: Objection, irrelevant,
7 Judge.

8 THE COURT: I'm going to overrule the
9 objection.

10 Q. (By Attorney Strang)~ You were in your camouflage
11 coat?

12 A. Yes.

13 Q. In your green Ford Ranger?

14 A. Yup.

15 Q. Passing one another at 55 miles an hour?

16 A. Nope. Where I passed Bobby I probably was only
17 doing maybe 25 miles an hour tops. He was
18 slowing down to turn in my driveway and I was
19 driving up 147.

20 Q. I see. And so you surmise that he would have
21 known you were going deer hunting because he
22 would have seen you in your camouflage clothing?

23 A. Yes.

24 Q. Did you go hunting with anybody that day?

25 A. No.

1 Q. I want to go back just a moment, because this was
2 my mistake, November 29, 2005, was not the first
3 time you spoke to law enforcement officers about
4 Halloween, was it?

5 A. I don't recall.

6 Q. Does November 10 sound more like the first time?

7 A. Yeah, that sounds more like it.

8 Q. Okay. About 10 days, 11 days after Halloween?

9 A. Yes.

10 Q. Correct? And on that occasion, you also told the
11 police that you arrived home from seeing your
12 mother in Green Bay at 3:15, true?

13 A. True.

14 Q. Now, if I understood your testimony here today,
15 you get back to Barb Janda's home at about 5:15,
16 something like that?

17 A. Yes.

18 Q. This is a home that she, at that point, shares
19 with her four sons?

20 A. Yes.

21 Q. You see, at that point, Steven Avery, and Barb
22 Janda, and one of the Dassey boys, standing
23 outside talking?

24 A. I don't recall them standing outside. I don't
25 recall seeing anybody at that time besides Barb.

1 Q. All right. And is it your testimony today that
2 you don't recall seeing a fire in that burn area
3 there behind --

4 A. Oh, I seen a fire there.

5 Q. Oh, you did see the fire there?

6 A. Oh, yeah.

7 Q. At 5:15?

8 A. I don't recall seeing a fire at 5:15.

9 Q. All right. When do you tell us today you first
10 recall seeing the fire --

11 A. I first --

12 Q. -- in the burn area --

13 A. I first remember seeing the fire --

14 THE COURT: Mr. Tadych, let Mr. Strang
15 finish his question first.

16 Q. (By Attorney Strang)~ Fire, burn area, behind
17 garage. Today, when did you tell us you first
18 saw that fire?

19 A. I really remember first seeing it the second time
20 I was there.

21 Q. Well, would it help to look at Exhibit 356 again
22 to see what you told the police on November 29th?

23 ATTORNEY KRATZ: Objection, your Honor, he
24 hasn't claimed any lack of memory.

25 Q. Do you recall telling the police, on November 29,

1 that you saw a fire burning in the area behind
2 Steve's garage between 5:15 and 5:30 --

3 THE COURT: Just a minute, you can ask him
4 the question, but let's pull the exhibit away.

5 ATTORNEY STRANG: Okay.

6 Q. Do you recall telling the police, the officers,
7 that between 5:15 and 5:30, on October 31, 2005,
8 you saw two people standing around a fire that
9 was burning in the area behind Steven's garage.

10 A. That was the second time I seen him standing,
11 when I came back. I don't recall --

12 Q. You don't recall telling the police you saw that
13 between 5:15 and 5:30?

14 A. Not that -- No, I don't recall.

15 Q. All right.

16 A. I seen it the second time.

17 Q. Well, take a look, again, at Exhibit 356. That's
18 not the one I want.

19 (Exhibit No. 357 marked for identification.)

20 Q. I show you Exhibit 357, a DCI report, interview
21 with you that occurred on November 29, 2005.
22 Again, look at any part of it you like. The
23 third paragraph on that page may be the most
24 helpful in refreshing your recollection. All
25 done? Having looked at that, does that refresh

1 your recollection about what you told the police
2 on November 29?

3 A. Yes, it does.

4 Q. Did you tell the police on November 29, that
5 between 5:15 and 5:30 p.m. you saw two people
6 standing around a fire burning in the area behind
7 Steven's garage?

8 A. Yes, I did.

9 Q. Memory fresher then than it is today?

10 A. What was that, sir?

11 Q. Is your memory fresher today or was it fresher
12 back on November 29, 2005?

13 A. Fresher back on the 29th of November.

14 Q. And is that the -- If I understood you today, you
15 are telling us that when you see the fire later,
16 sometime after 7:30, you think the flames were
17 almost as high as the garage, maybe 8 to 10 feet?

18 A. Yeah.

19 Q. Was November 29 also the day that you told the
20 police that the flames were at least 3 feet high,
21 at least that high?

22 A. Must have.

23 Q. Whenever you saw this fire, and however many
24 times you saw it, you smelled nothing strange
25 coming from the fire?

1 A. No.

2 Q. You heard no one screaming?

3 A. No.

4 Q. You heard no gunshots?

5 A. No.

6 Q. You didn't see Mr. Avery trying to conceal
7 himself in any way?

8 A. No.

9 Q. Especially at 7:15, 7:30, when you drove up, you
10 would have driven up the driveway, with your
11 headlights on?

12 A. Yes.

13 Q. After dark, right?

14 A. Yes.

15 Q. And as you drove west down this lane, as I
16 understand your testimony, then you swung into
17 the driveway this way?

18 A. No, the other way.

19 Q. Came in this way?

20 A. Yes.

21 Q. But parked over here?

22 A. Yes.

23 Q. All right. So you would have had your headlights
24 on until you parked the car and turned it off?

25 A. I didn't shut my car off.

1 Q. Had the headlights on the entire time?

2 A. Yes.

3 Q. Now, if I understood you as well, today, you have

4 told us that Barb came to your house a little

5 later that evening?

6 A. Correct.

7 Q. You dropped her off, right, she goes in the

8 house?

9 A. I don't know what she did.

10 Q. You dropped her off, you presume she went in the

11 house?

12 A. Yes.

13 Q. And then shortly later, she appears at your

14 house?

15 A. Correct.

16 Q. Barb, by the way, at that time, was married to

17 your cousin, Tom Janda?

18 A. Correct.

19 Q. You know, separated or whatever?

20 A. Yes.

21 Q. But the name Janda comes from your cousin, Tom

22 Janda?

23 A. You are absolutely right.

24 Q. Okay. And so she comes to your house and the two

25 of you are going to watch television?

1 A. Correct.

2 Q. You remember specifically that you wanted to
3 watch a show called "Prison Break"?

4 A. Correct.

5 Q. Is that something you were recording on the VCR?

6 A. No.

7 Q. Or TiVo, something like that?

8 A. No.

9 Q. You were going to actually watch it as it was
10 broadcast?

11 A. Yes.

12 Q. Which is why you think you got home at 8:00?

13 A. That's exactly why I wanted to be home.

14 Q. Now, she stays, the two of you watch that show?

15 A. Correct.

16 Q. You have a memory of watching that show?

17 A. Yup.

18 Q. And then your recollection, as you told us today,
19 is that she leaves somewhere around 10:30 or 11?

20 A. Correct.

21 Q. You are quite sure that she leaves and goes home?

22 A. Yes.

23 Q. Well, you talked with the police yet a third
24 time, I guess at least, didn't you, after
25 November 29?

1 A. I may have.

2 Q. March 30, 2006, does that sound about right?

3 A. Could be.

4 Q. And Investigator John Dederer from the Calumet
5 County Sheriff's Department?

6 A. Could be.

7 Q. Do you recall telling Investigator Dederer that
8 Barb spent the night at your residence and did
9 not go home, and that you knew she did go
10 directly to work, from your residence, to your
11 knowledge?

12 A. I don't recall that.

13 Q. You don't recall that. Okay. Do you think
14 reviewing Investigator Dederer's report might
15 help refresh your recollection about that?

16 A. I'm sure it will.

17 (Exhibit No. 358 marked for identification.)

18 Q. It is -- I will show you Exhibit 358,
19 Investigator Dederer's report of his interview
20 with you on March 30, 2006. Read to yourself any
21 part of it you like. The very bottom on the
22 first page may be most helpful.

23 THE COURT: Are you done, Mr. Tadych?

24 THE WITNESS: Yes.

25 THE COURT: I believe he's ready.

1 Q. (By Attorney Strang)~ All done? Does that help
2 refresh your recollection?

3 A. Yeah, I guess.

4 Q. About what you told Investigator Dederling?

5 A. Yes.

6 Q. Did you tell Investigator Dederling, on March 30,
7 that Barb spent the night at your residence and
8 did not go home; Barb did go directly to work
9 from your residence to your knowledge?

10 A. Yes, I did.

11 Q. Barb works an early morning shift, at least at
12 that time?

13 A. Yes.

14 Q. Until sometime in the mid afternoon?

15 A. Yes.

16 Q. Sometime around the time that you talked to
17 Investigator Dederling, on the occasion you just
18 described, were you trying to sell one of the
19 Dassey boy's .22's to a man named Jay Mathison
20 (phonetic) at work?

21 A. No.

22 Q. You weren't? And you are sure, though, that you
23 watched the show *Prison Break* starting at
24 8:00 p.m. on Monday, October 31, 2005?

25 A. Am I sure?

1 Q. Yeah.

2 A. Yup.

3 Q. Are as you sure of that --

4 A. Maybe not.

5 Q. --as you are of anything you testified --

6 A. Maybe not.

7 Q. -- here?

8 A. But I'm sure that's what I went home to watch.

9 Q. Okay. You are sure it was 8:00?

10 A. Yeah.

11 Q. As sure as you are --

12 A. I'm sure it's 8:00.

13 Q. Are you as sure of that as you are of anything
14 you testified to here today?

15 A. I guess not. I don't know.

16 ATTORNEY STRANG: That's all I have.

17 THE COURT: Mr. Kratz, anything else?

18 **REDIRECT EXAMINATION**

19 BY ATTORNEY KRATZ:

20 Q. Mr. Tadych, Mr. Strang asked if your recollection
21 was clearer earlier --

22 A. It was clearer earlier.

23 Q. You really are going to have to wait until I --

24 A. Sorry.

25 Q. -- finish the question. Whether your

1 recollection was clearer, that is, as you got
2 closer or were earlier in time, specifically
3 November of 2005.

4 A. Yes.

5 Q. Do you remember both of your first two interviews
6 with law enforcement?

7 A. I remember the first two.

8 Q. And do you remember in both of those interviews
9 telling law enforcement officers that Barb left
10 your house sometime between 11:00 p.m. or
11 midnight and went home those nights?

12 A. Yes, I assumed she went home. I thought she did.

13 ATTORNEY KRATZ: That's all I have of
14 Mr. Tadych. Thank you.

15 THE COURT: All right. The witness is
16 excused. You may call your next witness, Mr. Kratz.

17 ATTORNEY KRATZ: Call Bobbie Dohrwardt to
18 the stand. Could I have just a minute with
19 Mr. Strang, Judge?

20 THE COURT: Sure. Excuse me, counsel, I
21 think the witness is standing right behind you.

22 THE CLERK: Raise your right hand.

23 **BOBBIE DOHRWARDT**, called as a witness
24 herein, having been first duly sworn, was
25 examined and testified as follows:

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

3 THE WITNESS: My name is Bobbie Dohrwardt,
4 D-o-h-r-w-a-r-d-t.

5 (Exhibit No. 359 and 360 marked for identification.)

6 **DIRECT EXAMINATION**

7 BY ATTORNEY KRATZ:

8 Q. I'm sorry for the delay, Ms Dohrwardt. Can you
9 tell the jury, please, how are you employed?

10 A. I work for Cellcom.

11 Q. And what is Cellcom?

12 A. Cellcom is a wireless carrier, local to northeast
13 Wisconsin.

14 Q. Ms Dohrwardt, have you been asked and have you
15 reviewed cellular telephone records for a
16 subscriber by the name of Steven Avery, or
17 Avery's Salvage -- Auto Salvage for the dates on
18 and around October 31st, 2005?

19 A. Yes, sir.

20 Q. Let me ask you, Ms Dohrwardt, are -- in your
21 employment with Cellcom, are you what is known as
22 one of the custodians of the business records for
23 that business?

24 A. Yes, I am.

25 Q. Generally, what do you do for Cellcom?

1 A. I am the team leader for Technical Support
2 Department.

3 Q. And as team leader, are you able to review, and
4 to the extent that, at least in general terms,
5 we're going to ask you questions; are you able to
6 interpret cellular telephone records that you
7 have been asked to look at?

8 A. Yes, sir.

9 ATTORNEY KRATZ: The Court has asked,
10 Judge, and I think Mr. Strang will agree, that we
11 not use telephone records in this instance -- excuse
12 me -- telephone numbers in this instance. And Ms
13 Dohrwardt will be referring, then, to subscriber
14 names rather than numbers. And, please, Mr. Strang,
15 if there's an issue, stop and we can either approach
16 the bench or we can approach the witness at that
17 time. Does that sound fair, Judge?

18 ATTORNEY STRANG: Your Honor, this actually
19 will be Mr. Buting's witness, but we did have an
20 agreement, we do have an agreement, that for
21 purposes of this trial, we'll not identify specific
22 telephone numbers at least without conferring
23 further.

24 THE COURT: Very well.

25 BY ATTORNEY KRATZ:

1 Q. Ms Dohrwardt, the first document that you have in
2 front of you, which is actually quite small
3 print, I would ask you to identify that document
4 number for me, please; what exhibit number is it?

5 A. Exhibit 359.

6 Q. And could you tell the jury, please, what
7 Exhibit 359 is?

8 A. It is a call record that I produced.

9 Q. And was this the call record, again, for both
10 incoming and outgoing telephone calls for the
11 cellular telephone records for Steven Avery?

12 A. Yes.

13 Q. Again, do these include calls on October 31st of
14 2005?

15 A. Yes.

16 Q. If I ask you at a specific time and if you have
17 another record next to you, which I think is
18 Exhibit No. 360, please feel free to refer to
19 that if that will assist you; does that sound
20 okay?

21 A. Fine.

22 Q. Let me ask you, then, Ms Dohrwardt, at 8:12 a.m.
23 on October 35 (sic), 2005, was a cellular
24 telephone call placed from that cellular
25 telephone of Steven Avery?

1 A. Yes.

2 Q. And again, referring to Exhibit No. 360, since
3 that will refer to subscriber names rather than
4 numbers, could you tell us who that call went to,
5 please?

6 A. That call was to *Auto Trader*.

7 Q. And how long or what was the duration of that
8 call?

9 A. Two minutes, forty-seven seconds.

10 Q. I would next ask you to review a outgoing
11 telephone call at 2:24 p.m.; do you note that
12 calling having been made?

13 A. Yes.

14 Q. And again, referring to Exhibit No. 360 and
15 Exhibit 359, in conjunction, are you able to tell
16 who that telephone call was made to?

17 A. To Teresa Halbach.

18 Q. What is the duration of that call?

19 A. Seven seconds.

20 Q. Now, Ms Dohrwardt, I'm going to ask you about a
21 specific cellular telephone feature, which is
22 called the *67 feature; are you familiar with
23 that?

24 A. Yes.

25 Q. Could you explain that to the jury; what is a *67

1 feature?

2 A. It is a remote feature activation that will allow
3 the outbound number to be blocked or restricted
4 on the terminating end.

5 Q. If the individual on the receiving end had, let's
6 say, caller ID, you may have a better term than
7 that, but if they had what we all know as caller
8 ID, would they be able to see who the call is
9 being made from?

10 A. No, it would appear as blocked, or restricted,
11 private, something like that.

12 Q. And next, Ms Dohrwardt, I'm going to ask you to
13 review those records, again, Exhibit 359 and 360.
14 Ask, at 2:35 p.m., if another call, outgoing
15 call, was attempted from the cellphone of
16 Mr. Steven Avery?

17 A. Yes.

18 Q. And who was that call placed to?

19 A. Teresa Halbach.

20 Q. Is there a duration or was that a completed call?

21 A. There was no duration.

22 Q. All right. Now, both the 2:24 call and the 2:35
23 call, do your records reflect that any specific
24 call feature was used on those two calls?

25 A. Yes.

1 Q. Which call feature was used?

2 A. The *67 blocking feature.

3 Q. At 4:35 p.m., Ms Dohrwardt, does another outgoing

4 call appear on those records?

5 A. Yes.

6 Q. Who was that call made to?

7 A. Teresa Halbach.

8 Q. And is there a duration noted on that call?

9 A. No duration.

10 Q. So duration would be zero?

11 A. Zero.

12 Q. All right. At 5:57 p.m., do your records reflect

13 another call being made?

14 A. Yes.

15 Q. And who was that call made to?

16 A. Charles Avery.

17 Q. And can you describe for the jury the duration of

18 that call?

19 A. Five minutes, twenty-three seconds.

20 Q. Finally, Ms Dohrwardt, at 9:20 p.m., do your

21 records reflect a final outgoing call that day?

22 A. Yes.

23 Q. And who is that call made to?

24 A. Barb Janda.

25 Q. And is there a call duration associated with that

1 call?

2 A. Zero.

3 Q. Now, we have talked about Exhibit No. 359 being
4 your records, that is, the records of Cellcom;
5 does Exhibit No. 360 appear to be, legal term is
6 a summary exhibit, of what you have testified to
7 here today?

8 A. Yes.

9 Q. And do the numbers or times of the calls, type of
10 call, and call durations, all appear consistent
11 with not only the records in 359, but also with
12 what you have testified here today?

13 A. Yes.

14 ATTORNEY KRATZ: With that, then, Judge, I
15 will move the admission of Exhibits 359,
16 provisionally 360, and maybe an additional
17 stipulation with that exhibit. But I don't believe
18 I have any further questions of Ms Dohrwardt at this
19 time. Thank you.

20 THE COURT: Any objection to the exhibits?

21 ATTORNEY BUTING: No objection.

22 THE COURT: All right. The exhibits are
23 received.

24 ATTORNEY BUTING: Can we approach, your
25 Honor?

1 THE COURT: Sure.

2 (Side bar taken.)

3 THE COURT: All right. Members of the
4 jury, we're going to take our afternoon break at
5 this time. We'll resume in about 15 minutes.

6 (Jury not present.)

7 THE COURT: All right. We'll resume in 15
8 minutes.

9 (Recess taken.)

10 (Jury present.)

11 THE COURT: Mr. Buting, you may proceed.

12 ATTORNEY BUTING: Thank you, your Honor.

13 **CROSS-EXAMINATION**

14 BY ATTORNEY BUTING:

15 Q. Good afternoon, Ms Dohrwardt. Just a couple
16 quick questions, first, and then I'm going to
17 return to these exhibits that you have been
18 referring to. All right?

19 A. All right.

20 Q. This *67 feature, that's actually available on
21 other lines as well, land lines, right?

22 A. Right.

23 Q. And that's something that the caller uses if they
24 would want to not allow the receiving party to
25 see what that phone number they are calling from

1 is, right?

2 A. Right.

3 Q. But it doesn't remove it from your phone bill; it
4 still shows up on the customer's own phone bill,
5 right?

6 A. Right.

7 Q. Okay. So it's not like it's a call that becomes
8 invisible if you use *67, it is still in your own
9 records, the customer's own calling records would
10 show the phone number, that the phone call was
11 made, right?

12 A. Are you referring to Cellcom, how they bill, or
13 another carrier?

14 Q. Just in general, if you get an itemized bill, it
15 will be on there as an outgoing call, right?

16 A. Cellcom only bills for answered calls, with
17 duration.

18 Q. All right.

19 A. So --

20 Q. So if it was answered, if you use the *67 call to
21 somebody and it's answered, it will show up on
22 your bill as an outgoing call?

23 A. Yes --

24 Q. Okay.

25 A. -- but it would not show the restriction.

1 Q. Pardon?

2 A. It would not -- It would not separate from --

3 Q. Sure, it will be on there, though?

4 A. Right.

5 Q. Okay. So, Mr. Avery's bill would show he made a
6 phone call to Teresa Halbach, each one of those
7 times, whether or not the *67 feature is used,
8 correct?

9 A. If it was answered and there was duration, yes.

10 Q. Sure. Okay. Well, let's go into that little
11 issue that you just brought up, answered or not.
12 Do you have 360 -- Exhibit 360 in front of you?

13 A. Yes.

14 Q. And then, I'm going to put this up on the ELMO
15 because this is testing the limits of my eyes.
16 Exhibit 359, that's the basis really of your
17 testimony today, your knowledge, right?

18 A. Right.

19 Q. Exhibit 360 was not prepared by you, though,
20 right?

21 A. Right.

22 Q. That was prepared by the prosecutor, just as sort
23 of a summary exhibit of what your testimony would
24 be?

25 A. Right.

1 Q. Okay. If you don't mind, I'm going to take both
2 of these away from you for a moment and I'm going
3 to put them up on the screen. Okay?

4 A. All right.

5 THE COURT: Counsel, one thing, weren't we
6 trying to avoid the numbers? Are you going to show
7 the telephone numbers on the screen?

8 ATTORNEY KRATZ: Yes, I would prefer,
9 Judge, that only 360 be put up on the screen.

10 ATTORNEY BUTING: There is no other way,
11 Judge. If you want to order the cameras not to --

12 THE COURT: All right. I will ask the
13 television cameras in the courtroom, then, not to
14 show the screen while the telephone numbers are on
15 there. That would be Exhibit 359?

16 ATTORNEY BUTING: That is correct.

17 THE COURT: Okay. Or Exhibit 360, when
18 it's back to the names, if the television cameras
19 wish to show the screen, they can. Which one are
20 you doing first, Mr. Buting?

21 ATTORNEY BUTING: I'm going to do 359
22 first.

23 THE COURT: All right. 359.

24 Q. I just want to show you first, make sure we know
25 what we're talking about here; 359, which has

1 this very small font because you are trying to
2 get -- whoever printed it is getting a long line
3 of columns onto a little 8 1/2 X 11 piece of
4 paper, right?

5 A. Correct. Actually both pages, side by side,
6 would be the entire record.

7 Q. Oh, it actually goes out two full pages, you're
8 right.

9 A. Correct.

10 Q. Okay. All right. I'm going to zoom in here,
11 first column -- Well, it has a number -- like a
12 sequential number of the phone call for this
13 particular record, right? Seventy, seventy-one,
14 seventy-two?

15 A. Right.

16 Q. The next column is seize date and time. Now, if
17 I understand what that is, is when someone makes
18 a call and it gets connected to one of the cell
19 towers, the time begins running, right?

20 A. Correct.

21 Q. That's -- The call is seized, whether or not it
22 goes on beyond that, right?

23 A. Correct.

24 Q. And then, if you look at the fourth one up from
25 the bottom; do you see the number here, 14:35?

1 A. Yes.

2 Q. That is a time, right?

3 A. Right.

4 Q. That is, 2:35, right?

5 A. Right.

6 Q. And the third one up from the bottom is 16:35,
7 which actually is 4:35 p.m., correct?

8 A. Right.

9 Q. Okay. Now, and the one right above -- I'm sorry,
10 I should have started with this one, the fifth --
11 the sixth one -- or fifth one up from the bottom,
12 14:24, this call that's placed by Mr. Avery's
13 cell at -- I hate these military time. I'm
14 sorry. 14:24 is 2:24 p.m., right?

15 A. Right.

16 Q. That's call number 61?

17 A. Eighty-one.

18 Q. Eighty-one. Okay. I should have blown it up
19 more. If we follow along here, the next column
20 is the answer date and time, right?

21 A. Right.

22 Q. And then the next one over is the release date
23 and time, right?

24 A. Right.

25 Q. And then the answer -- the next column is the

1 answer indicator column, right?

2 A. Right.

3 Q. And that call says answered in that column,
4 doesn't it?

5 A. It does.

6 Q. And the call right below it, which is the one
7 that was made at 2:35 p.m., says not answered,
8 correct?

9 A. Correct.

10 Q. And the call at 4:35 p.m., to Ms Halbach's phone,
11 also says answered, correct?

12 A. Yes.

13 Q. Now, we're going to have to remember the order of
14 these, because I have got to turn to the next
15 page. And I don't think you have numbers on
16 there. So, let's look at, first, call number
17 83, which is the third one up from the bottom
18 okay?

19 A. All right.

20 Q. That's the call that was made at 4:35 p.m. from
21 Mr. Avery's cellphone to Teresa Halbach, right?
22 Still with me?

23 A. Yes.

24 Q. The one that says answered over here in that --
25 in that column. I'm going to turn to the last

1 page, because of this exhibit. Because the last
2 columns -- almost the last columns of this
3 exhibit give us the duration of the phone call,
4 right?

5 A. Right.

6 Q. And if we look, then, at the third to the bottom
7 call -- line here, the call from Mr. Avery's
8 phone at 4:35 p.m. on October 31st, to Teresa
9 Halbach's phone, has a seized duration of 62
10 seconds, right?

11 A. Sixty-two hundredths of a minute.

12 Q. Oh, okay.

13 A. Three one.

14 Q. And it does not have a duration of zero, does it?

15 A. It does not.

16 THE COURT: Is that the third one up or the
17 fourth one up?

18 ATTORNEY BUTING: This is the third one up.
19 Do you want to see the first page again?

20 THE COURT: Yeah.

21 ATTORNEY BUTING: Okay.

22 THE COURT: Okay. So it's the 4:35 call
23 you are talking about?

24 ATTORNEY BUTING: 4:35 call.

25 THE COURT: Okay.

1 ATTORNEY BUTING: Is the third one up.

2 THE COURT: Very well.

3 Q. (By Attorney Buting)~ And would you agree with me
4 that this exhibit shows that it has a duration, a
5 seized duration of 62, 062, and a call duration
6 of .18?

7 A. I do.

8 Q. Okay. And the next one above it has a duration
9 of zero?

10 A. Right.

11 Q. And the one above that has a duration of .12?

12 A. Correct.

13 Q. And back to the first page, the one directly
14 above the 4:35 call that we were talking about,
15 is the one that's made at 14:35, or 2:35 p.m.,
16 that's the one that says it's not answered?

17 A. Right. There's more to these calls, though.

18 Q. And that one is clearly not answered at all?

19 A. Not answered. And the release cause shows the
20 calling party hung up before anything answered
21 the call, voice mail or a person.

22 Q. Okay. The one above it, though, at 2:24 p.m., is
23 answered, right?

24 A. Yes. But, again, I can't say by a person or by
25 voice mail.

1 Q. All right. So we don't know whether the call
2 goes -- These records don't tell us whether the
3 call goes into voice mail or whether it's
4 answered by a live person?

5 A. If it was a Cellcom customer, I could see that,
6 but not when it's another carrier.

7 Q. All right. And let me just go back to this call,
8 you also testified about a call at 5 -- or your
9 Exhibit 360 refers to a call to Charles Avery at
10 5:57 p.m., that would be the second to the last
11 row, right?

12 A. Right.

13 Q. Seventeen fifty-seven. and that one is answered,
14 right?

15 A. Right.

16 Q. And your Exhibit 360 says the duration was 5
17 minutes and 23 seconds. This exhibit says 538?

18 A. It says 5.38 minutes.

19 Q. Okay. So you divide that into -- you do a
20 calculation and figure out that .38 minutes is 23
21 seconds; is that how you did it?

22 A. Right.

23 Q. Well, in the call above it, it says point -- it
24 says 0.18, you said the duration is zero on this
25 Exhibit 360. It's really not zero, is it?

1 A. The call duration is, yes.

2 Q. Call duration says 0.18, correct?

3 A. Well, I'm confused on which call we're on now.

4 Q. The third from the bottom, where it says, we have
5 established is, the call at 4:35 p.m. from Mr.
6 Avery's call to Teresa Halbach's?

7 A. That would be 11 seconds.

8 Q. So this exhibit, then, 360, is wrong?

9 ATTORNEY KRATZ: Judge, I'm going to object
10 as argumentative. She clearly wanted to explain it;
11 Mr. Buting hasn't let her.

12 ATTORNEY BUTING: We're going to that right
13 this moment.

14 ATTORNEY KRATZ: Well, then don't call it
15 wrong.

16 THE COURT: All right. I -- That question,
17 to me, allows an answer, so you can explain --

18 ATTORNEY KRATZ: Thank you, Judge.

19 THE COURT: -- your answer.

20 A. Answered, as far as an answered call, being able
21 to tell if it was answered actually by a phone or
22 by voice mail, unable to tell that. And the
23 durations on Exhibit 360, since I have a seized
24 duration and call duration, both columns on my
25 report; I'm not sure which -- which of those

1 numbers was taken for 360, to say that it was
2 right or wrong.

3 Q. All right. Well, what we have just established
4 now, though, today, is that the call that was
5 made from Mr. Avery's cellphone to Teresa
6 Halbach's cellphone, at 4:35 p.m., according to
7 your records in Exhibit 359, Cellcom records, is
8 marked as answered, right?

9 A. Correct.

10 Q. And has a duration, not of zero, but of 11
11 seconds, right?

12 A. Correct.

13 Q. And, similarly -- Well, that's okay. We'll leave
14 it with that. So, would you suggest that we
15 correct Exhibit 360 so that in that last column,
16 where it says duration, on that call to Teresa
17 Halbach, that it actually say 11 seconds instead
18 of duration zero?

19 ATTORNEY KRATZ: Objection, Judge, it's a
20 mischaracterization.

21 THE COURT: Well, I'm going to let her
22 explain -- or answer the question.

23 A. Looking at that specific call, something did have
24 answer with the call.

25 Q. Okay.

1 A. Whether, again, I can't say a phone or a voice
2 mail system, either would cause that result. But
3 the connection was up for 11 seconds.

4 Q. So then why does Exhibit 360 say duration zero?

5 A. I don't know if that's because of how the other
6 carrier shows whether it was answered or not.
7 And how -- I can't explain how their records
8 work, how these numbers came to be.

9 Q. All right. Well, if this Exhibit 360 is being
10 introduced through you, presumably it's based on
11 your knowledge of Cellcom's records --

12 A. Correct.

13 Q. Or is it?

14 A. Well, I just saw this for the first time today,
15 so I apologize, I did not see that particular
16 call.

17 THE COURT: Just for the Court's
18 clarification; did you prepare Exhibit 360?

19 THE WITNESS: No.

20 ATTORNEY BUTING: Okay.

21 Q. (By Attorney Buting)~ I'm not trying to beat up
22 on you, ma'am, I'm just trying to clarify. I
23 understand that you didn't prepare 360. What I'm
24 asking you is, now, looking at the record
25 yourself, from your own records; would you

1 suggest that perhaps that Exhibit 360 in front of
2 you be amended, if not corrected, amended to show
3 on the duration column, 11 seconds?

4 A. Yes.

5 ATTORNEY STRANG: Thank you. That's all I
6 have.

7 ATTORNEY KRATZ: Let me ask --

8 THE COURT: Mr. Kratz.

9 **REDIRECT EXAMINATION**

10 BY ATTORNEY KRATZ:

11 Q. Ms Dohrwardt, if you reviewed, as you have in
12 this case, other records, that is, records other
13 than records from Cellcom, would you be able to
14 give the jury a full explanation of what happened
15 with that call at 4:35?

16 A. I don't understand the question.

17 Q. Are there other records that you have reviewed,
18 regarding that specific call at 4:35 p.m., that
19 better explains what happened with that call,
20 other than your Cellcom records?

21 A. Yes.

22 Q. What other records --

23 ATTORNEY BUTING: Judge, let me object. If
24 she's not testifying from her own records, she's
25 unable to authenticate or explain someone else's

1 records. This witness -- If another witness can do
2 that, fine. This witness, as I understand it, is
3 qualified to interpret Cellcom records and she's
4 done that.

5 ATTORNEY KRATZ: Let's ask her, Judge.

6 THE COURT: Yeah, we don't know yet whether
7 she -- I mean, in a sense, both of you are right.
8 She hasn't been qualified yet, but I can't say for
9 sure that she won't be qualified. So, Mr. Kratz,
10 you may proceed.

11 ATTORNEY KRATZ: Thank you, Judge.

12 (Exhibit No. 361 marked for identification.)

13 ATTORNEY KRATZ: Is 359 still floating
14 around somewhere?

15 ATTORNEY BUTING: Did I grab it?

16 Q. (By Attorney Kratz)~ Ms Dohrwardt, I have now
17 handed you what has been marked for
18 identification purposes as Exhibit No. 361 have
19 you seen that document before?

20 A. Yes.

21 Q. In providing the information for Exhibit No. 360,
22 the summary exhibit, which as Mr. Buting
23 correctly indicates, is an exhibit created as a
24 summary of voluminous information, did you look
25 at Exhibit 361 and assist in the interpretation

1 of those records, together with your records, of
2 Exhibit 359?

3 THE COURT: Just a second, before we go
4 further, I think we should identify what Exhibit 361
5 is.

6 ATTORNEY KRATZ: I would be happy to do
7 that, Judge.

8 Q. (By Attorney Kratz)~ What is Exhibit No. 361?

9 A. Exhibit 361 is a type of call record activity
10 from Cingular.

11 Q. And do you know what Cingular is?

12 A. They are another cellphone provider.

13 Q. And do you know -- do you know if the Cingular
14 wireless records that are contained in
15 Exhibit 361 tell the other side of the story, for
16 lack of a better term, for what the caller
17 records from 359 tell?

18 ATTORNEY BUTING: Objection, she's still
19 not been qualified to be able to interpret these
20 records.

21 THE COURT: I assume that she's in the
22 process of being qualified. You may be right, maybe
23 she won't be qualified, but I think this is a
24 foundational question, as I understand it.

25 A. These records have a lot of the same information

1 that ours -- that Cellcom records have, but a lot
2 that we don't. They are missing a lot that our
3 records have.

4 So you can't see, on the calls at these
5 particular times, who actually the calling number
6 was on those; where ours show inbound and
7 outbound. But these do show communication
8 between the phone and the network; durations;
9 outbound numbers, if they were dialed. And
10 that's it. That's all that's on these records.

11 Q. Exhibit 361 also shows something called a tower
12 site, or a tower designation; is that correct?

13 A. Correct.

14 Q. Now, let's go back to the qualification, your
15 qualifications; as technical research team
16 leader, as in fact the manager of tech support
17 for Cellcom, are you familiar with interpreting
18 that kind of data and that kind of information?

19 A. Yes.

20 Q. In fact, you do that every day?

21 A. Correct.

22 ATTORNEY BUTING: Which kind of data are we
23 referring to? The question is not clear.

24 THE COURT: She has to be qualified to
25 interpret the -- Exhibit 361, the records from a

1 competitor.

2 ATTORNEY KRATZ: I understand that, Judge.

3 THE COURT: That's where you are going?

4 ATTORNEY KRATZ: Yes.

5 Q. (By Attorney Kratz)~ Are you asked to interpret
6 information -- And the specific column that I'm
7 interested in is cell designation and cell site
8 information. Are you asked to interpret that
9 kind of information every day?

10 A. Yes.

11 Q. And, specifically, as you look at Exhibit
12 No. 331, are you able --

13 THE COURT: 361?

14 ATTORNEY KRATZ: 361, I'm sorry, Judge.

15 Q. (By Attorney Kratz)~ Ms Dohrwardt, are you able,
16 in looking at Exhibit No. 361, to provide
17 assistance, to provide an explanation as to a
18 call made at 4:35 p.m. on March 31st of 2005?
19 I'm sorry, 4:35 p.m.

20 A. What I can --

21 Q. October 31st, I'm sorry.

22 A. What I can say about these records is that
23 communication between the phone and some cell
24 site, which I can't convert, because I don't have
25 a chart to tell what these numbers mean, as far

1 as what cell site, but they clearly show that
2 there's communication between the phone and a
3 site, for every call up until that call. And
4 then there's no further communication with that
5 phone and any cell site after that time.

6 Q. Based upon your training, based upon -- I assume
7 you have been doing this for a while?

8 A. Yes.

9 Q. How long have you been doing this?

10 A. Four and a half years.

11 Q. And are you trained to interpret and provide
12 opinions on data such as in Exhibit 361?

13 A. I have not been trained in other carriers records
14 and how they pull them, but being how similar
15 that they are, I feel comfortable with what I'm
16 looking at.

17 Q. All right. Ms Dohrwardt, recognizing it is
18 Cingular and not Cellcom, recognizing that
19 difference, okay, which is I think what you
20 testified about?

21 A. Yes.

22 Q. Are you able -- I'm not going to ask yet for your
23 opinion, but are you able, looking at those
24 records, at Exhibit No. 361, to provide an
25 opinion as to whether that particular call had a

1 duration, that is, as to whether that was a
2 completed call, that is, completed with a human
3 being on the other end of the line?

4 A. There is no cell site on that call, but there is
5 the duration matching --

6 ATTORNEY BUTING: Objection, your Honor.

7 ATTORNEY KRATZ: I'm just asking, yes or
8 no, if you are able to render that opinion.

9 THE WITNESS: Oh, yes.

10 ATTORNEY KRATZ: Judge, I don't know if
11 Mr. -- and I want to give Mr. Buting an opportunity
12 to voir dire. I am going to ask that opinion, but
13 if there's --

14 THE COURT: Well, let me ask this, do you
15 have a Cingular person coming in.

16 ATTORNEY BUTING: Yeah, why don't we do it
17 then?

18 THE COURT: Is there going to be a witness
19 from Cingular?

20 ATTORNEY KRATZ: Yes, Judge, but I want to
21 be heard. This -- We can't -- If this witness is
22 qualified, I think I'm entitled to ask her that
23 question.

24 ATTORNEY BUTING: Well, he's asking for an
25 expert opinion now, she's not just a custodian. If

1 there's a witness available, let's just move on.

2 THE COURT: She's indicated that it's not
3 her company and they don't have all the information
4 on the form; however, she's also said she's
5 qualified to interpret this particular information.
6 And I believe, under our rules for expert witnesses,
7 I believe that's sufficient, so I'm going to let her
8 do it.

9 Q. (By Attorney Kratz)~ Did you understand my
10 question?

11 ATTORNEY BUTING: Your Honor, there's been
12 no disclosure --

13 (Court reporter couldn't hear.)

14 ATTORNEY BUTING: There's been no
15 disclosure of her report, then, under 971.23, if
16 she's (sic) now going to convert this witness, a
17 custodian, into an expert.

18 ATTORNEY KRATZ: She's just interpreting
19 the data, Judge. And I don't know that she's issued
20 a report, or written report, on this. In fact, I'm
21 quite sure she hasn't.

22 ATTORNEY BUTING: Or any summary of her
23 opinions that are anticipated to be presented. We
24 have been through this before.

25 THE COURT: All right. Let's save it for

1 the next witness. Your -- Your -- As I understand
2 it, your summary exhibit is a compilation of
3 information that you anticipate eliciting from more
4 than one witness, correct.

5 ATTORNEY KRATZ: Yes. And it's from two
6 witnesses, Judge. This witness is necessary to
7 complete Exhibit 360.

8 THE COURT: As is the next witness.

9 ATTORNEY KRATZ: I understand that, but the
10 suggestion that is now left before this jury, is
11 that it's somehow an error. And with this witness,
12 I can clear that up. She's qualified to do that and
13 I'm asking for leave to do that. If the Court is
14 saying no, then we'll move on.

15 THE COURT: I don't agree with your
16 characterization. I think what it -- the only
17 conclusion it draws at this stage, Exhibit 360 is
18 incomplete, because it's a compilation of
19 information you are going to be eliciting from two
20 separate witnesses. So let's limit this witness to
21 what the witness has to say about Cellcom. And then
22 you be can go back to Exhibit 360 when you bring in
23 the Cingular witness.

24 ATTORNEY KRATZ: I will, at this time,
25 Judge, not ask this witness any questions. I'm

1 alerting counsel and the Court that I may recall
2 this witness after our next witness.

3 THE COURT: Fair enough. Any more
4 questions, Mr. Buting?

5 ATTORNEY BUTING: No, I don't believe so,
6 all the questions were regarding the other witness,
7 so we'll wait for the witness.

8 THE COURT: All right. You are excused at
9 this time. And the State may call it's next
10 witness.

11 ATTORNEY KRATZ: Thank you, Judge. We'll
12 call Laura Schadrie to the stand.

13 (Exhibit No. 362 marked for identification.)

14 THE CLERK: Please raise your right hand.

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

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

20 THE WITNESS: Laura Schadrie,
21 S-c-h-a-d-r-i-e.

22 **DIRECT EXAMINATION**

23 BY ATTORNEY KRATZ:

24 Q. Ms Schadrie, what is your occupation?

25 A. I am manager of a Cingular store.

1 Q. Where is your business located? Where is your
2 home office?

3 A. Home office is located in Atlanta, Georgia.

4 Q. Where are you physically located?

5 A. Fond du lac, Wisconsin.

6 Q. All right. Ms Schadrie, as a manager --
7 Cingular, by the way, is a wireless phone
8 service; is that correct?

9 A. Yes.

10 Q. Ms Schadrie, as a manager, as a person in
11 management for Cingular, are you familiar with,
12 and have you been asked to review, various
13 cellular phone records, specifically for a
14 Cingular customer by the name of Teresa Halbach?

15 A. Yes.

16 Q. Ms Schadrie, were you asked to review those
17 records and calls placed, both incoming and
18 outgoing calls, for October 31st, 2005, for that
19 Cingular customer?

20 A. Yes.

21 Q. And prior to coming to court this afternoon, have
22 you, in fact, reviewed those business records?

23 A. Yes.

24 Q. Are you what's called a custodian of those
25 records?

1 A. Yes.

2 Q. Ms Schadrie, I'm going to have you look in front
3 of you at -- I believe it's Exhibit 361; do you
4 recognize those records?

5 A. Yes.

6 Q. What is Exhibit No. 361?

7 A. It is the call records for -- that I have
8 reviewed.

9 Q. Now, I understand that, and so that the Court is
10 clear about your last answer, you have been asked
11 not to discuss or broadcast any specific
12 telephone numbers in this case; is that right?

13 A. Yes.

14 Q. Because of that, there are two other documents in
15 front of you, one is Exhibit No. 360 and I think
16 is Exhibit 362; do you see those?

17 A. Yes.

18 Q. Ms Schadrie, are you able, in reviewing Exhibit
19 No. 361 and in conjunction with 362, at least as
20 that relates to names rather than telephone
21 numbers, of providing this jury with a summary of
22 telephone calls, both incoming and outgoing, from
23 Teresa Halbach's cellular records dated
24 October 31, 2005?

25 A. Yes.

1 Q. I'm first going to ask you to look at a telephone
2 call at 9:46 a.m. And, again, feel free to
3 compare and to use both documents if they will
4 assist you. I'm going to ask you first of all if
5 that was an incoming or an outgoing call?

6 A. That was incoming call.

7 Q. And who was that received from?

8 A. *Auto Trader*.

9 Q. Time of the call?

10 A. Thirty-three seconds.

11 Q. And you're meaning the duration of the call; is
12 that right?

13 A. Yes.

14 Q. All right. And just so the jury understands,
15 those records wouldn't provide you with any
16 detail as to the content of the call, or what it
17 was about, or anything like that; is that right?

18 A. Right.

19 Q. Just the time of the call and the duration of the
20 call and who it may be from, at least a telephone
21 number or a name; is that right?

22 A. Yes.

23 Q. All right. Second call I'm going to ask you to
24 refer to is a call at 11:04 a.m.; do you see that
25 call?

1 A. Yes.

2 Q. Was that incoming or outgoing?

3 A. That was an outgoing call.

4 Q. And who was that call to?

5 A. Voice mail.

6 Q. And how long was that call?

7 A. 1 minute and 55 seconds.

8 Q. The next call I'm going to ask you to describe is

9 a call at 11:27 a.m.; do you see that?

10 A. Yes.

11 Q. And was that incoming or outgoing?

12 A. That was an outgoing call.

13 Q. And who is that to?

14 A. Voice mail.

15 Q. And how long was that call?

16 A. 2 minutes and 55 -- 2 minutes and 56 seconds.

17 Q. All right. Now, when you talk about voice mail,

18 those of us in the courtroom and those jurors

19 that don't have voice mail, what is a voice mail?

20 A. A voice mail is when a caller leaves you a

21 message if you are not able to answer your phone

22 call, and when you would call your voice mail to

23 retrieve any of your unheard messages.

24 Q. Okay. Next call I'm going to ask you to refer to

25 is at 11:43 a.m.; do you see that?

1 A. Yes.

2 Q. Is that incoming or outgoing?

3 A. That was an outgoing call.

4 Q. And who is that too?

5 A. Barb Janda.

6 Q. And how long was that call?

7 A. 1 minute and 5 seconds.

8 Q. Next call I'm going to ask you to identify is at
9 12:39 p.m.; was that incoming or outgoing?

10 A. That was an outgoing call.

11 Q. And to whom?

12 A. That was to voice mail.

13 Q. And what was the duration of that call?

14 A. Thirty-three seconds.

15 Q. The next call I'm going to have you identify is
16 at 12:51 p.m. First of all, was that incoming or
17 outgoing?

18 A. That was an outgoing call.

19 Q. From -- Or to whom, I'm sorry?

20 A. Steven Schmitz.

21 Q. And for how long was that call duration?

22 A. Forty-six seconds.

23 Q. Do you see another call at 2:12 p.m.?

24 A. Yes.

25 Q. And was that incoming or outgoing?

1 A. That was an outgoing call.

2 Q. To whom?

3 A. George Zipperer.

4 Q. And how long was that call?

5 A. 1 minute and 9 seconds?

6 Q. Next call is at 2:13 p.m., can you describe that

7 for me, please.

8 A. That was an outgoing call to voice mail.

9 Q. And how long did that take?

10 A. Thirty-seven seconds.

11 Q. Now, do you see a call at 2:24 p.m.?

12 A. Yes.

13 Q. And do you know if that was incoming or outgoing?

14 A. That was an incoming call.

15 Q. Now, are you able, from your records, to

16 determine who it was from?

17 A. No.

18 Q. And how long was that call?

19 A. Eight seconds.

20 Q. Next call I'm going to have you identify is at

21 2:27 p.m.; do you see that?

22 A. Yes.

23 Q. And was that incoming or outgoing?

24 A. That was an incoming call.

25 Q. And from whom?

1 A. *Auto Trader*.

2 Q. And how long was that call?

3 A. Four minutes and forty-five seconds.

4 Q. And, finally, I'm going to have you refer to a
5 call at 4:35 p.m.; do you see that?

6 A. Yes.

7 Q. Was that incoming or outgoing?

8 A. That was an incoming call.

9 Q. And from whom?

10 A. Steven Avery.

11 Q. And what was the duration of that call?

12 A. Thirteen seconds.

13 Q. Now, your -- The summary exhibit, that is,
14 Exhibit No. 362, does that set forth the type of
15 calls, who they were sent or received from, the
16 time of the call, and the duration, as you have
17 testified here in court?

18 A. Yes.

19 Q. And have you looked back, however, at Exhibit No.
20 361, those are your Cingular records themselves;
21 is that right?

22 A. Yes.

23 Q. I want you to look at the column that deals with
24 cell site information, or where a call may -- may
25 be placed off of, or what's called hit off of; do

1 you see that column?

2 A. Yes.

3 Q. All right. Specifically, the call at 4:35 p.m.,
4 do you see that call on your records, 361?

5 A. Yes.

6 Q. Now, does the call at 3 -- at 4:35 p.m., does
7 that appear to have been a completed call,
8 meaning, did that call hit off of any cell sites
9 that your records reflect?

10 A. I don't know.

11 Q. Does it show on the exhibit whether or not it hit
12 off of any cell sites?

13 A. No.

14 Q. No it doesn't, or no it didn't?

15 A. It doesn't show that it hit any cell site.

16 Q. Okay. Now, as a manager, are you required, or do
17 you perform any technical research, or provide
18 any technical opinions for Cingular?

19 A. No.

20 Q. Are there tech people, in other words, are there
21 technicians or people in your Technical Research
22 Department that do that kind of thing and render
23 those kinds of opinions?

24 A. Yes.

25 Q. So you are here today just as the custodian of

1 these records; is that right?

2 A. Yes.

3 ATTORNEY KRATZ: With that, Judge, at least
4 with Ms Schadrie, that's all the questions I have.
5 I would move the admission of 361 and 362 at this
6 time.

7 THE COURT: Any objection?

8 ATTORNEY BUTING: Yes, but I would like to
9 be heard outside the jury as to the summary of those
10 only. But we can hold off on that and do the cross.

11 THE COURT: By summary exhibits, we're
12 talking 360 and 362.

13 ATTORNEY BUTING: Yes.

14 THE COURT: Very well. Other exhibits are
15 okay?

16 ATTORNEY BUTING: 361 and 359, I have no
17 objection.

18 THE COURT: Okay. Those are admitted. And
19 Mr. Buting, you may commence your cross.

20 ATTORNEY BUTING: Thank you.

21 **CROSS-EXAMINATION**

22 BY ATTORNEY BUTING:

23 Q. Good afternoon, ma'am.

24 A. Hi.

25 Q. Do you still have the exhibits in front of you

1 there?

2 A. Yes.

3 Q. 361 has a call on it, call No. 7, that's

4 4:35 p.m., right?

5 A. Yes.

6 Q. Doesn't actually have a number, in the column it

7 says dial number, there's nothing listed there,

8 right?

9 A. Yes. Correct.

10 Q. And that's true of a lot of these calls that are

11 on this particular exhibit, right?

12 A. Yes.

13 Q. But anyway, in this one, it does show that a

14 duration is 13 seconds, correct?

15 A. Yes.

16 Q. It's not zero, right?

17 A. Right.

18 Q. Okay. And you can't tell from this whether the

19 call went into voice mail or not? Possible?

20 A. Right.

21 Q. Okay. And just so we're clear, Exhibit 362

22 that's in front of you, the summary exhibit, does

23 not include all of the calls that were made to

24 and from Teresa Halbach's phone on October 31st,

25 does it?

1 A. Right.

2 Q. And, in fact, if you look at Exhibit 361, there
3 is a call at 2:41 p.m., that has a duration of 1
4 minute and 20 seconds, correct?

5 A. Yes.

6 Q. And that does show a cell site, right?

7 A. Yes.

8 ATTORNEY KRATZ: Judge, I'm going to object
9 as irrelevant, unless Mr. Buting wants to admit that
10 there is a relevance that it shows a cell site in
11 there.

12 ATTORNEY BUTING: I'm just pointing out
13 what's on the record at this point.

14 THE COURT: Does it have any relevance?

15 ATTORNEY BUTING: Well, how about this
16 relevance, it's the last phone call on Teresa
17 Halbach's record that shows an actual cell site
18 location. I think that's pretty relevant.

19 ATTORNEY KRATZ: I will absolutely
20 stipulate to that, Judge, that's the last call that
21 ever made it to Ms Halbach, that's right.

22 ATTORNEY BUTING: I'm not stipulating to
23 that. I'm just saying it's the last one with a cell
24 site on it.

25 THE COURT: I'm gathering from what you are

1 saying -- both saying, that at least it has some
2 relevance, so I'm going to allow the question.

3 Q. (By Attorney Buting)~ So, for instance, the 2:41
4 calls says a minute and 20 seconds duration,
5 right?

6 A. Yes.

7 Q. And these records don't tell us, if I understand,
8 whether or not a phone call gets sent into voice
9 mail or not?

10 A. Correct.

11 Q. And there's also a call -- I'm just going to --
12 this may be compound, but I will ask it any way.
13 There was a call at 1:52 p.m., right?

14 A. Yes.

15 Q. That's not on Exhibit 362, correct?

16 A. Correct.

17 Q. There was a call at 12:45 p.m., right?

18 A. Yes.

19 Q. It's not on Exhibit 362, right?

20 A. Correct.

21 Q. And neither of those calls show the number that
22 it's coming from?

23 A. Correct.

24 Q. There's another one at 12:29 p.m., correct?

25 A. Correct.

1 Q. And all three of those last numbers I mentioned
2 are incoming calls?

3 A. Yes.

4 Q. You can tell that because an outgoing call -- or
5 outgoing call from her phone would have the phone
6 number that's dialed?

7 A. Right.

8 Q. So, for instance, that last actually dialed
9 number that's reflected on here is at 2:13 p.m.,
10 that is on Exhibit 362, and that has a long
11 number, that apparently is the voice mail?

12 A. Yes.

13 Q. Which is actually a 4-1-4 number?

14 A. Yes.

15 Q. Okay. Is there anything in this exhibit, No.
16 361, that tells you the names of these people
17 that you testified to, that are on Exhibit 362?

18 A. No.

19 Q. So, when you said, for instance, a phone call to
20 George Zipperer at 2:12, that is not actually
21 reflected on 361, is it?

22 A. Correct.

23 Q. And you didn't prepare 362, did you?

24 A. No.

25 Q. And the phone call that you mentioned that 362

1 says was to Steven Schmitz, you can't tell that
2 from your record, Exhibit 361, either, can you?

3 A. Correct.

4 Q. And even the call to Barb Janda at 11:43 a.m.
5 reflected on 362, you cannot tell that from your
6 own records, 361?

7 A. Correct.

8 Q. All right. Let's talk about voice mail for a
9 minute, you are familiar with that, right.

10 A. Yes.

11 Q. If somebody wants to call their own voice mail,
12 from their own Cingular phone; do they have to
13 enter a password?

14 A. No.

15 Q. So you just push some buttons and it goes
16 automatically?

17 A. Correct.

18 Q. Okay. If somebody wants to call voice mail from
19 a land line, though, say the owner of a cellphone
20 is trying to pick up their messages on a land
21 line, they would have to enter some password,
22 right?

23 A. Yes.

24 Q. And when one does that, if you are on a land line
25 or -- I will broaden that a little bit, whether

1 you are calling for a land line or your own
2 cellphone, when you call in it will tell you --
3 give you a message, you have five new messages,
4 something like that, right?

5 A. Yes.

6 Q. And then you push a button and you listen to all
7 five of those messages, right?

8 A. Yes.

9 Q. Once you do that, in your records, those are
10 considered opened and listened to. They are
11 still on your system, but they are considered
12 opened and read, right?

13 A. Yes.

14 Q. If there are phone messages in your voice mail
15 that you don't open and read, they are reflected
16 in your records as unopened?

17 A. Yes.

18 Q. So, if your records show that on a certain date,
19 let's say, we'll just pick a date, November 5th
20 of 2005, okay. If your records were to show that
21 messages were opened all the way up to that date,
22 on Teresa Halbach's phone, that would mean that
23 somebody had listened to those voice messages?

24 ATTORNEY KRATZ: Objection, speculation,
25 Judge.

1 ATTORNEY BUTING: I guess she can answer
2 it.

3 ATTORNEY KRATZ: I haven't heard a
4 foundation, perhaps he could lay some foundation
5 with this witness.

6 THE COURT: All right. That's fair.

7 Q. (By Attorney Buting)~ You understand Cingular
8 records, right?

9 A. Yes.

10 Q. You understand Cingular's voice mail process,
11 right?

12 A. Yes.

13 Q. And you understand how they mark messages,
14 incoming opened, or incoming unopened, right?

15 A. Yes.

16 Q. And incoming old, you know what that means as
17 well, right?

18 A. Yes.

19 Q. Incoming old would mean messages that have been
20 already listened to and are still on the system?

21 A. Right.

22 Q. Incoming unopened would be messages that are on
23 the system that no one has ever listened to?

24 A. Right.

25 Q. All right. And then incoming new would be a

1 brand new message that's come in, probably the
2 most recent one, right?

3 A. Correct.

4 Q. If --

5 ATTORNEY KRATZ: Judge, I would like to be
6 heard outside the presence of the jury, please.

7 THE COURT: All right. At this time the
8 Court will excuse the members of the jury.

9 (Jury not present.)

10 THE COURT: We'll excuse the witness from
11 the courtroom as well. You can step out in the
12 hallway.

13 (Witness not present.)

14 ATTORNEY BUTING: Judge, actually --

15 THE COURT: All right. I believe the jury
16 and the witness are both out of the courtroom at
17 this time.

18 ATTORNEY BUTING: Actually, I think we
19 might need this witness to be able to make this
20 argument, but. What is Mr. Kratz's objection?

21 THE COURT: Mr. Kratz.

22 ATTORNEY KRATZ: These are voice mail
23 messages that were retrieved, I think it's clear,
24 and I think Mr. Buting knows, from family members of
25 Teresa Halbach, after she was missing on the second,

1 or third, or something like that. And Mr. Buting's
2 position, if his theory of defense is that Teresa
3 Halbach is alive on the 2nd of November, we're
4 entitled to know that. We're entitled to notice of
5 that. That's my objection, is that it's irrelevant.
6 He is about to show her some retrieved voice mails
7 on the 2nd. It absolutely is meant to mislead this
8 jury and I want an offer of proof, Judge.

9 THE COURT: Mr. Buting.

10 ATTORNEY BUTING: There's no -- Mr. Kratz
11 may draw the conclusion that because messages are
12 opened as of November 2nd that means that Teresa
13 Halbach was alive on that date, I don't. And I
14 don't think the jury needs to either, but I do
15 intend to introduce records that show that her voice
16 mail was picked up at 8 a.m. on November 2nd and
17 that she was not reported missing for 36 hours more.
18 Somebody listened to her messages, waited 36 hours
19 before she was reported missing.

20 That's relevant and this jury has a
21 right to know it. And this witness will
22 establish that through this exhibit that I am
23 about to introduce.

24 ATTORNEY KRATZ: I'm thrilled to hear how
25 that's relevant, Judge. I'm thrilled to hear how,

1 if Teresa's brother waited 24 hours to report her
2 missing, how that has anything to do with whether
3 Mr. --

4 (Attorneys and Court talking over each other.)

5 THE COURT: I'm not sure --

6 ATTORNEY KRATZ: -- whether --

7 THE COURT: -- you will have to explain the
8 relevance to me.

9 ATTORNEY BUTING: Somebody --

10 (Court reporter stops them.)

11 ATTORNEY BUTING: I'm sorry.

12 ATTORNEY KRATZ: I would like to know how,
13 whether her brother waiting 24 hours to report her
14 missing, has anything to do with a fact in
15 consequence, that is, whether Mr. Avery killed
16 Teresa Halbach.

17 ATTORNEY BUTING: Okay. Judge, what we
18 have heard, at the very beginning of this trial, is
19 that nobody reported this young woman missing until
20 about 5:00 p.m. on Thursday, November 3rd. In fact,
21 nobody even started calling each other, or friends
22 about it, until sometime in the afternoon, I think 1
23 or 2:00 was the testimony from Mr. Pierce, of
24 November 3rd.

25 Somebody listened to Teresa Halbach's

1 messages. They are opened, from October 31st
2 through November 2nd, at 8:00 a.m. This witness
3 has established that you have to have a password
4 to be able to do that. Somebody with a password
5 listened to her phone messages and yet no steps
6 were taken, no other references.

7 I'm not saying it's her brother; I don't
8 know who it is. But I do know that the police
9 have had this report in their custody and it's
10 another example of the police investigative bias
11 by their failure to follow up on this. There's a
12 lot of unanswered questions about what was
13 happening in Teresa Halbach's life in those last
14 few days, and why there is this kind of a delayed
15 report. And here we have evidence that should
16 have directed their investigation further and
17 it's pretty obvious now, to hear Mr. Kratz, that
18 it wasn't done.

19 THE COURT: Mr. Kratz.

20 ATTORNEY KRATZ: I invite the Court to also
21 look at 904.03. If there is any -- any probative
22 value, it is substantially outweighed by the danger
23 of unfair prejudice. But also, more than that, the
24 danger of confusion of this jury to the real issues
25 in this case.

1 If, in fact, Mr. Buting is suggesting,
2 which I think is the only reason for this, that
3 Ms Halbach may not have perished on the 31st of
4 October, that it doesn't go to law enforcement
5 bias, since Mr. Buting can't tie this up with law
6 enforcement, 904.03, if nothing else, Judge,
7 should exclude this particular evidence.

8 THE COURT: I don't recall if there was
9 testimony earlier about someone retrieving her phone
10 messages earlier or not. Has there been any
11 testimony about that in the record?

12 ATTORNEY BUTING: There was testimony that
13 someone retrieved her messages on the evening of
14 November 3rd.

15 ATTORNEY KRATZ: They got a phone bill to
16 look at who she called on the 3rd.

17 ATTORNEY BUTING: I believe somebody
18 listened to the messages, but they didn't --

19 ATTORNEY KRATZ: That may be.

20 ATTORNEY BUTING: There is no confusion,
21 there is no unfair prejudice. I don't see any way
22 the State is prejudiced by this. This is just
23 simply a phone record that will attempt to establish
24 something that was going on with this phone, in a
25 very, very critical period of time for this trial,

1 which is between October 31st and November 5th when
2 her car was found, or November 3rd, when she was
3 found missing.

4 ATTORNEY KRATZ: How does that help this
5 jury decide who killed her? That's what the jury is
6 here to do, Judge.

7 ATTORNEY BUTING: Because unless the State
8 is prepared to establish that Mr. Avery had her
9 password, then he's not the one who is listening to
10 her messages on Wednesday November 2nd at 8:00 a.m.

11 ATTORNEY KRATZ: You said --

12 ATTORNEY BUTING: Somebody who knew her,
13 somebody who may have had a motive that he doesn't
14 have and somebody who may have had opportunity, was
15 doing that.

16 ATTORNEY KRATZ: Sounds like --

17 ATTORNEY BUTING: I'm not suggesting
18 that --

19 ATTORNEY KRATZ: -- third party liability,
20 Judge.

21 ATTORNEY BUTING: -- she was still alive.

22 ATTORNEY KRATZ: That's what it sounds
23 like.

24 THE COURT: I don't --

25 ATTORNEY BUTING: No, but I'm saying -- I

1 mean, I'm not going to argue that part to the jury,
2 because that's what the Court says we're not going
3 to do. But as far as what's relevant is, the police
4 have had this report and the police have not
5 followed up to find out what's up here.

6 Who was accessing Teresa Halbach's phone
7 mail on November 2nd, at 8 a.m. Either she was
8 alive and doing it herself, or somebody who had a
9 password to her voice mail was doing it. It's
10 got to be one or the two.

11 And I have a right to introduce this to
12 the jury as a another example of how the focus
13 was all on Mr. Avery. And they knew Mr. Avery
14 didn't have the password. So -- And their theory
15 is, that he's already destroyed the phone.

16 So, again, this is an investigative lead
17 that could be critical, that the State has --
18 prosecution and police have not followed up. And
19 the jury has a right to see that, it's part of
20 this defense. I obviously will limit -- we're
21 not going to get into motive -- I will limit it
22 to that.

23 THE COURT: Does the State know who
24 accessed the voice mail?

25 ATTORNEY KRATZ: I suppose we -- If there

1 was an inkling that Mr. Buting was going to suggest
2 that Ms Halbach was alive at that time, this is
3 something that could have been looked into
4 investigatively. That's another thing that we can
5 do, if the defense is, once again, changing its
6 theory.

7 ATTORNEY BUTING: This is not changing
8 theory at all. This fits perfectly to show that
9 they have not followed up this investigative lead,
10 because this investigative lead points elsewhere
11 than Mr. Avery. Doesn't fit with their theory. And
12 here we are in the middle of the trial and it hasn't
13 been investigated. The jury has a right to know
14 that.

15 THE COURT: All right. I'm, I guess,
16 having trouble tying it's relevance or probative
17 value. I'm not going to allow it at this time. But
18 I'm not going to automatically exclude it either. I
19 want a little time to think about it. It will give
20 some -- the State some time to see if they have an
21 explanation for who listened to it, or under what
22 circumstances someone listened to it. But I'm --
23 It's -- I'm having trouble seeing the apparent
24 relevance of it at this stage of the trial.

25 Let's bring the jurors back in. Do I

1 take it that you have another technical person
2 from Cingular who's going to be testifying?

3 ATTORNEY KRATZ: No, that's what -- that's
4 what Ms Dohrwardt was for, Judge. She's that
5 technical person who is able to testify about the
6 cell sites and about there was no cell site that
7 this hit off of and explain what that means, the
8 significance of that.

9 THE COURT: All right.

10 (Jury present.)

11 THE COURT: You may be seated. Mr. Buting,
12 you may continue.

13 BY ATTORNEY BUTING:

14 Q. Just a couple of other questions I need to ask
15 you. Does the -- Are you familiar with the
16 Cingular wireless dot com access site?

17 A. Yes.

18 Q. A customer can go online and access information
19 about their account?

20 A. Yes.

21 Q. To do that, you type in the website, when you get
22 to the website you have to put in a user name and
23 a password, right?

24 A. Right. You have to first set up the account.

25 Q. Okay. So in order to access those records, you

1 would have to -- someone would have to know the
2 user name and password, right?

3 A. Yes.

4 Q. And before you can find out, online, whose
5 making -- or what calls someone has been making
6 on a particular Cingular account, you would have
7 to get past that screen?

8 A. Yes.

9 Q. That requires a user name and a password?

10 A. Yes.

11 Q. There is no other way for me, or anyone else, to
12 find out who you have been calling on your
13 account, as an example?

14 A. Right.

15 Q. And in Teresa Halbach's case, the focus here,
16 since I don't know if it's a different type of
17 account, but to your knowledge, for one to access
18 Teresa Halbach's wireless account and find out
19 who was calling her or who she called on October
20 31st, one would have to enter a user name and a
21 password?

22 A. Yes.

23 Q. Okay. All right. Maybe I better put this up on
24 the ELMO so the jury can follow.

25 ATTORNEY BUTING: I just put an exhibit

1 back up on the Elmo again, Judge, that's got
2 numbers.

3 THE COURT: It has phone numbers. Is that
4 going to be the first one you put up there?

5 ATTORNEY STRANG: Yes, that will be the
6 first one.

7 THE COURT: All right. Then the TV camera
8 is instructed not to show the screen for this next
9 exhibit.

10 Q. (By Attorney Buting)~ Exhibit 361 is -- is now on
11 the screen, correct? Is that correct, ma'am?

12 A. Yes.

13 Q. Okay. I'm sorry. And this is the report that --
14 this is the record that you were testifying
15 about, on direct, as to information on Teresa
16 Halbach's wireless account?

17 A. Yes.

18 Q. I'm going to zoom it in a little bit because it's
19 hard to see here, but, for instance, in the --
20 what would be the second column, its says call
21 date, call time, it's got dialed number,
22 duration, etcetera, right?

23 A. Yes.

24 Q. Okay. And this column that says dialed number
25 has a lot of blanks in between the numbers. It

1 has got some numbers there and there are some
2 that are blank, right?

3 A. Yes.

4 Q. And even the numbers that are there don't give a
5 name, right?

6 A. Right.

7 Q. So this document doesn't really tell you who made
8 a call, for instance, at 12:29:08 p.m. that
9 lasted 40 seconds?

10 A. Correct.

11 Q. And this document doesn't tell you whose number
12 is 755-8715, does it?

13 A. Correct.

14 Q. So Exhibit 362, where it says sent and received
15 and has a whole lot of names in it, how did you
16 get those names; how did you tie those names to
17 any of these numbers, or to any of these calls, I
18 should say, since some of them don't even have
19 numbers?

20 ATTORNEY KRATZ: Judge, that's a summary
21 exhibit, this witness did not create. I think
22 that's been established.

23 THE COURT: I'm going to excuse the jury
24 again for a couple of minutes here. The witness may
25 stay.

1 ATTORNEY BUTING: I -- Do I take that down
2 or leave it up?

3 THE COURT: You can leave it up.

4 (Jury not present.)

5 THE COURT: You may be seated. Counsel,
6 maybe I'm missing something here, but if the parties
7 agreed to have exhibits that only had names and not
8 numbers, I guess I don't understand the significance
9 of questions that are asking why these exhibits show
10 numbers and not names.

11 ATTORNEY BUTING: Judge, let me clarify. I
12 misspoke when I mentioned the one that's up there
13 that has the 755 number. My question is as to the
14 ones that are blank, where there is no phone number,
15 some of which are on this exhibit, I believe.

16 THE COURT: I understand that, I wasn't
17 second guessing that. But this is not the first
18 time we have had some questions about why the
19 summary exhibit show names, but the phone records
20 show only numbers. And I think it's unfair to
21 suggest to the jury that there's anything untoward
22 about that if the parties have agreed that they want
23 the summary exhibits to show names and not numbers.

24 ATTORNEY KRATZ: The Court directed us to
25 do this and that's why this exhibit was created. We

1 were in chambers and the defense agreed. There's
2 not a stipulation, that's great. Let us know.

3 ATTORNEY BUTING: Bear with me, just one
4 moment, your Honor. Judge, I think we have this
5 worked out, I apologize. The summary exhibit
6 includes phone numbers from other records and other
7 exhibits, that have already been introduced, this
8 witness doesn't know that.

9 I just want to clarify, through this
10 witness, that the absence of numbers on this
11 exhibit, where it says dialed, numbers in. That
12 doesn't, for instance, mean that it's a *67 call
13 or anything like that. The absence of those
14 numbers is just because, as I understand, they
15 are not Cingular customers; is that right?

16 THE WITNESS: The absence of the numbers
17 dialed? You mean, are you talking about like on --

18 ATTORNEY BUTING: Yeah.

19 THE WITNESS: Just the missing numbers?

20 ATTORNEY BUTING: Right.

21 THE WITNESS: Those would be *67, or
22 incoming calls.

23 ATTORNEY BUTING: Oh, so --

24 THE WITNESS: In our records, incoming
25 calls are not shown.

1 ATTORNEY BUTING: Unless they are a
2 Cingular person; if they are a Cingular person do
3 they show up on incoming?

4 THE WITNESS: No.

5 ATTORNEY BUTING: Oh.

6 THE WITNESS: No incoming calls show on the
7 records, just the outgoing calls.

8 ATTORNEY BUTING: *67 or otherwise?

9 THE WITNESS: Right.

10 ATTORNEY BUTING: Okay. We'll just clarify
11 that point for the jury --

12 THE COURT: Right.

13 ATTORNEY BUTING: -- and we'll also
14 explain.

15 THE COURT: I think counsel should explain
16 to the jurors that those summary exhibits have names
17 and not numbers because the parties agreed that's
18 how it's going to be done. Now, if there's -- if
19 there's any disagreement about a number matching a
20 name, that's a separate issue, but assuming that
21 there's no disagreement about that, I think that
22 should be clarified for the jury.

23 ATTORNEY KRATZ: I would appreciate it.
24 Thank you.

25 THE COURT: Who wants to do it?

1 ATTORNEY STRANG: We will.

2 THE COURT: Very well. All right. Let's
3 bring the jurors back in.

4 (Jury present.)

5 THE COURT: You may be seated. Members of
6 the jury, I apologize for the extra exercise we have
7 been giving you this afternoon. There was an issue
8 about the use of telephone numbers and the names of
9 the person -- persons associated with those numbers.
10 And I believe the attorneys wish to put a
11 stipulation on the record for you.

12 ATTORNEY BUTING: Judge, we have agreed
13 that the summary exhibits, which would be 362 and
14 360, would not include phone numbers of the persons
15 called, or calling in, for privacy reasons. And
16 they would be -- the summary exhibits would be
17 substituted with the names of the parties.

18 And having had some discussion now, we
19 clarified that the -- this witness doesn't
20 actually know all the information that's on 362,
21 because some of that information comes from other
22 exhibits. So that explains some of the confusion
23 that we were having.

24 THE COURT: All right. Mr. Kratz.

25 ATTORNEY KRATZ: Judge, I just wanted to

1 include in that stipulation that the Court and the
2 attorneys had been asked to substitute what would
3 have been phone numbers for names. Exhibits No. 360
4 and 362 were created by the State, at the suggestion
5 of the Court and the acquiescence of the defense.

6 We believed those to be, and still
7 believe them to be accurate reflections of not
8 only the type of calls, the times, and the
9 durations of the calls. If there continues to be
10 any questions about that, we will call other
11 witnesses to explain them.

12 But with Mr. Buting's acknowledgement
13 that there was a confusion, at least with this
14 witness and perhaps with others, we hope that
15 that explanation for the jury suffices and that
16 360 and 362 can be admitted as Exhibits, as if
17 approved as summary exhibits. And if there are
18 any further questions, those can certainly be
19 asked, but certainly there shouldn't be any
20 further question as to the authenticity or
21 accuracy of these two exhibits.

22 ATTORNEY BUTING: Judge, just so we're
23 clear, we are stipulating as to the sent/received
24 column, the names that are there. We still do
25 dispute, because the exhibits are inconsistent as to

1 the 4:35 p.m. phone call, one of which says the
2 duration is zero seconds and another exhibit says 13
3 seconds.

4 So with that, otherwise, we don't have a
5 problem with these two exhibits.

6 ATTORNEY KRATZ: I understand that. And we
7 may recall that witness --

8 ATTORNEY BUTING: Okay.

9 ATTORNEY KRATZ: -- just to explain that
10 one call, Judge.

11 THE COURT: Very well. Mr. Buting, do you
12 have further questions?

13 ATTORNEY BUTING: Just one or two last
14 ones.

15 Q. (By Attorney Buting)~ Exhibit 361, which is still
16 on the screen here, just so we're clear, the
17 dialed number column there that has some phone
18 numbers and also has some blanks --

19 A. Yes.

20 Q. The ones that are blank are not blank because
21 somebody uses the *67 necessarily, right?

22 A. Correct.

23 Q. Those are simply all incoming calls of any sort.
24 Cingular doesn't print out the phone numbers?

25 A. Correct.

1 Q. All right.

2 ATTORNEY BUTING: That's all I have.

3 THE COURT: All right. Anything else from
4 the State?

5 ATTORNEY KRATZ: Not of this witness. I
6 will recall Ms Dohrwardt.

7 THE COURT: This witness -- You are
8 excused. And then we'll allow the State to recall
9 Ms Dohrwardt.

10 You may be seated. And, Ms Dohrwardt,
11 you are still under oath. Mr. Kratz.

12 ATTORNEY KRATZ: Thank you.

13 **DIRECT EXAMINATION**

14 BY ATTORNEY KRATZ:

15 Q. Ms Dohrwardt, the exhibit that is now being
16 shown, Exhibit No. 361, you see a column that's
17 called Icell, do you see that?

18 A. Yes.

19 Q. Do you know what that column represents?

20 A. I don't know for a fact, but by cell and the
21 numbers, I would interpret that to be cell site
22 numbers.

23 Q. All right. So the jury --

24 ATTORNEY BUTING: Objection, your Honor, if
25 she doesn't know, she doesn't know.

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THE COURT: Mr. Kratz.

ATTORNEY KRATZ: I can ask her what cell site numbers are and how she believes that column relates to that, Judge. I would be happy to do that, or I can call somebody from the Department of Justice. We can do it either way.

THE COURT: Well, you may ask additional foundation questions if you believe it will help.

ATTORNEY KRATZ: I do.

Q. (By Attorney Kratz)~ Ms Dohrwardt, what are cell sites?

A. Those would be towers and sectors of towers. Ours are numbered, one tower could have up to six different numbers.

Q. On a cellular telephone is used, how does that cellular telephone communicate with a cell tower?

A. By registration.

Q. Does that happen --

A. There are certain events that cause registration.

Q. Why don't you explain that for us, if you can.

A. When a phone is powered on, it creates registration; when it makes or receives a call, it will show registration; sends or receives a message, it will show registration. And when it's powered down, physically powered down, that

1 would be the last registration and it would show
2 at that time that it was physically powered off.

3 Q. And what can physically power off a telephone or
4 a cellphone?

5 A. For where I'm talking, it would be holding the
6 power button.

7 Q. Okay. If a cellular phone is no longer operable,
8 that is, if a cellular telephone is somehow
9 destroyed, will it show that it is somehow off,
10 or powered down, or will it continue to bounce
11 off of or hit off of a cell tower?

12 A. No, it will no longer have a registration.

13 Q. And if a cellphone no longer has a registration,
14 that's two questions. First of all, can you
15 still send a call, like a voice mail message, to
16 that particular cellphone?

17 A. Yes.

18 Q. Physically, however, if it is no longer in
19 service, if it's destroyed, as an example; could
20 you physically answer or communicate with that
21 cellphone?

22 A. No.

23 Q. And do you know or do you have an opinion as to
24 how that may be reflected in cell records,
25 specifically in record No. 361?

1 A. I believe that the numbers in the Icell column do
2 represent cell site numbers, that represent the
3 cell site for each of those calls. And that at a
4 point there is no longer any communication with
5 the phone for the subsequent calls.

6 ATTORNEY KRATZ: Mr. Fallon can move that a
7 little bit to the left.

8 Q. Are you able --

9 ATTORNEY KRATZ: To the left, Mr. Fallon,
10 there you go, and up a little bit. The other way
11 Mr. Fallon. If I could see the cell site, there we
12 go.

13 Q. (By Attorney Kratz)~ Are you able, now looking at
14 Exhibit 361, to see at which time is the last
15 telephone call regarding this particular phone,
16 Ms Halbach's phone, that actually was hitting or
17 using a cell tower?

18 A. That would be the 2:41 p.m. call.

19 Q. After 2:41 p.m., on the 31st of October, has Ms
20 Halbach's phone ever again, as this exhibit shows
21 you, receive or send a phone message?

22 A. No.

23 Q. So the 4:35 call, specifically, do you see that
24 on there?

25 A. Yes.

1 Q. Says 13 seconds; is that right?

2 A. Yes.

3 Q. But do you see a cell tower that's associated
4 with that?

5 A. No.

6 Q. What does that tell you?

7 A. That tells me that that duration was spent in
8 voice mail.

9 Q. That it wasn't -- Does it tell you whether or not
10 it was physically answered?

11 A. It could not have been. There's no cell site
12 communicating with the phone for that call.

13 Q. So if a cell call doesn't physically ever bounce
14 off a tower, it can't physically ever be
15 answered; is that what you are saying?

16 A. Correct.

17 Q. And is that the 4:35 call that is shown in
18 Exhibit No. 361?

19 A. Yes.

20 Q. And, in fact, every call thereafter, that phone
21 never bounces off a cell site, does it?

22 A. Correct. There's no registration.

23 ATTORNEY KRATZ: That's all I have got,
24 Judge. Thank you.

25 THE COURT: Mr. Buting.

1 ATTORNEY BUTING: Just a couple of points
2 of clarification. Sorry, I'm an idiot on this
3 stuff, bear with me.

4 **CROSS-EXAMINATION**

5 BY ATTORNEY BUTING:

6 Q. You said that when the phone is powered down,
7 there is no registration, right?

8 A. There is an event that shows --

9 Q. Okay.

10 A. -- that it's physically powered down. And that
11 we would see in the switch.

12 Q. But you can't tell that from these records?

13 A. No.

14 Q. Okay. And if someone calls you when your phone
15 is powered down, it goes into -- their phone
16 still pings off some sort of tower, right?

17 A. Who's theirs?

18 Q. The calling party.

19 A. The calling party calling a powered down phone?

20 Q. Sure.

21 A. Yes.

22 Q. It still goes to a tower?

23 A. The calling phone, yes.

24 Q. And then that tower, what, searches for the
25 other -- for the receiving phone? If it doesn't

1 find it, it goes to voice mail, is that how it
2 works?

3 A. It depends on whether you're same carrier or not
4 same carrier, that you are calling.

5 Q. So, here it was a phone call from your carrier
6 that goes to a tower trying to reach a phone
7 that's not answering it, or not picking it up,
8 will it go to that voice -- to that other
9 carrier's voice mail, or how does that work?

10 A. The other carrier switch would have conditions or
11 triggers that, certain conditions are met, send
12 the call to voice mail, such as no answer after
13 25 seconds.

14 Q. Okay.

15 A. It knows the phone is powered off and then it
16 would send it immediately to voice mail, not --

17 Q. Okay.

18 A. -- 13 seconds typically.

19 Q. Okay. So this -- your best estimate is this
20 probably went to voice mail?

21 A. Right.

22 Q. As did the other ones after that?

23 A. Right.

24 Q. And the only way then to retrieve those messages
25 if -- let's say if the phone was destroyed,

1 somebody would have to be calling in on a land
2 line and using and accessing that through a
3 password?

4 A. Right. From any other phone, you can access
5 voice mail.

6 Q. With a password?

7 A. With a password?

8 ATTORNEY BUTING: All right. Thank you.

9 THE COURT: Anything else?

10 ATTORNEY KRATZ: No, Judge. I didn't know
11 if -- if those four exhibits have been received. I
12 believe they have, but if not, I would offer them at
13 this time.

14 THE COURT: Any objection at this time?

15 ATTORNEY BUTING: Yes, we can talk about --
16 We do have an objection to summary exhibits, but I
17 think we can probably work that out with counsel,
18 during a break.

19 THE COURT: All right. I'm going to excuse
20 the witness at this time. And members of the jury,
21 I'm going to excuse you for the day as well.
22 Remember not to discuss the case among yourselves or
23 with anyone else. And make sure not to watch any
24 news media accounts of the case. We will see you
25 tomorrow morning at the normal time.

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(Jury not present.)

THE COURT: You may be seated. We're still on the record here. Counsel, with 360 and 362, are you referring to the phone numbers that the defense may want to add to the exhibits, or something else?

ATTORNEY STRANG: What we would like to do is, I think talk to the State about modifying the exhibits. They may well agree. Just, you know, to include the information that -- that we want on and have elicited.

There's no reason the jury would have to know that the exhibit has been modified. The jury hasn't seen 360 or 362. Assuming we can reach an agreement with the State, as I expect we will, then we would not have an objection to the admission of 360 or 362 and the jury can see them at that point.

THE COURT: All right. Well, let's make sure to take that up first thing tomorrow morning. I would like to meet briefly with counsel in chambers before you leave today.

ATTORNEY KRATZ: Just, Judge, if I can just complete the record. 360 and 362 were both shown by Mr. Buting, to the jury. I promised the Court I wouldn't show them until we made any changes that

1 there was going to be. I suspect none of them are
2 going to pick up on that. And I don't have any
3 objection to Mr. Buting and Mr. Strang and I trying
4 to refine those exhibits. And if the Court has no
5 objection and Madam Clerk doesn't as well and we can
6 come to some agreement, we'll simply substitute
7 those exhibits.

8 ATTORNEY STRANG: I stand corrected,
9 Mr. Buting says he did briefly swipe them past, but
10 we'll see what we can work out.

11 THE COURT: All right.

12 (Proceedings concluded.)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 21st day of November, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL
5 TRIAL DAY 13

6 vs.

Case No. 05 CF 381

7 STEVEN A. AVERY,

8 DEFENDANT.

9
10 **DATE:** FEBRUARY 28, 2007

11 **BEFORE:** HON. PATRICK L. WILLIS
12 Circuit Court Judge

13 **APPEARANCES:**

14 KENNETH R. KRATZ
Special Prosecutor
15 On behalf of the State of Wisconsin.

16 THOMAS FALLON
Special Prosecutor
17 On behalf of the State of Wisconsin.

18 NORMAN A. GAHN
Special Prosecutor
19 On behalf of the State of Wisconsin.

20 DEAN STRANG
Attorney at Law
21 On behalf of the defendant.

22 JEROME BUTING
Attorney at Law
23 On behalf of the defendant.

24 STEVEN A. AVERY
Defendant
25 Appeared in person.

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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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1 (Reconvened at 9:12 a.m., jurors not present.)

2 THE COURT: At this time the Court calls
3 State of Wisconsin vs. Steven Avery, Case No.
4 05 CF 381. We're here this morning, uh, outside the
5 presence of the jury at this time for the
6 continuation of the trial in this matter. Will the
7 parties state their appearances for the record,
8 please?

9 ATTORNEY KRATZ: Good morning, Judge.
10 The State appears by the Calumet County District
11 Attorney, Ken Kratz, Assistant Attorney General,
12 Tom Fallon, Assistant D.A. Norm Gahn, appearing
13 as special prosecutors.

14 ATTORNEY STRANG: Steven Avery's present
15 in person, Jerome Buting and Dean Strang on his
16 behalf.

17 THE COURT: All right. I'll indicate for
18 the record that I met with counsel, uh, in chambers
19 before beginning today, uh, to discuss the schedule
20 for today, uh, and, uh, the Court also discussed
21 with counsel the, um, issue relating to the, uh,
22 victim's, uh, voicemail records, which the Court
23 reserved ruling on, uh, yesterday, uh, and I'd like,
24 uh, counsel to indicate the status of that matter as
25 they see it, uh, this morning.

1 Um, Mr. Buting, you were offering the
2 evidence, so I'll have you go first.

3 ATTORNEY BUTING: Yes, Judge. Uh, my
4 understanding is that, uh, there may or may not
5 be a -- a explanation that -- acceptable to the
6 defense as to the, uh, nature of these particular
7 records, which seem to indicate that messages
8 were listened to only through November 2 at eight
9 a.m.

10 Um, the State is going to be following
11 up on this and attempting to confirm, or get some
12 information, or actually present a -- a witness
13 from Cingular who can explain their records,
14 which clearly seem to indicate that, to me, if
15 the records are -- can be explained otherwise,
16 then we'll have that answer, and, if not, then
17 it's something that we will be raising and asking
18 the Court to permit, um -- to be admitted at
19 this -- in this trial.

20 THE COURT: Mr. Kratz?

21 ATTORNEY KRATZ: Judge, we, uh, will
22 have a combination of witnesses that will explain
23 Mr. Buting's misinterpretation of these records.
24 Uh, we intend to do that before the close of our
25 case, just as soon as those witnesses, which we

1 expect to be remote witnesses, that is, from out
2 of state, uh, are, uh, available. I'll alert the
3 Court and Counsel of that fact and we will be
4 calling them, as I mentioned, before the close of
5 our case.

6 THE COURT: All right. Uh, anything else
7 before we bring in the jurors?

8 ATTORNEY BUTING: One thing I wonder is
9 whether we might want to at least mark the
10 exhibit that we were, uh -- that's the subject of
11 this issue so that it could be not presented to
12 the jury, obviously, unless it's so ruled, but at
13 least it is part of the record?

14 THE COURT: Oh, um, I agree. I wasn't
15 aware it hadn't been marked. Uh, it definitely
16 should be.

17 (Exhibit No. 372 marked for identification.)

18 ATTORNEY BUTING: All right. So this
19 is --

20 THE COURT: What is the exhibit number?

21 ATTORNEY BUTING: It's 372, but the,
22 uh -- Exhibit is 372 and it's a, uh -- a computer
23 record of voicemails from Teresa Halbach's
24 Cingular phone covering the period of October 31
25 through November 3. I think there actually is

1 one two weeks later even, November 16. Um, a
2 record from Cingular, and the interpretation or
3 explanations of it will have to wait until we can
4 find out further information.

5 THE COURT: Very well. Anything else
6 before we bring in the jury?

7 ATTORNEY KRATZ: Your Honor, I think I
8 need that exhibit number again. I'm sorry.
9 Three --

10 THE CLERK: Three seventy-two.

11 ATTORNEY KRATZ: Three seventy-two.
12 Thank you.

13 THE COURT: All right. You can call in the
14 jury.

15 (Jurors in at 9:17 a.m.)

16 THE COURT: You may be seated. Uh, good
17 morning, members of the jury. Uh, Mr. Kratz, at
18 this time you may call the State's next witness.

19 ATTORNEY FALLON: Um, yes, Your Honor.
20 Um, the State would call, uh, to commence
21 testimony today, Special Agent Tom Sturdivant.

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

25 THE CLERK: Please be seated. Please state

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

2 THE WITNESS: Thomas Allen Sturdivant,
3 S-t-u-r-d-i-v-a-n-t.

4 **DIRECT EXAMINATION**

5 BY ATTORNEY FALLON:

6 Q What do you do for a living?

7 A I'm a special agent with the Wisconsin Department of
8 Justice, Division of Criminal Investigation.

9 Q How long have you been employed with the
10 Department of Justice?

11 A Since November of 1998.

12 Q What is your current assignment?

13 A I am currently assigned to the Narcotics Bureau.

14 Q And how long have you held that assignment?

15 A Approximately two years now.

16 Q And where are you based?

17 A I'm based out of Wausau.

18 Q Prior to receiving a narcotics assignment, what
19 else -- what other assignments have you held in
20 the employ of the Department of Justice?

21 A I worked in the Arson Bureau, as well as the
22 Financial Crimes Bureau.

23 Q Prior to joining the Wisconsin Department of
24 Justice, had you had other law enforcement
25 experience?

1 A Yes. I was -- I worked in the Maine State Police
2 from 1998 -- I'm sorry -- 1988 until 1998.

3 Q And that is the state of Maine?

4 A That is correct.

5 Q And what did you do for them?

6 A I was a uniformed trooper for approximately seven
7 years and a detective for three years.

8 Q Generally, what kinds of cases did you
9 investigate for the, uh, Wisconsin State Patrol
10 in Maine?

11 A The Maine State Police. I investigated a variety of
12 things from basic line patrol duties, uh, traffic
13 accidents, to investigating, uh, organized crime.

14 Q Agent Sturdivant, were you called upon to assist
15 other law enforcement entities in the
16 investigation of the, uh, death of Teresa
17 Halbach?

18 A I was.

19 Q How did you become involved?

20 A On November 8, 2005, I assisted with executing a
21 search warrant at the Avery business, and later that
22 afternoon I also assisted in looking at, um, areas of
23 interest that were marked by search teams.

24 Q All right. What types of, uh -- or what --
25 what -- what -- Excuse me. What were some of the

1 areas of interest that you, um, investigated
2 further?

3 A During that day, we looked at vehicles, we looked at
4 earthen piles, we looked at things that were marked
5 by flags that might have been discovered by the State
6 Patrol, or we were just looking at things to
7 determine if they had any evidentiary value.

8 Q Directing your attention, then, to the afternoon
9 of November 8, approximately 1:30 in that
10 afternoon, did you have, uh, occasion to, um,
11 meet with a Manitowoc County Sheriff's Officer by
12 the name of Jason Jost?

13 A I did.

14 Q Tell us about that encounter.

15 A Prior to that, we were at the command post and we
16 were asked to go out and take a look at a variety of,
17 uh, different things; the earthen piles, the
18 vehicles, and so forth. And, along the way, um, we
19 came across Jason Jost who was standing in front of a
20 red flag that had marked an item on the ground.

21 Q And where was that particular item marked?

22 A That item was, uh, located behind Steven Avery's
23 garage and south of the earthen pile, uh, behind the
24 garage, approximately 80 feet from the so-called burn
25 pit.

1 Q And we're going to show you, um, a photograph. I
2 believe it's been received as Exhibit 86.
3 Directing your atten -- uh, attention to Exhibit
4 86, we're zooming in on what has previously been
5 identified as the, uh, portion of the property
6 attributed to Mr. Avery.

7 Um, directing your attention, then, to
8 Exhibit 86, does that assist you in illustrating
9 where your attention was drawn to by, uh, Deputy
10 Jost?

11 A Yes, it does.

12 Q All right. Would you, with the laser pointer,
13 indicate, uh, where you and Deputy Jost were,
14 uh -- where your attention was drawn to?

15 A If this is -- this -- this is the earthen pile here,
16 we were standing just beyond it about, uh, eight
17 feet, um, beyond that earthen pile.

18 ATTORNEY FALLON: Would the record
19 reflect the, uh, witness has indicated with the
20 laser pointer, uh, a direction a few feet,
21 apparently, uh, eight feet south of the pile,
22 which would be the top of the picture, uh, as
23 zoomed in here on Exhibit 86?

24 THE COURT: Does the defense agree?

25 ATTORNEY STRANG: I don't have any

1 quarrel. It's up to the jury in the end.

2 THE COURT: All right. Uh, the record will
3 so reflect.

4 ATTORNEY FALLON: Thank you.

5 Q (By Attorney Fallon) After Deputy Jost do --
6 drew your attention to this particular, um,
7 matter, um, first of all, could you describe a
8 little more fully what you and he were looking at
9 at that point?

10 A Excuse me. Deputy Jost was standing in front of what
11 appeared to be, in my opinion, a piece of bone
12 fragment. It was approximately one inch in length.
13 And, um, my opinion was, and I think we kind of
14 agreed, that it was a, uh -- a -- a piece of bone
15 fragment. And after looking at that, I looked at
16 this so-called burn pit at the end of that pile of
17 gravel and also noticed other -- what in my opinion
18 were bone fragments, um, that were obvious, uh,
19 around that, uh, pile of debris.

20 Q All right. And, um, I'd like to, uh, show you
21 some exhibits now. While we retrieve one exhibit
22 already introduced, I'm going to have Agent
23 Fassbender provide some additional photos for
24 your examination.

25 First of all, though, before we look at

1 those photos, I'd like to direct your attention
2 to Exhibit No. 50 as, um -- as portrayed on the
3 scene. Do you recognize that particular area?

4 A Yes.

5 Q Is that a photograph of how the burn area looked
6 when, uh, you first, um, began to inspect it?

7 A That is correct.

8 Q All right. And I note that there is a, uh,
9 German Shepherd, uh, prominently featured in the
10 center of this photograph?

11 A That is correct. It was a large, uh, in my opinion,
12 intimidating, big German Shepherd that stood on top
13 of that pile.

14 Q All right. And, um, was that, uh, German
15 Shepherd there when you first approached the area
16 to, uh, examine the article found by Deputy Jost?

17 A Yes, he was.

18 Q All right. Now, you indicated the dog was large
19 and intimidating. Could you elaborate on that?

20 A As you walked towards the mound of dirt, the dog
21 would come out and, um -- and, at times, um,
22 aggressively, um, charge towards the people that were
23 walking towards the earthen pile.

24 Q All right. Um, I believe we have some additional
25 photographs in front of you? So would you take

1 the first one on the pile, uh, turn it over, and
2 tell us what exhibit number that is?

3 A Exhibit 363.

4 Q All right. And do you recognize Exhibit 363?

5 A I do.

6 Q And what is Exhibit 363?

7 A It is a picture of -- of the dog, the earthen pile,
8 and this is a pile of, uh, sand, rock, and stone that
9 stood probably a, uh, foot to two feet above the
10 grass where the natural landscape.

11 Um, and the left -- or the low left-hand
12 corner of this, you can see in part of the burn
13 pit, um, can see the hammer that was, uh -- was
14 at the site as well, as well as the burned out
15 frame -- uh, what appeared to me a metal frame
16 seat from a motor vehicle, and lots of
17 steel-belted, uh, wire from what I thought
18 were -- were -- were steel-belted tires.

19 Q Very well. I'm going to have, um, uh -- go back
20 to Exhibit No. 50, and, um, see if we can get a
21 perspective that I'd like you to identify.

22 Again, looking at Exhibit 50, can you
23 indicate with your laser pointer the approximate
24 location of the first bone that you and Deputy
25 Jost, um, examined?

1 A The first -- the first bone is approximately out
2 here. It's about eight feet, as I estimated, from
3 the beginning of the burn pit.

4 Q All right. So it would be in -- in -- what is in
5 our picture here, would be in the -- the front
6 foreground of the picture?

7 A That's correct. It would actually be in the grassy
8 area away from the burn pit.

9 Q And that would be, uh -- So as you indicated with
10 your pointer, the, uh, lower right-hand corner of
11 the photograph?

12 A That is correct.

13 Q Thank you. All right. Uh, again, and, um, to,
14 uh, direct your attention to the next, uh,
15 photograph, uh, which has been -- The photographs
16 have been presented to you there. What's the,
17 uh -- the next photograph that, uh, you have?

18 A Exhibit 364.

19 Q All right. And what is Exhibit 364?

20 A Exhibit 364 is a -- just a different angle, um, of
21 the earthen burn, if you will. Um, you can see the
22 doghouse within that, um, and you can see the metal
23 seat, the burned out metal seat, um, metal frame of
24 the vehicle seat if -- in my opinion.

25 Q All right.

1 A Um, and you can see the -- you can see the pile.
2 This is the pile of sand and gravel that stood above
3 the landscape, and the doghouse.

4 Q All right. And there's also a propane tank
5 prominently featured in this photograph?

6 A That is correct.

7 Q All right. And, uh, the next photograph?

8 A Next exhibit is, uh, 365.

9 Q Do you recognize Exhibit 365?

10 A I do.

11 Q Okay. And Exhibit 365 is what?

12 A Exhibit 365, um, represents what I initially saw.
13 Um, the bone was out here that I initially looked at.
14 I looked at the burn pit, walked over, this is where
15 I saw charred debris to include what I believed to
16 be, um, bone fragments, a shovel, um, the large dog,
17 a seat, a -- a tire out here, lots of, um -- in my
18 opinion, lots of, um, steel belts from burned tires.

19 I believe there was a hammer in here,
20 but, uh, this -- this is -- would be the debris
21 that I focused on right here.

22 Q Uh, does that -- uh, again, does that picture, as
23 does, uh, the last exhibit, truly and accurately
24 portray the scene before any, uh, further
25 investigation took place?

1 A Yes, it does.

2 Q All right. Now, um, you began to describe -- And
3 I think we may have interrupted you. Can you
4 estimate for us the approximate size of the area
5 where the burn is, itself, in terms of its, uh,
6 dimensions?

7 A I estimated this pile of dirt to be 30 feet by
8 30 feet. It was easily the width of this garage, and
9 I estimated it to be about 30 feet in length.

10 In the center of this pit -- We'll
11 consider this the bottom of the south side, if
12 you will, is a burn pit right here. Was a -- I
13 described that as being six feet in rectangular
14 shape. It appeared to me as though somebody had
15 taken a, um -- some sort of a construction
16 vehicle with a front end loader on it, and gone
17 in there and taken approximately six feet of that
18 out and created a concave area that looked just
19 like a -- a -- a pit.

20 Um, so it was, again, about six feet
21 wide, looked like somebody had taken a big shovel
22 from a bobcat or a front end loader and scooped
23 out dirt, and removed it, and -- and, um, dumped
24 it elsewhere.

25 Q All right. Now, I note in the -- in the far

1 background of this picture, we're going to zoom
2 in, um, is there a vehicle depicted there?

3 A Yes, there is.

4 Q All right. And was that vehicle, uh, in the area
5 as well?

6 A I do not recall.

7 Q Okay. All right. Next photograph, please?

8 A Next Exhibit is 366.

9 Q What is Exhibit 366?

10 A Again, this, uh, depicts the, uh -- a portion of the,
11 um, pile of dirt, as well as, um, I believe to be
12 that -- uh, Steven Avery's trailer, the, uh, propane
13 tank and a portion of the, uh, detached, uh, two-car
14 garage.

15 Q And, uh, in -- in the foreground in front of the
16 garage is a red box-like item? What is that?

17 A Yes. That would be the doghouse.

18 Q All right. And, again, is that, generally, the
19 layout of the scene and the burn area of -- uh,
20 when you came upon the scene, on Tuesday
21 afternoon, November 8?

22 A Yes, it is.

23 Q All right. Very well. Um -- All right. Let's
24 talk, uh, again, about what you did after you and
25 Deputy Jost examined this particular, um, um,

1 bone fragment? What did you do?

2 A After looking at the bone fragment, I then walked
3 towards this burn pit. So I walked from the bone --
4 from the, uh -- the piece of bone fragment out here
5 to the burn pit. I looked at the burn pit. I
6 observed what I thought were other bone fragments in
7 and around that burn pit. I picked up a twig. I
8 moved some leaves and other things, and I could see
9 other bone fragments within that -- within the
10 charred debris. Um, I noticed what I believed to be,
11 uh, skull fragments, uh, in that debris and
12 intertwined within the steel-belted tires.

13 Um, aside from that, I didn't do much
14 with that burn pit. Um, at that point we were
15 trying to, uh, uh, get in contact with the, uh --
16 the, uh, folks from the Crime Lab, as well as
17 some of our arson folks.

18 Q All right. And, uh, were you able to, uh, get a
19 hold of anyone in the Arson Bureau, uh, that
20 particular afternoon?

21 A Myself and another agent were, uh, trying to contact,
22 uh, the arson folks. I spoke with Kevin Heimerl. I
23 believe Deb Straus -- Straus spoke with the -- I
24 think, uh, Special Agent Fassbender, as well as one
25 of our other arson agents that happened to be, um,

1 working the investigation.

2 Q All right. And, um, you mentioned something
3 about the Crime Lab? Tell us about their
4 involvement if any?

5 A Um, and we -- we attempted, um, to get those folks to
6 the, uh -- to the scene. I understood that the Crime
7 Lab was busy retrieving or collecting other, um,
8 evidence from burn barrels and so forth, so that they
9 would not be available for a bit. Um, the arson
10 agents that we spoke with were also busy, um, with
11 other, um, investigative activities, uh, so we, uh --
12 we waited for the, uh, Crime Lab to, uh, show up.

13 Q All right. And, um, at approximately three p.m.,
14 were you assisted by members of the Crime Lab?

15 A Yes. Uh, I don't have the exact time, but at some
16 point later on, um, in the afternoon, the Crime Lab
17 did show up. Um, I believe it was John Ertl, Guang
18 Zhang, um, and Chuck Cates who arrived with a van and
19 set up a sifting apparatus, a large sifting
20 apparatus, on a tripod that required two and three
21 people to assemble it.

22 Q All right. And, um, after they came with their
23 equipment -- Well, first of all, before they came
24 with their equipment, were -- were there -- was
25 there anything removed, or any shovels taken to

1 that pit, anything disturbed in the fire pit
2 area, before the arrival of the Crime Lab, by
3 yourself or any other law enforcement officer in
4 your presence?

5 A Nothing was introduced, um, between the time that we
6 discovered the pit and the time that the Crime Lab
7 arrived. We did not have proper equipment, gloves
8 or, uh, proper clothing to, uh -- to, uh, process
9 that.

10 Q Did the Crime Lab provide the necessary equipment
11 to begin processing?

12 A They did.

13 Q In addition to, um -- Tell us about the sifting
14 apparatus?

15 A Well, the sifting apparatus is a large tripod that
16 has these large, I think they're maybe three foot in
17 length, a couple of feet wide, different strains of
18 different sizes so the debris, as you -- as you moved
19 it around, certain things would fall through, certain
20 things would remain above.

21 And so as -- After setting that up
22 and -- and getting it all set up, we then took
23 the debris from that debris pile, put it on top
24 or shoveled it on top of these screens as in
25 sifted through it, and, again, the small

1 particles would fall through, the large ones
2 would remain.

3 There were two different types of
4 strains. And we picked out what we thought were
5 bone fragments. Um, other things to include
6 metal grommets, as well as a, uh, zipper. And
7 all of those items that -- Again, we -- I'm not
8 an anthropologist. I'm not trained in that
9 field. We picked out things that we thought
10 might be bone fragments, to include teeth, and
11 placed them in a box which was then, um, taken by
12 the Crime Lab.

13 Q I'm going to have an exhibit marked, for your,
14 uh, examination, by Investigator Wiegert.

15 (Exhibit No. 373 marked for identification.)

16 ATTORNEY FALLON: Want to -- Would you
17 show Counsel, please?

18 Q (By Attorney Fallon) I'm showing you what has
19 been marked for identification purposes as
20 Exhibit 360 --

21 THE CLERK: Three hundred seventy-three.

22 Q (By Attorney Fallon) -- 373. Sorry. Do you
23 recognize that particular item?

24 A I do. It's the, uh -- the zipper that was retrieved
25 from the debris as we sifted through it and placed in

1 a larger box.

2 Q All right. Very well. I'm -- I'm going to have
3 you place that back in the box and have, uh,
4 Investigator Wiegert put it on the, uh, ELMO for
5 projection.

6 ATTORNEY FALLON: Leave it in the box
7 unless you don't think it will portray. Could
8 you zoom and adjust that light for us,
9 Investigator? Little out of focus. You'll have
10 to zoom out. Very good.

11 Q (By Attorney Fallon) Is, uh, portrayed on this,
12 uh, screen now for the benefit of our jurors, is
13 that the, uh -- the piece of zipper that you, uh,
14 discovered?

15 A Yes, it is.

16 Q Thank you. In your examination of that zipper,
17 did you notice any markings on that zipper?

18 A Yes. There were three letters on the zipper.

19 Q And do you recall those letters?

20 A I don't recall them, no.

21 Q I'll have the Investigator show you the exhibit.
22 Would a pair of reading glasses assist you?

23 A They -- they might. Thank you.

24 Q Age is a terrible thing, isn't it?

25 ATTORNEY STRANG: It's better than the

1 alternative.

2 THE WITNESS: The letters are Y, K, K.

3 Q (By Attorney Fallon) Thank you. Approximately
4 how long did this, uh, sifting, um, process, uh,
5 take?

6 A The sifting process went on until, uh, just about
7 dark. Um, because of the darkness we were, um,
8 moving along, um, rapidly, trying to get -- we were
9 trying to retrieve, um, as much of the bones that we
10 could recognize and get those things to the Crime Lab
11 for examination.

12 Q All right. And why was that?

13 A Well, at this point in time, quite frankly, we don't
14 know if Teresa Halbach is alive or dead. So I had
15 made the decision that we need to get these bones,
16 um, off to the Crime Lab to determine whether or not
17 these bones were human bones and belonged to Teresa
18 Halbach.

19 Q And, um, generally, how did you and, uh,
20 Mr. Ertl, and, uh, Mr. Zhang, and Mr. Cates, and
21 I think you were -- said you were assisted by
22 Agent Straus?

23 A No. In terms of the sifting?

24 Q Yes.

25 A The sifting involved, uh, John Ertl, Chuck Cates,

1 and -- and, uh, uh, Guang Zhang from the Crime Lab,
2 myself and -- and Deputy, uh, Jason Jost.

3 Q Okay. And, um, how did the, um -- how was the
4 material taken from the pit and brought to the,
5 um, sifting apparatus?

6 A We set up the tripod. The tripod was, uh, just a
7 short ways from the burn pit, if you will. Um, might
8 have been, uh, maybe six feet from the burn pit. So
9 you've got this tripod device set up, you've got
10 these long, um -- elongated sifting devices that were
11 supported by -- by, uh, chains, and beneath that we
12 put a brown tarp.

13 John Ertl, or someone else from the
14 Crime Lab, took the shovelful of debris up,
15 placed it on top of the sifter. As we spread it
16 out with our -- with our hands and with our
17 gloves, and we sifted through it and picked out
18 those things that we felt were either bones, in
19 some cases the metal grommets, and the, uh -- the
20 zipper that, uh -- that we could discern, uh,
21 from -- from the pile of debris.

22 Other things -- you know, things that
23 fell through were placed on -- or fell to the
24 tarp. Um, the debris that could not fall through
25 was picked up and then dumped on that tarp. So

1 everything that we sifted was collected on top of
2 that tarp.

3 Other things like, uh, maybe a seat
4 belt, a metal seat belt fastener was -- was left
5 there, a hacksaw blade, other things that came
6 out of that debris, to include the, uh -- the
7 steel-belted, uh, uh, metal from the tires, that
8 was left there as well.

9 Um, so we -- we always sifted those
10 things that fit on the shovel, um, and the things
11 that we took out of that were placed in a large
12 box that the Crime Lab -- Crime Lab had and took
13 with them.

14 So we did it relatively fast due to the,
15 uh, darkness, uh, impending darkness, and, um --
16 and -- and -- and, again, carefully picked the
17 stuff up, put it on top of the, uh -- the
18 sifters, and sifted through it, and picked out
19 what we thought, was, uh, bone material and other
20 items of interest.

21 Q What did you do with the material that was left
22 on the tarp?

23 A The material that was left on the tarp was picked up,
24 collected, folded inside the tarp. There was another
25 tarp placed over it, and then we double-bagged it and

1 placed it inside a locked van at the crime scene. It
2 was basically turned over to -- to, uh, Deputy, uh,
3 Rick, uh, um, Riemer from the, uh, Calumet County
4 Sheriff's Department.

5 Q What did you do with the, um -- the -- the, um,
6 burn pit area, itself, uh, when it became too
7 dark to continue the processing?

8 A We -- we examined the scene and removed the stuff
9 down -- down to the ground surface. We did not dig
10 in the ground. We left, um, other items that we
11 found there, the shovel, and the hammer, the hacksaw
12 blade, the screw driver, um, the seat belt fastener,
13 the burned out frame, the tire, and other things were
14 left at the scene. The scene was covered with a
15 tarp.

16 And my decision was, if this turned out
17 to be Teresa Halbach, and we -- and we called
18 Special Agent Fassbender, that we should then
19 come back and more thoroughly examine this scene.
20 But our intention at that point in time were to
21 determine whether or not Teresa Halbach was alive
22 or dead at that point in time, and that's why it
23 was important to me just to get those bones off
24 to the Crime Lab to see if -- if, in fact, that,
25 uh, we discovered Teresa Halbach.

1 Q All right. Did you have any other concerns
2 regarding, um, the evidence, or the weather, or
3 anything else that factored into your
4 decision-making that afternoon?

5 A Well, um, part of that, uh, you know -- I mean, the
6 bones could have been carried off by animals, there
7 were a lot of things that could have happened, to
8 include rain or other in climate weather. I didn't
9 know the forecast at the time. Um, but, uh, we --
10 we -- we did make some preparations to cover the --
11 the, uh, burn pit, um, and pick up as many bones as
12 we could to prevent, the -- you know, the loss or --
13 or being carried off by an animal. Um, so that was,
14 uh, that -- that's what I did.

15 Q All right. I think you can remove your gloves.
16 I'm sure they're getting a little uncomfortable
17 at this point.

18 A Didn't know if there was other evidence or not.

19 Q Um, if you would, uh, examine, again, the
20 remainder of the photographs in front of you,
21 what's the -- the next photograph on the list?

22 A Yeah. That would be Exhibit 367.

23 Q All right. And what is Exhibit 367, please?

24 A That is the hammer that was, uh, um, beside the burn
25 pit. Um, that, um, was sitting, um, up on the ridge.

1 If you're facing the burn pit, up on the right-hand
2 side.

3 Q In the gravel portion?

4 A Yes.

5 Q All right. And, um, what's the next photograph?

6 A The next exhibit is, uh, 368.

7 Q And what is Exhibit 368?

8 A That's the, uh, screwdriver that was also, uh,
9 located in the pit.

10 Q Was that actually in the burn area, itself, or
11 was that in the surrounding gravel?

12 A I believe this was down inside the pit.

13 Q And what is the next item?

14 A Uh, a masonry trowel or a little pull, if you will.
15 And this was also, uh, in the, uh, burn pit area.

16 Q And that is Exhibit 3 --

17 A I'm sorry. Exhibit 369.

18 Q All right. And, finally, what else do you have
19 there?

20 A I got Exhibit 370 and 371. Exhibit 370, that's the,
21 uh -- the spade or shovel that was sitting on top of
22 the, uh, dirt and sand just to the left of the burn
23 pit.

24 Q All right.

25 A And the final exhibit I have is 371, and that is a

1 picture of the -- in my opinion, a -- a metal frame
2 of a, uh, seat from a motor vehicle. Um, this was
3 the seat that was seated -- If you're looking at the
4 pit, to the right of the pit, um, with, uh, a -- a
5 tire and some other -- other debris, to include the,
6 uh -- more metal from, uh, steel-belted tires.

7 Q All right. Um, and, finally, I'm going to
8 redirect your attention, I guess, back to, uh,
9 Exhibit No. 50, uh, which is one of the first
10 photographs. You don't have that in front of
11 you.

12 But, um -- Now, if we could, um, I
13 believe in Exhibit, uh, 50 there is a shovel,
14 which is depicted, uh, right there. Is that the,
15 uh, shovel that we just saw a picture of?

16 A That is correct.

17 Q All right. Very well. And, uh, in terms of the,
18 um -- I believe you have an exhibit in front of
19 you, uh, a photograph, uh, with the hammer and
20 its location?

21 A Yes. The hammer would have been located
22 approximately right here to the right of the pit
23 on -- on the, um, top of the mound.

24 Q All right. And now we have zoomed in on Exhibit
25 No. 50. Is that the, uh, hammer that we've just

1 examined in an evidence photo?

2 A That is correct.

3 Q Very well.

4 ATTORNEY FALLON: I have no further
5 questions for the witness. Subject to cross, I
6 would move into evidence the exhibits that we've
7 marked and identified during Agent Sturdivant's
8 testimony.

9 THE COURT: Any objection?

10 ATTORNEY STRANG: Uh, no objection to
11 any of the exhibits, which I think are 363
12 through 371, and then, numbers 373.

13 THE COURT: Very well. Those, um, exhibits
14 are admitted. Um, Mr. Strang?

15 ATTORNEY STRANG: Thank you, Your Honor.

16 **CROSS-EXAMINATION**

17 BY ATTORNEY STRANG:

18 Q Good morning.

19 A Morning, sir.

20 Q How many days were you out at the Avery property?

21 A I was out there, uh, one day, fully, and then just,
22 uh, partially for, um, a -- a morning.

23 Q The 8th was the full day out there?

24 A Yes.

25 Q November 10 was the other day?

1 A I believe so.

2 Q You were gone in between for court obligations or
3 something?

4 A That is correct.

5 Q How many, uh, sites did -- did you see while you
6 were at the Avery property at which you found
7 actual or suspected human bone fragment?

8 A Just one.

9 Q The one you've described here?

10 A That's correct. Yes.

11 Q Now, this site, though, uh, the first fragment
12 that you saw, uh, was next to a red flag?

13 A Yes, sir.

14 Q The red flag was next to a sheriff's deputy?

15 A That's correct.

16 Q The sheriff's deputy was Jason Jost or Jost?

17 A Yes, sir.

18 Q From Manitowoc County Sheriff's Department?

19 A Yes, sir. Correct.

20 Q That red flag and Deputy Jost were about eight
21 feet south of the burn pit or the burn area
22 you've described?

23 A That's correct.

24 Q Eight feet south onto grass?

25 A That's correct. Yes.

1 Q There did not appear to be burnt ground or burnt
2 grass in the area of that first bone fragment?

3 A There was not.

4 Q Didn't look like it had been used as a burn area?

5 A No.

6 Q Did the, uh, dog leash, so far as you know,
7 extend that far south to the, uh -- to the red
8 flag of the bone fragment?

9 A It did not, to the best of my knowledge.

10 Q While we're at it, um, the dog we saw in the
11 picture, did he or she stay there the entire time
12 you folks were sifting and going through this
13 burn pit?

14 A No. It's my recollection that the dog was removed, I
15 believe, prior to the sifting. So I thought the dog
16 was removed at some time between, uh, the time that
17 we contacted the Crime Lab and the time that we began
18 our sifting.

19 Q And that was a matter of asking an officer to
20 come and remove the dog?

21 A I'm not certain who did that, but I believe the dog
22 was removed by -- could have been the animal control
23 officer.

24 Q Okay. That was a matter of just simply making a
25 phone call and getting somebody to do it?

1 A Yes.

2 Q You had some prior experience as an arson
3 investigator with -- with our Crime Lab?

4 A I had never worked with the Crime Lab at a crime
5 scene prior to that.

6 Q I'm sorry. I -- I --

7 A I misunderstood the question, perhaps, but --

8 Q I may have misunderstood the testimony. I
9 thought -- I thought I had understood you to say
10 that you had experience as an arson investigator
11 prior to November 8, 2005?

12 A I did, but I never used the services of the Crime Lab
13 or the Field Team.

14 Q My mistake. My mistake. I'm -- I said Crime
15 Lab. What I meant was DCI, Division of Criminal
16 Investigation.

17 A That's correct. Yes.

18 Q Same Wisconsin Department of Justice, two
19 different entities within the Wisconsin
20 Department of Justice; right?

21 A Yes, sir.

22 Q Crime Lab, what we'll -- we will call DCI, the
23 Division of Criminal Investigation?

24 A Yes, sir.

25 Q All right. My mistake. You're with DCI?

1 A That's correct.

2 Q The Crime Lab people help process more
3 challenging scenes?

4 A Correct.

5 Q Uh, your work, though, with DCI had -- it had
6 included a stint as an arson investigator?

7 A Yes, sir.

8 Q Had you ever dealt with what -- what's called a
9 body cremation or a suspected body cremation site
10 before this one?

11 A Yes.

12 Q On how many occasions if you remember?

13 A Uh, maybe three or four different occasions. Not to
14 this extent, though.

15 Q Okay. And I -- and when -- when I say "body
16 cremation" I mean the distinguishing those from
17 what you'd -- what I -- I would call an arson
18 site. Are you also drawing a distinction?

19 A I would -- I would draw the distinction between we
20 talking about charred remains or somewhat decomposed
21 bodies from fire scenes?

22 Q Right. And let's develop that. I want to
23 develop that with you just a little bit more, all
24 right?

25 A Yes.

1 Q An -- an arson scene, uh, sometimes,
2 unfortunately, will -- will involve one or more
3 human fatalities?

4 A Correct. Yes.

5 Q In your experience with an arson scene, what has
6 happened is either you suspect, or someone
7 actually has, set fire deliberately to some
8 structure or property?

9 A Yes.

10 Q In your experience, as an arson investigator,
11 sometimes a murder has occurred in the structure
12 or at the scene and fire is set to try to dis --
13 disguise the murder?

14 A Correct. Yes.

15 Q In other situations, the fire is set and someone
16 inside the property perishes in the fire?

17 A Yes.

18 Q Whether intended by the arsonist or not?

19 A Yes.

20 Q What is common to arson scenes involving a
21 fatality, in your experience, is that, typically,
22 if there's a death, that body simply lies where
23 it falls, so to speak?

24 A Yes.

25 Q Uh, the -- the person may have died before a fire

1 was set, but the arsonist has set the fire and
2 left?

3 A Yes.

4 Q Or if the arsonist has started the fire and
5 somebody's unfortunate enough to be in the
6 building, or not be able to get out, the person
7 falls where the smoke or the flames overcome
8 them?

9 A As well, correct.

10 Q Uh, so, typically, in an arson scene that would
11 involve the recovery of charred human remains,
12 those remains, again, typically, in your
13 experience, simply are -- are in place and have
14 not been tampered with unless firefighting
15 personnel inadvertently have disturbed that
16 scene?

17 A There is typically a body or a -- somewhat of a, um,
18 um, body remain because, typically, that body remains
19 on a surface and is protected. In this case, um --
20 I'm sorry. And -- and, you know, in the arson scenes
21 I've been in, if the body remains on a surface, the
22 body is somewhat protected, um, so that there is a --
23 there is, um, somewhat, uh -- or often a -- a --
24 could be a complete body, could be a partially
25 decomposed body.

1 Q Sure. And in this -- I -- I don't mean to be
2 unnecessarily in a cob here, uh, this morning,
3 but, um, it -- when you say "protected", there
4 may be fallen debris or other materials from the
5 burnt property that are atop the body.

6 A That's correct. Typically, whatever the body is
7 lying on, or if there's something lying on the body,
8 that body will be protected. There will be a body.
9 My experience, of all the arsons I've been to, that
10 body is always protected on at least one side, and
11 you will see -- or have a body or a partially
12 decomposed body.

13 Q Right. Not something that's been re -- reduced
14 entirely to charred bone?

15 A Correct.

16 Q So when you say "protected", you'll have tissue
17 on at least one side of the body?

18 A Tissue, clothing, whatever's protected.

19 Q Sure. Because, for example, if someone falls
20 facedown on the floor, uh, the -- the -- the
21 thermal injury, the heating, has no access to,
22 then -- to the -- what would be the front side of
23 my body if I'm lying facedown on the floor?

24 A Correct.

25 Q Uh, and, again, barring inadvertent disturbing

1 of -- of that scene by firefighting efforts, um,
2 you would expect the -- the body or the remains,
3 essentially, to be contained within the area in
4 which the person fell or laid?

5 A For the most part, yes.

6 Q That's your experience --

7 A Yes.

8 Q -- for the most part in arson investigations?

9 Now, cremation, on the other hand -- And let's --
10 let's make clear that we're talking about illegal
11 cremation. We're not talking about the proper
12 disposal of a -- of a dead body. But a cremation
13 scene is different in a number of ways. One of
14 those is that cremation, as you understand it,
15 typically involves the intentional effort to
16 disguise a dead body?

17 A I'm not an expert in cremation, um, um, so it --
18 it's -- it's hard for me to say what actually goes on
19 with a cremation, but, um, you know, yes.

20 Q Cremation sites you've seen, in other words, uh,
21 you've understood, in your experience, to involve
22 someone's effort to conceal or destroy a human
23 body?

24 A Yes.

25 ATTORNEY FALLON: Your Honor, I'm going

1 to, uh, ask -- I have an objection. It might be
2 just a brief foundation question, but it's not
3 clear to me exactly how many cremation sites as
4 opposed to arson sites he's been to, and what
5 their condition was before those questions can be
6 elicited.

7 ATTORNEY STRANG: I -- I did ask. I'm
8 happy to ask again and develop that a little
9 further.

10 Q (By Attorney Strang) Maybe for Mr. Fallon's
11 benefit you can repeat the answer about the
12 number of cremation sites?

13 A Based on your, um -- what you're saying, I would -- I
14 would say that I've been to two cremation sites. One
15 being the Teresa Halbach site, as well as another
16 one.

17 Q Okay. And was the other one previous?

18 A The other one was previous, which also involved
19 sifting.

20 Q All right. And, uh, was that an outdoor site as
21 well?

22 A No. That was a vehicle, uh, scene. Body was inside
23 a motor vehicle.

24 Q All right. Um, but you viewed it as a cremation
25 site because you concluded that a deliberate

1 effort had been made to destroy a body by fire or
2 heat?

3 A I didn't consider it a cremation. I guess I
4 considered it at the, uh -- the fire scene. So...

5 Q Okay.

6 A Not being an expert in cremation.

7 Q No. No. And I -- And I'm not suggesting you are
8 an expert in cremation. I'm just trying to
9 distinguish --

10 A Right.

11 Q -- sort of a typical arson scene as you
12 understand it, where there may be a fatality from
13 a cremation sense.

14 A Yes.

15 Q A -- another distinction you made -- or you
16 make -- I think you suggested in discussing the
17 arson scene, where, uh, in the arson scene,
18 there -- there ordinarily would be at least one
19 protected side or area of the body. In a
20 cremation scene, the purpose is, uh, that -- that
21 the body not be protected and an effort made to
22 reduce the body to charred remains all the way
23 around?

24 A Not necessarily effort, but just the way the body's
25 positioned and elevated, for instance, under the

1 motor vehicle seat.

2 Q That could happen?

3 A Yes.

4 Q Um, and if the, um -- if the attempt in cremation
5 is to disguise or conceal the fact of the death
6 or the existence of the body, you may see
7 someone, then, disturbing the remains during or
8 after the fire?

9 A Yes.

10 Q Now, here, uh, you described for us the bone
11 fragment found eight feet, roughly, to the south
12 of the pit?

13 A Yes.

14 Q During the course of the day, day-and-a-half,
15 whatever it is, that you were involved in
16 sifting, uh, you also found suspected bone
17 fragments to the east of the burn area you
18 described?

19 A I'm not certain what you're speaking of. Within the
20 pit or outside the pit?

21 Q Let's go back, if we could, to Exhibit 50. Is
22 that possible? I have Exhibit 50 up?

23 A Yes.

24 Q Did you find fragments, uh, to the east, which
25 would be to the right in this photograph?

1 A This would be east, correct? Okay. The bone
2 fragment -- One was out here. There were bone
3 fragments intertwined in the steel belts, um --

4 Q Now, those belts are hard to see, um, but I think
5 the material you're referring to as -- as belts
6 almost looks like a -- a tumbleweed or a bramble
7 bush or something?

8 A Exactly.

9 Q Down in the --

10 A Crater.

11 Q Exactly. All right. Those -- You've seen burned
12 tires before?

13 A Yes.

14 Q And recognize the unraveling of the steel-belted
15 radial?

16 A Yes.

17 Q In heat. All right. And so you had bone
18 fragments to the east of the burn area?

19 A The bone fragments were concentrated within the pit,
20 but there were some bone fragments intertwined within
21 the steel belts, and I -- so the -- the -- the bulk
22 of -- of the debris, or bone fragments, were located
23 within the pit.

24 Q Sort of in a pile, in effect?

25 A Yes.

1 Q Did you find any fragments -- I understand that's
2 where the bulk were. Did you find any fragments
3 to the west of the burn area or the pit?

4 A The -- the bone fragments I concentrated on, and
5 there could have been others, but the bone fragments
6 that we concentrated on were the bone fragments
7 located in the pit.

8 Q So whether -- whether other officers picked up
9 fragments outside the immediate pit area and
10 tagged them separately, you don't know one way or
11 other?

12 A I don't know. I know that the scene was reprocessed
13 again, and that's when they could have picked up
14 those other bone fragments.

15 Q All right. Um, what is clear to you, or was
16 clear to you, when you were there on November 8,
17 is that the -- the area that appeared, uh, to
18 have been used for burning seemed to be in what
19 you're calling the pit?

20 A Yes, sir.

21 Q The pit, actually, appears to be more or less at
22 grade with the surrounding yard or lawn; correct?

23 A That is correct.

24 Q And then it looks like, uh, some dirt and -- or
25 gravel, uh -- doesn't look like topsoil,

1 necessarily, but dirt and gravel, rocks, at some
2 point were piled atop the yard or the grass?

3 A Yes.

4 Q So that -- so the dirt is what's elevated, and
5 what you're calling the pit is actually simply at
6 yard level?

7 A That's correct.

8 Q But burned on the bottom?

9 A Yes. And there's some burning along the sides as
10 well.

11 Q Signs of some heat?

12 A Correct.

13 Q All right. Now, the, uh -- You mentioned a
14 propane tank in one of these pictures. There was
15 no feed from the propane tank to this entire burn
16 area that you saw?

17 A Not to my knowledge, no.

18 Q The propane tank you understood to be for home
19 utilities and the trailer?

20 A That would be my guess.

21 Q Well, actually, more than a guess. You did not
22 see anything that looked like a -- a propane
23 feed --

24 A I did not.

25 Q -- heat source to the burn area?

1 A No.

2 Q Now, the, um -- You've learned that it was about
3 9:15 in the morning on November 8 that Manitowoc
4 Deputy Jost first alerted someone, Mr. Fassbender
5 or someone, at the, uh, site to this possible
6 bone fragment?

7 ATTORNEY FALLON: Objection. That's
8 incorrect statement of the testimony. 9:15?

9 ATTORNEY STRANG: I -- I don't think it
10 is a statement of the testimony.

11 Q (By Attorney Strang) Um, is that -- is that
12 something you learned?

13 A Absolutely not. I have no information on that.

14 Q When it happened?

15 A No.

16 Q Okay. What you know is that you got to the Avery
17 property, in general, about eight in the morning
18 on November 8?

19 A I think so. I'm not sure.

20 Q And give or take, uh, to this burn area at about
21 1:30?

22 A That's correct. My first duty was to conduct a
23 search warrant. I was standing around the command
24 post with myself, uh, Special Agent Deb Straus, and
25 uh, our supervisor, Pete Thielen (phonetic), who

1 was -- was, uh, requested to go out and take a look
2 at different things that had been discovered.

3 Q Sure. And, obviously, then, you have no way of
4 knowing at all who had been near this general
5 area described in Exhibit 50 for the three days
6 or so preceding November 8 at about 1:30 in the
7 afternoon?

8 A I had no prior information with respect to that until
9 I arrived, um, on scene.

10 Q Fair enough. Now, um, you mentioned in -- in
11 passing, um -- I'm going to go back to it just so
12 people didn't miss it, you -- you very candidly
13 told the jury, briefly, that you're not an
14 anthropologist?

15 A That's correct.

16 Q Uh, an anthropologist, you understand, to be a
17 scientist engaged in the study of the behavior
18 and culture of human beings, generally?

19 A Yes.

20 Q Neither are you an archaeologist, meaning a
21 subspecialty within the field of anthropology?

22 A Correct.

23 Q Archaeologists would be concerned with, among
24 other things, the, uh, preservation and recovery
25 of burial sites?

1 A Yes.

2 Q This is not something in which you have any
3 expertise at all?

4 A Absolutely none.

5 Q All right. Um, neither have you had any training
6 in human skeletal anatomy?

7 A None.

8 Q Okay. Uh, so what you -- what you did, and I
9 want to get into the -- And you call this a
10 recovery?

11 A If you'd like, yes.

12 Q Is that -- or do you have a -- a term you'd
13 prefer?

14 A No, that's fine.

15 Q Okay. Uh, so let -- let's get into the recovery
16 efforts on the afternoon of November 8. You get
17 there at about 1:30, and from that time on you're
18 at least in the area?

19 A Yes, sir.

20 Q Here? Um, but before doing anything, you want
21 the Crime Lab folks?

22 A That's correct. Yes.

23 Q That takes about another hour-and-a-half, give or
24 take. It's around three o'clock that the Crime
25 Lab team appears here?

1 A Yes.

2 Q Now, um, there -- there -- there isn't a delicate
3 way to say this, but, um, if what you were seeing
4 here was human bone --

5 A Yes.

6 Q -- whether it's Teresa Halbach or not, the --
7 the -- the -- the person whose bones they are is
8 beyond aid?

9 A Yes.

10 Q Um, so to the extent that people are hoping
11 Teresa Halbach is still alive or didn't know
12 about her fate at that point, uh, those searches
13 would have, and could have, continued elsewhere
14 outside of this burn area?

15 A I think they were.

16 Q There would have been no reason here to worry
17 about a living person in the immediate area
18 depicted in Exhibit 50?

19 A No.

20 Q When you folks, uh, started in on the recovery
21 effort, you focused on this six-by-six -- roughly
22 six-by-six rectangular area that you described
23 for us?

24 A That's correct. Yes.

25 Q All right. Um, now, you did not set up a -- a

1 grid, a stringed grid around that area?

2 A We did not. No.

3 Q You did not set up a contamination path to
4 control how people were going into or near that
5 area?

6 A No.

7 Q Uh, what you did was, uh, found that most of the
8 fragments, or things of interest, were sort of --
9 I don't know if pile is the right word -- but
10 sort of in the center of that six-by-six foot
11 area?

12 A The items I thought were bone fragments were the
13 items within this six-by-six pit. Yes.

14 Q And they were more or less centrally deposited?
15 At least the bulk of them? Is that --

16 A Most of them, in my opinion and my recollection, were
17 within the pile, yes.

18 Q All right. Um, so you folks, uh, set up the
19 sifting apparatus somewhere to the side or close
20 by?

21 A Sifting apparatus was set up just in front, maybe
22 just off to the right of the pile.

23 Q All right. You did -- You did not take
24 photographs up close of fragments in place?

25 A No, we did not.

1 Q Uh, in fact, you didn't take any of the
2 photographs you're seeing today?

3 A I -- I did not. No.

4 Q Do you -- Do you know whether the photographs
5 even were taken on November 8?

6 A These photographs here?

7 Q That you've identified?

8 A I don't know when they were taken.

9 Q Yeah. And clearly some of them show items in
10 the -- in a garage somewhere? Uh, you know, an
11 evidence garage? But you --

12 A Yes.

13 Q You don't know when any of the photographs were
14 taken?

15 A I do not. No.

16 Q The scene, though, was -- was generally as you
17 recall seeing?

18 A Yes, sir, it was.

19 Q All right. And, um, I think you observed some
20 additional suspected charred bone material both
21 within and around the debris pile --

22 A Correct.

23 Q -- which you've described?

24 A Yes.

25 Q So the sifting screens are set up just to the

1 south, and then what you folks do is you
2 undertake some shoveling?

3 A That's correct. Yes.

4 Q You go in -- do -- with that shovel or one of
5 your own?

6 A No. The Crime Lab brought out, uh, shovels to
7 process the scene.

8 Q And they also brought out some smaller sort of
9 hand trowels or scoops?

10 A I believe so. Yes.

11 Q So you -- you folks sort of wade in and scoop up
12 or shovel up --

13 A Well, I would --

14 Q -- a shovelful and take it to the sifter?

15 A I believe it was John Ertl and another Crime Lab
16 technician, if you will, that actually shoveled up
17 the debris and placed it on top of the sifter.

18 Q Okay. It's just -- just in the normal manner of
19 shoveling and then carried over and put it on top
20 of the sifting screen?

21 A Yes. We walked up, scooped up a shovelful of
22 debris, and placed it on top of the, uh, sifting
23 screen.

24 Q And, again, there's -- there's -- there's no
25 attempt to photograph fragments in place before

1 that?

2 A There were -- there -- I -- I took no photographs.
3 That's correct.

4 Q Okay. Uh, no attempt to mark, you know, as with
5 nail polish or some other, uh, color spot, any of
6 the fragments in place?

7 A There was not. No.

8 Q Okay. So you -- you go -- you -- you described
9 for us going through, uh -- you know, the shovel
10 goes to the sifting screen and that would be
11 probably the screen with the largest mesh first?

12 A Yes, sir.

13 Q You shake the screen on its chains that's
14 suspended from this tripod?

15 A Yes.

16 Q Sort of, you know, this kind of a motion?

17 A Exactly.

18 Q And then that falls down to a tarp or to a -- to
19 a -- a second sifting screen with smaller mesh?

20 A I believe there might have been a second smaller
21 sifting screen, which then the debris fell through
22 onto the ground tarp. Yes.

23 Q All right. And then you think there was a third
24 sifting screen somewhere with the finest mesh?

25 A No. Just -- just two screens.

1 Q Okay. Fair enough.

2 A Just picked out the things that we thought might be
3 bone fragments.

4 Q And the -- the things that are too small to get
5 caught in either of the two screens with the --
6 the second one with smaller mesh, go through to
7 the tarp?

8 A That's correct.

9 Q So the second, uh, sifting screen also would be
10 shaken a little bit?

11 A That's correct. Yes.

12 Q To -- to get stuff to fall through?

13 A Yes.

14 Q And what's left in the -- in the screen you would
15 examine by -- by eye and hand?

16 A Yes.

17 Q And if something looked like a pebble or a rock,
18 presumably you would leave it?

19 A If it didn't look like a bone fragment or a metal
20 grommet or a zipper or something, it was left to be
21 re-examined if, in fact, that turned out to be Teresa
22 Halbach.

23 Q Sure. And the things that to the eye looked like
24 they might be important, conceivably, you would
25 pluck out and put in the box?

1 A Correct.

2 Q And there, again, it -- it simply would go in the
3 box. There wasn't an identification or a -- a
4 nail polish dot or anything like that done at
5 that point?

6 A No, there was not.

7 Q All right. And then what was left on the tarp,
8 though, you -- you did keep?

9 A That's correct. Yes.

10 Q Yeah. The tarp you bundle up, sort of fold up,
11 and then double-bag in black, plastic garbage
12 bags?

13 A Yes.

14 Q Put that in a locked truck?

15 A Correct. Yes.

16 Q And all of that eventually goes to the Crime Lab?

17 A I don't know where it went to.

18 Q Okay. But -- but the purpose was to keep all of
19 this material so that it go -- could go to
20 someone who might identify it, if possible,
21 whether these are human bones?

22 A The intent was to protect it and keep it if it needed
23 to be re-examined.

24 Q During the time that you spent there at the scene
25 in Exhibit 50, you were not aware of a forensic

1 anthropologist being present at anytime?

2 A No.

3 Q Weren't involved in calling a forensic
4 anthropologist?

5 A I was not. No.

6 Q No photos were taken by anyone at the site during
7 the sifting process, itself?

8 A I did not take any photos. I'll take responsibility
9 for that and I'll take the criticism that comes along
10 with it. No.

11 Q Well, I -- I don't know that I'm really here to
12 criticize you. Uh, I -- you know, I understand
13 you're on cross-examination and --

14 A Yes, sir.

15 Q I -- I'm simply trying to elicit the fact --

16 A (Inaudible.)

17 Q Yeah. And when you say you didn't take any
18 photos, you didn't see anyone else taking --

19 A I did not. No.

20 Q -- photos either? Um, now, the -- the nature of
21 the sifting process, obviously, is to sort of
22 shake or rearrange whatever's in the sifting tray
23 from its original position?

24 A Correct.

25 Q Although the shovel would have done that as well,

1 obviously?

2 A Well, the sifter allows us to spread the debris out,
3 you know, because there's -- there were ashes in
4 there, there's other things in there that will fall
5 through, and allows to more closely look at those
6 items.

7 Q Right. Understood. But when I say -- You know,
8 by the time they get to the sifting tray, they've
9 already been scooped up with a shovel that picks
10 up whatever the shovel will hold?

11 A That's correct.

12 Q And from whatever area the person with the shovel
13 decides to next strike the shovel?

14 A Yes.

15 Q Were you in -- Were you involved on Thursday,
16 November 10, yourself, in sort of going back
17 and -- and reprocessing or continuing this?

18 A No. I -- I did sift, um, other material here at the
19 Sheriff's Department that we had collected.

20 Q But that was somewhat later or was --

21 A Yes, it was.

22 Q Not on -- not on November 10?

23 A Not on scene. No.

24 Q Okay. Um, I -- I probably covered this, but I --
25 but I just want to nail it down because I think I

1 asked you about potential sites of human bone
2 fragments on the Avery property. Um, were you --
3 were you sent to any potential sites or sites
4 where potential human bone was found off of the
5 Avery property?

6 A I was not. No.

7 Q Were you aware of any such sites?

8 A I was not.

9 Q Okay. That's all I have for you at the moment.
10 Thank you.

11 A Thank you.

12 THE COURT: Mr. Fallon, any, uh, redirect?

13 ATTORNEY FALLON: No redirect.

14 THE COURT: Very well. The witness is
15 excused.

16 THE WITNESS: Thank you.

17 THE COURT: Members of the jury, I think
18 we'll take our morning break at this time. I'll
19 remind you again, as usual, not to discuss the
20 case, uh, during the break.

21 (Jurors out at 10:27 a.m.)

22 THE COURT: Then, counsel, let's be
23 ready to go at quarter to eleven.

24 (Recess had at 10:28 a.m.)

25 (Reconvened at 10:54 a.m.)

1 THE COURT: Mr. Fallon, are you going to be
2 taking the next witness as well?

3 ATTORNEY FALLON: Yes.

4 THE COURT: You may call your witness.

5 ATTORNEY FALLON: State would call
6 Dr. Don Simley.

7 THE CLERK: Please raise your right hand.

8 **DONALD SIMLEY,**
9 called as a witness herein, having been first duly
10 sworn, was examined and testified as follows:

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

13 THE WITNESS: My name is Donald O. Simley,
14 S-i-m-l-e-y, II.

15 **DIRECT EXAMINATION**

16 BY ATTORNEY FALLON:

17 Q Good morning.

18 A Morning.

19 Q What do you do for a living?

20 A I'm a general dentist in Madison, Wisconsin.

21 Q And, uh, how long have you been a, uh, general
22 dentist in Madison?

23 A Uh, since 1976 when I graduated from Marquette.

24 Q Uh, generally, what does, uh, uh, that type of
25 practice entail?

1 A Uh, just the general taking care of, uh, individual
2 patients with their restorative needs and their oral
3 hygiene.

4 Q Does that include any orthodontia work or is --
5 just regular dental care?

6 A Uh, no, sir. Uh, just gen -- general dental care.

7 Q Do you have any areas of specialization within
8 the field of dentistry?

9 A Yes, sir.

10 Q And what would that be?

11 A Uh, forensic dentistry or forensic odontology they
12 call it also.

13 Q All right. And, uh, for the benefit of those of
14 us who don't spell well, could you tell us how to
15 spell odontology?

16 A Odontology is o-d-o-n-t-o-l-o-g-y.

17 Q Now, you mentioned the word "forensic dentistry"
18 or "forensic odontology". Could you tell us what
19 that is?

20 A Forensic dentistry, uh, is just the application or
21 science of dentistry to the field of law. And there
22 are a number of different areas that we can become
23 involved in in forensic dentistry.

24 Uh, the most common area that I've
25 become involved in is -- is in dental

1 identifications. Routine dental identifications
2 of individuals that are usually not identifiable
3 by traditional means.

4 Uh, also involvement is in mass
5 disasters, uh, bite mark evidence, child abuse
6 cases, uh, dental malpractice in negligence, in
7 trauma or injury that are involved in litigation.
8 Although, the last two areas I -- I usually don't
9 get involved in very often. But the other areas
10 we certainly do.

11 Q And how did you get involved in this particular
12 case, Doctor?

13 A On November 9, I believe it was, of 2005, I received
14 a phone call from Special Agent, uh, Dol -- Dorlin --
15 Duranda Freymiller from DCI, Division of Criminal
16 Investigation, uh, requesting assistance in the
17 identification of an individual who was burned.

18 Q And what were you asked to do, generally?

19 A Uh, to attempt to identify the remains of this
20 individual.

21 Q And, uh, why are you here today?

22 A Uh, to offer my opinion on, after my examination and
23 analysis of the evid -- analysis of the evidence, uh,
24 to give an opinion as far as what I found.

25 Q All right. Well, before we get to your opinion,

1 Doctor, let's, uh, find a little bit about your,
2 um, background if we may. Um, you indicated you
3 received a degree in -- in dentistry from
4 Marquette; is that correct?

5 A Yes, sir.

6 Q And when did you receive that degree?

7 A That was in 1976.

8 Q And prior to receiving your dental degree at
9 Marquette, did you receive an undergraduate
10 degree?

11 A Yes, sir.

12 Q And in -- from what institution?

13 A That was Elmhurst College in Illinois. That was in
14 1972.

15 Q And what was the degree in?

16 A Uh, it was a BS degree.

17 Q Bachelor of Science?

18 A Bachelor of Science. Yes, sir.

19 Q Um, after receiving your, uh, uh, Doctor of
20 Dental Surgery -- Is that what it is?

21 A Yes, sir.

22 Q From Marquette? Did you pursue any additional,
23 um, training?

24 A Uh, I became interested in -- in forensic sciences
25 and started taking classes in 1979 at the Armed

1 Forces Institute of Pathology out in Washington, DC.

2 Q What kind of institution is that?

3 A Um, they just have an annual course in forensic
4 dentistry. Uh, that's one of the -- supposed to be
5 one of the premier courses in forensic dentistry.

6 Q Um, did you receive any certificates associated
7 with that particular course?

8 A Yes, sir.

9 Q And what certificate did you receive?

10 A It's just a certificate in forensic dentistry.

11 Q Um, currently, um, do you heard -- do you hold
12 any certifications in the field of forensic --
13 forensic dentistry?

14 A Yes, sir.

15 Q What, uh, certifications do you hold?

16 A I'm board certified in forensic dentistry from the
17 American Board of Forensic Odontology.

18 Q All right. What does it mean to be board
19 certified?

20 A Well, you have to undergo kind of a rigorous, uh,
21 examination. You have to submit an application. Um,
22 and then you have to take an examination before a
23 national board.

24 Q All right. And, um, if you know, how many board
25 certified forensic dentists are there in the

1 state of Wisconsin?

2 A There's only two of us. An individual in Milwaukee
3 and myself.

4 Q And are you aware of approximately how many, uh,
5 are board certified in North America?

6 A There are approximately around a hundred dentists
7 that are board certified in the United States and
8 Canada.

9 Q Are -- are -- Do you belong to any professional
10 organizations that are particularly germane to
11 the field of forensic dentistry?

12 A Yes, sir.

13 Q And what are those?

14 A There's a number of them. Um, the American Society
15 of Forensic Odontology; uh, I'm a Fellow in the
16 American Academy of Forensic Sciences; I'm a member
17 of the Wisconsin Association for Identification; I'm
18 a member of the Wisconsin Coroners and Medical
19 Examiners Association; uh, I'm a member of the
20 National Disaster Medical System. Uh, under that is
21 a subgroup of what they call DMORT, which is the
22 Disaster Mortuary Operational Response Team. And I
23 think those are the ones that pretty much pertain to
24 the forensic sciences.

25 Q All right. If you could, uh, tell us, what is

1 the, uh, National Disaster Medical System? I
2 think you used the acronym DMORT?

3 A Under the NDMS -- NDMS, the National Disaster Medical
4 System, is DMORT, which stands for the Disaster
5 Mortuary Operational Response Team, which is a
6 subdivision of -- of the NDMS.

7 Q All right. And what -- what kinds of, uh -- what
8 type of involvement do you have with that
9 organization?

10 A That's pretty much for mass disaster involvement.
11 Um, if a plane crash would go down -- If a
12 jurisdiction would have more individuals to identify
13 than their local jurisdiction can handle, uh, they
14 would call in DMORT.

15 Q All right. And have you actually been involved
16 in any disaster response operations?

17 A Yes, sir.

18 Q And what have you been involved in?

19 A Uh, I went out to New York after the World Trade
20 Center and spent two-and-a-half weeks out there. And
21 af -- after Katrina, went down to New Orleans and
22 spent two-and-a-half weeks down there at temporary
23 morgues.

24 Q And was that all part of our country's, uh,
25 national disaster response -- coordinator

1 response to those incidents?

2 A Yes, sir.

3 Q How long have you been, uh, board certified by
4 the American Board of Forensic Odontology?

5 A That was in 1993.

6 Q Have you maintained that certification?

7 A Yes, I have. You have to recertify every five years.

8 Q Um, are you a member of any disaster response
9 teams, um, confined to the midwest part of our
10 country?

11 A Yes, sir.

12 Q And what are those?

13 A I'm co-leader of the Wisconsin Dental Association's
14 Dental Identification Team. Um, I'm a member of the
15 Cook County, in Chicago, their Mass Disaster Dental
16 Identification Team. Uh, Lake County, Illinois, just
17 north of Chicago, has a team also. And Minnesota.

18 Q All right. Um, have you ever testified in a
19 court of law regarding a dental identification
20 issue or a bite mark issue?

21 A Yes, I have.

22 Q Approximately how many times?

23 A I believe there are 31 times that I've testified.

24 Q And have you been asked to render what people
25 refer to as expert opinions regarding the

1 identification of either a bite mark or of human
2 remains?

3 A Yes, sir, I had.

4 Q Um, I believe you have in front of you Exhibit
5 374?

6 A Yes.

7 Q And, uh, what is Exhibit 374?

8 A Uh, this is a copy of my Curriculum Vitae or CV.

9 Q All right. Uh, and, uh, it's current as of what
10 date?

11 A January 1 of '07?

12 Q All right. Is that a true and accurate copy of
13 your, uh, Curriculum Vitae, uh, detailing your
14 experiences, history and training?

15 A Yes, sir, it is.

16 ATTORNEY FALLON: Subject to, um,
17 cross-examination later on, we would move for the
18 Exhibit, uh, 374, move its admission.

19 THE COURT: Any objection?

20 ATTORNEY STRANG: No, I -- No,
21 there's -- there's no objection.

22 THE COURT: All right.

23 ATTORNEY FALLON: Thank you.

24 THE COURT: The exhibit's admitted.

25 Q (By Attorney Fallon) Doctor, um, you indicated

1 you first received a call in this case on
2 November 9. Um, how did you actually become
3 involved?

4 A Well, Special Agent, uh, Freymiller called me and
5 asked if I would be willing to assist in the
6 examination and identification of these remains. Uh,
7 on the same date another individual from the Division
8 of Criminal Investigation, Special Agent, uh, Matthew
9 Joy, brought, uh, a box of -- of evidence to my
10 office for me to examine.

11 Uh, I also talked with -- I believe he's
12 an assistant district attorney from Calumet
13 County, Jeff Froehlich, and he asked me,
14 specifically, if the remains that I examined were
15 human or nonhuman, which I said they were human.
16 And, also, asked some, uh, questions regarding my
17 expertise and qualifications.

18 And at the same time I also discussed,
19 uh, what I had found so far with, uh, Sheriff
20 Pagel.

21 Q All right. And all in all, um, were there
22 several, uh, deliveries of items for -- submitted
23 to you for examination?

24 A Yes, sir, there were.

25 Q Approximately how many different deliver?

1 A There were six deliveries, of, uh, dental fragmentary
2 evidence, and then one delivery of -- of dental
3 records.

4 Q And, overall, approximately how many items were
5 you asked to identify? Approximately?

6 A There were 52 items of potential evidence.

7 Q And what did these items consist of?

8 A Of the 52 items, there were 24 dental fragments that
9 I was asked to look at. Um, of the 52 -- Sometimes
10 when you have a -- a -- a burned piece of wood, uh,
11 it -- it may look like a burnt piece of tooth,
12 because there wasn't a whole tooth, uh, as we can
13 visualize, that the crowns of the teeth had been
14 destroyed.

15 So when I was asked to look at was, uh,
16 the 52 pieces, there were 24 that were actually
17 tooth fragments. Not a whole tooth, but 24 tooth
18 fragments. There were three bone fragments, uh,
19 all from the lower jaw, and there were 24 pieces
20 of wood, and then there was one piece of -- of
21 plastic that looked like a crown of a tooth, but
22 when we were able to clean it up, we were easily
23 to tell it was a piece of plastic.

24 Q All right. Um, now, you mentioned something
25 about, uh, not unusual for wood to be mistaken

1 for teeth. Can you kind of explain that?

2 A When -- When the remains of an individual are -- are
3 burned to the extent that they were in this
4 particular case, you get a lot of fragmentation of
5 the teeth.

6 And so if you've ever had a wisdom tooth
7 extracted or another tooth extracted, and you see
8 the -- the crown of the tooth sticking up and you
9 have the root structure, when you have the degree
10 of, um, destruction or devastation that's
11 associated with the intensity of the temperature
12 of the fire and the prolonged duration of -- of
13 exposure to the fire, uh, this dental evidence
14 can become very brittle, it can fracture,
15 fragment, and, um, due to the burning aspects, it
16 can become charred and blackened. And so you can
17 have a piece of wood, a small piece of wood, that
18 can look very similar, and almost exactly alike,
19 to -- to some of the root fragments that are
20 associated there, also. And when the recovery
21 was taking place, it's difficult for somebody
22 who's not a -- a dentist to -- to discern between
23 some of these, uh, fragmented, burned dental
24 structures and, uh, burned pieces of wood.

25 In fact, even with me looking at them,

1 sometimes -- I mean, I can't always tell, and
2 that's why I rely on x-rays to really make a
3 definitive decision on some of them. Some of
4 them I could look at very easily and discern and
5 some of them I had to rely on the x-rays to
6 discern.

7 Q All right. And, uh, while we're at that, can you
8 describe in more detail the condition of the
9 tooth and bone fragments that you were asked to
10 examine and you were able to determine as tooth
11 and root fragments?

12 A Again, they were, um, blackened, they were charred,
13 uh, they were very brittle, they were very
14 fragmented, um --

15 Q In terms of a level of destruction, uh, based on
16 your experience in terms of your disaster relief
17 effort -- efforts and other forensic, uh,
18 experience, um, how badly damaged were these, uh,
19 fragments?

20 A Um, again, I've been doing this work since 1981.
21 And, I mean, I -- I've seen other cases very similar
22 to this, but, um, even most burn victims that I see
23 from -- from car fires or house fires, they're not
24 burned to the extent that these indi -- these
25 individual dental fragments were burned. They're

1 right up there at the top of the list as far as the
2 worst I've seen.

3 Q All right. Are you familiar with a term called
4 "fracture matching"?

5 A Yes, sir.

6 Q Tell us what that is.

7 A Again, with some of these dental fragments that I
8 examined, if I can take two pieces of a tooth, and if
9 I can fracture match them back together, in other
10 words, if I can say that they came from a common
11 source, I would put them back together.

12 Um, again, some of these fragments
13 are -- are very, very brittle, where if I take my
14 fingers and -- and just squeeze them, I could
15 destroy that piece of evidence, and if that
16 evidence is lost, it could preclude an
17 identification from being made.

18 So to pervert -- preserve that evidence,
19 if I could fracture match those pieces back
20 together and keep -- say that they came from a
21 common source, I would put them back together and
22 use a little cyanoacrylate or Super Glue and fix
23 them together. Um, and then that preserves the
24 evidence, it makes it stronger, makes it more
25 durable and less likely to be damaged or

1 destroyed.

2 Q Okay. And, uh, were you able to engage in this
3 fracture matching process with, um, the tooth
4 fragments and bone fragments that you received?

5 A There were -- On one particular date there were two
6 root fragments that I could fracture match back
7 together. I put those back together.

8 And there was a piece of bone fragment,
9 uh, that was also associated with that box or bag
10 of evidence that I received in that particular
11 day, and I could actually re-associate that now,
12 two root fragments that are -- are super glued
13 back together as one now, and I could
14 re-associate that with the bone fragment and put
15 back to the bone.

16 And then there was another date when
17 there were two other root fragments that I could
18 super glue back together. So there were two
19 roots that I could put back together and then
20 that one root back with the bone.

21 Q Um, of -- After you were done with your fracture
22 matching process, were any of the fragments
23 suitable for comparison?

24 A Yes, sir.

25 Q And what was, uh, suitable for comparison? What

1 did you have to work with?

2 A The best evidence that I had was the evidence that
3 was recovered, uh, the second time I was -- the
4 evidence was delivered to my office, and that was by
5 Special Agent Jim Holmes, and that was the -- the
6 fragments that I was able to fracture match back
7 together and the associated fragment of bone, which
8 was from the lower right quadrant, and that was the
9 best piece of evidence for comparison.

10 Some of the other dental fragmentary
11 pieces of evidence, even after x-rays and
12 studying these things for a long time, I mean,
13 you really couldn't even tell exactly which tooth
14 it was. Um, so this was the best piece.

15 Q All right. Now, um, in effort to make a dental
16 comparison, I'm assuming you had to have
17 something to compare this fracture fragment with?

18 A Correct.

19 Q What did you have?

20 A Special Agent Holmes, on, uh, November 10 of '05,
21 brought dental records to my office for comparison.
22 Uh, the record specifically were x-rays, which are
23 the main type of dental record that I look for in a
24 comparison.

25 And there was a -- a panorex x-ray from

1 2001. A panorex x-ray, um, is an x-ray that goes
2 around the outside of the mouth and picks up
3 everything from ear to ear.

4 There were also 16 bitewing x-rays. The
5 kind that when you normally go in to see your
6 dentist, and they take an x-ray, and they have
7 you bite down on the film, and they shoot the
8 x-ray in from the side, uh, is a bitewing x-ray,
9 which shows the most amount of tooth structure
10 with the least amount of x-rays. So it shows the
11 top and bottom teeth. It doesn't show the root
12 structure, the end of the root structure, but it
13 sometimes shows some of the root structure. And
14 those x-rays ranged from 1998 to 2004.

15 Um, and then there were other x-rays
16 that I received at a later date. Uh, on that
17 same date, on November 10, I was looking for some
18 additional x-rays, and I called the dentist
19 involved, a Dr. Krupka, I believe his name was,
20 and --

21 Q Who was Dr. Krupka, by the way?

22 A That was the -- the treating dentist for Teresa
23 Halbach.

24 Q Okay.

25 A And all the x-rays were labeled with the name Teresa

1 Halbach.

2 Q All right. And so you then received the
3 additional x-rays to assist in making this
4 comparison?

5 A Well, I -- I called him and asked if they had any
6 other x-rays, and they did have some older x-rays
7 from 1997. They had four bitewing x-rays. But he
8 said they were positioned a little further down in
9 the mouth, and so they actually showed more root
10 structure, uh, specifically, in the lower right
11 quadrant, which is the area I was concerned about,
12 and so he sent those to me and I received those on
13 the -- November 15.

14 Q All right. So you indicated you were concerned
15 with the, uh, uh, lower right quadrant. Uh, were
16 you able to specifically identify the tooth or
17 root fragment that you were, uh, focusing your
18 comparison on?

19 A Yes, sir, I did.

20 Q And what was that?

21 A That root fragment was from the lower right second
22 molar. And we refer to that as Tooth No. 31. Um,
23 there's what they call a universal numbering system,
24 and so that if I'm talking to a dentist in New York
25 City, or in Los Angeles, or in Florida, and I talk

1 about Tooth No. 31, they'll know I'm talking about
2 the lower right second molar.

3 Um, all the teeth have numbers from --
4 There's 32 teeth in the mouth. And from the
5 upper right, which would be Tooth No. 1, the
6 upper right wisdom tooth. The lower right wisdom
7 tooth would be Tooth No. 32. And the upper right
8 central incisor would be Tooth No. 8. So we have
9 a numbering system that we refer to. So this
10 specific tooth was a -- a lower right second
11 permanent molar.

12 Q All right. Now, uh, Doctor, did you have
13 occasion to have, uh, the Crime Lab assist you in
14 preparing a Power Point, uh, presentation to
15 further illustrate your, um, comparison process?

16 A Yes, sir, I did.

17 Q All right. Um, I believe it's -- is there a
18 exhibit in front of you that's, uh, marked?

19 A Just the CV.

20 Q Just the CV?

21 ATTORNEY FALLON: I believe the Court --

22 ATTORNEY KRATZ: I'm showing these now,
23 Exhibits 376 and 377.

24 Q (By Attorney Fallon) Um, Doctor, uh, first of
25 all, if you would identify Exhibit, uh, 376. Uh,

1 377, please?

2 A 377 is a, uh, copy of the pictures that are used in
3 the Power Point presentation.

4 Q All right. And, uh, if we now -- if we could
5 direct your attention, then, to the screen, we
6 have a depiction -- Um, one second.

7 ATTORNEY FALLON: We're going to provide
8 the Court with a copy. Very good.

9 Q (By Attorney Fallon) Um, Doctor, on the screen we
10 have a -- an item depicted. I believe there's a
11 laser pointer to your right --

12 A Yes, sir.

13 Q -- there if need be?

14 A Um-hmm.

15 Q Can you tell us what, uh, we're looking at here,
16 Tooth No. 31, and the word "buccal". What --
17 what does that mean?

18 A Well, again, Tooth No. 31 is -- uh, refers to that
19 lower right second molar, and buccal refers to the
20 side of the tooth. Each tooth has, like, five
21 surfaces that we can examine. We have the cheek
22 side, the tongue side, the biting surface, and then
23 what they call the mesialer, towards the front of the
24 mouth, the distal, towards the back of the mouth.
25 The buccal surface is the cheek side aspect that

1 we're looking at here.

2 Q All right.

3 A So the tooth that I'm looking at is right here. We
4 have two roots that are associated. This would
5 actually be where the roots would be for Tooth No.
6 30, which would be the first molar, which was not
7 recovered. So this fragment actually comes from the,
8 uh -- this bony fragment here comes from the second
9 molar, or second bicuspid, goes back to beyond the
10 second molar.

11 Q All right.

12 A But the cheek side aspect, or the buccal aspect,
13 sometimes it can be difficult to -- When you take
14 x-rays on a fragment, you have to make sure that the
15 x-ray film is on the tongue side. So it's very
16 critical to be able to identify which is the cheek
17 side, which is the tongue side, and -- and sometimes
18 on burned fragments they can be very difficult.

19 In this particular case, it would
20 really -- is -- is pretty easy for me to do that
21 because usually the cheek side aspect is a part
22 that's going to be destroyed and burned the
23 worst.

24 Q Why is that?

25 A Well, in a burn victim, as the -- Again, with the

1 intensity and the temperature of the fire, and the
2 prolonged duration of exposure, the -- actually, the
3 cheek will be destroyed first and then -- Again, the
4 crowns -- Again, if we look to the part that would be
5 in the mouth here, would be up here, and that part is
6 missing. So the crown has been destroyed and
7 essentially all the crowns have been destroyed in
8 this evidence. There was one portion of a crown that
9 was recovered and that was on a cuspid, or an
10 eyetooth, uh, which was really non -- not critical at
11 all in the comparison or identification here.

12 But the cheek side aspect is -- is
13 further protected from the bone. The roots of
14 the teeth are going to be protected from the
15 bone. The crown has been destroyed. But once
16 that fire -- Again, with the intensity and the
17 temperature of the fire, and the prolonged
18 duration of exposure, and the cheek is now gone,
19 we now just have the bone structure protecting
20 that tooth.

21 The crown doesn't have the bone support
22 protecting the crown of that tooth. The part
23 that's in the mouth. So that part has been
24 destroyed. But the root structure is being
25 further protected, insulated, uh, from the, um --

1 from the, uh, effects of the fire.

2 Q All right. In looking at that, how -- where,
3 exactly, is the -- would we call that the jaw
4 bone or not, or --

5 A That's a portion from that lower right corner of the
6 mouth. The lower white crad -- quadrant.

7 Q Could you point on the exhibit what part is bone
8 and what part is root fragment, just so that
9 we're clear?

10 A This is root fragment from Tooth No. 31. The rest of
11 this is all bone.

12 Q All right. Next one. All right. We have, uh,
13 another slide here, 231, lingual. What does that
14 mean?

15 A Lingual is the tongue side aspect. And this is where
16 it was, again, very easy, uh, to determine which was
17 tongue side, which was cheek side, because the tongue
18 side, while it's -- while it's blackened, where it's
19 been burned, but it's completely intact, as opposed
20 to the cheek side aspect, or the buccal aspect, that
21 was -- was rough and had burned -- burned away down
22 to the root structure in there.

23 Q All right. Excellent. And what are we looking
24 here on the third slide marked "occlusal"?

25 A "Occlusal" means the biting surface. So now we're

1 looking down directly on the tooth. And, again, the
2 crown has been destroyed, so what we're looking at is
3 really the top of the roots of the teeth. And the
4 fracture matching was done in here where originally
5 that was two roots, and, again, I fracture matched
6 them and super glued them back together. And, again,
7 the cheek side aspect has been destroyed up in here,
8 and the tongue side aspect is still intact.

9 Q All right. Excellent. And what are we looking
10 at here?

11 A This is the 2001 panorex x-ray that Special Agent
12 Holmes brought to me on, uh, November 9 -- or 10,
13 and, again, it -- it goes from ear to ear. I mean,
14 the -- one ear would be over here, the other one
15 would be over here, and it shows all the teeth.

16 The one that I'm concerned about is this
17 lower right quadrant, or lower right corner, and
18 the tooth that I'm going to be comparing is Tooth
19 No. 31.

20 Q All right.

21 A Tooth No. 32 had been removed after this x-ray had
22 been taken.

23 Q All right. And, um, what are we looking at on
24 the next slide?

25 A Uh, this is just a cropped picture of just 31.

1 Q All right.

2 A And it just shows Tooth No. 31.

3 Q All right. Again, now, what is, uh, postmortem
4 x-ray Tooth No. 31? Please explain.

5 A Uh, postmortem x-ray is one of the x-rays that I had
6 obtained. There were, like, 46 x-rays that I had
7 taken of all the remains and this is one of the
8 x-rays that I had taken on Tooth No. 31 after the --
9 the roots had been fracture matched back together and
10 have been placed in the bone.

11 Q And just so that we're all clear, postmortem
12 means?

13 A Postmortem is after death. Antemortem is prior to
14 death.

15 Q All right. The next slide, please. This would
16 be the, uh, Slide No. 7, top of page three, um,
17 what are we looking at here?

18 A Uh, this shows that cropped picture of Tooth No. 31
19 from the 2001 panorex. So this would be an
20 antemortem film over here, and this is the postmortem
21 x-ray over here. What I'm doing is comparing the
22 root structure that's associated with Tooth No. 31 to
23 the postmortem.

24 And it's not just one root structure,
25 it's actually two root structures. Uh, one

1 tooth, but there's -- there's two structures
2 associated with it. We have the mesial root, or
3 the front root, and the distal root, or the back
4 root.

5 And there are a number of things I can
6 look at here and compare. And, again, the
7 panorex x-ray does show the whole root down here.
8 But I can see it -- a little bend to the root
9 down here on the mesial root, on the distal root,
10 also has a slight curvature, and I can see the
11 same curvature here and the same bend over here.

12 Q All right.

13 A The pulp tissue in the middle of the tooth we also
14 can compare. And we'll see that later on --

15 Q All right.

16 A At --

17 Q Okay. And -- and what are we looking at on, uh,
18 the next slide?

19 A What I've done here is just to take, uh, and
20 superimposing one x-ray on top of the other, and the
21 one on the left just shows what it's going to look
22 like if it does not match. Uh, where I -- I put the
23 postmortem x-ray on top of the antemortem x-ray, and
24 just had it slightly askew or just off a little bit,
25 and we can see that the pulp tissue -- The pulp is

1 the blood vessel nerve in the middle of the tooth, so
2 if you have a root canal done, they go in and they
3 remove that pulp tissue, and the lines don't line up
4 over here, uh, the width between the roots is not
5 consistent.

6 Whereas, if I slide it over just a
7 little bit, that pulp tissue is very consistent,
8 uh, the width between the roots is very
9 consistent. Again, this back root is very
10 consistent, and it's -- it's -- the dimension of
11 the root, itself, the dimension of this root, the
12 space in between the roots, and the pulpal tissue
13 that I'm looking at.

14 Q All right. Thank you. All right. Now, we have
15 another slide, uh, a panorex postmortem slide.
16 What are we looking at here? These are all with
17 respect to tooth 31?

18 A Correct.

19 Q Okay.

20 A This is actually the same picture that we just saw.
21 It's just an enlargement. Again, showing, again
22 that -- what it's going to look like if it doesn't
23 match or doesn't line up.

24 Q All right. And, um, next slide?

25 A And, again, where it, in my opinion, is -- is very

1 consistent, uh, where, again, you can put one on top
2 of the other and you can -- you can superimpose one
3 x-ray on top of the other, and see how the x-ray --
4 that crown of the tooth up here, again, has been
5 destroyed. That's on the antemortem film. The
6 postmortem, but it comes up and it just -- it's one
7 solid line as it comes up.

8 Q All right. Next slide, please. All right. We
9 have an antemortem bitewing, um, displayed here.
10 What does this tell us?

11 A This was the -- Again, it was the oldest of the
12 bitewings. It was a 1997 bitewing, but it was the
13 one that showed the most tooth structure. And so
14 that's what I was concerned about. So it doesn't
15 show the end of the root down here, but it shows more
16 than the other bitewings, which may have come up
17 about here.

18 Q All right.

19 A And this is just a -- a cropped version of -- of that
20 particular x-ray, that bitewing x-ray, so this is the
21 part that we're zeroing in on on that Tooth No. 31.

22 Q All right. Next one. And we're looking at --

23 A And this is the postmortem x-ray, again, that we saw
24 before.

25 Q All right. And now we have an antemortem and

1 postmortem, uh, slide? Please explain.

2 A Okay. Again, this is the cropped antemortem picture.
3 This is the one from the bitewing x-ray. Again, it
4 does not show the entire root structure down here,
5 but it shows a fair amount of it. And, again, we can
6 compare the pulp tissue in the middle of the tooth,
7 uh, there's actually a little constriction of the
8 pulp up here. A little constriction of the pulp
9 down -- up here, and then it gets a little bit wider,
10 gets a little bit wider here. Uh, the bend to the
11 root here. We can see the bend of the root over
12 here.

13 So this x-ray, again, it's cutting off
14 part of that root there, so this x-ray's probably
15 coming across right about in here. But it does
16 show that bend in there.

17 Q All right. Excellent. What are we looking at at
18 these particular slides?

19 A Um, same thing I did with the panorex x-ray. Um,
20 I've superimposed one on top of the other, and I
21 have, again, the antemortem film, I have a postmortem
22 film on top of it, and, again, just showing what it
23 would look like if it does not match, if the pulp
24 tissues and the root structures do not, uh, coincide.

25 And then I slide it over a little bit,

1 and, again, it -- it -- it's the -- the way it
2 comes up into the tooth over here, the way the --
3 the -- Again, this part of the tooth is missing,
4 but it's a perfect match as it comes across down
5 here, uh, to the end of the roots down here. You
6 can see where the root kind of just goes from the
7 postmortem into that antemortem film. Uh, the
8 pulpal tissues line up nicely, the width between
9 the roots, uh, everything is very consistent.

10 Q All right. And to the final slide then?

11 A Uh, there's two more that -- It just -- just shows,
12 again -- This is the -- the same pictures that we
13 just looked at, but a larger version of it where it's
14 blown up, where it does not match. And on the next
15 one, uh, again, it's just a larger version of -- of
16 when you can take those fracture matched pieces, and
17 pieces that I've re-associated, put back together,
18 and then compare them to the antemortem, uh, x-rays,
19 and, uh, everything lines up.

20 Q Now, do you have, um -- Investigator Wiegert is
21 going to bring you a --

22 ATTORNEY FALLON: Uh, first, would you
23 show, uh, Counsel before you --

24 Q (By Attorney Fallon) And you've been handed an
25 exhibit. What number is that for the record?

1 A No. 375.

2 Q All right. Would you, uh, examine Exhibit 375,
3 please?

4 A This is the -- the fragment that I -- I compared, um,
5 with --

6 Q Would you take it out and hold it?

7 A Sure.

8 Q Display it for us, please?

9 A This is the original bag that I received this
10 particular evidence in that was received on -- from
11 Special Agent Holmes on November 11, and it has that
12 section of the mandible from the lower right
13 quadrant. There's actually another fragment in there
14 of the -- what they call the coronoid process, which
15 is the top part of the -- the lower jaw, and another
16 root fragment in there, but this is the fragment that
17 was critical to the comparison for that Tooth No. 31
18 and that -- that lower right quadrant of the lower
19 jaw.

20 Q So what you have there are the remains of Tooth
21 No. 31 from which you made your comparison?

22 A Correct.

23 Q All right. Now, Doctor, do you have an opinion
24 on whether the root fragments from tooth 31
25 recovered from the burn pit are consistent with

1 the dental x-rays of Teresa Halbach obtained from
2 Dr. Krupka?

3 A Yes, sir.

4 Q And what is that opinion?

5 A In my opinion, the remains are very consistent.

6 Q All right. And, uh, were you able to obtain a
7 positive identification?

8 A I'm kind of reluctant to use the word "positive".
9 Uh, there were -- there were not a lot of remains
10 that were recovered. Uh, there were no crowns that
11 were critical, there were no dental fillings that I
12 could compare. Uh, when I make a positive
13 identification, and I do use that term quite
14 frequently in reports, a positive identification to
15 me would indicate to the exclusion of all others in
16 the world. Um --

17 Q So you would be one -- you would have to be one
18 hundred percent beyond any doubt for you to make
19 a positive identification?

20 A Correct. I'm very conservative on my opinion, and I
21 just was reluctant to use the word "positive".

22 Q How close were you to making a positive
23 identification in this particular case?

24 A Um, I was very close. I mean it -- it -- it was --
25 when you can superimpose, uh, evidence, one on top of

1 the other, and they look to be as one fragment, um,
2 you can't get much closer.

3 Q All right. Um, Doctor, the opinion that the
4 fragments from tooth 31 are very consistent with
5 the dental x-rays that you obtained from Teresa
6 Halbach displaying tooth 31, do you hold that
7 opinion to a reasonable degree of scientific
8 certainty?

9 A Yes, sir, I do.

10 Q All right.

11 ATTORNEY FALLON: Um, subject to
12 Counsel's right to cross-examination, I would
13 move into evidence, the, uh, actual CD-ROM of the
14 Power Point presentation. Um, the, um, handout
15 of -- which is Exhibit 377. I believe the Power
16 Point ROM is 376. His, uh, CV has already been
17 received, and, uh, would move into evidence the,
18 uh -- the root fragment which he's displayed.

19 THE COURT: Any objection?

20 ATTORNEY STRANG: I -- I don't -- No,
21 there -- there's no objection. The 376 is a
22 CD-ROM; is that right?

23 ATTORNEY KRATZ: It's the disk, itself.

24 ATTORNEY STRANG: Okay. No -- no
25 objection to --

1 THE COURT: Very well. Um, those exhibits
2 are admitted.

3 ATTORNEY FALLON: Pass the witness.

4 THE COURT: Mr. Strang?

5 **CROSS-EXAMINATION**

6 BY ATTORNEY STRANG:

7 Q I don't have a lot for you. I've just -- I've
8 got a few questions in -- in one area that you
9 brought up, um, with us, Dr. Simley, on direct
10 examination, and that's the -- the heat.

11 Um, are you able, as a matter of your
12 experience and learning, uh, to tell us what --
13 what, um, temperature range would be required to
14 render, uh, to the State, you saw them, the 24
15 tooth fragments that you examined here?

16 A No. Um, the only thing I would say is that, uh,
17 again, I, during the course of my 26 years of
18 involvement in forensic dentistry, seen a number of
19 individuals from, uh, car accidents, um, house fires,
20 and under the understanding that temperature ranges
21 there can be over a thousand degrees Fahrenheit, and,
22 uh, this individual -- either -- either the prolonged
23 duration of exposure or a higher temperatures, uh, I
24 don't like to get into temperatures, but, again,
25 this -- this is more than the average burn victim

1 that I normally see.

2 Q All right. Have you, uh -- have you also
3 examined at least the dental remains of burn
4 victims in which the, uh, fire was fed by a
5 volatile fuel? Jet Fuel A, or 8 gas or some --
6 some other -- You know what I mean by a volatile
7 fuel?

8 A Yes, sir. Yes, sir. Yes, I have.

9 Q Uh, roughly how many times have you done that?

10 A Tell you the truth, I -- I -- I don't -- I'm not
11 always privy to that information, um, but I know that
12 there's one other case that I can think of where
13 there were five individuals involved, and I know
14 there were accelerants used there. Uh, again,
15 remains look very similar from my point of view, but
16 I'm the lay person when you talk -- when you talk
17 about there.

18 Q Sure. Um, by an accelerant, we're talking about
19 a -- a flammable fluid of some sort?

20 A Correct.

21 Q Okay. And would -- would the -- the burning that
22 you see here, the level of -- it's called thermal
23 destruction or thermal damage --

24 A Okay.

25 Q -- that you see here, be high -- worse than,

1 about the same as, or not as bad as, the
2 instances in which you've seen, uh, dental
3 remains where there was a -- you know, a fire fed
4 by some accelerant, as you say?

5 A To me, they -- they would look about the same as --
6 as what I have seen with accelerants used.

7 Q Can you -- Based -- Drawing on your experience
8 and your learning, can you give us -- I think --
9 I think -- It sounded like you wanted to shy away
10 from a -- from a temperature estimation or range;
11 is that right?

12 A Probably be fairly safe to say that, yes.

13 Q Safe because you just don't feel competent to do
14 that or --

15 A Well, I know that the temperature ranges -- Again,
16 from what I understand on -- on house fires and --
17 uh, again, a thousand to twelve hundred degrees. I
18 think in cremation you're looking at around eighteen
19 hundred degrees Fahrenheit or so. Um, are -- are
20 these -- Again, from a temperature point of view, uh,
21 they certainly appear to me -- Again, uh, there are
22 other people more qualified to answer that question
23 than myself, but, uh, from my point of view, they're
24 more than the typical house fire, which would either
25 put the temperature range either higher or the

1 prolonged duration of exposure longer.

2 Q Let's take those in -- in the two -- two separate
3 categories --

4 A Fine.

5 Q -- you started with.

6 A I agree.

7 Q When you use the term "cremation", which we were
8 using earlier this morning, you mean a, uh -- a
9 lawful cremation?

10 A Correct.

11 Q Uh, which you know to occur in a -- in a closed
12 chamber of some kind?

13 A Correct.

14 Q Fed by, um, jets or an --

15 A Yes, sir.

16 Q -- active accelerant?

17 A Yes, sir.

18 Q Okay. And that, you understand, to produce a
19 temperature range something close to eighteen
20 hundred degrees Fahrenheit?

21 A Correct.

22 Q Do you have an understanding about how long the
23 lawful, you know, the ordinary cremation process
24 takes if that's how someone, you know, or a
25 relative likes to dispose of remains?

1 ATTORNEY FALLON: Objection, foundation.

2 Q (By Attorney Strang) I -- I -- I -- I mean this

3 to be a foundational question.

4 A From what I understand, about an hour-and-a-half or

5 so --

6 Q Okay.

7 A -- of cremation.

8 Q And that -- that -- that's knowledge you've

9 acquired through your work as a forensic

10 odontologist?

11 A Through continuing education and lectures and talking

12 to funeral directors, yes.

13 Q Fair enough. Okay. And so about an

14 hour-and-a-half, give or take. I'm sure, um, we

15 can assume that all people are different sizes

16 and structures; is that correct?

17 A Right.

18 Q Uh --

19 A I've never actually seen a cremation, though.

20 Q Sure. And about eighteen hundred degrees

21 Fahrenheit, although we can -- we can agree that

22 all crematory facilities are going to be a little

23 bit different too?

24 A Correct.

25 Q Okay.

1 A And I think the individuals can make a difference on
2 the temperatures also.

3 Q Sure. So I'm -- I'm looking for ball parks
4 just --

5 A Right.

6 Q -- based on your training and experience. Uh,
7 and then if we're -- if we're talking about a
8 house fire, you've -- you've sounded comfortable
9 using a range of about a thousand to twelve
10 hundred degrees Fahrenheit generated by a typical
11 house fire?

12 A Again, there -- other people that are more qualified
13 than myself to -- to render that opinion. But from
14 what I've talked with other individuals, and from
15 what I've heard, that seems like a -- I think a
16 fairly reasonable --

17 Q A reasonable --

18 A -- estimation.

19 Q -- range?

20 A Yes.

21 Q Okay.

22 A But, again, that's out of my area of expertise.

23 Q Understood. And I don't want to -- don't want to
24 take you farther --

25 A No, that's fine.

1 Q -- than you can go. Uh, and then let's go to the
2 second category or factor, uh, variable that you
3 described, which is time of exposure to this sort
4 of intense heat or thermal, uh -- dynamic thermal
5 energy; all right? Um, I take it, then, that if
6 what you were seeing here, uh, in range, in
7 temperature range, may be closer to the cremation
8 sort of temperature range?

9 A I'm -- Again, I think that gets closer to putting an
10 actual degree on it and I -- I -- I hate to do that.

11 Q All right. But if not that, then a longer period
12 of time exposed to maybe a lower level of heat?

13 A From the dental remains that I saw, it -- it's one or
14 the other, I think, and I think there arson
15 investigators that can probably give a better idea as
16 far as the, uh, temperatures involved. But, again,
17 from my point of view, um, it either had to be an
18 extremely hot fire or -- or prolonged duration of
19 exposure.

20 Q And by "prolonged duration of exposure" can
21 you -- can you give us any estimate, and -- and
22 just tell me if you can't, uh, but can you give
23 us any, uh, estimate of a time, or a duration, if
24 we posited a fire of something in more -- you
25 know, in the thousand to twelve hundred degree

1 Fahrenheit range?

2 A I -- I don't think I could. No, sir.

3 Q Fair enough. Thanks.

4 A Sure.

5 THE COURT: Any redirect?

6 ATTORNEY FALLON: Uh, no redirect for
7 this witness.

8 THE COURT: All right. You are excused,
9 sir.

10 ATTORNEY FALLON: Could, uh, counsel
11 approach to decide how we're going to --

12 THE COURT: Sure.

13 ATTORNEY FALLON: -- use the remainder
14 of our time?

15 (Discussion off the record.)

16 ATTORNEY KRATZ: State's going to call
17 Karen Halbach, Judge.

18 THE COURT: Very well.

19 THE CLERK: Please raise your right hand.

20 **KAREN HALBACH,**

21 called as a witness herein, having been first duly
22 sworn, was examined and testified as follows:

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

25 THE WITNESS: Karen Halbach, H-a-l-b-a-c-h.

1 DIRECT EXAMINATION

2 BY ATTORNEY KRATZ:

3 Q Good morning, Mrs. Halbach. Thank you for
4 agreeing to testify on -- on such short notice.
5 I have a couple of easier questions for you and I
6 have some difficult questions.

7 The first questions that I need to talk
8 to you about regard your daughter, Teresa. Could
9 you tell us, please, first of all, how many --
10 um, many children you've had?

11 A Five.

12 Q And where, within those five, um, did Teresa
13 fall?

14 A She was -- She was the second oldest.

15 Q We've heard from your son, Mike. Uh, do you have
16 any other sons?

17 A Yes, I have. My oldest is a boy.

18 Q His name?

19 A Tim.

20 Q What does Tim do for a living?

21 A He's an attorney.

22 Q And you have two other daughters; is that right?

23 A Yes.

24 Q We've heard from one of them in this trial; is
25 that correct?

1 A Yes.

2 Q What's her name?

3 A Katie.

4 Q And how old is Katie?

5 A Fifteen.

6 Q And you have a younger daughter?

7 A Yes.

8 Q And what's her name?

9 A Kelly.

10 Q How old is Kelly?

11 A Thirteen.

12 Q Is -- When your oldest daughter, um, Teresa -- we

13 have a -- a picture up here in court -- was

14 killed, how old was she?

15 A Twenty-five.

16 Q Tell the jury about, um, your relationship with

17 Teresa? And I'll -- How often would you talk to

18 her?

19 A Um, at least once a week. She'd come over a lot on

20 the weekends to spend time with us and her two

21 sisters. Um, she took pictures for us. She did our

22 family picture, and she was always taking pictures of

23 the girls and around the farm. She liked to take

24 pictures a lot.

25 And we'd spend a lot of time together.

1 We'd go out, out to eat, or -- it seems like the
2 kids were always over on a Sunday afternoon, and
3 we'd talk, sit around the island in our kitchen
4 and talk a lot. We did spend a lot of time
5 together.

6 Q Was Sundays a day that the family would typically
7 get together?

8 A Yeah. Yes.

9 Q In fact, the Sunday before Teresa -- Teresa's
10 death, a Sunday, the one day before her death on
11 the 30th of October, do you recall all getting
12 together for a birthday party that day?

13 A Yes. It was my father's birthday on Halloween, but
14 we got together that Sunday before and celebrated his
15 birthday at his house.

16 Q Okay. So Teresa was actually killed on your
17 dad's birthday?

18 A Yes.

19 Q I think you told us, um, Mrs. Halbach, that
20 Teresa lived close to you in -- in physical
21 proximity. Who owned the property in which she
22 lived?

23 A My husband and I do.

24 Q And do you know at the time of her death who she
25 lived with?

1 A Uh, with a friend, Scott Bloedorn.

2 Q Sometime on the 3rd of November of 2005, did you
3 receive a telephone call from a gentleman by the
4 name of Tom Pearce?

5 A Yes, I did.

6 Q Could you describe that call for the jury,
7 please?

8 A He called about one o'clock in the afternoon and he
9 told me he was worried about Teresa because, not only
10 had she not shown up for work Tuesday or Wednesday,
11 but he had tried calling her on her cell phone, and
12 it said the voicemail was full, and that concerned
13 him because her cell phone was her business phone.
14 She used that. It was easiest for her. And then
15 I -- I said that concerned me, too. I was worried
16 about her then, too.

17 Q Were you familiar with the, uh, phone? Uh, that
18 is, the, um, cell phone that Teresa had?

19 A A little bit I was.

20 Q You -- you've been asked and, in fact, after, uh,
21 Teresa's death, investigators asked you to go
22 through and actually find some things at her
23 residence; is that correct?

24 A Right.

25 Q I'm going to show you two exhibits. One is

1 Exhibit No. 379 and one is Exhibit 380.

2 ATTORNEY KRATZ: Mr. Strang, have you
3 seen these?

4 ATTORNEY STRANG: I've seen them. All
5 three. I've seen all three, yeah.

6 Q (By Attorney Kratz) I think there's a
7 stipulation, uh, Mrs., uh, Halbach, meaning
8 there's an agreement with the attorneys, but I
9 just want you to tell the jury what Exhibit 379
10 is, please?

11 A It's a receipt for her cell phone that she bought.

12 Q And what is Exhibit No. 380?

13 A It's the contract for her cell phone.

14 Q With what carrier? What, uh, wireless carrier?

15 A Cingular.

16 Q I'd like you to turn to the back page of the
17 contract, and on the very bottom do you see that
18 it indicates what kind of a cell phone she had?

19 A Right.

20 Q What does it say?

21 A It's Motor V3.

22 Q Motorola V3?

23 A Yeah.

24 Q All right. Do you know that to be, uh, something
25 called a RAZR -- Motorola RAZR cell phone?

1 A Yes.

2 Q Now, had you seen your daughter, Teresa, with
3 that cell phone before?

4 A Yes, I have.

5 Q You've also heard evidence about Teresa owning
6 something that's generically called a -- a -- a
7 Palm Pilot. I'm sure the Palm Pilot people would
8 be happy that we're calling it that. But it's a
9 personal data assistant. Were you familiar that
10 she owned one of those?

11 A Yes.

12 Q I'm showing you another exhibit.

13 ATTORNEY KRATZ: Mr. Fallon, what's that
14 exhibit number, please?

15 ATTORNEY FALLON: Three-seven-eight.

16 Q (By Attorney Kratz) Three seventy-eight. Can
17 you tell the jury what that is, please?

18 A It's a receipt from a Palm Pilot from Target.

19 Q On the, um, top of the receipt, does it indicate
20 the date in which she bought that Palm Pilot or
21 that Palm Zire 31, and does it indicate
22 November 15 of 2004?

23 A Yes.

24 Q During the course of the investigation, the
25 missing person's investigation, and later, uh,

1 what you unfortunately found out was a, uh -- a
2 murder homicide investigation, were you asked to
3 provide samples -- biological samples from
4 yourself, something called a buccal swab, um, a
5 sample of your DNA?

6 A Yes, I was.

7 Q And did you provide that for investigators?

8 A Yes, I did.

9 Q Mrs. Halbach, were you also asked to assist
10 investigators, if you could, and have your
11 children, Mike and other children, helping with,
12 um, trying to determine cell phone records and --
13 and things like that? Do you remember that being
14 asked of you?

15 A Yes, I do.

16 Q Your, um, daughter, Katie, who we've heard from,
17 um, were you familiar with Katie's relationship
18 with your daughter, Teresa?

19 A Yes.

20 Q Would you describe that? What -- what you
21 noticed about that relationship?

22 A Um, Teresa was very close to both of her sisters.
23 Um, you know, they spent a lot of time laughing and
24 picking on each other. Uh, it kind of became
25 tradition, Teresa would come over Sunday after --

1 Sunday night, and three of her favorite TV shows were
2 on that night, and they'd watch it together and laugh
3 and have a good time. You know, she took them
4 shopping.

5 Q All right. When you heard that Katie knew about
6 Teresa's clothing, when she knew that she owned a
7 pair of Daisy Fuentes jeans, do you have any
8 doubts that, uh, they were close enough that
9 she'd know that?

10 A Oh, yeah. Teresa, um -- The girls would go over to
11 Teresa's house and they would try on her clothes,
12 because if Teresa had jeans that wouldn't fit her,
13 she'd give them to the girls. So I'm sure Katie
14 knows she had them.

15 Q All right. There's been at least some suggestion
16 that on, perhaps, the 2nd or 3rd of November,
17 that your daughter, Teresa, may still have been
18 alive. May have been accessing her cell phone.
19 After the 31st of October, Mrs. Halbach, um, did
20 you ever hear your daughter, Teresa's voice
21 again?

22 A No, I did not.

23 Q Is Teresa -- or was Teresa the kind of girl that
24 would have taken off, or would have left, or
25 would have, um, vanished without talking to you,

1 or talking to her family?

2 A No, she would not.

3 Q The last difficult area of inquiry I have with
4 you, Mrs. Halbach, has to do with notification.
5 That is, um, how you've been notified of, um,
6 this investigation. At the beginning of this
7 case I told the jury that it was my
8 responsibility as a district attorney to meet
9 with you, and to meet with your family, and to
10 tell you about the evidence that's been found in
11 this case. Do you remember me saying that?

12 A Yes.

13 Q Do you remember those things happening in this
14 case?

15 A Yes.

16 Q The physical evidence, no matter how disturbing
17 it's been to you, have you been, and your family
18 been, kept informed throughout this
19 investigation, uh, of all the developments, do
20 you feel?

21 A Yes.

22 ATTORNEY STRANG: Your Honor, this is
23 needlessly difficult and it's -- the case is not
24 about Mr. Kratz.

25 THE COURT: Court agrees.

1 ATTORNEY KRATZ: Judge, I would move the
2 admission of the three, uh, exhibits that have,
3 uh, been identified by Mrs. Halbach, and, um,
4 with that, I would pass the witness to
5 Mr. Strang.

6 THE COURT: Any objection to the exhibits?

7 ATTORNEY STRANG: Your Honor, I have no
8 objection to the three exhibits, and I'm not going
9 to make Mrs. Halbach answer any questions.

10 THE COURT: Very well. The exhibits are
11 admitted. Ma'am, you are excused.

12 Uh, members of the jury, at this time
13 we'll take our, uh, lunch break and, uh, resume
14 at one o'clock. I will remind you, as usual, not
15 to discuss the case among yourselves during the
16 lunch hour. Uh, then, counsel, we can resume
17 with the next State witness at one o'clock?

18 ATTORNEY KRATZ: We'll do that, Judge.
19 Thank you.

20 (Recess had at 11:56 a.m.)

21 (Reconvened at 1:04 p.m.; jurors not present.)

22 THE COURT: At this time we're back on the
23 record outside the presence of the jury. Uh,
24 counsel, uh, I understand there's some business you
25 wish to take up before we bring the jurors back?

1 ATTORNEY STRANG: I do. Uh, Your Honor,
2 there have been, uh, I don't know, a number of
3 occasions, most recently on the direct
4 examination of, uh, Karen Halbach just before
5 lunch, in which the prosecution has posed
6 questions on direct examination that, um, assume
7 as a fact, or presuppose, either a killing, um,
8 in the case of the question as posed here today,
9 or that it is somehow established beyond, uh,
10 dispute, or tacitly conceded that, um, the murder
11 alleged here actually did occur on October 31.

12 Those kinds of questions, um, not only
13 invade the province of the jury, I mean, as --
14 assume the ultimate facts to be decided here, and
15 the, uh, the actual elements of the, uh, most
16 serious charge, but, also, tend to suggest
17 superior knowledge on the part of the State or --
18 or of vouching, in effect.

19 I don't think they're properly put. Um,
20 I don't think that's a -- a, uh, proper question.
21 Um, we are coming up on three weeks into a trial,
22 and not only has the State not established beyond
23 dispute, um, the death, uh, of Ms. Halbach, or on
24 any specific day, but almost three weeks in, we
25 don't know -- we don't know at all how she died,

1 when she died, uh, where, exactly, they say she
2 died or why. Uh, the State says she died.

3 So, uh, I -- I -- I'd like the Court to
4 instruct, um, Counsel that questions ought not be
5 phrased in a way that tends to vouch for or
6 invade the, uh, province of the jury in that way
7 or to suggest some superior knowledge on the part
8 of the, uh, State and its agents.

9 THE COURT: Mr. Kratz or Mr. Fallon?
10 Who's going to be responding?

11 ATTORNEY KRATZ: Certainly is the theory
12 of the prosecution, Judge, that Ms. Halbach, uh,
13 was murdered. As I recall, uh, that was not
14 going to be disputed by the defense. If they,
15 once again, changed their theory of defense,
16 then, once again, we'd like to know that.

17 That, notwithstanding, Your Honor,
18 phrasing the question regarding Ms. Halbach's
19 murder is consistent with our theory of the
20 prosecution, what we think is that the evidence
21 that has already been, uh, elicited, uh, at this
22 trial, both, uh, through expert and, uh -- and
23 lay witnesses.

24 Uh, if Mr., um, Strang would like to
25 argue to the -- the jury upon closing that Ms.

1 Halbach, um, uh, was not, in fact, uh, murdered,
2 uh, if some other reason exists for her not being
3 in this courtroom, then I guess, uh, we, uh, can
4 hear it at that time. But until that moment, uh,
5 I do believe that it is, uh, within our province
6 to frame those questions in that regard.

7 I suppose I could, um, always use the
8 word "alleged" but since we are an advocate in
9 this case, since we advocate for a position, we
10 are advocating the position that Ms. Halbach was,
11 in fact, murdered, and until the Court tells us
12 we can't, uh, I intend to, um, um, elicit
13 questions that, uh -- that presuppose that fact,
14 because at least up to this point, the State
15 believes that that has, in fact, been proven or a
16 reasonable inference of -- can be drawn by this
17 jury that that has occurred.

18 THE COURT: I don't remember the specific
19 comments. I thought, going back to the defense
20 opening statement, that there wasn't a dispute that
21 the victim was murdered. But I -- When the date,
22 October 31, was used, I guess that's what I thought
23 that Mr. Strang's comments were going to be directed
24 to. Mr. Strang?

25 ATTORNEY STRANG: Well, that -- that is

1 primarily, you know, killed on October 31, killed
2 on your father's birthday, um, you know, and
3 there -- there's a difference between what we may
4 choose to argue to a jury and the State's burden
5 of proof on every essential element.

6 There's only one essential element of
7 the four charges here that we've stipulated.
8 That's it. One, that he was a convicted felon as
9 of the relevant date in 2005.

10 Um, so what we actually choose to be --
11 argue to the jury has nothing to do with the form
12 in which the State poses questions on direct
13 examination of witnesses who are not hostile and
14 are not appropriate either for leading or for
15 vouching.

16 Uh, so I -- You know, it -- it's not the
17 evidence that is objectionable, it is the form of
18 the question that purportedly seeks to elicit the
19 evidence, uh, that causes me to, um -- to ask for
20 the Court's instruction.

21 THE COURT: All right. Well, um, as the
22 trial has gone on, and I can only respond to
23 objections as they're made, if I -- I may have
24 misunderstood the, um -- the extent to which the
25 defense was not contesting some of the items

1 alleged by the State, but I understand your point
2 and, um, if, uh, another question is made that
3 the defense's feel objectionable, uh, object to
4 it at the time and I'll rule on it.

5 Anything else before we bring the jury
6 back in?

7 ATTORNEY STRANG: No, Your Honor.

8 ATTORNEY FALLON: I think we're just
9 waiting for the clerk to finish marking exhibits.

10 (Jurors in at 1:10 p.m.)

11 THE COURT: You may be seated, and, uh,
12 Mr. Fallon, you may call your next witness.

13 ATTORNEY FALLON: State would call
14 Leslie Eisenberg.

15 THE CLERK: You can step over there.
16 Please raise your right hand.

17 **LESLIE EISENBERG,**
18 called as a witness herein, having been first duly
19 sworn, was examined and testified as follows:

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

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

24 **DIRECT EXAMINATION**

25 BY ATTORNEY FALLON:

1 Q Good afternoon.

2 A Good afternoon.

3 Q What do you do for a living?

4 A I am currently employed, and have been since June of
5 1993, for the State of Wisconsin, Wisconsin
6 Historical Society, as the State's, uh, Burial Sites
7 Preservation Program Coordinator. I am, likewise,
8 employed privately as a forensic anthropologist.

9 Q Would you tell us what an anthropologist does?

10 A I'd be happy to. Uh, a -- an anthropologist, and in
11 particular, a forensic anthropologist, uses
12 techniques from physical anthropology, uh, including
13 knowledge of the human skeleton and knowledge of
14 human variation and applying that knowledge in a
15 legal context.

16 Q Are there any particular areas or subspecialties
17 of forensic anthropology or anything like that?

18 A Um, I, uh, have a bit of -- quite a bit of experience
19 with trauma reconstruction and with, um, identifying
20 and, um, recognizing burned human remains.

21 ATTORNEY FALLON: Um, Judge, either the
22 witness should lean back a little or if you could
23 turn the volume down a tad. She seems to be more
24 comfortable leaning forward so, perhaps, less
25 volume. Thanks.

1 THE COURT: Sure.

2 Q (By Attorney Fallon) How are you involved in
3 this case?

4 A I was, uh -- In early November of 2005, I was
5 requested, uh -- my assistance was requested by the
6 Calumet County Sheriff's Office, uh, to examine some
7 human remains that had been recovered.

8 Q And, uh, in terms of today, um, why are you here
9 today?

10 A I am here to explain the work I've done, and my
11 findings, um, with particular reference to a
12 determination of, um, the sex and the age of the
13 burned human remains I was asked to examine, uh, as
14 well as to render a professional opinion with respect
15 to the manner of death.

16 Q Now, before we get to your findings and opinions,
17 Doctor, um, I'd like to find a little bit about
18 yourself, please. Um, first of all, uh, tell us
19 your educational background?

20 A I received a Master's Degree in anthropology in 1981,
21 a Doctorate, or Ph.D, in anthropology in 1986, uh,
22 and in 1997 was awarded what's called "diplomat"
23 status or board certification in forensic
24 anthropology.

25 Q And if you could tell us, what does diplomat

1 status, or bird cer -- board certification status
2 what -- why is that significant?

3 A It's significant, uh, to a forensic anthropologist
4 because it means that you have gone through a very
5 rigorous process in submitting case reports for
6 review to an organization called the American Board
7 of Forensic Anthropology, who will review your
8 application and determine your fitness to sit for a
9 very rigorous day-long written and practical
10 examination.

11 Q From which institutions did you receive your
12 Masters and Doctoral Degrees?

13 A Both degrees were received from New York University
14 in New York City.

15 Q Tell us, if you would, um, your, uh -- Well, how
16 long have you been with the Wisconsin Historical
17 Society? We'll start there.

18 A I, uh, moved to Wisconsin in, uh -- at the end of May
19 of -- of 1993 to accept the position with the
20 Wisconsin Historical Society. So I've been here
21 almost 14 years.

22 Q Did you say '83? '93?

23 A '93.

24 Q What, um, positions have you held which, uh,
25 benefit you in the performance of your

1 anthropological, uh, duties and opinions that you
2 render?

3 A Well, there have been a number. Uh, for me, one of
4 the most important positions I held before coming to
5 Wisconsin, uh, began in 1986, and that was as a
6 consulting forensic anthropologist, one of two for
7 the Office of Chief Medical Examiner in New York
8 City.

9 Uh, I have also, uh, been fortunate and
10 honored to be asked to be part of a federal
11 disaster mortuary team that goes by the name --
12 the full name is, um, Disaster Mortuary
13 Operational Response Team. And that's a team
14 made up of different kind of professionals,
15 including dentists and pathologists and, uh,
16 other specialties like forensic anthropology,
17 that are most useful in identifying, um, remains
18 that have sustained effects from disasters,
19 whether they be, um, an explosion, a burning
20 episode, um, more -- most recently Hurricane
21 Katrina, uh, the World Trade Center, plane
22 crashes, things like that.

23 Q And this, uh, Disaster Mortuary Operational
24 Response Team, is that known by the acronym
25 DMORT?

1 A It is.

2 Q D-M-O-R-T?

3 A That's correct.

4 Q And, now, you mentioned some disaster relief
5 efforts. Have you participated in any disaster
6 relief efforts, uh, involving the need for, uh,
7 expertise in the field of forensic anthropology?

8 A Yes, I have.

9 Q Uh, tell us about those responses that you've
10 been involved in?

11 A Well, of the requests made to me to assist, um, I --
12 I have been asked to assist on multiple occasions.
13 Of those requests I've been able to, uh, actually
14 help with three of them. The first one was regarding
15 a train derailment, train crash, in Bourbonnais,
16 Illinois, uh, where, uh, a number of individuals on
17 that train, um, sustained, um, trauma from -- from
18 the crash and also from the subsequent burning
19 episode.

20 I also was called, uh, the day of the
21 World Trade Center disaster, excuse me, to
22 respond to New York to help with the
23 identification of the extremely fragmented and,
24 in many cases, very badly burned human remains
25 from that attack.

1 Uh, and more recently, in September of
2 2005 to -- I was asked to go down to
3 Mississippi -- to, Gulf Port, Mississippi to
4 assist with the identification of, uh, in some
5 cases, cemetery remains that had been washed out,
6 and in other cases, to assist, uh, with remains
7 of unidentified individuals, um, who were either
8 washed up or recovered subsequent to, uh,
9 Hurricane Katrina and Rita, which followed on its
10 heels.

11 Q Are you, uh -- Do you -- Are you a member of any
12 committees or belong to any boards of, uh -- that
13 are particular interest with respect to the field
14 of forensic anthropology?

15 A Yes, I am, um, a board member of the American Board
16 of Forensic Anthropology. Uh, for six years, uh, I
17 served on that board as an elected member. Uh, the
18 last three years of that six-year term as the board
19 secretary.

20 Q Currently, do you belong to any, um, uh, national
21 professional organizations?

22 A Yes, I do.

23 Q And what, uh, are those organizations?

24 A Um, may I refer to my resumé so that I don't leave
25 anything out that may be of interest?

1 (Exhibit 381 marked for identification.)

2 Q Sure. Showing you what has been marked for
3 identification purposes has Exhibit 3-8-1. Could
4 you identify that for us, please?

5 A Exhibit 381 is my resumé, also known as a Curriculum
6 Vitae, um, which consists of 17 plus pages. Um, with
7 regard to my professional affiliations, um, I do
8 belong to a number of national and regional
9 organizations.

10 Um, I am a, um -- a fellow of the
11 American Academy of Forensic Sciences, which is
12 basically the umbrella organization of forensic
13 professionals in this country, in Canada and
14 membership also, uh, spans the globe. Uh, being
15 a fellow of that organization means that you have
16 attained the highest level of membership, uh,
17 that the American Academy of Forensic Sciences,
18 um, has.

19 Uh, as I mentioned, I am also a board
20 certified forensic anthropologist with an
21 affiliation with the American Board of Forensic
22 Anthropology.

23 I am also a member of the International
24 Association for Identification, which most
25 recently has begun a forensic anthropology

1 section, and I am, uh, acting, uh, with other
2 colleagues to begin, uh, that section for the
3 organization.

4 Q All right. Um, if I may interrupt you. And,
5 again, continuing the field of anthropology, um,
6 are you a member of any, uh, regional
7 professional organizations?

8 A Yes, I am, sir.

9 Q What would those be?

10 A Um, with respect to my qualifications here, the -- I
11 am a member of the Wisconsin Association for
12 Identification, the Wisconsin Association of Homicide
13 Investigators, and the Wisconsin Coroners and Medical
14 Examiners Association.

15 Q Have you received, uh, any, um, particular
16 research grants, awards, or honors of, um,
17 particular importance with respect to your field
18 of forensic anthropology?

19 A Uh, yes, I have. If I may refer, again to --

20 Q Sure.

21 A -- Exhibit 381?

22 Q You may.

23 ATTORNEY STRANG: Your Honor, that
24 exhibit can be admitted without --

25 ATTORNEY FALLON: I --

1 ATTORNEY STRANG: -- objection.

2 ATTORNEY FALLON: Thank you. I was just
3 about to do that in a moment or two.

4 THE COURT: All right. The exhibit is
5 admitted.

6 ATTORNEY FALLON: Thank you.

7 A Most recent for 2006, I am, uh, proud to say that my
8 peers, uh, in the DMORT organization in, uh, the, uh,
9 federal disaster team have named me the distinguished
10 member of the year.

11 Um, and among other, uh, awards and
12 honors, in the year 2000, the Wisconsin State
13 Assembly, uh, presented me with a citation, uh,
14 recognizing my work in another forensic case, uh,
15 from Sauk County, Wisconsin.

16 Q All right. So is the, uh, Curriculum Vitae, uh,
17 that you have there a -- a summary of your
18 professional training and experience awards,
19 publications, etc.?

20 A It is, sir.

21 Q Thank you. Uh, turning now to this particular
22 case, when did you first become involved, uh, in
23 this case, involving, uh, Teresa Halbach?

24 A My involvement with this case began with a telephone
25 call. Actually a voicemail message that was left for

1 me on November 9 of 2005. Uh, there was a call
2 placed to me, uh, by special agent of the Wisconsin
3 Department of Justice, uh, Division of Criminal
4 Investigation, uh, asking for my assistance in
5 examining some, um, items that had been collected,
6 uh, with -- and the specific request had to do with
7 looking at those items to determine if any human
8 remains were part of that in -- uh, ini -- initial
9 collection of items.

10 Q I'd like to direct your attention to, uh, the
11 time frame of November 5, which we've established
12 is a Saturday, through November 10th, which we
13 have also established as a Thursday. Uh, during
14 that time frame, uh, were you in the state of
15 Wisconsin?

16 A I, uh, left, uh, on that Sunday, which I believe
17 would have been the --

18 Q Sixth?

19 A -- 6th of, uh, November, returning on Wednesday, the
20 9th. I was, along with four or five other
21 individuals, who's representing the state of
22 Wisconsin at a -- at a missing persons conference in
23 Denver, Colorado.

24 Q All right. You returned to the 9th and your
25 first day back at work would have been the 10th?

1 A Would have been Thursday, November 10 of '05.

2 Q What were you asked to do, initially? What were
3 your primary tasks?

4 A My primary task was to examine the contents of a
5 sealed box, um, and to provide information about the
6 con -- the contents of that box.

7 Um, when I opened the box, uh, on,
8 Thursday, November 10 at the Dane County
9 Coroner's Office Morgue where I do most of my,
10 uh, laboratory work, um, I opened the box to find
11 many, uh, blackened, highly fragmented and
12 incomplete human bone fragments.

13 Q All right. Upon making that examination and
14 after receiving the request from law enforcement,
15 what did you attempt, or what was your -- what
16 were you attempting to do with respect to, uh,
17 evaluating these, uh, fragments?

18 A Well, the first task at hand in this case, and in --
19 in other cases, uh, as well, sometimes, uh, one of
20 the tasks that a forensic anthropologist is often
21 asked to do, is to look at, um, remains, whether
22 they're fragmentary or complete, and render an
23 opinion as to whether or not the remains are human
24 and, if you can answer yes to that question, to then,
25 uh, distinguish or determine, um, can you also

1 distinguish other kinds of items that are associated
2 with those.

3 So one of the -- one of the key roles
4 for forensic anthropologists is to determine or
5 distinguish human from nonhuman remains, whether
6 they're biological or otherwise.

7 Q I've -- I've just been informed you might have to
8 pull that microphone just a little bit closer.

9 A Okay. I'll try and do better. Thank you.

10 Q At some point were you attempting to develop a
11 biological profile of, uh -- of the person, if
12 there was, in fact, a determination that they
13 were human remains?

14 A Yes. One of the other key roles of a forensic
15 anthropologist is to develop what's called a
16 biological profile. And that often includes, and
17 should include, a determination of the sex of the
18 individual, the age of the individual, um, the
19 stature or height of the individual, the ancestry or
20 race of the individual, um, a determination as to
21 whether or not, um, there are any, uh -- the remains
22 have sustained trauma of any kind, whether they
23 occurred before death or after death, and, also, um,
24 to re-fit any fragments that might be re-approximated
25 or put back together.

1 Q Are you familiar with the terms "antemortem",
2 "postmortem" and "perimortem"?

3 A Yes, I am.

4 Q Could you explain those terms to us --

5 A I --

6 Q -- please, at least as you apply them in your
7 field of anthropology?

8 A I would be happy to. The term "antemortem", the
9 prefix "ante" means "before", "mortem" means "death",
10 so antemortem means before death.

11 Perimortem, P-e-r-i-m-o-r-t-e-m, "peri"
12 means at or near the time of death. So that's
13 what perimortem means.

14 And postmortem, "post" means "after" so
15 postmortem means after death.

16 Q All right. In terms of your task, could you tell
17 us, please, what were -- what were the condition
18 of the bones and fragments and materials that
19 were sent to you?

20 A The material that I initially examined, and virtually
21 all of the subsequent material presented to me for
22 examination, um, the human bone fragments that I
23 identified and sorted and inventoried was incomplete,
24 highly fragmented, burned, and in some cases what we
25 call calcined, and calcined is -- is a state or a

1 condition, um, along a continuum or a progression of
2 what happens to bone, human bone, when it's exposed
3 to heat.

4 Um, and it's -- it's -- so if you can
5 break that down into three different kind of
6 general periods, when bone is initially exposed
7 to heat, it begins to lose moisture. Um, many
8 people think of bones as, uh -- as inert, kind of
9 as a -- like a piece of wood, but, in fact, there
10 are blood vessels that run through bone, and bone
11 is a very dynamic substance. As anyone who may
12 have broken a bone knows, it -- it hurts a lot
13 when that happens.

14 So when bone is exposed to heat, it
15 first begins to lose its moisture. It will then
16 begin, um, as time goes on, as more heat or, um,
17 is -- is applied or the duration of the exposure
18 to heat is extended, the organic content of the
19 bone, um, what makes you and me human, begins
20 to -- to disappear from the bone.

21 And then the third phase, when a bone is
22 calcined as I mentioned, is when it begins to
23 lose all of its minerals, um, that keep the bones
24 strong. And so when that happens, the bone
25 begins to function not so much as a living bone,

1 but more as a brittle material.

2 Q All right. Now, in the field of, um, disaster
3 relief and forensic anthropology, are there,
4 uh -- is there a standard, or are there levels of
5 destruction or degradation that are, uh, assigned
6 to particular samples when you're asked to
7 examine them?

8 A Well, again, um, different -- different researchers
9 have -- have written about this and have assigned,
10 um, or developed these, um, protocols or continuums
11 where, um, the initial level is that, uh, a body may
12 have been exposed to heat, continuing up to the final
13 level where you are left with cremated remains. And
14 it's, um -- the phases that have been defined by
15 researchers are -- are fairly discreet or stand alone
16 phases, but we know that -- that there's a continuum.
17 There's a -- there's a continual progression from
18 recognizably burned individual, to an individual
19 whose remains have been, for all intents and
20 purposes, cremated.

21 Q All right. Uh, I'd like to show you some
22 exhibits, and to begin with, uh, some, uh,
23 preliminary questions.

24 THE COURT: Doctor, I think I'm going to
25 ask you to move the microphone just a little further

1 away. There's a little distortion coming through
2 the --

3 THE WITNESS: My apologies.

4 THE COURT: That's okay.

5 Q (By Attorney Fallon) If you would be so kind to
6 uh -- to begin with the, uh -- the first
7 photograph. I believe it's marked as Exhibit,
8 uh, 382?

9 A That's correct.

10 Q All right. And, uh --

11 A Exhibit 382 is a -- what appears to be a four-by-six
12 inch color photograph of myself and other
13 investigators sorting through what appears to be burn
14 material. And, uh, if memory serves, uh, I believe
15 this photo was taken at the Wisconsin Crime
16 Laboratory in Madison in December of -- of 2005.

17 Q All right. Um, and the next, uh, photograph?

18 A The next four-by-six color photograph, marked Exhibit
19 383, depicts the, uh, contents of the initial box
20 that was submitted to me, uh, for examination, uh,
21 under Calumet County Sheriff's Office Tag 8318.

22 This was a box that was left for me, um,
23 at my office on November 9 of 2005. That on the
24 following day, I brought it to the Dane County
25 Coroner's Office Morgue, uh, to examine.

1 Q All right.

2 A And -- and I would also note, um, the darkened color
3 of -- of the bones, um, and the fact that some of the
4 lighter colored bones, the bones that almost look
5 white, have taken on or have reached that phase, that
6 calcine phase, where the mineral content and the
7 moisture of the bone, uh, has already dissipated or
8 is gone.

9 Q All right. If you could take -- I believe
10 there's -- should be a, um, laser pointer --

11 A Yes.

12 Q -- up there? If you could just point to the box
13 and just give the jury an example, if you would,
14 of some of these calcined bones that you just
15 described for them? If you could pick out from
16 the box there?

17 A Um, there's one.

18 Q All right.

19 A Um --

20 Q Toward the bottom of the --

21 A There's another.

22 Q Toward the bottom of the box on the edge there?

23 A Correct.

24 Q All right.

25 A And a fragment here, a fragment there. And I would

1 also note that some of these fragments, um, as you
2 probably can see, uh, in some cases have a calcine
3 portion and maybe a charred portion all part of the
4 same bone.

5 Q All right. What is the, uh, next, uh,
6 photograph? This is Exhibit --

7 A This is Exhibit 384.

8 Q All right. And what are we looking at here?

9 A You are looking at, um, uh, a sampling of skull
10 fragments, uh, of different sizes, um, that were part
11 of that initial submission that came in that white
12 box to me that I initially examined on November 10 of
13 2005.

14 Um, they look, I'm sure, very irregular
15 to all of you, um, but I would call your
16 attention to some, uh, characteristic, um, traits
17 that I -- that stand out to me immediately. Um,
18 these -- these areas of projections, um, these
19 are all part of cranial sutures, where many of
20 the bones of the skull fit together.

21 Q All right. If we were to zoom in, would that
22 assist you in further illustrating the point
23 you're making?

24 A Thank you, yes. Here and here.

25 Q So you're pointing to pieces what -- what appear

1 to be very irregular shaped?

2 A That's correct.

3 Q All right. And those are cranial sutures?

4 A They, um -- they represent parts of cranial sutures
5 and there are different cranial sutures around the
6 skull.

7 Q All right. Now, do you recall approximately, um,
8 how many, um, diagnostic, uh, human skull
9 fragments you did examine or look at?

10 A If memory serves, there were 58 diagnostic skull
11 fragments. Um, and when I use the word "diagnostic",
12 uh, to me that means there was en -- there was enough
13 about the bone, either given its shape or its
14 contours, where I could say, yes, this bone fragment
15 came from the skull.

16 Q And, uh, it -- I may not be clear enough in my
17 own head, so what, exactly, is a cranial suture?

18 A We, um -- All of us, hopefully, as -- as, uh -- as
19 we're born, develop into kids and -- and get older.
20 Um, hopefully our heads grow to accommodate our
21 growing brains. And, uh, essentially, what happens
22 is that -- the skull is made up of multiple bones,
23 and as your brain grows, um, your skull is able to
24 accommodate that growth at these open sutures or
25 these, um -- I don't want to call them a zipper, but

1 in a sense, you could think of them as the teeth of a
2 zipper, um, that as you get older, um, those teeth or
3 these sutures sometimes fuse or grow together. But
4 in -- in younger children, even, uh, in adults,
5 hopefully my age, those sutures are still pretty open
6 even though my -- my brain has stopped growing.

7 Um, for little kids or for babies, um,
8 you can sometimes feel a soft spot on the top of
9 the head. That's because the bone, uh, has not
10 grown to the point where, um, that soft spot is
11 covered up yet.

12 Q All right. Are they somewhat reflected, or some
13 people refer to those as growth plates? Or they
14 assist in the growth of the head and this -- the
15 brain? Skull?

16 A Most people, uh, refer to growth plates with respect
17 to growing long bones. The leg bones and the arm
18 bones. But less so, really, with the skull.

19 Q All right. All right. Uh, next, uh, exhibit,
20 please? This is Exhibit No. three eighty --

21 A This is Exhibit 385. Um, this photograph was taken,
22 um, as part of my preparations in preparing, um, a
23 submission or a package for a transfer to the FBI
24 for -- for examination. What you are looking at in
25 this image, um, is a bone fragment that's -- that's

1 kind of charred but, um, perhaps not really burned,
2 and certainly not to the degree of the other, uh --
3 of all of the other bone fragments found in this
4 case.

5 ATTORNEY FALLON: I'm going to ask my
6 colleague, if I could, to zoom in on the one that
7 you seem to be pointing at. Pointing your laser
8 pointer at.

9 A Thank you. This -- this is the bone, um, and
10 although there's no scale in this particular
11 photograph, it was really meant as a -- as a, um -- a
12 reminder to me what the contents of that evidence tag
13 number, uh, contained.

14 And this is -- was the largest bone that
15 was collected as part of this evidence tag. It
16 is, uh, unquestionably human, um, and -- and
17 the -- the color of this bone is more typical of
18 what you would expect to see, um, in a nonburn
19 case. In other words, it was somehow protected,
20 um, and if you could zoom out to the larger photo
21 for me, please, was protected by some of, um,
22 this dried or desiccated muscle tissue that
23 surrounded this bone.

24 Q All right. Now, the one we've been examining
25 more closely here, is that the bone that you, uh,

1 had sent or arranged to be sent to the FBI, or
2 excuse me, to the Crime Lab for further analysis?

3 A No, this -- um, the contents of all of the items you
4 see on this screen, um, this larger bone, which is
5 only about two-and-a-half inches long, and some of
6 these other bone fragments, and this muscle tissue,
7 uh, was packaged by me and transferred directly to
8 the FBI in November of 2005.

9 Q All right. Um, what type of bone, uh -- Is that
10 all bone, or is it tissue, or what, exactly, is
11 that one to the far left there?

12 A This?

13 Q Yes.

14 A This entire fragment is human bone.

15 Q All right. All right. Based on your examination
16 of the bones and fragments recovered, uh, from
17 the, um, burn pit behind the garage of Mr. Steven
18 Avery, did you find evidence of human remains?

19 A Yes, sir, I did.

20 Q And what did you determine?

21 A I was able to determine --

22 Q Were they human or nonhuman? Human?

23 A They were human.

24 Q Were you able to determine, uh, the -- or
25 identify the relative age of the person whose

1 remains you examined?

2 A Yes, I was. And it -- it's, uh, with a reasonable,
3 uh, degree of scientific certainty, based on an
4 examination of certain preserved parts of the
5 skeleton, um, my assessment is that the, uh,
6 fragmentary and burned remains that I was asked to
7 examine from behind Mr. Steven Avery's garage were
8 those, um, of someone, uh, probably no older than
9 between 30 to 35 years of age.

10 Q When you -- when you say "no older" can you
11 explain that? No older than the range of 30 to
12 35. Can you explain how anthropologists use
13 dates like that so that we're not confused?

14 A I -- I will. And, um, I -- I would say that any
15 reasonable and professional forensic anthropologist
16 will always provide an -- an age range, as opposed to
17 a particular year, um, because we can never really
18 know for sure. But there are certain
19 characteristics, certain things we expect to see
20 happening to bone at certain ages, and as we -- as we
21 age, as we start to look a little different every
22 year on the outside, on the inside our bones also
23 start to look a little different.

24 And what I'm referring to in particular
25 is the onset of a degenerative bone condition

1 known as arthritis.

2 Q All right. So when you say, uh, 30 -- of an
3 individual less than 30 to 35, in other words,
4 it's someone who's younger than -- I assume you
5 have different levels? There's a 30 to 35,
6 there's a 20 to 25, or a 40 to 50, so they --
7 these remains of this person was somebody who was
8 clearly less than 30 to 35 years of age?

9 A That's correct. And I say that because there were no
10 bony signs of arthritis on several of the joint
11 surfaces that I was able to recognize and examine.

12 Q Were you able to determine the sex of the person
13 whose remains were recovered?

14 A Yes, I was.

15 Q And what was that?

16 A That in my professional opinion these remains are
17 those of an adult female.

18 Q And why were you able to make that determination?

19 A I was able to make that determin -- determination
20 based on, um, certain characteristics, traits and
21 measurements of various portions of the body that had
22 been recovered and could be recognized as to where in
23 the body they come from. Actually, which bone they
24 came from.

25 Q All right. I would like to direct your attention

1 to, I believe, the next photograph? And that
2 would be Exhibit 386?

3 A Three-eight-six. That's correct.

4 Q And, uh, it's now being displayed on the screen.
5 What are we looking at in Exhibit 386?

6 A Um, I -- I would ask, um, you to -- as you're facing
7 me, um, we are facing this image, and -- and what we
8 are looking at is, um, the recognizable, what I call
9 diagnostic, portions of human facial bones, and --
10 and I'd like to take you through what it is I see in
11 the hopes that you can orient yourselves as well.

12 Q Sure.

13 A Um, if you, um -- if you're looking at this head-on
14 or face-on, if you will, this would be the top of the
15 left eye socket. This would be the top of the right
16 eye socket. This is the left nasal bone. Um,
17 everyone's nose has a right side and a left side. We
18 recovered the left nasal bone. We also have the
19 entire, or virtually the entire, right cheekbone, as
20 well as a portion of the left cheekbone, and a
21 portion of bone that begins in the cheekbone area and
22 continues over and above the left op -- the opening
23 for the left ear.

24 Q All right.

25 A And -- and I must say, if I can add, that, um, in

1 burn situations like this one, it is sometimes
2 unusual to find the -- the facial structures because
3 they are thin and easily damaged. And the fact that
4 we have these bones and they are as recognizable as
5 they are, to me is -- is, in part, a testament to the
6 recovery that occurred at the scene.

7 Q I note from examining, uh, Exhibit 386 that there
8 appear to be some red dots on the fragments which
9 are displayed?

10 A That's correct.

11 Q Can you explain what those dots are and who --
12 how they came to be?

13 A Yes. Um, I would be happy to do that. As -- as part
14 of the investigation and the sorting, um, I needed to
15 find a way to, um -- to mark from what location
16 certain bones came. And what I initially decided to
17 do was to go out to Walgreens, buy some very brightly
18 colored nail polish in different colors, different
19 enough so that each color could be distinguished from
20 one another, and mark certain recovered items whose
21 tag numbers or identification numbers we knew so that
22 if I was, over time, be able -- was able to re-fit
23 fragments, I would know if one match and another
24 match came from the same, uh, evidence collection or
25 came from two different evidence collections, for

1 example.

2 Um, the red dots you see here, um,
3 indicate that all of these fragments, all of
4 these, recognizable to a forensic anthropologist,
5 facial fragments, came from that initial recovery
6 Tag No. 8318, uh, in that white box that I was
7 initially asked to examine.

8 Um, I would also like to say that I took
9 great pains on these fragments, and other
10 fragments that may have been so marked, to place
11 these dots in areas that did not ob -- obscure
12 any kind of anatomical landmark or that might be
13 needed later on for examination purposes.

14 Q All right. If you would turn to the next
15 photograph? This would be Exhibit 387?

16 A Yes, sir.

17 Q And 387 is what?

18 A Three eighty-seven is a close-up of a portion, uh, of
19 facial bones that we saw in the previous, uh, slide.
20 Uh, what you are looking at, uh, we're doing the same
21 thing. We're looking face-on at somebody, and what
22 you are looking at, this area is actually the area
23 just above and between your eyes. And, again, this
24 area is the portion of the frontal bone or the
25 forehead that demarcates or forms the boundary for

1 the top of the left eye socket.

2 You are also looking at -- at the left
3 nasal bone. Uh, and while you can't see it here,
4 um, actually -- which actually fit with this
5 frontal bone.

6 Q All right. If you would, uh, turn to the next,
7 uh, photograph, I believe it would be Exhibit
8 388?

9 A Yes, sir.

10 Q And Exhibit 388 is, um -- First of all, you have
11 to tell us a little bit about this exhibit. Um,
12 um, how was this -- with whom did you work to
13 prepare this particular exhibit?

14 A Um, I had the opportunity, uh, to work with, uh, a
15 Wisconsin State Trooper by the name of Timothy
16 Austin, who prepared many of the graphics for this
17 case, um, using software that, uh, I wouldn't have
18 the first idea about how to make work, but he -- he
19 did, uh, a wonderful job in -- in helping me depict
20 certain areas of -- of the body that had been
21 recovered, uh, from -- from Mr. Avery's property.

22 Um, what this slide depicts is a graphic
23 of a human skull. We are essentially looking,
24 again, face-on at that skull, and each of these
25 identifying labels, uh, points to the portion of

1 the facial bone that was depicted and was
2 recognized and was inventoried, uh, in this
3 particular case.

4 If you remember, we had virtually the
5 entire right cheekbone, um, that we call the
6 malar bone, but it's essentially a cheekbone, um,
7 we had the left nasal bone, um, we had this
8 portion of the left cheekbone, the left malar
9 again. We had that, um, linear or stick-looking
10 piece of bone that forms part of the cheekbone
11 that continues over and above the -- the opening
12 for the left ear.

13 Um, and a very, very characteristic
14 portion of the left frontal bone that contains,
15 uh, a continuous surface demarcating the top of
16 the left eye socket.

17 We also had, uh, fragments from the --
18 the top of the right eye sockets, but,
19 unfortunate -- unfortunately, given their
20 fragmentary nature, they could not be
21 re-approximated or fit one right next to another.

22 Q All right. If we could have you turn to one
23 more, uh, photograph, and then, um, I'll ask a
24 couple of questions regarding the ones we just
25 looked at. Uh, Exhibit, I believe it would be

1 389?

2 A Yes, sir.

3 Q All right. Um, the question at hand, as we began
4 the analysis of these, uh, facial bones, was your
5 ability to determine a female from male, and, um,
6 if you would then, uh, illustrate further, uh,
7 making a compare and contrast, uh, Exhibit, uh,
8 389, with, uh, the male and female anatomy and
9 tell us how you were able to determine that the
10 remains you examined were, in fact, female?

11 A In fact, there were multiple indicators of -- of, uh,
12 these remains having come from a female. Um, the
13 first, um -- the first evidence of that actually came
14 from that left frontal bone fragment that you saw a
15 minute ago with, um, the sharp, um, upper boundary of
16 the left eye socket, and that is, uh, characteristic,
17 and actually the hallmark, uh, for, um, being able to
18 dis -- distinguish -- well, one of the
19 characteristics and one of the hallmarks for allowing
20 anthropologists to make a distinction between males
21 and females.

22 Q So I take it, then, by your description, you're
23 pointing that the skeletal figure depicted on the
24 left-hand of our screen is a male?

25 A No, actually, uh, facing the screen --

1 Q Oh. Our -- our looking -- look -- right-hand
2 side, excuse me.

3 A Yes. The skeleton graphic on the right-hand side is
4 the male --

5 Q Right.

6 A -- and on the left-hand side depicts, in a general
7 way, a female.

8 Q Okay. Now, you said, uh, in addition to the, uh,
9 facial bone, uh, that you've just described,
10 there were other, uh, bone, uh, material that you
11 examined that, um, further supported your opinion
12 that, uh, the remains were of a female?

13 A Yes, sir.

14 Q Tell us --

15 A Um --

16 Q -- about that.

17 A As we move from, um, the head down the body to what
18 are called the post-cranials, anything neck and
19 below, post, again, after, so below the -- below the
20 skull, uh, one of the, um, fragments that was
21 actually recovered and in very, very good shape was
22 part -- was a bone that forms part of the elbow
23 joint, and the elbow joint is made up of three bones;
24 the lower end of the upper arm bone, that's called
25 the humerus, and the upper end of the two lower arm

1 bones, the one on the thumb side of the arm, called
2 the radius, and the one on the other side, called the
3 ulna.

4 And what I was able to identify was the
5 elbow, and of the radius, it's called the radial
6 head, which is, um, a rounded lozenged-shaped
7 portion of the bone that forms part of the elbow
8 joint.

9 Q All right. And, um, did you recover, uh, any
10 other bones? For instance, a femur shaft or
11 anything like that which would be of -- would be
12 of some assistance in determining the sex?

13 A Yes. Along with the head of the radius, um, that
14 actually I can try and point out in this graphic,
15 it's -- well, maybe not. Um, may I -- may I approach
16 the --

17 Q Sure. I think that --

18 A -- graphic? I think I might be able to do a little
19 better.

20 Q Sure. Would you like to use a pen to, uh, point
21 or --

22 A Well, no, this -- this should work. Um, it's that
23 lozenged-shaped area right there. You have one on
24 the left and one on the right, um, but I was only
25 able to identify one of those radial heads and -- and

1 I do not know from what side that came.

2 Um, along with the head of the radius
3 there was also a femur shaft. The femur is the
4 thigh bone. And, um, most long bones, the arm
5 bones and the leg bones, as you can see in this
6 photograph, the upper arm bones, there's an upper
7 end at the joint, a lower end at the joint, and
8 in between those two joint ends is usually the
9 cylindrical or rounded part of the bone that's
10 called the shaft.

11 And there was a femur shaft fragment
12 that was found in with the initial recovery Tag
13 No. 8318 whose circumference measurement or the
14 measurement around the tubular part of the bone
15 falls well within the expected range, uh, for
16 females.

17 Q Now, early on in -- when we were talking about
18 your experiences, you say -- uh, you said that
19 oftentimes the ancestry or stature of a person
20 could be determined. Were you able to make any
21 of those determinations upon your examination in
22 this case?

23 A I was not. Uh, stature is, um -- was not possible.
24 There were no complete long bones or no bones long
25 enough to even, um, estimate stature from. Uh,

1 likewise, there was nothing indicative of, um,
2 ancestry.

3 There's certain parts of the body that
4 anthropologists typically look at, um, skull
5 shapes and proportions, as well as areas of the
6 femur and some other bones that often assist us
7 in determining ancestry or race. And, in fact,
8 unless you can make a determination as to
9 ancestry, um, no good forensic anthropologist
10 would even attempt stature because many of the
11 equations we use to plug in the length of a long
12 bone require that you know the ancestry
13 beforehand.

14 Q I take it that's because there are different
15 standards associated with age?

16 A There are different standards because different
17 populations, um, are proportioned differently, and
18 those equations take that into account.

19 Q Doctor, I want to switch gears a little bit from
20 some of your, uh, findings here, and, uh, ask you
21 this, um, uh, question: As a forensic
22 anthropologist, are you -- um, are you familiar
23 with the concepts of cause and manner of death?

24 A Yes, I am.

25 Q Are you, um, sometimes asked to render such

1 opinions based on your training, your experience
2 and your findings?

3 A Uh, I am. Uh, and in particular, in cases where
4 remains are too -- either too badly decomposed or
5 have been otherwise compromised to the point where
6 traditional autopsy cannot be performed.

7 Q So, uh, for the benefit, uh, of all of us here,
8 in your mind, please distinguish cause of death
9 and manner of death.

10 A When -- when, uh, someone uses the terms "cause of
11 death" it's, um, why -- why did the person die? Um,
12 but "manner of death", um, is -- is how did they die?
13 And, um, most people would agree that there -- in
14 general, there are, um, four main categories that
15 people look to when they talk about manner of death.
16 And, um, one of those categories is, uh, a natural
17 death. Another category is an accidental death. A
18 third category would be, uh, suicidal. Someone takes
19 their own life. And the fourth major recognized
20 category is homicide. That is, someone takes the
21 life of someone else.

22 Q Um, based on your findings and examination of the
23 materials submitted to you in your training, do
24 you have an opinion as to the manner of death of
25 this individual?

1 A I do, sir.

2 Q And what is that opinion?

3 A In, um, my professional opinion, the manner of death,
4 uh, in this case was by homicidal violence.

5 Q Could you explain that term for us, please?

6 A Yes, sir. Um, in -- in inventorying and examining
7 every fragment, um, every piece that was recovered
8 from this scene, and in separating the human bone
9 from the nonhuman bone, from the nonbone, whether it
10 was metal, fiber, whatever, um, there were two
11 fragments in particular, two skull fragments, that
12 showed, in my mind, unmistakable, um, defects or
13 unnatural openings, openings that were not caused
14 either by some disease process, they weren't
15 pathological nor were they caused by any congenital
16 condition or some kind of condition that someone
17 might have been born with.

18 Q Now, if you would turn to the next, uh, exhibit
19 you have there? And that is Exhibit 3 --

20 A That is Exhibit 3-9-0.

21 Q What are we looking at?

22 A We are looking at one of the cranial fragments. Um,
23 obviously, it's unrecognizable to most people who --
24 who haven't spent many years looking at -- at bone
25 fragments, but this is a human bone fragment that has

1 been burned, that is fragmented. You are looking,
2 uh -- If you think of the skull kind of as a ball
3 that has an inside surface and an outside surface,
4 you are looking at the inside surface of a skull bone
5 that I know comes from the side of the skull, and I
6 know that because of these anatomical landmarks here.

7 These, um, what looks like -- look like
8 tracks in the sand are actually impressions in
9 the bone in which, um, vessels sit. Um, and when
10 you hear that someone has meningitis, these --
11 these, uh, tracks are the -- the, uh, areas in
12 which the meningeal -- middle meningeal vessels
13 sit. The vessels that become inflamed when
14 someone does have meningitis.

15 So the fact that we see these vessel
16 markings mean that this bone has come from one of
17 the two bones on the side of the skull, and these
18 bones, they're matched bones. They're called
19 parietal bones, p-a-r-i-e-t-a-l. There's a left
20 parietal bone and a right pariet -- parietal
21 bone, and when I take this bone, um, and orient
22 it in its, um, correct anatomical position,
23 because of the placement and direction of these
24 vessel markings, I know that this fragment came
25 from the left side of the skull from the left

1 parietal.

2 I -- I also --

3 Q I was going to say, uh, parietal is p-a-r-i-e --

4 A E-t-a-l.

5 Q Okay. And, uh, just so that we're oriented in
6 common everyday parlance, uh, where -- where on
7 the skull is the parietal bone found?

8 A The -- We -- As I mentioned, we have two parietal
9 bones. One, it's a -- it's a matched set. We have
10 one on the left side of our skull and one on the
11 right side.

12 Q All right. Um, in relation to an area that, um,
13 people are familiar with, sometimes called the
14 temporal area, where in relation to the temporal
15 area would this parietal bone, uh, which, uh,
16 appears to be depicted in Exhibit 390, where
17 would that be on the left side?

18 A The temporal -- Uh, the temple area, um, would be,
19 uh, to the front portion of that bone.

20 Q Okay. Um, before I go further into, uh, having
21 you describe the findings regarding these, um,
22 unnatural defects to the skull fragments, were
23 there any other reasons, um, that you believed
24 supported, uh, any other finding that you made
25 that supported your opinion that this was

1 homicidal violence?

2 A Well, I think, um, there was a -- a clear effort to
3 obscure a body, uh, through burning. Um, the -- the
4 extreme heat-related fragmentation, um, the burning
5 of the bone, in some cases the calcine bone, taking
6 the -- the destruction of the bone mineral to -- to
7 its extent, um, there was an obvious attempt, in my
8 professional opinion, to obscure the identity of an
9 individual.

10 Q All right. All right. Returning, then again, to
11 these, um, uh, defects, you've talked a little
12 bit about the parietal defect depicted in Exhibit
13 390, if I could direct your attention to Exhibit
14 391, if you could tell us what that is?

15 THE COURT: Mr. Fallon, before you begin,
16 I -- or continue, I'm going to give people a chance
17 to get up and stretch. It's been about an hour
18 since we've been out here, so... We're not going to
19 take a break, just a chance to get up and stretch.

20 (Short break taken.)

21 All right. You may be seated.

22 Mr. Fallon, you may continue.

23 Q (By Attorney Fallon) Directing your attention --
24 I think we were at Exhibit 391. What is Exhibit
25 391?

1 A Three-ninety-one, um, represents an image of three
2 different bones that were re-approximated or
3 re-fitted from the left parietal.

4 Um, this larger fragment, now in proper
5 anatomical position, um, is the fragment -- the
6 only fragment we saw in the previous image.

7 You are looking, uh, at the fragment as
8 if you were standing inside of the skull looking
9 to the inside of the left side of the skull.

10 And so, again, I would call your
11 attention to these vessel markings that now are
12 in proper anatomical position. Um, the outside
13 of the skull would be behind.

14 Q All right. Now, you mentioned something about
15 these, uh, defects. Is the def -- one of the
16 defects the, uh -- that you found with --
17 associated with the parietal skull bone, is it
18 featured in this exhibit here?

19 A Yes, sir, it is.

20 Q Would you point out to us, um, the, um -- the
21 defect that, uh, caused you some concern and
22 support your opinion with respect to homicidal
23 violence as the manner of death?

24 A Yes, sir. I would, uh, like to call your attention
25 to the top portion of this bone, and in particular to

1 this semi-circular defect here that has another
2 smaller, um, unnatural opening here, and this is
3 actually the border from the outside of the un --
4 unnatural opening, and this area here that all --
5 that looks very much like honeycomb, actually kind of
6 is honeycomb.

7 Um, our skull is -- is made up, um --
8 it's kind of a sandwich between hard, flat bone
9 on the outside, hard, flat bone on the inside,
10 with a honeycomb type of bone in the middle. And
11 it's through this honeycomb type of bone, um,
12 that there's -- there's fat, and there's blood
13 vessels and -- and so on.

14 And, um, what you're looking at here is
15 the in -- internal portion of the skull. We
16 don't see the -- the outside of the skull, but
17 what you're looking at is kind of the inside of a
18 crater where the inside of the skull bone here is
19 gone. It's missing. And you're looking directly
20 into the honeycomb portion of the skull.

21 Q All right. If you would turn to the next
22 exhibit, um, 392, I believe?

23 A Yes, sir.

24 Q And what is depicted in Exhibit 392 then?

25 A What we are looking at here is -- is, essentially,

1 the flip side of -- of what we were just looking at.
2 We are looking at the three bones, but this time from
3 the outside of the skull.

4 And what I will call your attention to
5 is the circular or crescent-shaped opening
6 reflected on the outside of the skull. This is,
7 essentially, just above where that honeycomb bone
8 was on the inside of the skull that we just
9 looked at.

10 Q Now, I also note, in addition to the, uh, couple
11 of different colored, uh, dots on that, there
12 also appears to be an arrow, uh, on Exhibit 392?
13 Do you know what that is?

14 A That's correct. I believe that is a -- a copper
15 marker that was affixed there by a representative of
16 the Wisconsin Crime Laboratory.

17 Q Mr. Olsen?

18 A I believe so.

19 Q All right. If we could direct your attention,
20 then, to, uh, the next exhibit? I believe it
21 would be 393?

22 A May I, uh, just return for one moment?

23 Q Oh, sure. I'm sorry if I'd interrupted you.

24 A No, that's -- Um, we -- we mentioned before the,
25 um -- my attempt at marking, um, some of the bone

1 fragments, and what I would like to call your
2 attention to here, um, are these two different colors
3 of nail polish on this bone. The parietal fragment
4 with the defect --

5 Q Right.

6 A -- or the unnatural opening, and, um, an adjoining
7 parietal fragment showing the same two markings.

8 Q All right. And that's -- As you've said, that's
9 related to your color coding system --

10 A That's correct.

11 Q -- to assist you in, uh, recognizing what the
12 items are, and when you received them, and where
13 they came from?

14 A And -- and, additionally, um, whether there were any,
15 um, specific results, um, that I wanted to show on
16 that particular bone.

17 Q Exhibit 393? What is -- What is it that we are
18 looking at, uh, with respect to Exhibit 393?

19 A This is, uh, another part of the skull. This time
20 not from the left side of the skull, but from the
21 back side of the skull, and you're looking, uh,
22 again, at the internal portion, or the inside of the
23 skull bone, um, two different fragments that
24 re-approximate, that fit, um, together, and, um, an
25 area where you can see clearly a honeycomb appearance

1 to the bone, which means a portion of the inside,
2 between the outside of the skull and the inner skull
3 bone, is exposed.

4 Q And is there a name for this particular bone?

5 A This bone is known as the occipital bone,
6 o-c-c-i-p-i-t-a-l. And it's the bone you feel at the
7 back of your skull.

8 Q And, um, the, uh, area where this defect is, is
9 that the area which seems to be, uh -- our
10 attention seems to be directed to by virtue of
11 the, uh -- the, uh, triangular marker?

12 A That's correct.

13 Q And next exhibit, please? I believe this is
14 Exhibit 394?

15 A Yes, sir.

16 Q Uh, what is it that we're looking at here?

17 A This is, um, uh, a view of the same two bones, uh,
18 although, um, you get a better sense of the totality
19 of those two bones. Um, just by way of reference, I
20 will point your, uh, attention here to the inner
21 table of the skull, the inner margin of the skull,
22 and, again, this honeycomb bone between the inner and
23 outer tables of the skull that's exposed, and, again,
24 another copper-colored pointer pointing to this
25 unnatural opening.

1 Q Now, um, are you familiar with the phrase, uh,
2 "internal beveling"?

3 A Yes, I am, sir.

4 Q And could you tell us what that is?

5 A Internal beveling is kind of cratering. Um, it's,
6 um, where, um, there may be an opening. Um, for
7 example, if you take a -- a piece of drywall or
8 sheetrock and -- and you hammer something into it,
9 you're -- you're liable to have a -- a small hole on
10 the outside, but if you flip that -- that piece of
11 particle board around, you'd see a wider opening, or
12 a cratering on the opposite side. And that's,
13 basically, what we are seeing here on the internal
14 view of the skull bone at the back of the skull.

15 Q And so you were pointing, again, to the area
16 where you've identified it as a defect, and it's
17 indicated in this photo by the Crime Lab marker?

18 A It is. And the honeycomb appearance of the bone.

19 Q All right. Was there anything else about the
20 def -- this internal beveling or -- or this --
21 that you've earlier referred to it as a defect
22 that was unusual?

23 A Um, in the sense that, um, both of these defects, um,
24 the -- the cranial bones that were identified by me
25 were taken for x-ray in November of 2005, and, uh,

1 ten different x-ray films were taken, and the results
2 of those x-rays indicate, um, that there were what
3 are called radiopaque particles, or little areas on
4 x-ray that were much whiter than -- and much denser
5 than surrounding bone.

6 And when you look at these x-rays, those
7 little white flecks, the reason they are so white
8 in comparison with the surrounding bone is that
9 the x-rays, while they pass through bone, do not
10 pass through these other areas, and that's why
11 you have that whiter appearance in relationship
12 to the bone, itself.

13 Q So these -- this, uh, radiopaque or denser
14 material, which of the, uh -- of the, uh, bones
15 had the presence of this material? And the
16 parietal bone, or the occipital bone, or both?

17 A Both, sir.

18 Q All right. Um, next exhibit, please? I'd like
19 to step out a little bit from the, uh, trees and
20 get more of the overview, uh, forest perspective.
21 Um -- Well, before we do that, we have one last
22 internal photo. What is it that we're looking at
23 here with respect to this particular photo?

24 A We are looking at the flip side, or the outside of
25 that occipital bone, the bone at the back of the

1 skull that shows the unnatural opening. And what I
2 will point out here is the outside of that opening,
3 as well as the loss of a little bit of outer bone,
4 which is not unusual when bone is -- is burned as it
5 is in this case. The bone becomes very brittle and
6 fragile and it's not unusual to see some spawling off
7 of bone from the outer surface.

8 Q All right. Next exhibit, please? That would be
9 Exhibit 396?

10 A Yes, sir.

11 Q All right. Exhibit 396, uh, does that, uh,
12 generally depict the location of the parietal
13 defect as you observed it?

14 A Yes, sir, it does.

15 Q Uh, next one, please? What are we looking at
16 here? I take it this is, uh, Exhibit 397?

17 A Yes, it is. What we are looking at are two of three
18 fragments that could be re-approximated or re-fitted
19 from the left parietal bone. What I -- I'll call
20 your attention, again, to these vessel markings
21 telling me that this, in fact, comes from a parietal
22 bone, and, more specifically, call your attention to
23 the internal beveling or internal cratering, um, of
24 the parietal bone.

25 And what I'd like to call your attention

1 to are these four flecks or whiter areas depicted
2 on x-ray. Here's one. Here's another. Here's a
3 third. And here's a fourth.

4 Q Directing your attention to the one, uh, in the,
5 uh, bevel defect?

6 A Yes, sir.

7 Q Are, um, those, uh, dense, white specks or
8 particles, are those naturally occurring?

9 A They are not, sir.

10 Q When we say something is, um, radiopaque, uh, can
11 you give a -- a -- a layman's, um, understanding
12 of that term?

13 A Well, I am certainly not a radiologist, but it means
14 that the, um -- the x-rays, which are -- are not
15 visible to the naked eye, cannot penetrate whatever
16 that substance is. Uh, and in this case, can
17 penetrate the bone, but cannot penetrate these other,
18 uh, more dense substances.

19 Q All right. If you would, uh, take the next
20 exhibit? Exhibit 398?

21 A Yes, sir.

22 Q What are we looking at in Exhibit 398?

23 A We are looking at one of the, um, x-rays, one of the
24 ten x-rays, that was taken in November of 2005 of
25 selected, um, cranial fragments, and, uh, in

1 particular, I'd like to call your attention to some
2 of the sutures that we talked about before. The
3 irregular shape of these bones, um, but, in
4 particular, I'd like to focus on this bone up in the
5 upper left-hand corner.

6 Q All right. Now, what bone is it that we've
7 zoomed in now at the upper left-hand corner of
8 Exhibit 398? There are eight, uh -- eight bones
9 depicted, and we're looking at the one in the
10 upper left-hand corner, and, uh, what is it
11 that -- which bone -- First of all, is that the
12 parietal or occipital?

13 A That is the occipital fragment with the unnatural
14 opening.

15 Q All right. And, um, would you identify clearly,
16 then, the, um, uh, radiopaque dense particles
17 you've been talking about?

18 A Yes. Um, I focus your attention in this area within
19 and adjacent to the unnatural opening or defect. Um,
20 and, uh, in x-ray, when I look at the x-rays, I count
21 at least ten different particles. There may actually
22 be more.

23 Q All right. Thank you. Um, would you turn to the
24 next exhibit, please? This would be Exhibit 399?

25 A Yes, sir.

1 Q All right. Uh, and, uh, 399, uh -- What is
2 depicted on Exhibit 399?

3 A We are looking, uh, at the back, uh, of this graphic
4 skeleton. The back kind of from the left-hand side
5 of the skeleton and the approximate area of, uh,
6 where that occipital defect or opening is on the
7 bone. Uh, it related to the previous slide we just
8 saw of the x-ray.

9 This is the portion of the bone that
10 showed at least ten of those radiopaque or dense
11 particles adjacent to the defect.

12 Q All right. Excuse me. All right. Uh, Doctor,
13 in terms of, um, these defects, were you able at
14 all, based on your findings, to determine a
15 particular order which these defects may have
16 occurred?

17 A No, sir.

18 Q Are these naturally occurring defects in the
19 human condition?

20 A They are most certainly not.

21 Q Why not?

22 A Um, based on the -- It's not what our bone looks
23 like. It's not what our skull bone looks like. We
24 may have tiny openings for the passage of blood
25 vessels, but we do not have openings that, um, are

1 this large or that cause, um, the outer or inner
2 tables of the skull, um, to be fractured away or to
3 expose the honeycomb bone in between the outer and
4 inner layers of the -- of the skull.

5 Q In your opinion, Doctor, did these defects exist
6 before the burning episode or did they occur
7 after?

8 A In my professional opinion these defects occurred
9 prior to or before the bone epi -- the burning
10 episode. Before.

11 Q Tell us why?

12 A Um, as I looked at the bone, uh, it's always
13 important to look at the distribution of burning and
14 the color on the bones, and, um, inside the defects,
15 uh, the cratering and the honeycomb portion of the
16 inside of the skull is of the same color as the
17 outside burned portion and the inside burned portion.
18 And based on that observation, it is my professional
19 opinion that these defects occurred prior to the
20 burning episode.

21 Q What does the presence of the internal beveling,
22 coupled with the localized radiopaque particles
23 on the parietal and occipital bones, signify to
24 you?

25 A To me, the -- those defects, and -- and what those

1 defects look like, signifies, um, what happens to
2 skull bone when it's subjected to a gunshot or
3 gunshots.

4 Q I have a few, uh, questions here of -- to
5 conclude. Uh, before I do, Doctor, you mentioned
6 something about the concept of postcranial
7 remains, uh, and having described them as below
8 the head. What other postcranial remains, uh,
9 were you able to identify as coming from the area
10 behind the, uh, garage that we've been referring
11 to as the burn pit?

12 A I would, um -- I would say that virtually every part
13 of the skeleton -- Um, obviously, there were no
14 entire bones that were found, but at least a fragment
15 or more of almost every bone below the neck was
16 recovered in that burn pit. Um, one bone that's
17 conspicuously absent, uh, are the left and right
18 kneecaps, for example, but that is not surprising to
19 me given that those bones were made up almost
20 exclusively of that honeycomb, very fragile bone,
21 that I would expect not to survive, um, a burning
22 episode. So it's not surprising to me that I've not
23 found evidence of -- of the kneecaps, but virtually
24 every other bone below the neck, um, I found evidence
25 for.

1 Q Uh, next exhibit, please? I'm showing you what
2 has been, uh, marked for identification purposes
3 as Exhibit 3 -- um, 400?

4 A Yes, sir.

5 Q And with respect to Exhibit 400, is this, um,
6 representative of the variety of human bone that
7 you found in this area?

8 A Yes, sir.

9 Q So you have some rib bone, some hand, some legs,
10 clavicle --

11 A There is --

12 Q -- or shoulder bones?

13 A Yes. Um, obviously, no entire bone, but, uh, enough,
14 um, of a bone or bones -- uh, enough of the
15 anatomical landmark that I can say this is part of
16 the spine, or this is part, uh, of a rib, or this is
17 part of a -- a collarbone. Yes, I can.

18 Q Now, there were some other bones that you found
19 that you weren't completely sure were human or
20 not; is that correct?

21 A That is correct.

22 Q Let's talk a little bit about that, if you'd
23 like, all right? Um, and we'll talk about them
24 in -- in this context, other than, uh, damage
25 caused by fire or gunshot, as you've, uh, told us

1 about, what other bones did you find that had
2 other indicators of -- of damage or unnatural
3 occurring injury to them?

4 A There were several other bones whose origin, uh, I
5 could not be sure of. In other words, I was not
6 sure, uh, that the bones were definitely human.

7 Q I'll get to that in a minute.

8 A Okay.

9 Q If you would just describe for us, first of all,
10 what the possibility or probability -- What --
11 Describe the bone that you have, uh, pictured in
12 your mind right now, and then we'll talk about
13 it.

14 A There -- there is one bone fragment in particular.
15 Uh, part of a bone shaft. That kind of tubular,
16 cylindrical portion of a bone is probably not more
17 than about two or two-and-a-half inches, um, that
18 shows evidence of cut marks and, of, uh, a saw cut as
19 well.

20 Q All right.

21 A And that bone is -- is, um, burned to the point of
22 being calcined. In other words, its color has moved
23 beyond black, but to whitish-gray.

24 Q All right. Now, with respect to that particular
25 bone, uh, can you say to a reasonable degree of

1 scientific certainty that that bone shaft
2 fragment is a human bone?

3 A I cannot, sir.

4 Q Um, did you find any evidence of a, uh -- of the
5 superior aspect of an iliac blade?

6 A Uh, yes, I did. And, um, for everyone in the room
7 but me, I'll show you where that is.

8 Q That's my next question.

9 A And, um --

10 Q Thank you. Bail me out.

11 A The, um -- The pelvis is made up of three different
12 bones; the left hip bone, the right hip bone, and the
13 sacrum, which is the bone that sits at the base of
14 the spine and actually is the lowermost portion of
15 the spine. And the iliac crest is this top area
16 here. What you actually feel, if you rub your hand
17 on your hip bone, that's known as the iliac crest.

18 Q All right. Now, the bone that you suspected to
19 be the iliac crest, can you say to a reasonable
20 degree of scientific certainty that that, uh, is
21 human bone?

22 A No, sir, I cannot.

23 Q Did you find evidence, uh -- or -- of a bone
24 that's referred to as the sacral iliac
25 articulation?

1 A Actually, those are two bones. It's where the right
2 half of the sacrum, or the lowermost part of the
3 spine, um, articulates -- it's actually adjoined --
4 with the right side of the hip bone.

5 Q And in terms of that, uh, suspected bone
6 fragment, can you say to a reasonable degree of
7 scientific certainty that that was human bone?

8 A Um, I cannot.

9 Q Doctor, were you able to perform any other tests,
10 uh, on these bones to determine if they were of
11 human origin?

12 A Uh, no, there were no other tests that I performed.

13 Q And why is that?

14 A Um, I did not, uh -- there, um, are -- There is the
15 potential for, um, using, um, microscopes to look,
16 for example, to try and confirm if suspected human
17 bone might actually be human bone or animal bone, but
18 given the condition of the remains, I did not
19 believe, um, that cutting into the bone, uh, that
20 they would survive that -- those kinds of tests, and
21 so I did not perform them.

22 Q Did you make an effort to, have, um, um, several
23 bone fragments, uh, submitted to the FBI
24 Laboratory to attempt further identification?

25 A Yes, sir, I did.

1 Q Based upon your examination of the bones and the
2 material that you had, did you find evidence of
3 any heman (phonetic) human bone that was
4 identified as being collected from a site other
5 than the burn pit behind the defendant's garage?

6 A Yes, sir, I did.

7 Q Tell us about that?

8 A There, uh -- Human bone also was found in and among
9 material that was collected from, uh, what was
10 designated "Burn Barrel No. 2".

11 Q All right. And what type of bone fragment do you
12 recall as having come from that particular burn
13 barrel?

14 A There was a portion of a -- a scapula or a shoulder
15 blade, um, some long bone fragments, um, a possible
16 hand bone, metacarpal, and I believe there was a
17 fourth representation but I don't remember. Um, I
18 certainly can check my notes if you'd like.

19 Q Uh, would it -- Spine bone, perhaps?

20 A Yes. Vertebral spine. Thank you.

21 ATTORNEY BUTING: Sorry. What was that?

22 Q (By Attorney Fallon) Could you -- Counsel didn't
23 hear that.

24 A Part of -- Part of the spine. A vertebral element.

25 ATTORNEY BUTING: Vertebral?

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THE WITNESS: Yeah.

ATTORNEY BUTING: Okay.

Q (By Attorney Fallon) All right, Doctor. The opinion that the remains were those of an adult female less than 30 to 35 years of age, do you hold that opinion to a reasonable degree of scientific certainty?

A Yes, I do.

Q The opinion that the internal beveling observed in the left parietal bone is characteristic of a gunshot or bullet entrance wound, do you hold that opinion to a reasonable degree of scientific certainty?

A Yes, sir, I do.

Q The opinion that -- The opinion that the internal beveling observed in the occipital bone left of the midline, is characteristic of gunshot or bullet entrance wound, do you hold that opinion to a reasonable degree of scientific certainty?

A Yes, sir, I do.

Q The opinion that the internal beveling observed in the left parietal bone and in the occipital bone occurred before the burning episode, do you hold that opinion to a reasonable degree of scientific certainty?

1 A Yes, sir, I do.

2 Q Finally, Doctor, the opinion that the manner of
3 death for this person was homicidal violence, do
4 you hold that opinion to a reasonable degree of
5 scientific certainty?

6 A Yes, I do.

7 ATTORNEY FALLON: Um, I would move into
8 evidence the exhibits that I've had this witness
9 identify. Upon their receipt, would pass the
10 witness for cross-examination.

11 THE COURT: Any objection to the exhibits?

12 ATTORNEY STRANG: I have no objection to
13 any of the exhibits.

14 THE COURT: Very well. Court will order,
15 uh, all of the exhibits testified to by this witness
16 admitted, and at this time we're going to take our
17 afternoon break. Uh, members of the jury, I'll
18 remind you not to discuss the case during the break.
19 Uh, and we'll resume cross-examination after the
20 break.

21 (Jurors out at 2:42 p.m.)

22 THE COURT: You may be seated. Counsel,
23 I'll try not to, uh, interrupt you in your
24 examination for a stretch break, but, uh, science
25 class is pretty heavy for the jury, so when I look

1 at them and think they need a break, I'll try to do
2 it at a logical time.

3 ATTORNEY STRANG: You should feel free
4 to do that.

5 THE COURT: All right. We'll see you at
6 3:00.

7 (Recess had at 2:43 p.m.)

8 (Reconvened at 3:00 p.m.; jurors present.)

9 THE COURT: You may be seated. Is
10 someone going to get the witness?

11 ATTORNEY FALLON: I believe so.

12 THE COURT: All right. Mr. Strang, you
13 may begin.

14 ATTORNEY STRANG: Thank you, Your Honor.

15 **CROSS-EXAMINATION**

16 BY ATTORNEY STRANG:

17 Q Dr. Eisenberg, um, let's start by agreeing, if we
18 can, that in all the work you did on this case
19 with human bone, possible human bones, suspected
20 human bone, all of the work which you've
21 testified, you had no evidence that more than one
22 person was involved in terms of a contributor of
23 bones?

24 A Are you asking me whether or not more than one
25 individual was represented by what I examined?

1 Q That's right. That you have no evidence that you
2 saw bone fragments from more than one person? Is
3 that a better way to put it?

4 A I have no evidence for having seen any duplicate
5 bones in what I examined. That's correct.

6 Q No evidence that you saw bones that were
7 characteristically male, for example?

8 A No trace that would suggest to me any of those
9 fragments came from a male skeleton.

10 Q Nothing to suggest female human bones of a
11 detectably different age range than the under 30
12 to 35 years you've testified to here today?

13 A That's correct.

14 Q The evidence that you have is that the bone
15 fragments here were attributable to one person
16 and one person only?

17 A That's correct.

18 Q Did I hear you stop just short, um, of giving us
19 your opinion on the cause of death? Did I hear
20 you stop just short of that?

21 A Um, no, I don't believe so.

22 Q Okay. I heard you say that you had an opinion on
23 manner of death; correct?

24 A I -- I was asked to render an opinion as to manner of
25 death.

1 Q And the manner of death you assigned here in your
2 opinion as homicide, or I think your term was
3 homicidal violence?

4 A Yes, sir.

5 Q All right. And, again, that's -- Manner of death
6 is a, um -- is a term of art, if you will,
7 normally used by medical examiners, or coroners,
8 pathologists?

9 A That's correct.

10 Q All right. Um, and we have accidental, suicidal
11 homicidal, and there's -- there's a -- there's a
12 fourth one?

13 A Natural.

14 Q Natural, which would encompass illness or heart
15 attack, that kind of thing; correct? In natural?

16 A Well, I guess it depends on the situation, and -- and
17 since I am not a forensic pathologist, I'd -- I'd --
18 uh, really don't know how to answer that question.

19 Q Well, I'd understood you to be saying, uh, here
20 to this jury that you are qualified to give an
21 opinion on manner of death?

22 A In the absence, uh, of, um, remains that could be
23 subject to a traditional autopsy, then really the
24 forensic anthropologist is the only one, um, who can
25 offer such, uh -- such information.

1 Q And are you qualified to opine on manner of
2 death, including natural, accidental, homicidal
3 and suicidal?

4 A Uh, I believe, depending on the nature of the case,
5 yes, I am.

6 Q What do you mean by "depending on the nature of
7 the case"?

8 A If the remains are highly fragmented, whether or not
9 they're burned, if the remains are too decomposed or
10 skeletonized for a traditional autopsy, um, then if
11 the forensic anthropologist observes something that
12 is significant and can speak to cause and/or manner
13 of death, I believe it's the duty of the forensic
14 anthropologist to provide that information.

15 Q All right. Now, right now, I'm interested in
16 manner. We'll get to cause. But is there a
17 situation in which you would be qualified to
18 opine, uh, that a cause of death was natural?

19 A I don't believe so.

20 Q Then it's also true that there is not a situation
21 in which you would be qualified to exclude
22 natural cause of death unless you definitely
23 could include or attribute manner of death to
24 homicide, suicide?

25 A There are many cases with which I've been associated

1 or asked to examine where no cause or manner of death
2 can be attribute --

3 Q Let -- let's go back and let's -- let's -- let's
4 work on answering the question I'm asking, all
5 right? Manner of death --

6 A Yes, sir.

7 Q -- I think we've established that you can't think
8 of a case in which you would be qualified to
9 offer an opinion that the manner of death was
10 natural? Did I understand you?

11 A That is correct and that is because, uh, often a
12 forensic anthropologist is not provided with enough
13 remains to be able to do that. In other words, if
14 I'm presented with --

15 Q All right.

16 A -- a skeleton --

17 Q The answer to my question is, yes? You are not
18 qualified to render an opinion in any case you
19 can think of that the cau -- that the manner of
20 death was natural? The --

21 A I -- I don't --

22 Q -- answer to that question's yes?

23 A I -- I -- I am not -- I -- I don't believe I'm not
24 qualified. I simply believe that there is no way for
25 me to observe and interpret what might be considered

1 a natural, uh, death.

2 Q And if there's no way for you to observe and
3 interpret it, then you certainly wouldn't offer
4 an opinion to a reasonable degree of scientific
5 certainty that something was a natural cause of
6 death, would you?

7 A That's correct.

8 Q All right. And then the question when we got a
9 little bogged down was, then, unless you could
10 say to a reasonable degree of scientific
11 certainty that the manner of death was either
12 homicidal or suicidal, you also could not rule
13 out natural death, could you?

14 A By exclusion, no, I could not.

15 Q The same would be true both calling an accidental
16 death as the manner of death or rule out
17 accidental as the manner of death?

18 ATTORNEY FALLON: Objection as to the,
19 uh, relevance of an opinion -- of a relevance of
20 an opinion regarding, uh, accidental or natural
21 death to our circumstances here. Those were not
22 the opinions elicited.

23 ATTORNEY STRANG: No, but I think she
24 was tendered as an expert on giving an opinion on
25 manner of death.

1 ATTORNEY FALLON: In the context in
2 which it was asked?

3 THE COURT: I'm not sure if these are
4 foundational questions leading to something else or
5 where we're going.

6 ATTORNEY STRANG: They are.

7 THE COURT: All right. On a foundational
8 basis, I'll allow it.

9 Q (By Attorney Strang) Again, not qualified to
10 give an opinion within your field that
11 something's an accidental death?

12 A There may be circumstances where, um, I might be able
13 to distinguish an accidental death from a -- a
14 different type of manner.

15 Q Okay. And that -- that -- the situation there
16 might be, just to use an easy example, uh, the
17 crash of a -- of a jetliner? Of an airplane,
18 possibly; correct?

19 A Well, I certainly wouldn't give an opinion as to, um,
20 how people died, because there may have been many
21 factors beyond my expertise.

22 Q Okay. But, again, if we're just talking about
23 manner and not cause, if you had no evidence that
24 the plane fell out of the sky because of a bomb
25 or some deliberate human action, but, rather,

1 that the plane crash was an accident, in that
2 instance you, as a forensic anthropologist, might
3 be able to say the manner of death of a passenger
4 in the plane was accidental?

5 A That's correct.

6 Q But, again, I think what I hear you saying is
7 that you, as a forensic anthropologist, have a
8 fairly limited range in which you're comfortable
9 opining on the manner of death if accident is a
10 possibility?

11 A It -- It depends on, um, my observations and, um,
12 what's presented to me for analysis.

13 Q Now, let's go, then, to cause of death; all
14 right?

15 A Yes, sir.

16 Q Okay. Cause is just -- If -- if it's a homicide,
17 how did the homicide happen; right? I mean, was
18 it a gunshot? Was it something else? That's
19 what we mean by cause of death?

20 A That's correct.

21 Q All right. And, ideally, we would try to assign
22 something more specific than that? If it's a
23 gunshot, we'd like to know a gunshot to where;
24 correct?

25 A Correct.

1 Q All right. Here, you are not able to give an
2 opinion that a gunshot or a gunshots caused the
3 death of the person whose bones you examined, are
4 you?

5 A I am able to note the presence of defects that are
6 consistent in architecture and -- and -- and what's
7 happened to the bone.

8 Q And, again, that -- that wasn't my question, was
9 it?

10 A Would you ask it again, then, please?

11 Q I'd be happy to. You are not able to give us an
12 opinion here that gunshot or gunshots was the
13 cause of death of the person whose bones you
14 examined?

15 A In the absence of any other professional looking at
16 these remains, that that is my testimony.

17 Q Why don't you tell me just exactly what evidence
18 you have on which to conclude that the defects
19 here you've described as gunshot wounds happened
20 before the death of the person whose bones you
21 examined?

22 A I would be happy to, um -- to, uh, repeat, uh, the
23 answer I -- I gave before when that question --

24 Q What --

25 A -- was asked.

1 Q What is the evidence -- Let's assume these are
2 gunshots for purpose of our discussion here, all
3 right? What you -- what we're calling unnatural
4 defects. Let's assume they're gunshots. What
5 evidence did you see that allows you to conclude
6 that those gunshots happened before or at the
7 time of death?

8 A I am not able to -- to tell you whether those
9 gunshots -- I can tell you that the gunshots happened
10 before death. I cannot tell you within a time
11 interval how close to the time of death they
12 occurred.

13 Q I think I heard you testify that you could tell
14 us that the gunshots happened before burning?
15 Did I hear that correctly?

16 A That's correct.

17 Q All right. And you explained why you -- you
18 concluded that the gunshots happened before
19 burning --

20 A Yes.

21 Q -- of the bones? Because the coloration's about
22 the same, including on that beveled surface on
23 the inside of the bone?

24 A Yes, sir.

25 Q The interior side of the bone? So I understand

1 that you -- you believe that the gunshot wounds
2 here happened before the bones were burned?
3 I'm -- I'm clear on that? Tell me what evidence
4 you have that the gunshots to those bones
5 happened before death as opposed to a dead person
6 being shot?

7 A After or before burning?

8 Q I'm talking about before burning. I'm talking
9 about well before burning, okay? What evidence
10 do you have that the person whose bones have the
11 gunshot holes --

12 A Um-hmm.

13 Q -- was alive and breathing as opposed to dead? A
14 corpse, unburned, but dead, at the time the
15 gunshot wounds made the holes you identified in
16 those bones?

17 A So -- so if -- if I may ask the question in a
18 different way to make sure I understand what you're
19 asking, you are asking me how can I be sure that a
20 person who was already dead, then, did not sustain
21 two gunshot wounds to the head?

22 Q Let's -- I'll -- I'll work with that. Can you
23 work with that for me in answering the question
24 about --

25 A Is -- is that a fair assessment --

1 Q Sure.

2 A -- of what you've asked me?

3 Q Sure.

4 A Um, given the fragmentation to the skull and the
5 inability to put the entire skull back together, I
6 cannot say that.

7 Q As you sit here, and on the evidence you have,
8 one or both of those gunshots, as easily, could
9 have been fired into the skull of a dead person
10 as into the skull of a living person; true?

11 A That is possible.

12 Q Which -- Not only possible, it's true, isn't it?

13 A Yes. In the absence of being able to reconstruct the
14 skull, um, I would agree with you.

15 Q And -- and you've completed the work that you've
16 been able to do on reconstruction of this skull?

17 A To the best of my ability, yes.

18 Q All right. And if the gunshot wounds were fired
19 into the skull after the person was dead, then
20 the gunshots did not cause the death of the
21 person, did they?

22 A That would be a correct assessment.

23 Q If the gunshots did not cause the death of the
24 person, then, as we go back to manner of death as
25 homicide, the evidence you have for homicide is

1 the burning or destruction of the bones that you
2 saw?

3 A That is correct.

4 Q The burning or destruction of these bones clearly
5 happened after death or postmortem as you say?

6 A One would hope so.

7 Q You have no evidence that it occurred before
8 death?

9 A I do not.

10 Q So if you're unable to give us an opinion on the
11 cause of death, then you also are unable to give
12 an opinion on the manner of death, unless we take
13 as sufficient support for your opinion on
14 homicidal violence as the manner of death the
15 burning or destruction of the bones that you've
16 described?

17 A That's correct.

18 Q Now, you understand -- I don't mean to have
19 ang -- angels dancing on the head of a pin here,
20 you understand, because you're a forensic
21 anthropologist, you apply anthropology, the
22 science of human behavior, cultural and physical
23 characteristics to law?

24 A That is correct.

25 Q All right. And the law in the state of Wisconsin

1 includes, among other possible crimes, but two
2 relevant here, first degree intentional homicide,
3 that is, intentionally causing the death of a
4 human being, you understand that?

5 A Yes.

6 Q And a crime called mutilation of a corpse, you
7 understand that --

8 A Yes, I do.

9 Q -- as well? And if one is living, then the
10 defendant or the person is incapable of
11 mutilating a corpse, because it -- you know, if
12 you're living, you're not a corpse; correct?

13 A Correct.

14 Q All right. So you understand, here, that these
15 folks to your left will have to make a
16 distinction between homicide on the one hand and
17 mutilating a corpse on the other? You understand
18 that?

19 A Yes, I do.

20 Q All right. And you certainly would view the
21 burning of bones to this state of char and
22 calcination as mutilation of a corpse, and that
23 to the extent these are human bones, that looks
24 like mutilation of a corpse, doesn't it?

25 A That's correct. Although mutilation of a corpse does

1 not -- is not mutually exclusive. In other words --

2 Q Understood.

3 A Okay.

4 Q Un -- understood. Uh, but I'm -- In terms of --
5 You -- you -- you would view what happened here,
6 with the fragmentation and burning of bones, as
7 mutilating a corpse if someone had done that
8 intentionally, wouldn't you?

9 A Correct.

10 Q All right. Now, in your work with these bone
11 fragments, uh, you found evidence of two gunshot
12 wounds I take it?

13 A Yes, sir.

14 Q You did not find evidence of 10 or 11 gunshot
15 wounds in any of your work with these bone
16 fragments?

17 A I did not.

18 Q Let's, uh, spend a little bit of time talking,
19 now, just sort of backing up a bit, uh, to the
20 recovery of -- of bone fragments. The initial
21 process of recovery. Um, I understand you
22 weren't there, okay, but I want to talk to you
23 about the recovery process, all right?

24 Um, you were -- you were out of state at
25 a -- at a conference in Denver or something, and,

1 uh, didn't attend the recovery effort of any --
2 any bone fragments here?

3 A That is correct.

4 Q Indeed, you weren't asked to do that?

5 A That is correct.

6 Q Your initial contact on November 9 was a phone
7 call simply alerting you that someone was
8 bringing a box of material collected to you?

9 A Yes, sir.

10 Q All right. And -- and -- and, indeed, somebody
11 did, so when you came to the office on
12 November 10, uh, there was a box waiting for you
13 on your arrival?

14 A That's correct.

15 Q This was the box you've described as being under,
16 uh, Tag 8318?

17 A That's correct.

18 Q Now, when -- when -- you -- you -- you talk about
19 tags a lot, and I understand that, and you do,
20 um, but, uh, when evidence is collected, the --
21 the person or people collecting that evidence
22 will give it a unique number often on a tag;
23 correct?

24 A That's correct.

25 Q So they can keep straight what it is they found,

1 and what they did with it, and then keep track
2 later of where it goes --

3 A Uh --

4 Q -- whose got their hands on it?

5 A As well as that number is also associated with the
6 location of the find.

7 Q Ab -- absolutely.

8 A Yes.

9 Q Um, in general, and certainly in this case?

10 A Yes, sir.

11 Q And the location will be described with some
12 degree of, I guess, specificity. Here, 8318 was
13 described as being behind Steven Avery's garage,
14 or words to that effect?

15 A Yes, sir.

16 Q All right. And, um, you were -- you -- you know
17 a gentleman named Dr. Ken Bennett, uh, who also,
18 I think, lives in Madison?

19 A Yes, I do.

20 Q Uh, Ken Bennett, uh, also a Ph.D like you?

21 A Yes, that's correct.

22 Q Also a forensic anthropologist?

23 A Yes.

24 Q Uh, a colleague or at least an acquaintance of
25 yours?

1 A Yes.

2 Q And, uh, because you were out of town, uh,
3 Dr. Bennett was the first to take a look at some
4 of the bone fragments that you later examined?

5 A That's correct.

6 Q To your knowledge, he wasn't asked to go to the
7 recovery scene either?

8 ATTORNEY FALLON: Objection. Calls for
9 hearsay.

10 ATTORNEY STRANG: I -- I guess I said,
11 "to your knowledge" and that may or may not call
12 for hearsay. Um --

13 ATTORNEY FALLON: Source of the
14 information would be for Mr. Bennett or another
15 agent. That would --

16 ATTORNEY STRANG: Well, let --

17 ATTORNEY FALLON: -- be hearsay.

18 ATTORNEY STRANG: Let's -- let -- let me
19 withdraw it and we'll go at it this way.

20 THE COURT: All right.

21 Q (By Attorney Strang) Uh, you and Dr. Bennett
22 share a specific field of expertise?

23 A That's correct.

24 Q Forensic anthropology?

25 A Yes.

1 Q There aren't that many of you folks in the world,
2 or at least certainly in the state of Wisconsin?

3 A There aren't that many board certified forensic
4 anthropologists.

5 Q He's also board certified?

6 A He is not.

7 Q Uh, and he's someone with whom you've worked
8 collegially at various times in the past?

9 A Uh, initially, when I moved to Wisconsin, uh, he
10 invited me to work with him on a number of cases.

11 Q In your field of forensic anthropology, is it
12 reasonable to rely on, uh, information provided
13 by another forensic anthropologist whom you know
14 to be honest and qualified?

15 A Um, are you asking do I make an independent
16 assessment or do I rely on information provided by a
17 colleague and peer?

18 Q Oh, I -- I -- I'm quite certain that you always
19 make an independent assessment in the end, don't
20 you?

21 A I do.

22 Q Yes. But --

23 A And --

24 Q And in doing --

25 A -- and in the beginning.

1 Q Okay. And -- And in doing that, uh, because you
2 can't be all places at all times, you have to
3 rely on information provided by others?

4 A Well, I think the -- the investigators had to rely on
5 someone who was knowledgeable at the time.

6 Q No, I'm talking about you, though. I mean,
7 you -- you got to rely -- and you do routinely
8 rely on some information provided by others?

9 A Certainly in terms of, uh, forensic literature, that
10 would be a good example.

11 Q That'd be one good example. Another good example
12 would be when you come in and you say, uh, these
13 are bones that were found behind Steven Avery's
14 garage. You've never seen Steven Avery's garage
15 in person in your life, have you?

16 A That is correct.

17 Q Okay. Um, so you're getting that kind of
18 information from law enforcement; right?

19 A That's correct.

20 Q Perfectly reasonable in your field to rely on law
21 enforcement officers for that sort of
22 information?

23 A Yes. They are trained in investigations.

24 Q Sure. And so when they tell you this is Tag 8318
25 and it was found behind Steven Avery's garage,

1 unless you have some very good reason to doubt
2 that, that's information that you rely on as part
3 of your work in forensic anthropology?

4 A That is correct.

5 Q Likewise, if Dr. Ken Bennett gives you
6 information about what he saw or what he did,
7 unless you've got some very good reason to doubt
8 that, it's reasonable for you to rely on it in
9 doing your own work?

10 A No, I don't agree with you. I --

11 Q You wouldn't rely on Dr. Bennett?

12 A I would listen -- If he gave -- he provided me with
13 information, I would certainly note that, but I would
14 start my investigation from scratch, um, independent
15 of any information he or anybody else gave me.

16 Q So if -- if Dr. Bennett had told you, this is Tag
17 8318, and it's from behind Steven Avery's garage,
18 you would have said, no, I've got to start from
19 scratch. I'm going to drive to Mishicot,
20 Wisconsin and make sure that there's a Steven
21 Avery who's got a garage?

22 A Well, the information provided to Dr. Bennett -- Dr.
23 Bennett ultimately came from law enforcement, and it
24 would be from law enforcement that I would take that
25 information.

1 Q Okay. All right. So what, ultimately, came from
2 law enforcement, you know that Dr. Bennett wasn't
3 asked to come to the scene of Steven Avery's
4 garage either, don't you?

5 A No, I don't know that, sir.

6 Q You don't?

7 A I don't.

8 Q All right. Do you have any information that
9 there was an anthropologist present anywhere at
10 the Avery Salvage Yard during the recovery of the
11 bones you saw?

12 A I do not believe there was.

13 Q That wasn't so hard, was it?

14 A No.

15 Q Okay. Um, and what you do know is that you --
16 regardless of who was at the scene, you did not
17 receive any record of where any particular
18 fragment was found in relation to any other
19 fragment?

20 A That is correct.

21 Q You got -- You got sort of general locations for
22 batches or boxes or bags of fragments?

23 A That's true.

24 Q Area behind the garage, here's a box containing
25 the number of fragments?

1 A Or burn pit, here's a box.

2 Q Right.

3 A Correct.

4 Q Or, for example, beyond the Burn Barrel No. 2?

5 A That's correct.

6 Q Okay. And, uh -- but -- But, as you're going
7 through the, uh -- the fragments that you
8 received, you did not have benefit of knowing
9 where fragment A was found in relation to
10 fragment B or fragment C?

11 A That is correct.

12 Q In -- indeed, we've had testimony here that part
13 of the recovery process, uh, involved first
14 taking a shovel or a -- a small -- smaller hand
15 tool of some kind, both, I guess, the testimony
16 was, scooping up, um, you know, a shovel of
17 something out of, let's say, the burn area or the
18 burn pit, and then putting it on a sifting tray?
19 We've had testimony like that here. Is that
20 consistent with your understanding of the
21 recovery process?

22 A I -- Unfortunately, I know little or nothing about
23 how the recovery was undertaken.

24 Q All right. You say, "unfortunately" you know
25 little or nothing about that. Why -- Why do you

1 say "unfortunately"?

2 A Well, I -- I wasn't here when the majority of the
3 work took place, and, uh, I know only what was
4 associated with the evidence identifier in terms of
5 location.

6 Q Uh, you're familiar with sifting of possible
7 human remains?

8 A I am -- As an archaeologist and forensic
9 anthropologist, I am.

10 Q Right. And that's -- that's, actually -- I was
11 going to get there eventually. But, uh, your --
12 your day job, so to speak, is that you're the
13 coordinator for the State Historical Society's,
14 uh, Burial Sites Preservation Program?

15 A That's correct.

16 Q For the state of Wisconsin?

17 A That's correct.

18 Q And, uh, burial site preservation is something
19 that falls into a subfield of anthropology called
20 archaeology?

21 A That's correct.

22 Q Um, which you could define better than I, but,
23 essentially, it's historical, uh, focus on
24 physical, cultural, behavioral characteristics of
25 human beings?

1 A Actually, my -- the majority of my experience is from
2 prehistoric archaeological sites.

3 Q I should have said that, because it's -- We've
4 got history and then we've got prehistory?

5 A Right.

6 Q All the way back to, conceivably, the earliest,
7 uh, Homo sapiens or earlier, conceivably, would
8 fall into archaeology?

9 A That's correct.

10 Q So, um, you're familiar with this process of
11 sifting at, for example, a burial site?

12 A Yes.

13 Q Now, when you -- when you sift, uh, and you're
14 sort of shaking things through, uh, necessarily
15 what you're doing is you're rearranging the
16 orientation or placement of, let's say, bone
17 fragments, uh, from what they were before being
18 disturbed?

19 A Depending on how they were taken from the ground and
20 placed in the screen, that is a possibility.

21 Q Okay. If they're taken from the ground with a --
22 with a good, old shovel, and the shovel's turned
23 over on the screen, we're likely to be
24 reorienting, if you will, the placement of the
25 bone fragments each to the other?

1 A Well, archaeologists sift and screen all the time,
2 and we know where that shovelful came from, and as
3 long as what's found in the screen is associated with
4 the location of origin, then we are just fine with
5 that.

6 Q Sure. No, I -- I understand that you --

7 A Right.

8 Q -- screen all the time.

9 A Right.

10 Q I'm just saying that part of what we're doing --
11 Um, if this is -- you know, it's three o'clock in
12 the afternoon, it's going to be dark in two
13 hours, so we're going to sort of swoop and scoop,
14 uh, part of what we're doing is we're rearranging
15 the places of the fragments? That's all. I'm
16 not -- I'm not --

17 A Archaeology by its very nature is -- is a destructive
18 endeavor, and so, in a sense, that's -- that's what
19 happens.

20 Q Yeah. And, um, if there -- if there was not a
21 note made of where this shovelful came, or better
22 yet, if there was not photography taken, you
23 know, of -- of each, let's say, a grid section or
24 small areas, we later would not know where
25 fragments from a particular shovelful came in in

1 relation, at least, to any other shovelful?

2 A That is true. I would, uh, offer, in -- in this
3 particular case, given, um, the -- the burn
4 fragments, the dark color, um, while photography is
5 often -- often accompanies this kind of endeavor,
6 photography in this case may not have been all that
7 helpful in terms of discriminating one fragment from
8 another.

9 Q We'll never know, because we don't have the
10 photography?

11 A I don't know that, but if that's what you're telling
12 me --

13 Q You've never seen any photographs of these --

14 A I have not.

15 Q -- of these fragments in place as found?

16 A I have not.

17 Q Okay. Um, now, you know, obviously, archaeology
18 is destructive in the sense that we -- we -- you
19 and I just agreed, if we're sifting and removing
20 things from one place and taking them to another,
21 in a sense we're destroying the site, if you
22 will, or rearranging, changing the placement of
23 the bones; true?

24 A And any other material that might be of --

25 Q And -- and any other --

1 A Right.

2 Q -- material that might be of interest?

3 A Right.

4 Q Um, but, you know, essentially, if we -- if we do
5 this, we scoop it up, we put it on -- on a -- on
6 a sifting screen, this is a little bit like
7 taking the pieces of a jigsaw puzzle and shaking
8 the box up?

9 ATTORNEY FALLON: I'm going to object to
10 that, uh, characterization. Uh, as I recall the
11 testimony of, uh, Mr. Ertl, he testified that
12 this was carefully done, uh, pushed on with a
13 shovel and then put into the sifter. It's not
14 this swoop and scoop and let's shovel it over
15 like we're digging a ditch. So we object to the
16 characterization of the question -- of the
17 question.

18 THE COURT: Okay. I -- Mr. Strang?

19 ATTORNEY STRANG: I -- I can re -- I can
20 reframe it if --

21 THE COURT: My understanding was that this
22 witness indicated she didn't actually know anything
23 about the particular method of collection here. I
24 understood the question to be more of a general
25 nature.

1 ATTORNEY STRANG: Yes.

2 THE COURT: Um --

3 ATTORNEY STRANG: They are. But let --
4 let me -- let me rephrase it.

5 Q (By Attorney Strang) I -- I think the point is
6 fairly clear, when we're -- when we're sifting
7 and shaking to try to get smaller pieces to fall
8 through and larger pieces to stay up in the mesh,
9 and then we do it again with a finer mesh, we're
10 simply -- we're simply reorienting, shaking the
11 bones around. The fragments. True?

12 A With -- with the ultimate goal of identifying and
13 recovering the maximum number of items.

14 Q Well, absolutely.

15 A Right.

16 Q Absolutely. Uh, un -- understood. Um, now, um,
17 it is true, though, that, um, had you been at the
18 scene, uh, you might have done this recovery
19 differently?

20 ATTORNEY FALLON: Objection. Calls for
21 speculation.

22 ATTORNEY STRANG: Well, I -- I -- I
23 think she knows how she would have done a
24 recovery.

25 THE COURT: Well, I'm not sure how she can

1 answer the question if she doesn't know how it was
2 done in the first place. I mean, she said she
3 wasn't there. I -- I think you'll have to rephrase
4 the question.

5 Q (By Attorney Strang) Let's go at it this way.
6 Uh, you have participated in burial site
7 recoveries a number of times yourself?

8 A Of unburn -- unburned skeletons, correct.

9 Q Of unburned skeletons?

10 A And on two occasions, um, clandestine graves.

11 Q Okay. So this -- this is work you've done, is
12 you've been out to a -- a gravesite or we'll call
13 it a burial site, and you've participated in
14 recovery; correct?

15 A That's correct.

16 Q Uh, you've directed recovery?

17 A Yes, I have.

18 Q All right. Uh, one of the things you do, for
19 example, at a burial site would be typically to
20 set up a grid?

21 A Depending on the nature of the site, maybe yes, maybe
22 no. Every site is a little bit different. Many of
23 the discoveries that I get called out to in
24 association with my job for the state of Wisconsin
25 involves an accidental disturbance of a portion of a

1 burial. Uh, under Wisconsin law, um, excavations of
2 burials are now prohibited without a permit. So not
3 even an archaeologist could go out and do that.

4 Q Okay. But a -- but assuming there's no legal
5 prohibition, and the terrain allowed it, one of
6 the things you have done in the past is set up a
7 grid, if you will?

8 A That's correct.

9 Q Tell -- tell the -- the jurors what -- what you
10 mean by a grid?

11 A Well, one of the important things that you do want to
12 do is, um, map or note the location of interest with
13 respect to a known point. So that even once the
14 excavation is completed with reference to that known
15 point, you could go back to that spot if you needed
16 to for some reason.

17 Um, the benefit, where appropriate of
18 setting up a grid of sorts, is to provide, uh,
19 a -- a somewhat more systematic way of recovery,
20 uh, so ultimately you will have an idea of the
21 relationship of different parts of the body to
22 each other.

23 Q And so if -- if we use -- if we're using a grid
24 to do that, we would set up the grid around and
25 probably just beyond the area that we suspect is

1 the burial site to be excavated or recovered?

2 A Correct.

3 Q And then we would -- this grid would consist of
4 some number of, essentially, squares?

5 A Or you may choose to run a string down the middle and
6 excavate the west half and then excavate the east
7 half. So there are varying --

8 Q Sure.

9 A -- degrees of -- of specificity that you --

10 Q Sure. But -- but -- but no matter how many ways
11 we -- we divide up the space --

12 A Um-hmm.

13 Q -- into just two with a string down the middle,
14 or into eight, or four, or sixteen, or whatever
15 it is, what we can do, then, is we can identify a
16 sector of the grid in which we're working at the
17 moment?

18 A That's correct.

19 Q Finish that sector, document what we've taken out
20 of there, and then move to another sector?

21 A That's correct. And sometimes that documentation
22 doesn't occur until you get back to the laboratory.

23 Q Um-hmm. But -- but later we'll have a record of
24 at least what area or sector of our grid
25 particular items have come from?

1 A That's correct.

2 Q Um, you also, in your work, um, recovering or --
3 or excavating a burial site, you'll set up, uh,
4 what you might call a contamination path?

5 A Well, um, not necessarily. Well, with respect to
6 forensic work, I certainly would, but -- but let me
7 preface that by saying that, um, if I am asked to
8 assist at a scene, um, it is not my investigation.
9 That investigation belongs to the local jurisdiction,
10 and if I'm invited in to assist, I may make rec --
11 recommendations, but that doesn't mean that I come in
12 and call the shots. It is always someone else's
13 investigation.

14 Q Yes. Un -- understood. And I think that's --
15 You know, that's consistent with my recollection,
16 at least of the testimony we've heard here from,
17 let's say, Crime Lab people.

