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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
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STATE OF WISCONSIN,

PLAINTIFF,

JURY TRIAL
TRIAL DAY 7

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: APRIL 23, 2007

BEFORE: HON. JEROME L. FOX
Circuit Court Judge

APPEARANCES:

KENNETH R. KRATZ
Special Prosecutor
On behalf of the State of Wisconsin.

THOMAS FALLON
Special Prosecutor
On behalf of the State of Wisconsin.

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

MARK R. FREMGEN
Attorney at Law
On behalf of the defendant.

RAYMOND L. EDELSTEIN
Attorney at Law
On behalf of the defendant.

BRENDAN R. DASSEY
Defendant
Appeared in person.

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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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(Reconvened at 8:34 A.M. Jury out)

THE COURT: Good morning, ladies and gentlemen, Counsel. This is State of Wisconsin vs. Brendan Dassey, 06 CF 88. Appearances, please.

ATTORNEY FALLON: Good morning, Your Honor. May it please the Court, the State continues in its appearance by Special Prosecutors Ken Kratz, Norm Gahn, Tom Fallon.

ATTORNEY FREMGEN: Attorney Mark Fremgen appears with Attorney Ray Edelstein. The defendant appears in person.

THE COURT: Are you set to proceed, uh, Mr. Fremgen?

ATTORNEY FREMGEN: Yes, Judge, we, uh -- at this time our first witness will be the defendant, but we need the Court to proceed with the colloquy with Mr. Dassey to ensure that, um, he is making the decision freely, voluntarily to testify.

THE COURT: All right. If you'd move the microphone over there. Mr. Dassey, can you hear me?

THE DEFENDANT: Yes.

THE COURT: Uh, it's my understanding you wish to testify?

THE DEFENDANT: Yes.

THE COURT: You understand that you have a

1 constitutional right to testify?

2 THE DEFENDANT: Yes.

3 THE COURT: You have a constitutional right
4 not to testify?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that
7 decision, whether or not to testify, is for you, and
8 you alone, to make?

9 THE DEFENDANT: Yes.

10 THE COURT: That doesn't mean that you
11 can't get advice from family, from friends, from
12 your lawyers, but you understand, in the end, it's
13 your decision?

14 THE DEFENDANT: Yes.

15 THE COURT: Has anyone made any threats or
16 promises to you in an attempt to influence your
17 decision?

18 THE DEFENDANT: No.

19 THE COURT: Have you discussed your
20 decision, whether or not to testify, with your
21 lawyers?

22 THE DEFENDANT: Yes.

23 THE COURT: Have you made a decision as to
24 whether or not you want to testify?

25 THE DEFENDANT: Yeah.

1 THE COURT: What is that decision?

2 THE DEFENDANT: That I want to.

3 THE COURT: You want to testify?

4 THE DEFENDANT: Yeah.

5 THE COURT: All right. Uh, let me address
6 counsel. Mr. Fremgen, have you had sufficient
7 opportunity to thoroughly discuss with your client,
8 uh, the case and his decision whether or not to
9 testify?

10 ATTORNEY FREMGEN: I can say for the record
11 that we have spoken at least a half dozen times,
12 specifically, on that one issue. Um, and
13 recently -- as recently as yesterday.

14 THE COURT: Are you convinced that he
15 understands the implications of him testifying and
16 not testifying?

17 ATTORNEY FREMGEN: I believe so.

18 THE COURT: Are you satisfied that the
19 decision he announced on the record here is being
20 made knowingly, intelligently and voluntarily?

21 ATTORNEY FREMGEN: I don't know if I can
22 answer that question, Judge.

23 THE COURT: Well, is --

24 ATTORNEY FREMGEN: I believe he's -- I'm
25 sorry. I believe he knows what he's doing and I

1 believe he's voluntarily agreeing to do it.

2 THE COURT: All right. So it's knowingly
3 and voluntarily being made?

4 ATTORNEY FREMGEN: Yes, Judge.

5 THE COURT: You're -- you're suggesting
6 that, uh, it is being made by him, and him alone,
7 in this instance?

8 ATTORNEY FREMGEN: That I don't know if I
9 can answer either.

10 THE COURT: All right. The Court will
11 find, based on this record, that the, uh, decision
12 of this defendant to testify is being made, uh,
13 knowingly and voluntarily. The Court has, uh, had a
14 colloquy with him. The Court, uh, uh, believes that
15 the defendant has -- has made this decision, realize
16 it's his alone to make -- before I go through this,
17 Counsel?

18 ATTORNEY KRATZ: Given Mr. Fremgen's,
19 um --

20 THE COURT: Reticence?

21 ATTORNEY KRATZ: -- reticence, uh,
22 perhaps, uh, the Court should inquire of
23 Mr. Dassey if -- if there isn't something else,
24 or if there, uh, uh, isn't an explanation for --
25 for that. Our concern, as you know, Judge, is to

1 make this complete record. Uh, if the Court is,
2 uh, reluctant to do so, I certainly understand
3 that, but that was our -- our, um --

4 THE COURT: I -- I understand, uh, the
5 State's concern. Mr. Fremgen has positively averred
6 that the decision is being made knowingly and
7 voluntarily. I've gone through the colloquy with --
8 with Mr. Dassey. I -- I don't know at this stage,
9 uh, absent, uh, getting into matters that, uh, I
10 have no business inquiring in, I can be doing.

11 ATTORNEY FREMGEN: If -- if I can add,
12 Judge --

13 THE COURT: Go ahead.

14 ATTORNEY FREMGEN: -- you -- you had asked
15 if I thought this was an intelligent decision?

16 THE COURT: Correct.

17 ATTORNEY FREMGEN: And -- and not that
18 intelligence is different, viewed from -- from a
19 legal standpoint than common sense, I -- I don't
20 know if I can honestly say that if there -- if -- if
21 it's being made based upon, um, reasonable and
22 logical, uh, decision-making.

23 And the Court also inquired as to
24 whether Mr. Dassey has talked to others besides
25 ourselves.

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THE COURT: Right.

ATTORNEY FREMGEN: And I'm sure he has. In fact, I know he has. And, for that reason, I can't say for certain that the decision is solely his. I can say to you -- to this Court, that he has told us this is his decision, and he wishes to pursue testifying.

THE COURT: Well, let me, then, reask Mr. Dassey. Would you pull the microphone over there? Mr. Dassey, I've told you that, in the end, this decision is yours, and yours alone, to make; correct?

THE DEFENDANT: Yes.

THE COURT: And you understand that?

THE DEFENDANT: Yes.

THE COURT: Uh, you've talked to other people about this other than your lawyers?

THE DEFENDANT: Yes.

THE COURT: Uh, have those -- are you being forced to do this in any way do you feel?

THE DEFENDANT: No.

THE COURT: You're doing this voluntarily?

THE DEFENDANT: Yes.

THE COURT: You understand there may be some risks to your testifying?

1 THE DEFENDANT: Yeah.

2 THE COURT: And you're willing to take
3 those risks in testifying?

4 THE DEFENDANT: Yes.

5 THE COURT: No one's promised you anything
6 in order to get you to do this?

7 THE DEFENDANT: No.

8 THE COURT: You're not threatened in any
9 way?

10 THE DEFENDANT: No.

11 THE COURT: And this is -- in the end, it
12 is your decision; is that correct?

13 THE DEFENDANT: Yes.

14 ATTORNEY KRATZ: That -- that's fine,
15 Judge. Thank you.

16 THE COURT: Yeah. I don't know where else
17 we can go here. So, let's, uh -- we'll get the jury
18 in and let's proceed.

19 ATTORNEY KRATZ: There's one -- one
20 other thing, Judge. The, uh -- as long as the
21 jury is out, I had promised the Court and, uh,
22 Madam Clerk that, uh, there was a videotape clip
23 of an answering machine that I -- that I think
24 was on the first day of testimony, that we would
25 have a copy of that made and marked to make, uh,

1 part of the record. Over the weekend, we've had
2 an opportunity to make a copy of that, and I just
3 wanted to complete the record by providing a copy
4 of that, uh, uh, clip as I had promised early on.

5 THE COURT: Had we previously marked it as
6 an exhibit?

7 ATTORNEY KRATZ: No.

8 THE CLERK: No.

9 THE COURT: All right. So this will be
10 Exhibit 225?

11 THE CLERK: Yes.

12 ATTORNEY KRATZ: That's all we have,
13 Judge. Thank you.

14 THE COURT: All right. Specifically, it's
15 an exhibit of -- it's a CD of a -- a --

16 THE CLERK: It's a CD of the answering
17 machine --

18 THE COURT: All right.

19 THE CLERK: -- clip.

20 THE COURT: All right. We can bring the
21 jury in, then.

22 THE CLERK: So that's received as --

23 THE COURT: Yeah.

24 (Jury in at 8:42 a.m.)

25 THE COURT: Morning ladies and gentlemen.

1 Be seated. Uh, you may proceed.

2 ATTORNEY FREMGEN: Judge, at this time
3 we'll call Brendan Dassey.

4 THE CLERK: Please raise your right
5 hand.

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

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

11 THE WITNESS: Brendan Dassey, D-a-s-s-e-y.

12 **DIRECT EXAMINATION**

13 BY ATTORNEY FREMGEN:

14 Q Morning, Brendan.

15 A Morning.

16 Q How old are you, Brendan?

17 A Seventeen.

18 Q Where were you living on October 31, 2005?

19 A With my mom.

20 Q Where, exactly, was that located?

21 A At 12930-A Avery Road.

22 Q What city is that in?

23 A Two Rivers.

24 Q And how long have you lived at that address?

25 A Six or seven years.

1 Q Now, there are others that live around you; is
2 that right?

3 A Yes.

4 Q Is this all family?

5 A Yes.

6 Q Who -- who lived -- well, who all lived in that
7 general area?

8 A Me, my family, Steven, Chuckie, my grandma and
9 grandpa --

10 Q Who's Chuckie?

11 A One of my uncles.

12 Q Okay. So it was all family that lived in that
13 area?

14 A Yes.

15 Q Was it adjacent to some property? A business?

16 A Yes.

17 Q What business was that?

18 A The Avery Auto Salvage.

19 Q Okay. Now you said that Steven, that's your
20 uncle?

21 A Yes.

22 Q And he lived where, exactly, in relation to your
23 house?

24 A Next door.

25 Q About how far next -- is next door from your

1 house?

2 A Few hundred -- hundred or two hundred or three
3 hundred yards away.

4 Q Do you know yards or feet? Do you know the
5 difference between the two?

6 A Not really.

7 Q Okay. Was it farther than a football field away
8 from you?

9 A No.

10 Q So less than a football field away from you?

11 A Yeah.

12 Q Now, who else lived in the house with you and
13 your mom?

14 A Me, my brother, my mom.

15 Q You said your brother or brothers?

16 A All three of them.

17 Q Okay. And who -- who are they? What are the
18 names?

19 A Bobby, Brian and Blaine.

20 Q So your mom and the four brothers all lived
21 there?

22 A Yes.

23 Q And how old is Blaine?

24 A Ten months older than me.

25 Q In rela -- in the house, in relation to where you

1 slept, where did he sleep?
2 A In the same room.
3 Q You guys shared a room?
4 A Yes.
5 Q What about Bobby? How old is Bobby?
6 A Three years older.
7 Q And did he also have a bedroom?
8 A Yes.
9 Q Did he share with anyone?
10 A No.
11 Q And -- and you said Brian also lived there?
12 A Yes.
13 Q And -- and where did he -- uh, how old is Brian?
14 A Four years young -- older.
15 Q So you're the youngest?
16 A Yes.
17 Q On October 31, 2005, were you attending school?
18 A Yes.
19 Q And where did you go to?
20 A Mishicot High School.
21 Q What level grade were you in?
22 A At the time?
23 Q Yes.
24 A Tenth.
25 Q Now, do you know what the difference between

1 mainstream and nonmainstream classes is?

2 A Yes.

3 Q Okay. Were you in the mainstream classes at

4 Mishicot or nonmainstream?

5 A In both.

6 Q Okay. So a little -- are some of them

7 nonmainstream?

8 A Yeah.

9 Q It's also -- is it also sometimes referred to as

10 "special education" class?

11 A Yes.

12 Q Okay. What kind of grades did you receive when

13 you were in school?

14 A Usually C's, D's and F's.

15 Q Did you belong to any clubs at school?

16 A No.

17 Q Any extracurricular activities at school?

18 A No.

19 Q Did you work while you were going to school?

20 A Can you repeat that?

21 Q Did you work while you were going to school?

22 A No.

23 Q So after school, what would you normally do?

24 A Usually play video games.

25 Q Where at?

1 A At home.

2 Q So on October 31, 2005, was it a normal day for
3 you?

4 A Yes.

5 Q And by "normal", about what time would you get
6 home -- get home from the school bus?

7 A Three forty-five.

8 Q And you did on that day as well?

9 A Yes.

10 Q Was anyone else with you on the bus that day?

11 A Just Blaine.

12 Q Is that normal, you and Blaine take the bus
13 together?

14 A Yes.

15 Q Where does it drop you off at the, uh, um -- does
16 it drop you off at your house?

17 A No.

18 Q Where does it drop you off?

19 A By our mail boxes.

20 Q Okay. About how far away is that from your
21 house?

22 A About a quarter mile.

23 Q How long does it take you to get from where the
24 bus drops you off to get to your house?

25 A Well, if you walk, it takes five minutes, but if you

1 run, it probably takes you two.

2 Q Do you normally run home from the bus?

3 A Sometimes.

4 Q On October 31, 2005, did you run or walk home?

5 A I don't recall.

6 Q Now, did you go directly home from getting off

7 the bus that day?

8 A Yes.

9 Q Did you see anyone when you were walking down the

10 bus -- down to -- from the bus stop to your

11 house?

12 A No.

13 Q Other than Blaine; right?

14 A Yes.

15 Q What did you do when you got home that day?

16 A I played video games.

17 Q Do you know what Blaine was doing?

18 A He was on the phone.

19 Q Was that something you talked about beforehand?

20 A Yes.

21 Q Why -- why would that topic of conversation come

22 up while you were walking from the bus stop?

23 A Because Blaine wanted to use the phone, and I wanted

24 to go on the computer.

