

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

ANDREW L. COLBORN,

Plaintiff,

vs.

**NETFLIX, INC.; CHROME MEDIA LLC,
F/K/A SYNTHESIS FILMS, LLC; LAURA
RICCIARDI; AND MOIRA DEMOS,**

Defendants.

Civil No.: 19-CV-484

DECLARATION OF LAURA RICCIARDI

I, Laura Ricciardi, under penalty of perjury under the laws of the United States of America, declare as follows:

1. I am co-creator of the documentary series *Making a Murderer* and co-founder and co-owner of Chrome Media LLC, f/k/a Synthesis Films, LLC with Moira Demos. I submit this Declaration in support of the Motion for Summary Judgment filed in the above-captioned matter on behalf of myself, Moira Demos, and Chrome (sometimes referred to collectively herein as the “Producer Defendants”). I am over 18 years old and have personal knowledge regarding the facts set forth in this Declaration.

2. As one of two lead creators of *Making a Murderer*, I played several key roles. My credits on *Making a Murderer* included executive producer, writer, director, interviewer, researcher, additional camera, and sound recordist. In practical terms, that meant that I was responsible for most of the source contact, interviews, and research for the Series. Moira and I collaborated on storytelling. Although we worked with and received assistance and input from

others in the course of producing *Making a Murderer*, we retained creative control and are the two people responsible for ultimately deciding what was included in *Making a Murderer*.

3. I began working on the film project that became *Making a Murderer* while I was a graduate film student in the thesis phase of my five-year program at Columbia University. Prior to and during film school, I worked as a lawyer and in film and television production. While in law school, I served as a summer law clerk for the U.S. Attorney's Office. Early in my career, I worked in the U.S. Attorney General's Honor Program for the Federal Bureau of Prisons in Kansas City, Kansas, and later worked in private practice at the mid-size law firm Vedder Price in Chicago, IL, where I lived for five years.

4. With the exception of some modest grants that we received and small donations from family and friends, Moira and I self-funded the production (filming) and post-production (editing) of *Making a Murderer* before entering into a licensing agreement with Netflix in 2014. To help fund *Making a Murderer*, I took contract attorney work, as well as work in television. I have not practiced law since 2014.

5. *Making a Murderer* chronicles the story of Steven Avery, a resident of Manitowoc County, Wisconsin who after serving 18 years for a wrongful conviction was exonerated through DNA evidence only to be arrested and convicted for a second even more serious crime. While there are other individuals featured prominently in *Making a Murderer*, including Steven Avery's nephew and co-defendant, Brendan Dassey, who was also convicted of murdering Teresa Halbach and related crimes, Steven Avery is the principal subject or main character. It was Avery's seemingly unique status as a DNA exoneree charged with a new, serious crime that motivated Moira and me to commit to making this project because an individual's journey from one extreme of the American criminal justice system to the other is of

great public concern and documenting the journey would provide a significant window into the legal process at work. Although a significant portion of *Making a Murderer* concerns the investigations and legal proceedings related to the Teresa Halbach murder, the series covers a 30-year time period and it is not until more than halfway through the second episode that Teresa Halbach is reported missing. Before that point, the series documents a range of Steven Avery's experiences in the legal and political systems, including his early life and encounters with the criminal justice system and criminal offenses, his 1985 wrongful conviction, his related appellate and postconviction efforts, his 2003 exoneration, the Wisconsin Department of Justice's investigation into the wrongful conviction, the Avery Task Force (renamed the Criminal Justice Study Commission), and Avery's federal civil rights lawsuit against Manitowoc County and two of its former law enforcement officials.

The Producer Defendants' Initial Interest in Steven Avery's Story

6. Moira Demos and I read a November 23, 2005 *New York Times* front-page article recounting the story of Steven Avery, who was exonerated through DNA evidence after serving 18 years for a crime he did not commit only to be arrested a little over two years later and charged with murder. We were immediately interested in the article and wanted to learn more. We had never heard of someone exonerated by DNA evidence who was later charged with a serious crime. We believed that Avery's seemingly unique situation might present an interesting vantage point for examining how the American criminal justice system compared from 1985 (the year Avery was wrongly convicted) to 2005 (the year he was arrested and charged for the new crime), a 20-year timespan that had seen the advent of DNA technology and many legislative reforms.

7. In December 2005, Moira and I traveled to Manitowoc, Wisconsin to begin researching and filming a project that, many years later, would eventually grow into and become *Making a Murderer*.

8. We moved to Manitowoc in January of 2006 expecting Avery to go to trial for the murder of Teresa Halbach later that spring.

9. In March 2006, our plans changed after Special Prosecutor Ken Kratz's March 1 and 2, 2006 press conferences, at which he revealed that a 16-year old relative of Avery's, Brendan Dassey, had made a confession that Avery had raped and murdered Teresa Halbach and he (Dassey) had been involved too. Dassey was in custody and ultimately became Avery's co-defendant. We could tell from these developments and the public and media reaction to them that the story was getting even more complex.

10. There was extensive news coverage of Steven Avery's exoneration (as well as coverage of the Wisconsin Department of Justice's investigation into the 1985 case, the state legislature's Avery bill [subsequently renamed the Criminal Justice Reform Bill] and Avery's civil rights lawsuit), the disappearance of Teresa Halbach, the Halbach murder investigation, and the Avery and Dassey hearings and trials. Developments from the Halbach case frequently made the nightly news on multiple local television stations.

11. Moira and I lived in Wisconsin from January 2006 until August 2007 to conduct research and sit-down interviews, request and acquire public records and other primary source materials, and review and license archival footage and other materials for the 30-year story. We also filmed events as they unfolded and covered the pre-trial, trial and sentencing phases of both the Avery and Dassey cases. We made a number of trips to Wisconsin from 2009 to 2014 to do additional filming.

Interviews and Other Documentary Efforts

12. Moira and I filmed events as they were unfolding in an observational documentary style where neither we nor the subjects knew what would happen next. We also conducted sit-down interviews with subjects regarding those events and conducted sit-down interviews with subjects about past events. We began reaching out and requesting access to numerous people connected to Avery's various legal matters, including Avery, Sandra Morris (his cousin whom he ran off the road and pointed a gun at), his ex-wife, Lori, (whom among other things he threatened to kill), retired Manitowoc County Sheriff's Office ("MTSO") deputies Judy Dvorak and Arland Avery, retired Sheriff Thomas Kocourek, former Manitowoc County District Attorney Denis Vogel, Penny Beerntsen (the survivor of the 1985 sexual assault, attempted murder and false imprisonment [herein, "1985 sexual assault"]), Avery's family, his then fiancé, his former and present attorneys, Judge Hazlewood (who presided over the Beerntsen matter and was then retired) and later Judge Patrick Willis (who presided over Avery's murder trial) and Judge Jerome Fox (who presided over Dassey's murder trial), Peg Lautenschlager (then Wisconsin Attorney General), reporters and politicians. Some, but not all, of them agreed to interviews and/or other filming. With Avery's trial attorneys, the filming we did in the lead up to and during the murder trial was limited and we had to wait to do most of our interviews with them until after the murder trial was completed.

13. We reached out to the family of Teresa Halbach, but they did not wish to do sit-down interviews or otherwise participate. Given what they had been through, we understood. We made a good faith effort to film them at public events and film Teresa's brother Mike Halbach's press conferences. In *Making a Murderer*, we tried to present their perspective by using that

more public footage as well as using archival vérité and interview footage of them that we were able to license or otherwise include.

14. We also reached out to the prosecutors in Avery's and Dassey's murder cases, including Special Prosecutor Ken Kratz, Thomas Fallon and Norm Gahn. However, the prosecutors either did not respond to requests or declined to participate. Again, in *Making a Murderer*, we tried to present the State's experiences and perspective by including extensive coverage of the prosecutors in court through all phases of the Halbach murder trials, archival footage of Ken Kratz from the period before we were filming in Wisconsin and footage we could shoot at or obtain of press conferences (both before and during Avery's and Dassey's trials) where the prosecutors answered questions and (primarily Ken Kratz) set forth the State's theories and outlined key evidence that they believed pointed to Avery's and Dassey's guilt. Kratz's March 2, 2006 press conference referenced above is one such event, as that was a particularly significant turning point in the case. *See MaM* Ep. 3 26:00–28:26; *see also MaM* Ep. 7 44:28–45:30.

15. We also reached out to Undersheriff Robert Hermann at MTSO, as we understood that he was acting as a spokesperson for the Department and we also understood that current MTSO personnel generally were forbidden from talking with the media about the Penny Beerntsen and Teresa Halbach matters. We interviewed Undersheriff Hermann, and portions of that interview are included in episode 3 of *Making a Murderer*. *See MaM* Ep. 3 22:51–23:22.

16. We also interviewed then Assistant District Attorney Michael Griesbach who spoke about Avery's wrongful conviction and subsequent exoneration for the 1985 sexual assault of Penny Beerntsen. Griesbach also discussed matters concerning the investigation by the Wisconsin Department of Justice that followed Avery's release, along with matters related to

Avery's civil rights lawsuit against Manitowoc County, former Manitowoc County Sheriff Thomas Kocourek and former Manitowoc County District Attorney Dennis Vogel (who had been the lead prosecutor). *Making a Murderer* includes portions of Griesbach's interview in episode 1. *See MaM* Ep 1 at 49:51–51:50.

17. As part of our research into and documenting of Avery's 1985 conviction and imprisonment, related appeals and postconviction efforts, subsequent exoneration, the Wisconsin Department of Justice's investigation and Avery's subsequent civil rights lawsuit, the Avery Task Force, and the Halbach case we obtained copies of many primary source materials related to those matters, investigations and proceedings. For example, we obtained copies of:

- Pleadings, orders and other documents related to Avery's priors;
- Pleadings, orders and other documents related to Avery's 1985 conviction;
- The Wisconsin Department of Corrections file on Avery;
- Pleadings, orders and other documents related to Avery's appeals and postconviction efforts to overturn his 1985 conviction;
- Correspondence and reports relating to Avery's exoneration;
- Copies of the Wisconsin Department of Justice's Division of Criminal Investigation ("DCI") investigative reports regarding Avery's 1985 conviction, subsequent imprisonment and 2003 exoneration, as well as many documents and correspondence related to those reports;
- A copy of the Wisconsin Attorney General's report regarding whether there were any criminal or ethical violations relating to Avery's 1985 conviction, subsequent imprisonment and 2003 exoneration;

- Pleadings and other documents from Avery's civil rights lawsuit, including videos and transcripts of the depositions of numerous witnesses in that case including Sandra Morris and MTSO officials such as Plaintiff Andrew Colborn, Sheriff Kenneth Petersen, Lieutenant James Lenk, former deputy Judy Dvorak, former Chief Deputy Eugene Kusche, and Manitowoc County Assistant District Attorney Michael Griesbach, Manitowoc District Attorney Mark Rohrer, and DCI Special Agents Amy Lehmann and Debra Strauss, and Assistant Attorney General Thomas Fallon;
- Copies of documents referenced at those depositions;
- Copies of documents related to the criminal record of Gregory Allen, the man who DNA evidence showed was the actual person responsible for the 1985 sexual assault of Penny Beerntsen for which Avery had been wrongfully convicted;
- Video and audio copies of interrogations of Steven Avery in the Sandra Morris (audio only) and Halbach cases;
- Video and audio copies of interrogations of Brendan Dassey;
- Audio copies of Avery's and Dassey's jail calls recorded while they were in custody awaiting trial for the murder of Teresa Halbach;
- Video footage, pleadings and orders related to the pre-trial proceedings in Avery's and Dassey's cases; and
- Footage from press conferences related to the Avery and Dassey cases.

We also obtained secondary sources like newspaper articles and news footage related to the above items.

18. Moira and I obtained these materials to better understand the subjects that we were covering and to try to make *Making a Murderer* as accurate as we could. We spent

considerable sums of money obtaining copies of these materials, including, for example, copying charges and license fees.

19. In connection with making *Making a Murderer*, I estimate that I personally spent thousands of hours reviewing the materials described above in Paragraph 17, which includes only researching and reviewing third-party materials. The estimate does not include time spent in production or post-production with original or pool footage from all of our sitdown interviews, vérité shoots, recording of pre-trial and trial footage, etc. Factoring in those efforts would bring the total to well over ten thousand hours over a ten-year period.

20. We carefully researched *Making a Murderer* and relied among other things on public records and other primary sources. To this day, I am confident that we were as accurate as the record allowed for the numerous legal matters that we covered.

Trial Footage, Unterminated Feed Issues and Good Faith Efforts to Address those Issues

21. The Judge presiding over Steven Avery's murder trial, Hon. Patrick L. Willis, permitted use of a single camera in the courtroom to film all public pre-trial hearings, and the media worked according to a pool system where members of the media could plug into a multi-box fed from the camera to take that feed. All outlets had the right to use the footage. Synthesis Films participated in this pool system.

22. Before trial Judge Willis had a meeting with all the members of the media including Synthesis Films to discuss camera coverage for the trial. A true and correct copy of Judge Willis' Order Regarding Trial Administration, dated January 19, 2007, is attached as Exhibit 17. It was ultimately decided that there would be three pool cameras (A, B, C) for the courtroom, as well as one pool camera in the hallway, which would move downstairs in the afternoon to also record daily press conferences. The A-camera (which Moira and I call the

“witness cam”) was a manned camera in the back right corner of the gallery that filmed the witnesses and the judge. The B-camera (which Moira and I call the “lawyer cam”) was a remote-control camera mounted to the wall above the jury box that filmed the lawyers, the defendant, the gallery and the projection screen. The C-camera (which Moira and I call the “C-cam”) was a manned camera in the small, windowed media room in the back left corner of the courtroom that rolled on the rare moments when someone in the courtroom was up on their feet moving and could not be filmed well by the A- and B-camera positions.

23. During the trial in Calumet County, Moira and I were upstairs in the small media room in the back left corner of the courtroom. Moira was operating the remote-control/B-camera and performing a live edit between the three cameras (A, B, C) and I was controlling the sound mixer.

24. During trial, there were three feeds that were fed down to the media room in the basement where all of the media outlets as well as Synthesis Films were set up to record. The first feed was of raw (unedited) footage from the witness cam (A-camera). The second feed was of raw (unedited) footage from the lawyer cam (B-camera). The third feed was a feed of the live edit of all three cameras (A, B, C) (which Moira and I call the “mixed feed”).

25. Whereas all the media outlets were recording from the (edited) mixed feed and using it in their contemporaneous coverage, we at Synthesis Films were the only ones recording from the raw (unedited) footage feeds from the witness and lawyer cams (A- and B-cameras, respectively) as well as copying the tape of the C-camera operator. We were not recording from the (edited) mixed feed. We only reviewed and began working with our recordings of the A-camera and B-camera feeds and C-cam tapes after the trial was completed. When we did so, we realized that the raw feed from the witness cam (A-camera) was “unterminated.” Unbeknownst

to us during the trial, on the morning of the second day, someone had removed an adapter that was connecting the witness cam (A-camera) feed to the mult-box, located down in the media room, and instead connected the feed, without an adapter, directly to the mult-box, which created what is called an “unterminated” feed. The result is that the footage from the witness cam (A-camera) was unusable for broadcast and could not be fixed.

26. The witness cam (A-camera) footage is unusable as it is “blown out,” meaning it is very high contrast and the whites are clipping. The witnesses' facial and other features have no detail and often could not be made out clearly. As a result, the footage recorded off the unterminated feed was non-repairable and unusable for our documentary project and it did not meet broadcast standards.

27. We only discovered the unterminated feed issue after Avery’s trial was completed. In response, Moira and I made repeated efforts to reach out to dozens of people working at the local television stations who had covered Avery’s trial in an attempt to obtain copies of their stations’ mixed feed footage or the opportunity to make copies of such footage. Attached as Exhibits 28, 31, 32, and 35 and Exhibits 29 and 30 to the concurrently filed Declaration of Moira Demos are true and correct copies of some of our correspondence related to those efforts to obtain more footage. Ex. 28, CHRM034819 (initial outreach email from Demos to pool re footage); Ex. 31, CHRM034769 (Ricciardi explaining the unterminated feed to producer); Ex. 29, CHRM034730 (pool member recognizing contributions to the group); Ex. 30, CHRM034747 (Hearst affiliate assisting with footage); Ex. 35, CHRM034867 (CBS affiliate assisting with footage).

28. In 2007, we were able to duplicate footage from two local television stations, WISN and WBAY. Their footage consisted of the mixed feed footage described above, which

meant there was not complete footage of witnesses (including Plaintiff) during every moment of their time on the witness stand. The mixed feed footage only sometimes showed the witnesses because the recorded live edit was cutting back and forth between the witness, the attorneys, the judge, the gallery, the projection screen and the C-cam footage. Moreover, the television stations did not always record the totality of a witness' testimony. In 2015, we made additional efforts to obtain more usable footage of two trial witnesses: Plaintiff and Leslie Eisenberg. That was because neither of the stations from which we already had obtained usable footage, i.e., WISN and WBAY, had been rolling during significant portions of those two witnesses' testimony. We were successful in obtaining such additional footage from WGBA, although we had to pay a \$10,000 license fee to the station. That footage was also mixed feed footage and for the reasons listed above was still not complete coverage of the witnesses.

29. As a result, there were gaps of the witnesses that Moira and I could not fill. When working on *Making a Murderer*, there were times when Moira and I did not have usable footage of Plaintiff testifying in response to a particular question, as the only footage of Plaintiff at that moment was the unterminated footage from the witness cam (A-camera). This was an issue we had with every witness that testified after the morning of the second day of trial that appears in the series and the way we addressed the problem was the same across all the witnesses. To address the problem, we found a response from the usable footage we had that was as close as possible to the moment for which we did not have usable footage. For example, there is a scene in *Making a Murderer* in which prosecutor Kratz asks Plaintiff whether he knows if the Jail Call was even about Steven Avery. Because there was no on-screen usable footage of Plaintiff responding, "No, I don't" to Kratz's question, Moira and I substituted usable footage that we had where Plaintiff answered "No, sir." Our goal in this and all other substitutions was to find

substitute footage that stayed true to the substance of witnesses' testimony (including Plaintiff's). See *MaM* Ep. 7 at 18:42. Lodged concurrently herewith as Exhibits 1–4 are copies of the raw footage that we had for that particular sequence, along with a composite showing the footage from the three relevant feeds that we prepared for ease of comparison. These are excerpts of much larger files that we produced in discovery to Plaintiff in this case in connection with our agreement to provide Plaintiff with copies of all of our raw footage of Plaintiff testifying at Avery's trial.

30. Contrary to Plaintiff's allegations that *Making a Murderer* "spliced" testimony to try to make Plaintiff look bad or to change the gist of his testimony, we went to considerable effort utilizing the usable footage we possessed to portray the substance of Plaintiff's testimony accurately and to avoid making material changes to the gist of what Plaintiff's contentions were on the witness stand. In taking these steps, we tried, and I believe we succeeded, in accurately maintaining the material substance of the witnesses' testimony, including that of Plaintiff. I do not believe any of the edits we made responding to the unterminated feed footage issue materially altered Plaintiff's demeanor or the meaning of any of Plaintiff's testimony included in *Making a Murderer* let alone in a defamatory manner as he alleges in the Second Amended Complaint ("SAC").

Other Matters Related to Editing and Production of *Making a Murderer*

31. *Making a Murderer* documents events beginning in the early-1980s and continuing through 2015. It covers Avery's early life, his early encounters with the criminal justice system/criminal offenses, his 1985 arrest and wrongful conviction, his related appeals and postconviction challenges, his 2003 exoneration and release, the Wisconsin Department of Justice's investigation into his wrongful conviction, Avery's involvement in legislative reforms,

his 2004 civil rights lawsuit, the 2005 disappearance of Teresa Halbach, Avery's subsequent arrest for her murder, the investigation into Avery and his nephew Brendan Dassey, the pre-trial period leading up to Avery and Dassey's 2007 trials, Avery's 2007 trial, Dassey's separate 2007 trial, the juries' guilty verdicts and reaction to them, and Avery's and Dassey's appeals and postconviction efforts.

32. *Making a Murderer* also explores its subjects' experiences in the legal system, as well as aspects of the legal system itself.

33. The process of making a documentary necessarily requires significant editing. That involves summarizing, condensing, and compressing a huge volume of information and materials. Avery's 2007 trial alone lasted approximately five weeks, with 60 witnesses and hundreds of exhibits. While Season 1 of *Making a Murderer* spends a considerable amount of time in the courtroom for Avery's murder trial (slightly less than two hours), *Making a Murderer* necessarily could only include a portion of what occurred there. The same is obviously true of Plaintiff's trial testimony. At Avery's trial, Plaintiff testified on the stand for approximately 3 hours and 10 minutes, or approximately 3 hours and 40 minutes if you include oral argument of counsel during the time he was on the stand. And Plaintiff is just one of 25 witnesses at Avery's trial whose testimony is included in *Making a Murderer*. If *Making a Murderer* had included all of the witnesses' entire testimony, the trial scenes alone would have been about 130 hours.

34. Our intent when editing footage was to summarize, condense and compress voluminous material in a comprehensible manner for viewers that accurately captured the gist of subjects' testimony and viewpoints on events. The standard editorial practices we used to summarize, condense and compress subjects' testimony, actions and viewpoints were applied universally to all witnesses who appear in the series. With respect to the Teresa Halbach case, we

necessarily had to choose certain pieces of evidence to feature and in making those choices we looked to the prosecution and the defense to see what each side said was their most important evidence.

35. We explicitly sought to include both the view of the State and of Avery's defense attorneys in the Series, even when representatives from the prosecution and law enforcement declined to make themselves available for interviews. We used press conferences and arguments in court to substitute for direct interviews.

36. While in post-production, we ensured we had proper permissions and hired Rights and Clearance Counsel in connection with using footage, images, and other materials in the Series. Rights and Clearance counsel also vetted *Making a Murderer* to ensure that it was legally proper and did not, for example, defame any of its subjects. We did this both as a preventative measure and because we wanted to be accurate.

The Distribution Agreement with Netflix and Working with Netflix in Post-Production

37. After Steven Avery's trial in 2007, Moira and I started the long process of mapping out and editing footage for what eventually became *Making a Murderer*. We had difficulty pitching what at that time was an unconventional format: a long-form documentary series. We spent several years working on the first few episodes to demonstrate to potential distributors that it was more than just a documentary feature film and that a long-form series was justified.

38. Lisa Nishimura of Netflix recognized the complexity and appeal of the story and took a risk. After discussions and later negotiations by our outside counsel with Netflix, in 2014,

we entered into a licensing agreement with Netflix whereby *Making a Murderer* would be distributed on the Netflix platform.

39. Throughout the remaining post-production, Netflix creative executives provided notes, but we chose how (and whether) to implement them and retained creative control. I worked closely with Moira who was the lead editor of the series and I oversaw the work of contributing editors.

40. We had initially planned for eight episodes but expanded to ten episodes to devote more running time to Avery's and Dassey's trials.

41. Netflix marketed the show, though we had some input on marketing issues.

42. Netflix suggested we hire a graphics company to create graphics for the Series. We provided the information to include in the graphics and gave notes and input to make the graphics accurate and viewer-friendly. We believed that using graphics was appropriate because, particularly in the early episodes of *Making a Murderer*, viewers are presented with lots of events, dates, locations and individuals, including numerous MTSO officers, to keep track of.

43. We were invited to and participated in many media interviews and industry, legal, educational and cultural events following *Making a Murderer's* release on Netflix on December 18, 2015.

44. We received many messages, both positive and negative, after the Series was released. We received an email from then Manitowoc County ADA Michael Griesbach congratulating us on the Series and its overall message about ambiguity and uncertainty in the criminal justice system. Attached as **Exhibit 34** is a true and correct copy of Michael Griesbach's December 23, 2015 email to Moira and me. CHR002666.

Allegations in the SAC regarding *Making a Murderer*

Plaintiff's Overarching Complaint

45. Much of the SAC strikes me as being premised on an overarching complaint that *Making a Murderer* includes the viewpoints of Steven Avery's defense and others that Plaintiff and others in law enforcement planted evidence to frame Avery for the murder of Teresa Halbach. However, that was a core part of Avery's defense at his murder trial. We could not document Avery's trial without including this key defense.

46. The SAC often seriously mischaracterizes portions of *Making a Murderer* in which Avery and his defenders' voice planting accusations against Plaintiff as statements made by "Defendants" or "*Making a Murderer*." But *Making a Murderer*'s inclusion of subjects' viewpoints does not mean that we were endorsing or agreeing with what they said. Indeed, *Making a Murderer* also includes statements made by Plaintiff and others explicitly denying and pushing back against Avery's planting allegations.

47. Attributing *Making a Murderer*'s subjects' viewpoints to Moira and me shows a fundamental misunderstanding of *Making a Murderer*. Moira and I purposefully did not include in *Making a Murderer* an omniscient voiceover narrator telling viewers what and whom to believe. Instead, *Making a Murderer* includes individuals expressing their own views in interviews, in vérité footage, in deposition and trial testimony, and at press conferences and public places where various matters were being discussed. When editing the part of *Making a Murderer* focused on the investigation into and trial of Steven Avery for the murder of Teresa Halbach, we chose to lay out the story in the present tense, again without voice-over narration by us or anyone else. The result is that the events play out as people on all sides of the Halbach case take action, voice their points of view and make their respective legal arguments concerning

Halbach and her horrific murder, as well as the investigation, prosecution, conviction, and sentencing of Avery and Dassey and the appellate and postconviction phases of those cases. *Making a Murderer* includes a variety of viewpoints, opinions, assertions, and counter-assertions. *Making a Murderer* also explores ambiguities in the story, and, far from beating viewers over the head with a “correct” conclusion, reflects the many uncertainties in the matter. In creating *Making a Murderer*, Moira and I intended to raise questions but deliberately did not provide answers or tell viewers what to think.

48. I do not know whether Steven Avery killed Teresa Halbach. I accept that, unless there is some new revelation in the case, I will probably have to live with that uncertainty. I also do not know whether Plaintiff or others in law enforcement planted evidence against Avery. Again, unless there is some new revelation on that score, I anticipate that I will have to live with the uncertainty.

The 1994–95 Jail Call

49. I reviewed Plaintiff’s allegations in his pleadings about specific statements related to the 1994–95 Jail Call and related subjects. None of the Plaintiff’s challenged statements relating to them were included in *Making a Murderer* with knowledge of their falsity or with a high degree of awareness of probable falsity. I did not and do not entertain any doubts that *Making a Murderer* accurately captured the gist of the parties’ contentions with regard to those statements and subject matter.

50. Plaintiff alleges in Paragraph 27 of the SAC that Defendants “spliced and omitted” portions of Plaintiff’s testimony about the Jail Call to lead “viewers to falsely conclude that Plaintiff bears responsibility for seven or eight of Avery’s 18 years of wrongful imprisonment, providing him with a motive to frame Avery for Halbach’s murder.” That is not

true. We did not attempt to lead *Making a Murderer* viewers to conclude that Plaintiff bears responsibility for seven to eight years of Avery's wrongful imprisonment providing him with a motive to frame Avery for Halbach's murder, nor do I believe that *Making a Murderer* does so. While Avery and his attorneys accused Plaintiff of planting evidence and claimed he was motivated to do so by, among other things, Avery's civil rights lawsuit and Plaintiff's involvement in the Jail Call, that was simply their viewpoint, which was reflected in *Making a Murderer* along with viewpoints of others, including that of Plaintiff, whom *Making a Murderer* shows denying that accusation. *Making a Murderer* also includes other statements by Plaintiff related to the Jail Call: (1) that he did not know if the caller was talking about Steven Avery; (2) that he forwarded the call to an MTSO detective to address the caller's concerns; (3) Plaintiff did not prepare a report on the Jail Call in 1995 because he did not think one was called for; and (4) Plaintiff did not plant evidence and was not motivated to plant evidence based on the Jail Call. *See MaM* Ep. 7 at 22:57–24:30.

51. The Avery trial was approximately five weeks long, and Plaintiff alone was on the stand for three-plus hours. Abridgment of Plaintiff's and other witnesses' testimony was a necessity, and thus *Making a Murderer* could not include the entirety of Plaintiff's testimony. That applies generally, and also specifically with respect to the Jail Call. Moira and I tried to capture the core aspects of Plaintiff's testimony on that subject, and I believe that we accurately did that. In condensing Plaintiff's testimony, we did not attempt to distort Plaintiff's testimony, nor do I believe that we did so. I do not believe that the particular items related to the Jail Call that Plaintiff complains about in his SAC constitute material alterations of the gist of Plaintiff's testimony. Regardless, the editing decisions that Moira Demos and I made were not done with the intent to make any such material changes. Nor did we know that any such material change

was made or entertain any doubts that what *Making a Murderer* included accurately reflected the key substance of Plaintiff's testimony and of Avery's attorneys' suggestions and accusations that Plaintiff had planted evidence.

52. To the extent there are any material inaccuracies resulting from *Making a Murderer*'s efforts to compress and summarize testimony (although I do not believe there are), such inaccuracies were inadvertent. I did not and do not entertain any doubts that what was presented in *Making a Murderer* accurately captured the gist of the parties' contentions. That applies generally and also specifically to those portions of *Making a Murderer* related to the Jail Call.

53. I believed when *Making a Murderer* was released on December 18, 2015, (and still believe now) that *Making a Murderer*'s inclusion of Plaintiff's testimony that he did not know if the Jail Call had anything to do with Steven Avery conveyed the idea that Plaintiff was claiming that Avery's name was not mentioned to him during the Jail Call.

54. I believed on December 18, 2015, (and still believe now) that compression of a Q&A that resulted in Plaintiff answering the question—"Have you ever planted any evidence against Mr. Avery?"—with the response "I have to say that this is the first time my integrity has ever been questioned, and no, I have not" instead of "that's ridiculous, no I have not," did not materially alter the meaning of Plaintiff's testimony. To the contrary, it shows that Plaintiff was firmly denying Avery's planting accusations and taking umbrage at their being made against him. *See MaM* Ep. 7 at 18:42–19:15.

55. I believed on December 18, 2015, (and still believe now) that the substance of Plaintiff's explanation for why he did not prepare a report of the Jail Call in 1995 is captured by *Making a Murderer*'s inclusion of Plaintiff's testimony that he "didn't know what [a 1995]

report would have been about” and “if I wrote a report about every call that came in, I would spend my whole day writing reports.” See *MaM* Ep. 7 at 22:57–24:30.

56. I believed on December 18, 2015, (and still believe now) that Stephen Glynn’s statement that Plaintiff’s Sept. 12, 2003 written statement was left in the Sheriff’s safe not only represented Glynn’s opinion on the matter, but I also was aware of a September 30, 2003 report from Wisconsin DCI in which Special Agent Debra Strauss had confirmed that Plaintiff’s written statement *was*, in fact, kept in Sheriff Petersen’s safe. I understand that while Plaintiff’s SAC alleged that Glynn’s statement was false, Plaintiff has now admitted that his written statement *was*, in fact, kept in a safe in the Sheriff’s office.

57. While *Making a Murderer* also includes statements by others that Plaintiff was given reassurances by someone at MTSO in the 1990s that he need not worry because they already had the “right guy” in prison, I am aware that Plaintiff himself has testified that he does not recall ever receiving any such reassurances from anyone at MTSO.

58. To the extent there are any material inaccuracies resulting from *Making a Murderer*’s efforts to compress and summarize testimony with respect to the Jail Call (although I do not believe there are), such inaccuracies were inadvertent and I did not and do not entertain any doubts that what was presented in *Making a Murderer* accurately captured the gist of the parties’ contentions and testimony, including Avery’s attorneys’ express or implied accusations against Plaintiff and also Plaintiff’s denial of those accusations.

Call to Dispatch

59. I reviewed Plaintiff’s allegations in the pleadings about specific statements related to the Call to Dispatch and related subjects. None of the Plaintiff’s challenged statements relating

to them were included in *Making a Murderer* with knowledge of their falsity or with a high degree of awareness of probable falsity. I did not and do not entertain any doubts that *Making a Murderer* accurately captured the gist of the parties' contentions with regard to those statements and subject matter.

60. I believed on December 18, 2015, (and still believe now) that the compression of questions and answers addressed in Paragraph 34 of the SAC does not materially change the meaning of Plaintiff's testimony. Guided by what happened at trial, *Making a Murderer* shows the key points in that question-and-answer exchange: (1) Avery's attorneys suggested Plaintiff was looking at Teresa Halbach's car when he made the Call to Dispatch; and (2) Plaintiff denied that. *See MaM* Ep. 5 at 53:35–57:00.

61. Plaintiff's allegations in Paragraph 34 of the SAC ignore prior questioning by Avery's attorney shown in *Making a Murderer* that had established that Plaintiff frequently called dispatch and provided a license plate number for a car that he had stopped or had come across while on patrol. *Making a Murderer* then shows Avery's attorney playing portions of the audio recording of the Call to Dispatch to Plaintiff and then asking him if he was looking at Teresa Halbach's license plate when he made the call, and Plaintiff denies that he was. After more questions and answers, *Making a Murderer* proceeds to the scene about which Paragraph 34 complains. But what the SAC calls a "manipulation" is simply a streamlining of the question-and-answer that saves time and removes an evidentiary objection (for which there was no footage of the objecting prosecutor Kratz, or the Judge), followed by Avery's attorney rephrasing his initial question. While the wording of the two questions may be different, to me, they convey the same meaning, particularly in context. Avery's attorney is suggesting the audio recording of the Call to Dispatch sounds like one of the frequent calls Plaintiff had testified about where he

had been looking at a car's license plate when calling dispatch. The attorney was insinuating that Plaintiff was similarly looking at Teresa Halbach's license plate during the Call to Dispatch. And Plaintiff denies that. I do not believe *Making a Murderer* materially changes the gist of that exchange. Episode 5 ends with Plaintiff explicitly denying the accusation a second time. We did not intend to convey any assertion or implication that Plaintiff was admitting that he was looking at Teresa Halbach's car when he made the Call to Dispatch, nor do we believe that *Making a Murderer* does so.

62. I believed on December 18, 2015, (and still believe now) that *Making a Murderer* conveys Plaintiff's explanation for how he believes he got the license plate and other information for Teresa Halbach's car (from Mark Wiegert), and that the additional testimony Plaintiff cites in Paragraphs 35 and 36 of the SAC would have been cumulative. Editing decisions were not motivated by any desire to present a false impression of Plaintiff's testimony on the subject. Instead, Plaintiff's testimony was edited for compression and summarization reasons. Again, such standard editing techniques were applied universally to witnesses and Plaintiff was treated no differently than any other witness. Also, Paragraph 36 notes that *Making a Murderer* did not include a portion of the Call to Dispatch that Plaintiff acknowledges was "inaudible." We did not include inaudible statements as a general principle because inaudibility would confuse and frustrate viewers.

63. I believed on December 18, 2015, (and still believe now) that *Making a Murderer* does not contain any "reaction" shots of Plaintiff that materially change the gist of his trial testimony in a manner defamatory to him. I am aware of one particular scene in *Making a Murderer* about which Plaintiff complained at his deposition in this case, which I attended in person. That shot is at 55:31 of Episode 5 of *Making a Murderer*. In my opinion, that shot does

not make Plaintiff look “nervous or apprehensive,” as his SAC alleges in Paragraph 37. To the contrary, Plaintiff is shown holding his head up and his eye level steady. In any event, we did not include that shot in *Making a Murderer* to make Plaintiff look nervous or apprehensive. Rather, I recall that Moira Demos, when editing *Making a Murderer*, used the particular shot about which Plaintiff complains because of the unterminated footage problem described above, which meant we did not have footage of Plaintiff at that exact moment at trial and had to find a moment of him not talking and looking towards the defense table. I do not believe the shot included in *Making a Murderer* of Plaintiff materially alters the meaning of his testimony or presents him in a materially different manner than at trial. I was present in the media room behind the courtroom when Plaintiff testified, and the shot included in *Making a Murderer* is, in fact, footage from Plaintiff on the witness stand.

64. I believed on December 18, 2015, (and still believe now) that the scene in *Making a Murderer* showing Plaintiff’s testimony regarding the Call to Dispatch about which he complains in Paragraph 38 of his SAC is not a “fabricat[ion],” but includes and accurately captures the gist of both Avery’s defense lawyers’ accusations and also Plaintiff’s repeated express denials of those accusations.

65. I believed on December 18, 2015, (and still believe now) that *Making a Murderer*’s cutting from Steven Avery telling interrogators that he believes law enforcement officials planted evidence against him to a scene involving Plaintiff accurately reflects the fact that, at trial, Avery’s attorneys were accusing Plaintiff of being one of two officers (along with Lenk) who planted evidence. In fact, I recall that Judge Willis issued an order allowing Avery’s attorneys to accuse Plaintiff and Lenk—and only Plaintiff and Lenk—of planting evidence.

66. Paragraph 40 erroneously alleges that the scene in *Making a Murderer* involving Avery's criminal defense attorney Jerome Buting's discovery of a blood vial stored in a box with a broken seal kept at the Manitowoc County Clerk of Court's office was a "dramatic re-enactment." It was not. It was shot live by Avery's attorney Jerome Buting, who receives a credit at the end of Episode 4 reflecting that. *See MaM* Ep. 4 at 1:05:11. It should have been obvious that this scene was not a re-enactment because it includes prosecutor Norm Gahn and investigator Mark Wiegert, who obviously would not have been participating in a "re-enactment" of Avery's attorneys coming across the blood vial. I believed on December 18, 2015, (and still believe now) that *Making a Murderer*'s inclusion of this scene captures the fact that Avery's defense team was excited about the blood vial discovery, which was reflected in arguments they made at trial. *See MaM* Ep. 4 1:02:26–1:04:14. I would also note that *Making a Murderer* includes the prosecution's efforts to rebut those arguments, including via an FBI test and an expert witness for the State testifying about that test. *See MaM* Eps. 5-7.

67. I believe that *Making a Murderer* accurately portrays the Call to Dispatch insofar as it presents Plaintiff's testimony that he believed it was November 3, 2005 when he made the Call to Dispatch (such testimony is included in *Making a Murderer*), but there is no presentation of any documentary evidence pointing to a definitive time and date to confirm when the call occurred. To my understanding, the Call to Dispatch had to have occurred sometime between when Teresa Halbach was reported missing on November 3, 2005 and when her vehicle was found on the Avery property on November 5, 2005. In my research for *Making a Murderer*, I never came across any written log that definitively set forth the caller information, date, and time for the Call to Dispatch. In this litigation, I have seen documentation that could be relevant to

setting the date and time of that call, but I have not seen any such evidence that definitively confirms the date and time of the Call.

68. I am aware of differing sworn testimony about the timing of the Call to Dispatch. As depicted in Episode 7, Plaintiff has testified that he believed that he placed the Call to Dispatch on November 3, 2005 after speaking with Calumet investigator Wiegert. *See MaM* Ep. 5 at 55:35–56:10. By contrast, in a sworn affidavit accompanying Avery’s October 23, 2017 motion for reconsideration, a local resident named Kevin Rahmlow testified that he saw Teresa Halbach’s car on the side of the road in Mishicot on November 3 and 4, 2005, saw a missing person poster about Teresa Halbach and her car, and then alerted an MTSO officer whom he ran into at a gas station on November 4, 2005, about his having seen the car on the side of the road. He further attested that, after viewing *Making a Murderer*, he recognized that officer as Plaintiff. *See* CHRM009598 (Rahmlow affidavit).

69. To the extent there are any material inaccuracies resulting from *Making a Murderer*’s efforts to compress and summarize testimony with respect to the Call to Dispatch (although I do not believe there are), such inaccuracies were inadvertent and I did not and do not entertain any doubts that what was presented in *Making a Murderer* accurately captured the gist of the parties’ contentions and testimony, including Avery’s attorneys’ express or implied accusations against Plaintiff and also Plaintiff’s denial of those accusations.

Discovery of the Key

70. I reviewed the Plaintiff’s allegations in the pleadings about specific statements related to the discovery by James Lenk of the key to Teresa Halbach’s car in Steven Avery’s bedroom on November 8, 2005 and related subjects. None of the Plaintiff’s challenged statements relating to them were included in *Making a Murderer* with knowledge of their falsity

or with a high degree of awareness of probable falsity. I did not and do not entertain any doubts that *Making a Murderer* accurately captured the gist of the parties' contentions with regard to those statements and subject matter.

71. I believed on December 18, 2015, (and still believe now) that the scene in *Making a Murderer* showing Calumet Sgt. Tyson's testifying that he had to watch Manitowoc County officers during searches to make sure they weren't left alone on Avery's property, and that it was the only time in Tyson's career that he had been asked to do that, accurately captures the gist of Tyson's testimony. While Plaintiff challenges the editing in that scene, we simply condensed Tyson's testimony as part of overall efforts to streamline the presentation of events in light of time constraints. Edits were not made to materially alter the substance Tyson's testimony. Rather, I believe both the first question in the challenged question and answer exchanged (shown in *Making a Murderer*) and the second question (not shown) carried the same gist: whether Tyson had ever in his career had to watch over fellow law enforcement officers during a search to make sure they were never left alone without supervision. *See MaM* Ep. 7 at 5:20–6:17; see also *infra*, Ex 19 to this Declaration, CHRM008000 at 25:5–26:19 and 53:1–10.

72. I believed on December 18, 2015, (and still believe now) that *Making a Murderer* accurately presents the substance of Plaintiff's explanation for how he believes the key was found on November 8, 2005, after numerous prior searches of Avery's bedroom had failed to locate it. Specifically, *Making a Murderer* shows witness testimony that the State's theory was that the key probably fell out from the back of a bookcase as a result of Plaintiff's having handled that bookcase "roughly" on November 8th. The SAC complains that *Making a Murderer* does not include photographs of the back of the bookcase, but *Making a Murderer* could not include everything from trial. There were hundreds of exhibits at Avery's trial, and *Making a*

Murderer only includes footage of a handful of them. *Making a Murderer*'s non-inclusion of the photograph was not the result of any decision to "le[a]d viewers to the inescapable but false conclusion that Plaintiff and MTSO Lt. James Lenk planted the ignition key," as the SAC falsely claims. Rather, Moira and I believed *Making a Murderer* had already captured the gist of Plaintiff's (Kucharski's and Lenk's) explanation for the circumstances and timing of the discovery of the key. The same goes for Plaintiff's complaint in discovery that *Making a Murderer* did not include more of prosecutor Kratz's questioning of Plaintiff regarding the bookcase. At the point in the Series that Plaintiff is testifying about the bookcase, *Making a Murderer* viewers have already heard testimony about the finding of the key from Deputy Daniel Kucharski in Episode 3 at 6:21 during Avery's preliminary hearing, and from two witnesses at Avery's trial, Deputy Daniel Kucharski and Lieutenant James Lenk. *See MaM* Ep. 7 at 6:19–13:58. *Making a Murderer* could not include Plaintiff's entire testimony and we necessarily had to make editing decisions. I do not believe those editing decisions materially alter the meaning of Plaintiff's testimony or present him in a materially different manner than at trial.

73. I believed on December 18, 2015, (and still believe now) that *Making a Murderer* accurately captures the gist of the rest of Plaintiff's testimony regarding the discovery of the key. Plaintiff notes that in response to the question, "There was no time that you went in Mr. Avery's home when you were not also with Lieutenant Lenk," Plaintiff's answer is changed from "Not that I recall" to "No, sir." But that does not materially alter his testimony. As explained in more detail in the Declaration of Moira Demos, who edited *Making a Murderer*, that change was made because of the untermiated feed/unusable footage issue described above. It was not done to try to change the meaning of Plaintiff's testimony or make him look worse. To the contrary, Plaintiff

often responded Yes/No plus “sir” to questions at trial, so I believed the substitution here was generally consistent with Plaintiff’s question-answering.

74. I believed on December 18, 2015, (and still believe now) that *Making a Murderer* does not materially alter the gist of Plaintiff’s testimony by including a clip in which Avery’s attorney Dean Strang questions Plaintiff about a “half page” report he had submitted on November 8, 2005. *See MaM* Ep. 7 at 22:22–23:05. While Plaintiff complains that he also filed another half-page or page report at a later date (in June 2006), Strang’s questioning of Plaintiff regarding that other report is included in *Making a Murderer* too. *See MaM* Ep. 7 at 20:02–20:40. In any event, I do not believe that Plaintiff’s testimony regarding those reports is materially changed whether the total length of those two reports was half a page, a page, or a page and a half, and we did not edit *Making a Murderer* on that score in order to try to make Plaintiff look bad.

75. I should note that there were other details omitted from *Making a Murderer* regarding the discovery of the Key that were unfavorable to law enforcement, including the fact that the initial criminal complaint in the Avery criminal case identified Deputy Kucharski as the officer who found the key, not James Lenk. *See* CHR019831. However, *Making a Murderer* did not include such details. Again, it came down to a question of having massive amounts of footage and material, and necessarily not being able to include everything.

76. I believe that *Making a Murderer* accurately portrays the opinions and commentary from various individuals sympathetic to Avery, as well as the opinions and commentary from various individuals who believe that Avery is guilty of murdering Teresa Halbach, as well as the opinions and commentary from various individuals sympathetic to law enforcement and Plaintiff.

77. Any alleged omissions to *Making a Murderer* were due to the challenge of compressing 30 years of history into 10 hours of television. I do not believe that they alter the meaning of the Series or present Avery's criminal defense theories and opinions as "actual and unanswered facts." In light of the mass of material reviewed for this Series, it is a misnomer to refer to "omissions" as that is based on an erroneous assumption that all material is to be included and anything that is not is an omission when in fact the reverse is true – the question was one of what "makes the cut," i.e., what do we have room to include in light of the wide scope of the subject matter and the voluminous amount of potential material?

78. To the extent there are any material inaccuracies resulting from *Making a Murderer's* efforts to compress and summarize testimony with respect to the discovery of the key (although I do not believe there are), such inaccuracies were inadvertent and I did not and do not entertain any doubts that what was presented in *Making a Murderer* accurately captured the gist of the parties' contentions and testimony, including Avery's attorneys' express or implied accusations against Plaintiff and also Plaintiff's denial of those accusations.

Alleged "Omissions"

79. Plaintiff's premise of allegedly defamatory "omissions" ignores the fact that, by definition, *Making a Murderer* could not include everything that anyone would have liked to include—not Plaintiff, not Avery and his attorneys, not the prosecution. Making a documentary series necessarily requires editing. This involves summarizing, condensing, and compressing a substantial volume of information. Simply put, it would have been impossible to include everything. We did not alter the meaning of the events, including the components of the series that relate to Plaintiff Andrew Colborn as well as to Steven Avery's defense theories and strategies.

80. None of the alleged “omissions” listed in Paragraphs 46 and 47 or anywhere else in the SAC were not included in *Making a Murderer* with knowledge of falsity or with a high degree of awareness of probable falsity with respect to any statement of and concerning Plaintiff. I did not and do not entertain any doubts that *Making a Murderer*’s not including such matters resulted in any material change.

81. Plaintiff’s alleged omissions are also cumulative in kind to many similar facts already in *Making a Murderer*. For example, Plaintiff points to Avery’s DNA being found on the hood latch of Teresa Halbach’s vehicle, but *Making a Murderer* already devotes significant attention to Avery’s blood being found in Halbach’s car and to scientific testing by the FBI and expert testimony by a State’s witness rebutting Avery’s attorney’s arguments that the blood had been planted. *See generally, MaM* Ep. 6 (“Testing the Evidence”) and Ep 7 (“Framing Defense”). Similarly, Plaintiff points to Teresa Halbach’s cell phone, camera and other possessions being found in a burn barrel on Avery’s property, but *Making a Murderer* already addresses the fact that Ms. Halbach’s cremains were found in Avery’s burn pit and in a burn barrel behind the neighboring Dassey family trailer.

82. I believe the SAC is wrong insofar as it is suggesting that *Making a Murderer* does not include the crimes for which Avery was actually charged and convicted. Those include his burning to death of a family cat, some burglaries when he was younger, running his cousin Sandra Morris off the road and pointing a gun at her, the 1985 sexual assault of Penny Beerntsen (for which he was wrongfully convicted), and, of course, the murder of Teresa Halbach. *See MaM* Ep. 1 at 5:18–7:24 (Morris allegations of indecent exposure); 9:30–9:59 (burglaries); 10:00–10:53 (cat burning and conviction and probation); 12:31– 13:59 (Morris assault); 16:07 (Morris criminal charges). *Making a Murderer* also includes the fact that Avery sent his ex-wife

letters from prison threatening to kill her. *See MaM* Ep. 1 at 36:53–37:38; *MaM* Ep. 2 at 11:33–11:44. In fact, *Making a Murderer* viewers were shown far more evidence of Avery’s prior crimes and violent acts than jurors at his murder trial, as Judge Willis excluded those prior crimes and acts from evidence. *See* CHR034905 (order re prior bad acts).

83. Aside from being cumulative, many of the alleged “omissions” listed in the SAC relate to items that were the subject of disputes between Avery and the prosecution. For Moira and me, that meant including them in *Making a Murderer* would have taken a considerable amount of additional time because we would have had to include both sides and often additional surrounding context. Again, we simply did not have time to include everything in *Making a Murderer*.

84. Perhaps most notably, the SAC’s complaints about alleged omissions also ignore the large number of scenes that are included in *Making a Murderer* and that reflect negatively on Avery. Those include:

- A scene with a statement by Chuck Avery, Steven Avery’s brother, stating that he was “pretty positive” Steven murdered Teresa Halbach. *MaM* Ep. 3 at 42:00–42:08.
- A scene in which Steven Avery’s sister, Barbara Janda, tells Steven “I hate you for what you did to my kid. All right? So you can rot in hell.” *See MaM* Ep. 3 25:21–25:29.
- Scenes showing Avery’s nephew Bobby Dassey testifying against him at his murder trial, with Dassey shown as being one of the prosecution’s most important witnesses. *See MaM* Ep. 5 at 19:28–21:56.
- A scene showing Teresa Halbach’s brother Mike Halbach opining that he believed Avery was guilty. *See MaM* Ep. 7, 59:12–1:00:04.
- Scenes discussing Avery’s prior bad acts, including numerous crimes that the judge in the Avery murder trial excluded from evidence. *See MaM* Ep. 1 at 5:18–7:24 (Morris allegations of indecent exposure); 9:30–9:59 (burglaries); 10:00–10:53 (cat burning and conviction and probation); 12:31–13:59 (Morris assault); 16:07 (Morris criminal charges).
- An interview in which Judge Hazlewood, the presiding judge in Avery’s 1985 trial, opines that Avery had a propensity for violence against women. *See MaM* Ep. 1, 26:36–28:18
- A scene in which Steven Avery tells his parents that he was going to kill himself if they did not figure out a way to post bail for him.

- A scene with Avery opining that the prosecution was going to win at trial.
- An interview with a member of the local media who said the arrest of Avery for the 1985 sexual assault was not a surprise because Avery was one of the “regular names” on the crime beat in Manitowoc County and the assault was “in character” for him. See *MaM Ep 1* at 27:09 – 27:52
- The jury’s guilty verdicts in Avery’s trial for the murder of Teresa Halbach. See *MaM Ep. 8* at 26:02–28:01.
- A scene showing Judge Willis, who presided over Avery’s trial, opining that Avery was “probably the most dangerous individual to set foot in this courtroom.” *MaM Ep. 9* at 1:01:08–1:02:53.

85. The SAC also fails to acknowledge many scenes in *Making a Murderer* in which subjects push back against Avery’s planting accusations against Plaintiff, including:

- An interview with the MTSO Undersheriff criticizing Avery’s planting accusations against officers and characterizing them as “impossible.” See *MaM Ep. 3* at 22:51–23:22.
- *Multiple* scenes in which the prosecutors from Avery’s murder trial push back against Avery’s planting accusations by, among other things, calling those accusations “despicable” and “deplorable.” See, e.g., *MaM Ep. 7* at 13:55–14:28; 44:00–45:30.
- A scene in which a member of the media calls out Avery’s criminal defense attorneys for accusing Plaintiff of planting. See *MaM Ep. 7* at 24:30–24:50.
- A newscast in which an anchorman reads Plaintiff’s prepared public statement following the jury’s guilty verdict in Avery’s murder trial. See *MaM Ep. 8* 34:02–19.
- Footage from Plaintiff’s testimony at Avery’s murder trial in which Plaintiff expressly denies the planting and framing accusations.

86. To the extent there are any material inaccuracies resulting from *Making a Murderer*’s not including any of the alleged omissions in Paragraphs 46 and 47 of the SAC (although I do not believe there are), such inaccuracies were inadvertent and I did not and do not entertain any doubts that what was presented in *Making a Murderer* accurately captured the gist of the parties’ contentions and testimony, including Avery’s attorneys’ express or implied accusations against Plaintiff and also Plaintiff’s denial of those accusations.

Plaintiff's Remaining Complaints about Statements by Avery and his Defenders

87. None of the SAC's challenged statements relating to subjects other than those already addressed above were included in *Making a Murderer* with knowledge of falsity or with a high degree of awareness of probable falsity. I did not and do not entertain any doubts that *Making a Murderer* accurately captured the gist of the parties' contentions regarding the subject matter embraced therein.

88. In Paragraph 37 of the SAC, Plaintiff complains about *Making a Murderer's* inclusion of Avery's criminal defense attorney Buting's musings on arguments that he planned to make that he hoped the jury would accept. Similarly, in Paragraph 48, Plaintiff complains about another statement from Buting in which he opines that a conspiracy to frame Avery would not have necessarily required a large number of conspirators (as the prosecution argued to dispute the conspiracy charge), but instead could have been achieved by two people or "[m]aybe even one" followed by a cut to James Lenk on the witness stand. In both instances, that simply reflects Buting's opinions and is consistent with the arguments he later presented to the jury at Avery's trial. The SAC's allegation that *Making a Murderer* therefore "presented it as a foregone conclusion that the police, allegedly including Plaintiff, planted the key at Avery's residence," is wrong. Again, these are instances where the SAC incorrectly claims that the views of *Making a Murderer's* subjects are those of *Making a Murderer* and its creators. As explained above, that is not how *Making a Murderer* worked. Indeed, *Making a Murderer* also includes Plaintiff's explicit denials that he planted evidence.

89. In Paragraph 39, the SAC challenges the inclusion of a scene in which an interrogator asks Steven Avery whether someone told him that "a cop put that vehicle – Teresa's vehicle – out on your property," to which Avery responds "Yeah," followed by a cut to a visual of Plaintiff. Again, that is Avery's statement, not a statement by "Defendants" as Plaintiff

alleges. Its inclusion in *Making a Murderer* is consistent with the fact that Avery's counsel argued at trial that Plaintiff and James Lenk planted evidence against Avery.

90. Paragraph 40 of the SAC is another instance in which Plaintiff incorrectly conflates statements made by documentary subjects with statements made by "Defendants." Moreover, as explained above, the blood vial scene is not a "re-enactment." Paragraph 40 is also wrong that I was "aware" that a phlebotomist was prepared to refute Avery's defense arguments about the blood vial at trial. I was not aware of that. No phlebotomist ever testified. By contrast, the prosecution did call someone from the FBI as an expert witness to counter Avery's arguments about the blood vial and planting, and *Making a Murderer* includes testimony from that witness.

91. At times, Plaintiff appears to be complaining about *Making a Murderer's* use of visuals, graphics and possibly music. However, we included visuals and graphics in *Making a Murderer* for clarity and to help viewers follow along, not to try to make Plaintiff look bad. For example, the first couple of episodes of *Making a Murderer* introduce a lot of different characters to viewers, in particular many individuals who worked at MTSO. Graphics and visuals were used to help viewers keep track of such individuals and better understand their relationship within the department. Graphics were also used in the series to help viewers understand events, dates and geography. Plaintiff's complaints about *Making a Murderer's* use of music is equally unfounded. Music is standard to documentary filmmaking, is used throughout the Series, and we did not include any music in *Making a Murderer* to materially alter Plaintiff's testimony or his presentation in the series.

92. Exhibit A to the SAC includes portions of some statements by Avery, his attorneys, his relatives and supporters, and others that were included in *Making a Murderer*.

Avery and his defenders offer their own personal opinions, as is made clear from *Making a Murderer*. *Making a Murderer* presents Avery and his supporters as voicing their opinions, not as authoritative sources of facts. Those opinions are consistent with the arguments that Avery's counsel made in his civil lawsuit and in his murder trial. The SAC fails to acknowledge that *Making a Murderer* also includes contrary opinions from many others that Avery was guilty and that his accusations against Plaintiff were false. It also includes Plaintiff's testimony denying the accusations against him, as well as statements by others to the same effect.

93. At one or more of the depositions in this case, I recall that Plaintiff's attorneys played a particular portion of Episode 3 of *Making a Murderer* in which certain individuals from the local community in a tavern express their opinions that they believed law enforcement had framed Steven Avery. See *MaM* Ep. 3 at 14:10–15:37. However, *Making a Murderer* also includes statements from members of the community opining that Steven Avery was guilty of murdering Teresa Halbach, including in that same episode. *Making a Murderer* also contains statements with individuals like members of the Halbach family and Avery's own siblings opining that they believed Avery was guilty.

94. Exhibit A to the SAC also demonstrates that the local news coverage of Avery's murder case included his planting accusations against law enforcement. We included media as a major character in the Series to reflect the public discussion around the Teresa Halbach case and to underscore why *Making a Murderer* necessarily had to include the media's treatment of criminal matters in order to document Avery's trial and the surrounding events. I would also note that, again as shown by Exhibit A, *Making a Murderer* also includes footage from a press conference in which a reporter challenges Avery's attorney for making planting accusations against Plaintiff. We included that scene in *Making a Murderer* to help capture various

viewpoints, including those of members of the community who viewed Avery's planting accusations with skepticism if not outright hostility.

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95. To the extent there are any material inaccuracies resulting from *Making a Murderer*'s efforts to compress and summarize testimony with respect to subjects other than the Jail Call, the Call to Dispatch and the discovery of the Key (although I do not believe there are), such inaccuracies were inadvertent and I did not and do not entertain any doubts that what was presented in *Making a Murderer* accurately captured the gist of the parties' contentions and testimony, including Avery's attorneys' express or implied accusations against Plaintiff and also Plaintiff's denial of those accusations.

96. Attached as Exhibit 1 is a true and correct copy of a Manitowoc County Sheriff's Department Memorandum to All Department Personnel, dated September 12, 2003, mandating no comment on the Steven Avery Case, produced by the Producer Defendants as CHRM004480 and introduced by the Producer Defendants as Exhibit 1003 at the Deposition of Kenneth Petersen on May 19, 2022.

97. Attached as Exhibit 2 is a true and correct copy of the September 12, 2003 Statement of James Lenk regarding the Jail Call, produced by the Producer Defendants as CHRM004478 and introduced by the Producer Defendants as Exhibit 1010 at the Deposition of Andrew Colborn on July 22, 2022.

98. Attached as Exhibit 3 is a true and correct copy of the September 12, 2003 Statement of Andrew Colborn regarding the Jail Call, produced by the Producer Defendants as CHRM004479 and introduced by the Producer Defendants as Exhibit 1009 at the Deposition of Andrew Colborn on July 22, 2022.

99. Attached as Exhibit 4 is a true and correct copy of the Wisconsin DOJ Division of Criminal Investigation ACISS Investigative Report of Debra Strauss, dated September 30, 2003, noting the retrieval of documents including Plaintiff and Lenk's 2003 statements from Sheriff

Petersen's safe, produced by the Producer Defendants as CHRM004724 and introduced by the Producer Defendants as Exhibit 1101 at the Deposition of Andrew Colborn on July 22, 2022.

100. Attached as Exhibit 5 is a true and correct copy of the Wisconsin Department of Justice Avery Review dated December 17, 2003, detailing the investigation into Steven Avery's wrongful conviction, produced by the Producer Defendants as CHRM011281.

101. Attached as Exhibit 6 is a true and correct copy of an excerpted transcript of the Video Deposition of Michael Griesbach taken in connection to civil Case No.: 04 C 986, *Avery v. Manitowoc County* dated September 22, 2005, produced by the Producer Defendants as CHRM002679.

102. Attached as Exhibit 7 is a true and correct copy of an excerpted transcript of the Video Deposition of Andrew Colborn taken in connection to civil Case No.: 04 C 986, *Avery v. Manitowoc County* dated October 13, 2005, produced by the Producer Defendants as CHRM002891.

103. Attached as Exhibit 8 is a true and correct copy of an excerpted transcript of the Video Deposition of Kenneth Petersen taken in connection to civil Case No.: 04 C 986, *Avery v. Manitowoc County* dated October 13, 2005, produced by the Producer Defendants as CHRM002956.

104. Attached as Exhibit 9 is a true and correct copy of an excerpted transcript of the Video Deposition of Eugene Kusche taken in connection to civil Case No.: 04 C 986, *Avery v. Manitowoc County* dated October 26, 2005, produced by the Producer Defendants as CHRM003031.

105. Attached as Exhibit 10 is a true and correct copy of the original criminal complaint in *State of Wisc. v. Steven Avery* [Case No.: 05 CF 381] dated November 15, 2005,

which references Calumet County Deputy Daniel Kucharski finding the key to Teresa Halbach's vehicle, produced by the Producer Defendants as CHRM019831–34.

106. Attached as Exhibit 11 is a true and correct copy of an excerpt from a Manitowoc County Sheriff Department Summary Report dated November 8, 2005 detailing the search of the Avery property with entries from James Lenk and Andrew Colborn, produced by the Producer Defendants as CHRM016566–98.

107. Attached as Exhibit 12 is a true and correct copy of an excerpt from a Manitowoc County Sheriff Department Summary Report dated July 18, 2006 with a June 29, 2006 entry from Andrew Colborn recording conversation with Steven Avery on November 3, 2005 regarding the missing person, produced by the Producer Defendants as CHRM020347 and introduced by the Producer Defendants as Exhibit 1013 at the Deposition of Kenneth Petersen on May 19, 2022.

108. Attached as Exhibit 13 is a true and correct copy of excerpts from a pretrial hearing on August 22, 2006 where Judge Willis issued orders regarding the role of MTSO in the Avery case, produced by the Producer Defendants as CHRM009598.

109. Attached as Exhibit 14 is a true and correct copy of a pretrial order from Judge Willis dated September 22, 2006 regarding the exclusion of evidence of Steven Avery's prior bad acts, produced by the Producer Defendants as CHRM034905, introduced by Defendant Netflix, Inc. as Exhibit 57 at the Deposition of Andrew Colborn on June 21, 2022.

110. Attached as Exhibit 15 is a true and correct copy of a pretrial order from Judge Willis dated January 30, 2007 regarding the admission of evidence related to Steven Avery's wrongful conviction, produced by the Producer Defendants as CHRM034924

111. Attached as Exhibit 16 is a true and correct copy of a pretrial order from Judge Willis dated January 30, 2007 denying the State's motion to exclude evidence of a blood vial containing Steven Avery's blood, produced by the Producer Defendants as CHRM003721. Judge Willis acknowledged the defense sought to introduce the blood vial "to be used as part of a 'frame-up' defense," and the court noted that the defense would not attempt to "implicate any members of the Sheriff's Department other than Mr. Lenk or Mr. Colborn in any frame-up."

112. Attached as Exhibit 17 is a true and correct copy of a pretrial order from Judge Willis dated January 19, 2007, outlining proposed media pool procedures, produced by the Producer Defendants as CHRM034811.

113. Attached as Exhibit 18 is a true and correct copy of an excerpted transcript of Jury Trial - Day 1, *State of Wisc. v. Steven Avery* (Case No.: 05 CF 381) dated February 12, 2007, including opening arguments, produced by the Producer Defendants as CHRM006136.

114. Attached as Exhibit 19 is a true and correct copy of the full transcript of Jury Trial - Day 7, *State of Wisc. v. Steven Avery* (Case No.: 05 CF 381) dated February 20, 2007, including Plaintiff's testimony, produced by the Producer Defendants as CHRM008000.

115. Attached as Exhibit 20 is a true and correct copy of an excerpted transcript of Jury Trial - Day 8, *State of Wisc. v. Steven Avery* (Case No.: 05 CF 381) dated February 21, 2007, produced by the Producer Defendants as CHRM007765.

116. Attached as Exhibit 21 is a true and correct copy of an excerpted transcript of Jury Trial - Day 9, *State of Wisc. v. Steven Avery* (Case No.: 05 CF 381) dated February 22, 2007, produced by the Producer Defendants as CHRM005930.

117. Attached as Exhibit 22 is a true and correct copy of an excerpted transcript of Jury Trial - Day 10, *State of Wisc. v. Steven Avery* (Case No.: 05 CF 381) dated February 23, 2007, produced by the Producer Defendants as CHRM007094.

118. Attached as Exhibit 23 is a true and correct copy of an excerpted transcript of Jury Trial - Day 23, *State of Wisc. v. Steven Avery* (Case No.: 05 CF 381) dated March 14, 2007, including the beginning of closing arguments, produced by the Producer Defendants as CHRM006618.

119. Attached as Exhibit 24 is a true and correct copy of an excerpted transcript of Jury Trial - Day 24, *State of Wisc. v. Steven Avery* (Case No.: 05 CF 381) dated March 15, 2007, including the remainder of closing arguments, produced by the Producer Defendants as CHRM004546.

120. Attached as Exhibit 25 is a true and correct copy of an excerpted transcript of Jury Trial - Day 27, *State of Wisc. v. Steven Avery* (Case No.: 05 CF 381) dated March 18, 2007, including the guilty verdicts, produced by the Producer Defendants as CHRM004124.

121. Attached as Exhibit 26 is a true and correct copy of a page from the Appleton *Post-Crescent* newspaper dated March 19, 2007 including several headlines regarding the Avery case and the continued media gag order on law enforcement, produced by the Producer Defendants as CHRM011297 and introduced by the Producer Defendants as Exhibit 1004 at the Deposition of Kenneth Petersen on May 19, 2022.

122. Attached as Exhibit 27 is a true and correct copy of the Affidavit of Kevin Rahmlow dated July 15, 2017 with attached Supplemental Affidavit of Kevin Rahmlow dated November 2, 2017 detailing a November 4, 2005 encounter with Plaintiff filed in appellate

proceedings for Steven Avery and produced in this lawsuit by the Producer Defendants as CHRM013700.

123. Attached as Exhibit 28 is a true and correct copy of an email from Moira Demos to members of the 2007 Avery trial media pool dated April 15, 2007 requesting access to dub trial footage due to the unterminated feed on the witness camera, produced by the Producer Defendants as CHRM034819.

124. Attached to the Declaration of Moira Demos as Exhibit 29 is a true and correct copy of an email from journalist Sean Downs responding on April 16, 2007 to Moira Demos's April 15, 2007 email offering to help with footage "as you did a lot of work for all of us switching the feed," produced by the Producer Defendants as CHRM034730.

125. Attached to the Declaration of Moira Demos as Exhibit 30 is a true and correct copy of an email from Moira Demos responding to Sean Downs on April 23, 2007 thanking him for the offer to copy footage, produced by the Producer Defendants as CHRM034747.

126. Attached as Exhibit 31 is a true and correct copy of an email from Laura Ricciardi to producer Lisa Dennis dated September 18, 2013 seeking assistance to secure trial footage from members of the Avery trial media pool, produced by the Producer Defendants as CHRM034769.

127. Attached as Exhibit 32 is a true and correct copy of an email from Laura Ricciardi to the Avery trial media pool liaison dated November 14, 2013 seeking assistance to secure trial footage from members of the Avery trial media pool, produced by the Producer Defendants as CHRM034818.

128. Attached as Exhibit 33 is a true and correct copy of an email from Moira Demos to Elektra Gray, a public relations employee of Netflix copying Laura Ricciardi and Lisa Dennis

dated September 30, 2015 requesting changes for accuracy and tone to a synopsis for *Making a Murderer* to submit to DOC NYC, produced by the Producer Defendants as CHRM000695.

129. Attached as Exhibit 34 is a true and correct copy of an email from Michael Griesbach to Laura Ricciardi and Moira Demos dated December 23, 2015 sharing “Congratulations!” after watching all ten episodes of *Making a Murderer*, produced by the Producer Defendants as CHRM002666.

130. Attached as Exhibit 35 is a true and correct copy of an email from Martine Charnow to Laura Ricciardi and Dave Malm dated August 25, 2015 confirming shipment for footage DVDs, produced by the Producer Defendants as CHRM034867.

I declare under penalty of perjury and subject to 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated this 16th day of September, 2022 Respectfully Submitted,

s/ Laura Ricciardi

Laura Ricciardi

EXHIBIT 1



MANITOWOC COUNTY SHERIFF'S DEPARTMENT

1025 South 9th Street
Manitowoc, Wisconsin 54220
Phone (920) 683-4200 ~~XX~~ Fax (920) 683-4946



September 12, 2003

To: All Department Personnel
From: Kenneth J. Petersen, Sheriff *KJP*
Re: *Steven Avery Reversal of Conviction*

Employees shall make no comments concerning the Steven Avery case. All news releases shall be issued by either Sheriff Petersen or Inspector Hermann.

kl

005251

Serving Our Community With P.R.I.D.E.

**Exhibit
1003
5/19/2022**

EXHIBIT 2

STATEMENT

STATEMENT OF: _____ INCIDENT # _____

NAME: James M. Lenk PAGE 1 OF 1

BIRTH DATE: _____ AGE: _____ DATE: 09-12-03

ADDRESS: 1025 S. 9TH. ST. TIME: _____

CITY: MANITOWOC STATE: WI. ZIP: 54220

PHONE: 683-4216

IF JUVENILE: _____

FATHER: _____ MOTHER: _____

I, Lt. James Lenk, was talking to Sgt. Andy Colborn in my office regarding one of the detectives. The subject of the Steve Avery release came up & during the conversation Sgt. Colborn gave me the following information:

That when he (Sgt. Colborn) was working in the jail division (probably 1995) that he received a telephone call from a person who said he was a detective & Sgt. Colborn said he thought he might have been from Bro. County but he isn't sure. He said the detective told him that he ~~has~~ ^{has} a person in custody who stated that a few years prior that this suspect had committed an assault in Manitowoc County. This detective also told Sgt. Colborn that he believes someone was arrested for this crime already.

Sgt. Colborn said the detective wanted to speak to someone in the detective unit - but Sgt. Colborn can't remember who he advised or passed this information on to.

Sgt. Colborn said he was later informed by someone that the case was already solved & the right person was arrested.

I later went to Sheriff Peterson to pass on this information.

005249

WITNESS:

Exhibit
1010
5/19/2022

SIGNATURE:

James M. Lenk

WITNESS:

TIME:

1335 hours

Revised 03/01/00

Colborn
EXHIBIT NO. 1010
DATE: 5/19/22
365Reporting, LLC

EXHIBIT 3

STATEMENT

STATEMENT OF:

INCIDENT#

NAME: Sergeant Andrew L. Colborn #432

PAGE 1 OF 1

BIRTH DATE: 03/14/59 AGE: 44

DATE: 09/12/03

ADDRESS: 1025 South 9th Street,

TIME: 1330 Hours

CITY: Manitowoc, STATE: WI

ZIP: 54220

PHONE: 920-683-4201

IF JUVENILE:

FATHER:

MOTHER:

In 1994 or 1995 I was working as a Corrections Officer in the Manitowoc County Jail. I recall receiving a telephone call in the Central Control area from an individual who identified himself as a detective employed by an agency outside the Manitowoc County area. This dective stated he had received information that a person they had in custody in their jurisdiction had been commenting that he had committed an assault in Manitowoc County and that someone else was in jail for it. As I had no knowledge of what case this detective was referring to, I supplied the dective with a telephone number to one of MISO's detectives. I do not specifically recall but I may have tried to transfer the call as well. I do not recall the dective mentioning any names to me.

**Exhibit
1009
5/19/2022**

005250

WITNESS:

SIGNATURE: *Sgt. Andrew L. Colborn*

WITNESS:

TIME: 1343 HRS

Revised 03/01/00

Colborn
EXHIBIT NO. 1009
DATE: 7-22-22
385Reporting, LLC

EXHIBIT 4

Wisconsin DOJ Division of Criminal Investigation

ACISS Investigative Report

Report Number: DCIR13280/26

Report Date:

Primary Information	
Report Number:	DCIR13280/26
Type Of Report:	Investigative
Description:	dci2 re safe docs
Approval Status:	Approved
Approved Date:	04/12/2004
Approved By:	Conversion User (Criminal Investigation / Wisconsin DOJ Division of Criminal Investigation)

Narrative	
CASE ACTIVITY REPORT Wisconsin Department of Justice DJ-DCI-2 (Rev. 8/91) DIVISION OF CRIMINAL INVESTIGATION	
1. Case Number	GC-13280
2. Date	09/30/2003
3. Case Title	STEVEN AVERY PROSECUTION
4. Activity	Records Examination: Safe Documents
5. Date of Activity	09/30/2003
6.	
<p>On Monday, September 22, 2003, S/A Debra K. Strauss met with Manitowoc County Sheriff Kenneth J. Petersen. During this meeting, S/A Strauss told Sheriff Petersen the Attorney General's office has been asked to review the events which occurred between the PENNY BEERNTSEN assault on 07/29/1985 through the STEVEN AVERY prosecution. S/A Strauss assured Sheriff Petersen the Attorney General's office was not going to re-investigate the crime.</p> <p>S/A Strauss asked Sheriff Petersen for a copy of the Manitowoc County Sheriff's Department case file regarding the assault and subsequent investigation. Sheriff Petersen went to his safe because that is where he thought the entire case file was being kept. Sheriff Petersen pulled out a small stack of documents regarding AVERY.</p> <p>Sheriff Petersen then went to a second location and obtained the entire case file regarding the assault and conviction.</p> <p>Sheriff Petersen said he would be willing to provide S/A Strauss with a copy of the documents in the safe, but Sheriff Petersen would need time to have the case file copied. Sheriff Petersen would not release the case file to S/A Strauss because it is a policy of the sheriff's department that the case files need to stay in-house.</p> <p>The following is a list of the documents which were being maintained in a safe in the office of Sheriff Petersen:</p> <p>The first document examined by S/A Strauss was an affidavit of MICHAEL ERNEST LUCERO. This affidavit is dated 06/14/2000. As part of the affidavit, LUCERO states that while he was an inmate at the Green Bay Correctional Institution, he met STEVE AVERY. During one of LUCERO's conversations with AVERY, AVERY admits to raping a woman on a beach in Manitowoc.</p>	

Talk with any AAG about this meeting?

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lohmanna 04/13/2005 13:31

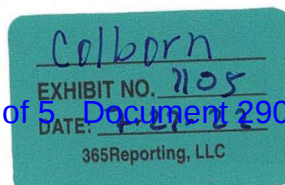
005543

Page 1 of 2

CONFIDENTIAL

Case 1:19-cv-00484-BHL Filed 09/16/22 Page 2 of 5 Document 290-4

CHRM004724



Wisconsin DOJ Division of Criminal Investigation

ACISS Investigative Report

Report Number: DCIR13280/26

Report Date:

Narrative - Continued

WL

The next document examined by S/A Strauss was a statement of JAMES M. LENK. This statement is dated 09/12/2003. This statement was regarding a conversation Lieutenant LENK had with Sergeant COLBORN regarding a phone call Sgt. COLBORN had received from Brown County. The person from Brown County was talking to Sgt. COLBORN because Brown County had a person in custody, who stated that a few years prior he committed an assault in Manitowoc County.

The third document examined by S/A Strauss was a one-page statement signed by Sergeant ANDREW L. COLBORN. This statement was prepared on 09/12/2003. According to this statement, in 1994 or 1995, Sgt. COLBORN was working as a corrections officer in the Manitowoc County Jail. While working as the corrections officer, Sgt. COLBORN received a call from a man who identified himself as a detective from outside the Manitowoc County area. The detective stated he had received information that a person in their custody had been commenting that he had committed an assault in Manitowoc County and someone else was in jail for it.

The next document examined by S/A Strauss is dated 09/12/2003. This document is a memo on Manitowoc County Sheriff's Department to all department personnel from Sheriff Kenneth Petersen. This memo states that employees shall make no comments concerning the STEVEN AVERY case. All news releases shall be issued by either Sheriff Petersen or Inspector Hermann.

Another document examined by S/A Strauss was a press release by Mark R. Rohrer, Manitowoc County District Attorney. This press release is regarding the release of STEVEN A. AVERY. This press release states that, according to DNA test results, GREGORY ALLEN had actually committed the sexual assault and attempted homicide, not STEVEN AVERY.

The final set of documents examined by S/A Strauss were master look-up files dated 09/10/2003 and 09/12/2003. The print-out, which was prepared on 09/10/2003, was regarding STEVEN A. AVERY, DOB 07/09/1962. The master look-files dated 09/12/2003 were regarding GREGORY A. ALLEN, DOB 01/17/1954.

A copy of the previously mentioned documents can be found in the main case file.

alk 10/03/03
13280 dci2 re safe docs 09302003 straus SDK.doc

Record Status Information

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

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Page 2 of 2

Wisconsin DOJ Division of Criminal Investigation

ACISS Investigative Report

Report Number: DCIR13280/27

Report Date:

Primary Information

Report Number: DCIR13280/27
Type Of Report: Investigative
Description: dci2 tele beerntsen
Approval Status: Approved
Approved Date: 04/12/2004
Approved By: Conversion User (Criminal Investigation / Wisconsin DOJ Division of Criminal Investigation)

Narrative

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

1. Case Number

GC-13280

2. Date

09/25/2003

3. Case Title

STEVEN AVERY PROSECUTION

4. Activity

Telephone Contact: Beerntsen

5. Date of Activity

09/23/2003

6.

On Tuesday, September 23, 2003, S/A Debra K. Strauss made telephone contact with:

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

S/A Strauss made contact with BEERNTSEN because BEERNTSEN had previously contacted the Attorney General's office regarding some nuisance phone calls she had been receiving. BEERNTSEN stated she would like to speak with the special agents but her attorney, Janine Geske, 414-288-7877 would like to be present during the interview. BEERNTSEN stated Geske was out of State until Friday and BEERNTSEN wanted to know if Friday morning (September 26, 2003) would be acceptable for the special agents to meet with her. S/A Strauss told BEERNTSEN that would be fine and that BEERNTSEN should contact Geske to determine when and where the meeting should take place. (It was later determined this interview would take place on Friday, September 26, 2003 in Geske's office, 1103 W. Wisconsin Street, Milwaukee, WI. Geske's office is at the Marquette Law School.)

During the phone conversation with BEERNTSEN, BEERNTSEN told S/A Strauss that after STEVEN AVERY had been sent to prison it was almost as if someone had been watching her house. Sometime during 1986 or 1987 the

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Wisconsin DOJ Division of Criminal Investigation

ACISS Investigative Report

Report Number: DCIR13280/27

Report Date:

Narrative - Continued

BEERNTSENS began receiving obscene phone calls. BEERNTSEN told S/A Strauss these calls were of a sexual content, such as asking BEERNTSEN if "she gave blow jobs." BEERNTSEN said in hindsight, she is wondering if GREGORY ALLEN had been watching her house. BEERNTSEN said that within 5 minutes of BEERNTSEN returning home from work her phone would ring and it would be the caller with obscene messages.

BEERNTSEN stated she has recently been receiving telephone calls where no one says anything. The phone will ring and BEERNTSEN will answer it but the caller will not speak. All BEERNTSEN can hear is breathing on the other end of the line. BEERNTSEN stated she has received three of these calls on Saturday, September 20, 2003 and one on Monday, September 22, 2003.

BEERNTSEN told S/A Strauss that she has offered to meet with AVERY and that if AVERY agreed to a meeting, AVERY could contact BEERNTSEN through BEERNTSENS attorney. As of this date, AVERY has not accepted this offer and all BEERNTSEN has heard for a response is what BEERNTSEN is reading in the newspaper.

BEERNTSEN had no additional information and the telephone contact was terminated.

dmg: 10/02/2003

13280 dci2 tele beerntsen 09232003 straussdk

Record Status Information

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

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Page 2 of 2

EXHIBIT 5

CORRESPONDENCE/MEMORANDUM**DEPARTMENT OF JUSTICE**

Date: December 17, 2003

To: Mark Rohrer
District Attorney
Manitowoc CountyFrom: 
Peggy A. Lautenschlager
Attorney General

Subject: Avery Review

I. PURPOSE

The Wisconsin Department of Justice evaluated the facts and circumstances of the 1985 investigation and prosecution of Steven Avery, who was convicted of attempted first degree murder, first degree sexual assault, and false imprisonment on December 14, 1985. In September 2003, eighteen years after Avery commenced his prison term, DNA testing exonerated Avery and implicated another person, Gregory Allen. The Department's goal was to assess what, if any, errors occurred during the investigation and prosecution of Avery's case and whether any criminal or ethical violations were committed by anyone involved in handling the case.

II. SUMMARY OF FACTS

On July 29, 1985, P.B. was jogging on the beach, north of Two Rivers, Manitowoc County, when she was abducted, brutally beaten and sexually assaulted at knifepoint. After the assault, P.B. was taken to the hospital where Manitowoc County Sheriff's Deputies interviewed her. P.B. provided a physical description of her assailant. She also assisted Chief Deputy Gene Kusche from the sheriff's department in developing a hand-drawn composite picture of her assailant. Once the investigators were given a physical description and while the composite was being created, Sheriff Tom Kocourek asked that members of the sheriff's department put together a photo array. P.B. reviewed the composite picture when it was completed and, a short time later, reviewed the photo array displayed by Sheriff Kocourek. She identified Steven Avery as her assailant. Three days later, on August 1, 1985, P.B. again identified Avery as her assailant from a live line-up.

Based on P.B.'s initial identification of Avery as her assailant, Avery was arrested and charged with first degree sexual assault, attempted first degree murder and false imprisonment. The arrest took place within eight hours of the assault.

A trial was held before the Honorable Judge Fred H. Hazlewood in December 1985. The prosecutor was Manitowoc County District Attorney Denis Vogel. Defense counsel was James Bolgert, who took over the case from Assistant Public Defender Reesa Evans-Marcinczyk in late

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5/12/05

October 1985. Avery had sixteen alibi witnesses as to his whereabouts on the day of the assault. However, he was convicted of the crimes and sentenced to a total of thirty-two years in prison.

In September 2003, the results of a second round of DNA tests on pubic hairs obtained after the 1985 assault were received. These tests revealed that Avery was not the perpetrator of the crimes. Avery was released from prison on September 11, 2003. Gregory Allen, whose DNA matched that of the pubic hair, is serving a sixty-year sentence for a sexual assault he committed in Green Bay in 1995.

On September 18, 2003, current Manitowoc County District Attorney Mark Rohrer requested that the Wisconsin Department of Justice conduct an independent review, and the Department agreed. Two Special Agents from the Division of Criminal Investigation, Amy Lehmann and Deb Strauss, conducted the investigation. This report is based on interviews with the victim, the sheriff, deputy sheriffs involved in the investigation, former Manitowoc County District Attorney Denis Vogel, personnel who worked in Vogel's office at the time of the prosecution, officers from the Manitowoc and Two Rivers Police Departments and defense counsel handling Avery's case in the trial court. The Department has also reviewed files from the sheriff's department, files of the prosecutor and defense attorneys handling the case, the transcripts from the Avery proceedings, including the trial and appellate records, and numerous police reports from the sheriff's department and the Manitowoc and Two Rivers Police Departments. This report examines the critical points of the investigation and prosecution of Avery's case.

III. THE COMPOSITE DRAWING

After P.B. was transported to the hospital, she participated in creating a composite sketch of her assailant with Chief Sheriff's Deputy Gene Kusche. The composite drawing was completed at 10:20 p.m., approximately six hours after the assault occurred. At a suppression hearing, Deputy Kusche testified that before he did the drawing, a name was given to him as a suspect; however, he did not have any personal recollection of the individual and had no mental image of him at the time of the drawing. He was told they had a mug shot of the suspect; however, he told everyone not to show either him or the victim any photographs. P.B. testified at trial that she was never given any suggestions as to how the suspect should look. The Department has not uncovered any information challenging the integrity of the composite process.

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IV. THE PHOTO ARRAY

Issues involving the photo array were addressed in Avery's first appeal.¹ While the photo array was not perfect, it met applicable legal standards and does not demonstrate any misconduct on the part of the sheriff's department.

Sheriff Kocourek told investigators that he did not know Avery at the time, but that after P.B. gave a physical description of her assailant, someone said that the description sounded like Avery. Deputy Sheriff Judy Dvorak had been called to the hospital to take a statement from P.B. and the Department's review indicates that it was Dvorak who made the comment that the description sounded like Avery. It was because of this statement that Kocourek asked that Avery's photograph be included in the photo array.

The photo array was conducted at approximately 10:20 p.m., after completion of the composite drawing. The sheriff laid out nine photographs on a table tray at the side of P.B.'s hospital bed. Avery was somewhere in the middle of the array. After P.B. chose Avery as her assailant, the sheriff told her he was going to apprehend the suspect.

In an unpublished decision of the court of appeals dated August 5, 1987, the court reviewed Avery's challenges to the identification procedure, namely, the photo array and the live line-up. Avery contended that the photo array was impermissibly suggestive because the sheriff testified that he put the array together and that he told P.B. that "there was a chance that the suspect might be in there and that she should look at them and attempt to determine if in fact he was."

The court, relying on *Fells v. State*, 65 Wis. 2d 525, 537-38, 223 N.W2d 507 (1974), concluded that the sheriff's statement, standing alone, did not render the procedure impermissibly suggestive. The statement did no more than tell the victim what was already implied by conducting a photo array, that is, that the attacker's picture might be included. The court also examined photographs from both the photo array and the live line-up. With regard to the array, the court stated, "The pictures in the photo array display individuals who correspond to the description given by P.B. and who so closely resemble one another that Avery does not stand out from them. In fact, the photo array constitutes one of the fairest ones this court has seen." The array did not include a picture of Gregory Allen.

¹ The Department was not asked to review the two appeals in this case. However, review of the briefs and decisions in those cases do not indicate any impropriety or failures on the part of the parties or courts involved. An appellate court's review is limited: it only considers the arguments raised by the parties and cannot act as the fact-finder on the issue of guilt. The state's arguments and the court's conclusions on appeal were consistent with controlling legal standards.

005029

V. THE LIVE LINE-UP

Avery challenged the legitimacy of the line-up in the appeal discussed above. A suppression hearing revealed the following circumstances surrounding the line-up. Avery was the only person in both the photo array and the live line-up. Assistant public defender Stephanie Stoltman was present during the line-up. The line-up was conducted three days after the assault. Stoltman testified that after District Attorney Vogel positioned the participants, he asked Stoltman if the line-up was okay and Stoltman requested that some of the participants be moved in order to get a closer height, age and coloration range. After they were re-positioned, P.B. was led into the room, which adjoined the room containing the line-up and had a one-way mirror for viewing the participants. At some point Stoltman requested that P.B.'s husband not talk to her during her observation and that he step away from her. There were eight males who participated. Stoltman stated that Avery appeared to be the youngest, the fairest and the shortest of the participants. A few of the people were fairly well dressed. One of the participants looked at Avery during most of the line-up.

P.B. testified that no one suggested to her whom to pick out during either the photo array or the line-up. At the suppression hearing, P.B. testified that there was nothing any of the participants did in the live line-up that suggested to her that the person to pick out was Avery or that drew attention to Avery. After she picked out Avery, she went to the sheriff's office, where she was told that the person she had picked in the line-up was the person they had in custody based on the photo identification.

Kocourek testified at the suppression hearing that in choosing the people for the live line-up, he looked for people with full beards and mustaches and people close in height to Avery, which was difficult because he was quite short. He believed three of the people in the live line-up were very close to Avery's height. He also believed that at some point P.B. was told they had arrested a suspect and that the suspect would be in the line-up. However, she was never told that the person she picked from the photo array would be in the line-up. The line-up contained one other individual who had a history of this type of crime, but it was not Allen.

On appeal, Avery alleged that the line-up was suggestive because he was the only person who was in both the photo array and the line-up and because he was the youngest, fairest and shortest person in the line-up and was the only one with straight hair. He also contended that some of the other participants were well dressed and that one participant turned toward him during most of the line-up.

The court of appeals concluded that the photographs of the line-up revealed that as a group, the participants reasonably resembled Avery in terms of age, hair color, complexion, size and manner of dress. In addition, like Avery, all of the participants had beards and mustaches.

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Based on the pictures of the line-up, the court concluded that the police secured a fair and balanced presentation of alternative possibilities of identification.

Avery also argued that even if the identifications were admissible, P.B.'s identification of him was not sufficient to negate his alibi defense. The court rejected that argument based on well-established Wisconsin law indicating that the eyewitness testimony of a victim is sufficient to sustain a conviction even absent corroborating evidence. *See State v. Tarrell*, 74 Wis. 2d 647, 660, 247 N.W.2d 696 (1976). The court of appeals further stated, "Moreover, in this case P.B.'s identification could be deemed by the jury to be particularly convincing based on the testimony indicating that she had ample opportunity to view him, that she consciously determined to get a good look at him, that her initial description substantially matched Avery's appearance, and that only six and one-half hours passed between the assault and the initial identification."

There is nothing to indicate that the live line-up was unduly suggestive or otherwise improper. As with the photo array, the line-up did not include Allen.