18 A Okay.

19 Q And they -- they are asked to assist as you would
20 be on occasion? Uh, you would be brought in for
21 your expertise; correct?

22 A That's correct.

23 Q But you wouldn't be running the show. You'd be
24 offering your advice which, of course, your
25 advice is why you're being asked to attend?

1 A Which may or may not be followed.

2 Q Right. Your advice at least would be -- If this
3 was forensic, if something that might end up in a
4 courtroom, your advice would be to establish
5 something like a contamination path or a
6 contamination corridor so that we know where
7 we're walking in and out of the site?

8 A Well, that would not be my job. That would be the
9 job of -- of whoever's scene it was to maintain chain
10 of custody, to create a contamination path and so on.

11 Q Right. And I -- and I -- I think I said you'd
12 make a recommendation?

13 A I don't think I would need to make that
14 recommendation. That is part of normal police
15 protocol.

16 Q You would expect a -- the police normally to --

17 A Correct.

18 Q -- to do exactly that?

19 A Okay.

20 Q And, uh, where possible, you might try to either
21 photograph or mark, uh, items of interest, let's
22 say? Where they lie before picking them up in
23 any way, or scooping them, or removing them in
24 any way?

25 A I would certainly call the attention of a -- an item

1 of interest to an evidence technician and -- and a
2 scene photographer.

3 Q Sure. Where it's possible?

4 A Correct.

5 Q And I understand here, you know, you were -- you
6 were hypothesizing that, given the dark and
7 charred burn quality of these bones, photography
8 may or may not have worked?

9 A Correct.

10 Q Um, but the nail polish, um, idea that you had,
11 for example, later, was a way for you to later
12 associate one bone fragment at least with a tag
13 number --

14 A That's correct.

15 Q -- that you were given?

16 A That's correct.

17 Q And, conceivably, that sort of nail polish idea,
18 or something -- some similar coding or -- of
19 bones or fragments of bones might be done by
20 sector of a grid?

21 A That is -- That's a -- a possibility, yes.

22 Q Again, if -- if we're worried about where things
23 are in relation to one another?

24 A Correct.

25 Q Now, one of the reasons that trying to identify

1 things when they're still in the original place
2 can be important, uh, arises here in -- in a --
3 in a situation where bones have been burned, and
4 that is that once burn -- bones are burned to a
5 certain level, they become quite fragile?

6 A To a -- to -- for a high temperature for a prolonged
7 period and so on, that's correct.

8 Q Right. In fact, in your experience, very
9 commonly a calcined bone, um, may disintegrate
10 with any handling?

11 A It will certainly be extremely fragile and require
12 very careful handling.

13 Q And you may get spawling or some disintegration
14 no matter how careful you are?

15 A That's correct.

16 Q Uh, so if one wanted, in that situation, to see
17 a -- a very brittle or calcined bone as found,
18 one almost would have to photograph, or in some
19 way record without touching, the appearance of
20 the bone?

21 A Yes.

22 Q Um, calcined, by the way, is -- You described
23 that. But it -- it -- it's a -- it's a chemical
24 change in the minerals of the bone that produces
25 something called calx? Is that -- Is that your

1 best understanding?

2 A Um, I don't know the term "calx". I apologize.

3 Q C-a-l-x?

4 A No, I don't know that term.

5 Q Okay. It's the noun. The calcine is the -- the
6 adjective. Um -- In any event, these things have
7 a white appearance to them?

8 A And calcined bone can be, uh, a range of colors from
9 blue to gray to pinks to whites to yellows, even.

10 Q And -- and it tends to be sort of powdery on the
11 surface?

12 A Uh, if it's taken to the extreme, yes.

13 Q Now, um, the reason you might go to the trouble
14 in a burial recovery, um, of the grid, of a
15 contamination path, and photographing or trying
16 to identify things in place, is that you -- you
17 may want to know later, when you actually do get
18 a chance to examine bones or bone fragments up
19 close, how close they were in distribution and
20 placement to a human skeleton?

21 A That's -- That would be correct.

22 Q That's sort of the point of -- of this exercise;
23 correct?

24 A If -- if there's any way to determine, uh, for
25 example, what the position of the body was.

1 Q Right. So in other words, if -- if by careful
2 recovery process we find that, essentially, uh,
3 charred and badly burned bones without any tissue
4 at all nevertheless are found in the place they
5 would be, for example, if a skeleton was lying
6 prone on its back, we will know something about
7 whether that site was disturbed?

8 A That's correct.

9 Q Disturbed after burning occurred?

10 A Or as part of the burning episode.

11 Q Or as part of the burning process?

12 A Right.

13 Q Exactly. Um, so there's a number of ways that --
14 I call this a cremation site, um, might -- might
15 be disturbed. One is during the burning process?

16 A In order to keep a -- the fire going.

17 Q Absolutely. Poking the fire? Putting fuel on?
18 Whatever it may be?

19 A Correct.

20 Q Okay. Uh, another way it may be disturbed after
21 burning is, uh, animals? You know, just -- just
22 sort of animals in the environment? May -- maybe
23 they're rummaging around, or carrying off bones,
24 or sort of disturbing the scene?

25 A Uh, it's possible. Although, um, what I understand

1 about, uh, animals, um, coming to scenes of burned
2 human rem -- remains, typically they don't. Um, it's
3 not, uh, like a body that may be out in the woods
4 that's subject to coyotes and dogs and racoons, and
5 so on.

6 Q Okay.

7 A Typically, animals do not, um, come near burned human
8 remains.

9 Q They aren't drawn to the burnt remains?

10 A Correct.

11 Q Okay. A decomposing body you've seen --
12 you'll -- you'll see often. There's -- I know
13 there's a better forensic term for this, but, you
14 know, sort of animal damage as things are pulled
15 off or carried away?

16 A That's correct. The body, essentially, is in their
17 territory.

18 Q Exactly.

19 A Right.

20 Q And, um, another thing you may see, specifically,
21 or you'd be looking for in a -- in a cremation
22 site, is, conceivably, whether some effort was
23 made to change the body before it was burned?

24 A Can you be more specific?

25 Q I'm sure I can. Um, dismember a body, for

1 example?

2 A Uh, dismembering marks would be quite obvious even
3 after a burning episode.

4 Q But a starting point might be, uh, you know, if,
5 in recovering the bones, we find limbs, or bones
6 from limbs --

7 A Hum.

8 Q -- in places where they would not anatomically
9 be, we would potentially look further for
10 evidence of dismemberment?

11 A That's correct.

12 Q We also -- In a -- in a less sort of grotesque
13 way we might be interested, or you -- you would
14 be interested, if you could determine the
15 position in which a body fell, or the position in
16 which it was lying, or standing, or whatever it
17 was when burned?

18 A That's correct.

19 Q And so knowing where the bones first were found
20 might provide you some evidence from which you
21 later could draw a conclusion about body
22 position?

23 A That's correct.

24 Q Now, as it happened here, um, what -- what you
25 got was boxes and bags of fragments?

1 A That's correct.

2 Q You, in a -- in a -- I don't know who was here in
3 the initial sort, but sort of early in the
4 process, you, then, tried to separate, uh,
5 fragments, um, by areas of the body to the extent
6 you could identify, visually, what partial bone
7 you were looking at?

8 A That's correct. After sorting human from nonhuman
9 and other nonbiological items, um, the next step in
10 the process would be, uh, identification of fragments
11 and grouping of like fragments from the same bone, if
12 you will.

13 Q Right. So you divided the body up into I think
14 it was eight different categories; face and
15 cranial --

16 A Initially.

17 Q -- and --

18 A Initially.

19 Q Right. And tried to separate things into those
20 eight groups after weeding out the nonhuman and,
21 indeed, the nonbiological --

22 A That's correct.

23 Q -- stuff. And, uh -- and then you've already
24 told us about how you went the next step and
25 tried to color code, uh -- not tried, you did --

1 color code, um, bone fragments by tag number;
2 correct?

3 A Yes.

4 Q Which at least told you the approximate area that
5 the police say they recovered those fragments
6 from?

7 A That's correct.

8 Q None of that, though, um -- In -- in -- in none
9 of that were you able, then, to say, um, whether
10 the body had been disturbed or altered in the
11 places in which it was found?

12 A I cannot.

13 ATTORNEY STRANG: Uh, if I could trouble
14 Counsel, maybe we could go back to Exhibit 392?

15 Q (By Attorney Strang) And I'll give you -- Well,
16 if we can get it up on the screen, you can see it
17 from there?

18 A I can.

19 Q Okay. Exhibit 392, I think. Um, in fact, the --
20 it -- it is 392. It says up in the upper left
21 corner there?

22 A I do see that now. Thank you.

23 Q Now, these are three pieces that you were able to
24 fit back together?

25 A Yes.

1 Q Um, two of them you -- you nestled right up next
2 to each other like puzzle pieces; correct? And
3 the third one, I guess, you left that off a
4 little bit?

5 A Just -- just to show that, um, by separating it, that
6 yet there was a third piece that -- and that piece
7 does, in fact, re-fit.

8 Q Right. It -- it slides up and fits --

9 A It does.

10 Q -- right on there? Okay. Now, the -- the two
11 pieces on the left have double dots of some
12 wonderful nail polish color?

13 A They do.

14 Q All right. And the one on the right I -- I see
15 only one dot?

16 A That's correct.

17 Q Only one color? Does that mean the one on the
18 right was actually found in a different place or
19 under a different tag number than the two on the
20 left?

21 A No. Uh, the two fragments on the left that each
22 retained two different nail polish dots means
23 something different. Um, the more orangey-red of the
24 colors, um, that appears on each of the three
25 fragments means that those three -- three fragments

1 came from the original recovery Tag No. 8318. The
2 additional -- the second dot on each of the two
3 fragments on the left side of the screen indicate
4 that each of those fragments showed signatures in
5 x-ray of a material of par -- particles denser than
6 the bone, itself. So radiopaque particles that we
7 have talked about previously.

8 Q Fair enough. Okay. So that's -- We now
9 understand your code. We've got these little
10 speckles of radiopaque stuff on the two pieces on
11 the left but not on the piece on the right?

12 A Correct. That are not visible to the naked eye.

13 Q Very good.

14 ATTORNEY STRANG: We could probably take
15 that down. Thank you very much, Mr. Kratz.

16 Q (By Attorney Strang) Um, you were involved, I
17 think -- The very first picture, um, you were
18 shown, and you explained for the jury, uh, showed
19 you involved in a sifting or sorting sort of
20 process, yourself, um, at the -- at the Dane
21 County Morgue?

22 A No, that photo was actually taken at the Wisconsin
23 Crime Laboratory in Madison.

24 Q Okay. The -- the Crime Laboratory. And this --
25 this is, again, a process where you -- you spread

1 things out on tarps or plastic sheets and went
2 very carefully through a thinly spread layer of
3 the debris or material that had been recovered?

4 A Of -- of badly burned, uh, debris. Correct.

5 Q All right. One of the things that came out of
6 that was, to your knowledge, the discovery of
7 some, you could call, metal grommets or rivets
8 here? Were you around or were you aware of
9 discovery of some metal --

10 A There were some metal objects that, uh, I had
11 identified as such in my original sort on
12 November 10.

13 Q All right. And there -- those -- those were kept
14 as something possibly of interest?

15 A Those were returned to the Calumet County Sheriff's
16 Office. Correct.

17 Q Um, you also found, uh -- Do you have your
18 reports with you by the way?

19 A I do. And -- and I'm assuming they were also placed
20 into evidence or have they not yet been?

21 Q One of them has.

22 A One. Okay.

23 Q So, yeah. Don't worry about it. I'm -- I was
24 just going to invite you, if you need to, to feel
25 free to look at your reports.

1 A Thank you.

2 Q This -- this isn't a closed book exam here.

3 A Thank you.

4 Q Um, just tell us if you need to look at a report.
5 But, uh, you -- you found, also, some, uh, pieces
6 or remnants of fabric, um, as you sorted through,
7 um, the bone fragments and other material at --
8 at various times?

9 A That's correct.

10 Q That fragments of fabric you also kept?

11 A They were placed, uh, usually in vials or in ziplock
12 bags, um, marked with the evidence tag number, if
13 they were not kept with the bones, themselves.

14 Q You -- you remember any -- any fabric frag --
15 fragments or scraps of fabric that looked to you
16 like blue denim?

17 A With as much time that's passed, I don't remember.

18 Q One way or the other? Now, um, here you may need
19 your report, which is why I sort of warmed you up
20 for that. Uh, if you don't, that's fine. But,
21 uh, your recollection is that, um, the -- the --
22 the largest bulk of human bone fragments that you
23 saw came in under this original tag, 8318?

24 A Uh, I don't know if I can answer your question
25 because I looked at so many different containers,

1 that taken collectively may have been, um, larger in
2 bulk. What I can tell you is that the majority of
3 identifiable fragments probably did come from that
4 initial collection tag 3 -- 8-3-1-8, and also
5 provided me with, um, the initial information that
6 allowed me to determine, uh, sex and age.

7 Q Great. That's a good start. And, uh, you also
8 know that, uh, some of the fragments you examined
9 came from an area east of the burn pit or the
10 burn area?

11 A That's correct.

12 Q You know that's -- uh, because they -- they had a
13 separate tag number?

14 A That's correct.

15 Q And some of the fragments that you had examined
16 came under a tag number saying they were found
17 north of the burn area?

18 A That's correct.

19 Q On yet a third tag, uh, said these fragments came
20 from west of the burn area?

21 A That's correct.

22 Q You were aware of at least one fragment, uh, I
23 think the initial fragment found, that came from
24 about eight feet south of the burn area?

25 A I do not know to which fragment you're referring.

1 Q Okay. May -- maybe that wasn't separately
2 tagged. But we've got 8318 which comes from the
3 burn area, is your understanding?

4 A The burn pit sifted. Correct.

5 Q Right. The burn pit. And then east, north and
6 west of there?

7 A Correct.

8 Q And in -- and in each of those four groupings,
9 under these different tag numbers, you found
10 human bone?

11 A May I refer to my --

12 Q Ab --

13 A -- report?

14 Q Absolutely.

15 A Thank you. And here I'm referring to my second
16 report that includes a, um, basic spreadsheet of tag
17 numbers and, uh, material that was collected under
18 each tag number.

19 Q That's correct.

20 A What I don't have on this list is the, um, reference
21 location for each tag number.

22 Q Why don't you -- Why don't you try page four of
23 your first report?

24 THE COURT: I think while the witness is
25 looking at that, we will take a chance for a stretch

1 break if anybody wants one. Go ahead.

2 A May I ask you to repeat the question or have the
3 question read back, please?

4 Q Sure. I, uh -- What I'm asking is you -- in --
5 in each of those four areas, burn area, east,
6 north and west, you were able to identify some
7 human bone fragment?

8 A Um, actually, um, in the container or the package
9 labeled "bone fragments found north end of burn pile,
10 south end of garage", no bone was found in that,
11 uh -- associated with that evidence tag number.
12 Simply lots and lots of what appeared to be
13 insulation from what may have been wire that was no
14 longer present.

15 Q Some burned metal wire?

16 A Well, the insula -- burned insulation, uh, kind of
17 tubular thin insulation was --

18 Q Okay.

19 A -- in that container.

20 Q Okay. Fair enough. Um, but east and west you
21 did find human bone fragments?

22 A Yes, I did.

23 Q Uh, and the -- the burn area, itself, was
24 described to you as roughly a rectangular area,
25 six-by-six feet, more or less?

1 A Um, what I know of the burn area is from my reading
2 of, uh, Trooper Timothy Austin's, uh, graphic
3 depiction of the scene.

4 Q Which is about six feet by six feet, more or less
5 square or rectangular?

6 A Um, I -- There was no scale in the photo that I
7 remembered, but, uh --

8 Q Fair enough. Okay. Uh, we've heard testimony to
9 that, and you, of course, didn't get to hear
10 that. You -- you have no reason to doubt the DCI
11 agent who described the -- the burn pit?

12 A I do not.

13 Q Okay. As six feet by six feet rectangular? Um,
14 so let -- let me -- let me just see whether we
15 can agree that if -- First of all, you didn't
16 find the whole skeleton, obviously?

17 A That -- that is true. There were -- it was
18 impossible to reconstruct an entire skeleton.

19 Q Right. But you -- you did find at least a piece
20 of most of the bones -- almost all of the bones
21 in the skeleton?

22 A Correct. And for some bones, multiple pieces.

23 Q Right. Um, in all, though, this may be helpful,
24 um, for a -- a -- a woman of Teresa Halbach's
25 reported height and weight, you actually have a,

1 um -- or formula you can use to give a rough idea
2 of what you would expect the -- the total bone
3 weight of that skeleton to be?

4 A Well, there has been some work done in that regard,
5 um, by some anthropologists and -- and by some other
6 people, and, in general, as I read that information
7 and distill it, and, uh, figure out what everyone is
8 saying, um, some people say there's a lot of
9 variability based on geography, other people say it's
10 an unreliable measure, other people give weight
11 numbers in grams for if a -- if a fragmentary bone
12 weighs this much, then it was likely a male, if it
13 weighs under this amount, it was likely female, so I
14 think there's -- there's a lot of information out
15 there.

16 Um, what I've come to think about as --
17 as I worked on this case, is that, um, it may be
18 more important to think in terms of volume rather
19 than weight of fragments.

20 Q Okay.

21 A And, um, for that, I went to some of the literature
22 that funeral homes and crematories, uh, put out. And
23 there's kind of a general rule of thumb, um, that
24 says, for every pound of body weight, um -- If you're
25 buying an urn, for example, um, you should assume one

1 cubic inch per pound of body weight.

2 And, um, as I did my -- my quick
3 calculations, um, if Ms. Halbach's weight was as
4 it was stated on the missing person's poster, as
5 135 pounds, then in terms of volume, um, what
6 would have been expected if we were able to
7 identify every fragment as human and group them
8 all together, um, the volume of -- of her remains
9 after the burning incident -- incident, after
10 cremation of sorts, if you will, would be a
11 little larger than a two-liter bottle of soda.
12 And I say that with all due respect.

13 Q No. I -- I understand. A little bit more than
14 two liters?

15 A Correct. About 2.2 liters.

16 Q Um, for a person of about that weight --

17 A Correct. If -- if --

18 Q -- and stature?

19 A -- um, the crematory, um, estimates for the weight to
20 volume conversion is -- is accurate.

21 Q Right. And what you had here was substantially
22 less than two liters of volume?

23 A I'd say, um, probably, um, I have two- to
24 three-fifths of what might be expected, given those
25 rough calculations.

1 Q Okay. Fair enough. Um, so something, perhaps --
2 and this is all very rough -- uh, but perhaps
3 two- to three-fifths, 40 to 60 percent of what
4 might be a -- a complete skeleton --

5 A Correct.

6 Q -- in total?

7 A Um, no, that's -- I'm sorry. That's -- That's not
8 what I said. In terms of expected volume from, uh,
9 human remains of the stated weight for Ms. Halbach.

10 Q Yes.

11 A I believe if -- if you filled or put those fragments
12 into a two-liter bottle, about 40 to -- 40 percent of
13 that bottle would be filled.

14 Q Okay.

15 A Okay?

16 Q Great. Um, and what -- what we know, then, is
17 that there are -- there are pieces missing?

18 A We know there are pieces that are missing. That's
19 correct.

20 Q Not recovered?

21 A Or not there to recover after the burning episode.

22 Q Exactly. I mean --

23 A Correct.

24 Q -- the reasons for not being recovered may be
25 just complete reduction to ash or something

1 unrecognizable by fire --

2 A Correct.

3 Q -- or missing for some other reason?

4 A Correct.

5 Q Um, and if, um -- if the stated height on the --
6 on the missing poster is about right, of 5'6, we
7 also know that if bone -- if human bones were
8 found east and west, and if you'll take my word
9 that there was testimony about a bone found --
10 being found eight feet south, a bone fragment
11 being found eight feet south, and then some in
12 the middle of the burn pit, we also know that the
13 human skeleton of someone 5'6 would not have
14 spread to that area as it lay in place?

15 A You're saying, for example, from head to toe?

16 Q Head to toe, you know, fingertip to fingertip?

17 A That's correct. I also understand there were some,
18 um, weather-related changes happening to the scene
19 out of everybody's control --

20 Q Sure.

21 A -- so it's possible that the heavy rains that were
22 reported could have transported some fragments from
23 their original location.

24 Q We -- we don't know the -- the cause, but we do
25 know that at -- at least, if the information

1 reported to you is accurate, we do know that
2 we're finding human bone fragments transported
3 away from where they would have been in terms of
4 skeletal, uh, position or human anatomy?

5 A In other words, the distribution of fragments is
6 larger than what you would expect if, um, a body was
7 placed in one location.

8 Q Well said. Exactly. And that's what I mean and
9 that's what you mean?

10 A Yes.

11 Q Okay. All right. So how, or what, or why, we
12 don't know. But fragments have been -- have
13 moved? Have been moved? Or had moved, true?

14 A Uh, I'm relying on what you're telling me.

15 Q Okay. Um, you -- you talked a little bit about
16 animals a while back, and I want to just tie that
17 up quickly. Um, you saw no evidence of the site
18 or any of the bone fragments here being disturbed
19 by a dog, did you?

20 A I did not.

21 ATTORNEY FALLON: Objection. That's two
22 questions in one. There's the bone, themselves,
23 and the site. That's two different --

24 ATTORNEY STRANG: Fair enough. Fair
25 enough.

1 Q (By Attorney Strang) Um, let's just talk about
2 the bone fragments, okay?

3 A Yes.

4 Q You didn't see any evidence, um, that any of the
5 bone fragments, the human bone fragments, that --
6 that you identified had been disturbed in any way
7 by a dog?

8 A I did not.

9 Q Now, up until now we've really been talking about
10 one general area, um, the area behind Steven
11 Avery's garage. Fair enough?

12 A Yes.

13 Q And then -- but we've broken that down by some
14 tag numbers to the burn pit. Specifically, in
15 the east and west. North, we found -- you found
16 noth -- no bone?

17 A Correct.

18 Q No human bone anyway? Uh, but that -- that site,
19 taken as a whole, okay, um, that site was not the
20 only place from which you identified human bone
21 fragments here?

22 A That is correct.

23 Q Another place in which -- or from which you were
24 able to identify human bone fragments, uh, was
25 something called the Janda Burn Barrel No. 2?

1 A That is correct.

2 Q Can you see me and still be heard?

3 A Yes.

4 Q All right. Um, you talked about Trooper Austin
5 before, and then what I'm showing you here is
6 Exhibit 113 which, uh, has been received, and,
7 uh, we all also know to be Trooper Austin's work.
8 Did you come to learn, in the course of your
9 work, the location or approximate location of the
10 Janda Burn Barrel No. 2?

11 A Um, once I received, um -- It was sometime in
12 December of -- of -- it was December 1, two thousand
13 and -- '06 when I met with Trooper Austin, um, that I
14 learned where these barrels were located.

15 Q Why don't -- why don't you point out the, uh,
16 location of the barrels with your laser pointer,
17 if you would. You see four of them represented
18 there in this -- this diagram?

19 A Yes.

20 Q All right. Doesn't -- One of them was No. 2?

21 A That is correct.

22 Q All right. And then if we zoom back out, can you
23 point out the, uh, area you've been describing as
24 behind Steven Avery's garage?

25 A Not in -- in this view, I don't believe I can.

1 Q Okay. Do you know which is Steven Avery's
2 garage, or no?

3 A Um --

4 Q If you don't, that's -- that's fine.

5 A I can't tell from -- from this perspective.

6 Q Fair enough. Okay. Um, in any event, you
7 understood that Burn Barrel No. 2 was a barrel
8 associated with the Janda residence, not the
9 Avery residence?

10 A That's correct.

11 Q Specifically, uh, the items that came to you from
12 the, uh, Janda Burn Barrel No. 2 were tagged No.
13 7964?

14 A Um, may I confirm that?

15 Q Of course. 7964.

16 A That's correct.

17 Q That's the property or the evidence tag number
18 for the Janda Burn --

19 A Yes.

20 Q -- Barrel No. 2? Now, from that Burn Barrel No.
21 2, you were able to identify human bone?

22 A That's correct.

23 Q You made a conclusion to a reasonable degree of
24 scientific certainty that these were human bone
25 and not from some other animal?

1 A There was human bone as well as nonhuman bone in that
2 barrel.

3 Q Fair enough. And I -- I want to be clear, but
4 the things that you identified as human, you did
5 so to a reasonable degree of scientific certainty
6 in your field?

7 A Yes, sir.

8 Q All right. I show you Exhibit 401, which I think
9 is an exhibit from the report that you and
10 Trooper Austin did together, am I right?

11 A That is correct.

12 Q Do you recognize that as a diagram depicting
13 where and -- and what types of bones you found or
14 identified as human in the Janda Burn Barrel No.
15 2?

16 A Yes, sir.

17 Q Let me see if I can make this work. Maybe I
18 shouldn't. Leave it to Mr. Buting. Do we now
19 have Exhibit 401 up in color on the --

20 A Yes. Yes, you do.

21 Q Okay. Um, you identified part of a human
22 scapula --

23 A Yes, sir.

24 Q -- in that burn barrel? Or the shoulder blade,
25 as you said?

1 A A portion of the shoulder blade.

2 Q Okay. You identified one or more portions of,
3 uh, the spinal column or the vertebrae?

4 A Fragments from the spinal column, yes.

5 Q More than one?

6 A I believe there were.

7 Q Okay. Uh, identified one or more bones from the
8 hand? Metacarpals?

9 A At -- at least one.

10 Q And more than one fragment of long bones?

11 A Yes, sir.

12 Q Now, these fragments of long bones were small
13 enough that you weren't able to decide which of
14 the long bones in the human body they came from?

15 A That's correct.

16 Q Or even whether they all came from the same long
17 bone in the human body?

18 A That's correct.

19 Q What you can say, though, is that the human bone
20 fragments that you found in Janda Burn Barrel No.
21 2 are -- were -- were not bones that -- or, you
22 know, pieces of bones that are connected to one
23 another, so to speak? This feels clumsy. Do you
24 know what I'm trying to say?

25 A Are you asking whether any of the fragments of human

1 bone that I found in the burn barrel re-fit with one
2 another?

3 Q Let's start there. I wasn't, but let's start
4 with that.

5 A I was not able to make any re-fits or
6 re-approximations from the few bone fragments that
7 came from the barrel.

8 Q Okay. You tried, but were not able to?

9 A That's correct.

10 Q All right. And then I -- I was at at least
11 one -- one greater area of generality. And,
12 again, I -- I'm sorry, what I -- fumbling around,
13 but the -- the -- the vertebrae that you find --
14 that you found are not, necessarily, in the same
15 part of the body, so to speak, as a scapula?

16 A I didn't find any whole vertebrae, um, but portions,
17 I believe, of facets that allow one spinal element to
18 stack on top of each other. So, um, what we -- what
19 we think of as spine, most of it is that honeycomb
20 bone that --

21 Q Right.

22 A -- doesn't survive well in heat, fire, so, um, there
23 were isolated fragments that could be identifiable as
24 to location, but I could not tell you where along the
25 spine they came from.

1 Q Okay. If -- Let -- Let's go at it this way.
2 Sort of graphic way, and I apologize. But if --
3 if one were going to cut up or dismember a body,
4 you would not expect any one limb or piece to
5 account for all of the differing locations of
6 bone fragment that you found in the Janda's burn
7 barrel?

8 A I am not sure I understand your question.

9 Q If -- If my arm had been removed, okay?

10 A Yes.

11 Q Uh, and then burned in a burn barrel, and in --
12 and no -- no one -- no -- no more disturbing of
13 that burn barrel scene had happened, you might
14 find pieces that you could associate with my arm?

15 A That's correct.

16 Q Maybe pieces of fingers or bones in my hand?
17 Maybe the ulna? I guess, that's the -- the
18 radius on this side and the ulna down here? Uh,
19 and then maybe the long bone up here?

20 A Yes.

21 Q You might find a socket or something, uh,
22 conceivably?

23 A I might find a piece of the shoulder joint. That's
24 correct.

25 Q Okay. But things you might be able to then

1 identify as coming from a distinct limb or
2 portion of my body?

3 A I would certainly try and do that.

4 Q Um, here, the distribution of the fragments you
5 found did not suggest, you know, that they came
6 from one piece of a body that might be easily
7 removed before burning?

8 A That's correct.

9 Q Sort of had a scattering, if you will, of
10 fragments in that Janda burn barrel?

11 A Scattering from throughout the body.

12 Q Yes.

13 A Yes.

14 Q Okay. Now, there was, uh -- You noticed that
15 the, um, human bone fragments in the Janda burn
16 barrel were charred in much the same way as the
17 human bone fragments you found under the other
18 evidence tags?

19 A That's correct, sir.

20 Q Some were calcined?

21 A Uh, I don't recall that. I'm sorry.

22 Q But the general -- the general, physical
23 appearance of the bones in the Janda burn barrel
24 was much like the general, physical appearance of
25 the bones in the Steven Avery burn area or behind

1 the garage?

2 A That's correct.

3 Q Okay. There was a third site, um, that, uh,
4 resulted in, uh, evidence under another tag
5 number being brought to you, was there not?

6 A Yes.

7 Q And this would be Evidence Tag No. 8675. Did you
8 find, uh -- Did you find Evidence Tag No. 8675 in
9 your report?

10 A I -- You hadn't asked me --

11 Q Oh.

12 A -- a question or asked me to do anything --

13 Q I'm sorry.

14 A -- so I -- I didn't look.

15 Q Okay. It -- it may be helpful to go to your
16 discussion of Tag No. 8675?

17 A Yes, sir.

18 Q All right. Now, do you -- do you have the Austin
19 report with you as well?

20 A I do not.

21 Q You do not? Okay.

22 ATTORNEY STRANG: I'll show this to
23 Mr. Fallon. We'll mark this.

24 (Exhibit No. 402 marked for identification.)

25 Q (By Attorney Strang) Exhibit 402. Do you

1 recognize that?

2 A Yes, I do, sir.

3 Q What is it?

4 A It looks like, uh, what I would call a -- a plan view
5 or a birdseye view of a portion, um, of the -- what's
6 indicated here as the Avery Salvage Yard, uh, that
7 depicts, uh, the Steven -- the approximate location
8 of the Steven Avery res -- residence with respect to
9 the entire salvage yard, and then somewhere southwest
10 of there, uh, a point location, uh, from which, uh,
11 Tag No. 8675 was identified.

12 Q Terrific. Let's put up Exhibit 402 on the ELMO.
13 Okay. Um, this is, obviously, just a diagram,
14 but we've got Avery Road coming down from the
15 north, and then a box around the -- what we've
16 heard is about a 40-acre parcel for the Avery
17 Salvage Yard?

18 A Yes, sir.

19 Q You see that? And then a smaller box in there.
20 Again, that's the approximate location of Steven
21 Avery's trailer and his garage?

22 A Yes.

23 Q And then the flag you're talking about is the
24 site from which the materials that you were given
25 under Exhibit -- or under Tag No. 8675 came?

1 A That's correct.

2 Q All right. It appears to be well southwest of
3 the Avery property?

4 A Yes, sir.

5 THE COURT: Mr. Strang, can you, uh, let
6 me know about how long this line of questioning
7 will go?

8 ATTORNEY STRANG: Yes, I was -- I,
9 actually, was going to do that. Um, I could -- I
10 could break here comfortably, or I could do five
11 more minutes and I would still have 30 minutes
12 left, so...

13 THE COURT: All right. Then I think, uh,
14 we'll break for today, uh, and resume tomorrow
15 morning.

16 Uh, members of the jury, I'll remind
17 you, uh, before we leave today, do not discuss
18 the case, uh, with each other. Make sure you
19 don't listen to any news accounts, or read
20 anything, or watch anything on TV about the case.
21 Uh, with that, I will excuse you for today and
22 we'll see you tomorrow morning.

23 (Jurors out at 4:32 p.m.)

24 THE COURT: You may be seated. Uh,
25 counsel, if you could, after you clean up, I'd like

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you to stop in chambers again.

ATTORNEY BUTING: Sure.

(Wherein court stands adjourned at 4:33 p.m.)

1 STATE OF WISCONSIN)
)SS.
2 COUNTY OF MANITOWOC)

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I, Jennifer K. Hau, Official Court Reporter for Circuit Court Branch 3 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this ____ day of _____, 2007.

Jennifer K. Hau, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 14

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** MARCH 1, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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I N D E X

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1 THE COURT: At this time the Court, again,
2 calls State of Wisconsin vs. Steven Avery, Case No.
3 05 CF 381. We're here for a continuation of the
4 trial in this matter this morning. Will the parties
5 state their appearances for the record, please.

6 ATTORNEY KRATZ: Good morning, Judge, the
7 State of Wisconsin appears by Calumet County
8 District Attorney Ken Kratz, Assistant Attorney
9 General Tom Fallon, Assistant District Attorney Norm
10 Gahn, all appearing as special prosecutors.

11 ATTORNEY STRANG: Good morning. Steven
12 Avery is here in person. Jerome Buting represents
13 him, Dean Strang appears on his behalf as well.

14 THE COURT: Is there anything this morning
15 before we resume the defense cross-examination of Ms
16 Eisenberg?

17 ATTORNEY FALLON: I just wanted to alert
18 the Court that Mr. Strang and I are working out the
19 final language of a stipulation that we would like
20 to put on the record after Dr. Eisenberg completes
21 her testimony. We're waiting for the completion of
22 her testimony to finalize the language regarding a
23 stipulation to save us a witness.

24 THE COURT: Very well. The coordinator may
25 bring the witness in and we'll bring the jury in.

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(Jury present.)

THE COURT: You may be seated. Good morning, members of the jury. When we left off yesterday afternoon the defense was conducting its cross-examination of Dr. Eisenberg. We'll resume this morning. Mr. Strang, you may continue.

THE CLERK: You want the witness to be sworn?

THE COURT: I think we will, we've been doing that. We'll have the clerk re-swear the witness.

DR. LESLIE EISENBERG, called as a witness herein, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please be seated.

CROSS-EXAMINATION

BY ATTORNEY STRANG:

Q. Welcome back. Good morning.

A. Good morning to you.

Q. Yesterday when we were broke off -- when we broke off, we were talking about a site somewhat southwest of, you know, what we have all here been calling the Avery Salvage Yard property. I want to just go back, though, a little bit to get us up there again. And, now, when I say go back

1 a little bit, I'm going to go back to the Janda
2 burn barrel, number two, just for a little bit.

3 Okay.

4 A. Yes, sir.

5 Q. Which was your tag -- not your tag, but tag
6 number 7964?

7 A. That's correct.

8 Q. Okay. Now, again, nowhere did you find evidence
9 that you were looking at bone fragments from more
10 than one body?

11 A. That is correct.

12 Q. The bone fragments you saw under tag number 7964
13 from the burn barrel were burned, charred, some
14 of them calcined, as they had been in the burn
15 area?

16 A. The human bone.

17 Q. Yes, the human bone, because you did find some
18 nonhuman bone?

19 A. In the location --

20 Q. In the burn area and in the burn barrel?

21 A. That's correct.

22 Q. Some of them were what you called avian bone?

23 A. Avian simply is a Latin term for -- means bird
24 bone.

25 Q. A bird, right. So whether it's a chicken, or a

1 turkey, or a pheasant, some sort of something
2 with wings?

3 A. Yes.

4 Q. All right. So you correct me if I forget to add
5 the human, because it's ordinarily human bone I
6 mean to be talking with you about.

7 A. Understood.

8 Q. Okay. Now, one of the things we didn't cover and
9 I want to cover with respect to the burn barrel,
10 is when you are looking at these human bone
11 fragments you are using not just your eyes, of
12 course, but you are also using your sense of
13 smell; is that fair?

14 A. That's fair.

15 Q. Smelling, do I smell the odor of let's say fuel,
16 some accelerant or something, correct?

17 A. Yes.

18 Q. The only human bone fragments on which you
19 detected an odor of some sort of accelerant or
20 flammable fluid were the bone fragments that came
21 out of the Janda burn barrel; is that accurate?

22 A. No, I would qualify that by saying that the
23 container in which those human -- those fragments
24 from 7964 associated with burn barrel number two
25 behind the Janda residence, upon opening the

1 container, there wasn't an odor of fuel. Whether
2 or not they were specifically human bone, I could
3 not say.

4 Q. Very good. Thank you. Because I was not clear
5 on your report, but that -- that makes sense. So
6 you opened this Tupperware type container, or was
7 this a plastic bag, some container?

8 A. A sealed lidded container.

9 Q. Plastic lidded container.

10 A. Yes.

11 Q. And it's there that you get the waft of some kind
12 of flammable liquid or fluid?

13 A. Yes.

14 Q. But, of course, there is no way to tell which --
15 which of the bone fragments or non-bone material
16 that may be coming from?

17 A. Right, there was no way to tell from the contents
18 of that container where that odor was coming
19 from.

20 Q. All right. Very well. Now, you did not detect
21 the distinctive smell of burnt rubber from any of
22 the containers you examined here that contained
23 human bone fragments?

24 A. I did not.

25 Q. And by that, I mean any of the containers, all of

1 the tag numbers from whatever source?

2 A. I did not.

3 Q. Neither did you -- did you note any residue from,
4 let's say burnt rubber, that was visible to you,
5 in any of the containers you examined?

6 A. No burned rubber, that's correct.

7 Q. Now, if we're warmed up, I think let's go, now,
8 back to tag number 8675 where we left off
9 yesterday afternoon. And this is the -- get
10 ourselves oriented again.

11 ATTORNEY STRANG: I want to go to the ELMO.

12 ATTORNEY BUTING: It may not be turned on.

13 Q. (By Attorney Strang)~ Okay. This is just 402
14 again, which we saw yesterday, tag 8675, are the
15 items that came to you, reportedly, from the GPS
16 coordinates of that red flag.

17 A. That's correct.

18 Q. Somewhere southwest of the Avery property?

19 A. Yes.

20 Q. Have you ever seen a photograph of the Avery
21 property, from the air?

22 A. I believe I have seen one.

23 Q. All right. You may or may not be able to work
24 with Exhibit 91, but I will show it to you. Can
25 you orient yourself from that photograph? This

1 is an exhibit that's been admitted, I'm sorry, I
2 should have shown it to you; it's Exhibit 91?

3 A. Yes, I can.

4 Q. Okay. You can see where the Avery salvage
5 property is?

6 A. Yes, I can.

7 Q. All right. Does it look to you like we're
8 looking east from an airplane?

9 A. It does, because the Avery and Janda properties
10 appear at the lower left hand corner of the
11 salvage yard.

12 Q. Terrific. Thank you. Let me pop this up on the
13 ELMO. Okay. So, obviously, someone taking this
14 photograph is up in an airplane? And what we're
15 doing is we're flying probably about close to due
16 east here.

17 A. I'm sorry, close to?

18 Q. To due east.

19 A. Due east, yes.

20 Q. Toward the lake. And the road coming through at
21 an angle in the upper left corner of the picture
22 is Highway 147.

23 A. I believe it is.

24 Q. And we can see Avery Road coming down to the
25 northeast corner of the salvage yard.

1 A. That's correct.

2 Q. Okay. And what -- We can't place the location
3 from which the material under tag number 8675
4 came, but we can see here that there's
5 essentially quarry area and some wooded areas to
6 the south of the Avery property?

7 A. Yes, that's correct.

8 Q. So I'm going to refer to tag 8675 as the quarry
9 pile; does that work?

10 A. It does, understood.

11 Q. All right. Now, you found, in the material from
12 the quarry pile, two fragments that appeared to
13 you, in your experience, to be pelvic bone; is
14 that right?

15 A. That's correct.

16 Q. There were some cuts, appeared to be some cuts on
17 those pelvic bone fragments?

18 A. Yes.

19 Q. But you weren't able to conclude, 100 percent
20 certain, that these were human pelvic bone
21 fragments; do I understand that correctly?

22 A. That's correct.

23 Q. Okay. Now, you suspected them of being human
24 pelvic bone; am I understanding you correctly?

25 A. Yes.

1 Q. You still suspect them of being human pelvic
2 bone?

3 A. Suspected possible human.

4 Q. Right. And part of the problem you had in
5 identifying those as certainly human is that they
6 were so small.

7 A. It was less their size than what the contours of
8 the bone looked like after they were cut. But it
9 was clearly a joint articulation at the right
10 side of the pelvis where the pelvis meets the
11 lower part of the spine.

12 Q. You say the right side, you actually were able to
13 say which side of the pelvis?

14 A. Yes.

15 Q. Okay. And the overall thickness of those
16 fragments was consistent with a human being?

17 ATTORNEY FALLON: Objection, she indicated
18 suspected and possible and that's as far as she can
19 go. I don't believe there's any testimony regarding
20 consistent or non-consistent. She couldn't
21 identify --

22 THE COURT: I think his question is just
23 asking about one element of the bones, not
24 concluding that it was a human bone. So as I
25 understand the question, I'm going allow it.

1 ATTORNEY STRANG: The thickness. And
2 actually, you know, it's a fair point.

3 Q. (By Attorney Strang)~ Let me just drop back and
4 ask you a foundational question or two before I
5 get to that. One of the things that
6 distinguishes human bones from even larger
7 animal -- large animal bones, is the wall
8 thickness of the bone, is that -- am I correct in
9 that?

10 A. You are partially correct. It's the relationship
11 or the ratio of the thickness of the outside of
12 the bone to the size of what we would call the
13 marrow cavity, the inside of the bone.

14 Q. Okay. So if we have a round bone, there's a wall
15 thickness, so to speak, and then a marrow cavity,
16 you are describing that as, inside?

17 A. A space, like a cylinder.

18 Q. Right. And then the other wall?

19 A. Correct.

20 Q. And if we were looking at something like a deer,
21 a relatively large animal, would we find, in a
22 long bone of a deer, that the wall thickness of
23 the bone was less than the wall thickness of a
24 similarly length -- similarly long human bone?

25 A. No, the thickness -- the diameter, the

1 measurement of the outside of the bone in humans
2 would be less than that in a deer bone, for
3 example.

4 Q. Now, I think I lost you -- I mean -- You are
5 talking about the ratio of the wall thickness to
6 the thickness of the marrow cavity?

7 A. That's correct.

8 Q. And that's -- It's a thicker wall relative to the
9 marrow cavity in the human bone.

10 A. No, it's a thinner wall.

11 Q. I have it the other way around?

12 A. Yes.

13 Q. Okay. All right. So the question, then, is the
14 thickness of the bone wall here that you observed
15 on these two pelvic bone fragments, was that
16 thickness at least consistent with human pelvic
17 bone?

18 A. Let me answer your question in two parts. The
19 first part is that the architecture or the make
20 up of these pelvic bone cut fragments is
21 different in character and shape than the long
22 bones you have been talking about. The internal
23 structure of these bones is made up almost
24 entirely of honeycomb looking bone.

25 Q. All right.

1 A. And so using the long bone as an example may not
2 be an accurate comparison. Secondly, the
3 thinness of the outside bone of these pelvic cut
4 fragments is not inconsistent with the thickness
5 I would expect to see relative to the honeycomb
6 bone in humans.

7 Q. Okay. It is not inconsistent with the human --

8 A. Correct.

9 Q. -- bone. And let me ask you just maybe the
10 simplest, most straight forward question here, is
11 what made you suspect that these pieces of pelvic
12 bone could be human?

13 A. The contours of the bone, and more particularly,
14 the shape of what we call the articular surfaces,
15 where one bone fits with another bone at the hip
16 joint.

17 Q. Those appeared consistent with a human being?

18 A. With the shape and the contours of what would be
19 expected in a human bone.

20 Q. All right.

21 A. Yeah.

22 Q. Now, I would like to show you something that's
23 not been marked as an exhibit. And I don't have
24 a small copy of it, so I'm going to pause and
25 tell Mr. Fallon what it is that I want to put up

1 on the screen, if you would bear with me. I will
2 let you in on the secret now. I'm going to show
3 you what's marked on the CD Rom that I got from
4 the report that you and Trooper Austin did.

5 A. Yes.

6 Q. What's marked as skeleton 1, it's a JPEG file,
7 skeleton one, okay?

8 A. Yes.

9 Q. And I don't -- That's what you are about to see.
10 Now you know. This is, again, one of these
11 computer generated models that Trooper Austin did
12 under your supervision?

13 A. He was not working under my supervision, but we
14 worked cooperatively to depict my findings.

15 Q. He was good with the computers, you were good
16 with human skeletons?

17 A. Hopefully, yes.

18 Q. Yes. And, again, this isn't a photograph, but
19 what you know in looking at this model is that
20 the features you see are consistent with an adult
21 female human skeleton?

22 A. Without seeing this side by side with what might
23 be a male skeleton, I will agree to that
24 characterization.

25 Q. Okay. And, look, I'm not trying to push you

1 somewhere you don't want to go on this; this is
2 from your report?

3 A. Yes.

4 Q. Do you need to look at your report or reorient
5 yourself to what skeleton figure 1 was?

6 A. This is from Trooper Austin's report?

7 Q. Yeah, I mean, the report the two of you put
8 together.

9 A. That's fine, I don't believe that's necessary.

10 Q. Okay. So you are comfortable and I don't know,
11 frankly, that female versus male makes a big
12 difference on this point, but show us the pelvis.

13 A. May I approach.

14 Q. We'll give you a laser point, or you can approach
15 if you like. But ...

16 A. Thank you.

17 Q. Sure.

18 A. As I mentioned yesterday, the pelvic girdle or
19 the pelvis, that we all probably think about as
20 one bone, is actually three different bones.

21 Q. All right. You talked about the fragments you
22 saw under tag 8675 being right pelvic bone, so
23 let's identify that.

24 A. Okay. I should clarify, one of those -- for one
25 of those fragments, it's impossible to side, the

1 iliac crest that we talked about yesterday. But
2 the other two fragments that are still
3 articulated at a joint surface are from the right
4 side.

5 Q. So show me the right pelvic bone here, if you
6 would. And this is obvious it's left as we're
7 all looking to it, but when you say right or left
8 on the human body, you are talking about as if
9 you were in the person's skin?

10 A. When you -- and I'm sorry, I should have
11 clarified that -- when we look at a graphic or
12 photograph like this, computer generated image,
13 we, in the same way we were looking at the face
14 yesterday, we are then looking at someone who
15 would be facing us. So the right hand side would
16 be the person's right hand side.

17 Q. Correct. Yes.

18 A. As we're facing, correct.

19 Q. My right pelvic bone?

20 A. Correct.

21 Q. So right pelvic bone is one of the bones, left
22 pelvic bone is the second of the bones that make
23 up the pelvis?

24 A. Well, they actually have fancy names, but there
25 are a left side called the innominate, a right

1 side called the innominate, and they both are
2 joined, left and right, at the sacrum, which is
3 at the base of the spine.

4 Q. That's the tailbone that hurts when you slip and
5 fall on the ice?

6 A. It's the very bottom of that bone, yes.

7 Q. Okay. All right. Innominate is
8 i-n-n-o-m-i-n-a-t-e?

9 A. That's correct.

10 Q. Okay. Now -- So you actually had three bones
11 that you thought associated with the pelvis under
12 tag 8675 from the quarry file?

13 A. That's correct.

14 Q. Two that look from the right pelvis, one from the
15 sacroiliac -- sacroiliac?

16 A. The iliac crest, so it would be either this
17 topmost area, what you can feel when you palpate
18 or touch your hip, or from the right side, that's
19 correct.

20 Q. Were these fragments too small to suggest to you
21 whether they might be male or female?

22 A. It was not a matter of sides but simply what
23 parts of the bone we had that would not allow
24 that determination.

25 Q. When you say cuts, you saw cuts on these, are you

1 able to be any more specific about the type of
2 cut that you saw?

3 A. It was a long, linear cut, on either side of
4 those two bones that were still in proximity.
5 They were essentially a slicing cut on one side
6 and a sharp slicing cut on the other side.

7 Q. Any way to tell what instrument may have made
8 that cut?

9 A. We --

10 ATTORNEY FALLON: Objection, lack of
11 foundation.

12 ATTORNEY STRANG: I can ask some
13 foundational questions --

14 THE COURT: Go ahead.

15 ATTORNEY STRANG: -- if that would help.

16 Q. (By Attorney Strang)~ One of the things you do in
17 your work is look for human damage to bones or
18 damage caused by human agency, if you will?

19 A. If present, yes.

20 Q. If present. I mean, you look for it, sometimes
21 it's present, sometimes it's not, but you are
22 always looking for it.

23 A. Correct.

24 Q. You looked for that here?

25 A. Yes.

1 Q. Damage to the bones by human agency, correct?

2 A. That's correct.

3 Q. The unnatural defect that you were describing in
4 the parietal and occipital bones yesterday was an
5 example?

6 A. That's correct.

7 Q. Another common example would be to look for
8 evidence of cutting that you might see in bone?

9 A. That's correct.

10 Q. Now, that -- that actually may give you some help
11 on occasion in deciding whether you are looking
12 at a human bone or an animal bone, if the piece
13 is so small that you can't tell the difference,
14 in the sense that animals might often be
15 butchered and you would see signs of cutting near
16 the ends or joints of bones?

17 A. That's correct.

18 Q. Are you able to, not every time now, but on
19 occasion are you able to draw any professional
20 conclusions about what type of instrument may
21 have used to cut, or is that beyond what you can
22 do?

23 A. That is beyond my expertise and certainly would
24 refer that kind of work out to someone who
25 specializes in that kind of analysis.

1 Q. Okay. You may have some suspicions, but wouldn't
2 make -- wouldn't feel competent to make a final
3 conclusion?

4 A. As to what instrument --

5 Q. Right.

6 A. -- may have caused the cut? That's correct.

7 Q. Are you capable of discerning the characteristic
8 differences between a cut made by something
9 that's sawtooth and a cut made by a smooth edge?

10 A. Visually, that is often possible to do.

11 Q. But, again, a final conclusion you would refer
12 out?

13 A. Yes, I would.

14 Q. All right. Did it appear to your eyes that these
15 cuts were -- if you could draw any conclusion at
16 all -- that the cuts on these pelvis bones were
17 from a smooth edged instrument or a toothed
18 instrument?

19 A. I cannot answer your question.

20 Q. Very well. But the cuts were fairly long and
21 straight cuts?

22 ATTORNEY FALLON: Objection, she's
23 indicated this is beyond her ability to answer these
24 types of questions.

25 ATTORNEY STRANG: No, no. I think -- I

1 think that you did testify to, if I heard you just a
2 minute or so ago describing the cut more
3 specifically -- you said -- or maybe I misheard you,
4 they were fairly long cuts?

5 THE COURT: I will overrule the objection
6 because I think the question goes to not what type
7 of instrument it came from, but rather the
8 appearance of what she saw in the bone.

9 ATTORNEY STRANG: And the Court is right.

10 Q. (By Attorney Strang)~ Not interested in the
11 instrument, just what did you see about the cut,
12 again?

13 A. That they were straight and linear. But because
14 of the burning and charring of the bone itself,
15 it was difficult to make any additional
16 observations beyond that.

17 Q. All right. Could you tell, for example, whether
18 the cut went horizontal to the ground or
19 vertical?

20 A. If I could place those two adjoining fragments in
21 anatomical position, which I was able to do, as
22 part of the right pelvic structure, those cuts
23 were made on either side, in what I would call a
24 north/south direction, an up and down direction.

25 Q. Up and down if the skeleton or person was

1 oriented as I am now, standing up?

2 A. Correct.

3 Q. Okay. These -- These three small fragments you

4 described were not the only bone fragments that

5 you found under tag 8675?

6 A. That's correct.

7 Q. There were 10 bone fragments in total, or in

8 addition to the pelvic bone fragments?

9 A. In addition.

10 Q. Okay. So we're talking about a total of 13 bone

11 fragments?

12 A. There were also nonhuman unboned burns --

13 burned --

14 Q. Unburned bones?

15 A. Unburned bones. Thank you.

16 Q. Okay.

17 A. Under that same tag number.

18 Q. Okay. But 13 bone fragments that were burned?

19 A. Correct.

20 Q. The charring and partial calcine -- calcined

21 condition that you saw was essentially consistent

22 with the charring and the calcined condition that

23 you saw in human bone fragments from the Janda

24 burn barrel and behind Steven Avery's garage?

25 A. That is correct, sir.

1 Q. Of the 13 charred bone fragments under tag 8675,
2 only one of those was -- was clearly nonhuman?

3 A. No, certainly more than one was nonhuman.

4 Q. Of the 13?

5 A. Yes.

6 Q. Okay. Let's go to your report. I'm interested
7 here, I think, in the first report at page nine?

8 A. Yes, sir, I am there.

9 Q. I was looking at the second full paragraph down
10 on page nine of your first report.

11 A. Yes, sir.

12 Q. So what you saw is a tag 8675 contained many
13 elements of unburned nonhuman bone, which you
14 just told us, right?

15 A. Yes.

16 Q. And other items, as well as 10 fragments of bone
17 with suspected cut marks?

18 A. Yes, that's what I have written.

19 Q. Okay. Eight of the ten fragments, one definite
20 nonhuman, were burned/calced?

21 A. That's correct.

22 Q. So of the -- of the eight burned bone fragments
23 that showed suspected cut marks, of those eight,
24 one was definitely nonhuman?

25 A. At -- At that point in my analysis, that's as

1 much as I knew.

2 Q. Okay. Were you later able to establish more in
3 terms of separating nonhuman from human among the
4 10 bone fragments we're discussing now?

5 A. I was.

6 Q. And what did you -- what was the separation you
7 eventually made?

8 A. I do not have my working notes here with me in
9 court today and I am, unfortunately, not able to
10 answer that question with any certainty.

11 Q. Just don't remember now?

12 A. I do not.

13 Q. Do you remember the bottom line being that the
14 three pelvic area bones that you have described,
15 you continue to suspect may be human, but can't
16 be certain?

17 A. That is correct.

18 Q. And as to the other 10 charred bones, are there
19 some that you continue to suspect may be human,
20 but can't be certain?

21 A. There is that possibility. I should say that
22 none of those fragments are diagnostic; in other
23 words, I cannot associate them with one
24 particular bone or another.

25 Q. Right. And I know you can't give us a number any

1 more among the 10 charred bone fragments that
2 weren't pelvic, but the bottom line is that you
3 still suspect that some of them may be human, you
4 are not certain of that?

5 A. The three larger fragments that show burn
6 patterns consistent with burn patterns found on
7 human bone elsewhere on the property, yes.

8 Q. Okay. Very well. Of the bone fragments under
9 tag 8675, from the quarry pile, that you suspect
10 may be human, were the two from the right pelvic
11 bone, or the right innominate bone, the only --
12 the only two that you were able to associate with
13 each other?

14 A. Actually, they came to me still articulated.

15 Q. Oh, okay.

16 A. The bones were in anatomical position, when I
17 received them.

18 Q. As they arrived?

19 A. Correct.

20 Q. Others, because they were non-diagnostic, you
21 couldn't associate one with the other?

22 A. That's correct, non-diagnostic and much, much
23 smaller.

24 Q. So, in the same way, then, if we go back to the
25 child's nursery rhythm, you know, the leg bone is

1 connected to the knee bone and the knee bone is
2 connected to the shin bone and the shinbone to
3 the ankle bone, that kind of thing; you can't --
4 you are obviously unable to tell us whether these
5 fragments were from contiguous or, you know,
6 associated bones?

7 A. The non-bone pelvic fragments, I cannot.

8 Q. What we have, then, I guess in the end, first,
9 your conclusion was that the vast majority of
10 human bone fragments, presented to you under all
11 tag numbers, quarry pile, Janda burn barrel,
12 Steven Avery's garage area, or behind Steven
13 Avery's garage, the vast majority of the human
14 bone fragments, from all those sites,
15 collectively, the vast majority was found behind
16 Steven Avery's garage?

17 A. That's correct.

18 Q. All of these exhibited similar charring and
19 calcined appearance?

20 A. That is correct.

21 Q. From all three sites?

22 A. The human bone, yes.

23 Q. All of them were fragmented, similarly, from the
24 three sites, again, human bone?

25 A. That's correct.

1 Q. And while you made mention yesterday, briefly, to
2 not knowing what the weather was, you know, and
3 whether -- whether some weather condition might
4 have caused bone fragments to be found east or
5 west or south of the burn pit at Steven Avery's
6 garage; do you remember that --

7 A. Yes, I do.

8 Q. -- testimony? You certainly would agree that it
9 would be very strange weather conditions, indeed,
10 that would transport human bone fragments from
11 the Avery garage area into burn barrel number two
12 on the Janda property?

13 A. In fact, I would submit there would be no weather
14 conditions that could make that happen.

15 Q. You would rule that out?

16 A. I would.

17 Q. Likewise, the quarry pile?

18 A. Yes, sir.

19 Q. All right. So what -- what you conclude is that
20 by human agency the bone fragments here were
21 moved or located where they were found?

22 A. Some bone fragments identified as human had been
23 moved, that's correct.

24 Q. Including, I think we agreed yesterday, possibly
25 human bone fragments found in the general area

1 behind Steven Avery's garage?

2 A. Based on some of the information you provided me
3 with yesterday, there is some evidence for
4 disbursal --

5 Q. All right.

6 A. -- that's correct.

7 Q. Now, you have no evidence that human bone
8 fragments actually were burned at more than one
9 site, do you?

10 A. I do not know that.

11 Q. You just don't have any evidence that there were
12 multiple burn sites, correct?

13 A. Not based on the material I was given to examine.

14 Q. Right. And in any event, the burning, charring,
15 calcining, all was roughly consistent as between
16 the three sites: Quarry, Janda burn barrel and
17 behind Avery's garage?

18 ATTORNEY FALLON: I'm going to object to
19 that question. This is the third time that question
20 has been asked in this context. The witness
21 indicated that she cannot say that the bones at the
22 quarry site were human, to a reasonable degree of
23 scientific certainty.

24 ATTORNEY STRANG: Okay.

25 ATTORNEY FALLON: So whether they are

1 burned, or calcined, or not charred, or burned, or
2 whatever, is irrelevant.

3 ATTORNEY STRANG: Let's do it this way. I
4 don't agree that it's irrelevant, but let me take
5 the human qualifier out.

6 Q. (By Attorney Strang)~ The bone fragments, here we
7 have to set aside the completely non-burned bone
8 fragments, animal bones that weren't burned.

9 A. Right.

10 Q. But the burnt bone fragments that you saw from
11 the three sites, again, all were roughly similar
12 in their burning, charring, and calcining?

13 A. That is correct.

14 Q. You are aware that the burn pit behind
15 Mr. Avery's garage was one possible burn site, if
16 you will, on the property that the -- the various
17 properties that the police examined?

18 A. Yes, that's true.

19 Q. That burn pit was described to you as, again,
20 this sort of rectangular area that was at grade,
21 but sort of surrounded by a higher mound of dirt?

22 A. I don't -- My understanding was that it was a
23 mound itself and the pit was part of that mound;
24 that may or may not be correct.

25 Q. Right. And have you ever seen a photograph of

1 that burn pit?

2 A. I have not.

3 Q. All right. I won't show you one then. But

4 essentially this was described to you as an open

5 burn area, although possibly with sides to it?

6 A. Correct.

7 Q. You are familiar with a burn barrel, correct?

8 And the general idea of a burn barrel?

9 A. Yes, I am.

10 Q. Seen pictures of burn barrels?

11 A. Yes.

12 Q. A burn barrel here would be a possible burn site

13 for a human cremation?

14 A. I guess anything is possible.

15 Q. Well, burn barrels are used for burning things,

16 right?

17 A. Most often not used for burning human remains --

18 Q. Shouldn't be --

19 A. -- however.

20 Q. Should not be used for burning human remains, but

21 a burn barrel would be large enough to put a

22 human being in if one wanted to.

23 A. Depending on the size of the barrel, it's

24 possible.

25 Q. Okay. And the jury has seen the barrels here,

1 so. Were you aware of an aluminum smelter on the
2 Avery salvage property?

3 A. Only in so far as that item was described in
4 Trooper Austin's report.

5 Q. Aware of the large wood furnace on the Avery
6 salvage property?

7 A. I cannot say for sure.

8 Q. All right. And again, then, you have no way of
9 knowing what other possible burn sites that were
10 in a quarry or anywhere else, in the vicinity of
11 Mishicot, Wisconsin, of course?

12 A. That's correct.

13 Q. Do you have enough experience with burnt human
14 remains to know whether an enclosed burn area
15 will do a faster job of cremating human remains
16 than an unenclosed burn area?

17 A. I would respond to that by saying that's really
18 outside of my range of expertise.

19 Q. Okay. So the answer is you just don't know?

20 A. I do not know.

21 Q. All right. Is it also outside your area of
22 expertise to offer an opinion on whether a burn
23 area that's actually fed with a source of
24 flammable gas or fluid would cremate faster than
25 a burn area that did not have -- was not fed by

1 flammable gas or fluid?

2 A. Again, I would offer the same response, that's
3 beyond my range of expertise.

4 Q. What you can say is that the burnt human bone
5 fragments that you saw from behind Steven Avery's
6 garage, as they came to you, were consistent with
7 human bone fragments that could have been moved
8 to that site after burning?

9 A. I would have to answer no to that question.

10 Q. Why were they inconsistent with human bone
11 fragments that could have been moved to that site
12 after burning?

13 A. My answer would be that, with the hypothetical
14 transport that you are talking about, the moving
15 of bones, I would expect to see some breakage to
16 some fragments, or many fragments, with that
17 transport. And the kinds of signs that I would
18 look for for breakage would be a bone break where
19 on the surface is the break, the break would be
20 lighter in color than the surrounding burned
21 bone, which would indicate to me a more recent
22 break from handling, whatever caused that
23 handling. And I did not see any -- anything like
24 that.

25 Q. Well, we do know that the very recovery of burn

1 bone fragments from behind Mr. Avery's garage
2 involved shoveling, correct?

3 A. That's correct.

4 Q. Transport to a sifting screen?

5 A. Yes, sir.

6 Q. Sifting on the screen, correct?

7 A. Correct.

8 Q. Some of them falling through to a second screen?

9 A. Yes, sir.

10 Q. Some of them falling through altogether to a tarp
11 below?

12 A. If that's how they set it up.

13 Q. All right. Possibly sifting on a second screen?

14 A. Possibly, yes.

15 Q. And from all of that, you saw no breakage or
16 spalling of the human bone fragments you looked
17 at?

18 A. I did not.

19 Q. But I think we have also established that as
20 bones from behind the garage came to you, we have
21 no way of knowing their relationship to one
22 another or to the human skeletal anatomy as they
23 were found?

24 A. We do not know the relationship of one fragment
25 to the next, to the next, that's correct, but we

1 do have general locational information assigned
2 to individual tag numbers.

3 Q. Right. Just behind the garage, for example?

4 A. Yes.

5 Q. All right. So while shoveling and sifting may
6 not have produced this sort of breakage, you
7 think that bones being carried in a barrel or
8 some other container and poured out would have
9 produced breakage; is that your opinion?

10 A. I -- I really can't answer that question.

11 Q. Okay. So you are not able to say that the bone
12 fragments you found are inconsistent with having
13 been transported to the burn area and poured out
14 there?

15 A. Are you referring to the burn fragments from the
16 burn barrel?

17 Q. No, no. I'm talking about the burn fragments of
18 human bone found behind Mr. Avery's garage?

19 A. And you are asking me, were they transported
20 there?

21 Q. No, you obviously don't know whether they were or
22 were not transported, you weren't there.

23 A. I was not there, but based on my archaeological
24 experience and the volume of human -- of burned
25 human bone fragments behind the garage, I find it

1 highly unlikely that that was not the primary
2 burn location.

3 Q. All right. But I guess that rests on an opinion
4 that transport in a barrel or some other
5 container, and being poured out, would have done
6 more damage to those human bone fragments than
7 shoveling, sifting, putting into a box and
8 transporting to Madison would have done?

9 A. I really don't know.

10 Q. You don't know one way or the other?

11 A. That's correct.

12 Q. What you do know is that somehow bones were
13 transported from one place to another place
14 because they wound up in at least two different
15 spots, human bones that is, behind Avery's garage
16 and in the Janda burn barrel?

17 A. There was transport --

18 ATTORNEY FALLON: Objection to the
19 question. She just indicated that there was not a
20 transport, in her opinion, to the burn pit. So
21 there's only one transport of human bone that the
22 testimony has revealed, so I object to the question
23 as mischaracterization.

24 THE COURT: Mr. Strang.

25 ATTORNEY STRANG: I don't think it's a

1 mischaracterization at all and she certainly could
2 answer here. The fact that she said the bones
3 clearly were transported, moved from original
4 location, both behind the garage and by dint of the
5 fact that they are found in the Janda burn barrel.

6 THE COURT: That she -- her previous
7 testimony was that they were moved from behind the
8 garage?

9 ATTORNEY STRANG: No, no, moved somewhere,
10 somehow the bones were moved because they were found
11 in at least these two separate locations.

12 THE COURT: Let's ask her again.

13 Q. (By Attorney Strang)~ Human bone fragments were
14 moved here, that's your professional conclusion,
15 isn't it?

16 A. There is evidence from the Avery property that
17 there was transport of human bone. And I believe
18 that transport occurred from the original burn
19 pit and adjacent areas, to barrel number two.

20 Q. And you base that opinion on what?

21 A. On the overwhelming majority of burned human bone
22 fragments behind the garage, in the area and
23 adjacent areas of the burn pit, the finding of
24 very delicate and fragmentary dental structures
25 within that universe, if you will, of burned

1 human bone fragments behind the garage and
2 absolutely none, for example, in burn barrel
3 number two.

4 And it's my opinion that if transport
5 occurred from the burn barrel to the burn pit,
6 that there would have been a greater
7 representation left over in the burn barrel of
8 more of the skeleton. And I do not see that. I
9 also would expect to see a less -- a lesser
10 volume of material found in burn barrel number
11 two, along with a few human bone fragments that
12 were in there.

13 Q. Well, I guess if someone was taking the burn
14 barrel to the Avery garage area, and was trying
15 very hard, or thought he or she had dumped
16 everything out of the burn barrel, we might see
17 very little in the burn barrel, that's true,
18 isn't it?

19 A. Very little human bone or --

20 Q. Yes, very little human bone in the burn barrel.

21 A. That is true, but that's also assuming that the
22 person who does that can distinguish between
23 human bone and nonhuman bone.

24 Q. Because you saw much more nonhuman bone in the
25 burn barrel?

1 A. Unburned nonhuman bone and larger bones -- larger
2 nonhuman bones as well.

3 Q. And some burned nonhuman bones in the burn
4 barrel?

5 A. Some possible burned nonhuman bones in the burn
6 barrel.

7 Q. And, again, you did not see the burn barrel in
8 place, correct?

9 A. I have never visited the property, so I have not
10 seen the burn barrel in place.

11 Q. The contents of the burn barrel came to you in
12 one of these sealed bins.

13 A. That's correct.

14 Q. So you have no idea and aren't able to tell this
15 jury what the layering was in the burn barrel
16 itself?

17 A. That's correct.

18 Q. You found, in the burn barrel, similarly, no
19 evidence of breakage caused by transport?

20 A. That's correct.

21 Q. The same would be true of the possible human
22 bones in the quarry pile, no breakage associated
23 with transit?

24 A. That's correct.

25 Q. And just so I'm clear, everyone of these human,

1 or suspected human bone fragments, by the time
2 they reached you, had been transported into a
3 plastic bin, or some container, and then
4 transported 90 or 100 or 110 miles, whatever it
5 is, to Madison, Wisconsin?

6 A. That's correct. The quarry area contained those
7 suspected possible human bones, that's right.

8 Q. But I'm also talking about the Janda burn barrel
9 and Steven area -- Steven Avery garage area.

10 A. That's correct. It was collected and transported
11 to me.

12 Q. All transported?

13 A. Yes.

14 Q. Large number of bone fragments in a bin, lying
15 one against the other?

16 A. Correct.

17 Q. And even after all that transport, you didn't
18 see, when you finally had a chance to look at
19 these human bone fragments, you didn't see a sign
20 of breakage?

21 A. I did not and I was very careful in looking for
22 any and all evidence, to look carefully at the
23 ends of every fragment.

24 Q. Including those delicate dental structures you
25 just mentioned a few minutes ago?

1 A. That's correct.

2 Q. If I understand your opinion, Dr. Eisenberg, you
3 think the most probable burn site here, on the
4 evidence you have, is the area behind Steven
5 Avery's garage?

6 A. Yes, sir.

7 Q. All right. As you sit here, though, you cannot
8 rule out another burn site as being a possible
9 site of burning of these human bone fragments,
10 can you?

11 A. I cannot.

12 Q. You are a reasonable person?

13 A. I hope so.

14 Q. I think so. And you cannot reasonably rule out
15 another possible burn site, can you?

16 A. Based on the information I have at hand, I
17 cannot.

18 ATTORNEY STRANG: That's all I have.

19 THE COURT: Mr. Fallon.

20 ATTORNEY FALLON: Thank you.

21 **REDIRECT EXAMINATION**

22 BY ATTORNEY FALLON:

23 Q. Doctor, let's start with the line of questioning
24 regarding your finding a complete absence of
25 breakage, spalling, and damage to these fragments

1 after they were removed from the pit, sifted by
2 law enforcement, and transported to you. What
3 does that tell you about the recovery efforts
4 engaged in by the officers and Crime Lab
5 personnel?

6 A. It indicates to me that whoever had an
7 opportunity to handle those remains, and recover
8 those remains, and package them, and transport
9 them, did not add any additional damage, or did
10 not create any artificial damage that I examined
11 when I looked at the remains.

12 Q. Given the condition of the remains, did that
13 suggest to you that these remains were carefully
14 extracted from their location and presented to
15 you?

16 A. That would be the conclusion I would draw.

17 Q. All right. Now, just so that we're crystal clear
18 on this, the various fragments from the gravel
19 pits southwest of the property, originally you
20 were only able to determine one was clearly
21 nonhuman. In your subsequent review and
22 analysis, you determined several more were
23 clearly not human; is that correct?

24 A. That's correct.

25 Q. And as a matter of fact, there was only three

1 left that you had a reasonable suspicion on that
2 could be human; is that correct?

3 A. That could possibly be human, that is correct.

4 Q. And as a matter of fact, as you sit here today,
5 you cannot tell us that those bones, to a
6 reasonable degree of anthropological or
7 scientific certainty, are human, can you?

8 A. I cannot.

9 Q. All right. Now, you did offer an opinion that
10 you believe the location for the primary burning
11 episode here was the burn pit behind the garage;
12 is that correct?

13 A. That is correct.

14 Q. Would you please elaborate for us your reasoning
15 on that?

16 A. Number one, in the order of priority, would be
17 that the overwhelming majority of fragments,
18 burned fragments that were identified by me as
19 human, were found in that location behind the
20 garage, in and adjacent to the burn pit, that
21 there were, in my opinion, many small, delicate,
22 brittle fragments that would have been left
23 behind some place else had that not been the
24 primary burn location.

25 And if that had been the case, I would

1 have been able to recognize those fragments from
2 another location and did not, except for burn
3 barrel number two. And that all the human bone
4 fragments that were fragmented and badly burned
5 from that location, show the same -- the --
6 approximately the same degree of charring,
7 burning, and calcination variously throughout the
8 material recovered in the burn pit and adjacent
9 areas.

10 Q. Since you have concluded that the burn pit was
11 the location of the primary burning episode, tell
12 us why, in your opinion, burn barrel number two
13 would not have been?

14 A. I believe that burn barrel number two would not
15 have been the primary burn location because I
16 would have expected to find more bone fragments
17 that I would have been able to -- bone fragments,
18 and human bone fragments, and dental structures
19 that I would have been able to identify as human
20 in burn barrel number two than actually I was --
21 than actually were found.

22 Q. Now, this may be a self-evident question, but I
23 want to make sure that we all understand. Given
24 the nature and condition of the fragments you
25 examined, would it have required professional

1 training and experience to be able to identify
2 human from nonhuman bone, if such bones were --
3 for someone to transport those bones? In other
4 words, would someone have to know human from
5 nonhuman?

6 ATTORNEY STRANG: That's wildly
7 speculative, your Honor.

8 ATTORNEY FALLON: Let me see if I can
9 rephrase that or articulate that question; it's
10 poorly worded, I agree with counsel.

11 Q. (By Attorney Fallon)~ Let's keep it simple.
12 Given the nature and condition of the charring,
13 the calcine defect on these bones, does it take a
14 professional such as yourself to be able to
15 clearly identify human from nonhuman burned bone?

16 A. I would say yes, except when nonhuman bone is of
17 a size, and intact, that someone might recognize
18 a deer bone or some other nonhuman bone. But,
19 yes, I would agree with you, given the charring,
20 and burning, and calcination of the fragments, in
21 fact, the majority of the contents of the burn
22 pit and adjacent area, that, yes, it would take
23 someone who has experience looking and
24 identifying human from nonhuman bone fragments.

25 Q. Would you say the same for what was found in burn

1 barrel number two?

2 A. Yes, I would.

3 ATTORNEY FALLON: That's all. Thank you.

4 THE COURT: Any redirect (sic)?

5 **RECROSS-EXAMINATION**

6 BY ATTORNEY STRANG:

7 Q. It would take much less experience with anatomy,
8 or identifying bone, to distinguish burn from
9 non-burn bone, that's true?

10 A. It -- Would you ask that again, I'm sorry.

11 Q. It would take much less experience to distinguish
12 burned bone from non-burned bone, wouldn't it?

13 A. Yes, sir, it would.

14 Q. You also found nonhuman bone under the tag
15 numbers that came from -- reportedly came from
16 behind Mr. Avery's garage?

17 A. Yes.

18 Q. And taking all three sites, the quarry, the Janda
19 burn barrel, and the Avery garage area, as a
20 whole, for the fragments that you found that were
21 burned, the burning charring and calcination was
22 roughly similar from all three places, wasn't it?

23 ATTORNEY FALLON: Asked and answered.

24 THE COURT: I will allow it as a
25 clarification of some of the other questions that

1 have been asked.

2 A. Actually, I would say no to your question. I
3 would indicate that in the quarry location, tag
4 number 8675, there was nonhuman bone intact. In
5 other words, it wasn't fragmentary, most of it,
6 and was clearly unburned. And it was in 8675
7 that there was more unburned nonhuman bone
8 than --

9 Q. We're going past each other, and it's my fault.
10 Of the burned -- I mean, you found some burned
11 bone from all three sites?

12 A. That's correct.

13 Q. And of the burned bone that you found, the
14 condition was roughly similar in all three sites?

15 A. That is correct.

16 ATTORNEY STRANG: That's all. Well --
17 That's all.

18 THE COURT: Mr. Fallon, anything else?

19 ATTORNEY FALLON: No, thank you. The
20 witness may be excused.

21 THE COURT: Right. The witness will be
22 excused at this time. And given the time, I believe
23 we'll take our morning break at this time. Members
24 of the jury remember not to discuss the case among
25 yourselves during the break.

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(Jury not present.)

THE COURT: You may be seated. We'll resume in 15 minutes.

(Recess taken.)

THE COURT: Counsel, there was some mention earlier of a stipulation. Is there something the parties wish to present at this time or should we bring the jurors back in?

ATTORNEY STRANG: Mr. Fallon is doing it. We have reached a stipulation and I assume he's sort of retyping it, the language of it, your Honor.

THE COURT: Okay.

ATTORNEY STRANG: But I can't speak for him on that, I'm just assuming that. I know we agreed on the language.

THE COURT: Was it something the parties wanted to present to the jury before we begin the next witness?

ATTORNEY STRANG: I think he does, and it would make sense to do it.

THE COURT: All right. All right. Mr. Fallon, do I understand the parties have a stipulation they wish to read to the jury.

ATTORNEY FALLON: Yes, Judge. The parties -- sorry for the delay, but the parties

1 wanted to make sure that Dr. Eisenberg's testimony
2 was complete before we could finalize the language
3 on a stipulation saving us the production of a
4 witness from Virginia from the FBI Laboratory, one
5 Dr. Les McCurdy. I don't know what the Court's
6 preference is, if you would like one of us to read
7 it, or the Court might want to read, it matters not
8 to me.

9 THE COURT: If the parties wish, I will
10 read it, otherwise one of you can read it.

11 ATTORNEY STRANG: I would think since it's
12 a stipulation between the parties I think it would
13 be better if Mr. Fallon read it.

14 THE COURT: Very well.

15 ATTORNEY FALLON: All right.

16 THE COURT: Anything else before we bring
17 the jurors back in?

18 ATTORNEY FALLON: No.

19 THE COURT: Okay. We can bring the jurors
20 in at this time.

21 ATTORNEY STRANG: Oh, you know, should move
22 in 401 and 402 while we're waiting, your Honor.

23 ATTORNEY FALLON: You can do that in front
24 of the jury and I will go along with that.

25 THE COURT: All right.

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(Jury present.)

THE COURT: You may be seated. Mr. Strang, I understand that the defense wishes to move admission of some exhibits.

ATTORNEY STRANG: I do. I move admission of Exhibit 401, which was the skeleton diagram tag 7964, and Exhibit 402, which was a schematic map of the Avery Salvage yard, and then the quarry pile site. I also used, for demonstrative purposes, a third image of a skeleton. And it matters not to me whether that's marked and admitted or not. It was used simply for demonstrative purposes.

THE COURT: Any objection to admission of the marked exhibits?

ATTORNEY FALLON: I have no objection to the admission of 401 and 402 and nor do I think it's necessary for us to produce a photograph of the exhibit counsel used for demonstrative purposes, so.

THE COURT: Very well, 401 and 402 will then be deemed admitted.

Members of the jury at this time I believe the parties have a stipulation to present to the jury. Mr. Fallon.

ATTORNEY FALLON: Yes, thank you, Judge. The parties are agreed that bone fragments

1 identified as human from the burn pit behind Steven
2 Avery's garage, bone fragments identified as human
3 from burn barrel number two behind the residence of
4 Barb Janda, and bone fragments suspected as possible
5 human bones from the quarry pile in the Radandt
6 gravel pit south of the Avery Salvage Yard, were
7 sent to the FBI Laboratory in Quantico, Virginia, on
8 November 2nd, 2006, November 7th, 2006, and
9 December 19th, 2006, to attempt further DNA
10 analysis. If called to testify, Dr. Leslie McCurdy,
11 of the FBI DNA Analysis Unit, would testify that due
12 to the condition of the submitted bone fragments, no
13 DNA examinations could be conducted.

14 THE COURT: And, Mr. Strang, is that an
15 accurate statement of the parties stipulation?

16 ATTORNEY STRANG: It is. That's the
17 stipulation as to Dr. McCurdy's testimony, were he
18 called.

19 THE COURT: Thank you. Members of the
20 jury, you may take those facts as established. And
21 at this time, then, the State may call its next
22 witness.

23 ATTORNEY KRATZ: Thank you, Judge, the
24 State calls Curtis Thomas to the stand.

25 **CURTIS THOMAS**, called as a witness

1 herein, having been first duly sworn, was
2 examined and testified as follows:

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

5 THE WITNESS: Curtis Thomas, T-h-o-m-a-s.

6 **DIRECT EXAMINATION**

7 BY ATTORNEY KRATZ:

8 Q. Good morning, Mr. Thomas and thank you for making
9 it here. Could you tell the jury, please, what
10 you do for a living.

11 A. Yes, I'm an electronics engineer with the Federal
12 Bureau of Investigation.

13 Q. And from which FBI office are you stationed?

14 A. I'm stationed currently in Quantico, Virginia.

15 Q. Placed in front of you, Mr. Thomas, is an
16 exhibit, No. 403; do you see that?

17 A. Yes, I do.

18 Q. Tell the jury what that is, please?

19 A. It's my curriculum vitae. It's basically a
20 resume of what I have done and my current
21 position.

22 Q. Working for the FBI, what do you currently do; in
23 other words, what is your day usually made up
24 doing?

25 A. We examine electronic devices such as cellphones,

1 PDA's, other various electronic circuits that may
2 contain electronic data pertaining to a crime.

3 Q. Are you ever asked to make identification of
4 electronic components?

5 A. Yes, we are.

6 Q. Mr. Thomas, let me ask you if you do that in a
7 forensic capacity; in other words, after your
8 examinations in the laboratory, are you sometimes
9 asked to come to court or otherwise apply this to
10 legal principles?

11 A. Yes, I am.

12 Q. The FBI Lab in Quantico, Virginia, does that
13 enjoy any certifications?

14 A. Yes, we are currently ASCLD lab certified.

15 Q. You are going to have to explain what that means?

16 A. It's an Association of Criminal Laboratory
17 Directors Laboratory Accreditation Board is what
18 the full acronym stands for. It's basically an
19 internal validation that we go through to make
20 sure that we're following all the rules and
21 handling the evidence in the proper manner.

22 Q. All right. Exhibit No. 403, your curriculum
23 vitae, does that include your educational
24 background?

25 A. Yes, it does.

1 Q. And can you briefly describe what that is, for
2 the jury.

3 A. I have a bachelor's degree in computer
4 engineering.

5 Q. To entitle you or to allow you to perform
6 examinations and make identifications of
7 electronic equipment, have you had any specific
8 training and do you have experience in that
9 field?

10 A. I have received training as far as electronic
11 forensic examinations and how to handle evidence
12 properly. As far as identification goes, we
13 handle many different kinds of cellphones on a
14 daily basis and, therefore, I'm familiar with
15 many different models and makes of cellphones.

16 Q. All right. Are you familiar with the term
17 exemplar or standard?

18 A. Yes, I am.

19 Q. Does your lab in Quantico, Virginia, have
20 exemplars or standards for -- let's first talk
21 about cellphones?

22 A. Yes, we do.

23 Q. Can you describe that for jury, please.

24 A. We have a cabinet area that contains any sort of
25 cellphone that we have received in for

1 examination. We generally buy a copy of it so
2 that we can test -- perform tests on it before we
3 do examinations on the actual evidence and make
4 sure we don't change anything.

5 Q. All right. These exemplars, these standards or
6 examples, if you will, do you have those for
7 electronic devices other than cellphones?

8 A. Yes, we do, we have PDA's and also GPS devices.

9 Q. We need to slow down just a little bit. For
10 those jurors who don't know what a PDA is; what
11 is that?

12 A. A PDA stands for personal digital assistant such
13 as a palm pilot or pocket PC device.

14 Q. What are those used for generally?

15 A. Generally they are used to house contact
16 information and function as an electronic
17 calendar.

18 Q. All right. Does your unit analyze electronic
19 components on a daily basis? That's a poor
20 question, let me ask it a different way. Are
21 there individuals, other than you, in Quantico,
22 Virginia, at the FBI Lab, that do this kind of
23 work as well?

24 A. Yes, I work in an office of five people.

25 Q. All right. How do you typically receive

1 submissions for analysis, Mr. Thomas?

2 A. We're generally sent a communication requesting
3 our assistance and detailing what we're asked to
4 do.

5 Q. All right. Who is that generally sent by?

6 A. Generally sent from and FBI Field Office, but
7 it's -- we also accept requests from local police
8 officers as well.

9 Q. I guess my question is, you generally get
10 requests from a law enforcement agency?

11 A. That's correct.

12 Q. You don't do this kind of thing for the general
13 public or for some corporation or something, do
14 you?

15 A. No, we do not.

16 Q. Let me ask you, Mr. Thomas, in this case, now,
17 were you asked not only by a local agency, the
18 Wisconsin Division of Criminal Investigation, but
19 the local field office of the FBI here in
20 Wisconsin, to analyze some electronic components
21 that were recovered?

22 A. Yes, I was.

23 Q. Investigator Wiegert from the Calumet Sheriff's
24 Department is going to bring you a exhibit, he's
25 first going to open it. It's been marked as

1 Exhibit No. 415. I'm first going to ask you if
2 you are able to identify that box and then I will
3 have you identify the contents.

4 A. I do recognize the box, the box -- the box the
5 evidence was sent to us in.

6 Q. Okay. If you would be so kind, Mr. Thomas, as to
7 open that box for the jury and tell the jury
8 what's in that box, please.

9 ATTORNEY BUTING: This is 411?

10 ATTORNEY KRATZ: It's 415.

11 ATTORNEY BUTING: 415.

12 A. This box contains burnt electronic components.

13 Q. All right. As we go through that box, I'm going
14 to show you some exhibits as well. I'm first
15 going to show you some photos, but to assist you,
16 I'm going to show you what you are going to see
17 that's marked as Exhibit No. 404. I ask you to
18 refer to the large screen here in the courtroom
19 and tell us what the jurors are looking at,
20 please.

21 A. That is a layout of basically all the components
22 that are inside this box, spread out in a more
23 easy to view fashion.

24 Q. All right. When electronic components are
25 recovered, whether they are burned, or whether

1 they are recovered at some other potential crime
2 scene, do you typically receive them in a
3 packaged form similar to what's in front of you
4 as Exhibit 415?

5 A. We receive them in various different containers,
6 including paint cans that have been sealed up,
7 boxes that have been taped up, just pretty much
8 whatever the evidence is collected in, they send
9 to us.

10 Q. All right. Let's look at Exhibit No. 404,
11 generally. And why don't you give us an
12 overview, why don't you tell the jury -- you have
13 a laser pointer, by the way, in front of you, if
14 you would like to use that, please feel free.
15 Just give us an overview and tell the jury what
16 it is that these components are and what it is
17 that we're looking at here?

18 A. There are components from approximately three
19 devices in here. You can see here, this is the
20 front cover for a Motorola RAZR cellular
21 telephone. This is the back cover for the same
22 phone. This here is some of the front internal
23 pieces.

24 This is the front lens cover for a
25 PowerShot camera from Canon. This right here is

1 the circuit board that's inside a Palm Zire PDA.
2 And these little rectangular devices are pieces
3 of compact flash memory cards that would go
4 inside the camera to hold the pictures.

5 Q. Now, you have talked about three -- at least
6 three distinct electronic components, one of them
7 was a cellphone. Let's start with that first.
8 In the submission from the Division of Criminal
9 Investigation and our local law enforcement
10 agencies, what were you asked to do, if anything,
11 with that particular cellphone?

12 A. When the device was sent to us, they asked us if
13 we could extract any electronic data from the
14 cellphone.

15 Q. In the condition that you received it in, in the
16 burned condition that we now see all of these
17 components, were you able to extract any data
18 from that cellphone?

19 A. No, I was not.

20 Q. Let me ask you, Mr. Thomas, were you asked to
21 extract, if you could, any images from the
22 digital camera that was sent to you as well?

23 A. Yes, I was.

24 Q. Tell the jury, how does a digital camera work,
25 generally, and then explain for the jury what

1 process, or what you did to try to extract data
2 from that?

3 A. A digital camera works by taking in light through
4 the lens. It's then stored in an electronic
5 nature onto a compact flash card which -- of
6 which there are several in this submission. As
7 far as in this case, pretty much no effort was
8 taken to retrieve electronic -- electronic
9 information because, upon looking at it, it was
10 obvious that everything was damaged too far to
11 retrieve any such information.

12 Q. All right. You talked about a flash card or the
13 actual memory card that kind of goes into the
14 camera, are you able to just point out to the
15 jury -- we may see some other pictures of that,
16 but point to the jury where those memory cards or
17 flash cards that go into a camera are?

18 A. There's one here, a couple more here, and a
19 couple more here. Pretty much anything up here,
20 that's around this size, came from it. They kind
21 of split into sometimes multiple pieces, so each
22 one of those little rectangles doesn't represent
23 an individual compact flash card, but perhaps
24 more just a piece of one of the ones that was
25 submitted.

1 Q. And, again, you weren't able to retrieve any data
2 from that; is that correct?

3 A. That's correct.

4 Q. At some point, Mr. Thomas, you told the jury that
5 you found a third component, can you describe
6 that please.

7 A. Yes, as we were examining the evidence that was
8 sent to us, we noted that there was more
9 components than would be just left over from a
10 burned cellphone and a burned camera. And we
11 noticed that it was mainly this circuit board
12 right here. And this is the main board to a Palm
13 Zire PDA.

14 Q. All right. Let's go through the components.
15 Some are probably going to be easier than others.
16 What I'm going to have you look at, in front of
17 you is Exhibit No. 405; tell the jury what that
18 is, please.

19 A. That is the back cover for a Motorola RAZR
20 cellphone.

21 Q. And how do you know that that's for a Motorola
22 RAZR cellphone.

23 A. You can clearly see the M here, which is the
24 Motorola logo. And we also have an exemplar at
25 the FBI Lab to compare it to.

1 Q. All right. Motorola RAZR, is that also known as
2 a different model number or type?

3 A. Yes, it's also known as a V3.

4 Q. All right. Can you describe for the jury, for
5 those jurors who haven't heard of this kind of
6 phone, is this a commonly used or a common type
7 of cellphone?

8 A. Yes. All four of the major cellular carriers
9 offer one.

10 Q. Offer one what?

11 A. A Motorola RAZR cellphone.

12 Q. Do you know anybody that has one?

13 A. Yes, I do, my wife actually has one.

14 Q. Okay. I'm going to show you, Mr. Thomas, what
15 has been marked as Exhibit No. 406; again, these
16 are photographs that are in front of you, so if
17 you need a closer look, you can certainly take
18 them. Tell the jury, what is Exhibit 406?

19 A. Exhibit 406 is the back cover of the burned
20 cellphone; again, being compared with our
21 exemplar that we have at Quantico.

22 Q. What does that mean? Why don't you use the laser
23 pointer and tell us what you are talking about.

24 A. Basically we -- this is the burned evidence that
25 was sent to us here and this is our device that

1 we have at the lab. And basically we just took
2 pictures of them side by side, to show what it
3 would have looked like before it was burned.

4 Q. Next exhibit that might help the jury is
5 Exhibit 407. Tell us what that is, please.

6 A. Yes, that is the front cover for the Motorola
7 RAZR cellphone being compared, once again, with
8 the exemplar device that we have.

9 Q. All right. And why, Mr. Thomas, at least in
10 these images, is the exemplar placed right next
11 to the evidence, the burned evidence that was
12 recovered in this case?

13 A. It's for comparison purposes, so you can clearly
14 see where the burned evidence came from in the
15 original device.

16 Q. So in 407, if you could show us the burned
17 evidence that was recovered and what part of the
18 phone that is.

19 A. All right. This burned -- This is the burned
20 evidence piece right here and you can clearly see
21 here is the Motorola logo, which also appears
22 over here and you can also clearly see this
23 little speaker port, which is cut into the front
24 cover of the phone as well, as well as this
25 rectangular space for the camera being cut out.

1 Q. Finally, or at least finally regarding the phone,
2 I'm going to have you look at Exhibit No. 408 and
3 tell us what the jurors are looking at here,
4 please.

5 A. This is the internal key pad, which is present on
6 -- this here is the burned evidence, again, and
7 this here is our exemplar.

8 Q. And that's the internal key pad for a Motorola V3
9 RAZR phone?

10 A. That's correct.

11 Q. After your visual examination and after examining
12 the exemplar, were you able, then, to identify
13 those components, at least the components that
14 you have shown the jury here today, as coming
15 from a particular cellphone?

16 A. Yes, I was.

17 Q. And what was that conclusion that you were able
18 to draw?

19 A. We were able to conclude that these pieces came
20 from a Motorola RAZR V3 cellphone.

21 Q. Next item that you had talked about was a digital
22 camera. Just very quickly, however, I'm going to
23 just show you the rest of the photos that were
24 provided. What's Exhibit No. 409? What is
25 Exhibit 409? The picture?

1 A. Oh, Exhibit 409 is, once again, just pieces of
2 the burned cellphone placed together.

3 Q. All right. And Exhibit 410?

4 A. Exhibit 410 is simply a photo of some of the
5 burned evidence placed together.

6 Q. Okay. And from Exhibit 410, do you see any items
7 that are associated with a digital camera?

8 A. Yes, this piece right here is a lens cover for a
9 Canon PowerShot camera.

10 Q. As we zoom in on Exhibit 410, this might be kind
11 of obvious to everybody, but do you see any
12 markings on that digital camera cover that helped
13 you in identifying what kind of a camera this
14 came from?

15 A. Yes, there's the words PowerShot A310 appear.

16 Q. All right. And I understand that you do this for
17 a living and are probably an expert in this, but
18 you don't need to be an expert to see what camera
19 this is from, do you?

20 A. No, you do not.

21 Q. That notwithstanding, Mr. Thomas, there were
22 other electronic components to the camera that
23 were recovered; is that right?

24 A. That's correct.

25 Q. And, again, could you describe those for the

1 jury, are those shown in this exhibit, or do you
2 need to go to a different exhibit?

3 A. It's in a different photo.

4 Q. All right. Let me go to those, please. I'm
5 first going to show you, again, another exhibit,
6 that is, Exhibit 411, a little clearer picture of
7 the name; do you see that?

8 A. Yes.

9 Q. Again, what does that say?

10 A. It says PowerShot A310.

11 Q. What's Exhibit No. 412? What are we looking at?

12 A. Burned pieces of the Motorola RAZR V3 cellphone.

13 Q. All right. And Exhibit 413?

14 A. It's another zoom in on the earlier shot that
15 contained all the burned evidence laid out.

16 Q. Now, does any of this evidence associate with the
17 camera itself?

18 A. Yes, it does.

19 Q. Can you show that for the jury, please.

20 A. This circuit board right here is from the digital
21 camera.

22 Q. From the A310?

23 A. Yes.

24 Q. Is there anything else that you see that is
25 obviously associated with the camera?

1 A. Other than the compact flash cards, no.

2 Q. I'm going to leave this exhibit up -- let me ask
3 your opinion. Based upon the exhibits that you
4 have now shown these jurors, are you able and
5 were you in this case able to identify from which
6 digital camera those components came?

7 A. Yes, I was.

8 Q. What was that camera?

9 A. We determined it was a PowerShot A310.

10 Q. From Canon?

11 A. That's correct.

12 Q. All right. Let's talk about PDA's a little bit;
13 you said that stood for what?

14 A. Personal digital assistant.

15 Q. I think you mentioned one of the brands of a PDA
16 was something called a Palm Pilot?

17 A. That's correct.

18 Q. Are you there other brands of PDA's?

19 A. Yes, there are.

20 Q. And what are some of those, if you know.

21 A. Pocket PC and also Blackberry.

22 Q. Now, have you heard of a manufacturer of a
23 personal digital assistant that's called a Palm
24 Zire or Palm Zire?

25 A. Palm is the manufacturer of that device, yes.

1 Q. The Palm Zire 31, that particular model, do you
2 have familiarity with that?

3 A. Yes, I do.

4 Q. And at the time of your examination, at the time
5 that you did what was asked of you by local law
6 enforcement, describe for the jury what, if any,
7 familiarity you had with that particular brand of
8 PDA?

9 A. That particular PDA, we just happened to be
10 working on downloading memory and such from that
11 device, so I was familiar with what it looked
12 like, both inside and out.

13 Q. Mr. Thomas, I'm going to take you back to our
14 original exhibit, that is, Exhibit No. 404. Have
15 you looked at this and, again, if you are able,
16 from Exhibit 404, which is all the components
17 that were recovered in this case, if you can
18 point to the large screen as to which of those
19 components are associated with a Palm Zire?

20 A. This here is the main circuit board of the Palm
21 Zire and these two clear pieces of glass, one of
22 them is the screen, the LCD screen for the glass,
23 or for the PDA. And the other one is what's
24 known as a digitizer for the PDA.

25 Q. You are going to need to tell us what a digitizer

1 is, please.

2 A. PDA's allow you to touch the screen to input
3 information into them and the digitizer is the
4 piece of technology that allows this to take
5 place. It records where you tapped on the screen
6 and sends that information to the PDA.

7 Q. So, as I don't own one of these deals, but when
8 you see say somebody taking out something that
9 looks like a pen and they tap it on the screen,
10 is that the digitizer thing that you are talking
11 about?

12 A. That's correct.

13 Q. Looking at these components and looking and
14 describing for the jury, were you able to
15 identify, then, from what personal digital
16 assistant these components came?

17 A. Yes, I was.

18 Q. Could you describe that for the jury, please.

19 A. We determined that they came from a Palm Zire 31
20 PDA.

21 Q. I will have you look at Exhibit No. 404, which
22 are the -- a photograph of all the components and
23 compare that to the box that's in front of you,
24 Exhibit 415; does it appear that the electronic
25 components photographed in 404 are the very same

1 components that not only are in front of you in
2 415, but were also analyzed by you?

3 A. Yes, they are the same.

4 Q. The identification of electronics and electronic
5 components, does that require specialized
6 training and experience?

7 A. Yes, it does.

8 Q. And, again, you believe that you have that
9 through your work with the FBI?

10 A. That's correct.

11 Q. Your findings, Mr. Thomas, that is, the
12 identification of the Motorola RAZR phone, the
13 Canon PowerShot A310, and the Palm Zire 31, in
14 rendering those opinions, do you hold those
15 opinions to a reasonable degree of professional
16 certainty?

17 A. Yes, I do.

18 Q. After having come to those conclusions, did you
19 have a official report, again, authored by
20 yourself, performed in this case?

21 A. Yes.

22 Q. I'm showing you -- Do you have the exhibit number
23 in front of you?

24 A. 414.

25 Q. I'm showing you Exhibit No. 414, tell the jury

1 what that is, please.

2 A. This is my report that I generated once I was
3 finished examining the evidence.

4 Q. And does that report include your findings, that
5 is, include the identification of the three
6 electronic items that were recovered and which
7 you analyzed and identified?

8 A. Yes, it does.

9 Q. The last two exhibits I want you to take a look
10 at are two boxes that have been handed to you,
11 Exhibit No. 8 and Exhibit No. 9. Could you grab
12 those, please, and tell the jury what those are.

13 A. They appear to be consumer electronic devices
14 which are the same, as you can see, be similar to
15 our exemplars that we have in house.

16 Q. All right. First of all, they are boxes; is that
17 right?

18 A. They are boxes, yes.

19 Q. And which one is Exhibit No. 8; are you holding
20 that?

21 A. Yes.

22 Q. And could you tell the jury what the box on
23 Exhibit No. 8 reflects.

24 A. It says Zire 31.

25 Q. And would that be, at least from a manufacturing

1 standpoint, if you went to buy that in a store,
2 would the components or would the non-damaged
3 Palm Zire 31 that you have identified likely be
4 in that box if you purchased it?

5 A. Yes, it would.

6 Q. And show the jury Exhibit No. 9, please. You can
7 hold it up and show them what that is. What is
8 it?

9 A. It is the box for a Canon PowerShot A310.

10 Q. And, once again, would that likely be the box, if
11 you had purchased a Canon PowerShot A310, the
12 same box that would contain the undamaged
13 components as you have identified in not only the
14 photographs in Exhibit No. 415, but also are
15 included in your official FBI report?

16 A. Yes.

17 ATTORNEY KRATZ: I would at this time,
18 Judge, move the admissions of Exhibits 404 through,
19 I believe it's 415?

20 THE COURT: Any objection?

21 ATTORNEY BUTING: No objection.

22 ATTORNEY KRATZ: And I will pass the
23 witness, Judge.

24 THE COURT: 403 was the witness' CV?

25 ATTORNEY KRATZ: And 403, I'm sorry, Judge.

1 THE COURT: Any objection to that?

2 ATTORNEY BUTING: No objection to that.

3 THE COURT: Very well. Those exhibits are
4 all admitted. Mr. Buting.

5 ATTORNEY STRANG: Thank you, your Honor.

6 **CROSS-EXAMINATION**

7 BY ATTORNEY BUTING:

8 Q. Good morning, sir.

9 A. Good morning.

10 Q. You have been working at the FBI just for about
11 three years now, right?

12 A. That's correct.

13 Q. And there's five of you in your particular
14 division?

15 A. Yes.

16 Q. Are they all about as young as you, or some of
17 them quite a bit older?

18 A. It varies.

19 Q. You are at an age where people use these kinds of
20 devices more than probably us old folks anyway,
21 right?

22 A. I guess.

23 Q. You use digital PDA's yourself, right?

24 A. I personally do not use a PDA, no.

25 Q. Oh, really, okay. But others in your lab do?

1 A. Not on a personal basis, no.

2 Q. Well, as part of their business, do they use them
3 at all?

4 A. We use them as part of our job, just to examine
5 them.

6 Q. Oh, okay. So nobody in your lab actually has
7 these devices?

8 A. Not personally, no.

9 Q. All right. Let me just clear one thing up. The
10 FBI Lab, Mr. Kratz, as you indicate, is the
11 submissions from law enforcement, right?

12 A. That's correct.

13 Q. The FBI Lab does not do any tests for the defense
14 on a case, do they?

15 A. Our lab does not, no.

16 Q. So, even if I wanted to use your lab for
17 anything, it's not available?

18 A. No.

19 Q. Okay. You identified --

20 ATTORNEY BUTING: Could we put up one of
21 those exhibits, the overall shot, 409 and 410,
22 please?

23 ATTORNEY KRATZ: Do you want 404, the one
24 with all of them?

25 ATTORNEY BUTING: That's fine, 404, yeah.

1 Yeah, that's the one.

2 Q. (By Attorney Buting)~ Is -- 404 is an overall
3 layout of all of the items that you received,
4 every single one?

5 A. That's -- That picture was not taken by me, that
6 picture was taken here, as far as I know.

7 Q. Okay. Does that appear to be an accurate
8 representation of everything that you got in that
9 box, though?

10 A. It appears to be all the electronic pieces that
11 were contained in this box.

12 Q. Okay. And did you make an effort to actually
13 sort of fit these pieces back together?

14 A. No, we did not.

15 Q. So, for instance, do you know whether there's any
16 pieces missing from a complete PDA?

17 A. There are pieces missing just -- most likely they
18 have been consumed wholly by the fire.

19 Q. Well, I'm not sure that you can express that
20 opinion, but my point is that not necessarily all
21 of the pieces are there, right?

22 A. No.

23 Q. For instance, there's not -- there's a case, an
24 outer case that that PDA, circuit -- internal
25 circuit board fits into?

1 A. That's correct.

2 Q. Also a keyboard of some sort?

3 A. Yeah, there were four buttons at the bottom.

4 Q. Okay. And I don't know if the same holds true
5 for the cellphone and the camera, but there's
6 buttons and internal components that are missing?

7 A. That's correct.

8 Q. And in some instances even the outer cases that
9 these components are composed -- or contained in
10 are also missing?

11 A. That's correct.

12 Q. Okay. The digital camera, have these -- or uses
13 compact flash, is that what you called it?

14 A. Yes.

15 Q. Those little rectangular cards that we put in our
16 cameras?

17 A. That's correct.

18 Q. You said that no effort was made, though, to try
19 and retrieve any digital files from them?

20 A. That's correct.

21 Q. In the course of your work, how many cases have
22 you done where you're working with burned
23 electronics?

24 A. I have done a few.

25 Q. Less than five?

1 A. Most likely, yes.

2 Q. Okay. So most of your work is not -- is not
3 dealing with burned electronic parts, it's intact
4 parts?

5 A. That's correct.

6 Q. And in those instances, you are able to take, for
7 instance, a compact flash card and retrieve data
8 from it, potentially, right?

9 A. That's correct.

10 Q. But you never actually tested these cards to see
11 whether there might be some photographs or
12 digital files on the cards?

13 A. The condition that these cards were in precludes
14 any sort of testing that we would have done, lest
15 we completely destroyed this evidence. As you
16 touch most of this stuff, it is crumbling apart.

17 Q. Well, for instance, the compact flash cards,
18 could they have been -- did you try to insert
19 them into any kind of a card reader?

20 A. There was no connector left on most of them.

21 Q. Okay. The connector being some sort of metal?

22 A. It's plastic.

23 Q. Okay. And you have no other way, other than
24 being able to insert them into a card reader to
25 analyze what's on them?

1 A. We have the capability to remove the actual flash
2 memory chips from devices to read them, if
3 necessary.

4 Q. But you didn't do that here?

5 A. No.

6 Q. Okay. And as to the Palm Pilot, you are familiar
7 with how they are used, right?

8 A. Yes.

9 Q. And people keep appointments on them, for
10 instance?

11 A. Yes, they do.

12 Q. So the owner of this one, for instance, may have
13 had appointments that she was going to go to on
14 her last day, that we know of?

15 A. It's possible.

16 Q. As well as future dates for that matter, right?

17 A. That's possible.

18 Q. And how is that information stored on a Palm
19 Pilot?

20 A. It's also stored in flash memory.

21 Q. Okay. And do you see -- or did you find that
22 sort of a flash card amongst this?

23 A. The flash -- It doesn't store it in a separate
24 flash card, as the camera does. It instead uses
25 flash memory that would be contained on the main

1 circuit board.

2 Q. Okay. And did you make any effort to try and
3 retrieve any of the data from that flash memory
4 on the PDA?

5 A. No, we did not.

6 Q. Okay. So you weren't able to find, for instance,
7 whether she had appointments scheduled on her PDA
8 or not?

9 A. That's correct.

10 ATTORNEY BUTING: All right. Thank you,
11 sir. That's all I have be.

12 ATTORNEY KRATZ: Just two questions.

13 **REDIRECT EXAMINATION**

14 BY ATTORNEY KRATZ:

15 Q. Mr. Thomas, you mentioned, especially when we're
16 talking about combustible or things that are
17 destroyed in a fire, what kinds of components
18 usually, or as you look at this evidence, what
19 kind of components survived and what kind of
20 components didn't?

21 A. In this case and in --

22 ATTORNEY BUTING: I object. Hold on. I
23 object to the question as to what kind of components
24 didn't. I mean, that's speculative. That calls for
25 speculation. The first part is okay.

1 ATTORNEY KRATZ: I can ask what kind of
2 components aren't here, Judge, and what they are
3 made from.

4 THE COURT: You can phrase it that way.

5 ATTORNEY BUTING: Sure. That's fine.

6 BY ATTORNEY KRATZ:

7 Q. What kind of components survived; what materials
8 or products are these components made from?

9 A. Are primarily metal.

10 Q. And the components that you don't see, the
11 components that are missing, are you able to say
12 what those are primarily made of?

13 A. They are primarily made of plastic.

14 ATTORNEY KRATZ: That's all I have for
15 Mr. Thomas. Thank you.

16 ATTORNEY BUTING: Just one quick follow-up.

17 **RECROSS-EXAMINATION**

18 BY ATTORNEY BUTING:

19 Q. Are you able to state that the only missing
20 pieces here are plastic or are there also
21 potentially some metal pieces that are missing
22 too that aren't here?

23 A. We did not perform that sort of examination so
24 I'm not certain.

25 Q. All right. So you don't really know what --

1 exactly what pieces are missing, you just looked
2 at what pieces you had?

3 A. That's correct.

4 ATTORNEY BUTING: All right. thank you.

5 THE COURT: Very well. You are excused.

6 ATTORNEY KRATZ: I would ask that
7 Mr. Thomas be released from his subpoena and be
8 allowed to go back to Virginia.

9 ATTORNEY BUTING: That's fine.

10 THE COURT: Very well. You may leave the
11 evidence there.

12 THE WITNESS: Okay.

13 ATTORNEY KRATZ: We'll remove those things
14 and we're able to call another witness now --

15 THE COURT: Yes.

16 ATTORNEY KRATZ: -- if you would like us
17 to.

18 ATTORNEY FALLON: State will be calling
19 Bill Newhouse.

20 THE CLERK: You can step over there.
21 Please raise your right hand.

22 **WILLIAM L. NEWHOUSE**, called as a witness
23 herein, having been first duly sworn, was
24 examined and testified as follows:

25 THE CLERK: Please be seated. Please state

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

2 THE WITNESS: William L. Newhouse,

3 N-e-w-h-o-u-s-e.

4 ATTORNEY FALLON: Thank you. Good morning,

5 sir.

6 **DIRECT EXAMINATION**

7 BY ATTORNEY FALLON:

8 Q. What do you do for a living?

9 A. I'm employed as a firearm and toolmark examiner
10 with the Wisconsin State Crime Laboratory in
11 Madison, Wisconsin.

12 Q. How long have you been so employed?

13 A. I joined the Wisconsin State Crime Laboratory in
14 November -- I'm sorry, September of 2002.

15 Q. Prior to joining the Wisconsin State Crime
16 Laboratory, what other employment have you held?

17 A. Well, I have to back up to 1972. I accepted a
18 position with the California Department of
19 Justice in August of 1972, as a -- out there they
20 call us criminalists -- as a trainee,
21 essentially, at that time. I didn't really
22 encounter firearms and toolmark work, which is
23 the work I do here in Wisconsin, until probably
24 the fall of 1974.

25 I, at that time, went through --

1 initiated the training courses they had in place
2 in the Sacramento Crime Laboratory that dealt
3 with the firearms and toolmark section and dealt
4 with the kinds of examinations that we were
5 expected to perform in the course of case
6 examinations in the firearm section. I completed
7 that training course successfully.

8 And January of 1975, then, still in
9 Sacramento, I was asked to take a week long
10 course, again as part of my training, that dealt
11 with the theory of identification and how is it
12 you can say anything about a bullet or a
13 cartridge casing and answer questions about
14 whether they were fired from a particular gun or
15 not.

16 After I completed that, and I think the
17 next week I was in another course that dealt with
18 ammunition problems. I was then assigned to the
19 firearm section of the Sacramento Laboratory and
20 was responsible, until I left that laboratory,
21 for most of the firearms work that came into that
22 firearms section of the laboratory.

23 Q. And when were you doing your firearms
24 identification work for the State of California,
25 about what time frame are we in?

1 A. We're talking about the spring of 1975 until
2 1981.

3 Q. And after that, where did you next have
4 professional experience?

5 A. I moved to the Montana State Crime Laboratory in
6 January of 1981. Took a position there as that
7 State's Firearm and Toolmark Examiner. While I
8 was there in Montana, I had the opportunity to
9 obtain some additional training.

10 I went to the FBI Academy. It was
11 probably in 1984, approximately. Took a course
12 there. It was a week long course that dealt with
13 specialized techniques in firearms and toolmark
14 identification. We look at special problems that
15 we encounter in the firearms section. And I was
16 there until November of 1988.

17 At that time I then moved to Kansas
18 City, Missouri Police Department Crime laboratory
19 as a Firearms and Toolmark Examiner, one of four
20 in that laboratory, and was responsible primarily
21 for firearms case work in that laboratory.

22 The last two years that I was in the
23 firearms section there, before I came to
24 Wisconsin, I was Chief Criminalist of the
25 Firearms Section in which I had supervisorial

1 (sic) duties in addition to the case work duties.

2 And then in, as I mentioned, in
3 September of 2002, I came from Kansas City up to
4 the Wisconsin State Crime Laboratory.

5 Q. And prior to engaging in this field, did you
6 receive any bachelor's degree from any
7 university?

8 A. I have a bachelor of science degree in physics
9 from Purdue University. I received that in June
10 of 1970.

11 Q. And did you pursue any post-graduate training, at
12 least in some respects?

13 A. I took a number of graduate courses for
14 approximately two years, until I -- until August
15 of 1972, when I went to California. Those
16 were -- most of them were in physics courses.
17 And I was doing that while I was looking for
18 employment after I had gotten my degree.

19 Q. All right. First of all, if you could tell us
20 what is firearms and toolmark identification, if
21 you can just generally tell us about that field.

22 A. In the firearms section of most crime
23 laboratories, we're dealing with evidence that's
24 recovered in the course of criminal
25 investigations that involve shootings. So,

1 obviously, what I'm going to be looking at, in
2 most cases, there's going to be a gun.

3 I'm interested in and have to be able to
4 define how a gun functions, whether it's
5 functioning properly, perhaps whether it's been
6 altered in some cases and, of course, whether or
7 not I can fire the gun safely, or whether or not
8 it was capable of being operated safely in the
9 instant in which -- from which it was recovered.

10 I'm also asked to look at bullets and
11 cartridge casings. We fire these guns, the
12 bullets, of course, are -- leave the gun, the
13 cartridge casings, depending on the design of the
14 gun, can leave the gun and are recovered at the
15 crime scenes, occasionally recovered at
16 autopsies.

17 I'm asked to examine those items of
18 evidence, the cartridge casings and bullets. And
19 most often I'm asked to determine, if a gun has
20 been recovered, whether that gun, or that bullet,
21 or that cartridge casing has been fired in a
22 particular weapon. In those instances where I
23 may not have a gun, then the question may be, was
24 this group of cartridge casings all fired in the
25 same gun or do we have more than one gun

1 involved.

2 The same questions apply to bullets.
3 So, then the next thing I do in that section most
4 frequently is look at bullets and cartridge
5 casings, compare them to test fired bullets and
6 cartridge casings so that I can answer those
7 questions.

8 The other element of firing the gun
9 involves gunpowder and gunpowder residues. And
10 it's also part of, or one of the duties that I
11 have, to examine clothing; to examine patterns on
12 skin of shooting victims; and answer questions
13 about distance, can I determine, if possible,
14 what distance the shooting victim may have been
15 from the gun when the gun was discharged.

16 Q. All right. Have you had any -- Do you currently
17 belong to any professional organizations?

18 A. I do.

19 Q. And what are those?

20 A. I'm a member, and have been for something over 20
21 years, of the Association of Firearms and
22 Toolmark Examiners.

23 Q. All right. And have you testified in courts of
24 law regarding your findings and expressed
25 opinions on those findings?

1 A. Yes, I have.

2 Q. Do you have any estimate for us as to
3 approximately how often you have been called upon
4 to testify in court proceedings regarding
5 firearms identification issues?

6 A. I'm satisfied it's been much in excess of 300
7 times at this point.

8 Q. I believe there's an exhibit placed in front of
9 you, and what is the number on that exhibit, for
10 us?

11 A. Exhibit 416.

12 Q. 416. And what is Exhibit 416?

13 A. 416 is a curriculum vitae, a description of my
14 experience and the training that I have received
15 in the 30 some years of experience I have had in
16 crime laboratories.

17 Q. All right. All right. Mr. Newhouse, in this
18 particular case, were you called upon to examine
19 some weapons, some bullet fragments, and some
20 cartridges?

21 A. Cartridge casings, yes, I was.

22 Q. Did you conduct such an examination?

23 A. I did.

24 Q. And were you able to make any findings or any
25 comparisons, based on your examination?

1 A. Yes, I did.

2 Q. All right. Well, before we get into that, if you
3 could -- I think it would probably be good if you
4 would define some terms for us. Some of us are
5 not so proficient in firearms technology and
6 language. So, first of all, can you tell us what
7 a cartridge is?

8 A. Most of you are probably familiar, if only
9 secondarily through TV, with guns, and know that
10 what you fire in a weapon is a cartridge. You
11 may not be aware of what the different components
12 of a cartridge are, and it's the components, of
13 course, most often, that I'm asked to look at.
14 You are going to hear me talk about some of these
15 parts of a cartridge and how they relate to and
16 connect with different parts of the weapon.

17 A cartridge is a composition of about
18 four different parts. A cartridge consists of a
19 cartridge casing, and we'll see some of these
20 later, I presume, at least pictures of them. We
21 also have a bullet or a projectile. This is part
22 of a cartridge. And, of course, the bullet is
23 what is aimed at a particular target and what
24 will, if the weapon is working properly and the
25 cartridge works properly, what will strike that

1 target.

2 Inside of the cartridge, inside the
3 cartridge casing, is gunpowder. Gunpowder is a
4 propellant. It's a chemical that, under the
5 conditions that we expose it to when we're firing
6 the gun, essentially explodes in the gun. And,
7 of course, when it does that, a couple of things
8 happen. It forces the bullet out of the barrel
9 of the weapon and, again, down range from
10 wherever the weapon is pointed.

11 The last component in a cartridge is
12 what we call a primer. There's a part of the gun
13 that's going to cause the cartridge to fire.
14 That part of the gun actually strikes a different
15 chemical in the gunpowder that's present in the
16 cartridge casing and that is very shock
17 sensitive. It gets struck. It explodes. It
18 ignites the gunpowder and then our cartridge
19 fires and the gun should work as it's intended
20 to.

21 Q. Generally, on a gun, where would the primer be
22 located or found.

23 A. Really only two places on any cartridge, these
24 days at any rate. We may have a rim fire
25 cartridge, and in this case that's the kind of

1 ammunition that was used. And in the case of a
2 rim fire cartridge, the primer is located around
3 the edge of the head of the cartridge.

4 And we may also have, in other weapons,
5 a center fire. In that instance, the primer is
6 located in the center of the head or the end of
7 the cartridge.

8 Q. All right. And you began to explain, I think you
9 did, on how the cartridge is actually fired. So
10 let me ask you, then, what happens to the bullet
11 as it is propelled down the barrel and out toward
12 its intended target?

13 A. Well, we have to know where the bullet starts
14 out. Of course, it's in the cartridge. But in
15 the weapon, the cartridge is going to be
16 chambered or located right at the end of the
17 barrel of the weapon.

18 The muzzle of the weapon is the very
19 front and most portion of that barrel. And at
20 the back of the barrel will be a part of the
21 barrel that's called the chamber. And it's
22 designed to receive a cartridge. When the
23 cartridge is fired, the bullet is projected or is
24 expelled from the cartridge and into the barrel.

25 If the gun is going to work properly

1 that barrel has to be sealed by the bullet. That
2 is, no gases can escape around the sides of the
3 bullet. And so the bullet, as it comes down the
4 barrel of the gun, is in contact with that inner
5 surface of the barrel. We have, then, the lead
6 surface or the copper jacketed surface of the
7 bullet being scraped by the inside of the barrel
8 of the weapon.

9 Q. All right. What happens to the cartridge when
10 the weapon is fired?

11 A. That's going to be determined by the design of
12 the weapon. Some weapons are designed to keep
13 the cartridge, the fired cartridge casing now,
14 inside the weapon, so that it has to be extracted
15 manually.

16 In other designs of weapons, allow you
17 to extract the cartridge casings in certain ways.
18 We may have what's called a bolt on a weapon that
19 if you actually pull up and back and that will
20 cause the cartridge casing that's been fired in
21 the weapon to be extracted and rejected from the
22 weapon.

23 And, finally, there's a design of a
24 weapon that's very common that's called a
25 semi-automatic design. And, in this instance,

1 the cartridge, when it's fired, the weapon is
2 designed to use the gases, the energy that's
3 created by the explosion of that gunpowder in
4 there, to actually drive back a part of the
5 weapon, extract whole that cartridge casing from
6 the chamber and then there will be another part
7 of the weapon that the cartridge casing comes
8 into contact with that causes the cartridge
9 casing to be ejected from the weapon.

10 And, then, the next step in this kind of
11 weapon is that that same part of the gun that's
12 driven backward and extracts the fired cartridge
13 casing, moves forward again, under spring
14 pressure most of the time, and it pushes the next
15 cartridge that's in the weapon up into the
16 chamber, and at the same time cocks the weapon.

17 So on a semi-automatic weapon, if you
18 fire a cartridge in that weapon, it ejects --
19 extracts and ejects the cartridge casing,
20 chambers the next round, cocks the weapon, and
21 now the gun can be fired by a pull of the
22 trigger.

23 Q. All right. And just so that we're clear, we have
24 had some other terminology used by some of the
25 other witnesses, a phrase called a shell casing.

1 What is the relationship, if any, between a
2 cartridge, and a shell casing, and what have you?

3 A. There's a number of different terms that are used
4 commonly in the public that refer to the same
5 thing. I generally, and in my reports, describe
6 a fired cartridge casing as a cartridge casing.
7 But it can also be called a shell casing. Some
8 people call them hulls, that's generally in
9 shotguns, but it is misused also. If you heard
10 the term shell casing, it's the same thing as
11 what I'm referring to as cartridge casing.

12 Q. All right. Given this process that you have
13 described about how -- what happens to the bullet
14 upon its being fired and what happens to the
15 cartridge casing; what makes firearms
16 identification possible?

17 A. You have heard me describe, I think, that when a
18 cartridge casing or cartridge is fired in a gun,
19 that we have contact between different parts of
20 the gun and the cartridge casing. And, then, I
21 know I described, specifically, that when the
22 bullet passes through the barrel of the gun that
23 it's in contact with that inner surface of the
24 barrel.

25 Whenever there is a contact between

1 either the bullet and the cartridge casing with a
2 part of the gun, we have the opportunity for a
3 marking to be transferred to that item. Let's
4 talk, specifically, about the bullet. When that
5 bullet passes through there and is scratched by
6 the inside of the barrel of the weapon, and I
7 look at that surface of the bullet under
8 magnification in the laboratory, what I'm going
9 to see are a series of scratches. We call them
10 stria. They are actually three dimensional
11 engravings, something more than scratches, in
12 most instances, on the surface of the bullet.

13 When I test fire the gun in the
14 laboratory, I fire it into a water tank and I
15 retrieve the bullets that I fired. I can examine
16 those test fired bullets and demonstrate to
17 myself that I have a pattern of these engravings,
18 of this stria, on that surface of the bullet.
19 And I can compare, test to test, two bullets that
20 I test fired in the weapon and establish that, in
21 fact, when I fire a bullet from that particular
22 weapon there is a pattern I can expect to see on
23 that bullet.

24 And so now I know, having done that,
25 that when I look at a bullet that I don't know

1 what gun it has been fired from, that if I find
2 that pattern on there, then I have the
3 opportunity to draw a connection between the
4 bullet that's been recovered and submitted to the
5 laboratory and possibly the gun that's been
6 submitted too. And that connection is going to
7 be based on the presence of these patterns of
8 markings.

9 With the cartridge casing, they have
10 exactly the same thing going on, and of course we
11 have different parts of the gun that are
12 involved. I will talk about two because they
13 were involved in my examination in this case.

14 I told you that a part of the gun
15 strikes the cartridge and causes it to fire.
16 It's that primer causes an explosion and, of
17 course, the cartridge goes off and the bullet
18 goes away. That firing pin, that piece of metal
19 in the gun that actually strikes the cartridge,
20 has markings on it that were created during the
21 manufacture of that firing pin. And some of
22 those markings can be transferred to the
23 cartridge casing.

24 Again, I test fired the cartridge
25 casing. I don't know when I test fire the gun

1 what parts of the weapon may be marking the
2 cartridge casings in a way that will allow me to
3 come to any conclusion about it, or whether there
4 will be any marks there. I examine my test
5 fires. I will examine the firing pin impression.
6 And under magnification, I may see a pattern of
7 markings in the firing pin impression.

8 And, again, if I do, and can demonstrate
9 that that's occurring with that ammunition on
10 every cartridge casing I fire in there, then I
11 know I have something to look for on cartridge
12 casings that have been recovered in the course of
13 an investigation and maybe tie that into that
14 gun. The other part --

15 ATTORNEY BUTING: I'm sorry, could we have
16 a little bit more question and answer to break it up
17 and follow along. The narrative is rather lengthy.

18 THE COURT: That's a good point.

19 ATTORNEY FALLON: Very well.

20 Q. (By Attorney Fallon)~ We'll develop that a little
21 further as we get into some of the opinions you
22 will offer. But I wanted to have you define
23 another term or two for us, if you would.
24 There's a phrase that I'm sure many people have
25 heard on television and elsewhere called lands

1 and grooves; could you tell us what they are?

2 A. These relate to the inner surface or the inside
3 of the barrel of the modern gun. When they
4 manufacture that barrel, they put grooves on the
5 inside surface of the barrel.

6 And, additionally, when they put those
7 grooves into that surface of the barrel, they
8 turn the tool that they are using to put the
9 grooves in there and give it a twist. We call,
10 of course, the grooves of the barrel are the
11 grooves. The term that's applied to the area of
12 the barrel between the grooves, we call lands, or
13 l-a-n-d-s. Don't know where the term came from,
14 but that historically has been the term applied
15 to that area between the grooves in the barrel of
16 the rifle -- or of the weapon.

17 Q. Okay.

18 ATTORNEY FALLON: Your Honor, I think this
19 would be a good place to break for lunch.

20 THE COURT: All right. Members of the jury
21 we'll take our lunch break at this time. We will
22 resume at 1:00. I will remind you not to discuss
23 the case at all during the lunch break. You're
24 excused at this time.

25 (Jury not present.)

1 THE COURT: You may be seated. Counsel,
2 were you going to be prepared to meet in chambers at
3 1, 1:00?

4 ATTORNEY BUTING: Yes, we could do that.

5 THE COURT: The package that you were
6 expecting came in?

7 ATTORNEY BUTING: Yes.

8 THE COURT: Very well. We'll see you at
9 1:00 then in chambers.

10 ATTORNEY FALLON: Judge, would it be
11 beneficial to have a quick five minute chat right
12 now perhaps?

13 THE COURT: Back in chambers?

14 ATTORNEY FALLON: Yeah.

15 THE COURT: Okay.

16 (Noon recess taken.)

17 THE COURT: Members of the jury, I have
18 been informed that some of you have had questions
19 about whether or not the trial is proceeding on
20 schedule. I discussed that matter with counsel
21 during the break and I have been assured that the
22 trial is proceeding on schedule.

23 And I can also tell you that because of
24 the weather situation today and tomorrow, it's
25 likely that we'll leave early today and we may be

1 well adjourning early tomorrow as well. We'll
2 try to make arrangements to get the bus here a
3 little sooner to accommodate that schedule. At
4 this point, Mr. Fallon, you may resume your
5 direct examination.

6 ATTORNEY FALLON: Thank you, Judge. Good
7 afternoon, sir.

8 **DIRECT EXAMINATION CONTD.**

9 BY ATTORNEY FALLON:

10 Q. I believe we left off with your discussion of
11 lands and grooves. And I just wanted to have one
12 more question on that topic before we move on.

13 And that is, why are there lands and grooves, or
14 how does it come to be that there are lands and
15 grooves in the barrel of the rifle that occur
16 during manufacturing?

17 A. The manufacturers put those in the barrel. And
18 you remember, I described how they will turn the
19 tool that creates the grooves in the barrel.
20 Those are there because when the bullet passes
21 through the barrel, it fills the barrel, engages
22 that rifling, and when it leaves the barrel it is
23 now spinning and that makes the bullet more
24 stable and makes the gun much more accurate.

25 Q. Now, I'm going to have Investigator Wiegert show

1 you some exhibits, sir, as we begin the remainder
2 of your testimony. First of all, I would like
3 Exhibit 247, which I believe it is the rifle.
4 The record should reflect that Investigator
5 Wiegert is handing Exhibit 247 to Mr. Newhouse.
6 And I would ask you, sir, do you recognize that
7 item?

8 A. I do.

9 Q. And what is, for the record, item -- Exhibit 247?

10 A. Exhibit 247 is a .22 caliber Marlin manufactured
11 semi-automatic rifle. Actually known as the
12 Glenfield Model 60. And this was a weapon that
13 was submitted to the laboratory in the course of
14 this investigation.

15 Q. And how is it that you are able to recognize that
16 particular weapon as the one that was submitted
17 to you for examination?

18 A. I mark or, in some cases, with guns in
19 particular, place a sticker on the weapon with
20 the information that associates it with --
21 associates it with our case number and the date
22 that I opened the box that it was in and so on.

23 Additionally, I had also, when it was
24 submitted to the laboratory, I had checked it to
25 make sure it wasn't loaded, and safe to handle

1 and store in the laboratory, before I examined it
2 in the firearms section. I also have a tag on
3 there with that same kind of information on it.

4 Q. And I see you are holding the exhibit, you are
5 pointing to what appears to be a green tag on the
6 trigger guard?

7 A. That's correct.

8 Q. And that is a tag that you affixed to the weapon
9 upon your receipt of it?

10 A. Yes.

11 Q. All right. I would like to have Investigator
12 Wiegert also show you one other item -- well, two
13 other items. Exhibit 250, the shell casings; do
14 you have Exhibit 250 in front of you?

15 A. I do.

16 Q. And do you recognize that exhibit?

17 A. Yes, I do.

18 Q. And for the record, what is Exhibit 250?

19 A. Exhibit 250 is a paper bag, a box, and eventually
20 you get to 11 fired cartridge casings, all of
21 them .22 caliber cartridge casings.

22 Q. And are those the casings that were submitted to
23 you for examination and comparison in this case?

24 A. They are.

25 Q. And, finally, if Investigator Wiegert would

1 provide to you Exhibits 276 and 277. Which one
2 are you holding at the moment?

3 A. I have Exhibit 277.

4 Q. All right. And tell us what Exhibit 277 is?

5 A. Exhibit 277 is a bullet, a bullet fragment if you
6 like, that we designated as Item No. FL when it
7 was received in the laboratory.

8 Q. All right. And Exhibit 276?

9 A. Exhibit 276 is a second bullet. And this one we
10 designated as Item FK when it was received in the
11 laboratory.

12 Q. All right. Were all these items submitted at the
13 same time, or did they come in in different -- at
14 different times?

15 A. They came in at different times.

16 Q. All right. And as a result of which, how many
17 reports did you generate regarding your
18 examination of those items?

19 A. I wrote two reports to describe the conclusions I
20 came to.

21 Q. All right. Let's take them one at a time. We'll
22 start with the first report. At approximately
23 when was that first report prepared by you
24 regarding your findings?

25 A. The first report that I wrote was written on

1 February the 21st of 2006.

2 Q. All right. So let's begin, then, with that
3 report and your examination regarding that
4 report. With respect to that first or initial
5 examination what were you asked to do?

6 A. Well, I had -- I knew that we had submitted in
7 the case a rifle and that some cartridge casings
8 had also been recovered and submitted. I was
9 asked to examine and test fire the rifle, and
10 then to answer the question, determine if I
11 could, whether the cartridge casings that had
12 been recovered had actually been fired in this
13 rifle, or whether they had been fired in some
14 other weapon.

15 Q. All right. All right. Let's begin with the
16 rifle. What was the first thing that you had to
17 do in order to attempt any subsequent
18 comparisons?

19 A. The procedure, the approach to a weapon
20 examination is really the same on just about any
21 gun that I look at. Initially, I'm concerned
22 about whether the weapon is safe to fire. I know
23 I'm going to want to do that.

24 I also want to examine the weapon, as I
25 did in this case, and document various features

1 of the weapon that might allow me to identify it
2 later, or that give me some idea of a possible
3 problem with its function if I examine it
4 closely.

5 Additionally, I'm interested in whether
6 or not there might be, in most cases, some other
7 kind of evidence on the weapon. Just depends on
8 whether it's been examined by someone else or not
9 or whether I'm the first to actually handle it.

10 So, in this case, the first thing I did
11 was to go through the weapon. It had already
12 been through the DNA section. I didn't need to
13 be concerned about any materials or substances on
14 the exterior of the weapon. And so I just
15 documented serial number, caliber, make, model,
16 length of the barrel, various physical
17 characteristics of the weapon.

18 One of the other things that I did in my
19 initial examination is to examine the bore of the
20 weapon, to look down the barrel. For two
21 reasons, one, I want to know that it's not
22 obstructed. And the only way to do that is to
23 look down there and make sure there is not a
24 bullet caught up somewhere in the middle of the
25 barrel.

1 And the other was to look at the
2 condition of the barrel. That gives me some idea
3 of what I might expect to see when I fire it, and
4 in particular what condition the bullet that I
5 recover from test firing it might be.

6 Q. All right. And did you subsequently, then, test
7 fire that weapon?

8 A. I did.

9 Q. And what determination did you make regarding the
10 weapon's functioning capability?

11 A. After I worked my way through the gun, I was
12 satisfied it was working and in safe enough
13 condition to fire. So I went ahead and selected
14 some ammunition from the collection there at the
15 laboratory and actually fired the weapon
16 recovering cartridge casings and the bullets and
17 also confirming that the weapon does function as
18 it was designed to function.

19 Q. All right. And what kind of ammunition did you
20 select for your test firing?

21 A. The cartridge casings that had been submitted,
22 the recovered cartridge casings, were
23 manufactured by CCI, one of the companies that
24 makes ammunition. So I fired, from my
25 collection, three CCI cartridge casings. I'm

1 sorry, three CCI cartridges.

2 Q. All right. And those cartridges contained the
3 bullets that you previously described, in terms
4 of how the weapon operates?

5 A. Yes.

6 Q. All right. And, generally, just for our benefit,
7 what is a bullet? What does it consist of? What
8 is in the bullet?

9 A. Virtually all bullets are going to be either lead
10 composition, or they will be a lead core that's
11 contained within some kind of a copper alloy
12 jacketing. In this case, the bullets that I
13 fired initially in this weapon, particularly for
14 the comparison to and the examination of the
15 cartridge casings that were submitted, were lead
16 bullets.

17 Q. All right. All right. Now, after you determined
18 that the .22 caliber rifle was functioning
19 properly, what did you do with respect to
20 determining whether any of the cartridge casings
21 had been fired from that rifle?

22 A. Well, as I said, I recovered the cartridge
23 casings that I had fired in this weapon. The
24 next step was to compare those to the recovered
25 cartridge casings, those ones that were

1 submitted. And at that moment, or at the point
2 that they were recovered, of course, we didn't
3 know what gun they were fired in.

4 The examination is a microscopic
5 examination. I'm looking at very, very, tiny
6 markings that are placed, as I described earlier,
7 on the cartridge casings, by the different parts
8 of the gun.

9 First thing I do is to look at my test
10 fires, to again assess what expectation I can
11 have of finding markings that are placed there by
12 the gun, what they look like, what patterns I
13 will see. Having done that, I would then, using
14 my microscope again, place one of the cartridge
15 casings that we're wondering whether it was fired
16 from the gun, and one of my test fired cartridge
17 casings, on the microscope, and do a direct
18 comparison, under magnification, of those
19 markings that I see on the cartridge casings.

20 Q. And were you able, then, to make a determination
21 as to whether the casings submitted to you had in
22 fact been fired from that gun?

23 A. Yes, I was.

24 Q. And what conclusion did you reach?

25 A. I was able to determine that all 11 of the

1 cartridge casings that had been submitted had, in
2 fact, been fired in this rifle.

3 Q. And the opinion that all of them had been fired
4 in that rifle, do you hold that opinion to a
5 reasonable degree of scientific certainty?

6 A. I do.

7 Q. And your opinion that the weapon, the .22 caliber
8 Marlin Glenfield 60 rifle, was functioning
9 properly upon its submission to you; do you hold
10 that opinion to a reasonable degree of scientific
11 certainty?

12 A. Yes, I do.

13 Q. All right. I would like to direct your attention
14 then to the second examination that you prepared
15 in this particular case. I want to direct your
16 attention to May of 2006; were you once again
17 asked to conduct an analysis involving that very
18 same Marlin Glenfield rifle?

19 A. Yes, I was.

20 Q. All right. This time, what was the requested
21 task or examination that was expected?

22 A. By now, two bullets, two pieces of metal that
23 looked like bullets, at any rate at that point,
24 had been recovered. I was asked, again, to
25 determine, if possible, whether those two bullets

1 had been fired from this same weapon that I had
2 already identified the cartridge casings as
3 having been fired in.

4 Q. All right. And are those the previously
5 identified exhibits, 277 and 276, which are in
6 front of you?

7 A. They are.

8 Q. All right. And they have the Crime Lab
9 designation Item FL and FK; is that correct?

10 A. That's correct.

11 Q. All right. Let's begin with a closer
12 description, if possible, of the bullet
13 fragments, or suspected bullet fragments that you
14 were asked to examine. First of all, let's begin
15 with Exhibit 276 identified as bullet FK. Tell
16 us, if you can, what the condition of that
17 particular fragment was upon its submission to
18 you for examination?

19 A. Well, the bullet in Exhibit 276 which, again, is
20 our Item FK, is probably -- or would not be
21 immediately recognizable to most people as a
22 bullet. It's in very poor condition. It doesn't
23 look like it did when it was still in the
24 cartridge.

25 ATTORNEY BUTING: Your Honor, I object and

1 move to strike that comment as to what other people
2 would think it looked like. He can give an opinion
3 as to its condition, but he can't express an opinion
4 about whether other people would have recognized it.

5 THE COURT: I think he's talking about its
6 apparent condition. I'm going to overrule the
7 objection.

8 ATTORNEY FALLON: Thank you.

9 Q. (By Attorney Fallon)~ All right. Please describe
10 further the condition of the bullet.

11 A. This is -- has been damaged greatly, no longer
12 looks like a bullet. Of course, having looked at
13 these for 35 years, it does look to me like a
14 bullet that has passed through or has struck some
15 harder object than the bullet.

16 When I examine it in the laboratory
17 initially, I do a number of things. I weigh the
18 bullet. I look at it under the microscope to
19 determine what kinds of, or if any, rifling
20 characteristics might be present on what remains
21 of this bullet.

22 I'm also interested in the bullet
23 composition. I want to -- I want to fire a
24 bullet like that from this gun, for comparison,
25 and so I'm interested in whether this is a lead

1 bullet, or whether this is a lead bullet that's
2 coated with copper, and so on. And all of those
3 things were part of what I documented and
4 recorded in the course of my examination of this
5 item, State's Exhibit 276.

6 Q. And what can you tell us about the bullet. You
7 said you wanted to select one that was similar to
8 what had been submitted to you. So I guess my
9 question is, what would you have selected or --
10 not what would you have -- what did you select
11 for purposes of making a comparison?

12 A. When I did the microscopic examination, it was
13 clear it was a coated bullet and not a lead
14 bullet. It was also clear it was a .22 caliber
15 bullet to me. Additionally, under the
16 microscope, I could see markings that were put
17 there by the rifle, in particular the barrel
18 through which it was fired.

19 Those lands and grooves that I described
20 earlier, in the bullet, leave what we refer to as
21 land and groove impressions. And in this
22 particular item, Exhibit 276, I could identify
23 under the microscope, eight remaining land and
24 groove impressions on that bullet.

25 Q. All right. Was that enough to be able to make

1 any comparisons whatsoever as to whether that
2 bullet was fired from that gun, or any other gun
3 for that matter?

4 A. The next step was to look at that under greater
5 magnification on the microscope. And the fact
6 is, on this Exhibit 276, although I had eight of
7 these land and groove impressions remaining on
8 the bullet, under greater magnification I could
9 see that I had none of the very small detail,
10 those things that make up patterns that I was
11 trying to describe earlier. None of that was
12 present, or at least not enough of it for me to
13 use to come to any conclusion about what gun
14 fired this bullet in Exhibit 276.

15 Q. All right. Now, I need you to explain something.
16 You previously described the bullets you
17 selected, the CCI bullets, as being lead bullets.
18 And then you just made some comment about not
19 lead but coated with a different substance. Can
20 you kind of explain --

21 A. Yes.

22 Q. -- so that we're not --

23 A. Yes.

24 Q. -- confused here?

25 A. Yes. Most .22 caliber bullets, with the

1 exception of .22 magnums, are actually lead
2 bullets. But many of them are coated with a very
3 fine powder of copper, or possibly a copper
4 alloy, that they actually impress into the
5 surface of the bullet. And that is the kind of
6 bullet that we have here in Exhibit 276.

7 That's important to me because I know
8 that if I'm going to compare this to the test
9 fired bullets from this gun, I want to shoot the
10 same kind of thing. So I selected, then, for
11 this second set of examinations with the bullets,
12 an ammunition that, in fact, was copper coated.

13 Q. All right. Although it was a lead bullet, but
14 the coating was not lead, the coating was copper?

15 A. Correct.

16 Q. Okay. All right. So, just so we're clear, were
17 you able to make any comparisons then with
18 respect to bullet FK, Exhibit 276?

19 A. I was able -- or it was limited to a class
20 characteristics comparison, a term I haven't used
21 yet. I knew by examining the bullet in Exhibit
22 276, that it had been fired from a gun
23 manufactured with 16 lands and grooves and a
24 right hand twist. That much information is on
25 the bullet. It's also a .22 caliber bullet.

1 This weapon is a .22 caliber bullet.
2 And in the barrel of this gun are 16 lands and
3 grooves and a right hand twist. However, I can
4 say no more than that about this bullet. And the
5 fact of the matter is, I cannot specify exactly
6 what gun this bullet was fired in, again, because
7 I don't have those small stria, those scratches
8 on the bullet surface, that I can use for that
9 kind of conclusion.

10 Q. All right. So in terms of class characteristics
11 is that a general category, or a specific
12 category, or tell us. I'm not a gun person, so
13 what do I -- what should I take from that?

14 A. It means that, based just on the class
15 characteristics on Exhibit 276, I know it was
16 fired in some gun, among a group of guns,
17 thousands of guns, if you like, tens of thousands
18 of guns, that were manufactured with 16 lands and
19 grooves and a right hand twist, and were
20 .22 caliber. And I can be no more specific than
21 that, based on what we have left on this bullet.

22 Q. All right. And do you hold that opinion to a
23 reasonable degree of scientific certainty?

24 A. I do.

25 Q. All right. Let's direct our attention, then, to

1 the remaining bullet, Item FL, Exhibit No. 277;
2 were you able to conduct an analysis of that
3 particular bullet?

4 A. I did.

5 Q. And were you able to make a determination as to
6 whether Exhibit 277, bullet designation FL, was
7 fired from the Marlin Glenfield .22 caliber rifle
8 in front of you?

9 A. Yes, I was.

10 Q. And what conclusion were you able to reach?

11 A. In this case, I was able to be more specific.
12 And, in fact, because of markings on the bullet
13 in State's Exhibit 277, I was able to conclude
14 that this bullet had been fired from this
15 specific gun.

16 Q. All right. So Exhibit 277 had been fired from
17 Exhibit 247?

18 A. Yes, that's correct.

19 Q. All right. Now, how is it that you were able to
20 make that determination?

21 A. Again, we have to refer to, or talk about what's
22 present, at high magnification, on the surface of
23 that bullet. And on this bullet I have, in fact,
24 patterns of scratches, or patterns of stria,
25 present on a number of different areas of the

1 bullet, even in the condition it's in, that I
2 could -- could relate to, that I could identify
3 with the same patterns on the test fired bullets.

4 Furthermore, the patterns that were
5 there, the markings that I see, are patterns that
6 I recognize as being more than could be expected
7 to be seen, more than we would ever see on a
8 bullet that was not fired from the same gun. It
9 has to exceed what I recognize as those -- those
10 set of markings that we expect to see on two
11 bullets not fired from the same gun.

12 So when I looked at State's Exhibit 277,
13 the pattern I saw there, the quality and quantity
14 of the pattern correlations and matchings that I
15 saw there, was enough for me to come to a
16 conclusion that, in fact, the reason they had the
17 same pattern on this bullet and my test fired
18 bullets, is because it had been fired from the
19 same gun.

20 Q. All right. Is there -- Does that mean it could
21 not have been fired from any other gun?

22 A. It does.

23 Q. The opinion that Exhibit 277, item designation
24 FL, was fired from Exhibit 247, the Marlin
25 Glenfield, Model 60, .22 caliber rifle; do you

1 hold that opinion to a reasonable degree of
2 scientific certainty?

3 A. I do.

4 Q. The opinion that it could not have been fired
5 from any other gun; do you hold that opinion to a
6 reasonable degree of scientific certainty?

7 A. I do.

8 Q. Did you prepare two brief reports and a disc
9 summarizing your findings?

10 A. The findings with regard to the bullets was on a
11 report dated May 10th of 2006. I also had taken
12 photographs of some of what I saw under the
13 microscope and had had those transferred to a
14 disc.

15 Q. All right.

16 ATTORNEY FALLON: For the record, your
17 Honor, counsel has seen them, I have had the two
18 reports marked and a disc marked to complete the
19 testimony, would offer them into evidence, and
20 tender the witness for cross-examination.

21 THE COURT: Any objection?

22 ATTORNEY BUTING: No objection.

23 THE COURT: All right. The exhibits are
24 received.

25 ATTORNEY BUTING: Give us the numbers,

1 please.

2 ATTORNEY FALLON: Certainly, 418, 419 and
3 417, the disc.

4 **CROSS-EXAMINATION**

5 BY ATTORNEY BUTING:

6 Q. Good afternoon, sir.

7 A. Good afternoon.

8 Q. Let me go back a little bit and maybe have you
9 explain to the jury in a little bit more detail a
10 few things. Okay.

11 A. Certainly.

12 Q. About your field. Now, one thing, sir, you are a
13 little bit far from the microphone. If you could
14 pull it toward you, or pull your chair up, or
15 lean forward, I think that would probably help.

16 A. Okay.

17 Q. That's much better. Thank you. You say you
18 belonged to this organization for 20 years now,
19 the Association of Firearms And Toolmark
20 Examiners; is that right?

21 A. Probably more than that, but at least 20 years.

22 Q. Okay. And that's a reputable organization, it's
23 been around a long time?

24 A. Yes, it has.

25 Q. And if you have been a member that long, I assume

1 you have kept up with -- do you get sort of a
2 regularly monthly publication?

3 A. Yes, we do.

4 Q. Do you get the AFTE Journal?

5 A. It's a quarterly journal but, yes, I do.

6 Q. Okay. And that's a journal that is -- where
7 articles are published, people in your field
8 share studies and information with other people
9 such as yourself?

10 A. That's correct.

11 Q. And I take it that to belong to that organization
12 you -- there's certain guidelines or
13 qualifications that you have to have?

14 A. Yes, there are.

15 Q. It's not just pay your money and you are in,
16 right?

17 A. No.

18 Q. Okay. And you abide by those guidelines and
19 qualifications, right?

20 A. I had to satisfy them to become a member, yes.

21 Q. Right. And you continue to abide by whatever
22 requirements are recommended, or the
23 recommendations of that organization, right?

24 A. Beyond maintaining the work that I do in the
25 field, and then paying the fee every year, there

1 are no other requirements to receive the journal.

2 Q. Okay. But you do read the literature?

3 A. Yes, I do.

4 Q. All right. And you also said that your lab, the
5 Crime Lab, is a member of ASCLD, that's
6 A-S-C-L-D, often referred to by people like you
7 as ASCLD?

8 A. I don't think I said that, but we are ASCLD lab
9 accredited.

10 Q. I thought you did say that actually, but I may be
11 wrong.

12 A. No.

13 Q. And is that true of the entire Crime Lab, all the
14 different units are A-S-C-L-D qualified?

15 A. No.

16 Q. Your unit, though, is ASCLD accredited, right?

17 A. Yes, it is.

18 Q. And in order to become accredited by that
19 organization which, again, we had some testimony
20 about it, but that's a different witness, that's
21 actually an Association of Crime Lab Directors,
22 right?

23 A. Yes.

24 Q. And they do a number of things in terms of
25 reviewing the procedures and the qualifications

1 of the people in the lab, whatever unit they are
2 accrediting, before they get -- before they give
3 out that accreditation, right?

4 A. That's correct.

5 Q. And that includes they review your protocols for
6 tests and examinations, right?

7 A. Yes, they do.

8 Q. And proficiency tests as well?

9 A. Yes.

10 Q. Do you do proficiency tests?

11 A. Yes, I do.

12 Q. What sort of proficiency tests does a firearm and
13 toolmark person do?

14 A. We do probably two a year. One of them will be a
15 firearms case, may be a set of bullets that we
16 have to determine were fired from the same gun or
17 maybe cartridge casings. We're also asked, once
18 a year, to do a proficiency test that's focused
19 on more specific toolmark kind of comparison.
20 Might be a bow cutter case. Might be a mark made
21 by a screw driver.

22 Q. Okay. So, it's not just bullets, it's also other
23 tool markings?

24 A. Yes.

25 Q. And then you also have a protocol for different

1 types of examinations that you do?

2 A. We have procedures in place that relate to how we
3 perform certain examinations.

4 Q. Okay. And one of the things that ASCLD requires,
5 and I believe the other association, the AFTE, is
6 that you make sure that you have proper
7 documentation of what you examine, right?

8 A. That's correct.

9 Q. That can include notes, right?

10 A. Yes.

11 Q. Photographs?

12 A. Yes.

13 Q. And peer review, right?

14 A. That's correct. That's an element of our
15 examination process, yes.

16 Q. Okay. And, in fact, the guidelines, I believe,
17 require that -- that your documentation be good
18 enough that another person in your absence can
19 look at it and come to the same conclusion,
20 right?

21 A. That's correct.

22 Q. And when you do these examines you actually have
23 -- you are supposed to have two people look at
24 it. You look at it, come to a conclusion, and
25 then you have another person look at it up here,

1 and come to the same conclusion?

2 A. That's correct.

3 Q. And that's part of your protocol?

4 A. Yes, it is.

5 Q. Okay. Now, when we talked about proficiency
6 tests, you are aware, I assume, of a gentleman by
7 the name of Alfred Biasotti?

8 A. Yes, I am.

9 Q. You probably have been questioned about this
10 gentleman before, haven't you?

11 A. Not specifically that I recall, no.

12 Q. Okay. Then I will be the first. He's a very
13 well-known -- he produced a very well-known study
14 in your field, correct?

15 A. Yes, he did.

16 Q. And forgive me for a moment while I get the
17 actual name of it, it's called a Statistical
18 Study of the Individual Characteristics of Fired
19 Bullets; does that sound right?

20 A. Yes, it does.

21 Q. Actually, that was a study done quite some time
22 ago, 1959, but still is relied on in your field?

23 A. Yes.

24 Q. All right. And what he concluded is, that among
25 other things, that in the real world, there's no

1 such thing as a perfect match when it comes to
2 cartridges and bullets, correct?

3 A. That's correct, if by that you mean everything
4 lines up, yes.

5 Q. Right. And in his study -- Actually, his study
6 echoed the findings of another study that found
7 only 21 to 38 percent of the marks will match up
8 on bullets fired from the very same gun; does
9 that sound right?

10 A. That sounds like an appropriate range if we're
11 talking about percent match.

12 Q. Okay. So that when you are looking at these
13 bullets and you are calling something a match,
14 you are doing so with only 21 to 38 percent of
15 those markings matching up?

16 A. If, in fact, on the particular bullets I'm
17 looking at, that may be the case that if we look
18 at percent matching, that may be that only
19 21 percent match.

20 Q. All right. And yet you could still call it a
21 match?

22 A. That's correct.

23 Q. Now, part of that is because, in your field, your
24 opinion is really what we would call subjective,
25 correct?

1 A. There are subjective elements to it. There are
2 objective qualities to the examinations and
3 conclusions as well.

4 Q. Well, let me just give you an example. You
5 mentioned in this case there were bullets with 16
6 lands and grooves, the rifle you believe had 16
7 lands and grooves, right?

8 A. That's correct.

9 Q. There's no magic number when you are looking at a
10 bullet that says you have to have 14 -- you have
11 to see 14 of those match up in order to call it a
12 match, right?

13 A. No, the number of actual groove impressions or
14 land impressions that remain on a bullet that
15 we're examining does not have to be a certain
16 number of the original number that were there.

17 Q. Okay. So you are a little bit -- you're probably
18 a little bit familiar with fingerprints for
19 instance, right?

20 A. Not really too much. In terms of identification,
21 no.

22 Q. Okay. So you are not aware of how many standards
23 they have, about how many points of similarity
24 have to match up before they can make a call?

25 A. I'm aware that they have -- or that some agencies

1 operate under the need or requirement to have a
2 certain number of points.

3 Q. Okay. But in your field there is no quantitative
4 number or guidelines that you have to follow
5 before you call something a match or not a match?

6 A. There is no required guideline. There are
7 guidelines established that have been published
8 in the literature of that same journal we have
9 been talking about.

10 Q. Okay. But it's not something that you follow?

11 A. No, that's not true.

12 Q. Well, it's not something that you -- do you have
13 a specific number that have to be -- you have to
14 get to in terms of number of lands and grooves
15 before you can call something a match?

16 A. I have a certain number of matching stria. We're
17 going to have -- I'm going to have to use
18 terminology I haven't defined yet.

19 Q. We'll define stria a little bit more later. But
20 just tell me what is it, you have a specific
21 number?

22 A. Again, there's nothing regarding how many land
23 and groove impressions must be on a bullet. The
24 only requirement is that we have a pattern of
25 markings on the bullet or the cartridge casing

1 and that they satisfy some kind of minimum
2 requirement.

3 Q. But the minimum requirement is a subjective
4 requirement. It's your opinion that there's
5 enough to call a match, right?

6 A. No, that's not correct.

7 Q. Is there a specific number you must have, you
8 know, 40 particular stria in order to call it, or
9 what?

10 A. There are -- And, in fact, Mr. Biasotti, in that
11 treatise that you named a moment ago, there are a
12 certain number of stria that have been identified
13 and that we recognize as a number, beyond which,
14 we know we will not see that amount of
15 correlation in a non-match type of comparison.

16 That's going to require a little
17 explanation probably, but the point of what I'm
18 trying to say is that Mr. Biasotti, in fact, with
19 that paper, was the one who first defined it,
20 that there are and we can talk about minimum
21 criteria of consecutive matching stria or
22 markings and treat that as a threshold, above
23 which we can be sure, statistically, that this is
24 an identification.

25 Q. Well, tell us, what is the minimum? What's the

1 number? Is there a number associated with the
2 minimum?

3 A. Yes, there is.

4 Q. What is it?

5 A. When we're talking about a three dimensional
6 stria comparison, if you look under the
7 microscope, the markings I'm looking at, as I
8 alluded to earlier, I think are not just
9 scratches, they actually have depth. They have
10 width. They have that three dimensional element
11 to it. So we're not just counting lines.

12 When I'm performing this kind of a
13 comparison, the all important question is, of
14 course, when do I know I have enough for an
15 identification. Mr. Biasotti's research,
16 followed up by any number of other three or four
17 other important papers over the last few years,
18 have defined that minimum criteria. And it's
19 available for examiners to use, if they wish, to
20 rely on it.

21 In response, what the actual number is,
22 when I'm looking at three dimensional patterns of
23 marks on bullets, or any toolmark for that
24 matter, and we're talking about stria, that if I
25 have two consecutive groups of three marks, or a

1 single run of consecutive markings that number
2 six, or more than that, of course, this is a
3 minimum conservative criteria again, then I can
4 be assured, again, based on these studies that
5 have been published in the AFTE Journal and that
6 all of these researchers have completed, I can be
7 assured that, in fact, that is not possible with
8 two bullets fired from different guns.

9 When I see that minimum criteria or one
10 more, I can be assured, based solely on that,
11 that those two bullets had to have been fired
12 from the same gun in order to observe that set of
13 matching stria.

14 Q. All right. Let me -- Jumping around a little bit
15 here, but as long as we're on this topic, tell
16 us, what was the number you found for Item FL in
17 this case?

18 A. If we look at Item FL and we look at the
19 photographs, a little more specifically later if
20 you want to, you will see one run on, I believe
21 it was groove impression number three, of
22 approximately -- not approximately -- of six
23 consecutive stria. What I was trying to remember
24 was whether there were actually seven or not.
25 But at any rate, we have at least six consecutive

1 stria. And, again, that is the minimum criteria
2 that would allow me, based solely on what I'm
3 seeing in that one groove impression, to come to
4 the conclusion that it was fired from this
5 particular gun.

6 Q. And you are stating that from your memory; is
7 that right?

8 A. Well, I have reviewed my case notes and my
9 photographs.

10 Q. Okay. I'm going to show you Exhibit 420, if you
11 could identify that for us, please.

12 A. Exhibit 420 is a worksheet that I used to
13 document the cartridge casings, or my examination
14 of the cartridge casings.

15 Q. And that worksheet has information that you fill
16 out, it's sort of a graph, or actually more like
17 a chart, and it's where you make note of a number
18 of things, right?

19 A. That's correct.

20 Q. And nowhere on this document do you indicate
21 anywhere what you just testified to to the jury,
22 is it?

23 A. That's correct.

24 Q. What it does say, though, is this particular
25 worksheet includes both -- well, let's put it up

1 on the ELMO. You can see it from the screen, I
2 believe, from where you are sitting. Actually, I
3 marked the wrong exhibit. Let me give you
4 another one.

5 (Exhibit No. 425 marked for identification.)

6 Q. Just to clarify for the jury here, look at
7 Exhibit 425 for a minute.

8 A. Okay.

9 Q. You said you did this on two different dates?

10 A. That's correct.

11 Q. One date you did the cartridges. The first one I
12 gave you, actually, was the worksheet for the
13 cartridges.

14 A. Cartridge casings, yes.

15 Q. So, let me direct your attention now to 425
16 instead, which is the worksheet from the bullets,
17 correct?

18 A. That's correct.

19 Q. Okay. Let's put that up. All right. We have
20 got Exhibit 425 up on the screen. Let me zoom
21 out a little bit so we see the whole thing. And
22 at the top there's a chart that you fill out that
23 includes some numerical types of information,
24 right?

25 A. Some of it are measurements of the bullets that I

1 made, yes.

2 Q. Okay. And this includes both Item FL and FK,
3 right?

4 A. Yes, it does.

5 Q. And for both of them you indicate .22 caliber; is
6 that right? Is that what that says?

7 A. Yes.

8 Q. It doesn't say .22 caliber long either does it?

9 A. No.

10 Q. There's a difference, right.

11 A. The dimension that you see there, the 0.22 inch,
12 is approximately the diameter of the bullet.

13 Q. Okay. Doesn't tell you whether it's a
14 .22 caliber long, .22 caliber short, or plain old
15 .22 caliber, does it?

16 A. Just tells me it's a plain old .22 caliber and
17 just that measurement does not allow me to
18 conclude whether it's a .22 long, short, long
19 rifle.

20 Q. Well, in this particular instance, with FL and
21 FK, were you able to conclude, from looking at
22 the bullet alone, whether this was a .22 caliber
23 long, short, or plain old .22 caliber?

24 A. Are we talking about FL or FK, I'm sorry.

25 Q. Let's look at FL.

1 A. Okay. FL, the other characteristic of the bullet
2 that might allow me to determine and distinguish
3 a long from a long rifle and from a short is the
4 weight of the bullet. The weight of the bullet
5 there is 19.7 grains. And the weight of the
6 bullet when --

7 Q. We're talking about this column right here,
8 right?

9 A. That's correct.

10 Q. Okay.

11 A. The weight of a long rifle bullet is generally
12 around -- it's 40 grains. There is a few
13 variations in that out there the manufacturers
14 have produced. A .22 short bullet, I honestly
15 don't recall what the weight of those are, but
16 they are much less than that, than 40 grains.
17 The 19.7 grains is clearly -- because of the
18 condition of the bullet, which I also observed, I
19 recognize I'm missing parts of the bullet. And
20 so I don't see that 40 grain weight that you
21 would expect from a .22 long rifle.

22 Q. Well, but you don't know what you have got,
23 whether it's a .22 long or not, so you don't
24 really know what the weight is supposed to be?

25 A. Based on the weight, no, I don't know.

1 Q. So, there's really nothing you can tell from this
2 bullet whether this is a .22 long or not, right?

3 A. Well, that's not true. I know it's not a .22
4 short, because if I had 20 grains of a .22 short
5 bullet I would have more of the bullet --

6 Q. Okay.

7 A. -- there than I have.

8 Q. Fair enough. Fair enough. But can you tell the
9 difference between a long and a short, just from
10 this bullet?

11 A. The difference between a long rifle and a -- or
12 I'm sorry, a long and a short, or a long rifle
13 and a short?

14 Q. Right.

15 A. There's two different things. I can't tell the
16 difference between a long rifle and a long. I
17 can tell the difference here between a long rifle
18 and a short, and a long and a short.

19 Q. All right. Well, let's not get bogged down on
20 that. As long as you talked about the weight,
21 let's talk about that. If it is a long, .22 long
22 caliber, a full bullet would be about 40 grains,
23 right?

24 A. Again, I don't recall the weight on a .22 long.

25 A .22 long rifle is 40 grains.

1 Q. Okay. And in this instance then, Item FL would
2 be about -- only about half of that, correct?

3 A. That's correct.

4 Q. And Item FK is actually about three-quarters of
5 it, right?

6 A. Yes, it is.

7 Q. So Item FK is actually more -- a larger fragment
8 than FL?

9 A. More of the original bullet is present in FK.

10 Q. Okay. Now, third column over is -- TWT means
11 twist. It's a right hand twist, both of them,
12 right?

13 A. Yes.

14 Q. The next one is lands and grooves. And it says
15 11 of 16 for the first one and 8 of 16 for the
16 second one, right?

17 A. Eleven remaining and sixteen original and eight
18 remaining, yes.

19 Q. Okay. All right. And then over by the grains,
20 it says coated, that explains the -- that
21 particular type, right?

22 A. Yes.

23 Q. And in the base construction, concave coated for
24 both?

25 A. Yes.

1 Q. And I can't read that last column; what is that?

2 A. That's an indication that I marked the container
3 in which the bullet was received, but I did not
4 mark the bullet.

5 Q. Okay. Just the container. And then down below
6 you have some handwritten notes. First part is
7 packaging, fairly routine. And then below that
8 you have got FL. It says no markings in the land
9 impression, correct?

10 A. Correct.

11 Q. That means the land portion of the barrel is
12 making no impressions on this particular bullet
13 that you can tell.

14 A. It means that, on this bullet, I have no markings
15 in the impression made by the land.

16 Q. Fine. So you are left with the grooves. And you
17 do have useful groove -- useful markings in the
18 groove impression, test to test, comparisons
19 typical of coated .22 caliber bullets, right?

20 A. Yes.

21 Q. But, again, nothing in this document records any
22 kind of minimum number that you testified about
23 earlier?

24 A. That's right.

25 Q. And the determination, let's just get back to

1 that for a moment. The whole determination of
2 whether you are seeing these little scratches or
3 stria or you are not, it requires a subjective
4 eyeball opinion, right?

5 A. Certainly requires an evaluation of what's
6 present there and the judgment about what that
7 means, yes.

8 Q. And you are looking at these like two -- is this
9 a comparison microscope with two fields?

10 A. Yes, it is.

11 Q. So you have got a test bullet in one and the
12 evidence bullet in the other?

13 A. That's correct.

14 Q. And then you are looking through this microscope
15 and you are making an eyeball comparison based on
16 your judgment, experience, and what not, right?

17 A. Exactly.

18 Q. Sort of like used to be done with hair
19 comparison, microscopic analysis; are you
20 familiar with that?

21 ATTORNEY FALLON: Objection, no foundation,
22 argumentative, and speculation.

23 Q. (By Attorney Buting)~ Well, are you familiar with
24 that field?

25 ATTORNEY FALLON: Could we have a ruling on

1 the objection before counsel starts asking more
2 questions?

3 THE COURT: Well, I'm going to sustain the
4 objection. I will let him ask the next question, if
5 he is familiar with it.

6 ATTORNEY BUTING: I meant to withdraw and
7 rephrase, is what I was trying to do.

8 Q. (By Attorney Buting)~ Are you familiar with the
9 field of hair comparison, microscopic analysis?

10 A. Familiar is one thing, I have no expertise in
11 hair comparison.

12 Q. I understand, but you are aware -- I mean you
13 have been in Crime Labs for 30 years, right?

14 A. Yes, I have.

15 Q. And you are aware that that was a field, forensic
16 field, that was offered by Crime Labs for many
17 years, right?

18 A. It was a comparison or examination that was
19 performed for a long time, yes.

20 Q. And it is no longer, right?

21 A. I'm satisfied that some laboratories may still be
22 -- are probably still performing hair
23 comparisons.

24 Q. Generally, it's been discredited, however?

25 ATTORNEY FALLON: Objection.

1 Q. (By Attorney Buting)~ If you know. If you know.

2 A. Certain elements, certain conclusions that are
3 based on a hair examination certainly are
4 discredited.

5 Q. All right.

6 A. Hair examination itself, done properly,
7 interpreted correctly, has not been discredited.

8 Q. To your knowledge. But you are not an expert in
9 that field, right?

10 A. I'm not an expert in that field.

11 Q. So, this eyeball comparison that you are making,
12 this judgment, just so we're clear, a difference
13 between objective and subjective, let's use some
14 other types of tests that your Crime Lab does.
15 DNA, for instance, would you agree that DNA is a
16 more objective test than yours?

17 A. No, I would not.

18 Q. All right. You are aware that DNA, though, the
19 test that comes up with specific numbers and
20 genetic markers, and it either matches or it
21 doesn't, right?

22 A. They produce statistics that give them
23 probabilities.

24 Q. But before you even get to that, they have to
25 determine whether something is completely

1 excluded, whether it just can't be, it doesn't
2 match, right?

3 ATTORNEY FALLON: Your Honor, I'm going to
4 interpose an objection again, the witness is not
5 trained in DNA. There is no foundation for these
6 questions.

7 THE COURT: I'm going to sustain the
8 objection.

9 Q. (By Attorney Buting)~ Is it your opinion that
10 your field of forensics is just as objective as
11 DNA; is that your opinion?

12 ATTORNEY FALLON: Objection. Same
13 objection.

14 THE COURT: Without more foundation, I
15 agree. The objection is sustained.

16 Q. (By Attorney Buting)~ Beyond this minimum number
17 that you -- or description that you have given
18 us, there's no particular number at which a
19 perfect match can be declared; is that right?

20 A. I would never declare a perfect match, because I
21 have never seen one and I don't need more than
22 the minimum criteria that have been specified in
23 the research and the literature that's been
24 published.

25 Q. And is that a specific written protocol of your

1 department in the lab?

2 A. Absolutely not.

3 Q. There is no protocol on how to -- or what's
4 required in order to make a match, is there?

5 A. That is not described in our procedures, no.

6 Q. What is described is that you have to document
7 whatever it is you are examining, right?

8 A. We're required to document our comparisons. I do
9 that with photography.

10 Q. Okay. And you also -- And you always make sure
11 there is another person who looks at the same
12 thing, so it's a peer review?

13 A. That's correct.

14 Q. Okay. Going back just a minute to some of the
15 basics of your field. This kind of testimony, or
16 this kind of analysis, has been going on for many
17 years, early in the 19th century, or something
18 like that, right?

19 A. Mid to late 19th century, I believe.

20 Q. And originally, one of the bases (sic) for it
21 was that at that time firearms were hand-forged
22 or handmade, by and large, right?

23 A. Many of them were, certainly. Certainly all of
24 them were at the beginning.

25 Q. Sure. And by doing that handmade process, there

1 were many more unique kind of markings,
2 scratches, features inside of a rifle barrel at
3 that time, right.

4 A. Probably not correct, no.

5 Q. Well, all right. Would you agree with me that
6 modern manufacturing of guns has made guns more
7 uniform from one particular gun off the line than
8 to the next, same manufacturer.

9 A. No, that's not true.

10 Q. Okay.

11 A. In terms of what I'm looking at for
12 identification, no.

13 Q. Well, let's just talk about the lands and the
14 grooves for a minute. All right. The way a
15 barrel is made these days, most often is it's
16 cast.

17 A. No.

18 Q. Is it forged?

19 A. Forging would be part of the process of creating
20 the metal blank that's used to create the barrel.

21 Q. Okay.

22 A. Forging has nothing to do with the inside of the
23 barrel and the process that creates the lands and
24 grooves inside that barrel.

25 Q. But the process that drills the barrel open,

1 hollow, is a mechanical process?

2 A. Yes, it is.

3 Q. And it's done by a machine, that same machine
4 that makes rifle number one that's coming down
5 the line, rifle number two that's coming down the
6 line, and so forth, right?

7 A. You will have the same tool used to make many,
8 many barrels.

9 Q. Okay.

10 A. You will have the same tool used to put the
11 grooves and the lands in many, many barrels.

12 Q. All right. So there are actually two tools, one
13 that bores out the -- hollows out the tube and
14 then it deliberately -- I mean it's put through
15 another machine that deliberately puts this --
16 these grooves with a twist in it?

17 A. That's correct.

18 Q. And the twist is done in order to make --
19 deliberately make the bullet spin as it's fired,
20 right?

21 A. Yes.

22 Q. And sometimes the more it spins the more accurate
23 it can be to its target?

24 A. Yes.

25 Q. Okay. The Marlin 60, would you agree is,

1 probably is, or is close to, the most popular .22
2 made in the world?

3 A. I really -- I don't know any sales figures or
4 anything. I see a lot of them and suggests to me
5 that it's very popular.

6 Q. Well, you keep -- you have data banks and data
7 bases that you rely on, right?

8 A. For some things, yes.

9 Q. Okay. And from that I assume you learn something
10 about the rifle that you are examining and
11 testing, right?

12 A. Yes.

13 Q. You are aware that the Marlin 60 has been made
14 for 40 -- since 1960, right?

15 A. I don't think I knew when they started making it.

16 Q. Okay. But it's been around for decades, would
17 you agree with that?

18 A. It has.

19 Q. And it's mass produced by Marlin and it's
20 considered a very accurate rifle.

21 A. I believe it would be, yes.

22 Q. Partly because it has those 16 lands and grooves
23 with the twist. Some rifles have much less,
24 right?

25 A. Yes.

1 Q. And so, for that reason, plus the fact that it's
2 relatively inexpensive, it's quite common; would
3 you agree with that?

4 A. Yes, I would.

5 Q. Did you examine any other Marlin 60 firearms for
6 this case?

7 A. I did not.

8 Q. I'm going to read for you a statement from the
9 AFTE, A-F-T-E, Journal, the organization that you
10 belong with. And you tell me if you agree or
11 disagree with this particular statement. Quote,
12 "Currently the interpretation of
13 individualization/identification is subjective in
14 nature, founded on scientific principles and
15 based on examiner's training and experience."

16 A. That's correct.

17 Q. Okay. Let me go back for just one minute. When
18 you talked about class, whether something is part
19 of the same class, which is what you concluded
20 the FK was?

21 A. Yes.

22 Q. There's really sort of three different levels
23 that you could come up with a similarity between
24 bullets that would be class, sub-class, or
25 individual characteristics?

1 A. Yes.

2 Q. So that when a rifle comes from the same class,
3 and certainly any Marlin 60 is the same class;
4 would you agree?

5 A. Assuming that Marlin manufactured all Marlin 60's
6 with 16 lands, grooves, and right hand twists,
7 yes.

8 Q. Okay. So that would make this Item FK could have
9 been fired by any Marlin 60?

10 A. Based on what remains on that bullet, yes.

11 Q. And as you candidly admitted, there are least
12 tens of thousands, if not millions, have been
13 made over the years?

14 A. I suspect not millions, but certainly tens of
15 thousands.

16 Q. Okay. And then the next more unique kind of
17 feature that you could find is called sub-class
18 features, right?

19 A. Yes.

20 Q. And then even more unique, or supposedly unique
21 than that, would be these individual
22 characteristics?

23 A. That's correct.

24 Q. By the way, do you know how many other, if any,
25 firearms are manufactured with 16 lands and

1 grooves and a right hand twist?

2 A. I'm familiar with one other, a .22 caliber pistol
3 manufactured by Jennings. They are no longer in
4 business, but they manufactured some .22 caliber
5 pistols with 16 lands and grooves and a right
6 hand twist, and there may be others as well.

7 Q. And Item FK, is that the sort of ammunition that
8 could also have been fired in a Jennings .22
9 caliber, or not?

10 A. Yes, it is.

11 Q. So, when you talk about class of possible
12 firearms for that bullet, you have to include not
13 just Marlin, but this whole, however many number
14 of Jennings there are, right?

15 A. That's correct.

16 Q. Okay. All right. Now, let me just go for a
17 minute to the cartridges. I'm going to show you
18 what's been marked as -- these are Exhibits 424,
19 21, 22, 23 and 24. Can you identify these?

20 ATTORNEY FALLON: Excuse me, counsel, are
21 those the cartridge photos?

22 ATTORNEY BUTING: Yes, those are all the
23 cartridge, I believe.

24 A. These are copies of photographs that I took of
25 the cartridge comparisons.

1 Q. Okay. Some of them are -- I am going to put one
2 or two of these up on the screen. Some of them
3 are just photograph of the cartridge itself,
4 unfired, and others of one of these comparisons
5 having one side one and one side the other,
6 right?

7 A. Three of them are comparisons of the test fire to
8 one of the cartridges submitted. And the fourth
9 picture is a photograph of the head of one of the
10 cartridges submitted.

11 Q. Let's start with that last one first since -- I
12 will go ahead and leave the photocopies up here
13 with you so you can refer to them as numbers.
14 That's 421?

15 A. I'm sorry. Yes, it is.

16 Q. And that's just a close up photograph of the
17 cartridge before it's fired?

18 A. No.

19 Q. After it's fired?

20 A. This is a photograph of, as I indicate there on
21 the bottom, one of the cartridge casings from
22 what we refer to as Item EI and is in State's
23 Exhibit 250. I took a picture of it just to
24 illustrate what we see when a cartridge casing
25 has been fired, that indentation you see, the

1 rectangular one at 3 o'clock, I guess --

2 Q. Sure.

3 A. -- is the firing pin impression that was created
4 by the gun that fired that cartridge casing.

5 Q. Okay. And so that little rectangular thing at 3
6 o'clock is a very distinctive marking that
7 apparently occurred when these shells were fired?

8 A. That's correct.

9 Q. And this is one of the shells, 11 shells, that
10 was given you in that box, right?

11 A. Yes.

12 Q. Okay. I don't want to belabor this too much, but
13 let's look at Exhibit 424. Is that one of these
14 where you made a comparison side by side?

15 A. Yes, it is.

16 Q. So in this one, you can kind of see the line down
17 the middle and you have got numbers or lettering
18 at the bottom that says test fire from Item DD.

19 A. That's correct.

20 Q. And that shows a very close match even to the
21 unaided -- to the layperson. One can see that
22 this marking over on the right side of the
23 picture matches up very nicely with the one on
24 the left, which is the shell that was found in
25 Item EI, right?

1 ATTORNEY FALLON: Counsel, which Exhibit is
2 this now?

3 ATTORNEY BUTING: 424.

4 ATTORNEY FALLON: Thank you.

5 A. I hope it's clear. From here, to me, it's not
6 real clear, but I will use the pointer. The
7 dividing line, that is, what separates the image
8 of my test faired cartridge casing from one of
9 the cartridge casings in Exhibit 250 here is,
10 really, in the photograph, a discontinuity from
11 the distance you are at.

12 If you could see it more closely you
13 would see there's a very fine dark line there.
14 On the right side of that line is the image of
15 the test fire, on the left side the image of one
16 of these cartridge casings. The area of interest
17 runs from approximately where the pointer is now
18 up to here.

19 And, yes, along that line, there is what
20 appears to me, of course, to be a very clear
21 correlation or agreement of detail that was
22 created by the firing pin of the rifle, the
23 Marlin Glenfield 60 rifle.

24 Q. That's fine. And that's fairly easy, I think,
25 even for myself and the jury to be able to see

1 that similarity. I want to show you now -- did I
2 mark the other ones? Do you have any bullet ones
3 up there too?

4 A. Yes, I do.

5 Q. Are they marked?

6 A. No.

7 Q. All right. Thanks.

8 (Exhibit Nos. 426, 427, 428, marked for identification.)

9 Q. I'm showing you Exhibits 426, 7, and 8, can you
10 identify those?

11 A. Exhibits 426, 427 and 428, these are all copies
12 of, again, photographs that I took of markings in
13 this case on -- that I observed during the bullet
14 comparison and, specifically, of the bullet in
15 Item 277, compared to the test fires from the
16 Glenfield Model 60.

17 Q. All right. I'm going to put one of them up on
18 the screen and you are going to have to tell us
19 what number it is on your --

20 A. That's No. 426.

21 Q. All right. Now, again, this is one of those
22 split screen ones. The one on the right is the
23 test fired bullet and the one on the left is Item
24 FL, right?

25 A. Yes.

1 Q. This is only one portion of the cylindrical kind
2 of bullet, at any rate, that you are looking at,
3 right?

4 A. Just a portion of what's remaining on that
5 bullet.

6 Q. Okay. But it's a fragment, right?

7 A. Very small portion of it, yes.

8 ATTORNEY FALLON: Excuse me, counsel, could
9 we have the witness -- now that we have that up on
10 the screen, identify which photograph goes with
11 that?

12 ATTORNEY BUTING: He did, 426. Is that
13 right?

14 THE WITNESS: Yes.

15 ATTORNEY FALLON: Okay. I'm sorry.

16 ATTORNEY BUTING: That's okay.

17 Q. (By Attorney Buting)~ You've got the pointer, I
18 don't, so I'm going to just point. Would it be
19 fair to say that the indentation, linear areas of
20 this, on either side of this, is what you call
21 the groove?

22 A. What you just pointed to -- here let me use the
23 pointer. This area here that you see defined by
24 two parallel lines, and this area here, which is
25 clearly defined by two parallel lines on this

1 side, but less obviously so here, those are the
2 land impressions as they were created by the
3 lands in the barrel.

4 Q. I see, it's the reverse here, because we've got
5 -- these are impressions?

6 A. Right.

7 Q. So on the barrel, these would actually -- the
8 flatter surfaces on the bullet is what actually
9 is the groove in the barrel; is that right?

10 A. Well, they aren't really flat, but on the bullet
11 they are raised. And they are raised because
12 they are impressions of the groove in the barrel
13 of the weapon.

14 Q. And as I recall, your notes said that the grooves
15 don't give us any particular information in this
16 case; is that what you said?

17 A. I said the land impressions don't have any
18 detail.

19 Q. Okay. And the land ones, again, are point -- are
20 which ones?

21 A. You see in the photograph the label GI No. 1, and
22 that refers to Groove Impression No. 1. I
23 labeled this one No. 1. The land impressions are
24 this area and this area, on each side of the
25 groove impressions.

1 Q. In any event, the test fired bullet on the right
2 shows quite a bit of differences in the land area
3 from the one on the left, does it not? It seems
4 to have some extra ridges or bulges sticking out
5 of some sort?

6 A. There are differences on -- between both bullets.
7 I don't know what you're referring to
8 specifically. There's a great deal of
9 differences on the bullet on the left side of the
10 photograph when you compare it to the bullet on
11 the right side of the photograph.

12 Q. A great deal of difference, right?

13 A. Absolutely, yes.

14 Q. And yet you are saying that this bullet on the
15 right, which was fired from the gun that you had
16 in front of you earlier, is a match with the
17 bullet on the left, the fragment, despite the
18 great deal of differences; is that right?

19 A. I'm saying there's enough detail there, and not
20 in this position in that photograph, but in the
21 composite of positions that we -- some of which
22 we see exhibited in other photographs, for me to
23 conclude that, yes, that bullet in my FL, Exhibit
24 277, was fired from that Marlin rifle.

25 Q. And in doing that you have to discount the

1 differences that you find on the bullet from the
2 test fire?

3 A. I have to understand them, yes.

4 Q. All right. Let's go to the next one and can you
5 tell us which exhibit that is?

6 A. Oh, your number is 427.

7 Q. Okay. 427 is on the screen now. Again, we see
8 -- show us the line on this one, from the
9 microscope, from one to the next?

10 A. It runs here. See the discontinuity,
11 particularly in this area right here, you see the
12 different colors?

13 Q. Right.

14 A. That's the dividing line that separates the image
15 of the bullet in 277 from my test fired bullet.

16 Q. And your test fired bullet, also, there's another
17 vertical line running down the line of it, the
18 center of it, right?

19 A. Yes, that's right.

20 Q. And that's not the microscope line, that's on the
21 bullet.

22 A. That's a design feature of the bullet that
23 remained in tact after firing it.

24 Q. That's not a designed feature that's on the Item
25 FL?

1 A. No.

2 Q. And, again, we see these multiple raised bumps, I
3 call them, on the right in the test fire, but we
4 don't see them on FL; is that right?

5 A. Are you talking about these?

6 Q. Yes.

7 A. Okay. Those are called cannelures. And you are
8 right, they are not, in that photograph, present
9 on the bullet in Exhibit 277.

10 Q. All right. And, finally, this is I think the
11 last photograph that you took comparing Item FL
12 with the test fired bullet. And here it looks
13 like the bullet itself is damaged, the Item FL
14 appears to be significantly damaged, in that
15 area?

16 A. We're at the edge of the useful part of Item --
17 or Exhibit 277, our Item FL bullet. And above
18 that area you see that it is impacted and just
19 been completely obliterated by the impact it made
20 with whatever it struck.

21 Q. Maybe for my benefit, again, tell me what those
22 bumps are again, cannelures?

23 A. Over here, again, on the test fire bullet, I have
24 two sets of cannelures.

25 Q. Would you spell those for the court reporter.

1 A. C-a-n-n-e-l-u-r-e-s.

2 Q. Okay. And on this one, the test fire bullet has
3 two sets of those visible?

4 A. This is the same test fire bullet we were looking
5 at before but, yes, in this photograph there are
6 two sets of them visible.

7 Q. And again, they are not at all visible on any of
8 the three photographs that you took of Item FL?

9 A. No, they are not.

10 Q. By the way, while I'm thinking of it, do you have
11 your CV up there, Item -- or Exhibit 416?

12 A. Yes, I do.

13 Q. Is there a typo on here, third from the bottom,
14 1978 to 1989, California Department of Justice?
15 The one right above it says 1981, you weren't
16 working at both the California Department of
17 Justice and -- should that be 1979?

18 A. There's clearly a typographic error there.

19 Q. And what is it supposed to be, 1979?

20 A. Should be, yes, 19 -- that refers to the -- my
21 last two years there, 1978, and it should have
22 been 19 -- should have gone to 1980 actually. I
23 don't know why it says 1989. Because in 1981 is
24 when I joined the Montana State Crime Laboratory.

25 Q. And did you go right from one job to the next or

1 were you off work for a while?

2 A. No, I left the California Laboratory, I think in
3 May of 1980. And I was -- had opened a business
4 with an acquaintance there in Sacramento that
5 eventually didn't work out. And chose then to
6 take the position in Montana in January of 1981.

7 Q. So by the time you left the California Department
8 of Justice, you had risen to the level of section
9 supervisor, right?

10 A. Criminalist 3, yes, I functioned as section
11 supervisor, yes.

12 Q. But then in your next job, you actually went sort
13 of down the ladder, when you started in Montana,
14 as just a plain old examiner, right?

15 A. They simply classified them differently.

16 Q. You weren't a section supervisor at Montana?

17 A. I was the only examiner there.

18 Q. Okay.

19 A. No one to supervise.

20 Q. Okay. And then, from there, you went to Kansas
21 City in 1988, right?

22 A. That's correct.

23 Q. This is now the third different organization you
24 have worked for, right?

25 A. At that time, yes.

1 Q. And when you left there, you were considered
2 Chief Criminalist of the toolmark section, right?

3 A. I had -- The last two years there, I had assumed
4 the supervisorial (sic) position there, which is
5 that of Chief Criminalist, yes.

6 Q. Again, there must be a typo because it says
7 7/2002 and then it says Wisconsin starts 2000,
8 which is it?

9 A. Well, no, when I left the laboratory there, I
10 left myself a month and a half or two months in
11 between before I actually started here.

12 Q. And you didn't start here as a chief head of the
13 firearms toolmark section, did you?

14 A. Again, I'm the only examiner in the firearm
15 section in the Madison laboratory. My title I
16 think is that of unit leader, for what it's
17 worth.

18 Q. You are the only firearm examiner?

19 A. In the Madison laboratory, yes.

20 Q. Well, how do you ever have anybody review your
21 work?

22 A. I do that using the photographs. And one of the
23 examiners in the Milwaukee laboratory, another of
24 the Wisconsin State Laboratories, of course,
25 reviews my photographs. And on occasion, I will

1 take cases over to him where I believe it's
2 warranted, or where he does. And that's how we
3 conduct our peer review of the examinations.

4 Q. That's how you comply with that part of your
5 protocol that says you always have an examiner --
6 two examiners look at the same thing, right?

7 A. Exactly.

8 Q. Okay. I will use the ELMO for just a minute now.
9 And when you do that, when you have that peer
10 review, you actually have -- I will just use this
11 example, 422 -- put down PC2. You have got two
12 signatures. You have got -- is this the person
13 in Milwaukee who signed off on this?

14 A. Yes, it is.

15 Q. And what's his name?

16 A. Reg Templin.

17 Q. So the first initials on 2/21/06 is yourself,
18 right?

19 A. Yes.

20 Q. And the next one below is -- on 4/13/06 is
21 Reginald Templin, T-e-m-p-l-i-n?

22 A. Yes.

23 Q. And this is the -- one of the cartridge fires,
24 test fires?

25 A. Yes, it is.

1 Q. Okay. Again, same thing with -- this is another
2 cartridge fire, this being Exhibit 423, also
3 initialed by yourself and Mr. Templin, right?

4 A. That's correct.

5 Q. And Exhibit 424, which is another cartridge fire,
6 same initials, I can't tell if it's the same date
7 that Mr. Templin signed, looks like that might be
8 a 13, 4/13/06?

9 A. Yes.

10 Q. Okay. Now, one last one from that cartridge
11 casing, again. Peer reviewed, signed by both
12 yourself and Mr. Templin, right?

13 A. Yes.

14 Q. Now, let's go to the photograph for Exhibit 426.
15 Those your initials on it, dated 5/10/06?

16 A. Yes.

17 Q. Do you see Mr. Templin's initials anywhere on
18 there?

19 A. No, they are not there.

20 Q. Is there anybody besides Mr. Templin who ever
21 reviews your work?

22 A. Occasionally, but not in this case, no.

23 Q. Okay. This, by the way, is bullet Item FL,
24 right?

25 A. Yes, it is.

1 Q. Let's look at 427, another photograph, one of the
2 ones we looked at on the screen, again, Item FL;
3 those your initials?
4 A. Yes, they are.
5 Q. Same date, 5/10/06?
6 A. Yes.
7 Q. Do you see Mr. Templin's initials anywhere on
8 here?
9 A. They are not there.
10 Q. Do you see any other firearm tool examiner's
11 initials anywhere on here?
12 A. No. Mr. Templin is the one who reviewed that
13 one, there wouldn't be anyone else.
14 Q. Do you see Item 428?
15 A. Yes.
16 Q. Also another one for Item FL; do you see your
17 initials on there?
18 A. Yes, they are.
19 Q. Do you see Mr. Templin's initials on there?
20 A. No, they are not.
21 Q. So, we have, in your documentation that you must
22 keep in order to maintain your profile --
23 protocol, no record that any other examiner,
24 besides yourself, looked at Item FL to confirm
25 whether your opinion that this bullet was fired

1 from the gun that was before you earlier, were
2 one in the same, came from the same gun, right?

3 A. The error here is that that's not where he makes
4 or records his approval, his acknowledgment that
5 he reviewed the identification via the pictures.

6 Q. Well, sir, we saw how he made very diligent
7 initials when he reviewed your opinions, your
8 subjective opinion, about the cartridges, right?

9 ATTORNEY FALLON: Objection to the
10 characterization, subjective.

11 ATTORNEY BUTING: He's giving us that,
12 certainly subjective. I'll rephrase it.

13 THE COURT: Okay.

14 Q. (By Attorney Buting)~ On each and every one of
15 the photographs that you took of the cartridge --
16 of your opinion about the cartridges, Mr. Templin
17 signed his initials, did he not?

18 A. Not at the time he reviewed the photographs.

19 Q. Well, they are on these documents, right?

20 A. That's correct.

21 Q. Do you have any documents in that file with --
22 that show the very exhibits we just showed, the
23 photographs with Mr. Templin's name -- or
24 initials for Item FL?

25 A. No, because he had not reviewed the printed copy.

1 He reviewed the computer stored copy.

2 Q. Do you have any documentation, anywhere in your
3 file, that establishes anyone else reviewed your
4 opinion, that Item FL was fired from the gun that
5 was before you?

6 A. That documentation is not in the file.

7 Q. Nowhere in your file?

8 A. That's correct.

9 Q. And so that would be a deviation from your
10 protocol, wouldn't it?

11 A. No.

12 Q. The protocol requires documentation, you told us,
13 right?

14 A. Yes.

15 Q. And documentation including peer review, right?

16 A. Correct.

17 Q. And yet on this very same bullet, Item FL, that
18 we have heard a lot of testimony about, once
19 again, we have something that indicates a
20 deviation from your protocol; is that right?

21 ATTORNEY FALLON: Argumentative,
22 mischaracterization.

23 THE COURT: Well, I'm going to allow him to
24 explain his answer. Why do you feel it's not a
25 deviation?

1 A. The protocol and the approved method that we use
2 for peer review involves my taking those pictures
3 that you saw, some of which you saw up there. I
4 copy them to a location on our server, in our
5 computer network, that is secure, of course, that
6 Reg Templin in Milwaukee has access to. He then
7 -- then I email him, I let him know that, in
8 fact, I have a case there that needs to be
9 reviewed before I can then send a report out, or
10 write the report expressing my opinions.

11 He reviews those photographs. If he
12 agrees that -- that those photographs that we
13 have been looking at, to him support my opinion
14 that that bullet was fired from that gun, or that
15 the cartridge casing was fired from that gun, he
16 then records, with the computer, that A, he has
17 reviewed it, and B, he has approved it.

18 And that, then, is the record of the
19 peer review. The initials that you see on the
20 paperwork which are in our file at the laboratory
21 in Madison, of course, reflects the other part of
22 the procedure and it is part of a review process,
23 but different from the peer review of my
24 identifications.

25 Once or twice a year, it's entirely up

1 to what Reg and I work out, he comes over to
2 Madison, he has to review a certain percentage,
3 approximately 20 percent, of all the cases I have
4 done since he was there last. And this case, the
5 cartridge casing examinations, because I did them
6 first, before he came in April, was one of those
7 case files that he reviewed.

8 As part of the procedure to prove that
9 he's reviewed the case file, he initials all the
10 paperwork there, all the supporting documentation
11 that I put in the case file. And that's why we
12 see this April 13 date on some of those
13 documents, and that's because he came over in
14 April, but the bullet examination was actually
15 performed in May.

16 Q. Okay. I think we understand what you are saying.
17 It's now March 1st, 10 months later, from the
18 Item FL opinions that you came to, right? And
19 you said that you see Mr. Templin twice a year,
20 so presumably you have seen him since April of
21 '03, right -- '06, I'm sorry. April of '06,
22 correct?

23 A. That's correct.

24 Q. Despite that, Mr. Templin has never signed off on
25 any of those exhibits we showed of the

1 photographs that comprise your opinion about Item
2 FL; isn't that right?

3 ATTORNEY FALLON: Objection,
4 mischaracterization, that's not what the witness
5 testified to. He explained the process. This is
6 asked and answered --

7 ATTORNEY BUTING: No, it's not.

8 THE COURT: I'm sensing there might be a
9 misunderstanding here between the questioner and the
10 witness. Explain again --

11 ATTORNEY BUTING: I understand what he's
12 saying.

13 Q. (By Attorney Buting)~ Of the 20 percent -- Are
14 you saying he has reviewed you -- reviewed 20
15 percent of your cases since April of '06?

16 A. Yes.

17 Q. Okay. And you are telling us that it just so
18 happens that of the files that he reviewed during
19 that time, Item FL just wasn't one of the ones
20 that he took a look at; is that right?

21 A. I choose -- From all those cases I worked since
22 he was here last, I choose that 20 percent at
23 random.

24 Q. Oh, you do.

25 A. And it is exactly the case, that this case file

1 was not, when he came over in October, of one of
2 those that I chose.

3 Q. Okay. So you choose the 20 percent?

4 A. I do.

5 Q. And so you come here to this jury today, though,
6 with no documentation of any sort that
7 establishes Mr. Templin has ever reviewed your
8 opinion about Item FL?

9 A. I came here today with -- able to tell you that
10 the procedure that we abide by requires, before
11 this report is approved by a supervisor and
12 allowed to leave the laboratory --

13 ATTORNEY BUTING: All right. Your Honor --

14 A. There has to have been --

15 ATTORNEY BUTING: -- he is not responsive.

16 A. -- a review by Reg Templin.

17 THE COURT: No, it is responsive.

18 ATTORNEY BUTING: Okay.

19 THE COURT: I'm going to allow it.

20 Q. (By Attorney Buting)~ Go ahead.

21 A. There has to have been, before this report is
22 allowed out of there, proof to the supervisor
23 that this case has been reviewed, that this
24 report and my conclusions have been reviewed by
25 Reg Templin, or someone else over in the

1 Milwaukee Laboratory, or this report doesn't get
2 out.

3 The fact that they even saw this report,
4 anybody saw this report is, in fact, proof that
5 Reg saw my photographs, agreed with my
6 conclusions, approved with the review process,
7 acknowledged that those conclusions were correct
8 in his mind, and the report then went out.

9 Q. Okay. And that is your assumption because of the
10 usual way in which reports get approved, right?

11 A. Well, it's not an assumption, it's what I know
12 happened.

13 Q. But you don't have any documentation in the file
14 that confirms that, do you?

15 A. I do have documentation on the computer that
16 could only have been created by him.

17 Q. And you don't have it with you?

18 A. I do not, that's correct.

19 Q. All right.

20 ATTORNEY BUTING: Thank you. That's all I
21 have.

22 THE COURT: Members of the jury, let's take
23 a stretch break before we go back for redirect.
24 Since this is going to be the last witness today,
25 I'm not sending you out for an afternoon break.

1 (Brief stretch break taken.)

2 THE COURT: Mr. Fallon, any redirect?

3 ATTORNEY FALLON: Yes, just a couple
4 questions, thank you, Judge.

5 **REDIRECT EXAMINATION**

6 BY ATTORNEY FALLON:

7 Q. I'm going to ask my colleague to see if we can
8 pull up exhibit -- Well, before we do that, you
9 indicated in cross-examination that there are
10 class characteristics, sub-class characteristics,
11 and individual characteristics, as I understand
12 it; is that correct?

13 A. Yes.

14 Q. All right. Now, with respect to Item FK, I
15 believe your testimony was there were general or
16 class characteristics that were still present on
17 Item FK?

18 A. Yes.

19 Q. Were there sufficient sub-class features or
20 sufficient individual characteristics that you
21 might have been able to rely upon to attempt any
22 identification or comparison?

23 A. On that Item FK, your 276, there were simply not
24 enough of the individual characteristics. I'm
25 not concerned with sub-class characteristics,

1 particularly in this examination. There were not
2 enough of the individual characteristics, some of
3 those little markings that we saw on some of the
4 photographs, on that item, to allow me to come to
5 any specific conclusion about the gun that fired
6 that bullet.

7 Q. All right. Now, I had a couple of questions --
8 There we go. You were asked questions about Item
9 426, Groove Impression No. 1. And you used the
10 words that "between the test fired bullet and the
11 sample bullet" there were, I think you said, "a
12 great deal of difference". First of all, tell us
13 what you mean by that.

14 A. Sure. Well, what we have to understand is
15 there's always differences. The test fired
16 bullets, when I compare those, I expect to see
17 differences. You cannot fire two bullets from
18 any gun and expect to see what we have maybe
19 heard referred to as a perfect match. Those
20 simply just don't exist.

21 What's critical is to be able to
22 understand when the difference you see are, in
23 fact, significant. Do I have to worry about this
24 difference, what I think I described as a
25 cannellure, this set of markings, or this set of

1 depressions that you see vertically over here.
2 Clearly that's a difference, a very obvious
3 difference to everyone.

4 Does it mean anything? It means
5 absolutely nothing. That's a manufacturer's
6 marking that's put on there, has nothing to do
7 with the gun it was fired in. It's not
8 obliterated by firing it through the barrel of
9 the gun. I don't even care whether it's there or
10 not. Clearly, it plays no role. That's an
11 example of the difference, it plays no role, has
12 no influence whatsoever in my evaluating those
13 markings on the bullet to determine whether it
14 was fired from a gun.

15 Other differences, differences in the
16 color here, they may have started out the same
17 color. Differences in color don't mean a thing.
18 What I'm interested in, so long as all of the
19 class characteristics are the same, what is
20 absolutely required of me, is that I recognize
21 what markings we do have here that are
22 individual, that have some significance because
23 they relate to the manufacturing process that
24 created the barrel from which this bullet was
25 fired. I have to know that they are individual,

1 individual or unique, to that particular barrel.
2 That's not an issue in this case either.

3 The other element of this is related to
4 markings that, from where you are sitting I
5 suspect you can't see, I know I can't see them
6 clearly from here. They are in this area right
7 here. And this is the only place in this
8 photograph where I have individual detail that
9 I'm trying to take a picture of to show you the
10 kind of thing I'm seeing under the microscope.
11 This isn't everything I saw under the microscope.
12 This is just an example of what I saw.

13 And I will tell you that in Groove
14 Impression No. 1, that we have some correlation.
15 We have some matching of stria in this location.
16 And, in fact, in this location, however, there is
17 not enough stria there for an identification. If
18 this is all I had on this bullet, I would have
19 had the same conclusion I had with the other
20 bullet here, because that wouldn't be enough. Of
21 course, it isn't all I had.

22 With regard to this photograph, though,
23 the usefulness of this area that I have labeled
24 DI No. 1, was that it gave me a reference point.
25 I have got all this stuff you see on these

1 bullets. I need to be comparing different parts
2 of the bullets -- of one bullet to different
3 parts of the other bullet. It's kind of nice to
4 have a place to start.

5 And there are a pair of stria there that
6 I had observed on my test fires, that when I got
7 done looking at my test fires, I knew I was going
8 to look for those on the bullet and, frankly, see
9 if I got lucky. And they were on the bullet that
10 was recovered in Exhibit 277. And the fact of
11 the matter is, they were there. That's what this
12 photograph exhibits.

13 This is part of the process, but it is
14 not the whole process. And this isn't everything
15 that lead me to the conclusion that this bullet
16 here was fired from that Marlin rifle.

17 Q. So that photograph is an example of what part of
18 the overall analysis?

19 A. It's one element of the examination.

20 Q. All right. Now, those markings, those stria that
21 you are talking about, are those the things that
22 occur during the manufacturing process that
23 actually leaves and makes firearms weapons
24 identifications possible?

25 A. These stria are a result of the manufacturing

1 process.

2 Q. All right. One second. Can you elaborate on
3 that manufacturing process, I know you talked a
4 little bit about it. But now that it's come up
5 here on cross-examination and those markings, how
6 are those markings -- how did they assist you, as
7 the examiner, in making that determination?

8 A. When I'm trying to determine whether a bullet was
9 fired from a gun, it all starts with
10 understanding what the manufacturer is doing to
11 produce that barrel. There are, unquestionably,
12 methods of creating barrels, putting grooves in
13 barrels, that will produce markings that
14 reproduce from barrel to barrel. And, clearly,
15 if you can't recognize it, I can't recognize
16 those when I'm looking at bullets, then there's
17 no way I can come to any conclusions about that.

18 Any firearms examiner has to bring to
19 the examination an understanding of how that gun
20 barrel was made and what creates these markings
21 we see on the bullets. With Marlin, I can tell
22 you exactly how they made that barrel. And
23 because I know what they did, what machining
24 processes they did, or applied to that barrel to
25 create the grooves in the barrel, I also know

1 that the defects, those microscopic defects that
2 were left in the barrel, after that process was
3 done, are going to create these markings on the
4 bullet and they are going to be unique to that
5 barrel.

6 So that's the first step in the process.
7 And I say, looking at and having this gun in
8 front of me, that what I'm looking at that's
9 going to be created by the barrel of the gun, is
10 that unique to that gun. In this case I can.

11 The next step, and the other thing that
12 requires experience and training in the knowledge
13 that a firearm examiner brings to an examination,
14 is an awareness that when we have those markings,
15 you know, I may have 150 of these tiny little
16 scratches and stria scattered around the surface
17 of a bullet. And, clearly, some of them are
18 going to line up. We expect that randomly, if I
19 have two bullets that have been fired from
20 separate guns, obviously, some of these are going
21 to line up. So there's got to be more than just
22 finding lines that line up.

23 And there is, of course. I have to be
24 aware of, part of my background has to have
25 looked at hundreds, or probably thousands by now,

1 of non-matched situations where I'm looking at
2 bullets that I know were not fired from the same
3 gun, trying to force a match, but recognizing
4 what's the -- what kind of agreement am I going
5 to see in a non-matched situation. And then
6 demanding that when I look at something like
7 this, that I have more than that, to come to an
8 identification. That is also critical for a
9 firearms and toolmark examiner.

10 And, finally, we talked about
11 consecutive matching stria a little bit. I
12 didn't get into it in a lot of detail. When we
13 look at our matching lines, there's a number of
14 different ways to evaluate them. I think counsel
15 brought up, from I think Mr. Biasotti's paper,
16 that we might find as much as 38 percent lines
17 matching on a comparison and -- on two bullets
18 that we know were fired from the same gun.

19 Is that significant? Can I look at two
20 bullets, count all the lines and see if I've got
21 38 percent, and if I have 40 percent say, oh,
22 those were fired from the same gun. Not at all.
23 The percent matching is not a good criteria for
24 judging whether a bullet was fired from the same
25 gun. We don't use that.

1 What we have found, because -- and
2 Mr. Biasotti's study that counsel quoted over
3 there, started this all up back in 1959. What we
4 have been able to define and quantify -- I can
5 provide some numbers for you if you like -- is
6 what about matching lines is significant to the
7 examiner when he is trying to make that
8 conclusion.

9 Q. If I can stop you there for a second. These
10 matching lines, those are produced in the
11 manufacturing process?

12 A. These are produced -- they are a result of
13 defects in the barrel.

14 Q. All right.

15 A. These defects create these stria, these lines, if
16 you like, on the surface of the bullet, or on the
17 cartridge casings, as the case may be.

18 Q. And that's how -- that is what they use to make
19 the identification?

20 A. Exactly. And if you could look more closely at
21 this --

22 Q. If I could interrupt you --

23 A. I'm sorry.

24 Q. -- and ask you a couple questions to conclude,
25 then. I think it's important that we make one

1 point that may not be as abundantly obvious as it
2 should be. But when you test fire a bullet in
3 the laboratory, what are the conditions under
4 which that bullet is test fired?

5 A. I want a bullet that has not been damaged. I
6 want a bullet on which the only markings I see
7 were created by the barrel of the gun from which
8 I fired it.

9 And to accomplish that in the
10 laboratory, I fire it into water. I have this
11 big old 9 foot X 2 1/2 foot X 4 foot deep water
12 tank and a port on one end of it. And I fire the
13 bullet into the water. If the water is
14 sufficient to slow it down, it drops to the
15 bottom and then I recover it, from the bottom of
16 the tank. And I know, then, that I have a bullet
17 that's only been marked by the barrel of the gun.

18 Q. All right. Now, is that the way you normally
19 receive a sample from the field?

20 A. Of course not, no.

21 Q. And so that the fact that there may appear to be
22 differences, could it simply be the result of the
23 quality of what is submitted from having been
24 shot in less than ideal situations, compared to
25 what you are doing in the laboratory when you

1 test fire a bullet?

2 A. Almost any bullet I have ever seen recovered from
3 a criminal investigation has struck something.
4 It has struck a shooting victim, it's struck a
5 wall, it's passed through a wall, whatever the
6 case may be. And as you can imagine, this is a
7 lead bullet, even a copper jacketed bullet, they
8 get damaged, broken up into pieces.

9 The kind of damage we saw on that bullet
10 is just very, very common. And so, I'm not
11 concerned about those kinds of differences. They
12 don't matter. What I'm concerned about is
13 whether this detail, this individual
14 characteristics, these stria, have they been
15 obliterated or not by its passage through a wall,
16 or by it's having struck a shooting victim. And,
17 of course, I determine that by examination under
18 the microscope.

19 ATTORNEY FALLON: Nothing else.

20 THE COURT: Mr. Buting, anything else?

21 ATTORNEY BUTING: Yes.

22 **RE CROSS-EXAMINATION**

23 BY ATTORNEY BUTING:

24 Q. All right. It's the same exhibit, but what was
25 the number? Do you have it in front of you?

1 A. Oh.

2 Q. This is groove impression?

3 A. I don't have them anymore.

4 ATTORNEY FALLON: It's 426, counsel.

5 Q. (By Attorney Buting)~ 426 is up there. One thing
6 I just want to make clear, because I don't know
7 that it's clear, on the record, to the jury.

8 These -- What appear are lineal indentations or
9 rows on these bullets are the lands, right?

10 A. The two you just pointed at are land impressions.

11 Q. Okay. Land impressions. And the general
12 impressions that you get here, you are going to
13 get on any rifle that has 16 grooves and lands
14 with a right hand twist, right?

15 A. The characteristics of that, the width of those
16 impressions, would be characteristic of what you
17 would get from a 16 land and groove manufactured
18 barrel.

19 Q. Okay. So, the similarities in this exhibit with
20 these -- on these two sides, of having these rows
21 or lands impressions, would be something that
22 would just be considered a class characteristic?

23 A. Exactly.

24 Q. That would be common with any Marlin 60, or even
25 the Jennings pistol manufacturer, right?

1 A. That's correct.

2 Q. What your opinion is based on are these smaller
3 scratches, or stria, in the groove area, right?

4 A. In this particular case, they happen to be in the
5 groove impression, that's correct.

6 Q. Right. And in your redirect testimony, you said
7 that on this photograph, really, the only area
8 that to you demonstrated enough individual
9 characteristics on this whole photograph, is this
10 central area right here, which would be just to
11 the left of where it says GI No. 1; is that
12 right?

13 A. Only in Groove Impression No. 1, in this
14 photograph.

15 Q. In this photograph, correct. So it's your
16 opinion --

17 ATTORNEY BUTING: Zoom in on that once.

18 Q. (By Attorney Buting)~ So, in your opinion, those
19 two halves are so similar, in this instance, that
20 you are able to consider this as one of your
21 features that make this bullet unique to that
22 rifle that was before you earlier?

23 A. No, that's not what I said.

24 Q. Well, okay, let me ask it this way. Your opinion
25 is that those two sides match?

1 A. Again, I would not use that term for this
2 particular groove impression, no.

3 Q. Well, this one you thought was so unique, or so
4 similar that it was a reference point, right?

5 A. It was similar enough to be a reference point,
6 and that's why I took the photograph of it, yes.

7 Q. Okay. And so we rely on your opinion then, that
8 both sides of this photograph, in that area,
9 match?

10 A. Again, I would not say that. That's not my
11 description of this.

12 Q. Similar. What's the word you want to use?

13 A. What I would say is that in this area I have this
14 pair of stria that were easy to see, and that I
15 could look for and use as a reference point. I
16 was also very clear that, in fact, there is not
17 enough other stria -- and two is not enough -- to
18 support the conclusion that we have an
19 identification here. I had to rely on other
20 detail that -- some of which I tried to
21 photograph in the other photographs.

22 Q. None of which can be quantitated. You can't just
23 look at that and say, you know, quantitatively,
24 these match. Instead, it depends on your
25 subjective opinion to this jury that those two

1 sides match -- or I'm sorry, not match -- similar
2 enough to consider individual?

3 A. With regard to this groove impression, there is
4 quantitatively not enough information to conclude
5 an identification. That information, that more
6 complete quantitative information is present in
7 other areas on the bullet.

8 Q. But in each one of those instances, it is an
9 eyeball subjective conclusion on your part, about
10 whether those are similar -- those two strias are
11 similar or not?

12 A. I have no other way of evaluating it other than
13 looking at it through the microscope, that's
14 correct.

15 ATTORNEY BUTING: All right. Thank you.
16 That's all I have.

17 THE COURT: All right. Mr. Fallon?

18 ATTORNEY FALLON: Nothing.

19 THE COURT: Very well. The witness is
20 excused. Members of the jury, that is going to
21 conclude our session today. I did notify the bus
22 line that they should stop early today. Hopefully
23 they are here already. If they aren't, they will be
24 here shortly.

25 I will remind you again not to discuss

1 the case among yourselves or with anyone else,
2 and not be exposed to any news media accounts of
3 this case. We'll see you at the normal time
4 tomorrow morning.

5 (Jury not present.)

6 THE COURT: You may be seated. Counsel,
7 are there any exhibits that either party wishes to
8 address at this time?

9 ATTORNEY BUTING: I would move -- I would
10 move in, I think all of the exhibits that I
11 introduced, which is 420, through 428.

12 ATTORNEY FALLON: I believe 420 was the one
13 that was mismarked and never really discussed. That
14 was the worksheet on the cartridges. So I'm not
15 sure it has any particular relevance. And in terms
16 of the photograph, or the black and white copies --
17 Well, all right, I suppose we might as well move
18 them in. I was going to say the disc is a much more
19 representative. The CD ROM has all seven
20 photographs that were brought for exemplary purposes
21 and identified as Groove Impression 1, 3, and 6, so.

22 ATTORNEY BUTING: Sure. I have no
23 objection to that. The black and white simply give
24 us a frame of reference on the record from which one
25 is which.

1 THE COURT: So, is somebody going to
2 provide for the record a disc that identifies them
3 by the exhibit number they were given?

4 ATTORNEY STRANG: 417.

5 THE COURT: We have that?

6 THE CLERK: Yeah, 417.

7 THE COURT: Very well.

8 ATTORNEY BUTING: It doesn't identify each
9 individual ones inside. When you open it up, it
10 doesn't have exhibit numbers on it, but these black
11 and white ones will correspond, I think, enough that
12 you can figure it out.

13 THE COURT: Fair enough. What about the
14 420, the one that was --

15 ATTORNEY BUTING: I will withdraw 420. We
16 didn't get into. It was mismarked, actually.

17 THE COURT: Withdraw or simply not offer it
18 for admission, two different things. If you
19 withdraw it, I'm going to give it back to you. All
20 right.

21 ATTORNEY BUTING: Yeah, let's take it back.

22 THE COURT: 420 is withdrawn?

23 ATTORNEY FALLON: That's fine.

24 THE COURT: Are there any other exhibits
25 that need action?

1 THE CLERK: Do you want me to keep a copy
2 of it, that it was marked or doesn't it matter?
3 Normally when it's withdrawn, I always keep a copy
4 of it.

5 THE COURT: Keep a copy.

6 ATTORNEY FALLON: I was just wondering if
7 maybe tomorrow we could get together with the Clerk
8 and see if we can have an overall accounting, see
9 where we are on the exhibit score card.

10 THE COURT: At the beginning of the day or
11 the end?

12 ATTORNEY FALLON: Probably at the end.

13 THE COURT: At the end, when the jury is
14 gone. All right. We'll do that. We'll see you
15 tomorrow morning.

16 ATTORNEY FALLON: Thank you.

17 ATTORNEY BUTING: Do you have 425 up there?

18 THE CLERK: Yes. I'm going to make a copy
19 of this one that's withdrawn. And then I will give
20 it back to you.

21 ATTORNEY BUTING: Okay.

22 (Proceedings concluded.)

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1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 21st day of November, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 15

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** MARCH 2, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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(Jury not present.)

At this time the Court calls State of Wisconsin vs. Steven Avery, Case No. 05 CF 381. We're here this morning for a continuation of the trial in this matter, outside the presence of the jury at this time. Will the parties state their appearances for the record, please.

ATTORNEY KRATZ: Good morning, Judge. The State appears by Calumet County District Attorney, Ken Kratz, Assistant Attorney General Tom Fallon, Assistant District Attorney Norm Gahn, all appearing as special prosecutors.

ATTORNEY STRANG: And good morning. At this table is Steven Avery and Jerome Buting and Dean Strang.

THE COURT: All right. Is there a matter the parties wish to take up before we bring in the jurors?

ATTORNEY FALLON: I don't think we have anything other than previously.

THE COURT: Very well. At this time, then, we'll bring in the jury.

(Jury present.)

THE COURT: You may be seated. And, Mr. Fallon, you may call the State's first witness

1 today.

2 ATTORNEY FALLON: Thank you. The State
3 would call Mr. Kenneth Olson to the stand.

4 **KENNETH B. OLSON**, called as a witness
5 herein, having been first duly sworn, was
6 examined and testified as follows:

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

9 THE WITNESS: Kenneth B. Olson, O-l-s-o-n.

10 **DIRECT EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q. What do you do for a living?

13 A. I'm a forensic scientist at the State Crime
14 Laboratory in Madison. My main duties are as a
15 trace evidence examiner. And trace evidence
16 includes paint, glass, fibers, explosives,
17 metals, anything that needs chemical
18 identification that doesn't fit into either
19 toxicology or drug analysis.

20 I'm also involved in our Field
21 Response Program, going to crime scenes. And I'm
22 also a bloodstain pattern examiner.

23 Q. All right. And how long have you been employed
24 at the Wisconsin State Crime Lab?

25 A. Almost 27 years.

1 Q. And during that particular time, how long have
2 you been doing or involved in the field of trace
3 evidence analysis?

4 A. That's been my main duty since I was hired at the
5 laboratory.

6 Q. And how long have you been involved in field
7 response operations?

8 A. I have been involved in field response since I
9 have been employed at the laboratory, also.

10 Q. All right. Are you currently a member of a Field
11 Response Team?

12 A. I'm no longer actively on call, but I will assist
13 if they need help at crime scenes.

14 Q. All right. How are you involved in this case,
15 Mr. Olson?

16 A. I was asked to examine certain charred items that
17 was recovered from the Avery property; items that
18 were recovered from a burning barrel and then
19 some charred skull fragments.

20 Q. And why are you here today?

21 A. I'm here to explain the results of my
22 examination.

23 Q. All right. First of all, let's find out a little
24 bit about yourself, please. Can you tell us what
25 your educational background is.

1 A. I have a bachelors of science degree, with a
2 major in chemistry from the University of
3 Wisconsin at Superior.

4 Q. When did you receive that degree?

5 A. In June of 1980.

6 Q. And have you pursued any post-graduate studies of
7 any nature?

8 A. I attended a few courses in business management.

9 Q. All right. As a member of the trace evidence
10 unit, how many individuals are there in that
11 particular unit?

12 A. At the Madison laboratory there are two
13 scientists, myself and my colleague.

14 Q. All right. And as a member of that particular
15 unit, have you attended trainings during the past
16 27 years?

17 A. Yes. When I was hired, I went through an
18 extensive on-the-job training in the different
19 areas that -- in the materials that I analyze.
20 And since being employed at the laboratory, I
21 have attended numerous training seminars and
22 courses in the area of trace evidence.

23 Q. And how often do you attend these types of
24 courses?

25 A. It varies. I suppose it averages once a year.

1 Q. All right. And with respect to your training and
2 experience, have you received any specialized
3 training which assisted you in terms of
4 performing any of the examinations in this
5 particular case?

6 A. In the area of elemental analysis, I have had
7 training using the scanning electron microscope
8 with an energy dispersive x-ray analyzer. And
9 that instrument is used for identifying different
10 elements.

11 Q. And when we're saying elements, can you give us
12 an example or an idea of what kind of elements
13 that you are looking at with this particular
14 instrument?

15 A. Well, we can examine approximately 70 different
16 elements. They include carbon, oxygen, nitrogen,
17 iron, lead, titanium, magnesium, just a broad
18 spectrum of elements.

19 Q. And what are some of the objects and items that
20 you are routinely called upon to examine in your
21 trace evidence unit?

22 A. As far as elemental analysis?

23 Q. Sure.

24 A. I routinely analyze paint samples, using a scan
25 electron microscope energy dispersive x-ray,

1 SEMEDX for short. Use it for glass samples,
2 unknown powders, explosives and questioned
3 metals.

4 Q. All right. Have you testified in courts of law
5 during the past 27 years you have been with the
6 Crime Lab?

7 A. Yes, I have.

8 Q. And approximately, do you have an estimate as to
9 how many times you have been called to testify in
10 cases?

11 A. Approximately 165 times.

12 Q. And have you -- During those times, have you been
13 called upon to express or render expert opinions
14 regarding your findings?

15 A. Yes, I have.

16 Q. And of those 165 times, do you have an idea as to
17 approximately how many of them were trace metal
18 or trace evidence related testimony?

19 A. The majority of my testimony has been in the area
20 of trace evidence. And it's well over 100 times
21 I testified in trace evidence.

22 Q. When did you first become involved in this case,
23 Mr. Olson?

24 A. I first became involved in December of 2005. I
25 was given some items from a burning barrel to

1 examine.

2 Q. And did you examine the contents of a barrel?

3 A. Yes, I did.

4 Q. All right. And what did you find in your
5 examination of the barrel?

6 A. The material that was submitted to me were
7 charred items and in there was a charred portion
8 of a Motorola cellphone, a charred Canon
9 PowerShot A310 camera, and assorted other
10 electronic components.

11 Q. Now, is your laboratory capable of extracting
12 data from those types of items, or not?

13 A. No, I was just told to examine them to see if I
14 could give any information as to what those items
15 might be.

16 Q. What other -- Does your particular trace unit
17 have a supply of products on hand to assist you
18 in attempting to identify severely burned items
19 such as this?

20 A. No, we don't.

21 Q. As a result of which, did you make any
22 recommendations with respect to your initial
23 findings?

24 A. I reported what I found in that charred debris to
25 Investigator Tom Fassbender with DCI.

1 Q. All right. In addition to those items, what
2 other charred debris were you asked to examine as
3 part of this case?

4 A. I was asked to examine some charred skull
5 fragments that had a defect in them that was
6 consistent with high energy projectile.

7 Q. All right. And, first of all, I would like to
8 direct your attention to Exhibit -- Exhibit 391.
9 And I'm going to hand you a laser pointer. Do
10 you recognize Exhibit 391, in particular the item
11 on the right?

12 A. Yes, I do.

13 Q. All right. And what is that?

14 A. Exhibit 391 is a photograph of that charred skull
15 fragment that I examined.

16 Q. All right.

17 A. And the defect, or the hole in the skull, is this
18 area right up in here.

19 Q. All right. And as part of your analysis, do you
20 routinely assign an item number or a Crime Lab
21 identification number to assist you in working
22 with these items?

23 A. Yes, we do.

24 Q. And what item designation was Exhibit 391 given?

25 A. Exhibit 391 was item EJ.

1 Q. All right. I'm going to have Exhibit 392
2 displayed. All right. And do you recognize that
3 item?

4 A. Yes, I do.

5 Q. And what is Exhibit 392?

6 A. Exhibit 392 is the other side of that charred
7 skull fragment. This would be the external
8 surface. And the defect or the hole in the skull
9 is up in this area right here.

10 Q. Now, I see that there is an arrow shaped marker
11 depicted on this outer view of Exhibit 392; do
12 you know what that is?

13 A. Yes, I do.

14 Q. And what is that?

15 A. The triangular shaped marker in Exhibit 392 is a
16 little piece of copper tape that I made into a
17 point of an arrow so it will help me locate the
18 area on the bone that I need to examine with the
19 microscope and to do my elemental analysis.

20 Q. When did you receive these items?

21 A. These items were submitted to the laboratory on
22 February 15th, 2006. And I examined them --
23 started examining them on February 16, 2006.

24 Q. Describe for us, if you will, how item EJ
25 appeared when you first accepted and began

1 working on it?

2 A. Item EJ, Exhibit 392, appears very similar when I
3 examined it. It's a charred skull fragment that
4 had been, obviously, in a fire.

5 Q. All right. And how is it packaged, tell us about
6 the appearance of the item in its packaging?

7 A. This item, item EJ, was one of two items that
8 were submitted in the laboratory in sealed
9 plastic bags that were received in a sealed box.

10 Q. All right. And how were they labeled; did that
11 assist you in performing the requested
12 examination?

13 A. This item, which was the one I examined, there
14 were three bags in item EJ. This one was
15 identified as a charred cranial fragment with a
16 entrance defect. And that's what I concentrated
17 my examination on.

18 Q. All right. And what about the other bags that
19 were part of the EJ designation; were they
20 subject to examination?

21 A. No, those were labeled as cranial refits and they
22 didn't have any defects. And I was more
23 interested in looking at the hole in that item.

24 Q. All right. Now, you mentioned there was one
25 other item in addition to EJ; what item was that?

1 A. That was item EK.

2 Q. All right. Did you conduct any examinations of
3 item EK?

4 A. No, I did not.

5 Q. And why did you not conduct any examinations?

6 A. The bag, that item EK, was labeled as cranial
7 bone fragments, dental fragments, nothing that
8 had a defect or hole that I would be interested
9 in.

10 Q. Now, with respect to item EJ, can you tell us,
11 specifically, using the laser pointer, what part
12 of that item did you examine and why did you
13 examine it?

14 A. I examined this area right up in here, is where I
15 concentrated most of my analysis. And through my
16 training and experience, that bullets, when they
17 go through bone or hard objects, if they are a
18 lead bullet, which most bullets are, you can
19 sometimes get a --

20 ATTORNEY BUTING: Objection, your Honor, I
21 don't know that he's -- this is a trace chemist, I
22 don't know that he is qualified to be talking about
23 bullets and what they do and don't do.

24 ATTORNEY FALLON: I will rephrase the
25 question.

1 THE COURT: Very well.

2 Q. (By Attorney Fallon)~ Were there specific -- Was
3 there specific information that you had with
4 respect to the condition of the defect that you
5 have identified, that caused you to examine it
6 more closely?

7 A. Yes, this defect is consistent with a high energy
8 projectile.

9 Q. I understand, but my question is, what,
10 specifically, did you -- were you -- why were you
11 asked to examine -- I realize it has a defect,
12 but what other information did you have to assist
13 you that caused you to examine that specific
14 crescent shape there?

15 ATTORNEY BUTING: Move to strike the last
16 answer as well, your Honor.

17 THE COURT: You mean the answer about
18 the --

19 ATTORNEY BUTING: The answer that was not
20 responsive to Mr. Fallon's question about high
21 energy projectiles.

22 ATTORNEY FALLON: That's not his objection
23 and we're rephrasing the question.

24 ATTORNEY BUTING: I move to strike it.

25 THE COURT: I think he's moving to strike

1 the answer that came after his objection, if I'm not
2 mistaken.

3 ATTORNEY BUTING: Yes.

4 THE COURT: The Court will strike that
5 answer as nonresponsive, which I think Mr. Fallon
6 recognized by rephrasing his question.

7 ATTORNEY BUTING: Yes.

8 THE COURT: Go ahead, Mr. Fallon.

9 Q. (By Attorney Fallon)~ Rephrasing the question,
10 Mr. Olson, what additional information did you --
11 Well, let's strike it this way. Did you have any
12 x-rays that you examined before conducting this
13 examination of item EJ?

14 A. No, I didn't.

15 Q. All right. But at that particular point -- Let's
16 get at it this way. What did you find when you
17 looked at the crescent shape that you have
18 identified there, the defect area?

19 A. When I analyzed that area for elemental analysis,
20 I detected the presence of lead.

21 Q. Okay. We'll come back to that in a moment. In
22 addition to item EJ, were you asked to examine
23 any other cranial fragments?

24 A. Yes, I was.

25 Q. All right. And did you obtain some cranial

1 fragments?

2 A. Yes, I did.

3 Q. And from whom did you obtain those fragments.

4 A. I obtained some more cranial fragments from
5 Dr. Leslie Eisenberg.

6 Q. And approximately when did you obtain additional
7 cranial fragments?

8 A. On November 17th, 2006.

9 Q. And when did you begin your analysis of these
10 additional fragments?

11 A. I started examining those cranial fragments on
12 November 21st of 2006.

13 Q. All right. I'm going to have Special Agent
14 Fassbender hand you some photographs. Beginning
15 with the top exhibit, I believe it is designated
16 Exhibit 429; is that correct?

17 A. That's correct.

18 Q. Do you recognize that exhibit?

19 A. Yes, I do.

20 Q. What is Exhibit 429?

21 A. Exhibit 429 is a photograph of item KQ, the
22 cranial fragment with the entrance defect that I
23 received from Dr. Leslie Eisenberg.

24 Q. All right. And directing your attention, then,
25 to the screen, is that the very same exhibit that

1 you are holding in your hand?

2 A. Yes, it is.

3 Q. All right. And describe, if you will, in more
4 detail, item KQ, upon your receipt of it?

5 A. I'm sorry, could you repeat that?

6 Q. Yes, specifically, I just want to ask you to
7 describe that -- Well, let's do it this way.
8 Describe for us, if you will, the size or
9 contours of the defect.

10 A. The bone fragment itself is an inch and a
11 quarter, approximately, by an inch and three
12 quarters in size.

13 Q. All right. And so that's from top to bottom and
14 across the exhibit there?

15 A. That's correct.

16 Q. All right. And the defect itself was
17 approximately how much?

18 A. It appears to be about -- the diameter of that
19 crater is about a half inch.

20 Q. All right. And I would like to show you, also,
21 Exhibit 398 at this particular time. And do you
22 recognize Exhibit 398?

23 A. Yes, I do.

24 Q. And is item KQ present in Exhibit 398?

25 A. Yes, it is.

1 Q. And if you would use the pointer and describe for
2 us, if you will, where that is.

3 A. Item KQ is this bone fragment right here in the
4 upper left hand corner.

5 Q. All right. And if we could zoom in on that. And
6 what were you examining with respect to item KQ?

7 A. I was particularly interested in these bright
8 spots here, which indicates it could be a dense
9 metal.

10 Q. All right. And with respect to item KQ, did you
11 use the scanning electron microscope to conduct
12 your analysis of those particles?

13 A. Yes, I did.

14 Q. All right. And finally, there should be the next
15 exhibit in front of you?

16 A. Exhibit 429 or 4 --

17 Q. 430.

18 A. 430.

19 Q. Yes. And what is Exhibit 430?

20 A. Exhibit 430 is a photograph of item KQ, but the
21 inner surface. The previous exhibit was the
22 outer surface. And Exhibit 430 is the inner
23 surface.

24 Q. All right.

25 A. That's what's being displayed right now.

1 Q. All right. And did you examine the inner surface
2 of the defect area, as well as the outer surface,
3 on this particular item?

4 A. Yes, I did.

5 Q. All right. And finally, there's one more
6 exhibit. And I believe Exhibit 431.

7 A. Yes.

8 Q. All right. And what is Exhibit 431?

9 A. Exhibit 431 is a photograph of an x-ray of other
10 charred bone fragments.

11 Q. All right. And particularly with respect to
12 Exhibit 431, was there a Crime Lab designation
13 assigned to that item?

14 A. Yes, there was.

15 Q. All right. And what was that?

16 A. That was item KR.

17 Q. All right. All right. Now, with respect to your
18 findings, I would like to redirect your
19 attention, again, to item EJ, Exhibit 392; did
20 you find traces of elemental lead in the area of
21 that defect?

22 A. Yes, I did.

23 Q. And tell us about what you found.

24 A. I was examining the entrance defect approximately
25 in this kind of lower left hand corner.

1 ATTORNEY BUTING: I'm sorry, is this item
2 EJ we're talking about?

3 ATTORNEY FALLON: Yes, this is item EJ,
4 Exhibit 392.

5 A. I examined this area in here and found traces of
6 elemental lead.

7 Q. All right. And with respect to Exhibit 92, what
8 -- were there more than one location or area
9 within that defect that you examined?

10 A. Yes, there was.

11 Q. And what did you find with respect to other
12 possible locations of elemental lead?

13 A. In this area, I examined three different areas
14 and found elemental lead -- traces of elemental
15 lead. In this area, I examined and did not
16 find -- I found what were very low amounts of
17 lead, but it was too low for me to call. So,
18 essentially, I did not find any lead in this area
19 over here.

20 Q. All right. And did you examine other areas of
21 that particular fragment, Exhibit 392?

22 A. Yes, I did.

23 Q. And approximately how many areas did you examine
24 on this one particular exhibit?

25 A. Approximately 12 different areas that I examined.

1 Q. All right. And I know it might be kind of
2 difficult with that photograph, but could you
3 give us a general idea of what other locations
4 that you examined for the possibility of
5 elemental lead?

6 A. I examined approximately seven locations here and
7 approximately five locations down in here, as a
8 control area.

9 Q. All right. Well, let's begin, we talked about
10 areas one, two, and three, and you mentioned
11 something about five, six, and seven. Let's talk
12 a little bit about those areas. What, if
13 anything, did you find with respect to areas
14 five, six, and seven.

15 A. I did not find any elemental lead in five. Area
16 six and seven, which was right next to it, over
17 here, I saw what began to look like the presence
18 of lead, but it was too low of a level for me the
19 call.

20 Q. All right. Now, Mr. Olson, you used the laser
21 pointer to point to a particular area. And would
22 I be accurate in describing that that would --
23 the area you pointed to, five, six and seven, was
24 on the edge or the beginning, as it were, of the
25 defect area?

1 A. Yes, it is.

2 Q. All right. And one, two, and three were actually
3 in the defect area?

4 A. Either on or slightly in, yes.

5 Q. All right. How about the other areas, 8, 9, 10,
6 11 and 12, with respect to the exhibit, where are
7 they located?

8 A. These would be down in this area here.

9 ATTORNEY FALLON: All right. If the record
10 would reflect, the witness is pointing to the bottom
11 edge of Exhibit 392 of the photograph which is
12 depicted.

13 Q. (By Attorney Fallon)~ What did you find at those
14 locations?

15 A. I did not find any traces of elemental lead.

16 Q. All right. Now, you mentioned something -- Well,
17 first of all, let me ask, what was the purpose of
18 testing those locations, 5, 6, 7, and most
19 notably, 8 through 12?

20 A. I was examining those areas, away from the
21 entrance defect, to have a control area where I
22 would not think or suspect to find any lead.

23 Q. And could you explain for the jury the concept of
24 a control?

25 A. The control is just a sample that you expect to

1 have certain results, usually negative results,
2 in this same type of material that you are
3 analyzing.

4 Q. All right. So how does performing these control
5 tests assist you in assessing your findings in
6 the other locations, particularly one, two, and
7 three?

8 A. It adds more weight to my findings, finding
9 elemental lead in those areas around the defect.
10 And then not finding it in the other areas goes
11 more to the point that -- that there is traces of
12 lead in that entrance defect.

13 Q. All right. Now, let's talk a little bit about
14 item EK; did you examine EK?

15 A. No, I did not.

16 Q. And why was EK not examined?

17 A. There was no entrance defect on those charred
18 skull fragments.

19 Q. All right. And do you recall what they were
20 labeled or how they were submitted to you?

21 A. Those would have been labeled cranial, facial,
22 dental, I believe.

23 Q. All right. All right. Again, now, returning to
24 item KQ, which we have depicted in Exhibit 398
25 and I believe in Exhibit 429 and 430. You

1 conducted a similar analysis of this particular
2 item?

3 A. Yes, I did.

4 Q. All right. And you were examining more closely
5 the bright white particles which appear on this
6 particular exhibit?

7 A. Yes, I was particularly interested in those
8 bright spots. That would be indicative of a more
9 dense material, such as lead.

10 ATTORNEY FALLON: And for the record,
11 Exhibit 398 depicts several cranial fragments. The
12 witness is describing the fragment which appears at
13 the upper left hand corner of the exhibit as a
14 whole.

15 Q. (By Attorney Fallon)~ I would like to direct your
16 attention then back to Exhibits 429 and 430. We
17 will start with Exhibit 429. All right. And,
18 again, is this the inner or outer depiction of
19 Exhibit 4 of item KQ?

20 A. This would be the outer surface of that skull
21 fragment.

22 Q. All right. And then we'll start with the outer
23 surface, did you find -- did you examine -- You
24 said you examined the area near the defect?

25 A. Yes, I did.

1 Q. All right. Did you find elemental lead at any of
2 the locations you examined at this -- at this --
3 in this particular defect?

4 A. Yes, I did.

5 Q. And what did you find?

6 A. I found elemental lead corresponding to those
7 bright spots in this entrance defect.

8 Q. Now, in this particular case, was it more than a
9 trace, or less than a trace; reference, you know,
10 item EJ, comparatively speaking, was there more
11 or less lead that you detected here?

12 A. There was considerably more lead in this sample
13 than there was in item EJ.

14 Q. All right. And similarly, did you have a control
15 for your examination on this outer surface of
16 item EJ, Exhibit 429?

17 A. Yes, I did.

18 Q. And if you would be so kind as to point with your
19 laser pointer to the control areas.

20 A. The control area was in this -- approximately
21 this area.

22 ATTORNEY FALLON: The record is reflecting
23 that he's pointing to the right side of his marker
24 arrow, towards the top, almost the same height as
25 the point of the arrow.

1 THE COURT: Record will so reflect.

2 ATTORNEY BUTING: That's fine.

3 ATTORNEY FALLON: Thank you.

4 Q. (By Attorney Fallon)~ And just so that we're
5 clear, the areas where you did find the elemental
6 lead, if you would be so kind, with your pointer,
7 to indicate that area on the exhibit.

8 A. Right in this area, on and in the beveled area.

9 Q. On and in the beveled area. Very well, thank
10 you. Now, did you similarly examine the inside
11 of item KQ.

12 A. Yes, I did.

13 Q. All right. I would like to direct your
14 attention, then, to Exhibit 430. And just so
15 that we're clear, counsel advised me I may have
16 misspoke. KQ item is our Exhibits 429 and 430;
17 is that correct? Just so that -- I may have
18 misspoke.

19 A. Item KQ is -- 429 is the outer surface and 430 is
20 the inner surface of item KQ.

21 Q. All right. And we have Exhibit 430 on the screen
22 now, which is the inner surface?

23 A. That's correct.

24 Q. All right. Now, tell us about your analysis of
25 this particular item, how did you begin?

1 A. I concentrated my examination, elemental
2 examination, around the entrance defect and
3 inside the bevel of this item.

4 Q. All right. And in that particular area, did you
5 find elemental lead?

6 A. Yes, I did.

7 Q. And approximately where on the exhibit, if you
8 are able to tell us, that you found this?

9 A. On the edge of the defect and inside of the
10 bevel.

11 Q. All right. And approximately how many locations
12 did you test in or on the beveled area?

13 A. I believe it was four.

14 Q. All right. And in those four locations, did you
15 find the presence of elemental lead at each of
16 those locations?

17 A. Yes, I did.

18 Q. And with respect to their locations and comparing
19 it to item EJ, was there more or less lead
20 associated with item KQ or EJ?

21 A. There was considerably more lead in this
22 particular item KQ.

23 Q. All right. And in terms of locations three and
24 four, if you are able, can you direct us,
25 roughly, where locations three and four would be?

1 A. Three would be approximately here and four would
2 be approximately here, both of them inside the
3 bevel.

4 Q. All right. And with respect to comparing
5 locations one and two with three and four, what
6 did you find with respect to the amounts of
7 elemental lead that was present?

8 A. In areas three and four, inside the bevel, there
9 was even more lead concentrated in those areas
10 than in areas one and two.

11 Q. All right. Similarly, with respect to your
12 testing of the inside of item KQ, Exhibit 430,
13 were there any control locations that you
14 utilized to assist you in interpreting your
15 results?

16 A. Yes, there were.

17 Q. And if you would be so kind as to take your
18 pointer and indicate generally where the control
19 areas were utilized?

20 A. I believe the control area was in this area.

21 Q. All right. You are talking to the area
22 immediately to the right and at the bottom of the
23 marker that you placed on this exhibit?

24 A. That's correct.

25 Q. All right. In the control area, did you find the

1 presence of any lead?

2 A. No, I did not detect the presence of lead in that
3 area.

4 Q. All right. Now, we would like you to take a look
5 at Exhibit 431, please. Do you recognize
6 Exhibit 431?

7 A. Yes, I do.

8 Q. Were you called upon to examine that particular
9 piece?

10 A. Yes, I was.

11 Q. And similarly --

12 ATTORNEY BUTING: Can you just identify
13 what that is, x-ray or photo.

14 A. It's a photograph of an x-ray.

15 ATTORNEY BUTING: Okay.

16 Q. (By Attorney Fallon)~ And it was your
17 understanding this was, again, another cranial
18 piece that you were given by Dr. Eisenberg?

19 A. Yes, it was another cranial piece and a
20 particular in interest was the lower piece had a
21 bright spot consistent with a higher density type
22 material.

23 Q. All right. And upon examination of KR -- Well,
24 first of all, let me ask, did you examine KR
25 using the same methods you did with KQ and EJ?

1 A. No, because when I examined that item I did not
2 see the material here present on the tiny bone
3 fragment. It wasn't on the bone any longer. It
4 was -- It just wasn't there.

5 Q. All right. So there were no conclusions that
6 could be drawn as to what that artifact was?

7 A. That's correct.

8 Q. All right. Did that particular artifact have any
9 entrance, or suspected entrance defect, like
10 items EJ and KQ?

11 A. No, it did not.

12 Q. All right. Mr. Olson, your opinion that item EJ,
13 Exhibit 392, has traces of elemental lead in the
14 defect area, do you hold that opinion to a
15 reasonable degree of scientific certainty?

16 A. Yes, I do.

17 Q. Your opinion that item KQ, Exhibits 429 and 430,
18 at locations one, two, three, and four contained
19 elemental lead, do you hold that opinion to a
20 reasonable degree of scientific certainty?

21 A. Yes, I do.

22 Q. And your opinion that item KR, which did not have
23 a suspected entrance defect and showed no traces
24 of elemental lead; do you hold that opinion to a
25 reasonable degree of scientific certainty.

1 A. Yes, I do.

2 ATTORNEY FALLON: Subject to cross, we
3 would move into evidence Exhibits 429, 430 and 431.

4 THE COURT: Any objection?

5 ATTORNEY BUTING: No objection.

6 THE COURT: Those exhibits are admitted.
7 Mr. Buting.

8 ATTORNEY BUTING: Thank you, Judge.

9 **CROSS-EXAMINATION**

10 BY ATTORNEY BUTING:

11 Q. Good morning, sir.

12 A. Good morning.

13 ATTORNEY BUTING: If counsel could be so
14 kind as to put up Exhibit 398 for a moment, please.

15 Q. (By Attorney Buting)~ Now, just leaving it at
16 this magnification for a second, this is a
17 photograph of an x-ray of -- which is it?

18 A. That is a projection of a photograph of an x-ray.

19 Q. Okay. Which item is it, KQ, or is it EJ?

20 A. It's neither.

21 Q. Well, this item up here?

22 A. That item is item KQ.

23 Q. Okay. So the one in the upper left is KQ.

24 ATTORNEY BUTING: Okay. Could we just look
25 at 429 for a minute, please.

1 Q. (By Attorney Buting)~ You're quite sure this is
2 the same item as we just saw on the x-ray.

3 A. Yes, it is.

4 Q. Well, on this item, maybe it's just my eyes, but
5 if you look at the far right side, there is a
6 rather prominent projection, almost looks like a
7 large nose sticking out or something, right?

8 A. That's correct.

9 Q. I didn't see that on 398.

10 ATTORNEY BUTING: Could we go back and look
11 at that for a minute?

12 ATTORNEY FALLON: Certainly.

13 ATTORNEY BUTING: Could we maybe zoom in on
14 this upper?

15 Q. (By Attorney Buting)~ Where is that marking?
16 Where is that part -- that little projection that
17 we just saw in the other photograph? Where is it
18 on this x-ray? I don't see it.

19 A. It is not there. This x-ray was taken before
20 Dr. Eisenberg attempted to do her refits. And
21 the piece that I got was after the refit. And
22 when I got it, it was broken --

23 Q. Oh.

24 A. -- and that piece that you are seeing --

25 Q. Okay.

1 A. -- is from another portion of the cranial.

2 Q. Okay. So what you saw -- When you saw it, it had
3 been changed slightly, that piece had been broken
4 off?

5 A. Yes, it did not look like that.

6 Q. Okay. Well, that's good. I'm glad you cleared
7 that up.

8 ATTORNEY BUTING: You can take that down
9 now, counsel, that's fine. Thank you.

10 Q. (By Attorney Buting)~ Do you -- Do you know what
11 item FL is in your lab?

12 A. No, I do not.

13 Q. Well, there's been evidence, the jury has heard
14 that item FL has been identified and talked about
15 quite a bit here as a alleged bullet fragment,
16 right? Okay. You will accept that?

17 A. I will accept that, yes.

18 Q. Okay. You were not given item FL, to do any
19 examination of?

20 A. No, I was not.

21 Q. So you didn't test the chemical composition of
22 item FL?

23 A. No, I did not.

24 Q. So you cannot say that the trace items of lead
25 that you saw in either one of these two cranial

1 fragments came from item FL; isn't that right?

2 A. That's correct.

3 Q. Okay. Now, you were given some other duties
4 besides this trace analysis of cranial fragments
5 in this case, right?

6 A. That's correct.

7 Q. And at one point, I believe in April, you were
8 actually asked to examine a headboard?

9 A. Yes, I was.

10 Q. And that, for the record, is an item that's -- I
11 don't know if you gave the designation or it was
12 already designated, this for you, or by someone
13 else in your lab before you got it, as item GI?

14 A. That's correct.

15 Q. And you were looking -- Among other things, you
16 were looking for the possible presence of rope
17 fibers on that headboard, right?

18 A. That's correct.

19 Q. And was it your understanding that you were
20 looking for the possible presence of rope fibers
21 on the spindles of that headboard to see whether
22 there was any evidence of possible rope being
23 used as a restraint?

24 A. That's correct.

25 Q. Did you find any rope fibers?

1 A. No, I did not.

2 ATTORNEY BUTING: Thank you, no further
3 questions.

4 THE COURT: Any redirect?

5 ATTORNEY FALLON: Sure.

6 **REDIRECT EXAMINATION**

7 BY ATTORNEY FALLON:

8 Q. What is the main elemental composition of a
9 bullet?

10 A. Lead.

11 Q. .22 caliber bullets contain lead?

12 ATTORNEY BUTING: Objection. This has been
13 -- I think this was testified to by the prior
14 witness.

15 ATTORNEY FALLON: Well, he asked, this is
16 appropriate redirect.

17 ATTORNEY BUTING: Okay.

18 THE COURT: I believe it is.

19 ATTORNEY BUTING: That's fine.

20 Q. (By Attorney Fallon)~ The .22 caliber bullets
21 contain lead?

22 A. Almost 99 percent lead.

23 ATTORNEY FALLON: That's all. Thank you.

24 **RECROSS-EXAMINATION**

25 BY ATTORNEY BUTING:

1 Q. Bullets also contain -- or bullets are composed
2 of different elements, right?

3 A. The major component is lead, but depending if
4 they want to harden the lead, they will add
5 antimony or tin to the bullet to make it harder.
6 Some bullets have copper jackets with a lead
7 core. Some bullets have a silver tipped or
8 aluminum coating with a lead core.

9 Q. Right. So some bullets are coated, some bullets
10 are not?

11 A. Correct.

12 Q. You did not test item FL to see whether it was a
13 coated or non-coated, did you?

14 ATTORNEY FALLON: Objection, asked and
15 answered. He asked if he tested FL at all and he
16 said no.

17 THE COURT: It's a fair summary question, I
18 will allow it.

19 Q. (By Attorney Buting)~ Is that right?

20 A. Could you repeat it, please.

21 Q. You did not test item FL to see if it was a
22 coated or non coated bullet?

23 A. I did not examine item FL.

24 ATTORNEY BUTING: That's all. Thank you.

25 THE COURT: All right. The witness is

1 excused.

2 THE WITNESS: Thank you, your Honor.

3 THE COURT: You're welcome.

4 ATTORNEY FALLON: Could we have a quick
5 sidebar?

6 THE COURT: Sure. Is it relating to
7 scheduling, I take it?

8 ATTORNEY FALLON: Yes.

9 THE COURT: All right. Members of the
10 jury, we're going to take a short break. We'll
11 resume in a few minutes. I will remind you not to
12 discuss the case during your break.

13 (Jury not present.)

14 THE COURT: You may be seated.

15 ATTORNEY FALLON: We're going to go check
16 and see on the progress that Dr. Jentzen is making.

17 THE COURT: If he is not here yet, is he
18 reachable by cellphone?

19 ATTORNEY FALLON: He may very well be. I
20 believe Mr. Gahn is checking on that.

21 THE COURT: Let me know in chambers what
22 you find.

23 ATTORNEY FALLON: Sure. Thank you.

24 (Recess taken.)

25 (Jury present.)

1 THE COURT: Mr. Gahn, you may call the
2 State's next witness.

3 ATTORNEY GAHN: Thank you, your Honor. The
4 State would call Dr. Jeffrey Jentzen to the stand.

5 **DR. JEFFREY JENTZEN**, called as a witness
6 herein, having been first duly sworn, was
7 examined and testified as follows:

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

10 THE WITNESS: Dr. Jeffrey M. Jentzen, M.D.
11 J-e-f-f-r-e-y J-e-n-t-z-e-n.

12 **DIRECT EXAMINATION**

13 BY ATTORNEY GAHN:

14 Q. Dr. Jentzen, what is your occupation?

15 A. I'm a forensic pathologist employed as a medical
16 examiner for Milwaukee County.

17 Q. And are you a licensed physician in the State of
18 Wisconsin?

19 A. I am.

20 Q. And how long have you been licensed to practice
21 medicine in the State of Wisconsin?

22 A. For 20 years.

23 Q. And did you practice anywhere before coming to
24 Wisconsin?

25 A. I was in Minnesota.

1 Q. Would you please outline, for the jurors, your
2 educational background from residency on?

3 A. I graduated from White State Medical School in
4 Detroit. I, then, did a four year anatomic and
5 clinical pathology residency at Hennepin County
6 Medical Center in Minneapolis.

7 Following that I did a year of special
8 training in field of forensic pathologist at the
9 Medical Examiner's Office in Minneapolis. I was
10 the assistant medical examiner in Minneapolis for
11 approximately six months before coming to
12 Milwaukee in 1987 as the medical examiner.

13 Q. And what are the duties of a medical examiner?

14 A. I typically oversee the administrative functions
15 of the office. I supervise other forensic
16 pathologists and trainees. I direct a forensic
17 drug laboratory, supervise other death
18 investigators who go out to crime scenes in the
19 Milwaukee County area. And I perform autopsies
20 and testify in courts.

21 Q. Are you on the staff or are you affiliated with
22 any universities or academic institutions?

23 A. Yes, I'm a professor of pathology at the Medical
24 College of Wisconsin.

25 Q. And have you had teaching responsibility?

1 A. Yes.

2 Q. Could you explain those to the jury.

3 A. Typically, we have a forensic fellowship program
4 so we teach and train other pathologists to
5 become forensic pathologists. We're one of about
6 35 training programs in the country. We also
7 teach medical students, pathology residents, and
8 other under graduate -- and other under graduate
9 programs.

10 Q. And what professional societies or associations
11 have you been active in?

12 A. I'm a member of the local State Medical Examiner
13 and Coroner's Association. I'm also the -- on
14 the -- member of the National Association of
15 Medical Examiners where I'm currently the vice
16 president of the organization. And I'm a fellow
17 of the American Academy of Forensic Sciences.

18 Q. And do you specialize in any particular branch or
19 field of medicine?

20 A. Yes, forensic pathology.

21 Q. And what exactly is forensic pathology?

22 A. Well, pathology in general is the study of
23 disease and injury. And it's broken down into
24 two rather broad categories.

25 And anatomic pathology has to do with

1 tissues; for example, skin, bone, heart muscle,
2 etcetera. And clinical pathology deals with
3 components of the body's liquids; for example,
4 what's in the blood, the urine, bile, etcetera.
5 And forensic pathology utilizes aspects of both
6 clinical pathology and anatomic pathology as they
7 pertain to general questions of the law.

8 Q. And are you board certified?

9 A. Yes.

10 Q. And would you explain -- excuse me -- explain to
11 the jurors the significance of being board
12 certified?

13 A. Board certification indicates that you have taken
14 a prerequisite course of study, you have
15 completed that course of study and taken a
16 standardized examination. And I have -- I am
17 board certified with the American Board of
18 Pathology and Anatomical, Clinical and Forensic
19 Pathology.

20 Q. And are you the author of any specific papers
21 that deal with the field of pathology?

22 A. Yes, I have written a number of papers on various
23 topics, in the field of forensic pathology,
24 predominantly. I have also co-authored a book on
25 death scene investigation and training

1 individuals to do death scene examinations,
2 etcetera.

3 Q. Have you ever received any honors or special
4 recognition in your field?

5 A. I -- I have been recognized in some areas, yes.

6 Q. Could you explain those to the jurors.

7 A. I have -- I have developed a child death review
8 team in Milwaukee County for the last 15 years
9 and we have been recognized for that.

10 We have also developed other testing
11 methods and genetics to determine drug
12 metabolism.

13 And I have been recognized as in the
14 position of the vice president and president
15 elect as I think an individual who would be a
16 leader in the field.

17 Q. And would you look at, in front of you, I believe
18 there is a document there which has been marked
19 as Exhibit 432?

20 A. Yes.

21 Q. Do you see that?

22 A. Yes, this is a copy of my curriculum vitae. It's
23 roughly around 24 pages and it documents the
24 papers and presentations and other types of
25 academic efforts that I have done over the last

1 20 years.

2 Q. Now, Doctor, approximately how many autopsies
3 have you performed in your career?

4 A. I typically perform, personally, between 250 and
5 300 autopsies a year. And then I supervise other
6 pathologists and trainees and forensic
7 pathologists in their cases. So I see a number
8 of cases. Our office typically would perform
9 around 1,000 or 1100 autopsies per year.

10 Q. And how many times have you testified in court as
11 a forensic pathologist?

12 A. I would estimate that probably -- We get a number
13 of subpoenas, but I would estimate that I
14 probably testified once a week for the past 20
15 years.

16 Q. Could you put a number on this, please?

17 A. Probably -- I would say probably around 500 or
18 1,000 times.

19 Q. Thank you. Have you ever been rejected --

20 A. No.

21 Q. -- as an expert. Now, how did you become
22 involved in this case, Doctor?

23 A. I was contacted by yourself in a telephone
24 conversation and asked if I would assist in the
25 examination of some bone materials.

1 Q. And how would you describe your role in this
2 case?

3 A. I would describe myself as a -- somebody who was
4 brought in as a consultant.

5 Q. And have you been a consultant before.

6 A. Yes.

7 Q. And what type of cases have you been a consultant
8 on?

9 A. For example, I was recently in a child death
10 case; I was a consultant. Other cases related to
11 cause and manner of death; interpretation of
12 gunshot wounds; and frequently asked by district
13 attorneys around the State to inquire and make
14 judgment on that. And I also consult with public
15 defenders and other attorneys who might have
16 questions related to injury and disease.

17 Q. How did this -- a case like this, where you are
18 in the role of a consultant, differ from the
19 typical case that you would receive at the
20 Milwaukee County Medical Examiner's Office?

21 A. Well, in our routine business we would go to the
22 scene of sudden and unexpected deaths that occur
23 in the county. I might personally -- If there
24 were a particular type of case, I might
25 personally examine the scene myself and observe

1 materials at the scene, consult with law
2 enforcement personnel at the scene.

3 And then, basically, process the body
4 myself, examine x-rays and other materials,
5 perform the autopsy, look at the tissues under
6 the microscope with the assistance of a drug
7 analyst. I might interpret drug levels in
8 testing. And then if it were a case in Milwaukee
9 County, I would determine the cause and manner of
10 death and sign the death certificate.

11 In this case, my role was limited, as a
12 consultant, to look at some material and render
13 an opinion.

14 Q. And is that because the traditional autopsy would
15 not be performed in a case such as this?

16 A. And, yes, that's true, plus -- well, an autopsy
17 is basically an examination of a deceased person.
18 In some cases, you have more material than are --
19 and tissue than in other cases.

20 But in this case, it would be that I
21 would not have performed the examinations myself,
22 as far as the autopsy or dissection. And in this
23 case my role is limited to examining small pieces
24 of bone fragments and rendering an opinion.

25 Q. Would you explain to the jury what you did in the

1 course of your investigation in this case?

2 A. I was requested to go to Madison. And at the
3 Dane County Coroner's Office I met with
4 Dr. Leslie Eisenberg, the forensic
5 anthropologist, and some attorneys and other
6 individuals.

7 And we examined -- I was shown the
8 material that Dr. Eisenberg had previously
9 examined. I reviewed her report and I -- and she
10 showed me some bone fragments. I also examined
11 some x-rays of those bone fragments. And on the
12 basis of those materials, I rendered an opinion.

13 Q. Did you also review various Crime Lab reports in
14 this case?

15 A. Yes, I did. As well as the -- although I wasn't
16 at -- I never went to the scene of this case, I
17 was shown photographs and given laboratory
18 information, looked at the x-rays and the
19 reports.

20 Q. As part of your job as medical examiner, did you
21 have experience with examining burned body parts?

22 A. Yes.

23 Q. About how many cases have you been involved in
24 where there were burned body parts?

25 A. I would say on a routine basis we would examine

1 probably around 10 charred bodies per year, in
2 our office.

3 Q. And as part of your job as medical examiner, do
4 you have experience with interpreting x-rays?

5 A. Yes, in a general forensic sense, interpreting
6 trauma and injury, yes.

7 Q. How are they used in your work?

8 A. We typically take x-rays on all pediatric cases,
9 all gunshot wounds, stab wounds, and cases where
10 there's some concern over identification.

11 Q. And as part of your job as medical examiner, do
12 you have experience with bullets and bullet
13 fragments?

14 A. Yes.

15 Q. On an annual basis, approximately how many cases,
16 involving gunshots to the skull, would you see in
17 the Milwaukee County Medical Examiner's Office?

18 A. I would give a rough estimate at probably around
19 100 to 120.

20 Q. Now, I believe you stated that you met with
21 Dr. Eisenberg and you actually examined bone
22 fragments in this case?

23 A. I did.

24 Q. Could you basically describe to the jurors, what
25 was the condition of these bones that you

1 examined?

2 A. I would describe the bones as fragmented and
3 charred. There was no intact skull fragments.
4 And Dr. Eisenberg had separated out bone
5 fragments from the skull and from other areas and
6 so I was able to look at just small fragments of
7 the bone -- bony material, as well as the x-rays
8 of those areas.

9 Q. In particular, did you examine certain skull
10 fragments?

11 A. Yes.

12 Q. And was there anything unusual about some of
13 those skull fragments that you observed?

14 A. Yes, on two of the fragments, one fragment
15 Dr. Eisenberg identified to me as the left
16 parietal skull, or a bone from the left parietal
17 skull. And the parietal bone, and I'm pointing
18 to that area just about above my ear, the
19 parietal bone is the -- a rather large flat bone
20 that -- there's one on the right and the left
21 side.

22 And Dr. Eisenberg identified a fragment
23 of that bone and also there was a fragment that
24 she identified as the left occipital bone. The
25 occipital bone is the bone that's in the back of

1 the skull, in this area. And I'm pointing to
2 that area behind and below my left ear.

3 Q. Was there any particular reason Dr. Eisenberg
4 pointed these two skull fragment pieces out to
5 you?

6 A. Those fragments were noted, by herself and the
7 initial examining pathologist, to have a defect
8 called internal beveling on the fragments and so
9 I paid particular attention to those bones;
10 although, I did make a gross examination of
11 multiple skull bones that she had demonstrated.

12 Q. I'm going to put up on the screen what has
13 previously been marked as Exhibit 390, and has
14 been testified to by Dr. Eisenberg as a left
15 parietal bone area; did you examine this?

16 A. Yes.

17 Q. And there is a laser pointer there on the desk,
18 Doctor.

19 A. Yes.

20 Q. Could you point out to the jurors this beveling
21 area and maybe amplify a bit on that for the
22 jurors.

23 A. In addition to the beveling area, there was a
24 semi-circular defect that has a shape on it that
25 I would interpret as a portion of a whole. And

1 this area, we're talking about the inside portion
2 of the skull, so this area you can see is
3 fragmented.

4 And if you would imagine a stone or
5 something striking glass and the way the glass
6 fragments; it's the same thing for a bullet going
7 through the skull. Typically there's an internal
8 beveling that occurs on an entrance wound. And
9 characteristically there's external beveling
10 noted as the bullet exits the skull.

11 And we use these characteristics to help
12 identify and determine where an entrance or exit
13 wound would be on a skull, if there were two
14 different types of perforation. So it would be
15 my opinion that this is consistent with a
16 perforating entrance gunshot wound -- I'm sorry
17 penetrating entrance gunshot wound.

18 Q. And did you also review an x-ray that would be
19 associated with this particular piece of skull
20 fragment?

21 A. Yes.

22 Q. And I'm going to put up on the large screen what
23 has previously been marked as Exhibit 397. And
24 I'm going to ask you if you could again describe
25 for the jurors what this shows?

1 A. Yes, this is the left parietal bone fragment.
2 Again, you can see the internal beveling and the
3 semi-circular perforation and there's also some
4 small radio dense fragments that I'm pointing to
5 with the pointer. I can see probably about two
6 or three on the picture from here. And those are
7 characteristic of metallic fragments the bullet
8 imparts to the target as the bullet travels
9 through bony material. It's a common finding in
10 certain gunshot wounds to the skull and other
11 bony fragments.

12 Q. And, again, did this support your original
13 conclusion about this being an entrance gunshot
14 wound?

15 A. Yes.

16 Q. I'm going to show you what has been marked as
17 Exhibit 393, and previously testified to by
18 Dr. Eisenberg as a bone fragment from the
19 occipital area, and ask you if you recognize
20 this?

21 A. Yes, that's the bone fragment located, according
22 to Dr. Eisenberg, in the left occipital region.

23 Q. And, again, did you actually see this bone
24 fragment when you were at Dr. Eisenberg's office?

25 A. Yes.

1 Q. And, again, would you take the pointer and just
2 explain to the jurors, again, this beveling
3 process that you have described about -- with the
4 parietal?

5 A. Again, one can see the internal beveling pattern
6 that's prominent here and there is a
7 semi-circular appearance to the edge of the bony
8 fragment.

9 Q. And, again, what did that indicate to you?

10 A. It was my opinion that that was consistent with a
11 gunshot wound, entrance gunshot wound.

12 Q. And did you also review an x-ray that would be
13 associated with this?

14 A. I did.

15 Q. And I'm going to show you what has been marked as
16 Exhibit 398? And, again, would you take the
17 laser point and point to any areas of particular
18 interest for the jurors.

19 A. Yes, I'm pointing to the bony fragment on the
20 photograph and, again, on the semi-circular area
21 with the internal beveling. There is a rather
22 localized area of multiple radio dense fragments.
23 And it would be my opinion that these would be
24 consistent with and suggestive of metallic lead
25 type fragments that the bullet delivers to the

1 bone as it's it passing through the bone. Could
2 I expound on that?

3 Q. Please.

4 A. The bone is actually -- the bone in the skull is
5 actually kind of like a wafered cookie.

6 There's -- there's a bony -- a bony surface on
7 the outer portion, a bony surface on the inner
8 portion and the material in the inside is rather
9 porous. It's actually where there's bone marrow
10 and that's how the bone grows.

11 And so we call the outer table, the
12 outer portion of the skull. And the inner table
13 is the inner table -- is the inner portion of the
14 skull. And the portion between is -- is -- is
15 rather porous. And, then, as you can see in this
16 area, this is predominantly where these small
17 metallic fragments are pushed into or imparted
18 into the bony tissue.

19 Q. Based upon your examination of the skull
20 fragments and the x-rays and all the associated
21 records and reports that you reviewed in this
22 case, do you have an opinion, to a reasonable
23 degree of medical certainty, as to the manner of
24 Teresa Halbach's death?

25 A. Yes, I do.

1 Q. And what is that opinion?

2 A. It would be my opinion that she died as a result
3 of gunshot wounds to the head and that the manner
4 of her death would be homicide.

5 Q. And based upon your examination of the skull
6 fragments and x-rays and all the associated
7 reports in this case, do you have an opinion, to
8 a reasonable degree of medical certainty, as to
9 the cause of Teresa Halbach's death?

10 A. Yeah, I believe that she -- her -- the cause of
11 her death would be the gunshot wound to the head.
12 And the manner would be the homicidal
13 designation.

14 ATTORNEY GAHN: Thank you, Doctor. That's
15 all I have.

16 THE COURT: Mr. Strang.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY STRANG:

19 Q. Dr. Jentzen, about what -- when, I should say,
20 was it that Mr. Gahn first called you to consult
21 on this case?

22 A. I would say it was the early portion of November,
23 or very late portion of October.

24 Q. 2006?

25 A. Yes.

1 Q. Just about a year after you understood that the
2 bones were examined, or the fragments of bones
3 were?

4 A. I would say so, yes.

5 Q. Give or take?

6 A. Yeah.

7 Q. Okay. And it was also well after you knew that
8 Steven Avery had been charged in the homicide of
9 Teresa Halbach?

10 A. I had knowledge of that through the regular
11 media, yes.

12 Q. Sure. Widely reported case?

13 A. Right.

14 Q. You knew of it just from reading the paper, or
15 looking at the internet, or whatever you do?

16 A. Yes.

17 Q. All right. And when you got involved, you come
18 over to Madison, you look at some bone fragments
19 that Dr. Eisenberg has set out for you?

20 A. Yes. Actually we looked at all the bone
21 fragments that she had, yeah.

22 Q. She identified for you the parietal bone
23 fragments?

24 A. Correct.

25 Q. She identified for you the occipital bone

1 fragments?

2 A. Correct.

3 Q. You were not able to identify those bones
4 yourself?

5 A. I could probably identify them as a skull bone
6 fragment, but it would be difficult for me to
7 place them specifically into a left occipital and
8 parietal bone.

9 Q. Okay.

10 A. And that would be in the area of expertise of an
11 anthropologist.

12 Q. Reasonable in your view to rely on
13 Dr. Eisenberg's expertise in telling you where in
14 the skull she thought these bones came from?

15 A. Correct.

16 Q. The meeting that you described with
17 Dr. Eisenberg, you said that there were others
18 there, including some attorneys?

19 A. Correct.

20 Q. Just to be clear, there were not defense
21 attorneys there?

22 A. Correct.

23 Q. The attorneys were both from the State or
24 prosecution?

25 A. The three attorneys at the table, yes.

1 Q. Fair enough. Okay. Now, you, I gather although
2 you were only -- well, you didn't do an autopsy
3 here, as you said?

4 A. Correct.

5 Q. Although you were in a consultant role, you asked
6 for the information you thought might be helpful
7 to forming an opinion?

8 A. Yes. I examined what I would typically examine
9 in a case where I was asked to consult, autopsy
10 protocol laboratory tests, if they were
11 available; scene investigation materials on a --
12 police reports. It would be consistent with the
13 same type of examination I would do if it was any
14 other kind of forensic examination.

15 Q. You asked for all of the information available
16 that you thought might help you in forming your
17 opinions?

18 A. Specifically, within my area of expertise, yes.

19 Q. I mean, you know, your opinions are within your
20 area of expertise?

21 A. Correct.

22 Q. So you were interested in information that might
23 bear on the opinion you hoped to form?

24 A. Correct.

25 Q. None of the information you requested was

1 withheld from you, was it?

2 A. Not to my recollection, no.

3 Q. You got what you thought you needed?

4 A. Yes.

5 Q. Here, as in any other case involving a charge of
6 a homicide, you understand that the personal
7 stakes are high for the family of the victim?

8 A. Yes.

9 Q. The family of the defendant?

10 A. Yes.

11 Q. The defendant himself?

12 A. Yes.

13 Q. It's a serious case when the allegation is
14 homicide, obviously?

15 A. Yes, as I mentioned, I probably testify on
16 probably 50 to 100 homicide type cases a year.

17 Q. Right. And you're -- because you're a forensic
18 pathologist, every time you testify, to some
19 extent your own reputation is -- is at stake?

20 A. I make opinions based on the evidence that I'm
21 given and use my background experience in
22 training and education to make opinion
23 statements, correct.

24 Q. Sure. And you want those opinions to be
25 expressions that you can stand behind

1 confidently?

2 A. To the best of my ability, yes.

3 Q. Stake your reputation to?

4 A. Yes.

5 Q. And, of course, any time you testify, just as
6 today, you are testifying under oath?

7 A. Yes.

8 Q. You came here, as I understand it, offering two
9 specific opinions: One, the more general, would
10 be manner of death; am I correct?

11 A. Correct.

12 Q. And then, the second, and more specific in a
13 sense, would be cause of death?

14 A. Correct.

15 Q. All right. Let's start with the more general,
16 manner of death. We have heard a little bit
17 about this, but not from a pathologist or medical
18 examiner. In your work, we could say that there
19 are four determined manners of death; is that
20 right?

21 A. Typically five.

22 Q. All right. One would be accidental?

23 A. Correct.

24 Q. No special order here, but one of these is
25 accidental, another is natural?

1 A. Yes.

2 Q. A third would be suicide?

3 A. Yes.

4 Q. And fourth, homicide?

5 A. Yes. Fifth is undetermined.

6 Q. Very good. That's the one we didn't hear about

7 yesterday. Unexplained or undetermined is your

8 term of choice?

9 A. Undetermined, yes.

10 Q. All right. We'll use undetermined. So that

11 would be the fifth manner of death, which is

12 different than the other four in the sense that

13 it's -- it's what you say when you don't know?

14 A. It's what we say when we can't definitively

15 determine between, or distinguish between, for

16 example, an accident and a suicide, or a homicide

17 and an accident, yes.

18 Q. Sure. Okay. And then, if we descend to the

19 specific cause of death, there is as many as

20 there are the ways that people die in some sense.

21 I mean, this would be a gunshot in one case, it

22 would be a drug overdose in another, you would

23 try to identify the drug, if you could --

24 A. Correct.

25 Q. -- in that instance?

1 A. Correct.

2 Q. It may be just any -- any of a number of ways
3 that can cause people to die?

4 A. Yes.

5 Q. All right. And what you do in establishing cause
6 of death, if you can, is be as specific as
7 possible?

8 A. Yes. And I would say, based on the materials and
9 evidence that's present, we make an opinion on
10 that, yes.

11 Q. All right. And by specific as possible, let's,
12 since you are talking today about gunshots, let's
13 use a gunshot case. When you get a full course
14 or, you know, most of the course, you may find
15 multiple gunshot wounds in evidence at autopsy?

16 A. Yes.

17 Q. When that happens, you make an effort, to the
18 extent medically possible, to determine which of
19 the gunshot wounds would have led to death?

20 A. Yes. And in some cases there are multiple wounds
21 and others I would describe as non-lethal and
22 others are potentially lethal.

23 Q. Sure.

24 A. Others are definitely lethal.

25 Q. Sure. So -- And, again, just by way of example,

1 if someone has five gunshot wounds, you may be
2 able to say, for example, that two of these
3 definitely would have been lethal; two definitely
4 would not have been lethal in the ordinary course
5 of medical care; and maybe the fifth, possibly
6 lethal?

7 A. Correct.

8 Q. Something like that. And just as an example.

9 A. Yes.

10 Q. All right. Now, here you saw evidence of two
11 gunshot entrance wounds?

12 A. Yes.

13 Q. To bones that you could identify, personally, as
14 probably being from a human skull?

15 A. Correct.

16 Q. And as to which you had more specific locations
17 from Dr. Eisenberg?

18 A. Yes.

19 Q. You saw no bones displaying anything you viewed
20 as an exit wound?

21 A. Correct.

22 Q. A bullet leaving the body.

23 A. Correct.

24 Q. You, therefore, were not able to draw any
25 conclusions about what we might call wound track?

1 A. Correct.

2 Q. The direction or angle at which a bullet
3 penetrates the body?

4 A. I would say, based on the material that I had, I
5 wasn't able to do that, correct. In some cases,
6 when you have more intact specimens, you can
7 certainly render more definitive --

8 Q. Sure?

9 A. -- opinions as to wound track, direction of fire,
10 that type thing.

11 Q. But those were not opinions you were able to form
12 or render here?

13 A. Correct.

14 Q. Now, tell the -- I mean, in your opinion, the
15 cause of death here was one or two gunshot
16 wounds?

17 A. Yes.

18 Q. To the head?

19 A. Correct.

20 Q. All right. Tell, the ladies and the gentlemen of
21 the jury all of the information you have in this
22 case that allows you to conclude that either of
23 the two bullets here first struck skull bone
24 while the victim was alive?

25 A. Okay. Could you repeat that question.

1 Q. Sure. I would like you to simply tell the ladies
2 and gentlemen of the jury what information you
3 have here that allows you to conclude that either
4 of these gunshot wounds occurred while the victim
5 was alive, that is, bullet struck bone, while
6 that person was alive?

7 A. I don't specifically think that there's any one
8 piece of information that would say that the
9 person was alive, with a beating heart, or an
10 intact brain. There's material and I was given
11 information that there was a spent bullet
12 recovered at the scene that contained the blood
13 specimens of the decedent.

14 And that would be indicative to me that
15 the bullet had passed through the brain at a
16 time, whether it was liquified blood, or that it
17 wasn't going through specifically bone fragments.
18 And I would think that that would be the
19 predominant -- that would be information that I
20 think would be helpful in making that type of
21 opinion.

22 Q. All right. We have certainly had testimony that
23 Teresa Halbach's DNA was found on a bullet
24 fragment?

25 A. Right.

1 Q. I, at least, recall no testimony that Teresa
2 Halbach's blood was found on a bullet fragment,
3 but the jury will decide in the end, that. And
4 in a sense it doesn't matter.

5 Is there any way to distinguish the
6 bullet you -- hole you saw, either one, from a
7 gunshot that was fired into the head of an intact
8 corpse, from a gunshot that was fired into the
9 head of a living person?

10 A. I don't think I could make a definitive
11 determination based on whether the individual was
12 in a peri-mortem time frame or whether the
13 individual was skeletonized. It would be my
14 opinion that the wounds showed an intact, robust
15 bone that is consistent with what I would say
16 non-skeletonized material, meaning that these
17 look like -- typically like an entrance wound
18 through a bone of a person who is not a skeleton.

19 And the way -- the reason I described
20 that and I would make that -- that clarity is
21 that in a skeletonized bone, where you have got
22 dried bone material, as the bullet passes through
23 it, I would suspect that there would be a
24 different kind of fracturing and that it wouldn't
25 get the same type of gunshot wound, particularly

1 in the parietal bone fragment that I can see.

2 That would just be my opinion on that.

3 Q. Okay. So, you know, I'm trying to track you
4 here, but as I understand, you think these bullet
5 holes were made before the body was in a purely
6 skeletal condition?

7 A. Yes.

8 Q. All right. Let's go back to the question I
9 asked. The gunshot wounds to the bones you
10 observed, would be indistinguishable if the
11 bullet had hit the bone 30 minutes after the
12 person had expired or 3 seconds before the person
13 expired?

14 A. I would agree with that, yes.

15 Q. You would. And if the person was 30 minutes
16 expired when the bullet hits bone for the first
17 time, then the gunshot did not cause the death,
18 true?

19 A. If the individual was dead before the gunshot --
20 sustained the gunshot wound to the head, then the
21 bullet would not have caused the death.

22 Q. The bullet wounds you saw are as consistent with
23 a bullet striking a non-skeletal body after
24 death, as they are with a bullet striking the
25 skull before death?

1 A. I would say so, yes.

2 Q. If death occurred before the first bullet struck
3 bone here, then there was another cause of death
4 entirely, as a matter of logic, wasn't there?

5 A. I would agree with that, yes.

6 Q. And as to -- In that situation, as to cause of
7 death, you cannot give an opinion?

8 A. Are you talking about specifically in this case
9 or are you talking about if I have got a skull
10 with two bullet holes in it without any other
11 information?

12 Q. Well, let's start without any other information.

13 A. I would say that the two gunshot wounds to the
14 head are highly suspicious for a non-intentional,
15 or the individual would not have done it
16 themselves, because of the multiple nature of the
17 injury.

18 Q. Sure.

19 A. And with the caveat that, you know, whether it
20 was done before or after the person died.

21 Q. Okay. So, let's -- let's unpack that. If we
22 have two gunshots to the head, we're highly
23 doubtful that this is suicide?

24 A. I would say so, yes.

25 Q. Right. Most suicides --

1 A. Assuming that these were the ones that caused her
2 death --

3 Q. Sure.

4 A. -- yes.

5 Q. Most suicides don't get off a second shot?

6 A. Correct.

7 Q. All right. You would suspect homicide?

8 A. Correct.

9 Q. But you also would have to suspect accidental
10 death if you had gunshot holes in a skull, absent
11 other information.

12 A. I wouldn't suspect that there would be two
13 perforations with a accidental type -- or two
14 entrance wounds with an accidental type death,
15 unless it was a multiple missiles; for example,
16 like a buck shot injury, or something along those
17 lines.

18 Q. Sure. And in that instance it would be relevant
19 information if the deceased was found dressed in
20 blaze orange in shrubbery, in the middle of the
21 woods in the third week of November. That's
22 information that might be relevant to determining
23 whether two gunshot wounds to the head were
24 accidental or homicidal?

25 A. I would say that would be helpful information

1 yes.

2 Q. Sure. You would need more information, in any
3 event?

4 A. Yes.

5 Q. By homicide, if we back up on manner of death, we
6 didn't explain that here, but this, in your
7 argot, homicide would mean the intentional
8 causation of another persons death?

9 A. That a homicide in my, would be that the death
10 was caused by another person, correct.

11 Q. Correct. And it does not necessarily connote
12 legal liability, homicide in that sense?

13 A. I don't make those determinations.

14 Q. Right. So if something later proves to be, let's
15 say a justified shooting in self defense, it's
16 still a homicide in your world because it's one
17 person causing the death of another?

18 A. Correct.

19 Q. All right. Now, back closer, I guess to this
20 case, you can't tell whether these bullet holes
21 in the skull were made before death or after
22 death. You can -- You can tell only that they
23 are made before the remains are skeletal?

24 A. Correct.

25 Q. All right. And if the bullet wounds were made

1 after death, then necessarily something else is
2 the cause of death?

3 A. I would agree with that.

4 Q. And as to what that might be, there's almost
5 nothing you could rule out, based on the
6 information you had?

7 A. Based on the evidence that I have, yes.

8 Q. So --

9 A. There could be other -- There could be other, for
10 example, drugs or something along those lines --

11 Q. Sure.

12 A. -- that I don't have access to.

13 Q. And we could sit here all a day on that, but
14 someone could have been strangled and then shot
15 after -- after they --

16 A. Certainly is possible.

17 Q. -- expired.

18 A. Yes.

19 Q. Beaten, shot after they expired.

20 A. Correct.

21 Q. Drugs, as you say, a drug overdose, shot after
22 they had died of the drug overdose?

23 A. Correct.

24 Q. And I won't go on but, in other words, there's
25 nothing that you can say about opining on cause

1 of death, if the gunshot wounds occurred after
2 death?

3 A. On the cause of death, yeah, I would say so.

4 Q. And then, likewise, once -- once we don't have a
5 cause of death, it's similarly difficult to
6 assign a manner of death?

7 A. Well, medical examiners and forensic pathologists
8 don't make determinations on manner of death in a
9 vacuum. We utilize, as I mentioned, evidence
10 from the scene. And if we can go to the scene,
11 personally, we use that information. Or if we
12 can't, then we use photographs and other people's
13 reports to use that information.

14 We use laboratory data. We use evidence
15 that's recovered. And we -- we put that together
16 and we render our opinion as to what the manner
17 of death is. We don't do it in a vacuum with a
18 single piece of information, in isolation from
19 all others.

20 Q. Of course not. Of course not. And in a cause of
21 death, for example, you cited to these jurors,
22 your understanding that a bullet or bullet
23 fragment was found with what you thought was
24 blood of the victim on it. And that, initially,
25 factored into your opinion on cause of death?

1 A. That was one of the things, yes.

2 Q. Sure. You now acknowledge, that as long as the
3 remains weren't skeletal, blood or DNA could have
4 been left on that bullet, passing through the
5 skull of a dead person?

6 A. Correct.

7 Q. Likewise, with manner of death you, of course,
8 consider all the information you have, that's
9 almost obvious, isn't it?

10 A. Correct.

11 Q. And some of the information you have here is that
12 the bone fragments you saw were burned?

13 A. Correct.

14 Q. Badly burned?

15 A. Correct.

16 Q. Burned to the point that they had fragmented and
17 fallen apart?

18 A. Yes.

19 Q. That suggested to you, in your line of work, some
20 effort to conceal the body or disguise the body?

21 A. Exactly.

22 Q. And you said to yourself, now, with that
23 information, why would someone want to conceal
24 the fact of death. Well, one obvious reason
25 would be that the death itself, you know, the

1 fact that the person died, might be incriminating
2 or awkward in some way.

3 A. That would be information that would be valuable,
4 yes.

5 Q. Sure. And an effort to conceal death is
6 something you see frequently, or at least not
7 infrequently, in homicide cases?

8 A. Correct.

9 Q. It's also something you will see less frequently,
10 but it's happened in your experience, you will
11 see this in accidental deaths, on occasion?

12 A. I would say it would be pretty rare, yes.

13 Q. Well, let's -- let's offer some paradigms and see
14 if you have had these kinds of cases in your
15 experience. None of them -- And I'm not
16 suggesting any of these paradigms bear any
17 similarity to this case, but I want to explore
18 the relation between an unknown cause of death
19 and the manner of death.

20 A. Sure.

21 Q. Okay? A young teenager who's become pregnant out
22 of wedlock, feels a great deal of shame about
23 that, conceals the pregnancy, ultimately gives
24 birth by herself, the baby dies for want of
25 medical care and an effort is made to conceal the

1 newborn.

2 A. And you are giving that as an example of what --

3 Q. Concealment.

4 A. -- manner of death?

5 Q. Concealment in connection with an accidental
6 manner of death.

7 A. I don't know if I would attribute that to an
8 accidental manner of death; it would depend upon
9 the totality of the information that's available.

10 Q. Sure.

11 A. Resuscitation efforts, evidence of trauma and
12 injury on the child, age, etcetera. So, again,
13 you can't take a specific issue and look at it in
14 isolation. You need all the information.

15 Q. Understood. And sometimes in the sort of
16 paradigm that I have explained, sometimes,
17 unfortunately, the young mother will smother the
18 infant or do something active to cause the
19 infant's death, other times it simply the lack of
20 medical care, the infant can't thrive or survive?

21 A. Correct.

22 Q. Dies of, in a sense, a natural cause or an
23 accidental cause, for want of medical care at the
24 time of birth?

25 A. Again, I don't know if we're talking about an

1 accident or ...

2 Q. Right.

3 A. -- or another type of injury, that you are
4 talking about.

5 Q. Yes.

6 A. But I think it would be very rare to call a death
7 like that an accident.

8 Q. All right.

9 A. There -- I mean, there might be other examples.

10 Q. Another example would be, something you may have
11 run across, two people involved in an adulterous
12 affair or liaison and one drops dead of a heart
13 attack. Some effort may be made under those
14 circumstances to conceal the fact, or at least
15 the timing or place of death.

16 ATTORNEY GAHN: Objection, your Honor, as
17 to relevancy of this.

18 THE COURT: Mr. Strang.

19 ATTORNEY STRANG: I'm simply trying to
20 establish that there are instances in which
21 accidental death, as a manner, will be matched with
22 concealment.

23 THE COURT: Is that in dispute?

24 ATTORNEY STRANG: Is that in dispute?

25 THE COURT: Do you acknowledge that such

1 circumstances can exist?

2 THE WITNESS: I would acknowledge that
3 there's concealment in some cases, your Honor, but
4 examples that are given here, I don't think I would
5 agree with. Could I expound on that?

6 THE COURT: Go ahead.

7 ATTORNEY STRANG: Sure.

8 A. I have never seen a individual burned in an
9 attempt to conceal an adulterous affair and
10 somebody who dies suddenly during an act of
11 intercourse. On occasion, we will see
12 individuals who die from drug overdoses that
13 would be dumped at a different location, but it
14 would be very uncommon or rare to see any
15 mutilation or other types of bodily disruption to
16 hide that kind of death.

17 Q. Okay. Fair enough.

18 A. And so the type of burning and charring that I
19 would see in this case would be, in my opinion
20 and my experience, most consistent with homicidal
21 type of manners of death and extremely rare in
22 others.

23 Q. Fair enough. Okay. You simply, you think this
24 is most consistent, you can't rule out other
25 possibilities?

1 A. I can't rule out other possibilities beyond --
2 beyond the impossible, correct.

3 Q. Well, and one of the problems we have here is
4 that we're dealing -- we're in a forensic
5 setting, the intersection of the pathology with
6 law, correct?

7 A. Yes.

8 Q. And you know that there is both a first degree
9 intentional homicide charge that these folks will
10 have to decide and a mutilating a corpse charge
11 they will have to decide, correct?

12 A. I'm not aware of what the -- of what the legal
13 standards are being used here as far as --

14 Q. Or what the charges are?

15 A. And what the charges are.

16 Q. You are familiar with the fact that Wisconsin has
17 a crime for mutilating or concealing a corpse?

18 A. I am, yes.

19 Q. All right. And you are familiar that Wisconsin
20 has a crime of first degree intentional homicide?

21 A. I am aware of that, yes.

22 Q. All right. And you are not -- Your field of
23 expertise does not allow you to render an opinion
24 on who fired a shot, or shots, into this skull?

25 A. No. I don't have that information, no.

1 Q. Your area of expertise does not allow you to
2 render an opinion on who caused the burning or
3 charring of the bone fragments you saw?

4 A. That's correct.

5 Q. And whether one or more, two, three, four,
6 however many people are involved, in one or the
7 other of those alleged crimes, you are not able
8 to say?

9 A. In this case I can't, no.

10 Q. Right. And whether one person is involved in one
11 offense, but not in the other, you are not able
12 to say?

13 A. Correct.

14 Q. All right. So these are the reasons for my
15 questions and I guess in the end, what you are
16 telling us is that your opinion on manner of
17 death rests in part on the fact that you see
18 gunshot entrance wounds?

19 A. Correct.

20 Q. And then rests on the burning or charring that
21 you saw here, of the skeleton?

22 A. Correct. Could I expound on that?

23 Q. Well, I don't want to -- if you have useful
24 information --

25 A. There may be other issues.

1 Q. -- you can answer that question.

2 A. There may be other issues related to the
3 determination of manner of death, in addition to
4 simply the evidence of gunshot wounds and the
5 evidence of concealment.

6 Q. And are there other specific issues here that you
7 rely upon in offering the opinion that homicide
8 is the manner of death here?

9 A. I would have other information, yes.

10 Q. Do you have other information in this case?

11 A. Yes.

12 Q. That came from the police?

13 A. It came from the investigators, yes.

14 Q. All right. Your opinion, in any event, is that
15 homicide was the manner of death?

16 A. Correct.

17 Q. You did not view this as unexplained?

18 A. Correct.

19 Q. Notwithstanding the fact that you cannot here,
20 as I understand you, assign a cause of death
21 other than by assuming that the bullet holes were
22 made, at least one of them was made, while the
23 person was alive?

24 A. Correct.

25 Q. Just to be perfectly clear here, in the end, as

1 you sit here today, you can't tell this jury
2 whether one or both of these gunshots were made
3 while the person was alive?

4 A. That would be correct, yes.

5 Q. If they were made after death, they did not cause
6 the death?

7 A. That would be true, also.

8 Q. But your opinion remains that gunshot is the
9 cause of death?

10 A. Correct.

11 ATTORNEY STRANG: That's all I have.

12 THE COURT: Mr. Gahn.

13 ATTORNEY GAHN: Thank you, your Honor.

14 REDIRECT EXAMINATION

15 BY ATTORNEY GAHN:

16 Q. Dr. Jentzen, you talked about, as a medical
17 examiner, not viewing one particular piece of
18 information in a vacuum and you talked about
19 having helpful information and looking at the
20 totality of the circumstances; would you explain
21 what all of that means, to the jurors, in the
22 context of this case.

23 A. Well, on a daily basis, the medical examiner, I
24 mean, for example, I would investigate hundreds
25 of deaths a year. And that investigation entails

1 seeing information: History, medical history of
2 the individual, habits and social habits of the
3 individual, past medical history, and then,
4 finally, the appearance of the body. Possibly
5 the position of the body in some cases, at the
6 scene, may determine whether the death is an
7 accident or a natural death, based simply on the
8 position and other artifacts that we would see on
9 the body.

10 Medical examiners and coroners do this
11 on a routine basis and looking at individual
12 cases. And to take one specific area or one
13 single piece of information and to say that this
14 is an accident, or a homicide, or a undetermined
15 case, I think is not real consistent with how
16 medical examiners and coroners function in
17 evaluating and investigating deaths.

18 On a daily basis, we make determinations
19 as to cause and manner of death, based on
20 evidence, information, scene investigation,
21 medical history.

22 Q. And how many years have you been in the
23 profession as a medical examiner?

24 A. This is my 21st year as a medical examiner for
25 Milwaukee.

1 Q. And did you state that annually you will look at
2 maybe 100 cases involving gunshot wounds to the
3 skull?

4 A. Typically our office would investigate between, I
5 would say, roughly 100 to 120 or 30 homicides and
6 probably 100 to 130 or 40 suicides. And 60 to 70
7 percent of those are gunshot wounds. And the
8 vast majority of those are to the head and upper
9 torso areas. Many times there's multiple wounds,
10 there's different types of ammunition.

11 And in addition, that we attend lectures
12 and other educational programs to expand our
13 understanding of both the -- the bodies, and the
14 projectiles and weapons, and the circumstances,
15 and we render opinions, legally bound -- binding
16 that determine cause and manner of death where
17 there is a lot at stake.

18 ATTORNEY STRANG: Your Honor, I object to
19 the reference to a legally binding determination of
20 this witness, that's entirely out of place and the
21 jury should be told that there is no legally binding
22 determination by this witness.