25 Q Did you have one connection in the house?

1 A Yes.

2 Q So if someone's on the phone, you can't be on the
3 computer?

4 A Yes.

5 Q Do you know why Blaine needed to use the phone?

6 A To call his friend.

7 Q Do you know why?

8 A To go -- to see if he was going trick or treating.

9 Q So something you guys talked about?

10 A Yes.

11 Q You didn't go -- want to go trick or treating
12 that night?

13 A I was deciding if I wanted to.

14 Q So, now, you were at home playing video games.
15 You said this is normal for you?

16 A Yes.

17 Q Do you remember what video game you were playing?

18 A I believe it was *American Chopper*.

19 Q How do you recall or how -- why would you think
20 that that's the game you were playing?

21 A Because some of the games that we have now are too
22 new.

23 Q Okay. So that was not a new game at that time?

24 A No.

25 Q How long were you playing video games after you

1 got off the bus at 3:45?

2 A About two hours.

3 Q What did you do after you were done playing video
4 games?

5 A I ate some food.

6 Q Okay. Did you make it yourself?

7 A Yes.

8 Q Where did you go to make food for yourself?

9 A In the kitchen.

10 Q How far from your bedroom is that?

11 A Twenty feet.

12 Q Do you know what time it was when you went to
13 make food for yourself?

14 A Around 5:00.

15 Q How do you know it was around five when you went
16 to the kitchen?

17 A Because I looked on the -- the oven for the time.

18 Q Okay. Was anyone else in the kitchen at that
19 time?

20 A Not that I recall.

21 Q Any time while you were eating?

22 A Just Blaine.

23 Q Okay. And -- and, uh, what was Blaine doing?

24 A He was in the kitchen holding his duffel bag.

25 Q Was he going somewhere?

1 A Yeah.

2 Q Where was he going?

3 A Trick or treating.

4 Q And this is with the same person he talked to on
5 the phone?

6 A Yes.

7 Q Do you remember what time he left?

8 A Around 5:20.

9 Q So when you say you thought it was 5:00, it was
10 certainly sometime before Blaine left?

11 A Yes.

12 Q Was anyone else home at that time?

13 A Just my mom.

14 Q And -- and do -- do you know when -- the time
15 your mom got home?

16 A Around five.

17 Q Did you see her come home?

18 A No.

19 Q How do you know it was around five?

20 A Because, usually, she keeps her door shut for her
21 bed -- to her bedroom.

22 Q Okay. But how would you know, then, it was
23 around five when she got home?

24 A She usually comes home from work at that time.

25 Q There was no reason for you to -- well, strike

1 that. The, um -- so she normally comes home at
2 five?
3 A Yes.
4 Q Did you speak with her at all bef -- after -- or
5 while you were eating supper?
6 A No.
7 Q Okay. What did you do after you were done
8 eating?
9 A I went into my mom's room and talked to her about --
10 that she was -- I asked her -- or she told me that
11 she was going with Scott to the hospital to see his
12 mom.
13 Q And who's Scott?
14 A My mom's fiance.
15 Q Did you know ahead of time that that might be
16 something she was doing that evening?
17 A No.
18 Q Okay. Did you just learn -- this was the first
19 time you heard it?
20 A Yes.
21 Q Did you see her leave?
22 A Yes.
23 Q Do you know what time that was?
24 A Around 5:30.
25 Q And was it before or after Blaine left?

1 A After.

2 Q Was it shortly after or long time after Blaine
3 left?

4 A Shortly.

5 Q So is that why you think it was about 5:30?

6 A Yeah.

7 Q When, um -- when your mom left, did she -- did
8 you see if she drove off in her car?

9 A No.

10 Q Did you see how she left? How she left to go up
11 to Green Bay?

12 A Yeah.

13 Q And -- and how did that happen?

14 A She got into Scott's truck and they left.

15 Q So you saw Scott's truck out there?

16 A Yes.

17 Q Now, did you see Scott?

18 A No.

19 Q So you're assuming he was driving?

20 A Yeah.

21 Q Okay. During the time that you and Blaine had
22 been home after getting off the bus at 3:45, did
23 you ever leave the house?

24 A Can you repeat that?

25 Q After you and Blaine got off the bus at 3:45, and

1 before your mom left, excuse me, did you leave
2 the house?
3 A No.
4 Q Did you ever see Blaine leave the house?
5 A Just at 5 or around 5:20.
6 Q So when he left to go meet his friend was the
7 first time you saw him leave?
8 A Yes.
9 Q What did you do -- well, first of all, is anyone
10 left at the house, now, after your mom leaves?
11 A No.
12 Q Do you know where Bobby is?
13 A No.
14 Q Did you go in his room to check and see if he was
15 in there?
16 A No.
17 Q What did you do after your mom left at 5:30?
18 A Watched TV.
19 Q And where do you watch T -- do you watch TV in
20 your room?
21 A In the living room.
22 Q Do you know how long you watched TV?
23 A Until around 6:00 when I got a phone call.
24 Q Who -- who called?
25 A Mike Kornely.

1 Q Who's Mike Kornely?
2 A Blaine's boss.
3 Q Do you recognize his voice when he calls?
4 A Yes.
5 Q Do you know Mike?
6 A Yes.
7 Q Why -- how do you know Mike?
8 A I used to work for him.
9 Q Did he call for you?
10 A No.
11 Q Who did he call for?
12 A For Blaine.
13 Q Did you talk to him for very long?
14 A No.
15 Q And how long did you talk to Mike?
16 A Five to ten minutes.
17 Q Do you know for certain it was 6:00 or around
18 6:00 he called?
19 A Yeah.
20 Q And how do you know that for certain?
21 A Because he called after my mom left.
22 Q So sometime after 5:30 he called?
23 A Yes.
24 Q Okay. And you watched TV for awhile before he
25 called?

1 A Yes.

2 Q So, you're making a -- would it be fair to say
3 you're just kind of estimating what time he
4 called?

5 ATTORNEY FALLON: Objection, leading.

6 THE WITNESS: Yes.

7 ATTORNEY FALLON: At this point I'd ask
8 for a more question and answer format.

9 THE COURT: I think these are fair
10 questions. Go ahead.

11 Q (By Attorney Fremgen) Did you receive any other
12 calls after Mike Kornely called at around 6:00?

13 A No.

14 Q What did you do after you got off the phone with
15 Mike?

16 A I watched TV.

17 Q And how long did you watch TV after you got off
18 the phone with Mike?

19 A Until I got another phone call at around 7.

20 Q Okay. And who called you around 7?

21 A Steven.

22 Q Who's Steven?

23 A My uncle.

24 Q Is it -- that's Steven Avery?

25 A Yeah.

1 Q Okay. And the one who lives near -- next door?
2 A Yeah.
3 Q What did Steven call you about?
4 A He asked me if I wanted to come over to the bonfire.
5 Q Now, did you look out the window and see if there
6 was a bonfire?
7 A No.
8 Q What did you say to Steven?
9 A That I would be over in a little bit.
10 Q So what did you do? Did you have the phone then?
11 A Yeah.
12 Q What did you do then?
13 A I changed my clothes out of my school clothes.
14 Q Why did you get changed?
15 A Because, usually, I don't like, uh -- I wear
16 different clothes when I go out -- well, I was
17 wearing shorts and a short-sleeve that day.
18 Q What was the weather like that night?
19 A Cold.
20 Q So what did you change into?
21 A Pants and a -- a shirt.
22 Q What -- what kind of pants?
23 A Jeans.
24 Q Now, you've been, obviously, sitting through this
25 trial. There were a pair of jeans. I believe

1 it's Exhibit No. 58. Do you recall seeing that?

2 A Yes.

3 Q Those were the jeans you were wearing?

4 A Yes.

5 Q Okay. So did you go right over to your uncle's,

6 then, after you got off the phone?

7 A No.

8 Q What did you do?

9 A I changed into that clothes, and, then, he called

10 again ten -- about ten minutes later.

11 Q Why -- why did he call again?

12 A To see if I changed my mind.

13 Q What did you say?

14 A That I was on my way.

15 Q So what did you do next, Brendan?

16 A I walked over there.

17 Q Over where?

18 A Over by Steven.

19 Q Where, exactly, did you go over when you left

20 your house at around 7-ish?

21 A To the fire pit.

22 Q To a fire pit?

23 A Yeah.

24 Q Okay. Where's the fire pit located at Steven's

25 house?

1 A Behind his garage.

2 Q Did you see the fire going?

3 A Yes.

4 Q Could you describe what it looked like?

5 A It was two feet high.

6 Q Have you seen fires back there before?

7 A Yes.

8 Q How often have you seen fires? Do you know?

9 A Not that I recall.

10 Q More than once?

11 A Yes.

12 Q Okay. Did it look like it was normal size fire?

13 A Yes.

14 Q Did you see anything on the fire?

15 A Just some tires and some branches.

16 Q So about how close did you get to the fire?

17 A Ten, fifteen feet.

18 Q Where was Steven when you got to the fire?

19 A Standing, like, by the golf cart.

20 Q Okay. And where was the golf cart by the fire?

21 A About 15 feet away from it.

22 Q All right. What did you do when you got down to

23 the fire?

24 A I asked him what we were going to do, and he told me

25 that he wanted to pick up the yard, and we drove

1 around in the golf cart and picked up stuff.

2 Q Okay. What kind of stuff did you pick up?

3 A Wood, tires, an old cabinet and the van seat.

4 Q Now, is this stuff that's just lying around your

5 yard?

6 A Yes.

7 Q And -- and by -- I guess what -- to clarify, was

8 it your yard or Steven's yard?

9 A Both.

10 Q Now, we go back to the wood. Do you recall where

11 the wood was on your yard? Where it was?

12 A All over.

13 Q Why -- do -- do you know why there was wood all

14 over your yard?

15 A Because it was, uh, leftovers from building our

16 garage.

17 Q Leftovers from?

18 A Building our garage.

19 Q What -- what kind of wood?

20 A Timber. Whatever.

21 Q Timber? Would use to frame the garage you mean?

22 A Yeah.

23 Q Okay. You said an old cabinet?

24 A Yeah.

25 Q Where was that?

1 A Maybe a hundred feet away from the -- our garage.
2 Q And -- and some old tires you said?
3 A Yes.
4 Q Okay. Where were the tires when you -- when you
5 found them?
6 A In the same place as the cabinet.
7 Q So were most of these things on your land?
8 A Yes.
9 Q Okay. I'm sorry, did you mention a van seat,
10 too?
11 A Yes.
12 Q Okay. Where was that?
13 A On the side of our garage.
14 Q Do you know why it was there?
15 A Just that Steven got it for -- because we couldn't
16 find one of the seats for the van.
17 Q The van, meaning that maroon van, that was out in
18 front of your house?
19 A Yes.
20 Q Okay. What did you do with the items as you
21 collected them?
22 A We put them in the golf -- the back of the golf cart.
23 Q And what did you do with them after that?
24 A When the back of the golf cart got full, we drove it
25 to the fire.

1 Q Did you throw them on the fire?
2 A Some of it.
3 Q What did you do with the rest?
4 A Piled it -- or planted it -- piled it right by the
5 fire.
6 Q How many trips did you take in the golf cart
7 collecting debris from your yard?
8 A Around four.
9 Q And how long did it take you to do that? Collect
10 the debris in your yard?
11 A About 45 minutes.
12 Q And after that, what did you do?
13 A Went into the garage. He -- Steven asked me to help
14 him clean up something in the garage on the floor.
15 Q Okay. Now, have you been in the garage before?
16 A Yes.
17 Q Had you ever worked with Steven before in the
18 garage?
19 A Yes.
20 Q Was it unusual for him to ask you to help you
21 clean something out of the garage?
22 A Not really.
23 Q What did that, uh -- you said it -- something to
24 clean up. What did the -- what was the
25 something? Do you know?

1 A No.

2 Q What did it look like?

3 A Looked like some fluid from a car.

4 Q So what did you do to clean up? Or how did you
5 clean up the -- the mess on the floor?

6 A We used gas, paint thinner and bleach with, uh, old
7 clothes that me and my brothers don't fit in.

8 Q Okay. Well, let me ask you, was it a -- a large
9 spill?

10 A About three feet by three feet.

11 Q And did you pour gasoline on it?

12 A No.

13 Q So you were -- what -- what did you do? If you
14 weren't pouring the gasoline, what were you doing
15 to help clean up?

16 A I was looking through the bag to find stuff to clean
17 it up with.

18 Q Bag of what?

19 A Bag of the clothes.

20 Q And did you clean it up with the -- something
21 from the bag of old clothes?

22 A Yes.

23 Q Okay. And as you did that, what did you do with
24 the rags? Did you just wash them out?

25 A What do you mean?

1 Q When you cleaned up with the old clothes, what
2 did you do with them as they got dirty?
3 A We picked them up and we threw them on the fire.
4 Q Okay. Now, you said that you used three items to
5 try to clean up the -- the mess on the floor?
6 A Yes.
7 Q And did you ever pour anything on -- on the mess?
8 A No.
9 Q Okay. What was -- what was the second item that
10 Steven used?
11 A Paint thinner.
12 Q And did that clean up the mess?
13 A A little bit.
14 Q Same thing? You used rags, then, to clean up?
15 A Yes.
16 Q How would you -- how did you do that? Would --
17 did you get down on your hands and knees? Can
18 you explain how you did that?
19 A We would just throw it on the floor and we used our
20 feet.
21 Q And, then, you would do what with them?
22 A Move them around.
23 Q And, then, after they -- what did you do with
24 them after they were dirty?
25 A Picked them up and threw them on the fire.

1 Q And how did you pick them up?

2 A By our fingers.

3 Q The -- the bleach, that -- was that last?

4 A Yeah.

5 Q Where did Steven get the bleach?

6 A From the house.

7 Q Did you go in with him?

8 A No.

9 Q Did you ever go in the house that night?

10 A Not that I recall.

11 Q His house?

12 A No.

13 Q Do you know where Steven keeps his bleach?

14 A Usually in the bathroom.

15 Q And how do you know that?

16 A Because I was in the bathroom a few times and I seen

17 it.

18 Q Can you estimate, in the past, how many times

19 you'd been in the bathroom?

20 A Twenty to twenty-five.

21 Q So you're familiar with his house a little bit?

22 A Yes.

23 Q Did you ever ask Steven what it was that was on

24 the floor?