VI. THE DECISION TO ARREST AND CHARGE AVERY WHILE FAILING TO CONSIDER ALLEN AS A SUSPECT

Avery was a reasonable suspect.

At the time of P.B.'s assault, the sheriff's department was familiar with Avery from an incident that had occurred only six months earlier, in January 1985, in which Avery ran a deputy sheriff's wife off the road at gunpoint and told her to get in his car. The woman told him that she had her baby in her vehicle and that the baby would freeze. After checking to see if the child was in fact in the car, Avery let the woman go. He confessed to the crime and stated that he had done this because the woman had been making allegations that he appeared naked in his front yard on several occasions. Avery was ultimately convicted of endangering safety for this offense and was sentenced to six years imprisonment, concurrent with the sentence in the assault against P.B. District Attorney Vogel told investigators that he assumed that the January incident involving Avery was sexually motivated. Avery was also convicted in Manitowoc County in 1981 of two counts of burglary, for which he received five years of probation, and was convicted in 1982 for cruelty to animals. These cases were not handled by Vogel, but by assistant prosecutors in his office.

The sheriff's department's suspicions regarding Avery were bolstered following P.B.'s positive identification of Avery as her assailant in both the photo array and the live line-up. Suspicions were further validated by Avery's statement to his wife upon arrest that he was being accused of murdering a "girl," although no one had identified the victim as female, and the fact that Avery's alibi was that he had been pouring cement all day, but his clothes tested negative for the presence of any cement dust.

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Facts undermining Avery as the assailant, all of which the jury heard, included sixteen alibi witnesses and the fact that Shopko employees and receipts confirmed that he was at the Shopko in Green Bay at 5:13 p.m., only an hour and fifteen minutes after the assault near Two Rivers. Sheriff's deputies did a timed drive from the location of the assault north of Two Rivers to the Green Bay Shopko. They were able to go through the check-out line fifty-seven minutes after leaving the crime scene, but the officers admitted that they went ten miles per hour over the speed limit to reach those numbers and the officers did not account for potential delays resulting from the presence of five children, including six-day old twins, all of whom were seen with Avery and his wife at the Shopko. Moreover, the reenactment did not allow any time for picking up Avery's family and would therefore assume that Avery's wife and five children were at the beach somewhere or in the car while he committed the assault.

Nonetheless, because of P.B.'s positive identification of Avery as her assailant on several occasions, Avery's semi-incriminating statement to his wife, the lack of cement dust on Avery's clothes and the fact that officers were able to fit the Shopko appearance within the required time frame, it was possible that Avery committed the assault. Both Vogel and Kocourek told investigators that they were convinced at the time of trial that Avery had committed the assault against P.B., particularly in light of P.B.'s positive identification.

Allen was a viable suspect.

Both the sheriff's department and the district attorney's office should have been on notice that Allen was a reasonable suspect in the 1985 assault.

The Sheriff Department's Knowledge of Allen

With regard to the sheriff's department, the Department's review reveals the following. The sheriff's file contained information regarding other potential suspects, but the file does not suggest that they were seriously considered. The file includes a letter from Defense Attorney Bolgert to Kocourek asking him to investigate one B.G. as a suspect. It also includes information regarding four other individuals; however, it is unclear how many were considered real suspects. One of the men was included in the line-up. Fingerprint cards of Avery and two other individuals were transported to the state crime laboratory. In addition, the file contains information indicating that three of the men had been "cleared." There is no information regarding an investigation into Allen, although a criminal complaint against Allen from a 1983 lewd and lascivious case, signed by Vogel, was in the sheriff's file.²

² This case is discussed in more detail, below.

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Moreover, reports from the Manitowoc County Sheriff's Department indicate that on December 15, 1983, the sheriff's department had information that Allen would expose himself and masturbate in front of children. Allen was also a chief suspect in a murder of a fifteen-year-old girl in North Carolina on June 16, 1975. Detective Conrad of the Manitowoc County Sheriff's Department had this information and gave it to Detective Thomas Bergner of the Manitowoc Police Department. (Bergner is now the Manitowoc Deputy Police Chief.)

Manitowoc Deputy Police Chief Thomas Bergner told investigators that he was working for the Manitowoc Police Department in 1985 and that all jurisdictions were very territorial at that time and did not like to share information or contact other agencies regarding investigations they were working on. Despite this relationship, shortly after the investigation began, Bergner went to Kocourek and discussed the 1985 assault against P.B. Bergner asked if Kocourek knew about Allen. Kocourek told Bergner that Allen had been ruled out as a suspect. Bergner got the impression that Kocourek knew about Allen and Allen's history. [Kocourek told investigators that he did not recall such an incident. He further stated that in 1985 he was not aware of Allen and did not think anyone else in the sheriff's department was].

Bergner believed that Allen should have been considered a suspect because he was a suspect in other sexual assaults around this same time. Allen was a suspect of an attempted sexual assault on July 14, 1985, in Manitowoc, two weeks prior to the assault against P.B. Allen was never charged in that matter because there was insufficient evidence.

P.B. told investigators that within weeks of the assault, she received a telephone call from someone at the Manitowoc Police Department. That individual told her they had someone in mind that matched the description of her assailant and that the subject was not Avery. Police asked P.B. if she ever noticed anyone watching her while she was at home, watching her at the YMCA where she worked or simply following her around. P.B. had in fact received harassing phone calls following her assault, even after Avery was arrested. Many of the phone calls were of a sexual nature, some of which occurred five minutes after she would return from home, indicating she might be being watched. [Such post-crime contact and stalking behavior was consistent with Allen's past offense history – see below].

P.B. contacted the sheriff's department and believes she spoke directly to Sheriff Kocourek. P.B. asked if there was another suspect and relayed the contents of the phone call from the Manitowoc Police Department. She was told the sheriff's department would contact the police department and that she should not worry about this phone call because the sheriff's department had jurisdiction over this case. [Kocourek told investigators he did not recall such a conversation with P.B.]

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Had the sheriff's department reviewed police reports from the Manitowoc Police Department, the following information would have been discovered, making Allen a prime suspect in the assault against P.B.:

- Allen had been convicted of an aggravated offense as a juvenile.
- The Manitowoc Police Department file contained a police report from the Two Rivers Police Department regarding a crime that Allen had committed in 1983. According to the police report from the Two Rivers Police Department, on August 2, 1983, Allen came up over some sand dunes on the same beach on which P.B. was assaulted, only some distance south of that point, and began walking behind a woman. He then pulled his shorts half-way down and began masturbating. He then lunged at her but the woman was able to run away.

Following the incident, Allen contacted the victim twice at her home and asked her to drop charges. The victim had moved to Green Bay for school and did not know how Allen knew this or how he knew her phone number. Allen also contacted the victim's mother five days after the offense and asked to talk to "Sue," which was the victim's name.

- Allen had been convicted on February 28, 1984, for disorderly conduct in the city of Two Rivers.
- On June 13, 1984, Allen was the suspect in a "proowler" case in which he attempted to gain entry into a woman's residence in Manitowoc after following her 16 year-old daughter and her daughter's friend.
- Allen was suspected of prowling on January 24, 1985, and February 2, 1985, in Manitowoc, involving walking into people's yards and up to their garages and homes.
- On January 26, 1985, Allen was the suspect in the following investigation: A woman told Manitowoc police that at 6:30 a.m. she saw a male subject wearing a ski mask between her yard and neighbors' yards. The suspect had taken a brick and moved it on the other side of a yard fence in order to stand on it and see into the neighbor's windows. That neighbor had a high school-age daughter.

Because he had been convicted twice on municipal charges for prowling, the Manitowoc Police Department turned the case over to the district attorney's office.

On February 20, 1985, the district attorney's office returned the complaint sheet and stated charges would not be issued because it was just prowling and there was no state statute available. The Manitowoc Police Department again cited him for prowling. On April 16, 1985, the city attorney's office dismissed the charge of prowling.

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- On June 26, 1985, just one month prior to P.B.'s assault, Allen was suspected of going to a woman's front door at 2:30 a.m. and exposing himself, wearing a red t-shirt wrapped around his head. The victim could see the man's eyes, nose and mouth. She found out later that her kitchen window had been removed. Also, a bedroom window on the north side of house had twelve Phillips screws removed from it.

Allen was stopped on his motorcycle a short distance away, wearing a red t-shirt. Allen matched the description except that he had a mustache and the victim said she did not think he had one. He was arrested for a traffic violation and for being a suspect in a vehicle entry that same day in which the vehicle owner had two daughters. Allen had two Phillips screwdrivers in his possession. The victim could not make a positive identification of Allen from photographs.

The Manitowoc police noted: "It would appear that this is getting very serious in regard to the suspect, GREGORY A. ALLEN. He in all probability is the suspect involved, however at this point [victim] could not make a positive identification." Allen "will have to be caught in the act as he is starting to become very bold."

- On July 14, 1985, just two weeks prior to P.B.'s assault, Allen was suspected of breaking into a man's home at 3:28 a.m. and attempting to assault his daughter. The daughter awoke to find a man straddling her, sitting on her thighs and fondling her breasts. The man then placed a knife to the girl's throat saying she should take off her clothes or he would kill her. He was nude and had a bathing suit wrapped around his head covering his entire face and hair. The victim stated she had her period and not to hurt her. He brought her hand onto his penis and made her masturbate him until he ejaculated on her nightgown. He asked where her sister was and she said her sister was not at home. He then ordered her to accompany him to the back door, where he had her let him out. As he was leaving he told her not to tell anyone or he would kill her.

A neighbor stated that he saw a man park his motorcycle near the victim's house at approximately 2:30 a.m. and then walk toward the victim's house. Allen had a motorcycle. Another neighbor stated that at approximately 2:42 a.m., she observed a man carrying a picnic bench between her house and the victim's house. The suspect had gained access to the house through the window. Another neighbor had seen a man duck into the bushes of the victim's home one month prior to the July 14 incident at approximately 8:30 p.m. He then saw a motorcycle parked in front of elderly couple's house nearby. Police were unable to obtain a positive identification of Allen.

- A police report from the Manitowoc Police Department dated July 17, 1985, stated:

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"This department has compiled several complaints recently concerning Prowling, Window Peeping, Indecent Exposure, and Sexual Assault, ranging from January 1985 through 7/14/85. In each case GREGORY A. ALLEN . . . has been listed as a suspect. Past record and intelligence concerning Gregory Allen reveals he is a dangerous individual with a potential for violence."

The Manitowoc Police Department then began monitoring Allen's whereabouts on a daily basis, often more than once. On the day of P.B.'s assault, there were two entries, one indicating the whereabouts of Allen's motorcycle and other vehicle and the other stating, "Unable to check due to other calls."

Kocourek told investigators that it would have been nice to have more information on Allen in 1985 but that the sheriff's department and police department did not have joint records or joint dispatch as they do now.

Other sheriff's deputies, including the captain of detectives in 1985, Don Belz, and Deputy Arland Avery voiced their concern to investigators that the case against Avery moved too quickly. This characterization was also confirmed by Lieutenant Leroy Beilke, who was in the traffic bureau for the sheriff's department in 1985. Beilke told investigators that he was informed by one of the sheriff's deputies that a man was seen in the area where the sexual assault took place at the time the assault took place. This man was known for committing these types of sexual crimes and matched P.B.'s description. Beilke believed the man was from the Sheboygan area. There is no information to indicate this man was Gregory Allen. Beilke immediately told Belz about this but Belz told Beilke that the sheriff's department was not going to bring this individual in for questioning. Belz said he could not do it because the sheriff wanted Avery convicted because the description provided by the victim matched Avery's. In contrast, Kocourek told investigators that any suspect brought to his attention would have been thoroughly investigated.

The District Attorney's Knowledge of Allen

With regard to the district attorney, the Department's review revealed the following. As stated above, two years prior to the assault against P.B., Allen was charged for an offense on the same beach, in which he masturbated while walking behind a woman and then lunged at her. The prosecutor in the 1983 case against Allen was Denis Vogel, the same prosecutor handling the 1985 charges against Avery. According to the docket sheet from the Manitowoc County court file, the charges were reduced from indecent exposure to disorderly conduct in February 1984 and Allen was convicted and fined one hundred dollars for the 1983 offense.

A copy of the criminal complaint and the Two Rivers police report for the 1983 incident involving Allen is contained in the prosecutor's file for the 1985 case against Avery, again

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indicating that District Attorney Vogel was aware of the 1983 offense at the time he prosecuted Avery. Police reports by the Two Rivers Police Department on another suspect, A.P., accused of a series of indecent exposures, are also contained in the file.

In addition, personnel from Vogel's office at the time told investigators that they did not believe that Avery was responsible for the 1985 assault, but believed Allen was. At least two employees claim they brought their concerns to Vogel's attention. Jill Martens worked in the Manitowoc County DA's office as a secretary or paralegal in 1985. She worked near Beverly Badker and Brenda Petersen. Neither Martens, Badker nor Petersen thought Avery was the one who committed this crime because there were too many inconsistencies. Martens stated she was familiar with Allen because he was a "peeper" who had a history of sexual assault. Martens never expressed her concerns directly to Vogel. She believed there was a sense of urgency to get the case done quickly because the victim was someone well known in the community and someone of stature.

Brenda Petersen is the Manitowoc County victim/witness coordinator and worked in the Manitowoc County Prosecutor's office in 1985. She told investigators that as soon as she saw the composite drawing, she thought it was Allen who committed the offense. She was familiar with Allen from court hearings. She said from what she knew of Allen's history, the attack on P.B. seemed to fit Allen. She stated that Allen had been in court for various reasons including charges of stalking, window peeping, watching women at Red Arrow Beach and stealing women's undergarments. She was aware that the Manitowoc Police Department was watching Allen because of his behavior. Throughout the trial, she never believed Avery committed the crime. She stated she was vocal about how she felt and had had conversations with the officers involved. She believes Vogel would have heard her make those comments. She heard that someone had checked with a probation officer in Door County who stated that Allen was in Sturgeon Bay at the time of the assault. She believes she heard this in Vogel's office.

Petersen also thought it was peculiar that Kocourek was so involved in the case, and that there were many closed door sessions between P.B., Kocourek and Vogel, which was odd because usually she would be in the room during an interview with a victim. She believes Kocourek put a lot of pressure on Vogel to prosecute. [Vogel denied being pressured to prosecute. Moreover, Kocourek stated that he handled the investigation only because no other detectives were available to handle the case and that he did not need to pressure Vogel.]

Beverly Badker currently works as paralegal in Manitowoc County DA's office. In 1985, she was a secretary there. She told investigators that when she saw the composite drawing, she immediately thought it was Allen. She was familiar with Allen because of his prior contacts with the DA's office. She believes he may have come to the front counter. She claimed that she told Vogel the drawing looked like Allen and not Avery. Vogel told her that Allen could not have committed the crime because he was on probation in Door County at the time the crime was

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committed and that Allen's probation officer had been contacted and the probation officer verified that Allen had an alibi covering the time the crime was committed. [Investigators later discovered that Allen was not placed on probation until April 2, 1986, well after Avery's conviction.]

Vogel told investigators that he did not specifically recall anyone from his office making any comments regarding this case, but that office staff frequently discussed cases. He further stated that he did not receive any pressure from the sheriff regarding this case. He stated Allen never struck him as a big-time criminal, but only someone with some exposure cases.

In view of the foregoing, Allen would have been an even more logical suspect than Avery had all of the agencies shared their information. However, because the sheriff's department had only one suspect in mind at the time of the photo array and P.B. identified that suspect as her assailant, the sheriff, and eventually the district attorney became convinced that Avery, and no one else, was the responsible party.

VII. COMPLIANCE WITH DISCOVERY REQUESTS BY DEFENSE COUNSEL

As stated, the prosecutor's file on the 1985 Avery case contains the criminal complaint and police report regarding the 1983 offense committed on the beach by Allen. It is clear that defense counsel's discovery requests included a request for information on all other suspects. Because the defense attorneys interviewed did not recall hearing Allen's name at the time of the investigation into the 1985 Avery case, a question arose as to whether the information had been turned over to defense counsel. The Department's review indicates that the information appears to have been timely disclosed

First, on August 6, 1985, original trial counsel Assistant State Public Defender Reesa Evans-Marcinczyk filed a "Motion for Exculpatory Evidence," in which she requested, among other things, "any and all evidence and/or information in the state's possession, knowledge or control" which would "tend to show that a person other than the defendant committed the crime charged" or which would "form the basis for further investigation by the defense." On October 10, 1985, the same attorney filed an "Additional Discovery Motion" asking for "[a]ny law enforcement reports of a 'suspicious person' or similar reports in the vicinity of Neshotah Beach and/or Point Beach Park and/or the vicinity of the alleged assault in the last year."

It appears the district attorney complied with these requests. Contained in the defense file is a copy of the Two Rivers police report involving the 1983 Gregory Allen incident. This police report is one in a series of police reports contained in the file. The first of these reports is a report of lewd and lascivious conduct involving another individual, A.P. It is stamped by the Office of the Public Defender in Manitowoc as "Received October 23, 1985." Notations on that same page cross-reference this police report with the 1983 Gregory Allen lewd and lascivious

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charge. The file contains the Gregory Allen report, the lewd and lascivious report with A.P. as the suspect, and three other indecent exposure reports from the Two Rivers Police Department, two of which name A.P. as a suspect, and one of which does not name a suspect. The Allen police report and the four other police reports are the same reports contained in the prosecutor's file. In light of this information, it is reasonable to assume timely disclosure of the Allen reports.

Moreover, Vogel told investigators that he had an open file policy in every case and that he withheld nothing. He stated that he had a very good working relationship with the public defenders and always gave them access to what he had collected as part of his case file. Indeed, Assistant State Public Defenders Jack Schairer and Reesa Evans-Marcinczyk claimed in a June 1986 post-conviction motion for an in camera inspection of the DA's file that the open file policy of the DA's Office did not exist for post-conviction matters. This indicates that an open-file policy did exist pre-conviction. Additionally, there is a July 14, 1986 letter from trial counsel James Bolgert to Mr. Schairer indicating "(t)he reports section of the District Attorney's file was open to me. I reviewed it and compared against the Discovery provided to me, which reports I have in turn provided to you."

Finally, at some point prior to Avery's first appeal in 1986, Prosecutor Vogel filed an affidavit which stated, "[P]retrial discovery was complied with in that the entire file was made available for inspection to defense attorney James Bolgert, and that numerous contacts took place regarding information therein." (Item # 114 in 86-1831-CR)

Thus, it appears that defense counsel was provided with the police report involving the 1983 Allen lewd and lascivious incident and that Vogel complied with discovery requests.

VIII. CONCLUSIONS

There is no basis to bring criminal charges or assert ethics violations against anyone involved in the investigation and prosecution of this case. At worst, the sheriff's department failed to investigate a viable suspect, Gregory Allen, in its quest to capture P.B.'s assailant quickly. Had the sheriff's department taken more time in exploring potential suspects prior to the photo array and live line-up, it is possible that Allen's photograph might have been included in the photo array or that Allen himself might have been in the live line-up. While it is impossible to know whether P.B. would have chosen Allen as her assailant, including Allen obviously would have increased the chances that P.B. would have chosen the right person, especially considering that Allen and Avery had a similar appearance.

Once P.B. identified Avery as her assailant, the sheriff's department and prosecutor became convinced that he was the perpetrator, especially once some of the other circumstantial facts appeared to confirm her identification. Nonetheless, while in many cases eyewitness

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testimony is reliable and strong evidence, it is by no means unassailable and should not be viewed as such by law enforcement agencies. Law enforcement agencies must and should investigate all reasonable suspects and alternative hypotheses consistent with innocence. Not only does this help assure that innocent people are not convicted of crimes they did not commit, but it also helps prevent the guilty from continuing a course of criminal conduct.

Moreover, this case also underscores the necessity of sharing information between law enforcement agencies.³ Had the sheriff's department gathered all of the information in the possession of the Manitowoc and Two Rivers Police Departments, it is difficult to believe that Allen would not have been a suspect. Had Allen emerged as a viable suspect, it also would have been incumbent upon Vogel to follow up on the alibi reportedly provided by Allen's probation officer, if in fact Vogel was aware of such an alibi. It would have been an easy task to verify Allen's probationary status, had he been considered a suspect. The underlying problem in this case is that the investigators responsible for the investigation into the assault of P.B. never deemed Allen a suspect.

Finally, it bears emphasis that Avery's innocence was established through scientific analysis of evidence not available at the time of his conviction. In the interim, DNA evidence has gained acceptance in the criminal justice system as having forceful, potentially irrefutable probative value. In contrast, eyewitness identifications have been subject to pretrial and trial challenges based on myriad factors having to do with the witness's opportunity to observe as well as ability to recall the suspected perpetrator. Those challenges were made in this case, and evaluated in line with established legal standards. In the end, the jury unanimously concluded that the evidence before it satisfied the prosecution's burden to meet an even more established constitutional standard of proof: guilt beyond a reasonable doubt. Had the investigation into the assault of P.B. been conducted using currently available technology, it is reasonable to believe that the trial of Steven Avery never would have occurred.

³ It should be noted that developing information technology affording police agencies throughout the state access to defendant information and police reports should facilitate such information sharing in the future. Moreover, such emerging technologies should also allow investigators opportunities to do thorough and targeted searches to determine potential suspects.

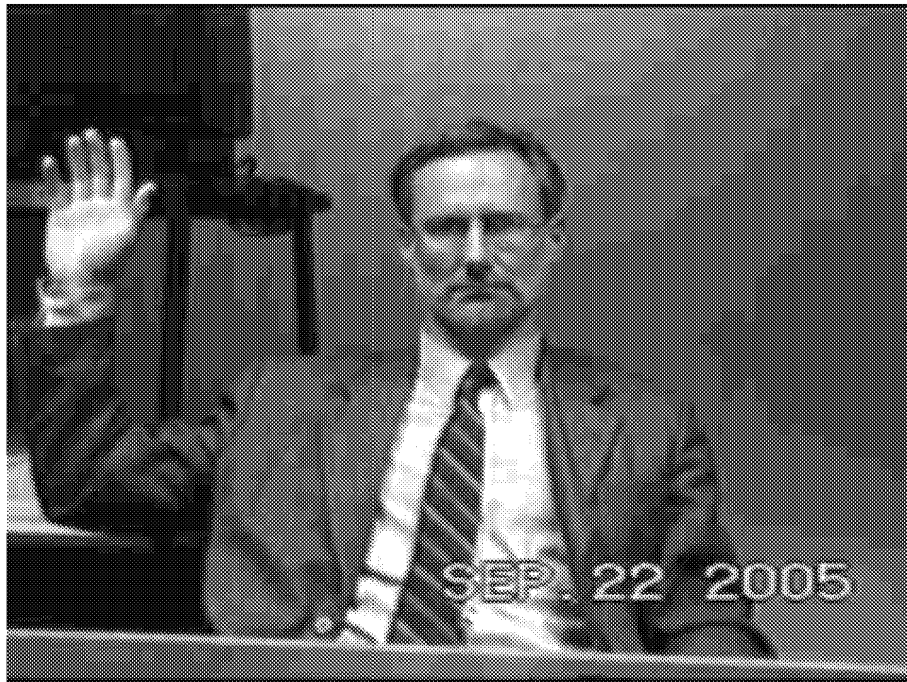
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EXHIBIT 6

United States District Court
Eastern District of Wisconsin

Avery v. Manitowoc County

04 C 986



Video Deposition of

Michael Griesbach

Recorded 09/22/2005 in Manitowoc, WI

11:43 am - 1:06 pm, 84 mins. elapsed

Magne-Script

(414) 352-5450

23016 Condensed transcript with index

Video Deposition of Michael Griesbach 9/22/05

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1 not to take office. But in the intervening time
 2 between actually the primary election which was in
 3 September of 2002 until January of 2003 which was when
 4 the new term was going to begin, I was still present
 5 as was the former D.A., Jim Fitzgerald.
 6 Q Okay.
 7 A But the answer is basically no, I have not served as
 8 the district attorney in Manitowoc County.
 9 Q Did you remain in office between January of '03 and
 10 March of '03 when Mark Rohrer came on board?
 11 A Yes, I did.
 12 Q Okay. I don't want to go into the personal reasons,
 13 but I do need to ask this. Did the personal reasons
 14 have anything to do with this case, with the Steven
 15 Avery case?
 16 A Not at all.
 17 Q Oh, okay. Fine. All right. So the period of time
 18 that you've served as an assistant district attorney
 19 in the Manitowoc County district attorney's office up
 20 until January 1 of 2003, your boss was Jim Fitzgerald?
 21 A That's right.
 22 Q Okay. And then starting in March of 2003, your boss
 23 became Mark Rohrer?
 24 A Yes.
 25 Q And he's still your boss.

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1 A Yes.
 2 Q Okay. So, then, you were in the office during some of
 3 the postconviction proceedings in the Steven Avery
 4 case.
 5 A That would be right.
 6 Q In particular, you were in office when Steve Glynn
 7 represented Steven Avery in 1996 in an effort to
 8 secure his release on the basis of DNA evidence at
 9 that time.
 10 A In office in the sense that I worked there as an
 11 assistant D.A.
 12 Q Okay.
 13 A Right.
 14 Q Let me ask you this. Did you have -- in any of those
 15 proceedings, did you have any responsibilities
 16 yourself?
 17 A No.
 18 Q Okay. In respect to the Steven Avery conviction,
 19 during the period of time that you worked for Mr.
 20 Fitzgerald, did you ever discuss the case with him?
 21 A I may have once. I recall being present more or less
 22 as an observer during one of the postconviction
 23 motions when Mr. Fitzgerald was appearing for the
 24 state. And I thought Mr. Glynn but perhaps someone
 25 from the Wisconsin Innocence Project was appearing for

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1 Mr. Avery. Nothing in depth in terms of a
 2 conversation at all.
 3 Q We've had some testimony about the fact that in early
 4 September of '03, around September 3rd, Mark Rohrer
 5 received a telephone call from the crime lab
 6 concerning the analysis the crime lab had done and the
 7 fact that the crime lab had by its analysis determined
 8 that the person who had assaulted Penny Beerntsen was
 9 Gregory Allen and not Steven Avery.
 10 A Yes, I re-- yes.
 11 Q And you were informed of that by Mark Rohrer?
 12 A Yes.
 13 Q Okay. Up until that moment, had you from any source
 14 any knowledge concerning Gregory Allen?
 15 A None.
 16 Q Was it a new name to you when Rohrer told you about
 17 what he had been told by the crime lab?
 18 A Yes, it was.
 19 Q Okay. Again, up until that time, you were serving in
 20 an office that included Brenda Petersen as the
 21 victim/witness coordinator and Beverly Badker as a
 22 paralegal, right?
 23 A Yes.
 24 Q Up until you heard from Rohrer about what he had heard
 25 from the crime lab, had you discussed Gregory Allen or

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1 Steve Avery with either Brenda Petersen or Bev Badker?
 2 A No.
 3 Q Okay. Where did you go to law school?
 4 A I went to Marquette U.
 5 Q Okay. And when did you complete your studies at
 6 Marquette?
 7 A It would have been 1983 undergrad, and then 1986 law
 8 school.
 9 Q Okay. Between '86 and '91 when you entered the D.A.'s
 10 office, what did you do?
 11 A Working backwards I guess from Manitowoc, I was an
 12 assistant D.A. in Ozaukee County from -- I still
 13 remember the date -- May 2nd of 1988 until I believe
 14 it was September of 1991. Prior to working as an
 15 assistant D.A. in Ozaukee, I was in private practice
 16 for a couple years, I guess that would be two years
 17 between law school and Ozaukee County, as an attorney
 18 for a law firm by the name of Gonyo Law Office, which
 19 was located in Berlin, Wisconsin, west of Oshkosh.
 20 Q Okay. When you were in private practice, did you do
 21 any criminal work?
 22 A A small amount.
 23 Q Okay. So you were -- is it fair to say that you were
 24 a relative rookie in criminal law when you started at
 25 the Ozaukee office?

Video Deposition of Michael Griesbach 9/22/05

Page 25

1 during that meeting. Might have been, might not have
 2 been.
 3 BY MR. KELLY:
 4 Q Okay. I'm going to show you what's been marked as
 5 Exhibit 124 and ask you if you'd take a moment and
 6 examine that.
 7 A Yeah, I've taken a look at it.
 8 Q Okay. And, first of all, is this a document that
 9 you've seen before today?
 10 A I think I have.
 11 Q It's dated September 18th of '03. Doug Jones was an
 12 attorney in the D.A.'s office at that time, right?
 13 A Still is, yes.
 14 Q Okay. A colleague of yours?
 15 A Yes.
 16 Q And was this information that's in 124 made available
 17 to you at the time that this memo was prepared?
 18 A Yeah. I think by the time that memo was prepared, I
 19 was aware of the contents of that memo. My earlier, I
 20 guess, hesitation was I don't recall that the contents
 21 of that memo was discussed at the meeting with Sheriff
 22 Peterson sometime earlier.
 23 Q All right.
 24 A It may have been, may not have been.
 25 Q Okay. Was any further investigation, to your

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1 knowledge, of the statements that are made in this
 2 memorandum about the information that was provided to
 3 Sheriff Kocourek and how he responded, was there any
 4 further investigation of that by you or Mr. Rohrer as
 5 far as you know?
 6 A No, I don't know.
 7 Q Okay. So was there any further discussion, to your
 8 knowledge, of the information that's stated in here
 9 about Mr. Allen by you or Mr. Rohrer with either
 10 Colburn or Lenk?
 11 A There very well may have been. It was likely from Mr.
 12 Rohrer. I, you know, vaguely remember this topic, the
 13 contents of that memo being discussed here and there
 14 over the -- you know, the following weeks. I was more
 15 of a receiver of information. I was not directing
 16 anybody to look into anything. But I do recall this
 17 same topic coming up once or twice more.
 18 Q And what further information, if any, that you recall,
 19 did you receive about that?
 20 A My recollection is just that it was confirmed that
 21 indeed that Sheriff Kocourek had said, upon hearing
 22 that somebody else did this, that we've got the right
 23 guy and that he should not concern himself. My
 24 impression is that that was what people were saying
 25 was the case. I don't have personal knowledge that he

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1 said that, but...
 2 Q Okay. And when you say "what people were saying was
 3 the case," can you identify the people that you're
 4 talking about?
 5 A I believe it would be Officer Colburn, and he's the
 6 only one I can say with any level of certainty that
 7 confirmed that. Now, you know, what one reads into "I
 8 think we have the right guy" is another story. I'm
 9 not speaking to that issue. But as far as that having
 10 been said by -- allegedly said by Sheriff Kocourek,
 11 that is my understanding of Deputy Colburn's
 12 recollection of what was said.
 13 Q All right. And do you have any understanding of what
 14 Mr. Lenk says about that?
 15 A I don't.
 16 Q Okay. And who was your source of information as to
 17 what Colburn was saying?
 18 A Probably Mark, Mr. Rohrer.
 19 Q All right. To your knowledge, was the information
 20 concerning what Colburn said and how Kocourek
 21 responded provided by Rohrer to the attorney general's
 22 office?
 23 A I believe it probably was.
 24 Q And what's the basis for that belief?
 25 A Just from the general way in which Mark, the district

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1 attorney, and I, for whatever it's worth, were
 2 handling this case. All information we had was
 3 provided to the attorney general.
 4 Q To your knowledge, did Mark Rohrer make any notes of
 5 any of the interviews he had with Brenda Petersen or
 6 Beverly Badker or Colburn or Sheriff Peterson?
 7 A I don't know whether he did or not.
 8 Q Did you?
 9 A No.
 10 Q Is there some reason you didn't?
 11 MR. COVELLI: Well, objection. He didn't --
 12 lack of foundation. He never said he interviewed
 13 these people.
 14 BY MR. KELLY:
 15 Q You can answer.
 16 A I don't -- I didn't make any notes of whatever
 17 conversations I heard. My main focus was on whether
 18 or not Mr. Avery should be released, and quickly. And
 19 after that, I think I memoed up a few things: a call
 20 from Mr. Vogel that I'm sure you're aware of.
 21 Q I am.
 22 A And some conversations that I think I had with Penny
 23 Beerntsen, the alleged victim, and I think with Janine
 24 Geske as well. But I did not memo up much in the
 25 office. Frankly, there wasn't a lot discussed in the

EXHIBIT 7

United States District Court
Eastern District of Wisconsin

Avery v. Manitowoc County

04 C 986



Video Deposition of

Andrew Colborn

Recorded 10/13/2005 in Manitowoc, WI

4:06 pm - 4:27 pm, 22 mins. elapsed

Magne-Script

(414) 352-5450

15858 Condensed transcript with index

Video Deposition of Andrew Colborn 10/13/05

<p style="text-align: center;">Page 1</p> <p>Witness Andrew Colborn</p> <p>Thursday 10/13/2005 at 09:00 by: Jeff Joseph</p> <p>Nash, Spindler, Grimstad & McCracken 201 East Waldo Boulevard Manitowoc, WI</p> <p>Caption: Avery v. Manitowoc County Case No.: 04 C 986 Venue: United States District Court Eastern District of Wisconsin</p>	<p style="text-align: center;">Page 3</p> <p>1 Raymond J. Pollen 2 Crivello, Carlson & Mentkowski, S.C. 3 710 N. Plankinton Ave. #500 4 Milwaukee, WI 53203 5 On behalf of Tom Kocourek and Manitowoc County 6 7 John F. Mayer 8 Nash, Spindler, Grimstad & McCracken 9 201 East Waldo Boulevard 10 Manitowoc, WI 54220 11 On behalf of Tom Kocourek 12 13 Also Present: Steven Avery 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: center;">Page 2</p> <p>1 A P P E A R A N C E S 2 Walter F. Kelly 3 Walter F. Kelly, S.C. 4 700 W. Michigan St. #500 5 Milwaukee, WI 53233 6 On behalf of the Plaintiff 7 8 Stephen M. Glynn 9 Glynn, Fitzgerald & Albee, S.C. 10 526 E. Wisconsin Ave. 11 Milwaukee, WI 53202 12 On behalf of the Plaintiff 13 14 Claude J. Covelli 15 Boardman, Suhr, Curry & Field 16 1 S. Pinckney St. #410, PO Box 927 17 Madison, WI 53701-0927 18 On behalf of Denis Vogel and Manitowoc County 19 20 Timothy A. Bascom 21 Bascom, Budish & Ceman, S.C. 22 2600 N. Mayfair Rd. #1140 23 Wauwatosa, WI 53226-1308 24 On behalf of Manitowoc County 25</p>	<p style="text-align: center;">Page 4</p> <p>1 I N D E X 2 EXAMINATION BY PAGE NO. 3 Mr. Glynn 4 4 Mr. Bascom 20 5 (There were no exhibits marked) 6 (The sealed original transcript was sent to Mr. Kelly) 7 =====</p> <p>8 E X A M I N A T I O N 9 BY MR. GLYNN: 10 Q Sergeant Colborn, my name is Steve Glynn. I'm going 11 to ask you a few questions. I'm here, along with Walt 12 Kelly, on behalf of Steve Avery. First, you have in 13 front of you a document that doesn't bear a sticker, 14 but I'll represent to you that that's a photocopy of 15 Exhibit 138 that's been earlier marked in these 16 proceedings, okay? 17 A Yes, sir. 18 Q Have you had a chance to look at that document today? 19 A Yes. 20 Q Have you seen it before today? 21 A Yes. 22 Q Can you tell me when the last time before today is 23 that you saw that? 24 A I believe when I penned it, when I authored it. 25 Q Okay. And from that time until today, you don't think</p>

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<p>1 you've seen it? 2 A I take that back. I had a -- Thursday, I believe, of 3 last week, or Friday of last week, I was shown this 4 document by Amy Doyle. 5 Q As part of an interview with her? 6 A Yes. 7 Q Essentially prepping you for testimony here? 8 A Yes. 9 Q Okay. Did she show you anything else besides this 10 document? 11 A I don't recall. I don't believe so. 12 Q Okay. Well, let me ask a couple of background 13 questions and then we'll go into the document. And, 14 actually, let me start with the first sentence of the 15 document because that's part of the background. It 16 says that in 1994 or 1995, you were working as a 17 corrections officer in the Manitowoc County jail, 18 correct? 19 A Yes, sir. 20 Q How long had you been working as a corrections officer 21 in the jail? 22 A I was hired in January or February of 1992, so roughly 23 two or three years I had been employed as a 24 corrections officer in the jail. 25 Q Prior to that time, had you had any job connected with</p>	<p>1 would be a written hard copy of why that prisoner was 2 on a suicide watch and what he was doing during the 3 course of his day. 4 Q Sure. 5 A But outside of jail business, no, there's no log. 6 Q How about your own private diary or calendar, memo 7 book, anything like that? 8 A No. I usually keep my appointments in my head, and I 9 don't keep a diary or a journal. 10 Q Okay. You've gone over what is Exhibit 138... 11 A Yes, sir. 12 Q ...today and earlier, correct? 13 A Yes, sir. 14 Q It describes you receiving a telephone call from 15 someone who identifies himself as a detective, 16 correct? 17 A Yes. 18 Q And am I correct in understanding that at the time you 19 wrote this memo, which is September 12, 2003, you 20 could not recall with certainty what law enforcement 21 agency that detective was associated with? 22 A That's correct. 23 Q Do you -- I hear your machine clicking. Does that 24 mean anything to you? 25 A I'm okay.</p>
Page 6	Page 8
<p>1 the jail? 2 A Prior to 1992? 3 Q Yes, sir. 4 A No, sir. 5 Q Had you had any law enforcement job prior to that? 6 A No, sir. 7 Q Okay. So in the time period that's discussed in this 8 memo, which is '94 and '95, do you recall whether you 9 were in the custom or practice of keeping notes in a 10 log book, in a memo book, in any data entry form? 11 A Prior to this? 12 Q At this time... 13 A At this time. 14 Q ...in '94 and '95. 15 A There was a computer daily log that you typed 16 significant events that occurred in the jail, but it 17 was a log that pertained specifically to the jail. I 18 did not keep a written notebook or notes of any kind 19 in the capacity as a corrections officer. 20 Q Okay. So short of this computer entry which would 21 have been intended to relate to activities in the 22 jail, you did not record events that occurred at your 23 work; is that correct? 24 A Only events that were occurring in the jail. Like, 25 you may have a prisoner on a suicide watch. There</p>	<p>1 Q Okay. I'm just going to go ahead, operating on the 2 theory that if your machine is going off and it 3 matters, you'll tell us. 4 A Yes, sir. 5 Q Okay. 6 A That would be great. 7 Q All right. With respect to this report, it says, 8 "receiving a telephone call in the central control 9 area." What is that? Part of the jail? 10 A Yes, sir. 11 Q And there is another report prepared by a Lieutenant 12 Lenk? 13 A Yes, sir. 14 Q Do you recall that? 15 A Yes. 16 Q Do you know if you've seen that report? 17 A No, sir. 18 Q Okay. Have you discussed this matter with him, I 19 assume? 20 A The fact -- 21 MR. BASCOM: Object to the form. Vague as 22 to time. 23 BY MR. GLYNN: 24 Q Anytime. Anytime prior to today, have you had a 25 conversation with Lieutenant Lenk about the matter</p>

Video Deposition of Andrew Colborn 10/13/05

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<p>1 that is discussed in this statement?</p> <p>2 A Yes, sir.</p> <p>3 Q And do you recall in that conversation learning that</p> <p>4 at least he had the belief that this was related to</p> <p>5 Brown County or at least thought it might have been</p> <p>6 related to Brown County?</p> <p>7 A He never relayed that information to me, so I don't</p> <p>8 know.</p> <p>9 Q Let me show you what's been marked as Exhibit 125 and</p> <p>10 ask you to take a look at that. Have you seen that</p> <p>11 before, or do we need to give you a chance to read it?</p> <p>12 A I've never seen Lieutenant Lenk's statement, no.</p> <p>13 Q Okay.</p> <p>14 MR. GLYNN: Then let's just go off the</p> <p>15 record and give him a chance to read it.</p> <p>16 REPORTER: Off the record.</p> <p>17 (Off the record 4:12 - 4:13)</p> <p>18 REPORTER: Back on the record.</p> <p>19 BY MR. GLYNN:</p> <p>20 Q Have you had a chance now to read Exhibit 125?</p> <p>21 A Yes, sir.</p> <p>22 Q Do you recall telling Lieutenant James Lenk that the</p> <p>23 person from whom you received the telephone call was a</p> <p>24 detective and that you thought he might have been from</p> <p>25 Brown County?</p>	<p>1 Q Okay. And what that person in custody had said was</p> <p>2 that he had committed an assault in Manitowoc County</p> <p>3 and someone else was in jail for it, correct?</p> <p>4 A Yes, sir.</p> <p>5 Q And that much you're pretty sure of, correct?</p> <p>6 A Yes.</p> <p>7 Q I mean, that's a significant event.</p> <p>8 A Right. That's what's stood out in my mind.</p> <p>9 Q Sure. And you knew by September 12, 2003 that Steven</p> <p>10 Avery is someone who had been in jail for an assault</p> <p>11 that he had been convicted of, correct? Had been in</p> <p>12 jail.</p> <p>13 A Yes.</p> <p>14 Q He was recently released by then.</p> <p>15 A Yes. Mm-hmm.</p> <p>16 Q And you knew that someone else had committed that</p> <p>17 crime, Gregory Allen; that was in the media as well,</p> <p>18 correct?</p> <p>19 A Yes.</p> <p>20 Q And so one of the things you believed was that there</p> <p>21 may be a relationship between the Gregory Allen matter</p> <p>22 and this telephone call, correct?</p> <p>23 MR. BASCOM: Are you talking about 2003?</p> <p>24 MR. GLYNN: In 2003.</p> <p>25 Q Correct?</p>
Page 10	Page 12
<p>1 A Actually, I thought I had told Lieutenant Lenk that I</p> <p>2 thought the individual was from Sheboygan County, but</p> <p>3 I wasn't sure.</p> <p>4 Q Okay. So as of today, you know, here we are in</p> <p>5 October 2005, you're not sure what you told Lieutenant</p> <p>6 Lenk back in 2003 with respect to the county?</p> <p>7 A That's correct, sir.</p> <p>8 Q Okay. At any rate, what the subject matter was of</p> <p>9 this person's call was a statement apparently made to</p> <p>10 the caller by a person who was in the caller's</p> <p>11 custody; is that correct?</p> <p>12 A You know, we're going back to '94 or '95.</p> <p>13 Q Sure.</p> <p>14 A I'm a little gray on exactly --</p> <p>15 Q And you can use your own report, Exhibit 138, to</p> <p>16 refresh your recollection if that helps you.</p> <p>17 A I don't know if the pers-- I gathered, yes, that they</p> <p>18 had someone in custody. I don't know if this person</p> <p>19 had commented directly to the person who called me or</p> <p>20 had commented to other people within that jurisdiction</p> <p>21 and this eventually got to my caller.</p> <p>22 Q But the detective indicated that there was a person in</p> <p>23 custody who had made a statement about a Manitowoc</p> <p>24 County offense, correct?</p> <p>25 A Yes.</p>	<p>1 A Yes. That -- Yes, sir.</p> <p>2 Q Sure. And, I mean, the fact of the matter is also,</p> <p>3 again, as reported in the media, Mr. Allen, at the</p> <p>4 time of Mr. Avery's being released by the court, had</p> <p>5 been convicted of a sexual assault in Brown County and</p> <p>6 sentenced to prison, correct?</p> <p>7 A That whole portion of it I wasn't aware of.</p> <p>8 Q Okay.</p> <p>9 A I am now. It's '05. At the time of '03, I really</p> <p>10 wasn't -- can't say I was, like, following the case.</p> <p>11 So I knew the name that you mentioned had come up, but</p> <p>12 I didn't know where he was incarcerated; if he was</p> <p>13 incarcerated, what his status was.</p> <p>14 Q Have you seen any of the reports of the district</p> <p>15 attorney's office indicating that it would not be</p> <p>16 prosecuting Mr. Allen for the crime on which Mr. Avery</p> <p>17 had been exonerated due to the fact that a statute of</p> <p>18 limitations had run, and in any event, Mr. Allen was</p> <p>19 serving a 60 year sentence?</p> <p>20 A I can't recall viewing --</p> <p>21 Q Recall any of that?</p> <p>22 A -- no, viewing any reports from the district</p> <p>23 attorney's office. No, sir.</p> <p>24 Q And I'm not really talking about reports at the</p> <p>25 moment, sir. I'm including any source: media, and by</p>

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<p>1 that I mean television, radio, newspapers; talk around 2 the sheriff's department; talk in your own household, 3 anything. 4 A Certainly in the media. 5 Q Okay. 6 A I mean, there was a lot of media coverage on this 7 case, and certainly I probably got most of the 8 information that I knew about the case through the 9 media. 10 Q Sure. I mean, you yourself hadn't had any involvement 11 in the Avery prosecution or investigation, correct? 12 A I wasn't even in this country when that occurred. 13 Q Sure. 14 A I was stationed overseas in the military. 15 Q And when you came back and were involved in '94 and 16 '95 as a corrections officer, you were not otherwise 17 working as a deputy sheriff, correct? 18 A No, sir. 19 Q So you hadn't had any involvement in any of the post- 20 conviction investigative efforts with respect to Mr. 21 Avery's case. 22 A No, sir. 23 Q So your sources of information would necessarily have 24 been media-type sources, correct? 25 A Correct.</p>	<p>1 transferred, and sometimes people give you a number in 2 advance of the attempt to transfer and say in case we 3 lose each other or the call doesn't go through, the 4 number to call is such and such. Is that the way you 5 were doing it? 6 A Yes. 7 Q Okay. So you gave the person the number and then 8 attempted to transfer the call. And do you know 9 whether the call went through to the other detective? 10 A I don't know. I didn't hear somebody pick up. But as 11 soon as the phone rang, I would have hung it up. 12 Q Okay. Because at that stage, again, you've given the 13 person the contact information if he chooses to follow 14 up, correct? 15 A Yes, sir. 16 Q Did you ever make any inquiries of anybody in the 17 detective bureau to find out whether they had received 18 such a call? 19 A No, sir. 20 Q Or did you ever hear any feedback from anybody about 21 -- 22 A No, sir. 23 Q -- whether they had gotten such a call? 24 A No, sir. 25 Q Okay. So that's what's going on in 2003, correct?</p>
Page 14	Page 16
<p>1 Q Okay. At any rate, you recognized this was 2 significant enough that you should forward that call 3 that was coming in from another detective to someone 4 in the Manitowoc County Sheriff's Department to take 5 it further, correct? 6 A Yes, sir. 7 Q It wasn't within your jurisdiction to take it any 8 further, correct? 9 A No, sir. 10 Q And even if you had wanted to, you didn't have the 11 legal authority under your job duties to do that. 12 A Correct. 13 Q So what you did was to give the calling detective a 14 telephone number for a Manitowoc County Sheriff's 15 office detective, correct, or the detective bureau? 16 A Right. I believe I would have just given him that 17 number in case -- I'm sure I tried to transfer the 18 call. 19 Q Okay. 20 A Because that would have been the protocol that was 21 required, you know, as my job. But I got in the habit 22 of, since that's sometimes iffy, I would have given 23 him the number of who I was trying to transfer him to. 24 Q So let me see if I understand that because I think all 25 of us at one time or another have had their calls</p>	<p>1 A No, the call -- 2 Q I'm sorry. That's what's going on in '94/'95. 3 A Yes, sir. 4 Q You then, in 2003, following the publicity that we've 5 already discussed relating to Mr. Allen and Mr. Avery, 6 and you're concerned that perhaps the caller that was 7 calling was speaking about Mr. Allen and Mr. Avery, 8 true? 9 A I was wondering about that, yes. 10 Q Sure. You brought that up to someone else, correct? 11 A Yes, sir. 12 Q And to whom did you bring that up? 13 A To Lieutenant Lenk. 14 Q And you and Lieutenant Lenk had a conversation about 15 it? 16 A Yes, sir. 17 Q And in that conversation, is it safe to say that you 18 told him what's reflected in Exhibit 138? 19 A Yes, sir. 20 Q There was also a conversation that followed that in 21 which you spoke to Sheriff Petersen, correct? 22 A Yes, sir. 23 Q And do you recall that Lieutenant Lenk was there as 24 well? 25 A When I spoke with Sheriff Petersen?</p>

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<p>1 Q Yes. Was he or not; do you know?</p> <p>2 A No, he was not.</p> <p>3 Q He was not. Okay. Who all was there when you talked</p> <p>4 to Sheriff Petersen; do you remember?</p> <p>5 A I don't recall who was in the room. I remember coming</p> <p>6 into work. Sheriff Petersen was downstairs where our</p> <p>7 patrol division is, and I got the impression he was</p> <p>8 waiting for me to come into work. There were other</p> <p>9 people coming in and out of the room, but I don't</p> <p>10 recall who.</p> <p>11 Q Do you know what it is that gave you the impression he</p> <p>12 was waiting for you? I mean, did he come right up to</p> <p>13 you or ask you to come with him or something?</p> <p>14 A I usually don't have contact with the sheriff, you</p> <p>15 know. So that's what gave me the impression he was</p> <p>16 waiting for me.</p> <p>17 Q And when you and he connected that day, what happened?</p> <p>18 I mean, did you say something to him? Did he say</p> <p>19 something to you?</p> <p>20 A No, he initiated the conversation by saying he had</p> <p>21 spoken with Lieutenant Lenk and he felt that it would</p> <p>22 be in the best interests of Lieutenant Lenk and myself</p> <p>23 and the sheriff's department, I would suppose, that if</p> <p>24 I was to give him a statement on the gist of our</p> <p>25 conversation or what we had discussed. And I asked</p>	<p>1 conversations with Sheriff Petersen about this subject</p> <p>2 matter?</p> <p>3 A No.</p> <p>4 Q How about any meetings with District Attorney Rohrer</p> <p>5 about this subject matter, and again, I mean the</p> <p>6 subject matter of Exhibit 138 that we've been</p> <p>7 discussing.</p> <p>8 A No, I've never had a meeting with the district</p> <p>9 attorney about this.</p> <p>10 Q Okay. How about an assistant district attorney named</p> <p>11 Mike Griesbach?</p> <p>12 A Never had a meeting with Mike Griesbach about this.</p> <p>13 Q have you ever had any conversations with anybody else,</p> <p>14 other than Sheriff Petersen and Lieutenant Lenk, about</p> <p>15 the subject matter of Exhibit 138? Ever discuss it</p> <p>16 with anyone else, any other officers, any friends, any</p> <p>17 family?</p> <p>18 A Not that I can specifically recall. I may have</p> <p>19 mentioned it to other people, but I don't recall doing</p> <p>20 it.</p> <p>21 Q That is, as you're sitting here today, you don't have</p> <p>22 any specific recollection of discussing it with</p> <p>23 anybody else.</p> <p>24 A No, sir.</p> <p>25 Q But you're not ruling out the possibility that you may</p>
Page 18	Page 20
<p>1 for clarification on that, you know. And he goes,</p> <p>2 "Well, what you discussed about a telephone call that</p> <p>3 you received while you were working in the jail." And</p> <p>4 I said okay. And before I went out on patrol, I</p> <p>5 provided this statement.</p> <p>6 Q Do you know what time your patrolling duties were</p> <p>7 then?</p> <p>8 A Well, I worked noon to 8:00, but as a shift commander,</p> <p>9 there's some times I don't get out on the road until</p> <p>10 two, three o'clock depending on what sort of</p> <p>11 administrative or office duties I have.</p> <p>12 Q So if you look toward the upper right-hand portion of</p> <p>13 that Exhibit 138, you see a time of 1330 hours. Does</p> <p>14 1:30 seem like about an appropriate time?</p> <p>15 A Yes. Sure.</p> <p>16 Q And that would have been immediately after your</p> <p>17 conversation with Sheriff Petersen?</p> <p>18 A No. I believe my conversation with Sheriff Petersen</p> <p>19 would have been like at quarter to twelve or 12:00.</p> <p>20 Q Okay. Well, when I say immediately after, I mean</p> <p>21 within an hour or two.</p> <p>22 A Oh, yeah. Yes, sir.</p> <p>23 Q Okay.</p> <p>24 A Same day as the conversation with Sheriff Petersen.</p> <p>25 Q All right. And do you recall any further</p>	<p>1 have discussed it.</p> <p>2 A No, I'm not ruling out the possibility that I may have</p> <p>3 discussed it with someone else, but I can't</p> <p>4 specifically tell you names of people I may have</p> <p>5 mentioned this to.</p> <p>6 Q Okay.</p> <p>7 MR. GLYNN: I think that's all I have.</p> <p>8 That's all, thanks.</p> <p>9 MR. BASCOM: I just have one question</p> <p>10 because I'm confused about the testimony</p> <p>11 concerning Sheboygan County versus Brown County.</p> <p>12 And I wasn't sure if I heard you correctly. Let</p> <p>13 me just ask you this question.</p> <p>14 E X A M I N A T I O N</p> <p>15 BY MR. BASCOM:</p> <p>16 Q You said "Sheboygan County, but I'm not sure." And my</p> <p>17 question is, is it that you heard that the detective</p> <p>18 -- you think the detective that called you was from</p> <p>19 Sheboygan County but you're not sure, or that you told</p> <p>20 the Lieutenant that you thought the guy was from</p> <p>21 Sheboygan County but you're not sure? Do you see the</p> <p>22 difference between those two questions?</p> <p>23 A Sure.</p> <p>24 Q And I'm not sure which way your answer was aiming.</p> <p>25 A You know, I can't recall the specifics of my</p>

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1 conversation with Lieutenant Lenk. I may have said he
2 was either from Sheboygan or Brown County, I don't
3 know, because I don't know. And I don't know why
4 those two jurisdictions stand out in my head other
5 than that is the area or outside jurisdictions that we
6 have the most contact with, you know, being centered
7 between the two of them. You know, I don't know if
8 that answers your question --

9 Q Well, as we sit here today --

10 A -- as it pertains to Lieutenant Lenk, I'm --

11 Q No, as we sit here today --

12 A Okay.

13 Q -- do you have a sense or a feeling that the guy was
14 from Brown County or Sheboygan County, or don't you
15 know?

16 A I really don't know, sir.

17 Q That's fine.

18 MR. BASCOM: That's all I have.

19 MR. GLYNN: Nothing else.

20 MR. BASCOM: Great. Thanks.

21 REPORTER: Okay. There being no further
22 questions, this deposition is concluded at 4:27
23 p.m. Off the record.

A	B			
activities 6:21	back 5:2 9:18	capacity 6:19	copy 7:1	detective 7:15,21
administrative 18:11	10:6,12 13:15	Caption 1:10	correct 5:18 6:23	9:24 10:22 14:3
advance 15:2	background 5:12	Carlson 3:2	7:12,16,18,22	14:13,15,15
agency 7:21	5:15	case 1:11 12:10	10:7,11,24 11:3	15:9,17 20:17
ahead 8:1	Bascom 2:20,21	13:7,8,21 14:17	11:5,11,18,22,25	20:18
aiming 20:24	4:4 8:21 11:23	15:2	12:6 13:11,17	diary 7:6,9
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EXHIBIT 8

United States District Court
Eastern District of Wisconsin

Avery v. Manitowoc County

04 C 986



Video Deposition of

Kenneth Petersen

Recorded 10/13/2005 in Manitowoc, WI

12:04 pm - 1:29 pm, 84 mins. elapsed

Magne-Script

(414) 352-5450

15843 Standard transcript

Video Deposition of Kenneth Petersen 10/13/05

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Witness

Kenneth Petersen

Thursday 10/13/2005 at 09:00 by: Jeff Joseph

Nash, Spinlder, Grimstad & McCracken

201 East Waldo Boulevard

Manitowoc, WI

Caption: Avery v. Manitowoc County

Case No.: 04 C 986

Venue: United States District Court

Eastern District of Wisconsin

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6

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9 201 East Waldo Boulevard
10 Manitowoc, WI 54220
11 On behalf of Tom Kocourek
12

13 Also Present: Steven Avery
14
15
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1 Lenk?

2 A It's Lieutenant Lenk.

3 Q Lieutenant Lenk. I'm sorry.

4 A Yes.

5 Q And they told you about these events that had occurred
6 in 1995 as they recalled them, correct?

7 A Yes.

8 Q Do you remember who else was involved in those
9 conversations between you and -- well, let's start
10 with Mr. Colborn?

11 A No, I believe both Andy Colborn and James Lenk came to
12 my office at the same time.

13 Q And with no one else?

14 A Correct.

15 Q And you were with no one else?

16 A Correct.

17 Q So it was just the three of you?

18 A Yes.

19 Q Okay. And you had talked about this matter of the
20 1995 telephone contact from an outside agency to the
21 Manitowoc County Sheriff, correct?

22 A Yes.

23 Q And what did they tell you? Let's start with Sergeant
24 Colborn. What did he tell you had occurred?

25 A He said when he was working in the jail, he had

1 received a phone call I believe from a detective in
2 Brown County, that he had a suspect who said that he
3 had assaulted a person in Manitowoc County and
4 somebody else was in prison. And that's about it. He
5 said he referred it to a detective and heard nothing
6 of it after that.

7 Q And I take it that that was something that you
8 considered to be significant material, correct?

9 A Yes.

10 MR. MAYER: Form of the question.

11 BY MR. GLYNN:

12 Q You recognize that if in fact the statement that was
13 being reported by the detective in Brown County was
14 accurate that someone may have been wrongfully
15 convicted of something in Manitowoc County, correct?

16 A Correct.

17 MR. COVELLI: Objection. Calls -- no
18 foundation.

19 BY MR. GLYNN:

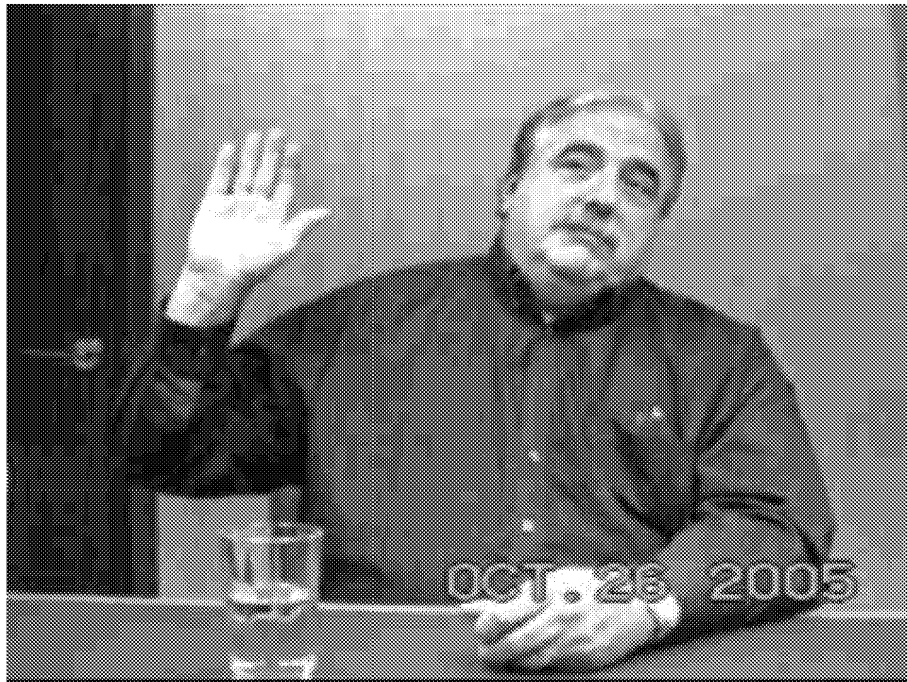
20 Q You also recognize that since neither -- well, since
21 -- let's just deal with Sergeant Colborn. Since
22 Sergeant Colborn had not memorialized that telephone
23 call in any way, that is he had not prepared a report
24 concerning it, that he should now attempt to do that,
25 correct?

EXHIBIT 9

United States District Court
Eastern District of Wisconsin

Avery v. Manitowoc County

04 C 986



Video Deposition of

Eugene Kusche

Recorded 10/26/2005 in Manitowoc, WI

9:35 am - 1:10 pm, 191 mins. elapsed

Magne-Script

(414) 352-5450

23017 Condensed transcript with index

Video Deposition of Eugene Kusche 10/26/2005

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1 what you knew from that conversation, you had any
 2 conversation with any of the detectives in the
 3 department about that?
 4 A No.
 5 Q All right. And you're telling me that your
 6 recollection is that amongst yourselves, you and
 7 the detectives did not ever discuss Tom Beerntsen
 8 pressuring the sheriff in this case.
 9 A No.
 10 Q Okay. You mentioned a bit earlier in your
 11 testimony an Officer Colborn and a document that
 12 you saw about that; is that right?
 13 A That's correct.
 14 Q Okay. I'm going to show you Exhibit 124 in this
 15 case. And you've seen that before, right?
 16 A I saw this Monday.
 17 Q Had you seen it before Monday?
 18 A No.
 19 Q This document reflects a conversation between you
 20 and Douglass Jones on September 18th, right?
 21 A That's correct.
 22 Q That's shortly after it became public knowledge
 23 that Steven Avery had been exculpated by the DNA
 24 evidence and that Gregory Allen had been
 25 inculpated, right?

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1 A That's correct.
 2 Q Was the call that is reflected in this document
 3 initiated by Mr. Jones?
 4 A Yes.
 5 Q Do you remember what he said to you initially
 6 when he first introduced himself?
 7 A I think he wanted me to put up a -- this was a
 8 call, if I have the sequencing correct, that a
 9 campaign sign for someone for school board.
 10 Q Anything else that you recall that introduced the
 11 subject matter of the Steven Avery case?
 12 A I really don't recall how it came up.
 13 Q All right. Look at the first sentence, if you
 14 would. He says --
 15 A Okay.
 16 Q -- he called you on the afternoon --
 17 A Oh, okay.
 18 Q -- of September 11th to tell you that there was an
 19 article in the Herald Times Reporter about the Avery
 20 case and that Avery had been released. Do you see --
 21 A That may have been how it started.
 22 Q Okay.
 23 A I really don't recall that much about the
 24 conversation.
 25 Q Okay. But in any event, you're not disagreeing

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1 with the first sentence.
 2 A I wouldn't disagree with it.
 3 Q All right. And then he says in this memo that
 4 you told him that you were already aware of the
 5 article and about Steven Avery being released.
 6 A Correct.
 7 Q Then he says, "We chatted about unrelated
 8 matters."
 9 A Right.
 10 Q Probably about the political campaign, right?
 11 A Perhaps.
 12 Q Okay. Any other unrelated matters that you
 13 remember?
 14 A I don't recall.
 15 Q All right.
 16 A I don't have much recollection of the call.
 17 Q Then he says that your future plans, your health,
 18 your exercise regimen, he told you things about
 19 his family. Do you remember all of that
 20 occurring?
 21 A No.
 22 Q All right. Then he says as he, Doug Jones, was
 23 trying to close the conversation, you told him
 24 that you would retain the drawing.
 25 A Yes.

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1 Q Do you remember telling him that?
 2 A No.
 3 Q At the time that you spoke to him, you in fact
 4 had the drawing, though.
 5 A Yes.
 6 Q All right. Had he asked you to keep it?
 7 A No.
 8 Q Do you know why you told him that you would
 9 retain the drawing?
 10 A I would imagine we were anticipating this event.
 11 Q Meaning that the question of the drawing would
 12 come up --
 13 A Sure.
 14 Q -- in subsequent legal proceedings.
 15 A Of course.
 16 Q All right. He goes on and he says, referring to
 17 you, "He then told me that in '95 or '96, Andy
 18 Colborn had told Tom Kocourek, former Manitowoc
 19 County Sheriff, that an officer from Brown County
 20 had told Colborn that Allen, and not Avery, might
 21 have actually committed the Beerntsen assault."
 22 Okay? That is what Exhibit 124 says, correct?
 23 A That's correct.
 24 Q Okay. Did you in fact tell that to Douglass
 25 Jones?

Video Deposition of Eugene Kusche 10/26/2005

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1 A I don't recall.
 2 Q All right. Does seeing this document, 124,
 3 refresh your recollection?
 4 A No.
 5 Q All right. Do you have any reason to disbelieve
 6 what this document says you told Doug Jones?
 7 A I recall Colborn saying something to me, and I
 8 might have said something to him on the side. I
 9 don't know if Tom Kocourek's name came into it.
 10 I don't recall that.
 11 Q All right. Anything else with respect to that
 12 sentence that...
 13 A Again, that's all I can recall.
 14 Q So you knew about Gregory Allen in 1995 or '96 --
 15 A No. No. I --
 16 Q -- because Tom Colborn told you.
 17 A No. He didn't tell me that in 1995, '96.
 18 Q Okay. Then --
 19 A He said he had the conversation in '95, '96.
 20 Q All right.
 21 A I didn't hear about it till in passing talking to
 22 Andy at one time, something being said within --
 23 probably within a matter of a couple of -- a
 24 couple, three months of this conversation
 25 occurring.

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1 Q What happened within a couple, three months of
 2 this conversation?
 3 A Andy making a comment to me about this. Because
 4 I said this thing comes up with conversations.
 5 And he may have said something, and it would not
 6 necessarily have been important to me that I
 7 would file it away for future memory. It might
 8 have just made a -- been a side comment at the
 9 end of a telephone conversation.
 10 But I did not receive that information in '95,
 11 '96. At that time I was chief investigator and would
 12 have done something. I would have -- And then I made
 13 this comment. I probably asked him, was Lenk, who was
 14 my replacement, aware of this. And that's how I would
 15 imagine I said he -- that Detective Lenk was aware.
 16 He was not that until -- He didn't take command of
 17 that bureau until 2003.
 18 Q You made a statement in the course of that long
 19 narrative answer that within two or three months
 20 of this time he told me.
 21 A I would say.
 22 Q Within two or three months of what time?
 23 A Of this telephone conversation that I had with
 24 Doug Jones [indicating Exhibit 124].
 25 Q So your testimony is that within two or three

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1 months prior to September 18th of 2003, Colborn
 2 told you this?
 3 A Made a comment on something to that effect.
 4 Q So this is before there's been any public
 5 knowledge or information, two to three months
 6 before there's been any public knowledge or
 7 information that Steven Avery has been
 8 exonerated. And you're telling us that Colborn
 9 told you, "Hey listen, back in '95 or '96, I
 10 found out that" --
 11 A When it came out -- It had happened aft-- well,
 12 I'm assuming two to three months, I don't know.
 13 After the information about Avery came out and
 14 before this conversation with Jones, that comment
 15 was made.
 16 Q Well, it's an absolute fact that the first time
 17 the district attorney found out about the results
 18 of the DNA examination was on September 3 of
 19 2003.
 20 A Okay. I have no --
 21 Q And this document -- look at it. This document,
 22 dated September 18th, is referring to a
 23 conversation between you and Doug Jones that took
 24 place on September 11th, 2003. Do you see that?
 25 A Yes, I see that.

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1 Q So you're telling us that --
 2 A I don't --
 3 Q -- Colborn spoke to you before anybody knew
 4 anything about Steven Avery being exonerated?
 5 A I don't know when it occurred. It happened
 6 before this con-- [indicating Exhibit 124]. It
 7 may have happened that day.
 8 Q So you're changing your prior testimony that it
 9 was two to three months before this conversation?
 10 A I don't know. It happened before it. It
 11 happened after I left my position and before that
 12 conversation, anytime in there.
 13 Q Okay.
 14 A I don't know. I told you, I don't have very
 15 specific recollection of this conversation.
 16 Q Well, you seem to have recovered some of your
 17 recollection about it. Apparently Colborn
 18 identified Allen to you.
 19 A He -- I don't know that he identified Allen to
 20 me. I'm saying what my recollection was of this
 21 conversation, which is not very strong, was that
 22 Colborn made a comment to me about getting some
 23 information.
 24 Q Yeah. Okay.
 25 A And I related it in the phone conversation.

Video Deposition of Eugene Kusche 10/26/2005

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1 Q Okay. The statement goes on and says, the next
 2 sentence says, "Gene stated," that's you.
 3 A Mmm-hmm.
 4 Q -- "that Colborn was told by Kocourek something
 5 to the effect that we already have the right guy
 6 and he should not concern himself." Now --
 7 A That --
 8 Q Did Colborn tell that to you?
 9 A I don't recall it.
 10 Q Did you tell that to Doug Jones?
 11 A I don't recall it.
 12 Q Do you have any reason to believe that Doug Jones
 13 would misrecord what you told him?
 14 A No.
 15 Q Okay. Then it goes on to say that Doug Jones
 16 asked you if this information was known. Do you
 17 remember him asking you that?
 18 A No.
 19 Q Then it goes on to say that you said Lenk, MCSO
 20 Lieutenant James Lenk, detective bureau command
 21 officer, was aware. Did you tell that to Doug
 22 Jones?
 23 A If he put it there, I probably did.
 24 Q And what was the basis for your knowledge about
 25 that?

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1 A It would had to have been from Andy Colborn.
 2 Q Did you talk with Lenk about whether or not Lenk
 3 was aware of this?
 4 A No.
 5 Q All right. At any time?
 6 A Not to my recollection.
 7 Q Okay. And then the statement goes on and says,
 8 "He did not indicate in any way when Lenk first
 9 learned about Colborn and Kocourek's
 10 conversation." Is that true?
 11 A I wouldn't know.
 12 Q All right. "On late Thursday afternoon," he
 13 says, "he found Mark Rohrer and apprised him of
 14 the conversation with Gene," referring to you,
 15 and then he says, "By the time I found Mark, he
 16 indicated that he'd already been made aware of
 17 conversation between Colborn and Kocourek."
 18 A Okay.
 19 Q Did he tell you that?
 20 A No.
 21 Q That you remember: he did not tell you that.
 22 A Not to my recollection.
 23 Q Okay. Now, you just testified a moment ago that
 24 had you been in office at the time and chief
 25 investigator that you would have had to do

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1 something about that information, right?
 2 A If there's information on somebody else having
 3 committed the crime, yes.
 4 Q Well, and that's what this is saying. This is
 5 what this information --
 6 A No, that's not what that's saying. I did not
 7 have any information prior to my retirement that
 8 someone else committed the crime.
 9 Q Oh, I'm mis-- that was an ambiguous question on my
 10 part. What I'm saying to you is, the information that
 11 Colborn had about Greg Allen might have been the
 12 actual assailant rather than Steven Avery would be
 13 information about someone having committed a crime.
 14 MR. BASCOM: Object to the form.
 15 BY MR. KELLY:
 16 Q Specifically Greg Allen.
 17 MR. BASCOM: Same objection.
 18 A I'm not really following that.
 19 BY MR. KELLY:
 20 Q Well, let's posit this.
 21 A All right.
 22 Q Let's say that it's before May of 2003 and you're
 23 the chief investigator.
 24 A Yes.
 25 Q And an officer within the department comes and

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1 says to you an officer in Brown County called me
 2 and told me Greg Allen did the Penny Beerntsen
 3 assault, not Steven Avery. Your testimony is you
 4 would have to do something about that then.
 5 A Yes.
 6 Q Okay. And you would have to draw up a report of
 7 having received that information from one of your
 8 subordinates.
 9 A Of course.
 10 Q And you would have to follow-up on that lead; is
 11 that right?
 12 A Yes.
 13 Q Okay. So the fact that you received this
 14 information when you did would not cause you to
 15 have to do that, you're saying, because you were
 16 no longer in office.
 17 A If the information here is that Lenk was aware of
 18 it, I may have asked if that occurred. I'm
 19 assuming that from this report.
 20 Q Okay. Did you in fact at any time have any
 21 discussion with the subject matter of Exhibit 124
 22 with Tom Kocourek?
 23 A No.
 24 Q Did you at any time have any dealings with Jim
 25 Gospodarek about the Steven Avery case?

EXHIBIT 10

STATE OF WISCONSIN

D. A. Case No. 2005CA000607
Agency Case No. 05-0157-955

Plaintiff,

-VS-

ORIGINAL FILED NOV 15 2005

CRIMINAL COMPLAINT

Steven A. Avery
12932 Avery Road
Two Rivers, WI 54241
DOB: 07/09/1962
Sex/Race: M/W

CASE NO: _____
LYNN ZIGMUNT
CLERK OF CIRCUIT COURT
MANITOWOC COUNTY, WISCONSIN

Case No. 05-CF-381

Defendant,

Thomas Fassbender, Special Agent with the Wisconsin Department of Justice, Division of Criminal Investigations, being first duly sworn, states that:

Count 1: FIRST DEGREE INTENTIONAL HOMICIDE

The above-named defendant on Monday, October 31, 2005, at 12932 Avery Road, Town of Gibson, Manitowoc County, Wisconsin, did cause the death of Teresa M. Halbach, with intent to kill that person, contrary to sec. 940.01(1)(a), 939.50(3)(a) Wis. Stats., a Class A Felony, and upon conviction shall be sentenced to imprisonment for life.

Count 2: MUTILATING A CORPSE

The above-named defendant between Monday, October 31, 2005, and Friday, November 4, 2005, at 12932 Avery Road, Town of Gibson, Manitowoc County, Wisconsin, did mutilate, disfigure or dismember a corpse with the intent to conceal a crime, contrary to sec. 940.11(1), 939.50(3)(f) Wis. Stats., a Class F Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than twelve (12) years and six (6) months, or both.

PROBABLE CAUSE:

Complainant states that he is a special agent with the Wisconsin Department of Justice, Division of Criminal Investigations, and bases this complaint upon the reports and investigations of Deputy Bill Tyson and Deputy Dan Kucharski, Cpl. Leslie Lemieux of the Calumet County Sheriff's Department, as well as statements of witnesses Ken Bennett, Leslie Eisenberg, Dr. Donald Simley, Sherry Culhane, Karen Halbach, Steve Harrington and statements of defendant Steven A. Avery. The statements of Deputy Tyson, Deputy Kucharski, and Cpl. Lemieux are presumed to be truthful and reliable as made by sworn law enforcement officials; the statements of witnesses Ken Bennett, Leslie Eisenberg, Dr. Donald Simley, Sherry Culhane, Karen Halbach, and Steve Harrington are presumed truthful and reliable as citizen informants; and the statements of defendant Steven A. Avery, are presumed truthful and reliable as they were made against his penal interests.

STATE4792

Complainant is informed that on November 3, 2005, Karen Halbach contacted the Calumet County Sheriff's Department. Halbach stated that her daughter, Teresa Marie Halbach, DOB: 03/22/1980, had not been seen or heard from since Monday, October 31, 2005. Halbach said it was unusual for Teresa not to have had personal or telephone contact with her family or friends for that length of time. Halbach stated that her daughter was driving a 1999 Toyota Rav 4, dark blue in color, bearing Wisconsin license plate #SWH582. Complainant is informed that Corporal Leslie Lemieux of the Calumet County Sheriff's Department obtained Wisconsin Department of Transportation records for Wisconsin license plate #SWH582. The records outlined that the vehicle with Wisconsin license plate #SWH582 is owned by Teresa M. Halbach, and the VIN for said vehicle is JT3HP10V5X7113044.

Complainant is informed that on November 5, 2005, officers received information from volunteer searchers that they had located a vehicle matching the description of the vehicle owned by Teresa Halbach at Avery Auto Salvage located on Avery Road in the Town of Gibson, County of Manitowoc, Wisconsin. Volunteer searchers had received verbal consent to search Avery Auto Salvage yard by Earl Avery. Law enforcement was provided with a partial VIN number and detailed description of the Rav 4 located at Avery Auto Salvage, which was consistent with that belonging to Teresa M. Halbach. During a visual observation of the vehicle, law enforcement officials noted that there were tree branches covering the vehicle and also vehicle parts placed alongside of the vehicle which looked as though someone had attempted to conceal the vehicle.

On November 5, 2005 a search warrant was obtained and executed for Avery Auto Salvage, which included the residences, outbuildings, vehicles and property. During the execution of the search warrant, Teresa Halbach's 1999 Toyota Rav 4, VIN #JT3HP10V5X7113044, was found partially concealed. The vehicle was subsequently seized, secured in an enclosed trailer and transported to the Wisconsin Crime Laboratory for subsequent search and analysis. On November 6, 2005, a preliminary report was received from the Wisconsin State Crime Lab indicating a presumptive positive finding of human blood located within the interior of Teresa Halbach's vehicle. Steven Harrington of the State of Wisconsin Crime Laboratory confirmed that technicians had located the presumptive human blood in the rear cargo portion of the vehicle as well as the ignition area of the vehicle.

Complainant is informed that during a search of the residence of Steven A. Avery, law enforcement also identified a dried red substance which appeared to be blood on the bathroom floor in front of the washer and dryer and also located items of restraints within Steven Avery's residence, including handcuffs and leg irons. Complainant is informed that on November 6, 2005, Deputy Kucharski continued the search of the defendant's bedroom located at 12932 Avery Road, Town of Gibson, Manitowoc County, Wisconsin, where officers located two firearms, identified as a .22 caliber semi-automatic rifle and a .50 caliber black powder muzzleloader. Deputy Kucharski noted that there was masking tape attached to the muzzleloader with the name "Steve" written on it. On November 5, 2005, Deputy Tyson located a desk in the same room, which contained numerous magazines addressed to Steven A. Avery, Sr. at 12932 Avery Road. Also on November 6, 2005,

officers carried out a search of a detached garage next to the Steven Avery residence located at 12932 Avery Road, Town of Gibson, Manitowoc County, Wisconsin. Officers located approximately eleven spent .22 caliber long rifle shell casings on the floor of the garage.

Complainant is informed that on November 7, 2005, Deputy Dan Kucharski continued the search of the defendant's bedroom located at 12932 Avery Road, Town of Gibson, Manitowoc County, Wisconsin. Deputy Kucharski located a Toyota ignition key adjacent to furniture found within the bedroom of the defendant, Steven Avery. Complainant is informed that the key located in the bedroom of Steven Avery's residence was successfully used in the ignition of the Toyota Rav 4 owned by Teresa M. Halbach; the key successfully turned the ignition of the Halbach vehicle.

Complainant is informed that on November 8, 2005, while continuing to execute the search warrant of the Avery Auto Salvage property located on Avery Road in the Town of Gibson, Manitowoc County, Wisconsin, law enforcement officials located two Wisconsin license plates, bearing Wisconsin license plate #SWH582, in a scrapped vehicle located on the north end of the salvage yard. The plates were crumpled. The recovered license plates were later identified as the license plates that belonged to the 1999 Toyota Rav 4 owned by Teresa M. Halbach.

Complainant is informed that on November 5, 2005, officers located a burn barrel near the residence of Steven Avery located at 12932 Avery Road, in the Town of Gibson, County of Manitowoc, Wisconsin. In that burn barrel, officers located burned clothing and a partially burned shovel.

Complainant is informed that on November 8, 2005, while continuing to execute the search warrant of the property located near the residence of Steven Avery located at 12932 Avery Road in the Town of Gibson, Manitowoc County, Wisconsin, officers located bone fragments and teeth in a fire pit area located approximately 20 yards south of a detached garage that is located next to the residence of Steven Avery. Officers also located remnants of steel belts of tires that appear to have been utilized as fire accelerants.

The bone fragments located were transported by Dorinda Freymiller, a special agent with the Division of Criminal Investigations, to Ken Bennett, a retired forensic anthropologist, who identified the bones as being human in nature. Bennett also determined that based on the characteristics of the ilium bone, the bones are from an adult human female.

On November 14, 2005, Leslie Eisenberg, Forensic Anthropologist, described the bone fragments as the obvious result of mutilation of a corpse. Eisenberg stated that almost every bone in the body or body area is present and has been recovered from the scene.

The tooth fragments that were located in the burn pit area were delivered to Dr. Donald Simley, who is board-certified in forensic odontology and has been practicing forensic dentistry since 1981. Dr. Simley's analysis of the tooth fragments indicated the presence of human teeth.

On November 9, 2005, the defendant, Steven A. Avery, provided a statement to your complainant indicating that the victim, Teresa Halbach, was at his home on October 31, 2005 between 2:00 and 3:00 p.m. Steven Avery stated that he resides at 12932 Avery Road in the Town of Gibson, County of Manitowoc, Wisconsin. The defendant denies ever being in the victim's car and indicated that there was no way his blood could be in her car. Steven Avery admitted to having personal contact with Teresa Halbach that day in his driveway outside of his residence. The defendant stated that he paid Teresa Halbach \$40 in cash and indicated that Halbach gave him an Auto Trader Magazine at that time.

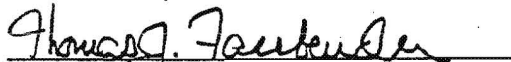
On November 14, 2005, your complainant reviewed a report submitted by Sherry L. Culhane, DNA Analyst with the Wisconsin Department of Justice, Division of Law Enforcement Services, Wisconsin State Crime Laboratory. Culhane indicates that blood found in the interior portion of Teresa Halbach's vehicle (including on the driver's seat; the ignition area; the front passenger seat; and the rear passenger door entrance) match the DNA profile for the defendant, Steven A. Avery. Culhane also indicates that DNA material found on the Toyota ignition key, seized from the bedroom of Steven A. Avery, matched the DNA profile of the defendant, Steven A. Avery.

Culhane's report further indicates that blood found in the rear cargo area of the Toyota Rav 4 was analyzed, and found to match DNA found upon a "Wild Cherry Pepsi" can recovered from the front console of the vehicle. Culhane indicates both DNA samples originate from the same female individual, which your complainant believes to be the victim, Teresa M. Halbach.

On November 15, 2005, in a preliminary report, Culhane indicated to your complainant that the partial DNA profile developed from the charred remains is consistent with the female DNA profile developed from the human blood stain in Teresa Halbach's vehicle, as well as the "Wild Cherry Pepsi" can also located in Teresa Halbach's vehicle.

Based on the foregoing, the complainant believes this complaint to be true and correct.

This 15th day of November, 2005.


Complainant


Kenneth R. Kratz
Calumet County District Attorney
Manitowoc County Special Prosecutor
State Bar No. 1013996

EXHIBIT 11

MANITOWOC CO SHERIFF DEPT Summary

DUPLICATE
COPY

Print Date/Time: 12/13/2005 14:23
Login ID: S509
Case Number: 2005-00008844

MANITOWOC COUNTY SHERIFF
ORI Number: WI0360000

Case Details

Case Number: 2005-00008844
Location: 12930 AVERY RD
TWO RIVERS, WISCONSIN, 54241
Reporting Officer ID: S278 - REMIKER

Incident Type: HOMICIDE - NEGLIGENT
Occurred From: 10/31/2005 14:00
Occurred Thru: 10/31/2005 14:00
Disposition: CLEARED BY ARREST
Disposition Date: 11/15/2005

RECEIVED
DEC 21 2005
Calumet County
District Attorney

Offenses

No.	Group/ORI	Crime Code	Statute	Description	Counts
1	State	09A	940.01(1)(a)	1ST DEGREE INTENTIONAL HOMICIDE	1
2	State	90Z	940.11(1)	MUTILATING A CORPSE	1

Subjects

Type	No.	Name	Address	Phone	Race	Sex	DOB
OTHER	2	BARBARA ELLEN JANDA	12930 AVERY RD A TWO RIVERS, WISCONSIN 54241	(920) 755-8715	WHITE	FEMALE	11/07/1964
OTHER	4	GREGORY A PHILLIPS	920 LADURON DR MISHICOT, WISCONSIN 54228	(920) 755-4684	WHITE	MALE	08/01/1969
OTHER	5	LESLIE WALTER DUENING JR	770 E ALBERT DR 60 MANITOWOC, WISCONSIN 54220	(920) 652-0253	WHITE	MALE	03/05/1966
OTHER	6	KENNETH DOUGLAS KNAPP	702 N PACKER DR WHITELAW, WISCONSIN 54247	(920) 684-3988	WHITE	MALE	04/01/1964
OTHER	7	GERALD J WENZEL	3024 MEMORIAL DR TWO RIVERS, WISCONSIN 54241		WHITE	MALE	12/24/1958
OTHER	8	BRETT A WENZEL	3024 MEMORIAL DR TWO RIVERS, WISCONSIN 54241	(920) 553-1509	WHITE	MALE	06/19/1983
OTHER	9	KYLE G MAERTZ	1116 BLUFF AVE SHEBOYGAN, WISCONSIN 53081		WHITE	MALE	07/21/1985
OTHER	10	DARRYL E MAERTZ	1116 BLUFF AVE SHEBOYGAN, WISCONSIN 53081		WHITE	MALE	02/05/1945
OTHER	11	JESUS NMI SOTO	N5671 SUNSET LN LUXEMBURG, WISCONSIN 54217		WHITE	MALE	05/24/1966
OTHER	12	LAMEC NMI CRUZ	1959 S 57TH ST MILWAUKEE, WISCONSIN 53219	(414) 546-4349	WHITE	MALE	10/01/1967
OTHER	13	JESUS M PENNA	2463 N HOLTON ST B MILWAUKEE, WISCONSIN 53212	(414) 264-6023	WHITE	MALE	09/25/1962
OTHER	14	MICHAEL J KORTAS	1815 FRIDAY ST MANITOWOC, WISCONSIN 54220	(920) 684-0572	WHITE	MALE	11/19/1954
OTHER	15	KEITH W PAMPLHAM	TOWNLINE RD KEWAUNEE, WISCONSIN 54216	(920) 388-4086	WHITE	MALE	05/06/1975
OTHER	16	AVERY AUTO SALVAGE	12930 AVERY RD TWO RIVERS, WISCONSIN 54241	(920) 755-2848			
OTHER	18	MARIE L LITERSKY	242 E SAMZ RD MISHICOT, WISCONSIN 54228	(920) 755-4384	WHITE	FEMALE	10/27/1986
OTHER	19	PAUL E RABAS	15234 N MARIBEL RD MARIBEL, WISCONSIN 54227		WHITE	MALE	02/05/1961
OTHER	20	PAUL L NOVAK	UNKNOWN DENMARK, WISCONSIN 54208		WHITE	MALE	06/29/1962
OTHER	21	ROLAND A JOHNSON	UNKNOWN JACKSON, WISCONSIN	(262) 677-3858	WHITE	MALE	05/11/1938
OTHER	22	CHARLES EARL AVERY	12930 AVERY RD TWO RIVERS, WISCONSIN 54241	(920) 755-2879	WHITE	MALE	07/13/1954
OTHER	23	ALLAN K AVERY	12930 AVERY RD TWO RIVERS, WISCONSIN 54241	(920) 755-2848	WHITE	MALE	05/03/1937
OTHER	24	KRISTY A HAZAERT	3978 CREEKVIEW RD DEPERE, WISCONSIN 54115	(920) 676-9030	WHITE	FEMALE	02/12/1978
OTHER	25	JOLENE M BAIN	2571 TELLURIDE TRL H GREEN BAY, WISCONSIN 54313	(920) 217-7402	WHITE	FEMALE	11/17/1974
OTHER	26	SHERRY A LEMEROND	233 N BROADWAY ST 132 DEPERE, WISCONSIN 54115	(920) 676-5585	WHITE	FEMALE	01/04/1975
OTHER	27	AUBREY H WYGRALAK	4125 ROBIN LN GREEN BAY, WISCONSIN 54313	(920) 865-2125	WHITE	FEMALE	12/02/1982
OTHER	28	TRINITY L ROSENOW	3501 JACKSON AVE 4 PLOVER, WISCONSIN 54467	(715) 345-1466	WHITE	FEMALE	05/15/1981
OTHER	29	KIM J DUCAT	1212 HAWTHORNE ST	(920) 242-1832	WHITE	FEMALE	07/24/1963

MANITOWOC COUNTY SHERIFF'S DEPARTMENT REPORT

2005 - 8844

MANITOWOC CO SHERIFF DEPT Summary

Print Date/Time: 12/13/2005 14:23
Login ID: S509
Case Number: 2005-00008844

MANITOWOC COUNTY SHERIFF
ORI Number: WI0360000

OTHER	30	EARL KAVERY	TWO RIVERS, WISCONSIN 54241 6904 CORD Y	(920) 755-2257	WHITE	MALE	06/10/1971
OTHER	31	JODI M STACHOWSKI	WHITELAW, WISCONSIN 54247 12932 AVERY RD	(920) 755-4860	WHITE	FEMALE	09/11/1969
SUSPECT	1	STEVEN ALLAN AVERY SR	TWO RIVERS, WISCONSIN 54241 12932 AVERY RD	(920) 755-4860	WHITE	MALE	07/09/1962
VICTIM	1	TERESA MARIE HALBACH	TWO RIVERS, WISCONSIN 54241 3637 CORD B	(920) 737-4731	WHITE	FEMALE	03/22/1980
WITNESS	1	PAMELA A STURM	HILBERT, WISCONSIN 54129 3002 WILLIAMS GRANT DR	(920) 532-5033	WHITE	FEMALE	01/05/1954
WITNESS	2	NIKOLE E STURM	DEPERE, WISCONSIN 54115 336 GRANDVIEW AVE	(920) 941-0211	WHITE	FEMALE	04/13/1977
WITNESS	3	GEORGE BERNARD ZIPPERER	MENASHA, WISCONSIN 54952 4433 CORD B	(920) 682-5719	WHITE	MALE	05/16/1940
WITNESS	4	JOSHUA R RADANDT	MANITOWOC, WISCONSIN 54220 3510 W TWIN LN	(920) 755-4503	WHITE	MALE	11/10/1974
			TWO RIVERS, WISCONSIN 54241				

Arrests

Arrest No.	Name	Address	Date/Time	Type
516 A	STEVEN ALLAN AVERY SR	12932 AVERY RD	11/15/2005 13:00	S-SUMMONED/CITED
552 A	STEVEN ALLAN AVERY SR	TWO RIVERS, WISCONSIN 54241 12932 AVERY RD	11/15/2005 13:00	S-SUMMONED/CITED
		TWO RIVERS, WISCONSIN 54241		

Property

Date	Code	Type	Make	Model	Description	Tag No.	Item No.
11/3/2005	6 - EVIDENCE/SEIZED	03-AUTOMOBILES	TOYOTA	RAV4 (sport utility)	TOYOTA RAV4 DARK GREEN		

Suspect Vehicles

No.	Vehicle Type	Year	Make	Model	Color	License Plate	State

MISSING PERSON/TERESA HALBACH

11/03/05: I, Det. Remiker, was called in to assist with an investigation reference a missing adult. Lt. Lenk, Det. Jacobs, and I met with CASO Inv. John Dederling at the MTSO. Inv. Dederling stated they received a missing adult report reference TERESA HALBACH who has been missing since 10/31/05. Inv. Dederling stated they received the missing adult report from family members on 11/03/05. Inv. Dederling stated, during his follow-up, he found that TERESA made at least 2 stops in Manitowoc Co. reference her employment. TERESA is currently employed by a company called AUTO TRADER from the Fox Cities area. Inv. Dederling stated, based on his investigation, he has found that TERESA made stops at a residence on Avery Rd and on CORD B. These locations have been identified as the residences of GEORGE ZIPPERER (CORD B) and possibly STEVEN AVERY (Avery Rd). Information we received was that TERESA, during her employment, goes to various locations and takes photos of vehicles which are attempting to be sold. TERESA has not returned home, and there are indications that this is very unusual. There are concerns about TERESA'S well-being. Inv. Dederling requested our assistance in making contact at some residences in Manitowoc Co. in an attempt to obtain further information.