23 ATTORNEY GAHN: I don't believe that's what
24 the doctor was saying.

25 THE COURT: Well, I agree, I guess it

1 depends on your definition of legally binding, but
2 to the extent, certainly, it invades the province of
3 the jury, the Court agrees very strongly, that's the
4 jury's determination in this case. And I will
5 instruct the jury to that affect. I'm not sure of
6 the context in which it was used.

7 ATTORNEY GAHN: I took it to mean that he
8 just gives opinions in cases that other people make
9 decisions on. That's what I took the context in.

10 THE COURT: Anything else?

11 ATTORNEY GAHN: Yes.

12 Q. (By Attorney Gahn)~ Doctor, do you believe that
13 you had sufficient information in this case to
14 render an opinion as to manner of death and cause
15 of death?

16 A. Yes.

17 Q. And today you are in Calumet County testifying,
18 right?

19 A. Correct.

20 Q. If this case had happened in Milwaukee County and
21 with all the information that you know in this
22 case, would you have rendered an opinion as to
23 manner and cause of death, if this were your case
24 in the Milwaukee County Medical Examiner's
25 Office?

1 A. I would have rendered the same opinion.

2 Q. And is that opinion -- And, again, what is your
3 opinion as to the manner of death of Teresa
4 Halbach?

5 A. It would be my opinion that she died as a result
6 of gunshot wounds to the head and the manner of
7 her death is homicide.

8 ATTORNEY GAHN: Thank you. That's all I
9 have.

10 THE COURT: Anything else, Mr. Strang?

11 ATTORNEY STRANG: No, thank you.

12 THE COURT: All right. The witness is
13 excused. Members of the jury, that is all the
14 evidence that we're going to hear today. At this
15 time I'm going to excuse you for the rest of the
16 day. I will let you know in a minute, because of
17 the order of things, why. Before I do that, since
18 we are adjourning for the weekend, at this point I
19 want to read to you the warning that you have heard
20 before, but it's still very important.

21 The Court's decision not to sequester
22 the jury during the trial in this case is
23 dependent on the jurors not listening to,
24 watching, or reading any news accounts of the
25 case, nor discussing it with anyone, including

1 members of your family or other jurors.

2 For these reasons it is vital that you
3 do not listen to any conversation about this
4 case. Do not read any newspaper or internet
5 reports or listen to any news reports on radio or
6 television about this case.

7 To assure that you are not exposed to
8 any improper media coverage, the Court has
9 ordered that, for the duration of the trial, you
10 do not watch the local news on television, do not
11 listen to the local news on radio, and do not
12 read the newspaper unless you first have someone
13 remove any articles about the case. In addition,
14 you are not to visit any internet websites or web
15 logs which may include any information about the
16 case.

17 Since we are breaking for the weekend, I
18 understand that some of you may be working at
19 places of employment. Do not discuss the case
20 with any employers, employees, or patrons, do not
21 volunteer your status as a juror to anyone.

22 If anyone attempts to discuss the case
23 with you, politely but firmly notify them that
24 you are prohibited from discussing the case. If
25 you're involuntarily exposed to any information

1 about the case from any source, take steps to
2 immediately avoid any further exposure.

3 Should you be exposed to any reports or
4 communications from any source concerning the
5 case during the trial, or should you become aware
6 of anything you believe may affect your ability
7 to serve as a juror, you should not discuss your
8 concerns with any other jurors but should report
9 any concerns to the jury bailiff.

10 Now, I have also told you, previously,
11 that occasionally during the trial there will be
12 times when the Court has to take up matters with
13 the attorneys, outside the presence of the jury.
14 There is going to be one such occasion on Monday.
15 And because it is a matter which may take the
16 greater part of the day, rather than have you
17 sitting around and waiting until we're finished,
18 I'm not going to have the jury report for duty on
19 Monday. I'm going to have you report for duty on
20 Tuesday at the normal time.

21 Because of the fact that you are not
22 going to be here on Monday and it's a weekday, I
23 want to make especially sure that you pay
24 attention to the warning I just read, that is,
25 make sure you don't discuss it with anyone, avoid

1 any exposure to the case.

2 But it is necessary for the Court to
3 hear information outside your presence on Monday
4 and for that reason you will not be reporting on
5 Monday but reporting on Tuesday morning, at the
6 normal time. With that, I will excuse you for
7 the weekend at this time.

8 ATTORNEY GAHN: Your Honor, may I move in
9 Exhibit 432, the CV of Dr. Jentzen?

10 ATTORNEY STRANG: No objection.

11 THE COURT: All right. That exhibit is
12 admitted.

13 (Jury not present.)

14 THE COURT: You may be seated. Appears the
15 jury is not disappointed that we'll be going home
16 early. All right. Then, on Monday, we'll report
17 back to this courtroom at the normal time. Correct,
18 counsel?

19 ATTORNEY STRANG: Yes, sir.

20 THE COURT: All right. I will see you
21 then.

22 ATTORNEY FALLON: Your Honor, could we have
23 an accounting on the exhibits; there's a number of
24 exhibits that may not have been moved in that we
25 would like to move into evidence at this time. And

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then if the Clerk would check her score cards.

THE CLERK: Sure.

THE COURT: I have to address another matter at this time. Let me suggest this, why don't the attorneys meet with the clerk first thing Monday morning. If you discover there is action that needs to be taken with respect to any of the exhibits, we'll do it at that time.

ATTORNEY FALLON: All right. Thank you.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 21st day of November, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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2	accidental [11] 59/22 59/25 68/9 68/13 68/14 68/24 73/11 74/5 74/8 74/23 75/21	another [12] 29/17 29/19 33/1 59/25 60/22 67/3 69/8 69/10 69/17 75/3 75/10 88/3
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 16

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** MARCH 5, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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I N D E X

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery Case No. 05 CF
3 381. We're here this morning on a motion hearing as
4 part of the continuation of the trial in this
5 matter. Will the parties state their appearances
6 for the record, please.

7 ATTORNEY FALLON: Good morning, your Honor.
8 May it please the Court, the State appears by
9 Assistant Attorney General Tom Fallon, Assistant
10 District Attorney Norm Gahn, and District Attorney
11 Ken Kratz as Special Prosecutors for the State of
12 Wisconsin.

13 ATTORNEY STRANG: Good morning, Steven
14 Avery is in person, Jerome Buting and Dean Strang on
15 his behalf.

16 THE COURT: In terms of the agenda today,
17 it's the Court's understanding we're going to begin
18 by hearing the State's motion to admit EDTA test
19 results. Both parties agree that the State will
20 make its offer of proof on the record today. The
21 Court will then hear oral argument and make a
22 determination as to whether or not the State's
23 proffered evidence is admissible.

24 Should the Court determine that the
25 evidence is admissible, the Court will then hear

1 the defendant's motion for sequential independent
2 testing and funding. And there's also a motion
3 that was filed, or made orally by the defense
4 during trial, in which the defense renewed its
5 fair testing motion. And the Court will hear
6 oral argument on that at the end of the day
7 today, time permitting. Counsel, is that your
8 understanding of our agenda?

9 ATTORNEY GAHN: Yes, your Honor.

10 THE COURT: All right. The State may call
11 its witness.

12 ATTORNEY GAHN: State would call Dr. Marc
13 LeBeau.

14 THE CLERK: Please raise your right hand.

15 **DR. MARC LEBEAU**, called as a witness
16 herein, having been first duly sworn, was
17 examined and testified as follows:

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

20 THE WITNESS: My name is Marc, M-a-r-c,
21 LeBeau, L-e-B-e-a-u.

22 **DIRECT EXAMINATION**

23 BY ATTORNEY GAHN:

24 Q. What is your occupation?

25 A. I'm the unit chief of the Chemistry Unit at the

1 FBI Laboratory.

2 Q. And where is your laboratory located?

3 A. It's located in Quantico, Virginia.

4 Q. And how long have you been employed at that
5 laboratory?

6 A. Since 1994.

7 Q. And how long have you been the unit chief of the
8 Chemistry Unit?

9 A. Since September of 2000.

10 Q. And what are your duties within the FBI
11 Laboratory?

12 A. I manage the day-to-day operation of the unit
13 overseeing not only the cases that come into our
14 unit for analysis, but also review the results of
15 the scientists that work under me to ensure that
16 all of the requirements are in place before the
17 reports are released to our contributors.

18 Q. And what is your educational background, please.

19 A. I have a bachelor's degree in chemistry and
20 criminal justice from Central Missouri State
21 University in Warrensburg, Missouri. I have a
22 master's degree in forensic science from the
23 University of New Haven, in West Haven
24 Connecticut. And I have a doctorate in
25 toxicology from the University of Maryland in

1 Baltimore.

2 Q. And, Doctor, would you please describe any
3 experience and special training that you have in
4 your field?

5 A. Well, when I started with the FBI Laboratory, I
6 was thoroughly trained in the relevant areas of
7 forensic chemistry and forensic toxicology, as it
8 pertains to the types of examinations that we are
9 typically asked to perform in our laboratory.

10 I worked for four years before I started
11 with the FBI Laboratory. I worked as a
12 laboratory supervisor at a medical examiner's
13 office in St. Louis, Missouri. Before that I was
14 a chemistry instructor for the University of New
15 Haven. I worked as a laboratory intern for a
16 private toxicology laboratory and I have also
17 worked as a laboratory technician for Monsanto
18 Chemical Company in St. Louis, Missouri.

19 Q. Do you belong to any professional or scientific
20 organizations in your field?

21 A. Yes, I do.

22 Q. And what are they, please?

23 A. I'm an active member of the Society of Forensic
24 Toxicologists in which I serve on the Board of
25 Directors in that organization and also chair one

1 of their professional committees. Likewise, I'm
2 a member of the International Association of
3 Forensic Toxicologists and, again, I'm on two
4 committees in that organization. I'm also an
5 active member of the American Academy of Forensic
6 Scientists.

7 Q. Do you attend conferences within your field?

8 A. Yes, I do.

9 Q. And are you ever asked to present or speak at the
10 conferences in your field?

11 A. Yes, I am, quite frequently.

12 Q. Could you describe some of those for his Honor?

13 A. I'm asked quite often to be a speaker in a number
14 of workshops for these different organizations
15 and I'm also often invited to lecture in areas of
16 forensic toxicology, specifically with drug
17 facilitated crimes. I often get invitations for
18 that.

19 Q. Would you explain a little bit of what you mean
20 by drug facilitated crime.

21 A. Yes, these are crimes in which, as the name
22 implies, the crime itself is helped out by the
23 fact that an individual has slipped a drug and
24 that drug usually incapacitates an individual so
25 that the crime can occur.

1 Q. Is the FBI Laboratory accredited?

2 A. Yes, it is.

3 Q. What does that mean to be accredited?

4 A. It's that an outside expert body will come into
5 your laboratory and inspect its practices to
6 ensure that it's following the standards that
7 have been set up by that outside body.

8 Q. And do you undergo proficiency testing at the
9 FBI?

10 A. Yes, we do.

11 Q. And do you yourself undergo proficiency testing?

12 A. Yes, I do.

13 Q. And have you passed all your proficiency tests?

14 A. Yes, I have.

15 Q. Have you ever testified as an expert before?

16 A. Yes, I have.

17 Q. And how many times?

18 A. I don't keep track of the numbers, but it's
19 roughly 40 or 50 times I have testified.

20 Q. Have you ever been rejected as an expert in your
21 field?

22 A. No, I have not.

23 Q. Have you authored or coauthored any peer review
24 journals or articles?

25 A. Yes, I have.

1 Q. And could you explain some of those to the Court?

2 A. I have authored or coauthored approximately 20
3 scientific articles for chapters in books. These
4 have ranged in various areas of forensic
5 chemistry and forensic toxicology.

6 Q. Have any of these articles dealt with the use of
7 a technique called LC/MS/MS?

8 A. Yes, they have.

9 Q. And could you describe for the Court some of the
10 articles that you have coauthored or perhaps if
11 there are any textbooks that you have been
12 involved in?

13 A. Yes, I have authored an article that analyzes for
14 a drug called Rohypnol using LC/MS/MS techniques.
15 I have coauthored an article that talks about a
16 drug called Mivacurium, also using LC/MS/MS
17 techniques.

18 ATTORNEY BUTING: Could you -- Could you
19 just spell, when you get to names of drugs like
20 that, could you spell them, please.

21 A. Yes, Rohypnol is R-o-h-y-p-n-o-l. Mivacurium,
22 M-i-v-a-c-u-r-i-u-m. And then, additionally, I
23 coauthored an article on another drug that's
24 called Doxacurium, D-o-x-a-c-u-r-i-u-m. And,
25 again, that's using LC/MS/MS techniques.

1 I recently was an invited guest reviewer
2 for a textbook on the topic of LC/MS and LC/MS/MS
3 techniques. And then I have also coedited a book
4 on drug facilitated sexual assault that involved,
5 within the chapters, the topic of LC/MS and
6 LC/MS/MS techniques.

7 Q. And when you talk about the LC/MS/MS techniques,
8 is that the technique that you used in the
9 analysis in this case?

10 A. Yes, it is.

11 Q. Would you describe how your lab became involved
12 in this case?

13 A. Well, I received a phone call from the District
14 Attorney's Office asking if we had a method that
15 would allow us to determine if EDTA was present
16 in a bloodstain or not. Through the course of
17 the conversation, we were asked if we would be
18 willing to work this case for the State. And we
19 agreed to do the work on this case.

20 Q. And were you informed of the nature of this case,
21 basically that there were accusations of
22 planting, by law enforcement officers, of
23 evidence?

24 A. Yes, I was.

25 Q. And why would the FBI be concerned about a case

1 that involves allegations of planting evidence by
2 law enforcement officials?

3 A. Well, one of the many type of cases that the FBI
4 investigates are corruption by public officials.
5 So it's one of the areas we consider to be a very
6 serious accusation for two reasons.

7 If there's a crooked public official out
8 there, we want to make sure they get off the
9 streets. And, likewise, if an innocent public
10 official is being wrongly accused of something,
11 we want to at least try to set the record
12 straight to ensure the public's trust in that
13 organization or that individual.

14 Q. Before we go any further, Doctor, I have marked
15 that Exhibit as 433; is that correct?

16 A. Yes.

17 Q. Could you please describe what that exhibit is.

18 A. This is a copy of my curriculum vitae describing
19 my experiences, my education, etcetera.

20 Q. And does that basically summarize what you
21 testified today about your qualifications?

22 A. Yes, it does.

23 Q. Now, you were sent samples to test in this case;
24 is that correct?

25 A. Yes, I was.

1 Q. And could you tell the Court what it was that was
2 sent to you?

3 A. We received a number of different items. They
4 were swabs, collected from a vehicle, a RAV --
5 Toyota RAV4, as well as control swabs, and a tube
6 of blood from Steven Avery.

7 Q. And what type of instrument did you use in
8 testing these items?

9 A. We used the LC/MS/MS instrument.

10 Q. And could you describe for the jury just exactly
11 what this instrument is and what it tests for?

12 A. Well, the LC/MS/MS instrument is actually three
13 different instruments that are linked together.
14 The LC stands for liquid chromatograph. And what
15 this does is it allows us to take a mixture of
16 chemicals and separate them into individual
17 components so that they are presented to the mass
18 spec portion, the MS portion, individually.

19 So a good example of this would be if
20 you had a sack full of marbles, if you will, and
21 you had small marbles, medium size marbles and
22 large marbles. And if you even complicate it
23 more and suggest that the large marbles were both
24 red -- some were red and some were blue.

25 If you would pass the marbles,

1 simplifying it, through this instrument, it would
2 separate them out so that initially the small
3 marbles would come out, and then maybe a minute
4 later the medium size marbles, and then a minute
5 later maybe the large blue marbles, and then 30
6 seconds after that, the red large marbles. So it
7 allows those to be separated and then introduced
8 to the next instrument, which is your mass
9 spectrometer.

10 The mass spectrometer is an instrument
11 that gives you detailed information about the
12 weight of the chemical that it's analyzing, as
13 well as it applies energy to fragment that
14 chemical into many pieces that presents a very
15 consistent fragmentation pattern, that forms what
16 we call a chemical fingerprint, if you will.

17 It allows us to, then, search against
18 data bases for what chemicals give you that
19 particular fingerprint, and make the unequivocal
20 identification of the actual chemical. By
21 linking two mass spectrometers together, you are
22 able to do very complex and sophisticated
23 experiments that improves the specificity and
24 selectivity of the analytical procedure.

25 Q. And is this instrument something that is used in

1 the field of analytical chemistry?

2 A. Yes, it is.

3 Q. Would you explain to his Honor exactly what the
4 field of analytical chemistry is.

5 A. Analytical chemistry is simply a subset of the
6 overall field of chemistry. And it involves
7 analyzing matter for specific chemical
8 characteristics.

9 The most simple form of analytical
10 chemistry that we consider is, you are doing one
11 of two things, you are either given a material
12 and asked to figure out what that material is,
13 try to identify it, or at least characterize it
14 chemically; or you might be given a second -- a
15 separate material and asked to identify the
16 presence of a specific chemical in that material.
17 Both of those are different forms of analytical
18 chemistry.

19 Q. This LC/MS/MS instrument, basically, is this
20 designed to identify chemicals?

21 A. That's exactly right. It's an instrument that is
22 designed to identify the presence of chemicals.

23 Q. And does it make any difference what the chemical
24 is that you test for in this machine?

25 A. Generally, no, as long as the instrument is able

1 to detect that chemical, it can do the
2 identification.

3 Q. How long has this LC/MS/MS technology been
4 around?

5 A. It's been around for decades.

6 Q. And who would use this type of technology?

7 A. Well, mainly chemists; although, it's starting to
8 get more and more into the biology area, but
9 primarily chemists are the ones employing it.
10 These could be chemists in not just forensic
11 applications, but also in food science; in
12 agriculture and the petroleum industry; in
13 athletic steroid testing; in medicine, when they
14 are looking at proteins and things like that,
15 trying to map out proteins. Those are just some
16 of the examples of where it is used.

17 Q. Are there publications available within the
18 scientific community about the LC/MS/MS
19 technique?

20 A. Yes, there are.

21 Q. Could you describe for his Honor some of those --
22 or how many publications there are.

23 A. There are quite a few. I did a search of what's
24 called the National Library of Medicines Data
25 Base. And in the last 20 years there were over a

1 thousand specific articles in just their data
2 base. These are published journal articles that
3 dealt with the topic of LC/MS/MS and then there
4 are many, many more that deal just with the
5 simpler LC/MS technique.

6 Q. Are there any text books on this technology?

7 A. Yes, there are.

8 Q. Do any particular ones come to mind for you?

9 A. Well, as I indicated earlier, I was asked to
10 review one of those textbooks. It's called
11 applications of LC/MS in toxicology. It's a
12 textbook that was published by a scientist from
13 Italy; his name is Aldo Polettini.

14 Q. And do you take advantage by reading publications
15 and textbooks just to keep up to date in your
16 field?

17 A. Yes, I do.

18 Q. And, again, I would like you to explain to the --
19 and I think you touched on this for the Judge
20 but, again, any articles that you have coauthored
21 or peer reviewed, publications or textbooks in
22 this area.

23 A. Yes, there are many that I have coauthored or
24 primary authored.

25 Q. Could you give the Judge an idea of how many and

1 what it means to peer review, and some of your
2 coauthor experience?

3 A. As far as numbers that I have authored or
4 coauthored, I believe there's about four or five
5 different articles. As far as peer review, which
6 peer review is simply where a scientist sends a
7 manuscript of their research into a professional
8 journal and the editor of that journal then
9 reviews what -- what they are writing about and
10 then goes out to the field to find experts in
11 that particular area, and asks those experts to
12 critique the work that was done by that scientist
13 that submitted the manuscript.

14 They usually have a number of
15 suggestions that they send back to the editor who
16 passes them on to the original author. And then
17 they respond to those critiques and ultimately a
18 decision is made whether or not it's worthy of
19 being published in that particular scientific
20 publication.

21 I'm often asked to be a peer reviewer
22 for a number of the professional journals in my
23 field of study. Usually I have one on my desk at
24 every moment, essentially, to peer review.

25 Q. Have any of these dealt with the LC/MS/MS

1 technology?

2 A. Yes, quite a few have.

3 Q. And I think you spoke about the availability of
4 publications and the use of this technology, but
5 is it widely used throughout the scientific
6 community, this technology?

7 A. It is very widely used throughout the analytical
8 chemistry community.

9 Q. And what other fields -- and I know you touched
10 on this, but I would ask you to amplify a bit on
11 what other fields, besides analytical chemistry,
12 would find use for this LC/MS/MS technology?

13 A. Well, as I indicated, in environmental chemistry,
14 an area where they have used this technique to
15 test water, soil, or perhaps agriculture
16 products.

17 It's also used in food chemistry to
18 analyze different foods for contaminants, for
19 example, or to verify that certain things that
20 are supposed to be in that are there at a
21 particular level.

22 It is used in the pharmaceutical
23 industry when they are looking for new drugs;
24 drug discovery trials, when they are trying to
25 identify new metabolites from drugs.

1 Again, with proteomics, which is
2 studying proteins, it is probably the most widely
3 used instrument for that.

4 And it's used to test athletes for the
5 use of steroids.

6 It is used to look for residues of
7 explosives after a suspected bomb has gone off.

8 Pretty much any organic chemical can be
9 analyzed using this technique.

10 Q. And has the LC/MS/MS technology been subject to
11 any validation studies by the FBI?

12 A. Yes, it is has.

13 Q. Could you describe those for his Honor.

14 A. Well, whenever we have a new technique that's
15 introduced into the laboratory, a new instrument
16 into the laboratory, we basically verify that it
17 performs at the same level that the manufacturer
18 claims it performs at. And then we do a number
19 of studies in which we shoot standards that we're
20 used to seeing, chemicals we're used to seeing on
21 other instruments, to ensure that it gives the
22 appropriate response.

23 Then we employ, when it's time to
24 actually use that particular instrument for a
25 procedure that we're going to apply to

1 evidentiary material for a case, we go through a
2 validation study that verifies things such as
3 detection limit. It may verify interferences to
4 that instrument, any matrix affects from the
5 material that we're going to analyze, and a
6 number of other parameters, depending on what
7 type of method we're developing.

8 Q. Basically, what did the validation studies
9 demonstrate?

10 A. The validation study simply demonstrates the
11 method's fitness, or the instrument's fitness to
12 be used in the laboratory. It identifies the
13 limitations, if you will, to that particular
14 procedure, so, you, as a scientist can understand
15 where it may not perform at the level that you
16 had hoped it to, or in contrast, it kind of
17 supports that it works in the way that you
18 expected it to work, so.

19 Q. And has this LC/MS/MS technique been subject to
20 validation studies by other colleagues in your
21 field?

22 ATTORNEY BUTING: Objection, clarify as to
23 what technique he's referring to, LC/MS --

24 ATTORNEY GAHN: MS. The LC/MS/MS.

25 ATTORNEY BUTING: -- generally, you're

1 talking about, as an instrument?

2 ATTORNEY GAHN: Yes.

3 ATTORNEY BUTING: Okay.

4 Q. (By Attorney Gahn)~ Has the LC/MS/MS technique
5 been subject to validation studies by other
6 colleagues, within the scientific community?

7 A. Absolutely. Part of validation, in a way, is the
8 fact that it's published. And as I indicated, in
9 the last 20 years there are well over a thousand
10 different articles published by scientists
11 throughout the world, that have used the LC/MS/MS
12 technique.

13 Q. And do you believe that this technique is a
14 reliable and accurate technique and accepted
15 within the scientific community?

16 A. Absolutely, it is, yes.

17 Q. And does the FBI maintain quality assurance
18 measures and procedures to ensure that the
19 testing results are reliable?

20 A. Yes, we do.

21 Q. Could you describe some of those for his Honor.

22 A. We use a number of controls to verify that the
23 instrument is working properly, as well as that
24 any procedures that we use on that particular
25 instrument are performing as they are expected to

1 perform. For example, before we use the
2 instrument each day, we inject into it a -- what
3 we call a test mix, which is simply a standard of
4 either a group of analytes that we're used to
5 looking at, or in cases in which we're looking
6 for a targeted analyte, looking for a specific
7 chemical, we will shoot just a standard of that
8 chemical daily, to ensure that we're getting a
9 consistent response, day after day on that
10 instrument.

11 When we're actually running evidentiary
12 material, we introduce negative controls which
13 are simply closely matched to the evidence, the
14 same type of material that we put through the
15 procedure. We know those are supposed to be
16 negative before we start and we make sure they
17 are negative when we finish, in order to accept
18 those results.

19 Likewise, we run positive controls.
20 These are samples that we know are to be
21 positive, before we start the examination, and we
22 ensure that they are positive when they are
23 finished in order to accept the data that came
24 out of that run.

25 Q. And you have used the term analyte a few times,

1 could you please describe for the Court, what you
2 mean by analyte?

3 A. The analyte is simply the chemical that we're
4 looking for.

5 Q. And did you use the LC/MS/MS technique to test
6 for the presence of EDTA in the samples that were
7 sent to you in this case?

8 A. Yes, I did.

9 Q. What is EDTA?

10 A. EDTA stands for ethylenediaminetetraacetic acid.
11 And what it is, is it's a chemical. It's a
12 chemical that is known as a chelating agent,
13 which simply means it takes metals out of the
14 environment that it's in and, basically, attaches
15 to those metals so they can't be used as they
16 normally would in their free form.

17 Q. Could you give an example for his honor about
18 this chelating of this chemical?

19 A. Well, one place that we see EDTA used is in
20 poisoning cases where, for example, if someone is
21 suspected of having lead poisoning, they will
22 give EDTA into the body to bind up the lead so it
23 can't be absorbed into the body to minimize the
24 toxic effects of that poison.

25 Q. Where is EDTA found?

1 A. Well, it's -- it's pretty much found everywhere
2 these days. And I say that because it's the most
3 abundant manmade chemical that's present in the
4 environment. We have a really big problem with
5 it in -- particularly in soil, and in waste water
6 and streams and such, because it's been used so
7 much in so many projects over the past few
8 decades that it's become a real environmental
9 concern.

10 Q. Why does it pose a problem?

11 A. Because of the stability, it doesn't go away very
12 easily once it's, you know, as itself. But,
13 then, in particular, when you bind it with a
14 metal, it becomes very persistent.

15 Q. What is EDTA used for?

16 A. It's used in a number of products, commercial
17 products such as shampoos, detergents, where it's
18 trying to take the metals out of the water that
19 make your water hard. It will help remove those
20 metals so you get a better cleaning action with
21 those detergent or shampoos.

22 It is found in the paper industry, to
23 help in the bleaching process, to make the paper
24 whiter. It's found in agriculture products such
25 as some fertilizers. You see it in foods as

1 preservatives. And, then, of course, we use it
2 in laboratory settings.

3 Q. Is its chemical composition known?

4 A. It is, yes.

5 Q. And have there been scientific techniques or
6 methods available within the scientific community
7 to analyze or test for the presence of EDTA in
8 substances?

9 A. Yes, there have been.

10 Q. Could you describe some of those for his Honor.

11 A. Again, they are in all those different areas, so
12 there are methods that are related to food
13 chemistry that talk about EDTA and the analysis
14 of it in foods, same with water and in soil, in
15 commercial products such as shampoos and
16 detergents; so there are quite a few.

17 Again, if you do a search on -- in data
18 bases of published articles for methods for EDTA,
19 there are -- I'm trying to -- I believe there are
20 over 20 that deal with just LC/MS techniques.
21 There are over a hundred that have been used that
22 are published methods that are out there in the
23 literature for a variety of techniques.

24 Q. Now you used the LC/MS/MS technique to test for
25 the presence of EDTA, correct?

1 A. That's correct.

2 Q. Are there other techniques available which could
3 also test for the presence of EDTA?

4 A. Yes, there are.

5 Q. And would you please describe some of them.

6 A. Well, the LC/MS/MS is a very advanced instrument.
7 There are simpler forms of the same technique
8 that could be used. For example, the LC is what
9 is known as an HPLC, a high pressure liquid
10 chromatograph. That instrument, attached to a
11 simpler detector than a mass spectrometer, which
12 is called a diode, d-i-o-d-e, array detector,
13 could be used.

14 Then, you could also use a technique
15 that's called capillary electrophoresis. There
16 are techniques for using gas chromatography.
17 There are techniques for doing what is called
18 nuclear magnetic resonance spectroscopy and --

19 COURT REPORTER: Excuse me, could you
20 repeat that one more time?

21 THE WITNESS: Nuclear resonance,
22 r-e-s-o-n-a-n-c-e -- I'm sorry, I misspoke. Nuclear
23 magnetic resonance spectroscopy.

24 COURT REPORTER: Thank you.

25 A. And, then, you can take any of those -- nearly

1 any of those instruments and link them to a mass
2 spectrometer to get the information about the
3 identity of that chemical. It doesn't require,
4 essentially, the LC/MS/MS to do this particular
5 analysis. But, I mean, we did employ it because
6 I think it provides specificity and selectivity
7 that is important in a legal proceeding like
8 this.

9 Q. Who would have these types of instruments that
10 you described?

11 A. Any -- Any chemistry laboratory, analytical
12 chemistry laboratory, is going to have at least
13 one of those instruments I talked about.

14 Q. Have other scientists tested substances for the
15 presence of EDTA?

16 A. Yes, they have.

17 Q. And have they published their techniques and
18 findings in peer review articles?

19 A. Yes, they have.

20 Q. Could you describe a few of those for his honor.

21 A. Well, again, we get into the different areas.
22 There are publications in the environment.
23 Environmental studies that have been done looking
24 at the analysis of water, soil. There's
25 agriculture products that have been analyzed by

1 EDTA.

2 The commercial products that have been
3 analyzed for EDTA using a variety of different
4 instrumental techniques, the whole gamut: HPLC,
5 GC, capillary electrophoresis and, then, any of
6 those techniques linked with a mass spectrometer.

7 Q. And did you say that these findings and
8 techniques have been published in peer review
9 articles?

10 A. That's exactly right.

11 Q. And, again, please describe for his Honor, what
12 is a peer reviewed article?

13 A. A peer reviewed article is one --

14 ATTORNEY BUTING: Asked and answered.

15 THE COURT: Sustained, I have got that.

16 Q. (By Attorney Gahn)~ Could someone replicate those
17 testing processes?

18 A. Yes, they can.

19 Q. And can the instruments that test for EDTA, shall
20 we say in agriculture or soil, also be used to
21 test for EDTA in biological substances like
22 blood?

23 A. Yes, absolutely.

24 Q. What is a blood collection tube?

25 A. Well, a blood collection tube is the actual

1 vessel, that when you get blood drawn from you,
2 that's what usually a nurse or a medical
3 professional will put the blood into. It's a
4 small, usually glass tube that is under vacuum.
5 And that vacuum helps draw the blood out of your
6 vein into the tube.

7 Q. Are there different kinds of blood collection
8 tubes?

9 A. Yes, there are.

10 Q. Now, Dr. LeBeau, you prepared a short PowerPoint
11 demonstration; do you believe that would be
12 helpful for the Judge?

13 A. Yes, it would be.

14 Q. And would you please describe the different kinds
15 of blood collection tubes available?

16 A. Well, there are a number of different tubes that
17 are available. And they may or may not have
18 preservatives and anticoagulants in them. We can
19 tell what's in a tube simply by looking at the
20 color of the cap on top of that tube.

21 The red-stoppered tube, for example, has
22 nothing in it. So when blood goes into it, it's
23 simply blood with nothing added to it. A
24 yellow-stoppered tube has citric acid or citrate
25 in it. Gray-stoppered tubes have potassium

1 fluoride as well as usually potassium oxalate.
2 And, then, we also have the lavender or
3 purple-topped tube that has EDTA in it.

4 Blood is put into those tubes. They are
5 mixed up so that any preservative in them is
6 equally distributed throughout the blood. And
7 the reason that we have these preservatives and
8 anticoagulants present in the tubes is that,
9 because of this, this is what's called the
10 clotting pathway.

11 We know that when we cut our hands or
12 something that the blood will clot to stop the
13 bleeding, most of the time. And that's, in part,
14 largely due to the presence of calcium throughout
15 this cascade that leads to the actual clotting.
16 What the anticoagulants tend to do in the tube of
17 blood is tie up that calcium to prevent it from
18 participating in this clotting pathway.

19 So, again, if we go back to the
20 red-stoppered tube that does not have any
21 anticoagulant or preservative in it, what happens
22 after some time of that blood sitting around in
23 the tube, with calcium that's present from our
24 natural diet and just normal metabolic pathways
25 in our body, is the calcium helps make those red

1 blood cells clump together, or clot. And that,
2 of course, makes it very difficult to use that
3 blood sample in a laboratory setting for doing
4 laboratory testing.

5 So that's why we have tubes like the
6 lavender-top or purple-topped tube containing
7 EDTA. The EDTA structure is listed down on the
8 bottom portion of the screen and simply what EDTA
9 does, as I mentioned earlier, is it binds metals.
10 Takes metals that are present in that blood
11 sample, such as calcium, to stop the clotting,
12 and iron, which is normally present in our diet,
13 and, again, through metabolic processes binds
14 them up so that those metals are no longer
15 available to work as they normally would. And by
16 binding it up, it -- it stops the blood from
17 clotting.

18 Here we have the EDTA in the red blood
19 cells. Again, the iron is floating freely
20 throughout the blood, initially, as is the
21 calcium. And once those are mixed up, the EDTA
22 grabs on to those metals, calcium and iron, and
23 binds them and forms a metal complex or a
24 chelate, as I mentioned earlier.

25 But you will notice that there is -- in

1 that tube, there is still EDTA present, what we
2 call the free acid form of EDTA. That's because
3 they put much, much more EDTA in those tubes than
4 what's actually needed for a standard specimen,
5 for it to work as an anticoagulant and
6 preservative. So you will have excess EDTA
7 present.

8 Q. And I believe you testified that you received
9 bloodstains from Teresa Halbach's RAV4 to test?

10 A. That's correct.

11 Q. And you also received a tube of blood from Steven
12 Avery?

13 A. Yes.

14 Q. And was that a purple-topped tube?

15 A. It was a purple-topped tube, yes.

16 Q. And that's the type of tube that you just
17 described?

18 A. That's right.

19 Q. And did you subject those samples to your
20 LC/MS/MS technology?

21 A. Yes, we did.

22 Q. And did you test those samples for the presence
23 of EDTA?

24 A. Yes, we did.

25 Q. Would you describe the steps that you took to

1 validate the method that you used in this testing
2 process.

3 A. Well, initially, we -- we had to develop the
4 method or we had to ensure that the method would
5 work on the instruments that we were employing
6 for this particular technique. Once that was
7 done, we performed four different validation
8 experiments.

9 One is what we call our detection limit
10 study. It's simply to determine how low of a
11 concentration, of EDTA, we can detect using our
12 method. We did this two ways. The first way was
13 by taking a solution of EDTA in water and making
14 dilutions of it until we reached a point that we
15 could no longer detect EDTA in that aqueous
16 solution.

17 Then we took a sample of blood not
18 related to this case, but this blood sample had
19 EDTA in it. It was a standard purple-topped tube
20 that had been filled to the standard level,
21 shaken up. And then we took drops, measured
22 amounts of blood, out of that tube. And, again,
23 we measured to the point that we could no longer
24 detect EDTA.

25 And as it turns out, with this

1 particular technique, the smallest volume of
2 blood that we can measure out is one microliter,
3 one microliter is one 1 millionth of a litre. At
4 that one microliter drop, we were still able to
5 find presence of EDTA, using this technique.

6 Q. And that would be EDTA in a purple-topped tube?

7 A. That's exactly right. So that was the one step
8 of the validation we performed, which is our
9 detection limit study. We also looked for
10 interferences in normal blood samples that would
11 interfere with this particular analysis, to cause
12 confusion when it came time to interpreting the
13 results. And we did this by analyzing 10
14 different blood samples, that were collected in
15 tubes that contained other preservatives than
16 EDTA; for example a yellow-stoppered tube, or a
17 gray-stoppered tube, or perhaps a red-stoppered
18 tube.

19 These are blood samples that were just
20 ran -- from random individuals. And, again, we
21 analyzed that, following this procedure and
22 determined that none of those samples, those
23 other blood samples, had interferences in them
24 that would confuse the results.

25 Another part of that study was to ensure

1 that our internal standard, which is simply a
2 control that we put into every sample that we're
3 going to analyze, to ensure that that didn't
4 cause any interferences with our ability to
5 detect EDTA in the samples.

6 The third step was what we called a
7 matrix suppression study. And this is something
8 that is very well known with the use of the LC/MS
9 technique, especially when you use what's called
10 electrospray ionization mode, which we did in
11 this case. And simply what that means is that
12 there are -- it's a well-known phenomenon that
13 there are other analytes present in a sample,
14 that can suppress the signal of the analyte that
15 you are interested in.

16 So what could potentially happen is, it
17 makes it look like there's less there than what
18 is actually there. We evaluated that to ensure
19 that we weren't getting any significant matrix --
20 matrix affect. And at the very worse we got was
21 a 33 percent suppression in matrix -- caused by
22 the matrix, which is fairly insignificant.

23 And then the final study that we did
24 was -- I can't think what the final study was,
25 I'm drawing a blank. Can I refer to my notes?

1 Q. Sure, please.

2 A. Oh, yes, also a very important study is the
3 carryover study, which was essentially to
4 determine whether or not, if you analyze a sample
5 of EDTA, does it show up in the next sample
6 that's analyzed. So we evaluated that as well.
7 We did not see any significant carryover effect
8 using this particular technique. And those are
9 the steps that we used in the method validation.

10 Q. And these steps that you used in the method
11 validation, are these the steps that you normally
12 use in the FBI Laboratory to perform method
13 validation?

14 A. Yes, exactly, they are.

15 Q. Would you describe for his Honor, the analysis
16 that you and others under your supervision
17 performed on the specimens, actually in this
18 case.

19 A. Well, the analysis, your Honor, is simply that we
20 focused our instrument to look for two of the --
21 two of the products that are on the screen. We
22 looked specifically for the presence of EDTA that
23 was bound to the iron in the blood. And we chose
24 iron over calcium because it is naturally present
25 at about a 10 to 30 times higher amount than is

1 calcium.

2 And, then, we also looked for the
3 presence of the free acid form of the actual
4 EDTA. Again, that is because there's so much
5 there in an EDTA tube, that's what you should
6 expect to see the most of, unless it's a case of
7 like a poisoning or something, a metal poisoning.

8 Q. Did you develop a protocol or standing operating
9 procedure for the analysis you performed in this
10 case?

11 A. Yes, we did.

12 Q. And what is a protocol or a standing operating
13 procedure -- standard operating procedure?

14 A. A standard operating procedure is simply the
15 steps that you take in order to complete the
16 analysis. And it's done to ensure that you --
17 that it's done consistently time after time. It
18 includes the information, the background
19 information, and all the materials that you need
20 to perform the analysis, much like a recipe in a
21 cookbook. It tells you what you need and, then,
22 the stepwise procedure to actually carry it out.

23 But it also includes important things
24 like references you relied upon in developing the
25 procedure and includes the limitations of the

1 method or the results of the validation study.

2 Q. I'm going to ask if Officer Fassbender would,
3 please, bring you an exhibit, which has been
4 marked Exhibit 434, and ask you to identify it.
5 Thank you.

6 A. All right. Exhibit 434 is the standard operating
7 procedure that we developed for the analysis of
8 EDTA in dried bloodstains, specifically for this
9 case.

10 Q. And, again, during this analysis, what were you
11 looking for?

12 A. Looking for the presence of EDTA in both the free
13 acid form and in the form that's complexed to the
14 iron in the bloodstain.

15 Q. And did you follow this protocol or standard
16 operating procedure that you developed?

17 A. Yes. Yes, we did.

18 Q. Is it unusual for the FBI Chemistry Unit Lab to
19 receive requests to analyze some substance for a
20 chemical and that you have to develop a protocol
21 for?

22 A. Not at all. Many of the cases that we receive in
23 our unit, in particular, would normally be worked
24 by a state laboratory. But, for a number of
25 reasons, they are sent to our laboratory;

1 primarily because, either it would be very taxing
2 on that state laboratory to take people off of
3 their normal casework in order to develop a
4 method, validate the method, and then put it into
5 use; or they may -- in other cases, they may not
6 have the expertise or the personnel in order to
7 do that.

8 So many of our requests that come in are
9 to analyze for unique or new drugs, or to apply a
10 new technique to a particular analyte. And so
11 we're very, very familiar and it's a normal
12 course of business for us to have to develop a
13 method, validate it, and then apply it to a case.

14 Q. Was there anything in the literature that helped
15 you develop this standard operating procedure
16 that you used in this case?

17 A. Yes, there certainly was.

18 Q. I'm going to have handed to you two exhibits
19 which have been marked Exhibits 436 and 437. I
20 ask you to look at those and I ask you, do you
21 recognize those?

22 A. Yes, Exhibit 436 is a manuscript out of the
23 *Journal of Analytical Toxicology* published in
24 November/December of 1997, that's entitled *The*
25 *Analysis of EDTA and Dried Bloodstains by*

1 *Electrospray LC/MS/MS and Ion Chromatography.*

2 And this is one of the -- this is the primary
3 article that we relied upon in order to develop
4 the method in our particular -- in this
5 particular case.

6 The second article, Exhibit 437, is from
7 a journal that's entitled *Analytical Chemistry.*

8 And the title of the article is *Determining EDTA*
9 *in Blood.* And, again, we relied upon this
10 article to help us along the way as we were
11 developing and analyzing specimens in this case.

12 Q. Do you consider those articles or publications to
13 be peer reviewed articles?

14 A. Absolutely.

15 Q. And could someone take those articles and develop
16 a testing procedure for EDTA in blood?

17 A. Yes, they could.

18 Q. And if someone wanted to, could they make
19 improvements to the methods addressed in those
20 two articles?

21 A. Yes, they can.

22 Q. Could you again just state, what was the date of
23 the second article, Exhibit 437?

24 A. Yes, that is August of 1997.

25 THE COURT: For my benefit, these are the

1 first two listed items under Item 16, references on
2 the -- looks like page eight of the attachment to
3 your submission?

4 ATTORNEY GAHN: That is correct, your
5 Honor.

6 Q. (By Attorney Gahn)~ And were the instruments used
7 in those articles similar to the instruments that
8 you used in your testing in this case?

9 A. Yes, they are similar, but not exactly the same.

10 Q. Could independent researchers, university
11 research facilities, or other forensic labs,
12 adopt those procedures and develop a protocol for
13 testing of EDTA in blood?

14 A. Yes, they could.

15 Q. Did you make any improvements to those articles?

16 A. We did.

17 Q. Please describe for his Honor the improvements
18 that you made to the existing protocols.

19 A. All right. Probably the most significant
20 improvement I think we undertook when we
21 developed our method is, we introduced what's
22 called an internal standard as I alluded to
23 earlier. This is simply, for each sample we're
24 adding a positive control to that actual sample.

25 It's a chemically modified version of

1 the same analyte that we're looking for. It's
2 simply made a little bit heavier than the normal
3 analyte. And it allows us to get a very accurate
4 assessment as to if the actual sample itself
5 worked, not just the batch run of samples, but it
6 allows you to assess each individual sample as to
7 whether or not it should pass or fail your
8 quality assurance protocols and quality control
9 protocols you have set up.

10 We introduced that, which neither of
11 these papers did. We also -- We looked for the
12 presence of the free acid form of EDTA in one of
13 the techniques that -- that the first reference,
14 Exhibit 436, did not look for. So we added an
15 additional test, if you will, to our protocol,
16 that allowed us to kind of take a three prong
17 approach to looking for EDTA in these samples.

18 And we used -- Furthermore, we used a
19 different LC/MS/MS instrument than what was used
20 in this -- the 1997 article in the *Journal of*
21 *Analytical Toxicology*. The instrument we used is
22 newer than the one they used in this particular
23 procedure. And improvements have been made that
24 I believe helped us eliminate one of the concerns
25 that they reported in this particular paper, and

1 that is of carryover of the samples from one
2 sampling to the next.

3 Q. What is a scientific hypothesis?

4 A. Well, it's -- it's -- it's an idea that a
5 scientist has that, then, they are going to apply
6 research, if you will, to either show that their
7 idea is accurate or if it's inaccurate.

8 Q. Did you develop a scientific hypothesis for this
9 case before you did your testing?

10 A. Well, we did, yes.

11 Q. And what was that?

12 A. Again, if I can go to this presentation, the idea
13 was, what we were asked to do is determine if
14 someone took a purple-stoppered tube of blood
15 that has EDTA in it, takes the cap off that tube,
16 and then pours a drop, or many drops out, onto
17 the surface, if someone comes along at a later
18 date, swabs up that dried bloodstain, are we able
19 to, then, find, on that swab, from that stain,
20 the presence of EDTA and EDTA linked with iron.

21 That's the scientific hypothesis, is
22 that we should be able the find the presence of
23 free acid EDTA, as well as the EDTA that's bound
24 to iron, off of that stain that's on the swab,
25 that's collected from a bloodstain.

1 Q. And were you able to do that in this case?

2 A. We were able to perform that analysis, yes.

3 Q. And what was your conclusion?

4 A. Well, we -- we did not find any EDTA, or EDTA
5 bound to iron, on the swabs that we received in
6 this case.

7 Q. Were controls run with each analysis that you ran
8 with the bloodstains submitted to you?

9 A. Yes, they were.

10 Q. Explain what controls are.

11 A. Again, we ran negative controls, these were blood
12 samples that were not put into an EDTA tube and
13 then they were -- samples of the blood were
14 applied to swabs. Those swabs were carried
15 through the whole extraction procedure. They
16 were to be negative from the start and at the end
17 of the analysis they were indeed negative.

18 We ran positive control samples. We did
19 this two ways. We ran a positive control sample
20 of blood from a lab volunteer who, again, their
21 blood sample was put into a purple-stoppered tube
22 that contains EDTA. That blood sample we
23 expected to be positive at the end of the run and
24 it was indeed positive.

25 But, additionally, we took the blood

1 sample that was provided to us from Steven Avery.
2 We put that on a swab and ran that through as a
3 positive control. It should have had EDTA in it
4 because it was in a purple-topped tube, and it
5 did, indeed, have EDTA in it, served as a
6 positive control.

7 And, then, as I alluded to, the internal
8 standard that we introduce into every sample,
9 that is another control that allows us to assess
10 that that actual sample worked as expected. So
11 that was a third type of control we used.

12 THE COURT: I would like to stop because
13 I'm not following something. I thought in the
14 exhibit up on the PowerPoint, you said that you took
15 some blood out of a purple-topped tube, spilled some
16 of it out, tested it with the swab, and did not find
17 EDTA or EDTA --

18 THE WITNESS: I'm sorry, your Honor, if I
19 could just go back. I was asked about the
20 scientific hypothesis that we had for this
21 particular case. And the hypothesis being that, if
22 someone, anyone, were to take a tube of blood that
23 contains EDTA and put it somewhere, put some of that
24 blood somewhere, and then someone else comes along
25 and samples that blood, that EDTA blood should

1 transfer onto that swab.

2 THE COURT: It should.

3 THE WITNESS: Should, yes.

4 THE COURT: Okay.

5 THE WITNESS: And the idea is, the whole
6 premise behind our protocol that we developed was
7 that we should be able to find EDTA and EDTA bound
8 to iron on that swab. And our validation showed
9 that we can do that. We absolutely can do that.

10 Then I was asked about the results in
11 this particular case. And the results in this
12 particular case, with the swabs we received, we
13 did not detect EDTA and EDTA with iron linked to
14 it. So this is specifically for the results on
15 our -- on the case at hand today.

16 THE COURT: When you say the swabs you
17 received, what swabs are we talking about?

18 ATTORNEY GAHN: He was sent three swabs,
19 the three that Sherry -- three of the ones that
20 Sherry Culhane testified to, A-8, the swabbing from
21 the ignition, by the dashboard by the ignition.

22 (Court reporter asked him to repeat.)

23 ATTORNEY GAHN: A-8.

24 ATTORNEY BUTING: You want to let him
25 testify as to what he tested?

1 Q. (By Attorney Gahn)~ Would you tell him?

2 THE COURT: I think if this line of
3 questioning was designed to elicit that, I didn't
4 get it, so I think you better go back and do it
5 again.

6 ATTORNEY GAHN: All right.

7 Q. (By Attorney Gahn)~ What did you receive to test
8 in this case?

9 A. Okay. We received three swabs, ones that were
10 collect from the RAV4: One swab was reported to
11 have been collected from near the ignition switch
12 in the car, another swab was off of a door pan --
13 door panel area, and the third was off of a CD
14 case.

15 Q. And those were sent to you and you subjected
16 those to the LC/MS testing; is that correct?

17 A. That's correct.

18 Q. And what were you looking for in those swabs?

19 A. We were looking for the presence of EDTA in the
20 free -- the free acid form of EDTA, as well as
21 EDTA that's bound or complexed with iron.

22 Q. And were you also sent a tube of blood from
23 Steven Avery that came from the Manitowoc County
24 Clerk of Court's Office?

25 A. Yes, I was.

1 Q. And what -- Did you test that tube of blood?
2 A. Yes, we did.
3 Q. And what did you test it for.
4 A. Presence of EDTA and EDTA bound to iron.
5 Q. Did you find EDTA in the tube of blood of Steven
6 Avery?
7 A. Yes, we did.
8 Q. Did you find EDTA in any of the three
9 bloodstained swabs from Teresa Halbach's RAV4?
10 A. No, we did not.
11 Q. Now, would you just relate to his Honor, how that
12 testing process fit in with your original
13 hypothesis in this case that you developed.
14 A. Well, the idea was, as part of the validation of
15 the method, is that you can actually still find
16 the presence of EDTA, even if it's collected onto
17 a swab and then sent into the laboratory,
18 essentially.
19 Q. So you were either going to find EDTA, or not
20 EDTA, in the swabs from Teresa Halbach's car?
21 A. Exactly.
22 Q. And you did not find?
23 A. We did not.
24 Q. Would you tell his Honor about your experience --
25 No, I take that -- Strike that. Are their

1 articles about the degradation of EDTA?

2 A. Yes, there are. There are numerous articles.

3 There's even chapters in books talking about the
4 degradation, or conversely, the stability of
5 EDTA.

6 Q. And tell the Judge about your experience with the
7 stability of EDTA and any tests you may have run
8 in conjunction with this case?

9 A. Well, specifically, in this article that we
10 relied upon, *The Journal of Analytical*
11 *Toxicology*, they talk about it in relation to old
12 bloodstains. They -- They looked at bloodstains
13 that were two years old and were still able to
14 identify EDTA after two years of storage at room
15 temperature.

16 Likewise, we performed a similar
17 analysis in our lab in which we looked at
18 bloodstains that had been put onto cards, spot
19 cards, EDTA blood that had been placed on the
20 spot cards in May of 2004 and stored at room
21 temperature up until they were analyzed, just
22 last week. And we were able to identify the
23 presence of EDTA in every single one of those.

24 Q. I'm going to have handed to you an exhibit which
25 has been marked as Exhibit, I believe, 435. And

1 could you explain to the Court what that exhibit
2 is.

3 A. This is a copy of the laboratory I -- laboratory
4 report that I issued for this case.

5 Q. And I would like you to explain to the Court a
6 little bit about the detection level, how low
7 could you go in detecting EDTA in this case?

8 A. Well, I can explain it two ways. One way is
9 talking about concentration of EDTA. And as I
10 explained earlier, we were able to do
11 decreasingly lower and lower concentrations of
12 EDTA in a water solution.

13 At that -- Using that technique, we
14 could identify 13 micrograms per milliliter of
15 EDTA. And that's -- it's a number. It doesn't
16 necessarily mean a whole lot unless you are a
17 scientist. But likewise, what we did is we took
18 a tube of EDTA blood and we did spots of that
19 blood, to the lowest volume that we can
20 accurately measure out which is one microliter.
21 And even that one microliter drop of EDTA blood,
22 which is the equivalent of about 1/20 of a drop
23 of blood, even that little amount, we were able
24 to find the presence of EDTA in.

25 Q. Based upon your training and experience, and

1 based upon your test results using the LC/MS/MS
2 technique, and based upon all of the data and
3 compilations that you reviewed, and basically the
4 entire case file that you have; do you have an
5 opinion, to a reasonable degree of scientific
6 certainty, whether the bloodstains from Teresa
7 Halbach's RAV4, that you tested, came from the
8 vial of blood from Steven Avery, which was in the
9 Manitowoc County Clerk of Court's Office?

10 A. I do have an opinion on it.

11 Q. What is that opinion?

12 A. My opinion is that the bloodstains did not come
13 from that tube of blood.

14 Q. Thank you.

15 ATTORNEY GAHN: That's all I have.

16 ATTORNEY BUTING: Do you want to take a
17 break now or do you want to start.

18 THE COURT: Let's take a 10 minute break
19 and then we'll come back to your cross.

20 ATTORNEY BUTING: Okay.

21 (Recess taken.)

22 THE COURT: And, Mr. Buting, at this time
23 you may begin your cross-examination.

24 ATTORNEY BUTING: Thank you, your Honor.

25 **CROSS-EXAMINATION**

1 BY ATTORNEY BUTING:

2 Q. Good morning, Mr. LeBeau.

3 A. Good morning.

4 Q. Let's talk a little bit about your background.

5 Do you have the CV in front of you?

6 A. Yes, I do.

7 Q. As I look at it, it -- if you turn to page -- Do
8 you have anything in here that shows research
9 interest? Do you have a heading that says that,
10 or am I wrong? Do you have a heading like that,
11 a sub-heading that says research interests?

12 A. I don't notice one.

13 Q. Well, let's go ahead and mark this.

14 (Exhibit 438 marked for identification.)

15 Q. I'm going to show you Exhibit 438, can you look
16 through that and identify it for us.

17 A. Yes, this is a declaration that I made in another
18 case involving EDTA.

19 Q. Okay. And that's a case called ***State of***
20 ***California vs. Cooper?***

21 A. That's correct.

22 Q. We'll talk about that in more detail later, but
23 attached to this declaration, you had also a CV I
24 believe. And this was filed in -- declaration is
25 dated April 28th of 2004?

1 A. 2004, that's correct.

2 Q. Okay. And I recognize that CVs can change from
3 time to time, right?

4 A. That's right.

5 Q. And the one that you filed here today, it being
6 2007, is going to be somewhat different than the
7 one you filed in 2004, right?

8 A. That's correct, yes.

9 Q. But in this particular one, you did have a
10 section called research, areas of research,
11 right? Highlight it for you there.

12 A. Yes, I did.

13 Q. Okay. And at least as of 2004, you described
14 your -- you listed six areas of research
15 interest, okay? Would you agree with me?

16 A. Yes, I do.

17 Q. The first one, which you dated as 1987 and '88
18 only, was Trace Elemental Analysis of Hair,
19 right?

20 A. That's correct.

21 Q. 1989, Statistical Analysis of Suicide Deaths,
22 right?

23 A. Yes.

24 Q. 1991, Nebulizer Administration of Cef -- can you
25 pronounce that for me?

1 A. Ceftriaxone.

2 Q. That's C-e-f-t-r-i-a-x-o-n-e to follow, right?

3 A. That's correct.

4 Q. Some antibiotics for chickens or something?

5 A. Yes.

6 Q. Okay. And then, 1991 to 1994, you put Postmortem
7 Redistribution of Drugs?

8 A. Yes.

9 Q. And then, at least as of 2004, the only one --
10 research interest that you put as still present
11 was 1998 to the present, Detection of Drug
12 Facilitated Rape, right?

13 A. That's correct.

14 Q. And 1999 to present, GHB and Drug Facilitated
15 Sexual Assault?

16 A. That's correct.

17 Q. More or less the same.

18 A. One's a broader topic than the other, but, yes.

19 Q. Okay. And would it be true to say that if you
20 were to add this section to your CV right now,
21 updating it to 2007, these would probably say
22 1998 to present, still?

23 A. No. No, the research section of that old CV from
24 three years ago, were different topics of
25 research that I had engaged during my course of

1 study at different universities. So, for
2 example, the last two items, Detection of Drug
3 Facilitated Sexual Assault and GHB in Drug
4 Facilitated Sexual Assault, those were my
5 dissertation topic for my doctorate.

6 The topic about Trace Elements and Hair,
7 that was an undergraduate research project I did
8 at the Central Missouri State University in
9 Warrensburg, Missouri, was part of a senior level
10 project. The Ceftriaxone in Foul was a graduate
11 research project I was employed upon at my job
12 when I was working at the St. Louis County
13 Medical Examiner's Office. It was a side project
14 that my supervisor asked me to work on with him.
15 And --

16 Q. So let me just stop you for a second, then. So
17 what you are saying is those research areas we
18 just described are only research that you did
19 while you were engaged in some educational
20 pursuit?

21 A. In an academic -- towards an academic degree,
22 that's what those specific research projects
23 listed in that old CV.

24 Q. So in 2004, when you list the Detection of GHB
25 Drug Facilitated Rape as a research area, you

1 said, 1988 to present, you were still working on
2 your Ph.D at that time?

3 A. Yes, I was.

4 Q. Okay. And you have since completed it?

5 A. Yes, I have.

6 Q. So, you no longer are involved in any research at
7 all?

8 A. I'm not involved in any research in an academia
9 type setting. Certainly, we do research to a
10 small scale with cases as we're asked to be
11 involved with them.

12 Q. Sure. But --

13 A. Not long term research like you would expect
14 towards a degree.

15 Q. And when we're talking about academic research,
16 we're talking about publications, peer review,
17 things of that sort, right?

18 A. Well, that's one part of doing research in
19 academia, that's correct.

20 Q. Doesn't help much if you are in a laboratory
21 doing some experiment on your own and devising
22 something, if you don't publish it and tell other
23 people what it is, right?

24 A. Well, I mean, you can't publish everything you
25 do, that's certainly true. But we do publish

1 methods, for example, that we developed that are
2 unique and not already out in the scientific
3 literature. We will publish --

4 Q. Okay.

5 A. -- and put it through the peer review process.

6 Q. Okay. We'll get into that in a minute. But, as
7 I look at your presentations, the talks that you
8 give, from 1998 to now, looking at the new CV,
9 the huge, huge majority of those presentations
10 are on this topic of GHB and drug induced rape
11 things, situations, right?

12 A. That's correct.

13 Q. In fact, you are speaking in just a couple of
14 weeks at a Women's Sexual Violence Seminar,
15 aren't you?

16 A. I may be, I don't know my schedule that far out,
17 actually.

18 Q. You don't know that you are speaking on
19 March 23rd?

20 A. I could very well be.

21 Q. You haven't written a paper on it yet?

22 A. I may have. I do quite a bit of training on that
23 particular topic.

24 Q. So, do I understand, though, that you don't even
25 know that you are giving a talk in -- March 23rd

1 now?

2 A. No. What you understand is, I don't know my
3 calendar three weeks out.

4 Q. Okay. And when I say the great majority of your
5 talks are on that one topic, would you agree
6 probably over 90 percent of the talks that you
7 have given since 1998 are focused on that one
8 issue?

9 A. It's a topic that I am well recognized in this
10 country for being an expert and so I am invited
11 to do a --

12 Q. Sure.

13 A. -- whole lot of training on that particular
14 topic.

15 Q. And that has been -- As far as peer review of any
16 of your research, that's been it; that's where
17 you have gotten the recognition and the most peer
18 review is on your work on the detection of GHB in
19 sexual assault cases?

20 A. No, I would disagree with that. It's certainly
21 an area that I have done a considerable amount of
22 publication on and personal research towards my
23 doctorate, but there are numerous other
24 publications that I have been involved with that
25 fall outside the area of GHB in drug facilitated

1 crimes.

2 Q. Okay. Let's talk about your -- your experience
3 with EDTA. You have never tested for EDTA before
4 this case, have you?

5 A. Yes, I have.

6 Q. When?

7 A. Approximately 1998.

8 Q. And was that the O.J. Simpson case?

9 A. No, it wasn't.

10 Q. Were you working for the FBI?

11 A. Yes, I was.

12 Q. And were you using a protocol?

13 A. Yes, I was.

14 Q. And Mr. Gahn forwarded you a letter that I sent,
15 requesting copies of information?

16 A. Yes.

17 Q. One of those was a request for any and all
18 protocols that you have ever used testing EDTA?

19 A. Yes.

20 Q. You didn't provide that, did you?

21 A. No, we did not.

22 Q. All you provided was your current protocol,
23 right?

24 A. That's correct. Because this is the protocol we
25 used for this case.

1 Q. Well, how many times have you tested for EDTA
2 before this case?

3 A. One other time.

4 Q. One other time. And it was a protocol that you
5 no longer use; is that right?

6 A. I believe we still use a revised version of the
7 protocol I used in the previous testing for EDTA,
8 but it was not the same type of scenario. We
9 weren't --

10 Q. No.

11 A. -- looking for EDTA in a bloodstain, which would,
12 in my opinion, require a little bit different
13 approach --

14 Q. It sure does.

15 A. -- to analysis.

16 Q. What were you testing for in that case?

17 A. EDTA.

18 Q. In what?

19 A. I'm sorry?

20 Q. In what?

21 A. In a buffer solution.

22 Q. In a buffer solution?

23 A. Yes.

24 Q. Why would you find EDTA in a buffer solution?

25 A. Well, as I indicated, it's used in laboratory

1 settings and it was a case involving allegations
2 of a wrongdoing by a forensic lab employee
3 purposely mixing up a buffer, contaminating it
4 with EDTA, switching buffers. So, we were asked
5 to investigate the buffers to see if they had
6 indeed been switched --

7 Q. Okay.

8 A. -- and that's what it involved.

9 Q. And were they? Did you find evidence of it?

10 A. I don't recall, actually.

11 Q. Really. What lab was that?

12 A. I don't recall.

13 Q. Wasn't that right around the time when the FBI
14 Lab itself was being challenged and audited for
15 the very same sorts of concerns?

16 A. No, not at all. We were not audited for
17 purposely mixing up buffers and to -- as a
18 disgruntled employee trying to get back at the
19 organization.

20 Q. I see.

21 A. Not at all.

22 Q. Well, you were audited by the Inspector General
23 of the United States?

24 A. Yes, we were.

25 Q. And that was in 1999?

1 A. I don't recall the date, but it was in the late
2 90s, you're right.

3 Q. And it was part of an evaluation of the whole FBI
4 Lab, not just your unit?

5 A. It was -- It was overall, the practices within
6 our organization and in our laboratory.

7 Q. And how many different units do you have in the
8 FBI Laboratory?

9 A. Today?

10 Q. Or back then.

11 A. It's going to be a different answer, so.

12 Q. Well, give me back then.

13 A. Approximately 25 units.

14 Q. Okay. How about today?

15 A. Probably around 30 units today.

16 Q. Okay. And of those 25 units, the Chemical Unit
17 was one of the units that was audited by the
18 Inspector General, isn't it?

19 A. Well, all the units were looked at and the
20 practices of the FBI Laboratory were looked at.
21 Our unit was one that the Inspector General came
22 in and specifically was looking at allegations
23 made by the individual that initiated the
24 complaint. His allegations against one employee
25 within our unit.

1 Q. And --

2 A. That's how we were looked at.

3 Q. And the allegation involving that employee
4 concerned a test very similar to what you are
5 doing today, or what you did in this case, that
6 is, a test for EDTA in bloodstains, right?

7 A. Could you repeat that.

8 Q. The individual and the reason that your unit was
9 audited by the Inspector General concerned an
10 EDTA test and a bloodstain that was done by your
11 lab, right?

12 A. That's not my understanding of why our unit was
13 one that was looked at by the Inspector General.
14 You would have to actually ask the Inspector
15 General why they looked at our unit.

16 Q. Well, you are the unit chief?

17 A. I am now, yes.

18 Q. And you are responsible for quality control?

19 A. I am, yes.

20 Q. And if the Inspector General audits your lab and
21 comes up with some recommendations or
22 suggestions, you are going to know that, aren't
23 you?

24 A. Well, when the Inspector General was looking at
25 our unit, I was still an examiner, I was a

1 bench --

2 Q. Okay.

3 A. -- scientist. Since that, there was another unit
4 chief and then I became unit chief. So there
5 were -- there was a number of other managers
6 prior to me.

7 Q. So you have never read the Inspector General's
8 report auditing your unit?

9 A. I read the Inspector General's report in -- you
10 know, it was a very large report. I read the
11 executive summary of that report. And I read
12 specific allegations against the individual in
13 the Chemistry Unit --

14 Q. Right.

15 A. -- to see what their criticisms were towards him,
16 as a educational lesson.

17 Q. And that individual -- Which exhibit is this,
18 437?

19 A. That is Exhibit 436.

20 Q. Exhibit 436, that individual is one of the
21 authors of this exhibit, 436, correct?

22 A. That's correct.

23 Q. That is Mr. Roger Martz, right?

24 A. That's correct.

25 Q. And the audit and the allegations that were

1 investigated concern Mr. Martz's involvement in
2 an EDTA test on a bloodstain, in a case; isn't
3 that right?

4 A. One of the areas that the Inspector General did
5 look at was how Mr. Martz testified in the O.J.
6 Simpson case in regards to EDTA --

7 Q. Fine. Thank you.

8 A. -- the presence of blood, amongst a number of
9 other things that were allegations made by
10 Mr. Whitehurst (phonetic) against numerous
11 employees in the FBI Laboratory.

12 Q. All right. The FBI Lab -- Exhibit 436, by the
13 way, this article, that is supposedly a published
14 peer review article?

15 A. It is not supposedly, it absolutely is a
16 published and --

17 Q. Sure.

18 A. -- peer reviewed article.

19 Q. It is. Let's just get clear who wrote it. Okay.
20 All of the authors are FBI Lab members, right?

21 A. They were at the time of this --

22 Q. Sure.

23 A. -- publication, yes.

24 Q. Okay. So this article was written by FBI people,
25 correct?

1 A. Yes.

2 Q. And it was written after the O.J. Simpson case,
3 right?

4 A. That's correct, it was.

5 Q. And in that case, the issue of a possible stain
6 having EDTA in it came up in sort of the middle
7 of the case, right?

8 A. It did, yes.

9 Q. And your lab developed a protocol kind of in the
10 middle of that case, right?

11 A. Yes.

12 Q. And that was the first time your lab had ever
13 tested for EDTA on a bloodstain, right?

14 A. I believe that's true, yes.

15 Q. And how many times after that did your lab ever
16 test for EDTA in bloodstains?

17 A. Never.

18 Q. So until this case, the FBI has not tested for
19 blood -- EDTA in bloodstains, again, since 1996,
20 I think this was, right?

21 A. Yeah, I believe it was 1996 when the O.J. case
22 was going on.

23 Q. So in -- So 10 years go by, even after the EDA --
24 FBI publishes this peer review article, 10 years
25 go by before E -- the FBI, again, tests for EDTA,

1 which is this case, right?

2 A. That's correct.

3 Q. And you, in fact, have -- As we indicated in that
4 declaration, Exhibit 438, you have come out on
5 the side of the government against defendants who
6 seek EDTA testing of bloodstains in their cases;
7 isn't that right?

8 A. No, that's not right.

9 Q. Didn't -- In the Kevin Cooper case, didn't you
10 object to the testing of the EDTA stain in that
11 case?

12 A. No, I objected to the technique that was used in
13 order to do the actual testing in regards to how
14 an estimation of the size of the sample --

15 Q. Okay.

16 A. -- blood sample was obtained, as well as what
17 appeared to me to be the lack of appropriate
18 controls used by the scientist in this case.

19 Q. All right. Well, we'll talk about that a little
20 bit more in a minute. Let me -- So, let's get it
21 clear then, ever since the O.J. case, O.J.

22 Simpson case, until this case, of Mr. Steven
23 Avery, the FBI has never tested for EDTA in a
24 bloodstain on any other case in this country?

25 A. The FBI Laboratory has not received a request to

1 test for EDTA in a bloodstain from O.J. -- the
2 O.J. case until this case and it's been
3 approximately 10 years; that's a correct
4 statement.

5 Q. And Exhibit 437, maybe explains why. Do you have
6 Exhibit 437 in there?

7 A. Yes, I do.

8 Q. Exhibit 437 points out that there was -- there
9 was some problems in the EDTA test protocol that
10 was used in the O.J. Simpson case, correct?

11 A. On what page are you referring to?

12 Q. Well, the bottom of the first page and top of the
13 second, that paragraph, that says, What was wrong
14 with the laboratory testing? Do you see that?

15 A. I do.

16 Q. What it says is, "What was wrong with the
17 laboratory testing? First, it was not clear
18 whether the method had ever been used before",
19 right?

20 A. That's right.

21 Q. In fact, the method had never been used before
22 that case, right?

23 A. That's correct. Not the method that we used in
24 the O.J. case, it had never been used in that
25 manner before.

1 Q. In that manner, correct, for EDTA stains, right,
2 in blood?

3 A. That's correct.

4 Q. "Most likely", continuing the quote, "the method
5 was developed quickly under a great deal of time
6 pressure", okay?

7 A. Yes.

8 Q. And is that true?

9 A. Yes, that's true.

10 Q. And in retrospect, FBI chemists now believe that
11 the EDTA detected may have been injection
12 carryover in the LC/MS/MS instrumentation, right?

13 A. That's correct.

14 Q. And so that particular protocol that was
15 developed and published and peer reviewed in --
16 that you have in front of you as 436, the peer
17 reviews found flaws in this protocol, didn't
18 they?

19 A. No. Absolutely not. That is, this journal -- this
20 analytical chemistry paper, published in August
21 of 1997, was not -- cannot be considered a peer
22 review of the article that was published in
23 November of 1997.

24 Q. Well are you --

25 A. This one is published prior to this one and the

1 author of this would never have seen this until
2 it was published.

3 Q. Have you seen any article, any peer review
4 response, anywhere, to Exhibit 436, this FBI
5 published protocol in the testing?

6 A. Yes, I have.

7 Q. Where, can you cite to it?

8 A. Yes, I peer reviewed that article --

9 Q. Oh, you --

10 A. -- internally --

11 Q. Internally.

12 A. -- because part of the FBI Laboratory's
13 requirements, is before we publish any article --

14 Q. I see.

15 A. Excuse me, I'm not finished.

16 Q. Yes, you are, this is cross; you can explain
17 yourself later, sir. Thank you.

18 THE COURT: Wait a minute, that's -- that's
19 part of his answer to the question you asked; I'm
20 going to let him complete it.

21 A. So, your Honor, as part of any publication that
22 employees at the FBI Laboratory put out, we're
23 required to have an additional peer review step
24 conducted by employees, within our organization,
25 to ensure that the science is valid, so we don't

1 embarrass ourselves before it goes out to a peer
2 reviewer. I was an internal peer reviewer on the
3 article that is in the *Journal of Analytical*
4 *Toxicology* and I made comments on that article
5 and sent it back to the researchers that were
6 involved in it.

7 After my comments were addressed, it
8 then went out to the actual journal and that
9 editor of the journal employed some reviewers to
10 look at it. Now, I don't know who those
11 reviewers were and I never saw that review.

12 Q. As a matter of fact, you mentioned, so the FBI is
13 not embarrassed, the FBI was embarrassed by the
14 EDTA stain test in the O.J. Simpson case, weren't
15 they?

16 A. I would disagree.

17 Q. Well, they never did it again, did you?

18 A. We were never asked to do it again. We don't
19 control the cases that come into our laboratory.

20 A -- Law enforcement agencies ask us for their
21 assistance and if we were able to provide that
22 assistance, we will --

23 Q. Do you know --

24 A. -- but if we were not asked to do a test, we
25 don't have control over that.

1 Q. And, of course, defendants can't ask you to do
2 tests, can they?

3 A. That's -- That's correct. We are a law
4 enforcement agency. And the funding that we get
5 from the U.S. congress is to support law
6 enforcement investigations --

7 Q. Okay.

8 A. -- with the results --

9 Q. You are aware, though, that, over the course of
10 the year, the last decade, there have been some
11 cases where defendants have sought to do some
12 sort of EDTA test on bloodstains, right?

13 A. Yes, I am.

14 Q. Most often post-conviction cases, right?

15 A. Yes.

16 Q. Like the Kevin Cooper case?

17 A. Yes.

18 Q. And would you agree with me that in every one of
19 those cases that you have heard of, the
20 government has been opposing the use, or the
21 protocols, or the methods that a defendant has
22 used to try and get EDTA stain evidence in,
23 bloodstain evidence in?

24 A. I don't -- I don't believe they were opposing the
25 idea of testing a bloodstain for EDTA. My

1 understanding -- and I'm only aware of two
2 cases -- my understanding is they were opposing
3 the approach that was taken by the scientist,
4 that he didn't use good science. The techniques
5 that he employed, the instrumental techniques, as
6 we talked about in direct, these are techniques
7 to identify chemicals. So a chemical is a
8 chemical.

9 Q. Sure.

10 A. But if you don't apply good science to getting to
11 that answer, that's what becomes in question.
12 They weren't his -- My understanding is, his
13 approach was not a well validated approach.

14 Q. And his approach, when you say his, we're talking
15 about Dr. Kevin Ballard, right?

16 A. That's correct.

17 Q. At the National -- NMS, what's it called,
18 National Medical Services Lab?

19 A. That's correct.

20 Q. And his -- You disagreed with his protocol?

21 A. I didn't see his protocol; I disagreed with the
22 approach --

23 Q. Okay.

24 A. -- that he testified to in the *Cooper* case, I
25 believe it was.

1 Q. Okay. Can you tell us of any lab anywhere in the
2 world that has ever used the protocol that your
3 colleagues published in Exhibit 436?

4 A. There would be no way to know that. We don't --
5 There's not a data base that people have to
6 report to us if they are choosing to take a
7 journal in a public -- an article out of a public
8 journal and use it in their own laboratory.

9 Q. Well --

10 A. We would never know if they used it or not.

11 Q. Well, let me just give you an example. Often
12 times, people publish, in fact, there are some
13 articles you cited, on the use of LS/MS/MS for a
14 particular technique, right?

15 A. LC/MS/MS.

16 Q. I'm sorry, LC/MS/MS, right?

17 A. Yes.

18 Q. And the -- by the way there's a slash between
19 LC/MS/, that's the way it's written?

20 A. That's correct.

21 Q. And often times, in academia, what researches
22 will do is, they will take one test that's
23 published and they will test it, report back
24 whether they get the same results, right?

25 A. That's common when you are dealing with, like, a

1 breakthrough in a new area of science.

2 Q. Sure.

3 A. You might have multiple researchers from
4 different research teams working independently,
5 yet together, to prove that a new scientific
6 hypothesis is actually working as they expect.

7 Q. Sure. That's what science is, right, the whole
8 idea that you can replicate someone else's study?

9 A. That is part of it, yes.

10 Q. And can you tell me of any article anywhere, of
11 anybody who ever studied and replicated, or tried
12 to replicate, the test that's -- or the study
13 that's reported in Exhibit 436?

14 A. Yes.

15 Q. Who?

16 A. Me.

17 Q. Oh, okay. Anybody besides you?

18 A. Not that I know of.

19 Q. Okay. And Exhibit 437, analytical chemistry
20 article entitled, *Determining EDTA in Blood*, they
21 used an entirely different method, didn't they?

22 A. No, absolutely not. They used a very similar
23 method. The only difference is the -- instead of
24 using a liquid chromatograph on the front end, to
25 do the separation of the components into their

1 individual components, if you will --

2 Q. They used a capillary --

3 A. They used capillary electrophoresis, which does
4 the exact same thing and it's based in a very
5 similar principle, just uses electrical currents
6 and charges to cause the separation.

7 Q. But the protocol -- the test they did, is not the
8 same as reported in the FBI Lab article, is it?

9 A. Well, they are doing mass spec, mass spec to
10 actually do the identification of EDTA. And it
11 is very similar to what is published in the
12 independently done publication in the *Journal of*
13 *Analytical Toxicology*.

14 Q. And we're talking about this article by Robin
15 Sheppard and Jack Henion, who at that time were
16 associated in some way with Cornell?

17 A. That's correct.

18 Q. Do you know them personally?

19 A. I do not know either of them personally.

20 Q. Do you know that neither one of them is with
21 Cornell any more?

22 A. I don't know that.

23 Q. Okay. But their study was trying to do something
24 more; their study was actually trying to
25 quantitate, see if they could quantitate the

1 amount of EDTA, right?

2 A. They were, yes.

3 Q. And your protocol that you used in this case,
4 which is Exhibit, what, 434? It's up there.

5 A. The protocol was -- I don't believe I have the
6 protocol.

7 Q. Well, you're familiar with it. Oh, I have got it
8 with me, I'm sorry. I thought it was just a
9 copy. This protocol, 434, does not attempt to
10 quantitate the EDTA if it's found, does it?

11 A. No, it does not.

12 Q. It's simply trying to see if there's any way you
13 can detect the presence of EDTA.

14 A. That's exactly right.

15 Q. Okay. This protocol, which is Exhibit 434, has a
16 date of February 15th, 2007, right?

17 A. That's correct.

18 Q. And until that time, until this protocol was
19 developed for this specific case, the FBI had no
20 existing protocol to test for EDTA in a
21 bloodstain, correct?

22 A. I don't believe that to be correct, no.

23 Q. Well, let me go back for just a minute, because
24 perhaps we have been misinformed. Maybe I have
25 been misinformed. When were you first contacted

1 by any prosecutor, law enforcement agent, or
2 whatever, involved with Mr. Avery's case?

3 A. In December of 2006.

4 Q. So between February of 2006 and December of 2006,
5 nobody from the State contacted you, right?

6 A. Between February of 2006 and December 2006, not
7 that I recall, no.

8 Q. Nobody called you to say, hey, we have got
9 some -- a case where somebody is claiming that
10 evidence was planted and we have some bloodstains
11 in this vehicle we would like you to test for
12 EDTA; is that right?

13 A. That's correct.

14 Q. It wasn't until December that somebody first
15 contacted you from the prosecution team, right?

16 A. To my recollection, yes.

17 Q. That would be Mr. Gahn?

18 A. That's correct.

19 Q. Okay. Is there any reason why you would have
20 been unable to develop a protocol like this any
21 time between February of '06 and February 15th of
22 '07 when you actually did develop it.

23 A. No.

24 Q. So if the State had contacted you a year ago and
25 said, hey, we would like to test for these

1 stains, we know this guy is claiming that it was
2 planted, we want to rule out this ridiculous
3 defense; you could have developed a protocol any
4 time within that year, right?

5 A. Yes, we could.

6 Q. Okay. Now, when you spoke with Mr. Gahn in
7 December, what did you tell him about whether you
8 could do this protocol?

9 A. I said we could.

10 Q. Did you tell him how long it would take?

11 A. I probably gave him a estimate about how long it
12 would take us to get to it.

13 Q. And what was that estimate?

14 A. I generally say about four to six months.

15 Q. All right. And did he explain to you that, hey,
16 we have got a trial date coming up on February
17 5th, that's not going to work?

18 A. He did.

19 Q. And did the he ask you for your fastest -- we're
20 talking December now -- did he ask you what's the
21 fastest turn around you could possibly give us to
22 get this test done?

23 A. I believe he did.

24 Q. And you told him three to four months at that
25 time?

1 A. I don't know what my response is, but it was
2 probably in that range, three to four months.

3 Q. And one of the reasons you told him that was that
4 you had no working protocol that would be allowed
5 to be used in your accredited lab?

6 A. I think that's the message getting a little mixed
7 with an in between messenger. What I told him
8 was, that since we had moved our laboratory in
9 2003 from Washington D.C. to Quantico, Virginia,
10 we had acquired a number of new instruments and a
11 number of the instruments that we had at the old
12 laboratory did not come with us.

13 So what that involved is, if we had not
14 used any protocol that moved with us to the new
15 laboratory, we had to essentially revalidate, to
16 some extent, if we were putting it onto a new
17 instrument that it, you know -- the instrument
18 had never been used before, for this particular
19 analysis.

20 So my message to Mr. Gahn was that we
21 had not used the protocol since the O.J. case and
22 that we would need to bring it up to standard
23 with today's accreditation standards for our
24 accrediting value; we would have to make sure
25 that it met all of our internal quality assurance

1 requirements, because since the O.J. case we have
2 gone through four different quality assurance
3 systems in our laboratory, each one is another
4 step up --

5 Q. Sure.

6 A. -- as far as requirements. So we had to insure
7 that this protocol that was used in the
8 mid-nineties met the standards of 2007. That's
9 essentially what it was.

10 Q. Okay. And you told them, because of all of that,
11 calibrating the instrument and validating a new
12 protocol, it would take a matter of months,
13 right?

14 A. Yeah, that's my general response to any time
15 we're asked to develop a new method and validate
16 it. I generally say four to six months because
17 we never know what major cases are going to
18 happen in this country that can, you know, divert
19 our resources to other investigations.

20 Q. Okay. But then in January somebody else
21 contacted you; is that right?

22 A. You will have to refresh my memory.

23 Q. Did anybody else, in January, contact you, again,
24 to see if that whole time frame could be changed?

25 A. I really -- I don't know when it was, but I did

1 get a call from one of our special agents in the
2 local field office asking me if we could help out
3 on this case. But as I explained to him at the
4 time is we had already agreed to help out on the
5 case and that we were going to start doing
6 something that's rather unprecedented for us. We
7 were actually going to start working on the case
8 before the evidence actually got to us, meaning,
9 we were going to start doing the method
10 validation work, anticipating that this evidence
11 was actually going to show up.

12 Q. So that -- unprecedented is the word you used,
13 right?

14 A. Unprecedented in that we actually start to do
15 work on a case before it shows up into our
16 laboratory.

17 Q. And tell the Court what changed, how it is that
18 in December it was going to take three to four
19 months to develop a protocol, validate it,
20 calibrate the instruments and suddenly, now, the
21 time frame was shortened to a matter of three or
22 four weeks?

23 A. The time frame wasn't shortened, there were no
24 guarantees that we would get it done, never made
25 a guarantee that we would. But what changed was,

1 simply, we applied ourselves to that and no other
2 case. Myself and some of my staff, this is what
3 we worked on. And we worked long hours, there
4 were weekends involved. There were, you know,
5 more than the standard normal hours of operation.

6 That's what happened, you know, we
7 decided that we would help out. We committed
8 that we would work out on the case and we would
9 try our best to complete all of the work that was
10 required in order for it to be here during this
11 court proceeding. But, again --

12 Q. Okay.

13 A. -- we could have failed, quite honestly.

14 Q. And, by the way, you mentioned long hours, does
15 the FBI Lab run 24 hours a day?

16 A. No, it doesn't.

17 Q. What are your normal hours?

18 A. 7:30 to 5:00.

19 Q. In the month of February, did you ever arrive at
20 the office or the lab before 7:30 in the morning?

21 A. Yes, I did.

22 Q. What time?

23 A. Probably 7:15, 7:00.

24 Q. So the earliest you ever arrived was 7:00 a.m.?

25 A. The laboratory opens at 7:00 a.m.

1 Q. Okay. But in this case, there were actual
2 analysts working even earlier than that, right?

3 A. No.

4 Q. Like 5:00 in the morning?

5 A. No.

6 Q. All right. We'll look at some of these sheets
7 later, perhaps I'm just misinterpreting them.
8 So, at any rate, when did you tell Mr. Gahn that
9 you thought, hey, I can get this done quicker if
10 we work weekends and apply ourselves?

11 A. I never told him that.

12 Q. You never told Mr. Gahn that you could get this
13 test done before -- or in time for rebuttal of
14 the State's case?

15 A. No, like I explained, I said we would try our
16 best to get it done, but I never guaranteed we
17 would.

18 Q. But while you were doing it, you knew that you
19 had the time pressure of the trial already
20 beginning, right?

21 A. Yes.

22 Q. In fact, the protocol wasn't validated until
23 February 15th, right?

24 A. No, that's not -- that's not correct.

25 Q. Well, what's the date of February 15th on there

1 mean?

2 A. That's the date the protocol was issued.

3 Q. Okay.

4 A. If I can, I can explain the process we go through
5 to bring our --

6 Q. Go ahead.

7 A. -- protocol on line. The first thing we have to
8 do is we have to develop the method. And in this
9 case we had the luxury of having a published
10 reference to go to. So we didn't have to start
11 from scratch. We simply went to that method, we
12 used the same parameters that are published in
13 this paper from the *Journal of Analytical*
14 *Toxicology*, the same parameters.

15 Q. You're talking about -- So we're clear, you are
16 talking about the form of protocol that the FBI
17 used in the O.J. case, right?

18 A. Well, this isn't exactly the protocol that was
19 used in the O.J. case. This is not exactly,
20 there are things done in this paper that were not
21 done in the O.J. case.

22 THE COURT: Exhibit number what?

23 ATTORNEY BUTING: 436.

24 THE WITNESS: 436, yes.

25 Q. (By Attorney Buting)~ Okay. So you looked at

1 that and then you worked off of that to develop
2 this new protocol?

3 A. Well, we essentially set up our instrument so
4 that it was giving results comparable to what
5 they were talking about in this paper, meaning,
6 just injecting standards of EDTA into the
7 instrument, not with blood or anything.

8 Q. You can tell us when those first -- those first
9 steps began?

10 A. That was very late January into early February.

11 Q. Okay.

12 A. And then we -- after we have the instrument
13 working the way it's supposed to work, set up, we
14 start our actual validation steps. And this is,
15 as I described earlier, these are the steps to
16 ensure that the method is fit for it's intended
17 purpose. For us to identify any limitations in
18 that particular procedure that we can then use if
19 we're trying to interpret data --

20 Q. And on -- And on what date was that protocol
21 validated, in your opinion.

22 A. All of the validation work was done before the
23 middle of the month, before the 14th of February.

24 Q. Okay.

25 A. And then it has to go through a review process --

1 Q. All right. So --

2 A. -- by scientists that are not involved in the
3 actual validation study. So an independent group
4 of scientists looks through all the validation
5 data and to sign their name that they agree with
6 the work that was done and the findings of the
7 validation study.

8 Q. Let me stop you there for one second. A group of
9 independent scientists, you are talking about FBI
10 people?

11 A. That's right.

12 Q. Not outside independent labs, right?

13 A. That's correct.

14 Q. Not other academic researchers, right?

15 A. Yes, that's right.

16 Q. And this protocol, for instance, has not been
17 peer reviewed like it would be if it's published
18 like -- like our Exhibit 436, right?

19 A. Well, the changes were very minor from off the
20 published --

21 Q. Sir.

22 A. -- protocol.

23 Q. This protocol, Exhibit 434, was -- has not been
24 peer reviewed by anybody outside of the FBI Lab;
25 is that right?

1 A. Sir, very few of our protocols are reviewed by
2 anybody --

3 ATTORNEY BUTING: Judge --

4 A. -- outside the FBI Laboratory.

5 THE COURT: He's entitled to an answer to
6 his question.

7 A. No, this was not peer reviewed by anyone outside
8 of the FBI --

9 Q. Thank you.

10 A. -- as it's written here.

11 Q. That's right. And that protocol did not arise
12 out of any kind of ongoing research, independent
13 of this litigation, right?

14 A. I'm not sure I understand your question.

15 Q. The development of this protocol was not
16 something that just came out of independent
17 research your lab was doing on determining
18 whether or not you could find EDTA in
19 bloodstains.

20 A. That is correct. This was generated specifically
21 by the request to do the analysis of evidence in
22 this case. That's why we developed this --

23 Q. Sure.

24 A. -- protocol.

25 Q. So it's specific to this litigation, right?

1 A. And then future cases, if we get the request.

2 Q. And there were no industry standards that bound
3 you to this particular protocol, right?

4 A. No, I disagree. There are certainly standards
5 that we have to employ that are based on the FBI
6 Laboratory's quality assurance program.

7 And those are very stringent protocols
8 and requirements that are, in essence, based upon
9 our accrediting body's requirements. And that,
10 we have actually stepped up to a more stringent
11 accreditation program where we're following
12 what's called the International Standards of
13 Operation or ISO protocols. And --

14 Q. Let me stop you there for a second, because
15 most -- a lot of your testimony on direct was
16 about this LS/MS/MS technique -- I'm sorry --
17 LC/MS/MS technique, right?

18 A. That's correct.

19 Q. Just so we're not confused, I'm not attacking
20 that particular instrument, okay?

21 A. Okay.

22 Q. I'm not challenging the ability of that
23 instrument to find, in some circumstances,
24 certain chemicals, okay.

25 A. Okay.

1 Q. Are you with me?

2 A. Yes.

3 Q. So, what I'm trying to focus on here is the use
4 of that instrument to attempt to find EDTA in a
5 bloodstain, all right?

6 A. Yes.

7 Q. And that's what your protocol, 434, was developed
8 to do, right?

9 A. Yes, it was.

10 Q. And you were not bound by any kind of industry
11 standards in the development of that protocol's
12 hypothesis that you were trying to find EDTA in a
13 bloodstain?

14 A. I'm sorry, but I'm not sure I follow you.

15 Q. It's probably a bad question, I apologize. It's
16 my fault. Let me go at it this way. As far as
17 you know, is there anybody else in the country
18 who is doing testing for EDTA stains -- I'm
19 sorry -- EDTA in bloodstains.

20 A. Yeah, I believe that the lab you referred to
21 earlier, National Medical Services, is offering
22 that.

23 Q. And that's Mr. Ballard, right?

24 A. He's at least one of the scientists that perform
25 that analysis. I'm not aware if any others do or

1 not.

2 Q. Okay. And you are not aware of any other lab
3 that does?

4 A. I'm not aware of any that do, and the only reason
5 I'm aware that National Medical Services offers
6 it is because of the **Cooper** case, as we talked
7 about earlier.

8 Q. Would you agree there is a rather conspicuous
9 void of research in the last 10 years, since
10 Exhibits 436 and 437 were published?

11 A. A void in the research, there certainly have not
12 been any articles that I'm aware of, published in
13 the last 10 years --

14 Q. Okay.

15 A. -- specifically looking at EDTA in bloodstains.

16 Q. We talked earlier about how I asked, did you
17 produce any other protocols that you used for
18 testing EDTA; why did you refuse to do that?

19 A. We have an attorney that's employed in our
20 laboratory and I was instructed to not turn over
21 any other protocols, other than the one that was
22 used in this particular case, because according
23 to the attorney, that's the only one that's
24 relevant to this case.

25 Q. Okay. So you had some internal attorney make the

1 decision for you?

2 A. That's correct.

3 Q. All right. We talked about, I think you agreed
4 that the protocol that was used in the O.J. case
5 was developed rather hurriedly, mid-trial, right?

6 A. It was -- Again, it was taking a procedure that
7 we had in place, which is simply looking for
8 chemicals, specific chemicals in a material, and
9 we do this all the time at the FBI Laboratory.
10 We -- Many, many cases, we are asked to look at a
11 stain -- I'll keep it very simple -- a stain, and
12 determine if a specific chemical is in that
13 stain. So, in that general line of thought, we
14 took our general procedure that we would use to
15 identify an unknown chemical in a stain, and
16 apply that in the O.J. case.

17 Q. And --

18 A. Now --

19 Q. Would you agree --

20 A. I'm sorry, what had to be done quickly, to finish
21 the answer is, we had to look specifically for
22 EDTA, so we had to set the instrument up so that
23 it was targeting EDTA.

24 Q. And in doing that, quickly, in order to be used
25 in the O.J. Simpson case, you didn't employ all

1 of the four -- I forget what you called it --
2 factors in validation?

3 A. Well --

4 Q. Have I confused you or --

5 (Court reporter couldn't hear.)

6 Q. (By Attorney Buting)~ Have I confused you? Do
7 you know what I'm talking about?

8 A. I do.

9 Q. Okay. You went through four, what do you call
10 those, factors?

11 A. Well, they are different variables in the
12 validation protocol.

13 Q. And one of them you forgot today until you looked
14 it up, right? Do you know what I'm talking about
15 now?

16 A. Yes I drew a blank, that was carryover. But --

17 Q. Those are four experiments, I think, is what you
18 called them, right?

19 A. Yes, four different areas that we're evaluating
20 on the procedure.

21 Q. Detection limit, right?

22 A. Yes.

23 Q. Interferences from normal blood?

24 A. That's correct.

25 Q. Matrix suppression?

1 A. Correct.

2 Q. And carryover?

3 A. Yes.

4 Q. And, in fact, in the O.J. Simpson protocol that
5 was used, as you went back and looked at it, you
6 discovered, oops, there might have been some
7 carryover that was affecting the results in that
8 case?

9 A. That's not entirely accurate.

10 Q. Well, didn't -- Well, okay. Let me ask -- Why
11 don't you explain; didn't you, in fact, conclude
12 that there -- that carryover was a factor in some
13 of the results that you were getting?

14 A. For this case, or for --

15 Q. For the O.J. Simpson protocol.

16 A. No, I didn't work on the O.J. Simpson case, so I
17 didn't --

18 Q. Well, you just studied it in order to develop
19 this protocol, right?

20 A. No, I did not look at the O.J. Simpson case and I
21 did not look for EDTA in the bloodstain from that
22 case.

23 Q. But you looked at Exhibit 436?

24 A. Yes, I did.

25 Q. And 436 expresses concerns about possible

1 carryover affect in the protocol, right?

2 A. That's correct, it does.

3 Q. And it's your testimony that you don't know that
4 that was, alternately, the FBI's explanation for
5 the results that they got showing EDTA in the
6 O.J. case?

7 A. No, that's not my testimony. My testimony was
8 that I didn't -- you said, when I looked at the
9 O.J. Simpson case; I didn't work on the O.J.
10 Simpson case.

11 Q. Right. What I'm saying is, your testimony today
12 is that you don't know that scientists went back
13 and looked, after the O.J. case, try and explain,
14 hey, why are we getting these EDTA results and
15 concluded it was probably carryover?

16 A. Well, you know, to be accurate about it, it was
17 discovered in the middle of the trial, when the
18 evidence was being presented in the case. There
19 was a break over the weekend and the scientist
20 that was doing the work, came back to Washington,
21 and did some additional tests and realized that
22 what he was seeing as a very small blip of EDTA
23 in the bloodstain, was actually instrument
24 carryover --

25 Q. Okay.

1 A. -- from a previous sample, showing up in the next
2 sample. And he did experiments and he proved
3 that to be the case, that was in the middle of
4 the trial --

5 Q. Okay.

6 A. -- not for this paper.

7 Q. Okay. But --

8 A. This paper supported those findings that he had
9 during that case.

10 Q. And in that trial, your laboratory offered
11 evidence, based on a protocol, that in the middle
12 of the trial, your own scientist determined was
13 flawed, right?

14 A. Could you repeat that?

15 Q. In that trial, your laboratory, the FBI, offered
16 a brand new protocol, never used before, and in
17 the middle of the trial, your own scientist
18 discovered that it was flawed.

19 A. No, absolutely not. In the O.J. trial, I don't
20 know that we offered a protocol. I have no
21 reck -- I have no knowledge of that, whatsoever.
22 I don't believe that he said it was flawed; he
23 was explaining the result. That doesn't mean he
24 did not identify EDTA, or the lack of EDTA, but
25 he did some additional validation studies in the

1 middle of the trial.

2 Q. Correct.

3 A. That's correct. And he reported that back to the
4 Court.

5 Q. And so he -- So, your laboratory offered evidence
6 and opinions, on a test, that later validation
7 studies, in the middle of the trial, proved to be
8 not completely accurate, because there was
9 carryover; isn't that right?

10 A. Again, I -- I -- I disagree.

11 THE COURT: Hold on a minute. This isn't
12 the jury, this is me.

13 ATTORNEY BUTING: Okay.

14 THE COURT: And I think I have got the
15 drift here.

16 ATTORNEY BUTING: All right.

17 THE COURT: So we can move on.

18 Q. (By Attorney Buting)~ Well, there's another case
19 that you were involved in in which a protocol was
20 developed rather hurriedly; do you know which one
21 I'm talking about already?

22 A. I -- There are many cases we --

23 Q. Okay.

24 A. -- we work on that the protocols develop quickly.

25 Q. Let's talk about the William Sybers case. Are

1 you familiar with that one?

2 A. Yes, I am.

3 Q. **Sybers** is S-y-b-e-r-s **vs. State**, the citation is
4 841 Southern 2d, 532, 535 to 40, Florida App.
5 2003, just giving the cite for the Judge and the
6 record, okay.

7 A. Yes.

8 Q. And this was a case in which a medical examiner
9 was accused of having poisoned his wife with a
10 certain chemical. And the accusation was that
11 the charge arose about nine years after she had
12 died, right?

13 A. That's correct.

14 Q. And her body was exhumed and tested for this
15 particular chemical, right?

16 A. Yes, it was.

17 Q. And, I'm sorry, but maybe you can pronounce it
18 for me?

19 A. It's called succinylmonocholine,
20 s-u-c-c-i-n-y-l-m-o-n-o-c-h-o-l-i-n-e.

21 Q. So this succinyl drug was tested by you -- I'm
22 sorry, some embalmed tissues and organs were
23 tested by you?

24 A. Ultimately, they were tested my me, yes.

25 Q. Based on a protocol -- You had never tested for

1 that particular drug before, had you?

2 A. No, I had not.

3 Q. So, you developed a protocol to test for that
4 particular drug and that particular case -- for
5 that case?

6 A. At the request of a court, yes, we did.

7 Q. Much like today, where you developed a test for a
8 particular case?

9 A. Well, it was a little different; in that
10 particular case another laboratory had initially
11 found this chemical in the remains of the alleged
12 victim in that case. And --

13 Q. And just tell the Judge which laboratory that
14 was?

15 A. That was National Medical Services.

16 Q. And let's tell the Judge which doctor or
17 scientist.

18 A. It was Dr. Kevin Ballard was the scientist on
19 that particular case.

20 Q. And what he did, and you then, also, tried to
21 replicate, with a slightly different test, right?

22 A. Well, it was -- it was significantly different.

23 Q. But in both instances, Doc -- you basically came
24 to the same conclusion as Dr. Ballard, which was,
25 there was evidence that this woman had been

1 poisoned with this drug; isn't that right?

2 A. Not exactly what -- the conclusion I came to was,
3 we were asked to verify if this chemical, which I
4 will just call SMC, was present in her specimens.
5 And National Medical Services had found this
6 chemical in every specimen they collected from
7 her, from the heart, to the kidney, the liver,
8 the brain, and fat tissue.

9 We were not able to confirm it in any of
10 them, except for one or two specimens. So we did
11 confirm that this chemical was present in those
12 specimens that were collected from an exhumed
13 body.

14 Q. Let me stop you there for a second. Because you
15 weren't able to find everything -- you weren't
16 able to find this chemical in as many tissues and
17 fluids as Dr. Ballard had found, right?

18 A. That's correct.

19 Q. And when you were challenged about that, in
20 court, you said, well, it's probably because
21 there -- he had different detection limits than I
22 did.

23 A. Exactly. Exactly.

24 Q. Which means that you can set up these tests in
25 machines in a way that -- that you set the

1 threshold as to when something is considered
2 detected and when it's not?

3 A. No. No. I mean, you could, theoretically, but
4 what that means is, in analytical chemistry, our
5 instrumentation that we use, we have a pretty
6 significant break through about every three years
7 in the quality of instrumentation. And what that
8 equates to is, how low we can go.

9 So, his instrument that he used in that
10 particular test was very state-of-the-art
11 instrumentation. In fact, we didn't even have
12 one at the time and got one at a later date. But
13 his instrument was much more sensitive to these
14 things. It had nothing to do with any settings
15 that we do in the laboratory. It's just the
16 technology --

17 Q. Technology --

18 A. -- you are using at the time. And what he used,
19 it was a much more sensitive technique than what
20 we had.

21 Q. And when you developed whatever protocol you did
22 use in that case, you did so knowing that there
23 had never been a study of how this particular
24 chemical works, reacts, breaks down in a body
25 that's nine years old, right?

1 A. No, no. I disagree again. There were studies
2 and, I mean, you are calling up on memory from a
3 number of years ago here, but there were studies
4 that were published that dated back decades
5 before that case, in which they did demonstrate
6 the breakdown of the parent drug, which is called
7 succinylcholine.

8 Q. Right. But none of them involved a test of what
9 it would look like nine years later when you
10 exhume the body, did it?

11 A. There would never be a study like that, so.

12 Q. Right.

13 A. Yes.

14 Q. And just like there is no study on what and how
15 any EDTA would react or degrade or not degrade in
16 a 9 or 11 year old blood tube, or blood vial, is
17 there?

18 A. Well, again --

19 Q. Simple question.

20 A. I'm sorry, but I disagree about that. There
21 are --

22 Q. Oh, there's a study that describes the
23 degradation of EDTA in a blood vial that is 9 --
24 or in your case -- 11 years old?

25 A. I'm not aware of any studies, no.

1 Q. Okay. That's fine. That was my question.

2 A. Okay.

3 Q. Now, in that **Sybers** case, there was a conviction,

4 right?

5 A. There was, yes.

6 Q. A man was convicted of poisoning his wife, right?

7 A. That's correct.

8 Q. After the conviction, it was reversed on appeal,

9 right?

10 A. I believe it was, yes.

11 Q. And after that, additional scientific tests were

12 done that proved, although you thought the

13 science was good at the time, subsequent tests

14 proved them no longer to be accurate and correct;

15 isn't that right?

16 A. Not exactly, no.

17 Q. I'm showing you Exhibit 439, take a moment and

18 look at them.

19 A. Okay.

20 Q. This is a filing notice; it is entitled notice to

21 the Court?

22 A. That's correct.

23 Q. **State vs. William** Syber -- **Sybers**, right?

24 A. Yes.

25 Q. And the -- You agree with me that this notice

1 states, and it has the case number, the notice
2 states, the purpose of this filing is to notify
3 the Court and the defendant that recent
4 scientific testing conducted by National Medical
5 Services and the Federal Bureau of Investigation
6 Laboratories has discovered that the findings
7 specifically related to this defendant and the
8 testimony of the experts from each of these
9 laboratories, though believed to be correct at
10 the time of the testimony, can no longer be
11 relied upon.

12 The findings of the presence of
13 succinylmonocholine in the specimens tested are
14 believed to be accurate and correct; however, the
15 opinions that the succinylmonocholine proves to a
16 scientific certainty the prior presence of or
17 injection of succinylcholine are not correct,
18 right?

19 A. That's what it says, yes.

20 Q. And that's what, ultimately, your own lab
21 determined, after you convicted -- helped convict
22 a man, right?

23 A. No.

24 Q. Okay. Let me ask, do you disagree with that
25 finding?

1 A. I absolutely do.

2 Q. Okay.

3 A. Again, we were asked to confirm the findings of
4 the first lab, and we did, in some of the
5 specimens. And during that trial, one of the
6 specimens that we did not find
7 succinylmonocholine in was actually the only
8 specimen that the first lab never touched. Are
9 you following me?

10 Q. Yeah.

11 A. So, at that trial, I said, of any specimens that
12 are of relevance here, because the allegation was
13 that the first lab had contaminated everything
14 with this drug, I said the one that is of most
15 relevance is the one that was never in their lab
16 and that's negative.

17 Now, we were able to find
18 succinylmonocholine in the tissues from the
19 victim in the case, the **Sybers** case. And as this
20 -- As you clearly said, the finding of the
21 presence of succinylmonocholine, in the specimens
22 tested, are believed to be accurate and correct,
23 and I stand by that.

24 What we did, years later, again, we had
25 new technology come into our laboratory and in

1 applying that new technology to the same method,
2 we were going through another validation study to
3 ensure that with this new instrument we were
4 still able to use this method, and in doing so,
5 this more sensitive instrument was now picking up
6 traces of this same chemical in specimens that
7 were collected from people that had never been
8 exposed to that drug. So this was a --

9 Q. So you dug up bodies?

10 A. No, I did not dig up bodies.

11 Q. Well, you looked at other dead bodies, tissues
12 from other dead bodies, and you found the very
13 same chemical, right?

14 A. We were provided specimens from Washington D.C.
15 medical examiner cases. And all of those cases
16 we had a very good history on what medications
17 they may or may not have been given. And we used
18 that information to come up with the end result
19 that our laboratory was able to find traces of
20 this particular chemical in non-embalmed --

21 Q. Okay.

22 A. -- non-embalmed specimens that were collected
23 from people that had never been given the parent
24 drug, succinylcholine.

25 Q. People that had never been poisoned.

1 A. Well, it's not a poison, it's a drug that you
2 use, clinically, to paralyze the muscles in the
3 body so that you can intubate them.

4 Q. I understand that, sir.

5 A. People have to be on a respirator, normally, in
6 order to live through that because the diaphragm
7 gets paralyzed.

8 Q. I understand that there's a legitimate reason for
9 the drug, but what Mr. Sybers was charged with
10 and what you testified on behalf of the State
11 about was that the presence of that drug, a
12 metabolite of that drug, actually, proved that
13 the drug itself had been given by Mr. Sybers?

14 A. That's right. And that was based on the science,
15 the knowledge of the science at the time --

16 Q. Fine.

17 A. -- of the testimony.

18 Q. And the science changed a few years later. And
19 you had to withdraw your findings in that case,
20 your opinion in that case.

21 A. Yes, science always changes; that's part of it.

22 Q. All right. Let's go to the **Cooper** case for a
23 moment. You filed the affidavit that we saw
24 earlier, right? In that case, right?

25 A. I'm sorry, I don't --

1 Q. I may have taken --

2 A. -- have a copy?

3 Q. I'll bring that back to you in a minute. I'm not

4 actually going to refer much to it, but my point

5 is, in that case, you didn't actually do any

6 testing?

7 A. Oh, that's correct, yes.

8 Q. You were just brought in at the beginning to give

9 an opinion about whether or not Mr. Ballard's

10 tests were valid -- testing procedure was valid?

11 A. Yeah. And, again, I didn't even look at data

12 that he generated on that case. I was asked to

13 review his testimony and what he testified to as

14 his approach and then make a declaration as to

15 whether or not that I felt that that was an

16 appropriate approach that he took.

17 Q. Okay. So you disagreed with Dr. Ballard in that

18 case?

19 A. With the approach that he took, yes.

20 Q. Okay. But you agreed with Dr. Ballard in the

21 **Sybers** case?

22 A. Well, I guess I agreed and disagreed.

23 Q. Well, you confirmed some of his findings, didn't

24 you?

25 A. Yeah.

1 Q. And you rendered an opinion like he did, that
2 that poor man, Mr. Sybers, had poisoned his wife
3 nine years earlier?

4 A. I agreed that we were able to find
5 succinylmonocholine in the specimens that we
6 collected from the alleged victim in that case.

7 Q. And didn't you render an opinion that that
8 finding, to a reasonable degree of scientific
9 certainty, allowed you to conclude that
10 Mr. Sybers had injected the parent drug in his
11 wife?

12 A. I never said, in testimony, under oath, that
13 Dr. Sybers injected his wife with
14 succinylcholine.

15 Q. But you did say that the presence of the drug
16 you -- the chemical you found, was consistent
17 with someone having administered the parent drug
18 to Mr. Sybers' wife before she died?

19 A. Yes, I believe that to be true.

20 Q. Okay. And, by the way, you interned with
21 National Medical Services, S.C., right?

22 A. Yes, I did, for about three months in the summer
23 of 1998 -- or I'm sorry, 1988.

24 Q. So you have worked quite a bit with Mr. Ballard?

25 A. I'm sorry, 1987.

1 Q. Okay. So have you worked quite a bit with
2 Mr. Ballard?

3 A. I don't believe he was employed with National
4 Medical Services when I did my internship there.

5 Q. All right. The Kevin Cooper case was a case
6 similar to this in the sense that an allegation
7 was made that a bloodstain of his, the
8 defendant's, was placed on some kind of crime
9 scene evidence, right?

10 A. Yes, that's correct.

11 Q. I'm showing you Exhibit 440, this is the EDTA
12 testing order ultimately approved by the Court in
13 that case, right? Take a minute and look at it.

14 A. Okay.

15 Q. Okay. And the test protocol developed there was
16 sort of a compilation of testimony by a number of
17 experts in front of this Judge Marilyn Huff,
18 United States District Court, Southern District
19 of California, right?

20 A. I haven't read this in detail, so I'm not sure.

21 Q. Well, are you telling me, then, that when you
22 looked for resources in February of 2007, to rely
23 on, or references to look at when you developed
24 your own protocol from this case, that you did
25 not review the protocol that was used in the

1 Kevin Cooper case?

2 A. That's correct, I did not.

3 Q. Instead, you relied just on the FBI's own
4 protocol from 10 years earlier.

5 A. No, I relied upon my education and training, my
6 experiences, to make a decision as to what was
7 the most appropriate approach to take in the
8 request that we had in front of us for this
9 particular case.

10 Q. But in terms of protocols to detect EDTA in a
11 bloodstain, you looked only at the FBI's own
12 protocol from 1997?

13 A. No, I did a literature search as -- for published
14 methods on EDTA, in particular for bloodstains,
15 and the only two references I was able to find
16 that were significant in my opinion were the two
17 that we talked about earlier that are exhibits --

18 Q. 436 and 437?

19 A. Yes.

20 Q. Both written -- or published in 1997?

21 A. That's correct.

22 Q. And so this order, exhibit -- what are we up to
23 -- Exhibit 440, is dated August of 2004, right?

24 A. Yes.

25 Q. And you were aware of the *Cooper* case because you

1 had provided an affidavit for it --

2 A. Yes.

3 Q. -- right?

4 A. Yes.

5 Q. But you are saying that when you developed the
6 protocol for Mr. Avery, you did not consider the
7 protocol as been developed, ultimately, with the
8 Court's approval in the **Cooper** case?

9 A. As far as I know, it was never a peer reviewed,
10 published protocol. And, as I stated earlier, my
11 affidavit in this case said I disagreed with his
12 approach, so that would imply I disagreed with
13 the protocol he used. So I'm not sure why I
14 would --

15 Q. Well --

16 A. -- consult that as a reference to use in
17 developing a protocol for ourselves.

18 Q. Well, because, did it ever occur to you that the
19 Court had taken your testimony or your affidavit
20 or declaration, as well as the defense
21 declaration, and then taken all this testimony
22 and had gone through all this work for about a
23 year to develop this testing protocol, and you
24 never looked at it?

25 A. No.

1 Q. All right.

2 A. I wasn't aware of that.

3 Q. Okay. And when you developed this protocol, you
4 never came to this Court and suggested, hey, this
5 is how we think we're going to do it, do you
6 think this is going to be a valid approach in
7 order to allow the evidence or the opinions to be
8 admissible?

9 A. No, we never do that, sir.

10 Q. You are the FBI, you do things your own way.

11 A. No, it's our job to independently develop a
12 procedure and put it through the required steps
13 of validation --

14 Q. Let's talk a little --

15 A. -- as -- I'm sorry -- as defined by our
16 accrediting body.

17 Q. Okay.

18 A. And, then, to present that in front of the Court,
19 who is the gatekeeper, as you know, as to whether
20 or not it should be allowed in.

21 Q. Okay. The exhibit in front of you describes a
22 protocol that's done under what's called double
23 blind procedure; are you familiar with double
24 blind?

25 A. I am, yes.

1 ATTORNEY GAHN: Your Honor, I would just
2 like to make a clarification here. I understand
3 this to be an EDTA testing order. Could counsel lay
4 a foundation that this is a protocol. Seems to me
5 this talks about the order of testing, who gets it
6 first, what do they get, but to refer to this as a
7 protocol, I would like a bit more foundation.

8 Q. (By Attorney Buting)~ All right. Well, I will
9 accept the amendment of this, not as a protocol,
10 but as a testing order prepared by a court in the
11 **Cooper** case. All right.

12 A. All right. But, again, I have never read this,
13 so --

14 Q. Okay.

15 A. -- I feel like I should take time to read it if
16 you are going to question me about any of the
17 science and the specific steps in it.

18 Q. Okay. Well, let's -- Rather than do that, let's
19 just move on to this issue of double blind
20 testing; what is double blind testing?

21 A. Double blind testing is essentially a proficiency
22 test or competency test that's done so that the
23 person taking the test doesn't know the results
24 while they are taking it, doesn't know the right
25 answer, and also the person administering the

1 test doesn't know the right answer. It's an
2 independent system.

3 Q. And what that's, in part, designed to do is to
4 get rid of any kind of potential bias that the
5 tester may have, right?

6 A. That's true.

7 Q. That if the tester thinks that he's being asked
8 to find a particular chemical in a particular
9 sample, there may be some examiner bias
10 potential?

11 A. Yeah, that's true.

12 Q. And so, double blind means that they are given
13 these examples, samples, they don't know whether
14 it's a control, they don't know whether it's a
15 swab from the RAV4; they don't know what it is,
16 right?

17 A. That's true.

18 Q. They just test it for the presence of EDTA?

19 A. That's right.

20 Q. You didn't do that in this case, did you?

21 A. Yes, we did.

22 Q. You did double blind testing?

23 A. We did blind testing, not double.

24 Q. And blind being what --

25 A. Did blind testing. I'm sorry.

1 Q. Blind being in what manner?

2 A. Well, it was before we analyzed the evidence in
3 this case, I had one of my employees prepare 10
4 swabs. And some of those swabs had EDTA blood on
5 them and some did not. And then myself and one
6 other scientist were randomly assigned those five
7 swabs.

8 Q. Are you talking about the validation test?

9 A. No, sir. I'm talking about a competency test,
10 which was in that binder that we sent to you.

11 Q. Well, let me -- I'm directing you to the test in
12 this case, on the evidence.

13 A. Well, you asked me if we did any blind testing on
14 this case. And my answer is, yes, we did, and I
15 was explaining that.

16 Q. Go ahead then.

17 A. So we did not know the answers upfront. We just
18 knew that the swabs had blood on them and that
19 they either had EDTA on them or they did not.
20 Some did, some didn't. Two different scientists
21 were assigned, five and five.

22 And we ran the tests, we reported those
23 results back to an independent person, that
24 wasn't even involved in giving the test in the
25 first place. The independent person was handed a

1 sealed envelope that had the results in it, the
2 right answers.

3 After we gave our answers to her, she
4 then graded our results and prepared a memo back
5 to our training files to show that we
6 successfully identified correctly 10 out of 10 of
7 those swabs.

8 Q. Let's clarify for the Court, those swabs and
9 samples you are talking about were not the RAV4
10 swabs, or the blood vial in Mr. Avery's case?

11 A. No, there was -- No.

12 Q. Okay. So, when you tested the evidence in this
13 case, the blood swabs, the swabs from the
14 vehicle, the control swabs from the vehicle and
15 the blood vial that was sent to you, they were
16 not -- those tests were not done in any blind
17 fashion?

18 A. Well, no, I mean we knew what we received. We
19 had to check it in. We had to follow our
20 standard forensic practices of looking through
21 the evidence, documenting things --

22 Q. Sure.

23 A. -- and then we had to apply it to the protocol.

24 Q. Right.

25 A. So, I don't believe you can do it blindly.

1 Q. Well, how many chemists do you have, working for
2 you?

3 A. I have a number of chemists, but they are not all
4 qualified to do this type of examination.

5 Q. How many qualified chemists do you have to do
6 this exam?

7 A. Three, counting myself.

8 Q. Okay. You could have had yourself, or one of
9 them, go through, log in the evidence, identify
10 it, give it a cue number, or whatever, right?

11 A. Yes.

12 Q. And, then, you could have had another chemist
13 test it, who didn't know what those numbers and
14 designations meant, apply to.

15 A. Yes. That could have happened, yes.

16 Q. But you didn't?

17 A. No, that was -- we don't normally do that.

18 Q. You had the same chemist who -- who tagged and
19 booked -- or -- the items, also do the test?

20 A. That's correct.

21 Q. And just so we're clear, you didn't do the tests
22 in this case?

23 A. No, I did not.

24 Q. A Mr. Brewer, what's his name?

25 A. Jason Brewer.

1 Q. Jason Brewer, B-r-e-w-e-r.

2 A. Dr. Jason Brewer.

3 Q. Dr. Brewer. Why isn't Dr. Brewer here?

4 A. Because he is a -- in this case, he served the

5 role as a laboratory technician.

6 Q. So when Mr. Brewer was doing the tests, when he

7 was putting, you know, running a test to see if

8 there was EDTA in item Q-46, he knew that item

9 Q-46 was a swab from the vehicle?

10 A. Yes, he did.

11 Q. Okay. Now, the question of whether or not you

12 are seeing a particular chemical in one of these

13 LC/MSS (sic) tests, requires some subjective

14 interpretation by the examiner?

15 A. Well, as the protocol indicates, there are a

16 number of criteria that must be met in order

17 to -- to make the call that it is a positive

18 finding, that it's truly identified, so if all

19 those criteria are met, then it's clearly there.

20 And if they are not met, then we determine that

21 it's negative.

22 Q. Well, talking about these mass spectrum

23 instruments, there are limitations on what they

24 can tell you, right?

25 A. Can you be more clear on that?

1 Q. Well, you can't just run a sample, then open up
2 the door, put the sample in, close the door,
3 thing beeps a bunch of times and out spits a
4 result.

5 A. Only on CSI.

6 Q. All right. Not, certainly, in real life?

7 A. Not in real life, but it is -- the mass
8 spectrometer is considered to be the gold
9 standard of instrumentation that's used in
10 analytical chemistry, so.

11 Q. Sure, but even it has limitations?

12 A. Well, yes, everything has a limitation, that's
13 right.

14 Q. Okay.

15 A. And that's why we put into our protocol, this
16 SOP, we write what those limitations are.

17 Q. All right. But you also have what's called
18 guidelines for comparison of mass spectra?

19 A. That's correct.

20 Q. And that was issued June 21st of 2006.

21 A. That's correct.

22 Q. You are familiar with that?

23 A. Oh, yes, I am.

24 Q. And it talks about, basically, what kind of
25 guidelines you are supposed to follow before you

1 make a call that something is or isn't present,
2 right?

3 A. That's exactly right.

4 Q. Okay. And do you agree with this statement, that
5 the definition of what makes any given ion
6 characteristic, quote unquote, of a particular
7 chemical structure, is somewhat nebulous?

8 A. Can I see where you are referring to.

9 Q. Sure. Sure. This would be on guideline 9.3?

10 A. Okay. But -- It does say that, but you have to
11 put it in context --

12 Q. I understand that.

13 A. -- with what's around it.

14 Q. Sure. But what it's telling you is that
15 something called diagnostic ions, right?

16 A. Yes.

17 Q. And that's something that, you know, you put
18 these things in and it spits out -- the computer
19 spits out these graphs and spikes and whatnot, I
20 can show you that later, but, right? I'm
21 simplifying, but?

22 A. Very much so, but, yes.

23 Q. Okay. And what this is telling you is, that
24 there does not appear to be any universally
25 accepted standard in the field. This means that

1 good and consistent judgment by the examiner is
2 essential.

3 A. That's true.

4 Q. Okay. And it's also telling you, though, that
5 you have to be careful about the interpretation
6 of the results, even with this wonderful
7 instrument, LC/MC/MS/MS, or just the MS part?

8 A. That's exactly right, you have to have experience
9 and training in order to interpret the data.

10 Q. Did you, by the way, approve this guidelines? I
11 believe you did.

12 A. Yes, I did.

13 Q. Would you take a minute and look at limitations,
14 item 14, in that list of guidelines. Okay?

15 A. Yeah, absolutely.

16 Q. Did you write this?

17 A. No, I did not.

18 Q. You just signed off on it?

19 A. I reviewed it and signed off on it.

20 Q. Maybe we'll mark this -- Well, I will mark it and
21 then I will get a copy that's not highlighted,
22 over lunch. Just identify for the record, now,
23 this Exhibit 441?

24 A. All right.

25 Q. That's entitled what?

1 A. It's entitled, Guidelines For Comparison of Mass
2 Spectra.

3 Q. Okay. And this is a document that is -- that the
4 FBI Laboratory Chemistry Unit follows.

5 A. For the -- Specifically for the toxicology,
6 sub-unit of the Chemistry Unit.

7 Q. Okay. And so would you agree or disagree with
8 this statement? The mere fact that an unknown
9 mass spectrum matches well to the spectrum of a
10 known standard will rarely, by itself, be
11 sufficient grounds to claim the presence of that
12 compound in the question sample.

13 A. Absolutely, that's a correct statement.

14 Q. And quote, similarly, the fact that an unknown
15 mass spectrum fails to match that of a known
16 standard, will generally, not by itself,
17 constitute grounds for concluding that the
18 compound is not present in the questioned
19 specimen?

20 A. That's right. In simple English, what that is
21 saying, is you have to consider all the data that
22 you have generated in order to make a call that
23 something is there or not there. You can't just
24 pick the data that matches your hypothesis; you
25 have to take the totality of the information --

1 Q. Sure.

2 A. -- and apply it in your interpretation.

3 Q. So it's not just what comes out on these graphs,
4 you have to interpret them?

5 A. Exactly.

6 THE COURT: I think, Mr. Buting, if you are
7 moving on to another line of questioning, it might
8 be a good time to take our lunch break.

9 ATTORNEY BUTING: Sure.

10 THE COURT: Are you done with the
11 Exhibit 441?

12 ATTORNEY BUTING: Actually, I am. This
13 would be a good time to break.

14 THE COURT: All right. Let's report back
15 at 1:00, then.

16 (Noon recess taken.)

17 ATTORNEY GAHN: Before Mr. Buting
18 continues, could I just make one observation for the
19 Court, about the admissibility hearing?

20 THE COURT: Sure.

21 ATTORNEY GAHN: At one point, I believe Mr.
22 Buting stated that he is not challenging or
23 questioning whether the LC/MS/MS test can test for
24 EDTA in blood with this instrument.

25 ATTORNEY BUTING: No, that's not what I

1 said.

2 ATTORNEY GAHN: Even if not challenging
3 that, I would think that the admissibility --
4 everything so far he's been questioning on really
5 goes to weight of evidence as opposed to
6 admissibility. And if he is not going to challenge
7 the underlying scientific principles of LC/MS/MS,
8 aren't we over with this hearing?

9 ATTORNEY BUTING: We most certainly are
10 not, because it's the application of this to this
11 particular instrument, which may be perfectly
12 acceptable and reliable in the field, but it's the
13 application of this instrument to this test, to its
14 ability to determine EDTA in a bloodstain that's
15 being challenged here.

16 THE COURT: One of the elements that the
17 Court has to address in determining whether expert
18 testimony is admissible is whether the evidence will
19 assist the trier of fact in determining an issue of
20 fact; I'm assuming that that's what --

21 ATTORNEY BUTING: Yes.

22 THE COURT: -- Mr. Buting's line of
23 questioning is directed at, so, I'm going to allow
24 it.

25 ATTORNEY STRANG: The Court's microphone is

1 a little -- sometimes we aren't getting it at all
2 and sometimes it seems soft.

3 THE COURT: All right. Unfortunately, it's
4 glued to the desk, so, I do my best. Thank you.
5 Mr. Buting, you may proceed.

6 ATTORNEY BUTING: Thank you, very much.

7 CROSS-EXAMINATION CONTD

8 BY ATTORNEY BUTING:

9 Q. All right. Mr. LeBeau, let me just go back to
10 one thing for a moment, the FBI's attorney, his
11 refusal to produce the prior protocols that your
12 lab has used for EDTA tests? Okay?

13 A. That's correct. I was instructed that the only
14 protocol to turn over, for this case, based on
15 the letter that was sent to our laboratory, was
16 the protocol that we applied for this particular
17 case.

18 Q. Well, would you agree that if we looked at the
19 old protocols that you used and we saw any
20 differences between those protocols and the one
21 that you devised, we could ask you about those
22 differences, right, if we had those old
23 protocols?

24 A. Potentially, if there were significant
25 differences, you could ask.

1 Q. Okay. And we could ask about what the reasons
2 were for you to make any changes between what you
3 have got now and what you had previously, right?

4 A. Yes.

5 Q. And we could ask about what studies you have done
6 or relied on in order to make those changes in
7 protocol -- this protocol from any prior ones?

8 A. Yes.

9 Q. And if we saw that there were any internal
10 critiques of those prior protocols, we could
11 learn even more about possible weaknesses with
12 this protocol?

13 A. Well, there are no records of internal critiques
14 about the former protocol.

15 Q. And why are there not any internal critiques
16 about that?

17 A. There was no reason to critique it.

18 Q. Then why didn't you use it in this case?

19 A. Well, as I indicated earlier today, we moved our
20 laboratory from Washington D.C. to Quantico,
21 Virginia. And in doing so, we acquired a number
22 of new instrumentation that we did not have when
23 we were in Washington D.C.

24 Q. Well --

25 A. And as part of that move, we had to, in essence,

1 revalidate, or at least reconfirm, that every
2 protocol that we moved with us was actually
3 working the same way in the new facility. Now,
4 as I had --

5 Q. But --

6 A. -- also indicated earlier, we had not had any
7 request to do this particular analysis since we
8 worked in the O.J. Simpson case. Our laboratory
9 moved in 2003, so over that course of period in
10 2003, we essentially did not take with us that
11 old protocol. I mean, it's an electronic
12 document, so it's not that we didn't have it
13 available, but it's something that we chose not
14 to bring online in the new laboratory, because we
15 weren't getting requests to perform this
16 analysis.

17 Q. But my point is, you do have it, you are just not
18 turning it over because your attorney won't --
19 doesn't want you to?

20 A. I honestly do not know that we have a protocol in
21 this format, as I turned over for this case, for
22 what was done in the O.J. Simpson case. That was
23 under a completely different quality assurance
24 program and, at the time, we weren't even
25 required to have written protocols like this.

1 There was a protocol in existence, as I said
2 earlier, that would allow you to identify
3 chemical in a stain, not specifically EDTA in a
4 bloodstain.

5 Q. Well, are you saying that you think scientists
6 from your lab came into the O.J. Simpson case
7 with all the publicity and national television
8 and presented results of testing for EDTA in a
9 bloodstain and didn't have a written protocol?

10 A. I have no idea if they did or did not. I'm sure
11 there was a written protocol, but at the time of
12 the O.J. case, this is the mid-nineties,
13 completely different set of rules for
14 laboratories in the mid-nineties.

15 Q. Sure.

16 A. And at that time, it was acceptable -- by the
17 standards at the time, it was acceptable to write
18 your protocol, just in your notes for that
19 particular case. As long as you wrote what you
20 did, that was fine. So that wouldn't be a
21 document that's generated like this today.

22 Q. All right.

23 A. So it could simply be the notes from the O.J.
24 Simpson case that would have the protocol.

25 Q. But, if we had those notes, we would be able to

1 look at the differences between that protocol and
2 yours, today?

3 A. Yes, if you had a protocol from the O.J.
4 Simpson --

5 Q. Just so we're clear, that machine, their
6 instrument, even though you may have new
7 versions, the very same test that you used in the
8 O.J. case, that also involved LC/MS/MS, did it
9 not? Tandem mass?

10 A. I don't know. I didn't -- I didn't review the
11 O.J. Simpson case. I didn't do the original work
12 in the O.J. Simpson case.

13 Q. Okay. But you have read the proto -- the
14 published Exhibit 436, right?

15 A. Yes, I have.

16 Q. And that was done very shortly after the O.J.
17 case, right?

18 A. Yes, it was.

19 Q. And the method that's used in that report
20 involves LC/MS/MS, does it not?

21 A. Yes, it does.

22 Q. Okay. So, maybe a different instrument, but the
23 whole idea of being able to do these with one of
24 those combination liquid chromatography and
25 tandem mass spectrometry -- metry, that part is

1 the same; you are using -- the idea of using that
2 instrumentation is the same?

3 A. That's correct.

4 Q. It's other things that we can't tell that have
5 changed because we don't have that protocol,
6 right?

7 A. Yes, you can't distinguish if there's any
8 differences unless you had, probably, the case
9 file, the actual case notes from the O.J. Simpson
10 case. That's where you would be able to
11 differentiate between what was done in that case
12 and what I did in this case.

13 Q. All right. Now, going to this February 15th,
14 2001, protocol, for a moment, that's 434?

15 A. Yes.

16 Q. Are there any internal critiques or comments
17 about that protocol or the -- you know, from the
18 approval process?

19 A. If there are, they are in the packet that I
20 provided you.

21 Q. Who approved that protocol?

22 A. Approved it in what manner? We have three levels
23 of approval --

24 Q. Right.

25 A. -- on issuance.

1 Q. And the ultimate approval for a new protocol is
2 the unit chief, right?

3 A. Well, it's a combination of myself, as the unit
4 chief, and the quality assurance unit chief who
5 oversees quality for the whole laboratory.

6 Q. Sure. But were you involved in the actual
7 development of this protocol?

8 A. As a supervisor I was, yes.

9 Q. And, then, you were also there in the position
10 where you also had to sign off on it?

11 A. Yes. And it's for every protocol in our unit, as
12 the supervisor, I oversee the development of the
13 protocol and then assure that all the steps have
14 been met for a quality program. And then a
15 second check to that is our quality assurance
16 unit chief that does the same thing.

17 Q. So -- But in other cases, let's say if someone is
18 developing a protocol of a test, some other
19 chemical, you know, in a routine, not a hurried
20 manner, not a specific trial date and all that,
21 he may not be involved in the development of that
22 protocol at all, right?

23 A. Well, it depends on who the case is assigned to.
24 If it's assigned to another examiner in our unit,
25 then I wouldn't be as heavily involved with it.

1 But in this case, it was assigned to myself and I
2 had more incite into the development of the
3 method and the validation.

4 Q. But in those cases where you are not involved,
5 where it's not assigned to you, someone else
6 develops the protocol first, right?

7 A. Yes.

8 Q. Without your involvement?

9 A. They may come to me for guidance.

10 Q. Okay.

11 A. I am their supervisor, so.

12 Q. But, then, it comes to you after someone else,
13 another examiner completes it, then it goes to
14 you for approval at the unit level, the unit
15 chief level?

16 A. Well, I wish it was quite that simple. Actually,
17 there's a -- when a method is developed, we have
18 the validation steps that have to be drawn to, be
19 adhered to. As part of that validation, there is
20 a check list that is completed. That check list
21 helps the scientist doing the validation assure
22 that they are completing each of the required
23 steps of that validation. That validation study
24 is reviewed by an independent scientist that had
25 nothing to do with the validation and then I do a

1 review of that on top of it. That's for every
2 protocol that's issued into our -- in our unit.

3 Q. Right.

4 A. In this particular case, because I was involved
5 in the validation, I didn't do the validation
6 review. I assigned that to another employee to
7 do the validation review and she reviewed all of
8 the validation data and signed that she agreed
9 with the work that was done there.

10 Q. Right. But then it gets to the next level of
11 unit chief approval and you are basically
12 approving yourself. You are approving your own
13 protocol at that level, in this case?

14 A. Well, I suppose, technically, yes.

15 Q. I'm just trying to distinguish how, in some
16 cases, when it gets to the unit level, the unit
17 chief approval level, it really is another
18 independent review by you, who wasn't involved in
19 the development?

20 A. Yes.

21 Q. But this case worked differently because it was
22 assigned to you, to begin with?

23 A. Slightly different.

24 Q. Okay. All right. Let me talk about some of the
25 assumptions that I think you are making as you do

1 this test, okay. I call them assumptions, you
2 may disagree. But, for instance, in doing this
3 test where you are trying to see if there is EDTA
4 in bloodstains that may have come from a blood
5 vial that is now 11 years old, you make an
6 assumption that the EDTA that was originally in
7 that blood tube has not degraded in the 11 years
8 to the point where it's not detectable, right?

9 A. I did not make that assumption, no.

10 Q. Okay. Well, if in fact the EDTA had degraded in
11 11 years, then it wouldn't be detected, would it?
12 Simple question.

13 A. If -- If the EDTA -- EDTA had degraded, then it
14 would not. Completely degraded, I should add, to
15 zero, then it would not be detectable.

16 Q. Not really completely to zero, just to the point
17 where it's below your limit of detection, right?

18 A. That would be a very significant reduction in
19 EDTA, because a standard tube has --

20 Q. But, sir --

21 A. -- approximately a thousand to 2,000 parts --

22 Q. Sir --

23 A. -- per million of EDTA --

24 Q. -- please.

25 COURT REPORTER: I'm sorry --

1 ATTORNEY BUTING: Judge, I would direct the
2 witness --

3 COURT REPORTER: I'm sorry, I didn't get
4 his answer.

5 A. I said that standard tube has approximately 1,000
6 to 2,000 parts per million of EDTA in it.

7 COURT REPORTER: Thank you.

8 Q. (By Attorney Buting)~ All right, sir, just follow
9 with me, we'll get to that, all right. But the
10 first step is this. If -- Would you agree with
11 me, if the EDTA has degraded, not to zero, but to
12 a point where it's below your limit of detection,
13 then your tests would not show it, right?

14 A. Well, it would have to degrade to a level below
15 13 parts per million from that --

16 Q. Whatever --

17 A. -- original --

18 Q. Whatever it is. Whatever it is. Whatever your
19 limit is it, it could still be there, but not be
20 detectable?

21 A. To below 13 parts per million.

22 Q. Right. And, so, when you say that -- when you
23 express an opinion that there is no EDTA in those
24 stains -- I'm sorry, let me rephrase that. When
25 you express an opinion that the blood in those

1 stains in the Toyota could not have come from the
2 blood vial, you are making the assumption that
3 the EDTA that was originally in that tube 11
4 years ago, has not degraded to the point where
5 it's not being detected on those stains any more,
6 right?

7 A. No, we tested the tube of blood and determined
8 that it did have EDTA in it at high amounts.

9 Q. You quantitated it?

10 A. Did not quantitate it, but I compared it directly
11 to a fresh tube of EDTA blood and the results for
12 the same amount of blood analyzed gave very
13 similar results.

14 Q. Wait a minute, are you telling us now that you
15 quantitated the level of EDTA in that blood vial,
16 yes or no?

17 A. No, I said we took the same amount of blood from
18 a fresh tube of EDTA blood, compared to the blood
19 sample from Mr. Avery, same amount of blood on
20 the instrument gave the same comparable
21 response --

22 Q. Okay. Let's talk about that.

23 A. That would indicate --

24 Q. Let's talk about that.

25 A. I'm sorry, I didn't finish. That would indicate

1 to me that there was no significant degradation
2 of EDTA in that tube.

3 Q. Are you testifying then that your mass spec test
4 quantitates the level of EDTA?

5 A. It's certainly capable of doing that, yes.

6 Q. Did you do that here?

7 A. No.

8 Q. All right. Now, if what you found when you do
9 this test is that -- we'll get to that in a
10 minute -- but whatever your mass spec printout
11 graphs show, were some peaks that would be
12 consistent with EDTA, right? In the blood vial?

13 A. Which blood vial?

14 Q. The blood vial.

15 A. The blood vial from Mr. Avery?

16 Q. Yes.

17 A. It had peaks in it that were identified,
18 unequivocally, as being EDTA.

19 Q. And -- But those peaks don't tell you whether
20 there is 1500 milligrams per liter or
21 13 million grams per liter, do they?

22 A. Oh, they do. They give you an idea of how much
23 is there. And we do that.

24 Q. So what's the idea, sir, where is it in your
25 reports that you have any conclusion drawn about

1 what the quantity of EDTA is in that 11 year old
2 blood vial, show me, you have got it right in
3 front of you?

4 A. In my report?

5 Q. Show me where, anywhere in your reports, your
6 stack of 6 inch lab sheets; show me where you
7 express an opinion that there is a particular
8 quantity of EDTA in the blood vial?

9 A. No, I did not do a quantitative analysis, but the
10 response on the instrument does allow an
11 experienced chemist to assess if there is a --
12 you know, you can tell, from the response, if you
13 have 50 percent of what you are comparing to and
14 you can tell if you have 10 percent.

15 Q. Oh, yes.

16 A. Because the instrument gives a certain peak size.

17 Q. Show me.

18 A. That -- it's not --

19 Q. Show the Judge.

20 A. -- in the report, it's in the data.

21 Q. Show the Judge in the data.

22 A. Okay. It will take me one minute.

23 Q. And while you are doing that, show the Judge in
24 your report where you say anything about the
25 quantity of the EDTA that you found in that 11

1 year old blood vial.

2 THE WITNESS: Can I approach?

3 ATTORNEY BUTING: Can I see them, please?

4 Q. Okay. What you are pulling out are all positive
5 -- are all controls, positive controls that you
6 did, right?

7 A. That's correct.

8 Q. Show me a test that you ran, not on a control
9 extract, but on the Q-49, whether it's a spot,
10 two microliters, one microliter, whatever?

11 A. You are holding it in your hand. The Q-49 is
12 positive control B, was the actual tube of blood,
13 from Mr. Avery, that we prepared a second control
14 to, for this very reason, to assess that the EDTA
15 in that tube had not significantly degraded.

16 Q. Well, where is the sample of Q-49, not the
17 positive control that you ran through, where's
18 the actual evidence sample?

19 A. This is it.

20 Q. That's it?

21 A. Yes.

22 Q. You ran no separate Q-49?

23 A. Well, we also did a -- to another detection limit
24 study with specimen Q-49 where we took a one
25 microliter drop and a two microliter drop of that

1 same blood, from the tube from Mr. Avery, and we
2 analyzed that with this protocol as well.

3 Q. Okay.

4 A. But that was a detection limit study --

5 Q. Right.

6 A. -- to verify that our instrument was capable,
7 again, to see that level of EDTA.

8 Q. And that's important, because if your detection
9 level isn't right, it may be there and you are
10 just not seeing it.

11 ATTORNEY GAHN: Your Honor, at this point,
12 could we back up and could you mark the exhibits
13 that Dr. LeBeau pointed out to you and showed you
14 where the EDTA testing was done? And why don't we
15 show those on the ELMO?

16 ATTORNEY BUTING: All right.

17 ATTORNEY GAHN: And just, basically, go
18 through what you just went through before with
19 Dr. LeBeau.

20 THE COURT: Just to clarify a couple of
21 things for the Court, I have, which was attached to
22 the State's motion, a copy of the report of
23 examination. I don't believe I have got the
24 document that's being referred to here. Do I take
25 it, was a copy of the document that's being referred

1 to, previously provided to the defense?

2 ATTORNEY GAHN: Yes.

3 ATTORNEY BUTING: On Friday, to me, without
4 a chemist.

5 THE COURT: Okay. And can a copy of the
6 entire document be marked as an exhibit? Is there a
7 copy of the document available, or is that entire
8 thing the document?

9 ATTORNEY BUTING: That's it.

10 ATTORNEY GAHN: Yes. This is the discovery
11 which was provided by the FBI. And what Mr. Buting
12 is talking to Dr. LeBeau about are a couple of pages
13 from this discovery package.

14 THE COURT: All right. And so you are
15 asking the pages be identified as an exhibit?

16 ATTORNEY GAHN: The ones that he just
17 talked to Mr. -- Dr. LeBeau about on the stand,
18 where Dr. LeBeau was pointing out the levels of
19 EDTA. I think those should be marked and actually
20 shown on the ELMO, so that everyone knows exactly
21 what we're talking about here.

22 THE COURT: I think Mr. Buting, actually,
23 was about to show them on the ELMO.

24 ATTORNEY BUTING: Yeah, I will. I'm going
25 to show -- Maybe we should mark the whole thing.

1 The State can get us another copy, and at the end of
2 this hearing, for any possible appeal record, we
3 will have a whole copy.

4 THE COURT: Any objection from the State?

5 ATTORNEY GAHN: No, your Honor, we can have
6 another copy made.

7 THE COURT: All right. If that's going to
8 occur, then I think as long as we identify what you
9 are looking at by page number or some other fashion,
10 when the entire exhibit is received, we should be
11 able to identify the pages that are being
12 referenced.

13 Q. (By Attorney Buting)~ All right. I'm going to
14 show you this first page which, at the top, I'm
15 going to show this overall page first so you can
16 see. This graph on the right side that you are
17 referring to, where this is a peak, that you are
18 saying is a -- well, actually, this is -- can you
19 see the top?

20 A. No, I can't.

21 Q. All right. The date is February 16 of '07?

22 A. That's correct.

23 Q. The time is 4:00 a.m.?

24 A. That's correct.

25 Q. Somebody is doing this test at 4:00 in the

1 morning?

2 A. No, an instrument, a robot, in the lab, is doing
3 it.

4 Q. Oh, really, so there is nobody there to monitor
5 it at all?

6 A. No, it is set up as an auto sampler. It runs
7 itself once you put together a sequence list, it
8 shoots one sample. When that sample is finished,
9 the next sample is injected and so on and so.

10 Q. And it does that all night long?

11 A. It did in this case, yes.

12 Q. Okay. On a bunch of different -- whatever --
13 whatever samples are being tested, could be more
14 than one case?

15 A. No, just this case. It was the only one tested
16 on this instrument at that time.

17 Q. Okay. It says positive control A, MAL, EDTA
18 extract?

19 A. Yes.

20 Q. Is that you?

21 A. Yes, it is.

22 Q. Your own blood?

23 A. Yes, it is.

24 Q. So you are the lab volunteer who gave his blood?

25 A. Yes, I was.

1 Q. Okay. And then that was put into a tube with
2 EDTA?

3 A. It was, yes, in a purple topped tube.

4 Q. Mixed up?

5 A. Yes.

6 Q. Then extracted and --

7 A. For clarification, five microliters of that blood
8 were put onto a cotton tip applicator. And then
9 it was carried through the procedure that's
10 already in --

11 Q. Okay.

12 A. It's a court exhibit.

13 Q. And when you get these, goes through the --
14 believe me, I'm not an expert, but as I
15 understand it, it goes through this machine and
16 it's bombarded with some kind of electrical
17 charge so that ions are knocked free from the
18 molecule?

19 A. Well, first, it separates the mixture of all the
20 chemicals that are in the blood, into their
21 individual chemicals. And they come out at
22 different times. So it's probably easier if you
23 look at the other side of the graph first. And
24 if there's -- is there a laser pointer I could
25 use, please. Is it possible to put that whole

1 side of that page up at one time?

2 Q. Sure.

3 A. Okay.

4 Q. Is that good enough?

5 A. Yes. Thank you. So, what we're looking at then
6 is this is one peak, two peaks. These are
7 different mass spec experiments that are going
8 on, that are monitoring the time that it takes
9 for that -- from that injection till that EDTA
10 peak comes out and this is the EDTA peak right
11 here. So, again, now, if you don't mind, just
12 zooming in a little bit.

13 Q. That's your blood in that graph, the top one?

14 A. Yes, it is.

15 Q. All right.

16 A. Okay. So it took .89 minutes, roughly, .9
17 minutes, for the EDTA to be injected and then
18 come out of the LC to the mass spectrometer.
19 That's what that's indicating. So that is an
20 EDTA peak there and on the right side of the
21 graph is the chemical fingerprint I told you
22 about earlier, that the mass spec gives us.

23 Q. That's this one, 160 is at the top?

24 A. Yes.

25 Q. These are the ions you are looking for, three

1 ions, right?

2 A. That's right. Plus the -- the parent ion, 243,
3 that's -- 293, I'm sorry, that's the weight of
4 EDTA. And then these, 247, the 163, and the 132,
5 those are -- I'm sorry the 160 and the 132 are
6 the fragments of EDTA. And a real simple way to
7 think of this is if you took a sheet of glass and
8 we could hit it with a hammer and every time hit
9 it exactly in the same place, at the same amount
10 of energy, that sheet of glass is going to
11 fracture the same way.

12 And if we could catalog those fragments
13 into a data base, and catalog it based on a
14 different type of glass, we could say, okay, this
15 is that type of glass, based on that
16 fragmentation pattern. That's what a mass
17 spec -- a mass spec does with a chemical. It
18 fragments into a consistent fragmentation pattern
19 that serves as a fingerprint. This is the
20 fingerprint for EDTA that you see up there.

21 If you zoom out a little bit, you can
22 get the whole picture. And what's important is
23 that not just that you have those four fragments
24 there, but look at the relative ratio of those
25 fragments. The most abundant is the 160 at the

1 very top, that's what's called the base peak.

2 Q. Right.

3 A. And then we have, in the ballpark of around 15 to
4 20 percent, the 132 and the 247. And below
5 10 percent, we have the 293, which is the --
6 that's what it originated as, the full EDTA,
7 without being fragmented. Okay. So that is for
8 my blood that was put into an EDTA tube, mixed
9 up, five microliters of my blood were put onto a
10 cotton tipped swab and run through the
11 application.

12 Now, if you go back to the top of that
13 particular graph, on the right side here, this is
14 via signal. This is how much of a signal it
15 gave, that's 1.3 times 10 to the 5th. That's the
16 amount, in essence, that the instrument is
17 reading. It's not -- I'm not telling you a
18 quantity; I'm not putting a number on it.

19 But it's giving -- The more that's
20 there, the higher that peak is going to go, the
21 higher that number will go. So, if I had, in
22 essence, twice as much EDTA in that sample, I
23 would have 2.6 times 10 to the 5th, in that
24 category. If I had a 10th of the amount of EDTA
25 in that sample, I would have 1.3 times 10 to the

1 4th.

2 Q. Okay.

3 A. That's how I'm able to give you an approximate

4 amount.

5 Q. Okay.

6 A. Without doing a quantitative analysis.

7 Q. Well, first of all, let me just make clear, you

8 don't express any opinion in your report about

9 the quantity of EDTA in that tube, do you?

10 A. No, I don't.

11 Q. Okay. Now, you say this is -- this is the

12 signature for EDTA, that 160 is way up in the

13 hundred and the 132 and 247 are about sort of

14 even amounts down here at 1500 or something,

15 right?

16 A. That is the mass spectrum that we obtain on our

17 instrument in doing this experiment, which is

18 called positive mode electrospray ionization,

19 LC/MS/MS.

20 Q. I'm going to show you one that is exactly the

21 same time, 2/16/07, 4:02:32?

22 A. Mm-hmm.

23 Q. Positive control, MAL; that's your initials?

24 A. Yes, it is.

25 Q. EDTA extract?

1 A. Yes.

2 Q. Got strong 160?

3 A. Yes.

4 Q. And down here, the 247 is only about half as
5 intense as the 132, right?

6 A. Could you go back to the top, I'm just -- I want
7 to make sure I'm looking at the same one.

8 Q. And, by the way, there's quite a few other little
9 small peaks on the bottom of this one, right?

10 A. Yes.

11 Q. 175, 195; what do those mean?

12 A. Well, those are background ions, I mean, it's not
13 always real clean.

14 Q. Contamination.

15 A. No. No, not contamination at all. The
16 instrument has noise to it and what that means,
17 essentially, is there's always going to be some
18 signal in that instrument that's going to be
19 recorded. So that's -- that's all we're seeing
20 there. And we can -- we can display that by
21 subtracting out the noise. We can display it
22 including the noise. And what you are looking at
23 is the same -- again, I didn't see what the top
24 number was.

25 Q. I will get to that. I will go back. Don't worry

1 I will go back. But I want to go back to this --

2 A. Well, I'm sorry, you asked me about that and I
3 wanted to verify if --

4 Q. I will get to it, sir.

5 A. -- it was the same sample.

6 Q. I'm just asking you now, do you see any noise in
7 this first one we looked at? Do you see any
8 other ions at the bottom of this -- you said the
9 machine always has background noise?

10 A. It does, yes. And as I said, there are different
11 ways to display it, so that you can display it
12 without the noise.

13 Q. Okay.

14 A. And I can tell you that by looking at the top of
15 the sheet, that you don't want to show me, I
16 guess.

17 Q. The top, is that what you want?

18 A. Yes. Okay. You switched to the other one now.

19 Q. This is the one you wanted to see.

20 A. Yes. This is the -- for the -- this is the mass
21 spectrum across that whole peak, from .81 to .95
22 minutes. So that would include --

23 COURT REPORTER: I'm sorry, could you
24 repeat that and slow down just a little. Thank
25 you.

1 THE WITNESS: I'm sorry.

2 A. This is the mass spectrum in this column here, of
3 this whole peak, essentially from this part of
4 the peak where it is just starting, over to that
5 side. So it's taking the average of the signal
6 across that entire peak, which is taking, you
7 know, roughly a 10th of a minute or so to
8 completely come out.

9 Q. And so it gives a slightly different spectrum
10 where -- where the 247 ion is only half as
11 intense as the 132 ion?

12 A. That's exactly right.

13 Q. And that's actually more what it should be, isn't
14 it?

15 A. Well, this is -- Yes, that's more what it should
16 be, you're right. And that's why I used that
17 particular display, that you just had up, to
18 create this chart here. Which is, as I indicated
19 earlier, your Honor, we have, in our protocol, a
20 section entitled decision criteria. And this is
21 a section that is to ensure that we have a
22 consistent interpretation of the data, so that
23 scientist A and scientist B are going to look at
24 this same data and come to the same conclusion.
25 And with that in mind, we have employed criteria

1 that must be met in order to call something
2 positive, based on mass spectral data. And
3 that's what you see here. This is --

4 Q. Well, before we --

5 A. -- applying that.

6 Q. Before we turn to this --

7 A. Yes.

8 Q. So what you are saying is, when you get these --
9 these two different looking spectrums of your own
10 blood, one that has the 132 ion, the same signal
11 response as the 247, you make some objective or
12 -- I'm sorry -- subjective conclusion that the
13 instrument is not completely right, that it's
14 really supposed to be more like the second one I
15 showed you, where there's actually a difference,
16 a ratio between the 132 and the 247?

17 A. Again, you failed to go back and show me the
18 header on that one, which was what I was looking
19 to do.

20 Q. I did show you that.

21 A. No, I'm sorry --

22 Q. Do you want to see it again?

23 A. -- you did not. It's the one that you are saying
24 is clean, you failed to show me the header on
25 that. But --

1 Q. Well, I can take a look at it. I believe we
2 looked at it in the beginning, same date, same
3 time.

4 A. As you will notice, it says right there,
5 retention time is .91, so that's -- instead of it
6 being an average, your Honor, across the whole
7 peak, it is simply looking at what is the mass
8 spectrum right at .91. This is the initial
9 assessment of the data, right here, what you are
10 looking at, the initial assessment where we're
11 going through and we're trying to make an initial
12 assessment as to whether or not there is
13 something potentially there to go back and take a
14 closer look at.

15 And in this case, it's a positive
16 control. It seems obvious that there are ions on
17 there that are characteristic of EDTA. So then
18 we went back and looked at the data and displayed
19 it under the proper conditions that allowed us,
20 then, to assess it for the ion ratios, the
21 requirement that's in our actual SOP.

22 Q. But in this --

23 A. And that's why there's a separate printout.

24 Q. All right. But wait a second, so the other one
25 is an average, that's fine. But in this one, you

1 will agree with me that the signature, the
2 spectrum signature is not exactly like the other
3 one because you are getting an equal strength
4 response from the 132 ion and the 247 ion?

5 A. And that's why we average across the whole peak,
6 because the instrument is in each millisecond,
7 it's do -- it's hitting this chemical and
8 breaking it up. So you are going to get some
9 fluctuation in the signal and we average across
10 the whole peak, because that's -- that's a more
11 characteristic of the signal. It really wouldn't
12 be fair to anyone to base it on just looking at
13 one point in time when the peak is composed of
14 signals across about 15.15 seconds.

15 Q. Sure. So, a few minutes ago when we looked at
16 this and you told the Judge this was the
17 spectrum, this was the signature for EDTA; you
18 want to correct that now?

19 A. No, I don't. I mean, that is the typical mass
20 spectrum that you should expect to find, mainly
21 looking at the fact that the base peak, which is
22 the largest peak, is 160. And you have fragments
23 of 132 and 247, with a small amount of 293
24 present.

25 That's -- That's what we're looking for

1 with that initial assessment, as to make a
2 determination whether or not we should look at it
3 closer for the presence of EDTA.

4 Q. All right. Well, let's look at this other
5 exhibit which is -- says at the top, tandem mass
6 spectrum, positive ESI mode.

7 Okay. This is -- This is a chart now.
8 And on the left it has got positive control A,
9 positive control B at the top. Then it has
10 numbers that show the response.

11 A. That's right.

12 Q. And 160, in this column right here, is about
13 91,000, right?

14 A. Yes.

15 Q. 132 is like much, much less, 13,000. 247 is
16 about half of that?

17 A. Mm-hmm, yes.

18 Q. And that's what it's supposed to be, isn't it?
19 They're not supposed to be even or --

20 A. Well, there -- Again, if you look at the protocol
21 I provided, it does talk about this. There's an
22 acceptance range on those fragments and generally
23 it's within -- it depends on the type of mass
24 spectrometry we're doing. It depends if we are
25 doing this type of mass spec, mass spec. But

1 there are pre-defined acceptance criteria for the
2 mass spectral data, in order to get that
3 consistent interpretation.

4 What you are looking at here is the
5 actual abundance of each of those ions plugged
6 into a spread sheet that we generated in our
7 laboratory to automatically apply the rules that
8 we have in our protocol to the data.

9 Q. All right.

10 A. So that, you know, you don't have to sit there
11 and manually do the calculations every time. You
12 plug it into the thing and it will tell you if
13 the criteria is met in order to call it a pass or
14 a fail. So what you have for --

15 Q. You review that too, right? It's not just --

16 A. Oh, of course.

17 Q. -- pass fail by the computer?

18 A. Of course. Yeah, absolutely. It's reviewed
19 manually as well. But I'm just saying, so that
20 somebody doesn't have to sit down with a
21 calculator and apply the calculations each time.

22 But you can also tell, I mean,
23 15 percent and 14 percent are very close to one
24 another; 8 percent and 10 percent are very close
25 to one another.

1 Q. Sure.

2 A. Where we have one that fails, though, is the next
3 one down, if you would.

4 Q. Yeah, now, let's --

5 A. 41 percent is no where --

6 Q. Wait, wait, wait. Just -- Let's just --

7 THE COURT: Hold it. I want both of you to
8 stop for a second.

9 ATTORNEY BUTING: Okay.

10 THE COURT: This is cross-examination, so
11 don't go into explanations that he doesn't ask for.

12 THE WITNESS: Okay. Yes, your Honor.

13 THE COURT: Your attorneys will have a
14 chance on redirect to follow up, if they wish. And
15 let's each of you try not to talk over the other
16 one.

17 ATTORNEY BUTING: All right.

18 THE COURT: Mr. Buting, if you think he is
19 not being responsive, then let me know and I will
20 rule on it, okay?

21 ATTORNEY BUTING: All right. Thank you,
22 your Honor. I'm sorry.

23 THE COURT: Go ahead.

24 ATTORNEY GAHN: Could we mark this as an
25 exhibit, if possible.

1 ATTORNEY BUTING: Sure. Do you want to
2 mark the whole book as like 442 and then have 442A,
3 B, C, something like that?

4 ATTORNEY GAHN: Well, I'm really interested
5 in --

6 THE COURT: Let's give -- Let's give this
7 exhibit the next sequential number. And when the
8 book comes in, we'll give the book a number.

9 ATTORNEY BUTING: Okay.

10 Q. (By Attorney Buting)~ This is 442, right? This
11 is a sort of chart that summarizes what the
12 results on this particular test were, right? Is
13 that fair?

14 A. Could you say that again.

15 Q. This is a chart that summarizes or prints out
16 what the -- what the results were on this one
17 particular test, or series of tests, whatever it
18 is?

19 A. Yeah, that's a series of tests.

20 Q. Okay. All right. Now, Q-49 is the blood vial of
21 Mr. Avery's blood, right?

22 A. Yes, it is.

23 Q. And, you know, your analyst knew that when he was
24 doing the test, too, right?

25 A. Yes, he did.

1 Q. Okay. This particular one is Q-49, limit of
2 detection one microliter?

3 A. That's correct.

4 Q. And then down below is Q-49, limit of detection
5 two microliters, right?

6 A. That's correct.

7 Q. And what you are doing here when you test down to
8 only one microliter, you find that this is the
9 control and if we notice, these are the same, all
10 the way down. Three times the positive control A
11 is the same, right?

12 A. That's correct.

13 Q. Same number, same strength, same ratio,
14 everything to the decimal point, right?

15 A. Yes.

16 Q. But one microliter, this one is showing no 132
17 and a 247 shows up at like 1800?

18 A. That's correct.

19 Q. So that's considered a fail?

20 A. By that criteria I was describing, yes, that was
21 ruled as a fail. It does not meet the criteria
22 to call it positive.

23 Q. Okay.

24 A. For that one microliter drop, using that
25 particular technique.

1 Q. So in that particular technique, that was what,
2 too small of a sample then?

3 A. Yeah, it's right -- As I explained earlier,
4 that's right at our detection limit, as we found
5 in our validation study.

6 Q. So when you said it was valid to that one
7 microliter, it's not exactly to that one
8 microliter, because here it failed at one
9 microliter, right?

10 A. Well, in this particular sample, yes. And in
11 this particular analysis, yes, that failed.

12 Q. Okay. But, then, when you increased it a little
13 bit to two microliters, we did get a pass because
14 the ratios between the 160, the 132, and 247 are
15 about within tolerance, right?

16 A. That's right.

17 Q. But we know --

18 A. I'm sorry. I'm sorry, to be clear, but I
19 ultimately ruled that negative as well.

20 Q. That's right. That's what I want to show right
21 now, because is that your handwriting and your
22 signature on those?

23 A. Yes, it is. Well, I'm sorry the top two are not
24 my handwriting, that's the reviewer, that
25 reviewed the data before the report went out.

1 Q. Okay. Looks the same to me, but anyway. The
2 handwriting that says, extra fragment ruled ND
3 with a circle on it, that's yours?

4 A. Yes, it is.

5 Q. And despite what this chart says and despite what
6 the machine says, when you looked at the actual
7 graphs, there are too many extra peaks to make a
8 call on that one?

9 A. Yeah, it was -- it wasn't as clean as I would
10 like it to be to feel comfortable making that
11 call.

12 Q. Okay. And this is at two microliters, right?

13 A. That's correct.

14 Q. You want to go back a few pages deeper into your
15 book. There's a sequence that's run at -- run at
16 different times, actually. Here's one that is
17 run at 4:35 in the morning on the 16th of
18 February, right? Would you agree with me? I
19 will move it over so you can see what we're
20 looking at. We're looking at a positive control
21 B which you say is an extract from the tube of
22 blood?

23 A. Could you -- Would you mind zooming out so I can
24 see the whole picture a minute?

25 Q. Sure.

1 A. All right. I'm sorry, but I believe you took
2 that from me, earlier, my copy of that.

3 Q. You're right, I did. We'll use yours and we'll
4 mark this.

5 (Exhibit 433 marked for identification.)

6 Q. (By Attorney Buting)~ Now, we just saw your -- In
7 that early example, we saw the signature for EDTA
8 and the ratios. And this one is, again, it's
9 very close in time, it's 4:35 in the morning on
10 February 16th?

11 A. That's correct.

12 Q. It has the 160 peak there, which is always set up
13 -- you set that up at a hundred, right?

14 A. The instrument normalizes itself, so the most
15 abundant peak is set to a hundred and everything
16 has been put relative to that.

17 Q. Okay. Sure. So this -- If it detects 160, it's
18 always going to be up there at a hundred because
19 it's adjusting it accordingly.

20 A. Not exactly, it has -- 160 has to -- has to be
21 the most abundant --

22 Q. Oh, okay.

23 A. -- for it to be set at 100.

24 Q. Okay. Now, as we look down at this, bottom of
25 this graph, this is Mr. Avery's blood, you can

1 see that the 132 ion is coming in at about half
2 of what the 247 ion is?

3 A. That's correct.

4 Q. This is a retention time of .92 minutes; is that
5 what that means RT 0.92?

6 A. Yes.

7 Q. So, similar to what it was with yours when it was
8 .91?

9 A. Yes, it's just one single look at that peak
10 instead of the whole --

11 Q. Right.

12 A. -- peak.

13 Q. And yet in this one you have the exact opposite
14 of what you would -- should get for a signature
15 ratio -- for a ratio of 132 to 247, you have the
16 exact opposite of what you would expect to get in
17 your signature for EDT?

18 A. Well, I wouldn't assess this for the ratios and I
19 did not assess this for the ratios. I would
20 average across that whole peak, as I did with the
21 positive control A, average across the whole peak
22 in order to make that determination.

23 Q. Okay. Tell me what the difference is between the
24 positive DSI mode and the negative DSI mode?

25 A. Well, it's simply flipping the electronics

1 around. In one mode you are looking at fragments
2 that have a positive charge and in the other mode
3 you are looking at fragments that have a negative
4 charge to them.

5 Q. All right. So, not that we have had enough of a
6 lesson to understand how these machines work, but
7 certainly they do require some interpretation in
8 order to make a call or not make a call, right?

9 A. Yes, it does.

10 Q. EDTA is biodegradable?

11 A. Not readily, no.

12 Q. But it is eventually, right; it is broken down?

13 A. Not significantly, no.

14 Q. Well, you said you apparently are aware of
15 studies about how it is the most ubiquitous
16 chemical in the environment now, right? Manmade
17 chemical?

18 A. That's right.

19 Q. And there are many studies about how to deal with
20 it in waste water treatment, for instance, right?
21 In the environment?

22 A. That's correct.

23 Q. And they come up with methods to try and break it
24 down to biodegrade it, right?

25 A. Harsh methods, yes.

1 Q. Okay. Well, it, for instance, has been found to
2 breakdown more quickly if the PH is raised?

3 A. Yes, that is correct.

4 Q. So a more base or more al -- I always says
5 alkaline PH level will make the EDTA degrade
6 faster than a neutral?

7 A. That's correct.

8 Q. Okay. Now, you talked briefly about some kind of
9 study that you did on the stability of EDTA,
10 based upon pulling out some random blood card
11 that you still had from 33 months ago; is that
12 it?

13 A. Well, I didn't have them personally, our DNA Unit
14 had a number of spot cards where they had put
15 EDTA blood onto these cards and they were stored
16 at room temperature from May of 2004.

17 Q. Okay. So you do recognize, then, that the whole
18 question of whether ED -- just how stable EDTA is
19 and whether it breaks down over time could affect
20 your ultimate opinion in this case?

21 A. If EDTA was known to break down, or if our
22 studies found EDTA to break down, then that would
23 absolutely have an affect on my opinion.

24 Q. Okay. What study have you seen that's ever
25 tested an 11 year old vial of blood to see how

1 EDTA breaks down or doesn't break down?

2 A. I think the only study is the study that -- that
3 we did for this case with --

4 Q. Oh, really?

5 A. -- the actual blood itself.

6 Q. Okay. And your report, by the way, is in front
7 of you -- what is that, 435 -- Exhibit 435, is
8 that still in front of you?

9 A. Yes, it is, 435.

10 Q. What is the date of that report?

11 A. February 26th.

12 (Exhibit No. 444 marked for identification.)

13 Q. I'm showing you Exhibit 444, which is two pages
14 of a section of discovery that you gave me.

15 A. Yes.

16 Q. Can you identify that?

17 A. Yes, this is an EDTA stability study that we
18 conducted very late last week.

19 Q. And it's -- put it up on the ELMO, so the Court
20 can see it. This consists of two pages, one of
21 which is one type written paragraph, right?

22 A. Yeah, that's my brief summary --

23 Q. Okay.

24 A. -- of the results.

25 Q. And the second page is a few handwritten notes

1 from whoever did that study. Who did that?

2 A. Dr. Jason Brewer.

3 Q. Same guy?

4 A. Yes.

5 Q. The date of that study?

6 A. 2/28/07.

7 Q. So you did these so-called stability study two
8 days after you actually filed your report?

9 A. Yes.

10 Q. So, if you had done this study and found out,
11 oops, this EDTA isn't as stable as we thought it
12 was, you may have to retract your report, or
13 amend it, right?

14 A. Well, again -- Well, yes.

15 Q. And this is the sum -- This first page of this
16 Exhibit 444, this one paragraph, is basically
17 your study. That's all that's written that
18 explains what your study is, right? Your EDTA
19 stability study, is this one paragraph?

20 A. No, it's that page and the other page you showed
21 with Dr. Brewer's notes.

22 Q. Handwritten notes?

23 A. Yes.

24 Q. You are not going to publish this study, I
25 assume, are you?

1 A. I -- I never even considered it. I don't know.

2 Q. Well, let's talk about it for a minute. What you
3 did is you pulled out 10 spot cards that were 33
4 months old, stored in room temperature, right?

5 A. Yes.

6 Q. And 4 of those 10 did not show the EDTA free acid
7 form at all, right?

8 A. No, that's not correct.

9 Q. Do I have it backwards? I'm sorry. Four of the
10 spot cards did not show the EDTA iron complex,
11 right?

12 A. That's correct, 4 of the 10 showed an indication
13 of it, but it didn't meet our criteria for
14 calling it.

15 Q. So you couldn't call it?

16 A. That's correct.

17 Q. So, in just 33 months, at room temperature, some
18 controlled environment you have, we see some
19 degradation going on with the EDTA, because four
20 of them you are not able to see the iron at all,
21 are you?

22 A. Well, I disagree with your statement there, that
23 you see --

24 Q. You don't know what --

25 A. -- degraded --

1 Q. You disagree with the degradation part.

2 A. I disagree with the degradation of EDTA. What
3 you can see here is either the EDTA iron is
4 becoming unbound, potentially.

5 Q. That's called --

6 A. -- the EDTA --

7 Q. -- degrading, right?

8 A. Well, it's dissociating is what it's called, not
9 degrading. It's called dissociation, back to the
10 free acid form. So that's one potential
11 explanation, because you can clearly see the EDTA
12 in every one of those spot cards, the free acid
13 form. So either that is taking place and that
14 could be environmentally occurring, or it has
15 decreased to a level that we're not able to
16 detect.

17 Q. Okay.

18 A. We can't tell, though, looking at that result,
19 which of those two scenarios are the actual
20 answer.

21 Q. All right. So one scenario is that it has
22 decreased to the level you can't detect, right?

23 A. That's true, yeah.

24 Q. And your study, if you want to call it that,
25 doesn't discriminate for one or the other, right?

1 A. For the EDTA iron complex, yes.

2 Q. And so, all you know is, that when you tested
3 these 33 month old spot cards that -- that 4 of
4 these 10 that you tested you were not able to
5 read or get a reaction, detectable level of the
6 iron, EDTA iron?

7 A. The iron complex, yes.

8 Q. Okay. Did you test for a calcium complex in any
9 of these?

10 A. No, as I indicated earlier, the amount of calcium
11 typically in blood is 10 to 30 times lower than
12 the amount of iron. So it made more sense to
13 focus on the iron complex.

14 Q. Okay. Now, your study is of 33 month old blood
15 on spot cards, right?

16 A. That's right.

17 Q. And the spot cards are paper?

18 A. Yes, they are.

19 Q. And they are -- they are supposed to be a stable
20 substrate so to speak?

21 A. They are exposed to the environment, to air, so.

22 Q. But there's not supposed to be anything on the
23 paper that would cause degradation, for instance,
24 or anything like that?

25 A. That's exactly right. They are sterile matrix

1 that the blood is placed onto.

2 Q. And presumably some sort of stable PH.

3 A. Yeah, the PH would really come from the
4 environment --

5 Q. Okay.

6 A. -- that it's exposed to.

7 Q. Okay. But you don't know how the blood vial, in
8 Mr. Avery's case, was stored, right? For 11
9 years?

10 A. No, I don't. I don't know if it was stored --
11 I'm going to make an assumption it was stored
12 with the cap on, otherwise it would have leaked
13 out. But other than that, I don't know if it was
14 stored refrigerated or at room temperature.

15 Q. By the way when you -- you can tell that the cap
16 had been removed at some point, right?

17 A. Yes.

18 Q. That was obvious, from your examination you could
19 tell someone took that cap off?

20 A. That's exactly right, yes.

21 Q. And if there was less than what you would expect,
22 amount of blood in the vial, 10 milliliter vial
23 and it had only five and a half?

24 A. I wouldn't -- Well, that's a two part question.
25 Yes, I did, certainly recognize that the cap had

1 been taken off. You can tell that it had been
2 taken off. Was it less than I thought should be
3 there; is that your question?

4 Q. Well, I guess you wouldn't necessarily -- or
5 would you know, I mean, is it normally filled
6 when you see a ...

7 A. No.

8 Q. Okay.

9 A. Typically --

10 Q. Normally more than half filled?

11 A. Typically, when they fill a blood tube, it is
12 filled about two-thirds of the way to
13 three-fourths of the way up.

14 Q. So you don't know whether there was blood taken
15 out because you don't know what the original
16 volume was?

17 A. Exactly, I don't.

18 Q. But you do know the cap was removed?

19 A. Yes, I could tell.

20 Q. So it was no longer in a vacuum state inside the
21 tube?

22 A. That's correct.

23 Q. And some sort of air and bacteria had been
24 exposed to it by taking the top off and bringing
25 it back on?

1 A. Sure, some limited air that would just basically
2 replace --

3 Q. Right.

4 A. -- the area that was left in that tube.

5 Q. But you don't know anything about what conditions
6 of heat it was stored in for 11 years, do you?

7 A. No, I don't.

8 Q. Or cold?

9 A. No, I don't.

10 Q. Or PH in the environment that it was stored,
11 right? You would be guessing, but you don't
12 know?

13 A. Well, the PH is going to be of the blood itself,
14 so. It's not stored in an environment of PH.
15 That was implied that it's being put into
16 something else that has a PH.

17 Q. And the same thing as far as the storage of the
18 swabs -- Let me make one thing clear here, the
19 swabs that you tested were the swabs, as far as
20 you know, that were taken on November -- in
21 November of 2005, from the vehicle, right?

22 A. Those were some of the swabs we tested, yes.

23 Q. Three?

24 A. There were three swabs, yes.

25 Q. We'll get to controls later. If someone had used

1 that blood vial to plant blood in the RAV4, then
2 those swabs, as of November of 2005, were about
3 nine years old?

4 A. I'm sorry, I was confused on what you just asked.

5 Q. I'm sorry. If the -- If someone used that blood
6 vial, which was drawn in January of 1996, to
7 plant blood in the RAV4, okay, then the swabs
8 that were made from that blood would contain
9 blood that was about nine years old?

10 A. Yes, that's correct.

11 Q. Okay. That had been stored under conditions that
12 you don't know, for that nine years, right?

13 A. That's correct.

14 Q. And then those swabs were taken and sent to
15 various places. And, again, you don't know how
16 they were stored from November of 2005 until you
17 received them in February of this year?

18 A. That's correct.

19 Q. Before you tested the vial Q-49, did you shake it
20 up, mix it up?

21 A. Yes, I did.

22 Q. You don't know, whether or not, for nine years,
23 that blood sitting the way it was, you don't know
24 how that EDTA was reacting within the liquid, do
25 you? Bad question, let me phrase it this way.

1 You don't know whether, over a nine year period,
2 the EDTA would remain homogenous, homogeneously
3 distributed within that vial of blood, do you?

4 A. Well, yes, I -- within a reasonable degree of
5 scientific certainty I would expect that it would
6 be equally homogenous throughout, because it --

7 Q. Then why did you shake it up, sir?

8 A. Just standard practice, I always do. Always
9 shake a tube of blood when I get it.

10 Q. And that way you know it's going to be mixed
11 evenly, right?

12 A. Correct.

13 Q. You don't know whether that blood vial that sat
14 for nine years, up until November 5th, you don't
15 know whether the EDTA was homogeneously mixed in
16 that liquid, at that time, do you?

17 A. If I could clarify my answer. I think I do. And
18 the reason I say that is, because any time
19 something goes into solution, which blood is
20 essentially water, and these are things that are
21 dissolving into the blood, just like if you put
22 instant coffee into hot water, you're going to
23 stir it up, it's going to dissolve into the hot
24 water. If you let it sit, the coffee doesn't
25 start to recrystallize and sink to the bottom and

1 you have clear water and coffee. It's going to
2 stay in solution and be distributed throughout
3 that tube of blood.

4 Q. But, sir, have you done -- this is your
5 assumption, right?

6 A. Well, it's -- it's based on my education.

7 Q. Have you done any tests or are you aware of any
8 studies that would describe how EDTA would act
9 after nine years of just sitting in a tube?

10 A. No, I have not personally done anything like
11 that.

12 Q. And have you noticed that when blood sits for a
13 long while, there's some sediment, it sort of
14 will separate, slightly, into the plasma, or
15 the -- the red blood cells are heavier and tend
16 to fall to the bottom?

17 A. Especially in a tube that doesn't have a
18 preservative in it, that's true.

19 Q. Okay. Would the EDTA iron chelates, I think you
20 called them, right?

21 A. Yes.

22 Q. Would they have a higher or greater specific
23 gravity, such that they may -- than the rest of
24 the blood, such that they may sink to the bottom?

25 A. No, because, again, these are still water soluble

1 entities.

2 Q. Sure. But they have --

3 A. So --

4 Q. -- they have bound, the iron ones have combined
5 with the iron molecule, right?

6 A. It has bound to the iron molecule, yes.

7 Q. And so wouldn't you agree with me that specific
8 gravity of that isotope or chelate would be
9 different than let's say the free EDTA that's not
10 bound with anything.

11 A. No.

12 Q. Okay. In any event, you don't know, if some
13 police officer was intending to use that nine
14 year old vial to plant blood, you don't know
15 whether that officer would have shaken it up or
16 not, before doing that?

17 A. No, I don't.

18 Q. And you don't know whether the portion that's
19 poured out might have a lower concentration of
20 EDTA than it would if it had been all mixed up,
21 do you?

22 A. I don't believe that that's a realistic scenario.

23 Q. But you haven't tested it?

24 A. No, I have not.

25 Q. And when this blood vial came in, you didn't do

1 that kind of a test before mixing it up?

2 A. Well, it would have been mixed just getting to
3 our laboratory. Any time its shipped or moved
4 from location --

5 Q. Sure.

6 A. -- A to B, it's mixing. So that would be
7 irrelevant, if I tested it in my laboratory,
8 wouldn't answer your question.

9 Q. Okay. You do know, from the **Cooper** case, I
10 believe, at least, that EDTA on fabrics may
11 migrate and distribute in a different
12 non-homogenous manner, right?

13 A. I read that was the opinion of one of the experts
14 in the **Cooper** case. I don't know that I share
15 that opinion.

16 Q. Well, didn't you say that that was, in fact, one
17 of your concerns was that a drop of blood on
18 fabric might expand and migrate in ways such that
19 the EDTA levels might be different?

20 A. No, that wasn't what I testified to.

21 Q. And you tested on the -- from the swabs that were
22 taken from the RAV4, they were not spot cards,
23 right?

24 A. No, they weren't.

25 Q. They were cotton, absorptive cotton, right?

1 A. They were cotton applicators, like Q-tip type?

2 Q. Okay. And a portion of it was cut off?

3 A. Yes.

4 Q. You don't know whether or not the EDTA that might
5 have been in that bloodstain, once absorbed by
6 the cotton, might have migrated in different
7 concentration levels, do you?

8 A. Sorry, I need you to repeat that.

9 Q. You don't know whether once that stain was
10 swabbed with cotton and gets absorbed into the
11 cotton, you don't know whether the EDTA, if there
12 was any in the blood, might have migrated
13 differently as it's absorbed into the cotton,
14 stronger in one place, weaker in another?

15 A. That would go against most principles in
16 chemistry, for that to happen.

17 Q. Let me go back to the peaks for just a moment.
18 You mentioned this -- one of the spikes was a 293
19 ion; do you recall that? I think you called it a
20 parent, the parent?

21 A. It's the parent ion in mass spectrometry, when
22 you are running it in positive electrospray
23 ionization mode.

24 Q. And how many other organic chemicals in the world
25 also share that parentage?

1 A. Have a molecular weight of 292?

2 Q. I think it was 293.

3 A. Well, the molecular weight is 292. It adds a --

4 (Court reporter couldn't hear.)

5 A. It adds a proton, p-r-o-t-o-n, onto it, to

6 increase the weight by one. I don't know how

7 many other chemicals in the world have a

8 molecular weight of 292.

9 Q. Do you know how many other organic chemicals in

10 the world have a parent peak of 293, a base peak

11 of 160, and also peaks of 132 and 247?

12 A. Just looking at the mass spectrum, I would think

13 that there is probably no other peak -- no other

14 compound in the world that gives that same mass

15 spectro profile.

16 Q. And have you compared it to any library of other

17 organic compound spectrum that you have in your

18 lab?

19 A. Yes, that spectrum is very characteristic of what

20 you would find in a library for EDTA. It's very

21 characteristic for what you find in publication,

22 your Honor, that's previously presented for EDTA.

23 Q. How many other organic chemical compounds would

24 have spectrums that would be close to that?

25 A. I don't know, there's over 12 million chemicals.

1 And there's no way that we can evaluate every
2 single one.

3 Q. Well, what is the machine's or instrument's
4 tolerance for being able to detect, let's say, a
5 292 from a 293?

6 A. It's set up so that it can -- it's within one
7 mass unit. Essentially it can differentiate 293
8 from 292. It can differentiate 293.5 from 293.4.

9 Q. Okay. By the way, did you ever do any, or did
10 Mr. Brewer ever do any presumptive test on these
11 swabs, to be sure what he was testing was the
12 swabs from the RAV4? Did he ever do any
13 presumptive test to be sure he's testing blood?

14 A. No, we're not qualified to test for blood, for
15 the presence of blood in the Chemistry Unit,
16 that's done in our DNA Serology Unit.

17 Q. Okay. You know what I mean when I say substrate?

18 A. Yes.

19 Q. That's sort of like a surface, that a swab, in
20 this instance, would be taken from.

21 A. Yes.

22 Q. And you don't know how the EDTA might be reacting
23 to different substrates within that vehicle, do
24 you?

25 A. Not really, no.

1 Q. And there are different ones, one is a dashboard,
2 around the ignition, right?

3 A. Yes.

4 Q. That's what you have been told?

5 A. Yeah.

6 Q. You haven't actually seen the vehicle?

7 A. I have not seen the vehicle, I have seen
8 pictures.

9 Q. Okay. Another is like a -- some sort of a vinyl
10 CD wallet, case?

11 A. Yes.

12 Q. And another is a metal surface?

13 A. Yes.

14 Q. And you don't know how the EDTA may bind with any
15 of those chemicals that are on those various
16 surfaces?

17 A. Well, the metal surface wasn't bare metal, it was
18 painted metal, so it's not metal like what we
19 have been talking about. Other than that, I
20 wouldn't expect there to be a significant amount
21 of binding.

22 Q. But you don't know, for instance, even though
23 it's paint, there may also be some sort of wax on
24 top of it?

25 A. That's right.

1 Q. Or other, you know, chemical cleaners that maybe
2 leave a residue?

3 A. That's right.

4 Q. Such as Armor All, for instance?

5 A. Perhaps.

6 Q. Okay. Some of those substances like, for
7 instance, Armor All has EDTA, right?

8 A. I don't know that to be true.

9 Q. Does paint?

10 A. No, it doesn't.

11 Q. So you did not, for instance -- Let me go back
12 for a second. You weren't present when the
13 November 2005 swabs were obtained, right?

14 A. No, I wasn't.

15 Q. So you don't know how the lab technician swabbed
16 those particular stains?

17 A. No, I wasn't present.

18 Q. Neither were you present when the controls were
19 taken in February of 2007?

20 A. No, I wasn't.

21 Q. And you don't know, for instance, how close to
22 the stain itself the controls were taken, whether
23 they were half inch, 4 inches, what, you don't
24 know?

25 A. No, I don't.

1 Q. And by the way, each of those three stains had
2 two controlled swabs sent to you, right?

3 A. Yes, they did.

4 Q. But you only tested one?

5 A. That's right.

6 Q. And you didn't ask the person who was going to
7 send you the swabs to do an experiment where they
8 actually poured some of the blood vial onto those
9 same types of surfaces, that is, on the metal, on
10 the CD case, and on the dashboard, and then
11 swabbed those stains for testing, did you?

12 A. No, I would never recommend anything like that.

13 Q. So, if you had done that, for instance, then you
14 would be able to say, hey, here's what this stain
15 should look like, if it had come from the blood
16 vial, right?

17 A. I don't know if you can jump to that conclusion,
18 quite honestly. Pouring it on and then saying,
19 well, this is what it should look like if it came
20 from that blood vial. It's making a lot of
21 additional assumptions here, I don't think --

22 Q. Such as what?

23 A. -- that I would jump to the conclusion.

24 Q. Such as time delay?

25 A. That it was poured on as opposed to droppers

1 being used to deliver it versus splattering it.
2 That's probably the primary thing.

3 Q. Why would that make a difference, if it's blood
4 and it's supposedly got EDTA in it, why would it
5 matter how it was put on the surface?

6 A. It was simply your question you asked. I didn't
7 agree with the final conclusion, based on the
8 question you asked.

9 Q. Well, let me try rephrasing it, probably wasn't
10 that clear. If you wanted to be able to say that
11 there's no way that those stains in the RAV4
12 could have come from the 11 year old blood vial,
13 you could have had someone create, with a
14 dropper, or whatever, pipette, you could have had
15 someone create stains deliberately with the blood
16 vial, swabbed those and tested them and then
17 compared them to the swabs that were taken in
18 November of 2005, right?

19 ATTORNEY GAHN: Objection, your Honor. I
20 believe we're really beyond the scope of an
21 admissibility hearing now.

22 THE COURT: I'm going to sustain the
23 objection.

24 Q. (By Attorney Buting)~ You mentioned the auto
25 sampler running in the middle of the night, it

1 actually takes, if I understand your protocol,
2 what the -- what the person does is take these
3 samples, cotton swabs or whatever, put them in
4 some sort of little test tube and then add 200
5 microliters of a solution; is that right?

6 A. Yes, it is.

7 Q. And then that 200 microliters is allowed to sit
8 and react for a period of time, right?

9 A. Yes.

10 Q. And then the whole tubes are centrifuged and the
11 liquid is separated?

12 A. It's filtered, essentially.

13 Q. Okay. And the idea being, it's the liquid that
14 you want because at that point you hope that it
15 would have dissolved any EDTA that might be in
16 solids.

17 A. But not just hope, our validation demonstrated
18 that it does --

19 (Court reporter asked him to repeat.)

20 A. Our validation study demonstrated that it does
21 dissolve any EDTA in the solid material.

22 Q. Okay. And then, so there's approximately 200
23 microliters of liquid in these vials?

24 A. That's correct.

25 Q. And the instrument only uses five microliters?

1 A. That's right.

2 Q. So there's another 195 microliters of liquid
3 there that presumably would have the same result
4 as the five that were taken out, right?

5 A. Approximately.

6 Q. Do you save that liquid to be retested?

7 A. No, we don't.

8 Q. You destroy it?

9 A. Yes, we do.

10 Q. So the defense has no opportunity to retest that
11 solution that you have created, to determine if
12 we would get the same results as you do, right?

13 A. No, instead we left half of the sample that we
14 were provided with. We used half for our
15 analysis and left half for defense retesting
16 using your own protocol, not ours.

17 Q. Sure.

18 A. And your own controls, etcetera, to do their
19 test.

20 Q. But if we wanted to test your protocol and your
21 method, and not just the protocol, but the
22 accuracy of the technician, Mr. Brewer, who is
23 doing this test, that liquid would tell us
24 exactly what it should. If we tested it, it
25 should match what you did, if it was available,

1 right?

2 A. Again, it's -- to me it's a complex question.
3 There's not a yes or no answer. If you wanted to
4 test the work that was done by Dr. Brewer, you
5 can look at the data that's in the packet and the
6 controls. The controls let us evaluate whether
7 or not the batch run operated as it was supposed
8 to. It let's us assess whether or not the
9 individual sample operated as it was supposed to.

10 Now, if you want to test our method,
11 then it's a far superior idea to take the method
12 and put it into the hands of another scientist
13 and let them run the samples, following the whole
14 protocol, as opposed to them taking our final
15 extract and putting it on their instruments.

16 Q. But you don't keep the final extract?

17 A. No, we don't. We never do in chemistry.

18 Q. So -- All right. What is your error rate in this
19 protocol?

20 A. The error rate, I would say, is zero.

21 Q. Have you done a study?

22 A. Well, yes.

23 Q. Do you know what I mean by error rates?

24 A. I absolutely do.

25 Q. Okay.

1 A. I teach on this topic. The error rate is
2 something that you generally talk about when
3 you're talking about your ability to distinguish
4 a false positive from a false negative. And
5 that's usually talking about a single analytical
6 technique. So if you were going to just look at
7 the HPLC method, you might be able to assess an
8 error rate, if you're just looking at the time it
9 takes for the compound to come out of the end of
10 that column.

11 Now, when you are running multiple
12 techniques, it's what we call self-correcting.
13 Self-correcting because, as I indicated earlier,
14 you do not rely on a single analysis to make the
15 call. You have to take all the pieces of the
16 data that you have and make sure that it all
17 supports the final answer. And if it doesn't,
18 then, you know, you really shouldn't make that
19 call.

20 Q. Well, then are you saying that this kind of test
21 you can never attribute an error rate?

22 A. There's no numerical error rate that you can
23 apply to something like that, when it's this
24 complex of multiple experiments being done and
25 you are taking all of that data and applying it

1 to a final answer.

2 Q. So there may be some error rate, but we just
3 don't know what it is, can't be quantitated, is
4 that what you are saying?

5 A. No. Maybe you could -- One way that people
6 assess error rates are looking at the results of
7 proficiency tests. And as I indicated earlier,
8 we did give ourselves a test, a blind test. And
9 we had 10 samples.

10 Q. Ten samples.

11 A. Ten samples, that had either EDTA blood on them
12 or did not, and we correctly identified them
13 100 percent of the time. So I -- I would --
14 that's -- if you want to put a number on it, I
15 would say we have zero percent error.

16 Q. All right. And you teach on this, so tell me,
17 when you -- when you devise a method of trying to
18 validate a test and trying to figure out what the
19 false positive or false negative rate is; is 10
20 samples considered sufficient?

21 A. For that technique of determining the error rate,
22 yes, it is.

23 Q. When you are validating tests that can give you a
24 known error rate, is 10 samples enough?

25 A. Generally, when we're talking about error rates,

1 we're talking about, again, techniques that are
2 not as specific as mass spectrometry. We're
3 talking about non-specific techniques that just
4 give you a simple positive negative result,
5 without a lot of data for the analyst to look at.

6 So that is a technique -- that is a
7 value, a numerical value that let's another
8 scientist know, how good is that particular
9 method, if I stand on those results alone, and it
10 doesn't have some expert looking over those
11 data -- data points in order to make that call.

12 Now, you are taking that and putting it
13 into a completely different realm with LC/MS/MS
14 techniques, and especially when you are talking
15 about multiple techniques being used to get that
16 final answer.

17 Q. So if I understand your answer, then, is that
18 this LC/MS/MS technique just -- you can't
19 attribute an error rate to it?

20 A. I think you can by applying proficiency samples.
21 That's probably the best way to --

22 Q. All right.

23 A. -- assess an error rate and that's what we have
24 done in the past when we're asked to determine an
25 error rate on a complex method.

1 Q. Okay. You said that EDTA --

2 THE COURT: Mr. Buting, can I ask about how
3 much longer you think you have?

4 ATTORNEY BUTING: It's a while, half hour
5 at least.

6 THE COURT: We'll take a break at this
7 time, then, and resume at quarter to three.

8 ATTORNEY BUTING: Okay.

9 (Recess taken.)

10 THE COURT: Mr. Buting, you may resume.

11 ATTORNEY BUTING: Thank you, Judge.

12 **CROSS-EXAMINATION CONTD.**

13 BY ATTORNEY BUTING:

14 Q. All right. You told us that EDTA is very
15 commonly found, right, in the environment?

16 A. Yes, it is.

17 Q. It's used in a lot of different, like household
18 products, for instance?

19 A. Yes, it is.

20 Q. Detergents?

21 A. Yes.

22 Q. Some things like make-up, shampoo?

23 A. Yes.

24 Q. Some auto care products?

25 A. Yes, I'm sure there are some.

1 Q. I'm going to show you Exhibit -- First of all,
2 are you familiar with the National Institute of
3 Health?

4 A. Yes, I am.

5 Q. National Library of Medicine?

6 A. Yes, I am.

7 Q. Okay. I'm going to show you Exhibit 445, which
8 is something just in the public domain as sort of
9 a list of products that contain EDTA; would you
10 just take a look at it for a moment.

11 A. Yes.

12 Q. I mean, you don't need to memorize it or
13 anything, but would that be considered a
14 reliable -- reasonably reliable data base of
15 products, general everyday care products that
16 have EDTA as part of it's composition?

17 A. Yes, it would be.

18 Q. And so, just so it's clear for the record, that's
19 like a seven page document with a single page
20 list of products, even by brand name, like Zest,
21 and Suave and those sorts of things, right?

22 A. That's correct.

23 Q. Now, do I understand that the FBI has not
24 actually tested any of these products themselves
25 to see whether they have EDTA or what levels they

1 may be?

2 A. That's correct, we have not.

3 Q. Okay. Yet, when you tested the controls, which
4 in your report are identified as K -- what are
5 they, K-3, 4 -- 2, 3, 4 or something?

6 A. Yes, K-2 through 4.

7 Q. Okay. You found no EDTA in those controls,
8 right?

9 A. That's correct.

10 Q. Now, given the ubiquitous nature of EDTA in the
11 environment, was that sort of an unexpected
12 result?

13 A. No.

14 Q. I'm going to go back to, just a minute, to this
15 process where you -- you cut off a piece of the
16 swab, Q-tip, and put it into this little vial,
17 okay?

18 A. Yes.

19 Q. You do that with all of the control swabs too,
20 right?

21 A. That's correct.

22 Q. And then you put this 200 microliter solution in
23 it?

24 A. That's correct.

25 Q. If you had done that and then evaporated that

1 solution down from 200 microliters to say 20
2 microliters, would the concentration of EDTA be
3 greater --

4 A. The relative --

5 Q. -- if there was any in it?

6 A. The relative concentration would have been
7 greater, yes.

8 Q. Okay. And so if you wanted to test these
9 controls, let's just talk about the controls for
10 a minute, and evaporated that down from
11 200 milliliters to 20 and then sent it through
12 the auto sampler that takes five microliters of
13 that, if there were EDTA in that background swab,
14 you would be more likely to actually detect it
15 with these tests, right?

16 A. Not necessarily. If I can explain.

17 Q. Okay.

18 A. This particular instrument has been demonstrated
19 to actually do the opposite of what you would
20 expect. Generally, if we were talking about an
21 instrument, if you concentrate the sample and
22 shoot that sample into the instrument, you are
23 going to get a better response.

24 This particular instrument, our
25 experience, and others that use it, have found

1 that, actually, if you concentrate it, you have a
2 detrimental effect on the signal because of that
3 matrix suppression that I talked about earlier,
4 that we evaluated as part of our validation
5 study. So, by actually diluting it, you dilute
6 the matrix interference compounds, or the things
7 that might suppress the signal and, therefore,
8 you actually have a better signal --

9 (Court reporter couldn't hear.)

10 A. For the analyte of interest.

11 Q. So, you might get -- you might get a signal
12 showing EDTA, but you might also get interference
13 from other ions as well?

14 A. Not so much an interference as it is the signal
15 is lower than what you expect it to be.

16 Q. Okay. If you increase the solution from 200
17 microliters to 2,000 microliters, you are
18 diluting it to the point where it may not show up
19 at all, right?

20 A. Yeah, that's true.

21 Q. So this level of 200 microliters, if you adjust
22 it a little bit up or a little bit down, you can
23 actually make it so that your test will not see
24 EDTA, even if it's there?

25 A. Well, if you take it to an extreme, yes.

1 Q. Okay. Now, at the dilution level you chose, it
2 may be that EDTA is in those controls, but it's
3 just too small or too low for your test to pick
4 up?

5 A. That's true.

6 Q. And the same would be true for the bloodstains
7 next to the controls in the RAV4, there may be
8 EDTA in it -- in them, it's just too low for your
9 -- you to detect with your dilution level?

10 A. And that's why we determine that detection limit,
11 so we know what value that corresponds to what
12 we're no longer able to actually differentiate
13 the presence or absence of EDTA.

14 Q. But my point is you cannot -- you cannot
15 absolutely say that there is no EDTA in those
16 bloodstains in the RAV4, right?

17 A. Wrong.

18 Q. You can only say that you can't detect it at your
19 level of detection, LOD, you are unable to detect
20 it, right?

21 A. I am -- I am able to say that the bloodstains
22 that were collected from the RAV4 do not contain
23 the amount of EDTA that would be expected if that
24 source of EDTA came from that tube of blood
25 collected from that --

1 Q. Sir, that's not my question. Listen to my
2 question.

3 A. I'm sorry.

4 Q. My question is, you cannot tell us, absolutely,
5 that there is no EDTA in those bloodstains, you
6 can only tell us that there is no EDTA at a level
7 that you can detect from your instrument?

8 A. That's a fair statement, yes.

9 Q. Okay. Now, since you didn't provide an opinion
10 about the level of -- or the quantity of EDTA in
11 the test tube -- not the test tube. Let me
12 rephrase that. As I read your report, what you
13 are saying is your test detected some amount of
14 EDTA in the blood vial, right?

15 A. Yes, it did.

16 Q. But not an amount that you were able to
17 quantitate and express an opinion on?

18 A. It's an amount that I did not quantitate.

19 Q. Okay. And so you get a blood vial and it says
20 EDTA right on it; it does right?

21 A. Yes, it does.

22 Q. So one would expect, if you test it, there will
23 be some detectable amount of EDTA, right?

24 A. That's right, yes.

25 Q. Although, with 11 years having gone by, we don't

1 know whether it's the same level it started with,
2 or something that's less, right?

3 A. I think that I testified earlier, I think that
4 you can get an estimate, based on the analysis,
5 as to whether or not there was significant
6 degradation.

7 Q. But you don't know what you start off with, you
8 don't know how much EDTA was in that tube to
9 begin with, right?

10 A. Well, yeah, I do.

11 Q. You know a range?

12 A. I'm sorry. I know, based on what the
13 manufacturers put into these EDTA tubes in order
14 for the EDTA to function as they intend it to
15 function, that the concentration, when that tube
16 is filled to the standard volumes that they put
17 blood into these tubes, it ranges between 1,000
18 and 2,000 parts per million.

19 Q. Okay. But now, what you don't know, first of
20 all, is what the original volume of blood,
21 whether it filled that tube or not, right?

22 A. No, I don't know how much was originally in that
23 tube --

24 Q. Okay.

25 A. -- that's correct.

1 Q. And you don't know, other than this range, you
2 don't know the actual amount of EDTA that started
3 off in that tube 11 years ago?

4 A. Well, it would be, in my opinion, that it would
5 be between 1,000 and 2,000 parts per million.

6 Q. Well, that's a pretty big range. My point is,
7 you don't know the numbers, right? It's not like
8 you just get --

9 A. Yeah, I did measure a number.

10 Q. You don't know what you started with in 1996.
11 You don't know what the number of EDTA was in
12 that vial in 1996?

13 A. Not exactly, no.

14 Q. Okay. Thank you. And you mentioned that there's
15 more EDTA in one of these blood vials than is
16 needed to chelate or bind with the metals, like
17 calcium and iron, right?

18 A. That's correct, yes.

19 Q. But I assume that varies sometimes depending upon
20 the person?

21 A. Depending on their diet, generally.

22 Q. Okay.

23 A. We intake calcium, intake iron, in our diet. And
24 then through metabolic processes, we actually
25 generate waste that are those ions --

1 Q. Okay.

2 A. -- those metals, if I can clarify.

3 Q. So, what your opinion, today, basically is, there
4 is EDTA at some detectable level in the blood
5 vial, first, right?

6 A. Yes.

7 Q. And your opinion is that there is no detectable
8 EDTA in the three stains from the RAV4 that you
9 tested, right?

10 A. That's correct.

11 Q. Let's take that last opinion, that there's no
12 detectable level of EDTA in the RAV4 stains,
13 okay?

14 A. Okay.

15 Q. That's something that you could have done, if you
16 had been asked, back in November or December of
17 2004, right? I'm sorry, 2005, right?

18 ATTORNEY GAHN: Your Honor, I'm going to,
19 again, interpose the objection. I think we're going
20 way beyond an admissibility hearing?

21 ATTORNEY BUTING: No, it's we're going
22 directly to the whole question of the next motion,
23 sequential testing or not.

24 THE COURT: Well, it does go to the next
25 motion, but that's not the motion we're hearing at

1 this time. So I'm going to sustain the objection.
2 At this time we're taking evidence on the State's
3 request to have this witness testify as an expert.
4 I'm going to sustain the objection.

5 Q. (By Attorney Buting)~ Okay. Your opinion that
6 you prepared in the report, does not in any way
7 make a comparison to a quantitated level of EDTA
8 from the blood vial to the bloodstains, does it?

9 A. We did not perform a quantitative analysis on
10 this case.

11 Q. Or comparative analysis of the blood vial to the
12 stains?

13 A. I'm not sure I understand your question.

14 Q. To get the results that you got on the
15 bloodstains, you would not have needed the blood
16 vial in your test, would you?

17 A. I think to interpret the data fully, we needed
18 the blood vial. But to get the results, you are
19 right, we didn't need the blood vial.

20 Q. Okay. And, in fact, one of the requests that you
21 got from the Milwaukee office, when it described
22 what was necessary and what kind of test it was,
23 they asked you to conduct relative comparisons to
24 swabs from the crime scene?

25 ATTORNEY GAHN: Objection, your Honor,

1 relevancy, for the purposes of this hearing.

2 THE COURT: Sustained.

3 Q. (By Attorney Buting)~ All right. Is this a fair
4 statement that, at best, your tests tell us
5 whether or not there is any detectable EDTA in
6 the bloodstains now, 16 months after they were
7 found?

8 A. Yes. That's a fair statement, yes.

9 Q. Your test does not tell us whether there was any
10 detectable EDTA in the bloodstains when they
11 were -- first came to be in the Toyota RAV4, 16
12 months earlier?

13 A. I'm sorry, but I disagree.

14 Q. Well, would you agree that if there was EDTA in
15 those bloodstains, in November of 2005, then it
16 matters not whether your tests now, 16 months
17 later, shows no EDTA?

18 A. Well, I disagree with that statement too.

19 Q. And why is that?

20 A. If there was EDTA in the bloodstain when it was
21 originally collected and it didn't show up today,
22 to me that would suggest that there was some
23 evidence switching, that it wasn't the same stain
24 that we analyzed.

25 Q. Okay. And that's based on your assumption of how

1 fast or slow EDTA might change or degrade in the
2 environment?

3 A. It's based on what's published and my own
4 experiments that show that EDTA is quite stable
5 in a bloodstain. And in a tube of blood, I would
6 add.

7 Q. Well, I'm talking about the bloodstains, for now,
8 okay?

9 A. Yes.

10 Q. In the little study that you made up of those 10
11 spot cards that were 33 months old?

12 A. Yes.

13 Q. Did you quantitate the amount of EDTA that were
14 in those bloodstains?

15 A. No, sir, this was not validated as a quantitative
16 procedure. So it was simply qualitative, was it
17 there or was it not there.

18 Q. And you know of no study that has quantitated the
19 bloodstain that is 11 years old versus one that's
20 33 months old?

21 A. A bloodstain that's 11 years old?

22 Q. Or a blood sample?

23 A. No, I don't.

24 Q. Just one more question, I think. The matrix, you
25 mentioned four experiments, something called

1 matrix suppression?

2 A. Yes.

3 Q. And what that does is it tends to actually
4 suppress an ion that is there, but you don't see
5 it?

6 A. That's exactly what matrix suppression is. It
7 suppresses the signal on the instrument, so you
8 may miss something that's there. And we would --
9 like I said, we did validate that.

10 Q. And your validation there was that there could be
11 as much as 33 percent suppression of what the
12 actual amount should be?

13 A. That's correct. If the range of suppression was
14 between 3 percent and 33 percent or 34 percent.

15 Q. And that's not considered significant to you?

16 A. No. No.

17 ATTORNEY BUTING: All right. I have no
18 further questions.

19 THE COURT: Mr. Gahn, any redirect?

20 ATTORNEY GAHN: Just one moment, your
21 Honor, please. No questions, your Honor.

22 THE COURT: Very well, the witness is
23 excused.

24 THE WITNESS: Thank you, your Honor.

25 ATTORNEY BUTING: What do we want to do

1 with that exhibit he has, can we make a copy and
2 file it later as --

3 ATTORNEY GAHN: What I have here, your
4 Honor, is the exact same copy. I will have this
5 copied and then we can mark it as an exhibit.

6 THE COURT: Very well.

7 ATTORNEY GAHN: Do you want to give it a
8 number now or save one for it? But I will have it
9 reproduced.

10 THE COURT: What's the next number?

11 THE CLERK: 446.

12 THE COURT: 446. All right. The full
13 report will be 446.

14 ATTORNEY BUTING: And just so the record is
15 clear, it's not a report, it's the lab sheets, data,
16 those sorts of things.

17 THE COURT: I apologize. That's a good
18 correction, because I think the shorter document
19 here is actually entitled a report.

20 All right. Counsel, at this time the
21 Court will hear argument on the State's motion to
22 admit the EDTA test results. Mr. Gahn, are you
23 going to be arguing that for the State?

24 ATTORNEY GAHN: Yes, your Honor, and I'm
25 going to rely upon the -- that portion in the brief

1 that we filed, our motion to admit EDTA test results
2 and then permit expert testimony on -- in the
3 State's case-in-chief. And I will just refer the
4 Court to pages 10 through 13, which I think
5 certainly talks about the law and the status in
6 Wisconsin.

7 Basically, I think this Court has to
8 look at the analysis of the EDTA derived from the
9 LC/MS/MS testing procedure and determine if that
10 is admissible. And the Court has to look at
11 three factors under our case law in Wisconsin.
12 Is it relevant? I think clearly it's relevant to
13 the facts in this case.

14 Number two, is the witness presenting
15 the evidence? Is that person qualified as an
16 expert to do so? I think, clearly, Dr. LeBeau,
17 through his testimony and through his CV, show
18 that that would be the case.

19 And, three, is the evidence, would it
20 assist the trier of fact in determining an issue
21 of fact. And I think that -- I don't think that
22 the normal or the typical citizen of the
23 community understands LC/MS/MS technology and how
24 it works and what EDTA is and its function and
25 the analysis of that. And I think this certainly

1 would clearly assist the jury in arriving at a
2 decision in this case. And that's all I have.

3 THE COURT: Mr. Buting?

4 ATTORNEY BUTING: Actually, Mr. Strang is
5 going to take this.

6 THE COURT: Sorry, Mr. Strang.

7 (Previous Avery transcripts, Wolstad should be Walstad.)

8 ATTORNEY STRANG: The way we divide things
9 up, your Honor, is that Mr. Buting does the hard
10 work and I come in later. **Walstad** is the starting
11 point, whether it ought to be or not. Much could be
12 added to the discussion, but I won't. Wisconsin has
13 not adopted the United States Supreme Courts'
14 approach to tender scientific or other expert
15 evidence set out originally in **Daubert vs. Merrell**
16 **Dow Pharmaceuticals** in 1993 and elaborated in cases
17 after that.

18 Wisconsin persists in the **Walstad**
19 approach and I agree in a general way with
20 counsel that there are three factors the Court
21 need consider, under **Walstad**, in deciding
22 admissibility initially here. One, is relevance.
23 Two, is whether the tendered witness is an
24 expert. And, three, is whether the evidence or
25 the opinion would be helpful to the jury. Would

1 the Court prefer that I wear the --

2 THE COURT: Sure.

3 ATTORNEY STRANG: -- mike? How is that?

4 Does that work any better?

5 THE COURT: Yeah.

6 ATTORNEY STRANG: All right. The third
7 criterion is, would the evidence or the opinion be
8 helpful to a jury? And that really is where we
9 founder here, the question of whether there was EDTA
10 in the blood found in the Toyota. And the critical
11 caveat here, whether there was EDTA in the blood in
12 the Toyota in November of 2005 is relevant. That
13 is, there is a material issue of fact here to be
14 decided by the jury, which is, did the blood come
15 freshly from Steven Avery's finger or some other
16 source on his body, on or about October 31, 2005, or
17 did the blood get in the Toyota because, put there
18 by someone else, presumably from a vial that itself
19 dated back to 1996.

20 And we can, you know -- The vial
21 contained EDTA, let's assume, for the purposes of
22 argument, even setting aside the expert's opinion
23 confirming that --

24 (Court reporter couldn't hear.)

25 ATTORNEY STRANG: Even setting aside the

1 expert's opinion confirming that the vial contained
2 EDTA.

3 So, that's a material question in this
4 case. And evidence that made it more or less
5 likely that the material proposition was true
6 would be relevant here. So, if this is evidence
7 that there was no EDTA in that blood in late
8 October or early November, 2005, then it's
9 relevant.

10 Mr. LeBeau's qualifications,
11 particularly as an analytic chemist who can use a
12 liquid chromatograph, matched with a tandem mass
13 spectrometer, is beyond serious dispute. We
14 don't dispute that here for purposes of the
15 admissibility determination. He's a good deal
16 more qualified than the holders of bachelor's
17 degrees from our State Crime Laboratory in
18 Madison who have made their appearance in this
19 trial.

20 But the problem is whether this is
21 helpful to a jury. And what this Court is being
22 asked to do, just so that no one makes any
23 mistake about it, your Honor is being asked to
24 join a select club. In fact, there's only one
25 other member of the club, so far as anyone knows.

1 And the founding member of the club is Judge
2 Lance Ito from the Superior Court of Los Angeles
3 County, in the O.J. Simpson trial.

4 And, your Honor, the State nominates to
5 be the second member of this club, and that is,
6 of judges or courts who have admitted evidence
7 concerning EDTA analysis, in dried bloodstains,
8 in a criminal trial. And the similarities
9 between which Judge -- that which Judge Ito did
10 and that which your Honor is being asked to do,
11 actually continue.

12 We now know, after testimony today, that
13 the protocol for testing was prepared hurriedly,
14 that it was prepared during the O.J. Simpson
15 trial which, of course, went a good deal longer
16 even than this trial. I think the preliminary
17 hearing in that case went a good deal longer than
18 this trial. But it was a mid-trial creation of a
19 protocol, mid-trial testing. And, then,
20 evidently, further mid-trial retesting and
21 reconsideration of some of the earlier results.

22 That, of course, is what we have here.
23 As Mr. Buting has discussed before and I think
24 even offered the Court, or at least read from an
25 email between Mr. Kratz and the Crime Laboratory,

1 non-quantitative EDTA testing of the bloodstains
2 from the Toyota was under active consideration by
3 the State in February of 2006. For strategic
4 reasons, evidently, the State chose not to pursue
5 that testing then.

6 Now, beginning about the end of January,
7 2007, the State decided to pursue such testing
8 and inveigled the FBI into doing it -- or
9 prevailed upon the FBI Chemical Unit at the
10 laboratory to assist the State in that manner.
11 Those tests occurred sometime between February 1,
12 when I believe the actual swabs and control
13 samples were received at the FBI Laboratory. I
14 may be off a day or so, but I'm very close there.
15 And what is it, February 26th that our report is
16 dated, or Mr. LeBeau's report is dated.

17 And if I recall his testimony, the work
18 on a protocol for conducting those tests began in
19 January, 2007. The protocol evidently was,
20 according to his testimony, ready for an approval
21 process by February 14, 2007. We were at that
22 point, nine days into trial.

23 And that approval process evidently went
24 very smoothly for Mr. LeBeau because the protocol
25 itself was issued and dated February 15, 2007.

1 So within one day, I gather, from his testimony
2 and the date on Exhibit 434, approval was
3 accomplished within the FBI bureaucracy for this
4 protocol.

5 The protocol was developed for no case
6 but this. The protocol has been used in no case
7 but this. The protocol is unrevised. The
8 protocol has been validated, if at all, only
9 internally, in the FBI, and, again, approved
10 apparently in the course of 24 hours, after
11 submitted for approval. All of these things are
12 similar to the evidence that -- that Judge Ito
13 admitted in the Simpson prosecution, out in Los
14 Angeles County.

15 We now have results that are
16 non-quantitative and that express, necessarily,
17 an opinion that no EDTA is detected in the swabs,
18 the three swabs from the bloodstains, or in the
19 control samples that were also submitted at the
20 same time. Although, Mr. LeBeau ventures an
21 opinion that he, therefore, can opine that no
22 detectable EDTA was present back at the relevant
23 time, October, early November, 2005. He has to
24 support that opinion, one degradation study and
25 apparently one degradation study only.

1 Your Honor has seen the entirety of it,
2 two pages, one of handwritten notes and one that
3 consists of a short paragraph. And as I
4 understand it, what Mr. LeBeau did was went over
5 to the DNA Unit across the hall, or wherever it
6 is, figuratively, in Quantico, said, let me have
7 some old spot cards, which would be blood on a
8 different medium than submitted here, on a PH
9 neutral stable matrix of a spot card.

10 And evidently someone told him that the
11 blood on these spot cards came from something
12 from the EDTA purple-topped tube. We don't have
13 much detail on how he satisfied himself of the
14 EDTA origins or content of the spot cards.

15 These things are about 33 months old.
16 He tests the 10 of them. And he finds EDTA in
17 the free acid form in all 10 spot cards. Finds
18 the iron chelate of EDTA in hardly more than half
19 of them, in 6 out of 10. And sort of dismisses
20 that as insignificant to his conclusion that,
21 boy, EDTA sure must be stable and must not
22 degrade quickly in bloodstains.

23 We don't know why he dismissed that so
24 freely, other than that he seemed to take
25 reassurance from the fact that he found the free

1 acid form of EDTA in all 10 of these. And that's
2 it. That hasn't been peer reviewed by anybody,
3 evidently not even within the FBI, so far as the
4 record shows. Certainly hasn't been published.

5 Certainly doesn't explain what
6 differences in degradation there might be, were a
7 different matrix or medium to be used. For
8 example, the cotton swab that was submitted here,
9 as opposed to the blotter paper spot card there,
10 which of course is specifically designed for
11 stabilizing and holding blood.

12 Doesn't have any way to explain, or
13 hasn't, so far as we can see, considered what
14 environmental differences there may be that would
15 have produced different degradation or could
16 have. And has no way at all to extrapolate to
17 the degradation he would expect in a 9 or 11 year
18 old sample of blood in any medium, whether in the
19 vial, whether on the swab, whether on the
20 substrates found in the Toyota.

21 So he is not able, here, to give us any
22 curve at all, because he's only got one point to
23 plot on the graph, which is 33 month old spot
24 cards. We don't have anything that's less old.
25 We don't have anything that's more old. We have

1 nothing that would establish a rate of
2 degradation in any environment, let alone in the
3 relevant environment.

4 So to suggest on that dataset, and with
5 that level of scrutiny, that this is helpful,
6 that an opinion that the EDTA was not detectable
7 or present back in November of 2005, based on a
8 failure to detect EDTA in the blood swabs in
9 February, 2007, really is rank speculation, or so
10 close to rank speculation that it's simply not
11 helpful to a jury. The opinion just isn't
12 helpful.

13 Now, you know, an analogy, if your Honor
14 were trying a slip and fall case in a commercial
15 establishment and the question, the material
16 issue was what comparative negligence ought we
17 assign to the plaintiff, and the defendant store
18 owner wanted to call a palm reader and an
19 astrologer. The palm reader would say, I have
20 examined the plaintiff's hand and he's the kind
21 of person who is prone to accidents and he must
22 have known that. The astrologer to say, the
23 plaintiff's zodiac for that month, his horoscope
24 for that month, says that he ought to be careful
25 because unexpected things could happen.

1 This would be relevant under the **Walstad**
2 standard. And a properly qualified horologist or
3 astrologer, a properly qualified palm reader, one
4 of many years experience, certainly could be
5 qualified as having specialized knowledge. But
6 their opinions, I submit, would not be helpful to
7 a jury. And even under **Walstad**, wouldn't be
8 admitted because unhelpful, even though the issue
9 of comparative negligence and whether the
10 plaintiff took adequate precautions is relevant
11 and the witnesses are qualified.

12 The examples are a reduction to the
13 absurd. And I don't, here, stand before the
14 Court and suggest that Mr. LeBeau is the moral
15 equivalent of a palm reader or an astrologer. I
16 don't suggest it. But the example also is
17 illustrative, I think, of how his opinion here,
18 based on the hurried assembly of a protocol, the
19 mockery of a degradation or stability study, the
20 lack of outside validation in any of the work,
21 and the effort to extrapolate without degradation
22 data, back from February of 2007, to November 5,
23 or days before that, 2005, is simply not helpful
24 to a jury.

25 It would be possible here for the Court

1 to admit the opinion that in mid February, 2007,
2 within the detection limits of the FBI Lab, there
3 was no detectable EDTA in the blood swabs. On
4 that opinion alone, the State is on much more
5 solid ground.

6 But the opinion that, therefore, the
7 blood in the Toyota did not come from the blood
8 of Steven Avery's vial, which necessarily carries
9 an opinion about what the EDTA level would have
10 been, in the swabs of the dried bloodstains at
11 the relevant time, again, autumn 2005, that's not
12 helpful to a jury, because it's wholly
13 unreliable, unsubstantiated, other than by the
14 man who wrote the protocol was one of the people
15 who approved his own protocol, donated his blood
16 for the test, supervised the testing, and
17 assigned himself to the case.

18 Now, let's not forget, in weighing all
19 of this, that although good, Mr. LeBeau clearly
20 is not perfect. He didn't claim that he is and
21 if it were possible to bring Dr. William Sybers
22 here from Florida, I would have a pretty good
23 witness to tell the Court that Mr. LeBeau and his
24 work is not perfect, neither are perfect.

25 He was proven wrong there on an effort

1 to extrapolate back, nine years in embalmed
2 tissues, the presence of a metabolite, a muscle
3 paralytic drug, succinylcholine. As we showed,
4 the Assistant Attorney General, Special Assistant
5 Attorney General for the State of Florida, who
6 prosecuted that case, later filed with the court
7 a document warning that Mr. LeBeau's results, and
8 for that matter, National Medical Services
9 results, Dr. Ballard's results, ought not be
10 relied upon.

11 So it is a select club that your Honor
12 is being asked to join. What's different and, I
13 mean, I'm foreshadowing the next argument, but
14 this has a bearing now on this question. What is
15 different and worse about this case and Simpson
16 is that your Honor is being asked to admit these
17 mid-trial results, and opinions extrapolated
18 backward from the results, without benefit of
19 degradation data, when one side and one side
20 only, as a practical matter, will have the
21 ability to do any testing at all.

22 And that's where this case really is
23 different from Simpson. There is no reason to
24 believe and, indeed, if my memory serves, both
25 sides in Simpson participated in EDTA testing and

1 had the opportunity to do that, during the course
2 of that trial.

3 Not so in this. And there is no
4 14 million dollar defense fund here that there
5 was because O.J. Simpson was the one in a million
6 criminal defendants who had that kind of money to
7 put into his defense for experts, for lawyers,
8 for Barry Scheck and Peter Neufeld, people from
9 the original innocence project at Benjamin
10 Cardoza Law School, people who are well versed in
11 chemistry and in forensic science.

12 So acknowledging that it would be
13 possible here to allow part of Dr. LeBeau's
14 opinion, that is, the opinion that no EDTA was
15 detectable by the method they used in February,
16 2007, I think the Court would err and would allow
17 evidence that is not helpful to the jury, were it
18 to allow Dr. LeBeau to go further than that.

19 And the fact that there will be no
20 independent testing has a bearing on this **Walstad**
21 analysis because, if for no other reason than
22 because of this, the failure to detect EDTA in
23 control samples here is highly, highly suspicious
24 given the ubiquitous presence of EDTA in the
25 whole gamut of consumer products, from the soft

1 drinks we drink, where EDTA is used to prevent a
2 carcinogen from forming, benzine; to Armor All,
3 used to clean cars and their interiors; to all
4 sorts of personal care products, detergents,
5 cleaning products; the failure to detect any EDTA
6 in any of the controlled swabs is a bright red
7 flag here. And we would start immediately with
8 that, if we had an opportunity to do independent
9 testing. Because it's just flat out counter
10 intuitive.

11 It just does not comport with common
12 sense. I will venture a guess that the belief
13 that the State would find EDTA in the dried
14 bloodstains and in controlled areas is what led
15 the State, tactically, in February, 2006, not to
16 undertake this very testing, on which they have
17 taken a chance now, once it turns out there is a
18 blood vial, that there was a source of whole
19 blood that could have been planted here,
20 conceivably.

21 And I don't know whether the answer for
22 those control swabs would lie in just because
23 there really was no EDTA detectable, or whether
24 it would lie in the dilution that the FBI used,
25 200 microliters of inner reagent or fluid added

1 to five microliters of the sample. I don't know.
2 I'm not a chemist. We'll never know before this
3 jury comes back with a verdict, if the Court
4 admits Dr. LeBeau's testimony.

5 I ask the Court not to go down that
6 path, not to join Judge Ito's club and not to
7 admit opinions from Dr. LeBeau that, although
8 they sound impressive, coming from an FBI expert,
9 in fact, offer no honest help to this jury.

10 THE COURT: Mr. Gahn.

11 ATTORNEY GAHN: Your Honor, the State is
12 simply asking this Court to apply the law in
13 Wisconsin to the admissibility of expert testimony
14 and scientific evidence in Wisconsin. We have given
15 you a statement of the law, I'm sure the Court is
16 aware itself of the standard in Wisconsin for the
17 admissibility of this type of evidence. I think
18 Dr. LeBeau clearly established to this Court the
19 wide use of the LC/MS/MS technology and that it is a
20 technology that can test for chemicals, it doesn't
21 make any difference what that chemical may be.

22 He's testified how samples will come
23 into the FBI and say, would you test this to see
24 if there are any chemicals in it. And perhaps
25 there will be a panel that they will find. Or

1 some item will come in and say, will you test
2 this for a specific chemical, such as cyanide, or
3 something, or EDTA.

4 All of that is possible to be done.
5 It's done with very standard well recognized
6 instruments in the scientific community and
7 that's exactly what he did. Samples were
8 submitted to him to test for the presence of
9 EDTA. He has the technology that is world wide
10 recognized, capable of doing that. And that's
11 what he did.

12 I think he explained well that this was
13 a qualitative test, not a quantitative test. I
14 note that the defense has talked a lot during
15 cross-examination about quantitating this. But
16 how do you quantitate something that's not there.

17 His test results on the bloodstains from
18 the RAV4 and on the controls from the RAV4, there
19 was nothing there. So this was a qualitative
20 test under the umbrella of analytical chemistry
21 and very valid in the scientific community.

22 I think he established his background
23 and experience in the area of degradation. They
24 did their own degradation studies. He talks
25 about so many other fields that are testing for

1 EDTA. EDTA can be somewhat of a problem because
2 it does stay around, binds to metals. And
3 there's problems in the agricultural world,
4 wildlife, fish, and game.

5 I think he was clear, this isn't
6 something that's not tested for, it is tested for
7 and it can be tested for. Everything that the
8 defense has brought up, whether it be about the
9 controls, the commercial products, suspiciousness
10 about the testing results, datasets produced,
11 degradation rates, all of that clearly goes, your
12 Honor, to weight of evidence and has nothing to
13 do with the admissibility of evidence.

14 And I think a reading of the **Peters**
15 case, where they did an analysis under the DNA
16 testing, clearly shows the difference between
17 admissibility and issues that are for the weight
18 of evidence. So I would ask the Court simply
19 to -- we're not inviting you to join any clubs,
20 your Honor, we're just asking you to look at the
21 law in Wisconsin and apply it to the testimony
22 that you heard from Dr. LeBeau. Thank you, sir.

23 THE COURT: All right. Well, the reference
24 to Judge Ito's club is interesting. Actually, from
25 my recollection of that case, I believe that the

1 evidence came in without objection, because both
2 parties must have felt they had something to gain by
3 it. So to the extent there is a club, one way or
4 another, I think I'm probably the only member.

5 The historical reference to the O.J.
6 Simpson case is interesting, but my obligation in
7 this case is to apply the law as it is in
8 Wisconsin and determine whether or not the
9 offered evidence is admissible in this case. And
10 I think it's helpful to briefly review the
11 standards that have historically applied in this
12 jurisdiction and others, governing the admission
13 of evidence.

14 At one time, the prevailing standard in
15 many parts of the country was what is known as
16 the **Frye** test, which held that the trial court is
17 to determine whether the expert evidence had
18 gained general acceptance in the particular field
19 to which it belongs. In this case, I think
20 there's a serious question about that, because of
21 the lack of a significant history of EDTA
22 testing.

23 The United States Supreme Court
24 subsequently replaced the **Frye** test with the
25 **Daubert** test, which relaxed the federal standards

1 somewhat, but still required a trial court to
2 assure that expert testimony is reliable. In
3 Wisconsin, it's pretty well established that we
4 have a standard that is more lenient than even
5 the *Daubert* test, that is the standard that's set
6 forth in Section 907.02 of the statutes.

7 That statute provides that, as a
8 condition to the admissibility of expert
9 testimony, the evidence is admissible if it is
10 relevant, if the witness is qualified as an
11 expert, and if the evidence will assist the trier
12 of fact in determining an issue of fact.

13 In this case, I don't believe there is a
14 dispute between the parties on the first two
15 issues. Unquestionably, the evidence relating to
16 the question of whether or not the blood in the
17 RAV4 was planted is relevant, certainly it was
18 the -- a large part of the defense's opening
19 statement and cross-examination of some of the
20 witnesses. And, likewise, the State is equally
21 concerned to show the jury that the blood was not
22 planted, but came directly from the defendant.
23 So I think it's definitely relevant.

24 Likewise, there's not a serious dispute
25 that the witness in this case, Dr. LeBeau, is

1 qualified as an expert. He testified as to his
2 qualifications. He's got a master's degree, a
3 doctorate degree. He's worked at the FBI Lab for
4 a number of years. In fact, he's the head of his
5 section. There's no question that he is
6 qualified as an expert.

7 The issue boils down to whether the
8 evidence will assist the trier of fact in
9 determining an issue of fact. And I think some
10 of the comments that have been included in
11 Wisconsin Court of Appeals decisions and the
12 Supreme Court are worthwhile repeating here as a
13 backdrop, if you will, to the standard the Court
14 is to apply.

15 The Court of Appeals in the *Riva* case,
16 reported at 266 Wis. 2d, 696, noted as follows:
17 The approach, that is, the Wisconsin approach to
18 allowing expert testimony, has served to reduce
19 the gatekeeper role of the Wisconsin trial court
20 when it comes to expert testimony. Reliability
21 is not part of the trial court's function.
22 Rather, reliability is an issue for the trier of
23 fact, not the trial judge as a predicate for
24 admissibility. The reliability of expert
25 testimony is an issue for the trier of fact, not

1 the circuit court as a predicate for
2 admissibility. Instead, Wisconsin relies on the
3 vehicle of cross-examination to test the
4 reliability of an expert witness.

5 So in looking at some of the items of
6 dispute, as Mr. Strang pointed out, and which I'm
7 certain will be a part of the cross-examination
8 of the witness in this case, there are points to
9 be made with respect to the reliability of the
10 testing method that was used in this case.

11 However, the Court cannot say that the
12 evidence would not assist the trier of fact in
13 determining an important issue. The witness'
14 testimony was, to a reasonable degree of
15 scientific certainty, that the blood that was
16 found if the RAV4 did not come from the blood
17 vial in this case. The results are not
18 quantitative. To be certain, the question of
19 degradation is an issue which will no doubt be
20 explored by the defense in its case.

21 But for the Court, on its own at this
22 point in the proceedings, to make a determination
23 that degradation has been demonstrated to the
24 point that the evidence will not assist the trier
25 of fact, is simply further than the evidence

1 presented today authorizes the Court to go.

2 The witness testified he didn't believe
3 that the difference in the results here could be
4 explained in terms of degradation. And while the
5 evidence may not be conclusive one way or
6 another, the Court is not in a position, under
7 the law which the Court is expected to apply, to
8 make that determination today.

9 So, in conclusion, I believe that the
10 State has met its burden here to show that the
11 evidence of this expert is admissible under the
12 standards of Section 907.02 and the Court will
13 grant the State's motion to allow Dr. LeBeau to
14 testify in this case.

15 Based on the Court's decision on the
16 State's motion, it is necessary to rule on the
17 defense motion for sequential and independent
18 testing. I am going to take a few minutes to
19 retire to chambers and review my notes about this
20 and then I will come back and issue an oral
21 decision on that motion as well.

22 ATTORNEY BUTING: Judge?

23 THE COURT: Yes.

24 ATTORNEY BUTING: Just a point of
25 clarification, so the record is clear, the Court is

1 allowing Mr. LeBeau, then, to give an opinion -- two
2 opinions, the two opinions sought by the State, that
3 no EDTA was in the swabs when he tested and that his
4 opinion is, therefore, the blood on the swabs could
5 not have come from the tube of blood. Is that
6 right?

7 THE COURT: I believe he's got opinions
8 about the blood in the tube as well as the blood in
9 the vehicle. And I'm allowing him to testify about
10 both those items.

11 ATTORNEY BUTING: But the ultimate opinion,
12 though, of saying that the blood on the swabs could
13 not have come from the blood in the tube; is that
14 being allowed?

15 THE COURT: Yes.

16 ATTORNEY BUTING: All right.

17 THE COURT: We'll resume in 15 minutes.

18 (Recess taken.)

19 THE COURT: All right. Mr. Strang.

20 ATTORNEY STRANG: I'm sorry, your Honor,
21 just two follow-ups. One, we neglected to move the
22 -- I think Exhibits 438 through 446, which were the
23 items the defense marked on Dr. LeBeau's
24 cross-examination.

25 THE COURT: Any objection?

1 ATTORNEY GAHN: No, your Honor. And I
2 believe that I failed to move in Exhibits 433 to
3 437.

4 ATTORNEY STRANG: No objection there.

5 THE COURT: Very well, all the exhibits
6 marked today, then, are admitted into evidence.

7 ATTORNEY STRANG: Second, your Honor, I
8 would be remiss if I did not pose directly to your
9 Honor an argument that **Walstad** ought to be overruled
10 and that, in the end, Wisconsin courts ought to come
11 in line with **Daubert** and adopt a similar test of
12 admissibility of scientific or expert testimony.

13 I make that argument now and suggest
14 that, particularly on something this complex,
15 with as little of the underlying criteria of
16 reliability as there are present, a court acting
17 as gatekeeper with, in many ways, superior
18 resources and perhaps background knowledge of
19 scientific endeavors, could not make a finding of
20 reliability as a threshold matter to
21 admissibility on the opinions that Dr. LeBeau
22 proposes to offer.

23 To the extent that Wisconsin leaves that
24 reliability determination to a jury of
25 laypersons, I think that this rises to a due

1 process denial. A criminal defendant has a right
2 both to be tried and sentenced on reliable
3 information. The due process roots of that go at
4 least back to the United States Supreme Court in
5 **Williams vs. New York**, which I think is 1948.
6 And I'm sorry, I don't have a citation because
7 I'm relying on my memory of the case here.

8 But to the -- If the Court correctly
9 applied **Walstad**, a point on which I respectfully
10 disagree with the Court, nonetheless, leaving the
11 reliability here to a jury for this unreliable
12 evidence that the State proposes to offer, I
13 think results in trying Mr. Avery on unreliable
14 information and rises to the level of the due
15 process violation.

16 So I ask the Court, on those brief
17 remarks, to reconsider its decision on the
18 assumption that **Walstad**.

19 would be overruled, that its time has
20 passed, and that Wisconsin will come into line
21 with the federal courts and the growing majority
22 of state courts that rely, either on **Daubert** or
23 even still on the more restrictive **Frye** test.

24 THE COURT: All right. The Court will note
25 your objection for the record. Given the fact that

1 **Walstad**, I believe, has been reaffirmed a number of
2 times in reported court decisions, I'm not going
3 to -- Well, I'm going to deny the request to
4 reconsider the Court's decision and -- but I will
5 note your objection for the record.

6 At this time, then, since the Court has
7 ruled that the EDTA expert evidence offered by
8 the State is admissible, the Court is required to
9 rule on the defendant's motion for sequential
10 independent testing and funding. The defendant
11 filed that motion on February 25th in order to
12 permit the defendant to conduct independent
13 testing for the presence of EDTA in what has been
14 referred to as the vial of blood from the
15 Manitowoc County Clerk's Office from the
16 defendant's 1985 case, as well as the bloodstains
17 allegedly belonging to the defendant which were
18 found in the victim's RAV4 vehicle.

19 The motion requests that the Court grant
20 the defendant permission to conduct testing
21 sequential to the FBI testing. That would
22 involve either declaring a mistrial in this case
23 or continuing it for a period of several months.
24 In addition, the defendant requests that this
25 testing be conducted at public expense because

1 the defendant is indigent.

2 There certainly is provision in the
3 statutes for expert testing to be conducted by
4 both parties, including the defendant. The
5 relevant statute is Section 971.23 (5). The
6 question in this case is really not so much the
7 right of the defendant to conduct testing, but
8 rather the timing of the request to perform such
9 testing, coming as it does in the middle of the
10 trial.

11 The parties do not cite the Court to any
12 directly relevant case law on this subject and I
13 don't believe there is any. I attempted to find
14 relevant case law myself. I think the Court's
15 decision has to boil down, as it often does in
16 these cases, as one of fundamental fairness; that
17 is, under the circumstances as they have
18 developed to this point, does fairness and a
19 meaningful opportunity on the part of the
20 defendant to present a defense require that the
21 relief being requested by the defendant be
22 granted.

23 In order to evaluate all of the
24 circumstances in this case, under that standard,
25 the Court believes it is necessary to first

1 review the relevant procedural history of this
2 case. The Court has to consider not just the
3 inability of the defense to conduct sequential
4 testing at this point in the trial, which I doubt
5 that even the State would contest is a given, I
6 think it would be difficult for the defendant at
7 this point to conduct that testing. But the
8 Court also has to consider the opportunities that
9 the defendant had in the course of these
10 proceedings to conduct such testing, had the
11 defense desired to do so.

12 In that regard, I would go back, first,
13 to July 10 of last year, which was the date the
14 Court issued an order requiring notification of
15 any extrinsic planting evidence to be provided,
16 by the defendant, at least 30 days prior to the
17 start of the trial.

18 Approximately 10 days after that, on
19 July 20 of 2006, that represents the date which
20 the State asserted and has on a number of
21 occasions, was the latest date by which the
22 defense knew of the existence of the container in
23 the Clerk of Court's Office, which represented
24 that it contained Steven Avery's whole blood
25 sample according to the defendant's original

1 motion for access.

2 As the defense noted in it's argument,
3 that's not the equivalent of knowing necessarily
4 that the blood vial was there, because the blood
5 vial hadn't been examined at that point, but the
6 defendant has not disputed the State's assertion
7 that the knowledge of at least the existence of
8 the box representing that it contained the
9 defendant's sample would have been made known to
10 the defendant by July 20th of last year.

11 On October 27th of last year the Court
12 issued a scheduling order setting both a
13 discovery deadline and the deadline for the State
14 to name expert witnesses to December 15th of
15 2006.

16 On December 6 of 2006, which was 9 days
17 before the discovery deadline, the defendant
18 filed a motion for order allowing access to prior
19 court file, which sought the opening of the
20 container purporting to contain the defendant's
21 blood, in the Manitowoc County Clerk of Court's
22 Office.

23 On December 14, the attorneys for both
24 sides met jointly to examine the vial and found
25 that it appeared to contain whole blood and

1 represented on its label that it was the blood of
2 the defendant.

3 On January 4th, the State filed a motion
4 to exclude the blood vial evidence, or in the
5 alternative adjourn the trial in order to permit
6 the State to analyze the blood sample. A hearing
7 was held on that date.

8 Five days later, on January 9th, the
9 Court denied the State's motion for a continuance
10 in order to analyze the vial of blood.

11 On January 12 of 2007, which was not
12 quite, but close to, 30 days before the scheduled
13 start of the trial, the defendant did file a
14 statement on planted blood describing the basis
15 for seeking introduction of the blood vial
16 evidence in this case.

17 On January 16th, the State filed a reply
18 opposing admission of the blood vial evidence.

19 On January 19th, the State asked to be
20 relieved of its obligation to disclose expert
21 witnesses with regard to the blood vial evidence.
22 The State did not oppose that request and the
23 Court granted it on the record.

24 On January 30th, the Court granted the
25 defense request to allow the blood vial evidence

1 in, subject to limitations.

2 Taking into consideration that part of
3 the procedural history in this case, the Court
4 comes to a few conclusions. First of all, the
5 Court finds that the defendant in this case did
6 timely comply with notice requirements that were
7 set by the Court.

8 The statement on planted blood that was
9 filed on January 12 was slightly less than 30
10 days before the start of trial required by the
11 Court's order, but I believe that at some point
12 after December the Court allowed that filing by
13 that date.

14 The history also shows that the
15 defendant had knowledge of at least the suspected
16 existence of the blood vial long before the State
17 did, that is, sometime on or before July 20 of
18 2006. The defendant indicates, at page 17 of his
19 brief, that counsel for both sides did not know
20 of the contents of the box until they opened it
21 together on December 14th. And while that
22 technically may be true, given the label on the
23 box which was attached as an exhibit to the
24 defendant's motion and the extensive information
25 about the box in the defendant's December 6th

1 motion, the Court concludes certainly that the
2 defense had much greater reason to suspect the
3 existence of the blood vial well before
4 December 14th; and, in fact, virtually
5 immediately made it in public statements, an
6 important part of the defense case.

7 The Court also concludes that if the
8 defendant had felt the testing of the blood was
9 important, the defendant had adequate opportunity
10 in which to arrange for such testing. The
11 defendant could have sought release of the blood
12 vial much earlier and requested permission to
13 test it himself under Section 971.23 (5).

14 In the alternative, if the defendant did
15 not want to risk spending resources on a test
16 which could possibly produce inconclusive or
17 unfavorable results, the defendant could have
18 disclosed the existence of the blood evidence
19 earlier, asked the Court to set a deadline for
20 the State to conduct any testing that it wished
21 to conduct and still allow the defense adequate
22 time to make its own decision as to whether or
23 not it wanted to independently test the blood
24 vial, all of which could accomplish -- been
25 accomplished well before the start of trial in

1 this case.

2 The Court believes the defense decision
3 not to pursue identification of the blood vial
4 until very close to the discovery deadline was a
5 decision that the defense was entitled to make.
6 That is, I find that it was a reasonable decision
7 on the part of defense counsel. There certainly
8 could have been a number of reasons for making
9 that decision.

10 While there are procedures for testing
11 EDTA, as Mr. Buting informed the Court on the
12 January 4 motion hearing, there are no
13 standardized -- universal standardized protocols
14 or universally accepted quantitative standards
15 and it would have been entirely possible that the
16 result of any testing conducted by the defense
17 could have been inconclusive. In addition, the
18 testing results could have been inculpatory
19 rather than exculpatory.

20 Finally, by waiting until shortly before
21 the time it was permitted to do so, the defense
22 may have left the State with less time to prepare
23 to meet the evidence and, specifically, with not
24 enough time in which to conduct the State's own
25 tests. It certainly appeared, based on the

1 original State request to adjourn the trial, that
2 that may well have been the case here.

3 However, the fact that the decision as
4 to the timing of the motion seeking access to the
5 blood vial was within the deadlines set by the
6 Court and was reasonable, that does not mean that
7 the defendant is allowed to second guess the
8 strategy at this point and be entitled to a
9 mistrial or lengthy continuation of the trial in
10 this case.

11 The Court believes that it would have
12 been highly foreseeable that, once made aware of
13 the blood vial evidence, the State would want to
14 test the blood in order to refute any planting
15 defense and would likely make every effort to do
16 so.

17 On that point, I think it's worthwhile
18 to go back to the transcript of the hearing on
19 January 4, that is, the hearing on the State's
20 request to adjourn the trial in this case and
21 repeat some of statements that were made at that
22 time.

23 Defense counsel informed the Court at
24 that time that it only would -- that it would
25 oppose a continuance of the trial date unless the

1 defendant was released on bail. Included among
2 the statements from the record of that hearing
3 are the following from defense counsel: And if,
4 that is, Mr. Avery, is to remain in custody, we
5 will and do oppose adjournment of this trial. We
6 want it to go forward on February 5 if he is to
7 remain in custody. That was from page 18 of the
8 transcript.

9 On page 19, defense counsel argued, But
10 if the State wants to test and if Mr. Avery is to
11 remain in custody, the trial ought to go forward
12 while the testing process is going forward.

13 At page 20, defense counsel argued, we
14 don't pursue testing ourselves. We don't know
15 that we will. We aren't asking to, but we
16 understand why the State wants to pursue that
17 testing.

18 Going on to page 20, we may well oppose,
19 in the end, the admissibility, the relevance of
20 those test results, but that, again, is something
21 the Court could address with the benefit of
22 knowledge of the test results, presumably, and a
23 chance to look at the type of testing that was
24 done, the protocols, and what the case law may
25 have to say about the admissibility of similar

1 tests.

2 Of course, that all came to pass, but
3 the point is that the defense was aware at that
4 time that the State was going to pursue testing.
5 The defense didn't oppose testing from the State,
6 as long as an adjournment was not granted. And
7 even at that point in the proceedings the
8 defendant was not interested in pursuing
9 independent testing.

10 Based on that history, the Court
11 concludes in this case that the defense motion
12 for sequential independent testing and funding
13 must be denied. The reasons are as follows:

14 First of all, the Court concludes that
15 the defendant had adequate time in this case to
16 pursue testing if he wished to do so.

17 The defense was aware of the likely
18 existence of the blood vial many months ago.

19 The defendant had an adequate
20 opportunity, after the discovery of the suspected
21 existence of the blood vial, to pursue testing.

22 As pointed out by the defendant, the
23 State could have pursued testing of at least the
24 blood evidence in the vehicle earlier as well.

25 But the importance of such testing did

1 not become evident until the defendant disclosed
2 that it was preserved blood in the Manitowoc
3 County Clerk of Court's Office that was
4 specifically the alleged origin of the planting
5 evidence.

6 There could have been other arguments
7 available to the defendant, for example, we have
8 heard testimony there were traces of the
9 defendant's blood found in his trailer, could
10 have been argued that somehow the State got a
11 hold of that blood or blood from somewhere else
12 that may not have been preserved, that was
13 planted in the RAV4 vehicle.

14 If the blood that was alleged to have
15 been planted was not preserved blood, the
16 significance of the lack of EDTA would not
17 necessarily have been terribly probative.

18 Both parties acknowledge that at this
19 stage in the development of EDTA testing, there
20 are not any generally accepted scientific methods
21 for either testing EDTA or interpreting the
22 results. From all the Court has been able to
23 learn at this point, that appears to be due more
24 to the fact that there's not much demand for it
25 than anything else. The Court has not heard any

1 evidence to suggest that it's more difficult to
2 test for EDTA than a variety of other chemical
3 substances.

4 Especially under the standards for
5 admission of expert evidence in the State of
6 Wisconsin, had either party decided they wanted
7 to pursue testing earlier, they could have done
8 so with the knowledge that the test results, as
9 long as conducted by a competent lab, probably
10 would have been admissible.

11 The Court does not find, in this case,
12 that the FBI is the only lab in the country or is
13 somehow uniquely qualified to perform this type
14 of testing. As we heard earlier today, I think
15 the last time it was conducted by the FBI was at
16 the time of the O.J. Simpson trial.

17 And referring, again, to the January 4
18 transcript, Mr. Buting pointed out to the Court
19 at that time that their, meaning the FBI's,
20 expert was called at the O.J. trial, actually
21 used by the defense in the O.J. case, and was
22 very helpful to the defense and ultimately very
23 embarrassing to the FBI who was part of whistle
24 blower allegations in the very lengthy
25 investigation that the FBI Lab did of misconduct,

1 or negligence, or sloppy practices in their lab.

2 So that's -- The role of the FBI in the
3 O.J. Simpson case didn't exactly establish the
4 FBI as the sole lab in the country that could
5 responsibly test for the presence of EDTA.

6 Now, there is a case that was cited by
7 the defendant in the brief that the Court does
8 agree is worth examining here. It may be the
9 closest case at least that somehow resembles the
10 facts in this case. That was the case of the
11 ***United States vs. Kelly***, where an appeals court
12 reversed a conviction because the trial court did
13 not allow for a one month continuance of the
14 trial in order to allow for a sequential testing
15 as requested by the defendant.

16 I'm going to quote from that case
17 briefly setting forth the facts and the ruling of
18 the Court: In June, 1968, the seized drugs --
19 and it was a drug case -- were sent to Washington
20 for tests, including neutron activation tests
21 which tended to show that the drugs all came from
22 the same original batch.

23 The government did not inform the
24 defendants of this test. They, the defendants,
25 only became a care of it at the trial, after the

1 testimony of the prosecutions first witness when
2 the government produced its exhibits. The
3 appellants also contend that the government had a
4 positive duty to disclose the results, or at
5 least the fact that they had taken them. This is
6 especially -- This is so, especially in light of
7 the fact the government had opposed discovery on
8 the grounds that the request was not particular
9 enough and now the government alone had knowledge
10 of the particular tests it had taken.

11 The course of the government smacks too
12 much of a trial by ambush in violation of the
13 spirit of the rules; a new trial is required with
14 a fair opportunity for the defense to run its own
15 neutron activation tests of the material to
16 determine the atomic similarity or dissimilarity
17 of the trace elements in the samples.

18 The Court believes there are at least a
19 couple of significant differences between the
20 facts in *Kelly* and the facts here. First of all,
21 the State has disclosed its test results
22 immediately upon receipt, to the defense, the
23 State did not have those test results available
24 until after the trial in this case started.

25 There is no element of trial by ambush

1 in this case. The Court concludes that the State
2 acted promptly after learning of the existence of
3 the blood vial to seek to have the tests of the
4 blood conducted.

5 The primary reason for the receipt of
6 the results during the trial as opposed to
7 earlier is because the State did not learn of the
8 existence of the blood vial until months after it
9 was believed to exist by the defense.

10 The Court also notes that the defense,
11 as I said earlier, could have conducted testing
12 of its own, but did not do so. And as of January
13 4 of this year, still informed the Court, on the
14 record, it had no plans to do so.

15 The Court, finally, concludes that the
16 remedies suggested by the defense in this case to
17 allow sequential testing are inadequate. As I
18 suggested earlier, had -- had this matter come up
19 well ahead of the trial, so that the results
20 would have been in before the trial, I may well
21 have ruled differently. I mostly likely would
22 have allowed the defense to pursue sequential
23 testing.

24 But at this date, the remedies suggested
25 are, first, a continuation of the trial, for an

1 unspecified period of months. And that simply is
2 not practical. I think, actually, both parties,
3 in their briefs, probably recognize that. First
4 of all, it would be very difficult to prevent the
5 jurors from being exposed to publicity about the
6 case in the meantime.

7 And even more significant than that, we
8 have heard a great deal of testimony. We're
9 beginning week four of the trial, I'm not sure
10 how the jurors could be expected to have -- could
11 be expected to have a meaningful recollection of
12 the testimony that's been introduced, the
13 evidence that's been received, and use that
14 information to come to a verdict some unspecified
15 period of months from now.

16 Likewise, the Court believes that there
17 are simply no grounds in this case to declare a
18 mistrial. The primary reason that the defense
19 has not conducted EDTA testing earlier is because
20 the defense chose not to pursue it when there
21 would have been time to do so.

22 The defense has made the alleged
23 planting of blood a vital part of this case. As
24 defense counsel pointed out at the January 4
25 hearing, he, meaning Mr. Avery, has been saying

1 from the beginning, to anybody with a microphone
2 and TV camera, initially as early as November,
3 2005, that if his blood was in the Toyota,
4 somebody planted it. So there hasn't been any
5 secret about his defense and his view of the
6 facts.

7 If testing of the blood was determined
8 by the defense to be vitally necessary to that
9 planting defense, which was known from the very
10 beginning, it should have been pursued far
11 earlier than it has been.

12 The bottom line in this case is that
13 both parties had an opportunity in this case to
14 pursue testing. The Court believes that because
15 of its earlier knowledge of the existence of the
16 blood vial, the State had a slight -- or the
17 defense had a slightly earlier opportunity, at
18 least than the State, but did not pursue the
19 testing. And for that reason a continuation of
20 the trial at this point is not warranted.

21 Because of the Court's decision denying
22 the motion, it's not necessary for the Court to
23 act on the public funding request from the
24 defense in this case. However, I feel compelled
25 to make a few comments about that request, should

1 it become relevant at some point.

2 First of all, if a defendant finds
3 himself in the position of Mr. Avery, that is,
4 let's say the defendant was determined to be
5 indigent, I believe the proper course to follow
6 was set forth by the Court of Appeals in the case
7 of ***Dressler vs. Racine County Circuit Court***, a
8 1991 Court of Appeals case. And the Court,
9 there, essentially, when a private counsel
10 requested funding for testing on the basis that
11 the defendant was unable to comply with the terms
12 of the retainer agreement and financially unable
13 to either continue to pay the attorney or pay for
14 testing, ruled that the defendant should contact
15 the Public Defender's Office, there's a provision
16 in the Public Defender rules to allow, not only
17 for testing, but also to appoint acting counsel,
18 even in the middle of a case, and be paid by the
19 Public Defender, if the defendant is unable to
20 continue to comply with the terms of any retainer
21 agreement.

22 The other point I will note relates to
23 the affidavit which was filed with the motion in
24 this case. I did take some time to read that and
25 while I don't have the entire retainer agreement

1 in front of me, the affidavit notes that the lump
2 some payment that was paid by the defendant, to
3 defense counsel, was accepted as a minimum earned
4 and maximum fee; that is, the fee was going to be
5 the amount for representation in the trial,
6 regardless of the amount of hours earned.

7 Also significant in the Court's mind is
8 paragraph 7 in which defense counsel indicates,
9 my firm's retainer agreement with Mr. Avery
10 requires the firm to pay expenses including
11 expert witnesses and any other necessary
12 litigation expenses after the amount in our trust
13 account is exhausted.

14 Now, as I read that, the logical reading
15 to me would be that the retainer agreement may
16 well obligate defense counsel to pay for testing
17 expenses and that the defendant's status at this
18 time as being indigent or not is not terribly
19 relevant because there is a contractual agreement
20 which has already been fulfilled by the defendant
21 which requires defense counsel to pay for testing
22 or expert witnesses. As I say, my ruling doesn't
23 require me to rule on that, so I'm not going to.
24 I only offer that as my observations.

25 In any event, the Court is going to deny

1 the defendant's motion for sequential independent
2 testing and funding. I will direct the State to
3 prepare the order, both on that motion and the
4 Court's earlier ruling today.

5 And I will see the parties tomorrow and
6 the jury will be back here to begin testimony.
7 Anything else before we adjourn today?

8 ATTORNEY BUTING: Do you want to meet
9 briefly in chambers?

10 THE COURT: That sounds fine, I will see
11 everybody in chambers in a few minutes.

12 (Proceedings concluded.)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 2nd day of January, 2008.

Diane Tesheneck, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL
5 vs. TRIAL DAY - 17
Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** MARCH 6, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 the State of Wisconsin vs. Steven Avery, Case No. 05
3 CF 381. We're here this morning for a continuation
4 of the trial in this matter. We are outside of the
5 presence of the jury at this time. Will the parties
6 state their appearances for the record.

7 ATTORNEY KRATZ: Good morning, Judge, the
8 State appears by Special Prosecutors Ken Kratz, Tom
9 Fallon, and Norm Gahn.

10 ATTORNEY STRANG: And good morning, Steven
11 Avery in person; Jerome Buting and Dean Strang on
12 his behalf.

13 THE COURT: All right. Counsel, I
14 understand that the parties have something to take
15 up outside the presence of the jury.

16 ATTORNEY STRANG: The defense has a brief
17 motion, your Honor, in light of the Court's rulings
18 at the end of the day yesterday. The defense all
19 along has been consistent in contending that there
20 were no reliable tests that can be done that would
21 be useful to the jury on the dried bloodstains in
22 the Toyota, or the blood vial in the Clerk's Office.
23 The Court ruled as it did, yesterday, leaving
24 reliability to the jury and ruling the State's tests
25 performed during this trial otherwise admissible

1 under **Walstad**.

2 That will not allow -- It's no surprise,
3 as we said all along, that will not allow any
4 rebuttal testing or independent testing that
5 might be offered to rebut the State's testing now
6 that the State has chosen to pursue that and the
7 Court has allowed that testing, regardless of
8 it's reliability. So I have a two prong motion
9 to preserve Mr. Avery's rights and options.

10 First, I would like the Court to order
11 that all samples remaining of swabs, or the dried
12 bloodstains themselves in the Toyota RAV4, be
13 preserved indefinitely and not destroyed or
14 damaged, absent further Court order on
15 application by the State with notice to Mr. Avery
16 and whoever his counsel may be.

17 And, as well, that the blood vial from
18 the Clerk's Office be preserved, not damaged or
19 destroyed in any way, absent express further
20 Court order on application by the State with
21 notice to Mr. Avery and counsel, so that we
22 preserve the ability to test, if and when science
23 advances to the point of allowing some reliable
24 testing or just rebuttal testing by the defense.

25 Second, I would like the Court to enter

1 an order now that the defense will have access to
2 the swabs from the Toyota. And when I say swabs
3 from the Toyota, I'm referring both to swabs of
4 the dried bloodstains and the control swabs that
5 were taken for purposes of the FBI testing to
6 which Dr. LeBeau has testified, as well as the
7 dried bloodstains themselves, all the dried
8 bloodstains in the Toyota attributed to
9 Mr. Avery, and the blood vial from the Clerk's
10 Office.

11 I would like the Court to order now
12 that, without further application, the defense
13 may conduct independent testing of any or all of
14 those materials at any time, from today through
15 trial. If there's a conviction, post-conviction,
16 in the appellate process or after the appellate
17 process, I would like the ability to do that
18 testing when it reasonably becomes available to
19 Mr. Avery to do it, as a matter of science and
20 finances, regardless of when that may happen; it
21 won't happen during the trial, so I'm just
22 looking ahead.

23 Of course, if he's acquitted, everyone
24 will lose interest in testing. But if he's
25 convicted of any of the charges, this evidence

1 that the State contends is so material to guilt
2 or innocence, will retain its materiality to
3 guilt or innocence. And I would like the Court
4 to order that Mr. Avery, or his counsel, have
5 access to that, without further order of the
6 Court, for testing, at any time.

7 THE COURT: Who will be speaking for the
8 State?

9 ATTORNEY GAHN: I will, your Honor.

10 THE COURT: Mr. Gahn.

11 ATTORNEY GAHN: I have no objection to
12 anything that Mr. Strang has stated.

13 THE COURT: All right. Just as a practical
14 matter, and I'm testing my memory here a bit, I
15 thought that the samples from the RAV4 were already
16 split, such that in order to enable both parties to
17 conduct testing if they wished.

18 I'm wondering, if the Court is going to
19 issue an order that samples be preserved, I guess
20 rather than leave it that broad, I would like to
21 know where they are now, and perhaps the order
22 should reflect how they should be preserved or
23 where they should be preserved.

24 ATTORNEY GAHN: My understanding is that
25 the samples from the RAV4 that were submitted to

1 EDTA testing, which would have been, A-8, the swab
2 from the dashboard; A-10, the swab from the CD case
3 in Teresa Halbach's car; and, A-12, which was the
4 bloodstain swab from the metal on the rear passenger
5 door entry, that Mr. Buting requested that the FBI
6 preserve one half of each of those samples for
7 independent testing.

8 That has been done. One half of those
9 swabs are preserved. Also, Mr. Buting requested
10 that the controls that were taken also be -- that
11 the FBI only consume one half of those, and that
12 is the case. So one half of the controls are
13 available.

14 As far as the other swabs which were
15 taken by Sherry Culhane, those are in the control
16 now of the Calumet County Sheriff's Department.
17 And those also are available to the defense. And
18 one half of the A-10, A-12, and A-8 have been
19 returned by the FBI and they are in the control
20 of the Calumet County Sheriff's Department.

21 THE COURT: All right. So the
22 understanding is that these items are going to be
23 retained at the Calumet County Sheriff's Department,
24 that's where they are going to be if they are
25 needed?

1 ATTORNEY GAHN: Yes.

2 ATTORNEY STRANG: That's very helpful.
3 What it leaves uncovered, or that we haven't covered
4 here, are the dried bloodstains themselves, as there
5 were stain areas for which swabs were not sent to
6 the FBI, if I understood Mr. LeBeau's testimony
7 correctly, and then the blood vial. And so we just
8 need to know what arm of the State, what agency of
9 the State is preserving all of those.

10 THE COURT: All right. So, Mr. Gahn, when
11 you say swabs, you mean samples taken from these
12 areas.

13 ATTORNEY GAHN: Correct.

14 THE COURT: Was the part of the vehicle
15 with the stain on the dash removed from the vehicle,
16 or is the dash still intact with the vehicle,
17 wherever it is?

18 ATTORNEY GAHN: The dash is still intact
19 with the vehicle, and the vehicle is here on the
20 Calumet County grounds.

21 THE COURT: Is that going to be saved or?

22 ATTORNEY GAHN: Under --

23 THE COURT: Let me ask first, what has the
24 defense requested; are the swabs enough?

25 ATTORNEY STRANG: No, I think the stains

1 have to be preserved. And I suppose the issue,
2 then, is other -- other control areas for testing.
3 So it would be, I guess, useful to know what the
4 plans are with the Toyota.

5 THE COURT: Well, let's do this, there's no
6 dispute between the parties that the swabs should be
7 saved. As far as the details of the Court's order,
8 that could be addressed, if there is a conviction in
9 this case. And perhaps between this time and that
10 time, should the need arise, the parties could
11 discuss whether or not they might come to a joint
12 agreement on how to preserve samples.

13 I mean, the CD case is small enough,
14 that can be preserved. The dash and the door
15 frame, I don't know if the vehicle will be
16 preserved forever, but perhaps the parts could be
17 removed if it would be determined to be
18 necessary. I'm not sure.

19 ATTORNEY GAHN: I think what the Court is
20 suggesting is a prudent course. Let's wait until
21 these proceedings are over, because Wisconsin does
22 have a mandatory preservation statute that would be
23 applicable in this case. And it would make more
24 sense to address this under that statute, after the
25 proceedings are completed.

1 THE COURT: I think any order should
2 probably include, not only the fact that the samples
3 would be preserved, but a bit more specificity as to
4 how they would be preserved. And both parties may
5 want to be heard on that or you may come to an
6 agreement with a joint recommendation to the Court.

7 ATTORNEY STRANG: I'm only in partial
8 agreement with Mr. Gahn. I do want an order now, at
9 least all the control swabs and the swabs of
10 bloodstains be preserved, and the blood vial. And I
11 have not heard yet where the blood vial is, or the
12 remaining part of the blood vial is.

13 ATTORNEY GAHN: The blood vial will be in
14 the control of the Calumet County Sheriff's
15 Department.

16 THE COURT: Is that where it is now?

17 ATTORNEY GAHN: Well, that will also become
18 an exhibit very shortly.

19 THE COURT: Oh.

20 ATTORNEY GAHN: And let me also say that
21 some of the stains that Ms Culhane, from the Crime
22 Lab, tested, those stains and swabs are in the court
23 record here as exhibits.

24 THE COURT: What if we handle it this way,
25 the defense can prepare an order to order that all

1 these items be preserved now. I understand that to
2 be not in dispute with the State. And the order can
3 provide that the manner of preservation will be
4 determined following the conclusion of the trial.
5 Does that work for both parties?

6 ATTORNEY STRANG: Sure, I think so. And
7 we'll have no objection to things like the blood
8 vial and the swabs being withdrawn from evidence for
9 purposes of preservation by the State.

10 THE COURT: All right. Is that sufficient
11 detail for you to prepare a proposed order,
12 Mr. Strang?

13 ATTORNEY STRANG: Yes.

14 THE COURT: Okay. In terms of -- I try to
15 keep an inventory of matters that arise during the
16 trial that have not been resolved. One of those
17 items is the fair testing motion which the defense
18 renewed back on February 27th. If there's time,
19 after the last witness today, I would suggest that
20 the Court hear argument on that today.

21 Mr. Buting gave some argument at the
22 time of the motion. Mr. Gahn requested time to
23 respond. I could hear argument from the State,
24 any rebuttal from Mr. Buting, and, hopefully,
25 resolve that matter today.

1 I also took under advisement, also
2 Mr. Buting's request, to introduce evidence
3 concerning the voice mails and whether or not
4 they were accessed on November 2nd, or that the
5 details of them being accessed. I believe at the
6 time I reserved ruling. The parties were going
7 to conduct some discussions with each other to
8 see if the matter could be resolved or if
9 additional evidence was necessary. What is the
10 status of that motion at this time?

11 ATTORNEY KRATZ: Additional evidence, your
12 Honor, is going to be necessary. Mr. Strang and
13 Mr. Buting have agreed to telephone testimony from a
14 Cingular technician. We anticipate that to be
15 sometime tomorrow, probably tomorrow morning. That
16 will be supplemented with the State recalling Mike
17 Halbach. But that combination of witnesses should
18 resolve that matter. And, again, the defense has
19 been kind enough to allow telephone rather than live
20 testimony in that matter.

21 ATTORNEY STRANG: That's right. And I have
22 also, at least suggested in an email last night to
23 Mr. Fallon -- and I can't remember if I copied
24 Mr. Kratz and Mr. Gahn or not -- but suggested that
25 a stipulation as to one or both of the Cingular

1 witness and Mike Halbach, stipulation as to one or
2 both of those witnesses is conceivable. And at
3 least we could try, at least take a stab at that. I
4 don't know whether either side in the end would
5 stipulate, but it's worth a discussion.

6 If we go forward with testimony and not
7 a stipulation from the Cingular person, we're, of
8 course, working on the assumption that the
9 Cingular person at the other end of the telephone
10 would have the same documents in front of him or
11 her that we have here, so that the person can be
12 questioned about the documents and I'm quite
13 certain that the State shares that.

14 ATTORNEY KRATZ: We actually copied three
15 Court exhibits this morning and faxed them to that
16 person as well.

17 ATTORNEY STRANG: Great.

18 ATTORNEY KRATZ: So we're working all from
19 the same pages, Judge.

20 THE COURT: Very well.

21 ATTORNEY STRANG: And the remaining --
22 While the Court is taking inventory, the remaining
23 issue of which I'm aware was my renewed motion to
24 suppress the results of searches of the Avery
25 trailer and the garage and the area behind the

1 garage. I think we settled on after the November 5
2 search that began at about 7:30 p.m. and ended about
3 10:05 p.m.

4 I had renewed that, oh, several days
5 ago. I think the State, again, reserved response
6 for wanting to be heard on that. And that's my
7 recollection of the issue that remains ripe for
8 decision, or at least further argument and
9 decision.

10 ATTORNEY FALLON: I was under the
11 impression that we did argue it and the Court
12 decided you would rule later, after hearing the
13 argument that Mr. Strang and I made last week.

14 ATTORNEY STRANG: Well, actually, that's --
15 that is right, because now that I hear Mr. Fallon, I
16 recall his eloquence in responding. And the Court
17 at the time I think, if memory serves, said it would
18 not hear reply from me now or at that point, but we
19 would address the issue in some fashion later.

20 THE COURT: All right. I will -- do the
21 parties remember what day that was? I would like --
22 I'm going to review the transcript.

23 ATTORNEY STRANG: It may have been
24 February 22, but I can't promise.

25 ATTORNEY FALLON: I would have to look at a

1 calendar.

2 THE COURT: I do recall that as well.

3 ATTORNEY FALLON: I'm trying to remember
4 who the witness was, right before a particular
5 witness. Right now, for the life of me, I can't
6 think of that.

7 THE COURT: All right. Well, we'll attempt
8 to recreate that a bit later. Are the parties ready
9 for the jury to come in?

10 ATTORNEY STRANG: Yes.

11 ATTORNEY KRATZ: Yes.

12 THE COURT: All right. We'll bring in the
13 jurors at this time.

14 (Jury present.)

15 THE COURT: You may be seated. Welcome
16 back members of the jury. At this time we are ready
17 to proceed with the testimony. Who will be
18 questioning? Mr. Fallon, you may call your first
19 witness.

20 ATTORNEY FALLON: Thank you. The State
21 would call Lynn Zigmunt to the stand.

22 THE CLERK: Please raise your right hand.

23 **LYNN ZIGMUNT**, called as a witness
24 herein, having been first duly sworn, was
25 examined and testified as follows:

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

3 THE WITNESS: Lynn Zigmunt, Z-i-g-m-u-n-t.

4 **DIRECT EXAMINATION**

5 BY ATTORNEY FALLON:

6 Q. How are you employed?

7 A. I'm the Clerk of Court for Manitowoc County.

8 Q. And how long have you been the Clerk of Court for
9 Manitowoc County?

10 A. Since January of 2005.

11 Q. Tell us, if you would, what are the duties of the
12 Clerk of the Circuit Court for Manitowoc County?

13 A. I administer the Clerk of Court Office, oversee
14 the staff to ensure that there is appropriate
15 coverage for all court proceedings, record
16 keeping, oversee all the record keeping in the
17 office. Create policies for the record keeping
18 and oversee the budget for our office.

19 Q. What kinds of records does the Clerk of Court's
20 maintain?

21 A. All the records for the three circuit courts. So
22 any of the case files that are started, any of
23 the filings that are made within the files,
24 correspondence, pleadings, and exhibits that
25 would be filed with the court as a result of a

1 trial or hearing.

2 Q. And does that include maintaining files and
3 exhibits from files from cases in the past?

4 A. Yes.

5 Q. In your capacity as Clerk of the Circuit Court
6 for Manitowoc County, are you familiar with a
7 case entitled State of Wisconsin vs. Steven A.
8 Avery, Case No. 85 FE 118?

9 A. Yes.

10 Q. And how are you familiar with that particular
11 case file?

12 A. I guess from the large interest of the media in
13 that case after Mr. Avery was exonerated in 2003.
14 We maintain the file in our office so, when there
15 are public requests to view the file, we provide
16 it for inspection. And that file was in our
17 office for said purposes.

18 Q. All right. Now, in your capacity as the Clerk of
19 Circuit Court, do you supervise the other clerks
20 which are employed in that office?

21 A. Yes.

22 Q. And as the Clerk of the Circuit Court are you
23 generally familiar with their duties and
24 responsibilities?

25 A. Yes.

1 Q. And in terms of your familiarity with the 1985
2 case, can you tell us, based upon your
3 understanding, of where that file had been kept
4 while in the custody of the Clerk of the Circuit
5 Court?

6 A. From the time I took office, the file was
7 maintained in a large like rectangular shaped
8 cardboard box. And it was in our inner office,
9 in a central location, meaning on top of a filing
10 cabinet. And the reason that it was there, I
11 think it was brought up after Mr. Avery was
12 exonerated in 2003, after there was a high
13 interest by the media to look through the file.
14 It was a very big and cumbersome box to have to
15 bring up from the basement where it was normally
16 stored before, in a lower level filing area.

17 Q. I'm going to have some exhibits shown to you, if
18 I may, beginning with a series of exhibits marked
19 452. Let opposing counsel examine them for a
20 moment or two. While counsel is examining the
21 exhibits, were you asked to bring certified
22 copies of certain documents from case file 85 FE
23 118?

24 A. Yes, I was.

25 Q. And were you able to obtain copies of the

1 requested documents?

2 A. Yes.

3 Q. And you have received the documents?

4 A. I have received them? Oh, right now.

5 Q. The exhibits.

6 A. Yes.

7 Q. Okay. If you would, directing your attention to
8 Exhibit 452, I believe it is, can you tell us
9 what that is.

10 A. It's a stipulation filed in the case of State vs.
11 Steven Avery, Case No. 85 FE 118. I think -- I
12 believe it was a stipulation signed by District
13 Attorney E. James FitzGerald and Mr. Avery's then
14 attorney, Robert Henak. I believe they entered
15 into a stipulation regarding providing a DNA
16 sample.

17 Q. All right. And with respect to the last page of
18 that document, is there any marking or seal from
19 the Clerk of the Circuit Court which is affixed
20 thereto?

21 A. Yes.

22 Q. Tell us what that is.

23 A. It's a seal stating that this is a full certified
24 copy of the original, which is on file in the
25 Office of Clerk of Circuit Court in Manitowoc

1 County, and signed by me and dated 3/5/07.

2 Q. All right. And what is Exhibit 453?

3 A. An order in the case State vs. Steven A. Avery 85
4 FE 118. And it's in conjunction with the
5 stipulation wherein the Court ordered that
6 Mr. Avery submit to a DNA sample. It's dated
7 November 29th, 1995.

8 Q. Similarly, is there a certification affixed to
9 that document?

10 A. Yes, there is.

11 Q. And whose certification is it?

12 A. My certification dated 3/5/07.

13 Q. All right. And what is Exhibit 454?

14 A. A letter dated December 6, 1995, from Attorney
15 Robert R. Henak addressed to the Clerk of Circuit
16 Court for Manitowoc County, addressed to Ms
17 Wilda, our criminal clerk, just confirming a
18 telephone conversation where a request was made
19 for a conformed copy of Judge Hazlewood's order
20 to be sent to Elaine Wheeler, Health Service Unit
21 Manager with Fox Lake Correctional Facility.

22 Q. All right. And Exhibit 455?

23 A. A letter dated December 12th, 1995, from Shirley
24 Wilda, Deputy Clerk with the Clerk of Court
25 Office for Manitowoc County addressed to Elaine

1 Wheeler, Health Service Unit Manager with Fox
2 Lake Correctional Facility, enclosing a certified
3 copy of the stipulation and order regarding the
4 DNA sample ordered by Judge Hazlewood.

5 Q. Do the documents to this point indicate the
6 nature of the sample to be submitted for DNA
7 analysis?

8 A. What do you mean by the nature of the sample?

9 Q. Does it say -- specify the form of which the DNA
10 sample would be obtained?

11 A. Enclosed please find a certified copy of the
12 stipulation and order in the above referenced
13 referred to case, which orders that a Health
14 Services Unit at Fox Lake Correctional
15 Institution obtain a DNA sample from the
16 defendant as requested by a Laboratory
17 Corporation of America and forward that sample,
18 as directed, to Laboratory Corporation of
19 America.

20 Q. All right. What is Exhibit 456?

21 A. A letter dated December 12th, 1995, from Shirley
22 Wilda of the Manitowoc County Clerk of Court
23 Office to Attorney Robert R. Henak, enclosing a
24 copy of the stipulation and order which was filed
25 in the above matter. And just confirming that on

1 this date a certified copy of the stipulation and
2 order was mailed to Elaine Wheeler, Health
3 Service Unit Manager at Fox Lake Correctional
4 Facility, per his request.

5 Q. And what's the next -- is there one more or two?

6 A. One more.

7 Q. The last one?

8 A. Exhibit 457, it is -- it's not dated, it's got a
9 file date where it was received in our office,
10 filed June 6, 1996. It is from Lab Corp
11 Molecular Biology and Pathology, addressed to
12 whom it may concern: Enclosing -- Enclosed you
13 will find evidence that your agency submitted to
14 the Forensic Identity Unit at Roche Biomedical
15 Laboratories for analysis. And then in
16 parenthesis, RBL Case No. F95-624. Please
17 reference your agency file, Wisconsin vs. Avery.
18 So it must be -- looks like it's a return of the
19 evidence which was submitted through a DNA
20 sample. I would think returning it to our
21 office.

22 Q. All right. Now, the 454, 455, 456, and 457,
23 those exhibits, do they all have certifications
24 affixed to them?

25 A. Yes, they do.

1 Q. All right. And you are the one who certified --

2 A. I certified --

3 Q. -- those documents?

4 A. -- them and they are all dated 3/5/07.

5 Q. Okay. And so that they are official copies of
6 the records which are maintained in Manitowoc
7 County Circuit Court file 85 FE 118?

8 A. Yes, they are.

9 Q. All right. I would like to show you -- I would
10 like to show you some photographs now, if we may.
11 If you would examine, your attention is directed
12 to Exhibit 464?

13 A. Okay.

14 Q. All right. And do you recognize that?

15 A. Yes.

16 Q. And what is Exhibit 464, please?

17 A. It's a photograph of the two plastic tote storage
18 cases where the case of State vs. Steven Avery,
19 Case No. 85 FE 118 was stored in my office.

20 Q. All right. If I may publish that now. Thank
21 you. Is this a copy of Exhibit 464?

22 A. Yes.

23 Q. It's being displayed on the screen?

24 A. Yes.

25 Q. All right. Tell us, specifically, what is

1 Exhibit 464, what are we looking at here?

2 A. That is the entire case file of the 85 FE 118
3 case for Steven Avery. The case contains the
4 case file, the paper part of the case file, as
5 well as all the exhibits that were presented in
6 that file.

7 Q. What is the location of that particular exhibit?
8 In other words --

9 A. Of the storage cases?

10 Q. Yes, where are those -- Where was that picture
11 taken?

12 A. In my office.

13 Q. All right. And I believe earlier you talked
14 about the file originally having been contained
15 in some cardboard boxes?

16 A. Right, it was in one large rectangular shaped
17 cardboard box, which was very cumbersome to move
18 and carry. It was quite heavy with all the
19 exhibits in one box.

20 Q. When did the file find it's way into the plastic
21 containers which are depicted in Exhibit 464?

22 A. I had originally thought, like the end of 2005,
23 possibly the beginning of 2006. And I had made a
24 call to my assistant to confirm the exact --
25 because I bought those storage totes out of -- I

1 was reimbursed out of our petty cash, so she
2 could track down the exact date. And she did
3 call and confirm that it was July of '06 when the
4 purchase was made.

5 Q. Okay.

6 A. So that's when it actually got transferred from
7 that box to these storage totes.

8 Q. And where was the cardboard box before that?

9 A. When it was in our office?

10 Q. Yes.

11 A. It was -- when you walk into the secured area,
12 like, the secured door to our office, it would
13 be, like, straight ahead against the west wall of
14 our office, in kind of like a general walkway.
15 It was -- Our office is kind of partitioned off
16 into sections and that's kind of like a -- just
17 an open like walkway.

18 There's a desk on one side where
19 sometimes when people, like attorneys, want to
20 come in and review a file or something, we would
21 let them do it on the desk that's in that area.
22 And where this file was was just a little further
23 past that desk, right in front of like the
24 windows on the side of the building there.

25 Q. All right. What is the next exhibit you have in

1 front of you?

2 A. 447.

3 Q. 447?

4 A. And that is a picture of the entrance door to our
5 inner office.

6 Q. All right. 447 is now displayed on the screen.
7 Could you describe for us what we are looking at
8 here with respect to that?

9 A. Well, there's a key code pad that's above the
10 latch and that's -- there's an access code that
11 our staff and -- I think it's just court
12 personnel pretty much that has that access code
13 and you need that code to gain entrance into the
14 inside of our office.

15 Q. So if -- there's a counter I see to the immediate
16 right of the door, under what appears to be a
17 doorbell, what is that counter for?

18 A. The counter is -- that's part of -- like in our
19 lobby area, there's a counter that surrounds our
20 -- the area where we wait on people over the
21 counter. It's kind of an L-shaped area, that's
22 the short part of the L-shape.

23 Q. Would it be fair to say that's where the general
24 public comes to do business in the Clerk of
25 Court's Office?

1 A. Yes.

2 Q. What are the hours of the Clerk of Court's office
3 in Manitowoc County?

4 A. On Mondays, 8:30 to 5 and Tuesday through Friday,
5 8:30 to 4:30.

6 Q. What is the next exhibit that you are holding,
7 please?

8 A. Exhibit 448.

9 Q. And tell us what is Exhibit 448?

10 A. It is a package, Airborne Express Package. And
11 it was an exhibit and I believe it's the exhibit
12 that contained the box, the blood vial container.

13 Q. All right. If we could pull this up. Exhibit
14 448 is now being displayed on the screen. Is
15 that the package that the Clerk's Office received
16 from the testing entity, Lab Corp of America?

17 A. Yes, that's what it appears to be.

18 Q. All right. And what is the next exhibit?

19 A. Exhibit 449. It looks like it's the label that
20 is on that shipping package, telling what is
21 enclosed as the exhibit. It says enclosed
22 evidence return from Forensic Identity Unit at
23 Roche Biomedical Laboratory that has been
24 submitted for analysis. Do you want me to read
25 the whole thing?

1 Q. No, I think we have it here. What is being
2 depicted on the screen here as exhibit -- is that
3 449 that you are holding in your hand?

4 A. Yes.

5 Q. That is the labeling of the package in 448?

6 A. Right.

7 Q. All right. And next exhibit, please.

8 A. Exhibit 450. And this appears to be probably the
9 backside of the square container that held the
10 blood vial.

11 Q. All right.

12 A. The styrofoam container. It has markings on,
13 looks like the date it was opened and it was
14 initialed by the people that were present and
15 witnessed the opening.

16 Q. Very well. And this box was contained within
17 Exhibit 448?

18 A. Correct.

19 Q. Exhibit 451?

20 A. 451 is just the other side of the styrofoam
21 container that held the blood vial. It shows the
22 taped end, where the evidence tape had been and
23 where it was opened.

24 Q. All right. So Exhibits, I think we began with
25 464, and then we went 447 through 451. Are those

1 exhibits, based upon your knowledge and your
2 responsibilities as a Clerk of the Circuit Court,
3 officially part of the record in the case of
4 State of Wisconsin vs. Steven Avery, 85 FE 118?

5 A. Yes.

6 Q. Your best recollection, Ms Zigmunt, when did the
7 file take up residence, as it were, in your
8 private office?

9 A. Probably my best guess would be this July of '06
10 when the storage -- those plastic storage tote
11 containers were purchased.

12 Q. All right. And what was the general procedure
13 for allowing access to this particular file by
14 members of the general public?

15 A. We have a sign in logbook that anybody who wants
16 to view a public and open record, they sign in
17 it, that would include the date, the case number,
18 their signature. And if their signature would be
19 illegible, we have them print their signature,
20 print their name.

21 Q. And when did that logbook get created?

22 A. I started that in April of 2005. Before that
23 there was nothing in effect at all to document
24 when files were being reviewed.

25 Q. And who would -- First of all, before we get to

1 that point, let me ask, why did you decide to
2 create such a log?

3 A. I just thought it was important. And going to
4 the Clerk's meetings, being a new Clerk of Court,
5 I gained a lot of information at all the
6 different conferences that we have -- that I have
7 gone to. And that was one of the things that we
8 had discussed.

9 And, well, and one of the other reasons
10 I thought would be a good idea to have a record
11 like this was because with identity theft being
12 such a big issue, I thought if we had some kind
13 of tracking device, if there was ever a case of
14 identity theft, we would have something to kind
15 of go back and at least see who was accessing
16 certain files.

17 Q. All right. And who would be required to sign
18 such a log?

19 A. In the beginning, I think I had originally wanted
20 the policy to include everyone; the public, and
21 attorneys, and anybody who accessed any file.
22 But some of the staff thought, you know, maybe
23 some of the attorneys that come, if they knew who
24 they are, they thought maybe we didn't have to
25 get their signature.

1 Or like for title insurance companies
2 too, because when they came in to look at files
3 too, there would be such a long list. We let it
4 kind of go a little lax on it in the beginning.
5 But I'm not sure exactly what the trigger date
6 was, but probably a few months into it, maybe by
7 October of that year for sure, that we got more
8 strict and wanted it to be inclusive of
9 everybody, every single person who viewed any
10 file.

11 Because I just thought we need a
12 consistent practice. I don't think we can
13 require one person and not another. You know, if
14 we're doing it for a purpose, it's got to be
15 straight forward or it's not serving the purpose.

16 Q. So your best recollection is is that by October
17 of 2005 anyone who was looking at a particular
18 file would be required to sign in?

19 A. Right.

20 Q. All right. And that include -- attorneys and
21 everyone, I take it?

22 A. Right. It was supposed to include everyone.

23 Q. Okay. I believe you have now been presented
24 Exhibit 45 -- or 467, is it?

25 A. Yes.

1 Q. All right. And can you tell us what Exhibit 467
2 is?

3 A. It looks like it's a book called -- entitled
4 Evidence Room Case Entry Log.

5 Q. All right.

6 A. And it says evidence room and then at the top it
7 says journal so must be some...

8 Q. And is that the case entry log that people would
9 be required to sign into?

10 A. No.

11 Q. What is that?

12 A. I have never --

13 Q. What is that particular?

14 A. I have never seen this before, this must be...

15 Q. All right. Do we have a picture of -- is there a
16 picture of your particular log?

17 A. Here, no.

18 Q. Okay. All right. I just wanted to make sure
19 that we're clear on what that is. Thank you.
20 All right. I would like to direct your attention
21 to the time frame 2005, particularly that year,
22 and begin with this question. Do you know an
23 individual by the name of Andrew Colborn?

24 A. Yes, I do.

25 Q. And who is he?

1 A. He's, I believe, a sergeant with the Manitowoc
2 County Sheriff's Department.

3 Q. And did you recall, or do you recall, ever seeing
4 Sergeant Colborn in the Clerk of Court's Office
5 during the year 2005, your first year in office?

6 A. No, I don't think I have ever really seen him
7 ever in -- especially in the inner part of our
8 office, ever.

9 Q. All right. Are you familiar with an individual
10 by the name of James Lenk?

11 A. Yes, I am.

12 Q. And who is James Lenk, that you know?

13 A. I believe he's a lieutenant with the Manitowoc
14 County Sheriff's Department.

15 Q. And, again, with respect to the year 2005, your
16 first year in office, do you recall ever seeing
17 Lieutenant Lenk in your office that year?

18 A. There was one occasion, in the very beginning of
19 my term, I had contacted the Sheriff's Department
20 regarding questions I had on evidence storage.
21 Because we have a safe that's in my office, where
22 we do maintain various kinds of evidence.
23 There's some drugs and I'm not sure, I think
24 there might be a weapon in there.

25 And going -- after one of the

1 conferences that I had attended, this was an item
2 of discussion regarding maintaining custody of
3 those types of evidence in our possession. And
4 it was suggested that any time those types of
5 evidence came into play that they should be
6 stored at, like a Sheriff's Department or other
7 issuing agency where there's more -- a more
8 secure facility.

9 And I had called Mr. Lenk, or he was the
10 person I was put in touch with because he must
11 take care of evidence and things over at the
12 Sheriff's Department. And he had come over to
13 see what was at issue. We discussed it and we
14 discussed a procedure. And I'm working -- I
15 mean, I have been working on a policy and
16 procedure for our evidence retention and we
17 discussed how we were going to handle
18 transferring that to the Manitowoc County
19 Sheriff's Department.

20 Q. And approximately when did that discussion occur?

21 A. I would say it was early spring. It was
22 probably, you know, very early into that year.
23 So for sure, maybe March or April. I don't think
24 I have anything that really actually documents
25 exactly the date, but it was pretty early in the

1 year.

2 Q. Other than that one occasion where you had some
3 discussions about the evidence storage policies,
4 other than that, had you ever seen him in the
5 inner office area of the Clerk of Courts?

6 A. Never. I don't think -- Besides that one
7 incident, I don't think he's ever been inside of
8 our office.

9 ATTORNEY BUTING: Objection to that form of
10 that answer, if she's never seen him inside the
11 office, she can't say he's never been in the office.

12 ATTORNEY FALLON: That's for
13 cross-examination. She answered the question as
14 best she could.

15 THE COURT: Well, I'm going to sustain the
16 objection, because of lack of foundation, for the
17 opinion about when she was not in the office.

18 ATTORNEY FALLON: That's fine. One minute.
19 Your Honor, we will pass the witness for
20 cross-examination; however, we would move into
21 evidence Exhibits 452 through 457, as well as
22 Exhibit 464 and 447 through 451.

23 THE COURT: All right. I take it that
24 excludes the item that the witness could not
25 identify that was on the screen.

1 ATTORNEY FALLON: That's right.

2 THE COURT: But all other exhibits that she
3 testified to, you are asking to be admitted?

4 ATTORNEY FALLON: Yes.

5 THE COURT: Mr. Buting.

6 ATTORNEY BUTING: No objection to those,
7 452 is the only one that's not --

8 ATTORNEY FALLON: 467 is not offered.

9 ATTORNEY BUTING: 467, I'm sorry.

10 THE COURT: All right. Then all the items
11 this witness testified to, other than 467, I
12 understand to be offered and if no objection, they
13 are admitted. Mr. Buting, will you be doing the
14 cross?

15 ATTORNEY BUTING: Yes, I will, Judge.
16 Thank you.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY BUTING:

19 Q. Good morning, Ms Zigmunt.

20 A. Good morning.

21 Q. The -- You became the clerk, elected clerk, in
22 January of '05, is when you took office?

23 A. Yes.

24 Q. So about 10, 11 months before the Teresa Halbach
25 disappearance?

1 A. Correct.

2 Q. Correct. Okay. And would it be fair to state
3 that when you first took office, part of your
4 time was getting used to what the security
5 procedures were and were not --

6 A. That's correct.

7 Q. -- in existence. And you had some concerns that
8 maybe some of the security and some of the
9 procedures were a little bit -- I don't know if
10 lax is the right word -- but not as secure as you
11 would ultimately wish they would be -- them to
12 be, right?

13 A. I think that's a pretty good assumption.

14 Q. Okay. Did you bring the log, evidence log, with
15 you, or the case review log with you?

16 A. No, I didn't.

17 Q. Have you reviewed it before today?

18 A. In detail you mean, or I mean, I guess I haven't
19 paged through and looked, for any reason.

20 Q. Okay. Well, for instance, do you know that every
21 person who has come to that office since October
22 of 2005 and asked to look at any file, has
23 absolutely, positively, been required to sign in
24 on a log?

25 A. Since October of 2005, you are saying?

1 Q. Yes.

2 A. That was the directive I had given and I don't
3 know that it was completely being followed. I
4 think --

5 Q. Okay.

6 A. -- you know, there were people that were making
7 exceptions for people, but we have tightened up
8 on that --

9 Q. Sure.

10 A. -- to make it ...

11 Q. And as of -- Really, you tightened up as of
12 August of '06 is when you really made sure that
13 everybody, all the staff required that people
14 sign in?

15 A. I don't have an exact date, I didn't document it
16 for any reason, so I guess I can't say with
17 certainty.

18 Q. But would it be fair to say that until -- or
19 around that time July or August of '06, until
20 that time you would -- or I should say at that
21 time, you became concerned after talking to some
22 of the staff, that maybe some people weren't
23 requiring everybody to sign in and that this was
24 mandatory at this point forward?

25 A. Yes, I think my concern was, too, that they were

1 allowing like attorneys who -- if they knew them
2 personally, or like I said, the title insurance
3 companies, things like that, those are pretty --
4 the ones that were allowed not to sign, but I
5 wanted to make it consistent for everyone to have
6 to sign.

7 Q. Okay. Now, you were first interviewed by law
8 enforcement officers in this case at the end of
9 December or early January of this -- just a
10 couple months ago, right?

11 A. I don't know exactly the dates.

12 Q. Well, were you -- did you ever speak to Agent
13 Fassbender or Mr. Wiegert?

14 A. Right, they were in on several occasions.

15 Q. And that was all in the last couple of months or
16 so?

17 A. Yeah, pretty much.

18 Q. So no law enforcement officer came to you in
19 November of 2005 and said, you know, Mr. Avery
20 has been telling everybody that if that blood --
21 if his blood is found inside Teresa Halbach's
22 vehicle, it must have been planted. Nobody came
23 to you and talked to you about that particular
24 statement, did they?

25 A. No.

1 Q. And between November of 2005 and this past summer
2 of 2006, none of the law enforcement officers
3 came to look at Mr. Avery's 1985 file, none of
4 the investigating law enforcement officers in
5 this case, right?

6 A. I can't say that for certainty. I mean, other
7 people wait on people when they are looking --

8 Q. Okay.

9 A. -- at the file, so.

10 Q. So it's possible that somebody from Manitowoc
11 Sheriff's Department even, may have, after
12 Mr. Avery made the public statements that
13 somebody is framing me, somebody has planted my
14 blood, it's possible that somebody from Manitowoc
15 may have come and looked at his file, to see if
16 there was any blood in it?

17 ATTORNEY FALLON: Objection, two grounds,
18 speculation, and more importantly, it seems to me we
19 have a limited focus of who may have come and looked
20 from Manitowoc County?

21 ATTORNEY BUTING: I'm talking about the
22 investigation, after the disappearance.

23 ATTORNEY FALLON: Then I say relevance.

24 THE COURT: What is the relevance
25 Mr. Buting?

1 ATTORNEY BUTING: Let me lay some more
2 foundation questions.

3 THE COURT: Go ahead.

4 ATTORNEY BUTING: Let's do it that way.

5 Q. (By Attorney Buting)~ Let me go back a little bit
6 first. As of October of 2005, the 1985 case
7 against Mr. Avery that was in your office was a
8 closed file, right?

