

STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 1

STATE OF WISCONSIN,

PLAINTIFF,

JURY TRIAL
TRIAL DAY 19

vs.

Case No. 05 CF 381

STEVEN A. AVERY,

DEFENDANT.

DATE: MARCH 8, 2007

BEFORE: Hon. Patrick L. Willis
Circuit Court Judge

APPEARANCES:

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

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

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

DEAN STRANG
Attorney at Law
On behalf of the defendant.

JEROME BUTING
Attorney at Law
On behalf of the defendant.

STEVEN A. AVERY
Defendant
Appeared in person.

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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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126		100	101
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1 (Reconvened at 9:07; jurors not
2 present.)

3 THE COURT: At this time the Court calls
4 the State of Wisconsin vs. Steven Avery, Case No.
5 05 CF 381. We're here this morning for a
6 continuation of the trial in this matter outside the
7 presence of the jury at this time. Will the parties
8 state their appearances for the record, please?

9 ATTORNEY KRATZ: The State appears by
10 Calumet County District Attorney Ken Kratz,
11 Assistant Attorney General Tom Fallon. I should
12 tell the Court that, uh, Mr. Gahn, uh, has been,
13 uh, delayed for a few minutes but will be joining
14 us during these proceedings, Judge.

15 ATTORNEY STRANG: Good morning. Uh,
16 Steven Avery in person, Jerome Buting, Dean
17 Strang on his behalf.

18 THE COURT: All right. We're here, uh,
19 this morning to take up, uh, some outstanding
20 motions, uh, that were raised during the course of
21 the trial thus far, and, uh, also hear what the
22 Court anticipates will be a -- a new motion or
23 motions from the defense.

24 One of the items yesterday that was left
25 unresolved was, um, somewhat of an inventory of

1 the exhibits, uh, to make sure that, uh, exhibits
2 that have been marked but not yet received, uh,
3 may -- that one party or the other may request
4 that they be received and to verify, I guess,
5 that the exhibits that have been marked and not
6 received were done so intentionally.

7 I'm going to ask the parties to address
8 that item with the clerk, uh, after I hear
9 argument on the motions, since I want some time
10 to, um, um, consider the arguments that are made
11 on the motions, and I think that will give the
12 parties more than adequate time to, uh, uh, check
13 with the clerk on the status of any exhibits that
14 haven't been resolved.

15 Um, we can go back on the record before
16 the jury is brought in this afternoon to address
17 any items with respect to exhibits, uh, that
18 require attention.

19 Uh, looking at the inventory of motions
20 that have been made but not yet finally
21 addressed, uh, one of them -- and it wasn't
22 really a motion, there was an objection made back
23 on February 27, uh, to an offer by the defense
24 concerning, uh, telephone records regarding the
25 accessing of voice mails. That matter was --

1 I -- I reserved ruling, uh, on that matter.

2 Finally, uh, pending receipt of
3 additional evidence from the, um, phone company
4 representative that we heard yesterday, um, Mr.
5 Buting, I believe you were acting on behalf of
6 counsel at the time. Are you satisfied the
7 evidence that was permitted in yesterday
8 addresses that matter sufficiently?

9 ATTORNEY BUTING: Uh, in the sense that,
10 uh, the evidence I wanted to get in, came in,
11 yes. Uh, I'm -- I'm not commenting that it
12 satisfied me from an evidentiary reconciliation
13 type of perspective, but certainly the in -- the
14 information that, uh, I think, actually, the --
15 the witness that was present from Cingular on
16 that February 27 date wasn't as knowledgeable
17 about the records, and, actually, gave us some
18 incorrect information about what those, um, uh,
19 open versus unopened meant. And I think this
20 witness cleared that up and, uh, provided some
21 other helpful information. So, uh, I'm satisfied
22 that -- that we, uh -- we -- we got what we
23 wanted.

24 THE COURT: All right. I was not looking
25 for a stipulation as to the significance of any of

1 the testimony but, rather, whether the evidentiary,
2 uh, issue had been resolved, and I take it that it
3 has been?

4 ATTORNEY BUTING: Yes.

5 THE COURT: Uh, one other, uh, matter
6 that I wanted to address this morning was a, uh,
7 motion, uh, from Mr. Strang back on February 23
8 renewing the defense challenge to the, uh -- what
9 has been referred to in, um, earlier portions of
10 these proceedings, as multiple entries under the
11 November 5 search warrant.

12 Uh, I note that after the Court heard
13 argument from both parties on that date, um, I
14 indicated that I would not hear further from the
15 parties on the issue at that time, but because
16 there may be additional evidence yet to be
17 introduced, I would give the parties an
18 opportunity to argue the matter, um, further.

19 Um, to refresh everyone's memory, the
20 Court's understanding of the argument made by the
21 defense at that time was that it came in, uh,
22 three parts. Um, first of all, a challenge to
23 the sequential nature of the searches of the
24 defendant's trailer, garage, and surrounding
25 property.

1 Uh, second, a renewed argument, um,
2 under a **Franks** theory that the, uh,
3 representations of the State in the affidavit for
4 the November 5 warrant, uh, did not have a
5 factual basis.

6 And, third, there was a challenge which
7 the Court would consider to be more in the nature
8 of a new challenge rather than a refinement of
9 the old one, which related to the, uh, State's
10 alleged failure to search the burn area in a
11 timely manner, uh, to summarize it as the Court
12 understands it.

13 Uh, but with that background and my
14 understanding, uh, Mr. Strang, I'll hear from you
15 first.

16 ATTORNEY STRANG: Thank you. At the
17 time the, um, reply I intended to make to, uh,
18 Counsel's argument would have focused on, um, the
19 issue of abandonment, of, um, property that
20 Counsel argued as to items in the backyard or,
21 um, in what we've called the burn area. And as
22 I -- as I understood Mr. Fallon's argument, um,
23 it was that, um, Steven Avery had no further
24 privacy interest in anything that was found in
25 the, uh -- in the burn area, uh, and, therefore,

1 there just was not a Fourth Amendment interest at
2 stake.

3 Um, irrespective of how close the, um,
4 area was to the house or its -- or the -- the
5 private areas of the property, I think the
6 analogy Counsel drew was to garbage that's set
7 out on the curb for disposal, uh, or in -- in a
8 trash bin, that sort of thing, the idea, that,
9 uh, burning, um, is -- is an act of disposal, or
10 abandonment, or relinquishment than he took a
11 privacy interest in the -- in the items.

12 Uh, Counsel did argue that, uh, um, uh,
13 curtilage no longer is a dispositive concept, uh,
14 at least as the Wisconsin courts apply the Fourth
15 Amendment, and, uh, Article I, Section I of the
16 Wisconsin Constitution. And to an extent,
17 Counsel's right. It -- it's clear that courts
18 are getting away from arcane terms like curtilage
19 or, um, a mechanical assessment of, um, you know,
20 where a treeline is or where a picket fence may
21 be, um, so up to -- up to a point I agree with
22 Counsel on -- on his assessment of the
23 development of case law.

24 But it remains true that, um, areas of
25 a -- of a person's home and accompanied property

1 that he seeks to preserve for private use or the
2 intimate activities of life, uh, remain within
3 the scope of the Fourth Amendment, and, uh,
4 carried it to its ex -- extreme, and I don't know
5 that in the end Mr. Fallon would carry it this
6 far, but carried to its logical end, his argument
7 that curtilage doesn't matter, and that burning
8 is an act of destruction that relinquishes all
9 privacy rights for purposes of Fourth Amendment,
10 would mean that, uh, I have no privacy interest
11 in my fireplace in my living room. Which, of
12 course, just can't be.

13 And, here, I acknowledge that we're not
14 talking about a fireplace inside someone's living
15 room or home, we're talking about an area outside
16 of the immediate home. But what -- what we have
17 here is an area that is behind the garage, not,
18 uh, easily viewed from anyplace that, uh, an
19 uninvited visitor, or sales person, newspaper
20 delivery boy, or somebody -- post--- postal
21 carrier would likely be. Um, it's behind the
22 home.

23 And on the State's own theory here, um,
24 you know, if we accept the State's argument, the
25 theory of prosecution, then it is that Mr. Avery

1 burned bone -- bone, burned the body, and the
2 personal items of Teresa Halbach in that area.
3 We dispute that entirely, but -- but let's work
4 with the State's theory, uh, and that he did so,
5 not as an act of abandonment, but as an act of
6 concealment, uh, or -- or intention not to be
7 discovered, uh, on the crime that the State
8 contends he -- he committed.

9 Moreover, the State has educed evidence
10 that the doghouse and the dog, which associates
11 with Mr. Avery, were positioned in such a way as
12 to keep people away from the burn area. Um,
13 indeed, uh, when it suits the agents of the
14 State, they've argued here, that they couldn't
15 go. They were kept away from the burn area by,
16 uh, the dog, um, and the -- the -- the range of
17 its leash, the location of its doghouse.

18 So it -- it really is, I think,
19 inconsistent here for the State to argue that
20 Mr. Avery did not show a subjective interest in
21 the privacy of the area behind his garage. Um,
22 he did, and that subjective interest in privacy
23 is, uh, the first important aspect of standing or
24 the right to assert a Fourth Amendment claim.

25 And the other, then, is whether that

1 subjective assertion of a privacy interest is one
2 that society, at large, objectively, uh, views as
3 reasonable or recognizes, and I think here, uh,
4 it -- it's -- it's really beyond serious debate
5 that for an area 20 feet, or 40 feet, or whatever
6 it is behind your house, immediately behind your
7 garage, uh, in an area that looks like a
8 construction site to be situated in an area in
9 which the grass is mowed, it's a backyard that's
10 tended as the -- the evidence showed here. We --
11 you know, the photographs. I think, some of the
12 testimony referred to the grass being short and
13 mowed.

14 Uh, it's really beyond serious argument,
15 but that's sort of a -- an immediate backyard
16 area, um, is something in which the public, our
17 culture, doesn't recognize, a right to privacy.
18 Um, people do private things in the backyard.
19 It's a -- it's a different area of the backyard,
20 but there's a swimming pool, for instance, in the
21 backyard here as the Court has seen. There's a
22 back deck off the house. As I say, the -- the
23 area is mowed and tended as a lawn.

24 Farther out in that yard, um, than,
25 um -- than the burn area, there -- there are cars

1 to the south. They're, you know, lined up or
2 parked, um, not as if they belong to this -- the
3 business or the salvage property, uh, business,
4 but as if they are associated with the yard of --
5 of, uh, the red trailer which -- which clearly is
6 Steven Avery's building.

7 So, um, this is his pet. He keeps the
8 pet in this area, quite apart from whether it was
9 intended to exclude others. You keep your pet in
10 an area that you expect to be private, and, um,
11 don't expect others to be walking through or
12 disturbing your pet, at least where the pet is
13 leashed, uh, and housed as it was here.

14 So, um, I don't think that, uh, the
15 State can succeed at the threshold question here
16 saying that there was not, um, both a subjective
17 and objective reasonable privacy interest in this
18 area immediately behind Steven Avery's detached
19 garage in his backyard and, you know, just
20 several yards, uh, uh, away from his trailer.

21 So, um, that -- that at the time is when
22 I recall, um, wanting to add, um, by way of
23 reply, and I don't think there's much more I can
24 do to freshen my original arguments with the
25 evidence that we've heard since I've made them.

1 THE COURT: All right. Let me ask a
2 question with --

3 ATTORNEY STRANG: Sure.

4 THE COURT: -- respect to the burn pit
5 area. I understand the, um -- the -- the
6 challenges made to the searches of the trailer
7 and the garage, um, the -- there was a concession
8 that the initial brief sweep searches would not
9 have been the searches that count, but that the
10 lengthier searches shortly thereafter of the
11 garage and the trailer should have been the end
12 of it.

13 The, uh -- in reviewing my notes and --
14 and the argument with respect to the search of
15 the burn pit area, uh, the focus seemed to be on
16 the fact that, uh, well, the -- the State could
17 have searched it earlier, uh, the State could
18 have, uh, neutralized the dog that was guarding
19 the burn pit area, and searched it earlier, but
20 I'm not -- I guess it's not immediately apparent
21 to me what the significance of the timing of the
22 search of the burn pit area is, assuming it was
23 done within the time within which the State could
24 effectuate the warrant.

25 Uh, in other words, if it was done

1 later, uh, so what? Is -- is there -- I -- I
2 didn't -- I didn't detect in the argument a claim
3 that there were -- there was somehow an improper
4 multiple search of the burn pit area. So I want
5 to make sure I'm not missing your argument there.

6 ATTORNEY STRANG: Well, um, it -- it --
7 it's a very good question, and I -- and I'm --
8 I'm pausing only because I'm trying to remember,
9 um, when the first search warrant expired, or --
10 or would have expired on its own terms. I think
11 it was either the 9th or the 10th.

12 There's at least a second search warrant
13 obtained on the 9th, as I recall. Um --

14 ATTORNEY FALLON: I can help out. It
15 would have ex -- If the warrant was obtained
16 on --

17 ATTORNEY STRANG: The 5th.

18 ATTORNEY FALLON: -- Saturday, the 5th,
19 at 3:25 p.m., then, technically, according to
20 statutory interpretation, its arguable expiration
21 would have been Thursday, the 10th, at 3:25, if I
22 count correctly.

23 ATTORNEY STRANG: Yeah, I -- that --
24 that sounds -- that sounds right to me as a
25 matter of statutory expiration. Um, I think the

1 first search of the burn area is the 8th. Um,
2 off the top of my head, I'm not sure we had any
3 testimony about anything happening on the 9th in
4 the burn area. We certainly do on the 10th.

5 Um, and so the 8th would have been in
6 the -- within the statutory time, um, but, you
7 know, the statute isn't the begin -- isn't --
8 isn't the end of it. Um, what -- what we've done
9 here, if -- if the search of the Avery -- of the
10 Steven Avery part of this property reasonably
11 should have ended with the first thorough
12 searches on the evening of the 5th, or the
13 garage, I guess, at the latest, the morning of
14 the 6th, then holding the entire property and
15 excluding it from him unreasonably impinged on
16 his possessory interest.

17 And the Fourth Amendment protects the
18 privacy interest and also the possessory interest
19 that -- that we have, and there's really no
20 justification, once you complete the search of
21 the house and the garage, for not also completing
22 the search of the private areas associated with
23 those -- those two buildings. And from the 6th
24 on, you're unreasonably depriving this man of his
25 possessory interest in -- in his home, in the

1 place he lives.

2 Um, and, um, you know, I -- I don't rely
3 as much on the privacy interest in that yard as
4 to a first search, but, again, if the first
5 search isn't timely, isn't reasonably timely, and
6 he's being excluded from his possessory interest
7 in his home, um, and its, you know -- and it --
8 and its useful property, the private areas
9 surrounding the home, then you do trigger the
10 reasonableness requirement of the Fourth
11 Amendment as well, um, by the passage of time.

12 So I think the -- the search on the 8th
13 is -- is already beyond a reasonable time as a
14 matter of his possessory interest, and certainly
15 the work on the 10th, and the 11th, and whatever
16 is done after in the, uh, burn area, itself, um,
17 is outside the statutory limits of that warrant
18 and, um -- and -- and all the more unreasonable
19 just by virtue of further passage of time, um, in
20 which he's denied his possessory interest.

21 And then, also, the privacy interest is
22 triggered, again, as you have serial searches at
23 the convenience of law enforcement people rather
24 than recognizing this isn't their property, it's
25 someone else's property. They are the unwelcome

1 visitors. They are the intruders from the
2 standpoint of the Fourth Amendment, not the other
3 way around.

4 And, um, so you -- you have the privacy
5 interest escalating and being affected
6 unreasonably as time passes after the 6th.
7 That's not terribly articulate, but it did -- I
8 did, at least, answer the question.

9 THE COURT: All right. So the -- as --
10 as I understand it, it's not a -- so much a
11 parallel argument to the garage and the house and
12 that there were improper multiple searches made
13 of the burn area, but, rather, once the house and
14 the garage searches were completed, there was
15 adequate time to also search the burn area had
16 the State wished, and because they didn't,
17 therefore, it should be suppressed?

18 ATTORNEY STRANG: Yes. And the backup
19 argument, then, is that anything after the first
20 search on the 8th also triggers the serial search
21 concern, and -- and really the 10th -- um,
22 because the searching on the 10th, as I -- I may
23 be wrong about Mr. Pevytoe's testimony. I -- I
24 know he arrives in the afternoon on the 9th, and
25 I guess I don't remember right now, but I can

1 look at my notes. Um --

2 THE COURT: Well, let me address that,
3 though. The --

4 ATTORNEY STRANG: Sure.

5 THE COURT: I thought that the State's
6 argument that the searches of the house and the
7 garage were completed earlier was premised on
8 statements from the officers who participated that
9 they had found everything that they wanted after
10 what the defense characterized as the search. The
11 difference with the burn area is, it's my
12 understanding that the initial items found on the
13 8th immediately triggered a desire to search it
14 further because it looked like burn fragments, and
15 then later people who knew more about it came in.
16 Maybe I'm missing --

17 ATTORNEY STRANG: No --

18 THE COURT: -- something.

19 ATTORNEY STRANG: -- I -- I think that's
20 right. And there -- there -- there was initial
21 searching on the 8th as I recall. Um, and then
22 I'm trying to remember when -- I was just trying
23 to remember when the search on the 10th starts,
24 and if -- if Mr. Pevytoe or Mr. Ertl gave us a
25 time of day. I didn't note it in my notes. I

1 apologize. Um, but -- but, as I say, by the
2 10th, you're in the serial searching and you're
3 also, at some point, bumping up on the -- the
4 statutory expiration of the warrant.

5 So that -- that would be the -- the
6 second or alternate argument that -- that we're
7 making in that respect.

8 THE COURT: Okay. Mis -- Mr. Fallon?

9 ATTORNEY FALLON: Thank you, Judge. The
10 hallmark of any interpretation or application of
11 the Fourth Amendment under current standards is
12 reasonableness. And reasonableness is determined
13 by the totality of the circumstances under which
14 an exercise of judgment occurs. And, in effect,
15 that's what we have here, an exercise of judgment
16 based on an assessment of facts.