25 A No.

1 Q Now, do you recall -- or do you recall, at some
2 point, from February 27, or on, 2006, speaking to
3 Investigators Wiegert or Fassbender?
4 A Yes.
5 Q And -- and you recognize them; right?
6 A Yeah.
7 Q They're here in court?
8 A Yes.
9 Q Okay. And -- and you spoke to them a couple
10 times?
11 A Yes.
12 Q Did you tell them what you saw on the floor?
13 A Yes.
14 Q What did you tell them?
15 A That it could have been blood.
16 Q What did you tell them the first time they asked
17 you what it was on the floor?
18 A I can't remember.
19 Q How long did it take you to clean up what was on
20 the floor?
21 A Fifteen minutes.
22 Q Now, did anything happen to your clothes cleaning
23 up the -- the mess on the floor?
24 A Not that I noticed right away.
25 Q What did you notice later?

1 A That there was bleach stains on them.

2 Q Bleach on -- on what?

3 A The pants.

4 Q Okay. Did you ever wear those pants again?

5 A Not that I remember.

6 Q What did you do with them?

7 A I washed them that night and just put them in my
8 dresser.

9 Q So, after you finished cleaning up, you said it
10 took about 15 minutes?

11 A Yes.

12 Q What did you do then?

13 A We went back outside and we put some of the -- more
14 of the stuff that we picked up from the yard.

15 Q How close to the fire did you get when you were
16 throwing more stuff onto it?

17 A About five feet.

18 Q Did you, yourself, get any phone calls while you
19 were out there?

20 A Not that I talked to.

21 Q Did that -- so someone call you?

22 A My mom called Steven.

23 Q But you didn't talk to her?

24 A No.

25 Q Do you know what time that was?

1 A Not that I recall.

2 Q Did he tell you what she said to -- to him?

3 A Yeah.

4 Q Was Steven outside with you the whole time

5 watching the fire?

6 A Yes.

7 Q Other than going in to get the bleach, did he

8 ever go inside?

9 A No.

10 Q So, now, you're watching the fire for awhile;

11 right?

12 A Yes.

13 Q What are you doing?

14 A I only can recall that Steven was talking to me about

15 a phone call that he got from Jodi.

16 Q Okay. Do you recall any other conversations you

17 had?

18 A Not that I recall.

19 Q Did you -- but you were talking?

20 A Yes.

21 Q Do you know how long you were out there waiting

22 and -- or, excuse me, talking and watching the

23 fire?

24 A No.

25 Q About what time did you go home?

1 A Around ten.

2 Q Do you recall -- and, again, I -- maybe I asked

3 you this. I'm sorry. Did -- I asked you what

4 time you received the call from your mom?

5 A Yeah.

6 Q Did you know what time that was?

7 A No.

8 Q Okay. When you got home, was anyone else home?

9 A Not that I recall.

10 Q Did you see any brothers?

11 A No.

12 Q Did you talk to your mom at all?

13 A Yeah.

14 Q When was that?

15 A About 10:20.

16 Q Was she home then?

17 A No.

18 Q How did you talk to her?

19 A She called on the house phone.

20 Q What were you doing when she called?

21 A Sitting on the couch.

22 Q What time did you go to bed?

23 A After I had got done talking to my mom.

24 Q Now, following October 31, 2005, did you lose any

25 weight?

1 A Yes.

2 Q How much did you lose?

3 A Five, ten pounds.

4 Q Were you doing this on purpose? Is it --

5 A No.

6 Q You weren't trying to lose weight?

7 A Well, I was trying to.

8 Q Okay. Why were you trying to lose weight?

9 A Because people were calling me fat and because I

10 thought that my first girlfriend broke up me -- with

11 me because of my weight.

12 Q You mean first ever or --

13 A Yeah.

14 Q Prior to October, or -- well, let me ask -- ac --

15 actually, ask you it this way. Have you ever

16 seen Teresa Halbach before?

17 A No.

18 Q Now, you, obviously, know that name; correct?

19 A Yes.

20 Q When was the first time that you recall hearing

21 the name or seeing her picture?

22 A When she was reported missing.

23 Q When was that? Do you recall?

24 A Not that I remember.

25 Q And how did you come about hearing about her

1 being missing?

2 A On that day, my mom called. She told me to turn on

3 the news.

4 Q So you watched TV?

5 A Yes.

6 Q Now, at some point your Uncle Steven is arrested;

7 correct?

8 A Yes.

9 Q Did you watch any TV accounts about that?

10 A Not that I remember.

11 Q Did you ever see Teresa Halbach alive on

12 October 31, 2005?

13 A No.

14 Q Did you ever see her body that night?

15 A No.

16 Q Now, you spoke with Investigators Wiegert and

17 Investigator Fassbender; correct?

18 A Yes.

19 Q And you were in court for the video as well;

20 correct?

21 A Yes.

22 Q Obviously, that's you on the video; right?

23 A Yes.

24 Q Do you realize how serious this charge is?

25 A Yes.

1 Q Why did you tell those two investigators that you
2 participated in killing and -- and raping Teresa
3 Halbach?
4 A I don't know.
5 Q You have no idea why you would say that?
6 A No.
7 Q Okay. Brendan, I want to talk about that video a
8 little bit with you, okay?
9 A Okay.
10 Q You -- you know it was being videotaped that day?
11 A Yes.
12 Q And -- and the officers explained to you your
13 rights; is that right?
14 A Yes.
15 Q Did you understand them?
16 A Yes.
17 Q When they -- you first talked to the officers
18 about Teresa Halbach, did you immediately tell
19 them that you had -- you were there and
20 participated killing and raping her?
21 A No.
22 Q In your mind, Brendan, do you feel as if there
23 were promises made to you by the officers?
24 A Sort of.
25 Q What do you mean by that?

1 A That if I told the truth, that I won't go away for
2 life.

3 Q Did you tell the truth?

4 A No.

5 Q What other promises do you think -- in your mind,
6 what other promises were made to you?

7 A That's all I recall.

8 Q There were times that they wanted to talk to you
9 about a gun; right?

10 A Yes.

11 Q And did you ever admit to using the gun?

12 A No.

13 Q Why didn't you admit to that?

14 A Because I don't like guns.

15 Q Was that different than it -- when you admitted
16 to what you're saying you didn't do?

17 A Yes.

18 Q Why is that? Why do you believe that's
19 different?

20 A I don't know.

21 Q When you were being, um, questioned by the
22 officer, the two investigators, did they ever
23 tell you that they were telling you the truth
24 about things?

25 A Did I feel like that?

1 Q No. Did they? Did they tell you that?

2 A No.

3 Q Did they ever say they were lying about anything?

4 A Did they say I was lying?

5 Q No. Did they say they were lying to you?

6 A No.

7 Q You don't know what they were telling you was
8 true or not; correct?

9 ATTORNEY FALLON: Objection, leading, at
10 this point.

11 THE COURT: Under 906.11 (3), some leading
12 questions are permissible, mainly foundational
13 questions. We're now getting into some evidentiary
14 areas, so, I'm going to sustain the objection.

15 ATTORNEY FREMGEN: That's fine. I was
16 sense -- sense -- essentially using that to try to
17 lead up to this question, which will be a little
18 more open-ended.

19 Q (By Attorney Fremgen) If you didn't know that
20 they're lying to you, or telling you the truth,
21 Brendan, why did you answer the questions to them
22 the way you did?

23 A I don't know.

24 Q Do you have any explanation for admitting to
25 this?

1 A No.

2 Q How many times had you talked to the officers
3 before March 1?

4 A Twice.

5 Q And, when -- when did those two times occur?

6 A In November of 2005.

7 Q How many times in November?

8 A Twice.

9 Q Okay. What about -- anytime between November,
10 2005, and March 1, 2006?

11 A To March?

12 Q Between those two dates, did you talk to the
13 investigators? Officers -- Investigators Wiegert
14 or Fassbender?

15 A Yes.

16 Q And how many times did you talk to them between
17 those two dates?

18 A Once in February and -- or, there was three times, on
19 February 27, and one on February -- or March 1.

20 Q So where -- where were the three times in
21 February? Where did those occur?

22 A One at school, one in Two Rivers and one, I believe,
23 it was the Fire Department in Mishicot.

24 Q What happened after they spoke to you on
25 February 27? Did they arrest you?

1 A No.
2 Q What happened to you? Where did you go?
3 A They put us up in Fox Hills Resort.
4 Q Okay. How -- how -- how long were you up there?
5 A We only stayed up there for that night.
6 Q Which night? What's the date of that?
7 A February 7 -- 27.
8 Q So where did you go on February 28?
9 A Home.
10 Q Where did you sleep on February 28?
11 A At home.
12 Q Where did you go on March 1?
13 A Went to school.
14 Q And after that?
15 A The investigators talked to me and brought me to --
16 first they brought me to my house to get the pants,
17 and they brought me to Manitowoc.

18 ATTORNEY FREMGEN: I have nothing else,
19 Judge.

20 THE COURT: Cross.

21 ATTORNEY FALLON: Yes. Thank you.

22 **CROSS-EXAMINATION**

23 BY ATTORNEY FALLON:

24 Q Mr. Dassey, I have a few questions for you; all
25 right?

1 A Okay.

2 Q First, let me ask this: How long does it take
3 you to walk from the trailer, where you were
4 living with your mom and your brothers, to your
5 Uncle Steve Avery's trailer?

6 A Around a minute or two.

7 Q All right. You like to play video games; right?

8 A Yes.

9 Q As a matter of fact, when you get done with
10 school, you would like to design video games?

11 A Yes.

12 Q You really enjoy working with them?

13 A Yes.

14 Q And you're pretty good with them?

15 A Yes.

16 Q All right. And, at school, you have just two
17 special classes; right?

18 A I don't -- I don't know.

19 Q Well, you said you had both, um, mainstream and
20 some special classes?

21 A Yes, but I don't know the names of the --

22 Q How many special classes did you have? Two;
23 right?

24 A That I recall, yeah.

25 Q Okay. Otherwise, you're in with the rest of the

1 regular students; right?

2 A Yes.

3 Q Okay. Now, let me show you something. Exhibit
4 58. Do you recognize these?

5 A Yes.

6 Q All right. These are the blue jeans that you
7 were wearing on the night of October 31?

8 A Yes.

9 Q All right. And these are the ones that you've
10 just told your attorney that, on March 1, you
11 went with Special Agent Fassbender to pick these
12 up on your way to the Sheriff's Department?

13 A Yes.

14 Q Okay. These are the pants?

15 A Yes.

16 Q All right. You're telling us you washed them
17 that night?

18 A Yes.

19 Q Did you wash anything else that night?

20 A Not that I recall.

21 Q Just those pants?

22 A Yes.

23 Q All right. Now, you just told us that you were
24 cleaning up the floor in the garage?

25 A Yes.

1 Q But you didn't get on your hands and knees to
2 clean the floor?

3 A No.

4 Q Okay. In other words, you just put whatever
5 cleaner down and you used your feet to mop up the
6 stuff with the old clothes?

7 A Yes.

8 Q Is that right?

9 A Yes.

10 Q Okay. You're sure?

11 A Yes.

12 Q Okay. And you just told us that the pants didn't
13 seem to get dirty? You didn't notice them being
14 dirty?

15 A Yeah.

16 Q And you had just put them on before you went over
17 there?

18 A Yes.

19 Q Okay. Where did you get them from before -- when
20 you changed your clothes?

21 A In my dresser.

22 Q In your dresser drawer?

23 A Yes.

24 Q Were they clean, then, when you put them on?

25 A Yes.

1 Q All right. If they were clean when you put them
2 on, and you didn't notice them getting dirty, and
3 you never got on your hands and knees, why did
4 you wash them?

5 A Because I usually do that after a while.

6 Q You usually wash your pants after wearing them
7 for two hours?

8 A Well, I usually wash pants for school every day
9 almost.

10 Q You do laundry every night?

11 A Yes.

12 Q Mr. Dassey, you went over to your Uncle Steven's
13 house at some point after school?

14 A No.

15 Q You didn't tell your mother that you went over
16 there?

17 A I didn't.

18 Q All right. Well, let me, um, play something for
19 you, and I want to ask you a couple of questions;
20 all right?

21 A Okay.

22 (Wherein audio clip is played.)

23 Q That was the conversation between you and your
24 mother; right?

25 A Yes.

1 Q All right. Why didn't you tell your mother at
2 5:00 what you had seen earlier?
3 A Because it really didn't happen.
4 Q Was Teresa Halbach alive at 5:00, Mr. Dassey?
5 A She was never there at -- when I was there.
6 Q Never where, sir?
7 A I never seen her there.
8 Q You never saw her there?
9 A No.
10 Q All right. Then, why is your mother asking you
11 that question?
12 A I don't know.
13 Q Where do you think she would have gotten the idea
14 that you were there before 5:00, sir?
15 A I don't know.
16 Q She came home about 5:00?
17 A Yes.
18 Q So at 5:00, you're home, your brother, Blaine, is
19 still there, and you're there?
20 A Yes.
21 Q Your brother, Blaine, leaves at 5:15, 5:20?
22 A Yes.
23 Q Your mother leaves 5:20, 5:30?
24 A Yes.
25 Q And she leaves with Mr. Tadych?

1 A Yes.

2 Q All right. Mr. Dassey, let me ask you a
3 question: In the interview you gave on March 1
4 with these two gentlemen here, you told them that
5 your uncle's fiance, Jodi Stachowski, called;
6 correct?

7 A Yes.

8 Q You told him that she called twice; correct?

9 A Yes.

10 Q All right. You told them that she called at
11 5:30?

12 A Yes.

13 Q How do you know that, if you weren't there?

14 A Because Steven told me.

15 Q He told you that?

16 A Yes.

17 Q What time did he tell you the other time?

18 A What do you mean?

19 Q I'm sorry?

20 A What do you mean?

21 Q How many times did she call that night?

22 A Twice.

23 Q How many times were you there?

24 A When I was there?

25 Q Yeah.

1 A Once.

2 Q I have something else I'd like you to listen to,
3 sir. I have something else for you, sir. One
4 moment.

5 (Wherein portion of March 1 videotape is played)

6 ATTORNEY FALLON: Record should reflect
7 that was about 14 minutes.

8 THE COURT: Do you have the start and
9 ending times?

10 ATTORNEY FALLON: Yes. Uh, 11:37, 47, to,
11 I believe it was about 11:50, approximately.

12 Q (By Attorney Fallon) All right. Mr. Dassey, you
13 told the officers that you were there and Teresa
14 was alive?

15 A Yes.

16 Q She was alive?

17 A But it really didn't happen.

18 Q You made that all up?

19 A Yes.

20 Q You just happened to know Teresa's words?

21 A No.

22 Q How do you know what she said?

23 A I made it up.

24 Q You made it up?

25 A Yes.

1 Q You made up the part that you raped her?

2 A Yes.

3 Q You made up the part that she told you not to do

4 it?