9 A. Yes.

10 Q. In fact, it had been not only a closed file, but
11 it was a dismissed closed file, right?

12 A. Yes.

13 Q. So there were no ongoing post-conviction
14 proceedings, right?

15 A. Not that I'm aware of.

16 Q. Or appellate proceedings, right?

17 A. I mean, I guess I can't really testify to that.
18 I wasn't really that familiar with the file at
19 that time, so I guess...

20 Q. Okay. You weren't that familiar with the file.
21 But you do know that the media was asking and
22 other, you know, freelance writers, or general
23 public was asking about this file quite a bit?

24 A. Yes.

25 Q. And --

1 ATTORNEY BUTING: Let me mark a couple of
2 exhibits here.

3 (Exhibit No. 468 & 469 marked for identification.)

4 Q. (By Attorney Buting)~ Would it be fair to say
5 that until it was discovered publicly that there
6 was a vial of Mr. Avery's blood in that case
7 file, you weren't aware of it?

8 A. That's correct.

9 Q. And you didn't have any particular concern about
10 the security of that file because you didn't know
11 there was a blood vial in it, for instance,
12 right?

13 A. You mean to take any extra security on it?

14 Q. Right.

15 A. Correct.

16 Q. Okay. And if anything, because there were so
17 many requests to see this file, this file was
18 really kept in a less secure spot within the
19 Clerk's Office than other old case files would
20 be?

21 A. In my office, less secure?

22 Q. No, the Clerk's Office, not your office.

23 A. Not real -- I don't know. I mean, I don't know
24 that it's any less secure; it's a pretty secure
25 -- it's not just open to the general public.

1 Q. Sure.

2 A. There are very few people who have access.

3 Q. But you mentioned how it was cumbersome to have
4 to move this big box up and down the stairs,
5 right?

6 A. Correct.

7 Q. Normally you have -- is there a vault downstairs
8 or just a room?

9 A. Just a room. It's in the basement.

10 Q. Okay. You have a storage room in the basement
11 where your old files are kept?

12 A. Correct.

13 Q. And Mr. Avery's file, being a 1985 file, would be
14 normally down there in that sort of archive area?

15 A. Correct.

16 Q. But for the fact that once he was exonerated,
17 there were so many demands for it, that you left
18 it upstairs in the main area, right?

19 A. Correct. And, actually, I'm not the one that
20 brought it up originally, because I wasn't in
21 office at that time.

22 Q. Okay. So it was actually upstairs before you
23 even came into office?

24 A. Correct, for probably two years.

25 ATTORNEY FALLON: Counsel, can we see those

1 exhibits?

2 ATTORNEY BUTING: Okay. I'm sorry.

3 Q. (By Attorney Buting)~ I'm showing you Exhibit 468
4 and 469. See if you can identify, first, 468?

5 A. Yes, this was the original cardboard box that the
6 file was maintained in.

7 Q. The file being the Steven Avery file?

8 A. Correct.

9 Q. 1985 file?

10 A. Right.

11 Q. And the one next to it is?

12 A. The same file.

13 Q. Same file from a little bit farther back, right?

14 A. Right.

15 Q. So, it was one of your deputy clerks -- I'm
16 sorry. One of these -- Well, let's publish this
17 so we can talk about it for a minute. This is a
18 picture that shows the file in the Clerk's
19 Office, this is No. 469?

20 A. Correct. It was put on the desk that was used
21 for the viewing area, like when attorneys would
22 come in and view files.

23 Q. Okay. And you mentioned that it was stored kind
24 of on a filing cabinet next to a window?

25 A. Right. Which is kind of behind where that

1 divider is.

2 Q. Let me point to it. Right here, it's right back
3 there, right?

4 A. Yeah.

5 Q. Just over the shoulder of one of your deputies
6 right?

7 A. Correct.

8 Q. And over here is an old vault, like an actual
9 safe with a whole door?

10 A. Right.

11 THE COURT: We're going to take a break at
12 this time. Let's -- We'll resume at 10:15.

13 (Juror needs a break.)

14 (Jury not present.)

15 THE COURT: You may be seated. And we'll
16 resume at 10:15.

17 (Recess taken.)

18 (Jury present.)

19 THE COURT: And, Mr. Buting, you may resume
20 your cross-examination.

21 ATTORNEY BUTING: Thank you, Judge.

22 **CROSS-EXAMINATION, CONTD.**

23 Q. (By Attorney Buting)~ Ms Zigmunt, I found a
24 digital version of what we were looking at
25 before. I'm going to use that so it will be

1 easier to see, okay?

2 A. Okay.

3 Q. Now, I put up Exhibit 469. And the vault that we
4 were talking about, that's the vault door right
5 there, isn't it?

6 A. Yes.

7 Q. I can't read that, it says something safe
8 company. It's very old, hundred years old
9 probably, put in when the building was first
10 built, right?

11 A. I would believe so.

12 Q. But it's not something that you use as a locked
13 location any more?

14 A. No.

15 Q. Wasn't used that way long before you came here,
16 right?

17 A. Correct.

18 Q. Okay. And then over on the other side of Janet's
19 left shoulder is the window that you were
20 referring to where that box was normally kept,
21 until somebody would ask to look at it, right?

22 A. Right.

23 Q. There's a filing cabinet right there, heater,
24 things of that nature?

25 A. Right.

1 Q. Now, the box is -- That is the cardboard box the
2 way it looked until you had it put into plastic
3 tubs sometime in, you think, July, right?

4 A. July of 2006, right.

5 Q. Okay. Well, after this photograph was taken any
6 way, right?

7 A. Right.

8 Q. Okay. Is that the table that you are referring
9 to, there's like a desk or a table that it can be
10 put on when someone asks to see it, if they can
11 go through?

12 A. Correct. That is where they originally used to
13 look at files. I mean, and that one, too, but
14 just with that file being so cumbersome and so
15 many exhibits involved, there's really not a
16 place to spread it out. And it just wasn't a
17 real good location. There's a lot of traffic
18 through that area, from the back room, off into
19 the section where you see the other clerk sitting
20 there. People traveling back and forth all the
21 time, it just didn't seem a real secure place
22 for -- with all the exhibits and all that paper
23 out.

24 Q. Sure. And the file actually has the exhibits in
25 it as well as the paper documents, right?

1 A. Correct. All the exhibits are underneath all of
2 it. I think all the paper was pretty much at the
3 top.

4 Q. Right. And this one has -- this particular file
5 has things like clothing, and whatever was
6 introduced as exhibits just kind of like what we
7 have in this case today?

8 A. Correct.

9 Q. But I want to draw your attention to -- there's a
10 partition right here on the far right side of the
11 picture, right? Some, like, notices posted?

12 A. Right behind the box.

13 Q. Right behind the box, yeah. And so the way it's
14 set -- it's not a partition that goes all the way
15 to the ceiling, but it's not the same height as
16 that -- the partition in the background there?

17 A. Correct.

18 Q. They're all -- There's a number of partitions
19 like that in the Clerk's Office, within the
20 interior part of the Clerk's Office?

21 A. Yes.

22 Q. And so when one is standing there like Janet is,
23 by this box, the people on the other side of the
24 partition don't see the box?

25 A. Correct.

1 Q. And other than this one woman in the background
2 here with the long blond hair, there is no other
3 clerk desk in that back area.

4 A. Correct.

5 Q. So I don't have a schematic of the layout, but
6 the way this works is, this is sort of a narrow
7 hallway that leads to this area right from one of
8 doors that goes to the public area, right?

9 A. Right.

10 Q. And, then, behind the partition, over here is
11 where the main area where all the clerks work?

12 A. Right. There's like a separate area over there.
13 There's I think five including the one with the
14 blonde hair, you know, different work stations
15 that are set up.

16 Q. Okay. So if the clerk who works in that
17 particular workstation is not sitting there right
18 then, when someone is going through this file,
19 you could go through this file without the rest
20 of the clerks directly seeing you moving around
21 things in the box, right?

22 A. Correct.

23 Q. And your deputy clerks, like both of the
24 individuals in this picture, have a lot of
25 duties, they move to and fro during the day,

1 right?

2 A. Correct.

3 Q. So the woman in the back, I suppose we could give
4 her a name, but the woman in the background of
5 this photo is not sitting in that chair all day
6 long while she works?

7 A. Correct.

8 Q. Okay. Now, the cardboard box that we were
9 looking at, Exhibit 468, has the pleadings and
10 the docket minutes, at least in this instance
11 they are sitting right on top, right?

12 A. Right.

13 Q. So it wouldn't be very difficult for someone to
14 know that this particular file or box is the
15 Steven Avery case, would it?

16 A. I guess if you looked at it, I mean, you would
17 have to -- in that condition of the box that one
18 day, I mean, and when people go through it, it
19 doesn't necessarily end up back in that same
20 condition. And I think when it was kept over on
21 the side filing cabinet, I tried to level things
22 out to, so the cover -- the flaps could come
23 over, because I didn't think that was a very
24 secure ...

25 Q. Sure. But there is that -- see that foam board

1 exhibit in the background?

2 A. Right. And that would probably stick out no
3 matter where --

4 Q. Yes.

5 A. -- because it was too big for the box.

6 Q. So the box wouldn't close?

7 A. Right.

8 Q. Okay. No matter what you did. All right. Now,
9 would it be fair to say that the presence of
10 sheriffs deputies inside the interior part of
11 that Clerk's Office, it's not that unusual an
12 event, right? In the normal course of your
13 business?

14 A. To have sheriffs deputies in our office?

15 ATTORNEY FALLON: Objection, relevance as
16 asked.

17 ATTORNEY BUTING: Well, it's entirely
18 relevant.

19 THE COURT: What is the objection?

20 ATTORNEY FALLON: Relevance as to the
21 phrasing of that particular question, vis-a-vis the
22 pre-trial court rules.

23 THE COURT: Well, it could be laid as a
24 foundational question, so I will allow it for that
25 purpose.

1 ATTORNEY BUTING: Thank you.

2 Q. (By Attorney Buting)~ Do you understand my
3 question?

4 A. If you would like to just repeat it.

5 Q. Sure. Okay. You know that door that you showed
6 us, the photograph that has the little, you know,
7 lock combination?

8 A. Yes.

9 Q. When you go through that door, you go into the
10 inner office of the Clerk's Office, right?

11 A. Yes.

12 Q. And in that area, it's not unusual to see
13 sheriffs deputies during the normal course of
14 business, is it?

15 A. The only sheriffs deputies that would be normally
16 in our office would be probably the sheriffs
17 bailiffs that are posted in the courthouse for
18 security reasons. And they --

19 Q. Right.

20 A. -- go occasionally.

21 Q. In fact, they are in there every day picking up
22 files or returning files from court, right?

23 A. Yeah, they are in there frequently.

24 Q. Okay. And, similarly, drug unit -- officers who
25 are assigned to drug units, at various times, are

1 back in that area because they are dealing with
2 search warrants and filing and returns and all
3 that as well, right?

4 A. They could have access -- I mean, they don't have
5 access -- they don't have the code to get in.
6 They would have to be buzzed in.

7 Q. I'm sorry. My question is, whether it's unusual
8 to see them in that area. Wouldn't be an unusual
9 event to take note of --

10 A. Correct.

11 Q. -- in your mind, right?

12 A. Correct.

13 Q. And that would be true of your deputy clerks as
14 well, right? Maybe more so than you, even?

15 A. True of the deputy clerks, what do you mean --

16 Q. Seeing a --

17 A. -- that they would see them?

18 Q. Seeing a sheriffs department employee in that
19 area was not such an unusual event that it would
20 make someone take note in their mind, hey, what's
21 going on here, would it?

22 A. Correct.

23 ATTORNEY FALLON: Speculation, foundation
24 for this witness, ask the answer be stricken.

25 THE COURT: No, I will allow it.

1 Q. (By Attorney Buting)~ And on occasion even,
2 sheriff's employees may be coming into the
3 interior of the office, like attorneys, going
4 through files, while they are investigating an
5 old file. I'm sorry, looking at an old file in
6 the course of their investigation in a new case,
7 right?

8 A. So your question is, an attorney?

9 Q. No. Badly phrased. Let me retry it. Sheriff's
10 employees, sheriff's deputies, also on occasion
11 are in that back area, the inner area of your
12 Clerk's Office, looking at one case file perhaps
13 as part of their investigation on somebody in
14 another case, right?

15 A. I guess I can't really say. I don't know that
16 they would be looking at a file there. I mean,
17 if anybody requests to look at a file, it's
18 usually done over the counter. I don't know that
19 it's ...

20 Q. All right. But you don't --

21 A. I mean, right, I can't say with 100 percent
22 certainty, what they are doing, because you're
23 usually dealing with the deputy clerks like of a
24 specific unit.

25 Q. That's right. And you are usually back in your

1 office and they are dealing with a number of
2 different clerks, deputy clerks?

3 A. Correct.

4 Q. Now, in addition, the Sheriff's Department has
5 access to the Clerk's Office with master keys;
6 isn't that right?

7 A. The security bailiffs would.

8 Q. Okay. Do you know a list, do you know every --
9 Well, let me go back for a second. Do you know
10 that the Sheriff's Department is responsible for
11 the security of the whole courthouse facility?

12 A. Yes.

13 Q. And that if there's a fire or something, after
14 hours, they have to have access, right?

15 A. Yes.

16 Q. Both to the courthouse and to all of the rooms
17 within the courthouse, right?

18 A. Yes.

19 Q. And there are a number of master keys that are
20 issued by somebody from Manitowoc County to give
21 to people who are allowed to have this kind of
22 access right?

23 A. I would imagine, I don't know specifically.

24 Q. Sure. You don't know who, but you know generally
25 that's the case, right?

1 A. Yes.

2 Q. If you have a master key to get through that
3 doorway, you don't need the separate combination
4 lock, right?

5 A. I wasn't aware of that before, but during the
6 investigation when the keys were, you know, when
7 it was being questioned, it did come to my
8 knowledge that the key could be used to gain
9 access to that door.

10 Q. Sure. The whole idea of a master key, it
11 wouldn't do much good if they turned the lock,
12 but then you couldn't get past because you have
13 got to have the combination, right?

14 A. Correct.

15 Q. So, the way it is set up -- at least the way it
16 was set up in the fall of 2005 was, a master key
17 would allow entry to the inner part of the
18 Clerk's Office.

19 A. I guess so.

20 Q. Okay. And that would include after hours, on
21 weekends, or in the evenings, right?

22 A. Correct.

23 Q. Okay. Now, Mr. -- Mr. Fallon asked you on direct
24 if you recalled seeing Sergeant Colborn or
25 Lieutenant Lenk in that inner area of the Clerk's

1 Office; do you recall that question?

2 A. Yes.

3 Q. That question was never put to you until some
4 time in late December or early January, 2006 and
5 2007, correct?

6 A. I believe that's probably correct.

7 Q. Okay. So nobody asked you about whether you
8 could recall seeing Lieutenant Lenk or Sergeant
9 Colborn until about 14 or 15 months after the
10 Teresa Halbach disappearance, right?

11 A. I guess. Yes.

12 Q. Okay. So between November of 2005 and December
13 of 2006, no investigating officers in this case
14 came to you and said, hey, has anybody come to
15 look at the 1985 court file, right?

16 A. I don't think so, I think it was pretty much just
17 when all the investigation was going on, like you
18 said, late November, December.

19 Q. Well, let's get clear here, because your answer
20 isn't, I'm sorry. All the investigation going on
21 you are talking about, is all the investigation
22 that started once the blood vial was discovered
23 there, right?

24 A. Right, I believe when the special investigator
25 that was assigned.

1 Q. Mr. Fassbender?

2 A. Right.

3 Q. Okay.

4 A. I guess I don't have a specific date, though. I
5 mean, I didn't mark it down for any reason, so.

6 Q. We're talking generally here, okay. I'm going to
7 get to some pictures with you in just a minute.
8 But after we, the defense, filed a motion in
9 December, someone in your office took that white
10 box that we looked at, from the exhibit, out of
11 the court file and locked it in the safe for
12 security, right?

13 A. I believe it was done pursuant to an order of the
14 Court.

15 Q. And that was in December of 2006, right?

16 A. Okay.

17 Q. Okay. Do you agree?

18 A. I agree. I don't have certainty. I mean, I
19 don't -- I mean, to the time frame, it would be
20 the approximate time.

21 Q. Okay.

22 A. But I don't have anything to verify that.

23 Q. Sure. And shortly thereafter, a week or so
24 later, the attorneys all came to your office and
25 we, with the Court's permission, opened that safe

1 and opened the box; do you recall that?

2 A. Correct.

3 Q. And we -- Do you recall we videotaped it and took
4 photographs?

5 A. Yes.

6 Q. Sort of at various stages, right?

7 A. Yes.

8 Q. Okay. Bear with me just one second, I'm going to
9 play an excerpt of that videotape. I think
10 counsel has no objection?

11 ATTORNEY FALLON: Not as long as it's
12 played as represented --

13 ATTORNEY BUTING: Sure, no audio.

14 (Court reporter couldn't hear.)

15 ATTORNEY FALLON: As represented, no audio.
16 We'll stipulate to the fact that counsel indicated
17 that it's a 10 minute version of a 33 minute event.
18 Is it marked as an exhibit?

19 ATTORNEY BUTING: We'll mark it right after
20 this. I'm going to have it marked as an exhibit.

21 ATTORNEY FALLON: Very well.

22 ATTORNEY BUTING: If you want to reserve
23 the next number, this will be a DVD of excerpts of.

24 Q. Just so we're clear, you recall the date was
25 December 14 of 2006?

1 A. Yes.

2 Q. Okay. And what I would like you to do is to
3 watch this and then just tell us afterwards if
4 this, in fact, comports with your recollection of
5 what this box and it's contents looked like at
6 various stages as it's opened. Okay.

7 (DVD playing.)

8 Q. Now, stop for one second. At this point this is
9 a closer up version of one of the exhibits that
10 you have in front of you, Exhibit 451. This
11 shows the end of the box secured as it was when
12 we looked at it on December 14th, right?

13 A. Correct.

14 Q. And from this you can tell -- I mean you are
15 familiar with the way the exhibits are typically
16 sealed with red evidence tape, or white evidence
17 tape or whatever, right?

18 A. Correct.

19 Q. And it's pretty clear to you even at this stage
20 that that evidence tape seal had been opened and
21 the box reclosed just with that little piece of
22 scotch tape, correct?

23 A. Correct.

24 (DVD playing.)

25 Q. All right. Let's go on. We're looking at the

1 handwriting that was on the outside of the box
2 that you referred to earlier?

3 A. Correct.

4 Q. And this is actually taking place in your
5 personal office, right?

6 A. Right.

7 Q. There's a label with a date of January 4, 1996?

8 A. Yes.

9 Q. Is that Mr. Wiegert there, putting on some
10 gloves?

11 A. Yes.

12 Q. And just so the jury is clear, you earlier
13 referred to this whole container as a styrofoam
14 box, but there's actually -- it's a cardboard box
15 that contains a styrofoam box within it, correct?

16 A. That's correct.

17 Q. And as we see it right now, that evidence seal on
18 the card -- on the inner styrofoam box appears to
19 be secure from this angle, right?

20 A. Yes.

21 Q. Now, Mr. Wiegert is removing the styrofoam box
22 and we're getting a closeup view of the other
23 side of the styrofoam box and that seal appears
24 to be open, does it not?

25 A. I believe so.

1 ATTORNEY FALLON: Could I make an
2 observation, it might be best to let the exhibit
3 speak for itself. I think further viewing will
4 establish several points.

5 THE COURT: The Court agrees, I don't
6 believe the witness has any specialized knowledge in
7 this regard.

8 (DVD playing.)

9 THE COURT: Mr. Buting, if at any point you
10 want to stop the tape and point out something to the
11 jury that's on there, you may.

12 ATTORNEY BUTING: Okay. Thank you, Judge.

13 Q. (By Attorney Buting)~ Now, just so we're clear,
14 you were actually in your office as we were doing
15 this as well, right?

16 A. Yes.

17 Q. So you saw us videotaping this?

18 A. Yes.

19 Q. Okay. Keep going.

20 (DVD playing.)

21 Q. The parties are sort of rocking this gently, this
22 tube of blood back and forth, gently; were you
23 able to determine if it looked liquid inside
24 there, from where you were at.

25 A. I couldn't see it from where I was.

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(DVD playing).

Q. (By Attorney Buting)~ Just so the record is clear, there is no kind of evidence seal or tape around the top, the lavender top to that tube, is there?

A. It didn't look like there was.

Q. Okay. All right. So does that video excerpt of the events on December 14, 2006, purport with your recollection of what happened when we opened that box?

A. Yes.

ATTORNEY BUTING: Thank you. I have no further questions. We'll mark this as an exhibit now.

THE COURT: And the number of that exhibit is?

(Exhibit 470 marked for identification.)

THE CLERK: 470.

THE COURT: 470.

ATTORNEY BUTING: And that's a DVD of what we just viewed in court.

THE COURT: Correct. Mr. Fallon, any redirect?

ATTORNEY FALLON: Just one moment, I might have a question or two.

1 REDIRECT EXAMINATION

2 BY ATTORNEY FALLON:

3 Q. To your knowledge, Ms Zigmunt, the only sheriff's
4 deputies that have a key that permits access to
5 the inner office of the Clerk of Courts are the
6 two bailiffs?

7 ATTORNEY BUTING: Objection, calls for
8 speculation, unless she knows.

9 THE COURT: The question should be preceded
10 with a foundational question to determine if she
11 knows.

12 Q. (By Attorney Fallon)~ Let's go about it this way.
13 You -- In your cross-examination, you were asked,
14 it was not usual to have the sheriff deputies in
15 the inner office area and you responded, yes,
16 just the bailiffs, explain why you answered it in
17 that regard.

18 A. Because the bailiffs are pretty commonly seen in
19 the office. They come and go with different
20 reports or different things during the day.
21 Sometimes they are in the office before I get
22 there in the morning. I'm usually one of the
23 first people in the office and one of them might
24 be in the office delivering or picking up. They
25 have a pickup place for papers everyday. So it's

1 not uncommon to see them at any time, really.

2 Q. All right. And do they have a key that permits
3 access to the inner office?

4 A. They must have a key. I mean, I guess I really
5 never looked to see if they were using the code.
6 And they would have to have a key, because if
7 they get there before I do, you would need a key
8 to get in the outside door of the office.

9 Q. Are they permitted the cipher lock code as well?

10 A. I know when we changed the codes, because I
11 changed it like January of '06. We changed to a
12 new code from the previous Clerk of Court, just
13 for some security measures. And I did provide
14 them with that access code at that time.

15 Q. Now, to your knowledge, did you provide that
16 access code to any other member of the sheriff's
17 department, other than the bailiffs?

18 A. No.

19 Q. And I believe you also answered a question on
20 cross-examination, that perhaps on occasion other
21 deputies are in the inner office area, from time
22 to time; did I understand that correctly?

23 A. There could be someone that had business with one
24 of the clerks. They would have to be buzzed in.
25 They wouldn't have automatic access, someone

1 would have to allow them. Like that doorbell
2 little device thing, we have some of those under
3 the desks at the -- the counter clerks have those
4 and they press that to open the door for ...

5 Q. So do I understand it correctly, then, that they
6 would be buzzed in and they would be attended to
7 by one of your clerks?

8 A. Right. If they had -- I mean, a lot of times,
9 too, if they come in, I mean, we take care of
10 them over the counter. I mean, I don't really
11 know what the different business is that they
12 would have to come in for, but occasionally they
13 would ask -- like if they asked to see Janet or
14 something and then if someone determined that she
15 is there, they would buzz her -- buzz them in and
16 they could just go to her desk.

17 ATTORNEY FALLON: That's all we have.
18 Thank you.

19 THE COURT: Anything else Mr. Buting?

20 ATTORNEY BUTING: Just very quick.

21 **REXCROSS-EXAMINATION**

22 BY ATTORNEY BUTING:

23 Q. You mentioned how if they would ask to see Janet
24 or some other deputy, they would be buzzed in and
25 then the sheriff's department employee would then

1 be in the inner area, right?

2 A. Right. I mean, I don't know specifically that
3 any sheriff's department...

4 Q. I understand that. I'm just saying, just general
5 common practice, would be if one of the sheriff's
6 officers, employees, lieutenants, whoever, asked
7 to see somebody, they would be buzzed in and they
8 could go in back and talk to the clerk or deputy
9 clerk, or whomever, correct?

10 A. Correct.

11 Q. And, then, once back in that area, they would
12 have -- would have had in, let's say October,
13 November, 2005, they would have been in the area
14 where Mr. Avery's file could be accessed, right?

15 A. Well, going to Janet's area would not. I mean,
16 they would be turning the corner right away,
17 where his file was kept was straight ahead and a
18 little out of the way. So I don't think that
19 they would have --

20 Q. Well, there's no --

21 A. -- come in contact with that file at all.

22 Q. There was no other door in between where they
23 would be and where Mr. Avery's file was kept,
24 right?

25 A. There was quite a distance from it. I don't ...

1 Q. Well, we saw on the photograph, approximately?

2 A. Well, that was when it was on the desk, though,
3 in the desk for the viewing area. That isn't
4 where it was normally kept. It was kept on a
5 filing cabinet, although, further away yet. So
6 it was really --

7 Q. 10 feet from the door maybe, 15 feet?

8 A. Maybe 20 feet from the door.

9 Q. Okay. All right.

10 A. 25, I don't know.

11 Q. Sure. The point being, though, once you get past
12 that door, where you are buzzed in, it's all open
13 with partitions in the inner area of the Clerk's
14 Office?

15 A. Right.

16 Q. And I'm not trying to put blame on you, ma'am.
17 But I understand that in November of 2005, it was
18 not on your radar, you were not worried about an
19 officer from the sheriff's department coming in
20 and removing a court exhibit to plant evidence
21 and frame somebody, was it?

22 ATTORNEY FALLON: Objection, beyond the
23 scope.

24 THE COURT: Sustained.

25 ATTORNEY BUTING: That's all.

1 THE COURT: All right. The witness is
2 excused. And, members of the jury, we'll take a
3 stretch break before the State calls its next
4 witness. All right. We'll take a short break, five
5 minutes, and then come back.

6 (Jury not present.)

7 THE COURT: You may be seated.

8 ATTORNEY KRATZ: Thank you, Judge. As we
9 alerted the Court before the start of today's
10 proceeding, the State does anticipate calling
11 Dr. Marc LeBeau to testify. Mr. Buting was kind
12 enough on cross-examination to have showed the jury
13 the blood vial, purple-topped blood vial tube, which
14 the State believes entitles us to call Dr. LeBeau at
15 this time.

16 We had assured the defense that
17 Investigator Wiegert was going to testify, and he
18 is, but that's just as to the packaging of the
19 purple-topped blood vial and sending it to
20 Dr. LeBeau. We would prefer to call Dr. LeBeau
21 so that his direct examination and his cross
22 examination can be completed before he goes back
23 to Virginia today.

24 If the defense still wishes us to call
25 Investigator Wiegert at this time, we had also

1 assured the defense and the Court that we would
2 recall him neither for cross-examination or
3 continued cross on matters outside of the limited
4 purpose of packaging the blood.

5 So we're just looking for direction from
6 the Court. We would prefer, since the vial has
7 already been showed to the jury, to start with
8 the Dr. LeBeau and complete his testimony and
9 then call Investigator Wiegert. And if there's
10 other foundational witnesses, that may be
11 necessary. If there's an issue, or if the Court
12 believes that somehow to be an inappropriate use
13 of resources, or the presentation of evidence,
14 then we can certainly do it the other way as
15 well.

16 THE COURT: Mr. Buting.

17 ATTORNEY BUTING: Could I have just one
18 moment with counsel, please.

19 THE COURT: Go ahead.

20 ATTORNEY BUTING: Judge, I'm going to -- We
21 can defer Investigator Wiegert's testimony until
22 after Mr. LeBeau, but I am marking four other
23 exhibits which are essentially hard copies of what
24 we just saw. And by stipulation -- I was going to
25 use Investigator Wiegert to introduce those, but we

1 can just, by stipulation, introduce them and proceed
2 with Mr. LeBeau, if that's what counsel prefers.

3 ATTORNEY KRATZ: That's fine. 471, start
4 with, Janet?

5 THE CLERK: Yes.

6 ATTORNEY BUTING: And then I will be moving
7 all the exhibits that I introduced which is 466 --
8 468. Well, let's let her mark them first.

9 (Exhibit Nos. 471-474 marked for identification.)

10 ATTORNEY BUTING: Okay. So it will be 468
11 through 474. Is that all right, counsel?

12 ATTORNEY KRATZ: Just so I can see them.

13 ATTORNEY BUTING: Okay. So then I would
14 move 468 through 474.

15 ATTORNEY KRATZ: Is that a different photo
16 than 451? Janet, can you look at 451 and see if 474
17 is different.

18 THE COURT: Let's go off the record for a
19 couple minutes here. Counsel, are you ready to go
20 back?

21 ATTORNEY BUTING: I am, Mr. Gahn is still
22 checking for something.

23 THE COURT: All right. I believe that --
24 We'll go back on the record at this time.
25 Additional exhibits have been marked, those are

1 numbers what?

2 THE CLERK: 471 through 474.

3 THE COURT: 471 through 474. Are the
4 parties asking that they be admitted at this time?

5 ATTORNEY BUTING: 468 through 471,
6 actually, is what I'm asking to be moved.

7 THE COURT: 468 through 471.

8 ATTORNEY BUTING: Yes.

9 THE COURT: Any objection from State?

10 ATTORNEY KRATZ: They are eventually going
11 to get in, Judge, we have no objection at this time.

12 THE COURT: All right. Those are admitted.
13 Anything else before we bring the jurors back in?

14 ATTORNEY BUTING: No.

15 THE COURT: If not, we'll bring the jury in
16 at this time.

17 (Jury present.)

18 THE COURT: You may be seated. At this
19 time the State may call it's next witness.

20 ATTORNEY GAHN: Yes, your Honor, the State
21 would call Dr. Marc LeBeau to the stand.

22 THE COURT: Very well.

23 **DR. MARC LEBEAU**, called as a witness
24 herein, having been first duly sworn, was
25 examined and testified as follows:

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

3 THE WITNESS: My name is Marc, M-a-r-c
4 LeBeau, L-e-B-e-a-u.

5 **DIRECT EXAMINATION**

6 BY ATTORNEY GAHN:

7 Q. And what is your occupation?

8 A. I'm the unit chief of the Chemistry Unit at the
9 FBI Laboratory.

10 Q. And where is the FBI Laboratory located?

11 A. In Quantico, Virginia.

12 Q. And how long have you been so employed?

13 A. I have worked as the unit chief since September
14 of 2000. And prior to that I was within the same
15 unit at the FBI Laboratory, the Chemistry Unit,
16 since 1994.

17 Q. And what are your duties at the FBI Laboratory in
18 the Chemistry Division?

19 A. Well, as the unit chief, I oversee the day-to-day
20 operation of that unit. That entails making
21 decisions about the types of cases that we accept
22 into our unit for analysis. And then assign
23 those cases to the most experienced or the
24 appropriate personnel that work under me.

25 When we receive evidence into our unit,

1 we're typically asked to analyze for the presence
2 of a chemical, whether or not it is in or on a
3 piece of evidence. Then we compile our results
4 and prepare a report. And before that report is
5 released to the contributing agency, another duty
6 of mine is to review the result and the report to
7 make sure that it meets all of the quality
8 requirements that are set forth by our Quality
9 Assurance Department in our laboratory.

10 Q. And what is your educational background, Doctor?

11 A. Well, I have a bachelor's degree in chemistry, as
12 well as criminal justice from Central Missouri
13 State University in Warrensburg, Missouri. I
14 also have a master's degree in forensic science
15 from the University of New Haven and that's in
16 West Haven, Connecticut. And a doctorate in
17 toxicology from St. Louis University, in St. --
18 I'm sorry, from the University of Maryland in
19 Baltimore. I took an additional four years of
20 graduate level course work at St. Louis
21 University in the early '90s.

22 Q. Now, when you say you have a doctorate, is that
23 what is commonly referred to as having a Ph.D.?

24 A. Yes, it is.

25 Q. And thus the title, Dr. Marc LeBeau.

1 A. That's correct.

2 Q. Would you describe any experience or any special
3 training you had in your field?

4 A. Yes, well, when I started with the FBI
5 Laboratory, I was thoroughly trained in the types
6 of examinations that we typically do in our
7 laboratory. These are examinations specifically
8 in the area of forensic chemistry as well as
9 forensic toxicology.

10 Before I started with the FBI, I worked
11 as the laboratory manager of the St. Louis County
12 Medical Examiner's Office in St. Louis. And I
13 did that for about four years. I have also
14 worked as a chemistry instructor at the
15 University of New Haven, as well as a laboratory
16 intern at a private toxicology laboratory in
17 Willow Grove, Pennsylvania, called National
18 Medical Services. And I have also worked as a
19 laboratory technician for Monsanto Chemical
20 Company.

21 Q. Do you belong to any professional or scientific
22 organizations pertaining to your field?

23 A. Yes, I do.

24 Q. And would you describe for the jurors what those
25 are?

1 A. Yes, I'm an active member of the Society of
2 Forensic Toxicologists and I serve on their Board
3 of Directors, as well as I chair one of their
4 committees. I'm also involved with and a member
5 of the International Association of Forensic
6 Toxicologists. And, again, I serve on two
7 committees within that organization. And I'm an
8 active member of the American Academy of Forensic
9 Sciences. And I hold a membership level of
10 fellow within that organization, which is one of
11 highest membership levels you can have.

12 Q. And do you attend conferences within your field
13 for forensic purposes?

14 A. Yes, I do.

15 Q. And how often and why?

16 A. Well, I attend the conferences of those three
17 organizations pretty much annually, specifically
18 to stay on top of current trends within our field
19 of forensic chemistry and forensic toxicology.
20 But also I'm often invited to put on workshops
21 and be a guest speaker at a number of
22 conferences.

23 Q. Is your lab at the FBI an accredited lab?

24 A. Yes, it is.

25 Q. And what does that mean to be accredited?

1 A. An accredited laboratory simply means that a body
2 of experts that will, from time to time, come
3 into the laboratory and check your practices to
4 ensure that you are following a set of standards
5 that this body has set down to those that they
6 accredit. So it's simply a quality measure so
7 that we have consistency from one laboratory to
8 the next.

9 When you are dealing with an accredited
10 laboratory under the body that accredits the FBI
11 Laboratory, which is known as the American
12 Society of Crime Laboratory Directors, Laboratory
13 Accreditation Board, or ASCLD lab, all
14 laboratories that are accredited by that agency,
15 we follow their same standards.

16 Q. Do you undergo proficiency testing?

17 A. Yes, we're required to as part of our
18 accreditation.

19 Q. And what is that proficiency testing?

20 A. Proficiency testing is simply, we're provided
21 test cases, from time to time, where we're
22 asked -- where we don't know the results, some
23 outside entity knows the results, and we analyze
24 these test cases as if they were real cases and
25 then provide those results to the referee, if you

1 will, of those results. And they grade our
2 results and then report back, not to just to us,
3 but they report our result back to our
4 accrediting body as well.

5 Q. And how have you done on your proficiency tests?

6 A. I have passed all of the proficiencies I have
7 taken in the 16 years I've been employed in this
8 business.

9 Q. Have you ever testified as an expert before in
10 court?

11 A. Yes, I have.

12 Q. How many times?

13 A. Well, approximately 40 to 50 times.

14 Q. Have you ever been rejected as an expert in your
15 field?

16 A. No. No, I have not.

17 Q. Have you authored or co-authored any peer
18 reviewed journal articles?

19 A. Yes, I have.

20 Q. And could you describe some of those to the
21 jurors?

22 A. Well, I have authored or co-authored about 15 to
23 20 peer reviewed journal articles, professional
24 articles, scientific articles, that are published
25 in professional publications.

1 Q. And I have had placed in front of you an exhibit
2 that was marked as Exhibit 433; could you tell
3 the jurors what that is.

4 A. Yes, this is a copy of my curriculum vitae,
5 essentially my resume that describes my
6 experience.

7 Q. Now, did you analyze samples that were sent to
8 you in this case?

9 A. Yes, I did.

10 Q. Describe how you, in your lab, became involved in
11 this case?

12 A. Well, following the normal course of business at
13 our laboratory, as the unit chief, as I
14 indicated, I am the gatekeeper, if you will, of
15 cases that we accept to work. And I was
16 contacted by the local District Attorney's Office
17 to make a determination whether or not we could
18 provide assistance in analysis of specific
19 evidence in this particular case.

20 Q. And did you know that this was a case that
21 involved an allegation of police planting
22 evidence?

23 A. Yes, I did.

24 Q. Why would a case such as that, an allegation of
25 law enforcement officers planting evidence, be of

1 a concern to the FBI?

2 A. Well, one of the areas that the FBI is
3 responsible for investigating in this country is
4 crimes of public corruption. This is where a
5 politician or another public official, such as a
6 police officer, is accused or believed to be
7 involved in doing something illegal.

8 So that is an area that we are strongly
9 involved in in our investigations at our agency.
10 And, of course, that's a very serious allegation.
11 If an individual is truly in that political
12 position or in a law enforcement position and
13 they are doing something illegal that erodes the
14 public's trust in that agency or that individual,
15 and we would want that, certainly, that
16 individual, out of that office or off the street.

17 But, additionally, if they are being
18 wrongly accused, we want to be involved in that
19 investigation to help set the record straight and
20 hopefully clear their name, if they are wrongly
21 accused so, again, the trust can be restored.

22 Q. And did the testing that you performed in this
23 case determine that issue?

24 A. I believe it did, yes.

25 Q. Before we get to your conclusions, I would ask

1 you to describe for the jurors basically what
2 type of instrumentation did you use to perform
3 the testing in this case?

4 A. Well, we used an instrument that's called a
5 liquid chromatograph mass spectrometer. And we
6 abbreviate that LC/MS. And then we also took
7 that one step farther and did additional
8 experiments with the mass spectrometer that the
9 entire technique is what is known as LC/MS/MS.
10 It's essentially three different instruments, if
11 you will, that are all linked together and hand
12 shaking with each other so that they work in
13 tandem.

14 Q. Would you describe for the jurors exactly what
15 analytical chemistry is?

16 A. Well, analytical chemistry is a subset of the
17 whole field of chemistry that, in a nutshell,
18 just is trying to determine the chemical
19 properties or identity of matter. Little simpler
20 put, analytical chemistry involves trying to
21 either identify the present -- or the chemical
22 characteristics or the identity of an unknown
23 substance, trying to figure out what it is. Or
24 if there's an idea that there's a specific
25 chemical in some material, then we will target

1 that analysis in trying to figure out if a
2 specific chemical is present in that substance.

3 Q. And this instrumentation that you just referred
4 to, the LC/MS/MS, is that what is used in
5 analytical chemistry to determine these chemical
6 compounds?

7 A. Yeah, it's one of the tools that we use in order
8 to do just that, identify what a substance is, or
9 to target a particular analysis to see if
10 specific chemicals are in a material.

11 Q. Could you very briefly, and as simply as
12 possible, tell the jurors how this instrument
13 works?

14 A. I will try. It's -- Again, it's three
15 instruments that we're really talking about. The
16 most simple form is to talk about it as two, the
17 LC portion and the mass spec portion. The liquid
18 chromatograph, or LC, it's job is simply to take
19 a mixture of chemicals and separate them so that
20 they are delivered to the next instrument, the
21 mass spectrometer, one at a time.

22 And a good analogy to think of is, if we
23 had a bag full of marbles and we knew that some
24 marbles were real small, other marbles were of a
25 medium size, and the remaining marbles were very

1 large. And we can even complicate it a little
2 more by saying that the large marbles are of two
3 colors, some are blue and some are green.

4 If we were to put these marbles,
5 thinking that they are chemicals, into our liquid
6 chromatograph, the LC portion, it would take that
7 mixture and separate them so that when they came
8 out of the instrument, the small marbles would
9 come out first, say one minute after they were
10 introduced; the medium marbles would come out
11 maybe at two minutes after they were introduced;
12 the large marbles would come out -- or I should
13 say the large blue marbles, perhaps, would come
14 out at three minutes; and the green marbles would
15 come out perhaps 15 seconds later.

16 So it allows that mixture to be
17 separated into the individual components so that
18 the next instrument only sees essentially one
19 chemical at a time. And that's important because
20 the next instrument is that mass spectrometer.
21 And what that does is, it gives us the
22 fingerprint of that chemical, breaks it apart
23 into small pieces using a very large amount of
24 energy, breaks it apart, and presents us a
25 fingerprint that we can then compare.

1 And, essentially, all chemicals give you
2 a different fingerprint. That's the value of a
3 mass spectrometer, is it gives us information
4 about the weight of the chemical as well as its
5 fragmentation pattern that, then, we will
6 interpret using a set of guidelines in order to
7 determine if it matches the specific chemical
8 we're looking for, or if we're trying to figure
9 out what unknown chemical it is, we can match it
10 against the data base to see what it matches.

11 Q. And how long has this technology been around?

12 A. Well, LC/MS has been around for decades in
13 analytical chemistry laboratories.

14 Q. So is this a standard instrument used in
15 analytical chemistry?

16 A. It is. We used it in our laboratory since the
17 early 90s.

18 Q. Is this technology used in other fields besides
19 analytical chemistry?

20 A. Yes, it is.

21 Q. Could you describe a few of those for the jurors.

22 A. Well, LC/MS is very widely used in the
23 pharmaceutical industry where they are developing
24 new drugs, they are looking for new metabolites
25 of drugs and trying to identify what those are.

1 It's also used in looking at explosives,
2 explosive residues. If a bomb is discharged, it
3 can look for the residues of the explosive
4 portion that caused that.

5 It's used to test athletes for steroids.
6 It's used to test workers for whether or not they
7 are smoking marijuana on the weekends.

8 It's also used in the food industry to
9 look at various components in foods. It is used
10 in agricultural chemistry as well.

11 Q. I would like to switch topics a little bit now
12 and ask you, would you explain to the jurors what
13 EDTA is?

14 A. Yes, EDTA stands for ethylenediaminetetraacetic
15 acid, and EDTA is a chemical, simply a chemical
16 that is known as a chelating agent. And what
17 that means is, it simply will take metals that
18 are in the environment of this chemical and latch
19 on to them, bind to it, and remove them from that
20 environment that it's in.

21 Q. Where is EDTA found?

22 A. EDTA is found in a lot of commercial products
23 that we all use. It's found in your shampoo.
24 It's found in your laundry detergent. It's found
25 in a number of foods such as sodas. And it's

1 found in fertilizers, just to name some.

2 And the reason that they are in things
3 like detergents and shampoos is that it, again,
4 it attaches to the metals. And I don't know if
5 you have hard water here in this part of
6 Wisconsin but, you know, generally hard water has
7 a whole lot of metal in it, that's what makes it
8 hard.

9 So what that shampoo will do with the
10 EDTA in it is latch on to those metals so that it
11 actually does a better job of cleaning, same with
12 your detergent. So that's what EDTA is found in,
13 a whole lot of different commercial products.

14 Q. And what's its purpose, again, what is it used
15 for?

16 A. To bind metals, specifically, what it is used for
17 is a chelating agent. And, then, as I indicated
18 it, because of that binding of metals and
19 different uses, it helps stabilize certain food
20 products, for example. So that's why it's used.
21 In that instance, it might be used in a
22 laboratory setting to serve as a buffer in a
23 reagent.

24 Q. You use the word it's used to stabilize
25 something, could you explain a little more to the

1 jurors what you mean by a stable chemical.

2 A. Well, a stable chemical is one that doesn't
3 easily break apart. That's a very simple way of
4 explaining it. It's very rugged. It's not
5 fragile.

6 Q. Are there studies in the scientific literature,
7 or articles about the stability of EDTA?

8 A. Yes, there are, there are numerous studies in the
9 scientific literature that talk about the
10 stability of EDTA.

11 Q. And why would these studies be made?

12 A. Well, most of the studies that have been done in
13 the past few decades are studies that are
14 concerned with the prevalence of EDTA in the
15 environment. As I mentioned, it's stable and it
16 attaches to metals. And over the years, as the
17 use of EDTA continues to be used in more and more
18 products, what we're seeing in the environment is
19 that it continues to build up because EDTA is so
20 stable.

21 So we're finding it in wastewater and
22 river water, find it in your soil. And what the
23 concern is, of course, is it's taking metals out
24 of your water, taking metals out of the soil,
25 that are normally supposed to be there for the

1 normal process of biology, and latching on to
2 them, making them unusable in their normal form.

3 So that's what most of the studies are
4 talking about, the stability of EDTA in the
5 environment and the concern of it building up
6 over time. And the difficulties of actually
7 removing it from the environment, out of your
8 water before you drink it, and out of soil,
9 etcetera.

10 Q. These articles or other studies, these were
11 studies that were developed by other scientists;
12 is that correct?

13 A. Yes, scientists from all over the world. These
14 publications are from the Netherlands, from South
15 America, from the United States, all over Europe,
16 yeah, essentially all over the world.

17 Q. Would you tell the jury a little bit about your
18 experience with the stability of EDTA?

19 A. Well, as part of work that we did around this
20 case is we were interested to see whether or not
21 blood that was in an EDTA tube and put onto a
22 spot card, which is simply a card that you put a
23 spot of blood on, if that were stored at normal
24 room temperature environment for a number of
25 years, would that EDTA remain in that bloodstain.

1 And we did find that a stain that was made in May
2 of 2004, today still were able to detect the
3 presence of EDTA in.

4 Q. So this chemical is not easily broken apart under
5 normal environmental conditions; is that fair to
6 say?

7 A. That is absolutely a correct statement.

8 Q. And why not?

9 A. Well, again, it is not a fragile chemical. It is
10 not fragile at all. It takes very severe
11 conditions to break it down. For example it can
12 withstand temperatures up to 300 degrees
13 Fahrenheit before it will break apart.

14 Q. And this chemical, EDTA, is this a chemical that
15 you could test for its presence in substances in
16 this instrument that you talked about at the FBI?

17 A. Yes, absolutely.

18 Q. Now, I would like to ask you, Doctor, what is a
19 blood collection tube?

20 A. Well, a blood collection tube is simply the glass
21 test tube, if you will, that when you have blood
22 drawn at a doctor's office it is the tube that
23 they put your blood in.

24 Q. And are there different kinds of blood collection
25 tubes?

1 A. Yes, there are.

2 Q. And would you be able to describe those for the
3 jurors?

4 A. Yes, I could.

5 Q. We have prepared a -- you have prepared a
6 PowerPoint presentation to give this description;
7 would that be helpful to the jurors while
8 testifying?

9 A. Yes, it would.

10 Q. Can you -- Do you have a mechanism to back this
11 up, I think we want a different slide initially
12 to start with the collection tubes. And, again,
13 I'm going to ask you to -- could you describe a
14 little more about these different types before we
15 get the slide set up, these different types of
16 collection tubes and why they have different
17 types.

18 A. Well, there are a number of different types of
19 tubes. One type of tube has nothing in it; it's
20 simply your blood goes into the tube and it's
21 there with nothing added to it. But the majority
22 of collection tubes that we deal with, the
23 majority of collection tubes that we deal with
24 have some form of a preservative or an
25 anticoagulant in that tube. And the reason being

1 is you want to allow this blood to be stored for
2 some time, so it's still usable to the
3 laboratory.

4 As I indicated, there are multiple types
5 of tubes. And the way we can tell what is in the
6 tube is simply by the color of the stopper on
7 that tube. The color indicates what's inside the
8 tube when it's empty -- when it's-- before it's
9 filled with blood.

10 So the red-stoppered tube, as you can
11 see on the screen, has nothing in it, where as
12 the yellow-stoppered tube has citric acid or
13 citrate in it. The gray-stoppered tube has
14 potassium fluoride -- I'm sorry -- sodium
15 fluoride and potassium oxalate in that one. And
16 then the lavender or purple-stoppered tube has
17 this chemical EDTA.

18 Now, when the blood is put into these
19 tubes, you shake them up so that the chemical
20 additive is well mixed within the tube. And then
21 it does its thing.

22 Now, if we start by looking simply at
23 the red-stoppered tube with nothing in it, what
24 happens is, within our blood we have blood cells,
25 red blood cells, which you I'm sure heard of, but

1 we also have calcium in our blood. And that's
2 important because the calcium plays a very key
3 role in those red blood cells staying apart from
4 one another.

5 After awhile, if we don't have a
6 preservative or an anticoagulant in that tube,
7 what happens is those red blood cells clot. They
8 come together and form clots within that tube,
9 which of course makes it very difficult for
10 laboratories to do testing on the blood.

11 So that's why we use these
12 anticoagulants and preservatives in these tubes.
13 If we look at the purple-stoppered tube, which is
14 your EDTA tube, the EDTA is in with the blood,
15 mixed in, with the calcium and the red blood
16 cells. And as I said earlier, the role that EDTA
17 plays is to bind metals, such as calcium. But it
18 binds any metals that are present in our blood.
19 And a lot of those metals come from our diet,
20 from our normal metabolic processes that occur in
21 our body.

22 So the EDTA is going to bind with those
23 calcium -- the calcium, the iron, and other
24 metals and, again, latch onto it and make it
25 unavailable for its normal use. So that's going

1 to prevent your blood from clotting. And that's
2 why EDTA is in the purple-stoppered tube. What
3 this does, as I said, we have iron floating
4 around in our blood and we have calcium, which is
5 the CA, iron is FE. The EDTA comes along and it
6 complexes with those metals, complexes with the
7 calcium and it complexes with the iron. And
8 that's simply what the different blood collection
9 tubes are and why EDTA, in particular, is present
10 in these purple-stoppered tubes.

11 Q. And when you did your personal stability test for
12 EDTA, was it bloodstains from purple-topped
13 tubes?

14 A. That's what was reported to us. I'm sorry, what
15 was your question?

16 Q. When you did your stability study and degradation
17 study, was it bloodstains from purple-topped
18 tubes?

19 A. Yes. Yes, they were. They were all stains that
20 were generated from purple-stoppered tubes.
21 Those were generated, again, in May of 2004, and
22 we analyzed them just last week.

23 Q. And the chemical that you would be looking for,
24 just so it's clear for the jurors, in the
25 instrumentation that you have described, again,

1 according to this slide, what can you identify
2 with your instrumentation?

3 A. Well, we specifically focused on EDTA bound to
4 iron, as well as free EDTA. There's so much EDTA
5 in that tube, that not all of it is used. In
6 fact, the majority of it is not used, so there's
7 a lot of the original EDTA still floating around,
8 unbound to anything.

9 So we focused on both the unbound EDTA,
10 the original form, as well as the EDTA that was
11 bound to iron. And we chose the iron over
12 calcium, simply because iron is about 10 to 30
13 times more abundant in our blood than is calcium,
14 so it would make it easier to answer the question
15 that was put before us.

16 Q. And did you receive samples to test in this case?

17 A. Yes, we did.

18 Q. And do you recall, what did you receive?

19 A. We received a number of swabs that were reported
20 to us as having been taken from bloodstains out
21 of a Toyota RAV4, as well as control swabs that
22 were collected in the areas near where those
23 bloodstains were. And we also received a tube of
24 blood in a purple-stop -- stoppered tube, a EDTA
25 tube, that was collected from Mr. Steven Avery.

1 Q. I'm going to ask Agent Fassbender to bring you
2 what have previously been marked as Exhibits 332,
3 334, and 336. Dr. LeBeau, would you look at
4 Exhibit 332, which has been already entered into
5 evidence and testified to by Sherry Culhane as
6 being a blood swab that she took from the
7 dashboard of Teresa Halbach's RAV4 and she
8 identified that as her laboratory number A-8; did
9 you receive that?

10 A. I'm sorry, could you repeat the exhibit number?

11 Q. Exhibit No. 332?

12 A. And A?

13 Q. It was previously identified by Sherry Culhane
14 from the State Crime Lab.

15 ATTORNEY BUTING: Why don't we just read
16 what's on the exhibit?

17 A. This says A-10.

18 Q. I'm sorry. Then, I'm asking you to look at --
19 look for the one that is for A-8?

20 A. A-8 has exhibit 336 on it.

21 Q. And that was previously identified by Sherry
22 Culhane as a bloodstain taken from the dashboard
23 of Teresa Halbach's RAV4; did you receive that?

24 A. Yes, I did.

25 Q. And how can you tell?

1 A. I can recognize our laboratory number that we
2 placed on this packaging, as well as the initials
3 of the technician that did perform the analysis,
4 and my own initials.

5 Q. Okay. And did you test the swabs from that
6 bloodstain using the technology you have
7 described to the jurors?

8 A. Yes, we did.

9 Q. Now, I would ask you to identify for us, if you
10 can, what would have been marked as A-12, a
11 bloodstain from the rear passenger door of Teresa
12 Halbach's car?

13 A. That's correct.

14 Q. What exhibit number is that, please?

15 A. Exhibit 334, yes.

16 Q. And, again, that has been already entered into
17 evidence and identified by Sherry Culhane as a
18 bloodstain--

19 ATTORNEY BUTING: Your Honor, I would
20 object to counsel telling this witness what has --
21 describing these exhibits as something other than
22 what this witness knows. This witness should
23 testify to what he saw, what he was advised. But
24 what was testified to, he has no knowledge of.

25 THE COURT: I agree that I don't know that

1 this witness was in a position to say what a
2 previous witness said, but if these exhibits have
3 been admitted on that basis previously, I think it
4 is help for the identification. If there's a
5 dispute about that, then I think we should be heard.
6 Is there a question?

7 ATTORNEY BUTING: Not at this time, you can
8 proceed.

9 THE COURT: All right.

10 Q. (By Attorney Gahn)~ And, again, Exhibit 334, did
11 you receive that for testing in your lab?

12 A. Yes, we did.

13 Q. And how can you tell, Doctor?

14 A. Again, our laboratory number and the initials of
15 both the technician that did the work, as well as
16 myself.

17 Q. And would you -- would you have Exhibit 336
18 there?

19 A. Yes, I do.

20 Q. And that is an exhibit that has been previously
21 identified by Sherry Culhane from the State Crime
22 Lab as a bloodstain that she took from a CD case
23 from Teresa Halbach's RAV4; is that correct?

24 A. No, sir.

25 Q. I'm sorry? I'm sorry, 332; is that correct?

1 A. Exhibit 332 is identified by the label on the
2 packaging as being collected from the CD case on
3 the front passenger seat.

4 Q. And -- And did you receive that for testing?

5 A. Yes, we did.

6 Q. And how can you the tell?

7 A. Again, our laboratory number written on the
8 packaging, as well as the initials of the
9 technician that did the work, and myself.

10 Q. I'm going to ask Agent Fassbender to bring you
11 three additional envelopes which were control
12 swabs taken in this case. And, again,
13 Dr. LeBeau, just the last exhibit, 332; is that
14 marked as exhibit -- have the identifying Crime
15 Lab No. A-10?

16 A. That's correct.

17 Q. Dr. LeBeau, would you look at Exhibit 476?

18 A. Yes.

19 Q. And can you identify that exhibit?

20 A. This is a -- reported to be a control swab, or
21 two control swabs that were collected from the
22 rear passenger door area in the RAV4.

23 Q. And how can you -- Did you examine those?

24 A. Yes, we did.

25 Q. And how can you tell?

1 A. Again, our laboratory number is placed on there
2 as well as our initials.

3 Q. And would you look at Exhibit 475; can you
4 identify that exhibit?

5 A. Yes, I can.

6 Q. Will you tell the jurors what that is?

7 A. This is reported to be control swabs that were
8 collected from the RAV4, off of a CD case.

9 Q. And did you receive that for testing?

10 A. Yes, we did.

11 Q. And how can you tell?

12 A. Again, the laboratory number that we assigned to
13 this case as well as our initials are on it.

14 Q. And do you have Exhibit 477 in front of you, sir?

15 A. Yes, I do.

16 Q. And can you tell the jurors what that is?

17 A. Again, this is reported to be control swabs that
18 were collected from the RAV4, in the ignition
19 switch area of the vehicle.

20 Q. And did you test that with the technology you
21 have described?

22 A. Yes, I did.

23 ATTORNEY BUTING: Objection, your Honor, I
24 think we need, for foundation purposes, when he says
25 did you test, counsel is asking did you test this,

1 did you test that, and he is repeatedly answering we
2 tested, yes, we did. So I think there needs to be
3 some clarification as to what this witness did.

4 THE COURT: The Court agrees, that should
5 be clarified.

6 Q. (By Attorney Gahn)~ Would you explain to the --
7 when I say, did you test this, I'm talking about
8 the FBI. Would you explain to the jurors when
9 you receive evidence, how the testing process
10 proceeds?

11 A. Typically, the way we're set up is, certainly the
12 manager of the unit isn't -- doesn't have a lot
13 of time to spend performing the actual analyses.
14 So, we have two levels of scientists within our
15 unit.

16 We have what are called chemists, which
17 are essentially technicians, but they are well
18 educated technicians, many with Ph.D.s. And,
19 then, we have examiners. And I'm -- In this role
20 I serve as an examiner. The examiner is assigned
21 the case and oversees the analytical work that's
22 done on the case.

23 So they're the supervisor. They are in
24 close contact with the technician that worked on
25 the case, often times in the lab with him,

1 helping out. But most of the analytical work is
2 actually done by a qualified chemist.

3 When the work is finished, the
4 analytical product, the results, are handed off
5 to the examiner, who compiles the results, forms
6 the opinion that is then put into the report, as
7 I indicated earlier, and is sent out to the
8 contributing agency. So it's simply an
9 efficiency thing so that work can always be done
10 while the examiners are out testifying on their
11 cases.

12 Q. Would you also describe to the jurors the roles
13 that you have played yourself in the processing
14 of this case and the analysis that was done.

15 A. Well, again, I supervised the entire process of
16 this case as far as the method development, the
17 receipt of the evidence, the decisions that were
18 made on what was analyzed, when it was analyzed,
19 how it was analyzed. And then took the results
20 and compiled them, formed an opinion, my opinion,
21 as to what they meant, wrote the report myself,
22 issued the report after it had been reviewed by
23 an independent scientist that works within my
24 unit and, of course, here today to testify.

25 Q. And these items of evidence that you testified to

1 just now in front of the jury, did you personally
2 examine these items?

3 A. Yes, I did.

4 Q. And, thus, that's why your initials are on each
5 of the bags?

6 A. Yes.

7 ATTORNEY GAHN: May I proceed?

8 THE COURT: Actually, I think you are not
9 going to finish before lunch, so I think I'm going
10 to take a break at this time.

11 Members of the jury, we'll take our
12 lunch break at this time, I will remind you not
13 to discuss the case among yourselves until we
14 resume. And we'll see you after lunch.

15 (Jury not present.)

16 THE COURT: You may be seated. Counsel, I
17 would like to see you briefly in chambers before we
18 break for lunch.

19 (Recess taken.)

20 (Jury present.)

21 THE COURT: At this time we're back on the
22 record and Mr. Gahn you may resume.

23 ATTORNEY GAHN: Thank you, your Honor.
24 Before resuming the testimony I would like to inform
25 the Court that we have marked as exhibits,

1 Exhibit 465, and Exhibit 466; 466 is the PowerPoint
2 demonstration that Dr. LeBeau was using to explain
3 his testimony for the jurors. We have probably gone
4 through about half of it. There will be some more
5 coming. And Exhibit 465 is a CD Rom of that
6 PowerPoint demonstration. I would move those into
7 evidence at this time.

8 ATTORNEY BUTING: No objection.

9 THE COURT: Very well, they are admitted.

10 **DIRECT EXAMINATION CONTD.**

11 BY ATTORNEY GAHN:

12 Q. Now, Dr. LeBeau, you just finished testifying
13 about some of the samples that you received for
14 testing at your laboratory, namely the three
15 blood swabs that came are from the RAV4 and three
16 controlled swabs, correct, that came from the
17 RAV4?

18 A. Actually six control swabs, there were two of
19 each.

20 Q. Two of each. Thank you, Doctor. And did you
21 also receive a blood sample from Steven Avery in
22 this case?

23 A. I did receive a blood sample that was reported to
24 have been taken from Steven Avery, yes.

25 Q. And I'm going to ask that that be marked as an

1 exhibit at this time and I'm going to have that
2 brought to you for your examination.

3 (Exhibit No. 478 marked for identification.)

4 Q. (By Attorney Gahn)~ First, could you state what
5 exhibit number is that?

6 A. This is Exhibit 478.

7 Q. And do you recognize that?

8 A. Yes, I do.

9 Q. And how do you recognize that, sir?

10 A. Again, I recognize it by the initials of the
11 technician who opened this. Some of the markings
12 that we did place on it, unfortunately our lab
13 number has been covered up by crime scene tape,
14 or evidence tampering tape, rather, from the
15 Wisconsin State Crime Lab in Madison apparently.

16 Q. And if you were to open that container, would you
17 be able to make further identifications of the
18 blood vial that you tested in this case?

19 A. Yes, I would be.

20 Q. Would you do so at this time, sir.

21 A. Yes.

22 THE COURT: Before that happens, I recall
23 there was some discussion about fingerprint evidence
24 on the vial, is that -- has that matter been
25 resolved?

1 ATTORNEY GAHN: It's been completed.

2 THE COURT: Defense is satisfied?

3 ATTORNEY BUTING: Let's go to side bar for
4 just a minute.

5 THE COURT: All right. Don't open it any
6 further, please.

7 (Side bar taken.)

8 THE COURT: I should indicate for the
9 record that during the side bar a question was
10 raised about the evidence tape on the vial, which
11 the parties are free to go in their examination.

12 It was also pointed out to the Court,
13 that witness, in fact, does have latex gloves on,
14 something, unfortunately, in this courtroom, I
15 can't really see from the bench, so. But go
16 ahead, you may proceed.

17 ATTORNEY GAHN: All right. Thank you, your
18 Honor.

19 (Witness opens exhibit.)

20 A. I'm going to try to open it. Oh, okay, it's
21 reversed. I'm a little concerned that I'm going
22 to throw a vial of blood when I open this. There
23 we go.

24 Q. And would you explain to the jurors why a vial of
25 blood is packaged as it is?

1 A. Well, this container is a shipping container to
2 ensure that the tube inside doesn't break. It's
3 very high density plastic material and packed on
4 the inside with cotton and then further packaged
5 on the inside with yet another tube that is heavy
6 duty, like a plastic material so that the tube,
7 if it were to break on the inside, the blood
8 would remain, actually, in this secondary
9 container here. It's just a safety precaution.

10 Opening and being able now to see the
11 tube, I can recognize our laboratory number, as
12 well as the initials of myself and the technician
13 that performed the actual analyses on this blood.

14 ATTORNEY BUTING: May I see the tube,
15 counsel?

16 ATTORNEY GAHN: Certainly.

17 ATTORNEY BUTING: I will let you hold it.

18 THE WITNESS: Okay.

19 Q. (By Attorney Gahn)~ And does that blood tube
20 that's contained in that container have the name
21 Steven Avery written on it?

22 A. Yes, it does.

23 Q. Now, you may put that aside for the moment. And
24 I would like you to explain to the jurors what
25 you mean by, what are control samples as it

1 pertains to the control samples that were taken
2 in this case and sent to you?

3 A. Well, a control sample is simply a replicate swab
4 of the area near the stain that was collected to
5 look for any contamination that would count for
6 positive findings you actually find in the item
7 that you are analyzing. So in this case, the
8 bloodstain itself, it was a swabbing of the area
9 around it to ensure that there wasn't any
10 contaminants that would interfere with our
11 particular analysis.

12 Q. And why would they be particularly helpful in
13 this case for your analysis?

14 A. Well, for this particular case because, in part,
15 as I indicated, EDTA is widely used in a number
16 of commercial products. So, you would be
17 concerned that the inside of the car, for
18 example, may be processed with a cleaning agent
19 that may leave a residual amount of EDTA behind.
20 So you want to make sure that that isn't there in
21 case you have a positive finding in the
22 bloodstain because that could confuse the
23 interpretation of the results.

24 Q. When you receive a case submitted to you for an
25 analysis, do you routinely take photographs of

1 the items that are sent to you?

2 A. Yes, I do, as well as my staff routinely does
3 that.

4 Q. And that is something that is in the protocol of
5 the FBI in your Chemistry Unit?

6 A. It is within the protocol of the whole FBI
7 Laboratory to document -- to every extent that we
8 can, document the evidence as it is received into
9 the laboratory and into the unit.

10 Q. And was that done in this case?

11 A. Yes, it was.

12 Q. I'm going to ask Mr. Fallon to bring you six
13 photographs. I would like you to look at those.
14 And if you were to take the top photograph, turn
15 it over and identify the exhibit number, please.

16 A. This is Exhibit 458.

17 Q. And how -- Do you recognize that photograph?

18 A. Yes, I do.

19 Q. How do you do that, sir?

20 A. I recognize our laboratory number and the item
21 designation we gave to this particular item of
22 evidence.

23 Q. And how does that photograph -- would you explain
24 to the jurors how that corresponds to the
25 evidentiary items that you have in front of you?

1 A. Yes, this is a photograph of the blood swab that
2 was reported to have been taken from the ignition
3 area in the RAV4.

4 Q. And is that photograph now being displayed on the
5 large screen?

6 A. Yes, it is.

7 Q. And could you just explain to the jurors the
8 condition of this swab when you first saw it?

9 A. When -- It looks exactly like you can see in the
10 photograph, that's how we received it.

11 ATTORNEY BUTING: Objection, again, he's
12 got to testify, it's not clear whether he saw it, or
13 whether he reviewed it, or whether he is talking
14 about his lab staff.

15 THE COURT: The objection is sustained.

16 Q. (By Attorney Gahn)~ Did you review this
17 photograph? I mean, have you seen this
18 photograph before?

19 A. Yes.

20 Q. And did you yourself look at the swabs that were
21 submitted to you for analysis?

22 A. Yes, I did.

23 Q. And could you describe for the jurors the
24 condition of this swab that you actually saw?

25 A. Again, exactly as you see on the screen, this is

1 the condition of the swab when it was received in
2 our laboratory and when we opened it for the
3 first time, this is a photograph of it.

4 It was obvious to us that this swab had
5 been analyzed, or at least cut at one point,
6 previously, because it wasn't the typical rounded
7 shape you would expect on a cotton tipped
8 applicator. It appeared as if a portion of it
9 had been removed and that was consistent with
10 what we had been told had occurred with this
11 particular swab, prior to our analysis with it.

12 Q. Would a laser pointer be helpful to you --

13 A. Yes, it would.

14 Q. -- in pointing this out to the jurors?

15 A. So specifically this area here, the top portion
16 appeared to have -- that the top had been cut
17 off.

18 Q. And does this photograph in Exhibit 458
19 accurately depict this swab, from the dashboard
20 of Teresa Halbach's car, as you observed it?

21 A. Yes, it does.

22 Q. Would you go to the next photograph and identify
23 which exhibit that is?

24 A. This is Exhibit 459.

25 Q. And how does that correspond to the evidentiary

1 items in front of you that you have already
2 testified about?

3 A. This is a photograph of a swab that was reported
4 to have been collected from the rear passenger
5 door area from the RAV4.

6 Q. And did you personally look at the swabs that
7 were submitted in this case from the rear
8 passenger door area of the RAV4?

9 A. I did, yes.

10 Q. And does the photograph, the photograph that you
11 have, is that being displayed now on the large
12 screen?

13 A. Yes, it is.

14 Q. And, again, could you point out to the jurors
15 what you observed about this swab?

16 A. Again, this swab had what appeared to be blood on
17 it. And, again, it was obvious that a portion of
18 it had been cut or removed, prior to it arriving
19 to our laboratory.

20 Q. And does the photograph that you have in
21 Exhibit 459 accurately depict the condition of
22 this swab from the rear passenger door area as
23 you observed it?

24 A. Yes.

25 Q. And would you go to the next exhibit, please, and

1 identify it.

2 A. This is Exhibit 460.

3 Q. And how does that correspond to the evidence
4 samples that you examined in this case?

5 A. This is a swab that was reported to us as having
6 been collected from the CD case that was found in
7 the RAV4.

8 Q. And does that photograph -- is that being
9 depicted now on the large screen?

10 A. Yes, it is.

11 Q. And did you personally examine this swab?

12 A. Yes, I did.

13 Q. And please describe for the jurors the conditions
14 that you observed?

15 A. Again, this swab appeared to have been sampled
16 previously. There did not appear to be a great
17 deal of blood on this particular swab suggesting
18 that there was little to begin with in the
19 previous analysis, perhaps took the portion that
20 would have been useful for our particular
21 examination.

22 Q. I would ask you to take the next exhibit, which
23 would be Exhibit 461, I believe, next photograph,
24 please, and identify that exhibit number.

25 A. Exhibit 461.

1 Q. Yes.

2 A. This is -- These are two control swabs, reported
3 to us as control swabs.

4 Q. And can you correspond those swabs with the
5 evidence samples that you received for analysis?

6 A. Yes, these were control swabs that were collected
7 from the area near the ignition switch.

8 Q. And are those swabs that are in that photograph
9 now being shown on the large screen?

10 A. Yes, they are.

11 Q. Could you take the next exhibit, please, and
12 identify it.

13 A. Exhibit 462.

14 Q. And what is that a photograph of?

15 A. These are control swabs that were reported to us
16 as having been collected from the area near the
17 staining on the rear passenger door of the RAV4.

18 Q. And the next exhibit, next photograph, please.

19 A. Exhibit 463.

20 Q. Yes. Would you identify that and tell us what
21 that -- which evidentiary item that photograph
22 corresponds to?

23 A. These are control swabs that were reported to us
24 as having been collected off the CD case that was
25 found in the RAV4 pickup.

1 Q. And all of these swabs, the controls as well as
2 the bloodstains, did you test these samples for
3 the presence of what you described to the jurors
4 as EDTA?

5 A. Yes, I did, or we did.

6 ATTORNEY BUTING: I'm sorry, which is it,
7 you said I did, we did?

8 A. Collectively we did it within my unit, my staff
9 and I did, yes.

10 Q. Would you explain, again, to the jurors, just how
11 the process works at the FBI Laboratory, what
12 your role is and the role of your technicians and
13 what is the typical way that a case is processed?

14 A. Throughout the FBI laboratory we have, again,
15 technicians that do a vast majority of the actual
16 hands on analytical work, saving the staff that
17 is responsible for compiling the result,
18 reviewing the results, ensuring that all the
19 quality standards are correctly documented in the
20 results, preparing the report, testifying,
21 etcetera; assuring that they are available to do
22 their job, we have technicians that do the vast
23 majority of the analytical work.

24 Q. And, again, what were you looking for when you
25 tested these swabs?

1 A. We were looking for the presence of EDTA,
2 specifically, as well as the iron complex of
3 EDTA. And if I could go back to the presentation
4 I had used earlier?

5 Q. Would this be helpful to the jurors?

6 A. I believe it would be.

7 Q. Please, do.

8 A. So, specifically, we were looking for the free
9 form of EDTA, this was the EDTA that was in
10 excess and never bound to any metals in the blood
11 sample, as well as the presence of the EDTA that
12 actually bound to iron. And, again, we chose
13 iron over calcium because iron tends to be
14 present at about a 10 to 30 times higher amount
15 in a blood sample than you would expect calcium
16 to be there.

17 Q. When was the last time your laboratory at the FBI
18 tested for the presence of EDTA in a bloodstain?

19 A. The last time we, within the FBI Laboratory,
20 analyzed a bloodstain for EDTA was in the O.J.
21 Simpson trial in the mid 1990's.

22 Q. Why is that so long ago, why is that the case,
23 that it's been such a long time?

24 A. Well, simply, because we haven't had any request
25 to do the analysis since then. We -- As I

1 indicated earlier, we don't go in search of work
2 to do. The investigators call us and ask us if
3 we can provide analytical assistance. We have
4 never had a request, that I can recall, since the
5 O.J. Simpson trial, in which prosecution was
6 interested, or an investigation was interested in
7 determining whether or not EDTA was in a
8 bloodstain.

9 Q. Are there routine cases and non-routine cases
10 that are submitted to the FBI Laboratory?

11 A. Yes, there are routine and non-routine cases.

12 Q. Could you explain the difference to the jurors,
13 please.

14 A. Well, we -- we do many examinations that we
15 consider routine. And by that I mean, these
16 we're doing, maybe not weekly, but at least
17 monthly. Examples of this might be something
18 like, in a bank robbery, where a individual
19 robbing a bank is given a die pack. And that die
20 pack goes off and leaves a stain on the clothing
21 or on the money of that individual.

22 We'll analyze that stain to determine
23 whether or not a very unique die is present
24 that's associated with die packs. That's a very
25 routine examination for us. We're one of the few

1 labs in this country that do that analysis and
2 those types of cases tend to be federal cases.

3 Another routine examination we do is
4 looking at unknown powders that are mailed in
5 threat letters. We have a whole lot of these
6 happening throughout the country. Our laboratory
7 tends to get these unknown powders and tries to
8 identify what those powders actually are and
9 assess whether or not they are a true threat.
10 Again, that's a very routine thing.

11 DNA in our laboratory is as routine,
12 essentially, as you can get it, as well as latent
13 fingerprints. You can't get much more routine.

14 On the other hand, we do a whole lot of
15 non-routine examinations. These are examinations
16 that the state labs would not typically put
17 together a procedure to do, because they may get
18 this request once in their lifetime.

19 So we're often called upon, especially
20 in my unit we're called upon, to develop a
21 technique to analyze for a specific chemical, a
22 unique chemical. And we may not do that again
23 for a decade. It is not uncommon at all. So
24 that would be an example of a non-routine
25 examination.

1 An example of some ones that come to
2 mind recently is looking for insulin in a
3 syringe. Most state labs wouldn't do that. We
4 get that request maybe every three years to do
5 something like that.

6 Looking for a new drug that just
7 recently came on the market, that cannot be a
8 routine examination, so we would develop that as
9 a non-routine procedure and then perform analysis
10 on the evidence. So it's very common in our unit
11 and it does take up a considerable amount of our
12 time to do.

13 Q. Are you familiar with the crime that has been
14 referred to as a drug facilitated sexual assault?

15 A. Yes, I am.

16 Q. Do you have any expertise in this area?

17 A. Yes, I do.

18 Q. Please describe for the jurors your expertise in
19 this area?

20 A. Well, I'm considered one of the country's experts
21 on this particular topic. I do a considerable
22 amount of training, not just in the United States
23 but throughout the world, on drug facilitated
24 sexual assault and drug facilitated crimes.

25 I have written a number of scientific

1 articles that have been published in peer review
2 journals. I have also co-authored a book on drug
3 facilitated sexual assault.

4 Q. And what is a drug facilitated sexual assault?

5 A. These are crimes that people typically think of
6 as when someone is slipped a drug secretly and
7 that drug knocks them out, incapacitates them so
8 that a perpetrator can potentially assault them,
9 sexually assault them without them resisting the
10 attack.

11 Q. And what are these drugs that are used to
12 accomplish that?

13 ATTORNEY BUTING: Objection, to relevance
14 at this point.

15 ATTORNEY GAHN: Well --

16 THE COURT: Mr. Gahn.

17 ATTORNEY GAHN: I have a few more questions
18 and then I will wrap this up, I just wanted to show
19 the chemical testing that was done on this drug.

20 ATTORNEY BUTING: And why, we test
21 chemicals every day, what's the relevance here?

22 ATTORNEY GAHN: Well, that's the point of
23 this, to show how the procedures were developed for
24 a non-routine case. It's just a few more questions.

25 THE COURT: This is a foundational question

1 for something else?

2 ATTORNEY GAHN: Yes. Yes.

3 THE COURT: All right. If you can relate
4 it, I will allow you to continue.

5 Q. (By Attorney Gahn)~ Did a time come -- These
6 drugs that are used for the drug facilitated
7 sexual assaults, did a time come when your lab
8 was requested to test for these for the first
9 time?

10 A. Yes, of course.

11 Q. And what did you do? Did you develop a procedure
12 to test for these drugs that are used in drug
13 facilitated sexual assaults?

14 A. Yes, we did.

15 Q. And why was it important to do that?

16 A. Because we didn't have a procedure that had been
17 validated and put on line, as we would call it,
18 to do the analysis for these drugs. So there's
19 always a first time for everything, of course,
20 and we had to develop a method and validate it
21 and then use it in cases. And it eventually
22 became a very routine examination that we now
23 conduct, but initially it was a first case where
24 we were asked to do this analysis.

25 Q. And how often do you get requests to test for

1 chemicals that you have never tested for before?

2 A. I would say approximately 20 percent of our case
3 load are requests to do unique non-routine types
4 of examinations.

5 Q. And in this case here, did you develop a
6 procedure or a protocol to test for the presence
7 of EDTA in bloodstains?

8 A. Yes, we did.

9 Q. And did you specifically develop those procedures
10 for this case?

11 A. Yes, we did.

12 Q. I'm going to ask Mr. Fallon to bring you what has
13 been marked as Exhibit 434 and ask you to
14 identify the document.

15 A. This is a copy of the procedure that we developed
16 and used in the evidence for this case.

17 Q. And was there anything in the scientific
18 literature that helped you develop the procedures
19 that you used in this case?

20 A. Yes, there was.

21 Q. I'm going to ask Mr. Fallon to bring you what
22 have been marked as Exhibits 436 and Exhibits 437
23 and I ask that you examine them, please. And
24 what is Exhibit 436?

25 A. 436 is a article entitled *The Analysis of EDTA in*

1 *Dried Bloodstains by Electrospray LC/MS/MS and*
2 *Ion Chromatography*, published in the *Journal of*
3 *Analytical Toxicology*, in November/December,
4 1997.

5 Q. And what is Exhibit 437?

6 A. Exhibit 437 is an article entitled *Determining*
7 *EDTA in Blood*, published in a journal entitled
8 *Analytical Chemistry*, in August, 1997.

9 Q. And what is the *Journal of Analytical Toxicology*?

10 A. This is one -- The *Journal of Analytical*
11 *Toxicology* is one of the most relied upon
12 professional journals for individuals in the
13 field of toxicology, but more specifically
14 forensic toxicology.

15 Q. And what is the *Journal of Analytical Chemistry*?

16 A. Analytical Chemistry is one of the most relied
17 upon professional journals for those that
18 practice analytical chemistry.

19 Q. And are those considered to be scholarly
20 authoritative publications in the scientific
21 community?

22 A. Absolutely.

23 Q. And do you consider those articles to be peer
24 reviewed?

25 A. Yes, they both are.

1 Q. And what do you mean by an article or publication
2 being peer reviewed?

3 A. Peer review, what that simply means is a
4 scientist that does research and then wants to
5 publish that research. What they will do is
6 write up a manuscript and submit it to the editor
7 of that particular journal.

8 Now in science, what we do, we don't
9 just publish because somebody sends us an
10 article, but the editor has the responsibility of
11 reviewing that article and finding experts in
12 that area of study to review the work that was
13 done in that particular manuscript.

14 So the editor sends that to reviewers,
15 it's done blindly so no one knows who the
16 reviewers are, except the editor. And the
17 reviewers then make comments. They critique the
18 manuscript, make suggestions for improvements in
19 the science and then send those comments back to
20 the editor who then passes those comments on to
21 the original author of the manuscript.

22 Then the author of that manuscript must
23 meet the recommendations and the suggestions of
24 the peer reviewers and send that back to the
25 editor who then makes a decision as to whether or

1 not it is suitable to be published. So it's a
2 check and balance to ensure that what is
3 published is actually scientifically valid
4 information.

5 Q. And did you develop your protocol, which you have
6 identified as Exhibit 434, that you developed for
7 this case, to test for EDTA in bloodstains, based
8 upon procedures in those two exhibits?

9 A. Yes, one of the things that we do, when we're
10 looking for a method to develop, when we're
11 deciding we need to develop a method that we
12 don't currently have a written standard operating
13 procedure for, we go to the literature, published
14 literature, and we try to find a method that's
15 been used and published by another group of
16 scientists.

17 And we basically find one that meets our
18 needs that we can apply with the instrumentation
19 that we have in our laboratory and that will meet
20 the needs for the particular analysis that we're
21 being asked to perform. And the first article I
22 referred to, Exhibit 436, from the *Journal of*
23 *Analytical Toxicology*, this article met those
24 needs.

25 We essentially based our entire method

1 on what was published in this article, with the
2 article, Exhibit 437, from Analytical Chemistry,
3 supporting the ideas that were presented in the
4 article from the *Journal of Analytical*
5 *Toxicology*.

6 Q. And did you make they improvements to the
7 procedures that you observed in the publication
8 from Analytical Chemistry and Analytical
9 Toxicology?

10 A. I believe we did make some improvements when we
11 put the method together and actually validated
12 it.

13 Q. And what were those improvements?

14 A. Well, one thing we did, we used a different type
15 of LC/MS for analysis. It was a newer technology
16 than what was used in the 1997 publication.

17 Additionally, we introduced what's
18 called an internal standard into our method. And
19 simply what this is is a -- it's a control that
20 we introduce into every sample as we're doing the
21 analysis. It's a control that tells us whether
22 or not the analysis, not for the whole batch of
23 samples that we're running at one time, but for
24 each individual sample, to show us that it
25 actually worked as it was supposed to work.

1 Additionally, we added one more
2 experiment than what they were suggesting to do
3 in this paper, that looked for the free form of
4 EDTA in not just one technique, but two
5 techniques.

6 Q. What was your thought process in approaching this
7 case that was sent to you?

8 A. If I can go to the presentation.

9 Q. Will this be helpful to the jurors?

10 A. It certainly will be.

11 Q. Then, please, do.

12 A. The thought process is simply there's going to be
13 one or two scenarios when you are dealing with
14 the notion that blood was planted from an EDTA
15 tube. First scenario is that bloodstain that is
16 found at a crime scene is either there from
17 someone bleeding, actively bleeding, such as
18 indicated here.

19 If that blood then dries and a crime
20 scene technician comes along and swabs that
21 particular bloodstain, they are going to put some
22 of the blood onto that swab. And then if that
23 swab is sent into the laboratory for doing an
24 analysis, the laboratory will look at that swab
25 and analyze it. That's scenario one.

1 Second scenario is if the blood is
2 actually planted from an EDTA tube, again, a swab
3 from a crime scene technician, that comes along
4 and samples that stain, again, that swab being
5 sent to the Crime Lab to analyze the stain. So,
6 essentially, if you look at that swab that's sent
7 to the laboratory, you have one of two potential
8 options here.

9 The first option is if you find the
10 presence of EDTA and the iron complex of EDTA on
11 that bloodstain, on the swab, and you don't find
12 any significant EDTA on your controlled swab, in
13 that area, remember I said you need to make sure
14 that a cleaning product wasn't used that would
15 confuse the interpretation of the results. If
16 that's the case, you find EDTA present on that
17 swab, then that's an indication that that blood
18 was indeed planted or came from a tube such as a
19 purple-topped tube.

20 The other scenario is that you do not
21 find EDTA, or that metal complex of EDTA, and
22 that would, then, suggest that the blood came
23 from active bleeding and not from an EDTA
24 preserved tube.

25 Q. And the blood tube that you have identified as

1 being the blood tube with the name Steven Avery,
2 is that a purple-topped tube blood?

3 A. Yes, it is.

4 Q. And in this case, did you follow the protocol
5 that you developed to test for these two
6 scenarios?

7 A. Yes, we did.

8 Q. First, would you, please, describe to the jury
9 the steps that you took to validate the
10 procedures that you used in this case.

11 A. Well, once we had ensured that all of our
12 instrument settings were correct, based, again,
13 on the paper from the *Journal of Analytical*
14 *Toxicology*, we performed the required validation
15 steps that are a requirement of our unit, based
16 upon the requirements of our laboratory, which,
17 again, are based on the requirements of our
18 accrediting body. And we performed an analysis
19 initially to determine what our detection limit
20 was for this particular analysis, basically, how
21 low could we go to find EDTA.

22 And we did that one of two ways. We did
23 it, first, by taking solutions of known
24 concentration of EDTA and continuously diluting
25 them, analyzing it, diluting it, analyzing,

1 diluting, until we got to the point that we could
2 no longer meet the requirements that we had
3 written into the protocol, as far as something
4 being a positive or a negative. When we reached
5 that lowest concentration, that's what's called
6 our detection limit.

7 Another test we did, though, is we took
8 a tube of blood that had been preserved with EDTA
9 and we put different size drops of blood on a
10 microscope glass slide and we let that dry and
11 then came along with a swab, swabbed it off, and
12 did, again, the analysis like we wrote in this
13 procedure, on those swabs, until the point that
14 we could no longer detect the presence of EDTA.

15 And as it turned out, with that
16 particular analysis, with the spot, the lowest
17 volume we can accurately measure is one
18 microliter of blood. And one microliter of blood
19 is the equivalent of about 1/50th of a drop. So
20 that's as low as we could accurately measure a
21 volume out onto the microscope slide. And we
22 were still able to find the presence of EDTA and
23 EDTA with the iron complex on that one microliter
24 drop.

25 So that, combined with the fact that our

1 decreasing concentration suggested that we could
2 go as low as 13 parts per million, with the
3 analysis, 13 parts per million, we knew where we
4 were as far as sensitivity with this particular
5 method.

6 The second thing that we did was to look
7 for the presence of interferences that would
8 cause us some confusion when we did the analysis.
9 Since we were dealing with blood, we looked at a
10 number of blood specimens that were not preserved
11 with EDTA. They had other preservatives in them
12 and blood that had no preservatives. And we ran
13 this through the same test. We put some of that
14 blood onto swabs, let it dry, and then ran
15 through the procedure.

16 That, again, was to demonstrate that
17 blood doesn't interfere with the test. None of
18 the components that are normally found in blood
19 interferes with the test.

20 The third thing we did was something
21 that's called matrix suppression, an evaluation
22 of matrix suppression. You are putting proteins
23 and all these other things into the instrument
24 when you are dealing with blood. So what we
25 wanted to also verify is that these other things,

1 not just that they didn't interfere and cause
2 signals that we shouldn't -- that would interfere
3 with our ability to detect or identify EDTA, but
4 also that the signal itself didn't drop because
5 we were dealing with blood.

6 Now, this is very important when you are
7 doing a method with LC/MS, particularly with the
8 technique, as this paper describes, electrospray
9 LC/MS. Because it's very well known that
10 electrospray LC/MS, this is one of the criticisms
11 of that particular analysis is that with some
12 analytes other things that are in the sample can
13 cause your signal in -- if it were this high, for
14 example, in water, when you run it in a
15 particular matrix, say like blood, or if you were
16 doing food, that those things, other chemicals
17 could cause that signal to drop.

18 So we had to evaluate that so we knew if
19 this was a significant drop in the signal. And
20 what we found is that at the very low
21 concentration, we had an average drop in signal
22 of about three percent. And at the very high
23 concentration, we had a drop in signal of about a
24 third. And, again, that's not very significant.

25 The next thing we did was to analyze for

1 carryover. And this is an important concept any
2 time we're doing chemistry, analytical chemistry,
3 is that when you shoot a sample that has a
4 chemical in it, you want to make sure that that
5 sample doesn't stick around, residual amounts of
6 that sample don't stick around and show up in the
7 next sample that's injected.

8 And this is a particular concern because
9 this paper, again, from the *Journal of Analytical*
10 *Toxicology*, talked about this being a problem
11 with EDTA. And their recommendation in this
12 paper, to avoid carryover to the next sample or
13 the sample that follows, was to extract blank
14 blood, unpreserved blood, and shoot that as a
15 negative in between samples that were associated
16 with the case.

17 So we evaluated carryover as part of our
18 validation. And we actually found, with the
19 system we were using today, that we had
20 essentially no carryover. We did not find any.
21 So I attribute that in part because technology
22 has changed and the tubing, etcetera, within the
23 instrument, is no longer made of metal, like it
24 was in 1997. We're using a high density plastic
25 material and that's probably why that occurred.

1 But those are the steps of the validation that we
2 undertook for this particular analysis.

3 Q. And after completing this validation, did you use
4 the LC/MS/MS technology, with the procedures that
5 you developed, to test for the presence of EDTA
6 in the samples that were sent to you in this
7 case?

8 A. Yes, we did.

9 Q. And after all these different types of analyses
10 that you performed, were you able to reach a
11 conclusion concerning the presence of EDTA in the
12 control swabs from Teresa Halbach's RAV4?

13 A. I was.

14 Q. And what was that conclusion?

15 A. We were not able to identify any presence,
16 whatsoever, of EDTA or the EDTA iron complex on
17 the controlled swabs, any of the controlled swabs
18 from the RAV4.

19 Q. After all these different types of analyses that
20 were performed, were you able to reach a
21 conclusion concerning the presence of EDTA on the
22 blood swabs that you tested from Teresa Halbach's
23 RAV4 that were sent to you in this case?

24 A. Yes, sir. Yes, I was.

25 Q. And what was that conclusion?

1 A. Again, we were not able to identify any
2 indication of the presence of EDTA or EDTA bound
3 to iron in any of the swabs that were submitted
4 to our laboratory that contained blood and were
5 reported to us as being collected from the RAV4.

6 Q. And after all these different types of analysis
7 that you performed, were you able to reach a
8 conclusion concerning the presence of EDTA in the
9 purple-topped tube that came from Steven Avery?

10 A. Yes, I was.

11 Q. And what is that conclusion?

12 A. That the tube of blood, the purple-stoppered tube
13 of blood that was reported to have come from
14 Steven Avery, did indeed contain significant
15 amounts of EDTA in it.

16 Q. Dr. LeBeau, based upon your training and
17 experience, and based upon your test results
18 using the LC/MS/MS technique, and based upon all
19 the data that you reviewed and all the
20 compilations that were done in this case, do you
21 have an opinion, to a reasonable degree of
22 scientific certainty, whether the bloodstains
23 from Teresa Halbach's RAV4, that you tested, came
24 from the vial of blood of Steven Avery that was
25 in the Manitowoc County Clerk of Court's Office?

1 A. Yes, I do.

2 Q. And what is that opinion?

3 A. It's my opinion that the bloodstains that were
4 collected from the RAV4 could not have come from
5 the EDTA tube that was provided to us in this
6 case.

7 Q. And, therefore, which scenario did your testing
8 answer in this case?

9 A. Of the scenarios on the board, I think our
10 results rule out one of those two possibilities.
11 It would be my opinion that it could not have
12 been from an EDTA tube.

13 Q. And, therefore, there was no planting of
14 evidence?

15 ATTORNEY BUTING: Objection, way over
16 broad.

17 THE COURT: Without any limitation, yes,
18 sustained. I will sustain the objection. I
19 think -- I'm sustaining the objection.

20 Q. (By Attorney Gahn)~ In accordance with the two
21 scenarios that you set out in your thought
22 process in analyzing this case, did the planting
23 scenario prove true?

24 A. No, it did not.

25 ATTORNEY GAHN: Thank you. That's all I

1 have.

2 ATTORNEY BUTING: A break?

3 THE COURT: Yeah. Members of the jury,
4 would you like a full break or a stretch break at
5 this time. Stretch, is that enough? Okay. We'll
6 take a stretch break at this time. You may be
7 seated.

8 ATTORNEY GAHN: Before I officially pass
9 the witness, I guess I would like to just introduce
10 the exhibit of the report of Dr. LeBeau from the
11 Crime lab, which has been marked as Exhibit 435.

12 Q. If you would just identify that.

13 A. Yes, Exhibit 435 is the laboratory report I
14 prepared for this case.

15 Q. And does that contain your findings and
16 conclusions in this case?

17 A. It does, yes.

18 ATTORNEY GAHN: Thank you.

19 THE COURT: Is the State moving for
20 admission of any exhibits at this time?

21 ATTORNEY GAHN: Yes, I would move for
22 admission of Exhibit 475 to 478, 434 through 437,
23 and 433.

24 ATTORNEY BUTING: No objection.

25 THE COURT: Very well, those exhibits are

1 admitted. And, Mr. Buting, you may begin.

2 ATTORNEY BUTING: This PowerPoint isn't an
3 exhibit, is it?

4 ATTORNEY KRATZ: It is.

5 THE COURT: Which number?

6 ATTORNEY BUTING: I will object to that,
7 but the others I won't.

8 THE COURT: What number is that?

9 THE CLERK: 466.

10 ATTORNEY FALLON: 465.

11 THE CLERK: 465 is the CD Rom.

12 THE COURT: All right. Do you wish to be
13 heard, later, outside the presence of the jury?

14 ATTORNEY BUTING: Later.

15 THE COURT: The other uncontested exhibits
16 are admitted at this time.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY BUTING:

19 Q. Good afternoon, Doctor.

20 A. Good afternoon.

21 Q. I'm sure you're anxious to get back to Virginia
22 where it's not quite so cold.

23 A. It would be nice, yes.

24 Q. You have your curriculum vitae up there with you?

25 A. Yes, I do.

1 Q. And we had a little bit of talk about your
2 expertise in drug facilitated rape cases, right?

3 A. That's correct.

4 Q. Also sometimes called GHB drugs, one of those
5 types of drugs?

6 A. One of the 60 different drugs used, yes.

7 Q. Okay. That's the one that maybe most people have
8 heard of; it's the one I have heard of, okay.

9 A. Okay.

10 Q. When you are going through your CV you talked
11 about how you authored or coauthored 15 to 20
12 articles?

13 A. That's correct.

14 Q. How many of those articles did not involve drug
15 facilitated rape?

16 A. Seventeen.

17 Q. Okay. And how many of those involved postmortem
18 fluids, analysis of postmortem fluids; do you
19 know what I'm talking about, from deceased
20 bodies?

21 A. Yes, I know what you are talking about. I'm
22 sorry, did refer to postmortem or did not?

23 Q. Did.

24 A. Okay. I don't know that I can answer that
25 because -- If I can elaborate?

1 Q. Well, go ahead.

2 A. Well, urine can be a fluid from an autopsy, a
3 postmortem fluid, or urine can be from a living
4 person. So an article I published about urine,
5 it would be hard to say if that's meant to be for
6 postmortem or living people. The same with
7 blood. Now, obviously a liver sample or a brain
8 sample, must be from a deceased individual.

9 Q. Okay. Would you agree or disagree that the
10 majority of your presentations and the majority
11 of your publications involve either drug
12 facilitated sexual assaults or the analysis of
13 postmortem fluids?

14 A. I would disagree.

15 Q. Okay. You do have some experience in analysis of
16 postmortem fluids, right?

17 A. I certainly do.

18 Q. You certainly do, yes. And, in fact, one of your
19 more recent articles you published, holds
20 yourself out as an expert in the area of
21 postmortem fluid analysis, does it not?

22 A. I'm now sure I know --

23 Q. Are you --

24 A. -- what article you are referring to.

25 Q. Okay. Are you an expert, do you consider

1 yourself an expert in the analysis of postmortem
2 fluids?

3 A. I do, yes.

4 Q. Okay. We'll return to that in a moment. You
5 also give quite a few presentations. Just this
6 year alone, out of -- looks like out of nine --
7 just one moment, please. Out of nine times that
8 you have gone around presenting talks this year,
9 six of those involve drug facilitated sexual
10 assaults, right? In 2006, I'm sorry.

11 A. Yes, six of the presentations that I gave in 2006
12 were on the topic of drug facilitated crimes and
13 drug facilitated sexual assaults.

14 Q. Okay. So would you agree with me that that's one
15 of your real specialties?

16 A. Yes.

17 Q. And that's what you are often sought after for,
18 by conferences?

19 A. It's an area that I am asked to speak on quite
20 frequently, yes.

21 Q. Have you ever, in your life, been asked to give a
22 presentation on EDTA interpretation in
23 bloodstains?

24 A. No, I have not.

25 Q. You are not sought off -- you are not a sought

1 after presenter on that particular topic, are
2 you?

3 A. No, sir, I'm not.

4 Q. Have you ever before testified, in a court of
5 law, as an expert who is giving opinions about
6 the interpretation of EDTA and bloodstains?

7 A. No.

8 Q. This jury is privileged to be the first to hear
9 your wisdom on this topic; isn't that right?

10 ATTORNEY GAHN: Objection, your Honor, to
11 the form of the question.

12 THE COURT: I will sustain the objection.

13 Q. (By Attorney Buting)~ This jury is privileged to
14 be the first to hear any opinions you have ever
15 expressed in court on the analysis of EDTA in
16 bloodstains, correct?

17 A. I wouldn't say they are privileged, but I would
18 say that this is certainly the first time I'm
19 testifying about EDTA in a bloodstain, that's
20 correct.

21 Q. And one reason is, this is the first case you
22 have ever been asked to test -- to test for EDTA
23 in bloodstains, isn't it?

24 A. That is correct.

25 Q. But some of your colleagues at the FBI Laboratory

1 did have the pleasure of testifying on that topic
2 once before, didn't they?

3 A. Yes, they did.

4 Q. In the O.J. Simpson case you mentioned, correct?

5 A. Yes.

6 Q. And I believe you said that that, in fact, in 19
7 -- that's 10 years now, 10 years ago, right?

8 A. At least 10 years ago, yes.

9 Q. At least 10 years ago. Okay. So in the last 10
10 years, nobody has come to your lab and asked for
11 your lab to give us the benefit of your knowledge
12 and your ability to test for EDTA in bloodstains;
13 isn't that right?

14 A. It hasn't happened to me personally, not to my
15 knowledge.

16 Q. Okay. And might that be because your lab screwed
17 up in the O.J. Simpson case?

18 A. No, we did not screw up, as you say, in the O.J.
19 Simpson case.

20 Q. Well, in the O.J Simpson case, correct me if I'm
21 wrong, tests that your lab did, found EDTA in a
22 sock, right?

23 A. That is correct, yes.

24 Q. And the defense used your test to help acquit
25 Mr. Simpson, didn't they?

1 A. Could you repeat that.

2 Q. The defense used your test results in the O.J.
3 Simpson case, your lab test results, to help
4 acquit Mr. O.J. Simpson of that crime, didn't
5 they?

6 A. That I don't know. I have no idea. I wasn't the
7 one that performed any of the analysis of EDTA,
8 as I testified to --

9 Q. Sir --

10 A. -- in the O.J. Simpson case. I don't know how --
11 I don't know that the defense used the results or
12 the prosecution. I don't recall that.

13 Q. Were you working the FBI Lab during the O.J.
14 Simpson case?

15 A. Yes, I was. I had been there approximately a
16 year.

17 Q. And you would have us believe that you weren't
18 following what was going on with your lab's
19 testimony in the O.J. Simpson case?

20 A. Actually, while that examiner was testifying, I
21 was out on my own testimony at a bank robbery
22 trial in Los Angeles, myself.

23 Q. Ah, so you --

24 A. I couldn't --

25 Q. So --

1 A. I'm sorry, so I couldn't really monitor the
2 actual testimony in that case.

3 Q. Sure, you couldn't watch it while it was going
4 on, is what you are saying, right?

5 A. That's correct.

6 Q. And are you telling us that you didn't follow up
7 afterward, you didn't hear all of the discussion
8 in the news about your lab's involvement in that
9 case?

10 A. I heard what the media reported, yes. And I
11 heard what our own chemist reported.

12 Q. Sure, you talked about it in the lab, didn't you?

13 A. Yes.

14 Q. You sat around the water cooler or the lunch
15 table and you talked about it, right?

16 A. Yes, we did.

17 Q. And, more than that, shortly after the O.J.
18 Simpson case, your unit, the chemistry unit of
19 the FBI was accused of misconduct or malfeasance
20 of some sort that resulted in an audit by the
21 Inspector General of the United States of
22 America; isn't that right?

23 A. No, that's not correct.

24 ATTORNEY GAHN: Objection, your Honor, as
25 to relevancy.

1 THE COURT: Over --

2 ATTORNEY BUTING: It's foundation.

3 THE COURT: Overruled.

4 Q. (By Attorney Buting)~ Your answer was no?

5 A. No, that's incorrect.

6 Q. Okay. Have you read an inspector general's
7 report from 1999 that involved an audit of your
8 unit?

9 A. I have read a portion of the inspector general's
10 report, that was a report on their audit of the
11 FBI Laboratory.

12 Q. Okay. And part of that review involved your
13 unit, the chemistry unit, did it not?

14 A. Not to my recollection. It involved
15 investigation of one chemist within the unit,
16 same individual who worked on the FBI -- sorry --
17 on the O.J. Simpson case. He was specifically
18 targeted within that investigation; it wasn't our
19 entire unit.

20 Q. Okay.

21 A. There were units within the FBI --

22 Q. Sure.

23 A. -- laboratory, though, that do chemical analysis
24 that were looked at as a whole unit, but it was
25 not the Chemistry Unit to my recollection.

1 Q. Do you know Roger Martz?

2 A. I do, yes.

3 Q. Was he one of your colleagues at the FBI Lab in
4 1997?

5 A. Yes, he was.

6 Q. Did he testify in the O.J. Simpson case?

7 A. Yes, he did.

8 Q. Is he working in your unit any more?

9 A. No, he's retired from the FBI.

10 Q. Took early retirement, huh?

11 A. That would be personnel information that I
12 wouldn't be privy to.

13 Q. Oh, of course. Well, Mr. Martz, if you read that
14 portion of this inspector general's report, was
15 the target of complaints about the performance
16 of -- or about his performance on EDTA testing in
17 the O.J. Simpson case, was he not?

18 A. I believe that Mr. Martz was -- there were a
19 number of allegations made by the individual who
20 made allegations against Mr. Martz. And there
21 were approximately 10 individuals within the
22 whole FBI Laboratory that this Dr. Fred
23 Whitehurst made allegations against. Those
24 individuals were looked at because of these
25 allegations, the inspector general came in and

1 looked into every allegation that was made by Mr.
2 -- or Dr. Whitehurst.

3 Q. Sir, I'm going to stop you here for a second.

4 A. Yes, sir.

5 Q. Are you telling us now that you read the entire
6 report?

7 A. No, as I -- No, sir.

8 Q. Okay.

9 A. But I do know the history.

10 Q. All right. Well, we'll get into it, question by
11 answer -- question and answer, okay.

12 A. Yes.

13 Q. All right. Mr. Martz is one of the esteemed
14 authors of this Exhibit 436, isn't he?

15 A. Yes, he is.

16 Q. In this esteemed publication of the *Journal of*
17 *Analytic Toxicology*, right?

18 A. It's the *Journal of Analytical Toxicology* and he
19 is one of the authors.

20 Q. Forgive me. He is one of the authors, one of the
21 four authors of this article upon which you
22 primarily based your protocol for EDTA testing in
23 this case, right?

24 A. That's exactly right, yes, sir.

25 Q. The other three authors are all FBI employees,

1 aren't they?

2 A. Yes, they are.

3 Q. And this -- In fact, this entire article is based
4 on the protocol that was developed for the O.J.
5 Simpson case, by the FBI Lab, right?

6 A. I believe part of it is, but I don't know that
7 the entire article is based on what was done in
8 the O.J. Simpson --

9 Q. Okay.

10 A. -- case.

11 Q. Well, the article was written after the O.J. case
12 was done, right?

13 A. Approximately two years afterwards.

14 Q. And the article, in fact, is an effort to explain
15 to the rest of the scientific world how you guys
16 screwed up when you tested O.J. Simpson's --

17 ATTORNEY GAHN: Objection, your Honor, to
18 the form of the question and the relevancy of this.

19 THE COURT: It's cross-examination, I will
20 allow the question and I will allow the witness to
21 explain and answer.

22 A. Could I get the question again, please?

23 Q. This article was written by these four agents
24 from the FBI to explain to the rest of the
25 scientific world how you guys, your lab, I should

1 say, managed to screw up in the O.J. Simpson
2 case?

3 A. Well, that's incorrect, on a number of levels,
4 sir. First of all, those are not agents at the
5 FBI Laboratory. The only one that was was Roger
6 Martz. The others are Ph.D. scientists,
7 chemists, or Ph.D biologist. That article was
8 not written as any form of excuse, or
9 explanation, for what our laboratory for -- in
10 the O.J. Simpson case.

11 That was simply a group of researchers
12 who had the lead, published group lead authors.
13 Dr. Mark Miller, as well as Dr. Bruce Mccord.
14 They are not in our case working area at the
15 laboratory. They never work on cases. They are
16 in our research unit. They are the lead authors.
17 They are the ones that did the research. They
18 are the ones that published it.

19 It is quite common for those researchers
20 to give credit to individuals in the case working
21 units who had the original idea.

22 Q. Okay. So --

23 A. So that is why, I'm sure, Mr. Martz's name is on
24 that article. He had nothing to do with the
25 actual work done.

1 Q. Oh, really?

2 A. Publication.

3 Q. So these authors, you are telling us that they
4 put Mr. Martz's name on here when he didn't do
5 anything at all to do with this study or this
6 article?

7 A. I believe that to be true.

8 Q. How about Mr. Bruce Bedowle.

9 A. Dr. Bruce Bedowle, he is an expert statistician
10 and at the time was, as I recall, the ranking
11 manager within the research unit. Again, it's a
12 respect thing where you include your supervisor
13 in the list of authors.

14 Q. Okay. Let's talk for a minute about how the
15 protocol was developed for the O.J. Simpson case.
16 All right?

17 A. Yes.

18 Q. Just as in this case, a request was made or
19 efforts were started to create a new type of
20 test, mid-trial, right?

21 A. Well, again, sir, I didn't do the testing in the
22 O.J. Simpson trial. I don't have all the
23 intimate details as to what conversations
24 occurred, when the request came in. I was a
25 newly qualified examiner in the FBI Laboratory.

1 I had been there approximately a year. So I
2 don't have knowledge about the intimate details
3 that you are asking there.

4 Q. Well, I didn't realize I was asking intimate
5 details, but let's rephrase it so I'm not,
6 clearly. Was the protocol used in the O.J.
7 Simpson case in existence in the FBI Lab before
8 that trial began?

9 A. Not to my knowledge, it was not.

10 Q. It was developed in a hurry while the trial was
11 going -- ongoing, right?

12 A. I don't know when they started to develop the
13 pro --

14 Q. How long did it take to develop the --

15 A. -- protocol.

16 Q. How long did it take to develop the protocol in
17 the O.J. Simpson case?

18 A. I don't know.

19 Q. Okay. Well, Exhibit 437, *Determining EDTA in*
20 *Blood*, another scholarly article you refer to,
21 right?

22 A. Yes, it is.

23 Q. Respected in the field?

24 A. Yes, it is.

25 Q. By two authors, at that time associated with

1 Cornell University, right?

2 A. That's correct.

3 Q. And they talked about, and part of this article
4 talks about, the FBI Lab experience in developing
5 the protocol for testing EDTA in bloodstains,
6 that was used in the O.J. Simpson case, right?

7 A. I would have to review the article again to
8 answer that question.

9 Q. Are you serious, you don't know what this says?
10 You don't know if this refers to the O.J. Simpson
11 case?

12 A. Yes, I am serious. And I asked to review the
13 portion that you are referring to.

14 Q. Go right ahead. It's on the first page, Doctor.

15 A. What was your question, again?

16 Q. Does that refresh your recollection?

17 A. Yes.

18 Q. And do these authors say, quote, What was wrong
19 with the laboratory testing? First, it was not
20 clear whether the method had ever been used
21 before. Most likely the method was developed
22 quickly, under a great deal of time pressure. In
23 retrospect, FBI chemists now believe that the
24 EDTA detected may have been injection carryover
25 in the LC/MS/MS instrumentation; do you recall

1 reading that?

2 A. I do. I can't verify that that's it. You said
3 quote, I can't verify that, but it sounds like
4 the context is very much what I recall reading in
5 that --

6 Q. Okay.

7 A. -- paragraph.

8 Q. Okay. So these authors pointed out that the FBI
9 effort to develop a protocol for testing EDTA in
10 bloodstains for the O.J. Simpson case was
11 hurried?

12 A. No, sir, they said it appeared to have been
13 hurried. Those authors were not present in our
14 laboratory when that method was developed. I
15 know that to be a fact.

16 Q. Okay. So you would like to criticize these
17 authors --

18 A. No.

19 Q. -- this publication, now?

20 A. No, sir. The portion of that article that we
21 relied upon was the scientific portion, not the
22 narrative.

23 Q. Well --

24 A. It's the science within the latter portion of the
25 article refers to the use of an instrumental

1 technique called capillary electrophoresis, mass
2 spectrometry, mass spectrometry. Again it's a
3 technique --

4 Q. Sir --

5 A. -- that analyzed for EDTA.

6 ATTORNEY BUTING: May I ask a question?
7 This is cross-examination, Judge.

8 THE WITNESS: I thought I was responding.

9 ATTORNEY BUTING: No, you're not.

10 THE COURT: Well, the answer goes a little
11 bit beyond what the question was, so.

12 Q. (By Attorney Buting)~ So --

13 THE COURT: Mr. Buting.

14 Q. (By Attorney Buting)~ Okay. So, Exhibit 437 that
15 you considered, that you offered here on direct
16 as one of only two publications that you
17 considered while developing this protocol, you
18 say that you considered the portion of science in
19 the latter part of it, but you ignored the
20 portion in the narrative at the beginning that
21 criticized the hurried nature of the development
22 of a protocol; is that right?

23 A. Yes, that's correct. It was irrelevant in my
24 opinion.

25 Q. And you know why -- Well, let me ask it this way.

1 It was irrelevant to you because, in this case,
2 you were under a time crunch, weren't you?

3 A. Yes, I was.

4 Q. Let's talk about that. Oh, and by the way, just
5 to make it absolutely clear, these two
6 publications that you referred to, Exhibit 436
7 and 437, were both published in 1997, right?

8 A. Yes, they were.

9 Q. And both of them discuss the use of an EDTA test
10 in the O.J. Simpson case, right?

11 A. Yes, they do.

12 Q. And they don't discuss the use of an EDTA test in
13 any other case, right?

14 A. No, they don't.

15 Q. Because, as a matter of fact, no one has ever
16 presented to any jury, anywhere, not just you, no
17 one has ever presented a test for EDTA in
18 bloodstains in a criminal trial before, other
19 than the O.J. Simpson case?

20 A. I don't know that that's true.

21 Q. Can you tell me another case in this country
22 where an expert has gotten up in court and
23 expressed an opinion that they are able to
24 determine the presence or lack of EDTA, in a
25 bloodstain, in a criminal jury trial?

1 A. No, I can't, but I don't know that it's true that
2 it hasn't happened. I haven't done a search of
3 the legal system to make that determination.

4 Q. Oh, really?

5 A. Really.

6 Q. So when you were asked to develop a protocol in
7 this case, are you telling us, then, that you
8 didn't search the public domain to see if maybe
9 someone else had already invented the wheel?

10 A. I searched the scientific literature, as I
11 indicated earlier, to see if there were published
12 methods in peer review journals that are
13 scientifically sound, in order to base my method
14 upon. I didn't search the so-called public
15 domain for such a method.

16 Q. Okay. But in any event, you found no other
17 reference in any other scientific journal across
18 whatever disciplines there may be, you found no
19 other reference to any other case or instance
20 where a jury had been presented an expert opinion
21 by somebody who says that they can determine
22 whether or not EDTA exists in a bloodstain,
23 correct?

24 A. Again, I did not search, like, legal proceedings.

25 Q. Perhaps my question was too long. Let's break it

1 down. You searched the entire scientific domain
2 of research articles, right?

3 A. Yes, I did.

4 Q. And in that entire search, I'm talking not just
5 chemistry, but any kind of forensic science
6 journals, right? You looked at those?

7 A. Yes, I did.

8 Q. Okay. Any kind of physics journals, or whatever?

9 A. I didn't look at physics journals.

10 Q. Whatever scientific domain you looked at, you
11 found no other case where anyone had done what
12 you are doing here today and come into court and
13 presented an opinion about whether you can
14 determine EDTA in a bloodstain other than the O.
15 J. Simpson case; correct?

16 A. That's correct.

17 Q. All right. Now, you were first contacted by
18 someone on the prosecution team in this case in
19 December, late December, of 2006, correct?

20 A. That's correct.

21 Q. Let me go back. I'm sorry, I need to clear up
22 one thing in this Exhibit 437 to 436, the FBI --
23 I will bring it back to you. Because we talked
24 about carryover, right?

25 A. Yes, we did.

1 Q. And the authors of that particular study
2 apparently believe that carryover explained why
3 they were -- why they found any kind of EDTA in
4 Mr. O.J. Simpson's sock, right?

5 A. Again, I don't recall that specific detail being
6 in this paper. I think, yes, they talked about
7 carryover as being a problem in the O.J. Simpson
8 case. I don't know if that was with a sock, or
9 if it was the bloodstain itself, or a swab, or --

10 Q. All right.

11 A. -- or what the evidentiary --

12 Q. That's fair.

13 A. -- material was.

14 Q. That's fair. I don't expect you to remember the
15 particular evidentiary item. But you understand,
16 though, that the conclusion was that carryover
17 was the result of the EDTA reading. EDTA
18 positive came from carryover, right?

19 A. There was a small signal for EDTA, as I recall,
20 that was attributed to a previous injection of
21 EDTA; again, carrying over into a future
22 injection.

23 Q. All right. So, then, if carryover explained that
24 small signal of EDTA in whatever piece of
25 evidence that was in Mr. Simpson's case, then, in

1 fact, there may not have been any EDTA in that
2 piece of evidence, right?

3 A. That's correct, yes.

4 Q. And, then, if there was not EDTA in that piece of
5 evidence, when the FBI concluded that there was,
6 then the FBI lab was wrong in that case, right?

7 A. I don't know that the FBI Laboratory concluded
8 that there was EDTA in that case. Again, I never
9 read the report that was issued in the O.J.
10 Simpson case. I didn't do the work myself. I
11 don't know what the actual report was. And I
12 don't know that they claimed there was a
13 significant amount of EDTA.

14 Q. All right. Well, let me ask it this way. Either
15 the protocol that was used in that case was
16 faulty, or the work performed was faulty, in
17 order for there to be this report of a finding of
18 EDTA on the evidence sample, right?

19 A. No, I disagree.

20 Q. Well, which is it?

21 A. Well, if I can elaborate?

22 Q. If you would like to, go right ahead.

23 A. Okay. What I believe is that the method was not
24 well validated, quite frankly.

25 Q. All right.

1 A. That's my understanding.

2 Q. Okay. I will accept that.

3 THE COURT: Mr. Buting, I think I'm going
4 to stop you there.

5 ATTORNEY BUTING: Okay. I see it's 2:30.

6 THE COURT: It is 2:30. So members of the
7 jury we'll take our break at this time. I will
8 remind you again, as usual, not to discuss the case
9 during the break.

10 (Jury not present.)

11 THE COURT: You may be seated. Counsel, I
12 will ask you to report back at quarter to three.

13 ATTORNEY BUTING: Okay.

14 (Recess taken.)

15 THE COURT: Mr. Buting, you may resume.

16 ATTORNEY BUTING: Thank you, your Honor.

17 **CROSS-EXAMINATION, CONTD.**

18 BY ATTORNEY BUTING:

19 Q. Okay. Now, sir you were first contacted by
20 somebody from the prosecution team in late
21 December of 2006, right?

22 A. If I could correct some testimony I made earlier;
23 I realized I made an error. And then I can
24 answer your question; is that all right?

25 Q. Well, we can wait for redirect, but -- what -- Is

1 it on one of the articles that you were referring
2 to?

3 A. It was in response to one of your questions.

4 Q. And what was it?

5 A. You asked me earlier, as I recall, if both these
6 articles referred to the testing in the O.J.
7 Simpson case. And during the break I reviewed
8 the article from the Journal of Analytical
9 Chem -- Toxicology and realized that I had
10 mistakenly agreed with your statement. This
11 article does not refer to the O.J. Simpson case.
12 So I wanted to set that -- the record straight.

13 Q. Oh. Okay. Well, let's -- let's just, for a
14 couple minutes, follow up on that. This article
15 is written, though, by four FBI employees, right?

16 A. Yes, it is.

17 Q. Including Mr. Martz, right?

18 A. Yes. I'm not changing my testimony on that, sir.

19 Q. Okay. Who testified in the O.J. Simpson case,
20 right?

21 A. Mr. Martz.

22 Q. And the article discusses the test on a sock; is
23 that right?

24 A. You will have to show me that, sir, I couldn't
25 find it in that article.

1 Q. Let me see if I can find it in mine. I'm going
2 to have Mr. Strang take a moment and look at it
3 and then we can move on and not bore the jury,
4 okay?

5 A. Yes, sir.

6 Q. All right. He's quicker than I am. If you would
7 take a minute and look at page 526, begin with
8 the circling of the word, but that will help
9 refresh your recollection.

10 A. Okay. The word "a sock" is circled, but there is
11 no reference to the O.J. Simpson case. And as I
12 -- I said, I agreed with your statement that it
13 referred to evidence in the O.J. Simpson case and
14 I need to withdraw that agreement because it --
15 to set the record straight.

16 Q. Well, do you know of any other case in the
17 mid-nineties when the FBI testified about EDTA on
18 some sock? Yes or no? Do you know of any other?

19 A. No.

20 Q. No, right?

21 A. No.

22 Q. Okay. And maybe just so the jury is a little bit
23 -- can understand your concerns about your
24 testimony being accurate, there's something
25 called a court testimony monitoring practice that

1 the FBI is engaged in, right?

2 A. That's correct.

3 Q. And the FBI, at least for the last number of
4 years, has a practice of following up what their
5 agents or lab people testify when they come to
6 court, right?

7 A. That's correct.

8 Q. And what you say here today, to this jury, could
9 be followed up and reviewed by your supervisor?

10 A. That's right. Our testimonies are reviewed as
11 part of our accrediting body's requirement.

12 Q. And so you want to be absolutely sure that you
13 don't say something that may be construed
14 negative about the bureau, by your supervisors,
15 unless it's true, right?

16 A. Sir, I just want to make sure I'm telling the
17 truth if I'm under oath.

18 Q. All right. If I can return, my question was,
19 that you were first contacted by somebody in the
20 prosecution team in late, very late December of
21 2006, right?

22 A. Yes, sir.

23 Q. Approximately two months ago, correct?

24 A. Approximately two and a half months ago.

25 Q. All right. And that was the first you had ever

1 heard about this case, or was it?

2 A. Yes, it was the first I had heard of this case.

3 Q. And as you thought about, well, geez, what can I
4 do here, to do this test, you thought maybe an
5 LC/MS/MS instrument might be an appropriate
6 instrument to try and run a test for this
7 particular chemical; is that fair?

8 A. Not in December of 2006.

9 Q. All right. Let me move forward, just make it a
10 little broader, then. As you later committed to
11 do a protocol or test in this case, you thought
12 about that particular instrument, right?

13 A. Yes.

14 Q. And that instrument, as you said, has been used
15 for decades, right?

16 A. Yes.

17 Q. It has commercial applications?

18 A. Yes, it does.

19 Q. So, for instance, the petroleum industry may use
20 it to determine the, you know, chemical
21 compositions of products that they are putting
22 out?

23 A. Perhaps.

24 Q. Pharmaceuticals I think you mentioned. One of
25 the things that they have to do is make sure

1 that, according to FDA regulations, that the
2 drugs that they are marketing contain the
3 chemical makeup that they represent, right?

4 A. The pharmaceutical industry does use LC/MS and
5 LC/MS/MS techniques.

6 Q. Sure. And they use it for all kinds of reasons
7 including testing how long their drugs may last,
8 right?

9 A. Generally, no, they tend to use the LC/MS and
10 LC/MS/MS for metabolite studies and looking for
11 what the body converts these drugs into to
12 monitor.

13 Q. I see. Okay.

14 A. Studies that are done.

15 Q. So they are looking -- They use the instrument to
16 see if -- how the drug breaks down into some
17 other metabolite, you say, right?

18 A. That's exactly right.

19 Q. And they want to be sure that there's not side
20 affects, that this drug breaks down into
21 something that might be toxic, for instance,
22 right?

23 A. That be might one -- one thing that they are
24 looking for, yes.

25 Q. And they are looking to see that the drugs don't

1 break down too quickly, or they are just trying
2 to find out how quickly the drug will break down,
3 for one thing, right?

4 A. That's part of it, yes.

5 Q. Expiration dates, that's what the whole point of
6 having those kinds of things on drug labels and
7 what not, right?

8 A. Well, I don't know that they are studying it for
9 expiration dates. Again, they are studying it
10 for metabolites, what the body is converting it
11 into. Shelf life, which I believe you were
12 referring to there, is a completely separate
13 issue.

14 Q. Okay. But that's an issue as well, that they
15 want to make sure that their drugs are, you know,
16 working long enough to be effective; in other
17 words, someone doesn't take a drug out of their
18 medicine cabinet five years later and it's no
19 longer -- it's way past the expiration date or
20 something?

21 A. And for some drugs they may need to do that, to
22 verify that it's -- it's stable.

23 Q. Okay. So you settled on this particular
24 instrument but, before you got there, the person
25 you spoke to was Mr. Gahn, correct?

1 A. That is correct, yes.

2 Q. And what you told him in December, when he asked
3 if you could run a test to see if there was EDTA
4 in a bloodstain, was that it would take you three
5 to four months before you would be able to get
6 him any results, right?

7 A. Yes, that's what I told him.

8 Q. Okay. And that that was, in part, because you
9 knew that you would -- it had been so long since
10 the O.J. case, the last time your lab had done
11 this kind of a test, that you would need to
12 develop or retest some protocol, right?

13 A. That we would need to validate the protocol in
14 order to use it.

15 Q. Sure. And that you would have to, in order to do
16 that, go through a number of tests and what not
17 in order to satisfy the validation process that
18 you thought was necessary, right?

19 A. That's exactly right, yes.

20 Q. And so you told them about three to four months?

21 A. That's the standard estimate I give. When we --
22 we're asked if we can develop a new method, my
23 standard response is three to four months and
24 that's what I recall responding to Mr. Gahn's
25 request.

1 Q. Okay. So when you say you get these non-routine
2 cases and you are asked to develop these
3 protocols, typically it takes three to four
4 months?

5 A. It depends, quite honestly.

6 Q. But that's the standard answer you give?

7 A. It's the standard answer.

8 Q. Okay. And he asked you -- he told you, well,
9 that was not going to work with the trial date
10 that was set in this case, right?

11 A. He relayed to me that there was an upcoming trial
12 date and indicated that they may need the results
13 faster in order for it to be used in this case.

14 Q. Okay. And yet, in that discussion with Mr. Gahn,
15 you still could not promise to do anything
16 quicker than three to four months, right?

17 A. In my recollection, at the time was, I actually
18 suggested that they try to find another
19 laboratory to do the analysis. That was my
20 initial response because we had the holidays
21 coming up, this was right before Christmas. And
22 most of my staff is gone for -- at the end of the
23 year, we lose our leave if we don't take off and
24 use it.

25 So, you know, realistically, looking at

1 the scenario we were represented with, I thought
2 three to four months was probably a fair
3 estimate. And the other thing we always have to
4 keep in mind, that we're the primary federal law
5 enforcement investigative body. So if a bomb
6 goes off, if there's a terrorist attack --

7 Q. Sir --

8 A. There's --

9 Q. Excuse me. We would like to get you back to
10 Virginia some time soon so. The question didn't
11 require that long an answer. If you would just
12 try and focus on the questions and give us some
13 answers.

14 A. I was trying to, sir, I'm sorry.

15 Q. Okay. And if you need to you, I mean, you will
16 have an opportunity with Mr. Gahn, you can
17 elaborate your answers and explain them further.
18 And if I cut you off and it's unfair, just tell
19 me, okay.

20 A. Yes, sir, I will.

21 Q. All right. Thank you. So, you gave Mr. Gahn the
22 standard response. Then, in January, you were
23 contacted again by someone else, about this case,
24 to see if you could do something a little
25 quicker, right?

1 A. I was, yes.

2 Q. And that was the FBI office or -- Who was that,
3 U.S. Attorney's Office, or what?

4 A. It was our local FBI Office.

5 Q. In Milwaukee?

6 A. Green Bay.

7 Q. Green Bay, okay. And after speaking with them
8 and learning something about the case and the
9 trial date that was starting February 5th, you
10 said, oh, well, I think we can do it faster than
11 that, right?

12 A. No, sir.

13 Q. You didn't?

14 A. No.

15 Q. Did you say you would try to do it faster; is
16 that the difference?

17 A. I told the agent that called me from our field
18 office in Green Bay, I explained to him that I
19 had had numerous conversations with Mr. Gahn and
20 I had agreed that we would accept the evidence
21 and analyze it for this case, after we had
22 developed a method and validated that method.

23 Q. Okay. But you told Mr. Gahn, or you told this
24 FBI agent in Green Bay, that you thought you
25 would be able to do all of that while the trial

1 was going on and you would be able to get results
2 by the end of the trial, right?

3 A. No, sir. I told him that we would do our best to
4 get the work completed in the time requirements
5 that were needed.

6 Q. Okay. And you knew that those time requirements
7 were that it's, what, early March now, you knew
8 that you were going to have to get something in
9 probably by around the end of February, right?

10 A. I believe the deadline we were given was,
11 essentially this week, to have the actual results
12 in.

13 Q. Okay. Actually, March 9th, I think, right?

14 A. That sounds familiar, yes.

15 Q. Okay. So you beat the deadline, right?

16 A. We did, yes.

17 Q. Because your actual report is dated
18 February 26th?

19 A. That's correct.

20 Q. Now, you testified about why the FBI would have
21 any interest in this case in the first place, do
22 you recall that, with Mr. Gahn?

23 A. Yes, I do.

24 Q. You said that, oh, the FBI has this -- has a
25 concern about public corruption, correct?

1 A. It's one of the types of investigations that we
2 have a classification for within the FBI, yes.

3 Q. Sure, you have agents that go around and do
4 investigations when there is allegations of
5 public corruption, right?

6 A. That's correct, yes.

7 Q. It's not just your chemistry unit that gets
8 involved, right?

9 A. Of course not. Of course not.

10 Q. You tell me, now you knew this case, by the way,
11 was charged against Mr. Avery in November of
12 2005, 16 months ago, approximately, okay. Are
13 you aware of that?

14 A. That the charges were made then?

15 Q. Yes.

16 A. I don't know when the charges were made, sir.

17 Q. Well, you looked at these swabs that you were
18 testing, right, and they had some dates on them?

19 A. Yes.

20 Q. Some of those dates were November of 2005, right?

21 A. That's correct.

22 Q. So you knew that Mr. Avery must have been charged
23 by that time.

24 A. No, sir, I just knew that's when the date that
25 indicated the specimens were collected. I don't

1 have any knowledge of when charges were made.

2 Q. Okay. In any event, can you tell me what
3 investigation was started by the FBI to
4 investigate allegations that Mr. Avery made, upon
5 his arrest, publicly, that the police had planted
6 his blood in Teresa Halbach's car?

7 A. I have no knowledge of an investigation.

8 Q. In fact there was none, was there?

9 A. I have no knowledge of it --

10 Q. Okay.

11 A. -- whether there was or was not.

12 Q. Can you tell me when the U.S. attorney convened a
13 grand jury investigation to investigate
14 allegations of public corruption made by
15 Mr. Avery, against police officers, in this case?

16 A. I have no knowledge of whether or not they did
17 it.

18 Q. Okay. And can you tell me when any members, any
19 agents from the FBI spoke to Lieutenant Lenk,
20 Lieutenant Colborn, or any other person involved
21 in the investigation of this case?

22 A. Sir, I'm a scientist; I'm not a law enforcement
23 officer, I have no knowledge of anything of that
24 nature.

25 Q. Now, you were trying to find out in your test

1 simply whether or not there was a corrupt,
2 dishonest, criminal cop who planted evidence to
3 frame Mr. Avery is one scenario, right?

4 ATTORNEY GAHN: I'm going to object, your
5 Honor. I don't believe that was his testimony.

6 ATTORNEY BUTING: I can rephrase it, it's a
7 little cumbersome.

8 THE COURT: Go ahead.

9 Q. (By Attorney Buting)~ You testified, one of the
10 FBI's concerns was, that if there was a corrupt
11 cop on the street and doing something illegal,
12 and certainly planting evidence to frame somebody
13 would be illegal, right? Would you agree with
14 me?

15 A. Yes, I would.

16 Q. Okay. And that one of the functions of the FBI
17 was to ferret out bad cops like that, right?

18 A. Generally, that's what I -- Yes --

19 Q. Okay.

20 A. Generally --

21 Q. Okay.

22 A. -- that's what I said, yes.

23 Q. And so what the FBI was asked to do in this case,
24 then, was to find out if there was evidence that
25 would point towards someone planting the

1 evidence, against Mr. Avery, as he has said,
2 police officers, right; that was one scenario
3 that you were looking into?

4 A. That's correct.

5 Q. Or whether or not perhaps Mr. Avery was just full
6 of hot hair and making this up, right?

7 A. No, sir, I wouldn't say that that was the other
8 scenario. The other scenario was whether that
9 blood came from active bleeding --

10 Q. All right.

11 A. -- as opposed to from that tube of EDTA preserved
12 blood.

13 Q. All right. I didn't -- Don't let me put words in
14 your mouth then, but those were the two
15 scenarios. And as far as you were concerned,
16 you're an objective chemist, you didn't care
17 which way it came down; is that your testimony?

18 A. That's absolutely my testimony.

19 Q. And that's the position of the FBI, your boss, I
20 mean, your organization that you work for, they
21 were taking an objective and independent view, in
22 this case, and didn't care which way it came
23 down, in that analysis; is that right?

24 A. Well, I can't speak for any of my bosses. I'm
25 here testifying for myself. And that is my view

1 of it, yes, I could care less as to what the
2 results are, quite frankly.

3 Q. I'm going to show you what's been marked as
4 Exhibit 479 and see if you can identify that for
5 us, please. I'm going to substitute a copy
6 later, so it's really just the first few pages
7 we're concerned about. The chain of custody
8 isn't at issue here.

9 A. Okay. The first few pages are a copy of the
10 internal communication that the FBI uses to
11 essentially write memos between field offices and
12 divisions within the FBI. And this is the
13 specific request that was sent in to me for
14 analysis in this particular case.

15 Q. Okay. And did you read the sentence on top of
16 page two that discusses the purpose of this
17 request for your services?

18 A. The purpose of this request is to establish the
19 presence of EDTA in the vial of blood, thereby
20 eliminating the allegation that this vial was
21 used to plant evidence.

22 Q. Okay. Can you show me anywhere in there where
23 that request says our purpose is also to find out
24 if there might be any evidence that there's a
25 corrupt cop in Manitowoc County.

1 A. No, I don't see anything of that nature.

2 Q. Okay.

3 A. But I can elaborate if you like.

4 Q. So, the purpose of your -- of the FBI's request
5 of your laboratory, to get involved in this case,
6 the state crime -- Let me step back for a second.
7 The FBI generally is a law enforcement branch for
8 federal crimes, correct?

9 A. That's correct.

10 Q. You don't typically get involved in run of the
11 mill state crimes, do you?

12 A. That's incorrect.

13 Q. Well, unless someone brings you in from the state
14 level, for some particular reason, it's not
15 normally the kind of a case where you take
16 jurisdiction, is it?

17 A. Forty percent of the cases that we work in my
18 unit come from state and local investigations.
19 So I would say it's a significant number.

20 Q. Is homicide of a citizen in the State of
21 Wisconsin a federal crime?

22 A. No, sir, it's not.

23 Q. Okay. Is mutilation of a corpse in the State of
24 Wisconsin a federal crime?

25 A. No.

1 Q. Okay. So, the purpose of you getting your
2 federal agency involved in this state crime was
3 to eliminate the allegation that this vial was
4 used to plant evidence; isn't that true?

5 A. No, sir. If I can elaborate, I will be happy to
6 explain.

7 Q. You can elaborate later, sir. Now, the protocol
8 that you developed for this case, this test, all
9 right, you began to develop around the beginning
10 of February, February 1st, something like that?

11 A. I believe we began the actual method validation
12 on -- at the very end of January, perhaps the
13 very last day of January.

14 Q. All right. So January 31st, let's say, okay.
15 The protocol was completed on February 14th?

16 A. That's correct.

17 Q. About two weeks, right?

18 A. Let me correct that, the protocol was issued --

19 Q. I said completed. I will get to the differences
20 in a second.

21 A. The protocol was completed and issued on
22 February 15th.

23 Q. Okay. Was issued on the 15th, but it was
24 actually completed on the 14th, other than a
25 review process still, right?

1 A. Well, it's not technically complete until it
2 passes the review process.

3 Q. Okay. And this so-called validation studies, or
4 whatever you told us was ongoing, that was done
5 by February 14, right?

6 A. Can I refer to my notes?

7 Q. Sure.

8 A. I believe the last validation test was performed
9 on February 13th.

10 Q. Okay. Thank you. So February 13th. So, really,
11 14 days, then, if you started on the 31st of
12 January, right.

13 A. Yes, 14 days.

14 Q. Okay. But as you said, it's not complete unless
15 it goes through an approval process, right?

16 A. That's correct.

17 Q. And the approval process, in your instance, I
18 think you said -- I'm not sure if you did say,
19 actually. But I think you did, yes, you said you
20 had another scientist look at it?

21 A. Which part are you referring to, sir?

22 Q. Well, between February 13th and February 15th,
23 did you have somebody else look at this protocol
24 before it was issued?

25 A. Yes, I did.

1 Q. A who was that?

2 A. I had -- Well, if I can clarify things, I had
3 another scientist review all of the validation
4 data --

5 Q. Okay.

6 A. -- before the protocol was issued.

7 Q. Who was that?

8 A. Madeline Montgomery.

9 Q. And is Madeline Montgomery in some independent
10 lab?

11 A. No, she's within the FBI Laboratory, Chemistry
12 Unit.

13 Q. And she's in the very same Chemistry Unit as
14 yourself?

15 A. Yes, she is.

16 Q. Okay. Anybody else?

17 A. Reviewing the validation data, only the chemist
18 that did the actual work.

19 Q. And that wouldn't count for your approval
20 purposes, you have to have somebody else take a
21 look at this, right?

22 A. No, sir, I mean, the first person that does the
23 work has to, of course, review it and verify all
24 of the data is correct. So that's your first
25 level review. Then you follow that up with a

1 second level review by an independent person and
2 who wasn't involved in the study at all. And I
3 always assign that to a supervisory chemist
4 within the unit, someone with more experience,
5 etcetera.

6 Q. Okay. Someone in your unit, though, right?

7 A. It has to be done in the same unit in which they
8 are qualified to do the work. We couldn't get it
9 to a DNA examiner --

10 Q. Sure.

11 A. -- they are not a chemist.

12 Q. Of course. Anybody else look at this validation
13 data, besides yourself and Ms Montgomery and the
14 technician who ran it?

15 A. I don't believe so.

16 Q. Okay. Well, I believe we learned a little bit
17 earlier, before the break, that the FBI has
18 something called a forensics science research
19 division, don't they?

20 A. Yes, they do, they have a research unit.

21 Q. And, in fact, that's where you said Mr. Miller
22 and Mr. McCord were working. It's called the
23 Forensic Science Research and Training Center,
24 right?

25 A. That's correct.

1 Q. And these people don't work on cases?

2 A. No, they do not.

3 Q. They just do research, right?

4 A. They do long term research, primarily.

5 Q. And that includes developing protocols for new

6 types of tests, right.

7 A. Not in recent years, no. Most of those duties

8 fall back to the case working units. As I

9 indicated --

10 Q. Oh, really? You don't -- These are scientists

11 who are doing research, but you don't have them

12 ever look at your new protocols; you let the

13 caseworkers do that?

14 A. Yes, I mean, I think in this instance, the people

15 that work under me are more qualified to look at

16 this particular type of an analysis. The

17 research unit these days are heavily focused in

18 dealing with homeland security issues. They

19 would not have the time to review this type of

20 material.

21 Q. Well, you didn't think you had the time either,

22 initially, right?

23 A. That's correct. But I can make myself make the

24 time; I can't make them make the time.

25 Q. Just so we're clear, then, you did not have any

1 scientist researcher from the FBI Forensic
2 Science Research and Training Center review your
3 validation data or the protocol that you used in
4 this case, before using it in Mr. Avery's case,
5 right?

6 A. That's correct.

7 Q. Okay. This Madeline Montgomery, that's in your
8 unit?

9 A. Yes, she is.

10 Q. She's the one you said you had independently
11 review the validation data?

12 A. Yes.

13 Q. Does she report to you?

14 A. Yes, she does.

15 Q. Do you review her work?

16 A. Yes, I do.

17 Q. Do you decide her raises and promotions?

18 A. I do, yes.

19 Q. Okay. And that's your idea of an independent
20 scientist?

21 A. Absolutely. We train our scientists to be
22 unbiased.

23 Q. Actually, while I'm on that, you talked about how
24 peer review is done for articles that get
25 published in scientific journals, right?

1 A. Yes, that's correct.

2 Q. And that before anything gets put into some sort
3 of publication that has any reputation
4 worthwhile, the editor takes it from the author,
5 the manuscript from the author, and finds some
6 other scientist to review it?

7 A. Yes, that's correct. Qualified scientist, based
8 on the editor's opinion.

9 Q. Right. And you say that that's done blindly, so
10 that, you know, there is no bias involved by the
11 reviewers, right?

12 A. That's exactly right.

13 Q. And that's important in order to be fair and make
14 sure that you can weed out any kind of bias that
15 one individual may have, either for or against
16 another.

17 A. Yes, I believe that's true.

18 Q. But you didn't have Ms Montgomery or Mr. -- or
19 the technician who did this case, run through
20 these tests in a blind fashion, did you?

21 A. Not blind specifically for the evidence in the
22 case, but we did do some blind testing before we
23 issued the protocol.

24 Q. And the protocol, just so we're clear, it
25 wasn't -- didn't grow out of any kind of ongoing

1 research project that you were doing in your lab,
2 right?

3 A. That's correct, it was based on the publication,
4 as I indicated earlier.

5 Q. No, no, no. What I'm saying is, it didn't grow
6 out of, it didn't develop because of some ongoing
7 project separate from Mr. Avery's case?

8 A. No, no, no. It was -- The protocol was validated
9 and reviewed and put into use specifically for
10 this case.

11 Q. And only this case, so far, right?

12 A. So far, yes.

13 Q. Okay. And as you say, the data stuff was done on
14 the 13th of February and it was issued on the
15 15th, right?

16 A. Which --

17 Q. The protocol.

18 A. -- data stuff? I'm sorry?

19 Q. You said that all of the data acquisition,
20 however that was being done by these
21 validation -- what you call validation tests, was
22 completed on the 13th, right?

23 A. The validation work was completed -- the last day
24 of the validation was the 13th of February.

25 Q. And it was formally issued and adopted by your

1 laboratory on the 15th of February, right?

2 A. Yes, it was.

3 Q. Of this year, 2007?

4 A. Yes, that's correct.

5 Q. Okay. And in order to get to that point where
6 it's actually issued, that -- that constitutes an
7 approval process, right?

8 A. Absolutely, it does.

9 Q. And that approval process, by your own protocols
10 with the FBI, requires approval by the unit
11 chief, right?

12 A. That's correct.

13 Q. As well as someone else, right?

14 A. As well as the unit chief over our Quality
15 Assurance Unit, which is an independent unit that
16 oversees all quality within the laboratory.

17 Q. Now, in this case, you are the unit chief?

18 A. I'm the unit chief of the Chemistry Unit, but --

19 Q. Right.

20 A. -- not the Quality Assurance Unit.

21 Q. So in the protocol, the chain of how these things
22 are supposed to be approved -- By the way, this
23 whole approval process, is part of quality
24 assurance, right?

25 A. That's exactly right.

1 Q. And the idea is, we want to get some other eyes
2 looking at this to make sure that it's -- that
3 it's, you know, the protocols have been followed
4 and that this is valid science, right?

5 A. That's right.

6 Q. Okay.

7 A. And other scientists review the procedure before
8 it's issued.

9 Q. Right. Now, in your case, though, one of those
10 steps was really sort of skipped because you were
11 involved doing the development of the protocol,
12 right?

13 A. No, sir, not at all.

14 Q. Oh, so you just reviewed yourself?

15 A. No.

16 Q. You graded yourself?

17 A. No.

18 Q. Did you find another unit chief besides the
19 quality assurance person?

20 A. No, as I indicated, the review is done by another
21 scientist. And the scientist that did the review
22 for the protocol, that went through the stepwise
23 procedure, to verify, again, that everything was
24 written as was required by our quality assurance
25 program, that the validation study had been

1 completed, was Madeline Montgomery.

2 She did an independent review of this
3 procedure and then -- I'm not approving it in the
4 sense of I'm saying it's okay to be used, my
5 approval is simply that all the steps for the
6 quality assurance program, within my unit, have
7 been met.

8 Q. So --

9 A. That's why --

10 Q. Sir.

11 A. -- my signature is on the approval line.

12 Q. The answer to my question then is, yes, you
13 skipped a step in the usual approval process
14 because you were the unit chief who would
15 otherwise have to independently approve a new
16 protocol?

17 A. No, you're incorrect. No steps were skipped,
18 this is the same approach we take to every
19 protocol that's issued within the FBI Laboratory.
20 I have to be the final signature for approval of
21 any protocol that's issued out of my unit.

22 Q. All right. And so you graded yourself and gave
23 yourself and A+?

24 A. I did not --

25 ATTORNEY GAHN: Objection, your Honor, as

1 to the form of the question.

2 THE COURT: Sustained.

3 Q. (By Attorney Buting)~ As part of the discovery
4 request, you know, attorneys file requests and
5 ask your -- people such as yourself to produce
6 documents, right?

7 A. Yes.

8 Q. You are familiar with that process?

9 A. I am, yes.

10 Q. You are aware that I asked you, through Mr. Gahn,
11 to disclose the FBI protocol that was used in
12 1997 in the O.J. Simpson case, right?

13 A. I am aware that you asked for that, yes.

14 Q. Okay. And yet your lab refused to give that to
15 me; isn't that right?

16 A. The attorney that represents our laboratory did
17 indicate that we were not to turn over any other
18 protocol except the one that was used in this
19 particular case, as her opinion was, it was the
20 only one relevant --

21 Q. In her opinion?

22 A. -- for this report.

23 Q. So in her opinion, your lab didn't want this jury
24 to see the only other protocol, the only other
25 time you have ever tested for EDTA in a

1 bloodstain in any case in this country?

2 ATTORNEY GAHN: Objection, your Honor, that
3 was not his testimony.

4 THE COURT: Sustained.

5 Q. (By Attorney Buting)~ Well, you knew that if you
6 turned over that protocol to the defense, I would
7 use it to cross-examine you, right?

8 A. I don't know that.

9 Q. Well, wouldn't take much of a guess to figure it
10 out, that if I had your prior protocol, I could
11 point out to this jury the differences that you
12 made, or lack of differences, between that
13 protocol and this one, right?

14 ATTORNEY GAHN: Objection, your Honor, as
15 to the relevancy of the O.J. Simpson protocol.

16 ATTORNEY BUTING: Couldn't be more
17 relevant.

18 THE COURT: Well, I'm going to sustain the
19 objection, though, on that basis, if there was --
20 the witness testified it wasn't his decision, but
21 the attorney's decision, not to turn it over. If
22 there's a request for an order to turn it over, that
23 should be directed to the Court, so I don't think
24 this witness is in a position to answer. That's why
25 I'm sustaining the objection.

1 Q. (By Attorney Buting)~ All right. At any rate,
2 because we don't have, in front of us today -- I
3 assume you didn't bring it, right, or did you?

4 A. No, I did not.

5 Q. So you didn't bring it, if the Court was -- if I
6 asked the Court to order you to turn it over
7 today, you don't have it to do that, do you?

8 A. No, I do not.

9 Q. Okay. So, because you don't have it, we don't
10 have anything to compare this protocol to the one
11 you used in the OJ case?

12 A. No, you don't.

13 Q. We talked briefly about blind tests, let's
14 explain a little bit to the jury. There is --
15 There is a concept or a technique that's used in
16 science to -- it's called blind testing; are you
17 familiar with that?

18 A. Yes, I am.

19 Q. And the idea behind blind testing is that you --
20 the examiner, or the person who is testing the
21 results or the samples doesn't know what they are
22 or where they came from, right?

23 A. Sometimes that's considered blind testing, yes.
24 There are other forms of blind testing.

25 Q. Okay. And one of the reasons that you do -- or

1 that the scientists do blind testing is to remove
2 the possibility of some sort of bias in the
3 examiner's testing process, right?

4 A. Yes, that's exactly right.

5 Q. And so, for instance, when they are testing -- or
6 when you are testing drugs, they will sometimes
7 have a placebo with one person and the effective
8 drug with another. And the person who is testing
9 it doesn't know one way or the other?

10 A. That's right.

11 Q. Okay. In this case, maybe in all FBI cases, I
12 don't know, but in this case, the person who did
13 the tests didn't do a blind test, did he? Let me
14 be more specific, because I see you are already
15 trying to pick that question apart. In this
16 case, the person who tested the swabs and the
17 blood that was submitted to you, from the Avery
18 case, did not do a blind test, did he?

19 A. No, he knew that this was evidence related to a
20 case that we were working.

21 Q. And he knew more than just that it was evidence,
22 he knew exactly what evidence was which, correct?

23 A. Yes, I -- Yes, he did. I knew which specimen
24 came from which area.

25 Q. Okay. And the designations that we saw some of

1 them up there Q-46, Q-48, K-3, those
2 designations, wasn't some blind code that he
3 didn't know what they meant, right?

4 A. No, those were the designations that we gave to
5 those individual items that we would refer to
6 within our report.

7 Q. And when you say we, let's be very clear to the
8 jury you are talking about yourself and the
9 technician who did the tests?

10 A. Well, no, I'm sorry, in that instance, when I say
11 we, I mean the entire FBI laboratory, that's the
12 system that we use. Those numbers, letter number
13 designation Q-43, for example, it's actually
14 assigned by our evidence control unit. They are
15 the very first ones that receive the evidence and
16 do that initial assignment of specimen
17 designations to -- to evidence.

18 Q. Okay. But -- Well, let's name this mystery
19 person who was doing the testing in your case;
20 it's a guy named Jason Brewer, right?

21 A. That's correct.

22 Q. B-r-e-w-e-r.

23 A. That's correct.

24 Q. And he is more than just a technician, would you
25 agree?

1 A. Well, I would -- He's a Ph.D. He is recently
2 promoted to be an examiner --

3 Q. Okay.

4 A. -- in this area.

5 Q. And he's the one who actually did all the tests
6 that you then later reviewed, right?

7 A. Well, not exactly. He performed most of the
8 analyses, that part is true. But I was reviewing
9 the data all along. And I was with him a great
10 majority of the time that decisions were being
11 made about the order of things and the amount of
12 sample to use, etcetera.

13 Q. But you are a busy man, you are a manager, right?

14 A. I'm a manager, yes.

15 Q. You don't have time to sit around in the lab
16 while these machines are clicking and whirring,
17 right?

18 A. Well, I did make time for this case, I was in the
19 lab a substantial amount of time, actually.

20 Q. Okay. But is it fair to say that Mr. Brewer is
21 the guy who really, from one test to the other,
22 did all of the LS/MS/MS (sic), and the
23 extractions, and the whole protocol; he was
24 involved in every step of your protocol?

25 A. There's multiple answers to your question; could

1 you break it out?

2 Q. Yeah, that was a bad question. Is it fair to say
3 that Mr. Brewer is the one who did the actual
4 instrument analyses in this case?

5 A. Yes, that is fair to say.

6 Q. Okay. And Mr. Brewer, you have designations of
7 chemist at sort of the lower level?

8 A. That's the equivalent of a technician,
9 essentially.

10 Q. Okay. And then you get promoted to forensic
11 chemist examiner, right?

12 A. That's exactly right.

13 Q. And that allows you to do other things, including
14 expert witness testimony regarding the results of
15 chemical analysis, right?

16 A. That is true, yes.

17 Q. And you have seen Mr. Brewer's resumé, have you
18 not?

19 A. Yes, I did. I turned it over to you.

20 Q. Okay.

21 (Exhibit 480 marked for identification.)

22 Q. (By Attorney Buting)~ I'm showing you what's
23 marked now as Exhibit 480; this is Jason Brewer's
24 curriculum vitae, right?

25 A. Yes, it is.

1 Q. And would you agree with me that it says in his
2 curriculum vitae that he is qualified, by your
3 laboratory, to come to court and to explain to
4 juries what it is he does in cases?

5 A. No, sir, it does not say that on his curriculum
6 vitae that he is qualified to do so --

7 Q. Oh.

8 A. -- and he is not qualified to do so.

9 Q. Doesn't this say, under his job description here,
10 interpret data, prepare written reports and
11 provide expert witness testimony regarding the
12 results of chemical analysis?

13 A. That's correct, that's what it says. But he
14 is -- he was a chemist and qualified as a
15 chemist, as a technician. And, then, just last
16 September, he was promoted to the level of an
17 examiner, but he is still in a training mode as
18 an examiner. He still works cases as a chemist.
19 Until he is qualified, completes his training,
20 passes all the tests, he is not allowed to
21 testify until that is completed and he is
22 certified. He is not a certified examiner at
23 this time, sir.

24 Q. Well, he is a forensic chemist examiner?

25 A. That's his position, his official position title

1 within the U.S. government.

2 Q. And so, despite the fact that the curriculum
3 vitae that he has, that you turned over to us,
4 that says that he can do that, it's your
5 testimony today that he is not qualified to come
6 here like you are?

7 A. That's correct.

8 Q. Okay. So that's why we're not hearing from him?

9 A. That's correct. I supervised his work and I'm
10 the one that compiled the results and formed the
11 opinion and issued the report; that's why I'm
12 here today.

13 Q. All right. You say that Mr. Brewer is still in
14 training for courtroom testimony, right?

15 A. No, sir, I didn't say that.

16 Q. Well, you said he is not qualified to come here
17 and testify to this jury about what he did?

18 A. That's what I said, yes.

19 Q. Okay. What sort of courses or training does he
20 need to do to learn how to tell the truth to a
21 jury.

22 ATTORNEY GAHN: Objection, your Honor, as
23 to the form of the question.

24 THE COURT: Sustained.

25 Q. (By Attorney Buting)~ Let me just turn for a

1 moment to this particular instrument that you
2 use, GS -- or I'm sorry -- LC/MS/MS. All right.

3 THE COURT: Mr. Buting, just before you get
4 into that new --

5 ATTORNEY BUTING: You want to stretch?

6 THE COURT: -- topic, lets stand up and
7 stretch.

8 ATTORNEY BUTING: Okay.

9 THE COURT: All right. Mr. Buting, you may
10 resume.

11 ATTORNEY BUTING: Thank you.

12 Q. (By Attorney Buting)~ Let's talk about this --
13 this instrument, this LS/MS/MS (sic) instrument.
14 It's three instruments, you said, together,
15 right?

16 A. Yes, sir, it's the LC/MS/MS.

17 Q. I'm sorry, I'm not a chemist. I keep botching
18 that designation, I'm sorry. I want to explain,
19 make sure the jury understands, because sometimes
20 lay people, like myself, are in awe of science
21 and machines and we sometimes think that they do
22 more than they can, okay?

23 A. Yes.

24 Q. So this isn't something that you just push a few
25 buttons, run a sample through, some lights flash

1 and buzzers go off, and then spits out a result
2 at the end, paper result says this is EDTA, or
3 this is not EDTA, right?

4 A. That's correct.

5 Q. It's nowhere near that simple, right?

6 A. No, it's not that simple.

7 Q. And in fact, what the whole premise of the
8 machine is is that it's supposed to somehow
9 determine the characteristic of an ion and
10 whether or not it's consistent with one chemical
11 or another?

12 A. That's not technically correct, no.

13 Q. All right. A series of ions, is that the
14 correction you wanted?

15 A. It's fragments that are ions --

16 Q. Okay.

17 A. -- that originate from the chemical itself.

18 Q. Okay. If you turn to -- I have handed you what's
19 been marked as exhibit -- I'm sorry, what is the
20 exhibit number?

21 A. 441.

22 Q. 441, and it's entitled guidelines for comparison
23 of mass spectra, right?

24 A. That's correct.

25 Q. And this is a document that's issued by your

1 unit, the FBI Laboratory, Chemistry Unit, right?

2 A. That is correct.

3 Q. June 21st of '06 is this one, right?

4 A. Yes, it is.

5 Q. And it's signed by yourself at the end, as well
6 as the quality assurance people?

7 A. Yes, it's signed by myself and two other
8 individuals.

9 Q. Okay. And if you would turn to page three,
10 there's a section that has a heading that says
11 determination of diagnostic ions in a mass
12 spectrum, okay?

13 A. Yes, sir.

14 Q. Your guidelines state, quote, the definition of
15 what makes any given ion "characteristic" of a
16 particular chemical structure is somewhat
17 nebulous and there does not appear to be any
18 universally accepted standard in the field,
19 correct?

20 A. Yes, that's what it says.

21 Q. Okay. And it says that's why you have got to
22 have good and consistent judgment and you have to
23 employ judgment -- subjective judgment as an
24 examiner, when you look at the results of these
25 tests, right?

1 A. It does say you should apply good and consistent
2 judgment, it doesn't say subjective, as you
3 indicated there.

4 Q. Is there any such thing as objective judgment?

5 A. I don't know.

6 Q. I will take that as a no.

7 A. I don't know.

8 Q. You are going to fight me on that one too?

9 A. No.

10 Q. Okay. And, then, on the last page, page 10 of 15
11 actually, limitation section?

12 A. I'm sorry, I do want to -- I want to rethink that
13 answer. I do believe there is such a thing as
14 objective judgment.

15 Q. All right. Go ahead turn to page 10 of 15. You
16 got it?

17 A. Yes, sir.

18 Q. Okay. And this is a heading that's called
19 limitation and, again, these are the guidelines
20 on how to interpret the results of these tests,
21 right? That's what this document is?

22 A. Of the mass spec --

23 Q. Mass spectra.

24 A. -- type test?

25 Q. Yes.

1 A. Yes, this -- this is a narrative talking about
2 the general limitations in evaluating mass
3 spectral data.

4 Q. And this particular section is headed
5 limitations. It's telling you, you know, hold
6 on, there are some limits to this we have got to
7 consider, right?

8 A. That is exactly right.

9 Q. Okay. And doesn't it say, quote, the mere fact
10 that an unknown mass spectrum matches well to the
11 spectrum of a known standard will rarely, by
12 itself, be sufficient grounds to claim the
13 presence of that compound in the question sample,
14 correct?

15 A. That's correct.

16 Q. Doesn't it also say that, quote, similarly, the
17 fact that an unknown mass spectrum fails to match
18 that of a known standard generally will not, by
19 itself, constitute grounds for concluding that
20 the compound is not present in the questioned
21 spectrum, correct?

22 A. That's correct, too.

23 Q. All right. And so what you have to do with these
24 mass spectrum tests is look at a big picture,
25 consider all the data, as well as what comes out

1 of this machine or instrument, correct?

2 A. Yes, you have to look at all the data that's
3 generated and put all the pieces of the puzzle
4 together to reach your conclusion.

5 Q. All right. Your protocol, then, that was
6 developed on February -- or issued on
7 February 15th of 2007, for this case only, it's
8 important that whoever do the test, follow the
9 protocol as written, correct?

10 A. Yes.

11 Q. And that you are not supposed to just adjust one
12 procedure differently than what's in the
13 protocol?

14 A. You are allowed to do that as long as you
15 document the fact that you did make a deviation
16 to the procedure.

17 Q. Okay. And when you do that, you are actually, by
18 your lab's protocol, you are supposed to fill out
19 some kind of a form saying I want to deviate from
20 the protocol?

21 A. Well, it depends, there's two types of
22 deviations. We have what are called major
23 deviations, which are quality affecting, meaning
24 by doing this deviation you potentially are going
25 to affect the results of the test and you have to

1 get a higher level of approval. It has to go up
2 to the quality assurance unit, if you are going
3 to do a major deviation. If you're going to do a
4 minor deviation, on the other hand, it simply
5 just requires a notation in the notes with
6 approval by the examiner and myself, and in this
7 case, approval by me.

8 Q. All right. Turn to 434 exhibit, please, page 3
9 of 9, No. 9 procedure, got that?

10 A. Yes, sir.

11 Q. Sets forth five steps to follow, right?

12 A. Yes, sir.

13 Q. And the last step after you do this filtrate
14 and -- I'm not going to bore everybody with the
15 scientific jargon -- but is that you are supposed
16 to transfer this -- this solution that you come
17 up with, first, and inject it into a system
18 that's a negative ion mode, correct?

19 A. That's what the procedure says, yes.

20 Q. And then you follow that up and inject some of
21 the other samples, if they are positive, into the
22 positive ion mode, correct?

23 A. That's correct.

24 Q. And in this case, Mr. Brewer did the reverse,
25 didn't he?

1 A. Yes, he did.

2 Q. He injected it, first, into the positive ion
3 mode, right?

4 A. Yes, he did.

5 Q. And then into the negative ion?

6 A. Yes, he did, per my instructions.

7 Q. Okay. Your instructions?

8 A. Yes.

9 Q. Okay. So on the very first time you used this
10 protocol, you started changing the procedures
11 around?

12 A. No, sir. Consider that a minor deviation,
13 simply, it's like you put your right shoe on
14 first or your left shoe--

15 Q. Okay.

16 A. It's that simple.

17 Q. The exhibit in front of you, also, in
18 paragraph two -- number two, I should say, not
19 paragraph two, first page?

20 A. Paragraph two, first page.

21 Q. Not paragraph two, item number two, where it says
22 scope?

23 A. Yes, sir.

24 Q. It says that this procedure allows for the
25 screening and confirmation of EDTA in suspected

1 bloodstains, right?

2 A. That's correct.

3 Q. The protocol isn't actually validated to do -- to
4 quantitate a particular specific level of EDTA,
5 correct?

6 A. That's exactly right.

7 Q. And the difference, just so we're clear, is that
8 protocol is designed to see if there's any level
9 of EDTA that can be detected under your -- above
10 your bar, your limit, right?

11 A. Yes, that's part of it, yes.

12 Q. But the protocol is not designed to allow you to
13 actually fix a number and say this is 500
14 micrograms or whatever, right?

15 A. It's not validated to provide an accurate number
16 on any measurement we make where we put a number
17 on it.

18 Q. Okay. Mass spec instruments, though, you can set
19 up a protocol and they are sometimes used to
20 actually quantitate, right?

21 A. Yes, they are.

22 Q. But you didn't use it -- you didn't use the
23 instrument in this type of protocol to do that,
24 right?

25 A. That's correct, we did not.

1 Q. And you did not, for instance, when you tested in
2 the blood vial that had Mr. Avery's name on it,
3 you didn't quantitate what level of EDTA was in
4 the tube, right?

5 A. It wasn't validated to do quantitative analysis,
6 so we did not --

7 Q. All right.

8 A. -- put a specific value on the amount of EDTA
9 that was present in the tube.

10 Q. That's fine. That's all I'm asking. You didn't
11 do it, right?

12 A. That's right.

13 Q. And you issued your report, Exhibit -- what is
14 it, 326? No. Do you have the report up there
15 with you?

16 A. Yes, I do.

17 Q. What is the number?

18 A. Exhibit 435.

19 Q. 435. You didn't -- As per the protocol, you
20 didn't express any kind of opinion in the report
21 about how much, if any, EDTA was detected in the
22 vial from -- of Mr. Avery's blood, right?

23 A. No, I did not.

24 Q. Okay. And one of the things that was kind of
25 really unique about it, or is unique about this

1 case, is that when you are testing that purple
2 vial, it's 11 years old, right?

3 A. Yes, I believe it was.

4 Q. It was drawn from Mr. Avery's arm in January of
5 1996 and tested in your lab in February of 2007,
6 correct?

7 A. I would have to refer to my notes.

8 Q. Go ahead.

9 A. Yes, that's a correct statement.

10 Q. Okay. And we talked a little bit -- or you
11 talked a little bit about this, I think, with
12 Mr. Gahn, but the whole question of the stability
13 or lack of stability of this chemical, EDTA, is
14 an issue of research, correct? In the scientific
15 community?

16 A. I don't know how much it's researched these days.
17 It's -- I think it's very well documented. I
18 don't know how much ongoing research there is on
19 it.

20 Q. Well, you mentioned that it's a concern that some
21 environmentalists have that this chemical could
22 be building up in our water and our soil, right?

23 A. That's correct, yes.

24 Q. On the other hand, manufacturers who include this
25 chemical in their products are countering that by

1 saying that this a biodegradable product and will
2 ultimately be dissolved and not be a problem?

3 A. No, sir, I don't believe that's true.

4 Q. Are the manufacturers telling the
5 environmentalists that you are right, this drug
6 is just going to build up in our soil and water
7 forever?

8 A. I don't know that the manufacturers are saying
9 anything to the environmentalists.

10 Q. You are not aware of any debate, ongoing research
11 in that field?

12 A. No, sir, I'm not.

13 Q. But you did mention that you were aware of some
14 degree of studies about the stability of EDTA,
15 right? I believe you testified to that.

16 A. Yes, I'm aware of a number of studies that
17 discuss the stability of EDTA as well as
18 chemistry reference books that talk about the
19 stability of EDTA.

20 Q. Okay. Can you cite me to any study, published
21 study, that's ever studied the -- or evaluated
22 the degradation rate of EDTA in an 11 year old
23 vial of blood?

24 A. No, sir.

25 Q. Can you cite me to any published study that has

1 ever tried to characterize the degradation rate
2 of EDTA in any blood substance, stains or liquid?

3 A. Yes, sir, I can.

4 Q. What's that?

5 A. The *Journal of Analytical Toxicology* article that
6 I believe you have. I'm sorry. For
7 clarification, did you say an 11 year old
8 bloodstain?

9 Q. Well, at first I said 11 year old and you are
10 aware there is no study of blood that old, right?

11 A. Yes, sir, I'm aware of that.

12 Q. You do know, though -- Let me just step back for
13 a second, you do know that EDTA is biodegradable
14 eventually, correct, or is that the wrong term?

15 A. That's the correct term, the research suggests
16 that it is not very biodegradable.

17 Q. But the research also suggests that it can be
18 broken down, correct?

19 A. Extremely harsh conditions, yes.

20 Q. Well, waste water treatment plants have been
21 doing studies where they determined that if you
22 increase the PH in the treatment plant, you can
23 break down EDTA quite readily, right?

24 A. Well, the published references say that if you
25 boil EDTA in a highly alkaline solution, which

1 would be high PH, it doesn't breakdown.

2 Q. You are not aware of studies that talk about
3 using lime in waste water treatment to increase
4 the PH so that it breaks down?

5 A. Well, the lime may be doing other things, other
6 than just dealing with PH. And there are
7 numerous steps that they take to breakdown the
8 EDTA in water, so it's not just lime.

9 Q. Okay. But it is -- there are steps they take to
10 break it down.

11 A. Again, very harsh steps.

12 Q. In your opinion, you have never done any
13 yourself --

14 (Court reporter asked to have the last answer repeated.)

15 A. Harsh. Harsh steps.

16 Q. Harsh in your opinion because you have never
17 actually done of any of those studies, right?

18 A. Harsh in my review of the literature, as they
19 call them. I'm quoting some of those references.
20 They are referring to things that, as a chemist,
21 I consider to be quite harsh.

22 Q. Have you ever done any kind of experiment
23 yourself to see if you can actually make EDTA
24 break down into its components?

25 A. No, I haven't done any studies.

1 Q. Okay.

2 A. But your question is twofold there. And you said
3 into its components, I'm not aware of the
4 components that EDTA breaks into.

5 Q. Well, at some point, it can be degraded, whether
6 it's harsh or whatever, that's what I'm talking
7 about.

8 A. And then it would just fall apart as a molecule.

9 Q. Okay. I apologize, I don't know all the
10 terminology, but you get my drift, right? You
11 understand the question?

12 A. I do understand the question.

13 Q. And you haven't performed any experiments to
14 break it down, break the molecules apart?

15 A. I have not performed any such experiments.

16 Q. Okay. You did, however, testify about performing
17 a little study just last week, right?

18 A. Correct.

19 Q. And that study was designed to see whether or not
20 you would still be able to detect EDTA in some
21 blood spot cards that you had had on -- or that
22 your lab, one of your units had, right, from a
23 number of years ago or, actually, 33 months?

24 A. I need you to --

25 Q. All right.

1 A. -- repeat that question, please.

2 Q. It's a little study that you are talking about in
3 which you tried to see if -- if you could still
4 detect EDTA in some spot cards, that were 33
5 months old, is something you did last week,
6 right?

7 A. That's correct, yes, last week.

8 Q. And you actually did it on February 28th?

9 A. If I can refer to my notes.

10 Q. Go ahead.

11 A. Yes, sir, that's correct, February 28th.

12 Q. Now, on February 26th, you issued the report in
13 this case, right?

14 A. That is correct.

15 Q. With your opinions, right?

16 A. That's correct.

17 Q. The opinions that you knew you'd have to express
18 in court, under oath, in front of a jury, right?

19 A. Correct, yes.

20 Q. And so when you issued that report, you had done
21 no study whatsoever of whether or not EDTA would
22 be stable enough to be found in some old
23 bloodstains or blood vial, correct?

24 A. Yeah, I had not personally done it, but it was in
25 the literature.

1 Q. And the literature you are referring to is this
2 analytical chemistry thing, right?

3 A. No, sir. The Journal of Analytical Toxicology
4 did a stability study of EDTA in old blood stains
5 as well.

6 Q. Two years old, right?

7 A. I believe it was 24 months, yes.

8 Q. Okay. And you knew in this case you were talking
9 about a blood vial that's 11 years old, five
10 times longer, right?

11 A. Well, my understanding there, the bloodstains
12 were just about two years old themselves.

13 Q. Well, if the vial of blood that came out of
14 Mr. Avery's arm on January of 1996 was used to
15 plant the stains in the RAV4 in 2005, then that
16 blood at that time was already almost nine years
17 old, correct?

18 A. That's correct.

19 Q. And, then, since that date, another 16 months or
20 so had elapsed?

21 A. Yes, that's correct.

22 Q. Okay. So you issue your report, without doing
23 any study of your own on what the stability might
24 be of EDTA in a bloodstain, correct?

25 A. That is correct.

1 Q. And so, then, two days later -- Was that after
2 Mr. Gahn called you and asked you a question that
3 I had raised, that you decided to do this study?

4 A. No, I decided to do the study based on the letter
5 you sent requesting materials, discovery
6 materials, and one of the items you requested
7 were any studies that the FBI had done on the
8 stability of old bloodstains.

9 Q. Okay.

10 A. It prompted me to start thinking, is there a way
11 that we could do it.

12 Q. Okay.

13 A. And I went to our DNA Unit and asked them if they
14 had any old blood cards with EDTA on it, and they
15 did. So we decided to go ahead and run them to
16 see if it would help, for this particular case.

17 Q. Okay. So -- I'm glad you cleared that up. So,
18 then, this -- this study that you did on
19 stability was because the defense attorney in the
20 case had pointed out to you that something might
21 be lacking in your ability to express an opinion
22 to the jury about how stable EDTA was or was not;
23 would that be fair?

24 A. No, that wouldn't be fair at all, sir.

25 Q. Okay. Well, we'll let the jury draw whatever

1 inference they want from that. But I'm showing
2 you now what exhibit -- what's exhibit -- I'm
3 sorry -- 444, this is your EDTA stability study,
4 right? It's up on the screen?

5 A. Oh, that is the summary of the EDTA stability
6 study. Those are my notes doing a quick review
7 of what we found.

8 Q. Okay. And these are the other notes attached to
9 this study dated February 28 of '07, correct?

10 A. That's correct.

11 Q. And those are Mr. Brewer's initials, again?

12 A. Yes, that's Dr. Brewer's initials.

13 Q. Dr. Brewer, I'm sorry.

14 A. Yes.

15 Q. And other than these handwritten notes and this
16 one paragraph, there's nothing else that tells us
17 about this study that you did, right?

18 A. No, that's false.

19 Q. Did you write up some report?

20 A. No, there are pages of data that are related to
21 that study.

22 Q. Okay. Just graphs and charts and things of that
23 nature, right?

24 A. That's correct. That's the actual study. This
25 is the interpretation of the study and the notes

1 as to how the study was put together and how it
2 was actually run.

3 Q. Okay. So would you submit this to some journal
4 to be published, in its form?

5 A. That one paragraph, I don't believe would be
6 accepted for publication, sir.

7 Q. I thought not. Let me just talk about the timing
8 of this for a second. If you had done this test,
9 two days after you issued your report, because
10 you are worried about my cross-examination of
11 you, and if you had found that these --

12 ATTORNEY GAHN: Objection, your Honor, to
13 the form of that question and that's not what his
14 testimony was.

15 Q. I haven't finished it, but I will start
16 rephrasing it. If you had done this study, two
17 days after issuing your report and you knew you
18 were going to come into court and testify under
19 oath about and if you had gotten results that
20 would show this EDTA really wasn't as stable as
21 you thought it was, you would be -- you would
22 have a bit of a problem there, wouldn't you?

23 A. Well, we would be refuting all the published
24 scientific data out there that suggests that EDTA
25 is an incredibly stable complex, so it would be

1 rather a eureka moment, quite frankly.

2 Q. And so, then, there would have been no reason for
3 you to do this study at all, right? If it's --
4 If it's that clear in the published literature,
5 there would have been no reason for you to do
6 this study two days after you issued your report,
7 would there?

8 A. Obviously, we didn't do it as part of the method
9 development, so I do not consider it to be a
10 relevant aspect of putting the method together,
11 doing the analysis in this case, and providing
12 that report to the agency that requested the
13 examinations.

14 But I do believe that it assists in the
15 final interpretation. It does assist in
16 answering your question, your specific question
17 that we had not addressed in my unit. It had
18 been addressed in the publication, as I alluded
19 to earlier. I did think it was a good idea to do
20 since we did have available to us bloodstains
21 that were 33 months old. I didn't think, as a
22 scientist, that I could just pass that by and not
23 test them.

24 Q. Well, I'm very glad to hear that, sir.

25 A. I'm sorry?

1 Q. I'm very glad to hear that, as a scientist, you
2 didn't just pass that by. But, tell me, page
3 two, which is the only place that describes the
4 actual method that was used; is this a protocol?

5 A. I'm sorry?

6 Q. Is this a protocol for testing the stability of
7 EDTA in 33 month old bloodstains?

8 A. These are the notes describing the steps that
9 were taken in order to conduct the study. But
10 the protocol that we used is the published
11 protocol, the issued standard operating procedure
12 for the analysis of EDTA in dried bloodstains.

13 Q. So, did you submit a protocol to determine the
14 stability of EDTA, long term, over many, many
15 months?

16 A. I don't think I understand that question.

17 Q. You just used the protocol you developed to see
18 if there is EDTA in a particular stain at a given
19 time, right? Correct?

20 A. Yes.

21 Q. Which isn't designed to quantitate how much EDTA,
22 if any, is there?

23 A. That's right.

24 Q. My question is, did you develop a protocol, as a
25 scientist, that would be accepted for peer

1 review, that would determine -- be designed to
2 determine the stability of EDTA, as the term you
3 actually used here, to determine EDTA stability?

4 A. Yes, I believe that the work that was done here
5 is worthy of -- total worthy of publication if we
6 decide to write it up and submit it to a journal.

7 Q. Okay. But you just used the other protocol that
8 you already developed, you didn't develop a new
9 protocol to study how stable EDTA was; am I
10 right?

11 A. I'm sorry. I'm not completely understanding your
12 question. We used this stepwise procedure, page
13 two.

14 Q. Let me just ask, very simple: Did you develop a
15 new protocol -- the question probably begs the
16 answer -- but you did not develop a new protocol
17 and go through your rigorous review and approval
18 and validation and studies, and all of that, for
19 the specific question of determining the
20 stability of EDTA, correct?

21 A. We did not develop a new protocol to address
22 the -- any potential breakdown of EDTA, but we
23 did determine that we could still --

24 Q. Okay.

25 A. -- find EDTA in a 33 year old -- not -- 33 month

1 old bloodstain.

2 Q. And looking at this result, you tested a total of
3 10 spot cards, right?

4 A. That's correct.

5 Q. That you got from the DNA Unit?

6 A. Yes.

7 Q. You didn't know where they came from, right?

8 A. I didn't, no.

9 Q. Didn't know whether they came out of a
10 purple-topped tube, a yellow-topped tube, a
11 red-topped tube, or a gray-topped tube, right?

12 A. Wrong.

13 Q. Wrong?

14 A. That's an incorrect statement you just made.

15 Q. Okay. How did you know what kind of tube a
16 little spot on a piece of paper came from?

17 A. Because I was informed by the analyst in DNA that
18 these were all EDTA bloodstains.

19 Q. Okay. So you relied on that, whatever
20 information that was?

21 A. Yes.

22 Q. Okay. And when you tested them, you found that 4
23 of the 10 spot cards you could not determine --
24 you could not detect the iron complex EDTA,
25 correct?

1 A. That's correct, 4 out of the 10 it failed --

2 Q. Okay.

3 A. -- the requirements failed to actually make the
4 call. There was an indication of it's presence,
5 though.

6 Q. But something that's an indication, that doesn't
7 reach your threshold, you don't make a call?

8 A. That's exactly right because we err -- we work
9 conservatively.

10 Q. Right. Because something that's just an
11 indication could be an indication of other
12 things, right? That's why you have threshold
13 limits, correct?

14 A. Well, as we discussed earlier, we have the
15 guideline for mass spectral comparison, which was
16 Exhibit 441. That defines how we interpret the
17 mass spectral data. And those four samples
18 failed the requirements in here to actually make
19 the call.

20 Q. All right. So, 40 percent of the samples that
21 were only 33 year -- 33 months old, were
22 already -- had already degraded in the EDTA iron
23 complex?

24 A. No, sir. I wouldn't say that at all. We don't
25 know what the original concentration of EDTA was,

1 of the iron complex, in that spot. Additionally,
2 this was done on spot cards and we validated our
3 method to be done on cotton tipped swabs.

4 We did not, in this study, go to see,
5 you know, all the steps we talked about earlier
6 about detection limit. We didn't look at
7 interferences. We didn't look at matrix
8 suppression. We did not do the -- Well, the
9 carryover would probably be irrelevant here. But
10 we didn't do all of those steps for extracting it
11 from a filter paper, a DNA filter paper, which is
12 probably insignificant, but scientifically I
13 can't say that with absolute certainty, that that
14 couldn't have some affects because --

15 Q. Okay.

16 A. -- this -- this material may --

17 Q. Sir.

18 A. -- bind more tightly to that filter paper, the
19 bloodstain may. Because that's actually what
20 these are designed for, these are spot cards for
21 blood.

22 Q. Those steps you just mentioned: Carryover,
23 matrix suppression, limited detections, that's
24 called validation, right?

25 A. That's exactly right.

1 Q. And what you just told us is that you didn't
2 validate this study to detect EDTA in spot cards,
3 right?

4 A. That's exactly right.

5 Q. Thank you. So this study, then, wouldn't really
6 tell you how stable or not EDTA might be in a
7 liquid form that's 11 years old, right?

8 A. That's correct, yes.

9 Q. You mentioned -- You mentioned that you were
10 testing swabs, or your tests were designed for
11 swabs of cotton, right?

12 A. Yes, we did all of our validation on cotton
13 tipped swabs --

14 Q. Okay.

15 A. -- because that's what we were told the
16 evidentiary material was going to be in this
17 case.

18 Q. Okay. And cotton swabs are also absorbent, more
19 absorbent than paper, would you agree, or
20 disagree?

21 A. I don't know.

22 Q. You don't know. You haven't tested it, so you
23 don't have an opinion one way or the other?

24 A. I don't have an opinion.

25 Q. Okay. You do have an opinion, though, that EDTA

1 on -- in a bloodstain that is on fabric might be
2 absorbed in different ways so that throughout the
3 stain the level of EDTA is not homogenous,
4 correct?

5 A. Incorrect.

6 Q. You disagree with that?

7 A. Yes.

8 Q. Okay. Did you shake up the tube when you got it?

9 A. Yes, we did.

10 Q. Mix it up real well?

11 A. Yes.

12 Q. Have no way of knowing if somebody used that vial
13 to plant, as your little PowerPoint showed, drip,
14 drip, drip, drip, whether or not that
15 person would have shaken up the vial, 11 year
16 old -- or nine year old vial, before doing that,
17 do you?

18 A. Could you repeat that question?

19 Q. You have no way of knowing that if somebody used
20 that vial to plant blood in the Halbach vehicle,
21 whether that person shook that vial up like a
22 scientist would before doing so, do you?

23 A. If that was the scenario, then, I wouldn't know
24 if they shook that vial first.

25 Q. Okay. By the way you never did any -- I think

1 you testified about the swabs when you had the
2 photos up there, you kept referring to them as
3 bloodstains here and there, right? Do you recall
4 that?

5 A. Yes, that's what they were reported to us as
6 being.

7 Q. Okay. Reported to you, but you didn't do any
8 kind of presumptive tests on them?

9 A. No, sir, I'm not a qualified serologist.

10 Q. So the portion when you -- well, not you, but
11 when Mr. Brewer cut the swabs -- By the way, were
12 you present when he cut the swabs?

13 A. Yes, I was.

14 Q. Okay. You didn't test to be sure that the
15 section that he was cutting did or did not prove
16 presumptively positive for the presence of human
17 blood, right?

18 A. Again, I'm not qualified to do that. It was
19 reported to us that this was blood and that had
20 been confirmed by testing at another laboratory.

21 Q. Well, it had been confirmed to you that somewhere
22 on this swab, the portion of the swab that was
23 cut off by the prior lab had tested, that had
24 blood, right? As far as you know?

25 A. Yes, that's -- I believe that's what I said.

1 Q. Okay. But the portion that was left on those
2 swabs, you don't know that anybody ever tested to
3 see if there was blood, and if so, how much of
4 the swab that was being cut off contained the
5 blood, right?

6 A. That's correct.

7 Q. Okay. You know that blood and EDTA -- that EDTA
8 is a binding; you call it chelating, but the same
9 way -- another way of saying binding, right,
10 molecules?

11 A. Yeah, it binds -- it binds metals, that's
12 correct.

13 Q. Particularly metals, right?

14 A. Yes.

15 Q. And so it may bind with one substrate that a
16 stain is sitting on differently than another
17 substrate that a stain is sitting on, right?

18 A. If it's not already bound to another metal, yes.

19 Q. Okay. And by substrate, I'm talking -- it's
20 another way of saying a surface, particular
21 surface, right?

22 A. That's correct.

23 Q. You only tested three swabs that were reported to
24 have been taken, or found, in the Teresa Halbach
25 vehicle, right?

1 A. That's correct.

2 Q. Do you know how many other swabs or how many
3 other stains were also found in that vehicle?

4 A. No, I don't.

5 Q. Your opinion that there's no EDTA in the swabs
6 from the Halbach vehicle, then, is limited to the
7 three swabs that were presented to you; isn't
8 that right?

9 A. Could you repeat that?

10 Q. You expressed an opinion a little more broadly
11 than perhaps you intended to, I believe, which
12 was that your opinion was -- let me look for my
13 notes -- that the stains in the Halbach --
14 bloodstains in the Halbach vehicle could not have
15 come from the purple vial that you tested, right?

16 A. That's correct.

17 Q. But you're actually referring only to the three
18 stain swabs that you tested, correct?

19 A. No, I believe my original testimony is what I
20 meant.

21 Q. Well, are you telling me right now, that even
22 though you never tested three other swabs of
23 separate bloodstains found elsewhere in the RAV4
24 vehicle, that you're willing to express an
25 opinion that none of those three swabs have EDTA

1 either?

2 A. I am willing to -- to conclude that.

3 Q. Oh, you are?

4 A. Yes, sir. If I can elaborate.

5 Q. Well, no, let me finish my -- my question. So
6 even though you didn't test those other three
7 swabs, you are prepared to state that they could
8 not have come from the blue -- the purple-topped
9 vial that you tested of Mr. Avery's blood?

10 A. I believe that to be true within a reasonable
11 degree of scientific certainty, yes.

12 Q. Okay. I just wanted to know how far you were
13 willing to go. And the -- You also give another
14 interesting opinion where you -- I'm not sure
15 exactly how it came out after I objected and it
16 was rephrased, but that you believe the planting
17 scenario, one of those two -- you only gave two
18 scenarios there, one which is that the blood came
19 from a dripping finger that you so helpfully gave
20 us on the screen, right, that was one scenario?

21 A. To represent active bleeding. I wouldn't know if
22 it came from a finger or a toe or an arm.

23 Q. Oh, really, you just picked a dripping finger out
24 of just thin air, right?

25 A. That's what happened to be at Microsoft's web

1 site --

2 Q. Oh.

3 A. -- a finger, right.

4 Q. And that was one scenario. The other scenario
5 was that someone was pouring out these little
6 drops from the purple-topped tube, right?

7 A. Sure, yes.

8 Q. And I think if I understood you, you maybe went
9 even farther and said that because of your test
10 on those three stains, there was no way that --
11 that the blood in the RAV4 could have been
12 planted by anybody; isn't that what you said?

13 A. Yes, that was my opinion. That's correct.

14 Q. Or did you mean that they couldn't have been
15 planted from that purple-topped tube only?

16 A. Well, if you look at all of the information I was
17 given on this case, my opinion would be that it
18 couldn't have come from the EDTA tube that we
19 tested or any other EDTA tube.

20 Q. Okay. But you are not expressing the opinion
21 that it couldn't have been planted from some
22 other blood source, that didn't have EDTA
23 already, are you?

24 A. No, sir.

25 Q. Okay.

1 A. I'm not saying that.

2 Q. Okay. And you never tested any swabs that were
3 reported to you to have been recovered from the
4 garage floor or inside Mr. Avery's trailer --
5 trailer, were you?

6 A. Could you repeat that?

7 Q. You never tested any swabs that were given to you
8 that were reportedly recovered from the garage
9 floor or trailer of Mr. Avery, did you?

10 A. No, I wasn't.

11 ATTORNEY BUTING: Should we approach the
12 bench for a minute, your Honor?

13 THE COURT: Sure.

14 (Side bar taken.)

15 THE COURT: Members of the jury, we're
16 going to go a little longer than normal to get the
17 witness back to Virginia. I'm told we don't have
18 too much to go. But let's take a quick stretch
19 break and then allow the attorneys to finish. You
20 may continue.

21 ATTORNEY BUTING: Thank you, Judge.

22 Q. (By Attorney Buting)~ The -- Without getting too
23 bogged down in the procedure that's followed and
24 the protocol and all that, if you allow me to
25 oversimplify it, as I understand it, you take

1 these swabs -- And, by the way, let's just clear
2 one thing up, the photograph showed two control
3 swabs for each of these three stains, right?

4 A. Yes, that's correct.

5 Q. You didn't test both control swabs, though, did
6 you?

7 A. No, standard practice, we leave half for
8 retesting, so we tested one and left the other
9 for future testing if that was deemed necessary.

10 Q. Well, aren't these swabs supposed to have been
11 taken from different areas of, like, one side or
12 the other of a particular stain.

13 A. It's from the general area, that's correct.

14 Q. But the theory being that you don't swab the
15 exact same area twice, you swab -- you use the
16 second swab to swab a different control area
17 somewhere around the stain, right?

18 A. That's one way to do it, yes.

19 Q. All right. You don't know how it was done in
20 this case, because you weren't there?

21 A. That's correct, I was not there.

22 Q. Okay. But my point is, you didn't test -- you
23 didn't take half of each -- clip off half of each
24 swab and do it that way, right?

25 A. That's correct, we did not.

1 Q. You just tested one?

2 A. Yes.

3 Q. Okay. The -- As I understand it, what you do is

4 you clip off the swab. You put it in a little --

5 some sort of a little vial or something. You put

6 a solution in there. And it's actually 200

7 microliters of something, something of that

8 nature; does that sound right?

9 A. Well, perhaps you are oversimplifying it.

10 Q. Well, you put a solution -- you put a solution

11 into the dry swab sample, right?

12 A. You do, yes.

13 Q. And you allow it to react for a certain period of

14 time, right?

15 A. Forty-five minutes.

16 Q. And your protocol for this particular test, 45

17 minutes, correct?

18 A. Yes. Yes.

19 Q. And then you -- you centrifuge it?

20 A. Yes, we do.

21 Q. And then, what that does, is it separates the

22 liquid from the solids that drop to the bottom,

23 right?

24 A. The liquid portion goes through the filter and it

25 carries with it the EDTA and EDTA iron complex

1 that was dissolved into the solution.

2 Q. And the solids drop to the bottom?

3 A. No, sir.

4 Q. Well, okay, the liquid is at the top?

5 A. No, sir. If you would like, I can simplify this.

6 Q. Please.

7 A. Okay.

8 Q. Simply.

9 A. The swabs are cut and put into what's called a
10 molecular weight cut off filter, it's a filtering
11 device, sitting in this filter device. And then
12 we add a solution of the internal standard, which
13 I described earlier as the positive control, into
14 each sample. That's 200 microliters, which is --
15 again, that is approximately a 10th -- I'm
16 sorry -- a 20th of a drop, and that is placed
17 into the --

18 Q. Two hundred microliters?

19 A. I'm sorry, I misspoke. It's not --

20 Q. Yeah, I thought so.

21 A. It's approximately two drops. Thank you. It's
22 approximately two drops of liquid that are placed
23 into that -- onto that swab. And it's left to
24 sit for 45 minutes to allow for -- time for all
25 of the EDTA, or a portion of the EDTA and the

1 iron complex, to actually go into the water that
2 was added to it.

3 And then we centrifuge it at high speed
4 to drive the liquid through the filter device and
5 the liquid goes to the bottom of the tube and the
6 swab and all the solids remain at the top in the
7 filter itself. And then we analyze the liquid
8 portion.

9 Q. Okay. So I misspoke, it's the other way around,
10 the liquid is at the bottom, right?

11 A. Yes, sir.

12 Q. All right. And then goes into -- there's --
13 there's approximately 200 microliters of liquid,
14 a little less probably by then, right?

15 A. A little less, yes.

16 Q. Okay. Then it goes into a machine called auto
17 sampler, right?

18 A. No, not exactly.

19 Q. Well --

20 A. It's transferred into a small sampling container,
21 a vial, which is a sealed glass vial. And then
22 we manually place it onto an auto sampler.

23 Q. Okay. And then the auto sampler basically sucks
24 out just five microliters for the test, right?

25 A. For each of the individual tests that we ran on

1 this, yes.

2 Q. Correct. So out of each, Q-49, Q-48, Q-47, the
3 micro sampler takes five micro -- auto sampler
4 takes about five microliters, leaving 190 or so
5 left, correct?

6 A. Well, probably considerably less than 190, but it
7 leaves some residual liquid behind, yes.

8 Q. Okay. And then it's that five microliters that
9 gets tested in the instrument, correct?

10 A. That's right.

11 Q. But you don't save the remaining liquid to be
12 retested by the defense, or another lab, or
13 anything of that nature, do you?

14 A. No, we don't.

15 Q. And presumably, if you did, that would be one way
16 of verifying the results that came from the five
17 microliters that was tested, correct?

18 A. That would be one of many ways it could be --

19 Q. Okay.

20 A. -- reevaluated.

21 Q. Now, EDTA is found, you mentioned, in many, many
22 products, common household products, right?

23 A. Yes.

24 Q. You mentioned shampoos, detergents, and some
25 automotive cleaning products as well, right?

1 A. Yes.

2 Q. Including Armor All?

3 A. No.

4 Q. Make up?

5 A. Some cosmetics.

6 Q. Okay. Also used in photography?

7 A. In some applications of photography, yes.

8 Q. Okay. And, yet, when you tested the controls in

9 this case, you found no EDTA detectable, correct?

10 A. That's exactly right.

11 Q. And that was in the process whereby you have

12 diluted the -- or allowed the solid to react with

13 200 microliters of liquid, correct?

14 A. That's correct, yes.

15 Q. If you had allowed that to evaporate down to a

16 smaller amount, if there was any EDTA in the

17 liquid, it would be more concentrated, correct?

18 A. Yes, it would be.

19 Q. You did not do that in this case, on the

20 controls, for instance, to rerun them and see if

21 you would detect EDTA at a lower dilution?

22 A. No, I don't believe it was necessary to do.

23 Q. Okay. And, by the way, the -- even with this

24 brand new test you devised, you can't tell the

25 jury, to a absolute scientific certainty, if

1 there is such a thing, that there's no EDTA in
2 any of those blood stains. All you can say is
3 that there is none detectable given your limits
4 of detection, correct?

5 A. Yes, they are negative at our limit of detection,
6 which I feel --

7 Q. Okay.

8 A. -- is more than adequate.

9 Q. I understand that's your opinion, but the point
10 of it is, there might be a lower level of
11 detection which might reveal EDTA; isn't that
12 right?

13 A. Well, you could go lower and start detecting
14 environmental contamination from soil and water,
15 but that, I believe, would just confuse the
16 interpretation on this case.

17 Q. What that might do is just what happened in the
18 O.J. case, which is, show the jury that there is
19 EDTA in the bloodstain rather than that there is
20 not, correct?

21 A. Again, I didn't do the testing in the O.J. case
22 and I'm not fully aware of all the final findings
23 in that particular case. It's been, I believe,
24 12 years, actually.

25 Q. All right.

1 A. And -- But it's my recollection, to answer your
2 question, that we did not report that there was a
3 significant amount of EDTA in that bloodstain in
4 that case.

5 Q. I want to show you a photograph that we have
6 looked at earlier. Probably this -- one of these
7 two. But I will show you Exhibit 473, first.
8 Take a look at these two. Okay. Have you had a
9 chance to look at that?

10 A. Yes, I have.

11 Q. And is that the blood vial that looked the way it
12 looked when you got it?

13 A. No, sir.

14 Q. It's changed? The one you got was changed? How?

15 A. Well, I can't even verify that this is the same
16 vial, based on this photograph, either of these
17 photographs.

18 Q. Well, I think counsel -- we have had testimony
19 earlier, we can -- for your purposes, you can
20 assume that that is the same vial that ultimately
21 made it to the FBI Lab, at least we hope, okay.

22 ATTORNEY GAHN: I will agree that the
23 witness can assume that that's the vial that came
24 from the Manitowoc County Clerk of Court's Office
25 and was sent to the FBI for your analysis, Doctor.

1 Q. (By Attorney Buting)~ Okay.

2 A. Yes.

3 Q. So, then, my question is, the condition, the way
4 that vial looks to you right now in that picture,
5 is that consistent with the -- is that consistent
6 with the way the vial looked on that day that you
7 saw it?

8 A. If I can refer to my notes.

9 Q. Sure.

10 A. Again, I really can't tell fully because I can't
11 see all the markings on the vial to verify that
12 it's marked exactly the same as when we received
13 it. But when we -- when we received the vial of
14 blood, it came in a different container, as was
15 indicated earlier. It was sealed into a shipping
16 container like this and it has a label on the
17 side that I don't see in either of these
18 photographs. Additionally, the top was sealed
19 with evidence tape on here. Let me correct that
20 last statement, the vial itself was not sealed
21 with evidence tape, it's this outside container
22 that was.

23 Q. Okay. Let me put this up on the screen for you,
24 for the jury. Is this the same exhibit you are
25 looking at right now.

1 THE COURT: I'm not sure your microphone is
2 on, Mr. Buting.

3 ATTORNEY BUTING: Sorry.

4 Q. (By Attorney Buting)~ Is this the same exhibit
5 that you are looking at right now? Does it look
6 the same?

7 A. No, sir, I believe that's a different photograph.

8 Q. Let me see the photograph, please.

9 A. Yes.

10 Q. All right. Let's try this one. Okay. I think
11 counsel have agreed we have got Exhibit 473 up on
12 the screen now. Let me ask you, when you did
13 open up the vial, or the packaging, and found the
14 purple vial of blood that said -- or that was
15 reported to you to be Steven Avery's, did it
16 appear to you that the vial had been clearly
17 opened at some time?

18 A. Yes, it did.

19 Q. Okay. And is that, in part, because around the
20 edge, as I have zoomed in on this exhibit of the
21 stopper, there appears to be some red blood that
22 has actually seeped in onto the stopper itself?

23 A. That's exactly right, yes.

24 Q. Okay. And that's a clear sign that at some point
25 the top had been opened, right?

1 A. Yes, it is.

2 Q. All right. Your opinions that you expressed
3 today are to a reasonable degree of scientific
4 certainty, right?

5 A. Yes.

6 Q. And just as you would do in any other case where
7 you are expressing an opinion to a jury, correct,
8 as an expert?

9 A. Yes, based on the science, yes.

10 Q. All right. Well, let's talk about another case
11 that you were involved in in which a protocol was
12 developed rather hurriedly, not the O.J. one that
13 you were not involved in, but a fellow by the
14 name of Dr. William Sybers, does that ring a
15 bell?

16 A. Yes, it does.

17 Q. Correct me if I'm wrong, but Dr. Sybers was a
18 medical examiner in the State of Florida, whose
19 wife passed away and nine years later was charged
20 with her murder for poisoning -- allegedly
21 poisoning her with a particular sort of muscle
22 paralyzing drug, correct? Is that a fair
23 summary?

24 A. Yes.

25 Q. Okay. And so what they did was, they dug up poor

1 Mrs. Sybers' body and took samples from the
2 tissue of -- the embalmed tissue of her remains,
3 correct?

4 A. Yes, they did.

5 Q. And then, they went to you, to develop a protocol
6 to test for a particular drug called
7 succinylcholine, that's s-u-c-c -- maybe you can
8 spell it. S-u-c-c-i-n-y-l-c-h-o-l-i-n-e, is that
9 right?

10 A. No, that's wrong.

11 Q. Okay. Tell us, how do you spell it?

12 A. No, that's the correct spelling, your statement
13 was wrong.

14 Q. Okay. You developed a protocol to develop -- in
15 an effort to determine whether, from a metabolite
16 that could be found in someone's postmortem
17 fluids, one could determine if the parent drug
18 had been administered at some earlier time?

19 A. I need you to repeat that before I can respond.

20 Q. You developed a protocol, in that case -- First,
21 let me step back. What you were trying to do,
22 what you were asked to do, was to test these
23 postmortem fluids, a subject which, by the way,
24 you continue to testify on now, in 2007, right,
25 or six?

1 A. Again, that's a multi-question question, I can't
2 respond to it.

3 Q. They train you well on courtroom testimony, don't
4 they?

5 A. I'm just answering your questions --

6 Q. Okay.

7 A. -- truthfully, sir.

8 Q. You were correct that was a multi -- that was a
9 bad question, it's getting late. You still teach
10 at conferences about postmortem fluids, right?
11 The testing of postmortem bodily fluids?

12 A. I do, that's part of my job.

13 Q. Right. And it was back in 1999, I think, right?

14 A. Yes, it was.

15 Q. And you were asked in that case to try and see if
16 you could come up with a test protocol that could
17 determine whether or not Dr. Sybers had poisoned
18 his wife with a particular drug; is that right?

19 A. Not entirely correct, no.

20 Q. Well, you're going to fight me all the way on
21 this I can see. You developed a protocol to try
22 and find out whether the prosecution's theory
23 that Dr. Sybers had poisoned his wife was correct
24 or not, correct?

25 A. No, sir. That's never the intent of developing a

1 procedure is to determine someone's guilt or
2 innocence. It's to simply analyze for the
3 presence of a chemical in evidentiary material.
4 We don't decide the guilt or the innocence.

5 Q. Well, thank God for that.

6 ATTORNEY GAHN: Objection, your Honor.

7 THE COURT: Sustained.

8 Q. (By Attorney Buting)~ What you were trying to do
9 was to test bodily fluid that had been embalmed
10 nine years earlier and draw some conclusions
11 about whether or not one could make an assessment
12 of whether this parent drug had been administered
13 to the person before they died, correct?

14 A. If I can correct your question a little bit, move
15 things along. We tested, not postmortem fluids,
16 but we tested postmortem tissues, heart, kidney,
17 lung, fat, muscle, as I recall. We were asked to
18 develop the protocol to determine whether or not
19 a chemical called succinylmonocholine,
20 s-u-c-c-i-n-y-l-m-o-n-o-c-h-o-l-i-n-e, was
21 present in these tissues, because another
22 laboratory had found them and we were asked to
23 verify whether or not that laboratory had indeed
24 identified this particular chemical.

25 Q. Okay. And your testing indicated a positive

1 finding for succinylmonocholine in the victim's
2 kidney, correct?

3 A. That is correct.

4 Q. And that particular molecule is a metabolite of
5 the drug succinylcholine, correct?

6 A. Yes, it is.

7 Q. And your testimony was employed, by the
8 prosecution, to obtain a conviction of Dr. Sybers
9 for the murder of his wife by means of the
10 injection of this succinylcholine, correct?

11 A. I did pros -- I did testify for the prosecution
12 in that case, that's correct.

13 Q. And you rendered opinions to a reasonable degree
14 of scientific certainty, didn't you?

15 A. I believe I did. If I rendered an opinion, I
16 would make sure it was within a reasonable degree
17 of scientific certainty.

18 Q. Just as you are today?

19 A. Yes, sir.

20 Q. To a jury just as we have here today, correct?

21 A. To a jury, yes.

22 Q. And that jury convicted Mr. Sybers, correct?

23 A. Yes, they did.

24 Q. The conviction, however, was reversed by the
25 Court of Appeals in Florida four years later,

1 right?

2 A. I don't know when, but I do know that they
3 reversed the decision on appeal.

4 Q. And only after that, when additional tests were
5 done on other tissues or fluids from other
6 deceased persons, was it determined that that
7 very same metabolite you found in Mrs. Sybers'
8 body was also in theirs; isn't that right?

9 A. That's correct. I would like to elaborate on it.

10 Q. You can elaborate in a moment and I'm sure you
11 will take any opportunity you can. But the point
12 being, your protocol was hurriedly developed for
13 the trial of Mr. Sybers' case, right? Mid-trial,
14 while the trial was going on, yes or no?

15 A. I'm trying to answer, but you are not giving me a
16 chance, sir. Yes, it was developed for the
17 Sybers' case.

18 Q. Okay.

19 A. It was a court ordered test that we were --

20 Q. Okay.

21 A. -- told to do.

22 Q. And you didn't decline, right? You could have
23 said, no, we don't have enough time to do this?

24 A. I couldn't decline in that instance, no.

25 Q. Well, did you tell the Court, hey, I just don't

1 have time to do this properly and scientifically?

2 A. No, sir, I was told that the Attorney General of
3 the United States was going to call me and
4 request that we do this exam, so I decided that I
5 would do it.

6 Q. Did you tell the jury that you were under
7 pressure to do -- to develop a test protocol that
8 you didn't feel comfortable doing?

9 A. No, I never -- never told the jury I was
10 uncomfortable developing the test protocol.

11 Q. Okay.

12 A. But I do believe I informed them it was done
13 under rather rushed circumstances.

14 Q. Okay. And you never told them that there was any
15 concerns about the scientific validity of the
16 opinions you were expressing either, were you,
17 correct?

18 A. There were no concerns, in my opinion, about the
19 scientific certainty of what we did in
20 that particular case.

21 Q. Okay.

22 A. And I stand by it today.

23 Q. Okay. Except that years later, when you tested,
24 as you should have all along, other tissues from
25 other bodies, you found the same metabolite?

1 A. Well, it's a complex question; I can't just
2 answer yes or no. We did test tissues from other
3 bodies when we worked to develop the method and
4 validate the method before it was used on
5 specimens in the Sybers case, we did do that.

6 But what happened was years later we got
7 a new instrument into our laboratory and we had
8 additional cases where we were requested to
9 analyze for the same analyte. And when we
10 started to move the method over to the new
11 instrument, which was more sensitive than the old
12 method, we started to find this chemical there at
13 very low levels in bodies that we knew had never
14 been exposed to that particular drug.

15 So that was then reported immediately to
16 the investigators in Florida. We did all of that
17 work ourself. We reported it to the
18 investigators and informed the Court of our
19 findings.

20 Q. Now, just out of the goodness of your heart, you
21 kept testing these samples, is that what you are
22 saying? There was no ongoing post-conviction
23 litigation that was involved in this case?

24 A. No, sir, not at all. As I testified, we
25 continued to test specimens because we were

1 requested to do this examination on other cases
2 in the future.

3 Q. Okay. And what happened was this, you expressed
4 an opinion, in court, to the jury, that the
5 presence of the metabolite, succinylmonocholine,
6 proved to a scientific certainty, the prior
7 presence of or injection of succinylcholine,
8 correct?

9 A. Can I see what you are reading from, please.

10 Q. I just asked you the question?

11 A. I don't recall. I would have to see what you are
12 reading from.

13 Q. Okay. Well, I will show you this in just a
14 moment. In any event, several years later, the
15 attorney general, or the prosecutor in Florida,
16 submitted what's called a notice to the court,
17 that is marked as the Exhibit 439, correct?

18 A. I don't know what that form is called, I'm sorry.

19 Q. Well, have you seen this exhibit before?

20 A. First time I saw it was yesterday.

21 Q. Okay. But you saw it yesterday?

22 A. Yes.

23 Q. Okay. I'm going to read you a sentence and you
24 tell me in you agree or disagree with it. The
25 purpose of this filing is to notify the Court and

1 the defendant that recent scientific testing,
2 conducted by National Medical Services and the
3 Federal Bureau of Investigation Laboratories, has
4 discovered that the findings specifically related
5 to this defendant and the testimony of the
6 experts from each of these laboratories, though
7 believed to be correct at the time of the
8 testimony, can no longer be relied upon.

9 The findings of the presence of
10 succinylmonocholine in the specimens tested are
11 believed to be accurate and correct; however, the
12 opinions that the succinylmonocholine proves, to
13 a scientific certainty, the prior presence of, or
14 ingestion of, succinylcholine are not correct,
15 end quote.

16 A. I disagree with that statement.

17 Q. You do? Oh, this is the ***State of Florida vs.***
18 ***William Sybers***, correct?

19 A. Yes, it is.

20 Q. Okay. Prosecutor apparently agreed with it,
21 correct?

22 A. I think you would have to ask the prosecutor; I
23 don't know.

24 Q. Okay. Well, would you like to see the signature
25 of the State's attorney on this document?

1 A. Yes.

2 Q. Do you see that?

3 A. Yes.

4 Q. Okay. By the way, National Medical Services is
5 the lab that you interned at, correct?

6 A. I did a three month intern there while I was
7 working on my master's in 1987.

8 Q. And in the trial of that case, you and Dr. Kevin
9 Ballard, from that lab, were both testifying for
10 the prosecution, correct?

11 A. Yes, we were both called by the prosecution to
12 testify in that case, that's correct.

13 Q. Do you know how many years Mr. -- or Dr. Sybers
14 spent in prison before the -- before these tests
15 proved to disprove that original thesis?

16 A. I believe he's still in prison, sir.

17 Q. Well, did you ever go apologize to Dr. Sybers?

18 A. No, sir, I did not.

19 Q. Did you ever send a letter or apology to the
20 jurors who convicted him, for giving them an
21 opinion that was later retracted by the
22 prosecutor himself?

23 A. No, because I believed my original testing was
24 accurate, that the specimens did contain what I
25 said were in those specimens, which was

1 succinylmonocholine.

2 Q. And that your opinion was that the presence of
3 that proved poor Mrs. Sybers had been injected by
4 the parent drug?

5 A. And that opinion, of course, was based on the
6 research that was available at the time.

7 Q. And later research proved your opinion to be
8 wrong; isn't that right, sir?

9 A. Not exactly. Later research, with more sensitive
10 instrumentation that was not used in the Sybers
11 case, proved that we were able to find traces of
12 this chemical, now, when we used a more sensitive
13 approach than we actually used in this case.

14 Q. So, later science and instrumentation proved your
15 opinion, offered to the jury to a reasonable
16 degree of scientific certainty in that case, was
17 wrong, correct?

18 A. No, sir. I believe all it did is actually
19 confuse the issue.

20 Q. Just like you are doing here today in Mr. Avery's
21 case, correct?

22 A. I hope I'm not confusing the issue, sir.

23 Q. Well, I hope so too.

24 ATTORNEY BUTING: Thank you, sir that's all
25 I have.

1 THE COURT: Mr. Gahn, any redirect?

2 ATTORNEY GAHN: Yes, your Honor, just a
3 little bit.

4 **REDIRECT EXAMINATION**

5 BY ATTORNEY GAHN:

6 Q. Dr. LeBeau, will you, please, explain to the
7 jurors how you became involved in the Sybers
8 case, what transpired, and how it was finally
9 resolved?

10 A. Yes, I will. There was an investigation of a
11 medical examiner named William Sybers, in the
12 State of Florida. It was a very long ongoing
13 investigation where there was a great deal of
14 evidence -- the investigators felt there was a
15 great deal of evidence against this forensic
16 pathologist in the death of his wife. And the
17 investigation lasted approximately 10 years.
18 Because he was a medical doctor --

19 ATTORNEY BUTING: Judge, I'm going to
20 object, unless this is knowledge that he's acquired
21 on his own, from his involvement in the case, it's
22 hearsay and it's irrelevant. It's at least hearsay.

23 THE COURT: I think the background of the
24 case is already established and the witness should
25 move onto his role in it and what he knows happened

1 afterward, if we haven't heard it already.

2 A. The laboratory in Pennsylvania was involved in
3 this case and they analyzed those specimens from
4 her exhumed body for the presence of every single
5 chemical known to man. And they found the
6 presence of this chemical called
7 succinylmonochole. And in that, they concluded
8 that that would -- that chemical was a metabolite
9 that comes from succinylcholine. And that was
10 very well established in the research that dated
11 back into the '50s.

12 But because they were the only
13 laboratory that did this analysis and because
14 they had some prior evidence rejected by the
15 Court on that particular case, the Court ordered
16 the prosecution to find another laboratory to
17 verify the findings of the laboratory out of
18 Pennsylvania and they called upon us to do so.

19 So we developed a method -- quickly
20 developed a method to try to identify the
21 presence of this chemical, succinylmonochole,
22 in tissues, which is actually one of the most
23 difficult types of analyses to do. And we did
24 identify the presence of this chemical in some of
25 the same tissues that the laboratory in

1 Pennsylvania found it in, but not all of them.
2 And I testified to that in the trial, that we
3 were not able to find it in all those tissues and
4 that our method was not as sensitive as the
5 method that was used by the laboratory in
6 Pennsylvania.

7 I did conclude, at that trial, that the
8 only known source of succinylmonocholine, at the
9 time, came from injections of the parent drug,
10 succinylcholine. And I testified to that. We
11 did validate the method before it was put into
12 use. We ran negative tissues from other bodies
13 that we knew had never been exposed to
14 succinylcholine or succinylmonocholine.

15 Then, in the years after the trial and
16 the conviction, we were continuing to get
17 requests from other agencies that were claiming
18 that that same laboratory in Pennsylvania had
19 found the presence of this same chemical in old
20 cases, unclosed cases. And after awhile I
21 started to get concerned, because it didn't make
22 sense to me that this very unique drug would be
23 used in so many homicide cases.

24 So we started testing, using a new
25 instrument. And we transferred the method over

1 to this new instrument that was much more
2 sensitive than what we had used in the past. And
3 in the validation steps for the transfer, we ran
4 some blank tissues again, as we did before we
5 used it in the Sybers case. But this time we
6 started to find small, small amounts of the
7 chemical, succinylmonocholine.

8 And we -- as soon as we finished that
9 and we verified the findings, we consulted
10 heavily with the laboratory in Pennsylvania and
11 we concluded that this was present in very trace
12 amounts, naturally, in our bodies, at least in
13 postmortem specimens. So we were the very first
14 ones to identify this.

15 And we reported it immediately, not only
16 to the prosecutor in that case, but prosecutors
17 in other cases. And we also immediately put a
18 letter into the *Journal of Analytical Toxicology*
19 so that that information would be immediately
20 available to anyone else that may be doing this
21 testing. So my opinion at the time, I feel, was
22 correct. At the time, the only known source for
23 succinylmonocholine came from the parent drug
24 succinylcholine.

25 Q. And it was your testing for this chemical later

1 on that you notified the Court that the
2 technology that you had in place now was finding
3 it?

4 A. That's exactly right.

5 Q. And can you tell this jury how was the Sybers
6 case resolved.

7 A. My understanding is --

8 ATTORNEY BUTING: Objection, the -- we
9 can -- the Court can take judicial notice of how the
10 matter was ultimately resolved. And unless this
11 witness was involved in the resolution, I don't know
12 how that is relevant.

13 ATTORNEY GAHN: Well, your Honor, I will
14 take the exhibit that defense attorney has been
15 reading from and I would like to get a complete
16 reading of the exhibit.

17 THE COURT: Is the exhibit available?

18 ATTORNEY BUTING: Yes, it is.

19 Q. (By Attorney Gahn)~ This is Exhibit 439 that you
20 have seen before?

21 A. Yes, it is.

22 Q. And do you know, how was this case resolved
23 against Mr. Sybers?

24 A. Dr. Sybers pled guilty.

25 Q. Thank you.

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ATTORNEY GAHN: That's all I have.

RECROSS-EXAMINATION

BY ATTORNEY BUTING:

Q. Dr. Sybers pled guilty to time served and was released immediately, wasn't he?

A. That I don't know, sir.

Q. You haven't researched it? You didn't look that up; is that what you are saying? Do you know that Dr. Sybers was released from prison, in 2003, as a result of entering a plea that was time served, after this notice was filed with the Court?

THE COURT: I'm going to intercept here and stop with your comment. I think the relevance of whatever happened to him later is borderline. I believe the testimony that's relevant to this case is already in the record.

ATTORNEY BUTING: All right.

THE COURT: Members of the jury, we're going to excuse you for today. I apologize for running late. Again, I will remind you not to discuss the case with each other or with anyone else and we'll see you tomorrow morning.

(Jury not present.)

THE COURT: You may be seated. Counsel,

1 I'm not going to take up any of the outstanding
2 motions at this time, but we probably should deal
3 with Exhibit 466, the PowerPoint presentation of
4 this witness that the defense objected to -- defense
5 objected to the admission.

6 ATTORNEY BUTING: I object to it because it
7 really draws a conclusion that -- of a dripping -- a
8 finger dripping blood, when the State is trying to
9 argue that that may have been the source of the
10 blood is highly prejudicial and apparently without
11 any foundation from this witness, according to his
12 own testimony.

13 THE COURT: Mr. Gahn.

14 ATTORNEY GAHN: I think that the witness --
15 that the doctor testified that his PowerPoint
16 demonstration would be helpful to the jury. And I
17 think he explained that on cross-examination that
18 the only reason he used that was because it was in
19 the Microsoft. I really don't think it has any
20 impact.

21 THE COURT: In the Court's mind, the jury
22 has already seen it. He's given a satisfactory
23 explanation. I believe the jury understands it was
24 used for illustrative purposes only and it is
25 consistent with the opinion that he gave, so I'm

1 going to admit Exhibit 466.

2 ATTORNEY BUTING: I would also move to
3 admit whatever -- what are those two, the curriculum
4 vitae, No. 480, of Mr. Brewer -- Dr. Brewer, oh,
5 and No. 479, which is the original intake internal
6 communication document.

7 THE COURT: Are there any exhibits that you
8 marked that you are not requesting be admitted?

9 ATTORNEY BUTING: I don't believe so. I
10 think we have introduced everything else.

11 THE COURT: Any objection from the State to
12 any of the marked exhibits being admitted?

13 ATTORNEY GAHN: Only to the CV of
14 Dr. Brewer, I don't what the purpose of that is.
15 Dr. Brewer did not testify.

16 THE COURT: He did not testify, but there
17 was testimony he played a role in the testing of the
18 blood, so I'm going to allow that exhibit as well.
19 Anything else today?

20 ATTORNEY STRANG: Are 475 through 478 in?

21 ATTORNEY GAHN: Yes.

22 ATTORNEY STRANG: They are, okay.

23 THE COURT: All right. We'll see you
24 tomorrow morning.

25 ATTORNEY GAHN: Your Honor, may Dr. LeBeau

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go back to Virginia?

THE COURT: Assuming the defense isn't asking him to say.

ATTORNEY BUTING: No, we're not.

THE COURT: He is excused.

THE WITNESS: Thank you, your Honor.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 2nd day of January, 2008.

Diane Tesheneck, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 18

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** MARCH 7, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
12 Special Prosecutor
On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
14 Special Prosecutor
On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
16 Special Prosecutor
On behalf of the State of Wisconsin.

17 DEAN A. STRANG
18 Attorney at Law
On behalf of the Defendant.

19 JEROME F. BUTING
20 Attorney at Law
On behalf of the Defendant.

21 STEVEN A. AVERY
22 Defendant
Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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(Jury present.)

THE COURT: At this time the Court calls State of Wisconsin vs. Steven Avery, Case No. 05 CF 381. We're here this morning for a continuation of the trial in this matter. Will the parties state their appearances for the record, please.

ATTORNEY FALLON: Good morning, your Honor, may it please the Court, the State appears by Assistant Attorney General Tom Fallon, District Attorney Ken Kratz, and Assistant District Attorney Norm Gahn as special prosecutors for Manitowoc County.

ATTORNEY BUTING: Good morning, your Honor. Attorneys Jerome Buting and Dean Strang appear with Mr. Avery, the defendant.

THE COURT: All right. I will indicate for the record, this morning, as usual, I met with counsel in chambers, before we began, to discuss the agenda for today. Is there anything either party wishes to address on the record, outside of the presence of the jury before we bring the jurors in?

ATTORNEY FALLON: Nothing, at this time, from the State.

ATTORNEY BUTING: No, your Honor.

THE COURT: Very well, we'll bring the

1 jurors in at this time.

2 (Jury present.)

3 THE COURT: You may be seated. And,
4 Mr. Fallon, are you going to be questioning the
5 State's first witness?

6 ATTORNEY FALLON: I am, thank you.

7 THE COURT: You may call your witness.

8 ATTORNEY FALLON: State would call Special
9 Agent Rod Pevytoe.

10 **SPECIAL AGENT RODNEY PEVYTOE**, called as
11 a witness herein, having been first duly sworn,
12 was examined and testified as follows:

13 THE CLERK: Please be seated.

14 THE WITNESS: Thank you.

15 THE CLERK: Please state your name and
16 spell your last name for the record.

17 THE WITNESS: My name is Rodney Pevytoe,
18 P-e-v-y-t-o-e.

19 **DIRECT EXAMINATION**

20 BY ATTORNEY FALLON:

21 Q. What do you do for a living?

22 A. I'm a Special Agent with the Wisconsin Department
23 of Justice, the Division of Criminal
24 Investigation. I'm assigned to work in the arson
25 bureau of that unit.

1 Q. And how long have you been employed for the
2 Division of Criminal Investigation, Wisconsin
3 Department of Justice?

4 A. It should be 27 years next week.

5 Q. How long have you been a law enforcement officer?

6 A. Over 30 years.

7 Q. And prior to joining the Department of Justice,
8 what law enforcement experience have you had?

9 A. I was a reserve deputy with the Marathon County
10 Sheriff's Department --

11 COURT REPORTER: I'm sorry, Judge, I
12 can't hear the witness.

13 THE COURT: You'll have to get a little
14 closer to the microphone.

15 COURT REPORTER: Could you repeat that,
16 please.

17 A. I was a reserve deputy with the Marathon County
18 Sheriff's Department in Wausau, Wisconsin.

19 Q. How long have you been assigned to the Arson
20 Bureau?

21 A. It will be 25 years next week.

22 Q. What types of cases does the Arson Bureau involve
23 themselves in?

24 A. Our primary emphasis is the investigation of
25 fires and explosions that occur in the State of

1 Wisconsin, determine their cause and assist in
2 further follow up criminal investigation, if it
3 is warranted.

4 Q. Approximately how many fire investigations have
5 you been involved in in your years of experience
6 in the Arson Bureau?

7 A. I don't have an exact number, but I can say it's
8 easily in excess of 800.

9 Q. Of those investigations, do you have an idea for
10 us approximately how many of them involved a
11 death?

12 A. The best estimate I could give you is
13 approximately 100 individual incidents. And some
14 of those would involve multiple fatalities.

15 Q. How does the Arson Bureau typically get involved
16 in a case?

17 A. When there is a fire or an explosion, we'll
18 receive a request from either a fire chief or a
19 law enforcement official to come there and work
20 with them in making determination as to the
21 events that occurred there and assist them in
22 further investigation, if warranted.

23 Q. And where are you currently based?

24 A. I work out of northern Wisconsin, near Eagle
25 River.

1 Q. Tell us about your educational background. Do
2 you hold a bachelor's degree?

3 A. Yes, I do. I have a bachelor's degree in
4 criminal justice from the University of Wisconsin
5 in Oshkosh.

6 Q. And approximately when did you receive that
7 degree?

8 A. 1978.

9 Q. Do you hold any certifications as a law
10 enforcement officer?

11 A. Yes, I do. I'm a certified law enforcement
12 officer in the State of Wisconsin.

13 Q. And do you belong to any particular associations
14 which are pertinent to the field of fire
15 investigation?

16 A. Yes, I'm a member of the International
17 Association of Arson Investigators in Wisconsin
18 Chapter, as well as in the International Chapter.
19 And I currently serve on the Board of Directors
20 for the International Association.

21 Q. And approximately how long have you been
22 associated with the International Association of
23 Arson Investigators?

24 A. Be 25 years next week.

25 Q. Do you have any estimate as to approximately how

1 many members, worldwide, are in this
2 International Association?

3 A. I believe that the total is somewhere between 7
4 and 8,000 right now.

5 Q. Are there any certifications that are awarded or
6 provided in conjunction with membership in the
7 International Association of Arson Investigators?

8 A. The International Association of Arson
9 Investigators has a certified fire investigator
10 program. You don't have to be a member of that
11 association to earn that accreditation, but they
12 do have a program to certify a level of
13 competency in fire investigators.

14 Q. All right. Have you received such a
15 certification from this association?

16 A. Yes, sir.

17 Q. And how long have you held such a certification?

18 A. I believe it's 22 years now.

19 Q. Are you currently still certified by the
20 association?

21 A. Yes.

22 Q. And do you continue to receive training in arson
23 investigation or fire investigations and
24 explosions?

25 A. Yes, I do. It's an ongoing basis always.

1 Q. As a result of your 25 years experience and
2 training and certifications, are you familiar
3 with the concepts of cause and origin of fire?

4 A. Yes.

5 Q. Are you capable of recognizing possible human
6 remains which have been damaged by fire as a
7 result of your training and experience?

8 A. Yes, sir.

9 Q. Are you familiar with the concept of accelerants
10 and their role in the cause and origin of fire?

11 A. Yes.

12 Q. Briefly, what is an accelerant?

13 A. An accelerant is typically either a fuel or an
14 oxidizer -- oxidizer that's added to the
15 combustion process to enhance it. Most of the
16 time we think of it as ignitable liquids, but
17 it's not necessarily always that.

18 Q. All right. What are some of the other forms that
19 an accelerant may take?

20 A. Well, in a solid or in a gaseous form.

21 Q. All right. Directing your attention to this
22 particular case, how did you get involved in this
23 investigation?

24 A. Well, on November 9th of 2005, I received a
25 telephone call. I was working on a case in

1 northern Wisconsin. And during that telephone
2 conversation, I was requested to come down to
3 Manitowoc to assist in the investigation of the
4 scene.

5 Q. And that -- November 9th would have been a
6 Wednesday; is that correct?

7 A. That's correct.

8 Q. And approximately what time did you arrive on
9 scene?

10 A. I'm not sure of the exact time, but I'm going to
11 estimate it was approximately mid-afternoon.

12 Q. And when you arrived, what was the first thing
13 you did in conjunction with this case?

14 A. Well, there was a security checkpoint, so I
15 checked in with a officer that was manning that.
16 And then I went over to a command area, if you
17 will, and I spoke to Special Agent Fassbender,
18 who was the leader of that. And then I was
19 introduced to Detective Wiegert, who was also
20 working on that.

21 Q. After this briefing and introduction, what first
22 investigative step, if any, did you take on that
23 day?

24 A. Just more or less got a tour of the whole
25 situation there, in order to make an assessment

1 of any potential needs that would be required for
2 further investigation on my part.

3 Q. As part of this initial tour, did you have an
4 opportunity to observe the area which has
5 previously been identified as the burn pit,
6 behind the residence of the defendant?

7 A. Yes, I did.

8 Q. Tell us your initial observations.

9 A. Well, what was described as the burn pit, is in
10 back of a car or automobile garage there. It was
11 a raised area of soil that had an indentation in
12 it. That indentation, approximately four feet
13 wide, maybe five feet deep, into that soil, or
14 mound, or plateau area. And it had some darkened
15 residue at the base of that. It had been covered
16 up with a tarp prior to my arrival.

17 Q. And did you attempt or begin any processing of
18 that area on Wednesday afternoon, November 9th?

19 A. No, I didn't feel that the weather or the
20 resources allowed it at that time.

21 Q. Did you conduct any other investigative activity
22 on that day?

23 A. No, other than just getting familiar with the
24 scene and making an assessment of the needs.

25 Q. All right. Directing your attention, then, to

1 Thursday, November 10th, in the morning, what was
2 the first investigative task that you undertook?

3 A. Well, the first thing I did on Thursday was
4 actually come here to Chilton to the sheriff's
5 department and I went and met with Deputy Riemer
6 of the Calumet County Sheriff's Department. And
7 myself, along with Special Agent Tom Sturtivant,
8 we did a re-examination of some char material
9 that had been previously removed from the burn
10 pit area.

11 Q. All right. And tell us about that particular
12 examination?

13 A. Well, in that examination, we set up some clean
14 tarps under -- or brand new tarps underneath,
15 elevated the debris so we could get very close to
16 it and look at it, put some very bright lights on
17 it to try to identify as much as we could and
18 then began a systematic process of evaluating the
19 material, going through it in an attempt to
20 identify potential evidentiary items that may be
21 in there.

22 Q. Did you locate any potential items of evidentiary
23 significance in your examination of the debris?

24 A. Yes, sir.

25 Q. And tell us about that?

1 A. Well, I encountered numerous items that I
2 suspected were bone fragmentation. I also
3 recovered something that I believed was part of a
4 tooth. And then a couple other items that were a
5 darkened mass roughly the size of, let's say, a
6 golf ball, maybe a little bit larger, that I felt
7 was charred muscle tissue.

8 Q. And what did do you with these materials that you
9 suspected to have evidentiary significance?

10 A. Deputy Riemer from the sheriff's department was
11 present with me and he was directly adjacent to
12 me. So, when we recovered items, I literally
13 just took them from my hand and put -- handed it
14 over to him.

15 Q. Approximately how long did this process take?

16 A. Until about midday.

17 Q. And during this process, were you assisted by
18 anyone other than Special Agent Sturtivant and
19 Deputy Riemer?

20 A. No.

21 Q. After completing your examination of this debris,
22 what was the next step, investigative step, that
23 you took in this case?

24 A. I went back out to the Avery property.

25 Q. Can you estimate for us your approximate arrival

1 time at the Avery property?

2 A. I believe it was the early part of the afternoon
3 on Thursday.

4 Q. All right. Upon your arrival at the property,
5 what task did you undertake?

6 A. Well, after checking in with everybody there and
7 going through the security procedures, I met with
8 other agents from the Arson Bureau there. They
9 went about some different tasks at the property
10 and then myself, and Special Agent Mike Rindt,
11 and Special Agent Jim Sielehr, we conducted a
12 re-examination of the burn pit area.

13 Q. All right. And what role did Special Agent Rindt
14 fulfill on this particular day with respect to
15 the burn pit?

16 A. Well, his initial role was to do some photography
17 of the scene. And then once that was completed,
18 or as part of that ongoing process, he did assist
19 in the examination and so did Special Agent
20 Sielehr.

21 Q. And what did do you when you arrived at the pit?

22 A. Well, the first thing we did is we documented
23 with photographs. And then there were some
24 evidence technicians from the City of Manitowoc
25 Police Department there, so I asked them to do a

1 grid search of the perimeter of that raised soil
2 area.

3 And there were three of them there, so
4 what I had them do in the grid search is, they
5 walk, literally, shoulder to shoulder. And they
6 were to go in a crisscross pattern, one
7 direction, then going perpendicular to it later.
8 They were supposed to walk through the grass. If
9 they saw anything that seemed out of place or
10 they didn't understand, they were just supposed
11 to mark it and not handle it.

12 I gave them some flags that would be
13 like you see for utility companies, a little flag
14 on a wire. And they would highlight those areas
15 and they would be looked at by Deputy Riemer.
16 And if it was potential evidence, he would be
17 taking it from that perimeter area, so to speak.

18 Q. Now, with respect to the actual burn pit itself,
19 what did you do there?

20 A. Well, maybe to back up a little bit, we didn't
21 start with the burn pit. The next step after
22 doing that perimeter search was to do the
23 elevated part of the sand area, which was larger
24 than the pit area. And then the pit was the last
25 part of the examination process, if you will.

1 Q. All right. Tell us about that.

2 A. Okay. Well, the first thing that we did when we
3 looked at that elevated area, after some
4 photography of it, is I established a path to
5 walk in, walked into the area, noticed some areas
6 that had some debris that had some potential
7 interest, that was up above. And I marked those
8 with flags. I exited in the same route that I
9 entered.

10 And then we developed a plan where the
11 three of us would begin to enter from the edge of
12 it; in other words, going from the grass and
13 working our way into the pit, from the far side
14 of the soil, the farthest distance from the burn
15 pit, and we would start to pick up evidentiary
16 items.

17 The first thing we encountered was a dog
18 house there. So I crawled into the dog house to
19 see if there was any evidence there. We moved it
20 out of the way. We eventually found, I think the
21 roof came off of it. So we examined the dog
22 house, the chain, a few other things that were
23 there, to see if there was anything that -- of
24 particular interest in that area. And then we
25 continued to progress throughout the soil.

1 Q. Did you find any interest in and around the dog
2 house?

3 A. Not in what I expected to be human remains, but
4 we were in the process of taking everything that
5 was there to ensure for it's preservation.

6 Q. After examining the dog house and the elevated
7 dirt pile, how did you proceed?

8 A. Once we completed that elevated area, we then
9 proceeded into this depression that's been called
10 the burn pit. I divided that pit in half,
11 visually, east and west. And we moved in from
12 its perimeter, the edge of it, on our hands and
13 knees and moved through that, and removing items
14 that we suspected would be evidence. And
15 eventually removed all of the ash, there was like
16 a caked, baked on layer of the top soil right
17 there. Actually crumbled that and sifted all the
18 debris and then preserved and removed all of that
19 from the same.

20 Q. All right. Tell us about the material that you
21 found as you began to examine the burn pit.

22 A. Well, there was this heavy layer of black --
23 blackened soil. It kind of had an oily residue.
24 There was some heavy black, dark charred
25 material. Didn't look like cellulose or wood

1 type charring, although there was some there.

2 There were some different remains of --
3 I think there was like a couple hinges, and like
4 different metal parts that we would encounter in
5 that process. And also we found some things that
6 we suspected were some potential bone
7 fragmentation.

8 Q. And tell us about some of the other items; did
9 you find any wire, for instance?

10 A. Yes, just off to the side of the burn pit there
11 was a large ball of intertwined wire that was
12 present. And then there was also the metal
13 remains of what I thought was the -- like a back
14 seat of a SUV type vehicle that had been removed
15 and that also was burned.

16 Q. All right. And tell us, was there anything
17 noteworthy about the balls of wire that you found
18 in conjunction with your examination of the pit
19 area?

20 A. Yes, the wire is consistent with what I have seen
21 in the past in other fires. And it's the wire
22 that remains after steel belted radial tires are
23 burned. So we had this large groupings of oval
24 shaped wires, so to speak, that were all
25 entwined. And in examining those, I noticed that

1 there was some bone fragmentation entangled in
2 the wires, so we attempted to photograph that and
3 recover those items also. And eventually took
4 the whole tangled wires and that rear car seat
5 that I had mentioned.

6 Q. All right. In your fire investigative
7 experience, can you tell us whether steel belted
8 radial tires, do they burn?

9 A. Yes.

10 Q. And is rubber considered an accelerant?

11 A. It can be. It certainly has -- When we look at
12 materials, we judge it by the amount of heat
13 energy it releases. And in my definition, tires
14 being introduced to a fire greatly enhances its
15 ability to burn. It releases a lot more heat
16 energy into it and I believe that tires can be
17 used as a form to accelerate a fire.

18 Q. All right. Now, why did you take the rear seat
19 of the vehicle; why was that of some particular
20 interest to you?

21 A. Well, first of all, because it was there. And it
22 was in the crime scene area, so we removed that.
23 And, also, I didn't know if it would be matched
24 up to a vehicle later on. And, also, the seat
25 itself may have had some impact on the way the

1 fire burned. The foam rubber on the seat, once
2 the seat covering is removed in a combustion
3 process, the foam rubber also burns with great
4 intensity.

5 Q. All right. Approximately how long did the
6 processing of this area take?

7 A. Several hours because we went into the hours of
8 darkness that day. I wanted to -- Once we
9 initiated the process, I wanted to complete it.
10 So we brought in a generator and some large --
11 several sets of large floodlights to illuminate
12 the area. It might have been as late as 9,
13 10:00, when we were completed.

14 Q. Okay. With the -- With the items that you
15 suspected of evidentiary value, what -- what did
16 you do with those items which were collected from
17 this area?

18 A. Deputy Riemer was, again, accompanying us in this
19 examination. His role was to take any items that
20 we seized as evidence and, then, he was the
21 evidence custodian for that process.

22 Q. All right. Upon completion of your work on
23 Thursday, November 10th, did you return to the
24 area on Friday, November 11th?

25 A. I did.

1 Q. What were your tasks to perform on Friday,
2 November 11th?

3 A. Well, there were some other areas at the property
4 that needed some examination and evaluation.

5 Q. And what areas were those?

6 A. There were several spots. The first one was an
7 aluminum smelter that was part of the junkyard
8 operation. There was an outdoor wood boiler at
9 the property that we looked at.

10 And then there were several areas, there
11 was a campfire pit in a backyard of one property.
12 And some other areas where some debris had just
13 been discarded at different times; we were
14 looking at that.

15 Q. Well, let's take those one at a time and let's
16 begin with the boiler area. Tell us about that.

17 A. This wood boiler is a commercially made outdoor
18 wood boiler that's used as a -- either a
19 supplemental or primary heat source for a
20 residence, or in this case, the commercial area.

21 It's a large self-standing unit and has
22 a large door. You open it up and if you were to
23 use it, you would ignite a fire in there, it
24 would heat water and then the water would be
25 circulated for the heating process in a remote

1 location.

2 Q. All right. And tell us your external visual
3 observations as to the condition of this boiler.

4 A. Well, the boiler, first of all, was cold. It
5 wasn't warm, did not give the appearance of
6 having been used at any time in the recent past.
7 In fact, on the smoke stack of the boiler, there
8 was a five gallon bucket over the top of it, I
9 assume to keep rain water from getting into it at
10 some point.

11 We then opened the door into the
12 combustion chamber and it was filled with paper
13 products that were unburned, as if items had been
14 placed in there in the past. So as part of our
15 examination process, we removed that unburned
16 paper, looked through it, and then eventually
17 removed all the ash that was in the bottom of it,
18 and looked through it. And, then, as the final
19 step, I partially crawled into it to -- with a
20 flashlight, to examine the area as best I could.

21 Q. I'm going to have Special Agent Fassbender
22 provide you some photographs for your
23 examination.

24 A. Thank you.

25 Q. I believe you are first examining, is it

1 Exhibit 381?

2 A. Yes, State's Exhibit 381 is a photograph.

3 Q. I'm sorry, is that 3-8 or 4-8-1? I'm sorry.

4 A. Oh, I'm sorry, yes, it's Exhibit 4-8-1. It's
5 Case 381, so my confusion, I apologize.

6 Q. Is that the boiler that you examined on Friday,
7 November 11th?

8 A. Yes.

9 Q. Does that appear to be a true and accurate
10 depiction of how it appeared to you when you
11 examined it on that day?

12 A. It does.

13 Q. All right. Directing your attention to the large
14 screen projection of that exhibit, does that
15 accurately reflect the exhibit itself?

16 A. It does.

17 Q. All right. Now, you mentioned something about a
18 bucket, is that depicted in the picture?

19 A. Yes, you can see a stainless steel smoke stack on
20 the boiler. And at the top of it, there's a
21 white, I assume it's a five gallon size, plastic
22 bucket covering that.

23 Q. All right. Upon making the observation of this
24 particular boiler, what was the next step in your
25 investigative process?

1 A. Well, we took some additional photographs and
2 then we began to look into the combustion
3 chamber.

4 Q. All right. If your -- If your attention then
5 would be directed to the next photograph,
6 Exhibit 482 is it?

7 A. Correct, 482, is an accurate depiction of the
8 scene when I saw it. And that photograph is
9 actually just a close up, more so of the
10 chimney --

11 Q. All right.

12 A. -- on this unit.

13 Q. Now, again, who was assisting you in the
14 investigative process on this particular date?

15 A. Special Agent Rindt was.

16 Q. All right. Next exhibit, please, 483, I believe.

17 A. Yes, State's Exhibit 483 is a photograph that is
18 an accurate prediction -- presentation of the
19 boiler unit when we opened up the door.

20 Q. All right.

21 A. And that shows the unburned paper products that
22 we found in there initially.

23 Q. Upon your examination of the inside of this
24 boiler, what did you do?

25 A. We removed these paper products and examined

1 them.

2 Q. All right. And next exhibit, please, 484.

3 A. State's Exhibit 484 is an accurate depiction of
4 the side of the wood boiler.

5 Q. Exhibit 485.

6 A. State's Exhibit 485 is a photograph we took and
7 that is an accurate depiction of the boiler unit
8 after we removed the ash from the bottom of it.
9 It's a gray cellulose type ash.

10 Q. All right. Tell us about the removal of the ash
11 from the boiler?

12 A. We employed a systematic process where we would
13 remove it and examine it as we were placing it
14 down onto this tarp. Photo editor doesn't look
15 like it's showing the whole bottom of the
16 photograph, at least in this depiction. There.

17 Q. All right. Why did you remove the ash?

18 A. To examine it.

19 Q. And what did you note, you said something about
20 the cellulite content of the ash?

21 ATTORNEY STRANG: Cellulose.

22 Q. (By Attorney Fallon)~ Cellulose, excuse me. What
23 did you mean by that?

24 A. Well, if you noticed, the ash is very gray in
25 color, much like you might get from the bottom of

1 a fireplace after you use it for a long time.
2 And this gray, very fine ash is typical of what I
3 have seen from wood products that are burned in a
4 relatively complete combustion process.

5 Q. Now, with respect to that ash, was that at all
6 similar to any of the ash you found in your
7 investigation of the burn pit area?

8 A. No, the ash from the burn pit was very dark black
9 in color and almost more granular in nature.
10 This was very, almost powder, something like a
11 talcum powder almost type consistency, if you
12 will.

13 Q. All right. Your next photograph is exhibit?

14 A. State's Exhibit 486. And that would be a
15 photograph and that depicts the internal part of
16 that burn chamber on the wood boiler. And I
17 believe you have it sideways, the left hand side
18 would be the top of it.

19 Q. The left hand side is the top?

20 A. Yes.

21 Q. All right.

22 A. Rotate it clockwise. And that photograph there
23 would be -- that's the inside of the boiler unit
24 after we have removed the ashen remains. And
25 that gray area is the bottom where the combustion

1 takes place. And so we removed that and then
2 that's where I eventually got partially into and
3 used a flashlight to examine and see if there was
4 anything that we missed in there.

5 Q. And in terms of your investigation of the boiler,
6 did you find anything of evidentiary significance
7 in your opinion?

8 A. No.

9 Q. All right. What do you have for your next
10 exhibit, 480?

11 A. I see some photographs of the smelter unit.

12 Q. All right. And is that where your investigation
13 took you next?

14 A. Actually, we did the smelter before we did the
15 wood boiler, but ...

16 Q. All right. Tell us about your investigation of
17 the smelter.

18 A. This smelter unit was kind of an addition onto
19 part of one of the buildings. It was just a
20 partially enclosed area. And it was an LP gas
21 fueled unit and it appeared, by the stock piles
22 of stuff there, it was used to melt aluminum
23 components from the automobile salvage area and
24 eventually render down into ingots at some point.

25 (Court reporter asked him to repeat.)

1 A. Into an ingot form.

2 Q. By the way, how did it come to pass that you were
3 examining the boiler and now this smelter?

4 A. I was requested to do so by Special Agent
5 Fassbender.

6 Q. And when you investigated the smelter, who
7 assisted you in this particular process?

8 A. Again, Mike Rindt, who is a special agent with
9 the Department of Justice, was with me.

10 Q. And what -- The next exhibit you have there, with
11 respect to the smelter, is Exhibit 480?

12 A. Well, I do have 145. I don't know if that's --

13 Q. That's fine, 145. Do you recognize Exhibit 145,
14 we're putting that on the screen; it's already
15 been received.

16 A. All right. State's Exhibit 145 is that smelter
17 unit that I previously described. You can see
18 some of the aluminum material in the background.
19 And the very center of the photograph, the
20 heavily oxidized unit, is the smelter.

21 Q. All right. And what's your next photograph?

22 A. 487.

23 Q. 487. And Exhibit 487 depicts what?

24 A. That's a depiction of the back of the smelter
25 unit. It shows where the fuel lines that feed

1 that unit are. And there's a couple blower
2 motors.

3 Q. All right. And the next exhibit?

4 A. 488.

5 Q. 488. And what is depicted in Exhibit 488?

6 A. That is the area where the material is introduced
7 and melted.

8 Q. All right. How was this picture obtained?

9 A. If you look in the bottom left hand corner, you
10 see my foot there. In order to look at this
11 smelter unit, I crawled up on top of it and was
12 standing over it, looked down into this melting
13 area, if you will. And I had Special Agent Rindt
14 hand me the camera. So, I'm standing on top of
15 it, looking straight down into this melting area,
16 or melting pot of the smelter.

17 Q. All right. Next exhibit, please.

18 A. Exhibit 489, it's again, another photograph of
19 part of that melting pot, if you will, of the
20 smelter. This one shows three beer cans in it
21 that are unmelted.

22 Q. Again, was this particular photograph taken by
23 yourself when you were on top of the smelter?

24 A. It is.

25 Q. Next exhibit?

1 A. 490.

2 Q. And again --

3 A. Exhibit 490 is another photograph that I took
4 looking down into the melting pot of the smelter.

5 Q. All right. Next?

6 A. 491 is similar.

7 Q. This is another close up of that?

8 A. Yeah, at one point I reached down and moved some
9 things around to see -- you can see there's some
10 like slag in the bottom and some heavy oxidized
11 pieces of metal, so. Because there were areas
12 that were kind of out of direct view of up and
13 down so I had to lean at different angles to take
14 the photograph and did it that way.

15 Q. All right. And I note there are a couple of what
16 appear to be pipes on one of the walls to the
17 melting chamber; do you know what those are?

18 A. Yeah, if you look at the top of that photograph,
19 that would correspond to those blower motors that
20 we saw in the previous exhibit and that would be
21 where they are forcing air into that area.

22 Q. And your next photograph?

23 A. My next one is 493. And this is a depiction of
24 the smelter. It's from the opposite side as the
25 very first exhibit we looked at.

1 Q. And your next?

2 A. Next one would be 494. And that's kind of into
3 the entrance of where the smelter was and it
4 shows a stockpile of, again, what I believe to be
5 aluminum automobile parts. I assume would be for
6 future operation and melt down.

7 Q. And your last exhibit?

8 A. Final photograph is 494 -- excuse me -- 495. And
9 that's a photograph taken from a distance looking
10 out to the smelter and you also see the LP tank
11 that fuels that process.

12 Q. All right. Did you make written documentation of
13 your investigation regarding the boiler and the
14 smelter?

15 A. I wrote a report on the boiler and I forgot to
16 write a report on the smelter.

17 Q. All right. Who assisted you in -- Let me ask you
18 this, was there anyone else assisting you, other
19 than Special Agent Rindt, in your examination of
20 the boiler and the smelter?

21 A. No, Mike Rindt, was the one that was with me both
22 times.

23 Q. In terms of your investigation of the smelter,
24 did you find anything of any evidentiary
25 significance?

1 A. We removed no items of evidence from there.

2 Q. In your opinion, did it appear to have been
3 recently used?

4 A. Not at all.

5 Q. After your examination of the boiler and the
6 smelter, what other investigative tasks did you
7 perform that Friday, November 11?

8 A. There was a -- Just so we maybe separate for the
9 sake of definition, there was a campfire pit in
10 back of the Janda property and Special Agent
11 Rindt and I went over and examined the contents
12 of that area.

13 Q. And did you find any items of evidentiary
14 significance in that?

15 A. We took some items from there, just on the
16 potential that they could be evidence of
17 something. They were men's clothing that were
18 unburned, heavily soiled with like grease and
19 oil.

20 Q. Did you examine any other general debris area on
21 that Friday afternoon?

22 A. One other area was examined.

23 Q. What was that?

24 A. On the back of the defendant's property, at the
25 very rear of the property, there was a sharp

1 depression that went into what looked like an old
2 quarry area, sand pit. Down on that hillside
3 there was some just debris that was located by
4 searchers. And they asked us to look at that
5 debris just in potential that it could have been
6 something of significance to the investigation.

7 Q. All right. I'm going to have Exhibit 86
8 displayed in a zoomed in mode and ask if that
9 might assist you in showing us where you examined
10 this other debris pile?

11 A. This other debris pile that I'm just referring to
12 would be -- This is the burn pit at the Avery
13 property and the debris pile, this is actually a
14 slope down that goes towards these automobiles.
15 And it was on the slope, right in this area, that
16 those items were discarded and we examined them.

17 Q. Did you find anything of evidentiary significance
18 in the examination of that debris pile?

19 A. No, sir.

20 Q. Directing your attention, then, to Saturday,
21 November 12th, did you continue to assist in this
22 investigation on that day?

23 A. I did.

24 Q. And on Saturday, November 12th, who assisted you,
25 if anyone?

1 A. Special Agent Ronald Evan was with me at a couple
2 points.

3 Q. And did you have the opportunity to examine other
4 potential debris locations on that day?

5 A. Yes, sir, we did.

6 Q. And what areas -- Did you come to examine an area
7 that's been referred to as the Radandt deer camp?

8 A. Yes, sir.

9 Q. And tell us about your examination of that area.

10 A. There were a couple burn barrels there. And we
11 went there with the intent of examining those to
12 see if there were any items that could be of
13 significance. So we went through that and the
14 immediate area around that.

15 Q. And did you find any items of evidentiary
16 significance there?

17 A. As I recall, there was one unburned bone. It
18 looked like a steak bone that was there, but we
19 did take that, just in the possibility that it
20 could be important.

21 Q. Now, was there another location for one of the
22 Radandt Sand and Gravel operation that you
23 examined some debris?

24 A. I don't recall. I believe it was right at the
25 trailer, there was a burn barrel there. And it

1 was around that area that we were looking.

2 Q. Okay. In terms of your investigation of these
3 areas and items, you indicate you didn't require
4 -- excuse me -- you did recover some men's
5 clothing. If you found anything you thought of
6 significance, who was your contact with the
7 Calumet Sheriff's Office for receipt of any
8 information you determined of evidentiary
9 significance?

10 A. That would be Deputy Riemer.

11 Q. Now, in your examination of the burn barrels, I
12 think you said your first task in this -- Well,
13 let me ask you, did you have an opportunity to
14 investigate or to examine some burn barrels as
15 part of this?

16 A. Yes, on Saturday, the 12th, I believe it was.
17 When I was done at the fire pit at the Avery
18 property, I came back over to the Sheriff's
19 Department and there were several 50 gallon
20 barrels that they asked us to go through.

21 Q. All right. And tell us about those burn barrels.

22 A. Those barrels were here at the Sheriff's
23 Department here in Chilton and Special Agent Evan
24 and I, along with Deputy Riemer, went to an area
25 and Deputy Riemer would produce a 50 gallon

1 barrel and its contents and we would conduct an
2 examination of it. If we found anything that we
3 suspected would be potential evidentiary value,
4 we separated that from the barrel. The barrels
5 were being retained for evidence. But we
6 separated out things that might have been
7 important and set them aside and gave them
8 directly to Deputy Riemer for preservation.

9 Q. Now, of those barrels, how many of them did you
10 actually find anything that had some potential
11 evidentiary significance?

12 A. I think only one barrel. We recovered some bone
13 fragments at the time.

14 Q. Now, those bone fragments which were recovered,
15 how did those bone fragments compare with the
16 fragments that you found that were sifted from
17 the burn pit itself; was there anything distinct
18 in your mind about the condition of those
19 fragments or the size of those fragments compared
20 to those in the burn pit debris?

21 A. Yes, the fragmentation that I was finding from
22 the burn pit was very small. Much of it was --
23 in some cases was the size of half of your little
24 fingernail, if you will. Most of the bones were
25 very fragmented in there. Where the bones that

1 were recovered from that barrel on Saturday, the
2 burn barrel, they were of larger mass.

3 Q. All right. In your examination of materials from
4 the burn barrel, did you find anything such as
5 rivets, or grommets, or any other articles of
6 clothing?

7 A. No.

8 Q. In terms of your examination of the -- of the
9 items from the burn pit itself, did you find
10 evidence of clothing such as rivets, or grommets,
11 or things?

12 A. Yes.

13 Q. Tell us about that.

14 A. Well, during this process of the burn pit debris,
15 we looked at several things that were small, bone
16 fragments, couple dental fragments, as well as I
17 recall, at a later date in the examination where
18 we were going through it, if you will, in a very
19 fine dedicated manner to look for small items, we
20 recovered a couple brass colored rivets that --
21 like what you might see on a pair of blue jeans
22 or jean type clothing.

23 Q. All right. And when did that occur?

24 A. That was in December.

25 Q. And where?

1 A. At the State Crime Laboratory in Madison.

2 Q. And who if -- And who else participated in the
3 investigation of the debris on that day?

4 A. There were numerous people there. Dr. Eisenberg
5 was there for a while, myself, Special Agent
6 Heimerl. I believe Special Agent Rindt was
7 there. At one point Special Agent Fassbender and
8 Inspector Wiegert were there. There were a
9 couple people that were there for part of the
10 process, because it took multiple days to go
11 through that.

12 Q. All right.

13 ATTORNEY FALLON: Your Honor, at this time
14 I would move into evidence Exhibits, I believe 481
15 through 495. Apparently we marked Exhibit 492 and
16 that's just a re-mark of I think it was 145, so
17 rather than duplicate the evidence, we'll just go
18 with Exhibit 145, I believe it was.

19 ATTORNEY STRANG: Counsel is correct on the
20 duplication and I have no objection to any of the
21 tendered exhibits.

22 ATTORNEY FALLON: And we would pass the
23 witness for cross-examination.

24 THE COURT: Very well. The exhibits are
25 admitted. Mr. Strang.

1 ATTORNEY STRANG: Thank you.

2 CROSS-EXAMINATION

3 BY ATTORNEY STRANG:

4 Q. Mr. Pevytoe, good morning.

5 A. Good morning.

6 Q. You -- You have a quarter century's training in
7 arson investigation sounds?

8 A. Yes, sir.

9 Q. And, really, no training at all in archaeology?

10 A. You know, as part of the process of investigating
11 fire scenes, especially in fatal fires, and we
12 cover that. We duplicate a process that's much
13 used by anthropologists. So in classes that I
14 have had, we talk about the process that might be
15 employed and how it actually compares to what an
16 anthropologist or an archaeologist might do in a
17 grave dig.

18 Q. Right, in a burial site recovery.

19 A. Correct, and they are very similar at times.

20 Q. But in terms of training in archaeology as a
21 field, that's not something you have pursued?

22 A. No, I'm not an archaeologist, I'm a fire
23 investigator, sir.

24 Q. Not an anthropologist?

25 A. No.

1 Q. There are --

2 A. Took some classes in college in anthropology, but
3 I don't profess to have any extreme knowledge in
4 that area.

5 Q. Okay. There are some system similarities,
6 though, in the burn site recovery or -- I'm
7 sorry -- burial site recovery that might be used
8 in an arson investigation and in archaeology, as
9 you say?

10 A. Correct.

11 Q. Now, in an arson that results in fatalities, one
12 or more deaths you -- you typically, in going
13 into the burned area, would find the remains sort
14 of where they fell?

15 A. Well, in most cases. Sometimes they are moved,
16 in order to preserve them, by firefighters, or
17 something from damage.

18 Q. Yes, either moved accidentally by firefighters in
19 the course of trying to extinguish the fire?

20 A. Correct. Or intentionally.

21 Q. Or intentionally, again, to try to preserve the
22 remains for arson investigators later?

23 A. Or if there is a question of a life, not being
24 able to see correctly, obviously, they may remove
25 a body.

1 Q. Right. There may be emergency efforts?

2 A. Correct.

3 Q. Obviously, to preserve life?

4 A. Right.

5 Q. But, typically, in your experience as an arson
6 investigator, in the instances where the body has
7 been moved at all, that's been by responding
8 emergency personnel?

9 A. Well, I did have -- I recall one case that comes
10 to mind where I had some individuals that were
11 murdered and they were moved. And then they were
12 burned again. And then they were moved again.
13 So I had some where a defendant or a perpetrator
14 has moved body remains.

15 Q. Okay. Let's go to that. But you will recall
16 that my question started with typically?

17 A. And, typically, you are right.

18 Q. So, you know, as they say, typically, then, the
19 body is in place, untouched, unless responding
20 emergency personnel have had some reason to
21 disturb the body?

22 A. Correct. In most occasions that would be
23 correct.

24 Q. Right. Now you spoke of one instance where there
25 was a murder and then an arson?

1 A. Yes.

2 Q. Okay. And let's take that in order. This is not
3 all that uncommon in your experience, to have a
4 murder occur and then somebody set a fire to try
5 to conceal the fact of the murder?

6 A. Well, I don't know what we say is common. It is
7 certainly a possibility that people would use
8 fire to conceal evidence of a homicide or
9 something like that. Fortunately, I don't run
10 into it as a common place thing.

11 Q. If I didn't say, I meant to say, it's not
12 uncommon. You have had the experience in
13 investigating arsons that you concluded were set
14 to conceal a crime?

15 A. Correct.

16 Q. Often that crime would be a murder?

17 A. Yes.

18 Q. In these instances that you have investigated?

19 A. There have been times, yes.

20 Q. Okay. And you described one prior experience
21 where your investigation concluded that there had
22 been a murder, and arson, and then burned bodies
23 were moved in some fashion, again?

24 A. Correct.

25 Q. And re-burned?

1 A. Well, they were murdered, moved, burned, and then
2 the incinerated remains were buried partially.
3 And some were left at the original site and some
4 were buried.

5 Q. Okay. That was one case, in 25 years?

6 A. Correct. And involved five victims, but yes.

7 Q. And in that -- On that occasion, where the
8 incinerator remains were removed and buried,
9 okay, are you with me?

10 A. Mm-hmm.

11 Q. You found the majority of the incinerated remains
12 in the burial site?

13 A. Correct. They were the large pieces, because it
14 wasn't a very good incineration process.

15 Q. And smaller pieces were left behind at what you
16 suspected as the original burn site?

17 A. Correct.

18 Q. Less noticeable pieces, other than to a trained
19 arson investigator?

20 A. I would say that's a fair statement.

21 Q. That is, you have experience, unfortunately, I
22 guess, or perhaps fortunately as a law
23 enforcement matter, of having learned to
24 recognize charred human remains?

25 A. Yes.

1 Q. Remains that might not appear to be human at all
2 to my eyes, or to someone without your
3 experience?

4 A. That's correct.

5 Q. That is, for example, charred muscle tissue looks
6 not much at all like muscle when it's been burned
7 and dried and what you could call desiccated?

8 A. Probably, yes.

9 Q. All right. So your eye picks up smaller remains
10 that an untrained eye may not perceive as human
11 remains at all?

12 A. That's possible, yes.

13 Q. You don't, though, hold yourself out as someone
14 with expertise in cremation, I take it?

15 A. I guess it depends on your definition of an
16 expert. I do have education, somewhat, in
17 cremations. I have gone and observed them and
18 did some studies on because of my position in the
19 arson bureau.

20 Q. And when you say cremations, we're talking about
21 a human body?

22 A. Correct, in a commercial application.

23 Incineration is what I consider to be something
24 that's done in the field.

25 Q. Okay. And so you had some training in commercial

1 cremation. You have obviously had job experience
2 in what you were describing as incineration.

3 A. Yes. And education there. So I had education
4 and experience in both.

5 Q. You know that in a commercial cremation, the
6 cremation will be accomplished in an enclosed
7 container or burn chamber?

8 A. Within our culture, yes. There's other cultures
9 that don't do it that way. But within North
10 America, that's typical.

11 Q. Sure. And that's a fair qualification, but let's
12 use North America as the cultural setting here,
13 not India, for example?

14 A. Correct.

15 Q. Typically here, a commercial cremation would
16 happen in an enclosed combustion chamber?

17 A. In a retort, it's called.

18 Q. Yes. And by retort, you mean a closed chamber?

19 A. Correct.

20 Q. All right. That allows for more intense heating
21 in the sense that the heat is captured by the
22 retort, or the enclosed chamber?

23 A. Well, the heat levels were probably the same. It
24 allows for better efficiency of the use of the
25 heat.

1 Q. And a cremation chamber typically would be fed by
2 accelerant, in some fashion.

3 A. Natural gas is the most common fuel product.

4 Q. With lines going into the chamber, correct?

5 A. Depends on the manufacturer of the retort. But
6 there are several avenues that the gas is
7 introduced into there.

8 Q. And then for combustion, you also need air to be
9 introduced into the chamber?

10 A. That's correct.

11 Q. Much, in this very general sense, a little bit
12 like the aluminum smelter you described for us
13 here this morning?

14 A. And adding air to it or what?

15 Q. Yes, I think you pointed out two pipes in one of
16 the photographs of the aluminum smelter that you
17 described as being attached to blower motors?

18 A. Correct.

19 Q. That was to introduce air into the -- the -- what
20 you call the melting pot of the aluminum smelter?

21 A. That's what it looked like they were used for.

22 Q. And then you also saw that there were LP gas or
23 liquid propane gas feeds into the smelter?

24 A. Yes.

25 Q. With the LP gas tank, 500 gallon, thousand

1 gallon, whatever it was, outside?

2 A. Correct.

3 Q. And so, you know, in that sense, the aluminum
4 smelter also was enclosed -- an enclosed
5 combustion area, when used?

6 A. Just partially enclosed, I think the top was open
7 because that's how I could take the photograph.

8 Q. Right. But it wasn't burning when you took the
9 photographs?

10 A. That's correct.

11 Q. And you would expect, in operation, one would
12 close the top?

13 A. Well, it appears it could have been left open at
14 times because there was some scorching to the
15 area a little bit, but it certainly could have
16 been covered at times.

17 Q. Okay. I mean, at least the manufactured design
18 would allow the top to be closed during
19 combustion?

20 A. It looked like it. I didn't operate the furnace
21 so I don't know if there was any switches to
22 prevent or whatever, but it had a cover that
23 could be used. At what point, I don't know.

24 Q. Okay. Fair enough. And do you have a sense of
25 the commercially common or standard temperature

1 at which, again, a commercial cremation is
2 conducted in North American culture?

3 A. Yes, most retorts are going to operate 16 to
4 1800 degrees. The temperature is going to vary
5 because at some points there's fluctuations,
6 depending on the fuel and when the body ignites
7 and becomes part of the of the fuel mass and then
8 there's a cool down process, but it's a general
9 operating range at times.

10 Q. Very good. 16 to 1800 Fahrenheit?

11 A. Correct. I'm sorry.

12 Q. Now, the -- let's -- I'm going to take you now and
13 talk for a little bit about the burn area behind
14 Steven Avery's garage.

15 A. Okay. The burn pit?

16 Q. Well, I'm going to talk about the larger area,
17 because I think you -- you distinguished,
18 somewhat, the area that was a pit or an
19 indentation --

20 A. Correct.

21 Q. -- from the overall area?

22 A. Yes.

23 Q. Your -- Your first call on this case came on
24 November 9?

25 A. Correct.

1 Q. A Wednesday, I think?

2 A. Yes.

3 Q. One of the things you were told that you were
4 being called because some suspected burnt bone
5 fragments had been found the day before?

6 A. I believe so, yes.

7 Q. And there had been some work at that burn area
8 including the indentation, you were told, the day
9 before, on November 8?

10 A. Correct.

11 Q. But, now, your expertise was being sought as an
12 arson investigator?

13 A. As a scene investigator, yes. And I believe also
14 because of the -- some expertise in looking for
15 bone fragmentation.

16 Q. Very well. You actually began that process on
17 November 10?

18 A. Correct.

19 Q. About, you know, give or take, two days after you
20 understood bone fragments first had been
21 discovered in the area?

22 A. That's right.

23 Q. You did not have an opportunity to photograph the
24 overall burn area, if you will, behind Steven
25 Avery's garage, before initial recovery efforts

1 had been made?

2 A. That's correct, I did not.

3 Q. You had an opportunity to photograph it after and
4 before you began any work, correct?

5 A. That's correct.

6 Q. All right. And you set up something of a
7 contamination path --

8 A. Yes.

9 Q. -- if you will?

10 A. That would be my typical procedure to do, just
11 out of habit.

12 Q. Habit in training?

13 A. That's just my habit. In fire investigation, we
14 emphasize a systematic process of evaluation.
15 And I try to continue that over into other things
16 I might be called upon. And that's just part of
17 my personal systematic process.

18 Q. And what the path does for you, in addition, you
19 know, to being routine and systematic, is it
20 allows you to keep to a minimum the amount of
21 earth you are tramping on?

22 A. Correct.

23 Q. So you are reducing, at least, the risk that you
24 will be stepping on, breaking, disturbing,
25 destroying, things that may turn out to be of

1 interest later?

2 A. Correct.

3 Q. And then you -- then you sort of worked from the
4 outside in?

5 A. Correct.

6 Q. You -- You -- And here I'm going to use a royal
7 view, in the sense that I think is it Rindt and
8 Sielehr who are with you on the 10th?

9 A. Yes, sir.

10 Q. At the burn area behind the garage?

11 A. Yes, sir.

12 Q. All right. So the three of you start well
13 outside this indentation area?

14 A. Correct.

15 Q. And examine the area, I would say, east of the
16 indentation, but on the overall, was a sandy sort
17 of mound you described?

18 A. Yeah, if you think of it in the -- as in the
19 sense of a plateau, we examined all of the sand
20 area, except for the pit, in one process, or the
21 indentation where the combustion was -- had taken
22 place.

23 Q. Okay. You don't have to buy into this and you
24 can tell it's February and what I have on my
25 mind, but in some ways, this area looked like a

1 large pitcher's mound with an indentation or a
2 notch in it?

3 A. A large pitcher's mound in it.

4 Q. Right, yes. A very large pitcher's mound, but,
5 roundish in general shape?

6 A. I actually had the impression that it might have
7 been a future building site, like it was a pad
8 that you might eventually put up a building or
9 garage on. But that's just the impression I had
10 from looking at it.

11 Q. Sure, but -- And it was roundish, in general?

12 A. Yeah.

13 Q. And -- And raised in elevation, other than the
14 indentation that you have described?

15 A. That's correct.

16 Q. So you -- you -- you examined the east sort of
17 area of that burn area, we'll call it that?

18 A. You are going to have to forgive me, I don't know
19 the compass direction as well. I think as far as
20 geographical items, I think we started by the dog
21 house --

22 Q. Okay.

23 A. -- and worked our way towards this depression of
24 the burn pit.

25 ATTORNEY STRANG: You know, it may be

1 helpful, we have all seen this quite a bit, but it
2 may be helpful just to pop up an overhead. That's
3 great, that will work just fine.

4 Q. (By Attorney Strang)~ This is a computer
5 generated --

6 A. Sure, I recognize it.

7 Q. -- schematic, okay. Now, counsel -- counsel can
8 object if he thinks I'm wrong, but I think we
9 have established that north is up --

10 A. North is up, okay.

11 Q. -- on Exhibit 109, which is now up on the screen
12 for you.

13 A. All right.

14 Q. Okay. So if you will accept that?

15 A. I trust you for that, sir.

16 Q. Okay. This is a pretty good schematic of the
17 area you have described.

18 A. Yes.

19 Q. All right. The dog house, then, would be
20 generally to the north at about an
21 11:00 position, if we used the round area?

22 A. Correct.

23 Q. And that's -- that's where you started?

24 A. Correct, we started up -- if you use your
25 terminology, the 11:00 position, worked our way

1 in to where we could get centered and then the
2 three of us advanced, we would say directly
3 south, towards the burn pit, and parallel. Each
4 of us spread out and covering an area and
5 overlapping.

6 Q. So, one of you west, one of you north and
7 central, and one of you east?

8 A. That would be correct.

9 Q. All right. And then just worked slowly to the
10 south?

11 A. Correct.

12 Q. All right. You found nothing of any interest in
13 this case in the dog house?

14 A. No.

15 Q. You did find some suspected bone fragments as you
16 worked, though, south along the west, the
17 central, and the eastern areas of that burn area?

18 A. Well, not really. And let me explain. When I
19 first did this initial walk in, I was standing
20 up. And throughout that area, there were -- I
21 could see in that elevated pit area, the
22 pitcher's mound area, as you described it, sir,
23 there were some small lengthy pieces of kind of a
24 chalk white material which looked very consistent
25 with bone fragmentation and it was scattered

1 throughout this upper portion.

2 However, as I started to get on my hands
3 and knees and pick it up in that layer process, I
4 actually realized that it was burned insulation
5 from some jumper cables that were entwined in the
6 dog's leash. And this burned insulation, with
7 the dog having moved around, it had fragmented
8 that burned insulation, which had a coloration
9 similar to bone, but on closer examination, we
10 could see it was synthetic material.

11 So we picked it up saying that just in
12 the event that we could miss one single bone
13 fragment somewhere in there, let's pick up every
14 thing so we have it and we'll let Dr. Eisenberg
15 sort it out. But in the reality of it, I don't
16 think we found any bone fragmentation in the
17 elevated area when it really came down to it.

18 Q. At least on the 10th?

19 A. Correct.

20 Q. When you were out there working?

21 A. Right, we didn't see anything up in that top
22 part.

23 Q. Now, have you worked with Dr. Leslie Eisenberg
24 before?

25 A. Yes.

1 Q. Did you call her on the 10th and say, we could
2 use you up here?

3 A. No, I spoke to her on -- I don't know if I spoke
4 to her on the 9th also. Either the 9th or 10th I
5 had several conversations with her.

6 Q. By telephone?

7 A. Correct, by cellphone.

8 Q. And you did not ask her to come to the scene?

9 A. No, I was describing the scene to her, indicated
10 that the area where the mass of the bones in the
11 burn pit had already been examined and excavated
12 and we opted not to do it at that point.

13 Q. The mass of the bones, were those excavated by
14 you?

15 A. No, this was in the first examination on the burn
16 pit, would be those items that I examined at the
17 sheriff's department on the 10th, in the morning,
18 that had been taken out in the first examination.

19 Q. Which -- Which is from this area, this is the
20 indentation area you described?

21 A. Yes, sir.

22 Q. So this was gone by the time you even got to the
23 scene?

24 A. That's right.

25 Q. What's this, if you know, intended to represent?

1 A. I assume that's that ball of wire.

2 Q. Is that about where you saw it?

3 A. Yes, I recall them being to the right, in that
4 area. There was a mass of wire, probably about,
5 you know, I'm just going to estimate, so big
6 around. Well, the size of a passenger car's
7 tire, but there was a mass of multiple tires
8 there entwined.

9 Q. It looked to you like more than one tire?

10 A. Oh, certainly.

11 Q. Okay. But all on the same area?

12 A. Well, no there were fragments of wires in the
13 burn pit also. So, there were broken pieces of
14 steel belted radials in the burn pit. And this
15 was the one accumulation in entirety there.

16 Q. All right. By the burn pit, the gray area?

17 A. Gray or black it looked like to me.

18 Q. Okay.

19 A. But in the burn pit there was short lengths of
20 fragmented wire. When you burn these tires, the
21 rapid oxidation of fire also compromises the
22 steel. And in some cases they can be, with
23 mechanical force, broken. And you find pieces of
24 the steel belts in the pit.

25 Q. Fair enough. And those -- those -- those broken

1 pieces in the pit, though, were by far the
2 smaller quantity?

3 A. Yes, the mass was that ball.

4 Q. Right. And that mass, if from more than one
5 tire, at least was all intermingled?

6 A. Correct. That's what it appeared to be.

7 Q. These are, you presume steel, since they come
8 from steel belted radials?

9 A. Yes.

10 Q. They had a highly oxidized appearance, though, to
11 your eye?

12 A. Correct, which is consistent when they burn.

13 Q. Yes, and by oxidized, I mean rusty.

14 A. Correct. Fire is a process of rapid oxidation,
15 so frequently we see iron or steel that's been
16 exposed to fire, rusting quickly.

17 Q. Yes, and that's where I was going. Fire actually
18 increases the rate of oxidation?

19 A. By its definition it is, yes.

20 Q. Because it's -- fire goes because of oxygen.

21 A. Fire is a rapid self-sustaining oxidation
22 accompanied by the evolution of heat and light in
23 varying intensity.

24 Q. So, in very common parlance, you will get more
25 rapid rusting when iron or steel are submitted to

1 or subjected to fire?

2 A. Many times, yes.

3 Q. To your eye, this mass of rusty, steel wires from
4 the tires, appeared to have bone fragment
5 intermingled with them?

6 A. Correct.

7 Q. You could draw to conclusion from that about how
8 the bone fragments came to be intermingled in the
9 wires?

10 A. That's correct. They were entwined in there to
11 the point where I actually had to physically, so
12 to speak, separate and try to recover. They
13 weren't right on the surface easily removed. But
14 they were into the depth of the wire at times.

15 Q. And you can think of possibilities of how that
16 might have happened, one would be that a body had
17 been atop a -- an intact tire at the time that
18 both were burned?

19 A. That's one possibility.

20 Q. That's one possibility. Another possibility
21 would be that the tires already had been burned
22 at some earlier time and a body was atop that
23 layer? That's the second possibility?

24 A. That's a possibility.

25 Q. A third possibility would be that bone fragments,

1 after the body was burned, not on top of the
2 wires, bone fragments could have been moved into
3 the wires or tossed into the wires, somehow
4 disturbed, so that they were introduced into the
5 wire mesh you have described?

6 A. That's a possibility, yes.

7 Q. And we probably could go on, but the reality is,
8 you can't narrow down to any one of the
9 possibilities we could identify?

10 A. That's correct.

11 Q. Neither could you assign a time frame within
12 which the rusty steel wires that you saw were
13 burned?

14 A. That's correct.

15 Q. You could not assign a time frame within which
16 the bone fragments, or suspected bone fragments
17 you saw, were burned?

18 A. Correct.

19 Q. This area was cool, wet, even cold, when you
20 examined it on November 10th?

21 A. Yes, sir.

22 Q. And just -- just to be clear, the burn pit, or
23 the gray or black area itself, had been excavated
24 before you got to it?

25 A. Correct.

1 Q. By others?

2 A. Yeah, best said, the loose ash was removed from
3 that area.

4 Q. And so you -- you and Rindt and Sielehr, I don't
5 mean disrespect, but it's Special Agents, all of
6 you, found nothing you thought was human in the
7 brown or sandy area here?

8 A. That would be correct, sir.

9 Q. Likewise, you found nothing you thought was human
10 in the grass around the perimeter that you
11 described asking deputies to comb in a grid
12 fashion?

13 A. Correct.

14 Q. Now, by grid fashion, you don't mean that you
15 actually laid out a string grid?

16 A. No, their search pattern was to go shoulder to
17 shoulder and walk north south and then they
18 walked east west over the same area, after they
19 completed it, so that they are crossing it twice.
20 And we call that a grid search pattern.

21 Q. And did they place any of those little flags?

22 A. Yes.

23 Q. They did? Did you examine those things, then,
24 with Deputy Riemer?

25 A. Some of them, I believe we did. Most of it

1 really was not related debris.

2 Q. Right.

3 A. But we asked them and said, if it wasn't a blade
4 of grass, mark it, we'll search -- sort it out.

5 Q. Decided none of it was of evidentiary value?

6 A. I think Deputy Riemer would have to say what he
7 took or didn't. But there might have been a few
8 pieces that we took just to make sure.

9 Q. Okay. But there, again, the grass area,
10 especially south of the burn area as I'm calling
11 it, that also had been examined and things had
12 been recovered, it was your understanding, on
13 November 8 or 9?

14 A. November 8, I believe it was, yes.

15 Q. You described, later in December, I'm going to
16 relate this to the burn area, going through
17 debris from that burn area, I think it was in the
18 Crime Laboratory, you said?

19 A. Correct.

20 Q. Is that right, in December of 2005?

21 A. Yes, sir.

22 Q. Did you go through debris in the Crime Laboratory
23 in December, 2005, from areas other than this
24 area behind the garage?

25 A. Yes.

1 Q. That included one of the burn barrels from behind
2 the Janda property?

3 A. I believe -- Yeah, I believe we did some
4 examination of burn barrels. At that time I
5 don't know where the barrels are, I just know
6 that it's barrel, shall we say, Barrel A, or B,
7 or whatever, but --

8 Q. Right.

9 A. -- we examined multiple things over the course of
10 several days.

11 Q. Do you remember whether you went through debris
12 from what we've called here the quarry pile? And
13 if that doesn't make any sense to you, because
14 you weren't here --

15 A. You're right, that doesn't make any sense to me.

16 Q. Okay. We have identified a -- or had identified
17 for us a site that was, oh, I don't know,
18 somewhere southwest of the Avery property
19 altogether, in or near the Radandt property to
20 the south?

21 A. Okay.

22 Q. Is that a site you went to?

23 A. At one time on Thursday, maybe on Friday, I went
24 to multiple sites, not to examine them, but to
25 check on the welfare of my fellow agents who were

1 doing those sites. So I didn't participate in
2 those areas, but it's possible I may have stopped
3 and asked if they needed some water, or
4 assistance, or special tools to complete their
5 job.

6 Q. All right. I'm just going to -- I'm going to pop
7 up here the -- an Exhibit 402 and see if --
8 this -- now this is just a schematic diagram.

9 A. Okay.

10 Q. All right. But, again, north is still up in
11 this, to get you oriented.

12 A. I believe you.

13 Q. And you see the little -- there's a little box
14 there that shows the Avery residence and the
15 garage area?

16 A. Okay.

17 Q. Okay. So the little red utility flag symbol, as
18 you described earlier, that's the -- what's been
19 described here as the quarry pile site. Do you
20 recall now whether you got down there?

21 A. I couldn't tell you. It's entirely possible I
22 may have stopped to just check on my agents, but
23 I can tell you that I did not search that area.
24 If that's -- I looked at one site Saturday
25 morning, briefly, but I don't believe that's the

1 same site that's being depicted here.

2 Q. And you never searched here?

3 A. Not to my knowledge, no.

4 Q. Neither do you know whether you looked in the
5 Crime Lab garage at debris from that site?

6 A. We looked at a lot of debris at the Crime Lab.
7 Some of the debris had rocks in it. Whether
8 that's specifically that one, I don't know. At
9 that time we're just saying this is Item A, Item
10 B, and we're searching it. Nobody had said this
11 is the quarry site, as you described it now. So
12 I can't tell you if I searched that or not.

13 Q. Sure. What you can say is that in going through
14 this debris very carefully on the tarp, one of
15 the things you were looking for were rivets.

16 A. Well, any artifacts of clothing, and rivets would
17 be part of that.

18 Q. Fair enough. Did you personally find any rivets?

19 A. I think there were two found and I think Kevin
20 Heimerl found one. I thought I found one, or
21 Kevin and I were next to each other and we saw
22 one. So, yes.

23 Q. Whether you found it directly or not, you got an
24 eyeball on at least a couple of rivets, if I
25 understand?

1 A. Sure, because I remember we cleaned them off and
2 got a magnifying glass to try to read it.

3 Q. All right. These were brass.

4 A. They were brass colored.

5 Q. Brass colored, okay. You have no idea what the
6 actual metal was?

7 A. No, a lot of times that's just a wash surface on
8 there and not -- the surface color is not typical
9 of it's parent metal.

10 Q. Sure. Okay. But whether a magnet was helpful or
11 not, you don't know, but in any event that was
12 the process --

13 A. Well, I had used magnets on there. When we did
14 that examination, I have a real large, foot long
15 oval shaped magnet that we passed over that area
16 first to remove sometimes those broken wires from
17 the steel belted radials --

18 Q. Sure.

19 A. -- and other things. The rivets weren't found in
20 that process, they were actually found visually,
21 so I don't believe it was a ferrous metal.

22 Q. Right. If these things -- if these things
23 weren't ferrous iron or steel, they aren't going
24 to attach to the magnet?

25 A. That would be correct.

1 Q. But you looked very carefully through the debris
2 and were able to find two or three rivets that
3 you were aware?

4 A. Yeah, I thought it was two, but.

5 Q. Okay. You also were looking for the larger
6 button that there might be as a waistband closure
7 on a pair of pants?

8 A. Well, we were going to look for any type of
9 artifacts that we could find.

10 Q. From clothing, period?

11 A. Clothing or human remains.

12 Q. You found no larger, brass colored button from,
13 you know, a blue jean closure at the waistband?

14 A. Not that I recall.

15 Q. Is that something you think you would recall?

16 A. Well, if I found it, I would have, yeah.

17 THE COURT: Mr. Strang, can you tell me how
18 long you think you might need yet?

19 ATTORNEY STRANG: I have a ways to go and
20 this would be a fine time to break.

21 THE COURT: All right. Let's take our
22 morning break at this time. Members of the jury, do
23 not discuss the case or this morning's testimony
24 during the break and we'll resume when the break is
25 over.

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(Jury not present.)

THE COURT: You may be seated. Counsel,
see you in 15 minutes.

ATTORNEY STRANG: All right. Thank you.

(Recess taken.)

THE COURT: Mr. Strang, you may resume.

ATTORNEY STRANG: Thank you.

CROSS-EXAMINATION CONTD.

Q. We were in the basement of the Crime Lab
somewhere, when we left off, maybe it wasn't the
basement, but it was the Crime Lab?

A. All right.

Q. You were going through materials in different
places on tarps. And if one of those was -- one
of those items or areas that you were examining
on the tarps was from a burn barrel behind the
Janda house, you wouldn't know that other than by
the property tag number or whatever it was that
identified that -- that debris?

A. Correct.

Q. You had no opportunity to see the burn barrels
behind the Janda house before they were
disturbed?

A. Correct.

Q. But you did testify on direct examination that

1 there -- you saw suspected bone fragments from a
2 burn barrel behind the Janda house, later?

3 A. I believe my testimony was, is that if you are
4 referring to the examination of Saturday the
5 12th, that we examined some barrels, whether that
6 barrel was from behind the Janda house or not,
7 but one of the barrels we looked at, there was
8 some bone material in it.

9 Q. You looked at a total of four barrels or was it
10 more?

11 A. Four sounds correct.

12 Q. What you are sure of is that only one of them had
13 bone material in it?

14 A. Yes.

15 Q. That bone material -- And it's Saturday,
16 November 12, and we're in the Calumet County
17 Sheriff's Office now, correct?

18 A. Yes.

19 Q. Examining material there?

20 A. Mm-hmm, yes.

21 Q. So the barrels have been transported, somehow, to
22 the Calumet County Sheriff's Office, obviously?

23 A. Correct.

24 Q. There has been a sifting process?

25 A. By myself, or previous, or?

1 Q. If you know?

2 A. I don't know what happened to them. All I can
3 tell you is that when I got there the barrels
4 were there, we removed the contents and went
5 through them.

6 Q. Did you actually remove the contents from the
7 barrel?

8 A. Yes.

9 Q. Okay. Did you sift at that point?

10 A. Much of that debris was too big to sift. Our
11 screens are quarter inch in size so.

12 Q. Okay.

13 A. In -- I don't think any of it could have been
14 sifted, the debris was so massive.

15 Q. Would it have been on tarps on the floor?

16 A. Correct. We would lay a clean tarp down and then
17 go through it. And then I think we would wrap
18 all the material up from the barrel in that clean
19 tarp and then place that into the barrel as a way
20 of making sure that we were recovering everything
21 we looked at.

22 Q. Okay. In spreading the material from the barrel
23 onto the tarps, you did this with caution?

24 A. Yes.

25 Q. I mean, you know, to avoid further breakage of

1 whatever might be in there?

2 A. Yes, some of the stuff, you know, at least
3 initially, I believe the tarp -- the barrel was
4 upright and we were just hand removing it, so to
5 speak.

6 Q. Okay. Again --

7 A. Yes, yeah.

8 Q. Again, for good cautious handling?

9 A. Correct.

10 Q. Spread it out on the tarps, carefully?

11 A. Yes.

12 Q. And the things that you identified as possible
13 bone fragment from one of the barrels, you
14 thought, in general, looked larger than, in
15 general, the suspected bone fragments from the
16 burn pit behind the garage had looked?

17 A. Correct.

18 Q. Now, obviously there's some variation in size in
19 both -- in bone fragments from both places?

20 A. Correct.

21 Q. And these aren't uniformly sized pieces by any
22 means?

23 A. No, you're correct on that.

24 Q. But taking it on the whole, it looked to you like
25 most of the fragments from the barrel were a bit

1 larger than most of the fragments from the burn
2 area?

3 A. Well, from the barrel, as you are describing it,
4 there were only a few bones recovered. I don't
5 know the exact number. It might have been four,
6 or three, something like that. It was certainly
7 single digit numbers. From the burn pit, there
8 were, you know, tens of hundreds found of small
9 fragmentation, and probably by the end, in the
10 high hundreds of small fragments.

11 Q. Well, and we have had Dr. Eisenberg, so we have
12 got, you know, a better sense of what she
13 eventually identified as human as opposed to
14 nonhuman bone. So I don't need to try to get
15 numbers out of you.

16 A. Okay.

17 Q. Okay. But in general, little bit bigger bone
18 fragments from the barrel than from the burn
19 area?

20 A. Yeah, they were noticeably larger.

21 Q. Burned in both cases?

22 A. I believe, yeah, they looked like they had some
23 thermal exposure.

24 Q. You have had experience, obviously, as an arson
25 investigator, with burnt human bone?

1 A. Yes.

2 Q. From sort of light burning on through complete
3 incineration?

4 A. Yes.

5 Q. You know that as burn -- as bone, human bone,
6 becomes progressively more burned or charred, it
7 becomes fragile?

8 A. Yes, and it shrinks and you get some spiral
9 fracturing of it as you go.

10 Q. Right. It shrinks because you are losing
11 moisture?

12 A. Right. The fire dehydrates the body process as
13 part of that incineration.

14 Q. Exactly. And so you will get some spiral
15 fracturing of the bone, all on its own?

16 A. Correct. And some shrinkage of the bone.

17 Q. Which again causes breakage?

18 A. Yes.

19 Q. But beyond that, once the fire is out, you know
20 that those pieces are fragile once burned or
21 calcined?

22 A. Right.

23 Q. Part of the reason for the care with the
24 contamination paths, and getting down on hands
25 and knees, and the grid system of recovery?

1 A. That would be one of the reasons for doing it in
2 that manner, yes.

3 Q. The bones, in general, which you saw in the burn
4 area, looked like they had been subjected to
5 additional breakage, to which the bones in the
6 burn barrel had not?

7 A. There were smaller fragmentations so, yes.

8 Q. The work that you did in the burn area,
9 ultimately -- not ultimately -- but later, after
10 you had gone through for all items of possible
11 evidence you could see, it included actually
12 removing that pitcher's mound, so to speak?

13 A. Yeah, other agents did that. But, yes, that soil
14 area was examined.

15 Q. Examined in the sense of a backhoe was brought in
16 or a skidster or something?

17 A. I didn't participate in that, but, yeah there was
18 a -- a skidster or bobcat type excavator that was
19 used.

20 Q. Okay. Sort of this stuff was dug out, gathered
21 somewhere for further examination?

22 A. Correct. Where we had removed all of the foreign
23 debris from the area, then that area was exhumed
24 to see if there was anything intermed (sic) in
25 the soil.

1 Q. Did -- Did you later have a chance to participate
2 in the examination of all of that soil?

3 A. I didn't, other agents did.

4 Q. All right. You don't know what, if anything, was
5 found in that?

6 A. I wasn't there. I was examining these other
7 areas on Friday. A couple times I did come back
8 to that area to talk to them to see if they
9 needed additional resources. But I wasn't an
10 active participant in that.

11 Q. All right. And so this area you described as
12 really looking like a possible future
13 construction site, you know, something like a pad
14 that a building might have contemplated, that
15 area just gets swept clean, essentially.

16 A. Yes, it was exhumed and examined and then
17 deposited elsewhere.

18 Q. You were asked, and I don't remember, I think it
19 was the 11th of November, which would have been a
20 Friday, you were asked by Special Agent
21 Fassbender to look at some other sites on the
22 general Avery salvage property?

23 A. Correct.

24 Q. One of them was where debris had been dumped
25 down, sort of off the south edge of the yard,

1 behind Steven Avery's house, into what has also
2 been called the pit here where the cars were
3 stored?

4 A. Correct. As I showed you in the one exhibit,
5 that area, yes.

6 Q. That just turned out to be junk of no interest?

7 A. Correct.

8 Q. Another area was the wood furnace?

9 A. Correct.

10 Q. Now, does the 11th sound -- am I recalling your
11 testimony right, that this was the 11th.

12 A. Yes, the Friday the 11th.

13 Q. All right. So about 11 days, 12 days, after you
14 understand that Ms Halbach had been to the Avery
15 property to take photographs of a van.

16 A. Correct.

17 Q. At that time you found the wood furnace cold to
18 the touch?

19 A. Yes, it was.

20 Q. All right. This was obviously the first third of
21 November?

22 A. Correct.

23 Q. It had been sleeting and raining and doing all
24 kinds of things at various times during the 11 or
25 12 days?

1 A. That's what I understand. It didn't do that
2 while I was there, but it was cold a couple times
3 while I was there.

4 Q. It wouldn't surprise you that a furnace would be
5 cold to the touch if it hadn't been used in a
6 day, or two, or whatever?

7 A. You know, I guess the one thing with that unit,
8 it holds multiple gallons of water. And I would
9 think that that water would retain heat well
10 after the fire was out, for a period of time. At
11 that time, I don't know, but I think if it had
12 been used in the recent past it still might have
13 had some temperature in it because of the size of
14 that boiler and the amount of water it would have
15 contained.

16 Q. In the water?

17 A. Correct, in the water chamber, that's the
18 principle it works on.

19 Q. And the water chamber is where?

20 A. It surrounds the combustion chamber.

21 Q. Okay. And that your understanding was, it was
22 used to heat some of the commercial buildings for
23 the business?

24 A. I think so. It has underground lines, so I
25 didn't follow to what they went to, but.

1 Q. But whether the heat was on in the pole barns, or
2 whatever buildings it was intended to heat?

3 A. That I don't know.

4 Q. The smelter also was cold to the touch?

5 A. Correct.

6 Q. Or, you know, ambient temperature, so to speak?

7 A. Yeah, it didn't seem to have an unusual
8 temperature.

9 Q. Right. By ambient temperature, I mean, just to
10 the touch it was consistent with what the air
11 was?

12 A. It seemed so, I didn't take its temperature, but.

13 Q. I understand, I understand you didn't take its
14 temperature, but about how -- Let's back up just
15 a minute. You simply forgot to make a report
16 about the smelter, didn't you?

17 A. Correct, I should have added a couple sentences
18 to one report or made a special report. We made
19 a photo log and took the photos, but it was a
20 mistake on my part.

21 Q. And I'm not here to beat you up about that.

22 A. Thank you.

23 Q. In fact, I'm trying to throw you a line a little
24 bit, in the sense that I'm going to --
25 necessarily you are going to have to go off your

1 memory --

2 A. Okay.

3 Q. -- on the smelter here, other than the

4 photographs --

5 A. All right.

6 Q. -- which are similar if you want to take a look

7 at them. Okay. Actually, maybe we will. this

8 area in the -- this one will do as well as

9 anything. Which one is that?

10 A. This is Exhibit No. 490.

11 Q. Okay.

12 A. This exhibit is one of those that I took looking

13 down into the melting pot, if you will.