17 The testimony educed during the course
18 of the trial does nothing to undermine the
19 original Court's ruling on the motion to suppress
20 and the lengthy briefing that occurred in
21 relation thereto.

22 In fact, I would argue to the Court that
23 the testimony, uh, elicited during the course of
24 the trial does nothing but further support,
25 further augment, and demonstrate the

1 reasonableness of the law enforcement efforts
2 involved in this case. Uh, and not to --
3 unnecessarily redundant, but I think it certainly
4 bears in mind that we're looking at a piece of
5 property of approximately 40 acres in size, with,
6 as I recall, 15 buildings in total, 4 residences,
7 and somewhere between 3,800 and 4,000 junked
8 cars.

9 It is within that context that law
10 enforcement obtained and executed a search
11 warrant on Saturday, November 5. As -- as I
12 indicated, I believe the warrant -- uh, they
13 returned to the property with the warrant at
14 about 3:25 p.m. on Saturday, began execution
15 thereof short -- shortly thereafter.

16 Again, I focus the Court's attention on
17 the fact that there were searches on Saturday,
18 two sweeps and one initial search on Saturday
19 evening, which are apparently not at issue.

20 The first search of the garage on
21 Satur -- on Sunday morning is not at issue. And
22 as a result, we're looking at sub -- subsequent
23 searches to each of those locations.

24 Again, the premise upon which the
25 Court's original decision was made remains firm

1 and is still a valid premise, it's still a valid
2 justification for denying the motion to suppress,
3 and that is, there was one warrant and one
4 continuous ongoing search of various locations.

5 The defendant's argument has legs. It
6 holds water if, and only if, one looks at it in
7 one microscopics point in time and one location
8 in time.

9 As the testimony of Agents Fassbender,
10 uh, and Investigator John Ertl from the Crime
11 Lab, uh, even Mr. Wiegert yesterday, and numerous
12 other officers, including, interestingly enough,
13 Special Agent Pevytoe, yesterday, indicates that
14 he was, um, bouncing around on a -- various sites
15 on both Friday and Saturday, uh, touching base
16 with colleagues on other locations both in the
17 salvage yard and beyond the salvage yard. So you
18 have one continuing search.

19 I find Counsel's argument most
20 interesting with respect to the burn pit, that
21 that's somehow not to be considered part of the
22 search or that somehow law enforcement should
23 have, uh, worked in the pit, as it were, sooner
24 than they did.

25 Um, let me digress here momentarily to

1 make one observation with respect to, uh, the
2 privacy interest or this whole curtilage argument
3 and just make one observation. Just because
4 someone evinces a motive to conceal, and just
5 because they take acts in furtherance of their
6 concealment, and just because they exercise
7 dominion or control over a particular item,
8 doesn't necessarily, under all sets and
9 circumstances, uh, establish a privacy interest
10 in the area which society is necessarily, uh,
11 expected to honor and accept, as reasonable,
12 under all the circumstances.

13 And, again, I come back to that point.
14 There is nothing that refutes the argument that
15 that burning, whether it's in a burn barrel on
16 the side of the road containing cell phone parts,
17 or a burn pit in the back of -- uh, from which
18 remains of a person are obtained, there's nothing
19 there that, um, disputes the fact that the
20 concealment, uh, also, in this case, goes hand in
21 hand with the a -- a -- abandonment -- uh, the
22 abandonment of whatever is in those items.

23 But, again, that's a digression, because
24 the Court need not reach that argument, although
25 I think it's supportive of the State's position.

1 What you have here is a continuing execution of a
2 search warrant. Day by day methodical process
3 engaged in by law enforcement based on -- upon
4 arra -- available resources, based upon
5 information which was coming in, literally, by
6 the hour, making an assessment as to its
7 importance, the need for the, um, dispatchment of
8 resources to address discoveries and the whatnot.

9 And in this particular case, uh, as
10 indicated, um, search of the burn pit was not
11 exactly the highest priority, nor was its
12 evidentiary significance apparent on Saturday or
13 Sunday. And -- and we have numerous bits of
14 testimony from Agents Fassbender and Mr. Ertl,
15 and the, uh, uh -- the handlers of the human
16 remains stuff.

17 But, again, returning to the question of
18 the pit in -- inferentially, I see nothing in
19 their argument that makes any sense whatsoever
20 about why the search of the pit is somehow
21 invalid because it occurs on the 8th, because it
22 occurs at that time upon the discovery of -- of
23 what looks like a piece of human bone in the
24 grass near the pit, which then draws the
25 attention of law enforcement officers and they

1 begin to work that information.

2 And, next, I would point out that, um, a
3 second warrant, and I'm not even convinced that
4 it was required, but, clearly, in a precautionary
5 safety mode effort, the officers did apply and
6 renew the original search warrant on Wednesday
7 afternoon, and that search warrant, as noted in
8 previous proceedings, was executed on Thursday.

9 Interestingly enough, um, Special Agent
10 Pevytoe had already begun working the pit. As I
11 recall his testimony quite clearly yesterday in
12 response to my question, he began Thursday
13 afternoon, shortly after the noon hour, after
14 working all morning here in Calumet County
15 sifting debris which is a -- was obtained from
16 that very same burn pit, mind you, uh, here at
17 the Sheriff's Office on Thursday morning.

18 He returned to the scene at that time
19 with the needed equipment and personnel to begin
20 processing this scene in greater detail. And by
21 the scene I mean the burn pit. So that
22 processing began, uh, on Thursday afternoon and
23 went late into the night as we heard Agent
24 Pevytoe describe.

25 So, clearly, we have a continuing

1 search, uh, based upon an evaluation of what has
2 occurred. What do we know so far? Uh, we had,
3 as Special Agent Sturdivant said with respect to
4 the pit, those bone fragments. I made the call.
5 I made the decision. I wanted to know if those
6 were human remains. I wanted to know if there
7 was reason to look at this pit more closely. I
8 wanted to know if they were Teresa Halbach's
9 remains. We packaged up as many as of we thought
10 were bones, sent them to the Crime Lab. They
11 made their way to Ms. -- to Dr. Bennett.

12 I believe we heard some testimony on,
13 uh, who in -- initially was able to make a
14 determination on Wednesday that there were some
15 human remains. And then, of course, we heard
16 testimony from Dr. Eisenberg that she began her
17 involvement on Thursday, the 10th. And,
18 interestingly enough, as we've heard from Agent
19 Pevytoe, there was discussion between, uh,
20 herself and Agent Pevytoe about the status of the
21 affairs at that time.

22 So, clearly, law enforcement's efforts
23 here, I premise all that, or put that all out
24 there, as evidence of the reasonableness of the
25 efforts undertaken by the officers to search what

1 they searched, when they searched it, and why
2 they did it, and the manner in which they did it,
3 because all those factors go back, again, to the
4 reasonableness of the manner of which the
5 searches were carried out.

6 And I think it's -- it's quite apparent
7 here, more important, to note that there's not
8 just one, but there were two search warrants here
9 authorizing the -- the efforts of law enforcement
10 here. And, again, any evaluation of
11 reasonableness must take into, um -- into, uh --
12 lost my train of thought -- must take into
13 account all of the facts, all of the
14 circumstances of what was being searched, not
15 just the 40 acres.

16 Uh, there were searches of all of the
17 surrounding gravel pits areas. There were, uh,
18 uh, the Radandt fre -- uh, gravel pit area, there
19 was the markings, uh -- the exhibit number
20 escapes me at the moment -- that, uh, Counsel
21 displayed even as late as yesterday in his
22 examination of Agent Pevytoe. There were
23 multiple sites. Uh, we had the, uh -- the -- the
24 Maribel park incident that pulled resources away.

25 So they were attempting to respond to

1 what they thought was the most important, most
2 needed information to be, uh, assessed and
3 addressed, and proceeded in accordance therewith.

4 So without repeating, uh, the arguments
5 any further than were made both in the briefs, in
6 which I note that abandonment was argued in the
7 briefs, as well as inevitable discovery premised
8 upon the additional warrant, all of this has
9 already been set forth in written argument and
10 the subject of the Court's previous decision.

11 So, in effect, we see nothing in the
12 evidence educed at trial which should cause the
13 Court to rethink that decision, and we ask the
14 Court not to, and continue to rule the evidence
15 admissible for proper jury consideration. Thank
16 you.

17 THE COURT: Anything else, Mr. Strang, on
18 that motion?

19 ATTORNEY STRANG: No. I -- I -- I think
20 a great deal has been said and I -- I'd probably
21 be repeating myself.

22 THE COURT: Very well. Uh, there's
23 another -- There is another, um, outstanding, uh,
24 motion, uh, regarding the, uh, renewal by the
25 defense of its, uh, fair forensic testing, uh,

1 motion. I know that, uh, originally I believe
2 Mr. Buting argued it for the defense and Mr. Gahn
3 wanted a chance to respond.

4 ATTORNEY FALLON: Uh, he did. Uh, as,
5 uh, indicated by, uh, Mr. Kratz, Mr., uh, Gahn
6 had some transportation issues. We expect his
7 arrival about 10:30, if that would be all right,
8 if we could defer that one until a little bit
9 later?

10 THE COURT: Very well. That's, um, what I
11 have as far as the inventory of -- of outstanding
12 prior motions. Uh, the Court understands that the
13 defense has a motion, or some motions, uh, to raise,
14 uh, following the close of the State's case. Uh --

15 ATTORNEY STRANG: Yes.

16 THE COURT: Who -- who wishes to be heard
17 on that?

18 ATTORNEY STRANG: I -- I'll -- I'll be
19 happy to argue those, Your Honor. The -- the
20 State now having rested its case in chief, um, my
21 motion is for judgment of acquittal on all four
22 counts, uh, now under consideration, and -- and
23 I -- I don't know if there's been a second
24 Amended Information filed or not. I maybe just
25 don't remember right now, but we've -- we've at

1 least referred to the four remaining counts here
2 as, uh, Count 1, first degree intentional
3 homicide; uh, Count 2, I think, is mutilating a
4 corpse; as I recall, Count 3 is the felon in
5 possession of a firearm count; Count 4 is, uh,
6 false imprisonment. So I move for a judgment of
7 acquittal and dismissal, uh, on all four counts.

8 Um, the -- the -- the argument I make,
9 uh, as to all four is that all of the evidence
10 presented in the State's case in chief, viewed in
11 the light most favorable to the State, drawing
12 all reasonable inferences, um, in favor of the
13 State at this point, but, of course, drawing no
14 unreasonable inferences that way, um, still, um,
15 by that standard, the evidence is insufficient to
16 warrant a reasonable fact finder in returning
17 verdicts of, uh, guilty on any of the four counts
18 under consideration, um, so whether we call it a
19 directed verdict or dismissal, uh, or an
20 acquittal, um, the relief we seek, uh, really is
21 the same, functionally, uh, now that the State
22 has rested its ca -- its case.

23 That's, as I say, the -- the -- the
24 general argument, and as to the first three
25 counts, I'll -- I'll stand on that argument.

1 I do want to amplify with some more
2 specific comments on Count 4, the false
3 imprisonment charge. When Mr. Avery first was
4 charged with murder of Teresa Halbach in
5 November, 2005, um, he faced two charges with
6 respect to that core set of allegations by the
7 State. One charge was first degree intentional
8 homicide and one was mutilating a corpse. Those
9 were joined, I think, without objection from the
10 defense, with the very first charge filed against
11 Mr. Avery as a matter of chronology under this
12 case number, which was the felon in possession of
13 a firearm, or at least that was the, uh -- the
14 warrant on which he was arrested.

15 So those three charges together stood
16 until, um, the State, uh, obtained some
17 statements from Brendan -- Brendan Dassey in the
18 end of February and the first day of March, 2006.

19 On March 1 and March 2, 2006, as this
20 record shows, and as we -- we had discussed a
21 number of times, uh, agents of the State appeared
22 at televised news conferences and laid out a
23 chilling, gripping story of the last minutes, or
24 perhaps hours, of Teresa Halbach's life. And
25 that story, in large part, was reflected in the

1 Criminal Complaint about -- at about the same
2 time against Brendan Dassey, and much of that
3 story found its way into the Amended Criminal
4 Complaint against Steven Avery, but added three
5 more charges. Those were first degree sexual
6 assault, kidnapping, and false imprisonment.

7 Added so far as the Complaint made
8 clear, and so -- insofar as any viewer of these
9 news conferences would have concluded, added on
10 the basis of Brendan Dassey's supposed confession
11 and allegations.

12 Now, we argued at -- at the time, I
13 think indisputably, the inadmissible nature of
14 Brendan Dassey's statements against Mr. Avery.
15 We lost that argument.

16 We sought to subject the new allegations
17 to the minimal testing of a preliminary hearing.
18 We lost that argument.

19 We sought an interlocutory appeal, or a
20 permissive appeal, because we thought strongly
21 that Wisconsin law required the ta -- the State
22 to put up or shut up to some degree, at least to
23 a probable cause level of admissible evidence, on
24 those three new charges. The Court of Appeals
25 declined to hear the permissive appeal.

1 This Court raised, by 50 percent, as I
2 recall, Mr. Avery's cash bail on the basis of the
3 new allegations attributed to Brendan Dassey.
4 And shortly before this trial, two of those three
5 added charges the State abandoned, acknowledging
6 the obvious to everyone else that the State
7 couldn't prove first degree sexual assault, the
8 State couldn't prove kidnapping, the State had no
9 admissible evidence. Indeed, I'm not sure the
10 State has inadmissible evidence to support those
11 two charges.

12 But over my objection, and in the face
13 of my motion to dismiss false imprisonment as
14 well, the State persisted, asserted its right to
15 decide what to go to a jury on, and at least
16 implicitly represented to the -- to this Court
17 that it would offer evidence sufficient to
18 establish at least the false imprisonment charge
19 that it wished to present. So that -- The Court
20 acceded to -- to the State's request, and we all
21 have to acknowledge that the prosecution, in
22 general, gets to decide, uh, what charges to go
23 forward to on those that have been bound over and
24 on which the defendant has been arraigned, and I
25 said at the time that if the State fell short, I

1 thought there might be grounds for a mistrial.

2 Why? Because the false imprisonment
3 count here is the last vestige of the
4 unsupported, inaccurate, uncorroborated claims of
5 Brendan Dassey that were broadcast by agents of
6 the State to everyone who had a TV turned on in
7 this part of the state that threatened the right
8 to a fair trial, that threatened the right to
9 have a jury drawn from the venue in which this
10 cr -- crime was charged, and that curled the hair
11 of anyone who listened to the description of a
12 naked woman manacled to a bed, sexually
13 assaulted, stabbed, throat cut, strangled when
14 slashing of her throat didn't kill her, and then
15 only later, a corpse, shot 11 times. That was
16 the story. That was the horror story that was
17 present. And the false imprisonment charge, as I
18 say, is the last vestige of that horror story.

19 And the State went forward with it. And
20 what we have here, now that the State has
21 presented its entire case in chief, what we have
22 here is nothing to support a belief that Brendan
23 Dassey had anything to do with Steven Avery on
24 October 31, 2005. Nothing to support the notion
25 that he had anything to do with anything criminal

1 in which Mr. Avery may have been engaged.

2 Again, giving the State the benefit of
3 all reasonable inferences and viewing the
4 light -- the evidence in the light most favorable
5 to the State, anything Mr. Avery may have done on
6 October 31, there is nothing that has been
7 presented to show that Brendan Dassey had a
8 culpable connection to any of it. There is
9 nothing to suggest that Ms. Halbach ever was in
10 Mr. Avery's bedroom, let alone restrained there,
11 let alone assaulted there, let alone stabbed
12 there, or with her throat slashed.

13 Indeed, the physical evidence beyond
14 serious dispute, beyond peradventure that
15 physical evidence has destroyed or revealed the
16 inaccuracy of that horror story. It was a fable.
17 An ugly, horrific fable, but a fable, all the
18 same, belied by the physical evidence and by the
19 testimony in the State's own case in chief.

20 And we now learn that the cause of
21 death, in the State's view, isn't stabbing, it
22 isn't throat-slashing, it isn't strangling. What
23 is it? It's two gunshot wounds to the head. The
24 gunshot wounds that, according to the Complaint
25 and the news conferences, were supposed to have

1 been fired after she was dead, now become the
2 cause of death. Not 11, but 2.

3 Do we know at all? Do we have any basis
4 to draw reasoned inference from the State's case
5 in chief about where those gunshots were fired?
6 From how far away? In what position Ms. Halbach
7 was at the time? Whether she was alive at the
8 time? Who fired the gunshots? On that, we have
9 evidence that the gun that fired at least one of
10 the bullets was found in Steven Avery's bedroom,
11 and that shell casings found in the garage were
12 identified, also, as having been fired by that
13 gun.

14 So, again, viewing the light in -- or
15 the evidence in the light most favorable to the
16 State, one might say that a reasonable jury,
17 perhaps, could find that Mr. Avery was the one
18 who fired the bullet that later we are told has
19 Teresa Halbach's DNA on it. I don't think that's
20 a reasonable interpretation of the evidence as a
21 whole, but let's spot the State that one. We
22 still don't know where, when, from how far away,
23 or in what condition Ms. Halbach was at the time.

24 And to the extent that the State's
25 evidence has put her in Mr. Avery's house at all,

1 the rich irony, of course, is that that rests --
2 that inference rests on one offhand statement of
3 Mr. Avery to which Detective Remiker testified, a
4 statement of the defendant that was undisclosed
5 with which we were caught at surprise at this
6 trial.

7 And beyond that, what we have here,
8 viewed in the light most favorable to the State,
9 is Bobby Dassey's testimony that he saw Ms.
10 Halbach walking toward Steven Avery's trailer.
11 Not that she went in, not that Mr. Avery had any
12 interaction with her, but saw her walking toward
13 his trailer after taking photographs of the van.
14 That's it.

15 No reasonable jury here, viewing the
16 light -- the evidence in any light, could infer,
17 reasonably, from here that Ms. Halbach was
18 restrained or confined by Mr. Avery in his house
19 in any way. Of course, walking into somebody's
20 house isn't an unlawful confinement or restraint.
21 We do that all the time. People visit other
22 people's homes. Strangers are admitted. That's,
23 in itself, no proof of an intentional and
24 unlawful confinement or restraining. And, at
25 best, that's what the State has as to the home.