5 A Yes.

6 Q To do the right thing?

7 A Yes.

8 Q And to tell your uncle not to do it?

9 A Yes.

10 Q You made that up?

11 A Yes.

12 Q Now, Mr. Dassey, didn't you tell your mother in a

13 phone call on May 13 that you had gone over to

14 your Uncle Steven's after school and before she

15 came home?

16 A Yes.

17 Q You did?

18 A Yes.

19 Q And, again, on May 15, the first tape we played,

20 she's asking you why you didn't tell her. Why

21 didn't you?

22 A Because it didn't happen.

23 Q Why did you tell her you went over there, sir?

24 A I don't know.

25 Q You lied to your mother as well?

1 A Yes.

2 Q And you lied to the police?

3 A Yes.

4 Q Are you lying -- you're lying today?

5 A No.

6 Q Didn't you tell your mother, when she asked you,
7 when did you go over there, well, I went over
8 earlier and then came home before you did.

9 A Yeah.

10 Q You told her that; right?

11 A Yeah.

12 Q All right. And she said, why didn't you say
13 something to me then; right?

14 A Yeah.

15 Q And you answered, I don't know, I was too scared.

16 A Yeah.

17 Q You didn't tell your mother you weren't there,
18 did you?

19 A Because I never went up -- out -- over there.

20 Q My question, young man, is you didn't tell your
21 mother you weren't there; right?

22 A No.

23 Q That's not right?

24 A I didn't tell her.

25 Q You did not. Why?

1 A Because I -- I didn't go over there.

2 Q Why did you let her believe that you did?

3 A I don't know.

4 Q Now, speaking of these -- these lies, Mr. Dassey,
5 on your direct examination, you told us that
6 there was a fire that night; right?

7 A Yes.

8 Q But when you were interviewed up in Crivitz by
9 Detective O'Neill, you remember the gentleman who
10 testified a couple of days ago?

11 A Yes.

12 Q All right. You told him there was no fire that
13 week; right?

14 A Yes.

15 Q So you lied to him?

16 A Yes.

17 Q Why did you lie to him?

18 A Because I'm just like my family. I don't like cops.

19 Q You don't like cops. Why didn't you tell
20 Detective O'Neill what you told us on direct
21 examination today?

22 A I don't know.

23 Q You didn't -- if you didn't do anything wrong,
24 sir, why didn't you tell Detective O'Neill?

25 A I don't know.

1 Q Your brother's interview was done much more
2 quickly than yours; right?

3 A Yeah.

4 Q On November 6?

5 A Yes.

6 Q In fact, he was done in about 10 minutes, maybe,
7 15, maybe?

8 A I believe so.

9 Q All right. Now, in that second interview -- you
10 just told us you were interviewed twice up in
11 Crivitz area. On the second interview, you did
12 tell them about a fire.

13 A Yes.

14 Q When did you tell them the fire happened that
15 time?

16 A On October 31.

17 Q Isn't it a fact you told them that the fire was
18 Tuesday or Wednesday of that week and not Monday?

19 A I might have.

20 Q I want to play one very brief clip from this
21 March 1 interview, sir. I'd like you to watch it
22 and then answer a question or two; all right?

23 A Yes.

24 (Wherein portion of March 1 videotape is played)

25 ATTORNEY FALLON: For the record, I started

1 at 2:10:25, uh, 2.

2 Q (By Attorney Fallon) Mr. Dassey, if you didn't

3 do anything, why did you feel sad?

4 A I don't know.

5 Q Why did you apologize?

6 A I don't know.

7 Q They didn't tell you to apologize?

8 A No.

9 Q You apologized on your own; right?

10 A Yes.

11 Q Do you always apologize for things that you

12 didn't do?

13 A Not really.

14 Q In fact, you usually apologize when you've done

15 something wrong?

16 A Not really.

17 Q You don't apologize then either?

18 A Sometimes.

19 Q Okay. When do you apologize?

20 A For both.

21 Q For both? Explain, please.

22 A I would say that I'm sorry for, uh, some things I do

23 and some I don't.

24 Q Is that why you apologize in this case? Because

25 you were sorry for what you had done to Teresa?

1 A No, because I didn't do it.

2 Q Why did you apologize?

3 A I don't know.

4 Q Now, all week you sat in court with your head
5 down and you didn't look at the tape of the
6 interview when we played it on Friday. Why?

7 A Huh?

8 Q Why did you not look at the tape?

9 A Because I didn't have to.

10 Q In fact, you didn't look at the tape this morning
11 when I played it for the fifth -- for almost 15
12 minutes, did you?

13 A No.

14 Q You didn't have to; right?

15 A No.

16 Q That's because you knew what was on it?

17 A Yes.

18 Q Yeah. Are you ashamed of your behavior? Is that
19 why your head was down all week?

20 A No.

21 Q Are you feeling guilty?

22 A No.

23 Q Then why were you hanging your head all week?

24 A I had my head down because I can hear better that
25 way.

1 Q Are you hearing me all right now?

2 A Yes.

3 Q You've heard Detective Wiegert testify on --

4 A Yes.

5 Q -- Friday and Saturday morning; right?

6 A Yes.

7 Q And he said he had no idea that there was a

8 sexual assault?

9 A Yes.

10 Q You were the one who brought up the fact of a

11 sexual assault; right?

12 A Yes.

13 Q You brought up the rape; right?

14 A Yes.

15 Q You went over to your uncle's cabin because you

16 knew you were going to have sex; right?

17 A No.

18 Q Why did you tell the police that your Uncle

19 Steven was proud of you for what you had done?

20 A I don't know.

21 Q Why did you say that you sexually assaulted her?

22 A I don't know.

23 Q Why did you say you put your penis in her for

24 five minutes?

25 A I don't know.

1 Q Why did you tell the police that you thought it
2 was blood in the garage?
3 A Because it was the color of red.
4 Q Because it was the color of red?
5 A Yeah.
6 Q It looked like blood?
7 A It could have been.
8 Q What else would it have been?
9 A Fluid from a car.
10 Q Mr. Dassey, have you ever used bleach to clean up
11 car fluid?
12 A That was the first time I cleaned up car fluid.
13 Q First time?
14 A Yes.
15 Q All right. And you used gas?
16 A Yes.
17 Q Used paint thinner?
18 A Yes.
19 Q And you used bleach?
20 A Yes.
21 Q You used the bleach?
22 A Well, Steven put it on the ground.
23 Q How did the bleach get on your pants if you never
24 got on the ground, sir?
25 A It could have splashed up on my pants.

1 Q All the way up to your waist?

2 A That, or I could have had some -- the sprinkles on
3 the bottom could have been from splashing on the
4 ground, and when I picked up the -- the towel -- the
5 rags that we used, I could have wiped my hands on my
6 pants.

7 Q Those rags were Teresa's clothing; right?

8 A No.

9 Q Why did you tell the officers her clothing were
10 in the fire?

11 A I don't know.

12 Q All right. I want to show you a picture. I'm
13 showing you what is marked for identification, or
14 received into evidence, excuse me, as Exhibit
15 204. You recognize the people in that picture?

16 A Yes.

17 Q That's your Uncle Steve on the right?

18 A Yes.

19 Q And your grandma and your grandpa in the middle?

20 A Yes.

21 Q And that's you on the left?

22 A Yes.

23 Q And that's at the cabin in Crivitz?

24 A Yes.

25 Q As a matter of fact, that's the search warrant on

1 the table; right?

2 A I couldn't -- can't tell.

3 Q Do you remember that picture being taken?

4 A Yes.

5 Q And it was taken right around the same time you

6 were interviewed by Detective O'Neill; right?

7 A I can't recall.

8 Q Well, you just said you remember when the picture

9 was taken. When was it taken?

10 A In November something.

11 Q In November?

12 A Yes.

13 Q While you were up at Crivitz?

14 A Yes.

15 Q And before your Uncle Steven was arrested?

16 A Yes.

17 Q So it would have been taken between November 5

18 and, say, November 9?

19 A Yes.

20 Q What were you talking about in that -- right

21 around the time of that picture?

22 A I can't remember.

23 Q All right. Is your Uncle Steven proud of you?

24 Does he have that proud look in his face?

25 A No.

1 Q What are you thinking in that picture? Do you
2 remember?

3 A No.

4 Q Why did you tell the police that your Uncle
5 Steven was proud of you for helping him?

6 A I don't know.

7 Q Why did you tell them he couldn't have done it
8 without you on that March 1 interview?

9 A I don't know.

10 Q Well, he was proud of you for helping him, wasn't
11 he?

12 A No.

13 Q He was not?

14 A Because it didn't happen.

15 Q I'm sorry? What didn't happen?

16 A All the stuff that I said.

17 Q Well, did you clean up?

18 A Yeah.

19 Q All right. You helped put things on the fire?

20 A Yes.

21 Q All right. As a matter of fact, you saw this car
22 seat; right?

23 A Yes.

24 Q It's sitting right in front of you; right?

25 A Yes.

1 Q You helped your uncle put that car seat on the
2 fire?
3 A Yes.
4 Q And you helped him put tires on the fire?
5 A Yes.
6 Q So that part's true?
7 A Yes.
8 Q And he told you, when he was done, thanks for
9 helping. I'm proud of you. I couldn't have done
10 it without you.
11 A Not that I remember.
12 Q Well, let's talk about your memory. How is it
13 that you were able to tell the police officers,
14 Mr. Fassbender and Mr. Wiegert, so much detail
15 about what happened to Teresa if you weren't
16 there?
17 A I don't know.
18 Q What do you mean, sir, you don't know?
19 A I could have got it out of books.
20 Q Out of books?
21 A Yeah.
22 Q Tell us, what books could you have gotten that
23 out of?
24 A I don't remember the names.
25 Q Where else could you have gotten it?

1 A I don't know.

2 Q All right. Out of books. Let's talk about that
3 then. Would you say you have a good memory,
4 Mr. Dassey, or a medium one, or a poor one?

5 A Between poor and medium.

6 Q All right. And would you agree with the
7 counselor, Ms., um -- Ms. Gross,
8 Schoenenberger-Gross, when she testified on, uh,
9 Saturday morning that you do have memory problems
10 when it comes to learning stuff at school?

11 A Yes.

12 Q As a matter of fact, when you read things, or
13 when teachers tell you things, it's hard for you
14 to remember that so you do well on your tests;
15 right?

16 A Yes.

17 Q All right. But for other things, things that you
18 personally experience, things that you see and
19 feel and hear and smell yourself, your memory is
20 better for those things; right?

21 A Somewhat.

22 Q And -- and that's because you actually live
23 through them, you experience them; right?

24 A Yeah.

25 Q Well, when was it that you read these books to

1 help you provide all that detail to these
2 officers?
3 A Probably three, four years ago.
4 Q I'm sorry?
5 A Three or four years ago?
6 Q Three or four years ago? And you just happened
7 to remember all of that on March 1, 2006?
8 A Yes.
9 Q And you just happened to be able to tell them the
10 exact travels that your Uncle Steve took in
11 driving Teresa Halbach's SUV from his garage to
12 the place in the salvage yard where the vehicle
13 was hidden?
14 A Yes.
15 Q What book had that story in it, Mr. Dassey?
16 A I don't know.
17 Q What book that you read ever had the story of a
18 woman chained to a bed, raped by two -- raped,
19 stabbed, and then her body thrown on a fire?
20 What book was that, sir?
21 A I believe it was called, *Kiss the Girls*.
22 Q All right. Who wrote the book?
23 A I don't remember his name.
24 Q Mr. Dassey, please look at Exhibit 208?
25 A Yeah.

1 Q You drew that; correct?

2 A Yes.

3 Q That's your depiction?

4 A Yes.

5 Q Of Teresa Halbach chained to the bed?

6 A I don't understand.

7 Q Is that your dep -- is that your description? Is

8 that how she looked when you saw her on the bed

9 in Uncle Steven's bedroom?

10 A I didn't see it.

11 Q You just made that up?

12 A As I said, I got it out of that book.

13 Q Yeah. The bed is a bed that you could see from

14 the living room? You could see down the hallway

15 and see into that bedroom?

16 A Yes.

17 Q Exhibit 210. You drew this as well, sir;

18 correct?

19 A Yes.

20 Q That is your description of the burn area?

21 A Yes.

22 Q That is your description of Teresa on the fire in

23 the burn pit?

24 A Yes.

25 Q You made that up?

1 A Yes.

2 Q Why?

3 A I don't know.

4 Q Did you make Exhibit 208 up?

5 A Yes.

6 Q Why?

7 A I don't know.

8 Q Exhibit 209. You drew this picture of the
9 garage; correct?

10 A Yes.

11 Q This is your picture of Teresa Halbach; right?

12 A Yes.

13 Q And that's the area right here where you cleaned
14 up; right?

15 A No.

16 Q Well, you said that you cleaned up a -- a three
17 foot by three foot stain in the garage on direct
18 examination; right?

19 A It was in the garage but not right there.

20 Q You told the police it was right behind the lawn
21 mower?

22 A Yes.

23 Q And that's where you cleaned up?

24 A No.

25 Q Why did you tell the police this was the area of

1 the cleanup?

2 A I don't know.

3 Q Why did you put Teresa Halbach's representation,
4 this stick person, why did you tell them that was
5 Teresa's body?

6 A I don't know.

7 Q Exhibit 207. You drew this picture of the knife?

8 A Yes.

9 Q You said this was the knife that your Uncle
10 Steven used to stab Teresa Halbach?

11 A Yes.

12 Q You drew that?

13 A Yes.

14 Q And you describe it as having a black handle?

15 A Yes.

16 Q And you told the police this was the knife that
17 you used to cut across the front of her throat?

18 A Yes.

19 Q Why?

20 A I don't know.

21 Q Mr. Dassey, why did you tell the police that the
22 burn pile smelled bad?

23 A I don't know.

24 Q It smelled bad because there was a body there;
25 right?

1 A No.

2 Q You saw body parts in that fire, didn't you?

3 A No.

4 Q You told the officers that on February 27 you saw
5 body parts?

6 A Yes.

7 Q You told your cousin, Kayla, you saw body parts
8 in December?

9 A No.

10 Q No? She just made that up?

11 A Yes.

12 Q Okay. Did you ever talk to Kayla about the
13 events? The things that happened on October 31?

14 A I might have talked about Steven to her, but not what
15 happened on that day.

16 Q What would you think you would have told her
17 about Steven?

18 A I don't remember what I told her.

19 Q Did you tell her anything about body parts or --
20 or any of the information that you told, uh,
21 Investigators, uh, Fassbender and Wiegert?