I, Det. Remiker, received information previously that Sgt. A. Colborn made contact at the AVERY property on Avery Rd. Sgt. Colborn made contact with STEVEN AVERY and obtained information about his observations involving TERESA HALBACH. Information we received was that TERESA was at the AVERY property to take a photo of a vehicle which was possibly owned by BARBARA JANDA. Sgt. Colborn indicated that he received information that TERESA was at the AVERY property on 10/31/05 during the afternoon hours.

MANITOWOC CO SHERIFF DEPT Summary

Print Date/Time: 12/13/2005 14:23
Login ID: S509
Case Number: 2005-00008844

MANITOWOC COUNTY SHERIFF
ORI Number: WI0360000

Several attempts were made to make contact with TERESA on her cell phone. CASO indicated that TERESA'S cell phone is either off or no longer has power due to the fact that the cell phone immediately goes to a voice mail recording. At this time, the voice mail recording is also indicating that her voice mail account is full.

After making several other attempts to obtain additional information, it was decided to attempt contact at the ZIPPERER residence at 4433 CORD B, Manitowoc. Inv. Dederling, Sgt. Colborn, and I went to that address. After approx. 15-20 minutes of attempting contact at both the front and rear entrances to the residence, GEORGE ZIPPERER and JASON ZIPPERER exited the residence and made contact with officers. Initially, GEORGE was not real cooperative during the interview with him but after a short time, he was able to provide some information, along with JASON.

The information we received was that JASON placed an ad in a local newspaper for a Trans Am vehicle that he was wishing to sell. GEORGE and JASON stated they received a phone call from a female subject, stating that she wished to come to their property and take a picture of the vehicle for additional advertisements. We received information from GEORGE and JASON that JOELLEN ZIPPERER (GEORGE'S wife) may have additional information but may not be willing to speak with us.

A short time later, JOELLEN came to a window. I asked JOELLEN several questions about TERESA calling to their residence and coming to their residence for the photograph. JOELLEN had a lot of difficulty determining what date and time of day TERESA was on her property to take the photograph. JOELLEN was not even able to determine what day of the week it was currently. After a lengthy discussion with JOELLEN, she stated that TERESA did leave a message on their answering machine, requesting directions to the ZIPPERER property. A short time later, Inv. Dederling received verbal consent to enter the residence in an attempt to listen to the answering machine. Inv. Dederling indicated that he heard the voice mail left with at the ZIPPERER residence. He was able to make a determination on the approx. time that TERESA came to the ZIPPERER property.

Inv. Dederling and Sgt. Colborn did accompany JASON to the location where the vehicle was. They did walk the property but did not locate any items of evidence.

I, Det. Remiker, continued a discussion with JOELLEN who stated she recalls having contact with a female party that was wearing blue jeans and taking a photograph of the vehicle. JOELLEN stated she believed that GEORGE had previously given permission to the female subject to enter onto their property and take the photograph. JOELLEN stated she directed the female subject in a direction toward where the vehicle was currently parked. JOELLEN stated, a short time later, she observed the female subject return from the area where the vehicle was and leave the property. JOELLEN stated she was not able to observe where the vehicle was parked or any direction of travel.

The ZIPPERERS indicated that the female subject left some paperwork on the property. One of the items that was left was a piece of paper believed to be completed by TERESA, indicating that a photograph of the vehicle was taken and contact can be made with her to further advertise the vehicle. The date on the document indicated 10/31/05 but did not indicate a time that TERESA was at the property. Also left on the property was a white, plastic bag which contained some brochures for the AUTO TRADER. All of these items were given to Inv. Dederling.

Based on the lengthy conversation with JOELLEN, it was found that the female subject may have been on the property sometime between noon and 1500 hours. No precise time could be obtained from JOELLEN.

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After returning to the MTSO, it was decided to possibly conduct some more follow-up on the following day.

11/04/05: Lt. Lenk was contacted by CASO Inv. Wiegert. Inv. Wiegert requested that we make contact at the AVERY residence in an attempt to obtain further information.

Lt. Lenk and I went to 12932 Avery Rd, Two Rivers, where we attempted to make contact. After a short period of time, it was determined that no one was at the residence.

A short time later, we observed 2 individuals entering onto the property. One of the individuals was identified as STEVEN AVERY. STEVEN was very cooperative, and we asked him numerous questions about his observations of the female subject from the AUTO TRADER. STEVEN stated the female subject has been on the property numerous times to take photographs of vehicles which are to be listed for sale. STEVEN indicated that he observed the female subject operating a smaller, green SUV. After asking STEVEN if it was possibly a Toyota Rav 4, he indicated that he believed that was the vehicle she was operating. STEVEN stated she was on the property for a very short period of time. He believed the time may have been at approx. 1400-1430 hours on 10/31/05. STEVEN indicated that the vehicle which was being photographed was a maroon in color van that was near his residence. STEVEN was not able to provide any further information in regard to TERESA HALBACH.

A short time later, I asked STEVEN if he would be willing to provide us with verbal consent to do a quick interior search of his residence. STEVEN immediately volunteered to provide us consent to go into his residence.

11/04/05 @ 1030 Hrs.: STEVEN allowed us into his residence. I did a swift interior search of the residence, including closets and additional interior rooms. I did not locate any signs of any suspicious activity.

11/04/05 @ 1035 Hrs.: The consent search was completed, and we were out of the AVERY residence.

At this time, based on our investigation on the AVERY property, there are no indications of any suspicious activity or any other signs to provide us with further information as to the whereabouts of TERESA HALBACH. I recontacted Inv. Wiegert and advised him of our findings. At this time, Inv. Wiegert did not request any additional follow-up from the MTSO. Further investigation is being completed by the CASO. DERemiker /bjc

11/05/05: I, Det. Remiker, was working at the MTSO at which time I received a phone call from CASO Investigator Mark Wiegert. Inv. Wiegert indicated there were numerous volunteer searchers who were coordinating their efforts to do some searches of properties within Manitowoc Co. Inv. Wiegert indicated that several searchers were willing to go to the AVERY property on Avery Rd to search the junkyard/salvage area. Inv. Wiegert stated he and several of the volunteer search parties would be coming to the MTSO within the next hour to meet and coordinate efforts. Inv. Wiegert requested my assistance for this follow-up.

A short time later, Inv. Wiegert called me at the MTSO and indicated that he received information from a female subject who was currently on the AVERY property who may have located TERESA'S Toyota Rav 4 vehicle on the property. Inv. Wiegert stated he is not sure if this is TERESA'S vehicle but did receive some information from the volunteer which indicated that it may be her vehicle. Inv. Wiegert requested that I respond

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to the AVERY property ASAP to make contact with the female subject in an attempt to obtain further information to determine if the vehicle was indeed TERESA'S.

I, Det. Remiker, immediately began leaving the MTSO. I responded toward the AVERY property. I received another call from Inv. Wiegert, indicating that he received another phone call from the female volunteer with additional information which led him to believe that the vehicle may be TERESA'S. Inv. Wiegert stated he obtained some VINs from the volunteer and information that the vehicle contained a Lemieux Toyota sticker on the back of it which matches the sticker that was on TERESA'S vehicle.

While I was en route to the AVERY property, I contacted the Shift Commander and requested a patrol officer respond to the AVERY property ASAP. Deputy O'Connor stated he was in the vicinity, and he responded to the location. I received additional information from Inv. Wiegert which indicated it is very possible that the vehicle on the property is TERESA HALBACH'S. I immediately advised Deputy O'Connor to block off the road at Avery Rd and STHY 147.

11/05/05 @ 1100 Hrs.: I, Det. Remiker, arrived on the AVERY property and drove to the back end of the property where I located 2 female subjects. The 2 females stated they were volunteer searchers who received permission from EARL AVERY to search the salvage yard area. They pointed to an area where they observed a green or dark blue Toyota Rav 4 vehicle parked. Lt. T. Hermann and Sgt. Orth also arrived on the property shortly thereafter. As I was walking toward the vehicle, I noted there were no RPs on it. I noted a hood from a vehicle placed alongside the rear passenger side of the vehicle. I noted there were numerous branches and tree limbs pushed on top of the front hood area and top of the vehicle. Both Sgt. Orth and I looked around the vehicle and inside in an attempt to obtain further information. I retrieved a registration for the missing vehicle and attempted to confirm the VIN on the vehicle. I was able to verify all but the first 2 numbers on the VIN of the missing HALBACH vehicle. At no time did we touch the exterior of the vehicle in an attempt to open the vehicle or enter the vehicle. At no time did we enter the vehicle to make any further observations.

11/05/05 @ 1104 Hrs.: The VIN was confirmed as the VIN from the missing HALBACH vehicle. We noted what appeared to be a digital camera photo memory card in the back driver side area of the vehicle which had the name "TERESA" on it. At this time, I immediately contacted Inv. Wiegert from the CASO and advised him of my findings. Inv. Wiegert stated he would be there very shortly. We immediately left the area and did not conduct any further investigation reference the vehicle. I advised Sgt. Orth to stand near the vehicle as security until further information can be obtained.

11/05/05 @ 1106 Hrs.: I, Det. Remiker, along with Lt. Hermann walked away from the vehicle, back to where our vehicles were parked, approx. 100 yards away.

11/05/05 @ 1110 Hrs.: Inv. Wiegert and CASO Sheriff Pagel arrived on the scene. Sgt. Orth remained as security near the vehicle.

A short time later, a 4-wheeler came to our location, and I made contact with EARL AVERY. I asked EARL several questions about the vehicle being on his property. EARL indicated he has absolutely no knowledge of the vehicle being in the auto salvage area and has no information to provide reference who put the vehicle there. EARL then indicated that CHARLES AVERY, ALLAN AVERY, DOLORES AVERY, and STEVEN AVERY left for their cottage in Marinette Co. this morning. EARL was the only AVERY family member on the property at this time. EARL stated he is a business partner for AVERY AUTO SALVAGE. EARL indicated

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that DOLORES is the actual owner of the entire property.

I, Det. Remiker, questioned EARL extensively about his knowledge of the vehicle on the property. EARL gave no indication that he had any knowledge of the vehicle. I received additional information from EARL reference where the AVERY cottage is in Marinette Co. EARL stated the property is off of Parkway on High Line Ln in Marinette Co. EARL stated all individuals left sometime between 0600-0630 hours this morning. All of this information was provided to Inv. Wiegert and the CASO.

D.I. Schetter arrived shortly thereafter, and a conversation took place with him, Inv. Wiegert, Sheriff Pagel, and me reference this investigation. It was determined, and the decision was made for the CASO to take over the investigation. There was also discussion that the CASO would probably request the assistance of DCI.

11/05/05 @ 1135 Hrs.: I, Det. Remiker, advised Dispatch to make contact with the WI State Crime Lab.

11/05/05 @ 1145 Hrs.: The decision to turn over the scene to the CASO and DCI was made.

11/05/05 @ 1154 Hrs.: I, Det. Remiker, received a call-back from a representative of the Crime Lab, JOHN ERTL, who requested further information on the investigation and directions to our location. JOHN advised that they would be leaving shortly and would arrive at our location within the next 3.0-3.5 hours.

11/05/05 @ 1205 Hrs.: Information was obtained from the 2 volunteer search parties. They were advised that they could leave the area in order for the investigation to continue.

11/05/05 @ 1225 Hrs.: ADA Griesbach arrived at the location. Prior to this, DA Mark Rohrer also arrived at our location to assist.

11/05/05 @ 1230 Hrs.: Inv. Wiegert made contact with EARL AVERY and requested EARL to accompany him for another interview.

11/05/05 @ 1255 Hrs.: The interview with EARL was completed by the CASO.

11/05/05 @ 1304 Hrs.: DA Ken Kratz from Calumet Co. arrived on the scene.

11/05/05 @ 1306 Hrs.: CASO Det. Baldwin arrived on the scene.

I, Det. Remiker, was requested by DA Kratz to obtain information for Search Warrants of numerous buildings and residences on the AVERY property. I responded to the STEVEN AVERY residence, along with BARBARA JANDA'S residence, to complete a physical description of those properties for the Search Warrant procedure. I made telephonic contact with MICHELLE who is a paralegal with the Calumet Co. DA's Office to provide her with that information.

Arrangements were made with the on-call Judge to respond to his location in an attempt to obtain Search Warrants. It was determined that Judge Fox would be the on-call Judge at this time.

11/05/05 @ 1404 Hrs.: I, Det. Remiker, along with Inv. Wiegert, DA Kratz, DA Rohrer, and ADA Griesbach responded to Judge Fox's residence in the City of Two Rivers. It was determined that we should go to another

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location on Washington St in the City of Two Rivers in order to complete the paperwork and have access to a fax machine.

11/05/05 @ 1410 Hrs.: DA Kratz was assigned as special prosecutor and in charge of the case.

11/05/05 @ 1415 Hrs.: Officers and attorneys arrived at ATTORNEY FOX'S office on Washington St in the City of Two Rivers.

11/05/05 @ 1506 Hrs.: Judge Fox began signing the paperwork for the completion of the Search Warrants.

11/05/05 @ 1510 Hrs.: The Search Warrants were signed.

11/05/05 @ 1514 Hrs.: We left ATTORNEY FOX'S office. Inv. Wiegert, DA Kratz, and I went back to the AVERY property.

11/05/05 @ 1525 Hrs.: We were back at the AVERY property.

Several individuals, including investigators and attorneys, organized their efforts. It was decided that residences and outbuildings needed to be checked in an attempt to locate TERESA HALBACH. At this time, CASO Investigator Gary Steier and I were assigned to STEVEN AVERY'S residence at 12932 Avery Rd, Two Rivers. This contact at the residence was in reference to attempting to locate TERESA in the residence.

I, Det. Remiker, along with Inv. Steier went to STEVEN'S residence. I initially opened the exterior storm door of the residence. I observed a dried red in color substance on the edge of the outside exterior door and the door handle area. At this time, I was not able to determine whether the substance was dried blood or possibly paint which was consistent with the color of the exterior of the residence. I knocked on the inside door several times but did not receive an answer. I did announce, "Sheriff's Department, Search Warrant," several times but did not receive a response. I checked the interior door and noted the door was currently locked. I advised Inv. Steier that we should check additional windows and doors of the residence in an attempt to locate an open door. We walked around the entire exterior of the residence and noted that all windows were in a secured position and the back patio door was also locked. We went back to the front door of the residence and attempted contact again. We did not receive an answer at the door.

It was then determined to make forcible entry to the residence. I again announced, "Sheriff's Department, Search Warrant." After receiving no response for approx. 15 seconds, I decided to make forced entry. I kicked the door with the bottom of my foot 3 times. The door then opened. We immediately announced and identified ourselves as, "Sheriff's Department, Search Warrant," prior to entering or going through the threshold of the residence. After entering the residence, Inv. Steier and I did a complete search of closets and other areas inside the residence in an attempt to locate any signs of TERESA HALBACH. Entry into the residence was made at 1548 hours.

11/05/05 @ 1558 Hrs.: We exited STEVEN'S residence.

We went to an adjacent garage which is detached from the residence. Inv. Steier found that the door to this garage was locked. Inv. Steier made forced entry into the garage area using his shoulder. The door was opened. Both Inv. Steier and I entered the garage area. We did a search of the interior of the garage but did not locate

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any obvious signs of TERESA HALBACH. Entry to the garage was made at 1603 hours.

11/05/05 @ 1606 Hrs.: We left the garage. DERemiker /bjc

11/05/05 @ 1050 Hrs.: I, Sgt. Orth, overheard Det. Remiker communicating with Dispatch and Lt. T. Hermann via the police radio. Det. Remiker indicated that he was en route to AVERY'S SALVAGE YARD to follow-up on this missing person investigation. Det. Remiker stated 2 females are currently in the salvage yard with a vehicle they believe is owned by TERESA HALBACH. With this information, Lt. Hermann, Deputy O'Connor, and I started responding.

11/05/05 @ 1054 Hrs.: Deputy O'Connor arrived and parked on Avery Rd at STHY 147. Deputy O'Connor remained at this location to prevent anyone from entering/leaving the property.

11/05/05 @ 1058 Hrs.: Det. Remiker called my squad cell phone and stated the females are apparently in the lower portion of the salvage yard, near the gravel pit owned by the RADANDT family.

11/05/05 @ 1059 Hrs.: I, Sgt. Orth, arrived. I proceeded down the gravel driveway which runs parallel with the eastern property line. I went to the far SE portion of the salvage yard at which time I was flagged down by 2 white/females. The females identified themselves as the callers. They immediately pointed to the southernmost row of junked vehicles. One female stated, "It's about 10 cars in."

11/05/05 @ 1101 Hrs.: I, Sgt. Orth, started walking WB on what appeared to be an overgrown access road. This access road runs parallel with the southern property line and is just north of the southernmost row of junked vehicles. I walked on the left/south side of the path. When approaching the vehicle, I observed that it was facing WB, parked tight against the southernmost row of vehicles. It was obvious that someone attempted to conceal it as 2 branches were propped up against the rear of the vehicle, an old fence post was propped against the passenger side taillamp area, an old hood was propped against the passenger side rear fender area, a piece of plywood (approx. 2' x 4') was propped against the front passenger side tire/fender area, a branch was covering the roof, and at least 1 large branch was covering the hood. The driver side of the vehicle was concealed as it was parked within 2' of a red, junked EB vehicle bearing WI RP CUG484. (It should be noted that the EB vehicle is parked on the south property line and TERESA'S vehicle was parked between the EB vehicle and the overgrown access road. This appeared to be the only spot on the south property line where the vehicles were parked "2 deep.")

I, Sgt. Orth, walked along the passenger side of the vehicle and looked into the front passenger side window. I did not observe any persons inside. I walked around the back of the vehicle and proceeded to the front driver side fender. I attempted to read the VIN; however, I could not clearly read it.

11/05/05 @ 1103 Hrs.: Det. Remiker and Lt. Hermann started approaching the vehicle. I proceeded to the rear of the vehicle to meet with them. Within moments, Det. Remiker walked along the driver side of the vehicle and started to view the VIN with the use of a flashlight. While Det. Remiker was viewing the VIN, I looked through the rear window and observed a piece of paper within the vehicle with TERESA'S name written on it. Shortly thereafter, Det. Remiker verified the VIN, confirming that this is TERESA'S vehicle. It should be noted that Lt. Hermann remained several feet behind the vehicle while Det. Remiker and I were viewing the vehicle.

Det. Remiker and Lt. Hermann proceeded back to the area where the squad cars were parked to once again meet

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with the 2 female callers. I, Sgt. Orth, remained with the vehicle in question to provide security. I stood approx. 30' behind the vehicle on the south side of the grown over access road.

11/05/05 @ 1300 Hrs.: Lt. Hermann proceeded to my location to allow me to take a short break.

11/05/05 @ 1305 Hrs.: I, Sgt. Orth, proceeded back to the location in question. I continued to monitor the vehicle. Lt. Hermann proceeded back to the squad cars.

11/05/05 @ 1340 Hrs.: Lt. Hermann proceeded to my location to give me a break.

11/05/05 @ 1345 Hrs.: I, Sgt. Orth, returned to the vehicle and continued to monitor it. Lt. Hermann proceeded back to the squad cars.

11/05/05 @ 1445 Hrs.: Deputy Cummings relieved me. Deputy Cummings started monitoring the vehicle at which time I proceeded over to the squad cars (the area where arriving officers were meeting). I started a log to document the names of individuals approaching the immediate area around the vehicle.

11/05/05 @ 1504 Hrs.: CASO Sgt. Tyson relieved Deputy Cummings. I was informed that the CASO was already requested to lead this investigation and that they would be guarding the vehicle from this point forward.

11/05/05 @ 1512 Hrs.: The following persons approached the vehicle and placed 2 brand new blue tarps over the vehicle: Det. Jacobs from MTSO, Thomas Fassbender from DCI, Alan Hunsader from DCI, Sgt. Tyson from CASO, Gary Steier from CASO, and Deputy Jennifer Bass from CASO. After covering the vehicle, all aforementioned subjects left the immediate area except for Deputy Bass. She remained with the vehicle for security reasons.

11/05/05 @ 1551 Hrs.: Deputy Prange relieved me from my duties. I left the property and responded to the MTSO. JJOrth /bjc

11/05/05 @ 1056 Hrs.: I, Deputy O'Connor, per the instructions of Det. Remiker put up a road block using my marked squad (Squad 64) on Avery Rd at STHY 147. Per the instructions of Det. Remiker, I was to stop all individuals attempting to leave AVERY'S AUTO SALVAGE on Avery Rd, identify the individuals, and hold them at this location. I was also instructed to keep anyone other than law enforcement personnel from going onto Avery Rd. A total of 6 vehicles with a total of 12 individuals in those 6 vehicles were stopped and the occupants were identified. The following is a listing of those vehicles and their occupants:

- A 1995 Chevrolet Camaro bearing WI RP TVA935 -- occupant being GREGORY PHILLIPS,
- A 1997 Dodge pickup truck bearing WI RP BL18944 -- occupants being KEITH PAPLHAM, KENNETH KNAPP, and LESLIE DUENING,
- A 1993 Chevrolet truck bearing WI RP THP746 -- occupants being GERALD WENZEL and BRETT WENZEL,
- A 1992 GMC truck bearing WI RP AC7046 - occupants being DARRYL MAERTZ and KYLE MAERTZ,
- A 1992 Toyota Corolla station wagon bearing WI RP 425GUC - occupants being JESUS PENA, JESUS SOTO, and LAMEC CRUZ, and
- A 1991 Chrysler New Yorker bearing WI RP 377AWA - occupant being MICHAEL KORTAS.

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The vehicles and their occupants remained on Avery Rd at STHY 147 until I received word from ADA Mike Griesbach that one the parties had been identified, they could be released. At this time, I did release them, after getting all information needed for the report. I also explained to them that they may be contacted by an investigator in regard to this incident. I requested them that it would be to their benefit of the investigation at this time if they did not speak with the news media who were present at various locations of road blocks on STHY 147. I informed them all that we could not forbid them to speak with the news media but at this time, the request was being made for them not to. All individuals stated they had no desire to speak with the news media at this time.

After all parties left, I remained at the location until I was relieved by Deputy Haese. POConnor /bjc

11/05/05 @ 1103 Hrs.: I, Lt. T. Hermann, did arrive in the AVERY AUTO SALVAGE yard reference a found vehicle belonging to TERESA HALBACH. At this time, Deputy O'Connor was at the end of Avery Rd providing security so that no persons would exit or enter the yard. Det. Remiker and Sgt. Orth were in the SE area of the salvage yard where I met up with them. Two female subjects were at this location, pointing out the HALBACH vehicle.

Det. Remiker, Sgt. Orth, and I approached the vehicle. I noted the vehicle had old car hoods leaning against the passenger side. The vehicle was parked in a brushy area near older vehicles, on the south edge of the salvage yard. The vehicle had branches over the top of it. Det. Remiker approached the driver side to verify the VIN. Sgt. Orth approached the left rear of the vehicle. I stayed to the rear of the vehicle, out of reach of the vehicle. I noted the RP from the rear was missing. After Det. Remiker verified the VIN, we exited the area on the same path that we entered. Sgt. Orth remained on the path near the vehicle to maintain security.

I, Lt. Hermann, made contact with the 2 female subjects, PAMELA STURM and NIKOLE STURM. They indicated that they found the vehicle. PAMELA and NIKOLE stated they were in the area searching for TERESA. I obtained their information and asked them to remain on the scene to speak with investigators.

11/05/05 @ 1110 Hrs.: EARL AVERY did respond to the pit area on a 4-wheeler. EARL remained on the 4-wheeler while officers spoke with him.

11/05/05 @ 1115 Hrs.: I, Lt. Hermann, contacted DA Mark Rohrer, advising him that we located the missing vehicle. I advised him that it appeared suspicious in nature that someone had attempted to conceal the vehicle. DA Rohrer stated he would respond to the scene to assist.

11/05/05 @ 1117 Hrs.: I, Lt. Hermann, spoke with EARL AVERY. EARL gave verbal consent at this time for conducting an investigation in the salvage yard.

I, Lt. Hermann, had also contacted D.I. Schetter, advising him of the incident. D.I. Schetter did respond to AVERY AUTO SALVAGE at which time I met with him.

CASO investigators and their Sheriff arrived on the scene to assist.

I, Lt. Hermann, spoke with D.I. Schetter who advised that he had spoken to Inspector R. Hermann about the incident. He was informed that the vehicle had been located in AVERY AUTO SALVAGE and that an investigation would take place at this location. At this point, D.I. Schetter and I approached CASO Sheriff

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Pagel, requesting that their agency take over the investigation due to ongoing civil litigation between STEVEN AVERY and Manitowoc Co.

While standing by on the scene, I spoke with EARL AVERY. I asked him about the vehicle crusher which was in the yard. This crusher is owned by NORB'S SALVAGE out of Denmark. EARL stated he has used the piece of equipment on occasion and that the owner, NORB'S SALVAGE, did not have a problem with the AVERYS using it while it was in their yard.

Individuals were observed to the SW of the AVERY AUTO SALVAGE in a gravel pit area, near a gravel conveyer while officers were on the scene in the salvage yard. D.I. Schetter and I walked through the yard to this area where we made contact with 5 subjects - KRISTY HAZAERT, JOLENE BAIN, SHERRY LEMEROND, AUBREY WYGRALAK, and TRINITY ROSENOW. These subjects indicated they were friends of the HALBACH family and were assisting with search efforts. I identified the persons, and they were advised that at this time, the salvage yard area is a secured area and they needed to leave the general area.

After the area was secured, a command post was set up at the south end of Avery Rd, where it intersects with the AVERY property. MTSO remained on the scene to assist CASO, providing any resources that they requested to assist with their investigation. TEHermann /bjc

11/05/05: I, Det. Remiker, was walking in the driveway area near STEVEN AVERY'S residence and the detached garage area. Upon checking the area, I located within approx. 25' of the maroon van parked near the driveway a portion of some eyeglasses. I located 2 separate locations where I located the broken eyeglasses, along with a plastic ear piece part in the driveway. These items were marked with evidence flags and later retrieved at approx. 1730 hours by CASO Deputy Dan Kucharski and me.

11/05/05: I, Det. Remiker, was asked to assist the CASO reference a Search Warrant of STEVEN AVERY'S residence at 12932 Avery Rd, Two Rivers. We received a Document Search Warrant for the residence which was provided to us to leave inside the residence once entry was gained. Assigned to the Search Warrant of STEVEN AVERY'S residence was Lt. Lenk, Sgt. A. Colborn, CASO Sgt. Bill Tyson, and me (Det. Remiker).

11/05/05 @ 1930 Hrs.: We arrived at the residence. Photographs were taken immediately by Sgt. Colborn using a 35-mm camera and me using a digital camera. Entry was again gained after approaching the residence and announcing, "Sheriff's Department, Search Warrant." Again, there was no response from the residence. After approx. 15 seconds, we gained entry to the residence through the main door.

11/05/05 @ 1944 Hrs.: Upon entering the residence, Lt. Lenk, Sgt. Colborn, Sgt. Tyson, and I began a search of the south bed at the end of the hallway. Each individual officer was assigned a specific area within the south bedroom. My initial assignment was near the closet and dresser area within the bedroom, along with Sgt. Colborn being assigned the desk and nightstand area adjacent to the bed. During our search of the bedroom, numerous items were located and identified as possible pieces of evidence. Some of the items located in the bedroom were a set of leg irons which were found at 1947 hours, along with a pair of handcuffs. Those items were in the desk area adjacent to the bed. Additional items were located, such as some keys, identifiers containing the name STEVEN AVERY at the 12932 Avery Rd address, a Playboy magazine, and identifiers for JODI M. STACHOWSKI, DOB 09/11/69. I also located a roll of duct tape which was next to the TV, on top of a dresser in the corner of the bedroom. Additional items located within STEVEN'S bedroom were identified, photographed, and taken as evidence. Those additional items of evidence can be found in the CASO Search Log

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and Evidence Log.

11/05/05 @ 2016 Hrs.: I, Det. Remiker, along with Lt. Lenk collected the pillowcases and bedding from STEVEN AVERY'S bed.

11/05/05 @ 2006 Hrs.: Lt. Lenk was assigned to search the bathroom/laundry room which was adjacent to the bedroom. After items were collected and logged from STEVEN'S bedroom, we moved to the hallway area, leading to the back bedroom and laundry room area. Upon inspection of a doorway just outside of STEVEN'S bedroom and/or bathroom, I located several areas on the interior of the door which looked to be consistent with a dried, red substance.

11/05/05 @ 2013 Hrs.: I, Det. Remiker, identified at least 3 different spots which contained the dried, red substance along with a dried, red substance on the wooden frame area surrounding the doorway. Photographs were taken by Sgt. Colborn and me of the possible items of evidence.

11/05/05 @ 2035 Hrs.: I, Det. Remiker, obtained some sterile, cotton-tipped applicators which were sealed in their packaging from a biological specimen kit provided by the WI State Crime Lab. All items used to collect the dried, red substance were items contained and sealed in the biological specimen kit. I removed the sterile, cotton-tipped applicator and applied a couple of drops of distilled water on the tip of the applicator. I then used the cotton applicator to obtain a sample of the dried, red substance. The applicator was provided to Sgt. Colborn who used the boxed cardboard container to place the applicator in. The box was folded securely and labeled. Two swabs were taken of the dried, red substance from the doorway, along with a control swab which was taken near the location where the dried, red substance was obtained. Those items were retained by officers and later turned over to the CASO via Sgt. Tyson.

Upon inspection of the bathroom, we located a drop of dried, red substance on the floor in front of the washer and dryer inside the bathroom. I again removed a sealed sterile, cotton-tipped applicator from the biological specimen kit and placed drop of distilled water on the tip to obtain the dried, red sample on the floor. I did obtain a sample of the dried liquid. I also obtained a control swab right next to the area where the dried, red substance was obtained. The item of evidence located on the floor was taken at 2043 hours. The control swab was taken at 2044 hours.

I, Det. Remiker, removed a mini lint roller which contained an adhesive material. I obtained numerous samples of possible hair and fiber material from the floor right next to the bed inside the bedroom. This was collected at 2058 hours. I also located a dried, red substance on the wooden molding on the right side of the doorway, facing the doorway from the interior of the residence. Additional photos of this item were taken. A sterile, cotton-tipped applicator was again used to collect a sample of the red, dried substance from the wooden molding. That sample was collected at 2112 hours. Photographs were taken of the samples on and near the doorway, along with measurements of the height of the possible evidence and some abrasions or scratches in the wall alongside of the bedroom hallway.

Additional items were identified and obtained by Sgt. Colborn, including a vacuum bag and filter from a vacuum in an additional bedroom near the living room of the residence. Sgt. Colborn collected a trace fiber from the living room floor in front of the couch within the residence.

Sgt. Colborn and Lt. Lenk were assigned to search the kitchen area of the residence. I was assigned to search

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the desk area located within the living room area. I located some copies of what looked to be digital photos which contained pictures of a female's anatomy and a penis. One of the pictures was dated 10/10/05 which was a close-up photo of an erect penis. There were numerous nude photos of a female dated 01/02/05 and 01/15/05. I located a small notebook which contained on the second page the phone number of (920) 737-4731. The note contained the words "Back to Patio Door." Based on this investigation, I was informed that the phone number on the second page of the notebook was indeed the cell phone number for TERESA HALBACH.

11/05/05 @ 2135 Hrs.: Sgt. Colborn took a photograph of this notebook.

11/05/05 @ 2148 Hrs.: I, Det. Remiker, located a "For Sale" sign on the right side of the desk area. On the back of the "For Sale" sign was the cell phone number of 737-4731. Also on the back of this sign was the address of 3302 Zander Rd. I located an AUTO TRADER magazine on the desk area, along with some additional items which were identified and taken as evidence (see the CASO Evidence List).

11/05/05 @ 2152 Hrs.: I, Det. Remiker, located a car key which was located on a portable bar between the kitchen and living room area of the residence. This item was taken as possible evidence.

Prior to leaving the residence, we located a possible dried, red substance on the exterior storm door. Sgt. Colborn obtained a possible sample of the dried, red substance, along with a control swab which was collected by me. These samples were collected at 2159 hours and 2201 hours.

11/05/05 @ 2205 Hrs.: Officers were completed with the processing of the residence and out of the residence.

Sgt. Tyson completed a written log of times and items located within the residence, along with identifying the item numbers of the items which were located. Those lists can be found with the CASO police report.
DERemiker /bjc

11/06/05: I, Det. Remiker, along with Sgt. A. Colborn, Lt. Lenk, and CASO Deputy Dan Kucharski were assigned to conduct a search and possibly collect evidence from a detached garage belonging to STEVEN AVERY.

11/06/05 @ 0800 Hrs.: We entered the detached garage and began doing an interior search of the building to locate any possible evidence of items. Upon entry, we located numerous areas on the floor of the garage which contained dried blood substances and empty shell casings which were believed to be .22 caliber casings. Upon locating the items, we placed evidence triangles next to the items to identify each specific area. Photographs were taken by Sgt. Colborn and Deputy Kucharski of the identified pieces of evidence. Again, I used the items from the biological specimen kit provided by the State Crime Lab to conduct the collection of the dried, red substances. Sterile, cotton-tipped applicators and distilled water were used to collect the items. As the items were collected, they were placed into cardboard drying containers and labeled by item number and time of collection. All of the located shell casings were collected. Also, on the concrete floor within the garage, there was what looked to be a footwear print (dried) within the red, liquid substance. Those prints were photographed, and an attempt was made to lift the print; however, this was unsuccessful. Several red, dried liquid substances were collected and obtained on the sterile-tipped applicators, and control swabs were taken from numerous locations next to the collected red, dried substance. All items of evidence were turned over to Deputy Kucharski who assisted with the documentation of the collection and identification of items.

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Upon inspection of a Suzuki Samurai truck parked inside the garage, I located what appeared to be a smeared latent fingerprint on the rear window portion of the vehicle. I dried, red substance was located directly below the rear door area of the vehicle. It was decided to remove the entire back door and glass window portion of the vehicle for further processing.

Upon completion of identification and collection of all items within the garage, officers were completed with the search and collection of possible evidence in the garage at 0947 hours.

Upon completion in the garage, I was advised that officers were in the process of collecting 4 metal "burning barrels" located behind BARBARA JANDA'S residence. Officers from the CASO and I assisted with the processing of these burning barrels, along with placing the burning barrels into an enclosed trailer for transport. I identified each burning barrel as items number 1 through 4. Photographs were taken of the burning barrels in their original locations. Upon completion, they were loaded into an enclosed trailer. DERemiker /bjc

11/06/05: I, Deputy Tackes, was assigned the task of picking up some evidence, specifically burning barrels from the AVERY property. Upon arrival at the scene, I met with Det. Remiker. I was directed to an area in the AVERY yard where 4 burning barrels were located.

11/06/05 @ 1010 Hrs.: I, Deputy Tackes, assisted Det. Remiker and members of the CASO with loading the barrels in an enclosed trailer that I towed with Squad 70. A CASO officer also loaded a car door which appeared to belong to a Suzuki vehicle. The trailer was then secured with evidence tape and a padlock. CASO Deputy Marie Oosterhouse and I transported the trailer to the CASO.

11/06/05 @ 1223 Hrs.: The trailer was released to the CASO. GDTackes /bjc

11/06/05: I, Det. Remiker, along with Lt. Lenk, Sgt. Colborn, and Deputy Kucharski were assigned to conduct the Search Warrant at 12930A Avery Rd, Two Rivers. This is the residence identified as the residence belonging to BARBARA JANDA. We entered the residence and announced, "Sheriff's Department, Search Warrant." We provided a copy of the Search Warrant within the residence. A complete search was done of the interior of the residence in an attempt to locate any items of evidence. Upon entering the residence, I located a drop of dried, red substance on the floor located between the side entrance of the residence and the laundry area within the residence. A sterile, cotton-tipped applicator was again used to obtain a sample of the substance, along with a control swab of the substance. Those items were packaged and labeled. They were later turned over to the CASO.

I, Det. Remiker, located within the residence a cordless telephone which contained a digital answering machine. Upon inspection of the contents of the answering machine, I located there were 12 messages. Upon viewing message 6, I found there was a message from a female subject who was identified as TERESA from AUTO TRADER magazine. The message was recorded on my digital camera audio recorder mode which contained information, requesting that TERESA stop at the address to take a picture of a vehicle. TERESA requested that she obtain some directions to the location. She gave an approx. time when she would be arriving. TERESA provided her cell phone number to the answering machine for a call-back. That audio recording was retained on my digital camera, and copies of all digital photos and audio recordings from the camera were later copied onto a CD recordable disk. Those items will be provided to the CASO for their investigation.

11/06/05 @ 1225 Hrs.: We were requested to return to 12932 Avery Rd, STEVEN AVERY'S residence. We

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were requested to obtain and retrieve any firearms which were located in the residence. During our search of STEVEN'S residence, we located 2 firearms on a firearm rack located directly above the headboard of the bed in STEVEN'S bedroom. One of the firearms was identified as a .22 caliber weapon. The other was a muzzle loader type of weapon. During our first initial search of STEVEN'S residence, we did not obtain the weapons. We were requested to return to the residence and obtain those weapons. At 1225 hours, Lt. Lenk, Sgt. Colborn, Deputy Kucharski, and I made re-entry to STEVEN'S residence at which time we collected these 2 weapons from the bedroom. We also then collected the bedding from the second bedroom within the residence, along with the entire vacuum cleaner which was located in that bedroom. This evidence process and collection of STEVEN'S residence was completed, and we left the residence at 1248 hours.

11/06/05: It was decided that officers would begin processing a Ford F350 pickup truck which was located parked in front of the detached garage on the STEVEN AVERY property. Sgt. Colborn, Deputy Kucharski, and I began an investigation reference the vehicle which was started at 1549 hours. Both Sgt. Colborn and Deputy Kucharski photographed the vehicle. A search of the interior of the vehicle did locate some items of possible evidence. Deputy Kucharski did gain entry to the vehicle by access through a rear window of the vehicle. Upon unlocking the passenger side door, a vehicle alarm did go off. That alarm was disconnected by disconnecting the battery from under the hood compartment.

Upon inspection of the interior of the vehicle, I located some trace hair samples and fiber samples on the passenger side. These samples were located alongside the right side of the passenger side seat and the passenger side door. Those items were photographed and collected. They were later turned over to the CASO. Additional items within the vehicle were identified as a floor mat with a reddish-brown, dried substance, a rag, a blanket, and a piece of paper with some Internet dating information. All items were turned over to the CASO.

Shortly after beginning a search of the interior of the vehicle, I was called off this assignment to respond back to the command post. Sgt. Colborn and Deputy Kucharski did complete the remaining portion of the search of the vehicle.

Search Warrants were obtained for the building as identified as the "auto shop building" on the AVERY property. Lt. Lenk, Sgt. Colborn, Deputy Kucharski, and I conducted a search of the interior area of the shop. The shop did contain a large garage area and another office area adjacent to the garage. No items of evidence were obtained from this location. Further information can be obtained reference the time of arrival and completion on the CASO report.

A Search Warrant was conducted at 12928 Avery Rd, Two Rivers, which is the residence believed to be occupied by CHARLES AVERY. Lt. Lenk, Sgt. Colborn, Deputy Kucharski, and I went to the front door entryway of the residence. Upon arriving, we noticed that the front door of the residence was locked. Deputy Kucharski used a credit card type of device to gain entry through the door, in order to not use forced entry. Prior to making entry, we did announce, "Sheriff's Department, Search Warrant." We did not receive a response from within the residence. Upon entering, officers were assigned different areas within the residence in an attempt to identify any items of evidence. A complete search of the interior of the residence did not locate any items of evidence believed to be in connected with this investigation. Upon completion of the Search Warrant at CHARLES AVERY'S residence, we left the residence and conducted some additional searches of vehicles outside of the residence. We did not locate any items of evidentiary value.

Later this evening, I was advised that the WI State Crime Lab was on the scene and wishing to enter STEVEN

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EVERY'S trailer home in an attempt to locate any additional items of evidence. Sgt. Colborn and I, along with CASO Sgt. Tyson, accompanied the Crime Lab with entry into the residence. State Crime Lab officials did use an alternate light source to illuminate several areas within the residence. Crime Lab representatives stated that they did locate some additional items within the residence. They directed our attention to those areas. Crime Lab representatives did locate some dried, red substance on the bowl area of the sink within the bathroom. There were some trace samples of dried, red substance located on top of the vanity of the bathroom sink area. The Crime Lab did conduct some tests on the dried, red substance. Some of the items did test POSITIVE, indicating it was of blood nature. The Crime Lab advised that they would be conducting some additional examinations within the residence. It was then decided to return on the following day to complete the collection of those dried, red substances. Officers also located some dried, red substance on the washing machine cover area, along with a latent print on a bottle of dishwashing soap container. All of these additional items located by the State Crime Lab were later retrieved and collected on 11/08/05. DERemiker /bjc

11/06/05 @ 1200 Hrs.: I, Sgt. Orth, was assigned to assist at the command post. I was informed that volunteer fire fighters were currently searching junked vehicles for TERESA HALBACH. A log sheet was already started, documenting the names of fire fighters within the search area, along with the time they started searching. I observed that the first fire fighter arrived at 0925 hours. I continued to log the fire fighters entering the search area.

11/06/05 @ 1545 Hrs.: I, Sgt. Orth, was informed that the fire fighters completed the trunk searches. All fire fighters were accounted for and exited the search area. The list of fire fighters and in and out times was forwarded to the CASO.

11/06/05 @ 1440 Hrs.: Chief PAUL RABAS from Maribel FD informed me, Sgt. Orth, that PAUL NOVAK from NORB'S operates the car crusher on this property. PAUL RABAS stated PAUL NOVAK may be able to identify the vehicles he crushed vs. the vehicles he did not crush. PAUL RABAS stated PAUL NOVAK is currently "up north"; however, PAUL NOVAK'S brother, DANIEL NOVAK, could make contact with his brother tonight, sometime after dark. PAUL RABAS stated DANIEL'S cell phone number is (920) 619-4888. I relayed this information to D.I. Schetter who in return informed a DCI agent.

11/07/05 @ 0810 Hrs.: I, Sgt. Orth, received an anonymous call in the Shift Commanders' Office at the MTSO. The female caller informed me that ROLAND JOHNSON owns the trailer STEVEN AVERY resides in. I was informed that STEVEN occasionally talks to ROLAND; therefore, investigators may want to interview him. The caller stated she does not have any reason to believe that ROLAND has helpful information; however, she thought we should have the homeowner's information for possible follow-up. I was informed that ROLAND resides in Jackson, WI, and that his cell phone number is (262) 677-3858. I passed this information on to DCI Agent Thomas.

11/07/05 @ 1145 Hrs.: I, Sgt. Orth, received a call from TRPD Lt. John Reimer. Lt. Reimer stated he was contacted by KIM DUCAT who is one of his informants. KIM apparently stated that STEVEN AVERY has 2 incinerators on the property in question and that investigators should check those areas.

I, Sgt. Orth, made phone contact with KIM DUCAT. KIM had no reason to believe that anything was in the incinerators; however, she felt it would be a good place to check. KIM added that she does not feel anyone could have drove the vehicle in question onto the property in question without CHARLES AVERY or any other AVERY family member noticing. I thanked KIM for her information, and the phone call was ended.

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The information received from KIM was passed on to Lt. Hermann. Lt. Hermann informed me that the DCI is already aware of both incinerators.

11/07/05 @ 1130 Hrs.: I, Sgt. Orth, received a call from ALLAN AVERY in the Shift Commanders' Office at the MTSO. ALLAN inquired as to when his wife can return home to pick up some medication. ALLAN stated his son, CHARLES AVERY, wanted to know what was going on with his truck. I informed ALLAN that I would have a CASO investigator recontact him to answer questions. At this time, ALLAN gave the phone to CHARLES so that he could relay his cell phone number to me. Prior to CHARLES relaying his cell phone number to me, he also asked about his truck. I informed CHARLES that a CASO investigator would answer his questions. CHARLES ultimately gave me his cell phone number, that being (920) 242-1460.

I, Sgt. Orth, made contact with D.I. Schetter to inform him of my conversation with ALLAN and CHARLES AVERY. D.I. Schetter stated he would pass the information on to the CASO. JJOrth /bjc

11/07/05 @ 0800 Hrs.: I, Deputy Siders, along with Sgt. Senglaub, Sgt. J. Jost, and Deputy M. Bushman responded to 12930 Avery Rd, Two Rivers, which is AVERY AUTO SALVAGE to assist the CASO with searching the property and the surrounding area.

Once on the scene, the OIC of the CASO did break up search groups. The search groups included the MTSO, the CASO, and volunteer fire fighters. The group which I was put in was "Group A," and the team leader was Deputy M. Bushman. Also in the group were officers from the CASO and volunteer fire fighters from surrounding FDs. The property which we were to search was a wooded area on White Cedar Rd, west of AVERY'S AUTO SALVAGE, in addition to the property north of STEVEN AVERY'S residence.

While searching the land north of STEVEN AVERY'S residence (a corn field), I came across a burning barrel which was in my section of area to search. The burning barrel was located out front of STEVEN'S residence next to the corn field. I approached the burning barrel and looked inside. I observed a metal vehicle rim with wire strung around the outside of the rim. It appeared to be the remains of steel belts from a tire. I lifted up the metal rim and laid it outside the burning barrel. Once I lifted up the metal rim, I observed some burnt, melted plastic items. As I looked closer at the plastic item, it appeared to me to be a cell phone. I took a closer look at the cell phone and noted there was an "M" emblem on the front of it. (It appeared to be the emblem for a Motorola brand cell phone.)

At this time, I contacted Sgt. Senglaub who was searching an area just to the north of me. I had him come over and check the items out. Once I showed Sgt. Senglaub these items, he called the team leader, Deputy M. Bushman, over to look at the items. Deputy Bushman came over and observed the remains of what appeared to be a cell phone. He then contacted the OIC and informed him that we had some items which needed to be looked at by Dets. We were informed that the DCI would be en route to our location to check out the items.

The DCI did arrive at our location. They looked at the items. They also believed that this was a cell phone. As they looked through the burning, the DCI informed me that they believed there were parts to a camera in there. The DCI informed Sgt. Senglaub and me (Deputy Siders) that they would take custody of the burning barrel. Sgt. Senglaub did confirm that they had custody of the burning barrel. The DCI stated yes. At this time, I gave the DCI my information (i.e. name and agency works for).

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After the DCI took custody of the burning barrel, Sgt. Senglaub and I continued our search of the property.
DVSiders /bjc

11/08/05: I, Lt. Lenk, along with Sgt. A. Colborn were requested to assist CASO Deputy Dan Kucharski with searching various areas on the AVERY property for the presence of firearms and pornography, in addition to any other relevant evidentiary items related to this case.

11/08/05 @ 0730 Hrs.: We went to a yellow vehicle bearing WI RP 343JVF which was parked in front of the office building on the AVERY property. This vehicle belongs to EARL AVERY. There were 2 shotguns and an ammo belt with shotgun ammo collected from the trunk area of the vehicle.

We returned to the command post where Deputy Kucharski was given an assignment by his supervisor, CASO Lt. Bowe, to return to the STEVEN AVERY trailer to place into evidence a computer and computer-related items which were located in the living room area. We also were to collect small spots of possible suspected blood which was located in the bathroom area by the State Crime Lab the previous evening. These items were ultimately collected by Sgt. Colborn and turned over to Deputy Kucharski. The computer and related items were collected and recorded by Deputy Kucharski. They were then signed over to CASO Deputy VanOss.

After the computer and related items had been turned over, Deputy Kucharski, Sgt. Colborn, and I went to the rear bedroom of the trailer (STEVEN AVERY'S bedroom) to begin the search for pornographic materials or any other evidentiary items. This is a small bedroom. The 3 officers were not more than 2-4' apart at any time. Each officer would search a small area at a time and any items which were to be taken as evidence were photographed and collected by Deputy Kucharski. Deputy Kucharski did the retrieval of the evidence found while Sgt. Colborn and I did the physical searching.

Sgt. Colborn searched the desk area (the desk was located in the corner of the bedroom), as well as a small cabinet next to the desk for pornographic materials. Sgt. Colborn did locate .22 caliber ammunition in the desk. This was turned over to Deputy Kucharski. I was also searching the cabinet for pornographic materials. Materials which we found were placed on the floor next to the bed where Deputy Kucharski was sitting and filling out evidence cards. I took a 3-ring binder from the cabinet which was filled with news clippings of STEVEN AVERY since being released from prison. There were no pornographic materials in the binder. Sgt. Colborn even tipped the cabinet to its side, away from the desk, to be sure that no photographs or other materials had fallen between the desk and the cabinet.

When Sgt. Colborn and I were putting magazines and papers back into the cabinet, we were pushing into the cabinet, striking the back of the cabinet as we pushed them in. When I replaced the 3-ring binder into the cabinet, I met with some resistance. I pushed it 2-3 times before it finally went into the cabinet.

After the items were placed back into the cabinet, I was facing the pile of magazines and pictures of evidence which was piled next to the bed on the floor. At this time, I had my back to the cabinet. I informed Deputy Kucharski that I was going to go to the living room area to get some large paper bags or maybe some boxes to put the evidence which we collected into. I left the bedroom and went to the living room where I contacted the command center to see if I could get some boxes. I decided just to double-bag our larger paper bags to provide for extra strength to put in the magazines and other items.

I, Lt. Lenk, left the living room and returned to the bedroom to help bag up the evidence on the floor. When I

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reached the bedroom, I observed a single key laying on the floor. The key had a blue canvas key bob attached to it. The key bob was approx. 3-4" long. The key and key bob were laying on the floor, just in front of a pair of slippers, next to the rear corner of the cabinet. This key was not there when we first started the bedroom search. I informed Deputy Kucharski and Sgt. Colborn that there was a key here and it was not here before. We all looked at the key. It appeared to be a key from a Toyota brand vehicle due to the emblem. The key was photographed by Deputy Kucharski who recovered it. Just prior to the key being placed into the evidence bag, we all observed it while Deputy Kucharski held it to confirm that it was a Toyota key. Deputy Kucharski then placed the key into an evidence bag.

We all looked at the cabinet. We noticed the back was loose and that the back lower rear corner was open approx. 1/2" to 1". It appeared to be pulled away from the side where it had been attached. We all believe the key was dislodged from the back of the cabinet as we were tipping and banging the magazines and binder in and out of the cabinet.

The search stopped at this time. Deputy Kucharski contacted the command center with the information that a Toyota key had been located. CASO Det. Mark Wiegert and DCI Agent Tom Fassbender came to the AVERY trailer to observe the key. They informed Deputy Kucharski that they would send an Agent back to take charge of the key and to have it transported directly to the State Crime Lab in Madison. The key was in constant control of Deputy Kucharski until he signed over the evidence to the DCI Agent who picked it up.

After the key was turned over, we continued the collection of evidence in the STEVEN AVERY trailer.
JMLenk /bjc

11/08/05: I, Sgt. A. Colborn, along with Lt. Lenk and CASO Deputy Dan Kucharski were instructed to return to 12932 Avery Rd, Two Rivers, to search the residence of STEVEN AVERY for more possible evidence. It should be noted that on 11/06/05, Det. Remiker and I had been shown an area on the bathroom sink and counter which contained small, red spots believed by the Crime Lab to be blood.

11/08/05: I, Sgt. Colborn, in the presence of Deputy Kucharski and Lt. Lenk took several swabs of samples of the suspected blood using sealed, cotton swabs from a biological specimen kit. I collected the swabs by taking a sealed swab from its paper wrapping, applying a drop of distilled water to the swab, and then collecting the sample by rubbing the swab on the sample. I collected a sample from the bathroom sink, the bathroom vanity top, the toilet seat, and the underside of the washer lid, all in the bathroom of STEVEN AVERY'S residence.

After packaging the samples and writing the date and times collected on the packages, the samples were turned over to Deputy Kucharski. Deputy Kucharski did photograph these samples with scale prior to this officer collecting the samples.

For this officer's assistance with this investigation, see CASO report #05-0157-955.

No further action taken. ALColborn /bjc

11/08/05 @ 0915 Hrs.: I, Sgt. J. Jost, was assigned to assist with searching junked vehicles in the AVERY AUTO SALVAGE yard. We were attempting to locate any piece of evidence that may assist with locating the victim in this case, TERESA HALBACH.

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After completing that assignment, I was asked to temporarily relieve a Brillion PD officer by the septic tank located on the property of STEVEN AVERY.

11/08/05 @ 1247 Hrs.: I, Sgt. Jost, drove Unit 70 down to that property. I allowed Officer Joanne Mignon to take a break. Officer Mignon gave me the log sheet, and she then drove Unit 70 back to the command post area. While I was waiting for B&M WASTE REMOVAL to return from Green Bay, I walked toward the south end of the property, still keeping watch on the septic tank. While at the SW corner of the property, I noted the burn pit area which was located to the south of the garage for STEVEN AVERY'S residence.

On 11/07/05, I was asked to feed the dogs which were present on STEVEN'S property and also at the residence to the east of STEVEN'S. I remembered seeing the burn pile at that time, while I was feeding the German shepherd which was tied up behind STEVEN'S garage. I noticed there were some items tangled in the cable that the dog was fastened to. While feeding the dogs, MTPD Officer Jason Koenig and MTPD Officer Wilterdink assisted me. Due to the aggressiveness of the German shepherd, I was unable to retrieve the 5-gallon pails which were placed next to the kennel, this being where the food and water are kept. We were able to keep the German shepherd far enough away from us so that I could pour some food on the ground and also fill up a small water dish.

Again, going back to 11/08/05, while I was standing near the SW corner of the STEVEN AVERY property, I noted several items laying within close proximity to the burn pile. The items were as follows:

There were numerous rings of wire laying in and around the area of the burn pile. I recognized these as steel beltings from inside tires.

There was a tire which had not been burned. This was on the SE corner of the burn pit area.

There was a rubber mallet which was on the grass, SE of the pile.

There was a metal hammer, believed to be a claw hammer, laying on the ground, NE of the pile.

There was a gravel shovel which was tipped upside-down, located on the west side of the pile.

There was a burned/charred metal scraper with a wooden handle attached which was laying NE of the pile, on the grass area.

There was a frame from a bench seat that appeared to be from some type of vehicle. This was located in the grassy area SE of the pile. The cloth or vinyl material which had been on the seat was burned off the frame.

Still while walking on the SW corner of the property, I noted there were several tires laying on the ground in that corner. There was another bench style of seat on the south side of the property. This one still had the material attached to it.

Earlier, when I had been in the command post area, I remembered someone mentioning that JOSHUA RADANDT had checked on his hunting trailers on Monday evening. He saw there was a large fire burning near STEVEN AVERY'S property. The fire was described as being "larger than usual."

I, Sgt. Jost, started to piece all of this information together. I felt this area, if not already looked at, should be checked for any type of evidence. When Officer Mignon returned, I spoke with her about my feelings of the burn pile. She stated she also felt that something was unusual with that area.

Upon returning to the command post, I made contact with CASO Lt. Sippel. I explained to him that I felt the burn pit area specifically should be checked further. He responded to the property with me. Without disturbing

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the area, we walked close to the burn pit to take a further look. I mentioned to him that due to the aggressiveness of the dog, it was very possible that the other K9 handlers may not have walked their dogs this close to the area. This also may have hindered officers from specifically going to this location.

As we were looking at the ashes laying in the area, it was evident that someone used some type of front end loader to remove ground from this particular location. The ashes were inside this area. As we looked at the ash pile, we observed that there was a bone laying near the south side of the pile, on the east side. Without disturbing the bone, I looked at it as closely as I could. It appeared as though it may have been a vertebrae bone. I could see another bone in the pile. At this time, we decided that someone from the Crime Lab or DCI needed to further investigate the area. Not mentioned above was that Lt. Sippel had walked to the pit with me at approx. 1341 hours and he left the area at approx. 1400 hours.

I, Sgt. Jost, remained at the burn pit area. A short time later, I believe it was TOM STURTEVANT from DCI who walked over to the burn pit with one of his female partners. Utilizing a small twig that was present, TOM moved the bone mentioned above. Without touching it, it still appeared to be some type of vertebrae bone. He moved some of the steel belting wires which were located on the east side of the burn pile and found there appeared to be several other items which appeared to be burns. One piece appeared to be in the shape of a part of a skull.

Based on this information, I returned to the command post to speak with the Crime Lab. Members of the Crime Lab responded to the scene. Using their sifting equipment, they sifted through the majority of the burn pile. They located numerous bones and teeth which were present among the ashes. These items were later given to the CASO for processing.

No further details to add. JMJost /bjc

11/08/05 @ 1200 Hrs.: DCI Agent Louis requested that a MTSO officer assist him with locating MARIE LITERSKY. Agent Louis needed to contact MARIE for an interview. I was assigned to assist Agent Louis.

I, Sgt. Orth, along with Agent Louis originally proceeded to MARIE LITERSKY'S parents' residence located at 242 E Samz Rd, Mishicot. No one answered the door; therefore, we proceeded to FOX HILLS RESORT which is where MARIE is employed. An employee at FOX HILLS did relay MARIE'S cell phone number to officers, that being 973-1256. Agent Louis was able to make phone contact with MARIE. MARIE stated officers could respond to her residence at 2006 13th St, Two Rivers.

Agent Louis and I met MARIE at her residence. MARIE agreed to accompany officers to the TRPD for an interview. MARIE did follow officers to the TRPD.

Agent Louis interviewed MARIE within an Interview Room at the TRPD. Per Agent Louis' request, I witnessed the interview. The questioning primarily revolved around 2 cell phone calls that STEVEN AVERY made to her. See Agent Louis' report for further details reference his interview.

Attached to this report is my initial crime scene log which I generated shortly after locating TERESA HALBACH'S vehicle.

No further action was taken by this officer. JJOrth /bjc

Page: 21 of 22

MANITOWOC CO SHERIFF DEPT Summary

Print Date/Time: 12/13/2005 14:23
Login ID: S509
Case Number: 2005-00008844

MANITOWOC COUNTY SHERIFF
ORI Number: WI0360000

DEPUTY _____

Date _____

SGT _____

Date _____

LT _____

Date _____

DEP INSPECTOR _____

Date _____

SHERIFF _____

Date _____

EXHIBIT 12

MANITOWOC CO SHERIFF DEPT Summary

Print Date/Time: 07/16/2006 11:05
Login ID: S508
Case Number: 2005-00008844

MANITOWOC COUNTY SHERIFF
ORI Number: WI0360000

Agent Louis interviewed MARIE within an Interview Room at the TRPD. Per Agent Louis' request, I witnessed the interview. The questioning primarily revolved around 2 cell phone calls that STEVEN AVERY made to her. See Agent Louis' report for further details reference his interview.

Attached to this report is my initial crime scene log which I generated shortly after locating TERESA HALBACH'S vehicle.

No further action was taken by this officer. JJOrth /bjc

03/01/06: I, Det. Remiker, assisted CASO Inv. Wiegert and Agent Fassbender during some additional investigations and interviews with BRENDAN DASSEY. At one point, it was decided that additional searches would be completed at the AVERY property.

03/01/06 @ 1625 Hrs.: I, Det. Remiker, left the MTSO en route to the Mishicot FD where a briefing took place.

03/01/06 @ 1736 Hrs.: I, Det. Remiker, arrived on the AVERY property. Several units from the CASO and DCI were at the location. I assisted several individuals at the scene by providing them with resources and equipment to assist them during their search. I was requested several times by several individuals about various pieces of equipment, and I did provide them with the assistance necessary to carry out their evidence collection.

03/01/06 @ 2322 Hrs.: I, Det. Remiker, was completed with my assistance at the AVERY property. The areas on the property that I assisted officers included the STEVEN AVERY residence and the garage. I also assisted in taking video of the STEVEN AVERY residence prior to and upon completion of the search of the trailer.

03/02/06 @ 0828 Hrs.: I, Det. Remiker, arrived at the Avery Rd location. Again, I acted as a resource for the individuals who were completing searches at that location. I was asked numerous times for particular items of evidence collection equipment. At one point, the individuals in the garage requested that I assist them with the search and collection of evidence in the garage.

03/02/06 @ 0850 Hrs.: I, Det. Remiker, entered the garage and assisted other officers during their search. My main purpose at that location was searching for evidence, collecting, packaging, labeling, and securing any items of evidentiary value. During the search, I assisted with the identification and collection of numerous items, including bullet fragments on the garage floor. Items that were identified, collected, and labeled by myself were turned over to CASO Officer Gary Steir.

03/02/06 @ 1407 Hrs.: The garage search was completed.

03/02/06 @ 1522 Hrs.: All investigators from CASO, DCI, and MTSO were completed and off the AVERY property. DERemiker /bjc

06/29/06 @ 1600 Hrs.: I, Sgt. A. Colborn, attended a pretrial conference at the CASO reference this case. While describing my involvement with this case, I mentioned that I had made initial contact with STEVEN AVERY on Thursday, 11/03/05. It was suggested to this Sgt. on 06/29/06 that I make an entry on this case narrative, describing my initial contact with STEVEN on 11/03/05.

On 11/03/05, I received a telephone call from the CASO, requesting that a member of the MTSO respond to the

Page: 22 of 24

Exhibit

1013

5/19/2022

STATE_1_1308

MANITOWOC CO SHERIFF DEPT Summary

Print Date/Time: 07/18/2006 11:05
Login ID: S609
Case Number: 2005-00008844

MANITOWOC COUNTY SHERIFF
ORI Number: WI0360000

EVERY residence located on Avery Rd to attempt to locate a missing person. I was the 1200-2000-hour Shift Commander on this date. I personally responded to AVERY AUTO SALVAGE initially to make contact with CHARLES "CHUCK" AVERY in an attempt to locate the missing person. The CASO had provided me with a RP, which corresponds with a Toyota Rav 4 registered to the missing person, as well as the name of the missing person, that being TERESA HALBACH.

Upon arrival at the AVERY AUTO SALVAGE compound, I drove directly to the business office and in close proximity to ALLAN and DOLORES AVERY'S trailer. As I exited my squad, again my intention was to walk to CHUCK'S trailer and make contact with him; however, as soon as I exited my squad, STEVEN AVERY exited ALLAN and DOLORES' trailer from the garage area and made contact with me. STEVEN inquired as to what I was at the property for. I asked STEVEN if a girl from AUTO TRADER MAGAZINE had been on the property that day taking pictures of a vehicle that they were selling. STEVEN replied that the female had indeed been on the AVERY property and that she had been photographing a van which his sister was selling. I asked STEVEN about what time the girl was on the property. He replied that he believed it was somewhere around 1500 hours. I asked STEVEN if he spoke with her or if she told him where she was going when she left the AVERY property. He informed me that he did not speak with her and that she had only been on the property 5-10 minutes at the most.

I again asked STEVEN if the girl did not mention where she was going or if she had any other appointments in the area. Again, STEVEN stated he did not speak with her and, therefore, would not know where she was going when she left the AVERY property. STEVEN did volunteer the information that he glanced out the window of his residence and had observed her photographing the van - that is how he knew she was on the property.

STEVEN asked me why I was asking about her or if there was some sort of problem. I informed STEVEN that she had not yet returned home and her parents were worried about her. STEVEN made some sort of reply, something to the effect of, "I hope she turns up soon," at which time I left the AVERY property.

Upon leaving the AVERY property, I contacted D.I. Schetter by telephone and informed him of this case, specifically that the CASO was reporting a missing person and that person had been on the AVERY property, according to STEVEN AVERY, at approx. 1500 hours but had left after 5-10 minutes. I further contacted the CASO by telephone and informed them of the same information. As far as making contact with the AVERY family or returning to the AVERY property, no further action was taken on 11/03/05 by this Sgt.
ALColborn /bjc

It should be noted that on 11/03/05, upon my return to the MTSO, I (Sgt. A. Colborn) spoke with Det. Remiker who was still on duty. I briefed Det. Remiker as to my contact with STEVEN AVERY, including our conversation to which Det. Remiker refers to in the earlier narrative of this case.

No further action taken. ALColborn /bjc

DEPUTY _____

Date _____

EXHIBIT 13

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

3
4 STATE OF WISCONSIN,
5 PLAINTIFF, JUDGE'S DECISION
6 vs. Case No. 05 CF 381
7 STEVEN A. AVERY,
8 DEFENDANT.

9 DATE: AUGUST 22, 2006
10 BEFORE: Hon. Patrick L. Willis
11 Circuit Court Judge

12 APPEARANCES:
13 KENNETH R. KRATZ
Special Prosecutor
On behalf of the State of Wisconsin.
14
15 THOMAS J. FALLON
Special Prosecutor
On behalf of the State of Wisconsin.
16
17 DEAN A. STRANG
Attorney at Law
On behalf of the Defendant.
18
19 JEROME F. BUTING
Attorney at Law
On behalf of the Defendant.
20
21 STEVEN A. AVERY
Defendant
Appeared in person.

22 * * * * *
23 TRANSCRIPT OF PROCEEDINGS

24 Reported by Diane Tesheneck, RPR
25 Official Court Reporter

1

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

appears 5 ATTORNEY KRATZ: State of Wisconsin
6 by Calumet County District Attorney Ken Kratz,
7 appearing as Special Prosecutor. Also appearing
as 8 Special Prosecutor is Tom Fallon, from the
9 Department of Justice.

in 10 ATTORNEY STRANG: Steven Avery is here
11 person and he's represented by Jerry Buting of
12 Buting and Williams. And Dean Strang of Hurley,
13 Burish and Stanton. Good morning.

14 THE COURT: All right. We're here this
15 morning for the Court to issue its decision on a

16 number of motions that have been filed.
Following
17 the decisions on those motions, the Court will
take
18 a summary of the motions that are still
outstanding,
19 just to make sure that they are all being dealt
20 with.

21 Court will first issue its decision on
22 the defendant's motion to dismiss on the grounds
23 that the State has made a trial in Manitowoc
24 County impossible. The basis for this motion is
25 alleged that the State has taken actions to make

2

1 a fair trial in Manitowoc County impossible.

2 Specifically, the defendant refers to
3 eight press conferences that were conducted
4 primarily by the Calumet County District Attorney
5 and Sheriff. Four of these press conferences
6 occurred after the defendant's arrest in this
7 case. The defendant also cites comments made in
8 a two-part news story in May of this year by the

9 Manitowoc County Sheriff.

10 The defendant asserts that his
11 constitutional rights under Article 1, Section 7,
12 of the Wisconsin Constitution, as well as his due
13 process rights under the Fourteenth Amendment to
14 the United States Constitution, and Article 1,
15 Section 8, of the Wisconsin Constitution were
16 violated by the State's participation in
17 pre-trial publicity.

18 The defense brief concludes on Page 11,
19 that, taken together, the State's actions
20 effectively have destroyed Avery's opportunity to
21 obtain an impartial jury in Manitowoc County.
22 That is, the basis for requesting dismissal as a
23 sanction is the claim that participation by
24 agents of the State in pre-trial publicity has
25 precluded the defendant from receiving a fair

3

1 trial in front of Manitowoc County jurors. The
2 Court has reviewed the media account -- accounts
3 referenced by the motion.

4 The defendant cites no Wisconsin case
5 which has ever granted the remedy he requests;
6 that is, no Wisconsin case has ever found that a
7 defendant is entitled to dismissal of a criminal
8 charge because of the State's participation in
9 pre-trial publicity.

10 The defendant does cite two Wisconsin
11 cases as being relevant: State ex rel. Schulter
12 v. Roraff, a 1968 Wisconsin Supreme Court case,
13 and Briggs vs. State, a 1977 Wisconsin Supreme
14 Court case.

15 In neither of these cases did the Court
16 order that the criminal charges involved be
17 dismissed. In fact, the Court specifically
18 rejected the remedy in Schulter, the one case in
19 which the defendant actually requested dismissal.
20 Continuance and change of venue have been the
21 only remedies approved, to date, where
22 prejudicial pre-trial publicity threatens the
23 defendant's right to a fair trial.

24 The Court is not prepared to say that
25 the State's participation in pre-trial publicity

1 could never justify dismissal of criminal
2 charges; indeed, there's language from the
3 Schulter decision which suggests that the Court
4 did not rule out the possibility entirely.
5 There's a sentence that reads as follows: In
6 State vs. Woodington, we considered the problem
7 of pre-trial publicity and concluded that the
8 remedy was not necessarily the dismissal of
9 charges, but a change of venue, or continuance of
10 the trial, and the careful selection of the jury
11 on voir dire.

12 So it may be possible that, in an
13 appropriate case, the Supreme Court could justify
14 dismissal as a sanction. However, since no
15 reported decision ever -- ever sanctioned the
16 remedy of dismissal, this Court concludes that a
17 remedy as drastic as dismissal could only be
18 justified by very egregious behavior on the part
19 of the State.

20 The Court concludes in this case that
21 the State's role in pre-trial publicity was not
22 egregious, or designed to jeopardize the

23 defendant's right to a fair trial. The Court has
24 reviewed the participation of the State
25 complained of by the defendant and makes the

5

1 following observations:

2 The first four of the eight cited press
3 conferences were more informational in nature and
4 also related more to the missing person report,
5 not to the involvement of the defendant in the
6 crimes that have been alleged in this case. The
7 last four press conferences did involve a
8 detailing of the accusations made against the
9 defendant, in some cases with more detail than
10 the Court believes was necessary.

11 But the content was largely confined to
12 information contained in the Complaints against
13 Mr. Avery, and the co-defendant in this case,
14 Brendan Dassey. While the content was somewhat
15 inflammatory in nature by virtue of the very
16 allegations of fact, similar to the situation
17 described in the Briggs decision, the information

18 was largely available to the press and the public
19 anyway, from the Complaints, which already were,
20 or were soon to become, public information.

21 The Court notes that the press in this
22 case has given publicity to a number of pleadings
23 and motions that have been filed, even before the
24 court proceedings dealing with those pleadings.
25 So, it is unlikely that the news conferences

6

1 resulted in the disclosure of any meaningful
2 information that would not have been publicized
3 in any event.

4 The Court also notes that, especially
5 early in these proceedings, there were media
6 reports that the defendant and members of the
7 defendant's family believed the police were
8 unfairly picking on him and suggested that the
9 defendant was being framed; indeed, the defense
10 in this case has filed motions indicating that
11 such a defense may be pursued at trial.

12 Supreme Court Rule 20:3.6(d) permits a
13 district attorney to make a statement reasonably
14 required to protect the State from the adverse
15 effects of publicity not initiated by the State.
16 Early in these proceedings, such adverse
17 publicity existed. The State was reasonably
18 entitled to respond to public allegations that it
19 was basing its decisions on bias rather than the
20 evidence obtained.

21 With respect to the two-part news story
22 involving the Manitowoc County Sheriff, the Court
23 notes that that took place in May, a number of
24 months before the scheduled trial date. At the
25 outset, the Court does conclude that a number of

1 the comments made by the Sheriff were ill-advised
2 and the Sheriff should not have participated in
3 the interview, even in the absence of a
4 prohibition order issued by the Court. The Court
5 does conclude, however, that his participation
6 was not so egregious or prejudicial as to justify

7 dismissal of the charges.

8 First, it had been previously reported,
9 and the May reports reiterated, that the Sheriff
10 was involved in the wrongful prosecution of
11 Mr. Avery back in 1985. The Sheriff's testimony
12 at the July 5 hearing in this case suggested he
13 may still not be convinced that Gregory Allen is
14 guilty and Steven Avery is innocent in the 1985
15 sex assault. But the Sheriff appears to be
16 largely alone in that belief.

17 As has been widely reported for some
18 time, the State has not only conceded that
19 Mr. Avery did not commit the 1985 crime, but the
20 State has concluded that another man, Gregory
21 Allen, did. Thus, any viewer of this report
22 would have serious reason to question the
23 Sheriff's objectivity.

24 To further balance the report, it
25 included prior statements from members of the

1 defendant's family that law enforcement
2 representatives were unfairly picking on the
3 defendant's family.

4 Sheriff's explanation as to why his
5 department would have had no reason to frame the
6 defendant may have been unfortunately worded, but
7 the Court is satisfied that the Sheriff was
8 trying to explain, in an admittedly awkward way,
9 why the allegation that his department was trying
10 to frame Steven Avery should not be believed. As
11 the Court has already noted, while the Sheriff
12 should not have granted the interview, his
13 participation is somewhat mitigated by a
14 perceived need to respond to publicized frame-up
15 allegations on the part of the defendant and his
16 family.

17 A person viewing the report may well
18 have come away with the impression that the
19 Sheriff believed the defendant is guilty of the
20 crimes charged in this case. That should not be
21 any more surprising than that the defendant's
22 family, friends, and his attorney in a civil
23 case, Stephen Glynn, publicly expressed their
24 belief in his innocence in the same report.

25 If law enforcement officials did not

1 believe the defendant was guilty, this Court
2 would certainly expect the State to move to
3 dismiss the charges against the defendant. The
4 Court gives the public more credit than to be too
5 unduly influenced by comments from either side.
6 The report was balanced and not so inflammatory
7 that persons who viewed it months ago could still
8 not provide the defendant a fair trial if
9 selected as jurors.

10 Finally, the Court notes that while the
11 defense is requesting dismissal because he
12 asserts the State's participation in pre-trial
13 publicity has made a trial in Manitowoc County
14 impossible, the defendant acknowledges in another
15 motion that if the Court grants an adjournment of
16 the trial date to early next year, a fair jury
17 composed of Manitowoc County citizens could be
18 selected. At least, the Court believes that's a
19 fair inference for the Court to draw from the
20 defendant's contingent change of venue request.

21 The bottom line is that while there may
22 be a set of facts which would warrant the relief
23 the defendant seeks, there are no such facts
24 present here. The complained of publicity
25 occurred many months before the scheduled trial.

10

1 Early news conferences focused on the search for
2 Teresa Halbach, not the charges against the
3 defendant.

4 Later press conferences with the Calumet
5 County District Attorney and Sheriff were mainly
6 confined to information available in public
7 records. The Manitowoc County Sheriff's
8 participation in the May interview was
9 ill-advised, but not so prejudicial as to justify
10 the remedy the defendant seeks.

11 The defendant's own contingent change of
12 venue request demonstrates his belief that, with
13 adequate precautions, a fair jury can be selected
14 in Manitowoc County. For all these reasons, the

15 defendant's motion to dismiss is denied by the
16 Court.

17 Before I proceed to other motions, I
18 will note that there have been motions filed
19 relating to change of venue and scheduling of the
20 trial date. And it's my understanding that the
21 parties have a stipulation on those issues to
22 propose to the Court this morning; in fact, I
23 have been handed a written stipulation. Counsel,
24 does one of you care to put it on the record for
25 the Court?

11

I 1 ATTORNEY KRATZ: I certainly can, Judge.
to 2 don't know how much in detail the Court wants me
with 3 go. We have provided the Court a two-page
4 stipulation. That stipulation attempts to deal
5 the issues of change of venue, as well as trial
least 6 schedule. The stipulation, and I will read at
7 the part of the stipulation that is being

proposed

8 towards the bottom of Page 1.

9 The parties, that is, the defense and
10 the State, have agreed to the following: Number
11 one, that the jury trial in this case will
12 commence on or about February 5, 2007. The
13 parties continue to believe that the trial itself
14 will last approximately six weeks. I note for
15 the record that I'm paraphrasing, when
16 appropriate, in parts of the stipulation.

17 Number two, that the jury trial will
18 physically be held in the Calumet County
19 Courthouse.

20 Number three, that the Court has agreed
21 upon the county in which the jury will be
22 selected. The parties have identified and have
23 agreed upon that jury pool, and the Court may
24 wish to comment on that thereafter.

25 The stipulation is proposed by myself

12

1 and Mr. Strang, both as lead counsel for the

2 relative parties. The stipulation includes
3 acquiescence by Mr. Avery, and a statement as to
4 waiver of right to be tried physically here in
5 Calumet County. And also includes the agreement
6 of the Halbach family, by Tim Halbach, a
7 representative of the Halbach family.

8 I should note that the purpose of the
9 stipulation, or at least in part, as well as the
10 Halbach's acquiescence, is based upon the Halbach
11 family's ability to now fully participate, if
12 they choose, in all aspects of the jury trial, as
13 the physical location would be within Calumet
14 County.

15 Attached to the stipulation includes
16 proposals from Sheriff Pagel, with the agreement
17 of the Manitowoc County Sheriff's Department.
18 This sets forth reasons why Calumet County is a
19 preferred venue, or preferred place of trial in
20 this case, as to issues of security, transport,
21 and the physical evidence which is being held in
22 the Calumet County Courthouse.

23 Lastly, there is correspondence from
24 Mr. Rollins, who is Corporation Counsel, acting
25 on behalf of Manitowoc County. This county, that

1 is, Manitowoc County, has requested this Court
2 adopt the stipulation, based upon the physical
3 amenities that the Calumet County Courthouse may
4 have, Mr. Avery's location, the physical
5 evidence, again, and the participation of the
6 Halbach family.

7 For all of those reasons, and reasons
8 previously provided in more detail to the Court,
9 including this proposal having been made by me
10 back in, I believe it was February of this year,
11 the parties jointly, that is, Mr. Avery, his
12 lawyers, and the State, is asking the Court adopt
13 the stipulation.

14 THE COURT: Mr. Strang.

15 ATTORNEY BUTING: Counsel recited the
16 stipulation's terms, in their essence. He did it
17 fairly. He did it accurately, but for one small
18 item on which he misspoke, innocently, and that

is

19 simply that Mr. Avery has agreed in writing here,
20 not to be tried in Manitowoc County, physically.

it 21 The trial will take place in Calumet County, but
to 22 would be Manitowoc County in which he had a right
And 23 insist upon the physical location of the trial.
Calumet 24 he's agreed instead to try the case in the
25 County Courthouse, just as counsel explained.

there 1 THE COURT: All right. I will note
2 were some written modifications to the third
parties 3 paragraph in the stipulation, that after the
4 approached the Court, I indicated I had a concern
5 with. At one point, it was my understanding the
would 6 parties wished the county from which the jury
But I 7 be selected to not be disclosed at this time.
8 understand the parties do not have an objection
to 9 disclosure as of today.

10 ATTORNEY KRATZ: That's correct, Judge.

11 THE COURT: Mr. Strang.
12 ATTORNEY STRANG: That's true.
13 THE COURT: And I think that is
important,
14 I'm for the Court to make sure that Mr. Avery -- and
15 going to conduct a brief colloquy with him on the
16 record today -- that everybody understands and
17 agrees what is being proposed here and,
18 specifically, that the parties both agree that
the
19 jurors are to be selected from Manitowoc County.
Is
20 that correct?
21 ATTORNEY STRANG: Yes.
22 ATTORNEY KRATZ: Yes.
23 THE COURT: Mr. Avery, is that your
24 understanding of the recommendation that the
parties
25 are proposing to the Court today, and that you
have

15

1 agreed to?

2 MR. AVERY: Yes.

3 THE COURT: Okay. I do have some
questions

4 to ask of you, to make sure that you understand
it,
5 and I want to make sure that you are knowingly
6 agreeing to this proposal.

7 First of all, do you understand that you
8 have a constitutional and statutory right to keep
9 venue in Manitowoc County, if you wish; that is,
10 a right to be tried not only by a jury of
11 Manitowoc County residents, but also, at least
12 arguably, to a trial physically held in Manitowoc
13 County? Do you understand that?

14 MR. AVERY: Yes, I do.

15 THE COURT: Do you also understand that
the
16 venue statute, Section 971.225, only permits the
17 Court to order the trial to be held in another
18 county if I make a determination that an
impartial

19 trial could not be held in Manitowoc County?
That
20 is, if you were not requesting it, the Court
would
21 not be ordering that this trial be held in
Calumet
22 County; do you understand that?

23 MR. AVERY: Yes.

in 24 THE COURT: Is it your wish to be tried
of 25 Calumet County in this case, with a jury composed

1 Manitowoc County residents?
2 MR. AVERY: Yes.
3 THE COURT: Has anyone made any promises
or 4 threats to you, to get you to request this
5 provision?

6 MR. AVERY: No.
7 THE COURT: Have you had adequate time
to 8 discuss this decision with your attorneys?

9 MR. AVERY: Yes.
10 THE COURT: And do you have any
questions 11 at this time? If you do, I would go off the
record 12 and permit you to discuss the matter further with
13 your attorneys. Do you have any such questions?
14 MR. AVERY: No, I don't.

also
to

15 THE COURT: Very well. The parties had
16 alerted the Court a few days ago that this
17 stipulation would be being presented today, so I
18 have had some time to give it some thought. I
19 took the opportunity, a few days ago, to travel
20 Calumet County in order to tour the courthouse
21 facilities.

22 I agree that there are some advantages
23 to holding the trial in Calumet County, in terms
24 of security relating to both the defendant and to
25 the jurors. There also appears to be more space

17

1 at the courthouse for the media.

2 And the Court has been informed that
3 Manitowoc County officials believe it would be
4 more economical to hold the case in Calumet
5 County. That is not a major request, obviously,
6 in the Court's decision, but the Court is aware
7 that Manitowoc County officials concur in the
8 move. And I also understand that the victim's

9 family has joined in this request; in fact,
10 Calumet County, I believe, is closer to their
11 home than Manitowoc.

12 Based on those considerations, the
13 request that's been made by the parties, I'm
14 going to grant the joint request that's been made
15 here. I will also note the request calls for a
16 delay in the trial date, that will further
17 alleviate any prejudicial effects of any
18 pre-trial publicity, avoid any potential
19 conflicts with the Thanksgiving holiday that
20 might have occurred had the trial started in
21 mid-October, and allow the defense more time to
22 evaluate the evidence in this case, which is
23 somewhat voluminous. The Court has been informed
24 of such requests on the defense in the past. So
25 I will grant the request.

18

1 The trial date here will be scheduled
2 for February 5, of 2007. I cannot foresee

3 anything at this time that would result in a
4 further continuance of that trial date, and the
5 Court will agree to hold the trial in the Calumet
6 County Courthouse.

7 The jury will be selected, composed of
8 Manitowoc's residents. Jury selection, I think,
9 will take place here. It will be more convenient
10 for everyone. But once the trial begins, it will
11 take place in Calumet County. Is there anything
12 further from either party on that matter?

13 ATTORNEY KRATZ: No, Judge.

14 THE COURT: If not, then the Court will
15 move on to the defense motion to exclude members
of
16 the Manitowoc County Sheriff's Department from
17 testifying in this case. That motion initially
18 included a request, also, to prevent members of
the
19 Sheriff's Department from overseeing the jury in
20 this case. But, Mr. Strang, it's my
understanding
21 that with the move of the physical site of the
trial
22 to Calumet County, that portion of the defense
23 motion is being withdrawn.

24 ATTORNEY STRANG: It is in the sense
that I
25 think it's mooted. There are a number of

logistical

to 1 details attending the stipulation just presented
2 the Court, and adopted by the Court, that we have
3 not laid out here today, but on which the parties
4 are in accord. And one of those, in sum, is that
5 with a trial conducted in the Calumet County
6 Courthouse, the Calumet County Sheriff's
Department,
7 in the ordinary course, would take charge of jury
8 assembly, jury management, the role of bailiff,
9 custody of Mr. Avery, if in fact he's in custody
at
10 the time of trial.

11 And we see that as mooted the request
12 for relief as to a role with the Manitowoc County
13 Sheriff's Department, in prospective or actual
14 jurors, because under this proposal the Manitowoc
15 County Sheriff's Department will have no role
16 with, or contact with, actual or prospective
17 jurors.

Court 18 THE COURT: Okay. All right. As the
all 19 noted, the defense has filed a motion to exclude
Department 20 members of the Manitowoc County Sheriff's
of 21 from testifying on behalf of the State, as part
22 the State's case-in-chief.

23 The sole basis for the defense motion
24 arises out of comments made in an interview
25 Sheriff Kenneth Peterson provided to FOX 11 News

20

1 in Green Bay, portions of which were aired in a
2 two-part report on May 11 and 12 of this year.
3 The Court is not going to detail the Sheriff's
4 comments further here, other than to note that
5 they related to the Sheriff's involvement with
6 Mr. Avery in the past, including the Sheriff's
7 role in the prosecution of Mr. Avery back in
8 1985, relating to a sex assault charge, for which
9 he was subsequently exonerated. The Sheriff also
10 relayed in the report some of his own opinions

11 concerning the defendant's personality.

12 The defendant contends that he is
13 entitled to the remedy he seeks because the
14 Sheriff's's comments were calculated to interfere
15 with the defendant's right to a fair trial in
16 Manitowoc County, before a Manitowoc County jury.

17 The Court has reviewed the two-part news
18 report in its entirety and I have also read and
19 heard the party's arguments; that is, the written
20 argument submitted by Mr. Strang with his motion;
21 the written response submitted by Mr. Fallon; as
22 well as the arguments made at the July 5, 2006
23 hearing. The Court makes the following
24 observations:

25 The Court has accepted, today, the

21

1 stipulation of the parties that the trial will be
2 held in Calumet County, with a Manitowoc County
3 jury. So the defendant has not lost his
4 constitutional right to a trial in the county

5 where the crimes are alleged to have been
6 committed. The place of the trial is being moved
7 at the joint request of the defendant and the
8 State.

9 Earlier in these proceedings, the
10 parties agreed, informally, to eliminate out of
11 court comments to the press; the State, through
12 the attorneys or representatives of the Calumet
13 County Sheriff's Department, and the defense
14 through defense counsel or the defendant himself.
15 There was, and is, no order at this time to
16 support this agreement. But it came about as a
17 result of the Court's reluctance to issue a gag
18 order, which the Court regarded as an extreme
19 remedy. The Court felt that this agreement,
20 along with the admonition to the parties to
21 comply with Supreme Court Rule 20:3.6, would
22 address the concerns initially raised by the
23 defense.

24 The informal agreement has proven
25 largely effective with respect to the parties

1 involved. No party mentioned any concern at the
2 time with comments originating from the Manitowoc
3 County Sheriff's Department. The Court did not
4 issue any type of gag order, and the Sheriff's
5 comments in this case did not violate any such
6 order.

7 There is no evidence that the Sheriff
8 initiated contact with FOX 11 News.
9 Representatives of that organization apparently
10 contacted him for the interview.

11 Nevertheless, the Court does believe
12 that the comments were inappropriate coming in
13 the context of these court proceedings. And the
14 Sheriff should not have -- should have used his
15 own discretion to avoid such comments. Those
16 comments fell within the scope of the type of
17 publicity the parties had agreed to stop and had
18 the potential to jeopardize the defendant's right
19 to a jury of Manitowoc County jurors.

20 Whatever the Court's decision is on the
21 defense motion, the Court believes that care
22 should be taken to make sure such comments do not
23 occur again before the trial in this case. The
24 Court notes that the comments involved were those

25 of the Sheriff alone.

23

1 His department does not have control of
2 this investigation. And the Court has not been
3 presented with any evidence to suggest that any
4 other member of the Manitowoc County Sheriff's
5 Department who participated in the investigation
6 in this case has been directly, or indirectly,
7 influenced in any way by the Sheriff. The Court
8 notes that the Sheriff has announced his
9 intention to retire at the expiration of his term
10 in early January of next year.