1 The State has no evidence at all putting
2 Teresa Halbach, herself, in the garage. Her
3 blood isn't found there. What is found there is
4 a bullet, four months later, on which her DNA is
5 identified. Not her blood, but her DNA.

6 How the bullet comes to be there we
7 don't know, but it's lying out on the floor under
8 an air compressor four months after the garage is
9 searched repeatedly, and that's the only
10 connection, immediate though it is, between
11 Ms. Halbach and the garage as a possible place of
12 confinement.

13 Moreover, if she ever was in the garage,
14 we don't know. We have no evidence on which we
15 can do anything more than speculate that she was
16 alive when she was in the garage. And while you
17 certainly can mutilate a corpse, or treat a
18 corpse unlawfully, you can't confine or restrain
19 a corpse. And this Court acknowledged that in
20 its preliminary instructions to the jury on the
21 essential elements of false imprisonment under
22 Section 940.30 of the Wisconsin Statutes. So the
23 garage isn't a place in which a reasonable jury
24 can find Ms. Halbach was restrained or confined
25 under any view of the elements.

1 And that leaves the Toyota by my lights.
2 The Toyota has, uh, bloodstains in the rear cargo
3 area that a reasonable jury certainly could
4 conclude were made by bloodied hair up against
5 the passenger side wheel well of the rear cargo
6 area. A reasonable jury certainly could conclude
7 that this was Teresa Halbach's blood. There was
8 ample testimony from Sherry Culhane to warrant
9 that conclusion.

10 But if the State's theory is, as it now
11 apparently is, that the cause of death was being
12 shot in the head twice, two gunshot wounds, the
13 State presented that evidence from Leslie
14 Eisenberg and from Dr. Jeffrey Jentzen, then
15 Teresa Halbach was dead when her hair was
16 bloodied by a hole in the occipital bone and a
17 hole in the parietal bone. We have nothing else
18 here. Nothing on which a reasonable inference
19 would arise, from which an infer -- a reasonable
20 inference would arise that there was any other
21 reason for bloodied hair but two gunshot wounds
22 to the head.

23 Now, if that happened, if that was the
24 cause of death, highly speculative, but let's set
25 that aside for the sake of argument, if that was

1 the cause of death, then, again, it's a body in
2 the back of the Toyota, not another person. Not
3 a living human being. Not only is that the -- a
4 reasonable inference, it's the only reasonable
5 inference if one credits the State's cause of
6 death. The State has produced no other evidence
7 that would suggest another cause of death.

8 So what we're left with in the end is
9 nothing on which a reasonable jury, acting on
10 evidence and reasonable inferences from evidence
11 rather than on horror stories or fables or
12 imagination or guesses, could come to a conclu --
13 conclusion here that the State in its case in
14 chief has proven the essential elements of false
15 imprisonment beyond a reasonable doubt.
16 Beyond -- Nothing that would allow a reasonable
17 jury to find those essential elements proven
18 beyond a reasonable doubt.

19 So I'm asking the Court to, in a sense,
20 ratify what the State has already done, which is
21 the abandonment of this charge and the
22 abandonment of a theory that Brendan Dassey had
23 anything to do with this or that the story that
24 Brendan Dassey told under police questioning has
25 any veracity, corroboration, or foothold in the

1 evidence presented at this trial.

2 THE COURT: Before I hear from the State,
3 uh, I'm going to check something in my office.
4 We're going to take a five-minute break and we'll
5 come back.

6 (Recess had at 10:03 a.m.)

7 (Reconvened at 10:11 a.m.; jurors not
8 present.)

9 THE COURT: Who will be arguing this motion
10 for the State? Mr. Kratz?

11 ATTORNEY KRATZ: Yes. Thank you, Judge.
12 The posture -- procedural posture of this
13 particular argument is hardly unique to the case
14 of, uh, State vs. Avery. Any serious, um, case,
15 or any, uh, defense attorney, uh, worth, uh, his
16 weight at all, brings motions to dismiss at the
17 close of the, uh -- the State's case, and, uh,
18 although, uh, not at all meaning to, uh, demean
19 or to discredit the defense attorney's, um,
20 bringing this particular motion, uh, it is, uh,
21 procedurally very common.

22 That having been said, Your Honor, the
23 standard that the Court must apply, Mr. Strang
24 has, uh, accurately indicated, uh, that is, in
25 considering the light -- or excuse me,

1 considering the evidence in the light most
2 favorable to the State, the evidence, uh, if,
3 believed, uh, and, uh, if rationally considered
4 by the jury, would be sufficient to prove the
5 defendant's guilt beyond a reasonable doubt.

6 Importantly, in this case, uh, is the
7 jury instructions that not only talk about direct
8 evidence, but also include that of circumstantial
9 evidence, because this jury, and, uh, at least
10 by, um, application to this motion, this Court
11 can and should not only consider direct evidence
12 that has been, uh, presented, but, also,
13 reasonable inferences. That is, any inference
14 that -- and in -- in this posture, that this
15 Court could, uh, reasonably infer, uh, based upon
16 a fair consideration of all the evidence in the
17 case.

18 Mr., uh, Strang, although arguing for
19 dismissal of the, uh, first, uh, three counts,
20 makes no specific, uh, arguments, uh, as to those
21 bases, uh, most of his, uh, argument as to the
22 Count 4, which is, in fact, included in the
23 second Amended Information, uh, which is a charge
24 of false imprisonment, and, therefore, my, uh,
25 response to Mr. Strang will, uh, in kind, uh,

1 most, uh, predominantly, uh, relate to that
2 count.

3 False imprisonment, as this Court knows,
4 uh, is a count which does not usually, uh, stand
5 alone. False imprisonment is a crime that is
6 usually charged with another more serious crime.
7 In this case, a homicide. Sometimes, uh, a
8 sexual assault, sometimes a carjacking, or
9 robbery, or, uh, something like that. But it is,
10 uh, almost by definition, a crime of motive.
11 That is, requires juries to consider why. Why is
12 somebody confined? Why is somebody restrained?
13 Why is somebody, uh, held or compelled, uh, to
14 remain in a place against their will? Again,
15 usually in conjunction with another crime.

16 And although it would be a luxury, uh,
17 to have, uh, whatever evidence the State might,
18 uh, believe, uh, it has available to it, uh, and,
19 most notably, and, uh, I guess, most pointedly to
20 Mr. Strang, uh, noting Mr. Dassey's, uh,
21 involvement, Mr. Dassey's statement, uh, and
22 although academically we can talk about, well, if
23 the State had Mr. Dassey available and had his
24 testimony available in this case, uh, what might
25 this jury consider?

1 The fact of the matter is, Judge, we
2 don't. We don't have Mr. Dassey available. And
3 so you, the Court, and the jury, eventually, will
4 have to consider the evidence that is before it,
5 not the evidence that might be, or the evidence
6 that's been excluded, or the evidence that has
7 been ruled unavailable to the State, but that
8 which the State does have. And, again, we're
9 entitled at this stage of the proceedings, uh, to
10 have this Court consider not only the evidence,
11 but the inferences that may draw therefrom.

12 I mention, Judge, that the false
13 imprisonment, uh, count, itself, is a charge of
14 motive. Uh, that is, the "why". And, as Mr.,
15 uh, Strang, digressed, uh, at least briefly, to,
16 uh, some procedural parts of this case, uh, I
17 feel it necessary to do the same. The State
18 attempted in this case to show this jury, uh, the
19 why. That is, why would this kind of crime --
20 why would the very crime, the false imprisonment,
21 have taken place?

22 Uh, on nine separate motions brought by
23 this State, uh, we were unsuccessful in something
24 called "other acts motion". That is, uh,
25 attempting to show this jury, uh, the very

1 history of this man, Mr. Avery, uh, of his, uh,
2 not only violent history, uh, but also his, uh,
3 very history of assuring compliance, uh, with,
4 uh, other young women at gunpoint. Uh, that, uh,
5 if, uh, allowed in this case, uh, may very well
6 have ended this discussion right there.

7 But, again, we don't have those kinds
8 of, uh, evidence available, at least,
9 unfortunately, in the State's perspective, uh, to
10 present or to argue in this case.

11 Importantly, or maybe just as
12 importantly, uh, during this trial, uh, we
13 attempted to provide and have the jury consider
14 evidence of Ms. Halbach, herself, and her state
15 of mind. That is, whether Ms. Halbach would
16 voluntarily go into Mr. Avery's trailer. The
17 Court may remember the testimony of Ms. Pliszka,
18 uh, when the State at least elicited, or
19 attempted to elicit, testimony about a prior
20 contact between Ms. Halbach and Mr., uh, Avery,
21 where Ms. Halbach felt creepy, uh, about Mr., um,
22 uh, Avery, and that, uh, she very much would not
23 have voluntarily gone into Mr. Avery's trailer.

24 And although not available, uh, to the
25 State in -- at least for, uh, this part of the

1 trial, uh, I make -- uh, I may renew, as this
2 trial goes forward, uh, our request to introduce,
3 uh, just that evidence. But we are, as I
4 mentioned, entitled to inferences. And the
5 inferences still available, that is, that
6 Ms. Halbach would not voluntarily go into Mr.,
7 uh, Avery's trailer, would not, certainly, uh,
8 voluntarily, without compulsion, or without being
9 compelled, uh, remain there where harm could come
10 to her.

11 So back to my original premise, Judge,
12 that this is a crime of motive, that is, a crime,
13 uh, typ -- typically accompanied by a more
14 serious crime or series of crimes, I'm asking
15 this Court at this stage of the proceedings to
16 consider all of the evidence and to consider the
17 in -- the inferences that may draw therefrom.

18 The Court can probably, uh, uh,
19 understand that these kinds of crimes are not
20 usually committed with lots of witnesses around.
21 In this case there's no victim to tell the story,
22 uh, of what happened, and so, necessarily, the
23 jury, and in this case the Court, will have to
24 rely upon those inferences.

25 The State believes, Your Honor, uh, that

1 inferences can be drawn in this case. First of
2 all, the State can and is asking this Court to
3 draw the inference that the defendant's motive,
4 that is, his request to have Ms. Halbach come to
5 his property, was not an innocent, uh, request,
6 was not an innocent motive.

7 We've argued that he's lured Ms. Halbach
8 to his property by using the name, B. Janda.
9 Although Mr. Strang may argue that one inference,
10 uh, may be that that is innocent in nature, uh,
11 the State is entitled to an inference that
12 supports conviction. That is, that it's not a
13 coincidence that Mr. Avery used an alias, used a
14 different name to lure Ms. Halbach.

15 That becomes important when we talk
16 about the second part of this case. That is,
17 when Ms. Halbach actually gets to the property.
18 We've heard testimony from Bobby Dassey, uh, that
19 he saw Ms., uh, Halbach walk towards the trailer.
20 That he took a shower, and when leaving to go
21 hunting, uh, and coming out to, uh, his truck, he
22 saw nobody in the vicinity of, uh -- did see Ms.
23 Halbach's vehicle.

24 We're entitled at that point, Judge, to
25 the inference that Ms. Halbach is inside of

1 Mr. Avery's trailer. Uh, although Mr., uh,
2 Strang characterizes that as speculation, uh, the
3 State certainly believes that that is a
4 reasonable inference not just that this Court can
5 draw, but that a jury, eventually, uh, can draw.

6 We have to, for the next inference,
7 Judge, go to the end of the case, uh, in order
8 to, uh, ask the Court to draw the inferences in
9 the middle, and that is, where is Ms. Halbach
10 killed? The State believes, as Ms. Strang --
11 Mr. Strang has, uh, accurately indicated, that,
12 uh, Ms. Halbach was killed in the garage.

13 I think it is, um, uh, although an
14 inference, not a reasonable inference, uh, that
15 Ms. Halbach was shot, uh, while she was al --
16 already in a -- a -- a -- a -- a state of being a
17 corpse when she was deceased, the reasonable
18 inference is that you shoot somebody in the head
19 to cause their death.

20 And so where this happened, as Mr., uh,
21 Strang I think rhetorically asked, although I
22 will answer that question, the inference is, in
23 the garage, because the bullet, uh, which passed
24 through Ms. Halbach's body, is in the garage.
25 You've heard testimony, Your Honor, as to the

1 weapon that was used, by experts, as to the shell
2 casings that came from that weapon, as to the
3 bullet that came, uh, from that weapon, to the
4 exclusion of all others.

5 And so while Ms. Halbach was killed in
6 the garage, and while she -- the inference was
7 earlier in Mr. Avery's trailer, the inference
8 that we're asking this Court, and eventually the
9 jury, to draw, is that, uh, she is transported
10 from the trailer to the garage.

11 We're asking, Judge, and I think
12 reasonably, uh, asking, that the inference is
13 also that she wouldn't do that voluntarily.
14 Again, not just because of the statements of
15 friends and family, Mr. Pearce, and others, uh,
16 as to warnings as to not going into individuals'
17 homes and the like, uh, but just the surrounding
18 circumstances, and circumstantial evidence, and
19 common sense, uh, should dictate, uh, that she
20 would not, uh, go from a place, that is, from a
21 trailer, uh, to a place, uh, where she was killed
22 in the garage without being compelled to do so.

23 Again, Judge, there may be other
24 reasonable inferences. There may be other
25 inferences that can be drawn. But at this stage

1 of the proceedings we are entitled to the Court's
2 inference that supports a conviction. We're
3 entitled to those reasonable inferences, uh,
4 that, if believed by a jury, would lead to a
5 conviction. Permis -- permissive inferences, uh,
6 are not, again, just unique, uh, to this part of
7 the proceedings, um, but are, uh, oftentimes
8 applied by juries when I mentioned the
9 consideration of circumstantial evidence.

10 There aren't very many cases as, uh, we
11 discussed, at least, uh, parenthetically, uh,
12 yesterday directly on this topic, uh, although
13 there are some cases on false imprisonment,
14 itself, and many of those cases are reflected or
15 adopted in the jury instruction, itself,
16 Instruction 1275, uh, when, uh, false
17 imprisonment, or the confinement, or restraint
18 can be proved by acts, by words, or by a
19 combination, uh, of the two, uh, and so the
20 combination here of acts, uh, or words, the acts,
21 of course, uh, being the, uh, pointing, uh, of a
22 firearm at another, uh, the words, uh, whatever
23 there may -- they may have been, all do, uh, I
24 believe, uh, support the reasonable inference
25 that Ms. Halbach's, uh, freedom of movement was

1 compelled. That is, that she did not go
2 voluntarily to the garage, the ultimate place
3 where she was killed.

4 Once again, Judge, uh, we are not here,
5 we are not before this Court, uh, arguing
6 whether, uh, the case, uh, is proved, uh, beyond
7 a reasonable doubt. Simply, if a jury, or if
8 this Court at this time, when considering the
9 facts in a light most reasonable and most
10 favorable to the State, would, um, uh, support a
11 conviction, and it does.

12 Uh, we have, uh, other evidence. I'm
13 not going to belabor the point as to the where
14 and the when, uh, statements, uh, by, uh,
15 Mr. Fabian, uh, statements by others, uh, who may
16 place a timeline as to where Ms. Halbach was or
17 what, uh, she may have been doing.

18 Uh, the bottom line, uh, does, however,
19 suggest, I think, quite reasonably, uh, that her,
20 that is, Ms. Halbach's, uh, freedom of movement
21 was, in fact, uh, restrained, was -- she was, in
22 fact, confined, uh, that she was deprived of that
23 freedom of movement that, uh, individuals do
24 enjoy, that physical force, uh, although not
25 required, uh, I think it certainly was, uh, used

1 in this case, or at least threatened, uh, by use
2 of a -- a firearm, and the State is entitled to
3 those inferences.

4 Again, not what evidence that the State
5 wishes, uh, we could, uh, have presented in this
6 case, but the inferences from the evidence that
7 we have educed, uh, we do believe supports a
8 conclusion that the Count 4, the 4th count of the
9 Information, that is reasonably included in this
10 case, is supported by the evidence.

11 We'll ask the Court at this time to deny
12 the, uh, defense's motion, uh, for an acquittal
13 or for dismissal, uh, at this stage of the
14 proceedings, that is, after the State has rested
15 its case in chief. That's all I have, Judge.
16 Thank you.

17 THE COURT: Mr. Strang, anything in reply?

18 ATTORNEY STRANG: Yes, Your Honor. Uh,
19 although it came only at the end, I -- I
20 appreciate Counsel's concession that the proper
21 standard here for the Court is, uh, assessing the
22 sufficiency of the evidence, not assessing the
23 sufficiency of the proof that the State wishes,
24 or would like to have offered but did not.

25 So confining my reply to the evidence,

1 I'll start with this. Um, seems a small point,
2 but, perhaps, it's really not. The evidence is
3 undisputed that Teresa Halbach was 25 years old,
4 um, on October 31, 2005. The State's first
5 argued inference, um, in support of false
6 imprisonment is that she was lured to the Avery
7 property at all, um, by a -- by a lie, by a -- a
8 sham, or a pretense that, uh, Mr. Avery
9 undertook.

10 I -- I raised her age, because if it
11 were true that he lured her there, or that a
12 reasonable jury could find so, that wouldn't make
13 out false imprisonment as a matter of law.
14 Luring someone, an adult, a competent adult,
15 someplace, is not intentionally confining or
16 restraining them in that place.

17 Now, a child can be lured into a
18 secluded or enclosed place, and if the purpose of
19 luring the child there is one of several that the
20 child enticement statute, 948.07, sets out, then
21 that's a crime. But an -- but an adult, uh,
22 isn't falsely imprisoned by being lured to go
23 someplace under, uh, false pretenses, and
24 there's -- there's no decisional support or case
25 law that would support the luring theory of false

1 imprisonment here of which I'm aware.

2 In any event, uh, I also note in that
3 respect that the evidence is undisputed that
4 Ms. Halbach had been to this very address several
5 times before for the purpose of taking pictures.
6 The evidence is undisputed, offered by the State,
7 that there was a maroon van. Um, if -- if -- if
8 we -- we saw one picture we must have seen ten,
9 of the maroon van from -- from almost every
10 possible angle. I would -- I was going to offer
11 to buy the van myself in order not to see one
12 more picture of it. So that's undisputed.