22 A No.

23 Q Okay. You're sure?

24 A Yes.

25 Q Absolutely sure?

1 A Yes.

2 Q Okay. Then tell us, how is it that you and
3 Kayla, both, came up with telling and seeing body
4 parts in the fire if you never talked about it?

5 A She could have heard it on the news.

6 Q What newscast would that have been, sir?

7 A I don't know.

8 Q Your seeing body parts in the fire? What
9 newscast was that?

10 A I don't know. When I heard that they found bones.

11 Q No. My question is, you told the police on
12 February 27 you saw body parts; right?

13 A Yes.

14 Q All right. Kayla is telling her counselors of a
15 conversation she had with you. She's telling her
16 counselors in January that she talked to you in
17 December and that you had told her about body
18 parts. How could that be?

19 A I don't know.

20 Q How do you feel about this today? Right now.

21 A That I just want to go home.

22 Q That's all you feel right now? You just want to
23 go home?

24 A And scared.

25 Q Do you feel sorry for Teresa?

1 A Well, I know everybody feels sorry for losing
2 someone.

3 Q What do you feel?

4 A I feel sorry for them.

5 Q Why? Why?

6 A Because I know how it feels to lose someone that you
7 love.

8 Q And you're telling us today that you had nothing
9 to do with the -- with the death of Teresa
10 Halbach?

11 A No.

12 Q Why did you tell the officers that you did?

13 A I don't know.

14 Q And is it just a coincidence that you had all the
15 details about how she died?

16 A I don't know.

17 Q Do you recognize this exhibit; 170?

18 A Yes.

19 Q This is the rake that your Uncle Steven used to
20 tend the fire that night, isn't it?

21 A I can't remember.

22 Q You can't remember?

23 A No.

24 Q How about this shovel? Exhibit, uh, 171?

25 A Yes.

1 Q He used this shovel that night; right?

2 A Well, I know he used a shovel and a rake, but I don't
3 know that they're it.

4 Q How did you know that Teresa was handcuffed to
5 the bed?

6 A I don't know.

7 Q You just made that up?

8 A Yes.

9 Q You've never told a lie before that got you into
10 so much trouble, have you?

11 A No.

12 ATTORNEY FALLON: That's all.

13 THE COURT: Redirect?

14 **REDIRECT EXAMINATION**

15 BY ATTORNEY FREMGEN:

16 Q Brendan, you had been asked by Attorney Fallon
17 about the jeans. And, specifically, asked about
18 how bleach got on them; correct?

19 A Yes.

20 Q You said you might have wiped your hands on them?

21 A Yeah.

22 Q Do you recall wiping your hands on them?

23 A I think I did.

24 Q When did you notice that they were dirty with
25 bleach?

1 A When I got home.

2 Q That same night?

3 A Yes.

4 Q Mr. Fallon played a -- played a portion of the
5 video for you to watch and asked you some
6 questions. Do you recall that?

7 A Yes.

8 Q And he questioned you about how you had answered
9 the questions to the two officers; correct?

10 A Yes.

11 Q Had you said the same thing before that to the
12 officers?

13 ATTORNEY FALLON: Objection, vague.

14 ATTORNEY FREMGEN: That's fine.

15 Q (By Attorney Fremgen) What did you say to the
16 officers prior to -- about those same topics
17 prior to that clip that he just showed you?

18 A I don't understand.

19 Q Okay. Attorney Fallon showed you a clip of you
20 telling the officers about being there and seeing
21 Teresa Halbach and participating and killing her
22 and sexually assaulting her; correct?

23 A Yes.

24 Q You watched that or saw it or heard it?

25 A Yes.

1 Q Were you asked those same questions at any other
2 time during that interview?
3 A During that interview?
4 Q During interviews with the officers?
5 A Before the taping?
6 Q Were you asked any questions like that before
7 that clip on the video?
8 A Yes.
9 Q Were your answers the same?
10 A No.
11 Q Why did you have different answers before that?
12 A Because I was making it up.
13 Q What were you making up?
14 A The details and that.
15 Q Before or during the clip that Mr. Fallon showed,
16 what was the part that you made up?
17 A Well, the stuff that didn't really happen is the
18 stuff that I made up.
19 Q And what stuff didn't really happen?
20 A Where I was over there before 5:00, where helped, and
21 kill her, and rape her and that.
22 Q Why should this jury believe you today?
23 A Because I didn't really do it.
24 Q On the video clip -- again, I'm talking about the
25 one Mr. Fallon showed you?

1 A Yes.

2 Q The longer one?

3 A Yeah.

4 Q It's about 15 minutes long? You heard the
5 questions that were asked of you by the officers?

6 A Yes.

7 Q When the officer would tell you that it wasn't
8 your fault, how did that make you feel when
9 you're answering the questions?

10 ATTORNEY FALLON: Objection, beyond the
11 scope.

12 ATTORNEY FREMGEN: It was on the video.

13 THE COURT: It was. Uh, overruled. You
14 may answer.

15 THE WITNESS: Can you repeat the
16 question?

17 Q (By Attorney Fremgen) When the officers would
18 tell you, this is not your fault, how did that
19 question or how did that comment in the question
20 make you feel?

21 A That I wouldn't be -- that I wouldn't be taken away
22 from my family and put in jail.

23 Q No matter what you said?

24 A Yeah.

25 ATTORNEY FREMGEN: I have nothing else,

1 Judge.

2 THE COURT: Any recross?

3 ATTORNEY FALLON: No. Thank you.

4 THE COURT: All right. You may step down.
5 We'll take a break. About, uh -- until about
6 quarter to.

7 (Recess had at 10:24 a.m.)

8 (Reconvened at 10:56 a.m. Jury in.)

9 THE COURT: At this stage, ladies and
10 gentlemen, uh, this is part of the defense's case.
11 The defense has subpoenaed a witness, but the
12 witness is not going to be available until 1:30 this
13 afternoon; is that correct?

14 ATTORNEY FREMGEN: He's apparently
15 leaving the crime lab shortly. Should be here by
16 1:30.

17 THE COURT: Uh, you're finding out that
18 scheduling witnesses is certainly not a science in
19 the case, and I'm not even sure it's an art, but
20 in -- in any event, that's what's -- that's what
21 occurred, or that's what's occurring at this stage.
22 And he will be your only witness this afternoon?

23 ATTORNEY FREMGEN: This afternoon. The
24 next witness we have would take about, we're
25 guessing, somewhere between five, five-and-a-half

1 hours.

2 THE COURT: Tomorrow.

3 ATTORNEY FREMGEN: We'll begin first thing
4 Mon -- uh, tomorrow morning, correct.

5 THE COURT: All right. So with that said,
6 uh, we're going to adjourn until 1:30 this
7 afternoon. Thank you.

8 (Recess had at 10:58 a.m.)

9 (Reconvened at 1:44 p.m. Jury in)

10 THE COURT: Mr. Fremgen.

11 ATTORNEY FREMGEN: Judge, at this time we
12 would call Mike Riddle.

13 THE COURT: Right up here, sir. Just
14 remain standing.

15 THE CLERK: Please raise your right hand.

16 **MICHAEL RIDDLE,**

17 called as a witness herein, having been first duly
18 sworn, was examined and testified as follows:

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

21 THE WITNESS: Michael Riddle, R-i-d-d-l-e.

22 **DIRECT EXAMINATION**

23 BY ATTORNEY FREMGEN:

24 Q Mr. Riddle, what is your current employer?

25 A I'm a latent print examiner with the State Crime Lab

1 in Madison.

2 Q Why don't you pull the microphone just a little
3 bit closer to you. And how long have you been
4 working in that capacity?

5 A Uh, be 15 years in August.

6 Q What, uh, generally, are your duties and
7 responsibilities as a -- a fingerprint analyst
8 for the crime lab?

9 A We receive evidence from, uh, local sheriff and
10 police departments to process for presence of latent
11 finger or palm prints. If we do get prints on an
12 item and they're compared to standard fingerprint or
13 palm-print cards in attempt to make an
14 identification.

15 Q You've testified as an expert in fingerprint
16 analysis in prior cases in the state of
17 Wisconsin?

18 A Yes, I have.

19 ATTORNEY FREMGEN: I believe at this
20 time, Judge, the State has no objection to
21 qualifying this individual as an expert in this
22 field.

23 THE COURT: Is that correct?

24 ATTORNEY GAHN: That's correct, Your
25 Honor.

1 THE COURT: All right. It's stipulated
2 then.

3 ATTORNEY FREMGEN: We'll avoid a number of
4 other questions that way.

5 Q (By Attorney Fremgen) I see you have a file with
6 you. Is that the file in regards to this
7 investigation?

8 A Yes, it is.

9 Q If you need to refer to that while you're
10 testifying, if you can just indicate that you
11 need do to do so before you do.

12 A Okay. Thanks.

13 Q Thank you. Can you, uh, briefly explain why
14 analyzing fingerprints is an important
15 investigative tool?

16 A Because of the uniqueness and individualness of
17 fingers, uh, no two fingerprints on -- are alike on
18 any person or persons, so if we are able to find a
19 latent print on an item, it does indicate that that
20 item was touched at some point in time by that
21 particular individual, uh, to the exclusion of all
22 others.

23 Q Is this an exact science?

24 A Yes, it is.

25 Q Can you, uh, uh, briefly describe what it is that

1 you're looking for, as a fingerprint analys --
2 when you're doing a fingerprint analysis, in
3 regards to, say, comparing a known fingerprint to
4 an unknown fingerprint?

5 A Well, the first thing I do is if you can see a
6 pattern type. There's only three basic patterns on
7 fingerprints, and it's a whorl, or a loop, uh, or an
8 arch. Um, looking at the standard, if I see that a
9 person has all loops, which is fairly common, and the
10 latent fingerprint I have is -- is a whorl, then I
11 don't have to look any further. I can automatically
12 exclude that print.

13 Uh, if I do get two pattern types that
14 are the same, then I look for individual
15 characteristics within that pattern area in order
16 to make an identification.

17 Q What ways do you, as -- or as, let's say, a crime
18 tech individual, who may be lifting prints and --
19 and you can describe what that means, but what
20 ways, uh, are there available to you, or those
21 persons, um, extracting or developing a
22 fingerprint for purposes of comparison, can you
23 describe the ways that you go about to do that?

24 A There's several different ways, and usually it
25 depends upon the nature of the surface as to what

1 method of development we use to bring out a
2 fingerprint.

3 A -- a latent print is also called a
4 hidden print, which means it's invisible and has
5 to be brought out or developed by the use of
6 powders or chemicals.

7 If we have a real nice, smooth surface,
8 um, such as a piece of glass, then we can just
9 use regular fingerprint powders, develop the
10 print that way, and we can photograph it, and
11 preserve it. Um, and we either do or do not lift
12 it. It depends. Uh, if we have -- have it
13 captured with a photograph, there really isn't
14 any nec -- isn't necessary to go any farther.

15 Um, but, many times, we'll put some
16 lifting tape, which is like a clear, plastic
17 tape, and we'll rub it on top of the print, pick
18 it up, and put it on a backer.

19 If we're using -- if we're using a white
20 powder, we'll -- can put it on a black backer so
21 that we can see the contrast, and if we're using
22 a -- a darker powder, then we'll put it on a
23 white or a clear backer so we can see it.

24 Um, other items that are more porous,
25 such as paper, cardboard, uh, we have to use

1 chemicals in order to develop those prints. Uh,
2 there's one particular chemical we use called
3 Ninhydrin, and it reacts to the amino acids in
4 the fingerprints. So when we, uh, processed
5 that, either brush it on, or spray it on, um,
6 it'll develop into kind of a purple fingerprint.
7 Brings out all the ridge detail.

8 Uh, there's also Superglue, which we use
9 on semi-porous items. Put it in a tank where
10 there's superglue fumes, and the fumes will
11 adhere to the fatty acids in the fingerprint.

12 Uh, after that's accomplished, we can
13 either powder it and lift it, or we can enhance
14 it further by the use of dye stains and look at
15 it under a laser.

16 Q Now, you were referring to latent prints --

17 A Yes --

18 Q -- for the most part?

19 A -- that's correct.

20 Q There are other types of prints; correct? For
21 instance, visible prints?

22 A There's visible prints, known as, uh, pat -- patent
23 prints, and there's also ink impressions, uh, we get
24 from our fingerprint standards, like on a fingerprint
25 card.

1 Q What are plastic prints? Have you heard that
2 term before?

3 A Uh, yes. It's either a plastic or a molded
4 impression, and these are impressions that might be
5 left in clay, putty. Um, oftentimes if a burglar
6 tries to get in through a window that's puttied, we
7 can find molded prints inside there.

8 Q If someone leaves a print in dust, for instance,
9 what would -- would that be able to be, um,
10 lifted under some of the -- what you discussed in
11 regards to latent prints, or is that more
12 appropriate to be somehow preserved as like a
13 plastic print?

14 A Well, in -- in a dust print, um, we don't get a whole
15 lot of those, because what normally happens, if a
16 surface is real dusty and the hand or fingers touches
17 that dusty item, it lifts the -- it lifts the dust
18 away, and it may leave an impression looking like a
19 finger was there, but there usually is no ridge
20 detail, uh, at all. So there's not much we can do
21 with it. We can try supergluing it and see if we can
22 develop ridge detail, but on dusty surfaces, it -- it
23 usually doesn't work very well.

24 Q Is it possible to use digital photograph of a
25 print, whether it be visible or plastic, for

1 instance, to be able to preserve the print
2 without, actually, physically touching the print?

3 A Yes, it's possible. Um, we -- we use standard three
4 by five format film, uh, not -- not digital, to
5 capture our prints. Although, we do get many prints
6 in from other agencies that they've used digital
7 camera to take them.

8 Q For instance, the FBI, I think, has developed a
9 methodology, and -- for that tech -- technology
10 for, uh, extracting prints using digital
11 photographs; is that correct?

12 A That's correct.

13 Q Now, in -- in this case, uh, you -- you were
14 called in at some point to assist in the
15 investigation? The Halbach case?

16 A Yes, I was.

17 Q And you were -- you'd have -- well, how would it
18 occur? Did -- did the, uh, lead investigators
19 contact you and ask you to look at items that may
20 have either visible or latent prints?