11 The Court makes the following
12 conclusions: The Court is unaware of any
13 precedent for granting the remedies the defendant
14 seeks where no court order was violated. The
15 cases cited by the defense, which sustain the
16 drastic remedy of exclusion of evidence, involve
17 violation of either a court order or a discovery
18 statute.

19 Participation by representatives of the
20 State in pre-trial publicity has only been used
21 in reported cases as a grounds for change of
22 venue or a continuance. There is even less
23 reason in this case to exclude evidence from
24 members of the Sheriff's Department who did not
25 themselves participate in any allegedly improper

24

1 comments.

2 The Court further notes that the report
3 was a one time, in two-part, news item on one
4 television station in May, approximately nine
5 months before what will now be the scheduled
6 start of the trial.

7 The Court agrees that the comments made
8 were inappropriate in the context of these court
9 proceedings and did constitute a threat to the
10 defendant's right to fair trial before a
11 Manitowoc County jury; although, the Court has
12 earlier today accepted a stipulation of the
13 parties to have this case heard by a Manitowoc

14 County jury.

15 While the attorneys did not cite concern
16 over comments from the County Sheriff's
17 Department, that is, the Manitowoc County
18 Sheriff's Department, at the time they reached
19 their informal agreement to refrain from public
20 comment in this case, the comments should not
21 have been made.

22 To make sure there are no further
23 problems of this nature, the Court is going to
24 issue an order prohibiting members of either the
25 Manitowoc County Sheriff's Department, or the

25

1 Calumet County Sheriff's Department, from making
2 any further public comment concerning this case,
3 or the defendant, Steven Avery, until the trial
4 is concluded.

5 The Court is satisfied that adherence to
6 the attorneys to Supreme Court Rule 20:3.6
7 precludes the need for any such order to apply to

8 counsel. I'm directing the counsel for the
9 defense to draft the order and submit it to
10 counsel for the State before submitting it to the
11 Court for signature.

12 Because the Court concludes that the
13 other remedy sought by the defense, that is, the
14 exclusion of testimony by members of the
15 Sheriff's Department of Manitowoc County is not
16 warranted, that portion of the defense motion is
17 denied.

18 ATTORNEY STRANG: As a matter of
19 clarification, your Honor -- and I'm happy to
draft
20 the proposed order -- I will intend to include
21 proceedings related to Brendan Dassey within the
22 Court's definition of this case, even though,
23 technically, the Dassey proceedings are under a
case
24 number different than the Avery proceedings.

25 THE COURT: Any objection from the
State?

1 ATTORNEY KRATZ: I'm not sure you have
2 authority over the Brendan Dassey case, Judge.
3 THE COURT: I don't have authority over
the
4 case, but -- and the Court's order would have no
5 affect in his case -- but I think it could extend
to
6 comments relating to his role in this case. I
7 will -- I will do this, I will let it up to the
8 parties, in the form of your proposed order, to
9 attempt to resolve that matter. If it still
winds
10 up being contested and the parties have
alternative
11 versions of the proposed order to submit, I will
12 review them, give the parties a chance to be
heard,
13 before I issue the Court's order.
14 ATTORNEY KRATZ: That's fine. Thank
you.
15 THE COURT: The Court will next move on
to
16 the State's motion in this case to admit
statements
17 of Teresa Halbach to co-workers. The State seeks
to
18 admit certain statements which Teresa Halbach
19 allegedly made to co-workers in October of 2005,
20 relating to her observations during an earlier
visit

21 to the defendant's property and her state of mind
22 based on those observations.

23 The defense opposes the admission of
24 these statements. The admissibility of evidence
25 which the State seeks to introduce involves

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1 issues relating to hearsay, relevance, and the
2 defendant's right to confront his accusers. The
3 Court will address each of these issues
4 independently, as they relate to the statements
5 which the State seeks to introduce.

6 First of all, with respect to hearsay,
7 the State asserts that Teresa Halbach's
8 statements relating to both her perceived
9 observations and to her state of mind fall under
10 the hearsay exception contained in Section
11 908.045 (2). That statute provides in relevant
12 part as follows:

13 The following are not excluded by the
14 hearsay rule, if the declarant is unavailable as
15 a witness. A statement which describes an event

16 or condition recently perceived by the declarant,
17 not in contemplation of pending or anticipated
18 litigation and while the declarant's recollection
19 was clear.

20 The statements which Teresa Halbach may
21 have made to her co-workers describing
22 observations from her earlier visit to the
23 defendant's home could fit within this hearsay
24 exception, subject to adequate foundation. At
25 this point, the State has not provided the Court

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1 with a date the observations were allegedly made
2 by Ms Halbach, nor when the observations were
3 relayed to her co-workers.

4 However, it appears that any statement
5 relating to her observations may well constitute
6 a statement which describes an event she recently
7 perceived. Indeed, the defense does not
8 seriously dispute, that with proper foundation,
9 the hearsay exception in Section 908.045 (2)

10 could apply to statements relating to Ms
11 Halbach's observations.

12 The statements relating to her state of
13 mind, as opposed to her observations, do not fall
14 within the exception of Section 908.045 (2). A
15 statement of recent perception is exactly that,
16 it is a statement of something which the
17 declarant has perceived. It does not include
18 opinions of the declarant relating to her
19 perceptions or her state of mind.

20 Now, there is a hearsay exception not
21 advanced by the State which could arguably apply
22 to the defendant's state of mind; that is,
23 Section 908.03 (1), which reads, in relevant
24 part, as follows. The following are not excluded
25 by the hearsay rule: A statement explaining an

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1 event or condition made while the declarant was
2 perceiving the event or condition, or immediately
3 thereafter. While the statements made by Ms
4 Halbach relating to her then existing state of

5 mind could arguably fall within this exception,
6 they would still have to be relevant before they
7 could be admitted.

8 In order for a statement of Teresa
9 Halbach relating to her state of mind to be
10 relevant, the statement would have to relate to
11 an element of the crimes which the State seeks to
12 prove. A similar issue was addressed by the
13 Court of Appeals in the case of State vs. Kutz, a
14 2003 Court of Appeals case.

15 The defendant in that case was charged
16 with first-degree intentional homicide, hiding a
17 corpse, and stalking, arising out of the
18 disappearance of his wife. The State sought to
19 introduce a number of statements attributed to
20 the wife, in the time leading up to her
21 disappearance involving threats, which the
22 defendant made to her. The State sought
23 introduction of the of statements as evidence of
24 her fearful state of mind at the time she made
25 the statements, shortly before her disappearance.

1 The Court of Appeals ruled that the
2 statements were not admissible, because while
3 they were evidence of the declarant's state of
4 mind, her state of mind was not relevant to the
5 charges in that case. The Court recognized that
6 the primary purpose of introducing the evidence
7 was to demonstrate that the threats were actually
8 made to the wife, not that she was in fear
9 because of the statements.

10 That is similar to the situation here.
11 While any statement of Teresa Halbach involving
12 her state of mind made a few weeks before her
13 disappearance would certainly be relevance as
14 evidence of her state of mind, her state of mind
15 is not really at issue in this case.

16 The State has suggested that her state
17 of mind has a relationship to the elements which
18 the State must prove on the kidnapping charge.
19 However, the Court views the probative value of
20 her state of mind weeks before the crime as very
21 marginal. The Court does not believe that her
22 state of mind has sufficient probative value or
23 relevance to justify admission of the evidence.

24 The State asserts that the personal
25 observations of Theresa Halbach, as opposed to

1 her state of mind, have relevance as to the
2 defendant's intent and plan to sexually assault
3 her in the future. The Court has heard
4 references in prior arguments of the parties to
5 allegations that Mr. Avery specifically requested
6 Teresa Halbach to return to his residence.

7 Depending on what other facts are
8 introduced, her observations, which were relayed
9 to her co-workers, may have probative value which
10 could justify their admission. However, the
11 Court is unable, based on the current state of
12 the record, to resolve that issue at this time.

13 Should the observations of Teresa
14 Halbach fall within the hearsay exception of
15 Section 908.045 (2) and have sufficient probative
16 value to justify their admission, the question
17 remains as to whether the admission of such
18 statements would violate the defendant's

19 constitutional rights under the confrontation
20 clause of the constitution.

21 The United States Supreme Court expanded
22 the scope of the confrontation clause in Crawford
23 vs. Washington, a 2004 case. The Court ruled in
24 Crawford that where testimonial statements are
25 involved, the defendant is entitled to confront

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1 his accusers, regardless of the reliability of
2 the statements or whether they fall in firmly
3 rooted hearsay exceptions.

4 For purposes of the State's motion, the
5 key question is whether the statements offered
6 for admission are testimonial in nature. The
7 issue of what is a testimonial statement was
8 recently addressed by the United States Supreme
9 Court in Davis vs. Washington, a case decided on
10 June 19th of this year. The case involved the
11 question of whether statements made by an
12 emergency 911 caller were testimonial in nature.

13 The Court ruled that some of the
14 statements made in the course of a 911 call were
15 testimonial, while others were not.

16 Specifically, the Court ruled as follows:

17 Statements are non-testimonial when made
18 in the course of police interrogation, under
19 circumstances objectively indicating that the
20 primary purpose of the interrogation is to enable
21 police assistance to meet an ongoing emergency.

22 They are testimonial when the
23 circumstances objectively indicate that there is
24 no such ongoing emergency and that the primary
25 purpose of the interrogation is to establish or

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1 prove past events potentially relevant to later
2 criminal prosecution.

3 Of particular significance to our case
4 is the following language, which the Davis
5 opinion quoted from the Crawford case: An
6 accuser who makes a formal statement to
7 government officers bears testimony, in a sense

8 that a person who makes a casual remark to an
9 acquaintance does not.

10 With this example the Supreme Court
11 comes very close to describing the statements
12 Teresa Halbach purportedly made to her co-workers
13 as a textbook example of what is not testimonial.
14 The observational statements which the State
15 seeks to admit were not made to the police and
16 were certainly not made in the context of any
17 investigation by anyone. They are much more in
18 the nature of a casual remark to an acquaintance,
19 which is not testimonial.

20 The Court concludes that the statements
21 by Teresa Halbach of her earlier observations of
22 Mr. Avery are not testimonial in nature and their
23 admission would not implicate confrontation
24 clause concerns.

25 In conclusion, any statement made by

1 Teresa Halbach to her co-workers concerning her

2 state of mind at an earlier point in time are not
3 admissible. Subject to proper foundation
4 establishing relevance and probative value,
5 statements that she made involving prior
6 observations may be admissible under the hearsay
7 exception contained in Section 908.045 (2).

8 Finally, for today's hearing, the Court
9 will address the defendant's motion challenging
10 the search of November 5, on the basis that it
11 violated the rule in Franks vs. Delaware. I'm
12 not addressing, today, the additional challenge
13 to the search based on alleged multiple
14 executions of the search warrant, because the
15 Court has not yet received from -- the briefs of
16 the parties on that issue.

17 As part of his challenge to obtaining --
18 to the obtaining and execution of the search
19 warrants, the defendant challenges the
20 November 5, 2005 search warrant on the basis that
21 it was obtained as a result of false statements,
22 knowingly and intentionally made, or with
23 reckless disregard for the truth, that were
24 included in the affidavit supporting the search
25 warrant request.

1 Under the rule of *Franks vs. Delaware*, a
2 1978 United States Supreme Court decision, if the
3 defendant makes a substantial preliminary
4 showing, and proves that such false statements
5 were made, and that they are necessary to the
6 finding of probable cause, a search warrant can
7 be voided and the fruits of the search
8 suppressed.

9 Initially, the defendant's motion
10 alleged that three separate knowingly false
11 statements were made in the affidavit of
12 Detective Mark Wiegert supporting the request for
13 the November 5, 2005 warrant. First, the
14 defendant alleged that Pamela Sturm and her
15 daughter, the two citizens who initially located
16 Teresa Halbach's vehicle on the Avery property,
17 were incorrectly characterized as volunteer
18 searchers, when in fact they were acting on
19 behalf of law enforcement.

20 Following the evidentiary hearing,
21 defense counsel acknowledged that the evidence

22 did not demonstrate that Ms Sturm and her
23 daughter were anything but volunteer searchers.
24 The motion goes on to allege, however, that the
25 affidavit falsely claimed that the volunteer

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1 searchers located a vehicle matching the
2 description of the vehicle owned by Teresa
3 Halbach, at the Avery Auto Salvage.

4 Further, the defendant alleges that the
5 affidavit falsely represented that the searchers
6 provided a complete VIN from the vehicle, when in
7 fact the searchers were only able to identify 10
8 of the 17 characters of the vehicle
9 identification number.

10 While acknowledging that Detective
11 Remiker was able to obtain the full VIN of the
12 vehicle when he responded to the scene, the
13 defendant's motion further alleges that Detective
14 Remiker did not have a search warrant, or consent
15 to be on the property, and his complete

16 identification of the VIN can, therefore, not be
17 considered because it was illegally obtained.
18 The defendant concludes that if the false
19 information and Detective Remiker's
20 identification are excised from the affidavit, it
21 lacks the required level of probable cause to
22 justify the issuance of the November 5 warrant.

23 The State asks the Court to deny the
24 motion for the following reasons: First, the
25 allegations made in the defendant's motion do not

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1 constitute a substantial preliminary showing
2 justifying an evidentiary hearing under the
3 holding of the Franks case.

4 Second, that Steven Avery lacks standing
5 to challenge the searches of any portions of the
6 Avery Auto Salvage Yard, other than his trailer
7 residence and the detached garage, because he has
8 not demonstrated a reasonable expectation of
9 privacy in the other portions of the Avery
10 Salvage property.

11 Third, that no intentional
12 misrepresentations were made in the affidavit.

13 Fourth, even if the challenged
14 information is excised from the affidavit, it
15 still contains sufficient probable cause to
16 justify the issuance of the November 5 warrant.

17 And, finally, that Steven Avery lacks
18 standing to challenge the information gathered by
19 Detective Remiker when the detective responded to
20 the scene on November 5, because whether or not
21 Detective Remiker was legally on the premises,
22 Mr. Avery had no reasonable expectation of
23 privacy, either in Teresa Halbach's vehicle, or
24 the portion of the Avery Salvage property on
25 which Detective Remiker was present.

1 The Court will first address the State's
2 claim that the defendant has not made a
3 substantial preliminary showing entitling him to
4 a hearing on the alleged Franks violations. When

5 a defendant alleges that a search warrant is
6 based on knowingly false information, the United
7 States Supreme Court held in *Franks vs. Delaware*
8 that the following procedure governs:

9 Where the defendant makes a substantial
10 preliminary showing that a false statement
11 knowingly and intentionally, or with reckless
12 disregard for the truth, was included by the
13 affiant in the warrant affidavit, and if the
14 allegedly false statement is necessary to the
15 finding of probable cause, the Fourth Amendment
16 requires that a hearing be held at the
17 defendant's request.

18 In the event that at the hearing the
19 allegation of perjury, or reckless disregard, is
20 established by the defendant, by a preponderance
21 of the evidence, and with the evidence -- with
22 the affidavits false material set to one side,
23 the affidavit's remaining content is insufficient
24 to establish probable cause, the search warrant
25 must be voided and the fruits of the search

1 excluded to the same extent as if probable cause
2 was lacking on the face of the affidavit.

3 In this case the defendant's motion
4 alleged, first, that the two citizens who found
5 the RAV-4 were not truly volunteer searchers, but
6 persons who Detective Wiegert told Detective
7 Remiker were willing to go to the Avery property
8 on Avery road to search the junkyard salvage
9 area.

10 The quoted language presumably was
11 obtained by the defendant as part of a discovery
12 from a police report. One possible inference
13 from the language could have been that the
14 volunteer searchers had in fact met with
15 Detective Wiegert and expressed their willingness
16 to assist the police in searching the Avery
17 property.

18 While neither party has argued the point
19 at any length, it is at least arguable that if
20 they had been enlisted to assist law enforcement,
21 the searchers may have had to disclose that fact
22 to Earl Avery when they obtained his consent to
23 enter the property, in order to conduct the
24 search. The State has not argued otherwise as a

25 reason for which the motion should be denied.

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1 The defense also characterizes as an
2 intentional false statement, or one made with
3 reckless disregard for the truth, the assertion
4 in the affidavit that the searchers claimed they
5 had located a vehicle matching the description of
6 the vehicle owned by Teresa Halbach. The basis
7 for this assertion is that Pamela Sturm was told
8 to be looking for a green vehicle, but she
9 informed police that the vehicle was, quote,
10 "bluish green, though it's more blue than green",
11 end quote.

12 In addition, while the affidavit
13 indicates that Sturm provided the entire 17
14 character VIN, Sturm was actually able to report
15 only 9 or 10 of the 17 VIN characters. She was
16 not in a position to see the remaining
17 characters.

18 Detective Wiegert acknowledged in his

19 testimony that the portion of his affidavit
20 indicating that Patricia (sic) Sturm provided the
21 entire VIN, was incorrect. He acknowledged that
22 while he obtained the full VIN from Detective
23 Remiker, Ms Sturm was only able to make out 10 of
24 the 17 characters.

25 In addition to the inconsistencies

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1 listed in the defendant's motion, the defendant
2 also asserts that the State was not assisted by
3 Detective Remiker's ability to read the full VIN
4 because he did not have authorization or consent
5 to be on the property.

6 The Court was initially inclined to
7 conclude that the defendant's motion did
8 constitute a substantial preliminary showing that
9 false statements had been intentionally included
10 in the search warrant which called into question
11 the level of probable cause needed for the
12 issuance of a warrant. Had Patricia Sturm -- or
13 I believe it's Pamela Sturm -- and her daughter

14 been acting as agents of the State, their
15 discovery of the RAV-4 and it's identifying
16 information, which formed an important basis for
17 the issuance of the warrant, may have been
18 subject to suppression.

19 As the State correctly points out,
20 however, a close reading of the defendant's
21 motion reveals no substantial preliminary showing
22 that the Sturms were acting as agents of law
23 enforcement. The motion does refer to a
24 scheduled meeting of volunteers, which apparently
25 never took place.

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1 But there is no assertion that the
2 Sturms had any specific relationship with any
3 member of law enforcement. Indeed, the defense
4 conceded at the conclusion of the hearing that no
5 evidence introduced added anything to the
6 allegations in the original motion.

7 In addition, while the motion describes

8 Detective Remiker's entry on the property as
9 unauthorized and non-consensual, which apparently
10 it was, there's no assertion in the motion that
11 Steven Avery had any legitimate expectation of
12 privacy over either Teresa Halbach's vehicle or
13 the portion of the Avery salvage property on
14 which the vehicle was located.

15 If Detective Remiker's presence on the
16 property had violated Steven Avery's reasonable
17 expectation of privacy, it could perhaps be
18 argued that the failure of the affidavit to
19 disclose his unlawful presence was a material an
20 intentional omission, which could support a
21 Franks claim under the Wisconsin Supreme Court
22 decision in State vs. Mann.

23 However, since there was no assertion in
24 the motion that the defendant had a legitimate
25 expectation of privacy over the area in which the

1 Halbach vehicle was located, Detective Remiker's
2 lack of permission to be on the property does not

3 measurably contribute to the substantial
4 preliminary showing required as a prerequisite
5 for a hearing on the defendant's Franks motion.

6 The Court concludes that the State is
7 correct, the motion does not make a substantial
8 preliminary showing entitling the defendant to a
9 hearing on the Franks claim. While the defendant
10 may not have been entitled to a hearing on his
11 Franks motion, the Court, nevertheless,
12 conditionally granted one.

13 The evidence introduced at the hearing
14 further supports the conclusion that there was no
15 Franks violation in this case. The defense
16 acknowledges that the volunteer searchers
17 referred to in Detective Wiegert's affidavit
18 truly were volunteer searchers; thus, there is no
19 basis upon which to delete their discovery of
20 Teresa Halbach's vehicle from the Wiegert
21 affidavit.

22 While one can argue whether or not
23 Detective Wiegert was justified in using the term
24 "matching" in the affidavit, the Sturm's clearly
25 did discover a vehicle, which was very similar in

1 appearance to Teresa Halbach's vehicle, and which
2 turned out to be an exact match.

3 While Detective Remiker's entry on the
4 property may not have been authorized by an owner
5 or person in control of the property, there is no
6 evidence to suggest that the defendant had any
7 ownership interest or other expectation in the
8 area upon which the vehicle was located, or the
9 vehicle itself. Thus, the information provided
10 by Detective Remiker is also appropriately
11 included in the affidavit.

12 With all of this information included,
13 there is no question but that the affidavit was
14 sufficient to justify the issuance of the
15 November 5, 2005 search warrant.

16 The State also asserts in its written
17 argument that Steven Avery has no standing to
18 challenge any of the searches that were
19 subsequently conducted at the Avery Auto Salvage
20 Yard, including searches of the burn barrel, burn
21 pit, the RAV-4, or any of the other buildings

22 located on the property, with the exception of
23 Mr. Avery's residence and detached garage.

24 Resolution of this argument is not
25 necessary to the Court's decision on the Franks

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1 issue. The Court concludes that this argument is
2 more appropriately addressed in the portion of
3 the defense motion challenging the multiple
4 executions of the original search warrant.

5 For the reasons stated, the defense
6 motion to suppress the fruits of the November 5,
7 2005 search warrant on the grounds that it was
8 issued in violation of Franks v. Delaware is
9 denied.

10 Those are all the decisions on motions
11 the Court has today. I did want to take a brief
12 inventory of what I understand to be the
13 outstanding motions and confirm the status of
14 those motions at this time.

15 The State has filed a motion concerning
16 the admissibility of DNA evidence. And it's my

17 understanding that at least at one point the
18 parties were working on a stipulation to resolve
19 that motion. Counsel, where are we on that
20 motion?

21 ATTORNEY KRATZ: I understood, Judge, if
22 there was going to be a challenge to whatever it
was
23 that Mr. Gahn had presented, that Mr. Buting was
24 going to alert us to that.

25 ATTORNEY BUTING: That's correct, Judge,

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1 and Mr. Gahn has been trying to compile some
2 additional requests that I had made regarding
those
3 tests and has not yet complied with that. And
once
4 we receive that, I anticipate we'll either --
we'll
5 be in a position to either agree or not agree.

6 THE COURT: All right. I would like to
7 have a date by which the Court will be notified
8 either that the motion is going to be contested,
or

9 that it's resolved.

10 ATTORNEY KRATZ: Judge, would the Court
be
11 willing to adopt a scheduling plan that Mr.
Buting
12 has 30 days after the receipt of our discovery?
13 Mr. Gahn is meeting with Mr. Fallon and myself
14 tomorrow. We should have an idea as to that
date,
15 certainly won't be any later than perhaps
16 mid-September. Nonetheless, Judge, Mr. Buting
17 believes that he can have that done within 30
days
18 after receipt.

19 THE COURT: When you say receipt, is
that
20 what's going to happen in the next couple of
days?

21 ATTORNEY KRATZ: No, Mr. Gahn will be
22 meeting with us. And what I'm suggesting is that
we
23 can -- if you wanted to set a date certain for
that,
24 we can have that to him, let's say by the 15th of
25 September; Mr. Buting alerting the Court as to
any

give

1 challenges by the 15th of October. That should
2 us plenty of time.

the

3 THE COURT: All right. So, Mr. Buting,
4 with the understanding that you are going to get
5 information by September 15th, the October 15th
6 acceptable to the defense?

is

7 ATTORNEY BUTING: Yes, that's fine.

filed

8 THE COURT: Very well. The State has
9 a number of other acts motions. The Court has
10 received written arguments and I'm going to be
11 issuing a written decision on those motions. Do

I

12 have all of the briefs that are going to be

filed?

13 ATTORNEY KRATZ: Yes, you have three

from

14 the State, Judge.

15 THE COURT: Mr. Strang.

the

16 ATTORNEY STRANG: You have everything

17 defense anticipates submitting.

18 THE COURT: Okay.

19 ATTORNEY STRANG: I think the most

recent

one
20

was Friday, August 18. We submitted a brief on

21

aspect of Paragraph 6 of the State's motion.

22

THE COURT: All right. And I understand

has
23

that each party has filed a motion. The defense

24

filed a motion to admit evidence regarding the

25

defendant's prior wrongful conviction. The State

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1

has filed a motion to exclude it. Where are the

2

parties on those motions?

stipulation
3

ATTORNEY KRATZ: I note that a

4

was proposed, Judge. I think even Mr. Strang may

5

have provided us with his first suggestion as to

6

that stipulation. This kind of goes on the same

7

track as the stipulation regarding evidence of

exchanged
8

victim history. That stipulation is to be

9

as well. Would the Court allow us to exchange

and

10

then perhaps alert the Court by, again, the 15th

of

we 11 October, if we have a resolution. If we don't,
12 can certainly tell the Court before that time.

13 THE COURT: Does that work for both
14 parties?

15 ATTORNEY STRANG: Yes. I followed the
16 Court's lead, I submitted a proposed stipulation
on 17 the wrongful conviction evidence that really also
18 looks like an offer of proof. It's fairly
detailed 19 and I gave the State a written draft of that
20 document either on August 9 or August 10, when we
21 were last here in Court. I don't -- I don't see
any 22 difficulty in leaving that issue unresolved until
23 October 15 on the present schedule.

24 THE COURT: All right. So with respect
to 25 that issue and the issue of the victim's history,

1 the parties will notify the Court by October 15th
2 either that you have an agreement, or that you

3 don't, and if it requires Court resolution --

4 ATTORNEY KRATZ: I'm sorry, we should
5 probably be using the 16th, the 15th is a Sunday.

6 THE COURT: All right. The 16th.

7 ATTORNEY KRATZ: I don't know if it
makes

8 that much difference. The 16th I think is --

9 THE COURT: I will use that for the DNA
10 evidence issue as well.

11 ATTORNEY STRANG: Okay.

12 THE COURT: With respect to the
suppression

13 motion regarding Marinette County statements, I
have

14 received briefs from both parties, but it's my
15 understanding that there may be a related issue

the
16 parties want to alert the Court to.

17 ATTORNEY FALLON: Yes, Judge. After
18 reviewing counsel's brief on the matter, the

thought
19 occurred to me that I think each counsel would
like

20 to be heard. If the Court for one reason or
another

21 decides to suppress the statement obtained by the
22 Marinette County Sheriff on Saturday, November

5th,
23 from the point on -- from the point of

contention,

24 we would like to be heard as to whether the
25 subsequent statements obtained on November 6th
ought

50

1 to be suppressed as well. And that's because
2 there's a different set of arguments and issues
3 presented.

4 Neither party really briefed those this
5 time around, waiting and preferring to see if
6 there was a need to. So we -- I think each
7 counsel would reserve our right, if we may, to
8 address further those issues if, and only if, the
9 Court finds anything suppressible on the
10 November 5th statement.

11 THE COURT: Mr. Strang, is that a fair
12 statement?

13 ATTORNEY STRANG: That's been the
defense
14 intention from the start, both on the motion to
15 suppress statements after the point of
contention,

I 16 as Mr. Fallon puts it, on November 5, 2005. And
17 might add on the Fourth Amendment suppression
18 motions, as to which Mr. Buting took the lead
role,
19 I think the Court properly ought to decide on, is
20 the exclusionary right -- exclusionary role
rightly
21 invoked here? Does it have a role to play? If
it
22 does, we can be heard later, both parties, on the
23 scope of exclusion, or what potential evidence
would
24 derive from any unconstitutional conduct by law
25 enforcement.

1 And I will add, it's not out of the
2 realm of possibility that the State or the
3 defense might wish to offer some evidence on the
4 scope of application in the exclusionary rule;
5 although, it's also quite possible that just
6 would be a matter of written or oral argument.
7 So not only am I in agreement with Mr. Fallon on

8 this point, it's really been my intention from
9 the start as I think a much more orderly and
10 measured way to proceed on those issues.

11 THE COURT: All right. So the --
Whether
12 or not the parties are going to be looking to
make
13 further argument, or possibly even introduce
14 additional evidence, will depend on the Court's
15 decision. And the parties are both asking the
Court
16 at this time to only make a decision with respect
to
17 the November 5 statements. Is that a fair
summary?
18 ATTORNEY FALLON: Yes.
19 ATTORNEY STRANG: And there -- Yes, it
is.
20 And there, just to endorse the suggestion the
Court
21 made during the August 9 and August 10
evidentiary
22 proceedings, there's no challenge to the
23 admissibility of Mr. Avery's statements on
24 November 5 prior to, again, as Mr. Fallon puts it
25 elegantly, the point of contention, and we have
both

1 briefed where exactly that arises in the recorded
2 interview.

3 THE COURT: All right. There is a
defense
4 motion, filed some time ago, entitled -- it's
5 actually not a motion, but a notice concerning
6 interference with right to counsel. I have been
led
7 to believe a number of times that's been
resolved,
8 but it's still technically hanging out there.

9 ATTORNEY STRANG: Well, it is resolved.
It
10 was not a motion or a request for relief, it was
a
11 notice of a concern. Since I had it -- had the
12 concern on June 16, I treated that deadline as
one
13 by which I ought to raise the concern in good
faith.
14 I did.

15 The State provided me the information it
16 promised about the inmate at issue, his name is
17 Orville Jacobs. I'm satisfied at this point with
18 the information I have gotten from the State. I
19 don't perceive a Sixth Amendment right to counsel

20 concern arising with respect to Mr. Jacobs. Of
21 course, if future information comes to light, or
22 future events warrant it, I will raise the
23 concern again, but I don't anticipate either of
24 those events coming to pass.

25 THE COURT: All right. Since it was

53

believe 1 entitled a notice and not a motion, I don't
or 2 there's any need for a formal withdrawal document
3 anything like that.

any 4 ATTORNEY STRANG: But neither is there
5 need for a ruling.

respect 6 THE COURT: All right. Then with
the 7 to the defense motion to suppress the fruits of
of 8 search, or searches, based on multiple executions
9 the search warrants, those written briefs are due
10 September 13.

11
simultaneous

ATTORNEY STRANG: Yes, it's a

12

exchange, as I understand it, of one round.

13
haven't

THE COURT: For my benefit, and I

14
to

seen the written arguments yet, but it appeared

15
in,

me possible, based on the way the evidence came

16
the

that there could be different lines of arguments
relating to different individual searches. Are

17

parties -- Are the briefs going to be structured

18

such that different searches are addressed

19

individually?

20
it

ATTORNEY BUTING: I suppose we could do

21
can

that way. I anticipate -- Really, if the Court

22

recall from the testimony, I anticipate that the

23
that

major point of contention is going to be after

24

first three hours or so search was made on the

25
night

was a
one
issue
don't
argue
to

1 of the 5th, Saturday night. Thereafter, there
2 number of entries and -- and I can address each
3 of those separately, but I think the primary
4 is going to be on that.

THE COURT: Let me just ask this, I
want to tell each party -- either party how to
their case, but if you have arguments that relate
some searches and not others, please let those be
differentiated in your briefs so that I know what
you are trying to argue.

ATTORNEY BUTING: Okay.

State's
I'm

THE COURT: And then there's also a
motion regarding statements to other inmates. I
believe I have recently received a written brief
from the defense on that. Is there anything more
coming from the State, or do I have everything
going to have on that?

that,
and
perhaps

ATTORNEY KRATZ: We just talked about
Judge. We will discuss that in detail tomorrow
if the Court would allow us an opportunity,

21 to the 13th of September, we can get that to the
22 Court as well.

from 23 THE COURT: All right. Any objection
24 the defense?

issue 25 ATTORNEY STRANG: I don't. That's an

55

sealed 1 that's under seal, or we have treated it as
2 to date.

3 THE COURT: Very well. I will give the
4 State until September 13 then to respond.

the 5 ATTORNEY BUTING: Judge, could we return
6 for just one moment to the multiple execution of
7 search warrant issue. As the Court framed it, I
8 don't know whether that -- the way these -- the
9 arguments may come out then might really be more
10 amenable to a reply by either party as well.

11 In the event that there are -- that the
12 State has certain arguments on certain searches

13 and not others, or that I have likewise, it might
14 be easier to just reply to them, rather than try
15 and anticipate -- each of us anticipate what the
16 arguments of the others would be. We have a
17 little bit more time to do that now and I just
18 raise that as one way of resolving that.

19 THE COURT: Mr. Fallon.

20 ATTORNEY FALLON: Yes. Thank you. It
21 seems to me that the way -- excuse me -- the way
the
22 defense pled the issue and proceeded with its
23 proofs, that the issue has been fairly well
narrowed
24 to complain of the searches occurring to Mr.
Avery's
25 trailer and garage, starting on Sunday, the 6th,

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obtained 1 until the second or subsequent warrant was
2 late afternoon, I believe on the 9th.

3 Those were the issues which were the
4 subject of the testimony and it seems to me that
5 that's the context in which the case is going to

6 be argued. So I'm not really sure that we need
7 to separate out the searches per se other than,
8 as the testimony reflected, there was, you know,
9 an entry on Sunday, for instance, and one or two
10 on Monday, and then one on Tuesday, that type of
11 itemization or reflection.

12 I'm not sure it's to our benefit to
13 separate them out any further, because as I
14 reviewed the case law in preparation for writing
15 this brief, it's not much -- it's not the issue,
16 really. And I don't -- I don't know if we really
17 need to reply, and counter-reply, or what have
18 you. It seems to me it's been narrowly pled and
19 the testimony was narrowly produced. So I'm not
20 sure we have a whole lot of range of other
21 searches at issue, so to speak.

22 THE COURT: Let's do this, after each
party
23 receives a copy of the other party's brief, if
24 either party feels there's a need to reply, you
can
25 ask the Court for permission, in writing, just
fax

1 it to me, I will take it up at that time.

2 ATTORNEY STRANG: Thank you.

3 THE COURT: I would ask also on that
issue,
4 I think I mentioned it before, I did not have
access
5 in our law library, or my online law library, to
all
6 of the secondary sources that necessarily relate
to
7 that issue. So if you have -- if you're going to
be
8 citing any secondary sources, please give me
copies.
9 I have got ALR and Am Jur and those types of
things,
10 but I think it was --

11 ATTORNEY BUTING: LaFave.

12 THE COURT: -- LaFave I do not have.
13 Right. I'm not looking to make the file any
bigger
14 than it is, but if you cite to LaFave, give me a
15 copy. I think I have already gotten one from the
16 State.

17 ATTORNEY FALLON: I think you got the
copy.
18 I think, unless counsel disagrees, I think we
have

Court. 19 got the relevant portions of LaFave for the
there 20 ATTORNEY BUTING: I believe so. If
21 are any -- so the Court has access to case law.
is 22 THE COURT: Other jurisdiction case law
23 fine, I have got LexisNexis, but LaFave is not on
24 there.
25 ATTORNEY BUTING: So anything like law

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that 1 journals, law reviews, things of those nature
2 might -- you do not have access to?
Lexis 3 THE COURT: If you have got access to
me. 4 and it's on Lexis, you don't have to send it to
5 ATTORNEY BUTING: I use Lexis.
6 THE COURT: Right. So, if it's not on
7 Lexis, send it, otherwise you don't have to. I
8 certainly have access to case law from all other
but 9 jurisdictions and a number of secondary sources,

10 not LaFave.

11 ATTORNEY FALLON: Your Honor, may I have
12 just a moment to talk to Mr. Buting on this.

13 THE COURT: Go ahead.

14 ATTORNEY FALLON: I thought we might
have
15 one other point of interest for the Court, but I
16 guess we'll have to defer comment until we
consider
17 it further.

18 THE COURT: All right. Is there
anything
19 further from either party today?

20 ATTORNEY STRANG: Yes. One, just a
point
21 of clarification. This may have been implicit in
22 the Court's rulings both on the motion to dismiss
23 and the motion for sanctions to exclude the
24 Manitowoc County Sheriff's Department, since the
25 Court referred to having reviewed the eight news

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1 conferences, but I just want to make sure that
the

2 record is complete and that, in fact, a viewable,
3 either VHS tape or DVD arrived from WFRV-TV to
the
4 Court as I had arranged to happen.

5 THE COURT: Yes, the VHS tape arrived
and
6 that's workable.

7 ATTORNEY STRANG: Terrific. Second, I
8 anticipate some further motions, not just motions
in
9 limine. Conceivably, for example, some discovery
10 that I received -- was received at my office, I
have
11 lost track of the dates now, but it's more than a
12 week and less than two weeks ago. Some new
13 discovery suggests a further non-evidentiary
motion.

14 It's also entirely possible, as
15 Mr. Dassey's case proceeds here, that an issue
16 may arise under Samuels -- under State vs.
17 Samuels in this case. We can't know that at this
18 juncture of the proceedings in Mr. Dassey's
19 separate case.

20 But what I would propose is that I treat
21 the October 16 deadline as a good time to file
22 any other motion, other than an in limine issue
23 properly addressed much closer to trial, you

24 know, that has arisen with new discovery, or new
25 information, or new events since June 16.

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1 For that matter, September 13, I also
2 could treat as a date for raising any new issues.
3 I know there's at least one that I intend to
4 raise so, that's disclosure. And I guess also
5 jointly request that the Court set a date, fix a
6 date for me to do that, or accommodate new issues
7 that have arisen.

8 THE COURT: Mr. Kratz.

9 ATTORNEY KRATZ: We are going to need a
10 scheduling conference anyway, Judge. We talked
11 about jury questionnaires. We talked about
exchange
12 of experts and some other more definite
scheduling
13 order from the Court. And whether the Court
wants
14 to do that by a phone conference, to at least
15 schedule that meeting, or wants to set that
meeting,
16 we're certainly amenable to that.

17 THE COURT: All right. Because of the
18 contemplated adjournment of the trial date, I
didn't
19 give that as much attention as I might have
before
20 today. I agree that we're going to need a
21 scheduling conference at some point to establish
22 timelines for filing motions in limine, jury
23 questionnaires, those types of things. Do either
of
24 the parties have any suggestions about when that
25 could be effectively accomplished?

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1 ATTORNEY STRANG: Well, we'll know where
we
2 are on some things on October 16, particularly
DNA,
3 and the wrongful conviction, and victim's history
4 information.

5 ATTORNEY KRATZ: Perhaps later that
week,
6 Judge, we know it's blocked off our calendar so.

7 THE COURT: I know I have got time that

8 week. All right. I'm having the clerk get me my
9 calendar.
10 ATTORNEY KRATZ: Could either be that
11 Thursday or Friday, those work best for us,
Judge.
12 THE COURT: Thursday the 19th, morning
or
13 afternoon?
14 ATTORNEY KRATZ: Morning would be just
15 fine.
16 THE COURT: Should we say 10:00.
17 ATTORNEY BUTING: That's fine.
18 ATTORNEY KRATZ: That's good, Judge.
Thank
19 you.
20 THE CLERK: What date was that?
21 THE COURT: October 19th.
22 ATTORNEY KRATZ: Will that be on the
record
23 or in chambers, your Honor?
24 THE COURT: I will notify you about that
a
25 little closer to the date, whether it will be on
the

1 record, or simply a scheduling conference, or
2 something that involves going on the record. For
3 now, it will be an off the record scheduling
4 conference, but I'm going to hold the time in the
5 event there is anything to deal with on the
record.

6 Does either party have anything else that needs
7 addressing?

8 ATTORNEY STRANG: So we'll address
9 deadlines for further motions and the whole sort
of
10 schedule before trial at that point?

11 THE COURT: Yes.

12 ATTORNEY STRANG: Fine.

13 THE COURT: Anything else today?

14 ATTORNEY KRATZ: No, Judge. Thank you.

15 THE COURT: If not, we're adjourned for
16 today.

17 (Proceedings concluded.)

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1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

3

4

I, Diane Tesheneck, Official Court

5

Reporter for Circuit Court Branch 1 and the

State

6

of Wisconsin, do hereby certify that I reported

7

the foregoing matter and that the foregoing

8

transcript has been carefully prepared by me

with

9

my computerized stenographic notes as taken by

me

10

in machine shorthand, and by computer-assisted

11

transcription thereafter transcribed, and that

it

12

is a true and correct transcript of the

13

proceedings had in said matter to the best of my

14

knowledge and ability.

15

Dated this 29th day of January, 2007.

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Diane Tesheneck, RPR
Official Court Reporter

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EXHIBIT 14



PATRICK L. WILLIS, CIRCUIT JUDGE

MANITOWOC COUNTY COURTHOUSE

DIANE TESHENECK
REPORTER —

CIRCUIT COURT
BRANCH 1

September 22, 2006

Attorney Kenneth R. Kratz
Calumet County District Attorney



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Wisconsin Dept. of Justice



Attorney Dean A. Strang
Hurley, Burish & Stanton S.C.



Attorney Jerome F. Buting
Buting & Williams, S.C.



Re: State of Wisconsin vs. Steven A. Avery
Manitowoc County Case No. 05 CF 381

Dear Counsel:

Enclosed please find the Court's Decision and Order on State's Motion to Allow the Introduction of Nine Items of Other Acts Evidence in the above referenced matter.

Very truly yours,

Patrick L. Willis,
Circuit Judge

Enclosure (sealed)

PLW/lm
MAILED
SEP 25 2006

03-23-07
Unsealed per
Court's Order

Colborn
EXHIBIT NO. 57
DATE: 7-21-22
365Reporting, LLC

REC'D SEP 25 2006

TO BE FILED AND KEPT UNDER SEAL

STATE OF WISCONSIN

CIRCUIT COURT

MANITOWOC COUNTY

STATE OF WISCONSIN,

Plaintiff,

MANITOWOC COUNTY
STATE OF WISCONSIN
FILED

Case No. 05 CF 381

vs.

SEP 25 2006

STEVEN A. AVERY,

Defendant.

CLERK OF CIRCUIT COURT

**DECISION AND ORDER ON STATE'S MOTION TO ALLOW THE INTRODUCTION
OF NINE ITEMS OF OTHER ACTS EVIDENCE**

The State has filed nine motions seeking the introduction of separate instances of other acts evidence. The State's motions were all filed on June 15, 2006. The State filed a "Memorandum in Support of State's Motion to Allow the Introduction of Other Acts Evidence." The defense filed "Defendant's Memorandum Opposing Uncharged Misconduct Evidence" in opposition. In reply, the State filed the "State of Wisconsin's Supplementary Memorandum in Support of Other Acts Evidence." The defense responded with "Defendant's Reply Opposing Uncharged Misconduct Evidence." Finally, the State submitted the "State of Wisconsin's 2nd Supplementary Memorandum in Support of Other Acts Evidence."

The Court has permitted the filing of the motions as well as the memoranda in support of and in opposition to the motions under seal. The Court took this action based on the significant potential for prejudice to members of the jury pool. Specifically, the Court has taken into consideration the extensive publicity this case has received, including news reports on filings in the Clerk of Courts office, as well as the defendant's stated desire to have his case tried by a jury composed of Manitowoc County residents if possible. For these reasons, the Court is also

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(1)

addressing the motions in the form of this written Decision and Order, which shall remain under seal.

Other acts evidence is generally inadmissible, subject to certain exceptions specified in Wis. Stat. §904.04(2). The statute reads as follows:

(2) *Other crimes, wrongs, or acts.* Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

The analysis which the Court is to apply in evaluating the request by any party to introduce other acts evidence is set forth in State v. Sullivan, 216 Wis. 2d 768 (S. Ct. 1998) and has been repeated in subsequent reported decisions. That analysis was recently summarized in State v. Kimberly B., 283 Wis. 2d 731, 752 (Ct. App. 2005) as follows:

The analysis of other acts evidence culminated in our supreme court's delineation of a three-step analytical framework for attorneys and courts to follow in determining whether other acts evidence is admissible. *Sullivan*, 216 Wis. 2d at 772.

- (1) Is the other acts evidence offered for an acceptable purpose under WIS. STAT. § (RULE) 904.04(2), such as establishing motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident?
- (2) Is the other acts evidence relevant, considering the two facets of relevance set forth in WIS. STAT. § (RULE) 904.01? The first consideration in assessing relevance is whether the other acts evidence relates to a fact or proposition that is of consequence to the determination of the action. The second consideration in assessing relevance is whether the evidence has probative value, that is, whether the other acts evidence has a tendency to make the consequential fact or proposition more probable or less probable than it would be without the evidence.
- (3) Is the probative value of the other acts evidence substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence?

See WIS. STAT. § (RULE) 904.03.

Sullivan, 216 Wis. 2d at 772-73 (footnote omitted).

Sullivan describes the manner in which the parties are to present the arguments and how the trial court is to apply the three-step test:

¶16. The proponent and the opponent of the other acts evidence must clearly articulate their reasoning for seeking admission or exclusion of the evidence and must apply the facts of the case to the analytical framework. The circuit court must similarly articulate its reasoning for admitting or excluding the evidence, applying the facts of the case to the analytical framework. This careful analysis is missing in the record in this case and has been missing in other cases reaching this court. Without careful statements by the proponent and the opponent of the evidence and by the circuit court regarding the rationale for admitting or excluding other acts evidence, the likelihood of error at trial is substantially increased and appellate review becomes more difficult. The proponent of the evidence, in this case the State, bears the burden of persuading the circuit court that the three-step inquiry is satisfied.

Sullivan, *supra*, at 774. Trial courts are admonished to exercise care before allowing the introduction of other acts evidence because of its potentially prejudicial affect. The law on this subject is summarized in State v. Veach, 255 Wis. 2d 390, 411-412 (S. Ct. 2002) as follows:

48. "Other acts evidence should be used sparingly and only when reasonably necessary." *See, Whitty*, 34 Wis.2d 278, 149 N.W.2d 557 (1967). It may not be used to demonstrate that the accused has a certain character and acted in conformity with that trait. *Sullivan*, 216 Wis.2d at 782 (citing 7 Daniel D. Blinka, *Wisconsin Practice: Evidence* § 404.5, at 110).

49. In *Whitty*, this court offered four reasons justifying the rule excluding other acts evidence:

- (1) The overstrong tendency to believe the defendant guilty of the charge merely because he is a person likely to do such acts;
- (2) the tendency to condemn not because he is believed guilty of the present charge but because he has escaped punishment from other offenses;
- (3) the injustice of attacking one who is not prepared to demonstrate the attacking evidence is fabricated; and
- (4) the confusion of issues which might result from bringing in evidence of other crimes.

Whitty, 34 Wis.2d at 292; *see also Sullivan*, 216 Wis.2d at 782-83. "[T]he exclusion of other acts evidence is based on the fear that an invitation to focus on an accused's character magnifies the risk that jurors will punish the accused for being a bad person regardless of his or her guilt of the crime charged." *Sullivan*, 216 Wis.2d at 783.

Another aspect of other acts analysis which comes into play in this case is the so-called "greater latitude rule" which applies in sexual assault cases. The Supreme Court summarized the rule in State v. Davidson, 236 Wis.2d 537, 555 (S. Ct. 2000) as follows:

However, alongside this general framework, there also exists in Wisconsin law the longstanding principle that in sexual assault cases, particularly cases that involve sexual assault of a child, courts permit a "greater latitude of proof as to other like occurrences." (citations omitted).

As for the rationale behind the greater latitude rule, the court in Davidson summarized its earlier discussion in State v. Friedrich, 135 Wis.2d 1 (S. Ct.1987) as follows:

The court suggested that the difficulty sexually abused children experience in testifying, and the difficulty prosecutors have in obtaining admissible evidence in such cases, are among the reasons supporting the more liberal standard of admissibility in child sexual assault cases. *Id.* at 30-33 and n. 17.

With the preceding criteria in mind, the Court will address the items of other acts evidence sought to be admitted by the State in order.

1. Acts of physical violence and threats by Steven Avery against his ex-wife, Lori Avery.

The State seeks to introduce prior acts of physical violence and threats of Steven Avery against his former wife, Lori Avery while they were married before he was sent to prison in the mid-1980s. In addition, the State seeks to introduce evidence of written threats which Mr. Avery made to Lori Avery while he was incarcerated through the early 1990s. These apparently include written threats to kill his wife by mutilating her.

The State offers this evidence to show intent, motive and plan, all admissible purposes under Wis. Stat. §904.04(2), with respect to the crimes of First Degree Intentional Homicide and Mutilating a Corpse. The defense concedes that the offered evidence could be offered for the purpose of showing intent. The court agrees with the parties that the State meets Step 1 of the three-step Sullivan test as the evidence relates to the purpose of intent. The Court sees little, if any, relationship between the offered evidence and the purposes of motive or plan. The motive the defendant would have had to bring harm to his former wife many years ago bears little

relationship to any motive he would have had to assault or bring harm to Teresa Halbach. Likewise, any actions the defendant may have taken toward Lori Avery do not appear to be part of a plan to assault Teresa Halbach. In order for evidence to be admissible as part of a plan, "There must be some evidence that the prior acts were a step in a plan leading to the charged offense, or some other result of which the charged offense was but one step." State v. Cofield, 238 Wis. 2d 467 (Ct. App. 2000). The offered evidence described by the State does not show such a common scheme as to constitute a plan.

Step 2 of the Sullivan test is a two part test. First, the other acts evidence must be relevant. That is, the offered evidence must relate to a consequential fact which the State must prove. Since the State is required to prove intent as an element of both First Degree Intentional Homicide and Mutilating a Corpse, the offered evidence meets the first requirement of Step 2. The more difficult question relates to the second part of the Step 2 test, that is, does the offered evidence have probative value? While the evidence regarding Lori Avery may be marginally relevant on the issue of intent, the evidence lacks any measurable probative value. When evaluating probative value, the court considers a number of factors, including nearness in time, place and circumstance, similarity of acts, distinctive traits, and whether the victim is the same or similar. As pointed out by the defense, the offered other acts evidence here dates back more than 20 years. The State notes, and the court agrees, that the time difference alone would not necessarily disqualify the evidence from admission, especially considering the length of time during which the defendant was incarcerated. (It should be recognized, however, that the time of the defendant's incarceration cannot be entirely discounted, since the letters he sent threatening Lori Avery were sent while he was in prison.) However, the probative value is minimal because of the many other reasons the defendant may have had to be violent toward his former wife. The

defendant's domestic violence toward Lori Avery allegedly occurred over a significant period of time, she had divorced him, and they had children together. Despite a lengthy and stormy relationship, the defendant never inflicted the level of violence against his former wife which he is alleged to have inflicted against Teresa Halbach, who was no more than a casual business acquaintance. The passage of time and the significant difference in circumstances make the probative value of the offered evidence minimal at best. There are too many explanations for the defendant's behavior toward his former wife which would not be probative of his attitude toward Teresa Halbach. Any probative value the evidence might have would be clearly outweighed by the prejudicial value of such evidence. It is not admissible.

2. Acts of Physical Violence by Steven Avery Against His Girlfriend, Jodi Stachowski.

The State seeks to introduce evidence involving Steven Avery's violence toward his girlfriend, Jodi Stachowski, which occurred during the last few years. The State's offer of proof includes evidence that Avery physically abused Stachowski by slapping her, hitting her with a closed fist, and throwing her to the ground on a number of occasions. The offer includes one incident in which Avery allegedly choked Stachowski until she blacked out. The defendant again concedes, and the Court agrees, that the offered evidence could be relevant on the issue of intent on the First Degree Intentional Homicide Charge, the charge for which the State offers the evidence. Thus, the first part of the Sullivan test is satisfied.

With regard Step 2, the alleged acts of violence against Jodi Stachowski do demonstrate intent to cause bodily harm, a proposition that is of consequence to the homicide charge. The evidence is arguably relevant. The probative value of the evidence is, however, minimal. The acts did occur nearer in time to the pending charges than the acts involving Lori Avery.

However, the defendant's alleged behavior against Jodi Stachowski is significantly different, both in terms of the nature of the acts involved and Avery's relationship to her. Domestic violence is unfortunately an all too common occurrence in today's society. People who live together often have disagreements regarding the normal affairs of life. In too many cases those disagreements lead to domestic violence. There is a significant difference in the nature of the acts involved in the domestic violence situation and the horrific criminal acts alleged in the amended complaint in this case. The correlation between Avery's alleged acts of domestic violence to a live-in partner and his alleged actions against a casual business acquaintance with whom there is no history of companionship or conflict is tenuous at best. While the evidence may be marginally relevant, it has very little probative value. Whatever probative value it has is significantly outweighed by the danger of unfair prejudice. The evidence is not admissible.

3. 1982 Act of Criminal Cruelty Involving the Killing of a Cat.

The defendant was convicted on a charge of animal cruelty in 1982 when he was 20 years old. Without doubt, the facts surrounding the conviction and the defendant's role in it are repulsive and disgusting. The defendant built a bonfire in his back yard, soaked a cat in gasoline and oil, and threw the cat in the fire. After the cat ran out of the fire, the defendant poured more gasoline on it before the animal died.

The State seeks to introduce evidence of the 1982 animal cruelty episode on the grounds that it is admissible on the issues of intent, motive, plan, and identity. None of the memoranda submitted by the State "clearly articulates" the State's rationale for admission of the offered evidence as it individually relates to any of the issues of intent, motive, plan, and identity. This is a shortcoming which runs through the State's argument on much of its offered other acts

evidence. The court will nevertheless attempt to articulate its own reasons why the offered evidence is not admissible.

In each of the State's supplementary memoranda, the State asserts that this evidence would demonstrate the defendant's "sadistic personality." The court does not doubt that the evidence would be relevant on the issue of Mr. Avery's sadistic personality, but that is specifically the type of character evidence which is generally prohibited under §904.04(2). The State does not articulate how the actions of a 20-year-old who tortured and burned a cat in 1982 demonstrate intent to commit the murder and mutilation of a young woman 23 years later. Likewise, other than providing evidence of bad character on the part of the defendant, the offered evidence appears to have no relationship to motive.

Neither of the State's supplementary memoranda specifies how the animal cruelty evidence relates to plan. One can speculate that the use of a bonfire in each case is somehow indicative of a common plan. In addition, the State's initial supplementary memorandum points out that the defendant poured gasoline on the cat after he was already in the fire and also allegedly shot the victim multiple times after she was already dead. Such similarities fall far short of what is required to justify admission of other acts evidence as part of a common plan. For example, in State v. Cofield, 238 Wis. 2d 467 (Ct. App. 2000), the court rejected the State's attempt to introduce evidence of two prior sexual assaults despite common elements with the charged offense. The court ruled as follows

¶ 13. The State argues that the similarities between the old and new offenses demonstrated a common scheme or plan. That is, a knife was used in each incident, the race of the women was the same, all of the victims were in their twenties or thirties, they were all women Cofield had seen before, and he told each of them that if they were compliant, they would not get hurt. Our supreme court has addressed the concept of "plan" as that term is used in Wis. Stat. § 904.04(2):

The word "plan" in sec. 904.04(2) means a design or scheme formed to accomplish some particular purpose. . . . Evidence showing a plan establishes a

definite prior design, plan, or scheme which includes the doing of the act charged. As Wigmore states, there must be "such a concurrence of common features that the various acts are materially to be explained as caused by a general plan of which they are the individual manifestations."

State v. Spraggin, 77 Wis.2d 89, 99, 252 N.W.2d 94 (1977) (citation and footnote omitted). In other words, similarity of facts is not enough to admit other acts under this "other purpose." There must be some evidence that the prior acts were a step in a plan leading to the charged offense, or some other result of which the charged offense was but one step. See, *State v. Roberson*, 157 Wis.2d 447, 453, 459 N.W.2d 611 (Ct.App. 1990). This linkage is simply not present here. There is no evidence that the prior acts were simply a step in a plan leading up to the Lee incident. In addition, there are as many dissimilarities between the earlier acts and the charged offenses as there are similarities. In the charged offense, Cofield shared cocaine with the victim, he put the knife down, the incident took place in his apartment as opposed to the victim's bedroom, he allowed the victim to leave to retrieve her child, and the instant case occurred during the day.

State v. Cofield, 238 Wis. 2d 467, 474-475 (Ct. App. 2000). Clearly, there is no common "plan" between the 1982 animal cruelty incident and the offenses charged in this case.

The animal cruelty evidence is also offered to show identity. In its second supplementary memorandum, the State argues simply that the jury should be allowed to consider "the striking similarity of placing the object of Avery's torture on a bonfire" for the purpose of determining the identity of Teresa Halbach's killer. The Wisconsin Supreme Court has stated the standard for evaluating other acts evidence to prove identity as follows:

To be admissible for the purpose of identity, the other-acts evidence should have such a concurrence of common features and so many points of similarity with the crime charged that it "can reasonably be said that the other acts and the present act constitute the imprint of the defendant." *Fishnick*, 127 Wis.2d at 263-64. The threshold measure for similarity with regard to identity is nearness of time, place, and circumstance of the other act to the crime alleged. *Id.* at 264, n. 7. Whether there is a concurrence of common features is generally left to the sound discretion of the trial courts. *Id.*

State v. Kuntz, 160 Wis. 2d 722, 746-747 (S. Ct. 1991). There is no serious argument that the defendant's sadistic burning of a cat in 1982 has "so many points of similarity" with the crimes charged in this case as to show any type of identity as the term has been defined by the Wisconsin Supreme Court. Even if the animal cruelty evidence was somehow construed to meet one of the permitted purposes under Step 1 of the Sullivan three-part analysis, the evidence

would have such marginal probative value and be so prejudicial as to fail both the second and the third test. The offered evidence fails all three parts of the Sullivan test and is not admissible.

4. Act of Recklessly Endangering the Safety of Sandra Morris. The State seeks to introduce evidence relating to the defendant's 1985 conviction for endangering safety by conduct regardless of life. Briefly stated, the offered evidence is that in January of 1985 the defendant followed Sandra Morris in a vehicle and struck her vehicle with his vehicle, forcing her off the roadway. The defendant then pointed a loaded rifle at Ms. Morris and ordered her to get into his vehicle. He allowed her to get back into her vehicle and drive to her parents' residence only after she demonstrated to him that her baby was in the front seat of her vehicle and would freeze if she was not allowed to take the child to her parents' home. The defendant subsequently admitted much of Ms. Morris' account of the event to sheriff's detectives. The defendant indicated he ran her off the road because she was telling people that he was "bare-ass in the road" while she drove by his residence on her way to work. Ms. Morris in fact did indicate to police that the defendant exposed himself to her as she drove by his residence early in the morning on a number of occasions as she was driving to work.

The State asserts that the evidence should be admissible for the purposes of intent, motive, plan and identity. In view of the standards discussed in the previous section of this decision which the State would have to meet, the court does not understand how the required relationship for the purposes of plan and identity could be met. Arguably, the evidence could relate to the defendant's intent on the Kidnapping charge. As the court discusses later in this decision, intent is not an element of the sex assault charge in this case.

Intent is relevant as an element which the State must prove on the Kidnapping charge. The question then becomes whether the offered evidence has probative value. In determining probative value the court considers, among other factors, nearness in time, place and circumstance, similarity of acts, and distinctive traits. While the State contends that "the similarity of these acts is quite remarkable," the court is not persuaded. The prior incident took place 21 years before the crimes charged in this case are alleged to have occurred. The victim in the 1984 case was a relative, the victim in this case was not. The 1984 case involved a car chase which was related to prior allegations the victim had made that the defendant was exposing himself to her as she drove by his residence. While the State draws attention to the fact that at one point the defendant greeted Teresa Halbach wearing only a towel, he was reported to have masturbated a number of times in the presence of Sandra Morris in the 1984 case. When Sandra Morris asked Avery to let her go, he allowed her to leave. In this case, the defendant is alleged to have murdered the victim after he sexually assaulted her. While the activity attributed to the defendant in both cases is deplorable, especially in the case of the alleged conduct in this case, the similarities between the two events are far from significant. The 1984 evidence does not have significant probative value and fails Step 2 of the Sullivan test. Even if it passed Step 2, the events are so dissimilar that any probative value the evidence has would be substantially outweighed by the danger of unfair prejudice under Step 3 of the Sullivan test. The evidence is not admissible.

5. Prior act of being a convicted felon in possession of a firearm. The defendant was convicted in 1985 for being a felon in possession of a firearm. The charge is identical to one of

the charges in this case. The State seeks to introduce evidence of the 1985 conviction as it relates to the issue of knowledge.

While acknowledging that knowledge is not an element of the offense of felon in possession of a firearm, the State nevertheless argues that evidence of the defendant's prior conviction for the same offense in 1985 is relevant for the jury to consider. Since the State does not have to prove that the defendant knew his possession of a firearm was unlawful, the court is at a loss to understand how the requested evidence would be offered for the purpose of knowledge. The elements of the offense require simply that the State prove the defendant possessed a firearm and that he has previously been convicted of a felony. Court records will show whether or not the defendant has previously been convicted of a felony. The State argues that because it will have to rely to some extent upon constructive possession of the firearms which were found above the bed of the defendant's trailer, the evidence of his prior conviction for being a felon in possession of a firearm is somehow relevant. It is difficult for the court to analyze and evaluate the State's argument because the court simply does not understand it. The jury will have to determine whether the defendant did or did not possess a firearm. The court does not understand how evidence of his prior conviction for being a felon in possession of a firearm relates to that issue. Since the State has not articulated in any meaningful fashion its basis for requesting admission of the evidence, its request for admission is denied.

6. Sexual misconduct with M. A. The State desires to introduce evidence regarding a sexual assault or assaults that Steven Avery committed against M.A., who was 17 years old at the time, during the summer of 2004. The offered evidence is that the defendant had forcible sexual intercourse with the victim while forcibly holding her hands over her head. In addition,

he threatened that if she ever told anyone of their activities, he would kill her family. The defendant is alleged to have made statements to others confirming multiple acts of intercourse, but not confirming the use of force.

The State offers this evidence on the issues of intent, motive, and plan with regard to the charges of First-Degree Sexual Assault and Kidnapping that have been filed against Steven Avery. The evidence cannot be offered to show intent with respect to the First-Degree Sexual Assault charge because intent is not an element of that offense. State v. Cofield, 238 Wis. 2d 467, 473 (Ct. App. 2000). Intent is an element of the charge of Kidnapping, and the evidence could justifiably be offered for that purpose.

The State also seeks admission of evidence concerning the sexual assault of M.A. as bearing on the issue of motive. The issue of motive is closely related to the issue of intent and the evidence cannot be offered to show motive on the Sexual Assault charge for much the same reason. The court in Cofield discusses the issue as follows:

¶ 12. Similarly, the other acts cannot be properly admitted to show motive. Other crimes evidence may be admitted to establish motive for the charged offense if there is a relationship between the other acts and the charged offense, *see e.g., Holmes v. State*, 76 Wis.2d 259, 268-69, 251 N.W.2d 56 (1977), or if there is a purpose element to the charged crime, *see State v. Friedrich*, 135 Wis.2d 1, 22, 398 N.W.2d 763 (1987). Here, neither can be satisfied. There was no connection between Cofield's earlier convictions and the Lee case, and there is no evidence that the prior offense provided a reason for committing the charged offenses or that there was some link between them. Further, there is no purpose element in the crimes charged in this case.

State v. Cofield, 238 Wis. 2d at 473-474. The Wisconsin Supreme Court has previously sanctioned the admission of other acts evidence as bearing on the issue of motive in sexual contact cases, but has done so specifically because the purpose of the contact is an element of the offense. *See, e.g. State v. Plymesser*, 172 Wis. 2d 583, 593 (S. Ct. 1992). In this case, there is not a specific relationship between the offered evidence and the crimes alleged in the information, nor is there a purpose element to the sexual assault charge because it involves

intercourse rather than contact. Arguably, the evidence could be offered for motive on the Kidnapping charge because the kidnapping charge has an intent element.

The State also offers the sexual assault of M.A. evidence to show plan. Cofield discussed what is required to show plan. *See, pp. 8-9* above. There is not anything near the “concurrency of common features” which is required to justify admission of the challenged evidence to show plan. M.A. was not only an acquaintance, but a relative of the defendant. The sexual assaults apparently occurred on more than one occasion. The defendant, according to the State’s 2nd Supplementary Memorandum, told a family friend that he was “going with” M.A. That is certainly in stark contrast to a one-time sexual assault of a business acquaintance which ended up in murder. There is not nearly the “concurrency of common features” required for the court to consider the evidence as bearing on the issue of plan as it relates to either the sex assault charge or the kidnapping charge. Thus, as it relates to the sexual assault charge, the offered M.A. evidence does not pass Step 1 of the Sullivan test. The evidence does pass Step 1 as it relates to the Kidnapping charge.

The M.A. evidence probably passes the relevance portion of the second part of the Sullivan test as well on the Kidnapping charge. That is, in both the M. A. case and in the instant case the motive and intent of the defendant in holding a victim against her will was to commit a sexual assault. The evidence fails the probative value portion of the test, however. Based on the representations made by the State, the defendant apparently felt he had some type of dating relationship with M.A., even if he was sexually forcing himself upon her. He apparently did not hide the nature of his relationship with her and had sexual relations on more than one occasion. In this case, the defendant is alleged to have had forcible sexual intercourse with Teresa Halbach on one occasion, after which he is alleged to have murdered her. There is no evidence he shared

his relationship with Teresa Halbach to anyone other than his co-defendant, Brendan Dassey. A kidnapping that results in the murder of the victim is far different than a kidnapping which results in a sexual assault of an acquaintance with whom the defendant claims to have some type of consensual relationship. Whatever probative value such evidence may have would be far outweighed by the prejudice which attended the introduction of such evidence. The evidence is not admissible.

7. Sexual misconduct with J.A.R. The State seeks to introduce evidence involving a sexual assault of J.A.R., date of birth 11/09/64, by the defendant in 1982 or 1983. The victim was residing with the defendant and his wife at the time. She would testify that the defendant held his hand over her mouth and told her if she yelled or screamed there was going to be trouble. The defendant is alleged to have had penis to vagina sexual intercourse on one occasion.

The State seeks to offer this evidence on the issues of intent, motive, and plan. The reasons why the evidence is not admissible are the same as those given with respect to the sexual misconduct with M.A. In addition, in this case the evidence involves an assault that occurred 23 or more years ago, so its probative value would be considerably less than the evidence involving M.A. The evidence has no relationship to the offenses charged in this case and its only probative value would be to show that the defendant has a propensity to commit sexual assaults.

8. Prior sexual history with Jodi Stachowski. The State seeks to introduce evidence concerning the defendant's sexual relationship with Jodi Stachowski during a period of a little more than a year before the crimes in this case are alleged to have been committed. The offered history is that Avery was extremely sexually active and had sexual relations with Ms.

Stachowski every day at least once and sometimes as many as five times a day. The State's 2nd Supplementary Memorandum indicates that the State would further intend to introduce evidence that Stachowski and Avery experimented with bondage and that Avery kept pornographic images and other sexual aids in his residence. The evidence would be offered on the issue of motive as it relates to the First-Degree Sexual Assault charge.

The court fails to find any meaningful relationship between the other acts evidence and the charged offense. There is not a significant relationship between men who are unusually sexually active with their girlfriends and those who commit forcible assaults against some other victim. Because there is no purpose element to the charge of First Degree Sexual Assault by intercourse in this case, evidence related to motive is even less relevant. The evidence has virtually zero probative value and would be highly prejudicial. It is clearly not admissible.

9. Phone conversation with Marie Litersky. The State seeks to introduce evidence that Steven Avery called Marie Litersky, a former girlfriend of the defendant's nephew, on October 30, 2005, the day before the crimes alleged in this case. The offered evidence is that Avery asked Litersky if she would "like to come over and have a little fun. We can have the bed hit the wall real hard." The State submits that "the defendant's failed attempt to lure Marie Litersky to his trailer for a stated sexual purpose less than 24 hours before Ms. Halbach's arrival is highly relevant as to the elements of the sexual assault count, as well as motive as to the homicide." State's 2nd Supplemental Memorandum, p. 12. Since the State does not assert that Mr. Avery had any thoughts of killing Marie Litersky, the court concludes that the State has not "clearly articulated" any reason for admission of the Marie Litersky evidence on the homicide charge. As the court has already explained with respect to the offered M.A. evidence, intent is

not an element of the sexual assault charge in this case. The court does not perceive any meaningful relationship between the offered other acts evidence and the first-degree sexual assault charge. The offered evidence would show that the defendant attempted to induce Marie Litersky to come to his residence to have sexual relations with him. However, it also shows that he asked her to do so voluntarily and when she spurned his advances, he did not pursue the matter any further. That is a far cry from kidnapping a business acquaintance, sexually assaulting her, and then murdering her. For the same reason, there is not "such a concurrence of common features" that the Litersky evidence demonstrates a plan to kidnap another woman, sexually assault her, and murder her. Any probative value the evidence would have would be far outweighed by its prejudicial affect. The evidence is clearly inadmissible.

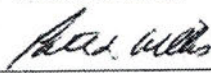
In closing, the court has not addressed the issue raised in the defendant's reply that the State may no longer have evidence to suggest that Mr. Avery committed a sexual assault of Teresa Halbach. For purposes of its decision regarding these motions in limine, the court has assumed that the State would be introducing evidence to support the allegations contained in the Amended Complaint and that the offered other acts evidence would be submitted to supplement more direct evidence on the charges in the Amended Information.

ORDER

For the reasons stated in this decision, IT IS HEREBY ORDERED that all nine motions of the State to introduce other acts evidence are denied.

Dated this 22d day of September, 2006.

BY THE COURT:



Patrick L. Willis,
Circuit Court Judge

EXHIBIT 15

STATE OF WISCONSIN,
Plaintiff,

vs.

STEVEN A. AVERY,
Defendant.

MANITOWOC COUNTY
STATE OF WISCONSIN
FILED

JAN 30 2007

Case No. 05 CF 381

CLERK OF CIRCUIT COURT

DECISION AND ORDER ON WRONGFUL CONVICTION EVIDENCE

The State filed a motion in limine dated June 9, 2006 seeking to preclude the introduction of any evidence pertaining to the defendant's wrongful conviction on charges on sexual assault and attempted homicide in Case No. 85 FE 118. The State argued it would be inappropriate for the jury to consider that information because it presented an improper attempt to solicit sympathy from the jury and was irrelevant to the charges the defendant is presently facing.

The defendant filed his first motion in limine on July 14, 2006 seeking to introduce evidence concerning the wrongful conviction and the defendant's 2004 federal lawsuit against Manitowoc County arising out of the wrongful conviction. Avery contends that he should be permitted to present evidence relating to these matters because it demonstrates the potential bias of some of the State's witnesses against him. The State counters by recognizing that evidence of a witness's bias is

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generally admissible, but in this case the marginal relevance of such evidence is outweighed by its prejudicial effect and the evidence should be excluded.

At the outset, the court notes that the jury in this case is likely to gain some knowledge relating the 2004 lawsuit against Manitowoc County as part of the State's case-in-chief, irrespective of the use of such evidence by the defense on the issue of bias. Otherwise, the jury would simply be left to wonder why a crime which occurred in Manitowoc County was investigated under the supervision of the Calumet County Sheriff's Department and is being prosecuted by the Calumet County District Attorney. The jurors are entitled to some explanation as to why the prosecution of this matter is being handled by Calumet County and why they are being transported to Calumet County to hear the case. Otherwise, the jurors would be left to speculate on reasons for this procedure, to the potentially unfair prejudice of either party, rather than focus on the evidence as it relates to the merits of the case.

Both parties recognize that the starting point in determining the admissibility of bias evidence is *State v. Williamson*, 84 Wis. 2d 370 (1978). The court recognized in *Williamson* that "the bias or prejudice of a witness is not a collateral issue and extrinsic evidence may be used to prove that a witness has a motive to testify falsely." 84 Wis. 2d at 383. The trial court has discretion in determining the extent of the inquiry a defendant may make with respect to bias. *Id.* The first step

for the court to apply in exercising its discretion is to determine the relevance of bias evidence. “Evidence offered to prove bias must be rationally related to the witness sought to be impeached by it. In other words, using the terminology of the Wisconsin Rules of Evidence, testimony offered to show bias must be ‘relevant’ on that point. Sec. 904.02, Stats. To be relevant, the evidence must have a logical or rational connection with the fact sought to be proved.” *Id.*, at 384. If the court determines the bias evidence to be relevant, the court must then weigh its probative value against its prejudicial effect under §904.03. *Id.*, at 384-385.

The defendant seeks to introduce evidence relating to the defendant’s wrongful conviction in the 1985 case and subsequent lawsuit against Manitowoc County because he asserts it is relevant to show bias on the part of two members of the Manitowoc County Sheriff’s Department, James Lenk and Andrew Colborn. The court understands the defendant’s argument to be that while Lenk and Colborn were not members of the Manitowoc County Sheriff’s Department at the time of the 1985 case, they were deposed in the course of the defendant’s civil suit because they are alleged to have received information in 1995 or 1996 implicating Gregory Allen, the man who all parties now recognize actually committed the 1985 offense, at a time when the defendant was still incarcerated. Avery contended as part of his federal lawsuit that the inaction on the part of Lenk and Colborn contributed to the prolonging his wrongful incarceration. He argues that his accusation would

provide a motive on the part of Lenk and Colborn to be biased against him in their investigation of this matter. The court agrees that Avery's charges against Lenk and Colborn in his federal lawsuit could have provided such a motive, whether or not Lenk and Colborn were actually parties to the lawsuit. That is, the court is satisfied that some evidence relating to the wrongful conviction and the defendant's civil suit would have relevance on the issue of alleged bias on the part of Lenk and Colborn.

The next question is whether the probative value of such evidence is nevertheless substantially outweighed by the dangers of unfair prejudice, confusion of the issues, or potential to mislead the jury, rendering it inadmissible under §904.03. The court recognizes that there is a significant danger of unfair prejudice to the State because of the fact the jury could be swayed by sympathy for the defendant. Specifically, it is important that the jury in this case base its decision on the evidence introduced and not on sympathy for the defendant because of the fact he was wrongfully convicted and spent a number of years in prison arising out of the 1985 charges of which he was unquestionably innocent. In addition, in terms of confusion of issues, misleading the jury, or considerations of undue delay, it is important not to turn this trial into a relitigation of the defendant's civil rights lawsuit which has already been settled. The jury should not be given the impression that Mr. Avery should be found guilty or not guilty in this case based

on whether the jury feels he should or should not have prevailed in his wrongful conviction action against Manitowoc County arising out of the 1985 case. The court is satisfied that these problems can be addressed by (1) limiting the introduction of evidence relating to the 1985 wrongful conviction and the 2004 civil rights lawsuit to that which directly bears on the alleged motive of Lenk or Colborn to be biased against the defendant, and (2) providing the jurors with a cautionary instruction at the conclusion of the case concerning the reasons for which the evidence is being admitted. With these considerations in mind, the court will allow evidence at trial that:

1. The defendant, Steven Avery, was convicted following a jury trial on charges of attempted homicide and sexual assault in Manitowoc County for crimes allegedly committed in 1985.
2. The Manitowoc County Sheriff's Department was the lead investigative agency in that case.
3. The conviction in the 1985 case was based primarily on eyewitness identification of Steven Avery by the victim.
4. Following his wrongful conviction in the 1985 case, the defendant served a number of years in prison.

5. In 2003, the defendant was released from prison after DNA evidence from the 1985 case demonstrated to the satisfaction of all parties including the State that Gregory Allen, and not Steven Avery, was responsible for the crime.

6. The DNA testing which led to the defendant's release from prison in 2003 was not available earlier.

7. In 2004 the defendant filed a civil rights lawsuit against Manitowoc County based on the alleged failure of the Manitowoc County Sheriff's Department to pursue other leads which may have led to Gregory Allen as a suspect and prevented the defendant from being wrongfully convicted.

8. James Lenk and Andrew Colborn are employees of the Manitowoc County Sheriff's Department. They were not on the sheriff's department at the time of Steven Avery's wrongful 1985 conviction and played no role in the investigation that led to Mr. Avery's wrongful conviction.

9. The fact that Lenk and Colborn were members of the Manitowoc County Sheriff's Department in 1995 and thereafter, along with any action or inaction they were alleged to have taken or not taken relating to the 1985 case, including any reports made or not made.

10. Lenk and Colborn were deposed as witnesses in Steven Avery's civil lawsuit approximately three weeks before Teresa Halbach's disappearance.

11. The defendant did not make a monetary claim against either Lenk or Colborn in the 2004 civil rights lawsuit.

12. The defendant and Manitowoc County's insurance carrier settled the defendant's 2004 lawsuit before it went to trial. All settlement proceeds were paid by the insurance carrier for Manitowoc County.

13. The DNA testing which led to the defendant's release from prison in 2003 was performed by the State of Wisconsin Crime Laboratory.

The court further concludes that evidence relating to the following items would not be admissible, as any relevance it may have is outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or considerations of undue delay and waste of time:

1. The amount of money either claimed by Steven Avery in the 2004 civil rights lawsuit or the amount for which the lawsuit was settled. Since Lenk and Colborn were not parties to the lawsuit and would presumably have been covered under the County's liability insurance had they been named as parties, the damages claimed or the settlement reached have no measurably probative value relating to their alleged bias. Any marginal probative value of such evidence is substantially outweighed by danger of unfair prejudice, confusion of the issues and potential to mislead the jury. Since Lenk and Colborn had no personal money at

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stake, and the reason for the evidence relates to their motives, the evidence is not admissible.

2. The precise number of years Mr. Avery spent in prison as a result of his 1985 wrongful conviction. A discussion of the time Avery spent in jail would require the jury to learn that he was also serving a sentence on a felony for which he was lawfully convicted and would draw undue attention to his criminal record.

3. The history of Mr. Avery's challenges to his 1985 conviction, except for the information listed above which is specifically admissible. Because the evidence is being admitted as it relates to bias on the part of James Lenk or Andrew Colborn, other information relating to the 1985 wrongful conviction or Avery's civil rights lawsuit would have little or no probative value. Whatever probative value the evidence had would be substantially outweighed by the danger of unfair prejudice, confusion of the issues and misleading the jury. What's important is not the history of the defendant's wrongful conviction, but the role Lenk and Colborn may have played in it that could cause them to be biased.

4. The number of lawyers representing the parties to the 2004 lawsuit. This information is simply irrelevant.

5. The fact that Sheriff Petersen on or about September 12, 2003 issued a written directive to the Manitowoc County Sheriff's Department that its personnel were not to discuss Steven Avery. Sheriff Peterson is not alleged to have played

any role in the investigation of the charges the defendant now faces and his directive has no particular relevance to bias on the part of Lenk or Colborn.

The court is satisfied that the facts listed above which the court will permit the defendant to introduce on the issue of bias, coupled with a cautionary instruction to the jury as to the use which they are permitted to make of the evidence, will allow the defendant to adequately pursue his claim of bias against James Lenk and Andrew Colborn without unfairly prejudicing the State, confusing the issues or misleading the jury.

Dated this 30th day of January, 2007.

BY THE COURT:



Patrick L. Willis,
Circuit Court Judge

EXHIBIT 16

STATE OF WISCONSIN,
Plaintiff,

vs.

STEVEN A. AVERY,
Defendant.

MANITOWOC COUNTY
STATE OF WISCONSIN
FILED

JAN 30 2007

Case No. 05 CF 381

CLERK OF CIRCUIT COURT

**DECISION AND ORDER ON STATE'S MOTION
TO EXCLUDE BLOOD VIAL EVIDENCE**

On January 3, 2007 the State filed a Motion to Exclude Blood Vial Evidence, or in the alternative, to Analyze the Vial of Blood. The court issued a Decision and Order Denying the State's Motion for Continuance to Analyze Vial of Blood on January 9, 2007. Prior to ruling on the State's motion to exclude blood vial evidence, the defendant was given an opportunity to submit an offer of proof in support of his request to admit blood vial evidence. The defendant submitted the "Defendant's Statement on Planted Blood" on January 12, 2007. The State filed its "Reply to Defendant's Statement on Planted Blood" on January 16, 2007. The court heard oral argument from the parties at a motion hearing on January 19, 2007.

The blood vial which is the subject of the State's motion is a vial of the defendant's blood located in the Manitowoc County Clerk of Circuit Court office

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(1)

in the file for Case No. 85 FE 118. The defense seeks to introduce the vial as evidence suggesting that members of the Manitowoc County Sheriff's Department planted blood from the vial in Teresa Halbach's vehicle. There was blood found in her vehicle which was subsequently identified as the defendant's blood by the Wisconsin State Crime Lab.

It is well settled that defendants in a criminal case have a constitutional right to present a defense. "Whether rooted directly in the due process clause of the 14th Amendment or in the compulsory process or confrontation clauses of the 6th Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." *Holmes v. South Carolina*, 126 S. Ct. 1727, 1731 (2006) (other citations omitted). The right to present a defense is not without limitations. "State and federal rule makers have broad latitude under the constitution to establish rules excluding evidence from criminal trials." *Id.* In this case, the defendant seeks the introduction of the blood vial evidence to be used as part of a "frame-up" defense. Specifically, the defendant seeks to introduce evidence in order to show that members of the Manitowoc County Sheriff's Department took blood from the blood vial in the Manitowoc County Clerk of Circuit Court office and planted it in Teresa Halbach's vehicle in an attempt to frame him for her death.

The rules governing admissibility of frame-up evidence in Wisconsin are set forth in *State v. Richardson*, 210 Wis. 2d 694 (S. Ct. 1997). The Supreme Court in *Richardson* determined that a criminal defendant is not required to comply with the stricter “legitimate tendency” test set forth in *State v. Denny*, 120 Wis. 2d 614 (Ct. App. 1984), which applies to evidence of third-party liability, when seeking to introduce frame-up evidence. Instead, frame-up evidence is to be analyzed under the Wisconsin Rules of Evidence for relevance, which primarily involves an application of §904.01, 904.02, and 904.03. 210 Wis. 2d at 705-706. To apply these rules, it is necessary to summarize the offer of proof submitted by the defendant.

At oral argument, the defendant identified James Lenk and Andrew Colborn as the sheriff’s department officers he claims were involved in the alleged frame up. The defendant submits that both Lenk and Colborn would have had a motive to plant evidence against him because of their role in his lawsuit against Manitowoc County relating to his wrongful 1985 criminal conviction. Specifically, the defendant offers to prove that both Lenk and Colborn were involved in a 1995 or 1996 telephone call received by the Sheriff’s Department from another law enforcement agency which reported that an inmate had confessed to an assault in Manitowoc County for which another man was incarcerated. Avery asserts he was the wrongfully incarcerated man referred to in the call.

Avery asserts that neither Colborn nor Lenk acted on this report at the time and did not prepare a report of the call until September 12, 2003, the day after Avery's release from prison. Moreover, Avery points out that Lenk and Colborn were deposed in Avery's lawsuit against Manitowoc County only three weeks before Teresa Halbach disappeared. Avery asserts that the County was able to settle its lawsuit on terms favorable to the County after he was charged in this case.

With respect to the blood vial itself, Avery proposes to show that the blood was taken from him in 1996 in connection with his 1985 case and has been present in the Manitowoc County Clerk's office in his file for some time. He indicates there are notations on the vial indicating that it was opened in 2002 in the presence of then Manitowoc County District Attorney E. James Fitzgerald and attorneys for the Wisconsin Innocence Project before being placed back in the file. Since that time, the box and Styrofoam container in which the blood is enclosed have both been unsealed, except for the box being closed with a small piece of Scotch tape. While the blood vial itself was not submitted to the crime lab as part of Mr. Avery's case at the time, James Lenk prepared the transmittal documentation for other exhibits which were submitted to the crime lab in 2002. Avery points out that his file has been directly accessible to members of the public since September, 2003, during which time many members of the media and the public sought to go through the file. Avery notes that until the autumn of 2006, the clerk's office did

not keep any records of individuals who asked for permission to look at the file. Avery concludes that anyone intent on obtaining a sample of his blood could have done so. In addition to the public access to the file, he points out that the Manitowoc County Sheriff's Department has a key to courthouse offices and could have obtained access to the blood vial after hours, had a member of the department wished to do so. He notes that that when the vial was inspected on December 14, 2006 it had a lavender rubber-type stopper not sealed with any tape and the stopper has a needle hole through it.

With respect to this case, Avery asserts that both Mr. Lenk and Mr. Colborn showed a particular interest in the case from the time Teresa Halbach was first reported missing on November 3, 2005. He notes that Colborn participated in a visit to Avery and interview with him on the evening of November 3, 2005. Lenk participated in a similar inquiry on the morning of November 4, 2005. Avery asserts that Lenk's whereabouts for portions of November 5, 2005, the date Teresa Halbach's vehicle was discovered on the Avery property by searchers, are unaccounted for. Avery notes that Lenk claimed to have worked ten hours for the sheriff's department on November 5, 2005 but that he testified he did not get to the Avery property on that date until 6:30 or 7:00 p.m. in the evening. Records show he left the Avery property at 10:41 p.m. He states that Lenk admitted approaching Halbach's vehicle on November 5, but denied touching it. Avery attaches further

significance to the fact Lenk volunteered to help search Steven Avery's residence on November 5 after control of the investigation into Teresa Halbach's disappearance had been turned over to the Calumet County Sheriff's Department. Avery believes Lenk should not have been volunteering to search anything to avoid the appearance of a conflict of interest. Avery also believes it is important to note that neither Lenk nor Colborn informed Calumet County Sheriff's officials that they gave deposition testimony in Avery's civil lawsuit approximately three weeks earlier.

Avery states that Mr. Lenk played a significant role in the investigation. He discovered a key belonging to Teresa Halbach's vehicle in Avery's residence after the residence had been searched a number of times earlier by other officers. None of those officers observed the key that Lenk reported was in plain view on the floor when he discovered it. Avery notes that the key represents the only piece of physical evidence found inside his residence which connects him to the crime. He acknowledges that the key, when examined at the Wisconsin State Crime Lab, was found to contain his DNA, but not Teresa Halbach's.

Lenk also participated in the search of the Avery property in March of 2006, following receipt of Brendan Dassey's statements. Avery finds it significant that the day after Lenk visited the Avery property other officers found a small bullet fragment in a detached garage near Steven Avery's residence that was found to

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contain a profile consistent with Teresa Halbach's DNA. Avery points out that the garage had been searched before without the bullet being discovered and appears to suggest that Lenk may have planted the bullet, though Avery points out there are other exculpatory explanations for the presence of the bullet as well.

Avery acknowledges that he has no direct proof that Lenk, Colborn, nor any other Manitowoc County Sheriff's Department officer took blood from the file in the Clerk of Court office or planted blood from the vial in Teresa Halbach's vehicle. He relies on the circumstantial evidence summarized as sufficient to justify the admission of the blood vial and other related evidence to support his position.

The parties agree that Teresa Halbach's car was discovered on the Avery property by volunteer searchers Pamela and Nicole Sturm at about 10:30 a.m. on November 5, 2005. The first law enforcement officers arrived on the scene a little after 11:00 a.m. A number of officers were present on the Avery property prior to the time the vehicle was removed by Wisconsin Crime Lab personnel at 8:40 p.m. on November 5, 2005. Avery points out that while no one is reported to have entered Teresa Halbach's vehicle before it was removed by crime lab personnel, no one who examined it from the outside reported seeing any blood stains inside. As of this time, the court has not been informed by either side how big the blood stains would have been.

The defendant's written "*Richardson Proffer*" was not specific in describing exactly what members of the Sheriff's Department were alleged to have been involved in any frame-up, when they were alleged to have obtained the blood from the vial in the court file, nor when they would have planted the blood in Teresa Halbach's vehicle. Based on the oral argument presented on January 19, 2007, the court understands Mr. Avery's position now to be that sometime between November 3, 2005, the date Teresa Halbach was reported missing, and November 5, 2005, the day her vehicle was discovered, either Lenk, Colborn or both made their way in to the Manitowoc County Clerk of Courts office, located the 1985 file, and removed blood from the vial in the file. One or both of them then, sometime between 11:00 a.m. and 8:40 p.m. on November 5, 2005, gained access to Teresa Halbach's vehicle and planted the blood. The court does not understand Avery will be attempting to implicate any members of the Sheriff's Department other than Mr. Lenk or Mr. Colborn in any frame-up.

The State disputes a number of the factual assertions submitted to the court by the defendant. Specifically, the State provided a timeline in its Reply to Defendant's Statement on Planted Blood asserting that officers other than Lenk and Colborn were standing guard over Teresa Halbach's vehicle from the time police first arrived on the scene until it was removed by Wisconsin State Crime Lab personnel. The State also asserts that the defendant's DNA was found on the

hood latch of Teresa Halbach's vehicle besides being found in her vehicle. The State asserts that the defendant's DNA found on the key to Teresa Halbach's vehicle was not blood, but came from another biological source. The State intends to offer evidence that the needle hole in the top of the blood vial was placed there by the phlebotomist who withdrew Mr. Avery's blood back on January 2, 1996. The State disputes other assertions by Mr. Avery as well, which the court will not dwell on here. It is sufficient to note that the court cannot reject the defendant's offer of proof simply by determining that the State's offer is entitled to more weight. That is specifically the type of approach which was rejected by the United State Supreme Court decision in *Holmes v. South Carolina*, 126 S. Ct 1727 (2006).

The first step under the *Richardson* test is to determine whether the blood vial evidence is relevant. This involves a determination of whether the frame-up evidence is a fact of consequence to the determination of the action and, if it did concern such a fact, whether it made the existence of that fact more or less probable. *Richardson*, at 705-706.

There is little doubt that the alleged frame-up evidence concerned a fact of consequence to the determination of this action. If the defendant's blood found its way to Teresa Halbach's vehicle not by anything he did, but because it was placed there by a member of the Manitowoc County Sheriff's Department after Ms. Halbach's disappearance, it would clearly concern a fact of consequence to the

determination of this action. The court is certain the State will offer at trial that the presence of the defendant's blood in Teresa Halbach's vehicle is strong evidence that he was responsible for or involved with her death.