14 Q. Yeah, that was --

15 A. The smelter.

16 Q. By the melting pot, we could call it the chamber?

17 A. Sure.

18 Q. We could call it the combustion area?

19 A. Sure. It's where the metal and the heat come

20 together to form a liquid.

21 Q. Right. Exactly, where it's intended to melt

22 aluminum, right?

23 A. Appears to be so.

24 Q. So it appeared. And you saw transmissions and

25 parts like that stacked up outside the smelter

1 building?

2 A. Correct.

3 Q. Transmissions are aluminum?

4 A. I believe that they are.

5 Q. They looked aluminum to you, in any event. And
6 this -- this chamber, you stood on top and took a
7 photograph down into it?

8 A. That's correct.

9 Q. Correct? About how high up was that -- was the
10 edge on which you were standing?

11 A. You know, I'm not real sure. It was -- It took
12 me something to climb up onto it and that's why I
13 asked Mike Rindt, the special agent with me, to
14 hand me the camera, so I'm going to estimate it
15 was 4 and a half to 5 feet.

16 Q. Let's go at it this way, from your observation in
17 the smelter, did that -- did the open top that
18 you are looking down into, did that appear to be
19 the way at which one would, you know, toss in the
20 things you wanted to melt?

21 A. Yes, it looks like the product would be
22 introduced through the top area.

23 Q. So, however high it was, it was not so high that
24 someone couldn't, you know, sort of throw the
25 transmission in, or whatever aluminum?

1 A. I don't know how they use it, but it looks like
2 things could be loaded into the top, yes.

3 Q. All right. And then they melt and they run out,
4 channeled, the molten aluminum runs out channels
5 into ingot molds?

6 A. Correct.

7 Q. When the ingot's cool and then you can recycle
8 and sell it to an aluminum recycler?

9 A. I assume so, yes.

10 Q. Yeah. All right. And that chamber itself, on
11 the melting pot as you called it, in Exhibit 490,
12 give me a sense of the dimensions of that?

13 A. I'm not really sure. The opening on the top is
14 smaller than the actual melting chamber.

15 Q. Okay.

16 A. As we noted from the photographs. I would hate
17 to be inaccurate here, because I'm just going
18 from memory from almost two years ago or a year
19 and a half ago, 24 by 24, somewhere in that
20 neighborhood. And that's, you know, shall we use
21 the term, guesstimate?

22 Q. Yeah. Sure. And that's why I threw you the
23 lifeline, you didn't write a report, you are
24 going by memory. But a guesstimate would be
25 2 feet by 2 feet, something like that?

1 A. Yeah, I would say in that general neighborhood.
2 Could be 20 inches, it could be 26 inches, but.

3 Q. Fair enough. I mean, we're in the ballpark?

4 A. Yeah.

5 Q. Okay. And, roughly, again, a cubicle in shape?

6 A. Yes.

7 Q. Or cubic, whatever the word is?

8 A. Square, square opening on top.

9 Q. Although the chamber itself was larger than the
10 opening, per se?

11 A. Yes, there was some extension off to the sides
12 that I had tipped to look into.

13 Q. All right. So if in fact this thing was, you
14 know, useful for melting an automobile
15 transmission, whether it's 24 inches, or 20
16 inches, or 26 inches, or whatever the heck it is,
17 it is large enough to get an automobile
18 transmission into, to your eye?

19 A. Or at least a portion of it and then it would
20 melt into that area.

21 Q. You never climbed down into the melting pot?

22 A. I stuck my head down in there and reached around,
23 but I did not physically step into it.

24 Q. That sort of answers, I think, the question, but
25 I will nail it down. So there was no close

1 examination of the debris, or the -- whatever,
2 the slag, or melted contents at the bottom of
3 that chamber?

4 A. No, I bent over and looked in there, because of
5 not being able to see, and used a flashlight and
6 actually examined it. So I got my head close to
7 it, so I could see the best and looked into that
8 area. And then I physically disrupted the bottom
9 of it with my hand so I was within arms reach --

10 Q. Okay.

11 A. -- in order to see if there was any debris that
12 was covered by this aluminum or slag that was on
13 top. Or there's some old rusted metal in there.

14 Q. Then you took nothing out of interest?

15 A. Correct.

16 Q. I'm going to look at my notes just for a moment
17 and see that I covered what I wanted to cover
18 with you. If you will bear with me.

19 A. Sure.

20 Q. The only thing I over looked was the car seat
21 back out at the burn barrel?

22 A. Yes.

23 Q. Okay. Your guess was that this may have been
24 from an SUV?

25 A. It didn't look like a car seat. It -- I thought

1 it was like a bolt in backseat of like an older
2 SUV, bus seat type thing. It was more tubular
3 steel and construction.

4 Q. All right. But you have no idea, really, in the
5 end, what car this would have come from or
6 vehicle this would have come from?

7 A. That's correct.

8 Q. How old the vehicle would have been?

9 A. I have no idea.

10 Q. You are just trying to give us an idea of the
11 appearance?

12 A. Correct.

13 Q. Okay. This thing was burned?

14 A. Yes.

15 Q. It was sitting outside of the actual indented
16 burn pit or indentation?

17 A. On the 11th, when I examined it, it was off to
18 the side.

19 Q. Up sort of on the elevated area?

20 A. Yeah, adjacent to the pit, to the right, as I was
21 facing the north.

22 Q. The areas adjacent to the pit, or the
23 indentation, did not look as if they had been
24 used to burn anything, did they?

25 A. No.

1 Q. This was gravel and sand showing no signs of ash
2 or other burning?

3 A. Correct.

4 Q. So you have no idea how the -- whether it was
5 agents who put the seat there or how that came to
6 be adjacent to the burn area?

7 A. That's correct. I can only tell you it was there
8 when I examined it.

9 Q. It, too, was rusty?

10 A. Yes, it was oxidized.

11 Q. But, again, that could have happened very quickly
12 in the fire?

13 A. Yes.

14 Q. Or it could have happened with the elements over
15 a longer period of time?

16 A. That I don't know, because a lot of times
17 those -- those items have a surface coating on
18 them that inhibits the rust --

19 Q. Okay.

20 A. -- by it's appearance. And I also recall that
21 there was a seat belt buckle found, that would
22 look like it would be consistent with a car seat.

23 Q. Mm-hmm. Sure.

24 A. That buckle had the nylon web burned off of it.
25 So I was under the distinct impression that that

1 car seat, or vehicle seat, had been burned.

2 Q. So am I. I mean it was missing all the padding?

3 A. Right.

4 Q. Right. I mean, it was just down to the metal?

5 A. Correct.

6 Q. But -- But, again, whether -- whether it was

7 burned and then left out in the elements and

8 that, you know, the process of being in the

9 elements after being burned account for all the

10 rust, or whether it was just rapid oxidation from

11 being burned, you are not in a position to tell

12 us?

13 A. That's correct. I mean, the fire makes it happen

14 quicker, but it actually rusts after the fire.

15 Q. Okay. Fair enough. See, we -- we don't -- we

16 don't have any idea when this seat was burned?

17 A. No, I just know that it was burned.

18 Q. Right. And we can say it probably wasn't burned

19 where -- where it sat when you saw it?

20 A. Correct.

21 Q. You didn't see any bone fragments, or anything of

22 interest, sort of intermingled into the

23 components of that seat?

24 A. That's correct.

25 Q. The springs or anything like that?

1 A. I did not.

2 Q. So what was of interest was that it was a car
3 seat?

4 A. Correct.

5 ATTORNEY STRANG: That's all I have.
6 Thanks.

7 THE COURT: Mr. Fallon, any redirect?

8 ATTORNEY FALLON: Just a couple questions.
9 Thank you.

10 **REDIRECT EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q. Counsel asked you some questions regarding the
13 spool of left over radial -- steel belted radial
14 tire?

15 A. Yes.

16 Q. And is it possible, from the condition in which
17 you examined it, that one other scenario is that
18 it had been -- could have been raked out of a
19 fire?

20 A. Yes, that's another one of the possibilities of
21 how the bone and the mass of the wires got
22 together as they are, through attending of the
23 fire.

24 Q. And I wanted to have you elaborate a little
25 further on another point counsel raised, and that

1 is, eventually there was a bobcat that was used
2 to excavate the site entirely?

3 A. Correct.

4 Q. Specifically, so that we're clear, that did not
5 happen on November 10th; is that correct?

6 A. That's correct, it happened on the 11th.

7 Q. On the 11th. And prior to doing that, you
8 mentioned something about after all the items
9 were removed from the pit?

10 A. Correct.

11 Q. And what was the surface of the ground like, at
12 that point, after all of the loose debris and
13 everything was removed?

14 A. In the bottom of the burn pit?

15 Q. Yes.

16 A. In the bottom of the burn pit, it was a real --
17 it had an appearance, I guess you could call it
18 like blacktop, but it was very crusty and black
19 and thick mass that came off as if it had been
20 adhered to. It's consistent of what I have seen
21 in fires like that. And we broke that apart to
22 make sure, some of it was soil, some of it was
23 burnt remains of what appeared to be tire
24 products in there.

25 Q. All right. Well, that was my next question, that

1 crusted surface, like, is that consistent with
2 the residue left over from tires burning?

3 A. It's similar to what I have seen in that same
4 situation, yes.

5 Q. All right. And did you remove that layer of
6 soil?

7 A. Yes.

8 Q. All right. And I take it, it was only after
9 that, then, after all the other items of
10 evidentiary significance were removed, that an
11 excavation occurred, on Friday, the 11th?

12 A. That's correct.

13 Q. All right. Are fires -- excuse me -- Are tires
14 considered an accelerant?

15 A. I guess it would depend on the method that it's
16 used. It certainly can be used to accelerate, as
17 a good fuel, into a fire scene. So you hear of
18 people using it to set brush piles on fire, as
19 the initial igniter, because it burns with great
20 intensity for a given period of time. So,
21 depending on it's use, yes, I would say it's an
22 accelerant.

23 Q. It would be a solid accelerant rather than
24 liquid?

25 A. In it's original form and then it converts during

1 the fire process.

2 Q. Because it's primarily an oil based product?

3 A. Correct.

4 Q. All right. Now, in your investigation of the
5 materials, did you come across any evidence of
6 any other liquid accelerant?

7 A. There was a couple jugs that had like a black oil
8 in it, but what its role in it or not, I don't
9 know.

10 Q. You don't know if that played any part at all in
11 -- in -- in the fire itself?

12 A. That's correct.

13 Q. Okay. You mentioned something about tires, do
14 they give off a lot of energy when they burn?

15 A. Yes, they are a very good source of energy, heat
16 energy.

17 Q. Do you have any idea?

18 A. Well, the one pound of tire gives you roughly
19 15,000 BTUs of energy. The average passenger
20 tire, according to the tire manufacturers, think
21 it's about 20 pounds. So depending on the
22 orientation and a few other things, you are
23 looking at about 300,000 BTUs per tire.

24 Q. Do all tires have steel belt -- are they all
25 steel belted radials or are there different types

1 of tires that wouldn't have steel belts in them?

2 A. There are different tires. A lot of times
3 trailer tires, are smaller tires for utility
4 vehicles, won't have steel belts. There's also
5 bias ply tires which don't have a steel belt in
6 it. So we see the steel wires there as the
7 remains of steel belted tires, but in those other
8 types of belts -- or tires, when they are burned,
9 we basically just see the black ash, like we saw
10 in the bottom of this pit remains.

11 Q. Are they also considered like a possible solid
12 accelerant, even though they don't have any steel
13 in them?

14 A. Correct, they are a very good fuel.

15 ATTORNEY FALLON: That's all. Thank you.

16 THE COURT: Mr. Strang.

17 **RECROSS-EXAMINATION**

18 BY ATTORNEY STRANG:

19 Q. I think, probably, we can agree, counsel
20 misspoke, at least in the tires that you and I
21 are familiar with, they are not primarily oil or
22 petroleum based, but primarily rubber based,
23 aren't they.

24 A. Well, I think they are synthetic rubbers, I don't
25 recall the exact breakdown, there's multiple

1 compounds in there.

2 Q. Okay. You are not an expert here to tell us
3 about the composition of tires?

4 A. No, I have information data about it that I use
5 as a resource, but I'm not into tire
6 manufacturing.

7 Q. They can be used as an accelerant in a fire,
8 growing in the same way that I suppose crumpled
9 newspaper can be used?

10 A. Well, it can be, but I think a tire is better
11 because the tire, in its solid format, burns with
12 great intensity for a longer period of time than
13 crumpled newspaper.

14 Q. Sure.

15 A. So it's giving off a lot of energy in a
16 concentrated area over a given period of time,
17 much longer than paper, so I would consider it to
18 be a much better product for that purpose.

19 Q. Right. And so would I, you know, newspaper burns
20 pretty quickly. But the idea is when you say
21 accelerant here, this is something used to get a
22 fire going?

23 A. Or to enhance its combustion process.

24 Q. All right. And you -- you -- you have acquired
25 your knowledge about the BTUs generated by a tire

1 through your professional training?

2 A. Correct.

3 Q. You have, just in the same way, I guess, you have
4 acquired knowledge about other possible
5 components of other accelerants in a fire?

6 A. Correct.

7 Q. This isn't knowledge you came to the job, a
8 quarter century ago, with?

9 A. No, I don't think so.

10 ATTORNEY STRANG: That's all I have.

11 THE COURT: All right. The witness is
12 excused.

13 THE WITNESS: Thank you, your Honor.

14 THE COURT: Were there any exhibits that --
15 introduced that this witness -- that either party is
16 requesting admission of?

17 ATTORNEY FALLON: I think we moved into
18 evidence the photographs, without objection, as I
19 understand it.

20 THE COURT: They are all in already, very
21 well. The State may call it's next witness.

22 ATTORNEY FALLON: State would call Mike
23 Riddle.

24 THE CLERK: Please raise your right hand.

25 **MICHAEL RIDDLE**, called as a witness

1 herein, having been first duly sworn, was
2 examined and testified as follows:

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

5 THE WITNESS: Michael Riddle, R-i-d-d-l-e.

6 **DIRECT EXAMINATION**

7 BY ATTORNEY FALLON:

8 Q. What do you do for a living?

9 A. I work at the Wisconsin State Crime Lab in
10 Madison where I'm a latent fingerprint and
11 footwear examiner.

12 Q. And I'm sorry, I didn't hear the end of it?

13 A. Latent fingerprint and footwear examiner for the
14 Wisconsin State Crime Lab in Madison.

15 Q. And how long have you been employed at the
16 Wisconsin State Crime Laboratory?

17 A. About 14 and a half years.

18 Q. Do you have any prior experience in the field of
19 fingerprinting, palm print analysis, elsewhere?

20 A. Yes, I started in Mississippi in about 1988. I
21 started in fingerprints there and worked there
22 for several years and came up here in 1992.

23 Q. And what are your official duties; in other
24 words, in your current role as an examiner, what
25 is it that you do?

1 A. I receive evidence from agencies to be processed
2 for the presence of latent fingerprints. We
3 process the evidence and the prints are obtained.
4 We compare the prints to standard fingerprint
5 cards. If identifications are made, whether they
6 are made or not, we report on our findings and at
7 times are required to also testify in court as to
8 our findings.

9 Q. Have you received any specialized training to
10 assist you in performing these duties?

11 A. Yes, I have. When I first started in 1988, I
12 worked under a certified examiner for three
13 years, received almost 300 hours of training
14 through the FBI Academy in Quantico. And at the
15 end of a three year internship, I tested with the
16 International Association For Identification for
17 my certification, which I passed the test and
18 have been certified ever since.

19 Q. All right. Any estimate as to how many
20 fingerprints or palm prints you have been asked
21 to examine in your career as an examiner?

22 A. Literally hundreds of thousands.

23 Q. Now, you mentioned this -- an organization, tell
24 us about this organization that you mentioned.

25 A. The International Association For Identification

1 certifies people in many different disciplines.
2 One of them is including fingerprints, footwear,
3 crime scene. They are an organization that not
4 only certifies us, but has yearly conferences and
5 educational conferences. We attend different
6 meetings.

7 Q. You mentioned something about a certification,
8 tell us about that.

9 A. The certification process with the IAI is -- I
10 think it's twofold. If you have a college
11 degree, you have to internship for three years.
12 I believe that's the way it is. It may have
13 changed since I took it. But for me it was three
14 years.

15 With a high school diploma, I think you
16 can be certified with eight years under a
17 certified examiner, before you are even eligible
18 to take that test. You have to pass a test that
19 is, I think, three phase. There's the latent
20 print test. You have to show where you testified
21 in court successfully. You have to prepare a
22 court chart and have that approved by them. And
23 then there's also a written test on top of that.
24 You have to pass all these phases before you can
25 become certified.

1 Q. And how long have you held this certification?

2 A. Since 1991.

3 Q. What kind of equipment do you normally use as an
4 examiner?

5 A. Well, in processing through latent prints, we use
6 several types of methods. We use super glue
7 chambers, where we fume evidence and try to
8 develop --

9 (Court reporter couldn't hear.)

10 A. Yeah, super glue fuming chambers. And we'll
11 place the evidence in these chambers and fume
12 them to develop latent prints. And then take it
13 a step farther and add dye stains and look at
14 them under laser lights and try to look at the
15 real fingerprints that may not be visible even
16 with the super glue. Then we use magnetic powder
17 or regular powder, use different methods of
18 lifting them also.

19 Q. Is there a substance that's called ninhydrin?

20 A. Yes, there is.

21 Q. And what is that?

22 A. Ninhydrin is used on porous surfaces such as
23 cardboard and paper. It reacts with amino acids
24 in the fingerprints, turns purple, leaving a
25 pattern of ridge detail behind. We have to use

1 that on porous items because it doesn't work well
2 with powders or super glue.

3 Q. Now, have you had occasion to identify persons by
4 comparing latent fingerprints or palm prints with
5 their own ink fingerprints or palm prints?

6 A. Yes, I have.

7 Q. Any estimate as to approximately how often that's
8 occurred?

9 A. I probably make several identifications on a
10 weekly basis.

11 Q. All right. Now, have you had -- been called upon
12 to express opinions in courts of law regarding
13 your findings on identification or the lack of an
14 identification?

15 A. Yes, I have.

16 Q. And approximately how often have you been asked
17 to render such opinions in a court of law?

18 A. I don't know the exact number here in Wisconsin,
19 probably between 40 and 50 times. In
20 Mississippi, was probably closer to 150, 200
21 times.

22 Q. Now, you used the term, and I thought it might be
23 a good idea at this point to define some of these
24 terms, lets begin with, what is an inked print?

25 A. An inked print is when a thin layer of printer's

1 ink is rolled across the top of the surfaces of
2 the ridges of your fingers. And the fingers are
3 rolled out on a white receiving surface such as a
4 fingerprint card, leaving a lasting impression of
5 the fingerprint detail.

6 Q. Is an inked print, is that also sometimes
7 referred to as a standard?

8 A. Yes, it is. That's what they are.

9 Q. And what do we mean by that?

10 A. A standard print is where it's a known print.
11 It's a print that we know who it is. We have
12 inked the fingers. We rolled the fingers out.
13 And we have identified the person who these
14 fingerprints were taken. That would be the
15 standard.

16 Q. And what is a latent print?

17 A. Latent print is also known as a crime scene print
18 or a hidden or invisible print. These are
19 typically found at a crime scene by the use of
20 powder. They have to be brought out and
21 developed with powders or chemicals.

22 Q. And is there such a thing, I have heard expressed
23 a patent print?

24 A. Yes, there is.

25 Q. What is that?

1 A. A patent print is a visible print, a print that
2 you can see that is left in maybe blood, or
3 grease, or dirt. Doesn't have to be developed or
4 brought out.

5 Q. Are there different distinguishing
6 characteristics of a fingerprint or a palm print
7 that makes identification possible?

8 A. Yes, in the fingers, you usually start out with
9 different pattern types; loops, swirls, and
10 arches. But these don't fully distinguish
11 between people, because everybody has some of
12 these patterns in their hands. But we have
13 individual characteristics within the pattern
14 area, such as ending ridges, dots, islands. The
15 placement of those individual characteristics in
16 the pattern area, compared to the standard print,
17 is what makes them unique.

18 Q. Are fingerprints specific to each individual?

19 A. Yes, they are.

20 Q. In your experience, have you ever found two
21 people with identical fingerprints?

22 A. No, I have not.

23 Q. Just generally, what are the basic factors that
24 you would use in analysis of fingerprints, to
25 determine identification?

1 A. First thing I would look at is pattern type. If
2 I'm looking at a latent print, it's a loop, and a
3 standard, it's an arch, I can eliminate it
4 automatically. If the pattern type is the same,
5 then I look for the individual characteristics
6 within that pattern area. If I were to find an
7 ending ridge in a certain part of a latent print
8 in identification, I would expect to find that
9 same ending ridge following in the print
10 standard.

11 Q. Now, is it possible -- Well, let me first ask,
12 what kind of surfaces are you generally called
13 upon to examine and look for the presence of
14 latent fingerprints?

15 A. All kinds of surfaces. Some of them are good,
16 some of them aren't very good.

17 Q. All right. And in your experience, what are some
18 of the areas, or if I can use the phrase richest
19 area, and which one is likely to find a latent
20 print suitable for examination?

21 A. Hard, smooth surfaces are best. Rough surfaces
22 are more difficult. Some porous surfaces, such
23 as paper, is also very good. Some porous
24 surfaces such as styrofoam are very bad. It
25 depends upon the nature of the surface and the

1 condition of a person's skin as to how -- latent
2 prints and how good they are.

3 Q. And does the presence or absence of perspiration
4 from an individual, is that a factor that is
5 known to contribute whether or not a print is
6 actually left behind?

7 A. Yes, a person with normally dry hands is probably
8 less likely to leave latent prints than would be
9 somebody with oily skin or very sweaty hands.

10 Q. All right. And directing your attention to this
11 particular case, how did you first become
12 involved in this investigation?

13 A. Well, I came to work on November 7th, on a Monday
14 morning, and I was informed by my unit leader
15 that a vehicle had been brought in in relation to
16 this case and I was assigned to process the
17 vehicle for the presence of latent finger and/or
18 palm prints and also to inventory the contents of
19 the vehicle.

20 Q. And that vehicle was a Toyota RAV4?

21 A. That's correct.

22 Q. Let's begin with your inventory and proceed from
23 there. First of all, tell us, what is an
24 inventory?

25 A. Inventory is just a itemization of everything we

1 find within the vehicle. What I did in this case
2 is I started with the front seat passenger side
3 and I inventoried everything that was in there.
4 Front seat driver side, middle console. I put
5 the vehicle into quadrants and inventoried each
6 one individually.

7 Q. All right. During the course of your inventory,
8 did you find a compact flashcard?

9 A. Yes, I did.

10 Q. Cargo area?

11 A. Yes, I did.

12 Q. All right. I'm going to have Investigator
13 Fassbender show you an exhibit.

14 (Exhibit 496 marked for identification.)

15 SPECIAL AGENT FASSBENDER: 496.

16 ATTORNEY FALLON: Thank you.

17 Q. (By Attorney Fallon)~ Agent Fassbender is showing
18 you what has been marked for identification
19 purposes as Exhibit 496; do you recognize it?

20 A. Yes, I do.

21 Q. What is Exhibit 496?

22 A. It is a Verbatim compact flash memory card with
23 the name Teresa on it.

24 Q. All right. And from what location in the vehicle
25 was that flash card obtained?

1 A. It was in the rear of the vehicle, in the cargo
2 area, behind the left passenger seat in the rear.

3 Q. All right. I'm going to have my colleague show
4 Exhibit 300 on the screen. Do you see the
5 presence of this flash card, Exhibit 496; is that
6 present --

7 A. Yes, it is.

8 Q. -- in the picture depicted in Exhibit 300?

9 A. Yes, it is.

10 Q. I believe there is a laser pointer to your
11 immediate right there; do you think you could
12 point that out for us, please?

13 A. Be right there.

14 Q. All right. Thank you. During the course of your
15 inventorying of the vehicle here in question, did
16 you find a compact disk carrying case?

17 A. Yes, I did.

18 Q. And where was the compact disk carrying case
19 located?

20 A. I believe that was in the front passenger side
21 area.

22 Q. All right. I'm having counsel show you exhibit,
23 what appears to be 292; do you recognize that?

24 A. Yes, I do.

25 Q. And is that the compact disk carrying case that

1 you inventoried in this particular case?

2 A. Yes, it is.

3 Q. And is that the location in which you first
4 observed it when you began your inventory?

5 A. Yes, I did.

6 Q. And, finally, during the course of your inventory
7 of the contents of this vehicle, did you find an
8 Air National Guard lanyard?

9 A. Yes, I did.

10 Q. All right. I'm going to have Exhibit 287
11 displayed to you at this time; do you recognize
12 that exhibit?

13 A. Yes, I do.

14 Q. And is that the Air National Guard lanyard that
15 you observed in the RAV4 vehicle?

16 A. Yes, it is.

17 Q. And if you recall, can you tell us the
18 approximate location of that lanyard?

19 A. Yes, it was in the center console between the
20 driver's -- front driver's seat and the front
21 passenger seat.

22 Q. I'm going to have Exhibit 293 displayed on the
23 screen for you. If you would take your pointer
24 and tell us the approximate location of that, if
25 you can, with the use of this exhibit.

1 A. It would be in the center console right in there.

2 Q. I see there are a bottle of Aquafina water and
3 some other items?

4 A. That's correct.

5 Q. And you are pointing to the area between the two
6 seats?

7 A. That's correct.

8 Q. Thank you. How long did the processing of the
9 vehicle -- your part of the processing of this
10 vehicle take?

11 A. I worked on the vehicle for most of that day and
12 the part of the next.

13 Q. And during -- Specifically to -- directing your
14 attention to November 8th, did you have occasion
15 to examine a wheel cover?

16 A. Yes, I did.

17 Q. And did you examine it for the possibility of
18 fingerprint analysis?

19 A. Yes, I did.

20 Q. Tell us about that.

21 A. The wheel cover on the back of it had
22 impressions, for fingerprint impressions. You
23 can see them on the top of it, but it was so
24 dirty that actually there weren't any impressions
25 left behind. It was more of the take away. If

1 you have a really dirty surface and you touch it
2 with your fingers, there's no way you can leave
3 the impression behind, but you are picking all
4 the dirt up and that's where the impressions are.
5 You are taking it away, you are not putting it
6 down.

7 Q. I'm showing you Exhibit 308, does that look
8 familiar to you?

9 A. Yes, it does.

10 Q. And I note, prominently on the top of the wheel
11 cover there, there appears some smudge marks that
12 actually look like fingerprints?

13 A. That's correct.

14 Q. All right. Tell us exactly what we're looking
15 at.

16 A. If you see this, you can tell that this is all
17 real dirty. This is just covered with road grime
18 and you can see what appears to be fingerprint
19 impressions here and down here, where somebody
20 put a right and left hand on here.

21 Unfortunately, when we processed, there's no
22 ridge detail to develop because most of this is
23 just dirt and it lifted up and there was -- no
24 latent prints were put down. The other ones that
25 were visible would be down here at the bottom,

1 but as you can see, these are basically smears,
2 no ridge detail in any one of those.

3 Q. So is that what you mean by this concept of a
4 take away?

5 A. That's correct.

6 Q. In other words, whatever was there was removed by
7 the hands; in fact, it could even have been
8 gloves that caused that?

9 A. That's correct.

10 Q. All right. Now, we're on this concept of
11 fingerprint analysis, did you process the vehicle
12 for possible fingerprint analysis?

13 A. Yes, I did.

14 Q. And in terms of your specific recollection here,
15 did you -- you processed the vehicle as a whole,
16 I take it?

17 A. That's correct.

18 Q. And outside?

19 A. Outside an inside, yes.

20 Q. All right. And in terms of the items that you
21 examined in -- Well, let's start with the outside
22 of the car. Were you able to develop any prints
23 that were useful or suitable for follow up
24 examination?

25 A. Yes, I was.

1 Q. And approximately how many prints did you locate,
2 suitable for examination?

3 A. I believe there was a total of eight areas where
4 there was prints that were suitable for
5 comparison.

6 Q. All right. In terms of the interior of the
7 vehicle, did you examine any of the items you
8 inventoried for the presence of latent prints?

9 A. Yes, I did.

10 Q. And give us a ballpark idea of approximately how
11 many items or the nature and type of items you
12 looked at.

13 A. I looked at the three Aquafina bottles. I also
14 processed a granola wrapper that was found in the
15 back of the vehicle, the CD case was also
16 processed. And several other items that ...

17 Q. A blinker light, lug wrench?

18 A. A blinker light kit, lug wrench.

19 Q. In addition to the wheel cover you just told us
20 about?

21 A. That's correct.

22 Q. During the course of your analysis, did you also
23 examine the license plates?

24 A. Yes, I did.

25 Q. And the license plates that you examined, were

1 you able to identify anything suitable on either
2 plate for purposes of subsequent analysis?

3 A. No, I was not.

4 Q. Now, in an effort to make an identification or
5 something to compare it to, you would need
6 standards; is that correct?

7 A. That's correct.

8 Q. In your effort to identify anyone as being the --
9 having put those prints on the items that you
10 were able to identify, what standards did you
11 have available to you; do you recall?

12 A. I don't recall the whole list of them. I know I
13 had Steven Avery's. I had a lot of the Avery
14 family's. I believe the wrecker drivers
15 submitted standards also.

16 Q. So if I were to read you a list of names, would
17 you recognize and be able to tell us as to
18 whether or not you had standards or compar --
19 from these individuals to assist you in your --
20 conducting your analysis?

21 A. Yes.

22 Q. All right. Allen Avery?

23 A. Yes, I did.

24 Q. Steven Avery?

25 A. Yes.

1 Q. Charles Avery?
2 A. Yes.
3 Q. Earl Avery?
4 A. Yes, I did.
5 Q. Delores Avery?
6 A. Yes.
7 Q. Bobby Dassey?
8 A. Yes.
9 Q. Brian Dassey?
10 A. Yes.
11 Q. Brendan Dassey?
12 A. Yes.
13 Q. Barb Janda?
14 A. Yes.
15 Q. Scott Bloedorn?
16 A. Yes.
17 Q. James Lenk?
18 A. Yes -- Not to the vehicle.
19 Q. Not to the vehicle. But eventually those -- you
20 had those prints as well?
21 A. That's correct.
22 Q. And Andrew Colborn?
23 A. That's correct.
24 Q. All right. Let's start with the vehicle. With
25 respect to the prints that you had and you

1 indicated you had 8 latent prints from the Toyota
2 itself?

3 A. That's correct.

4 Q. That were suitable for analysis. Were any
5 identifications effective?

6 A. No.

7 Q. How about the Sunbelt crunchy granola bar
8 wrapper, were there any identifications effected
9 in your comparison of that print with any of the
10 standards submitted?

11 A. No, there were not.

12 Q. The bottle of Aquafina water, were any
13 identifications effected there?

14 A. No, they were not.

15 Q. On the black CD carrying case, were any
16 identifications effective from that analysis?

17 A. No, sir.

18 Q. On the partially full bottle of Aquafina water,
19 were any identifications effective?

20 A. No, sir.

21 Q. At some point was a headboard from a bed
22 submitted to you for fingerprint analysis?

23 A. Yes, it was.

24 Q. And that headboard was represented to you as
25 having come from the residence of Steven Avery;

1 is that correct?

2 A. That's correct.

3 Q. All right. Was there an identification effective
4 there?

5 A. Yes, there was.

6 Q. And what was that?

7 A. I believe it was the right little fingerprint of
8 Steven Avery.

9 Q. Were any other fingerprint identifications
10 effected with respect to that item?

11 A. No, there were not.

12 Q. All right. At some point were you asked, during
13 the course of this investigation, to examine a
14 letter which was directed to the Manitowoc County
15 Sheriff's Office?

16 A. Yes, I was.

17 Q. Were you able to develop any latent prints from
18 that letter which were suitable for analysis or
19 comparison?

20 A. No, I was not.

21 Q. So it would be fair to say that no identification
22 could be effected from that examination?

23 A. That's correct.

24 Q. All right. At some point -- Recently, were you
25 asked to examine a cardboard box reputedly to

1 have contained a vial of blood?

2 A. That's correct, I was.

3 Q. All right. Did you examine any prints from that
4 box?

5 A. Yes, I did.

6 Q. And so that we're clear, where did you obtain the
7 prints from?

8 A. I obtained the prints, I believe, from Calumet
9 County Sheriff's Office, the standards.

10 Q. That would have been from Deputy Hawkins?

11 A. That's correct.

12 Q. All right. And you used those standards and you
13 made a comparison to prints of whom?

14 A. Lenk, and I can't remember. I can check my
15 notes.

16 Q. Sure, please.

17 A. Andrew Colborn and James Lenk.

18 Q. All right. With respect to your analysis of the
19 cardboard box, and the prints lifted from that
20 box, were any identifications effected?

21 A. No there were not.

22 Q. I'm going to show you Exhibit 473. And in the
23 background, does that look like the box that
24 you -- First of all, let me just ask, that's a
25 poor question. Let me back up before I go there,

1 I misspoke. Did you also examine a blood vial?

2 A. Yes, I did.

3 Q. All right. And, again, directing your attention
4 to Exhibit 473, does that look like the vial
5 which you were asked to examine in this
6 particular case?

7 A. Yes, it does.

8 Q. All right. How did the vial come to your
9 attention?

10 A. Came to my attention, I believe it was sent by
11 Jeremy Hawkins also from Calumet County?

12 Q. And had that vial previously been to the FBI for
13 some type of analysis, upon your receipt of it?

14 A. As far as I know it had, yes.

15 Q. All right. And were you able to process the vial
16 for any latent prints for examination?

17 A. Yes, I did.

18 Q. All right. Were any prints located on the vial?

19 A. There was some very faint ridge detail, but
20 nothing suitable for comparison was developed.

21 Q. So you weren't able to identify that ridge
22 detail, wasn't sufficient for identification
23 purposes?

24 A. That's correct.

25 ATTORNEY FALLON: Your Honor this might be

1 a good point to break for lunch.

2 THE COURT: All right. Members of the
3 jury, we'll break for lunch at this time and resume
4 at 1:00. I remind you not to discuss the case
5 during the lunch hour.

6 (Jury not present.)

7 THE COURT: You may be seated. Counsel,
8 then, I will see you back at 1:00.

9 ATTORNEY FALLON: All right. Thank you.

10 (Recess taken.)

11 (Jury present.)

12 THE COURT: Mr. Fallon, at this time you
13 may resume your direct examination.

14 ATTORNEY FALLON: Yes, thank you, Judge. I
15 see that we have the exhibit available. I would
16 like to ask Special Agent Fassbender to obtain the
17 exhibit for the vial of blood.

18 **DIRECT EXAMINATION CONTD.**

19 BY ATTORNEY FALLON:

20 Q. Mr. Riddle, I'm having Special Agent Fassbender
21 show you what has been received in evidence as
22 Exhibit 478. Do you recognize that item?

23 A. Yes, I do.

24 Q. And what is 478?

25 A. That's the container holding the vial of blood.

1 Q. All right. And are there some crime lab tape
2 markings on the outside exterior of that exhibit?

3 A. Yes, there is. I sealed this myself, and there's
4 my initials and date it was sealed right there.

5 Q. All right. And what is the date of the seal on
6 that?

7 A. February 26th of this year.

8 Q. All right. And Agent Fassbender would lift the
9 tube out. Do you recognize the contents of the
10 exhibit?

11 A. Yes, I do.

12 Q. And did you examine the vial which is contained
13 inside that exhibit?

14 A. Yes, I did.

15 Q. All right. And that is the item which you
16 attempted to process the prints from; is that
17 correct?

18 A. That's correct.

19 Q. And as I understand it, you said there was just
20 one ridge print?

21 A. There was very, very faint ridge detail that was
22 unsuitable for comparison, on the tube.

23 Q. So no identification could be effected?

24 A. No.

25 ATTORNEY FALLON: I will pass the witness

1 for cross-examination.

2 THE COURT: Mr. Buting.

3 ATTORNEY BUTING: Thank you, Judge.

4 **CROSS-EXAMINATION**

5 BY ATTORNEY BUTING:

6 Q. Good afternoon, Mr. Riddle.

7 A. Good afternoon.

8 Q. You have been a fingerprint examiner for, now,
9 how many years?

10 A. 19 years.

11 Q. 19 years. And about 14 of it, I think, was with
12 Wisconsin?

13 A. It will be 15 years in August, yes, sir.

14 Q. Okay. And in that capacity are you often called
15 to the scene of alleged crime or offense?

16 A. I have been on field response in the past, not
17 for the last three years, however.

18 Q. Typically you are just -- you just receive items
19 that are brought to you by the law enforcement
20 authorities?

21 A. That's correct.

22 Q. Okay. And is it in your experience that officers
23 would tend to bring items that they think are
24 important to their investigation?

25 A. Yes, that's correct.

1 Q. Items that they think might help identify who a
2 suspect is?

3 A. That's correct.

4 Q. Sometimes completely unknown person they don't
5 have any idea and they are just looking to see if
6 you can link somebody up?

7 A. That's correct.

8 Q. Some of those items might be, let's say,
9 something that's a suspected murder weapon in a
10 homicide case, right?

11 A. That's correct.

12 Q. Like a knife that they think might have been
13 used?

14 A. That's correct.

15 Q. Or a firearm that they think might have been
16 used?

17 A. That's correct.

18 Q. Did you have the opportunity to look at a .22
19 Marlin rifle, for fingerprints in this case?

20 A. I don't believe so, no.

21 Q. You never had one of these officers from the
22 State submit a .22 Marlin rifle for your analysis
23 to see if you could find any fingerprints?

24 A. No, they did not.

25 Q. Hmm. How about any bullet cartridges or shell

1 cases, did you ever get any of those?

2 A. I didn't receive any of those items, no, sir.

3 Q. Do you know -- Do you know anything about

4 firearms yourself?

5 A. Very little, some.

6 Q. Do you know how you have to load a .22 with

7 shells, cartridges?

8 A. Are you referring to a rifle or a revolver?

9 Q. Rifle.

10 A. Depending on the type of rifle, whether it's bolt

11 action or semiautomatic, there is a big

12 difference.

13 Q. Okay. So, if it's a semi-automatic, there's like

14 a little cartridge, or a little tube that goes in

15 underneath the barrel?

16 A. That's correct.

17 Q. And in order to fire it, one has to pickup

18 cartridges, which are fairly small, about an inch

19 and a half or so, right?

20 A. That's correct.

21 Q. And in doing that, then they have to load them

22 one, by one, by one into a tube.

23 A. That's correct.

24 Q. And have you ever been able to -- Have you ever

25 examined any cartridge cases before?

1 A. Yes, I have.

2 Q. Have you ever been able to find any kind of
3 fingerprints on them?

4 A. Very seldom but, yes, I have.

5 Q. Okay.

6 A. Not on a .22, though, sir.

7 Q. But you didn't in this case?

8 A. No, sir.

9 Q. No one even gave you cartridges to look at in
10 this case?

11 A. That's correct.

12 Q. While we're on the subject of important items
13 that maybe law enforcement might give you to look
14 at, how about if they find what they believe is
15 some personal item of a victim, in the bedroom of
16 a suspect, is that something they might want to
17 bring to you or you might be asked to look for
18 fingerprints?

19 A. I would assume so, yes.

20 Q. Any officer ever bring you a Toyota car key to
21 look at?

22 A. No, they did not.

23 Q. The -- Let me move ahead for a minute and then I
24 will go back to the RAV4. I'm going to show you
25 what's marked as Exhibit 497. Put your glasses

1 on, see if you can identify that for me, please.

2 A. That's a report that I issued on December 5th of
3 2006, with the results of the Item KT, letter to
4 the Manitowoc Sheriff's Office that I had
5 processed for prints.

6 Q. Okay. Before we talk about that any more, just
7 so no one is confused, there's some -- this isn't
8 an original of yours, right?

9 A. No, it is not.

10 Q. This is a copy of this. Some numbering at the
11 bottom that says State 1-9371, sort of a Bate
12 stamp kind of a thing? That's not normally on
13 your report, right?

14 A. No, it is not.

15 Q. Something that we have got that helps us, but
16 otherwise does this appear to be a accurate copy
17 of the report that you prepared?

18 A. Yes, it does.

19 Q. And attached to it, would you tell me what's
20 attached to this?

21 A. That's a copy of my handwritten notes.

22 Q. Okay. And keep going, what's attached to that?

23 A. It's a copy of a letter that was submitted, Item
24 KT.

25 Q. Okay. Let me put this up on the ELMO, so we can

1 talk about it that way.

2 ATTORNEY FALLON: Your Honor, I would like
3 to be heard on this, I think there's a hearsay
4 objection and a relevance objection that need to be
5 made.

6 THE COURT: The Court will excuse the
7 jurors for a few minutes to hear the motion.

8 (Jury not present.)

9 THE COURT: You may be seated. Mr. Fallon.

10 ATTORNEY FALLON: Yes, Judge. If counsel
11 is intending on displaying the actual cryptic letter
12 here, which was the subject of a -- an attempted
13 identification, which by the way was requested by
14 the defense, I have reason to object on grounds of
15 relevance, hearsay, lack of foundation, and what
16 have you, with respect to an anonymous letter sent
17 to the Sheriff's Department. So, I don't see any
18 relevance primarily, but it is also hearsay and
19 unidentified document.

20 THE COURT: The parties have the advantage
21 of me because I don't know what the letter is.

22 ATTORNEY BUTING: Sure. Let me show it to
23 the Court. Do we want to excuse the witness at all?

24 ATTORNEY FALLON: I don't see how that
25 would make any difference.

1 ATTORNEY BUTING: Okay. I just wanted to
2 bring it up. Well, Judge, the -- obviously the
3 document isn't offered for the truth of the matter
4 alleged in there, but it is -- it was brought up on
5 direct. I think under cross I can examine the
6 expert about his evaluation of the document. The
7 timing of how and when it was submitted is actually
8 already in the record. But it obviously goes to the
9 fact that this was just found, if the Court recalls
10 from an earlier witness, I believe, in the property
11 room a whole year after it had been received and
12 nothing had been done with it, goes to the
13 investigative bias, tunnel vision argument we have
14 been making for the last month. So for those
15 reasons it's certainly relevant and obviously it's
16 something that this witness -- this expert was asked
17 to examine, so it's relevant in that regard as well.

18 ATTORNEY FALLON: Your Honor, if I may
19 reply to that. The only reason this exhibit was
20 introduced is because counsel brought it up on
21 cross-examination of Investigator Fassbender, about
22 two weeks ago. It doesn't have any particular
23 relevance to this case whatsoever, other than it's
24 another rule out, another exclusion.

25 And by the way, I would also point out

1 that any attempt to discussion or display of the
2 writings of the particular exhibit go to, I think
3 are in violation of the Court's pre-trial ruling
4 suggesting some other unknown culprit committed
5 this particular offense. Again, it's an
6 anonymous letter, unaccounted for. So it's of
7 marginal relevance.

8 ATTORNEY BUTING: Judge, let me respond to
9 that. It doesn't go to any -- it's not, if you are
10 talking about third party liability, there is no
11 name on that, nobody that's particularly being
12 alleged. For all that matter, it could have been,
13 you know, it could be arguing that the defendant did
14 it. But the point of the matter is, it was a --
15 obviously, in our view, a very important tip that --
16 that may or may not have been acted on properly as
17 part of their investigative bias. So that's the
18 relevance.

19 THE COURT: Maybe the parties can refresh
20 my memory, I have a vague recollection of the
21 subject matter of the document; has the letter been
22 introduced as an exhibit?

23 ATTORNEY FALLON: No, that's it. It was
24 brought up in cross-examination of Special Agent
25 Fassbender on the first Friday of this trial, I

1 believe that is the 9th, if memory serves me.
2 Again, it was all -- that was the point -- that was
3 the time to cross-examine, if any.

4 ATTORNEY BUTING: Well, there was
5 cross-examination.

6 ATTORNEY FALLON: And here -- here's the
7 point, the probative value of showing that to the
8 jury is minimal, at best. It's the confusion, waste
9 of time, let's follow another dead end somewhere, is
10 the whole point of that. The time for
11 cross-examining, the time to make the point of
12 investigative bias, which was attempted and arguably
13 made or not, that's a subject for closing argument,
14 was in the investigation and cross-examination of
15 Special Agent Fassbender, when he said, well, we
16 ruled it out, or we just heard testimony from
17 Pevytoe, ruling it out.

18 ATTORNEY BUTING: Judge, first of all, how
19 can it not be relevant when there is a letter that
20 says the body was burned in the smelter at 3:00 a.m.
21 on Friday morn. It can't be more relevant than what
22 all the testimony we have heard about the body in
23 this case and the whole question of whether it's
24 location at Mr. Avery's -- behind Mr. Avery's
25 garage, was its original location or not is central

1 to this case and will continue to be central.

2 ATTORNEY FALLON: So, now he's arguing that
3 it's offered for the truth of the matter as it
4 affects the investigation?

5 ATTORNEY BUTING: No, but it's a tip that
6 was not followed on by the law enforcement agents in
7 this case because it did not fit their theory that
8 the body was burned behind Mr. Avery's garage.
9 And -- And the failure to do anything with this for
10 a whole year, supports that defense.

11 ATTORNEY FALLON: Then let counsel make
12 that argument in closing argument, based on the
13 evidence its exhibited.

14 THE COURT: If -- If Mr. Fassbender -- And
15 I have to say, this trial has now gone on long
16 enough, I don't have all the previous testimony
17 committed to memory. This letter was brought up to
18 Mr. Fassbender when he was examined and he said, we
19 didn't pursue it, is that --

20 ATTORNEY FALLON: He said they ruled it out
21 because we had already ruled out the smelter as
22 having any part of this particular case.

23 THE COURT: Okay.

24 ATTORNEY FALLON: He's already got the
25 evidence in to make the argument he wants to make.

1 ATTORNEY BUTING: No, because the -- I
2 don't know if we do or not, but I don't recall the
3 exact testimony myself right now. But, look, just
4 because they ruled it out, doesn't mean it's no
5 longer relevant. That's a central part of this
6 trial. That's a matter that the jury can decide,
7 whether or not this is just another piece of the
8 puzzle that, if we're going to use their analogy, a
9 piece of the puzzle that shows, time and time again,
10 they ignore anything that doesn't fit the State's
11 theory.

12 ATTORNEY FALLON: Are we now going to hear
13 testimony that the smelter was the source of
14 combustion of the remains of Teresa Halbach from,
15 presumably, Dr. Fairgrieve. We would certainly like
16 to know that. And I --

17 ATTORNEY BUTING: You have seen his report.

18 ATTORNEY FALLON: Well, counsel, we have
19 seen no report from Dr. Fairgrieve. We have seen a
20 rendition of what he might or might not say.

21 ATTORNEY BUTING: I'm sorry, that's what I
22 meant, you have seen a summary of what he says, and
23 the smelter is mentioned.

24 THE COURT: Maybe you can help me out,
25 what's he going to say?

1 ATTORNEY BUTING: I don't want to repeat at
2 this point, it's in the Court's file. I can't
3 restate it better than what we did in our summary.
4 But there are -- the evidence is clear that there
5 are multiple burn sites on that Avery property
6 alone, not to mention other sites outside of that
7 property. This was not reasonably considered. This
8 was dismissed as a possible site, despite the fact
9 that they are getting anonymous tips about it. And
10 more than anonymous tips that we haven't heard about
11 yet.

12 But, again, it shows investigative bias.
13 And it's clearly within the scope of direct. He
14 was asked about a letter that he -- that was sent
15 to the Manitowoc County Sheriff's Office and that
16 he did fingerprints on. If they didn't want it
17 in, it should never have been brought out. Now
18 the jury hears there's some letter, who knows
19 what it is.

20 ATTORNEY FALLON: Well, counsel, then you
21 shouldn't have asked the question on
22 cross-examination of Agent Fassbender, over
23 objection of the State.

24 ATTORNEY BUTING: Well, we wanted it,
25 you're the ones that don't.

1 ATTORNEY FALLON: Obviously they want it,
2 Judge, because they want to use it for this truth of
3 the matter asserted.

4 ATTORNEY BUTING: No.

5 THE COURT: All right. Here's my ruling.
6 To the extent that the -- and I'm basing this, I
7 guess, on the recollection of the testimony the
8 parties are providing me. To the extent -- First of
9 all with respect to the letter itself, it's not
10 admissible for the truth of the matter asserted, but
11 I believe I did admit -- admit it for the purpose
12 which I understand -- or not admit the letter, but
13 allow the question about it, not for the truth of
14 the matter asserted, but based on the proposition
15 advanced by the defense, which was that it was an
16 example of a lead that the State chose not to
17 follow.

18 The State has its own -- gave its own
19 explanation, I believe, for it, if I'm
20 understanding you correctly, Mr. Fallon. Again,
21 I don't remember Mr. Fassbender's explanation,
22 but both parties are telling me that this came in
23 and that it was the subject of questioning of
24 Mr. Fassbender.

25 ATTORNEY FALLON: Correct.

1 THE COURT: To the extent that point has
2 gotten in, that point has already been made. Since
3 Fassbender indicated it was not pursued of
4 necessity, the State didn't choose to send it to
5 this witness, and I'm not sure what -- what would be
6 added at this point by admitting it. Because to put
7 it up on the screen now raises the danger that the
8 jury will take it for the truth of the matter
9 asserted.

10 ATTORNEY BUTING: Judge, it's been talked
11 about. Now, the witness, on direct, was told that
12 he looked at a letter, the jury doesn't know what it
13 is, they brought it up, it's left hanging there, the
14 jury is going to, if anything, speculate about what
15 that letter is, whether it somehow relates to
16 Mr. Avery or not. And the fact his report shows
17 that it was a whole year until this was even sent to
18 be examined.

19 THE COURT: All right. This is a
20 fingerprint expert.

21 ATTORNEY BUTING: I understand.

22 THE COURT: As I understand this report, he
23 didn't find any usable fingerprints on the letter,
24 so what -- what is his testimony going to add to the
25 point that the Court has already been allowed to be

1 made with respect during Ms Fassbender's testimony.

2 ATTORNEY BUTING: I don't recall that we
3 have gotten the details out in Mr. Fassbender's
4 testimony. He didn't -- As I recall, he didn't
5 admit that he had even seen it. This witness has
6 seen it. He said, I think he indicated that he
7 didn't recognize it, didn't know what it was, other
8 than the defense wanted it sent for fingerprints a
9 year after the arrest of Mr. Avery, when we found it
10 in the property room.

11 THE COURT: Well, if there's a theory for
12 the defense to get this letter in, it may -- there
13 may be a way to get it in through another witness,
14 but this is a fingerprint expert. The only
15 testimony he would have to offer is that he didn't
16 find any fingerprints on the document and I don't
17 think this is an appropriate way to get the document
18 in.

19 ATTORNEY BUTING: All right. Then, for
20 this purposes then, I would like to just finish with
21 him on this point, and let the jury know that when
22 he received the letter, at least establish the date,
23 that it was not until December of '06. We're not
24 showing it, we'll work on the other issue later.

25 THE COURT: All right. I'm not sure I

1 understand what you are looking to do.

2 ATTORNEY BUTING: Finish up my questioning
3 on this issue, with him, by pointing out this
4 letter, without showing it, was not sent to him
5 until December of '06.

6 THE COURT: Okay. So, in front of the
7 jury, that a letter was sent to him. You can
8 identify this as a handwritten letter dated
9 whatever, or whenever it was received. Any
10 objection from the State?

11 ATTORNEY FALLON: If he wants to have it
12 identified as the letter examined with respect to
13 his December 5th report, that's fine.

14 THE COURT: Very well. That's permissible.

15 ATTORNEY BUTING: All right.

16 THE COURT: The jurors can be brought back
17 in. You may be seated.

18 (Jury present.)

19 THE COURT: Mr. Buting, you may proceed.

20 ATTORNEY BUTING: Sure.

21 Q. (By Attorney Buting)~ Okay. Mr. Riddle, again
22 showing you Exhibit 497, if you could just tell
23 us -- Well, let me do it -- Let me lead you
24 through it. This was a letter that was sent to
25 Manitowoc Sheriff's Department, as far as you

1 knew?

2 A. As far as this goes.

3 Q. Okay. And it was a handwritten letter, do you
4 know if there was anything about the date that it
5 was received, in the information you received?

6 A. Not that I received, no.

7 Q. Okay. Well, then, tell us when it was that you
8 received it and when it was you were asked to
9 do -- to test it for latent fingerprints?

10 A. I received this piece of evidence on December the
11 4th, of 2006, completed the work on December the
12 5th.

13 Q. Okay. So, a year after -- actually 13 months
14 after you were first brought into the case to
15 look at the RAV4 at the Crime Lab?

16 A. That's correct.

17 Q. Okay. The box, the cardboard box that contained
18 a vial of blood that you also looked at?

19 A. Yes.

20 Q. That was in -- when was it that you were asked to
21 look at that?

22 A. I believe that was just last week.

23 Q. Last week, okay. If you could check and be sure.

24 A. Actually, it was a couple weeks ago, February
25 the 19th, is when I issued the report on that.

1 Q. All right. And is that true also for the blood
2 vial itself; is that when you examined it?

3 A. The blood vial came in a couple days later, about
4 a week later, actually. I completed that report
5 on February the 26th.

6 Q. All right. Now, I noticed when you picked up the
7 lanyard in your direct testimony, you put on some
8 gloves before you did that?

9 A. That's correct.

10 Q. That's sort of a normal thing officers are taught
11 to do before they handle evidence, right?

12 A. That's correct.

13 Q. Because you know if you put on gloves, you are
14 not going to leave fingerprints, right?
15 Typically, with the right kind of gloves?

16 A. That's correct.

17 Q. And that's like second nature to a police
18 officer, right?

19 A. Yes, sir.

20 Q. So, really it would be very unusual for you to
21 find police officers' fingerprints on an
22 important item of evidence in a case?

23 ATTORNEY FALLON: Speculation.

24 A. Usually --

25 THE COURT: I think he can answer it.

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ATTORNEY BUTING: Okay.

A. Occasionally there are slip ups where I have identified officers fingerprints on items of evidence, but for the most part they are very careful about wearing gloves and not leaving prints.

Q. All right. We went through a list of items.

(Exhibit 498 marked for identification.)

Q. We went through a list of items that earlier on you looked at in, like, I believe November of '05, on direct exam; do you recall that?

A. Are you referring to the inventory of the vehicle?

Q. Yeah, but I'm going to limit it; I'm going to narrow it down to just a few items, okay?

A. Okay.

Q. Just so we're clear, maybe I missed it, but it was actually November 7th of 2005 when you were first brought in at the Crime Lab?

A. That's correct.

Q. And at that time, the vehicle was -- the RAV4, Toyota RAV4, was still at the garage of the Crime Lab, right?

A. That's correct.

Q. And that was helpful to you because you have --

1 you've got decent lighting, and photographic
2 equipment with you, and all of that, right?

3 A. That's correct. We have photographers that take
4 our pictures for us there.

5 Q. Okay. I'm showing you Exhibit 498, could you
6 just identify that, please?

7 A. That's a report issued on December 7 of 2005.
8 Some of the items involved the RAV4 itself and
9 some items recovered from it that I processed for
10 fingerprints.

11 Q. Okay. Now, a number of those items that you
12 processed, you actually did find fingerprints
13 suitable for comparison, correct?

14 A. That's correct.

15 Q. Let's talk about those items for a moment. You
16 found suitable prints on the RAV4 itself, right?

17 A. That's correct.

18 Q. We'll get into where in a moment, but you also
19 found suitable prints on this crunchy granola bar
20 wrapper?

21 A. That's correct.

22 Q. And the bottle of Aquafina water?

23 A. That's correct.

24 Q. Were those both found in the front seat?

25 A. I believe the crunchy granola wrapper was found

1 in the rear of the vehicle, in the cargo area.

2 Q. Okay. Just so we're clear, you actually did the
3 search of that vehicle at that time as well,
4 right?

5 A. That's correct.

6 Q. And you made -- you made note of where you found
7 all of these items, including the lanyard, for
8 instance?

9 A. That's correct.

10 Q. Okay. And you also found and identified a print
11 suitable for comparison on the CD case, a black
12 plastic CD case?

13 A. Yes, that's correct.

14 Q. And on another partially full bottle of Aquafina;
15 is that right?

16 A. That's correct.

17 Q. So two of the three bottles of water, you were
18 able to find a suitable print?

19 A. Yes, sir.

20 Q. Okay. Now, let's talk about the RAV4 itself for
21 a moment. You mentioned the wheel cover on the
22 rear cargo gate had, I guess these patent or
23 patent prints, correct?

24 A. They were more take-aways than prints. A patent
25 print would be -- to me would be a fingerprint

1 that was visible --

2 Q. Okay. I'm sorry.

3 (Court reporter couldn't hear.)

4 A. The areas on the wheel cover are actually void
5 areas, that are in the shape of a hand print, but
6 there are actually no prints there.

7 Q. Okay. So this was something that -- These
8 were -- I'm using the wrong term. These were
9 just looking like fingers, prints, but there was
10 not -- no ridge detail?

11 A. That's correct.

12 Q. All right. Let's put up Exhibit 307 for a moment
13 here. And, actually, I'm going to put up the
14 other -- I'm going to put up Exhibit 308 first
15 and talk about that, that's a closer up picture
16 of the rear tailgate of the RAV4, right?

17 A. Yes, sir.

18 Q. Okay. And these sort of finger markings up here
19 on the top and the bottom are what you refer to
20 as take-aways, that you couldn't get a ridge
21 detail?

22 A. That's correct.

23 Q. But you did find some fingerprints that were
24 suitable, for identification purposes, on the
25 rear of this vehicle?

1 A. Yes, I did.

2 Q. Okay. And one of which is in this photograph.

3 Do you have the laser pointer with you; could you

4 point where it is?

5 A. Yes. You can't actually see the fingerprint.

6 What you are looking at here is the scale and

7 this points to where the fingerprint is for our

8 photographer, so he can take a picture of it. So

9 it would be right in front of that scale.

10 Q. Okay. Now, if I understand how this worked, you

11 found -- There was a number of places where you

12 found some prints that were suitable for

13 identification, but they didn't lift off of the

14 surface in that fashion, right?

15 A. No, they did not. None of the lifts I made were

16 suitable for comparison.

17 Q. Okay. But, there were fingerprints that you

18 found left on the vehicle that could be preserved

19 in another way, right?

20 A. That's correct.

21 Q. And that is where your photographer comes and

22 takes a close up photograph of the print that

23 shows a ridge detail, right?

24 A. That's correct.

25 Q. And it's actually done in sort of a negative

1 fashion?

2 A. That's the way I prefer it. I prefer them to
3 take the photograph and give me the negative, so
4 I can put it on a light box, where the light
5 shines through the back of it, makes the print
6 easier to see for me.

7 Q. Okay. And those are actually better sometimes
8 for identification purposes than the kind that
9 actually lift off with a piece of tape or
10 something, right?

11 A. It can be, yes.

12 Q. Okay. Could you use the pointer, laser pointer,
13 and let's talk about where you found these prints
14 that were suitable for comparison on this
15 vehicle, okay?

16 A. Okay. We had the one, I don't see the tag right
17 now, but the one right here, and most of the
18 other ones, actually came from this area right
19 here and a little farther around this side. I
20 think there was another one, can't see it in this
21 particular picture, but it's going to be around
22 the front of the vehicle. And then there is one
23 on an inside window.

24 Q. Okay. We'll talk --

25 A. I think a total of eight locations.

1 Q. Okay. We'll talk about those in a minute. There
2 were eight locations?

3 A. I believe so, yes.

4 Q. Okay. And if my recollection is correct, you
5 gave them numbers; I don't know if you recall
6 what the actual numbers are?

7 A. Yes, they were 8 -- inside of 825 -- and those
8 were eight latent lifts.

9 Q. Okay. But you found one -- right where we saw on
10 the earlier closeup, one right next to where the
11 key goes in for the cargo gate?

12 A. That's correct.

13 Q. And then three along this pillar to the left side
14 that goes above the taillight assembly?

15 A. That's correct.

16 Q. And then a fifth one was over on the other side,
17 sort of in shadows, on the other side of the
18 wheel cover?

19 A. That's correct.

20 Q. Okay. Now, I'm going to switch to Exhibit 289.
21 This is just a side shot of the vehicle. I don't
22 have a front shot, unfortunately. But the other
23 three that you found, if I'm correct, one of them
24 was in the -- one of them was actually on the
25 inside passenger window, right on this side of

1 the vehicle, wasn't it?

2 A. That's correct, it was.

3 Q. On the inside, right?

4 A. On the inside, yes.

5 Q. And another one was on the inside of the

6 passenger window of the rear window, on the other

7 side, on the passenger side, right?

8 A. Correct, yes, sir.

9 Q. And that was six and seven. And then the eighth

10 one was actually found on the hood?

11 A. That's correct.

12 Q. As if somebody would open a hood, might touch it

13 and leave a fingerprint?

14 A. That's correct.

15 Q. And you compared those fingerprints to the

16 fingerprints standard of Mr. Steven Avery?

17 A. Yes, I did.

18 Q. And they did not match, correct?

19 A. No, they did not, that's correct.

20 Q. And you went through a list of other people that

21 you -- other people's standards that you compared

22 to these unknown fingerprints. But am I correct

23 that you did not, and have not, as of today, ever

24 compared fingerprint standards from Lieutenant

25 James Lenk or Sergeant Andrew Colborn to any of

1 those fingerprints from the RAV4?

2 A. No, I did not.

3 Q. I am correct, you did not, right?

4 A. I did not, you are right.

5 Q. And still have not?

6 A. No.

7 Q. No one has asked you to do that?

8 A. No, they have not.

9 Q. Also, absent from that list of people who
10 Mr. Fallon ran down with you, of standards that
11 you compared, you did not compare any
12 fingerprints of Mr. Scott Tadych, T-a-d-y-c-h,
13 did you?

14 A. No, I did not.

15 ATTORNEY FALLON: Objection, relevance.

16 THE COURT: Sustained.

17 ATTORNEY FALLON: Ask that the answer be
18 stricken.

19 THE COURT: Court will order the answer to
20 that question be stricken.

21 Q. (By Attorney Buting)~ The standards that you
22 listed on direct are the only ones you got to
23 compare to these eight unknown fingerprints on
24 the RAV4?

25 A. That's correct.

1 Q. Were there also some palm prints found?

2 A. Yes, sir, there was. One of those eight
3 locations did contain a palm print.

4 Q. Okay. And you got actual palm print standards
5 from all of those people as well?

6 A. That's correct.

7 Q. And you did find a fingerprint of Mr. Avery's
8 that matched a fingerprint -- or latent that was
9 left or found on -- as reported to you, on a
10 headboard, right?

11 A. That's correct.

12 Q. Do you know where that headboard came from?

13 A. I was informed it came from Mr. Avery's bedroom.

14 Q. All right. So finding an owner's or occupant's
15 fingerprint on one's own headboard, would not be
16 that surprising, would it?

17 A. It would be expected.

18 ATTORNEY BUTING: All right. That's all I
19 have of this witness.

20 THE COURT: Any redirect?

21 ATTORNEY FALLON: Just a few questions.

22 **REDIRECT EXAMINATION**

23 BY ATTORNEY FALLON:

24 Q. Do you have any standards from Teresa Halbach to
25 assist you in making any comparisons?

1 A. No, I did not.

2 Q. And as a fingerprint examiner, would you trust,
3 if someone were to bring you a box of her
4 belongings, and say, well, her prints are
5 probably on there? As an examiner, would you use
6 that in making a comparison?

7 A. If they were to bring me --

8 Q. In other words -- Let me ask it, it's a poorly
9 worded question. What do you need for a standard
10 to assure yourself that you are making an
11 accurate comparison and subsequent
12 identification?

13 A. I would need a standard fingerprint card that was
14 received by that individual and we know that the
15 prints on that card were hers.

16 Q. All right. And if an item has been processed for
17 the presence of DNA, in other words swabbed, are
18 you likely to find any kind of prints suitable
19 for comparison after that has been done?

20 A. Not on the areas that were swabbed, no.

21 Q. And that would include a key?

22 A. That's correct.

23 Q. A gun?

24 A. That's correct.

25 ATTORNEY FALLON: Nothing else. Thank you.

1 ATTORNEY BUTING: Just a couple quick
2 follow-up there.

3 RECROSS-EXAMINATION

4 BY ATTORNEY BUTING:

5 Q. Do you have any information that -- that -- You
6 know what a .22 rifle looks like, right?

7 A. That's correct, sir, I do, yes.

8 Q. Okay. Has a long wooden stock, right?

9 A. Yes.

10 Q. That would be a good place maybe to find
11 fingerprints.

12 A. Depends on the condition of the wood, stocks
13 usually aren't that great for that.

14 Q. Okay. But, you know, top of the barrel, lots of
15 places on a rifle that might have suitable
16 prints, right?

17 A. That's correct.

18 Q. Do you have any information that anybody from the
19 DNA unit swabbed the complete surface all the
20 way, top, one end to the other, of that rifle?

21 A. I couldn't say what areas were swabbed, sir.

22 Q. Okay. And any areas that weren't swabbed, might
23 well have been suitable for you to look for
24 fingerprints?

25 A. That's a possibility, yes, sir.

1 ATTORNEY BUTING: Thank you, nothing else.

2 THE COURT: Very well, the witness is
3 excused.

4 ATTORNEY BUTING: Judge, I would move the
5 exhibits for the purposes stated.

6 THE COURT: Any objection?

7 ATTORNEY FALLON: As I see, 498, and 497,
8 is that it?

9 ATTORNEY BUTING: I believe so.

10 ATTORNEY FALLON: With respect to 497, only
11 for the -- well, for the purposes discussed, fine.

12 ATTORNEY BUTING: Right.

13 ATTORNEY FALLON: And for 498, that's fine.

14 THE COURT: Very well, 497 and 498 are
15 admitted.

16 ATTORNEY BUTING: Thank you.

17 THE COURT: Do I understand the State's
18 next witness is going to be appearing by telephone?

19 ATTORNEY KRATZ: Yes.

20 THE COURT: Members of the jury, I'm going
21 to give you a short break, hopefully short, so you
22 don't have to sit here while we're making
23 arrangements for the telephone. We'll call you back
24 as soon as we're ready.

25 (Jury not present.)

1 THE COURT: You may be seated. Mr. Kratz,
2 do you have the number to call?

3 ATTORNEY KRATZ: That would help. Yes, I
4 do, 817 -- We'll do this quietly.

5 (Off the record.)

6 THE COURT: Counsel, do I understand that
7 the relevant exhibits that are going to be the
8 subject of testimony, the witness has?

9 ATTORNEY BUTING: That's correct and they
10 are already exhibits that have been introduced here.

11 ATTORNEY KRATZ: Already admitted and he
12 has both of them already marked, Judge.

13 THE COURT: All right. Who is the witness?
14 Mr. Zimmerman, this is Judge Willis, can you hear
15 me?

16 THE WITNESS: Yes, Judge.

17 THE COURT: All right. We're outside the
18 presence of the jury at this time. In a few
19 minutes, we'll bring them in. I will let
20 Mr. Kratz -- Mr. Kratz, are you going to be doing
21 the examination?

22 ATTORNEY KRATZ: I will. Perhaps the
23 volume could be just a little louder.

24 THE COURT: I will let Mr. Kratz call you
25 as a witness and we'll let you know when we're

1 ready.

2 ATTORNEY KRATZ: Mr. Zimmerman, can you
3 hear me, okay? Mr. Zimmerman?

4 THE COURT: I don't think your microphone
5 is on.

6 ATTORNEY KRATZ: Mr. Zimmerman, can you
7 hear me, okay?

8 THE WITNESS: Yes, I heard that all just
9 fine.

10 ATTORNEY KRATZ: Okay. Thank you.

11 THE COURT: Mr. Zimmerman, can we hear you
12 again? Are you there?

13 THE WITNESS: Yes, I'm here.

14 THE COURT: All right. Why don't you talk
15 consistently for a few minutes while we adjust the
16 volume here. You can tell us how the weather is
17 there.

18 THE WITNESS: Well, today the weather is
19 fairly cool and mild. It's approximately 50 degrees
20 outside right now.

21 THE COURT: All right. When you are giving
22 your testimony, I'm going to ask you to speak
23 perhaps even a little closer into your phone or talk
24 a little louder if you are as close as you can get.
25 We can hear you here, but not quite as loud as

1 everybody else.

2 THE WITNESS: All right.

3 THE COURT: All right. Are we ready to
4 bring in the jury?

5 ATTORNEY KRATZ: We are, Judge, yes.

6 THE COURT: Very well, we'll bring in the
7 jury.

8 (Jury present.)

9 THE COURT: You may be seated. At this
10 time the jury is back in the courtroom. Mr. Kratz,
11 you may call your next witness.

12 ATTORNEY KRATZ: Thank you, Judge. Via
13 telephone, your Honor, we're going to be calling a
14 gentleman by the name of Tony Zimmerman.
15 Mr. Zimmerman, are you able to hear us okay?

16 THE WITNESS: Yes, I am.

17 ATTORNEY KRATZ: Mr. Zimmerman, I'm sure
18 the Clerk is going to ask you to raise your right
19 hand.

20 THE COURT: I will take care of that at
21 this time.

22 ATTORNEY KRATZ: I'm sorry, Judge.

23 THE COURT: Mr. Zimmerman, this is Judge
24 Willis. I'm going to ask you to raise your right
25 hand at this time; do you have it raised?

1 THE WITNESS: Yes, I do, Judge.

2 ANTHONY JOSEPH ZIMMERMAN, called as a
3 witness herein, having been first duly sworn, was
4 examined and testified as follows:

5 THE COURT: Would you please state your
6 full name and spell your last name for the record.

7 THE WITNESS: Anthony Joseph Zimmerman,
8 last name Z-i-m-m-e-r-m-a-n.

9 THE COURT: Mr. Kratz, you may proceed.

10 ATTORNEY KRATZ: Thank you.

11 **DIRECT EXAMINATION**

12 BY ATTORNEY KRATZ:

13 Q. Mr. Zimmerman, please do your best to speak up
14 nice and loudly and right into the phone so we
15 can all hear you, sir. How is it that you are
16 employed?

17 A. I am employed with Cingular Wireless.

18 Q. And how are you employed, sir?

19 A. You mean my job title?

20 Q. Your job title, yes.

21 A. I'm a network engineer.

22 Q. Are you currently working in any specific
23 departments within Cingular.

24 A. The department I work in, I am responsible for
25 technical support on our voice --

1 (Court reporter couldn't hear.)

2 Q. On your voice mail platform?

3 A. That's correct.

4 Q. There were some questions earlier in this trial,
5 actually a couple of weeks ago, regarding some
6 voice mails that had been received; were you
7 asked to appear today, either in person or by
8 phone, to clear up some of those questions about
9 voice mails?

10 A. Yes.

11 Q. First of all, Mr. Zimmerman, how long have you
12 been employed in that capacity?

13 A. In this capacity, I have been working for eight
14 years.

15 Q. And what are your general duties as in the voice
16 mail platform or as a network engineer?

17 A. Primarily responsible for ensuring our voice mail
18 systems are running without errors and providing
19 voice mail service to our customers.

20 Q. As part of that occupation, Mr. Zimmerman, are
21 you called upon from time to time to review
22 records regularly kept by Cingular?

23 A. Yes, I am.

24 Q. And in reviewing those records, specifically some
25 of those records as they relate to voice mail,

1 are you able to offer either opinions or
2 explanations about what some of the terminology
3 means in those records?

4 A. Yes, I am.

5 Q. Sometime prior to your testimony, Mr. Zimmerman,
6 you were provided with a couple of exhibits that
7 have already been introduced into evidence in
8 this case. One is Exhibit No. 361 and one is
9 Exhibit No. 372, do you have both of those
10 exhibits in front of you at this time?

11 A. I have Exhibit 361 and I have -- I believe I have
12 Exhibit 372; although, it's not marked as such.

13 Q. All right. We'll talk about 372 in just a
14 minute. I'm going to have my colleague, Mr.
15 Fallon, for the benefit of the jurors and
16 everybody in the court, put up Exhibit No. 361.
17 This is a Cingular document that has previously
18 been referred to and, in fact -- and, in fact,
19 was already received.

20 ATTORNEY KRATZ: And just for the record,
21 Judge, as this is a document that includes telephone
22 numbers, we would very much appreciate that the
23 media not film at least this particular document.

24 THE COURT: I think the -- I don't think
25 the camera is aimed at the screen. Is there a

1 camera man back there? I guess it's really not
2 aimed at the screen since there is nobody manning
3 the camera. It doesn't seem to be aimed that way,
4 so I think we'll be okay.

5 Q. (By Attorney Kratz)~ Mr. Zimmerman, this
6 subscriber activity report, do you recognize this
7 exhibit, 361?

8 A. Yes, I recognize it.

9 Q. All right. Now, as a network engineer in the
10 technical support area, Mr. Zimmerman, have you
11 been asked not only to review this particular
12 report, but other reports that deal with the
13 telephone -- or excuse me, the wireless usage of
14 a young woman by the name of Teresa Halbach?

15 A. Yes, I have been.

16 Q. Let me first ask you, Mr. Zimmerman, after
17 October 31st, 2005, at or about 2:27 -- excuse
18 me, 2:41 p.m., have you been able to determine
19 whether or not there was any what's called
20 activity, regarding Ms Halbach's cellular
21 account?

22 A. I have not been able to determine whether there
23 was any activity on that account.

24 Q. All right. The question that I have of you, and
25 I asked it in a negative way, so let me come

1 right out and ask you, was there any activity in
2 Ms Halbach's account after that time?

3 A. Not from the mobile itself, no, there was no
4 activity.

5 Q. All right. Now, is there anyway, Mr. Zimmerman,
6 from you, that is from technical support or as a
7 network engineer, to do determine why that might
8 be; in other words, although you can tell us that
9 there was no activity, are you able, just by
10 looking at records, to determine why a particular
11 account may be inactive?

12 A. Because there was no billing activity taking
13 place.

14 Q. All right. As an example, Mr. Zimmerman, if this
15 particular telephone, the cellphone of Ms
16 Halbach, had been used, even for something like
17 checking a voice mail account, would that be an
18 activity that you, through your review of the
19 records, would have been able to see?

20 A. Yes, that's correct.

21 Q. And, again, after -- sometime after 2:20 --
22 excuse me, 2:21 p.m. -- excuse me, 2:41 p.m., on
23 the 31st of October, it's your testimony that
24 there was no such activity; is that correct?

25 A. That is correct.

1 Q. All right. Next, Mr. Zimmerman, like to clear up
2 one last area and that is Exhibit No. 372. You
3 said that you may not know it as such, or at
4 least as a document that is marked as a exhibit,
5 or a State's exhibit, but do you have in front of
6 you a four page document which identifies various
7 voice mails that, again, are specifically related
8 to Teresa Halbach's account?

9 A. Yes, I have this document in front of me.

10 Q. And I would just ask you, as we discuss this, I
11 would ask you to consider that four page document
12 as Exhibit No. 372 if, in fact, we refer to it as
13 such; are you able to do that for us?

14 A. Yes, I am.

15 Q. All right. Thank you.

16 ATTORNEY KRATZ: Mr. Fallon, if you would
17 be so kind as to zoom into any of the messages; it
18 doesn't make any difference to me.

19 Q. (By Attorney Kratz)~ Let's just look at message
20 No. 2, the second message down, at least on our
21 screen. Mr. Zimmerman, on page number one of
22 that exhibit, do you see something called message
23 number two?

24 A. Yes, I see it.

25 Q. Now, within that message, or within the details

1 of that message, there is some jargon that is
2 used that I would ask you to tell our jurors what
3 it means. First of all, when something says
4 received, do you see where -- where you see that
5 the message or the voice mail was received?

6 A. Yes, I see that.

7 Q. Could you describe for the jurors, what does it
8 mean to, at least on this document, that a voice
9 mail was received?

10 A. That is the time and date stamp that the message
11 was recorded into the voice mailbox and the voice
12 mail system.

13 Q. When it says 11/2/2005, is that the date that a
14 voice mail for Ms Halbach was actually received
15 into her voice mailbox?

16 A. Yes, that's correct.

17 Q. And what does 14:28 mean?

18 A. That correlates to 2:28 p.m. in the afternoon.

19 Q. All right. Is there anything within that detail
20 of that message, or, in fact, any of the 18
21 messages that we are going to see in Exhibit No.
22 372, that describes for you the time or date when
23 that message may have been retrieved by somebody?

24 A. There is no such data in this report.

25 Q. Now, there are two other terms that I would ask

1 you to identify for us. First of all, what is an
2 unopened message?

3 A. It is simply a message that has not been saved.
4 And one can draw the conclusion that it was
5 either listened to or skipped while the playback
6 was taking place.

7 Q. And once again, when a message is not saved, that
8 is, whether it's been listened to or skipped, or
9 not, does that tell us anything about when that
10 message might have been retrieved or listened to?

11 A. No, that does not tell us anything about that.

12 ATTORNEY KRATZ: Ask Mr. Fallon to turn to
13 page two, if he would, about two thirds of the way
14 down the page.

15 Q. And, Mr. Zimmerman, I ask you to look at that as
16 well. It appears to say number of unopened
17 messages, eight; do you see that?

18 A. Yes, I see that.

19 Q. Can you describe for jury what that means?

20 A. That is the total count of messages that are
21 marked unopened, that have not been saved in the
22 mailbox.

23 Q. Now, other than unopened messages, there is
24 something that is called an old message; is that
25 correct?

1 A. That's correct.

2 Q. What is an old message?

3 A. And old message refers to a message that had been
4 saved in the mailbox.

5 Q. If a message has been saved in the mailbox, are
6 you able, as a network engineer in the technical
7 support area, able to render an opinion as to
8 whether that has physically been listened to?

9 A. It has. Yes, I can render an opinion that it has
10 been listened to, at least partially and most
11 likely entirely.

12 Q. All right. And is there a manual or some human
13 component to that which requires that message to
14 be saved?

15 A. Yes, there is, one must interact via the keys on
16 their handset or telephone.

17 ATTORNEY KRATZ: I would ask Mr. Fallon to
18 turn to the last page, that's page four of this
19 exhibit. That's Exhibit No. 372.

20 Q. Ask you, also, Mr. Zimmerman, to look at that on
21 page four, ask if you can tell us how many old
22 messages was there that were related to Ms
23 Halbach's voice mail?

24 A. There are 10.

25 Q. Of those 10 retrieved or saved messages, is there

1 any way for your company, and for you, as it's
2 representative and network engineer, to tell this
3 jury when those messages may have been listened
4 to?

5 A. I cannot determine when exactly these messages
6 were listened to, no.

7 Q. Mr. Zimmerman, with a Cingular voice mail
8 account, is it possible to retrieve or listen to
9 a voice message remotely, that is, from a phone
10 other than the cellphone for which that voice
11 mail attaches to?

12 A. Yes, that is possible.

13 Q. Could you tell the jury how that works, please?

14 A. Well, someone can call either the mobile number
15 itself from, say a land line telephone, as the
16 voice message begins playing the greeting, one
17 can interrupt that greeting with a key press and
18 enter that mailbox's password and gain full
19 access to the mailbox just as if they were the
20 subscriber.

21 Q. So if --

22 A. I'm sorry.

23 Q. Go ahead.

24 A. Besides calling the mobile number itself, they
25 can also call the voice mail system number, there

1 is a phone number associated with the voice mail
2 system, and that will simply place them into a
3 generic greeting, in which they can enter the
4 mobile 10 digit number to access the mailbox that
5 way.

6 Q. So if I understand correctly, if somebody wanted
7 to access Ms Halbach's voice messages, remotely
8 that is, using a phone other than Ms police
9 Halbach's cellphone, they could do so either by
10 calling her phone number and putting in a pass
11 word; is that right?

12 A. That's correct.

13 Q. Or they could call the Cingular system itself and
14 enter a -- what would be a 10 digit number, as
15 well as the password number; is that correct?

16 A. That is correct.

17 Q. And, once again, if somebody knew the password,
18 if somebody knew or figured out a password for
19 this particular cellphone account, it wouldn't
20 necessarily have to be the owner or holder of
21 that account to retrieve those; is that fair?

22 A. That's correct.

23 ATTORNEY KRATZ: I think that clears up
24 those two areas and those few questions. Thank you,
25 very much, Mr. Zimmerman, and I will pass the

1 witness, Judge.

2 THE COURT: All right. Mr. Zimmerman, just
3 a second, I want to ask, are the members of the jury
4 able to hear okay? I had maintenance turn the fan
5 off; hopefully we won't have trouble breathing, but
6 I think for the duration of this witness' testimony,
7 it works better, Mr. Buting.

8 ATTORNEY BUTING: Yes, thank you, Judge.

9 **CROSS-EXAMINATION**

10 BY ATTORNEY BUTING:

11 Q. Mr. Zimmerman, can you hear me?

12 A. Yes, I can.

13 Q. Good afternoon, this is Jerome Buting. I'm one
14 of the defense attorneys for Mr. Avery, who's on
15 trial here today, okay?

16 A. Okay.

17 Q. If you could explain for me a couple of things, I
18 would appreciate it. First of all, when one
19 calls into a voice mail account like this one --

20 ATTORNEY BUTING: Mr. Fallon, could you put
21 that last page back up again, please?

22 Q. (By Attorney Buting)~ When one calls into the
23 voice mail and you get a message that says you
24 have, I don't know, 18 messages holding; is that
25 how it works?

1 A. It usually plays the number of messages you have
2 that are new.

3 Q. Okay. So the very first messages that come on
4 are the most recent messages; is that right?

5 A. That's correct.

6 Q. And if somebody hasn't checked their phone for a
7 while and 18 messages have built up into the
8 system, when you start listening to it, the first
9 time, does it play the most recent messages first
10 and go in reverse order, chronologically?

11 A. It will play the oldest message first.

12 Q. Okay. So it will start off with number one and
13 go, chronologically, up to 18; is that right?

14 A. Yes.

15 Q. So, in turning to Exhibit No. 372 for a moment,
16 to page two -- We're just putting it up on the
17 screen, bear with us. Okay. So on page two,
18 about two thirds of the way down, it says
19 incoming old messages; do you see that?

20 A. Yes, I do.

21 Q. And the date of that is October 31 of 2005, at
22 1:54 p.m., right?

23 A. The date for that particular message, that's just
24 below the heading, yes, that's correct.

25 Q. So if one was to call in after all of these 18

1 messages had built up, into the account, this
2 would be the first one that would play; is that
3 right?

4 A. That's not totally correct, no. Would you like
5 me to expand on that?

6 Q. Sure.

7 A. If there are new messages in the account, those
8 new messages will play in chronological order,
9 starting with the oldest message. Now, if there
10 are no new messages in the mailbox, then it will
11 begin playing the skipped or unopened messages
12 first.

13 Q. From the oldest to the most recent?

14 A. Yes, that's correct.

15 Q. Maybe you need to define for us what you mean by
16 new messages, if there's new messages received?
17 What does that mean?

18 A. A new message would be one that has not been
19 listened to at all.

20 Q. Okay. So, taking this account and these records,
21 if all 18 of these messages built up into the
22 account, without any of them having been listened
23 to, when one first called to access that account,
24 would it start at this message that we're looking
25 at on page 2 that says October 31, of 2005, at

1 1:54 p.m.?

2 A. Yes, I believe that's the oldest message in the
3 mailbox, so, yes, that would be accurate.

4 Q. Okay. And, then, from this record, you can tell
5 that someone did listen to that message, right?

6 A. That's correct, yes.

7 Q. And as well as, if you follow with me on this
8 document, message two, message three, turning the
9 page to page three of the document, all of those
10 up to the last one on page four --

11 ATTORNEY BUTING: Can you turn to that one,
12 Dean?

13 Q. And, sir, if you would turn to the last page,
14 this is the last one, message number 10, that
15 appears to be categorized as an old message; is
16 that right?

17 A. That's right.

18 Q. And the date and time of this one is
19 November 2nd, 2005, at 8:05 a.m.; is that right?

20 A. That's correct.

21 Q. So, from this record, then, does it appear to you
22 that 10 messages were opened and listened to, or
23 at least partially listened to, as you said,
24 between October 31st, that first one we looked
25 at, and this 10th one on November 2nd, at 8:05?

1 A. I can't determine when they were listened to, or
2 saved, based on these records.

3 Q. I understand. I'm not asking you that. What I'm
4 asking you is, is it clear from these records,
5 though, that those first 10 messages, in
6 chronological order, were opened and listened to?

7 A. Yes. Yes, that is apparent.

8 Q. Okay. And, then, turning to page one, again, of
9 this exhibit, to message number one, on this
10 exhibit for the next -- on page one and two,
11 there's a series of -- a sequence of eight
12 messages that appear to be under this category
13 that says incoming unopened messages; do you see
14 that?

15 A. Yes, I see that.

16 Q. Do I understand, then, that incoming unopened
17 means they have not been listened to?

18 A. No. No, they are actually marked in the system
19 as having been listened to, but not saved.

20 Q. And how would that be? How do you listen to it
21 and not save it?

22 A. And you simply don't interact with the handset.
23 You don't interact. You don't press any keys,
24 the save key, you don't press the save key, and
25 it will stay in this date. You can press say,

1 for instance, a pound key, to skip the message,
2 but listen to the next one, but as long as you
3 don't save them, they will stay in this date,
4 after listening to them.

5 Q. Okay. So when it says unopened messages, it
6 doesn't necessarily mean that they weren't
7 listened to at all?

8 A. No, it simply means that they have not been
9 saved.

10 Q. Okay. And can you tell that they have been
11 listened to?

12 A. At least partially. They have been marked as
13 listened to in the system, but if one message was
14 to begin playing and the skip key was pressed,
15 that would also mark it as having been listened
16 to, in the system.

17 Q. Okay. So how does this differ from the opened
18 messages?

19 A. The opened messages have been saved. The saved
20 key has been pressed, after listening to the
21 message in its entirety, or at least partially,
22 which marks the message as saved, also known as
23 hold.

24 Q. Okay.

25 (Court reporter couldn't hear.)

1 Q. Hold. And I'm trying to get clear the difference
2 here then. So these eight messages that are
3 marked as incoming unopened messages, it's your
4 testimony that they -- that someone did open them
5 and listen to them, at least partially, and then
6 either let them play all the way through and not
7 interact and save, or push some button that skips
8 to the next before they're completed?

9 A. Yes, that is my testimony.

10 Q. Okay. And when you do that, they are
11 automatically saved as incoming, unopened
12 messages.

13 A. Yes, they stay in the mailbox as -- as incoming
14 unopened messages.

15 Q. Okay. And, then, when one listens to them, and
16 at the end of each message, chooses to push a
17 button to save them, that's when they get
18 reclassified as incoming opened messages; do I
19 have that right?

20 A. They are actually classified as incoming old
21 messages.

22 Q. All right. Then, from this document, can we
23 determine, then, that the -- in chronological
24 order, the first 10 messages were opened and
25 saved, each one, manually, by pushing a button,

1 beginning on October 31st; is that right?

2 A. Yes.

3 Q. But the next eight were listened to or skipped,
4 but not saved.

5 A. That's correct.

6 Q. Okay. Thank you, very much. That's very
7 helpful. Can you tell from this -- from these
8 records, whether or not someone listened to any
9 voice mails and then erased them?

10 A. I cannot tell from this record that that has been
11 done, no.

12 Q. And can you tell, from her account, what the
13 capacity for messages would be before you get a
14 message that says mailbox is full?

15 A. There is a way to tell that on an active voice
16 mailbox via a different report. This report does
17 not show that information.

18 Q. Okay. From your experience, your years in the
19 business, if you look at these -- By the way, let
20 me go back for a second. Is the capacity
21 determined by, like the length of the call, or
22 the number of the calls?

23 A. It is considered -- There are limitations placed
24 on both the length of each message and, also, the
25 number of messages that can be stored in the

1 mailbox.

2 Q. Okay. And the length of these messages are also
3 indicated on this report, right? Each message
4 has a -- third line down from the top says audio,
5 colon, and then a number with parentheses (SEC),
6 like seconds?

7 A. Yes, that's correct.

8 Q. So, for instance, on page number one, message
9 number one, under unopened, where it says audio,
10 69 seconds, that means it was a 69 second phone
11 call?

12 A. That's correct.

13 Q. Okay. Looking, if you would, for a moment, then,
14 at the length of all of these calls combined
15 together, with a number being 18, do you have an
16 opinion about whether or not this would fill up
17 the capacity of this subscriber's voice mailbox,
18 these messages?

19 A. This appears that it would not have filled up the
20 full capacity of the mailbox.

21 Q. All right. And, so, if one was getting a message
22 on November 3rd, when calling this particular
23 phone number, that said mailbox full, would that
24 indicate to you that perhaps some messages that
25 we now -- or that some messages had been erased

1 that are not reflected on this Exhibit No. 372?

2 A. Well, if somebody heard that recording, that the
3 mailbox was full, on November 3rd, then I would
4 say, yes, at least one or more messages had to
5 have been removed before the new message at the
6 stop of this document was received.

7 Q. Okay. And there's no way to tell what date or
8 time in this sequence that message or messages
9 might have been, that was erased?

10 A. There is no way to determine that from this
11 record, no.

12 Q. Okay. And is there also no way to tell what
13 time, I assume, if someone called in, what time
14 it would have been erased?

15 A. Not from this record, no.

16 Q. I have just got a couple of other questions that
17 I don't know that you can answer or not, but they
18 have to do with trying to access one's account,
19 such as this one, online; are you familiar with
20 that process at all?

21 A. From the internet?

22 Q. Correct. From your cingularwireless.com?

23 A. From our company website, I'm not aware of a
24 function we have that allows that.

25 Q. Maybe it's not the company website, but are you

1 aware that customers can go online and access
2 their accounts and find out, you know, the call
3 activity, what their last phone calls were?

4 A. Yes, I am familiar with that feature.

5 Q. Okay. And to do that, does one have to have a
6 user name and a password set up?

7 A. Yeah. In order to access your billing account
8 records, yes.

9 Q. But if you have that information, a user name and
10 a password, you can then access the billing
11 records, which would give you, for instance, the
12 most recent call activity on that account; is
13 that right?

14 A. Yes, that's correct.

15 Q. If you don't have -- If you have the password,
16 but you don't have the user name, you are not
17 going to be able to access that account?

18 A. If you are unable to correctly put in the user
19 name, yes, that's correct, you will not be able
20 to access it.

21 Q. Okay. So you have to know both the user name and
22 the password to be able to access the account?

23 A. Yes.

24 Q. And the password for that account, online, may or
25 may not be the same as the password one enters to

1 access their voice mail account?

2 A. I believe that's true; however, I'm not
3 100 percent familiar with our online account
4 security --

5 Q. Okay.

6 A. -- requirement.

7 Q. All right. So, you don't know, for instance,
8 whether an online password requires numbers and
9 letters, whereas the phone, probably just
10 numbers?

11 A. That's correct, yes.

12 Q. Okay.

13 ATTORNEY BUTING: All right. Thank you
14 very much, sir. That's all I have.

15 THE COURT: Mr. Kratz, any redirect?

16 ATTORNEY KRATZ: No. Mr. Zimmerman has
17 been very helpful. Thank you, that's all the
18 questions I have.

19 THE COURT: Okay. Thank you,
20 Mr. Zimmerman, you may hang up at this time.

21 THE WITNESS: All right. Thank you.

22 ATTORNEY BUTING: Thank you, sir.

23 ATTORNEY KRATZ: One very brief witness,
24 Judge. It's very well right at this time, if I
25 could call him.

1 THE COURT: All right. We'll take one more
2 witness, then, before the break.

3 ATTORNEY KRATZ: We would recall Mike
4 Halbach to the stand, your Honor.

5 MICHAEL DANIEL HALBACH, called as a
6 witness herein, having been first duly sworn, was
7 examined and testified as follows:

8 THE CLERK: Please be seated. Please state
9 your name and spell your last name for the record.
10 Michael Daniel Halbach, H-a-l-b-a-c-h.

11 DIRECT EXAMINATION

12 BY ATTORNEY KRATZ:

13 Q. And, Mike, please, remind the jurors how it is
14 that you know Teresa Halbach?

15 A. Teresa is my sister.

16 Q. And how are you employed, Mr. Halbach?

17 A. I work for the Green Bay Packers, in the Video
18 Department as a video assistant.

19 Q. As a video assistant with the Green Bay Packers,
20 are you -- or have you been provided with a
21 cellphone from the Green Bay Packers?

22 A. Yes, I have.

23 Q. Mike, upon learning of your sister's
24 disappearance, or that she was missing, did you
25 take any steps to try to ascertain where she was,

1 including trying to access her voice mail
2 messages?

3 A. Yes, I did.

4 Q. When did you do that, Mike?

5 A. My mom had called me that Thursday, November 3rd,
6 that afternoon, about Teresa, and wondering if I
7 knew where she was. And I didn't. So I had a
8 feeling that I might know her voice mail
9 password, because my mom had said that she had
10 tried calling and Teresa's in box was full.

11 So I guess what I was interested in was,
12 why it was full, or when the first new message
13 was from, was received in her in box. And so,
14 you know, that's why I did call her voice mail.

15 Q. And you said that you had called that on the 3rd
16 of November?

17 A. That's correct.

18 Q. Do you recall making that call, Mike?

19 A. I do.

20 Q. And were you able to accurately guess her
21 password?

22 A. Yes, it wasn't very difficult.

23 Q. Okay. How did you do that?

24 A. I had a feeling what it was, because of -- from
25 previous testimony, I said I did some website

1 design for her and her password for that included
2 her birthday, the month and day. And that was
3 successful in getting into her voice mail.

4 Q. She used her birth date as her password?

5 A. Yes.

6 Q. Mike, when you called your sister's voice mail on
7 the 3rd of November, do you recall what message
8 you first got? Now, I don't want to talk about
9 the messages that -- that were retrieved, but the
10 automated message; do you remember what that
11 said?

12 A. It just told me how many new voice mail messages
13 there were.

14 Q. Do you have a recollection of how many there
15 were?

16 A. I know that there were 18.

17 Q. So some automated voice said 18 new messages, or
18 something like that?

19 A. Correct.

20 Q. Did you listen to at least some of those messages
21 that day?

22 A. I did.

23 Q. Did you listen to all of them?

24 A. I believe that I did.

25 Q. Okay. Did you save some of them, or save all of

1 them, or skip them, or tell the jury what you
2 did?

3 A. Like I said, what was important to me was, I knew
4 that the first new voice mail message was from
5 Monday afternoon some time. So after hearing
6 that I was, you know, extremely worried just
7 because she checks her voice mail, you know, a
8 number of times every day. You know, she carries
9 her cellphone with her all the time. So that --
10 I mean, I was worried about that. So then I
11 listened to the first few messages, or I ended up
12 listening to all the messages, but as I listened
13 to the first half or so, I would save them when I
14 was done with them. And then we started -- or I
15 started to get into messages that were, you know,
16 later in the week, Tuesday night, Wednesday. And
17 at that point the messages just, you know, didn't
18 tell me anything about where Teresa was, just --
19 it was a lot of stuff about work and friends
20 calling about, you know, what they were going to
21 do that weekend. So I did begin to skip them.
22 But, yeah, I do believe I listened to at least
23 parts of all 18 messages. But I did not save --
24 I must have saved half of them.

25 Q. And the verification that it was you, in fact, on

1 the 3rd of November, that afternoon, that
2 accessed her voice mail; were you able to verify
3 that through the Green Bay Packers and through
4 their telephone records that could verify or
5 remind you that that was the time and date that
6 you accessed that voice mail?

7 A. I was able to, yes.

8 Q. All right.

9 ATTORNEY KRATZ: For this issue, that's all
10 I have of this witness, Judge. Thank you.

11 THE COURT: Any cross?

12 ATTORNEY BUTING: Very brief, Judge.

13 THE COURT: Go ahead.

14 **CROSS-EXAMINATION**

15 BY ATTORNEY BUTING:

16 Q. Mr. Halbach, did you -- as you listened to these
17 messages, you said you saved some and didn't save
18 the rest. You just kind of let them play and
19 skip through, hear a little bit and skip through
20 it; is that your recollection?

21 A. Right.

22 Q. Did you erase any of the messages?

23 A. I don't believe I erased any messages.

24 ATTORNEY BUTING: All right. Thank you.

25 THE COURT: Very well, you are excused.

1 All right. Members of the jury, we'll take our
2 afternoon break at this time. I will remind you,
3 again, not to discuss the case. And we'll see you
4 when the break is over.

5 (Jury not present.)

6 THE COURT: Counsel, we'll see you in 15
7 minutes then.

8 ATTORNEY BUTING: Thank you, Judge.

9 (Recess taken.)

10 (Jury not present.)

11 THE COURT: At this time we're back on the
12 record, outside the presence of the jury. Counsel,
13 is the State ready to call another witness?

14 ATTORNEY KRATZ: I am, Judge. I wanted to
15 place one thing on the record. In criminal cases,
16 Judge, it is permissible for testimony to be taken
17 by telephone. It does require, however, the
18 acquiescence of the defense. And the defendant, I
19 understood from Mr. Strang, prior to calling
20 Mr. Zimmerman, that, in fact, that procedure, for
21 the limited purpose of Mr. Zimmerman, was agreed to.
22 I simply wanted to make a record of that before the
23 close of this case.

24 THE COURT: All right. Mr. Strang.

25 ATTORNEY STRANG: Yes, Mr. Kratz is exactly

1 right. We discussed this before Mr. Zimmerman
2 testified. Given the nature of this witness, the
3 purpose of his testimony, the manner in which his
4 testimony was taken by telephone, we think
5 adequately satisfies both state and federal
6 constitutional rights to confrontation. We agreed
7 to the procedure, acquiesced in that, and have no
8 objection to it as it happened, as to that witness,
9 of course.

10 THE COURT: All right. And I should
11 indicate, the Court had been told in chambers
12 earlier that the parties had the agreement. I
13 probably should have put something on the record
14 before we had the witness testify, but the --
15 counsel let me know before the witness did testify
16 that they would be putting something on the record.

17 ATTORNEY STRANG: Right. It was discussed
18 before the witness testified.

19 ATTORNEY KRATZ: And the last matter that I
20 had for the record, Judge, yesterday, so that
21 Mr. LeBeau could find his way back to Virginia, or
22 do his travels, rather than calling Investigator
23 Wiegert, who would have packaged, and part of his
24 testimony would have included the packaging of the
25 vial of blood, which of course would have more

1 appropriately, or at least chronologically, had been
2 taken yesterday, the defense had agreed to taking
3 Dr. LeBeau out of order to accommodate that
4 schedule. I don't think that we need to tell the
5 jury that Investigator Wiegert, who is our next
6 witness, is taken out of order. I'm simply
7 explaining that for the jury that that was an
8 agreement between ourselves and Mr. Strang and
9 Mr. Buting.

10 THE COURT: Explaining it for the Court?

11 ATTORNEY KRATZ: I'm sorry?

12 THE COURT: You said you were explaining it
13 for the jury, you don't intend to tell the jury.

14 ATTORNEY KRATZ: I don't, Judge, I wanted
15 to place that on the record because this is a
16 witness who would normally have been called
17 yesterday, but with the acquiescence, once again,
18 and approval of Mr. Strang, we had agreed to call
19 Mr. Wiegert today and we intend to do that next.

20 THE COURT: Mr. Strang.

21 ATTORNEY STRANG: For the convenience of
22 Mr. LeBeau and for the State, Mr. Buting and I had
23 agreed yesterday that Mr. Wiegert could be taken out
24 of order, just as is happening. There is no
25 objection at all to it and there is no need for the

1 jury to be party to that agreement.

2 THE COURT: Very well. In terms of
3 scheduling, I know, again, from chambers, and the
4 Court has been meeting with the attorneys regularly
5 before we get started just to have some idea about
6 what the testimony for the day will be. Does the
7 defense intend to cross-examine Mr. Wiegert just on
8 the transmittal issue, or more broadly than that, I
9 know there was some discussion that he might be
10 called as part of the defense case?

11 ATTORNEY STRANG: No. I think, at least
12 the anticipation is, that we will just cover on
13 cross-examination here all that we have. I expect
14 to be able to finish that comfortably by 4:30, or
15 quite possibly before 4:30. And, you know, it could
16 happen that we recall him in the defense case, but
17 I'm not anticipating that at the moment.

18 THE COURT: Very well. We'll bring the
19 jury out at this time.

20 (Jury present.)

21 THE COURT: You may be seated. Mr. Kratz,
22 at this time you may call your next witness.

23 ATTORNEY KRATZ: Thank you. State will
24 call Mark Wiegert to the stand.

25 **INVESTIGATOR MARK WIEGERT**, called as a

1 witness herein, having been first duly sworn, was
2 examined and testified as follows:

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

5 THE WITNESS: Mark Wiegert, W-i-e-g-e-r-t.

6 **DIRECT EXAMINATION**

7 BY ATTORNEY KRATZ:

8 Q. Mr. Wiegert, tell us how you are employed,
9 please.

10 A. I'm an investigator with the Calumet County
11 Sheriff's Department.

12 Q. How long have you been a law enforcement officer?

13 A. All total, about 15 years, 14 with the Calumet
14 County Sheriff's Department.

15 Q. How long have you been an investigator?

16 A. Around five years, going on five years.

17 Q. And what are your general duties as a Calumet
18 County investigator?

19 A. We investigate all types of crimes from,
20 obviously the worst homicide, to burglaries,
21 thefts, sexual assaults, various nature of
22 things.

23 Q. So you have general investigative
24 responsibilities?

25 A. I do.

1 Q. With that occupation and with those duties,
2 sometime in early November of 2005, were you
3 informed of a missing persons investigation?

4 A. Yes, actually. On November 3rd our department
5 received a call from the Halbach family
6 indicating that they had some concerns about
7 their daughter and that she possibly was missing.
8 They did not know where she was. I did not take
9 the original call, one of our road deputies did
10 and then contacted me.

11 Q. Were you in charge of or what's known as the lead
12 investigator in that missing persons
13 investigation?

14 A. Yes, I was the one who received the call from the
15 road deputy. So at that point I was the lead
16 investigator on it, correct.

17 Q. Now, we have heard a great deal of testimony
18 about how that case developed thereafter. Let me
19 just ask you, though, if you remember the early
20 days of the missing persons investigation, that
21 is, the 3rd and 4th of November?

22 A. Yes, I do, in fact.

23 Q. Tell the jury, if you would, just the general
24 areas of investigative responsibility of those
25 first couple of days; in other words, what kinds

1 of leads were you following up on?

2 A. Well, any time you get a missing person
3 complaint, your first 24 to 48 hours are very
4 important, as we all know from watching TV. But
5 the first night when we initially got the phone
6 call, I initially met with the road officer who
7 had previously been at the Halbach residence or
8 had telephoned them. I'm not clear if she had
9 went there or telephoned them.

10 When she came in by me, she had already
11 talked to the Halbach's briefly. And then we
12 both went up to Teresa's residence where we met
13 with Karen and Tom Halbach, which would be
14 Teresa's parents. We also met with several of
15 her friends who had shown up at that time, and
16 also her roommate.

17 We did some brief interviews, basically,
18 to find out where she might have gone, if there
19 was any reasons, if there had been any
20 depression, any medication issues, anything like
21 that. We talked to the family. We talked to
22 Mr. Bloedorn, who would be the roommate. We
23 talked to a lot of friends who had arrived there.

24 We had also received a printout of some
25 phone calls, correction, a phone bill that --

1 Teresa's phone bill actually. So we had taken
2 that and tried to do some reverse directory
3 things to find out who some phone calls had been
4 made to. We also contacted *Auto Trader* because
5 we knew that she had worked for *Auto Trader*. And
6 they had given us some information, some
7 appointments that she was supposed to have on the
8 31st.

9 So we started following up on those type
10 of things on that Thursday night. We went as
11 long as we could on Thursday night, which I think
12 we worked till probably 11:30, maybe midnight or
13 so. We decided that we would meet back first
14 thing on Friday morning. I think we actually
15 came in early, around 7:00 in the morning.

16 That morning we sat down, myself, two
17 other investigators, and the sheriff, actually.
18 We sat down and put together kind of what we knew
19 at that point and decided that we would start
20 doing some interviews?

21 Q. Let me just stop you there, Investigator, because
22 I'm quite certain Mr. Strang would prefer I do
23 this more by question and answer. The 4th, that
24 is, the Friday, the 4th of November, did your
25 missing persons investigation continue?

1 A. Yes, it did.

2 Q. All right. And we have heard some of the details
3 of that missing persons investigation, but so
4 that I can move to the area of concern for why
5 you are being called at this moment as a witness,
6 the next day, that is, the 5th of November, were
7 you informed of and, in fact, did you participate
8 in a phone call from a Pam Sturm?

9 A. I did. You probably heard the phone call
10 earlier, in testimony. But we had received a
11 phone call at around 10:29 in the morning on that
12 Saturday from Pam Sturm, who had indicated that
13 she had located a vehicle matching the
14 description of Teresa's vehicle.

15 Q. Now, so that this jury understands, prior to that
16 phone call and, in fact, the prior 48 hours at
17 least, had you been in contact with Manitowoc
18 County authorities, specifically, a Detective
19 Dave Remiker?

20 A. Yes, among other people, I had been asking him to
21 do some things for us. We were out doing some
22 things, depending where the jurisdiction lied,
23 that's correct.

24 Q. On the 5th, then, on the morning of the 5th,
25 understanding that Ms Halbach -- or what was

1 suspected to be Ms Halbach's vehicle, was found
2 on the Avery salvage property itself, did you
3 agree to meet Detective Remiker and other law
4 enforcement officials out at that location?

5 A. Yes, actually, after we had gotten a phone call,
6 I had phoned Detective Remiker to let him know
7 that we had just received information that
8 Teresa's vehicle was possibly found.

9 So I immediately called Detective
10 Remiker, obviously, because it's in Manitowoc
11 County. I told Detective Remiker what I knew at
12 that time and told him that he probably should
13 get out there as soon as possible and that we
14 would be on our way out there to assist him in
15 any way we could.

16 Q. All right. Now, as we have heard for the last
17 four weeks, investigative efforts continued from
18 the 5th of November, really, up through mid
19 February of this year, 2007; is that correct?

20 A. Absolutely, yes.

21 Q. And as you sit here today, Investigator Wiegert,
22 if an investigative lead, or if there was
23 something relevant in this case, would you act
24 upon that, even during the trial?

25 A. I would, or I would have somebody else do it for

1 me, yes.

2 Q. Let's talk about blood planting, all right? Were
3 you aware, or let me ask it this way, when, if
4 ever, were you first made aware that the defense,
5 that is, somebody to my left, would have alleged
6 or was going to allege that there was going to be
7 a law enforcement officer involved in planting
8 some evidence in this case?

9 A. Specifically, in December of '06, we had gotten
10 word that Mr. Avery had indicated that the blood
11 had been planted by two specific officers.

12 Q. All right. Let's -- Let's -- Let's back up a
13 little bit. The planting of evidence and the
14 planting of a specific blood vial, do you
15 understand that to be two different issues?

16 A. Yes, sir.

17 Q. All right. Let's break that into its -- its
18 components then. When were you first informed
19 that a vial of Steven Avery's blood existed
20 anywhere within the confines of Manitowoc County?

21 A. Again, that would have been back in December of
22 '06 is when I first was made aware of that.

23 Q. Now, before December of '06, were you asked to
24 check into that very possibility?

25 A. Absolutely. We, as part of the investigation

1 and, again, as you had indicated before, the
2 defense had made some -- there were some comments
3 made about planting issues. So we did the best
4 we could at that time. We searched in all the
5 places which you would logically think that there
6 might be some DNA, blood, things like that.

7 I believe it was the April of '06, I had
8 contacted Detective Remiker at Manitowoc County
9 and said, this is what I'm hearing, what I need
10 you to do is check your evidence at the sheriff's
11 department, tell me, do you have any type of
12 blood, DNA, things like that.

13 Detective Remiker reported back to me.
14 He indicated that they had fingernail scrapings,
15 hair samples, and DNA swabs, from Mr. Avery. And
16 as you know, the DNA swabs have already been
17 introduced here. He had indicated DNA swabs were
18 still sealed by the Crime Lab.

19 ATTORNEY STRANG: This is hearsay, your
20 Honor, objection.

21 ATTORNEY KRATZ: It's not -- If
22 investigative bias is, in fact, still going to be
23 part of the defense in this case, Judge, it is not
24 for the truth of the matter, but for what this lead
25 investigator did in response to that.

1 THE COURT: As I understand it, it's being
2 offered to explain why the officer acted as he did,
3 not because of the truth of the matter. He can
4 testify as to his understanding of what the state of
5 the facts were. At some point, I suppose that there
6 may be more detail than is necessary but, generally,
7 I will allow him to answer the question.

8 Q. (By Attorney Kratz)~ And I will just ask you,
9 Investigator, if you can withhold saying what
10 somebody else might have been said; in other
11 words, quoting another officer, we would very
12 much appreciate that. But what you learned, is
13 what I'm interested in.

14 A. Sure.

15 Q. All right. Were you able, then, to determine,
16 back in April of 2006, that Manitowoc County,
17 that is, the law enforcement officials within
18 Manitowoc County, did not, in fact, have Steven
19 Avery's blood?

20 A. Yes, they did not have Steven Avery's blood.

21 Q. Were you asked, and were you able to verify that
22 any other DNA sample, like a buccal swab that we
23 have heard about, the Q-tip swab, that they were
24 in the possession of Manitowoc, were in a sealed,
25 that is, in a non-contaminated, pristine, if you

1 will, form?

2 ATTORNEY STRANG: This, again, it's not
3 relevant if it's not for the truth. So there's
4 hearsay and confrontation objections.

5 THE COURT: Well, at this point I'm going
6 to sustain the objection on the ground the question
7 is leading. For the purpose for which the Court
8 understands it's being offered, I don't believe it's
9 irrelevant.

10 Q. (By Attorney Kratz)~ All right. Could you tell
11 me, regarding buccal swabs, what, if anything,
12 you were able to determine?

13 A. I determined that there were buccal swabs at the
14 custody of Manitowoc County Sheriff's Department,
15 located in their evidence room, and that those
16 buccal swabs were packaged and sealed.

17 ATTORNEY STRANG: Same objection.

18 THE COURT: I think the witness has to
19 testify in terms of his understanding, rather than
20 what he learned. I'm not sure, Mr. Strang, if that
21 addresses your objection or not.

22 ATTORNEY STRANG: It would. That's right,
23 as long as it's clear that he's relying on
24 information given to him by others and we're just
25 learning this to explain why Investigator Wiegert,

1 then, acts on what others are telling him.

2 THE COURT: And I think taking into account
3 the validity of Mr. Strang's objection, I will
4 instruct the jury at this point, that the answers
5 this witness is giving are relevant to the extent
6 they deal with his motivation for acting as he did,
7 not for the truth of any of the information which
8 may have been passed on to him.

9 ATTORNEY KRATZ: Thank you, Judge.

10 THE COURT: Mr. Strang, does that address
11 your concern?

12 ATTORNEY STRANG: Yes, for the moment it
13 does. Thank you.

14 THE COURT: All right. Mr. Kratz, you may
15 proceed.

16 ATTORNEY KRATZ: Thank you.

17 Q. (By Attorney Kratz)~ The same inquiry, or the
18 same satisfaction to yourself and the prosecution
19 team, were you asked to determine whether any DNA
20 samples were in the custody of the Wisconsin
21 State Crime Lab?

22 A. I was.

23 Q. And were you able -- were you able to make that
24 determination?

25 A. Yes, I did contact the State Crime Lab. And we

1 actually spoke with, I believe it was Sherry
2 Culhane, and she informed me and indicated to me
3 that they did not have any blood from Steven
4 Avery, at the Crime Lab.

5 Q. All right. Satisfying yourself that law
6 enforcement didn't have any blood, that the Crime
7 Lab didn't have any blood -- By the way, did you
8 inquire, or make any other inquiries, about
9 Steven Avery's blood, of anyone?

10 A. I don't know that I made any other inquiries at
11 that point.

12 Q. Okay. Let me ask you, Investigator Wiegert, at
13 that point in the investigation, this is April of
14 '06, or the spring of '06, who were the law
15 enforcement agencies heading up or leading this
16 investigation?

17 A. The Calumet County Sheriff's Department and the
18 Department of Criminal Investigation.

19 Q. At that time, in the spring of '06, did you have
20 any reason to believe that there was a vial of
21 Steven Avery's blood, or any biological material,
22 within the Clerk of Court's Office in Manitowoc
23 County?

24 A. No, I would have no way of knowing that. I don't
25 routinely check Clerk of Court's Offices for

1 substances such as that. I mean, to my
2 knowledge, at that time, it would be stored
3 somewhere in another facility, like a law
4 enforcement facility, for several reasons. It's
5 biological hazard, number one. I wouldn't think
6 that would just be where it was.

7 Q. Then, back to my original question, when was the
8 first time that you were informed that the
9 Manitowoc County Clerk of Court's Office had a
10 vial of blood in their possession or control?

11 A. On or about December 13th or 14th of 2006.

12 Q. All right. After being informed of the existence
13 of a blood vial in Manitowoc County, in the Clerk
14 of Court's Office, were you asked to investigate
15 the facts and circumstances regarding that blood
16 vial?

17 A. Yes, we were.

18 Q. Were you asked, Investigator Wiegert, and, in
19 fact, did you determine who had access to the
20 Manitowoc Clerk of Court's Office, including who
21 had the keys, who had the codes to the entrance
22 doors; generally, in fact, not just generally
23 but, specifically, who had access to that
24 particular file?

25 ATTORNEY STRANG: This goes well beyond any

1 relevant purpose and is both -- presents both
2 hearsay and confrontational problems here. There
3 would be no other reason for offering this other
4 than to suggest the truth.

5 THE COURT: Mr. Kratz?

6 ATTORNEY KRATZ: I may agree, that's not
7 relevant, at least after yesterday, but if this is
8 still going to be part of the defense, this is
9 clearly relevant to the facts in this particular
10 case.

11 THE COURT: I'm going to sustain the
12 objection. I don't know that this witness is the
13 one to answer that. I'm going to sustain the
14 objection.

15 Q. (By Attorney Kratz)~ All right. Let me jump
16 ahead, then, Investigator Wiegert. Sometime in
17 mid December, were you, for the first time,
18 invited to actually view this vial of blood?

19 A. Yes, on December, I want to say 14th, I went to
20 the courthouse with people from the prosecution
21 side and several members of the defense. And
22 that was the first time I viewed that blood.

23 Q. And we saw a videotape, I don't know if it was
24 yesterday or the day before, that the defense had
25 showed, did that accurately depict the opening of

1 that particular packaging and the first time that
2 you saw that vial?

3 A. Yes, it did.

4 Q. Investigator Wiegert, sometime thereafter, were
5 you asked by the prosecution team, after a court
6 order had been issued, to actually package up, or
7 take that vial of blood and do something with it?

8 A. Yes, pursuant to the Court's order, I went to the
9 Clerk's Office in Manitowoc, at the courthouse.
10 I believe that was on February 5th, my
11 recollection, of this year. I was -- I then
12 provided the Clerk with the copy that the Court
13 had provided me, for release of the blood vial.
14 I took the blood vial into my possession and
15 transported it back here to Calumet County
16 Sheriff's Department.

17 Q. Now, February 5th of this year, just to put this
18 in perspective, is the same time that this trial
19 was starting; is that your understanding?

20 A. Yes.

21 Q. All right. Investigator Wiegert, as you are
22 putting your gloves on, you can do two things at
23 once, I'm going to have you look at the large
24 screen, Exhibit 471, which has already been
25 admitted in this case, is a photograph; do you

1 recognize that?

2 A. Yes, I do.

3 Q. What is that?

4 A. That's a picture that was taken, I can't say when
5 the picture was taken, probably one of the ones
6 that I took on -- in December, actually, when we
7 first opened that blood vial package, would be my
8 guess.

9 Q. When you saw that blood vial, as was shown in the
10 videotape, did the 10 year old vial of blood
11 still appear to be in non-coagulated, or in
12 liquid form?

13 A. Yes, we actually -- as you seen in the video
14 yesterday, we actually took the styrofoam box and
15 moved it back and forth and you could see the
16 blood actually move in there.

17 Q. All right. Moving on to February 5th, tell the
18 jury what you did?

19 A. On February 5th, when I picked the blood vial up,
20 and I transported it back here to the Sheriff's
21 Department, I took it down to our evidence room
22 where I un-packaged it from that package. And I
23 took the vial out and the vial was placed,
24 actually, into this red container that you see
25 right here. Inside this red container there is

1 another glass container. I first put it inside
2 that glass container and then it went inside this
3 red container. Then it was sealed, evidence
4 taped by me, and initialed by me.

5 Q. Now, Dr. LeBeau, I think, testified about that
6 particular exhibit and that that's a kind of
7 packaging that you, even in law enforcement,
8 don't typically see, is that right?

9 A. No, this was actually provided to us by the FBI,
10 the red packaging here.

11 Q. All right.

12 THE COURT: Mr. Kratz, I think the exhibit
13 number should be placed on the record.

14 ATTORNEY KRATZ: Right.

15 Q. (By Attorney Kratz)~ Is that Exhibit 478?

16 A. It is.

17 Q. Were you informed then, Investigator, that at
18 some point, at least at some point after
19 February 5th, that the FBI, the federal law
20 enforcement investigative body, was going to
21 attempt to do some analysis of that vial of
22 blood?

23 A. Yes, if I could just step back a second. On
24 February 5th, I was the one that turned this over
25 to the FBI. And then we did learn that they

1 would be attempting to do some testing for us.

2 Q. All right. And you were in court yesterday, you
3 heard the results of that testing; is that right?

4 A. Absolutely, I did.

5 Q. Now, notwithstanding the possibility of getting
6 some results from the FBI, had you and
7 Investigator Fassbender, as lead investigators,
8 performed another or a parallel investigation as
9 to the allegations of planting, specifically, by
10 Lieutenant Lenk and Sergeant Colborn?

11 A. Absolutely. I mean, I felt -- I can't speak for
12 Mr. Fassbender, but I felt it was our duty, that
13 we had to do everything we could to find out, one
14 way or another, whether it was true or it wasn't
15 true. And we did do that.

16 Q. And, yesterday, there was a scientific opinion
17 that was offered, without going into the
18 investigative efforts that you did, was that
19 investigation completed, your parallel
20 investigation?

21 A. To the best that we could, yes.

22 Q. You said that you packaged that vial yourself and
23 you provided it to the FBI. Could you just
24 explain, just briefly, and I'm almost finished
25 with you, Investigator, but just briefly, the

1 transmittal protocol, that is, how evidence gets
2 from you, in this case, to the FBI?

3 A. Sure. What we do is we contact the most local
4 FBI office. In our case here, that is the Green
5 Bay office. And in order for something to be
6 submitted to their lab, it has got to go through
7 the local office.

8 Things actually go from the local
9 office, in this case, Green Bay. They have to go
10 from there to Milwaukee, and there they are --
11 put their own labels on, it's packaged and things
12 like that in Milwaukee, and then it goes out to
13 Virginia. That's the only way we're allowed to
14 submit things, through that chain.

15 So what I did is, I had turned it over
16 to an agent by the name of Agent Hammond, from
17 Green Bay. And then I believe it went to
18 Milwaukee from there.

19 ATTORNEY KRATZ: For this purpose, Judge,
20 that is all the questions I have of Mr. Wiegert.
21 Thank you.

22 THE COURT: Very well, Mr. Strang, are you
23 going to be doing the cross?

24 ATTORNEY STRANG: I am.

25 **CROSS-EXAMINATION**

1 BY ATTORNEY STRANG:

2 Q. Judge, I just have a couple questions. I
3 thought -- I don't usually like to do this,
4 but --

5 A. Do I keep these on?

6 Q. I'm not going to tell a guy how to dress, do as
7 you please. Usually I would start at my own
8 place, but I just thought, I was curious with the
9 last couple questions you were asked. Are you
10 saying that under the rules of the FBI you
11 weren't allowed to send that directly to the lab?

12 A. That's my understanding, that I can't send it
13 directly to Virginia.

14 Q. Okay. So you had to give it to an FBI agent in
15 Green Bay?

16 A. Who was the closest agent, correct.

17 Q. Right.

18 A. To transport down.

19 Q. Closest, what they call a resident office?

20 A. Yes.

21 Q. And then he wasn't allowed to send it to the lab,
22 he had to send it to the Milwaukee office --

23 A. Yes.

24 Q. -- of the FBI?

25 A. I'm sorry. My understanding is that they do the

1 packaging in Milwaukee and things go out from
2 there.

3 Q. All right.

4 A. So Milwaukee is probably the regional office.

5 Q. Okay. So the FBI Green Bay sent it to FBI
6 Milwaukee and they repackaged it in some fashion
7 then. Were the Milwaukee people allowed to send
8 it to the lab?

9 A. It did go to the lab from Milwaukee.

10 Q. Any idea how long this all took?

11 A. I can tell you it made it to Milwaukee the same
12 day I turned it over to the agent. From there, I
13 have no knowledge of that.

14 Q. You prevailed on the FBI agent in Green Bay to
15 drive it right down to Milwaukee?

16 A. Yes, sir.

17 Q. All right. Let's go back, because you are the
18 initial lead investigator, as you said, in this
19 case, obviously, and then sort of split your
20 duties as lead investigator with Mr. Fassbender?

21 A. That's correct.

22 Q. And is it -- If we call you a case agent on this
23 case, is that a term you are familiar with?

24 A. You can call me that, sure.

25 Q. Okay. I mean, is that a term you use?

1 A. Generally not a term that we use.

2 Q. Lead investigator?

3 A. That's probably.

4 Q. That works for me, so.

5 A. Sure.

6 Q. So the two of you shared those duties because

7 this was a larger investigation?

8 A. Yes, sir.

9 Q. But you had it first, in the sense that the

10 person who took the call, she wasn't in the

11 business of investigation. She wasn't in your

12 Investigation Bureau, so she quite properly

13 referred it to an investigator?

14 A. That was correct, she was a road officer.

15 Q. You actually went out to Teresa Halbach's home

16 that very first evening, I don't know, I don't

17 remember now, I'm not sure it really matters, but

18 6, 6:30, something like that?

19 A. Somewhere in that area, yes.

20 Q. Met with Halbach family members, as you said, and

21 friends?

22 A. That's correct.

23 Q. Now, this was, at that point, a missing persons

24 investigation and a missing persons

25 investigation, I guess, only at that point.

1 A. Yes.

2 Q. You were able to, I guess not you personally, but
3 you watched others gain access to the Cingular
4 account on the website that we have heard about?

5 A. Don't know that I watched them, I know I was
6 provided with a printout that they had gotten off
7 the computer.

8 Q. Okay. All right. Did you personally try to call
9 Teresa's cellphone?

10 A. I did, as well as I believe the initial officer
11 had tried calling before me. But, yes, I did.

12 Q. Okay. And may not have been the only officer who
13 did that?

14 A. Probably not.

15 Q. Did you get a message that Ms Halbach's voice
16 mailbox was full when you called?

17 A. Trying to recall the exact -- I got the
18 impression it was full. And I don't remember
19 what it says, but I had the impression that it
20 was full, yes. I don't exactly remember the
21 verbiage that it says --

22 Q. Right. Okay.

23 A. -- but, yeah.

24 Q. The understanding you came away with was that it
25 was -- the mailbox was full?

1 A. I believe so, yes.

2 Q. Did you -- Do you think you made that call the
3 evening of November 3, that first night?

4 A. I think I did, to the best of my recollection.

5 Q. You didn't listen to any voice mail messages?

6 A. I did not.

7 Q. You certainly didn't erase any voice mail
8 messages?

9 A. I did not.

10 Q. Okay. Now, what -- what did happen is, while you
11 were still at Ms Halbach's home, you got a call
12 from Lieutenant James Lenk?

13 A. Eventually I did, however, there were some things
14 that happened before that. I had made the
15 initial call to Manitowoc County.

16 Q. Talked with Sergeant Colborn and Detective
17 Remiker, I'm not sure which order?

18 A. Initially, I called dispatch. They had Sergeant
19 Colborn call me back. And then later that
20 evening, I believe, I probably spoke with Remiker
21 and Lenk, later that evening.

22 Q. Okay. And it was Lenk who called you?

23 A. Yes, he did call me.

24 Q. You -- You know, just sort of get this out of the
25 way. You, at that point, had no idea that Mr.

1 Lenk and Mr. Colborn had had their depositions
2 taken in the civil lawsuit that Steven Avery had
3 brought?

4 A. No, I would have no reason to know that.

5 Q. And you didn't learn that until some time last
6 summer, summer of '06 probably?

7 A. Yes, that's correct.

8 Q. Now, one of the things you were doing that first
9 night, November 3, was trying to, you know, get a
10 handle on who were the close people in Ms
11 Halbach's life, so to speak?

12 A. Well, among other things, we wanted to know,
13 obviously, who her friends were and what kind of
14 family she had. Because I didn't know Teresa --

15 Q. Sure.

16 A. -- at that time. Didn't know her family at the
17 time. So I wanted to know who her family was,
18 who her friends were, among other things, like
19 where she might have went, you know, follow the
20 last 24 hours, something like that.

21 Q. Exactly, who would be likely to hear from her
22 frequently, what her circle of friends was, what
23 her business circle was, that kind of --

24 A. That's correct.

25 Q. -- thing? And what you try to do in a missing

1 persons investigation is figure out where we
2 think, you know, as best as we can find out,
3 where do we think this person was last seen and
4 last heard from and then let's try to work from
5 there?

6 A. That's true. It's more of a process of
7 elimination --

8 Q. Sure.

9 A. -- than anything, at that point when you have
10 some -- You're a broad perspective at this time
11 and you hope to narrow that down.

12 Q. Okay. And, so, in addition to family members and
13 friends, you learned something about her business
14 life, if you will, Tom Pearce and the photography
15 business?

16 A. Yeah, I had learned -- I'm not sure when I
17 learned it, but I learned, eventually, that she
18 had a business up in Green Bay, a photography
19 business in Green Bay.

20 Q. And then the *Auto Trader* freelance work --

21 A. Yes.

22 Q. -- or part time commission work that she did?

23 A. Right.

24 Q. Okay. And, then, you know, sort of her social
25 circle, which would include, obviously, family

1 members, with a close family like this, and also
2 friends who aren't family members.

3 A. Yes.

4 Q. She had a roommate, Scott Bloedorn?

5 A. That's correct.

6 Q. You were interested in learning whether these
7 were just people sharing a house or whether there
8 was some romantic linkage between the two of
9 them?

10 A. I wouldn't say initially. Initially, we were
11 concerned about where she might be. It wasn't my
12 concern, initially.

13 Q. Sure. But, I don't mean necessarily initially,
14 but sort of in the early steps, one would try to
15 ascertain, does this person have a boyfriend or,
16 you know, who is close --

17 A. Sure.

18 Q. -- to her?

19 A. Absolutely.

20 Q. So that -- that was something you pursued a
21 little bit as to Mr. Bloedorn, what's the nature
22 of his relationship as a roommate?

23 A. Sure.

24 Q. You learned about another fellow named Bradley
25 Czech, that first night, I think that's

1 C-z-e-c-h? Is that --

2 A. I believe that's correct.

3 Q. Okay. He was an acquaintance of Ms Halbach, you
4 learned that evening?

5 A. Yes.

6 Q. Pursued whether there was a romantic --

7 A. I guess I have to step back for a second. I
8 don't think it was that evening, I think it was
9 the next day.

10 Q. Okay. Fair enough.

11 A. My recollection.

12 Q. You know, and I'm -- if it's easier for you, we
13 can work with November 3 and November 4 together?

14 A. That's fine.

15 Q. Okay. Early on?

16 A. Sure.

17 Q. While this was a missing persons investigation.
18 So you learned about Mr. Czech?

19 A. Yes.

20 Q. Okay. And were you able to, you know, learn what
21 his connection was to Ms Halbach, at least in the
22 early stages of this investigation?

23 A. I determined that it was both a business and a
24 personal relationship.

25 Q. All right. And did you take any steps to pursue

1 that -- that aspect of the investigation further?

2 A. I spoke with Mr. Czech, if that's what you are
3 asking, yes.

4 Q. Okay. And that was early on?

5 A. I believe that was on Friday, the 4th.

6 Q. Would that have been the last time, to your
7 knowledge as the case agent, that an interview
8 was pursued with Mr. Czech?

9 A. You know, without reviewing 1,080 some pages of
10 just my reports, by mine I mean Calumet County
11 reports, I'm not willing to say that.

12 Q. And that's just --

13 A. That's just Calumet's reports. There's probably
14 6, 7, 800 of DCI reports, so I haven't memorized
15 them all.

16 Q. No, neither have I. And let's sort of pause on
17 that, and just to give this jury some
18 understanding of, you know, of the basic police
19 work here. When you say your reports, the way
20 the Calumet County Sheriff's Office works is that
21 you folks really just sort of run a continuous
22 flow of reports, with one reporting officer
23 adding on, essentially, to the foot of the
24 previous reporting officer's report?

25 A. No, I wouldn't classify it that way. I would say

1 numerically we do. I mean, if I have five pages
2 of report and another detective comes in on the
3 same case, it may start at number six --

4 Q. Right.

5 A. -- but his is not included in my report. His is
6 a separate report, obviously.

7 Q. Yes, that's exactly right, but the page number is
8 sequential?

9 A. Yes.

10 Q. So, when you say the Calumet County Sheriff's
11 Office report here is about 1,080 pages,
12 that's -- that's what it is, pretty close to
13 that, right up today?

14 A. Yeah, I would say it's in that range.

15 Q. And some of that you have actually authored, some
16 of that others have authored.

17 A. Certainly.

18 Q. But it just runs sequentially?

19 A. Numbers, yes.

20 Q. Right. And so there's just a huge amount of
21 preparation of basic police reports that's gone
22 on in this case, in your department?

23 A. Absolutely.

24 Q. You have heard me cross-examine others about the
25 purpose of police reports and, you know --

1 A. Yes.

2 Q. -- the training that goes into that. And I'm not
3 going to repeat that, but that's what you folks
4 have done?

5 A. Yes.

6 Q. And, then, the DCI, Mr. Fassbender and others
7 working for the DCI, have done sort of a parallel
8 reporting process, correct?

9 A. They have done their own reporting process. I
10 guess you could call it parallel, sure.

11 Q. Right. And they number their reports in sequence
12 rather than paginating them in sequence. But
13 it's the same idea that it's -- it's a whole run
14 of hundreds of pages of reports?

15 A. Yes.

16 Q. And so, at least as you sit here today, I guess
17 what you can say is that Bradley Czech, you sort
18 of talked to him and sort of set him aside pretty
19 early on in the investigation, so to speak?

20 A. Well, if I could preface that answer, we talked
21 to a lot of friends and acquaintances in a two
22 day period, among other investigative things we
23 were doing.

24 Q. Right.

25 A. Doesn't mean they were included, excluded, at any

1 point. It just means we got basic information
2 and we could always come back to those people if
3 we needed to do that, for whatever reason.

4 Q. Right. Basic information, name, date of birth,
5 address, phone number, how do we find this
6 person?

7 A. Probably a little more than that. Have you seen
8 Teresa? When was the --

9 Q. Right.

10 A. -- last time you saw Teresa --

11 Q. I know.

12 A. -- things like that.

13 Q. I'm just saying as a starting point.

14 A. Certainly.

15 Q. You get the information so you can come back to
16 them.

17 A. Yes, sir.

18 Q. And then it's, what's your relationship, have you
19 seen her, when did you last talk to her, that
20 kind of stuff?

21 A. Correct.

22 Q. Okay. And so Czech and Bloedorn fell into that
23 category early on and then you had that in case
24 you needed to go back to it.

25 A. Yes. And, actually, I know, again, I can't say

1 for sure Czech, but I know Bloedorn had been
2 talked to another time --

3 Q. Mm-hmm.

4 A. -- things like that, during the course of this.
5 But you are correct, but that's how we do every
6 missing persons complaint.

7 Q. Okay. And in this one, as you work back, you
8 learned that Ms Halbach had some plans, actually,
9 for Saturday night, October 29, the Saturday
10 before?

11 A. I believe so.

12 Q. Halloween party or something like that?

13 A. My recollection, yeah, there was a holiday party
14 type. I think maybe in Green Bay, but I don't
15 recall without reviewing that report.

16 Q. Right. And that's my recollection too. And as I
17 sit here thinking of all these reports you talked
18 about, I can't think of anyone who she was seeing
19 at that party, from whom you have ever heard?

20 A. Again, without going back and looking at all the
21 reports, I can't think of anybody offhand.

22 Q. Who popped up and said, hey, I saw her Saturday
23 night at the party?

24 A. Again, when I think back on it, there was a
25 multitude of people, not only that we contacted,

1 that contacted us and said, this is when I saw
2 her last, or this is when I saw her last. I
3 can't say, specifically, anybody told me they saw
4 her at the Halloween party, offhand.

5 Q. Yeah. No. And I -- Look, I would tell you if I
6 knew that and I'm suggesting I don't. So, at
7 least presently, your recollection is the same.

8 A. My recollection is that, without looking at the
9 report, I can't say nobody told me that, but I
10 don't recall anybody telling me that at this very
11 moment.

12 Q. Right. And, now, we have heard how early on in
13 the investigation you learned that there were to
14 be appointments at the Zipperer's and the Avery's
15 or somebody at the Avery --

16 A. Yes.

17 Q. -- property? And Mr. Colborn goes out to the
18 Avery property that very night, November 3rd?

19 A. She actually had, that we knew of, three
20 appointments that day. And we sent an officer
21 to -- actually, I made a phone call to the police
22 in our county --

23 Q. Right.

24 A. -- and then requested Manitowoc County to look at
25 the other two residents because it was in their

1 jurisdiction. And I also told them, eventually,
2 that I would send a detective over to assist them
3 with that.

4 Q. All right. So three, three and a half weeks ago,
5 actually, the fellow in your county, we heard
6 from Steven Schmitz?

7 A. Yes.

8 Q. And, then, the Zipperer residence was in
9 Manitowoc County; the Avery residence was in
10 Manitowoc County?

11 A. Yes.

12 Q. And this is how the name Steven Avery first gets
13 attached to the missing persons investigation?

14 A. Yes.

15 Q. You -- And I don't -- I don't -- I'm not now
16 suggesting that this happened right away on
17 November 3, or November 4, I don't think it did,
18 but one of the things you learned is that Mr.
19 Avery had a girlfriend at that time named Jodi
20 Stachowski.

21 A. That's correct.

22 Q. You learned that she was serving a jail sentence
23 right then?

24 A. Actually, I think I learned that several days
25 after this all started. But at one point in this

1 investigation, certainly --

2 Q. Right. Yeah.

3 A. -- I learned that.

4 Q. And I want to make that clear, I'm sure we're
5 well -- we're some days after November 4th at
6 this point, correct?

7 A. Correct.

8 Q. Okay. And you learned that Ms Stachowski was
9 doing a jail sentence at that point, in Manitowoc
10 County?

11 A. Yes.

12 Q. And you knew, because of your -- I guess, now, 15
13 years in law enforcement and 13 plus then, that
14 phone calls out of a jail are tape recorded?

15 A. I know ours were and our system is only a few
16 years old. I had no knowledge if Manitowoc's
17 were at that point or not.

18 Q. But you -- you -- you did learn, you came to
19 learn, as part of your investigation, that Ms
20 Stachowski's phone calls out of the Manitowoc
21 County jail were on tape?

22 A. Certainly.

23 Q. So you could go back and say to yourself, I
24 wonder if she made any calls on October 31, 2005;
25 specifically, I wonder if she called Mr. Avery?

1 A. You are asking me if we went back and looked?

2 Q. Yes.

3 A. Yes, we did.

4 Q. You -- You did and you found out that there were

5 two telephone calls from Ms Stachowski in the

6 jail, to Mr. Avery, the evening of October 31,

7 2005?

8 A. That is correct.

9 Q. You had a chance to listen to those?

10 A. I have.

11 Q. I mean, you personally?

12 A. I have.

13 Q. One of them you recall as being at 5:36 p.m.?

14 A. I can tell you there were two calls. I don't

15 want to say what time they were because I don't

16 recall what time they actually were made, but.

17 Q. You don't have any reason to disagree that the

18 first one was at 5:36 p.m.?

19 A. I will take your word for it. I know it was

20 earlier in the evening somewhere, but I can't say

21 what time.

22 Q. Subject to me being wrong, okay?

23 A. Sure.

24 Q. Does 8:57 p.m. sound about right for the second

25 phone call?

1 A. I know it was several hours after the first one.

2 Q. Okay. And those calls had to go to a land line,
3 so to speak, correct, from the jail?

4 A. Yes.

5 Q. Because you have to call collect from a jail?

6 A. Yes.

7 Q. And you can't call collect to a cellphone?

8 A. Some jails you can use calling cards; I don't
9 know if Manitowoc is set up that way, but.

10 Q. In any event --

11 A. One of the ways, you either have to use a calling
12 card or call collect.

13 Q. And, specifically, you were able to learn that
14 these calls were made to Mr. Avery's land line,
15 if that's the right word for your phone in your
16 house?

17 A. Yes, that's correct.

18 Q. Each one was about 15 minutes long?

19 A. I believe so, because I think that's as long as
20 those calls can go at Manitowoc.

21 Q. Okay. So you -- So you got to listen to those
22 and confirm -- And I'm not -- I don't -- I don't
23 get to put in anything Mr. Avery said, and I'm
24 not trying to, okay? But, you were able to say,
25 that's Steven Avery's voice and that's Jodi

1 Stachowski's voice on these two phone calls?

2 A. Yeah. I mean, I recognized the number,
3 certainly, that was called to Mr. Avery -- excuse
4 me, certainly that the number that Mr. Avery
5 picked up from, you know, the number from the
6 phone call. And, eventually, I recognized his
7 girlfriend's voice, after meeting with her on
8 other occasions, certainly.

9 Q. And you know Mr. Avery's voice, at least as you
10 sit here today, you know his voice, as well?

11 A. Certainly, yes.

12 Q. And now, on November 5, it's Saturday, and the
13 car gets found, and you folks go out to the Avery
14 property. And you are sort of off and running at
15 that point. One of the -- One of the assignments
16 you had, or you undertook, that afternoon, on
17 Saturday, November 5, was to be the one to
18 actually go and seek out a search warrant?

19 A. Yes.

20 Q. And this was to be a search warrant for the Avery
21 property in general, correct?

22 A. Yes.

23 Q. But it also identified a couple of specific homes
24 on the Avery property that, particularly, you
25 wanted to search?

1 A. I believe so. I don't recall what at all that
2 identified, but.

3 Q. And here, I tell you what, I don't know that I
4 even need to mark this, but I'm just -- I'm going
5 to give it to you because --

6 A. Sure.

7 Q. -- you can look at it.

8 A. Thank you.

9 Q. What I have handed you, at this point unmarked --

10 ATTORNEY STRANG: And, your Honor, if the
11 Court wants it marked with an exhibit number, I'm
12 happy to do that.

13 Q. (By Attorney Strang)~ -- but I just thought it
14 might help refresh your recollection to see the
15 affidavit, the search warrant. That's what I
16 have given you, right?

17 A. Yes.

18 Q. And it's got your signature on the second page?

19 A. Certainly.

20 Q. It's dated Mar -- November 5, I'm sorry, 2005?

21 A. Yes.

22 Q. And when you want a court, or a judge of a court,
23 to give you a search warrant, which is just
24 judicial permission to search a place or a
25 person, you have to apply for that warrant in

1 front of the judge, true?

2 A. Yes.

3 Q. And the application is called an affidavit, at
4 least typically?

5 A. Yes.

6 Q. And affidavit meaning because it's actually sworn
7 on -- on under oath.

8 A. That's correct.

9 Q. So you were the person who swore out the
10 affidavit here?

11 A. I did.

12 Q. You got it about 3:00 in the afternoon, from a
13 Manitowoc judge?

14 A. I actually think it was about 3:25.

15 Q. Okay. Good enough. We're talking about the same
16 search warrant?

17 A. Sure. Yes.

18 Q. And now that you have it, I think the --
19 Paragraph 4, you give your first description of a
20 specific home or residence that you want to
21 search, and that's Steven Avery's trailer home,
22 true?

23 A. Yes.

24 Q. Then, if you continue on in Paragraph 4, you
25 also, specifically, next describe Barb Janda's

1 trailer home?

2 A. Yes.

3 Q. And then you go on to say, and, you know, the
4 whole 40 acre parcel we want to search as well,
5 and that has a number of other buildings and
6 places to be searched?

7 A. It talks about the 40 acres, describes the
8 property.

9 Q. Right.

10 A. Talks about the outbuildings, the vehicles.

11 Q. And by -- by 3:25 p.m, that Saturday, what you
12 were saying under oath, to Judge Fox, was that
13 you believed that Teresa Halbach was the victim
14 of crimes, including among others, homicide?

15 ATTORNEY KRATZ: Objection, Judge, it's a
16 vague question and it's also misleading, did not
17 include the requisite legal standard in which
18 applications are presented to a Court.

19 ATTORNEY STRANG: Well, I can --

20 ATTORNEY KRATZ: Far different than what we
21 are doing here in trial, Judge.

22 ATTORNEY STRANG: No, I -- And that's -- If
23 that's the only concern, let's deal with that, you
24 and I, pretty easily. Okay?

25 Q. (By Attorney Strang)~ To get a search warrant,

1 you have to show something called probable cause.

2 A. Yes.

3 Q. Which is not proof beyond a reasonable doubt?

4 A. That's correct, something lower than that.

5 Q. It's -- Not getting into a legal lecture, it's
6 essentially a good reason, a reasonable basis, to
7 search a place or a person?

8 A. I would agree.

9 Q. Okay. And so what you are -- the actual
10 language, what you say in your affidavit, in
11 Paragraph 7, is you're saying you're affiant,
12 which is a formal way of saying to a judge, me,
13 I. Right? And you are describing yourself as
14 the affiant?

15 A. Yes.

16 Q. Okay. Affiant just being someone who makes out
17 an affidavit?

18 A. You are correct.

19 Q. So you are saying that you believe that, based
20 upon Teresa's lack of contact with her employer
21 and family members, and her vehicle being
22 abandoned at the Avery Auto Salvage Yard, that
23 Teresa Halbach is the victim of a crime,
24 including, but not limited to, and then you start
25 with homicide?

1 A. Are you asking me, that's what it says?

2 Q. Yes.

3 A. That's what it says.

4 Q. Right. And that's what you told Judge Fox in an
5 effort just to establish probable cause?

6 A. That's correct.

7 Q. Okay. So, I mean, in other words, at this point,
8 although you don't know for sure, you think you
9 have got probable cause by 3:25 on Saturday
10 afternoon, to believe that there's actual
11 criminal activity up to and including homicide,
12 and this is not just a missing persons
13 investigation?

14 A. I know it's out of character for Teresa not to be
15 home. I know it's out of character for Teresa's
16 vehicle to show up on the Avery property, to be
17 concealed on the Avery property.

18 Q. Sure.

19 A. Absolutely.

20 Q. So the answer to my question is yes?

21 A. Yes.

22 Q. Okay. Now, I want to -- I want to cover some
23 things, I guess in a summary way, Investigator
24 Wiegert, drawing on your deep familiarity with
25 this investigation as one of two lead

1 investigators.

2 A. Sure.

3 Q. All right. You know that during the course of
4 the investigation, up to today, you have not --
5 you collectively now, I mean investigators --
6 have not recovered anything identified as Teresa
7 Halbach's purse?

8 A. No, I don't know that.

9 Q. Did you -- Did you find a purse at her home?

10 A. No, but testimony from other witnesses, you know,
11 there was buckles, things like that, which could
12 have come from a purse. I don't know if we
13 collected anything from the purse or not.

14 Q. Yeah.

15 A. I can't say we haven't.

16 Q. Okay.

17 A. Very possible we have.

18 Q. I was trying to be careful with the question. I
19 mean, you're not -- you don't know that you've
20 recovered her purse?

21 A. I don't know if we have or if we haven't.

22 Q. Okay. You -- You -- You are aware that a Toyota
23 key was recovered?

24 A. Absolutely.

25 Q. Was found?

1 A. Mm-hmm.

2 Q. Mr. Lenk said he found that key or was the first
3 to see it?

4 A. Mr. Lenk found the key, yes.

5 Q. And you have no other keys that you've found in
6 the course of this investigation, other than any
7 you may have seen at Ms Halbach's own house?

8 A. We found a lot of keys.

9 Q. And, specifically, linked to Ms Halbach?

10 A. None that we could specifically link to her, but
11 we did find a lot of keys.

12 Q. That turned out to be not connected to Teresa
13 Halbach?

14 A. I wouldn't say that. I don't know if they are or
15 not. To the best of our ability, we tried to
16 determine if they were or not, and we haven't
17 been able to determine that to this date --

18 Q. All right.

19 A. -- what they are.

20 Q. I mean, that is, you tried them in her front
21 door, or in her business, the lock on the door of
22 her business?

23 A. There were some keys that we had recovered that
24 we had actually taken to -- I believe it was
25 where she coached volleyball at her church, and

1 attempted to use them there and they did not
2 work.

3 Q. They did not work?

4 A. That's correct.

5 Q. Didn't find a key that worked in the front door
6 of her house?

7 A. Not yet, no.

8 Q. Or in her business?

9 A. No.

10 Q. The -- One of the men that you later were able to
11 confirm that she visited and took a photograph of
12 a car he had for sale, on October 31st, was this
13 Steve Schmitz, whom we spoke about a few minutes
14 ago?

15 A. Yes.

16 Q. Mr. Schmitz, you learned, wrote a check for the
17 *Auto Trader* services?

18 A. I would have to see that report. I don't know
19 how he paid. I think you are right. I recall
20 seeing a check from him.

21 Q. Yeah, I think he actually testified --

22 A. That's possible.

23 Q. -- to that. That's a check that you never found?

24 A. Could you be more specific, never found, period?

25 Q. It never turned up?

1 A. Not to my knowledge.

2 Q. And you -- you -- you checked into this, so to
3 speak, and found out that the check was never
4 negotiated.

5 A. I believe, actually, now that you are talking
6 about, he had stopped payment on that check, I
7 think was his testimony, I believe.

8 Q. And you learned that no one ever presented the
9 check for payment, or tried to cash the check?

10 A. Not that we have been made aware of.

11 Q. At some point early on, and when I say early on I
12 mean in 2005, you were aware of an anonymous
13 letter being found at the Green Bay Post Office,
14 addressed to the Manitowoc sheriff?

15 A. Yes.

16 Q. You have heard testimony about that, I think a
17 little bit today, with Mr. Riddle?

18 A. That's correct.

19 Q. That's a letter you saw at the time?

20 A. No, I did not see it at the time.

21 Q. You didn't?

22 A. I have seen it since.

23 Q. Okay.

24 A. But when it was brought back, I did not see it,
25 no.

1 Q. This was Exhibit 497. I will show you exhibit
2 497.

3 A. Sure.

4 Q. Specifically, the -- three and four pages; it's a
5 five page exhibit. When, roughly, at least, was
6 the first time you saw that letter?

7 A. I know that I heard that this letter was at the
8 Green Bay Post Office. As a matter of fact, I
9 think I made arrangements with one of our
10 detectives to eventually get up there and pick it
11 up. I think, if memory serves me correctly, we
12 had Green Bay Police Department secure it for us.

13 Q. So you are involved in assigning somebody to go
14 get the letter --

15 A. Right.

16 Q. -- and bring it back?

17 A. But I can't tell you exactly when I saw it; I
18 don't recall.

19 Q. Would it have been shortly after it came back to
20 the Calumet County Sheriff's Office?

21 A. Again, I know I have seen it. I don't know
22 exactly when, because commonly when things come
23 back, if the officer needs to put that into a
24 short term storage, then I don't have access to
25 that. So I probably didn't see it that very day,

1 would be my guess.

2 Q. You do know that later in 2006 you saw it in the
3 property room at -- at your sheriff's office?

4 A. Yes.

5 Q. You are not aware of anything having been pursued
6 on the letter between the first time you saw it
7 and, then, the next time you saw it in 2006, in
8 the property room?

9 A. Well, again, I don't know dates, but I would
10 disagree with you. There were things pursued
11 about it.

12 Q. Oh. And what did you pursue on the letter?

13 A. I think the -- one of the DCI agents testified
14 this morning that they had looked into the
15 smelter and determined that it had nothing to do
16 with this case.

17 Q. Well, actually, you know, and I was here to, and
18 the jury will -- you are speaking about
19 Mr. Pevytoe?

20 A. Yes, that's correct.

21 Q. Okay. So we'll let the jury decide what they
22 heard, but I think what he said is he looked in,
23 felt around, and took -- took nothing, saw
24 nothing of evidentiary value and took nothing
25 from inside the smelter?

1 ATTORNEY KRATZ: I think that's a
2 mischaracterization. I know we're getting into what
3 the jury remembers. And I'm just interposing that
4 objection. Because he did testify as to whether or
5 not it was recently used or not.

6 THE COURT: I think he's asking the witness
7 if that's the witness' recollection.

8 ATTORNEY KRATZ: Okay.

9 Q. (By Attorney Strang)~ And we can -- we can step
10 off that because what another witness says is
11 really not the point here.

12 A. Sure.

13 Q. Other than Mr. Pevytoe looking at the aluminum
14 smelter, doing what he described himself, in the
15 same chair you're in, is there anything else you
16 did in pursuit of the letter marked as Exhibit
17 497, before sending it to Mr. Riddle in 2006?

18 A. No, I don't know what else could have been done
19 with it.

20 Q. Did you -- Did you personally ever see the
21 aluminum smelter, during the week, roughly, that
22 you were out at the Avery property, November 5
23 through November 12, 2005?

24 A. I don't believe so. And if I saw it, I probably
25 wouldn't have known what it was, so.

1 Q. You didn't make a point of going to the smelter?

2 A. No, I did not.

3 Q. I'm going to ask you to stick, for the time
4 being, during that same week --

5 A. Sure.

6 Q. -- while you are spending, basically all or most
7 of your waking hours out at the Avery property
8 that week, right?

9 A. That's correct, yes.

10 Q. You learned on Saturday, November 5, that one of
11 the human remains dogs had alerted strongly on or
12 neither the Janda burn barrels?

13 A. As well as by Teresa's vehicle, yes.

14 Q. Right. And there had been other alerts, for that
15 matter, down in the pit, or in cars near the
16 vehicle, near the Toyota?

17 A. Sure.

18 Q. But there was -- You learned there was a strong
19 alert near one of the Janda burn barrels, or that
20 area?

21 A. I know that there was an alert. I can't say if
22 it was strong or not. I don't have any knowledge
23 of how the dog actually alerts, for the most
24 part. I know there was an alert, I can tell you
25 that.

1 Q. You learned -- You learned that some burnt bone
2 fragments later were found in one of the barrels?

3 A. Yes.

4 Q. You also were aware that there were several sites
5 off the Avery property, but in that, you know, in
6 that general part of the world, where possible
7 bone fragments were found and looked at?

8 A. I know there were other sites, you would maybe
9 want to call dumping areas, where maybe something
10 was there that resembled, and I will give you an
11 example, there was a gravel pit where one of
12 these searchers had found what they thought might
13 be a foot and it turned out to be a piece of
14 insulation that was burned. So there were a lot
15 of those false things that were going on,
16 certainly.

17 Q. Well, and not all of them -- not all of them
18 false, in the sense that --

19 A. I think the vast majority were.

20 Q. Okay. And then there were several, one, for
21 example, was in the Michel's Quarry to the east
22 of the Avery property.

23 A. I'm aware of one that I can say that the doctor
24 had said that there was possible human bone, or
25 bone, that was there, but that's the one I'm

1 aware of.

2 Q. East -- Is this the one east of the Avery
3 property or the one southwest?

4 A. I don't recall which one it was.

5 Q. Okay. But at least one of them resulted in bone
6 fragments, human or nonhuman, but bone fragments
7 and other debris, if you will, being sent to
8 Dr. Leslie Eisenberg?

9 A. Yes, and to my recollection, she determined she
10 didn't know for sure what it was, human or
11 nonhuman.

12 Q. And, again, we have her testimony to rely on for
13 that --

14 A. Absolutely.

15 Q. -- rather than your recollection or mine?

16 A. Certainly.

17 Q. But that -- that at least -- Do you remember that
18 being the site that was southwest of the Avery
19 property?

20 A. My recollection of it is, the map you showed
21 today. Now, if that was exactly the one, I would
22 not be able to tell you that.

23 Q. You personally never went there?

24 A. No, I did not.

25 Q. You were involved, if I recall correctly, because

1 I think you were in one of the pictures, in the
2 search on tarps, through debris in -- at the
3 Crime Lab in December of 2005?

4 A. Yes, I was present, I think for one day of that,
5 yes.

6 Q. That was a two day project in December of 2005
7 and then two more days, but I think back in the
8 Calumet Sheriff's Office in March of 2006; does
9 that sound right?

10 A. Sounds pretty close to it, yes.

11 Q. You were -- You were involved only in one day and
12 then in December at the Crime Lab?

13 A. I was involved in a day at the Crime Lab and I
14 would say maybe a day back here, later on in that
15 year.

16 Q. Okay. One of the reasons for that was to be
17 combing through, looking for pieces of metal, or
18 other, I guess bone fragments would have been of
19 interest, anything that might look important, or
20 possibly important, in going through that debris?

21 A. Yes, absolutely.

22 Q. At least two rivets were found in that debris?

23 A. Five rivets.

24 Q. Five total?

25 A. Yes, at this date we have -- to this date we have

1 five rivets identified as Daisy Fuentes rivets.

2 Q. Okay. And that's why it's useful to have you as
3 a lead investigator here, so.

4 A. Thank you.

5 Q. No, I mean you have -- but you have got -- you
6 have got sort of the overview of things?

7 A. Yes, I would, probably better than some other
8 people, yes.

9 Q. Right. So five Daisy Fuentes rivets, no Daisy
10 Fuentes button, metal button?

11 A. Five rivets, a zipper; no, I don't believe we
12 ever found, if you are talking about the main
13 button?

14 Q. Yeah, on a pair of jeans?

15 A. I don't believe we ever recovered that. And
16 there were some eyelets that looked like they
17 came from shoes, actually, that were recovered.

18 Q. Okay. And the zipper was not something that said
19 Daisy Fuentes?

20 A. No, my recollection, it had the initials YKK on
21 it.

22 Q. Mine too, or something like very close to that.
23 I think it was YKK too, that's my recollection
24 too, which you learned is a very large zipper
25 manufacturer?

1 A. Sure. Yes.

2 Q. So that -- that zipper, you never were able to
3 link to any special pair of jeans, or coat, or
4 any other garment?

5 A. I can tell you it matches the one on the jeans
6 which we had brought into court, same holes, same
7 letters, everything, that I can tell you.

8 Q. But, again, it's sort of -- it's a large zipper
9 manufacturer, which makes lots and lots of sort
10 of generic zippers.

11 A. The initials on there, yes. Whether the holes
12 are in the same place on all pants, I don't have
13 that.

14 Q. Right. Okay. Same week, one of the places you
15 did personally get to, was Steven Avery's garage?

16 A. I know I had been down to the garage that week we
17 were out there, yes. I don't know what day for
18 sure, I wouldn't be able to tell you that.

19 Q. I could probably show you a report, although, I'm
20 not -- I'm not sure you and I would really have
21 any dispute over this. If I suggested to you
22 that November 12 is the day you folks pulled up
23 stakes --

24 A. Sure.

25 Q. -- and stopped --

1 A. Yes.

2 Q. -- and you ended that search, so to speak, of the
3 whole property?

4 A. Yes, we did.

5 Q. You and Mr. Fassbender did a final sort of walk
6 through on at least some of the sites on that
7 property?

8 A. As best we could. We felt it was our
9 responsibility to know the condition of it when
10 we left, because we were the lead agents on that
11 case, that's correct.

12 Q. You knew that earlier in the week, I say the
13 week, I mean this seven or eight day period you
14 folks were out there, that shell casings had been
15 found in the garage, on the floor?

16 A. I know there were some found. I don't know what
17 day but, yes, had to be earlier than the 12th,
18 correct.

19 Q. Turns out to be 11 brass shell casings?

20 A. Yes.

21 Q. .22 caliber?

22 A. Yes.

23 Q. You -- You had told investigators, people
24 involved in actually searching the garage, in
25 your role as a lead investigator, you had told

1 folks, in essence, where there are cartridge
2 shells there may be bullets?

3 A. Did I specifically tell somebody that, no.

4 Q. You understood that they would be looking for
5 bullets?

6 A. I can't testify to what they understood. They
7 were to look for all sorts of evidence. Would
8 that be included in there, if they knew what they
9 were looking for, yeah, I'm sure.

10 Q. Well, did you try to assign people who you
11 thought knew what they were looking for?

12 A. I would think I would know what I'm looking for,
13 but I wouldn't know what a spent bullet would
14 look like.

15 Q. I guess my question is, did you -- did you try to
16 assign people who you thought would know what
17 they were looking for?

18 A. I assigned people that I trusted, as evidence
19 technicians, to do the job.

20 Q. All right. And you would expect, if they had
21 recognized a bullet, or a fragment of bullet, in
22 the garage, you would have expected somebody to
23 have said this may be important enough to pick
24 up?

25 A. If they, in fact, had saw it and recognized what

1 it was, absolutely, I'm sure they would have.

2 Q. All right. And you were satisfied, by the time
3 you did that final walk through with
4 Mr. Fassbender, that the garage had been searched
5 as thoroughly as reasonably possible?

6 A. I was satisfied that the people who were
7 searching the garage had did the best job they
8 could, under the circumstances.

9 Q. Did a walk through yourself, saw nothing that you
10 recognized as being possibly important as
11 evidence?

12 A. I don't know if I did a walk through the garage.
13 I went down to the garage. I know I walked into
14 the house trailer. I can't say that -- I don't
15 believe I did walk through the garage, to the
16 best of my recollection.

17 Q. Okay. But you were satisfied that where the
18 searching productively could have been done, had
19 been done by that time?

20 A. To the best of their ability at the time, I'm
21 sure, yeah.

22 Q. Yeah. And I mean, and let's be clear, I mean,
23 ultimately, it was -- it was a law enforcement
24 decision on when to turn this property back over
25 to the Avery family, right?

1 A. It certainly was. And if I -- Do I wish I could
2 have had another three weeks to move everything
3 out of every garage, and every air compressor,
4 every refrigerator, go through every part of that
5 salvage yard, with a fine tooth comb, I would
6 love to have, but it's not feasible.

7 Q. All right. So you made the decision, that
8 Saturday morning, November 12, was the day?

9 A. Yes, because, you know, for several reasons, we
10 did the best we could in that time period. The
11 Avery's had a business to run. We had already
12 put them out for a week. And it was a hard
13 decision to make, to be honest with you.

14 Q. Was that a business that at some point you, in a
15 moment -- in an unguarded moment, said you wanted
16 to shut down?

17 A. No, I don't ever remember saying that.

18 Q. Now, in any event, you knew that when you turned
19 the property back over to the people who lived
20 and worked there, you would lose control over the
21 property, that's obvious?

22 A. Certainly.

23 Q. Law enforcement would?

24 A. Yes.

25 Q. People would come and go as they pleased?

1 A. I would think that -- I don't know if people come
2 and go as they please. The Avery's would assume
3 back their responsibility for their residences
4 and business.

5 Q. Right. And customers would come to the business?

6 A. I'm sure.

7 Q. People would live in their houses, use their
8 garages, that kind of stuff?

9 A. Yes, sir.

10 Q. Two of the people -- I don't know that you
11 personally had contact with either one, you may
12 have, I don't know. But two of the people whom
13 investigators working under your joint direction
14 with Mr. Fassbender met and had contact with that
15 week, were Bobby Dassey and Scott Tadych?

16 A. Could you ask the question again, I'm not sure
17 what you are asking?

18 Q. Got pretty long. Someone, during the week you
19 were out searching the Avery property, had
20 contact with Bobby Dassey and Scott Tadych?

21 A. I believe so. I know somebody had contact with
22 Bobby on Saturday already.

23 Q. Saturday, the 5th, the first Saturday?

24 A. That's correct, yes.

25 Q. You personally didn't have any contact, that you

1 remember, with Bobby Dassey or Scott Tadych, that
2 week?

3 A. Not to my recollection, no. I don't believe I
4 personally have. But I know that there was
5 another investigator who actually talked to Bobby
6 from our department. That I know, but I don't
7 know about Mr. Tadych.

8 Q. Okay. Now, you did learn, in the course of your
9 work as a lead investigator here, that Bobby and
10 Scott each sort of were the only one who could
11 say the other was going deer hunting the
12 afternoon of October 31?

13 A. No, I don't know that that's true, that I can say
14 that they were the only ones who knew they were
15 going deer hunting. No, I can't say that. I
16 know they passed each other on the road, if
17 that's what you're asking.

18 Q. Right.

19 A. That I know.

20 Q. I mean, Bobby said, I passed Scott. Scott said,
21 yeah, I passed Bobby. And each says I'm going
22 deer hunting, and the other guy is going deer
23 hunting; that you knew?

24 A. I know they passed each other on the road. I
25 know they were going hunting, yes.

1 Q. Or that that's what they said?

2 A. Yes.

3 Q. Did you -- you, also, I guess, learned that

4 Mr. Tadych had not gone to work on October 31?

5 A. Did I know that? Is that what you're --

6 Q. Yeah. Did you learn that during the course of

7 your investigation?

8 A. I learned that he had been to visit his mother in

9 the hospital, in Green Bay. Yeah, I did hear

10 that.

11 Q. That that's what he said?

12 A. Yes.

13 Q. Anybody ever check out, you know, check whether

14 the mother in fact was in the hospital, or had an

15 operation?

16 A. I don't believe so. I just know that people

17 had -- that we eventually asked Barb the same

18 thing. And Barb had -- which is his girlfriend,

19 or wife, now.

20 Q. Right, girlfriend, then.

21 A. She had verified that that's where he was. And

22 she, eventually, I believe, went up there with

23 him, to my recollection.

24 Q. She goes up for an evening trip?

25 A. I believe she said so, yes.

1 Q. Right. Okay. Anyone ever ask Bobby why, if he
2 was going deer hunting, he would have taken a
3 shower right before going deer hunting?

4 A. Again, I didn't interview Bobby, so I wouldn't be
5 able to answer that.

6 Q. You don't remember whether he was --

7 A. I don't know if anybody asked him why he took a
8 shower. No, I don't.

9 Q. Let's move forward, then. The next time you are
10 on the Avery property is about four months later,
11 March, 2006, at least on to search?

12 A. Yes, certainly.

13 Q. Another search warrant?

14 A. That's correct.

15 Q. And we're talking about the first two days of
16 March, 2006?

17 A. I believe it was the first and second of March,
18 we were back out there.

19 Q. Now, this was a more focused search, if you will,
20 in terms of the actual physical area you were
21 searching?

22 A. Yes, we had developed new information on the case
23 and we acted on that information.

24 Q. And what you were searching this time was Steven
25 Avery's garage and Steven Avery's trailer. And

1 then I think probably the Janda house as well,
2 correct?

3 A. We had a search warrant, again, based on new
4 information that was learned in the case, for
5 Mr. Avery's trailer and Mr. Avery's garage. And
6 Barb Janda, I don't recall what her new last name
7 is. I will refer to her as Janda, at the time,
8 had given us verbal permission to enter her
9 house. I think we might have even had written
10 permission from her. So that wasn't included in
11 the search warrant, but she had given us
12 permission --

13 Q. Okay.

14 A. -- to go in there.

15 Q. The point is, we're not -- this isn't a search of
16 the whole 40 acres again, this is some specific
17 areas that were in the northwest corner?

18 A. For specific areas spelled out in the search
19 warrant, which was granted to us.

20 Q. Now, by -- by that time, four months into the
21 investigation, essentially, did you have
22 sufficient evidence technicians available to you,
23 in the Calumet Sheriff's Office and the DCI, to
24 conduct the search of Mr. Avery's garage and the
25 search of his trailer, in March, 2006?

1 A. I probably can't answer that yes or no. I would
2 probably have to expound on that a little bit.

3 Q. Well, who invited the Manitowoc County Sheriff's
4 Department back to help in that search?

5 A. Matter of fact, I notified Manitowoc County
6 Sheriff's Department because it is in their
7 jurisdiction and I feel it's my duty that they
8 know that we're going out to the Avery property.

9 Q. Okay. And that's certainly courteous, but who
10 invited Manitowoc County Sheriff's personnel to
11 help search and collect evidence in the garage
12 and the trailer, in March, 2006.

13 A. I believe that we utilized Detective Remiker and
14 it was a joint decision between Mr. Fassbender
15 and myself. And I stand by that decision.

16 Q. Okay. Was Detective Remiker the only Manitowoc
17 officer, to your knowledge, that you used --

18 A. Searching?

19 Q. -- in the March search?

20 A. If you're talking about the physical searching?

21 Q. Yes.

22 A. That is my recollection, yes.

23 Q. Now, let's -- let's move forward, finally, to the
24 blood vial --

25 A. Sure.

1 Q. -- sitting there in front of you. In fact, you
2 knew, just from watching TV, I guess, back in
3 November of 2005, that Mr. Avery, personally, was
4 saying, you know, if my blood is in the Toyota,
5 someone must have put it there, words to that
6 affect?

7 A. You know, something to that affect. Again, I
8 couldn't say but, yeah, there was something to
9 that affect, where he would talk about planting
10 it or something, I recall.

11 Q. Yeah. Sure. And, in fact, you were standing
12 probably closer to Mr. Kratz than I'm standing to
13 you, at a news conference, in November of 2005,
14 where you heard Mr. Kratz --

15 ATTORNEY KRATZ: Objection, it's
16 irrelevant. My comments in this case are
17 irrelevant.

18 ATTORNEY STRANG: I'm not at all sure they
19 are, given the direct examination here.

20 THE COURT: I'm going to sustain the
21 objection.

22 Q. (By Attorney Strang)~ You were aware of the
23 agents of the State, back in November of 2005,
24 publicly ridiculing the claim that law
25 enforcement officers would be walking around with

1 vials of Mr. Avery's DNA? You were aware of that
2 weren't you?

3 A. Yeah, absolutely.

4 Q. Okay.

5 A. I agree with that.

6 Q. But you also know that a Clerk of Court's Office
7 is a public office, right?

8 A. It's open, the lobby is open to the public.

9 Q. Right.

10 A. That's true.

11 Q. It keeps public records?

12 A. Yes.

13 Q. Court records?

14 A. Mm-hmm.

15 Q. These are available to be looked at for the
16 asking, for any member of the public who comes to
17 the counter at the Clerk's Office?

18 A. I assume so, yes.

19 Q. And you know that, I mean, there's a Clerk of
20 Court's Office right across the hall in this
21 building; isn't there?

22 A. Yes.

23 Q. Sure. And you, as a law enforcement officer,
24 interact with the Clerk's Office from time to
25 time?

1 A. No, I can honestly say, in my 14 years here,
2 other than when I'm on the stand in the court
3 office, I don't interact with the Clerk of
4 Court's.

5 Q. Don't you file returns for search warrants?

6 A. That's about the only thing I do, from the front
7 window, yes. I mean, that's my -- If you are
8 saying that's interaction, yes, you are correct.
9 That would be the extent of my interaction.

10 Q. I should not use 69 cent words but, I mean, you
11 know, you go there yourself to file a return for
12 a search warrant?

13 A. Yes, that would be the extent of my interaction.

14 Q. Okay. And you were aware, from very near the
15 beginning of this investigation, that Mr. Avery
16 had this lawsuit pending against Manitowoc
17 County?

18 A. Certainly I was aware of that, yes.

19 Q. For the wrongful imprisonment?

20 A. Against Manitowoc County, certainly.

21 Q. Right. Against Manitowoc County. But as I
22 understand you, in pursuing this, look for, you
23 know, gee, does Manitowoc County have his DNA
24 somewhere, neither you, nor anyone under your
25 direction, ever just went to the Clerk of Court's

1 Office to look at the old case file?

2 A. I did not. And I would never think of looking in
3 a case file for blood. And I don't know that
4 anybody else probably would either, unless they
5 had some knowledge of it being there.

6 Q. Okay. We didn't have knowledge of it being
7 there, but we looked, and that's how you found
8 out, right?

9 A. I would think you would probably have more
10 knowledge of it being Mr. Avery's attorney, than
11 I would. Because, obviously, he knew this blood
12 was drawn.

13 ATTORNEY KRATZ: I'm going to interpose an
14 objection, that's providing testimony.

15 THE COURT: Yeah, I don't think this line
16 of questioning is proper. I'm going to sustain the
17 objection.

18 ATTORNEY KRATZ: Ask that be stricken,
19 Mr. Strang's testimony or comment.

20 THE COURT: We'll strike the question, the
21 comment, and the answer. The Court will order that
22 it be stricken.

23 Q. (By Attorney Strang)~ You did not, in any event,
24 go to the Clerk's Office until after receiving
25 notice that the defense had found this box that

1 we have seen?

2 A. Yes, sir, that's correct.

3 Q. All right. And, then, as you said before, you
4 were one of a group of people, from the
5 prosecution and the defense, who were there when
6 the box, the styrofoam box was opened?

7 A. Yes, I was.

8 Q. In fact, I was about the only person who wasn't
9 there?

10 A. Yes. I think Mr. Buting was there, I believe.

11 Q. All right. And I'm going to -- We have already
12 played part of, or we played all of Exhibit 470.
13 And I just want to go back to part of that.

14 THE COURT: Let's take a stretch break
15 while he's doing that. Just in terms of timing, how
16 long are you looking at?

17 ATTORNEY STRANG: Another 90 seconds.

18 THE COURT: Okay. Go ahead.

19 Q. (By Attorney Strang)~ All right. We're going to
20 do it this way, come on over.

21 A. Sure.

22 Q. What I have got is Exhibit 470 here. Now, the
23 jury can't see this, but look upside down, this
24 is the blood vial that you saw when you guys went
25 and looked and videotaped this?

1 A. Yes, sir.

2 Q. Okay. What does that say right there, on the
3 manufacturer label?

4 A. There's some numbers and it says EXP March '90
5 something, I can't say.

6 Q. March '96?

7 A. '96 or '98, I can't tell.

8 Q. Okay. You can go back, you are not miked. Same
9 tube, right? Inside here?

10 A. I believe so, I would need to look at it.

11 Q. Sure.

12 A. Looks like the same tube.

13 Q. Yeah. Now somebody has written initials over
14 that last digit, but EXP is -- you recognize that
15 as a common abbreviation for expiration, right?

16 ATTORNEY KRATZ: Objection, speculation,
17 Judge. I don't know that he has a foundation for
18 that on a purple-topped tube.

19 THE COURT: There would have to be a
20 foundation for the witness to answer the question.

21 Q. (By Attorney Strang)~ Did you ever buy Advil, or
22 Pepto-Bismol, or anything at the grocery store,
23 that has an expiration date?

24 ATTORNEY KRATZ: I'm sorry, Judge, I am
25 going to interpose an objection. I don't know that

1 that applies to this case.

2 THE COURT: I agree, I don't think it would
3 be that simple to lay a foundation for this witness
4 to be qualified to answer.

5 Q. In any event, what you see is EXP and then a
6 space and then March '96 or '98, whatever the
7 last digit is?

8 A. Yeah, nine something, along with a lot of other
9 writing, but that's one of the things.

10 Q. Somebody has written initials on that now, right?

11 A. Initials, Steven Avery's name. There's a lot of
12 writing on this tube.

13 Q. Okay. All right. You can pop it back in there.

14 ATTORNEY STRANG: That's all I have.

15 THE COURT: Any redirect?

16 ATTORNEY KRATZ: No, not for this witness.

17 THE COURT: Very well, the witness is
18 excused. Do we have any exhibits that require
19 action?

20 THE CLERK: 496 from the State, that was
21 the flash card.

22 ATTORNEY KRATZ: We would offer that,
23 Judge. Actually, before the close of the case
24 wanted to have an accounting of things but, that not
25 withstanding, we do know that the flash card we are

1 moving.

2 THE COURT: Any objection?

3 ATTORNEY STRANG: There is no objection to
4 Exhibit 496.

5 THE COURT: Very well, that exhibit is
6 admitted. Mr. Kratz, anything from State before we
7 adjourn for today?

8 ATTORNEY KRATZ: Not for -- from the State,
9 for today, Judge. There is something outside the
10 presence of the jury I would like to address with
11 the Court, but nothing further at this time.

12 THE COURT: Is it something that requires
13 the jury to come back?

14 ATTORNEY KRATZ: Not today, Judge.

15 ATTORNEY STRANG: We can just take a brief
16 side bar.

17 ATTORNEY KRATZ: Side bar.

18 THE COURT: Okay.

19 ATTORNEY STRANG: Deal with that.

20 THE COURT: Okay. We'll do that.

21 (Side bar taken.)

22 THE COURT: All right. The record will
23 reflect that I just met with the attorneys to talk
24 about a stipulation, which I understand I'm going to
25 be hearing in a minute, before we send the jury home

1 for the day. Mr. Kratz.

2 ATTORNEY KRATZ: Thank you, Judge. Your
3 Honor, subject to the State offering and the Court
4 ruling on exhibits, which I believe -- or which the
5 State believes will be appropriately part of the
6 record in the State's case-in-chief, at this time
7 the State intends to rest.

8 THE COURT: Okay. And those are exhibits
9 that have already been marked, correct?

10 ATTORNEY KRATZ: That's right, Judge.

11 THE COURT: But the State may be requesting
12 the admission of some exhibits that have not been
13 admitted yet, and subject to that, the State is
14 resting?

15 ATTORNEY KRATZ: That's right, Judge.

16 THE COURT: First, Mr. Strang, does the
17 defense have any objection to that procedure?

18 ATTORNEY STRANG: We do not. We understand
19 that the State has rested and that there may be some
20 housekeeping to do on exhibits already marked and
21 identified in the State's case-in-chief. No
22 objection to that.

23 THE COURT: And I further understand that
24 the parties are requesting the Court to consider
25 matters outside the presence of the jury, which

1 would result in not needing the jury until tomorrow
2 afternoon; is that correct?

3 ATTORNEY STRANG: Yes.

4 THE COURT: Mr. Kratz.

5 ATTORNEY KRATZ: Unless they object, Judge,
6 yes.

7 THE COURT: Members of the jury, I'm not
8 going to ask you if you would like to sit around all
9 morning tomorrow before we get started. So let's do
10 this, how about if we have you meet at the normal
11 location for the bus at 12:30 tomorrow and we'll
12 bring you back for a session just tomorrow
13 afternoon.

14 I probably should have asked, I don't
15 know the transportation arrangements for the
16 morning, does that pose a problem for any member
17 of the jury? Very well. Then, Robbie, I will
18 ask you to notify the bus people of that change.
19 And you are excused for today. I will remind
20 you, again, not to discuss the matter or look at
21 anything on TV, radio, or any other media. And
22 we'll see you tomorrow, sometime around 1:15 or
23 so.

24 (Jury not present.)

25 THE COURT: You may be seated. Counsel,

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then, I would like to see you in chambers for just a couple minutes before you leave today.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 2nd day of January, 2008.

Diane Tesheneck, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL
5 TRIAL DAY 19

6 vs.

Case No. 05 CF 381

7 STEVEN A. AVERY,

8 DEFENDANT.

9
10 **DATE:** MARCH 8, 2007

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

13 **APPEARANCES :**

14 KENNETH R. KRATZ
Special Prosecutor
15 On behalf of the State of Wisconsin.

16 THOMAS J. FALLON
Special Prosecutor
17 On behalf of the State of Wisconsin.

18 NORMAN A. GAHN
Special Prosecutor
19 On behalf of the State of Wisconsin.

20 DEAN STRANG
Attorney at Law
21 On behalf of the defendant.

22 JEROME BUTING
Attorney at Law
23 On behalf of the defendant.

24 STEVEN A. AVERY
Defendant
25 Appeared in person.

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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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C O N T ' D I N D E X

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126		100	101
164		93	94
165		93	94
372		99	100
416		93	94
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1 (Reconvened at 9:07; jurors not
2 present.)

3 THE COURT: At this time the Court calls
4 the State of Wisconsin vs. Steven Avery, Case No.
5 05 CF 381. We're here this morning for a
6 continuation of the trial in this matter outside the
7 presence of the jury at this time. Will the parties
8 state their appearances for the record, please?

9 ATTORNEY KRATZ: The State appears by
10 Calumet County District Attorney Ken Kratz,
11 Assistant Attorney General Tom Fallon. I should
12 tell the Court that, uh, Mr. Gahn, uh, has been,
13 uh, delayed for a few minutes but will be joining
14 us during these proceedings, Judge.

15 ATTORNEY STRANG: Good morning. Uh,
16 Steven Avery in person, Jerome Buting, Dean
17 Strang on his behalf.

18 THE COURT: All right. We're here, uh,
19 this morning to take up, uh, some outstanding
20 motions, uh, that were raised during the course of
21 the trial thus far, and, uh, also hear what the
22 Court anticipates will be a -- a new motion or
23 motions from the defense.

24 One of the items yesterday that was left
25 unresolved was, um, somewhat of an inventory of

1 the exhibits, uh, to make sure that, uh, exhibits
2 that have been marked but not yet received, uh,
3 may -- that one party or the other may request
4 that they be received and to verify, I guess,
5 that the exhibits that have been marked and not
6 received were done so intentionally.

7 I'm going to ask the parties to address
8 that item with the clerk, uh, after I hear
9 argument on the motions, since I want some time
10 to, um, um, consider the arguments that are made
11 on the motions, and I think that will give the
12 parties more than adequate time to, uh, uh, check
13 with the clerk on the status of any exhibits that
14 haven't been resolved.

15 Um, we can go back on the record before
16 the jury is brought in this afternoon to address
17 any items with respect to exhibits, uh, that
18 require attention.

19 Uh, looking at the inventory of motions
20 that have been made but not yet finally
21 addressed, uh, one of them -- and it wasn't
22 really a motion, there was an objection made back
23 on February 27, uh, to an offer by the defense
24 concerning, uh, telephone records regarding the
25 accessing of voice mails. That matter was --

1 I -- I reserved ruling, uh, on that matter.

2 Finally, uh, pending receipt of
3 additional evidence from the, um, phone company
4 representative that we heard yesterday, um, Mr.
5 Buting, I believe you were acting on behalf of
6 counsel at the time. Are you satisfied the
7 evidence that was permitted in yesterday
8 addresses that matter sufficiently?

9 ATTORNEY BUTING: Uh, in the sense that,
10 uh, the evidence I wanted to get in, came in,
11 yes. Uh, I'm -- I'm not commenting that it
12 satisfied me from an evidentiary reconciliation
13 type of perspective, but certainly the in -- the
14 information that, uh, I think, actually, the --
15 the witness that was present from Cingular on
16 that February 27 date wasn't as knowledgeable
17 about the records, and, actually, gave us some
18 incorrect information about what those, um, uh,
19 open versus unopened meant. And I think this
20 witness cleared that up and, uh, provided some
21 other helpful information. So, uh, I'm satisfied
22 that -- that we, uh -- we -- we got what we
23 wanted.

24 THE COURT: All right. I was not looking
25 for a stipulation as to the significance of any of

1 the testimony but, rather, whether the evidentiary,
2 uh, issue had been resolved, and I take it that it
3 has been?

4 ATTORNEY BUTING: Yes.

5 THE COURT: Uh, one other, uh, matter
6 that I wanted to address this morning was a, uh,
7 motion, uh, from Mr. Strang back on February 23
8 renewing the defense challenge to the, uh -- what
9 has been referred to in, um, earlier portions of
10 these proceedings, as multiple entries under the
11 November 5 search warrant.

12 Uh, I note that after the Court heard
13 argument from both parties on that date, um, I
14 indicated that I would not hear further from the
15 parties on the issue at that time, but because
16 there may be additional evidence yet to be
17 introduced, I would give the parties an
18 opportunity to argue the matter, um, further.

19 Um, to refresh everyone's memory, the
20 Court's understanding of the argument made by the
21 defense at that time was that it came in, uh,
22 three parts. Um, first of all, a challenge to
23 the sequential nature of the searches of the
24 defendant's trailer, garage, and surrounding
25 property.

1 Uh, second, a renewed argument, um,
2 under a **Franks** theory that the, uh,
3 representations of the State in the affidavit for
4 the November 5 warrant, uh, did not have a
5 factual basis.

6 And, third, there was a challenge which
7 the Court would consider to be more in the nature
8 of a new challenge rather than a refinement of
9 the old one, which related to the, uh, State's
10 alleged failure to search the burn area in a
11 timely manner, uh, to summarize it as the Court
12 understands it.

13 Uh, but with that background and my
14 understanding, uh, Mr. Strang, I'll hear from you
15 first.

16 ATTORNEY STRANG: Thank you. At the
17 time the, um, reply I intended to make to, uh,
18 Counsel's argument would have focused on, um, the
19 issue of abandonment, of, um, property that
20 Counsel argued as to items in the backyard or,
21 um, in what we've called the burn area. And as
22 I -- as I understood Mr. Fallon's argument, um,
23 it was that, um, Steven Avery had no further
24 privacy interest in anything that was found in
25 the, uh -- in the burn area, uh, and, therefore,

1 there just was not a Fourth Amendment interest at
2 stake.

3 Um, irrespective of how close the, um,
4 area was to the house or its -- or the -- the
5 private areas of the property, I think the
6 analogy Counsel drew was to garbage that's set
7 out on the curb for disposal, uh, or in -- in a
8 trash bin, that sort of thing, the idea, that,
9 uh, burning, um, is -- is an act of disposal, or
10 abandonment, or relinquishment than he took a
11 privacy interest in the -- in the items.

12 Uh, Counsel did argue that, uh, um, uh,
13 curtilage no longer is a dispositive concept, uh,
14 at least as the Wisconsin courts apply the Fourth
15 Amendment, and, uh, Article I, Section I of the
16 Wisconsin Constitution. And to an extent,
17 Counsel's right. It -- it's clear that courts
18 are getting away from arcane terms like curtilage
19 or, um, a mechanical assessment of, um, you know,
20 where a treeline is or where a picket fence may
21 be, um, so up to -- up to a point I agree with
22 Counsel on -- on his assessment of the
23 development of case law.

24 But it remains true that, um, areas of
25 a -- of a person's home and accompanied property

1 that he seeks to preserve for private use or the
2 intimate activities of life, uh, remain within
3 the scope of the Fourth Amendment, and, uh,
4 carried it to its ex -- extreme, and I don't know
5 that in the end Mr. Fallon would carry it this
6 far, but carried to its logical end, his argument
7 that curtilage doesn't matter, and that burning
8 is an act of destruction that relinquishes all
9 privacy rights for purposes of Fourth Amendment,
10 would mean that, uh, I have no privacy interest
11 in my fireplace in my living room. Which, of
12 course, just can't be.

13 And, here, I acknowledge that we're not
14 talking about a fireplace inside someone's living
15 room or home, we're talking about an area outside
16 of the immediate home. But what -- what we have
17 here is an area that is behind the garage, not,
18 uh, easily viewed from anyplace that, uh, an
19 uninvited visitor, or sales person, newspaper
20 delivery boy, or somebody -- post--- postal
21 carrier would likely be. Um, it's behind the
22 home.

23 And on the State's own theory here, um,
24 you know, if we accept the State's argument, the
25 theory of prosecution, then it is that Mr. Avery

1 burned bone -- bone, burned the body, and the
2 personal items of Teresa Halbach in that area.
3 We dispute that entirely, but -- but let's work
4 with the State's theory, uh, and that he did so,
5 not as an act of abandonment, but as an act of
6 concealment, uh, or -- or intention not to be
7 discovered, uh, on the crime that the State
8 contends he -- he committed.

9 Moreover, the State has educed evidence
10 that the doghouse and the dog, which associates
11 with Mr. Avery, were positioned in such a way as
12 to keep people away from the burn area. Um,
13 indeed, uh, when it suits the agents of the
14 State, they've argued here, that they couldn't
15 go. They were kept away from the burn area by,
16 uh, the dog, um, and the -- the -- the range of
17 its leash, the location of its doghouse.

18 So it -- it really is, I think,
19 inconsistent here for the State to argue that
20 Mr. Avery did not show a subjective interest in
21 the privacy of the area behind his garage. Um,
22 he did, and that subjective interest in privacy
23 is, uh, the first important aspect of standing or
24 the right to assert a Fourth Amendment claim.

25 And the other, then, is whether that

1 subjective assertion of a privacy interest is one
2 that society, at large, objectively, uh, views as
3 reasonable or recognizes, and I think here, uh,
4 it -- it's -- it's really beyond serious debate
5 that for an area 20 feet, or 40 feet, or whatever
6 it is behind your house, immediately behind your
7 garage, uh, in an area that looks like a
8 construction site to be situated in an area in
9 which the grass is mowed, it's a backyard that's
10 tended as the -- the evidence showed here. We --
11 you know, the photographs. I think, some of the
12 testimony referred to the grass being short and
13 mowed.

14 Uh, it's really beyond serious argument,
15 but that's sort of a -- an immediate backyard
16 area, um, is something in which the public, our
17 culture, doesn't recognize, a right to privacy.
18 Um, people do private things in the backyard.
19 It's a -- it's a different area of the backyard,
20 but there's a swimming pool, for instance, in the
21 backyard here as the Court has seen. There's a
22 back deck off the house. As I say, the -- the
23 area is mowed and tended as a lawn.

24 Farther out in that yard, um, than,
25 um -- than the burn area, there -- there are cars

1 to the south. They're, you know, lined up or
2 parked, um, not as if they belong to this -- the
3 business or the salvage property, uh, business,
4 but as if they are associated with the yard of --
5 of, uh, the red trailer which -- which clearly is
6 Steven Avery's building.

7 So, um, this is his pet. He keeps the
8 pet in this area, quite apart from whether it was
9 intended to exclude others. You keep your pet in
10 an area that you expect to be private, and, um,
11 don't expect others to be walking through or
12 disturbing your pet, at least where the pet is
13 leashed, uh, and housed as it was here.

14 So, um, I don't think that, uh, the
15 State can succeed at the threshold question here
16 saying that there was not, um, both a subjective
17 and objective reasonable privacy interest in this
18 area immediately behind Steven Avery's detached
19 garage in his backyard and, you know, just
20 several yards, uh, uh, away from his trailer.

21 So, um, that -- that at the time is when
22 I recall, um, wanting to add, um, by way of
23 reply, and I don't think there's much more I can
24 do to freshen my original arguments with the
25 evidence that we've heard since I've made them.

1 THE COURT: All right. Let me ask a
2 question with --

3 ATTORNEY STRANG: Sure.

4 THE COURT: -- respect to the burn pit
5 area. I understand the, um -- the -- the
6 challenges made to the searches of the trailer
7 and the garage, um, the -- there was a concession
8 that the initial brief sweep searches would not
9 have been the searches that count, but that the
10 lengthier searches shortly thereafter of the
11 garage and the trailer should have been the end
12 of it.

13 The, uh -- in reviewing my notes and --
14 and the argument with respect to the search of
15 the burn pit area, uh, the focus seemed to be on
16 the fact that, uh, well, the -- the State could
17 have searched it earlier, uh, the State could
18 have, uh, neutralized the dog that was guarding
19 the burn pit area, and searched it earlier, but
20 I'm not -- I guess it's not immediately apparent
21 to me what the significance of the timing of the
22 search of the burn pit area is, assuming it was
23 done within the time within which the State could
24 effectuate the warrant.

25 Uh, in other words, if it was done

1 later, uh, so what? Is -- is there -- I -- I
2 didn't -- I didn't detect in the argument a claim
3 that there were -- there was somehow an improper
4 multiple search of the burn pit area. So I want
5 to make sure I'm not missing your argument there.

6 ATTORNEY STRANG: Well, um, it -- it --
7 it's a very good question, and I -- and I'm --
8 I'm pausing only because I'm trying to remember,
9 um, when the first search warrant expired, or --
10 or would have expired on its own terms. I think
11 it was either the 9th or the 10th.

12 There's at least a second search warrant
13 obtained on the 9th, as I recall. Um --

14 ATTORNEY FALLON: I can help out. It
15 would have ex -- If the warrant was obtained
16 on --

17 ATTORNEY STRANG: The 5th.

18 ATTORNEY FALLON: -- Saturday, the 5th,
19 at 3:25 p.m., then, technically, according to
20 statutory interpretation, its arguable expiration
21 would have been Thursday, the 10th, at 3:25, if I
22 count correctly.

23 ATTORNEY STRANG: Yeah, I -- that --
24 that sounds -- that sounds right to me as a
25 matter of statutory expiration. Um, I think the

1 first search of the burn area is the 8th. Um,
2 off the top of my head, I'm not sure we had any
3 testimony about anything happening on the 9th in
4 the burn area. We certainly do on the 10th.

5 Um, and so the 8th would have been in
6 the -- within the statutory time, um, but, you
7 know, the statute isn't the begin -- isn't --
8 isn't the end of it. Um, what -- what we've done
9 here, if -- if the search of the Avery -- of the
10 Steven Avery part of this property reasonably
11 should have ended with the first thorough
12 searches on the evening of the 5th, or the
13 garage, I guess, at the latest, the morning of
14 the 6th, then holding the entire property and
15 excluding it from him unreasonably impinged on
16 his possessory interest.

17 And the Fourth Amendment protects the
18 privacy interest and also the possessory interest
19 that -- that we have, and there's really no
20 justification, once you complete the search of
21 the house and the garage, for not also completing
22 the search of the private areas associated with
23 those -- those two buildings. And from the 6th
24 on, you're unreasonably depriving this man of his
25 possessory interest in -- in his home, in the

1 place he lives.

2 Um, and, um, you know, I -- I don't rely
3 as much on the privacy interest in that yard as
4 to a first search, but, again, if the first
5 search isn't timely, isn't reasonably timely, and
6 he's being excluded from his possessory interest
7 in his home, um, and its, you know -- and it --
8 and its useful property, the private areas
9 surrounding the home, then you do trigger the
10 reasonableness requirement of the Fourth
11 Amendment as well, um, by the passage of time.

12 So I think the -- the search on the 8th
13 is -- is already beyond a reasonable time as a
14 matter of his possessory interest, and certainly
15 the work on the 10th, and the 11th, and whatever
16 is done after in the, uh, burn area, itself, um,
17 is outside the statutory limits of that warrant
18 and, um -- and -- and all the more unreasonable
19 just by virtue of further passage of time, um, in
20 which he's denied his possessory interest.

21 And then, also, the privacy interest is
22 triggered, again, as you have serial searches at
23 the convenience of law enforcement people rather
24 than recognizing this isn't their property, it's
25 someone else's property. They are the unwelcome

1 visitors. They are the intruders from the
2 standpoint of the Fourth Amendment, not the other
3 way around.

4 And, um, so you -- you have the privacy
5 interest escalating and being affected
6 unreasonably as time passes after the 6th.
7 That's not terribly articulate, but it did -- I
8 did, at least, answer the question.

9 THE COURT: All right. So the -- as --
10 as I understand it, it's not a -- so much a
11 parallel argument to the garage and the house and
12 that there were improper multiple searches made
13 of the burn area, but, rather, once the house and
14 the garage searches were completed, there was
15 adequate time to also search the burn area had
16 the State wished, and because they didn't,
17 therefore, it should be suppressed?

18 ATTORNEY STRANG: Yes. And the backup
19 argument, then, is that anything after the first
20 search on the 8th also triggers the serial search
21 concern, and -- and really the 10th -- um,
22 because the searching on the 10th, as I -- I may
23 be wrong about Mr. Pevytoe's testimony. I -- I
24 know he arrives in the afternoon on the 9th, and
25 I guess I don't remember right now, but I can

1 look at my notes. Um --

2 THE COURT: Well, let me address that,
3 though. The --

4 ATTORNEY STRANG: Sure.

5 THE COURT: I thought that the State's
6 argument that the searches of the house and the
7 garage were completed earlier was premised on
8 statements from the officers who participated that
9 they had found everything that they wanted after
10 what the defense characterized as the search. The
11 difference with the burn area is, it's my
12 understanding that the initial items found on the
13 8th immediately triggered a desire to search it
14 further because it looked like burn fragments, and
15 then later people who knew more about it came in.
16 Maybe I'm missing --

17 ATTORNEY STRANG: No --

18 THE COURT: -- something.

19 ATTORNEY STRANG: -- I -- I think that's
20 right. And there -- there -- there was initial
21 searching on the 8th as I recall. Um, and then
22 I'm trying to remember when -- I was just trying
23 to remember when the search on the 10th starts,
24 and if -- if Mr. Pevytoe or Mr. Ertl gave us a
25 time of day. I didn't note it in my notes. I

1 apologize. Um, but -- but, as I say, by the
2 10th, you're in the serial searching and you're
3 also, at some point, bumping up on the -- the
4 statutory expiration of the warrant.

5 So that -- that would be the -- the
6 second or alternate argument that -- that we're
7 making in that respect.

8 THE COURT: Okay. Mis -- Mr. Fallon?

9 ATTORNEY FALLON: Thank you, Judge. The
10 hallmark of any interpretation or application of
11 the Fourth Amendment under current standards is
12 reasonableness. And reasonableness is determined
13 by the totality of the circumstances under which
14 an exercise of judgment occurs. And, in effect,
15 that's what we have here, an exercise of judgment
16 based on an assessment of facts.

17 The testimony educed during the course
18 of the trial does nothing to undermine the
19 original Court's ruling on the motion to suppress
20 and the lengthy briefing that occurred in
21 relation thereto.

22 In fact, I would argue to the Court that
23 the testimony, uh, elicited during the course of
24 the trial does nothing but further support,
25 further augment, and demonstrate the

1 reasonableness of the law enforcement efforts
2 involved in this case. Uh, and not to --
3 unnecessarily redundant, but I think it certainly
4 bears in mind that we're looking at a piece of
5 property of approximately 40 acres in size, with,
6 as I recall, 15 buildings in total, 4 residences,
7 and somewhere between 3,800 and 4,000 junked
8 cars.

9 It is within that context that law
10 enforcement obtained and executed a search
11 warrant on Saturday, November 5. As -- as I
12 indicated, I believe the warrant -- uh, they
13 returned to the property with the warrant at
14 about 3:25 p.m. on Saturday, began execution
15 thereof short -- shortly thereafter.

16 Again, I focus the Court's attention on
17 the fact that there were searches on Saturday,
18 two sweeps and one initial search on Saturday
19 evening, which are apparently not at issue.

20 The first search of the garage on
21 Satur -- on Sunday morning is not at issue. And
22 as a result, we're looking at sub -- subsequent
23 searches to each of those locations.

24 Again, the premise upon which the
25 Court's original decision was made remains firm

1 and is still a valid premise, it's still a valid
2 justification for denying the motion to suppress,
3 and that is, there was one warrant and one
4 continuous ongoing search of various locations.

5 The defendant's argument has legs. It
6 holds water if, and only if, one looks at it in
7 one microscopics point in time and one location
8 in time.

9 As the testimony of Agents Fassbender,
10 uh, and Investigator John Ertl from the Crime
11 Lab, uh, even Mr. Wiegert yesterday, and numerous
12 other officers, including, interestingly enough,
13 Special Agent Pevytoe, yesterday, indicates that
14 he was, um, bouncing around on a -- various sites
15 on both Friday and Saturday, uh, touching base
16 with colleagues on other locations both in the
17 salvage yard and beyond the salvage yard. So you
18 have one continuing search.

19 I find Counsel's argument most
20 interesting with respect to the burn pit, that
21 that's somehow not to be considered part of the
22 search or that somehow law enforcement should
23 have, uh, worked in the pit, as it were, sooner
24 than they did.

25 Um, let me digress here momentarily to

1 make one observation with respect to, uh, the
2 privacy interest or this whole curtilage argument
3 and just make one observation. Just because
4 someone evinces a motive to conceal, and just
5 because they take acts in furtherance of their
6 concealment, and just because they exercise
7 dominion or control over a particular item,
8 doesn't necessarily, under all sets and
9 circumstances, uh, establish a privacy interest
10 in the area which society is necessarily, uh,
11 expected to honor and accept, as reasonable,
12 under all the circumstances.

13 And, again, I come back to that point.
14 There is nothing that refutes the argument that
15 that burning, whether it's in a burn barrel on
16 the side of the road containing cell phone parts,
17 or a burn pit in the back of -- uh, from which
18 remains of a person are obtained, there's nothing
19 there that, um, disputes the fact that the
20 concealment, uh, also, in this case, goes hand in
21 hand with the a -- a -- abandonment -- uh, the
22 abandonment of whatever is in those items.

23 But, again, that's a digression, because
24 the Court need not reach that argument, although
25 I think it's supportive of the State's position.

1 What you have here is a continuing execution of a
2 search warrant. Day by day methodical process
3 engaged in by law enforcement based on -- upon
4 arra -- available resources, based upon
5 information which was coming in, literally, by
6 the hour, making an assessment as to its
7 importance, the need for the, um, dispatchment of
8 resources to address discoveries and the whatnot.

9 And in this particular case, uh, as
10 indicated, um, search of the burn pit was not
11 exactly the highest priority, nor was its
12 evidentiary significance apparent on Saturday or
13 Sunday. And -- and we have numerous bits of
14 testimony from Agents Fassbender and Mr. Ertl,
15 and the, uh, uh -- the handlers of the human
16 remains stuff.

17 But, again, returning to the question of
18 the pit in -- inferentially, I see nothing in
19 their argument that makes any sense whatsoever
20 about why the search of the pit is somehow
21 invalid because it occurs on the 8th, because it
22 occurs at that time upon the discovery of -- of
23 what looks like a piece of human bone in the
24 grass near the pit, which then draws the
25 attention of law enforcement officers and they

1 begin to work that information.

2 And, next, I would point out that, um, a
3 second warrant, and I'm not even convinced that
4 it was required, but, clearly, in a precautionary
5 safety mode effort, the officers did apply and
6 renew the original search warrant on Wednesday
7 afternoon, and that search warrant, as noted in
8 previous proceedings, was executed on Thursday.

9 Interestingly enough, um, Special Agent
10 Pevytoe had already begun working the pit. As I
11 recall his testimony quite clearly yesterday in
12 response to my question, he began Thursday
13 afternoon, shortly after the noon hour, after
14 working all morning here in Calumet County
15 sifting debris which is a -- was obtained from
16 that very same burn pit, mind you, uh, here at
17 the Sheriff's Office on Thursday morning.

18 He returned to the scene at that time
19 with the needed equipment and personnel to begin
20 processing this scene in greater detail. And by
21 the scene I mean the burn pit. So that
22 processing began, uh, on Thursday afternoon and
23 went late into the night as we heard Agent
24 Pevytoe describe.

25 So, clearly, we have a continuing

1 search, uh, based upon an evaluation of what has
2 occurred. What do we know so far? Uh, we had,
3 as Special Agent Sturdivant said with respect to
4 the pit, those bone fragments. I made the call.
5 I made the decision. I wanted to know if those
6 were human remains. I wanted to know if there
7 was reason to look at this pit more closely. I
8 wanted to know if they were Teresa Halbach's
9 remains. We packaged up as many as of we thought
10 were bones, sent them to the Crime Lab. They
11 made their way to Ms. -- to Dr. Bennett.

12 I believe we heard some testimony on,
13 uh, who in -- initially was able to make a
14 determination on Wednesday that there were some
15 human remains. And then, of course, we heard
16 testimony from Dr. Eisenberg that she began her
17 involvement on Thursday, the 10th. And,
18 interestingly enough, as we've heard from Agent
19 Pevytoe, there was discussion between, uh,
20 herself and Agent Pevytoe about the status of the
21 affairs at that time.

22 So, clearly, law enforcement's efforts
23 here, I premise all that, or put that all out
24 there, as evidence of the reasonableness of the
25 efforts undertaken by the officers to search what

1 they searched, when they searched it, and why
2 they did it, and the manner in which they did it,
3 because all those factors go back, again, to the
4 reasonableness of the manner of which the
5 searches were carried out.

6 And I think it's -- it's quite apparent
7 here, more important, to note that there's not
8 just one, but there were two search warrants here
9 authorizing the -- the efforts of law enforcement
10 here. And, again, any evaluation of
11 reasonableness must take into, um -- into, uh --
12 lost my train of thought -- must take into
13 account all of the facts, all of the
14 circumstances of what was being searched, not
15 just the 40 acres.

16 Uh, there were searches of all of the
17 surrounding gravel pits areas. There were, uh,
18 uh, the Radandt fre -- uh, gravel pit area, there
19 was the markings, uh -- the exhibit number
20 escapes me at the moment -- that, uh, Counsel
21 displayed even as late as yesterday in his
22 examination of Agent Pevytoe. There were
23 multiple sites. Uh, we had the, uh -- the -- the
24 Maribel park incident that pulled resources away.

25 So they were attempting to respond to

1 what they thought was the most important, most
2 needed information to be, uh, assessed and
3 addressed, and proceeded in accordance therewith.

4 So without repeating, uh, the arguments
5 any further than were made both in the briefs, in
6 which I note that abandonment was argued in the
7 briefs, as well as inevitable discovery premised
8 upon the additional warrant, all of this has
9 already been set forth in written argument and
10 the subject of the Court's previous decision.

11 So, in effect, we see nothing in the
12 evidence educed at trial which should cause the
13 Court to rethink that decision, and we ask the
14 Court not to, and continue to rule the evidence
15 admissible for proper jury consideration. Thank
16 you.

17 THE COURT: Anything else, Mr. Strang, on
18 that motion?

19 ATTORNEY STRANG: No. I -- I -- I think
20 a great deal has been said and I -- I'd probably
21 be repeating myself.

22 THE COURT: Very well. Uh, there's
23 another -- There is another, um, outstanding, uh,
24 motion, uh, regarding the, uh, renewal by the
25 defense of its, uh, fair forensic testing, uh,

1 motion. I know that, uh, originally I believe
2 Mr. Buting argued it for the defense and Mr. Gahn
3 wanted a chance to respond.

4 ATTORNEY FALLON: Uh, he did. Uh, as,
5 uh, indicated by, uh, Mr. Kratz, Mr., uh, Gahn
6 had some transportation issues. We expect his
7 arrival about 10:30, if that would be all right,
8 if we could defer that one until a little bit
9 later?

10 THE COURT: Very well. That's, um, what I
11 have as far as the inventory of -- of outstanding
12 prior motions. Uh, the Court understands that the
13 defense has a motion, or some motions, uh, to raise,
14 uh, following the close of the State's case. Uh --

15 ATTORNEY STRANG: Yes.

16 THE COURT: Who -- who wishes to be heard
17 on that?

18 ATTORNEY STRANG: I -- I'll -- I'll be
19 happy to argue those, Your Honor. The -- the
20 State now having rested its case in chief, um, my
21 motion is for judgment of acquittal on all four
22 counts, uh, now under consideration, and -- and
23 I -- I don't know if there's been a second
24 Amended Information filed or not. I maybe just
25 don't remember right now, but we've -- we've at

1 least referred to the four remaining counts here
2 as, uh, Count 1, first degree intentional
3 homicide; uh, Count 2, I think, is mutilating a
4 corpse; as I recall, Count 3 is the felon in
5 possession of a firearm count; Count 4 is, uh,
6 false imprisonment. So I move for a judgment of
7 acquittal and dismissal, uh, on all four counts.

8 Um, the -- the -- the argument I make,
9 uh, as to all four is that all of the evidence
10 presented in the State's case in chief, viewed in
11 the light most favorable to the State, drawing
12 all reasonable inferences, um, in favor of the
13 State at this point, but, of course, drawing no
14 unreasonable inferences that way, um, still, um,
15 by that standard, the evidence is insufficient to
16 warrant a reasonable fact finder in returning
17 verdicts of, uh, guilty on any of the four counts
18 under consideration, um, so whether we call it a
19 directed verdict or dismissal, uh, or an
20 acquittal, um, the relief we seek, uh, really is
21 the same, functionally, uh, now that the State
22 has rested its ca -- its case.

23 That's, as I say, the -- the -- the
24 general argument, and as to the first three
25 counts, I'll -- I'll stand on that argument.

1 I do want to amplify with some more
2 specific comments on Count 4, the false
3 imprisonment charge. When Mr. Avery first was
4 charged with murder of Teresa Halbach in
5 November, 2005, um, he faced two charges with
6 respect to that core set of allegations by the
7 State. One charge was first degree intentional
8 homicide and one was mutilating a corpse. Those
9 were joined, I think, without objection from the
10 defense, with the very first charge filed against
11 Mr. Avery as a matter of chronology under this
12 case number, which was the felon in possession of
13 a firearm, or at least that was the, uh -- the
14 warrant on which he was arrested.

15 So those three charges together stood
16 until, um, the State, uh, obtained some
17 statements from Brendan -- Brendan Dassey in the
18 end of February and the first day of March, 2006.

19 On March 1 and March 2, 2006, as this
20 record shows, and as we -- we had discussed a
21 number of times, uh, agents of the State appeared
22 at televised news conferences and laid out a
23 chilling, gripping story of the last minutes, or
24 perhaps hours, of Teresa Halbach's life. And
25 that story, in large part, was reflected in the

1 Criminal Complaint about -- at about the same
2 time against Brendan Dassey, and much of that
3 story found its way into the Amended Criminal
4 Complaint against Steven Avery, but added three
5 more charges. Those were first degree sexual
6 assault, kidnapping, and false imprisonment.

7 Added so far as the Complaint made
8 clear, and so -- insofar as any viewer of these
9 news conferences would have concluded, added on
10 the basis of Brendan Dassey's supposed confession
11 and allegations.

12 Now, we argued at -- at the time, I
13 think indisputably, the inadmissible nature of
14 Brendan Dassey's statements against Mr. Avery.
15 We lost that argument.

16 We sought to subject the new allegations
17 to the minimal testing of a preliminary hearing.
18 We lost that argument.

19 We sought an interlocutory appeal, or a
20 permissive appeal, because we thought strongly
21 that Wisconsin law required the ta -- the State
22 to put up or shut up to some degree, at least to
23 a probable cause level of admissible evidence, on
24 those three new charges. The Court of Appeals
25 declined to hear the permissive appeal.

1 This Court raised, by 50 percent, as I
2 recall, Mr. Avery's cash bail on the basis of the
3 new allegations attributed to Brendan Dassey.
4 And shortly before this trial, two of those three
5 added charges the State abandoned, acknowledging
6 the obvious to everyone else that the State
7 couldn't prove first degree sexual assault, the
8 State couldn't prove kidnapping, the State had no
9 admissible evidence. Indeed, I'm not sure the
10 State has inadmissible evidence to support those
11 two charges.

12 But over my objection, and in the face
13 of my motion to dismiss false imprisonment as
14 well, the State persisted, asserted its right to
15 decide what to go to a jury on, and at least
16 implicitly represented to the -- to this Court
17 that it would offer evidence sufficient to
18 establish at least the false imprisonment charge
19 that it wished to present. So that -- The Court
20 acceded to -- to the State's request, and we all
21 have to acknowledge that the prosecution, in
22 general, gets to decide, uh, what charges to go
23 forward to on those that have been bound over and
24 on which the defendant has been arraigned, and I
25 said at the time that if the State fell short, I

1 thought there might be grounds for a mistrial.

2 Why? Because the false imprisonment
3 count here is the last vestige of the
4 unsupported, inaccurate, uncorroborated claims of
5 Brendan Dassey that were broadcast by agents of
6 the State to everyone who had a TV turned on in
7 this part of the state that threatened the right
8 to a fair trial, that threatened the right to
9 have a jury drawn from the venue in which this
10 cr -- crime was charged, and that curled the hair
11 of anyone who listened to the description of a
12 naked woman manacled to a bed, sexually
13 assaulted, stabbed, throat cut, strangled when
14 slashing of her throat didn't kill her, and then
15 only later, a corpse, shot 11 times. That was
16 the story. That was the horror story that was
17 present. And the false imprisonment charge, as I
18 say, is the last vestige of that horror story.

19 And the State went forward with it. And
20 what we have here, now that the State has
21 presented its entire case in chief, what we have
22 here is nothing to support a belief that Brendan
23 Dassey had anything to do with Steven Avery on
24 October 31, 2005. Nothing to support the notion
25 that he had anything to do with anything criminal

1 in which Mr. Avery may have been engaged.

2 Again, giving the State the benefit of
3 all reasonable inferences and viewing the
4 light -- the evidence in the light most favorable
5 to the State, anything Mr. Avery may have done on
6 October 31, there is nothing that has been
7 presented to show that Brendan Dassey had a
8 culpable connection to any of it. There is
9 nothing to suggest that Ms. Halbach ever was in
10 Mr. Avery's bedroom, let alone restrained there,
11 let alone assaulted there, let alone stabbed
12 there, or with her throat slashed.

13 Indeed, the physical evidence beyond
14 serious dispute, beyond peradventure that
15 physical evidence has destroyed or revealed the
16 inaccuracy of that horror story. It was a fable.
17 An ugly, horrific fable, but a fable, all the
18 same, belied by the physical evidence and by the
19 testimony in the State's own case in chief.

20 And we now learn that the cause of
21 death, in the State's view, isn't stabbing, it
22 isn't throat-slashing, it isn't strangling. What
23 is it? It's two gunshot wounds to the head. The
24 gunshot wounds that, according to the Complaint
25 and the news conferences, were supposed to have

1 been fired after she was dead, now become the
2 cause of death. Not 11, but 2.

3 Do we know at all? Do we have any basis
4 to draw reasoned inference from the State's case
5 in chief about where those gunshots were fired?
6 From how far away? In what position Ms. Halbach
7 was at the time? Whether she was alive at the
8 time? Who fired the gunshots? On that, we have
9 evidence that the gun that fired at least one of
10 the bullets was found in Steven Avery's bedroom,
11 and that shell casings found in the garage were
12 identified, also, as having been fired by that
13 gun.

14 So, again, viewing the light in -- or
15 the evidence in the light most favorable to the
16 State, one might say that a reasonable jury,
17 perhaps, could find that Mr. Avery was the one
18 who fired the bullet that later we are told has
19 Teresa Halbach's DNA on it. I don't think that's
20 a reasonable interpretation of the evidence as a
21 whole, but let's spot the State that one. We
22 still don't know where, when, from how far away,
23 or in what condition Ms. Halbach was at the time.

24 And to the extent that the State's
25 evidence has put her in Mr. Avery's house at all,

1 the rich irony, of course, is that that rests --
2 that inference rests on one offhand statement of
3 Mr. Avery to which Detective Remiker testified, a
4 statement of the defendant that was undisclosed
5 with which we were caught at surprise at this
6 trial.

7 And beyond that, what we have here,
8 viewed in the light most favorable to the State,
9 is Bobby Dassey's testimony that he saw Ms.
10 Halbach walking toward Steven Avery's trailer.
11 Not that she went in, not that Mr. Avery had any
12 interaction with her, but saw her walking toward
13 his trailer after taking photographs of the van.
14 That's it.

15 No reasonable jury here, viewing the
16 light -- the evidence in any light, could infer,
17 reasonably, from here that Ms. Halbach was
18 restrained or confined by Mr. Avery in his house
19 in any way. Of course, walking into somebody's
20 house isn't an unlawful confinement or restraint.
21 We do that all the time. People visit other
22 people's homes. Strangers are admitted. That's,
23 in itself, no proof of an intentional and
24 unlawful confinement or restraining. And, at
25 best, that's what the State has as to the home.

1 The State has no evidence at all putting
2 Teresa Halbach, herself, in the garage. Her
3 blood isn't found there. What is found there is
4 a bullet, four months later, on which her DNA is
5 identified. Not her blood, but her DNA.

6 How the bullet comes to be there we
7 don't know, but it's lying out on the floor under
8 an air compressor four months after the garage is
9 searched repeatedly, and that's the only
10 connection, immediate though it is, between
11 Ms. Halbach and the garage as a possible place of
12 confinement.

13 Moreover, if she ever was in the garage,
14 we don't know. We have no evidence on which we
15 can do anything more than speculate that she was
16 alive when she was in the garage. And while you
17 certainly can mutilate a corpse, or treat a
18 corpse unlawfully, you can't confine or restrain
19 a corpse. And this Court acknowledged that in
20 its preliminary instructions to the jury on the
21 essential elements of false imprisonment under
22 Section 940.30 of the Wisconsin Statutes. So the
23 garage isn't a place in which a reasonable jury
24 can find Ms. Halbach was restrained or confined
25 under any view of the elements.

1 And that leaves the Toyota by my lights.
2 The Toyota has, uh, bloodstains in the rear cargo
3 area that a reasonable jury certainly could
4 conclude were made by bloodied hair up against
5 the passenger side wheel well of the rear cargo
6 area. A reasonable jury certainly could conclude
7 that this was Teresa Halbach's blood. There was
8 ample testimony from Sherry Culhane to warrant
9 that conclusion.

10 But if the State's theory is, as it now
11 apparently is, that the cause of death was being
12 shot in the head twice, two gunshot wounds, the
13 State presented that evidence from Leslie
14 Eisenberg and from Dr. Jeffrey Jentzen, then
15 Teresa Halbach was dead when her hair was
16 bloodied by a hole in the occipital bone and a
17 hole in the parietal bone. We have nothing else
18 here. Nothing on which a reasonable inference
19 would arise, from which an infer -- a reasonable
20 inference would arise that there was any other
21 reason for bloodied hair but two gunshot wounds
22 to the head.

23 Now, if that happened, if that was the
24 cause of death, highly speculative, but let's set
25 that aside for the sake of argument, if that was

1 the cause of death, then, again, it's a body in
2 the back of the Toyota, not another person. Not
3 a living human being. Not only is that the -- a
4 reasonable inference, it's the only reasonable
5 inference if one credits the State's cause of
6 death. The State has produced no other evidence
7 that would suggest another cause of death.

8 So what we're left with in the end is
9 nothing on which a reasonable jury, acting on
10 evidence and reasonable inferences from evidence
11 rather than on horror stories or fables or
12 imagination or guesses, could come to a conclu --
13 conclusion here that the State in its case in
14 chief has proven the essential elements of false
15 imprisonment beyond a reasonable doubt.
16 Beyond -- Nothing that would allow a reasonable
17 jury to find those essential elements proven
18 beyond a reasonable doubt.

19 So I'm asking the Court to, in a sense,
20 ratify what the State has already done, which is
21 the abandonment of this charge and the
22 abandonment of a theory that Brendan Dassey had
23 anything to do with this or that the story that
24 Brendan Dassey told under police questioning has
25 any veracity, corroboration, or foothold in the

1 evidence presented at this trial.

2 THE COURT: Before I hear from the State,
3 uh, I'm going to check something in my office.
4 We're going to take a five-minute break and we'll
5 come back.

6 (Recess had at 10:03 a.m.)

7 (Reconvened at 10:11 a.m.; jurors not
8 present.)

9 THE COURT: Who will be arguing this motion
10 for the State? Mr. Kratz?

11 ATTORNEY KRATZ: Yes. Thank you, Judge.
12 The posture -- procedural posture of this
13 particular argument is hardly unique to the case
14 of, uh, State vs. Avery. Any serious, um, case,
15 or any, uh, defense attorney, uh, worth, uh, his
16 weight at all, brings motions to dismiss at the
17 close of the, uh -- the State's case, and, uh,
18 although, uh, not at all meaning to, uh, demean
19 or to discredit the defense attorney's, um,
20 bringing this particular motion, uh, it is, uh,
21 procedurally very common.

22 That having been said, Your Honor, the
23 standard that the Court must apply, Mr. Strang
24 has, uh, accurately indicated, uh, that is, in
25 considering the light -- or excuse me,

1 considering the evidence in the light most
2 favorable to the State, the evidence, uh, if,
3 believed, uh, and, uh, if rationally considered
4 by the jury, would be sufficient to prove the
5 defendant's guilt beyond a reasonable doubt.

6 Importantly, in this case, uh, is the
7 jury instructions that not only talk about direct
8 evidence, but also include that of circumstantial
9 evidence, because this jury, and, uh, at least
10 by, um, application to this motion, this Court
11 can and should not only consider direct evidence
12 that has been, uh, presented, but, also,
13 reasonable inferences. That is, any inference
14 that -- and in -- in this posture, that this
15 Court could, uh, reasonably infer, uh, based upon
16 a fair consideration of all the evidence in the
17 case.

18 Mr., uh, Strang, although arguing for
19 dismissal of the, uh, first, uh, three counts,
20 makes no specific, uh, arguments, uh, as to those
21 bases, uh, most of his, uh, argument as to the
22 Count 4, which is, in fact, included in the
23 second Amended Information, uh, which is a charge
24 of false imprisonment, and, therefore, my, uh,
25 response to Mr. Strang will, uh, in kind, uh,

1 most, uh, predominantly, uh, relate to that
2 count.

3 False imprisonment, as this Court knows,
4 uh, is a count which does not usually, uh, stand
5 alone. False imprisonment is a crime that is
6 usually charged with another more serious crime.
7 In this case, a homicide. Sometimes, uh, a
8 sexual assault, sometimes a carjacking, or
9 robbery, or, uh, something like that. But it is,
10 uh, almost by definition, a crime of motive.
11 That is, requires juries to consider why. Why is
12 somebody confined? Why is somebody restrained?
13 Why is somebody, uh, held or compelled, uh, to
14 remain in a place against their will? Again,
15 usually in conjunction with another crime.

16 And although it would be a luxury, uh,
17 to have, uh, whatever evidence the State might,
18 uh, believe, uh, it has available to it, uh, and,
19 most notably, and, uh, I guess, most pointedly to
20 Mr. Strang, uh, noting Mr. Dassey's, uh,
21 involvement, Mr. Dassey's statement, uh, and
22 although academically we can talk about, well, if
23 the State had Mr. Dassey available and had his
24 testimony available in this case, uh, what might
25 this jury consider?

1 The fact of the matter is, Judge, we
2 don't. We don't have Mr. Dassey available. And
3 so you, the Court, and the jury, eventually, will
4 have to consider the evidence that is before it,
5 not the evidence that might be, or the evidence
6 that's been excluded, or the evidence that has
7 been ruled unavailable to the State, but that
8 which the State does have. And, again, we're
9 entitled at this stage of the proceedings, uh, to
10 have this Court consider not only the evidence,
11 but the inferences that may draw therefrom.

12 I mention, Judge, that the false
13 imprisonment, uh, count, itself, is a charge of
14 motive. Uh, that is, the "why". And, as Mr.,
15 uh, Strang, digressed, uh, at least briefly, to,
16 uh, some procedural parts of this case, uh, I
17 feel it necessary to do the same. The State
18 attempted in this case to show this jury, uh, the
19 why. That is, why would this kind of crime --
20 why would the very crime, the false imprisonment,
21 have taken place?

22 Uh, on nine separate motions brought by
23 this State, uh, we were unsuccessful in something
24 called "other acts motion". That is, uh,
25 attempting to show this jury, uh, the very

1 history of this man, Mr. Avery, uh, of his, uh,
2 not only violent history, uh, but also his, uh,
3 very history of assuring compliance, uh, with,
4 uh, other young women at gunpoint. Uh, that, uh,
5 if, uh, allowed in this case, uh, may very well
6 have ended this discussion right there.

7 But, again, we don't have those kinds
8 of, uh, evidence available, at least,
9 unfortunately, in the State's perspective, uh, to
10 present or to argue in this case.

11 Importantly, or maybe just as
12 importantly, uh, during this trial, uh, we
13 attempted to provide and have the jury consider
14 evidence of Ms. Halbach, herself, and her state
15 of mind. That is, whether Ms. Halbach would
16 voluntarily go into Mr. Avery's trailer. The
17 Court may remember the testimony of Ms. Pliszka,
18 uh, when the State at least elicited, or
19 attempted to elicit, testimony about a prior
20 contact between Ms. Halbach and Mr., uh, Avery,
21 where Ms. Halbach felt creepy, uh, about Mr., um,
22 uh, Avery, and that, uh, she very much would not
23 have voluntarily gone into Mr. Avery's trailer.

24 And although not available, uh, to the
25 State in -- at least for, uh, this part of the

1 trial, uh, I make -- uh, I may renew, as this
2 trial goes forward, uh, our request to introduce,
3 uh, just that evidence. But we are, as I
4 mentioned, entitled to inferences. And the
5 inferences still available, that is, that
6 Ms. Halbach would not voluntarily go into Mr.,
7 uh, Avery's trailer, would not, certainly, uh,
8 voluntarily, without compulsion, or without being
9 compelled, uh, remain there where harm could come
10 to her.

11 So back to my original premise, Judge,
12 that this is a crime of motive, that is, a crime,
13 uh, typ -- typically accompanied by a more
14 serious crime or series of crimes, I'm asking
15 this Court at this stage of the proceedings to
16 consider all of the evidence and to consider the
17 in -- the inferences that may draw therefrom.

18 The Court can probably, uh, uh,
19 understand that these kinds of crimes are not
20 usually committed with lots of witnesses around.
21 In this case there's no victim to tell the story,
22 uh, of what happened, and so, necessarily, the
23 jury, and in this case the Court, will have to
24 rely upon those inferences.

25 The State believes, Your Honor, uh, that

1 inferences can be drawn in this case. First of
2 all, the State can and is asking this Court to
3 draw the inference that the defendant's motive,
4 that is, his request to have Ms. Halbach come to
5 his property, was not an innocent, uh, request,
6 was not an innocent motive.

7 We've argued that he's lured Ms. Halbach
8 to his property by using the name, B. Janda.
9 Although Mr. Strang may argue that one inference,
10 uh, may be that that is innocent in nature, uh,
11 the State is entitled to an inference that
12 supports conviction. That is, that it's not a
13 coincidence that Mr. Avery used an alias, used a
14 different name to lure Ms. Halbach.

15 That becomes important when we talk
16 about the second part of this case. That is,
17 when Ms. Halbach actually gets to the property.
18 We've heard testimony from Bobby Dassey, uh, that
19 he saw Ms., uh, Halbach walk towards the trailer.
20 That he took a shower, and when leaving to go
21 hunting, uh, and coming out to, uh, his truck, he
22 saw nobody in the vicinity of, uh -- did see Ms.
23 Halbach's vehicle.

24 We're entitled at that point, Judge, to
25 the inference that Ms. Halbach is inside of

1 Mr. Avery's trailer. Uh, although Mr., uh,
2 Strang characterizes that as speculation, uh, the
3 State certainly believes that that is a
4 reasonable inference not just that this Court can
5 draw, but that a jury, eventually, uh, can draw.

6 We have to, for the next inference,
7 Judge, go to the end of the case, uh, in order
8 to, uh, ask the Court to draw the inferences in
9 the middle, and that is, where is Ms. Halbach
10 killed? The State believes, as Ms. Strang --
11 Mr. Strang has, uh, accurately indicated, that,
12 uh, Ms. Halbach was killed in the garage.

13 I think it is, um, uh, although an
14 inference, not a reasonable inference, uh, that
15 Ms. Halbach was shot, uh, while she was al --
16 already in a -- a -- a -- a -- a state of being a
17 corpse when she was deceased, the reasonable
18 inference is that you shoot somebody in the head
19 to cause their death.

20 And so where this happened, as Mr., uh,
21 Strang I think rhetorically asked, although I
22 will answer that question, the inference is, in
23 the garage, because the bullet, uh, which passed
24 through Ms. Halbach's body, is in the garage.
25 You've heard testimony, Your Honor, as to the

1 weapon that was used, by experts, as to the shell
2 casings that came from that weapon, as to the
3 bullet that came, uh, from that weapon, to the
4 exclusion of all others.

5 And so while Ms. Halbach was killed in
6 the garage, and while she -- the inference was
7 earlier in Mr. Avery's trailer, the inference
8 that we're asking this Court, and eventually the
9 jury, to draw, is that, uh, she is transported
10 from the trailer to the garage.

11 We're asking, Judge, and I think
12 reasonably, uh, asking, that the inference is
13 also that she wouldn't do that voluntarily.
14 Again, not just because of the statements of
15 friends and family, Mr. Pearce, and others, uh,
16 as to warnings as to not going into individuals'
17 homes and the like, uh, but just the surrounding
18 circumstances, and circumstantial evidence, and
19 common sense, uh, should dictate, uh, that she
20 would not, uh, go from a place, that is, from a
21 trailer, uh, to a place, uh, where she was killed
22 in the garage without being compelled to do so.

23 Again, Judge, there may be other
24 reasonable inferences. There may be other
25 inferences that can be drawn. But at this stage

1 of the proceedings we are entitled to the Court's
2 inference that supports a conviction. We're
3 entitled to those reasonable inferences, uh,
4 that, if believed by a jury, would lead to a
5 conviction. Permis -- permissive inferences, uh,
6 are not, again, just unique, uh, to this part of
7 the proceedings, um, but are, uh, oftentimes
8 applied by juries when I mentioned the
9 consideration of circumstantial evidence.

10 There aren't very many cases as, uh, we
11 discussed, at least, uh, parenthetically, uh,
12 yesterday directly on this topic, uh, although
13 there are some cases on false imprisonment,
14 itself, and many of those cases are reflected or
15 adopted in the jury instruction, itself,
16 Instruction 1275, uh, when, uh, false
17 imprisonment, or the confinement, or restraint
18 can be proved by acts, by words, or by a
19 combination, uh, of the two, uh, and so the
20 combination here of acts, uh, or words, the acts,
21 of course, uh, being the, uh, pointing, uh, of a
22 firearm at another, uh, the words, uh, whatever
23 there may -- they may have been, all do, uh, I
24 believe, uh, support the reasonable inference
25 that Ms. Halbach's, uh, freedom of movement was

1 compelled. That is, that she did not go
2 voluntarily to the garage, the ultimate place
3 where she was killed.

4 Once again, Judge, uh, we are not here,
5 we are not before this Court, uh, arguing
6 whether, uh, the case, uh, is proved, uh, beyond
7 a reasonable doubt. Simply, if a jury, or if
8 this Court at this time, when considering the
9 facts in a light most reasonable and most
10 favorable to the State, would, um, uh, support a
11 conviction, and it does.

12 Uh, we have, uh, other evidence. I'm
13 not going to belabor the point as to the where
14 and the when, uh, statements, uh, by, uh,
15 Mr. Fabian, uh, statements by others, uh, who may
16 place a timeline as to where Ms. Halbach was or
17 what, uh, she may have been doing.

18 Uh, the bottom line, uh, does, however,
19 suggest, I think, quite reasonably, uh, that her,
20 that is, Ms. Halbach's, uh, freedom of movement
21 was, in fact, uh, restrained, was -- she was, in
22 fact, confined, uh, that she was deprived of that
23 freedom of movement that, uh, individuals do
24 enjoy, that physical force, uh, although not
25 required, uh, I think it certainly was, uh, used

1 in this case, or at least threatened, uh, by use
2 of a -- a firearm, and the State is entitled to
3 those inferences.

4 Again, not what evidence that the State
5 wishes, uh, we could, uh, have presented in this
6 case, but the inferences from the evidence that
7 we have educed, uh, we do believe supports a
8 conclusion that the Count 4, the 4th count of the
9 Information, that is reasonably included in this
10 case, is supported by the evidence.

11 We'll ask the Court at this time to deny
12 the, uh, defense's motion, uh, for an acquittal
13 or for dismissal, uh, at this stage of the
14 proceedings, that is, after the State has rested
15 its case in chief. That's all I have, Judge.
16 Thank you.

17 THE COURT: Mr. Strang, anything in reply?

18 ATTORNEY STRANG: Yes, Your Honor. Uh,
19 although it came only at the end, I -- I
20 appreciate Counsel's concession that the proper
21 standard here for the Court is, uh, assessing the
22 sufficiency of the evidence, not assessing the
23 sufficiency of the proof that the State wishes,
24 or would like to have offered but did not.

25 So confining my reply to the evidence,

1 I'll start with this. Um, seems a small point,
2 but, perhaps, it's really not. The evidence is
3 undisputed that Teresa Halbach was 25 years old,
4 um, on October 31, 2005. The State's first
5 argued inference, um, in support of false
6 imprisonment is that she was lured to the Avery
7 property at all, um, by a -- by a lie, by a -- a
8 sham, or a pretense that, uh, Mr. Avery
9 undertook.

10 I -- I raised her age, because if it
11 were true that he lured her there, or that a
12 reasonable jury could find so, that wouldn't make
13 out false imprisonment as a matter of law.
14 Luring someone, an adult, a competent adult,
15 someplace, is not intentionally confining or
16 restraining them in that place.

17 Now, a child can be lured into a
18 secluded or enclosed place, and if the purpose of
19 luring the child there is one of several that the
20 child enticement statute, 948.07, sets out, then
21 that's a crime. But an -- but an adult, uh,
22 isn't falsely imprisoned by being lured to go
23 someplace under, uh, false pretenses, and
24 there's -- there's no decisional support or case
25 law that would support the luring theory of false

1 imprisonment here of which I'm aware.

2 In any event, uh, I also note in that
3 respect that the evidence is undisputed that
4 Ms. Halbach had been to this very address several
5 times before for the purpose of taking pictures.
6 The evidence is undisputed, offered by the State,
7 that there was a maroon van. Um, if -- if -- if
8 we -- we saw one picture we must have seen ten,
9 of the maroon van from -- from almost every
10 possible angle. I would -- I was going to offer
11 to buy the van myself in order not to see one
12 more picture of it. So that's undisputed.

13 It is undisputed in the evidence that
14 Barb Janda, B. Janda, was offering the van for
15 sale. That ev -- that evidence came from, uh,
16 Bobby and Blaine Dassey, at least, and it may
17 have been mentioned by Scott Tadych, although I
18 don't say that to the Court because I'm not
19 certain.

20 So, you -- you -- you know, even if
21 hypothetically luring an -- a competent adult in
22 some circumstances could amount to false
23 imprisonment, it doesn't here on the evidence or
24 on any reasonable inference from the evidence.

25 The State, next, hones in closer and

1 says, well -- offers an argument that perhaps the
2 place the jury can infer Ms. Halbach was falsely
3 imprisoned is Mr. Avery's trailer.

4 Now, Counsel, uh, accurately describes,
5 uh, how one reasonably could view Bobby's
6 Dassey's testimony, uh, insofar as Counsel went.
7 Uh, Bobby Dassey did testify that he saw Ms.
8 Halbach walking toward the trailer as he looked
9 out the kitchen window before taking a shower and
10 saw her car there. Bobby Dassey didn't say, and
11 no one else suggested, that Steven Avery was
12 outside, or was marching Ms. Halbach,
13 involuntarily, toward the trailer, or interacting
14 with her in any way, or even visible. Um, Bobby
15 Dassey does not see Steven Avery at the time that
16 he sees Ms. Halbach walking toward the trailer.

17 So, again, we've got nothing on which to
18 base an inference that she's walking toward that
19 trailer for anything other than a business
20 purpose, uh, that she's undertaking. Um, nothing
21 to suggest she's being compelled to do that in --
22 you know, in the sense that the false
23 imprisonment statute speaks of a confinement or
24 restraint, uh, absent someone's consent.

25 It is also true that Bobby Dassey does

1 not see Ms. Halbach or Mr. Avery immediately
2 after his shower, but does see her car.

3 Now, what -- what the State omits was
4 Bobby Dassey's testimony, not put in dispute,
5 that his shower was three or four minutes. It's
6 three or four minutes, roughly, between his two
7 observations out the kitchen window.

8 If Ms. Halbach, in fact, is in
9 Mr. Avery's trailer at all, and let's -- let's
10 assume that's a reasonable inference from Bobby
11 Dassey's testimony if its credited, if she's in
12 his trailer at all, we don't know what she's
13 doing there, what's being said, whether any
14 effort is being made to keep her there. And
15 three or four minutes, by itself, is not a time
16 frame that would raise an inference that somebody
17 is being held against her will, um, raises no
18 inference of that at all, especially in light of
19 the undisputed business purpose, um, that
20 Ms. Halbach had for coming to the property in the
21 first place.

22 So there -- there -- Again, there's
23 really nothing. It -- it collapses, as this
24 would be wild speculation to assume that she's
25 being confined or restrained behind the door, if

1 she is, in fact, in the trailer, that she's being
2 confined or restrained against her will. We've
3 got nothing on that.

4 Her blood isn't there. There isn't any
5 sign of a struggle. Uh, nothing. Um, none --
6 none of her blood, hair, you know, anything.
7 Saliva. Nothing's found, uh, evidencing her
8 physical presence in the trailer or, perhaps more
9 importantly, a struggle or some effort to
10 restrain her in any way.

11 So the State then moves next saying,
12 well, maybe there's a reasonable inference that
13 she's transported between the trailer and the
14 garage involuntarily. That's nothing but a
15 guess, if one looks back over the evidence the
16 State has presented.

17 No one sees Mr. Avery and Ms. Halbach
18 going from house to garage either alone or
19 together. Certainly, no one sees them walking
20 from house to garage, or otherwise moving from
21 house to garage, in a way that would suggest that
22 Ms. Halbach's doing this against her will.
23 Nothing. Just nothing on that.

24 In fact, the notion that she gets to the
25 garage at all, under any circumstances, rests,

1 again, on -- on another series of inferences.
2 Um, and tho -- those inferences are that she must
3 have been killed in the garage because the bullet
4 bearing her DNA later is found in the garage.

5 There, again, um, if she's killed in the
6 garage, that's maybe a first degree intentional
7 homicide or a homicide of some sort. We don't --
8 we don't have any idea if this is a contact
9 wound, or if it's -- the gun is fired from a
10 hundred feet away, or anything at all. You know,
11 what her -- her condition is in the garage or
12 what her interaction with a shooter is, even if
13 we assume she's shot, and assume that she's shot
14 in the garage, um, and we certainly have nothing
15 other than the bullet to tell us anything about
16 confinement or restraint in the garage.

17 His blood is found in the garage, but
18 hers isn't. So, again, on the evidence we have,
19 if the State hypothesizes that some effort was
20 made to clean up the garage, which, itself, is
21 speculative, there's no evidence of it, but if
22 that's the hypothesis, then somehow, selectively,
23 the person cleaning the garage was able to remove
24 Ms. Halbach's blood but not able to remove
25 Mr. Avery's blood, or distinguish between the two

1 sources of blood and deliberately left
2 Mr. Avery's blood while removing all trace of
3 Ms. Halbach's blood.

4 You know, it's, um -- it -- it -- it
5 collapses just by -- by explaining what the
6 undisputed evidence here is, and there's nothing
7 else suggesting confinement or restraint as
8 opposed to a gunshot wound in the garage.

9 Now, if, implicitly, this Court is being
10 asked to find that every homicide also involves
11 false imprisonment, that proposition can't stand.
12 There -- there isn't any legal support for it.
13 And if, indeed, every homicide did involve un --
14 false imprisonment, then false imprisonment would
15 be a lesser included offense, and one couldn't be
16 convicted of both of them anyway if, necessarily,
17 a false imprisonment happened -- false
18 imprisonment happens with every first degree
19 intentional homicide. Um, I don't think the
20 State really means to say that the mere fact of a
21 homicide establishes a false imprisonment. If
22 the State does, it's wrong.

23 THE COURT: Anything else, Mr. Kratz?

24 ATTORNEY KRATZ: Nothing, Judge. Thank
25 you.

1 THE COURT: All right. Let's take our
2 break this time. Uh, resume -- Hopefully, Mr. Gahn
3 will be here within 15 minutes, and, um, then the
4 Court will hear argument on the, um, fair testing
5 motion.

6 (Recess had at 10:39 a.m.)

7 (Reconvened at 10:58 a.m.; jurors not
8 present.)

9 THE COURT: At this time we're back on
10 the record and the Court will take up the, uh,
11 motion from the defense -- it's actually a
12 renewal of the, uh, forensic fair testing motion.
13 And, um, before I, uh, hear argument from
14 Mr. Gahn, uh, Mr. Buting, I'll give you a chance
15 to reiterate your motion. I didn't mean to catch
16 you unaware there.

17 ATTORNEY BUTING: No, I was not unaware,
18 it's -- I've been told the table mike doesn't
19 work so I was trying to put this thing on.

20 THE COURT: Okay.

21 ATTORNEY BUTING: Um -- All right.
22 Thank you, Judge. This motion, although I don't
23 mean to make it sound this way, really is kind of
24 a, I told you so, because when we were here on
25 March 17, I have the transcript, uh, that's when

1 our motion for fair forensic testing was actually
2 heard. We filed it earlier than that, a couple
3 weeks earlier than that, and I predicted that
4 what would happen is there would be contamination
5 and there would be consumption of all of the
6 evidence related thereto.

7 Because of that, I asked for one of two
8 remedies, either that the defense expert be
9 present to observe or that it be videotaped. The
10 videotape remedy, had that been granted, probably
11 wouldn't have made a difference other than we
12 would have had a clearer record of how it would
13 have been contaminated and we would have had a
14 record of whether or not Ms. Culhane's
15 explanation that she was just talking and somehow
16 her saliva managed to find its way into a control
17 was credible.

18 But had -- had our expert been there,
19 um, when it became obvious, she probably would
20 have talked to him and said, look at the bullet,
21 it is such that I'm only going to be able to do
22 it once, or that we're not going to be able to
23 cut it in half. And an agreement might have been
24 reached at that point of a way to -- to separate,
25 once she puts the bullet into solution, to -- to

1 divide that solution, buffer, I think she called
2 it, in half, to preserve half for the defense.

3 At a minimum, she could have done that
4 on her own by simply, uh, you know, cutting it in
5 half, saving a buffer, running the first half of
6 the buffer. If, at that point, she's not getting
7 a high enough quantitation from that -- from that
8 amount, then she might have had at least a better
9 argument to say, okay, I got to use it all. I
10 got to consume it all.

11 But, instead, she didn't. She just took
12 it upon herself, knowing in her own mind, as she
13 described, that this was probative evidence, she
14 took it upon herself to, uh, wash the bullet in
15 one buffer solution and to, uh, consume that in
16 her test, leaving nothing left for independent
17 testing.

18 Now, I pointed out that the, uh --
19 there's **Arizona v. Youngblood** and the **Trombetta**
20 cases, also Arizona, I believe, United States
21 Supreme Court decisions, are, uh -- talk about,
22 um, the problem when there's a des -- a -- a
23 destruction of evidence, and the Supreme Court
24 had said, at any rate, that the -- the remedy
25 of -- of suppression, or even, potentially,

1 dismissal, is only available if the State acts in
2 bad faith when they destroy potentially
3 exculpatory evidence.

4 Um, that's, obviously, a pretty high
5 burden. It has to be more than negligence, but I
6 think that there's reasons to believe that we --
7 that there is bad faith here on the part of the
8 State. And I say that for this reason: We
9 asked -- made a reasonable request for fair
10 forensic testing in this case. We did so
11 explaining clearly on the record that this case
12 was unusual because of the allegations that were
13 made, before we even came into the case, by
14 Mr. Avery that somebody was -- was planting
15 evidence, messing around with the evidence, and
16 that for that reason, this case deserved,
17 warranted, required, a little different procedure
18 to protect his rights, as well as the public's
19 rights, to be sure that -- that, uh, process is
20 properly being done.

21 The State resisted that, and did so
22 while arguing that, uh, we don't have to worry
23 about things like this. We have a fine Crime
24 Lab. We have an accredited Crime Lab. Uh, we
25 can't allow Mr., uh, Friedman, Dr. Friedman, or

1 any defense expert, to be there while it's being
2 tested because, by gosh, that could increase the
3 chance of contamination. Well, what do we hear
4 happened?

5 She -- Ms. Culhane introduces other
6 people into the very process, herself, while
7 she's doing a training program. Now, how, having
8 a defense expert present, would increase --
9 greater increase the risk of contamination than
10 doing that, I don't know.

11 Um, so while arguing on the one hand
12 that defense experts shouldn't be allowed because
13 it would increase the risk of contamination,
14 Ms. Culhane then acts in a way that is directly
15 contrary to that, and she's got at least two
16 people, I don't recall how many trainees, I think
17 she said two, um, which, obviously, should
18 increase the risk even more than would have been
19 had a defense expert been there.

20 In addition, Mr. Gahn acknowledged that
21 there are circumstances where, um -- when -- when
22 it appeared that there might be complete
23 consumption of a piece of evidence, where it is
24 warranted for the State and the defense to -- to
25 work on agreement that the defense expert is

1 present when that's being done.

2 Um, Mr. Gahn has been a big champion of
3 independent testing. And his -- his remedy for
4 all of this was, don't worry, Judge, they can
5 retest. They have an opportunity to retest that
6 will protect, uh, an -- any outcome. Well, it
7 doesn't work. I -- I told the Court back then
8 that it -- that it does not work if the
9 material's already contaminated.

10 And, here, she did testify that she had
11 the extract that could have been retested, but
12 that's clearly an insufficient remedy when the
13 contamination, if at all, occurred, most likely,
14 during the extract process anyway. So if it's
15 contaminated at that point, then the extract,
16 itself, is going to be contaminated. And the
17 surest evidence of that, the surest evidence that
18 simply retesting the extract would not be a
19 sufficient remedy for the defense, is her own
20 unit deviation request. I forget the actual
21 exhibit number, but it's in the record.

22 And what she says is, under the proposed
23 deviation, quote, normally the sample would be
24 re-extracted, but in this case there is no sample
25 to re-extract. According to our current

1 protocol, this sample could only be used for
2 exclusionary purposes. However, in this case,
3 she then proposes the deviation of -- from
4 protocol.

5 So if the existence of a remaining
6 portion of the extract was sufficient to, uh --
7 if Mr. Gahn's going to argue that somehow we
8 could test that, and that that would protect Mr.
9 Avery's interests in the, um -- this crucial
10 evidence, that totally undercut by her own
11 admission that she can't extract anything else.
12 She didn't retest the extract, herself, because
13 she knew, as Mr. Gahn does, that that does not
14 constitute independent testing. That's just the
15 retesting of a contaminated, uh, product which
16 will confirm the contamination that's already
17 occurred.

18 Second, now, or finishing the second
19 point, I believe it is, which is that Mr. Gahn
20 says -- acknowledges that there are times when
21 having the defense expert present is -- is
22 warranted, and -- and those circumstances are
23 when it appears that there's only one chance, one
24 shot at the test, uh, we had that here. We had
25 it here. He acknowledged it.

1 And, yet, his own agent of the State,
2 the -- the Crime Lab analyst, um, clearly also
3 recognized that this was going to be a one-shot
4 deal and went ahead and did it, knowing that a
5 month earlier we had filed a motion that the
6 Court had ruled just two weeks earlier, because
7 her test, as I recall, was going on around
8 April 3, um, I believe the testimony was the
9 bullet arrived -- bullet fragment arrived, I
10 think, the day before our motion was decided, it
11 was May -- March 16, and she was beginning the
12 extract process the end of March and into the
13 beginning of April, no call to the defense to
14 say, hey, you were right, this is the situation
15 where there's only one chance to test this
16 evidence, would you like to have your -- your
17 expert there, or would you -- is there some
18 remedy or -- that you can propose? Nothing
19 like -- of that sort was done.

20 Instead, they went ahead and consumed it
21 deliberately knowing what this Court's ruling was
22 as well, which I'll get to in a moment.

23 The, uh -- I also pointed out that one
24 of the reasons for my motion was because the
25 public was beginning to learn in other parts of

1 the country that this sort of thing happened in
2 crime labs. It had been kept under wraps for
3 years. Finally, it was coming out, and I
4 mentioned that there was 17 states now in which
5 incidents had occurred, either fraudulence,
6 mistakes, contamination, or all of the three, um,
7 in crime labs in those states.

8 This Court, though, said -- Let me just
9 find it in quote. This Court said, I will --
10 quote, I'll al -- I will -- I'm sorry. This is
11 on page 43 of that transcript of March 17.

12 THE COURT: Thank you.

13 ATTORNEY BUTING: At the bottom of the
14 last paragraph. Quote, I will also note that
15 although there have been incidents of mistakes in
16 other crime labs, and I think anytime you're
17 dealing with human beings that's always a
18 possibility, I'm not aware that our State Crime
19 Lab has ever been involved in this type of thing.

20 Now, this is said in front of Mr. Gahn,
21 it's on March 17, and we now know that at that
22 moment the Crime Lab in Wisconsin had a re --
23 recorded history of contamination incidents going
24 back for years.

25 The State did not disclose that to the

1 Court, um, and I would, on that point, note, by
2 the way, uh, there is -- there's been some
3 inference that somehow, uh, the -- the
4 discovery -- in fact, I think there was an
5 argument that -- that -- at the hearing that
6 the -- the defense is going to get all the bench
7 notes, and lab notes, and the printouts, and --
8 and can have their own expert look at that, and
9 if that's an adequate remedy -- The contamination
10 log is not part of discovery in these cases. It
11 was not received as part of the discovery request
12 in this case. It was only received by me because
13 I made a specific request when I had some
14 information that, perhaps, a log of this sort was
15 being kept.

16 The Crime Lab initially resisted, and
17 then -- then -- then, initially, turned over a
18 redacted copy that had lack -- blacked out all of
19 the other case numbers so that, perhaps, they
20 were afraid that it would get out and other
21 defense attorneys in other cases would be able to
22 see, hey, there was contamination on my case.
23 Eventually, Mr. Gahn, to his credit, did prevail
24 upon them to provide an un-redacted copy, and
25 that's in the record now here.

1 But on March 17, when this Court was
2 under the impression that our Crime Lab had no
3 such history, the State did not correct the
4 Court's misconception. Mr. Gahn either knew or
5 should have known about that, or, when he then
6 learned about it, perhaps he should have gone
7 right back to the Crime Lab after hearing what
8 the Court's, uh, belief was, and said, hey, is
9 there any history of the -- of contamination that
10 I need to know about that -- to correct the
11 Court's misinterp -- impression. The State did
12 not do that, and so this Court's ruling was based
13 upon, uh, incorrect information withheld by the
14 State.

15 The sum of all of these, uh, points, I
16 think, constitutes bad faith sufficient under
17 ***California v. Trombetta*** to warrant in the -- the,
18 uh, suppression, or perhaps even greater remedy,
19 uh, of the evidence that the State did consume --
20 And in this instance what I'm focusing on -- only
21 focusing on here is Item FL, the bullet fragment
22 from -- on which they claim Ms. Halbach's DNA was
23 discovered during a test that was contaminated,
24 uh, uh, clearly had a contaminated control, and
25 by inference may also have been

1 cross-contaminated, which is something that I
2 pointed out.

3 So I would ask, first, the remedy that
4 that be suppressed, that the jury be
5 so-instructed. Alternatively, if the Court does
6 not believe that it rises even to the level of
7 bad faith to -- to require that kind of a remedy,
8 certainly it rises to the -- to the level that
9 this jury should be instructed of the three
10 following things:

11 Number one, that the State resisted the
12 defense attempts to be present during this test.

13 Number two, that the State totally
14 consumed the bullet fragment evidence without any
15 attempt to preserve a portion of it for
16 independent defense testing.

17 And, number three, that the State
18 withheld evidence that existed before the test of
19 Item FL, that the Wisconsin Crime Lab had a
20 recorded history of contamination incidents.

21 I don't know that this remedy would be
22 adequate, and I'm asking for something greater,
23 but I think at a minimum, uh, given the conduct
24 of the State in this case, this Court should
25 adopt that remedy at a minimum. Thank you.

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THE COURT: Mr. Gahn?

ATTORNEY GAHN: Yes, Your Honor. In *State v. Noble*, which is at 246 Wis. 2d 533, um, the principles, um, that Wisconsin cases have derived from United States Supreme Court decisions in *Trombetta* and *Youngblood*, and I quote from the *Noble* case, the defendant's due process rights are violated by the destruction of evidence if, number one, the evidence destroyed was apparently exculpatory and of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means, or, two, if the evidence was potentially exculpatory and was destroyed in bad faith. And I think that's the analysis that the Court must apply in Mr. Buting's motion.

The issue for, uh, the fair and independent testing to have, uh, an expert present was decided by the Court. I think that's a completely different issue than what we're discussing here.

Um, when Mr. Buting brought up at the March 17 hearing about other crime labs, uh, he was bringing up what are referred to as scandal issues. And there were some scandals in other

1 crime labs. And, um, the Wisconsin Crime Labs in
2 Milwaukee or Madison, neither of them have been
3 involved in any type of scandal issues of the
4 nature that Mr. Buting was referring to.

5 I think that we have to put this in
6 perspective, and I think part of the Court's
7 ruling, um, that it made in March 17 was the
8 reasonable -- reasonableness of the request of
9 the defense.

10 You have to look at what a State Crime
11 Lab operates and how they operate, and as Ms.
12 Culhane stated, since I think it was January 1 of
13 2001, have examined over 50,000 samples of DNA,
14 and she went through the procedure of how they
15 examine these samples, and first is that
16 extraction process and then it goes to the
17 quantitation.

18 And it -- it came out in the testimony,
19 also, you just don't know if you even have DNA.
20 You don't even know if you have a biological
21 substance these days, and the DNA testing is so
22 sensitive that until you get past the
23 quantitation stage, you don't even know if
24 there's anything there, and you don't even know
25 if that's even going to amplify and you're even

1 going to get an end result. And that's just the
2 nature of the science.

3 And when you're dealing with something
4 like that, it would be absolutely unreasonable to
5 have to stop everywhere along the way when you're
6 doing 50,000 samples, almost 10,000 a year, and
7 stop and say, wait, we have to call every defense
8 attorney, we have to, you know, see if they want
9 someone to come in. You can't stop that process
10 like that and wait and put it off for two weeks.
11 It would be a -- an absolutely -- so burdensome
12 that no crime lab could even operate to have to
13 stop every time.

14 And everyone knows, and I'm sure Your
15 Honor is knowledgeable, articles in the paper,
16 and just the last election, the backlog at the
17 Crime Lab is, um -- is -- is huge, and this would
18 just add to that burden of getting cases out.

19 In any event, Mr. Buting has been trying
20 to, I guess, inform the Court that this
21 contamination, uh, log is something that is,
22 um -- it rises to a level of a scandal. I think
23 the testimony from Ms. Culhane was clear. Um,
24 it's maintained, it's kept, it's used for
25 corrective action.

1 Um, I -- I disagree with Mr. Buting when
2 he says there's resistance by the State to turn
3 over the contamination logs. He requested them
4 and I obtained them. But of -- in 50,000 samples
5 in about five years there were 89 cases of
6 contamination. That's all. This isn't a scandal
7 issue. This is normal course of business. You
8 expect contamination when you're dealing with
9 forensic samples. This is something that one
10 expects and you do your best to prevent it.

11 But, um, I -- I just don't see how 89
12 out of 50,000 is -- raises to a level of, um,
13 what Mr. Buting feels is a -- is a scandalous
14 issue.

15 I found a, um -- my review of a A.L.R.
16 article. Uh, basically, I'd like to summarize,
17 uh, one of the statements from the A.L.R.
18 article, and it was from 40 A.L.R. 4th at 594.
19 In my review of the case law, it is found that
20 with respect to hard, physical evidence, it is
21 generally held that, uh, the necessary
22 consumption of evidence in state crime labs does
23 not violate the defendant's rights even though
24 the defendant is prevented from subse --
25 subjecting any of the hard ev -- physical

1 evidence to test by his own expert.

2 But that's not even the case here. Now,
3 I know that Ms. Culhane did not do a second
4 washing, and I believe there was questions on
5 cross-examination about that, but the bullet
6 still exists. And due to the sensitivity of
7 this, uh, DNA, a second washing could be
8 possible, uh, to try and extract DNA from that
9 bullet.

10 But, secondly, and more importantly, as
11 Ms. Culhane testified, the extract tube is
12 available, and that is available for testing, and
13 the defense can run this with their own control,
14 and Ms. Culhane made it very clear the
15 contamination was in the control, not on the
16 evidentiary item. So the evidentiary item
17 still -- the, uh, fact that bullet is available,
18 as well as the extract tube.

19 However, any independent defense testing
20 will likely find the same inculpatory DNA profile
21 that Teresa Halbach is on the bullet, and -- just
22 as Ms. Culhane did. So far, the defense has made
23 no effort to explore either of these options.
24 They've had the discovery in this case for a
25 very, very long time, and they could have, a very

1 long time ago, asked for the extraction tubes or
2 the bullet to at least attempt their own
3 re-examination of the DNA contained on those
4 items.

5 THE COURT: Let me stop you there, because
6 that was one of my questions in anticipation today.
7 Did, uh -- did the -- And this is for both counsel.
8 Did the report, uh, from Ms. Culhane to the defense
9 disclose not only the results of the testing but
10 the, um, contamination problem with the control?

11 ATTORNEY GAHN: Yes. The report that
12 she filed stated that her profile was in the
13 control.

14 THE COURT: And when was that provided
15 exactly?

16 ATTORNEY BUTING: I believe the date of
17 the report is May 8. Is it the May 8 report?

18 ATTORNEY GAHN: It -- it may be the
19 May 8 report. I -- I know that --

20 ATTORNEY BUTING: I think we -- we got
21 it in --

22 ATTORNEY GAHN: It would have been the
23 May 8 report because it was in, um, March that
24 the bullet was, um, discovered and I believe she
25 did her extract later that month. So it would

1 have been the next report, which would have been
2 the May 8 report.

3 ATTORNEY BUTING: I think we probably
4 got it in a -- a packet from June. Um, we got a
5 big packet in early June. Let me just see here.
6 Yes, Item FL is in the May 8 report, and I think
7 that was first, to answer the Court's question,
8 turned over to us in June. We, of course, did
9 not have any lab notes, lab sheets, until
10 sometime after that but...

11 THE COURT: Well, how did the report
12 reference the contamination in the control sample?

13 ATTORNEY GAHN: I --

14 ATTORNEY BUTING: I'll read it, if you'd
15 like.

16 THE COURT: Go ahead.

17 ATTORNEY BUTING: It's in a manner,
18 frankly, that I think is -- it -- I mean, it's --
19 it's truthful, but it's not exactly --

20 ATTORNEY GAHN: If -- if you'd just read
21 it --

22 ATTORNEY BUTING: -- as --

23 ATTORNEY GAHN: Why don't you just read
24 it there, Mr. Buting.

25 ATTORNEY BUTING: The profile developed

1 from the bullet fragment, Item FL, and the
2 interior of the driver's door handle, Item IG,
3 which isn't relevant here, but are consistent
4 with the profile developed from the pap smear,
5 Item EF, reportedly collected from Teresa
6 Halbach. And it says, see laboratory reports,
7 earlier ones.

8 The manipulation control extracted with
9 the bullet fragment, Item FL, contains DNA that
10 is consistent with this analyst.

11 And then it goes onto another, um -- you
12 know, another item is tested. So...

13 ATTORNEY GAHN: So it was revealed in
14 that report, but also all the bench notes, the
15 raw data, all the, um, electropherograms, which
16 they're called, was provided to the defense, and,
17 um, was available for their expert to review.
18 And a review of the raw data and a review of all
19 of the reports clearly showed that issue, the
20 manipulation control with Ms. Culhane's, um,
21 profile in it, um, all of that was provided to
22 the defense for their expert, and, um -- and I
23 will say it was used, um, uh, very, um,
24 efficiently by the defense in their
25 cross-examination of Ms. Culhane.

1 Um, at the very least, the defendant has
2 offered, I think, no proof, um, that the bullet
3 was apparently exculpatory, or that the State
4 acted in any type of bad faith.

5 But, also, I -- I think, one has to look
6 at this in the context of this case. The
7 defendant, as I gather, has used this
8 contamination issue and deviation from protocol,
9 uh, regarding this bullet, um, sort of in their
10 overall conspiracy, planting, frame-up, bias,
11 rush to judgment type defense that the police,
12 basically, had manufactured evidence against
13 them. Um, I just don't believe that even a
14 **Trombetta** or an **Arizona v. Youngblood** analysis is
15 even warranted.

16 So I respectfully ask the Court to deny
17 the defendant's motion to sup -- to suppress
18 that, um, evidence for the stated reasons.
19 Basically, nothing exculpatory was suppressed by
20 the State. There's no evidence to test -- There
21 is evidence available to test, um, but the
22 bullet, likely, has only inculpatory value. Um,
23 they're welcome to retest the extract and share
24 those results with us. We'd be more than happy
25 to see it.

1 I'm confident that their expert, at an
2 accredited lab, would test the extract and find
3 Ms., uh, Halbach's DNA profile on the bullet.
4 Um, I just don't believe there's any bad faith by
5 the State. So I thank you, Your Honor. That's
6 all I have.

7 THE COURT: Mr. Buting?

8 ATTORNEY BUTING: Yes, I -- I have some
9 response. Um, first, it -- it's a total red
10 herring to say that we can test the extract and
11 get any information that's independent of what's
12 already occurred, and Mr. Gahn knows that. If
13 the ex -- if the -- if the sample is contaminated
14 in the extraction process, then the extract will
15 be contaminated, too. It's -- it's just simple
16 common sense and it's supported by the fact that
17 the -- the analyst, herself, did not bother to
18 retest.

19 THE COURT: Now, wait. Let-- let's stop
20 there, because I -- I know I had trouble
21 following the testimony as it came through. It's
22 my understanding that the control that was
23 supposed to be blank was contaminated with the
24 operator's DNA, but that the extract was -- was
25 not. What -- Substantively, what calls into

1 question the, uh, validity of the results on
2 the -- on the bullet?

3 ATTORNEY BUTING: Okay. Sure. I'll --
4 I'll explain that.

5 THE COURT: Go ahead.

6 ATTORNEY BUTING: The problem is,
7 when -- when there's evid -- the -- the control
8 is run along together in this little block we --
9 she sort of mention -- uh, demonstrated it, um,
10 in these various little tubes, or whatever --
11 their -- their vials, or whatever they're called,
12 they're all run together through this same
13 instrument at that particular, uh, process.

14 The -- the sample -- the bullet that --
15 that gets extracted by, she said a -- a wash that
16 she said that -- I mean, she said did consume,
17 and one could reasonably expect would consume,
18 whatever DNA was on there, is taking place on her
19 lab bench. If she's capable of contaminating the
20 control with her own, then that's evidence of
21 cross-contamination right there.

22 She's also testified that at -- in that
23 very same bench she's had Teresa Halbach's DNA,
24 and that it's as reasonable an inference that
25 she's able to cont -- cross-contaminate from that

1 to the bullet fragment as it is that she
2 contaminated her own on the control.

3 And it's for that reason that the
4 protocol says, when you get a contaminated
5 control, you throw it out, because you cannot
6 assume that the evidence sample, itself, has not
7 also been contaminated.

8 THE COURT: Okay. The other question I had
9 is, um, let's suppose that the defense had had, uh,
10 an observer there. Um, perhaps the observer would
11 have been able to provide an explanation for how Ms.
12 Culhane's DNA found its way to the control sample,
13 and, uh, the State could have used that at trial.
14 But her -- The State did, in fact, cross-examine her
15 about that at trial. It certainly goes to the --
16 the weight or the validity of her test results.

17 What -- what did the defense lose, uh,
18 the way the testimony came out, that it -- that
19 it would have gained had an observer been there?

20 ATTORNEY BUTING: Okay. Had a defense
21 expert been there, the very first step where
22 she's analyzing the sample -- I recognize that --
23 that there's several different ways to get -- to
24 test for DNA. Most of what she did, I think,
25 here were -- were these cotton swabs, where

1 there's a apparent stain, and then the swab is
2 taken, and then it -- it absorbs whatever the
3 substance is, and you can cut it and save a
4 portion of the swab.

5 Um, but in a case like this, she chose
6 not to do that. She chose not to swab it. So a
7 defense expert would have said either we want you
8 to -- to use a swab, like you did in every other
9 test, swab the bullet and then cut and save half
10 of it, or, if she really felt it was necessary to
11 put it into this little buffer and -- and, uh,
12 dissolve it that way, to preserve half of that
13 ex -- that buffer before it gets done -- before
14 anything else gets done with it so that that
15 could be retested. More likely, it would have
16 been do the swab.

17 If you've got the forceps to hold the --
18 the -- the bullet with a forceps, you take a
19 swab, and you swab it around, and you get
20 everything you can get, just like she did with
21 the key and other items, then we would have half
22 of that, uh, swab that would have been preserved
23 for retesting. Instead, we only have extracts
24 that have been, uh, potentially already
25 contaminated.

1 Did that answer the Court's question?

2 THE COURT: Yes, it does.

3 ATTORNEY BUTING: Okay. Can I address a
4 couple of other --

5 THE COURT: You may --

6 ATTORNEY BUTING: -- points?

7 THE COURT: -- continue, yes.

8 ATTORNEY BUTING: Thank you. Um, the --
9 Counsel's right that there's sort of two
10 different levels, um, that -- that a -- a Court
11 engages in -- in -- under **Trombetta**, which is
12 whether evidence is apparently exculpatory and
13 destroyed versus when it's potentially
14 exculpatory and destroyed.

15 I'm not out -- I'm not arguing the
16 evidence was apparently exculpatory and was
17 destroyed, because then it would be even easier.
18 You don't have to show bad faith. Um, mo -- this
19 case, like most, fall in the category where
20 evidence is potentially exculpatory and then
21 destroyed, and if you can show bad faith, then --
22 then the remedy is warranted.

23 Um, there's always an argument the State
24 always says whenever they get a result that
25 favors them, see, it would have been inculpatory.

1 But there's no reason to think that the result
2 would be potentially exculpatory because, look,
3 we tested it, and it came back inculpatory.

4 But what -- what Mr. Gahn's ignoring
5 here is, looking at all of the evidence as a
6 whole, you have to consider how -- what's the
7 likelihood of it being potentially exculpatory?
8 There were two bullet fragments found. The other
9 one did not have, um, Ms. Halbach's DNA found on
10 it. So that's at least fifty-fifty that this one
11 wouldn't either.

12 Secondly, of all of the other 180 or
13 more items that she looked at and tested, none of
14 them had Teresa Halbach's DNA on it. This was
15 the only one. So if the odds are 1 out of 180
16 that this would be potentially inculpatory, it's
17 obviously much more likely, in my view, if it had
18 been properly tested and preserved for -- in a --
19 in a test, to have been shown to be exculpatory,
20 not inculpatory.

21 Um, also, Mr. Gahn says is this process
22 is -- would be burdensome and, um, the Crime Lab
23 has a backlog, they -- they can't stop and call a
24 defense expert every time they're in the middle
25 of these tests. The Court's not being asked to

1 make some sweeping decision that applies to every
2 test. We're focused on Mr. Avery's case.

3 And the unique circumstances of
4 Mr. Avery's case are that before this sample was
5 consumed, we asked the Court for relief, and we
6 put the State on notice, and despite that notice,
7 the State, nevertheless, went ahead and consumed
8 this cru -- this piece -- crucial piece of
9 evidence.

10 Secondly, focusing directly on this
11 case, Mr. Gahn said that she was testing a lot of
12 items, and you can't tell until you go to the
13 quantitation that there's even DNA. That's true.
14 But what she also testified to was her personal
15 knowledge that this particular item of evidence
16 was probative in her view. It fit the -- the
17 message that she'd gotten on the phone to try and
18 put -- somehow put her into the house or the
19 garage, and, indeed, she said the reason she
20 applied for this deviation request, for the first
21 and only time of her entire career, was because
22 she knew that this was a probative piece of
23 evidence.

24 So it's not like this was just some
25 random 1 out of 180 pieces that may or may not

1 have DNA. She knew ahead of time the potential
2 value, and the -- and the importance of it.

3 The contamination log and -- and the
4 comments that I made on the 17th were not
5 limited, by the way, to scandals in the crime
6 labs. What I said was, quote, on page 29, now 17
7 states, crime labs in 17 different states, have
8 been found to either -- I'm sorry -- to have
9 either had fraudulent behavior by one of the
10 analysts, or erroneous test results,
11 incompetence, everything, the entire spectrum of
12 problems, that results in false tests.

13 That in some instances, in Kansas, for
14 instance, resulted in the correct suspect being
15 released, going out and committing another
16 offense. And in other instances, innocent people
17 being wrongly identified through DNA testing, and
18 only later, fortuitously, was it determined that
19 the mistake was made, closed quote.

20 This exhibit, 346, which is the
21 contamination log from the Wisconsin State Crime
22 Lab, shows serious instances way beyond just
23 contamination of controls, and, in fact, on
24 the -- it's -- it says page 7, but I think it's
25 more than page 7 here, on a date of November 22,

1 '05, Ms. Culhane, herself, admits that she had a
2 contamination where there was a carryover of the
3 sperm fraction into the manipulation control, and
4 that the result of that was that the D.A. refused
5 to proceed with charges, uh, and the case was
6 closed.

7 Now, we don't know whether that person
8 was really guilty and got off because she screwed
9 up, or whether the person was really innocent
10 and -- and justice was served. But these kinds
11 of mistakes, I don't care whether there's only 89
12 out of 50,000, they are important, and they
13 deserve to have the -- the -- the light of
14 transparency shined on them, shown on them, and
15 that is what we were trying to do when we asked
16 for this motion.

17 And so I think, in -- in total, when you
18 look at all of what's happened, I think that
19 there is bad faith for the ultimate remedy, or,
20 at a minimum, for the alternative remedy that
21 I've -- that I propose, or something similar to
22 that. Thank you.

23 THE COURT: Anything else, Mr. Gahn?

24 ATTORNEY GAHN: I would just say that
25 I -- I wish that, um, he had asked Ms. Culhane

1 about the specific instance that he read in the
2 contamination log. I think it's unfair to, uh,
3 derive some meaning from that, uh, without having
4 Ms. Culhane explain what happened in that case.

5 I think that, um, Counsel also is wrong
6 when he says Teresa Halbach's DNA was not found
7 in any of the samples. Good Lord, where was he
8 during her testimony? Ms. Halbach's DNA was
9 found in A1, A2, A3, A4. It was on the Pepsi
10 can. There was a -- a -- a -- She had Teresa
11 Halbach's DNA, um, in many, many samples. So
12 I -- I don't know how he says that there wasn't
13 any, um, testimony to that effect.

14 But I would, um, just -- And with, um --
15 Perhaps, Your Honor, would -- I had a partial
16 transcript prepared of, uh, Ms. Culhane's, um,
17 testimony on this issue, and I would just direct
18 your attention --

19 THE COURT: I -- I have received that, and
20 it's my understanding that counsel for the defense
21 has also got a copy; correct?

22 ATTORNEY BUTING: Yes. I have seen that
23 and I'm not going to re-argue it. It -- that's
24 the whole point about extracts.

25 ATTORNEY GAHN: But she answers the

1 question, um, Mr. Buting asked her. Therefore,
2 the extract was contaminated already; isn't that
3 right? And she states, the control was
4 contaminated with my DNA, not the extract.

5 THE COURT: I think I understand the
6 arguments of the two parties. All right. With
7 respect to -- Well, first of all, do I have all the
8 outstanding motions at this time? Uh, you have both
9 made, uh, good arguments. Um, the motions were in
10 consideration more than I can give in the next ten
11 minutes or so, so I'm going to, uh, do more
12 examination this weekend.

13 What I would suggest is this, so that we
14 don't hold up the jury, uh, I will, uh, present
15 decisions on the motions at 8:30 on Monday
16 morning. Uh, so let's plan on starting early at
17 8:30. The jury won't be here, but I expect
18 counsel to be here and, uh, the Court will issue
19 rulings on the motions at 8:30 on Monday, uh,
20 before we proceed to testimony before the jury.

21 ATTORNEY GAHN: Thank you.

22 ATTORNEY BUTING: Thank you, Judge.

23 THE COURT: Uh, otherwise, I'll see you at,
24 uh, 1:30, uh, with the jury.

25 ATTORNEY BUTING: Thank you.

1 THE COURT: They should be here by 1:15,
2 so at 1:30 we should be ready to go. We're
3 adjourned for this morning.

4 (Recess had at 11:38 a.m.)

5 (Reconvened at 1:30 p.m.; jurors not
6 present.)

7 THE COURT: We're on the record outside the
8 presence of the jury. At this time, uh, counsel, is
9 there anything either party wishes to place on the
10 record concerning, uh, exhibits?

11 ATTORNEY KRATZ: Yes, Judge. The -- Uh,
12 the State went through with, uh, your clerk, uh,
13 exhibits that were referred to, identified what
14 we believed were offered but she does not have
15 lif -- listed as offered, and, uh, we can go
16 through those at this time.

17 Photos that we would offer at this time
18 include 164 and 165. That's the evidence photo
19 of the .22 caliber and .50 caliber, um, rifles.
20 Item 416 --

21 ATTORNEY STRANG: Sorry, um --

22 ATTORNEY KRATZ: I'm sorry, 164 and 165.

23 ATTORNEY STRANG: Both are --

24 ATTORNEY KRATZ: Are pictures of the --
25 of the guns. One of each. Item 416, which is

1 the CV of Mr. Newhouse. Photos 458 through 463.
2 I'm sorry, Janet, I -- I don't know -- how do I
3 identify those? I can in just a minute, Judge.

4 THE CLERK: Those were the swabs.

5 ATTORNEY KRATZ: Oh. Those are the
6 swabs that, um, Dr. Lowe (phonetic) had
7 identified and referred to.

8 I will tell the Court that there are
9 other exhibits which have been marked and are not
10 being offered. I don't know if you want me to
11 put that on the record as well. I can do that.
12 I went through all those with Janet, as well, but
13 at -- at least from my perspective, um, those
14 that I've just identified are the balance of the
15 exhibits that we would offer that have not yet
16 been received by the Court.

17 THE COURT: Does the defense have any
18 objection to the admission of those exhibits?

19 ATTORNEY STRANG: Uh, no, we -- we
20 don't. Um, like to talk a little bit about some
21 that I'm -- I'm not sure have been offered or
22 not, but...

23 THE COURT: All right. The exhibits,
24 then, that were just mentioned by Mr. Kratz will
25 be admitted. Uh, Mr. Strang.

1 ATTORNEY STRANG: The only ones that I
2 wanted to talk about, and just nail down the, um,
3 status, are the, um, summaries of phone records.
4 Um, I -- Here's what I think I understand.
5 Initially, we were working toward a stipulation
6 on summaries of phone records that would have
7 names but not telephone numbers and only list
8 calls that the parties jointly thought relevant.

9 Um, I had asked for some changes to be
10 made to the -- the -- the two the State wanted to
11 offer, I think one for Teresa Halbach's cell
12 phone and one for Steven Avery's cell phone, and
13 I also wanted, um, um, the -- a summary for
14 Steven Avery's landline, which the State
15 originally had prepared, and I think we were in
16 agreement about the two relevant calls.

17 Um, my -- my current understanding is
18 that, um, counsel for the State did not agree to
19 my proposed additions, um, to those exhibits,
20 and -- and decided not to offer the summaries at
21 all, but I'm -- I didn't had a chance to confirm
22 that with Mr. Kratz, so I'm looking in his
23 direction.

24 THE COURT: Mr. Kratz?

25 ATTORNEY KRATZ: That's true, Judge.

1 The -- Mr., um, Strang proposed a, uh -- an
2 additional column to the State's prepared summary
3 exhibit, um, which the State believed
4 misrepresented the calls. There -- there's no
5 secret about this. Mr. Strang wanted the column
6 that said "answered" uh, on the exhibit.

7 Uh, "answered" we believed
8 misrepresented because it could have been either
9 to a voice mail or actually physically answered,
10 um, so rather than, um, argue back and forth, and
11 I appreciate that Mr., uh, Strang and I were not
12 able to come to a, uh, stipulation, I've simply
13 withdrawn my summary, Exhibits 360 and 362.

14 The records, themselves, uh, although
15 the, uh, records refer, as the Court knows, to
16 phone numbers rather than names, uh, have been
17 received by the Court. Uh, from my perspective,
18 that is, what the State intends, that with the
19 live testimony, I believe, that, uh, I can, uh,
20 get by with -- with those.

21 Uh, if, uh, Mr. Strang would, um, want
22 those other exhibits, uh, resubmitted, uh,
23 without the "answered", um, column, I'm certainly
24 willing to do that as well. But the fact remains
25 it's a State's summary exhibit, and -- and

1 whether the defense, uh, agrees or wants
2 something on it or not, they're certainly not
3 entitled to that, but that notwithstanding, uh, I
4 was happy to try to work something out with
5 Mr. Strang. That didn't happen. So I've simply,
6 uh, uh, agreed that those exhibits not be
7 received into evidence.

8 ATTORNEY STRANG: And -- and we're
9 actually not in disagreement about that. These
10 are State summaries. He's well within his right
11 to decline to modify them as I'm proposing. So
12 there's no rub on that. The only rub here, um,
13 and I'll -- I'll take the blame for this in the
14 sense that I probably let this go on for a couple
15 of days or three days longer than I should have
16 before checking back in with Mr. Kratz, I was --
17 not that he would know this, but I was relying on
18 an understanding that at least the Steven Avery
19 landline phone records, or summary of them,
20 would -- would come in.

21 Now, I don't think, as it turns out,
22 there's any disagreement about the two phone
23 calls from the Manitowoc County Jail about which
24 we had testimony through Investigator Wiegert,
25 uh, and I don't care whether it's a summary or

1 whether it's a page of those phone records,
2 themselves, that come in, um, I just -- maybe
3 this is something we can just stipulate that
4 document in. Um, I -- if -- I -- he's perfectly
5 fine to not offer the summaries and I don't have
6 any problem with the underlying records.

7 THE COURT: I understood, Mr. Kratz, the
8 concern about the, uh, phone records with respect
9 to, uh -- I assume they were Teresa Halbach's
10 records that would be answered? Issue? Was a
11 cell phone?

12 ATTORNEY KRATZ: Yes.

13 THE COURT: Um, is there any objection to
14 the, uh, summaries for the defendant's phone? The
15 landline phone?

16 ATTORNEY KRATZ: Only in the sense that
17 there's been nobody to put those in. In other
18 words, that would either have to come from
19 Mr. Avery or from somebody on -- on the other
20 end.

21 Now, in fairness to Mr. Strang, he asked
22 Mr. Wiegert yesterday, do you remember calls at
23 5:36 and 8:57? Uh, as an officer of the Court, I
24 can tell the Court those are the correct times.
25 I don't have a problem with that. The testimony

1 is in there just isn't a, um -- a summary of
2 that. Perhaps that's something Mr. Strang and I
3 can work out. I don't have --

4 ATTORNEY STRANG: Yeah.

5 ATTORNEY KRATZ: -- really any dispute
6 as to that.

7 ATTORNEY STRANG: Right. I -- I suspect
8 this will be worked out and I'm not trying to
9 force him to put in the two summaries. That's --
10 that's really is his decision as -- as he says,
11 um, so we can try to work out, uh, anything in
12 the record.

13 THE COURT: Anything else before we bring
14 in the jury?

15 ATTORNEY STRANG: Were there any other
16 exhibits that were withdrawn was the only other
17 question I had.

18 ATTORNEY KRATZ: There were some not
19 offered, if that's what you're talking about.

20 ATTORNEY STRANG: Um -- Oh, uh, and 372
21 I think has not been offered; is -- is that
22 right? The voice mail document. One of the two
23 that, uh, Mr. Zimmerman identified.

24 THE CLERK: That's correct.

25 THE COURT: That's correct.

1 ATTORNEY STRANG: Okay. Is the State
2 not offering --

3 ATTORNEY KRATZ: Oh, no, we -- we were
4 offering that. That wasn't included, Janet, this
5 morning.

6 THE CLERK: It was marked as a defense
7 exhibit.

8 ATTORNEY KRATZ: Yes, we would offer
9 that.

10 ATTORNEY STRANG: Okay. And that's --
11 there's no objection.

12 THE COURT: All right, 372 is admitted.

13 ATTORNEY STRANG: I think 361 is in.
14 That was the other Zimmerman exhibit.

15 THE CLERK: Yes.

16 THE COURT: Yes. The clerk informs it's
17 already admitted.

18 ATTORNEY STRANG: All right.

19 THE COURT: Very well.

20 ATTORNEY STRANG: Anything else that was
21 withdrawn?

22 ATTORNEY KRATZ: There was a
23 duplicate -- 492 is a duplicate. We simply gave
24 that back to the clerk.

25 ATTORNEY STRANG: And, then, um, 126 was

1 a -- was a defense exhibit. It's the CD of the
2 radio log dispatch, November 5. I -- if -- if --
3 I move that in if I forgot to at the time.

4 ATTORNEY KRATZ: No objection, Judge.

5 THE COURT: All right, 126 is admitted.
6 Anything else?

7 ATTORNEY STRANG: I don't think we've
8 covered all the withdrawn exhibits. Just so my
9 records are straight, then we're okay.

10 THE CLERK: I believe so.

11 ATTORNEY STRANG: Okay. We're set.

12 THE COURT: Uh, at this time we'll call in
13 the jury then. And, Counsel, I've been informed
14 there still is a member of the jury who's not
15 feeling well, so if we have a fast recess, you'll
16 know why.

17 ATTORNEY KRATZ: Okay.

18 (Jurors in at 1:41 p.m.)

19 THE COURT: You may be seated. At this
20 time, uh, we'll begin the defense case, then.
21 Mr. Strang, you may call your first witness.

22 ATTORNEY STRANG: Thank you, Your Honor.
23 The, uh, defense calls Lisa Buchner as its first
24 witness. She'll swear you in.

25 THE CLERK: Please remain standing. Raise

1 your right hand.

2 **LISA BUCHNER,**

3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:

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

7 THE WITNESS: Um, Lisa Buchner,
8 B-u-c-h-n-e-r.

9 **DIRECT EXAMINATION**

10 BY ATTORNEY STRANG:

11 Q Good afternoon, Ms. -- Ms. Buchner. You'll
12 probably have to stay somewhere close to the
13 microphone --

14 A Okay.

15 Q -- um, as it doesn't pick up very far away. Um,
16 back in, uh, October of 2005, did you live, uh,
17 in Manitowoc County?

18 A Uh, yes.

19 Q Did you also work in Manitowoc County?

20 A Yes.

21 Q Um, had you been in Manitowoc County for some
22 time at that point?

23 A Yes.

24 Q How were you working, uh, back in October, 2005?

25 A I drove school bus for Mishicot.

1 Q For the entire school district?

2 A Yes.

3 Q Okay. And when you say drove school bus for
4 Mishicot, were you assigned to one school, or
5 more than one school, or how did that work?

6 A Um, I picked up at, uh, Holy Cross, the elementary,
7 and the middle school, and high school.

8 Q Okay. So you're actually covering four schools?

9 A Yeah.

10 Q I mean, Holy Cross is one?

11 A Right.

12 Q And then there's, uh, Mishicot Elementary; is
13 that right?

14 A (No verbal response.)

15 Q Mishicot Middle School?

16 A (No verbal response.)

17 Q You'll have to say yes or no for --

18 A Oh, okay.

19 Q -- the court reporter. And the Mishicot High
20 School?

21 A Yes.

22 Q Okay. Uh, about how long did you drive school
23 bus for the Mishicot schools?

24 A About a year-and-a-half.

25 Q And you were doing that all -- all through the

1 month of October, 2005? That was in that
2 year-and-a-half?

3 A Yes.

4 Q Okay. Um, so would -- would your school bus --
5 was it -- is it a standard big longer yellow
6 school bus?

7 A Yes.

8 Q Okay. Would your school bus have kids from five
9 or six years old up to 17?

10 A Yes.

11 Q All right. And, um, did you have a morning
12 route, an afternoon route, or both?

13 A I had a morning and afternoon.

14 Q Okay. Uh, what -- what time would you start your
15 morning route?

16 A Um, I'm not really sure. I don't remember what time
17 I would have started in the morning.

18 Q Okay. Do you remember when you had to be at the
19 first school?

20 A To drop the kids off?

21 Q Right.

22 A Um, I don't recall.

23 Q Okay.

24 A I mean, I haven't drove bus all year so I --

25 Q Sure. And -- and it -- Actually, the exact time

1 isn't important, but what is important was did --
2 did school start at the same time everyday for
3 these --

4 A Yes.

5 Q -- schools? Okay. And then, um, same thing in
6 the afternoon? Did it let out at the same
7 time --

8 A Yes.

9 Q -- everyday?

10 A Yes.

11 Q Okay. So, um, I guess, um, in the morning, um,
12 where -- which school would you stop at first and
13 let the kids off after you picked them up?

14 A Uh, the high school.

15 Q And then would --

16 A The high school and the elem -- uh, the high school
17 and the middle school would get off together.

18 Q Because those two buildings are together?

19 A Yes.

20 Q Okay. And then where would you go from Mishicot
21 High School and Mishicot Middle School?

22 A Um, actually I would go to Holy Cross and drop off
23 first, and then I would go to the middle school and
24 high school and drop off, and then go to elementary
25 school.

1 Q Okay. And that's in the morning?

2 A Yes.

3 Q When you're dropping all the kids off? Okay. Is
4 that right?

5 A Yes.

6 Q Okay. All right. Holy Cross is just a private
7 school; is that --

8 A Right.

9 Q Okay. Um, and then, in the afternoon, um, where
10 would you first pick kids up at the end of the
11 day?

12 A Holy Cross.

13 Q Where would --

14 A At 2:30.

15 Q -- you go after Holy Cross?

16 A Uh, elementary school.

17 Q And then?

18 A High school, middle school.

19 Q Again, a joint --

20 A Yes.

21 Q -- stop?

22 A Yes.

23 Q Okay. Um, and, uh, do you remember what time you
24 had to be in the afternoon at the -- at the first
25 school, Holy Cross, to pick the kids up?

1 A I'd be there at 2:30.

2 Q Okay. And do you remember when you had to be at
3 the Mishicot Elementary School?

4 A At 2:45.

5 Q How about, then, at the, uh, middle school and
6 the high school?

7 A I'm not sure on the time. We just followed after the
8 elementary let out and everybody loaded the buses.

9 Q Then you would just -- as soon as the elementary
10 kids were loaded on, you'd go straight to the
11 high school --

12 A Yes.

13 Q -- and middle school? Okay. Um, and the
14 afternoon route, did you drive the same route
15 everyday, so to speak? I mean, stop at the same
16 places in the same order everyday?

17 A Yes.

18 Q Um, and what time would you typically finish?
19 You know, drop the last kid off in the afternoon?

20 A Um, 4:00.

21 Q Was that pretty predictable?

22 A Yes.

23 Q I mean, unless there was really bad weather or
24 something or --

25 A Right.

1 Q Okay. Um, and I take it everyday you'd be making
2 exactly the same stops unless --

3 A Somebody was not --

4 Q -- kid missed school or something?

5 A Yes.

6 Q Hm?

7 A Yes.

8 Q Okay. When we talk over each other, one --

9 A Sorry.

10 Q -- of our mikes cuts out, so... Um, were --
11 did -- did you pick up, uh, two boys, whose last
12 name was Dassey, back in October of 2005?

13 A Yes.

14 Q They -- they rode the bus every school day?

15 A Yes.

16 Q Okay. Did -- and did you pick them up in the
17 morning?

18 A Yes.

19 Q Where did you pick the Dassey boys up in the
20 morning?

21 A Right in front of their driveway.

22 Q And can you tell us sort of where that was?

23 A Uh, down -- I believe, it's Avery Road. Not really
24 sure.

25 Q How would you get to Avery Road?

1 A I would -- What do you mean?

2 Q What -- what -- what larger road would you use

3 to --

4 A 147.

5 Q -- get -- Okay. And then you would turn down

6 Avery Road?

7 A Yes.

8 Q Where would you go when you turned down Avery

9 Road?

10 A I would go to the end and pick the boys up in front

11 of their driveway and then turn around.

12 Q Okay. So when you say "the end", down to the end

13 of the paved road that ran north/south?

14 A Yes. It was a paved road and they were on a gravel

15 road.

16 Q That you're calling their driveway?

17 A Yes.

18 Q Okay. Um, as you're driving down Avery Road,

19 which -- uh, which side of you was the driveway

20 on?

21 A The right.

22 Q Okay. And then what did you do at the end of

23 that road? Or how did you go to the next stop

24 from that --

25 A I would have to turn around and come back out the

1 same way.

2 Q Turn the bus around --

3 A Yes.

4 Q -- and -- Okay. Do you remember that -- the
5 first names of the Dassey boys?

6 A Um, Blaine and Brendan, I think.

7 Q All right. And did -- then did you also drop
8 Blaine and Brendan Dassey off in the afternoon?

9 A Yes.

10 Q Um, in the same order that you dropped -- you
11 know, I mean, you would go in the same rote in
12 the afternoon?

13 A The morning route would be different than the
14 afternoon route, but they were always the same
15 everyday.

16 Q The afternoon route would be the same everyday?

17 A Yes.

18 Q Okay. Um, and what time did you find that you
19 got to that -- you know, the end of Avery Road
20 where you dropped the Dassey boys off?