21 A Well, when the vehicle was located and -- and brought
22 (sic) to the lab, that's where I started my
23 involvement in it. And, uh, we don't get a lot of
24 vehicles in there, but when we do get them in the
25 identification section, we'd sort of rotate, uh, and

1 I was -- happened to be up at that time. That's how
2 I got that vehicle.

3 Q One second. You mentioned the vehicle. Is this
4 the vehicle you're referring to?

5 A Yes, it is.

6 Q And when you -- you -- You, uh, for instance,
7 examined the vehicle for possible prints; is that
8 correct?

9 A That's correct.

10 Q Did you view the -- the vehicle once it was at
11 the crime lab, or did you, actually, physically
12 come to the crime scene to -- to view the -- uh,
13 the vehicle where it was found?

14 A All my work was done strictly at the crime lab.

15 Q So you weren't a field -- you weren't involved in
16 the field operations of this investigation?

17 A No, I was not.

18 Q So, now, at the crime lab, you observed this
19 vehicle. Did you observe any visible prints when
20 you, uh, examined the vehicle?

21 A Yes, I did.

22 Q And were you able to, um, somehow preserve those
23 prints?

24 A Uh, the prints were powdered and developed that way,
25 and then they were photographed. Um, after the -- I

1 looked at the photographs and determined that they
2 were of value for identification, then I attempted to
3 lift them. Um, however, the -- for some reason or
4 another, they did not lift real well off the vehicle.

5 Q But you did first photograph the print before
6 attempting the lift?

7 A That's correct.

8 Q Okay. So you were able to also make -- do your
9 own observation of the photograph and compare to,
10 let's say, for instance, a known sample?

11 A That's correct.

12 Q In this case, do you recall what items of the
13 Rav 4 that you, um, examined and were able to
14 eith -- either photograph or actually lift a
15 possible print from?

16 A Yes. The outside of the vehicle, all those prints
17 that I found there were mostly -- ma -- majority of
18 them were on the rear or the side of the vehicle.
19 Uh, those were all powdered and then photographed,
20 preserved in that way. Um, there was other items
21 inside the car. A water bottle. I've got a list if
22 you want me to read off the list.

23 Q If -- if you recall?

24 A I don't recall all the items on there, but they --
25 they were -- they were processed inside the lab a

1 little bit differently. The vehicle on the outside
2 was processed in the garage. Uh, obviously, I can't
3 take that into my lab area. But the vehicles that I
4 took out -- excuse me -- the, um, items that I took
5 out from the inside of the vehicle were, uh, taken
6 back into the lab area and placed in a fuming tank,
7 uh, where they were superglued and then powdered.

8 Um, I don't know if I -- I don't think I
9 had any of those photographed, though, because
10 they were -- I just lifted them.

11 Q When you, uh, examined the exterior of the
12 vehicle, in doing so, did you look at what would
13 be considered obvious points of potential entry
14 that might leave a visible or latent print?

15 A Well, obviously, we look at -- at door handles,
16 and -- and areases (phonetic) like that to see if we
17 can develop prints. I didn't see any visible in
18 those areas except for on the back door. Uh, course
19 the whole vehicle, itself, was powdered, because not
20 all the prints would be visigle (phonetic) visible to
21 the naked eye.

22 Um, the -- the ones that were visible
23 appeared like they had been left in some type of
24 a substance, whether it'd been grease or
25 something, because I think that's the reason they

1 wouldn't lift. It'd actually dried on the
2 vehicle and I couldn't -- I couldn't lift
3 anything off of it.

4 Q Before I leave this exhibit, specifically, on the
5 back of the Rav 4, you can't see very clearly in
6 this picture, but do you recall there's a spare
7 tire or some sort of tire on the back end?

8 A That's correct, there was.

9 Q And there's a cover -- some sort of cover on
10 that?

11 A That's correct.

12 Q Did you note any -- what appeared to be a swipe
13 mark or some sort of a hand, palm print type of
14 marking?

15 A It actually appeared to be a whole handprint, um, on
16 the tire cover, itself. The problem with that is,
17 like I was saying before, this was really dirty, the
18 back of the tire cover was, and -- and rather than
19 actually leaving ridge detail behind, that's actually
20 a blank spot where they lifted the dirt up off of --
21 where it probably adhered to their fingers when they
22 removed their hands.

23 Uh, I did take the cover off and fume it
24 in -- in attempt to get other prints off of it,
25 but nothing developed. As I said, it was very

1 dirty and dirt is not a good medium for
2 fingerprints.

3 Q So you attempted to, actually, lift a print off
4 of it. Unable to do so?

5 A I -- I didn't attempt to lift in -- in using lifting
6 tape. I -- I attempted to develop one. Um, there
7 was nothing to develop, so there was nothing to lift.

8 Q From the photograph you took of that, you
9 didn't -- I'm sorry. You did take a photograph
10 as well?

11 A Uh, they -- photographs were actually taken by Brian
12 Werner (phonetic) who is our forensic photographer at
13 the lab. But, yes, I had him photograph it first.

14 Q And you had an opportunity to review the
15 photograph, too?

16 A Yes, I did.

17 Q Were you able to find any sort of ridge
18 formations? Were you able to provide any sort of
19 a -- a comparison from?

20 A There was no ridge detail on back of that tire cover
21 that was suitable for comparison.

22 Q Were there any, what appeared to be, clear
23 indications of a hand or palm print on any other
24 vehicle parts of the exterior of the vehicle?

25 A Yes, there was. The other palm print was on the rear

1 of the vehicle. Um, it's actually on the side rear.
2 I think it was the driver's side rear quarter panel
3 almost right close to the back door.

4 Q By pointing to this area, would be in this area
5 on this picture?

6 A Right. Yeah.

7 Q And, again, was it your ability to -- were you
8 able to photograph that apparent palm or
9 handprint?

10 A Yes, we were.

11 Q Were you able to extract any sort of physical
12 print from that?

13 A Yes, we were.

14 Q And were you able to match that to any known
15 sample that was provided to you?

16 A No, I was not.

17 Q Now, specifically, in this case, you were
18 provided with a number of family members of the
19 Avery family; correct?

20 A That's correct.

21 Q And at one point you were provided with Brendan
22 Dassey's, uh, I believe it was fingerprints and
23 palm print?

24 A That's correct, I was.

25 Q Were you able to compare -- or did you do a

1 comparison of that print from the side of the
2 vehicle with the known print from Brendan Dassey?
3 A Yes, I did.
4 Q Were you able to make a match?
5 A No, I was not.
6 Q I'm going to show you what's been marked -- and
7 that last one, by the way, for the record, was
8 Exhibit 141. I show you what's been marked as
9 Exhibit 144. You had mentioned that in the
10 interior of the vehicle there was some items that
11 you attempted to lift the prints from. May have
12 actually done so; correct?
13 A That's correct.
14 Q If you can see -- I'll provide you with a
15 pointer.
16 A Okay.
17 Q Do you see any items on the interior of the
18 vehicle that you were able to obtain some
19 comparable prints from?
20 A Um, I believe that's a water bottle right in there I
21 know of, and another one right here, possibly. I
22 think there was a total of three water bottles. And
23 I did get some prints off of, uh, either one or two
24 of those that I was able to lift.
25 Q Were you able to obtain any usable prints from

1 the black CD case?

2 A I'm going to have to refer to my notes, if you don't
3 mind.

4 Q That's fine.

5 A Yes, I was.

6 Q So, you -- can you tell, from your notes, then,
7 what, exactly, from the interior of the vehicle,
8 you were able to extract a usable or comparable
9 print?

10 A Yes. From my notes -- well, from my report, I was
11 able to get them off of, uh, about five different
12 items in the vehicle. For one, um, there was a -- a
13 crunchy granola wrapper that I was able to get a -- a
14 latent print off of that was suitable. Uh, one of
15 the Aquafina water bottles that were in there.

16 The, um, um, black plastic CD case,
17 which is right there, and another partially full
18 bottle of Aquafina water.

19 Q And from these items from the interior of the
20 vehicle, were you able to match with any of the
21 known samples provided to you during this
22 investigation?

23 A No, I was not.

24 Q And, specifically, later, you were provided with
25 Brendan Dassey's prints? Again, palm prints and

1 fingerprints?

2 A That's correct.

3 Q Were you able to match anything from those
4 interior items, which -- with the known, uh,
5 sample from Brendan Dassey?

6 A No, I was not.

7 Q Do you recall, at anytime during this
8 investigation, when you were asked to assist law
9 enforcement, were you ever asked to, um, examine
10 and determine if there were any prints on shell
11 casings?

12 A No, I was not.

13 Q So, if I were to show you a box of shell casings,
14 you would never have looked at those; correct?

15 A No.

16 Q So, you would have no idea if there were any
17 available prints, either latent or otherwise,
18 that could be drawn from those casings?

19 A No.

20 Q I'm going to show you what's been marked Exhibit
21 82 on the big screen, and do you recall, at
22 anytime during your involvement in the
23 investigation, having an opportunity to, um,
24 examine and determine if there were any usable
25 prints from the item that's on the screen?

1 A Yes. The headboard was submitted to the lab, and I
2 processed that. And I was able to develop, uh, one
3 print suitable for comparison, and identified that
4 one as, um, being from Steven Avery.

5 Q So that was the only print that you were able to
6 find?

7 A That's correct.

8 Q I'm going to show you what's been marked as
9 Exhibit 107. Do you recall, at anytime during
10 your involvement in this investigation, being
11 provided with this Blackjack creeper in the
12 middle of the picture?

13 A No, I was not.

14 Q So, if there were any prints, you wouldn't be
15 able to tell us whether or not there were any
16 there; correct?

17 A No. I never examined that item.

18 Q Do you recall, specifically, what items were
19 actually provided to you to look at?

20 A The only other one that was provided to me, that I
21 didn't collect myself out of the vehicle, I believe,
22 was the headboard.

23 Q So, no leg irons or handcuffs were provided to
24 you?

25 A No, they were not.

1 Q The gun, itself, was not provided to you --

2 A No.

3 Q -- to look at?

4 A No, it was not.

5 Q This bleach bottle here?

6 A No.

7 Q Okay. I suppose I could go through each item of
8 evidence with you, and the answer would be you
9 didn't look at any of -- anything else other than
10 what you've already testified to?

11 A That's correct.

12 Q And no known -- or no prints matched Brendan
13 Dassey; correct?

14 A No, they did not.

15 ATTORNEY FREMGEN: Okay. I have nothing
16 else, Judge. Thank you.

17 THE COURT: Cross.

18 ATTORNEY GAHN: Thank you, Judge.

19 **CROSS-EXAMINATION**

20 BY ATTORNEY GAHN:

21 Q Do you do any training in, uh, DNA, uh, lifting
22 prints around the state or for any law
23 enforcement agencies?

24 A I -- I do training in, um, the evidence tech school.
25 At times, I'll go in there and teach latent print

1 comparison and latent print development.

2 Q And when you teach, um, at the tech -- the
3 evidence technician schools, do you teach them
4 which surfaces are more amenable to getting
5 prints from than others?

6 A Yes, I do. I give them my experience as far as what
7 I have and have not been able to get prints from in
8 the past.

9 Q And do you believe that the evidence technicians,
10 after attending that training, are capable of
11 making those decisions on what to send for
12 possible print analysis?

13 A I would assume so, yes.

14 Q Could you tell the jurors some of the factors
15 that play into, uh, whether a surface might be a
16 good surface to capture a fingerprint?

17 A Well, actually, it depends on two things. It depends
18 upon the surface, and it also depends on -- on the
19 nature of the person's skin. Uh, some people with
20 normally very dry hands don't leave lot of
21 fingerprints. Uh, or if they have very rough hands,
22 let's say they're construction workers or brick
23 masons or something, that's going to erode and wear
24 down the fingerprints, they leave very bad
25 impressions.

1 Um, the best surfaces that we have to
2 develop prints off would be something that's very
3 smooth, um, such as, glass, uh, uh, vehicle side
4 was a -- was a good medium for it. Uh, the
5 headboard I was lucky to get a print. Wooden
6 items usually don't do so well.

7 Uh, very, very small items are
8 difficult, because it doesn't leave enough of
9 a -- a -- enough of a fingerprint pattern on them
10 to be able to identify. Uh, we get syringes in
11 all the time, and they want to get the top of the
12 syringes to see if we can develop prints on
13 those. And I have. But there's just not enough
14 individual characteristics to put in that pattern
15 area to be able to identify the print.

16 Q I'm going to ask, um, Detective Wiegert to just
17 bring you up one of our exhibits, uh, that
18 Mr. Fremgen talked to you about, and what --
19 Exhibit 128. And I'd ask you to just, uh, look
20 at -- These are shell casings which were
21 recovered from the garage of Steven Avery. Um,
22 could you talk to the jurors a little bit about
23 your, uh, opinion on the chances of getting
24 fingerprints from an item that size and, uh,
25 explain the factors involved in that?

1 A I suppose it is possible. I have probably processed
2 over a thousand of these, and not one time have I
3 ever gotten a fingerprint suitable for comparison.
4 The best I've ever been able to do is maybe get a
5 little bit of ridge detail on there. But it -- it
6 wouldn't be enough for an identification at all.

7 Another factor involved is, when these
8 are shot, they get hot, and the heat isn't very
9 good on a fingerprint either. So you have two
10 factors going against them. One, the size of it,
11 and, two, what the heat does to the fingerprint.

12 Q And are these examples of your experiences that
13 you teach evidence technicians when you go to the
14 technical schools and teach?

15 A Yes, they are.

16 Q And this is what the evidence technicians at the
17 law -- local law enforcement agencies learn from
18 you?

19 A Well, either from me or whoever happens to be
20 teaching their class at that time, yes.

21 Q And they, therefore, are capable of making
22 decisions on what to send forward to the crime
23 lab for analysis?

24 A Yes, they are.

25 Q Can fingerprints -- prints be cleaned off an

1 object or wiped off?

2 A Oh, most assuredly. They're very fragile. They're
3 made 98.5 percent water. Uh, so wiping them off,
4 it'd be very easy.

5 Q And when you, uh, examined the Rav 4, Teresa
6 Halbach's Rav 4, did you also -- did you,
7 yourself, do the inventory of those items that
8 you found in the Rav 4?

9 A Yes, I did.

10 Q And did you know that it was Teresa Halbach's Rav
11 4?

12 A Yes, I did.

13 Q And, um, the -- the fingerprints that you found,
14 uh, you found identifiable prints, I believe, you
15 testified to, on two water bottles; is that
16 correct?