The next step of the relevancy test is to determine whether the offered frame-up evidence has any tendency to make a consequential fact more or less probable. *Richardson* instructs that "the 'any tendency' standard reflects the broad definition of relevancy and the resulting low threshold for the introduction of evidence that the relevancy definition creates." *Richardson*, at p. 707. The State has argued vigorously that the evidence should be excluded because it has no tendency to make a consequential fact more or less probable. There is no doubt that the conclusion that the evidence was planted is a consequential issue in the case, but the question is whether the evidence offered has a tendency to make that fact more or less probable. Among the facts not offered by the defense is how Lenk or Colborn would have gained knowledge as to the presence of the blood in the Clerk of Circuit Court office. The defendant offers that Lenk prepared paperwork for the transmission of other evidence to the State Crime Lab in 2002, but does not explain how Lenk would have gained knowledge of the blood vial in the file, a piece of evidence that was not transmitted. There is no factual evidence other than the defendant's argument that it was possible to support the proposition that someone actually removed any blood from the vial in the Clerk of Circuit

Court office. In addition, there is no direct evidence offered to explain how either Lenk or Colborn would have planted the blood in Teresa Halbach's vehicle, other than allegations that one or both of them may have had an opportunity to do so. Among the other limitations on the probative value of the offered evidence is a fact pointed out by the State at oral argument: How could Lenk or Colborn have known that Teresa Halbach was dead at the time they are alleged to have planted the defendant's blood in her vehicle? Under the defendant's theory, either Lenk, Colborn, or both would have had to have formulated a plan involving their own commission of serious felonies and executed that plan within a very short period of time, motivated apparently only by their embarrassment for not allegedly having acted more responsibly on information that could have led to Mr. Avery's exoneration back in 1995 or 1996. The court agrees with the State that as the defendant's offer of proof has developed to this point, it is of marginal probative value to support the proposition for which it is offered. That being said, the standard for materiality in Wisconsin is very low and the court cannot say the evidence is so devoid of probative value that it does not meet the relevancy test. The defendant essentially accused Lenk and Colborn of contributing years to his wrongful conviction sentence because of their alleged failure to act on information that could have led to his freedom earlier. Their testimony relating to his allegations shortly before Teresa Halbach disappeared could have provided a

motive for them to falsify evidence. The defendant has offered some evidence that they could have had an opportunity to act on that motive, had they desired to do so. The evidence offered to this point is not exactly overwhelming. However, to paraphrase *Richardson*, the court concludes that “the frame-up evidence would have some tendency, however small, to make it less probable that” Avery committed some or all of the crimes charged. *Richardson*, at 707.

The last step of the *Richardson* test requires the court to consider is whether the evidence should be excluded under §904.03. That statute reads as follows:

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence.”

As the court has already noted, the probative value of the offered evidence in this case is not particularly strong. *Richardson* pointed out that where “the probative value of the frame-up evidence is relatively slight, it follows that the level of dangers and considerations needed to substantially outweigh that probative value is correspondingly lower.” *Richardson*, at 709.

In his Statement on Planted Blood, the defendant appeared to be arguing that any member of the Manitowoc County Sheriff’s Department may have taken blood from the vial in the Manitowoc County Clerk of Circuit Court office and that the blood may have been taken at any time between the time the vial was opened by

the Manitowoc County District Attorney and an attorney for the Wisconsin Innocence Project in 2002 and the time it was alleged to have been planted in Teresa Halbach's vehicle. Were these facts the entirety of the defendant's offer of proof, the court would find that the evidence should be excluded under §904.03 because of confusion of the issues as well as considerations of undue delay and waste of time. Such an offer could well include parading every member of the Manitowoc County Sheriff's Department to the witness stand in order to demonstrate that none of them were involved in taking blood from the vial. In addition, the State would be left with attempting to provide evidence showing that no blood was taken from the vial for a period of years. The defendant has offered no explanation as to why someone would have wanted to take Mr. Avery's blood out of the vial before the time Teresa Halbach disappeared.

The defendant has now narrowed his alleged frame-up evidence to a two day period of time. He also alleges that only two individuals were involved. Specifically, the defendant now seeks to offer evidence that either Lenk or Colborn or both removed blood from the vial in the Clerk of Circuit Court office sometime between November 3, the day on which Teresa Halbach was reported missing, and November 5, the date on which her vehicle was discovered, and then planted the blood in the vehicle. With these limitations, the court is satisfied that the evidence offered by the defense will not result in undue delay, waste of time or confusion of

the issues. Whatever the probative value of the offered evidence may be, the time needed by either side to present their evidence will be manageable and the court is satisfied that the issue will be focused narrowly enough to enable the jury to evaluate the evidence without being confused.¹

A few other points should be noted. One of the State's arguments was that Lenk and Colborn could not possibly have been involved in the frame-up unless they were also involved in the murder of Teresa Halbach. Avery asserts that he will be making no claim that any member of the Manitowoc County Sheriff's Department was involved in Teresa Halbach's murder. The State is free to argue its theory to the jury, but the court is not going to address an argument attributed to the defendant which the defendant is not making.

The State also raises the issue of unfair prejudice because of its inability to test the vial of blood for the presence of EDTA. This issue has already been addressed by the court to a large extent in its prior decision on the State's motion to adjourn the trial. The court certainly can entertain any request by the State to test the blood at this time, should such a request be pursued.

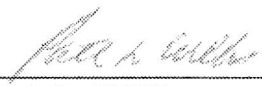
¹ The court is aware from its notes that at oral argument the defendant tried not to close the door completely on offering evidence that blood may have been taken at some other time or by someone else. However, the defense has made no offer of proof concerning any such alternate scenario other than speculation. The court is allowing the blood vial evidence in only as it relates to the facts specifically advanced by the defendant that the blood would have been taken by either Lenk or Colborn sometime between November 3 and November 5.

ORDER

Subject to the limitations set forth in its decision, the court orders that the defense may present evidence relating to the blood vial in Case No. 85 FE 118.

Dated this 20th day of January, 2007.

BY THE COURT:



Patrick L. Willis,
Circuit Court Judge

EXHIBIT 17

STATE OF WISCONSIN

v.

Case No. 05 CF 381

STEVEN A. AVERY

ORDER REGARDING TRIAL ADMINISTRATION

The above-entitled action is scheduled for a six week jury trial to begin February 5, 2007. There has been significant public interest in this case and the courtroom does not have sufficient seating capacity to hold the anticipated audience for the trial. All hearings in the case have been attended by representatives of the media and many hearings have been televised live.

The Court is mindful of the need to balance (1) the constitutional right of the defendant to a fair trial, (2) the public's right to know and the constitutional and statutory rights of the media to attend the proceedings, and (3) the court's own interest in maintaining order and an environment where jurors can easily pay attention to the witnesses and focus on their responsibilities without undue distractions. To address these important considerations, the Court has consulted with courtroom security personnel, the lawyers on this case, the media coordinator and other members of the media, and Amanda Todd, the Court Information Officer.

To assure that the proceeding protects the right of the parties to a fair trial, the right of the public and the media to have access to the trial, and the right of the jurors to be able to focus on their responsibilities, the Court hereby exercises its inherent authority and its authority under SCR 61.01(1).

IT IS HEREBY ORDERED AS FOLLOWS:

1. **Courtroom Seating.**

(a) **Seating for Defendant and Victim Families.** The first two rows of seats behind the defense table will be reserved for members of the defendant's family and the first two rows of seats immediately behind the prosecution table will be reserved for members of the victim's family.

(b) **Media Seating.** Members of the media shall be permitted in the enclosed media room at the rear of the courtroom as space permits. Media members shall also be permitted to observe court proceedings via closed circuit television in the media room (Room 025) located in the Calumet County Courthouse. Members of the media who choose to view the proceedings from the open portion of the courtroom may do so, but shall be subject to the same availability requirements and other restrictions applicable to members of the general public.

Media parking arrangements shall be handled by the Calumet County Sheriff's Department.

(c) **Public Seating.** The public may be seated anywhere other than in the seats reserved for the defendant's and victim's families. Members of the public who cannot find a seat in a pew shall not be permitted in the courtroom. The public will not be permitted to stand in the back or along the side of the courtroom. The public will not be permitted to stand at the back of the courtroom or along the sides of the courtroom. Lawyers not involved in this case shall be treated as members of the public.

Spectators will not be permitted to wear clothing expressing sympathy or support for either the defendant or the victim in the case. Wristbands not visible to the jurors are not prohibited. Persons wearing any such clothing, including visible arm bands, emblems or any other similar attire will not be permitted in the courtroom.

(d) **Seating in Front of the Bar.** No one other than the defendant, the attorneys and their assistants shall be permitted to sit in the chairs in front of the bar and behind counsel table without specific authorization by the court.

(e) **Entry and Exit During Court Proceedings.** Spectators, including members of the media outside the media room, and the public shall be seated before court is in session during any portion of the trial. No entry to the courtroom shall be permitted while court is in session. Persons leaving the courtroom during the trial must wait until the next recess before reentering. Approximately two minutes before the end of each recess the bailiff/court security personnel shall attempt to invite any members of the media or the public who have left the courtroom to return to their seats.

2. **General Restrictions.**

(a) **Handbags, Backpacks, etc. Prohibited.** Handbags, backpacks and other carry-ins of any kind are prohibited in the courtroom.

(b) **Cell Phones.** No spectator or member of the media may possess a cell phone in the courtroom, including the media room behind the glass.

(c) **Computers.** Members of the media who sit in the media room behind the glass may utilize computers, including laptops. Still photographers permitted in the courtroom may utilize a laptop computer for the purpose of transmitting photos, provided the computer is kept out of view. Otherwise, no spectators or members of the media are allowed to bring any computers in the courtroom.

3. **Courtroom Media Coverage.**

(a) **Television Camera.** Pursuant to SCR 61.03(1) and (2), based on space limitations in the courtroom and the need to protect juror identity, one traditional television camera will be permitted in the courtroom to be located in the media seating area in the rear of the courtroom. The court may also permit a remotely operated camera in the front of the

courtroom, subject to any restrictions set by the court. As they have done previously, all television media shall have access to and share the video received from the permitted cameras. Members of the television media shall designate and agree on the operator of the cameras permitted. In the absence of an agreement by the television stations and/or determination by the media coordinator, then no television cameras will be permitted in the courtroom. Unless otherwise prohibited by the court, live coverage of the trial shall be permitted except during jury selection.

(b) **Portion of Proceedings Which May be Televised.** The television camera shall not be set up nor disassembled at any time while the Court is in session. Cameras can be set up during a court recess, but cameras shall not be operated during a recess in the court proceeding. "Recess" means any time the judge is not on the bench. The camera shall not at any time photograph individual jurors. Pursuant to SCR 61.07, audio pickup, broadcast or recording of a conference in a court facility between an attorney and client, co-counsel, or attorneys and the trial judge held at the bench is not permitted.

(c) **Restrictions on Camera Coverage.** Pursuant to SCR 61.11(2), individual jurors shall not be photographed. In addition, no television camera or still camera shall take any close up shots of counsel table such that any detail concerning any writings on the table can be identified.

(d) **Audio Feed.** If one or more media representatives needs an audio feed, then only one audio system shall be set up for any and all media who need an audio feed. (They shall share one audio feed.) It may be connected directly into the court's sound system.

(e) **Still Photographers.** Subject to any further orders of the court, the court will permit up to two (2) still photographers, each using not more than two (2) cameras, in the courtroom at any one time during the trial. All cameras must have a silent shutter and no flash photography is allowed. The photographers are not to move about while court is in session.

They will be permitted to stand in one location outside the seating area at the direction of security personnel. They shall conduct themselves so as to not become a distraction to the trial participants, the Court, and/or the jurors.

(f) **SCR Chapter 61.** All members of the media are cautioned to be familiar with the requirements of SCR Chapter 61 “Rules Governing Electronic Media and Still Photography Coverage of Judicial Proceedings.”

(g) **Interviews.** No media interviews or videotaping shall be conducted in the courthouse except in the media room, Room 025.

(h) **Juror Contact Prohibited.** Members of the media are prohibited from contacting prospective jurors in any way until the jury is selected and from contacting any person selected as a juror until after the conclusion of the trial.

4. **Media Inquiries.** All communication between representatives of the media and the court shall come through the Media Coordinator, Fred Barry. Media representatives may contact Mr. Barry at: 920-682-0351, e-mail: news@womtradio.com.

5. **Court Security Officer Authority.** Any spectator who creates a visual or auditory disturbance of the court proceedings may be removed from the courtroom and/or the building at the discretion of court security personnel.

6. **Other Courthouse Areas.** Security officers may quiet or disperse such members of the public so they do not hinder other members of the public and court staff from having access to the building and to the Clerk of Courts office and the other courtrooms. Eating in the hallways of the courthouse is prohibited.

7. **Media Access to Court Documents.** The media can be provided with copies of open records documents upon request, through the Clerk of Court office, at \$1.25 per page. Sealed documents will not be provided to the media and are not made available for public inspection. Documents can be faxed to the media upon request. There is a \$3.00 fax fee, plus

\$1.25 per page. Advance payment is required for all records requests. Payment for copies can be made by cash, check or money order. Payments can be made by credit card online at www.manitowocounty.org, by clicking on the payment link, or by a toll-free, operator assisted call directly to PayTRUST Solutions, Inc., at 1-866-480-8552. There will be a convenience fee charged by PayTRUST Solutions for processing the credit card payment, which is based upon the amount being charged. There is a public access computer available in the Clerk of Court lobby to accommodate online payments.

Manitowoc County Clerk of Court does not have a scanner; cannot e-mail documents to media.

The media will have limited access to exhibits during the course of the trial, and said access may further limited by availability of staff to accommodate the photocopying requests. Special arrangements may need to be made for any substantial amounts of photocopying. Special arrangements will also need to be made directly with the Clerk of Court to provide media access to tangible evidence, such as photographs, videotapes and physical items. EXHIBITS ARE NOT TO BE MADE AVAILABLE TO THE MEDIA UNTIL THEY HAVE BEEN ADMITTED INTO EVIDENCE AND HAVE BEEN SEEN BY THE JURY.

Requests for copies can be made:

- (1) in person at the Clerk of Court office at 1010 South Eighth Street, Room 105, Manitowoc, Wisconsin;
- (2) by telephone at (920)683-4030;
- (3) by fax at (920)683-2733; or
- (4) by e-mail to Lynn.Zigmunt@wicourts.gov

Dated this 19th day of January, 2007.

BY THE COURT:

Patrick L. Willis
Circuit Court Judge
Branch 1

Distribution:

Sheriff
Court Security Officers
Bailiffs
Other Branches of Circuit Court
Court Information Officer

Clerk of Courts
District Attorney
Defense Counsel
Media Coordinator

EXHIBIT 18

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

3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL
5 vs. TRIAL - DAY 1
Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 DATE: FEBRUARY 12, 2007

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

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

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

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

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

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

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 TRANSCRIPT OF PROCEEDINGS

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

Opening
Statement

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

5 (Jury not present.)

6 THE COURT: Five minutes, counsel.

7 ATTORNEY KRATZ: That's fine.

8 (Recess taken.)

9 (Jury present.)

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

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

17 MR. AVERY: Good morning.

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

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

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

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

14 ATTORNEY GAHN: Good morning.

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

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

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

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

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

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

19 MR. WIEGERT: Good morning.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 They have already known the kinds of

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

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

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

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

1 the crime.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Who is this man? The Judge told you

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

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

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

25 Now, we understand and the evidence is

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 permission and did search the Avery salvage
2 property.

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

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

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

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

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

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

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

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

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

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

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

1 deceased person has been.

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

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

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

1 the back of that SUV.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 on the 31st of October.

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

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

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

25 Also on Monday, a burn barrel was

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

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

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

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

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

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

25 More detailed searches were also

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 And what Tim Austin will tell you is

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 And on the 3rd, Teresa Halbach is
9 reported missing to law enforcement authorities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 that portion of the Toyota key that was found.

2 So that's part of the science.

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

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

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

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

1 comparisons.

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

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

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

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

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

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

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

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

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

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

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

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

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

16 Dr. Eisenberg, then, with the assistance
17 of a gentleman by the name of Jeffrey Jentzen, is
18 the Milwaukee County Medical Examiner.

19 Dr. Jentzen, has -- and you will hear he has a
20 great deal of experience nationally, a national
21 expert in things like gunshot wounds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Those are the little brass casings that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 We have interior photos as well. Photos
11 of the inside of Mr. Avery's garage. Now, you
12 will note a couple things about this photo.
13 First of all, you will note how cluttered, to say
14 the least, that it is. And this might help you
15 understand how difficult it was for officers, not
16 knowing what they are looking for, in November,
17 to kind of go through this garage, not knowing
18 that the shooting -- not knowing that the
19 shooting happened in this garage. The officers
20 didn't really know what they were looking for.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (Jury not present.)

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

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

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

10 ATTORNEY STRANG: I have just one quick --

11 THE COURT: Go ahead.

12 ATTORNEY STRANG: -- matter if I might.

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

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

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

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

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

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

25 The other item about during the victim's

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

8 ATTORNEY STRANG: No.

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

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

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

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

19 (Noon recess taken.)

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

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

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

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

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

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

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

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

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

1 And in 1996, here, just a few miles
2 north of here, Teresa Marie Halbach was learning
3 to drive at age 16, I assume. And the irony --
4 Could you hear me before? Can you hear
5 me now?

6 THE COURT: We can hear you better now.

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

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

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

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

25 And the person from the Manitowoc County

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 and beat again.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the bell rings and kids run out the door.

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

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

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

25 Teresa Halbach does her business. And

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Avery.

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

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

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

25 As you might expect, law enforcement

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

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

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

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

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

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

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

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

25 And he has the ability to change his

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

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

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

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

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

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

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

1 Avery lives.

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

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

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

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

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

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

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

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

1 officers working this property.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 burnt bone fragments conclusively to Teresa
2 Halbach.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 It is perfectly clear to anyone around

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

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

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

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

1 It should be there. It must be him.

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

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

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

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

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

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

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

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

14 (Tape recording played.)

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

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

20 DETECTIVE REMIKER: Madison response
21 team.

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

25 ATTORNEY STRANG: It cut off. Sorry about

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

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

12 (Tape recording played.)

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

15 DETECTIVE REMIKER: Not yet.

16 DETECTIVE JACOBS: Is he in custody?

17 DETECTIVE REMIKER: Not yet, nothing
18 happening.

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

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

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

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

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

19 (Tape recording played.)

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

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

25 DISPATCH: I don't believe so.

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

3 (Tape recording starts playing again.)

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

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

9 DISPATCH: I don't believe so.

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

12 DISPATCH: I have no idea.

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

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

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

4 (Tape recording played.)

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

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

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

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

16 DETECTIVE JACOBS: All right. Thank
17 you.

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

20 DETECTIVE JACOBS: Bye.

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

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

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

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

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

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

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

14 (Jury not present.)

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

17 (Recess taken.)

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

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

22 THE CLERK: Please raise your right hand.

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

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

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

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

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

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

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

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

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

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

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

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

20 A. That's correct.

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

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

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

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

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

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

8 A. You said her involvement?

9 Q. Yes.

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

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

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

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

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

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

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

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

1 A. I don't think on her computer, no.

2 Q. Okay. And you didn't have her voice mail?

3 A. I said I did -- did have her voice mail password.

4 Q. You did have her voice mail password. Okay. Did
5 you check voice mails?

6 A. I did.

7 Q. Do you remember when you did that?

8 A. It was probably Thursday evening, early evening.

9 Q. After your mom --

10 A. Yes.

11 Q. -- had --

12 A. Yes.

13 Q. -- filed a missing persons report?

14 A. Yes.

15 Q. Okay. So I take it you were at work earlier that
16 day?

17 A. Correct.

18 Q. And the missing person report was sort of at the
19 end of the day, 5:00 or something?

20 A. Correct.

21 Q. Were you familiar enough with Teresa Halbach's
22 everyday stuff to know what -- what she carried
23 keys to?

24 A. I mean, yes, I think I would have an idea of what
25 keys she would have, yes.

EXHIBIT 19

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

3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL
5 vs. TRIAL - DAY 7
6 Case No. 05 CF 381

7 STEVEN A. AVERY,

8 DEFENDANT.

9 DATE: FEBRUARY 20, 2007

10 BEFORE: Hon. Patrick L. Willis
11 Circuit Court Judge

12 APPEARANCES: KENNETH R. KRATZ
13 Special Prosecutor
14 On behalf of the State of Wisconsin.

15 THOMAS J. FALLON
16 Special Prosecutor
17 On behalf of the State of Wisconsin.

18 NORMAN A. GAHN
19 Special Prosecutor
20 On behalf of the State of Wisconsin.

21 DEAN A. STRANG
22 Attorney at Law
23 On behalf of the defendant.

24 ATTORNEY JEROME F. BUTING
25 Attorney at Law
On behalf of the defendant.

STEVEN A. AVERY
Defendant.
Appeared in person.

TRANSCRIPT OF PROCEEDINGS

Reported by Diane Teshneck, RPR

Official Court Reporter

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(Jury present.)

THE COURT: The Court calls State of Wisconsin vs. Steven Avery, Case No. 05 CF 381. We're here this morning for the continuation of the trial in this matter. Will the parties state their appearances for the record, please.

ATTORNEY KRATZ: Good morning, Judge, the State appears by Calumet County D.A. Ken Kratz, Assistant Attorney General Tom Fallon, Assistant D.A. Norm Gahn, appearing as Special Prosecutors.

ATTORNEY BUTING: Good morning, your Honor, Attorney Jerome Buting and Dean Strang appearing with Mr. Avery today.

THE COURT: All right. I believe when we left yesterday the State had completed it's direct examination of Officer Tyson and the Defense will begin cross-examination today. Is the witness here?

THE CLERK: Please raise your right hand.

SERGEANT WILLIAM TYSON, called as a witness herein, having been first duly sworn, was examined and testified as follows:

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

THE WITNESS: William Tyson, T-y-s-o-n.

CROSS-EXAMINATION

1 BY ATTORNEY BUTING:
2 Q. Good morning, Sergeant.
3 A. Good Morning.
4 Q. Let me start right off by directing your
5 attention to November 5th, first arrival at the
6 scene, okay, remember that?
7 A. Yes, sir.
8 Q. You testified yesterday that you arrived at, I
9 believe about 2:45. It was about five minutes to
10 three by the time you got up to where the RAV4
11 was located; does that fit with your
12 recollection?
13 A. Correct.
14 Q. All right. And I don't know if you need to
15 refresh your recollection with your report, just
16 let me know if you do, okay?
17 A. Okay.
18 Q. But from what I understand, it appears that you
19 left that area at 3:10 p.m., just 15 minutes
20 later?
21 A. Correct.
22 Q. You were called back to the command center to do
23 some other assignments?
24 A. Correct.
25 Q. And during that 15 minutes, when you first

1 arrived, was the RAV4 covered with a tarp or was
2 it uncovered?

3 A. It was uncovered.

4 Q. Okay. But during that 15 minutes is the period
5 of time when the tarps were put over the RAV;
6 isn't that right?

7 A. Yes, they were attempting to get that tarp in
8 place.

9 Q. Okay. And you testified about that and you were
10 actually one of the people who helped put it over
11 the RAV4?

12 A. I never physically touched the tarp. I did
13 assist with getting some objects, I believe, from
14 a vehicle that was right next to it.

15 Q. Okay.

16 A. To secure it down, to prevent it from blowing
17 away.

18 Q. Okay. So you were just helping as others were
19 building this, like, tent, like, object over the
20 RAV?

21 A. That would be accurate, yes.

22 Q. Okay. And you were taking extreme care,
23 everybody was taking extreme care so that it
24 wouldn't actually -- the tarp wouldn't actually
25 touch the RAV4 itself?

1 A. Yes, all the officers were very conscious of that
2 fact.

3 Q. So there was space around it, underneath the
4 tarp, right?

5 A. They were trying to do the best they could to
6 make sure that the top of the vehicle was not
7 touched by the tarp.

8 Q. Okay. And that was completed, that operation of
9 putting the tarp over it was completed by the
10 time you were called away to the command center,
11 right?

12 A. They were still working on it when I was relieved
13 of my duties. There were some issues, the winds
14 were picking up. I know they were trying their
15 best to get that situated. I don't believe, to
16 the best of my recollection, that that was
17 totally finished by the time I was released.

18 Q. Okay. But largely covered, being able to weigh
19 it down still; is that the gist of it?

20 A. I think that would be accurate.

21 Q. Making some adjustments, perhaps?

22 A. That would be accurate.

23 Q. Okay. So, if -- if we heard other testimony that
24 showed that the RAV4 was still completely covered
25 with the tarp at 4:16 p.m., then that would mean,

1 for at least one hour, that RAV4 was covered;
2 would that be right?

3 A. Yeah, it was, you know, like I said, I left at 10
4 minutes after three, they were still doing some
5 adjustments to it. So, yeah, if you heard
6 testimony at 10 after 4, I was not down there so
7 I don't know for sure.

8 Q. So you never went back to that site?

9 A. Correct.

10 Q. The rest of the night you never went back to see
11 the RAV4 yourself?

12 A. I believe later on in the evening, after the
13 canine dogs had searched the area, I was down in
14 that area, but not near the RAV4. I was down by
15 the pond area and through the lanes, but never
16 really directly by the RAV.

17 Q. By the way, did you see -- Can you -- can you
18 tell me when you first saw Lieutenant Lenk at the
19 Avery salvage that day?

20 A. My recollection, the first time I saw Lieutenant
21 Lenk would have been up at the command center on
22 the top of the hill.

23 Q. All right. Well, would that have been the first
24 time you got there, or would that have been
25 later, which time?

1 A. It would have been after I cleared from the
2 Toyota RAV. We were up at the command center.
3 There were officers who I did not know at that
4 time. I never met these officers, was introduced
5 to those officers.

6 Q. Okay. So around 3:15 or so is when you think you
7 were introduced to Lieutenant Lenk up at that
8 command center?

9 A. I can't be sure if he was on scene immediately
10 when I got there, or if he showed up a half hour
11 later. I really don't know for sure what time he
12 showed up on scene.

13 Q. Okay. What about Sergeant Colborn?

14 A. Same would apply to him, I never met Sergeant
15 Colborn before so I didn't know who he was. I
16 was introduced to him, but I can't be certain
17 what time they actually showed up at the scene.

18 Q. All right. Now, when you first arrived at the
19 RAV4 location at approximately 3:00, you were
20 actually the first Calumet officer to relieve any
21 Manitowoc officer from security in that immediate
22 area, right?

23 A. That's my understanding.

24 Q. All right. So that if the first officers --
25 Manitowoc officers arrived at about 11:00 a.m. to

1 3:00 p.m., that means the first four hours that
2 that vehicle was in that location Calumet was not
3 securing it, Manitowoc was securing it, right?

4 A. I don't know exactly who was securing it. All I
5 know is I believe the Manitowoc deputy, if there
6 were other DCI officers there, I really don't
7 know.

8 Q. So you don't know what happened before you came,
9 you just know as far as Calumet goes -- Calumet
10 officers, you were the first?

11 A. That's what I was told.

12 Q. All right. Now, when you went to the Command
13 Post, the first time, when you first checked in
14 at 2:45 or so, you had the -- were you introduced
15 to who was in charge at that point?

16 A. No, my recollection is, is when I arrived with
17 Deputy Bass, I was met by Investigator Wiegert
18 and Steier and they informed me to respond
19 directly down into the junkyard area. I don't
20 believe I got out and socialized with the group
21 at all. It was just, you need to go down there
22 and take care of whatever they need your
23 assistance with.

24 Q. So you weren't told at that time about this
25 decision to transfer authority away from

1 Manitowoc to Calumet County, or were you?

2 A. I was not.

3 Q. All right. That didn't come until later when you

4 went back to the Command Post and were given some

5 search assignments?

6 A. Yes.

7 Q. And you have been with Calumet for how long?

8 A. Approximately 15 years.

9 Q. So you are pretty familiar with the officers in

10 your -- the other deputies and sergeants and

11 detectives on your staff, right?

12 A. Right.

13 Q. And you know which ones are evidence collection

14 people and which ones aren't, right?

15 A. Yes.

16 Q. Some have training in that and some don't, right?

17 A. Correct.

18 Q. But in your department, you mentioned yourself,

19 that you had had some kind of training or

20 experience since 1994?

21 A. Yes.

22 Q. Let me go through a list of some people and see

23 if these aren't evidence collection qualified

24 members of your department. All right.

25 A. Okay.

1 Q. Deputy Kucharski?
2 A. Yes.
3 Q. Deputy Riemer?
4 A. Yes.
5 Q. Investigator Wiegert?
6 A. I don't believe Investigator Wiegert ever had any
7 evidence --
8 Q. Really?
9 A. -- technician class. He did some work with
10 arsons and things like that. He was an arson
11 investigator. He did collect all the evidence at
12 arson scenes.
13 Q. What about Detective Dederling?
14 A. I don't believe Detective Dederling ever had the
15 official evidence class. He may have had some
16 on-the-job training from other officers, but
17 officially I can't testify that he did.
18 Q. Okay. Gary Steier?
19 A. Yes.
20 Q. Jeremy Hawkins?
21 A. Yes.
22 Q. How about Wendy Baldwin?
23 A. I don't believe she had any evidence technician
24 training.
25 Q. Any other evidence technician training officers

1 that you can think of on your force?

2 A. Yes.

3 Q. Who?

4 A. Keith Ristow and Nick Sablich.

5 Q. Okay. So Ristow, Sablich, Hawkins, Steier,

6 Riemer, Kucharski, and yourself?

7 A. Maybe a correction on that, Deputy Sablich didn't

8 obtain his training until after the Avery case,

9 the initial time on scene. He first went through

10 the class after that.

11 Q. All right. So we'll take one away. Six, right?

12 Six evidence qualified technicians, just on the

13 Calumet Sheriff's Department, right?

14 A. That would be correct, with the exception that,

15 like, Investigator Steier, for example, when you

16 are promoted to, like, an investigator position,

17 you have different responsibilities, he doesn't

18 do -- not called out to things like that, for

19 crime scenes for that part. But he is more of an

20 investigator than an evidence collector.

21 Q. Well, hold on just one second there, sir. Let's

22 fast forward here to March 1st and 2nd here for a

23 second. Who was the officer who was collecting

24 evidence on those two days?

25 A. Inside the residence, it was myself.

1 Q. And inside the garage was Gary Steier, was it
2 not?
3 A. He was present. I'm not sure what his
4 responsibilities were in the garage.
5 Q. Well, we'll deal with him later. Anyway moving
6 back, so there's six officers on your force who
7 were evidence collection qualified on November
8 5th, right?
9 A. Correct.
10 Q. And we also know, the very next day, you went out
11 with a team of Manitowoc city police by the name
12 of Jeff Tech, T-e-c-h?
13 A. Correct.
14 Q. Brian Swetlik?
15 A. Correct.
16 Q. And Robert Block?
17 A. Correct.
18 Q. All of whom were evidence collection technicians
19 for that department, right?
20 A. I don't know what their qualifications were. It
21 was explained to me when I first was introduced
22 to them that Brian Swetlik was a detective
23 sergeant; and Jeff Tech was a detective; and Rob
24 Block was a patrol officer and evidence
25 collection --

1 Q. Right.

2 A. -- officer.

3 Q. And they were part of your team the very next
4 day?

5 A. Yes.

6 Q. And they were going around and they were
7 collecting evidence, right?

8 A. Yes.

9 Q. And you wouldn't let somebody collect evidence
10 who wasn't trained to do so, would you?

11 A. Well, I wasn't in charge of calling those people
12 to assist me. If the investigators felt
13 comfortable with them, they would have made that
14 decision. They would know better than I would at
15 that time what their qualifications were. I
16 trusted the decisions that were being made at the
17 command center.

18 Q. All right, sir. So you watched those three
19 officers all day when you were with them, right?

20 A. Which day?

21 Q. November 6th, that's the Manitowoc officers that
22 we're having a little dispute about here:
23 Mr. Tech, Swetlik and Block.

24 A. I was with them.

25 Q. You were them. You never had any concerns about

1 whether they were collecting evidence properly,
2 did you?

3 A. I had no concerns of their abilities.

4 Q. So those three were competent evidence collection
5 people, right?

6 A. They appeared to be, yes.

7 Q. Okay. So, in addition to those two departments,
8 there were numerous other law enforcement
9 officers on site on November 5th; isn't this
10 right?

11 ATTORNEY KRATZ: I'm going to object,
12 Judge. We're assuming a fact that's not in
13 evidence. Mr. Buting is assuming that those three
14 officers were there on the 5th, perhaps you should
15 ask that question before who else was on site on the
16 5th.

17 THE COURT: All right. Mr. Buting, I will
18 ask you to rephrase.

19 Q. (By Attorney Buting)- All right. You don't know
20 who all was on site, but you know some of the
21 officers on site?

22 A. Yes.

23 Q. You know that there were numerous departments
24 represented on site on the 5th, right?

25 A. Yes, there were several.

1 Q. Okay. And you knew that there were Crime Lab
2 specialists on site on November 5th, right?

3 A. Yes.

4 Q. You didn't have any decision making
5 responsibility yourself as to how these teams
6 were put together?

7 A. That is correct.

8 Q. So, specifically, when you went back to the
9 Command Post at around 3:15 or 3:30 on
10 November 5th, that's the time when you were given
11 the assignment to go search places; you were
12 paired up with Lenk, Colborn, and Remiker?

13 A. No.

14 Q. That came later?

15 A. That was later.

16 Q. That's right, you went out with some dogs for
17 awhile, right?

18 A. Well, at 3:00, when I got back, they were
19 orchestrating teams to go do the initial entries
20 into the residences. My responsibility was to
21 find out who was going with who, document the
22 times as they reported back.

23 So when the deputies, our officers,
24 returned back to the command center, they would
25 check in with me, tell me the times that they did

1 entry, if it was forcible entry, non-forcible
2 entry and the time that they exited the
3 residence. So I was keeping a log for them and
4 their times were given to them.

5 Q. Okay. And those were what we heard earlier
6 described as the sweep searches?

7 A. Right.

8 Q. The brief entries?

9 A. Yes.

10 Q. Okay. Then after that, you had a brief period of
11 time where you were with some dog handlers,
12 right?

13 A. I met with the dog handlers, assigned officers to
14 go with the handlers, to take their dogs out,
15 yes.

16 Q. And then you came back and is that when you were
17 then assigned to go to with Lieutenant Lenk,
18 Colborn and Remiker?

19 A. Yes, it was after all that was done.

20 Q. Now, is that the first time that you -- Well, let
21 me ask you this, before November 5th even dawned,
22 did you know about Mr. Avery's lawsuit against
23 Manitowoc County and the sheriff's department?

24 A. Yes.

25 Q. And that -- Would it be fair to say that that was

1 fairly general knowledge among law enforcement
2 officers in the northeast Wisconsin area?

3 A. I don't know if law enforcement officers watch
4 the news like I do, but I was well aware of it.
5 I can't speak for any other officer --

6 Q. All right.

7 A. -- if they were following that story.

8 Q. So, at any rate, before you even got there, you
9 knew about that. And when were you first advised
10 that the -- because of that, the Manitowoc
11 sheriff had transferred authority over to
12 Calumet?

13 A. It was shortly after arriving back at the Command
14 Post around, 3:10. I know the district attorney
15 from Manitowoc County was there; I believe his
16 name is Mark Rohrer; and our district attorney
17 was there; sheriff; and I think there were some
18 high management people within the Manitowoc
19 County Sheriff's Department.

20 Q. All right. And then when you were given the
21 assignment to go into Mr. Avery's residence, this
22 was about 7:30 p.m. on Saturday evening,
23 November 5th?

24 A. Yes, we made entry at 7:30.

25 Q. Okay. So you were assigned shortly before that I

1 assume, right?

2 A. Correct.

3 Q. Who was making that assignment, Mr. Fassbender or

4 Mr. Wiegert?

5 A. To tell you the truth, I don't know which one

6 came up with that assignment. I don't know.

7 Q. Okay. Were they both present?

8 A. They were both in the command center area, yes.

9 Q. All right. And you said on direct that you were

10 advised to watch them, make sure that none of

11 Manitowoc officers were alone in the property?

12 A. That was the initial instruction from the

13 district attorney of Manitowoc County. He made

14 an announcement to all Manitowoc officers, that

15 you are not to be alone on the property, period.

16 Q. Were you there when that was made?

17 A. Yes.

18 Q. Okay. And so was there a discussion of that

19 again with Mr. Wiegert or Mr. Fassbender when you

20 were signed up, paired up with these three

21 Manitowoc officers?

22 A. I don't think that was reiterated; it was well

23 understood.

24 Q. Well, your assignment inside that trailer, the

25 residence, was to, as I recall, was to not

1 actually do the searching yourself, you were just
2 watching, making notes, documenting, right?

3 A. Yes.

4 Q. So of the four officers in that little trailer,
5 only the Manitowoc officers were the ones
6 actually doing the searching, right?

7 A. Right.

8 Q. You were doing the watching, right?

9 A. I was doing the documentation.

10 Q. And the watching, right?

11 A. Yes.

12 Q. You never let them out of your eye sight, did
13 you?

14 A. I cannot sit up here and look at you guys and
15 tell you that three hours inside that residence
16 that I didn't turn my back, walk away, glance
17 away; so I can't say that every second of the
18 close to three hours I was making direct eye
19 contact with them or watching every move they
20 made.

21 Q. Well, you did, I think at one point, describe an
22 incident or moment when --

23 ATTORNEY BUTING: Actually, let's put up --
24 Counsel, I am going to need your indulgence on this,
25 please, because I don't have the computer animated

1 diagram. Would you be able to put that up?
2 ATTORNEY STRANG: I do.
3 ATTORNEY BUTING: Do we? Let me figure out
4 the exhibit number.
5 ATTORNEY FALLON: What exhibit numbers,
6 counsel?
7 ATTORNEY BUTING: We're going to start with
8 102.
9 ATTORNEY FALLON: On the ELMO.
10 ATTORNEY BUTING: Yes.
11 Q. (By Attorney Buting)- Okay. I'm showing you up
12 on the screen here Exhibit 101, previously
13 marked, does that look familiar to you, sir, at
14 least what it depicts?
15 A. Appears to be the Steve Avery residence.
16 Q. And if you could go look at the bedroom area --
17 Actually, I'm going to put up a different one to
18 show you that; 104 is next. Okay. Do you see
19 that?
20 A. Yes.
21 Q. And is that a representation of the bedroom, back
22 bedroom, Mr. Avery's bedroom, and the hallway
23 bathroom area?
24 A. Yes.
25 Q. All right. I apologize for that delay. But, I

1 believe you said that at one point you were
2 watching them so carefully that Mr. Lenk,
3 Lieutenant Lenk, excuse me, walked out of the
4 bedroom into the bathroom area, right?
5 A. Correct.
6 Q. Through this hallway. And you were standing
7 right here at the doorway while they were
8 searching, right?
9 A. Originally, yes.
10 Q. In other words, this bedroom really wasn't even
11 big enough for four grown men to be walking
12 around and doing things, was it?
13 A. With the bed, you know, as I previously had
14 testified, Detective Remiker and Lieutenant Lenk
15 were by the closet area. Sergeant Colborn was up
16 by the desk and bookcase area?
17 Q. All right. So you are indicating the lower part
18 of the --
19 A. Yes.
20 Q. -- is the closet; lower part of this screen here.
21 And the upper is the desk bookcase area?
22 A. Correct.
23 Q. And you were standing in the door?
24 A. Just inside the doorway.
25 Q. Just inside the doorway, right. Okay. But you

1 mentioned that when Lieutenant Lenk went out into
2 the bathroom, you repositioned yourself in the
3 doorway so you could see him in the bathroom and
4 those in the bedroom, right?

5 A. Yes.

6 Q. You were keeping an eye on what was going on with
7 Mr. Lenk and -- Lieutenant Lenk and the other
8 officers?

9 A. I would say I was positioning myself to see if
10 they had located any evidence.

11 Q. Well, and you were also trying to abide by the
12 directive that Manitowoc officers should not be
13 alone in any of this property, right?

14 A. It was more of a documentation type thing. I
15 mean, I did not treat these guys like I did not
16 trust them, okay.

17 Q. Well, let me ask you this, sir. You knew that
18 the district attorneys told those officers not to
19 be alone on any property, right?

20 ATTORNEY KRATZ: Mischaracterization,
21 Judge, he said the Manitowoc County district
22 attorney, if he could rephrase the question.

23 ATTORNEY BUTING: I don't particularly care
24 which district attorney, it's a district attorney.
25 All right.

1 Q. (By Attorney Buting) - You knew that?
2 A. Yes.
3 Q. You knew that it was important to the
4 prosecution, or some attorneys on site, that
5 these officers not be alone anywhere on that
6 Avery property, right?
7 A. Yes.
8 Q. And you knew that this was Mr. Avery's trailer?
9 A. Yes.
10 Q. And that if anything, of all the places that they
11 should not be alone, it would be in Mr. Avery's
12 trailer, right?
13 A. We did not know that on that day.
14 Q. Mr. Avery was the one who was suing them, right?
15 You knew that?
16 A. I was aware of that fact, yes.
17 Q. You knew that, that's right. And you knew that's
18 why Manitowoc recused themselves, or transferred
19 authority over to Calumet, right?
20 A. Yes.
21 Q. It was because of this man right here, right?
22 A. I believe that's correct.
23 Q. And it was this man right here's trailer that you
24 were in?
25 A. Yes.

1 Q. And so that, of all places, you knew was
2 important that you make sure that these Manitowoc
3 officers not be alone?
4 A. Correct.
5 Q. And so you kept an eye on them, didn't you?
6 A. I was watching what they were doing, yes.
7 Q. Had you ever, in any other search in your entire
8 career, had to act like a babysitter, or a
9 watchdog, for the officers who were conducting a
10 search?
11 A. I did not treat this as if I was babysitting.
12 Q. Had you ever, in any of your years as an officer,
13 had to watch the officers who were searching
14 where you were, to make sure that they weren't
15 alone?
16 A. No.
17 Q. This was a first for you, wasn't it?
18 A. Yes.
19 Q. And you made sure, because you were the watchdog
20 here, you were the custodian, the representative
21 of Calumet, you made sure that none of those
22 officers could have planted anything, right?
23 A. I watched them to the best of my ability, within
24 those three hours.
25 Q. And to the best of your ability meant you did

1 everything you could to make sure that they knew
2 they were being watched and that they couldn't
3 plant any evidence if they wanted to?

4 A. They were told the same instructions that I were,
5 that I was going into that residence to document
6 and recover all evidence that was seized.

7 Q. Well, and you did a good job doing that, didn't
8 you?

9 A. I believe to the best of my ability, yes.

10 Q. All right. And would you agree with me that it
11 was -- would have been very difficult for
12 Lieutenant Lenk or Sergeant Colborn to have
13 planted a Toyota key in that residence, under
14 your watch?

15 A. I believe it would have been difficult.

16 Q. Extremely difficult, right?

17 A. It would have been difficult, yes.

18 Q. Because you were watching them?

19 A. To the best of my ability, yes.

20 Q. Did you ever suggest to Mr. Fassbender or
21 Mr. Wiegert that maybe you would like to have
22 some of your own officers in there doing this
23 search that night, to Mr. Avery's residence?

24 A. We didn't have all those officers that you
25 mentioned at the scene that day.

1 Q. You could call them in, right?

2 A. They were in charge of making those decisions. I

3 didn't know what information they were privy to.

4 Q. You were off duty, right? You weren't working

5 that day?

6 A. I don't recall if that was my scheduled day or

7 not.

8 Q. I believe that was your testimony.

9 A. I was at home when I got the phone call.

10 Q. So you were called in?

11 A. Yes.

12 Q. And there's no reason that other officers that we

13 went through that were evidence collection

14 officers on your force also couldn't have been

15 called in for this assignment, was there?

16 ATTORNEY KRATZ: Objection, both

17 argumentative and assuming a fact not in evidence.

18 This officer wouldn't know that.

19 ATTORNEY BUTING: I will withdraw it.

20 Q. (By Attorney Buting)- So your testimony, then, is

21 that you never questioned Fassbender or Wiegert

22 about their decision --

23 A. Absolutely not.

24 Q. -- to send Manitowoc officers in.

25 A. I did not question them or doubt their judgments,

1 no.

2 Q. Of course, they out rank you, don't they? They

3 were the leaders of this entire investigation at

4 that time, right?

5 A. Yes.

6 Q. And you take orders from them?

7 A. That's the way I looked at it, yes.

8 ATTORNEY BUTING: I'm going to take this

9 down.

10 Q. (By Attorney Buting)- You testified about a

11 number of these exhibits that you found, right?

12 A. Yes.

13 Q. And you mentioned that you found this bottle of

14 bleach, which is Exhibit 195, in the bathroom; is

15 that right?

16 A. I didn't find it, that was recovered by Deputy

17 Riemer.

18 Q. On a different search, then?

19 A. I believe so.

20 Q. Wasn't even recovered on November 5th?

21 A. I don't believe so.

22 Q. Okay. But your -- but your testimony was that it

23 was found in the bathroom?

24 A. I recalled seeing a bleach bottle in the

25 bathroom, if that's the very same exact one, I

1 believe it was.

2 Q. All right. Showing you Exhibit 206 and 207,
3 could you take a minute and just orient yourself
4 with that and tell me what those are?

5 A. Sure. Number 207 appears to be the washing
6 machine in the bathroom.

7 Q. In the bathroom, right? And what is 206?

8 A. 206 would be the sink in the bathroom.

9 Q. Okay. And this is the bathroom in Steven Avery's
10 residence, right?

11 A. Yes.

12 Q. Putting up Exhibit 207 in just a moment here.
13 That's what you have identified as Mr. Avery's
14 bathroom, right?

15 A. Yes.

16 Q. And you note the floor, the tiling -- linoleum on
17 the floor, the hamper. And does that appear to
18 be a shower in the background there?

19 A. Yes.

20 Q. So when you say that you found -- or that someone
21 found a bottle of bleach in the bathroom, it was
22 actually in the laundry room, right?

23 A. If you want to consider that front area to be a
24 laundry room, sure.

25 Q. Well, that's where the washer and dryer is,

1 right?

2 A. Yes, but it's part of the bathroom.

3 Q. Okay.

4 A. It's not in the hallway.

5 Q. Would it surprise you to find a bottle of

6 household bleach in someone's bathroom?

7 A. No.

8 Q. Do you have bleach in your bathroom?

9 A. I believe it's under the sink in the kitchen.

10 Q. Okay. But certainly bleach is where people --

11 The laundry room is where people use bleach,

12 isn't it --

13 A. Yes.

14 Q. -- typically?

15 A. Yes.

16 Q. And no bleach was found in the garage, was it?

17 A. I don't know, I never searched the garage.

18 Q. I'm putting up now, on the screen, 206, which is

19 the other side of Mr. Avery's bathroom, right?

20 A. Yes.

21 Q. You recognize the floor, the linoleum, and the

22 hamper sitting there?

23 A. Yes.

24 Q. I'm just going to zoom in on this for a minute.

25 You see a toothbrush?

1 A. Yes.

2 Q. Do you see more than one toothbrush?

3 A. I see the one.

4 Q. All right. And razor, looks like a razor?

5 A. Yeah.

6 Q. We'll get to this again in a minute. But you

7 mentioned buccal swabs. You know what buccals

8 are, right?

9 A. I didn't on that day. When I got to the hospital

10 it was explained.

11 Q. All right. So now you know what buccal swabs

12 are?

13 A. Yes.

14 Q. And buccal swabs are basically like a Q-tip that

15 you take and swab inside someone's mouth, their

16 cheeks?

17 A. Yes.

18 Q. And from that you get DNA samples, right?

19 A. Yes.

20 Q. And it's a very good way of collecting DNA,

21 correct?

22 A. That's what they tell me, yes.

23 Q. Much like a toothbrush would be, right?

24 A. I don't know what the capabilities are from a

25 toothbrush?

1 Q. Well, you know that people put toothbrushes in
2 their mouth all the time, right?

3 A. With toothpaste, yes.

4 Q. Okay. And so that it would be a fertile source
5 of one's DNA?

6 ATTORNEY KRATZ: Objection, Judge, beyond
7 the scope of this witness' expertise.

8 THE COURT: The objection is sustained.

9 Q. (By Attorney Buting)~ Did you ever work any
10 missing person cases besides this?

11 A. Yes.

12 Q. Did you ever have to go to the missing person's
13 house to try and get some personal items that
14 might have their DNA on it for future use?

15 A. I don't think it ever got to that level.

16 Q. Never got to, in your experience?

17 A. Yeah, they were located prior to a full-blown
18 investigation.

19 Q. Okay. Sure. All right. I'm showing you what I
20 believe is previously marked in your direct as
21 163; is that -- does that appear right?

22 A. Yes.

23 Q. And that's a photograph of Mr. Avery's bedroom
24 that was taken on the night of November 5th,
25 right?

1 A. I believe so.

2 Q. And you can see the gun rack that you just
3 identified, right?

4 A. Yes.

5 Q. And there's a -- some sort of a firearm in the
6 lower tier of that -- right -- in this photo,
7 right?

8 A. Yes.

9 Q. That's a black muzzleloader?

10 A. I never identified what type of firearm.

11 Q. Okay. Well, I don't know if you know guns and,
12 frankly, I don't know them that well, but this
13 thing that's hanging down here, do you know what
14 that is?

15 A. I believe they refer to that as a powder horn.

16 Q. A powder horn. So that's what you used,
17 presumably, with a powder rifle, to load it,
18 right?

19 A. I don't own one; I would assume that would
20 probably be correct.

21 Q. Okay. I just want to be clear, that's not some
22 sort of bizarre sexual device or anything, is it?

23 A. Not that I'm aware of.

24 Q. Or any kind of torture device, right?

25 A. I don't believe so.

1 Q. All right. Well, just in case not everybody
2 knows that, I wanted to make that clear. You did
3 mention finding some handcuffs and leg irons,
4 right?

5 A. Sergeant Colborn found those items, yes.

6 Q. But you were watching and taking note?

7 A. Yes.

8 Q. I believe on direct you testified that it was
9 found in the bookcase; in fact, it was found on a
10 night stand; isn't that right?

11 A. I believe it was the bookcase.

12 Q. You wrote a report of your investigation that
13 day, right?

14 A. Yes.

15 Q. Would that refresh your recollection, if you took
16 a moment to review that?

17 A. I think I know where you are going with this and
18 I don't think I need to see it. When I did my
19 report, what is now known as the bookcase, I
20 looked at it to be a night stand. I would use it
21 as a night stand myself. So in my report I did
22 refer to it as being a night stand.

23 Q. Okay. All right. So you cleared that up. At
24 any rate, these handcuffs and leg irons, these
25 are novelty items that are sold at places like

1 Intimate Treasures and things of that nature,
2 right?

3 A. Yes, you can get them from stores, I guess. I
4 never ...

5 Q. And they are meant for consenting adults, for
6 whatever kind of experimenting or play they may
7 do, right?

8 ATTORNEY KRATZ: Objection, Judge, I'm sure
9 they have a lot of uses.

10 THE COURT: Well, I think if he knows he
11 can testify as to what he understands their intended
12 use to be, if he knows.

13 ATTORNEY KRATZ: It's the term consenting
14 adults that I have objection with.

15 ATTORNEY BUTING: Well, I think he can tell
16 us, what is it?

17 ATTORNEY KRATZ: It could be unconsenting
18 adults, as well.

19 THE COURT: Well, that's something you can
20 take up on redirect.

21 Q. (By Attorney Buting)- Isn't that right, I mean,
22 they are sold at these adult novelty type places
23 where their intended use is consenting adults
24 engaged in whatever kind of role playing, or
25 whatever, right?

1 A. Sure.

2 Q. Okay. And I'm going to put back up that
3 photograph from -- No. 163 again. There's a
4 headboard in that photograph, right?

5 A. Yes.

6 Q. And that headboard was later seized by somebody
7 and put into your department's property room,
8 right?

9 A. Yes.

10 Q. And there came a time when you and some other
11 officers took that headboard out from the
12 property room to examine it, right?

13 A. That would be myself and Deputy Hawkins.

14 Q. And also Mr. Fassbender, correct?

15 A. Not originally, I don't think.

16 Q. Well, did you do a report of that day?

17 A. Yes.

18 Q. Would it refresh your recollection if you
19 reviewed that?

20 A. Sure.

21 Q. Page 936. This report, by the way has --

22 A. Yes.

23 Q. -- Deputy Jeremy Hawkins name on it.

24 A. Right.

25 Q. It reads as if it was written by you.

1 A. It is written by me, it was a typo by the
2 secretarial staff.

3 Q. Okay. And it says -- Just take a minute and
4 review that, those first two paragraphs and then
5 we'll --

6 A. I know where you're going with this as well.

7 Q. Okay. So you don't need to review it?

8 A. I don't believe so.

9 Q. All right. Then I will put it aside and ask you
10 some questions. This is Monday, April 3rd,
11 right, 2006?

12 A. That would be the second day that we looked at
13 the headboard. The first day we looked at the
14 headboard would have been March 28.

15 Q. Okay. Well, we're talking about this day.

16 A. Okay. That was the confusion then, when you
17 mentioned --

18 Q. All right.

19 A. -- Fassbender.

20 Q. All right. I understand. So I apologize for
21 that. On this day, though, you did have a
22 meeting with, actually, Sheriff Pagel, right,
23 Mark Wiegert, John Dederling, and Mr. Fassbender?

24 A. Yes.

25 Q. Special Agent Fassbender?

1 A. Yes.

2 Q. And a decision was made for you and Deputy
3 Hawkins to take a very good look at the
4 headboard, right?

5 A. We had looked at it previously, which is why we
6 had consulted with those persons, to get further
7 direction.

8 Q. All right. And so you took it out and put it on
9 freezer paper, examined it like any other piece
10 of evidence, right?

11 A. Yes.

12 Q. And didn't you, in fact, note, from your
13 observations, that we could not see any
14 striations around the spindles of the headboard
15 consistent with that of having handcuffs or leg
16 irons secured to the spindles of the headboard?

17 A. That would be correct.

18 Q. Meaning, you looked very, very closely at these
19 spindles depicted in Exhibit 163, on the
20 headboard, and saw no scratches. When you say
21 striations you mean scratches, right?

22 A. Yes.

23 Q. Scratches you might see from somebody who is
24 chained, arms out, to that headboard, right?

25 A. Correct.

1 Q. Somebody struggling for their life, you would
2 expect to see some scratches?
3 A. I would think so.
4 Q. And you saw none, right?
5 A. Nothing consistent with that going around the --
6 Q. All right.
7 A. -- entire spindle.
8 Q. Going back, for just one moment. Sergeant
9 Colborn, you mentioned, was --
10 ATTORNEY BUTING: You can take that back,
11 please.
12 Q. (By Attorney Buting)- Sergeant Colborn, you
13 mentioned, was searching the desk and bookcase
14 area?
15 A. Yes.
16 Q. And at no time did Sergeant Colborn ever say,
17 hey, look at this, this -- the back of this
18 bookcase is loose?
19 A. No.
20 Q. Well, there's a gap here, right?
21 A. No, I never saw him physically go behind and look
22 at it, he was going through the contents inside.
23 Q. And he never mentioned, and you never saw, the
24 back of that moving as he was going through,
25 right?

1 A. No.

2 Q. Okay. You mentioned some small blood drops or
3 bloodstains that were found in Mr. Avery's
4 bathroom; do you recall that?

5 A. Yes.

6 Q. Are you aware that none of those drops of blood
7 ever proved to be Ms Halbach's?

8 A. I was told that; I read a report.

9 Q. All right. In fact, that no blood anywhere, from
10 Teresa Halbach, was found on any of these
11 bloodstains you made note of that night?

12 A. I was told that, yes.

13 Q. Okay. So, do you know whose they did turn out to
14 be?

15 A. I can't testify --

16 Q. Well, we'll get to that. You testified about
17 this Exhibit 200, which is an envelope that was
18 found?

19 A. Yes.

20 Q. You saw this recovered?

21 A. I don't believe that was recovered on the 5th of
22 November during the initial search.

23 Q. Oh, okay. But you identified it, so you must
24 have recognized it as an identifier?

25 A. I saw it, yes.

1 Q. You saw it. Okay. And the letter is from --
2 ATTORNEY BUTING: Put the ELMO back on,
3 please.

4 Q. (By Attorney Buting)- The letter is from UW
5 Madison Law School, right?

6 A. Yes.

7 Q. The envelope itself?

8 A. Yes.

9 Q. And it actually contained a letter from the law
10 school dated November 1, 2005, right?

11 A. Yes.

12 Q. And it's an invitation --

13 ATTORNEY KRATZ: Objection, hearsay, Judge.

14 ATTORNEY BUTING: Well, this has been
15 introduced as an exhibit.

16 ATTORNEY KRATZ: I don't care, it's
17 hearsay, Judge, it's being offered for the truth of
18 the matter.

19 THE COURT: I'm going to sustain the
20 objection.

21 ATTORNEY KRATZ: Thank you, Judge.

22 Q. (By Attorney Buting)- You also introduced a
23 number of notebooks?

24 A. Yes.

25 Q. Just for the record, 199, 197, and 198, right?

1 A. Yes.

2 Q. And these are pocket notebooks, right?

3 A. Yes.

4 Q. We only talked about the one page here that had
5 Teresa Halbach's number on it, right?

6 A. Yes.

7 Q. But, in fact, all or most of these notebooks have
8 numerous other phone numbers on them too, don't
9 they? Need to look through them?

10 A. I never paged through them, so.

11 Q. Well, take just a moment. Tell me if you see
12 other people's phone numbers, names, things of
13 that nature jotted down.

14 A. I would like to also clarify something in
15 reference to my testimony yesterday as well.
16 These two notebooks right here, I did see them on
17 the night of the 5th. Detective Remiker was
18 looking at them. I'm not sure if my testimony
19 yesterday was that he collected them. But
20 reviewing my stuff, he didn't collect these on
21 the night of the 5th. A different officer would
22 have collected these on a day thereafter. I just
23 wanted to correct that.

24 Q. Okay. That's just fine. Thank you. And when
25 you say these, just so the record is clear, you

1 were holding up Exhibit 199, the red notebook?
2 A. And 197.
3 Q. And 197, the green notebook. Okay. Just take a
4 moment and see if there's other phone numbers and
5 names in some of these?
6 A. Okay.
7 Q. Is that a fair statement?
8 A. I see numerous different phone numbers, but it's
9 in somebody's handwriting.
10 Q. Well, are you a handwriting expert, sir?
11 A. Well, it's obviously not the one that had the
12 same writing as on there.
13 Q. Can you identify whose handwriting is it, back to
14 the door?
15 A. No.
16 Q. But there are different phone numbers so if --
17 these are as if someone was using these to keep
18 -- just jot down phone numbers and names, right?
19 ATTORNEY KRATZ: Objection, speculation.
20 I'm sure counsel doesn't want us to read everything
21 that's in that notebook. It's hearsay, Judge, and
22 it's speculation.
23 ATTORNEY BUTING: You can read everyone of
24 them if you want to.
25 THE COURT: It's a fair summary question

1 based on what he already testified to; I will allow
2 it.

3 Q. The exhibit that has the note that has Teresa
4 Halbach's phone number in it -- Well, first of
5 all, it's not torn out from the notebook, right?

6 A. Correct.

7 Q. Not as if this was posted on the door as a note
8 for somebody is it?

9 ATTORNEY KRATZ: Objection, speculation,
10 Judge.

11 Q. (By Attorney Buting)~ Do you see any tape on it,
12 scotch tape?

13 THE COURT: I'm going to allow the
14 question.

15 A. I don't see any tape.

16 Q. Okay. And there's two different colored inks,
17 too, correct?

18 A. Yes.

19 Q. Her phone number is in green ink and this
20 other -- whatever this other writing means, is in
21 a different color ink?

22 A. Back to patio door is in black.

23 Q. Okay. As if maybe it was even written at
24 different times?

25 ATTORNEY KRATZ: Objection, speculation,

1 Judge.

2 THE COURT: Sustained.

3 Q. (By Attorney Buting)- You also introduced a sign,
4 a for sale sign, that -- I don't see the exhibit
5 number here, but I will just show it to you.

6 ATTORNEY STRANG: 194.

7 Q. (By Attorney Buting)- All right, 194. This is --
8 On one side it has a for sale sign, like you
9 would buy at a hardware store or something,
10 right?

11 A. Yes.

12 Q. It's got 1995 Pontiac Grand Am listed, right?

13 A. Yes.

14 Q. And then, on the back it has got some other
15 writing, 3302 Zander Road, correct?

16 A. Correct.

17 Q. And then it's got the phone number here that
18 turns out to be Teresa Halbach's cell phone
19 number, right?

20 A. Yes.

21 Q. Are you aware that Teresa Halbach's never lived
22 at 3302 Zander Road.

23 A. I'm not aware of any significance to the address.

24 Q. So, as far as you know, there's no connection
25 whatsoever between this address and that phone

1 number, right?

2 A. I don't know that.

3 Q. You don't know that or you do know that?

4 A. I do not know that.

5 Q. Now, you do know, I assume, that Teresa Halbach

6 had seen Mr. Avery on several occasions before

7 October 31st?

8 A. I was told that by Investigator Wiegert in

9 advance.

10 Q. Okay. Part of your briefing, right?

11 A. Yes.

12 Q. They sit down and they explain some of the

13 background so you know what's going on, right?

14 A. Yes.

15 Q. Okay. And in fact, before October 31st,

16 Mr. Avery had Teresa Halbach's phone number

17 already because he had arranged a private sale

18 with her; do you recall that?

19 A. No, I don't recall him having her cell number,

20 what time he had it. I don't know that

21 information.

22 Q. So you didn't know that information, okay. But,

23 if that were the case, finding her phone number

24 in his house on November -- or trailer, on

25 November 5th, would have meant nothing, would it?

1 ATTORNEY KRATZ: Objection, Judge, calls
2 for a conclusion, that's probably what the jury --

3 THE COURT: The objection is sustained.

4 Q. Well, when you collected those pieces of
5 evidence, you didn't -- you don't know when those
6 notes -- phone numbers were written, right?

7 A. Detective Remiker collected them, but I did not
8 know when they were written.

9 Q. All right. They could have been written weeks
10 ago, for all you know?

11 A. True.

12 Q. By the way, you said you weren't collecting the
13 evidence, you were just standing their watching
14 and writing down notes as to the times that
15 things were collected?

16 A. Yes.

17 Q. But the actual collection itself was done by --
18 or the bagging was done by Lieutenant Lenk?

19 A. Yes.

20 Q. Did you watch him seal every single bag?

21 A. I can't say with 100 degree certainty every
22 single bag, but he was doing his duties, I was
23 there, yes.

24 Q. Okay. So when you say that you were --
25 ultimately you collected the evidence, it was at

1 the end of the night?

2 A. Yes.

3 Q. After all the bags were sealed and completed,
4 right?

5 A. Yes.

6 Q. Then it's turned over to you?

7 A. Yes.

8 Q. All right. And you never saw a Toyota key
9 anywhere in Mr. Avery's bedroom that night, did
10 you?

11 A. I did not, no.

12 Q. And if you had seen a Toyota key anywhere in that
13 bedroom that night, you would have made note of
14 that, wouldn't you?

15 A. Personally, I would not have known what a Toyota
16 key looked like. I'm not too familiar with
17 automobiles and their keys.

18 Q. Well, all right. Let me ask it this way, you
19 knew that Teresa Halbach's vehicle was a Toyota
20 RAV4?

21 A. Yes.

22 Q. You went and looked at it, right?

23 A. Yes.

24 Q. And so if you found -- if someone had located a
25 key, a car key, inside that residence, you would

1 have either seized it or at least made note of it
2 as possible evidence in the case, right?
3 A. Absolutely.
4 Q. Particularly if it was a Toyota key, because that
5 may be the key that would fit the victim's
6 vehicle?
7 A. Absolutely.
8 Q. And you made no such note, right?
9 A. Correct.
10 Q. And you stood in the doorway for at least a half
11 hour?
12 A. Yes.
13 Q. Of his bedroom?
14 A. Yes.
15 Q. All right. I just have one question about this
16 -- another exhibit here and then I will move off
17 of these exhibits. You identified Exhibit 205 as
18 a hood latch swab, right?
19 A. Yes.
20 Q. I just want to make it clear here, this is
21 actually a swab that's dated -- or a piece of
22 evidence that's dated April 3rd, 2006?
23 A. That's correct.
24 Q. And that it was -- it was collected not at the
25 Crime Lab?

1 A. Correct.

2 Q. So whatever is in this little package is not
3 something that the Crime Lab found when they went
4 over it very, very carefully on November 8th, or
5 7th, whatever day they had it, right?

6 A. I was just informed that they did request myself
7 and Deputy Hawkins to --

8 Q. Who requested?

9 A. Investigator Wiegert.

10 Q. Okay. So Investigator Wiegert told you to go do
11 this, right?

12 A. Yes.

13 Q. All right. Let's move to the next day,
14 November 6th, you are paired with a different
15 team on that day, right?

16 A. Yes.

17 Q. And we talked about that, those were the three
18 Manitowoc city police officers?

19 A. Right.

20 Q. And you weren't given any kind of instruction
21 that you had to watch those three officers like a
22 hawk while you were doing the search, did you?

23 A. Right.

24 Q. There was no concern about whether or not you had
25 to leave those officers alone in any part of the

1 buildings that we're looking at, right?

2 A. Right.

3 Q. Because Mr. Avery wasn't suing them, right?

4 A. To the best of my knowledge.

5 Q. All right. And then the next day, November 7th,

6 you were paired, again, with Lenk and Colborn,

7 right?

8 A. That's correct.

9 Q. But not Mr. -- not Detective Remiker on this

10 occasion?

11 A. His wife was having a baby, or had a baby.

12 Q. Okay. Good for him, good for her. So on that

13 occasion, though, you didn't do a thorough search

14 with Lenk and Colborn of Mr. Avery's residence,

15 right?

16 A. That's correct.

17 Q. They -- The two of them were only in that

18 residence briefly, with you, when you were trying

19 to get a serial number from a computer, right?

20 A. Yes.

21 Q. Just a few minutes I think you said?

22 A. Yes.

23 Q. So it would have been difficult for them to have

24 planted any evidence in front of you at that

25 occasion -- on that occasion, right?

1 A. Yes.

2 Q. And besides, they were with you, the watchdog,
3 right?

4 A. I wouldn't call myself a watchdog, but they were
5 with me, yes.

6 Q. Okay. And no key was discovered on that occasion
7 was it?

8 A. By the computer, no.

9 Q. Anywhere in the house?

10 A. We didn't search the house. We just got the
11 serial number from the computer.

12 Q. So no key -- no Toyota key was recovered on
13 November 7th when you were in there with
14 Mr. Colborn and Mr. Lenk, right?

15 A. No key was recovered by the computer, no.

16 Q. All right. November 8th, I believe you testified
17 that you weren't even at the Avery Salvage Yard
18 on that day, right?

19 A. Not until late in the day. I was at the Calumet
20 Sheriff's Department, logging evidence.

21 Q. So the watchdog wasn't there.

22 ATTORNEY KRATZ: Judge, I am going to
23 object. We hear that, Judge, one more time, we're
24 going to approach with a side bar.

25 THE COURT: The objection is sustained.

1 Q. (By Attorney Buting)~ In any event, you were not
2 with Mr. Lenk and Mr. Colborn when they reentered
3 Steven Avery's residence on November 8th, were
4 you?
5 A. That's correct.
6 Q. And that is the occasion when a key was found,
7 right?
8 A. That is my understanding.
9 Q. When you weren't with them?
10 A. That's my understanding.
11 Q. November 9th, you testified about having some
12 different duties and that was the DNA exemplars
13 were taken from people, right?
14 A. Yes.
15 Q. And fingerprints were taken?
16 A. Yes.
17 Q. And palm prints were taken?
18 A. Yes.
19 Q. And those items were taken for the purpose of
20 trying to see if they might match with some
21 fingerprints that the Crime Lab had found on the
22 RAV4; is that your understanding?
23 A. I had no information as to what the Crime Lab had
24 found at that time. We were just executing a
25 search warrant based on the specific information

1 within those search warrants.

2 Q. All right. And the search warrant included

3 taking those buccal swabs from each individual

4 that had been -- Well, let me just name them, the

5 ones you were involved with, okay. Mr. -- Was

6 Mr. Avery one of them; he was, wasn't he?

7 A. Yes.

8 Q. Yes. You testified about that?

9 A. Yes.

10 Q. Also Delores Avery, right?

11 A. Yes.

12 Q. Barb Janda?

13 A. Yes.

14 Q. Chuck Avery?

15 A. Yes.

16 Q. Earl Avery?

17 A. Yes.

18 Q. And Bobby Dassey?

19 A. Yes.

20 Q. And these are what are called elimination type

21 exemplars?

22 A. Yes.

23 Q. To see if you can eliminate somebody from

24 something that may be found in a crime scene?

25 A. Yes.

1 Q. Or match them?

2 A. Sure.

3 Q. Okay. And it included DNA fingerprints and palm
4 prints, for all of them, right?

5 A. Yes.

6 Q. But at the end of that day, though, you received
7 information from a special agent, Joseph
8 Kapitany, I believe is the way you pronounce his
9 name?

10 A. Yes.

11 Q. That the Crime Lab only wanted the palm prints
12 and fingerprints of Mr. Steven Avery right away?

13 A. Immediately, yes.

14 Q. And so efforts were made to transfer Steven
15 Avery's palm prints and fingerprints immediately
16 to the Crime Lab, right?

17 A. Agent Kapitany approached me and stated those
18 words, that the Crime Lab wanted those items
19 immediately. I did give them to him. He signed
20 off on the document --

21 Q. Okay.

22 A. -- for those items.

23 Q. So he went off to the Crime Lab as far as you
24 know, with those items?

25 A. He left the Aurora Clinic; I assume, yeah, he was

1 in route to Madison.

2 Q. But all the other ones you took and just booked
3 into the Calumet Sheriff's Department?

4 A. Yes.

5 Q. Do you know the results of any of the comparisons
6 of fingerprints; Mr. Avery's fingerprint
7 standards to any fingerprints found on the RAV4?

8 A. No.

9 ATTORNEY KRATZ: I'm also going to object
10 as beyond the scope of this witness' expertise.
11 Probably hearsay as well.

12 ATTORNEY BUTING: I wasn't asking for the
13 results, I just wondered if he knew it.

14 ATTORNEY KRATZ: It seemed like that was
15 the question, do you know the results.

16 THE COURT: As phrased, the objection is
17 overruled.

18 ATTORNEY BUTING: He's answered. That's
19 fine.

20 Q. (By Attorney Buting)~ All right. Just a few more
21 questions, sir. You talked about -- or we talked
22 about this April 3rd date, when you were -- I
23 think your report called it processing evidence,
24 right?

25 A. Yes.

1 Q. And there was actually a number of days, you
2 mentioned one in March, but there was a number of
3 days over the next several weeks, March, April,
4 May, when you were going through various items
5 that had been seized from Mr. Avery's residence,
6 or garage, on one of the searches, either
7 November or March, right?

8 A. Yes.

9 Q. And your purpose in going through these items of
10 evidence was to see if there was any way you
11 could determine if any of these items of evidence
12 had any link or importance to this crime, right?

13 A. Yes.

14 Q. And so you were doing things like testing,
15 examining it for blood, items for blood, right?

16 A. Yes.

17 Q. The bleach bottle, for instance, that's been
18 marked as whatever exhibit it was. This was one
19 of the things that you examined to see if there
20 might be any blood on it, right?

21 A. Yes.

22 Q. Just a little brown mark on the bottom somewhere
23 that you weren't sure about?

24 A. Right.

25 Q. This is Exhibit 195. And so you tested this with

1 these presumptive tests that are very sensitive
2 to blood, right?

3 A. Yes.

4 Q. And it proved negative, right?

5 A. Correct.

6 Q. No blood. All right. You also looked at foot
7 boards for the bed, right?

8 A. Yes.

9 Q. You looked at a number of pieces of brown
10 paneling, right?

11 A. Yes.

12 Q. Paneling marked number one, number two, number
13 three, and each of those was negative for any
14 kind of blood, right?

15 A. Correct.

16 Q. And it's your understanding this is -- these are
17 the panels taken off the walls of Mr. Avery's
18 bedroom, right?

19 A. Yes.

20 Q. No blood, correct?

21 A. We did not find any.

22 Q. And there's also some molding, wooden molding
23 also taken from his room somewhere?

24 A. Yes.

25 Q. Tested for blood, negative, right?

1 A. Right.

2 Q. There were also some paint thinner cans -- cans
3 that apparently were recovered from the garage;
4 do you recall that?

5 A. I recall examining them, yes.

6 Q. You weren't there when they were seized, but you
7 examined them?

8 A. Yes.

9 Q. And it was determined that those cans had no
10 evidentiary value whatsoever, right?

11 A. We did some presumptive tests on them, I believe,
12 and got negative results, correct.

13 Q. And there was also some gas tank -- or a number
14 of gas cans and I guess snowmobile gas tanks, or
15 things of that nature?

16 A. Correct.

17 Q. You tested all of those, right?

18 A. Yeah, we swabbed a lot of those gas cans,
19 anything that we saw that was suspicious, we
20 would do.

21 Q. And they were are all negative?

22 A. Yes.

23 Q. No blood, right. Then you also took -- and this
24 would have been on May 1st, a piece of carpeting
25 that was ripped out of the whole hallway of

1 Mr. Avery's residence, right?

2 A. It was a small piece of carpeting that was,
3 correct, cut from the entrance door by the
4 bathroom to the entrance to the bedroom.

5 Q. Okay. In that hallway right outside his bedroom?

6 A. Yes.

7 Q. Okay. And you actually did a luminol?

8 A. Yes.

9 Q. And we have heard testimony about luminol. I'm
10 not going to go over it in detail, but that's
11 something that can highlight anything that is
12 of -- could be blood, could be a lot of other
13 things, right?

14 A. Yes.

15 Q. And you found no heavy concentrations anywhere in
16 the carpet indicating any drops of blood had
17 fallen, right?

18 A. There was no pattern, nothing that was consistent
19 with what you were talking about, correct.

20 Q. All right. And you even looked at the back of
21 that carpet, right?

22 A. Yes.

23 Q. That was actually a later date, June 23rd, right?

24 A. I don't recall that.

25 Q. You were told to pull the carpeting out of -- I'm

1 sorry this was a different piece of carpeting?

2 A. Okay. That would be consistent.

3 Q. Okay. You pull the carpeting that was ripped out

4 of the bedroom of Mr. Avery, right?

5 A. Yes.

6 Q. And you actually looked at the very -- at the

7 back of it?

8 A. Yes.

9 Q. The backside. And you did presumptive tests for

10 blood?

11 A. Yes.

12 Q. And found nothing?

13 A. Correct.

14 Q. No blood?

15 A. Nothing consistent with blood, correct.

16 Q. You also, a number of times, I won't go into all

17 of them, but there were a number of knives,

18 kitchen knives, pocket knives, things like that,

19 that were seized either in the residence or the

20 garage, right?

21 A. Yes.

22 Q. And you looked at all of those, right?

23 A. Some were sent to the Crime Lab; some we kept at

24 the office and processed ourselves.

25 Q. All right. And the ones you processed you looked

1 for blood, right?

2 A. Yes.

3 Q. None, correct?

4 A. Correct.

5 ATTORNEY BUTING: All right. Thank you.

6 THE COURT: Mr. Kratz, are you going to be
7 doing redirect?

8 ATTORNEY KRATZ: I am.

9 THE COURT: How much time do you think?

10 ATTORNEY KRATZ: I just actually, I think I
11 have two questions, Judge, so.

12 THE COURT: All right. Go ahead.

13 REDIRECT EXAMINATION

14 BY ATTORNEY KRATZ:

15 Q. Sergeant Tyson, Mr. Buting asked you about
16 that -- that sign that mentioned a Zander Road
17 address; do you recall him showing you that?

18 A. Yes.

19 Q. Do you know where that Zander Road address is?

20 A. No.

21 Q. Do you even know if it's in Calumet County?

22 A. I heard Zander Road a couple of times on our
23 department radios, Manitowoc County either having
24 a crash or something like that, so I'm familiar
25 with Zander Road probably being in Manitowoc

1 County, I know it rang a bell, but I don't know
2 where it is.

3 Q. Something a Manitowoc officer might be better
4 able to answer?

5 A. Yes.

6 Q. And lastly, Mr. Buting asked you about somebody
7 relieving you from the scene security, that is,
8 from watching over the SUV; do you remember those
9 questions?

10 A. Yes.

11 Q. Do you remember what department relieved you; in
12 other words, the scene security from the point
13 that you took over, thereafter, do you know what
14 department was responsible?

15 A. Calumet County Sheriff's Department.

16 ATTORNEY KRATZ: I think that's all I have
17 for redirect.

18 ATTORNEY BUTING: No questions.

19 THE COURT: Very well, the witness is
20 excused, and at this time we'll take our morning
21 break. Members of the jury, again, do not discuss
22 this case among yourselves during the break. We'll
23 resume in about 15 minutes.

24 (Jury not present.)

25 ATTORNEY BUTING: Your Honor, could I move

1 206 and 207 into evidence?

2 THE COURT: Any objection?

3 ATTORNEY KRATZ: No.

4 THE COURT: They are admitted.

5 (Recess taken.)

6 (Jury present.)

7 THE COURT: Mr. Kratz, at this time you may
8 call your next witness.

9 ATTORNEY KRATZ: State will call Andrew
10 Colborn to the stand.

11 THE CLERK: Please raise your right hand.

12 SERGEANT ANDREW L. COLBORN, called as a
13 witness herein, having been first duly sworn, was
14 examined and testified as follows:

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

17 THE WITNESS: Andrew L. Colborn,
18 C-o-l-b-o-r-n.

19 ATTORNEY KRATZ: You don't have to be quite
20 so close.

21 DIRECT EXAMINATION

22 BY ATTORNEY KRATZ:

23 Q. Mr. Colborn, can you tell us, how are you
24 employed, please.

25 A. I'm a patrol sergeant with the Manitowoc County

1 Sheriff's Department.

2 Q. How long have you been a law enforcement officer?

3 A. Since 1996.

4 Q. Prior to 1996, what did you do?

5 A. I was a Corrections Officer from 1992 to 1994,
6 also with the Manitowoc County Sheriff's
7 Department.

8 Q. What does a Corrections Officer do?

9 A. A Corrections Officer is a non-sworn, non-law
10 enforcement officer, that is a responsibility for
11 security of the jail.

12 Q. All right. How was it that you became a sworn
13 law enforcement officer?

14 A. When a position opened up at the Manitowoc County
15 Sheriff's Department, I did perform the State
16 written test, performed an agility test, went on
17 an eligibility list, and eventually I was
18 selected.

19 Q. What are your current duties with the Manitowoc
20 County Sheriff's Department?

21 A. I'm a assistant shift commander for the noon to 8
22 shift so I have some administrative duties and
23 then I have some patrol duties.

24 Q. Prior to being selected as a law enforcement
25 officer, did you have any duties in your prior

1 life that in any way prepared you for being a law
2 enforcement officer?

3 A. No.

4 Q. Sergeant, you hold the rank of sergeant?

5 A. Yes, sir.

6 Q. And in early November of 2005, did you hold that
7 same rank?

8 A. Yes, sir.

9 Q. What were your duties back in early November of
10 '05?

11 A. Essentially the same duties that I hold today. I
12 was a patrol supervisor on -- I work a six day
13 on, three day off rotation. So on the days that
14 the lieutenant that's assigned to the shift is
15 off, I would be the shift commander.

16 Q. So you have supervisory responsibilities as well?

17 A. Yes, sir.

18 Q. I'm going to direct your attention to
19 November 3rd of 2005, ask if you were employed on
20 that evening?

21 A. Yes, sir.

22 Q. Do you recall what your duties were on
23 November 3rd?

24 A. I was the shift commander for the noon to 8
25 shift, that's the shift I'm assigned to.

1 Q. Sometime during that shift, Sergeant Colborn,
2 were you informed of a Calumet County missing
3 persons investigation that was ongoing?

4 A. Yes, sir.

5 Q. And being involved in that -- or excuse me, being
6 aware of that investigation, were you asked to
7 assist in any way?

8 A. Yes, sir.

9 Q. Tell the jury how you were asked to assist?

10 A. I was contacted by, I believe it was inspector or
11 Investigator Mark Wiegert from the Calumet County
12 Sheriff's Office, who contacted the dispatch
13 center by telephone, who then transferred the
14 call to my patrol car.

15 He asked if I could respond to, I
16 believe he gave me the address of 12928 Avery
17 Road. He asked if I knew where that was and I
18 told him, yes, I believe that that was the
19 address of Avery Auto Salvage. And he asked if I
20 could go there and check for a missing person
21 because they had a missing person report that had
22 generated in Calumet County and it had been
23 determined, through the course of their
24 investigation, that she had been out at the Avery
25 Salvage Yard, taking pictures of a vehicle that

1 was for sale.

2 Q. At the time that Investigator Wiegert asked for
3 your assistance, did Investigator Wiegert tell
4 you other places within Manitowoc County that Ms
5 Halbach had known to have been on the 31st of
6 October?

7 A. I don't believe in the -- in the initial phone
8 call that he did.

9 Q. All right. Some time later that evening you
10 heard?

11 A. Yes, sometime later that evening he gave me
12 another address on County Highway B and another
13 name and asked me to check there as well.

14 Q. What name was that, just so -- we're going to
15 eventually get there?

16 A. I believe the first name was George; I know the
17 last name was Zipperer.

18 Q. Sergeant Colborn, are you at all familiar with
19 the Avery salvage business itself?

20 A. Yes.

21 Q. Tell the jury how you are familiar with that
22 business.

23 A. I have been, personally, a customer of the Avery
24 Auto Salvage business; as well as, I have had
25 contacts there through with law enforcement. And

1 I have children that are the same age as some of
2 the owners of Avery Auto Salvage, so I had
3 contact with them through the course of school
4 events.

5 Q. All right. Let's take those -- Well, when we
6 discuss this, I'm going show you what's been
7 received as Exhibit 86, can you tell us what that
8 is, please.

9 A. That's an overhead, like an airplane view,
10 birds-eye view of the Avery Auto Salvage.

11 Q. Prior to the 3rd of November, 2005, had you been
12 to that property?

13 A. Prior to 2005?

14 Q. Prior to November 3rd of 2005, had you been to
15 that property?

16 A. Yes.

17 Q. And under what circumstances, can you tell the
18 jury about that?

19 A. Again, as a customer.

20 Q. Let's talk about that, first. What do you mean
21 as a customer.

22 A. I have several older vehicles, one, as a matter
23 of fact, is a 1950 Chevrolet pickup truck. And
24 I -- in the process of tinkering around with it,
25 I have gone to several auto salvage and I have

1 always been referred to the Avery Auto Salvage as
2 the place to go if you are looking for an older
3 model vehicle parts -- or parts for an older
4 model vehicle.

5 Q. Was there one person in particular that you would
6 normally have contact with at the Avery Auto
7 Salvage?

8 A. No, actually, usually there were two; either I
9 had contact with Charles Avery or Earl Avery.

10 Q. All right. They are brothers and, in fact, the
11 owners of the business; is that right?

12 A. Yes, sir.

13 Q. Let me ask you this, Sergeant Colborn, if you
14 know, prior to the 3rd of November, 2005, when
15 was the last time you were at the Avery Auto
16 Salvage business?

17 A. I think the last time I was at the Avery Auto
18 Salvage business would have been 1999.

19 Q. All right. So at least six years previously?

20 A. Yes, sir.

21 Q. But you knew where it was?

22 A. Yes, sir.

23 Q. Then, on November 3rd, after Mr. Wiegert asked
24 for your help; did you proceed to this scene?

25 A. Yes, sir.

1 Q. And that's 2005; is that right?

2 A. Yes, sir.

3 Q. Can you tell the jury, please, what happened when
4 you got there on November 3rd?

5 A. Again, I knew that Earl Avery, who was probably
6 the person that I have had the most contact with
7 or know the best, doesn't live on the Avery Auto
8 Salvage property, so my initial -- what I was
9 initially trying to do was to make contact with
10 Charles Avery, who does reside on there.

11 I knew Charles to -- I didn't know if he
12 owned the business, but I certainly knew that he
13 managed the business. So I was going to make
14 contact with him and ask him if he had seen
15 someone on the property taking pictures of a
16 vehicle that was for sale.

17 Q. In looking for Charles Avery, do you remember
18 what building you went to?

19 A. Well, initially, I was kind of surprised when I
20 drove in, because the shop area, a lot of --
21 there were new buildings and things had changed
22 since the last time I was there. But I was
23 attempting to make contact at his residence,
24 which I believe is right behind that large,
25 square shaped building.

1 Q. We're handing you a laser pointer to assist you
2 in your --
3 A. I believe that --
4 Q. -- testimony.
5 A. I thought that was his residence right there.
6 Q. And you were pointing actually to the residence
7 which would be just the south of the --
8 A. That one right there.
9 Q. You have to wait until I finish my question, sir.
10 You are pointing to a trailer or a residence just
11 south of the Avery business itself. And I think
12 counsel is willing to stipulate that is Charles
13 Avery's residence.
14 ATTORNEY STRANG: Certainly my
15 understanding.
16 THE COURT: All right. The record will
17 reflect the stipulation.
18 Q. (By Attorney Kratz)~ Did you drive or walk into
19 this property?
20 A. I drove.
21 Q. Can you tell the jury where you came in from,
22 please.
23 A. There is -- To my knowledge there is only one
24 entrance onto the property and that's off Avery
25 Road, which the whole of Avery Road isn't

1 pictured on that picture. But I ended up coming
2 down that dirt road there and parking almost
3 where there is a vehicle parked right now.

4 Q. Why don't you show us where you parked. If I
5 zoomed into that location would that help us?
6 All right. We have now zoomed in to Exhibit 86,
7 could you, again, show the jury about where it
8 was that you parked.

9 You are pointing which would be just to
10 the north of the large building, which is
11 something we have been calling the new office or
12 the new shop building; is that correct?

13 A. Yes, sir.

14 Q. All right. After parking at that location, tell
15 the jury what happened. By the way, about what
16 time was this that you got there?

17 A. I'm guessing around 7:00, between 6:30 and 7:30.

18 Q. Was it light out or was it dark?

19 A. It was dark.

20 Q. After parking there, Sergeant Colborn, what
21 happened?

22 A. I got -- I exited my squad car and I was going to
23 walk down the road, that road right there, in
24 order to access Charles' residence. Almost as
25 soon as I got out of my car I heard something

1 behind me. I turned and Steve Avery was walking
2 towards me and he had come out of that residence
3 right there.

4 Q. Do you know whose residence that is?

5 A. I believe that's Al and Delores Avery's
6 residence.

7 Q. Did you have any conversation with Steven Avery
8 at that time?

9 A. Yes, I did.

10 Q. And could you describe that conversation for the
11 jury, please?

12 A. I think Steve initiated the conversation with me
13 by asking me what I wanted, what I was doing
14 there.

15 Q. Were you dressed similar to what you are dressed
16 today?

17 A. Yes, I was in uniform.

18 Q. Did you have a marked squad car?

19 A. Yes, I did.

20 Q. What did you tell Mr. Avery?

21 A. I told Avery -- Mr. Avery, that there was -- I
22 had received a call from Calumet County and that
23 they had informed me that there was a girl
24 missing from Calumet County and asked him if she
25 had come out to their property to photograph a

1 vehicle that they were selling.

2 Q. Did Mr. Avery have a response for you?

3 A. Yes, he said that she had been there.

4 Q. Did he tell you what day she had been there?

5 A. I think I might have told him that, what day that

6 she should have been out there. I don't recall

7 if we mentioned a date, but I do remember asking

8 him what time she had been out there.

9 Q. Did Mr. Avery recall this young woman?

10 A. Yes.

11 Q. Did he name her for you?

12 A. No.

13 Q. Did he tell you what she had done at his property

14 that day?

15 A. He said that she was taking some pictures of a

16 van that his sister was selling.

17 Q. Mr. Avery tell you how long the woman had been on

18 his property?

19 A. He said 5 or 10 minutes.

20 Q. Did you inquire of Mr. Avery whether or not he

21 had personal contact with this woman on the date

22 she was out there?

23 A. I asked Mr. Avery if she had said where she was

24 going. And he said, I never talked to her. She

25 was only here 5 or 10 minutes and she left.

1 Q. But he never talked to her?

2 A. That's what he told me, he never talked to her.

3 Q. Did he describe that further, how he knew she was

4 there?

5 A. He said he saw her out the window taking the

6 pictures.

7 Q. Okay. Did you complete that conversation with

8 Steven Avery? Do you recall that conversation?

9 A. I told Mr. Avery that her parents and her family

10 were getting worried and was he sure that she

11 didn't mention where she might have been going

12 after she left. And he said, no, I didn't talk

13 to her. She was only here a few minutes and then

14 she left.