13 It is undisputed in the evidence that
14 Barb Janda, B. Janda, was offering the van for
15 sale. That ev -- that evidence came from, uh,
16 Bobby and Blaine Dassey, at least, and it may
17 have been mentioned by Scott Tadych, although I
18 don't say that to the Court because I'm not
19 certain.

20 So, you -- you -- you know, even if
21 hypothetically luring an -- a competent adult in
22 some circumstances could amount to false
23 imprisonment, it doesn't here on the evidence or
24 on any reasonable inference from the evidence.

25 The State, next, hones in closer and

1 says, well -- offers an argument that perhaps the
2 place the jury can infer Ms. Halbach was falsely
3 imprisoned is Mr. Avery's trailer.

4 Now, Counsel, uh, accurately describes,
5 uh, how one reasonably could view Bobby's
6 Dassey's testimony, uh, insofar as Counsel went.
7 Uh, Bobby Dassey did testify that he saw Ms.
8 Halbach walking toward the trailer as he looked
9 out the kitchen window before taking a shower and
10 saw her car there. Bobby Dassey didn't say, and
11 no one else suggested, that Steven Avery was
12 outside, or was marching Ms. Halbach,
13 involuntarily, toward the trailer, or interacting
14 with her in any way, or even visible. Um, Bobby
15 Dassey does not see Steven Avery at the time that
16 he sees Ms. Halbach walking toward the trailer.

17 So, again, we've got nothing on which to
18 base an inference that she's walking toward that
19 trailer for anything other than a business
20 purpose, uh, that she's undertaking. Um, nothing
21 to suggest she's being compelled to do that in --
22 you know, in the sense that the false
23 imprisonment statute speaks of a confinement or
24 restraint, uh, absent someone's consent.

25 It is also true that Bobby Dassey does

1 not see Ms. Halbach or Mr. Avery immediately
2 after his shower, but does see her car.

3 Now, what -- what the State omits was
4 Bobby Dassey's testimony, not put in dispute,
5 that his shower was three or four minutes. It's
6 three or four minutes, roughly, between his two
7 observations out the kitchen window.

8 If Ms. Halbach, in fact, is in
9 Mr. Avery's trailer at all, and let's -- let's
10 assume that's a reasonable inference from Bobby
11 Dassey's testimony if its credited, if she's in
12 his trailer at all, we don't know what she's
13 doing there, what's being said, whether any
14 effort is being made to keep her there. And
15 three or four minutes, by itself, is not a time
16 frame that would raise an inference that somebody
17 is being held against her will, um, raises no
18 inference of that at all, especially in light of
19 the undisputed business purpose, um, that
20 Ms. Halbach had for coming to the property in the
21 first place.

22 So there -- there -- Again, there's
23 really nothing. It -- it collapses, as this
24 would be wild speculation to assume that she's
25 being confined or restrained behind the door, if

1 she is, in fact, in the trailer, that she's being
2 confined or restrained against her will. We've
3 got nothing on that.

4 Her blood isn't there. There isn't any
5 sign of a struggle. Uh, nothing. Um, none --
6 none of her blood, hair, you know, anything.
7 Saliva. Nothing's found, uh, evidencing her
8 physical presence in the trailer or, perhaps more
9 importantly, a struggle or some effort to
10 restrain her in any way.

11 So the State then moves next saying,
12 well, maybe there's a reasonable inference that
13 she's transported between the trailer and the
14 garage involuntarily. That's nothing but a
15 guess, if one looks back over the evidence the
16 State has presented.

17 No one sees Mr. Avery and Ms. Halbach
18 going from house to garage either alone or
19 together. Certainly, no one sees them walking
20 from house to garage, or otherwise moving from
21 house to garage, in a way that would suggest that
22 Ms. Halbach's doing this against her will.
23 Nothing. Just nothing on that.

24 In fact, the notion that she gets to the
25 garage at all, under any circumstances, rests,

1 again, on -- on another series of inferences.

2 Um, and tho -- those inferences are that she must
3 have been killed in the garage because the bullet
4 bearing her DNA later is found in the garage.

5 There, again, um, if she's killed in the
6 garage, that's maybe a first degree intentional
7 homicide or a homicide of some sort. We don't --
8 we don't have any idea if this is a contact
9 wound, or if it's -- the gun is fired from a
10 hundred feet away, or anything at all. You know,
11 what her -- her condition is in the garage or
12 what her interaction with a shooter is, even if
13 we assume she's shot, and assume that she's shot
14 in the garage, um, and we certainly have nothing
15 other than the bullet to tell us anything about
16 confinement or restraint in the garage.

17 His blood is found in the garage, but
18 hers isn't. So, again, on the evidence we have,
19 if the State hypothesizes that some effort was
20 made to clean up the garage, which, itself, is
21 speculative, there's no evidence of it, but if
22 that's the hypothesis, then somehow, selectively,
23 the person cleaning the garage was able to remove
24 Ms. Halbach's blood but not able to remove
25 Mr. Avery's blood, or distinguish between the two

1 sources of blood and deliberately left
2 Mr. Avery's blood while removing all trace of
3 Ms. Halbach's blood.

4 You know, it's, um -- it -- it -- it
5 collapses just by -- by explaining what the
6 undisputed evidence here is, and there's nothing
7 else suggesting confinement or restraint as
8 opposed to a gunshot wound in the garage.

9 Now, if, implicitly, this Court is being
10 asked to find that every homicide also involves
11 false imprisonment, that proposition can't stand.
12 There -- there isn't any legal support for it.
13 And if, indeed, every homicide did involve un --
14 false imprisonment, then false imprisonment would
15 be a lesser included offense, and one couldn't be
16 convicted of both of them anyway if, necessarily,
17 a false imprisonment happened -- false
18 imprisonment happens with every first degree
19 intentional homicide. Um, I don't think the
20 State really means to say that the mere fact of a
21 homicide establishes a false imprisonment. If
22 the State does, it's wrong.

23 THE COURT: Anything else, Mr. Kratz?

24 ATTORNEY KRATZ: Nothing, Judge. Thank
25 you.

1 THE COURT: All right. Let's take our
2 break this time. Uh, resume -- Hopefully, Mr. Gahn
3 will be here within 15 minutes, and, um, then the
4 Court will hear argument on the, um, fair testing
5 motion.

6 (Recess had at 10:39 a.m.)

7 (Reconvened at 10:58 a.m.; jurors not
8 present.)

9 THE COURT: At this time we're back on
10 the record and the Court will take up the, uh,
11 motion from the defense -- it's actually a
12 renewal of the, uh, forensic fair testing motion.
13 And, um, before I, uh, hear argument from
14 Mr. Gahn, uh, Mr. Buting, I'll give you a chance
15 to reiterate your motion. I didn't mean to catch
16 you unaware there.

17 ATTORNEY BUTING: No, I was not unaware,
18 it's -- I've been told the table mike doesn't
19 work so I was trying to put this thing on.

20 THE COURT: Okay.

21 ATTORNEY BUTING: Um -- All right.
22 Thank you, Judge. This motion, although I don't
23 mean to make it sound this way, really is kind of
24 a, I told you so, because when we were here on
25 March 17, I have the transcript, uh, that's when

1 our motion for fair forensic testing was actually
2 heard. We filed it earlier than that, a couple
3 weeks earlier than that, and I predicted that
4 what would happen is there would be contamination
5 and there would be consumption of all of the
6 evidence related thereto.

7 Because of that, I asked for one of two
8 remedies, either that the defense expert be
9 present to observe or that it be videotaped. The
10 videotape remedy, had that been granted, probably
11 wouldn't have made a difference other than we
12 would have had a clearer record of how it would
13 have been contaminated and we would have had a
14 record of whether or not Ms. Culhane's
15 explanation that she was just talking and somehow
16 her saliva managed to find its way into a control
17 was credible.

18 But had -- had our expert been there,
19 um, when it became obvious, she probably would
20 have talked to him and said, look at the bullet,
21 it is such that I'm only going to be able to do
22 it once, or that we're not going to be able to
23 cut it in half. And an agreement might have been
24 reached at that point of a way to -- to separate,
25 once she puts the bullet into solution, to -- to

1 divide that solution, buffer, I think she called
2 it, in half, to preserve half for the defense.

3 At a minimum, she could have done that
4 on her own by simply, uh, you know, cutting it in
5 half, saving a buffer, running the first half of
6 the buffer. If, at that point, she's not getting
7 a high enough quantitation from that -- from that
8 amount, then she might have had at least a better
9 argument to say, okay, I got to use it all. I
10 got to consume it all.

11 But, instead, she didn't. She just took
12 it upon herself, knowing in her own mind, as she
13 described, that this was probative evidence, she
14 took it upon herself to, uh, wash the bullet in
15 one buffer solution and to, uh, consume that in
16 her test, leaving nothing left for independent
17 testing.

18 Now, I pointed out that the, uh --
19 there's **Arizona v. Youngblood** and the **Trombetta**
20 cases, also Arizona, I believe, United States
21 Supreme Court decisions, are, uh -- talk about,
22 um, the problem when there's a des -- a -- a
23 destruction of evidence, and the Supreme Court
24 had said, at any rate, that the -- the remedy
25 of -- of suppression, or even, potentially,

1 dismissal, is only available if the State acts in
2 bad faith when they destroy potentially
3 exculpatory evidence.

4 Um, that's, obviously, a pretty high
5 burden. It has to be more than negligence, but I
6 think that there's reasons to believe that we --
7 that there is bad faith here on the part of the
8 State. And I say that for this reason: We
9 asked -- made a reasonable request for fair
10 forensic testing in this case. We did so
11 explaining clearly on the record that this case
12 was unusual because of the allegations that were
13 made, before we even came into the case, by
14 Mr. Avery that somebody was -- was planting
15 evidence, messing around with the evidence, and
16 that for that reason, this case deserved,
17 warranted, required, a little different procedure
18 to protect his rights, as well as the public's
19 rights, to be sure that -- that, uh, process is
20 properly being done.

21 The State resisted that, and did so
22 while arguing that, uh, we don't have to worry
23 about things like this. We have a fine Crime
24 Lab. We have an accredited Crime Lab. Uh, we
25 can't allow Mr., uh, Friedman, Dr. Friedman, or

1 any defense expert, to be there while it's being
2 tested because, by gosh, that could increase the
3 chance of contamination. Well, what do we hear
4 happened?

5 She -- Ms. Culhane introduces other
6 people into the very process, herself, while
7 she's doing a training program. Now, how, having
8 a defense expert present, would increase --
9 greater increase the risk of contamination than
10 doing that, I don't know.

11 Um, so while arguing on the one hand
12 that defense experts shouldn't be allowed because
13 it would increase the risk of contamination,
14 Ms. Culhane then acts in a way that is directly
15 contrary to that, and she's got at least two
16 people, I don't recall how many trainees, I think
17 she said two, um, which, obviously, should
18 increase the risk even more than would have been
19 had a defense expert been there.

20 In addition, Mr. Gahn acknowledged that
21 there are circumstances where, um -- when -- when
22 it appeared that there might be complete
23 consumption of a piece of evidence, where it is
24 warranted for the State and the defense to -- to
25 work on agreement that the defense expert is

1 present when that's being done.

2 Um, Mr. Gahn has been a big champion of
3 independent testing. And his -- his remedy for
4 all of this was, don't worry, Judge, they can
5 retest. They have an opportunity to retest that
6 will protect, uh, an -- any outcome. Well, it
7 doesn't work. I -- I told the Court back then
8 that it -- that it does not work if the
9 material's already contaminated.

10 And, here, she did testify that she had
11 the extract that could have been retested, but
12 that's clearly an insufficient remedy when the
13 contamination, if at all, occurred, most likely,
14 during the extract process anyway. So if it's
15 contaminated at that point, then the extract,
16 itself, is going to be contaminated. And the
17 surest evidence of that, the surest evidence that
18 simply retesting the extract would not be a
19 sufficient remedy for the defense, is her own
20 unit deviation request. I forget the actual
21 exhibit number, but it's in the record.

22 And what she says is, under the proposed
23 deviation, quote, normally the sample would be
24 re-extracted, but in this case there is no sample
25 to re-extract. According to our current

1 protocol, this sample could only be used for
2 exclusionary purposes. However, in this case,
3 she then proposes the deviation of -- from
4 protocol.

5 So if the existence of a remaining
6 portion of the extract was sufficient to, uh --
7 if Mr. Gahn's going to argue that somehow we
8 could test that, and that that would protect Mr.
9 Avery's interests in the, um -- this crucial
10 evidence, that totally undercut by her own
11 admission that she can't extract anything else.
12 She didn't retest the extract, herself, because
13 she knew, as Mr. Gahn does, that that does not
14 constitute independent testing. That's just the
15 retesting of a contaminated, uh, product which
16 will confirm the contamination that's already
17 occurred.

18 Second, now, or finishing the second
19 point, I believe it is, which is that Mr. Gahn
20 says -- acknowledges that there are times when
21 having the defense expert present is -- is
22 warranted, and -- and those circumstances are
23 when it appears that there's only one chance, one
24 shot at the test, uh, we had that here. We had
25 it here. He acknowledged it.

1 And, yet, his own agent of the State,
2 the -- the Crime Lab analyst, um, clearly also
3 recognized that this was going to be a one-shot
4 deal and went ahead and did it, knowing that a
5 month earlier we had filed a motion that the
6 Court had ruled just two weeks earlier, because
7 her test, as I recall, was going on around
8 April 3, um, I believe the testimony was the
9 bullet arrived -- bullet fragment arrived, I
10 think, the day before our motion was decided, it
11 was May -- March 16, and she was beginning the
12 extract process the end of March and into the
13 beginning of April, no call to the defense to
14 say, hey, you were right, this is the situation
15 where there's only one chance to test this
16 evidence, would you like to have your -- your
17 expert there, or would you -- is there some
18 remedy or -- that you can propose? Nothing
19 like -- of that sort was done.

20 Instead, they went ahead and consumed it
21 deliberately knowing what this Court's ruling was
22 as well, which I'll get to in a moment.

23 The, uh -- I also pointed out that one
24 of the reasons for my motion was because the
25 public was beginning to learn in other parts of

1 the country that this sort of thing happened in
2 crime labs. It had been kept under wraps for
3 years. Finally, it was coming out, and I
4 mentioned that there was 17 states now in which
5 incidents had occurred, either fraudulence,
6 mistakes, contamination, or all of the three, um,
7 in crime labs in those states.

8 This Court, though, said -- Let me just
9 find it in quote. This Court said, I will --
10 quote, I'll al -- I will -- I'm sorry. This is
11 on page 43 of that transcript of March 17.

12 THE COURT: Thank you.

13 ATTORNEY BUTING: At the bottom of the
14 last paragraph. Quote, I will also note that
15 although there have been incidents of mistakes in
16 other crime labs, and I think anytime you're
17 dealing with human beings that's always a
18 possibility, I'm not aware that our State Crime
19 Lab has ever been involved in this type of thing.

20 Now, this is said in front of Mr. Gahn,
21 it's on March 17, and we now know that at that
22 moment the Crime Lab in Wisconsin had a re --
23 recorded history of contamination incidents going
24 back for years.

25 The State did not disclose that to the

1 Court, um, and I would, on that point, note, by
2 the way, uh, there is -- there's been some
3 inference that somehow, uh, the -- the
4 discovery -- in fact, I think there was an
5 argument that -- that -- at the hearing that
6 the -- the defense is going to get all the bench
7 notes, and lab notes, and the printouts, and --
8 and can have their own expert look at that, and
9 if that's an adequate remedy -- The contamination
10 log is not part of discovery in these cases. It
11 was not received as part of the discovery request
12 in this case. It was only received by me because
13 I made a specific request when I had some
14 information that, perhaps, a log of this sort was
15 being kept.

16 The Crime Lab initially resisted, and
17 then -- then -- then, initially, turned over a
18 redacted copy that had lack -- blacked out all of
19 the other case numbers so that, perhaps, they
20 were afraid that it would get out and other
21 defense attorneys in other cases would be able to
22 see, hey, there was contamination on my case.
23 Eventually, Mr. Gahn, to his credit, did prevail
24 upon them to provide an un-redacted copy, and
25 that's in the record now here.

1 But on March 17, when this Court was
2 under the impression that our Crime Lab had no
3 such history, the State did not correct the
4 Court's misconception. Mr. Gahn either knew or
5 should have known about that, or, when he then
6 learned about it, perhaps he should have gone
7 right back to the Crime Lab after hearing what
8 the Court's, uh, belief was, and said, hey, is
9 there any history of the -- of contamination that
10 I need to know about that -- to correct the
11 Court's misinterp -- impression. The State did
12 not do that, and so this Court's ruling was based
13 upon, uh, incorrect information withheld by the
14 State.

15 The sum of all of these, uh, points, I
16 think, constitutes bad faith sufficient under
17 ***California v. Trombetta*** to warrant in the -- the,
18 uh, suppression, or perhaps even greater remedy,
19 uh, of the evidence that the State did consume --
20 And in this instance what I'm focusing on -- only
21 focusing on here is Item FL, the bullet fragment
22 from -- on which they claim Ms. Halbach's DNA was
23 discovered during a test that was contaminated,
24 uh, uh, clearly had a contaminated control, and
25 by inference may also have been

1 cross-contaminated, which is something that I
2 pointed out.

3 So I would ask, first, the remedy that
4 that be suppressed, that the jury be
5 so-instructed. Alternatively, if the Court does
6 not believe that it rises even to the level of
7 bad faith to -- to require that kind of a remedy,
8 certainly it rises to the -- to the level that
9 this jury should be instructed of the three
10 following things:

11 Number one, that the State resisted the
12 defense attempts to be present during this test.

13 Number two, that the State totally
14 consumed the bullet fragment evidence without any
15 attempt to preserve a portion of it for
16 independent defense testing.

17 And, number three, that the State
18 withheld evidence that existed before the test of
19 Item FL, that the Wisconsin Crime Lab had a
20 recorded history of contamination incidents.