17 A That's correct.

18 Q A CD case?

19 A That's correct.

20 Q And a granola wrapper?

21 A That's correct.

22 Q And could -- and those are items that very well
23 could have belonged to Teresa Halbach?

24 A I suppose so, yes.

25 Q And she would have handled those?

1 A That's correct.

2 Q But did you have exemplars of Teresa Halbach to
3 compare?

4 A No, I didn't. She had no record on file.

5 Q Did, um -- does there -- does a time ever come
6 when you make decisions on whether to examine
7 something for a fingerprint or maybe send it for
8 a DNA analysis first, or maybe do a DNA first and
9 some other tests second? Do those questions come
10 up?

11 A It comes up all the time, yes.

12 Q Are you aware that, um -- do you know who Sherry
13 Culhane is?

14 A Yes, I do. She's the section head of our DNA
15 section.

16 Q And, um, when you did the inventory of the Rav 4,
17 I'm -- did you observe there were blood stains
18 and blood stain patterns in that Rav 4?

19 A Yes, I did.

20 Q And do you know, uh, whether Sherry Culhane
21 tested those blood stain patterns?

22 A Yes, she did.

23 Q Now, do you know whether, um, she determined
24 whether the blood of Steven Avery was found in
25 that Rav 4?

1 A Yes, I do. She -- I've seen her report. She --
2 there was her -- his blood in there.

3 Q And, um, Nick Stahlke, of your office, also
4 issued a report that, uh, the blood stain
5 patterns he found were indicative of an actively
6 bleeding person; correct?

7 A That's correct.

8 Q So, uh, is it fair to assume that, uh, Steven
9 Avery was inside that Rav 4?

10 A I believe so, yes.

11 Q Did you find his fingerprints in the Rav 4?

12 A No, I did not.

13 Q So, the absence of someone's fingerprints does
14 not mean that the person was not at the crime
15 scene, does it?

16 A Not at all.

17 Q Thank you, sir.

18 ATTORNEY GAHN: That's all I have.

19 THE COURT: Any redirect, Counsel?

20 ATTORNEY FREMGEN: Just a few. Excuse me.

21 Just a few.

22 **REDIRECT EXAMINATION**

23 BY ATTORNEY FREMGEN:

24 Q Do you -- do you know whether or not, uh, Brendan
25 Dassey has characteristics of his hands that are

1 dry or greasy?

2 A I would have to examine his hands. I -- I couldn't
3 tell you that.

4 Q You can certainly say, however, that, as to the
5 three items in the vehicle, they did not match
6 the known sample of the fingerprint of Brendan
7 Dassey?

8 A No, they did not.

9 Q Now, you mentioned that, often, smoother surfaces
10 are easier to either find a visible or even a
11 latent print?

12 A Yes, they are.

13 Q Uh, would smooth, steel handcuffs be something
14 that might be able to extract a fingerprint from?

15 A They could, possibly. Again, I'd have to examine the
16 handcuffs to be able to tell you if that surface
17 would be good enough. Or if they were in good shape,
18 uh, there's a pretty good chance I could find them.
19 But I've seen some of these cuffs that the finish was
20 worn off and they were rusted, and in a situation
21 like that, it'd be more difficult.

22 Q Would these, for instance, be something that you
23 might be able to extract a fingerprint from?

24 A I believe so, yes.

25 Q And I'm showing you what's been marked as Exhibit

1 92. It's actually Crime Lab Number CJ-2?

2 A Okay.

3 Q But you weren't provided with these, uh --

4 A No.

5 Q -- to review?

6 A This -- this is the first time I've seen them.

7 Q Thank you.

8 ATTORNEY FREMGEN: Nothing else.

9 **RE-CROSS-EXAMINATION**

10 BY ATTORNEY GAHN:

11 Q And, again, items can be cleaned or wiped off --
12 uh, fingerprints wiped off or cleaned from an
13 item?

14 A That's correct.

15 Q Thank you.

16 ATTORNEY GAHN: That's all I have also.

17 THE COURT: You may step down.

18 Mr. Fremgen, any additional witnesses this
19 afternoon?

20 ATTORNEY FREMGEN: We'll have a
21 psychologist who's prepared to testify at --
22 starting at 8:30 in the morning. Take a -- probably
23 majority of tomorrow.

24 THE COURT: All right. I take it that's a
25 no for this afternoon?

1 ATTORNEY FREMGEN: Sorry. No for this
2 afternoon, correct.

3 THE COURT: All right. Uh, ladies and
4 gentlemen, I'm going to excuse you at this time.
5 Remember, you are not to talk about the case or
6 anything you've heard or anything connected with it.
7 Thank you.

8 (Jury out at 2:14 p.m.)

9 THE COURT: Counsel, before coming out here
10 on the record, we have a brief -- we had a brief
11 discussion in chambers. It's my understanding, uh,
12 there's some matters we should make of record this
13 afternoon. Mr. Kratz, I'm going to turn to you
14 first. You may or may not have a motion or an
15 argument?

16 ATTORNEY KRATZ: I do, Judge. If I
17 could have just a moment to grab my materials.
18 Thank you, Judge. As this Court recalls, a
19 motion was argued in a pretrial manner regarding
20 the admissibility of testimony of a Dr. Robert
21 Gordon. Dr. Gordon provided this Court through,
22 um, videotape testimony, uh, with something
23 called an offer of proof, which is expected trial
24 testimony, and based an opinion on what
25 Dr. Gordon believed evidence at this trial was

1 going to establish.

2 Dr. Gordon, as this Court knows, uh,
3 has, uh, opined in a, uh, written report, and in
4 his offer of proof, that, uh, Brendan Dassey, uh,
5 was, in fact, an individual who was, uh, using
6 his term now, "vulnerable to suggestibility".

7 The State had objected in a, uh, oral
8 argument, as well as a, uh, written provisions to
9 the Court, to Dr. Gordon's testimony, noting that
10 this kind of evidence has not been, uh, admitted
11 in the state of Wisconsin, at least to this
12 point. And whatever, uh, marginal relevance
13 there may be, uh, is certainly outweighed by the
14 danger of confusion, uh, of the jury, or unfair
15 prejudice.

16 Um, nonetheless, uh, the Court, uh,
17 reasoned, in a pretrial decision, that Dr. Gordon
18 would be allowed to testify, uh, as to the area
19 of suggestibility, again, based upon, uh, an
20 offer of proof.

21 Uh, I recall, and I'm sure, um, the
22 Court, uh, has a recollection as to, um, my
23 argument, both oral and written, uh, cautioning,
24 uh, this Court as to its pretrial ruling prior to
25 even knowing what the trial testimony was going

1 to be, especially as it relates to foundation or
2 to relevance. And what I argued, Judge, was that
3 it's going to depend on who is going to testify
4 in this trial that Brendan Dassey's statements
5 were the product of suggestibility.

6 In other words, that somebody had to
7 come before this Court and claim that Brendan
8 Dassey's statements to law enforcement officials,
9 uh, were, in fact, the product of law enforcement
10 behavior, law enforcement, uh, suggestibility,
11 or, at the very least, some coercive practices by
12 law enforcement, for Dr. Gordon's testimony to
13 ever be relevant.

14 Uh, relevance, uh, of course, is, uh --
15 is well-defined, and this Court included, uh,
16 that in its, uh, pretrial ruling. And I'm not
17 going to, uh, reargue or belabor that. I agree
18 with the Court's, uh, definition and explanation
19 as to relevance.

20 Uh, now, however, we're at the point in
21 the trial where we don't have to guess as to what
22 the trial testimony is going to be. We don't
23 have to call it an offer of proof anymore, or,
24 uh, expect or, um, uh, presuppose what some trial
25 testimony may be. We've now heard what the

1 defense theory of the case is, what the defense
2 version is, and as, uh, announced by this Court,
3 and as predicted by the State in my written
4 brief, Brendan Dassey, himself, has testified and
5 has provided to the Court, uh, with a version of
6 events or an explanation as to, uh, the
7 admissions, or what we've referred to as the
8 confession, given, uh, in this case.

9 Uh, importantly, Judge, uh, Mr. Dassey
10 today, uh, when testifying in this trial, said
11 nothing of suggestibility despite Mr. Fremgen's
12 best efforts, uh, in continuing to ask Mr. Dassey
13 about, uh, things like suggestibility.
14 Mr. Dassey's responses, when he didn't say, "I
15 don't know", um, Mr. Dassey's, uh, response was
16 something called confabulation. That is, that he
17 made it up. That he made up the, uh, version of
18 events that he told law enforcement officials.

19 Confabulation is, of course, um,
20 absolutely a separate, uh, concept than
21 suggestibility. Uh, and when Mr. Dassey and the
22 defense, through Mr. Fremgen and, uh,
23 Mr. Edelstein, who, I assume, knew what
24 Mr. Dassey was going to testify about today,
25 present that theory of defense, and that theory

1 is, uh, devoid of any mention of suggestibility,
2 well, then, Dr. Gordon's testimony just simply no
3 longer becomes relevant.

4 Uh, this Court's pretrial, uh, uh, order
5 and ruling, which, uh, the State respects, uh,
6 very much, must simply -- uh, is no longer based
7 upon, uh, what the trial evidence is in this
8 case.

9 When Mr. Dassey explains, uh, that, uh,
10 the version of events given to law enforcement
11 is, uh, the product of -- of fabrication, or even
12 if, uh -- if we believe that it's the product of,
13 uh, some memory several years ago of some book
14 that he may or may not, uh, have read, uh, it is
15 just not suggestibility.

16 Uh, I then, uh, and at this time, renew
17 my motion, ask the Court to reconsider its
18 finding as to Dr. Gordon's testimony. We're
19 asking that Dr. Gordon's testimony be excluded.
20 We don't believe there is any foundation in this
21 record, uh, nor is there any relevance, uh, to,
22 uh, Dr. Gordon's ultimate opinion that, uh,
23 Mr. Dassey is vulnerable to suggestibility.

24 Now, we understand that this Court has
25 already limited Dr. Gordon's testimony. This

1 Court's already previously indicated that
2 Dr. Gordon can't talk about whether the
3 confession was true or false. That is, uh,
4 whether it was a false confession. Can't talk
5 about a coercion or the circumstances
6 surrounding, uh, the, uh, interrogation. And
7 although there are experts that can talk about
8 that, Dr. Gordon admits that he's not one of
9 those kind of, uh, individuals. But his testing
10 and his opinion, uh, as limited to
11 suggestibility, uh, simply, uh, is not, uh,
12 relevant. Would ask the Court revisit and
13 exclude the testimony.

14 Alternatively, Judge, uh, we are asking,
15 if the Court continues to allow Dr. Gordon's, uh,
16 testimony, uh, in this case, despite, uh, the
17 lack of foundation for his testimony, uh, we
18 would ask the Court, uh, reassert or restate, uh,
19 just what it is that Dr. Gordon can testify
20 about. Just what is relevant about Dr. Gordon's
21 testimony based upon the record currently, uh,
22 before this Court.

23 We certainly don't want to be in a
24 position where we're needlessly objecting during,
25 um, uh, direct examination, uh, or that the, uh,

1 State, unnecessarily, uh, has to cross-examining
2 -- cross-examine, uh, Dr. Gordon, uh, on issues
3 that, uh, may, in fact, not be allowed through
4 this Court's, um -- this Court's orders.

5 Lastly, Judge, at the conclusion of this
6 motion, that is, at the conclusion of my motion
7 to exclude, or the renewal of my motion to
8 exclude, uh, I would ask, also, to place on the
9 record the, uh, State's request to call, if
10 necessary, rebuttal witnesses.

11 But I have, uh, unfortunately, gotten
12 ahead of myself, and I'm just alerting the Court
13 that we do have that issue to discuss as well.
14 That's all the, uh, comments I have regarding
15 Dr. Gordon's issue. Thank you, Judge.

16 THE COURT: Response?

17 ATTORNEY FREMGEN: Uh, just a little -- a
18 brief one. Well, I'll try to be brief. The State,
19 uh, began its, uh, argument by indicating that, uh,
20 um, they expected Dr. Gordon to testify as to what
21 evidence would indicate in this trial. Well, I
22 don't think that's ever been what we've offered to
23 this Court. And I'm certain that's not what the
24 order of this Court is.

25 What we've offered, previously, is that

1 the doctor would testify as to his conclusions
2 based upon his evaluation of Brendan, his review
3 of the collateral information, which included,
4 uh, the videotape statement that was shown in
5 this court, as well as other statements that had
6 not been provided to the jury, and he would also,
7 uh, testify as to the different tools of
8 evaluation, the different, um, um, tests that he
9 actually conducted, and -- and the purpose for
10 those tests, including the Gudjonsson
11 Suggestibility Test.

12 We intend to offer the same testimony
13 with the same limitations that the Court imposed
14 on his testimony per the order of April 5. The
15 State's argument today is that there needs to be
16 additional foundation, essentially, or that there
17 hasn't been a sufficient foundation placed on the
18 record for the doctor's testimony.

19 Part of what the State argues is --
20 well, I -- I think maybe he misspoke, but
21 Mr. Kratz said foundation as to suggestion or
22 coercion. We've never once indicated that
23 Dr. Gordon would ever testify as to any coercion.
24 In fact, he even, in the offer of proof, said I
25 don't have the ability to do that and would not

1 offer his, uh, uh, opinion as to the officer's,
2 uh, techniques in regards to coercion.

3 So that was never an option. It was
4 never going to be something offered to the Court.
5 The indication that we provided to the Court,
6 with the limitations in the order, simply that he
7 would be testifying about the issue of
8 suggestibility, or vulnerable to suggestion, as I
9 think he referenced in his report.

10 So far, the testimony on direct and on
11 cross of the defendant was that, as to many
12 questions, he answered, I don't know why. When
13 asked why he would admit to a serious offense,
14 such as sexual assault, or first degree
15 intentional homicide, his answer is, I don't know
16 why.

17 At -- I probably could count up, on the
18 transcript, and come up with at least 20 or 25
19 times that that came out. There were times in
20 final cross by Mr. Fallon that -- that this idea
21 of confabulation came up, but there's equal or
22 more, um, testimony in regards to why he did what
23 he did, and his answers were, I don't know why.

24 Our intention is to wrap up what we've
25 started with all the witnesses, with the --

1 Officer Wiegert and with Detective O'Neill, for
2 that matter. Attorney Edelstein's questioning of
3 the -- at least with Detective Wiegert was,
4 essentially, 90 percent suggestibility issues.
5 Promises, lies, suggestion, um, and leading.