15 Q. What was Mr. Avery's demeanor like as he was

16 talking to you; was he cooperative?

17 A. Yes, he was very cordial.

18 Q. Mr. Avery indicate to you the time, that is, when

19 this young woman had been on his property?

20 A. He said he thought between 2:00 or 2:30.

21 Q. What did you do then?

22 A. I believe I thanked him for talking with me and I

23 started to get back in my car. And I believe

24 Mr. Avery told me that he hoped she turned up

25 soon.

1 Q. What did you do then?

2 A. I left. I left the property and I contacted --
3 he is the under sheriff of our department now,
4 but at the time he was the deputy inspector of
5 the operations division. I called him.

6 Q. What's his name?

7 A. Greg Schetter. And I let him know that Calumet
8 County was investigating a missing persons case
9 and that one of the places that it had been
10 mentioned that this party was at was on -- at the
11 Avery Salvage Yard and I just left there and made
12 contact and that I was unable to locate that
13 person. And he suggested that I probably contact
14 Lieutenant Lenk and see if he wanted -- if
15 Lieutenant Lenk wanted any of our detectives to
16 assist Calumet County in searching any place
17 else.

18 Q. Did you do that?

19 A. Yes, I did.

20 Q. And did you speak with Lieutenant Lenk that
21 evening?

22 A. Yes, by phone. And then when I got into the
23 department, because prior to going into the
24 department I went past the other residence. I
25 must have also contacted Investigator Wiegert and

1 let him know that I hadn't located.

2 And he, I believe, at that time told me
3 of the other address. So I purposely drove past
4 that residence. I saw it was dark, but that
5 there were cars in the driveway. But the
6 residence was dark. I didn't see any lights on
7 there. So I ended my tour of duty for patrol.

8 Q. Let me just stop you. Whose residence was this
9 that you drove past?

10 A. George Zipperer's.

11 Q. Go ahead. What did you do?

12 A. I ended my patrol tour of duty, but I remained on
13 duty to assist Calumet County Detective Dederling
14 and Detective Remiker in making contact at George
15 Zipperer's residence.

16 Q. Was that done at that time?

17 A. It was done, you know, within probably a half
18 hour or 45 minutes of my getting back to the
19 department.

20 Q. The question, Sergeant Colborn, did you assist in
21 that process?

22 A. Yes, sir.

23 Q. You mentioned that there was a Calumet detective
24 that was involved, as well as Manitowoc; is that
25 right?

1 A. Yes, sir.

2 Q. In meeting with the Zipperers?

3 A. Yes, sir.

4 Q. And, again, do you remember who they were?

5 A. I believe his name is John Dederling.

6 Q. All right. When you -- I'm just going to go back
7 just briefly to your contact with Mr. Avery. You
8 mentioned that he was cooperative; is that right?

9 A. Yes, sir.

10 Q. I want you to remember back, as best you can,
11 Sergeant Colborn, at that initial meeting with
12 Mr. Avery, you, Sergeant Andy Colborn, did you
13 have any feelings or any inclination that
14 Mr. Avery may have been involved in Ms Halbach's
15 disappearance?

16 A. Not at that time, no.

17 Q. Did you do anything on the 3rd of November to
18 further investigate Mr. Avery?

19 A. On November 3rd?

20 Q. Yes.

21 A. No, sir.

22 Q. Did you ever go back onto his property on the
23 3rd?

24 A. No, sir.

25 Q. After going to the Zipperers with Detective -- I

1 think it was Remiker and Dederling, what did you
2 do after that?

3 A. After we were done, completed at the Zipperers?

4 Q. Yes.

5 A. I went home. I was done with -- you know, I was
6 already on overtime. I checked out and went
7 home.

8 Q. Do you know about what time that was?

9 A. 10:30, 11:00 at night, maybe.

10 Q. All right. Do you remember what you did the rest
11 of that evening?

12 A. Just probably fell asleep on the couch. I went
13 to bed and, you know, fell asleep.

14 Q. The next day, on the forth of November, were you
15 working that day?

16 A. No, sir, I was off that day.

17 Q. It's a Friday; is that right?

18 A. Yes, sir.

19 Q. Do you remember what you did on the 4th? We'll
20 get back to that, but do you recall, generally,
21 your day on the 4th of November?

22 A. Yes, sir.

23 Q. Move your attention one day further, on the 5th,
24 Saturday, the 5th of November; do you recall what
25 you were doing that day or that morning?

1 A. That was also a regularly scheduled day off for
2 me. Yes, I recall what I did on that day.

3 Q. We'll get into the morning, but let me just jump
4 right to this investigation. Were you contacted
5 at all by any supervisors or superiors that day
6 and asked to participate in this case?

7 A. I was contacted by the noon to 8 shift commander
8 for that day, and he did ask me to come into work
9 and pick up a patrol vehicle and respond out to
10 the Avery Salvage Yard.

11 Q. Did you do that?

12 A. Yes.

13 Q. In a marked vehicle?

14 A. Yes, I did take a marked vehicle out there.

15 Q. And about what time was it that you arrived at
16 the Avery scene itself; do you recall?

17 A. I know I left my house between 4:00 and 4:30. I
18 probably got out to the Avery Salvage Yard
19 between 5:15, 5:30 maybe.

20 Q. To your best recollection?

21 A. Yes.

22 Q. What happened when you got to the Avery salvage
23 business?

24 A. I made contact with the same supervisor who had
25 called me and I asked him, what do you want me to

1 do. And he informed me that there was a deputy
2 there that had some personal business or matters
3 to attend to. She had been out there since
4 apparently earlier in the day. And he asked me
5 to transport that deputy back to the department
6 so that she could get her own private vehicle and
7 go home. And then come back out to the Avery
8 Salvage Yard and provide security.

9 Q. Did you do that?

10 A. Yes.

11 Q. What did you do when you got back to the Avery
12 business?

13 A. Tried to stay in the car as much as possible
14 because it was pouring rain. But they directed
15 my attention to a place way off in the salvage
16 yard where I could see some lights. And
17 somewhere up in this area here they just told me
18 to sit in the car and not let anyone go down any
19 of these roads.

20 Q. Providing scene security up near what would be
21 the business buildings?

22 A. Yes.

23 Q. Did you do that?

24 A. Yes.

25 Q. How long did you have that responsibility.

1 A. Maybe like an hour, hour and a half. And I was
2 then told that, actually, I could go home. So I
3 was preparing to do that. I was checking all my
4 equipment to make sure I had everything that I
5 got out there -- came out there with. And then I
6 was told that I was going to be needed in a
7 different capacity and not to go home.

8 Q. All right. Let me ask you this, Sergeant
9 Colborn, any time that day, any time on the 5th
10 of November, did you ever make your way down
11 towards the pond, or down towards the southeast
12 quadrant of the Avery salvage property?

13 A. No, sir.

14 Q. Could you point to that area for us, with the
15 laser pointer. Point to the northeast corner of
16 the property. I'll specifically ask you about
17 that area, did you go near that area at all on
18 the 5th of November?

19 A. No, sir.

20 Q. How about on the 3rd when you were there 2 days
21 earlier, talking to Steven Avery?

22 A. No, sir.

23 Q. And were you down there at all on the 4th of
24 November?

25 A. No, sir.

1 Q. When initially being told that you could leave,
2 or that you were in effect packing up to leave,
3 who was it that approached you with other duties?

4 A. Detective Remiker.

5 Q. Do you know what you were being asked to do then?

6 A. He just said, you may want to check in with
7 Inspector Wiegert -- Detective Wiegert, before
8 you go home, because you can see the huge area
9 here, it's going to have to be checked, and we
10 don't have a lot of people here to do that.

11 Q. Do you know how many sworn law enforcement
12 officers were on scene at that time, or is that
13 something that you wouldn't even have a guess on?

14 A. No, I didn't take a head count. I don't know. I
15 would ball park it at 50 or less, but I don't
16 know.

17 Q. All right. Now, 50 sounds like a lot of police
18 officers; do you think that's a lot for that size
19 scene?

20 ATTORNEY STRANG: Irrelevant.

21 THE COURT: Sustained.

22 Q. (By Attorney Kratz)- Did you check in with
23 Investigator Wiegert before you left?

24 A. Yes.

25 Q. And can you tell the jury, please, what -- what

1 that conversation was?

2 A. I believe he asked me if I was an evidence
3 technician and I said, yes, I am. And --

4 Q. Let me stop you there. What all goes into being
5 an evidence technician?

6 A. It's an investigative portion, it's an
7 investigative duty some police officers are
8 trained to do and some who may not be interested
9 in that are not. Not every police officer is an
10 evidence technician. You do get special training
11 on how to do photographing, how to identify
12 evidence, how to collect evidence without
13 destroying it.

14 Q. All right. And you had been through that
15 training?

16 A. Yes, sir.

17 Q. With Manitowoc County, that is, with the
18 sheriff's department, had you performed evidence
19 collection duties prior to November 5th of 2005?

20 A. Yes, sir.

21 Q. How long had you been an evidence tech?

22 A. Since 1997.

23 Q. Have you ever executed a search warrant or
24 collected evidence in that capacity before?

25 A. Yes, sir.

1 Q. After Investigator Wiegert asked you if you were
2 an evidence tech, what were you told to do?
3 A. I was just told to stand by, not to go home. So
4 I went back out to my patrol car.
5 Q. And, again, where was that parked, if you can
6 show us?
7 A. I may, you know, have moved it closer to the
8 Command Post, but initially I was parked right in
9 this area here.
10 Q. Again, near the business buildings?
11 A. Yes, sir.
12 Q. How long did you wait for further assignment?
13 A. Maybe 5, 10 minutes.
14 Q. Now, Sergeant Colborn, did you know what
15 assignment you were going to be given; in other
16 words, did you know where you were going to be
17 directed that night?
18 A. No, sir.
19 Q. What's the next direction that you recall
20 receiving?
21 A. I believe the next person I made contact with was
22 Sergeant Bill Tyson from the Calumet County
23 Sheriff's Department. And he was with Lieutenant
24 Lenk and Detective Remiker. I believe he came
25 out of the Command Post. They kind of motioned

1 to me. So walked up to them and Sergeant Tyson
2 said, you are going to be working for me and we
3 are going to be going to Steve Avery's trailer.

4 Q. What did working for me mean, or what do you
5 believe it meant?

6 A. Well, I had been told by this time that the
7 Calumet County Sheriff's Department was leading
8 up this investigation. So I interpreted working
9 for me as, you are the boss and you are going to
10 tell me what to do.

11 Q. Okay. Were you okay with that?

12 A. Yes.

13 Q. Did you then proceed with Deputy Tyson to the
14 Steven Avery trailer?

15 A. Yes, sir.

16 Q. Do you remember how you got there, how you got
17 down there?

18 A. I believe we took two cars. I believe Sergeant
19 Tyson took his Calumet County patrol car and we
20 probably -- I don't think we took my marked unit,
21 I think I got in Detective Remiker's car, or
22 Lieutenant Lenk's car, whichever. It was an
23 unmarked Manitowoc County car.

24 Q. All right. Tell us again, if you can look at
25 Exhibit 86, now where did you drive, where did

1 you guys go then?

2 A. I had never been to Steve Avery's trailer before
3 so I really didn't know where it was. But we
4 drove down this road to that trailer right there.

5 Q. I will zoom in again on Exhibit 86; do you recall
6 where the cars were parked?

7 A. I believe we parked them in this driveway here
8 that goes up to that garage.

9 Q. Do you recall that particular search that
10 evening?

11 A. Yes, sir.

12 Q. How is it that you have a independent memory of
13 that first search of Steven Avery's trailer?

14 A. Because I was involved in it.

15 Q. Okay. Did each of the search team members have a
16 specific responsibility within that trailer, if
17 you know?

18 A. Not really. I did have the specific
19 responsibility of photographing. But as far as
20 collecting, I mean, we all worked as a team. It
21 wasn't like one person went here and one person
22 went there. We were always -- worked together as
23 a team, always within arm's length of one
24 another.

25 Q. Was that by design, do you know?

1 A. I don't know if it was by design, per se, but it
2 just seemed that this would be the best way for
3 things to work and that we could be the most
4 careful and concise, working together as a team.

5 Q. All right. Let me ask you, Sergeant Colborn, did
6 you know the kinds of things that you were
7 looking for in Steven Avery's trailer?

8 A. Not specific -- specifically, no.

9 Q. Was there generally a term of things that you
10 were looking for?

11 A. I was looking for any evidence that would
12 substantiate or eliminate her having been there.

13 Q. Who's her?

14 A. Teresa Halbach.

15 Q. What rooms were it that the four of you searched?

16 A. I believe that first night we did search the
17 entire trailer. We started in what I term to be
18 the master bedroom or the largest bedroom.

19 Q. All right. We have already heard from Sergeant
20 Tyson so what responsibilities -- I'm just
21 talking about you now, not the others -- but what
22 responsibilities did you have in the search of
23 that bedroom?

24 A. Again, initially, I did all the photographing
25 that night with a 35mm camera. And then I was

1 looking in -- there was a bookcase type piece of
2 furniture next to the bed and a desk next to
3 that.

4 And while I say it's the larger bedroom,
5 it's still kind of a small bedroom so those
6 pieces of furniture were almost tight together.
7 And there was very little distance between the
8 bed and those pieces of furniture, I mean, maybe
9 2 foot. And that's the area that I was
10 specifically searching --

11 Q. How many --

12 A. -- in that bedroom.

13 Q. I'm sorry. How many men were in that bedroom?

14 A. There was myself, Detective Remiker, Lieutenant
15 Lenk and Sergeant Tyson.

16 Q. I'm going to put on the screen an exhibit which
17 has already been received; it's Exhibit 103.
18 It's a computer generated exhibit. Zoom in,
19 specifically, into the bedroom; does that help
20 you better orient yourself to Steven Avery's
21 bedroom?

22 A. Yes.

23 Q. Take the laser pointer, please, and tell the
24 jurors in what area you had initial
25 responsibility to search on the 5th of November.

1 A. This cabinet right here, I guess we could call
2 that a bookcase, and this desk right here.

3 Q. All right. And did you -- Let's talk about the
4 cabinet first. Mr. Wiegert is going to hand you
5 what's been marked as Exhibit No. 203 and on 204,
6 ask if you found those items in Mr. Avery's
7 bedroom on the 5th of November?

8 A. Yes, sir.

9 Q. Tell the jury where you found them, please.

10 A. That's a shelf right there, there's a little
11 space between that shelf and the top of the
12 cabinet. I found them inside there, inside that
13 area.

14 Q. Now, after finding or locating a piece of
15 physical evidence during this search, that is, on
16 the 5th, what did you do with that evidence?

17 A. As soon as I located something that, in my
18 opinion, was of evidence, which doesn't
19 necessarily make it evidence, but if it was, in
20 my opinion, to be of evidentiary value, I stopped
21 what I was doing. I informed Sergeant Tyson,
22 hey, I found some leg irons and handcuffs in
23 here.

24 Then Sergeant Tyson would come over. I
25 would photograph them, then he collected them and

1 put them -- you know, went through the
2 administrative duties that the Calumet County
3 Sheriff's Department requires for logging
4 evidence.

5 Q. The actual seizure, or the collection of them,
6 was whose responsibility?

7 A. Calumet County's.

8 Q. Sergeant Tyson?

9 A. Well, on that evening, yes, Sergeant Tyson,
10 sorry.

11 Q. When you look at Exhibit 103, this computer
12 generated diagram, other than the roof being
13 ripped off, for obvious reasons, does that look
14 the same or similar as it did on the 5th of
15 November?

16 A. Yes, sir.

17 Q. You see on the wall above the bed, the headboard,
18 there is a gun rack; do you see that?

19 A. Yes.

20 Q. Is that how it looked on the 5th of November as
21 well?

22 A. Yes.

23 Q. Did you see any firearms on that gun rack that
24 aft -- that evening?

25 A. There were two firearms on that gun rack, just

1 pretty much like it is in the picture.

2 Q. Were you able, Sergeant Colborn, to identify
3 those guns, or at least what kind of guns they
4 were?

5 A. I know as soon as we walked into the room we
6 noticed the guns right away. I probably stood
7 right about here and I could see that one of the
8 guns, I believe it's this lower one, was a
9 muzzleloader, and it had a piece of masking tape
10 on the stock that said Steve.

11 Q. What about the gun on top; is that a long gun as
12 well?

13 A. It's a .22 caliber rifle.

14 Q. Now, let me ask you, to the best of your
15 recollection, Sergeant Colborn, were those guns,
16 were those firearms seized from Mr. Avery's
17 bedroom on the 5th of November?

18 A. I don't think we did take them on the 5th of
19 November, no.

20 Q. So the jury understands, at that time, that is,
21 that first day, that first night that you guys --
22 you guys meaning the law enforcement -- got
23 there, had Teresa Halbach's body or any of her
24 remains been located?

25 A. No, sir.

1 Q. Did you even know that you were dealing with a
2 crime at that time?

3 A. I -- Initially, we were still treating this more
4 or less as a missing person.

5 Q. All right. But you were looking for items that
6 had obvious evidentiary value; is that right?

7 A. Yes, sir.

8 Q. What were some of the other rooms that -- or let
9 me just -- let me just make this clear, while in
10 that room, while in that bedroom searching, did
11 you notice any -- anything on the floor;
12 specifically, did you notice any car key on the
13 floor?

14 A. No, sir.

15 Q. In looking at, or on top of, either the desk or
16 the bookcase, did you notice any car key or
17 something that may have had obvious evidentiary
18 value in that regard?

19 A. Not really, no.

20 Q. Okay. What other rooms were searched that night?

21 A. I believe we searched every -- every room in the
22 trailer that evening.

23 Q. Try to get to a overview here. This has been
24 received as Exhibit No. 102, does this appear to
25 be an overview of the Avery trailer, again, a

1 computer generated diagram?

2 A. Yes, sir.

3 Q. Lists both bedrooms, the bathroom, living room,
4 dining room and kitchen area; is that right?

5 A. Yes, sir.

6 Q. Each of those rooms searched that evening?

7 A. Yes, sir.

8 Q. You said you were taking 35mm photography in that
9 trailer; is that correct?

10 A. Yes, sir.

11 Q. Were there other photographs also being taken?

12 A. I believe Detective Remiker had brought a small
13 digital camera in as well and he was taking some
14 digital photos as well.

15 Q. I show you a photo that's been received as
16 evidence. This is Exhibit No. 163 and ask if you
17 recognize this particular photo.

18 A. That's a photograph of the master bedroom area I
19 was just talking about in Steve Avery's trailer.

20 Q. Is that how it looked on the 5th of November?

21 A. Yes, sir.

22 Q. Exhibit No. 175, again, which has been received,
23 could you tell us what this is, if you know.

24 A. That's in the living room area of that same
25 trailer, the same residence. And this is like a

1 corner of the living room that was set up as a
2 computer work area.

3 Q. Was that an area that you and your colleagues
4 searched that evening?

5 A. Detective Remiker was the primary officer that
6 looked at that area, but he did call me over a
7 couple times to have me take pictures of items
8 that he had found.

9 Q. You can't fit four grown men into that --

10 A. No, sir.

11 Q. -- corner; is that right? After the search was
12 completed, or when the search was wrapping up,
13 could you tell us how that search ended, how that
14 effort ended?

15 A. The items that we had decided were of evidentiary
16 value that night were placed in Sergeant Tyson's
17 patrol vehicle and he stayed with the evidence.
18 We all went back to the Command Post. And not
19 exactly sure which Calumet County officer told us
20 what time to be there the next day, but we were
21 instructed to return the next day; myself,
22 Lieutenant Lenk, and Detective Remiker. And we
23 all left at the same time.

24 Q. After leaving the residence on the 5th, can you
25 tell the jury where you went, please.

1 A. I would have gone back to the Manitowoc County
2 Sheriff's Department, which is in the city of
3 Manitowoc and to get my personal vehicle, so I
4 could go home.

5 Q. Do you know about what time you cleared the
6 scene; in other words, about what time you left,
7 if you remember?

8 A. I'm sorry, I don't. I know it was late, that's
9 all.

10 Q. The next day, that is, on the 6th of November,
11 were you asked to come back to the scene?

12 A. Yes, sir.

13 Q. And what were you asked to do on the 6th?

14 A. On the 6th, when I came out there, again, with
15 Detective Remiker and Lieutenant Lenk and I
16 believe just -- this time just Lieutenant Lenk
17 went into the Command Post to make contact with
18 who we would be working with with Cal County that
19 day.

20 And Detective Remiker and I just kind of
21 waited until he came back out. And we were
22 introduced to Deputy Kucharski. And then Deputy
23 Kucharski informed us what our assignment would
24 be for that day.

25 Q. Okay. Prior to arriving on the scene, once

1 again, did you know what your assignment was
2 going to be?

3 A. No, I had no idea.

4 Q. Was an evidence collection team formed or
5 developed that morning, on the 6th?

6 A. Yes, sir.

7 Q. Do you remember who was involved in that team?

8 A. It was myself, Lieutenant Lenk, Detective
9 Remiker, and Deputy Kucharski, who's a employee
10 of the Calumet County Sheriff's Department.

11 Q. Once again, was it determined who would be in
12 charge of that group of search individuals?

13 A. After the first day, we didn't, you know -- I
14 didn't need to be told who was in charge, I knew.
15 But Deputy Kucharski told me that he would be
16 responsible for collecting and maintaining
17 security on any evidence that was located that
18 day.

19 Q. All right. What areas, then, of search were you
20 involved with, if any, on the 6th of November?

21 A. Initially, we started at the garage, at Steve
22 Avery's residence.

23 Q. Tell me about this garage, please?

24 A. It's a wooden, frame structure, maybe like a car
25 and a half garage. Not -- Not attached to the

1 residence. It had a vehicle parked out in front
2 of it, a black Ford pickup truck.

3 Q. I show you what's been received in evidence as
4 Exhibit No. 38, can you tell us what we're
5 looking at here, please.

6 A. That's Steve Avery's residence. That's his
7 garage. That's his pickup truck.

8 Q. All right. And that garage was searched; is that
9 right?

10 A. Yes, sir.

11 Q. Who was that searched by?

12 A. The aforementioned team; myself, Lieutenant Lenk,
13 Detective Remiker, and Deputy Kucharski.

14 Q. Do you remember the interior of that garage on
15 the 5th of November?

16 A. Yes, sir.

17 Q. Can you briefly describe that for the jury?

18 A. There was a smaller sport utility vehicle parked
19 in one half of the garage. It was a Suzuki
20 Samurai. There was a snowmobile also parked in
21 there, a Skidoo snowmobile. And there were some
22 other benches and tools that kind of went all the
23 way around the garage. There wasn't a lot of
24 room in there, with all the other apparatus that
25 was in there.

1 Q. In this case, already, and I think the defense
2 had asked and has been admitted, Exhibit No. 119,
3 ask you to take a look at Exhibit No. 119. Tell
4 us what we're looking at here.

5 A. That would be the interior of Steve Avery's
6 garage.

7 Q. Fair to say there's a lot of stuff in there?

8 A. Yes, sir.

9 Q. What kind of search was performed of that garage?

10 A. Well, the same type of, you know, search that we
11 had performed the night before in his residence.
12 We were looking for anything that would lead us
13 to believe that there was a missing person in
14 there.

15 Q. Each of the items that we see, and we can even
16 zoom into some of these things, was each and
17 every one of those items removed from the garage
18 and thoroughly searched, or searched under each
19 and every one of these items?

20 A. No. No, sir.

21 Q. Wasn't that kind of search?

22 A. No.

23 Q. In a very broad way, that is, in a overview
24 fashion, because we're going to hear from Deputy
25 Kucharski, but in a very broad sense, can you

1 tell us the kinds of things that were recovered
2 or viewed while you were in that garage?

3 A. Almost as soon as we stepped in the garage I
4 noticed, as did everyone else, that there were
5 several spent shell casings lying on the floor of
6 the garage.

7 Q. What's a shell casing?

8 A. It's the brass portion of a bullet. After the
9 bullet has been expended or fired, the casing is
10 usually ejected through from the firearm and
11 lands in close proximity to the shooter, usually
12 on the ground.

13 Q. Let me ask you this, Sergeant Colborn, are you
14 familiar with shell casings for different kinds
15 of, or different calibers of firearms?

16 A. Yes.

17 Q. By visual inspection, that is, without picking
18 them up or without even taking a look at those
19 shell casings, were you able to determine what
20 caliber weapon was used to fire those bullets?

21 A. Yes.

22 Q. How were you are able to determine that?

23 A. The shell casings that were laying on the ground
24 were small, for one. They were brass and they
25 didn't have a center primer. They had been fired

1 on the corner of the bottom of the casing; in
2 other words, the rim of the casing. And a
3 .22 caliber weapon is one of the only weapons
4 that is a rim fire weapon. Most weapons have a
5 primer in the center of the bullet. This does
6 not; it's fired off the rim.

7 Q. How many, what you believed were .22 caliber
8 shell casings, were readily apparent or viewable
9 to the naked eye as you entered that garage?

10 A. There were quite a few, 12 maybe, 12 plus.

11 Q. Do you know for sure?

12 A. No, sir, I don't.

13 Q. During the course of that search, were the shell
14 casings that were at least out in plain view
15 seized by Deputy Kucharski?

16 A. Yes, we photographed them first, where they were
17 lying. Initially, Deputy Kucharski and I were
18 both doing photographs, but then we thought
19 perhaps that was a bit redundant. So I just
20 let -- Deputy Kucharski felt more than
21 comfortable taking the photographs so I just
22 stopped taking pictures and assisted with
23 locating.

24 Q. About how long did the search of this garage
25 take?

1 A. One hour, one and a half hours.

2 Q. Looking at the stuff, I will call it junk; I
3 don't know if I will get an objection about that,
4 but probably not. Looking at the junk that we
5 see here, in a one hour search, were you able to
6 thoroughly search this garage?

7 A. No. I mean, if we were looking for something
8 minute, you could spend easily an hour just in
9 this area right here.

10 Q. All right. Were you given other search
11 assignments that day?

12 A. Yes, sir.

13 Q. Can you tell us where you were next assigned to
14 search?

15 A. I believe the next assignment, I believe, was the
16 Ford pickup truck that was parked right in front
17 of the garage.

18 Q. And that was Steve's black truck that we had seen
19 before?

20 A. I do have to mention, there were several times,
21 and I believe this was one of them, where we
22 would be searching a specific area, somebody from
23 Cal County would come and say, I need your
24 assistance doing this. So we would stop what we
25 were doing and assist them with another project

1 and then go back. So I believe before we started
2 searching that Ford pickup truck, I was asked to
3 photograph some burning barrels and assist in
4 loading them up into a covered trailer.

5 Q. All right. Did you do that?

6 A. Yes, sir.

7 Q. Just as long as we have this picture up, first,
8 we're going to go back to Exhibit 38; was that
9 the truck that you assisted in searching?

10 A. Yes.

11 Q. Now, you talked about some burn barrels, where
12 were these located?

13 A. Behind or to the side of Steve's garage. There
14 was three or four of them.

15 Q. Did you know whose burn barrels those were?

16 A. No, I didn't.

17 Q. You said that there were others that were
18 assisting in the recovery of those; do you know
19 who those other individuals were?

20 A. I didn't know, you know, everyone's name from the
21 Calumet County Sheriff's Department, or the
22 Department of Criminal Investigations that was
23 working there. I just recognized that some of
24 the officers were not at all connected with
25 Manitowoc County, but they were uniformed. And I

1 saw Calumet County, you know, Sheriff's
2 Department patches on their uniforms, but I do
3 not know them by name.

4 Q. There were some Manitowoc officers also involved?
5 A. Yes.

6 Q. Those burn barrels, I think a picture of them has
7 been received as Exhibit 52, I'm going to show
8 you that picture; do you recognize that?
9 A. Yes, I took that picture.

10 Q. Who is that we see in the picture?
11 A. That's Detective Dave Remiker from the Manitowoc
12 Sheriff's Department.

13 Q. These are the four burn barrels that you assisted
14 in recovering and loading; is that right?
15 A. Yes, sir.

16 Q. Looks like it's raining here again; is that
17 right?
18 A. Yes. I wanted to get a picture to show that we
19 were trying our best to protect the contents of
20 the barrel; that's the reason that tarp is on
21 there.

22 Q. After those barrels were loaded, did you proceed
23 to complete the search of Steve's black truck?
24 A. Yes, sir.

25 Q. All right. After that effort, what did you do

1 then?

2 A. Again, this is going to be one of those times
3 that I was pulled away for another project. We
4 were almost completed with the search of Steve's
5 truck when I was -- again, another Calumet County
6 supervisor told me -- or asked me where the
7 Maribel Caves Park was. And I said, you know, I
8 described where it was, but not being from
9 Manitowoc County, he didn't really know where it
10 was. And he said, well, some searchers have
11 found some things at the Maribel Caves Park, can
12 you go out there; see what they have, if you
13 think it's evidence, pick it up. So myself and
14 Detective Remiker went out to Maribel Caves Park
15 where we made contact with a civilian search
16 party. And they showed us some things that they
17 had found and we ended up bagging them up and
18 turning them over to the Calumet County Sheriff's
19 Department.

20 Q. What did do you then?

21 A. When I got back, then, I believe, the search of
22 Steve's truck, I think, had been completed then.
23 You know, in my absence, Deputy Kucharski had
24 completed the search and then I would have to
25 take a look at his report to see what our next

1 assignment was. I believe we were sent to Chuck
2 Avery's residence -- no, either Chuck's or
3 Steve's sister. And I'm not positive which one
4 was next.

5 Q. Who's Steve's sister?

6 A. Her first name is Barb. I believe at that time
7 her last name was Janda.

8 Q. All right. Did you assist in the search of Barb
9 Janda's trailer?

10 A. Yes.

11 Q. And we're going to hear from Detective Remiker
12 later, but do you recall being present when a
13 telephone answering machine was located.

14 A. Yes.

15 Q. This has been received as Exhibit No. 55, can you
16 tell us what we're looking at, please.

17 A. I believe that's the answering machine that was
18 in Barb Janda's residence.

19 Q. Who else was present when this answering machine
20 was investigated or searched?

21 A. It was the same search team that had gone into
22 Steve Avery's garage; Lieutenant Lenk, myself,
23 Detective Remiker, and Deputy Kucharski.

24 Q. Were the messages on this machine examined?

25 A. When we -- When we found the answering machine, I

1 saw that there were messages on there. I said,
2 let's unplug it and take the answering machine.
3 And, of course, the conversation between all of
4 us, we said, well, what if somehow in the
5 unplugging process we lose the messages. So,
6 yes, we hit the play button and listened to the
7 messages and Detective Remiker recorded the
8 messages as they were being played.

9 Q. Did you have occasion that day to reenter Steven
10 Avery's trailer?

11 A. I believe that was the day that I was asked to --
12 our whole team was asked to go back into Steve's
13 trailer and obtain serial number -- I think that
14 was the day -- that we were asked to obtain a
15 serial number off Steve's computer, the tower
16 portion of his computer.

17 Q. Are you sure about that, or are you guessing?

18 A. I'm not positive if that was the day or not. I
19 know that was one of the assignments that I
20 completed. I thought it was that day, but I'm
21 not positive. I do know, also, that that day we
22 had to go back into Steve Avery's trailer and
23 collect his weapons.

24 Q. Can you, again, describe those weapons.

25 A. He had a, like a two place or gun rack over his

1 bed. There were two weapons on the gun rack; one
2 was a .22 caliber rifle, and the other was a --
3 if I remember correctly -- was a .50 caliber
4 muzzleloader.

5 Q. We're going to have these marked, actually.

6 ATTORNEY KRATZ: Mr. Fallon, if you could
7 have them marked.

8 ATTORNEY FALLON: They're marked.

9 ATTORNEY KRATZ: Oh, I'm sorry.

10 Q. (By Attorney Kratz)~ Do you see a picture of the
11 .22 caliber rifle?

12 A. Yes, sir.

13 Q. And what exhibit number is that?

14 A. It is Exhibit 164.

15 Q. See if I can find that here. Do you recognize
16 Exhibit No. 164?

17 A. Yes, it's a .22 caliber rifle that we located in
18 Steve Avery's bedroom.

19 Q. I have put up a photograph of Exhibit No. 164;
20 again, does that .22 caliber rifle look the same
21 or similar as it did when it was seized on the
22 6th of November?

23 A. Yes, sir.

24 Q. Did you, by the way, that day, on the 6th, have
25 occasion to, at all, inspect or further inspect,

1 that rifle?

2 A. When we collected the rifle, in order to manage
3 an evidence room, we first needed to make sure
4 that the weapon wasn't loaded. So I did pull the
5 action back to see if it was going to eject a
6 round. And I believe I pulled the tube out,
7 which is under the barrel there.

8 Q. Why don't you show you us with the laser pointer.

9 A. That portion of the weapon is the magazine. To
10 load it, you pull a tube out, I believe, an
11 insert rounds through that notch right there.

12 This is the action of the magazine; it's
13 a semi-automatic weapon. So I pulled this action
14 back to see if there was a round inside the
15 barrel. And I believe the safety is right there
16 on the weapon and I would have checked to make
17 sure that the safety was on, because if someone
18 handling the weapon, obviously, if it was loaded
19 with the safety off, it could fire.

20 Q. Sure. Are you familiar with a semi-automatic
21 rifle such as Exhibit No. 164?

22 A. Yes, sir.

23 Q. Now, a tube loaded or a tube fed magazine, for
24 those on the jury that aren't gun enthusiasts,
25 can you tell us just -- just generally how that

1 works?

2 A. This portion of the weapon right here is where
3 it's loaded. At the very end here, you can twist
4 a knob and you pull out like a plastic plunger
5 and you load -- you would have to turn the weapon
6 almost upside down. But if you can see that,
7 there's a little notch there, that's where you
8 put the rounds in and then you just slide this
9 tube back in until it locks.

10 And if it doesn't lock, you put too many
11 rounds in. You have to get it so that that
12 locks. As you fire the weapon, there's a spring
13 on there and it just keeps pushing the rounds
14 back to the chamber.

15 Q. After a .22, you mentioned a rim fire bullets,
16 but after the shell casings are ejected, where do
17 they come out of?

18 A. Out of that area right there, that silver area.

19 Q. And with a semi-automatic weapon, do you have to
20 reload it, or cock it, or do anything that any --
21 any action like that that we might hear with
22 other weapons?

23 A. No, sir. A semi-automatic weapon will continue
24 to fire as fast as you can pull the trigger. You
25 must release the trigger to its sear each time,

1 but it will continue to fire as fast as you can
2 pull the trigger, until all the shells are
3 expended.

4 Q. By the way, Sergeant Colborn, I don't know if you
5 know this, but do you know what kind of weapon
6 this is; what brand name weapon?

7 A. I know when we catalogued the weapon, when we
8 took it, and when Deputy Kucharski took it in as
9 evidence, I read the manufacturer name to him,
10 but I don't recall who manufactured that weapon.

11 Q. That's fine. Thank you. You said there was a
12 second weapon that was seized; is that right?

13 A. Yes, sir. You gave me a photograph that's marked
14 Exhibit 165.

15 Q. Why don't you tell us what that is?

16 A. That's a muzzleloading weapon, similar to like a
17 musket from the Revolutionary War or frontier
18 period. It's called muzzleloading because that's
19 where you load it, through the muzzle.

20 Q. Where were these items seized from?

21 A. Steve Avery's bedroom, on a gun rack that was
22 hanging above his bed.

23 Q. Is there anything else that was seized from
24 Mr. Avery's trailer that day, that is, on the 6th
25 of November, that you can recall?

1 A. Not that I recall, no, sir.

2 Q. Any other buildings that you were asked to search
3 that day?

4 A. Not that I specifically recall, no.

5 Q. All right.

6 ATTORNEY KRATZ: Judge, before going into
7 the next day's search for the 7th, this might be a
8 good time for a lunch break.

9 THE COURT: All right. The Court agrees.
10 Members of the jury, we're going to take our lunch
11 break at this time. Again, do not discuss the case
12 in any fashion and during the break and we'll resume
13 at 1:00.

14 (Jury not present.)

15 THE COURT: You may be seated. Go off the
16 record at this time.

17 (Off the record discussion.)

18 THE COURT: At this time we'll go back on
19 the record. Mr. Kratz.

20 ATTORNEY KRATZ: Judge, before we break for
21 lunch, Mr. Strang was kind enough to alert me that
22 this witness may be cross-examined with the
23 assistance of a audio CD. Mr. Strang gave me a CD
24 that has 24 tracks on it. I don't know if he
25 intends to play all 24 tracks in the

1 cross-examination, but it would certainly assist us
2 in orienting as to the time and the context of those
3 conversations, if those could be identified. If
4 they can't, that's fine, but if the tracks
5 themselves, rather than listen to all 24 during the
6 lunch hour, could be identified, we would appreciate
7 that.

8 THE COURT: Mr. Strang.

9 ATTORNEY STRANG: Well, I provided the CD
10 out of an abundance of caution. I think these --
11 these taped calls are all calls that the State, like
12 the defense, received during the hearing on
13 August 9, 2006, from the Manitowoc County Sheriff's
14 Department. We should probably excuse the witness.

15 THE COURT: I was just thinking about that
16 myself. Mr. Colborn, if you can step out of the
17 courtroom for a minute, we'll continue here. The
18 witness has now left the courtroom.

19 ATTORNEY STRANG: Right. As I say, I'm
20 quite confident that when we received the CD's from
21 the Manitowoc County Sheriff's Department on
22 August 9, 2006, the State also received the very
23 same recorded calls, both radio transmissions and
24 some land lines at the sheriff's department that are
25 answered by dispatchers. Out of an abundance of

1 caution, I gave Mr. Kratz another copy of the disc
2 I'm going to mark today. But I'm not interested in
3 disclosing my cross-examination over the lunch hour
4 while, you know, the State is free to prepare
5 including with the witness.

6 THE COURT: All right. If it's information
7 that the parties already have, I don't know what's
8 going to come in but, Mr. Kratz, if you need a break
9 before redirect, I will take up a request at that
10 time.

11 ATTORNEY KRATZ: That's fine and counsel
12 may hear the very same response later in the trial.
13 That's fine. Thank you, Judge.

14 THE COURT: Okay.

15 (Noon recess taken.)

16 THE COURT: Mr. Kratz, at this time you may
17 resume your direct examination of Mr. Colborn.

18 ATTORNEY KRATZ: Thank you, Judge.

19 DIRECT EXAMINATION

20 BY ATTORNEY KRATZ:

21 Q. Sergeant Colborn, we left off with the next day,
22 I believe, of your involvement with the -- on
23 Monday, the 7th of November; do you remember that
24 day?

25 A. Yes, sir.

1 Q. Were you asked to return to the Avery property?
2 A. Yes, I was.
3 Q. And, by the way, who were you asked to return
4 there by?
5 A. The Calumet County Sheriff's Office, or
6 Department of Criminal Investigation, one of
7 those officers.
8 Q. If you could speak up just a little bit,
9 Sergeant, I would appreciate it.
10 A. I was either asked to return by the Calumet
11 County Sheriff's Department, one of their
12 supervisors, or by the Department of
13 Corrections -- or Department of Criminal
14 Investigations, Agent Tom Fassbender.
15 Q. Were you, for lack of a better word, volunteering
16 for this service, or these duties?
17 A. No.
18 Q. On the 7th of November, then, do you recall about
19 what time you returned to the salvage yard?
20 A. Somewhere between 6:30 in the morning and 7:30 in
21 the morning, I believe.
22 Q. Sergeant Colborn, what were you asked to do on
23 the 7th, if you recall?
24 A. On the -- On Monday, I was informed that -- by
25 Sergeant Tice that I -- Tyson, that I would be

1 working with him, again. This would be the same
2 Sergeant Tyson that I had worked with on
3 Saturday.

4 And he informed us that our assignment
5 that day was to go into the Avery Salvage Yard
6 and open any trunks of vehicles that had not yet
7 been searched, because the trunks, apparently,
8 they couldn't find the keys for these vehicles
9 and we were to look inside the trunks of these
10 vehicles.

11 Q. Were there any other members of your team, other
12 than you and Sergeant Tyson?

13 A. Also Lieutenant Lenk was with me that day.

14 Q. And did you, in fact, assist in opening up or
15 searching trunks that hadn't yet been opened?

16 A. Yes, I did.

17 Q. What else happened on the 7th?

18 A. That took the better part of the morning. I
19 believe in the afternoon we were instructed to
20 start collecting -- you know, specifically
21 instructed to collect -- I take that back. At
22 some point we were also asked to get a -- I
23 believe this was the day that we were asked to
24 get the serial number off Steven Avery's
25 computer.

1 Q. Did you assist Sergeant Tyson in that regard?

2 A. Yes, I did.

3 Q. Can you tell the jury what you did, please.

4 A. The serial number is on the back of the computer.

5 And the portion of the computer that we needed
6 the serial number was underneath a desk that had
7 been shown earlier, the photograph that was shown
8 earlier. So I crawled underneath the desk and
9 used a flashlight to obtain the manufacturer and
10 the serial number of the computer, which Sergeant
11 Tyson wrote down.

12 Q. All right. How long did that process take?

13 A. At the most, 10 minutes.

14 Q. Did you go in any other part of the residence, or
15 did you confine yourself to the living room area?

16 A. I just confined myself to the area where the
17 computer was that day.

18 Q. What else did you do then?

19 A. I believe then we were instructed to -- I believe
20 we were instructed, then, to start collecting
21 some firearms from the other residences that were
22 on the Avery property. I believe, specifically,
23 Barb Janda's residence.

24 Q. And did you do that?

25 A. Yes, sir.

1 Q. All right. What's the next thing you did on the
2 7th?

3 A. I know at one point I was asked to take some
4 photographs, I believe, of a burning barrel that
5 was on Steve Avery's property. I did do that.

6 Q. Which -- Which burn barrel did you take
7 photographs of?

8 A. It was a burn barrel that was on, I would -- that
9 was in close proximity to Steve's trailer. And I
10 remember it had a car wheel by it.

11 Q. To orient us to that, there's an exhibit which
12 has been received, it's Exhibit 114. It's,
13 again, an exterior computer animation. If you
14 take your laser pointer up there, tell us what
15 we're looking at, and what burn barrel you were
16 asked to examine and photograph?

17 A. That burn barrel right there. I remember right
18 on one -- either this side or this side of it
19 there was a car wheel standing on its edge with a
20 tire missing.

21 Q. Did it appear to you, at least as you went to
22 that scene and as you look at Exhibit 114, who
23 that burn barrel is attached to?

24 A. Yes, it's the burn barrel for that residence,
25 right there, Steve Avery's residence.

1 Q. Now, Sergeant, you talked about some different
2 kinds of photography. I think you talked about
3 digital as well as 35mm photography; do you
4 remember that day, the 7th of November, what kind
5 of photography you were performing?

6 A. 35mm, I did not do any digital photography the
7 entire time I was out there, personally.

8 Q. That way you talked about a wheel next to the
9 burn barrel, I'm going to show you what's been
10 marked as Exhibit No. 158, in fact, Mr. Fallon is
11 going to hand it to you, but I would ask you if
12 you could tell us what this is an image of.

13 A. That is a car wheel, that's at the very edge of
14 Steve Avery's burn barrel. And those wires, I
15 believe, that are around the wheel are actually
16 part of the make up of the tire, probably like
17 portions of the steel belt.

18 Q. As we get closer, do a little bit of a close up,
19 can you see that better now on the screen?

20 A. Yes, sir.

21 Q. By the way, Exhibit 158, is that a photo that you
22 took or likely took?

23 A. Yes, sir.

24 ATTORNEY KRATZ: In all honesty, Judge, so
25 that I don't forget, I'm going to move the admission

1 of Exhibit 158 at this time.

2 THE COURT: Any objection?

3 ATTORNEY STRANG: None.

4 THE COURT: 158 is received.

5 Q. (By Attorney Kratz)~ Were you asked to do
6 anything else on the 7th, Sergeant?

7 A. I believe I was also -- At some point, apparently
8 the Command Post received word that some
9 searchers had located an area that -- it looked
10 suspicious, there was plastic poking up from the
11 ground and it looked like the ground had been
12 disturbed. So I was asked to go to that area
13 along with the Wisconsin State Crime Lab,
14 Sergeant Tyson, and Lieutenant Lenk and help the
15 Crime Lab, if they requested it, to excavate that
16 area.

17 Q. Do you know on what roadway this was?

18 A. I believe it was off Kuss, White Cedar Road.

19 Q. This is something that Mr. Ertl, yesterday,
20 talked about a potential burial site but what
21 wasn't; was that your understanding, that it
22 turned out not to be?

23 A. Yes, it turned out to be nothing.

24 Q. Did you do anything else on the 7th.

25 A. I think by the time we were down with that, that

1 consumed the rest of the day.

2 Q. Let's move on then to the 8th, which would be
3 Tuesday, the 8th of November, were you asked to
4 return to the property?

5 A. Yes, sir.

6 Q. Again, who were you asked to return there by?

7 A. By -- No, I didn't get the -- the -- wasn't told
8 to me directly. Usually Lieutenant Lenk met with
9 members of the Calumet County Sheriff's
10 Department and Department of Criminal
11 Investigations at the completion of each day and
12 then I would just check with Lieutenant Lenk, are
13 we needed tomorrow or no.

14 Q. I see.

15 A. And then he said, we're needed tomorrow.

16 Q. Did you show up then on the 8th?

17 A. Yes, sir.

18 Q. And who were you attached to, or who were you
19 assigned to that day?

20 A. I was assigned to Deputy Dan Kucharski from the
21 Calumet County Sheriff's Department.

22 Q. Do you know what you were asked to do on the 8th?

23 A. Yes, Deputy Kucharski, Lieutenant Lenk, and
24 myself were instructed, by Special Agent
25 Fassbender, to look for some specific printed

1 material inside Steven Avery's residence.

2 Q. Okay.

3 A. And to collect same.

4 Q. Did you have occasion to enter Steven Avery's

5 bedroom on the 8th of November?

6 A. Yes, sir.

7 Q. Who did you enter that bedroom with.

8 A. Deputy Kucharski and Lieutenant Lenk.

9 Q. How long did you spend in that bedroom on the

10 8th, if you recall?

11 A. An hour or so.

12 Q. Were you directed to perform any search of that

13 trailer, specifically of that bedroom?

14 A. Before -- Actually, before we started on the

15 bedroom, I was instructed to, with Deputy

16 Kucharski, to remove the computer and to wait

17 until the computer was picked up by another law

18 enforcement officer.

19 Q. Okay. Did you do that?

20 A. Yes, sir.

21 Q. Then, moving to the bedroom, my question is,

22 whether you were to perform a search that day?

23 A. Yes, sir.

24 Q. I'm showing you what's been marked for

25 identification as Exhibit No. 208; can you tell

1 us what that is, please.

2 A. These are photographs of a cabinet that's right
3 next to the desk in Steve Avery's bedroom, that
4 would be the same bedroom where the firearms were
5 that I described before and --

6 Q. We're just talking about the first one now,
7 Exhibit 208.

8 A. That's this photograph here. It's a picture
9 of -- this is a desk.

10 Q. I'm actually going to put a view up for the jury
11 so that we can -- Okay. If you want to use your
12 laser pointer where everybody can see what you
13 are talking about then.

14 A. This is a desk. There's an open area, that's the
15 picture. This is a cabinet, you can see how
16 closely it is positioned to the desk there.

17 Q. Let me just stop you, is this something that you
18 earlier called a bookcase.

19 A. This cabinet, I'm sorry, yes, I called it a
20 bookcase and that's actually, I guess, what it
21 is, a bookcase.

22 Q. Just so that the jury understands, was this the
23 item from which the handcuffs and the leg irons
24 were seized a couple days earlier?

25 A. Yes, sir. It's easier to see now, with this

1 picture, the leg irons and handcuffs were located
2 in this area here.

3 Q. Now, this particular photograph, you can see a
4 pair of slippers, bedroom slippers next to it; is
5 that right?

6 A. Yes, sir.

7 Q. You can see a electrical outlet or a socket; is
8 that right?

9 A. Yes, sir.

10 Q. Can you point to that, please. Were you asked,
11 or at least as part of your responsibilities of
12 searching the bedroom, were you asked to do a
13 thorough search of this piece of furniture?

14 A. Yes.

15 Q. And did you do that?

16 A. Yes.

17 Q. In performing that search, Sergeant Colborn, did
18 you move or manipulate this piece of furniture at
19 all?

20 A. Yes, sir.

21 Q. Can you describe that for the jury, please.

22 A. As I stated before, we were looking for specific
23 printed or photographs. There is a narrow area
24 between this bookcase and this desk, right there.
25 And in order to make sure that there was no

1 evidence or anything else that we needed lodged
2 between there, I actually tipped this to the side
3 and twisted it away from the wall.

4 Q. If you can describe that further, I don't know if
5 you can do it with your words, or show us with
6 your hands, how you did it?

7 A. I will be the first to admit, I wasn't any too
8 gentle, as we were, you know, getting
9 exasperated. I handled it rather roughly,
10 twisting it, shaking it, pulling it.

11 Q. And that's the bookcase that you are talking
12 about?

13 A. Yes, this piece of furniture right here, a
14 bookcase.

15 Q. I'm sorry. Sergeant, in shaking and twisting
16 that particular bookcase, did you pull it away
17 from the wall itself, that you can see behind
18 there?

19 A. Yes, I did.

20 Q. After that process was complete, were the
21 items -- The binder that we can see in the lower
22 left hand corner of the bookcase; can you point
23 to that, please. Was that, and the other items
24 within that bookcase, removed and examined by
25 yourself and your -- other members of your team?

1 A. Yes, sir.

2 Q. Did you have occasion to replace those items into
3 that bookcase after having pulled it from the
4 wall?

5 A. Yes, sir.

6 Q. What was done with the bookcase after that
7 thorough search of the -- of those materials was
8 completed?

9 A. The items that we didn't use -- or collect as
10 evidence, that binder and some of the other
11 things there were kind of stuffed, rather
12 forcefully, back in there. And other items that
13 we were going to collect as evidence were -- we
14 had so many that we didn't have a container in
15 the room large enough to hold them all. So
16 Lieutenant Lenk exited the bedroom to get a
17 larger container and I began to search this desk
18 here.

19 Q. By a larger container, what are you talking
20 about?

21 A. A box.

22 Q. Now, at this time, that is, as the search was
23 completed, what was done with that piece of
24 furniture; what was done with the bookcase
25 itself?

1 A. It was still kind of away from the wall, but it
2 was more or less stuffed back into its original
3 position.

4 Q. The next exhibit, Exhibit No. 209, describe what
5 that is, please.

6 A. That's just a different photograph of the same
7 bookcase.

8 Q. I'm going to allow the jury to see that as well.
9 Is this the photo that you are talking about
10 of -- of the bookcase?

11 A. Yes, sir.

12 Q. The next exhibit, No. 210, can you describe what
13 that is for us, please.

14 A. 210 is a picture, a photograph of the -- Well,
15 you can see that we have some materials there
16 stuffed in a bag. Then there's the bedroom
17 slippers. And now there is a key with a fob,
18 lying between the bedroom slippers.

19 Q. Sergeant Colborn, I'm going to direct your
20 attention, then, to the large screen. I would
21 like you to carefully take the laser pointer and
22 describe for the jury what it is that we're
23 looking at?

24 A. These were some items that we had bagged up. I
25 don't recall what that is. These were the same

1 bedroom slippers that were in the other
2 photograph, but you can see that they have been
3 jostled. That's the electrical outlet. And now
4 there is a key and with this connecting canvas or
5 nylon fob and a black plastic buckle, lying on
6 the floor.

7 Q. The piece of furniture, that is, the bookcase
8 that we see in Exhibit 210, has that been removed
9 or replaced to its original position?

10 A. I can't say we have got it exactly 100 percent
11 where it was, but it's very close to its original
12 position, yes.

13 Q. So the jury understands the timing of these,
14 Exhibit No. 208 shows the slippers right next to
15 the outlet. And this exhibit, 210, shows the
16 slippers pushed to what would be the left and
17 actually a little bit closer to the photographer;
18 is that fair?

19 A. That's correct.

20 Q. Do you recognize this image, that is, did you see
21 this image on the 8th of November?

22 A. Yes.

23 Q. Can you describe that moment, or that event, for
24 the jury, please.

25 A. As I had mentioned earlier, Lieutenant Lenk had

1 exited -- That is the door coming into the
2 bedroom; he had gone through that door to get a
3 bigger container. I was searching the desk here.
4 Deputy Kucharski was sitting on the bed, which
5 also isn't in the photograph, but is in very
6 close proximity to this piece of furniture, the
7 bookcase, filling out paperwork.

8 Lieutenant Lenk got about right here,
9 his feet would have been right here, so he was in
10 the room, and said something to the effect of,
11 there's a key on the floor here, or, look,
12 there's a key. I don't know what his exact
13 verbiage was but he identified that there was a
14 key on the floor.

15 I turned around, as I wasn't very far
16 away, I turned around and looked and I observed
17 this key, lying right where it is. And I
18 observed this key had this black rubberized or
19 plastic end on it, which they didn't -- you know,
20 that's a newer model car key, due to that plastic
21 or rubberized end. And I also observed that
22 embossed on there was a Toyota emblem.

23 And we told Deputy Kucharski, get a
24 photograph of this, right away, which he did,
25 which is this photograph. I did not take this

1 photograph.

2 Q. By the way, as you and Deputy Kucharski and
3 Lieutenant Lenk observed this, did any of the
4 three of you approach or touch this piece of
5 evidence at that time?

6 A. I may have been standing in this area here, you
7 know. This piece of furniture is only 2 and a
8 half, 3 feet tall, maybe. So I could easily see
9 over it to see the key.

10 I did not approach the key. Lieutenant
11 Lenk did not come into the room. Deputy
12 Kucharski photographed the key from, you know,
13 from whatever angle this picture was taken at.
14 That's as close as we got.

15 Q. My question, again, was, did either yourself,
16 Lieutenant Lenk, or Deputy Kucharski, prior to
17 this photo was taken, touch that key?

18 A. No, sir.

19 Q. Why not?

20 A. I think all three of us knew at the same time
21 that there was a very good chance, seeing a
22 Toyota emblem embossed on that key, knowing that
23 Teresa Halbach's vehicle was a Toyota, that this
24 was a very important piece of evidence. And, you
25 know, none of us were going to taint that.

1 Q. Let me ask you, Sergeant Colborn, you guys -- you
2 specifically, Lieutenant Lenk, and now Deputy
3 Kucharski, had been in this room for quite some
4 time before this key appears in this position;
5 isn't that right?

6 A. Yes, sir.

7 Q. Did this surprise you, that you saw this key
8 there?

9 A. Yes, I was very surprised.

10 Q. Did the three of you talk about that, we hadn't
11 seen it before, anything like that?

12 A. I -- I believe I said to myself, damn, how did I
13 miss that.

14 Q. Now, other than the bedroom slippers being pushed
15 to the side, had anything else changed, other
16 than the pulling out and the twisting and the
17 jostling of the cabinet?

18 A. As we looked at the cabinet, it appeared that in
19 the process of us stuffing everything back into
20 the cabinet, we had separated the back of the
21 cabinet, the small piece of paneling that would
22 be the back of the cabinet, from the frame of the
23 cabinet itself.

24 Q. Let me stop you there. Did you have occasion,
25 then, to go look at the back of this piece of

1 furniture, the back of the cabinet, after this
2 key was processed?

3 A. Yes.

4 Q. I know I'm jumping ahead just a little bit, but
5 could you describe what you saw; could you
6 describe the back panel of the cabinet?

7 A. It would be made out of a -- I'm trying to think
8 of the right word, like a piece of wood, the same
9 thickness maybe as a piece of paneling that one
10 would put on a wall. You know, it's a thin piece
11 of wood, it's not -- it's not like it's a quarter
12 inch piece of plywood nailed to the back of the
13 cabinet. It's a thin piece of wood.

14 The piece of furniture itself is old and
15 not in the best state of repair. And I believe
16 it was just very small, short brads or nails that
17 held the piece of paneling or the piece of wood
18 to the back of the cabinet. And I'm sure that
19 when we were putting things in we exercised more
20 than enough force to push it away. And there was
21 a gap now between the back of the -- the piece of
22 paneling on the back of the cabinet and the frame
23 of the cabinet itself.

24 Q. I'm going to show you an exhibit that's been
25 received as Exhibit No. 169; although taken on a

1 different day, we're all in agreement about that,
2 does Exhibit 169 look the same as when you
3 witnessed the back of this cabinet on the 8th of
4 November?

5 A. Yes, sir.

6 Q. What was done with the key, if you remember?

7 A. Initially, it was photographed and Lieutenant
8 Lenk and I both -- when I say told, it was not
9 like we were ordering him, but we just
10 communicated to Deputy Kucharski that he needed
11 to make sure he put on a fresh set of gloves;
12 pick up that key, put it in a separate container,
13 totally by itself; and we needed to contact the
14 Command Post right away and let them know that we
15 had located a key that could possibly be a key to
16 Teresa's vehicle.

17 Q. Did somebody from the Command Post come to your
18 location then?

19 A. Two people from the Command Post came to our
20 location. Special Agent Fassbender and
21 Investigator Wiegert.

22 Q. Were you present when the lead investigators were
23 shown this key that was discovered?

24 A. Yes. We packaged the key and we went into the
25 living room and that's where we remained until

1 the two investigators came and looked at the key.

2 ATTORNEY KRATZ: What exhibit number is
3 next, Madam Clerk?

4 THE CLERK: 211.

5 Q. (By Attorney Kratz)- Sergeant Colborn --

6 ATTORNEY KRATZ: And, Judge, the record
7 should reflect that the evidence bag is being opened
8 with the assistance of Investigator Wiegert.

9 Q. (By Attorney Kratz)- But Sergeant Colborn, you
10 are going to be shown the contents of what is
11 being marked as Exhibit No. 211.

12 (Exhibit No. 211 marked for identification.)

13 ATTORNEY KRATZ: Deputy Wiegert, if you
14 would be so kind as to show it to this witness.

15 Q. (By Attorney Kratz)- Sergeant Colborn, please
16 don't -- don't touch this exhibit. But an
17 exhibit that has now been marked for
18 identification as Exhibit 211 is being shown to
19 you.

20 ATTORNEY KRATZ: If you stand to the side a
21 little bit, Investigator Wiegert, I would appreciate
22 it.

23 Q. (By Attorney Kratz)- Tell the jury what that is,
24 please.

25 A. That appears to be the exact same key as pictured

1 right there on that photograph. It's a long key,
2 with a black plastic end, with a Toyota emblem on
3 the end of it. And that same nylon, actually, I
4 think corresponds to something that someone would
5 wear around their neck and clip to the other
6 plastic end.

7 ATTORNEY KRATZ: With permission, Judge,
8 may Investigator Wiegert post it or at least show
9 the jurors?

10 THE COURT: Any objection?

11 ATTORNEY STRANG: Nope.

12 THE COURT: Yes, you may do so.

13 ATTORNEY KRATZ: Hold it up by one end,
14 Investigator, and show the jurors, please.

15 THE COURT: The record should probably also
16 reflect he's wearing rubber gloves at this time, or
17 unless you can describe them more accurately.

18 ATTORNEY KRATZ: Latex gloves. And
19 although Mr. Kucharski will be testifying as well,
20 Judge, I don't believe there is any contest as to --
21 as to this exhibit and I will move its admission at
22 this time.

23 THE COURT: Any objection?

24 ATTORNEY STRANG: Well, there's plenty of
25 contest as to that exhibit, but not as to it having

1 been authenticated and identified. And I don't have
2 any objection to it being received.

3 ATTORNEY KRATZ: Thank you.

4 THE COURT: All right. The exhibit will be
5 received.

6 ATTORNEY KRATZ: Thank you.

7 Q. (By Attorney Kratz)~ After Special Agent
8 Fassbender and Investigator Wiegert were shown
9 that key, do you know what happened to that key?

10 A. Just -- excuse me, we decided, between the three
11 of us, just to wait in the living room. Special
12 Agent Fassbender and Investigator Wiegert said
13 that another law enforcement officer would be
14 coming down to take possession of the key.

15 So we all three just waited until he got
16 there. We turned the key over and I believe we
17 were told that it would be going to Madison, to
18 the Crime Lab, where Teresa's vehicle already
19 was.

20 Q. Sergeant Colborn, after this search, after this
21 thorough search of Mr. Avery's residence was
22 completed, were you asked to perform a similar
23 thorough search of somebody else's residence that
24 day?

25 A. Yes, I believe it was Charles Avery's residence.

1 Q. And was that search performed by the same team;
2 that is, yourself, Lieutenant Lenk and Deputy
3 Kucharski from Calumet County?

4 A. Yes, sir.

5 Q. Sergeant Colborn, we have heard some references
6 this week, and even last, to your involvement in
7 this case. And now that you are here, now that
8 you are in court, I have some questions regarding
9 your knowledge of Mr. Avery.

10 First of all, prior to November of 2005,
11 had you been involved at all in the
12 investigation, testifying against, or prosecution
13 of Steven Avery in any previous criminal
14 proceedings?

15 A. No, sir.

16 Q. Had you ever been personally named in any civil
17 lawsuits, or ever personally been accused of any
18 wrongdoing regarding Mr. Steven Avery?

19 A. No, sir.

20 Q. You were asked, as I understand, as part of a
21 civil lawsuit, to provide what's called a
22 deposition, to be questioned by some lawyers; is
23 that right?

24 A. Yes, sir.

25 Q. Do you recall when that occurred?

1 A. I believe it was in October of 2005.

2 Q. Do you remember how long that deposition, how
3 long that -- that process took?

4 A. I thought it was less than an hour, but an hour
5 or less.

6 Q. All right. You were asked some questions, is
7 that right, under oath?

8 A. Yes, sir.

9 Q. Did you answer those questions to the best of
10 your knowledge and ability?

11 A. Yes, I did.

12 Q. Do you recall the context in which you were asked
13 those questions; in other words, do you recall
14 what you were asked about?

15 A. Yes, sir.

16 Q. Can you tell the jury what you were asked about?

17 A. In 1994 or '95 I had received a telephone call
18 when I was working as my capacity as a
19 corrections officer in the Manitowoc County Jail.
20 Telephone call was from somebody who identified
21 himself as a detective. And I answered the
22 phone, Manitowoc County Jail, Officer Colborn.

23 Apparently this person's assumption was
24 that I was a police officer, not a corrections
25 officer, and began telling me that he had

1 received information that somebody who had
2 committed an assault, in Manitowoc County, was in
3 their custody, and we may have somebody in our
4 jail, on that assault charge, that may not have
5 done it.

6 I told this individual, you are probably
7 going to want to speak to a detective, and I
8 transferred the call to a detective, to the
9 Detective Division, at the Manitowoc County
10 Sheriff's Department. That's the extent of my
11 testimony.

12 Q. That's it? That's your connection to Mr. Avery?

13 A. Yes, sir.

14 Q. Well, did that cause you enough embarrassment and
15 enough angst in which to set up Mr. Avery for a
16 charge of murder?

17 A. No.

18 Q. Did that deposition cause you such problems from
19 within your department that you obtained and
20 planted blood, so that it would be found and
21 Mr. Avery would be wrongfully accused of a
22 homicide case?

23 A. No, sir.

24 Q. Have you ever planted any evidence against
25 Mr. Avery?

1 A. That's ridiculous, no, I have not.

2 Q. Have you ever planted any evidence against
3 anybody in the course of your law enforcement
4 career?

5 A. I have to say that this is the first time my
6 integrity has ever been questioned and, no, I
7 have not.

8 ATTORNEY KRATZ: That's all I have for
9 Sergeant Colborn, Judge.

10 THE COURT: Mr. Strang.

11 CROSS-EXAMINATION

12 BY ATTORNEY STRANG:

13 Q. This is the first time your integrity has been
14 questioned?

15 A. As it applies to being a police officer, yes.

16 Q. Okay. And it's not the first time Mr. Avery's
17 has been, so I have some questions for you. You
18 were, in November of 2005, in the Road Patrol
19 Division of the Manitowoc County Sheriff's
20 Department?

21 A. Yes, sir.

22 Q. You were a sergeant in that division?

23 A. Yes, sir.

24 Q. Were there other sergeants in that division?

25 A. Yes, sir.

1 Q. How many?

2 A. There's one lieutenant and two sergeants assigned
3 per shift; there's three shifts. We're looking
4 at six sergeants, three lieutenants.

5 Q. Your shift particularly was noon to 8:00 p.m.?

6 A. Yes, sir.

7 Q. That made you the assistant shift commander as
8 opposed to the other sergeant?

9 A. Yes, sir.

10 Q. And the shift commander, himself, when the
11 lieutenant had a day off?

12 A. Yes, sir.

13 Q. The Road Patrol Division does exactly that, it
14 patrols the roads of Manitowoc County?

15 A. Yes, sir.

16 Q. Typically in marked squad cars?

17 A. Yes, sir.

18 Q. Speeding and other traffic law enforcement?

19 A. Yes, sir.

20 Q. Calls for help from citizens, a variety of calls?

21 A. Yes, sir.

22 Q. You might be the first to respond to a domestic
23 violence call, let's say?

24 A. Yes, sir.

25 Q. You might respond to a flat tire on the side of

1 the road?

2 A. Yes, sir.

3 Q. This division, during the noon to 8:00 shift,
4 back in, let's say, November, 2005, had
5 approximately how many officers out on the road
6 during that noon to 8:00 shift?

7 A. Well, I believe that par -- four or five officers
8 counting the shift commander.

9 Q. Roughly?

10 A. Yes, sir.

11 Q. I understand. And the shift commander had some
12 administrative duties, but also had some road
13 patrol duties?

14 A. Yes, sir.

15 Q. Collection of evidence was not typically a duty
16 of the Road Patrol Division?

17 A. Yes, it is.

18 Q. That is, some members of the Road Patrol Division
19 may be trained in the collection of evidence,
20 correct?

21 A. Correct.

22 Q. Just as some members of the other divisions of
23 the Manitowoc County Sheriff's Department may
24 have special training as evidence technicians or
25 in evidence collection?

1 A. Correct.

2 Q. The Sheriff's Department includes as one of its
3 divisions, or bureaus, units, if you will, an
4 Investigative Unit?

5 A. Yes, sir. To make it easier, both patrol and
6 investigations are assigned to the Operations
7 Division of the Manitowoc County Sheriff's
8 Department.

9 Q. Very well. Thank you. But they are separate
10 units within the operations division?

11 A. Yes, sir.

12 Q. You had been trained in evidence collection as a
13 technician?

14 A. Yes, sir.

15 Q. That went back to, I think, 1997?

16 A. Yes, sir.

17 Q. That was something for which you volunteered?

18 A. Yes.

19 Q. You were accepted or someone accepted your offer
20 and you got some special training?

21 A. Yes, sir.

22 Q. One of the people from whom you got that special
23 training is seated right over there, second to my
24 right in the back, true?

25 A. Evidence tech training?

1 Q. Yes.

2 A. No, sir.

3 Q. Didn't get that kind of training from Special
4 Agent Fassbender?

5 A. No, I did not.

6 Q. What training did you get from Special Agent
7 Fassbender? I'm talking about well before
8 November, 2005 now.

9 A. Special Agent Fassbender was my DAT, which is
10 defense and arrest tactics, instructor during the
11 recruit academy at Fox Valley Tech.

12 Q. All right. Having nothing directly to do with
13 evidence collection?

14 A. That's correct, sir.

15 Q. But you went through a recruit academy?

16 A. Yes, sir.

17 Q. As do all police recruits or candidate officers?

18 A. Yes, sir.

19 Q. How long did that academy last?

20 A. It was 400 hours when I went through the academy.
21 Ten weeks, roughly.

22 Q. Roughly 10 weeks full-time?

23 A. Yes, sir.

24 Q. All right. We'll come back to that a little bit
25 later in a different context. Did you have any

1 training as an evidence technician from
2 Lieutenant James Lenk?

3 A. Yes.

4 Q. He, you know, to be a lieutenant in charge of the
5 Detective Unit within the Operations Division?

6 A. Yes, sir.

7 Q. Are there more than one lieutenant in the
8 Detective Unit?

9 A. No, sir.

10 Q. So he's the chief detective, in fact, of
11 Manitowoc County?

12 A. Yes, sir.

13 Q. Within the Sheriff's Department. He was involved
14 in training you as an evidence technician?

15 A. I am not exactly sure how to answer that without
16 elaborating somewhat.

17 Q. Well, let's start with a yes or a no.

18 A. Yes, he has given me training material during the
19 course of my career.

20 Q. Okay. And has he given you anything more formal
21 than that; in other words, I'm going to let you
22 elaborate here, but we'll do this in a question
23 and answer format.

24 A. Lieutenant Lenk personally hasn't trained me on
25 any specific issue. We would have semi-annual,

1 or sometimes quarterly meetings, of all the
2 evidence techs, where Lieutenant Lenk might
3 present some new information or somebody who had
4 recently gone to training might present some new
5 information. But Lieutenant Lenk never took me
6 one-on-one and trained me in any sort of specific
7 application of being an evidence technician.

8 Q. But you have sort of in house, in service,
9 programs --

10 A. Yes, sir.

11 Q. -- if you will? Sharing information on new
12 techniques or new teaching?

13 A. Yes, sir.

14 Q. Sometimes that comes from Lieutenant Lenk?

15 A. Yes, sir.

16 Q. Other times he may simply be involved in
17 overseeing the meeting?

18 A. Yes, sir.

19 Q. You have known Lieutenant Lenk, personally, how
20 long?

21 A. Since 1996, so 10, 11 years.

22 Q. Was it '96 that you actually became a sworn
23 officer?

24 A. Yes, sir.

25 Q. And if I understood you, the period as a

1 corrections officer in the Manitowoc County Jail
2 was '92 to '94?
3 A. '92 to '96.
4 Q. I'm sorry, then I misunderstood you. You went
5 directly from the jail to the recruit academy and
6 then as a sworn officer?
7 A. Yes, sir.
8 Q. It was 1996, then, when you joined the department
9 as a sworn officer, that you met the man who is
10 now Lieutenant Lenk?
11 A. Yes, sir.
12 Q. He, at that time, was also in the road unit or
13 the Road Patrol Unit?
14 A. Yes, sir.
15 Q. You became friendly with Lieutenant Lenk?
16 A. Yes.
17 Q. Let's call him James Lenk and not worry about his
18 rank, at any given time, all right. Do you call
19 him Jim?
20 A. Yes, I do.
21 Q. You worked closely with him for several years?
22 A. Yes. I have worked with him several times, yes.
23 Q. He is one of the people on the department to whom
24 you feel personally close?
25 A. We don't do anything together socially, but I

1 feel he is an experienced officer and if I have a
2 investigative type question, I feel comfortable
3 talking with him about it.

4 Q. All right. And the time came in 2005 or 2006
5 when you decided that you aspired to some rank
6 higher than sergeant within the department, true?

7 A. I'm sorry, could you repeat.

8 Q. The time came in 2005, or perhaps in 2006, I
9 don't know when, but at some point, certainly
10 before the elections in 2006, you began to aspire
11 to a rank higher than sergeant in your
12 department?

13 A. Yes.

14 Q. You decided to run for sheriff?

15 A. That's correct.

16 Q. Of Manitowoc County?

17 A. That is correct.

18 Q. Another officer, within the department, at the
19 same time, also was running for sheriff in the
20 same 2006 election?

21 A. Yes.

22 Q. That created a situation in which two officers
23 from the same department were running against
24 each other?

25 A. Yes.

1 Q. There was some tension, at least, in that
2 situation?

3 A. Are you talking about in 2006, last summer?

4 Q. Well, whenever the campaign began to heat up.

5 A. I don't really think the campaign ever got
6 heated, but I didn't really feel any tension.

7 Q. Okay. But, one of the things you both were
8 interested in doing, and the other gentleman is a
9 man named Robert Hermann, correct?

10 A. Yes.

11 Q. The brother of Todd Hermann?

12 A. Yes.

13 Q. One of the things that you and Robert Hermann
14 both did was sort of see who would support you
15 and who might support the other fellow in the
16 race for sheriff?

17 A. No.

18 Q. Weren't interested who was on your side?

19 A. No, I wasn't.

20 Q. Do you know whether Lieutenant Lenk was on your
21 side?

22 A. I have no idea how Lieutenant Lenk voted during
23 the sheriff's campaign. I would hope that he
24 supported me, but it wouldn't change my feeling
25 one iota if he didn't.

1 Q. I understand that. But how long was it between
2 the time you declared your candidacy publicly and
3 the time of the election?
4 A. I thought we had to have our nomination papers
5 filed in May of 2006 and the election was in
6 November of 2006.
7 Q. Okay. So let's call it five, six months,
8 roughly. I'm just trying to get a rough time
9 frame here, okay. Lieutenant Lenk's working
10 hours, you know, to overlap in part with your
11 own, on the days you are both at work?
12 A. Yes.
13 Q. That is, he would typically work something like
14 an 8 to 5 kind of shift?
15 A. I'm not sure what his duty hours are, but
16 somewhere in that time frame.
17 Q. In other words, in the afternoon, you two would
18 be on duty at the same time?
19 A. Yes, sir.
20 Q. And in all that time, he never approached you and
21 gave you an attaboy, or told you he was in his
22 corner -- in your corner, or that he couldn't be,
23 nothing?
24 ATTORNEY KRATZ: Judge, I'm going to object
25 as irrelevant. Is this sometime after November of

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2005?

ATTORNEY STRANG: It is.

ATTORNEY KRATZ: I can't see the relevance, then, to what happened at the Avery salvage property; I will interpose that objection then.

THE COURT: Mr. Strang.

ATTORNEY STRANG: Well, I'm happy to be heard out of the presence, if the Court wishes that.

THE COURT: All right. I think what I will do at this time is excuse the jury for a few minutes.

ATTORNEY STRANG: We can excuse the witness as well.

THE COURT: Mr. Colborn, you are excused as well.

(Jury not present.)

(Witness not present.)

THE COURT: Mr. Strang.

ATTORNEY STRANG: This isn't a long line of inquiry, your Honor, but clearly this is relevant to Sergeant Colborn's bias or potential for bias here. Lieutenant Lenk was his partner through several days of searching. Consistently, as the testimony has shown, they were paired together, usually with Detective Remiker as well.

1 Together they were deposed, within 48
2 hours, in Steven Avery's lawsuit. I expect to
3 elicit testimony that they discussed their
4 depositions. Now, together, it is the two of
5 them who, in Sergeant Colborn's words, had their
6 integrity questioned.

7 Whether these two stood together and had
8 each other's back during a race for a higher
9 office that well could have been affected by the
10 lawsuit that Steven Avery had filed, by further
11 developments in that lawsuit, I think is directly
12 relevant to this witness' credibility and bias.

13 THE COURT: Mr. Kratz.

14 ATTORNEY KRATZ: We're talking about two
15 different things, Judge. Testimonial bias, which
16 would be today, and is this witness prepared to
17 shade his testimony to the benefit that perhaps of
18 Lieutenant Lenk or somebody like that, Mr. Strang's
19 area of inquiry is appropriate, if in fact the Court
20 finds that to be relevant.

21 However, what Mr. Strang is really
22 talking about is having each other's back, or
23 motive, or being in partnership, for lack of a
24 better term, in planting evidence or being
25 involved in criminal behavior and activity. Then

1 that only becomes relevant if they had this
2 connection, if they had this friendship or this
3 bond, before November of 2005.

4 So, if that is in fact the dual purpose
5 of this, then I would ask Mr. Strang to confine
6 his bias inquiry, at least as it regards
7 Lieutenant Lenk and the election, and to that
8 which might affect his testimony today; it would
9 have no relevance as to what occurred in November
10 of 2005.

11 THE COURT: How do you propose that that be
12 conveyed to the jury, what the purpose of his
13 questioning is?

14 ATTORNEY KRATZ: Well, as asked, then,
15 Judge, it is -- it is irrelevant and should be
16 inadmissible. If we direct it more towards
17 testimonial, that is, if he wants to get into, would
18 you do something to help your buddy, Jim Lenk,
19 today, in testifying, I think that's -- that that's
20 appropriate, but that should be made clear.

21 And if we're getting into more than
22 that, that is, as Mr. Strang, using his words, I
23 have your back, if we're talking about back in
24 November of 2005, their previous friendship may,
25 in fact, be relevant and all those kind of

1 things, but not what happened in the 2006
2 election.

3 ATTORNEY STRANG: Let's bring us back to
4 the actual line of questioning, because I don't know
5 that we need to slice the salami that thin. What
6 I'm doing now is simply following up on and
7 exploring his claim that he has no idea whether Jim
8 Lenk supported him or not for sheriff. He hopes he
9 did, but if Mr. Lenk did not vote for him, it
10 wouldn't affect, by one iota, his view of Mr. Lenk.

11 And I'm following that up, since he's
12 already acknowledged that he thinks well of Mr.
13 Lenk and has worked with him and known him since
14 1996. I'm also going to ask him when it is that
15 becoming sheriff popped into his head, since
16 presumably that was some -- some day before the
17 day in May, 2006, when he had to file his
18 candidacy papers. And that's really,
19 essentially, all the farther I'm going with this.

20 THE COURT: All right. It seems to me of
21 marginal probative value, but if you are telling me
22 you are almost done, I will let you ask a few more
23 questions and then move on. All right. We can
24 bring the jurors back. And then if the
25 Victim/Witness Coordinator is here, she can bring

1 Mr. Colborn in.

2 (Jury present.)

3 THE COURT: You may be seated. And
4 Mr. Strang, you may resume your questioning.

5 ATTORNEY STRANG: Thank you.

6 Q. (By Attorney Strang)~ So the question was,
7 Sergeant Colborn, in the months leading up to
8 this election, are you telling this jury that
9 there wasn't any time when Lieutenant Lenk
10 approached you and told you either that he was in
11 your corner or couldn't support you, for sure?

12 A. No, I'm not saying that.

13 Q. Well, what did he tell you about whether he was
14 supporting you?

15 A. We did not have -- I tried my hardest not to have
16 any discussions about the election at work
17 because I didn't want it to distract from work.
18 Privately, Lieutenant Lenk gave me every
19 indication that he was supporting me.

20 Q. Privately, you took him to be in your corner?

21 A. Yes.

22 Q. You may want to get just a little bit closer to
23 the mike, the mike is sort of touchy. When was
24 it that you began to think seriously about
25 running for sheriff, yourself?

1 A. January or February of 2006.

2 Q. Had the idea occurred to you back in 2005?

3 A. I can't recall, specifically. I may have thought
4 about it, but ...

5 Q. But at least by January or February, 2006, you
6 had a building sense that, maybe I could do the
7 top job in this department?

8 A. Yes, sir.

9 Q. Maybe I could do some things a little bit
10 differently than I see them being done?

11 A. Yes, sir.

12 Q. Maybe I could bring something important to the
13 job of sheriff and serve the citizens of
14 Manitowoc County?

15 A. Yes, sir.

16 Q. By May that idea had become strong enough to
17 cause you to go through all the steps necessary
18 to declare a candidacy?

19 A. Yes, sir.

20 Q. You had not run for an elected office before?

21 A. Actually, yes, I had.

22 Q. Okay. At a countywide level?

23 A. Yes.

24 Q. All right. So at least that process you were
25 familiar with and willing to undergo again?

1 A. Yes.

2 Q. Knocking on doors, speaking at Lion's Club
3 dinners, that kind of thing?

4 A. Yes, sir.

5 Q. Now, it was, I think, October 13, 2005, in
6 specific, in which your deposition was taken in
7 Mr. Avery's lawsuit?

8 A. Yes, sir.

9 Q. Was this the first time you had ever had your
10 deposition taken?

11 A. Yes, sir.

12 Q. New experience for you?

13 A. Yes.

14 Q. You were not so much asked to attend a deposition
15 as you were the recipient of a subpoena to do so?

16 A. I believe so, yes, sir.

17 Q. That deposition process involved being sworn,
18 same oath you took today, essentially?

19 A. Yes, sir.

20 Q. But in a conference room or library of a lawyer's
21 office?

22 A. Yes, sir.

23 Q. You were questioned by Mr. Avery's lawyers at
24 that deposition?

25 A. Yes, sir.

1 Q. You sat across the table from Mr. Avery, himself,
2 that day, October 13, 2005?
3 A. I know Mr. Avery was in the room, I don't -- no,
4 it wasn't like I was directly across from him.
5 Q. No.
6 A. He was down at the end of the table.
7 Q. Yeah, and I didn't mean directly across, but the
8 two of you shared this conference room and the
9 table?
10 A. Yes, sir.
11 Q. Along with other people?
12 A. Yes, sir.
13 Q. Court reporter?
14 A. Yes, sir.
15 Q. Various lawyers?
16 A. Yes, sir.
17 Q. Some of the questions concerned a telephone call
18 that you had taken?
19 A. Yes.
20 Q. You understood the call, which today you can
21 place only as 1994 or 1995?
22 A. That's correct, sir.
23 Q. You understood the call to be coming from someone
24 who was a detective?
25 A. Yes, sir.

1 Q. Detective with a law enforcement agency?
2 A. Yes.
3 Q. In an adjoining or nearby county?
4 A. I believe so, yes, sir.
5 Q. You don't remember the details today?
6 A. No, I don't, sir.
7 Q. And, indeed, on October 13, 2005, you didn't
8 remember many of the details either?
9 A. No, sir.
10 Q. But the gist of it was, we have got somebody here
11 in custody who we think maybe did an assault in
12 Manitowoc County, that was part of it?
13 A. Yes, sir.
14 Q. And we further think that you may have someone in
15 jail for the assault?
16 A. That was the gist of the phone conversation, yes.
17 Q. Right. And I understand you don't remember the
18 exact words, but that was the gist?
19 A. Yes, sir.
20 Q. Now, as a corrections officer in the jail, this
21 was not directly your responsibility?
22 A. No, sir.
23 Q. You passed, or tried to pass the call, to the
24 Detective Unit?
25 A. Yes, sir.

1 Q. But you understood that you were being told, by a
2 law enforcement officer, that Manitowoc County
3 may have someone locked up, who didn't commit the
4 crime for which he was imprisoned; that much you
5 understood?
6 A. Yes, sir.
7 Q. Was that a matter to shrug off for you?
8 A. I didn't shrug it off, sir. I did what the
9 caller asked me to do, connect him to a
10 detective.
11 Q. I think, actually, you suggested that perhaps the
12 caller should talk to a detective?
13 A. No, he specifically asked for a detective.
14 Q. How he happened to call the jail and get to you,
15 you have no idea?
16 A. No, I don't, sir.
17 Q. Lieutenant Lenk, you were aware, also was
18 deposed, had his deposition taken, in this same
19 lawsuit?
20 A. Yes, sir.
21 Q. This was a federal lawsuit?
22 A. I don't even know enough about it to know whose
23 jurisdiction it was.
24 Q. Okay.
25 A. I know there was a lawsuit.

1 Q. All right. Do you know if it was down in
2 Milwaukee?

3 A. The deposition? My deposition?

4 Q. Or the lawsuit, either one?

5 A. My deposition was in the City of Manitowoc. I
6 don't know where the lawsuit -- I don't know.

7 Q. Fair enough. But you did -- you did have an
8 opportunity to talk to Lieutenant Lenk about the
9 fact that he, too, was having his deposition
10 taken?

11 A. I don't recall discussing the deposition portion
12 of it with Lieutenant Lenk.

13 Q. What did you discuss, about the civil lawsuit,
14 with Lieutenant Lenk?

15 THE COURT: Excuse me, Counsel, are you
16 referring to some time before the deposition or
17 after?

18 Q. I'm referring to the time immediately before the
19 deposition, after you would have gotten your
20 subpoena.

21 A. Okay. Yes, I knew that Lieutenant Lenk had a
22 subpoena for the same deposition that I did, yes.

23 Q. Okay. And I'm not interested in the content of
24 your conversation, which probably would be
25 hearsay, but the two of you established that one

1 another had subpoenas for depositions in that
2 lawsuit?

3 A. Yes, sir.

4 Q. And, again, without going into the content,
5 aft -- shortly after your depositions were taken,
6 the two of you talked about the fact that your
7 depositions had been taken?

8 A. Not really, not beyond the fact of, you know, did
9 you go on the day that you were supposed to, yes,
10 and that was pretty much it.

11 Q. Okay. Fair enough. Did you have any concern
12 that you would be added as a defendant in that
13 lawsuit?

14 A. I don't know if concern is the correct word, I
15 know I expressed that I didn't have any knowledge
16 of that case. I wasn't a Manitowoc County
17 resident at that time.

18 Q. My question, though, was whether you had concern,
19 the thought crossed your mind, that you might be
20 added as a defendant in that civil lawsuit?

21 A. Yes, the thought crossed my mind that I might be
22 added as the defendant.

23 Q. You had never been the defendant in a lawsuit
24 before?

25 A. Not that I recall, no.

1 Q. Do you think you would recall?

2 A. I would think, but ...

3 Q. This isn't something you were relishing?

4 A. No.

5 Q. How do you think having been a defendant in
6 Mr. Avery's lawsuit, for his wrongful conviction,
7 would have affected your prospects in the race
8 for sheriff?

9 ATTORNEY KRATZ: Objection, speculation.

10 Q. (By Attorney Strang)~ Did you consider that?

11 THE COURT: Just a second. I'm going to
12 sustain the objection.

13 Q. (By Attorney Strang)~ Did you consider the
14 prospect of an effect on your race for sheriff,
15 if you were added to that lawsuit?

16 A. No, I didn't, sir.

17 Q. I would like to shift off the lawsuit and talk to
18 you about reports, police reports, for a little
19 bit. And I promised you we were going to get
20 back to the recruit academy, and we will.

21 Reports are something that police
22 officers, and by that I mean broadly; sheriff's
23 deputies, municipal police officers, special
24 agents of the Division of Criminal Investigation,
25 just law enforcement officers generally. All

1 right. Reports are something that is common to
2 the work of policemen?

3 A. Is that a question?

4 Q. It is.

5 A. Yes, reports are common to policing.

6 Q. That is one of the things you learned to do in
7 the recruit academy, was to prepare a report?

8 A. That's correct, sir.

9 Q. It is a regular routine, in policing, to prepare
10 reports of your activities, as they bear on a
11 criminal investigation?

12 A. Yes, sir.

13 Q. You were taught in the academy the basics of how
14 to prepare such a report?

15 A. Yes, sir.

16 Q. Reports have several purposes, I guess, one would
17 be to assure accurate collection of facts; that
18 would be one purpose of a police report?

19 A. Yes, sir.

20 Q. Another purpose would be to set down, on paper,
21 your memories before they begin to fade?

22 A. Yes, sir.

23 Q. A third purpose would be to allow others in the
24 department to benefit from knowing what facts you
25 had learned or steps you had taken in an

1 investigation?

2 A. That I don't -- that I don't know. Sometimes
3 reports are confidential and no other officers
4 view them.

5 Q. Sometimes, but let expands on that. In any sort
6 of a larger jurisdiction, let's use Manitowoc
7 County, the sheriff's department, policing is a
8 24 hour a day business?

9 A. Yes, sir.

10 Q. 365 days a year?

11 A. Yes, sir.

12 Q. That is, there may be very small towns that have
13 only a part-time police officer, constable,
14 police department, correct?

15 A. Yes, sir.

16 Q. But with the Manitowoc County Sheriff's
17 Department, it's around the clock, 24/7, 365 days
18 a year?

19 A. Yes, sir.

20 Q. Obviously, no single officer can work 24 hours,
21 seven days a week, so you divide the day into
22 shifts.

23 A. That's correct, sir.

24 Q. A criminal investigation that happens to begin on
25 one shift, may be carried over on another?

1 A. Yes, that's possible.

2 Q. Officers who actually don't work the same shift,
3 may be working on the same investigation?

4 A. Yes, sir.

5 Q. Witnesses may have to be interviewed and their
6 working hours may require officers who work on
7 the late shift, or the overnight shift, to
8 conduct the interviews?

9 A. Correct.

10 Q. So by preparing reports, officers on one shift
11 can share their information with officers on the
12 other shifts?

13 A. Absolutely.

14 Q. And in this sense, there is a collective benefit
15 that allows the department to continue its
16 criminal investigative duties, around the clock?

17 A. Yes, sir.

18 Q. Yet another purpose of police reports is to
19 report upward, to supervisors, what it is you are
20 doing?

21 A. Yes, sir.

22 Q. Reports typically are reviewed by supervisors?

23 A. Yes, they are.

24 Q. For accuracy?

25 A. Yes.

1 Q. For thoroughness?
2 A. Yes.
3 Q. For completeness?
4 A. Yes.
5 Q. Preparing reports is something that a thorough
6 police officer does?
7 A. Yes.
8 Q. Preparing reports is something that a police
9 officer should do in a timely fashion, true?
10 A. Yes.
11 Q. Because, again, one of the first purposes is to
12 get the facts down on paper accurately while they
13 are fresh in your mind?
14 A. Yes, sir.
15 Q. And preparing reports in a timely and thorough
16 way is something that a fair police officer does,
17 isn't it?
18 A. I would imagine, yes, sir.
19 Q. That is, you want the report to be objective?
20 A. Yes.
21 Q. Accurate in the sense of fair and factually
22 correct?
23 A. Yes.
24 Q. Not tilted or biased in any fashion?
25 A. Correct.