21 I don't know that this remedy would be
22 adequate, and I'm asking for something greater,
23 but I think at a minimum, uh, given the conduct
24 of the State in this case, this Court should
25 adopt that remedy at a minimum. Thank you.

1 THE COURT: Mr. Gahn?

2 ATTORNEY GAHN: Yes, Your Honor. In
3 **State v. Noble**, which is at 246 Wis. 2d 533, um,
4 the principles, um, that Wisconsin cases have
5 derived from United States Supreme Court
6 decisions in **Trombetta** and **Youngblood**, and I
7 quote from the **Noble** case, the defendant's due
8 process rights are violated by the destruction of
9 evidence if, number one, the evidence destroyed
10 was apparently exculpatory and of such a nature
11 that the defendant would be unable to obtain
12 comparable evidence by other reasonably available
13 means, or, two, if the evidence was potentially
14 exculpatory and was destroyed in bad faith. And
15 I think that's the analysis that the Court must
16 apply in Mr. Buting's motion.

17 The issue for, uh, the fair and
18 independent testing to have, uh, an expert
19 present was decided by the Court. I think that's
20 a completely different issue than what we're
21 discussing here.

22 Um, when Mr. Buting brought up at the
23 March 17 hearing about other crime labs, uh, he
24 was bringing up what are referred to as scandal
25 issues. And there were some scandals in other

1 crime labs. And, um, the Wisconsin Crime Labs in
2 Milwaukee or Madison, neither of them have been
3 involved in any type of scandal issues of the
4 nature that Mr. Buting was referring to.

5 I think that we have to put this in
6 perspective, and I think part of the Court's
7 ruling, um, that it made in March 17 was the
8 reasonable -- reasonableness of the request of
9 the defense.

10 You have to look at what a State Crime
11 Lab operates and how they operate, and as Ms.
12 Culhane stated, since I think it was January 1 of
13 2001, have examined over 50,000 samples of DNA,
14 and she went through the procedure of how they
15 examine these samples, and first is that
16 extraction process and then it goes to the
17 quantitation.

18 And it -- it came out in the testimony,
19 also, you just don't know if you even have DNA.
20 You don't even know if you have a biological
21 substance these days, and the DNA testing is so
22 sensitive that until you get past the
23 quantitation stage, you don't even know if
24 there's anything there, and you don't even know
25 if that's even going to amplify and you're even

1 going to get an end result. And that's just the
2 nature of the science.

3 And when you're dealing with something
4 like that, it would be absolutely unreasonable to
5 have to stop everywhere along the way when you're
6 doing 50,000 samples, almost 10,000 a year, and
7 stop and say, wait, we have to call every defense
8 attorney, we have to, you know, see if they want
9 someone to come in. You can't stop that process
10 like that and wait and put it off for two weeks.
11 It would be a -- an absolutely -- so burdensome
12 that no crime lab could even operate to have to
13 stop every time.

14 And everyone knows, and I'm sure Your
15 Honor is knowledgeable, articles in the paper,
16 and just the last election, the backlog at the
17 Crime Lab is, um -- is -- is huge, and this would
18 just add to that burden of getting cases out.

19 In any event, Mr. Buting has been trying
20 to, I guess, inform the Court that this
21 contamination, uh, log is something that is,
22 um -- it rises to a level of a scandal. I think
23 the testimony from Ms. Culhane was clear. Um,
24 it's maintained, it's kept, it's used for
25 corrective action.

1 Um, I -- I disagree with Mr. Buting when
2 he says there's resistance by the State to turn
3 over the contamination logs. He requested them
4 and I obtained them. But of -- in 50,000 samples
5 in about five years there were 89 cases of
6 contamination. That's all. This isn't a scandal
7 issue. This is normal course of business. You
8 expect contamination when you're dealing with
9 forensic samples. This is something that one
10 expects and you do your best to prevent it.

11 But, um, I -- I just don't see how 89
12 out of 50,000 is -- raises to a level of, um,
13 what Mr. Buting feels is a -- is a scandalous
14 issue.

15 I found a, um -- my review of a A.L.R.
16 article. Uh, basically, I'd like to summarize,
17 uh, one of the statements from the A.L.R.
18 article, and it was from 40 A.L.R. 4th at 594.
19 In my review of the case law, it is found that
20 with respect to hard, physical evidence, it is
21 generally held that, uh, the necessary
22 consumption of evidence in state crime labs does
23 not violate the defendant's rights even though
24 the defendant is prevented from subse --
25 subjecting any of the hard ev -- physical

1 evidence to test by his own expert.

2 But that's not even the case here. Now,
3 I know that Ms. Culhane did not do a second
4 washing, and I believe there was questions on
5 cross-examination about that, but the bullet
6 still exists. And due to the sensitivity of
7 this, uh, DNA, a second washing could be
8 possible, uh, to try and extract DNA from that
9 bullet.

10 But, secondly, and more importantly, as
11 Ms. Culhane testified, the extract tube is
12 available, and that is available for testing, and
13 the defense can run this with their own control,
14 and Ms. Culhane made it very clear the
15 contamination was in the control, not on the
16 evidentiary item. So the evidentiary item
17 still -- the, uh, fact that bullet is available,
18 as well as the extract tube.

19 However, any independent defense testing
20 will likely find the same inculpatory DNA profile
21 that Teresa Halbach is on the bullet, and -- just
22 as Ms. Culhane did. So far, the defense has made
23 no effort to explore either of these options.
24 They've had the discovery in this case for a
25 very, very long time, and they could have, a very

1 long time ago, asked for the extraction tubes or
2 the bullet to at least attempt their own
3 re-examination of the DNA contained on those
4 items.

5 THE COURT: Let me stop you there, because
6 that was one of my questions in anticipation today.
7 Did, uh -- did the -- And this is for both counsel.
8 Did the report, uh, from Ms. Culhane to the defense
9 disclose not only the results of the testing but
10 the, um, contamination problem with the control?

11 ATTORNEY GAHN: Yes. The report that
12 she filed stated that her profile was in the
13 control.

14 THE COURT: And when was that provided
15 exactly?

16 ATTORNEY BUTING: I believe the date of
17 the report is May 8. Is it the May 8 report?

18 ATTORNEY GAHN: It -- it may be the
19 May 8 report. I -- I know that --

20 ATTORNEY BUTING: I think we -- we got
21 it in --

22 ATTORNEY GAHN: It would have been the
23 May 8 report because it was in, um, March that
24 the bullet was, um, discovered and I believe she
25 did her extract later that month. So it would

1 have been the next report, which would have been
2 the May 8 report.

3 ATTORNEY BUTING: I think we probably
4 got it in a -- a packet from June. Um, we got a
5 big packet in early June. Let me just see here.
6 Yes, Item FL is in the May 8 report, and I think
7 that was first, to answer the Court's question,
8 turned over to us in June. We, of course, did
9 not have any lab notes, lab sheets, until
10 sometime after that but...

11 THE COURT: Well, how did the report
12 reference the contamination in the control sample?

13 ATTORNEY GAHN: I --

14 ATTORNEY BUTING: I'll read it, if you'd
15 like.

16 THE COURT: Go ahead.

17 ATTORNEY BUTING: It's in a manner,
18 frankly, that I think is -- it -- I mean, it's --
19 it's truthful, but it's not exactly --

20 ATTORNEY GAHN: If -- if you'd just read
21 it --

22 ATTORNEY BUTING: -- as --

23 ATTORNEY GAHN: Why don't you just read
24 it there, Mr. Buting.

25 ATTORNEY BUTING: The profile developed

1 from the bullet fragment, Item FL, and the
2 interior of the driver's door handle, Item IG,
3 which isn't relevant here, but are consistent
4 with the profile developed from the pap smear,
5 Item EF, reportedly collected from Teresa
6 Halbach. And it says, see laboratory reports,
7 earlier ones.

8 The manipulation control extracted with
9 the bullet fragment, Item FL, contains DNA that
10 is consistent with this analyst.

11 And then it goes onto another, um -- you
12 know, another item is tested. So...

13 ATTORNEY GAHN: So it was revealed in
14 that report, but also all the bench notes, the
15 raw data, all the, um, electropherograms, which
16 they're called, was provided to the defense, and,
17 um, was available for their expert to review.
18 And a review of the raw data and a review of all
19 of the reports clearly showed that issue, the
20 manipulation control with Ms. Culhane's, um,
21 profile in it, um, all of that was provided to
22 the defense for their expert, and, um -- and I
23 will say it was used, um, uh, very, um,
24 efficiently by the defense in their
25 cross-examination of Ms. Culhane.

1 Um, at the very least, the defendant has
2 offered, I think, no proof, um, that the bullet
3 was apparently exculpatory, or that the State
4 acted in any type of bad faith.

5 But, also, I -- I think, one has to look
6 at this in the context of this case. The
7 defendant, as I gather, has used this
8 contamination issue and deviation from protocol,
9 uh, regarding this bullet, um, sort of in their
10 overall conspiracy, planting, frame-up, bias,
11 rush to judgment type defense that the police,
12 basically, had manufactured evidence against
13 them. Um, I just don't believe that even a
14 **Trombetta** or an **Arizona v. Youngblood** analysis is
15 even warranted.

16 So I respectfully ask the Court to deny
17 the defendant's motion to sup -- to suppress
18 that, um, evidence for the stated reasons.
19 Basically, nothing exculpatory was suppressed by
20 the State. There's no evidence to test -- There
21 is evidence available to test, um, but the
22 bullet, likely, has only inculpatory value. Um,
23 they're welcome to retest the extract and share
24 those results with us. We'd be more than happy
25 to see it.

1 I'm confident that their expert, at an
2 accredited lab, would test the extract and find
3 Ms., uh, Halbach's DNA profile on the bullet.
4 Um, I just don't believe there's any bad faith by
5 the State. So I thank you, Your Honor. That's
6 all I have.

7 THE COURT: Mr. Buting?

8 ATTORNEY BUTING: Yes, I -- I have some
9 response. Um, first, it -- it's a total red
10 herring to say that we can test the extract and
11 get any information that's independent of what's
12 already occurred, and Mr. Gahn knows that. If
13 the ex -- if the -- if the sample is contaminated
14 in the extraction process, then the extract will
15 be contaminated, too. It's -- it's just simple
16 common sense and it's supported by the fact that
17 the -- the analyst, herself, did not bother to
18 retest.

19 THE COURT: Now, wait. Let-- let's stop
20 there, because I -- I know I had trouble
21 following the testimony as it came through. It's
22 my understanding that the control that was
23 supposed to be blank was contaminated with the
24 operator's DNA, but that the extract was -- was
25 not. What -- Substantively, what calls into

1 question the, uh, validity of the results on
2 the -- on the bullet?

3 ATTORNEY BUTING: Okay. Sure. I'll --
4 I'll explain that.

5 THE COURT: Go ahead.

6 ATTORNEY BUTING: The problem is,
7 when -- when there's evid -- the -- the control
8 is run along together in this little block we --
9 she sort of mention -- uh, demonstrated it, um,
10 in these various little tubes, or whatever --
11 their -- their vials, or whatever they're called,
12 they're all run together through this same
13 instrument at that particular, uh, process.

14 The -- the sample -- the bullet that --
15 that gets extracted by, she said a -- a wash that
16 she said that -- I mean, she said did consume,
17 and one could reasonably expect would consume,
18 whatever DNA was on there, is taking place on her
19 lab bench. If she's capable of contaminating the
20 control with her own, then that's evidence of
21 cross-contamination right there.

22 She's also testified that at -- in that
23 very same bench she's had Teresa Halbach's DNA,
24 and that it's as reasonable an inference that
25 she's able to cont -- cross-contaminate from that

1 to the bullet fragment as it is that she
2 contaminated her own on the control.

3 And it's for that reason that the
4 protocol says, when you get a contaminated
5 control, you throw it out, because you cannot
6 assume that the evidence sample, itself, has not
7 also been contaminated.

8 THE COURT: Okay. The other question I had
9 is, um, let's suppose that the defense had had, uh,
10 an observer there. Um, perhaps the observer would
11 have been able to provide an explanation for how Ms.
12 Culhane's DNA found its way to the control sample,
13 and, uh, the State could have used that at trial.
14 But her -- The State did, in fact, cross-examine her
15 about that at trial. It certainly goes to the --
16 the weight or the validity of her test results.

17 What -- what did the defense lose, uh,
18 the way the testimony came out, that it -- that
19 it would have gained had an observer been there?

20 ATTORNEY BUTING: Okay. Had a defense
21 expert been there, the very first step where
22 she's analyzing the sample -- I recognize that --
23 that there's several different ways to get -- to
24 test for DNA. Most of what she did, I think,
25 here were -- were these cotton swabs, where

1 there's a apparent stain, and then the swab is
2 taken, and then it -- it absorbs whatever the
3 substance is, and you can cut it and save a
4 portion of the swab.

5 Um, but in a case like this, she chose
6 not to do that. She chose not to swab it. So a
7 defense expert would have said either we want you
8 to -- to use a swab, like you did in every other
9 test, swab the bullet and then cut and save half
10 of it, or, if she really felt it was necessary to
11 put it into this little buffer and -- and, uh,
12 dissolve it that way, to preserve half of that
13 ex -- that buffer before it gets done -- before
14 anything else gets done with it so that that
15 could be retested. More likely, it would have
16 been do the swab.

17 If you've got the forceps to hold the --
18 the -- the bullet with a forceps, you take a
19 swab, and you swab it around, and you get
20 everything you can get, just like she did with
21 the key and other items, then we would have half
22 of that, uh, swab that would have been preserved
23 for retesting. Instead, we only have extracts
24 that have been, uh, potentially already
25 contaminated.

1 Did that answer the Court's question?

2 THE COURT: Yes, it does.

3 ATTORNEY BUTING: Okay. Can I address a
4 couple of other --

5 THE COURT: You may --

6 ATTORNEY BUTING: -- points?

7 THE COURT: -- continue, yes.

8 ATTORNEY BUTING: Thank you. Um, the --
9 Counsel's right that there's sort of two
10 different levels, um, that -- that a -- a Court
11 engages in -- in -- under **Trombetta**, which is
12 whether evidence is apparently exculpatory and
13 destroyed versus when it's potentially
14 exculpatory and destroyed.

15 I'm not out -- I'm not arguing the
16 evidence was apparently exculpatory and was
17 destroyed, because then it would be even easier.
18 You don't have to show bad faith. Um, mo -- this
19 case, like most, fall in the category where
20 evidence is potentially exculpatory and then
21 destroyed, and if you can show bad faith, then --
22 then the remedy is warranted.

23 Um, there's always an argument the State
24 always says whenever they get a result that
25 favors them, see, it would have been inculpatory.

1 But there's no reason to think that the result
2 would be potentially exculpatory because, look,
3 we tested it, and it came back inculpatory.

4 But what -- what Mr. Gahn's ignoring
5 here is, looking at all of the evidence as a
6 whole, you have to consider how -- what's the
7 likelihood of it being potentially exculpatory?
8 There were two bullet fragments found. The other
9 one did not have, um, Ms. Halbach's DNA found on
10 it. So that's at least fifty-fifty that this one
11 wouldn't either.

12 Secondly, of all of the other 180 or
13 more items that she looked at and tested, none of
14 them had Teresa Halbach's DNA on it. This was
15 the only one. So if the odds are 1 out of 180
16 that this would be potentially inculpatory, it's
17 obviously much more likely, in my view, if it had
18 been properly tested and preserved for -- in a --
19 in a test, to have been shown to be exculpatory,
20 not inculpatory.

21 Um, also, Mr. Gahn says is this process
22 is -- would be burdensome and, um, the Crime Lab
23 has a backlog, they -- they can't stop and call a
24 defense expert every time they're in the middle
25 of these tests. The Court's not being asked to

1 make some sweeping decision that applies to every
2 test. We're focused on Mr. Avery's case.

3 And the unique circumstances of
4 Mr. Avery's case are that before this sample was
5 consumed, we asked the Court for relief, and we
6 put the State on notice, and despite that notice,
7 the State, nevertheless, went ahead and consumed
8 this cru -- this piece -- crucial piece of
9 evidence.

10 Secondly, focusing directly on this
11 case, Mr. Gahn said that she was testing a lot of
12 items, and you can't tell until you go to the
13 quantitation that there's even DNA. That's true.
14 But what she also testified to was her personal
15 knowledge that this particular item of evidence
16 was probative in her view. It fit the -- the
17 message that she'd gotten on the phone to try and
18 put -- somehow put her into the house or the
19 garage, and, indeed, she said the reason she
20 applied for this deviation request, for the first
21 and only time of her entire career, was because
22 she knew that this was a probative piece of
23 evidence.

24 So it's not like this was just some
25 random 1 out of 180 pieces that may or may not

1 have DNA. She knew ahead of time the potential
2 value, and the -- and the importance of it.

3 The contamination log and -- and the
4 comments that I made on the 17th were not
5 limited, by the way, to scandals in the crime
6 labs. What I said was, quote, on page 29, now 17
7 states, crime labs in 17 different states, have
8 been found to either -- I'm sorry -- to have
9 either had fraudulent behavior by one of the
10 analysts, or erroneous test results,
11 incompetence, everything, the entire spectrum of
12 problems, that results in false tests.

13 That in some instances, in Kansas, for
14 instance, resulted in the correct suspect being
15 released, going out and committing another
16 offense. And in other instances, innocent people
17 being wrongly identified through DNA testing, and
18 only later, fortuitously, was it determined that
19 the mistake was made, closed quote.

20 This exhibit, 346, which is the
21 contamination log from the Wisconsin State Crime
22 Lab, shows serious instances way beyond just
23 contamination of controls, and, in fact, on
24 the -- it's -- it says page 7, but I think it's
25 more than page 7 here, on a date of November 22,

1 '05, Ms. Culhane, herself, admits that she had a
2 contamination where there was a carryover of the
3 sperm fraction into the manipulation control, and
4 that the result of that was that the D.A. refused
5 to proceed with charges, uh, and the case was
6 closed.

7 Now, we don't know whether that person
8 was really guilty and got off because she screwed
9 up, or whether the person was really innocent
10 and -- and justice was served. But these kinds
11 of mistakes, I don't care whether there's only 89
12 out of 50,000, they are important, and they
13 deserve to have the -- the -- the light of
14 transparency shined on them, shown on them, and
15 that is what we were trying to do when we asked
16 for this motion.