6 With Dr. -- with Detective O'Neill,
7 there was a number of questions about suggestion,
8 leading, promises. In fact, the State brought up
9 the subject when the State says there's devoid of
10 anything in the record about suggestibility. The
11 State, on cross of the school counselor, asked
12 her about suggestibility. So the issue has been
13 raised by the State as well. We would certainly
14 object to the ruling changing the original
15 ruling.

16 And as far as offering to the State some
17 sort of a, um -- a road map of where I intend to
18 go, or some, uh, formalized transcript of the
19 question and answers that I intend to -- to
20 elicit from the -- the doctor, I guess I would
21 offer, again, we will follow what the Court
22 ordered, the offer of proof with the limitations
23 that this Court has set upon the testimony, and
24 as to providing to the State some sort of heads
25 up as -- so to speak, I guess I would just

1 mimick what the State has told me throughout
2 this trial, I'll question my witnesses how I
3 want, without having to answer to the State.

4 And, so, I -- I would follow the order
5 that the Court placed on us, and I don't believe
6 that there has been, uh, this lack of foundation
7 that the State is suggesting with the -- the
8 Court, now, to change the ruling before in
9 regards to Dr. Gordon.

10 THE COURT: Mr. Kratz, any response?

11 ATTORNEY KRATZ: I don't have any.

12 Thank you, Judge.

13 THE COURT: All right. Uh, is -- both
14 parties have noted the Court has had an opportunity,
15 prior to this day, to take up the issue of
16 Dr. Gordon and any testimony that he might have to
17 offer. The Court ruled that Dr. Gordon's
18 testimony -- and -- and I did this based on a couple
19 of things, or based on, uh, the instance of seeing a
20 proposed offer of proof from the defense by way of
21 DVD and, as well, uh, the testimony educed by
22 Mr. Kratz at a cross-examination of Dr. Gordon.

23 Uh, under Section 9-0-7-0-2 of the
24 Wisconsin Statutes, uh, expert witness testimony
25 is permitted if the proffered testimony is

1 relevant, if it will assist the trier of fact in
2 some way, shape or form, if the expert is
3 qualified, and if the testimony that's going to
4 be offered is not superfluous -- superfluous or a
5 waste of time. This all stems from a case called
6 **State vs.**, uh, **Walstad** at 119 Wis. 2d 483.

7 I found, uh, initially, that all of
8 these qualifications were met. Uh, there also is
9 a secondary line of reasoning that can
10 occasionally be employed. Namely, that, by
11 virtue of the 6th Amendment of the
12 U.S. Constitution and Article 1 Section 7 of the
13 Wisconsin Constitution, a defendant should have
14 the right to present a defense. And while I
15 didn't make a finding, directly, on that point, I
16 think I alluded to it, at least collaterally, in
17 arriving at the ruling.

18 Mr. Kratz says, uh, in effect, that,
19 based on the testimony offered by this defendant
20 in person today, that the foundation for any kind
21 of testimony from Dr. Gordon with respect to
22 suggestibility is, in effect, vitiated. That is
23 to say, taken away.

24 Uh, that his testimony -- uh,
25 Dr. Gordon's testimony no longer becomes relevant

1 and, thus, it misses on the first, uh, uh, step,
2 the first prong, of the test of whether or not
3 it -- it should be used in this case.

4 Uh, I'm not going to recede from the
5 ruling that I -- I handed down before. I think
6 what we, uh, have, at best today, is testimony
7 that doesn't go to the admissibility of anything
8 Dr. Gordon has to say.

9 And, again, what Dr. Gordon is -- as I
10 understand it -- going to testify to, that based
11 on a number of tests that he administered this
12 defendant, based on the age of the defendant,
13 based on the defendant's, uh, limited, uh,
14 cognitive abilities, that this defendant falls in
15 the category that, scientifically, has been
16 adjudged as being a category of persons being
17 more suggestible or vulnerable to, uh, same
18 things that aren't necessarily true.

19 I think that Dr. Gordon's testimony is
20 still relevant. I think that he is a qualified
21 expert. I think that his familiarity with the,
22 uh, Gudjonsson Suggestibility Scale, and the
23 other tests that were given to, uh, support
24 whatever opinions he's going to give, uh, are all
25 as good today as they were before.

1 Now, with that said, it may be, again,
2 that while his testimony is cer -- I believe
3 admissible, uh, it is up to the jury as to what
4 weight that testimony should -- should give.
5 They are the -- they are the persons that
6 determine the weight.

7 I also find that I -- I do not believe,
8 based on anything I've heard today or during the
9 course of the trial, that his -- his testimony
10 would be, uh, superfluous.

11 Accordingly, I'm going to deny, uh, the
12 State's motion to exclude his testimony.

13 ATTORNEY KRATZ: Judge, I -- and -- and
14 I -- and I don't mean to, uh -- to take issue
15 with the Court, you mentioned that the doctor
16 would testify to being vulnerable to saying
17 things that weren't necessarily true. I think
18 that's exactly what the Court said he could not
19 testify about. He's vulnerable to
20 suggestibility, but whether it's true --

21 THE COURT: I --

22 ATTORNEY KRATZ: -- or not true is
23 something this doctor cannot testify.

24 THE COURT: Right. And -- and I did say
25 that, and, uh, thank you. I'll -- I'll sharpen

1 that up. He -- he can't testify as to what this
2 defendant said as to whether it was true or
3 false. He can testify as to the suggestibility,
4 the vulnerability, based on the factors, but he
5 cannot -- he cannot utter an opinion as to the --
6 the, uh, truthfulness or falsity of anything this
7 defendant said.

8 ATTORNEY KRATZ: Thank you, Judge. As
9 to my, uh, second, uh, purpose for, um, alerting
10 the Court as to, uh, the State's, uh, intent, uh,
11 with, uh, this Court, uh, reaffirming its ruling,
12 the State does intend to, uh, and does offer at
13 this time, two, uh, rebuttal, uh, witnesses.

14 Uh, one is a, um, clinical psychologist,
15 who will directly, uh, rebut Dr. Gordon's
16 testimony as to the testing, IQ, and what, uh,
17 uh, opinions, uh, may be drawn, uh, therefrom.
18 His name is Dr. James Armentrout. Uh, we,
19 previously -- uh, previously, meaning earlier
20 today. I don't mean to indicate, because of the
21 rebuttal nature, that it was, uh, other than
22 today, but, uh, informed defense counsel of our
23 intent to, uh, call Dr. Armentrout as a rebuttal
24 witness.

25 But, secondly, Judge, and something that

1 we have alerted the Court and, uh, counsel to,
2 uh, earlier, uh, was our intent to call an
3 expert, uh, in the, um, areas as to the
4 interrogative process. This Court may recall, as
5 part of Dr. Gordon's, uh, offer of proof,
6 Dr. Gordon indicated that he was not an expert on
7 issues of interrogation strategy or circumstance,
8 but that such experts do exist. Dr. Gordon, uh,
9 conceded that fact to both -- uh, in court and on
10 his, uh, DVDs.

11 The, uh, suggestion, and the effect of
12 the matter is, then, uh, as to the area of
13 suggestibility, uh, there is a -- a prong, if you
14 will, as to the testing, and -- and the, uh, um,
15 IQ, and the age, and the, uh, vulnerability to
16 suggestibility that psychologists talk about, but
17 the other part of that that Dr. Gordon talked
18 about was the circumstances surrounding the
19 interrogation, the strategies, and, uh -- and the
20 like, that, uh -- that were employed, and what,
21 um, after reviewing a specific, um,
22 interrogation, uh, what opinions can be drawn
23 therefrom.

24 State intends, as the defense and the
25 Court knows, uh, to call a, uh, Mr. Joseph

1 Buckley, uh, the president, as I believe, of, uh,
2 Reid and Associates, uh, author, uh, and expert,
3 uh, on issues of the interrogative process.

4 Uh, with the Court, uh, having, uh,
5 reaffirmed this ruling, uh, we simply offer that.
6 If the Court, uh, needs, uh, or the Court wishes
7 some further, uh, offer of proof or sharpening
8 of, uh, that partic -- uh, uh, Mr. Buckley's, uh,
9 relevance, or his intended testimony, we can
10 certainly do that. A report has been tendered to
11 the Court and to, uh, the defense as to, uh,
12 Mr. Buckley's, uh, intended testimony. If I
13 could have just a moment here, Judge.

14 And, Judge, uh, you may want to just
15 take judicial notice of the report of Mr. Buckley
16 that has, uh, been provided to the Court, should
17 Mr. Buckley's testimony be allowed. We'll
18 certainly have that marked as a trial exhibit and
19 will be officially offered at that time.

20 That's all I have as to, uh, again, just
21 by way of, uh, alerting the Court and Counsel,
22 uh, as to the State's intended rebuttal case.
23 Thank you.

24 THE COURT: All right. Uh, does the
25 defense wish to be heard on this, now? Rebuttal, of

1 course, is at the discretion of the Court, and it --
2 it may be you want to wait until you hear what
3 Dr. Gordon has to say. Although, I suspect,
4 Mr. Buckley's rebuttal may have as much to do with
5 the cross-examination of Investigator Wiegert as it
6 does with anything that, uh -- that Dr. Gordon may
7 say.

8 ATTORNEY FREMGEN: Up to the Court. I -- I
9 don't think that Dr. Gordon's testimony,
10 necessarily, is going to be indicative of what our
11 position is with, uh, uh, Mr. Mead (phonetic).
12 Um -- Or, Buckley? I'm sorry. Mr. Buckley.

13 THE COURT: Yeah.

14 ATTORNEY FREMGEN: Uh, our -- essentially,
15 and let me first answer the first comment about, uh,
16 Dr. Armentrout. Um, the only thing I would ask from
17 the State, if, at the time he testifies, if there is
18 any sort of summary of his, uh, impressions laid to
19 some written form, that we be provided a copy prior
20 to his testimony. Whether that be the second he
21 sits down, however the State wishes to provide it,
22 would be great. Also a CV. I mean, we provided our
23 curriculum vitae of our doctor. If we could have
24 Dr. Armentrout's sometime before he testifies, we
25 would appreciate that as well.

1 However, as to, um, uh, Mr. Buckley, we
2 have three essential positions as to why we don't
3 think it's relevant. Number one, it's not a
4 unique subject that this trier of fact, the jury,
5 needs assistance to understand.

6 Um, in fact, they've had two witnesses,
7 already, talk about it. Both detectives.
8 Detective O'Neill and -- and, uh, Investigator
9 Wiegert have testified that they are trained in
10 deceptive practices, um, superior knowledge,
11 whatever language is used to explain why they
12 lied, promised, lead, or suggest to a -- a -- a
13 interviewee in order to get information or
14 extract information they want.

15 So, it's already -- it's a point, I
16 won't say, necessarily, cumulative, but it
17 certainly has been, um, uh, developed and
18 addressed by the State.

19 It also seems to be somewhat of a
20 vouching of the State's witness. Officer -- uh,
21 Mr. Buckley would be testifying, essentially,
22 that the officer's testimony that this is how
23 we're trained and this is just simply, uh, uh, an
24 interview technique would be a -- be an offer to
25 sim -- simply, um, vouch for the voracity of the

1 officer's testimony in that regard.

2 And we also believe that, uh, there are
3 some comments in the report about what is
4 corroborated and what is not that impedes and
5 infringes upon what this jury's role is. And --
6 and the attorneys can certainly suggest to the
7 jury, this is corroborated and this is
8 uncorroborated. And that's fine. But I think
9 it's different having a witness get up there and
10 say, I've reviewed what the police officers did
11 in this case, and let me tell you, jury, this is
12 what they did right, and this is what they found,
13 and this is why you can find this person guilty.
14 I don't think that is the role of a expert.

15 Experts should be offering some sort of
16 testimony that, number one, has to be relevant to
17 some sort of material issue, which we don't
18 think, necessarily, is -- that there is enough,
19 uh, with this offer as of yet, and, number, two,
20 we certainly have to say there is nothing that
21 indicates that this trier of fact needs
22 assistance to understand that.

23 In fact, I believe, in opening,
24 Mr. Kratz mentioned to the jury, comments about
25 officers', uh, questioning and why people don't

1 admit to things that they didn't do, especially
2 as serious as a homicide, because it's just human
3 nature. You all understand that. Quote,
4 unquote. That was what Mr. Kratz said to the
5 jury.

6 Well, if they understand it, then why do
7 they need an expert? So I don't think it's
8 necessary.

9 THE COURT: All right. Mr. Kratz, getting
10 to you, uh, with respect to Dr. Armentrout, Counsel
11 was asking for a copy of his CV and, as well, any
12 sort of summary that you might be able to supply,
13 even if it's at the 11th hour? Are you able to
14 accommodate him on both those counts?

15 ATTORNEY JONES: Well, Judge, there is no
16 written report. There is no summary. Uh,
17 Dr. Armentrout's, uh, opinions will be based, uh,
18 solely and entirely upon what's been provided, uh,
19 by Dr. Gordon. So, the -- the -- the materials
20 that, uh, uh, Dr. Armentrout will be drawing from,
21 they already have.

22 The CV, uh, is something that I will ask
23 to be faxed, and we'll try to get that, uh --
24 we'll try to get that, uh, here, Judge, and --
25 and, uh, accommodate, out of courtesy, uh, uh,

1 the defense.

2 Um, did you ask me something else?

3 I've --

4 THE COURT: No.

5 ATTORNEY KRATZ: -- forgotten. Then
6 I'll be quiet.

7 THE COURT: No. We'll -- we'll get to
8 the -- the issue of what, if anything, Mr. Buckley
9 can testify to based, uh -- based on, in part, what
10 we hear tomorrow, and, in part, uh -- I want to
11 review the -- the -- the report, uh, again. Report
12 was handed -- I believe I got it on Friday from --
13 from the State.

14 ATTORNEY KRATZ: Might I suggest, Judge,
15 that on Wednesday we might convene in court,
16 perhaps, at, uh, 8:00 a.m. and, uh, get some
17 direction. We expect Mr. Buckley to testify in
18 the morning, and I think that is probably
19 appropriate that everybody, not just the State,
20 but that the defense, has fair notice about the,
21 uh, scope of what he'll be allowed to testify
22 about.

23 THE COURT: That's fine.

24 ATTORNEY FREMGEN: Thank you.

25 THE COURT: Any other matters today,

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gentlemen?

ATTORNEY KRATZ: Nothing for today.

Thank you, Judge.

THE COURT: All right? I'll see you
tomorrow at 8:30.

(Court stands adjourned at 2:42 p.m.)

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