1 Q. The idea is to lay out the facts and see where
2 they lead?
3 A. Yes, sir.
4 Q. You prepare reports, then, and as they go up the
5 stream, for a supervisors review, the supervisor
6 typically will sign off or indicate approval in
7 some fashion?
8 A. Yes, sir.
9 Q. Or may send the report back for further work?
10 A. Yes, sir.
11 Q. You are a supervisor, yourself, in the Road
12 Patrol Unit?
13 A. Yes, sir.
14 Q. You fill this function. That's one of your
15 administrative duties, is to review reports
16 prepared by deputies under you, in the Road
17 Patrol Unit?
18 A. Yes, sir.
19 Q. You encourage them to file timely reports?
20 A. Yes.
21 Q. Thorough reports?
22 A. Yes.
23 Q. And fair reports?
24 A. Yes, sir.
25 Q. The reports, you know, after now 10, going on 11

1 years as a sworn law enforcement officer, then
2 sometimes will go further, to a prosecutor?

3 A. Yes, sir.

4 Q. Prosecutors rely on those police reports in
5 making charging decisions?

6 A. Yes, sir.

7 Q. If they elect to charge a case, you know as well,
8 in your criminal justice system, that the
9 reports, then, go to the defense, once a case has
10 been charged in court?

11 A. Yes, sir.

12 Q. The defense lawyers then rely on the thoroughness
13 of those reports?

14 A. Yes, sir.

15 Q. The accuracy of those reports?

16 A. Yes, sir.

17 Q. The timeliness of those reports?

18 A. Yes, sir.

19 Q. And at a very practical level, if later, you, as
20 the officer involved in some activity, have
21 forgotten exactly what happened, you can turn
22 back to your report?

23 A. Yes.

24 Q. Use it to refresh your recollection?

25 A. Yes, sir.

1 Q. Sometimes use the report of other officers to
2 refresh your recollection?

3 A. Yes, sir.

4 Q. Which, again, is you relying on the accuracy and
5 the thoroughness and the timeliness of reports by
6 other officers?

7 A. Yes, sir.

8 Q. And if you were to change your explanation of
9 what happened, either the prosecution or the
10 defense might use the report to show that you had
11 said something different in the report?

12 A. Yes, sir.

13 Q. If you don't prepare a report, then you haven't
14 committed anything to paper, correct?

15 A. Correct.

16 Q. And someone who doesn't commit anything to paper,
17 then, can't be pinned down on the details as
18 would someone who had put the details on paper?

19 A. Okay. I mean, that makes sense.

20 Q. Makes sense to you?

21 A. Mm-hmm.

22 Q. Now, let's go to this investigation, the
23 activities concerning this investigation, are you
24 with me?

25 A. Yes, sir.

1 Q. November 3, 2005, when you learned from
2 Mr. Wiegert that Teresa Halbach was missing, was
3 just about exactly, to the day, three weeks after
4 your deposition in Steven Avery's lawsuit?
5 A. Yes, sir.
6 Q. You were the shift commander that day, as we have
7 established?
8 A. Yes, sir.
9 Q. You learned about Ms Halbach being missing at
10 about what time?
11 A. Somewhere between 6:30 and 7:30.
12 Q. You were scheduled to get off shift at eight?
13 A. Yes, sir.
14 Q. Nearing the end of your day?
15 A. Yes, sir.
16 Q. As shift commander, you could have assigned
17 anyone in road patrol to go out to the address on
18 Avery Road?
19 A. Yes.
20 Q. You chose to do it yourself?
21 A. Yes.
22 Q. Did you go alone?
23 A. Yes, I did.
24 Q. At that time, all you knew is that this address
25 on Avery Road was one of the appointments that Ms

1 Halbach evidently had the day she was last seen
2 by family or friends?
3 A. Yes, sir.
4 Q. You happened to meet Steve Avery -- or not meet
5 him for the first time, but run into him, so to
6 speak, when you went out there that evening?
7 A. Yes, sir.
8 Q. You talked with him?
9 A. Yes, I did.
10 Q. He was very cordial?
11 A. Yes, he was.
12 Q. And as you followed through, you saw events
13 unfold, eventually it was Steven Avery who was
14 charged with killing Teresa Halbach?
15 A. Yes, sir.
16 Q. That came a week, roughly, after your first
17 conversation with him on Thursday, November 3rd?
18 A. Yes, sir.
19 Q. Mr. Avery then was charged with the most serious
20 crime someone can commit in this state?
21 A. Yes, sir.
22 Q. When, sir, did you first make a written report of
23 anything having to do with the November 3, 2005,
24 meeting with Mr. Avery?
25 A. June of '06 I believe.

1 Q. Does June 29, 2006 sound correct?
2 A. Yes.
3 Q. A few days short of the 4th of July?
4 A. Yes, sir.
5 Q. Not quite 8 months after the conversation with
6 Mr. Avery?
7 A. Yes, sir.
8 Q. Was that a timely report?
9 A. I wasn't even aware that Manitowoc County had our
10 own report. I didn't find out about it till
11 then.
12 Q. You were aware that Manitowoc County sheriff's
13 deputies had played a substantial role at the
14 Avery property for a week, from November 5 to
15 November 12?
16 A. Yes.
17 Q. You saw literally dozens of fellow officers from
18 the Manitowoc County Sheriff's Department during
19 that week?
20 A. Yes.
21 Q. And your testimony today is you aren't aware that
22 any of them ever wrote any report?
23 A. No, I wasn't. I knew Calumet County Sheriff's
24 Department was handling the report portion of it.
25 Q. And somebody finally suggested to you, in June,

1 more than 7 months later, that maybe you ought to
2 write a report about that first interview with
3 Steven Avery?

4 A. They informed me that there was indeed a report
5 and that I should make an entry on it, yes.

6 Q. You made an entry on it?

7 A. Yes, I did.

8 Q. And that entry was all of about a page?

9 A. I guess it was a few paragraphs; I don't know how
10 many.

11 Q. Did you happen to notice when you were with
12 Mr. Avery on November 3, a big, fresh gash or cut
13 on his right middle finger?

14 A. No, I did not notice that.

15 Q. Didn't notice him bleeding?

16 A. No, sir, I didn't.

17 Q. Or notice anything that looked like it had been
18 recently bleeding or recently a fresh, open cut?

19 A. No, sir, I didn't notice any injury.

20 Q. That's why there is no mention of such an injury
21 in your report, true?

22 A. Correct.

23 ATTORNEY STRANG: What time does the Court
24 wish to take the afternoon break, for my purposes,
25 your Honor?

1 THE COURT: We'll go another 10 minutes.

2 ATTORNEY STRANG: Thank you.

3 Q. (By Attorney Strang)~ Now, did I understand you
4 correctly, in your testimony earlier today,
5 Sergeant Colborn, that today you remember what it
6 is you were doing on your day off, Friday,
7 November 4, 2005, the day after you first talked
8 to Steven Avery?

9 A. Yes.

10 Q. We were talking about timely and thorough and
11 accurate reports before. And I wonder if you
12 recall, oh, a little over a month ago, not quite
13 six weeks ago, in fact, January 11, 2007, being
14 interviewed by Investigator Steier of the Calumet
15 County Sheriff's Department; do you remember
16 that?

17 A. Yes.

18 Q. And you knew that Investigator Steier was
19 interviewing you in connection with this case?

20 A. Yes.

21 Q. You know, as a law enforcement officer, that it's
22 important, if one speaks to another -- to a
23 police officer, to give accurate information to
24 the officer?

25 A. Yes, sir.

1 Q. You know, in fact, that it's a crime in the state
2 of Wisconsin, intentionally to give false
3 information to a police officer?

4 A. Yes, sir.

5 Q. And on January 11, 2007, you recall Investigator
6 Steier asking you if you could recall what you
7 had done on Friday, November 4, 2005, your day
8 off; do you recall him asking you that?

9 A. Yes.

10 Q. And what you told him was, that you could not
11 recall what you had done on your off day; that's
12 what you told Investigator Steier?

13 A. Yes, at that precise second that he asked me, I
14 could not recall everything that I had done on
15 that day.

16 Q. You recalled later?

17 A. Yes.

18 Q. And when, sir, when did you call up Investigator
19 Steier and say, I'm sorry, I was wrong, I now
20 remember what I did on my day off, Friday,
21 November 4, 2005?

22 A. I didn't call Investigator Steier.

23 Q. One of the things the road patrol officers, under
24 your supervision, frequently do, is look for cars
25 that appear out of place?

1 A. Yes, sir.

2 Q. Or if they made a traffic stop, they will inquire
3 about the license plate or the registration
4 plates on an automobile?

5 A. Yes, sir.

6 Q. And they will call into dispatch and give the
7 dispatcher the license plate number of a car they
8 have stopped, or a car that looks out of place
9 for some reason, correct?

10 A. Yes, sir.

11 Q. And the dispatcher, very quickly these days, with
12 his or her computer screen, can get information
13 about who -- to whom a license plate is
14 registered?

15 A. Yes, sir.

16 Q. Also, the dispatcher can give you, right over the
17 phone or the radio, the information about what
18 car the license plate is registered to?

19 A. Yes, sir.

20 Q. This is useful so that you know who you may be
21 approaching, if there's a driver of the car
22 that's stopped?

23 A. Yes, sir.

24 Q. It's also useful to know whether the license
25 plate appears to be on the car for which it is

1 registered?

2 A. Yes, sir.

3 Q. If the car is abandoned or there's nobody in the
4 car, the registration tells you who the owner
5 presumably is?

6 A. Yes, sir.

7 Q. Are you the only Andy, to your knowledge, in the
8 Manitowoc County Sheriff's Department?

9 A. The only officer with the first name Andy?

10 Q. Yes.

11 A. No, I'm not.

12 Q. All right. I'm going to ask you to listen, if
13 you would, to a short phone call. And I will ask
14 you, first, if you are the Andy speaking. All
15 right?

16 A. Mm-hmm.

17 ATTORNEY KRATZ: Judge, before counsel does
18 this, could we have it identified as to the date and
19 time.

20 ATTORNEY STRANG: Absolutely, I will do the
21 best I can. In fact, I should mark it.

22 (Exhibit No. 212 marked for identification.)

23 ATTORNEY STRANG: This is a CD Rom that we
24 obtained from the -- or a copy of the CD Rom that we
25 obtained from the Manitowoc County Sheriff's

1 Department, Exhibit 212, counsel. Thank you.

2 For counsel's benefit this will be track
3 three. All I'm told by the sheriff's department
4 is that these are calls between November 3 and
5 November 12, 2005.

6 ATTORNEY KRATZ: Judge, we don't know
7 when -- what he is about to play them is within a 9
8 day period?

9 ATTORNEY STRANG: If the witness made the
10 call, I'm going to ask him when he made the call.

11 THE COURT: All right. Go ahead.

12 Manitowoc County Sheriff's Department.
13 This is Lynn.

14 Lynn.

15 Hi, Andy.

16 Can you run Sam William Henry 582. See
17 if it comes back to (Inaudible.)

18 Sam William Henry 582.

19 ATTORNEY STRANG: Let me just stop it right
20 there. In fact, I'm going to go back, because it
21 was so soft at the beginning.

22 Manitowoc County Sheriff's Department.

23 This is Lynn.

24 Lynn.

25 Hi Andy.

1 Can you run --

2 Q. (By Attorney Strang)~ Is that you?

3 A. It sounds like me. I believe it's me.

4 Q. Okay. I'll --

5 Sam William Henry 582. See if it comes

6 back to (Inaudible.)

7 Lynn.

8 Hi Andy.

9 Can you run Sam William Henry 582. See

10 if it comes back to (Inaudible.)

11 Sam William Henry 582. I (Inaudible.)

12 All righty. You speak any Spanish there, Andy?

13 I just a call at the top of the list, is my on

14 call didn't call me back. If I want to get in

15 trouble, Andy, I get in trouble. You know, what

16 am I supposed to do?

17 Well --

18 My favorite one is in the city of

19 Manitowoc. Okay. Shows that she's a missing

20 person. And it lists to Teresa Halbach.

21 All set.

22 Okay. Is that what you're looking for,

23 Andy?

24 '99 Toyota.

25 Yup.

1 Okay. Thank you.

2 You're so welcome. Bye, bye.

3 Q. Okay. That's the entire call. Hangs up. That's
4 your voice?

5 A. Yes, I believe that's my voice. Yes.

6 Q. When did you make that phone call inquiring about
7 a license plate?

8 A. I don't know.

9 Q. Do you have any recollection of making that phone
10 call?

11 A. It would have had to have been 11/03/05 or -- I'm
12 guessing 11/03/05.

13 Q. Okay. But let's -- let's ask -- establish this
14 first, do you remember making the call?

15 A. Not really, no.

16 Q. What you're asking the dispatcher, whose name is
17 Lynn, is to run a plate that's Sam William Henry
18 582; did I hear that correctly?

19 A. Yes, sir.

20 Q. Sam William Henry is a phonetic code that law
21 enforcement officers use, because sometimes it's
22 hard to tell just a letter over radio?

23 A. Yes, sir.

24 Q. Sam William Henry would be SWH-582.

25 A. Yes.

1 Q. This license plate?
2 A. Yes, sir.
3 Q. I'm showing, for the benefit of the record, this
4 is either Exhibit 152 or 153?
5 THE CLERK: It's on the plate itself.
6 ATTORNEY STRANG: This one happens to be
7 153.
8 Q. (By Attorney Strang)~ And the dispatcher tells
9 you that the plate comes back to a missing person
10 or woman?
11 A. Yes, sir.
12 Q. Teresa Halbach. Mispronounces the last name, but
13 you recognize the name?
14 A. Yes, sir.
15 Q. And then you tell the dispatcher, Oh, '99 Toyota?
16 A. No, I thought she told me that.
17 Manitowoc County Sheriff's Department.
18 This is Lynn.
19 Lynn.
20 Hi Andy.
21 Can you run Sam William Henry 582, see
22 if it comes back to (Inaudible.)
23 Sam William Henry 582. I (Inaudible.)
24 All righty. Do you speak any Spanish there,
25 Andy? I just got a call that the top of my list,

1 is my on call didn't call me back. If I want to
2 get in trouble, Andy, I get in trouble. You
3 know, what am I supposed to do?

4 Well --

5 My favorite one is in the city of
6 Manitowoc. Okay. Shows that she's a missing
7 person. And it lists to Teresa Halbach.

8 All set.

9 Okay. That's what you're looking for,
10 Andy?

11 '99 Toyota?

12 Yup.

13 Okay. Thank you.

14 You are so welcome. Bye, bye.

15 Q. Actually you who suggests this is a '99 Toyota?

16 A. I asked if it was a '99 Toyota, yes.

17 Q. And the dispatcher confirmed that?

18 A. Yes.

19 Q. Were you looking at these plates when you called
20 them in?

21 A. No, sir.

22 Q. And your best guess is that you called them in on
23 November 3, 2005?

24 A. Yes, probably after I received a phone call from
25 Investigator Wiegert letting me know that there

1 was a missing person.

2 Q. Investigator Wiegert, did he give you the license
3 plate number for Teresa Halbach when he called
4 you?

5 A. I don't remember the entire content of our
6 conversation but, obviously, he must have because
7 I was asking the dispatcher to run the plate for
8 me.

9 Q. Did you not trust that Investigator Wiegert got
10 the number right?

11 A. I don't -- That's just the way I would have done
12 it. I don't -- It's not a trust or distrust
13 issue.

14 ATTORNEY STRANG: I'm about to move to a
15 different area, your Honor.

16 THE COURT: All right. We'll take our
17 afternoon break at this time. Members of the jury,
18 do not discuss the case during break. And we'll
19 resume in about 15 minutes.

20 (Jury not present.)

21 THE COURT: Counsel, you should report back
22 a little before 3:00.

23 ATTORNEY STRANG: Thank you.

24 (Recess taken.)

25 THE COURT: Mr. Strang, you may resume your

1 cross-examination.

2 CROSS-EXAMINATION CONTD

3 BY ATTORNEY STRANG:

4 Q. So as you sit here today, Sergeant Colborn, you
5 don't recall whether Investigator Wiegert gave
6 you Ms Halbach's telephone number when he called
7 you that Thursday evening?

8 A. He never asked me anything about a telephone
9 number.

10 Q. But you think he must have given you her license
11 plate number? Did I say telephone number?

12 A. Yes, you did.

13 Q. I'm sorry. I apologize. What I meant is, you
14 don't recall, as you sit here today, whether
15 Mr. Weigert gave you Teresa Halbach's license
16 plate number when he called you on November 3?

17 A. No, I just don't remember the exact content of
18 our conversation then.

19 Q. But --

20 A. He had to have given it to me, because I wouldn't
21 have had the number any other way.

22 Q. Well, and you can understand how someone
23 listening to that might think that you were
24 calling in a license plate that you were looking
25 at on the back end of a 1999 Toyota; from

1 listening to that tape, you can understand why
2 someone might think that, can't you?

3 ATTORNEY KRATZ: It's a conclusion, Judge.
4 He's conveying the problems to the jury.

5 THE COURT: I agree, the objection is
6 sustained.

7 Q. This call sounded like hundreds of other license
8 plate or registration checks you have done
9 through dispatch before?

10 A. Yes.

11 Q. But there's no way you should have been looking
12 at Teresa Halbach's license plate on November 3,
13 on the back end of a 1999 Toyota?

14 ATTORNEY KRATZ: Asked and answer, your
15 Honor, he already said he didn't and was not looking
16 at the license plate.

17 THE COURT: Sustained.

18 Q. (By Attorney Strang)~ There's no way you should
19 have been, is there?

20 A. I shouldn't have been and I was not looking at
21 the license plate.

22 Q. Because you are aware now that the first time
23 that Toyota was reported found was two days later
24 on November 5?

25 A. Yes, sir.

1 Q. You were aware that it was found, without its
2 license plates?
3 A. Yes, sir.
4 Q. You are aware that the license plates weren't
5 reported found until November 8, 2005?
6 A. Yes, sir.
7 Q. Now, you spent a good bit of your time, your
8 working hours at least, between November 5 and
9 November 9, at the Avery salvage property.
10 A. Yes, sir.
11 Q. You were asked on direct examination if you
12 remembered when you first arrived on Saturday,
13 November 5, at that property; do you recall that?
14 A. Yes, sir.
15 Q. And if I heard you correctly, which you said is
16 you thought somewhere between 5 and 5:15?
17 A. That's what I thought, yes.
18 Q. Is that your recollection as you sit here now?
19 A. Yes.
20 Q. Okay. Now, that's a question that you have been
21 asked at a prior hearing in this case, correct?
22 A. Yes.
23 Q. Back on August 9, 2006, you testified at a
24 hearing?
25 A. Yes.

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ATTORNEY STRANG: Page 42, counsel.

Q. (By Attorney Strang)~ And on August 9, 2006, you were asked the following question and gave this answer?

QUESTION: Okay. Now, moving onto Saturday, November 5th, did you -- can you tell me what time you arrived at the Avery property?

And your answer was:

ANSWER: Sometime between 6 and 6:30, in the evening.

And I will show you the transcript. Is that the question you were asked and the answer you gave on August 9?

A. Yes, it is.

Q. Now, since then, you have had a chance to get prepared to testify for this trial?

A. Yes, sir.

Q. One of the things you have had the benefit of doing is sitting down with the gentleman to my right, at the prosecution table?

A. Yes, sir.

Q. And they ran through some of the areas they expected to cover with you in your testimony?

A. Yes, sir.

Q. You did not have the benefit of doing that on, or

1 shortly before, August 9, 2006?

2 A. Yes, I did. Actually, we did it on 6/29/06, the
3 date you previously mentioned.

4 Q. Okay. Five or six weeks earlier?

5 A. Yes, sir.

6 Q. Specifically, have you had a chance, though,
7 since August 9, to look at the log sheet for
8 November 5, 2005, at the Avery property?

9 A. I have not.

10 Q. How is it that your memory improved or changed
11 and that you now think it was between 5 and 5:15
12 that you arrived, not 6 or 6:30?

13 A. I -- I don't know. I did review my time cards
14 for that pay period and I saw what time I went on
15 duty, so I -- when I answered Mr. Kratz's
16 question, I didn't think it would have taken me
17 from 6 or 6:30 to get there.

18 Q. Okay. So it's not so much that you actually
19 remember now, it's just that you have spent some
20 time trying to reconstruct time from your house
21 and when you got the call and what your time
22 records show?

23 A. Yes.

24 Q. Okay. And we have got Exhibit 142 in evidence
25 and I would say today you did pretty well. I

1 will show you Exhibit 142. I have got it open to
2 the page where I think you will find yourself
3 signing in; is that right?

4 A. Yes, sir.

5 Q. 5:12 p.m.?

6 A. Yes, sir.

7 Q. That would be the sign in out by the Command
8 Post, true?

9 A. I don't know. I -- I have never seen this form
10 before today. That's what it looks like.

11 Q. Well, the question really is, where do you
12 remember logging in?

13 A. I thought we logged in out by Avery Road and 147,
14 but if you say it's by the Command Post, that
15 could be.

16 Q. No, no, no, I wasn't there. Avery Road and 147,
17 in other words, even farther out from the Command
18 Post?

19 A. Yes, sir.

20 Q. To get anywhere near the property you had to log
21 in?

22 A. Yes, sir.

23 Q. All right. 5:12 p.m. you log in?

24 A. Yes, sir.

25 Q. Do you recall, now, whether Lieutenant James Lenk

1 was there when you arrived, on November 5?

2 A. I don't know if he was there or came later. I
3 don't know.

4 Q. Okay. And you do know that you logged out with
5 him and with Detective Remiker that evening; do
6 you recall that?

7 A. Yes, sir.

8 Q. And, indeed, we can see that if you flip forward
9 a couple three pages, can you find where you have
10 logged out, on Exhibit 142?

11 A. Yes, sir.

12 Q. The three of you, Lenk, Colborn, Remiker log out
13 another 10:41 p.m.?

14 A. Yes, sir.

15 Q. Now, you were, as I say, spending most of your
16 working hours out there, somewhere on the Avery
17 property, from November 5 through at least
18 November 9?

19 A. Yes, sir.

20 Q. You -- As you told us already, you went into
21 Steven Avery's trailer a number of different
22 times during those several days?

23 A. Yes, sir.

24 Q. You said on direct examination that, you know, at
25 least initially, you still viewed this as a

1 missing persons case?

2 A. Yes, sir.

3 Q. You also knew that by the time you entered

4 Mr. Avery's trailer at 7:30 on Saturday,

5 November 5, you were doing so with a search

6 warrant?

7 A. Yes.

8 Q. A search warrant in which a fellow law

9 enforcement officer had sworn that you were

10 looking for evidence of murder, among other

11 things?

12 A. I didn't know what the content of the search

13 warrant was or how they obtained it.

14 Q. Search warrants, though, you do know, are used in

15 criminal investigations?

16 A. Yes, sir.

17 Q. Not in missing person investigations?

18 A. I can't really answer that. I could imagine the

19 Court would give a search warrant for a missing

20 person if we could prove probable cause that that

21 missing person was at a certain spot.

22 Q. Isn't a search warrant ordinarily used --

23 A. Yes, it is.

24 Q. -- when there is probable cause to believe you

25 will find evidence of a crime?

1 A. Yes, it is.

2 Q. All right. And you were looking for evidence of
3 a crime, beginning on the evening of November 5,
4 true?

5 A. Yes, sir.

6 Q. One of the things you do, as an evidence
7 technician, is you wear latex gloves, just like
8 those that Mr. Wiegert had on earlier, when you
9 searched someone's home, or garage, or whatever
10 it is?

11 A. Yes, sir.

12 Q. You wear those, everybody involved, every law
13 enforcement officer involved in the search wears
14 them?

15 A. Yes, sir.

16 Q. That way you can't leave your own fingerprints at
17 the scene or on evidence?

18 A. Yes, sir.

19 Q. And in theory, you shouldn't be leaving your own
20 DNA on the scene or on evidence?

21 A. Correct, sir.

22 Q. So you're in the house on November 5, November 6,
23 November 7, November 8, true?

24 A. Yes, sir.

25 Q. And, finally, on November 8, Mr. Kratz asked you,

1 were you doing a thorough search of the master
2 bedroom of Mr. Avery's trailer; do you remember
3 that?

4 A. Yes.

5 Q. Now, that thorough search, had you working on the
6 bookcase and on the desk?

7 A. Yes, sir.

8 Q. You described yourself as being, I think you said
9 none too gentle?

10 A. That's true.

11 Q. With the bookcase. And explained, I wasn't any
12 too gentle, as we were getting exasperated?

13 A. Yes, sir.

14 Q. What was exasperating you about the bookcase, or
15 that bedroom, on November 8, 2005?

16 A. The content of the material that we were
17 collecting.

18 Q. So you felt exasperated and that caused you to
19 take it out on the bookcase?

20 A. Didn't exactly take it out on the bookcase, it
21 just caused us to not be gentle in the handling
22 of the material.

23 Q. You were back in again on November 9, I don't
24 know that you covered that on direct, but you
25 actually were back into Mr. Avery's trailer,

1 briefly, on November 9, to look for a garage door
2 opener?

3 A. Yes, sir.

4 Q. That was also with Lieutenant Lenk, correct?

5 A. And a Calumet County deputy, yes, sir.

6 Q. Named Wendling, Deputy Wendling?

7 A. Yes, sir.

8 Q. From Calumet County? There was no time that you
9 went in Mr. Avery's home during November of 2005
10 when you were not also with Lieutenant Lenk?

11 A. Not that I recall.

12 Q. No time you went into Mr. Avery's garage when
13 Lieutenant Lenk was not also with you?

14 A. Not that I recall, no, sir.

15 Q. This case, you would describe as the largest
16 investigation in which you personally had
17 participated as a law enforcement officer?

18 A. Yes, sir.

19 Q. Some of the lengthiest searches, if we take
20 November 5 through November 9 as a whole, in
21 which you have participated?

22 A. Yes, sir.

23 Q. Led to very serious charges against Mr. Avery?

24 A. Yes, sir.

25 Q. You now know that the law enforcement agencies

1 involved, principally Calumet County Sheriff's
2 Department and the Division of Criminal
3 Investigation, have generated hundreds or
4 thousands of pages of police reports?

5 A. Yes, sir.

6 Q. Your total contribution to those reports, is
7 what, a little bit under half a page, as of
8 November 8, 2005?

9 A. That's correct, sir.

10 Q. And then about another page as of June 29, 2006?

11 A. Correct.

12 Q. The report that you filed on, or shortly after,
13 November 8, 2005, makes no mention of the Toyota
14 key?

15 A. That's correct, sir.

16 Q. Would you like to see it?

17 A. No, I believe you.

18 Q. In fact, the only thing you discuss in your
19 report is that on November 8, 2005, you were
20 using these cotton swabs, about which we have all
21 heard a lot, and distilled water, to collect some
22 blood spots in the bathroom and laundry room of
23 Mr. Avery's trailer?

24 A. Yes, sir.

25 Q. Were there things that you did not want to commit

1 to paper, in a report?

2 A. No, sir.

3 Q. And it all began, I guess, your involvement in
4 this investigation began, that Thursday night,
5 November 3, 2005?

6 A. Yes, sir.

7 Q. And that's the -- that's the report that we
8 established you wrote more than 7, nearly 8
9 months later?

10 A. Yes, sir.

11 Q. That is, it was almost 8 months after that
12 conversation with Steven Avery, the first
13 conversation with him in this investigation, that
14 you wrote down what you say he said to you, back
15 on November 3?

16 A. Yes, sir.

17 Q. Did you have any rough notes, note pad, anything
18 to work off when you wrote that report in the
19 heat of June, 2006?

20 A. No, I did not, sir.

21 Q. Well, about 8 months, but then, again, while
22 we're on Steven Avery and your reports about him,
23 that phone call, the phone call you took way back
24 in 1994 or 1995, when you were working in the
25 jail, the phone call where a detective from

1 another law enforcement agency told you you may
2 have the wrong guy in jail, that one?

3 A. Yes, sir.

4 Q. Did you ever write a report about that?

5 A. No, sir.

6 Q. Well, actually you did, didn't you? It was about
7 8 years later, wasn't it?

8 A. I wrote a statement on it, yes, sir.

9 Q. You wrote a statement after Sheriff Peterson
10 suggested that maybe you should?

11 A. Yes, sir.

12 Q. You wrote that statement in 2003, about the 1994
13 or 1995 telephone call?

14 A. Yes.

15 Q. You wrote that statement in 2003, the day after
16 Steven Avery finally walked out of prison, didn't
17 you?

18 A. I don't know what day Steve was released from
19 prison, but I wrote the statement in 2003.

20 Q. September 12, 2003 sound right?

21 A. I said, I don't know the date that I wrote the
22 statement, but I know it was in 2003.

23 Q. Well, I think I do know the date you wrote it and
24 I'm a happy to show it to you.

25 ATTORNEY STRANG: I will mark it for

1 identification.

2 (Exhibit No. 213 marked for identification.)

3 Q. (By Attorney Strang)~ What do you know as
4 Exhibit 213?

5 A. That's the statement I wrote after speaking with
6 Detect -- or Sheriff Peterson.

7 Q. What's the date of your statement?

8 A. September 12, 2003.

9 Q. Do you remember that now as the day after Steven
10 Avery finally walked out a free man?

11 A. Sir, I already said I didn't know what day he got
12 released.

13 ATTORNEY STRANG: That's all I have.

14 THE COURT: Mr. Kratz.

15 ATTORNEY KRATZ: I do have a issue outside
16 the presence of the jury, Judge. I ask that I be
17 able to be heard.

18 THE COURT: All right. At this time we'll
19 excuse the jurors for a few minutes.

20 (Jury not present.)

21 ATTORNEY KRATZ: I think the witness should
22 be excused as well.

23 THE COURT: All right. Mr. Colborn, you
24 may step outside. Mr. Kratz.

25 (Witness not present.)

1 ATTORNEY KRATZ: Thank you, Judge. As this
2 Court may know, this was a cross-examination which
3 was much anticipated. It was the subject of a great
4 deal of pre-trial litigation. It was the point in
5 the trial where the defense had represented to this
6 Court, in something that's called an offer of proof,
7 which is a lawyer's obligation, at least as this
8 Court presented it to the defense, to tell the Court
9 what the defense intended to show at trial.

10 When submitting the defense theory of
11 the case, in response to the State's motion to
12 exclude evidence of blood vial, of planting
13 evidence, the defense, in their offer of proof,
14 told this Court, promised this Court, that the
15 defense would -- with evidence, would show that
16 this witness, Mr. Colborn, or the next witness,
17 Mr. Lenk, somehow obtained a vial of blood from
18 the Clerk of Court's Office in Manitowoc County
19 and planted that evidence, or planted that blood
20 in Teresa Halbach's SUV.

21 Now, we have had heard Mr. Strang's
22 opening statement where planted evidence has been
23 eluded to. We have heard cross-examination of
24 other law enforcement witnesses, by Mr. Buting,
25 specifically, where he asked whether those

1 officers expected that their superiors would be
2 planting evidence in this case.

3 But now, when it would logically come up
4 in trial, now when evidence would logically be
5 presented, or when the very witness in the
6 defense offer of proof comes before this Court
7 and is able to be asked regarding sneaking into
8 the Clerk's Office, or stealing a vial of blood,
9 or planting evidence, we hear nothing.

10 And despite the contamination by the
11 defense throughout the entire jury selection
12 process, which this Court I think can take
13 judicial notice of, you heard all the questioning
14 about the vial of blood in the Clerk's Office in
15 jury selection, you heard the contamination in
16 press releases, you heard the contamination in
17 opening statements.

18 Now, for the first time, when evidence
19 should be placed into -- into the record, or at
20 least placed into this particular case, we hear
21 nothing. And so, Judge, I'm asking for
22 alternative direction, or rulings from the Court,
23 first, if the defense is abandoning their
24 planting evidence theory. The State needs to
25 know that and we need to know that now.

1 Because there shouldn't be any more --
2 any more questions of, are you friends with
3 Mr. Lenk, or any questions of any other witnesses
4 about a planting or about blood vials, if they
5 intend not to honor their offer of proof, if the
6 defense now intends not to, as they told this
7 Court in response to the State's motion to
8 exclude this very evidence, that they would prove
9 that evidence from the Clerk's Office, by way of
10 vial of blood would be brought into this case.

11 If they do, in fact, that is, if the
12 defense does in fact intend to abandon that
13 defense, then I will be asking for curative
14 instructions of this jury, at this time, that up
15 to this point in the trial they should disregard
16 Mr. Strang's opening statement, when he talked
17 about further evidence of planting evidence, of
18 any other witnesses that have been asked about
19 planting evidence, or any reference at all to
20 blood vial type evidence.

21 If, in fact, I'm mistaken, if I am
22 jumping the gun, if you will, if this is all
23 going to be Lieutenant Lenk now, rather than
24 Sergeant Colborn, then I am happy to be the first
25 one to stand corrected. But, if this defense is

1 going to be abandoned, before I redirect this
2 particular witness, the State is entitled to that
3 ruling and we're entitled to that information.

4 THE COURT: Mr. Strang.

5 ATTORNEY STRANG: I will stand on the
6 written materials we made, we tendered to the Court
7 and filed, with respect to a proffer of evidence and
8 reasonable inferences from evidence as to the blood
9 vial. I will stand on the transcript that our
10 capable court reporter has made of my opening
11 statement and simply note that, while he means no
12 inaccuracy and he is simply trying to give the Court
13 a summary, Mr. Kratz's description of our written
14 materials and my opening statement are not exactly
15 correct, and I will simply stand on them rather than
16 characterize them.

17 Second, just by the by, we haven't
18 gotten to the defense case-in-chief yet at all.
19 We're in the prosecution case-in-chief. So all
20 of this, at some level, would be wildly
21 premature. But, beyond that, to confront it most
22 directly, I'm idealistic. I'm certainly naive at
23 times. I am not so naive to think that someone
24 who may have planted blood evidence, who may have
25 been involved in planting a key, would come into

1 this courtroom, and simply, because asked under
2 oath, did you do it, say, oh, yes, I did it. We
3 are not going to have a *Perry Mason* moment here.

4 We will at some point have to establish
5 the existence of the blood vial in the Clerk's
6 Office and its state of being there so to speak.
7 And that could be done in the defense
8 case-in-chief; it could be done on
9 cross-examination in the State's case-in-chief,
10 if the opportunity should present itself with an
11 appropriate witness.

12 But I do not expect anyone, Lieutenant
13 Lenk, Sergeant Colborn, anyone else, to make an
14 admission, that you would see in the *Perry Mason*
15 show, on the witness stand. And the suggestion
16 that we should be held to getting one from such a
17 witness is preposterous. This jury will be
18 asked, in the end, by both sides, to rely on
19 reasonable inferences and common sense and on all
20 of the evidence.

21 So I don't think there's any relief to
22 be granted at the moment and there's no point in
23 discussing now what reasonable inferences may be
24 available at this point, since neither the jury
25 nor the parties know what the whole of the

1 evidence will be when the evidence is closed.

2 THE COURT: Mr. Kratz, anything else?

3 ATTORNEY KRATZ: Just -- I'm sure, Judge,
4 just one moment, if I could. I appreciate
5 Mr. Strang's response, Judge. And when Mr. Strang,
6 and I believe I wrote these words down correctly, we
7 will establish the blood vial in the Clerk's Office,
8 perhaps not through these witnesses; but it is, what
9 I have heard, that they are not abandoning that
10 defense.

11 That was my concern, because there's
12 nothing that requires Mr. Strang or Mr. Buting to
13 keep planting these little nuggets, if you will,
14 and then when the defense part comes, from them
15 saying, defense rests, or saying, now we have
16 abandoned it, when there is further contamination
17 of the jury.

18 That's our concern, Judge. We're able
19 to meet this defense and we intend to meet this
20 defense. But we have to do that in good faith
21 reliance, upon pre-trial rulings of this Court,
22 by pre-trial representations by the defense as to
23 where this trial is going, so that we don't
24 interrupt the flow of this case.

25 I don't want to object every time I hear

1 the word planting. I don't want to object every
2 time I hear the word, are you friends with
3 Lieutenant Lenk, or anything that might go down
4 that road. In fact, the defense intends to, as
5 their offer of proof, indicates to prove that up
6 at some point, or to embrace that as one of their
7 defenses.

8 And I know that's a clumsy term, and
9 with my apology to Mr. Strang, but I still
10 believe that we're entitled to know that. We're
11 entitled at some point, before there is further
12 contamination, if in fact this defense is going
13 to be abandoned at some point, the State is
14 entitled to know that. That was my point in
15 putting it on the record at this very moment,
16 before I proceed with my redirect examination.

17 THE COURT: I don't know that the defense
18 disagrees that if they should abandon that defense
19 that you would be entitled to some notice, but I
20 don't understand the defense to be saying that they
21 are abandoning that defense.

22 ATTORNEY STRANG: The Court is right on
23 both counts. And this is, you know, I would like to
24 know too whether the State is abandoning the false
25 imprisonment charge, but until we at least get to

1 the point where the State rests its case-in-chief,
2 that's all premature.

3 And I understand Mr. Kratz's concerns.
4 I don't know that if we were abandoning any
5 defense that I would have done the same
6 cross-examination, or for that matter, that
7 Mr. Colborn would have been called on direct at
8 all.

9 ATTORNEY KRATZ: What I would, just as a
10 final point, Judge, I would ask then, that before
11 the State rests, before the State concludes its part
12 of the case, that we be allowed a hearing, that we
13 be allowed an opportunity on an admissibility
14 hearing, or to meet what at least has been presented
15 to this point.

16 We have heard about vials of blood. We
17 have heard -- the jury has at least heard,
18 substantially during the voir dire process, about
19 a vial of blood in the Clerk's Office. We don't
20 have, obviously, any results from the FBI at this
21 particular point yet. But if and when we do get
22 those, I know that there is some disagreement as
23 to what's rebuttal evidence and can rebuttal, or
24 reply evidence, be put in even in the State's
25 case-in-chief.

1 Because if the defense, technically,
2 wouldn't call one single witness and the State
3 relied upon the defense representation that they
4 intended to put this in and the defense changed
5 their mind, we would be precluded from meeting
6 the challenges, or at least meeting the
7 assertions that have been made up to this point.

8 So, perhaps more by way of prediction
9 between now and the close of the State's case, we
10 will be asking for a hearing on this very issue.
11 I don't intend to have this conversation again.
12 Mr. Strang is right, we'll wait to see how the
13 case plays out.

14 But prior to the State being precluded
15 from meeting this defense, or at least from
16 presenting evidence relevant to this particular
17 topic, and before the State rests, we will be
18 asking for a more extensive opportunity to be
19 heard, even if it's just in writing, Judge. We
20 will submit something, but we will need some kind
21 of a ruling before the State does rest its case.

22 THE COURT: All right. If I'm reading your
23 comments correctly, you are not asking the Court to
24 do anything at this point in time, but you are
25 indicating that you may be asking for relief of some

1 kind at the close of the -- or before the close of
2 the State's case, pending whatever action the
3 defense takes between now and then.

4 ATTORNEY KRATZ: This was the earliest
5 opportunity and, in fact, the first obvious
6 opportunity to have heard that kind of evidence.
7 Since I didn't hear it, I'm putting the Court and
8 defense on notice of our position.

9 THE COURT: Mr. Strang.

10 ATTORNEY STRANG: Fair enough. And I -- I
11 think I should, you know, in the spirit of the
12 disclosure that Mr. Kratz has struck, add joining
13 part of what -- part of what he said. I mean,
14 clearly, because about half, I think, of the blood
15 vial sample has been sent off to the FBI for
16 testing, and we expect testing is ongoing, clearly
17 there will have to be a hearing. Mr. Kratz may have
18 one type of hearing in mind; we have another.
19 Certainly a **Walstad** hearing and there are a variety
20 of other issues that may arise with the FBI testing.

21 We are no closer to being able to
22 conduct any independent testing or to have an
23 expert to meet and assess the FBI's testing, than
24 we were when we first addressed this issue. We
25 have received a protocol from the FBI, thanks to

1 Mr. Gahn for that; we got that, I don't know, at
2 the end of last week, I think.

3 And we'll be filing a motion addressing,
4 in writing, the issues that this testing and the
5 denial of defense opportunity for independent
6 testing or even for a reasonable chance to find
7 an expert to meet and help us assess, possibly
8 contradict the FBI test results. It raises a
9 whole field of fair trial and due process issues
10 here. I will address those in writing.

11 I hope to file that before the end of
12 this week. I expect the State would want a
13 chance to respond in writing and, you know,
14 whatever I see as heading, is the Court needing
15 to schedule, conceivably. I mean, on Wednesday,
16 gets FBI results and what they are, the Court
17 needing to set a fair amount of time aside to
18 address the whole cluster of issues surrounding
19 that FBI testing.

20 THE COURT: All right. Anything else
21 before we bring the jury back in and allow the State
22 to redirect?

23 ATTORNEY KRATZ: No. And Mr. Strang's
24 comments are certainly well stated and we actually
25 join that, Judge; we will need a day and whether

1 it's going to be on a weekend or whether the Court
2 is going to allow a day or the better part of a day,
3 that the jury gets a probably much needed day off,
4 we'll need to schedule that within the trial. But I
5 am prepared with my redirect at this time, Judge.

6 THE COURT: Very well. We can bring the
7 witness back in and the jurors.

8 (Jury present.)

9 You may be seated. Mr. Kratz, at this
10 time you may begin your redirect.

11 ATTORNEY KRATZ: Thank you, Judge.

12 REDIRECT EXAMINATION

13 BY ATTORNEY KRATZ:

14 Q. Sergeant Colborn, just a very few follow-up
15 questions. Mr. Strang asked you if you had
16 written a report about that telephone call that
17 you had sometime in 1994 or '95; do you remember
18 that question?

19 A. Yes, sir.

20 Q. Do you remember your response?

21 A. My response was, no, that I did not write a
22 report about it.

23 Q. As you look back, back in 1994 or '95, if you
24 would have written a report, what would it have
25 been about?

1 A. That is why I didn't do one, I don't know what it
2 would have been about, that I received a call and
3 transferred it to the Detective Division. If I
4 wrote a report about every call that came in, I
5 would spend my whole day writing reports.

6 Q. Did this person ever identify the individual that
7 they were talking about?

8 A. No, sir. There were no names given.

9 Q. Let me ask you this, as you sit here today,
10 Sergeant Colborn, do you even know whether that
11 call was about Mr. Steven Avery?

12 A. No, I don't.

13 Q. Mr. Strang also played a telephone call for you,
14 a call to the dispatch center, wherein you asked
15 to verify a license plate; do you recall that?

16 A. Yes, sir.

17 Q. Do you know if you made that inquiry of the
18 dispatch center before or after you went to the
19 Avery property on the 3rd of November?

20 A. I did not, no, sir. I would think -- I don't
21 know.

22 Q. Mr. Strang asked whether or not it was common for
23 you to check up on other agencies, or perhaps
24 I'm -- I'm misphrasing that, but when you are
25 assisting another agency, do you commonly verify

1 information that's provided by another agency?

2 A. All the time. I'm just trying to get -- you
3 know, a lot of times when you are driving a car,
4 you can't stop and take notes, so I'm trying to
5 get things in my head. And by calling the
6 dispatch center and running that plate again, it
7 got it in my head who that vehicle belonged to
8 and what type of vehicle that plate is associated
9 with.

10 Q. All right. Mr. Strang also asked you about a
11 interview that you had with a Investigator Steier
12 from the Calumet County Sheriff's Department
13 sometime in January of this year; is that
14 correct?

15 A. Yes, sir.

16 Q. Mr. Strang asked you if, when Investigator Steier
17 asked if you were able to, at that time, back in
18 January, to recreate your day, if you will, on
19 your day off on the 4th of November; is that the
20 substance?

21 A. Yes, sir.

22 Q. And in January, were you able to do that?

23 A. No, sir.

24 Q. Have you since been asked to recreate or to
25 reexamine your comings and goings on the 4th of

1 November?

2 A. Yes, sir.

3 Q. And have you now been able to do that?

4 A. Yes, sir.

5 Q. At any time during the 4th of November, were you
6 anywhere near the Avery salvage property?

7 A. No, I was not.

8 Q. At any time other than what we have heard about
9 on the 3rd, were you anywhere near that salvage
10 property.

11 A. No, I was not.

12 Q. Again, before arriving there on the 5th of
13 November, had you gone near or approached
14 anywhere around the Avery salvage property
15 itself?

16 A. No, sir, I had not.

17 ATTORNEY KRATZ: That's all the redirect I
18 have of this witness. Thank you, very much, sir.

19 THE COURT: Mr. Strang.

20 RE-CROSS-EXAMINATION

21 BY ATTORNEY STRANG:

22 Q. How many calls have you ever gotten in your law
23 enforcement career, from another police officer,
24 suggesting you had the wrong guy in jail?

25 A. I don't know. I can't recall any others.

1 ATTORNEY STRANG: That's all I have.

2 THE COURT: All right. You are excused.

3 Mr. Kratz, the State may call its next witness.

4 ATTORNEY KRATZ: The State would call
5 Lieutenant James Lenk, then.

6 THE CLERK: Please raise your right hand.

7 LIEUTENANT JAMES M. LENK, called as a
8 witness herein, having been first duly sworn, was
9 examined and testified as follows:

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

12 THE WITNESS: James M. Lenk, L-e-n-k.

13 DIRECT EXAMINATION

14 BY ATTORNEY KRATZ:

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

16 A. I'm employed with the Manitowoc County Sheriff's
17 Department.

18 Q. In what capacity, sir?

19 A. I'm a lieutenant of detectives.

20 Q. What are your duties as lieutenant?

21 A. To distribute work amongst the other detectives,
22 to supervise other detectives, also to take cases
23 myself.

24 Q. So, together with the supervisory responsibility,
25 you have an active case load; is that right?

1 A. That's correct.

2 Q. How long have you been a law enforcement officer?

3 A. Total of approximately 24 years.

4 Q. And where did your law enforcement career begin?

5 A. At the Detroit Police Department in Detroit,

6 Michigan.

7 Q. How long were you employed in Detroit?

8 A. Just over four years.

9 Q. After your -- By the way, what did you do with

10 the Detroit Police Department?

11 A. I started out at as a patrol officer. I worked

12 undercover, vice unit. And I also worked

13 juvenile investigations.

14 Q. All right. What was the next law enforcement

15 position that you held?

16 A. I worked for Michigan Bell, Corporate Security,

17 Michigan Bell Telephone.

18 Q. How long was that?

19 A. Approximately two to three years; I don't recall

20 specifically.

21 Q. All right. Thereafter, what did you do?

22 A. I moved to Wisconsin and applied for the

23 Manitowoc County Sheriff's Department.

24 Q. And were you successful in obtaining that

25 position?

1 A. Yes, I was.

2 Q. When did that start?

3 A. It started December, 1988.

4 Q. Tell the jury, if you would, what your
5 responsibilities first were with the Manitowoc
6 Sheriff's Department?

7 A. When I first got hired on the Manitowoc County
8 Sheriff's Department, I worked as a jail officer
9 for a year.

10 Q. Did you move from that to something else?

11 A. Yes, I moved from that to patrol officer.

12 Q. How long were you a patrol officer?

13 A. I was a patrol officer for a short period of time
14 and then I went to the Metro Drug Unit.

15 Q. How long were you with the drug unit?

16 A. Approximately a year and a half.

17 Q. Could you describe your progression, then,
18 through the Manitowoc Sheriff's Department?

19 A. After the Metro Drug Unit, I became a sergeant
20 and I was assigned to the jail division; that
21 lasted a couple months. Then I was reassigned to
22 the Patrol Division as a sergeant.

23 Q. At some point, did you move out of the patrol
24 status?

25 A. Yes, I did.

1 Q. And did you move into investigations or into the
2 Detective Bureau?
3 A. Yes, I did.
4 Q. When did that happen, do you recall?
5 A. That was in February of '98, I believe.
6 Q. All right. At some point, Lieutenant Lenk, did
7 you move into a supervisory capacity within the
8 Detective Bureau?
9 A. Yes, I did.
10 Q. When was that; do you recall?
11 A. That was May of 2003.
12 Q. Lieutenant Lenk, I'm going to direct your
13 attention to November 3rd of 2005, ask if you
14 were first employed in the same capacity that you
15 hold now, at that time?
16 A. Yes, sir.
17 Q. And as the lieutenant in the Detective Bureau,
18 were you made aware of a missing persons
19 investigation that Calumet County had begun?
20 A. Yes, I was.
21 Q. How were you made aware of that?
22 A. I received a phone call from Investigator Wiegert
23 asking for assistance on a missing female.
24 Q. Is that something you worked on yourself on the
25 3rd, or assigned other officers?

1 A. I actually assigned the work to the other
2 officers. I stayed in the headquarters building
3 and did miscellaneous follow-up and paperwork.

4 Q. You did what, I'm sorry?

5 A. Miscellaneous follow- up and paperwork.

6 Q. Regarding this case or just other work?

7 A. This case and other work.

8 Q. All right. Is there an individual from the
9 Detective Bureau that you assigned to lead the
10 Manitowoc part of this investigation?

11 A. Yes, it would have been Detective Remiker.

12 Q. And does he have a first name?

13 A. Dave.

14 Q. If you can assist the jury, Lieutenant Lenk, that
15 first day, that is, the first day of the missing
16 persons investigation, the 3rd of November, what
17 was it that your agency, that Manitowoc, was
18 asked to assist with?

19 A. We were asked to assist with the missing female,
20 Teresa Halbach, to assist the Calumet County
21 officer that was coming to our county, to go to a
22 couple locations. I believe at least one
23 location, to see if they could gain information
24 to her possible whereabouts.

25 Q. As supervisor within the Detective Bureau, did

1 you speak directly with Detective Remiker
2 regarding those assignments?

3 A. Yes, I did.

4 Q. And were you informed. Were you briefed, I think
5 is the term, by Detective Remiker, regarding his
6 findings that day?

7 A. Yes, I believe I was.

8 Q. Did you have any conversation, direct
9 conversation, with Calumet County that first day?

10 A. Not direct conversation. I talked to Investigator
11 Dederling, who was also the one that came over to
12 our county.

13 Q. All right. Anything else happen on the 3rd,
14 other than what you have described regarding
15 the -- Manitowoc's limited role that day?

16 A. No, sir.

17 Q. All right. On the 4th, that would be on Friday,
18 the 4th of November, did you personally become
19 involved in the Manitowoc County portion of this
20 investigation?

21 A. Yes, sir.

22 Q. Could you tell the jury how you became involved?

23 A. Again, I received a telephone call from
24 Investigator Wiegert requesting that we go out
25 and reinterview Steven Avery.

1 Q. And did you proceed to Mr. Avery's property that
2 day?
3 A. Yes, I did.
4 Q. Who did you go with?
5 A. Detective Dave Remiker.
6 Q. Now, Lieutenant Lenk, had you ever been to the
7 Avery Salvage Yard as of the 4th of November?
8 A. No, I hadn't.
9 Q. Did you know where you were going on the
10 property?
11 A. No.
12 Q. When you got to -- Or did you proceed to that
13 scene?
14 A. Yes.
15 Q. When you got to the scene, where did you and
16 Detective Remiker go?
17 A. We turned to the right on Avery Lane, I guess it
18 is, towards Steven's trailer.
19 Q. To assist in your testimony, I'm going to show
20 you a much referred to exhibit, it's Exhibit No.
21 86; do you recognize that exhibit?
22 A. Yes, I do, sir.
23 Q. What is that?
24 A. That's the Avery Salvage Yard.
25 Q. And when you and Detective Remiker got to this

1 location, tell the jury where you went. There's
2 a laser pointer, if you need it, just to your
3 right, if that would assist you.

4 A. We came in -- It's hard to tell the area here.
5 We came in this road and we turned to the right.

6 Q. Why did you turn right?

7 A. Habit, I guess, just turned to the right.

8 Q. All right. Tell the jury where you went, please.

9 A. We went down to the -- almost to the end of the
10 road and we exited the vehicle. Detective
11 Remiker went up to the house trailer to knock on
12 the door, with no response; after which he went
13 to, I believe, the Janda trailer, again, knocked
14 on the door, no response.

15 As we were getting ready to leave, there
16 was a golf cart coming down the lane towards us.

17 Q. And who was on the golf cart?

18 A. Steven Avery and his mother.

19 Q. Did you have occasion to make contact with both
20 Steven and his mother at that time?

21 A. We talked to Steven, yes.

22 Q. Upon speaking to Mr. Avery, did you and Detective
23 Remiker ask for an opportunity to look in the
24 inside of his trailer?

25 A. Yes. Detective Remiker asked permission to look

1 inside his trailer.

2 Q. And was that done?

3 A. Yes, it was.

4 Q. How long did that take?

5 A. Approximately five minutes.

6 Q. Mr. Avery cooperative during that entire process?

7 A. Yes, he was.

8 Q. As you think back to that specific time,

9 Lieutenant Lenk, do you have an independent

10 memory of your sense of whether Mr. Avery may

11 have been involved in Ms Halbach's disappearance?

12 A. My memory at that point was that I did not think

13 there was any involvement with Mr. Avery.

14 Q. So you, Lieutenant James Lenk, the head of the

15 Detective Bureau, on the 4th of November, didn't

16 even think Steve was involved; is that what you

17 are telling us?

18 A. That's correct.

19 Q. Let me ask you this, Lieutenant Lenk, with that

20 having been said, did you take any steps from

21 that point forward to either plant evidence or to

22 ensure that Mr. Avery would be falsely accused of

23 that homicide?

24 A. No, sir, I definitely did not.

25 Q. Is that something that you have ever done in your

1 law enforcement career?

2 A. No, sir, I have never planted any evidence at any

3 time.

4 Q. Would you ever do something like that?

5 A. No, sir, I would not.

6 Q. The next day, on Saturday, the 5th of November;

7 do you remember that day?

8 A. Yes, sir.

9 Q. What were you doing that day, if you recall?

10 A. I was with my wife over near Menasha, looking for

11 a trailer for camping.

12 Q. Do you remember getting a call that day?

13 A. Yes, sir. I believe it was a page, initially.

14 Q. Did you speak with somebody?

15 A. Yes, I did.

16 Q. Who was that?

17 A. Detective Remiker.

18 Q. After getting the call from Detective Remiker,

19 did that affect your activities that morning?

20 A. Yes, sir. We stopped looking for the trailer and

21 I advised my wife, I have to get back, I have to

22 go to work.

23 Q. What did you do then?

24 A. We left the trailer sales, started to head home.

25 We got to Oneida and 441, my wife insisted that I

1 get something to eat because she knew that I
2 wouldn't eat the rest of the day, so we stopped
3 at Wendy's.

4 Q. Was that your idea?

5 A. No, it was not.

6 Q. But you stopped any way?

7 A. Yes, sir.

8 Q. All right. Where did you go then?

9 A. After we had a quick lunch at Wendy's, I went
10 directly home. And then from home, I went to the
11 department, to pick up my vehicle and my
12 supplies.

13 Q. And when you talk about picking up a vehicle, can
14 you describe that vehicle for us, please.

15 A. It's an unmarked police vehicle owned by
16 Manitowoc County Sheriff's Department.

17 Q. What kind of supplies did you pick up at the
18 Sheriff's Department?

19 A. Briefcase with various papers in it, radio, that
20 type of thing.

21 Q. Okay. Where did you go then?

22 A. I went from there to the Avery Salvage Yard.

23 Q. And, again, that's Exhibit No. 86; is that right?

24 A. That's correct.

25 Q. As you sit here today, Lieutenant Lenk, do you

1 recall about what time you arrived at that scene?

2 A. It was just shortly after 2:00, 2:05, somewhere

3 in there.

4 Q. Now, when you got to the scene, the Avery salvage

5 scene, had there been any kind of log in or check

6 in procedure put in place yet?

7 A. I don't recall a log in at that point.

8 Q. All right.

9 A. I just don't recall.

10 Q. What did you do when you got to the scene?

11 A. I met with the officers that were at the scene,

12 some from Manitowoc County, some from Calumet

13 County.

14 Q. Where did you meet with them?

15 A. Right at the beginning of the roadway where the

16 command center would have been set up.

17 Q. Can you show us on the diagram -- or excuse me,

18 the photo?

19 A. Would have been right in this area.

20 Q. Be an area just to the south of what we now know

21 are the business buildings; is that right?

22 A. That's correct, sir.

23 Q. I'm sorry, the north of. When you got there

24 Lieutenant Lenk, were there other members of your

25 department already on scene?

1 A. Yes, there were.

2 Q. Do you remember who you met with or who you saw
3 at that time?

4 A. I know I talked to Deputy Inspector Schetter.
5 I'm not real sure who else was there from our
6 department that I talked with, quite a few
7 officers there.

8 Q. From a hierarchy standpoint, or who's the boss
9 kind of a standpoint, is Deputy Inspector
10 Schetter, or was he at the time, ahead of you or
11 on top of you, regarding authority or rank within
12 the department?

13 A. Yes, sir, he was.

14 Q. Do you recall, Lieutenant Lenk, being involved,
15 or overhearing discussions regarding who should
16 lead up this investigation?

17 A. I believe, by the time I got there, that they had
18 already decided that Calumet County would lead
19 the investigation.

20 Q. All right. Were there Calumet County officers on
21 scene?

22 A. Yes, sir, I believe there were.

23 Q. At some point later that afternoon, do you recall
24 other officials arriving at the scene, including
25 myself, with the signed search warrant?

1 A. Yes, sir, I do.

2 Q. After D.A.'s and lead investigators got to the
3 scene, were you asked to perform any duties at
4 that scene?

5 A. Yes, sir. We were asked to assist Calumet
6 County.

7 Q. From Manitowoc County, other than Deputy
8 Inspector Schetter, was there any individual of
9 higher rank than you at the scene?

10 A. I'm not sure. You mean from the sheriff's
11 department?

12 Q. Yes.

13 A. No, sir. I don't think so.

14 Q. All right. Now, looking at Exhibit No. 86 and
15 remembering back to that first late afternoon; do
16 you remember whether manpower issues were a
17 factor that afternoon?

18 A. Yes, sir, they were a factor.

19 Q. Could you describe that for the jury. What does
20 that mean?

21 A. That means that there was a very large area. The
22 search warrants were already obtained and there
23 was limited manpower to search that area.

24 Q. I'm sure most, if not all of these potential --
25 or these jurors have not been to a crime scene;

1 is this a typical crime scene by way of size or
2 scope?

3 A. No, sir, it's not.

4 Q. Can you describe better or explain that for the
5 jury, please.

6 A. Most crime scenes are a smaller area, either a
7 house or a small yard, or a room, this area was
8 immense.

9 Q. When you arrived, did you appreciate the size or
10 the scope of this effort?

11 A. Yes. I also got a further appreciation the more
12 I looked around the property.

13 Q. All right. What did you believe Manitowoc County
14 Sheriff's Department involvement was going to be
15 at that scene?

16 A. Our involvement was to be part of the search
17 team, basically extra eyes and hands to do the
18 searching.

19 Q. Are you familiar with the term evidence tech?

20 A. Yes, sir.

21 Q. What is that?

22 A. It's an individual on the police department, or
23 sheriff's department, that has had some training
24 in how to gather evidence and package evidence,
25 at a crime scene.

1 Q. You talked about manpower before, was there an
2 abundance of evidence techs at that scene?
3 A. No, sir, there was not.
4 Q. Are you an evidence tech, or were you?
5 A. Yes, sir.
6 Q. Do you know, at that scene, what other members of
7 Manitowoc County Sheriff's Department would have
8 similar training or experience as an evidence
9 tech?
10 A. Yes, sir. Sergeant Andy Colborn and Detective
11 Dave Remiker.
12 Q. Now, Lieutenant Lenk, prior to your arrival at
13 the Avery Salvage Yard on the 5th, had you had
14 previous dealings or contact with Steven Avery?
15 A. Just the contact on the 4th of November.
16 Q. Do you recall being one of many individuals
17 involved in what's called a deposition, for
18 Mr. Avery?
19 A. Yes, sir.
20 Q. And can you tell the jury about that process,
21 please.
22 A. Well, the process was, I received a subpoena to
23 give a deposition in the Avery lawsuit case
24 against Manitowoc County.
25 Q. Did you respond to that subpoena, did you provide

1 testimony?

2 A. Yes, sir, I did.

3 Q. And so the jury understands, when Mr. Avery was

4 wrongfully convicted back in 1985, were you a

5 member of the Manitowoc County Sheriff's

6 Department?

7 A. No, I was not.

8 Q. Then, what involvement did you have; in other

9 words, what was your part of the deposition?

10 A. The part of the deposition was that I received a

11 statement from Sergeant Colborn, in 2003, I

12 believe, September, that he had taken a phone

13 call back in 1997, from another department, I

14 believe he said it was Brown County Sheriff's

15 Department, that they had in custody an

16 individual that had committed an assault in

17 Manitowoc County and that Manitowoc County had

18 someone in custody for that assault.

19 Q. Is that all?

20 A. That's all.

21 Q. Did you even receive that call back in the

22 mid-nineties?

23 A. No, sir, I did not.

24 Q. So your deposition was that you heard that Andy

25 Colborn got such a call; is that right?

1 A. Yes, sir, I received that information from Andy,
2 himself.
3 Q. Did that lawsuit cause you any personal or
4 professional embarrassment?
5 A. No, sir, it did not.
6 Q. Did that lawsuit create any angst or ill feelings
7 on your part?
8 A. No, sir, it did not.
9 Q. Did the fact of that lawsuit cause you any upset,
10 or aggravation, or anger?
11 A. No, sir, it did not.
12 Q. Did that lawsuit cause you or compel you to -- to
13 plant any evidence in this case?
14 A. No, sir, definitely not.
15 Q. What did you feel about that lawsuit; do you
16 remember?
17 A. I pretty much didn't care, one way or the other.
18 Q. All right. How were individuals assigned
19 responsibilities out at the Avery salvage
20 property?
21 A. I believe the assignments came through the two
22 officers in charge, Agent Fassbender and
23 Investigator Wiegert.
24 Q. Was this a situation where you volunteered for a
25 particular search or an area that you wanted to

1 become involved?

2 A. No, sir.

3 Q. Did you even know when you got your assignments

4 -- and we'll be talking about a couple later that

5 week -- but did you know where you were going to

6 be assigned?

7 A. No, sir.

8 Q. Lieutenant Lenk, were you made aware that search

9 teams were being assembled?

10 A. Yes, sir.

11 Q. And was there anything unique about the law

12 enforcement officers that were being selected for

13 those search teams, if you know?

14 A. I don't know, specifically, other than that they

15 were to have a Calumet officer in charge of the

16 team.

17 Q. What I'm asking, though, is the other -- other

18 than a Calumet County lead person involved, the

19 others that were chosen to be on that team, did

20 they have any unique or similar quality about

21 them?

22 A. Yes, sir. They were requesting anyone that had

23 evidence technician experience.

24 Q. As a supervisor and as a long time law

25 enforcement officer, do you have an opinion as to

1 why that was being done?

2 A. My opinion is they wanted the best people that

3 they could get, at the scene, to do the

4 searching.

5 Q. All right. That first night, were you made a

6 part of one of those teams?

7 A. Yes, sir.

8 Q. Who was in charge or who was the lead officer in

9 your search team?

10 A. Sergeant Bill Tyson.

11 Q. Now, you are a lieutenant and he was a sergeant;

12 is that right?

13 A. That's correct, sir.

14 Q. Did you have any concern or problem with taking

15 directional orders from Sergeant Tyson?

16 A. No, sir.

17 Q. Did you believe at that time, or actually

18 throughout this entire investigation, that rank

19 had anything to do with who was calling the

20 shots?

21 A. No, sir, I did not.

22 Q. Tell the jury, if you recall, when that first

23 team was assembled, if there were particular

24 responsibilities that each officer had?

25 A. Each officer was assigned a certain area of

1 searching. It was done as a team, but each
2 officer was assigned a certain particular area of
3 a room, or living room, or kitchen, of an area
4 that he was responsible for, or a team of
5 officers would be responsible for.

6 Q. All right. Was there direction that your team
7 received about items of evidentiary value and who
8 should take them into custody or who should seize
9 them?

10 A. Yes, we were told that all evidence would be
11 collected by Calumet County officers. All
12 reports would be done by Calumet County officers.
13 And basically we were there just to assist in the
14 searching process.

15 Q. Let's talk about reports for a minute. Wouldn't
16 it be typical for each individual officer at a
17 scene like this to do their own reports?

18 A. Normally, yes.

19 Q. Are you saying this was different or you were
20 given different direction?

21 A. We were given different directions, yes.

22 Q. The first area that you were involved personally,
23 in searching on the 5th, was what?

24 A. Steven Avery's trailer.

25 Q. Can you tell us who the other members of your

1 search team were?

2 A. Sergeant Tyson, Sergeant Colborn and Detective
3 Remiker.

4 Q. The jury has already heard this a couple of times
5 so we're not going to go piece by piece, I'm sure
6 thankfully; but could you just tell us the rooms
7 that were searched by the search team, please.

8 A. The rooms that were searched would be the
9 southernmost bedroom, that would be Steven
10 Avery's bedroom; the hallway; the bathroom that
11 is next to the bedroom; next to the bathroom area
12 is a second bedroom that was searched; next to
13 the bath -- or the second bedroom is the living
14 room area; followed by the kitchenette area; and
15 the kitchen.

16 Q. I'm not sure my math is that great, Lieutenant,
17 but how long have you been a police officer, just
18 total number of years?

19 A. Around 24 year.

20 Q. In 24 years of law enforcement experience, have
21 you been involved in searches of residences and
22 property before?

23 A. Yes, I have.

24 Q. Are there different kinds of searches?

25 A. I'm not sure what you mean.

1 Q. Well, if a property, a residence, as an example,
2 is to be searched by you or another law
3 enforcement officer; are you familiar with the
4 detail in which some of those searches are
5 performed in?
6 A. Yes, sir.
7 Q. Was this first search of the Avery property
8 intended to be a thorough, tear the place apart,
9 type search?
10 A. No, sir, it was not. It was more of a general
11 search.
12 Q. All right. I guess that's my question, maybe
13 tell the jury what you believed a general search
14 was?
15 A. At that time, a general search was looking for
16 any obvious signs for the missing Teresa Halbach,
17 in that trailer. It's pretty generalized at that
18 point.
19 Q. Do you know about how long you guys took in that
20 trailer?
21 A. I believe it was around two and a half hours.
22 Q. All right. During that initial search, did you
23 notice any firearms in Mr. Avery's bedroom?
24 A. Yes, sir.
25 Q. Can you describe what you saw, please.

1 A. There was a gun rack above the head of the bed,
2 in the bedroom area. There were two firearms in
3 there. I believe one was a .22 and one was a
4 muzzleloader firearm.

5 Q. You said that you searched the entire trailer.
6 After that first search was complete, of Steven's
7 trailer, can you tell the jury what you did,
8 please.

9 A. After that search was completed, I think we ended
10 for the day.

11 Q. Was there some meeting or something that occurred
12 before you left?

13 A. Yes, there was a meeting at the command center.

14 Q. What's the purpose of that?

15 A. To discuss what had been done and what needs to
16 be done the next day.

17 Q. Lieutenant Lenk, any time on the 5th of November,
18 did you have any contact with Teresa Halbach's
19 SUV?

20 A. No, sir, I did not.

21 Q. Did you have any contact with her SUV on the 4th
22 of November, or the 3rd of November, or in fact
23 any time there before?

24 A. No, sir, I did not.

25 Q. Were you asked to return to the property the next

1 day, the 6th?

2 A. Yes, sir, I was.

3 Q. And can you describe for the jury what your
4 responsibilities were on the 6th, please.

5 A. On the 6th we met at the command center. We were
6 assigned to Deputy Kucharski. And I believe we
7 were to search the garage on Steven Avery's
8 portion of the property.

9 Q. Describe the kind of search that was, please.

10 A. Again, that was a general search for any
11 indications of Teresa Halbach.

12 Q. Where did you go after that?

13 A. I believe we went -- got -- either went back to
14 the command center or received information from
15 them for the next place to search.

16 Q. Do you remember how long you were in the garage,
17 roughly?

18 A. Maybe an hour, hour and a half, I'm not exactly
19 sure.

20 Q. Now, the question, Lieutenant Lenk, is searching
21 that garage for an hour, or an hour and a half,
22 do you believe that you found, or would have
23 found everything of any evidentiary value in that
24 garage?

25 A. At that time we thought we found everything that

1 was of evidentiary value, yes.

2 Q. All right. Do you remember the interior of that
3 garage, as you think back?

4 A. Yes, I do.

5 Q. Was there a lot of things in that garage?

6 A. Yes, sir, it was full of things.

7 Q. All right. Were you informed, Lieutenant Lenk,
8 of how long, that is, the estimated time that law
9 enforcement was going to keep control of this
10 scene? Did you know that first day?

11 A. No, I didn't know that first day.

12 Q. Did you know whether you were going to do
13 additional searches of either residences, or
14 garages, or outbuildings, or anything like that?

15 A. Yes, we planned on doing additional searches of
16 the buildings.

17 Q. Let me ask you, Lieutenant Lenk, on the 6th, that
18 is, on that Sunday, did you have occasion to
19 assist other officers in a search of the
20 defendant's sister's home, that's Barb Janda?

21 A. Yes, sir.

22 Q. Could you describe that search, generally, for
23 us, please.

24 A. That was, again, a general search looking for
25 items that might relate to Teresa Halbach.

1 Q. Do you remember Detective Remiker noticing and
2 investigating an answering machine at that time?
3 A. Yes, sir.
4 Q. Were you asked to return to Steve Avery's trailer
5 at all?
6 A. Yes, sir, I think we were.
7 Q. And do you remember the scope of that?
8 A. I believe we were asked to go back, as a team, to
9 collect the firearms, a vacuum cleaner and the
10 bedding, I believe, off the spare bedroom.
11 Q. Again, who was in charge of seizing and taking
12 control of the evidence on that day?
13 A. Calumet County officer Deputy Kucharski.
14 ATTORNEY KRATZ: I just have two other
15 points, Judge, and then I will recommend that we
16 quit for the day, but let me finish this day, if I
17 may.
18 Q. On the 6th, Lieutenant Lenk, were there other
19 buildings that you were asked to search?
20 A. Yes, sir, there were.
21 Q. What were those buildings?
22 A. There was a large business office area building,
23 I believe they called it the office. And we also
24 searched, I believe it was Mr. Chuck Avery's
25 residence.

1 Q. All right. And the same search team that is
2 headed by Kucharski was involved in those
3 searches as well?

4 A. Yes, sir.

5 Q. All right.

6 ATTORNEY KRATZ: I do recommend, Judge, and
7 this may be a good time to break for the day and
8 call this witness tomorrow morning.

9 THE COURT: All right. Members of the
10 jury, I will remind you, again, that you are not to
11 discuss this case at all and make sure you don't
12 watch any news accounts about the case this evening.
13 We'll see you tomorrow morning.

14 ATTORNEY STRANG: Your Honor?

15 THE COURT: Yes.

16 ATTORNEY STRANG: While we still have the
17 jury, I forgot to move in Exhibit 212, Sergeant
18 Colborn; 213 was only marked and need not be moved
19 in.

20 ATTORNEY KRATZ: No objection.

21 THE COURT: 212, you are asking for
22 admission?

23 ATTORNEY STRANG: Yes.

24 THE COURT: Court will admit 212. Very
25 well, you are excused for the day.

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(Jury not present.)

THE COURT: All right. Counsel, we'll see
you tomorrow morning.

ATTORNEY STRANG: 8:30?

THE COURT: Yes.

ATTORNEY KRATZ: Thank you, Judge.

(Proceedings concluded.)

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STATE OF WISCONSIN)
) ss
COUNTY OF MANITOWOC)

I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 7th day of NOVEMBER, 2007.

Diane Tesheneck, RPR

Diane Tesheneck, RPR
Official Court Reporter

EXHIBIT 20

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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 1

STATE OF WISCONSIN,

PLAINTIFF,

JURY TRIAL
TRIAL DAY 8

vs.

Case No. 05 CF 381

STEVEN A. AVERY,

DEFENDANT.

DATE: FEBRUARY 21, 2007

BEFORE: HON. PATRICK L. WILLIS
Circuit Court Judge

APPEARANCES:

KENNETH R. KRATZ
Special Prosecutor
On behalf of the State of Wisconsin.

THOMAS J. FALLON
Assistant Attorney General
On behalf of the State of Wisconsin.

NORM GAHN
Special Prosecutor
On behalf of the State of Wisconsin.

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

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

STEVEN A. AVERY
Defendant
Appeared in person.

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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

1 what did you do?

2 A After the magazines and a binder were pushed back
3 into the bookcase, I advised Deputy Kucharski that I
4 would go out into the living room and retrieve bags
5 or try to get boxes to put the items that we had
6 recovered.

7 Q Did you do that?

8 A Yes, I did.

9 Q On your return to the bedroom, tell the jury what
10 you saw?

11 A When I entered the bedroom, I caught my eye, I saw a
12 key laying in front of the slippers by the back
13 corner of that cabinet.

14 Q Now, before Sergeant Colborn's manipulation or,
15 um, banging around of that piece of furniture,
16 had that key been there?

17 A No, sir, it was not.

18 Q If you could use your laser pointer again, tell
19 the jury about where in that bedroom you were
20 standing when you saw the key and where was the
21 key?

22 A I was coming in that door, and the key was right at
23 the back corner of that cabinet on the floor.

24 Q There's been another exhibit which has been
25 admitted into evidence. It's Exhibit No. 210.

1 ATTORNEY KRATZ: Objection, relevance, Your
2 Honor.

3 THE COURT: Uh, Mr., uh, Strang?

4 ATTORNEY STRANG: I'm -- I'm exploring
5 his attitudes about the lawsuit and its
6 consequences.

7 ATTORNEY KRATZ: This isn't a consequence
8 of the lawsuit at all, Judge.

9 THE COURT: Yeah. I'm going to sustain the
10 objection.

11 Q (By Attorney Strang) Do you care one way or the
12 other, Lieutenant Lenk, about whether your
13 Department gets the right guy in a criminal
14 investigation?

15 A Definitely.

16 Q That you do care about?

17 A Yes, sir.

18 Q And what's your preference?

19 A I'm not sure what your question is, sir.

20 Q Well, since you cared about whether they do or
21 don't get the right guy, what's your preference?

22 A My preference is you always try to get the right
23 person.

24 Q Now, this was the lawsuit that eventually led to
25 your deposition?

1 A Yes, sir.

2 Q Your deposition on, I think, October 11, 2005?

3 A I believe that's the date. I'm not positive.

4 Q I won't even bother to mark this, but I don't
5 want to have you have any questions about it.
6 I'm showing you the transcript of your
7 deposition. What's the date of that deposition?

8 A October 11, 2005.

9 Q That's you with your picture on the front?

10 A Yes, sir.

11 Q Lieutenant Lenk, was October 11, 2005, the first
12 time you had ever had your deposition taken?

13 A Regarding this lawsuit?

14 Q Regarding anything.

15 A No, sir. I believe I've had done it at least once
16 before.

17 Q Had -- had a deposition before. All right. Uh,
18 this was, though, something unusual for you?

19 A Yes.

20 Q You were subpoenaed?

21 A Is that a question, sir, or --

22 Q Yes.

23 A Yes, I was.

24 Q And, uh, you asked, uh -- or you were asked a
25 number of questions?

1 A That's correct.

2 Q You under -- you un -- you understand that this
3 process here that we're doing, I'm the one asking
4 questions? So I'm speaking to you. I'm asking
5 you a question?

6 A Yes, sir.

7 Q Okay. And you're providing answers?

8 A Yes, sir, I am.

9 Q Uh, you provided answers at the deposition in
10 much the same format, didn't you?

11 A Yes, sir, I did.

12 Q And I think you told us that one -- sort of the
13 major topic of this deposition was the telephone
14 call that Sergeant Colborn, in fact, when he was
15 in the jail, had received some years earlier?

16 A That's correct.

17 Q Sergeant Colborn told you about that telephone
18 call, didn't he?

19 A Yes, in 2003.

20 Q That is, he told you about it on the very day of
21 Steven Avery's release or the very next day,
22 didn't he?

23 A I don't recall. It could have been, yes.

24 Q But you all were having a conversation about
25 Mr. Avery being released from prison; right?

1 A I don't know if we were having a conversation about
2 that specifically, no.

3 Q But, in any event, uh, whether there was a
4 conversation or not, uh, Officer Colborn had
5 given you this information, uh, and you thought
6 it may or may not be relevant?

7 A That's correct.

8 Q And, uh, you should -- you -- you told Officer
9 Colborn he ought to pass it along to the sheriff?

10 A Yes, sir.

11 Q And the two of you went to Sheriff Peterson
12 together about it?

13 A Yes, sir, I believe we did.

14 Q And, uh, Sheriff Peterson suggested that maybe
15 the two of you ought to prepare a short report or
16 statement about that?

17 A That's correct.

18 Q You prepared that statement on September 12,
19 2003?

20 A I believe it was that same day, yes.

21 Q Do you recall that, or do you not, as being the
22 day after Steven Avery was released from prison?

23 A I don't specifically recall if that was the same day.

24 Q Did you consider the possibility that you might
25 be added as a defendant to that civil lawsuit?

1 A No, sir, I did not.

2 Q Never crossed your mind?

3 A No, sir.

4 Q Now, Teresa Halbach. It's November 3, 2005 when
5 you first learned that she is missing?

6 A That's correct, sir.

7 Q She's reported missing by another county? Not
8 Manitowoc County?

9 A Yes, it was Calumet County.

10 Q The adjoining county, but a different county
11 altogether?

12 A That's correct.

13 Q Uh, this is, at that point, their missing person
14 investigation?

15 A Yes, sir.

16 Q You at -- at the time, November 3, 2005, uh, were
17 then, as you are now, the chief detective, if you
18 will, for Manitowoc County?

19 A Lieutenant of detectives, yes, sir.

20 Q That is in charge of all of the other detectives
21 in the Manitowoc County Sheriff's Department?

22 A Correct.

23 Q You also have some duties as a detective yourself
24 in the field, so to speak?

25 A Yes, sir.

1 the 210. What you did notice is that the, uh --
2 the key is found not behind the bookcase, is it?
3 A No, sir, it was not.
4 Q Uh, not flush with the wall, was it?
5 A No, sir.
6 Q But to the sides of the bookcase?
7 A Back by the corner to the side. Yes, sir.
8 Q And with -- with all of this which you've
9 described, and I won't even go to later
10 November 8 or November 9, but with all of this,
11 we've got a page or page-and-a-half of police
12 reports from you, didn't we?
13 A From myself, sir?
14 Q Yes.
15 A Yes, sir.
16 Q Now, November 5, when you, uh -- you volunteered
17 with Mr. Colborn and Mr. Remiker to search Steven
18 Avery's trailer, uh, as of that time you
19 previously had talked with Sergeant Colborn about
20 the depositions the two of you gave?
21 A I believe we did at some point. Yes, sir.
22 Q Talked before the depositions, didn't you?
23 A He asked me if I got a -- a deposition subpoena, and
24 I said, yes.
25 Q And the two of you had a little conversation

1 about that?

2 A Yes. I had no idea what I was getting subpoenaed
3 for, and he said it was because of a statement he had
4 made.

5 Q A statement -- you know, a phone call he had
6 gotten?

7 A Correct, sir.

8 Q From a Brown County law enforcement agency?

9 A That's what he said, sir.

10 Q From a detective?

11 A Yes, sir.

12 Q They had someone in custody?

13 A Yes, sir. I believe so.

14 Q Someone who had committed a Manitowoc assault
15 some years prior?

16 A It was a Manitowoc assault. I don't know if there
17 was a time attached to it. I'm not sure.

18 Q At least what Sergeant Colborn told you was there
19 was a few years prior. The detective from the
20 other Brown County agency was telling him.

21 A Yes, if that's what's on there.

22 Q And, uh, the detective also told Colborn that he
23 believed someone already was arrested for the
24 crime?

25 A That's correct, sir.

1 Q So Sergeant Colborn fills you in on what he
2 thinks the depositions are about and, uh, the two
3 of you don't talk about the depositions after
4 them?
5 A After the depositions?
6 Q Right.
7 A We may have mentioned it to each other.
8 Q Okay. But it's less than four weeks later,
9 November 5, and one thing you do know is that you
10 didn't mention that deposition to Special Agent
11 Fassbender?
12 A That's correct, sir.
13 Q You didn't mention it to Investigator Mark
14 Wiegert?
15 A That's correct.
16 Q Didn't hear Sergeant Colborn mention the
17 depositions to either of those two gentlemen
18 either?
19 A Not to my recollection. No, sir.
20 Q Didn't tell Sheriff Pagel that you'd been deposed
21 three, four weeks earlier?
22 A No, sir.
23 Q Had Steven Avery actually been sitting there
24 during you deposition?
25 A He came in after I had started giving my deposition.

1 Yes, sir.

2 Q And, um, without you telling Mr. Fassbender, and
3 Mr. Wiegert, Sheriff Pagel about the deposition,
4 there's really no way they would have known about
5 it, would they have?

6 A No, sir.

7 Q So that's not information they could consider in
8 deciding whether to accept your offer to
9 volunteer to search Mr. Avery's trailer?

10 A They didn't have that information, sir.

11 Q Because you didn't give it to them?

12 A No, sir, I did not.

13 Q In effect, you took the decision upon yourself
14 that this was information they didn't need to
15 have?

16 A At that time I didn't even think about the
17 deposition.

18 Q Would it have been a little bit fairer to
19 Mr. Fassbender if you had given him this
20 information so that he, as the lead -- one of the
21 two lead investigators, could have considered it?

22 A It would have been more information for him. I don't
23 know if it would have changed his decision.

24 Q I don't know either, but would it have been fair
25 to give him that information?

1 A Had I thought of it, yes, sir.

2 Q Would it have been fair to give that to

3 Mr. Wiegert or Sheriff Pagel?

4 A Same answer. Yes, sir.

5 Q And before you went rummaging through Steven

6 Avery's bedroom once, twice, three times,

7 whatever it was, for hours, would it have been

8 fairer to Steven Avery if someone other than a

9 person who had been deposed in his lawsuit had

10 done that search?

11 A No, sir, I don't think it would have been.

12 ATTORNEY STRANG: That's all I've got.

13 Oh. I'm -- I'm sorry.

14 Q (By Attorney Strang) You came back to

15 Mr. Avery's four months later? Not quite four

16 months later?

17 A Yes.

18 Q March 1 and March 2 of 2006?

19 A That's correct, sir.

20 Q Much smaller search this time, wasn't it?

21 A Yes, sir. I believe it was just the garage.

22 Q The entire rest of the property was not closed

23 off to the public?

24 A No, sir, it was not.

25 Q The rest of the property was not closed off to

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Yes.

Q After their arrival, do you recall a discussion regarding who should head up both this investigation and, if necessary, uh, any, um, lawyer involvement, any D.A. involvement, in the case?

A There was a lot of discussion about that, yes.

Q Can you recount that for the jury, please?

A Um, obviously, uh, there were Calumet County people there. There were, um, Manitowoc County, uh, investigators, administrative staff there. In fact, um, at one point, uh, Deputy Inspector Schetter arrived, and, um, he had, obviously, more knowledge or -- or understanding of what was going -- his perception of maybe a conflict of inter -- interest in some ongoing litigation between, uh, Steven Avery and Manitowoc County.

And there was a decision made and a discussion made amongst Manitowoc County individuals, Calumet County individuals, and individuals from each District Attorney's Office that it was probably in the best interest to have Calumet County officers, um, work on the investigation, and, uh, they would even also, uh, ask the State of Wisconsin or DCI to assist also.

1 STATE OF WISCONSIN)
2)SS.
3 COUNTY OF MANITOWOC)

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I, Jennifer K. Hau, Official Court Reporter for Circuit Court Branch 3 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 8th day of November, 2007.

Jennifer K. Hau
Jennifer K. Hau, RPR
Official Court Reporter

EXHIBIT 21

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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 1

STATE OF WISCONSIN,

PLAINTIFF,

JURY TRIAL
TRIAL - DAY 9
Case No. 05 CF 381

vs.

STEVEN A. AVERY,

DEFENDANT.

DATE: FEBRUARY 22, 2007

BEFORE: Hon. Patrick L. Willis
Circuit Court Judge

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

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

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

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

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

STEVEN A. AVERY
Defendant
Appeared in person.

TRANSCRIPT OF PROCEEDINGS

Reported by Diane Tesheneck, RPR

Official Court Reporter

1 Q. During that thorough search, did you have
2 occasion to search the bedroom of Mr. Avery's
3 trailer?
4 A. Yes, we did.
5 Q. And we have heard about a lot of that search, but
6 I'm specifically going to direct your attention
7 to the key and the finding of the key in that
8 bedroom. Do you recall how that occurred?
9 A. Yes, I do.
10 Q. Why don't you tell the jury how that occurred,
11 please.
12 A. We were concluding the search in the bedroom.
13 We, as Lieutenant Lenk, Sergeant Colborn and I.
14 I was mostly doing the photographing, and logging
15 in and packaging of evidence. However, I did
16 search the nightstand. I was sitting on the bed
17 and the nightstand was right there, so when I had
18 time between my duties, I would search the
19 nightstand. We were just wrapping up the search
20 and Lieutenant Lenk left the room to get some
21 more boxes for some of the things that we were
22 taking into evidence.
23 Sergeant Colborn was searching --
24 finishing up his search of an area on the east
25 wall, next to the bookcase. And I was sitting on

1 the bed near the nightstand. Lieutenant Lenk
2 came back into the room, stopped at the doorway,
3 pointed at the floor, just a couple of feet away
4 from where my feet were sitting on the floor, and
5 said there was a key there.

6 Q. I'm going to show you, just as you describe this,
7 Exhibit No. 210, ask if this image looks familiar
8 to you?

9 A. That's the key, that's where the key was sitting
10 when we found it.

11 Q. How far was this key away from you as you were
12 sitting on the bed?

13 A. Just a of couple feet.

14 Q. Had you seen that key, either before Lieutenant
15 Lenk left the room, or at any time actually prior
16 to Lieutenant Lenk's return?

17 A. No, I did not.

18 Q. Now, when Lieutenant Lenk said, there's a key,
19 where was he standing when he said that.

20 A. He was standing in the doorway.

21 Q. Had he gotten to that area yet when he said that?

22 A. No.

23 Q. I'm just going to ask you, Deputy Kucharski, were
24 you surprised to see that on the floor?

25 A. Yes.

1 Q. What happened after you saw that key on the
2 floor?

3 A. Lieutenant Lenk pointed out the key; we all
4 looked at it. We all decided it was a Toyota
5 emblem on it. Stopped all searching. I had
6 everybody stop the searching. Immediately took a
7 photograph of it. I had taken my gloves off to
8 finish up my -- tough to write and take pictures
9 with the rubber gloves on. So I had taken the
10 gloves off, so I put on a fresh pair of gloves. I
11 took out a new evidence bag out of the --

12 Q. Let me just stop you. A fresh pair of gloves,
13 does that mean that it had touched any other
14 pieces of evidence in that room?

15 A. No, it did not. It came directly out of the
16 package.

17 Q. All right. So you put fresh gloves on, what did
18 you do then?

19 A. I took a new evidence bag out of the stack of
20 bags, picked up the key with the -- with my
21 gloved hand, put it into the new evidence bag and
22 then I contacted the Command Post.

23 Q. Deputy Kucharski, the jury has already seen the
24 actual key, itself, but I'm going to show you
25 something that's been marked as Exhibit 219, can

1 the key. I think the only person that would have
2 had the key would be the person that killed
3 Teresa --

4 ATTORNEY BUTING: Objection, speculation.

5 THE COURT: Sustained.

6 ATTORNEY BUTING: Move to strike.

7 THE COURT: Court will order the answer
8 stricken.

9 Q. (By Attorney Kratz)~ I want you to limit your
10 comments to your observations. What about your
11 observations do you believe it was impossible or
12 improbable for them to plant that key?

13 A. My actual observations, I would have to say
14 that -- that it could be possible, as in I was
15 doing other things. I was taking photographs. I
16 was searching the nightstand. So, if we're just
17 limiting it to if it was possible that they could
18 do it without me seeing it, I would say, yes, I
19 guess it is possible.

20 Q. All right. And is that in the sense of anything
21 is possible?

22 A. That's in the sense of it's possible aliens put
23 it there, I guess.

24 Q. All right. And in that regard, though, Deputy
25 Kucharski, while you were working with these

EXHIBIT 22

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

5 vs.

JURY TRIAL

TRIAL - DAY 10

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8
9 **DATE:** FEBRUARY 23, 2007

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

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

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

15 NORMAN A. GAHN
16 Special Prosecutor
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17 DEAN A. STRANG
18 Attorney at Law
On behalf of the Defendant.