17 And so I think, in -- in total, when you
18 look at all of what's happened, I think that
19 there is bad faith for the ultimate remedy, or,
20 at a minimum, for the alternative remedy that
21 I've -- that I propose, or something similar to
22 that. Thank you.

23 THE COURT: Anything else, Mr. Gahn?

24 ATTORNEY GAHN: I would just say that
25 I -- I wish that, um, he had asked Ms. Culhane

1 about the specific instance that he read in the
2 contamination log. I think it's unfair to, uh,
3 derive some meaning from that, uh, without having
4 Ms. Culhane explain what happened in that case.

5 I think that, um, Counsel also is wrong
6 when he says Teresa Halbach's DNA was not found
7 in any of the samples. Good Lord, where was he
8 during her testimony? Ms. Halbach's DNA was
9 found in A1, A2, A3, A4. It was on the Pepsi
10 can. There was a -- a -- a -- She had Teresa
11 Halbach's DNA, um, in many, many samples. So
12 I -- I don't know how he says that there wasn't
13 any, um, testimony to that effect.

14 But I would, um, just -- And with, um --
15 Perhaps, Your Honor, would -- I had a partial
16 transcript prepared of, uh, Ms. Culhane's, um,
17 testimony on this issue, and I would just direct
18 your attention --

19 THE COURT: I -- I have received that, and
20 it's my understanding that counsel for the defense
21 has also got a copy; correct?

22 ATTORNEY BUTING: Yes. I have seen that
23 and I'm not going to re-argue it. It -- that's
24 the whole point about extracts.

25 ATTORNEY GAHN: But she answers the

1 question, um, Mr. Buting asked her. Therefore,
2 the extract was contaminated already; isn't that
3 right? And she states, the control was
4 contaminated with my DNA, not the extract.

5 THE COURT: I think I understand the
6 arguments of the two parties. All right. With
7 respect to -- Well, first of all, do I have all the
8 outstanding motions at this time? Uh, you have both
9 made, uh, good arguments. Um, the motions were in
10 consideration more than I can give in the next ten
11 minutes or so, so I'm going to, uh, do more
12 examination this weekend.

13 What I would suggest is this, so that we
14 don't hold up the jury, uh, I will, uh, present
15 decisions on the motions at 8:30 on Monday
16 morning. Uh, so let's plan on starting early at
17 8:30. The jury won't be here, but I expect
18 counsel to be here and, uh, the Court will issue
19 rulings on the motions at 8:30 on Monday, uh,
20 before we proceed to testimony before the jury.

21 ATTORNEY GAHN: Thank you.

22 ATTORNEY BUTING: Thank you, Judge.

23 THE COURT: Uh, otherwise, I'll see you at,
24 uh, 1:30, uh, with the jury.

25 ATTORNEY BUTING: Thank you.

1 THE COURT: They should be here by 1:15,
2 so at 1:30 we should be ready to go. We're
3 adjourned for this morning.

4 (Recess had at 11:38 a.m.)

5 (Reconvened at 1:30 p.m.; jurors not
6 present.)

7 THE COURT: We're on the record outside the
8 presence of the jury. At this time, uh, counsel, is
9 there anything either party wishes to place on the
10 record concerning, uh, exhibits?

11 ATTORNEY KRATZ: Yes, Judge. The -- Uh,
12 the State went through with, uh, your clerk, uh,
13 exhibits that were referred to, identified what
14 we believed were offered but she does not have
15 lif -- listed as offered, and, uh, we can go
16 through those at this time.

17 Photos that we would offer at this time
18 include 164 and 165. That's the evidence photo
19 of the .22 caliber and .50 caliber, um, rifles.
20 Item 416 --

21 ATTORNEY STRANG: Sorry, um --

22 ATTORNEY KRATZ: I'm sorry, 164 and 165.

23 ATTORNEY STRANG: Both are --

24 ATTORNEY KRATZ: Are pictures of the --
25 of the guns. One of each. Item 416, which is

1 the CV of Mr. Newhouse. Photos 458 through 463.
2 I'm sorry, Janet, I -- I don't know -- how do I
3 identify those? I can in just a minute, Judge.

4 THE CLERK: Those were the swabs.

5 ATTORNEY KRATZ: Oh. Those are the
6 swabs that, um, Dr. Lowe (phonetic) had
7 identified and referred to.

8 I will tell the Court that there are
9 other exhibits which have been marked and are not
10 being offered. I don't know if you want me to
11 put that on the record as well. I can do that.
12 I went through all those with Janet, as well, but
13 at -- at least from my perspective, um, those
14 that I've just identified are the balance of the
15 exhibits that we would offer that have not yet
16 been received by the Court.

17 THE COURT: Does the defense have any
18 objection to the admission of those exhibits?

19 ATTORNEY STRANG: Uh, no, we -- we
20 don't. Um, like to talk a little bit about some
21 that I'm -- I'm not sure have been offered or
22 not, but...

23 THE COURT: All right. The exhibits,
24 then, that were just mentioned by Mr. Kratz will
25 be admitted. Uh, Mr. Strang.

1 ATTORNEY STRANG: The only ones that I
2 wanted to talk about, and just nail down the, um,
3 status, are the, um, summaries of phone records.
4 Um, I -- Here's what I think I understand.
5 Initially, we were working toward a stipulation
6 on summaries of phone records that would have
7 names but not telephone numbers and only list
8 calls that the parties jointly thought relevant.

9 Um, I had asked for some changes to be
10 made to the -- the -- the two the State wanted to
11 offer, I think one for Teresa Halbach's cell
12 phone and one for Steven Avery's cell phone, and
13 I also wanted, um, um, the -- a summary for
14 Steven Avery's landline, which the State
15 originally had prepared, and I think we were in
16 agreement about the two relevant calls.

17 Um, my -- my current understanding is
18 that, um, counsel for the State did not agree to
19 my proposed additions, um, to those exhibits,
20 and -- and decided not to offer the summaries at
21 all, but I'm -- I didn't had a chance to confirm
22 that with Mr. Kratz, so I'm looking in his
23 direction.

24 THE COURT: Mr. Kratz?

25 ATTORNEY KRATZ: That's true, Judge.

1 The -- Mr., um, Strang proposed a, uh -- an
2 additional column to the State's prepared summary
3 exhibit, um, which the State believed
4 misrepresented the calls. There -- there's no
5 secret about this. Mr. Strang wanted the column
6 that said "answered" uh, on the exhibit.

7 Uh, "answered" we believed
8 misrepresented because it could have been either
9 to a voice mail or actually physically answered,
10 um, so rather than, um, argue back and forth, and
11 I appreciate that Mr., uh, Strang and I were not
12 able to come to a, uh, stipulation, I've simply
13 withdrawn my summary, Exhibits 360 and 362.

14 The records, themselves, uh, although
15 the, uh, records refer, as the Court knows, to
16 phone numbers rather than names, uh, have been
17 received by the Court. Uh, from my perspective,
18 that is, what the State intends, that with the
19 live testimony, I believe, that, uh, I can, uh,
20 get by with -- with those.

21 Uh, if, uh, Mr. Strang would, um, want
22 those other exhibits, uh, resubmitted, uh,
23 without the "answered", um, column, I'm certainly
24 willing to do that as well. But the fact remains
25 it's a State's summary exhibit, and -- and

1 whether the defense, uh, agrees or wants
2 something on it or not, they're certainly not
3 entitled to that, but that notwithstanding, uh, I
4 was happy to try to work something out with
5 Mr. Strang. That didn't happen. So I've simply,
6 uh, uh, agreed that those exhibits not be
7 received into evidence.

8 ATTORNEY STRANG: And -- and we're
9 actually not in disagreement about that. These
10 are State summaries. He's well within his right
11 to decline to modify them as I'm proposing. So
12 there's no rub on that. The only rub here, um,
13 and I'll -- I'll take the blame for this in the
14 sense that I probably let this go on for a couple
15 of days or three days longer than I should have
16 before checking back in with Mr. Kratz, I was --
17 not that he would know this, but I was relying on
18 an understanding that at least the Steven Avery
19 landline phone records, or summary of them,
20 would -- would come in.

21 Now, I don't think, as it turns out,
22 there's any disagreement about the two phone
23 calls from the Manitowoc County Jail about which
24 we had testimony through Investigator Wiegert,
25 uh, and I don't care whether it's a summary or

1 whether it's a page of those phone records,
2 themselves, that come in, um, I just -- maybe
3 this is something we can just stipulate that
4 document in. Um, I -- if -- I -- he's perfectly
5 fine to not offer the summaries and I don't have
6 any problem with the underlying records.

7 THE COURT: I understood, Mr. Kratz, the
8 concern about the, uh, phone records with respect
9 to, uh -- I assume they were Teresa Halbach's
10 records that would be answered? Issue? Was a
11 cell phone?

12 ATTORNEY KRATZ: Yes.

13 THE COURT: Um, is there any objection to
14 the, uh, summaries for the defendant's phone? The
15 landline phone?

16 ATTORNEY KRATZ: Only in the sense that
17 there's been nobody to put those in. In other
18 words, that would either have to come from
19 Mr. Avery or from somebody on -- on the other
20 end.

21 Now, in fairness to Mr. Strang, he asked
22 Mr. Wiegert yesterday, do you remember calls at
23 5:36 and 8:57? Uh, as an officer of the Court, I
24 can tell the Court those are the correct times.
25 I don't have a problem with that. The testimony

1 is in there just isn't a, um -- a summary of
2 that. Perhaps that's something Mr. Strang and I
3 can work out. I don't have --

4 ATTORNEY STRANG: Yeah.

5 ATTORNEY KRATZ: -- really any dispute
6 as to that.

7 ATTORNEY STRANG: Right. I -- I suspect
8 this will be worked out and I'm not trying to
9 force him to put in the two summaries. That's --
10 that's really is his decision as -- as he says,
11 um, so we can try to work out, uh, anything in
12 the record.

13 THE COURT: Anything else before we bring
14 in the jury?

15 ATTORNEY STRANG: Were there any other
16 exhibits that were withdrawn was the only other
17 question I had.

18 ATTORNEY KRATZ: There were some not
19 offered, if that's what you're talking about.

20 ATTORNEY STRANG: Um -- Oh, uh, and 372
21 I think has not been offered; is -- is that
22 right? The voice mail document. One of the two
23 that, uh, Mr. Zimmerman identified.

24 THE CLERK: That's correct.

25 THE COURT: That's correct.

1 ATTORNEY STRANG: Okay. Is the State
2 not offering --

3 ATTORNEY KRATZ: Oh, no, we -- we were
4 offering that. That wasn't included, Janet, this
5 morning.

6 THE CLERK: It was marked as a defense
7 exhibit.

8 ATTORNEY KRATZ: Yes, we would offer
9 that.

10 ATTORNEY STRANG: Okay. And that's --
11 there's no objection.

12 THE COURT: All right, 372 is admitted.

13 ATTORNEY STRANG: I think 361 is in.
14 That was the other Zimmerman exhibit.

15 THE CLERK: Yes.

16 THE COURT: Yes. The clerk informs it's
17 already admitted.

18 ATTORNEY STRANG: All right.

19 THE COURT: Very well.

20 ATTORNEY STRANG: Anything else that was
21 withdrawn?

22 ATTORNEY KRATZ: There was a
23 duplicate -- 492 is a duplicate. We simply gave
24 that back to the clerk.

25 ATTORNEY STRANG: And, then, um, 126 was

1 a -- was a defense exhibit. It's the CD of the
2 radio log dispatch, November 5. I -- if -- if --
3 I move that in if I forgot to at the time.

4 ATTORNEY KRATZ: No objection, Judge.

5 THE COURT: All right, 126 is admitted.
6 Anything else?

7 ATTORNEY STRANG: I don't think we've
8 covered all the withdrawn exhibits. Just so my
9 records are straight, then we're okay.

10 THE CLERK: I believe so.

11 ATTORNEY STRANG: Okay. We're set.

12 THE COURT: Uh, at this time we'll call in
13 the jury then. And, Counsel, I've been informed
14 there still is a member of the jury who's not
15 feeling well, so if we have a fast recess, you'll
16 know why.

17 ATTORNEY KRATZ: Okay.

18 (Jurors in at 1:41 p.m.)

19 THE COURT: You may be seated. At this
20 time, uh, we'll begin the defense case, then.
21 Mr. Strang, you may call your first witness.

22 ATTORNEY STRANG: Thank you, Your Honor.
23 The, uh, defense calls Lisa Buchner as its first
24 witness. She'll swear you in.

25 THE CLERK: Please remain standing. Raise

1 your right hand.

2 **LISA BUCHNER,**

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

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

7 THE WITNESS: Um, Lisa Buchner,
8 B-u-c-h-n-e-r.

9 **DIRECT EXAMINATION**

10 BY ATTORNEY STRANG:

11 Q Good afternoon, Ms. -- Ms. Buchner. You'll
12 probably have to stay somewhere close to the
13 microphone --

14 A Okay.

15 Q -- um, as it doesn't pick up very far away. Um,
16 back in, uh, October of 2005, did you live, uh,
17 in Manitowoc County?

18 A Uh, yes.

19 Q Did you also work in Manitowoc County?

20 A Yes.

21 Q Um, had you been in Manitowoc County for some
22 time at that point?

23 A Yes.

24 Q How were you working, uh, back in October, 2005?

25 A I drove school bus for Mishicot.

1 Q For the entire school district?

2 A Yes.

3 Q Okay. And when you say drove school bus for

4 Mishicot, were you assigned to one school, or

5 more than one school, or how did that work?

6 A Um, I picked up at, uh, Holy Cross, the elementary,

7 and the middle school, and high school.

8 Q Okay. So you're actually covering four schools?

9 A Yeah.

10 Q I mean, Holy Cross is one?

11 A Right.

12 Q And then there's, uh, Mishicot Elementary; is

13 that right?

14 A (No verbal response.)

15 Q Mishicot Middle School?

16 A (No verbal response.)

17 Q You'll have to say yes or no for --

18 A Oh, okay.

19 Q -- the court reporter. And the Mishicot High

20 School?

21 A Yes.

22 Q Okay. Uh, about how long did you drive school

23 bus for the Mishicot schools?

24 A About a year-and-a-half.

25 Q And you were doing that all -- all through the

1 month of October, 2005? That was in that
2 year-and-a-half?

3 A Yes.

4 Q Okay. Um, so would -- would your school bus --
5 was it -- is it a standard big longer yellow
6 school bus?

7 A Yes.

8 Q Okay. Would your school bus have kids from five
9 or six years old up to 17?

10 A Yes.

11 Q All right. And, um, did you have a morning
12 route, an afternoon route, or both?

13 A I had a morning and afternoon.

14 Q Okay. Uh, what -- what time would you start your
15 morning route?

16 A Um, I'm not really sure. I don't remember what time
17 I would have started in the morning.

18 Q Okay. Do you remember when you had to be at the
19 first school?

20 A To drop the kids off?

21 Q Right.

22 A Um, I don't recall.

23 Q Okay.

24 A I mean, I haven't drove bus all year so I --

25 Q Sure. And -- and it -- Actually, the exact time

1 isn't important, but what is important was did --
2 did school start at the same time everyday for
3 these --

4 A Yes.

5 Q -- schools? Okay. And then, um, same thing in
6 the afternoon? Did it let out at the same
7 time --

8 A Yes.

9 Q -- everyday?

10 A Yes.

11 Q Okay. So, um, I guess, um, in the morning, um,
12 where -- which school would you stop at first and
13 let the kids off after you picked them up?

14 A Uh, the high school.

15 Q And then would --

16 A The high school and the elem -- uh, the high school
17 and the middle school would get off together.

18 Q Because those two buildings are together?

19 A Yes.

20 Q Okay. And then where would you go from Mishicot
21 High School and Mishicot Middle School?

22 A Um, actually I would go to Holy Cross and drop off
23 first, and then I would go to the middle school and
24 high school and drop off, and then go to elementary
25 school.

1 Q Okay. And that's in the morning?

2 A Yes.

3 Q When you're dropping all the kids off? Okay. Is

4 that right?

5 A Yes.

6 Q Okay. All right. Holy Cross is just a private

7 school; is that --

8 A Right.

9 Q Okay. Um, and then, in the afternoon, um, where

10 would you first pick kids up at the end of the

11 day?

12 A Holy Cross.

13 Q Where would --

14 A At 2:30.

15 Q -- you go after Holy Cross?

16 A Uh, elementary school.

17 Q And then?

18 A High school, middle school.

19 Q Again, a joint --

20 A Yes.

21 Q -- stop?

22 A Yes.

23 Q Okay. Um, and, uh, do you remember what time you

24 had to be in the afternoon at the -- at the first

25 school, Holy Cross, to pick the kids up?

1 A I'd be there at 2:30.

2 Q Okay. And do you remember when you had to be at

3 the Mishicot Elementary School?

4 A At 2:45.

5 Q How about, then, at the, uh, middle school and

6 the high school?

7 A I'm not sure on the time. We just followed after the

8 elementary let out and everybody loaded the buses.

9 Q Then you would just -- as soon as the elementary

10 kids were loaded on, you'd go straight to the

11 high school --

12 A Yes.

13 Q -- and middle school? Okay. Um, and the

14 afternoon route, did you drive the same route

15 everyday, so to speak? I mean, stop at the same

16 places in the same order everyday?

17 A Yes.

18 Q Um, and what time would you typically finish?

19 You know, drop the last kid off in the afternoon?

20 A Um, 4:00.

21 Q Was that pretty predictable?

22 A Yes.

23 Q I mean, unless there was really bad weather or

24 something or --

25 A Right.

1 Q Okay. Um, and I take it everyday you'd be making
2 exactly the same stops unless --

3 A Somebody was not --

4 Q -- kid missed school or something?

5 A Yes.

6 Q Hm?

7 A Yes.

8 Q Okay. When we talk over each other, one --

9 A Sorry.

10 Q -- of our mikes cuts out, so... Um, were --
11 did -- did you pick up, uh, two boys, whose last
12 name was Dassey, back in October of 2005?