21 A Um, between 3:30 and 4 -- or 3:40.

22 Q Between 3:30 and 3:40?

23 A Yes.

24 Q And how do you know that?

25 A Because it was about the same time everyday. Same

1 route.

2 Q Okay. Um, during the week of -- that began on
3 Monday, October 31, 2005, um, do you remember
4 seeing anything that, you know, you remembered
5 later when you dropped the Dassey boys off on
6 that -- that week?

7 A I, um, remember seeing a woman taking photographs.

8 Q Could you tell what the woman was taking
9 photographs of?

10 A A van.

11 Q And where -- where was the woman taking
12 photographs of a van?

13 A In the driveway.

14 Q The driveway you just described?

15 A Yeah. The one on the right.

16 Q Okay. About -- Could you see about how far down
17 the van was?

18 A It was right by the pavement. In the -- I mean,
19 right at -- right there. I don't know.

20 Q Okay. Um, remember anything about the van?

21 A It was -- No, it was junk.

22 Q Okay. All right. And, um, do you remember
23 where -- How did you know the woman was taking
24 photographs?

25 A I saw a woman taking photographs. I saw a camera.

1 Q Okay. Um, at the time, I assume, this was no big
2 deal?

3 A No.

4 Q All right. Uh, how is it that you later
5 remembered that?

6 A I remember, um, that I -- I was laying -- laying down
7 on the couch and I remembered that I made the comment
8 to myself, um, why would anybody take a piece -- a
9 picture of that piece of junk?

10 Q Okay. Um, and within a few days after this, um,
11 did -- were you encountering the -- the road
12 being closed off by police in that general area?

13 A The road was closed off, yes.

14 Q I mean, a few days after the -- you saw this
15 woman taking photographs of the van?

16 A Um, when I remembered, it was already closed off.

17 Q Okay. Um, now, as you sit here today, do you --
18 do you remember what day, exactly, of the week of
19 October 31 you saw the woman taking photographs
20 of the junky van?

21 A Uh, no I don't remember the day.

22 Q Okay. Do -- was there only one day when you saw
23 a woman in October, 2005, or early November, if
24 that's what it was, taking pictures --

25 ATTORNEY GAHN: Objection, Your Honor.

1 The -- He's leading the witness for a while now.

2 THE COURT: Um, well, I don't think that
3 last question's leading so I'm going to allow it.

4 ATTORNEY STRANG: Okay.

5 Q (By Attorney Strang) Was -- was there more than
6 one day in this time period when you saw a woman
7 taking photographs of the junky van?

8 A Uh, not that I remember. I only remember seeing one
9 woman taking pictures.

10 Q Okay. Um, do you personally know Steven Avery?

11 A No.

12 Q Uh, do you personally know any of Halbach family?

13 A No.

14 Q Okay. Um, I -- I -- I take it, if I understand,
15 you -- you simply happened to be a bus driver who
16 dropped the Dassey boys off?

17 A Yes.

18 Q And picked them up?

19 A Yes.

20 Q Um, when you saw this woman taking the
21 photographs, was -- was that when you were
22 dropping the Dassey boys off or some other time?

23 A Um, when I was dropping them off.

24 Q Okay. So in -- again, that would have been about
25 when? What --

1 A Three-thirty.

2 Q -- time of day?

3 A I'm sorry. Three-thirty to three-forty.

4 Q That's all I have. Thank you.

5 THE COURT: Mr. Gahn?

6 ATTORNEY GAHN: Yes, Your Honor.

7 THE COURT: You may proceed.

8 ATTORNEY GAHN: Thank you.

9 **CROSS-EXAMINATION**

10 BY ATTORNEY GAHN:

11 Q Good afternoon, Ms. Buchner. Um, do you recall
12 when you, um, reported this? What -- Your
13 observations to the police?

14 A I believe it was Saturday.

15 Q Saturday? Could -- could it have been, um,
16 Monday? The following Monday? On -- on
17 November 7 --

18 A Could have been.

19 Q -- do you recall? Okay. And do you remember,
20 um, how did you contact the police?

21 A I walked up to the barrier.

22 Q And, um -- and what prompted you to -- to go to
23 the police?

24 A Because I had remembered seeing a woman taking
25 pictures.

1 Q Okay.

2 A And I thought maybe I should say something.

3 Q As a good citizen?

4 A Yeah.

5 Q Okay. And, um, do you, um, remember who you
6 talked to?

7 A Um, when?

8 Q Uh, when you reported this.

9 A Uh, when I walked up to the barrier, and there was a
10 woman cop, and I spoke -- spoke to a male cop, but I
11 don't remember the name.

12 Q And this was over at the Avery Salvage Yard you
13 went to report this; correct?

14 A It was -- it was at a barrier by my house.

15 Q I'm sorry? By where?

16 A By my house where I lived.

17 Q Do you live nearby?

18 A Yeah. I did.

19 Q Do you -- so -- where did you live, then?

20 A I lived, um, on County Road Q.

21 Q And how far was that from the Avery Salvage Yard?

22 A I don't know. Not far. I don't --

23 Q Uh, did you drive over there or walk over there?

24 A I walked to the barrier at the intersection.

25 Q Okay. And -- and when you say "the barrier", you

1 mean the barrier over at the Avery Salvage
2 Yard?

3 A No. The barrier at the intersection of Q and -- and
4 147. The barrier --

5 Q But then from there did you go further to the,
6 um -- towards the Avery property?

7 A An -- another day I did. They called me back a
8 different day.

9 Q Oh. And -- and -- All right. So -- Did you talk
10 to anyone or tell anyone that first time you went
11 to the barrier?

12 A Tell them what?

13 Q What you just -- what you're telling today?

14 A Yes.

15 Q And then you say you went back again?

16 A And gave a statement.

17 Q Okay. And do you remember to whom it was you
18 gave a statement?

19 A No.

20 Q Okay. Could it have been Detective -- Officer
21 Wiegert, here?

22 A Um --

23 Q He's sitting right here behind --

24 A The glasses? I -- I think I was in his -- in his
25 cruise -- in his cop car. I don't -- I don't

1 remember. There was a cop I talked to, too, and then
2 somebody in a building.

3 Q And was that over by the Avery Salvage Yard?

4 A Yes.

5 Q Okay. All right. Um, and you -- you told him on
6 that day these observations of yours; correct?

7 A Yes.

8 Q And you can't tell us, though, to the exactly
9 what day it was you made these observations?

10 A No.

11 Q And can you say for sure whether it was the week
12 of October 31?

13 A No.

14 Q Could it have been before October 31?

15 A Yes.

16 Q Could it have been a week before?

17 A Yes.

18 Q Could it have been two weeks before?

19 A Yes. I -- I don't know.

20 Q So you don't know exactly when it was you saw
21 this woman taking pictures?

22 A No.

23 Q And do you remember -- Well, let me ask you this:
24 How close did you get to her?

25 A I have no idea how far away it would have been. I

1 was in a school bus, dropped kids off and drove away.

2 I'm --

3 Q I mean, um, five feet? Ten feet? Twenty feet
4 away?

5 A Um, not really sure.

6 Q Um, two blocks away?

7 A No.

8 Q Okay. Could you just give us an idea --

9 A Um --

10 Q -- of how far away she was when you saw her? And
11 it's okay if you can't.

12 A I -- I have no idea.

13 Q And that's okay. Um, and do you know where the
14 vehicles were that she was taking photographs of?

15 A They were at the end of the driveway.

16 Q And at the end of the -- where you enter the
17 Avery property?

18 A The, uh -- the gravel driveway to the right off of,
19 um, Avery Road by the mailboxes.

20 Q By -- Um, if you were to see a diagram of that
21 property, could that help you?

22 A Yes.

23 Q Very good. Thank you, ma'am. I'm putting up,
24 um, what has been previously, in this trial,
25 ma'am, as Exhibit 81, and I'm going to ask you,

1 does that have the road that you would drive down
2 to pick up or drop off the boys?

3 A The, um, road where all the cars are parked? That's
4 Avery Road?

5 Q Okay. Is it -- And -- and to -- are you sh --
6 sure that's Av -- that's Avery Road?

7 A I -- I don't know. I'm asking. Is it?

8 Q Okay. Yes, that's Avery Road.

9 A And then the gravel road would be the one to the
10 right there.

11 Q And where were the -- where -- If I were to give
12 you a laser pointer, could you show us where the
13 woman was taking pictures on this --

14 A Yes.

15 Q Okay. And, also, um, Ms. Buchner, let me know if
16 it would be helpful, because we can zoom in to
17 these intersections --

18 A Okay.

19 Q -- and make this closer. Could -- could you show
20 the jurors where Avery Road is and --

21 A Oh.

22 Q -- where you would drive your bus in?

23 A I would drive this way and then drop off right there.

24 Q Okay. That's where you would drop off the boys?

25 A Yeah. And then turn around right there.

1 Q All right. And where did you see the woman who
2 you believe was taking the pictures?

3 A Would be in the middle of right there. And --

4 Q And --

5 A -- taking --

6 Q You're -- You're doing just fine. Thank you.
7 Could you also -- Would there be any way to show
8 the jurors where you believe the cars were that
9 she was taking photographs of?

10 A Um, right there would be -- right there and on both
11 sides of this driveway right there. There was the
12 van, and then a car, and then a car on the other
13 side, and I think a car behind it, but I'm not sure.

14 Q And when you dropped the boys off after school,
15 is that where you always dropped them off?

16 A Yes.

17 Q Do you know how many cars she was taking
18 photographs of?

19 A No.

20 Q And, um, could you describe any of the clothing?

21 A No.

22 Q Could it have been a man with long hair?

23 A I don't think so.

24 Q Okay. I -- I'm just -- I know -- You're --
25 you're sure it was a woman?

1 A Yes, I remember it being a woman.

2 Q Okay. All right. Thank you so much, Ms.

3 Buchner. Appreciate it.

4 THE COURT: Mr. Strang?

5 **REDIRECT EXAMINATION**

6 BY MR. STRANG:

7 Q Ms. Buchner, um, I understand you don't remember
8 the day anymore, but did you -- did you -- did --
9 did you -- you walked up to tell the police about
10 this on your own?

11 A Yes.

12 Q And was that just a few days after this happened?

13 A Um, I believe it was Saturday.

14 Q Of the same week?

15 A Right.

16 Q At the end of that week? Okay. And then you --
17 then they asked you to come back a few days later
18 and give a statement?

19 A Yes.

20 Q But that was still a week or a little more than a
21 week after this -- after you saw this woman
22 taking the picture of the van?

23 A Yes.

24 Q Uh, that's all I have. Thanks.

25 THE COURT: Very well. You are excused.

1 Defense may call its next witness.

2 ATTORNEY STRANG: And that witness is a
3 gentleman named John Leurquin.

4 THE CLERK: Please raise your right hand.

5 **JOHN LEURQUIN,**

6 called as a witness herein, having been first duly
7 sworn, was examined and testified as follows:

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

10 THE WITNESS: John T. Leurquin,
11 L-e-u-r-q-u-i-n.

12 **DIRECT EXAMINATION**

13 BY ATTORNEY BUTING:

14 Q Good afternoon, Mr. Leurquin.

15 A Good afternoon.

16 Q Did we just meet?

17 A Yes.

18 Q For the first time today?

19 A Yes.

20 Q Okay. Can you, uh, tell the jury how you're
21 employed?

22 A Uh, I'm employed at Valders Co-op. I de -- I deliver
23 propane with a -- a propane truck.

24 Q Okay. And when you say you deliver propane, who
25 do you deliver it to?

1 A Residential and commercial customers.

2 Q Okay. And this is a, uh -- a -- a -- like a big
3 bulk tanker-type truck that you have or what?

4 A Yes.

5 Q Okay. And where do you get the fuel for that?

6 A Uh, my bulk tank that I load my truck is on the
7 southeast corner of Avery Road and 147.

8 Q Okay. We have, uh, Exhibit 91 up on the screen
9 for you. Um, I don't know if that can orient
10 you -- orient yourself by that at all? You don't
11 usually see it viewed from that side, from that
12 far up, I'm sure, but... Do you know where
13 Highway 47 is on that? One forty-seven, rather?

14 A Uh, yeah, that's in the top left corner.

15 Q Okay. You have a laser pointer in front of you.
16 Um, if you could turn it on and maybe point to
17 the location where your filling station is?

18 A Right there.

19 Q Okay. And so where is Avery Road?

20 A Right here.

21 Q And where is 147?

22 A Right here.

23 Q All right. So to get to your filling station,
24 then, you would have to turn off of 147 onto
25 Avery Road, itself?

1 A Yes.

2 Q There's no other entrance way to it?

3 A Nope.

4 Q Okay. And did you have like a regular route of
5 customers that you would deliver to?

6 A Yes, I do.

7 Q Um, well, tell me how that would work?

8 A Um, when we're on our -- our computer system that
9 goes off the degree days for the route, itself, and
10 then we have call-in customers that call when they
11 want LP, so we go to whoever's on the schedule or
12 whoever calls --

13 Q Okay.

14 A -- to deliver it.

15 Q And you, uh -- What were your normal work hours?

16 A Uh, normal work hours are 7:30 to 4.

17 Q Okay. Do you ever work after that?

18 A Yes.

19 Q How would that come about?

20 A Uh, if -- if I got work I got to do or somebody calls
21 later in the day, if I ain't done, you know, I'll get
22 there yet.

23 Q Okay. Um, how often would you visit that -- Is
24 filling station the wrong term for -- What do you
25 call it?

1 A It's a bulk plant.

2 Q A bulk plant?

3 A Yeah.

4 Q Okay. How often would you visit that bulk plant
5 to fill your truck?

6 A On -- on a day like during that time it would be
7 usually once a day.

8 Q Okay. Now, during that time, jumping ahead a
9 little bit, but I'm going to direct your
10 attention now to October of 2005, okay?

11 A (No verbal response.)

12 Q You have to say yes or no --

13 A Yes.

14 Q -- you understand? Um, is most of your business
15 in the winter heating?

16 A Yes. Except for farm accounts and stuff like that.

17 Q Okay. Um, so on October 31 of 2005, was that a
18 day in which you filled your tank?

19 A Yes.

20 Q Your truck?

21 A Yes.

22 Q Um, and what was your normal process, or how --
23 during that time, when would you go to the bulk
24 plant and, you know, when would you do your
25 deliveries?

1 A I do my deliveries during the day. And then usually
2 about 3:30 I go and fill my truck, because that way
3 it's full for the end of the -- at the end of the day
4 so to the next day I can start with a full truck.

5 Q Okay. And when you said -- Can you tell me
6 how -- how you would do it? What would you have
7 to do to fill your truck?

8 A Well, I would turn on Avery Road, and then I back
9 into my plant, onto the west side of the tank, or
10 south side of the tank I should say, and get out and
11 hook the hoses up and get back into the truck.

12 Q Mind if I zoom in on this a little bit? Okay. I
13 zoomed in a little bit now. Could you, uh, use
14 the laser pointer and point out where the -- the
15 bulk plant is again? Okay. And in this
16 particular photograph do you see a lot of
17 vehicles parked along Avery Road?

18 A Yes.

19 Q Was it usually like that?

20 A On any day?

21 Q Yeah.

22 A No.

23 Q Okay. Um, this was taken on a particular day
24 and -- and we've had testimony about that. But
25 which way would your be -- your truck be facing

1 while you were filling it up?

2 A Towards Avery Road.

3 Q Okay. I don't know if you can point out where

4 the -- the tank where you would pull up to is?

5 Okay. And so you would be facing this way? Uh,

6 what, west? Southwest would it be?

7 A Yeah. Well, it would be, actually, north -- kind of

8 northwest.

9 Q Okay.

10 A 'Cause the Avery Road runs kind of northwest right

11 there.

12 Q Okay. So you -- you say you back your truck in

13 there, and you hook it up, and then what do you

14 do?

15 A I get back into my truck and I write, uh, percent

16 number down on my log book and just basically wait

17 'til it's done.

18 Q Okay. And how long would it take for you to fill

19 up your truck?

20 A It takes roughly about a half hour.

21 Q All right. But what do you do when you -- during

22 that half hour?

23 A Sit in my truck, listen to the radio, and when cars

24 go by, look up at cars, and that's about it.

25 Q Okay. Now, on October 31 of 2005, do you recall

1 seeing any particular vehicle that later it
2 became of interest of -- to you?

3 A Uh, yes. I recall seeing a green SUV.

4 Q Okay. When you say "a green SUV", um, how big
5 was it?

6 A Uh, midsize SUV. Not the large size.

7 Q What kind of vehicle do you have?

8 A I have a Tahoe.

9 Q And is that a full size --

10 A Uh, generally speaking, yeah.

11 Q Okay. And the -- and the vehicle you saw, was it
12 as big as that? Or smaller? Or what?

13 A It was smaller.

14 Q Okay. Um, so tell us what you saw?

15 A I seen a vehicle pass by the front of my truck, and I
16 just glanced up, and it was just a green SUV, and
17 that -- that's all.

18 Q Well, which direction was it going?

19 A Back towards Avery Road. So that would be to the
20 north. I mean, towards 147.

21 Q Can you just show us on the -- with your pointer,
22 and -- and just with your pointer kind of draw
23 direction -- the direction that it was going? So
24 did it look like it was going into the Avery Auto
25 Salvage area or out of the Avery --

1 A It was leaving.

2 Q Okay. And are you familiar with the Avery Auto
3 Salvage?

4 A Yes.

5 Q Do you know them personally?

6 A Uh, somewhat.

7 Q Are you -- Would you consider yourself a friend
8 of any of the Averys?

9 A No.

10 Q Have you ever done business there?

11 A I was there, yes.

12 Q How many times?

13 A Um, three or four times.

14 Q Okay. Um, and did you happen to see which
15 direction that green SUV went when it got to the
16 intersection of Highway 147?

17 A No, I didn't pay attention.

18 Q Did there come a time when this, um -- this
19 recollection that you have become of interest or
20 importance?

21 A Uh, not necessarily. I -- I mean, I -- I -- At
22 first, I said I recalled seeing a green SUV, but that
23 was about it. I -- I didn't think nothing of it.

24 Q Okay. Well, let -- let me -- I'm -- Let me ask
25 it this way: Did you later learn or see any kind

1 of publicity about a missing person?

2 A Yes.

3 Q And, um, was there a description of the vehicle?

4 A Yes. There was, I think, actually a picture.

5 Q Okay. And when you saw that picture, did that
6 connect in any way to you?

7 A Um --

8 ATTORNEY FALLON: Objection. There's no
9 question -- There's no, um, foundation that he
10 actually saw a picture. He said there was a
11 missing person notice.

12 ATTORNEY BUTING: I'll ask --

13 ATTORNEY FALLON: It's a foundational
14 objection --

15 ATTORNEY BUTING: I'll -- I'll --

16 ATTORNEY FALLON: A few more
17 questions --

18 ATTORNEY BUTING: I'll move back and --
19 and bring -- bring it forward a little bit.

20 THE COURT: Go ahead.

21 Q (By Attorney Buting) Do you recall the name of
22 the missing person?

23 A Yes, Teresa Halbach.

24 Q Okay. Did you see any publicity on television
25 about it?

1 A Uh, yes.

2 Q Okay. And do you recall seeing any photographs
3 on television of both Teresa and the vehicle?

4 A Yes.

5 Q All right. And what did that do -- or what did
6 that, uh -- what did you think when you saw
7 that -- this -- this missing person, and you saw
8 that vehicle, and did you also -- I'm sorry,
9 another foundation. Did you also hear any
10 information on TV and the media about where she
11 had been?

12 A Yes.

13 Q Which is where?

14 A Over at Steven Avery's.

15 Q Okay. And so did you make any kind of
16 connection?

17 A Uh, other than recall seeing that green SUV, that --
18 that's it.

19 Q Okay. Well, did you say anything to anybody?

20 A Um, at work and at home I says I possibly mighta seen
21 it and that was -- that was it.

22 Q Okay. When you say, might have seen it, what are
23 you referring to?

24 A I seen a green SUV. I can't say it was that one or a
25 different one.

1 Q Okay. Um, do you know whether it was on that
2 day? October 31?

3 A Yes.

4 Q How do you know that?

5 A Because I remembered that part.

6 Q Okay. And -- and it -- How many days after
7 October 31 was it that your memory was drawn back
8 to that day?

9 A That I was asked about it? Is that what you're
10 saying?

11 Q Or that you told anybody about it or talked about
12 it at work or whatever?

13 A Um, maybe four or five days later.

14 Q Was it right when the publicity was beginning?

15 A Yes.

16 Q About Teresa Halbach?

17 A Yes.

18 Q Okay.

19 THE COURT: Mr. Buting, is your microphone
20 on? I'm not sure.

21 THE DEFENDANT: Yeah, I think it is.

22 THE COURT: Okay. Um, oh, yeah. Okay.

23 ATTORNEY BUTING: Okay.

24 Q (By Attorney Buting) Um, okay. Can you -- As
25 you sit here -- Actually, let me do it this way.

1 When you saw this publicity about the missing
2 person and the vehicle, did you, in your own
3 mind, think, hey, that's -- that's the one I -- I
4 saw, or what -- Tell us what you thought?

5 A Um, I thought that --

6 ATTORNEY FALLON: Objection to what he
7 thought. How is that relevant now? The question
8 is, did he see it or not?

9 ATTORNEY BUTING: Well, going to his
10 memory and how he's -- recalls what he recall --
11 what he recalls.

12 ATTORNEY FALLON: It's a memory of a
13 past recorded event. I don't -- I still don't
14 see the relevance of that.

15 THE COURT: Why don't you rephrase the
16 question.

17 Q (By Attorney Buting) When you saw the -- the
18 publicity about the missing woman and her
19 vehicle, what -- what was your thought process in
20 terms of whether there was any connection to
21 anything you saw or not?

22 A That it was possible that it was hers, but that it
23 was also a -- possible that it wasn't.

24 Q Okay. So what did you do, if anything?

25 A I didn't do nothing.

1 Q Did you come forward and talk to the police?

2 A No.

3 Q Um, did there come a time when you noticed that

4 there was a roadblock near there?

5 A Yes.

6 Q When was that?

7 A Um, it started on a Saturday, I think.

8 Q Okay. What are -- what are your work days?

9 A Um, my -- it's -- it's Monday through Saturday, and

10 then I'm on call 24 hours a day.

11 Q Okay. And is that the -- the only filling

12 station or -- or pump -- uh, bulk station that

13 you used?

14 A Yes.

15 Q So when was the next time that you used it when

16 it was -- you noticed there was a roadblock?

17 A On, uh, Monday.

18 Q That would be a week after the 31st?

19 A Yes.

20 Q Okay. And was there any way for you to get to

21 your -- your bulk station without going through a

22 roadblock?

23 A No.

24 Q So what did you do at the roadblock?

25 A I stopped, and then I had to show them my driver's

1 license, tell them what I was doing.

2 Q Okay. Did you explain at all what your job was,
3 or your route, or how often you had to come
4 there?

5 A Uh, they never asked how often. I just had to tell
6 them what I was doing. What -- That I had to go
7 through there.

8 Q Okay. And did they -- They let you through?

9 A Yes.

10 Q Um, and how many days was it that you -- you did
11 it that way?

12 A Uh, usually everyday.

13 Q Well, for how many days was it when there was a
14 roadblock is what I'm asking?

15 A Oh, well, at least a week.

16 Q Okay. Did you have to give your name every time?

17 A Uh, yes.

18 Q Did you ever, uh, say anything to the -- to -- to
19 any of the police at that time about what you
20 believed you saw?

21 A No.

22 Q Why not?

23 A 'Cause I don't -- I -- I didn't think it was a --
24 a -- a definite that it was hers, or -- and I don't
25 speculate unless I know the truth.

1 Q Okay. Well, did there come a time when you --
2 when you did speak with a police officer?

3 A Yes.

4 Q Do you recall how -- Tell us how that happened?
5 Was it in person or on the phone?

6 A Uh, he called my house.

7 Q And do you recall who it was?

8 A Agent Fassbender.

9 Q Okay. Had you ever met Agent Fassbender?

10 A Um, not 'til today.

11 Q All right. Um, so tell us what you talked about
12 when you first -- when he called?

13 A Um --

14 ATTORNEY FALLON: Objection. Hearsay.

15 ATTORNEY BUTING: I'm asking for his --

16 ATTORNEY FALLON: An out of court
17 statement.

18 THE COURT: Yeah. The question should be
19 rephrased.

20 ATTORNEY BUTING: Okay.

21 Q (By Attorney Buting) Um, did Agent Fassbender
22 tell you the purpose of the call?

23 A Uh, yes, I think so.

24 Q Did he say why he was calling you?

25 A Uh --

1 Q Or how he got your name to call?

2 A He got my name from that -- that check-in log I
3 think.

4 Q Okay. You mean the -- the -- the roadblock?

5 A Yes.

6 Q And did you tell him what you saw?

7 A Yes.

8 Q What did you tell him?

9 A That it was possible that I seen a -- Well, I told
10 him that I seen a green SUV leave, but I wasn't sure
11 if it was hers or not.

12 Q All right. Did you tell him what time?

13 A Uh, yeah.

14 Q And --

15 A Yes.

16 Q -- I'm not sure you told us what time. What time
17 was it on the 31st?

18 A In between 3:30 and 4.

19 Q And how do you know that?

20 A Because that's when I loaded my truck.

21 Q All right. Thank you. That's all I have, sir.

22 THE COURT: Mr. Fallon?

23 ATTORNEY FALLON: Yes. I'm going to try
24 this mike if it doesn't work. Test. Test. Try
25 it again.

1 THE COURT: Uh, just a second. I think
2 it's No. 7, but somehow the volume --

3 ATTORNEY FALLON: I have eight.

4 THE COURT: You got eight?

5 ATTORNEY FALLON: Right.

6 THE COURT: Oh. Well, that explains that.

7 ATTORNEY BUTING: We're seven.

8 THE COURT: You're seven. Okay.

9 ATTORNEY FALLON: Thank you.

10 **CROSS-EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q Uh, good afternoon, Mr. Leurquin.

13 A Good afternoon.

14 Q Um, I just want to begin, uh, I'm Tom Fallon, one
15 of the prosecutors, and, uh, just want to let you
16 know if there's something you don't know, just
17 tell us you don't know, and if you're not sure,
18 just tell us you're not sure.

19 A Okay.

20 Q There are no right or wrong answers. Just what
21 you remember, okay?

22 A Yes.

23 Q All right. Um, how long have you been working in
24 the propane fuel business?

25 A In the propane it was eight years.

1 Q All right. And as of October 31, 2005, how long
2 had you been working this particular job where
3 you were making these deliveries to residences
4 and businesses in the general Mishicot area?

5 A Uh, six years.

6 Q Six years? And would it be fair to say that, uh,
7 for six Octobers, uh, you would come to the
8 bulk -- bulk plant station that you've described
9 there and fill up at least once a day during the
10 month of October?

11 A Yes.

12 Q That would be fair?

13 A Yes.

14 Q Okay. And, um, did you always fill up at the end
15 the day or were there other times where you
16 filled up earlier in the day?

17 A Uh, there -- Well, I fill up sometimes early in the
18 day, but it's always usually at the end of the day
19 also.

20 Q Just so you get a good start the next day?

21 A Yes.

22 Q All right. Now, if you had a lot of business
23 orders, for instance, if there was something
24 going on, you might fill up more than once a day
25 even as -- as early as the end of October; right?

1 A Yes.

2 Q Okay. Now, um, I would imagine, but October 31,
3 as you think back about it now, was pretty much
4 like any other Monday morning; right?

5 A Yes.

6 Q Monday afternoon?

7 A Yes.

8 Q All right. Went to work at your usual time early
9 in the morning?

10 A Yes.

11 Q Knocked off about four?

12 A Yep.

13 Q And, um, as you think back right now, you can't
14 tell us what the weather was like that day;
15 right?

16 A No.

17 Q You don't know -- You don't remember if it was
18 cold?

19 A Uh, not offhand.

20 Q And you don't remember if it was one of those
21 really warm autumn days, do you?

22 A No.

23 Q Um, you can't tell us it was really cloudy, or
24 overcast, or bright sun that afternoon, can you?

25 A Nope.

1 Q All right. Now, um, as I understand it, the one
2 thing that you do remember is that it was a green
3 SUV that you saw?

4 A Yes.

5 Q Okay. And you said you, yourself, drive a Tahoe?

6 A Yes.

7 Q Now, that's a -- a much larger size sports
8 utility vehicle; right?

9 A Yes.

10 Q All right. And then we have the medium size,
11 then we have the compact size; right?

12 A Yes.

13 Q Uh, the SUV you saw was a medium size?

14 A Uh --

15 Q Or you don't know?

16 A Yes.

17 Q Medium, or you don't know? Which --

18 A Um, medium.

19 Q Okay. Um, now, would it be fair to say that, um,
20 the car drove by -- your recollection is you had
21 already hooked up your pipes or your, um -- to
22 your main, uh, tank there to fill your truck;
23 right?

24 A Yes.

25 Q And you get in, you fill up, you're doing some

1 log bookwork I take it?

2 A Yes.

3 Q Uh, listening to the radio?

4 A Yes.

5 Q Uh, so you've got 30 minutes to kill, more or
6 less, to fill a relatively empty tank?

7 A Yes.

8 Q Okay. So you're not particularly paying any
9 great attention to what's going on around you I
10 would imagine; right?

11 A No.

12 Q And, uh, your recollection is is that a vehicle
13 went by?

14 A Yes.

15 Q All right. Um, so would it be fair to say you
16 look up, see a vehicle go by, and then start
17 thinking or doing something else?

18 A Yes.

19 Q All right. Now, would it be fair to say that you
20 only glanced up at this vehicle for a half a
21 second, a second, just to see that it's a car
22 going by?

23 A It's uh -- it's usually a little longer than that.

24 Q Okay. So you got a -- a good look at it?

25 A Well, not a good, great, great look, but a -- a look

1 that every time a vehicle goes by I look at -- look
2 up and see what it is.

3 Q All right. Um, in this particular case -- But
4 you can't tell us whether there was a -- a man
5 driving the vehicle or a woman, can you?

6 A Nope.

7 Q As a matter of fact, you can't tell us if it was,
8 um, um, somebody who's only 18, 19 or 20 driving
9 the vehicle? A kid, right?

10 A No.

11 Q All right. And the vehicle didn't stop; right?

12 A At the stop sign.

13 Q All right. But I mean in front of your vehicle?

14 A No.

15 Q All right. And there was nothing else unusual or
16 anything else happening on that road that
17 afternoon; right?

18 A No.

19 Q And, um, as you think about it now, the reason
20 you didn't report it, your observations, sooner
21 to law enforcement, was that you weren't really
22 sure that you had seen the vehicle they were
23 looking for; right?

24 A Yes, I wasn't sure if it was that one or not.

25 Q All right. And you didn't want to say anything,

1 because you're one of those people that likes to
2 make sure that you're right when -- if you say
3 something; right?

4 A Yes.

5 Q Uh, just like you're trying your best today to
6 remember whatever you can remember; right?

7 A Yes.

8 Q Okay. Now, you can't -- As you sit here today,
9 you can't really tell us whether you saw the
10 vehicle that the people were concerned about on
11 that day, can you?

12 A No.

13 Q In fact, whatever you saw may have even been a
14 different day?

15 A No, it was that day.

16 Q Okay. But there's nothing outstanding about that
17 day, is there?

18 A No.

19 Q No. Thanks.

20 THE COURT: Mr. Buting?

21 REDIRECT EXAMINATION

22 BY ATTORNEY BUTING:

23 Q Okay. Sir, on a -- on a typical day while you
24 were sitting there -- for about a half hour you
25 said?

1 A Yes.

2 Q Filling at the bulk station, you'd be sitting
3 there about a half hour?

4 A Yes.

5 Q How many cars on a typical day would be coming or
6 going on Avery Road?

7 A About two easily.

8 Q Okay. So just a couple of cars a day?

9 A Yep.

10 Q All right. Now, I understand your -- your memory
11 was such back then, in -- in October, November of
12 '05, that you weren't certain that the vehicle
13 that you saw go by, leaving the Avery property,
14 was the one that you later saw on TV as being
15 Teresa Halbach's; correct?

16 A Yes.

17 Q But did it look similar to the one you saw on TV?

18 A Yes.

19 Q And is that why you remembered it now or
20 remembered it back then?

21 A Uh, yes.

22 Q Okay. And as you sit here today, I understand
23 you can't tell us certainly that the vehicle you
24 saw drive out of the Avery property was Teresa
25 Halbach's, but can you tell us whether or not it

1 was similar?

2 A Yes, it was.

3 Q Did it appear to be enough similar that you --
4 you recall it and recalled it back then in -- in
5 November of '05?

6 A Yes.

7 Q Okay. Thank you.

8 THE COURT: Mr. Fallon, anything else?

9 ATTORNEY FALLON: Yes.

10 **RECROSS-EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q Are you sure you were there between 3:30 and
13 4:00?

14 A Yes.

15 Q What other vehicles drove by?

16 A Uh, the ones that I remember is not -- that -- that I
17 can't -- I can't remember.

18 Q You can't remember any other vehicle?

19 A No. Because I -- I -- I see certain vehicles go by
20 everyday at certain times.

21 Q Right.

22 A And -- and, to me, I -- I can't even say that -- that
23 those vehicles drove by because I see it everyday.

24 Q Right. And, um, you don't have any specific
25 recollection of any other vehicle driving down

1 that road that afternoon, do you?

2 A No.

3 Q You didn't see any school bus drive down that
4 road, did you?

5 A No, because I see that everyday so I really --

6 Q You would --

7 A -- didn't dawn on me.

8 Q You wouldn't know if you saw it or not, would
9 you?

10 A No.

11 Q Thank you.

12 ATTORNEY BUTING: Just -- Not going to
13 go on forever. I just have a couple of questions
14 to clarify, though.

15 RE-REDIRECT EXAMINATION

16 BY ATTORNEY BUTING:

17 Q You say that you see -- Sometimes you see the
18 same vehicles everyday?

19 A Yes.

20 Q Um, would the school bus be one -- one like that?

21 A Yes.

22 Q Okay. This particular green SUV that you say you
23 recall seeing leaving the Avery property, did you
24 see it come in?

25 A No.

1 Q Was that a vehicle that you -- that you did see
2 everyday or was that a -- a different one you'd
3 never seen before?

4 A Different one.

5 Q But do you recall ever seeing it before there?

6 A Nope.

7 Q All right. That's all.

8 THE COURT: All right. Witness is excused.
9 Defense may call its next witness.

10 ATTORNEY STRANG: Next -- next up, Your
11 Honor, is, um, Roland Johnson.

12 THE CLERK: Raise your right hand.

13 **ROLAND JOHNSON,**

14 called as a witness herein, having been first duly
15 sworn, was examined and testified as follows:

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

18 THE WITNESS: Pardon?

19 THE CLERK: Please state your name and
20 spell your last name for the record.

21 THE WITNESS: My name is Roland Johnson.
22 The last name, J-o-h-n-s-o-n.

23 **DIRECT EXAMINATION**

24 BY ATTORNEY BUTING:

25 Q Okay. Sir, you're going to have to talk into the

1 microphone a little bit, okay?

2 A Okay.

3 Q Um, let me just adjust it for you. I think it
4 might work better if it's right about like that.
5 Okay?

6 A Okay.

7 Q All right. Thank you. Um, Mr. Johnson, uh, are
8 you employed?

9 A No. I'm retired.

10 Q And what did you use to do?

11 A I was a tool and diemaker.

12 Q Okay. Can you tell me where you live now? What
13 community?

14 A I live in Jackson, Wisconsin. Washington County.

15 Q Do you own any property in Manitowoc County?

16 A Yes. I own that one acre of land in the back of
17 Averys. I bought that at least 30 years ago.

18 Q Okay. Well, let's -- let's get into that a
19 little bit. Do you know any of the Averys?

20 A I know all of them.

21 Q Okay. Do you know -- Well, who's the first one
22 you came to know?

23 A Allen. Allen.

24 Q And how did that come about?

25 A I own -- or operated a bar in Manitowoc County and I

1 leased it. I didn't own it. And I met him at the
2 bar, and I was talking to him, got to know him fairly
3 well, and he -- I knew him, his brothers. I know
4 Delores. I know the whole family.

5 Q Okay. And from this relationship that grew out
6 of your acquaintance there, um, did you come at
7 some point to have some connection with the
8 property that Allen Avery owned?

9 A Yes. Allen rented that property in the back corner.
10 It was set up for a trailer with a well and septic
11 tank, and it was vacant, so he rented it to me after
12 I left the tavern. I had to have a place to go to.

13 Q You said it was just like a vacant pad?

14 A That's all it was was a vacant pad. Concrete slab.
15 And it had a well and a septic tank. At one time it
16 must have been used.

17 Q All right. Um, did you -- So did you do that?
18 Did you -- Did you go to that area?

19 A Yes. I moved my trailer up there, rented it from him
20 for a period of time. Eventually bought it from him.

21 Q All right. Just a minute. I'm going to try and
22 find a photograph to show you. I'm going to show
23 you -- Actually, I'm going to put it up on the
24 screen, if you -- Well, I'll let you look at them
25 first. Do you recognize Exhibit 39 and Exhibit

1 46?

2 A That is my trailer and that is my garage.

3 Q Okay. Now, you say that you -- you moved the --
4 the trailer -- I need the remote. I'm putting up
5 on the screen, uh, Exhibit 39. Is this the
6 trailer that you --

7 A Yes, that is my trailer.

8 Q You still own it?

9 A Yes, I do.

10 Q And are you the one who put it on that -- on its
11 current prop -- uh, parcel?

12 A Yes, I am.

13 Q Do you know when that was?

14 A Uh, probably '78 or '79.

15 Q Okay. And then showing you Exhibit 46, that is
16 what?

17 A That is my garage.

18 Q And was that there when you got there?

19 A No. We built that. Allen and I built that one.

20 Q Allen and you? All right. Um, so did you own
21 it, or were you leasing it, or how did it work?

22 A I was leasing it at the time.

23 Q And for how long did that --

24 A That was a period of maybe four or five years.

25 Q And then what happened?

1 A Then he offered -- I asked him a number of times
2 during that time if I could buy it. Finally, he
3 decided I could buy it.

4 Q And buy what?

5 A The lot that I was on. Instead of leasing it.

6 Q Okay. And so what -- What did you actually end
7 up buying? How much?

8 A I bought one acre of land in that back corner.

9 Q And do you know when that was?

10 A Not exactly. I don't remember anymore.

11 Q Okay. Well, would it have been in the '80's, or
12 the '70's, or...

13 A It would have definitely been in the '80's somewhere.

14 Q All right. I'm going to show you a -- a diagram,
15 Exhibit, uh, 111, see if that -- if you recognize
16 or can orient yourself with that?

17 A Yes.

18 Q Okay. And let me put it up on the screen and
19 let's talk about it for a moment. This is the
20 computer rendering that we -- we talked about
21 here quite a bit. Uh, do you see that round
22 brown area behind the garage?

23 A Yes, I do.

24 Q Um, is there such a place in real life as well?

25 A Yes, there is.

1 Q And how did that come to be?

2 A I was planning on building that garage longer, and I
3 got fill to level off the land to the same height as
4 the existing garage so I could just pour another slab
5 and extend that garage length.

6 Q Okay. So you -- you had that mound of dirt
7 put -- put there yourself?

8 A Yes, I did.

9 Q Do you know when that was?

10 A At least ten years ago. If not, more.

11 Q All right. So, now, you were going to extend the
12 garage but never did for some reason?

13 A Well, I wasn't living up there and it wasn't a urgent
14 need at the moment. So I just kind of put it off
15 time to time.

16 Q Okay. All right. So how long -- did -- or did
17 you -- You said you bought it. Did you actually
18 live in the trailer?

19 A Yes, I did. I lived there for at least ten years.

20 Q And can you tell me approximately when that was?

21 A Well, I would say approximately from '78 'til '88.

22 Q All right. And then what happened?

23 A I was working in, uh, Two Rivers, and I checked out
24 the wages in Milwaukee, and the wages doubled, so I
25 just opted to go back to Milwaukee and keep this

1 place as a weekend getaway.

2 Q Okay. So you switched jobs down in -- Where were
3 you working up here?

4 A I was working at Paragon Electric in Two Rivers.

5 Q Uh, is it still there?

6 A No, it's not.

7 Q Okay. And so you went down to Milwaukee to
8 change jobs?

9 A That's right. I went to Milwaukee. The wages were
10 so much higher. They were doubled or better than
11 what I was making here. So I went to Milwaukee.

12 Q Okay. And did you buy a house there?

13 A I had a house down there that I was renting out. And
14 I just told them that I'd like to move back in.
15 They'd have to find a house.

16 Q Okay. And so after you moved to Milwaukee -- You
17 say it was in '88?

18 A About 1988.

19 Q Okay. Did you, uh, continue to own this trailer
20 and this little one-acre plot?

21 A I owned that continuously from the time I bought it
22 from them 'til the present.

23 Q So you still own it?

24 A I still own it.

25 Q Okay. After you moved to Milwaukee, did you --

1 you said that you had it for a weekend getaway.

2 Did you come up and visit it?

3 A When I lived in the Milwaukee area, I came up every
4 weekend, because where I lived in Milwaukee was a
5 little too noisy to suit me on weekends.

6 Q All right. Let me ask you, um, did there come a
7 time when you rented it out -- when you stopped
8 coming as frequently?

9 A Uh, it was probably about '97 or '98 had to quit
10 coming out every weekend.

11 Q All right.

12 A It -- I moved to a quieter area where I'm now living,
13 and I didn't have to come up here as often. The
14 place was basically empty most of -- not of
15 furnishings -- but of people most of the time.

16 Q Okay. Was it furnished, though, even when no one
17 was in it?

18 A Yes, it was. It was something that I could get to on
19 a weekend or a week or whatever I wanted to stay up
20 here.

21 Q Okay. Um, did there come a time when you allowed
22 someone else to live in the trailer?

23 A Yes. A friend of mine asked if she could have a
24 friend of hers move in and use it temporarily. And I
25 agreed to this.

1 Q And who was that person that you allowed to move
2 in temporarily?

3 A It was Jodi Tikowsky (phonetic) or something.

4 Q Stachowski? Is that --

5 A That's the name.

6 Q All right. And what was -- Can you tell me when
7 that was?

8 A Probably 2003, 2004, someplace in that general time
9 limit.

10 Q Okay. And what was your arrangement? Did she
11 pay rent or how was it arranged?

12 A No. She was basically being tossed out of anything
13 other than her car, and I had the house, so the
14 friend of mine, who knows her quite well, asked if
15 she could move in. And I said, yes.

16 Q And so that was it? She didn't have to pay a
17 thing or...

18 A She -- all she had to do was cut the grass and clean
19 the house up.

20 Q Okay. Do you know Steven Avery?

21 A I know him very well.

22 Q Okay. And did there come a time when, uh, he was
23 released from prison that you recall?

24 A Yes. That was probably, what, 2002? I offered him
25 the place to stay at first, and he said he didn't

1 need it. He was going to stay with his parents.

2 Q Okay. So, initially, then, the -- the -- the
3 trailer was being occupied, to your knowledge, by
4 Jodi Stachowski?

5 A Correct. She was -- To the best of my knowledge, she
6 was supposed to be living in there. And I never said
7 that she had to live alone. And I'm not quite that
8 way.

9 Q All right. Did you at some time learn that --
10 that someone else was -- had moved in with her?

11 A Yes. After a period of time, I found out that Steve
12 had moved in with her.

13 Q Okay. Now, the furnishings in the trailer, who
14 owned those?

15 A As of the last time I looked, 90 percent of them I
16 owned. The only thing I didn't own was computer,
17 computer desk, and a bedroom -- bedroom set that was
18 in the main bedroom.

19 Q Okay. So you owned, like, the liv -- the living
20 room furniture and --

21 A That was mine. Except for that, uh, computer desk
22 that's -- that's up there. Or was up there. That
23 was new. That was added after. After I let them use
24 the house.

25 Q All right. I'm going to show you some

1 photographs that have been marked as exhibits
2 already and have you tell us about them if you
3 can. Can you tell me the first, um -- How many
4 bedrooms is this trailer?

5 A It's a two-bedroom trailer. A master bedroom and a
6 much smaller one.

7 Q All right. I'm going to show you a -- just
8 another one of these computer schematics and see
9 if this is familiar to you. Is that the layout,
10 more or less, of your trailer?

11 A Yes, it is.

12 Q And the deck around it? Did you build that deck
13 too?

14 A I built that, yes.

15 Q Okay. And you say that almost all of furnishings
16 in that trailer, even today, are yours?

17 A Yeah. Everything except that bed that's set in
18 there. My bed is the one that's in the other room.
19 That's the one I had in there. And that computer
20 desk in the living room is not mine.

21 Q Okay. There's a laser pointer here that you can
22 turn on and -- and point at some things. I guess
23 you have to hold the button in when you point.

24 A Okay.

25 Q If you could just show us, when you say, that

1 bed, and this bed, which bed are you talking
2 about?

3 A The bed over there is not mine. This bedroom is the
4 one that I had in that bedroom. This computer desk
5 here, right in here, that's not mine.

6 Q Okay. When you lived there, what bedroom did you
7 sleep in?

8 A I slept in that bedroom.

9 Q Okay. And when Jodi moved in, did she move any
10 furniture into that room?

11 A After she was there, she moved that bed in there. As
12 far as I know, that's her bedroom set.

13 Q Okay. And then she moved yours into --

14 A Into this room right here.

15 Q The smaller one? Okay.

16 A And there wasn't much room to move around the bed in
17 that bedroom.

18 Q Okay. All right. I'm going to show you
19 another -- a last exhibit, just for the record is
20 No. 101, does this item in Exhibit 167 that's on
21 the screen now look -- look familiar to you, sir?

22 A Yes. It's the gun rack I had on the wall in the
23 master bedroom.

24 Q Okay. Did you put it there?

25 A I put it there.

1 Q I'm going to show you Exhibit -- Exhibit 165.
2 Does that look familiar to you? I recognize it's
3 not in front of -- the actual item isn't in front
4 of you, but...

5 A I had a black powder rifle up there, but this one
6 looks like it's got two triggers on.

7 Q Okay. And what about this one?

8 A That looks like the Marlin .22 that I had up there.

9 Q Let me actually show you that exhibit for a
10 moment. This is Exhibit 247.

11 A That is my gun. I can remember it by the scratch
12 back here.

13 Q Okay. You're sure of that?

14 A I am sure of that now.

15 Q And when did you purchase this gun?

16 A Prior to 1977, or '76 I know for sure. I don't know
17 exactly when, but I'm positive I bought it at Fleet
18 Farm.

19 Q Okay. And where did you keep it when you lived
20 there?

21 A On the gun rack that was on the wall in the bedroom.
22 That, with the black powder rifle, were the two guns
23 that were sitting up there.

24 Q Okay. And did you -- Did you ever use that gun
25 on the property?

1 A Many times. Many, many times.

2 Q Have you ever fired that gun?

3 A I fired that gun at chipmunks, and I fired that gun
4 at targets all over the lot. I mean, I could have
5 been standing back end of the lot, down by -- far end
6 of the lot. I fired it all over the yard. I fired
7 it off the deck.

8 Q All right. What would you be shooting at?

9 A De -- Depending on -- more often than not, targets.
10 But targets of opportunity were gophers.

11 Q Gophers? Okay. Um, were there any -- Let me
12 direct your attention to the garage area, okay?
13 Did you ever fire that gun in the area of the
14 garage?

15 A I fired it all around the garage. I fired it all
16 around the lot. There, again, mostly for gophers.
17 It was fired many times.

18 Q Was there a gopher somewhere near the garage
19 or...

20 A Several of them. The whole yard was full of them.

21 Q That's -- Um, well, what would happen to the
22 shells?

23 A Basically, they'd be ejected. No matter where I was,
24 that's where they were ejected and that's where they
25 stayed.

1 Q So they would just fall on the ground?

2 A Yes, they would.

3 Q Did you pick them up?

4 A No, I did not.

5 Q Why not?

6 A Why? They're only a little .22 shell. There's no
7 value in them. They are not worth picking up.
8 They're small enough that they don't hurt anything.
9 I just left them. In fact, if you take a metal
10 detector and go over the yard, you'll probably find
11 many of them out there.

12 Q All right. Would that be true near the garage as
13 well?

14 A Anyplace on that lot, on that acre, it would be true.

15 Q All right. Did you ever fire the gun in the
16 garage?

17 A Not that I recall. I, basically, don't believe in
18 guns in a -- in a building.

19 Q Sure. I understand. But how close do you think
20 you ever were to -- to the garage when you'd be
21 shooting it?

22 A Right at the garage door opening.

23 Q Why?

24 A The main door. Here, again, gophers. I had a hole
25 under that door about that big, and I don't know how

1 far the tunnel went in, but I fired in -- into that
2 hole many times.

3 Q And that hole is where in relation to the garage?

4 A Right -- Basically, on the left-hand side of the main
5 garage door. The, um, opening garage door.

6 Q All right. I just want to verify that. I'll
7 show you Exhibit 101. Show me, approximately,
8 where these -- this gopher hole was?

9 A Approximately right in front of that truck. Right by
10 the edge of the door.

11 Q All right. Can you give me any kind of estimate
12 of how many times you would have -- well -- would
13 have fired that gun in front of you on that ac --
14 that one-acre parcel?

15 A Maybe five or six bricks, which are 500 in a brick,
16 25, 3,000 times.

17 Q Speaking of br -- of bricks, what kind of
18 ammunition did that gun use?

19 A Used .22 long rifle.

20 Q Did you buy that kind of ammunition while you
21 were there?

22 A While I was there, lot of it.

23 Q Okay. Now, you -- you left the gun there while
24 you rented it out to -- to --

25 A Yes, I did. Most of the furnishings and stuff were

1 mine, and I kind of figured if I'd come up on a
2 weekend and wanted to use it for any reason or come
3 up there, it was there.

4 Q All right.

5 A If I brought it down where I live now -- I live in
6 the city -- no use for a gun at all.

7 Q Okay. Do you know whether there was any ammo
8 that you also had in the --

9 A I could not say. I know for a fact there was
10 absolutely nothing for the black powder. For this, I
11 don't know if I had any laying around up there or
12 not. I could not tell you.

13 Q Okay. When do you think was the -- the last time
14 you would have been up on that property your --
15 yourself shooting the gun?

16 A Hm. Well, maybe --

17 THE COURT: Let's, uh -- Let's hold it
18 right there. We're going to take a break at this
19 time.

20 ATTORNEY BUTING: Okay. That's good.

21 THE COURT: Take our afternoon break.

22 ATTORNEY BUTING: Sure.

23 THE COURT: And we'll resume in 15
24 minutes.

25 (Jurors out at 2:57 p.m.)

1 THE COURT: All right. We'll come back at
2 quarter after three.

3 ATTORNEY BUTING: All right.

4 (Reconvened at 3:17 p.m.)

5 THE COURT: You may be seated. And, uh,
6 Mr. Buting, you may resume.

7 ATTORNEY BUTING: Thank you, Judge.

8 Q (By Attorney Buting) Okay. Mr. Johnson, you
9 were talking about the, um -- the -- the times
10 that you would fire that .22. By the way,
11 what -- what kind of .22 is it again?

12 A It's a long rifle. The gun is a Marlin.

13 Q All right. Do you know what model?

14 A It's a Glenfield. It was the cheapest one -- rifle
15 that you could buy, actually, at the time I bought
16 it.

17 Q Um, I think you said that around 1997 you
18 stopped -- you didn't come up as frequently to
19 the property?

20 A That's correct. No, '99.

21 Q Ninety-nine. What happened in '99?

22 A I bought my house where I'm at now. And I remember
23 exactly, it was October -- or, uh -- yeah, October
24 13, 1999. And it was a Friday the 13th. That's the
25 only reason I can remember that day.

1 Q Okay. Did you -- What happened to your house in
2 Milwaukee?

3 A It was flooded twice in a two-year period, and I
4 could not repair the house. The city of Milwaukee
5 ended up having to buy it.

6 Q Okay. Did you, then, um -- Once you moved to --
7 You say you're in Jackson?

8 A That's correct.

9 Q How frequently would you come up to the
10 property -- the one-acre property over on Avery
11 Road?

12 A Uh, basically, often enough to cut the grass and keep
13 it looking halfways decent. After that, '99.

14 Q All right.

15 A It wasn't weekly like it was before, but it was often
16 enough to keep it trimmed up a little bit.

17 Q Sure. Now, when, uh -- After Jodi Stachowski
18 moved in -- You said that was 2003?

19 A I think about 2003, 2004. Must have been 2004, not
20 2003.

21 Q Okay. After she moved in, did you continue to
22 come up to --

23 A I'd come up to visit her a number of times, yes, but
24 not -- not over -- Well, a couple times I stayed
25 overnight. I slept on the couch in the living room.

1 Q All right. And so when do you think was the last
2 time that you would have fired that .22 Marlin
3 that we had in front of you a little while ago?

4 A Probably -- It was definitely before Jodi moved in.

5 Q So sometime before 2003 or 4?

6 A Yeah.

7 Q After she moved in, you weren't in the -- uh,
8 you -- you never fired the gun again?

9 A Not up there, no. I didn't take it with me. I never
10 fired the gun again, after.

11 Q And to your knowledge, where did the gun -- where
12 was the gun after Jodi moved in?

13 A It was hanging on the wall on that gun rack in the
14 bedroom.

15 Q With the -- the -- the muzzleloader? The black
16 powder --

17 A Correct.

18 Q The -- After you -- After the police released the
19 property back to you, um, what condition did you
20 observe that it was in?

21 A The place was pretty much in complete shambles.
22 Panel was pulled off the wall. All the traps were
23 taken out the sinks. Toilet was broke out. The two
24 doors are damaged. One is completely broke and has
25 to be replaced. Garage door was broken, has to be

1 replaced. The carpeting was cut up. Couch was --
2 pieces were cut off, and it was my mother's couch,
3 which can't be replaced. And --

4 Q All right. Let me ask you about the carpeting
5 for a minute. The carpeting inside the
6 trailer --

7 A Yes.

8 Q -- um, how long had that been there?

9 A About a year. Before Jodi.

10 Q A year before Jodi?

11 A Yeah.

12 Q All right. So maybe a couple years before the
13 police search of the --

14 A Yes. As I said, it probably was used carpeting. It
15 was in excellent condition and I had somebody install
16 it.

17 Q All right. I'm going to show you a few more
18 exhibits. There's an item that we had some
19 discussion about in this trial. It's depicted in
20 Exhibit 168. If you could take a look at that
21 and tell me whether you recognize that?

22 A Yes, I recognize that. That's mine.

23 Q And what is it?

24 A It's a World War II model record cabinet for record
25 albums.

1 Q Now --

2 A That's why they're divided as such. You could stack
3 three albums in each one of the sections, and flat
4 records went on top.

5 Q I see. Now, it's been referred to here by some
6 people as a bookcase.

7 A Well, it's not a bookcase. But that's what it's been
8 referred to I guess.

9 Q All right. But -- but you refer to it as a -- a
10 record album --

11 A That's what it is.

12 Q -- cabinet?

13 A And it was bought in World War II. I remember that.

14 Q Okay.

15 A I was too young to be in it, but I remember what it
16 was.

17 Q I'm showing you Exhibit 169, which is sort of
18 a -- a closeup of the rear of that furniture
19 item? Um, we had some testimony that that back
20 panel was -- was loose. Did you ever see it that
21 way?

22 A I do not recall seeing it that way.

23 Q Okay. You had -- Had you checked it recently or
24 looked at it?

25 A I just looked at where it was at. I haven't looked

1 at that, specifically, because of -- it was no real
2 treasure.

3 Q Okay. I show you Exhibit 37. That's your
4 trailer?

5 A Yes, it is.

6 Q In the foreground, kind of surrounded by some
7 yellow police tape, is an item. Can you tell us
8 what that is?

9 A That's my burn barrel for burning up the paper and
10 garbage around the area.

11 Q You put it there?

12 A I did.

13 Q And did you use it?

14 A Yes, I did.

15 Q How often?

16 A Probably every time I came up there.

17 Q What sort of things would you burn there?

18 A Oil bottles, oil filters, paper garbage, and stuff
19 that comes, for the most part, in the mail, and bags
20 and stuff from the grocery store.

21 Q Was that -- Did you have a garbage pickup?

22 A No, you don't have a garbage pickup. You can go over
23 to the dump, but I never -- never went to the dump.

24 Q So what would you do with your regular household
25 garbage that would accumulate?

1 A Burn it in that barrel.

2 Q All right. Did you ever have any bigger fires

3 than -- other than --

4 A Occasionally, I would have cuttings and weeds and

5 stuff that I would burn, but it was basically just a

6 little bit further -- closer to those trees.

7 Q Out in the front here?

8 A Yes.

9 Q Did you ever burn anything back behind the

10 garage?

11 A No, I didn't.

12 Q Wasn't an area that you used for that --

13 A Not for burning.

14 Q Okay. Did you ever burn any tires?

15 A Only in the front here.

16 Q Okay. Now -- That's not going to work. The

17 barrel appears to be rusty. Um, was it new when

18 you bought it?

19 A When I put it there, it was new, but after the first

20 time you burn it, it's, you know, rust overnight.

21 You get that barrel hot and it will rust.

22 Q How do you know that?

23 A I'm a tool and diemaker. I have an idea what metal

24 does.

25 Q Okay. Showing you Exhibit 145. Can you

1 recognize this?

2 A Yes, I do.

3 Q What is it, sir?

4 A It's a aluminum melting smelter at Mr. Avery's
5 property.

6 Q Did you ever see anyone operating that smelter?

7 A Yes, I did.

8 Q And who would -- Who?

9 A Allen has --

10 ATTORNEY KRATZ: Judge --

11 A -- operated it.

12 ATTORNEY KRATZ: Judge, objection,

13 unless we establish a time frame, please.

14 Otherwise it's just not relevant to this case.

15 ATTORNEY BUTING: It's foundation.

16 THE COURT: Well, I think a time frame can
17 be used for foundation. I'll sustain the objection.

18 Q (By Attorney Buting) Um, well, tell us, first,
19 how often do you think you saw someone operating
20 this smelter?

21 A Three, four times for sure.

22 Q Okay. And when you think was the last time you
23 saw it?

24 A I honestly couldn't even give you a -- a date. I was
25 up there, and I remember Allen burning -- melting

1 down transmission housings and various other things,
2 but I can't tell you what -- when it was.

3 Q The, uh -- To me, as I see this, it looks kind of
4 rusted. Would you agree?

5 A It's definitely rusted. But anytime you put high
6 heat on metal, it'll rust.

7 Q Does it -- When you saw it being operated, did
8 it, uh, look like that either while it was being
9 used or -- or shortly thereafter?

10 A Shortly after. But while it's being used, it's
11 almost red hot.

12 Q Really? The whole --

13 A Yeah.

14 Q The whole outside panels?

15 A It will get real close to red.

16 Q And then how soon after that does it -- would it
17 have -- would it turn into a condition similar to
18 this?

19 A Probably overnight.

20 Q Really? As you see this smelter in its current
21 condition, did that look consistent with the
22 smelter that -- as -- how the smelter would
23 appear to you shortly after you saw someone using
24 it?

25 ATTORNEY KRATZ: Objection. Irrelevant,

1 Your Honor.

2 THE WITNESS: Yeah.

3 THE COURT: Uh, just a minute. Stop a
4 minute.

5 THE WITNESS: Okay.

6 THE COURT: Um, I -- I'm going to
7 sustain the objection.

8 Q (By Attorney Buting) As you look at the smelter
9 in -- in this picture, is there any -- does this
10 picture -- I'm sorry. Does -- does the condition
11 of the smelter tell you anything about how
12 recently or how long ago it had been used before
13 this photograph was taken?

14 A Not at all.

15 Q Why not?

16 A I would imagine if you go there right this instant it
17 would probably look the same way. I do not see
18 anything that could tell me when it was used before
19 or after. Nothing tells me that.

20 Q And what -- and what about the con -- the rust
21 condition? Doesn't that look -- tell you
22 anything?

23 A Not a bit.

24 Q Could that smelter have been used a few days
25 before that?

1 ATTORNEY FALLON: Objection.

2 Speculation.

3 ATTORNEY KRATZ: Objection.

4 Speculation, Judge.

5 THE WITNESS: It's -- it's --

6 THE COURT: Sus -- sus -- Sustained. The
7 objection's sustained.

8 Q (By Attorney Buting) All right. Thank you, sir.

9 ATTORNEY BUTING: That's all I have.

10 THE COURT: Mr. Fallon or Mr. Kratz?

11 ATTORNEY KRATZ: Yes. Janet, could you
12 get me, uh, Exhibit 248, please, while I start
13 my -- It's the other gun that we haven't seen
14 yet.

15 **CROSS-EXAMINATION**

16 BY ATTORNEY KRATZ:

17 Q Good afternoon, Mr. Johnson. How are you?

18 A Hello. I'm fine, thank you.

19 Q Mr. Johnson, prior to the 31st of October of
20 2005, when had you last seen your friend, Steven
21 Avery?

22 A I don't know. It was probably a month before, maybe.
23 I do not know for sure. I can't recall any reason
24 that I would have been out there.

25 Q Was it a month before?

1 A Could have been.

2 Q Do you remember, Mr. Johnson, being interviewed
3 by law enforcement officers in this case?

4 A Yes, I do.

5 Q And do you remember being interviewed on February
6 6 of 2006?

7 A Yes. That was at my house in Jackson.

8 Q Okay. At that time, Mr., uh, Johnson, do you
9 remember telling law enforcement officers that
10 you must have seen Steven Avery just prior to
11 October 31 of 2005?

12 A Yes, I do, because he had a cut on his hand.

13 Q Who's he?

14 A Steve.

15 Q Can you describe that cut for us, please?

16 A I can't even -- It's not uncommon to have your hands
17 cut in the junkyard, but I can't -- it was across --
18 it was a pretty nasty gash.

19 Q Across which finger? Do you remember?

20 A I think it was across the knuckle or the hand. I
21 can't swear to it.

22 ATTORNEY BUTING: Record should reflect
23 the witness was pointing to the, um -- Do that
24 again, sir?

25 ATTORNEY KRATZ: Well, no, I asked him

1 which finger.

2 Q (By Attorney Kratz) Do you know which finger,
3 Mr. Johnson?

4 A I think it was acrossed -- right acrossed the, what,
5 index finger?

6 ATTORNEY BUTING: All right. Record
7 should reflect --

8 THE WITNESS: It was --

9 ATTORNEY BUTING: -- he's --

10 THE WITNESS: -- a jagged-looking cut.

11 ATTORNEY BUTING: Sir, just one moment.
12 The record should reflect that he's pointing to
13 the -- the back or side of his hands, right near
14 the knuckles. And it, um --

15 THE COURT: I can't see his hand. Is that
16 a fair characterization, Counsel?

17 ATTORNEY KRATZ: I -- I suspect, Judge,
18 that's what Mr. Johnson today is saying.

19 THE COURT: All right. The record will so
20 reflect.

21 Q (By Attorney Kratz) Mr. Johnson, I'm going to
22 show you what's been marked for -- and, in fact,
23 received for identification, as Exhibit No. 193.
24 Do you see that?

25 A Yeah.

1 Q You know what that is?

2 A It's a cut finger.

3 Q Do you know whose finger that is?

4 A Not really. I can't see a face so I couldn't tell
5 you, but I can assume.

6 Q Does that -- Does that cut look, uh, the same or
7 similar as the cut that you described --

8 A Yes, it does.

9 Q -- to law enforcement? Mr. Johnson, you're going
10 to have to wait until I finish an -- asking --

11 A Oh.

12 Q -- my question. Otherwise, this young lady here
13 is going to get angry with one of us and it will
14 probably be me. Okay? Do you remember, uh,
15 seeing, a -- seeing a cut that looked just like
16 that on Mr. Avery's hand; is that right?

17 A A gash of that type, yes.

18 Q Do you remember telling law enforcement that you
19 saw that just before October 31 of 2005?

20 A I think I do. I remember the nasty-looking cut.
21 That's all I can say. I thought it should have been
22 stitched.

23 Q Mr. Johnson, I'm going to have Mr. Fassbender
24 hand you, um, what has been received as Exhibit
25 No. 248 and have you take a look at that firearm

1 and tell the jury if you recognize it?

2 A If it's got a wooden ramrod, it's mine.

3 Q Well, first take a look at Exhibit No. 248. Tell

4 us what that is, please?

5 A That is a firearm. A black powder gun.

6 Q All right. Um, have you ever seen this gun

7 before?

8 A I seen one. If it isn't the same one, it's almost

9 identically the same.

10 Q All right. Do you -- do you feel comfortable

11 handling that weapon? Or would you prefer

12 that -- that somebody else -- I want you to look

13 at both sides of it just to -- to make sure. Um,

14 you -- you feel comfortable in handling a -- a

15 weapon, I assume?

16 A (Unintelligible.)

17 Q In looking at both sides of Exhibit No. 248, do

18 you recognize that gun and have you ever seen it

19 before?

20 A Yes, I did. And now I remember. Yes, I have. That

21 was my gun.

22 Q That is. Okay. And despite having the -- It's

23 got two triggers?

24 A It's got a -- a safety device.

25 Q All right.

1 A The most I fired out of it was about 20 rounds.
2 Twenty rounds.

3 Q All right. And I'll have that taken from you.
4 So that, and the .22 caliber Marlin, were both
5 in --

6 A Those were the two guns I had. Oops.

7 Q They were both in the master bedroom; is that
8 right? Yes?

9 A Correct.

10 Q When was the last time that you saw that,
11 Mr. Johnson?

12 A Whenever I went up there -- Jodi was living there. I
13 know that. I can't tell you what year it was. 2004?

14 Q All right. Do you know if your friend, Steve,
15 was living with Jodi at that time?

16 A By that time, yes, I did.

17 Q And so when Steve Avery was living in that
18 trailer, including in that bedroom, did you see
19 that firearm and the .22 firearm in his bedroom?

20 A I can't honestly say if I did or not, because I
21 didn't go in the bedroom at that time.

22 Q You talked about something that was called a
23 brick of ammunition. Can you describe that
24 again?

25 A It's a package of ten boxes of .22 shells.

1 Q And how many shells are in each box?

2 A Fifty in each one. There's 500 rounds in a brick.

3 Q Now, are those boxes, uh, cardboard?

4 A Yes.

5 Q And all of the ammunition, at least for the

6 .22 caliber Marlin that you owned, uh, came in

7 this brick form? Is that your testimony?

8 A That's the way I bought it. It was cheaper.

9 Q You never bought, uh, .22 caliber ammunition in

10 plastic boxes?

11 A I might have from time to time. Depends on how the

12 brick came.

13 Q All right.

14 A I don't even remember. I just went to the store and

15 bought it.

16 Q All right. So as you sit here today, you don't

17 know what kind of .22 caliber ammunition you may

18 have had in the trailer?

19 A I have no idea what brands they were. They would

20 have been several different kinds.

21 Q My question, though, is do you believe that they

22 were in these 50, uh --

23 A Yes.

24 Q -- cartridge -- They were in these 50 cartridge

25 cardboard boxes?

1 A Cardboard or plastic --

2 Q All right.

3 A -- yes.

4 Q And if I understand this correctly, then, the
5 cardboard or plastic box would be grouped
6 together and you buy them in bulk, basically; is
7 that right?

8 A You'd buy them in a packaged up in the shape of a
9 brick.

10 Q All right. I show you, Mr. Johnson, what's been
11 received as Exhibit No. 246. Ask if you
12 recognize what that is, please?

13 A It's a box of shells out of the brick.

14 Q All right. And is this --

15 A And they're .22 long rifles.

16 Q And is this the kind of shell that you had in the
17 trailer at least the last time that you were
18 there?

19 A Probably is. Very, very likely.

20 Q Now, the brand of .22 long rifle shell, it says,
21 CCI. Do you know what that stands for?

22 A I don't remember, but I bought it for my .357. I
23 bought it for a .22 caliber pistol that I had. And I
24 used it -- The pistol and the rifle used the same
25 ammunition.

1 Q And that would be a .22 long rifle -- These are
2 hollow point, uh --

3 A Yes.

4 Q -- bullets; is that right?

5 A Right.

6 Q Are you familiar at all with ammunition? Do you
7 know what a hollow point bullet is?

8 A Yes. It's one that will fragment over and expand.

9 Q In fact, when it, uh, enters whatever the target
10 is, uh, whether it's a -- an animal or something
11 else, it's intended to create more damage; is
12 that --

13 A Correct.

14 Q -- correct? On -- on the -- would be the end of
15 these shells, um, you see a, uh -- a logo -- a --
16 a -- a letter C. You see that?

17 A Yes, I do.

18 Q That how you remember those shells looking?

19 A I bought so many shells I can't honestly tell you
20 what they look like.

21 Q I understand. All right. Do you know what a
22 rimfire --

23 A Yes, I do.

24 Q If I could just finish asking the question. You
25 know what a rimfire, uh, shell is?

1 A Yes, I do.

2 Q And what is that, sir?

3 A It is one that will fire anyplace along the rim as
4 opposed to having a firing pin for a primer.

5 Q So different kind of bullets, uh, ignite or
6 operate in different kind of ways? Is -- is that
7 your understanding?

8 A That's my understanding.

9 Q And .22 caliber shells are unique, as I
10 understand, or at least are typical for having
11 this rimfire, uh, uh, capacity; is -- is that
12 true?

13 A As far as I know, it's true.

14 Q Uh, larger caliber, um, bullets, uh -- Your .357,
15 as an example, uh, you're talking about a
16 handgun; is that right?

17 A Yes.

18 Q And .357 is just a different caliber? It's a
19 much larger caliber than a .22?

20 A Correct.

21 Q That .357 bullet, as an example, would -- on the
22 end of the bullet, if I can just show this again,
23 where I'm pointing here, instead of -- of it
24 being relatively flat, would have a -- a primer
25 in the center of the bullet; is that -- is that

1 correct?

2 A That's correct.

3 Q Now, you mentioned to Mr. -- Mr. Buting on his
4 direct examination that although you shot this
5 weapon, uh, around or near the garage, that you
6 never shot it inside of the garage. Is that
7 still your testimony?

8 A That is part of my testimony. I don't believe in
9 guns in a building.

10 Q All right. And, in fact, Mr. Johnson, uh, at
11 least the last time that you were there, last
12 time that you were in the garage, did you ever
13 notice any .22 caliber shell casings inside of
14 the garage?

15 A Not that I recall.

16 Q Well, if you would have seen a .22 caliber shell
17 casing inside of the garage, is that something
18 that you think that you would have remembered?

19 A Not really.

20 Q All right. How come?

21 A As I said, I fired outside the garage door, and I
22 pointed to the area, and if the door was open, shells
23 could have land in there as well as out.

24 Q All right. How far in the garage you think those
25 shells would have landed if you fired outside the

1 garage?

2 A I have no real idea.

3 Q Well, let me show you some pictures and ask you
4 some questions. First of all, I'm going to show
5 you Exhibit No. 221. Do you know what we're
6 looking at here?

7 A .22 shell.

8 Q And I suspect just from this photo you can't tell
9 me where that was taken, can you?

10 A I cannot.

11 Q All right. In the garage, Mr. Johnson, had --
12 there was, um, stuff?

13 A Understatement.

14 Q That's a nice way of putting it. I'm showing you
15 Exhibit No. 232. Some of the stuff is, uh,
16 exhibited in this photo; is that right?

17 A Yes, it is.

18 Q Uh, you'll see a -- a red -- larger red tool box.
19 That was yours; right?

20 A Correct.

21 Q You'll see a -- next to that a green air
22 compressor? You see that?

23 A Yes. That's mine.

24 Q That's yours as well? And to the right of the
25 red tool box, do you see, uh, at least the, uh,

1 edge of a gray workbench?

2 A Yes, I see what appears to be a workbench or
3 whatever.

4 Q Well, I -- I'm going to ask you about your
5 recollection. Do you recall seeing those items
6 there the last time that you were in the garage?

7 A Yes.

8 Q In fact, all of those items, and most of the
9 things that we see in this picture --

10 ATTORNEY BUTING: Your Honor, ob -- can
11 I just ask Counsel to clarify the last time? I
12 mean, he's been -- he's probably been in the
13 garage. He still owns it. He's probably been in
14 there recently, so you might want to give that
15 time frame.

16 THE COURT: There should be clarification
17 as to time.

18 ATTORNEY KRATZ: I'd be happy to do
19 that.

20 Q (By Attorney Kratz) The last time prior to
21 October of 2005 that you were in the garage, uh,
22 did you see those items in there?

23 A Yes, I did.

24 Q Do you remember, Mr. Johnson, you saying that you
25 had, or remembering now, that you had seen your

1 friend, Steven, before or just before the 31st of
2 October? Do you remember why it was that you
3 were talking to him?

4 A No. I'm trying to think of it. I was trying to
5 think of it after --

6 Q All right. You don't --

7 A Any reason for it.

8 Q You don't remember why you were visiting him --

9 A Not really.

10 Q -- that fall, huh? You had, uh, spoke -- or
11 answered some questions from Mr. Buting about the
12 rear area of the garage. Let me just grab a
13 photo here. I think it was your testimony that
14 you hadn't burned anything behind the garage?

15 A I had not burned anything behind the garage.

16 Q Showing you what's been received as Exhibit No.
17 47. Show you what appears to be a, uh -- a
18 charred or burned area. First of all, uh, do you
19 see that in the large screen?

20 A I see it, yes.

21 Q Uh, is that, um, an area that you ever burned in?

22 A No, it is not.

23 Q Now you see, also, in this photograph, a -- a
24 shovel and some other items; is that right?

25 A Yes, I do.

1 Q Have you ever seen that shovel before?

2 A It was in the garage.

3 Q Whose shovel was it?

4 A Mine.

5 Q Now, let me ask you, Mr. Johnson, and -- and I
6 may already know because of the -- the kind of
7 person that you are, but would you have left, uh,
8 your shovel or your tools just laying out in the
9 yard like this?

10 ATTORNEY BUTING: Objection.

11 A No, they would have been back in the garage.

12 ATTORNEY BUTING: Objection.

13 Irrelevant.

14 THE COURT: Um, based on the phra --
15 phrasing of the question, I'll sustain the
16 objection.

17 Q (By Attorney Kratz) The last time that you were
18 at your property, had you ever left, uh, any
19 tools, including a shovel like that, in the
20 condition that you see in Exhibit No. 47?

21 A No, I wouldn't have.

22 Q Mr. Johnson, you had identified a -- a burn
23 barrel, um, in front of the garage. Excuse me,
24 in front of, uh, the trailer. This is another
25 view of it. It's Exhibit No. 51. Uh, does that

1 look like your burn barrel?

2 A It could very well be, yeah. I can't say that it's
3 definitely mine because all barrels look pretty much
4 alike.

5 Q I understand. Let's go to a -- a view I think
6 that's -- I think Exhibit 37 is -- is the one
7 that he had been talking about. Is that now a --
8 look like your burn barrel?

9 A Yes, it does.

10 Q Now, when you talked to the jury, or at least
11 when you testified on direct examination, you
12 called it my burn barrel; is that right?

13 A That is correct.

14 Q When's the last time you burned anything in your
15 burn barrel?

16 A Probably just after Jodi came in, because I had
17 plastic oil bottles and oil filters, which you can't
18 get rid of.

19 Q Do you know what month or year that was?

20 A Well, if she moved in in 2004, might be closer to the
21 fall of the year.

22 Q Fall of 2004? It's fair to -- I'm sorry. When
23 (unintelligible.)

24 A I would think it was 2004. I said after Jodi moved
25 in. It wasn't when the two of them were together. I

1 might have left some stuff up there for them to burn
2 for me, but that would have been the last time I
3 burned.

4 Q It's fair, then, Mr. Johnson, that at least after
5 2004, whether it was Steven Avery or Jodi
6 Stachowski, other individuals may have burned in
7 that barrel?

8 A Correct.

9 Q In fact, do you know that to be the case?

10 A No.

11 Q You just know the last time you burned in it was
12 in '04?

13 A Yes.

14 Q All right. Did you ever burn a -- Let me first
15 ask the -- the foundation question. Do you know
16 what a digital camera is?

17 A Yes, I do.

18 Q And have you ever owned a digital camera?

19 A No, I have not.

20 Q Have you ever burned a digital camera in this
21 burn barrel?

22 A No, I have not.

23 Q Do you know -- Do you know what a cell phone is?

24 A Yes, I do.

25 Q Do you own a cell phone?

1 A No, I don't.

2 Q Have you ever burned a cell phone in this burn
3 barrel?

4 A I have not.

5 Q By the way, Mr. Johnson, this, um -- this burn
6 barrel, does it appear to be in about the same
7 position, at least relative position, as compared
8 to the garage and the trailer as when you left
9 this lot?

10 A It was moved there. Originally, I lived closer to
11 the garage, and they moved it up there, and I used
12 it, or Jodi started moving it up there because it was
13 making too much smoke in the trailer.

14 Q All right. Let me ask the question a little
15 differently. Exhibit No. 37, looking at that
16 burn barrel, does that look like the last place
17 that you had seen that burn barrel?

18 A Yes, it does.

19 Q That's all I have. Thank you very much, sir.

20 THE COURT: Mr. Buting, anything else?

21 ATTORNEY BUTING: Yes.

22 **REDIRECT EXAMINATION**

23 BY ATTORNEY BUTING:

24 Q Mr. Johnson, uh, Mr. Kratz reminded you that the
25 police spoke to you in February?

1 A I don't know what month it was, but I know they spoke
2 to me.

3 Q And you recall that because it was in your --

4 A They parked in my driveway in Jackson. They pulled
5 up into the driveway, and I looked, and what's a
6 squad car doing here? Or it appeared to be a squad
7 car.

8 Q All right. At any rate, was that the first time
9 that you had spoken to any police officers about
10 this --

11 A Yes --

12 Q -- incident?

13 A -- about that. It's the first time that I can recall
14 speaking to police officers about it. And I was kind
15 of surprised that they didn't act sooner.

16 Q So that was like three months later?

17 A It was a considerable period. If it was February, I
18 can't remember the month, because I -- I know it was
19 a long period of time after what was said was done.

20 Q Sure.

21 A It seemed like a long time before they came to see
22 me.

23 Q And by that time there had been, um, reports on
24 the television about the charge against
25 Mr. Avery?

1 A I've heard the charges about him, but I didn't talk
2 to anybody about them. I didn't know anybody.

3 Q No. That's fine. I -- I'm just saying, by the
4 time they came to talk to you, you knew something
5 about --

6 A Oh, yes, I did, by that time.

7 Q Sure. Okay. And, um, when they asked you about
8 when you were last up there to see, uh, Mr. --
9 Um, let -- let me clear this up first. Mr. Kratz
10 keeps saying that when you went up to see your
11 friend, Steven Avery, is that why you would go
12 visit the property?

13 A That's part of the reason I'd go and see him. I
14 wouldn't have to have a reason to go up there.

15 Q Okay. Who -- who's the -- Of the Averys, who are
16 you the closest to?

17 A I would say Allen.

18 Q Okay. So would you go up to see Allen,
19 primarily, and then see --

20 A I'd look at my trailer, and go up to see Allen, some
21 of my other friends in the area, too.

22 Q Okay. Um, and if you told the police that you
23 thought you were up to -- to see the trailer area
24 sometime just prior to -- or prior to Halloween,
25 2005, what kind of a time frame were you thinking

1 of or what did you have in mind?

2 A I almost think about within a month of Halloween.

3 Q Okay. So you didn't mean just the -- the week

4 before or --

5 A No, I didn't mean the week before. It could have

6 been, but I don't know.

7 Q And in all the times that you would visit the

8 Averys, um, was it unusual to see cuts on their

9 hands?

10 A It's not unusual to see cuts on anybody up there. In

11 a junkyard, wrenches slip easy.

12 Q Would that include Chuck?

13 A Chuck would have cuts.

14 Q Earl?

15 A Earl.

16 Q Allen?

17 A All of them.

18 Q Okay. Did, uh -- The -- the -- the photograph

19 that Mr. Kratz put up for you, um, as I

20 understand it, you said that the -- the gash that

21 you saw, or recall Steven Avery having, was

22 similar to that?

23 A It was a wide open cut like that. That -- that's

24 what I was referring to.

25 Q But you described it when you motioned you to --

1 you --

2 A I said that's where I thought it was. I can't
3 remember for sure. I had no real reason to -- to
4 think anything more about a cut in a junkyard.

5 Q Okay. And so the photograph that Mr. Avery
6 showed you may not have been the -- the cut that
7 you discussed with the police?

8 A It is possible that it's not the same cut. I don't
9 know.

10 Q Okay. You didn't make particular note of that
11 when you saw it?

12 A There was no reason to.

13 Q And they were talking to you how much after
14 the -- the, uh, event?

15 A When the police were talking to me?

16 Q When they were asking you about this cut? This
17 was several months?

18 A Yes. And I don't even recall exactly where he was
19 cut at that time, but I do know he had a cut.

20 Q Okay. That's all I have. Thank you, sir.

21 ATTORNEY KRATZ: Nothing else, Judge.
22 Thank you.

23 THE COURT: Very well. The witness is
24 excused. The, uh, defense may call its next
25 witness.

1 ATTORNEY STRANG: Next witness is, uh --
2 if this is working -- is Debra Kakatsch.

3 THE CLERK: Raise your right hand.

4 **DEBRA KAKATSCH,**
5 called as a witness herein, having been first duly
6 sworn, was examined and testified as follows:

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

9 THE WITNESS: My name is Debra Kakatsch,
10 and it's spelled D-e-b-r-a, and the last name is
11 K-a-k-a-t-s-c-h.

12 **DIRECT EXAMINATION**

13 BY ATTORNEY STRANG:

14 Q Good afternoon.

15 A Good afternoon.

16 Q How are you employed, Ms. Kakatsch?

17 A I'm employed as the Manitowoc County Coroner.

18 Q How long have you been the Manitowoc County
19 Coroner?

20 A Uh, I'm going into my 15th year and, also, I was, uh,
21 chief deputy two years before that.

22 Q So what -- what does that mean you started?

23 A As coroner?

24 Q Or as chief deputy?

25 A Uh, chief deputy, '91-'92. Coroner started '93.

1 Q Okay. What -- what sort of, um, work background
2 did you have before becoming the chief deputy
3 coroner?

4 A Um, my background was primarily nursing at that time.
5 I worked in several different areas. I was an
6 obstetrical nurse and delivered babies. Sometimes
7 doctor always didn't get there. Uh, also worked in a
8 nursing home, taught childbirth education. Uh,
9 chemotherapy. Worked in the emergency room. Uh,
10 intensive care area.

11 Q Um, when you first started nursing, what sort of
12 nursing certification, if any, did you have?

13 A In the beginning --

14 Q Yes.

15 A -- of my nursing career? Uh, I became, um, certified
16 in obstetrics in my earlier years.

17 Q And was -- I know there are different types of
18 nursing and just different certifications. Did
19 you have any of those initially?

20 A Well, uh, to be a nurse, you need to have a license
21 under the state of Wisconsin. Um, but then I went on
22 to be certified in other areas.

23 Q What was your first license as a nurse?

24 A Licensed Practical Nurse.

25 Q Did you continue your education in the field of

1 nursing after becoming a licensed practical --
2 practical nurse?

3 A Yes, I went back to school for a registered nurse.

4 Q And did you eventually get the RN?

5 A Yes, I did.

6 Q Or registered nurse?

7 A Yes, I did, 1980.

8 Q Do you have any schooling beyond the registered
9 nurse, uh, status?

10 A Yes, I do.

11 Q What's that?

12 A Um, I went back to school and, uh, I got a Bachelor's
13 Degree in management. And then I also went back to
14 school for a paralegal degree. And then I went back
15 to school for, uh, a police science degree. Not a
16 full degree, but at that time I was looking for, um,
17 more classes to help me do my job as a, uh, coroner
18 and also in other fields that I was pursuing later
19 on. But, uh, it helped me quite a bit in, um, my
20 coroner work. And -- and by doing that I got
21 involved in teaching some things, too.

22 Q Have you had any spec -- any training specific to
23 your work as the, uh, coroner?

24 A Yes, I have. Um, I have taken, uh, numerous other
25 trainings, um, such as, uh, anthropology,

1 autopsy-type, um, courses. I've been in a number of
2 autopsies, signed permits for a number of those. Um,
3 oh, DNA. I've taken a couple of Dr. Henry Lee's
4 courses. I don't know if you're familiar with him.
5 Um, Dr. Michael Bodden. I've taken some courses from
6 Dr. --

7 Q These --

8 A -- Bodden.

9 Q These are well-known medical examiners --

10 A Yeah.

11 Q -- from --

12 A Yes.

13 Q -- Connecticut in Dr. Lee's case, um, and
14 Pennsylvania in Dr. Bodden's case?

15 A Yes.

16 Q Okay.

17 A Um, and I felt I -- I learned a lot specifically from
18 getting training from those particular people. So,
19 um, then I try to keep on that -- keep up on that
20 training, uh, every year with whatever comes along
21 that best fits the scope of my job to do it better.

22 Q Do you have any certifications, um, connected to
23 your work as coroner?

24 A Yes, I do. I'm certified as a forensic nurse.

25 Q What does that mean?

1 A Forensic nurse deals more with the -- the
2 investigation part of nursing and the medical field,
3 and, uh, to do that I had to submit numerous types of
4 educational things that I attended, and, then, uh, I
5 also had to take an advanced condensed program and
6 then write an exam.

7 Q Okay. Uh, and other than forensic nursing, um,
8 have we covered your certifications?

9 A I also got certification as, um, Homeland Security,
10 which deals with, uh, the medical field death
11 investigation, disaster-type situations, death
12 investigations.

13 Q When you say, "Homeland Security", the United
14 States Department of Homeland Security?

15 A Uh, well, it's through our organization, the American
16 College of Forensic Examiners, so --

17 Q All right. Um, in addition to the American
18 College of Forensic Examiners, do you belong to
19 any professional associations?

20 A Yes. I belong to the Wisconsin Coroners Medical
21 Examiners Association, the Forensic Nurses
22 Association. I used to belong to the Homicide
23 Investigators Association.

24 Q All right. Now, what -- what is the position of
25 coroner, um, in, uh -- in Wisconsin?

1 A In Wisconsin it, uh, revolves around death
2 investigations and it can -- the types of deaths we
3 get involved in are, um, homicides, suicides, traffic
4 accidents, industrial deaths. Um, sometimes if there
5 would be a, uh, death in police custody or in jail,
6 or bodies found, remains found, um, drug deaths,
7 emergency room deaths, drug reactions. There's many
8 things we get involved in that the State requires us
9 to investigate.

10 Q All of them in -- involve, unfortunately, someone
11 dying?

12 A Yes.

13 Q Okay. And how do you -- how do you -- how do you
14 get this job of coroner?

15 A Coroner's elected.

16 Q What -- what's the current term?

17 A The current term is four-year term now. It -- it had
18 been two years.

19 Q Okay. And, uh, when you say "elected" is that
20 a -- a municipal position? A county position? A
21 state position? What --

22 A It's a county position.

23 Q All right. Um, does -- does your work as
24 coroner, uh, involve a duty to determine manner
25 of death? Uh, at least in some instances of a

1 sudden death?

2 A Well, that's our job everyday.

3 Q Now, but -- but if a death happens, let's say, in
4 a hospital or a nursing home, would you be
5 involved, typically, in that?

6 A Sometimes we are. It depends. Um, let's say, for
7 example, a person has a hip fracture and they're in
8 the nursing home, those we have to accept as a case.
9 If someone's choked, if someone's had a drug
10 reaction, we have to accept those as case as well.

11 Q So how would we -- how would we describe simply
12 for the jury what sort of deaths become the
13 coroner's business and what don't?

14 A Well, it -- it would fit under the criteria of what I
15 explained. If there's some kind of accidental
16 nature, suicide nature, homicide nature to it, um,
17 undetermined nature, um, we have to get involved.

18 Q Okay. In other words, if it's -- if -- if it's
19 natural causes, you might not be involved?

20 A We may still be involved because you may not know the
21 death is a natural death until you completed whatever
22 you need to do to arrive at that determination.

23 Q Okay. But, I guess, if I understand you, you
24 won't be involved in every natural death if a
25 doctor has attended --

1 A No. No.

2 Q Okay. Um, do you have the -- the power to sign
3 and issue a death certificate?

4 A That's our job everyday, yes.

5 Q Do you have any statutory or, you know, duties
6 under law, to, um, uh, control the disposition of
7 human remains?

8 A Yes.

9 Q What -- what are those?

10 A Um, well, particularly where I get involved, um, with
11 disposition is unclaimed bodies, bodies that are not
12 identified. We have to provide indigent burial if we
13 don't find anybody to claim that body.

14 Q All right. Did you, um, in November of 2005, uh,
15 come to learn of some suspected human bones found
16 on or near what we call the Avery property in
17 Manitowoc County?

18 A Yes, I did.

19 Q How did you learn about that?

20 A From television.

21 Q And, um, had you had any -- any prior involvement
22 in the investigation into Teresa Halbach's
23 disappearance?

24 A Could you repeat that?

25 Q Had you -- Before you saw this on the

1 television --

2 A Uh-huh.

3 Q -- did you have any prior involvement into the
4 investigation of Teresa Halbach's --

5 A No.

6 Q -- disappearance? Okay. Um, but, again, I
7 guess, it would be a death that would trigger the
8 coroner's involvement?

9 A Yes.

10 Q What did you do after you saw on television, uh,
11 something about the discovery of possible human
12 remains?

13 A Well, I got a few phone calls, uh, and particularly
14 from my deputies, as to what the plan of action would
15 be when --

16 Q Okay. I'm going to interrupt you just a moment.
17 I'm sorry. How many deputy coroners do you have?

18 A Uh, at that time I believe it was six.

19 Q Okay. I'm sorry I -- I interrupted.

20 ATTORNEY GAHN: Your Honor, I -- I'm --
21 I'm sorry, Your Honor. I think we need to be
22 heard outside the presence of the jury.

23 THE COURT: All right. At this time the
24 Court will excuse the jurors for a few minutes.

25 (Jurors out at 4:08 p.m.)

1 THE COURT: You may be seated.

2 ATTORNEY GAHN: I believe it would be
3 better if the witness were to leave the
4 courtroom.

5 THE COURT: All right. Ms. Kakatsch, we'll
6 excuse you from the courtroom at this time.
7 Mr. Gahn?

8 ATTORNEY GAHN: Yes, um, I guess we're
9 at a loss here. We don't know what is going --
10 happening here. We've received no discovery. I
11 see that the witness has a folder in front of
12 her. Um, looks like two folders. Um, I don't
13 know if she's going to be asked to render any
14 type of opinion. I don't know if this is --
15 involves the lawsuit that was pending at the
16 time.

17 But, more importantly, on, um, just
18 January 19 of 2007, uh, one of our agents,
19 Special Agent Heimerl, um, spoke with the
20 coroner, and at that point she stated that, uh,
21 she was not aware of being on the list as a
22 potential defense witness. She stated she did
23 not know why she would be called as a witness.
24 She stated that she does not know what type of
25 testimony may be needed from her as a defense

1 witness as she felt she had no relevant
2 information.

3 So I guess, under the rules of
4 discovery, we would like to know exactly what
5 documents the defense has, what they plan to
6 elicit from this witness. Uh, we just, um, have
7 no idea.

8 THE COURT: Mr. Strang?

9 ATTORNEY STRANG: I have no documents
10 from the witness. Never have. Um, because she
11 brought the files, I asked her to bring them in,
12 anticipating that maybe the State would want to
13 see them. Um, there's no discovery I have that's
14 to be turned over. She is not an expert witness.
15 She's purely a fact witness.

16 I understand I -- I asked some questions
17 about her background, but simply by way of
18 establishing who she is and why she has the job
19 of coroner. She was, of course, listed on our
20 witness list, uh, timely filed. Um, and, um, I
21 guess they could have interviewed -- they could
22 have interviewed her, um, as I have.

23 Um, she will, um, testify, um, to the
24 response that she began, in her capacity as the
25 Manitowoc County Coroner, um, in her efforts,

1 then, to obtain access to human remains, uh, how
2 those were rebuffed by, um -- specifically by
3 Investigator Mark Wiegert, as the person with
4 whom she recalls having contact, um, and then she
5 was later, um, told that, uh, she was not to get
6 involved, um, by the unusual, she will say,
7 intervention of the Manitowoc County Executive
8 and, later, the Corporation Counsel. Uh, and in
9 the end, she was prevented from discharging her
10 statutory duties as coroner.

11 ATTORNEY GAHN: And I would ask what is
12 the relevancy of this? Um, the Manitowoc County
13 Corporation Counsel, is my understanding, wanted
14 to remove all Manitowoc County officials from
15 this investigation. Um, it was a prudent, wise
16 move on their part.

17 And to come in now, because, perhaps,
18 some disgruntled Manitowoc County employee, uh,
19 didn't like that decision? I don't see the
20 relevancy at all in this.

21 ATTORNEY STRANG: Well, it probably
22 would have been prudent to remove all Manitowoc
23 County officials from the investigation. But
24 we've heard for a month just exactly how that
25 wasn't done with the Manitowoc County Sheriff's

1 Department. And, unlike the Sheriff's
2 Department, neither Ms. Kakatsch, nor the office
3 of coroner, nor anyone in the coroner's office,
4 had any prior involvement in Steven Avery's civil
5 lawsuit. Um, hadn't been deposed, hadn't been
6 interviewed, had no statutory responsibilities
7 for the 1985 crime.

8 And, um, yet, her office alone,
9 apparently, among Manitowoc County law
10 enforcement offices, uh, was walled off entirely,
11 uh, from performing, uh, legal duties, lawful
12 duties in connection with discovery of human
13 remains.

14 THE COURT: Assuming she was walled off,
15 what's the relevance of that for purposes of this
16 trial?

17 ATTORNEY STRANG: This -- this goes
18 directly to investigative bias and decisions to
19 prefer the involvement of certain Manitowoc
20 County officials and not other Manitowoc County
21 officials even when there were statutory duties,
22 uh, to be performed in connection with a death.

23 ATTORNEY GAHN: Your Honor, now, I
24 guess, the Corporation Counsel of Manitowoc
25 County is involved in the bias in this case. Um,

1 I don't see any relevance at all. But if -- if
2 Your Honor sees some shred of, uh, relevance,
3 then I would ask the Court to give a, um,
4 analysis under 904.03 as this is just, uh -- the
5 probative value is just so low that it just, um,
6 is outweighed by the, uh -- the prejudice this
7 could cause, the confusion of issues with the
8 jury, and -- and waste of time for the jury also.

9 ATTORNEY STRANG: Well, if there's -- if
10 there's any 9-0-4-0-3 concern, I guess that would
11 um -- and turning to the Milwaukee County Medical
12 Examiner a year after this death, uh, when he had
13 no involvement at the scene, uh, rather than
14 having the local official whose job it was to
15 investigate a suspicious death, to sign a death
16 certificate, to determine manner of death, the
17 State -- the State's put all of that, uh, in play
18 with Dr. Jentzen and even trying to use an
19 anthropologist for that. Here's the official
20 under Wisconsin law whose duty it is to do
21 exactly these things, and in her county she was
22 prevented from discharging that duty.

23 THE COURT: What -- what would be her
24 competence to perform this duty considering the
25 other plain state people that we've heard from?

1 ATTORNEY STRANG: Well, unlike the
2 State, she will testify that she immediately
3 contacted a forensic pathologist with whom she's
4 worked before and immediately contacted a
5 forensic anthropologist with whom she's worked
6 before, and told them, come to the scene. We've
7 got work to do at the scene, uh, there, as part
8 of a death investigation.

9 But there, again, relevance in how the
10 recovery of bones could have been done so that a
11 more useful assessment of -- of where the body
12 was burned, uh, where remains were found and how
13 they were distributed might have been done had
14 she been allowed to do her job.

15 THE COURT: Well, this may be relevant or
16 have probative value as it relates to a turf war,
17 but I -- I'm failing to see the -- the probative
18 value of it for purposes of this case. I think it
19 has much more potential to mislead the jury, um, and
20 I -- I don't see how anything the coroner would have
21 done, um, would have somehow contributed to a less
22 biased investigation in this matter.

23 ATTORNEY STRANG: Well, I think
24 preferring one Manitowoc County office to another
25 Manitowoc County office in itself, here, Your

1 Honor, bears on investigative bias. It goes
2 directly to the issue of consistency, if you
3 will, and inconsistency that reflects a
4 particular bias. This jury is entitled to see it
5 and, uh, rule upon.

6 THE COURT: I've already given the defense
7 quite a bit of latitude. I've allowed reference to
8 the lawsuit, uh, the fact that, uh, Lenk and
9 Colborn, uh, gave their depositions. I think the
10 Court has granted the defendants, uh, adequate means
11 to make the point as it relates to bias.

12 But the, um -- this witness has nothing
13 to do with the Sheriff's Department. The
14 decisions of Manitowoc County officials, uh, not
15 to become involved that started with the, um --
16 the district attorney, and, uh, whether Manitowoc
17 County higher officials made the right decision
18 or the wrong decision, for purposes of this
19 criminal case, uh, I fail to see any measurable
20 probative value and I think the State's objection
21 is well taken.

22 ATTORNEY STRANG: I think there's also
23 probative value more narrowly in showing this
24 jury that a forensic anthropologist could have
25 been there, could have been at the scene and

1 involved in the recovery, um, had the law
2 enforcement people followed the usual lawful
3 routine of notifying the county coroner upon
4 discovery of suspected human remains. Um, that
5 could have happened here, and the normal steps
6 contemplated by Wisconsin Statutes been taken
7 here.

8 Um, so I would -- I would tender, uh,
9 that as relevant, uh, as well, uh, Your Honor.
10 Uh, there will be testimony in the defense case
11 about, um, destruction of bodies by thermal
12 injury or cremation, uh, about what could have
13 been learned if this site had been properly
14 preserved and recovered, and this is, uh,
15 foundation in part for that testimony as well.

16 THE COURT: Well, if we hear some testimony
17 from a defense expert that creates some relevance
18 I'm not aware of right now, Ms. Kakatsch could
19 always, I suppose, be recalled. But, again, uh,
20 if -- if the reason that the coroner was told to
21 stay off the case was because of fear of a conflict,
22 uh, whether there was any or not, um, I -- I -- I
23 don't believe that the -- the probative value of
24 such evidence, uh, is very great.

25 And I'm -- I'm more worried about

1 creating confusion for the jury when I think the
2 real issue, as -- as I understand it, on the bias
3 issue from the defense has been the, uh, bias,
4 specifically, of Officers Lenk and Colborn, and I
5 think the Court has, uh, allowed, uh, the defense
6 to present a great deal of evidence with regard
7 to that issue.

8 Uh, but I think to further bring the
9 coroner involved, I -- I -- I just think, uh,
10 it's too dangerous to confuse issues when weighed
11 against -- against the probative value.

12 ATTORNEY STRANG: I understand the
13 Court's ruling. I -- I respectfully, uh, suggest
14 that the bias of any witness called by the State
15 is a relevant area of exploration. It's not
16 collateral to the issue and, specifically, this
17 would be -- this witness had telephonic contact,
18 she will say, with Investigator Mark Wiegert, uh,
19 who's been identified as one of the two lead
20 investigators on the case and who testified, um,
21 yesterday.

22 So -- but -- but, again, I -- I -- I
23 recognize the rulings that the Court has made and
24 the rulings allowed us on the bias of Mr. Lenk
25 and Mr. Colborn, but the bias of any state

1 witness is relevant, particularly somebody who
2 has a role like Mr. Wiegert, uh, did here.

3 Um, if -- if -- if the Court's ruling is
4 to stand, what I would simply propose to do is to
5 make a verbal, uh, offer of proof. Proffer her
6 testimony. I can do that in three or four or
7 five minutes just by running through my -- the
8 outline for my direct examination.

9 THE COURT: Anything from the State?

10 ATTORNEY GAHN: No, Your Honor.

11 THE COURT: Well, I -- I -- Maybe I'm
12 missing something. I don't recall any questioning
13 about Ms. uh -- Detective Wiegert in this regard.
14 I'm -- I'm only basing my ruling on what I know. If
15 you want to put something on the record as to what
16 you, uh, would intend to prove, and if, uh, further
17 witnesses from the -- the defense, uh, believes you
18 should ask the Court to reconsider its decision, I
19 will. I'm making my decision based on what I know
20 now.

21 ATTORNEY STRANG: Well, and I'll -- I'll
22 make an offer of proof of what I would expect to
23 elicit from Ms. Kakatsch.

24 THE COURT: Go ahead.

25 ATTORNEY STRANG: Um, I left off with

1 asking her, essentially, how did she learn that
2 suspected human bones, uh, had been discovered on
3 the Avery property. She said she learned by
4 television.

5 Uh, she -- I would -- I expect that she
6 would then testify that her response was to talk
7 to one or more of her deputy coroners. That she
8 then called, um, a forensic pathologist named
9 Dr. Doug Kelly, who at that time worked, uh,
10 with -- although she's not sure -- he was
11 actually employed by the Waukesha County Medical
12 Examiner's Office. He's no longer there. I
13 believe he's the Fond du Lac County Medical
14 Examiner today.

15 Um, she also asked Dr. Kelly to arrange
16 the services of Patrick J. Schoebel,
17 S-c-h-o-e-b-e-l, whom she refers to as P.J., uh,
18 a forensic anthropologist with whom she had
19 worked in the past.

20 I further expect that she would testify
21 that she then contacted, um, investigators at the
22 scene, um, asked why she had not been called.
23 Um, made arrangements to come to the scene, uh,
24 on the 9th of November. Uh, was put off, um, in
25 two or three telephone conversations with

1 Mr. Wiegert. First told, essentially, that he
2 had to check. Uh, next told that her services
3 weren't needed.

4 Um, she has notes that document those
5 conversations. And I'm just giving the general
6 gist of them. Uh, she was not, in the end,
7 allowed on the scene. Uh, she did not have a
8 chance to determine the cause or the manner of
9 death. Um, to her knowledge, neither Dr. Doug
10 Kelly nor Patrick J. Schoebel, um, reported to
11 the scene.

12 She did receive, on the 9th or 10th of
13 November, a phone call from Dan Fischer, who she
14 identifies as the County Executive of Manitowoc
15 County, uh, telling her, in essence, that there
16 was a conflict of interest and she ought not push
17 to be involved.

18 Uh, she disagreed with that. She would
19 say that it was very unusual for her to get a
20 phone call from the County Executive at all. She
21 later received a phone call from a -- from a
22 Steven Rollins, the Manitowoc County Corporation
23 Counsel. Actually, who I -- I know has written
24 the Court here on this case recently. Uh, he,
25 too, advised that she should not be involved

1 because of a conflict.

2 She protested that she and her office
3 had nothing to do with the civil lawsuit that
4 Mr. Avery had brought. Had no involvement in it
5 whatsoever, um, but realized that she was meeting
6 firm resistance.

7 And she, then, contacted the Calumet
8 County, uh, Medical Examiner. I believe he is in
9 Calumet County. A gentleman named -- she would
10 say his name, Mike Klaser. I think that's
11 K-l-a-s-e-r. She contacted him just because
12 somebody had to fulfill the obligations of the
13 coroner. And, as a matter of good faith and
14 doing what she could to discharge her duties, um,
15 she thought the next best thing she could do was
16 to contact the medical examiner in the county
17 that employed the, um, uh, investigator from the
18 Sheriff's Department with whom she was having,
19 uh, contact.

20 And, finally, she would explain that she
21 had no involvement at anytime with Steven Avery's
22 civil lawsuit. She wasn't deposed. She wasn't
23 interviewed by either side. So nobody had any
24 contact with her at all, um, in relation to the,
25 uh, civil lawsuit against Manitowoc County.

1 So that's, uh -- that's, in a nutshell,
2 or in -- in skeleton form, the, uh, testimony I
3 expect that she could offer and that I think is
4 relevant for these as I explained it.

5 THE COURT: Anything else from the State?

6 ATTORNEY GAHN: No, Your Honor.

7 THE COURT: All right. Based on that, uh,
8 testimony, um, I think it's summarized, is that her
9 inability to participate in the case was based on a
10 directive from the County Executive at the time and
11 the Manitowoc County Corporation Counsel. If memory
12 serves me right, may have been involved in the
13 initial decision to turn investigation over to
14 Calumet County, but I'm not -- I don't trust my
15 memory anymore. I know the district attorney was
16 there. I don't remember if the corporation counsel
17 was involved or not.

18 Uh, but at any rate, whether they made
19 the right decision or the wrong decision, uh, it
20 seems to me it was based on the effort of some
21 higher officials in Manitowoc County not to
22 create or further, if you will, from the defense
23 perspective, the appearance of a -- of a, uh,
24 conflict of interest. And, um, I -- I don't
25 perceive how pulling a Manitowoc County person

1 off would somehow add to any bias on any part
2 when the purpose for making the decision was to
3 avoid the creation of bias.

4 And whether that's right or wrong, the
5 probative value of that decision, uh, is so
6 minimal to the facts in this case, which is a
7 criminal case, uh, that I don't believe the
8 evidence has much probative value. Um, and for
9 that reason the Court is not going to allow it.
10 I believe it would tend to confuse the issues in
11 this case. Uh, and Mr. Strang's objection is
12 noted on the record and his offer of proof.

13 ATTORNEY STRANG: Right. It's -- it's
14 bias. It's a double standard that's employed, in
15 our view by, um, uh, the people running
16 investigation, including those who testified as
17 witnesses here, or were involved in it.

18 THE COURT: All right. I think we
19 should, um, bring the jury in and tell them
20 they're going to be excused for the day and then
21 we'll resume tomorrow morning.

22 ATTORNEY STRANG: Very well.

23 THE COURT: Bring the jurors in at this
24 time.

25 (Jurors in at 4:29 p.m.)

1 THE COURT: You may be seated. Uh, members
2 of the jury, it's 4:30, so we're going to conclude
3 our proceedings for today. Uh, I will remind you,
4 uh, again, when you go home, don't discuss the case
5 with anyone, don't discussed it among your --
6 discuss it among yourselves, and be sure not to, uh,
7 expose yourself to any media accounts about the
8 case. We will see you tomorrow morning, uh, at the
9 normal time.

10 (Jurors out at 4:30 p.m.)

11 THE COURT: You may be seated. And then
12 Counsel will, um -- I'd appreciate it tomorrow
13 morning if you can, uh, meet with the Court about
14 quarter to nine to give me an idea of what's going
15 to be going on.

16 ATTORNEY GAHN: Could we meet for a few
17 minutes in chambers, uh, tonight, Your Honor?

18 THE COURT: Now? Sure.

19 ATTORNEY GAHN: Thank you.

20 THE COURT: See you in a couple minutes.

21 (Wherein Court stands adjourned at 4:31 p.m.)
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1 STATE OF WISCONSIN)
)SS.
2 COUNTY OF MANITOWOC)

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I, Jennifer K. Hau, Official Court Reporter for Circuit Court Branch 3 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this ____ day of _____, 2007.

Jennifer K. Hau, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 20

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** MARCH 9, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **PARTIAL TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. We're here this morning for a continuation of
4 the trial in this matter. Will the parties, again,
5 state their appearances for the record.

6 ATTORNEY FALLON: Good morning, your Honor,
7 may it please the Court, the State appears by
8 Assistant Attorney General Tom Fallon, District
9 Attorney Ken Kratz, and in a very short moment,
10 Assistant District Attorney Norm Gahn on behalf of
11 the State.

12 ATTORNEY STRANG: Good morning, your Honor,
13 Attorneys Jerome Buting and Dean Strang appearing
14 with Mr. Avery.

15 THE COURT: Very well. The defense may
16 call its next witness at this time.

17 ATTORNEY BUTING: Okay. The defense calls
18 Janine Arvizu.

19 THE CLERK: Please raise your right hand.

20 **JANINE ARVIZU**, called as a witness
21 herein, having been first duly sworn, was
22 examined and testified as follows:

23 THE CLERK: Please be seated. Please
24 state --

25 ATTORNEY FALLON: Could we have just one

1 moment for Mr. Gahn, this will be his witness. He
2 apparently is momentarily delayed.

3 ATTORNEY KRATZ: It will just be a moment,
4 Judge, he's carrying some things in.

5 THE COURT: All right. I will allow the
6 Clerk to swear the witness, and then we'll wait for
7 the examination until Mr. Gahn gets here.

8 ATTORNEY FALLON: Thank you.

9 THE CLERK: Please state your name, spell
10 your last name for the record.

11 THE WITNESS: My name is Janine Arvizu,
12 A-r-v-i-z-u.

13 ATTORNEY BUTING: This microphone has been
14 a little bit touchy the whole time, so we'll try it
15 right about there.

16 THE WITNESS: Okay. Thank you.

17 ATTORNEY GAHN: I'm so sorry, your Honor.
18 I was held up on something. I apologize to the
19 Court.

20 THE COURT: All right. Mr. Buting, you may
21 begin.

22 ATTORNEY BUTING: Thank you, your Honor.

23 **DIRECT EXAMINATION**

24 BY ATTORNEY BUTING:

25 Q. Ms Arvizu, would you tell us your occupation,

1 please.

2 A. Yes, I'm a Laboratory Quality Auditor.

3 Q. Okay. And how are you employed?

4 A. I do independent contracting for people who use
5 analytical data and want to understand how much
6 reliable -- how reliable and how valid the data
7 are.

8 Q. Okay. And before I get into that a little bit
9 more, would you tell me, first, what your
10 educational background is?

11 A. Yes, sir. I have a Bachelor of Science in
12 Bio-Chemistry from Cal Poly in San Luis Obispo
13 and a ABD in Chemistry from the University of New
14 Mexico. And I'm certified as a quality auditor
15 by the American Society for Quality.

16 Q. Okay. And what is an ABD?

17 A. ABD is all but dissertation, it's, essentially,
18 that you have completed all the course work and
19 examinations for a Ph.D. but did not complete the
20 dissertation.

21 Q. Okay. Maybe just explain to us why you got to
22 that point and didn't complete your Ph.D.?

23 A. I accepted employment with one of the DOE,
24 Department of Energy, National Laboratories, to
25 continue the work I was doing my dissertation on,

1 that was funded by the Department of Energy.
2 After I accepted employment and started working,
3 we lost funding for that project, so I elected to
4 keep the job rather than go back to school.

5 Q. Okay. And do you have exhibit -- I'm sorry, what
6 is the exhibit number in front of you?

7 A. 499.

8 Q. 499. Can you just identify that for the record?

9 A. It's a copy of my resumé.

10 Q. Okay. And does that summarize your educational
11 background, as well as your areas of expertise
12 and your professional experience?

13 A. Yes.

14 Q. All right. We'll talk a little bit about your
15 professional experience in a minute, but, first,
16 the chemistry that you are involved with, is that
17 analytical chemistry?

18 A. Yes.

19 Q. And what is a lab auditor and who uses them?

20 A. A lab auditor is pretty much similar to what you
21 would expect for an auditor of any other
22 discipline. Lab auditors go into laboratories
23 and, essentially, look at how reliable and how
24 valid the data are that are reported by a
25 laboratory.

1 The people who use lab results, it's not
2 like buying a pound of sugar or buying a pound of
3 flour, different laboratories produce different
4 quality data. And so if the data that are being
5 used by a data user are real important and they
6 make real important decisions based on those
7 results, then they can hire an auditor to come in
8 and look at the lab's operations and see whether
9 or not the lab was operating in accordance with
10 good scientific principles and had good quality
11 control practices at the time the laboratory work
12 was done.

13 And so, over the course of my career,
14 the majority of my work assessing data quality
15 and looking at labs has been done for the federal
16 government, because they are probably the biggest
17 consumer of laboratory results. They use a lot
18 of analytical results. And so it's real -- And
19 they make very important decisions based on those
20 results, so it's real important to them to
21 understand how reliable and how valid their data
22 are.

23 Q. Does your employment -- or has your professional
24 experience involved review of commercial, private
25 laboratories exclusively, or government

1 exclusively, or combination, or what?

2 A. Mm-hmm. I have conducted audits of both
3 commercial and government laboratories. Because,
4 again, the government both operates its own
5 laboratories and contracts with commercial
6 services.

7 So I have audited state laboratories,
8 federal laboratories, commercial laboratories, in
9 a wide variety of disciplines. These are labs
10 that test environmental samples, food samples,
11 pharmaceutical samples, the whole manufacturing,
12 a whole gamut of samples.

13 Q. So what -- what arm of the federal government
14 would employ you to do an audit of another
15 government lab? I mean, you know, one part
16 auditing another part, right hand, left hand?

17 A. I'm not sure that's exactly the way it happens.
18 For example, I would be contracted by the U.S.
19 Navy to audit the laboratories that did
20 analytical work for the Navy. So that would
21 include both Navy laboratories, actually staffed
22 by Navy personnel, as well as commercial
23 laboratories.

24 So, it was -- And the Navy, if you will,
25 was the user of the results, and so they wanted

1 to know how much confidence they could have, but
2 it included -- I guess they were in a different
3 part of the Navy, if that's what you mean.

4 Q. Okay. And why is it important that a government
5 lab or a private lab be audited?

6 A. Experience has shown, in the business of science,
7 you know, it's really, really hard to do science
8 on a production line. I managed an analytical
9 lab for the Department of Energy for a number of
10 years, and it's a really, really hard job to do.

11 And that's what we're really asking of
12 these laboratories who are testing unknown
13 samples, is to practice science day, after day,
14 after day, in a highly defensible and valid
15 manner. It's a really hard job.

16 And the -- Experience has shown in the
17 measurement in science business, that the best
18 way to insure the reliability and the validity of
19 the results is to have a very rigorous, quality
20 assurance program in place.

21 It's not a management gizmo of the week;
22 it's a very technically driven job to put in
23 place quality control practices and measures, to
24 ensure that you consistently and reliably produce
25 good quality data.

1 And so that's what drives it, ensuring
2 that you understand the quality of your data and
3 that your data is good enough so you can make
4 good confident decisions based on them.

5 Q. And does the -- does the government, federal
6 government in the instance -- in the situation
7 that you had some experience in, do they ask for
8 audits of -- let's say, let's go to private labs
9 first a minute, just to check up and see if they
10 are okay, or are they sometimes concerned about
11 more serious things in the use of tax dollars?

12 A. It's a little bit of both. And the nature of the
13 problems can be either that the lab doesn't know
14 they have a problem, so when you go in as an
15 auditor you're identifying a problem that they
16 were largely unaware of.

17 For example, I did some work for the
18 Navy where they were interested in the presence
19 of a particular contaminant in bay water. And
20 the laboratory reported that it was not detected.
21 Lots and lots of samples, it was a very expensive
22 analysis. It was hundreds of thousands of
23 dollars worth of analysis in question, and the
24 laboratory reported it was not detected.

25 But when I went in and audited the

1 laboratory, I saw that the laboratories detection
2 limit was way up here, and the detection that the
3 Navy was interested in, where they knew they had
4 to pay attention to, was way down here.

5 So the fact that the lab said it wasn't
6 detected at this very concentrated level, really
7 didn't answer the Navy's question, and so they
8 ended up not having to pay for all that analysis,
9 because it really -- although, it's true that the
10 lab didn't detect it, it was really inappropriate
11 for the Navy's use, and so they ended up not
12 having to pay for it.

13 Q. So you saved the Navy some money --

14 A. Mm-hmm.

15 Q. -- by showing that the laboratory just didn't
16 provide what was asked for?

17 A. Correct.

18 Q. Okay. And has some of your investigation also
19 involved, or uncovered, any kind of fraudulent
20 practices by laboratories, government or
21 otherwise?

22 A. Yes. One of the things that you do as an auditor
23 is, is you try to reconstruct things after the
24 fact. All I'm dealing with, after the fact, is a
25 pile of paper. And so I'm trying to reconstruct

1 everything that happened with that sample, from
2 the time it was collected in the field, all the
3 way till it was ultimately reported on a piece of
4 paper in a lab report. And try to understand
5 whether all the controls were in place, and the
6 integrity of the sample was maintained, and the
7 results are valid and reliable.

8 So that's the whole process. And I have
9 kind of forgotten the beginning of that question,
10 I apologize.

11 Q. Whether or not you have had any experience in
12 detecting, or anything fraudulent.

13 A. During the course of that process, for example,
14 at a commercial laboratory, I determine that
15 although it appeared that they had results and
16 they had data, the paper data that looked like
17 results, when you put it altogether, I realized
18 that they were actually reporting more data than
19 they had the capacity to generate with their
20 instrument. It was like they only had the
21 ability with their instrument, for how long the
22 method took, to run one sample in one day, and
23 they were reporting results from many samples in
24 one day.

25 That meant that they were -- in our

1 local term it's "dry labbing", they were making
2 up results. They weren't testing the samples;
3 they were just making up the results. Obviously,
4 a clearly fraudulent practice that the government
5 doesn't want to pay for.

6 So that's the kind of big picture
7 perspective that you look at when you try to
8 audit laboratories.

9 Q. And as a result of some of your work or
10 investigations, has there been any criminal
11 penalty -- criminal or civil penalties imposed on
12 labs when they do that sort of thing?

13 A. You know, I just -- I just report it to the
14 government. I don't know what they do as a
15 follow-up.

16 Q. Okay. By the way, I don't know if it was made
17 clear, but what is your -- where -- who do you
18 work for now?

19 A. In this case?

20 Q. No, I'm sorry. What's your employment, your
21 business?

22 A. I'm an independent contractor in my -- in my
23 assessment duties as a forensic.

24 Q. Okay. Where is it based?

25 A. In the Albuquerque, New Mexico area.

1 Q. Okay. Do you work -- do you have any limits on
2 where you work, or are you all over the place, or
3 what?

4 A. I'm all over the place. I get data from all over
5 the country, even from overseas. I have
6 testified overseas as well.

7 Q. And you have been doing this for approximately
8 how long?

9 A. Well, I have been auditing labs and doing data
10 quality assessments for many, many years. But do
11 you mean, specifically, in the forensic
12 discipline?

13 Q. Sure.

14 A. In the forensic discipline, since the late '90's.

15 Q. Okay. And in terms of auditing labs, in general,
16 how long has your career been in that?

17 A. Since the '80s.

18 Q. And have you published any articles or anything?

19 A. The business of data quality assessment, I'm
20 working for the people using the results, and
21 they generally have proprietary use to the
22 results that I report to them. However, when I
23 was working for the Navy, I actually authored
24 their quality standard that they used for the
25 evaluation of laboratories. And it, essentially,

1 was the rules of the road for government
2 commercial labs that they wanted to work for the
3 Navy.

4 Q. All right. Are you familiar with -- We have had
5 some testimony about different types of
6 instruments that analytical chemists use. Are
7 you familiar with liquid chromatography?

8 A. Yes.

9 Q. And mass spectrometry -- spectrometry?

10 A. Yes.

11 Q. And the instruments that are used for those kinds
12 of tests?

13 A. Yes.

14 Q. Have you operated those kinds of instruments?

15 A. I have operated both.

16 Q. Okay. Can you tell us what a protocol is?

17 A. Mm-hmm. A protocol simply describes how a
18 laboratory does a -- performs a particular
19 method. It sets down the recipe, if you will,
20 for how they treat samples and what controls they
21 introduce, what it takes to have acceptable
22 performance or not.

23 Q. And as part of your auditing process, when you go
24 to a lab, what things do you look at; is it
25 people, instruments, method, what?

1 A. And then some. The process of doing an on-site
2 laboratory audit, personally, I find it very,
3 very interesting, because you always see things
4 in person that you will just never see on the
5 paper.

6 So, on-site, I'm looking at everything
7 from how they actually perform the manipulations;
8 whether they use good laboratory practices;
9 whether they seem to understand the principles of
10 contamination control, which are so important in
11 a laboratory; to looking at the heating,
12 ventilating, and air-conditioning system. I'm
13 looking to see where the make up vents provide
14 air, to see whether that could be a potential
15 contamination problem.

16 I'm looking at how they set up
17 instrumentation. I'm looking at the
18 documentation maintained by the lab. I look at
19 everything.

20 Q. You look at the, specifically, protocols; is that
21 something that you examine, consider, and
22 evaluate in the process of doing these lab audits
23 you refer to?

24 A. Absolutely. Always read the protocols before
25 going on-site, to understand how they say they do

1 their method, and then watch them and look at the
2 written work that they generate to see whether
3 they, in fact, followed their method.

4 The nature of chemistry is such that
5 it's so very important to follow protocols. For
6 any time that you deviate from a protocol, then
7 you have got to make a note of it.

8 It's a lot like a recipe. Again, if you
9 don't follow the recipe exactly, then that
10 chocolate cake isn't going to be as good as the
11 one that grandma makes. But if grandma doesn't
12 want to share her recipe, and she leaves out
13 ingredients, or doesn't really follow hers
14 exactly, you're not going to be able to reproduce
15 her work.

16 The same thing applies in the
17 laboratory. As scientists, we want to be able to
18 reproduce somebody else's work. That means they
19 have to have a completely documented protocol and
20 they have to follow it.

21 Q. And do you also, as part of this analysis that
22 you go through, consider whether or not the
23 protocol is being used for the purpose that it's
24 intended and whatever limitations there may be in
25 its actual scientific validity?

1 A. What you are referring to is, essentially,
2 deciding whether or not a method is valid. A
3 method that's perfectly acceptable for use in one
4 application may be completely inappropriate for
5 use in another application. So it's really
6 essential to understand exactly the scope of what
7 you are trying to use the results for.

8 When I managed the Department of
9 Energy's Analytical Laboratory, people were
10 always calling me up on the phone asking me: So,
11 can you analyze for beryllium? Yes, sir, I can.
12 And how low can you go? What detection limit can
13 you detect, they would ask me. And I would stop
14 and say: Depends on what question you are trying
15 to answer. Because you use different methods
16 depending on different applications of the
17 results.

18 Q. All right. Did you -- Did you have an
19 opportunity to review a report by a Dr. Marc
20 LeBeau?

21 A. Yes.

22 Q. And do you know who he is?

23 A. I do.

24 Q. Okay.

25 THE WITNESS: Excuse me, is it okay if I

1 get a drink of water?

2 ATTORNEY BUTING: Sure, isn't there one?

3 THE WITNESS: Yeah, thank you.

4 ATTORNEY BUTING: Usually there's some up
5 there.

6 Q. All right. I'm going to show you some exhibits
7 that have been marked earlier in this case and
8 see if you can identify or recognize them. Do
9 you see Exhibit 435?

10 A. Yes.

11 Q. And what is that?

12 A. That's a copy of the FBI Laboratory's report in
13 this case.

14 Q. By?

15 A. Authored by Marc LeBeau.

16 Q. Okay. And have you reviewed that report?

17 A. Yes.

18 Q. All right. And I'm going to show you what's
19 Exhibit 434. And tell us what that is.

20 A. This is a nine page standard operating procedure
21 by the FBI Laboratory that describes their
22 procedure, their recipe for analysis of EDTA in
23 dried bloodstains.

24 Q. Okay. And the date of --

25 A. This particular procedure is dated 2/15/2007.

1 Q. Okay. And then, also, Exhibit 446, can you
2 identify that?

3 A. Well, without looking at every page, this looks
4 like the package that I received for review in
5 this case, that consists of a letter from your
6 office, as well as all the materials received
7 from the FBI Laboratory in this case.

8 Q. Okay.

9 A. It's about the right size.

10 Q. Okay. The -- Going to the report, do you have an
11 opinion whether this protocol, as reported in the
12 report -- the use of this protocol as reported in
13 the report -- can determine, with scientific
14 validity, whether -- if a stain is tested for
15 EDTA under this protocol, and not found, whether
16 that -- a conclusion can be given that it was not
17 present in the stain?

18 A. I do have such a conclusion, and it's based on
19 more than just the procedure, but the fact that a
20 stain -- EDTA is not detected in a stain, does
21 not mean that EDTA was not present in the stain.

22 Q. Okay. Do you have an opinion about whether -- if
23 one tests three stains and gets some results, or
24 lack of results, whatever, whether one can
25 express an opinion about what may or may not be

1 in three untested stains?

2 A. Well, I'm in the business of analytical
3 chemistry, and we're not in the business of just
4 making guesses about what might be in samples; we
5 have instrumentation to test samples and that's
6 how we determine results. There's no way for an
7 analytical chemist to know what's in a sample
8 unless we test it.

9 Q. All right. Going more particularly to the
10 materials that you reviewed, let's talk about the
11 protocol for a moment. It's 434, I believe.

12 A. Yes.

13 Q. There's a section called scope, does the protocol
14 appear to be adequate for the scope, as it's
15 defined?

16 A. Yeah, it's a very short description of scope and
17 it's an accurate description of the applicability
18 of this method. It states that this procedure
19 allows for the screening and confirmation of EDTA
20 in suspected bloodstains. So that's exactly what
21 it does, it allows you to screen for EDTA in a
22 bloodstain and to detect EDTA in a bloodstain. I
23 will mention that that's probably the shortest
24 description of method scope I have ever read.

25 Q. Okay.

1 A. They are generally much more -- there's a little
2 more scientific meat in it in terms of describing
3 under what conditions and so forth.

4 Q. Does this protocol, as its designed, or
5 reportedly designed here, you say that it -- if
6 one follows this recipe and there is EDTA
7 present, that this protocol would allow one to
8 detect it; is that right?

9 A. To detect and identify it.

10 Q. Okay. Is it also possible, from this protocol,
11 to draw any conclusions, though, if one runs the
12 tests and does not detect EDTA?

13 A. That's really the problem. The issue with this
14 procedure is not whether or not it's a valid
15 result, if you were actually detecting EDTA.
16 This is a good method. If the results end up
17 that you detect EDTA and you identify EDTA,
18 that's a good -- good indication that EDTA was
19 present in that sample.

20 The problem really occurs when EDTA is
21 not detected in a bloodstain. And the problem in
22 that regard is, from this method, I don't know
23 whether that's simply because they didn't detect
24 it, or because it wasn't there. I can't tell the
25 difference between those two, for this method.

1 I don't know, really, what their method
2 detection limit is. So I don't know whether they
3 didn't see it or it wasn't there.

4 Q. Okay. You mentioned method detection limit; is
5 there also something called instrument detection
6 limit?

7 A. Yes.

8 Q. And as you look at this protocol -- or I'm
9 sorry -- look at the report for a moment, on Page
10 2, where Mr. LeBeau indicates that, using the
11 procedure employed in this case, EDTA is readily
12 identified at a concentration of 13 --
13 micrograms?

14 A. Milligrams per litre. The common term is parts
15 per million.

16 Q. Okay. As you go through his -- the stack of data
17 there that was provided to you, is that a
18 instrumentation limit or is that a method limit?

19 A. From reviewing the data, that appears to be an
20 instrument detection limit. That is, they figure
21 that out by starting out with a 100 PPM sample
22 and they would inject that right into the
23 instrument and see if they could see EDTA. And
24 they did.

25 So they cut it in half, diluted it in

1 half, and ran it again. When they ran 50, they
2 still detected EDTA. And each time they cut it
3 in half. When they ran 25, they detected EDTA.
4 When they cut 25 in half, at 12.5, or 13, they
5 still detected it. But when they cut that sample
6 in half and cut it down to about six parts per
7 million, they were not able to detect and
8 identify EDTA.

9 So based on that, they drew the
10 conclusion that their detection limit, or limited
11 detection as they called it, was 13 parts per
12 million. That, however, represents sort of the
13 theoretical best case of injecting a sample
14 directly into the instrument.

15 It does not reflect the detection limit
16 for going out and swabbing a stain and extracting
17 the sample from that stain and diluting it before
18 you get it into the instrument. Those are two
19 different things. Instrument detection limits
20 are usually very small. Method detection limits
21 are larger. That's just sort of the natural
22 order of things.

23 Q. Okay. Well, focusing specifically on this type
24 of a method detection limit, why would it be
25 different; why would you be able to detect a

1 smaller amount if you just inject the sample
2 directly into the machine versus if you have to
3 go through the process of taking a dried stain,
4 swabbing it, extracting that, diluting it, all of
5 that? Why is there a difference?

6 A. The difference is really because there are so
7 many other complicating factors associated with
8 taking a real world sample and getting it to the
9 point where it's clean and pristine enough to be
10 able to inject it into an instrument.

11 In the case of a bloodstain, that sample
12 is on a surface, it has to be removed from that
13 surface. So it's swabbed. There may be
14 interferences from the swab. They may not
15 completely recover the stain.

16 Then they try to extract the blood
17 sample off of the swab. Extractions, generally,
18 are not completely efficient. In some of the
19 reference material in this case, some work done
20 some years ago, extraction efficiencies were
21 typically 90 percent or so, on a first run. It
22 was quite common, if you do multiple extractions,
23 to extract more DNA so -- or more EDTA.

24 So in each -- in each step of the
25 process, you will lose a little bit. There's

1 issues that arise. And so, by the time you get
2 to the instrument, your effective method
3 detection limit is much higher.

4 Q. Is it possible to determine what the effective
5 method limitation is, in this case, from the
6 materials you reviewed?

7 A. No, it is not.

8 Q. Do you have an opinion whether it is the actual
9 effective method limit of this -- this test, to
10 be able to detect EDTA in a bloodstain, is higher
11 than 13 parts per million?

12 A. Yes, I do, and I believe that it is.

13 Q. Can you quantitate how much higher?

14 A. Unfortunately, that's -- that's a study that's
15 best done empirically, by actually doing
16 analytical work. Method detection limits are
17 best determined using actual analytical work. I
18 can infer some information from the data that
19 were obtained in this case, but I can't just
20 compute one from the data that are available.

21 Q. And looking at the data that is available in this
22 stack, the validation tests that were done, and
23 those sorts of things, is there any indication
24 that the FBI ever found out what the actual
25 detection limit, or method detection limit, would

1 be for this kind of a test?

2 A. No, there's no such indication in these data.

3 Q. Okay. Well, what does that tell you about the
4 use of this kind of a protocol?

5 A. This kind of protocol, there's basically two
6 things that can happen when you run this kind of
7 a method; either you detect EDTA or you don't.
8 From an analytical perspective, the results
9 either say, yes, we detected EDTA, or, no, we did
10 not.

11 This report makes it seem like those two
12 outcomes only can arise from two conditions. And
13 it makes it seem like if the answer is, yes, we
14 detected EDTA in a bloodstain sample, then it
15 kind of makes it seem like, then that means it
16 must have come from a tube of EDTA preserved
17 blood.

18 There is -- There was reference to the
19 fact that the control samples that they took from
20 the car were blank, so that's probably the more
21 likely interpretation.

22 The problems really come if the results
23 from testing are, no, there is no EDTA present in
24 those samples. Nothing there. We didn't see
25 anything.

1 The problem is, you just don't know
2 whether EDTA -- you didn't detect EDTA because
3 there was none there, or because your detection
4 limit wasn't low enough to see it, even if it had
5 been there. That's really the problem.

6 So just because EDTA is not detected by
7 the laboratory, doesn't mean that -- that that
8 blood sample came from somebody actively bleeding
9 onto that spot. It still means, that if your
10 detection limit is out of sync with the samples
11 in question, there could be EDTA in those samples
12 from that blood tube, you just didn't see it.

13 Q. All right. Now, the next sentence in his report,
14 Dr. LeBeau's report, talks about, that EDTA is
15 also detectable when a 1 microliter drop of EDTA
16 preserved blood is analyzed. As you reviewed the
17 data in that four or five inch package there,
18 would you agree or disagree with that statement?

19 A. I disagree with that statement.

20 Q. And why is that?

21 A. Because in the results reported by the
22 laboratory, if this statement says, I tested a 1
23 microliter drop of blood from a purple-topped
24 tube, from an EDTA tube, and I detected it, the
25 problem is -- and that was done in this case --

1 the problem is, they ran a 2 microliter drop of
2 EDTA preserved blood on a spot, a more real-world
3 kind of application, and they did not detect EDTA
4 in this lab.

5 Now, gosh, that might sound a little bit
6 counterintuitive, what do you mean they could
7 detect 1 microliter, but they couldn't detect --
8 they detected EDTA in a 1 microliter sample, but
9 they didn't detect EDTA in a 2 microliter sample.

10 If, in fact, the detection limit used by
11 this laboratory was down around that level,
12 that's -- I just have to tell you, that's not an
13 unexpected result. Sometimes you see it and
14 sometimes you don't, if an element -- If a
15 compound is present near it's detection limit.

16 In fact, that's, essentially, the
17 definition of a detection limit. It means that
18 if it's present at that concentration, sometimes
19 you'll see it and sometimes you won't.

20 So to state that he -- that the lab is
21 -- that EDTA is detectable when a 1 microliter
22 drop of preserved blood is analyzed, is really
23 not a true statement, even as evidenced by his
24 own results, because he didn't detect it in a 2
25 microliter sample of blood.

1 Q. Could you maybe find the --

2 A. I will try.

3 Q. -- the information that's in there that you are

4 referring to? And I'm going to take just a few

5 moments to show that on the ELMO. You -- Did you

6 find it already?

7 A. Yes.

8 Q. Okay. I have a copy, let me just see if I can

9 work from my copy while you have that, or else

10 you can use my copy?

11 A. There's only two pages, which one do you want?

12 Q. Okay. Why don't you use mine and I will use the

13 actual exhibit on the ELMO.

14 A. Okay.

15 Q. I'm going to start and just put this first --

16 first page of this stapled packet together.

17 A. Oh.

18 Q. Do you have that?

19 A. Yes.

20 Q. At the top it says the date of 2/16/07, 12:03:08?

21 A. Yes.

22 Q. Okay. What is this?

23 A. This is, essentially, a set of data that came off

24 the LC/MS instrument from running the entire

25 batch of case samples in this case. So it

1 includes all the question samples, all the known
2 samples, and all the control samples that were
3 run by the laboratory in sequence, in time
4 sequence, so you can sort of reconstruct what
5 happened to -- which samples were run through the
6 instrument plan. And, boy, you will never be
7 able to read that on top.

8 Q. I can zoom in, when we need to, believe me. And
9 so is this kind of -- these kinds of reports
10 are -- what do you call these, spectrographs,
11 mass specs?

12 A. Yeah, it's chromatograms and spectra.

13 Q. Are these the kinds of things that you see in
14 your review of lab data?

15 A. On a regular basis.

16 Q. Okay.

17 ATTORNEY GAHN: I'm sorry, could we have
18 this marked as an exhibit so we know what we are
19 talking about?

20 ATTORNEY BUTING: I think it is. It's
21 part --

22 THE WITNESS: This is part of this big
23 package, if you -- this big one that is called
24 Exhibit 446.

25 ATTORNEY GAHN: I understand that, but I

1 would like that -- this exact page, so we know what
2 pages you are talking about.

3 THE WITNESS: Sorry.

4 ATTORNEY BUTING: Would you like to do
5 that, your Honor.

6 THE COURT: Is the page numbered in any
7 fashion?

8 ATTORNEY BUTING: No, there are no numbers.

9 THE WITNESS: Unfortunately, no.

10 THE COURT: All right. Then let's label it
11 as a specific exhibit.

12 ATTORNEY BUTING: Okay. What I would like
13 to do, there's a stapled set, just mark them
14 altogether and then we'll talk about pages in there.

15 A. This includes all the samples that were run
16 between 12:03 and 5:40 on February the 16th, in
17 time sequence order.

18 (Exhibit No. 500 marked for identification.)

19 Q. All right. We finally made it to 500. Exhibit
20 500, can you tell us what that is?

21 A. Yes, this is a dataset that represents all the
22 results from running the case samples in this
23 case. They were run on February 16th. And they
24 started at 12:03 and ran through 5:51. And each
25 of these takes about 11 minutes to run, so the

1 time dates on each of them are about 11 minutes
2 apart.

3 Q. Are these run, you know, sort of automatically,
4 or robotically, or do you need to have a lab
5 person there to do this?

6 A. It's absolutely standard practice throughout the
7 industry, that these types of instruments -- it's
8 called "rack and run". You set up your samples,
9 you extract your samples, you load the tubes into
10 a little auto sampler set in certain labeled
11 positions. Then you let the instrument
12 automatically, or robotically, sample them;
13 typically, at night, while you are at home
14 sleeping, the instrument's in the lab working.

15 Q. Okay. And then when you come in the morning,
16 does it print out something like this for you?

17 A. Yes.

18 Q. And these are, then, the reports that the analyst
19 would review to determine if -- if it seems like
20 the test ran properly, or didn't, and what the
21 results are?

22 A. Exactly.

23 Q. Okay. All right. Now, the first page of
24 these -- I'm not going to bore everybody too much
25 here with great detail, but at the top, just so

1 people understand, on the upper left, there's a
2 staple sort of blocking it, but it's like a -- it
3 looks like a computer path, right?

4 A. Yeah, it's the identification of the file. The
5 instrument's collecting all these data,
6 electronically, and that's just the file where
7 it's storing that data for the analyst to come in
8 and look at it the next day.

9 Q. So, for instance, where this says cali --
10 Xcalibur data/Brewer, Brewer being -- would be,
11 in this case, the analyst?

12 A. Yes.

13 Q. Okay. And as you go over towards the center,
14 then, it has the 2/16/07, that's the date and the
15 time?

16 A. Yes, that's the date and time stamp for the time
17 the data was acquired by the instrument.

18 Q. All right. And then over on the right, at the
19 top, what is that referring to?

20 A. That's a description of the sample --

21 Q. All right.

22 A. -- that's entered by the analyst, at the time
23 they are preparing this set to run.

24 Q. Okay. And so in each of these -- or each of
25 these pages that I'm going to flip through, do

1 they - is it one page per sample, typically, or
2 can you determine that by what's up at the top?

3 A. You have to determine that by what's at top.
4 Often -- Well, sometimes they can zoom in so
5 there will be more than one page. So I can't
6 give you --

7 Q. Okay.

8 A. -- a direct answer.

9 Q. Very good. So this first one is a blank negative
10 blood, and that would be -- that's one of the
11 controls you mentioned?

12 A. Mm-hmm.

13 Q. You have to say yes or no?

14 A. Yeah, that's a quality control sample.

15 Q. All right. The next one is negative control?

16 A. Yes.

17 Q. And then another blank?

18 A. Two more blanks.

19 Q. Two more blanks. Okay. And, then, K-2 extract,
20 what does that mean?

21 A. That's one of the samples in this case identified
22 as K-2. And this is analysis of an extract that
23 was prepared from K-2, from the K-2 swab.

24 Q. Okay.

25 A. So this isn't a case where they are actually

1 taking a liquid sample and injecting it to the
2 instrument, because those blanks were, in fact,
3 just liquid samples. This is a case where they
4 took a solid sample on K-2 and had to do the
5 extraction before they injected it into the
6 instrument.

7 Q. All right. And from your review of the
8 materials, do you know what K-2 refers to, in
9 general?

10 A. I could look it up. Under report, it's simply
11 identified as two control swabs, Item 9802.
12 There's another record in here that describes
13 where it was taken from, I don't remember right
14 off the top of my head.

15 Q. Okay. The next page is another blank?

16 A. Yup.

17 Q. Two blanks, actually?

18 A. Yeah, there's always two blanks in between each
19 evidentiary sample.

20 Q. Okay. And is that done in part to get rid of the
21 possibility of effective carryover?

22 A. It's done to both get rid of the effects of
23 carryover and to be able to identify it in the
24 event that it's happening.

25 Q. All right.

1 A. It's a very good quality control practice.

2 Q. And, by the way, let me just go back for a
3 minute, at the bottom, turn to the very first
4 page, at the bottom of each page there's some
5 handwriting; what does that refer to?

6 A. That's the initials of the responsible analyst
7 who essentially made the call. On each and every
8 sample, a qualified analyst is responsible for
9 deciding, well, is EDTA there, or isn't it; is it
10 detected, or positive, or is it not detected.

11 So -- And by signing it and making that
12 entry on each page, that's acknowledgment that
13 that individual has made that call. So in this
14 particular case, the little -- just looks like a
15 sort of scribbled M's or something, that's the
16 initials of the analyst who made the call, ND, or
17 not detected, for this particular sample.

18 Q. Okay. And since this is a blank, you would
19 expect it to be not detected?

20 A. You would hope so.

21 Q. However, there is a line on it, with a number,
22 223, at the top. Is this -- What does this
23 indicate?

24 A. It indicates that blanks are not necessarily
25 always completely blank. But that particular

1 peak is not an indication that it's EDTA that is
2 present, so it doesn't create a problem for us.

3 Q. Okay. So it's something, but it's not -- it's
4 not EDTA?

5 A. That's correct.

6 Q. Okay. Move back ahead to where we were at Q-46
7 extract?

8 A. Yes.

9 Q. Okay. And this one he -- is there a call at the
10 bottom of that?

11 A. Yes, not detected.

12 Q. Okay. And then there's two more blanks, right?

13 A. Yes.

14 Q. And the next is a K-3 extract?

15 A. Yes, not detected.

16 Q. Okay. And then two more blanks?

17 A. Yes.

18 Q. The second blank. Now, this one is a little bit
19 different, there's the 223 showing up, but
20 there's also a 293 showing up; what does that
21 tell you, if anything?

22 A. Again, it tells you that that particular item was
23 detected, but that does not meet the criteria for
24 calling it EDTA, so it's something, but it's not
25 EDTA.

1 Q. Okay. And so the conclusion of EDTA is, again,
2 another ND, not detected?

3 A. That's correct.

4 Q. Okay.

5 A. They are really only looking for EDTA here. If
6 there's other things present, there's no attempt,
7 and, in fact, the method doesn't even allow for
8 identifying what the other things were.

9 Q. Okay. The next page, then, is Q-47 extract?

10 A. Yes.

11 Q. And you understand that to be one of the question
12 samples?

13 A. That's correct. It's a swab; it's a swab
14 extract.

15 Q. And could you understand that the -- the swab
16 stains reportedly taken from the RAV4 were
17 designated Q-46, Q-47, and Q-48?

18 A. That's correct.

19 Q. Okay. And this one is called, also, ND?

20 A. Yes.

21 Q. Okay. There is, again, 275 detected, but that's
22 not a concern as far as EDTA goes, there's
23 something else?

24 A. That's correct.

25 Q. All right. Bear with me, two more blanks, K-4

1 extract.

2 A. Not detected.

3 Q. Not detected, even though there is, again,
4 something there that's 208, correct?

5 A. Correct.

6 Q. Two pages further, again, another blank, not
7 detected, but once again there are things showing
8 up, it's just not the ion --

9 A. They don't meet the rules for calling it an EDTA.

10 Q. Okay. And then Q-48 extract, not detected, as
11 well, right?

12 A. Right.

13 Q. Okay. Two more blanks. Now, lets talk about
14 this for just a moment. You get to the page, it
15 says Positive Control A (MAL EDTA extract). As
16 you review the data, what does this tell you, or
17 what is -- what is this made of?

18 A. Well, from the data, from the record, it's not
19 really possible to tell. But my understanding is
20 that this is a sample prepared by Mark LeBeau.
21 MAL represents his initials and that he
22 volunteered his blood sample for this particular
23 sample. And created -- created a purple-topped
24 tube, did an extract, and then determined that he
25 was able to actually detect EDTA in this sample

1 of his blood.

2 Q. Now, is that -- would that be considered a proper
3 positive control, in your opinion?

4 A. No, it is not.

5 Q. And why not?

6 A. Control samples, there's rules, essentially, for
7 control samples. Control samples are of known
8 origin and purity. They have been tested to
9 determine their actual composition. And then
10 there's typically a certificate of analysis that
11 tells you, we have analyzed it and we note, with
12 this degree of confidence, that this is exactly
13 what's in this sample.

14 He, essentially, just took a sample out
15 of the production line, his own, introduced it,
16 and called it a positive control. So it's not,
17 it doesn't really conform to sort of the -- the
18 quality standard for what a positive control is.

19 Q. So when you say a certified known quantity, but
20 here, this is a control in order -- he is using
21 this as a control to -- just to find EDTA; is
22 that right?

23 A. Yes, to see whether he can detect EDTA during the
24 course of this run.

25 Q. So what would be a proper positive control for

1 that?

2 A. If they had a whole blood standard, and there are
3 supply houses that sell those kind of whole blood
4 standards, that had a known quantity of EDTA
5 present in it.

6 Q. So there are commercial labs that sell certified
7 specific --

8 A. Yes.

9 Q. -- things like this?

10 A. Yes.

11 Q. And those are intended to be used as a positive
12 control?

13 A. That's correct. Those are reference materials
14 intended for that use.

15 Q. Well, why would this be any different, if he puts
16 it in a purple-topped tube?

17 A. Because he doesn't know how much EDTA is in that
18 purple-topped tube.

19 Q. Okay.

20 A. So the fact that he detected it means it was
21 there, but how significant is that? Was that --
22 was that a very concentrated sample or a very
23 diluted one; he doesn't really know.

24 Q. Do -- Does the quantity of EDTA that one finds in
25 these commercially prepared purple-topped tubes

1 vary?

2 A. Yes.

3 Q. By how much, typically?

4 A. I don't know. I wasn't able to find any very
5 specific actual lab data reporting that. But in
6 the FBI Lab's own protocols, they describe it as
7 ranging typically from a thousand parts per
8 million to two thousand parts per million. So
9 it's a fairly broad range.

10 Q. Okay. Now, at the bottom of this, there's some
11 handwriting as well. What does this appear to
12 be, or what does this tell you?

13 A. Actually, this is an indication that, apparently,
14 this person whose initials look like some kind of
15 an M, went through and initially called this as a
16 not detect. Because you have seen this quite a
17 few times already this morning, the initials and
18 then ND circled, but then subsequently the
19 analyst went back and decided, you know what, I
20 think this really meets the criteria for being
21 able to call it EDTA, so they changed their mind,
22 lined out the not detected and indicated that it
23 was positive. And that's why there's a second M
24 up there, they indicated when they made that
25 decision to change that call.

1 Q. Okay. And this is even on a sample of
2 Mr. LeBeau's own blood?

3 A. Yes. This is the sample of an extract prepared
4 from Mr. LeBeau's own blood.

5 Q. Okay. And, then, keep looking -- bear with me
6 again -- another couple of pages of blanks. And
7 then we get to something called Positive Control
8 B, Q-49 extract; what is this?

9 A. I have to interpret this based on the information
10 you see there. They are calling this a positive
11 control, a second positive control, in this run.
12 However, it's an extract of Q-48, which --

13 Q. Q-49?

14 A. Q-49, excuse me, which tells me it's a question
15 sample, it actually is an extract of Q-49, which
16 is the liquid blood sample from Mr. Avery. Why
17 they are calling it a positive control, truly is
18 a puzzle to me. That is not what a positive
19 control is. This is a question sample. It's a
20 case sample. It's an unknown sample, as far as
21 this laboratory is concerned.

22 Q. Okay. And in this particular one there is an
23 indication of positive?

24 A. Yes.

25 Q. Okay. The next page, what's this? It has the

1 same heading or the same --

2 A. Same sample description, same date and time.

3 These -- This is a different display of the same
4 electronic file. So all they are doing is going
5 in and zooming in on part of the spectrum from
6 the previous page that -- in order to try to
7 decide and confirm the assignment. It's a normal
8 kind of a practice.

9 Q. And so this reference up here, zoom?

10 A. Yeah, parenthetically, the analyst went in there
11 and noted that this is simply a zoom of that same
12 file.

13 Q. So this is a zoom page of the very same page
14 right before it?

15 A. That's correct.

16 Q. All right. Two more blanks, and now we come to
17 something called Spot LOD, 1 microliter?

18 A. Yes.

19 Q. This has -- This is also called a positive?

20 A. This sample is called positive, yes.

21 Q. Okay. And the three ions that they seem to be
22 looking for through all these tests are a 160, a
23 247, and a 132, and certain ratio to each other,
24 right?

25 A. I -- You know what, I would have to look those

1 up, because I haven't been that familiar with it,
2 but there are certain characteristic ions that
3 are EDTA and it's not just the presence of those
4 ions, but the relative ratios of those ions that
5 matters to the interpretation.

6 Q. Well, let's just go back for a second to Mr --
7 Mr. LeBeau's own blood and see the ions that are
8 reported here that are showing up as detected,
9 the one that he had crossed out and then put
10 positive, just a couple pages back?

11 A. I must have missed it. Oh, okay.

12 Q. Okay. And what are the ions that are being
13 reported by the instrument in this?

14 A. There are -- There are three ions that are
15 reported, 132, 160, 247, 293. There's actually
16 four that are present in this sample.

17 Q. And 160 is the one that's always expressed at
18 the -- the highest is always up at the top?

19 A. Yeah, this -- if you look at that scale there, it
20 goes from 0 to 100, on the left, no matter how
21 much of the compound is present, it always sets
22 that at 100 percent. That's essentially a
23 percentage. And the highest peak is always set
24 at 100 percent and everything else is measured in
25 relation to that highest peak. Whether it's one

1 inch tall or a foot tall, the highest peak is set
2 at 100 percent.

3 Q. And does that mean -- does that have any
4 indication about the quantity of the -- of the --

5 A. No.

6 Q. -- of the substance that they found?

7 A. No, it's simply that the most abundant peak that
8 we saw, the ion that was there with the highest
9 frequency, the most abundance, is set at 100. It
10 doesn't relate to the quantity at all.

11 Q. Okay. If we could flip back to where we were, at
12 the Spot LOD, 1 microliter, a few pages later.

13 A. Okay.

14 Q. Start at 5:07:38 seconds?

15 A. Mm-hmm.

16 Q. Okay. This one is marked as a positive, right?

17 A. Yes.

18 Q. Do you see any -- or what ions do you see
19 expressed in this?

20 A. It has three of the four that you saw in the
21 previous sample; it has 160, 247, and 293.

22 Q. All right. Now, what's the very next page?

23 A. A blank.

24 Q. No, before that, the zoom?

25 A. Oh, okay, sorry, I was looking at the zoom page.

1 Q. Oh, you were, okay.

2 A. Yeah. The first page has those three ions, the
3 second page, just like the previous example, is a
4 zoom of the same result.

5 Q. And even though it's a zoom, is there any --
6 there's still not a 132 ion showing, right?

7 A. That's correct.

8 Q. But it's marked as a positive?

9 A. That's correct.

10 Q. Okay. We're almost done, two more blanks. And
11 now we come to the second to the last page of
12 this exhibit. This is February 16, 5:40 at 13
13 seconds, right?

14 A. Yes.

15 Q. It says Spot LOD, 2 microliters, at Q-49. By the
16 way, just so we're clear, what does this tell
17 you, the way it's designated as Spot LOD?

18 A. It appears that the laboratory is trying to
19 decide a detection limit for a sample of blood
20 that's collected from the Q-49 file, that they
21 are actually trying to use the purple-topped tube
22 that was submitted in this case, and trying to
23 see whether or not I can see 1 -- I can see EDTA
24 in a 1 microliter sample and whether or not I
25 could see EDTA in a 2 microliter sample. So

1 they're actually trying to empirically determine
2 whether they can even see EDTA when they know
3 that it's a sample from Mr. Avery's tube of
4 blood.

5 Q. And does this relate, then, to the sentence, the
6 remark in Mr. LeBeau's report, that,
7 specifically, EDTA is detectable when a 1
8 microliter drop is analyzed?

9 A. Yes. This is 2 microliters that's displaying on
10 the screen right now, but I would conclude, from
11 his report, that he is referring to when he ran a
12 1 microliter sample, he detected and identified
13 EDTA. And so that's the source of his statement
14 in the report.

15 Q. That's the one we saw that shows three of the
16 four ions, but is missing one of them?

17 A. Yes.

18 Q. Now this one, though, what's marked at the bottom
19 of this page? Is there any call made on this
20 page?

21 A. Yeah, this is the 2 microliter sample, so they
22 are taking --

23 Q. A bigger sample.

24 A. -- a tube of Mr. Avery's blood, and instead of
25 just extracting a 1 microliter stain, they are

1 taking a 2 microliter sample of his blood and
2 taking it through the process. In this case,
3 when they ran it through their process, they did
4 not detect EDTA. This is a sample that they took
5 from Mr. Avery's purple-topped tube, 2
6 microliters, they did not detect EDTA.

7 Q. Well, on this particular page, his initials are
8 there, but he doesn't appear to be making a call?

9 A. Yeah, I can infer from that that as he was going
10 through these results, when he got -- he
11 expected, probably, to see EDTA, because he had
12 seen it in the 1 microliter sample. And when he
13 got here, he probably said, oh, this doesn't meet
14 the criteria. This isn't passing. What's going
15 on. So if you go to the next page, he zoomed
16 in --

17 Q. I will in just one second, but this one does show
18 a 133 ion, a 160, and where are we?

19 A. You're making me dizzy.

20 Q. I'm sorry. And a 247, which are three of the
21 ones you were looking at before. Why wouldn't
22 this -- Why isn't he making a call that it's
23 present in this instance?

24 A. I can only infer that, because he doesn't
25 indicate that in any of his records, the basis

1 for whether he made a call or not. However, this
2 does not conform to the FBI Laboratory's own
3 rules for making a call, because I got a copy of
4 their procedure for mass spectral interpretation.
5 And this has an ion ratio problem. You may
6 recall that the 160 is usually the biggest peak
7 that relates to very characteristic ion.

8 Q. Right.

9 A. In this sample, 160 is not the biggest peak, that
10 -- this 293 is the --

11 Q. Over here.

12 A. -- is the large peak. Yeah.

13 Q. Okay. So then --

14 A. It flaunts their own ion ratio rules for making
15 an assignment.

16 Q. Okay. So then what does he do then; what's the
17 very last page?

18 A. On the very last page, he zoomed in to see if
19 there was any more information he could elicit
20 from doing a more detailed analysis.

21 Q. And how can you tell this is a zoom of the very
22 same results, other than obviously he's got it
23 written there?

24 A. Again, it's because it's the same date and time.
25 So it's just processing exactly the same

1 electronic file, looking at the same data, just
2 zooming in on it.

3 Q. Okay.

4 A. Much like we can do when we zoom in on things on
5 a computer.

6 Q. And when he zooms in, does he get the same --
7 have the same issue, same problem?

8 A. Yes.

9 Q. Once again, 160 is not at the right ratio; so
10 then what does he call?

11 A. So he makes a call on this sample, this 2
12 microliter sample, as not detecting any EDTA.

13 Q. All right. I'm -- Just so we're clear, there's
14 one last page, and it's a blank?

15 A. That's correct.

16 Q. All right. So, in his report, then, when he says
17 that EDTA is also detectable as low as a 1
18 microliter drop, his own data, does it support
19 that at all?

20 A. The problem is, he has data that indicates he can
21 not detect EDTA in a 2 microliter drop. That
22 kind of a result is entirely consistent with the
23 fact that his method has a hard time detecting it
24 at the concentrations in question here.

25 It's an overstatement, if you will, to

1 say it can be -- to say -- I want to get the
2 exact words -- to say that it's detectable when a
3 1 microliter drop of EDTA preserved blood is
4 analyzed. That's an overstatement, because his
5 own data shows that he can't detect it in a 2
6 microliter spot.

7 Q. All right. Now, his data did -- or he does
8 express the opinion that EDTA was detected in
9 Q-49, the tube of Mr. Avery's blood, 11 year old
10 tube, right?

11 A. Yes.

12 Q. Is there any data that quantitates how much that
13 EDTA is there?

14 A. None.

15 Q. You mentioned before that, you know, a new,
16 pristine, brand new blood tube sample, according
17 to his own protocol, would be between a thousand
18 and 2,000 parts per million, EDTA concentration,
19 right?

20 A. Correct.

21 Q. Is there any way to tell whether or not, after 11
22 years, the EDTA that would have been in
23 Mr. Avery's purple-topped tube is -- has degraded
24 down to even a barely detectable limit?

25 A. There certainly -- If they quantitated how much

1 EDTA was present; they did not do that. They
2 simply identified the fact that EDTA was present
3 in Mr. Avery's blood sample. They made no
4 attempt to say how much EDTA was present.

5 Obviously, I don't know how much was present 11
6 year ago, but they could have looked in the
7 sample now to see how much was present in his
8 blood today. But their method was not designed
9 to do that and was never validated to do that.

10 Q. So when they find a positive result for EDTA in
11 that Q-49 tube of Mr. Avery's blood, it could be
12 a thousand parts per million or 50 parts per
13 million?

14 A. We just have no way of knowing, no way at all of
15 knowing.

16 Q. And is EDTA the kind of chemical that will
17 degrade over time?

18 A. It's like any other chemical, it's dependent on
19 the conditions that it's exposed to in a length
20 of time. Chemicals, in general, are subject to
21 degradation from things like light and
22 temperature and biological activity.

23 I have not -- I don't know what the
24 degradation curve is for EDTA, but in analytical
25 chemistry, we put shelf lives on materials. And

1 the manufacturers who certify their reference
2 materials and who certify their results, know how
3 long that material is stable in that environment.
4 So they assign a shelf life, much like the FBI
5 did in their procedure. Their procedure for
6 analysis of EDTA in bloodstains has requirements
7 for preparation of EDTA solutions, and they
8 impose a shelf life on them.

9 Say that their EDTA performance mix that
10 has EDTA in water is stable for a period of at
11 least six months, what that means is, when you
12 get past six months they can't use it any more.
13 It's just like when milk is a week past it's
14 expiration date, you shouldn't be drinking it.

15 Q. And that's their own protocol imposes a six month
16 limit on a solution that they mix up of known
17 EDTA, right?

18 A. Yes.

19 Q. Commercially purchased.

20 A. Yes, of reagent grade EDTA, that's of known
21 purity and we actually know its chemical
22 composition.

23 Q. All right. If you would step over here, please,
24 we have had some problems today and yesterday
25 with Mr. Strang's computer being able to project.

1 THE COURT: Mr. Buting, can I ask how long
2 you think your direct is going to continue yet.

3 ATTORNEY BUTING: Just one moment. Not
4 much more; we could probably finish in about five
5 minutes I would think.

6 THE COURT: All right. You can have five
7 minutes, go ahead.

8 ATTORNEY BUTING: Okay.

9 Q. (By Attorney Buting)~ For some reason -- This is
10 the videotape that we showed the jury a couple of
11 days ago, and for some reason I'm not able to get
12 it up there, but it is on the computer screen
13 here. Do you see anything that looks like an
14 expiration date on this particular tube?

15 A. Yes.

16 Q. Okay. You can retake your seat. And tell the
17 jury what you see as an expiration date on this
18 11 year old tube of blood, Q-49, that is
19 Mr. Avery's blood that was found in the Clerk's
20 Office.

21 A. These tubes are routinely manufactured and
22 provided by their manufacturer with expiration
23 dates. In this case, it's March of '96.

24 Q. So when Mr. LeBeau tested this tube for the
25 presence of EDTA in February of 2007, he was

1 testing it approximately -- almost 11 years
2 beyond its expiration date?

3 A. That's correct.

4 Q. All right. Having reviewed all of this data,
5 then -- By the way, were you able to see
6 Mr. LeBeau's testimony, recorded?

7 A. Yes, the online streaming video, I was able to
8 see it there.

9 Q. Okay. And did you see the PowerPoint
10 presentation where he talked about his thought
11 process or the hypothesis he was considering?

12 A. Yes.

13 Q. And he mentioned only two, do you recall that?

14 A. Yes.

15 Q. Could you talk about that for a moment, what you
16 think about that?

17 A. Yeah, he, essentially, says that, when I get
18 results -- when I get results from the
19 laboratory, it either shows that EDTA is detected
20 or not detected. Those are the only two options.

21 I agree that those are the only two
22 options that can come out of his protocol. It's
23 either detected or it's not.

24 But then he draws the conclusion that in
25 the event that it's not detected, which is the

1 case here, in these stain samples, in the event
2 that EDTA is not detected in the stain samples,
3 he draws the conclusion that that means it must
4 have come from active bleeding, rather than from
5 Mr. Avery's tube. That's just simply not
6 supported by the actual laboratory results in
7 this case.

8 Q. And why not, is there some other conclusion?

9 A. Yes, it certainly is quite plausible that the
10 bloodstains that were swabbed from the RAV4
11 contained EDTA, but the lab simply was not able
12 to detect it, as was the case in that 2
13 microliter sample of Mr. Avery's blood that they
14 attempted to test and were not able to detect
15 EDTA.

16 Q. And, for the record, we have finally been able to
17 display the still, frozen part of the video of
18 the -- I don't know the exhibit number -- 1 --
19 470, where the container contain -- the tube of
20 blood was opened at the Clerk's Office. And do
21 you have a laser pointer available? No, no laser
22 pointer here today?

23 ATTORNEY KRATZ: Oh, I have one.

24 ATTORNEY BUTING: Oh, you do. Can I borrow
25 it, please?

1 ATTORNEY KRATZ: Sure, let me help you out.

2 ATTORNEY BUTING: There you go. Thank you.

3 Q. (By Attorney Buting)~ Could you point with the
4 laser to what you were referring to when you were
5 talking about expiration date.

6 A. Okay. It's upside down here, so you have to see
7 that it's upside down. It's right here, it says
8 EXP March '96.

9 Q. So from this data -- Well, let me just make it
10 clear for the jury, first of all. Were you able
11 to actually test any of these samples in this
12 case?

13 A. No.

14 Q. All right. And when did you receive the
15 materials that you have in front of you?

16 A. Late on Tuesday, this week.

17 Q. Okay. But it refers to tests that were done just
18 last week on March -- or February 26?

19 A. This is probably the fastest turn on any data I
20 have ever reviewed.

21 Q. What would be a more typical length of time for
22 one to do a -- develop a brand new protocol and
23 validate it and do all that?

24 A. Development, validation, performance of the
25 testing of unknown samples, is usually -- you

1 know, there's no set rules, but it's usually
2 something that takes considerably longer than the
3 very aggressive time frame in this case. In this
4 case, they were actually running the case samples
5 before they even had the results of their
6 competency sample, so it was very, very
7 compressed.

8 Q. And, so, from this data, can you express any
9 opinion about whether the 3, as Q-46, 47, and 48,
10 questioned stains examined by Mr. LeBeau, could
11 have come from the blood sample, the blood tube,
12 Q-49, that was also examined?

13 A. It's quite consistent with the results that were
14 presented by the laboratory. Because of their
15 inability to detect EDTA in the 2 microliter
16 sample of Mr. Avery's blood, it's quite possible
17 that those blood swabs could have come from
18 Mr. Avery's blood tube, but simply not been
19 detectable by the laboratory.

20 Q. And what about the three swabs from the RAV that
21 were not tested by Mr. LeBeau; can any conclusion
22 be drawn on that?

23 A. I'm an analytical chemist, I'm not in the
24 business of just guessing on some samples. We
25 have to test samples to decide what's in them.

1 Q. Is there any kind of a -- We were talking about a
2 limit of detection, and, you know, what the
3 method can detect. And a lot of this is
4 technical stuff for us lay people. Is there any
5 kind of analogy that you can draw about, you
6 know, some sort of instrument, or some sort of
7 detection limit that we have?

8 A. You gave me the entree. This -- We have pretty
9 good detection limits. Our noses are able to
10 smell things. People are -- have different
11 sensitivities to different smells. And that
12 means we have different instrument detection
13 limits, if you will.

14 Some of us can detect things that are
15 present at very, very low levels. And some of us
16 require that more of it be present before we can
17 detect it. So our nose is analogous to an
18 instrument, in terms of its ability to detect a
19 smell.

20 Q. So if one was blindfolded and given a -- say a
21 warm apple pie or something, and asked, can you
22 smell an apple pie, is that an example of your
23 nose being able to detect something?

24 A. Yeah. Yeah. And although I suspect that most of
25 us who at least have well-functioning noses could

1 detect a warm apple pie if there were no
2 complications, if that apple pie was present in a
3 room with a lot of other smells, or the doors and
4 the windows were open and there was a brisk wind
5 blowing through, you might not be able to detect
6 it. Doesn't mean that the apple pie is not
7 there, doesn't mean it's not giving off odor, it
8 just means you can't detect it. So that's the
9 difference between an instrument detection limit
10 and a method detection limit.

11 Q. All right. And, finally, as a matter of
12 scientific adequacy, can the protocol that
13 Mr. LeBeau developed, I think it's 434, be used
14 to rule out the presence of EDTA in those three
15 RAV4 bloodstains that were tested, just because
16 it's not detected in their tests?

17 A. No.

18 Q. And why not?

19 A. Because we just don't know what the method
20 detection limit of his method was, as evidenced
21 by the fact that he couldn't detect a 2
22 microliter sample of Mr. Avery's blood -- he
23 couldn't detect EDTA in a 2 microliter sample of
24 Mr. Avery's blood.

25 Q. So even having gone through this test, is it

1 possible that EDTA is, or was, in those 3 RAV4
2 stains?

3 A. Yes.

4 Q. Thank you.

5 THE COURT: All right. At this time we'll
6 take our morning break. We'll resume in 15 minutes.
7 Members of the jury, I will remind you, again, not
8 to discuss this case, this morning's testimony, or
9 any other element about the case during the break.

10 (Jury not present.)

11 THE COURT: All right. Counsel, we'll
12 return in 15 minutes.

13 ATTORNEY BUTING: All right.

14 (Recess taken.)

15 (Jury Present.)

16 THE COURT: Mr. Gahn, will you be doing the
17 cross-examination for the State?

18 ATTORNEY GAHN: Yes, I will.

19 THE COURT: You may begin.

20 ATTORNEY GAHN: Good morning.

21 THE WITNESS: Good morning.

22 **CROSS-EXAMINATION**

23 BY ATTORNEY GAHN:

24 Q. I would first like to explore a little more, I
25 looked over your resumé, and a little more of

1 your experience, actual hands-on-experience with
2 the LC/MS/MS technology?

3 A. I have operated liquid chromatographs and mass
4 spectrometers. I have not operated them
5 configured, essentially connected together in the
6 manner in which they were in this case.

7 Q. Okay. And -- And could you just describe the
8 difference in the way they were connected
9 together in this case and what you are familiar
10 with.

11 A. I'm not sure I understand your question. The
12 physical difference between how they are
13 interfaced or?

14 Q. No, if you, yourself, have not performed
15 analysis, on chemicals, using the LC/MS/MS
16 technique?

17 A. That's correct.

18 Q. Have you ever performed any type of analysis to
19 test bloodstains for EDTA?

20 A. No.

21 Q. Have you ever conducted any type of analysis to
22 detect blood EDTA levels in a lavender-topped
23 tube?

24 A. No.

25 Q. How about any type of blood collection tube?

1 A. No.

2 Q. You talked about blood collection tubes and -- in
3 reference to the expiration date; what is your
4 experience with blood collection tubes?

5 A. Part of what I do when I assess data quality, if
6 the sample was collected in any particular
7 container, be it a blood collection tube or any
8 other kind of container, part of what I'm doing
9 is seeing whether that container was appropriate
10 to protect the integrity of the sample, so that
11 its composition was not altered or degraded over
12 time to the extent possible by its interaction
13 with the tube.

14 So whether it's in a quart jar, or a
15 purple-topped tube, I'm looking at, did they know
16 that that container was of appropriate
17 cleanliness before the samples were put in, and
18 that type of thing. And these things are
19 typically purchased in lots. And they are
20 certified for a particular lot. So that
21 manufacturer has actually tested those samples,
22 made sure that they met their specifications, and
23 certify the lot.

24 If there's a problem, then they can go
25 back and find out which lot caused the problem,

1 just like they could find out which peanut butter
2 had the problem and so forth. So it's a lot
3 identification.

4 Q. So, again, what is your personal experience on
5 how a purple-topped tube works?

6 A. My personal experience with how it works?
7 Obviously, I have the same lay experience that
8 everybody in the courtroom does with when I have
9 had blood samples collected. My experience as a
10 quality auditor is simply reconstructing the
11 paper trail associated with the integrity of that
12 sample.

13 Q. Are you stating that the expiration date on that
14 vacutainer applies to the stability of EDTA?

15 A. No, sir.

16 Q. What does the expiration date on the
17 purple-topped tube, ma'am, apply to?

18 A. The expiration date is determined and assigned by
19 the manufacturer. And it provides the user with
20 a date beyond which they cannot certify the
21 appropriateness of that tube for it's intended
22 use; that is, protecting the integrity of that
23 blood sample.

24 And that's a combination of all the
25 things that go into that. It's the combination of

1 maintaining the integrity of the vacuum, the
2 EDTA. It's the package. They don't have
3 separate expiration dates.

4 Q. What can you point to that states that the
5 expiration date on the purple-topped tube
6 pertains to the stability of EDTA?

7 A. Nothing. It does not do that.

8 Q. All right. I just wanted to make that clear.
9 The expiration date has to do with the efficiency
10 of the vacuum in the tube; isn't that true?

11 A. It's not just the vacuum; it's the entire package
12 for its inappropriate use. They don't try to
13 parcel out the parts.

14 Q. You are not stating that, because of that
15 expiration date, the EDTA has broken down?

16 A. Oh, no, sir. No.

17 Q. Thank you. That's all I needed.

18 A. Okay.

19 Q. I just wanted to clear that up. Mr. Buting put
20 up a number of exhibits that you looked at. And
21 one of the things I noted was that you only
22 looked at the results in what is concerned --
23 called the positive ion mode; is that correct?

24 A. When he went through the page by page one?

25 Q. Yes.

1 A. This is the one on the 16th -- You know, I'm
2 not -- I don't remember if this was positive or
3 negative; I would have to go back and look at the
4 sequence.

5 Q. Could you do that?

6 A. Okay. No, sir, I believe it's the negative ion
7 mode. Is there some misunderstanding of which
8 data we're actually talking about?

9 Q. My understanding is that the data that Mr. Buting
10 put up, for you to look at, was from the positive
11 ion mode; isn't that correct? First of all, what
12 is the positive ion mode?

13 A. It's just the operating mode for the instrument,
14 whether you are looking at positive ions or
15 negative ions.

16 Q. And what does this look at for the EDTA? What is
17 it looking for in the EDTA?

18 A. In the course of the analysis, I believe you have
19 probably already heard a brief introduction of
20 this, a mixture is separated into its component
21 pieces, or its component chemicals, with use of
22 the chromatography instrument, used with the
23 liquid chromatography.

24 And then as each set of chemicals comes
25 out, or each package of chemicals comes out, is

1 introduced in the mass spectrometer where it's
2 frag -- it's subject to very high energy and it's
3 fragmented. And when it breaks into pieces, the
4 mass spectrometer then detects those
5 characteristic fragments.

6 Q. What I'm asking for is, in the positive ion mode,
7 what form of EDTA are you looking at?

8 A. Well, I'm -- I'm not -- What am I looking at?
9 It's -- In this case --

10 Q. In this case, what did the FBI's Laboratory
11 protocol, what form of the EDTA did it look at in
12 the positive ion mode?

13 A. It's -- It's actually, analytically, the sample
14 can contain EDTA in any number of forms. And so
15 it can be present as a sodium salt. It can be
16 present -- During the course of extraction, it's
17 converted largely into -- During the course of
18 extraction and interaction with the blood calcium
19 in iron; is that what you are asking, whether
20 it's the ion form or --

21 Q. I guess what I'm looking for is whether it's --
22 what form and whether it's in its free acid form
23 or in its comp -- metal or -- metal iron complex?

24 A. We can look for both.

25 Q. You can look for both?

1 A. Oh, sure.

2 Q. Okay. And what I'm asking you is, what form did
3 the FBI look for in the positive ion mode?

4 A. Oh, I don't know. I would have to -- I believe
5 it was the free acid, but I would have to look.
6 If that's what --

7 Q. You don't have to, I will agree with you.

8 A. Okay.

9 Q. Maybe we can come to some agreements here --

10 A. Okay.

11 Q. -- and it will be easier for the jury.

12 A. Okay.

13 Q. And in the negative ion mode, is it fair to say
14 they were looking for the forms of EDTA, not only
15 in free acid form, but also in the metal iron
16 complex?

17 A. That's correct.

18 Q. Okay.

19 A. That's correct.

20 Q. Now, back to my original question.

21 A. Okay.

22 Q. The data that you looked at and you showed up on
23 the big screen, wasn't that only from the
24 positive ion mode; only -- in other words, only
25 in its free acid form?

1 A. Yes, you are targeting, specifically, the ions
2 attributable to that -- from that one breakdown,
3 yes.

4 Q. So no data in the negative ion mode was shown on
5 the big screen, correct?

6 A. I don't remember, but there's some in the
7 package, if that's your question.

8 Q. That's my question. Did you display, or did
9 Mr. Buting display, any of the data in the
10 negative ion mode, which would be in the free
11 acid and in the iron complex forms?

12 A. I don't remember if he did.

13 Q. Well, let me ask you this, then, ma'am.

14 A. Okay.

15 Q. Do you remember reviewing that data?

16 A. Yeah.

17 Q. And what did -- What did the data tell you in the
18 negative ion mode?

19 A. Well, it's -- it's quite clear that -- I don't
20 know what you mean, which data you are talking
21 about, but it's quite clear that the method is
22 capable of detecting EDTA and -- and its iron
23 complex, as I would expect to be the case.

24 Q. So the protocol that the FBI put together is
25 capable of making an analysis for the presence of

1 EDTA in a lavender-topped tube, correct?

2 A. Yes, that's correct.

3 Q. And, likewise, in a non-preserved tube?

4 A. Yes.

5 Q. And, likewise, in dried bloodstains?

6 A. Yes.

7 Q. Now, did you read any articles or publications
8 that had to do with the analysis of EDTA in dried
9 bloodstains?

10 A. Only those articles that were provided by the FBI
11 Laboratory as part of their foundational
12 reference material along with this case.

13 Q. I'm going to ask that Mr. Fallon hand you two
14 exhibits. And I would ask you to identify each
15 of them for us, please.

16 A. Yes, sir. Exhibit 436 is an article from the
17 *Journal of Analytical Toxicology, The Analysis of*
18 *EDTA -- sorry, I'm going too fast -- in Dried*
19 *Bloodstains by Electrospray LC-MS-MS and Ion*
20 *Chromatography.*

21 Q. Let's stick with that one just for a minute.

22 A. Okay.

23 Q. Did you read that?

24 A. Yes.

25 Q. And is analytical -- I'm sorry, was that

1 Analytical Chemistry or Toxicology?

2 A. This particular one is Analytical Toxicology.

3 Q. And the *Journal of Analytical Toxicology*, is that
4 a well recognized scientific publication?

5 A. Yes, it is.

6 Q. And it's scholarly authoritative in the field?

7 A. Yes.

8 Q. And an article such as this would be a peer
9 reviewed article?

10 A. Yes.

11 Q. And that article also determined that it's
12 possible to test for the presence of EDTA in
13 dried bloodstains?

14 A. That's correct.

15 Q. And, also, the article, which would be the next
16 exhibit, please, could you state where that was.

17 A. That's an article from *The Analytical Chemistry*,
18 Exhibit 437, dated August 1st, 1997.

19 Q. And that, also, is a scholarly, authoritative,
20 scientific publication?

21 A. Analytical Chemistry is, yes.

22 Q. How about Analytical Toxi -- I'm sorry --
23 Analytical Chemistry?

24 A. Yes.

25 Q. And, again, that would be a peer reviewed

1 article.

2 A. I presume so.

3 Q. And, again --

4 A. This is a web version. I don't -- I don't know
5 if this was one of the ones subject to the same
6 peer review, but I would presume so.

7 Q. And did you -- When you read the FBI protocol and
8 compared it to those two articles, did you note
9 any improvements that the FBI made in the
10 development of the protocol that was used in this
11 case?

12 A. Yeah, I would presume that there were several
13 things that they did that would have to be
14 considered improvements against these early
15 versions.

16 Q. And could you tell us what those improvements
17 were that they made?

18 A. Their extraction procedure is substantially
19 different. One of these techniques uses
20 capillary electrophoresis instead of liquid
21 chromatography. They each have their own issues.
22 They are using tandem mass spec, mass spec, mass
23 spec, in the FBI's method. And the extraction
24 procedures are substantially different. I would
25 have to presume that those -- that they did those

1 because they considered it to be an improvement.

2 Q. Do you believe it was an improvement, by doing
3 the analysis, looking for not only the free acid
4 form and also the iron complex form of EDTA?

5 A. That would be considered a benefit.

6 Q. Correct.

7 A. Yeah.

8 Q. And why would that be a benefit? Why would you
9 want to look for it in the negative ion mode in
10 both forms?

11 A. Well, because it's a better -- essentially, if
12 you will, a better recovery, better understanding
13 the path that EDTA took in your samples.

14 Q. So there were significant improvements made in
15 this current protocol over the two articles that
16 you --

17 A. Oh, certainly, yes. Science isn't static, we
18 hope to improve it all the time.

19 Q. All right. Thank you. With that, significant
20 improvements, I do note from your direct exam
21 that you had a little problem with the -- I
22 guess, what, the uncertainty of their measurement
23 system, or their -- that -- their detection
24 level?

25 A. Detection limit -- method detection limit, that's

1 correct.

2 Q. What is the difference between a qualitative
3 assay and a quantitative assay?

4 A. That's a very good question. A qualitative assay
5 or qualitative measurement doesn't tell you how
6 much of something is present; it simply detects
7 it and identifies it. So, qualitatively, I can
8 say that EDTA is present, but it says nothing
9 about how much EDTA is present.

10 In contrast, a quantitative assay tells
11 you how much of something is present. There is
12 an entirely different calibration protocol to get
13 to how much of a given compound is present.

14 Q. And both are scientifically sound procedures?

15 A. Absolutely.

16 Q. And how would you characterize the FBI's protocol
17 or testing methodology in this case?

18 A. This is a purely qualitative method.

19 Q. And that, again, is a valid scientific method of
20 developing an analysis methodology?

21 A. Absolutely.

22 Q. Now, if you would please pick up the -- their
23 protocol, please. Do you have that?

24 A. The FBI's protocol?

25 Q. Yes, please.

1 A. Yeah. Yes. Okay.

2 Q. And on Page 7, under Paragraph 14, Limitations,
3 No. 8, the Limit of Detection, is it -- it was
4 your testimony that this was under a valid method
5 for determining their limits of detection?

6 A. It's not a universally used method, but it's an
7 appropriate means of getting to an instrument
8 detection limit.

9 Q. And one that could be used in detecting the
10 levels of EDTA, whether in a purple-topped tube
11 or in a dried bloodstain?

12 A. No, the method that they used, that they referred
13 to in this paragraph, is simply a means of
14 determining an instrument detection limit. So
15 it's -- it detects how much -- it gives you an
16 indication of how much EDTA you can detect from a
17 solution that you actually take a syringe and
18 inject into the instrument. It doesn't tell you
19 anything about how much EDTA you can detect from
20 a stain sample.

21 Q. But this limitations in their protocol clearly
22 state, and the data shows, that they are able to
23 detect -- 1 microliter drop is readily detectable
24 in this protocol?

25 A. I don't believe that that's true.

1 Q. So when they state that the 1 microliter drop was
2 readily detectable using this technique, are you
3 saying that's not true?

4 A. That particular statement is in reference to this
5 paragraph about a separate LOD study where some
6 EDTA was placed into a lavender-topped tube.
7 That's not what I'm referring to when I say they
8 had problems detecting it in a 2 microliter spot.
9 I'm referring to the actual case samples in this
10 case, where they -- where they were not able to
11 detect it from a 2 microliter set of blood, of
12 Mr. Avery's blood, as opposed to this one, which
13 is a more sort of theoretical, pristine case.

14 Q. I think we're talking about the same thing, but
15 maybe my question was not very good.

16 A. Okay.

17 Q. The system that they developed, the methodology
18 that they developed, allows them to detect levels
19 of EDTA to the 1 microliter level?

20 A. Okay. The reason that's not a true statement,
21 generally, is because we don't know how -- the
22 concentration of EDTA that's present in that
23 microliter. I don't know if there's 100
24 micrograms or 1 microgram present in that 1
25 microliter sample.

1 So saying it's possible to detect EDTA
2 in 1 microliter of blood really, scientifically,
3 doesn't mean much unless you also know the
4 concentration of EDTA. In this case, they state
5 that the 1 microliter drop that they prepared
6 from -- from a whole blood sample and known EDTA,
7 they knew the concentration of EDTA in that
8 sample.

9 I was unable to find the data related to
10 this particular experiment that they described.
11 It wasn't in this package, as far as I could
12 tell.

13 Q. And that would be important in a quantitative
14 aspect?

15 A. It is absolutely important in a quantitative
16 assay, but it's -- the reason it's important
17 qualitatively is because when you say not
18 detected, it's not detected at what level. Is it
19 not detected at a very, very concentrated level,
20 or is it not detected at a very, very weak level?

21 If I have my glass of water here and I
22 drop in two drop -- two crystals of sugar, there
23 is sugar in my water. But I may or may not be
24 able to detect it. If I run it by some
25 techniques, I may say not detected. It doesn't

1 mean it's not there, it just means I can't detect
2 it.

3 (Court reporter asked the witness to slow down.)

4 A. I'm sorry. If I run it by a method with a very
5 high detection limit, I won't be able to detect
6 -- find the sugar. It doesn't mean it's not
7 there; it just means that I can't find it. If I
8 put a lot of sugar in there, that method might be
9 able to detect it. And I would say, yes, I saw
10 sugar in that water. So it really depends on how
11 much sugar is in my water sample, or how much
12 EDTA is in the blood sample.

13 Q. When you looked at the data, did the testing
14 procedures employed by the FBI detect, at the 1
15 microliter level, EDTA in the blood tube of
16 Steven Avery?

17 A. In the 1 microliter sample that they reported, a
18 single instance, yes, they did report a positive
19 for EDTA. The 2 microliter sample, they did not
20 detect EDTA.

21 Q. But, again, that was just looking in the positive
22 ion mode, just --

23 A. Yes, that was the same set, yes.

24 Q. Just the free acid form?

25 A. Yes.

1 Q. Did you look at the negative ion form in the more
2 sensitive testing?

3 A. I believe that by the FBI's own data, they
4 indicate that both methods are comparably
5 sensitive. They report the same detection --
6 instrument detection limit for both. Let me look
7 and see if I can find some negative here. Okay.
8 I'm not sure this is your question, so tell me if
9 I'm off track here.

10 Q. Would it be helpful if I were to put up, on the
11 big screen, the 1 microliter results from the
12 tube of Avery -- tube of Steven Avery's blood?

13 A. I completely concur that that shows the positive
14 detection and identification of EDTA.

15 Q. And what I'm saying, though, ma'am, is that, what
16 you put up during direct exam was just in the
17 positive ion mode. I would like to put it up in
18 the negative ion mode --

19 A. Okay.

20 Q. -- also.

21 A. Okay. Okay.

22 Q. Would that be helpful for you instead of trying
23 to --

24 A. Well --

25 Q. I will directly go to it.

1 A. Okay. Thank you.

2 Q. And could you look -- does this state that these
3 are the test results, in the negative ion mode,
4 for the 1 microliter?

5 A. Yeah. I don't know where that is in my package
6 but, yes, that's what that looks like.

7 Q. Okay. But you did see this and review this?

8 A. Oh, yeah. There's a lot of stuff here.

9 Q. And EDTA is clearly present in the negative ion
10 mode. This is in the acid free, as well as the
11 iron complex, in the tube of Steven Avery's
12 blood, at the 1 microliter level, right?

13 A. The way that the laboratory runs their protocol,
14 their screening and confirmation, and they,
15 essentially, have to have confirmation both ways.
16 They have to have a positive in both techniques.

17 That's why, frankly, once I saw that it
18 was not detected, I didn't spend a lot of time
19 looking at the rest of it, but I will try to find
20 this, if that's okay.

21 Q. Or if we zoomed out more --

22 A. I don't see the analysts call on here, so to see
23 the criteria that they used. Okay. Thank you.
24 That helps.

25 Q. We can set this up anyway you like. We're

1 just -- And look through the files, if you want.
2 If this is helpful, we can move on. Can you work
3 with this?

4 A. That's just fine, yeah.

5 Q. Does this show that EDTA is present in the vial
6 of Steven Avery's blood, at the 1 microliter
7 level?

8 A. No, it doesn't, because there's inconsistent
9 results for that conclusion from the other
10 technique. You know, when you do it practicing
11 analytical chemistry, you don't get to cherry
12 pick which results you want to accept or not when
13 you run a given sample through an instrument.

14 Q. What is it about the data, that is on this form
15 in front of you, that states that EDTA is not in
16 Steven Avery's tube?

17 A. Nothing.

18 Q. Nothing?

19 A. Nothing.

20 Q. Okay. So, I will ask again, at the 1 microliter
21 level, in the negative ion mode, looking at free
22 acid form, as well as iron metal complex form,
23 EDTA is present in the tube of Steven Avery's
24 blood at the 1 microliter level?

25 A. As called here, that is a correct statement.

1 Q. Thank you.

2 A. Sorry.

3 Q. That's fine. Also, do you remember looking at
4 the data at the 2 microliter level?

5 A. Yes.

6 Q. In the negative ion mode?

7 A. No, I don't. I don't remember that. I'll bet
8 you can put it up there for me.

9 Q. I bet I can. Would you like to look at that,
10 too?

11 A. Please.

12 Q. And, again, what I'm going to ask is that whether
13 in the negative ion mode, looking at the free
14 acid form and the metal complex -- iron complex,
15 that EDTA is present at the 2 microliter level?

16 A. It appears that the analyst has called it a no in
17 this case. You know what, I'm sorry, can I get
18 you to zoom in a little more --

19 Q. Sure.

20 A. --right up here.

21 Q. Mm-hmm.

22 A. I'm sorry. Okay. Yeah, it appears that the
23 analyst in this case has -- has called this a no.
24 And if you go back to the kind of left side where
25 he's -- the left side of the page --

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ATTORNEY BUTING: Zoom out.

A. Yeah, be easier if you back up a little. Down lower. There we go. Clearly, in this case -- actually, if you go a little bit down, it will be more obvious that there is really nothing showing there.

Yeah, in this particular case, on this 247 ion, there's an indication that they simply did not detect it. And the analyst in this case is speculating as to whether that possibly may have been a weak injection.

Q. Correct. But at the 1 microliter level, in the negative ion mode, which we saw before, EDTA is in the blood tube of Steven Avery?

A. Based solely on that data, yes.

Q. Now, when you -- And, clearly, whether you are in the positive ion mode or the negative ion mode, EDTA is present in the 5 microliter sample of Steven Avery's blood in the tube, correct?

A. I don't recall ever seeing data from a 5 microliter sample of Mr. Avery's blood. I only recall seeing one, two, and the actual lead sample.

(Court reporter couldn't hear.)

A. And the actual sample of Mr. Avery's blood. I

1 recall seeing a 1 and 2 microliter spot sample
2 and what they called the positive control from
3 the Q sample.

4 Q. But this morning or late -- earlier this morning,
5 Mr. Buting put up the Positive Control B.

6 A. Yes.

7 Q. Which you --

8 A. Yes.

9 Q. And you recognize that that's the 5 microliter
10 level -- that's the 5 microliter level from his
11 EDTA tube?

12 A. Oh, I see. I see what you are saying, I think.
13 That particular sample, I have no way of knowing
14 exactly how much sample they used. That --
15 Because the sole identification of that is
16 Positive Control, Q-49.

17 Q. But, ma'am, in their notes -- don't they clearly
18 state, in their handwritten notes, that for the
19 Positive Control B, 5 microliters?

20 A. All these samples have a 5 microliter injection
21 volume. That's just how much of the sample is
22 injected to the instrument, but it's not how much
23 of the blood sample is injected in the instrument
24 in that case. It's how much of the extract
25 volume is injected into the instrument. Those

1 are two completely different things, with
2 completely different concentrations.

3 Q. Are you stating that the Positive Control B, Q-49
4 extract, is not the 5 microliter level of Steven
5 Avery's blood from the tube?

6 A. I -- As I understood it, that was a prepared
7 extract sample so -- and there's -- I will just
8 mention there's -- there are very few words in
9 this document. I can only infer from sample
10 description, sample titles.

11 Q. Would you look at the handwritten notes --

12 A. On the one that's been admitted previously?

13 Q. No, it might be easier if I were to bring you
14 what I have.

15 A. Okay.

16 Q. Instead of -- And I recognize that this -- such a
17 large volume, is difficult for you to go through.
18 We'll put it on the screen and, then, if you feel
19 as though you want to look through your notes to
20 find that section.

21 A. Okay.

22 Q. And do you see where it says Positive Control B,
23 it's probably the third little hash mark down
24 from the notes, Positive Control, 5 microliters?

25 A. Can you zoom in on that, please?

1 Q. Sure.

2 A. Okay.

3 Q. Do you see that?

4 A. Uh-huh.

5 Q. So, when you put up this morning, the positive
6 ion mode for the examination of the analysis, of
7 this positive control, that showed that EDTA was
8 present in the tube of Steven Avery, this was at
9 the 5 microliter level?

10 A. I'm sorry, but that's a misunderstanding. If you
11 continue to read here, it says 5 microliters of
12 blood was pipetted onto a clean cotton swab. So
13 he was not just taking 5 microliters and
14 injecting it into the instrument.

15 He was taking 5 microliters and putting
16 it onto a swab. And, ultimately, then it gets
17 into the instrument. Now, that's analogous to
18 if -- I'm not sure I'm understanding you
19 properly -- but that is just analogous to the
20 sample that I had concerns about, the 2
21 microliter sample. It's directly analogous to
22 that, in terms of it wasn't directly injected
23 into the instrument; it was placed on a swab and
24 then that was extracted.

25 Q. Will you agree that the Positive Control B, Q-49,

1 the tube of Steven Avery's blood --

2 A. Mm-hmm.

3 Q. -- that at -- that in the data that you looked
4 at, at the 5 microliter level, EDTA was present?

5 A. Yes, sir, it was.

6 Q. Okay.

7 A. I'm sorry, I thought that was like very clear.

8 Q. My questions may be inarticulate. I don't know.

9 A. I want to make sure I answer the right one.

10 Q. And you did. Okay.

11 A. Okay.

12 Q. All right. So, now, when you are talking 1
13 microliter, 2 microliters, 5 microliters, it's an
14 awfully small amount.

15 A. It sure is.

16 Q. And I think you said on direct exam that
17 sometimes, you know, you get down and there can
18 be things that can cause -- when you are down
19 that low in your detection levels, whether 1 or 2
20 microliter, something can skew one, one way or
21 the other; is that what you said or --

22 A. Well, it's just that, when you are down that low,
23 it's a more complicated analysis. And there is
24 more variability, if you will, in the results.
25 If the sample concentration isn't homogeneous,

1 any number of things can cause differences.

2 Q. But the data that we have just put up, as far as
3 the 1 microliter of Steven Avery's blood -- And
4 when we're talking 1 microliter, it's about like
5 1/50th of a drop, correct?

6 A. Right. And it's only a very small fraction of a
7 drop. If you look at this little pipette, it
8 would be obvious how small it is.

9 Q. And that's a very small amount we're dealing
10 with?

11 A. Yes, it sure is.

12 Q. And down to that level, EDTA was detected in the
13 blood of Steven Avery?

14 A. In the one not in the two.

15 Q. Pardon me?

16 A. In the 1 microliter sample, not in the 2
17 microliter sample.

18 Q. But also in the 5 microliter?

19 A. And in the 5, that they call the Positive
20 Control, that's correct.

21 Q. And some artifact, or some interference, or
22 whatever, may have caused the 2 microliter level
23 to -- under their protocol, to not call it?

24 A. Sure. And that's -- that's why you do detection
25 limit studies, because detecting it sometimes and

1 not detecting it other times, is entirely the
2 kind of thing you expect if you are operating at
3 the detection limit.

4 Q. It's not unusual?

5 A. That's not unusual.

6 Q. And even at the 2 microliter level, the presence
7 of EDTA was indicated, but wasn't called, maybe
8 because the ratio with one of the other ions was
9 out of place, that's all?

10 A. Well, you know, in analytical chemistry, close
11 doesn't count. You either call it or you don't.

12 Q. Correct, and they didn't call it?

13 A. That's correct, they did not.

14 Q. But still, when you looked at the data, at the 2
15 microliter level, the presence of EDTA still was
16 indicated?

17 A. That's correct.

18 Q. Okay. Now, maybe we don't even have to go
19 through the graphs. When you looked at the
20 extract, Q-46, which was -- under Q-46, do you
21 know which one I'm talking about?

22 A. Mm-hmm.

23 Q. When you looked at the data in the positive ion
24 mode and the negative ion mode, correct?

25 A. Okay.

1 Q. No EDTA was detected?

2 A. I will look just to make sure, but that's my
3 recollection.

4 Q. Okay.

5 A. That's correct.

6 Q. And in -- And that Q-46, as you know, is a
7 bloodstain from the dashboard of the RAV4?

8 A. That's correct.

9 Q. And on Q-47 extract, which was the bloodstain
10 from the rear passenger door of the RAV4?

11 A. Yes.

12 Q. No EDTA was detected?

13 A. That's correct.

14 Q. And on Q-48, which was a bloodstain from the CD
15 case that was in Teresa Halbach's RAV4, in the
16 positive ion mode, as well as in the negative ion
17 mode, no EDTA was detected?

18 A. Correct.

19 Q. I'm going to show you a picture of the swabs.
20 Have you seen the photographs of the swabs that
21 were --

22 A. Xerox copies, I haven't seen the photographs
23 themselves.

24 Q. Would those be helpful, to see the photographs of
25 them?

1 A. I can.

2 Q. Okay. I want to show you, this was a -- where --
3 this would be Q-46. This would be where the swab
4 was taken from by the Crime Lab analyst.

5 A. Mm-hmm.

6 Q. And I would like to show you, now, a photograph
7 of the swab, Q-46, that was sent to the FBI for
8 testing in this case. Now, again, we're dealing
9 with 1 microliter, which is, I think we agreed,
10 1/50th of a drop.

11 A. Okay. Here's the problem, we don't know what
12 volume we're dealing with. After -- You know, we
13 don't know what volume of blood was deposited on
14 the dashboard, if you are referring to this
15 particular -- these photographs?

16 Q. Yes, ma'am. I understand.

17 A. You said -- Okay.

18 Q. What I'm stating is that the detection limit for
19 the FBI protocol was they can detect the presence
20 of EDTA at the 1 microliter level. Isn't that
21 what the study stated?

22 A. It stated that. I don't believe the data support
23 that conclusion.

24 Q. But you just stated that there was no EDTA
25 present in the extract, Q-46, from the dashboard?

1 A. True, but you can't run a detection limit study
2 on unknown samples. That's an unknown sample.
3 We don't know whether EDTA is present in that
4 sample or not. You can only run detection on a
5 set of unknowns.

6 Q. And there was no EDTA detected on the rear door
7 of Q-47?

8 A. That's correct.

9 Q. And there was no EDTA detected on the stain from
10 the CD case in Teresa Halbach's car?

11 A. That's correct.

12 Q. Yet, in the blood tube of Steven Avery, clearly,
13 in the 1 microliter level, in the positive mode
14 and negative ion mode, testing for free acid EDTA
15 and metal iron complex EDTA, it was present?

16 A. It was present and confirmed in the 1 microliter
17 sample.

18 Q. Thank you.

19 ATTORNEY GAHN: Thank you, so much. That's
20 all I have, ma'am.

21 THE COURT: Any redirect, Mr. Buting?

22 ATTORNEY BUTING: Yes.

23 **REDIRECT EXAMINATION**

24 BY ATTORNEY BUTING:

25 Q. Let's just -- Let's pick up right there for a

1 moment. Mr. Gahn was limiting, very carefully,
2 his question to the 1 microliter level. But as
3 we have shown and discussed here, both direct and
4 cross, the data that the FBI -- the only data
5 they generated shows different results when you
6 test an even larger stain at 2 microliter, in the
7 positive mode, right?

8 A. That's correct.

9 Q. To an analytical chemist, what does it mean,
10 then, when you get what appears to the layperson
11 to be inconsistent results?

12 A. I can certainly see how it seems inconsistent,
13 but just based on my experience with detection
14 limit studies, is that that's not an unexpected
15 result if you are trying to analyze samples that
16 are at or near the detection limit. The fact
17 that sometimes you will see them and sometimes
18 you won't, even at slightly higher
19 concentrations, is not an unexpected result.

20 Q. But does it allow you to draw the conclusion that
21 Mr. LeBeau did in his report that, therefore,
22 this protocol is detectable, or shows that EDTA
23 can be detectable as low as 1 microliter?

24 A. I believe that's not supported by the data.

25 Q. Let me go back to the beginning of Mr. Gahn's

1 questioning for a minute, because I want to make
2 sure that it's clear to the jury, he asked for
3 your opinion about whether or not this protocol
4 was sufficient to test for the presence of EDTA,
5 correct?

6 A. Correct.

7 Q. And you agreed that it is?

8 A. It is. If it detects EDTA, it's a reasonable
9 conclusion that it is present.

10 Q. Okay. Is the protocol also, however, adequate,
11 or not adequate, to establish the absence of
12 EDTA?

13 A. It is insufficient to establish the absence of
14 EDTA at or near its detection limit.

15 Q. All right. So you can use this protocol in one
16 way, but you can also incorrectly use it in
17 another way?

18 A. Yes.

19 Q. And in this -- Dr. LeBeau's attempt to use this
20 protocol, to exclude the presence of EDTA in the
21 bloodstains; is that a correct or incorrect way
22 of using this protocol?

23 A. I believe that's incorrect.

24 Q. The questions about the expiration date, for a
25 moment, on the tube, you indicated the

1 manufacturer's expiration date is for the whole
2 package?

3 A. That's correct.

4 Q. Part of which is EDTA, right?

5 A. Yup.

6 Q. And the -- As far as the stability of EDTA and
7 its -- how long it lasts without beginning to
8 degrade, does the FBI's own protocol establish
9 only a six month limit for a known reagent
10 quantity EDTA solution that they prepared?

11 A. That's correct.

12 Q. And in so doing, does that limit, in their
13 protocol, express a -- I guess an opinion about
14 the stability of EDTA in that solution?

15 ATTORNEY GAHN: Objection, your Honor,
16 foundation for that question.

17 THE COURT: Sustained.

18 Q. (By Attorney Buting)~ Is the fact that the FBI
19 themselves, when they make up a -- mix up a
20 solution of EDTA, in their protocol, the fact
21 that they limit its use to only -- or
22 approximately six months, is that an indication
23 then of -- is that a shelf life?

24 A. That is, effectively, a shelf life.

25 Q. And is that -- Similarly, is that similar to the

1 kind of shelf life that manufacturers put on
2 products?

3 A. Yes. You use it after the shelf life at your own
4 risk. It may or may not be what they put into
5 it.

6 Q. Okay. Let me just -- Let me just clear up a
7 little bit the whole idea of detection limit.
8 When you get down to a detection limit for a
9 sample, does that mean that at that limit you are
10 100 percent of the time able to find what you
11 expect to find?

12 A. No, it does not. It means that 50 percent of the
13 time you will be able to see it and the rest of
14 the time you won't.

15 Q. Really? So it's an equilibrium sort of, I mean,
16 a null, or what would you call that?

17 A. I wouldn't really call it equilibrium because
18 that means something pretty different. But
19 it's -- it's like you are trying to see whether
20 or not there is one spike growing out of a field
21 of grass. There is a lot of variability, and you
22 are trying to see if one of them is big enough
23 than the rest -- bigger than the rest of them,
24 enough that you can detect it.

25 Q. And what you are saying is when someone -- when a

1 chemist establishes a limit, a lower limit of
2 detectability, whatever that level is that's
3 found, even there, 50 percent of the time the
4 substance may be present and not detected?

5 A. At that concentration, yes.

6 Q. And the other 50 percent of the time it would be
7 detected?

8 A. Yes. When you get about an order of magnitude
9 above a detection limit, that's the point where
10 you can start to quantitate. You have to be
11 higher than detection limit to be able to
12 quantitate.

13 At a detection limit, you can only tell
14 you whether or not it's there. You can't tell
15 how much is there. In order to be able to tell
16 how much is there, to actually get a quantitative
17 analysis, you have to be substantially above the
18 detection limit -- the instrument detection
19 limit.

20 Q. And you mentioned, early on in the direct, about
21 some experience that you had and -- with the
22 Navy, trying to examine the limits of detection
23 that a particular protocol actually is designed
24 to do, right?

25 A. Mm-hmm.

1 Q. You have to say yes or no, I'm sorry.

2 A. Yes, sorry.

3 Q. And in that instance you -- I believe you said
4 you found that even though the lab was reporting
5 that this -- to the Navy, that this chemical in
6 the bay was not present, by reviewing the same
7 kind of data you are seeing now, you were able to
8 determine that that was a worthless opinion
9 because the level was simply too high?

10 A. Yeah. It was meaningless in that particular
11 application. It's not -- It wasn't exactly the
12 same kind of data. It wasn't LC/MS data, it was
13 actually a different instrumental technique.

14 Q. Okay. I don't want to confuse things then. So,
15 finally, then, when Mr. Gahn asked you, based on
16 this test and this data, whether or not EDTA was
17 detected in Q-47 -- Q-46, Q-47 and Q-48, does
18 that mean that none of those samples have EDTA in
19 them?

20 A. Not necessarily.

21 Q. Because of what you talked to us before about
22 detection limit?

23 A. Yes.

24 Q. So, can you conclude then, that any of the RAV4
25 -- 3 RAV4 stains that were examined by the FBI

1 could not have come from the blood tube that
2 contained Mr. Avery's blood?

3 A. I can't conclude that.

4 Q. Based upon the data that's presented there,
5 generated from the FBI's own tests?

6 A. Right.

7 ATTORNEY BUTING: Thank you.

8 THE COURT: Anything else, Mr. Gahn?

9 ATTORNEY GAHN: Just a few follow-up
10 questions.

11 RECROSS-EXAMINATION

12 BY ATTORNEY GAHN:

13 Q. Again, back to this tube, and the vacutainer
14 tube, and the expiration date.

15 A. Okay.

16 Q. You are not stating that, in March of 1999, EDTA
17 broke down and was not present in that vial?

18 A. No. In March of '96, when it hit its expiration
19 date, it doesn't suddenly go bad on April Fool's
20 Day. Just like milk doesn't suddenly go bad on
21 its expiration date. But that's as far as the
22 manufacturer can certify to its acceptability.

23 Q. But doesn't that expiration date really have to
24 do with the vacuum and they can't guarantee that
25 the vacuum of bringing the blood from the vein

1 into the tube is going to operate?

2 A. That's a serious limiting factor for those tubes,
3 yes, absolutely.

4 Q. And that's what they are stating by that
5 expiration date, correct?

6 A. You know, it sounds subtle, but really it is the
7 system for its intended use. If you go back and
8 you look in the manufacturer's specs for these
9 things, that's the way they describe them. They
10 always talk about intended use.

11 Q. But probably most noteworthy in this case is that
12 the blood is still in its liquid form 11 years
13 later?

14 A. It is.

15 Q. And that means that the anticoagulant is working
16 very efficiently?

17 A. That's correct.

18 Q. And that's due to the EDTA in the tube?

19 A. That's correct.

20 ATTORNEY GAHN: Thank you, ma'am. that's
21 all I have.

22 THE WITNESS: Thank you.

23 ATTORNEY BUTING: A real couple quick
24 follow-ups.

25 **FURTHER REDIRECT EXAMINATION**

1 BY ATTORNEY BUTING:

2 Q. If the tube, Q-49, that Mr. Avery has, says it's
3 got EDTA in it, on the label, right?

4 A. Yes. Well, it doesn't say it has it, it's
5 implied by the presence of the purple top.

6 Q. Okay. But I haven't brought that actual tube out
7 for you to look at it so, but assuming that it
8 does, then it would not be terribly surprising
9 that some level of EDTA would be detected in that
10 still liquid form, right?

11 A. I would have expected that, yes.

12 Q. Okay. But the real question that is of interest
13 here is the stains in the car of the vehicle,
14 right?

15 A. That's correct.

16 Q. And that's what you are saying Mr. --
17 Dr. LeBeau's report cannot rule out?

18 A. Exactly.

19 Q. Thank you.

20 THE COURT: All right. Members of the
21 jury, at this time we're going to take our lunch
22 break. I will remind you, again, not to discuss the
23 case in any fashion, during the lunch break. We'll
24 resume about 1:00.

25 (Jury not present.)

1 THE COURT: You may be seated. Will the --
2 You may be seated. Will the defense be ready to go
3 at 1:00 --

4 ATTORNEY BUTING: Yes, we will.

5 THE COURT: -- with the next witness?

6 ATTORNEY BUTING: Yes, we will.

7 THE COURT: Very we'll. We'll see you
8 then.

9 (Recess taken.)

10 THE COURT: Mr. Strang, at this time the
11 defense may call its next witness.

12 ATTORNEY STRANG: Thank you, your Honor.
13 And, actually, before I do that, and while I'm
14 thinking of it, I would move into evidence Exhibits
15 499 and 500, which relate to Ms Arvizu.

16 THE COURT: Any objection?

17 ATTORNEY GAHN: No objection.

18 THE COURT: Very well, those two exhibits
19 are admitted.

20 ATTORNEY STRANG: And then the next witness
21 is Dr. Scott Fairgrieve.

22 THE CLERK: Please remain standing and
23 raise your right hand.

24 **DR. SCOTT FAIRGRIEVE**, called as a
25 witness herein, having been first duly sworn, was

1 examined and testified as follows:

2 THE CLERK: Please be seated.

3 THE WITNESS: Thank you.

4 THE CLERK: Please state your name and
5 spell your last name for the record.

6 THE WITNESS: Yes, my name is Dr. Scott
7 Fairgrieve, F-a-i-r-g-r-i-e-v-e.

8 **DIRECT EXAMINATION**

9 BY ATTORNEY STRANG:

10 Q. Are we good on volume? Maybe just pull the mike
11 down just a little bit?

12 A. Is that better?

13 Q. Yes. Probably so, yes. Good afternoon. I
14 wonder if we could start, Dr. Fairgrieve, with
15 explaining to our jury why it is that we brought
16 you down from Laurentian University in Ontario,
17 Canada.

18 A. I was requested by the defense counsel in this
19 particular case to review the reports and
20 circumstances surrounding the investigation of
21 the Avery property and, specifically, with
22 respect to cremated remains in this case and the
23 forensic anthropologist report.

24 Q. And how -- how, in general, are you employed?

25 A. I am currently employed as the chair of the

1 Department of Forensic Science at Laurentian
2 University in Sudbury, Ontario, Canada. And I am
3 also a forensic anthropology consultant to the
4 Office of the Chief Coroner for Ontario.

5 Q. Okay. Let me show you your curriculum vitae,
6 which I have marked -- had marked as Exhibit 501.
7 And we'll give the people a little bit of an
8 overview of who you are without -- I promise you
9 -- and without going through all 18 pages of
10 this.

11 A. Okay.

12 Q. You have a bachelor's degree?

13 A. Yes, I have a bachelor of science in biological
14 anthropology from the University of Toronto.

15 Q. Where did you take your education after that?

16 A. I then proceeded on to do my master's level
17 degree at Cambridge University in England, also
18 in biological anthropology.

19 Q. What is biological anthropology?

20 A. It's the examination, and my specific speciality,
21 of the human skeleton. We also refer to it as
22 human osteology. And I'm an expert -- or
23 received education in the area of the analysis of
24 the skeleton in a variety of contexts, both
25 archaeological and modern.

1 Q. Did you attain, what is it, a master's in
2 philosophy in biological anthropology from
3 Cambridge University?

4 A. That's correct. It's referred to as an M.Phil.
5 Degree.

6 Q. All right. You come back from Great Britain,
7 obviously, at some point, back to Canada, and
8 where do you -- where do you go with your
9 education from there?

10 A. From there, I attended the University of Toronto
11 for my doctoral degree, a Ph.D. in human skeletal
12 biology within the Anthropology Department.

13 Q. When did you obtain the Ph.D.?

14 A. In 1993.

15 Q. What have you done in general, big picture, what
16 have you done with your professional life since
17 you completed the doctorate?

18 A. In general, I have, obviously, as a forensic
19 scientist, I belong to several associations, but
20 in my actual work, I am employed, since 1991, at
21 Laurentian University as a forensic
22 anthropologist and have undertaken teaching
23 courses at the undergraduate level.

24 Q. Where is Laurentian University, specifically?

25 A. It's about -- It's in the town of Sudbury,

1 Ontario, which is a very well-known mining
2 community. It is located approximately four hour
3 drive north of Toronto.

4 Q. What -- Give us a run down, if you would, on a
5 little bit more about the faculty position you
6 hold as Chair of the Department of Forensic
7 Sciences at Laurentian?

8 A. Well, I oversee the operation and administration
9 of the department; however, I'm also a teacher,
10 if you like, a university professor. So I
11 instruct students in various different courses,
12 including forensic biology, introducing --
13 introduction of forensic science, forensic
14 anatomy of the human skeleton, as well as
15 forensic analysis of the human skeleton.

16 Q. Outside of an undergraduate or graduate student
17 classroom, do you do any training or teaching of
18 law enforcement?

19 A. Yes, I have. I have -- actually, was invited,
20 back in, I believe it was 2002, to form the very
21 first course in recovery of human remains from
22 crime scenes, for police officers; what we refer
23 to in Canada as forensic identification officers,
24 here they would be crime scene technicians, and
25 that went until 2005.

1 Q. Do you -- Are you involved in research as well as
2 the practical work you described?

3 A. Yes, sir. I am very active in research.

4 Q. What is your primary area of research interest?

5 A. My primary area is in the study and
6 interpretation of cremated human remains. So any
7 human tissues that are subjected to fire in a
8 variety of circumstances, but more commonly in
9 the forensic circumstances.

10 Q. Have you written anything about this?

11 A. I am published in the area of forensic cremains
12 through journal articles as well as book chapters
13 and conference presentations. And I have an
14 upcoming book coming out through a publisher in
15 the U.S. on the forensic cremation analysis and
16 interpretation.

17 Q. And we can look for that at amazon.com soon?

18 A. I'm hopeful.

19 Q. All right. Now, again, the jurors, I think, will
20 probably have your resumé, so I don't want to go
21 through everything, but give me a sense, give the
22 jury a sense of the professional associations to
23 which you gravitated or that you found, you know,
24 to enrich your work?

25 A. Professional associations are very important to a

1 scientist, in growth for both peer review of your
2 own work, but also further training and,
3 basically, communicating with other members of
4 your field.

5 I'm known as a fellow in the American
6 Academy of Forensic Sciences within the Physical
7 Anthropology Section. I'm a member of the
8 American College of Forensic Examiners
9 International and I'm also on the Editorial
10 Advisory Board for their publication known as the
11 Forensic Examiner.

12 Q. Actually, I'm going to stop you right there.

13 A. Yes.

14 Q. We have heard talk about peer reviewing articles;
15 is that exactly what somebody on the Editorial
16 Advisory Board does?

17 A. Well, in my case, from the editor of a specific
18 journal, I would receive the actual article in
19 question and they ask me to examine it for the
20 science behind the article, in order to make sure
21 that the procedures followed, and the way that
22 the article is written, conforms to scientific
23 standards.

24 Q. You are describing peer review, is that what peer
25 review is?

1 A. That's exactly what it is, literally a review by
2 your colleagues.

3 Q. Okay. Are any of the professional associations
4 to which you belong tilted towards law
5 enforcement or defense in the criminal justice
6 system?

7 A. Forensic science, as we deal with it, is meant to
8 be an unbiased profession. We are to undertake
9 analysis of evidence and present our findings of
10 that evidence in courts of law via either
11 reports, or through reports and testimony, such
12 as here.

13 Q. Have you testified in court before today?

14 A. Never in American court; however, in Canadian
15 courts, yes.

16 Q. And I'm -- I'm -- I'm actually curious, who --
17 who has called you as a witness in the past,
18 which side?

19 A. I have only testified for the Crown in Canada,
20 which is -- the equivalent here would be
21 prosecution, so the State.

22 Q. Okay. This is the first time both in an American
23 court and being called by the defense?

24 A. That's correct.

25 Q. Okay. And I want to get now into the more -- the

1 more practical or field work that you do. And
2 I'm curious, is there a tie between the research
3 interest in cremated human remains, or cremains,
4 and the practical field work that you do?

5 A. Yes. Well, my interest in cremains came out of
6 the fact that I was being called in order to, not
7 only recover in the field, cremated remains, from
8 crime scenes, but also to interpret those
9 remains. And so my research has very much
10 centered on the problems and the challenges that
11 one encounters with remains that are in such a
12 degraded state.

13 Q. Do you find yourself still called to consult at
14 crime scenes?

15 A. Yes, I am. I'm currently a consultant for the
16 Office of Chief Coroner in northern Ontario.

17 Q. Which covers how big an area?

18 A. Approximately western Europe. Land area, very
19 wide, from Sudbury on up through northern
20 Ontario, right up to Hudson Bay.

21 Q. Okay. So just part of the province.

22 A. Yes.

23 Q. But a large land area.

24 A. Yes.

25 Q. And who calls you in to crime scenes?

1 A. The -- Usually the procedure is I'm sometimes
2 contacted by police to tell me that there is a
3 scene that they will suspect they will want me to
4 attend; however, as per our protocol, I am called
5 to the scene and to attend by the Regional
6 Supervising Coroner and so I represent the
7 Regional Coroner as far as --

8 Q. Okay.

9 A. -- activity is concerned.

10 Q. So you may be working shoulder to shoulder with
11 police officers, but you are there under auspices
12 of the coroner -- auspices of the coroner, if I
13 understand?

14 A. That is correct, yes.

15 Q. Okay. When -- when you have a case, you are
16 called to the field, crime scene, or suspected
17 crime scene, and you have got human -- cremated
18 human remains?

19 A. Yes.

20 Q. What's -- What are the tasks for a forensic
21 anthropologist like yourself in that role?

22 A. Well, initially, what we do is, I will certainly
23 meet first with the law enforcement officials who
24 are responsible for the investigation as well as
25 the forensic officers. And we will -- I will get

1 background information from them, prior to even
2 attending the scene.

3 And, then, upon attending the scene we
4 will examine the general area in order to -- how
5 to approach. I usually check to see if there is
6 a path of contamination that has been initiated.
7 And we, essentially, work from the outside of the
8 scene to the inside. So I'm very much there
9 working shoulder to shoulder with the forensic
10 identification officers at the scene and --

11 Q. And --

12 A. -- and offering advice on how to do the recovery.

13 Q. Okay. And that's what we're talking about --

14 A. Yes.

15 Q. -- we're still at a point where we're trying to
16 recover --

17 A. Oh, yes.

18 Q. -- remains --

19 A. Oh, yes.

20 Q. -- when it was at the site?

21 A. And documenting those remains at the scene.

22 Q. Okay. So contamination path and I think you just
23 said you work in --

24 A. Yes.

25 Q. -- from the edges?

1 A. Yeah.

2 Q. What are you trying to do?

3 A. Well, we're first of all trying to preserve the
4 context of the evidence as best as possible, and
5 to do as little contamination as possible to the
6 actual scene. So by having a path of
7 contamination, this is a pathway, if you like,
8 that the police officers will have established
9 saying, well, this is the way we got on to the
10 scene originally, so we're just going to keep
11 walking on this path and not possibly contaminate
12 outside of that pathway.

13 Q. Okay. So, in addition to preservation, then,
14 what would be the next task?

15 A. Well, as with anything, as items are identified
16 and, typically, because we're dealing with
17 cremains, I'm the one to identify, okay, this is
18 a cremain and that's a cremain. I would actually
19 be indicating those and we would flag them, for
20 example; in other words, mark them, without
21 touching them, their location, so that we know
22 where they are.

23 And we start from the outside, as I said
24 before, from the areas of lowest concentration,
25 so that we can clear other areas around the scene

1 and then work into where we suspect the highest
2 concentration of the remains may be.

3 Q. As you are working in, what are you -- what are
4 you doing, if anything, to document what you are
5 finding as you work your way in?

6 A. As -- As I work with the ident officers, we --
7 everything that's found, in order, is given an
8 evidence number. And that is controlled by the
9 forensic ident officers. So I will indicate an
10 item, for example, and -- which is items, that
11 is, within my area of expertise, in this case
12 cremated remains.

13 And they will keep an evidence record
14 log and they will say, what description should we
15 give this. And I may say bone fragment, or
16 something of that ilk, and it would be
17 photographed and the flag would be remaining
18 there and subsequently mapped into place.

19 Q. By the time you are getting around to
20 photographing the things that you found, has
21 anything yet been touched, physically?

22 A. No. Nothing is touched until the photography is
23 done and -- but the mapping may be done a little
24 later, because we leave the flags in place.

25 Q. What goes around comes around, I think this jury

1 has heard about the system of mapping that you
2 have --

3 A. Sure.

4 Q. -- now days. Tell us just a little bit about
5 that?

6 A. Well, there's a few different ways to do it. I
7 mean, one -- one way is to superimpose a sort of
8 grid over the scene, which basically looks like a
9 bunch of squares. And then you approach the
10 scene such that you are taking care of the
11 squares around the scene first, clearing those
12 and then going in towards those areas of higher
13 concentration. And that, generally, is done in
14 order to control the method by which you are
15 processing the scene.

16 There are instances, however, where
17 we'll do a combination of this with an electronic
18 means of documenting a scene. And that's using
19 something known as a Total Station Unit, which is
20 basically a surveyors -- computerized surveyors
21 unit. And that helps us to generate a
22 computerized map of the scene.

23 Q. When I say what goes around comes around, we have
24 heard about the Total Station Unit already in
25 this trial. But you -- you folks are using that

1 as well.

2 A. Oh, yes.

3 Q. And what -- what are you -- what specifically are
4 you mapping with that when you use it?

5 A. We're mapping sometimes individual fragments,
6 perhaps fragments that are clustered together in
7 a tight grouping, in a context. It could be long
8 bones that we would see, or other elements of the
9 skeleton. And those are getting numbered as we
10 go along and their position is being noted. This
11 way we get a distribution.

12 Q. Why note the position of every single fragment
13 that you find?

14 A. Well, documentation, it is required for us, first
15 and foremost, for court purposes, in order to
16 document where everything comes from in its
17 original found location. Secondly, by
18 documenting this, this can tell us all sorts of
19 different things about the circumstances
20 surrounding this find.

21 So what we would look for would be bones
22 that happen to be in their relative position to
23 one another, such as the bones of the lower arm
24 being next to one another, and being close to or
25 joined up with the bones of the upper arm.

1 We're interested in the position of the
2 body, if that can be ascertained. We're
3 interested in whether the remains have been
4 purposely manipulated, moved, redistributed,
5 crushed actively, mixed up or comingled. All
6 those things can be ascertained through proper
7 excavation and recovery technique.

8 Q. So with that background, I guess, let's -- let's
9 get specifically to this case and your role in
10 this case. Are you familiar with a Dr. Leslie
11 Eisenberg?

12 A. Yes, I am.

13 Q. How -- How do you know her, or how have you
14 become familiar with her?

15 A. I have known Leslie for, must be over 10 years
16 now, as colleagues through the American Academy
17 Forensic Science, the Physical Anthropology
18 Section.

19 Q. Have you had a chance to review her report in
20 this case?

21 A. Yes, I have.

22 Q. And some photographs?

23 A. Yes.

24 Q. What -- What can you tell us about the common
25 ground you share with Dr. Eisenberg, the points

1 on which you agree with her work, based on the
2 work you have done here?

3 A. Oh, I agree with many points of Dr. Eisenberg's
4 research or study on, in this case, and her
5 report. I certainly have no reason to question
6 the parts of her analysis that deal with the fact
7 that the remains are representative of a single
8 individual, an individual who is female, as well
9 as a mature individual, that is, not a pubescent
10 if you like, or somebody who is post-pubescent.

11 Q. Do you have any reason to disagree with
12 Dr. Eisenberg's assessment of the rough age
13 range?

14 A. She did note in her report that there was a lack
15 of arthritic changes to the skeleton. And as I
16 recall, to the best of my ability, she was
17 indicating an age, an upper age limit of 30 to 35
18 years. That can be problematic. I agree that
19 there was no lipping, however there are --

20 Q. Stop. Time out. That was a technical word.

21 A. Pardon me, sorry. There were no arthritic
22 changes. And I certainly agree from what the
23 photos were I saw, I certainly didn't see any.
24 However, she's using that as a basis to say 30 to
25 35 and I know of no empirical studies to support

1 that. That would be purely speculation.

2 Q. But -- But you have no reason to doubt it either,
3 I mean, you are not -- I take it you don't --

4 A. Not one way or another.

5 Q. -- (inaudible) over that.

6 A. No. No.

7 Q. What else do you find yourself in agreement with?

8 A. Specifically, her analysis of the trauma to the
9 head, I am certainly in agreement with. She
10 indicated two gunshot wounds and I'm in agreement
11 with that.

12 Q. When you say you are in agreement with two gun
13 shot wounds, as a forensic anthropologist, are
14 you qualified to say, yeah, I look at that defect
15 in a bone and in my professional judgment it's an
16 entrance wound from a bullet?

17 A. What we do is, we describe the actual
18 characteristics of a specific lesion or
19 discontinuity, if you like, an opening. And we
20 look at the various signatures of that. And, in
21 fact, in this case, certainly, they do conform
22 with a high velocity projectile, meaning a
23 bullet.

24 Q. Do you think, as a forensic anthropologist, that
25 you also, though, could take the next step from

1 gunshot wound to assigning a manner of death or a
2 cause of death.

3 A. The problem with that is that with wounds such as
4 this, in my profession, we will tend to report
5 that something such as this is perimortem,
6 literally meaning around the time of death. We
7 cannot prove that that was actually the cause of
8 death. We can't prove that it happened shortly
9 after death, or it was a wound that was shortly
10 before death and the person survived for a few
11 minutes and may have been killed through some
12 other means.

13 Because we are dealing with skeletal
14 remains, I do not have the soft tissue that a
15 pathologist does in order to make some of these
16 other determinations; hence, we usually are stuck
17 with the term perimortem.

18 Q. Okay. And here, in specific, after your review
19 of the occipital bone fragment and the parietal
20 bone fragment --

21 A. Yes.

22 Q. -- and the unnatural opening or defect, you are
23 calling it a lesion --

24 A. Yeah.

25 Q. -- discontinuity, the bullet hole?

1 A. Yeah.

2 Q. Okay.

3 A. Trauma.

4 Q. Are you able to offer an opinion, as a forensic
5 anthropologist, on whether those gunshot wounds
6 occurred after the person was dead or before the
7 person was dead?

8 A. No, I cannot.

9 Q. Why not?

10 A. Well, the problem is that I just don't know what
11 actually did cause the death. I'm a reasonable
12 person in that, yes, I recognize that gunshot
13 wounds to the head are not conducive of long
14 life, however --

15 ATTORNEY FALLON: Your Honor, I'm going to
16 interpose an objection at this point, and it may be
17 cleared up with a few more questions from counsel,
18 but I don't think there's been any foundation for
19 this gentleman to render an opinion, vis-a-vis,
20 cause of death. Such was not rendered by
21 Dr. Eisenberg either, I might add.

22 Q. (By Attorney Strang)~ Well, actually, I think
23 we'll step back. I mean --

24 A. Sure.

25 Q. -- if I wasn't clear about this, I want to be.

1 As a forensic anthropologist, are you
2 professionally qualified to render an opinion on
3 cause of death?

4 A. No.

5 Q. As a forensic anthropologist are you
6 professionally qualified to render an opinion on
7 manner of death?

8 A. No.

9 Q. Okay. And I guess, if I understand you, what you
10 are saying here is, you cannot assign a manner of
11 death within your profession or calling?

12 A. No, we cannot. And, certainly, in my
13 jurisdiction as well, what -- how we proceed is
14 that I will evaluate trauma and then this goes to
15 the forensic pathologist, as well as the coroner
16 or medical examiner, as the case may be, and they
17 make that final determination.

18 Q. Now, as a forensic anthropologist, and one who's
19 got a strong interest in cremated human
20 remains --

21 A. Yes.

22 Q. -- can you offer us an opinion on whether the --
23 a gunshot wound to the head, for example, the two
24 here, were before or after burning of the bones;
25 is that something you can do?

1 A. Yes. Yes, that is something I can do.

2 Q. And do you agree or disagree with Dr. Eisenberg's
3 conclusion that the gunshot wounds here were
4 before burning of the bones?

5 A. Yes, I do agree with that.

6 Q. Okay. But whether the gunshot wounds were before
7 or after the death of the person on that --

8 A. I cannot say.

9 Q. Okay. Within the field of forensic anthropology
10 you cannot say that?

11 A. That's correct.

12 Q. Okay. Any other points of agreement with
13 Dr. Eisenberg's work here?

14 A. I agree that she -- I agree with her opinion that
15 she was not able to determine the ancestry of the
16 individual, or the stature of the individual.

17 Q. Height.

18 A. Yes.

19 Q. Okay. What -- What did the -- You just looked at
20 photographs, not actual bone fragments, correct?

21 A. That's correct.

22 Q. Okay. What did -- What did you see in the
23 condition, the exterior condition of the bone
24 fragments that -- that you saw in photographs?

25 A. Well, certainly subjected to an intense heating

1 event, a fire. The types of fractures that I saw
2 there were very consistent with those caused by
3 heat, so you have what we generally refer to as
4 heat induced fractures. And there's a variety of
5 these.

6 Q. Tell -- Tell us about those, a little bit about
7 heat induced fractures.

8 A. Sure. Heat induced fractures are actually caused
9 during the burning process, to any sort of
10 tissue, specifically bone in this case. Because,
11 when you have a fire, it's actually leaching the
12 water out. So you actually are losing water
13 content. And as a result of that, you get a
14 shrinkage of the bone that's occurring and then
15 you get a fracturing that occurs as well.

16 Q. And does it happen in the heating phase, or in
17 the cooling phase, or just throughout?

18 A. Initially, what happens is, as it's being
19 consumed the bone will heat up, and with anything
20 that does heat up, it expands. It's been found
21 through experimentation that the actual -- a lot
22 of the fracturing does really get undertaken at
23 the cooling stage. So as the bone cools, if
24 you -- particularly if it's been in a fire, let's
25 say like a house fire, or something like that,

1 and fire personnel come along and put water on it
2 to cool it fast, that will actually cause it to
3 fracture even more.

4 However, with fires that are attended by
5 a perpetrator, you do get the fracturing taking
6 place naturally; however, the bone will remain in
7 its same location as where it was put with the
8 rest of the body at the time.

9 Q. We heard -- We heard testimony from Dr. Eisenberg
10 to the effect that the recovery process here of
11 the human bone fragments she described was well
12 done. I'm not quoting her exactly, but she --
13 she offered some testimony to that affect. Is
14 that a view with which you can agree?

15 A. I'm afraid I have to differ with that opinion.

16 Q. Why?

17 A. Well, from the photographs that I received, first
18 of all, the documentation with the photography
19 was fairly poor. It was very difficult to tell
20 anything as far as in situ, or the original
21 location.

22 Q. In situ meaning the original site --

23 A. Yes.

24 Q. -- as found?

25 A. As found, would probably be a better way to put

1 it. So the photography was very poor from that
2 perspective. The accounts that I understand
3 occurred as far as the excavation procedures,
4 there was no systematic approach to the
5 collection of the evidence at first processing,
6 from what I saw. I know there was no grid
7 imposed at that time, during the initial
8 excavation.

9 I was informed that shovels were used in
10 order to do that and it wasn't, shall we say, a
11 more forensic archaeological approach and that,
12 essentially, Dr. Eisenberg received the materials
13 directly from the police services involved,
14 without her having been in the field.

15 Q. Okay. So other than nitpicking, why does this
16 matter. Why does it matter?

17 A. Well, it matters as far as what I mentioned about
18 the documentation and being able to tell things
19 about the circumstances surrounding the burning
20 of the body. One of things the context can tell
21 you, if it's well done, is to approach the
22 question of where the body was burned. Was it
23 moved? Was this the actual location or not?

24 Q. How do you approach drawing a conclusion about
25 where the original burn site, or where the body

1 was burned; how do you approach that through a
2 proper recovery?

3 A. Well, within the recovery and, certainly, in
4 recoveries I have been involved with, what is
5 done is, as you proceed through the careful
6 excavation, removing soil, soil is removed from a
7 particular square, for example, that you have
8 identified as being of interest within your grid.
9 And you proceed, vertically, from the highest
10 point of that square, down to a level until you
11 start finding material.

12 When you find that material, you clear
13 it off very carefully. You actually switch from,
14 shall we say, a trowel type implement, to
15 actually wooden implements, because they have the
16 same approximate density as bone and even
17 cremated bones, so you have less risk of actually
18 causing damage, shall we say, extra damage to the
19 remains.

20 Q. Why is that a concern, by the way, with burnt
21 bone?

22 A. Well, burnt bone is extremely fragile. You -- We
23 tend to have a little axiom that we refer to in
24 teaching cremation studies to students, and that
25 is, if you take a cremated bone and you pick up

1 one bone, you end up putting down 10. What that
2 means is, that it's very fragile and it can,
3 quite often, when moved, unless it's been, shall
4 we say, fixed together in some fashion, using a
5 glue or something of that ilk, you are actually
6 going to pick it up and you are going to cause
7 some damage.

8 Q. Now, is that -- is that breakage, or that
9 fragility, universally true through all the
10 stages of from, you know, light charring to a
11 complete calcination of the bone?

12 A. No, it's -- because a body burns what we call
13 differentially, in other words, it doesn't burn
14 evenly, you actually have some areas of the
15 skeleton that are going to burn, or the body,
16 that will burn more quickly.

17 If you think about it, areas where
18 there's not a lot of skin coverage, such as the
19 ends of fingers, the top of the head, these sorts
20 of areas will burn more quickly. So we'll
21 actually see them go through the various
22 different color changes and stages of the fire
23 process ahead of other areas, such as the torso.
24 More meat on the torso, certainly mine. And
25 that's going to take longer to actually be

1 consumed, as opposed to say the limbs or the head
2 and face and such.

3 Q. So when -- But I'm curious, I mean, does the
4 actual fragility, if you will, of the bone --

5 A. Yes, it's going to vary as a result of that. So
6 the earlier on, where you have the dark
7 blackened, if you like, charring of the bone, is
8 not as fragile as the bone that has gone to sort
9 of a gray-blue stage and approaching what we call
10 a calcined stage.

11 The actual end stage, if you like, the
12 ultimate extreme of burning bone is where we have
13 the white calcined stage. And, in fact, the
14 molecules of the minerals in the bone actually
15 reorient themselves into a structure that is more
16 akin to porcelain, so it actually becomes quite
17 strong at that point.

18 Q. Okay. So it's going through sort of a curve
19 where it's becoming more and more fragile. And
20 at the final stage, you are saying it's
21 actually -- regain --

22 A. It can be.

23 Q. -- some strength.

24 A. It's very much dependent upon the actual density
25 of the bone.

1 Q. Okay. All right. And you were -- you were
2 explaining how this, you know, this sort of
3 layered excavation and identifying pieces in
4 place --

5 A. Yes.

6 Q. -- helps -- helps get you to being able to draw a
7 conclusion about whether the body was burned
8 there, or moved, or, you know, otherwise
9 disturbed, and I want to go back to that.

10 A. Sure. The actual -- When we actually do an
11 excavation like this, and let's say we come
12 across, as I have, I will describe an actual
13 scene I have been involved with, the lower end of
14 the upper arm bone. And upon excavation, by
15 excavating it carefully, one can see the actual
16 lines of the fracture from the heat and see that,
17 yes, this bone is in a location; however, if we
18 move this bone, it is going to fall apart. That
19 tells us that this is the original context of
20 where that was burned, because if we moved it, we
21 would already find it in the smaller pieces.

22 Q. Okay. All right.

23 A. Quite logically, you know, if you have got
24 something that's -- if you -- it's akin to taking
25 a piece of glass and putting it on the floor and

1 stepping on it; well, you can see the outline of
2 the glass and the size of the piece of glass, but
3 you will also see all the cracks. So if you move
4 it, you are not going to be able to see that
5 outline any more in it's original form.

6 Q. Okay. Do you -- Do you agree here with
7 Dr. Eisenberg that it's clear in this case that
8 bones were moved?

9 A. I agree that bones were moved.

10 Q. In the human -- When I say bones, I'm talking
11 about human --

12 A. Human remains.

13 Q. -- human remains.

14 A. Yes.

15 Q. Okay. You -- you -- you do agree with that?

16 A. I do.

17 Q. Okay. And based on the recovery method that was
18 used here, are you able to offer an opinion, to a
19 reasonable degree of scientific certainty, about
20 where these human remains were burned?

21 A. No, I'm not.

22 Q. Why not?

23 A. Well, the fact is, that because I don't have any
24 records from which to examine that would actually
25 indicate to me that there are bones in the

1 original location, where they were burned, I
2 can't offer an opinion on that.

3 Q. You know, when -- if you -- if you go to a site
4 and you have the opportunity to recover a burnt
5 human remains, are you able to identify the, you
6 know, the specific bones by name and location in
7 the body when you are looking at them in place?

8 A. Yes.

9 Q. How is that?

10 A. Well, there are anatomical landmarks on the
11 various different bones. And if they are in
12 their original location where they were burned,
13 we'll even see them on what we call relative
14 anatomical position. So that if you burn remains
15 in a specific location and no other force acts
16 upon them except the actual burning process, then
17 the materials that make up the head will be at
18 the head end of the body and then you will have
19 the neck, the thorax, and then the legs and then
20 the arms off to the side. So that's -- that
21 makes logical sense.

22 Q. How -- How about when these things are fractured,
23 because I get -- I gather from what you said a
24 few minutes ago, some breakage and fracturing
25 will occur just because of the heating and

1 initial contraction as the bone dries?

2 A. Yeah, the heat actually will definitely cause
3 fracturing and you see all sorts of different
4 types of fractures within the bone itself.

5 Q. And -- But you're -- But you're still able, if
6 the bones are in place, to identify the type of
7 bone you are looking at?

8 A. Oh, yes.

9 Q. And that's something a forensic anthropologist
10 can do with training?

11 A. Oh, yes, absolutely.

12 Q. Back to the moving of bones now, when you say you
13 agree that human remains were moved here, are you
14 talking about moved a little bit within one site,
15 or moved from point A to point B, or both?

16 A. Given that there are three locations, from my
17 understanding, where we have bone having been
18 documented to have come from, then we are talking
19 point A to B or to C, as the case may be.

20 Q. Okay. Now, we have been calling these the area
21 behind Steven Avery's garage, or sometimes called
22 it the burn area?

23 A. Yes.

24 Q. The Janda burn barrel, is that --

25 A. Yes.

1 Q. -- the second. And then there's what I call, at
2 least, the quarry pile or quarry site.

3 A. Yes.

4 Q. On that, Dr. Eisenberg testified, as I recall,
5 that she only suspected that she was seeing human
6 bone fragments, maybe two from the pelvis, one
7 from the iliac crest and that there were other
8 bones that she initially suspected to be human,
9 some of which she later determined were animal --

10 A. Yes.

11 Q. -- bone, and some of which remain undetermined,
12 still possibly human and possibly not?

13 A. Yes, that's my understanding.

14 Q. Do you have any reason to disagree with that?

15 A. No, I do not.

16 Q. Okay. So -- But -- But as I understand it, in
17 your opinion, human bone fragments were found in
18 the Janda burn barrel?

19 A. Yes, that's my understanding from the report.

20 Q. And human bone fragments behind Mr. Avery's
21 garage?

22 A. Yes, that's correct.

23 Q. Okay. So, at least those two sites, to a
24 reasonable degree of scientific certainty, in
25 your opinion, you got human bone?

1 A. Yes, I take Dr. Eisenberg at her word.

2 Q. Okay. And, again, I think we touched on this,
3 but do you see any evidence, in your independent
4 review, that we have the remains of more than one
5 person?

6 A. No, it is consistent, from the inventory that she
7 provides in her report, it's consistent with one
8 individual.

9 Q. Are you able to say anything about whether bone
10 fragments in the area behind the garage were or
11 were not moved, disturbed, or the verb was you
12 used, in that general area behind Mr. Avery's
13 garage?

14 A. Based on the recovery techniques, I have no
15 evidence or any documentation to be able to make
16 any determination.

17 Q. Well, can you agree with Dr. Eisenberg's opinion,
18 as I recall it, that probably the area behind
19 Mr. Avery's garage was the original burn site for
20 the bone fragments, wherever found?

21 A. I cannot agree with that at this point.

22 Q. Why not?

23 A. Well, because, firstly, the documentation. The
24 documentation itself did not lend itself to that
25 interpretation, so I can make no inference

1 whatsoever from that.

2 Q. Okay. Well, let's -- let's go to the reasons
3 that Dr. Eisenberg gave in support of her -- her
4 view. She -- she -- she told us that the greater
5 amount -- the greatest amount, by far, of human
6 bone or human remains, was found behind the
7 garage, with much less found in the Janda burn
8 barrel, and still much less, if it was human at
9 all, at the quarry site?

10 A. Yes, that's what I understand.

11 Q. Does that, in your professional opinion, support
12 the view that, therefore, the Avery garage was
13 the most likely burn site?

14 A. No.

15 Q. Why not?

16 A. I have been involved in cases where human
17 cremains have been burned in one location and
18 moved to another location. And in those cases,
19 in fact, the actual location where the bones have
20 been moved to, in other words, their ultimate
21 location of where they have been buried, or
22 placed in another context, tends to be the
23 location where most of the remains are. And in
24 those -- in that instance, for example, I have
25 recovered elements or parts of the skeleton from

1 all areas of the body.

2 Q. Okay. Wait a minute, I want to stop you.

3 A. Sure.

4 Q. Are you saying that in your experience, when --
5 when burnt bones are moved, you tend to find the
6 majority of them away from the place in which
7 they were burned; in other words, find them in
8 the place to which they were moved, not from
9 which they were moved?

10 ATTORNEY FALLON: Objection, leading.

11 ATTORNEY STRANG: I want to make sure I
12 understood your testimony.

13 THE COURT: I'm going to allow it.

14 A. I understand that, from your question, the answer
15 is, yes, in the cases I have dealt with where
16 human cremains have been moved, the majority of
17 them have been from the body and making up the
18 largest portion of the body, from the ultimate
19 final place where they were actually moved to.

20 Q. When you had those situations, how have you been
21 able to determine that?

22 A. As far as the numbers, or --

23 Q. No, the -- you know, that the bones were moved to
24 this place.

25 A. Well, we have found small fragments in some in

1 situ, or shall we say the original location of
2 the burn, determined by the excavation techniques
3 I have told you about where items have been
4 missed. And then other -- all the other items
5 have been taken and moved.

6 Q. Well, and this brings me back to Dr. Eisenberg,
7 because it's -- as I recall, the second point she
8 made in support of the conclusion that the area
9 behind the garage was the probable burn site, is
10 that that's where she found the smaller, more
11 delicate bones, facial bones, dental structures,
12 that kind of thing. Does finding the smaller and
13 more delicate bone fragments support the
14 conclusion, in your experience, that this must be
15 the place where the original burn occurred?

16 A. No, it does not.

17 Q. Why not?

18 A. Well, we have actually been able to recover
19 fragmentary teeth, facial bones, very small bones
20 from the body, including even we found bones from
21 the middle ear, which are about a millimeter in
22 size, in one of these locations where the bones
23 have been moved to.

24 Q. In other words, they have survived -- some of
25 these small bones have survived moving?

1 A. Yes, they have.

2 Q. And then identifiable in another place?

3 A. Yes, that's correct.

4 Q. Say the bones in the middle ear?

5 A. Yes.

6 Q. How many of these bones are there?

7 A. Three in each middle ear.

8 Q. One millimeter each?

9 A. Approximately, yeah.

10 Q. Okay. Well, and I think the third thing, as I
11 recall Dr. Eisenberg's testimony, which she cited
12 in support of her opinion, that the area behind
13 the garage was the probable burn site, is that it
14 looked like there had been only one burn event;
15 you know, that there had been only one fire. Do
16 you follow what I'm saying, everything had been
17 burned in one place?

18 A. Yes.

19 Q. Does that support the opinion that the Avery
20 garage was the probable site?

21 A. Not necessarily, as a result -- one cannot tell
22 how many burns actually took place in that
23 location. From my own experience, I have
24 actually dealt with cremation cases where
25 somebody has actually used a traditional burn

1 area in there own yard for the location of a burn
2 itself. So if there's a fire pit that's at hand,
3 then that's where it's been.

4 Q. Well, but I guess I'm talking about cases in
5 which we're agreed that bones have been moved --

6 A. Yes.

7 Q. -- after burning.

8 A. Yes, that is, in fact, the case, yes. We do have
9 instances where there can be even re-burning
10 going on and certainly burns going on before
11 that. So you can't tell how many burn events
12 took place, that's the bottom line.

13 Q. Okay. Can you -- Can you give us an opinion
14 about where the original burn site was for the
15 human remains, eventually given to Dr. Eisenberg?

16 A. No, I cannot, not from the evidence that I have
17 reviewed.

18 Q. Is -- Is -- Can you rule out the area behind the
19 Avery garage?

20 A. The way I would phrase it is, I fail to exclude
21 it.

22 Q. So, in other words, it's a possible place?

23 A. Certainly.

24 Q. Okay.

25 A. Certainly.

1 Q. Based on the information you have, were there
2 other possible burn sites, let's say, on the
3 larger Avery property?

4 A. Oh, certainly, yes.

5 Q. Such as?

6 A. The barrel for one; I -- I can't rule that out.
7 My understanding, from the scene of the actual
8 overall property, that there is a wood type of
9 furnace, I understand, on the property. And
10 there's even, as I recall, an aluminum smelter on
11 the property.

12 Q. Okay. Now, you personally haven't looked at any
13 of these?

14 A. I have not examined any of these. I have never
15 been to the Avery property.

16 Q. All right. Yet alone in November of 2005?

17 A. Not at all.

18 Q. Okay. And what -- what can you say about other
19 unknown possible burn sites here?

20 A. Well, I can't exclude any other location as being
21 impossible, because simply I have no evidence to
22 that affect.

23 Q. Well, let's -- let's go back --

24 ATTORNEY FALLON: Your Honor, may counsel
25 and I approach the bench?

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THE COURT: Sure.

(Side bar taken.)

THE COURT: Members of the jury, we're going to take a short break at this time. I remind you not to discuss the case during the break. You are excused at this time.

(Jury not present.)

THE COURT: And, Dr. Fairgrieve, I will have you step out in the hallway at this time.

THE WITNESS: Okay. Thank you.

THE COURT: Please be seated. I will indicate for the record that Attorney Fallon asked for a side bar and raised an issue which I suggested be raised on the record, outside the presence of the jury. At this time the jury has been excused and the witness is also excused from the courtroom. Mr. Fallon.

ATTORNEY FALLON: Yes, thank you, Judge. I just wanted to express concern, I don't know where counsel is going with the rest of this examination on this point. But from my review of the amended disclosure of expert witness, Scott Fairgrieve, the amended disclosure states, at the bottom of page four, most notably the first full sentence on page five, that there would be an opinion expressed that

1 there is no evidence that these cremains were
2 originally burned in the barrel where they were
3 found.

4 So the testimony, as elicited by Dr.
5 Fairgrieve, it's not the opinion that we were led
6 to believe would be he expressed. And, again,
7 this was one of the reasons we filed our demand
8 for a disclosure -- full disclosure in a report,
9 for fear that such an opinion like this would be
10 expressed, without notice to the State.

11 THE COURT: Mr. Strang.

12 ATTORNEY STRANG: Yes, and I understand the
13 confusion, which I probably created in the summary
14 here, or maybe here, although I don't think he's
15 offered any opinion that bones were burned in the
16 burn barrel. What this is meant to say and what I
17 will assure counsel and the Court, is that
18 Dr. Fairgrieve is -- is -- I expect him to say that,
19 I have no evidence that allows me to conclude where
20 these bones were burned. I can't -- I can't say
21 they were burned in the burn barrel. I can't say
22 they were burned behind the garage. I can't say
23 they were burned anywhere else. In other words, I
24 can't assign a place, nor can I necessarily rule out
25 possible burn sites.

1 So I do understand the concern, because
2 the specific sentence says, there is no evidence
3 that these cremains were originally burned in the
4 barrel where they were found. And that is his
5 opinion, in the sense that, I can't say they were
6 burned there, I don't have evidence that the body
7 was burned in the barrel. What I expect him to
8 say is, I -- I can't rule out, or I -- I fail to
9 exclude any possible burn site, we'll just never
10 know, is the bottom line.

11 ATTORNEY FALLON: That's an entirely --
12 That's an entirely different -- well, not entirely
13 different, but it's clearly a different opinion. He
14 is saying here, they were not burned in the burn
15 barrel. That's what we expected him to say. Now
16 he's saying, I can't rule it out.

17 ATTORNEY STRANG: It doesn't -- it doesn't
18 say that. I mean, I understand the confusion and
19 I --

20 THE COURT: Well, there is a difference
21 between saying I can't rule out the burn barrel and
22 saying there's no evidence to suggest that they were
23 burned in the burn barrel. Perhaps that's something
24 the State can bring up on cross-examination. Did
25 the -- did the report come from the doctor or --

1 ATTORNEY FALLON: No, it's from counsel,
2 there is no report, that's our problem.

3 ATTORNEY STRANG: This is the disclosure
4 that we filed of potential expert witnesses, is the
5 overall -- the broader opinion here is that he may
6 agree with, challenge, or differ with any of the
7 opinions offered by the State's expert forensic
8 anthropologist and, more particularly, I'm quoting
9 from page three of the disclosure, Dr. Fairgrieve
10 may testify that while it is possible that the
11 cremains found were originally burned in the pit
12 behind Steven Avery's garage, in his opinion it was
13 also possible that they were burned in another
14 location.

15 He goes on to mention the smelter and
16 the wood furnace and in his opinion it is
17 possible that the cremains were rendered at
18 either of those locations or another undetermined
19 location. And that is the intended scope of the
20 testimony.

21 THE COURT: Well, taking what you just
22 read, together with what Mr. Fallon just read, I
23 would interpret that to mean they could have been
24 burned in another location besides behind the
25 garage. They could have been burned in the smelter

1 or whatever the other reference was, but I would
2 have interpreted it as excluding the burn barrel.

3 ATTORNEY STRANG: No, he won't say that.
4 He's saying, I can't exclude it, but neither do I
5 have any evidence that they were burned in the burn
6 barrel.

7 ATTORNEY FALLON: Well, I guess I disagree.
8 I think the opinion should be excluded. The
9 language that he read is helpful on the one hand,
10 but not helpful on the other; in so far as we fully
11 expected Dr. Fairgrieve to refute some, none, or all
12 of the opinions expressed in Dr. Eisenberg's report.
13 That's certainly fair game and I don't have a
14 problem with that. But then to try to say he may
15 offer some other opinions about some other stuff, to
16 which we're not privy yet, that creates the whole
17 problem of not having a report in the first place
18 from which to base a cross-examination upon.

19 So I understand counsel's point, but I
20 don't know how you get around the fact that he's
21 saying, it wasn't in the burn barrel, so that
22 leaves us the burn pit, the smelter, the boiler,
23 or some other place, God knows where. But it
24 certainly doesn't include the barrel.

25 ATTORNEY STRANG: No, what he's saying is,

1 I have no evidence that they were burned in the
2 barrel. I can't rule it out, but I have no evidence
3 that it happened.

4 THE COURT: All right.

5 ATTORNEY STRANG: And it might be helpful
6 to -- if we could go back with the court reporter
7 and find out just exactly where we were when we
8 stopped.

9 THE COURT: Before we do that, I'm going to
10 rule as follows: I believe that the information was
11 slightly misleading, but not so much so that I'm
12 going to grant a remedy to prevent this witness from
13 giving the testimony he did; that is, there is not a
14 significant difference between saying there's no
15 evidence to suggest it was burned in the barrel and
16 based on the evidence available, essentially, I have
17 no idea where it was burned.

18 I understand what you are saying
19 Mr. Fallon, I think there is somewhat of a
20 difference, but I'm going to rule that it's not
21 enough of a difference to impose a sanction on
22 the defense.

23 ATTORNEY FALLON: Very well. Thank you.

24 ATTORNEY STRANG: And I do want to go back
25 so that I -- I really can try to steer away from any

1 problem I created.

2 THE COURT: All right. Let's go off the
3 record for a couple of minutes before we bring the
4 jury back in.

5 (Brief recess.)

6 THE COURT: All right. We'll bring the
7 jury back in at this time.

8 (Jury present.)

9 THE COURT: You may be seated. And,
10 Mr. Strang, you may resume.

11 ATTORNEY STRANG: Thank you.

12 Q. (By Attorney Strang)~ Dr. Fairgrieve, within the
13 field of forensic anthropology and drawing on
14 your experience with cremated human remains, are
15 you able to offer an opinion, to any reasonable
16 degree of scientific certainty, about whether the
17 remains found here were burned in the area behind
18 Mr. Avery's garage?

19 A. No, I'm not.

20 Q. Are you able to offer an opinion, to a reasonable
21 degree of scientific certainty, that the remains
22 here were burned in any other particular
23 location?

24 A. No, I am not.

25 Q. On the evidence you have, to a reasonable degree

1 of scientific certainty, are you able to rule out
2 any possible burn site?

3 A. No, I am not.

4 Q. Are you able to say that, to a reasonable degree
5 of scientific certainty, bone -- human bones here
6 were moved, or remains were moved, after burning?

7 A. Yes.

8 Q. What is your opinion on that?

9 A. Well, the fact that we have burned bones in at
10 least two locations, logically, they have been
11 moved.

12 Q. Are you able to offer an opinion about the means
13 by which those were moved, or the, you know, the
14 mode of transport --

15 A. No, I am not.

16 Q. -- of the bones. Are you able to rule anything
17 out in that respect?

18 A. No, I am not.

19 Q. And in your professional experience, what
20 significance, if any, do you assign to the
21 majority of bone fragment being found behind
22 Mr. Avery's garage?

23 A. Just the fact that the majority of the bones
24 representing the individual are in that position.

25 Q. And in your experience, is that more consistent

1 with being a place that bones were moved to or
2 bones were moved from?

3 A. To.

4 Q. What, if any, significance do you assign to the
5 fact that somewhat larger bone fragments, in
6 general, or on average, may have been found in
7 the Janda burn barrel than on average were found
8 behind the Avery garage?

9 A. I don't really attach any significance to that
10 other than an incomplete movement.

11 Q. Why not?

12 A. Well, the fact that things do get left behind, I
13 don't know the motivation, as far as what's been
14 going on behind the actual movement of these
15 remains, and so why they are in one place and not
16 completely moved to another is beyond my
17 understanding.

18 Q. Okay. And how about size, the relative size of
19 the fragments, does that tell you anything about
20 movement, or where these -- why these things were
21 found where they were found?

22 A. Not specifically, no.

23 Q. Is it sometimes difficult, in the field, at a
24 burn site, to identify cremated human remains, I
25 mean by the -- to the naked eye?

1 A. To the trained eye, we do recognize specific
2 human elements, and it is possible, but it always
3 depends on what is present at the scene.

4 Q. And I'm not sure, I want to chase that just a
5 little bit. I mean, with burnt remains, is it
6 always obvious to the untrained eye what one is
7 looking at?

8 A. No.

9 Q. Why not?

10 A. Well, it takes -- In order to be able to
11 recognize human cremains, you are going to have
12 to have some fairly advanced training in the
13 anatomy of the human skeleton and what bones look
14 like. And also what, specifically, human bones
15 look like, because people will burn garbage
16 outside and there will be remnants from meals and
17 things like that, and being able to distinguish
18 animal from human, so that does take training.

19 Q. Did you see any differences that struck you, in
20 your experience, as significant, in the range of
21 heat damage to the bones found at either of the
22 two, or possibly three, locations?

23 A. From what I recall, the bones from the pit area,
24 as I recall, seemed to be more calcined, that is,
25 towards the white stage; and I believe there was

1 a higher preponderance of charred remains from
2 the burn barrel.

3 Q. And which -- which, if either, would be more
4 easily identified to the untrained eye as being
5 human bone?

6 A. Oh, the charred remains, the ones that are white
7 charred.

8 Q. More -- More easy by color or appearance than
9 the --

10 A. Form.

11 Q. I'm sorry?

12 A. Due to its form, shape.

13 ATTORNEY STRANG: Thank you. That's all I
14 have.

15 THE WITNESS: Thank you.

16 THE COURT: Mr. Fallon.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY FALLON:

19 Q. Good afternoon, Doctor.

20 A. Good afternoon.

21 Q. Welcome to Wisconsin.

22 A. Thank you.

23 Q. Is this your first trip?

24 A. No, I have been to Wisconsin before.

25 Q. You have. But this is the first time you have

1 been asked to be a witness in a case, I take it.

2 A. That is correct.

3 Q. All right. And this is the first time you have
4 been here with respect to this case?

5 A. Yes, it is.

6 Q. Okay. Now, I take it from your experience and
7 training and your -- more importantly your resumé
8 and your work for the Crown, it looks like you
9 have done a fair amount of forensic work?

10 A. Yes.

11 Q. And I take it you are routinely asked to go to
12 what are suspected crime scenes and assist law
13 enforcement in the processing of those?

14 A. That is correct.

15 Q. All right. And you have been doing that for
16 about 15 years?

17 A. Sixteen.

18 Q. Sixteen years?

19 A. Sixteen, yes.

20 Q. All right. And I take it, in the Province of
21 Ontario, you have provided expert testimony on a
22 number of occasions?

23 A. That is correct.

24 Q. And, frequently, if not almost in all cases, as I
25 understood it, you provided testimony for the

1 Crown or the prosecutor?

2 A. All cases.

3 Q. All right. Okay. For this case, help us out
4 here and tell us what information you had to
5 assist you in expressing the opinions you have
6 expressed this afternoon.

7 A. I received photographic files in the form of CDs.
8 I received reports from -- that were, shall I
9 say, compiled by Dr. Eisenberg.

10 Q. All right.

11 A. I have received a transcript of testimony of
12 Dr. Eisenberg's from, I believe it was a
13 preliminary hearing. And I received background
14 from the defense concerning the circumstances
15 surrounding the case.

16 Q. Background from the defense?

17 A. Yes.

18 Q. All right. We'll get to that in a minute. So
19 that I'm clear, in terms of the documents you had
20 for purposes of expressing the opinion today, you
21 had the preliminary and final report of
22 Dr. Eisenberg?

23 A. Correct.

24 Q. You had a copy of her testimony from the
25 preliminary examination in this case, which is

1 now about 14 months ago, I guess?

2 ATTORNEY STRANG: Let's just take one
3 moment at side bar, counsel, and your Honor, if we
4 may.

5 THE COURT: Members of the jury, I'm going
6 to excuse you for a much shorter period than the
7 short period I just excused you for a few minutes
8 ago. You are excused at this time.

9 (Jury not present.)

10 THE COURT: You may be seated. Mr. Strang.

11 ATTORNEY STRANG: I think probably the best
12 way to spend the time is just to go off the record
13 and counsel can try to work out here where he's
14 going and how we get there without, you know, going
15 into inadmissible material.

16 THE COURT: Go ahead. We'll go off the
17 record for a minute.

18 (Off record discussion.)

19 THE COURT: All right. Counsel, before I
20 bring the jury back, since we did have a side bar, I
21 will leave it to one of the two of you to put
22 something on the record concerning the contact.

23 ATTORNEY STRANG: I interrupted Mr.
24 Fallon's cross-examination to suggest a side bar
25 because, although I thought his questions proper, in

1 the proper area, I recognized that we might be
2 getting into a situation where the witness, quite
3 honestly, would respond by referring to information
4 attributed to Brendan Dassey, or from Brendan
5 Dassey's case, some of which was shared with the
6 witness.

7 I didn't think that's where Mr. Fallon
8 meant to be going and I just didn't want, you
9 know, to have an honest answer to an unintended
10 question and create a problem. So, that was the
11 reason for the side bar and what we discussed
12 briefly at side bar.

13 THE COURT: All right.

14 ATTORNEY FALLON: That's accurate. All I
15 wanted to know was the base of information upon
16 which he was operating. And I'm comfortable with
17 his not mentioning whatever information they
18 obtained from him because it's not germane to the
19 rest of my examination.

20 THE COURT: Very well, we'll bring the
21 jurors back in at this time.

22 (Jury present.)

23 THE COURT: You may be seated. And,
24 Mr. Fallon, you may resume.

25 ATTORNEY FALLON: Thank you.

1 Q. (By Attorney Fallon)~ Doctor, as I understand,
2 when we left off, you were telling us about the
3 information that you had at your disposal to
4 assist you in expressing these opinions this
5 afternoon. So, let me begin by saying and
6 summarizing, you had the two reports from
7 Dr. Eisenberg?

8 A. That's correct.

9 Q. A copy of her transcript from the preliminary
10 examination?

11 A. That is correct.

12 Q. Okay. You had a CD Rom of the -- I would imagine
13 fairly numerous amount of photographs taken just
14 by Dr. Eisenberg, of all the bone fragments she
15 examined?

16 A. Yes.

17 Q. Maybe not all, but quite a sizable amount of them
18 anyway?

19 A. Yes, that's correct.

20 Q. All right. And you also examined a few pages of
21 police reports as I understand it.

22 A. That is correct, yes.

23 Q. Now, the police reports you examined, were they
24 reports authored by an agent from the Division of
25 Criminal Investigation by the name of Tom

1 Sturtivant?

2 A. I believe so.

3 Q. All right. And there were about four pages?

4 A. I don't recall the number of pages.

5 Q. But it would have been about the initial -- the
6 initial discovery -- the reports -- But they were
7 brief reports from the officer regarding the
8 initial discovery?

9 A. I believe so, yes.

10 Q. Okay. Now, any other police reports?

11 A. I can't think of any offhand.

12 Q. All right. Other than the photographs of the
13 bone fragments made by Dr. Eisenberg, did you
14 obtain any other crime scene photographs?

15 A. Yes, I did.

16 Q. Okay. Tell us about the crime scene photographs
17 that you received?

18 A. Various views of the Avery property.

19 Q. Aerial views?

20 A. Aerial views.

21 Q. Okay.

22 A. Landscape views, so down, obviously taken by
23 somebody on the ground, various different angles;
24 exteriors views of dwellings; distant views of
25 the pit behind the garage, general area photos as

1 well.

2 Q. All right. How about any of the photographs
3 obtained prior to the processing of the pit,
4 developed by the Wisconsin State Patrol on Sunday
5 or Monday, that would be November 6th or 7th, the
6 days before the pit was discovered on the 8th?

7 A. I believe there were some, as I recall.

8 Q. Some?

9 A. Yeah, I'm trying to picture the images in my
10 mind, but I do believe I received those.

11 Q. Did you receive any photographs regarding the
12 processing of the pit by Special Agents Pevytoe,
13 Sielehr and Rindt, occurring on Thursday the
14 10th?

15 A. Not to my recollection.

16 Q. Okay. So you did not see any photographs showing
17 the pit covered in a blue tarp?

18 A. I do recall a photograph with a blue tarp over
19 it.

20 Q. A blue tarp over it. And how many of those
21 photographs do you recall? There were three
22 rolls of prints.

23 A. I can't recall, specifically.

24 Q. All right. Counsel has provided me some
25 information, so let's take a look.

1 ATTORNEY FALLON: If I may approach the
2 witness, Judge.

3 THE COURT: Go ahead.

4 ATTORNEY FALLON: Thank you.

5 Q. (By Attorney Fallon)~ I'm showing you what has
6 been marked, at least on the information provided
7 by counsel, as roll four; does that look like a
8 series of photographs that you are familiar with?

9 A. Yes, it does. Yes.

10 Q. Great. All right. How about another stack of
11 photographs, looks like D-16, 1 through 23, take
12 a quick look at those.

13 A. Yes, I do recall these.

14 Q. Okay. Great. And D-14, 1 through 28?

15 A. I recall some of the photos within this.

16 Q. Some, but you did not see all of them?

17 A. I cannot state with any certainty that I recall
18 seeing all of them.

19 Q. One last look here, if you would be so kind,
20 D-15, 1 through 24.

21 A. Yes, I do recall these.

22 Q. All right. And you have seen those photographs?

23 A. Yes, I do recall those.

24 Q. As well as the photographs provided to you that
25 were taken by Dr. Eisenberg?

1 A. Yes.

2 Q. Okay. Any other law enforcement reports, did you
3 have the opportunity to examine?

4 A. There was a compiled report that was a
5 computerized simulation of the scene.

6 Q. All right.

7 A. And I did have access to that document in
8 computerized form.

9 Q. That would have been an overview animation by
10 Trooper Austin?

11 A. Yes, that's correct.

12 Q. Now, with respect to the photographs that you
13 have seen there, did you have all of the reports
14 which were generated in conjunction with those
15 photographs?

16 A. I don't know for a certainty that I had all
17 reports.

18 Q. All right. Do you know when those photographs --
19 what day those photographs were taken, from the
20 information you were provided?

21 A. I don't recall.

22 Q. All right. When were you first asked to assist
23 in reviewing this information on behalf of the
24 defense?

25 A. I believe it was November, early November of

1 2006.

2 Q. All right.

3 A. If I recall.

4 Q. And in this particular case, you did not issue a
5 report of your findings, correct?

6 A. No, I did not.

7 Q. You were not asked to write one, I take it?

8 A. That's correct.

9 Q. All right. In the cases that you have testified
10 for the Crown, you usually write a report, do you
11 not?

12 A. I do.

13 Q. As a matter of fact, I suspect that's probably
14 required.

15 A. Oh, yes, absolutely.

16 Q. And that's so that when the gentleman who happens
17 to be on the other side of the prosecution by the
18 Crown, so that they would have fair notice of
19 exactly what opinions you were going to express
20 so they would know what they were?

21 A. Yes.

22 Q. Okay. By the way, while we're at that, when you
23 work for the Crown, generally you have access to
24 all of the information that the officers generate
25 to assist you in formulating the opinions that go

1 into that report; isn't that right?

2 A. I do have access, yes.

3 Q. And I would hazard a guess that it's probably
4 pretty routine practice that you would review all
5 that information before putting your report
6 together as the consulting forensic
7 anthropologist?

8 A. Correct.

9 Q. And that is because forensic means of, by, or
10 pertaining to a court; that's right?

11 A. A legal context.

12 Q. Right. So, in other words, it's taking your
13 field of biological anthropology, your specialty,
14 and kind of merging those principles with the
15 principles of the law, to formulate an opinion
16 and express it in a court of law?

17 A. Yes.

18 Q. Okay. Very good. Let's talk a little bit about
19 your experience, a little more detail. You would
20 agree, would you not, that no two crime scenes
21 are alike?

22 A. I would indeed.

23 Q. As a matter of fact, each crime scene presents a
24 host of different issues and problems that need
25 to be addressed and resolved by those

1 investigating what's before them?

2 A. Yes.

3 Q. And as such, there is a certain amount of
4 professional judgment that needs to be exercised
5 to perform your duties, which takes into account
6 these varying conditions?

7 A. Yes.

8 Q. And while you may have a standard operating
9 practice or procedure, sometimes that procedure
10 has to be modified from time to time, given
11 whatever you find at a location?

12 A. I would accept that.

13 Q. In fact, not every location can be processed with
14 a grid format or a forensic mapping format, can
15 they?

16 A. I don't know if that's true.

17 Q. Well, have you been to any disaster locations or
18 sites?

19 A. Yes.

20 Q. Not all of them are forensically mapped or
21 gridded, are they?

22 A. The ones I have been involved with they have had
23 a form of grid put in.

24 Q. But you can't say that that necessarily occurs in
25 all cases?

1 A. No, I cannot state that. That's correct.

2 Q. All right. And there may very well be good
3 reasons to depart from standard protocol and
4 procedures when processing a scene?

5 A. I would accept that.

6 Q. And I would imagine in your neck of the woods in
7 northern Ontario, weather is a pretty important
8 factor in processing scenes, especially this time
9 of year?

10 A. Absolutely.

11 Q. That might be one of the reasons that you might
12 depart from a certain set of procedures, to
13 account for that?

14 A. I have yet to do so. I have done winter
15 recoveries in cremains cases and have not
16 deviated from the protocols that I have been
17 using.

18 Q. But you can imagine a situation where that is
19 likely to occur?

20 A. I suppose.

21 Q. Sure. All right. I would like to talk a little
22 bit about fires. In your work, as I understand
23 it, and maybe this is a good way to get into it,
24 you specialize in studying cremations?

25 A. Cremated remains.

1 Q. Cremated remains. Now, are those cremated
2 remains, are those the kind that we're talking
3 about in crematoriums, or do you use the word
4 cremated remains in a more natural consequence?
5 A. A more natural consequence.
6 Q. All right.
7 A. Not commercial cremations.
8 Q. Not commercial cremations. Are you familiar with
9 commercial cremations?
10 A. Yes, I am.
11 Q. All right. And while we're at that, would it be
12 fair to say that it takes about 3 million BTUs to
13 cremate a human body?
14 A. 3 million?
15 Q. Yeah.
16 A. I wouldn't know that, specifically.
17 Q. You wouldn't know.
18 A. My knowledge is with time and temperature.
19 Q. Time and temperature.
20 A. Correct.
21 Q. All right. Then the average temperature to
22 cremate remains varies somewhere between 1600 and
23 1800 degrees, anywhere from an hour and a half to
24 two and a half hours? That sounds about right?
25 A. I take it the degrees are in Fahrenheit?

1 Q. Correct.

2 A. Yes, that would be correct.

3 Q. That's right, I forget, you guys use Celsius.

4 A. Right.

5 Q. You are not going to make me convert centigrade
6 to Fahrenheit, are you?

7 A. That's --

8 Q. Because I'm a lawyer, I can't do that.

9 A. I will do my best to convert my numbers.

10 Q. We might need a translator yet. All right. And
11 while we're at it, a BTU is a British Thermal
12 Unit?

13 A. Yes.

14 Q. And would you accept the general proposition that
15 one BT is the -- BTU is the amount of energy to
16 raise the temperature of water one degree from 59
17 1/2 degrees Fahrenheit to about 60 1/2 degrees
18 Fahrenheit?

19 A. I believe that's the definition.

20 Q. All right. And actually --

21 ATTORNEY STRANG: We would need a volume of
22 water for BTU.

23 ATTORNEY FALLON: Liter of water, excuse
24 me, you're right.

25 A. Yes.

1 Q. (By Attorney Fallon)~ And a BTU is a means of
2 measuring energy, right?

3 A. Yes, it is.

4 Q. All right. Now, when you are looking at cremated
5 remains in nature, one of the things that you
6 would ask yourself, as a forensic anthropologist,
7 you would want to know what the fuel load was;
8 you might be interested in how such a fire was
9 created?

10 A. The type of fuel, yes.

11 Q. Right. And we have at least four basic types of
12 fuel, do we not? We have a liquid form of fuel?

13 A. Yes, liquid. Solids.

14 Q. We have solids?

15 A. Gaseous.

16 Q. We have gas or vapor?

17 A. Yes.

18 Q. And we have aerosols and even dust?

19 A. Yes.

20 Q. Right?

21 A. That's correct.

22 Q. In fact, some powders, even wheat flour can
23 somehow be exploded?

24 A. Yes.

25 Q. Okay. So you would agree, that in terms of

1 determining the probability of burning human
2 remains at nature, depends in large part on the
3 fuel load, and more importantly, the exposure of
4 the body to the heat itself?

5 A. That's correct.

6 Q. As a matter of fact, in terms of the exposure of
7 the body to the heat, the more surface area which
8 is exposed to the heat, the quicker and faster
9 the remains will reach that cremated state,
10 correct?

11 A. That is correct.

12 Q. So the bottom line is, whenever you are looking
13 at that, what you want to do is try to assess, is
14 how long the parts of the body were expursed --
15 were exposed to a certain temperature?

16 A. Yes.

17 Q. All right. And it's not so much the flame, by
18 the way, that we're worried about, it's the
19 exposure to the heat --

20 A. Yes.

21 Q. -- generated by the flame?

22 A. Yes.

23 Q. Now, we have a variety of solid fuels that are
24 commonly used to burn, most notably, wood seems
25 to be the most common, correct?

1 A. Certainly.

2 Q. All right. And would you disagree with me if I
3 were to tell you that per pound of wood would
4 generate about 5,000 BTUs?

5 A. I have no basis to disagree with that.

6 Q. All right. And that a pound of coal would
7 generate, roughly, about 12,000 BTUs?

8 A. That sounds about right.

9 Q. And oil would be about 16,000 BTU?

10 A. Yeah, 16. Yeah.

11 Q. All right. Now, one of the things that could be
12 used for a fuel would be a tire, correct?

13 A. Absolutely.

14 Q. And as a matter of fact, a tire generates
15 anywhere from about 14,000 BTU to 16,000 BTU per
16 passenger tire?

17 A. Yes.

18 Q. And it's 14 to 16 because, if you shred the tire,
19 you are likely to end up with about 16,000 BTUs
20 of energy per pound of tire?

21 A. That would be right.

22 Q. And the reason that happens is because there is
23 more surface area of the tire which is exposed,
24 and thus generating more heat?

25 A. Precisely.

1 Q. The average passenger tire is about 20 pounds,
2 right?

3 A. Thereabouts, yeah, I would agree.

4 Q. All right. So, then, the average passenger tire
5 would generate anywhere from about 280,000 to
6 300,000 BTUs of energy?

7 A. I would accept that.

8 Q. And tires are a pretty good source of fuel
9 because they burn consistently and they burn very
10 hot?

11 A. Oh, yes.

12 Q. They generate a great deal of heat?

13 A. I agree.

14 Q. And, as a matter of fact, you would expect to see
15 a very large flame pile from one burning tires,
16 correct?

17 A. Flame pile?

18 Q. Flame, a high flame.

19 A. Oh, a high flame, yes.

20 Q. All right. And they would generate a great deal
21 of heat?

22 A. Yes.

23 Q. Okay. Now, before a body can be cremated,
24 whether it's in the crematorium or in the wild,
25 as it were, the body first has to be heated to a

1 significant degree or temperature, correct?

2 A. Yes, that would be correct.

3 Q. All right. As a matter of fact, you have to, for
4 all intents and purposes, you have to dehydrate
5 that body first?

6 A. The process begins with, obviously, the exterior
7 of the body. And heating things such as hair,
8 for example, would be the first area that is
9 lost, if there is no clothing.

10 Q. And as you heat the body, it begins to dehydrate.
11 And after a particular point in time, the body
12 itself, the remains become actually more fuel for
13 the fire?

14 A. Once you get through the skin, it becomes more
15 fuel, the fats of the body do serve as a fuel for
16 the fire, that is correct.

17 Q. As a matter of fact, back in days of antiquity,
18 when they had funeral pyres, they would often
19 smear the bodies with animal fat to assist in
20 creating the funeral pyre?

21 A. In order to get the ignition, yes.

22 Q. Now --

23 ATTORNEY FALLON: What time -- do you want
24 to take a break?

25 THE COURT: If you are at a logical break

1 in the questioning, I think that's a good idea.

2 ATTORNEY FALLON: Sure.

3 THE COURT: All right. Members of the
4 jury, we're going to take our afternoon break at
5 this time. I will remind you not to discuss the
6 case during the break. You are excused at this
7 time.

8 (Jury not present.)

9 THE COURT: You may be seated. Counsel, I
10 would like to see you briefly in chambers, now, at
11 the start of the break.

12 ATTORNEY FALLON: Okay.

13 (Recess taken.)

14 (Jury present.)

15 THE COURT: Mr. Fallon, you may resume.

16 ATTORNEY FALLON: Thank you, Judge.

17 **CROSS-EXAMINATION CONTD.**

18 BY ATTORNEY FALLON:

19 Q. Doctor, I would like to finish up our discussion
20 of the burning human remains in the natural
21 setting. You would agree, would you not, that
22 there are several variables that are at play in
23 trying to decide how a body was burned and how
24 long it would have taken and things of that
25 nature, correct?

1 A. Yes, I would agree.

2 Q. All right. For instance, you would want to know
3 the type and the amount of the fuel?

4 A. Yes, that would be important.

5 Q. And you would certainly want to know what the
6 weather conditions were, correct?

7 A. That would have an influence.

8 Q. That would have an influence. You would want to
9 certainly know what the ratio is of the fuel
10 mixture to the -- what is the item being burned?

11 A. If possible.

12 Q. And very importantly you would want to know the
13 extent to which the body was exposed to the heat
14 generated by the fuel?

15 A. Yes.

16 Q. Now, you would agree, would you not, that an
17 unattended -- we will use the term "funeral
18 pyre".

19 A. All right.

20 Q. Given all other variables being the same, but an
21 unattended funeral pyre would burn at a slower
22 rate than an attended one?

23 A. In general, yes.

24 Q. Because one -- an attended one, presumably the
25 person who is conducting the fire, or managing

1 the fire, that's probably a better word, would be
2 able to make sure that the fuel load is
3 adequately distributed to all parts of the fire?

4 A. Yes.

5 Q. All right. And, as a matter of fact, if the
6 attending person wanted to make sure that the
7 human remains were fully exposed to the heat,
8 there may be some dismembering, correct?

9 A. Dismembering in what sense?

10 Q. Well, if you were to -- if you were to -- Let's
11 put it right on the table. If you were to chop
12 up human remains, there would be more surface
13 area exposed to the heat?

14 A. Yes, I would accept that.

15 Q. All right. And, as a matter of fact, if that was
16 occurring, then the remains would be consumed
17 more quickly than if you had just left a body in
18 toto, laying on a funeral pyre?

19 A. Yes, I would agree.

20 Q. All right. I want to go back and visit the
21 testimony that you discussed with counsel
22 regarding the burn pit as being the potential, or
23 possible, area of initial or original burn, and
24 talk also about the impact, or no impact, of the
25 burn barrel.

1 A. Okay.

2 Q. Just so we're oriented.

3 A. Sure.

4 Q. Perhaps the best place to begin is, I think we
5 have an agreement, that for the minutest form of
6 human bone, which has been subjected to a great
7 deal of heat, professional training, in all
8 likelihood, would be required to identify those
9 items?

10 A. I would agree.

11 Q. In fact, there are certain bits of human remains
12 which are so small they could actually be the
13 quarter -- quarter -- one quarter of a finger
14 nail, might be just that much of a sliver of a
15 bone that could be -- that the remains are
16 present for?

17 A. Yes.

18 Q. And to the average person, and that includes all
19 of us here, with the exception of yourself I
20 would imagine, the chances of us being able to
21 recognize an item that small as part of a human
22 anatomy are about slim to none?

23 A. That sounds reasonable.

24 Q. And you are aware that the vast majority of human
25 remains, fragmented human remains of that size,

1 were recovered from the burn pit area, correct?

2 A. Yes.

3 Q. And you are also aware, are you not, that various
4 articles of clothing were recovered from that
5 burn pit as well, correct?

6 A. Yes.

7 Q. All right. You are aware that there were some
8 rivets that looked like they went to a pair of
9 blue jeans?

10 A. Yes.

11 Q. A zipper?

12 A. Yes.

13 Q. All right. And all of those were recovered from
14 the burn pit and from no other location that you
15 are aware of?

16 A. To my knowledge, that's correct.

17 Q. All right. And just so that I'm clear, it's your
18 understanding that, clearly, the -- some bones
19 had to have been moved because we have human
20 remains not only in the burn pit, but we have
21 them in this burn barrel a couple hundred feet
22 away?

23 A. Yes.

24 Q. All right. So you would agree that the only real
25 explanation for that to have happened is human

1 agency?

2 A. I would agree.

3 Q. In other words, a person had to have taken them

4 from one place and put them in another?

5 A. Yes.

6 Q. And in terms of the burn barrel, you are aware

7 that there was no articles of clothing found from

8 that particular burn barrel; there were no

9 rivets?

10 A. That's my understanding.

11 Q. No grommets from shoes?

12 A. That's correct.

13 Q. No zippers?

14 A. That's correct.

15 Q. And most of the bone fragments were of -- well,

16 they were of a larger variety than those

17 recovered from the pit itself?

18 A. Yes.

19 Q. Right?

20 A. Right.

21 Q. Okay. Now, one thing, if you could clear up for

22 me, I'm not sure, did you say that the bones in

23 the barrel had a greater degree of burned affect,

24 or was it the burns (sic) in the pit, which was

25 it?

1 A. I believe it was the burns -- the bones in the
2 pit appeared to have a greater -- a longer stage,
3 shall we say.

4 Q. A longer exposure, as it were, to the heat.

5 A. Yes.

6 Q. In other words, they showed greater
7 fragmentation?

8 A. Greater heat condition -- damage, yeah.

9 Q. Right.

10 A. Yeah.

11 Q. Which may very well account for the fact that we
12 have all of the really microscopic and very, very
13 small fragment of bone recovered from the pit;
14 that would certainly be consistent, right?

15 A. I can't deny that.

16 Q. Okay. Now, as I understand your testimony, it's
17 clear to you that the remains that were recovered
18 here, most of which came from the burn pit, are
19 the remains of an adult female?

20 A. Yes.

21 Q. And you do not take any issue with the fact that
22 there is clear evidence of at least two gunshot
23 to the cranial pieces, which were able to be
24 recovered?

25 A. That's correct.

1 Q. And you would agree, would you not, that they are
2 entrance defects, correct?

3 A. Yes.

4 Q. And that's because the beveling, which is
5 present, is on the outside of the -- in other
6 words, the entrance area, correct?

7 A. No, that is not correct.

8 Q. It's on the inside?

9 A. It's on the inside.

10 Q. And if they were exit wounds where would the
11 beveling be?

12 A. On the exterior.

13 Q. On the exterior?

14 A. Right.

15 Q. And in your opinion -- Well, let's digress
16 momentarily. You had some question regarding
17 cause of death and manner of death, let's just --
18 the only matter at issue here is manner of death.
19 Now, in the remains that you observed here, you
20 would agree, would you not, Doctor, that there
21 would be no point in attempting an autopsy?

22 A. Not in the traditional sense, no.

23 Q. There's certainly not enough tissue, in fact
24 there's no tissue left to examine?

25 A. I understood there to be some tissue recovered.

1 Q. Some tissue?

2 A. Some tissue, however charred.

3 Q. However charred. Which some DNA analysis was
4 undertaken; are you aware of that?

5 A. Yes, that's my understanding.

6 Q. But, by and large, that's really the only piece
7 of mushel -- muscle tissue that was recovered?

8 A. Yes.

9 Q. And that alone, certainly would not be enough for
10 one to conduct an autopsy in the traditional
11 sense, correct?

12 A. That is correct.

13 Q. All right. And you would agree, as an
14 anthropologist, whether you have an
15 archaeological perspective, or even a biological
16 perspective, that examining bones in the
17 condition in which these were found is, in large
18 part, almost strictly the purview of a forensic
19 anthropologist?

20 A. We are best to quantify and examine the cremains,
21 certainly for the traditional areas that forensic
22 anthropology deals with.

23 Q. And you certainly wouldn't disagree with the fact
24 that what you have is an individual who was
25 murdered, would you?

1 A. I don't know that to be true or not.

2 Q. Well, you wouldn't disagree with that as a
3 logical conclusion to be drawn from the evidence
4 provided, would you? I mean, she didn't jump in
5 the fire herself?

6 A. No. No. I would agree with that.

7 Q. And certainly didn't shoot herself in the head
8 twice, right? That would be pretty hard to do.

9 A. It may surprise you to know that I know that it's
10 been done, but.

11 Q. How many times have you seen that done, Doc?

12 A. One.

13 Q. All right. Out of how many thousands of cases?

14 A. Yeah, exactly.

15 Q. All right. Now, you can't say, to a reasonable
16 degree of scientific certainty, that that burn
17 pit was not the original place of the burning,
18 can you?

19 A. That's correct.

20 Q. I would like you to tell me just what evidence
21 you have that the body could have been burned in
22 the burn barrel?

23 A. I have none to support it.

24 Q. Absolutely none, right?

25 A. That's correct.

1 Q. In fact, the greater weight of the evidence,
2 which is presented to you, would show that that
3 barrel, in all likelihood, was not the location
4 of the original burning?

5 A. I can't say one way or the other.

6 Q. Well, a typical 55 gallon drum, in which it
7 certainly would be difficult to put an adult
8 female of approximately 5 foot 6 in stature, and
9 stuff her into a barrel and burn her; that
10 wouldn't be the easiest of things to do, right?

11 A. I wouldn't imagine it being easy, no.

12 Q. And a matter of fact, it would be -- it would
13 take -- you would have to agree, it would take
14 far longer time to actually reduce a human being
15 to the level of which you found the bones in the
16 burn pit? It would take a lot longer to do that
17 in a burn barrel?

18 A. Not necessarily.

19 Q. There is not enough exposure. You would have
20 to -- you would have to expose that body to a
21 great deal of heat, correct?

22 A. You would, yes.

23 Q. All right. And it would be certainly really
24 difficult to put in a lot of tires and high
25 burning accelerants in that particular barrel,

1 correct?

2 A. A large number of tires would be very difficult,
3 yes.

4 Q. Nor can you say, Doctor, that the boiler on the
5 property was the place where the original burning
6 occurred, can you?

7 A. That's correct.

8 Q. And you can't say that the smelter is the place
9 of the original burning, correct?

10 A. That is correct.

11 Q. Now, you had photographs of those items, right?

12 A. That's correct.

13 Q. And you looked at the cellulose ash which was
14 recovered from the wood burner boiler, right?

15 A. Yes.

16 Q. That ash is entirely inconsistent with the type
17 of ash and debris which was recovered from the
18 pit, correct?

19 A. From what I recall, yes.

20 Q. All right. And in your -- And your review of
21 strictly the photographs of the smelter, there
22 was no ash, or charring, or anything inside the
23 smelter, right?

24 A. That's correct.

25 Q. That you could see?

1 A. That I could see, that's correct.

2 Q. So, we certainly can't say that the smelter was
3 the place where the remains were burned, right?

4 A. Not to my knowledge, no.

5 Q. All right. By the way, are you familiar with a
6 process called board certification?

7 A. Yes, I am.

8 Q. And what is that?

9 A. It's -- Board certification for forensic
10 anthropologists is the American Board of Forensic
11 Anthropology.

12 Q. You have not yet pursued that certification; is
13 that right?

14 A. That is correct.

15 Q. Okay. All right. Oh, one more thing, Doc, you
16 never looked at the bones in this case, did you?

17 A. I did not.

18 Q. Thanks.

19 A. Thank you.

20 THE COURT: Mr. Strang, any redirect?

21 ATTORNEY STRANG: I do, thank you.

22 **REDIRECT EXAMINATION**

23 BY ATTORNEY STRANG:

24 Q. Dr. Fairgrieve, you were asked a number of
25 questions about what it is that you had to look

1 at?

2 A. Yes.

3 Q. Was there anything at all that you asked Mr.

4 Buting or me for that we declined to give you?

5 A. Not to my knowledge. I don't recall that there
6 was anything denied that I was asked for.

7 Q. And anything you thought you needed that you
8 asked us for and we said we had but wouldn't give
9 you or that we didn't have, for that matter?

10 A. No, I don't believe so.

11 Q. Is there any evidence at all that you have seen,
12 in all of the photographs you have looked and
13 Dr. Eisenberg's two reports or in her testimony,
14 that the body you have seen here was dismembered
15 in any way, before burning?

16 A. Prior to burning, no.

17 Q. Had tires, rubber tire, car tires, some sort of
18 tire, been used as a fuel to burn this body,
19 would you have expected a burnt rubber residue
20 sort of smell on at least some of the bone
21 fragments?

22 A. I have encountered that myself, in
23 experimentation.

24 Q. Is it a pungent or a strong smell?

25 A. When you are close to the bones, it can be

1 strong.

2 Q. And when you say you have encountered that
3 yourself in experimentation --

4 A. Yes.

5 Q. -- perhaps you can tell us what that is.

6 A. Part of the research that I undertake is to do
7 test burns. And we utilize, for these purposes,
8 pig carcasses, of varying sizes, to mimic human
9 remains. And burning up tires is just one such
10 scenario of consuming the flesh.

11 Q. And as a fuel?

12 A. As a fuel, yes.

13 Q. Have you done that yourself?

14 A. Yes, I have.

15 Q. And what did you smell with the -- you know, the
16 burnt remains of the pig, afterwards?

17 A. Quite a pungent odor associated with the remains
18 from the actual smell of the rubber.

19 Q. Is there any reason at all -- No, let me back up,
20 because I want to be clear. You are not here to
21 tell us that you can say any particular site is
22 the burn site in this case?