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

21 STEVEN A. AVERY
22 Defendant
Appeared in person.

23 TRANSCRIPT OF PROCEEDINGS

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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I N D E X

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1 A. These types are actually the different fragment
2 sizes, those different target sizes that we
3 amplified. The ABO system is a type of genetic
4 marker, but the discriminating power of ABO
5 systems, which is what we used many years ago, is
6 much less than the discriminating power of the
7 combined -- all of these combined types.

8 Q. Now, you previously testified that you collected
9 your swab A-1 from the rear cargo area --

10 A. Yes.

11 Q. -- of the RAV4; is that correct?

12 A. Yes.

13 Q. Can we go to the next one, please. And, again,
14 please show the jurors where you collected your
15 A-1 from.

16 A. In this area right here.

17 Q. And that was a blood stain that tested positive
18 in this presumptive test, correct?

19 A. Right.

20 Q. You also testified that you collected swab A-2
21 from across the panel of the rear cargo area.
22 Show the jurors, again, where that was.

23 A. Yes, that was right in this area here.

24 Q. And you also testified that you collected your
25 swab A-4 from the metal frame. Show the jurors

1 where that was.

2 A. Right along here.

3 Q. And you also testified that you collected A-3

4 from the cargo door itself; is that correct?

5 A. Yes.

6 Q. And can you show the jurors where that is?

7 A. Right here.

8 Q. And, again, all of these stains, you had a

9 presumptive positive test for blood?

10 A. That's correct.

11 Q. And you also testified that you collected a swab

12 from the Wild Cherry Pepsi can which you labeled

13 at A-14; is that correct?

14 A. Yes, right here.

15 Q. And, again, show the jurors. Thank you. Now,

16 did you develop DNA profiles from each of these

17 swabs?

18 A. Yes, I did.

19 Q. And according to the reports that you have, does

20 the following slide correctly depict your

21 results?

22 A. Yes, it does.

23 Q. And, again, would you explain to the jurors what

24 this slide shows.

25 A. Again, these are the genetic markers, these are

1 the 15 different markers we're looking at. And
2 these are the types that were developed from each
3 one of these evidence samples.
4 Q. And each one of those evidence samples came from
5 the RAV4 of Teresa Halbach, correct?
6 A. Correct.
7 Q. Now, can you tell whether this particular DNA
8 profile is from a male or a female?
9 A. Yes.
10 Q. How can you do that?
11 A. This marker here, referred to as amylogen, is a
12 gender marker. If you are female, you are only
13 going to have an X chromosome. If you are a
14 male, you will have a X and a Y chromosome.
15 Q. So this profile is from a female?
16 A. Correct.
17 Q. I notice that after genetic marker D7SA20 there
18 is an 11?
19 A. Correct.
20 Q. Why is there only one number there?
21 A. As I stated earlier, these genetic markers are
22 independently inherited, just like genes. So you
23 inherit 50 percent from your mom and 50 percent
24 from your dad. Now, the fact that this is an 11
25 means that she is a homozygote at this marker.

1 And that means she got the same type from her mom
2 and the same type from her dad. At D-3 there are
3 two markers. This is referred to as a
4 heterozygote. And she received one from her mom
5 and one from her dad.

6 Q. And this DNA profile that you developed from the
7 cuttings and the swabs from the RAV4, did you
8 compare that profile to the DNA profile that you
9 developed from Teresa Halbach's Pap smear?

10 A. Yes, I did.

11 Q. And according to your reports, does this slide
12 correctly display your findings?

13 A. Yes, sir, it does.

14 Q. Would you please point out to the jurors your
15 findings and conclusions?

16 A. Again, these are all the genetic markers. And
17 you can see that the types from the evidence
18 samples are consistent with the types from the
19 Pap smear of Teresa Halbach. So at this genetic
20 marker, the evidence sample is 16 18, Teresa is
21 16 18. At this marker it's 69.3, Teresa is a
22 69.3. And all of these markers are consistent
23 with the ones from Teresa Halbach.

24 Q. And did you calculate a statistic to determine
25 how rare or how common this particular DNA

1 profile would be in the population?

2 A. Yes, I did.

3 Q. And I'm going to show you a slide and ask you if
4 this correctly depicts the statistical analysis
5 that you performed?

6 A. Yes, it does.

7 Q. And would you explain to the jurors what this
8 slide means.

9 A. Remember earlier I said that we do a statistical
10 analysis when we have a match between an evidence
11 sample and a reference sample. If we have an
12 exclusion, we're finished, that's the end of it.
13 But if you have a match between an evidence
14 sample and a reference sample, then you have to
15 determine how common or how rare that match -- or
16 I mean that profile from the evidence sample is
17 in the population.

18 This first number here tells me that the
19 probability of finding someone in the Caucasian
20 population, some unrelated, random person that
21 has the same profile as the evidence sample, the
22 probability of that is 1 person in 416
23 quadrillion in the Caucasian population, 1 person
24 in 642 quadrillion in the African-American
25 population, 1 person in 641 quadrillion in the

1 southeastern Hispanic population, and 1 person in
2 1 quintillion in the southwestern Hispanic
3 population.

4 Q. And why do you look at these different
5 populations when you are estimating the frequency
6 of these genetic markers?

7 A. When we are calculating and estimating these
8 frequencies, we use a data base that's maintained
9 by the FBI. And that data base has samples from
10 individuals in these four different population
11 groups. This slide illustrates that even though
12 the rarity of the profile is different, in these
13 four population groups, there's not a lot of
14 difference between population groups. There are
15 some differences, but this profile is extremely
16 rare across all four populations.

17 Q. What does this number -- What do these numbers
18 mean, Ms Culhane?

19 A. This number means that the probability of finding
20 a person, random person, unrelated, in the
21 population, that has the same profile as the
22 evidence sample, is 1 person in 416 quadrillion.

23 Q. Do you have an opinion, to a reasonable degree of
24 scientific certainty, whether Teresa Halbach is
25 the source of the blood that you found on A-1,

1 A-2, A-3 and A-4, and the source of the
2 biological fluid on the Wild Cherry Pepsi can?
3 A. Yes, I do.
4 Q. And what is that opinion?
5 A. That Teresa Halbach is the source of the DNA from
6 those items.
7 ATTORNEY GAHN: I'm going to ask Detective
8 Wiegert to bring you what has been marked as Exhibit
9 337.
10 Q. Again, I have spoken with defense counsel before
11 we began this afternoon and, Ms Culhane, does
12 that container, which is Exhibit 337, contain
13 some charred remains that you examined in this
14 case?
15 A. Yes, it does.
16 Q. And did you assign a Crime Lab designation number
17 to that?
18 A. Yes, I did.
19 Q. What is that?
20 A. Item BZ.
21 Q. And I'm going to ask you to look on the slide on
22 the big screen. And what is contained in that
23 box there in front of you, which is Exhibit 337,
24 is this the piece of charred remains that you
25 examined?

1 A. Yes, it is.

2 Q. And when did you receive this; do you know?

3 A. I can refer to my notes.

4 Q. Please.

5 THE COURT: Do we have a number for the
6 photo exhibit?

7 ATTORNEY GAHN: Your Honor, we don't have
8 that with us, but you will get one.

9 A. Item BZ was taken into the laboratory on November
10 11th, 2005.

11 Q. And was this -- When you examined this, was this
12 a combination of bone and tissue?

13 A. It appeared to be, yes.

14 Q. And what is shown on the big screen here, which
15 we will later get an exhibit for and mark it, is
16 that the bone and tissue fragment sample that you
17 examined?

18 A. Yes, it is.

19 Q. How did you go about processing this for DNA?

20 A. Because this sample was compromised, it had been
21 subjected to -- appeared to be subjected to
22 intense heat, I needed to find an area that I
23 felt was the least damaged. So I chose a portion
24 of the tissue, which I believe was in this area
25 here, close to the bone. And sampled a portion

1 of that to continue my extractions and to
2 continue my typing.

3 Q. Were you able to develop a DNA profile from this
4 piece of charred remains?

5 A. Yes, I was.

6 Q. And according to your reports, does the next
7 slide correctly display your findings of your
8 test?

9 A. Yes, it does.

10 Q. Would you explain to the jurors what this is.

11 A. Again, these are the genetic markers that we're
12 looking at. And these are the types. You will
13 notice here there are no numbers at these
14 positions, these markers. And the reason is
15 because this was a fairly degraded sample of DNA.
16 DNA is a very stable molecule; however, it breaks
17 down and is degraded and broken up into pieces by
18 several things, heat being one, sunlight,
19 nucleases in the environment that chew it up.

20 But this was obviously a sample that had
21 been subjected to intense heat. And so,
22 therefore, on these fragments, these STR markers,
23 which are fairly large, the fragments -- there
24 was not enough DNA at those positions to develop
25 a type.

1 Q. Did you compare this partial profile with the DNA
2 profile that you obtained from the Pap smear of
3 Teresa Halbach?
4 A. Yes, I did.
5 Q. And does this slide accurately depict your
6 findings?
7 A. Yes.
8 Q. And would you please explain what your findings
9 were, to the jury?
10 A. In the -- At the marker positions where I did get
11 results, these types are consistent with Teresa.
12 Obviously, I don't know what the types are here
13 because there were no results. But for
14 everything else, all the types that I actually
15 developed, they were consistent with Teresa
16 Halbach.
17 Q. Now, you stated previously, when you made your
18 comparisons to Teresa Halbach's DNA profile with
19 the samples of blood that you found in the RAV4,
20 you were able to determine that Teresa Halbach
21 was the source of that blood; is that correct?
22 A. Yes.
23 Q. Can you say that in this case?
24 A. No.
25 Q. Why not?

1 A. This was a partial profile. When we have a
2 partial profile, we can only do a statistical
3 interpretation on the markers that we have
4 results for. In order to get very large numbers
5 and very rare profiles, what gives us those large
6 numbers is results, at all 15 different markers.
7 When we have less than that, then the frequency
8 of that profile becomes a little more common than
9 it would if it was a complete profile.

10 Q. Were you able to develop a statistic to tell you
11 how rare or how common the DNA profile on Item
12 BZ, the charred remains, would be in the
13 population?

14 A. Yes, I was.

15 Q. And does the next slide depict the frequency in
16 the population of the DNA profile on the charred
17 remains?

18 A. Yes.

19 Q. And would you explain to the jury these numbers
20 and what they mean.

21 A. This calculation was done exactly like the
22 calculation from the blood stains. The
23 difference is, this was not a full profile, it
24 was only a partial profile. So if you do a
25 statistical analysis of the types that you got,

1 and calculated the frequency of those types, the
2 probability of another random, unrelated person,
3 in the population, having the profile, the
4 partial profile of the remains, is 1 person in
5 1 billion in the Caucasian population, 1 person
6 in 2 billion in the African/American population,
7 1 person in 2 billion in the southeastern
8 Hispanic population; and 1 person in 3 billion in
9 the southwestern Hispanic population.

10 Q. And, again, can you break this down for the
11 jurors, exactly what that number, one billion,
12 would mean, as it relates to this DNA profile
13 from the charred remains?

14 A. That is the frequency that that partial profile,
15 those results at just the markers that I got
16 results from, the frequency of that partial
17 profile, that is the frequency that it occurs in
18 the population.

19 Q. Are there a billion people in the State of
20 Wisconsin?

21 A. I don't believe so.

22 ATTORNEY GAHN: Your Honor, I have now what
23 has been a photograph that has been marked as
24 Exhibit 338. I will ask Mr. Fallon if he will give
25 that to Ms Culhane.

1 Q. And Ms Culhane, would you look at that
2 photograph, and is that a photograph of the piece
3 of charred remains that we previously put up on
4 the large screen.

5 A. Yes, it is.

6 ATTORNEY GAHN: I would ask if Detective
7 Wiegert would bring you Exhibit 237 -- I'm sorry,
8 277. This would be the bullet fragment.

9 Q. And can you identify that exhibit that's in front
10 of you, Ms Culhane?

11 A. Yes, this is Crime Lab item designation FL. And
12 it is a lead bullet fragment. My initials and
13 markings are on the packaging.

14 Q. And can you tell when you received that exhibit?

15 A. That came into the laboratory on May 16 -- I'm
16 sorry, March 16th, 2006, and I took custody on
17 March 28th, 2006.

18 Q. And how did you process that bullet?

19 A. The first thing I did was, just like every item
20 of evidence, it was a visual examination. There
21 was nothing visual on the fragment. There didn't
22 appear to be any stain. So in order to remove
23 any residual DNA that might have been on the
24 bullet, I washed it. I put it in a test tube and
25 washed it with some buffer that we use to extract

1 the DNA. And the washing of that bullet, the
2 washing liquid is what I performed the rest of my
3 procedure on.

4 Q. And were you able to develop a DNA profile from
5 that washing on Item FL, the bullet?

6 A. Yes.

7 Q. And according to your reports, does the next
8 slide correctly display your findings?

9 A. Yes, it does.

10 Q. And would you please explain your results to the
11 jurors?

12 A. Again, I was looking at all of these. These are
13 the different markers. And these are the types
14 at each one of these markers. You will notice at
15 D-16 and at TPOX I am -- there's an asterisk
16 there. That indicates that there was a visible
17 peak there which represents a type. But it was
18 below our parameters for including that in the
19 final analysis. So it -- I'm missing a peak here
20 and a peak at TPOX.

21 Q. And did you compare this profile that you
22 obtained from the bullet fragment with the DNA
23 profile you obtained from the Pap smear of Teresa
24 Halbach?

25 A. Yes, I did.

1 Q. And according to your reports, does this slide
2 correctly display your findings?
3 A. Yes, it does.
4 Q. And would you explain them to the jury.
5 A. The profile from the bullet is consistent with
6 all of the types from Teresa Halbach. You will
7 notice at D16 she's missing the 13 type, and at
8 TPOX she is missing the 10 type. And, again,
9 those peaks were visible, but they were below our
10 threshold for calling those types.
11 Q. Did that have any impact on your match criteria
12 in this interpretation?
13 A. The impact is that I cannot use the information,
14 the frequencies at this marker, and at this
15 marker, to figure out my final frequency. In
16 other words, I had to calculate the frequencies
17 at all of the other markers except D16 and TPOX.
18 Q. But nothing about those two asterisks that you
19 have on your -- on the chart here excluded Teresa
20 Halbach as being on the bullet?
21 A. That's correct.
22 Q. Did this match differ in any way from the
23 previous matches that you called?
24 A. Yes, it did.
25 Q. And could you explain to the jury what happened.

1 A. Yes, it is.

2 Q. Now, you previously testified that you took
3 cuttings which you identified as Item A-6 from
4 the RAV4?

5 A. Correct.

6 Q. Can you show the jurors where it was you took the
7 cuttings?

8 A. In the front driver's seat, right about here.

9 Q. And those were the cuttings of a stain that you
10 had tested for blood with the presumptive test?

11 A. Yes.

12 Q. And I also believe that you testified earlier
13 that you collected your Item No. A-7 from the
14 center console area of the RAV for, would you
15 point that out to where that was for the jurors.

16 A. Right along the floor here by the console.

17 Q. Okay. And did you perform DNA testing on those
18 two evidentiary samples?

19 A. Yes, I did.

20 Q. And did you develop a DNA profile for the blood
21 stain on Item A-6?

22 A. Yes, I did.

23 Q. And according to your reports, does the next
24 slide correctly depict the DNA findings?

25 A. Yes, it does.

1 Q. And, again, would you explain those to the
2 jurors.

3 A. Again, these are the same 15 markers and these
4 are the types at each one of these markers that
5 were developed from the cutting of the stain in
6 the driver's seat of the RAV4.

7 Q. And, again, is this what you consider to be a
8 complete full DNA profile?

9 A. Yes.

10 Q. And did you also compare this profile to the DNA
11 profile that you developed from the buccal swab
12 of Steven Avery?

13 A. Yes, I did.

14 Q. And does this slide correctly display your
15 findings?

16 A. Yes, it does.

17 Q. And would you explain your findings to the jury?

18 A. Again, this is the profile developed from the
19 evidence sample. You can tell it's from a male
20 individual. All of the types are consistent with
21 each one of the types, at each marker, from the
22 reference standard of Steven Avery.

23 Q. And the DNA profile that you found in Item A-6,
24 the bloodstain, did you compare that to the other
25 standards that you received at the lab?

1 A. Yes, I did.

2 Q. And how did this profile compare to the other
3 standards?

4 A. It was not consistent with any of the other
5 standards that I examined.

6 Q. It was only consistent with the DNA profile of
7 Mr. Steven Avery?

8 A. That's correct.

9 Q. Did you develop a DNA profile from your Item No.
10 A-7, which were the blood crusts by the center
11 console?

12 A. Yes.

13 Q. And does the following slide show your findings?

14 A. Yes, it does.

15 Q. And would you explain those to the jurors.

16 A. Again, at each genetic marker, these are the
17 types. At D-5, this asterisk here indicates that
18 there was a peak there, a visible peak, but it
19 was below the parameters of our system. So that
20 would not be included in the statistical
21 interpretation of this sample -- of this profile.

22 Q. Now, that's only not included in the statistical
23 analysis, correct?

24 A. Correct.

25 Q. Now, the fact that that asterisk was there, did

1 not have any impact in your interpretation of
2 this profile as it compared to Steven Avery, did
3 it?
4 A. No.
5 Q. And did you compare this profile to Steven
6 Avery's profile?
7 A. Yes, I did.
8 Q. And does this slide correctly show your findings?
9 A. Yes, it does. And, again, you can see that the
10 profile is consistent with Steven Avery at every
11 genetic marker.
12 Q. Do you have an opinion, to a reasonable degree of
13 scientific certainty, whether Steven Avery is the
14 source of the blood stain on Item A-6, which was
15 the stain found on the driver's passenger seat?
16 A. Yes, I do.
17 Q. And what is that opinion?
18 A. That Steven Avery is the source of that profile.
19 Q. And do you have an opinion, to a reasonable
20 degree of scientific certainty, whether Steven
21 Avery is the source of the DNA profile that you
22 found on Item A-7, the blood crusts by the center
23 console?
24 A. Yes, I do.
25 Q. And what is that opinion?

1 A. That Steven Avery is consistent with that
2 profile.
3 Q. Do you have Exhibit 293 in front of you?
4 A. No, I'm sorry, I don't.
5 Q. I'm sorry. Do you have that now?
6 A. Yes.
7 Q. Is that photograph the same photograph that is up
8 on the big screen?
9 A. Yes, it is.
10 Q. Now, you previously testified that you collected
11 a cutting which you identified as Item A-9 of a
12 bloodstain from the front passenger seat of
13 Teresa Halbach's RAV4. Can you show the jurors
14 where that cutting was, once more.
15 A. Yes, right in this area here.
16 Q. And did you perform a DNA test on that cutting?
17 A. Yes, I did.
18 Q. And according to your reports, does the following
19 slide correctly display your results?
20 A. Yes, it does.
21 Q. Could you explain them to the jurors.
22 A. These are the exact same markers that we looked
23 at in each sample. And, again, there are types
24 at each one of these markers, and XY depicting a
25 male individual.

1 Q. And, again, is this what you call a complete full
2 profile?
3 A. Yes, it is.
4 Q. And did you compare the profile that you
5 developed from the bloodstain from the front
6 passenger seat of Teresa Halbach's car with the
7 DNA profile that you obtained from the buccal
8 swab of Steven Avery?
9 A. Yes, I did.
10 Q. And does this next slide show your findings?
11 A. Yes, it does.
12 Q. And would you explain them to the jury, too,
13 please.
14 A. This is the profile developed from the cutting in
15 the passenger -- the front passenger seat. And
16 this is the profile from Steven Avery's buccal
17 swab. And you can see it's consistent at all of
18 the 15 genetic markers.
19 Q. Do you have an opinion, to a reasonable degree of
20 scientific certainty, whether Steven Avery is the
21 source of the bloodstain that was found on Item 9
22 on the front passenger seat of Teresa Halbach's
23 RAV4?
24 A. Yes, I do.
25 Q. And what is that opinion?

1 A. That Steven Avery is the source of that stain,
2 A-9.

3 Q. All right. Now, you also previously testified
4 that you collected the swab from what was Item
5 A-10, that is the CD case that was on the front
6 seat of Teresa Halbach's car, correct?

7 A. Yes.

8 Q. And did you develop a DNA profile from the blood
9 stain on the CD case?

10 A. Yes, I did.

11 Q. And does the next slide correctly show your
12 findings?

13 A. Yes, it does.

14 Q. Did you compare this profile with the profile
15 that you developed from the buccal swab of Steven
16 Avery?

17 A. Yes, I did.

18 Q. And does this next slide correctly show your
19 findings according to your reports?

20 A. Yes, it does. Again, you can see all of the
21 types are exactly the same through all the
22 genetic markers.

23 Q. And do you have an opinion, to a reasonable
24 degree of scientific certainty, whether Steven
25 Avery is the source of the blood that you found

1 on the CD case in Teresa Halbach's SUV?

2 A. Yes, I believe he is the source of the blood

3 stain, Item A-10.

4 Q. Ms Culhane, do you have Exhibit 294 in front of

5 you?

6 A. Yes, I do.

7 Q. And does that photograph -- is that depicted on

8 the large screen here?

9 A. Yes, it is.

10 Q. Now, you previously testified that you collected

11 a bloodstain from the paneling of the rear

12 passenger door. And would you point out to the

13 jurors, one more time, where that bloodstain was?

14 A. This area right here.

15 Q. Yes. And you designated that as Crime Lab

16 designation Item A-12; is that correct?

17 A. Yes.

18 Q. And did you perform DNA testing on Item A-12?

19 A. Yes, I did.

20 Q. And did you develop a DNA profile from the

21 testing of that bloodstain?

22 A. Yes, I did.

23 Q. And does the next slide correctly show your

24 findings?

25 A. Yes, it does.

1 Q. And, again, did you compare the profile, the DNA
2 profile that you developed from the bloodstain on
3 the rear passenger door of Teresa Halbach's RAV4,
4 with the DNA profile that you obtained from the
5 buccal swab of Steven Avery?
6 A. Yes, I did.
7 Q. And does this slide correctly show your findings?
8 A. Yes, it does. And, again, you can see, at each
9 one of the markers, the types are consistent.
10 Q. I would ask you if you have in front of you
11 Exhibit 291.
12 A. Yes, I do.
13 Q. And is that photograph shown on the big screen
14 now?
15 A. Yes, it is.
16 Q. Now, you previously testified that you collected
17 this bloodstain on the dashboard of Teresa
18 Halbach's RAV4, by the ignition switch; is that
19 correct?
20 A. Yes.
21 Q. And this -- you did a presumptive test for blood
22 on that stain?
23 A. Yes, I did.
24 Q. And did you perform DNA testing on this
25 bloodstain in Teresa Halbach's vehicle?

1 A. Yes.

2 Q. And did you develop a DNA profile from that
3 bloodstain?

4 A. Yes, I did.

5 Q. And does this next slide correctly show your
6 findings?

7 A. Yes, it does.

8 Q. And did you compare the DNA profile from that
9 bloodstain with the DNA profile of Steven Avery?

10 A. Yes, I did.

11 Q. And does this next slide show your results?

12 A. Yes, it does.

13 Q. And, again, would you explain what those were to
14 the jury.

15 A. This is the profile from A-8, which is the stain
16 by the ignition. And this is the profile from
17 Steven Avery's buccal swab. And you can see at
18 each one of the markers, the types are
19 consistent.

20 Q. And, once again, is this what you consider a full
21 complete DNA profile?

22 A. Yes, it is.

23 Q. And the DNA profile that you developed from Item
24 A-8, the blood stain found near the ignition of
25 Teresa Halbach's SUV, did you compare that

1 profile with the profiles that you developed from
2 all the other standards in this case?
3 A. Yes, I did.
4 Q. And what were your results?
5 A. It was not consistent with any of the other
6 standards.
7 Q. It was only consistent with the DNA profile of
8 Steven Avery?
9 A. Correct.
10 Q. Did you arrive at a statistical number for this
11 profile that would reflect how often, or how
12 rare, or how common, this profile would be in the
13 population?
14 A. Yes, I did.
15 Q. And I would ask if this slide correctly displays
16 that statistic?
17 A. Yes, it does.
18 Q. And could you explain to the jurors what that
19 statistic is?
20 A. This number tells me that the probability of
21 another unrelated, random person in the
22 population, having the same profile as the
23 evidence samples that we just talked about, is 1
24 person in 4 quintillion in the Caucasian
25 population, 1 person in 898 quintillion in the

1 African/American population, 1 person in 25
2 quintillion in the southeastern Hispanic
3 population, and 1 person in 123 quintillion in
4 the southwestern Hispanic population.

5 Q. And does that statistic also apply to the other
6 bloodstains that you found in the RAV4 that were
7 attributable to Steven Avery?

8 A. Yes, it does.

9 Q. Do you have an opinion, to a reasonable degree of
10 scientific certainty, whether Steven Avery is the
11 source of the bloodstain found on the dashboard
12 by the ignition in Teresa Halbach's RAV4?

13 A. Yes.

14 Q. And what is that opinion?

15 A. My opinion is that Steven Avery is the source of
16 that stain.

17 ATTORNEY GAHN: That's all I have. Thank
18 you, your Honor.

19 THE COURT: Counsel, will you approach,
20 please.

21 ATTORNEY BUTING: Sure.

22 (Side bar taken.)

23 THE COURT: All right. Members of the
24 jury, at this time, since we kept you late
25 yesterday, we're going to give you a break today.

EXHIBIT 23

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

3 STATE OF WISCONSIN,
4 PLAINTIFF, JURY TRIAL
5 vs. TRIAL - DAY 23
6 STEVEN A. AVERY, Case No. 05 CF 381
7 DEFENDANT.

8 DATE: MARCH 14, 2007

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

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

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

17 NORMAN A. GAHN
18 Special Prosecutor
19 On behalf of the State of Wisconsin.

20 DEAN A. STRANG
21 Attorney at Law
22 On behalf of the Defendant.

23 JEROME F. BUTING
24 Attorney at Law
25 On behalf of the Defendant.

STEVEN A. AVERY
Defendant
Appeared in person.

23 TRANSCRIPT OF PROCEEDINGS

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

George Clooney

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2:25 and see how you are doing.

(Recess taken.)

(Jury present.)

THE COURT: Mr. Buting, at this time you may begin the defense closing.

ATTORNEY BUTING: Thank you, Judge. Good afternoon, ladies and gentlemen. This is the first time I have actually had a chance to talk to you. I have sort of been talking at you as we walk by the witnesses for 6, 5 weeks, whatever. And I'm really -- I feel honored and privileged to do so, just as I am honored and privileged to defend Mr. Steven Avery here, in this very, very serious case.

Let me make one thing very clear, right here at the outset. We do not and have never claimed that the police killed Teresa Halbach. But in that respect they have that in common with Steven Avery. However, the person or persons who did kill Teresa, knew exactly who the police would really want to blame for this crime.

And they were aided in that respect, by widespread media publicity as early as Friday morning, November 4th, the very morning after the day she was first reported. Widespread publicity

1 that identified Mr. Steven Avery as one of the
2 last people known to have seen her. And because
3 of who he is, that drew even more media attention
4 than perhaps it might other wise have. And the
5 focus was on Mr. Avery, rather than one of the
6 other customers that she saw that day.

7 And this was the very same Steven Avery
8 who was suing the Manitowoc County and the
9 Sheriff's Department, with a lawsuit asking for a
10 whole lot of money, for the wrongful conviction
11 and all the years in prison that he spent, from a
12 1985 wrongful conviction.

13 I believe that when the Manitowoc
14 officers saw this, they very badly wanted to
15 believe that he was guilty and that this was
16 their way out. And that from that point forward,
17 that they had this investigative bias, focused on
18 Steven Avery, that was, then, skillfully
19 exploited by the real perpetrator of this crime.

20 Now, from the very beginning, Steven
21 Avery has proclaimed his innocence in this case.
22 He told that -- everybody that had a camera,
23 anybody who talked to him, that he was not
24 guilty, and that he was being framed. That the
25 police planted his blood.

1 case. The magic key, Exhibit A, in this theory
2 that the police planted evidence in this case.

3 Because if you believe that those police
4 officers put that key in his room, that they are
5 capable of planting that kind of evidence to try
6 and link him, then why not plant -- why couldn't
7 they have also planted blood. If they go to that
8 extent that they -- that they plant Teresa
9 Halbach's key in his bedroom to try and convict
10 him, then that's it, it's over, case over,
11 because you can't rely on anything else they have
12 given you.

13 Now, let's look at this key. First of
14 all, why would he bring the key in his house and
15 put it in his own bedroom. Why would you do
16 that? If you still got the vehicle, and you
17 still wanted somehow to use the key, to drive it
18 some place -- by the way, why would you want to
19 disconnect the battery, if you're still going to
20 use the key? What good does the key do if the
21 battery is disconnected? So that's a disconnect,
22 no pun intended here.

23 But why wouldn't you just leave the key
24 in the car? Why wouldn't you hide the key under
25 the -- neath the car, or somewhere where you know

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STATE OF WISCONSIN)
) ss
COUNTY OF MANITOWOC)

I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 22nd day of January, 2008.

Diane Tesheneck, RPR
Diane Tesheneck, RPR
Official Court Reporter

EXHIBIT 24

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

3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL - DAY 24
5 vs. CLOSING ARGUMENTS, CONTD.
Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** MARCH 15, 2007

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

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

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

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

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

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

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 TRANSCRIPT OF PROCEEDINGS

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

1 a question. They are not advocating anything, as
2 far as I could pick up. Or as I say, sort of
3 selling you something, overselling something.
4 They are candid on cross-examination, just as
5 they were on direct examination. I thought, at
6 least, that's what this group of people shared.

7 Was I surprised that we had to call the
8 bus driver, rather than the State calling, to
9 help you with the time frame that afternoon,
10 yeah, I was surprised. But we did it, since they
11 didn't. And now you have got that information.

12 But, you know, these -- these people
13 rang true to my ear, at least. And it's your
14 ears that matter.

15 So let me move to my second question:
16 Can you believe the police? Can you believe the
17 law enforcement folks who are so sure that Steven
18 Avery's guilty? What do you see about their
19 behavior before they are on the stage here?
20 Well, look at what they say and do when they
21 don't know that you are going to be listening and
22 seeing.

23 Let's start with Andy Colborn, since I
24 sort of started with him on November 3. He calls
25 in, does a license check on Teresa Halbach's car.

1 He says he thinks it was probably on November 3,
2 not sure, but probably November 3, that he did
3 that. But remember he's working on November 3,
4 so he would have had his radio.

5 And it's Detective Remiker who says
6 ordinarily you would use your radio when you are
7 calling in a license check to dispatch. He uses
8 his cell phone instead. The tape you hear is
9 clearly a phone call, not a radio in. So I think
10 it's probably more likely that this license check
11 is November 4, when Sergeant Colborn acknowledges
12 he was off.

13 Didn't work on November 4. And you may
14 remember, Mr. Kratz asked him, do you remember
15 what you were doing on November 4, 2005. He
16 says, yes, I do. I was off. I remember what I
17 was doing. Doesn't tell you what he was doing,
18 other than to deny he went to the Avery Salvage
19 yard, or denied he had anything to do with
20 planting evidence. But he is off.

21 And I'm not going to play it for you
22 again, it's in evidence, but -- Let's see if this
23 comes up. That's -- That's what you hear on the
24 tape that we played.

25 SERGEANT COLBORN: Lynn.

1 DISPATCHER: Hi Andy.

2 SERGEANT COLBORN: Can you run Sam,

3 William, Henry, 582, see if it comes back to that

4 da da da da da -- then they start talking over

5 each other. I can't make it out. You can listen

6 to it if you want. Then she goes off on talking

7 about needing a Spanish interpreter, chitty

8 chatting while she's doing the license check.

9 She's comes back and she confirms it's

10 Teresa Halbach's license plate, the missing

11 person.

12 Sergeant Colborn says, '99 Toyota, and

13 so on.

14 Why is he doing that? Why is he doing

15 that? Why is he calling in a license check on

16 November 3, or November 4, which ever day it is?

17 You can get that information from Investigator

18 Wiegert, or if you want to call your dispatcher,

19 ask your dispatcher.

20 This sounds a lot like what road patrol

21 officers do when they come across a stalled car,

22 an abandoned car, a car where it shouldn't be.

23 That's what this sounds like. Draw your own

24 conclusions, obviously look at it like from any

25 other piece of evidence. But what's important is

1 he is doing this, not on a witness stand, he is
2 doing this when he doesn't know anybody is going
3 to be seeing, or hearing, or evaluating it later.

4 Stay -- Move off Sergeant Colborn, but
5 stay in the Manitowoc County Sheriff's Department
6 for the moment. Mr. Kratz argued to you
7 yesterday that Special Agent Fassbender, starting
8 November 5, devoted his resources where this
9 thing was likely going. Where this thing was
10 likely going.

11 True, I guess he did, in the sense that
12 it was certainly clear pretty quickly where this
13 thing, this investigation, was going. In my
14 opening, and with Detective Remiker, we had a
15 chance to hear, at 11:30 in the morning, on
16 November 5, half an hour after the first police
17 officers arrived at the Avery property, there to,
18 you know, see the concealed Toyota that the
19 Sturm's had found. Half an hour later, for you
20 to hear, at a time when he, you know, he wouldn't
21 have known it, Manitowoc detective, Dennis
22 Jacobs, talking to his dispatcher:

23 Can you tell me, do we have a body or
24 anything yet?

25 DISPATCHER: I don't believe so.

1 Very next thing he says:

2 Do we have Steven Avery in custody,
3 though?

4 Yeah, it's pretty clear where this is
5 going. By the time Special Agent Fassbender
6 arrives, you know, at 2:25, 3 hours later that
7 afternoon almost, it's pretty clear where it's
8 going. And five minutes after this one
9 conversation --

10 THE COURT: Mr. Strang, I'm getting a
11 signal for a break, so we're going to take a short
12 break and then we'll resume in 10 minutes.

13 (Jury not present.)

14 THE COURT: You may be seated. Let's
15 report back at 10:15.

16 (Recess taken.)

17 (Jury present.)

18 THE COURT: Mr. Strang, you may resume.

19 ATTORNEY STRANG: Thank you.

20 So five minutes later, five minutes
21 after Detective Jacobs called with the
22 dispatcher, he is on the phone with Detective
23 Remiker, or the radio, I don't remember now, but
24 you got the tape in evidence. Of course,
25 Detective Remiker does testify, and you may

1 remember him, kind of presented himself as
2 someone who thought they were barking up the
3 wrong tree, that Steve didn't do this, when he
4 testifies. That morning, just about an hour
5 after the Sturms have first found the Toyota.

6 Okay. Other than the car, do we have
7 anything else?

8 Not yet.

9 Okay. Is he in custody?

10 ATTORNEY STRANG: It's not who are you
11 talking about, who do you mean by he.

12 Negative, nothing yet.

13 One pronoun, he, and these guys know who
14 they are talking about at 11:35 in the morning.
15 Are these folks acting in a way that seems good
16 faith and honest to you, back then? Six days
17 after this, Special Agent Fassbender makes the
18 telephone call to Sherry Culhane at the Crime
19 Lab, try to give her some direction. And, you
20 know, she's holding herself out as a scientist,
21 that's how she holds herself out.

22 Is Special Agent Fassbender asking for
23 science, on the exhibit that Mr. Buting showed
24 you? Is he asking for science there, for a good
25 cautious, objective, let's see where the science

1 leads us kind of thing, when he's asking, try to
2 put her -- put her in his house or garage.
3 That's not a very good fit, in my view, with the
4 State's, counsel's argument here, when they
5 submit evidence, they are not looking for a
6 specific answer. Oh, really.

7 The memo belies that. The phone memo
8 does. And Sherry Culhane, on the stand, herself,
9 tells you, that by the time these buccal swabs
10 are taken in November, 2005, from all kinds of
11 people other than Steven Avery, members of his
12 family, these are elimination samples.

13 Elimination samples. We have already decided
14 they didn't do it, we're just trying to eliminate
15 if we find their DA -- their DNA anywhere.

16 Sherry Culhane, for that matter, had she
17 followed the protocol on her testing, the bottom
18 line folks, had she followed her protocol on the
19 testing of that bullet found in March. She can't
20 say it's Teresa Halbach's DNA. First time in her
21 career, 23 years, first time, on the last chance
22 to put Teresa Halbach in his house or garage, she
23 deviates from the protocol and includes Teresa
24 Halbach.

25 Now, it was just the control that was

1 contaminated. It was just Sherry Culhane's DNA.
2 That doesn't turn the evidentiary sample into
3 having Teresa Halbach's DNA. Okay. All right.
4 Fine. But the protocol presumably is there for a
5 reason. Protocols are the foundation of good
6 science. And the protocol says, if you have got
7 contamination, you set that experiment aside and
8 you do it again, you don't rely on that one.

9 Science ought to be reliable. It ought
10 to be consistent. And it ought to be cautious,
11 otherwise, it's not science. And the results
12 simply aren't reliable. That's why you have a
13 control. And when you get contamination, you now
14 know that something has gone wrong with this.

15 And to say that the contamination is
16 over here, but not over here, is a little like
17 saying, I don't know, maybe no one even eats TV
18 dinners any more, maybe they're microwave dinners
19 now, I guess, from what I see in the grocery
20 store. But whatever, however you heat this stuff
21 up, when you pull off the plastic, or the tin, or
22 whatever covers the meal, you know, and the
23 little peach cobbler has a fly in it, in that
24 little compartment, you don't eat the Salisbury
25 steak either, okay. You know, this is -- this is

1 not fancy stuff in the end. It's -- It is and
2 should be common sense, at some level, in the
3 end. But she deviates, for the first time in 23
4 years.

5 The end -- This continues, the end of
6 January, 2007, bringing us up to six weeks ago.
7 Now, the State goes all the way to Virginia, to
8 Quantico, to get the FBI. Are they trying -- Is
9 the FBI trying to root out possible police
10 corruption? Are they concerned about the
11 integrity, of policing in northeastern Wisconsin?
12 Trying to find out if there's a bad cop or not?
13 I think the decision is already made.

14 You have this, too, Special Agent Gerald
15 Mullen of the FBI, memo to the FBI laboratory,
16 this January 30th --

17 ATTORNEY KRATZ: Judge, I'm sorry, I don't
18 mean to interrupt. I believe the defense is
19 entitled to one closing. Mr. Buting covered exactly
20 the same territory yesterday. I understood they
21 were going to split and talk about different items.
22 I simply wanted to interpose an objection. My
23 apologies to counsel, but that was my understanding
24 from the Court.

25 ATTORNEY STRANG: I would be more concerned

1 about boring you. Mr. Buting did cover it. It's
2 there.

3 But I want to say something about EDTA
4 that Mr. Buting did not. Janine Arvizu, who is
5 not a doctor, Mr. Buting misspoke, she didn't
6 complete her dissertation. She did the other
7 Ph.D. work. I want to make sure you got out of
8 that what she had to tell you. And it's this,
9 the FBI protocol that they put together in a
10 couple of weeks here, is good for identifying and
11 confirming the presence of EDTA. It is not
12 designed for confirming the absence of EDTA. It
13 has to do with the detection limits. The
14 instrument has a detection limit and the method
15 has a detection limit.

16 So, look, if you were interested in
17 finding out whether your friend is at home, and
18 the instrument you chose was a telephone, call
19 him at his house, ring his telephone number, if
20 he answers the phone, you have confirmed his
21 presence with your instrument. He is there, you
22 have called his home, not his cell phone, he is
23 there. He's got to be, if he's answering his
24 phone. You have confirmed his presence.

25 However, if your instrument is your

1 telephone and you call his home and it just rings
2 and rings, and it's not answered, you have not
3 confirmed his absence. He could be in the
4 shower. He could be in the basement folding the
5 laundry, he could be in bed sleeping. He could
6 be pouting and just not answering the phone
7 because he sees it's you calling on the caller ID
8 and he doesn't want to talk to you today.
9 Whatever it is, you haven't confirmed his absence
10 with the telephone. You haven't designed a
11 protocol to get you to that.

12 Your method, in other words, of
13 detection, isn't suited to confirming absence,
14 only presence. If you like fresh baked hot apple
15 pie, and I put you in a room and I blindfold you
16 and we walk in, a fresh baked hot apple pie, your
17 nose is the instrument. It has a detection
18 limit.

19 A dog has a better instrument, lower
20 detection limit, fancier instrument. He can
21 detect less of the smell of apple pie than you
22 can, but you have got this instrument to use. If
23 it's within your detection limits, and the pie
24 is, you know, slid on the table under you while
25 you are blindfolded, you will detect it with your

1 instrument.

2 However, if the method is no good,
3 because we have got to consider that, you are not
4 smelling an apple pie. Well, is the room too
5 big, are the windows open, is the pie too far
6 away, does the room smell badly of something else
7 that's interfering with your instrument detecting
8 the fresh baked apple pie? We have method
9 detection problems and limits. Or is the apple
10 pie, not fresh baked, but it's an 11 year old
11 apple pie? You may not detect that either, with
12 your instrument. I don't think Janine Arvizu was
13 really telling you more than that. And,
14 unfortunately, Dr. LeBeau was trying to tell you
15 more than that and overselling his case.

16 Now, others who matter, in the law
17 enforcement group who think Steve is guilty.
18 Mr. Lenk and Mr. Colborn. They denied here, of
19 course, but what are they doing, in 2002, when
20 the evidence slip has to be signed for
21 transmission of the hair sample and fingernail
22 clippings, or whatever it is, to the Crime Lab,
23 and the evidence custodian at the time, Detective
24 Sergeant James Lenk, signs off.

25 Is he really, as he claims here, simply

1 signing the form, giving it to Sergeant Shallue
2 and allowing Sergeant Shallue to fill out the
3 otherwise blank form? You are entitled to
4 disbelieve that. Or at least to say he's not an
5 honest evidence custodian if he is doing that at
6 the time. He is begging to be fired, because he
7 is not documenting what's going where. Or if
8 he's just telling you here, to distance himself
9 from that file in the Clerk's Office, you are
10 entitled to consider that too.

11 Would Lieutenant Lenk lie, in the end?
12 Would he lie, as a sworn law enforcement officer?
13 Well, all I can tell you is, he did, twice, and
14 you heard it. I have the transcript from the
15 earlier hearing. Here he says he arrives at
16 2:00. When he's asked under oath before, it's
17 6:30 or 7, once when he's asked, and the other
18 time he's asked, it's late afternoon. This isn't
19 15 minutes off, folks. It's under oath and it's
20 a difference of four and a half or five hours.

21 At that time of year, November, 2005,
22 it's the difference between broad daylight and
23 pitch black. He was under oath, and he gave two
24 very different answers to the same question, at
25 two different times, under oath. He was the only

1 witness, in five weeks, shown to have made
2 inconsistent statements, under oath.

3 Others made inconsistent statements and
4 were shown to have. Blaine Dassey comes to mind.
5 Scott Tadych comes to mind. Both of them are
6 asked, at first, by the police, was there a
7 bonfire, on Halloween, no, no bonfire. Later
8 they get asked again, now there is a bonfire. In
9 fact, Scott Tadych comes here and says big
10 bonfire, flames to the top of the roof. Same
11 guy, again, I showed, when first asked by the
12 police, no bonfire. Closer in time to October
13 31, no, didn't see a bonfire that night.

14 That's inconsistent statements, but they
15 are not under oath. They still, as the Judge
16 instructed you yesterday, are something you can
17 consider, consistency or inconsistency of a
18 witness' statements, over time. Still you can
19 consider those when you decide who you believe,
20 and not under oath.

21 Blaine explained that a little bit.
22 Explained his changes of his story. Well, the
23 police kept asking him. They didn't like the
24 answer, they asked him again. Got angry with him
25 and his mother, at the restaurant, when they

1 wouldn't reject Uncle Steve. Is that because
2 Blaine is scared of Uncle Steve?

3 My recollection, yours will govern,
4 there's 12 of you and one of me, but my
5 recollection of that testimony is that the
6 question was whether Blaine Dassey was scared,
7 and the answer was something like, no, not
8 really, but he used to boss us around. You will
9 decide that.

10 But in any event, Lieutenant Lenk, by
11 the time he gets to you folks, is telling you
12 some really implausible things. Like, I had
13 never been to Steven Avery's house. I have never
14 been on the Avery property, but somehow, just out
15 of habit, I turned right at the end of Avery
16 Road, and I -- I -- I just happened to drive
17 straight to Steven Avery's trailer. Okay.

18 So this -- You know, what they are doing
19 and whether -- whether you think you can trust
20 them back when they are not aware they are going
21 to be observed or revealed later, is important in
22 the same way what he does, back before he knows
23 it's going to be played out to you, is important
24 in assessing who you believe. Are they acting
25 honestly? Is he acting like an innocent person

1 would act, or might act?

2 It is important because it comes down to
3 the bias in the end. You know, would, in the
4 end, police officers plant evidence? And that's
5 a hard one, you know. That's why it's helpful to
6 say, boy, are they behaving honestly and in good
7 faith up to then. Because in the end, would they
8 plant evidence against someone. Now, you will
9 have to decide whether you have a reasonable
10 doubt about that, or whether, you know, we have
11 shown that to you at any level, or not.

12 But, look, it is a matter of bias, if it
13 happened. And what you critically, I think, need
14 to understand, that if and when police officers
15 plant evidence, they are not doing it to frame an
16 innocent man. They are doing it because they
17 believe the man guilty. They are not doing it to
18 frame an innocent man. They are doing it to
19 ensure the conviction of someone they have
20 decided is guilty.

21 That's why you plant evidence. Other
22 than in the strangest, you know, most abandoned
23 of conscience sort of police officer, they aren't
24 after framing an innocent person, they are after
25 ensuring the conviction of someone they just

1 believe is guilty.

2 So as you approach the whole concept of
3 planting you have got to understand the bias that
4 would drive it, not, you know, boy, they are out
5 to get an innocent guy. It's just the opposite.
6 It's just the opposite. But it's also just as
7 corrosive to do it. Because juries decide guilt,
8 not police officers who are involved in the hunt.
9 You know, they get invested too, in the outcome,
10 and in whom they suspect, who they think is good
11 for something.

12 And, you know, the State pooh-poohs the
13 idea that a civil lawsuit, for a whole lot of
14 money, against the Manitowoc Sheriff's
15 Department, would have caused anyone to so
16 dislike Steven Avery that they would plant
17 evidence against him. Well, look what the mere
18 suggestion that they did plant evidence has done,
19 in terms of a reaction here.

20 The defensiveness of the case that the
21 State presented to you, the anger about the mere
22 suggestion of planting evidence, the
23 self-righteousness, the hostility, the trying to
24 have it both ways with you. We trusted the
25 Manitowoc people, they were skilled. They were

1 honest. They were the best available evidence
2 technicians.

3 But we also had somebody watching. We
4 were short of manpower. We needed them. But, in
5 the first search of Steven Avery's -- first
6 lengthy search of Steven Avery's house, on the
7 evening of November 5, we got enough people that
8 two of them can be taking photos. Two of them
9 can be taking photos, in this little trailer, as
10 you heard. You hear the State trying to have it
11 both ways, here.

12 And in sort of getting at the bias that
13 would drive a police officer, potentially, to
14 plant evidence, it's this -- it's this need, this
15 belief that he is not really innocent. He's
16 guilty, he's got to be guilty. It's what you
17 hear from Detective Jacobs and Detective Remiker,
18 it's that quality. It's the sense that this is
19 where this is going, three hours in, when all we
20 have got is the car, on a big property with a
21 whole lot of other people there.

22 It's the -- After five weeks of evidence
23 and 501 exhibits, it's the State standing up and
24 telling you it's clear. What in the world is
25 clear and simple when it takes five weeks and 501

1 exhibits to try to show. And whatever this is,
2 whatever, whichever way you come out, this case
3 isn't clear and simple.

4 And that's where the civil lawsuit feeds
5 in. It's not that it feeds in with bad cops. It
6 feeds in with good cops, in the sense that it
7 erodes, fundamentally, the sense of identity, we
8 get the bad guys, we don't get the good guys.

9 And here it is, they got it wrong, that
10 department got it wrong. Not only do they get it
11 wrong, but the right guy is still out there and
12 he commits another rape, Gregory Allen. This
13 goes to my identity, if I wear that same uniform.
14 Even if I'm aligned with these people, as you
15 hear the sort of reaction from the prosecutors to
16 this.

17 And now, you know, since -- since he
18 really couldn't have been that innocent, he's got
19 to be guilty of this one. He must be the right
20 guy this time. So you -- you know, nobody means
21 to do this, but you start looking around things
22 that are inconvenient, that don't quite square up
23 with the theory that he did it.

24 One example, and one example only, from
25 the blood, Teresa Halbach's blood in her own car.

1 Kucharski, talked about sitting on this bed, and
2 actually facing towards the door, his feet, I
3 think the testimony was, were facing where the
4 key ends up when Lieutenant Lenk exits the room
5 and comes back. Don't you have to kind of ask
6 yourself the question, how did the key get there?

7 If it was planted, how did that key get
8 there? Did Lieutenant Lenk, as he's walking
9 here, throw it? Did he kind of lob it over
10 Mr. Kucharski. Well, that's ridiculous.
11 Absolutely ridiculous. And although all three of
12 these officers, and in fact the prosecution team,
13 would have preferred, obviously, that the key
14 wouldn't have been found in this way, it was.
15 All right.

16 Cases come to you how they are. And
17 again, under the microscope of a case of this
18 magnitude, there is going to be some human
19 factors. And there's going to be some things
20 that you are going to have to wrestle with. And
21 this is one of those things. I'm not going to
22 short change you on that particular case.

23 And you may take a long time in deciding
24 whether or not that key is significant, or
25 whether the key is not significant. But let me

1 ask you, just kind of for the sake of talking, as
2 Mr. Strang wanted to talk with you rather than at
3 you, I certainly have a style that I would prefer
4 that as well. Let's assume they never found the
5 key. Let's assume this key isn't part of this
6 case at all.

7 Let's assume Mr. Strang's theory is
8 correct, that these cops aren't trying to plant
9 an innocent person, but trying to make sure that
10 a guilty person is found guilty. Well, can't you
11 then, with that argument, set the key aside? Do
12 you have the ability, as a jury, to set that key
13 aside, if in fact it doesn't matter whether or
14 not Mr. Avery is guilty or not guilty in this
15 analysis? Can you set that aside and decide is
16 there enough other evidence, or is the key the
17 only thing that points to Mr. Avery?

18 Well, if this was a CSI case, one of
19 those cases on TV where sometimes that key, or
20 sometimes one little piece of evidence like that
21 may decide the guilt or innocence, it would make
22 a difference. But that key, in the big picture,
23 in the big scheme of things here, means very
24 little. All right.

25 Now, I'm telling you that not because I

1 lot, if you are like me sometimes and I forget
2 where I have parked my car.

3 Is that why Mr. Avery unhooked the
4 battery, so that the citizen searchers that he
5 knew were coming couldn't just press a button and
6 of the 40,000 (sic) cars, could walk right to
7 that. That's possible. All right. That's an
8 inference, a logical inference, that could be
9 drawn. But that's speculating, and that's not
10 what I'm going to do. That's not what I'm asking
11 you to do. I'm not asking you at all in this
12 case to speculate. I'm simply answering
13 Mr. Buting's question.

14 Where was Teresa killed. This is a easy
15 answer, or at least it is an answer that is
16 directed by all of the physical evidence in this
17 case. Teresa Halbach, as we know, came to the
18 trailer of Steven Avery. We know that they
19 completed their transaction. How do we know
20 that, because the book and the bill of sale was
21 given to Mr. Avery. That's something that, as
22 you heard, happens at the end of the transaction.
23 That's sitting on Mr. Avery's computer desk.

24 We know sometime later, that is, we know
25 sometime in the future, a bullet is found in this

1 exact area, has Teresa Halbach's DNA on it. All
2 right. The inference, and this is an inference
3 that I'm asking you to draw, is that Teresa
4 Halbach was killed in the garage. She was killed
5 in Steven Avery's garage.

6 Now, we have heard testimony about
7 luminal finding blood, that is a reagent, a
8 chemical that is used by the Crime Lab is spread
9 out. There's two things that are most reactive
10 with luminal, one is human blood and the other is
11 bleach. Bleach coincidentally is the one thing
12 that eats up or destroys DNA.

13 We have heard about just to the left and
14 just to the back of this tractor, about a three
15 to 4 foot area, large area that lit up or glowed
16 very brightly. Mr. Ertl testified about that.
17 He was the person who processed that area. I'm
18 asking you to infer that Mr. Avery cleaned up
19 this area with bleach.

20 Now, you knew that inference, or that
21 suggestion from the State, I think, was coming.
22 We have put in the bleach. We have talked about
23 the luminal. We have gotten expert testimony
24 from Mr. Ertl that the two things that light up,
25 it wasn't blood, but it was, in fact, bleach.

1 one is that the defendant killed her and burned
2 it, and the other one, I guess, the defense wants
3 you to just come up with on your own.

4 That brings me to the conclusion, or the
5 last question, and that's, did the cops kill
6 Teresa Halbach. Again, the defense says no. But
7 if the cops had her blood, if the cops had her
8 bones, and before the 5th, if the cops knew she
9 was dead, let me say that again, if before the
10 5th the cops knew that Teresa Halbach was dead,
11 they were either told that by the real killer, or
12 they killed Teresa Halbach.

13 You have got to be willing to accept one
14 of those scenarios. And I don't think you can.
15 And I don't think you should. And I don't think
16 that the evidence points to that at all.

17 Mr. Strang, in his opening statement,
18 promised you what the defense was going to be.
19 Mr. Strang told you that it's no surprise that
20 the blood from an unsecured vial in the box in
21 the Clerk's Office, that Lieutenant Lenk examined
22 in 2002, ends up in the Toyota. At the start of
23 the case, that was what the defense was. That's
24 what the defense theory was. That's what the
25 defense said their theory of defense and what the

1 That's not reasonable. That's not a
2 reasonable doubt. Reasonable doubts are for
3 innocent people. Reasonable doubts are things
4 that juries adopt when all the evidence points to
5 that. And this planting, this vial planting
6 defense, even from a common sense standpoint, is
7 absolutely ludicrous.

8 But what we were able to do, what you
9 heard, is scientifically exclude that vial of
10 blood. You heard from Dr. LeBeau, who testified
11 that this blood is loaded with EDTA and this
12 blood, and this blood, and this blood, have no
13 detectable levels of EDTA. And so instead of
14 calling all of the people with keys and with
15 codes, and people in the Clerk's Office, and who
16 might have seen Lieutenant Lenk or Colborn, or
17 all those kinds of things, instead of doing it
18 that way, we only had to call one witness, who
19 scientifically could tell you that there is
20 absolutely no way that that vial of blood was
21 used to plant.

22 In fact, that very question was asked of
23 Dr. LeBeau, the head of the toxicology section,
24 or the unit at the FBI. And he said, by a
25 reasonable degree of scientific certainty, this

1 vial of blood is excluded, that means it's not
2 it, it's excluded as the source of those three
3 bloodstains.

4 Now, why is that important. Lieutenant
5 Lenk and Sergeant Colborn, as I mentioned
6 earlier, are good, decent, honest cops, sworn to
7 uphold the law. Kinds of officers Manitowoc
8 citizens should be proud to have on your police
9 force. They are the kinds of guys that you want
10 investigating cases for you, for Manitowoc
11 County. And again, they are not just some cops,
12 they are your cops, that's why a Manitowoc jury
13 decides this case.

14 This isn't just two guys, it's Jim Lenk
15 and it's Andy Colborn. And when you accuse
16 police officers of official misconduct, that's
17 serious business. Mr. Strang correctly predicted
18 that there would be some anger about this issue,
19 coming from the prosecution side, and there is.

20 Let me tell you why. Their livelihood,
21 their reputations, their families, everything in
22 their 20 plus years of law enforcement are on the
23 line, when some lawyer accuses them of
24 misconduct. Not just any misconduct, but
25 planting evidence in a murder case. All right.

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STATE OF WISCONSIN)
) ss
COUNTY OF MANITOWOC)

I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 22nd day of January, 2008.


Diane Tesheneck, RPR
Official Court Reporter

EXHIBIT 25

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

3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL
5 vs. TRIAL-DAY 27 VERDICT
Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 DATE: MARCH 18, 2007

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

11 APPEARANCES:

12 KENNETH R. KRATZ
Special Prosecutor
13 On behalf of the State of Wisconsin.

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

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

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

20 STEVEN A. AVERY
Defendant
21 Appeared in person.

22 * * * * *

23 TRANSCRIPT OF PROCEEDINGS

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

1 I will ask the foreperson to present the verdicts to
2 the bailiff so that they may be brought forward.

3 At this time the Court will read the
4 verdicts. On Count 1, the verdict reads as
5 follows: We, the jury, find the defendant,
6 Steven A. Avery, guilty of first degree
7 intentional homicide as charged in the first
8 count of the Information.

9 On Count 2, the verdict reads: We, the
10 jury, find the defendant, Steven A. Avery, not
11 guilty of mutilating a corpse as charged in the
12 second count of the Information.

13 On Count 3, the verdict reads: We, the
14 jury, find the defendant, Steven Avery, guilty of
15 possession of a firearm as charged in the third
16 count of the Information.

17 The verdict on Count 1 is signed by the
18 foreperson of the jury, dated today. The other
19 verdicts are also signed by the foreperson of the
20 jury.

21 At this time the Court is going to poll
22 the jurors. I will ask the media folks to cut
23 the audio at this time.

24 Mr. Slaby, were the verdicts as read by
25 the Court, and are they still now, your verdicts

EXHIBIT 26

The Steven Avery trial

Sheriff's officers forbidden from comment for now

By John Lee
Post-Crescent staff writer

CHILTON — As much as they might have wanted to talk after Steven Avery's homicide conviction Sunday, two sheriffs in the case were still bound by a judge's gag order.

Manitowoc County Sheriff Rob Hermann and Calumet County Sheriff Jerry Pagel weathered



Pagel

investigation into the death of Teresa Halbach.

In addition to saying that Manitowoc Sgt. Andrew Colborn and Lt. James Lenk had the motive and opportunity to plant blood in Halbach's vehicle to frame Avery, the lawyers also said the investigation was based on "tunnel vision" that failed to look at other po-

tential suspects. Hermann was here Sunday when the verdict was announced, but said neither he, Lenk nor Colborn could comment because of the gag order from Manitowoc County Circuit Judge Patrick Willis.

Lenk, contacted at

home Sunday, declined comment. Hermann said the county's corporation counsel advised him and employees the order is in effect until Willis lifts it or post-conviction defense activities are concluded.

That means officers

can't comment until after Avery's sentencing at the earliest. Pagel had asked Willis to lift the order when the verdict was read. Calumet County Dist. Atty. Ken Kratz was not bound by that order, and praised Calumet County Sheriff's Sgt. Mark Wie-

bert and Tom Fassbender, a special agent for the state Division of Criminal Investigation, who led the investigation. He also praised other officers involved for their "high degree of professionalism." Kratz said the accusations against Lenk and Colborn were "inappropriate."

Stories can be reached at 920-893-1010 ext. 362, or lee@postcrescent.com.

Not all evidence made it to trial

Early statements to officers might have shown conflicts

By John Lee
Post-Crescent staff writer

CHILTON — The jurors who convicted Steven Avery of killing Teresa Halbach made their decision without much of the information prosecutors wanted to bring to the trial.



Exhibit 1004
5/19/2022

Friends find relief in jury's guilty verdict

Avery 'will have to think of this the rest of his life,' says friend of Halbach

By Mike Heert

Garrett Wisconsin Newspapers

Several people who knew Teresa Halbach greeted Sunday's verdict with relief.

"It doesn't change anything. She's gone. But it's a relief to know he's not going to do this to anyone else."

"No matter what the verdict was, it wasn't going to bring Teresa back."

Tom Pearce, Teresa Halbach's former employer

EXHIBIT 27

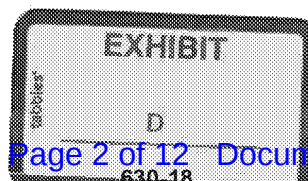
STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY

STATE OF WISCONSIN,)	
)	
Plaintiff,)	
)	Case No. 05-CF-381
v.)	
)	Honorable Judge Angela Sutkiewicz,
STEVEN A. AVERY,)	Judge Presiding
)	
Defendant.)	

AFFIDAVIT OF KEVIN RAHMLOW

Now comes your affiant, Kevin Rahmlow, and under oath hereby states as follows:

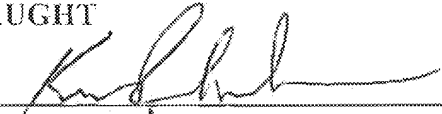
1. I am of legal majority and can truthfully and competently testify to the matters contained herein based upon my personal knowledge. The factual statements herein are true and correct to the best of my knowledge, information, and belief. I am of sound mind and I am not taking any medication nor have I ingested any alcohol that would impair my memory of the facts stated in this affidavit.
2. In 2005, I lived near Mishicot, Wisconsin. I am familiar with the Tadych family because I am acquaintances with Shaun Tadych. Shaun's brother Scott is now married to Steven Avery's sister, Barb.
3. On November 3 and 4, 2005, I was in Mishicot. I saw Teresa Halbach's vehicle by the East Twin River dam in Mishicot at the turnabout the bridge, as I drove west on Highway 147.
4. Around midday on November 4, 2005, I stopped at the Cenex gas station at the intersection of Highway 147 and State Street in Mishicot. While there, I saw and read a missing person poster for Teresa Halbach. I remember that the poster had a picture of



Teresa Halbach and written descriptions of Teresa Halbach and the car she was driving. I recognize the poster attached as **Exhibit A** to this affidavit as a copy of the one I saw at the Cenex station on November 4, 2005.

5. I recognized that the written description of the vehicle on the poster matched the car I saw at the turnaround by the dam.
6. While I was in the Cenex station, a Manitowoc County Sheriff's Department officer came into the station. I immediately told the officer that I had seen a car that matched the description of the car on Teresa Halbach's missing person poster at the turnaround by the dam.
7. In December 2016, I watched Making a Murderer. In the series, I recognized the officer who I talked to at the Cenex station on November 4, 2005. A photograph of this officer is attached as **Exhibit B** to this affidavit. Having watched Making a Murderer, I now know that his name is Andrew Colborn.
8. After I watched Making a Murderer, I sent a text message to Scott Tadych. Having reviewed a saved copy of that message, I know that I sent it on December 12, 2016, at 6:13 p.m. In the message, I told Scott Tadych that I had seen Teresa Halbach's car in Mishicot on November 4, 2005, and had told the officer in the Cenex station. On December 19, 2016, I sent Scott Tadych another message. I never heard back from Scott Tadych. Copies of the text message conversation I had with Scott Tadych are attached as **Exhibit C** to this affidavit.
9. Nothing has been promised or given to me in exchange for this affidavit.

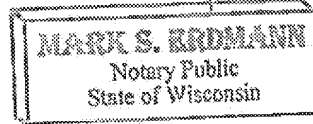
10. FURTHER YOUR AFFIANT SAYETH NAUGHT



Kevin Rahmlow

State of Wisconsin
County of Manitowish

Subscribed and sworn before me
this 15th day of July, 2017.



Commission Expires
11/15/2019



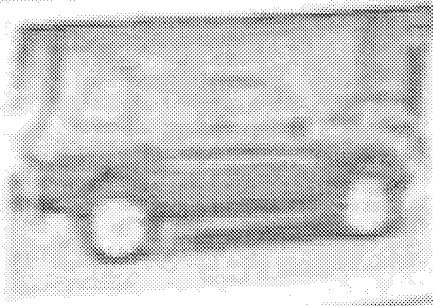
Notary Public

TERESA MARIE BALBACH

1971 - 1988 - 1990 - 1992 - 1994 - 1996 - 1998 - 2000 - 2002 - 2004 - 2006 - 2008 - 2010 - 2012 - 2014 - 2016 - 2018 - 2020 - 2022



TERESA MARIE BALBACH
1971 - 1988 - 1990 - 1992 - 1994 - 1996 - 1998 - 2000 - 2002 - 2004 - 2006 - 2008 - 2010 - 2012 - 2014 - 2016 - 2018 - 2020 - 2022



TERESA MARIE BALBACH
1971 - 1988 - 1990 - 1992 - 1994 - 1996 - 1998 - 2000 - 2002 - 2004 - 2006 - 2008 - 2010 - 2012 - 2014 - 2016 - 2018 - 2020 - 2022

TERESA MARIE BALBACH
1971 - 1988 - 1990 - 1992 - 1994 - 1996 - 1998 - 2000 - 2002 - 2004 - 2006 - 2008 - 2010 - 2012 - 2014 - 2016 - 2018 - 2020 - 2022

EXHIBIT
A
App. 0282

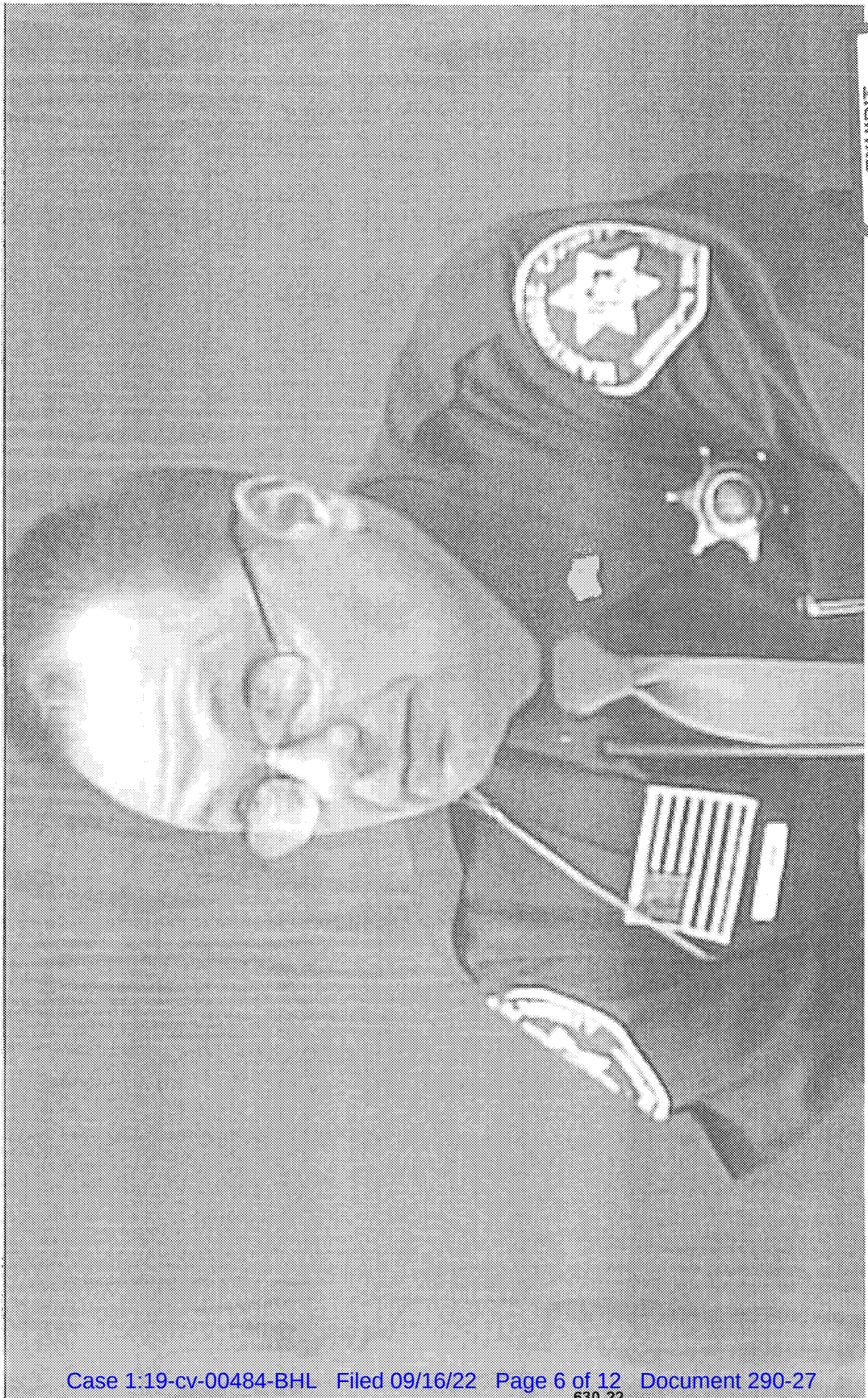


EXHIBIT
630-22

Scott Tadych



Your day

Add something to your day



DEC 12, 2016 AT 19:13

I just watched the series makin of a murderer and I gotta tell ya I need to get in touch with one of their lawyers as coubern I saw art cenex and told him that vehicle was at the old damn on a thurs or Fri

And im guessing Nov 3rd was the day he called the plates in

DEC 12, 2016 AT 19:41

Hey give me a call 9063612856

Ok I will I am really sick now can

EXHIBIT

STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY

STATE OF WISCONSIN,)
)
 Plaintiff,)
) Case No. 06-CF-381
 v.)
) Honorable Judge Angela Sutkiewicz,
 STEVEN A. AVERY,) Judge Presiding
)
 Defendant.)

SUPPLEMENTAL AFFIDAVIT OF KEVIN RAHMLOW

Now comes your affiant, Kevin Rahmlow, and under oath hereby states as follows:

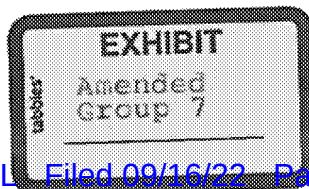
1. I wish to amend ¶ 8 of my original affidavit to read as follows:

After I watched Making a Murderer, I sent a message to Scott Tadych on December 12, 2016, at 18:13. The message stated:

I just watched the series makin [sic] of a murderer and I gotta tell ya I need to get in touch with one of of their lawyers as coubern [sic] I saw art [sic] cenex and told him that vehicle was at the old damn [sic] on a thurs or Fri. And im [sic] guessing Nov 3rd was the day he called the plates in

I sent another message at 19:41, in which I stated, "Hey give me a call 9063612856." I received one message back from Mr. Tadych that day, in which he said he was sick and that he would call the next day. I did not hear from Mr. Tadych the next day — or any other day — responsive to my request for attorney contact information for Steven Avery or Brendan Dassey. I received another message from Mr. Tadych on December 19 at 6:10 p.m., which was not responsive to my request. All of the messages exchanged between Mr. Tadych and I are attached.

2. Finally, I received a response to my initial inquiry from Barbara Tadych. Mrs. Tadych sent me a message on or about September 3, 2017, in which she stated:



Hello Kevin, I see you messaged scott awhile back and said things to him about the case. Brendan's attorneys would like to talk to you. Laura Nytrider [sic] 8125032204. Please give her a call.

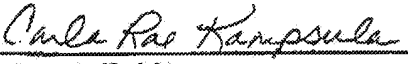
FURTHER AFFIANT SAYETH NAUGHT

Minnesota
State of Wisconsin
County of St. Louis



Kevin Rahmlow

Subscribed and sworn before me ^{call}
this 2nd day of ~~October~~ ^{November}, 2017.



Notary Public



Scott Tadych



Your day

Add something to your day



DEC 12, 2016 AT 18:13

I just watched the series makin of a murderer and I gotta tell ya I need to get in touch with one of their lawyers as coubern I saw art cenex and told him that vehicle was at the old damn on a thurs or Fri

And im guessing Nov 3rd was the day he called the plates in

DEC 12, 2016 AT 19:41

Hey give me a call 9063612856

SAMSUNG

75°

4G 48% 12:23



Scott Tadych

Active 2 hours ago



Your day

Add something to your day



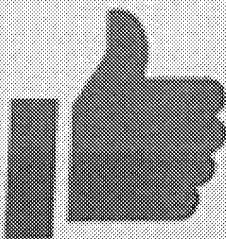
DEC 12, 2016 AT 19:41



Hey give me a call [9063612856](tel:9063612856)

Ok I will I am really sick now can hardly talk so I will call tomorrow

K



DEC 12, 2016 AT 18:10

Hey, can you help me get a prayer chain going for a little boy named Dakota. They had to life flight him. He is having seizures. Forward this to everyone you can please!

Hello Kevin, I see you messaged scott awhile back and said things to him about the case. Brendan's attorneys would like to talk to you. Laura Nytrider 3125032204. Please give her a call.

EXHIBIT 28

From: Moira Demos [REDACTED]@synthesisfilms.com

Subject: please help

Date: April 15, 2007 at 6:16 PM

To: Brian Kerhin [REDACTED]@wluk.com

Cc: mike trevey [REDACTED]@journalbroadcastgroup.com, zander press zander [REDACTED]@zanderpressinc.com, wendy navani [REDACTED]@nbc26.com, trish ossmann [REDACTED]@wbay.com, tom tomaszewski [REDACTED]@wtaq.com, susy [REDACTED]@hearst.com, sean downs [REDACTED]@hearst.com, scott keske [REDACTED]@todaystmj4.com, peter griggs [REDACTED]@nbc26.com, miles aquino [REDACTED]@foxtv.com, mike nipps [REDACTED]@wluk.com, mike kinzel [REDACTED]@whbl.com, mike kemmeter [REDACTED]@wcinet.com, matt kummer [REDACTED]@wluk.com, marle hoffman [REDACTED]@journal sentinel.com, mark vittorina [REDACTED]@foxtv.com, mark sherry [REDACTED]@deltapublications.com, mark krueger [REDACTED]@foxtv.com, laura ricciardi [REDACTED]@synthesisfilms.com, julie buehler [REDACTED]@wluk.com, john lee [REDACTED]@postcrescent.com, john lazarevic [REDACTED]@hearst.com, john devroy [REDACTED]@wbay.com, john byman [REDACTED]@620wims.com, joe kamenick [REDACTED]@peoplepc.com, jim murphy [REDACTED]@journalbroadcastgroup.com, jim dillon [REDACTED]@wbay.com, jim cullen [REDACTED]@todaystmj4.com, jeanne anthony [REDACTED]@wcinet.com, herman ward [REDACTED]@cbs58.com, grant uitti [REDACTED]@cbs58.com, gary l williams [REDACTED]@nbc26.com, fred barry [REDACTED]@womtradio.com, dwight nale [REDACTED]@postcrescent.com, ciane baumgart [REDACTED]@timesvillager.com, david malm [REDACTED]@wfrv.cbs.com, danielle bina [REDACTED]@wtaq.com, dan flannery [REDACTED]@postcrescent.com, brian lundberg [REDACTED]@cubradio.com, Brian Kerhin [REDACTED]@wluk.com, brian graham [REDACTED]@foxtv.com, bill kiefer [REDACTED]@wluk.com, alicyn hanford [REDACTED]@courttv.com, tom kertscher [REDACTED]@journal sentinel.com, kris schuller [REDACTED]@wfrv.cbs.com, bo s. rosser [REDACTED]@courttv.com, jessie wells [REDACTED]@nbc26.com, colleen marie henry [REDACTED]@hotmail.com, pattymurray [REDACTED]@wpr.org, angenette levy [REDACTED]@wfrv.cbs.com, Andy Nelesen [REDACTED]@sbcglobal.net, gil halsted [REDACTED]@wpr.org, Jennifer Mertens [REDACTED]@cygnusb2b.com, McCarey, Tom [REDACTED]@wbay.com, derrick nunnally [REDACTED]@journal sentinel.com, leah massey [REDACTED]@nbc26.com, carrie attflinger [REDACTED]@ap.org, Alina Machado [REDACTED]@cbs58.com

Hello everyone. Sorry to bother you on the eve of another trial but we wanted to get this out before (if possible) you started recycling all of you Avery tapes.

Here at Synthesis Films we have encountered a pretty serious problem with the footage we recorded from the raw feed of the manned witness camera. Since we were upstairs working the switcher and mixer we were not able to monitor the feed as well as would have liked. This problem came to light last week when we finally had the time to start dubbing and reviewing the footage. The footage from the witness cam is very high contrast and the whites are clipping. After talking to a number of engineers at the Dassey rig on Friday it seems as if our trouble came from one of two problems. Either the mult-box for the dedicated witness cam feed was not terminated or the video gain on that mult-box was turned way up. Either way it created a signal our deck could not tame.

We are writing now with an urgent request to the stations that participated in the pool. We are hoping that whichever station was shooting courtroom pool for a certain week could allow us to dub that week of footage (even if it's from the mixed feed). This would in essence be asking each station to refrain from copying over one week of footage. If your station has already recycled the footage from your week perhaps you can let us know what you still have and we can try to piece it together.

Obviously we are trying to sort this out as soon as possible before this footage disappears. On that note, just to put it out there, at the end of the day Synthesis films will be archiving the entire trial long into the future, and would be more than happy to provide you footage should you need it down the road.

Thanks in advance for your help.

See you tomorrow in Manitowoc.

Moira Demos and Laura Ricciardi

EXHIBIT 29

See Declaration of Moira Demos

EXHIBIT 30

See Declaration of Moira Demos

EXHIBIT 31

From: Laura Ricciardi [REDACTED]@synthesisfilms.com
Subject: list of wi news stations attached
Date: September 18, 2013 at 3:08 PM
To: Lisa Dennis [REDACTED]@earthlink.net
Cc: Moira Demos [REDACTED]@synthesisfilms.com



Dear Lisa,

Attached is a document I prepared which identifies the Green Bay and Milwaukee stations with whom we collaborated with over the period of two years. We covered all pre-trial, trial and post-conviction court dates with these stations for both Steven and Brendan's cases.

What Moira and I learned after Steven's trial is that our "mult box" feed of the witness cam at Steven's trial was unterminated. The result was a serious technical problem that causes our footage to look blown out.

Unlike most if not all the news stations, Synthesis was taking each of the raw feeds from the witness cam and the lawyer cam. The news stations, however, were taking a "mixed feed," which Moira was providing to the entire television camera pool by performing a live edit of the trial.

We are desperately seeking to dub the mix feed of certain key witnesses for use in our series. In the end, we would dub much much more than we would ever use in the series b/c we only need clips from the witness camera angle and only in places where we do not already have a copy of the mixed feed (which was provided to us by the ABC stations on the list, WBAY and WISN).

Based on the dubbing we did of WBAY and WISN footage, we know that none of the news stations was rolling on the entire trial. Our best hope is to piece together footage from various stations, praying that they rolled and cut at different times throughout the trial.

As for the issue of consideration, WBAY and WISN allowed us to dub the footage at no charge. They recognized that Synthesis did 2/3 of the work for the entire camera pool for the duration of the 5-week long trial. Moira operated the remote/lawyer cam while editing live for the news stations and COURT TV's website. Meanwhile, I handled all the courtroom (lavaliere) and audio and operated the sound mixer. This meant that all the news stations got to take turns providing a single camera person for the witness in the courtroom - about one week of work only for each of the news stations.

I'd be happy to be on the calls with you or to be the point person for follow-up if you could get anyone to respond to your call.

Please let me know if you have any questions or concerns.

Thanks!

Laura



Notes on News
Station...rial.doc

Laura Ricciardi
Synthesis Films LLC
[REDACTED]@synthesisfilms.com
[REDACTED]

EXHIBIT 32

From: Laura Ricciardi [REDACTED]@synthesisfilms.com
Subject: Avery Trial Footage
Date: November 14, 2013 at 4:11 PM
To: [REDACTED]@wlu.com
Cc: Lisa Dennis [REDACTED]@earthlink.net, Moira Demos [REDACTED]@synthesisfilms.com



Hi Brian,

I hope this finds you well.

This is Laura Ricciardi of Synthesis Films.

Judge Patrick Willis (retired) suggested I reach out to you with respect to a request my fellow producer Lisa Dennis (copied here) made to WGBA/NBC-26 in connection with Avery trial footage. Yesterday, on a call with Judge Willis, I explained to him that my company had a technical problem at the trial. As Moira and I were upstairs operating the remote camera in the courtroom and the mixer, down in the media room while lots of people were moving cables and equipment around, our decks somehow wound up with an unterminated feed.

We were taking the raw feeds of both the witness cam and the lawyer cam. As a result of the unterminated feed our footage from the witness cam is unusable.

We are well into post-production on what will be a docuseries, and we managed to find a NE Wisconsin station that still has Avery trial tapes. You might recall that Judge Willis entered an order regarding the setup of a TV camera pool with footage to be shared among the pool participants.

I believe WGBA has a new General Manager who does not know me and does not know the contribution Synthesis made in capturing the trial.

Judge Willis thought as the then media liaison to the court you might vouch for me and perhaps encourage the sharing of the archived tapes for dubbing purposes. Synthesis would of course pay for any labor on WGBA's end to pull the tapes - which should be minimal as we're told they are just in a box - to provide copies of whatever digital files we create of the dubs and to provide an on-screen credit to WGBA.

Please let me know if you would be willing to help make the introduction or provide some backstory to the GM.

Moira and I will be in Wisconsin next Thursday, 11/21, through Sunday, 11/24, and we can be available to meet and make arrangements for dubbing the footage.

Thank you in advance for your assistance with this, Brian.

Best,

Laura

Laura Ricciardi
Synthesis Films LLC
[REDACTED]@synthesisfilms.com

EXHIBIT 33

Message

From: [REDACTED]@synthesisfilms.com [REDACTED]@synthesisfilms.com]
Sent: 9/30/2015 1:22:44 AM
To: Elektra Gray [REDACTED]@netflix.com]
CC: Laura Ricciardi [REDACTED]@synthesisfilms.com]; Lisa Dennis [REDACTED]@earthlink.net]
Subject: Re: FOR APPROVAL - MaM Synopsis for DOC NYC

Hi Elektra,
sorry for taking so long to figure this out.
Here is a new draft.

Our main issues with the first draft were:

- 1) we are not okay using "true-crime" it actually does not apply to this work as it implies dramatic liberty.
- 2) we do not see any reason to use Steven's name
- 3) we do not want to use the terms "small town" as it limits the scope of the story and the themes
- 4) we want to include "America's heartland" to indicate that this is not in a city and not in the south
- 5) we would like to convey that this is an unprecedented story

Let us know what you think.

Netflix presents an exclusive preview of a captivating documentary crime series. Filmed over a 10-year period, *Making a Murderer* is an unprecedented real-life thriller about a DNA exoneree who while in the midst of exposing corruption in local law enforcement finds himself the prime suspect in a new crime. Set in America's heartland the series takes viewers inside a high-stakes criminal case where reputation is everything and things are not always what they appear.

Thanks.

Moira & Laura

On Tue, 29 Sep 2015 10:44:51 -0700, Elektra Gray <[REDACTED]@netflix.com> wrote:

Hi Guys - I need to submit a 75-word synopsis to DOC NYC for their announcement and program guide to be released Oct 14...please let me know if you have any edits or concerns about the enclosed paragraph. As discussed, I will then work on a full press release for our announcement.

Netflix presents an exclusive preview of a captivating true-crime documentary series. Ten years in the making, *Making a Murderer* is a stranger-than-fiction tale of wrongful imprisonment, small town corruption, and murder. The series follows the harrowing story of Steven Avery, an outsider from the wrong side of the tracks convicted and later exonerated of a brutal crime. In the midst of his civil case against the local police department, another body is discovered on his property.

--
Elektra Gray
Netflix
Original Documentary Publicity
[REDACTED]

|

--
Maira Demos
Producer/Director
Synthesis Films LLC
[REDACTED]@synthesisfilms.com
[REDACTED]

EXHIBIT 34

No Subject

From: Michael Griesbach <[REDACTED]@gmail.com>

Date: 12/23/2015 05:24AM

To: Laura Ricciardi <[REDACTED]@synthesisfilms.com>, [REDACTED]@synthesisfilms.com

Congratulations! I binged my way through all 10 episodes by Saturday afternoon and enjoyed it immensely. I'd be happy to share with you some of the local reaction beyond what has been reported if you are interested. I imagine you're swamped with media inquiries and other matters, but if you could email me your number and times you are available, I'll give you a call. I'm in the office til about 10:30 CST today but then on the road to UW Madison to pick up our daughter for the Christmas break.

By the way, I share most of the views you expressed below in your recent interview with the Post-Crescent. In the end, the CJS must be about process, not results.

All Best.

Mike

"Every question just led to more questions," said Moira Demos, who produced the series titled, "Making a Murderer," with Laura Ricciardi. "In the end we are not trying to provide any answers. We don't have a conclusion. We are really raising questions and our goal is to promote a dialogue about these things."

The series became available on Netflix on Friday but the first episode is available on YouTube.

The filmmakers, who were interviewed Tuesday by Post-Crescent Media, don't presume to know what happened.

"This is such a complex case and, you know, I think our takeaway through all of this is that one needs to be careful not to be too certain about any of this," Ricciardi said. "It's an imperfect system, it's a human system and there's lots of room for ambiguity. And there are lots of questions here."

Among the questions: Was the truth revealed in these cases and is the system working as it should?

--
Michael Griesbach

Author of award winning true crime thriller, *The Innocent Killer: a True Story of a Wrongful Conviction and its Astonishing Aftermath*

theinnocentkiller.com

<http://www.amazon.com/dp/1627223630>

EXHIBIT 35

From: Martine Charnow [REDACTED]@gmail.com
Subject: Re: TIME SENSITIVE Request for Specific Pool Trial Footage
Date: August 25, 2015 at 2:43 PM
To: Laura Ricciardi [REDACTED]@synthesisfilms.com
Cc: Dave Malm [REDACTED]@wearegreenbay.com



Hi Dave,

Attached is a FedEx Shipping Label that you can print and use to send us the DVDs. Thank you!

Martine

On Tue, Aug 25, 2015 at 12:34 PM, Laura Ricciardi <[REDACTED]@synthesisfilms.com> wrote:

Hi Dave,

Thank you for the fast turnaround on this.

And thank you very much for offering the airchecks...gratis. If we use any of the footage we will certainly credit WFRV News.

I will ask my assistant Martine, copied here, to send you a FedEx shipping label that you can use to send us the DVDs. It would be great to get them as soon as possible as we are beginning to lock episodes this week.

Around the time of the trial, I recall speaking with Angenette Levy about Synthesis' technical issue and I believe she said WFRV would be archiving its tapes from the trial which might be of use to us someday. Perhaps my memory is inaccurate. Were you unable to find any pool footage at all or just those two dates?

Best,

Laura

On Mon, 24 Aug 2015 20:33:26 +0000, Dave Malm <[REDACTED]@wearegreenbay.com> wrote:

Laura:

I was not able to locate the raw pool feeds of the time period you are requesting..I have located both days news airchecks..It includes our reports from 5, 6, and 10 pm those days..It includes sound bites withing packages from the days coverage..It is on DVD and I can send you the two DVD's and you may use them without charge. Only fee would be a WFRV News mention in the end credits. Let me know if and where you you like me to send the DVDs

Dave Malm | News Operations Manager | WFRV-TV Local 5

[REDACTED]

[REDACTED]



STATEMENT OF CONFIDENTIALITY AND NON-DISCRIMINATION

This electronic message may contain privileged or confidential information. If you are not the intended recipient of this e-mail, please delete it from your system and advise the sender.

WFRV & WJMN does not discriminate in advertising contracts on the basis of race, ethnicity or gender and further requires that in the performance of all WFRV & WJMN advertising agreements, WFRV & WJMN requires that each party not discriminate on the basis of race or ethnicity.

From: Laura Ricciardi [mailto: [REDACTED]@synthesisfilms.com]
Sent: Monday, August 24, 2015 1:50 PM
To: Dave Malm
Cc: [REDACTED]@synthesisfilms.com
Subject: TIME SENSITIVE Request for Specific Pool Trial Footage

Hello Dave,

I hope this finds you well.

My assistant Martine spoke with you recently about this request and I left you a voicemail message last week.

From December of 2005 through 2007 and later again in 2009 and 2010, my company participated in the television coverage of

From December of 2005 through 2007 and later again in 2009 and 2010, my company participated in the television camera pool that covered the Teresa Halbach case in Manitowoc County and Calumet County. The defendants were Steven Avery and Brendan Dassey and they were tried separately.

At the 5-1/2 week long Steven Avery trial Synthesis operated the remote camera and mixer as well as performed the live edit which local stations streamed. While my partner, Moira, and I were upstairs covering the trial along with the cameramen from the Green Bay and Milwaukee stations who were covering the angle on the witness, our deck which was down in the media room wound up with an unterminated feed.

Long story short, we are now working feverishly to deliver a documentary series related to the case and we need to replace at most a few minutes of footage of two witnesses. Specifically, we write to ask WFRV provide us with a copy of pool trial footage from 2/20/07 and 3/1/07. We are looking for the cross examination/recross/redirect of Sgt. Andrew Colborn (2/20/07) and the cross examination/recross/redirect for Dr. Leslie Eisenberg (3/1/07).

Synthesis is prepared to pay any associated fees. We ask that you treat this request as time sensitive and let us know by mid-week if you can provide the footage. We will pay to expedite.

Feel free to call me with any questions or concerns.

Thank You,

Laura Ricciardi

Executive Producer/Director

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8/25/2015

FedEx Ship Manager - Print Your Label(s)

TO: LAURA RICCIARDI
 SYNTHESIS FILMS

10711 N. 19th Ave.
 [redacted]
 [redacted]

98014-2408 WA

SHIP DATE: 08/25/2015
 TIME: 10:30:00 AM

FROM: [redacted]
 [redacted]
 [redacted]

CA 925

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