13 A Yes.

14 Q They -- they rode the bus every school day?

15 A Yes.

16 Q Okay. Did -- and did you pick them up in the
17 morning?

18 A Yes.

19 Q Where did you pick the Dassey boys up in the
20 morning?

21 A Right in front of their driveway.

22 Q And can you tell us sort of where that was?

23 A Uh, down -- I believe, it's Avery Road. Not really
24 sure.

25 Q How would you get to Avery Road?

1 A I would -- What do you mean?

2 Q What -- what -- what larger road would you use

3 to --

4 A 147.

5 Q -- get -- Okay. And then you would turn down

6 Avery Road?

7 A Yes.

8 Q Where would you go when you turned down Avery

9 Road?

10 A I would go to the end and pick the boys up in front

11 of their driveway and then turn around.

12 Q Okay. So when you say "the end", down to the end

13 of the paved road that ran north/south?

14 A Yes. It was a paved road and they were on a gravel

15 road.

16 Q That you're calling their driveway?

17 A Yes.

18 Q Okay. Um, as you're driving down Avery Road,

19 which -- uh, which side of you was the driveway

20 on?

21 A The right.

22 Q Okay. And then what did you do at the end of

23 that road? Or how did you go to the next stop

24 from that --

25 A I would have to turn around and come back out the

1 same way.

2 Q Turn the bus around --

3 A Yes.

4 Q -- and -- Okay. Do you remember that -- the

5 first names of the Dassey boys?

6 A Um, Blaine and Brendan, I think.

7 Q All right. And did -- then did you also drop

8 Blaine and Brendan Dassey off in the afternoon?

9 A Yes.

10 Q Um, in the same order that you dropped -- you

11 know, I mean, you would go in the same rote in

12 the afternoon?

13 A The morning route would be different than the

14 afternoon route, but they were always the same

15 everyday.

16 Q The afternoon route would be the same everyday?

17 A Yes.

18 Q Okay. Um, and what time did you find that you

19 got to that -- you know, the end of Avery Road

20 where you dropped the Dassey boys off?

21 A Um, between 3:30 and 4 -- or 3:40.

22 Q Between 3:30 and 3:40?

23 A Yes.

24 Q And how do you know that?

25 A Because it was about the same time everyday. Same

1 route.

2 Q Okay. Um, during the week of -- that began on

3 Monday, October 31, 2005, um, do you remember

4 seeing anything that, you know, you remembered

5 later when you dropped the Dassey boys off on

6 that -- that week?

7 A I, um, remember seeing a woman taking photographs.

8 Q Could you tell what the woman was taking

9 photographs of?

10 A A van.

11 Q And where -- where was the woman taking

12 photographs of a van?

13 A In the driveway.

14 Q The driveway you just described?

15 A Yeah. The one on the right.

16 Q Okay. About -- Could you see about how far down

17 the van was?

18 A It was right by the pavement. In the -- I mean,

19 right at -- right there. I don't know.

20 Q Okay. Um, remember anything about the van?

21 A It was -- No, it was junk.

22 Q Okay. All right. And, um, do you remember

23 where -- How did you know the woman was taking

24 photographs?

25 A I saw a woman taking photographs. I saw a camera.

1 Q Okay. Um, at the time, I assume, this was no big
2 deal?

3 A No.

4 Q All right. Uh, how is it that you later
5 remembered that?

6 A I remember, um, that I -- I was laying -- laying down
7 on the couch and I remembered that I made the comment
8 to myself, um, why would anybody take a piece -- a
9 picture of that piece of junk?

10 Q Okay. Um, and within a few days after this, um,
11 did -- were you encountering the -- the road
12 being closed off by police in that general area?

13 A The road was closed off, yes.

14 Q I mean, a few days after the -- you saw this
15 woman taking photographs of the van?

16 A Um, when I remembered, it was already closed off.

17 Q Okay. Um, now, as you sit here today, do you --
18 do you remember what day, exactly, of the week of
19 October 31 you saw the woman taking photographs
20 of the junky van?

21 A Uh, no I don't remember the day.

22 Q Okay. Do -- was there only one day when you saw
23 a woman in October, 2005, or early November, if
24 that's what it was, taking pictures --

25 ATTORNEY GAHN: Objection, Your Honor.

1 The -- He's leading the witness for a while now.

2 THE COURT: Um, well, I don't think that
3 last question's leading so I'm going to allow it.

4 ATTORNEY STRANG: Okay.

5 Q (By Attorney Strang) Was -- was there more than
6 one day in this time period when you saw a woman
7 taking photographs of the junky van?

8 A Uh, not that I remember. I only remember seeing one
9 woman taking pictures.

10 Q Okay. Um, do you personally know Steven Avery?

11 A No.

12 Q Uh, do you personally know any of Halbach family?

13 A No.

14 Q Okay. Um, I -- I -- I take it, if I understand,
15 you -- you simply happened to be a bus driver who
16 dropped the Dassey boys off?

17 A Yes.

18 Q And picked them up?

19 A Yes.

20 Q Um, when you saw this woman taking the
21 photographs, was -- was that when you were
22 dropping the Dassey boys off or some other time?

23 A Um, when I was dropping them off.

24 Q Okay. So in -- again, that would have been about
25 when? What --

1 A Three-thirty.

2 Q -- time of day?

3 A I'm sorry. Three-thirty to three-forty.

4 Q That's all I have. Thank you.

5 THE COURT: Mr. Gahn?

6 ATTORNEY GAHN: Yes, Your Honor.

7 THE COURT: You may proceed.

8 ATTORNEY GAHN: Thank you.

9 **CROSS-EXAMINATION**

10 BY ATTORNEY GAHN:

11 Q Good afternoon, Ms. Buchner. Um, do you recall
12 when you, um, reported this? What -- Your
13 observations to the police?

14 A I believe it was Saturday.

15 Q Saturday? Could -- could it have been, um,
16 Monday? The following Monday? On -- on
17 November 7 --

18 A Could have been.

19 Q -- do you recall? Okay. And do you remember,
20 um, how did you contact the police?

21 A I walked up to the barrier.

22 Q And, um -- and what prompted you to -- to go to
23 the police?

24 A Because I had remembered seeing a woman taking
25 pictures.

1 Q Okay.

2 A And I thought maybe I should say something.

3 Q As a good citizen?

4 A Yeah.

5 Q Okay. And, um, do you, um, remember who you

6 talked to?

7 A Um, when?

8 Q Uh, when you reported this.

9 A Uh, when I walked up to the barrier, and there was a

10 woman cop, and I spoke -- spoke to a male cop, but I

11 don't remember the name.

12 Q And this was over at the Avery Salvage Yard you

13 went to report this; correct?

14 A It was -- it was at a barrier by my house.

15 Q I'm sorry? By where?

16 A By my house where I lived.

17 Q Do you live nearby?

18 A Yeah. I did.

19 Q Do you -- so -- where did you live, then?

20 A I lived, um, on County Road Q.

21 Q And how far was that from the Avery Salvage Yard?

22 A I don't know. Not far. I don't --

23 Q Uh, did you drive over there or walk over there?

24 A I walked to the barrier at the intersection.

25 Q Okay. And -- and when you say "the barrier", you

1 mean the barrier over at the Avery Salvage
2 Yard?

3 A No. The barrier at the intersection of Q and -- and
4 147. The barrier --

5 Q But then from there did you go further to the,
6 um -- towards the Avery property?

7 A An -- another day I did. They called me back a
8 different day.

9 Q Oh. And -- and -- All right. So -- Did you talk
10 to anyone or tell anyone that first time you went
11 to the barrier?

12 A Tell them what?

13 Q What you just -- what you're telling today?

14 A Yes.

15 Q And then you say you went back again?

16 A And gave a statement.

17 Q Okay. And do you remember to whom it was you
18 gave a statement?

19 A No.

20 Q Okay. Could it have been Detective -- Officer
21 Wiegert, here?

22 A Um --

23 Q He's sitting right here behind --

24 A The glasses? I -- I think I was in his -- in his
25 cruise -- in his cop car. I don't -- I don't

1 remember. There was a cop I talked to, too, and then
2 somebody in a building.

3 Q And was that over by the Avery Salvage Yard?

4 A Yes.

5 Q Okay. All right. Um, and you -- you told him on
6 that day these observations of yours; correct?

7 A Yes.

8 Q And you can't tell us, though, to the exactly
9 what day it was you made these observations?

10 A No.

11 Q And can you say for sure whether it was the week
12 of October 31?

13 A No.

14 Q Could it have been before October 31?

15 A Yes.

16 Q Could it have been a week before?

17 A Yes.

18 Q Could it have been two weeks before?

19 A Yes. I -- I don't know.

20 Q So you don't know exactly when it was you saw
21 this woman taking pictures?

22 A No.

23 Q And do you remember -- Well, let me ask you this:
24 How close did you get to her?

25 A I have no idea how far away it would have been. I

1 was in a school bus, dropped kids off and drove away.
2 I'm --
3 Q I mean, um, five feet? Ten feet? Twenty feet
4 away?
5 A Um, not really sure.
6 Q Um, two blocks away?
7 A No.
8 Q Okay. Could you just give us an idea --
9 A Um --
10 Q -- of how far away she was when you saw her? And
11 it's okay if you can't.
12 A I -- I have no idea.
13 Q And that's okay. Um, and do you know where the
14 vehicles were that she was taking photographs of?
15 A They were at the end of the driveway.
16 Q And at the end of the -- where you enter the
17 Avery property?
18 A The, uh -- the gravel driveway to the right off of,
19 um, Avery Road by the mailboxes.
20 Q By -- Um, if you were to see a diagram of that
21 property, could that help you?
22 A Yes.
23 Q Very good. Thank you, ma'am. I'm putting up,
24 um, what has been previously, in this trial,
25 ma'am, as Exhibit 81, and I'm going to ask you,

1 does that have the road that you would drive down
2 to pick up or drop off the boys?

3 A The, um, road where all the cars are parked? That's
4 Avery Road?

5 Q Okay. Is it -- And -- and to -- are you sh --
6 sure that's Av -- that's Avery Road?

7 A I -- I don't know. I'm asking. Is it?

8 Q Okay. Yes, that's Avery Road.

9 A And then the gravel road would be the one to the
10 right there.

11 Q And where were the -- where -- If I were to give
12 you a laser pointer, could you show us where the
13 woman was taking pictures on this --

14 A Yes.

15 Q Okay. And, also, um, Ms. Buchner, let me know if
16 it would be helpful, because we can zoom in to
17 these intersections --

18 A Okay.

19 Q -- and make this closer. Could -- could you show
20 the jurors where Avery Road is and --

21 A Oh.

22 Q -- where you would drive your bus in?

23 A I would drive this way and then drop off right there.

24 Q Okay. That's where you would drop off the boys?

25 A Yeah. And then turn around right there.

1 Q All right. And where did you see the woman who
2 you believe was taking the pictures?
3 A Would be in the middle of right there. And --
4 Q And --
5 A -- taking --
6 Q You're -- You're doing just fine. Thank you.
7 Could you also -- Would there be any way to show
8 the jurors where you believe the cars were that
9 she was taking photographs of?
10 A Um, right there would be -- right there and on both
11 sides of this driveway right there. There was the
12 van, and then a car, and then a car on the other
13 side, and I think a car behind it, but I'm not sure.
14 Q And when you dropped the boys off after school,
15 is that where you always dropped them off?
16 A Yes.
17 Q Do you know how many cars she was taking
18 photographs of?
19 A No.
20 Q And, um, could you describe any of the clothing?
21 A No.
22 Q Could it have been a man with long hair?
23 A I don't think so.
24 Q Okay. I -- I'm just -- I know -- You're --
25 you're sure it was a woman?

1 A Yes, I remember it being a woman.

2 Q Okay. All right. Thank you so much, Ms.

3 Buchner. Appreciate it.

4 THE COURT: Mr. Strang?

5 **REDIRECT EXAMINATION**

6 BY MR. STRANG:

7 Q Ms. Buchner, um, I understand you don't remember
8 the day anymore, but did you -- did you -- did --
9 did you -- you walked up to tell the police about
10 this on your own?

11 A Yes.

12 Q And was that just a few days after this happened?

13 A Um, I believe it was Saturday.

14 Q Of the same week?

15 A Right.

16 Q At the end of that week? Okay. And then you --
17 then they asked you to come back a few days later
18 and give a statement?

19 A Yes.

20 Q But that was still a week or a little more than a
21 week after this -- after you saw this woman
22 taking the picture of the van?

23 A Yes.

24 Q Uh, that's all I have. Thanks.

25 THE COURT: Very well. You are excused.

1 Defense may call its next witness.

2 ATTORNEY STRANG: And that witness is a
3 gentleman named John Leurquin.

4 THE CLERK: Please raise your right hand.

5 **JOHN LEURQUIN,**

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

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

10 THE WITNESS: John T. Leurquin,
11 L-e-u-r-q-u-i-n.

12 **DIRECT EXAMINATION**

13 BY ATTORNEY BUTING:

14 Q Good afternoon, Mr. Leurquin.

15 A Good afternoon.

16 Q Did we just meet?

17 A Yes.

18 Q For the first time today?

19 A Yes.

20 Q Okay. Can you, uh, tell the jury how you're
21 employed?

22 A Uh, I'm employed at Valders Co-op. I de -- I deliver
23 propane with a -- a propane truck.

24 Q Okay. And when you say you deliver propane, who
25 do you deliver it to?

1 A Residential and commercial customers.

2 Q Okay. And this is a, uh -- a -- a -- like a big

3 bulk tanker-type truck that you have or what?

4 A Yes.

5 Q Okay. And where do you get the fuel for that?

6 A Uh, my bulk tank that I load my truck is on the

7 southeast corner of Avery Road and 147.

8 Q Okay. We have, uh, Exhibit 91 up on the screen

9 for you. Um, I don't know if that can orient

10 you -- orient yourself by that at all? You don't

11 usually see it viewed from that side, from that

12 far up, I'm sure, but... Do you know where

13 Highway 47 is on that? One forty-seven, rather?

14 A Uh, yeah, that's in the top left corner.

15 Q Okay. You have a laser pointer in front of you.

16 Um, if you could turn it on and maybe point to

17 the location where your filling station is?

18 A Right there.

19 Q Okay. And so where is Avery Road?

20 A Right here.

21 Q And where is 147?

22 A Right here.

23 Q All right. So to get to your filling station,

24 then, you would have to turn off of 147 onto

25 Avery Road, itself?

1 A Yes.

2 Q There's no other entrance way to it?

3 A Nope.

4 Q Okay. And did you have like a regular route of

5 customers that you would deliver to?

6 A Yes, I do.

7 Q Um, well, tell me how that would work?

8 A Um, when we're on our -- our computer system that

9 goes off the degree days for the route, itself, and

10 then we have call-in customers that call when they

11 want LP, so we go to whoever's on the schedule or

12 whoever calls --

13 Q Okay.

14 A -- to deliver it.

15 Q And you, uh -- What were your normal work hours?

16 A Uh, normal work hours are 7:30 to 4.

17 Q Okay. Do you ever work after that?

18 A Yes.

19 Q How would that come about?

20 A Uh, if -- if I got work I got to do or somebody calls

21 later in the day, if I ain't done, you know, I'll get

22 there yet.

23 Q Okay. Um, how often would you visit that -- Is

24 filling station the wrong term for -- What do you

25 call it?

1 A It's a bulk plant.

2 Q A bulk plant?

3 A Yeah.

4 Q Okay. How often would you visit that bulk plant

5 to fill your truck?

6 A On -- on a day like during that time it would be

7 usually once a day.

8 Q Okay. Now, during that time, jumping ahead a

9 little bit, but I'm going to direct your

10 attention now to October of 2005, okay?

11 A (No verbal response.)

12 Q You have to say yes or no --

13 A Yes.

14 Q -- you understand? Um, is most of your business

15 in the winter heating?

16 A Yes. Except for farm accounts and stuff like that.

17 Q Okay. Um, so on October 31 of 2005, was that a

18 day in which you filled your tank?

19 A Yes.

20 Q Your truck?

21 A Yes.

22 Q Um, and what was your normal process, or how --

23 during that time, when would you go to the bulk

24 plant and, you know, when would you do your

25 deliveries?

1 A I do my deliveries during the day. And then usually
2 about 3:30 I go and fill my truck, because that way
3 it's full for the end of the -- at the end of the day
4 so to the next day I can start with a full truck.

5 Q Okay. And when you said -- Can you tell me
6 how -- how you would do it? What would you have
7 to do to fill your truck?

8 A Well, I would turn on Avery Road, and then I back
9 into my plant, onto the west side of the tank, or
10 south side of the tank I should say, and get out and
11 hook the hoses up and get back into the truck.

12 Q Mind if I zoom in on this a little bit? Okay. I
13 zoomed in a little bit now. Could you, uh, use
14 the laser pointer and point out where the -- the
15 bulk plant is again? Okay. And in this
16 particular photograph do you see a lot of
17 vehicles parked along Avery Road?

18 A Yes.

19 Q Was it usually like that?

20 A On any day?

21 Q Yeah.

22 A No.

23 Q Okay. Um, this was taken on a particular day
24 and -- and we've had testimony about that. But
25 which way would your be -- your truck be facing

1 while you were filling it up?

2 A Towards Avery Road.

3 Q Okay. I don't know if you can point out where

4 the -- the tank where you would pull up to is?

5 Okay. And so you would be facing this way? Uh,

6 what, west? Southwest would it be?

7 A Yeah. Well, it would be, actually, north -- kind of

8 northwest.

9 Q Okay.

10 A 'Cause the Avery Road runs kind of northwest right

11 there.

12 Q Okay. So you -- you say you back your truck in

13 there, and you hook it up, and then what do you

14 do?

15 A I get back into my truck and I write, uh, percent

16 number down on my log book and just basically wait

17 'til it's done.

18 Q Okay. And how long would it take for you to fill

19 up your truck?

20 A It takes roughly about a half hour.

21 Q All right. But what do you do when you -- during

22 that half hour?

23 A Sit in my truck, listen to the radio, and when cars

24 go by, look up at cars, and that's about it.