23 A. That's correct.

24 Q. Okay. Neither are you able to rule out or
25 exclude any possible burn site, if I understood

1 you?

2 A. That's correct.

3 Q. What you have told us is, that in your
4 experience, you find the majority of bones
5 usually in the place to which bones are moved,
6 not the place from which they are moved.

7 A. Yes, that's accurate.

8 Q. Including smaller or more delicate bones?

9 A. Yes, I have found that to be the case.

10 Q. In your experience, do you have any reason to
11 think that a dead human body could not be put in
12 a 55 gallon drum or burn barrel?

13 A. No, I see no reason why it couldn't.

14 Q. Do you have any idea at all here, in the end,
15 where clothing fragments, whether that's fabric
16 or metal items, or grommets from clothing, were
17 recovered?

18 A. From other locations?

19 Q. Do you have any idea where -- where the police
20 may have found remnants, or possible remnants of
21 clothing?

22 A. From what I understood, it was from the actual
23 burn barrel. The pit behind the Avery garage.

24 Q. Okay. You don't know whether fragments were
25 found elsewhere?

1 A. Not to my knowledge.

2 Q. Neither do you know whether they were missed
3 elsewhere?

4 A. Definitely not.

5 Q. You spoke of the -- on the average, of the
6 fragments in the burn barrel being larger than,
7 on the average, the fragments in the burn area --

8 A. Yes.

9 Q. -- behind the garage? What were the largest
10 fragments you saw of bone here, regardless where
11 found?

12 A. As I recall, I believe it was the cranial
13 fragments.

14 Q. And about how big were those?

15 A. Oh, I would say, looked like about an inch and a
16 half in diameter.

17 Q. Okay.

18 A. Something on that order.

19 Q. So when we're talking about large and small --

20 A. Yeah.

21 Q. -- as I understand, everything here is about an
22 inch and a half on down, to smaller than that?

23 A. From what I recall, yes.

24 Q. Is a barrel something in which burnt human
25 remains might be moved and then, you know, turned

1 over or dumped elsewhere?

2 A. Oh, sure.

3 ATTORNEY STRANG: That's all I have. Thank
4 you.

5 THE COURT: Mr. Fallon, anything else?

6 ATTORNEY FALLON: About three questions.

7 **RE-CROSS-EXAMINATION**

8 BY ATTORNEY FALLON:

9 Q. The smell that one might, on occasion, find from
10 human remains subjected to a fire involving
11 rubber, that smell would dissipate over time,
12 right?

13 A. It is possible, yes.

14 Q. As a matter of fact, it would certainly be
15 subject to the elements of weather, would it not?

16 A. I agree.

17 Q. And that would certainly help dissipate the
18 smell?

19 A. That's possible, yes.

20 Q. As a matter of fact, the greater degree of
21 charring and calcination the less likelihood you
22 are going to have that kind of smell, because
23 there's not much for it to attach it to, right?

24 A. That is correct.

25 Q. I lost my train of thought. If I may have one

1 moment.

2 ATTORNEY FALLON: I'm afraid you're lucky,
3 Doc, I lost that train of thought. I'm done.

4 THE COURT: Mr. Strang, anything else?

5 ATTORNEY STRANG: No, thanks.

6 THE COURT: Very well, you are excused.
7 Mr. Strang.

8 ATTORNEY STRANG: What I would propose to
9 do at the moment is simply to read a stipulation to
10 which both Mr. Avery and the State have agreed, as I
11 understand it.

12 THE COURT: Is that correct, counsel?

13 ATTORNEY KRATZ: Yes, that's fine, Judge.

14 THE COURT: All right. You may do so.

15 ATTORNEY STRANG: Ladies and gentlemen, the
16 parties agree that, on October 31, 2005, Steven
17 Avery spoke twice with Jodi Stachowski, his
18 girlfriend, on his cordless land telephone line.
19 Each conversation was about --

20 THE COURT: Just a second, Mr. Strang, I
21 don't think number seven is working any more. So
22 you may want to use the --

23 ATTORNEY STRANG: The trial is over when
24 the electronics die? Do I need to start over?

25 THE COURT: I think that would be best.

1 ATTORNEY STRANG: All right. The
2 stipulation reads as follows: The parties agree
3 that, on October 31, 2005, Steven Avery spoke twice
4 with Jodi Stachowski, his girlfriend, on his
5 cordless land telephone line. Each conversation was
6 about 15 minutes. The first began at 5:36 p.m. and
7 the second began at 8:57 p.m.

8 THE COURT: And, Mr. Kratz, is the State
9 joining in that stipulation.

10 ATTORNEY KRATZ: It certainly is, Judge.

11 THE COURT: Very well. We'll receive the
12 stipulation. Mr. Kratz -- or Mr. Strang, excuse me.

13 ATTORNEY STRANG: Next defense witness,
14 briefly, is Investigator Mark Wiegert.

15 THE COURT: Very well.

16 **INVESTIGATOR MARK WIEGERT**, called as a
17 witness herein, having been first duly sworn, was
18 examined and testified as follows:

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

21 THE WITNESS: Mark Wiegert, W-i-e-g-e-r-t.

22 **DIRECT EXAMINATION**

23 BY ATTORNEY STRANG:

24 Q. Good afternoon, again, Mr. Wiegert.

25 A. Good afternoon.

1 Q. I think you probably were here in the courtroom
2 with us when a young woman named Lisa Buchner
3 testified yesterday?

4 A. Yes, sir.

5 Q. Had you interviewed her previously?

6 A. Yes, I remember the interview very well.

7 Q. Was that -- Did the interview take place on
8 Monday, November 7, 2005?

9 A. It did, yes.

10 Q. All right. And among other things, did Ms
11 Buchner tell you, on Monday, November 7, 2005,
12 that she remembered some things on Saturday,
13 November 5, and thought it would be important
14 that we would know; we, meaning law enforcement,
15 would know that information?

16 A. Yes, she had basically shown up at the checkpoint
17 where we had security up out on Highway 147. And
18 I had gotten a call from them stating that
19 there's somebody at the checkpoint that had
20 information. And that would happen periodically
21 throughout the time we were out there.

22 And, in fact, we would get a lot of
23 phone calls about information as well. But, what
24 had happened is, I didn't have any other
25 detectives to interview her because they were all

1 out doing other interviews, on leads and things
2 like that. So I told them to let her through the
3 checkpoint. I met her at the Command Post.

4 Q. On the 7th?

5 A. On the 7th.

6 Q. Right. Okay. And she -- You interview her and
7 she tells you, you know, that she saw a female
8 taking pictures around 3:30 p.m. one day?

9 A. That's correct.

10 Q. And when you are talking to her on Monday,
11 November 7, she was able to tell you that this
12 observation of a female taking pictures of the
13 van happened either on Monday, October 31, or
14 Tuesday, November 1, or maybe Wednesday,
15 November 2; do I understand that correctly?

16 A. That's -- That's what she had told me that day,
17 or she did not know what color the van or
18 anything was.

19 Q. Right. And -- And she could narrow it down only
20 to one of those three days, but it was the week
21 before she was speaking to you on Monday,
22 November 7th?

23 A. That's what she had indicated that day; however,
24 she couldn't give me a -- what kind of weather it
25 was that day. Nothing else stood out in her mind

1 that day. She just thought it was between those
2 three days. Again, she didn't know what color
3 the van was or anything.

4 ATTORNEY STRANG: Okay. That's all I had.
5 I just wanted to nail down the time. Thank you.

6 THE COURT: Mr. Kratz.

7 ATTORNEY KRATZ: Thank you, Judge.

8 **CROSS-EXAMINATION**

9 BY ATTORNEY KRATZ:

10 Q. Mr. Wiegert, I'm showing you what's been received
11 as Exhibit No. 86. When you spoke to Ms Buchner
12 early on in this investigation, was she able to
13 explain or describe for you where this woman was
14 seen taking the photographs?

15 A. She had indicated, at the time she saw this woman
16 taking photographs, was towards the shop area, if
17 you will, at the intersection of Avery Road,
18 where it meets with the driveway, where you go
19 down to the residences. There's a set of mail
20 boxes there and right in that area.

21 Q. I'm going to use my laser pointer, is this the
22 area where Ms Buchner said she saw the person
23 taking those photographs?

24 A. That's what she had thought, yes.

25 Q. Now, when you got to the Avery Salvage property

1 on the 5th, that's the first day that you were at
2 the property, we have seen photographs, but
3 wasn't the van that Ms Halbach was taking
4 pictures of actually down in this area, near
5 Mr. Avery's residence?

6 A. Yeah, it was still down there. And that's what
7 other witnesses had told us, too, that it was
8 down there.

9 Q. All right. Last question I have for you,
10 Investigator Wiegert, at least on this point is,
11 this intersection here, is that the main road or
12 intersection, if you will, for people coming into
13 the business property itself?

14 A. Yeah, I think it's actually a town road, I think
15 it's -- from my recollection, I think the town
16 upkeeps that road, so it's actually a traveled
17 roadway that leads down to the salvage yard and
18 that's where people come and go to do their
19 business.

20 Q. And, in fact, I think there is one other exhibit
21 that may show this a little bit better even,
22 Exhibit No. 81, that's been received. I will
23 show you and the jurors that intersection; do you
24 recognize that?

25 A. I do, yes.

1 Q. In fact, this intersection, which shows actually
2 two Command Post vehicles, I'm pointing to those;
3 is that where the law enforcement officers set up
4 their command center?

5 A. Yes.

6 Q. And isn't it, in fact, true, Investigator
7 Wiegert, that this very vehicle I'm pointing to
8 here, a Blazer, as well as a Pontiac Grand Prix
9 behind it, were vehicles that were for sale at
10 the Avery Salvage property when you arrived there
11 on the 5th?

12 A. Yes. And that would make sense, I mean, if
13 you're going to sell a car, you're going to have
14 it up where people are coming and going.
15 Wouldn't make sense to have it down --

16 ATTORNEY STRANG: That's pretty
17 speculative, your Honor, I will object.

18 THE COURT: The Court will sustain the
19 objection and order that the last part of the answer
20 be stricken.

21 ATTORNEY KRATZ: That's fine.

22 Q. (By Attorney Kratz)~ Let's talk about this
23 Blazer, right here, the red and black Blazer. In
24 fact, did you see photographs earlier, that is,
25 that that's one of the pictures that Teresa

1 Halbach took, a photograph of that very Blazer
2 that's depicted in Exhibit 81?

3 A. That is true, yes. I did see those pictures.

4 Q. The Grand Prix behind it is another photograph
5 that Ms Halbach took, that is, the Grand Prix for
6 sale directly behind that Blazer as well; is that
7 right?

8 A. Yes.

9 Q. And, again, both of these vehicles, at least on
10 the 5th, as you got there, were located in the
11 same intersection that Ms Buchner told you she
12 saw some woman out taking pictures of vehicles;
13 is that your understanding?

14 A. That's true, yes.

15 ATTORNEY KRATZ: All right. That's all I
16 have for cross-examination, Judge. Thank you.

17 THE COURT: Any redirect?

18 **REDIRECT EXAMINATION**

19 BY ATTORNEY STRANG:

20 Q. So, if Teresa Halbach was taking pictures of a
21 van or some cars up by the shop area that you
22 have described, on October 31, presumably, or
23 November 1 or November 2, that's not a photo you
24 could attribute to the call to **Auto Trader**
25 earlier on October 31, could you?

1 A. I guess I'm not sure what you are asking.

2 Q. Well, somebody else would have had to ask her to
3 take a photograph up at this end, because that's
4 not where the maroon van was, right?

5 A. The maroon van was not up there.

6 Q. And so if she was taking a picture, she was
7 either doing that on her own or because someone
8 else asked her.

9 A. I don't know that anybody has established that
10 she was taking a picture down there.

11 Q. Well, if Ms Buchner is correct, that she saw a
12 female photographing a van up at that end of the
13 driveway ...

14 A. Ms Buchner didn't say who was taking a picture.
15 She couldn't even give me a description of who it
16 was; she said it was a female.

17 Q. Right, I understand.

18 A. And didn't know what day it was. So it was
19 between a set of days, she thought.

20 Q. Did you find any other information that female
21 photographers were out taking pictures of cars
22 near Avery Road, or that driveway, on any day
23 between October 31 and November 2, 2005?

24 ATTORNEY KRATZ: I'm going to object as to
25 the characterization, Judge. I don't think you have

1 to be a professional photographer to take a picture.

2 ATTORNEY STRANG: I'm not suggesting a
3 professional photographer.

4 Q. (By Attorney Strang)~ Do you have any information
5 at all, as the case agent, or one of the two lead
6 investigators here, of any female taking
7 photographs of a van, or any other car, other
8 than Teresa Halbach, on October 31 to November 2,
9 2005, anywhere on that driveway?

10 A. Where the picture is there?

11 Q. Anywhere on Avery Road or that driveway --

12 A. The only --

13 Q. -- any information at all?

14 A. No, I don't.

15 ATTORNEY STRANG: Okay. That's all I have.
16 Thanks.

17 ATTORNEY KRATZ: One other question.

18 **RE-CROSS-EXAMINATION**

19 BY ATTORNEY KRATZ:

20 Q. But yesterday you heard Ms Buchner say it could
21 have been a week before, or two weeks before. It
22 wasn't the 31st, even necessarily anywhere around
23 that time frame; you heard that didn't you?

24 A. I did hear her say that yesterday, that's
25 correct.

1 ATTORNEY KRATZ: That's all I have got,
2 Judge.

3 THE COURT: All right. The witness is
4 excused.

5 ATTORNEY STRANG: Scheduling at side bar?

6 THE COURT: Mr. Strang, any more witnesses
7 today?

8 ATTORNEY STRANG: No, that's why I was
9 going to approach side bar; we don't have any more
10 witnesses for today.

11 THE COURT: All right. I will meet with
12 counsel after we conclude today. Members of the
13 jury, we're going to break early today, before you
14 leave, I have an announcement to read to you at this
15 time. Some of these things you have heard before.

16 As you know, the Court's decision not to
17 sequester the jury during the trial is dependent
18 on the jurors not listening to, watching, or
19 reading any news accounts of the case, nor
20 discussing it with anyone, including members of
21 your family or other jurors.

22 For these reasons, it is vital that you
23 do not listen to any conversation about the case,
24 do not read any newspaper or internet reports, or
25 listen to any news reports on the radio or

1 television, about this trial.

2 To assure that you are not exposed to
3 any improper media coverage, the Court has
4 ordered that, for the duration of the trial, you
5 do not watch the local news on television; do not
6 listen to the local news on radio; and do not
7 read the newspaper, unless you first have someone
8 remove any articles about the case.

9 In addition, do not visit any internet
10 websites or web logs, which may include any
11 information about the case, or for that matter,
12 watch any national shows that have any
13 information about the case.

14 The Court understands that some of you
15 may be working at places of employment during the
16 weekend, do not discuss the case with any
17 employers, employees, or patrons. Do not
18 volunteer your status as a juror to anyone.

19 If anyone attempts to discuss the case
20 with you, politely but firmly notify them that
21 you are prohibited from discussing the case. If
22 you are involuntarily exposed to information
23 about the case, from any source, take steps
24 immediately to avoid any further exposure.

25 Should you be exposed to any reports or

1 communications from any source concerning the
2 case during the trial, or should you become aware
3 of anything you believe may affect your ability
4 to serve as a juror, you should not discuss your
5 concerns with any other jurors, but should report
6 any concerns to the jury bailiff.

7 As you know, we are getting close to the
8 end of this trial. It is important for the Court
9 to know that each of you has been able to comply
10 with the Court's restrictions on outside
11 information about this case.

12 Should any of you believe that you have
13 been exposed to any outside information about the
14 case, such as through the news media, or from any
15 other persons, including other family members, or
16 jurors, it is important that you report such
17 information to the Court. You may do so,
18 confidentially, in writing.

19 I would like each of you to think about
20 that matter during the weekend. The Court may
21 individually question members of the jury before
22 we proceed to the final stages of the trial on
23 Monday, to make sure that no juror has been
24 exposed to any improper outside information about
25 the case. With that, you are excused for today.

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(Jury not present.)

THE COURT: You may be seated. And, counsel, then, I will see you in chambers in a few minutes.

ATTORNEY STRANG: Your Honor, before we go off the record, I just want to move Exhibit 501, which is Dr. Fairgrieve's CV.

THE COURT: Any objection?

ATTORNEY FALLON: None.

THE COURT: Exhibit 501 is admitted.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 2nd day of January, 2008.

Diane Tesheneck, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 21

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** MARCH 12, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. We're here this morning for a continuation of
4 the trial in this matter. Will the parties state
5 their appearances for the record, please.

6 ATTORNEY KRATZ: Good morning, Judge. The
7 State appears by Calumet County District Attorney
8 Ken Kratz, Assistant Attorney General Tom Fallon,
9 and Assistant District Attorney Norm Gahn, appearing
10 as Special Prosecutors.

11 ATTORNEY STRANG: Good morning, Steven
12 Avery is present. Jerome Buting and Dean Strang
13 also present on his behalf.

14 THE COURT: The first item of business
15 today is for the Court to issue its decision on
16 three outstanding motions. The Court has already
17 heard argument on these motions. I'm ready to issue
18 the decisions at this time.

19 The first motion the Court will address
20 is a renewal from the defense of its fair testing
21 motion; that is, a motion that was filed
22 pre-trial by the defense, last summer, asking for
23 permission to have an observer present while the
24 Wisconsin State Crime Lab was performing analysis
25 of various pieces of evidence.

1 The defense counsel argues that the
2 defendant in this case was prejudiced because the
3 defense was not permitted to have an observer
4 present while DNA testing was conducted of a
5 bullet, by Sherry Culhane. Ms Culhane testified
6 that during the testing process, some of her DNA
7 made its way into a control sample that should
8 not have contained anyone's DNA.

9 She believes it happened as a result of
10 saliva that came from her mouth while she was
11 speaking to observers from within the lab who
12 were being trained at the time. Ms Culhane
13 testified that there was no evidence of
14 contamination in the test of the extract from the
15 bullet itself, which is found to contain Teresa
16 Halbach's DNA.

17 The defense argues that this account
18 given by Ms Culhane demonstrated the defenses
19 need to have an observer present during testing.
20 The observer might have suggested splitting the
21 extract from the bullet as a control, before the
22 remainder of the test was completed, in order to
23 determine whether Teresa Halbach's DNA was, in
24 fact, on the bullet, or somehow found its way
25 into the abstract -- into the extract through

1 contamination.

2 An observer may also have seen, argues
3 the defense, how Teresa Halbach's DNA may have
4 gotten into the extract if it happened through
5 contamination. As a remedy, the defendant asks
6 that the Court suppress the test results, or in
7 the alternative, if suppression is not granted,
8 instruct the jury that the State resisted a
9 defense request to observe the testing process.
10 The State's testing totally consumed the sample.
11 And the State withheld the Crime Lab's
12 contamination log until it was specifically
13 requested by the defendant.

14 Both parties acknowledge in their
15 argument that the test, which the Court must
16 apply, is that set forth in the United States
17 Supreme Court case of ***Arizona vs. Youngblood***;
18 that is, unless a criminal defendant can show bad
19 faith on the part of the police, failure to
20 preserve potentially useful evidence does not
21 constitute a denial of due process in law. The
22 issue boils down, then, to whether or not the
23 State was guilty of bad faith in this matter.

24 The evidence that the defense cites as
25 evidence of bad faith on behalf of the State is

1 the following: First of all, the State resisted
2 the defendant's initial request to observe the
3 testing.

4 Second, the State did not disclose the
5 Crime Lab's contamination log history to the
6 defense at the time of the original fair testing
7 motion. The argument is that earlier disclosure
8 may have allowed the defense to succeed in its
9 earlier motion.

10 Third, that the State did not provide a
11 copy of the contamination log as part of the
12 defendant's original general discovery request.

13 Fourth, the defendant expressed its
14 concern about contamination at an earlier stage
15 in this proceedings and Ms Culhane's testimony
16 demonstrated that contamination occurred.

17 Fifth, the defendant personally
18 expressed his concern about being framed at an
19 early stage in the trial.

20 And, sixth, there is no clean sample
21 left for the defendant to test because the
22 extract that was found to contain the victim's
23 DNA may have already been contaminated and
24 the -- there is not sufficient DNA left on the
25 bullet to independently test.

1 The Court concludes that those facts do
2 not demonstrate a finding of bad faith on the
3 part of any representatives of the State.

4 With respect to the first part of the
5 defendant's request, that the State resisted its
6 request to observe the testing, the law in
7 Wisconsin is that the State had a right to resist
8 that request. Relevant are Wisconsin Statute
9 Section 176.79 (1), as interpreted in the Court
10 of Appeals case of **State vs. Franszczak**,
11 F-r-a-n-s-z-c-z-a-k, a 2002 reported decision.

12 The Court in that case summarized the
13 law under the statute as follows: All evidence,
14 information, and analyses of evidence submitted
15 to the Crime Lab by law enforcement is privileged
16 and, therefore, is off limits to a defendant
17 prior to trial. The same is true as to the
18 analyses of such evidence by the Crime Lab. This
19 privilege also bars any effort, by a defendant,
20 to examine Crime Lab personnel as witnesses prior
21 to trial.

22 There is an exception with respect to
23 such evidence as is subject to discovery under
24 Section 971.23 and, in fact, discovery was
25 exercised here and the State did present

1 materials. The point is there's nothing improper
2 about the State's initial resistance to the
3 defense request for fair testing. It's
4 authorized under the statute.

5 The second State argument is that the
6 State did not timely disclose the contamination
7 log history to the defense, or the Court's
8 original decision might have been different
9 because the defense argument for observation
10 would have been stronger.

11 The Court would not have ruled
12 differently on the original motion, even if it
13 had known of the existence of the contamination
14 log earlier. Frankly, the Court is relieved to
15 know that such a log is kept as an aid to
16 defendants who are able to make use of it in
17 cross-examination, as the defendant did in this
18 case.

19 The Court believes it is far preferable
20 to have a contamination log than if the Crime Lab
21 was hiding its mistakes. I will also note there
22 is no evidence to suggest the contamination log
23 demonstrates any fraud on the part of the Crime
24 Lab in its history, as the defense referred to in
25 other State Crime Labs as part of its original

1 argument.

2 The defense also argues that the State
3 did not provide a copy of the contamination log
4 as part of the defendant's general discovery
5 request. The Court wasn't really presented with
6 information to suggest whether or not the
7 contamination log would have been within the
8 scope of the original request made by the
9 defense.

10 However, it appears that the State did
11 provide a copy of the contamination log, to the
12 defendant, upon specific request for the log, and
13 the Court believes that the defense was able to
14 effectively use the information from the
15 contamination log in its cross-examination of Ms
16 Culhane. That is, the Court doesn't believe
17 there was any prejudice to the defense in the
18 conduct of its case.

19 The fourth argument advanced by the
20 defendant is that the defense expressed concern
21 for contamination, and in this case contamination
22 admittedly occurred as Ms Culhane testified. The
23 Court finds that despite that express concern on
24 the part of the defense, doesn't change the law
25 in this area, that the State is simply not

1 required to permit an observer at the Crime Lab.

2 The defense also argues that the
3 defendant himself personally expressed concern
4 about being framed earlier in this case. The
5 Court understands that that in fact was the case
6 here, but the Court also understands that the
7 defendant's claim is that he was being framed by
8 members of the County Sheriff's Department and
9 not by members of the Crime Lab.

10 I think it's worth noting in this case
11 that it was Ms Culhane's testing of the DNA in
12 the 1985 case that, in fact, led to the
13 defendant's exoneration. The Court is not aware
14 of any allegations that the Crime Lab was a party
15 to any frame up here and the Court finds no
16 reason to believe that was the case.

17 The last argument was there's no clean
18 sample left to test, as while there is an
19 abstract of the blood evidence, that abstract may
20 have been already contaminated. There's no
21 indication here that the operator, Ms Culhane,
22 used more of the sample than was necessary. She
23 used her best judgment in testing the bullet as
24 she did.

25 She testified that there was nothing

1 visible on the bullet and she felt she had to
2 take an extract from the bullet in order to get
3 enough of a sample to test. The Court can't find
4 anything wrong with that, which would constitute,
5 in any fashion, bad faith on the part of the
6 State.

7 The bottom line is that Ms Culhane did
8 somehow contaminate the control sample in the
9 course of the testing process and she disclosed
10 that contamination. She followed protocol in
11 asking for an exception. Her mistake was
12 disclosed to the defense in a timely manner as
13 part of discovery and the defendant skillfully
14 elicited her testimony about the mistake in
15 cross-examination. The Court does not believe
16 that any bad faith has been shown or that the
17 defendant has not been -- has been unfairly
18 prejudiced in any manner and for that reason that
19 motion is denied.

20 The next motion renewed by the defense
21 is the -- is motion to suppress evidence from
22 multiple searches. This motion was renewed
23 outside of the presence of the jury during the
24 trial, on February 23rd. At that time the
25 defense renewed its motion to suppress evidence

1 based on illegal searches, which was initially
2 denied by this Court in a 21 page written
3 decision on December 12 of last year.

4 Defense counsel cited three separate
5 bases for renewal of the motion at this time,
6 based on evidence that was introduced up to
7 February 23rd. First, the defendant claims that
8 the testimony of Special Agent Fassbender and the
9 other officers who participated in the execution
10 of the multiple day search is not consistent with
11 the facts which formed the basis of the Court's
12 original ruling. Specifically, the defendant
13 characterized the initial entries as prohibited
14 warm-up searches, which are not constitutionally
15 permitted.

16 In the Court's view, the evidence
17 introduced at trial was consistent with the
18 Court's earlier understanding of the bases for
19 the various entries into the trailer and garage
20 that were occupied by the defendant. The Court
21 is not going to repeat here its earlier findings
22 or conclusions, other than to note that the
23 evidence supports the Court's prior understanding
24 of the circumstances under which the entries to
25 the defendant's trailer and garage were made.

1 The fact that there were admittedly
2 multiple entries, raises a number of interesting
3 legal issues of apparent first impression in the
4 State of Wisconsin, but the Court believes it
5 addressed those issues in its written decision
6 and the evidence introduced does not change the
7 factual assumptions which were part of that
8 decision.

9 The defendant's second argument is that
10 the facts introduced give new life to the
11 defendant's **Franks** motion. Specifically, the
12 emphasis by law enforcement in the early stages
13 of the search, treating the case as a missing
14 persons case, the defense alleges undercut the
15 representation made in the affidavit for the
16 initial search warrant by Mr. Wiegert.

17 Mr. Wiegert's specific representations
18 in the affidavit for the warrant were the
19 following: Your affiant believes, that based on
20 Teresa's lack of contact with her employer and
21 family members, and her vehicle being abandoned
22 at the Avery Auto Salvage Yard, that Teresa
23 Halbach is the victim of a crime, including but
24 not limited to, homicide, sexual assault,
25 kidnapping, false imprisonment, and theft.

1 Essentially the Court understands the
2 defense argument to be that the State is not
3 permitted to suspect the worst, but hope for the
4 best. The Court does not agree, given the facts
5 available to law enforcement authorities at the
6 time, primarily the lack of conduct -- or contact
7 with Teresa Halbach for a number of days, and the
8 circumstances surrounding the discovery of her
9 vehicle, even before anyone's blood was found
10 inside the vehicle, there was more than probable
11 cause to suspect serious foul play, in the form
12 of the crimes listed in the affidavit.

13 It is not inconsistent, in those
14 circumstances, for law enforcement personnel to
15 hope that their legitimate suspicions are wrong
16 and that there might be some explanation which
17 would be consistent with Teresa Halbach still
18 being alive. There is nothing unreasonable about
19 what the State did, or what the State gave as
20 bases in the affidavit for the search warrant.
21 The information known to the State at the time,
22 which was reflected in the search warrant,
23 provides adequate probable cause for its
24 issuance.

25 The defendant's third separate argument

1 is that the State waited too long to commence its
2 search of the burn pit area behind the
3 defendant's garage, where the victim's bone
4 fragments were found. As the Court understands
5 the argument, it's different from the challenges
6 to the searches of the trailer and the garage
7 because the claim is not based on improper
8 multiple searches, but rather on an improper
9 delay in conducting the search at a time after
10 the possession of the defendant's living quarters
11 should have been turned back to him.

12 The Court finds nothing improper about
13 the timing of the search in this case. Section
14 968.15 requires that a search warrant be executed
15 and returned within five days. The search of the
16 burn pit commenced before that time period
17 expired.

18 The defense makes much out of the fact
19 that the searchers initially refrained from
20 starting the search because of the presence of
21 the defendant's dog and that's not a valid reason
22 for not starting the search earlier, even if the
23 dog appeared to be dangerous. The Court agrees
24 that the presence of the dog alone would not
25 excuse the timing of the search in this case.

1 However what does excuse it are a number
2 of factors. First, as the Court noted, the
3 search was commenced within the five day time
4 limit.

5 Second, law enforcement personnel had a
6 very large area to search under the warrant, that
7 is, the entire Avery Auto Salvage Yard, and they
8 did not artificially delay, in any way, their
9 search of the burn pit.

10 Third, and most significant, the
11 significance of the burn pit site was not
12 apparent until what appeared to be human remains
13 were discovered there. Once that discovery was
14 made the authorities worked promptly to collect
15 the evidence.

16 There was nothing unreasonable about the
17 search of the burn pit. For these reasons, the
18 defense renewed motion to suppress evidence based
19 on unlawful searches is likewise denied.

20 Third motion that the Court addresses
21 this morning is the defense motion to dismiss all
22 charges against the defendant at the close of the
23 State's case. The standard that the Court is to
24 apply in this situation has been stated as
25 follows:

1 The test is whether, considering the
2 State's evidence in the most favorable light, and
3 the evidence adduced, believed, and rationally
4 considered, is sufficient to prove the
5 defendant's guilt, beyond a reasonable doubt.
6 That is, the Court has to look at the evidence in
7 a light most favorable to the State and ask
8 itself whether a reasonable jury could find that
9 the defendant is guilty beyond a reasonable
10 doubt.

11 In this case, the defendant moved to
12 dismiss all charges, but did not present specific
13 argument on the homicide, mutilation of a corpse,
14 and possession of a firearm charges. The Court
15 is not going to summarize all the evidence here,
16 but it concludes that the State has introduced
17 evidence which, if believed by the jury, would be
18 sufficient to prove the defendant's guilt, beyond
19 a reasonable doubt, on these three particular
20 charges.

21 The argument advanced most strenuously
22 by the defendant is that the evidence introduced
23 by the State, even if believed by the jury, would
24 not be sufficient to sustain a guilty verdict on
25 the false imprisonment charge. The elements the

1 State must prove on the false imprisonment charge
2 are the following:

3 One, the defendant confined or
4 restrained Teresa Halbach during her lifetime.

5 Two, the defendant confined or
6 restrained Teresa Halbach intentionally.

7 Three, Teresa Halbach was confined or
8 restrained without her consent.

9 Four, the defendant had no lawful
10 authority to confine or restrain Teresa Halbach.

11 Five, the defendant knew that Teresa
12 Halbach did not consent and knew that he did not
13 have lawful authority to confine or restrain her.

14 The Court understands the defense
15 argument primarily to be that there's no evidence
16 the defendant confined or restrained the victim
17 in this case. The State introduced no direct
18 proof of that particular element, but asserts
19 that it has a circumstantial evidence case. The
20 State points to evidence that the defendant used
21 his sister's name in requesting the victim to
22 come to the property.

23 Bobby Dassey testified he saw Teresa
24 Halbach heading toward the defendant's trailer
25 after he observed her taking pictures of his

1 mother's van and did not see her three to four
2 minutes later when he looked again after taking a
3 shower.

4 The bullet fragment with the defendant's
5 DNA was found on the floor of the garage. The
6 State submits this evidence demonstrates that the
7 victim was killed in the garage by two bullet
8 wounds to the head. The State also argues the
9 evidence demonstrates that the victim was forced,
10 involuntarily, from the trailer to the garage,
11 and that's the basis for the false imprisonment
12 charge.

13 The State does offer a plausible
14 scenario for what happened; however, that's not
15 the standard that the Court must apply. The
16 evidence has to be sufficient to support a jury
17 verdict of guilt, beyond a reasonable doubt. The
18 circumstantial evidence introduced by the State
19 is, if believed by the jury, sufficient to
20 sustain a guilty verdict on the other charges,
21 but the Court believes there's minimal evidence
22 supporting the false imprisonment charged.

23 Viewed most favorable to the State,
24 there is a logical inference that the victim
25 entered the defendant's trailer for some

1 unspecified period of time and that she was
2 killed by the defendant in his garage. There is
3 no evidence from which a jury can determine the
4 circumstances of how she went from the trailer to
5 the garage.

6 To conclude, on the evidence presented,
7 that she was forced there against her will would
8 require speculation on the part of the jury. The
9 Court believes it is not coincidental that the
10 defendant was not charged with false imprisonment
11 until after the State received statements from
12 Brendan Dassey. That fact alone would not
13 prevent the State from pursuing the false
14 imprisonment charge if there was other evidence
15 to support the charge. But the record does not
16 contain such other evidence.

17 During voir dire, a number of jurors
18 indicated they were at least somewhat familiar
19 with the case against Brendan Dassey. To submit
20 this charge to the jury would, the Court
21 believes, invite the jury to fill in the blanks,
22 if you will, by what they might otherwise
23 remember about allegations that have not been
24 supported by evidence in this case.

25 The Court concludes there is not

1 sufficient evidence in the record to support a
2 jury finding of guilt, beyond a reasonable doubt,
3 on the false imprisonment charge. And the Court,
4 therefore, grants the defendant's motion to
5 dismiss that charge.

6 Counsel, is there anything further
7 before we bring in the jury?

8 ATTORNEY STRANG: I don't know that I need,
9 given the Court's ruling, but if I do, I would move
10 for entry of judgment of dismissal or acquittal on
11 Count 4 of the second Amended Information.

12 THE COURT: Anything else from State?

13 ATTORNEY KRATZ: No.

14 THE COURT: All right. The Court will
15 enter, then, a judgment of dismissal of that charge.

16 I will indicate for the record that the
17 Court met with counsel before beginning today.
18 And after discussion, I believe both parties and
19 the Court is in agreement that the Court is going
20 to individually voir dire the jurors, because of
21 the length of the trial, the extensive publicity
22 that it received, in order to make sure that the
23 Court's order has been adhered to in this case.
24 And before doing that, I think it's beneficial to
25 bring in the jurors briefly and let them know

1 what's going on.

2 I will also indicate, before we bring
3 the jury in, that the Court has spent a good deal
4 of time examining the circumstances under which
5 that individual voir dire should take place.
6 Because the subject of the voir dire could
7 include information about whether or not the
8 jurors violated the Court's order, the Court does
9 not believe that the voir dire should take place
10 in the confines of this courtroom, which could
11 easily be found to be somewhat intimidating to
12 the jurors.

13 It's very important in this case to make
14 sure that the jurors express candor in giving
15 their answers. In many cases voir dire is
16 conducted in chambers, without anyone else being
17 present. But this case is different from many
18 other cases because of the intense media coverage
19 that it's received.

20 The media is very interested in this
21 case and while the Court believes there may be
22 grounds to completely close individual voir dire,
23 the Court also believes that consideration must
24 be given to the interests of the media. And,
25 therefore, I have decided that, although the voir

1 dire will take place in a small conference room
2 that has very limited seating, the Court is going
3 to allow a media representative to be present
4 during the questioning of the jurors.

5 Earlier this morning, I instructed the
6 media coordinator to contact the media folks who
7 are here today and designate one of their members
8 to be present. It will be the obligation of that
9 member to report back to the other members of the
10 media. Obviously, they still will be prohibited
11 from disclosing the identity of any juror.

12 If any action is required as a result of
13 the answers given by the jurors, the Court
14 anticipates that that would take place in open
15 court and not in the voir dire investigation in
16 chambers.

17 Anything further that either party would
18 like to add to that before we bring in the jury?

19 ATTORNEY STRANG: Nothing -- Nothing from
20 the defense.

21 ATTORNEY KRATZ: No, Judge.

22 THE COURT: All right. Let's call in the
23 jurors at this time.

24 (Jury present.)

25 THE COURT: You may be seated. Good

1 morning, members of the jury. I can tell you that
2 your first sitting in the jury box this morning will
3 be probably the shortest sitting that you have
4 during the course of this trial.

5 I indicated last Friday, that because of
6 the length of the trial and the concerns about
7 exposure to media coverage and other items, that
8 it was entirely possible that the Court would
9 conduct some questioning of the jurors on an
10 individual basis before the end of the trial in
11 order to make sure that no improper information
12 had found its way to the jury. Before we proceed
13 further with the defense case this morning, that
14 is what we're going to do.

15 We're not going to conduct the voir dire
16 in this courtroom; it's going to be done in a
17 small conference room and you will be escorted by
18 a sheriff's deputy, one by one, to the conference
19 room, so that the questioning may take place. I
20 only called you out here this morning so I would
21 have a chance to tell you that.

22 So at this time, I'm going to allow you
23 to go back to the jury room and in a few minutes
24 we'll begin the individual questioning. Although
25 you will be questioned individually, the Court

1 does not anticipate that the process will be very
2 long, with respect to any individual juror. So
3 you are excused at this time.

4 (Jury not present.)

5 THE COURT: You may be seated. Counsel,
6 then, I will see you in the conference room near the
7 judge's chambers in 10 minutes.

8 (Individual voir dire in conference room.)

9 THE COURT: I'm not going to take them all
10 in order, we'll start out with Mr. Slaby.

11 Mr. Slaby, I think I indicated on the
12 record the reason for our little session here.
13 Because of the length of this trial, which was
14 kind of unusual in the amount of media attention
15 it's received.

16 You probably have memorized by now the
17 admonition I normally give at the end of the
18 week. And we just wanted to take -- give each
19 juror an opportunity to let us know if there have
20 been any problems, if they have been exposed to
21 any information from any source whatsoever about
22 the case, that, you know, might have an effect on
23 the juror. So, is there anything that you feel
24 the Court should know?

25 MR. SLABY: I don't believe so.

1 THE COURT: You feel you have been able to
2 follow the instructions okay?

3 MR. SLABY: Yes.

4 THE COURT: All right. Can you tell me,
5 have you heard any other persons, whether they be
6 jurors or otherwise, say anything about the case?

7 MR. SLABY: No, not about the case.

8 THE COURT: Okay.

9 MR. SLABY: I mean --

10 THE COURT: I'm sure there's been talk
11 among the jurors, we have heard it sometimes as you
12 leave.

13 MR. SLABY: I don't think there's been
14 anything improper.

15 THE COURT: All right. Very well, I'm
16 going to excuse you then. The sheriff will escort
17 you back to the jury room.

18 *****

19 ATTORNEY STRANG: If we're going to
20 continue this, we should see if Mr. Avery is willing
21 to waive his presence. We have got the sheriff
22 walking these people in. We've got two armed law
23 enforcement officers right outside the door, and
24 we've got a fourth one right in here. It just has a
25 feeling of, you know, an encampment. I don't think

1 anybody would assume that they are worried about
2 Norm Gahn.

3 ATTORNEY FALLON: I'm worried, he is right
4 behind me.

5 THE COURT: Well, we'll -- There's only one
6 sheriff's person in the room. And I think at
7 defense counsel request, I deliberately kept them
8 stationed behind the juror.

9 ATTORNEY STRANG: If he was going to be
10 here at all, that's right. But the sheriff is
11 walking them in and there are two armed, in uniform,
12 officers right outside the door.

13 ATTORNEY BUTING: Could they be out that
14 door?

15 ATTORNEY STRANG: There's another one out
16 there. That's five.

17 THE COURT: Let's do this, after this next
18 juror, we'll take it up and we'll ask the sheriff to
19 return.

20 ATTORNEY BUTING: Okay. Sure.

21 THE COURT: Hi.

22 MS DORN: Hi.

23 THE COURT: Have seat.

24 MS DORN: Is this the hot seat?

25 THE COURT: That's the hot seat. I told

1 you the room wouldn't be very big.

2 MS DORN: Yup.

3 THE COURT: As I explained late Friday and
4 this morning, because of the length of this trial
5 and the publicity that's it's received, now, as
6 we're getting toward the final stages, we just want
7 to make sure that there haven't been any problems
8 with jurors being exposed to information they
9 shouldn't be.

10 MS DORN: Mm-hmm.

11 THE COURT: So what I'm primarily looking
12 for is, do you feel that you have been exposed to
13 anything that you shouldn't have been?

14 MS DORN: My night ends at 8:30 at
15 night. I'm running -- too much running with the
16 kids, tournaments, everything.

17 THE COURT: So you have been busy and you
18 don't feel there's anything you have been exposed
19 to?

20 MS DORN: No.

21 THE COURT: Have you -- Let me ask you
22 this, has there been -- I know that the jurors talk
23 to each other, but has there been any discussion
24 about anything involving the case, that you are
25 aware of?

1 MS DORN: No.

2 THE COURT: There's not been.

3 MS DORN: No.

4 THE COURT: Okay. Very well, thank you.

5 *****

6 THE COURT: At this time we're back on the
7 record. The sheriff is in the conference room, the
8 juror is outside the conference room. The defense
9 counsel, I think, expressed concern about the jurors
10 seeing the sheriff's deputies as they came into the
11 room. It's not a problem with the deputy in the
12 room, as I understand it, but the defense was asking
13 if the deputies outside could, what?

14 ATTORNEY STRANG: Not be there. I mean
15 that's, you know, I'm just concerned about doing
16 this in a way that --

17 THE COURT: Okay.

18 ATTORNEY STRANG: -- has as heavy a law
19 enforcement presence as we have got here.

20 THE COURT: What about if they sat in the
21 outer conference room, behind the wall that's
22 behind?

23 OFFICER: That was a jailer and State
24 Patrol. We could dismiss the State Patrol
25 officer.

1 ATTORNEY BUTING: If they are sitting out
2 there no one is going to see them.

3 ATTORNEY STRANG: I think Brett Bowe is
4 already out there.

5 ATTORNEY KRATZ: Can I ask, in this room,
6 why we're not using a stun belt?

7 THE COURT: That's been ruled on already.

8 ATTORNEY KRATZ: That's been ruled on in a
9 court proceeding, not in a conference room, Judge.

10 THE COURT: I think the concern about what
11 could happen with the stun belt remains the same.
12 I'm not going to revisit that. There has not been
13 any problems with the defendant throughout this
14 trial; I see no reason to revisit it.

15 But security wise sheriff I guess the
16 question is, does that work for you?

17 OFFICER: Sure, if I could just be
18 standing out here after I bring the juror in?

19 THE COURT: Right.

20 OFFICER: Okay.

21 THE COURT: You can stay out there, I think
22 they're asking -- and the deputies, if you like them
23 nearby for security, that's fine.

24 OFFICER: Okay.

25 THE COURT: Have them sit in the outer

1 office rather than standing by the door. Am I
2 correct?

3 ATTORNEY STRANG: Yeah, and if that doesn't
4 work, we will talk about waiving his presence, so to
5 speak.

6 THE COURT: Okay. For what it's worth, I
7 should note that when I saw the first juror come in,
8 and the kind of surprised look on his face on the
9 way out of this room, I didn't get the impression it
10 was due to a couple deputies outside so much as all
11 of us sitting in this room, with one -- just one
12 chair left for him. That was my impression.

13 But at any rate, Sheriff, if that works
14 for you, you can have your deputies sit down in
15 the other outer office. Take Ms Dorn back.
16 Let's bring in Mr. Mahler, Richard Mahler.

17 OFFICER: Okay.

18 ATTORNEY STRANG: Do you have a particular
19 order in your head?

20 THE COURT: No, I'm trying to go as random
21 as I can.

22 ATTORNEY STRANG: There was much less
23 physical fidgeting with this juror.

24 ATTORNEY GAHN: She saw the other one come
25 back so.

1 ATTORNEY STRANG: Right. Some Stranger
2 wasn't sent in to pick up his coat.

3 ATTORNEY BUTING: She was always a little
4 more effervescent in court. The other guy wasn't
5 quite as talkative.

6 THE COURT: Good morning, Mr. Mahler.

7 MR. MAHLER: Good morning.

8 THE COURT: Well, there's no secret why you
9 are here, I indicated in the courtroom.

10 MR. MAHLER: Right.

11 THE COURT: Because of the fact that the
12 trial has gone on for six weeks and that there's
13 been a fair amount of publicity about the trial, I
14 have given the jurors warnings at the end of every
15 day and admonishments not to watch the news media.
16 We just want to make sure that none of the jurors
17 have been exposed to information that they shouldn't
18 have been seeing.

19 MR. MAHLER: Okay.

20 THE COURT: And so at this time, I'm just
21 asking, is there anything that you feel you have
22 been exposed to that could impact your service as a
23 juror.

24 OFFICER: No. In the beginning, my wife
25 said that Channel 12 humiliated me and my family

1 on TV, but that was about it. That has no affect
2 on what I'm doing here.

3 THE COURT: I don't think they would have
4 been permitted to identify a juror.

5 MR. MAHLER: Well, they didn't say my
6 name, but my wife said she knew who I was because
7 they said a musician living on the wife's trust
8 fund, which kind of pissed her off. So she wants
9 nothing to do with it.

10 THE COURT: Channel 12 is in Milwaukee?

11 MR. MAHLER: Yes.

12 THE COURT: Hopefully people in Milwaukee
13 didn't know, but do you feel that that would have
14 any impact on your ability to be fair in this case?

15 MR. MAHLER: No, I'm here to take in the
16 evidence and weigh it out.

17 THE COURT: Okay. Have you heard any
18 discussion of the case by any of the jurors, or
19 anything about the case?

20 MR. MAHLER: Nobody has said anything.

21 THE COURT: Okay. All right. Good. Thank
22 you. You may step outside, the sheriff will take
23 you back.

24 *****

25 THE COURT: All right. How about

1 Mr. Wardman? Good morning, Mr. Wardman. As I
2 indicated on the record, we're having this session
3 just because this is a trial that's gone on for six
4 weeks. There's been a lot of publicity about it.
5 And for the benefit of the Court and the parties and
6 to make sure there is a fair trial, we're just
7 double checking to see if any of the jurors may have
8 been exposed to any information about the case that
9 would affect their ability to serve as a juror. Can
10 you tell us if you feel you have been.

11 MR. WARDMAN: No, last night is the only
12 night I seen it on TV and I had clicked it real
13 quick.

14 THE COURT: You turned it off right away?

15 MR. WARDMAN: Yeah, after I was watching
16 ***Deal or No Deal***, I was surprised they put you on
17 there in commercial time.

18 THE COURT: They tell me I have been on
19 there more than I should be. Okay. So -- But that
20 was it and you turned it off right away.

21 MR. WARDMAN: Yeah. And I don't get the
22 paper so.

23 THE COURT: And the second question, to the
24 best of your knowledge has there been any discussion
25 about the case by any of the jurors?

1 MR. WARDMAN: No.

2 THE COURT: No. Okay. Thank you. You can
3 step outside, the sheriff will take you back.

4 *****

5 And let's try, if the sheriff can duck
6 in here for a minute. Sheriff, Diane Free,
7 number two.

8 THE COURT: Good morning, Ms Free.

9 MS FREE: Good morning.

10 THE COURT: As I indicated in the
11 courtroom, the reason we're doing this is because
12 the trial has gone on for, you know, five weeks now.
13 And there's been a good deal of publicity about the
14 case, so just to make sure that both sides get a --
15 a fair trial, we're double checking to see if any of
16 the jurors may have been exposed to any information
17 about the case that you feel could impact your
18 ability to serve as a juror. Have you been exposed
19 to any information about the case?

20 MS FREE: No, I'm -- I miss the news,
21 though.

22 THE COURT: You are not that many days
23 away. And the second question I have is, are you
24 aware of any conversations that have taken place
25 among any of the jurors involving the case.

1 MS FREE: No, we have done really good
2 policing ourselves.

3 THE COURT: Okay. I'm glad to hear that.
4 All right. Thank you, that's all I have. You are
5 excused.

6 MS FREE: Thanks.

7 *****

8 THE COURT: Number seven, Paul Nelesen.
9 Good morning, Mr. Nelesen.

10 MR. NELESEN: Good morning.

11 THE COURT: First of all, how are you
12 feeling today?

13 MR. NELESEN: Oh, fair to partly cloudy,
14 I guess.

15 THE COURT: Better than last week?

16 MR. NELESEN: Yeah, a little bit better.

17 THE COURT: As I indicated on the record,
18 because of the fact that the trial has gone on for
19 six weeks and has been the subject of a lot of
20 publicity, as we get toward the end stages of the
21 trial here, I'm just trying to make sure that there
22 haven't been any problems of the nature --

23 MR. NELESEN: Sure.

24 THE COURT: -- I addressed. So my question
25 is, whether you have been exposed to any

1 information, whether anybody tried to talk to you or
2 anything, anything that -- information about the
3 case that could affect your ability as a juror?

4 MR. NELESEN: No, I have had people ask
5 me, but I just pretty much tell them what you
6 told me, no, I can't talk about it. Everyone
7 pretty much just drops it.

8 THE COURT: Okay. That's good to hear.
9 And the second and the final question is, are you
10 aware of any discussion that's taken place among any
11 of the other jurors about the case?

12 MR. NELESEN: No, we usually keep pretty
13 quiet.

14 THE COURT: Okay. All right. That's good.
15 You are excused.

16 MR. NELESEN: That's it? Okay.

17 THE COURT: That wasn't so bad.

18 MR. NELESEN: No.

19 *****

20 THE COURT: Let's do number eight, Nathan
21 Klein. Good morning, Mr. Klein.

22 MR. KLEIN: Good morning.

23 THE COURT: As I indicated on the record,
24 because of the fact the trial has gone on for six
25 weeks and has been the subject of a lot of publicity

1 and the trial is starting to wind down and we're
2 getting near the end, we're taking the opportunity
3 to make sure that the -- that the jurors haven't
4 been exposed to anything they shouldn't be. So my
5 first question would be, have you inadvertently, or
6 otherwise, heard anything on the news, or had
7 persons talk to you, or anything else --

8 MR. KLEIN: No.

9 THE COURT: -- about the case?

10 MR. KLEIN: No, I have been very good
11 about it. Immediate family, nor anybody else in
12 the group.

13 THE COURT: And I did get your note about
14 the propane delivery driver, as I understand it that
15 was one of the witnesses from a few days ago.

16 MR. KLEIN: Correct.

17 THE COURT: You indicated you spoke to him
18 two or three years ago when your propane tank --

19 MR. KLEIN: Yeah.

20 THE COURT: Did you just talk about the
21 propane?

22 MR. KLEIN: Yes. There was nothing
23 more, but I felt that I should let you guys know.

24 THE COURT: Is that the extent of your
25 acquaintance with him?

1 MR. KLEIN: Yes.

2 THE COURT: You don't think that would
3 impair --

4 MR. KLEIN: I don't know the guy. He
5 doesn't hardly know me.

6 THE COURT: Last question is, are you aware
7 of any discussion that's taken place about the case
8 by any other members of the jury?

9 MR. KLEIN: No. No, I feel we have a
10 really good group in this. Everybody is very
11 diligent about not speaking of anything.

12 THE COURT: Okay. Very good. Thank you.

13 MR. KLEIN: Yeah, thanks.

14 *****

15 THE COURT: How about number 12, William
16 Mohr? Good morning. Mr. Mohr.

17 MR. MOHR: Good morning.

18 THE COURT: As I indicated on the record,
19 because of the fact that a trial has gone on for six
20 weeks and it's been the subject of a good deal of
21 publicity, we're just questioning the jurors to make
22 sure that they haven't been exposed to anything that
23 could jeopardize the right of either side to a fair
24 trial.

25 So my first question is whether,

1 inadvertently or otherwise, you have heard
2 anything on the news, or other persons have
3 talked to you or tried to talk to you about the
4 case?

5 MR. MOHR: No.

6 THE COURT: Anything?

7 MR. MOHR: No.

8 THE COURT: Thanks. And the second
9 question I have is, are you aware of any
10 conversations that have taken place among any
11 members of the jury that were related to the case or
12 about the case?

13 MR. MOHR: No.

14 THE COURT: Okay. Very good. You may
15 stand up and you will be escorted back.

16 MR. MOHR: All righty.

17 *****

18 THE COURT: Number three, Terri Temme.
19 Good morning.

20 MS TEMME: Good morning.

21 THE COURT: Have a seat.

22 MS TEMME: Okay.

23 THE COURT: As I indicated on the record,
24 because of the fact that a trial has gone on for
25 five weeks now and it's been the subject of a good

1 deal of publicity, we're just taking this
2 opportunity as we near the end of the trial to make
3 sure that, inadvertently or otherwise, none of the
4 jurors have been exposed to any information about
5 the case that they shouldn't be. So, my first
6 question is, has there been anything on the news, or
7 any person who has tried to talk to you, or anything
8 else, with information about the trial?

9 MS TEMME: No.

10 THE COURT: Okay. And my second question
11 is, are you aware, have you heard of any discussions
12 by any other members of the jury about the case?

13 MS TEMME: No.

14 THE COURT: Okay. Thank you. That's it.

15 *****

16 THE COURT: Let's try Barbara Schmidt,
17 number four. Good morning. Good morning, Ms
18 Schmidt. As you know, the trial has been going on,
19 we're in our fifth week now. And because of the
20 fact of the length of the trial and the amount of
21 publicity that it's received, it's very important to
22 both sides that the trial is heard by a fair and
23 impartial jury. And we want to make sure, that
24 whether through inadvertence or otherwise, or for
25 any other reason, that none of the jurors has been

1 exposed to any information that could affect their
2 ability to serve as a juror.

3 So I have a few questions for you. Have
4 you heard anything about the case from any of the
5 media during the trial?

6 MS SCHMIDT: No, sir.

7 THE COURT: The other thing that we asked
8 about and I know that sometimes through inadvertence
9 or through no fault of the jurors, it can happen,
10 but have any other persons attempted to talk to you
11 about the trial, whether other jurors, or family
12 members, or anything else?

13 MS SCHMIDT: No.

14 THE COURT: Okay. Have -- Is there anybody
15 else that lives in your household with you?

16 MS SCHMIDT: Well, my husband, my three
17 sons.

18 THE COURT: Okay. Are your three sons home
19 during the day?

20 MS SCHMIDT: Mostly the older one is a
21 foreman at EVM and the other two go to school.

22 Q. Okay. Have either -- Any of your children or
23 your husband said anything to you about the trial
24 during the course of the trial?

25 MS SCHMIDT: They mention things, but I

1 just kind of ignore them.

2 THE COURT: Okay. Who would mention
3 things?

4 MS SCHMIDT: Mostly my husband. I think
5 he knows more about what's going on than I do.

6 THE COURT: Can you tell me some of the
7 types of things he might mention?

8 MS SCHMIDT: Well, Saturday he said
9 something to the affect that it didn't make any
10 difference what the jurors would decide because
11 everybody would go to appeals and all that kind
12 of stuff. So that's basically it.

13 THE COURT: Has he -- do you know where
14 he's gotten whatever information he has about the
15 trial?

16 MS SCHMIDT: I don't know. He has -- he
17 goes out to the greenhouse, which is our part
18 business. And I imagine he has got a radio out
19 there.

20 THE COURT: Has he said anything to you
21 that in any way is for or against one of the parties
22 to the trial?

23 MS SCHMIDT: No, sir.

24 THE COURT: Okay. So he's mentioned things
25 to you about the trial, but he hasn't said anything

1 about, for example, how he feels?

2 MS SCHMIDT: No, sir.

3 THE COURT: Okay. And what have you done
4 when he's talked to you about the trial?

5 MS SCHMIDT: Well, on Saturday, I went
6 down to carry in wood. See, we have a wood
7 burner in our basement so that's what I do in my
8 spare time. Carry in, putting in, carry in,
9 putting in, that kind of stuff.

10 THE COURT: So you have walked away when
11 he's talked about it?

12 MS SCHMIDT: Yeah, it kind of perturbed
13 him, but I did walk away, yes.

14 THE COURT: And is he aware of the
15 restrictions the Court has placed on you, that you
16 are not supposed to talk about it.

17 MS SCHMIDT: He's aware, but he likes to
18 see if he can get my goat, so to speak.

19 THE COURT: Okay. Has he attempted to
20 provide you with any information outside of what the
21 jury has heard in court about the case.

22 MS SCHMIDT: No, sir, that he won't do.

23 THE COURT: Okay.

24 MS SCHMIDT: But I do have a problem
25 with those little -- I don't know what you call

1 them -- tickers across the bottom of the screen.
2 I usually pay attention because it means
3 something has happened, or like the kids don't
4 have to go to school that day --

5 THE COURT: Sure.

6 MS SCHMIDT: -- because of bad storms,
7 that kind of bothers once in a while, if I don't
8 catch it in time.

9 THE COURT: So you -- What do you do if you
10 see a ticker that involves the trial?

11 MS SCHMIDT: Well, I have been engrossed
12 pretty much in books and stuff. I don't pay too
13 much attention to TV, but when this little sign
14 goes off and then all of a sudden the ticker
15 flies across, well, you kind of pay attention to
16 it.

17 THE COURT: Okay.

18 MS SCHMIDT: But when it involves the
19 trial or something like that, I turn it off
20 quick.

21 THE COURT: Okay. All right. So do you
22 feel that you have been exposed to any information
23 that would affect you or your ability to be fair as
24 a juror?

25 MS SCHMIDT: Not that I know of.

1 THE COURT: Okay. Are you -- Have you
2 talked to any other jurors about what you just
3 talked to me about?

4 MS SCHMIDT: No, sir.

5 THE COURT: Do you know if any other jurors
6 have talked to you or have you heard anything about
7 similar situations where they might -- somebody in
8 their family might be talking to them?

9 MS SCHMIDT: No, sir. I kind of sit
10 back in the room and read all day. And they go
11 around talking, talking, talking.

12 THE COURT: Okay.

13 MS SCHMIDT: And I kind of absorb bits
14 and pieces here and there but.

15 THE COURT: Has any other juror said
16 anything to you on the bus about them talking to
17 their spouse or anything?

18 MS SCHMIDT: Not their talking to their
19 spouse, no.

20 THE COURT: Talking to anybody about the
21 case?

22 MS SCHMIDT: Not about the case, about
23 their measures as to not hearing it, you know,
24 like turning off the radio --

25 THE COURT: Okay.

1 MS SCHMIDT: -- or listening to the PF,
2 whatever, public service thing, you know.

3 THE COURT: Okay.

4 MS SCHMIDT: I don't know what that's
5 called, PBS.

6 THE COURT: So, based on what you know, you
7 feel that the other jurors are doing their best not
8 to hear anything about the case?

9 MS SCHMIDT: That's right.

10 THE COURT: All right. I'm going to have
11 you -- why don't you just step outside for a second
12 with the sheriff there.

13 MS SCHMIDT: Excuse me.

14 *****

15 THE COURT: Let's just hold for a second,
16 shut the door.

17 OFFICER: Okay.

18 THE COURT: We'll be right with you.

19 ATTORNEY FALLON: The only thought I had is
20 you might want to ask her what she's learned from
21 the tickers.

22 ATTORNEY KRATZ: If she learned anything
23 that wasn't in the trial.

24 ATTORNEY FALLON: Depending on what she
25 reveals, whether you go further is entirely

1 dependent on that answer.

2 ATTORNEY GAHN: The tickers, I wouldn't
3 even bring her back in for that.

4 ATTORNEY BUTING: It's kind of hard to
5 believe that as to how many times that her husband
6 has said anything and if he is trying to get her
7 goat all the time, but I'm not sure what would
8 provoke that thing, doesn't matter what the jurors
9 are going to do, everybody is going to appeal.

10 THE COURT: Yeah, well, that can be a
11 situation where a spouse, you know, if they know
12 they are not supposed to be talking about the case,
13 can tease them without saying anything that would
14 prejudice the juror.

15 ATTORNEY STRANG: Let's ask her what her
16 husband thinks about the case.

17 ATTORNEY BUTING: More open ended, what
18 does he think about the case. He knows more about
19 it, what's going on, than I do. How can that be?

20 THE COURT: Sure. Anything else before we
21 bring her back in? I will ask her both, I'll ask
22 her about the tickers.

23 Ms Schmidt, I just have a couple
24 follow-up questions. One was about the tickers
25 you mentioned. Do you know, before you were able

1 to turn the TV off, or look away, do you remember
2 anything that you saw on the tickers?

3 MS SCHMIDT: Not -- Not particularly,
4 no. It just -- it mentioned you and something
5 about Mr. Avery. And then I don't have any idea.
6 But see like the something is, you know, it goes
7 -- like I said, it goes in one ear and out the
8 other and sometimes it doesn't register in
9 between.

10 THE COURT: So whatever you saw on the
11 tickers, you can't remember?

12 MS SCHMIDT: No, sir.

13 THE COURT: The other question I have is
14 with respect to your husband, do you know what his
15 opinion is about the case? Does he think --

16 MS SCHMIDT: He has strong opinions,
17 they don't always agree with mine.

18 THE COURT: Okay. But what opinions of his
19 has he given to you?

20 MS SCHMIDT: Just what he mentioned
21 about, no matter what happens to the trial, you
22 are going to have appeals and all kinds of stuff
23 anyway, so.

24 THE COURT: Has he told you anything about
25 whether he thinks the defendant is guilty or

1 innocent?

2 MS SCHMIDT: No. No.

3 THE COURT: He has not.

4 MS SCHMIDT: No.

5 THE COURT: When you say he has strong
6 feelings, what -- what are those strong feelings
7 that he passed on to you?

8 MS SCHMIDT: Not anything regarding the
9 trial, but -- but like home things. Like if the
10 boys have trouble with this or that, they know
11 better, they are supposed to do this and they are
12 supposed to do that. He doesn't holler at them
13 or scold them, it's always up to me to do the
14 punishing.

15 THE COURT: How often has your husband
16 attempted to talk to you about the case?

17 MS SCHMIDT: Well, twice for sure. As
18 long as this has been going on, maybe twice.

19 THE COURT: Over the five weeks.

20 MS SCHMIDT: Yes, sir.

21 THE COURT: Do you remember which -- about
22 when they were?

23 MS SCHMIDT: No, I couldn't tell you on
24 it.

25 THE COURT: Do you remember the most recent

1 one?

2 MS SCHMIDT: Just that Saturday, this
3 past Saturday.

4 THE COURT: This past Saturday?

5 MS SCHMIDT: Yeah.

6 THE COURT: And the other one would have
7 been about how long before that?

8 MS SCHMIDT: Probably when it just
9 started.

10 THE COURT: Nothing other than that?

11 MS SCHMIDT: No, sir.

12 THE COURT: All right. Thank you. You may
13 step outside.

14 *****

15 THE COURT: Just hold it for a second and
16 shut the door.

17 ATTORNEY BUTING: I think we need to hear
18 from the reporter next, we're kind of shooting in a
19 vacuum.

20 THE COURT: Do you have any questions for
21 this juror at this time?

22 ATTORNEY FALLON: On the thing as a result
23 of that family dynamic, do you think that's going to
24 have any problem for you?

25 COURT REPORTER: I'm sorry, you're going

1 to have to talk a little louder.

2 ATTORNEY FALLON: Okay. I'm sorry. The
3 only thought I had and I'm not saying you definitely
4 need to ask it, but the only question I had is, do
5 you think as a result of the family dynamics here
6 that you would still be able to fulfill your role or
7 duty as a juror in this case, or something to that
8 affect. But other than that, I don't really see
9 anything else.

10 THE COURT: I think I asked her something
11 like that earlier, but it's a good idea to ask her
12 again, now that we have heard everything. Let's
13 bring her back for that one question.

14 One more question.

15 MS SCHMIDT: All right.

16 THE COURT: Ms Schmidt, you will be
17 relieved to know I only have one more question. As
18 a result of whatever discussion you had with your
19 husband on those two occasions when he's tried to
20 talk to you about it; do you feel that anything he
21 said would affect your ability to be fair and just
22 base your decision on the evidence in this case?

23 MS SCHMIDT: No, sir.

24 THE COURT: Okay. Thank you.

25 MS SCHMIDT: This is it, this time,

1 right?

2 THE COURT: I promise, you are not coming
3 back.

4 *****

5 THE COURT: Nancy Stienmetz.

6 ATTORNEY STRANG: As a matter of demeanor
7 and watching her, listening to the answers, I don't
8 believe her. I don't think this is a candid juror.

9 *****

10 THE COURT: Good morning.

11 MS STIENMETZ: Good morning.

12 THE COURT: Have a seat. Ms Stienmetz,
13 we're bringing all of the jurors in this morning to
14 ask some questions, because of the length of the
15 trial and the amount of publicity that it's had,
16 just to make sure that all the jurors can be fair
17 and impartial.

18 You should know that, although there's a
19 reporter sitting behind you, they are prohibited
20 from identifying any juror by name. And I told
21 him also by sex. So any reporting as a result of
22 what happens here cannot in any way identify
23 anything that is said by any particular juror.

24 MS STIENMETZ: Okay.

25 THE COURT: The first thing I want to ask

1 is that the trial has gone on for five weeks now and
2 it's received a great deal of publicity, so we're
3 calling in each of the jurors in order to find out
4 whether any juror may have, through inadvertence or
5 anything else, been exposed to any information about
6 the case from the news media, another person, or any
7 other source, that you can remember? Have you been
8 exposed to any such information?

9 MS STIENMETZ: I have been exposed to --
10 I have not seen a thing on TV, absolutely nothing
11 media wise. I have just been exposed to some
12 chit chat that I have heard, but that's --

13 THE COURT: Chit chat from who?

14 MS STIENMETZ: Some of the other jurors.

15 THE COURT: Okay. Are you referring to the
16 information you provided the Court earlier?

17 MS STIENMETZ: Yeah.

18 THE COURT: Okay. And we have heard
19 something about that as well from one of the
20 participants. I'm going to ask you, if you will, at
21 this time, to tell me as best you can remember, the
22 circumstances and what happened.

23 MS STIENMETZ: For -- From the whole
24 perspective of what I have heard --

25 THE COURT: Yes.

1 MS STIENMETZ: -- since the beginning of
2 everything?

3 THE COURT: Yes. My understanding, it
4 involves two other jurors.

5 MS STIENMETZ: Correct. From what I had
6 heard. The first week, first couple of days
7 Auggie, he sits right next to me, made the
8 comment that when he got --

9 THE COURT: Sits next to you on the bus?

10 MS STIENMETZ: No, he sits next to me at
11 our long table in the room.

12 THE COURT: Oh, not in the courtroom,
13 though?

14 MS STIENMETZ: No.

15 THE COURT: Okay.

16 MS STIENMETZ: No, in that sitting room.

17 THE COURT: Okay.

18 MS STIENMETZ: So, you know, there's
19 always conversation, everyone is laughing and
20 having a pretty good time, generally speaking,
21 but the first week he made a couple comments that
22 when he would get home that his wife watches the
23 trial while he is in there and that she would
24 tell him what transpired when we would be sent
25 out of the courtroom.

1 And one of the other jurors went, shh,
2 shh, you are not supposed to be talking about
3 that. You are not supposed to do that, you know.
4 And then he was quiet. And then a couple of days
5 later, again, he started saying that. And he got
6 shooed by several people and -- Oh, man, I don't
7 like having to do this. And, um, then that was
8 like the first week. Then you had said that you
9 were going to be giving a CD to keep everyone's
10 temptation.

11 THE COURT: Mm-hmm.

12 MS STIENMETZ: So, I think that was like
13 on a Friday and about a few days after that,
14 beginning of the next week, it was conversation
15 about how nice it was and that, you know, no one
16 should be tempted now and whatever. And then
17 there was conversation, just everybody generally
18 here and there popping in something. And they
19 were saying how you could -- you were not
20 supposed to -- because you were doing this, were
21 not supposed to be watching TV, reading
22 newspapers, the computer and stuff like that.
23 And then computer talk started and Auggie, he
24 tends to want to, I know we're not supposed to
25 talk about it but, and he wants to try to start a

1 conversation and he gets shooed.

2 But then when we were on the computer
3 stuff, saying well, you can pull stuff up. And I
4 had said, I think what started that was I had
5 said, well, I had a girlfriend who said that we
6 were all in the computer with our occupations,
7 our family, and I was kind of worried about it
8 because I didn't want anybody to know who I was.
9 I think that's how the computer started.

10 And then Auggie, he was saying, well,
11 how can you erase something on the computer, to
12 have it off of the C drive, I believe. And they
13 were telling him, but then they said, well, once
14 you delete it, it's still in the memory, etched
15 in the computer and anyone can still pull that
16 information out if they want to.

17 It was just speculation on my part. It
18 just was all very coincidental. And he got like
19 whiter than a ghost and didn't say a word the
20 rest of the day. So that was just
21 circumstantial, but I mean it was -- it put a
22 flag in my mind and I'm thinking, well, should I
23 say something, not, no. So I didn't, thinking
24 that was the end of it. Then, I guess what made
25 me think, well, I better say something was then

1 Wednesday on the bus, him and Barb were sitting
2 together and Barb is very quiet.

3 THE COURT: Mm-hmm.

4 MS STIENMETZ: And she was talking about
5 all her things going on at home on the farm and
6 stuff. And I heard Auggie mention, again, about
7 his wife watching it and wanting to tell him what
8 happens.

9 And Barb said that her husband watches
10 it, too, during the day, but he tries to pressure
11 her, influence her with his opinions. She
12 wouldn't mind if he -- She doesn't mind him
13 watching it, but he pressures her with his
14 opinions.

15 And then they were talking -- I don't
16 know, I heard bits and pieces about when news
17 flashes pop up on the screen with film flashes,
18 Auggie was saying that it's hard to get up and
19 leave. I don't know if he said he does or
20 doesn't, but that when they pop up, because they
21 pop up frequently, it's difficult.

22 And that's when I heard Barb,
23 specifically say, that she sees when the ticker
24 tape goes across the bottom of the screen, even
25 though there is a program on, that she does read

1 that ticker tape, that she doesn't leave the
2 room. And that's when I sat on it for a couple
3 days and I thought, well, I better say something.

4 THE COURT: Sure. Let me ask you just a
5 few follow-up questions. First of all, that
6 represents the extent of exposure you have had,
7 right?

8 MS STIENMETZ: Yes.

9 THE COURT: As I understand what you are
10 saying --

11 MS STIENMETZ: Yeah.

12 THE COURT: -- from what you reported that
13 Auggie said, did you get the impression that besides
14 his wife watching what happens when the jurors leave
15 the room, that -- that she's passing that
16 information on to him?

17 MS STIENMETZ: Yeah.

18 THE COURT: Do you have any reason to
19 believe anybody else on the jury is getting that
20 information?

21 MS STIENMETZ: From someone else?

22 THE COURT: Well, but if Auggie passing on
23 what he knows to anybody else.

24 MS STIENMETZ: I don't think so, I mean
25 Auggie, he -- he didn't say, oh, this is what

1 happened and this is what happened, but he just
2 said my wife tells me --

3 THE COURT: Okay.

4 MS STIENMETZ -- when I had come home. A
5 few times I have heard him say that.

6 THE COURT: Did he say if he makes any
7 effort to stop her?

8 MS STIENMETZ: I did not hear that.

9 THE COURT: And with Barb, did you learn
10 anything about what her husband's opinions are?

11 MS STIENMETZ: No.

12 THE COURT: So you don't know what they
13 are?

14 MS STIENMETZ: No. All I heard was, she
15 said that her husband watches the court
16 proceedings on TV, too, while she's in -- in here
17 and that she doesn't mind except that he
18 pressures her with his opinions about what goes
19 on in the courtroom.

20 THE COURT: When she -- When you heard her
21 say, pressures her with his opinions --

22 MS STIENMETZ: Mm-hmm.

23 THE COURT: -- were you sure that it was
24 pressures her with his opinions about this case, as
25 opposed to pressures her with his opinions about

1 other things.

2 MS STIENMETZ: I got the impression it
3 was with the case, because that's what they were
4 talking about.

5 THE COURT: Okay. But she didn't say what
6 those opinions were?

7 MS STIENMETZ: No, no, they did not. I
8 have not heard any of them say what someone had
9 told them, other than that they had been told.

10 THE COURT: Okay.

11 MS STIENMETZ: Influenced, or whatever,
12 I don't know. So, I'm sorry this has turned into
13 a mess.

14 THE COURT: No reason to be sorry for being
15 conscientious.

16 MS STIENMETZ: It's probably nothing,
17 but if it is something and if I didn't say
18 anything, it would be very difficult.

19 THE COURT: Believe me, everybody has to
20 live with themselves and it's good to be
21 conscientious.

22 MS STIENMETZ: So.

23 THE COURT: All right. I think that's all
24 I have for you. I'm going to let the sheriff take
25 you back.

1 MS STIENMETZ: Give me a minute to -- I
2 blush very easily.

3 THE COURT: Ms Stienmetz.

4 MS STIENMETZ: Yes.

5 THE COURT: When you leave with the
6 sheriff, you can tell them, if you want to sit down
7 outside for a little while, you can go in my office
8 if you want.

9 MS STIENMETZ: They have already made a
10 comment that Barb was out so long and I'm out as
11 long as she. And I don't want them to get any
12 ideas.

13 THE COURT: At any rate, you take whatever
14 time you need and we'll have the sheriff take you
15 back.

16 MS STIENMETZ: Okay.

17 THE COURT: Thank you.

18 *****

19 THE COURT: Let's try 16, Laura Barber.

20 ATTORNEY BUTING: We may want to ask this
21 next juror a little more pointed questions about,
22 you know, how you police yourselves. If she says
23 that nobody is talking about it, does it come up at
24 all, you know, what do you say, or how far does it
25 get, or sounds like something that's happened more

1 than once.

2 ATTORNEY KRATZ: Might want to keep her a
3 longer time.

4 ATTORNEY BUTING: Right. I knew they were
5 going to wonder because Barb was back here longer.

6 ATTORNEY GAHN: I was wondering that too.

7 THE COURT: Good morning, again.

8 MS BARBER: Good morning.

9 THE COURT: As I indicated on the record,
10 because of the fact that the trial has gone on for a
11 number of weeks and because it's gotten a lot of
12 publicity and, now, as we're getting toward the end
13 of the trial, we're taking time to make sure that
14 none of the jurors has been exposed to anything they
15 shouldn't be. So, my first question for you would
16 be, can you think of any information from the news
17 media, or any persons who said or tried to say
18 anything to you, has anything about the case been
19 presented to you.

20 MS BARBER: Not at all. Not at all. In
21 fact, if I can just speak, my family, once they
22 knew I was going to be on this jury, as soon as
23 anything comes on, you know, they mute it.

24 It's --

25 THE COURT: Okay.

1 MS BARBER: And I, then, avoid all
2 visual contact with the television. When it's
3 over, they will say it's over and put it back on.
4 People I work with, even, avoid saying. They
5 will come up and say glad to see you're still
6 working here. I work one day a week, you know,
7 and that's the extent, they don't care anything
8 else. And I appreciate that. I haven't picked
9 up a newspaper, I don't even go through the sale
10 papers on Sunday any more.

11 THE COURT: Okay.

12 MS BARBER: Just in case.

13 THE COURT: That's good to know. Next, I'm
14 wondering, and we're asking all the jurors about
15 this, have you heard any discussion about the case
16 during the course of the trial from any of the other
17 jurors?

18 MS BARBER: No, we make it specific that
19 we do not talk about the case. We may talk about
20 some of the people --

21 THE COURT: Okay.

22 MS BARBER: But that's -- usually it's
23 in a humorous -- in fact, I have never been with
24 a group, this long, this close, that everyone
25 gets along so well.

1 THE COURT: Okay.

2 MS BARBER: It's sometimes rather
3 humorous.

4 THE COURT: Sure.

5 MS BARBER: And I appreciate that,
6 because the time goes a lot nicer.

7 THE COURT: Okay. Have any members of the
8 jury had to kind of hush up any other ones before
9 they started talking about the case or --

10 MS BARBER: Someone might have started
11 to say something and it's like, whoa, hold it,
12 that's it, and it's quiet.

13 THE COURT: Okay. So there's pretty good
14 policing?

15 MS BARBER: Very much, very much.
16 Everybody keeps track of everybody else. Unless
17 they are talking to themselves in the bathroom, but
18 to me that's --

19 THE COURT: And you haven't heard --

20 MS BARBER: I'm sorry.

21 THE COURT: And you haven't heard anything
22 come from any of the jurors in this case?

23 MS BARBER: No. Not at all.

24 THE COURT: All right. Thank you.

25 MS BARBER: Oh, darn, I was kind of

1 enjoying this.

2 THE COURT: Well, it's a break from the
3 norm.

4 MS BARBER: Definitely, actually, we
5 were just discussing, we missed our morning
6 break, is it okay if we have one.

7 THE COURT: It's going to be running
8 altogether.

9 MS BARBER: I'm telling you, that's why
10 it's such an enjoyable group. Because this is
11 one of the things, we're worried about our break.

12 THE COURT: Well, that is good.

13 MS BARBER: Thanks.

14 *****

15 THE COURT: Let's try Marion Flint.

16 ATTORNEY FALLON: We don't talk about the
17 trial, but we talk about the people.

18 THE COURT: Talking to themselves in the
19 bathroom. I didn't know that any of you guys wanted
20 me to pursue that. I didn't know if they meant
21 other jurors or the participants in the trial.
22 Marion Flint is the next one.

23 Good morning, have a seat.

24 MS FLINT: Good morning. Okay.

25 THE COURT: We saved you the only chair

1 that's left. This is, as I explained on the record,
2 because of the fact the trial has gone on for a
3 number of weeks, it's gotten a lot of publicity.
4 We're near -- getting near the final stages of the
5 trial. And because of the length of the trial and
6 the publicity, we're taking this opportunity to talk
7 to each of the jurors, just to make sure that the
8 jurors haven't heard anything inadvertently or
9 otherwise, that could impact their ability to serve.

10 So, my first question is, are you aware
11 of any information that you have been exposed to,
12 by accident or otherwise, on the news or from
13 other persons, or any other member of the jury,
14 anything about the case?

15 MS FLINT: No.

16 THE COURT: You have been able to --

17 MS FLINT: I live alone.

18 THE COURT: Okay.

19 MS FLINT: And so I can monitor myself.

20 THE COURT: Sounds like you are doing a
21 good job. Next question is, I know the jurors have
22 been together a lot about this case, are you aware
23 of any instances that came to your attention in
24 which any of the jurors, other jurors, said anything
25 about the case?

1 MS FLINT: None, they have been really
2 good.

3 THE COURT: Okay. All right. Well, that's
4 good to hear. I think that's all I have got for
5 you.

6 MS FLINT: Okay. Thank you.

7 *****

8 THE COURT: Mr. Schuette. Good morning.

9 MR. SCHUETTE: Good morning.

10 THE COURT: We're, as I indicated on the
11 record, in recognition of the fact that the trial
12 has gone on for five weeks now and it's been the
13 subject of a good deal of publicity, and now that
14 we're starting to get near the end of the trial, we
15 wanted to make sure that -- that all the jurors
16 haven't been exposed -- or that none of the jurors
17 have been exposed to any information through
18 inadvertence, or otherwise, about the trial, because
19 of the importance to both parties to get a
20 absolutely fair trial.

21 And we're especially doing it because we
22 understand, even if the parties try to avoid
23 information, it's not always easy to do that.
24 So, in that light, I would like to ask you a
25 couple questions. First of all, whether or not

1 you have been exposed directly to any media
2 reporting about the case during the course of the
3 trial?

4 MR. SCHUETTE: No, I have not.

5 THE COURT: The next question I have
6 relates to information gained from other parties, or
7 other persons, whether there's been any personal
8 acquaintances, other jurors or, I know in special
9 cases, members of the person's family, whether any
10 such information, or any persons have attempted to
11 talk to you about the case in any way?

12 MR. SCHUETTE: No, nobody has. No there
13 have not.

14 THE COURT: Have there been any other
15 conversations with -- involving other members of the
16 jury about the case?

17 MS SCHUETTE: None at all, no.

18 THE COURT: Okay. There -- In cases with
19 people that have spouses, especially, we're asking
20 the question, do you have a spouse at home?

21 MS SCHUETTE: Yes, I do.

22 THE COURT: Has there been any discussion
23 whatsoever between you and your wife about the case;
24 is she following the case in any way?

25 MS SCHUETTE: She's limitedly following

1 it. We have had no discussion that would be
2 involved. I think the only thing about the whole
3 procedure, is what we have for lunch.

4 THE COURT: Okay.

5 MR. SCHUETTE: So there hasn't been
6 anything as far as any details, as far as the
7 trial itself.

8 THE COURT: Okay. Has she been following
9 the trial in any sense at home, on the internet?

10 MR. SCHUETTE: Well, somewhat, I think a
11 little bit in the newspapers. Not on the
12 internet, she doesn't know how to get on the
13 internet. Limitedly on the radio. I don't think
14 the radio, just limitedly.

15 THE COURT: And you said she hasn't talked
16 to you about the facts of the case; has she said
17 anything to you about the case during the course of
18 the trial?

19 MS SCHUETTE: No, not that I can
20 remember. I pretty much told her let's not talk
21 about it. She may well talk about it to some of
22 her family members, but she doesn't relay that to
23 me.

24 THE COURT: Are you aware of any
25 discussions that have been had between any members

1 of the jury about the case during the course of the
2 trial.

3 MS SCHUETTE: Not at all, no. I think
4 the jury, in my observation, I think they have
5 been very observant of your request not to talk
6 about anything.

7 THE COURT: Have any of the jurors had to
8 be told to stop talking about the case by any other
9 jurors?

10 MR. SCHUETTE: Not that I can recall.

11 THE COURT: Okay. Has anybody given -- any
12 person given any information to you about what was
13 happening during the trial while the jurors were
14 outside of the courtroom?

15 MR SCHUETTE: No.

16 THE COURT: Thank you. I think that's all
17 I have. The sheriff will take you back.

18 MR. SCHUETTE: Thank you.

19 *****

20 THE COURT: And Ms Thorne will be next.
21 Good morning.

22 MS THORNE: Good morning.

23 THE COURT: By luck of the draw, you are
24 the last person.

25 MS THORNE: Yeah, I get to wait the

1 longest and sit and wonder.

2 THE COURT: We, as I indicated on the
3 record, this trial is different than most in a
4 number of ways and one of the reasons is it's gone
5 on for five weeks now.

6 MS THORNE: Mm-hmm.

7 THE COURT: It's been the subject of a good
8 deal of publicity. And as we now get near the end
9 of the trial, because of the length of it and the
10 publicity, we're interviewing each of the jurors to
11 make sure that they haven't been exposed, through
12 inadvertence, no fault of their own, or any other
13 reason, deliberate or not, to any information about
14 the case.

15 MS THORNE: Okay.

16 THE COURT: So the first question I have
17 for you, is whether, during the course of the trial,
18 through the news media, family members, employers,
19 members of the public, anyone, have you received any
20 information about the case during the trial?

21 MS THORNE: No.

22 THE COURT: Okay. I'm trying to remember,
23 where are you employed, again?

24 MS THORNE: Waitress, but I'm off the
25 schedule until I go back.

1 THE COURT: Oh. So you have been off --
2 off the --

3 MS THORNE: Right.

4 THE COURT: -- schedule?

5 MS THORNE: Mm-hmm, ever since it
6 started.

7 THE COURT: Do you remember the last time
8 you worked there?

9 MS THORNE: The Sunday right before we
10 started.

11 THE COURT: Before the trial started?

12 MS THORNE: Uh-huh. Yeah.

13 THE COURT: So it was after the jury
14 selection, but before the trial started.

15 MS THORNE: Right. Right.

16 THE COURT: And you haven't worked since
17 then?

18 MS THORNE: No.

19 THE COURT: Okay. Has anyone -- Do any
20 family members or anyone live with you at home?

21 MS THORNE: My fiance.

22 THE COURT: Has he attempted to talk to you
23 about the case?

24 MS THORNE: No, huh-uh.

25 THE COURT: Have any fellow employees,

1 members of the public, anyone else, talked about it?

2 MS THORNE: No.

3 THE COURT: And are you aware as to whether
4 or not there's been any discussion by any of the
5 other jurors about the case?

6 MS THORNE: No, huh-uh.

7 THE COURT: No one has tried to talk to
8 you?

9 MS THORNE: No.

10 THE COURT: And you haven't heard anyone
11 else?

12 MS THORNE: No.

13 THE COURT: Okay. All right. I think
14 that's all I have.

15 MS THORNE: Okay.

16 THE COURT: You can step outside with the
17 sheriff.

18 MS THORNE: All that wondering for
19 nothing, huh.

20 THE COURT: We were trying to get you some
21 exercise this morning.

22 MS THORNE: Okay.

23 *****

24 THE COURT: All right. Counsel, what I'm
25 going to do at this time is adjourn for a break. I

1 will give you a chance to look at your notes and
2 digest things. And I have 11:22 right now, about 20
3 minutes to 12 report to chambers.

4 ATTORNEY KRATZ: This isn't something we'll
5 do on the record?

6 THE COURT: We'll determine --

7 ATTORNEY KRATZ: Oh, I see what you are
8 saying.

9 THE COURT: -- what's the next step after
10 that.

11 ATTORNEY KRATZ: Okay.

12 (Jury not present.)

13 THE COURT: At this time we are back on the
14 record, outside the presence of the jurors. All
15 counsel and the defendant are present. Mr. Strang,
16 does the defense have any additional evidence it
17 wishes to present?

18 ATTORNEY STRANG: We do not, your Honor.
19 We intend to rest, formally, before the jury next
20 joins us in the courtroom.

21 THE COURT: Very well, before we bring the
22 jurors in the courtroom to inform them of that fact,
23 the defendant in this case has a right to testify if
24 he wishes. And the Court wants to make sure that if
25 he is declining to exercise that right, that it is

1 done so knowingly and voluntarily. Mr. Strang, have
2 you raised this issue with your client?

3 ATTORNEY STRANG: I have raised it with
4 Mr. Avery; that is, Mr. Buting and I both have,
5 jointly, several times, probably beginning before
6 trial and then during the trial.

7 THE COURT: Thank you. You can move the
8 microphone over to Mr. Avery then.

9 Mr. Avery, do you understand that you
10 have a constitutional right to testify in this
11 case, if you wish?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: And do you further understand
14 that you have a constitutional right not to testify,
15 if you wish?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Do you understand that the
18 decision whether to testify or not is yours to make?

19 THE DEFENDANT: Yes.

20 THE COURT: That means, you can listen to
21 your attorneys and listen to their advice, but,
22 ultimately, it's your call; do you understand that?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: Has anyone made any threats or
25 promises to you to influence your decision?

1 THE DEFENDANT: No, they didn't.

2 THE COURT: Have you thoroughly discussed
3 your decision with your attorneys?

4 THE DEFENDANT: Yes, I did.

5 THE COURT: And have you made a decision as
6 to whether or not you wish to testify in this case?

7 THE DEFENDANT: Yes.

8 THE COURT: What is your decision?

9 THE DEFENDANT: My decision is, I'm an
10 innocent man and there's no reason for me to
11 testify. Everybody knows I'm innocent.

12 THE COURT: Okay. So you wish not to
13 testify; is that correct?

14 THE DEFENDANT: Yes.

15 THE COURT: Thank you. You may be seated.

16 THE DEFENDANT: Thank you.

17 THE COURT: Mr. Strang and Mr. Buting, have
18 each of you had sufficient opportunity to thoroughly
19 discuss this case and the decision whether or not to
20 testify with your client?

21 ATTORNEY BUTING: Yes, we both have.

22 THE COURT: And are each of you satisfied
23 that he's making his decision not to testify
24 knowingly, intelligently and voluntarily?

25 ATTORNEY BUTING: Yes.

1 THE COURT: Very well, the Court finds that
2 Mr. Avery's decision not to testify in this case is
3 knowingly and voluntarily made. I'm satisfied he's
4 aware of his constitutional right to testify, if he
5 wishes. And he is knowingly and voluntarily
6 declining the right to exercise the right to
7 testify. Is there anything else that either party
8 wishes to address before we bring the jurors in?

9 ATTORNEY STRANG: There is, from the
10 defense, your Honor. I cannot remember when, but
11 sometime earlier in this trial, we discussed the
12 issue of one of our juror's participation on an
13 earlier civil jury in which the witness here was a
14 party. I will not name the juror, but the juror is
15 known to the Court and to opposing counsel.

16 We argued at the time, that although
17 this was uncharted territory, as a matter of case
18 law, that the juror having once passed on the
19 credibility of a witness here, and that witness'
20 role as a party in a prior civil lawsuit, we
21 thought would leave a strong enough impression on
22 a juror and enough commitment to conclusions
23 about credibility that there would be at least
24 objective bias, if not also subjective bias, and
25 reason to relieve the juror from further

1 responsibilities. The Court disagreed.

2 We went back to the case file in the
3 earlier civil case and had our defense
4 investigator look at that file in the Manitowoc
5 County Circuit Court. And it appears from our
6 investigator's review that the real crux of the
7 dispute that was to be resolved by that earlier
8 civil jury was whether the man who was a witness
9 here and the plaintiff in that earlier case was
10 malingering or not.

11 So his credibility, as we understand
12 that earlier file, was not only in issue, but
13 probably the main fighting issue, the main point
14 of dispute in the earlier case. Clearly, given
15 the jury's award of something better than
16 \$170,000, to the plaintiff, that credibility
17 contest was resolved in favor of the plaintiff
18 there, witness here.

19 What we would like, and ask the Court to
20 do, is to transfer the whole of the file from the
21 earlier case to your Honor's custody now, so that
22 your honor might review both the Clerk's minutes
23 and such trial transcripts as there are. The
24 parties also should have an opportunity to review
25 those.

1 I have no reason to think that opposing
2 counsel have seen the file and I know that
3 neither Mr. Buting or I, personally, had seen the
4 file. We simply delegated this to an
5 investigator to take a first pass through that
6 earlier file.

7 So I request that the Court bring the
8 file, physically, to Chilton, from Manitowoc,
9 review the file itself, allow the parties an
10 opportunity to do that. And we anticipate
11 renewing our motion to relieve this juror from
12 further responsibilities in this case,
13 acknowledging, as we have from the beginning,
14 that the juror did the right thing by raising the
15 issue at all, with the Court.

16 So this isn't a juror misconduct issue,
17 claim, not even remotely. We think it's an
18 interesting, as far as we know, unprecedented
19 factual situation that arises, that we believe
20 does require that the juror be relieved. So
21 that's the request I'm making today and the one
22 I'm forecasting later.

23 THE COURT: Let me ask one question before
24 I ask the State if they wish to comment, just to
25 enable me to prepare to reevaluate your request. Is

1 it the defense position that even if this juror is
2 not subjectively biased, that by virtue of the
3 juror's participation in this prior trial, that the
4 juror is objectively biased?

5 ATTORNEY STRANG: Yes, in a word. And I
6 won't labor again to the argument I made earlier,
7 but I spoke to the Court, at the time, about the
8 unique function of being a judge of facts. And the
9 stylized way in which judges of facts, namely
10 jurors, assess the credibility of witnesses and that
11 it's very different than the way we assess
12 credibility day-to-day, or in the grocery store, or
13 barbershop, or wherever we may have conversation
14 with people.

15 And having -- having undertaken that
16 very special and stylized credibility assessment,
17 I think it's unlikely that a juror would
18 reconsider the credibility assessment, once
19 arrived at, as a matter of judgment, as a judge
20 of the facts. And that, objectively, this looks
21 like someone who comes in with an opinion on the
22 credibility of a witness, that has been cast by a
23 very special prior intense experience, with a
24 heavy responsibility for weighing credibility in
25 that earlier role, and now being asked to do so

1 again under the same pattern instruction and with
2 the same special and stylized considerations that
3 apply, in a trial, to the judges of the facts,
4 who fill out the array of 12 people in a jury
5 box.

6 We don't think, reasonably, she could be
7 expected, entirely, to set aside that prior, not
8 just experience with the witness, but conclusions
9 about credibility that she endorsed and drew
10 after deliberations with -- with a group of 12 in
11 that case and affirmed with her verdict.

12 THE COURT: All right. I take it at this
13 point the defense is not asking to argue the merits
14 of its request, but rather simply asking the Court
15 to have the file transmitted here tomorrow.

16 ATTORNEY STRANG: Well, that is correct. I
17 argued the merits earlier. I anticipate I will
18 argue the merits again, but for today, if we can get
19 the file and all counsel can have whatever
20 opportunity they wish to avail themselves of to look
21 at the file, will be in a better position to discuss
22 the issue on the merits tomorrow, or at the Court's
23 convenience.

24 THE COURT: Anything from the State?

25 ATTORNEY FALLON: I would simply say that

1 we don't oppose that suggestion and would certainly
2 like the Court to examine the file at its leisure.
3 I will no doubt be heard tomorrow regarding any
4 renewed motion for the recusal of the juror. I will
5 save my argument until then.

6 THE COURT: Very well, the Court will make
7 sure the file is here tomorrow. I don't know how
8 much leisure time I will have to review it, but I
9 will make sure that it does get reviewed.

10 Anything else before we bring the jurors
11 back in? All right. You may bring the jury in
12 at this time.

13 (Jury present.)

14 THE COURT: You may be seated. Mr. Strang,
15 at this time the defense may call its next witness.

16 ATTORNEY STRANG: Your Honor, Mr. Buting
17 and I jointly have elected to rest at this time on
18 behalf of Steven Avery.

19 THE COURT: Thank you. Mr. Kratz, does the
20 State have any witnesses or testimony to offer in
21 rebuttal?

22 ATTORNEY KRATZ: We do not, your Honor.

23 THE COURT: All right. Members of the
24 jury, that concludes the evidence portion of this
25 trial. I have a couple of notices to read to you.

1 I can tell you that the parties informed
2 me earlier today that they expected the evidence
3 to end some time early this afternoon. They have
4 also requested that they have tomorrow to prepare
5 closing arguments and address some other matters
6 that must be addressed before we have jury
7 instructions and closing arguments of the parties
8 and I have granted that request.

9 So I'm going to, at this time, excuse
10 you for the rest of the day and also notify you
11 that you won't have to report to court tomorrow.
12 You should report at the normal time on Wednesday
13 morning. And when you get here we will then
14 proceed with final jury instructions and also
15 closing arguments of the parties.

16 I do have a few notices to read to you
17 before I excuse you for the day. As you know,
18 the Court's decision not to sequester the jury
19 during the trial is dependent on the jurors not
20 listening to, watching, or reading any news
21 accounts of the case, nor discussing it with
22 anyone including members of your family or other
23 jurors.

24 For these reasons it is vital that you
25 do not listen to any conversation about the case,

1 do not read any newspaper or internet reports, or
2 listen to any news reports on the radio or
3 television about this trial.

4 To assure that you are not exposed to
5 improper media coverage, the Court has ordered
6 that, for the duration of the trial, that you do
7 not watch the local news on television, nor
8 listen to the news on radio, nor read any
9 newspaper accounts, unless you first have someone
10 remove any articles about this case from the
11 newspaper.

12 In addition, do not visit any internet
13 websites or web logs which may include any
14 information about the case. I should add at this
15 point that although the evidence portion of the
16 trial is complete, the Court's order remains in
17 affect. It is especially important at this time
18 that you not be exposed to any information about
19 the case.

20 The Court is asking that for those of
21 you who are employed, that you not report to work
22 tomorrow. I will make sure that you get paid a
23 full day's jury pay, even though we're not asking
24 you to be here tomorrow because of the request
25 that I'm making.

1 Make sure that you do not disclose your
2 status as a juror to anyone, if anyone attempts
3 to discuss the case with you, politely but firmly
4 notify them that you are prohibited from
5 discussing the case. If you are involuntarily
6 exposed to any information about the case from
7 any source, take steps to immediately avoid any
8 further exposure.

9 Should you be exposed to any reports or
10 communications from any source concerning the
11 case during the trial, or should you become aware
12 of anything that you believe may affect your
13 ability to serve as a juror, you should not
14 discuss your concerns with any jurors, but report
15 any concerns to the jury bailiff.

16 I also have a -- prepared a memo, which
17 the jury bailiff will give to you before you
18 leave today. There is a copy for each of you.
19 As I think the parties disclosed during the jury
20 selection process, it's difficult to predict --
21 difficult to predict how long jury deliberations
22 may take, as disclosed in the memo, the Court is
23 requesting that you pack some luggage, overnight
24 belongings, in the event deliberations go on for
25 more than a day and it's required that you stay

1 over.

2 If deliberations do go on more than a
3 day, we'll put you up at a hotel, make sure you
4 get all your meals taken care of and everything
5 else. There is further information in the memo
6 that you will be receiving. With that I'm going
7 to excuse you for today.

8 (Jury not present.)

9 THE COURT: You may be seated. Counsel, is
10 there anything further either party wishes to put on
11 the record at this time?

12 ATTORNEY STRANG: The defense moves now, at
13 the close of all evidence, for a judgment
14 dismissing, with prejudice, the remaining three
15 counts of the second Amended Information. I ask the
16 Court, without further argument, to consider all of
17 the evidence now received and to conclude that, even
18 in the light most favorable to the State and drawing
19 all reasonable inferences in the State's favor, the
20 evidence is insufficient, as to each one of the
21 three counts, to justify a reasonable jury
22 concluding that the State has proven all essential
23 elements as to each of those counts.

24 And I acknowledge, again, that as to one
25 of the counts, Count 3, the felon in possession

1 of a firearm count, we did stipulate to one
2 element, so as to that element, the status as a
3 convicted felon on the relevant date, there the
4 evidence is sufficient because stipulated. But
5 as to the other charges and their essential
6 elements, I ask for judgment of dismissal for
7 want of sufficient evidence.

8 THE COURT: Anything from the State?

9 ATTORNEY KRATZ: Just that the actual legal
10 standard the Court is supposed to apply at this
11 stage, not in the light most favorable to the State,
12 but could a reasonable juror find guilt, beyond a
13 reasonable doubt. We do believe that that slightly
14 higher standard has also been met regarding the
15 three remaining counts. Would ask the Court,
16 without further argument, deny that motion.

17 THE COURT: For many of the reasons which
18 the Court gave this morning, the Court believes that
19 it has already had adequate opportunity to address
20 this motion and the Court is going to deny the
21 motion to dismiss the remaining three counts against
22 the defendant at this time. Anything else before we
23 adjourn this afternoon?

24 ATTORNEY STRANG: Yes. Mr. Buting was
25 concerned that I was unclear, and I often am, as to

1 the felon in possession count. I meant to concede
2 only that one of the essential elements of that
3 count is established, not concede that any of the
4 other essential elements of that count are
5 established. And second --

6 THE COURT: That's how I understood your
7 argument.

8 ATTORNEY STRANG: Well, then, the Court's
9 become accustomed, perhaps, unfortunately, to my
10 clumsy way of speaking. I also had, before this
11 trial started, I think on February 2, suggested that
12 a mistrial may be warranted, if, in fact, the State
13 sought to proceed on the false imprisonment count
14 and then fell short in its case-in-chief. That's
15 what happened. I am not at the moment moving for a
16 mistrial, because I want to think long and hard
17 about whether necessity for that really is manifest.
18 And there's nothing happening with the jury now so,
19 sequentially, if I wish to make that argument, I
20 know that I could do it tomorrow, out of the jury's
21 presence. So I'm not making that motion now, but I
22 want to alert the Court and counsel that the matter
23 is fresh in my mind and under consideration.

24 THE COURT: Very well. If there's nothing
25 further, we're adjourned for this afternoon.

1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 11th day of January, 2008.

Diane Tesheneck, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 22

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** MARCH 13, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 STEVEN A. AVERY
Defendant
20 Appeared in person.

21 *****

22 **TRANSCRIPT OF PROCEEDINGS**

23 Reported by Diane Tesheneck, RPR

24 Official Court Reporter

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(Jury not present.)

(Jury instruction conference.)

At this time the Court calls State of Wisconsin vs. Steven Avery, Case No. 05 CF 381. We are here this afternoon to conduct the jury instruction conference and address a few other matters that still require the Court's attention. We're obviously not in the presence of the jury at this time. Will the parties state their appearances for the record, please.

ATTORNEY FALLON: Good afternoon, your Honor. May it please the Court. The State appears by Assistant Attorney General Tom Fallon, District Attorney Ken Kratz, and Assistant District Attorney Norm Gahn, as Special Prosecutors for Manitowoc County.

ATTORNEY STRANG: Good afternoon. Steven Avery is present in person. And Dean Strang appears on his behalf. I specifically want to note that the defense thinks it proper to have conducted a discussion in chambers, informally, about jury instructions before this. I participated in that willingly. I did not ask to have my client present. I do not think he was required to be present as a matter of the Sixth Amendment or the correlative

1 provisions of the Wisconsin Constitution. As far as
2 I'm concerned, it is not an issue.

3 THE COURT: All right. And as a follow-up
4 to that, I will indicate for the record that the --
5 counsel for both sides and the Court met in chambers
6 this morning to conduct an informal instruction
7 conference. Agreement was reached on some matters.
8 Some matters are still outstanding.

9 At this time the Court is conducting the
10 formal jury instruction conference. And along
11 those lines, Mr. Strang, I should ask, I don't
12 know if you had a chance to address the subject
13 of jury instructions with your client, but if you
14 would like to request some time to do that, I
15 will take a recess to permit you to do it.

16 ATTORNEY STRANG: I haven't done it. I
17 don't see a need to do it. If Mr. Avery has a
18 question, I think he knows he always can ask me.

19 THE COURT: All right. Why don't I do
20 this, I will stay here, but I will go off the record
21 for a couple minutes. I want to make sure you at
22 least have a chance to talk to him about it before
23 we proceed any further, because normally I do allow,
24 and it's true, often, that the defendant doesn't
25 choose to participate directly in the discussion

1 because it's legal concepts that perhaps aren't that
2 familiar with most defendants.

3 But I think it's important to at least
4 give the defense counsel a chance to speak with
5 the defendant. So we're going to go off the
6 record for a couple minutes.

7 (Brief recess.)

8 ATTORNEY STRANG: We have talked a little
9 bit. Mr. Avery, I think, understands why I didn't
10 suggestion he participate in the informal discussion
11 of jury instructions and he knows that we are going
12 to cover the same ground here this afternoon and
13 your Honor will make the final decisions on jury
14 instructions on the basis of what we do here in
15 court.

16 THE COURT: Very well, I will indicate at
17 this time that I distributed to each parties -- each
18 party a set of proposed jury instructions that, in
19 many cases, take into account matters on which the
20 parties indicated agreement earlier this morning.
21 Rather than read the instructions in their entirety,
22 I'm simply going to ask each counsel to acknowledge
23 on the record that they have received a copy of the
24 proposed jury instructions which, red lined is the
25 term typically used, but I have highlighted, in

1 shaded form, modifications which the Court has made
2 to the original draft of jury instructions, which
3 the Court gave to the parties. Mr. Strang, have you
4 received a copy of the latest update?

5 ATTORNEY STRANG: I have the March 13,
6 2007, red lined draft copy of jury instructions
7 which runs onto a 14th page, in my sight.

8 THE COURT: And, Mr. Fallon, have you
9 received them?

10 ATTORNEY FALLON: Yes, Judge, on behalf of
11 the State, we would acknowledge receipt of that very
12 same copy, did briefly examine it prior to going on
13 the record and it appears to conform to what our
14 preliminary discussions resulted in.

15 THE COURT: All right. And I should
16 indicate I inserted the shaded provisions in order
17 to draw attention to changes that have been made
18 from the earlier draft. Obviously, the final set of
19 jury instructions will not contain any red lining of
20 any form because a copy of the full set will be
21 given to each of the members of the jury. Let me
22 ask, at this point, on behalf of the State,
23 Mr. Fallon, are the jury instructions, as they have
24 been submitted, acceptable to the State?

25 ATTORNEY FALLON: Well, they are

1 acceptable, although, we did -- wanted to be heard
2 briefly, I think, on an argument relative to a
3 theory of defense. But in terms of the other
4 matters which are set forth in this second draft
5 of -- dated March 13th, we are in full accord.

6 THE COURT: All right. I will hear you
7 with anything you wish to say about the theory of
8 defense instruction that's found on page five of the
9 draft, at this time.

10 ATTORNEY FALLON: Thank you. In an effort
11 to succinctly get to the point, we do not believe
12 that the theory of defense instruction submitted by
13 the defense is one which is appropriate for
14 submission to the jury. We do so, not because we
15 think the defense is not entitled to such a theory
16 of defense instruction, but only in so far as the
17 theory of defense instruction submitted by the
18 defense, we do not believe is sufficiently and
19 solidly based in the evidence which was presented
20 during the course of the trial.

21 And as such, we do not believe that the
22 instruction should be given to the jury, that
23 there's not sufficient evidence in the record
24 from which a reasonable juror could come to the
25 conclusion that there has been some planting of

1 evidence, that there has been evidence of a
2 frame-up involving members of law enforcement
3 and, now, apparently some unknown other person,
4 or persons.

5 And as such, the evidence, we think, is
6 deficient and invites speculation and conjecture
7 on the part of the jurors. And we would ask that
8 the instruction not be given because we do not
9 believe it is based in the evidence presented.

10 THE COURT: Mr. Strang.

11 ATTORNEY STRANG: The Court's version of
12 the theory of defense instruction on page 5 has its
13 origins primarily in defense proposed Jury
14 Instruction No. 9, submitted on March 10. I think
15 for purposes of jury instructions, the theory of
16 defense instruction that we tendered as No. 9, meets
17 the three criteria for a Court in deciding whether
18 to instruct a jury on any point of law.

19 There is -- This is an accurate
20 statement of law and I don't hear the State to
21 contend otherwise. The matter is not otherwise
22 covered in the Court's proposed jury
23 instructions. Again, I don't hear the State to
24 contend otherwise.

25 And there is at least some evidence

1 which, if accepted by a jury, reasonably would
2 allow the inference and the conclusion that
3 Mr. Avery was not the person. If someone did, he
4 was not the person who killed Teresa Halbach, or
5 burned her body, and that others, instead, did
6 and took actions to make it appear that Mr. Avery
7 was guilty.

8 I'm don't -- I'm not going to go through
9 the entire trial, but I think the evidence more
10 than supports a reasonable jury in drawing that
11 conclusion from the evidence, if the jury wishes.
12 And that's why this is called a theory of defense
13 instruction and that's why there are also
14 theories of prosecution. A jury may or may not
15 choose to accept one side's theory or the other.

16 But there is an adequate evidentiary
17 basis for the instruction as submitted, No. 9.
18 It should be given. I agreed further to
19 modifications of No. 9, defense proposed No. 9.

20 The Court's modifications set out here
21 on page five of the red line draft of
22 instructions is acceptable to the defense. And
23 if the Court gives the theory of defense
24 instruction as now worded in this red line
25 instruction, I will accept the modification of

1 defense No. 9.

2 I also, again, on the express predicate
3 that the Court gives the theory of defense
4 instruction as set forth here, am prepared to
5 withdraw defense proposed Instruction No. 1 and
6 defense proposed Instruction No. 2. Those are
7 more specific refinements.

8 I recognize that I could not satisfy
9 this court or an appellate court that the general
10 theory of defense set forth here by the Court did
11 not otherwise cover the matters suggested in No.
12 1 and No. 2 as proposed by the defense. So I
13 would withdraw those, if the Court gives the
14 theory of defense instruction as set forth on
15 page five of today's draft.

16 THE COURT: Thank you. As I indicated to
17 counsel in chambers, the -- as a prerequisite to a
18 theory of defense instruction, there is a
19 requirement that there be evidence in the record to
20 support the giving of the instruction.

21 The case law suggests that the quantum
22 of evidence that is required in order to justify
23 the instruction is very low. There's a Seventh
24 Circuit Court of Appeals Case, *United States vs.*
25 *Bole*, B-o-l-e, Case No. 435 F 2d, 774, which I

1 believe uses the phrase, however tenuous, there
2 must be evidence to support the instruction. So
3 the quantum of evidence that the defendant must
4 demonstrate is not very high.

5 The Court believes and, again, I'm not
6 going to go over the evidence myself either, but
7 the defense has introduced circumstantial
8 evidence to support its theory of defense. The
9 defense is not required to meet the beyond a
10 reasonable doubt standard that the State must
11 meet in order to prove guilt. And the Court
12 concludes that there is sufficient evidence in
13 the record to justify the giving of a theory of
14 defense instruction. And it's my understanding
15 that if the decision is made to give such an
16 instruction, that the form on page five is
17 acceptable to both parties, recognizing the State
18 opposes the giving of the instruction in any
19 form.

20 Is that correct, Mr. Fallon?

21 ATTORNEY FALLON: That would be correct.

22 THE COURT: Okay. Does the State have any
23 other modifications to propose to the jury
24 instructions?

25 ATTORNEY FALLON: We do not.

1 THE COURT: Mr. Strang, before I ask you to
2 address your other requested instructions that are
3 still at issue, I did want to confirm that the
4 defense is requesting that the Court give
5 Instruction 315 relating to a defendant electing not
6 to testify. That's an instruction the Court is
7 directed to give if the defendant requests it.

8 ATTORNEY STRANG: I am requesting Pattern
9 Instruction 315, and as worded on page 12 of today's
10 red line draft, it is acceptable to the defense.

11 THE COURT: All right. The Court will
12 include 315, then. And it's also my understanding,
13 Mr. Strang, that although the defense has other
14 proposed instructions to offer, that there's not a
15 dispute about the instructions that are already in
16 the draft. Is that correct?

17 ATTORNEY STRANG: That's right. That's
18 right and wrong. I will be arguing that some
19 additional defense instructions should have been
20 included but, you know, subject to that argument,
21 the wording of the draft I have in front of me is
22 acceptable.

23 I will make an extemporaneous
24 suggestion, and suggestion only, that Pattern
25 Instruction 58, as modified, and that appears

1 near the bottom of page 8, might -- might be
2 better moved to either page 12 or page 13, either
3 right before or right after the 460, the closing
4 instruction, just as a matter of flow. But
5 that's -- that's a suggestion only. It also
6 could go right after 103 on page 1 or page 2. It
7 looks, to me, out of place where it is on page 8,
8 but that's, you know, a suggestion, at most.

9 THE COURT: All right. My logic in placing
10 it there, and keep in mind that it's actually part
11 of the opening instructions that the Court typically
12 gives, it's not always included in the closing
13 instructions. But since it relates to information
14 about the case that the jury might request to see, I
15 placed it right after 155, because 155 addresses a
16 somewhat similar issue as it relates to requesting
17 that exhibits be sent to the court -- or to the jury
18 room, and pointing out to the jurors that the
19 exhibit is received, whether it goes to the jury
20 room or not. But I don't have particularly strong
21 feelings about its placement. I don't know how the
22 State --

23 ATTORNEY STRANG: That's a pretty good
24 rationale and I'm going to accept placement wherever
25 the Court thinks it best. I just thought I would

1 offer the suggestion.

2 THE COURT: All right. I also think, with
3 respect to 315, which is the last instruction the
4 Court gives before the closing instruction, I think
5 its placement, as the last thing that the jury hears
6 before the closing, is deliberate, probably in
7 recognition of the importance of the defendant's
8 right not to testify. At least that's the way I
9 have always interpreted it. And I hate to take that
10 away from the defense, unless the defense feels
11 otherwise --

12 ATTORNEY STRANG: No, I'm in complete
13 agreement with the Court on that.

14 THE COURT: All right. We'll then move on
15 to the instructions that were requested by the
16 defense, that are still part of its request. And as
17 I understand it, No. 1 and 2 have been withdrawn, so
18 that takes us on to proposed Instruction No. 3,
19 relating to chain of custody.

20 ATTORNEY STRANG: Yes, your Honor, 1 and 2,
21 which are in the March 8, 2007, submission, are
22 withdrawn. No. 3 is not withdrawn, although, as I
23 suggested, informally, in chambers, I readily would
24 accept a substantial modification of this
25 instruction.

1 The nub of the legal point that I wish
2 communicated to the jury is that the Court's
3 decision to admit an exhibit, as opposed to admit
4 testimony of a witness, the Court's decision to
5 admit an exhibit says nothing about the weight
6 that the jury ought to give the exhibit, or any
7 other exhibit. And so the concept I want to
8 capture is the same one that the legislature
9 captured in Section 909.01 of the Wisconsin
10 Statutes.

11 It's the same concept that the
12 legislature drives at in Section 901.04 of the
13 Wisconsin Statutes which, you know, concerns
14 preliminary determinations of admissibility,
15 conditional admissibility; 901.03 may be another
16 Wisconsin Statute that goes to the concept that,
17 determining something admissible doesn't mean
18 that the exhibit is what the proponent claims
19 necessarily, just means that a jury so could
20 find, reasonably. And it doesn't mean anything
21 about the weight. The Court hasn't passed on the
22 weight of an exhibit by admitting an exhibit.

23 Why does it matter here? Well, we have
24 got 501 marked exhibits. Almost all of those
25 have been admitted. It's just a handful or two,

1 I don't know the precise number, but it's a small
2 number of the marked exhibits, that were not also
3 received by the Court. Much of the physical
4 evidence here is hotly disputed in terms of its
5 meaning, its importance, the weight that ought to
6 be given to it.

7 And, you know, I don't think the
8 instructions, otherwise, cover exhibits very
9 well. It is true that Pattern No. 148 refers to
10 other evidence, but there remains some ground
11 that can be covered and should be covered,
12 quickly and uncontroversially, within the scope of
13 defendant's proposed Instruction No. 3. So
14 that's my argument there.

15 I overlooked one point that I want to go
16 back to, if I may, while I'm thinking of it, in
17 the Court's red line instructions. And that is
18 at page 6. It's the last paragraph in the
19 instruction on elements of the crime of felon in
20 possession of a firearm.

21 Now, we have stipulated the truth of the
22 second element, so the State need not prove, did
23 not need to offer evidence to establish the
24 second essential element of the offense of felon
25 in possession of a firearm. It's established by

1 stipulation. I think -- and I can't cite a case,
2 because I can't call it to mind and I haven't had
3 time to look at it -- but I think there is
4 constitutional authority that, notwithstanding a
5 stipulated element, the Court still not -- may
6 not instruct a jury that it must accept an
7 essential element of an offense as conclusively
8 proved.

9 It is clear to me that the Court may
10 instruct a jury that it may accept the second
11 element in this offense as conclusively proved.
12 And, again, the element is not in dispute. But,
13 ultimately, this goes to the fundamental role of
14 the jury, as the finder of facts and the ultimate
15 arbiter of whether a person will be convicted of
16 a crime.

17 And I wish I had a case to cite or the
18 source of the authority. But I just -- I have
19 the sense that must accept a stipulation as an
20 element goes one half step too far. And I
21 just -- I wanted to alert the Court and counsel
22 to that potential constitutional infirmity in the
23 instruction, if I'm right.

24 The element remains stipulated. We're
25 not going to argue it. You know, we're not going

1 to argue to a jury that it's not proven. We're
2 not backing off the stipulation. A jury
3 certainly may and should accept that stipulation.
4 I just don't know that the jury must, as a matter
5 of the right to a jury trial.

6 THE COURT: Mr. Fallon.

7 ATTORNEY FALLON: Ordinarily, I would say
8 that counsel might have something that's worth our
9 concern here. But I think first and foremost, when
10 the issue is not in dispute, that, for all intents
11 and purposes, I think, moots out a concern regarding
12 the language choice between must and may, in terms
13 of accepting that particular element of fact.

14 Secondly, there is a common sense
15 perspective here, and that is, if the issue is
16 not in dispute, it's as if the element is not
17 there. It's not part of the crime, because it's
18 not a matter, in which case there's nothing for
19 the jury to consider on that particular point.
20 So, why create an issue with the language choice,
21 when there is no issue to be had. So I think,
22 from that common sense perspective, this is a
23 concern that we need not spend more time on than
24 it's duly noted.

25 And, by the way, and third, it is the

1 language that is the proffered choice of the Jury
2 Instruction Committee.

3 THE COURT: All right. I hesitate to speak
4 from memory about cases that I haven't read in
5 years, but I do recall that this matter came up
6 before, I think it was the **Villarreal** case or
7 **Villarreal**, however it was pronounced, where the
8 court required -- or the appeals court required that
9 a personal waiver be taken from the defendant, as
10 opposed to a stipulation by the parties, because it
11 involved an element of the offense.

12 The language that the Court is using is
13 from the form instruction and I believe it is
14 used deliberately and this is why I believe it is
15 used in that fashion. By stipulating to the
16 element, that is, the defendant personally
17 stipulating to the element, the State is
18 precluded from offering any evidence to the jury
19 as to the defendant's status as a felon.

20 If the Court gave a jury instruction
21 that said simply that the jury may accept the
22 fact that it's conclusively proved, that would
23 indicate that the jury has some discretion in the
24 matter. And if the jury had some discretion in
25 the matter, it would seem to be unfair not to

1 allow the State to introduce some evidence to try
2 to put any question the jury might have, out of
3 its mind.

4 So that the Court -- As I understand it,
5 that's the trade off. The benefit the defense
6 gets is that the State is prohibited from
7 introducing any evidence regarding the
8 defendant's status as a felon. But it would seem
9 to me that to reciprocate for that, the State
10 shouldn't be in a position where it might be
11 penalized by being prohibited, on the one hand,
12 from presenting evidence, and having permissive
13 rather than mandatory language used so that the
14 State -- that the jury could still find against
15 the State.

16 So I think the language of the Pattern
17 Instruction has been time tested and I think
18 there is a reason for it, so I'm going to leave
19 the pattern language as it is.

20 Mr. Strang, you may continue.

21 ATTORNEY STRANG: Thank you. Defense
22 proposed Instruction No. 4, I was persuaded to
23 withdraw --

24 THE COURT: Just a second. Actually, you
25 finished your argument on No. 3, but I don't know

1 that I heard back from the State. We kind of got
2 diverted by the other language.

3 ATTORNEY FALLON: Right.

4 THE COURT: So, Mr. Fallon, what's the
5 State's response to defense proposed Instruction 3?

6 ATTORNEY FALLON: Thank you. Our position,
7 in a nutshell, is that it's unnecessary. And it is
8 unnecessary because we think, if you take all of the
9 instructions in toto, it answers the questions,
10 concerns of the defense. Specifically, counsel
11 referred to Instruction 148. I would draw the
12 Court's attention to the remaining -- the last
13 couple of sentences in Instruction 148.

14 Again, you have Instruction 155, about
15 exhibits, you also have Instruction 300, about
16 credibility of witnesses. And while I may be
17 prepared to concede that I can conceive of a
18 situation in which an item of evidence, all by
19 itself, so physically significant and
20 conspicuous, such that this instruction may have
21 some -- requested instruction may have some merit
22 or some weight, the evidence in this particular
23 case, given the fact that this is a
24 circumstantial evidence case based on powerful
25 scientific evidence, that significance was all

1 presented in the context of testimony from the
2 witnesses.

3 And because of that, coupled with the
4 Instruction 148 on objections of counsel and
5 receipt of evidence over objection, the
6 definition of evidence, the definition of
7 exhibits and, finally, I think the instruction
8 that the Court gives, that you tell the jurors,
9 if I have given you any impression as to what I
10 think the results should be, or the significance
11 of the evidence, and I'm paraphrasing,
12 admittedly, then you should disregard it and
13 trust your own interpretation, your own memory
14 and come to your own conclusions in this case.

15 And I think when you we're looking at
16 something like this, you have to take the
17 instructions as a whole, and in their entirety,
18 to evaluate the evidence. Because, otherwise, we
19 could have a list of jury instructions that would
20 go a hundred pages. I mean, you could come up
21 with an instruction for virtually every
22 circumstance that occurs in a trial.

23 And I just do not believe that was the
24 intent of the drafters of the model instructions.
25 And as such, I think the instructions, as a

1 whole, deal with the issue that they raise in
2 their proposed Instruction No. 3. So it is
3 unnecessary and that's our basis -- basis for
4 denial.

5 ATTORNEY STRANG: Brief reply, because we
6 went around and around about this in chambers and
7 the Court posed a very good question on when would
8 there ever be an item of physical evidence that had
9 significance, independent of the testimony about it,
10 which I really thought was -- really -- I thought it
11 was a fascinating jurisprudential, the question in
12 the end.

13 And the thought finally occurred to me,
14 over lunch, and this goes all the way back to
15 Dean Wigmore. And I don't mean Wigmore in
16 evidence after other people took it over, I mean
17 Professor and Dean Wigmore when he was alive and
18 what he described as an autoptic proference. And
19 the classic example he gave was a knife with
20 dried blood on it, an item that was so powerful,
21 in and of itself, that its significance was
22 carried in its presence and its physical quality.

23 And we have something pretty close to
24 what Dean Wigmore would have called an autoptic
25 proference here in, for example, a flattened

1 bullet fragment found in the garage, a Toyota key
2 found in the defendant's bedroom. Again, this
3 was 1880 and 1890, when people were having these
4 arguments, but I simply think that the concepts
5 covered by the -- the three statutes I cited on
6 admissibility as a preliminary question and
7 authentication. And the basic concept that
8 admissibility does not determine weight is
9 something that the instructions don't otherwise
10 cover and should be.

11 THE COURT: All right. Well, as counsel
12 indicated, the Court and the attorneys had a
13 fascinating, academic discussion in chambers this
14 morning about whether or not there might be some
15 piece of physical evidence that would warrant some
16 instruction in addition to the standard instructions
17 that are given in all criminal cases.

18 I indicated that I did not feel that
19 this case presented that type of situation.
20 Taking exhibits, for example, such as the Toyota
21 key, certainly as it's been offered by the State,
22 the State may well argue that that's a
23 significant piece of evidence against the
24 defendant because it was found in his trailer and
25 alleged to contain his DNA.

1 On the other hand, the defense, I don't
2 think I'm anticipating too much here, will no
3 doubt argue in its closing that if the key had
4 been in the defendant's trailer some time before
5 the last time he left it, one would have expected
6 that it would have been found before it was, as
7 the trailer was searched on a number of
8 occasions.

9 So -- And all of these conclusions
10 relate to testimony that was received from
11 various witnesses. In some cases, I'm sure the
12 State -- or the defense will be relying on
13 evidence from the State's witnesses to support
14 its argument.

15 But I think that that situation
16 demonstrates that this particular case doesn't
17 seem to suggest that there is any piece of
18 physical evidence that, by itself, is capable of
19 only one conclusion and one conclusion only, and
20 that somehow by not giving further instructions,
21 which would risk appearing as though the Court
22 were commenting on specific pieces of evidence,
23 something that the Court tries to avoid, and I
24 believe I'm directed to try to avoid, I just
25 don't see that it's necessary. So the Court is

1 going to decline to give an instruction along the
2 lines of that suggested by the defense in its
3 proposed Instruction No. 3.

4 Next, we move on to defense proposed
5 Instruction No. 4. Mr. Strang.

6 ATTORNEY STRANG: Yes, thank you, your
7 Honor. That's the one I started to say, I think
8 that I was persuaded in chambers, and remain
9 persuaded, that is a topic adequately covered by
10 Wisconsin Pattern Criminal Jury Instruction 300.
11 And that Pattern Instruction 300 gives adequate
12 legal support for an argument the parties may want
13 to make. And I withdraw No. 4 for that reason.

14 No. 5 has been modified. And as
15 modified, incorporated into the Court's red line
16 draft today. The modification is acceptable to
17 the defense. And provided the modification, on
18 experts and the jury not being bound to accept an
19 expert's opinion, remains in the final
20 instructions, I'm pleased to withdraw defendant's
21 proposed Instruction No. 5.

22 Defendant's proposed Instruction No. 6,
23 also I view as having been modified and
24 incorporated into the Court's red line draft
25 today. I accept the Court's modification. And

1 assuming that remains in the final jury
2 instructions to be given in this case, I would
3 withdraw anything more from defendant's proposed
4 Instruction No. 6.

5 Defendant's proposed Instruction No. 7,
6 I understand the Court to be inclined to deny.
7 It concerns the general topic of spoliation. I
8 do not withdraw this instruction and I ask the
9 Court to reconsider its position.

10 I want to recognize, if for no other
11 reason than that one always ought to recognize
12 the obvious, that the United States Supreme Court
13 has spoken to an issue related to spoliation in
14 the due process context, though, not in the
15 context of an adverse inference that a jury might
16 be invited to draw, but not required to draw.

17 The Supreme Court decisions, the leading
18 decisions are **Arizona** against **Youngblood**, earlier
19 discussed in this trial, I think as recently as
20 yesterday. And **California** against **Trombetta**,
21 also discussed in this trial. I understand and
22 recognize, as a matter of due process, only bad
23 faith destruction of evidence material to
24 innocence or guilt results in a due process
25 remedy for the defendant, dismissal of charges,

1 or suppression of other evidence.

2 Here, I'm interested instead in an
3 adverse inference. Evidence has come in,
4 evidence can come in, consistent with the due
5 process clause, if the Court is right about
6 suppression rulings that it has made.

7 But the question here is what inferences
8 should be available to the jury and should the
9 jury be informed are in the array of choices as a
10 matter of law. And the State here, there's more
11 than adequate testimony to show that the manner
12 in which the State recovered bone fragments could
13 have led to destruction or loss of those bone
14 fragments. The failure to photograph could have
15 led to human remains not being recognized or
16 recovered at all at the scene.

17 And by volume here, Dr. Eisenberg
18 testified that she thought she only had about 40
19 percent of a complete human skeleton. So the
20 possibility that remains were not recognized and
21 recovered at all is real and reasonable on this
22 record.

23 We also had the proffered testimony of
24 Deb Kakatsch, the Manitowoc County Coroner,
25 excluded by the Court on the State's motion, and

1 over our objection, that would have gone to the
2 prospects for a more successful recovery of human
3 remains, with the assistance on the scene of a
4 forensic anthropologist and a forensic
5 pathologist.

6 So, where the record would support an
7 inference that material evidence, that is, human
8 remains, may have been destroyed or not recovered
9 at all, because of the means employed by the
10 State, an adverse inference ought to be available
11 to this jury for spoliation. And it ought to be
12 available on the same standard it would be in a
13 civil case. The criminal accused, the person
14 accused in a criminal case, surely can't be at an
15 evidentiary disadvantage when compared to a civil
16 defendant arguing over liability or money.

17 I think, here, that the actions to which
18 Special Agent Thomas Sturdivant testified, were
19 deliberate in the sense of intended actions
20 chosen as a matter of free will from the options
21 that Mr. Sturdivant saw available to him. I
22 don't contend that Special Agent Sturdivant acted
23 in bad faith. I'm not going to argue that he
24 did.

25 Although, of course, the good or bad

1 faith of any witness is for the jury to decide in
2 the end. But I don't think we have to show bad
3 faith and evil purpose, or motive, to establish
4 that actions are deliberate or intentional simply
5 in the ordinary sense of not being accidental or
6 involuntary.

7 So, for those reasons, I think the Court
8 should give something like defendant's proposed
9 Instruction No. 7. I always would consider some
10 modification, if the language is clumsy, or
11 overstates the point. But I have not heard
12 either the State or the Court suggest a
13 willingness to modify Instruction No. 7. And so
14 I advance it with the proviso that I have just
15 added.

16 THE COURT: All right. Before I turn it
17 over to the State, I do have one question. I'm
18 having trouble determining the other inference that
19 might be drawn if the bones had been collected in a
20 different manner. It's my understanding that -- I
21 don't know that any of the experts disagreed with
22 the fact that the bones were those of one human
23 being, that the forensic dental information
24 identified the human being as being the victim in
25 this case or that the -- I think that Dr. Fairgrieve

1 said something about the effect that as if it had
2 been like an intact skeleton that was just burned in
3 one place and stayed there, perhaps he could tell
4 where it was burned.

5 ATTORNEY STRANG: Now, the Court is going
6 to the point. A core point of Dr. Fairgrieve's
7 opinion is that we will never know where this body
8 was burned because of the manner in which the
9 recovery was undertaken. The absence of photographs
10 and the absence of the careful approach to the
11 recovery.

12 And he described what a proper recovery
13 approach would have been in the view of -- in his
14 own view as a forensic anthropologist. And as he
15 said, we don't know. One of the reasons we don't
16 know, and will never know, in his view, where the
17 body was burned, is because of the manner of
18 recovery.

19 Now that can cut both ways. But it's an
20 issue material to guilt or innocence. That is,
21 it is quite possible to hypothesize that, had the
22 recovery been done properly here, Dr. Fairgrieve
23 or Dr. Eisenberg would have been able to give a
24 professional opinion, to a reasonable degree of
25 certainty within the field of anthropology, that

1 the area behind Steven's garage was not the site
2 on which this body was burned, originally.

3 That clearly would suggest, it wouldn't
4 be conclusive but it would suggest, Mr. Avery's
5 innocence. Since it's a lot less likely that he
6 would have brought bones to a place more closely
7 associated with him, if he had burned them at a
8 more distant place.

9 It's also possible that a better
10 recovery would have allowed one or both of those
11 experts to conclude that the area behind
12 Mr. Avery's garage was, in their professional
13 opinion, the site of the cremation or
14 incineration. That would have tended to
15 strengthen the State's argument for guilt for the
16 reasons conversed as those I just suggested.

17 But either way, it's material to guilt
18 or innocence. And because we don't know and
19 because the recovery was the State's effort here,
20 the adverse inference should be available,
21 although, of course, not forced on the jury.

22 THE COURT: Mr. Fallon.

23 ATTORNEY FALLON: Thank you. I couldn't
24 agree -- disagree more with counsel, and I come up
25 with at least six reasons why this instruction

1 should not be given. First of all, counsel says,
2 well, we don't know where the other 60 percent of
3 the remains are. Well, that may be true, but it
4 seems to me the most logical, the most plausible,
5 the most reasonable explanation is that they were
6 consumed in the fire.

7 Secondly, Dr. Eisenberg did testify, and
8 this is uncontroverted because Dr. Fairgrieve
9 didn't bother to look at the bones. And she
10 found no evidence of breakage, spoliation, or
11 damage to those bones, after they were exposed to
12 the fire.

13 Third, the manner of recovery, counsel
14 cites, would lead one to logically infer that
15 this instruction should be given. But there's
16 another explanation as to why the remains were
17 found the way they were and why such an opinion
18 that counsel wishes could have been expressed,
19 may not have been able to be expressed, in any
20 event. And that is, the manner of recovery
21 should be juxtaposed with the manner of
22 incineration.

23 The State's theory is correct and
24 accepted by the jury. It wouldn't have mattered
25 if that was a funeral pyre which was being

1 attended to, where its fuel load was constantly
2 being adjusted and that the remains of the person
3 in the fire were constantly stirred up and
4 exposed to the heat, flame and temperatures, such
5 that we only have 40 percent, roughly, of the
6 remains. So there are plenty of plausible
7 explanations which support the theory that it
8 would not have mattered.

9 Finally, third, reference to a witness'
10 testimony is excluded offers us no help
11 whatsoever.

12 Fourth, the **Neumann** standard clearly
13 states that spoliation inference instruction
14 should not be given in the absence of clear,
15 satisfactory, and convincing evidence that the
16 party intentionally, deliberately destroyed
17 evidence, mere negligence does not suffice. And
18 on that standard, we're woefully short.

19 And, finally, there is the common sense
20 argument for rejection of this and it is also
21 based on the evidence in the trial. Is it not
22 more likely that that was the place of Teresa
23 Halbach's final remains, when it is but a few
24 feet away from the spot where she was last seen
25 alive? So for all those reasons, we think the

1 spoliation instruction must be rejected out of
2 hand. Thank you.

3 THE COURT: All right. I'm sure there can
4 be situations when a instruction such as that
5 proposed by the defense would be appropriate. I
6 believe that that's a logical reading of the stated
7 **Neumann** case cited by defense counsel in support of
8 the request. That case, which the Court read, was a
9 situation where an individual admitted that he
10 deliberately destroyed relevant evidence;
11 specifically, a gun and a suicide note, I believe.

12 In this case, the Court doesn't find --
13 there may be a question as to whether or not the
14 collection of the relevant -- collection of the
15 evidence was done negligently. I believe that
16 would be a fair characterization of what
17 Dr. Fairgrieve testified, that he felt he would
18 have done it more carefully.

19 But I don't think that there's any
20 interpretation of the evidence, that the Court
21 can see, where it was done deliberately, with an
22 intention to destroy evidence, or render its
23 value meaningless. At the time, the
24 representatives of the State thought they had
25 evidence that they -- that was helpful to them,

1 that they would want to preserve.

2 Whether they took steps that were most
3 effective in preserving the evidence may be
4 subject to doubt. But I haven't heard anything
5 really that their motivations were subject to
6 doubt, which is that they were trying to preserve
7 evidence.

8 Their people did not -- on the scene,
9 did not, perhaps, have the training of
10 Dr. Fairgrieve. But I'm simply not aware of any
11 facts that would amount to either intentional
12 expolia -- destruction of evidence, bad faith
13 actions on the part of the State, whatever the
14 standard might be, that would justify giving an
15 instruction such as the one provided, and the
16 Court is not going to give it. So that requested
17 instruction is denied.

18 ATTORNEY STRANG: The next instruction is
19 defendant's proposed Instruction No. 8, this
20 concerns prior inconsistent sworn statements. I
21 think the Court ought, at a minimum, give this jury
22 some instruction on prior inconsistent statements.
23 It readily could be appended to Pattern Instruction
24 300 on the credibility of witnesses, wouldn't have
25 to stand alone.

1 But it's odd, that in this state,
2 although Pattern Instruction 300 gives a number
3 of different considerations that a jury
4 specifically ought give the witness, the concept
5 of changing one's story, of making an
6 inconsistent earlier statement, is omitted from
7 that, and I think that's a significant omission.

8 We have at least two rules of evidence
9 that I can think of off the top of my head,
10 Section 906.13 of the Wisconsin Statutes and
11 Section 908.01(4)(a), that are addressed
12 specifically to prior inconsistent statements.
13 These are understood, at least by lawyers, to
14 bear on the credibility of witnesses.

15 And we ought to let jurors in on that
16 secret and tell them, specifically, that they can
17 consider a witness' prior inconsistent statement
18 in weighing the credibility of the witness. It
19 matters here. I don't know of any witness whose
20 credibility is more central, both to the defense
21 that Mr. Avery has presented, and to the State's
22 response, than Lieutenant James Lenk.

23 Of course, the credibility of every
24 witness is important, but he may be first among
25 equals, or close to that, in this case. And I

1 can't imagine I would get serious argument from
2 the State about the importance of both sides
3 attached to Lieutenant Lenk and Sergeant Colborn
4 here.

5 And Lieutenant Lenk was shown to have
6 made materially different statements, under oath,
7 than he made on the same topic here at trial.
8 And he was, in fact, impeached on
9 cross-examination, with two prior sworn
10 statements, that I think a jury could find are
11 materially inconsistent with his testimony on
12 direct examination on the question of, when did
13 he arrive at the Avery property on November 5,
14 2005. This jury should be told, specifically,
15 that it can consider those prior inconsistent
16 sworn statements in weighing his testimony.

17 Now, I will readily offer to accept a
18 broader statement of prior inconsistent
19 statements. Indeed, I would accept a
20 modification that removed the reference to sworn
21 statements, or remove the reference to any
22 witness by name, as a less favorite alternative,
23 to get some instruction that treats the topic of
24 prior inconsistent statements.

25 There certainly were other witnesses who

1 were impeached here with prior inconsistent
2 statements, albeit unsworn. Scott Tadych comes
3 to mind. Blaine Dassey comes to mind. Bobby
4 Dassey may have been, my memory doesn't serve me
5 entirely at the moment on that. And there may be
6 others that I'm not thinking about at all. But I
7 know it was not just Lieutenant Lenk. What made
8 him different is, I believe he is the only
9 witness who was impeached by a prior sworn
10 statement.

11 I could live without that, if -- if the
12 Court wanted to broaden the concept, because the
13 basic concept of considering credibility in the
14 light of whether someone changes his story, goes
15 beyond whether the statement is sworn or not.
16 It's important enough that it ought to be
17 addressed for the jury in considering
18 credibility.

19 I think there's no question about the
20 legal accuracy of defendant's proposed
21 Instruction No. 8. I also think that Pattern
22 Instruction 300 does not adequately cover the
23 topic and no other instruction really comes
24 close. So I do seek something like defendant's
25 proposed Instruction No. 8.

1 THE COURT: Mr. Fallon.

2 ATTORNEY FALLON: Much like a previous
3 offered instruction, our argument with this
4 instruction is that it is unnecessary and adequately
5 covered elsewhere in the instructions. And even
6 with concessions that counsel is prepared to make
7 with respect to identifying the persons who gave
8 inconsistent statements at trial, the instruction as
9 proposed still is unnecessary.

10 We disagree with counsel that the
11 Pattern Instruction 300 is not adequate; 300 has
12 several points which I think are -- directly bear
13 upon this situation. Although it did not
14 expressly mention a prior inconsistent statement.

15 But just taking, for example, the focus
16 that the defense has chosen to place on
17 Lieutenant Lenk and Sergeant Colborn, just for
18 instance. One, the first issue under 300 is
19 whether the witness has an interest or lack of
20 interest in the result of the trial.

21 The third, the clearness or lack of
22 clearness of the witness' recollection. The
23 apparent intelligence of the witness, the bias or
24 prejudice, if any, that a witness shows.
25 Possible motives for falsifying testimony.

1 And, finally, all other facts and
2 circumstances during the trial, which tend either
3 to support or to discredit the testimony. And I
4 think through the years lawyers have made a
5 living out of attempting, and sometimes on
6 occasion, successfully, discrediting witnesses
7 based on inconsistent statements.

8 And, again, there's nothing that
9 precludes the defense from arguing vigorously
10 that because Lieutenant Lenk said, in an earlier
11 proceeding this past summer, that his
12 recollection was that he arrived at the scene at
13 6:00, and it turns out, in reality, after
14 checking all the pay logs and records and
15 whatnot, he arrived on the scene somewhere around
16 2:00; defense is certainly free to argue with
17 that inconsistency, whether under oath or not.
18 Falls within one of those parameters that the
19 jurors are instructed on.

20 So I think for that reason, coupled with
21 the fact that the other authorities cited by the
22 defense; 906.13, 908.01, *Vogel vs. State*, all
23 they simply stand for is the proposition that
24 prior inconsistent statements are, or may be,
25 considered independent substantive evidence.

1 Counsel says, well, we should let the jury in on
2 that little lawyer secret.

3 Well, the reality is, there is no point
4 to it. Because if they were not independent
5 substantive evidence then we would not be able to
6 get up and argue in front of the jury the
7 significance of those statements, and as such,
8 the instruction is unnecessary. Thank you.

9 THE COURT: Anything else, Mr. Strang?

10 ATTORNEY STRANG: I think I would be
11 repeating myself.

12 THE COURT: All right. Well, we went over
13 most everything this morning, but there's a reason
14 why we have a formal instruction conference. As I
15 listen to the parties I am very uncomfortable with
16 giving an independent instruction on this issue,
17 because I think it draws undue attention to it.

18 For example, I'm not sure that -- I
19 don't think it's more important than some of the
20 other bulleted items listed in Instruction 300.
21 But I think it may be reasonable to add a bullet,
22 another bullet, to 300 that does not draw
23 attention to it, but at least lets the jurors
24 know they can consider it.

25 What I would suggest is another bullet

1 in 300 that allows the jury to consider the
2 consistency or inconsistency with any prior
3 statements of the witness. If I look at the
4 testimony of the witnesses who were questioned on
5 inconsistent prior statements, and that's not
6 limited to Mr. Lenk, as the parties indicate,
7 there's others. And in many cases their
8 testimony was consistent with what they said
9 previously and in some cases, on some elements,
10 inconsistent.

11 The comments in former Instruction 320
12 (a) suggest a separate instruction is not
13 required because of the fact the jury is allowed
14 to consider it. But I think it might be
15 worthwhile clarifying to the jury the right -- or
16 the fact that they can consider it. So that's my
17 suggestion.

18 ATTORNEY STRANG: And I said that I would
19 accept that suggestion and I do.

20 THE COURT: And I'm indicating consistency
21 as well as inconsistency.

22 ATTORNEY STRANG: I accept the suggestion.
23 And if the Court adds that bullet point, I will
24 consider No. 8 modified and I will withdraw anything
25 more from it.

1 THE COURT: Mr. Fallon, any comment from
2 the State?

3 ATTORNEY FALLON: We need a minute, Judge.
4 If you are going to do this I think it has direct
5 bearing on perhaps 180 and we want to talk about
6 that amongst ourselves. What was the language you
7 were considering, Judge?

8 THE COURT: Actually, I'm going to preface
9 it with the following, so it will read as follows:
10 The degree of consistency, or inconsistency, with
11 any prior statements of the witness.

12 ATTORNEY FALLON: If the Court is
13 contemplating that amendment to 300, then it seems
14 to me -- Well, does that apply to what we have are
15 inconsistent representations of statements made by
16 the defendant and does that then entitle the State
17 to argue same. It seems to me -- I realize he did
18 not appear as a witness, but there are a couple of
19 statements, and we're thinking primarily of the
20 statement to Sergeant Colborn and then a statement
21 elicited by the defense in the beginning of the
22 trial to Mr. -- is it Pearce -- Beach, Mr. Beach and
23 there is an inconsistency there. So what --

24 THE COURT: You have the better of me here,
25 I don't have it in my head exactly what statement

1 you are talking about or what the content was.

2 ATTORNEY FALLON: The extent of the contact
3 between the defendant and Teresa Halbach. There's
4 two different versions attributed to the defendant.

5 THE COURT: Mr. Strang.

6 ATTORNEY STRANG: I'm interested in
7 hearing -- I remember generally the testimony of the
8 two men, Beach was the last witness on the first day
9 of testimony and, of course, Colborn came later, but
10 I'm interested in hearing more since I can't
11 remember exactly what the inconsistency was.

12 THE COURT: What's the State's recollection
13 of what was said?

14 ATTORNEY FALLON: Beach basically said that
15 she -- the statement of the defendant was that she
16 was here, took a picture, left, went down the road
17 and turned left, or words to that affect. And,
18 then, I left out one, 447 --

19 ATTORNEY STRANG: Right.

20 ATTORNEY FALLON: -- which is now that we
21 know what all the evidence is, that's an interesting
22 rendition of the facts, but I will set that aside.
23 Then you have Sergeant Colborn's visit, I believe,
24 on the night of the 3rd?

25 ATTORNEY STRANG: Yes, Thursday, the 3rd, 7

1 or 7:30 in the evening, something like that.

2 ATTORNEY FALLON: And his explanation is is
3 there's more contact, other than she came, took a
4 picture, and left. And there's a brief discussion,
5 she was paid. So does that very same proviso for
6 credibility, if you're going to put that bullet in
7 for the general instructions, does it go in for
8 statements of the defendant?

9 ATTORNEY STRANG: Well, I mean I have got
10 to be -- Court's entitled to some intellectual
11 honesty here and the fact is that the answer is yes,
12 in that, you know, if an out of court declarant
13 statement is admitted, under 908.05, it may be
14 impeached or supported, as if the person had
15 testified.

16 Now, with a defendant, there's, of
17 course, a constitutional overlay here, because he
18 wasn't a witness in the sense that the jury would
19 understand that term at the trial and he has a
20 right not to testify and his silence can't be
21 considered against him. So the State would be
22 well advised to be very, very careful about how
23 it argues his earlier statements, in part,
24 because as I understand, the State has agreed not
25 to refer in argument to a statement to which

1 Detective Remiker testified and another alleged
2 statement to which Bobby Dassey testified.

3 But, here, the statements to
4 Mr. Colborn, alleged statements to Mr. Colborn,
5 the alleged statements to Mr. Beach, are
6 statements that were disclosed and that the State
7 properly can argue, if the State has not agreed
8 not to argue those two statements. There's no
9 reason the State would have to agree not to argue
10 them.

11 And if the State sees inconsistencies,
12 as a matter of intellectual honesty, it's
13 entitled to draw the jury's attention to those,
14 even though the defendant is the alleged speaker.
15 But the State also has to be very careful not to
16 run afoul of **Doyle**, or **Griffin**, or commenting on
17 a defendant's silence and decision not to testify
18 at trial.

19 So there's room for the argument, 908.05
20 would suggest that, to the extent Mr. Avery is an
21 out of court declarant, whose statements are
22 admitted, for purposes of credibility in -- at
23 least in some ways, treated like other witnesses.
24 There's room, the instruction would apply, and
25 it's just treacherous territory. And that's --

1 that's all I'm saying.

2 And I will add on this, that lest anyone
3 think I have completely taken leave of my senses,
4 the reason I so readily agreed to adding the term
5 consistency, as the Court proposed, is that there
6 is an evidentiary basis for that.

7 Prior consistent statements are treated
8 different -- differently under the rules of
9 evidence, than prior inconsistent statements.
10 But, at least one witness, Lisa Buchner, had her
11 credibility bolstered again by the introduction
12 of prior consistent statements, through Detective
13 Wiegert -- Investigator Wiegert. So there's an
14 evidentiary basis for adding the term consistency
15 and that's why I agree to it and I continue to
16 agree to it. I mean I hope that helps.

17 THE COURT: Let me -- Let me suggest this,
18 first of all, I'm going to take the words, the
19 degree of, out of there. I didn't insert them the
20 first time and as I'm thinking about it I'm not
21 comfortable with those.

22 ATTORNEY STRANG: That's fine.

23 THE COURT: What if -- So in 300 I add a
24 bullet for consistency or inconsistency with any
25 prior statements of the witness; and in 180, add a

1 bullet that says consistency or inconsistency with
2 any other statements of the defendant.

3 ATTORNEY FALLON: That's fine.

4 THE COURT: Does that do the job for both
5 parties?

6 ATTORNEY STRANG: Sure. I think that's --
7 again, I will stand on what I just said, about what
8 the perils are, for the State, in making the
9 argument and there would be perils for us in making
10 the argument, too, in opening the door on comment
11 about Mr. Avery's statements or lack of statements.
12 But with those qualifications, that's acceptable.

13 THE COURT: All right. And, obviously --
14 So it will read consistency or inconsistency with
15 any other statements of the defendant. And
16 obviously, there, statements of the defendant,
17 refers to statements of the defendant that were
18 admitted into evidence at this trial, with the
19 understanding there will be no comment on the fact
20 the defendant didn't give other statements at the
21 trial. I'm sure all of you are aware of that.

22 All right. Mr. Strang does that
23 address, then, I think the No. 9 was the theory
24 of defense instruction, which I believe has been
25 addressed; does that --

1 ATTORNEY STRANG: I have already addressed
2 it and only one remains, which I did not submit in
3 writing. It was an issue I raised briefly in
4 chambers this morning, concerns the State's
5 cross-examination of Dr. Fairgrieve. And the
6 background is this, the State was pursuing what I
7 thought was a perfectly appropriate line of
8 cross-examination of Dr. Fairgrieve on the fact that
9 he did not prepare a report.

10 In the main, Mr. Fallon's questions were
11 unobjectionable and they were good
12 cross-examination. One question, and it was the
13 last question that he asked in this area, before
14 moving on, but one of the questions, I thought,
15 crossed the line. And I had the court reporter
16 prepare just a very brief excerpt of that
17 question and the answer only, which I will read.
18 The question was:

19 Question: And that's so when the
20 gentleman who happens to be on the other side of
21 the prosecution by the Crown, so that they would
22 have fair notice of exactly what opinions you
23 were going to express so they would know what
24 they were?

25 Answer: Yes.

1 I did not object at the time. I
2 decided, at the time -- First of all, I was slow
3 on the uptake. It seemed like it crossed a line
4 to me. I wasn't as quick as I should have been
5 in articulating, to myself, the reason that
6 crossed the line. I did not object at the time.

7 Rather, at the next break, I raised the
8 issue informally with Mr. Fallon. I think I
9 probably even told him I was going to ask the
10 court reporter to read back that testimony to me
11 or prepare a short excerpt, because I could not
12 remember exactly what Mr. Fallon had said, that
13 had rubbed me wrong.

14 The court reporter did prepare the short
15 excerpt I just read, a little later. I raised
16 this informally in chambers, and I don't even
17 remember when, but it was well after
18 Dr. Fairgrieve was off the stand by that time.
19 And the problem is, the suggestion that we did
20 not give the State fair notice of
21 Dr. Fairgrieve's opinion.

22 We did. We complied with Section
23 971.23 -- well, whatever the provision is that
24 requires the defense to give notice of expert
25 opinions. It's true that we didn't give a

1 report, to the State, from Dr. Fairgrieve. But
2 we're not required to do that under the discovery
3 statute. That's one of two options.

4 We chose the second option, which was to
5 provide a summary of it, his expert opinion and
6 its basis. We also provided his curriculum
7 vitae. The State objected to the adequacy of our
8 notice. The Court directed us to provide some
9 further, more specific notice of Dr. Fairgrieve's
10 opinion. And we did that. Once we amended our
11 notice of his opinion, there was no further
12 complaint from the State. And I think our
13 discovery obligation was met and, therefore, as a
14 matter of law, there was fair notice of his
15 opinion.

16 Now, again, the fact -- the mere fact
17 that he didn't prepare a report is a fair subject
18 for cross-examination. And the questions
19 immediately preceding the question I quoted
20 today, were unobjectionable, in my view. But I
21 had no strategic reason for not objecting.

22 Indeed, I knew at the time it was a
23 problem. If my -- if my manner of handling it
24 was a waiver, then, it was a waiver without a
25 reason, without a strategic choice, or a -- or a

1 good -- a good reason on which I could defend my
2 waiver. And the intention, as I told folks off
3 the record, which doesn't count, I understand,
4 was to seek a brief curative instruction, not
5 make a terribly big deal out of it, but I thought
6 it was worth a curative instruction. I still do.

7 At this point, I think the curative
8 instruction should not refer to -- or need not
9 refer to Dr. Fairgrieve, or even to the State.
10 There's no need to scold at this point. A
11 curative instruction could be that, you know,
12 something to the effect that both parties
13 provided adequate notice, as required by law, or
14 fair notice as required by Wisconsin law, the
15 opinions of their experts, wouldn't have to be
16 anything fancier than that.

17 And I asked the Court to give, somewhere
18 in the final instructions, a curative instruction
19 along those lines. I also asked the Court forbid
20 a State argument that it was not given fair
21 notice of Dr. Fairgrieve's opinions. I think it
22 was. I think we complied with the discovery
23 statute in that respect.

24 THE COURT: Mr. Fallon.

25 ATTORNEY FALLON: Thank you. Much ado

1 about little. As counsel acknowledges, the
2 questioning and cross-examination was clearly
3 appropriate, the point simply being that
4 Dr. Fairgrieve, who at every point in the past in
5 his career had issued a report, did you issue a
6 report in this case. That's fair cross-examination,
7 nothing to apologize for.

8 This -- Every now and again, as a
9 prosecutor, we're entitled to throw a net or a
10 lifeline to counsel. I don't see his need to
11 fall on the sword here, or accept some kind of
12 reprimand from who may review this case in the
13 future. It's entirely unnecessary.

14 Again, the sole point is that he always
15 writes a report, but he didn't write a report in
16 this case, fair cross-examination.

17 The other way of looking at this --
18 because that's all that was intended by the
19 question, by the way. Another way of looking at
20 this is that, as counsel aptly noted, they have
21 two ways of complying with the provisions. One,
22 was to write a report, one is to give a summary.
23 They chose a summary.

24 Don't beat yourself up now or second
25 guess your selection, your choice, they chose a

1 summary, not a report. Doesn't mean I can't ask
2 the question, that you always wrote a report
3 every other time in the past, but you didn't
4 write one here.

5 So, again, he's saying a waiver without
6 knowledge, a waiver without strategic reason;
7 that's not true. It had already occurred. It
8 occurred back in January when the original report
9 was submitted. So for that context, the State
10 does not intend to argue that we didn't have
11 notice.

12 Although, I would note, inferentially,
13 and I still do, that the amended disclosure
14 contained an opinion which was different than the
15 opinion rendered on the stand regarding the
16 possibility of the burn barrel being the primary
17 burn location. So, for what that's worth, they
18 were different.

19 But the intent of the argument that the
20 State will make is simply that he always writes a
21 report and he didn't write a report this time.
22 That's the point of the question. And they had
23 the opportunity to choose, as I said, summary or
24 report. They chose summary, but that's their
25 right. So I don't think -- There's much ado

1 about nothing.

2 ATTORNEY STRANG: Well, I do need to be
3 heard in reply, because as I conceded, the general
4 line of questioning, cross-examination, was
5 appropriate. And if the questioning had stopped
6 where Mr. Fallon says he meant to stop, or with the
7 point he says he meant to make, it would have been
8 appropriate. If this had stopped with, so you
9 always write a report, this is the first time in
10 your career you haven't written a report. Fine,
11 unobjectionable.

12 This question went the next step. It
13 went farther. It was, you know, by not writing a
14 report, then, in essence, there is not fair
15 notice of exactly what opinions you were going to
16 express to the counsel for the other side, so
17 that they would know what they were. And I won't
18 reread this, I'm paraphrasing it, but I read
19 verbatim, the final question. And that -- the
20 implication that there was --

21 THE COURT: Read it verbatim again.

22 ATTORNEY STRANG: Sure.

23 Question: And here now I wish I had
24 gotten the preceding question, but it was -- I
25 think the preceding question probably was what

1 Mr. Fallon said, which is, this is the first time
2 you have not written a report, something like
3 that.

4 So the question in issue begins:

5 Question: And that's so when the
6 gentleman who happens to be on the other side of
7 the prosecution by the Crown, so that they would
8 have fair notice of exactly what opinions you
9 were going to express so they would know what
10 they were?

11 Answer: Yes.

12 I will give it to the Court. Now, did
13 Mr. Fallon mean to do anything wrong? No, he was
14 pursuing a fair line of questioning. He went one
15 question too far in my view. It's a slip of the
16 tongue. It happens in the heat of battle. Lord
17 knows in cross-examination I have asked one
18 question too many at various points. But this
19 was objectionable and I missed it. I didn't make
20 timely objection.

21 THE COURT: All right. Here's what I'm
22 going to do. If -- As I understand it, Mr. Fallon,
23 your point was not that you didn't get some
24 discovery in this case that you were supposed to
25 get, but rather that he always prepares a report in

1 all his other cases, but he didn't in this one.

2 ATTORNEY FALLON: That was the intent and
3 the focus of the question. And it wasn't until
4 afterwards that I gave some thought about the fact
5 that the amended disclosure held one opinion that
6 was different. But like I said, you already ruled
7 on that matter, so.

8 THE COURT: Let me ask this, do you intend
9 to make reference in your closing to the fact that,
10 not that you didn't get a report that you should
11 have gotten, but to the fact that it's significant
12 he did not prepare a report in this case.

13 Here's the -- I'm not precluding you
14 from doing that. All I'm saying, let me get to
15 the point. If you say something like that in
16 your closing, you will have to add, and let the
17 jury know, something to the effect, I'm not
18 saying we didn't get a report that we should have
19 gotten, but it's significant he didn't prepare a
20 report. Do you understand?

21 ATTORNEY FALLON: Right. Maybe we're just
22 coming at it from different angles. Our argument is
23 not that we didn't have notice, the argument we want
24 to make. The argument is, he didn't write a report.

25 THE COURT: Okay. I'm only saying that, if

1 you choose to point that out to the jury --

2 ATTORNEY FALLON: We have an obligation, I
3 see what you are saying.

4 THE COURT: And I think that addresses, Mr.
5 Strang, your concern, because you have acknowledged
6 that he was entitled to show the jury that the
7 witness usually prepared a report but did not here.

8 ATTORNEY STRANG: Yes.

9 THE COURT: As long as there's not an
10 implication that somehow the State didn't get
11 something to which it should have been entitled.

12 ATTORNEY STRANG: As long as there's no
13 implication that the State did not get fair notice,
14 which is what the question implied. And I would
15 like that cured, and it can be cured in a general
16 way.

17 THE COURT: I'm not -- I don't view it as a
18 significant part of, you know, the many weeks and
19 exhibits worth of evidence that came in in this
20 trial. I don't think it warrants its own
21 instruction, but I will caution the State that if it
22 raises that issue in any fashion in closing, that --
23 that it reference the fact that the State is not
24 claiming that it didn't get some notice it should
25 have gotten. Before we leave jury instructions, I

1 don't recall if I have asked the parties on the
2 record if the verdict forms are acceptable.

3 ATTORNEY FALLON: They are to the State.

4 ATTORNEY STRANG: Yes.

5 THE COURT: All right. I will make the --
6 the modifications in 300 and 180, that were placed
7 on the record. Otherwise, I will leave the jury
8 instructions as they were submitted to you today,
9 with the exception of removing the red lining.
10 Other than the defense requested instructions that
11 the Court has already been denied, does that resolve
12 the issue on instructions?

13 ATTORNEY STRANG: Yes.

14 ATTORNEY FALLON: Yes.

15 THE COURT: Before we break, Mr. Strang, I
16 understand you wish to ask the Court to reconsider a
17 previous motion made by the defense concerning the
18 request to excuse a juror.

19 ATTORNEY STRANG: I do. I will not name
20 the juror, but this is the juror we have discussed
21 before, who previously served on a civil jury, in a
22 lawsuit brought by a witness here. And I think I
23 can name the witness without disclosing too much.
24 The witness was Lieutenant -- I'm sorry, Detective
25 David Remiker of the Manitowoc County Sheriff's

1 Office.

2 As I understand, some years ago, it's a
3 1999 civil lawsuit, Detective Remiker sought some
4 compensation for injuries he alleged in
5 connection with an automobile accident. And our
6 juror sat as a juror at the trial of that civil
7 action. She was among those who voted for the
8 jury verdict in that case.

9 And I don't -- I didn't look here to see
10 whether that was a unanimous civil verdict, or a
11 5/6ths civil verdict. But my recollection is
12 that when she was questioned about it, she
13 acknowledged that she voted either with all the
14 other jurors or with the majority that determined
15 the verdict in the case.

16 We went back to -- Not -- Not -- I
17 shouldn't say we, that's a royal we. Mr. Buting
18 and I asked our defense investigator, who is not
19 a lawyer, to go look at the file in the earlier
20 civil case, and he did that.

21 Copied the Summons and Complaint, gave
22 us copies of the minutes from at least some of
23 the days of the trial and the special verdict
24 form. And, then, also copied an excerpt of
25 testimony from one witness. I think she -- a

1 medical doctor who testified for the plaintiff,
2 Detective Remiker.

3 And that's why I asked the Court
4 yesterday to obtain the entire file in
5 Mr. Remiker's case and bring it here so the
6 parties could look at it. The Court did that,
7 the box is in chambers. It's about the size of a
8 box of 10 girl scout cookie boxes that I got
9 recently in the mail.

10 And I flipped through it. I don't know
11 whether counsel for the State have availed
12 themselves of that opportunity, but the Court was
13 kind enough to obtain the file and it's in
14 chambers. Here's what appears, at my glance
15 through.

16 The defense that the insurance company
17 or the other -- the driver, who apparently caused
18 the accident in that case, presented to the jury,
19 was that Detective Remiker was malingering and
20 ought not be compensated, or ought not, at least,
21 obtain the full compensation that he sought. And
22 it looks to me, again, at a cursory glance, like
23 much of the trial was fought over whether
24 Detective Remiker was malingering or not, about
25 the lower back injury that he described.

1 In that sense, his credibility was
2 critically at issue. And this is -- this is just
3 a real nice tight example of that. And I'm
4 reading from pages 11 and 12 of the testimony of
5 the -- a plaintiff's expert, Dr. Diana Lamps,
6 L-a-m-p-s-a. This is a partial transcript of
7 proceedings in the civil case. Beginning at
8 line 10 on page 11 of the partial transcript:

9 Question: Do you understand that
10 Dr. Dahl, D-a-h-l, at one point in his statement
11 of opinions, used the term malingerer to refer to
12 Mr. Remiker?

13 Answer: Yes.

14 Question: Would you describe or define,
15 for the jury, what's meant by that term?

16 Answer: Well, malingering is basically
17 lying. Malingering is basically lying for
18 specific result, like a person might malingering if
19 they are lying to get out of work, or if they are
20 lying to get money in a court settlement, you
21 know, making up symptoms, or exaggerating
22 physical symptoms for a specific gain. It's a
23 specific kind of lying.

24 Question: Can everyone hear Dr. Lamps?
25 I think everyone is comfortable with your voice

1 level there.

2 Answer: Okay.

3 Question: Do you believe that
4 Mr. Remiker is a malingerer?

5 Answer: No, the kinds of comments I
6 just made a couple minutes ago, I described
7 somebody who is absolutely opposite of a
8 malingerer. He's, you know, very straight
9 forward, straight shooter, just an honest kind of
10 job, kind of guy, my impression. Likes sports.
11 Likes, you know, to me, the profile -- I can't
12 remember if he was a boy scout or not, but the
13 kind of guy who's in the boy scouts and mom and
14 apple pies, totally a straight character. So
15 nothing like that.

16 And evidently Dr. Dahl, was the defense
17 medical expert in that case, and that's what I
18 get from the context. So that, it looks to me,
19 is like -- like a large part of the trial issue
20 was Detective Remiker's credibility. Clearly,
21 when the jury returned a verdict of over
22 \$170,000, that credibility determination was
23 resolved in Detective Remiker's favor. And this
24 juror was part of that credibility determination.

25 So the argument, again, is that, because

1 of the ritual way in which we instruct jurors to
2 decide the credibility of witnesses here, and we
3 have argued this afternoon, at some length, over
4 Pattern Instruction 300, in criminal cases. And
5 what should be added and what should be
6 considered and what's fair game in determining
7 credibility.

8 Because of that ritual way in which we
9 instruct jurors, as judges of the fact -- of the
10 facts, to determine credibility, I think this
11 juror, now, is objectively biased. She's gone
12 through that ritual, that process, as a judge of
13 the facts, once, within the last seven years, as
14 to Detective Remiker.

15 His credibility matters here too. And
16 ought to be considered on the trial record here,
17 just like every other fact ought to be determined
18 on the trial record here, supplemented only by a
19 juror's common sense and experience. Her
20 experience proves this special role that we
21 occasionally ask people to fill, as a judge of
22 the facts, in a lawsuit.

23 And the determination of Detective
24 Remiker's credibility, on a whole different set
25 of facts, was not apparently an incidental issue

1 in the prior case. It's not incidental here
2 either. He's a fairly important witness. I
3 played a clip of him in the opening statement, my
4 opening statement, a clip of a dispatch
5 discussion, that went right to our theory of
6 investigative bias and tunnel vision.

7 He testified here. He offered a
8 statement of the defendant, of which neither the
9 State nor the defense had prior notice. He is
10 one of the people who met with Mr. Avery on
11 November 4. He's with the sheriff's department
12 that we accused as being the source -- of the
13 original source of the bias against Mr. Avery.
14 He was involved actively in the identification
15 and collection of evidence, not just for a week
16 in November, 2005, but again, on March 1 and
17 March 2 of 2006.

18 In fact, I think on this record, he's
19 the only Manitowoc County Sheriff's employee who
20 was actively involved in collecting or
21 identifying evidence in March, 2006, in the
22 search of Mr. Avery's garage. I don't think he
23 was involved at all in the search on the same
24 days in March, 2006, in Mr. Avery's home; that's
25 my recollection of the testimony. But I think he

1 did play a role in the garage. May have been the
2 only Manitowoc officer inside the evidence tape,
3 so to speak, in March of 2006.

4 So the juror did the right thing by
5 bringing the issue to the Court's attention. I
6 will accept, because it's for the Court to
7 decide, from her demeanor and her answers,
8 whether she's subjectively biased and the basis
9 of her prior role with Detective Remiker and
10 knowledge of him.

11 But I think there is objective bias
12 here. This isn't like a casual acquaintance. It
13 isn't like somebody we might size up because we
14 run into them at the grocery store. This is a
15 judgment the juror once has made and I think is
16 unlikely to reconsider.

17 As I noted by a loose analogy the first
18 time I argued this, even with professional
19 judges, judges of the law, when they are wrong in
20 their judgment and a higher court reverses them
21 in this state and sends the case back down,
22 there's enough of a presumption that the judge
23 will be reluctant to reconsider his or her
24 earlier judgments in the role of judge of the
25 law, that the parties are entitled to a

1 substitution, without a showing of prejudice
2 again, on remand, under Wisconsin law.

3 There are in, again, a loosely analogous
4 context, there are United States Supreme Court
5 decisions that consider the question, for
6 example, of vindictive resentencing, after a
7 reversal on appeal and a remand and the defendant
8 gets a higher sentence. There's constitutional
9 law on that, because the Supreme Court recognizes
10 the institutional bias that all of us acquire, in
11 favor of our earlier judgments once thoughtfully
12 rendered.

13 And it's asking a lot to expect a lay
14 person in -- in the special role of judge of the
15 facts, to decide credibility this time, without
16 considering the judgment she made about
17 credibility the last time she was a juror in a
18 case involving Detective Remiker.

19 So I think that's asking too much. It's
20 not reasonable to expect her to be able to do
21 that. I think she's objectively biased here,
22 without casting aspersions on her character, I
23 don't. To the contrary, she was right to raise
24 the issue. She was conscientious to raise the
25 issue. But now that it's out, and now that we

1 know something more about the 1999 civil case
2 involving Detective Remiker, I think she should
3 be relieved of further duties on the grounds of
4 objective bias.

5 THE COURT: Does the State wish to be
6 heard?

7 ATTORNEY FALLON: Yes, thank you. We would
8 oppose the excuse -- the striking for cause or the
9 excuse of this juror. We're going to begin with our
10 presentation with the law. A prospective juror is
11 objectively biased if a reasonable person in the
12 prospective juror's position, objectively, could not
13 judge the case in a fair and impartial manner.
14 That's a citation from *State vs. Mendoza*, 227 Wis.
15 2d, 838, with a citation to *State vs. Erickson*,
16 E-r-i-c-k-s-o-n, at 227 Wis. 2d, 758.

17 In *State vs. Faucher*, at 227 Wis. 2d,
18 700, Supreme Court noted, quote, The circuit
19 court is particularly well-positioned to make a
20 determination of objective bias and it has
21 special competence in this area. It is
22 intimately familiar with the voir dire proceeding
23 and is best situated to reflect upon the
24 prospective juror's subjective state of mind,
25 which is relevant, as well as to the

1 determination of objective bias.

2 Finally, as a backdrop, we ask the Court
3 to once again consider **State vs. Kiernan**,
4 K-i-e-r-n-a-n, at 227 Wis. 2d, 736. And that
5 case was -- dealt with the concept of whether a
6 veteran juror, as it was known at that time,
7 could set aside prior opinions or knowledge in
8 Judge Kiernan's case, solely on the evidence
9 presented at her trial.

10 I think those are the appropriate legal
11 standards. The most recent case on objective
12 bias is **State vs. Dale Smith**, 2006 Wisconsin 74.
13 And that was, I believe, the case of the
14 administrative employee of the District
15 Attorney's Office out in juvenile court sitting
16 as a juror in a felony case in downtown
17 Milwaukee.

18 Those are our legal standards upon which
19 the Court must make a determination of objective
20 bias. Now, let's look at the facts and apply
21 them to the law here. First and foremost, the
22 juror sent a note. The juror is the one who
23 called this matter to the attention of the
24 parties, having recognized Detective Remiker
25 after seeing him testify, and not beforehand.

1 The Court, at the request of the
2 parties, conducted a voir dire of the juror. The
3 juror reported no recollection of that case
4 whatsoever. But when pressed, all that the juror
5 could recall is something about the left lumbar
6 being the focal point of the trial. All that
7 could be recalled was the nature of the injury.

8 The juror could not recall whether
9 Detective Remiker even testified. Could not
10 recall the amount of damages awarded to Detective
11 Remiker. Did recall that he did prevail and that
12 he was awarded some money and she thought perhaps
13 \$100,000. But she could not recall any of the
14 circumstances. She could not recall the length
15 of the trial, or as I already said, the focus of
16 the trial, a trial that occurred six, to possibly
17 seven years before this trial.

18 I think it's apparent and a reasoned
19 inference could be drawn that there have been no
20 contact whatsoever between the juror and
21 Detective Remiker in the intervening years. So
22 applying the standards, then --

23 Oh, there's one other distinction.
24 While we do not diminish the significance, as it
25 were, of Detective Remiker's role in this case,

1 the case against Steven Avery will clearly not
2 rise or fall solely on the basis of the testimony
3 offered by Detective Remiker.

4 Whereas, in contrast, if everything is
5 as counsel represents, and I believe it to be the
6 case, Detective Remiker's role in his own case
7 was far greater, far more significant than this
8 case. And I say that because, then we have to
9 evaluate the fact that that's true. And the
10 juror has no recollection of that.

11 Then, let's take that reasonable juror
12 standard, a juror in this position, a juror who
13 has no memory of those facts or circumstances and
14 were somehow to conclude that she's objectively
15 biased, and as counsel would suggest, in favor of
16 Detective Remiker, because in that case 10, or
17 perhaps 12 other jurors, found his version of the
18 events credible and, thus, awarded him damages
19 for the accident in which he was injured. I
20 think not. There is no basis for that.

21 Then, you couple that fact, with the
22 representation that the prospective juror made,
23 as I recall, during the voir dire. The juror
24 reported that no other juror was aware of the
25 service previously performed. The Court asked,

1 in fact, I believe, instructed the juror, not to
2 advise any of the other jurors in this case of
3 her previous experience with respect to Detective
4 Remiker.

5 All of that, coupled with the fact that
6 this juror came forward on their own, I think
7 it's clearly a reasonable inference that if a
8 problem did develop, if circumstances did come to
9 light, that somehow the great light of memory was
10 revealed to her, the juror would tell us. But we
11 already have the assurance of this juror that
12 that would not affect deliberations in this case,
13 the assurance that that knowledge would not be
14 imparted to any other juror.

15 And this is the subjective component
16 here that counsel alluded to and is reflected in
17 the case law, the Court had the opportunity to
18 assess that juror's credibility. And under all
19 of these circumstances, the Court made a reasoned
20 determination at the time, which we ask the Court
21 to sustain now, is that the juror is not
22 objectively biased or subjectively biased. And
23 we would ask the Court to deny the request.

24 THE COURT: Mr. Strang.

25 ATTORNEY STRANG: In reply, let me -- let

1 me try this. I wouldn't be offering analogies if I
2 had something specifically on point, but I don't
3 think either Mr. Fallon or -- and I know I haven't
4 found anything directly on point. This appears to
5 be a pretty new issue.

6 But let me try this. Let's suppose,
7 instead, that this juror were a high school
8 teacher or a college professor. And when
9 Detective Remiker had walked in and testified,
10 the juror had said, oh, my gosh, I remember now,
11 six or seven years ago he was in my class. He
12 was a student of mine. I had forgotten the name,
13 but I remember the face. He was a student of
14 mine and, you know, now that I think about it, I
15 think I wrote him a letter of recommendation.
16 And the juror tells us that. And we explore and
17 we find out that it was a glowing letter of
18 recommendation.

19 Now, I don't know that I believe this
20 juror here on the issues that go to subjective
21 bias and what she does or doesn't remember, but
22 the Court gets to decide whether or not it
23 believes the juror. And that's why, primarily,
24 I'm relying on objective bias.

25 But let's suppose the Court was

1 satisfied in my example of the teacher/professor
2 who writes the letter of recommendation for the
3 student from six or seven years ago and now
4 remembers. And the Court is not to remember much
5 more than, I wrote him a letter of
6 recommendation.

7 Well, if we dug a little further into
8 the file and we found that it -- not only was it
9 a glowing letter of recommendation -- or letter
10 of recommendation, it was a glowing one. And if
11 we dug further and found that there were people
12 specifically asking the teacher, or the
13 professor, not to write the letter of
14 recommendation, urging upon the teacher the fact
15 that she ought not write a letter of
16 recommendation for this student.

17 I can't imagine that the Court wouldn't
18 find objective bias and excuse the juror. Well,
19 here, by way of analogy, a \$170,000 verdict, in
20 the face of opposition by the defense in this
21 case, is a pretty glowing letter of
22 recommendation. And is a glowing letter of
23 recommendation endorsed by this juror, in spite
24 of, evidently, you know, witnesses and arguments
25 from counsel, that the letter of recommendation,

1 so to speak, the verdict, ought not be delivered.

2 Just, again, setting aside subjective
3 bias, which the Court can judge, objectively,
4 this doesn't look reasonable for the outside
5 person to say, what you ruled for this guy once
6 as a juror and now you are here, supposed to be
7 judging him again, as a matter of his
8 credibility, but on entirely different evidence,
9 and without considering your earlier judgment on
10 his credibility.

11 It doesn't feel reasonable, objectively
12 reasonable. It doesn't look objectively
13 reasonable, I suggest. And it's not so much that
14 I'm worried that the State is depreciating
15 Detective Remiker's role in the trial. It's
16 really, I'm worried, if anything, the State is
17 depreciating the role of the juror.

18 It matters. What she did matters, in
19 the 1999 civil case. That was an important
20 function. She filled it. She filled it on,
21 presumably, the evidence she probably should
22 consider there in deciding his credibility. I
23 don't think we can ask her to set that judgment
24 aside now and to make the judgment anew on a
25 different set of factors entirely. It's just not

1 reasonable to expect that one would be able to do
2 that. And that makes her objectively biased, if
3 not more.

4 THE COURT: All right. The starting point
5 is to take a look at the standards that the Court is
6 to apply when a challenge is made to a juror on the
7 grounds of objective bias. And that is the
8 challenge that the defense is making here this
9 afternoon.

10 The law on the subject was recently
11 restated in the *Smith* case that counsel for the
12 State referred to. It's a quote taken from the
13 *Faucher*, F-a-u-c-h-e-r, case, and sets forth the
14 test as follows:

15 The focus of the inquiry into objective
16 bias is not upon the individual prospective
17 juror's mind, but rather upon whether a reason --
18 a reasonable person, in the individual
19 prospective juror's position, could be impartial.

20 When assessing whether a juror is
21 objectively biased, a circuit court must consider
22 the facts and circumstances surrounding the voir
23 dire and the facts involved in the case.

24 However, the emphasis of this assessment remains
25 on the reasonable person, in light of those facts

1 and circumstances.

2 When a prospective juror is challenged
3 on voir dire because there was some evidence
4 demonstrating that the prospective juror had
5 formed an opinion or prior knowledge, whether the
6 juror should be removed for cause turns on
7 whether a reasonable person in the prospective
8 juror's position could set aside the opinion for
9 prior knowledge.

10 And although this is termed objective
11 bias, rather than subjective, there is something
12 of a subjective component to it. The Court also
13 noted, this I believe is in **Faucher**: The circuit
14 court is particularly well-positioned to make a
15 determination of objective bias, and it has
16 special competence in this area. It is
17 intimately familiar with the voir dire
18 proceeding, and is best situated to reflect upon
19 the prospective juror's subjective state of mind,
20 which is relevant as well to the determination of
21 objective bias.

22 I think what the court is getting at
23 there is the fact that the basis for objective
24 bias is often statements made by the individual
25 juror in question and the court has to make a

1 determination as to the credibility of the juror
2 in that circumstance.

3 The Court has already ruled that the
4 juror in this case is not subjectively biased and
5 I don't understand that to be challenged today.
6 Reviewing the information that she provided when
7 the Court voir dired her earlier in the trial, I
8 will first note that this matter came to the
9 Court's attention at the instigation of this
10 juror.

11 That is, after she saw Mr. Remiker
12 testify, she connected his face with his name,
13 recognized that she had sat on a jury in a civil
14 case in which he was a plaintiff, approximately
15 seven years ago. Didn't feel that it caused her
16 to be biased in any way, but recognized it could
17 be an issue for the Court and brought it to the
18 Court's attention.

19 When I voir dired her, I asked her if
20 she remembered whether he testified in the case,
21 that was one of the first questions that I asked,
22 because it would be directly relevant on the
23 issue of whether or not she was influenced as to
24 his credibility. And she indicated that she did
25 not remember if he testified as a witness in the

1 case. She said that on more than one occasion
2 when I was questioning her.

3 She thought that the trial was
4 approximately a week long. She remembered that
5 it was a civil case and that the defendant -- or
6 the plaintiff was awarded some damages. She
7 indicated, I believe, that she thought it was
8 around a hundred thousand dollars.

9 When I asked her an open ended question
10 about what she remembered about the case, she
11 said, what I remember about it is a lot of
12 discussion about the lower left lumbar of the
13 back and that it involved an accident down on the
14 I-system, with a couple of other vehicles, that's
15 about it. She didn't remember anything about the
16 individual witnesses who testified at the trial.

17 She indicated there was nothing about
18 her experience as a juror in that case that would
19 affect, whatsoever, her service in a juror in
20 this case. And since she didn't remember whether
21 or not Mr. Remiker testified, it wasn't worth
22 asking a question about what affect -- what she
23 thought of his credibility or what affect it
24 might have, because she didn't remember him even
25 testifying in the case.

1 The Court, first of all, with respect to
2 her credibility, finds her to be a very credible
3 individual. It was her own forthrightness that
4 led to the matter coming to the Court's attention
5 in the first place. She indicated she really
6 doesn't remember much about this trial that took
7 place seven years ago; specifically, she doesn't
8 remember not only anything about Mr. Remiker's
9 testimony, if he did testify, but not even
10 whether he did testify.

11 In light of the fact -- I have trouble
12 remembering all of the testimony that took place
13 in the early stages of this case, I certainly
14 can't find that her -- her statement to the Court
15 is unreasonable in any way. I suspect most
16 people would probably be in about the position
17 she was.

18 There's no indication that she had any
19 connection with Mr. Remiker, either before or
20 after the case on which she sat as a juror. So
21 the question, then, comes down to, is a person in
22 this juror's position someone who could not
23 reasonably be expected to be fair and impartial
24 in this case, even if the Court finds that she's
25 not subjectively biased. And the Court concludes

1 that -- I don't think this is a particularly
2 close case. I don't think she's objectively
3 biased at all.

4 I took a look last evening at a number
5 of objective bias cases. The closest one that I
6 actually found, or the most analogous one on the
7 facts, I thought was the **Faucher** case itself, in
8 the sense that it involved the opinion of a juror
9 on the credibility of a witness who was expected
10 to testify at the trial in that case.

11 And during the course of voir dire in
12 that case, the issue came up before the trial
13 started. It was rather obvious that the juror
14 involved held strong opinions concerning Hayes'
15 credibility. And Hayes was a witness.

16 For example, the juror said that, I
17 believe she had been a neighbor of the witness
18 for some time. Her parents were still neighbors
19 of the witness. She indicated on voir dire, I
20 know she's a person of integrity and I know she
21 wouldn't lie. She then agreed with defense
22 counsel's restatement -- I guess it was a him,
23 the juror in that case -- that based upon his
24 knowledge of Ms Hayes as a next door neighbor, he
25 believed she would not lie about anything.

1 There was a lengthy history between the
2 juror and the witness that the juror was
3 acquainted with in that case. And the court
4 found, and I think rightfully so, that if you
5 have got a juror who says I know this person, I
6 know them well, and I know they wouldn't lie,
7 that's not a particularly close case.

8 That's what objective bias is all about.
9 Even though the juror later stated that the juror
10 could put that feeling aside and the appeals
11 court actually upheld the trial court's
12 determination that the juror was not subjectively
13 biased.

14 In this case, the Court believes there
15 are a number of contrasts between the facts in
16 this case and that case. First of all, there was
17 never any type of close relationship between the
18 juror and Mr. Remiker. It's not a case of an
19 acquaintance at school, at work, or any situation
20 where the juror would have had an extensive
21 opportunity to form an opinion about the witness'
22 credibility.

23 Even more significantly is the fact that
24 the one contact took place nearly seven years
25 ago. It's hard for the Court to say that the

1 juror objectively has an opinion of the witness'
2 credibility that she could not be expected to set
3 aside when she doesn't recall if he even
4 testified in the case. There's no -- She doesn't
5 appear to have an opinion as to the witness'
6 credibility that the Court has to ask whether or
7 not the juror could objectively set aside.

8 Let's assume -- If one assumes that she
9 remembered Mr. Remiker, or remembers him
10 testifying, the argument would have to be, that
11 because this juror found Mr. Remiker credible in
12 a civil trial that took place seven years ago,
13 that no person in this juror's position could
14 objectively evaluate Mr. Remiker's testimony in
15 this case.

16 That is, I don't think, even if she did
17 remember his testimony, unless there was some
18 reason why she couldn't set aside an opinion that
19 she was convinced he would never lie, that she
20 would be objectively biased and be forced to
21 leave the jury in this case. But we don't even
22 get to that because I find her testimony to be
23 very credible that she doesn't remember if he
24 testified in that case.

25 It's one thing to pull out a transcript

1 today that's something that a witness said seven
2 years ago at that trial that reflects on
3 Mr. Remiker's testimony, but, objectively, I
4 think most people, over seven years, would not
5 have a specific recollection of that.

6 There may be some people who could, but
7 the Court finds that this juror is not one of
8 those people. And even if there was some
9 recollection, finding that someone was credible
10 on one occasion, doesn't mean that you can never
11 judge their credibility again.

12 I know, as Mr. Strang was speaking, and
13 last evening as I was thinking about this, I was
14 trying to come up with analogies myself. I
15 recognize the fact the Court has -- I see police
16 officers testify on a regular basis, often at
17 suppression hearings, if I make a determination
18 in one hearing that they are credible, I'm not
19 sure that that disqualifies me, for the rest of
20 my judicial career, from evaluating their
21 credibility again at a later hearing.

22 Granted, I'm not a juror, I'm a judge,
23 but if the question is objective bias and I,
24 because I determine them to be credible one time,
25 could never do it again, that would leave the

1 judicial system in tough straits.

2 You know, from my own experience, I have
3 had officers testify in front of me, sometimes I
4 find their testimony credible, sometimes I don't.
5 Doesn't mean that I necessarily think they are
6 lying or not, but you can objectively evaluate
7 credibility in those situations, I believe.

8 And certainly the situation involving
9 this juror doesn't get close to that, because she
10 only had one contact with Mr. Remiker. It was
11 nearly seven years ago, and she doesn't appear to
12 remember much about it. It's a very far cry from
13 all of the other cases in which objective bias
14 has been found.

15 I don't believe there's any evidence
16 here to suggest this juror is objectively biased.

17 And, therefore, the Court is going to, again,
18 find that she should not be removed from this
19 jury, that there's no basis to remove her on the
20 grounds of either subjective or objective bias.

21 Counsel, let's take a 15 minute break
22 and, then, please meet me in chambers.

23 (Proceedings concluded.)

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1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 22nd day of January, 2008.

Diane Tesheneck, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 23

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** MARCH 14, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 (Individual voir dire of Juror Laura Barber.)

2 THE COURT: In a trial like this, whenever
3 the Court gets any information, the Court is
4 obligated to follow it up and that's what we're
5 doing this morning.

6 MS BARBER: Okay.

7 THE COURT: There was a report that was
8 received yesterday, that was passed on to me
9 yesterday, involving a citizen providing information
10 about a juror. And that's what I'm going to be
11 talking to you about.

12 MS BARBER: Okay.

13 THE COURT: The incident happened at the --
14 or reported was at the Manitowoc Eagle's Club on
15 Friday, March 2nd, which would be the Friday before
16 this past Friday.

17 MS BARBER: All right.

18 THE COURT: For a fish fry, I think, in the
19 evening. First, were you there?

20 MS BARBER: Yes, I was.

21 THE COURT: Okay. Can you tell me who you
22 were there with?

23 MS BARBER: My mother and my husband.

24 THE COURT: Okay. And do you know about
25 what time you were there, like from when until when,

1 say approximately?

2 MS BARBER: I'm going to guess 5:30 to
3 9.

4 THE COURT: Okay. During the time that you
5 were there, would you have said anything to anyone
6 that would have given them the impression that you
7 are a juror in this case?

8 MS BARBER: No, I didn't. A lot of
9 them, that I belong to the auxiliary with, knew I
10 was on, but they -- they don't question me about
11 things.

12 THE COURT: Okay.

13 MS BARBER: They do know I am a juror
14 and they make comments like, I wouldn't want to
15 be in your shoes.

16 THE COURT: Okay.

17 MS BARBER: And I just shrug my
18 shoulders and say, I can't say anything.

19 THE COURT: Okay. Was anything said to you
20 or was there any mention that you heard from anyone
21 at the Eagle's Club that evening involving the guilt
22 or innocence of the defendant in this case?

23 MS BARBER: I have to think about that.
24 I don't recall anybody saying something to me
25 because I -- I have my own opinions. I don't

1 want to listen to anybody else. And no matter
2 what they say, I don't listen to them.

3 THE COURT: Okay. Did you discuss the case
4 at the Eagle's Club with anyone that evening?

5 MS BARBER: No, I didn't.

6 THE COURT: Did you give any opinions or
7 say anything about your feelings about the case so
8 far?

9 MS BARBER: No. And that's -- I just
10 refuse to, because I don't -- I don't want
11 somebody telling me what to think.

12 THE COURT: Okay. Can you think of
13 anything that was said or that happened that night
14 that -- that would have led a citizen to report
15 something?

16 MS BARBER: Honestly, I don't. We go
17 for fish. I have a couple old fashions. We sit
18 upstairs in the bar afterward for a couple hours.
19 And I don't -- I don't make it a known thing that
20 this is what I'm doing.

21 THE COURT: Okay. You are saying, though,
22 that there are other -- there were other people
23 there who may have known you were a juror.

24 MS BARBER: Right.

25 THE COURT: And may have said something?

1 MS BARBER: Exactly. I don't know who
2 they were.

3 THE COURT: Okay.

4 MS BARBER: They talk amongst
5 themselves. I really don't listen. I have made
6 it a point that I don't want to have any
7 influence.

8 THE COURT: Okay.

9 MS BARBER: However, you want to take
10 that, that's fine, but I don't -- I don't want
11 somebody telling me how to think. And I have
12 always been that way.

13 THE COURT: Okay. Thank you. I'm going to
14 have you step outside with the sheriff.

15 MS BARBER: Sure.

16 THE COURT: Counsel, anything else that you
17 would like asked?

18 ATTORNEY STRANG: I think I caught this,
19 but we were clear that it was the Manitowoc Eagle's
20 Club?

21 ATTORNEY BUTING: Yes.

22 ATTORNEY STRANG: I thought so, but.

23 THE COURT: Otherwise we'll retreat to
24 chambers.

25 ATTORNEY FALLON: Did you want to ask her

1 point blank the question, it's been pointed out this
2 comment was attributed to someone meeting your
3 description. That's the only question left, if you
4 think you circumstantially have to.

5 ATTORNEY KRATZ: Does she know this woman?
6 But then you out the reporter.

7 THE COURT: I don't think the woman claimed
8 that she knew the juror.

9 ATTORNEY KRATZ: I think we can do this in
10 chambers.

11 THE COURT: All right. Let's go off the
12 record at this time.

13 (Individual voir dire concluded.)

14 (Jury not present.)

15 THE COURT: At this time the Court calls
16 State of Wisconsin vs. Steven Avery, Case No. 05 CF
17 381. We're here today for a continuation of the
18 trial, specifically, final instructions and closing
19 arguments. Will the parties state their appearances
20 for the record, please.

21 ATTORNEY KRATZ: Good morning, Judge. The
22 State of Wisconsin appears by Calumet County
23 District Attorney Ken Kratz. Also Tom Fallon and
24 Norm Gahn, all appearing as Special Prosecutors.

25 ATTORNEY STRANG: Steven Avery appears in

1 person, Jerome Buting and Dean Strang on his behalf.

2 THE COURT: Before we bring in the jury,
3 after the formal instruction conference yesterday
4 afternoon I prepared a proposed final set of jury
5 instructions. I also provided a copy of the final
6 draft to each of the attorney's before we left
7 yesterday. Mr. Kratz, are the instructions as
8 proposed acceptable to the State?

9 ATTORNEY KRATZ: They are, Judge.

10 THE COURT: And, Mr. Strang, subject to the
11 requested instructions of the defense the Court did
12 not give, do they, the instructions as submitted,
13 reflect your understanding?

14 ATTORNEY STRANG: The instructions, as
15 tendered to us this morning, do reflect our
16 understanding of the resolution, the jury
17 instruction conference, and what we understood the
18 Court would say to the jurors.

19 THE COURT: Very well. Does either party
20 have anything else before we bring the jury out?

21 ATTORNEY KRATZ: Not the State, your Honor.

22 ATTORNEY STRANG: (Shakes head negatively.)

23 THE COURT: All right. We'll bring in the
24 jurors at this time.

25 (Jury present.)

1 THE COURT: You may be seated. Members of
2 the jury, at this time the Court is going to read
3 the final instructions to you. We'll then proceed
4 to closing arguments of the parties.

5 Mr. Ward, I'm going to ask you if you
6 can take these instructions and provide one set
7 to each member of the jury.

8 ATTORNEY STRANG: Your Honor, maybe we can
9 have just a very brief side bar.

10 THE COURT: Okay.

11 (Side bar taken.)

12 THE COURT: All right. Members of the jury
13 you may follow along with the Court if you wish.
14 Members of the jury, the Court will now instruct you
15 upon the principles of law which you are to follow
16 in considering the evidence and in reaching your
17 verdict.

18 It is your duty to follow all of these
19 instructions. Regardless of any opinion you may
20 have about what the law is or ought to be, you
21 must base your verdict on the law I give you in
22 these instructions, apply that law to the facts
23 in the case which have been properly proven by
24 the evidence. Consider only the evidence
25 received during this trial and the law as given

1 to you by these instructions, and from these
2 alone, guided by your soundest reason and best
3 judgment, reach your verdict.

4 If any member of the jury has an
5 impression of my opinion as to whether the
6 defendant is guilty or not guilty, disregard that
7 impression entirely and decide the issues of fact
8 solely as you view the evidence. You the jury
9 are the sole judges of the facts and the Court is
10 the judge of the law only.

11 Evidence is, first, the sworn testimony
12 of witnesses, both on direct and
13 cross-examination, regardless of who called the
14 witness.

15 Second, the exhibits the Court has
16 received, whether or not an exhibit goes to the
17 jury room.

18 Third, any facts or testimony to which
19 the lawyers have agreed or stipulated or which
20 the Court has directed you to find.

21 Anything you may have seen or heard
22 outside the courtroom is not evidence. You are
23 to decide the case solely on the evidence offered
24 and received at trial.

25 The defendant in this case is charged

1 with three counts. A fourth count of false
2 imprisonment has been dismissed. The
3 instructions for the three remaining counts have
4 been modified somewhat from the opening
5 instructions given to you at the beginning of the
6 trial to conform to the evidence introduced at
7 trial.

8 The first count of the Information in
9 this case charges that: Steven Avery, on Monday,
10 October, 31, 2005, at 12932 Avery Road, Town of
11 Gibson, Manitowoc, Wisconsin, did cause the death
12 of Teresa M. Halbach, with intent to kill that
13 person, contrary to Section 940.01 (1)(a) of the
14 Wisconsin Statutes.

15 To this charge, the defendant has
16 entered a plea of not guilty, which means the
17 State must prove every element of the offense
18 charged beyond a reasonable doubt.

19 First degree intentional homicide, as
20 defined in Section 940.01 of the Criminal Code of
21 Wisconsin, is committed by one who causes the
22 death of another human being with intent to kill
23 that person or another.

24 Before you may find the defendant guilty
25 of first degree intentional homicide, the State

1 must prove, by evidence which satisfies you,
2 beyond a reasonable doubt, that the following two
3 elements were present:

4 One, the defendant caused the death of
5 Teresa Halbach. Cause means that the defendant's
6 act was a substantial factor in producing the
7 death.

8 Two, the defendant acted with the intent
9 to kill Teresa Halbach.

10 Intent to kill means that the defendant
11 had the mental purpose to take the life of
12 another human being or was aware that his conduct
13 was practically certain to cause the death of
14 another human being.

15 While the law requires that the
16 defendant acted with intent to kill, it does not
17 require that the intent exist for any particular
18 length of time before the act is committed. The
19 act need not be brooded over, considered, or
20 reflected upon for a week, a day, an hour, or
21 even for a minute. There need not be any
22 appreciable time between the formation of the
23 intent and the act. The intent to kill may be
24 formed at any time before the act, including the
25 instant before the act, and must continue to

1 exist at the time of the act.

2 You cannot look into a person's mind to
3 find intent. Intent to kill must be found, if
4 found at all, from the defendant's acts, words,
5 and statements, if any, and from all the facts
6 and circumstances in this case bearing upon
7 intent.

8 Intent should not be confused with
9 motive. While proof of intent is necessary to a
10 conviction, proof of motive is not. Motive
11 refers to a person's reason for doing something.
12 While motive or lack of motive is relevant and
13 may be shown as a circumstance to aid in
14 establishing the guilt or innocence of a
15 defendant, the State is not required to prove
16 motive on the part of a defendant in order to
17 convict. Evidence of motive does not by itself
18 establish guilt. You should give it the weight
19 you believe it deserves under all the
20 circumstances.

21 If you are satisfied, beyond a
22 reasonable doubt, that the defendant caused the
23 death of Teresa Halbach, with the intent to kill,
24 you should find the defendant guilty of first
25 degree intentional homicide.

1 If you are not so satisfied, you must
2 find the defendant not guilty.

3 The second count of the Information
4 charges that: Steven Avery, between Monday,
5 October 31, 2005, and Friday, November 4, 2005,
6 at a 12932 Avery Road, Manitowoc County,
7 Wisconsin, did mutilate, disfigure, or dismember
8 a corpse with the intent to conceal a crime,
9 contrary to Section 940.11 (1), 939.50 (3)((f) of
10 the Wisconsin Statutes.

11 To this charge, the defendant has also
12 entered a plea of not guilty, which means the
13 State must prove every element of the offense
14 charged beyond a reasonable doubt.

15 Mutilating a corpse, as defined in
16 Section 940.11 (1) of the Criminal Code of
17 Wisconsin, is violated by one who mutilates a
18 corpse with intent to conceal a crime or avoid
19 apprehension, prosecution, or conviction for a
20 crime.

21 Before you may find the defendant guilty
22 of this offense, the State must prove, by
23 evidence which satisfies you, beyond a reasonable
24 doubt, that the following two elements were
25 present:

1 One, Steven Avery mutilated the corpse
2 of Teresa Halbach.

3 Two, in mutilating the corpse of Teresa
4 Halbach, Steven Avery acted with the intent to
5 conceal a crime.

6 This requires that the defendant acted
7 with the purpose to conceal a crime.

8 You cannot look into a person's mind to
9 find out intent. Intent must be found, if found
10 at all, from the defendant's acts, words and
11 statements, if any, and from all the facts and
12 circumstances in this case bearing upon intent.

13 If you are satisfied, beyond a
14 reasonable doubt, that both elements of this
15 offense have been proved, you should find the
16 defendant guilty.

17 If you are not so satisfied, you must
18 find the defendant not guilty.

19 The defendant's theory of defense on the
20 charges of first degree intentional homicide and
21 mutilation of a corpse is that another person or
22 persons tried to frame him for the murder of
23 Teresa Halbach and the burning of her body. If
24 the facts introduced in support of the
25 defendant's theory raise a reasonable doubt in

1 your mind, or if you otherwise find that a
2 reasonable doubt arises from the evidence, then
3 you must find the defendant not guilty of the
4 charges.

5 The third count of the Information
6 charges that: Steven Avery, on Saturday,
7 November 5, 2005, at 12932 Avery Road, Manitowoc
8 County, Wisconsin, did possess a firearm
9 subsequent to the conviction for the felony or
10 other crime, as specified in sub. (1)(a) or (b),
11 contrary to Section 941.29 (2)(a), and 939.50
12 (3)(g) of the Wisconsin Statutes.

13 To this charge, the defendant has also
14 entered a plea of not guilty, which means the
15 State must prove every element of the offense
16 charged, beyond a reasonable doubt.

17 Section 941.29 of the Criminal Code of
18 Wisconsin is violated by a person who possesses a
19 firearm, if that person has been convicted of a
20 felony.

21 Before you may find the defendant guilty
22 of this offense, the State must prove, by
23 evidence which satisfies you, beyond a reasonable
24 doubt, that the following two elements were
25 present:

1 One, the defendant possessed a firearm.
2 Firearm means a weapon which acts by the force of
3 gun powder. It is not necessary that the firearm
4 was loaded or capable of being fired.

5 Possess means that the defendant
6 knowingly had actual physical control of a
7 firearm.

8 An item is also in a person's possession
9 if it is in an area over which the person has
10 control and the person intends to exercise
11 control over the item. It is not required that a
12 person own an item in order to possess it. What
13 is required is that the person exercise control
14 over the item.

15 Two, the defendant had been convicted of
16 a felony before November 5, 2005.

17 The parties have agreed that Steven
18 Avery was convicted of a felony before
19 November 5, 2005, and you must accept this as
20 conclusively proved.

21 If you are satisfied, beyond a
22 reasonable doubt, that both elements of this
23 offense have been proved, you should find the
24 defendant guilty.

25 If you are not so satisfied, you must

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find the defendant not guilty.

In reaching your verdict, examine the evidence with care and caution. Act with judgment, reason, and prudence.

Defendants are not required to prove their innocence. The law presumes every person charged with the commission of an offense to be innocent. This presumption requires a finding of not guilty, unless in your deliberations you find it is overcome by evidence which satisfies you, beyond a reasonable doubt, that the defendant is guilty.

The burden of establishing every fact necessary to constitute guilt is upon the State. Before you can return a verdict of guilty, the evidence must satisfy you, beyond a reasonable doubt, that the defendant is guilty.

If you can reconcile the evidence upon any reasonable hypothesis, consistent with the defendant's innocence, you should do so and return a verdict of not guilty.

The term reasonable doubt means a doubt based upon reason and common sense. It is a doubt for which a reason can be given, arising from a fair and rational consideration of the

1 evidence or lack of evidence. It means such a
2 doubt as would cause a person of ordinary
3 prudence to pause or hesitate when called upon to
4 act in the most important affairs of life.

5 A reasonable doubt is not a doubt which
6 is based on mere guesswork or speculation. A
7 doubt which arises merely from sympathy or from
8 fear to return a verdict of guilt is not a
9 reasonable doubt. A reasonable doubt is not a
10 doubt such as may be used to escape the
11 responsibility of a decision.

12 While it is your duty to give the
13 defendant the benefit of every reasonable doubt,
14 you are not to search for doubt. You are to
15 search for the truth.

16 An Information is nothing more than a
17 written formal accusation against the defendant
18 charging the commission of one or more criminal
19 acts. You are not to consider it as evidence
20 against the defendant in any way. It does not
21 raise any inference of guilt.

22 Disregard entirely any question that the
23 Court did not allow to be answered. Do not guess
24 at what the witness' answer might have been. If
25 the question itself suggested that certain

1 information might be true, ignore the suggestion
2 and do not consider it as evidence.

3 Attorneys for each side have the right
4 and the duty to object to what they consider are
5 improper questions asked of witnesses and to the
6 admission of other evidence which they believe is
7 not properly admissible. You may not draw any
8 conclusions from the fact an objection was made.

9 By allowing testimony or other evidence
10 to be received over the objection of counsel, the
11 Court is not indicating any opinion about the
12 evidence. The jurors are the judges of the
13 credibility of the witnesses and the weight of
14 the evidence.

15 During the trial the Court has ordered
16 certain testimony to be stricken. Disregard all
17 stricken testimony.

18 An exhibit becomes evidence only when
19 received by the Court. An exhibit marked for
20 identification and not received is not evidence.
21 An exhibit received is evidence whether or not it
22 goes to the jury room.

23 You will not have a copy of the written
24 transcript of the trial testimony available for
25 use during your deliberations. You may ask to

1 have specific portions of the testimony read to
2 you. You must continue to rely primarily on your
3 memory of the evidence and the testimony
4 introduced during the trial.

5 Remarks of the attorneys are not
6 evidence. If the remarks suggested certain facts
7 not in evidence, disregard the suggestion.

8 Consider carefully the closing arguments
9 of the attorneys, but their arguments and
10 conclusions and opinions are not evidence. Draw
11 your own conclusions from the evidence and decide
12 upon your verdict according to the evidence,
13 under the instructions given to you by the Court.

14 It is not necessary that every fact be
15 proved directly by a witness or an exhibit. A
16 fact may be proved indirectly by circumstantial
17 evidence. Circumstantial evidence is evidence
18 from which a jury may logically find other facts,
19 according to common knowledge and experience.
20 Circumstantial evidence is not necessarily better
21 or worse than direct evidence. Either type of
22 evidence can prove a fact.

23 Whether evidence is direct or
24 circumstantial, it must satisfy you, beyond a
25 reasonable doubt, that the defendant committed

1 the offense before you may find the defendant
2 guilty.

3 The State has introduced evidence of
4 statements which it claims were made by the
5 defendant. It is for you to determine how much
6 weight, if any, to give to each statement.

7 In evaluating each statement, you must
8 determine three things:

9 Whether the statement was actually made
10 by the defendant. Only so much of a statement as
11 was actually made by a person may be considered
12 as evidence.

13 Whether the statement was accurately
14 restated here at trial.

15 Whether the statement, or any part of
16 it, ought to be believed.

17 You may also consider the consistency or
18 inconsistency with any other statements made by
19 the defendant.

20 You should consider the facts and
21 circumstances surrounding the making of each
22 statement, along with all the evidence, in
23 determining how much weight, if any, a statement
24 deserves.

25 The weight of evidence does not depend

1 on the number of witnesses on each side. You may
2 find that the testimony of one witness is
3 entitled to greater weight than that of another
4 witness or even of several other witnesses.

5 In weighing the evidence, you may take
6 into account matters of your common knowledge and
7 your observations and experience in the affairs
8 of life.

9 Ordinarily, a witness may testify only
10 about facts. However, a witness with expertise
11 in a particular field may give an opinion in that
12 field.

13 You should consider the qualifications
14 and credibility of the expert, the facts upon
15 which the opinion is based, and the reasons given
16 for the opinion.

17 Opinion evidence was received to help
18 you reach a conclusion. However, you are not
19 bound by any expert's opinion. You may give as
20 much or as little weight to the opinion of any
21 expert as you conclude it is entitled to receive.

22 In resolving conflicts in expert
23 testimony, weigh the different expert opinions
24 against each other. Also consider the
25 qualifications and credibility of the experts and

1 the facts supporting their opinions.

2 During the trial, an expert witness was
3 told to assume certain facts and then was asked
4 for an opinion, based on that assumption. This
5 is called a hypothetical question.

6 The opinion does not establish the truth
7 of the facts upon which it is based. Consider
8 the opinion only if you believe the assumed facts
9 upon which it is based have been proved. If you
10 find the facts stated in the hypothetical
11 question have not been proved, then the opinion
12 based on those facts should not be given any
13 weight.

14 It is the duty of the jury to scrutinize
15 and to weigh the testimony of the witnesses and
16 to determine the effect of the evidence as a
17 whole. You are the sole judges of the
18 credibility, that is, the believability of the
19 witnesses and of the weight to be given to their
20 testimony.

21 In determining the credibility of each
22 witness, and the weight you give to the testimony
23 of each witness, consider these factors:

24 Whether the witness has an interest or
25 lack of interest in the result of this trial.

1 The witness' conduct, appearance, and
2 demeanor on the witness stand.

3 The clearness, or lack of clearness of
4 the witness' recollections.

5 The opportunity the witness had for
6 observing and for knowing the matters the witness
7 testified about.

8 The reasonableness of the witness'
9 testimony.

10 The apparent intelligence of the
11 witness.

12 Bias or prejudice, if any has been
13 shown.

14 Consistency or inconsistency with any
15 prior statements of the witness.

16 Possible motives for falsifying
17 testimony.

18 And all other facts and circumstances
19 during the trial which tend either to support or
20 to discredit the testimony.

21 Then give to the testimony of each
22 witness the weight you believe it should receive.

23 There is no magic way for you to
24 evaluate the testimony; instead, you should use
25 your common sense and experience. In everyday

1 life, you determine for yourselves the
2 reliability of things people say to you. You
3 should do the same thing here.

4 A defendant in a criminal case has the
5 absolute constitutional right not to testify.

6 The defendant's decision not to testify
7 must not be considered by you in any manner and
8 must not influence your verdict in any manner.

9 Now, at this time the closing
10 instructions will not be given until after the
11 closing arguments have been completed.

12 We're going to take a very short break,
13 not our normal morning break, at this time, to
14 allow the parties to get ready to present their
15 closing arguments.

16 I will continue to remind you not to
17 discuss this case until you have heard all the
18 closing arguments and the Court orders that you
19 begin deliberating.

20 (Jury not present.)

21 THE COURT: You may be seated.

22 ATTORNEY BUTING: Judge, one thing that
23 might be helpful just to explain to the jury so they
24 have some idea how the day will proceed, that the
25 State goes first, then the defense, and then the

1 State, actually, has a follow-up rebuttal.

2 Otherwise they may be unclear on how that works.

3 THE COURT: Any objection from the State?

4 ATTORNEY KRATZ: No.

5 THE COURT: I should indicate during the
6 side bar, requested by the defense -- Well,
7 Mr. Strang, I will let you reiterate what you told
8 the court.

9 ATTORNEY STRANG: I asked for a side bar
10 shortly before instructions began, but after written
11 instructions had been distributed to the jurors. I
12 raised my concern simply that I did not think the
13 jurors should have written instructions in their
14 hands or with them at their chairs during closing
15 arguments; although, I certainly agree they should
16 have a copy of the written instructions during
17 deliberations.

18 As I understand, without objection from
19 Mr. Kratz on behalf of the State, the Court
20 agreed to collect the written instructions again
21 at this point, from the jurors, and redistribute
22 them again after the jury is sworn to begin
23 deliberations.

24 THE COURT: Mr. Kratz?

25 ATTORNEY KRATZ: That's fine.

1 THE COURT: I'm just -- If I understand, I
2 was told what the parties were requesting; I don't
3 remember the part about ordering them being
4 collected. My concern is this, I generally
5 instruct, before closing arguments and hand out the
6 instructions because sometimes the attorneys in
7 their closing argument wish to refer to specific
8 instructions.

9 I don't know if either of you intend to
10 do that, but if you do, I generally allow --
11 first of all, I allow the attorneys to invite the
12 jurors to flip to a page so that the jurors can
13 follow along with what the attorney is reading
14 and not have to take the attorney's word for it
15 that that is the instruction.

16 Let me suggest this, I could tell the
17 jurors, when they come back for closing
18 arguments, to set the instructions down under
19 their chair and only refer to them if one side or
20 another, in its closing argument, invites them
21 to. Does that address your concern?

22 ATTORNEY STRANG: I think it would. It had
23 been our plan simply to put an instruction up on the
24 ELMO if we intended to use much of it, but I think
25 what the Court is proposing would do the same thing.

1 The concern here is for the same reason we don't
2 allow jurors to take notes during the closing
3 arguments, we don't want divided attention.

4 THE COURT: Mr. Kratz.

5 ATTORNEY KRATZ: That's fine.

6 THE COURT: All right. Well, I also, as a
7 practical matter, don't want them to misplace
8 theirs. I don't think they have written their names
9 on them. I will do this, I will instruct them to
10 place the instructions on the floor and not pick
11 them up to look at them during closings, unless the
12 attorney making the closing invites them to.

13 ATTORNEY STRANG: I'm going to duck out for
14 two minutes, if we have two minutes.

15 THE COURT: All right. We'll do that.
16 We'll take a couple quick minutes before we start.

17 (Brief recess taken.)

18 (Jury present.)

19 THE COURT: Members of the jury, before we
20 get started, I have a couple of announcements for
21 you. First, with respect to the format, in closing
22 arguments the State, because the State has the
23 burden of proof, goes first. We will, I believe,
24 take a break sometime this morning, in the middle of
25 the State's closing argument. The defense, then,

1 gets a chance to make its closing argument. And the
2 State has a final chance to make argument in
3 rebuttal, after they have heard what the defense
4 argument is.

5 The other thing is, I'm going to ask you
6 at this time to take your copy of the closing
7 instructions -- the jury instructions, if you
8 brought them out, set them on the floor upside
9 down. We do this to make sure that everybody is
10 paying attention to the closing arguments.

11 The attorneys are permitted, if they
12 wish, to make reference to the jury instructions
13 in their closings. If they ask you to take a
14 look at any instruction, you may pick them up at
15 that point, otherwise set them down. I believe
16 nobody has pens or notebooks, correct, because
17 you are not permitted to take notes during
18 closing arguments. With that, Mr. Kratz, you may
19 proceed.

20 ATTORNEY KRATZ: Thank you, Judge. I don't
21 know how the volume is on this mike.

22 THE COURT: Do you know if you are number
23 seven or eight?

24 ATTORNEY STRANG: Eight.

25 ATTORNEY KRATZ: I guess I'm eight, Judge.

1 THE COURT: Okay.

2 ATTORNEY KRATZ: Can everybody hear me
3 okay? Is that all right? Thank you. Then, I will
4 begin. May it please the Court. Let me start
5 ladies and gentlemen by thanking you for the time
6 and attention that you have given to this very
7 important case for the last five weeks.

8 This is an important duty. It's an
9 important duty not just for the 12 of you that
10 are going to decide the case, but for really all
11 of Manitowoc County. You are representatives of
12 the citizens of Manitowoc County.

13 And I'm going to be highlighting some of
14 the facts in this case that the State believes
15 was important. The last thing I'm going to do is
16 reiterate -- or try to reiterate all of the
17 facts, all the evidence that has been presented.
18 I don't think you want to hear lawyers any more
19 talking for you incessantly or hours upon hours.
20 But there are some important parts of this case.

21 We start with why are we here. It would
22 be a natural thought process for a jury to think,
23 you know, we have been sitting here for five
24 weeks, there must be a reason. There's got to be
25 a reason why, for five weeks, we have had to

1 listen to over 500 exhibits, something
2 approaching 60 witnesses, and there must be a
3 conflict. There must be a controversy that has
4 to be tried in this case.

5 We're here because Steven Avery pled not
6 guilty. We're here because Mr. Avery has a
7 constitutionally protective right to be tried
8 when he pleads not guilty, like anybody else who
9 pleads not guilty. There hasn't been any
10 question and I don't want you to sit in that jury
11 box and think that there is any question about
12 who is responsible for the death and the
13 mutilation of Teresa Halbach.

14 The fact that we have been here five
15 weeks is because it's my duty, it's my job, to
16 prove all the elements of the offenses for which
17 Mr. Avery is charged. Not because there are
18 questions. And I start by saying that for, I
19 think, obvious reasons. Because as jurors, you
20 must be thinking, or you would naturally be
21 thinking, that there's got to be two sides to
22 this. And as the State and as we, I think, have
23 presented in this case, all of the evidence
24 points to one person. That's the one person
25 being responsible.

1 I'm going to argue at the conclusion of
2 this case who that one person is. I bet you can
3 guess who I'm going to suggest was -- was
4 responsible. But, again, please keep, before any
5 of the evidence I talk about, please keep that in
6 mind, that we're here because that man pled not
7 guilty and because that man is entitled to a
8 trial.

9 Cases are decided on facts, at least
10 from the State's perspective. We don't present
11 speculation. We don't ask you to perform
12 guesswork when deciding what happens. You know
13 the funny thing about facts is facts are
14 stubborn. Facts don't change. You can twist
15 them and you can beat them up, you can try to
16 massage, if you will, the facts, but facts don't
17 change.

18 The facts in this case, as presented,
19 and as I will present to you, are very much so
20 uncontested, uncontroverted, at least most of the
21 facts in this case are uncontroverted. But my
22 job is going to be to take you through what I
23 think are the important facts of this case, why
24 we think we have proved the case, beyond a
25 reasonable doubt, against Steven Avery. And I

1 intend do that.

2 The first fact that I would like to talk
3 about is a starting point in the case. Now,
4 every case has a starting point. When you think
5 about a case this big, and by now you realize and
6 you have heard just how big of a case this is.
7 You have heard that the Crime Lab received the
8 most submissions ever in the history of the
9 Wisconsin State Crime Lab, that more law
10 enforcement officers were used in this case, from
11 an investigative standpoint, than any other case.

12 But what does that mean. Try and put
13 that in perspective in -- in kind of an
14 historical perspective. That means that this is
15 a pretty darn big case. And when a case is that
16 big, the natural tendency is to try to look at
17 the big picture, and to try to absorb it all, if
18 you can. But I'm not going to do that.

19 I want you to pick one particular point
20 in time. I want to start the presentation that I
21 have with one moment in time. Now, we could have
22 started any number of moments. There's been what
23 we call watershed moments, real important moments
24 in the case when Teresa Halbach was shot, when
25 she was murdered. That's a particularly

1 important moment.

2 We could start with the moment or with
3 the visual or with the image of that man, Steven
4 Avery, standing outside of a big bonfire, with
5 flames over the roof, or at least over the garage
6 roof, and the silhouette of Steven Avery, with
7 the bonfire in the background and the
8 observations made by some witnesses.

9 Can you all picture that? Can you
10 picture that as a moment, as a moment in time?
11 And that moment, by the way, although dramatic
12 and although important, should tell the whole
13 story. That moment of Steven Avery, after the
14 murder was committed, of Steven Avery tending the
15 fire, of Steven Avery disposing of and mutilating
16 the body of 25 year old Teresa Halbach. That
17 would be a good place to start.

18 But I'm not going to start there. I'm
19 going to start somewhere else. I'm going to
20 start with the Toyota RAV4. The Toyota RAV4,
21 which was owned by Teresa Halbach, which was
22 discovered on the 5th of November, at the Avery
23 Salvage Property, is less dramatic, it's a less
24 dramatic place to start, than those other moments
25 in time that I talked about. But it's equally

1 important.

2 Because the discovery of that RAV4, the
3 discovery of Teresa Halbach's vehicle, changed
4 the course of not only this case, but the clues
5 and the secrets found in that vehicle changed the
6 lives of everybody in this room. Look around,
7 everybody.

8 The clues found in that vehicle, on the
9 5th of November, changed everybody's lives, yours
10 included. Your lives will never be the same,
11 ours won't, families won't. That moment is
12 particularly important. And that is where we're
13 going to begin.

14 This woman, Pam Sturm, of the 60
15 witnesses -- by the way, I'm going to be helping
16 you remember some of these faces as we go along.
17 I don't expect you to remember 60 people and what
18 they look like. And when I talk about witnesses,
19 I'm going to try to help the jury with some
20 photos to jog your memories.

21 But on the 5th of November, Pam Sturm
22 and Ryan Hillegas had a conversation. They had a
23 conversation about where should Pam search for
24 Teresa's vehicle. And, importantly, in that
25 conversation, they decided to search the Avery

1 salvage property, the last place where Teresa
2 Halbach was seen alive.

3 Now, as I mentioned, this case
4 dramatically changes at that moment. This
5 changes from a missing persons investigation to
6 where something horribly bad has happened to
7 Teresa Halbach.

8 It's also the first opportunity that we
9 hear where we talk about law enforcement bias.
10 And we have heard that a lot from the defense,
11 throughout this case. But the perception or the
12 finding of the vehicle on the Avery property, in
13 fact, the very decision to look for this vehicle
14 on the Avery property, should tell you something.
15 What should it tell you?

16 Well, if Pam Sturm and Ryan Hillegas can
17 figure it out. If Pam Sturm and Ryan Hillegas,
18 when they talk to each other, say to themselves,
19 you know what, common sense would tell us that
20 the first place that we should look for Teresa
21 was the last place that she was seen alive, that
22 should put a lot of the defense suggestion of law
23 enforcement bias by Mr. Fassbender and
24 Mr. Wiegert, into perspective.

25 Because you don't have to be Sherlock

1 Holmes to figure out that that's where the
2 investigation should start. Pam and Ryan figured
3 that out, when Pam Sturm decided, let's go look
4 at the Avery property for this particular
5 vehicle.

6 Now, we also remember that Pam's
7 daughter, Nikole, went with her. Nikole,
8 importantly, did some things at the scene. She
9 took the photograph. She realized that the doors
10 were locked. She realized that it was too dark
11 to see inside, or to see any blood inside. She
12 realized that there were no plates on the
13 vehicle. But, importantly, both ladies never
14 took their eyes off of that vehicle until the law
15 enforcements arrived.

16 Now, photographs that were taken from
17 Pam are important; they are important in this
18 case. It was a camera lent to them by Scott
19 Bloedorn, as we understand. But what we do find
20 is that there were obvious attempts to obscure
21 the view of this car. There's no question that
22 this car was found by the car crusher.

23 Doesn't take a great leap of
24 interpretation to suggest that Steven Avery
25 intended to crush this car. But you don't have

1 to make that finding in this case. I'm just
2 saying that parenthetically for you. In other
3 words, that where it was located was not an
4 accident. There was no accident where Teresa
5 Halbach's vehicle was located.

6 Think also, if you will, about how
7 important this particular event was, finding this
8 car. Pam Sturm described it as divine
9 intervention, or words to that effect, that it
10 was the hand of God, I think was the term that
11 she said, as to where we should look at the 4,000
12 cars that were on this property. Pam Sturm
13 looked in that one place. She never would have
14 gotten through all those cars.

15 But on that Saturday morning, or going
16 into that Saturday afternoon, think of what would
17 have happened if this car wouldn't have been
18 found. Think about what would have happened if
19 this car was crushed, like the other 54 crushed
20 cars that were there. Think of what would happen
21 if the law enforcement officials wouldn't have
22 known that this car was there and this car would
23 have secretly been taken off the property and the
24 blood wouldn't have been found, both Teresa's
25 blood and Steven's blood.

1 Think how close he got to getting away
2 with that. Pam Sturm doesn't find this car, this
3 case doesn't change at that moment, we may not be
4 standing here today. All right. And that's why
5 that's the important place to start in this case.
6 That's why the investigation changes so
7 dramatically upon the recovery -- excuse me --
8 and observation of this particular car. All
9 right. That's the first fact.

10 Usually, when I would talk to a jury, I
11 wouldn't be concerned with things like security
12 issues, but part of the prosecution's job, not
13 only is to present my case, but to dispel any
14 defense suggestions that they have made in this
15 case. I'm not going to identify what the defense
16 has told you is evidence in the case, because
17 evidence has a meaning. Evidence suggests that
18 there were witnesses that said things about it or
19 that there were witnesses that agreed with the
20 questions that the defense gave.

21 Remember evidence in the case -- excuse
22 me -- evidence is the answers that witnesses
23 give. Evidence aren't the questions that
24 Mr. Buting or Mr. Strang asked. I know this is a
25 little bit of a diversion, but I'm the

1 prosecutor, I get to do this. The questions of
2 witnesses, did you plant evidence in this case,
3 and when witnesses consistently indicate that,
4 no, sir, I did not, that's the evidence.

5 The evidence is the answer. The
6 evidence isn't the question. Okay. So keep that
7 in mind as not only I go through my closing
8 argument, but as the defense may stand before you
9 and may suggest to you theories, or speculation,
10 or supposition, or maybe what questions they
11 might have asked. But you are also collectively
12 going to have to remember what the answers were,
13 because it's the answers that are the evidence,
14 not the question.

15 Scene security. Scene security was
16 talked to you by several witnesses. I'm not
17 going to spend a great deal of time, but we know
18 that law enforcement early on, number one, knew
19 the significance of this SUV; number two, knew
20 the -- at least perception of Manitowoc County
21 being involved in the case. But as importantly,
22 number three, knew the importance of something
23 called scene security, of making sure that nobody
24 was allowed to have access to that car. Nobody
25 was going to tamper with the SUV after it had

1 been located.

2 We first heard from Deputy Pete
3 O'Connor. Deputy O'Connor was the perimeter
4 security guy. Deputy O'Connor, as you recall,
5 and as we come right off of Highway 147, was
6 stationed right at the entrance to the Avery
7 salvage property. Importantly, I guess, not only
8 did he note the people that were leaving and that
9 he stopped, but that Sergeant Orth was the first
10 one to arrive.

11 And as you might expect, we then called
12 those officers in order of arrival on the scene.
13 When Sergeant Orth said that he got there about
14 10:59 a.m., that he talked to both of the Sturms,
15 that they were very upset, that they were visibly
16 upset, and they should be, the Sturms knew at
17 that time the significance of what they had
18 found. They knew about their cousin. They knew
19 about where this case was going and where it was
20 going to lead.

21 And Sergeant Orth testified that his
22 job, when he was on the Avery salvage property,
23 was to protect that particular vehicle. All
24 right. It's called scene security. That's a
25 fancy word for guarding a piece of property, or

1 maintaining the integrity of a piece of evidence
2 in a case. And we heard that he was, really,
3 just a few feet, what would be to the east of the
4 SUV that was located.

5 Remember also, though, that other
6 witnesses, including the Sturms, including some
7 other supervisors, including Calumet County, when
8 they arrive, they never take their eyes off of
9 that particular vehicle. And Sergeant Orth was
10 one of those. Remember his testimony, he said, I
11 didn't take my eyes off that vehicle. Nobody
12 entered that vehicle. Nobody tampered with that
13 vehicle.

14 We even called witnesses like Lieutenant
15 Todd Hermann who, at the time, provided short
16 breaks for Sergeant Orth. We do that for
17 something called chain of custody, to make sure
18 that even for those couple of minute gaps and
19 Sergeant Orth said, even when I was taking a
20 little break in the staging area, I could
21 still -- I could still see the car. But, again,
22 under the category of lead prosecutor, crossing
23 all of my T's, I wanted you to know, and wanted
24 to make sure that you knew that all the witnesses
25 were called.

1 We heard from Detective Dave Remiker,
2 several times in the case. But Detective
3 Remiker, who was involved early on, Detective
4 Remiker was, I guess, the lead investigative
5 individual from Manitowoc County, both in the
6 missing persons part of the case, and also in
7 these early stages Detective Remiker, we heard,
8 confirmed the VIN. Remember, confirmed that this
9 was, in fact, Teresa Halbach's car. And you will
10 remember everything that Detective Remiker said
11 to you about that case.

12 But I want you to think back and I want
13 you to remember Detective Remiker looking. I
14 want you to remember how Detective Remiker told
15 you about scene security. This is a detective, a
16 young detective, but a good detective, a guy who
17 knows his job. A guy who, on the scene, knew the
18 importance of scene security.

19 Detective Remiker looked at you, without
20 apology, didn't bat an eye, and he told you,
21 nobody entered that vehicle. Remember that?
22 Remember when Detective Remiker told all of you,
23 all of the jurors, that nobody entered that
24 vehicle, because it was so important. Because
25 the integrity, the perception about this case,

1 making sure that nobody was going to tamper with,
2 at that time, his evidence, was an important
3 factor to Detective Remiker.

4 And when you look at his credibility --
5 This is the first opportunity I will have to talk
6 about credibility of witnesses. It's not
7 something -- and the judge has instructed you --
8 not something that you do just as a juror. We do
9 it everyday.

10 When we listen to lawyers, or when we
11 listen to people who are trying to sell us
12 something, car salesmen, as an example. We weigh
13 their credibility. All right. The car salesman
14 comes up and tells you that this little baby was
15 only driven on Sunday, by a little old lady to
16 church. You might weigh some of those factors
17 into that particular salesman. What's he trying
18 to sell me and why is he trying to sell me that?
19 Does he have any interest in the outcome of what
20 he's saying? Does he have some kind of a bias or
21 does he have some kind of a prejudice?

22 And, of course he does. And you weigh
23 those kind of factors, not just how they say it,
24 but whether or not they have those -- those
25 influences. You do the same thing as -- it's a

1 little more formalized, but you do the same thing
2 as a juror. It's not just what they say, it's
3 how they say it and were they in a position to
4 know the things that they are talking to you
5 about.

6 And my suggestion to you, my argument to
7 you, as the lead prosecutor, when the guy who's
8 in charge of the case points to you and looks at
9 you, without apology and emphatically says,
10 nobody, nobody entered that vehicle, and nobody
11 tampered with that vehicle, that's something that
12 you should give great credibility and great
13 weight to.

14 We finish what's called the chain of
15 custody, or the transfer of -- from Manitowoc to
16 Calumet County, with Sergeant Tyson. You have
17 heard from Sergeant Bill Tyson who completes, if
18 you will, the chain; that is, who watched the
19 vehicle and who took over. And about 3:00, and
20 at least from 3:00 on, we learned, then, that
21 Calumet County takes over.

22 Calumet County takes over, then, with
23 not just perimeter security, but takes over
24 security of the SUV, of that particular part of
25 the scene. It's the transfer of management

1 control about this case, that's why Calumet
2 County and DCI got involved. Let me just spend a
3 couple minutes about that.

4 Manitowoc County sheriff's deputies were
5 never, never, precluded from being involved in
6 this case. The resources of Manitowoc County law
7 enforcement officers was critical, was crucial.
8 Mr. Fassbender never apologized for that.

9 And think about why. Because we're in
10 Manitowoc County. It's the Manitowoc County
11 sheriff's deputies that are going to know if we
12 need a wrecker, where are we going to go. If we
13 need some tarps, where are we going to go. If we
14 need some ropes, where are we going to go. If we
15 need some bodies, to do some searching, if we
16 need trained evidence techs, it's a logical place
17 to find them. And that's why Manitowoc County
18 remained involved in this case.

19 You heard the testimony from
20 Mr. Fassbender, that it was the management
21 decisions, that it was the control decisions,
22 over this particular investigation, that was
23 removed from Manitowoc County. Never, ever,
24 ever, the resources. Never that we couldn't, or
25 shouldn't, use Manitowoc County law enforcement

1 officers. All right.

2 I hope you all understand that. I hope
3 you understand the difference, then, between
4 decision making, how a case should be directed,
5 and whether or not a Manitowoc County law
6 enforcement officer should have been used in this
7 case.

8 All right. Fact number three, the
9 vehicle is locked. We learned at this time the
10 weather is worsening, it's getting dark. The
11 Crime Lab is called in. And so our third
12 uncontested fact, my third fact that I want you
13 to consider when deciding this entire case, is
14 something called a recovery process. The SUV
15 recovery.

16 And for the first time, I guess, we
17 learn, and it's the first example of the
18 diversity of agencies that are involved in this
19 investigative effort, this largest criminal
20 investigation, that we have talked about, of the
21 resources that need to be allocated.

22 We have civilian searchers, like canine
23 handlers. We have law enforcement officers, like
24 from DCI and Calumet County. We have scientists
25 that are brought in, like people from the Crime

1 Lab. We have, as you heard, other civilians
2 brought in to help, like the wrecker operator,
3 and the tow truck driver, and the driver of the
4 trailer in this recovery effort.

5 But this is a good place to really kind
6 of get your mind around the expanse of this
7 investigation. And remember, we're an hour into
8 it. We're only an hour into the investigation
9 and already the resources are being called in,
10 because the enormity of this investigative effort
11 is so, so apparent to everybody.

12 I told you on my opening statement about
13 what I called a four legged hero. That may have
14 overstated Brutus a little bit, but Brutus is
15 certainly a qualified asset that you should be
16 considering in this case. Brutus hit on the SUV.
17 All right. And if the officers didn't have
18 enough suspicion before that particular moment,
19 all right, that should have been, and was, in
20 fact, a very important part of this case.

21 Because Brutus hitting on the SUV, told
22 the handler, told Julie Cramer, who you have
23 heard from, one very important thing, that either
24 a dead body was still in that particular SUV, or
25 a dead body had been in that SUV. This is

1 another changing moment. It's another time in
2 this investigation where very important, the
3 investigation changes and becomes much more of a
4 criminal investigation, that of a missing person
5 investigation.

6 We heard about Brutus' search that he
7 did, real methodical kind of search. As I was
8 thinking about it, even though Brutus is a dog,
9 Brutus approached that search much like our law
10 enforcement officers, very methodically, very
11 professionally, and came up with the same kinds
12 of results that our other officers have in this
13 case, as well.

14 One of the two lead investigators, Tom
15 Fassbender, from the Division of Criminal
16 Investigation, talked to you about the agencies
17 that were involved. I will talk to you about
18 that a little bit later. But mentioned something
19 called resource allocation, putting the teams
20 together for searching all the different
21 properties.

22 That first night, Mr. Fassbender clearly
23 was in charge of deciding who's going to go into
24 what house and why those people were going to do
25 that. And talked about the search plan. Talked

1 about why Steven Avery was a person of interest.
2 Gave you that obvious answer that everybody is
3 giving you, is because Steven Avery was the last
4 person to see Teresa alive.

5 And Mr. Fassbender knew, that first
6 afternoon, what an overwhelming task this was.
7 He knew what an overwhelming job the coordination
8 of this largest investigative effort was going to
9 include. And, again, without apology, without
10 apology, Mr. Fassbender told you at that early
11 stage, all the early clues pointed to one man.

12 They pointed to one person, even early
13 on. Who's the last person to see her alive?
14 Where was the vehicle that was found? Was there
15 an attempt by Mr. Avery to lure, or to invite, if
16 you want to use a more polite term, this woman
17 onto the property? It all pointed to one person.

18 And although Investigator Fassbender
19 said that, he had other irons in the fire, he was
20 looking at other individuals, he was looking at
21 other family members, he was looking at possibly
22 old boyfriends, or people that might have had
23 contact with Teresa, or who else she might have
24 seen that day, Mr. Zipperer, or Mrs. Zipperer, or
25 Mr. Schmitz, or where she might have been going.

1 And all those things are important. And
2 a law enforcement officer does all those things.
3 But law enforcement officers aren't stupid
4 either. Law enforcement officers understand that
5 when you have limited resources, when there is
6 just so many officers to go around, you better
7 direct your resources to where this thing is
8 likely going.

9 And that night the likely place that
10 this was going was towards Steven Avery. And so
11 a team was put together to search Steven Avery's
12 trailer, that very first night, on the 5th,
13 subject to a search warrant. Getting ahead of
14 myself just a little bit.

15 I apologize, because we're still talking
16 about the recovery of the SUV. The scientist,
17 Mr. Ertl, who himself is a DNA analyst, that's
18 what he does during the day. But on weekends,
19 like many other Crime Lab employees, Mr. Ertl
20 volunteers to go on field responses. He
21 volunteers to go to crime scenes and look at
22 evidence and things just like this.

23 So Mr. Ertl, gave his opinion, gave his
24 expertise to, and opinions to, Mr. Fassbender.
25 Made the decision that because the weather was

1 becoming progressively worse, I think Mr. Ertl
2 used the term dramatic weather had occurred on
3 the evening of the 5th, after he had got there.
4 Mr. Ertl verified, if you remember, and
5 importantly, verified that the vehicle was
6 locked, that all the doors were locked in the
7 vehicle. And decided that although they were
8 going to process the outside of the vehicle, that
9 the real processing of this car was going to take
10 place in Madison.

11 But the SUV was going to be transported,
12 as it was, to a more pristine type of location,
13 to a place where the climate could be controlled
14 and where they could control the processing of
15 the vehicle. Mr. Ertl also told you that this
16 vehicle was obviously obscured, or attempted to
17 be obscured, you couldn't see it from, as an
18 example, an airplane. Mr. Drumm told you that
19 they couldn't see a car like that from an
20 airplane when they did their air search a day or
21 two before.

22 Mr. Ertl also told you, and if you
23 remember, we'll go to a picture of Mr. Ertl
24 who is standing right here with Mr. Fassbender
25 and some other -- one other Crime Lab person.

1 Mr. Ertl told you that, right on the other side,
2 see this, right on the other side of the SUV,
3 running all the way along this ridge, was this
4 berm. Mr. Ertl talked about this being 15 to
5 20 feet high.

6 Remember he talked about walking over
7 that particular berm where he -- after he got to
8 the top of it, kind of slid down, or gravity kind
9 of assisted this going down the other side of
10 that berm. That is important, or it may be for
11 you, important, when deciding whether or not
12 somebody knew to put this car here.

13 It certainly couldn't be driven in from
14 the south. That's the point. All right. The
15 point is that it couldn't be driven into that
16 property unless somebody knew that property,
17 unless who ever put that car there, knew how to
18 get the car into this location. Again, it's near
19 the car crusher. It's near a place where other
20 cars are to be crushed. It's near cars that have
21 been crushed. The 54 cars that we talked about.

22 But Mr. Ertl's job, primary job, at this
23 location, is to process the outside of the
24 vehicle. But then to get a wrecker, to get a tow
25 assembly set up, and to put this on an enclosed

1 trailer and take to it Madison for processing.
2 And so we move to our next uncontested fact, fact
3 number four. We move our investigation to
4 Madison.

5 ATTORNEY STRANG: Your Honor, excuse me.
6 Excuse me, Mr. Kratz. I think it's unwise and
7 improper to be describing facts necessarily as
8 uncontested.

9 THE COURT: Mr. Kratz.

10 ATTORNEY KRATZ: Well, however unwise it
11 may be, this is argument, Judge. And if the jury
12 decides that they are, in fact, contested, they can
13 make that conclusion as well.

14 THE COURT: All right. Members of the
15 jury, I think I will simply remind you about one of
16 the instructions that you read and that is that the
17 closing arguments are just that, arguments. They
18 are not facts. You should take anything that is
19 said by either party as argument.

20 The fact, for example, that one side
21 said something is uncontested, may not
22 necessarily make it so. It depends on your
23 interpretation of the evidence. And the other
24 side will also have a chance to respond in its
25 argument. Mr. Kratz, you may proceed.

1 ATTORNEY KRATZ: Thank you, Judge. And the
2 Judge is absolutely right and Mr. Strang is
3 absolutely right. And if you remember one of them,
4 one of the defense attorneys putting on some
5 evidence that this car wasn't taken to Madison for
6 processing, then you should adopt that. You should
7 adopt your memory. I'm calling it uncontested as an
8 argument. I'm saying because we haven't heard any
9 evidence to the contrary, we haven't heard any
10 answers from a witness to the contrary, that's why
11 I'm characterizing this as uncontested. But as I
12 mentioned --

13 ATTORNEY STRANG: I would like to be heard
14 about that, at an appropriate time, as if now.

15 THE COURT: I'm sorry, I didn't hear the
16 last part of your comment.

17 ATTORNEY STRANG: I would like to be heard
18 about that at an appropriate time, as if now.

19 THE COURT: Very well. You may proceed,
20 Mr. Kratz.

21 ATTORNEY KRATZ: The evidence in this case
22 was that this particular SUV was taken to Madison,
23 that it was taken to a garage in Madison. It was
24 taken to the Crime Lab, where this vehicle could be
25 processed. And we heard from Mr. Groffy and Ms

1 Culhane, and Mr. Riddle. And, in fact, we heard and
2 we'll talk about a fourth individual, Mr. Stahlke,
3 about the processing or the looking at this vehicle
4 in a more controlled environment.

5 Mr. Groffy testified that after the
6 vehicle was initially looked at, that when the
7 vehicle was open, that Mr. Groffy started
8 photographing. But, importantly, photographing
9 from the outside of the vehicle, not from the
10 inside. And that's why his testimony included
11 that he photographed both on the 6th, that's
12 Sunday, and also on the 7th.

13 Because on the 6th, Mr. Groffy testified
14 that he photographed from the outside of the
15 vehicle, that he could photograph things where he
16 didn't have to crawl into the vehicle, because he
17 couldn't get the inside shots yet. Didn't want
18 to contaminate the inside of the vehicle and
19 waited for the vehicle to be what's called
20 processed, by the lead individual who was in
21 charge of processing the car. And that was
22 Sherry Culhane.

23 Now, Ms Culhane has lots and lots of
24 involvement in this particular case. Ms Culhane,
25 you heard, was the unit leader or the unit head

1 of the DNA Section of the Madison Crime Lab. And
2 she was chosen or she assigned herself the
3 responsibility of this case. And it was the unit
4 head, the head of the DNA section who, herself,
5 processed this particular vehicle.

6 Ms Culhane, as you heard testimony, took
7 some swabs, took some samples of the interior of
8 the vehicle. It's more than just the four
9 pictures that I'm putting up before you, but the
10 swabs of around the ignition area, the swabs of
11 the seats -- excuse me -- the cuttings, as she
12 cut out portions of the seat, I believe the
13 testimony was. Swabs of the CD case, swabs of
14 the back door, and also on the interior of the --
15 what's called the cargo area of the SUV.

16 The defense will have an opportunity to
17 present a argument in this case. We heard some
18 questions of some law enforcement officers, about
19 planting evidence. We didn't hear anything about
20 how an officer might plant a stain like this,
21 what's called by Mr. Stahlke, a contact stain,
22 which common sense would tell you requires active
23 bleeding. How stains which require gravity, that
24 is, which require dripping kinds of actions might
25 be planted, how smear or movement kinds of stains

1 might be planted as well.

2 Now, I say that, again, not for my
3 argument, not at this particular time telling you
4 what the evidence has shown, or is going to show,
5 but I am interested to hear theories of how these
6 things might have actually happened. Mr. Avery's
7 blood is in six different places in this vehicle.
8 Other DNA, that is, without blood being visible,
9 is in yet another, that would be the hood latch
10 on this particular vehicle.

11 And so the sheer volume, the sheer
12 numbers of places, made this quite a job. Made
13 this processing or the recovery of this evidence
14 quite important, indeed.

15 We heard from Mr. Riddle, who is
16 primarily a fingerprint guy. And although he
17 didn't obtain any identifiable prints, at least
18 those that were suitable for comparison,
19 Mr. Riddle also had the responsibility of
20 inventorying the car. Mr. Riddle told you about
21 what that means, to inventory a vehicle. And
22 it's the little things that he found, the little
23 things within the inventory that become so
24 important.

25 Things like the blue lanyard, that was

1 given from Katie Halbach to her sister Teresa.
2 You saw Katie, with the assistance of, I think it
3 was Mr. Wiegert, actually fitting the key
4 assembly, or what's called the fob, right onto
5 this particular lanyard that was given to Teresa.

6 And I had a sense, and I'm allowed to,
7 and I will argue to you, that that showed where
8 this case fits together. Fits together just like
9 the fob and just like the lanyard that was given.

10 Now, Nick Stahlke, I told you I was
11 going the talk about, and I'm going to add a
12 little bit of Mr. Stahlke's testimony in at this
13 point, because although an analysis was given, it
14 does fit also into the processing of the vehicle
15 when Mr. Stahlke talked about the blood that was
16 found in the back of the RAV4.

17 This area right here, where Mr. Stahlke
18 said that that was a very identifiable impression
19 to him. Sadly, this is a impression, or an
20 impression, of a individual whose head, whose
21 hair, is soaked with blood. And it leaves an
22 impression. It leaves a stamp, if you will. And
23 you can see that and you may get a chance even to
24 see some photos, close up photos, when you
25 deliberate in this case.

1 But the point of Mr. Stahlke's testimony
2 was that, how Ms Halbach was laying in the back,
3 that her hair was blood soaked, becomes real
4 important, obviously. Because what we're going
5 to hear about gunshots to the head, what we're
6 going to hear about where Ms Halbach was placed
7 thereafter, when it ties in with Brutus hitting
8 on this particular vehicle, as an individual was
9 either bleeding, or was deceased in this
10 particular SUV, again, becomes very, very
11 important.

12 Mr. Stahlke also told you the difference
13 between contact and transfer kinds of stains,
14 which Mr. Avery -- the blood attributed to
15 Mr. Avery suggests impact, or what's called
16 projected blood, as if an individual was thrown
17 into the back of the SUV. That was on the back
18 gate, that Mr Stahlke talked about. We'll show
19 you some pictures about that, as if the blood is
20 splattering, or is actually in movement as it
21 hits the side of, or the back gate of, the SUV.

22 We talked about passive bleeding.
23 Again, those attributed to Mr. Avery; that is,
24 the back passenger seat and also on the front
25 seats where there's droplets, where there's

1 active bleeding that's going on.

2 Mr. Stahlke also testified, if you
3 recall, that upon his expert opinion, his opinion
4 as a blood spatter expert, and he does this for a
5 living, that this particular stain by the
6 ignition is absolutely consistent with somebody
7 with a cut to the outside of the right hand and
8 turning an ignition, this transfer -- contact
9 transfer stain was absolutely consistent.

10 Now, the Judge promised you a break and
11 you are going to get one right after fact number
12 five. So I want you to know that I'm not just
13 going to drone on and on. I'm going to provide
14 you a break after this next section. Because you
15 probably, since you have been sitting for about
16 45 minutes now, probably not more than an hour
17 should go by before you get a break.

18 Fact number five, we go back to the
19 salvage yard. Fact number five becomes a
20 critical or critically important piece of
21 evidence, the State is referring to as
22 Mr. Avery's burn barrel. And we have heard about
23 the discovery, and the recovery, and the
24 processing of this burn barrel. But all of the
25 aspects of this particular burn barrel, again,

1 become very, very important.

2 It is important because of the obvious
3 evidentiary value that we have had. But it's
4 also obvious -- or excuse me -- it's also
5 important for what we haven't heard. What we
6 haven't heard about explanations, if you will,
7 about how some of this evidence gets in there.
8 But, again, I'm jumping ahead, I will talk about
9 that in just a moment.

10 Deputy Siders was the individual that
11 you heard found or discovered the burn barrel on
12 a sweep of an adjoining property of Mr. Avery's
13 on Monday, the 7th of November. Deputy Siders
14 finds the burn barrel with a tire, with the tire
15 rim being inside of the vehicle (sic). And he,
16 as you recall, takes the tire rim out.

17 Tires, again, you have heard by later
18 witnesses, are accelerants. They can be used to
19 keep a fire going, to keep it certainly going hot
20 enough to destroy, or what should be, destroy
21 most of the things that it comes in contact with.

22 Deputy Siders, we hear, turns over
23 responsibility for the photography and the taking
24 control of this piece of evidence to Special
25 Agent Kevin Heimerl. Mr. Heimerl takes some

1 pictures of the inside. But even Deputy Siders
2 told you, upon looking in the burn barrel, it was
3 obvious that a Motorola cellphone was inside
4 there, because you could see the M, the very
5 distinctive M from inside of the burn barrel.

6 Mr. Ertl, again, another one of his
7 responsibilities, later, I think it was at the
8 Calumet County Sheriff's Department, processed
9 the contents of this burn barrel, which was
10 anywhere between a third and a half full. But
11 Mr. Ertl didn't identify those components. He
12 doesn't identify the obvious electronics that are
13 found within. He leaves that to the FBI.

14 Now, Mr. Thomas, although a very young
15 looking individual, is in fact an expert, here to
16 provide you with expert testimony. These
17 components were sent to Virginia. And these
18 components, we heard, were all laid out and were
19 all identified by Mr. Thomas.

20 When you look at these pictures and you
21 look at the kinds of things that didn't burn, and
22 when I asked Mr. Thomas, what are we looking at
23 here, what's left over, what didn't burn,
24 Mr. Thomas mentioned that the metal didn't burn.
25 He mentioned that the glass didn't burn. And I

1 said, well, what does that leave. I asked him
2 the question, what components aren't here, what
3 aren't we looking at.

4 Mr. Thomas told you plastic. He said it
5 was the plastic components of the camera, and of
6 the cellphone, and of the PDA, the personal data
7 assistant, that we're missing from this
8 constellation of things.

9 Mr. Thomas was able to positively
10 identify three specific things, obviously, the
11 cellphone. He talked to you about the large
12 circuit board for the PDA, the Palm Pilot type
13 thing, and also the components for the digital
14 camera, the Canon A310. Didn't just say it was
15 any camera, said it was a Canon A310 digital
16 camera.

17 I showed you a blow up of this
18 particular exterior of that camera. And it says,
19 you know, PowerShot A310 on it, so you probably
20 don't have to be an expert to determine what kind
21 of camera that was. Not surprisingly, the State
22 tied this up as well, as you might expect. We
23 meticulously, I think, matched the recovered
24 items and showed you that Teresa Halbach owned
25 all of those items. So at least the three items

1 that Mr. Thomas was able to positively identify.

2 Teresa owned a Motorola V3 RAZR
3 cellphone. She owned a PowerShot A310 digital
4 camera and she owned a Palm Zire 31 PDA. We saw
5 the boxes that Teresa had kept her or had
6 purchased her Palm Pilot. The box that *Auto*
7 *Trader* had given her her digital camera in, the
8 Canon PowerShot A310. And you also heard
9 testimony about Teresa owning the Motorola RAZR
10 cellphone, which is a very common kind of cell
11 phone.

12 But Steven Avery's burn barrel becomes
13 important, not just for what is found in it, but
14 what witnesses, what other citizens, what other
15 people on the property saw on the 31st. One of
16 those people is Blaine Dassey, is the nephew of
17 Steven Avery.

18 And when considering credibility, you
19 can consider a young man like this sitting in
20 front of his uncle and having to testify against
21 his uncle, and doing the best job that he can,
22 and telling you that he is generally scared of
23 his Uncle Steve, but does the best he can in
24 telling you that he and Brendan Dassey, his
25 brother, get off the bus, sometime between 3:40

1 and 3:45, everyday.

2 That on this day, on Halloween, he
3 remembers particularly, while walking home, while
4 coming down their dirt road towards their house,
5 that he saw his Uncle Steve walking from his
6 trailer and putting a bag, a white bag is what he
7 described, a white plastic bag, into an already
8 burning burn barrel. Okay.

9 So by 3:45 or 3:50 in the afternoon, the
10 State is arguing, Mr. Avery is already getting
11 rid of Teresa Halbach's stuff. The electronics,
12 the phone, the PDA, the digital camera are
13 already being disposed of, they are already being
14 destroyed at that time.

15 Mr. Dassey, importantly, also testified,
16 and please remember this, before our break,
17 Mr. Dassey testified that the Suzuki and the
18 snowmobile that you see pictures of inside of the
19 garage, on the 31st of October, weren't in the
20 garage, remember that. They weren't inside of
21 the garage as the picture shows. But the 31st,
22 the Suzuki and the snowmobile are on the side of
23 the garage, leaving this garage opened, at least
24 opened to the point where something else can fit
25 into that particular garage.

1 Brings us to our next witness, who's
2 Mr. Fabian. Mr. Fabian is Earl Avery's friend,
3 that they were rabbit hunting. Mr. Fabian told
4 you that he parked the golf cart, that the burn
5 barrel was already burning, that he smelled the
6 distinct odor of plastic burning at the time,
7 that the smoke was so bad that, although parked
8 in a golf cart to the south or next to the burn
9 barrel, eventually he had to move this golf cart
10 because the smell of burning plastic and the
11 smoke was getting so bad.

12 Mr. Fabian also tells you, at that time,
13 just before dark, he places that just before
14 dark, when the rabbit hunt was just about
15 completed, that Mr. Avery's garage was closed.
16 He couldn't see what was inside of the garage.
17 There isn't any SUV any more. There is nothing
18 to be seen. The garage is closed, but the Suzuki
19 and the snowmobile are on the side of the garage.
20 All right.

21 So I have given you five so far, five
22 pieces of evidence, five pieces of crucial
23 evidence of the evidence that the State believes
24 is necessary to prove this case, beyond a
25 reasonable doubt.

1 When you return, after whatever break
2 the Judge may give you, I will conclude, then,
3 with the other pieces of evidence and instruct
4 you, or at least argue to you, what I believe
5 that you should do, after considering all these
6 pieces of evidence.

7 It's a good time for a break, Judge.
8 Thank you.

9 THE COURT: All right. Members of the
10 jury, what we're going to do is this, we're going to
11 take a break of 10 minutes or so, at this time, then
12 come back and have the State complete its closing
13 argument. I have informed the lunch people to bring
14 in lunch at quarter to one. So, because we will be
15 eating lunch later than normal, if you want to have
16 a snack during the break, go ahead and do so.

17 And, again, I will remind you not to
18 begin discussing anything about this case until
19 all the closing arguments have been given and
20 until I tell you to begin deliberating. You are
21 excused at this time.

22 (Jury not present.)

23 THE COURT: You may be seated. Mr. Strang,
24 you have something you wish to place on the record
25 at this time?

1 ATTORNEY STRANG: I do. Thank you. I
2 initially interrupted Mr. Kratz's argument,
3 reluctantly, and trying to be polite and somewhat
4 circumspect about my comment that it was unwise and
5 improper to describe facts as uncontested. I waited
6 until we got to the PowerPoint slide that said fact
7 number four, and by my recollection, that was the
8 fourth time that the -- counsel for the State
9 returned to the theme of an uncontested fact.

10 As I say, I was trying to be
11 circumspect, but the concern, of course, was that
12 this comes too close to commenting on the
13 decision of the defendant not to take the stand.
14 Or, for that matter, not to offer witnesses that
15 he did not.

16 Mr. Kratz, in responding to my
17 interruption and objection, I think made the
18 problem substantially worse. I don't have
19 committed to memory, we could go back to the
20 court reporter's notes if we need to, but the
21 rejoinder from counsel for the State was that,
22 you know, if you remember a witness being called,
23 or if you remember someone saying this didn't
24 happen, something to that effect, well, then
25 that's fine, but, of course, the suggestion was

1 that the witness was not called and no one did
2 speak up to contest the fact.

3 Doesn't warrant a mistrial, but comes
4 way too close to commenting on the Fifth
5 Amendment privilege not to testify and I think
6 warrants some curative step, either by counsel
7 himself, or by the Court, or both.

8 THE COURT: Mr. Kratz.

9 ATTORNEY KRATZ: That's absurd, Judge. I
10 get to, on closing argument, suggest that Mr. Strang
11 is going to place a theory of defense into play in
12 this case. There's absolutely no evidence that
13 would suggest that. If there are facts that I
14 believe have not been contested, either by
15 cross-examination, or are not contested through the
16 defense calling its own witnesses, that's fair game
17 for me to comment upon.

18 I have not, and I will not, comment on
19 Mr. Avery's decision not to take the stand. I
20 understand and the jury has been instructed that
21 the defense, or the defendant, I guess, is how
22 the instruction reads, has no burden in this
23 case, but certainly if something is not
24 contested, if there is a fact that I believe has
25 been proven and is an important part of the

1 State's theory of the prosecution and there
2 hasn't been a challenge, at least through
3 evidence in the case, I feel very much so
4 entitled to comment upon that.

5 THE COURT: Anything else, Mr. Strang?

6 ATTORNEY STRANG: Well, it's certainly fair
7 game to argue what the State, or for that matter the
8 defense, thinks the evidence shows. It's fair game
9 to argue -- a little bit more dangerous for the
10 State, I suppose -- but fair game to argue what the
11 evidence does not show, draw conclusions from the
12 evidence.

13 But describing something as uncontested
14 or, you know, we could go to other cases, this
15 word hasn't been chosen here, but we could go to
16 other cases where un-rebutted or unchallenged
17 comes, I think, way too close to commenting, not
18 on the strength of the evidence, or the
19 conclusions, affirmatively, the State wants
20 drawn, but on the decision of the defendant not
21 to testify to something himself, or not to call a
22 witness on a point. And I don't think the
23 suggestion was absurd at all. But that's at
24 least for this Court, in the first instance, to
25 decide.

1 THE COURT: All right. The note I took
2 down at the time the objection was made that the
3 specific alleged fact involved I believe had
4 something to do with the vehicle being transported
5 to Madison for inspection. Frankly, that wasn't
6 something that struck a chord in my mind that
7 somehow there was any relationship with the
8 defendant's decision not testify.

9 I appreciate the fact defense counsel
10 has alerted the Court to that possibility. I
11 agree that the -- there is the potential, when
12 you start using the approach that's been used as
13 far as undisputed facts, I can see where it could
14 lead to that. I do not know what the rest of the
15 State's argument is going to be.

16 At least based on what I have heard so
17 far, I do not believe it relates in any way to
18 any suggestion to the jury that somehow they
19 should take the defendant's failure to testify
20 into account in evaluating the State's evidence,
21 based on the facts that have been discussed.

22 ATTORNEY STRANG: And I -- I want to add, I
23 will -- I will go one step further, I agree with the
24 Court that the particular fact described, where
25 actually Mr. Kratz quite acceptably is using fact

1 number one, and fact number two, fact number three,
2 really, to describe a constellation of facts around
3 some single event, I agree that -- and I haven't
4 moved for a mistrial -- that this was not a topic on
5 which a juror would say, boy, the one who probably
6 has the best knowledge about that is Mr. Avery. And
7 that's something exclusively within Mr. Avery's
8 knowledge.

9 I agree and I will go the one step
10 further and say that facts one, two, and three,
11 similarly, were not matters that immediately
12 would suggest whether the defendant is in the
13 best position to know. I used the term,
14 initially, unwise and incorrect, because I wanted
15 to alert counsel and the Court, that if, you
16 know, we could get to a point where this would
17 become a real serious concern.

18 Unfortunately, the response made the
19 concern more immediate. Still not rising to the
20 level of requiring a mistrial, in my view, and
21 perhaps the Court's admonition now will be
22 enough, but I -- if -- if we go much further down
23 there, I will be heard again.

24 THE COURT: I'm assuming that both parties
25 are aware there are permissible and impermissible

1 ways of suggesting the same thing. If the State
2 says there's no evidence in the record to show this
3 or that, then that's generally okay. But if the
4 argument relates to something that might implicate
5 the defendant's decision not to testify, and the
6 language, whatever it may be, is construed as
7 something that somehow the defense should have
8 produced, then that danger arises.

9 I'm assuming that all counsel for the
10 State understand that. I haven't heard that yet.
11 And I'm trusting, Mr. Kratz, we're not going to
12 have to go there.

13 ATTORNEY KRATZ: Except on the planting
14 issue, Judge, where the defense has affirmatively
15 put that into play. The State didn't. And as to,
16 have we heard anything about planting, I do intend
17 to go into that. And that may be on rebuttal. I
18 may wait to see what the defense does. And with the
19 Court's comments, I may, in fact, do that.

20 But I at least want the Court to
21 understand that since the defense has asked for
22 the theory of defense, and since the defense has
23 intended, throughout this trial, to discuss
24 planting of evidence as its theory, I think my
25 comment on the lack of evidence, at least on that

1 issue, without mentioning Mr. Avery, without
2 mentioning his decision to testify or not, is
3 certainly fair game in my argument, or whether I
4 choose to do it now, or whether I choose to do it
5 in my rebuttal.

6 ATTORNEY STRANG: Well, and you'll know
7 when we get there. I simply would point out now
8 that planting and being framed is not an affirmative
9 defense. It's not something on which a defendant
10 has a burden of production or going forward, let
11 alone a burden of persuasion. So this would be
12 different if the defense here were self-defense, or
13 involuntary intoxication, something like that, it's
14 an affirmative defense.

15 I, too, trust counsel is aware of the
16 boundaries and now I have elaborated my concerns.
17 But I do want to be clear, the defense that's
18 been presented here is not an affirmative
19 defense. So we'll ...

20 THE COURT: All right. I'm sure, now that
21 the matter has been brought to the parties'
22 attention and the parties will be careful about it.
23 We'll take a break at this time. I guess we will be
24 resuming in 10 minutes. The jury gets a little
25 longer.

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(Recess taken.)

THE COURT: Mr. Kratz, I understand you are now on mike seven.

ATTORNEY KRATZ: I am. I switched mikes, Judge, they couldn't hear in the back, so. I don't think the jury was having a problem hearing.

THE COURT: All right. You may resume.

ATTORNEY KRATZ: I appreciate it. Thank you, Judge.

Fact number six, we talked about the instrumentality of the murder and here we talk about the .22 caliber rifle. Remember both the felon in possession of a firearm charge, the instruction that was given to you, it's not ownership of the weapon, it is possession of. You heard the Judge give you the instruction that it is the exercise of control, especially in an area where an individual would have control of that weapon becomes important.

Mr. Johnson, although a entertaining fellow, also provided important information for the jurors that he certainly knew of the .22 caliber rifle, owned the black powder rifle as well, and knew that they were hanging just a few feet above Mr. Avery's bed. Also knew of the

1 ammunition. We have seen photographs and we have
2 actually seen these rifles.

3 Let me just tell you, and this goes to
4 Count 3, and this, interestingly, might be the
5 last time I talk about possession of a firearm by
6 a felon. You are to, and you must, consider the
7 fact that the defendant was previously convicted
8 of a felony that element has been proved and
9 we're now just responsible to prove to you
10 whether or not he possessed those firearms.

11 Either of these weapons are rifles,
12 either of these weapons qualify as weapons for
13 possession of a firearm. We were -- of course,
14 claim in this case that the .22 caliber Marlin
15 not just was, what's called constructively
16 possessed, that is, over an area of which
17 Mr. Avery had control, but we will actually be
18 arguing to you that Mr. Avery handled, held that
19 weapon in his hands, when Ms Halbach was killed.

20 Some quick testimony, or at least a
21 review of some testimony on these issues.

22 Mr. Tyson, although he didn't seize the guns,
23 observed the guns that first night, on the 5th.
24 Mr. Kucharski is the gentleman who actually
25 seized the weapons on the 6th.

1 So there was some further evidence about
2 the dogs demeanor being vicious, and that is
3 further testament as to why the burn pit, or the
4 burn area, wasn't searched before it was.

5 Mr. Austin was kind enough to provide
6 us -- the trooper reconstruction expert was kind
7 enough to provide us with some diagrams and
8 things that have helped us throughout this case.
9 And I think they have been very helpful to the
10 jury.

11 Deputy Kucharski also, however, found 11
12 shell casings in the garage on the 6th of
13 November; obviously, in plain view, obviously
14 something that you should consider.

15 When we move to March, though, when we
16 move to March 1st and 2nd, when there's been
17 additional search warrants being executed on --
18 in Mr. Avery's garage, an important discovery
19 occurs, that you heard about. And that is, two
20 separate bullets, a bullet up in front here where
21 we have tent number nine, and a bullet underneath
22 this compressor, actually having to move these
23 items by tent number 23, which is the bullet
24 which later we'll find has Teresa's DNA on it.

25 Remember the different kind of search

1 that this is in March, compared to November when
2 the agents and the officers talked about taking
3 all of this junk and moving it one by one, one
4 piece by one piece, and doing that kind of
5 search. In March, the officers, pursuant to
6 their search warrant, did, in fact, just that.

7 Mr. Newhouse, we heard from the firearms
8 expert. I think the kind of expert that you
9 might hope and expect to find, from the Crime
10 Lab, talking about shell casing matches and also
11 bullet matches, at least the bullet that had
12 Teresa's DNA on it.

13 All of these photos and all this
14 evidence is in evidence in this case. The
15 bullets that were taken from Mr. Avery's bedroom,
16 you will be able to see, no pun intended, bear
17 the same letter as those that were identified by
18 Mr. Newhouse. That is, as having been shot from
19 that specific gun, that is, the Marlin Glenfield
20 .22 hanging over Mr. Avery's bed. That's
21 important, that's important stuff, that the shell
22 casings that are found in this case are from that
23 very same weapon.

24 We heard about the bullet analysis as
25 well, the bullet with the DNA is from that very

1 same weapon. And interestingly and importantly,
2 Mr. Newhouse tells you, to the exclusion of all
3 other weapons. All right. That's the kind of
4 identification that these experts can do, at
5 least the ballistics and firearms experts. And
6 so the .22 caliber bullet is an important fact.

7 Fact number seven, some background
8 information. We will hear, or I'm sure -- I'm
9 sorry, you have heard about the prior *Auto Trader*
10 contacts, that is, prior contacts, the history
11 between Steve and Teresa. You heard from Mr.
12 Pearce, that she and Mr. Pearce had talked about
13 Ms Halbach already having gone to the Avery
14 property, something of the nature of, you are not
15 going to believe whose photos we were taking.
16 And you heard the testimony of Mr. Pearce about
17 his reminder not to -- generally, reminder not to
18 go into people's homes, or not to have that kind
19 of contact with them.

20 Ms Pliszka talked about the history,
21 knowing about the history. Ms Pliszka is from
22 *Auto Trader*; she's the receptionist. And the
23 important part, at least for this part of our
24 argument, is that that photographer, Ms Halbach,
25 had been there on a number of occasions before.

1 And when Mr. Avery called at 8:12 on the
2 31st of October, he asked for that same
3 photographer. Although, he didn't use the name
4 Teresa, asked for that same female photographer
5 that had been out there before. Again, although
6 using a different name, although using the name
7 B. Yanda, he specifically was asking for Teresa
8 to come out.

9 You heard from the supervisor of *Auto*
10 *Trader*, Ms Schuster, that Ms Halbach had taken
11 six prior photos at the Avery salvage property.
12 And we put these six photos, early on, into the
13 case, into evidence. You can note on most of the
14 photos, just how close they are in proximity to
15 Mr. Avery's trailer.

16 These photos, as you heard, were taken,
17 the first on June 20th, and the last on October
18 10th, of 2005. I think the inference that you
19 also may want to draw on as you think weeks ahead
20 from the presentation of this evidence is, after
21 these photos are taken, after a car goes into
22 *Auto Trader Magazine*, what's done with it.

23 You can actually answer that question by
24 some of the other photos that I showed you.
25 What's done with these cars doesn't do Mr. Avery

1 any good, or whoever is selling a car, any good,
2 to leave these items back by Mr. Avery's garage,
3 or back by his trailer.

4 But after the *Auto Trader* picture is
5 taken, these items are put up on the corner, what
6 is called the corner by the business property.
7 We know that because of Ms Buchner, Lisa Buchner,
8 when she testified in this case, that she
9 testified that she saw a woman taking pictures of
10 cars that were for sale. And, in fact, we
11 pointed out these two vehicles, the Grand Prix
12 and the Blazer, that Ms Halbach had earlier, or
13 just within the last month or six weeks had taken
14 photographs of.

15 And, so, when a photo is taken, when it
16 goes into the *Auto Trader*, and when it has to be
17 sold, it makes sense to put those vehicles up in
18 a place where people will see them. People that
19 are coming into the auto salvage business, people
20 that will drive by, as you remember the overall
21 view of this property, that will drive by those
22 vehicles and might naturally get out and take a
23 picture and they might want to buy that kind of
24 vehicle.

25 Now, we have also heard, and I will

1 argue, importantly, that the van that Ms Halbach
2 took a picture of, remained in exactly the same
3 location, remained there from the 31st, when Ms
4 Halbach took the picture, at least through the
5 5th, when the officers took control of the scene.

6 Now, I'm going to argue and you should
7 ask yourself why, you should ask yourself why,
8 what inference can I draw by that. I will argue
9 that the inference is that Mr. Avery knows that
10 the van is not going in the *Auto Trader Magazine*.
11 Mr. Avery knows that that picture is never going
12 to make it to *Auto Trader*, because he's taken the
13 camera and he's burned it. He's put it into the
14 burn barrel.

15 There is no reason to move the van from
16 its original location near Mr. Avery's property,
17 up towards where the other cars that are for sale
18 on this property. Again, has inferences that you
19 can draw, or that you don't have to draw, but,
20 again, I'm arguing that it's something that you
21 may want to consider, again, to reconcile Ms
22 Buchner's testimony, what she had given.

23 Fact number eight, we're able to piece
24 together some of the history of Teresa for the
25 31st. It's what's called a timeline for Teresa

1 Halbach. And we were able to do that through all
2 of these particular witnesses.

3 Ms Pliszka, of course, the 8:12 call for
4 Mr. Avery triggers Ms Pliszka's 9:46 voice
5 message call to Teresa. Remember Ms Pliszka's
6 testimony, again, this is hard, because it's five
7 weeks ago. Her testimony was, she left the voice
8 mail that there's a person who wants you to come
9 out and do a shoot. There is a phone number
10 that's been left.

11 You will hear later on in my
12 presentation, that at 11:43, Ms Halbach calls
13 that number. It's the voice message that we hear
14 to B. Yanda, to Barb Yanda's house saying, I'm
15 able to come out today and to take that -- to
16 take that call. But it's this 9:46 call, when
17 we're setting the timeline for Teresa, where was
18 she, excuse me, at all these times that become
19 important.

20 The most, probably, important thing that
21 Ms Pliszka talks about is the call at 2:27, the
22 call to Teresa, which is verified through the
23 phone records that she did receive a telephone
24 call at 2:27, from *Auto Trader Magazine*. That
25 telephone call from Ms Pliszka, to Ms Halbach, is

1 not so important for talking about
2 trick-or-treating and the things that Dawn
3 Pliszka said that they were talking about, but
4 what came from Teresa's side of that
5 conversation.

6 Remember the testimony from Dawn Pliszka
7 that Teresa said, I'm on my way to the Avery's.
8 All right. I'm on my way to the Avery's. So at
9 2:27, this is the best, at least from a timeline
10 standpoint, the best opportunity for you to put
11 these things into place and to determine what
12 time was it that Teresa arrived.

13 Mr. Remiker, an investigator in this
14 case, testified that, upon searching the
15 residence of Barb Yanda, he came across this
16 particular voice mail: Hello. This is Teresa
17 with *Auto Trader Magazine*, the photographer. And
18 I'm just giving you a call to let you know that I
19 can come out there today, in the afternoon. And
20 it will probably be around 2:00 or, you know, a
21 little later. If you could, please, give me a
22 call back and let me know if that will work for
23 you, because I don't have your address or
24 anything. So I can't stop by without getting a
25 call back from you. And my cellphone is

1 737-4731. Again, that's Teresa, 920-737-4731.

2 Thank you.

3 Other than the obvious impact that that
4 call has, it has substantial evidentiary value.
5 That call from Teresa talks about when she's
6 coming out to the property. The call from Teresa
7 says it will be some time after 2:00, or even
8 around 2:30, which turns out to be almost exactly
9 correct.

10 But she also indicates that, because of
11 the name that was given, because of the number
12 that was called, she doesn't know how to get
13 there because she hasn't been there. Well,
14 that's not true. That's not true, because if
15 Steven Avery would have given his name, Teresa
16 Halbach wouldn't have had to say, I don't know
17 how to get there, or I haven't been out to the
18 property before.

19 And so the purpose what I argued, or at
20 least what I -- the opening statement that I
21 gave, was that Mr. Avery lured Ms Halbach out to
22 the property, I think is a valid inference for
23 you to draw. But more importantly, it's the
24 timing, more importantly it's when Teresa says
25 through this voice mail message, when it is that

1 she's planning to come to that location.

2 Mr. Schmitz, at 1:30, testified, we put
3 the rest of the timeline together for you. So at
4 1:30 we know Teresa is out at the Schmitz
5 property. We know that she's wearing a light
6 colored or a white shirt, a waist length jacket.
7 We know she's wearing jeans. We know she's there
8 for 10 minutes. She leaves an *Auto Trader* book
9 and she leaves a receipt.

10 Right after she is done with Mr.
11 Schmitz, she goes to the Zipperer residence,
12 sometime between 2:00 and 2:30. In fact, you
13 will note from the calls and the testimony later
14 from the cellphone people, that at 2:12 a call is
15 made to the Zipperer residence. You heard some
16 reference to that.

17 It may have been lost in some of the
18 other testimony, about Teresa being lost and on
19 her way. But Teresa finds her way there. And we
20 know that about 2:15 or so, she does her photo
21 shoot at the Zipperer's. We also -- excuse me --
22 We also know, just like the Schmitz photo shoot,
23 just like every other photo shoot that you have
24 heard testimony about, that it lasts 10 minutes.
25 She leaves an *Auto Trader* book. She leaves a

1 receipt, which is actually called a bill of sale.
2 These things are particularly important.

3 You will see testimony later, or you
4 will see exhibits later, that were seized from
5 Mr. Avery on the 5th, that exactly the same *Auto*
6 *Trader Magazine* is found on his computer.
7 Exactly the same kind of bill of sale is found.
8 So the significance, or the habit, if you will,
9 of these contacts, become critically important.

10 Ms Schadrie, again, although providing
11 some confusing testimony that had to be cleared
12 up by a Mr. Zimmerman, later, at least provided
13 the records, at least provided what has been
14 received as Exhibit No. 361, the cellphone
15 records for Teresa Halbach.

16 Ms Schadrie provides some important
17 parts of this particular record. Specifically,
18 at 11:43, that was the call to Barb Janda's that
19 you heard about. The answering machine call that
20 was made.

21 You have heard about the call from -- at
22 2:27, from Ms Pliszka, I'm on my way to the
23 Avery's. And we have heard about -- or the
24 records reflect this last call at 2:41.

25 Now, the testimony, you have to next

1 turn to the testimony of Mr. Zimmerman, Exhibit
2 No. 372. And although that call starts at 2:41,
3 it's a voice mail. And on page two of document
4 372, page two of this exhibit, we learned,
5 importantly, this incoming call to Teresa is
6 never retrieved. It's never retrieved by Teresa.
7 All right.

8 Look at Teresa, how many times she
9 checks her voice mail. Mike Halbach talked about
10 Teresa Halbach being very conscientious about
11 checking her voice mail. And after, sometime
12 after her visit, assuming she wasn't harmed or
13 killed by Mr. Avery, you would have expected her
14 to check her voice mail.

15 Mr. Zimmerman also cleared it up and
16 said that after 2:41, on the 31st, this
17 particular cellphone, the cellphone of our
18 victim, Ms Halbach, was out of service. Wasn't
19 used after that particular point.

20 Remember the testimony that by 3:30 a
21 bag of something is being placed in the burn
22 barrel where this particular phone is later
23 found. It all starts to make sense now. It all
24 starts to be put together. Again, the
25 combination of observations of Blaine Dassey,

1 combination of phone records, combination of
2 explanation of voice mails, combination of
3 testimony from Mike Halbach.

4 You put all of that together and it
5 paints the picture for you. It provides the
6 timeline for you, for Teresa Halbach, not just
7 what happens to her phone, but by inference, what
8 happens to her, and when, when it's happening to
9 her. All right.

10 We talked more about the timeline and we
11 heard from Bobby Dassey, again, in the same kind
12 of a position to be -- his credibility to be
13 weighed by you, but is an eyewitness. Again, an
14 eyewitness without any bias. It is a individual
15 that deserves to be given a lot of credit.
16 Because sometime between 2:30 and 2:45 he sees
17 Teresa Halbach. He sees her taking photographs.
18 He sees her finishing the photo shoot. And he
19 sees her walking up towards Uncle Steve's
20 trailer.

21 Now, we heard about taking a shower.
22 And we heard about him leaving for hunting. That
23 all becomes important and becomes more important
24 when, after leaving for hunting, he sees Teresa's
25 SUV still parked next to the van, next to his

1 mom's van that's for sale, but Teresa is nowhere
2 to be found. All right.

3 If this event, if a photo shoot is only
4 supposed to take between five and 10 minutes, and
5 you see the habit, and you see that that's how
6 long that it does take, this is a longer period
7 of time. Teresa, although we don't know, that
8 is, we don't have an eyewitness seeing her going
9 into Mr. Avery's trailer, that's the inference
10 that the State is asking you to draw. She's
11 walking towards the trailer. She's walking
12 towards Mr. Avery's property, after doing the
13 photo shoot.

14 Mr. Dassey is looking out this window, a
15 clear view, sees the pictures being taken of the
16 SUV, a clear pathway, and that as she walks
17 towards Mr. Avery's, that's the last Ms Halbach
18 is seen. That's the last she's seen alive. All
19 right. So that's the timeline. That's the
20 pathway, if you will, towards what happens to Ms
21 Halbach.

22 Now, the State has done the same thing
23 with Mr. Avery's timeline; that is, through
24 conversations and through observations, the same
25 thing with Mr. Avery, from the other side of the

1 coin, if you will, what's Mr. Avery doing on the
2 31st of October.

3 We hear, at least, at 8:12, Mr. Avery is
4 making a call asking for that same female
5 photographer to come out and visit him at his
6 property; although, he uses a different -- a
7 different name. And from a timing standpoint,
8 although we don't have Mr. Avery on the phone, we
9 do have Teresa on the phone.

10 But Ms Dohrwardt helps, from that
11 perspective. Ms Dohrwardt, who is a witness for
12 Cellcom, Mr. Avery's cell provider, provided you
13 with those records and provided you with
14 testimony of those records. She's a tech support
15 person. She's a technical individual who can
16 tell you more about those calls. Told you about
17 the 8:12 call, but also these two important calls
18 to Teresa Halbach's cellphone, using what's
19 called the *67, or blocked feature, where the
20 recipient of that call can't tell who it is
21 that's calling.

22 The State is calling the 4:35 call a
23 alibi call, if you will. After her phone is
24 already burned. After Mr. Avery knows that the
25 phone is out of service, which is reflected in

1 what you saw, not only by Mr. Zimmerman's
2 testimony, but by also -- by the records there's
3 no reason to call her phone. He knows where her
4 phone is.

5 Mr. Avery knows where Teresa's phone is,
6 but Mr. Avery is also -- has the ability to think
7 ahead, has the ability to know that these phone
8 records may, in fact, be gleaned, or may, in
9 fact, be reviewed at some point in the future.
10 And so, although he doesn't block, because there
11 is no reason to block the 4:35 call, he still
12 calls Teresa Halbach. And you can see, or you
13 can ask for those records if you need to.

14 The rest of the application, or putting
15 together of Mr. Avery's timeline comes from
16 eyewitnesses, comes from people like Blaine
17 Dassey, at 3:45, seeing him in the burn barrel
18 (sic). You have to skip ahead, I guess, to about
19 11:00, when he sees that image that I talked
20 about, where he sees this large fire behind Uncle
21 Steve's garage. Again, the date of the fire, the
22 time of the fire, becomes ever so important.

23 There shouldn't be any question, at
24 least, any more, at this time, regarding the
25 place of the investigation, or the direction of

1 the investigation. Blaine certainly adds to
2 that.

3 Mr. Fabian provides nothing other than
4 around at dusk, plastic is being burned and he
5 sees that.

6 But Mr. Tadych, who at the time was the
7 boyfriend, is now the husband, of Barb Janda,
8 provides testimony that between 7:00 and
9 7:30, the fire is already going. Mr. Avery
10 already has a large fire. Again, the testimony
11 was flames above the garage roof, already has a
12 big fire going at that particular time.

13 The State will argue and we'll ask you
14 to adopt the inference, that between 7:30 and
15 7:45, Teresa Halbach is already killed. We know
16 that because Mr. Avery is planning to, or in the
17 process, after dark, which is between 7:30 and
18 7:45, of destroying, mutilating and burning her
19 body.

20 Fact number 10, although the fire is
21 included in the aspect of the timeline for
22 Mr. Avery, I have made Item No. 10 or fact number
23 10, it's own fact. These two witnesses, again, I
24 just wanted to reiterate, from Mr. Tadych, in a
25 position of where he is parked, remember his

1 testimony, that he was parked in the circle drive
2 and could clearly see the fire at the time. And
3 the same thing from Blaine Dassey at 11:00, after
4 he gets back from trick-or-treating, there isn't
5 any obstruction to the view of that particular
6 fire.

7 Remember the later evidence, as to the
8 amount of time that's necessary to destroy, or to
9 cremate a body. This is going to come later,
10 from some experts in the testimony, or at least
11 when we talk about that later. But at or about
12 1600 degrees, which actually was the defense
13 expert, Mr. Fairgrieve, when talking about BTUs
14 and 300,000 BTUs per average tire.

15 That's the amount of heat that's thrown
16 off by a tire. Plenty of fuel, plenty of solid
17 fuel to burn, or incinerate, or cremate a human
18 body, that that would take between an hour and a
19 half and two and a half hours, at that 1600
20 degree level. If it starts at, the very latest,
21 7:30 or 7:45, and it's still going at 11:00,
22 that's plenty of time. That's an amount of time,
23 through the timeline, and through the fire, and
24 through a combination of witnesses, for you, the
25 jury, to conclude that, in fact, that body was

1 incinerated, was mutilated, was cremated. As a
2 way, and for the reason, to hide a crime that had
3 already been committed. The crime is obvious,
4 it's a crime of homicide.

5 After the burning event, we ask
6 ourselves what's left, what's in the burn area.
7 And we talk now about some highly specialized
8 experts. We talked about, and we hear from,
9 Mr. Sturdivant, who's an arson investigator who
10 found the zipper, which I guess is important.

11 But more importantly, he found the
12 bones, the small bone fragments intertwined, or
13 mixed in with the steel belt from tires. All
14 right. The bones being intertwined and mixed in
15 is the State's, or one of the State's, strongest
16 argument for this being the primary burn site.

17 Mr. Sturdivant also talked about the dog
18 being vicious. This particular picture, I think
19 it's Exhibit No. 50, is probably all you need to
20 see. It's all you need to know as to why
21 officers were reluctant to kind of check out and
22 investigate this particular area.

23 This dog, whose name is Bear, we heard,
24 who's a German Shepherd, we heard being described
25 as vicious, who Deputy Kucharski said the only

1 way they could get by that dog was to destroy or
2 to kill the dog. Certainly was guarding or had
3 access to this entire area. Not only does the
4 testimony prove that, but this particular photo,
5 before any excavation, before any processing,
6 which is obvious has been done, has occurred.

7 Mr. Ertl, we heard, was the first Crime
8 Lab person with Mr. Sturdivant to get, on the
9 8th, to that burn area. And, importantly, we
10 heard about the careful processing, that he did
11 his best. Although a shovel was used, it wasn't
12 a, I think the word, the term "scoop and swoop",
13 wasn't that at all. It was very carefully done
14 to recover what the agents could at the time in
15 order to get those items to the Crime Lab, to
16 determine, first of all, are they human;
17 secondly, are they female; and, thirdly, do they
18 belong to our victim.

19 We need to know those things, obviously,
20 at the time. And photographs that were shown to
21 Mr. Ertl, and as you have seen these photographs,
22 the car seat that was used as additional fuel in
23 this case. The tires you will see, a hose, and
24 you will see rakes, and you will see shovels, and
25 other instrumentalities, what I call, at least,

1 are instrumentalities of mutilation, that is,
2 tending the fire, or without being particularly
3 insensitive, chopping up the remains of the body
4 as it's being burned, to make sure that a total
5 consumption occurs in these cases. You will be
6 able to see some of those exhibits to show that
7 that was in fact done.

8 Mr. Pevytoe, we hear later, DCR -- DCI
9 agent who, on the 10th, takes over the processing
10 of the burn area, does a more detailed
11 examination; here's where we hear the word
12 excavation, does a couple of things. First of
13 all, we hear that on the 9th and 10th he talks to
14 the anthropologist. He talks to Leslie
15 Eisenberg. He gets some information from Ms
16 Eisenberg as to the processing of the scene.

17 Mr. Pevytoe, as you heard, however, also
18 recalled that the bone fragments were intertwined
19 with the steel belts and, I believe, rendered
20 similar opinions as to the primary burn site.
21 Mr. Pevytoe also eliminates other burn locations.
22 Mr. Pevytoe's opinion about the smelter and about
23 the wood burner, whatever that may have had to do
24 with, on another part of the property, looked in
25 both, crawled up in, put his hands in, moved

1 things around. Didn't find any human remains.
2 Didn't find anything at all that would suggest
3 that that was a primary burn area.

4 And so who's involved, of the
5 individuals that law enforcement is supposed to
6 focus on, who's involved in the mutilation
7 process, who's involved in covering up the
8 homicide. Again, common sense should come into
9 play here, you don't leave that on the steps when
10 you walk into the courtroom. When the burn area
11 is directly behind Mr. Avery's garage, when it's
12 only a few feet from Mr. Avery's trailer, that's
13 the kind of common sense that you should and can
14 use in this case. Again, the evidence keeps
15 pointing only to one individual.

16 Additional processing after the fact,
17 that is, after the items are recovered, occur by
18 DCI agents and Ms Eisenberg, the anthropologist,
19 the doctor. Here is Mr. Heimerl, they find five
20 of the six Daisy Fuentes rivets.

21 Demonstratively, we had these jeans purchased for
22 you so that you can look at where the Daisy
23 Fuentes rivets are located.

24 These are rivets that hold blue jeans,
25 dress type blue jeans that Katie Halbach

1 indicated not only was the kind of blue jeans
2 that Ms Halbach owned, but after Ms Halbach's
3 death, remember, weren't there. They looked for
4 them, those are the pair of jeans, that is, the
5 Daisy Fuentes jeans, are the ones that are gone.

6 So what does that mean, five rivets are
7 found that say Daisy Fuentes on it. They are
8 mixed in with the human fragments. The
9 inference, of course, is that those jeans, the
10 clothing of Ms Halbach, are burned at exactly the
11 same time. There is a picture of Katie.

12 And, again, the credibility that her
13 testimony should be given, I think, is very, very
14 high. They are sisters. Katie knows the kind of
15 clothes. She knew, in fact, made fun of these
16 being old person jeans that her sister had
17 purchased, showed them when she purchased the
18 Daisy Fuentes jeans, would know, and, in fact,
19 was asked to and did look for those jeans, they
20 were missing.

21 We also need to identify the remains.
22 We need to identify who is the person that was
23 burned, who is this individual. We have heard
24 testimony that it was just one person, that it's
25 only talking about one person. But we still have

1 to, although, we can guess I suppose, or
2 speculate, that it's Teresa Halbach. We have to
3 show you, through evidence, that it's Teresa
4 Halbach.

5 We first do that through Dr. Donald
6 Simley. Mr. Simley, although unwilling because
7 of his scientist nature, make 100 percent match,
8 used these words, it's as close to a positive
9 match as you can get, using one tooth.

10 Dr. Simley talked about tooth No. 31, from Ms
11 Halbach's dentist, Dr. Krupka, having been
12 received.

13 Here's a blow up of that particular
14 tooth. And here is an x-ray of this particular
15 structure that was recovered from the burn area,
16 the fragmented and delicate, what Dr. Eisenberg
17 talked about were, dental structures. You can
18 look for yourself as to the similarities,
19 Dr. Simley's used in disaster relief efforts and
20 disaster kind of identifications and I think can
21 help you with that particular process.

22 The charred remains, one piece of bone
23 and tissue was recovered. One piece. One piece
24 was not completely burned up, was not completely
25 charred, to the point where a nuclear

1 identification by Ms Culhane could be made.

2 And although she made a partial profile,
3 that is, in 7 -- they are called loci -- 7 of the
4 13 areas that all labs look for to make a
5 positive match, 7 out of 7 match was made. She
6 gave you the frequency number, if you recall,
7 that being one in a billion, that's with a B,
8 that an individual would randomly have this --
9 this DNA.

10 So the State believes, and the State
11 argues, that there isn't any question that it is,
12 in fact, Teresa Halbach, and her bones, and her
13 remains, and her teeth, that are recovered just a
14 few feet behind Mr. Avery's garage and trailer.

15 Leslie Eisenberg, the State argues, is
16 an amazing expert, an amazing person, one of only
17 a handful of Board Certified Forensic
18 Anthropologists in the entire country. She
19 happens to live here in Wisconsin.

20 Leslie Eisenberg, you heard, was brought
21 on early in the case. And she says a lot about
22 this case and says a lot about what is important.
23 Her expertise, again, she talks about being one
24 of these people that goes to disaster scenes and
25 helps make these identifications.

1 But she didn't just look at some
2 pictures or some reports, she was actually
3 involved in the sifting and the sorting of these
4 bones. She was handling these bones. You could
5 tell how fragile they were, how very delicate
6 some of the dental structures was.

7 She was able to identify these bones as
8 having come from an adult female, no older than
9 age 35, believing -- or excuse me, finds these
10 entrance wounds, that we'll talk about in just a
11 minute, that happened before the burning episode.

12 Dr. Eisenberg testified there was a
13 clear attempt to obscure the identity of an
14 individual. By the way, that's evidence, that's
15 an opinion, that's important to the mutilation
16 count. All right.

17 Obstructing or obscuring the identity
18 for the purpose of covering up a crime, is the
19 essence of mutilation of a corpse. And that was
20 the testimony of Dr. Eisenberg.

21 Importantly, though, Dr. Eisenberg,
22 because she saw all of these bones, because she
23 was involved for such a long period of time, was
24 able to render the opinion that the primary burn
25 area, the primary burn site was behind

1 Mr. Avery's garage. And, again, talked about, or
2 commented on the great take -- care taken by
3 arson agents in the recovery of these bones.

4 Dr. Eisenberg goes through the labor
5 intensive method of the recovery of these
6 particles and pieces of bone, puts them together
7 again, as to the face, as to some of the other
8 areas of Ms Halbach and then able, again, with
9 the assistance of Mr. Austin, is able to show you
10 just from where those pieces come, on diagrams,
11 or on skeletons, or on diagrams -- excuse me --
12 of human skeletons.

13 What she also tells you, is that every
14 bone, at least a part of every major bone group
15 has been recovered from the burn area, from that
16 which is behind Steven Avery's garage. And
17 that's this exhibit up on -- up on the right.
18 All of those bones, or at least portions of
19 everyone of those bones identified, comes from
20 Mr. Avery's burn area. We hear about the -- what
21 she calls defects or damage to an area, just
22 above Ms Halbach's left ear, to that just behind
23 and to the left of Ms Halbach's skull as well.

24 Judge, I will have to alert you that I
25 do probably have perhaps a half an hour or so of

1 my closing left to give. I know that we got a
2 late start. I know that lunch was being brought
3 at this time. I'm happy to give it afterwards, I
4 don't have any problem with that, but I wanted to
5 give the Court at least an opportunity --

6 THE COURT: All right. I don't want it to
7 go too long, after all, it is supposed to be lunch
8 and I think we're going to keep it that way.

9 So, members of the jury, we're going to
10 take a break at this time. We'll resume at 1:30.
11 We're going to take a little shorter than normal
12 lunch break. We'll come back, have the State
13 finish its closing argument and then hear from
14 the defense.

15 Again, I will remind you, the case is
16 not over, do not begin discussing the case at
17 this time. You are excused.

18 (Jury not present.)

19 THE COURT: You may be seated. Counsel,
20 let's prepare to resume promptly, then, at 1:30
21 because I don't want to keep the jury too late with
22 closing argument.

23 ATTORNEY BUTING: Judge, just so you know,
24 after Mr. Kratz finishes, I'm going to need a little
25 bit of time to set up some exhibits.

1 THE COURT: I'm sure you will, and you will
2 get it.

3 ATTORNEY BUTING: All right.

4 (Noon recess taken.)

5 (Jury present.)

6 THE COURT: And, Mr. Kratz, at this time
7 you may resume.

8 ATTORNEY KRATZ: Thank you, Judge. Is the
9 volume okay with the Court; I assume it's okay.

10 We're going to break one rule today
11 never give an important speech after lunch it's a
12 difficult thing to do. I will try to get through
13 the rest of my closing in a manner that makes the
14 most sense. And I beg your indulgence as to how
15 important this is, to allow me to talk about our
16 remaining several facts.

17 Dr. Eisenberg, just to review our
18 transition, talked about two gunshot wounds to
19 the head of Teresa Halbach. Remember her
20 testimony, that it was before burning, that this
21 was a pre-burning event, gunshot events. She
22 knows exactly where. That speaks to
23 Dr. Eisenberg's quality, as far as an
24 anthropologist, forensic anthropologist, at that,
25 and to something I think that you should give,

1 obviously, great weight to. Our next important
2 fact, what I believe, although Dr. Eisenberg was
3 a extremely important witness, may well be the
4 State's most important scientific evidence.

5 And that's the DNA part of the case.
6 Sherry Culhane from the Crime Lab was the State's
7 DNA expert. And you learned what DNA was. You
8 learned that it was a genetic fingerprint and,
9 importantly, you learned that it is in every
10 fluid in our bodies, in every tissue in our
11 bodies.

12 And it's the same, that is, it never
13 changes. Never changes, not only throughout our
14 body, but never changes throughout our lives and
15 so DNA is stubborn as well. I talked about the
16 fact that it's stubborn; DNA is stubborn in that
17 sense in that it doesn't change.

18 Sherry Culhane, the Crime Lab analyst, a
19 great deal was said about her. And, again, you
20 are going to have to weigh the credibility of Ms
21 Culhane. Either Ms Culhane doesn't know what
22 she's talking about, or Ms Culhane is a very
23 talented scientist, very talented DNA expert.

24 Ms Culhane, I will remind you her
25 testimony, was in 2003, the analyst that tested

1 the single sample, the single hair that
2 exonerated Mr. Avery. That Ms Culhane's talent
3 in examining one hair was able, quite properly
4 to, through DNA evidence, because it's so
5 stubborn, because it's so reliable, was able to,
6 this woman was able to have Mr. Avery released,
7 with the other parts of that case as well. But
8 the analyst was, in fact, Ms Culhane.

9 She testified in this case, however,
10 that she received samples, that it was the most
11 samples ever sent to the Crime Lab for analysis.
12 It was the most DNA requests, 180, ever made to a
13 single analyst, on a single case.

14 And despite their backlog, you heard how
15 Ms analyst -- excuse me, how Ms Culhane set aside
16 her other work and got results, quality results,
17 to the State, to the investigators, in a time
18 when it mattered; in a time when the officers
19 needed to know whose DNA matched; whether we're
20 talking about female blood or male blood; and in
21 a time when Mr. Fassbender and Mr. Wiegert could
22 refocus or direct their investigation. That's
23 important.

24 It's important in a case like this and,
25 actually, it's reassuring to know that our Crime

1 Lab, our Wisconsin Crime Lab, we can take pride
2 in. We can take pride in the fact that such an
3 important case and an important investigative
4 responsibility and need was met, by Ms Culhane.

5 Again, she processed the vehicle,
6 starting on the 7th, developed DNA profiles, as
7 you heard on, not all 180 samples, I don't mean
8 to mislead at all. But she received 180 and
9 developed many, many, many profiles, all the
10 exemplars, all of the evidence samples in this
11 case, and then compared the profiles of the
12 evidence samples to what are called known
13 samples, or exemplars. We're going to go through
14 her findings because they are so critically
15 important in this case and, again, the State will
16 argue that this is a very talented lab analyst.

17 Again, she's the head of the unit.
18 She's the head of the DNA Unit for the Wisconsin
19 Crime Lab in Madison. Her experience should
20 speak for itself and, certainly, the quality work
21 that she had done within human boundaries should
22 speak as well.

23 We first start with Teresa, start with
24 Teresa Halbach's DNA. And what we start with is
25 a known sample, her Pap smear. You heard about,

1 at Bellin Health, that Ms Halbach, a couple years
2 ago, had a Pap smear done and that was used as
3 the standard they need because we don't have a
4 live person to take a cheek, or a buccal swab
5 from, or even a blood sample from. We need
6 something that we know is Teresa Halbach. And
7 the best sample, you heard, was this Pap smear
8 and this analysis and profile is developed.

9 All of these different markers, as you
10 heard, are different places on a strand of DNA
11 that analysts are trained to look. And they, in
12 fact, do look for and assign values, or actually
13 the machine that's used assigns values at each of
14 those places. And what's important, and what you
15 heard Mr. Gahn ask Ms Culhane to explain for you,
16 as best that we can understand, is that all of
17 these different locations, there are a whole
18 bunch of different profiles that are possible.
19 You heard, at least some examples of, at the
20 D3S13 location, you know, how many variations.
21 This is a 16/18 profile, but how many
22 possibilities are there.

23 And I'm not going to reiterate all of
24 that testimony because you took good notes about
25 that, I'm sure. But what's important is that

1 each of these is different. They are unique to
2 an individual, or at least this entire profile is
3 unique to an individual. In other words, there's
4 one, absent identical twins, which didn't come up
5 in this case and isn't part of this case, I add
6 that just out of intellectual integrity, but
7 other than identical twins, no two people share
8 the same DNA profile.

9 No two people, not brothers, not son and
10 daughter, nobody shares the same nuclear DNA
11 profile. And that's why it's so important.
12 That's why it is so discriminating, as far as who
13 does this belong to. You can take known samples,
14 then, and you can test them about -- or with
15 evidence samples. All right.

16 So the evidence samples of, in this
17 case, Exhibit A, those are all of the different
18 evidence samples, including the swabs that were
19 taken from the back of the RAV4, the back
20 tailgate, and the actual door itself that
21 Mr. Stahlke talked about the flying blood, the
22 blood spatter analysis, the saliva or the swab
23 taken from the Pepsi can. That's all evidence
24 that Ms Culhane developed and, again, compared to
25 this known -- excuse me, this known sample.

1 And so all of those blood samples, and
2 A-14 is the Pepsi can, they all developed exactly
3 the same. It's called a full profile, this isn't
4 the seven out of seven partial profile. At all
5 15 different locations a pattern, a analysis, is
6 developed for these unknown -- these unknown
7 samples.

8 And as Ms Culhane talked about, for all
9 the different bloodstains and Pepsi can, she was
10 able to compare, as you can, the results from the
11 RAV4 samples, to the known Pap smear, to Teresa
12 Halbach. And it is a perfect match, 15 out of 15
13 exactly, exactly a perfect match.

14 The blood or bullet fragment, which is
15 recovered on the 2nd, same thing is done with
16 that, you heard about the extraction process of
17 having to wash the DNA off of the bullet, but it
18 was able to provide a profile by which a match
19 can be made, or an attempted match can be made.

20 Remember that bullet that was found by
21 Mr. Heimerl, later processed and later developed.
22 And Ms Culhane, then, is able to make that
23 comparison. And although the item has, in two
24 separate locations, one of the values or the
25 spikes, it is not at all inconsistent with the

1 results. And so Ms Culhane says that is
2 insignificant as far as -- as the match.

3 Now, as you have heard, there is, not in
4 the bullet, not in the bullet extract itself, not
5 in the evidence, but in a control sample, in a --
6 what I understand to be a tube of some solution,
7 water, some saline, something, that's supposed to
8 have nothing on it, Ms Culhane's own DNA shows up
9 on that particular run, on that particular
10 sample. And she called that, quite
11 appropriately, contamination.

12 And that's a hard word for jurors, I
13 believe, at least I argue, to understand. But as
14 Mr. Gahn and Ms Culhane talked about
15 contamination, that that's expected, especially
16 in cases with this kind of volume. It's happened
17 89 separate times, unfortunately. This is one of
18 the cases that it happened.

19 But because it wasn't on the bullet,
20 because it wasn't on the piece of evidence
21 itself, Ms Culhane testified, and you can believe
22 her or not, but this expert witness testified
23 that it does nothing for the comparison purposes.
24 It does nothing to diminish whether or not Teresa
25 Halbach's DNA is on that bullet.

1 And stated another way, the fact that
2 Sherry's DNA is on some water or some control
3 somewhere should not, and in fact in this case,
4 did not, keep from you, the jurors, the fact
5 finders in the case, whether or not Teresa
6 Halbach's DNA is on the bullet. All right.

7 That's important evidence. You would
8 want to know that. You would want to know
9 whether or not Teresa Halbach's DNA is on this
10 bullet, this bullet that's found in the garage,
11 in Steven Avery's garage, is Teresa's DNA.

12 And as Ms Culhane said, there isn't
13 anything that can change one person's DNA into
14 another. There is no process, there is no
15 trickery, there's nothing that can go on that can
16 convert, if you will, somebody else's, in this
17 case Sherry's, DNA, into Teresa's. Teresa's DNA
18 is on the bullet.

19 It is your decision and your duty to
20 decide how much, how little, weight, to give to
21 the contamination on the control sample, again, a
22 sample that has nothing to do with this
23 particular bullet. Again, another match.

24 And the frequency, and what we're
25 talking about with all of these matches, and not

1 just these, but also the seven out of seven that
2 we talked about before, although one in a
3 billion, the frequency of all of these blood and
4 saliva matches for our victim, for Teresa, is you
5 would expect to find that DNA profile that we
6 just saw, at random, one time in every 416
7 quadrillion times in the Caucasian population.

8 Well, that's a number that's so big that
9 many of us, most of us, don't really have a good
10 concept about. It's a lot, it's a lot of zeros.
11 Okay. And it is a number that you can call that
12 an exact match. All right. An exact match.

13 When we talked about 6 billion people or
14 so in the world, 6 billion only, and this is a
15 quadrillion, lots and lots more. We're going to
16 talk about quintillions next. But we're talking
17 about such big numbers that it is absolutely --
18 has no impact on the results.

19 But more than that, what does this mean?
20 What does -- what does finding Teresa Halbach's
21 DNA mean, in this case? And where was it found?
22 Because DNA can't change, because DNA is so
23 stubborn, because DNA is what DNA is, I told you
24 at the opening statement, that I'm going to
25 reiterate now, that Teresa Halbach cries out to

1 you, the jurors, at this case. And it tells you
2 to listen and to look.

3 Teresa Halbach, by her DNA and where
4 it's found, is telling you a story. She's
5 telling you, this is where I was. She's telling
6 you, this is what happened to me. She's telling
7 you, this is how I was killed. She's telling
8 you, this is how this person tried to hide me and
9 where they tried to hide me.

10 And it's the kind of evidence, it's the
11 kind of powerful evidence that you can't ignore.
12 I told you at the opening statement and I'm
13 telling you now, that Teresa Halbach left this
14 evidence for you to see, and left this evidence
15 for you to hear, to hear about this evidence.
16 And I simply hope that this evidence has that
17 impact, that you can see where she was; you can
18 see where her body was placed; you can see how
19 she was killed, in this case; not through
20 speculation, not through guesswork, but by
21 scientific evidence.

22 Mr. Avery's DNA is also collected. And
23 the stubbornness about DNA applies to Mr. Avery's
24 DNA, just like it does to a victim of a crime.
25 Blood that's left behind, in this case, is

1 evidence; it's evidence against Mr. Avery. It's
2 important evidence, very, very important evidence
3 because DNA doesn't forget.

4 DNA kinds of evidence can't be confused,
5 it can't be tricked on cross-examination. DNA
6 evidence is what it is. And only through human
7 failure, failure to collect it properly, or
8 failure to analyze it properly, or failure on my
9 part to explain it properly to the jury, is the
10 limitation of DNA evidence.

11 Because the DNA evidence in this case is
12 incredibly powerful. You heard testimony that
13 Mr. Avery had a cut to his hand. Had a cut to
14 the outside of his right hand, what we're calling
15 the source of Mr. Avery's blood. This is how
16 Mr. Avery leaves those six different blood
17 samples within the SUV.

18 And from a prosecutor's standpoint, it's
19 fortunate to have that kind of evidence. It's
20 fortunate to be able to stand up here and tell a
21 story, to be able to tell you that story from
22 Steven Avery. Because just like the victim, just
23 like Ms Halbach's DNA telling you, here is where
24 I was, and here's what happened to me, and here's
25 how I was killed, Mr. Avery's blood tells a story

1 as well.

2 Now, we don't have the same kind of
3 standards used for Mr. Avery. We have what's
4 called a buccal swab, a cheek -- kind of a Q-tip
5 that's placed in his cheek. By the way, this is
6 the same kind of test Ms Culhane said was used in
7 Mr. Avery's exoneration, a buccal swab. You saw
8 that they were still sealed in the Manitowoc
9 County Sheriff's Department, after they were
10 used, analyzed and sent back.

11 But the Crime Lab never had Mr. Avery's
12 blood sample, it was all used through, as you
13 hear it is now days, through buccal swabs,
14 through standards. And the standard for
15 Mr. Avery, just like for Ms Halbach, is developed
16 at all 15 of these different locations that are
17 called loci, for Mr. Avery.

18 So what Ms Halbach (sic) does, then, is
19 she does test samples of different swabs, or
20 different swatches, or different things that
21 there are to analyze. She develops DNA profiles
22 for the hood latch. And you are able to see,
23 then, that the -- although not blood, no visible
24 blood available, you heard about from handling a
25 hood latch or a piece of metal, that depending

1 how much your hands sweat, skin cells and other
2 manners of DNA can be transferred onto a hood
3 latch.

4 Well, it was, in this case. On this
5 hood latch, Mr. Avery's DNA, on the Teresa
6 Halbach SUV. Reaching underneath the hood, is
7 Mr. Avery's DNA; an exact, perfect profile of
8 Mr. Avery's DNA, that does not include, at least
9 visibly, his blood.

10 Well, the same kind of analysis is done
11 on this Toyota key. And you will see the
12 analysis, the Toyota key, the evidence is
13 analyzed. And you will see that right down the
14 line, all 15 places, it's a perfect match for
15 that of Steven Avery. And, again, you heard that
16 by handling a key and, importantly, the last
17 person to handle the key is the most likely
18 source of the DNA that's going to be found on
19 that particular piece of evidence.

20 That was the testimony, that was the
21 testimony in this case. Mr. Avery was the last
22 person to handle this key. This key is the key
23 for Teresa Halbach's vehicle. This key, found in
24 Mr. Avery's bedroom, has a full, a complete, a 15
25 out of 15 match for Mr. Avery's DNA. That is

1 significant evidence.

2 We then talk about the blood and the
3 other stains that are found within the SUV. The
4 other five places in the front part: The
5 driver's seat; front console; the ignition area;
6 which is perhaps the most damning of all of the
7 DNA that's found; passenger seat; and the CD
8 case.

9 Now, each of these locations, Ms Culhane
10 is able to develop a profile on, a full 15 out of
11 15 profile, on these bloodstains. So these
12 aren't small bloodstains. These aren't one
13 microliter as you heard later in the trial about.
14 These are large bloodstains, a drop, as you
15 heard, one droplet of blood is 50 microliters.
16 And so these stains, although we do have a one
17 droplet stain of Teresa's, all of these stains
18 are much, much larger than that.

19 So, in the front, that is, from the
20 front seats forward, five different bloodstains
21 left by Mr. Avery in Teresa Halbach's vehicle.
22 Again, we're pointing to one person being
23 responsible for Ms Halbach's death.

24 In the rear, that is, on the rear
25 passenger door, that bloodstain is left. And we

1 hear that it is, in fact, Steven Avery's; again,
2 a perfect match for Steven Avery.

3 Now, each stain, Ms Culhane testified,
4 she's able to develop a frequency. Again, how
5 likely is it in the Caucasian population that you
6 would find, randomly, that exact DNA profile.
7 And she said one in four quintillion. Okay.

8 This is a number that is absolutely
9 huge. People can't even really picture how much
10 a billion is, finding a billion, one thing in a
11 billion. Finding one thing in a billion is -- is
12 hard enough, but I'm going to take 45 seconds and
13 I'm going to tell you what a billion is. All
14 right.

15 To get to a billion, you first have to
16 know what one out of a hundred is. Pick up 1
17 white marble and think of 99 black marbles. Can
18 you picture that? You put them together, and if
19 you randomly drew the one white marble out, it
20 would be one out of a hundred. Well, if you take
21 five times that, you're 1 out of 500, 1 white
22 marble in 5 -- 499, 500, if you will, black
23 marbles.

24 Would be like a shovelful or a coal
25 shovelful of marbles and you kind of throw them

1 out onto the floor. One of them is going to be
2 white and the other 500 are going to be black.
3 And that's 1 out of 500 black marbles. Okay.
4 You can kind of picture 1 out of 500.

5 A billion is such a big number, that if
6 every day, let's say you had a reservoir of black
7 marbles and you had one white marble in there.
8 All right. And every hour, every hour, of every
9 day, you took your coal shovel and you got out
10 500 marbles and you threw them onto the floor and
11 you said, is there a white marble there. To
12 randomly look for that match. And you don't see
13 it.

14 And then the next hour comes and you do
15 the same thing. Every hour of every day. Let's
16 say that you had the time to do that and you had
17 a big enough reservoir, here's how big a billion
18 is. To find one white marble out of a billion,
19 you would have to do this 500 marble exercise
20 every hour, of every day. And you would expect,
21 at random, you would expect, at random, to find
22 that white marble -- are you ready for this --
23 right about the time that Thomas Jefferson was
24 signing the Declaration of Independence. If you
25 did it every hour, of every day, 500 marbles

1 each, that's how often you would have to go to
2 get to a billion, to get to one out of a billion,
3 one white marble out of a billion black marbles.

4 That's a partial profile that we're
5 talking about. That's the numbers that we're
6 talking about, you need to visualize something.
7 Well, four quintillion, four quintillion, a
8 quintillion -- I hope you get this -- a
9 quintillion is a million billion, it's a million
10 times more than what I just talked about. A
11 million times you would have to do that with the
12 black marbles going back to the time of the late
13 1700s. So one in four quintillion, I need you to
14 appreciate the size that we're talking about, the
15 frequency that we're talking about here. All
16 right.

17 So when Sherry Culhane talks about when
18 we randomly see that same profile, one out of
19 four quintillion times, I hope that at least is a
20 way, something that you can visualize, as to how
21 big of a number that we're talking about.

22 That leads me to beyond a reasonable
23 doubt. Beyond a reasonable doubt is what do we,
24 the State of Wisconsin, have the obligation to
25 prove in this case. The judge has already

1 instructed you that a reasonable doubt is a doubt
2 for which a reason can be given, from a fair and
3 rational consideration of the evidence.

4 That means, a fair and rational
5 consideration of all of the evidence. Not just
6 some of it, but considering all of the evidence,
7 do we have a reasonable doubt in this case.
8 Doesn't mean beyond all doubt, in other words,
9 from a percentage standpoint, doesn't mean a
10 hundred percent, because the human system that we
11 have, it's a human justice system. My burden,
12 which I fully accept, in proving the defendant
13 guilty, beyond a reasonable doubt, is something
14 that I think, clearly, all of the evidence points
15 to in the case.

16 I told you at the beginning of the case
17 that there were agencies that were involved.
18 Mr. Fassbender talked about DCI and Calumet
19 County Sheriff's Department and Manitowoc County
20 Sheriff's Department and Manitowoc Police
21 Department, Marinette County, and Two Rivers
22 Police Department, New Holstein Police
23 Department, Brillion Police Department, Kiel
24 Police Department, Manitowoc Sheriff, and FBI,
25 and State Patrol, and all the volunteer

1 firefighters and everybody else pitched in in
2 this case, who did their professional job to find
3 out what happened to Teresa Halbach.

4 Law enforcement looked at the
5 possibilities, looked at all of the possibilities
6 that were presented to them, submitted results.
7 They didn't know what the results were going to
8 be. They didn't know the evidence was going to
9 come back to Steven Avery, but it did.

10 They didn't know that the bones were
11 going to come back as matching Teresa Halbach's
12 DNA, but it did. And so when they submit
13 evidence, again, they are not looking for a
14 particular answer, they are just seeing where the
15 answers come. And in this case, as I mentioned,
16 it's all been directed towards one person.

17 This 25 year old person that I called an
18 amazing young lady, this 25 year old lady was
19 murdered. That's real. All right. That's real
20 for family, and it's real for friends, and it's
21 real for Teresa Halbach. And I'm able to argue
22 to you what that means.

23 I'm able to argue to you that that means
24 that Teresa Halbach's dreams, and that her
25 potential and her future aspirations were snuffed

1 out by one act, and by one act from one person;
2 her chance to be loved and her chance to love,
3 and -- on the 31st of October.

4 Tom Pearce described this young woman as
5 somebody that he saw great potential in. I think
6 he said the words that she was really going to be
7 someone. I think there's a lot of people in this
8 room who might argue that she already was
9 someone. She already was someone that was very
10 accomplished and somebody that obviously is very
11 missed.

12 And that brings me to my last fact,
13 brings me to fact number 13, how was Teresa
14 Halbach killed. The manner and cause of death
15 was provided to you by three witnesses.
16 Dr. Eisenberg, Mr. Olson, and Dr. Jentzen. And
17 they all are in concert, they all agree, with how
18 this 25 year old woman was killed.

19 Dr. Eisenberg testified about those
20 cranial fragments showing entrance defects,
21 again, suggesting gunshot wounds to the parietal
22 and the occipital region -- regions. The
23 beveling was prior to the burning. The manner of
24 death she described as homicidal violence. I
25 think Dr. Eisenberg, in her own anthropological

1 way, explained to all of you, well, she didn't
2 just jump into the fire, it was homicidal
3 violence that caused her death.

4 Dr. Eisenberg was able to show you and
5 tell you, through photographs, that the -- this
6 particular bone piece, we wouldn't know it was
7 right above the left ear, but this is a piece of
8 the parietal bone that's right above the left
9 ear, that shows the characteristic sign of an
10 entrance bullet wound. And this particular
11 defect that is shown, again, that we wouldn't
12 know, is the occipital region of the skull, that
13 Teresa was also shot in the back of the head with
14 a .22 caliber gun.

15 Mr. Olson, our trace metals expert,
16 talks about instrumentality. That is, what are
17 these defects caused by. And Mr. Olson,
18 importantly, talked about lead deposits, talked
19 about bullets, and bullets having 99 percent
20 lead, but was able to show you x-rays of these
21 defects that we talked about, the x-rays of the
22 parietal region, where these things that light up
23 are actually particles of lead, which are
24 characteristic of a bullet, a bullet entering the
25 skull of an individual. And there's many more of

1 them, actually, back in the occipital area, many
2 more of these lead particles that he -- the
3 elemental analysis, and found, in fact, that
4 these were lead.

5 And, finally, Dr. Jeffrey Jentzen, an
6 expert, perhaps the expert, in the State of
7 Wisconsin, the medical examiner for Milwaukee
8 County Wisconsin, hundreds of gunshot wounds he
9 reviews. He was asked by Mr. Gahn to review this
10 case and see if he could render an opinion as to
11 both the manner and the cause of death.

12 Dr. Jentzen didn't have any question at
13 all about either one, that there was a gunshot
14 wound to the parietal region, agreeing with
15 Dr. Eisenberg it was a gunshot wound to the back
16 of the head. Manner of death is homicide. Cause
17 of death is gunshot.

18 There's three charges that you are going
19 to need to consider in this case: Homicide,
20 first-degree intentional homicide; mutilation of
21 a corpse; and the felon in possession. And it's
22 the State's obligation to prove to you several
23 things with those. They are called elements, but
24 what we really have to prove is what, and when,
25 and how, and, finally, who.

1 What is clear, that a homicide and
2 mutilation occurred. When, the 31st of October,
3 sometime after 2:45 p.m., when Ms Halbach makes
4 contact at the Avery salvage property. How, the
5 doctors and the trace metals and other experts
6 tell you, by gunshot.

7 And, so, when it comes down to the role
8 of the jury, when it comes down to you as the
9 trier of fact, searching for the truth, not
10 speculating, not searching for doubt, but
11 searching for the truth, it's that last answer.
12 It's the who, that you have to decide.

13 And you have got to decide whether or
14 not the State has satisfied you, beyond a
15 reasonable doubt, who killed Teresa Halbach.
16 Again, based upon the facts, based upon the
17 evidence, not based upon speculation.

18 I told you when I first stood up before
19 you this morning, there was no question, no
20 question at least from the State's perspective,
21 who was responsible. And despite having been
22 here for five weeks, I'm hopeful at this time
23 that you are able to agree with the State of
24 Wisconsin that all of the evidence, all of the
25 evidence, points to only one person. All the

1 circumstantial evidence, all the scientific
2 evidence, all the direct evidence, points to one
3 individual.

4 The law enforcement officers have done
5 their duty. All of the citizen searchers and
6 citizens that helped have done theirs. The
7 prosecution team, I believe, has set forth a very
8 methodical, very compelling case. And so we're
9 finally asking you, the citizens -- the jurors in
10 this case, the citizens of Manitowoc County, to
11 return verdicts of guilty, as it is your duty to
12 do so.

13 That's all I have, Judge, thank you.

14 THE COURT: Members of the jury, we're
15 going to take a 10 minute break at this time to give
16 the defense a chance to get ready for its closing
17 argument. Again, do not begin your deliberations at
18 this time. We'll call you back in as soon as we're
19 ready. I anticipate it being about 10 minutes.

20 (Jury not present.)

21 THE COURT: You may be seated.

22 ATTORNEY BUTING: Maybe a little bit longer
23 than 10 minutes, I have to get these exhibits
24 together.

25 THE COURT: All right. I will come back at

1 2:25 and see how you are doing.

2 (Recess taken.)

3 (Jury present.)

4 THE COURT: Mr. Buting, at this time you
5 may begin the defense closing.

6 ATTORNEY BUTING: Thank you, Judge. Good
7 afternoon, ladies and gentlemen. This is the first
8 time I have actually had a chance to talk to you. I
9 have sort of been talking at you as we walk by the
10 witnesses for 6, 5 weeks, whatever. And I'm
11 really -- I feel honored and privileged to do so,
12 just as I am honored and privileged to defend
13 Mr. Steven Avery here, in this very, very serious
14 case.

15 Let me make one thing very clear, right
16 here at the outset. We do not and have never
17 claimed that the police killed Teresa Halbach.
18 But in that respect they have that in common with
19 Steven Avery. However, the person or persons who
20 did kill Teresa, knew exactly who the police
21 would really want to blame for this crime.

22 And they were aided in that respect, by
23 widespread media publicity as early as Friday
24 morning, November 4th, the very morning after the
25 day she was first reported. Widespread publicity

1 that identified Mr. Steven Avery as one of the
2 last people known to have seen her. And because
3 of who he is, that drew even more media attention
4 than perhaps it might other wise have. And the
5 focus was on Mr. Avery, rather than one of the
6 other customers that she saw that day.

7 And this was the very same Steven Avery
8 who was suing the Manitowoc County and the
9 Sheriff's Department, with a lawsuit asking for a
10 whole lot of money, for the wrongful conviction
11 and all the years in prison that he spent, from a
12 1985 wrongful conviction.

13 I believe that when the Manitowoc
14 officers saw this, they very badly wanted to
15 believe that he was guilty and that this was
16 their way out. And that from that point forward,
17 that they had this investigative bias, focused on
18 Steven Avery, that was, then, skillfully
19 exploited by the real perpetrator of this crime.

20 Now, from the very beginning, Steven
21 Avery has proclaimed his innocence in this case.
22 He told that -- everybody that had a camera,
23 anybody who talked to him, that he was not
24 guilty, and that he was being framed. That the
25 police planted his blood.

1 And I want you to think for just a
2 moment how difficult a situation you would be in
3 if that had occurred to you. How, after all of
4 this evidence comes out, and police, who better
5 than anyone else would know how to plant
6 evidence, how you would get back the presumption
7 of innocence. How do you go about trying to get
8 the community, and ultimately a jury such as you,
9 to believe in our system of justice, to believe
10 that in America you are presumed innocent, unless
11 the State, which has the entire burden of proof,
12 can prove you guilty, beyond a reasonable doubt.

13 What would you do? Remember, this
14 morning and five weeks ago, you promised that you
15 would do that, despite all of the pre-trial
16 publicity you may have been exposed to and may or
17 may not have retained. You promised each of us
18 and the Court, and the Judge instructed you
19 today, that you must presume Mr. Avery innocent,
20 and that you must hold the State to the burden of
21 proof, beyond a reasonable doubt. We will talk a
22 little bit more about that later, but I want you
23 to keep that in mind. Because as you go through
24 this evidence, you have to apply that, because
25 that is your sworn duty.

1 Now, we have offered a theory of
2 defense. And that's what it is, it's a theory.
3 Because if someone frames you, you are obviously
4 not there to see how, exactly, it happened;
5 where, how, when, the kinds of things that
6 Mr. Kratz is going to argue we haven't presented.
7 There is no videotape showing how this was done.
8 There's no cop who, in a *Perry Mason* moment,
9 breaks down on the witness stand and says, yes, I
10 did it, I did it, you got me. This is real life,
11 that doesn't happen.

12 You are entitled to reasonable
13 inferences, however, and we're entitled to the
14 inferences that can be drawn from circumstantial
15 evidence, just as much as they are. And so you
16 ask yourself, what would it look like, what would
17 it look like, what would a case look like if
18 somebody was being framed.

19 And we're going to do that for a little
20 bit now. And I think when you do, you are going
21 to see that it would look a lot like this case.
22 You would look first and you would see, well,
23 what about the lack of evidence, in areas that
24 you would expect there to be evidence. And,
25 then, you would look at the areas where there

1 appears to be evidence linking the person to the
2 crime and ask yourself why does all of that
3 evidence appear suspicious or unreliable.

4 And we're going to go back and forth on
5 that a little bit, but those are the two main
6 areas I want to talk about first. Evidence
7 that's not there, that should be. And evidence
8 that is there that appears suspicious or
9 unexplained. And let me turn to that first.

10 In fact, let me turn to what probably
11 is, at least on its face, the most damning piece
12 of evidence in this case, and that is, Teresa
13 Halbach's remains, found in the burn pit, outside
14 Mr. Avery's garage, trailer, whatever.

15 We'll look at the -- what the evidence
16 shows first. We know that not all of her remains
17 have ever been found. I believe Dr. Eisenberg
18 said only 40 percent of her skeletal remains.
19 We're not talking the rest, obviously, that you
20 would expect might be gone, but skeletal remains,
21 only 40 percent. Not because the other 60
22 percent gets burned up. No expert has ever come
23 into this court and said fire would consume bone
24 completely.

25 What fire does, according to these

1 experts, is it goes through these phases of
2 charred to ultimately calcined -- calcinated, I
3 believe the word was. Sixty percent of it is
4 missing. All right. That's -- That's peculiar
5 to begin with. But, then --

6 Well, before I move off that, there's
7 something else that's missing and that is,
8 Mr. Kratz points out, well, the jeans, we found
9 these rivets in this pair of jeans here. But
10 they only found five of six, assuming that these
11 are the same jeans, and these are just a
12 representative example. But what did they not
13 find, the biggest item of all, the button that
14 closes the waist.

15 They have got magnets they are using
16 through all this dirt. They are the sifting
17 through every thing and they don't find this
18 button anywhere. They don't find her house keys
19 anywhere, her work keys anywhere. They find one
20 single key, which we'll certainly talk about.

21 But most importantly, all the experts
22 agree, these bones were moved. And I have got to
23 tell you, we have been here, now, for five weeks
24 and we have still not heard any explanation from
25 this side about how that happens.

1 In fact, we haven't heard any
2 explanation about a lot of things. We have heard
3 manner and cause of death, but that's not really
4 how Teresa Halbach was killed, or even where
5 Teresa Halbach was killed.

6 Unfortunately, from my standpoint on
7 this point anyway, the State gets to go last.
8 This is called sandbagging. This is where we
9 don't get to respond to the theory or the
10 argument that they have been harboring all this
11 time and haven't told you folks either. So they
12 are going to get up here after Mr. Strang and I
13 are done and they are going to say, hey, this is
14 the explanation, take our word for it. And we
15 don't -- of course, don't have a chance to
16 respond.

17 Well, I'm going to trust that between
18 the 12 of you, ultimately 12, you will be able to
19 answer those questions that they raise. You will
20 be able to pick apart, as well as I can, whatever
21 theory they come up with, because we have not
22 heard any yet.

23 The bones were moved. The question is,
24 were they moved to Mr. Avery's burn pit, or were
25 they moved from Mr. Avery's burn pit. The State

1 would have you believe that the original site of
2 burning was the burn pit, behind his garage. But
3 they have offered no explanation for why bones,
4 human bones, would be found in the Janda burn
5 barrel, some 150 feet, or whatever it is, away,
6 in the other yard.

7 And Dr. Eisenberg told you -- By the
8 way -- I can't believe I forgot this -- there's a
9 third site. There's actually three different
10 sites where human, or possible suspected human
11 bones were found. Clearly identified human bones
12 were found in the burn pit. And clearly
13 undisputed human bones were found in the burn
14 barrel.

15 But there's also this mysterious quarry
16 site, a quarter mile or so away that -- You will
17 have to forgive me, but I'm not as
18 technologically savvy as Mr. Kratz, and so we're
19 going to be using the ELMO instead of a laptop.
20 But this is -- this is the map that was shown to
21 you. This is the diagram that was created by
22 Mr. Austin, with the assistance of Dr. Eisenberg.

23 This flag down here, is the third site,
24 where pelvic bones were found, according to
25 Dr. Eisenberg. They were sent to the FBI to do

1 mito-typing (phonetic). We did a stipulation
2 that nothing could be determined from them. But
3 what she said was, all three locations where
4 bones were found, or possible human bones in the
5 case of the quarry, were all burned to the same
6 degree, same amount of calcination.

7 So there is a similarity here that
8 continues forward through all of them. And, very
9 important, no evidence of more than one body. I
10 don't even know if there are other bodies missing
11 in Manitowoc County, or people missing, but in
12 this instance, Dr. Eisenberg concluded, and
13 Dr. Fairgrieve agreed, no evidence of more than
14 one body. So we have got these bones in three
15 different locations.

16 Now, curiously, you have never seen a
17 photograph of what this site looks like, or what
18 the bones looked like, and neither have I. And
19 neither has, I assume, any of the prosecution
20 team because, for some curious reason, no
21 photographs were taken of that site.

22 The method of recovery in this case was
23 not skillfully done, as Mr. Kratz tried to argue,
24 by these experienced arson experts. This
25 investigation needed a forensic anthropologist to

1 be called to that scene, before anything was
2 touched. And Dr. Fairgrieve explained why.

3 Dr. Eisenberg admitted that by the time
4 she got the bones, she was unable to determine
5 some important information about its location,
6 how it was sited. And not only was nobody called
7 to the scene, but no photographs.

8 Have you seen one photograph of any of
9 those bones in the burn pit, in this location,
10 before it's picked up? One photograph? No, you
11 see boxes of bones, tables where they are thrown
12 out. You don't see them in their site. And
13 Dr. Fairgrieve explained to you why that's
14 important, especially important, if you're going
15 to try and answer the question of, was that the
16 burn site.

17 Dr. Fairgrieve is probably the expert in
18 the world, or at least in this North America, on
19 the forensic identification and interpretation of
20 cremains, much more experienced than
21 Dr. Eisenberg in this area. I don't have a
22 problem with Dr. Eisenberg; she's a fine person,
23 and a fine anthropologist.

24 But Dr. Fairgrieve has much more
25 experience in the field, dealing with cremains.

1 He's written a book that's coming out soon. He's
2 worked for the Crown all of his life. This is
3 the first case he's ever testified for the
4 defense. So this is not some paid defense expert
5 that we have just brought in here to try and --
6 try and do a smoke screen or something.

7 This is a world renown expert. And what
8 he says is, he's had a lot of cases, or he's been
9 called in and that very question has been
10 presented, the bones were moved, where is the
11 original site. Was it over here, or was it where
12 the bones were found.

13 Dr. Eisenberg says, you have to listen
14 carefully to her opinion, she concluded -- First
15 of all, she could not rule out other possible
16 burn sites, but her opinion was that it was most
17 likely the original site was behind the garage.
18 And that was based on the fact that most of the
19 bones that were recovered were found in that
20 location, that she would have expected more
21 breakage, and that she found a lot of small
22 delicate type of bones in that area, and so,
23 therefore, she concludes this must be where the
24 burn took place.

25 But Dr. Fairgrieve told you, that from

1 his own case experience, real world case
2 experiences, he has found the tiniest bones in
3 the human body, the little bones in your middle
4 ear. He has found those moved into the secondary
5 site, not at the original burn site.

6 And he told you something else that,
7 frankly, just makes common sense. In his
8 experience, where the majority of the bones are
9 found, that's the location where the bones were
10 moved to. Why? Why does that make common sense?
11 Because if you're -- if for whatever reason you
12 are trying to disguise the original site where
13 the burn took place, and you are going to plant
14 them, or put them some place else, of course you
15 are going to move as many of them as you can to
16 the second location. That makes common sense.
17 It would make perfect sense. And it fits with
18 Dr. Fairgrieve's own real case experience.

19 The other thing Dr. Fairgrieve said is
20 that, had an expert been called to the scene, a
21 real forensic anthropologist, you can determine
22 things about that. I believe he talked about a
23 case where he was able to tell that this was the
24 first, the original spot of burning, because
25 there was some anatomically connected bones.

1 Even though burned, they are close together,
2 anatomically, so you can tell that's where they
3 were burned. If you moved them, they would fall
4 apart and they would be rearranged.

5 Unfortunately, Dr. Fairgrieve, again, he
6 didn't go out on a limb. He said, I cannot tell
7 you for certain, where the original burn site is,
8 nobody can, because of the collection effort.

9 And I'm not faulting these officers,
10 there's nothing deliberate going on here. They
11 probably never encountered a case like this
12 before. And what they should have probably done
13 is just put a tarp over it. Instead, Agent
14 Sturdivant recalls -- I think it took five hours
15 before Mr. Ertl to come to the scene. And it's
16 already starting to get towards dark, 3:00, 3:30
17 or something. So they're hurriedly trying to get
18 as much as they can, working up to dark, until it
19 gets too dark, without light.

20 It's not that they deliberately
21 destroyed the evidence at the scene, but by
22 moving it without the kind of knowledge -- Well,
23 you have seen archaeologists on TV and in movies,
24 you know how they do it, how they move very
25 carefully with brushes. They want to make sure

1 that they can determine exactly where the
2 location of these bones are. Because, if they
3 are not in any kind of anatomical connection,
4 that tells you something.

5 So, Dr. Fairgrieve -- I'm sorry --
6 Dr. Eisenberg tells us that these bones were
7 found in the burn barrel. Zoom in first so you
8 can read the top. This is Exhibit 401. Evidence
9 Tag 7964, she told you was bones recovered from
10 one of the four Janda burn barrels that were
11 located.

12 She finds long bone shafts, metacarpal
13 fragments, vertebral -- vertebral fragments, and
14 a scapula fragment. And the helpful little
15 diagram here describes where you would find these
16 in your body. Now, obviously these are scattered
17 all over ones skeleton. It's not like somebody
18 dismembers an arm and burns that in the burn
19 barrel and you would expect to find only those
20 items. These were scattered and we'll talk about
21 why in just one second.

22 I think this was -- This is Exhibit 402,
23 the pelvic bones that were found in the quarry.
24 Now, again, possible, I'm not going to overstate
25 here. She was not conclusively able to determine

1 that they were human, but they were all burned to
2 the same degree. And she certainly could not
3 rule it out.

4 What explanation is there for finding
5 scattered bones of Teresa Halbach in the burn
6 barrel and in the burn pit. I'm going to propose
7 one possible theory, there could be others. You
8 may come up with others on your own. But I want
9 to show you, first, one of the instructions the
10 judge read you that's in your packet.

11 Focusing here on the reasonable
12 hypothesis. If you can reconcile the evidence
13 upon any reasonable hypothesis, consistent with
14 the defendant's innocence, you should do so and
15 return a verdict of not guilty.

16 I suggest that a reasonable hypothesis
17 is that somebody else burned Teresa Halbach's
18 body elsewhere, maybe in the quarry, maybe
19 somewhere else. And then they used that burn
20 barrel that was found on the Janda's property as
21 a container to transport the remains, as many as
22 they could scoop in, to Mr. Avery's backyard.

23 And they dump it in the burn pit, or
24 scatter it about, whichever, think that they've
25 got it all, turn it back over. And think about

1 how heavy these burn barrels are, you are not
2 going to be able to lift them up and turn them
3 upside down as easily as you would be tipping
4 them over. And they inadvertently leave a few
5 behind. This is most likely happening in the
6 dark.

7 And the barrel gets, then, placed over
8 on the Janda property, along with the other three
9 that were there, and so there's four barrels
10 found. That explains why there's scattered bones
11 from all over, skeleton, found in the barrel.
12 Explains why most of them are there in
13 Mr. Avery's. And explains why any would be found
14 in the burn barrel at all.

15 If Mr. Avery wanted to get rid of the
16 bones, from his burn area, he would not put a
17 scattered few in someone else's burn barrel and
18 leave all the rest behind. That's not making
19 sense. It doesn't make sense. No one would do
20 that.

21 One other little interesting bit of
22 testimony that almost slid by me, actually, was
23 Mr. Dassey, Bobby Dassey's testimony. Sometimes
24 the truth comes out in little dribs and drabs
25 when people aren't expecting it. And on direct

1 examination, as Mr. Kratz, I believe it was, was
2 trying to lead Mr. Dassey through a number of
3 photographs.

4 He asks him about the burn barrels that
5 your mom has out back. And Bobby says, we have
6 three. And then they try to correct him, and
7 he's like, I thought we had three. And yet four
8 are found on November 5th.

9 Where did that fourth one come from? I
10 submit it was the transport item used, perhaps
11 picked up, used to transport the bones and then
12 placed over where the others would -- where the
13 others were.

14 Let me tell you something about who
15 another possible suspect is. It may not, but
16 it's a reasonable hypothesis to explain the bones
17 the way they are. Now, when you realize -- The
18 reason I'm spending some time on this, is when
19 you realize that this is what may have happened
20 here, then you realize why it's so important.

21 Because if that body was burned
22 elsewhere and then moved and dumped on
23 Mr. Avery's burn pit, then Steven Avery is not
24 guilty, plain and simple. Because no one would
25 burn a body somewhere else and then move the

1 remains and dump them in your own backyard. No
2 one would do that.

3 Now, that's why the State has gone to
4 such trouble avoiding the fact that the bones
5 were moved, that's why you heard nothing about it
6 here. Because it does not fit with their theory
7 that Avery is guilty. They know that if you come
8 to believe that there is reasonable doubt about
9 whether those bones were moved to Mr. Avery's
10 backyard, then you are going to find him not
11 guilty.

12 You have to find him not guilty. Even
13 if, in the end, you aren't completely satisfied
14 how it occurred. Because although we offer you a
15 theory of defense, that does not mean that we
16 take on the burden of proof. The State has the
17 burden of proof. They have to answer the
18 questions that come to your mind, beyond a
19 reasonable doubt.

20 If someone is framed, they are not going
21 to be there. They are not going to see how
22 exactly it is done, but this is consistent with
23 the evidence, I submit.

24 Now, let's turn from the evidence that
25 appears to be incriminating, but is suspicious.

1 Let me turn for a moment to some of the evidence
2 that is lacking, that you would expect to find,
3 if Mr. Avery was really guilty.

4 There was blood identified in the RAV4,
5 that is, Mr. Avery's. And I don't know why,
6 frankly, we went through this exercise in
7 statistics in figuring out what a billion means,
8 when we're not, we've never challenged that. We
9 don't challenge that -- whether his profile --
10 when they come in and they say this is his blood,
11 this is not his blood, or whatever, there is no
12 dispute on that.

13 The question is, how did that blood get
14 there. And as you think, again, what a case
15 would look like if someone is framed, this is
16 very important as well. Because in the RAV4,
17 they find five, ultimately six stains, I believe,
18 which they theorize must have come from an
19 actively bleeding person, which means, the person
20 was not wearing gloves, and yet, they find no
21 fingerprints.

22 Why, because fingerprints are very
23 difficult to plant. Can't say it's never been
24 done, but it's extremely difficult to plant
25 someone's fingerprints. Much easier to plant

1 someone's blood, if you can get ahold of some.

2 So that right there is peculiar.

3 Now, is it because he wiped off his
4 fingerprints, took the time to wipe off all his
5 fingerprints, but missed the blood. Come on,
6 that doesn't make sense at all. Besides, we know
7 that there are eight unidentified fingerprints,
8 at this moment, that were found on that vehicle,
9 including some very incriminating locations.

10 I went through it with Mr. Riddle.
11 Right on the back rear cargo door of the RAV4 --
12 which of course I don't have -- right where you
13 would expect, if somebody is opening that door to
14 put a body in, they are going to find your
15 fingerprints, if you're not wearing gloves. And
16 if you're bleeding you're not wearing gloves.
17 You can't be. You can't have it both ways.

18 I would also point out, Dr. --
19 Mr. Riddle, I asked him, well, you took the
20 fingerprint standards of Lieutenant Lenk and
21 Sergeant Colborn. You know what the defense here
22 is. You know what we have been accusing them of
23 for the last month or more. Did they ask you to
24 compare these unidentified latents that were
25 found on Teresa Halbach's vehicle with Sergeant

1 Colborn or Lieutenant Lenk's standards, to see if
2 you could rule them out, or match. The answer,
3 no. Why, because they don't want you to know.

4 You cannot open this vehicle without
5 touching that latch. And this is where he said
6 he found them, the fingerprints. There, there,
7 and there. Riddle also found them on the hood.
8 Isn't that interesting. He says the lifting up
9 of the hood has been a big part of the State's
10 case. No one has compared those to Lenk and
11 Colborn.

12 The other thing that's kind of curious
13 is that no one at the scene sees any blood in the
14 vehicle. Granted it's -- part of the windows are
15 tinted, and it's -- but it's not dark. This
16 vehicle was found at 10:30, 11:00 a.m. in the
17 morning, on a Saturday.

18 And I believe Mr. -- or Special Agent
19 Fassbender, I believe he was the one, that says
20 he came with his flashlight. Maybe that was
21 Ertl. Was looking 5 or 10 minutes inside that
22 vehicle and didn't see any blood. Now, maybe you
23 won't see the blood on the black CD case, but if
24 indeed the vehicle is locked, you might want to
25 be looking inside to see if there's a key,

1 wouldn't you think.

2 You are going to be shining your
3 flashlight right there to see if maybe the key is
4 in the ignition, no one sees this rather peculiar
5 looking bloodstain that looks sort of like you
6 might get if you take a Q-tip and dab it.
7 Doesn't look consistent with the State's theory,
8 as I understand it.

9 And then you look at maybe the most
10 obvious lack of evidence. And that is the
11 complete lack of any blood or DNA of Teresa
12 Halbach anywhere inside Mr. Avery's entire
13 trailer and you heard what the police did with
14 that trailer. They peeled off the paneling, they
15 ripped up the carpeting.

16 You heard Mr. Ertl talk about how in one
17 instance he was familiar with, the suspect had
18 cleaned up the carpet with carpet cleaner and it
19 wasn't noticeable. When they peeled the carpet
20 back, it had soaked through to the pad. Well,
21 the police were at least smart enough to look for
22 that.

23 Here no blood on that pad. No blood on
24 the carpet. No bloody bedding. Admittedly, you
25 could burn the bedding, sure. You could get rid

1 of the bedding. But no blood on the mattress.
2 And there's no evidence that there was any change
3 in the mattress. And there's no evidence that
4 any mattress or box springs or any of that was
5 burned.

6 No blood spatter on the walls or the
7 ceiling. No bloody trail of a body being carried
8 out of that bedroom into the garage or into the
9 burn pit. Nothing on the carpet. Nothing on the
10 back stoop, the deck, anywhere. No scratches on
11 the headboard. No rope fibers on the headboard.
12 Nothing that would indicate somebody restrained,
13 struggling for their life, was murdered in that
14 bedroom.

15 Why am I telling you this? The State is
16 now saying he was -- I believe they are trying to
17 argue that she was killed in the garage, although
18 that's still not clear either. Why do I care
19 about the bedroom, because the Judge has told you
20 that you bring your common experiences too, you
21 can rely on those common experiences. And one of
22 the common experiences that you have all,
23 unfortunately, been exposed to, was the pre-trial
24 publicity in this case.

25 ATTORNEY KRATZ: Judge, I'm going to

1 interpose an objection. He is commenting on
2 pre-trial or out of court statements, whether by
3 counsel or by other witnesses. That is absolutely
4 improper. That is not a common experience that they
5 bring to the courtroom.

6 THE COURT: All right. Just a second, I'm
7 going to excuse the jury for a couple minutes.

8 (Jury not present.)

9 THE COURT: You may be seated.

10 ATTORNEY BUTING: Judge, I'm actually
11 bringing this up only to show them, and my next
12 explanation would be how important it is not to leap
13 to a quick judgment and why it's so important that
14 they disregard all of that kind of information they
15 may have heard before and focus on the evidence in
16 this case. That's where I'm going with this.

17 THE COURT: Okay. I wasn't sure from the
18 introduction comment if you were going to refer to
19 any information that was not introduced as evidence.
20 As I understand it, you are telling me you are not.

21 ATTORNEY BUTING: That's correct. That's
22 all I intend to say about it.

23 THE COURT: Mr. Kratz.

24 ATTORNEY KRATZ: When he starts with,
25 unfortunately, you were exposed to information, he

1 is pre-supposing, first of all, that they know that.

2 Secondly, Mr. Strang and Mr. Buting, in
3 jury selection, referred in great detail to out
4 of court statements in this particular case.

5 But, third, and most importantly, the
6 jury has already been instructed not to consider
7 anything that was outside the courtroom. So to
8 highlight some -- something they may have heard
9 on the news, or something earlier, is absolutely
10 improper and I'm suggesting that Mr. Buting knows
11 that.

12 ATTORNEY BUTING: I disagree. This jury
13 was exposed to false, misleading information for
14 months. And it's not until they came into this
15 courtroom that they heard the other side. That's
16 the point -- this is the best example I can think of
17 on why a case has to be decided and tried in the
18 courtroom.

19 The Court's instructed them. We talked
20 about it in voir dire. We couldn't ignore the
21 fact that at least three of these jurors who are
22 sitting here today came in saying, I think he's
23 guilty. They promised to put it aside, but
24 that's all I'm doing is reminding them of that.

25 THE COURT: One of the problems, as I

1 recall, is that the jurors, and I don't have each
2 individual juror's answer committed to memory, but
3 it's my understanding that they were exposed to
4 pre-trial publicity in varying degrees. For the
5 most part we wound up with jurors who weren't as
6 exposed to the publicity as some others. But I also
7 agree that we do not have a jury composed completely
8 of people who were not exposed to any pre-trial
9 publicity.

10 I'm a little concerned that, even the
11 reference to publicity, for the same reasons I
12 expressed as one of the reasons for dismissing
13 the false imprisonment charge is, references to
14 it could possibly lead the jurors to talking
15 about it in deliberations and that's something
16 that I don't think we want.

17 ATTORNEY BUTING: I agree. And that's as
18 far as I was going with it. I wasn't going to draw
19 any more references to it, other than to remind them
20 how I think this is the best example, now that they
21 have been through the process, to understand why it
22 is so important for them to only judge the case on
23 the facts, not speculating.

24 THE COURT: All right. I'm going to ask
25 you -- you can refer to speculation, but I'm going

1 to ask you to phrase it in some other way that
2 doesn't involve referring to pre-trial publicity, in
3 order to avoid the problems with it.

4 ATTORNEY BUTING: That's fine. I will just
5 finish by saying, that this case is an example of
6 why you can't leap to quick judgments and why you
7 should base your decision on the evidence in court.

8 THE COURT: That's fine. Anything else,
9 Mr. Kratz?

10 ATTORNEY KRATZ: I'm not sure how to
11 un-ring that bell, Judge.

12 ATTORNEY BUTING: Well, I wish I could
13 un-ring it too.

14 THE COURT: Both parties have made
15 arguments about un-ringing bells. I don't think the
16 comments that have been made thus far get us
17 significantly into that problem to require
18 corrective action. So as long as there's not going
19 to be a reference -- any further reference to any
20 pre-trial publicity, lets bring the jurors back and
21 allow Mr. Buting to continue.

22 ATTORNEY BUTING: Thank you.

23 (Jury present.)

24 THE COURT: You may be seated. Members of
25 the jury, we're hoping that our sound problems are

1 related to a bad battery, so the battery is being
2 replaced. In a minute, we'll resume.

3 ATTORNEY BUTING: All right. Where were
4 we. What I think this case is, is a good example of
5 why it is so important that people not leap to quick
6 judgments about a case, maybe decide something
7 that's based -- that's not based on the evidence you
8 hear in court. You promised, and I'm confident you
9 all will decide this case based only on the evidence
10 you have heard in court, and this case is a good
11 example why.

12 Let's look at what else evidence -- what
13 other evidence is lacking. Now, if the State's
14 theory is that she was shot in the garage, where
15 is her blood? None of her blood is found in that
16 garage.

17 We have heard testimony about high
18 velocity blood spatter that comes when someone is
19 shot from a bullet. There's none on the floor.
20 Maybe even more important, there's none on any of
21 all that -- any of that clutter that you saw.
22 When it's high velocity spatter, it can go
23 anywhere.

24 How would Mr. Avery be able to clean up
25 everything, not just on a floor, but every little

1 item. Because, remember, at least in March, they
2 picked up and handled every single, and examined
3 every piece of evidence. Every cooler, every
4 box, every can, every piece of junk that we all
5 have in our garage, they looked at. And that's
6 where you would expect to find spatter that no
7 one would be able to clean up, even if they tried
8 to clean up.

9 Now, is there evidence that he did clean
10 up at all? Well, his blood was found in the
11 garage. Why is that? If he's cleaning up, how
12 is it that his blood is found there. Is he able
13 to see a blood spot and say, oh, that's Teresa
14 Halbach's blood. Oh, that's mine, I can leave
15 mine, I will just clean up hers. Come on.

16 They have you believe that -- I'm
17 assuming he's going to get up here and say, this
18 is what happened because, of course, we haven't
19 heard it yet, that the bottle of bleach is so
20 incriminating. I don't know anybody who doesn't
21 have a bottle of a bleach somewhere in their
22 house. And an important part is, it was in his
23 house. They say it's in his bathroom, what they
24 didn't tell you until I got up and cross-examined
25 them, is that the bathroom is the laundry room.

1 So even there they try and mislead you into
2 thinking something means more than it does. A
3 bottle of bleach found in ones laundry room means
4 nothing. And it means nothing in this case.

5 And, by the way, if the theory is that
6 there's no blood of Teresa Halbach anywhere on
7 the floor of that garage, is that because he is
8 such a good cleaner, then why are there 10, 11
9 .22 shells laying all over the floor right in the
10 open. Don't you think if they are going to go to
11 the trouble of cleaning up the blood, after you
12 kill somebody, that maybe you might pick up the
13 shells that are right out there in plain view for
14 the police to find. Don't you think that would
15 be what you would do?

16 So those are some examples of the kind
17 of evidence, that if someone is being framed, you
18 might expect to find -- you might expect to find
19 lacking, because it doesn't fit with the reality
20 of what would have happened if the crime actually
21 occurred as the State apparently alleges.

22 We talked about one piece of
23 incriminating evidence and how that looked
24 suspicious. Let's look at maybe the biggest,
25 most glaring suspicious piece of evidence in this

1 case. The magic key, Exhibit A, in this theory
2 that the police planted evidence in this case.

3 Because if you believe that those police
4 officers put that key in his room, that they are
5 capable of planting that kind of evidence to try
6 and link him, then why not plant -- why couldn't
7 they have also planted blood. If they go to that
8 extent that they -- that they plant Teresa
9 Halbach's key in his bedroom to try and convict
10 him, then that's it, it's over, case over,
11 because you can't rely on anything else they have
12 given you.

13 Now, let's look at this key. First of
14 all, why would he bring the key in his house and
15 put it in his own bedroom. Why would you do
16 that? If you still got the vehicle, and you
17 still wanted somehow to use the key, to drive it
18 some place -- by the way, why would you want to
19 disconnect the battery, if you're still going to
20 use the key? What good does the key do if the
21 battery is disconnected? So that's a disconnect,
22 no pun intended here.

23 But why wouldn't you just leave the key
24 in the car? Why wouldn't you hide the key under
25 the -- neath the car, or somewhere where you know

1 it is? Why would you bring an incriminating item
2 like that into your own bedroom, especially since
3 you know, as of November 3rd, when Sergeant
4 Colborn comes to visit him, and November 4th,
5 when Lieutenant Lenk and Detective Remiker come
6 to visit him and all the television cameras are
7 there, that you are a person of interest, right?
8 You are not going to put the key in your bedroom.
9 Doesn't make sense.

10 And, then, the key is not found until
11 the 7th search of that trailer. You already had
12 four grown men in that little trailer. I'm
13 sorry, in that little bedroom they had four men,
14 for three hours, on Saturday night, November 5th.
15 And they come in here and they try to tell you
16 that's not really a thorough search. Three hours
17 in a little bedroom with four men, is not enough
18 time to do a thorough search? Who are they
19 trying to kid here.

20 And, then, it's not until November 8th,
21 when they have been in the bedroom, again, with
22 three men: Lenk, and Colborn, and Kucharski,
23 it's another hour or more before they find it
24 then. There's a common theme, by the way, that
25 we've been hearing in this case, whenever

1 something is mysteriously found much, much later
2 when it should have been, but earlier searches
3 didn't count, those were just cursory searches,
4 three hours cursory searches.

5 This computer rendering of the bedroom
6 is helpful just to show you how small this
7 bedroom is. How long does it take four men to go
8 through a closet, a dresser that's over here, a
9 desk and a bookcase, or World War II record album
10 holder, whatever it is. Seven entries.

11 Now, I submit that the reason it wasn't
12 found in the first entry is because there was a
13 watchdog along, Sergeant Tyson. The one thing
14 that they did was, they say it's okay to use
15 these Manitowoc officers for searches because
16 we're going to have a Calumet person there with
17 them to make sure nothing goes wrong.

18 Sergeant Tyson admitted he had never
19 been in a situation before where he had been told
20 to keep an eye on those guys, your fellow cops,
21 keep an eye on them. What are you doing putting
22 those three men into the person of interest, he's
23 a suspect in their eyes, what are you doing
24 putting three cops who have that kind of
25 potential conflict in that person's bedroom, that

1 you need to have another officer from another
2 agency watching over them, babysitting them.
3 That is absurd.

4 Lenk and Colborn volunteered for that
5 duty and they volunteered for a reason. But in
6 the first search Sergeant Tyson did his job. I
7 believe it when he says that he watched them. He
8 looked like a watchdog. He was watching them
9 like a hawk and he wasn't searching. That's
10 important too. They were doing the searching and
11 he was just doing the collecting. So the
12 opportunity wasn't there for Lenk or Colborn to
13 plant the key.

14 And then they are in there again, very
15 briefly the next day, again, with Tyson. Note
16 that each entry they are -- they are -- each time
17 they go in there, they were with Tyson, except
18 for November 8th and they go in with Deputy
19 Kucharski, who tried to make light of it by
20 saying that, you know, the possibility of
21 planting is about as likely as aliens coming down
22 and planting it.

23 But he had to admit, he was not told to
24 watch those officers. He was there with Lenk and
25 Colborn. He's told to search and that's what

1 he's doing, he's doing his job. And he's sitting
2 on the bed, after one hour. In fact, I think he
3 said he was getting almost done and took off his
4 gloves. He's sitting here, going through this
5 drawer.

6 Lieutenant Lenk is right here with his
7 back to him, like this, crouched down on the
8 floor, so he's not going see what's going on.
9 Lenk gets up, walks out the door, comes back in a
10 minute later, oh, my gosh, look at that, there's
11 a key. Low and behold, it's in plain view.

12 And so they come up with this theory,
13 this absolutely preposterous theory on how this
14 magic key, that no one ever finds before,
15 suddenly appears in plain view, out of this
16 bookcase. They find it right there, where those
17 slippers are. Right like that.

18 And how does it happen, well, they
19 decide, maybe they help the back of this cabinet
20 a little bit, but they decide that somehow this
21 key must be secreted in this cabinet, by Mr.
22 Avery, in his own bedroom, with everybody looking
23 at him, and that it somehow magically fell out
24 this -- this gap, bounces off the wall. And by
25 the way, we're talking about key, fob, and

1 plastic clip. Somehow bounces off the wall,
2 turns around the corner and lands, what is it 90
3 degrees from where it should be, where it would
4 have fallen.

5 Now, here is something else. I want you
6 to contrast what the State -- what kind of
7 evidence the State has given you. In this case,
8 we have been presented with a wooden gun rack, as
9 an Exhibit No. 196. This has really been
10 important in this case, hasn't it, this wooden
11 gun rack. It's meaningless. They have got --
12 And we have a got a photograph of it too. We
13 have the real thing and the photograph. What do
14 you need this for? Why do need this for? Why is
15 this in evidence. This is totally irrelevant.
16 They have pictures to show the guns are on the
17 wall, okay.

18 We have got a photograph of an empty
19 box. And we have got the box right here. We
20 have got a photograph of another empty box, and
21 we have got the empty box here too. What did
22 they give you on this bookcase, that, a
23 photograph. Where is the bookcase? Where is the
24 bookcase? Don't you think that's a little more
25 important in this case than that wooden gun rack.

1 They don't want you experimenting with
2 that bookcase and this key, because they know you
3 will see that it is incredibly improbable that
4 this key is going to find it's way out, the key,
5 the ring, the cloth fob, the plastic clip, and
6 not get hung up on anything. It's going to
7 bounce around like they say it will. So you ask
8 yourself why you haven't seen that, right there
9 in the property room. Nice picture of it.

10 ATTORNEY KRATZ: Judge, I'm going to
11 interpose an objection. Counsel is suggesting that
12 only the State could have introduced that, instead
13 of the defense.

14 ATTORNEY BUTING: State's burden.

15 THE COURT: I'm over --

16 ATTORNEY KRATZ: He's suggesting only the
17 State.

18 THE COURT: This is closing argument, the
19 objection is overruled.

20 ATTORNEY BUTING: While we're at it, while
21 we're talking about candor with the jury, I don't
22 know if you recall, but I do, in the opening
23 statements, these nice PowerPoint presentations that
24 Mr. Kratz has prepared, one of them he puts up there
25 in his opening statement and he shows this tailgate.

1 Puts up a nice PowerPoint slide showing the rear of
2 the vehicle like this.

3 And he's going through where Mr. Avery's
4 blood, DNA, was found on Teresa Halbach's
5 vehicle. And he's got one of his nice slick
6 arrows pointing right here with a circle. I see
7 that and I think, my gosh, I have been working on
8 this case for months, did I miss that; how could
9 I miss that the client's blood is supposedly on
10 the back tailgate. Well, when I looked more
11 carefully, and as we heard from Sherry Culhane,
12 he was wrong. There was no blood of Mr. Avery
13 ever found on the rear of that vehicle on the
14 tailgate. Now, Mr. Kratz is human, we all make
15 mistakes; I have certainly made plenty here. But
16 that's a pretty big mistake.

17 The key, also, by the way, has no blood.
18 Remember, she swabbed it and the stains were
19 clean and it only has his DNA. And, frankly,
20 counsel misspoke when he said, it's always the
21 last person -- when you are talking about trace
22 DNA from the fingers, it's always the last person
23 that touches it that's going to be on there, not
24 what the testimony was as I recall it. Testimony
25 was, the last person may have more of it, but you

1 are going to find a multiple, most likely, at
2 least two people. Particularly when it's an item
3 like a key that someone handles every day and
4 deposits their own DNA on.

5 And, finally, before we take a break
6 here, the source of Mr. Avery's DNA in his house
7 is plentiful. Toothbrushes, razors, all kind of
8 personal items in ones home, if Mr. Lenk and
9 Mr. Colborn wanted to put Mr. Avery's DNA on that
10 key, that was easily available. It doesn't have
11 Mr. Avery's fingerprints on the key; doesn't have
12 any of Teresa Halbach's DNA on the key.

13 Keep in mind, also, when you think about
14 the evidence that's lacking and evidence that's
15 suspicious, you came into this case, and as I
16 recall seeing up there on the PowerPoint slides,
17 there were four charges, now there's three.
18 Think about that, while we take our break. Is
19 this okay, your Honor?

20 THE COURT: Yes. All right. Members of
21 the jury, we'll take a break at this time. Again,
22 do not begin your discussions of the case until all
23 the arguments have been completed and the Court
24 submits the case to you. You are excused.

25 (Jury not present.)

1 THE COURT: Counsel, can I see you briefly
2 in chambers at the start of the break.

3 ATTORNEY BUTING: Sure.

4 (Recess taken.)

5 (Jury present.)

6 THE COURT: Members of the jury, before we
7 resume, I can report to you that I met with counsel
8 during the break. I just wanted to give you some
9 idea about where we were going from here. But we
10 are probably going to go late today in order to
11 finish the closing arguments of the parties. There
12 isn't going to be any time to begin deliberations
13 today.

14 After the closings are finished, we will
15 take a brief break to identify the alternate
16 jurors who will not be deliberating and then we
17 will adjourn for the day and begin deliberations
18 tomorrow morning. We are going to take breaks,
19 probably at faster intervals than normal, to keep
20 you fresh enough to follow the closing arguments,
21 but closing arguments will be what we will
22 complete today. Mr. Buting, you may resume.

23 ATTORNEY BUTING: Thank you, Judge. Before
24 I leave the magic key for a minute, I just want to
25 make sure I was clear enough that, again, this is

1 her car key, that obviously she used every single
2 day. It was Teresa Halbach's key.

3 And I believe Ms Culhane said she
4 swabbed all the way around that whole plastic
5 holder, all the way around it. Not just along
6 one edge of it. And yet she found none of Teresa
7 Halbach's DNA, not a shred of it. And found only
8 Mr. Avery's DNA, as if somehow the key had been
9 wiped clean and his DNA was placed on it. He
10 certainly is not going to do that. He's not
11 going to wipe off her DNA and leave his behind.

12 And as to the bookcase, why it's not
13 here, think about, again, it's their theory, that
14 this key could have found it's way magically out
15 of that bookcase and into its position. Their
16 burden of proof in the entire case, and also
17 their theory to explain to you how this very
18 unusual key materializes out of nowhere and yet
19 it is not here.

20 All right. Now, let's look at another
21 piece of evidence that initially appears,
22 certainly incriminating, but as you look more
23 closely, looks more and more suspicious. And
24 that is, Mr. Avery's blood in the RAV4.

25 Keep in mind that we're talking about a

1 very little amount of blood here. Mr. Kratz
2 maybe confused you when he made it seem like
3 there was a lot. Yeah, there's not one
4 microliter, but we're talking very small amounts
5 of blood. As a matter of fact, the photographs
6 that were taken by Mr. Groffy, before any swabs
7 were taken, before any of the blood is wiped off.
8 This is the front seat, I can barely see
9 anything, unless that -- if that's the spot of
10 blood, right there, that's awfully small,
11 particularly when you are talking about fabric.

12 The CD case, can't even find any blood,
13 can't see any blood. I believe Mr. Stahlke must
14 have misspoke when he said it seemed like it was
15 covered, that there was lots of blood on it.

16 The FBI guy who looked at it, the swabs,
17 we'll talk about that, Mr. -- Dr. LeBeau, later.
18 But he showed you pictures of those swabs and
19 there was hardly any blood on it. In fact, they
20 looked gray, like fingerprint dust, or something.

21 So, really, we have this and this, which
22 Mr. Stahlke says is consistent with active
23 bleeding. It is also consistent with active
24 planting. So when I first saw this, I thought,
25 you know, what is the source of Mr. Avery's

1 blood.

2 Well, we have heard about how his -- he
3 had blood in the bathroom. And so I looked at
4 these pictures, these were pictures that I
5 believe either Detective Remiker or Sergeant
6 Colborn testified that they went around and took
7 on Saturday night, at the apartment, before there
8 was any kind of seizures of swabs.

9 The first thing you do when you go in is
10 you take pictures and then you start collecting
11 evidence. Well, you look at this particular
12 swab, we'll do a close up on it. It's an awful
13 odd looking blood drop, with a little whole in
14 the middle, as if somebody would dab a Q-tip in
15 it, that was my first thought.

16 And, then, the blood vial. And I offer
17 that -- and we have offered that as a possible
18 source of the blood that's found, Mr. Avery's
19 blood that's found in the RAV4. It was in a
20 public office, in an unsecured area; not in a
21 vault where they keep locked up exhibits only;
22 not down in the basement where they normally keep
23 old files; but in that battered old cardboard box
24 that we saw sitting in the Clerk's Office,
25 because it was -- there were so many requests to

1 see it, from the media and the public, that that
2 made it more convenient.

3 They kept no good log back then, of
4 people who were asking to see files, see any
5 file, that one not withstanding. The clerk, Ms
6 Zigmunt, later tightened that up in, I think it
7 was October of '06, this past year. Now
8 everybody has to sign in before they can look at
9 any file. But back then she admitted that the
10 deputy clerks would be more casual about it. And
11 who would you be more casual about making someone
12 sign in than a police officer, who you would
13 normally trust.

14 So there would certainly be no reason
15 for these clerks to take note or think that some
16 police officer, Lieutenant Colborn, or Sergeant
17 Colborn, I'm sorry, Lieutenant Lenk or Sergeant
18 Colborn, would have any nefarious intent by
19 looking at Mr. Avery's file. And that area of
20 the file where it's kept is sort of screened off
21 from the rest of the unit.

22 And probably more likely, though, is the
23 after hours access that the deputies have. The
24 Manitowoc Sheriff's Department is responsible for
25 security in the courthouse so, understandably,

1 they have master keys that fit all the doors.
2 And how difficult, really, would it be for
3 someone like Lieutenant Lenk or Sergeant Colborn,
4 veteran officers, to come in after hours, or on
5 Saturday morning, and get what they needed. I
6 submit it would be not difficult at all.

7 Now, Mr. Kratz, I can hear him now, he's
8 going to get up here and say, where is the
9 evidence. This is all speculation. Where is the
10 evidence. As if he would expect anybody who was
11 being framed to have a videotape of the officer
12 taking the vial of blood and planting it.

13 Or as if he expects one of these police
14 officers, in front of everybody, under oath, on
15 streaming video on the internet, to admit, oh,
16 yes, of course, I took the blood and planted it.
17 Yes, I would admit that if I did it. Sure, I
18 would go away to federal prison probably but,
19 yeah, rather than lie under oath, I would rather
20 go to prison than admit that.

21 Come on. This is real life. It's not
22 TV. You can't expect a *Perry Mason* moment where
23 you're going to get somebody to admit, to you
24 guys, and everyone else in the world, that they
25 did this.

1 So what do we have, though. We have
2 reasonable inferences that can be drawn and
3 circumstantial evidence, just like they do.

4 The box, you have seen the video, I'm
5 not going to go through all that again, but I
6 want to just remind you, show you the box.
7 Evidence tape is very clearly cut, opened, and
8 the box is resealed with nothing but a piece of
9 scotch tape.

10 This one may show up a little better.
11 Inside the box was the styrofoam container, and
12 it was opened by all of us together, which also
13 had -- which also had evidence tape sealing it,
14 right along here. And on the video, you could
15 see very clearly that that was slit, as if by a
16 razor or scissors, or something sharp. So that
17 one would easily open this sort of clam shell
18 styrofoam container, and there is the vial of
19 blood.

20 The vial of blood has a hole, what
21 appeared to be any way, a hole in the middle,
22 right there, which is where professionals would
23 gain access to the blood, if they need it. But
24 this vial has something more, as even Dr. LeBeau
25 admitted. This vial has blood in between the

1 rubber stopper and the glass, so that the experts
2 who use these things all time, could say, even
3 Dr. LeBeau, I believe is the one, who said this
4 vial, clearly the top had clearly been taken off.

5 So, there's evidence that the box was
6 unsecured and the top had been removed at some
7 point. And the blood is still liquid. Can't
8 really show you it in there, the way they have
9 got it encapsulated in yet another glass tube.
10 You can't really see it, but you did see, I
11 think, in the video, as it was rocked back and
12 forth, the blood was still liquid and, therefore,
13 easily available to plant. And we're only
14 talking about a few drops. That's all that's
15 necessary to leave the amount of blood that they
16 found in that RAV4, a few drops, that's all.

17 Now, Lieutenant Lenk, whose name keeps
18 coming up at every important part of this case,
19 had reason to know that that blood of Mr. Avery's
20 was sitting in the courthouse. Because he was
21 the evidence tech -- the whole head of the
22 evidence department for Manitowoc. And he signs,
23 in 2000 -- what's the date here -- 2002,
24 September, he signed Exhibit 214, as the
25 transmitting, or submitting officer to submit

1 these items to the Crime Lab.

2 Now, I'm not trying to mislead you here,
3 these items do not include the vial that we're
4 talking about. But they clearly show that these
5 came from exhibits held by the court since the
6 end of the trial. And yet Lieutenant Lenk would
7 have you believe, in his testimony, that he had
8 no idea that that 1985 court file had any kind of
9 exhibits like that in there.

10 The one thing they did look for
11 fingerprints on, they looked for Lenk and
12 Colborn's fingerprints on the blood vial. No
13 surprise there. Second nature with cops when
14 they handle anything like that, a biological
15 piece of evidence, they are going to put their
16 gloves on. So, okay, they look there, don't find
17 any. But, again, they're looking for something
18 that they know isn't going to be there in the
19 first place, and trying to present that as if it
20 means something.

21 So then there's the question of the
22 opportunity to plant blood. And that's why we
23 heard all this testimony about the scene and
24 whether it was secure or not secure. Well, keep
25 in mind that that sheriff's department, even

1 though their bosses said, within 45 minutes of
2 getting there, that we're turning over this
3 investigation to Calumet, the one item, the one
4 item on that 40 acre property that they knew was
5 important, the main piece of evidence, was that
6 RAV4.

7 And they kept their officers in control
8 of it for four hours. Talk about the fox
9 guarding the hen house here, ladies and
10 gentlemen. Come on. Is that just a coincidence,
11 or is that Lenk and Colborn having some influence
12 here?

13 How carefully was it being watched?
14 Mr. Kratz told you that it was being maintained
15 very securely and carefully. Well, we heard that
16 until Special Agent Fassbender arrived at 2:25,
17 there was no log at all of who was coming and
18 going, looking at this main piece of evidence
19 that they knew about.

20 They rely on two civilians, Nikole and
21 Pamela Sturm, to be their watch dogs, so they can
22 see from this crusher, distance 369 feet, I think
23 it was, Mr. Austin measured. And, you know, I
24 don't fault the Sturms. I mean, its revision is
25 history, for them to say that they were watching

1 that carefully the whole time they were there,
2 that far away, to make sure nobody, even a police
3 officer, approached.

4 Why would they care. Once they knew it
5 was Teresa's vehicle, you know, the sad news that
6 it was, that's where their attention would be
7 drawn. They weren't watching this to see who
8 approached the RAV4.

9 And there was a tarp over the RAV4, for,
10 now, we find out, for an hour apparently,
11 according to the digital signatures that we can
12 find on digital photographs. And a tarp that's
13 built up in such a way that it's practically a
14 tent. That's not the best picture, but from a
15 distance, this large tented over object, being
16 very careful not to have the tarp touch the
17 sides, with a nice little opening here.

18 Now, maybe that's not when it was
19 planted, but it's certainly an opportunity.
20 Probably more likely is that it's getting dark,
21 and while the officer -- I don't believe, by the
22 way, that there was any testimony that Mr. -- or
23 Sergeant Orth was seated where Mr. Kratz said he
24 was. But even not withstanding that, what we did
25 hear was that there's other means of ingress and

1 egress to that property.

2 Sergeant Orth testified that while the
3 officers were somewhere in this area, remember
4 this picture was taken after the vehicle had been
5 removed, but that there's -- there's ways in and
6 out from the west. I will show you in a moment,
7 if I can find the overhead.

8 A little farther up, one can see the --
9 how the roads down here, we have lots of ways to
10 get in and put that -- First of all, for someone
11 to plant the vehicle. And, secondly, for anyone
12 to approach it while it's there. And an even
13 more distant shot that shows all the ways in to
14 this plot of land.

15 So while maybe directly to the south of
16 that berm it is not immediately accessible,
17 there's all these other ways in from here, or
18 from here. When somebody who knows the area,
19 perhaps someone who's been a patrol sergeant for
20 many years, knows the county like the back of his
21 hand, is going to know how to get to that RAV4.

22 Then we have this whole question of
23 whether the vehicle is locked or not. Well, the
24 Sturms said they thought it was locked, but then
25 when they were questioned more carefully it turns

1 out that Nikole didn't check the rear tailgate.
2 She checked it with her sleeve, the other four
3 doors, but not the rear tailgate.

4 If it was locked, by the way, who do you
5 go to when you lock your keys out. Most of the
6 time you go to call the cops. Who better knows
7 how to open up a car, quickly, than police? So
8 the fact that it was or wasn't locked isn't
9 crucial in this case, in my estimation.

10 But on this evidence, it's not entirely
11 clear, when it gets to the Crime Lab, it really
12 is locked. You will have to rely on your memory
13 for that, but I think the record is unclear,
14 frankly.

15 There is also, I want to point out, all
16 you would have to open, by the way, are two
17 doors, to put the blood where it was found. The
18 driver's side, you can reach everything in that
19 front seat and that one rear passenger door. So
20 you wouldn't have to have them all open and
21 sitting in the car in order to do this.

22 And then we have the interesting
23 circumstance of Lieutenant Lenk and his behavior
24 on November 5th and since then, in which he
25 testified, in a prior hearing in this case.

1 Lieutenant Lenk is the only officer, the only
2 witness in this case who was -- who has lied
3 under oath. He gave sworn testimony one day that
4 he didn't get to this site until 6:30 or 7:00,
5 when it is getting dark, but came in front of you
6 today and says, again, under oath, that it was
7 2:00.

8 Well, what happened in the interim? He
9 forgot about the logs. And when you look at the
10 logs, he signs out, but he never signs in.
11 Fassbender had those logs starting at 2:25. So
12 lo and behold, Lenk now appears on the scene at
13 2:00, to explain why he never logged in. Because
14 otherwise the alternative is, he comes at 6:30 or
15 7:00 and evades the guard that's doing the log.
16 That doesn't look good either.

17 So ask yourself, what evidence there is,
18 what inferences you can draw from a witness who
19 gives two different versions, under oath, about a
20 critical point like this. His whereabouts, by
21 the way, that entire day, he never writes a
22 report.

23 So, I also expect, again, because they
24 get to go last, I'm having to anticipate, and you
25 may have to answer some other questions that they

1 raise. But I expect that they are going to say
2 this would have to be this complicated wide
3 ranging conspiracy in order to frame Mr. Avery.
4 Not true. Not true at all. This could be done
5 by two officers, really one officer, the one
6 officer who keeps coming up, Lieutenant Lenk,
7 whose name is on the evidence transmittal from
8 the 1985 case, just a couple years earlier.

9 Lieutenant Lenk, who shows up on
10 November 5th without logging in. Lieutenant
11 Lenk, who finds the magic key. Lieutenant Lenk,
12 who four months later, four months after
13 Manitowoc no longer is needed, with no legitimate
14 reason, is back at that scene on March 1st and
15 what's found the next day, the magic bullet,
16 which we'll talk about in a moment.

17 Actually, let's talk about it now.
18 Again, every time they try and -- Every time they
19 find something that they should have found
20 before, it was because, oh, that prior search was
21 just for a missing person. We signed a search
22 warrant affidavit in which we said we were
23 looking for evidence of a homicide. But, oh, we
24 were just looking for a missing person, we didn't
25 know what we were looking for.

1 They are in that garage on November 6th,
2 for an hour and 47 minutes, three officers. They
3 find 10 or 11 shell casings, but they found -- if
4 they saw a bullet, don't you think they would
5 pick up that bullet? Don't you think that might
6 be important?

7 Now, where was it found? Right smack
8 dab in the middle, one of them. This is the
9 March 1st photo, but No. 9, right as you walk in
10 the door, the main overhead door, it's sitting
11 right there in a crack. Now, to you and I, that
12 may not look like much, but to an officer who's
13 looking for -- if they found .22 shell
14 cartridges, is going to be looking for a bullet,
15 that's going to be pretty obvious. But it's not
16 found until March 1st. And then the other, most
17 important one, is found back here, up against the
18 wall.

19 Now, one or two things had to happen,
20 either they missed it, during the first search,
21 or the scene had been altered between the first
22 search and March 1st. And, in fact, we know
23 that's what happened. We had the officers
24 identify, look at this, there's a different car
25 in there, there's this big engine hoist.

1 Mr. Avery wasn't altering it, but other people in
2 his family obviously had access, someone's car
3 was parked in there. Things probably moved
4 around, who knows.

5 But then we have testimony from Rollie
6 Johnson, about his many gofer hunts. He says
7 that if you go out there now, when the snow
8 melts, you will find his .22 shells all over the
9 place, including right -- most likely in that
10 garage. His gun, his .22 and, yeah, those shell
11 casings were fired in that .22, from that .22,
12 you can tell that because of the way the pin
13 hits.

14 But, according to Mr. Johnson, his --
15 the remnants of his firings, even years from now,
16 are probably still there. Especially if you
17 think about that, the Item FL, No. 23 that's
18 under the air compressor. That probably hasn't
19 been moved in years. Who knows how long that
20 bullet had been there.

21 It didn't have Teresa Halbach's DNA on
22 it, which we will talk about it in a moment. And
23 that bullet is probably totally irrelevant to
24 this case. Just one of many residues left over
25 from Mr. Johnson's target practices and whatnot.

1 I'm not sure it was entirely clear, so I
2 just want to go over with you and make sure it's
3 clear. The shell casings, we have two bullets
4 and 11 shell casings. The shell casings,
5 Mr. Newhouse was able to identify, came from that
6 gun, but he can't say that the bullet, the
7 ultimate bullet, FL, came from any of those shell
8 casings. And he can't say that Mr. Avery, for
9 that matter, ever handled any of them because
10 nobody did any fingerprints of them.

11 And, then, the second bullet, the one
12 they showed you that's down in the crack, that
13 was designated as Item FK, Mr. Newhouse said he
14 could not match to the gun, the .22 caliber
15 Glenfield Marlin that was found in Mr. Avery's
16 bedroom. He said that all he could say was that
17 it would come from a class -- gun of a similar
18 class, which I think included even a pistol that
19 we talked about, with a different brand name.

20 But we know, that on that very property,
21 the Avery 40 acre salvage yard area, there were
22 other, at least one other, maybe two, .22
23 Glenfield Marlin rifles. In Bobby Dassey's
24 bedroom, is one of them, exactly the same model,
25 one of the most common models in the world.

1 So, even Mr. Newhouse couldn't say
2 whether that bullet had any connection at all to
3 this case, or to Teresa Halbach, or even to the
4 gun that was found in Mr. Avery's bedroom, Rollie
5 Johnson's gun. He did say, however, that that
6 one item, under the air compressor, came from
7 that gun and no other.

8 And when I questioned that, how reliable
9 is that degree of science anyway. We're talking
10 about these eyeball comparisons to these --
11 comparison microscopes. It sounds very much like
12 the hair comparison analysis that had been
13 discredited years ago. And I predict this
14 so-called science is the next to go.

15 But at any rate, he was very defensive
16 about his field, perhaps understandably, but when
17 he wouldn't even admit that DNA is more objective
18 than this comparison thing he does, you got to
19 wonder. And, you also got to wonder why he
20 didn't show you the photos of the comparison of
21 the bullets, side by side, and neither did the
22 State.

23 He didn't want you to see those
24 comparison's, Mr. Newhouse, because he was afraid
25 when you looked at them you would see what I saw,

1 which is there's a lot of differences between
2 those two fields of view. And that his opinion,
3 that it came -- that they are one in the same,
4 they came from the same rifle, is questionable.

5 But, putting all that aside for a
6 second, even if he is correct, that that Item FL
7 that was fired from the .22 rifle that was
8 found -- Rollie Johnson's rifle, found in
9 Mr. Avery's bedroom, that still doesn't mean it's
10 connected to this case with any relevance.

11 Look at first, Mr. Olson, who does the
12 lead analysis from the fragments of the cranium
13 bones that he found. He said it's 99 percent
14 lead. Well, Mr. Newhouse, in his notes, and I
15 talked to him about this as well, he made a point
16 that this -- Remember he talked about the two
17 kind of bullets, some which are lead and some
18 which were coated.

19 And this one, I believe he said, was
20 coated with copper coating. Both of these
21 bullets -- fragments that he found, were coated
22 with copper. Where's the copper? I asked
23 Newhouse, did you -- did you try and compare that
24 -- the lead, little pieces of lead that he saw in
25 those x-rays, with the type of lead that's in

1 Item FL. And he said, no, he wasn't asked to.

2 So without some kind of connection
3 between Teresa Halbach and that bullet, the
4 bullet has no relevance in this case. It's just
5 a random fragment, that's found in an old garage,
6 that means nothing.

7 And so we come to Sherry Culhane. Now,
8 you know, one of the odd things about trying a
9 case with this kind of publicity, where other
10 people can watch at home, or wherever, is that
11 you get some feedback about how you do. Some of
12 it not so good. And some people told me maybe I
13 was a little hard on Sherry Culhane.

14 And if you think that, you know, I
15 apologize if I offended anybody with my
16 cross-examination of her, but I ask you not to
17 hold it against Mr. Avery. Because I have a job
18 to do and as an advocate, I need to point out, if
19 someone goes over the line and goes too far, you
20 have to understand it.

21 Now, I don't have a problem with almost
22 everything that Sherry Culhane did in this case,
23 and I said so. I haven't been up here disputing
24 her statistical calculation. I haven't disputed
25 any of her -- the Power Points where she's lining

1 up the profile of one to the next.

2 And it's true that she did help
3 exonerate Mr. Avery in 2003, although she sat on
4 it for a year and he spent an extra year in
5 prison, she did exonerate him by finding an
6 exclusion and then a match to Mr. Gregory Allen.
7 And we appreciate that. And I didn't mean to not
8 appreciate that.

9 But I also pointed out, it's not like
10 she's a defense witness either. She helped
11 convict him in 1985, with this now discredited
12 science of hair comparison analysis, where she
13 rendered opinions to jurors just like yourself.
14 So most of what she did in this case was fine; in
15 fact, it was more than fine. Because it really
16 excluded Mr. Avery from -- either Teresa Halbach
17 from all these items, or Mr. Avery from the other
18 items. Really the other way around, she's
19 looking for Teresa Halbach's DNA in incriminating
20 places. And she doesn't find it.

21 So I can imagine how frustrating it
22 might be when you get a phone message that tells
23 you this, early on, try to put her in his house
24 or garage. Now, this is not blind testing, by
25 any means. These agents are telling Ms Culhane

1 what they want. And this is November 11th.

2 Well, here it is, she's working on this
3 bullet fragment now, in March. And she still has
4 not found one item that links Teresa Halbach to
5 Mr. Avery's house or garage. So she's got to
6 feel some pressure. This is the biggest case of
7 her career. The biggest case the Crime Lab has
8 ever had: 380 items, 180, I think, submitted just
9 to her unit.

10 It's almost five months late and nothing
11 has been found. So when she gets this last
12 bullet fragment, she recognizes, I think she
13 said, it's a probative piece of evidence. She
14 knew what it was. And when she gets this
15 contaminated test, the pressure is on for her to
16 go way out on a limb, farther than she's ever
17 gone in her life. Never before has she ever
18 asked to deviate from a protocol to make an
19 inclusion, until this case.

20 Now, she probably convinced herself that
21 it's okay because it's just in the control, who
22 cares. There's no evidence that the bullet is
23 contaminated, right? Well, we talked about that,
24 what controls are, and why they have them, and
25 how you can find contamination in controls very

1 easily, because if a control has anything but
2 zero DNA, it's been contaminated.

3 What you can't tell is when a piece of
4 evidence shows up with someone's DNA, you can't
5 tell whether it's there because it has been
6 contaminated or not. And so what you do is, you
7 run a control. And the protocol says, if that
8 control is contaminated, you toss it out, and
9 that's the end of it. Because they know, from
10 their own tests, that there's cross contamination
11 that can occur from one evidence item to the
12 next. And they can never rule it out if there's
13 a contaminated control.

14 So where is Teresa Halbach's DNA coming
15 from? Ms Culhane says, she's theorizing and she
16 thinks, well, maybe -- maybe I'm talking too much
17 or I'm too close to the bench and that that's how
18 her DNA got on there. But in truth, she doesn't
19 know how her DNA got on there.

20 And what we do know is, that Teresa
21 Halbach's DNA was right there at her bench, right
22 underneath the same bench that she's working on,
23 is her storage area. We talked about the central
24 storage area for evidence. She checked it out in
25 November. She never put it back until mid April,

1 I think it was.

2 And all that while, she's got Teresa
3 Halbach's DNA, from the RAV4, in the cargo area,
4 sitting right there on her bench. That's a bad
5 practice right there. But when you get a
6 contaminated control, you can't tell how and
7 whether Teresa Halbach's DNA ended up there in
8 the same extraction mechanism that she's doing or
9 not. You just can't tell.

10 And their own logs, their own
11 contamination logs that I introduced, talk about
12 how difficult it is. We went through it. I
13 won't go through it again with you. But there
14 are instances in here where it specifically says,
15 evidence from one case has been contaminated into
16 another.

17 And they look and they try and figure
18 out why, corrective measures. And they can't
19 figure it out. They can't figure it out. So how
20 are we supposed to figure it out? How are you
21 supposed to figure it out? You can't. And
22 that's why the protocol says, you toss it out and
23 you do it over.

24 Only she had a problem, because she had
25 used it all up. She took a chance, rather than

1 trying to swab it, to put it in this buffer and
2 dissolve it all. And she had a one shot, one
3 chance with this DNA test. And when it came back
4 contaminated, she was kind of stuck, you know,
5 this was probative.

6 And so she went out on that limb and
7 said, I'm asking for a deviation from the
8 protocol. We're going to call this Teresa
9 Halbach's DNA. And why is that so important?
10 Why -- Why do we know that it's unreliable? What
11 else is there to tell us, maybe, that it's an
12 unreliable conclusion? It's the only place. All
13 these other items, it's the only thing that's
14 ever come up with Teresa Halbach's DNA.

15 You people look a little bit tired,
16 anybody want to stretch for a moment? Would you
17 like to get up and stretch? Is that okay, Judge?

18 THE COURT: That's a good idea.

19 ATTORNEY BUTING: All right. Let me --
20 There's one other area, though, where -- that we
21 have to talk about, that Mr. Avery's DNA is found
22 on. And that's the hood latch. But that's the most
23 easy -- easiest to understand, really, because --
24 First of all, note that it's not found until month's
25 later, which means that it wasn't found in the first

1 sweep of the car that Sherry Culhane does.

2 And who followed Sherry Culhane into
3 that vehicle, who's the next person? The first
4 thing they do is DNA, so that no one is
5 contaminating anything. Next one to come in is
6 Mr. Stahlke, the blood spatter guy.

7 He admits he is leaning in, he's got his
8 hands in there. He's touching. And I think he's
9 even -- I don't remember if he admits actually
10 touching the blood itself, but he's certainly all
11 over the area where it was, with his gloves.

12 And then someone asked him to get the
13 odometer reading. So he turns the key and
14 there's nothing. So he realizes maybe the
15 battery is dead. He comes around to the hood,
16 and he said, he didn't change his gloves. And he
17 opens the hood and, then, of course, sees the
18 battery is disconnected. And they have to do
19 something else to get the odometer reading.

20 But that's -- that's the problem with
21 DNA, it's so easily translated -- or transferred
22 in the environment. That's why you are supposed
23 to peel off your gloves. And he didn't.

24 Let's move on to some of the other
25 aspects of this case that are really peculiar.

1 How about a complete lack of any motive for
2 Mr. Avery to kill Teresa Halbach. Why would he
3 kill Teresa Halbach? It's a man who's wrongly
4 incarcerated, spent years in prison. Gets out,
5 has a good lawsuit pending; he's going to get a
6 whole lot of money, in all likelihood. Why would
7 he kill somebody? That makes no sense.

8 First thing that leaps out at you when
9 you heard about this charge, maybe more peculiar,
10 is why Teresa Halbach? Why kill some woman that
11 just comes over and takes pictures of your car
12 four or five times? Why her?

13 And just quickly, this theory that
14 somehow he was luring her over by using the name
15 B. Janda, is completely bogus, because the very
16 same day, one of the other customers did the same
17 thing. You give the name of the owner. Mr. -- I
18 may have it backyards, Mr. Schmitz, I believe,
19 called for -- Mr. Sippel called and left
20 Mr. Schmitz's name because he's the owner and he
21 was the one who was going to be there when the
22 car was looked at.

23 If he is really going to plan to kill
24 Teresa Halbach, specifically, why not just call
25 her on the cell phone? Why leave a paper trail?

1 Why call the office, you know, leave your
2 address, Avery Road? I mean, hello, Avery Road,
3 doesn't take a rocket scientist to trace it back
4 to him.

5 And where was she killed? In the
6 garage? We still don't know, from the State's
7 theory. But think about this, maybe he's got
8 some explanation he's going to come up with here,
9 but if she's killed in the garage and she's
10 burned in the burn pit, what's she doing in the
11 back of the RAV4?

12 He put's her into the cargo area of the
13 RAV4 so he can drive 20 feet around the other
14 side of the building to take her out and put her
15 into the burn pit? Makes no sense at all. It's
16 another reason to suspect that that burn pit is
17 not the original site of burning, because her
18 body was very clearly inside that rear of that
19 RAV4.

20 Why burn the phone, and the camcorder,
21 and the -- or I'm sorry, the camera, and the palm
22 pilot? Why burn those items in your own burn
23 barrel? You are surrounded by quarries. You are
24 out in a rural area. You have got 4,000 junk
25 cars. You have crushed cars you can put it in.

1 Why do you burn it? What's the point?
2 Get rid of it. It's easy to get rid of. Toss it
3 in one of the ponds. Bury it. No one is going
4 to find pieces of metal. Especially, again, if
5 after November 3rd and 4th, it's obvious, the
6 police are looking at you.

7 Mr. Kratz says, the location of that car
8 tells us it was going to be crushed. And think
9 what would have happened if that car -- if
10 Patricia Sturm had not found that car on Saturday
11 afternoon, that car would have been crushed and
12 we would have lost that evidence forever.

13 Well, ask yourself, why wasn't it
14 crushed, already? You got a crusher, I mean, you
15 got a crusher on your property. You got -- 54
16 cars are crushed there. It's obviously used all
17 the time. Why isn't it already crushed on
18 November 5th, especially if you know the cops are
19 looking at you? Common sense.

20 And why try and build this complicated
21 outdoor fire to get rid of a body, when you have
22 got something like this on your property, that
23 can melt aluminum to liquid. Big enough, easily,
24 to do the job you need, if that's what you are
25 going to do. You would use that. But, of

1 course, that doesn't fit with the State's theory,
2 because if you did use the smelter, you wouldn't
3 move the bones back on your property.

4 All right. Let me talk about the FBI,
5 Dr. LeBeau. I suggest he is not a credible
6 witness. And more importantly, the test, for
7 what it was used, for the opinions that were
8 given, is not credible for that.

9 He gets the award for the most absurd
10 expert opinion of anybody that's come into this
11 courtroom and this trial. When he says, I can
12 conclude to a reasonable degree of scientific
13 evidence, that when I test those three items, and
14 don't find EDTA, these other three items that I
15 never bothered to test, they don't have EDTA
16 either.

17 How can you ever make that kind of
18 conclusion? That tells you how sloppy he is with
19 his opinions, how willing he is to give them what
20 they want.

21 Compare his testimony to Dr. Janine
22 Arvizu, who was forthright, not dogmatic. She
23 gave Mr. -- Dr. LeBeau his due. She agreed with
24 him when he was right and pointed out where he
25 was wrong.

1 She said that this protocol is fine,
2 perhaps, the test, if EDTA is, in fact, present.
3 But to then use it beyond that and say that the
4 absence of it, the absence of EDTA by doing this
5 test proves it's not there, goes too far. It
6 even goes beyond the scope of the protocol
7 itself.

8 Because the protocol says that this
9 procedure allows for the screening and
10 confirmation of EDTA in the suspected bloodstain.
11 Doesn't say that you can then conclude, if you
12 don't get it, that's it's not there. And the
13 reason why is -- it took Dr. Arvizu to figure
14 out, I certainly couldn't -- it's this whole idea
15 of limit of detection.

16 The test that he did, injecting
17 something right into the -- into this instrument,
18 this whatever it was, MS/MS thing, that's easy.
19 I mean, yeah, you are going to get a low -- you
20 know, you are going to be able to get a low limit
21 of detection because it's pure, put right into
22 there.

23 It's the extraction process, where you
24 are taking something out of the fabric or a swab,
25 diluting it, extracting it and going through that

1 whole process of filtering, that it becomes more
2 difficult. Your level of detection is now much
3 higher.

4 In addition, the protocol was rushed.
5 Think about that. Think about how this whole
6 thing came about. The FBI has not tested for
7 EDTA in 10 years, since the O.J. Simpson case.
8 His explanation is, because no one asked. Think
9 about that. Why do you think no one asked?

10 First of all, we can't ask for it, as
11 the defense, the defense bar. Only the
12 prosecution can ask for it. What did they do in
13 that case? They screwed it up. They found EDTA
14 and later argued, whether they were right or
15 wrong, we will never know, later claimed, oh,
16 that was just a carryover from a different
17 sample. Well, the jury was told that there was
18 EDTA in that case, look what happened.

19 What prosecutor is going to trust them
20 to do this same kind of test and not screw up
21 their case? This prosecution team. Because they
22 were desperate to try and do something to
23 discredit the defense of planting, whatever it
24 took.

25 And, so, when it normally takes three to

1 four months to develop one of these protocols,
2 they suddenly come up with one in two weeks. And
3 they are testing it and validating it and
4 actually doing the test samples before, as
5 Dr. Arvizu said, before they even got their
6 results of their own competency tests from this
7 procedure.

8 So why is the FBI involved in this case
9 at all? Again, this shows credibility, a lack of
10 it. They try to say, oh, we're concerned about
11 police misconduct. We want our public officials
12 to be truthful. And if there's some officer who
13 is planting, we want to know about it.

14 Well, I asked them, what investigation
15 did you start? Where is the grand jury? What's
16 the U.S. attorney doing? Is there even any
17 investigator on the case from the whole FBI,
18 that's talked to any witness? No.

19 All they have got is this lab that's
20 asked to do this new protocol and here's what
21 they are told. Purpose of this request is to
22 establish the presence of EDTA in the vial of
23 blood, thereby eliminating the allegation that
24 this vial was used to plant evidence. That's it.
25 It's not to find out whether these cops are

1 corrupt. It's to eliminate the defense. So are
2 we surprised at the results? I'm certainly not.

3 The real reason the FBI got involved in
4 this case is because Mr. Avery had the audacity,
5 and, you know, this is what I'm going to hear,
6 probably, how dare he accuse these fine officers
7 and besmirch their reputations.

8 And when that happens, they circle the
9 wagons. Cops, when they get accused of
10 misconduct, they circle the wagons. That's the
11 code of silence, or that's the bond they have.
12 And that's why Calumet and DCI were so quick to
13 jump on the bandwagon, when Lenk and Colborn were
14 professing they did nothing wrong. They had
15 nothing to do with this. And Lenk and Colborn
16 probably counted on that.

17 Quickly, a couple of other peculiar
18 things about the timeline. The -- Bobby Dassey
19 says that he sees Teresa Halbach at 2:45, he
20 leaves at three, and the vehicle is still there,
21 something like that. He has no good way of
22 verifying the time, but he tells the officer,
23 talk to Scott Tadych -- Tadych, he can tell you
24 precisely, is the word he used, precisely what
25 time it was.

1 Well, how does he know that Tadych can
2 tell precisely what time it was that he
3 supposedly is being seen, unless the two of them
4 maybe got together, talked about a story they had
5 come up with.

6 Remember, those two people, unlike
7 anybody else that was asked about an alibi and
8 maybe weren't, but those two people alibied
9 themselves. Without each other, there is no
10 alibi for either one of them. Nobody sees Dassey
11 go hunting in the woods. Taking a shower, by the
12 way, before he goes off hunting, like his Irish
13 Spring soap is going to help attract deer. Come
14 on.

15 And he goes there so that -- he wants to
16 get there before dusk, because that's when the
17 deer feed. I'm not a hunter, but we know what
18 time he left and came home. It was well before
19 dusk, he is home at 5. That doesn't make sense.

20 More importantly, Lisa Buchner, the
21 school bus driver, is a completely disinterested
22 party and she does have a reason to know the
23 time, precisely, because she has got a regular
24 route that she drives, 3:30 to 3:40 every day.
25 School lets out 3:05. She's drives, drops the

1 people off. She's dropping those Dassey boys off
2 at that time.

3 What does she say? She says she saw a
4 woman taking pictures of a van. Now, how many
5 women are out there taking pictures of a van at
6 that same time period. She's honest and says I
7 don't remember if it was Monday, the 31st,
8 Tuesday, the 1st, or Wednesday, November 2nd.
9 That's what she tells Investigator Wiegert on
10 November 7th, just one week afterwards now, when
11 it's fresh in mind.

12 And she's so concerned about it, she
13 went to the barricades on November 5th and said,
14 hey, I think I saw her. I think I saw her. I
15 don't remember what day but, you know. That's
16 what she describes, this woman taking pictures.
17 The State, 16, 17 months later, is able to
18 confuse her, and say, well, yeah, maybe it was a
19 week earlier, maybe it was a couple weeks
20 earlier, but that's not what she said when it was
21 fresh in her mind.

22 The State will argue that the location
23 wasn't right. She said she saw someone taking --
24 she saw her taking the pictures of something down
25 around the turn around circle. And it's true,

1 that's not where Barb Janda's car was, or this
2 van was. It was up the road a ways. Well,
3 either she's mistaken about that or -- and I
4 submit this is a very real possibility -- she is
5 doing a hustle shot, because she's been flagged
6 down on her way out and asked to take another
7 picture. By who?

8 We know it's happened before. We have
9 evidence. Angela Schuster said, just a few weeks
10 earlier, Tom Janda had flagged her down and taken
11 a hustle shot, on the way out.

12 And John Leurquin, the propane driver,
13 yeah, he's not as certain, but he does
14 corroborate Lisa Buchner in that he sees this
15 green SUV around the same time. He doesn't know
16 who's driving, and maybe it wasn't Teresa Halbach
17 at that point. This person who was hustling a
18 shot perhaps, was driving away with. But he
19 recalled it because it was different, wasn't the
20 usual regular vehicles that he always sees.

21 So when the State tells you that Bobby
22 Dassey is this credible witness, who's the last
23 person to see Teresa Halbach alive, maybe he's
24 right, if he's the killer. Or Scott Tadych, his
25 only alibi. He tells him --

1 ATTORNEY KRATZ: Judge, I'm sorry, I'm
2 going to interpose an objection on third party
3 liability. I would like to be heard.

4 ATTORNEY BUTING: I will rephrase that. I
5 will withdraw that.

6 ATTORNEY KRATZ: I don't want it rephrased,
7 I want to be heard.

8 THE COURT: I'm going to let Mr. Buting
9 finish up, then I will hear your objection.

10 ATTORNEY KRATZ: Thank you, Judge.

11 ATTORNEY BUTING: Police, when they
12 interview Mr. Dassey, just accept his story,
13 unquestioning -- unquestioningly. And they accept
14 Mr. Tadych's story. They don't go check out his
15 alibi for later, where he says he is visiting his
16 mother at the hospital. Well, where is the proof of
17 that?

18 Why do you believe him, especially when
19 he tells you that, when he comes back, he sees
20 this fire, and then he knows what time it is
21 because he leaves around 7:45, he wants to get
22 home so he can watch *Prison Break*. *Prison Break*,
23 at 8:00, in Wisconsin. Did they check that out
24 to see what time it comes on?

25 Do you still want to be heard or?

1 THE COURT: You can continue.

2 ATTORNEY BUTING: All right. I will talk
3 briefly about the other, since Mr. Kratz said that
4 these -- Mr. Fassbender and Wiegert were
5 investigating, parallel, these other suspects,
6 including the boyfriends, ex-boyfriends, whatever,
7 but look at what they did. They admit that, yeah,
8 sure, Mr. Avery may be a suspect or a person of
9 interest because we know he was one of the people
10 who saw her on the last day.

11 But who else saw her on the last day,
12 George Zipperer, and look how he behaved. Mr.
13 Avery says, come on in, very cooperative.
14 Zipperer is belligerent. But we didn't know
15 that.

16 Hillegas, former boyfriend, no alibi,
17 didn't even ask him.

18 Male roommate, Mr. Bloedorn, who doesn't
19 report her missing for four days. What's up with
20 that? Don't ask him for an alibi. Where was he?

21 Bradley Czech, male friend with a little
22 bit more personal relationship with her, perhaps.
23 Again, no alibis checked.

24 Mr. Pearce, an employer who never
25 bothers to report her missing, for four days.

1 All of these roles that these people
2 play, the officers admitted would normally, in a
3 normal missing person or homicide investigation,
4 be considered possible suspects that you would at
5 least look at and check out, but not here.

6 And what about all the other people on
7 the Avery property on October 31st? What's up
8 with that? Where are their alibis? Customers
9 and other people who work and live there.

10 And, interestingly, going quickly back
11 to this hustle shot for a minute, I asked, you
12 know, you think maybe -- well, of course, if she
13 was flagged down, there wouldn't be any record in
14 her palm pilot.

15 But if it was a different kind of hustle
16 shot that she was on her way to go do, the FBI
17 technician, or whatever, that came here and
18 talked about the electronics, said that he might
19 have been able to recover that kind of data from
20 the palm pilot, but wasn't asked to. They were
21 concerned about him trying to prove that it was
22 Teresa Halbach's palm pilot, not what was on it.

23 And, then, there's what I consider the
24 mysterious part of Teresa Halbach's life. And I
25 mean no disrespect to the Halbach's family,

1 whatsoever, when I say this. But Teresa had her
2 own private life. We know that. She had at
3 least three circles of friends, I think it was
4 described: Her family, people that she worked
5 with in the community, marketing and whatnot, and
6 the Green Bay friends.

7 And apparently they didn't intersect
8 very much. Because she's missing for four days
9 before anyone reports it. And maybe most
10 interestingly is, we know that on Saturday night
11 she was out, with somebody, or she was -- I can't
12 say she was out with somebody, but we know that
13 she went out, some Halloween party somewhere,
14 bar, wherever, in Green Bay area is what
15 Mr. Hillegas, I think, said he thought, or maybe
16 Mike Halbach.

17 And yet, despite all those fliers that
18 were sent around, all over the state, thousands
19 of them, not one person has come forward to say I
20 was with her Saturday night. Something is weird
21 about that. Especially when you combine it -- I
22 believe Mr. Pearce, I may be misquoting him, but
23 I believe he, at one point, had some thought that
24 maybe she had met somebody on the weekend and
25 that's where she was and why she wasn't showing

1 up.

2 But then we have the weird thing about
3 the voice mail. Why did the police not follow up
4 on this. We were not confused about these
5 records, but I'm glad that Mr. Zimmerman was able
6 to enlighten us, that the messages that are on
7 this exhibit, 372, 18 of them, would not
8 constitute a full mailbox. He said that very
9 clearly.

10 And what he said was, when I asked him
11 if this -- if this persons account was sending
12 out a message when you called, that said mailbox
13 is full, would something more have to be on it
14 than what's on these records. And he said, yes.
15 And he said that, yes, that meant something had
16 to have been erased. Something on her voice mail
17 was erased by somebody.

18 And to do that, you would have to have
19 her password. And I'm not at all accusing the
20 Halbachs of that. But somebody else close, that
21 had her password, and for some reason thought it
22 necessary to erase a message. What was so
23 important on her voice mail, or perhaps so
24 incriminating on her voice mail, that would
25 necessitate somebody, close enough to her that

1 has her password, erasing one or more messages.

2 These are all reasonable doubts, ladies
3 and gentlemen. These are all questions that
4 police and law enforcement ignored, because it
5 points away from Steven Avery, who wouldn't have
6 had her password and points to someone else.

7 Mr. Strang will finish up and give you a
8 little bigger picture in a moment, but I'm
9 confident that you are going to find more than
10 reasonable doubt and find Mr. Avery not guilty.
11 Thank you.

12 THE COURT: All right. Members of the
13 jury, we're going to take a break at this time. I'm
14 going to talk to the attorneys about scheduling.
15 Again, do not discuss this matter during the break.
16 We'll call you back shortly.

17 (Jury not present.)

18 THE COURT: You may be seated. First of
19 all, Mr. Kratz, I will hear your objection at this
20 time.

21 ATTORNEY KRATZ: Thank you, Judge. This
22 Court has entered numerous pre-trial rulings for
23 which Mr. Buting was a party. One of those
24 pre-trial rulings prohibited any reference to a
25 possible third party, that is, a killer, other than

1 Brendan Dassey, without advance ruling of the Court.
2 This Court entered a written order, as I recall, as
3 to that matter.

4 Mr. Buting, in front of this jury,
5 indicated that maybe Bobby Dassey is the killer.
6 There's two things that I ask the Court to
7 entertain: First of all, inquire of Mr. Buting
8 whether that was an intentional violation of the
9 Court's previous ruling; that is, whether he
10 recalled the Court's previous ruling as to third
11 party liability and whether or not Mr. Buting was
12 fishing for a mistrial.

13 And if not, that is, if the Court is
14 unwilling or otherwise able to make its own
15 ruling as to intentional versus negligent
16 reference to Bobby Dassey, we are asking for an
17 admonishment in front of the jury as to the
18 nature; that is, that it intentionally or
19 purposely violated a pre-trial ruling of this
20 Court.

21 Certainly earlier, in Mr. Buting's
22 testimony, when referring to the burn barrels
23 with Bobby Dassey, he had referred to Bobby
24 Dassey as a possible other suspect. However, it
25 wasn't as blatant in calling Bobby Dassey the

1 killer.

2 And I don't know whether Mr. Buting
3 thinks that he's entitled, because he's
4 representing Mr. Avery, to play by a separate set
5 of rules, or to ignore pre-trial rulings of the
6 Court, and it certainly does call for an
7 admonishment and I would suggest it calls for a
8 colloquy, with the Court, as to whether this was
9 an intentional violation of a previous Court
10 order.

11 I would note that, Judge, both Dassey
12 and Tadych were specifically ruled out in the
13 pre-trial rule or the pre-trial order.

14 THE COURT: Mr. Buting.

15 ATTORNEY BUTING: Judge, I'm aware of the
16 pre-trial ruling. I don't believe I exceeded the
17 Court's ruling. When you are doing closing
18 arguments, of course, sometimes you say things
19 differently than you intend. If I did, I certainly,
20 I think, brought it back within the realm of
21 investigative bias, which was the primary point that
22 we're trying to make and throughout this case.

23 But maybe more importantly, the Court's
24 ruling was that we were not allowed to present
25 any evidence, extrinsic evidence, of a third

1 party. But I don't know that that included that
2 we couldn't argue reasonable inferences from what
3 the evidence presented.

4 I don't think I was -- I wasn't even
5 intending to go that far, quite frankly. I was
6 trying to keep a little farther back from that.
7 But I don't think that under *Denny* there's --
8 what they're talking about is presenting evidence
9 trying to point the finger at somebody else.
10 Reasonable inferences, I think, is another matter
11 and I think it's reasonable inference from the
12 evidence.

13 THE COURT: Mr. Kratz.

14 ATTORNEY KRATZ: No further argument,
15 Judge.

16 THE COURT: All right. I'm taking a look
17 at my order, after a 14 page decision, the order is
18 that the defense is precluded from offering any
19 direct evidence to a third party, other than Brendan
20 Dassey participated in the commission of the crimes
21 as charged in the Amended Information. I don't
22 recall that I was asked to place a limit on closing
23 argument. I think there is a differentiation
24 between the two.

25 I don't know how I would have ruled on

1 it, frankly, had I had one, because I don't know
2 that the *Denny* case specifically addresses the
3 issue. I don't know that another case
4 specifically addresses the issue.

5 But my recollection is, and the wording
6 of my order is, that it was directed to the
7 introduction of evidence. I'm not sure that the
8 Court can prevent the defense from arguing
9 inferences on the evidence as it was presented.
10 The State gets a chance to respond in rebuttal.

11 I don't know. I will hear further from
12 the State if you wish, Mr. Kratz, but I'm looking
13 at my order and it only relates to direct
14 evidence. I don't know that I can rely on that
15 order to address your concerns.

16 ATTORNEY KRATZ: If the Court excludes
17 evidence of third party liability, and there's no
18 evidence in the record, how does Mr. Buting think
19 that he can comment on that evidence, or lack of
20 evidence. He can't. I mean, it absolutely flies in
21 the face of the third party liability court order.

22 In other words, Judge, to be precluded
23 from presenting any evidence, but then to be
24 allowed to stand up in front of this jury and say
25 maybe Bobby Dassey is the killer, how could we

1 possibly have notice to either predict that, or
2 to present evidence that -- that might suggest
3 differently. That absolutely flies in the face
4 of the -- if not the words of the order,
5 certainly the intent of that order.

6 THE COURT: Mr. Buting.

7 ATTORNEY BUTING: Well, Judge, as the Court
8 I think has made clear, Mr. Avery, by his not guilty
9 plea, means he isn't the killer, so somebody else
10 has to be. What I was trying to do was simply point
11 out all of the other avenues that the police could
12 have examined and didn't.

13 And I think in the context, overall, of
14 every -- everything else that I have argued in
15 the argument, I think I'm within that. And I
16 don't think there is anything close to a
17 violation of the Court's order barring any kind
18 of direct evidence.

19 Again, it wasn't even my intent to go
20 outside the realm of investigative bias, failure
21 to look at suspects. But if I did, I think in
22 the overall context of the whole argument we have
23 been making throughout this case, I think the
24 jury is not going to be confused and it's going
25 to be clear that that's the purpose for which

1 it's being offered.

2 THE COURT: I -- I don't know, without
3 doing some research, the answer to the question the
4 State is raising here; that is, whether the logical
5 inference from a **Denny** decision that denies the
6 right to introduce evidence provide -- or prevents
7 the defense from arguing on the basis of evidence
8 that was presented, that there's third party
9 liability.

10 Let me suggest this, as I understand
11 what Mr. Buting is saying, he is saying, I may
12 have gotten carried away in the way I worded it.
13 My purpose in making the references was not to
14 suggest that there was evidence in the record
15 that any of these parties committed the crime,
16 but rather that the State did not sufficiently
17 investigate other parties.

18 We're still going to be hearing from
19 Mr. Strang. If Mr. Strang, at the beginning of
20 his argument, clarifies that point for the jury,
21 is that sufficient to address the State's
22 concerns?

23 ATTORNEY KRATZ: We would ask for an
24 admonishment. If that's the Court's ruling,
25 however, that the Court believes that that is a more

1 appropriate resolution of the case, I understand
2 that that's the Court's order.

3 THE COURT: Here's what I am going to do.
4 I'm going to give Mr. Strang a chance to do that
5 when he makes his argument, to clarify it, assuming,
6 Mr. Strang, that you feel the way your co-counsel
7 does about what the intention was.

8 ATTORNEY STRANG: Yeah, I -- More to the
9 point, I have to apologize, I was shortening my
10 closing argument --

11 THE COURT: Don't worry about it, because
12 that's something I'm going to discuss with the
13 parties in chambers. The juror's eyes are starting
14 to glass over. We're looking at your closing, plus
15 rebuttal from the State, I don't think it's fair to
16 the jurors to keep them here as long as that may
17 take.

18 I think both parties will be better
19 served if we come back tomorrow, when the jurors
20 are fresh. I do think, however, it's necessary
21 to address the alternate juror issue, and I'm
22 going to talk with the parties about that, in
23 chambers, before we come back.

24 ATTORNEY STRANG: Do we want to just
25 address, in chambers, what it is I should say, or

1 consider saying? I'm sorry, I just missed that.

2 THE COURT: You will have the evening to
3 think about that.

4 ATTORNEY STRANG: Okay.

5 THE COURT: I'm going to go off the record
6 right now. I will see counsel in chambers for a
7 short conference.

8 (Recess taken.)

9 THE COURT: I will indicate for the record,
10 I met with counsel in chambers and I indicated that,
11 based on the time of day and the fact we have got
12 part of defense argument, plus State rebuttal left,
13 I was concerned that the jurors, certainly by the
14 time we got to the State's rebuttal, would be too
15 tired to appreciate what was being said.

16 The Court has an interest in making sure
17 that the jurors have an opportunity to digest,
18 understand and comprehend the arguments that are
19 given. And while at the start of today, it would
20 have been my preference to complete closing
21 arguments today, sometimes justice takes more
22 time than we plan on in the morning.

23 So what I'm going to do, when the jurors
24 come back, is adjourn for the day. The Court is
25 going to begin the -- because we're as far into

1 closing arguments as we are, I'm going to begin
2 the sequestration process and the jurors will be
3 staying in a hotel tonight. It's my
4 understanding that the parties have a stipulation
5 to propose to the Court concerning the -- at
6 least two of the three alternate jurors.
7 Mr. Strang.

8 ATTORNEY STRANG: We do, your Honor. And I
9 would be happy to take a first stab at the
10 agreement, as I understand it, between the parties.
11 I will preface that by saying that I have explained
12 this agreement to Mr. Avery and I think it's
13 entirely acceptable to him. It's not complicated.
14 We had enough time to talk about it. And I'm
15 satisfied that he both understands and approves the
16 agreement that I will try to articulate now, late in
17 the day.

18 In short, the parties have agreed that
19 each will have an extra peremptory strike, in
20 effect, to be exercised here in the ordinary
21 manner of exercising peremptory strikes. That
22 will remove 2 of the 15 jurors that we presently
23 have, leaving 13, which would be 12 and 1
24 alternate.

25 And, of course, whether the Court keeps

1 an alternate, or how to handle the designation of
2 an alternate, and then what to do with an
3 alternate, is the Court's prerogative and not the
4 parties. But as I understand the agreement here,
5 for purposes of the record, it does encompass one
6 extra peremptory strike for each party, to be
7 exercised now.

8 THE COURT: Mr. Kratz.

9 ATTORNEY KRATZ: For today's purposes,
10 Judge, that is the scope of our agreement, that each
11 party intends to exercise an additional peremptory
12 strike this afternoon.

13 THE COURT: Okay. And this is in lieu of
14 drawing the names of the jurors out by lot, which
15 would be the process contemplated by the statute, in
16 the absence of agreement by the parties.

17 ATTORNEY STRANG: It is, your Honor, from
18 the defense advantage point.

19 THE COURT: Mr. Kratz.

20 ATTORNEY KRATZ: That's my understanding,
21 Judge.

22 THE COURT: And, Mr. Avery, it's correct
23 that you have discussed this with your counsel and
24 you are in agreement with this procedure.

25 THE DEFENDANT: Yes, I am.

1 THE COURT: Thank you. Anything else
2 before we bring the jurors back in?

3 ATTORNEY KRATZ: If I could have just a
4 moment with counsel, your Honor.

5 THE COURT: Go ahead.

6 ATTORNEY KRATZ: We're all set, Judge.

7 THE COURT: All right. You can bring the
8 jury in.

9 (Jury present.)

10 THE COURT: You may be seated. Members of
11 the jury, I understand I told you an hour and a half
12 or two hours ago or so, I don't remember when, that
13 we were going to attempt to complete closing
14 arguments this evening. In light of the point that
15 we're at in the proceedings now, I am concerned that
16 fatigue might be a factor that prevents you, as
17 jurors, from giving the attention that is deserved
18 for the closing arguments.

19 So what we're going to do is adjourn for
20 today and resume the completion of closing
21 arguments tomorrow morning. As I told you at the
22 beginning of the trial, we started out, initially
23 we had four extra jurors, we are now down to
24 three. Because of the fact we're this close to
25 the end of the trial, and I don't want to require

1 the extra jurors to participate longer than is
2 necessary, we have decided that we're going to
3 excuse two of the three extra jurors today.

4 The parties have agreed to a procedure
5 whereby each of the parties will exercise one --
6 will exercise a peremptory strike. If you recall
7 back at the time of initial jury selection,
8 that's how we got from 30 down to 16. So they
9 are going to do that today.

10 When they are done, the strikes will be
11 shown to me. I will identify the two jurors that
12 the parties have selected. I will meet with
13 those two jurors before excusing you today, as is
14 my practice any time alternate jurors are
15 excused.

16 For the 13 of you who are remaining,
17 because of the fact we are well into closing
18 arguments, we are going to begin sequestration
19 this evening. We have hotel accommodations for
20 you. We have dinner arranged for you. And you
21 can decide, when you get on the bus, I guess,
22 whether you want to check in at the hotel first
23 or go to dinner first. But because of the fact
24 we're at this late stage of the proceedings,
25 that's how we're going to handle things.

1 At this time I think the Clerk has a
2 sheet and we will allow the parties to make their
3 stipulated peremptory strike.

4 ATTORNEY KRATZ: Judge, could Mr. Strang
5 and I approach, just very briefly.

6 THE COURT: Yes.

7 (Side bar taken.)

8 THE COURT: Counsel, raised an issue for me
9 that I believe has been dealt with through the media
10 coordinator, but I will address it on the record,
11 since it was raised. And that is, there was some
12 conversation about whether the excused jurors would
13 be available to the media.

14 I'm not going to allow that at this time
15 until a verdict is reached at this case. It is
16 unlikely, but not impossible, that the jurors
17 could be called back. And for that reason I'm
18 not going to have the excused jurors available to
19 the media until a verdict is reached in this
20 case.

21 All right. Based on the information on
22 the sheet, the excused jurors are Terri Temme and
23 Laura Barber. I will meet with Ms Barber and Ms
24 Temme before we leave today. And I am going to
25 excuse the remainder of the jury at this time.

1 I will remind the rest of you, again,
2 that as usual, you are not to discuss the case.
3 It's especially important, even though you have
4 heard some of the closing arguments, you cannot
5 begin your deliberations until all the closing
6 arguments have been made. So make sure you do
7 not discuss the case.

8 The televisions and radios have already
9 been disconnected in your hotel room, so
10 hopefully between the lack of available media and
11 supervision by the sheriff's deputies, that won't
12 be a problem. But, again, do not discuss the
13 case, in any fashion, until the Court excuses you
14 to begin deliberations tomorrow. The 13 people
15 who are still on the jury are excused at this
16 time.

17 (Jury not present.)

18 ATTORNEY STRANG: Your Honor, maybe just
19 one -- another quick moment at side bar.

20 THE COURT: Okay.

21 (Side bar taken.)

22 (Proceedings concluded.)

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1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 22nd day of January, 2008.

Diane Tesheneck, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL - DAY 24
5 vs. CLOSING ARGUMENTS, CONTD.
Case No. 05 CF 381

6 STEVEN A. AVERY,
7 DEFENDANT.

8 **DATE:** MARCH 15, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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(Jury not present.)

THE COURT: At this time we're back on the record in the case of State of Wisconsin vs. Steven Avery, Case No. 05 CF 381. We're here for a continuation of closing arguments this morning. Will the parties present state their appearances for the record.

ATTORNEY KRATZ: Good morning, Judge. The State appears by Calumet County D.A. Ken Kratz, Assistant Attorney General Tom Fallon, Assistant D.A. Norm Gahn appearing as Special Prosecutors.

ATTORNEY STRANG: Good morning as well. Steven Avery is present, again. And Jerome Buting and Dean Strang standing for him.

THE COURT: All right. Before we bring in the jury and continue with closing arguments there was one matter I wanted to clarify for the record. During the course of these proceedings we have had some individual voir dire with the jurors. And I wanted to clarify the Court's understanding that neither party is asking that any of the jurors be excused for cause, based on any of the information adduced at the voir dire. Mr. Kratz.

ATTORNEY KRATZ: That's correct, Judge.

THE COURT: Mr. Strang.

1 ATTORNEY STRANG: That is also correct.

2 THE COURT: Very well. Is there anything
3 else the parties wish to take up outside the
4 presence of the jury before we resume with closings.

5 ATTORNEY KRATZ: No, Judge.

6 ATTORNEY STRANG: No, sir.

7 THE COURT: All right. We'll bring the
8 jurors in at this time.

9 (Jury present.)

10 THE COURT: You may be seated. Good
11 morning, again, members of the jury. At this time
12 we're ready to resume closing arguments. Mr. Strang
13 will be speaking first on behalf of the defendant.

14 ATTORNEY STRANG: Thank you. Good morning.

15 JURORS: Good morning.

16 ATTORNEY STRANG: You know, I -- what's it
17 been, five weeks, or six weeks, or whatever it's
18 been, and the rules within which we operate
19 fundamentally allow me only to speak at you. At
20 this point, I would be ready to speak with you. I
21 can't exactly. But I do want to do my best to talk
22 with you this morning. Can't hear?

23 JUROR: It's kind of soft.

24 ATTORNEY STRANG: Kind of soft.

25 THE COURT: Which number is that?

1 ATTORNEY STRANG: I'm No. 7. I'm getting
2 nods, you hear me, whether you want to or not.

3 I want -- I want you to step back just a
4 little bit here and let's try to work at
5 assembling a bit what you might do in approaching
6 your task. And you have got such a mass of
7 information, really, over the last five weeks,
8 let's call it. There are some things you are not
9 going to be able to do, I think. But there are
10 also some things you can do. And I want to talk
11 about what I see as the line between those
12 things.

13 You, unfortunately, are not going to be
14 able to solve the murder here. And I say that
15 for this reason, if Steven Avery did it, if -- if
16 he's the guy who murdered Teresa Halbach, then --
17 then, in a sense you are not going to solve that.
18 They already think that.

19 This is the person they think all the
20 evidence points to, the person they have
21 identified as doing it. You can agree or
22 disagree with that, with that -- that theory of
23 prosecution. But, fundamentally, you and I
24 aren't solving a murder, because if Steven Avery
25 didn't do it, we can't tell you who did.

1 You know, Jerry Buting, Jerome Buting,
2 in Court, you know, is not going to tell you --
3 doesn't mean to tell you that, for instance,
4 Bobby Dassey murdered Teresa Halbach. We don't
5 mean to tell you that someone else murdered
6 Teresa Halbach. It's really kind of a point, we
7 don't have a police department, you don't have a
8 police department.

9 We're not going to be able to solve the
10 murder, if Steven Avery did not do it. So, you
11 know, you can agree with the State, you can agree
12 with the defense, but at some level you are not
13 solving the murder, as much as it's natural for
14 all of us to want do that.

15 Second thing I think you are not going
16 to be able to do, I'm quite certain you are not
17 going to be able to do, is bring Teresa Halbach
18 back through that door, or better yet, back
19 through the door of her mom's house. We are not
20 going to be able to do that. Convicting a guilty
21 guy, convicting the person who killed her,
22 wouldn't do it. Convicting someone who didn't
23 kill her, certainly won't do it.

24 The life that was before October 31,
25 2005, never will be lost. It's etched in mom's

1 heart. It's etched in her brother's, and her
2 sister's minds, in their memories, in the people
3 they are. That life is not lost. The life that
4 could have been, going forward beginning
5 November 1, 2005 is forever lost, not forgotten,
6 but lost.

7 This is human tragedy, and if you or I
8 understood why people have been killing each
9 other since we crawled out of caves, we would
10 stop it. But somebody killed this woman and that
11 life going forward is lost. You can't get it
12 back. I can't get it back. The gentleman at
13 this table can't get it back.

14 The other thing I think that you are not
15 going to be able to do, you can't do, 13 people,
16 12 people, can't do, is we can't provide closure
17 here in any real meaningful way. It's not what
18 courtrooms are good for. You would like to be
19 able to do that for Teresa Halbach's family.

20 I think you would like to be able to do
21 that for Steven Avery's family, provide some
22 closure. Provide it for him, for crying out
23 loud. You would probably like to do that, too,
24 if you could. But there again, the time since
25 November of 2005 really, fundamentally, is lost,

1 as a matter of closure for Steven Avery.

2 He's never really, in the broader
3 public, been presumed innocent. He's never
4 really had the presumption to which he was
5 entitled as an American, as a citizen accused.
6 You folks may be the only people in the world,
7 other than those of us at my table, who do
8 presume him innocent.

9 You can't do anything about it. We
10 can't do anything about that, for the rest of the
11 world. And as I say, courtrooms are pitiful,
12 pathetic places to try and provide closure for
13 Delores, closure for the Halbach family. Not
14 that it's not important that the system not work,
15 it is important that the system work. Because
16 when it works, we can provide justice, or some
17 semblance of justice. But justice and closure
18 are -- are two different things.

19 Nobody is always happy with justice, or
20 at peace necessarily with justice. And in that
21 sense, closure would be something more.
22 Something more personal for that family, and for
23 this family, and for Steven. You'd provide it if
24 you could, I know you would. You won't be able
25 to do it.

1 And in some ways you are going to be
2 told that you ought not try to do any of these
3 things. Because I think Judge Willis will tell
4 you, after the lawyers are done speaking at long
5 last, I think he will tell you that you have got
6 to decide this case, as finders of fact, without
7 sympathy, without prejudice, without passion,
8 without all the things that might go into solving
9 murders or providing closure. You will be told
10 instead that you won't, you can't, be swayed by
11 sympathy, or prejudice, or passion.

12 But there are some very important things
13 that you can do here, now that I have identified
14 the things you can't. There are some very
15 important things you can do. You can honor your
16 oath. You can keep a promise that you made
17 before the world, more importantly, that you made
18 for yourself. You put your own conscience on the
19 line. You can honor the oath that you have taken
20 and that you will take, as jurors. You can obey
21 the oath.

22 That's no small thing. You are under an
23 enormous amount of pressure, internally and
24 externally. This table, my table, a courtroom
25 full of people, a community at large, terribly

1 serious issues for everybody. So when I say you
2 can honor and obey your oath, it's a big deal.

3 You also can apply the law, honestly and
4 courageously, part of what you are duty bound to
5 do, as the Judge delivers the law to you in the
6 form of those jury instructions. You can apply
7 that. You can decide this case, if you choose,
8 on the evidence in the courtroom and only the
9 evidence in the courtroom.

10 You have the power to do that. You have
11 a duty to do it, but more importantly you have
12 the power to do it. You get to make the choice
13 to do that. It's something you can do. You can
14 decide whether allegations have been proved,
15 beyond a reasonable doubt, in considering all of
16 the evidence.

17 I don't take it for granted that jurors
18 do that, in the end. Because jurors are all
19 human, just like I am. But if you choose to do
20 that, you can. It's within your grasp. And I
21 think, finally, you can, if you choose, you can
22 get it right.

23 In the limited parameters available to
24 you, you can get it right. You can go home,
25 whenever you are done, and say, I know in my

1 head, because I used my head, I know in my heart,
2 because I used my heart, I know in my conscience,
3 because I listened to my conscience, that I got
4 it right. You can do that. And if you do, you
5 will also have set it right.

6 Just as I said I was going to ask you,
7 when I spoke in opening statement, when it was
8 about 19 below zero outside, or whatever it was
9 that day, you will set a lot of things right, if
10 you get it right, here. The 1985 case won't
11 matter so much any more, if justice is done this
12 time.

13 Will that ever go away? No, but it just
14 won't matter so much any more, the injustice that
15 was done to Steven then, because there is --
16 there is something redemptive in human beings
17 going back and trying again and getting it right
18 eventually.

19 So I want to ask you simply to commit to
20 doing the things you can do, and to living with,
21 reconciling yourself to the things you can't do.
22 You are not going to solve a murder -- a murder,
23 but you may spare someone who's not a murderer.
24 You are not going to bring Teresa Halbach back to
25 her family, but at some level, just by this trial

1 ending, you can give her back to her family.

2 What I mean by that, I mean for crying
3 out loud, what an artificial thing we do -- and I
4 love this, I love being a lawyer, I love it --
5 but what an artificial strange thing it is that
6 we do here, rules of evidence, formal procedures.
7 And for crying out loud, right down to taking
8 body parts and putting exhibit numbers on them,
9 explain a person's phone records on a screen for
10 a room full of strangers to look at.

11 It is what we do. It's what we have to
12 do here, at some level. Clinical discussions of
13 death, dry discussions of who you are calling, or
14 who's calling you, on your cell phone, just for
15 example. It's important. It's necessary.

16 But, when this trial ends, with a just
17 verdict, although you can't bring her back, in
18 some ways you can give her back, you know. We
19 can be past that and remember the Teresa Halbach
20 who was, rather than the 15 loci of her DNA.

21 You won't give closure, but maybe,
22 maybe, you can create an opening; if not closure,
23 an opening when we finish this trial, for people
24 to get out of these pews, out of these
25 uncomfortable pews, go back about their lives,

1 and in church, and in community, and wherever --
2 wherever the heck people hang out, in family
3 rooms, there pursue closure.

4 And the sense of restoration or
5 reconciliation that we find, or seek, in places
6 other than courtrooms, with uncomfortable pews to
7 sit in. So maybe, as you finish this case,
8 although you can't give closure, maybe you can
9 give the opening for it.

10 How do you undertake then, to do the
11 things that you can do. It's witnesses, it was
12 helpful for Mr. Kratz to give you pictures of the
13 witnesses so you can associate the face with the
14 name again. But much more fundamentally, how do
15 you -- how do you assemble and assimilate this
16 mass of information and approach it in a
17 practical way.

18 You can't do it by hoping the DNA will
19 tell you a story. You know, unfortunately, for
20 example, DNA, doesn't tell stories. People tell
21 stories. People have stories. DNA is
22 submicroscopic bits of protein. Mine's a little
23 different than yours, but, you know,
24 fundamentally we're all about 99.9 percent the
25 same, probably. Doesn't tell a story. It

1 doesn't tell why someone did something, doesn't
2 tell when it got where it got.

3 If a human being made a mistake with the
4 DNA, it doesn't tell you anything at all about
5 whether -- whether it should have been here, or
6 wasn't here, or whatnot. It doesn't -- It
7 doesn't tell you a story, unfortunately, although
8 it makes good rhetoric, in a closing argument.

9 So what you have to do in the end is,
10 you have to look and listen to people here. Even
11 when they are talking about science, or filling
12 their -- with the propane truck, or whatever. In
13 this process, to do your job, to do the thing you
14 can, you have got to look at real intently on the
15 witness stand and listen to people. And you have
16 got to sort out who you believe and who you
17 don't, in the end.

18 So I want to at least suggest that you
19 ask two very basic questions here as -- as a
20 framework, a possible framework for getting at
21 the things you can do here, if you choose. First
22 question, you know, he says he is innocent.
23 Anybody can say they are innocent.

24 Back at the time before you were around,
25 before anybody was really looking at him, you

1 might ask first, was he doing the things that an
2 innocent person might do. As you look back at
3 it, was he acting and was he behaving like an
4 innocent man. That's one question you could ask,
5 sort of approaching this whole mass of evidence.

6 A second question you might ask yourself
7 is, for the law enforcement professionals and the
8 prosecutors, primarily the state employees and
9 state witnesses, call them law enforcement people
10 generally, the ones who are so convinced he is
11 guilty, back before they got here, were -- were
12 they behaving as honest people acting in good
13 faith do.

14 You could ask yourself that question,
15 again, as sort of a framework for approaching
16 this mass of evidence. Back before they knew you
17 were going to look at them, as you see it now,
18 were they behaving honestly, were they acting in
19 good faith. Now, these -- these are just two
20 suggestions, just some lawyer's idea. You can go
21 about this whatever way you want. But this might
22 be helpful.

23 And ask yourself, as to the folks who
24 think Steven Avery is guilty, do you believe them
25 in the end, and believe them to a level that you

1 would not even pause or hesitate, when called
2 upon to act in the most important affairs of
3 life. That's language right out of this
4 reasonable doubt instruction that you got.

5 And just taking a part of it, and it's
6 sitting under your chairs, or wherever your
7 instructions are, you don't have to pick it up
8 and look at it now, but you will find that. I
9 think it's a helpful practical guide in deciding
10 whether something is proven, whether you believe
11 it, beyond a reasonable doubt. It's, you know,
12 would you -- given the information you have in
13 the end, would you pause or hesitate in the most
14 important affairs of life.

15 There's no getting around that this is
16 one of the most important affairs of your life,
17 of your lives. A young woman is dead, for no
18 conceivable good reason. And a man is on trial
19 for doing it. Enormous consequences.

20 And Mrs. Halbach, and everybody who
21 loved and cared about this young woman, brothers,
22 sisters, friends, uncles, aunts, you name it.
23 And to Mrs. Avery, whose own story is tragic.
24 You know, and to the people who fought for his
25 innocence, the handful of people who believed

1 him, before the rest of the world finally got it
2 right, who went through all that, Mrs. Avery, and
3 then two years later to have this come crashing
4 down on her. This is an important affair. And
5 it is for you now, too.

6 So, I start with my first question, did
7 he behave as an innocent man might behave. Let's
8 go back, let's go back to roughly October, 2005.
9 What's he doing? What's Steven Avery doing?
10 Well, he is living in a trailer that he borrowed
11 from Rollie Johnson. That's pretty modest.
12 That's a damn sight better than a prison cell,
13 that he had been in. He's got himself a
14 girlfriend. He's working in the family business.
15 This is all honest stuff. So far.

16 He has a lawsuit started, for a whole
17 lot of money, based on he's got two indisputable
18 points on his side in that lawsuit. One, he was
19 innocent of the earlier case, but, you know, he
20 rotted in prison for a while anyway. So, you
21 know, he is innocent, but he went to prison.
22 He's got two pretty good starting points in a
23 lawsuit, in getting some money. And that's what
24 he's got two other lawyers pursuing for him, back
25 in 2005. He's got his mom and dad back. I don't

1 mean to be ignoring Allen, but when I speak of
2 Delores and anybody else, he's got his family
3 back, is the point.

4 And as this -- as this case starts to
5 take shape, you know, as Teresa gets reported
6 missing, and they find out that she had a photo
7 shoot out at the Avery property. The very night,
8 November 3, she's reported missing, Sergeant
9 Colborn comes out to the property, bumps into
10 Steven Avery.

11 Steven is not expecting the police.
12 There's no way he would have even known she had
13 been reported missing at this point. Bumps into
14 Sergeant Colborn and he is cooperative. By
15 Sergeant Colborn's own account, he is
16 cooperative, open, talks to Sergeant Colborn.
17 Doesn't say I'm not talking to you, you know.

18 The next morning, same thing. Detective
19 Remiker and Lieutenant Lenk come out to visit
20 him. He's cooperative, cooperative to the point
21 of saying you can come into my house, when they
22 ask, go ahead, come in my house.

23 I think it's later on Friday,
24 November 4, when David Beach comes and, you know,
25 has the poster. He wants to put the poster up.

1 This is Teresa's relative, nice younger guy who
2 testified, I think the first day of testimony.
3 And David Beach has a conversation with Steve
4 Avery and Steve is forthright. He's calm. He
5 appears concerned, according to Mr. Beach.

6 To me, this is useful, because at that
7 point he is not posing. He is not in a
8 courtroom. He doesn't know how this is all going
9 to play out. These -- These are people who are
10 seeing him real, if you will, just having, you
11 know, encounters with him. And this is their
12 take on what -- on what they are getting from his
13 behavior and what he says.

14 Is he behaving like an innocent man?
15 Well, he has Teresa Halbach's cell phone number.
16 We get a glimpse of her, she's obviously willing
17 to give this out. She says so in the voice mail
18 message. She leaves her cell phone number on the
19 voice mail message. They caught that, that she
20 leaves on the Janda voice -- or answering
21 machine.

22 And Steve has her cell phone number. He
23 has got it written down in two places in his
24 house. They are on his computer desk somewhere.
25 They are there on November 5 when the police

1 descend and the -- the Avery people get excluded
2 from the property. And the police have it for a
3 week. They are there. He hasn't destroyed her
4 cell phone number, hasn't tried to get rid of it,
5 you know. It is there in not one, but two
6 places.

7 So, you know, I don't know, if you can
8 burn a cell phone, and if you can burn an A310
9 Digital Power Shot Camera, I don't know why you
10 can't burn two pieces of paper that have a cell
11 phone number on it. That's not what he does,
12 obviously.

13 There was a van for sale. Heaven knows
14 there was a van, you saw about 10 pictures of
15 this silly maroon van sitting out there. Why --
16 Why do I, you know, why do I suggest that's
17 evidence, if you will, of Steve behaving like an
18 innocent guy would behave? Well, you know, if
19 you're -- if you are going to lure the
20 photographer to your property so you can have
21 your evil way with her, and kill her, you don't
22 need a car, you don't need anything for sale.
23 You just lie and say, you know, I want you to
24 come out and take a picture of a '73 Eldorado,
25 or, you know, whatever it is.

1 There's a van. It's the van he tells
2 *Auto Trader*. It's owned by Barb Janda, just like
3 he tells *Auto Trader*, B. Janda. And gives B.
4 Janda's telephone number. Turns out there is no
5 dispute, of which I'm aware. The Dassey boys,
6 you know, Scott Tadych, the people who know about
7 this, who testified, yeah, there's a van. It's
8 sitting there. She's trying to sell it. It's
9 hers.

10 I think that's suggestive of innocent
11 behavior. Not of, you know, luring, or
12 concocting some scheme so that you can murder
13 somebody.

14 Look, again, what he's doing in October
15 and early November, 2005, while he's still in his
16 house. The gun's over the bed. Are they hidden?
17 Has he -- you know, has he run off and burned
18 them, or asked his nephew to take them and thrown
19 them in the bottom of a pond or something, or
20 even moved them to the spare bedroom? No, the
21 guns are where they are. They are right where
22 Rollie Johnson left them.

23 Did he crush the car, no. Did he empty
24 the burn barrel, try to hide, you know, whatever
25 is in the burn barrel? Did he melt the license

1 plates? Did he get rid of the key that
2 supposedly is found, you know, next to the foot
3 of his bed, or across the way from the foot of
4 his bed, next to his desk? No, you know, he
5 doesn't do any of that. I don't think the key is
6 there. But if you believe that it's -- that it's
7 there, you know, if you believe it's there, then
8 it's awfully incriminating, if you believe he put
9 it there.

10 But, you know, I don't know why he would
11 keep the key, and that key alone, of all of
12 Teresa Halbach's possessions, if he has
13 previously disconnected the battery so that the
14 key won't work, unless he reconnect the battery
15 for some reason. And he's got a junkyard, for
16 crying out loud. Leave the key in the trunk
17 where the keys are for all the other junk
18 vehicles. Leave it in the ignition, put it in
19 the grass, I don't know. Bring that, and that
20 alone, to your bedroom.

21 But you know, in general, the behavior
22 you are seeing from Steven Avery on November 3
23 and November 4 is open, cooperative, sure you can
24 search my house, contrasted to the behavior of a
25 George Zipperer, who is one of the other

1 appointments Teresa has that afternoon.

2 Uncooperative, hostile, dishonest with the
3 police, won't let him in the house for a long
4 time, even after he knows this young woman is
5 missing. You get this from -- some of it from
6 JoEllen Zipperer and some of it from Detective
7 Remiker.

8 How about burning trash, plastic smell,
9 burning trash at about, give or take, 3:45 on
10 Monday afternoon, how about. Well, that really
11 sort of takes you to Bobby Dassey, and Blaine
12 Dassey, and Lisa Buchner, and John Leurquin, to
13 decide what burning trash means.

14 If Bobby Dassey is right and Teresa
15 Halbach has been there at 2:45, then burning
16 trash at 3:45 with a plastic smell is potentially
17 incriminating. Bob Fabian sees this, smells the
18 plastic burning as well. That's potentially
19 incriminating if Bobby is right.

20 I'm wondering why Bob Fabian doesn't
21 smell the quite distinctive odor of a burning
22 tire. You know, rubber burning, with black smoke
23 pouring thickly out of the burning barrel, if
24 supposedly the tire is being used to burn the
25 cell phone, the camera, and the palm pilot.

1 But setting that aside, to me there is a
2 more fundamental problem with that. I don't
3 think Bobby Dassey is right. You know, Blaine
4 Dassey has a good reason to know when he gets off
5 the bus every day, it's 3:30 to 3:40. He comes
6 home, Bobby is sleeping. Bobby is there and he's
7 sleeping. This is what his own brother
8 remembers.

9 More, the bus driver has a pretty good
10 reason to know what time. She's driving the same
11 route every afternoon, dropping off the same
12 kids, in the same place, at about the same time,
13 every afternoon.

14 She's no friend of Steven Avery. She's
15 not connected to Steven Avery. She's not
16 coached. She's not trying to oversell what she
17 remembers. But that's when she drops the Dassey
18 boys off. And one of the days that week, either
19 Halloween, or Tuesday, the 1st, or Wednesday,
20 November 2nd, she remembers seeing a female
21 photographer taking pictures of a van.

22 If facts are stubborn, as counsel says,
23 then that -- then that's a pretty stubborn fact.
24 Just because she's not overselling it, and she
25 has no reason to want -- to care how this case

1 comes out, you know.

2 So is it possible that some other female
3 photographer was there on Tuesday, November 2nd,
4 taking a picture of a van? Well, is it possible?
5 Sure, it's possible. But even Investigator
6 Wiegert concedes, when pushed a little bit about
7 that, that he doesn't have any information about
8 another female photographer coming to take a
9 picture of another van.

10 So this is pretty reliable stuff, that
11 Teresa is there at more like 3:30 or 3:40, not
12 2:45. John Leurquin sees a green SUV leaving.
13 What does he care about Steven Avery? For that
14 matter, what does he really care about Teresa
15 Halbach. And he doesn't have -- he doesn't have
16 a dog in this fight.

17 What he has to do is sit and stare out
18 the front windshield of his truck, every day for
19 half an hour, 3:30 to 4, quitting time, as he
20 fills the LP truck. He has got nothing to do
21 except look at the world. Filters out the school
22 bus, filters out, you know, the cars he sees
23 coming and going every day. That's common sense,
24 that makes sense.

25 When something new goes by, it's not a

1 heavily traveled road, he notices. Is he
2 overselling the point, no. Can't say it's that
3 SUV, can't say it's a Toyota RAV4. Looks
4 similar, can't say who is driving it. Didn't see
5 whether it turned right or left at the stop sign
6 on Highway 147. You know, he's not gilding the
7 lily, so to speak. He's not overselling what he
8 saw.

9 So, to me -- you guys are the ones that
10 matter -- but to me, that's fairly reliable
11 stuff. It's reported to the police, candidly,
12 when they ask. Lisa Buchner for that matter goes
13 up to the barricade, that Saturday, says I have
14 some information maybe you want. They interview
15 her two days later, you know, the following
16 Monday, when it's fresh in mind. And she tells
17 them what she knows. Tells them what she doesn't
18 know, for that matter.

19 So, you know, you got Bobby stacked up
20 against Blaine, Lisa Buchner and John Leurquin,
21 and it looks to me like the more probable time
22 frame is 3:30ish that she's there. And if that's
23 so, then burning garbage in your burn barrel at
24 3:45 is just burning garbage in your burn barrel.
25 It's innocent. Bob Fabian smells plastic, so

1 what. It's a white plastic garbage bag that, you
2 know, Blaine sees.

3 And you got plastic in your garbage, you
4 know, I'll bet you do, unless you live in town
5 where you've got a nice blue recycling tub or
6 something, and you separate that stuff out. But
7 this doesn't look like much, if the time frame is
8 different than Bobby Dassey has it.

9 So how about -- how about the 4:35 p.m.
10 phone call to Teresa's cell phone, what my
11 colleague referred to as the alibi phone call.
12 And the State argues he is doing that to create
13 an alibi, because he knows that will create a
14 record on the cell phone bills, cell phone
15 company records.

16 Okay. All right. I mean, first of all,
17 it makes the *67 calls not very important,
18 because they are going to create a record too.
19 And if he knows a 4:35 call is going to create a
20 record, then he also knows that the 2:24 and 2:33
21 call are going to create a record. But maybe
22 more importantly than that, this isn't much of a
23 alibi.

24 It's a cell phone, calling a cell phone,
25 you can be anywhere, doesn't place you in any

1 particular, you know, spot on the planet. It's
2 not like you are at home in your kitchen, because
3 you called on your land line, you know, with a 6
4 foot cord keeping you from going any further.
5 It's a cell phone. It's not a good alibi, you
6 know, it doesn't get you anywhere, or suggest
7 that it's guilty behavior.

8 This call, also, draws more attention to
9 you, not less. I mean, you are going to show up
10 on the cell phone records. It is your cell phone
11 you are using. It's not -- This isn't something
12 you do if you are trying to alibi yourself.

13 But if, while we're looking at phone
14 calls and moving through Steve's behavior on
15 October 31, you know, hey, there are two
16 telephone calls the State hasn't talked much
17 about yet, if at all, but they stipulate on this.
18 They agreed. There are two phone calls from the
19 Manitowoc County Jail to Steven Avery's land
20 line.

21 He's got a cordless phone, it may even
22 be in one of the pictures in the bedroom, so he
23 can wander around. But it is, you know, it is a
24 cordless land line phone, they have stipulated.
25 These phone calls come in from his girlfriend,

1 Jodi, from the jail. First one is at 5:36 in the
2 afternoon, 15 minutes of talking, tape recorded.
3 Investigator Wiegert has listened to it. And
4 then another one at 8:57 p.m., tape recorded,
5 then listened to by the police, 15 minutes long,
6 talking to his girlfriend.

7 This is what somebody who's in the
8 process of burning a body is going to be doing?
9 Are you kidding me? You know, I mean, you think
10 maybe you would have heard those tapes played if
11 there had been something incriminating, or out of
12 the ordinary about the 15 minute conversations
13 with the girlfriend, that night, Halloween night?
14 It's more just evidence of every day life, doing
15 what an innocent person might well be doing. And
16 that's how October 31 comes to an end.

17 Later that week -- and I, you know,
18 Blaine Dassey tells you this, he didn't make a
19 big point out of it, but he told you, and I want
20 to remind you about that, later that week Steve
21 Avery suggests to Blaine, maybe he wants to
22 invite some of his friends over for a bonfire, at
23 Steve's place. Blaine's in high school, high
24 school kids, bonfire, he makes the suggestion.
25 It never happens, for whatever -- I don't even

1 know that Blaine explained why, but it just --
2 the bonfire never happens later in the week.

3 But, you know, if you had burned a body
4 in your burn pit, or you even knew that there
5 were bones in your burn pit, spread around, human
6 remains, you are going to invite some high school
7 kids over to have a bonfire and sit around the
8 same burn area? I'm not. That doesn't seem to
9 me that somebody who's guilty, that that's
10 something he would do, an invitation he would
11 extend to his nephew. A bunch of random high
12 school kids, come on over to my make shift
13 crematorium for a bonfire and stand around.

14 What does he do here, in terms of
15 behaving like an innocent guy, or not. Well,
16 look at the witnesses we called on his behalf.
17 Now, all walks of life, many fewer witnesses than
18 the State called, but as I say, all walks of
19 life. And what struck me, at least, about the
20 folks who testified for you, because we called
21 them, is I thought to a person, these folks were
22 natural, they were real.

23 They weren't swiveling in their chair to
24 look at you and give you a talk, as if they were
25 an old friend of yours every time they are asked

1 a question. They are not advocating anything, as
2 far as I could pick up. Or as I say, sort of
3 selling you something, overselling something.
4 They are candid on cross-examination, just as
5 they were on direct examination. I thought, at
6 least, that's what this group of people shared.

7 Was I surprised that we had to call the
8 bus driver, rather than the State calling, to
9 help you with the time frame that afternoon,
10 yeah, I was surprised. But we did it, since they
11 didn't. And now you have got that information.

12 But, you know, these -- these people
13 rang true to my ear, at least. And it's your
14 ears that matter.

15 So let me move to my second question:
16 Can you believe the police? Can you believe the
17 law enforcement folks who are so sure that Steven
18 Avery's guilty? What do you see about their
19 behavior before they are on the stage here?
20 Well, look at what they say and do when they
21 don't know that you are going to be listening and
22 seeing.

23 Let's start with Andy Colborn, since I
24 sort of started with him on November 3. He calls
25 in, does a license check on Teresa Halbach's car.

1 He says he thinks it was probably on November 3,
2 not sure, but probably November 3, that he did
3 that. But remember he's working on November 3,
4 so he would have had his radio.

5 And it's Detective Remiker who says
6 ordinarily you would use your radio when you are
7 calling in a license check to dispatch. He uses
8 his cell phone instead. The tape you hear is
9 clearly a phone call, not a radio in. So I think
10 it's probably more likely that this license check
11 is November 4, when Sergeant Colborn acknowledges
12 he was off.

13 Didn't work on November 4. And you may
14 remember, Mr. Kratz asked him, do you remember
15 what you were doing on November 4, 2005. He
16 says, yes, I do. I was off. I remember what I
17 was doing. Doesn't tell you what he was doing,
18 other than to deny he went to the Avery Salvage
19 yard, or denied he had anything to do with
20 planting evidence. But he is off.

21 And I'm not going to play it for you
22 again, it's in evidence, but -- Let's see if this
23 comes up. That's -- That's what you hear on the
24 tape that we played.

25 SERGEANT COLBORN: Lynn.

1 DISPATCHER: Hi Andy.

2 SERGEANT COLBORN: Can you run Sam,
3 William, Henry, 582, see if it comes back to that
4 da da da da da -- then they start talking over
5 each other. I can't make it out. You can listen
6 to it if you want. Then she goes off on talking
7 about needing a Spanish interpreter, chitty
8 chatting while she's doing the license check.

9 She's comes back and she confirms it's
10 Teresa Halbach's license plate, the missing
11 person.

12 Sergeant Colborn says, '99 Toyota, and
13 so on.

14 Why is he doing that? Why is he doing
15 that? Why is he calling in a license check on
16 November 3, or November 4, which ever day it is?
17 You can get that information from Investigator
18 Wiegert, or if you want to call your dispatcher,
19 ask your dispatcher.

20 This sounds a lot like what road patrol
21 officers do when they come across a stalled car,
22 an abandoned car, a car where it shouldn't be.
23 That's what this sounds like. Draw your own
24 conclusions, obviously look at it like from any
25 other piece of evidence. But what's important is

1 he is doing this, not on a witness stand, he is
2 doing this when he doesn't know anybody is going
3 to be seeing, or hearing, or evaluating it later.

4 Stay -- Move off Sergeant Colborn, but
5 stay in the Manitowoc County Sheriff's Department
6 for the moment. Mr. Kratz argued to you
7 yesterday that Special Agent Fassbender, starting
8 November 5, devoted his resources where this
9 thing was likely going. Where this thing was
10 likely going.

11 True, I guess he did, in the sense that
12 it was certainly clear pretty quickly where this
13 thing, this investigation, was going. In my
14 opening, and with Detective Remiker, we had a
15 chance to hear, at 11:30 in the morning, on
16 November 5, half an hour after the first police
17 officers arrived at the Avery property, there to,
18 you know, see the concealed Toyota that the
19 Sturm's had found. Half an hour later, for you
20 to hear, at a time when he, you know, he wouldn't
21 have known it, Manitowoc detective, Dennis
22 Jacobs, talking to his dispatcher:

23 Can you tell me, do we have a body or
24 anything yet?

25 DISPATCHER: I don't believe so.

1 Very next thing he says:

2 Do we have Steven Avery in custody,
3 though?

4 Yeah, it's pretty clear where this is
5 going. By the time Special Agent Fassbender
6 arrives, you know, at 2:25, 3 hours later that
7 afternoon almost, it's pretty clear where it's
8 going. And five minutes after this one
9 conversation --

10 THE COURT: Mr. Strang, I'm getting a
11 signal for a break, so we're going to take a short
12 break and then we'll resume in 10 minutes.

13 (Jury not present.)

14 THE COURT: You may be seated. Let's
15 report back at 10:15.

16 (Recess taken.)

17 (Jury present.)

18 THE COURT: Mr. Strang, you may resume.

19 ATTORNEY STRANG: Thank you.

20 So five minutes later, five minutes
21 after Detective Jacobs called with the
22 dispatcher, he is on the phone with Detective
23 Remiker, or the radio, I don't remember now, but
24 you got the tape in evidence. Of course,
25 Detective Remiker does testify, and you may

1 remember him, kind of presented himself as
2 someone who thought they were barking up the
3 wrong tree, that Steve didn't do this, when he
4 testifies. That morning, just about an hour
5 after the Sturms have first found the Toyota.

6 Okay. Other than the car, do we have
7 anything else?

8 Not yet.

9 Okay. Is he in custody?

10 ATTORNEY STRANG: It's not who are you
11 talking about, who do you mean by he.

12 Negative, nothing yet.

13 One pronoun, he, and these guys know who
14 they are talking about at 11:35 in the morning.
15 Are these folks acting in a way that seems good
16 faith and honest to you, back then? Six days
17 after this, Special Agent Fassbender makes the
18 telephone call to Sherry Culhane at the Crime
19 Lab, try to give her some direction. And, you
20 know, she's holding herself out as a scientist,
21 that's how she holds herself out.

22 Is Special Agent Fassbender asking for
23 science, on the exhibit that Mr. Buting showed
24 you? Is he asking for science there, for a good
25 cautious, objective, let's see where the science

1 leads us kind of thing, when he's asking, try to
2 put her -- put her in his house or garage.
3 That's not a very good fit, in my view, with the
4 State's, counsel's argument here, when they
5 submit evidence, they are not looking for a
6 specific answer. Oh, really.

7 The memo belies that. The phone memo
8 does. And Sherry Culhane, on the stand, herself,
9 tells you, that by the time these buccal swabs
10 are taken in November, 2005, from all kinds of
11 people other than Steven Avery, members of his
12 family, these are elimination samples.

13 Elimination samples. We have already decided
14 they didn't do it, we're just trying to eliminate
15 if we find their DA -- their DNA anywhere.

16 Sherry Culhane, for that matter, had she
17 followed the protocol on her testing, the bottom
18 line folks, had she followed her protocol on the
19 testing of that bullet found in March. She can't
20 say it's Teresa Halbach's DNA. First time in her
21 career, 23 years, first time, on the last chance
22 to put Teresa Halbach in his house or garage, she
23 deviates from the protocol and includes Teresa
24 Halbach.

25 Now, it was just the control that was

1 contaminated. It was just Sherry Culhane's DNA.
2 That doesn't turn the evidentiary sample into
3 having Teresa Halbach's DNA. Okay. All right.
4 Fine. But the protocol presumably is there for a
5 reason. Protocols are the foundation of good
6 science. And the protocol says, if you have got
7 contamination, you set that experiment aside and
8 you do it again, you don't rely on that one.

9 Science ought to be reliable. It ought
10 to be consistent. And it ought to be cautious,
11 otherwise, it's not science. And the results
12 simply aren't reliable. That's why you have a
13 control. And when you get contamination, you now
14 know that something has gone wrong with this.

15 And to say that the contamination is
16 over here, but not over here, is a little like
17 saying, I don't know, maybe no one even eats TV
18 dinners any more, maybe they're microwave dinners
19 now, I guess, from what I see in the grocery
20 store. But whatever, however you heat this stuff
21 up, when you pull off the plastic, or the tin, or
22 whatever covers the meal, you know, and the
23 little peach cobbler has a fly in it, in that
24 little compartment, you don't eat the Salisbury
25 steak either, okay. You know, this is -- this is

1 not fancy stuff in the end. It's -- It is and
2 should be common sense, at some level, in the
3 end. But she deviates, for the first time in 23
4 years.

5 The end -- This continues, the end of
6 January, 2007, bringing us up to six weeks ago.
7 Now, the State goes all the way to Virginia, to
8 Quantico, to get the FBI. Are they trying -- Is
9 the FBI trying to root out possible police
10 corruption? Are they concerned about the
11 integrity, of policing in northeastern Wisconsin?
12 Trying to find out if there's a bad cop or not?
13 I think the decision is already made.

14 You have this, too, Special Agent Gerald
15 Mullen of the FBI, memo to the FBI laboratory,
16 this January 30th --

17 ATTORNEY KRATZ: Judge, I'm sorry, I don't
18 mean to interrupt. I believe the defense is
19 entitled to one closing. Mr. Buting covered exactly
20 the same territory yesterday. I understood they
21 were going to split and talk about different items.
22 I simply wanted to interpose an objection. My
23 apologies to counsel, but that was my understanding
24 from the Court.

25 ATTORNEY STRANG: I would be more concerned

1 about boring you. Mr. Buting did cover it. It's
2 there.

3 But I want to say something about EDTA
4 that Mr. Buting did not. Janine Arvizu, who is
5 not a doctor, Mr. Buting misspoke, she didn't
6 complete her dissertation. She did the other
7 Ph.D. work. I want to make sure you got out of
8 that what she had to tell you. And it's this,
9 the FBI protocol that they put together in a
10 couple of weeks here, is good for identifying and
11 confirming the presence of EDTA. It is not
12 designed for confirming the absence of EDTA. It
13 has to do with the detection limits. The
14 instrument has a detection limit and the method
15 has a detection limit.

16 So, look, if you were interested in
17 finding out whether your friend is at home, and
18 the instrument you chose was a telephone, call
19 him at his house, ring his telephone number, if
20 he answers the phone, you have confirmed his
21 presence with your instrument. He is there, you
22 have called his home, not his cell phone, he is
23 there. He's got to be, if he's answering his
24 phone. You have confirmed his presence.

25 However, if your instrument is your

1 telephone and you call his home and it just rings
2 and rings, and it's not answered, you have not
3 confirmed his absence. He could be in the
4 shower. He could be in the basement folding the
5 laundry, he could be in bed sleeping. He could
6 be pouting and just not answering the phone
7 because he sees it's you calling on the caller ID
8 and he doesn't want to talk to you today.
9 Whatever it is, you haven't confirmed his absence
10 with the telephone. You haven't designed a
11 protocol to get you to that.

12 Your method, in other words, of
13 detection, isn't suited to confirming absence,
14 only presence. If you like fresh baked hot apple
15 pie, and I put you in a room and I blindfold you
16 and we walk in, a fresh baked hot apple pie, your
17 nose is the instrument. It has a detection
18 limit.

19 A dog has a better instrument, lower
20 detection limit, fancier instrument. He can
21 detect less of the smell of apple pie than you
22 can, but you have got this instrument to use. If
23 it's within your detection limits, and the pie
24 is, you know, slid on the table under you while
25 you are blindfolded, you will detect it with your

1 instrument.

2 However, if the method is no good,
3 because we have got to consider that, you are not
4 smelling an apple pie. Well, is the room too
5 big, are the windows open, is the pie too far
6 away, does the room smell badly of something else
7 that's interfering with your instrument detecting
8 the fresh baked apple pie? We have method
9 detection problems and limits. Or is the apple
10 pie, not fresh baked, but it's an 11 year old
11 apple pie? You may not detect that either, with
12 your instrument. I don't think Janine Arvizu was
13 really telling you more than that. And,
14 unfortunately, Dr. LeBeau was trying to tell you
15 more than that and overselling his case.

16 Now, others who matter, in the law
17 enforcement group who think Steve is guilty.
18 Mr. Lenk and Mr. Colborn. They denied here, of
19 course, but what are they doing, in 2002, when
20 the evidence slip has to be signed for
21 transmission of the hair sample and fingernail
22 clippings, or whatever it is, to the Crime Lab,
23 and the evidence custodian at the time, Detective
24 Sergeant James Lenk, signs off.

25 Is he really, as he claims here, simply

1 signing the form, giving it to Sergeant Shallue
2 and allowing Sergeant Shallue to fill out the
3 otherwise blank form? You are entitled to
4 disbelieve that. Or at least to say he's not an
5 honest evidence custodian if he is doing that at
6 the time. He is begging to be fired, because he
7 is not documenting what's going where. Or if
8 he's just telling you here, to distance himself
9 from that file in the Clerk's Office, you are
10 entitled to consider that too.

11 Would Lieutenant Lenk lie, in the end?
12 Would he lie, as a sworn law enforcement officer?
13 Well, all I can tell you is, he did, twice, and
14 you heard it. I have the transcript from the
15 earlier hearing. Here he says he arrives at
16 2:00. When he's asked under oath before, it's
17 6:30 or 7, once when he's asked, and the other
18 time he's asked, it's late afternoon. This isn't
19 15 minutes off, folks. It's under oath and it's
20 a difference of four and a half or five hours.

21 At that time of year, November, 2005,
22 it's the difference between broad daylight and
23 pitch black. He was under oath, and he gave two
24 very different answers to the same question, at
25 two different times, under oath. He was the only

1 witness, in five weeks, shown to have made
2 inconsistent statements, under oath.

3 Others made inconsistent statements and
4 were shown to have. Blaine Dassey comes to mind.
5 Scott Tadych comes to mind. Both of them are
6 asked, at first, by the police, was there a
7 bonfire, on Halloween, no, no bonfire. Later
8 they get asked again, now there is a bonfire. In
9 fact, Scott Tadych comes here and says big
10 bonfire, flames to the top of the roof. Same
11 guy, again, I showed, when first asked by the
12 police, no bonfire. Closer in time to October
13 31, no, didn't see a bonfire that night.

14 That's inconsistent statements, but they
15 are not under oath. They still, as the Judge
16 instructed you yesterday, are something you can
17 consider, consistency or inconsistency of a
18 witness' statements, over time. Still you can
19 consider those when you decide who you believe,
20 and not under oath.

21 Blaine explained that a little bit.
22 Explained his changes of his story. Well, the
23 police kept asking him. They didn't like the
24 answer, they asked him again. Got angry with him
25 and his mother, at the restaurant, when they

1 wouldn't reject Uncle Steve. Is that because
2 Blaine is scared of Uncle Steve?

3 My recollection, yours will govern,
4 there's 12 of you and one of me, but my
5 recollection of that testimony is that the
6 question was whether Blaine Dassey was scared,
7 and the answer was something like, no, not
8 really, but he used to boss us around. You will
9 decide that.

10 But in any event, Lieutenant Lenk, by
11 the time he gets to you folks, is telling you
12 some really implausible things. Like, I had
13 never been to Steven Avery's house. I have never
14 been on the Avery property, but somehow, just out
15 of habit, I turned right at the end of Avery
16 Road, and I -- I -- I just happened to drive
17 straight to Steven Avery's trailer. Okay.

18 So this -- You know, what they are doing
19 and whether -- whether you think you can trust
20 them back when they are not aware they are going
21 to be observed or revealed later, is important in
22 the same way what he does, back before he knows
23 it's going to be played out to you, is important
24 in assessing who you believe. Are they acting
25 honestly? Is he acting like an innocent person

1 would act, or might act?

2 It is important because it comes down to
3 the bias in the end. You know, would, in the
4 end, police officers plant evidence? And that's
5 a hard one, you know. That's why it's helpful to
6 say, boy, are they behaving honestly and in good
7 faith up to then. Because in the end, would they
8 plant evidence against someone. Now, you will
9 have to decide whether you have a reasonable
10 doubt about that, or whether, you know, we have
11 shown that to you at any level, or not.

12 But, look, it is a matter of bias, if it
13 happened. And what you critically, I think, need
14 to understand, that if and when police officers
15 plant evidence, they are not doing it to frame an
16 innocent man. They are doing it because they
17 believe the man guilty. They are not doing it to
18 frame an innocent man. They are doing it to
19 ensure the conviction of someone they have
20 decided is guilty.

21 That's why you plant evidence. Other
22 than in the strangest, you know, most abandoned
23 of conscience sort of police officer, they aren't
24 after framing an innocent person, they are after
25 ensuring the conviction of someone they just

1 believe is guilty.

2 So as you approach the whole concept of
3 planting you have got to understand the bias that
4 would drive it, not, you know, boy, they are out
5 to get an innocent guy. It's just the opposite.
6 It's just the opposite. But it's also just as
7 corrosive to do it. Because juries decide guilt,
8 not police officers who are involved in the hunt.
9 You know, they get invested too, in the outcome,
10 and in whom they suspect, who they think is good
11 for something.

12 And, you know, the State pooh-poohs the
13 idea that a civil lawsuit, for a whole lot of
14 money, against the Manitowoc Sheriff's
15 Department, would have caused anyone to so
16 dislike Steven Avery that they would plant
17 evidence against him. Well, look what the mere
18 suggestion that they did plant evidence has done,
19 in terms of a reaction here.

20 The defensiveness of the case that the
21 State presented to you, the anger about the mere
22 suggestion of planting evidence, the
23 self-righteousness, the hostility, the trying to
24 have it both ways with you. We trusted the
25 Manitowoc people, they were skilled. They were

1 honest. They were the best available evidence
2 technicians.

3 But we also had somebody watching. We
4 were short of manpower. We needed them. But, in
5 the first search of Steven Avery's -- first
6 lengthy search of Steven Avery's house, on the
7 evening of November 5, we got enough people that
8 two of them can be taking photos. Two of them
9 can be taking photos, in this little trailer, as
10 you heard. You hear the State trying to have it
11 both ways, here.

12 And in sort of getting at the bias that
13 would drive a police officer, potentially, to
14 plant evidence, it's this -- it's this need, this
15 belief that he is not really innocent. He's
16 guilty, he's got to be guilty. It's what you
17 hear from Detective Jacobs and Detective Remiker,
18 it's that quality. It's the sense that this is
19 where this is going, three hours in, when all we
20 have got is the car, on a big property with a
21 whole lot of other people there.

22 It's the -- After five weeks of evidence
23 and 501 exhibits, it's the State standing up and
24 telling you it's clear. What in the world is
25 clear and simple when it takes five weeks and 501

1 exhibits to try to show. And whatever this is,
2 whatever, whichever way you come out, this case
3 isn't clear and simple.

4 And that's where the civil lawsuit feeds
5 in. It's not that it feeds in with bad cops. It
6 feeds in with good cops, in the sense that it
7 erodes, fundamentally, the sense of identity, we
8 get the bad guys, we don't get the good guys.

9 And here it is, they got it wrong, that
10 department got it wrong. Not only do they get it
11 wrong, but the right guy is still out there and
12 he commits another rape, Gregory Allen. This
13 goes to my identity, if I wear that same uniform.
14 Even if I'm aligned with these people, as you
15 hear the sort of reaction from the prosecutors to
16 this.

17 And now, you know, since -- since he
18 really couldn't have been that innocent, he's got
19 to be guilty of this one. He must be the right
20 guy this time. So you -- you know, nobody means
21 to do this, but you start looking around things
22 that are inconvenient, that don't quite square up
23 with the theory that he did it.

24 One example, and one example only, from
25 the blood, Teresa Halbach's blood in her own car.

1 If it were true, as the State now says, that
2 Steven Avery shot Teresa Halbach in his own
3 garage, killed her there, and if it were true
4 that he then burned her in the area immediately
5 behind the garage, why, why is her bloody head
6 ever in the Toyota at all. It's farther to take
7 her back to her car than it is to take her around
8 the corner of your garage, to the burn site, if
9 that's what it is.

10 So the State sort of ignore's the fact
11 that if Steve Avery had done it, and done it in
12 the way they say, her blood wouldn't be in the
13 car. The bloody hair stain wouldn't be there.
14 It is there, of course, so it suggests that
15 somebody did have to use the car as a transport.
16 She wasn't burned there -- or wasn't killed
17 there, but that's inconvenient. You guys have to
18 be, in the end, if you're going to do what you
19 can do here, more objective than that.

20 You can't overlook the inconvenient,
21 because it doesn't fit. You can't overlook, for
22 example, in deciding whether Lieutenant Lenk
23 dropped the key on the floor, rather than finding
24 it honestly.

25 You can't overlook the fact that all her

1 other keys are gone, the three or four other keys
2 that Tom Pearce described, and which common sense
3 would tell you would be on your key ring, and
4 they are not there. It's the kind of thing
5 that's inconvenient, but you can't overlook it,
6 even if they do.

7 The overlooking of the inconvenient,
8 really, I think, reaches its peak, if you will,
9 here in the State's opening statement, where
10 knowing that human bone fragments are found, at
11 least in the burn barrel, a long way from the
12 burn area behind Steve's garage. And maybe, in
13 the quarry, to the south.

14 Knowing, in other words, that their own
15 experts will say, yeah, bones were moved here,
16 the State never tells you in its opening
17 statement, there's a second place, and maybe even
18 a third, where human bone fragments, burnt human
19 bone fragments, are found. And we have no
20 evidence that it's more than one person. You
21 don't get told that, it's inconvenient.

22 But it also is true. And that's why, in
23 the end, it does become so important to decide,
24 burned here and a few moved elsewhere, or burned
25 somewhere else and most of them dumped here,

1 behind Avery's garage. That's why that says so
2 much about his guilt or innocence, in the end.

3 Look, I have got to sit down. Which no
4 defense lawyer ever likes to do because, in the
5 closing argument, because the prosecution gets to
6 stand back up. In a sense, they get the last
7 word, in closing argument.

8 I'm not going to get to answer the
9 passion, or the anger, or the replies that will
10 come, when I sit down. I got to turn him over to
11 you and let them have the last word. And as hard
12 as that is on me, the greater burden is on you.
13 The greater burden is on you. Because you have
14 got to try to do the things you can do here, and
15 you have got to find a way to live with the
16 things you can't do, but would like to do here.

17 You have got the great burden of
18 reaching a just, fair, and conscientious
19 decision. And so, in a sense, I'm -- in a sense
20 I'm going to rely on Judge Willis to give my
21 rebuttal to their rebuttal, in a sense. Because
22 I think he will tell you, when all is said and
23 done, that you won't be swayed by sympathy,
24 prejudice, or passion.

25 And I think that will be an answer to

1 what's about to come. I think he will, Judge
2 Willis will, I think, in the end, tell you,
3 charge you, to be very careful and deliberate --
4 deliberate in weighing the evidence, and to keep
5 your duty steadfastly. And that will be
6 sufficient answer, for me, to what's about to
7 come.

8 So I ask you, please, give it your full
9 and fair consideration. Do that critically here,
10 as citizens of Manitowoc County, where we stayed
11 to pick a jury, where we stayed to pick the 12 of
12 you, the 13 of you. And get it right. Get it
13 right.

14 Steven Avery has not been proved guilty
15 of murdering or mutilating the corpse of Teresa
16 Halbach. He's not been proved guilty of that,
17 beyond a reasonable doubt. It's because he is
18 not guilty. And that's what I'm asking you to
19 say in getting it right.

20 THE COURT: Members of the jury, there
21 is -- as counsel indicated, there's one more
22 argument, the State gets a chance for rebuttal. I'm
23 going to take a 10 minute break at this time, then
24 we'll come back to hear the State's argument and I
25 will give you final instructions.

1 Again, as I reminded you yesterday,
2 because the arguments are not complete yet, do
3 not begin your deliberations until all the
4 arguments have been made and I give you final
5 instructions.

6 (Jury not present.)

7 THE COURT: You may be seated. Counsel, I
8 will see you back at 11.

9 (Recess taken.)

10 (Jury present.)

11 THE COURT: And, Mr. Kratz, you may begin.

12 ATTORNEY KRATZ: Thank you, Judge.

13 This part of the case is the shortest
14 part, that is, the shortest argument, thankfully,
15 but it's also the most difficult, because I have
16 to limit my comments to what the defense has
17 argued. And it's also the part that it's a
18 little bit out of my comfort zone.

19 As you may have noticed throughout this
20 trial, I have tried to be courteous. I have
21 tried to examine witnesses with the fairness, and
22 the dignity, and the respect for which they
23 deserve in the courtroom. I have tried never to
24 cut off a juror (sic). When a juror (sic) wanted
25 to explain an answer, I tried never to say, stop,

1 I don't want to hear it, or the jury doesn't want
2 to hear what the answer might be. And so this
3 argument is different than that. It's
4 necessarily not as civil. It's necessarily not
5 my style, so I want to say that upfront.

6 Highly charged statements have been
7 given by the defense in their closing arguments.
8 And it's my responsibility to meet those,
9 hopefully, with compelling argument, the things
10 that you will find important when dismissing or
11 discarding some of what the defense has tried to
12 have you believe here.

13 I may personally like Mr. Strang, and I
14 may personally like Mr. Buting, but their
15 arguments I most certainly do not like. I think
16 they are unfair. I think they are unfair to you.
17 I think in many instances they have been what's
18 called disingenuous, which means that I don't
19 think that they have been totally truthful. And
20 in all candor towards you, I think they have
21 tried to fool you on a number of occasions.

22 I have got a job to do. I have got a
23 job to do as the lead prosecutor in this case, to
24 make sure that you are not fooled, to make sure
25 that you aren't sold something that isn't true.

1 And that's what this argument is all about.

2 The very first argument that Mr. Strang
3 made in the beginning of his opening statement,
4 he made it again in the beginning of his closing
5 statement, and at the end of his closing
6 statement, referenced the 1985 wrongful
7 conviction of that man, Steven Avery.

8 Steven Avery was wrongfully convicted in
9 1985. We all understand that. We all believe
10 that. But don't one of you consider anything
11 about that case when deciding the facts of Teresa
12 Halbach. Teresa Halbach, the Halbach family, and
13 the interests of justice deserve that you decide
14 it on this case, not on whether or not Mr. Avery
15 deserves some sympathy, or whether or not
16 Mr. Avery deserves to set it right. That's
17 something for civil lawsuits. That's something
18 for other jurisdictions to deal with and to
19 handle.

20 It is absolutely improper for Mr. Strang
21 to ask you to, in any way, consider that 1985
22 lawsuit, when finally coming to a decision in
23 this case, and in Mr. Strang's statement, in his
24 opening statement, to send him home. Sending
25 Mr. Avery home, if that is going to happen, is

1 going to be because the State, the prosecution
2 team, all of the agencies that you heard about,
3 didn't meet its burden, we didn't meet our burden
4 of proof on this case, not because Mr. Avery was
5 convicted in 1985.

6 Let me also suggest to you that any case
7 this big, especially what we have called the
8 largest criminal investigation. I don't know if
9 it is the largest in state history, but it is
10 certainly the largest that anybody that you have
11 heard of has ever talked about. Any case that
12 big, with that many witnesses, and you have just
13 gotten a sliver of the number of witnesses, and a
14 sliver of the number of exhibits that are
15 available in this case.

16 Five or six weeks may seem like a long
17 trial. Let me assure you, it could have been a
18 lot, lot longer, if we would have done the kinds
19 of things that Mr. Strang asked us to do. As an
20 example, if we would have followed every what's
21 called "blind alley", if we would have put in
22 what's called "negative evidence"; that is,
23 eliminate everybody who's not even a suspect in
24 this case, which is what law enforcement did.
25 That's their job. That's law enforcement's job.

1 And then, once we get to the prosecution
2 stage, it is our job to present evidence on who
3 we believe committed the crime. Does everybody
4 understand that? So, if we put in the entire
5 case, if you will, that would certainly be
6 something more than what would be relevant for
7 State of Wisconsin vs. Steven Avery. That's what
8 this case is about, not the '85 case.

9 The very first issue that I want to talk
10 about is perhaps the most problematic for the
11 jurors. I want to address this upfront, because
12 I believe that there were misrepresentations made
13 in the defense closing. I believe they tried to
14 fool you in their closing when they indicate that
15 Mr. Lenk comes in and all of a sudden there's a
16 key there.

17 Well, that's part of the story, and
18 that, of course, is a true statement. But what
19 the defense neglected, in their closing, to tell
20 you, was everything that Sergeant Colborn told
21 you about this particular investigation. I put
22 these two photos up because I'm calling them the
23 before and the after shot. And I put them next
24 to each other for a very, very important reason,
25 because they say a picture states a thousand

1 words.

2 This should do that for you, the before
3 and the after picture. These are taken just a
4 couple of minutes apart from each other, but
5 importantly, they are taken before the search,
6 before what Mr. Colborn talked about, not so
7 gently, or never so gently manipulating the
8 cabinet, and then after that had already been
9 accomplished.

10 A couple of important things to note.
11 First of all, we talked, I think in my closing or
12 in my opening perhaps even, about the slippers,
13 about how you, through your common sense, can
14 reconcile those slippers, that piece of evidence,
15 not just where they are situated with the wall
16 socket there, but you can understand how both
17 this cabinet was pushed to the left, pushing the
18 left slipper over to the left, and pushing the
19 right slipper over and actually flipping the left
20 slipper over. All right.

21 And then after jostling, and after
22 pushing, and after removing all the books, and
23 after Sergeant Colborn talked about putting those
24 books back in, and I want to get a correct
25 verbiage, "handled them none too gently", a key

1 comes out the back end of this particular
2 cabinet. Now, what hasn't been pointed out to
3 you yet, many of you being observant, may have
4 already noticed the before and the after.

5 This is the book that they were talking
6 about, that particular binder that was slammed
7 back into the cabinet. The before picture has
8 the binder virtually adjacent, or next to the
9 cabinet itself. The after picture has it several
10 inches back in. Why is that important? Why does
11 that one fact corroborate or lend credence to
12 Sergeant Colborn?

13 Sergeant Colborn said he slammed that
14 book back, none too gently. You have to kind of
15 envision this cabinet cocked, and the back of the
16 cabinet opened, the book slamming back, and the
17 key falling through that particular cabinet. And
18 so the testimony in connection with all of the
19 physical evidence, and not just what Mr. Strang
20 or Buting might tell you some of the evidence is,
21 where Lieutenant Lenk comes in and says, oh,
22 there's a key, which did happen, but the
23 explanation is absolutely plausible.

24 But more than that, we're going to need
25 to delve into this key and into this planting

1 issue, whether or not the key was planted. Was
2 the key planted. All right. To get to that
3 supposition, or to get to that conclusion, which
4 really is a supposition, because you are going to
5 have to guess, you have to know some things about
6 Sergeant Lenk -- excuse me -- Lieutenant Lenk,
7 and Sergeant Colborn. You have to know if they
8 are good, honest, decent cops, or if they are
9 not.

10 Now, we asked some questions, and you
11 can weigh their credibility. And they both
12 appeared indignant about this. They both
13 appeared upset about even being accused of such a
14 thing. And that demeanor, that credibility, is
15 something that you can and you should take into
16 consideration, in fact, when each of them said
17 absolutely not, absolutely not would I ever plant
18 evidence in this case.

19 But as importantly than that is the lack
20 of evidence. Mr. Strang was allowed, quite
21 properly, to talk about the lack of evidence that
22 the State would have presented. Wouldn't you
23 have expected evidence, is I think the way
24 Mr. Strang had placed it. Well, that works both
25 ways. And subpoena power and power to bring in

1 physical evidence applies equally to the State as
2 it does to the defense.

3 We know that because the defense has
4 subpoenaed some witnesses. They have brought
5 some witnesses in here. They have subpoenaed
6 some documents, and you have seen those
7 subpoenaed documents in this case.

8 Well, don't you think, folks, that if
9 either Sergeant Colborn or Lieutenant Lenk had a
10 pimple, had a blemish on their record for
11 truthfulness, or for honesty, or for planting
12 evidence, or for doing anything that was opposed
13 to the oath that they took to uphold the law in
14 Manitowoc County, don't you think you would have
15 heard about that. Don't you think that those two
16 good lawyers, excellent, in fact, defense
17 attorneys, would have presented that to you.

18 So when Mr. Strang tells you to look at
19 the big picture, and when he talks about, let's
20 see how they acted beforehand, beforehand you
21 didn't hear any evidence at all about Mr. Lenk or
22 Mr. Colborn. That is significant. But as
23 significant is the facts and circumstances
24 surrounding this particular bedroom.

25 And when Mr. Kucharski, Deputy

1 Kucharski, talked about sitting on this bed, and
2 actually facing towards the door, his feet, I
3 think the testimony was, were facing where the
4 key ends up when Lieutenant Lenk exits the room
5 and comes back. Don't you have to kind of ask
6 yourself the question, how did the key get there?

7 If it was planted, how did that key get
8 there? Did Lieutenant Lenk, as he's walking
9 here, throw it? Did he kind of lob it over
10 Mr. Kucharski. Well, that's ridiculous.

11 Absolutely ridiculous. And although all three of
12 these officers, and in fact the prosecution team,
13 would have preferred, obviously, that the key
14 wouldn't have been found in this way, it was.
15 All right.

16 Cases come to you how they are. And
17 again, under the microscope of a case of this
18 magnitude, there is going to be some human
19 factors. And there's going to be some things
20 that you are going to have to wrestle with. And
21 this is one of those things. I'm not going to
22 short change you on that particular case.

23 And you may take a long time in deciding
24 whether or not that key is significant, or
25 whether the key is not significant. But let me

1 ask you, just kind of for the sake of talking, as
2 Mr. Strang wanted to talk with you rather than at
3 you, I certainly have a style that I would prefer
4 that as well. Let's assume they never found the
5 key. Let's assume this key isn't part of this
6 case at all.

7 Let's assume Mr. Strang's theory is
8 correct, that these cops aren't trying to plant
9 an innocent person, but trying to make sure that
10 a guilty person is found guilty. Well, can't you
11 then, with that argument, set the key aside? Do
12 you have the ability, as a jury, to set that key
13 aside, if in fact it doesn't matter whether or
14 not Mr. Avery is guilty or not guilty in this
15 analysis? Can you set that aside and decide is
16 there enough other evidence, or is the key the
17 only thing that points to Mr. Avery?

18 Well, if this was a CSI case, one of
19 those cases on TV where sometimes that key, or
20 sometimes one little piece of evidence like that
21 may decide the guilt or innocence, it would make
22 a difference. But that key, in the big picture,
23 in the big scheme of things here, means very
24 little. All right.

25 Now, I'm telling you that not because I

1 don't want you to consider it, not because I
2 think that it's not important, or not because the
3 credibility of these officers is in question to
4 the State at all. What I am suggesting, though,
5 is that if you buy Mr. Strang's argument, if you
6 buy Mr. Strang's argument that they were trying
7 to make sure that a guilty person was found
8 guilty, then assigning accountability to the
9 murder for Teresa Halbach, shouldn't matter
10 whether or not that key was planted.

11 In other words, it shouldn't matter to
12 the Halbach family. You shouldn't be punishing
13 the police officers, in other words, the other
14 officers that were involved in this
15 investigation, if you come to that conclusion.
16 You are not going to. You are not going to come
17 to that conclusion because you have heard nothing
18 about these police officers that they would do
19 such a thing. But my suggestion is simply not to
20 focus all your attention.

21 In the law, that's called searching for
22 doubt. The Judge has told you, and may even tell
23 you again in your closing instruction, that you
24 are to search for the truth, you are not to
25 search for doubt. In other words, you don't go

1 into this case saying, well, let's look at where
2 all the discrepancies are first. That's the
3 place maybe that we should start, because as my
4 closing argument suggested to you, there's got to
5 be a reason, right. There's got to be a reason
6 that we have been here for five weeks.

7 No, there doesn't. There doesn't have
8 to be a reason why you have been here for five
9 weeks, other than the defendant's constitutional
10 right to a trial. And so the Judge will tell you
11 not to start there. The Judge will tell you not
12 to start at searching for doubt.

13 The Judge will tell you that the whole
14 process, the beginning of the process, the
15 middle, and the end, is to search for the truth.
16 To search for the truth in this case is who
17 killed Teresa Halbach, not whether or not we can
18 find some discrepancies.

19 More about the key. Mr. Buting, I
20 believe it was, had the imagination, let's call
21 it, to suggest to you that maybe officers were
22 taking a toothbrush and were kind of rubbing Mr.
23 Avery's toothbrush on the key and that's how the
24 DNA got on the key. Common sense should tell you
25 that these kind of motions, what are called

1 furtive motions, or for lay people, for people
2 like you, it's called suspicious looking things,
3 is something that you should probably discard.
4 Because if they take Mr. Avery's toothbrush and
5 start rubbing it on the key, you know, and then
6 kind of hold it behind their back, that becomes
7 almost cartoonish, that becomes something that is
8 not at all plausible.

9 But as important, when did that happen,
10 when did they plant the DNA on Mr. Avery's key.
11 Because we're not just talking about planting a
12 key. If it was planting a key, that's damning
13 enough. It's damning enough to have this
14 particular key found in Mr. Avery's bedroom. But
15 what makes it irrefutable is that Mr. Avery's
16 DNA, positive, hundred percent match, is on that
17 key. Right?

18 And you heard the testimony from Ms
19 Culhane, and perhaps others, that the last person
20 to handle a key or an object is most likely to
21 leave the DNA on the key. Now, Mr. Strang and
22 Mr. Buting have asked you to just discard that,
23 ignore it, ignore that expert opinion. I don't
24 know why they are asking you to do that, because
25 it doesn't fit with their theory of defense. But

1 it's the DNA on the key that has to be planted
2 too. Please understand that. It's not just
3 planting the key, it's planting the DNI -- the
4 DNA on the key as well.

5 If they planted the key, where did they
6 get the key? Now, that leads to an interesting
7 series of questions as well. There are only two
8 ways that law enforcement can get this key. All
9 right. Because the vehicle was locked, and
10 because on the 5th of November officers don't
11 really have access, as you have seen by the scene
12 security. They had to have access to the key
13 before the 5th.

14 And so there's only two ways to do that.
15 One, they can kind of stumble across it in a
16 scenario that Mr. Strang suggests, maybe off duty
17 or something like that. Or the last person to
18 hold that key, other than Teresa Halbach, is the
19 person who killed her.

20 Now, you heard that testimony in this
21 case. It may have drawn an objection, I don't
22 remember right now, use your own collective
23 knowledge as to whether it did. But that makes
24 sense, that the last person, other than Teresa,
25 to hold this key, is the person who killed her.

1 And if that's the case, then you hold these two
2 gentlemen responsible for suggesting that to you.

3 In other words, despite Mr. Buting
4 standing up here, I think it was the beginning of
5 yesterday, saying, look, folks, we're not saying
6 that the cops killed Teresa Halbach, what we're
7 saying is that somebody else, I think his words
8 were, "skillfully exploited law enforcement
9 bias", as if there's somebody smart enough out
10 there that could do that. We're going to talk
11 about that in just a minute.

12 But when you go down one layer, when you
13 scrape one layer of this manure off of the
14 topsoil, which is what it is, you scrape one
15 layer, you will realize that the cops had to kill
16 her. The cops had to be involved in killing
17 Teresa Halbach.

18 Now, are you prepared to say that? Are
19 you, as the jury, in order to find Mr. Avery not
20 guilty, willing to say that your cops, that your
21 Manitowoc County Sheriff's deputies, Lieutenant
22 Lenk, Sergeant Colborn, because of Mr. Avery's
23 lawsuit, that Sergeant Colborn and Lieutenant
24 Lenk didn't have a dime of stake in, at least
25 financially, that they weren't involved in in

1 1985, that they gave a deposition in about
2 receiving a phone call and transferring the phone
3 call, and that's the extent to it, but because of
4 that involvement, are you willing to say that
5 these two otherwise honest cops came across a 25
6 year old photographer, killed her, mutilated her,
7 burned her bones, all to set up and to frame
8 Mr. Avery. You have got to be willing to say
9 that. You have got to make that leap. Because
10 of this question right there, where did they get
11 the key.

12 The key isn't alone. The key is
13 attached, at least at some point, to something
14 called a lanyard, something that's around the
15 neck, similar to what you all are wearing as
16 juror badges. We know that that comes from Katie
17 Halbach. We know that that is found inside of
18 Teresa's SUV. And so where one is the other one
19 is. All right.

20 So I hope that makes sense. I hope you
21 understand that, at least for the first time in
22 my rebuttal, I'm going to be suggesting that you
23 dig down that one further step and understand
24 exactly what these two gentlemen are suggesting
25 to you. Despite Mr. Buting trying to sell you on

1 the fact that we're not saying the cops did it,
2 that's exactly what they are saying. That's
3 exactly what they are arguing to you, and you
4 have to be prepared to go there.

5 The next time that Mr. Buting tried to
6 fool you was when he told you that the police
7 never checked out other suspects in this case.
8 Well, you heard from Mr. Wiegert, you heard from
9 Mr. Fassbender, more particularly, that other
10 suspects were checked out. But let's think about
11 other suspects. Who were the other suspects in
12 this case? Where was the evidence pointing so
13 strongly, other than to Mr. Avery? Where was it?
14 Where was the evidence pointing?

15 Well, one choice was, Mr. Schmitz was
16 one of the people that saw Ms Halbach. Mr.
17 Schmitz, as you heard, was interviewed, was
18 checked out, but guess what, folks, Teresa
19 Halbach left that photo shoot alive. That kind
20 of eliminates Mr. Schmitz, doesn't it, from being
21 a suspect in this case.

22 Number two, was JoEllen Zipperer. And
23 although a nice little old lady like that
24 probably could have killed and mutilated Teresa
25 Halbach, guess what, folks, Teresa Halbach left

1 Mrs. Zipperer alive at about 2:27 p.m.

2 The third suspect then, or the third
3 logical person, was Mr. Avery, that's the third
4 customer that Teresa sees that day. That's the
5 only person that Teresa Halbach doesn't leave
6 alive, or at least isn't seen alive, after
7 meeting with Mr. Avery. So Schmitz and Zipperer
8 can be and were, early on, I will admit that,
9 were early on, eliminated as suspects in the
10 case.

11 As the case develops though, you heard
12 from Mr. Fassbender, that all the clues started
13 pointing towards one person. All right. So when
14 we talk about roommates and we talk about old
15 boyfriends, what you would think about as typical
16 suspects that may in fact be investigated,
17 doesn't make a whole lot of sense in devoting a
18 lot of resources in investigating those people
19 when the car is found in a different location.
20 When blood is found in that car, that turns out
21 to be that of Mr. Avery.

22 But I guess most importantly, when the
23 bones of the victim are found 20 feet or so
24 behind the property belonging to Mr. Avery, you
25 stop looking. You stop looking for people like

1 boyfriends, or other customers, or this kind of a
2 search. And you narrow it to who had access to
3 Teresa Halbach at that particular time. So it's
4 disingenuous, it's what I'm calling fooling you,
5 to suggest that other suspects in this case were
6 not ever checked out.

7 Mr. Strang talked about this phone call.
8 Now, this is going to take a really, really good
9 memory. And I hope one of you, and the 12 of you
10 collectively, we call it collective memory, which
11 means that when you deliberate in this case you
12 can talk about those kinds of -- those kinds of
13 things. When Mr. Strang first played this, or
14 attempted to play this particular tape, for
15 Mr. Colborn, I wonder if anybody remembers the
16 very next thing that happened.

17 I raised my hand and I said, objection,
18 your Honor. I said, I want some authentication.
19 Before Mr. Strang can play this tape, I objected
20 and said, I want to know the date and the time of
21 the tape. Because it's unfair to play this tape
22 for the jury without telling them the date and
23 the time that it's played. All right.

24 So it's foreseeing this very argument
25 that Mr. Strang made about a half an hour ago, or

1 an hour ago; that is, the tape could have been
2 the 3rd, but I think it was the 4th. Okay.
3 That's what Mr. Strang said to you, that
4 Mr. Colborn, the answer by Mr. Colborn was it was
5 on the third, but I think it was the 4th.

6 What the heck do I care, Mr. Strang,
7 what you think. What do I care if you think that
8 it was the 4th, or that it fits into your theory
9 of defense. This case is about evidence. It's
10 not about what Mr. Strang thinks. The answer
11 given on the witness stand was, it was the 3rd,
12 while on duty.

13 And the explanation about why it was a
14 phone call rather than a radio transmission, or a
15 dispatch kind of call, is because Mr. Wiegert had
16 called Mr. Colborn, if you remember, on the
17 phone. All right. He called him on the phone
18 and said can you check this out.

19 So in turn, Mr. Colborn called dispatch
20 and said I want to verify this particular plate.
21 Nothing sinister about that. Nothing unusual
22 about that. This isn't a traffic stop. It's not
23 a stop where you would radio it in, where your
24 time and your date become important and you want
25 to log in that kind of thing. It's not a traffic

1 stop at all. It's simply verifying Mr. Wiegert's
2 information, verifying the year, the license
3 plate, the make and model of the vehicle, nothing
4 sinister.

5 Now, I'm going to ask you to reject what
6 Mr. Strang said because that's not evidence. In
7 fact, what I'm saying to you right now is not
8 evidence. Evidence comes from the witness stand.
9 All right.

10 The answer to that question was the 3rd
11 of November. That is important. It's important
12 whether it was the 3rd, or whether it was the
13 4th. Now, when Mr. Strang answered my objection
14 by saying, well, we'll let the witness tell the
15 jury when it is. And the Judge allowed that, and
16 the witness did tell the jury when that was, that
17 it was the 3rd.

18 Mr. Strang still today, still today,
19 fools you, and stands before you and says, don't
20 believe Mr. Colborn, I think it was the 4th. All
21 right. That's the difference between evidence
22 and speculation. That's the difference between
23 the State's case and what the defense is trying
24 to sell you in their arguments.

25 Bones were moved in this case. There's

1 no question of that. Who moved the bones, to the
2 State, or for the theory of the prosecution is
3 easy. Mr. Avery moved the bones. He moved the
4 big bones. He moved the big bones, the ones he
5 could identify as human bones, from his burn pit,
6 over to his sister's burn barrel. All right.
7 That's a couple hundred feet away.

8 If you think about the selfishness
9 involved in that particular act, that I think
10 is -- is one factor. But I guess more
11 importantly is directing attention away from
12 himself. Might be that first night, might be the
13 31st, might be the 1st or the 2nd, because he has
14 got a couple of days, as it turns out, before the
15 police officers actually start the investigation.

16 But let's also remember this,
17 collectively, I want the 12 of you to remember
18 this when you deliberate. I want at least one of
19 you to say this when you are back in the jury
20 room. Although now we know that the cops didn't
21 get the search warrant, and they didn't come on
22 the property until the 5th of November, okay. We
23 know that now. Steven Avery didn't know that.

24 Steven Avery didn't know that Teresa
25 Halbach wasn't going to be reported missing until

1 the third, or that the flyover search wasn't
2 going to find the car, or that Ms Sturm even was
3 going to find the car on the 5th. For all Steven
4 Avery knows, the cops are on their way. Right
5 away. On their way, right away, the afternoon,
6 the late afternoon or early evening of the 31st.

7 Why is that important? Because as it
8 goes through some of this evidence and your
9 collective memories, and as you deliberate this
10 case, please remember that. Because there are
11 things that Mr. Avery does that the defense is
12 saying, well, why would he do all of those kind
13 of things.

14 Mr. Avery did all of those things on the
15 31st because he didn't know that the cops weren't
16 going to be knocking on his door, that very
17 night. They didn't know that -- Mr. Avery didn't
18 know that Teresa wasn't meeting a friend for
19 dinner, or that she wasn't going to be missed, or
20 that she didn't have another appointment, after
21 she was killed by Mr. Avery.

22 And so that's why he starts burning
23 things right away. That's why at 3:45 the
24 electronics are already being burned. That's
25 why, as we will be arguing and showing you,

1 Mr. Avery disposes of the body at the earliest
2 possible moment, that he moves the SUV at the
3 earliest possible moment, that he removes the
4 license plates.

5 He does all of those things, again, with
6 the benefit, as you saw in the photograph that
7 Mr. Remiker put in, of a police scanner, that's
8 inside and on top of the bar in Mr. Avery's. The
9 police scanner, so that Mr. Avery can hear, are
10 the cops on their way. Which, again, should
11 bolster, or should tell you why Sergeant Colborn
12 uses the telephone rather than using the radio,
13 it's because of things just like that, things
14 like officer's safety. But, again, I'm advancing
15 a little bit, and I want to make sure that I get
16 to those points.

17 The bones were moved, but they were
18 moved by Mr. Avery. These bones in the quarry,
19 I'm going to take about 20 seconds to talk about,
20 because the best anybody can say is that they are
21 possible human. What does possible human mean?
22 Well, it means we don't know what it is. All
23 right.

24 The best anthropologists in the world
25 don't know what these bones are. Dr. Eisenberg

1 didn't know what they were. Dr. Fairgrieve
2 didn't know what they were, he agreed with that.

3 And you heard a stipulation being read
4 to you by a person by the name of Les McCurdy.
5 Stipulation just means an agreement between the
6 parties, that these bones, we felt it important
7 enough, were sent out to the FBI. And Les
8 McCurdy from the FBI determined that these bones
9 were so degraded, that they were in such a shape
10 that even through testing, what's called
11 mitochondrial DNA testing, whether they are human
12 or not, could not, even by the FBI, be
13 determined.

14 So the bones in the quarry are really
15 not evidence in this case. And so Mr. Strang has
16 made a big deal out of showing you maps, and a
17 little flag, and things like that about a
18 possible bones. Again, speculation, conjecture,
19 is not part of this case. Facts are going to be
20 what decides this case.

21 ATTORNEY STRANG: Your Honor, I'm going to
22 interpose an objection. Like the 1985 case, there
23 is evidence here concerning the bones from the
24 quarry, possible human bones. It is proper for any
25 lawyer to argue all of the evidence, or any of the

1 evidence, in the case, including the 1985 case, or
2 the quarry bones, and I would like the jury so
3 instructed.

4 THE COURT: What I will instruct the jurors
5 is, remind you again, what you are hearing at this
6 time are arguments, not evidence. Your job, when
7 you are deliberating, is to remember the evidence as
8 it's been submitted, and draw your own conclusions
9 from that evidence. Mr. Kratz, you may proceed.

10 ATTORNEY KRATZ: Thank you, Judge.

11 The primary burn site, that is, where
12 the bones started burning, are important in a
13 sense and they are not important in a sense. All
14 right. It seems obvious what the answer is, but
15 if, again, you drag that first layer off of the
16 defense argument, it isn't going to make any
17 difference. But, of course, the primary burn
18 location is in Mr. Avery's pit. This is the
19 primary burn location.

20 And why do we say that? Dr. Fairgrieve,
21 I'm going to start from the other side,
22 Dr. Fairgrieve, the defense expert in this case,
23 said that he's had a case where bones were moved
24 from one location to the other, and that in that
25 case the bones moved to -- to the location had

1 more bones than were actually there. But what
2 Dr. Fairgrieve didn't do, and what he doesn't
3 know, are all the things that Dr. Eisenberg did,
4 and all the things that Dr. Eisenberg knows.

5 Dr. Eisenberg, of course, looked at the
6 bones. I guess that's the most important factor.
7 But this is one of those things that's common
8 sense. This is one of those things that
9 shouldn't take you a long time collectively.
10 Shouldn't take the 12 of you very long to decide
11 where the primary burn location is. It is the
12 pit. It's not most likely the burn pit, it is
13 this location.

14 How do we know that? Well, Teresa was
15 invited, or lured, whatever term you want to use,
16 on to that property. Her vehicle is there.
17 That's the last place that she is seen alive, is
18 just several feet from this location. Her burned
19 affects are on that particular property, just a
20 few feet away. Importantly though, her bone, her
21 tissue, especially her skull fragments, all of
22 them, all of them, are in this location.

23 Her clothes are there, at least what's
24 left of her clothes, are mixed in with those
25 bones, the rivets for her jeans are there. And

1 common sense, her bones and her jeans are in the
2 same place, because she's burned their. She's
3 burned in that location.

4 She was called there by Mr. Avery. And
5 the number one, if we're doing -- I'm going to
6 switch them around. The number one reason why
7 this is the primary burn location is that on
8 October 31st, Mr. Avery had a big whopping fire
9 there, on the 31st of October. And we haven't
10 heard any evidence of a big whopping fire, the
11 kind that would consume, fully consume a human
12 body, anywhere else on that property. That's the
13 primary burn location, ladies and gentlemen. You
14 can find that, and you should find that, beyond a
15 reasonable doubt. That shouldn't be a question
16 for you.

17 Mr. Buting said that there were no
18 fingerprints found on the SUV. I will just,
19 again, in 20 seconds, tell you that the
20 testimony, that perhaps Mr. Buting is ignoring,
21 from Mr. Riddle, or at least didn't tell you
22 about, from Mr. Riddle, the fingerprint guy, was
23 that of the eight latent prints that were lifted
24 in the case, none of them were suitable for
25 identification. All right.

1 So what Mr. Riddle also told you is
2 that, if you took your hand right now and placed
3 it onto an object, it's very likely that you
4 wouldn't leave fingerprints. That's why DNA
5 evidence is so much more powerful than
6 fingerprint evidence, at least nowadays, because
7 of those dynamics that are involved. Because of
8 the amount of sweat in your hands, and the oils,
9 and all of those kind of things, all are called
10 into question. I just mention that because I am
11 obligated to because Mr. Buting had mentioned
12 that.

13 They also, they meaning the defense,
14 talked about Teresa's body in the SUV. Once
15 again, expert testimony was that a 5 foot 6 inch
16 person could, in fact, fit in this particular
17 compartment of the RAV 4. And I guess you need
18 look no further than this area, the stamp, as I
19 talked about, the hair impression 25 year old
20 Teresa has left in that location. You can almost
21 see Teresa being pushed in, or shoved in, or
22 stuck in that location, which brings me, or will
23 bring me, to a point in just a moment.

24 Mr. Strang -- excuse me -- Mr. Buting,
25 actually asked you whether or not it would be

1 reasonable for police, by use of flashlights, to
2 see the stain that was by the ignition. When I
3 heard that I just about dropped my pen. All
4 right. There's the location, and that's the
5 stain that Mr. Buting is saying, why didn't the
6 cops see this.

7 Somebody want to tell me where a
8 flashlight has to be shined -- shown, from the
9 outside, to see that stain. You can see that
10 through the front window? You can see that
11 through one of the side windows? Are you going
12 to see that through the very back? Where are you
13 going to shine a flashlight that you are going to
14 be able to see that particular stain. All right.
15 That's disingenuous. It's the kind of argument
16 that you should be discarding, that you should be
17 saying it doesn't make any sense at all.

18 Mr. Buting also asked, well, if this
19 piece of evidence is -- excuse me -- if the
20 cabinet, the bookcase, is so important, why
21 didn't the State bring it into the courtroom. I
22 mentioned before, I think it's obvious, the State
23 doesn't have exclusive control over any evidence
24 in this particular case, at least as is presented
25 in court. The defense has just as much right to

1 bring that up here as the State did. All right.

2 We have taken photos, and I'm not going
3 to apologize for that. I'm not going to
4 apologize for what Mr. Buting calls my slick
5 PowerPoints. My God, a second grader can do a
6 PowerPoint examination. And the fact that
7 Mr. Buting wants to fumble around, he can do
8 that. I'm not going to do that to the jury.

9 But what we did do, is we took
10 photographs of all of the evidence to make it
11 easier to present, so that you could see all the
12 evidence. We brought in boxes of items like the
13 Palm Zire palm pilot box. We have the item
14 itself, but we also have a picture of it. We
15 have a picture of everything, as you have seen.
16 And so we're using pictures instead of the thing
17 itself.

18 And you can see, and at least
19 understand, with big clumsy kinds of items, the
20 reasons that we're doing that, for ease for the
21 jury. So that you can see big things, and you
22 can see small things, so we can zoom into areas,
23 and sometimes we don't need to do that.

24 Defense also suggested that there was no
25 blood on the CD case. Are you kidding me?

1 Mr. Buting may have showed you a picture, and I
2 didn't know where he got his picture from, but
3 the blood is obvious on the CD case. By the way,
4 I believe you are going to be getting the
5 photographs back into the jury room. That's
6 something the Judge will decide, not me. But you
7 can look at the picture itself and determine
8 whether or not there is blood on the CD case.
9 Again, another example of being disingenuous,
10 another example of trying to fool you.

11 Next time this happened in Mr. Buting's
12 argument yesterday was when he talked about this
13 stain, on the bathroom floor. Mr. Buting
14 actually walked up to this particular exhibit and
15 said, well, it looks like somebody took a Q-tip
16 and put it right into that sample of blood.
17 Which you heard some of the blood from
18 Mr. Avery's bathroom was analyzed, that it was in
19 fact Mr. Avery's blood, there isn't any question
20 about that.

21 But what Mr. Buting didn't tell you,
22 and what you heard testimony of, is when this
23 blood sample was collected. Do you remember? Do
24 you remember when this blood sample was
25 collected? Remember Detective Remiker and

1 Mr. Tyson, on the first night, talking about
2 going through the entire trailer and collecting
3 all the blood, and that they finished sometime
4 after 10:00 p.m., as it was approaching
5 11:00 p.m., it was pouring rain outside. You all
6 remember that, you remember that from the 5th of
7 November.

8 Mr. Buting is trying to sell you, he is
9 trying to fool you into thinking that maybe this
10 is the source of the blood in the SUV. Folks,
11 the SUV was already in an enclosed and locked
12 trailer, on its way to Madison, with Crime Lab
13 personnel and law enforcement personnel all
14 surrounding it.

15 To suggest to you that this might be the
16 source of any of all of that blood that you saw
17 in the SUV is, again, disingenuous. It's trying
18 to fool you. And it's my job, as the prosecutor,
19 to point those things out to you. It's my job to
20 show you just how absurd and ridiculous some of
21 those arguments are.

22 Mr. Buting then talked about the bullet,
23 and about the DNA, and suggested that, well, they
24 are both in the same room with Sherry Culhane, Ms
25 Culhane, the analyst in this particular case.

1 What Mr. Buting doesn't tell you, though, doesn't
2 remind you, though, when Mr. Gahn made this point
3 very clear, because of what's called the
4 contamination issue with the bullet in this case,
5 is that the extract for a sample of evidence is
6 done separately, and at a separate time than the
7 extract or the control is done.

8 Remember Ms Culhane telling you that the
9 samples are locked away in a cabinet. She was
10 talking about her bench, and how it's cleaned
11 off, and those kind of things. And I don't know
12 if Mr. Buting, I suspect he wants you to believe,
13 if you remember collectively, if you remember
14 about Ms Culhane, if he's suggesting that the Pap
15 smear, or the DNA from Teresa Halbach, somehow
16 got out of the sealed envelope that it was in,
17 the standard, somehow maybe walked across her
18 desk, somehow it jumped into the vial, or onto
19 the bullet. And that's the kind of thing that
20 Mr. Buting wants you to believe. That's
21 disingenuous, doesn't happen that way.

22 Mr. Gahn knew that was an important
23 point and he took time, meticulous time with Ms
24 Culhane, to explain that process for you. It's
25 Teresa Halbach's DNA on that bullet because,

1 unfortunately, it went through her body. Not
2 because the DNA from her Pap smear or from other
3 standard that was within the Crime Lab somehow
4 transmitted itself or made its way onto that
5 bullet.

6 There are areas of agreement and this
7 is, I guess, a positive part of the trial. There
8 are some areas of agreement between expert
9 witnesses in this case. Ms Arvizu, and I'm so
10 happy that Mr. Strang cleared that up, it's not
11 Dr. Arvizu. Mr. Strang called it a mistake that
12 Mr. Buting made, calling her, or raising her to
13 the level of doctor. She doesn't have her Ph.D.,
14 like Dr. LeBeau does, the Ph.D., the head of the
15 toxicology unit at the FBI lab.

16 But Ms Arvizu, even the defense expert
17 conceded on cross-examination, from Mr. Gahn, a
18 couple of things. Number one, that a qualitative
19 procedure is a solid scientific procedure. Don't
20 have to do quantitative. In fact, in this case,
21 when there's nothing there; in other words, when
22 three of the samples don't have any EDTA, you
23 can't quantitate it. How do you quantitate
24 nothing? All right. You can't do that.

25 And so for your purposes, when these

1 tests had to be done at the last minute, you
2 heard why, you heard why we didn't get these to
3 the FBI until the last minute. You heard from
4 Mr. Wiegert, that Mr. Wiegert and the State
5 didn't even know about this vial of blood until
6 sometime in December. And you heard that on
7 February 5th, the 5th of February, when you were
8 being selected is when this was sent out to the
9 FBI.

10 Back to Ms Arvizu, though, she
11 recognized that the protocol that was developed
12 was a good protocol, that it was based upon
13 scientific articles, that Dr. LeBeau had made,
14 what she called, significant improvements to any
15 prior protocols that the FBI had done, based upon
16 those articles, and was no question at all that
17 Dr. LeBeau was able to find several things.

18 First of all, that there was EDTA in the
19 vial of blood. Number two, that there was no
20 detectable EDTA on the three blood samples. Now
21 what Ms Arvizu did have some concern was about is
22 that this expert only tested three of the
23 samples. All right. Three of the swabs that --
24 that we're talking about. And I think -- I don't
25 think that's the next slide, it is not. I will

1 show those in just a minute, when we get to the
2 EDTA part of this case. But there wasn't any
3 question that EDTA was present in the vial and no
4 EDTA was detectable on the samples.

5 We also heard agreement between
6 Dr. Fairgrieve and Dr. Eisenberg. The agreement
7 that we have heard. In fact, we liked
8 Dr. Fairgrieve very much, from Canada, and
9 although he is not board certified, you should
10 not hold that against him. Dr. Eisenberg is, and
11 that is only a handful of anthropologists that
12 reach that level. But we actually thought
13 Dr. Fairgrieve was a very, very nice man and a
14 very good expert.

15 And he testifies mostly for -- in
16 Canada, for -- for the prosecution. And I
17 suspect that's why he conceded several things
18 about his colleague, Dr. Eisenberg. First of
19 all, that the gunshot wounds were present. That
20 there were gunshot wounds that were found in this
21 case, two of them, one in the left parietal, one
22 in the occipital region.

23 He called them peri-mortem, meaning that
24 they were about or around the time of death. He
25 agreed that there was only one person, the bones

1 of one person that we're talking about, which
2 makes sense, and that the gunshot wounds were
3 inflicted in this case before this burning
4 process. All right. So Dr. Fairgrieve and
5 Dr. Eisenberg had many -- and other than the
6 primary burn site, which Dr. Eisenberg rendered
7 an opinion about, and Dr. Fairgrieve was
8 unwilling to do that -- most other areas were, in
9 fact, something that -- that they had agreed
10 upon.

11 Judge, should we take just a couple
12 minutes for a stretch break?

13 THE COURT: Very well, we can do that.

14 ATTORNEY KRATZ: I know it's been about 45,
15 50 minutes. Let's do that and then I will conclude
16 my remarks.

17 THE COURT: Let's take five minutes, at the
18 request of one of the jurors.

19 ATTORNEY KRATZ: We'll do that judge.

20 (Recess taken.)

21 (Jury present.)

22 THE COURT: Mr. Kratz, you may continue.

23 ATTORNEY KRATZ: I appreciate it, Judge,
24 thank you.

25 Defense argued that there was no blood

1 found in the trailer. Since Teresa wasn't killed
2 in the trailer, there shouldn't be. But what was
3 found in the trailer is extremely important.
4 Remember the testimony early on in this case,
5 that on the 5th, on the very first search of
6 Mr. Avery's trailer, they found the very same
7 *Auto Trader Magazine*, the very same type of bill
8 of sale that we put in this exhibit, that's from
9 Mrs. Zipperer, the very same *Auto Trader*
10 *Magazine*, very same bill of sale. Teresa was in
11 that trailer. She was in the trailer, but she
12 was not killed in that trailer.

13 Defense has a hard decision to make
14 regarding Ms Culhane, is she competent, or is she
15 incompetent. And you guys already know why that
16 question has arisen and why it is such a pointed
17 question. Because if she's talented enough with
18 one hair, with one piece of evidence, to
19 exonerate Mr. Avery, why isn't she talented
20 enough with 180 items of physical evidence to
21 contribute to his conviction.

22 So it's a hard argument to make that in
23 one case, and in one circumstance, a couple years
24 ago, she was very talented, she knew exactly what
25 she was doing, but all of a sudden, she's

1 bumbling, some mill worker, some person on a line
2 type person, who really doesn't have any
3 expertise. Well, you don't get it both ways.
4 She's either talented, she either knows what
5 she's doing, as the head of the DNA Unit at the
6 Madison Crime Lab, or she's incompetent.

7 You already know the State's opinion
8 regarding Ms Culhane. We have heard a lot about
9 the Crime Lab Contamination Logs, 89 out of the
10 50,000 or so cases. I will let you guys do the
11 math, as far as what the rate of error, or the
12 contamination rate is.

13 Mr. Buting mentioned yesterday that
14 perhaps the hood latch, perhaps the DNA that is
15 found here was caused by that of Mr. Stahlke,
16 because Mr. Stahlke reached up under and opened
17 up and found that the battery cable was
18 disconnected. Well, so what. Mr. Stahlke talked
19 about he was rummaging around, he was actually
20 touching all kinds of DNA and touching all kinds
21 of blood, or any of those kind of things?
22 Absolutely not.

23 These are professionals. These are
24 people that process evidence for a living.
25 Mr. Stahlke had gloves on when he opened -- latex

1 gloves when he opened this particular vehicle.
2 So it is not Mr. Stahlke's, it was Mr. Avery's
3 DNA that is on the hood latch.

4 Now, the defense also asked why would
5 Mr. Avery disconnect the battery. You heard them
6 asking for speculation, guessing why Mr. Avery
7 would disconnect a battery. I have got an answer
8 and I'm going to tell you right now, right now,
9 that this is speculation. This is guessing. All
10 right. This isn't evidence. It's not even close
11 to it. It's kind of what the defense has been
12 doing through at least their closing arguments.

13 But I am going to speculate and I'm
14 going to guess that a man who hid the SUV and
15 knew that people were going to come looking for
16 that SUV, thought a little bit ahead, not just to
17 crush the car, and taking -- or in unhooking the
18 battery. But when citizen searchers looked at
19 40 acres of cars, and they looked and they go,
20 oh, my goodness gracious, how am I going to find
21 that. Mr. Avery may have thought about those
22 little devices that most of us have on our newer
23 cars. Where we're able to press a button and our
24 lights go on, or an alarm goes on, or something
25 flashes, where you can find your car in a parking

1 lot, if you are like me sometimes and I forget
2 where I have parked my car.

3 Is that why Mr. Avery unhooked the
4 battery, so that the citizen searchers that he
5 knew were coming couldn't just press a button and
6 of the 40,000 (sic) cars, could walk right to
7 that. That's possible. All right. That's an
8 inference, a logical inference, that could be
9 drawn. But that's speculating, and that's not
10 what I'm going to do. That's not what I'm asking
11 you to do. I'm not asking you at all in this
12 case to speculate. I'm simply answering
13 Mr. Buting's question.

14 Where was Teresa killed. This is a easy
15 answer, or at least it is an answer that is
16 directed by all of the physical evidence in this
17 case. Teresa Halbach, as we know, came to the
18 trailer of Steven Avery. We know that they
19 completed their transaction. How do we know
20 that, because the book and the bill of sale was
21 given to Mr. Avery. That's something that, as
22 you heard, happens at the end of the transaction.
23 That's sitting on Mr. Avery's computer desk.

24 We know sometime later, that is, we know
25 sometime in the future, a bullet is found in this

1 exact area, has Teresa Halbach's DNA on it. All
2 right. The inference, and this is an inference
3 that I'm asking you to draw, is that Teresa
4 Halbach was killed in the garage. She was killed
5 in Steven Avery's garage.

6 Now, we have heard testimony about
7 luminal finding blood, that is a reagent, a
8 chemical that is used by the Crime Lab is spread
9 out. There's two things that are most reactive
10 with luminal, one is human blood and the other is
11 bleach. Bleach coincidentally is the one thing
12 that eats up or destroys DNA.

13 We have heard about just to the left and
14 just to the back of this tractor, about a three
15 to 4 foot area, large area that lit up or glowed
16 very brightly. Mr. Ertl testified about that.
17 He was the person who processed that area. I'm
18 asking you to infer that Mr. Avery cleaned up
19 this area with bleach.

20 Now, you knew that inference, or that
21 suggestion from the State, I think, was coming.
22 We have put in the bleach. We have talked about
23 the luminal. We have gotten expert testimony
24 from Mr. Ertl that the two things that light up,
25 it wasn't blood, but it was, in fact, bleach.

1 You heard from Blaine Dassey,
2 importantly, that the garage, other than the junk
3 on the surrounding edges of this garage, looked
4 pretty much like this, from the sense of the
5 Suzuki and the snowmobile, which were in there
6 later on that week, were on the side of the
7 garage at the time. So Teresa Halbach's vehicle
8 is backed in, backed into the garage.

9 Teresa Halbach is killed. She's laying
10 down. She's shot twice, once in the left side of
11 her head, once in the back of her head, or I
12 guess I should more accurately say she's shot at
13 least twice. Because two bullet's were found,
14 two entrance wounds were found to her head. We
15 do have the 11 shell casings on the 6th that were
16 recovered. How many times Mr. Avery actually
17 shot this poor girl, you probably aren't going to
18 be able to determine, but it's at least twice,
19 and it's at least twice to the head.

20 What does he do though, later, with
21 Teresa Halbach. It's the State's theory in this
22 case, and we're entitled to a theory, just like
23 the defense, that after backing in the SUV, into
24 the garage, which was, again, empty at the time,
25 after closing the garage door, which Mr. Fabian

1 testified is how he saw it at around dusk,
2 Mr. Avery does a couple of things.

3 Remember he doesn't know if the cops or
4 somebody is coming looking for Teresa. He has
5 got lots to do. He has got lots of things in the
6 next several hours to do in this case. He has to
7 get rid of all of Teresa's stuff, her camera, her
8 cell phone, her PDA, which very well may be in a
9 purse or something, in the vehicle, which he
10 burns. We know that those are in the burn
11 barrel. We're going to talk about that in just a
12 minute.

13 And he places Teresa Halbach in the
14 back, or the cargo area of her own SUV. Now, in
15 doing that, Mr. Avery does a couple of things.
16 He doesn't do it very gently, because we know
17 that there's motion involved. He throws, if you
18 will, Teresa, in the back, because of the blood
19 spatter across the back of the open gate. But
20 Teresa is laying at rest; she is resting at
21 peace, having been killed by Mr. Avery, kind of
22 diagonally in the back of that SUV.

23 And because of her hair imprint, you are
24 able to deduce that. You are able to know that.
25 Again, remember my closing argument, those are

1 more indications of Teresa telling you this is
2 where I was. All right. This is where he put
3 me. And those are inferences, again, that you
4 should and can adopt. Why, because it's not dark
5 yet, and he needs a big rip roaring fire before
6 he can dispose of and mutilate this body.

7 Again, he has got to do all of this
8 stuff quickly, because he doesn't know if the
9 police are coming. So we hear then, at at least
10 7:30, perhaps before then, but at 7:30 there's
11 already a fire, a big fire in the back. Although
12 it's dark out, there's a big fire in the back of
13 his garage. And we'll talk about some of the
14 more details there. But as long as Mr. Buting
15 asked about the theory of prosecution, again,
16 which we are entitled, that is, in fact, the
17 theory of the State's prosecution.

18 Mr. Buting then asked, why would you
19 build a fire when you have a smelter. The
20 smelter, as we know, or at least this is from the
21 top of the smelter, which kind of melts aluminum
22 as I understand it, is, if you heard the
23 testimony, or if you saw the business buildings,
24 the out buildings, much closer to the residences
25 of the parents, of Delores and Allen. Much

1 closer to the residence of Charles Avery, the
2 brother. Early on in this case we identified
3 what all those buildings were and what were in
4 all of those separate buildings.

5 But what Mr. Avery had to do required
6 some alone time. Mr. Avery needed some privacy.
7 And so Mr. Avery chose his burn area. He chose
8 the place where somebody wouldn't happen upon
9 him, or ask him what he was doing. He was
10 building a fire like he had done many times
11 before.

12 It's an area over which he had control.
13 No other family members would be. And,
14 importantly, Mr. Pevytoe, the arson investigator,
15 remember he went through the smelter, eliminates
16 the smelter as a possible burn location for the
17 body.

18 Mr. Buting asked yesterday did we
19 confuse Lisa Buchner in the case. When she
20 originally testified, Mr. Strang, I believe,
21 questioned her. Mr. Strang provided the answer.
22 Again, this takes a good memory. This takes a
23 lot of you to remember Lisa Buchner's question
24 and answer. But the question was that -- I'm
25 paraphrasing but -- directing your attention to

1 the 31st of October, what did you see? Well,
2 what that does, when you ask a question like
3 that, as a skilled lawyer, and Mr. Strang
4 certainly is a skilled lawyer, Mr. Strang can
5 then come up here and can say, well, she said it
6 was the 31st of October.

7 But she didn't, did she. She never said
8 that it was the 31st of October. When
9 questioned, very courteously by Mr. Gahn, again,
10 about what date really was it, she said, I don't
11 know. When Mr. Gahn asked her, where was the
12 location, that she was clear about. Wasn't down
13 by Mr. Avery's trailer at all. It was one of
14 these cars that's parked at the corner that are
15 for sale.

16 Well, importantly, that excludes,
17 excludes, Teresa Halbach as the person taking
18 this picture. Not only is the time wrong,
19 because we have Bobby Dassey who doesn't have any
20 questions about what this person looks like, or
21 the time this happened, or that it was before he
22 went deer hunting and knew and was able to
23 recognize that that was Teresa Halbach.

24 But we have the defense own witness
25 saying, I don't know. I don't know the date that

1 this happened. Could have been the 1st, could
2 have been the 2nd. Mr. Gahn said, could it have
3 been a week ago, yeah, a week before. Could it
4 have been two weeks before, yeah, it could have
5 been two weeks before.

6 What does that do, how does that help?
7 As Mr. Strang argued in his closing, do you
8 believe that that's the truth, or do you believe
9 that that's disingenuous, again? Is that a
10 misrepresentation of what Ms Buchner actually
11 said? In other words, how does it help? How
12 does it help you? Between Bobby Dassey and Lisa
13 Buchner, who has the better memory? Who was in a
14 position to see what was going on that day? And
15 those kinds of questions you are going to need to
16 answer.

17 Same kind of thing with the other lay
18 witness that was called in this case, some
19 gentleman who was a propane employee, as I
20 understand, who talked about seeing a green
21 mid-sized SUV. Well, ask yourselves, is that a
22 green, mid-sized SUV? I will argue, no, that
23 that's not a green mid-size SUV.

24 But there's interpretations and there
25 are things that may or may not be important about

1 that. However, it hardly helps the equation. It
2 hardly helps you decide in this case whether or
3 not that was Ms Halbach. In fact, we know it
4 wasn't, because Ms Halbach never did leave that
5 property.

6 All right. You need to buckle up here.
7 Because here's where the absurdity starts.
8 Mr. Buting wants you to believe that some unknown
9 person, somebody that Mr. Buting can't identify,
10 somebody that the defense cannot identify,
11 actually undetected, took one of the four burn
12 barrels belonging to Barb Janda.

13 Suggested that that theory also
14 includes -- By the way, that would take more than
15 one person if you think about it, 55 gallon drum,
16 carrying this, we're talking about more than one
17 person. But we're going to go just for now with
18 Mr. Buting's theory in this case, and that at
19 some remote location, Teresa's burned, that the
20 bones are dumped, and that the burn barrel is put
21 back.

22 Mr. Buting doesn't tell you, though, are
23 the eight or nine steps in between that you as a
24 jury have to find as facts, in order to kind of
25 buy this. Okay. When somebody is trying to sell

1 you something, and when you decide whether or not
2 you are going to buy that, you should understand
3 all of the steps that you have to buy.

4 You have to buy that they could first of
5 all take one of these barrels undetected. All
6 right. Next, that they have Teresa Halbach lying
7 dead somewhere. Whoever this is, has Teresa
8 already lying dead in some remote location. And
9 rather, rather than dispose of Teresa Halbach, if
10 they were inclined to do so, at that remote
11 location, Mr. Buting is asking you to believe
12 that she's burned, that her body is mutilated,
13 that her body is then loaded, apparently, into
14 this 55 gallon drum of Barb Janda, that has been
15 stolen, it's a theft, that's been somehow
16 secreted off of the property.

17 What you are then being asked to believe
18 is that they loaded back on whatever vehicle it
19 is that they are able to transport Ms Halbach,
20 after, remember, the at least hour and a half to
21 2 and a half hours at 1600 degrees that it takes
22 to fully cremate a body, that they load all of
23 these remains. And rather than dumping them
24 someplace else, they bring them back to the very
25 place that Steven Avery, on the day that Teresa

1 Halbach was killed, had a big fire.

2 And they decide to dump the bones. Now,
3 they don't decide to dump all the bones,
4 Mr. Buting's theory goes. They only dump the
5 bones, some of them, and they leave some of them.
6 But interestingly, the ones they dump are the
7 little ones, and the ones they leave in the
8 barrel are the big ones.

9 Undetected. But they are able to do
10 this, undetected, just a couple of feet from
11 Mr. Avery's trailer. Then Mr. Buting wants you
12 to believe that they are able to put back the
13 barrel that has been taken off of the property,
14 again, undetected, and leave.

15 Now, Mr. Buting called that a plausible
16 explanation, one theory as to how these bones can
17 be in two different places. I hope you agree
18 with me as to the plausibility of that defense
19 theory.

20 Coupled with that theory, what you have
21 to buy into, what you have to believe, is that
22 there is somebody else out there, that there is
23 somebody, not a police officer. All right. So
24 that narrows the scope of people that are able to
25 do this. Somebody who's not a police officer,

1 who skillfully exploited the law enforcement
2 bias. That the real killer knew about,
3 apparently, the lawsuit, or the animosity, or the
4 embarrassment, or something about the 1985 case
5 enough, where it was important enough to them to
6 kill some innocent 25 year old victim and plant
7 it on Mr. Avery's property.

8 That's absurd. If this wasn't such a
9 important decision that you had to make, it would
10 be laughable. It would be something that if
11 somebody told you at a party, or somebody told
12 you at your home, you would say nobody would
13 believe that. And nobody should. Nobody should
14 believe this series of situations or coincidences
15 that would necessarily lead you to find Mr. Avery
16 not guilty.

17 The SUV was planted in this case, or at
18 least the defense will have you believe that the
19 SUV was planted, that somebody planted the SUV.
20 The fact of the matter is that this SUV was
21 concealed. It was obscured. Somebody didn't
22 want it to be found. Let me say that again.
23 What you are looking at right here, how the SUV
24 was found by Ms Sturm, was by somebody who didn't
25 want this SUV to be found. All right. That

1 makes sense.

2 Well, if you are going to plant
3 evidence, you have to want it to be found.
4 Because if Mr. Avery is going to be accused of
5 some murder that he didn't do in this case, you
6 would expect to find this vehicle, if it was
7 planted, in the Avery parking lot, or by
8 Mr. Avery's trailer, or in some location where it
9 would be found.

10 Again, it was only through happenstance
11 and by very fortuitous intervention that vehicle
12 was ever found. Very important, collectively
13 again, and using your common sense to understand
14 that concept, that this vehicle was obscured in
15 such a way that whoever put it there, like this,
16 didn't want it to be found.

17 Defense wants you to ignore this, and
18 for good reason. The defense wants you to ignore
19 the electronics that were found in the burn
20 barrel. Why, because there's no explanation for
21 it. Because it doesn't fit in any, in any theory
22 that the defense has advanced in this case. All
23 right. No law enforcement planting theory, no
24 civilian planting theory, no individual who
25 skillfully exploited the law enforcement bias

1 theory, explains why these things are burned in
2 Mr. Avery's burn barrel.

3 And so apparently the defense wants you
4 to ignore that. Well, remember the instruction,
5 and reasonable doubt is not -- is a doubt based
6 upon reason and common sense, but in
7 consideration of the evidence, which means all of
8 the evidence in this case, not just some of it.

9 So my point, ladies and gentlemen, is if
10 you are going to buy into one of these theories,
11 you have got to ask yourself, collectively, what
12 the heck is this. Her phone, her PDA, her
13 camera, are all found about 20 feet from
14 Mr. Avery's door, and he is found, that day,
15 burning in that particular barrel. If Mr. Avery
16 is not involved in the death and mutilation of
17 Teresa Halbach, then why are these things in that
18 barrel.

19 Also, you can't ignore the fact, please,
20 collectively remember, that after 2:41 p.m.,
21 after 2:41 p.m. on the 31st, Teresa Halbach's
22 phone is never used again. Never used again.
23 Her phone is in that burn barrel. Her phone is
24 being burned. And you, as the jury, have to
25 decide why. There's a couple of explanations,

1 one is that the defendant killed her and burned
2 it, and the other one, I guess, the defense wants
3 you to just come up with on your own.

4 That brings me to the conclusion, or the
5 last question, and that's, did the cops kill
6 Teresa Halbach. Again, the defense says no. But
7 if the cops had her blood, if the cops had her
8 bones, and before the 5th, if the cops knew she
9 was dead, let me say that again, if before the
10 5th the cops knew that Teresa Halbach was dead,
11 they were either told that by the real killer, or
12 they killed Teresa Halbach.

13 You have got to be willing to accept one
14 of those scenarios. And I don't think you can.
15 And I don't think you should. And I don't think
16 that the evidence points to that at all.

17 Mr. Strang, in his opening statement,
18 promised you what the defense was going to be.
19 Mr. Strang told you that it's no surprise that
20 the blood from an unsecured vial in the box in
21 the Clerk's Office, that Lieutenant Lenk examined
22 in 2002, ends up in the Toyota. At the start of
23 the case, that was what the defense was. That's
24 what the defense theory was. That's what the
25 defense said their theory of defense and what the

1 evidence was going to show in this case.

2 Vial planting, though, causes some
3 risks, risks to, what I'm characterizing as risks
4 to the defense. Because when you announce that
5 defense, the State gets to meet that defense. We
6 get an opportunity to tell you, the jury, through
7 witnesses, whether or not that's plausible,
8 whether or not that could happen, or whether or
9 not that's implausible.

10 And there's two ways to do that. First,
11 is the common sense way to do that. The vial
12 planting defense for Mr. Avery, and for the
13 defense team, is that either Mr. Lenk or
14 Mr. Colborn got through this door. All right.
15 They got through a door that they didn't have a
16 key to, and they got through a door that they
17 didn't have the code to. That's the first part
18 of this.

19 The next thing that they are asking you
20 to buy is that they knew that there was a file
21 someplace in the Clerk of Court's Office,
22 sometime between the 3rd and the 5th of November.
23 Now, why do I say the 3rd and the 5th, because
24 the 3rd is when Teresa is reported missing,
25 doesn't pay to plant evidence and to steal a vial

1 of blood before we know that it's going to do any
2 good. And the 5th is when Pam Sturm finds her.
3 So between the 3rd and the 5th they have to know
4 that this box actually exists.

5 They also need you to buy that they know
6 that there is a box within the box. That there
7 is a vial of blood inside of that particular box
8 in the Clerk's Office. They need you to
9 believe -- They need you to believe that they get
10 through a door they have no key, that they have
11 no code, they find a box that they don't know the
12 existence of, they find the vial that they don't
13 know the existence of, and then they are able to
14 get their hands on that vial of blood.

15 They also need you to believe that
16 nobody sees them do this, that they are able to
17 do that undetected, to secret it, again, to
18 remove it from the Clerk of Court's Office in
19 Manitowoc, to plant the blood, assuming they know
20 how to do that, in six different places.

21 I'm stopping right here, because I need
22 to. Because for the defense version to hold any
23 water at all, the van -- excuse me -- the SUV
24 can't be found yet. They have to plant the blood
25 before it's found. Again, there's only two ways

1 that they can do that. Either they kill this 25
2 year old girl, or they found her murdered
3 somewhere else.

4 And if they found her murdered somewhere
5 else, then weren't they taking quite a chance,
6 weren't Mr. Lenk and Colborn, if you admit or buy
7 what it is that these two gentlemen are selling,
8 wouldn't you have to agree that they took a
9 chance that this very 25 year old photographer
10 was also last seen alive by that man.

11 My God, they got lucky, didn't they. To
12 go and find the vial of blood, even assuming they
13 knew where it was, that the dead woman that they
14 had in their possession, theoretically, was also
15 the last person to have seen Mr. Avery. It
16 doesn't make sense. All right.

17 That's the common sense way to deal with
18 the vial of blood planting. By the way, because
19 the vial of blood is still in the Clerk's Office,
20 you have to reverse this process. You have got
21 to get the blood back after we do the planting.
22 We have to get through, again, the door that we
23 have no key to, and we have no code to, and into
24 the box, and get this thing secreted back in
25 there, undetected, with nobody seeing.

1 That's not reasonable. That's not a
2 reasonable doubt. Reasonable doubts are for
3 innocent people. Reasonable doubts are things
4 that juries adopt when all the evidence points to
5 that. And this planting, this vial planting
6 defense, even from a common sense standpoint, is
7 absolutely ludicrous.

8 But what we were able to do, what you
9 heard, is scientifically exclude that vial of
10 blood. You heard from Dr. LeBeau, who testified
11 that this blood is loaded with EDTA and this
12 blood, and this blood, and this blood, have no
13 detectable levels of EDTA. And so instead of
14 calling all of the people with keys and with
15 codes, and people in the Clerk's Office, and who
16 might have seen Lieutenant Lenk or Colborn, or
17 all those kinds of things, instead of doing it
18 that way, we only had to call one witness, who
19 scientifically could tell you that there is
20 absolutely no way that that vial of blood was
21 used to plant.

22 In fact, that very question was asked of
23 Dr. LeBeau, the head of the toxicology section,
24 or the unit at the FBI. And he said, by a
25 reasonable degree of scientific certainty, this

1 vial of blood is excluded, that means it's not
2 it, it's excluded as the source of those three
3 bloodstains.

4 Now, why is that important. Lieutenant
5 Lenk and Sergeant Colborn, as I mentioned
6 earlier, are good, decent, honest cops, sworn to
7 uphold the law. Kinds of officers Manitowoc
8 citizens should be proud to have on your police
9 force. They are the kinds of guys that you want
10 investigating cases for you, for Manitowoc
11 County. And again, they are not just some cops,
12 they are your cops, that's why a Manitowoc jury
13 decides this case.

14 This isn't just two guys, it's Jim Lenk
15 and it's Andy Colborn. And when you accuse
16 police officers of official misconduct, that's
17 serious business. Mr. Strang correctly predicted
18 that there would be some anger about this issue,
19 coming from the prosecution side, and there is.

20 Let me tell you why. Their livelihood,
21 their reputations, their families, everything in
22 their 20 plus years of law enforcement are on the
23 line, when some lawyer accuses them of
24 misconduct. Not just any misconduct, but
25 planting evidence in a murder case. All right.

1 Serious, serious business.

2 And as a representative of the State, as
3 the prosecutor in this case, I'm here to tell you
4 folks, that if you are going to allege that some
5 Manitowoc cop is crooked, that some Manitowoc cop
6 committed a crime, you better have something to
7 back it up. And when you don't, and when there
8 is a witness from the FBI who says that didn't
9 happen, and when common sense said, that didn't
10 happen, these men are owed an apology. Their
11 good name, their reputations, need to be restored
12 to them.

13 And Mr. Strang talked about what a
14 guilty verdict, or a not guilty verdict, may do
15 in this case. A guilty verdict is most
16 importantly attributed to whether or not
17 Mr. Avery committed these horrific acts in these
18 cases. But also the issue of official or police
19 misconduct should be something that angers you,
20 just as it angers me.

21 Mr. Buting said that he might have been
22 a little rough on Ms Culhane, that he owed her an
23 apology. I'm hoping that the comments that have
24 been directed towards Jim Lenk and towards Andy
25 Colborn, at the conclusion of this case, are also

1 met with an apology.

2 But what I heard yesterday, what I heard
3 yesterday, from Mr. Buting, when he suggested
4 that perhaps it was Teresa's lifestyle that
5 contributed to her homicide, I'm paraphrasing,
6 but he said, because she was at some party, what
7 do we know about this party that she was at on
8 Saturday, or what do we know about some phone
9 calls that she had gotten, or what do we know
10 about her living arrangements.

11 Do you blame a 25 year old homicide
12 victim? And when you suggest that that victim
13 had some responsibility, or something to do with
14 her own demise, you need to be held accountable
15 for that. You need to be taken to task for that.
16 And, again, as the prosecutor, I'm expressing my
17 indignance about that.

18 Any suggestion that these good people of
19 the Halbach family have to endure in listening to
20 Mr. Buting stand before you and say, what about
21 this woman's lifestyle, or what about this party,
22 or what about who she's living with, is
23 absolutely out of bounds, absolutely improper,
24 has no place in this case.

25 What does have a place in this case is

1 the facts. And now I have come full circle. And
2 at the conclusion of this, my final argument
3 before you, the jurors, you have seen, and should
4 see by now, the stark difference between the
5 State's facts, between our reliance on the facts,
6 and the defense necessarily relying upon
7 speculation.

8 Physical evidence, the DNA evidence, the
9 eyewitness testimony, the scientific evidence,
10 the big fire that Mr. Avery had, common sense all
11 point to one person and there's a reason for
12 that. As the jury in this case, you have a duty.
13 You have a duty to return what's called a true
14 verdict. You have a duty to search for the
15 truth.

16 I agree with Mr. Strang that you do have
17 a duty in this case, but I disagree when Mr.
18 Strang tells you that your finding of guilt in
19 this case is not going to solve the crime. It
20 is. It's going to solve the crime.

21 And I'm here to tell you, also, as the
22 prosecutor, and collectively, the three of us
23 prosecutors, with lots and lots of years of
24 experience, are also going to tell you that it
25 will provide closure. It will provide closure

1 for the Halbach family, at least in the legal
2 sense. And it's in the sense for what you are
3 charged to do, and that is to assign
4 responsibility. It's to assign accountability
5 for the death of Teresa Halbach.

6 I don't believe it is a difficult
7 decision. It's a complex series of facts. And
8 it is a very, very serious case. But it's not a
9 difficult case. It's not a difficult decision
10 that you have to make, because everything in this
11 case pointed towards one person, towards one
12 defendant.

13 I'm thanking you, at the conclusion of
14 this case, on behalf of the State of Wisconsin.
15 And urging you, urging you, to follow the Court's
16 instructions, to follow the evidence in the case,
17 and return verdicts of guilty. Thank you. Thank
18 you, Judge.

19 THE COURT: Now, members of the jury, the
20 duties of counsel and the Court have been performed.
21 The case has been argued by counsel. The Court has
22 instructed you regarding the rules of law which
23 should govern you in your deliberations. The time
24 has now come when the great burden of reaching a
25 just, fair, and conscientious decision of this case

1 is to be thrown wholly upon you, the jurors selected
2 for this important duty.

3 You will not be swayed by sympathy,
4 prejudice, or passion. You will be very careful
5 and deliberate in weighing the evidence. I
6 charge you to keep your duty steadfastly in mind
7 and, as upright citizens, to render a just and
8 true verdict, or in this case, just and true
9 verdicts.

10 The following six forms of verdict will
11 be submitted to you concerning the charges
12 against the defendant, Steven A. Avery.

13 One reading: We, the jury, find the
14 defendant, Steven A. Avery, guilty of first
15 degree intentional homicide, as charged in the
16 first count of the Information.

17 A second reading: We, the jury, find
18 the defendant, Steven A. Avery, not guilty of
19 first degree intentional homicide, as charged in
20 the first count of the Information.

21 A third reading: We, the jury, find the
22 defendant, Steven A. Avery, guilty of mutilating
23 a corpse, as charged in the second count of the
24 Information.

25 And a fourth reading: We, the jury,

1 find the defendant, Steven A. Avery, not guilty
2 of mutilating a corpse, as charged in the second
3 count of the Information.

4 A fifth reading: We, the jury, find the
5 defendant, Steven A. Avery, guilty of possession
6 of a firearm, as charged in the third count of
7 the Information.

8 And a sixth reading: We, the jury, find
9 the defendant, Steven A. Avery, not guilty of
10 possession of a firearm, as charged in the third
11 count of the information.

12 It is for you to determine whether the
13 defendant is guilty, or not guilty, of each of
14 the offenses charged. You must make a finding as
15 to each count of the Information.

16 Each count charges a separate crime and
17 you must consider each one separately. Your
18 verdict for the crime charged in one count must
19 not affect your verdict on any other count.

20 This is a criminal, not a civil case,
21 therefore, before the jury may return a verdict
22 which may legally be received, the verdict must
23 be reached unanimously. In a criminal case, all
24 12 jurors must agree in order to arrive at a
25 verdict.

1 When you return to the jury room, select
2 one of your members to preside over your
3 deliberations. That person's vote is entitled to
4 no greater weight than the vote of any other
5 juror.

6 When you have agreed upon your verdicts,
7 have them signed and dated by the person you have
8 selected to preside. I ask that you return the
9 unsigned verdict forms as well.

10 At this point, I'm going to ask the
11 media folks to shut the audio down because the
12 Court is going to be identifying one of the
13 jurors by name. I believe somebody is supposed
14 to signal me once that's been done. Thank you.

15 Members of the jury, as I previously
16 indicated, just before the beginning of
17 deliberations, any remaining alternate jurors
18 would be selected. We are now at that point in
19 the trial.

20 The alternate juror will be sequestered
21 separately from the other jurors until
22 deliberations are completed, to be available in
23 the event one of the other 12 jurors becomes
24 unable to complete deliberations.

25 The alternate juror in this case has

1 been determined to be Nancy Stienmetz. Ms
2 Stienmetz, with the consent of counsel for both
3 parties, I will be meeting with you shortly, in
4 chambers, to explain your remaining role in this
5 case.

6 At this time I will ask the Clerk to
7 swear the officer.

8 (Jury bailiff sworn.)

9 THE COURT: The jury is excused. Ms
10 Stienmetz, you'll be waiting in the hallway to meet
11 with me.

12 (Jury not present.)

13 THE COURT: You may be seated. Counsel, if
14 you should leave the courtroom area, I ask you to
15 keep the Clerk's Office informed of your
16 whereabouts.

17 ATTORNEY STRANG: The remaining task to
18 tend to is that we had agreed, I think, that all
19 photographs would go to the jury without a request.
20 But since then, I don't remember if I did this on
21 the record or not, but had moved to exclude some of
22 the exhibits already admitted, and photographs of
23 those.

24 I have numbers of them in my brief case,
25 but they are the handcuffs, leg irons, electrical

1 cords, and as I say, related pictures. So the
2 Court would need to rule on those, because if to
3 be excluded, of course, those photographs ought
4 not go.

5 THE COURT: I recall being informed that I
6 could anticipate the receipt of such a motion; I
7 don't know that I have received it yet. But I was
8 notified of it and my recollection is that the
9 parties were going to discuss the potentially
10 disputed items of evidence in order to determine
11 whether there would be a stipulation proposed.

12 ATTORNEY STRANG: I don't know that we had
13 much further conversation, so the question may be
14 best put to the State.

15 ATTORNEY KRATZ: If I could just have a
16 moment, Judge, I will be happy to identify those for
17 the Court. Exhibit 173, Exhibit 174.

18 ATTORNEY STRANG: 228 and 229.

19 ATTORNEY KRATZ: Thank you, counsel. 228,
20 and 229, although those are items themselves.

21 ATTORNEY STRANG: Yes, some of these are
22 photographs and some are the items themselves. And
23 I don't have which is which.

24 ATTORNEY KRATZ: All right. 228 -- 229 has
25 already been withdrawn, I think, as an exhibit. 228

1 is the other photo that is at issue in the case.
2 And those three photos, then, that have been
3 identified, we have no objection they be removed
4 from the binder of photos, and that the balance of
5 the photos be tendered to the jury at this time.

6 THE COURT: All right. Can you give me the
7 numbers of the photos again.

8 ATTORNEY STRANG: 173, 174, 228, and
9 Mr. Kratz says that 229 already was withdrawn.

10 ATTORNEY KRATZ: Right. Those are the
11 three exhibits.

12 ATTORNEY STRANG: Then the items themselves
13 are Exhibits 203, 204, and 249. Those are the
14 actual items.

15 ATTORNEY KRATZ: They wouldn't be going
16 back anyway, Judge.

17 THE COURT: Pardon me?

18 ATTORNEY KRATZ: The items wouldn't be
19 going back anyway.

20 THE COURT: I understand the motion to be
21 going beyond that.

22 ATTORNEY STRANG: Right. But they -- I'm
23 asking that they be excluded, that is, that the
24 Court reconsider the ruling admitting them, exclude
25 those things as exhibits. I agree, of course, with

1 Mr. Kratz, that these things wouldn't be going to
2 the jury anyway, absent a request, but I'm looking
3 to have them excluded as evidence altogether.

4 THE COURT: My only hesitation there is,
5 given the stage of the trial at which this is being
6 raised. I take it you are not asking for some type
7 of further instruction to the jury that they have
8 been withdrawn.

9 ATTORNEY STRANG: I'm not, no. I mean, we
10 would have addressed that before closing arguments.

11 THE COURT: Does the State have any
12 objection?

13 ATTORNEY KRATZ: The only issue, Judge, is
14 if they would ask to see those items, I think that
15 could be addressed at that time. I don't believe
16 that the items themselves, that is the physical
17 items themselves, need to be addressed at this time.
18 Certainly an argument could be made as to the
19 relevance, they are part of the record. And up and
20 until the time that those may be asked for, I
21 believe that request by counsel is premature.

22 THE COURT: Let me ask this. Is the
23 defense, with the understanding that both parties
24 agree that these six exhibits that have been
25 identified, that is, three photos and three physical

1 items, with the understanding that they will not be
2 sent to the jury, and I believe there's a
3 stipulation that the three photos can simply be
4 withdrawn, is the defense willing to postpone
5 further consideration of its request to withdraw the
6 other exhibits to such time as the jury requests to
7 see them?

8 ATTORNEY STRANG: Sure, because there is --
9 it's true, there is no practical effect other than
10 cleaning up the record, and that can be done any
11 time.

12 THE COURT: So, based on the stipulation of
13 the parties then, items -- Exhibits 173, 174 and 228
14 that are photos, are withdrawn, and items 203, 204,
15 and 249, will not be sent to the jury room if
16 requested.

17 ATTORNEY STRANG: That's right. Now, I
18 have to say, I had -- our exhibit shows 229.

19 THE COURT: I have been told -- my
20 understanding was that's already been withdrawn.

21 ATTORNEY STRANG: Let's just confirm that
22 with the clerk, I probably am wrong, but 229, Janet.

23 THE CLERK: I didn't show that as
24 withdrawn.

25 ATTORNEY KRATZ: It should be, I have no

1 problem with that.

2 THE COURT: All right. 229, then, is also
3 withdrawn.

4 ATTORNEY STRANG: Very well.

5 ATTORNEY KRATZ: Thank you.

6 THE COURT: Very well, we're in recess.

7 ATTORNEY BUTING: Judge, one other matter.

8 THE COURT: Yes.

9 ATTORNEY BUTING: I don't know what other
10 exhibits you intend to send back to the jury, other
11 than the photographs, but certainly we would object
12 to the expert's reports going back.

13 THE COURT: Let me clarify my understanding
14 further. If I understand what the parties are
15 telling me, and I want to make sure I'm not reading
16 too much in, I'm glad, Mr. Buting, that you brought
17 this up. If the jury requests permission to see any
18 of the other photos, are the parties saying I can
19 send them back, or the parties wish to be heard
20 before they are sent back?

21 ATTORNEY STRANG: Photos can be sent
22 without jury request.

23 ATTORNEY KRATZ: Right now.

24 ATTORNEY STRANG: That's what we agreed.

25 THE COURT: You are asking the Court to

1 send them back.

2 ATTORNEY KRATZ: Right now, yes.

3 THE COURT: Okay.

4 ATTORNEY KRATZ: But any other exhibits, if
5 they ask to be seen, we would all like to be heard
6 on that.

7 ATTORNEY STRANG: And maybe we didn't have
8 an agreement on this, I expressed the view to
9 counsel that we also could send CV's for all experts
10 back, without request. If they are not in
11 agreement --

12 ATTORNEY KRATZ: No, that--

13 THE COURT: I'm a little concerned if we're
14 sending all photos, that's one thing. I hate to
15 send back nothing but all CV's and nothing else, for
16 fear that it might draw undue attention to them. So
17 I'm going to wait, and if the jury requests to see
18 anything other than the remaining photos, I will
19 notify the parties, just as I would if I receive a
20 question from the jury, and the parties will have a
21 chance to be heard before they go back.

22 ATTORNEY KRATZ: That sounds good.

23 THE COURT: Fair enough?

24 ATTORNEY KRATZ: Thank you, Judge.

25 ATTORNEY STRANG: Yes.

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THE COURT: All right. We're adjourned for
this time.

(Court in recess, jury deliberating.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 22nd day of January, 2008.

Diane Tesheneck, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 25

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** MARCH 16, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:**

12 KENNETH R. KRATZ
Special Prosecutor
13 On behalf of the State of Wisconsin.

14 THOMAS J. FALLON
Special Prosecutor
15 On behalf of the State of Wisconsin.

16 DEAN A. STRANG
Attorney at Law
17 On behalf of the Defendant.

18 JEROME F. BUTING
Attorney at Law
19 On behalf of the Defendant.

20 STEVEN A. AVERY
Defendant
21 Appeared in person.

22 * * * * *

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

1 THE COURT: At this time the Court, again,
2 calls State of Wisconsin vs. Steven Avery, Case No.
3 05 CF 381. I will indicate that we are on the
4 record at this time, outside of the presence of the
5 jurors. Will the parties present state their
6 appearances for the record, please.

7 ATTORNEY KRATZ: Good morning, Judge, the
8 State appears by Calumet County District Attorney
9 Ken Kratz and Assistant Attorney General Tom Fallon
10 as Special Prosecutors.

11 ATTORNEY STRANG: And good morning as well,
12 Steven Avery in person and Jerome Buting and Dean
13 Strang on his behalf.

14 THE COURT: All right. Before I get to the
15 specific reason that we're going on the record this
16 morning, I wanted to address an item that came to
17 the Court's attention yesterday, after the jurors
18 began deliberations. There were a couple of
19 requests from the jury for accessories, if you will,
20 to assist them in their deliberations.

21 Specifically, at about 1:20 in the
22 afternoon the jurors requested a magnifying
23 glass, because of the size of the photos that
24 they received. And at 2:30, the jurors request a
25 dry board, a flip chart, or something along those

1 lines, that they could use in the course of their
2 deliberations.

3 When requests like this are typically
4 received, the Court generally will, informally,
5 discuss with counsel if any of them have any
6 problem, but normally the Court simply sends the
7 items back. It's practice and, in fact, it's
8 required to go on the record whenever a question
9 is received from the jury, but normally it's this
10 Court's practice and counsel confirmed yesterday
11 that they did not see a need to go on the record
12 for the requests that were made by the jury.

13 One difference in this case is that the
14 Court has been alerted that the media interest in
15 the juror deliberations extends to the request of
16 the nature of those that were made yesterday.
17 And the Court was, frankly, simply not thinking
18 about that yesterday afternoon.

19 But it would be my proposal, if there's
20 any requests like that received in the future,
21 although we may not go on the record for them, if
22 either party feels the need to do so, I will,
23 after any such requests are acted on, simply pass
24 information to the media coordinator and alert
25 all the media of what happened. Is that

1 procedure acceptable to both parties?

2 ATTORNEY KRATZ: Yes, judge.

3 ATTORNEY STRANG: Yes.

4 THE COURT: The next item has do with one
5 of the jurors in this case. Last evening, sometime
6 around 9 p.m., the Court received a telephone call
7 from Sheriff Pagel indicating that one of the jurors
8 had presented a request to a -- one of the
9 supervising deputies over at the hotel, to be
10 excused because of an unforeseen family emergency.

11 The Court, mindful of its duty to
12 exercise reasonable efforts to void the discharge
13 of a juror, once deliberations have begun,
14 nevertheless, concluded that based on the
15 information provided, the request appeared to
16 have merit and warranted further consideration.

17 After I received the information, I
18 contacted Attorney Kratz and both defense counsel
19 by telephone conference call to inform them of
20 the request. Counsel agreed that if the
21 information that had been presented to the Court
22 was correct, excusing the juror was appropriate
23 in this case.

24 Counsel further authorized the Court to
25 speak with the juror individually and excuse the

1 juror if the information provided to the Court
2 was verified. The Court did verify that
3 information with the juror and excused the juror
4 last evening.

5 Case law in Wisconsin provides three
6 alternatives in a situation now before the Court.
7 One alternative is that the parties can stipulate
8 to proceed with 11 jurors.

9 The second alternative is that the
10 parties can stipulate to substitute an alternate
11 juror. In this case the Court has previously
12 sequestered one of the alternate jurors to be
13 available for that purpose, if it became
14 necessary.

15 The third alternative is to declare a
16 mistrial in the absence of a stipulation by the
17 parties to proceed with one of the other two
18 alternatives.

19 It's my understanding that at this time
20 the parties do have a stipulation to present to
21 the Court. Mr. Strang.

22 ATTORNEY STRANG: Your Honor, thank you.
23 Mr. Avery and his counsel are willing to offer their
24 agreement to pursue the following course: One, if
25 the Court gives a proper instruction that jury

1 deliberations must begin entirely anew. And, two,
2 if each of the 11 presently deliberating jurors
3 provides satisfactory assurance that they can and
4 will follow an instruction to begin deliberations
5 anew, then, three, the defense will agree that the
6 person who has been the alternate to date should
7 join the ranks of the 11, becoming the 12th regular
8 juror and the deliberations may begin anew with this
9 newly composed group of 12.

10 If the State thinks the three aspects of
11 this agreement acceptable, the defense, too, will
12 be bound by it. And we have discussed that with
13 Mr. Avery. It has his concurrence and he
14 understands that the Court will want to make
15 brief personal inquiry of him as well.

16 THE COURT: Thank you. Mr. Kratz.

17 ATTORNEY KRATZ: Judge, the State joins in
18 the stipulation. After our conversation last
19 evening where the Court discussed the options, and
20 after hearing, this morning, of the defense
21 willingness to enter the stipulation, the State
22 agrees that the alternate juror, who was reserved
23 just for this unusual circumstance or occasion,
24 that -- that the Court do just that. And so we join
25 in Mr. Strang's request that the Court adopt and

1 approve this stipulation.

2 THE COURT: All right. As a supplement to
3 Mr. Strang's request, I should indicate for the
4 record that I did meet with counsel in chambers
5 before we began today and went over a proposed
6 instruction to the jury and question for the jurors
7 to make sure that they could follow the Court's
8 instruction.

9 The Court prepared that instruction with
10 input from both of the parties. And Mr. Strang
11 when you refer to an appropriate instruction, I'm
12 assuming you are referring to the one that was
13 discussed in chambers today.

14 ATTORNEY STRANG: The instruction that the
15 Court read to us in chambers this morning, after
16 hearing input from both sides, we think a proper
17 instruction.

18 THE COURT: Thank you. All right. Then,
19 Mr. Avery, I do have a few questions to ask of you
20 at this point. First of all, have you heard the
21 discussion that we just had, on the record, and the
22 proposal of how to address the issue of the excused
23 juror?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have you taken some time this

1 morning to discuss this matter with your attorneys?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Are you aware that you are
4 under no obligation to join in the stipulation, that
5 is, you have the right to require a jury of 12 and
6 the right to request a mistrial if the juror is
7 excused.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you feel that you need any
10 more time to consider your decision on this issue?

11 THE DEFENDANT: No, sir.

12 THE COURT: Are you in agreement with the
13 stipulation that has just been placed on the record
14 by your attorney, Mr. Strang?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Very well, the Court finds that
17 the parties have jointly stipulated, and the defense
18 has stipulated with the knowing and voluntary
19 consent of the defendant, to recall the alternate
20 juror in this case and allow the jurors to begin
21 deliberating anew, following an instruction from the
22 Court as to how those deliberations are to proceed.

23 Is there anything else that either party
24 wishes to bring up on the record before we bring
25 in the jurors?

1 ATTORNEY KRATZ: No, your Honor.

2 ATTORNEY STRANG: No, thank you, your
3 Honor.

4 THE COURT: And I believe it's the
5 understanding and agreement of both parties that,
6 when the jurors are brought in, we'll be bringing in
7 the remaining 11 original jurors and the alternate
8 to take the seat she normally takes.

9 ATTORNEY STRANG: Yes, and, that because
10 this procedure, very soon, will require naming
11 jurors, that arrangements have been made with the
12 media to preserve the Court's requirement that
13 jurors not be named publicly.

14 THE COURT: All right. I will cue the
15 media, the camera operators, when that time comes in
16 the instructions. At this time, then, we can bring
17 in the jurors.

18 (Jury present.)

19 THE COURT: You may be seated. We're going
20 to wait a minute for Ms Stienmetz to join us.

21 Members of the jury, one of your members
22 has been excused from jury deliberations in this
23 case, because of an unforeseen family emergency.
24 Although excusing a juror during deliberations
25 rarely occurs, it is sometimes necessary.

1 The Court has brought back the last
2 alternate juror excused, to participate in the
3 deliberations in this case. Before those
4 deliberations begin, I have an important further
5 instruction for all of you.

6 The law requires that, during
7 deliberations, 12 people must have the
8 opportunity to review the evidence in light of
9 each juror's perception, memory, and reaction.
10 It is important that the jury reach its consensus
11 through deliberations, which are the common
12 experience of all 12 jurors.

13 Each of the 12, must have the
14 opportunity to persuade the other members of the
15 jury and to be persuaded by them. If you have
16 formed any views about the evidence up until now,
17 you must set those views aside and start over.

18 To assure that these requirements are
19 followed in this case, you are instructed that
20 you must commence your deliberations anew. That
21 means that you should begin by electing a
22 foreperson and then proceed to evaluate all the
23 evidence as though you are just beginning to
24 deliberate. This is necessary to assure the full
25 participation of all 12 jurors in the

1 deliberation process.

2 Before I excuse you to begin
3 deliberating, it is necessary that I be assured
4 that each of you will be able to deliberate on
5 this basis. Therefore, I'm going to individually
6 ask each of you one more question. At this time
7 I will ask the media to cut the audio portion.
8 Thank you.

9 Each of you must accept this juror as an
10 equal member of this jury, giving her the full
11 respect and authority that you would give to any
12 other juror.

13 Mr. Slaby, will you be able to follow
14 this instruction I have just given you and begin
15 your deliberations anew?

16 MR. SLABY: Yes.

17 THE COURT: Ms Free, will you follow this
18 instruction I have just given you and begin your
19 deliberations anew?

20 MS FREE: Yes.

21 THE COURT: Ms Schmidt, will you follow the
22 instruction I have just given you and begin your
23 deliberations anew?

24 MS SCHMIDT: Yes.

25 THE COURT: Ms Thorne, will you follow this

1 instruction I have just given you and begin your
2 deliberations anew?

3 MS THORNE: Yes.

4 THE COURT: Ms Dorn, will you follow the
5 instruction I have just given you and begin your
6 deliberations anew?

7 MS DORN: Yes.

8 THE COURT: Mr. Nelesen, will you follow
9 the instruction I have just given you and begin your
10 deliberations anew?

11 MR. NELESEN: Yes, sir.

12 THE COURT: Mr. Klein, will you follow the
13 instruction I have just given you and begin your
14 deliberations anew?

15 MR. KLEIN: Yes.

16 THE COURT: Mr. Schuette, will you follow
17 the instruction I have just given you and begin your
18 deliberations anew?

19 MR. SCHUETTE: Yes.

20 THE COURT: Ms Flint, will you follow the
21 instruction I have just given you and begin your
22 deliberations anew?

23 MS FLINT: Yes.

24 THE COURT: Mr. Mohr, will you follow this
25 instruction I have just given you and begin your

1 deliberations anew?

2 MR. MOHR: Yes, your Honor.

3 THE COURT: And, Mr. Wardman, will you
4 follow the instruction I have just given you and
5 begin your deliberations anew?

6 MR. WARDMAN: Yes.

7 THE COURT: Last, Ms Stienmetz, have you
8 heard the instructions that I have given to the jury
9 and are you willing to resume your role as a juror
10 under those instructions in this case?

11 MS STIENMETZ: Yes, I am.

12 THE COURT: Thank you. Members of the
13 jury, the Court will prepare a written copy of the
14 instruction that I have just given you to send back
15 so that you will have it with your other
16 instructions in this case. Ms Stienmetz, do you
17 still have your original instructions or do you need
18 another set sent back?

19 MS STIENMETZ: It was left in the room.

20 THE COURT: All right. I will see to it
21 that another set of full instructions gets sent back
22 for you. At this time, then, members of the jury,
23 you are excused and you may begin your
24 deliberations.

25 (Jury not present.)

1 THE COURT: You may be seated. Counsel, I
2 will ask you to stop back, then, in about 10 minutes
3 so that I can prepare a written version of this
4 instruction, sent back to the jury, and each of you
5 can sign off on it.

6 ATTORNEY BUTING: All right.

7 THE COURT: Anything else while we're on
8 the record?

9 ATTORNEY KRATZ: No, Judge. Thank you.

10 ATTORNEY STRANG: No. Thanks.

11 THE COURT: Very well. Counsel, I'm going
12 to ask you to stop back right away.

13 ATTORNEY BUTING: Okay.

14 (Court in recess, jury deliberating.)

15 *****

16 (Question from the jury and the Judge's reply.)

17 THE COURT: At this time we are on the
18 record, outside the presence of the jury. All
19 counsel, except Mr. Gahn, are present, and the
20 defendant is also present, in person.

21 I can indicate for the record that the
22 Court has received a written question from the
23 jury dated today, at 1:29 p.m. Following receipt
24 of the question, I met with counsel in chambers
25 and discussed a proposed answer to the question.

1 I believe the parties are in agreement
2 with that answer. I will read the question and
3 the answer at this time and then ask the parties
4 if the answer is acceptable. The question from
5 the jury reads: Could we please read or hear a
6 transcript of Bobby Dassey's testimony. It is
7 signed by Daniel Slaby, who I presume to be the
8 foreperson, dated today at 1:29 p.m.

9 The proposed answer is the following:

10 Dear Jury Members, this is in response to your
11 request for a transcript of Bobby Dassey's
12 testimony. As the Court has instructed you, you
13 will not have a copy of the written transcript of
14 the trial testimony available for use during your
15 deliberations. You may ask to have specific
16 portions of the testimony read to you. You must
17 continue to rely primarily on your memory of the
18 evidence and the testimony introduced during the
19 trial.

20 The Court does not have and cannot
21 provide you with a transcript of Bobby Dassey's
22 entire testimony. If you can identify a specific
23 portion of his testimony, the Court will attempt
24 to address your request. Please do not disclose
25 the state of your deliberations in any such

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request. Signed by me. Mr. Kratz, is that answer acceptable to the State?

ATTORNEY KRATZ: Yes.

THE COURT: Mr. Strang, Mr. Buting, I don't know if you discussed this matter with your client, I will give you an opportunity to do so if you wish.

ATTORNEY STRANG: Mr. Buting did, briefly. The answer is acceptable both to defense counsel and to Mr. Avery.

THE COURT: Very well, if there's nothing further, I will send the original copy of the answer back to the jury and then keep the jurors question and a copy of the answer for the court file.

ATTORNEY FALLON: Do you want us to wait here in case there is a quick reply?

THE COURT: Actually, I have got another matter I would like to talk to you in chambers about, so let's meet back there.

(Court in recess, jury deliberating.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 11th day of January, 2008.

Diane Tesheneck, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 26

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** MARCH 17, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:**

12 KENNETH R. KRATZ
Special Prosecutor
13 On behalf of the State of Wisconsin.

14 THOMAS J. FALLON
Special Prosecutor
15 On behalf of the State of Wisconsin.

16 DEAN A. STRANG
Attorney at Law
17 On behalf of the Defendant.

18 JEROME F. BUTING
Attorney at Law
19 On behalf of the Defendant.

20 STEVEN A. AVERY
Defendant
21 Appeared in person.

22 * * * * *

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

1 THE COURT: At this time we're on the
2 record, outside the presence of the jury, in the
3 case of State of Wisconsin vs. Steven Avery, Case
4 No. 05 CF 381. Will the parties present please
5 identify themselves for the record.

6 ATTORNEY KRATZ: The State appears by Ken
7 Kratz and Tom Fallon as Special Prosecutors, Judge.

8 ATTORNEY BUTING: Steven Avery is here in
9 person, your Honor, Jerome Buting and Dean Strang on
10 his behalf.

11 THE COURT: All right. I will indicate
12 we're in the courtroom, outside the presence of the
13 jury at this time to address a written request that
14 was received from the jury; specifically, the
15 request reads as follows:

16 Your Honor, we would like to have the
17 testimony shown or read to us from Sherry Culhane
18 on Monday, February 26, on her DNA results on
19 Exhibit 164. Exhibit 154 (sic) is a .22 caliber
20 rifle. After the Court received that request, I
21 first summoned the attorneys for both sides to
22 chambers, to have a look at it.

23 We, then, had the court reporter
24 research the minutes or her testimony that was
25 taken down on Monday, February 26, from Ms

1 Culhane. I have received pieces of her testimony
2 in three separate parts from that day, listed as
3 pages -- or part of page 32, part of page 34, of
4 what I believe is the morning transcript. And
5 then page 8 and part of page 9 from the afternoon
6 transcript.

7 (Court reporter note: After completing
8 the transcription of February 26, 2007, Trial Day
9 11, the page numbers are 33, 34, 115, 116, 117.)

10 Those portions of the transcript have
11 been shared with counsel. And it's my
12 understanding that counsel for both parties are
13 asking that I read to the jury all of the
14 testimony from the pages I have just referred to.

15 Mr. Strang, is that correct, on behalf
16 of the defendant?

17 ATTORNEY STRANG: Yes.

18 THE COURT: And, Mr. Kratz?

19 ATTORNEY KRATZ: Judge, it's Exhibit 164, I
20 believe you said 154. But 164 is a photograph of
21 the .22 caliber rifle. We have all assumed that the
22 testing, which results find its way in Exhibit 313,
23 that the jury is asking about the testing of the
24 item itself.

25 The rifle itself is Exhibit 247, but we

1 have been able, I think the Court and counsel, to
2 ascertain that they are asking about the results
3 from the item itself, since the exhibit number is
4 the photograph and wouldn't, of course, have DNA
5 results. But we do agree with the Court that
6 those portions of those four pages should be
7 read.

8 THE COURT: Actually, the distinction you
9 may have just made raises a question in the Court's
10 mind. And that is, I'm wondering if we shouldn't,
11 before we bring the juror in -- the jurors in and
12 read this to them, ask them for a clarification to
13 make sure that the exhibit we're talking about is
14 the exhibit they are referencing in their note,
15 since they reference it by a number rather than an
16 exhibit.

17 ATTORNEY STRANG: They just have
18 photographs, your Honor, back there, so --

19 THE COURT: Okay.

20 ATTORNEY STRANG: -- I think it's pretty
21 clear.

22 THE COURT: Well, does the State feel
23 there's a need?

24 ATTORNEY KRATZ: I think they want the item
25 itself, Judge.

1 THE COURT: All right. Well, let me ask
2 this, should I clarify, before we begin, that the
3 Court and the parties assume that they are referring
4 to a photograph of a .22 caliber rifle?

5 ATTORNEY STRANG: Sure.

6 ATTORNEY KRATZ: And perhaps, Judge, that
7 the item itself is Exhibit 247. They are certainly
8 always free, then, to ask additional questions.

9 THE COURT: Mr. Strang.

10 ATTORNEY STRANG: That's fine.

11 THE COURT: Okay.

12 ATTORNEY STRANG: Just clarify or make
13 certain.

14 THE COURT: All right. Anything else
15 before we bring the jurors in? We'll bring the jury
16 in at this time?

17 (Jury present.)

18 THE COURT: You may be seated. Members of
19 the jury, the Court has received your written
20 request to have some testimony read to you,
21 specifically, the request for testimony from Sherry
22 Culhane on Monday, February 26, on her DNA results
23 on Exhibit 164.

24 It's the Court's understanding that you
25 are referring to the rifle that was introduced as

1 Exhibit 247 that is pictured in Exhibit 164. The
2 testimony has been transcribed; it's in,
3 actually, three separate portions of testimony
4 that was given by Ms Culhane on that date and I
5 will read each of those excerpts to you at this
6 time. The answers are all given as part of
7 cross-examination by Attorney Buting, for the
8 defense.

9 The first excerpt reads as follows:

10 Question: As well as the license plates
11 from the RAV4 and to check the .22 caliber gun,
12 Item DD, for any indication of the victim's blood
13 on the barrel, right?

14 Answer: Yes.

15 Question: And also to swab the trigger
16 guard area to compare with Steven Avery?

17 Answer: Correct.

18 And shortly thereafter, the following
19 exchange:

20 Question: And you checked the Item DD,
21 .22 caliber gun; that's a rifle, right?

22 Answer: Yes.

23 Question: You looked for any blood of
24 the victim on the barrel, right?

25 Answer: Correct.

1 Question: You found no DNA of Teresa
2 Halbach on that barrel?

3 Answer: Correct.

4 Question: You looked at the trigger
5 guard as well, not just the trigger guard, but
6 the trigger itself?

7 Answer: Yes.

8 Question: You swabbed both, right?

9 Answer: Yes.

10 Question: And you found no DNA of
11 Mr. Avery, right?

12 Answer: Correct.

13 Then a bit later, the following exchange
14 took place.

15 Question: Now, you also looked, or
16 asked to look, we saw that message earlier, at
17 the -- at .22 rifle swabs that were taken from
18 it, right?

19 Answer: Yes.

20 Question: And the purpose there was not
21 to see if you would find Teresa Halbach's DNA,
22 but to see if you would find Mr. Avery's DNA,
23 right?

24 Answer: Was that item DD?

25 Question: Yes.

1 Answer: I believe I was requested to
2 look for possible blood on the barrel part and
3 DNA from the trigger area.

4 Question: And you found neither,
5 correct?

6 Answer: That's correct.

7 Question: You did not find Mr. Avery's
8 DNA on that weapon anywhere, did you?

9 Answer: On the trigger guard is the
10 only place I swabbed, but, no, I didn't.

11 Question: And you did not find Teresa
12 Halbach's DNA anywhere on the barrel either?

13 Answer: Correct.

14 Question: Are you familiar with
15 close -- close, almost contact-type shootings?

16 Answer: I don't know what you mean by
17 that.

18 Question: Are you familiar with the
19 term blow back?

20 Answer: Yes.

21 Question: You know that if someone
22 shoots another human being with a gun, that's
23 very close to them, there may be blow back
24 spatter of blood onto that weapon?

25 Answer: I assume that's possible.

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Question: Well, that's what you were looking for?

Answer: I was simply looking for bloodstains, yes.

Question: On the barrel?

Answer: Correct.

Question: And you found none?

Answer: Correct.

THE COURT: And that represents the testimony in response to your question. At this time the Court will excuse you to resume your deliberations.

(Jury not present.)

THE COURT: Counsel, you may be seated. Anything else while we're on the record?

ATTORNEY STRANG: No, your Honor.

ATTORNEY KRATZ: No.

THE COURT: Very well.

(Court in recess, jury deliberating.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 11th day of January, 2008.

Diane Tesheneck, RPR
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL
5 vs. TRIAL-DAY 27 VERDICT
Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** MARCH 18, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES :**

12 KENNETH R. KRATZ
Special Prosecutor
13 On behalf of the State of Wisconsin.

14 THOMAS J. FALLON
Special Prosecutor
15 On behalf of the State of Wisconsin.

16 DEAN A. STRANG
Attorney at Law
17 On behalf of the Defendant.

18 JEROME F. BUTING
Attorney at Law
19 On behalf of the Defendant.

20 STEVEN A. AVERY
Defendant
21 Appeared in person.

22 * * * * *

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

1 THE COURT: At this time we are on the
2 record outside the presence of the jury. The Court
3 has been informed that the jury has reached verdicts
4 in this matter. Will the parties present state
5 their appearances for the record.

6 ATTORNEY KRATZ: Your Honor, the State of
7 Wisconsin appears by Calumet County District
8 Attorney Ken Kratz, Assistant Attorney General Tom
9 Fallon, both appearing as Special Prosecutors.

10 ATTORNEY STRANG: Good afternoon, Steven
11 Avery is in person. Jerome Buting and Dean Strang
12 on his behalf.

13 THE COURT: Before the Court brings the
14 jury in and receives the verdicts, I want to remind
15 all those present in the courtroom that this is a
16 court of law. The Court recognizes the emotional
17 nature of this case and its importance to all
18 parties involved. However, vocal outbursts or
19 displays of emotion will not be tolerated. Any
20 violation will result in removal from the courtroom.
21 At this time I will ask that the jury be brought in.

22 (Jury present.)

23 THE COURT: You may be seated. Members of
24 the jury, the Court has been informed that the jury
25 has reached its verdicts in this case. At this time

1 I will ask the foreperson to present the verdicts to
2 the bailiff so that they may be brought forward.

3 At this time the Court will read the
4 verdicts. On Count 1, the verdict reads as
5 follows: We, the jury, find the defendant,
6 Steven A. Avery, guilty of first degree
7 intentional homicide as charged in the first
8 count of the Information.

9 On Count 2, the verdict reads: We, the
10 jury, find the defendant, Steven A. Avery, not
11 guilty of mutilating a corpse as charged in the
12 second count of the Information.

13 On Count 3, the verdict reads: We, the
14 jury, find the defendant, Steven Avery, guilty of
15 possession of a firearm as charged in the third
16 count of the Information.

17 The verdict on Count 1 is signed by the
18 foreperson of the jury, dated today. The other
19 verdicts are also signed by the foreperson of the
20 jury.

21 At this time the Court is going to poll
22 the jurors. I will ask the media folks to cut
23 the audio at this time.

24 Mr. Slaby, were the verdicts as read by
25 the Court, and are they still now, your verdicts

1 in this case?

2 MR. SLABY: Yes, your Honor.

3 THE COURT: Ms Free, were the verdicts as
4 read by the Court, and are they still now, your
5 verdicts in this case?

6 MS FREE: Yes, sir.

7 THE COURT: Ms Schmidt, were the verdicts
8 as read by the Court, and are they still now, your
9 verdicts in this case?

10 MS SCHMIDT: Yes, sir.

11 THE COURT: Ms Thorne, were the verdicts as
12 read by the Court, and are they still now, your
13 verdicts in this case?

14 MS THORNE: Yes, sir.

15 THE COURT: Ms Dorn, were the verdicts as
16 read by the Court, and are they still now, your
17 verdicts in this case?

18 MS DORN: Yes, sir.

19 THE COURT: Mr. Nelesen, were the verdicts
20 as read by the Court, and are they still now, your
21 verdicts in this case?

22 MR. NELESEN: Yes, sir.

23 THE COURT: Mr. Klein, were the verdicts as
24 read by the Court, and are they still now, your
25 verdicts in this case?

1 MR. KLEIN: Yes, your Honor.

2 THE COURT: Mr. Schuette, were the verdicts
3 as read by the Court, and are they still now, your
4 verdicts in this case?

5 MR. SCHUETTE: Yes, your Honor.

6 THE COURT: Ms Flint, were the verdicts as
7 read by the Court, and are they still now, your
8 verdicts in this case?

9 MS FLINT: Yes, your Honor.

10 THE COURT: Mr. Mohr, were the verdicts as
11 read by the Court, and are they still now, your
12 verdicts in this case?

13 MR. MOHR: Yes, your Honor.

14 THE COURT: Ms Stienmetz, were the verdicts
15 as read by the Court, and are they still now, your
16 verdicts in this case?

17 MS STIENMETZ: Yes, your Honor.

18 THE COURT: Mr. Wardman, were the verdicts
19 as read by the Court, and are they still now, your
20 verdicts in this case?

21 MR. WARDMAN: Yes, your Honor.

22 THE COURT: Members of the jury, on behalf
23 of Manitowoc County, I would like to express my
24 sincerest gratitude and appreciation for your
25 service in this case. I recognize the personal

1 sacrifice in terms of time and restrictions on your
2 normal activities that the Court has required of you
3 during this trial. That sacrifice is a necessary
4 part of the price we pay for the judicial system
5 every citizen enjoys. I hope that you found the
6 experience a rewarding one.

7 Before discharging you, I have one final
8 instruction. Now that your service in this case
9 is completed, some of you may have questions
10 about the confidentiality of the proceedings.
11 Many jurors ask if they are at liberty to discuss
12 the case with anyone after receipt of the
13 verdicts.

14 Because your role in this case is over,
15 you are free to discuss it with any person you
16 choose, if you wish. However, you should know
17 that you do not have to discuss the case with
18 anyone or answer any questions about it from
19 anyone other than the Court.

20 If you do decide to discuss the case
21 with anyone, I would suggest that you treat any
22 discussion with a degree of solemnity such that
23 whatever you do say, you would be willing to say
24 in the presence of your fellow jurors, or under
25 oath, here in open court, in the presence of the

1 parties.

2 Also, keep in mind, if you do decide to
3 discuss the case, that your fellow jurors freely
4 and fully stated their opinions with the
5 understanding that they were being expressed in
6 confidence. Please respect the privacy of the
7 views of your fellow jurors.

8 If any members of the jury wish to
9 discuss the case today with representatives of
10 the media, arrangements have been made to permit
11 you to do so before you leave. Should anyone,
12 whether from the media or otherwise, persist in
13 attempting to question you, over your objection,
14 you should contact the Court.

15 Finally, should any of you have any
16 questions for the Court before leaving today,
17 please, let the bailiff know before you leave the
18 jury room. At this time you are excused.

19 (Jurors excused.)

20 THE COURT: You may be seated. At this
21 time the Court will entertain any motions for
22 judgment on the verdicts.

23 ATTORNEY KRATZ: At this time, Judge, I
24 would ask the Court enter judgment on each of the
25 three verdicts.

1 THE COURT: Anything from the defense?

2 ATTORNEY STRANG: Your Honor, I ask that
3 the Court enter judgment of acquittal on Count 2 of
4 the second Amended Information. And I ask that the
5 Court withhold judgment on Counts 1 and 3, set a
6 schedule for post-verdict motions, in part,
7 inconsistent verdicts, and anything else we might
8 want to address.

9 THE COURT: The Court is going to, at this
10 time, enter a judgment on the three verdicts that
11 have been received, subject to further rulings from
12 the Court after full consideration of any post-trial
13 motions; that is, a judgment of conviction on Counts
14 1 and 3 and a judgment of acquittal on Count 2. I
15 do not have my calendar here today; it's in
16 Manitowoc.

17 I am going to, at this time, order a
18 Presentence Investigation Report. The Court will
19 schedule a hearing on any motions after they are
20 received and schedule a sentencing date after
21 conversing with counsel later, contingent on any
22 rulings on any post-trial motions.

23 ATTORNEY STRANG: Would 30 days for filing
24 the motions be acceptable?

25 THE COURT: Any objection from the State?

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ATTORNEY KRATZ: Are we setting those
before the sentencing hearing?

ATTORNEY STRANG: Yes.

THE COURT: Well, I will decide that when I
get them, if and when I get them. I don't have any
motions in front of me. I'm not going to speculate
about hearing dates at this time. The Court is
going to, however, order that bail be revoked in
this case. Is there anything further from either
party on the record today?

ATTORNEY KRATZ: Nothing for today, Judge.
Thank you.

ATTORNEY STRANG: No, your Honor.

THE COURT: Very well, we are adjourned.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 11th day of January, 2008.

Diane Tesheneck, RPR
Official Court Reporter

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