25 Q Okay. Now, on October 31 of 2005, do you recall

1 seeing any particular vehicle that later it
2 became of interest of -- to you?

3 A Uh, yes. I recall seeing a green SUV.

4 Q Okay. When you say "a green SUV", um, how big
5 was it?

6 A Uh, midsize SUV. Not the large size.

7 Q What kind of vehicle do you have?

8 A I have a Tahoe.

9 Q And is that a full size --

10 A Uh, generally speaking, yeah.

11 Q Okay. And the -- and the vehicle you saw, was it
12 as big as that? Or smaller? Or what?

13 A It was smaller.

14 Q Okay. Um, so tell us what you saw?

15 A I seen a vehicle pass by the front of my truck, and I
16 just glanced up, and it was just a green SUV, and
17 that -- that's all.

18 Q Well, which direction was it going?

19 A Back towards Avery Road. So that would be to the
20 north. I mean, towards 147.

21 Q Can you just show us on the -- with your pointer,
22 and -- and just with your pointer kind of draw
23 direction -- the direction that it was going? So
24 did it look like it was going into the Avery Auto
25 Salvage area or out of the Avery --

1 A It was leaving.

2 Q Okay. And are you familiar with the Avery Auto

3 Salvage?

4 A Yes.

5 Q Do you know them personally?

6 A Uh, somewhat.

7 Q Are you -- Would you consider yourself a friend

8 of any of the Averys?

9 A No.

10 Q Have you ever done business there?

11 A I was there, yes.

12 Q How many times?

13 A Um, three or four times.

14 Q Okay. Um, and did you happen to see which

15 direction that green SUV went when it got to the

16 intersection of Highway 147?

17 A No, I didn't pay attention.

18 Q Did there come a time when this, um -- this

19 recollection that you have become of interest or

20 importance?

21 A Uh, not necessarily. I -- I mean, I -- I -- At

22 first, I said I recalled seeing a green SUV, but that

23 was about it. I -- I didn't think nothing of it.

24 Q Okay. Well, let -- let me -- I'm -- Let me ask

25 it this way: Did you later learn or see any kind

1 of publicity about a missing person?

2 A Yes.

3 Q And, um, was there a description of the vehicle?

4 A Yes. There was, I think, actually a picture.

5 Q Okay. And when you saw that picture, did that
6 connect in any way to you?

7 A Um --

8 ATTORNEY FALLON: Objection. There's no
9 question -- There's no, um, foundation that he
10 actually saw a picture. He said there was a
11 missing person notice.

12 ATTORNEY BUTING: I'll ask --

13 ATTORNEY FALLON: It's a foundational
14 objection --

15 ATTORNEY BUTING: I'll -- I'll --

16 ATTORNEY FALLON: A few more
17 questions --

18 ATTORNEY BUTING: I'll move back and --
19 and bring -- bring it forward a little bit.

20 THE COURT: Go ahead.

21 Q (By Attorney Buting) Do you recall the name of
22 the missing person?

23 A Yes, Teresa Halbach.

24 Q Okay. Did you see any publicity on television
25 about it?

1 A Uh, yes.

2 Q Okay. And do you recall seeing any photographs
3 on television of both Teresa and the vehicle?

4 A Yes.

5 Q All right. And what did that do -- or what did
6 that, uh -- what did you think when you saw
7 that -- this -- this missing person, and you saw
8 that vehicle, and did you also -- I'm sorry,
9 another foundation. Did you also hear any
10 information on TV and the media about where she
11 had been?

12 A Yes.

13 Q Which is where?

14 A Over at Steven Avery's.

15 Q Okay. And so did you make any kind of
16 connection?

17 A Uh, other than recall seeing that green SUV, that --
18 that's it.

19 Q Okay. Well, did you say anything to anybody?

20 A Um, at work and at home I says I possibly mighta seen
21 it and that was -- that was it.

22 Q Okay. When you say, might have seen it, what are
23 you referring to?

24 A I seen a green SUV. I can't say it was that one or a
25 different one.

1 Q Okay. Um, do you know whether it was on that
2 day? October 31?

3 A Yes.

4 Q How do you know that?

5 A Because I remembered that part.

6 Q Okay. And -- and it -- How many days after
7 October 31 was it that your memory was drawn back
8 to that day?

9 A That I was asked about it? Is that what you're
10 saying?

11 Q Or that you told anybody about it or talked about
12 it at work or whatever?

13 A Um, maybe four or five days later.

14 Q Was it right when the publicity was beginning?

15 A Yes.

16 Q About Teresa Halbach?

17 A Yes.

18 Q Okay.

19 THE COURT: Mr. Buting, is your microphone
20 on? I'm not sure.

21 THE DEFENDANT: Yeah, I think it is.

22 THE COURT: Okay. Um, oh, yeah. Okay.

23 ATTORNEY BUTING: Okay.

24 Q (By Attorney Buting) Um, okay. Can you -- As
25 you sit here -- Actually, let me do it this way.

1 When you saw this publicity about the missing
2 person and the vehicle, did you, in your own
3 mind, think, hey, that's -- that's the one I -- I
4 saw, or what -- Tell us what you thought?

5 A Um, I thought that --

6 ATTORNEY FALLON: Objection to what he
7 thought. How is that relevant now? The question
8 is, did he see it or not?

9 ATTORNEY BUTING: Well, going to his
10 memory and how he's -- recalls what he recall --
11 what he recalls.

12 ATTORNEY FALLON: It's a memory of a
13 past recorded event. I don't -- I still don't
14 see the relevance of that.

15 THE COURT: Why don't you rephrase the
16 question.

17 Q (By Attorney Buting) When you saw the -- the
18 publicity about the missing woman and her
19 vehicle, what -- what was your thought process in
20 terms of whether there was any connection to
21 anything you saw or not?

22 A That it was possible that it was hers, but that it
23 was also a -- possible that it wasn't.

24 Q Okay. So what did you do, if anything?

25 A I didn't do nothing.

1 Q Did you come forward and talk to the police?

2 A No.

3 Q Um, did there come a time when you noticed that

4 there was a roadblock near there?

5 A Yes.

6 Q When was that?

7 A Um, it started on a Saturday, I think.

8 Q Okay. What are -- what are your work days?

9 A Um, my -- it's -- it's Monday through Saturday, and

10 then I'm on call 24 hours a day.

11 Q Okay. And is that the -- the only filling

12 station or -- or pump -- uh, bulk station that

13 you used?

14 A Yes.

15 Q So when was the next time that you used it when

16 it was -- you noticed there was a roadblock?

17 A On, uh, Monday.

18 Q That would be a week after the 31st?

19 A Yes.

20 Q Okay. And was there any way for you to get to

21 your -- your bulk station without going through a

22 roadblock?

23 A No.

24 Q So what did you do at the roadblock?

25 A I stopped, and then I had to show them my driver's

1 license, tell them what I was doing.

2 Q Okay. Did you explain at all what your job was,
3 or your route, or how often you had to come
4 there?

5 A Uh, they never asked how often. I just had to tell
6 them what I was doing. What -- That I had to go
7 through there.

8 Q Okay. And did they -- They let you through?

9 A Yes.

10 Q Um, and how many days was it that you -- you did
11 it that way?

12 A Uh, usually everyday.

13 Q Well, for how many days was it when there was a
14 roadblock is what I'm asking?

15 A Oh, well, at least a week.

16 Q Okay. Did you have to give your name every time?

17 A Uh, yes.

18 Q Did you ever, uh, say anything to the -- to -- to
19 any of the police at that time about what you
20 believed you saw?

21 A No.

22 Q Why not?

23 A 'Cause I don't -- I -- I didn't think it was a --
24 a -- a definite that it was hers, or -- and I don't
25 speculate unless I know the truth.

1 Q Okay. Well, did there come a time when you --
2 when you did speak with a police officer?
3 A Yes.
4 Q Do you recall how -- Tell us how that happened?
5 Was it in person or on the phone?
6 A Uh, he called my house.
7 Q And do you recall who it was?
8 A Agent Fassbender.
9 Q Okay. Had you ever met Agent Fassbender?
10 A Um, not 'til today.
11 Q All right. Um, so tell us what you talked about
12 when you first -- when he called?
13 A Um --
14 ATTORNEY FALLON: Objection. Hearsay.
15 ATTORNEY BUTING: I'm asking for his --
16 ATTORNEY FALLON: An out of court
17 statement.
18 THE COURT: Yeah. The question should be
19 rephrased.
20 ATTORNEY BUTING: Okay.
21 Q (By Attorney Buting) Um, did Agent Fassbender
22 tell you the purpose of the call?
23 A Uh, yes, I think so.
24 Q Did he say why he was calling you?
25 A Uh --

1 Q Or how he got your name to call?

2 A He got my name from that -- that check-in log I

3 think.

4 Q Okay. You mean the -- the -- the roadblock?

5 A Yes.

6 Q And did you tell him what you saw?

7 A Yes.

8 Q What did you tell him?

9 A That it was possible that I seen a -- Well, I told

10 him that I seen a green SUV leave, but I wasn't sure

11 if it was hers or not.

12 Q All right. Did you tell him what time?

13 A Uh, yeah.

14 Q And --

15 A Yes.

16 Q -- I'm not sure you told us what time. What time

17 was it on the 31st?

18 A In between 3:30 and 4.

19 Q And how do you know that?

20 A Because that's when I loaded my truck.

21 Q All right. Thank you. That's all I have, sir.

22 THE COURT: Mr. Fallon?

23 ATTORNEY FALLON: Yes. I'm going to try

24 this mike if it doesn't work. Test. Test. Try

25 it again.

1 THE COURT: Uh, just a second. I think
2 it's No. 7, but somehow the volume --

3 ATTORNEY FALLON: I have eight.

4 THE COURT: You got eight?

5 ATTORNEY FALLON: Right.

6 THE COURT: Oh. Well, that explains that.

7 ATTORNEY BUTING: We're seven.

8 THE COURT: You're seven. Okay.

9 ATTORNEY FALLON: Thank you.

10 **CROSS-EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q Uh, good afternoon, Mr. Leurquin.

13 A Good afternoon.

14 Q Um, I just want to begin, uh, I'm Tom Fallon, one
15 of the prosecutors, and, uh, just want to let you
16 know if there's something you don't know, just
17 tell us you don't know, and if you're not sure,
18 just tell us you're not sure.

19 A Okay.

20 Q There are no right or wrong answers. Just what
21 you remember, okay?

22 A Yes.

23 Q All right. Um, how long have you been working in
24 the propane fuel business?

25 A In the propane it was eight years.

1 Q All right. And as of October 31, 2005, how long
2 had you been working this particular job where
3 you were making these deliveries to residences
4 and businesses in the general Mishicot area?

5 A Uh, six years.

6 Q Six years? And would it be fair to say that, uh,
7 for six Octobers, uh, you would come to the
8 bulk -- bulk plant station that you've described
9 there and fill up at least once a day during the
10 month of October?

11 A Yes.

12 Q That would be fair?

13 A Yes.

14 Q Okay. And, um, did you always fill up at the end
15 the day or were there other times where you
16 filled up earlier in the day?

17 A Uh, there -- Well, I fill up sometimes early in the
18 day, but it's always usually at the end of the day
19 also.

20 Q Just so you get a good start the next day?

21 A Yes.

22 Q All right. Now, if you had a lot of business
23 orders, for instance, if there was something
24 going on, you might fill up more than once a day
25 even as -- as early as the end of October; right?

1 A Yes.

2 Q Okay. Now, um, I would imagine, but October 31,
3 as you think back about it now, was pretty much
4 like any other Monday morning; right?

5 A Yes.

6 Q Monday afternoon?

7 A Yes.

8 Q All right. Went to work at your usual time early
9 in the morning?

10 A Yes.

11 Q Knocked off about four?

12 A Yep.

13 Q And, um, as you think back right now, you can't
14 tell us what the weather was like that day;
15 right?

16 A No.

17 Q You don't know -- You don't remember if it was
18 cold?

19 A Uh, not offhand.

20 Q And you don't remember if it was one of those
21 really warm autumn days, do you?

22 A No.

23 Q Um, you can't tell us it was really cloudy, or
24 overcast, or bright sun that afternoon, can you?

25 A Nope.

1 Q All right. Now, um, as I understand it, the one
2 thing that you do remember is that it was a green
3 SUV that you saw?

4 A Yes.

5 Q Okay. And you said you, yourself, drive a Tahoe?

6 A Yes.

7 Q Now, that's a -- a much larger size sports
8 utility vehicle; right?

9 A Yes.

10 Q All right. And then we have the medium size,
11 then we have the compact size; right?

12 A Yes.

13 Q Uh, the SUV you saw was a medium size?

14 A Uh --

15 Q Or you don't know?

16 A Yes.

17 Q Medium, or you don't know? Which --

18 A Um, medium.

19 Q Okay. Um, now, would it be fair to say that, um,
20 the car drove by -- your recollection is you had
21 already hooked up your pipes or your, um -- to
22 your main, uh, tank there to fill your truck;
23 right?

24 A Yes.

25 Q And you get in, you fill up, you're doing some

1 log bookwork I take it?

2 A Yes.

3 Q Uh, listening to the radio?

4 A Yes.

5 Q Uh, so you've got 30 minutes to kill, more or

6 less, to fill a relatively empty tank?

7 A Yes.

8 Q Okay. So you're not particularly paying any

9 great attention to what's going on around you I

10 would imagine; right?

11 A No.

12 Q And, uh, your recollection is is that a vehicle

13 went by?

14 A Yes.

15 Q All right. Um, so would it be fair to say you

16 look up, see a vehicle go by, and then start

17 thinking or doing something else?

18 A Yes.

19 Q All right. Now, would it be fair to say that you

20 only glanced up at this vehicle for a half a

21 second, a second, just to see that it's a car

22 going by?

23 A It's uh -- it's usually a little longer than that.

24 Q Okay. So you got a -- a good look at it?

25 A Well, not a good, great, great look, but a -- a look

1 that every time a vehicle goes by I look at -- look
2 up and see what it is.

3 Q All right. Um, in this particular case -- But
4 you can't tell us whether there was a -- a man
5 driving the vehicle or a woman, can you?

6 A Nope.

7 Q As a matter of fact, you can't tell us if it was,
8 um, um, somebody who's only 18, 19 or 20 driving
9 the vehicle? A kid, right?

10 A No.

11 Q All right. And the vehicle didn't stop; right?

12 A At the stop sign.

13 Q All right. But I mean in front of your vehicle?

14 A No.

15 Q All right. And there was nothing else unusual or
16 anything else happening on that road that
17 afternoon; right?

18 A No.

19 Q And, um, as you think about it now, the reason
20 you didn't report it, your observations, sooner
21 to law enforcement, was that you weren't really
22 sure that you had seen the vehicle they were
23 looking for; right?

24 A Yes, I wasn't sure if it was that one or not.

25 Q All right. And you didn't want to say anything,

1 because you're one of those people that likes to
2 make sure that you're right when -- if you say
3 something; right?

4 A Yes.

5 Q Uh, just like you're trying your best today to
6 remember whatever you can remember; right?

7 A Yes.

8 Q Okay. Now, you can't -- As you sit here today,
9 you can't really tell us whether you saw the
10 vehicle that the people were concerned about on
11 that day, can you?

12 A No.

13 Q In fact, whatever you saw may have even been a
14 different day?

15 A No, it was that day.

16 Q Okay. But there's nothing outstanding about that
17 day, is there?

18 A No.

19 Q No. Thanks.

20 THE COURT: Mr. Buting?

21 REDIRECT EXAMINATION

22 BY ATTORNEY BUTING:

23 Q Okay. Sir, on a -- on a typical day while you
24 were sitting there -- for about a half hour you
25 said?

1 A Yes.

2 Q Filling at the bulk station, you'd be sitting

3 there about a half hour?

4 A Yes.

5 Q How many cars on a typical day would be coming or

6 going on Avery Road?

7 A About two easily.

8 Q Okay. So just a couple of cars a day?

9 A Yep.

10 Q All right. Now, I understand your -- your memory

11 was such back then, in -- in October, November of

12 '05, that you weren't certain that the vehicle

13 that you saw go by, leaving the Avery property,

14 was the one that you later saw on TV as being

15 Teresa Halbach's; correct?

16 A Yes.

17 Q But did it look similar to the one you saw on TV?

18 A Yes.

19 Q And is that why you remembered it now or

20 remembered it back then?

21 A Uh, yes.

22 Q Okay. And as you sit here today, I understand

23 you can't tell us certainly that the vehicle you

24 saw drive out of the Avery property was Teresa

25 Halbach's, but can you tell us whether or not it

1 was similar?

2 A Yes, it was.

3 Q Did it appear to be enough similar that you --
4 you recall it and recalled it back then in -- in
5 November of '05?

6 A Yes.

7 Q Okay. Thank you.

8 THE COURT: Mr. Fallon, anything else?

9 ATTORNEY FALLON: Yes.

10 **RECROSS-EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q Are you sure you were there between 3:30 and
13 4:00?

14 A Yes.

15 Q What other vehicles drove by?

16 A Uh, the ones that I remember is not -- that -- that I
17 can't -- I can't remember.

18 Q You can't remember any other vehicle?

19 A No. Because I -- I -- I see certain vehicles go by
20 everyday at certain times.

21 Q Right.

22 A And -- and, to me, I -- I can't even say that -- that
23 those vehicles drove by because I see it everyday.

24 Q Right. And, um, you don't have any specific
25 recollection of any other vehicle driving down

1 that road that afternoon, do you?

2 A No.

3 Q You didn't see any school bus drive down that
4 road, did you?

5 A No, because I see that everyday so I really --

6 Q You would --

7 A -- didn't dawn on me.

8 Q You wouldn't know if you saw it or not, would
9 you?

10 A No.

11 Q Thank you.

12 ATTORNEY BUTING: Just -- Not going to
13 go on forever. I just have a couple of questions
14 to clarify, though.

15 RE-REDIRECT EXAMINATION

16 BY ATTORNEY BUTING:

17 Q You say that you see -- Sometimes you see the
18 same vehicles everyday?

19 A Yes.

20 Q Um, would the school bus be one -- one like that?

21 A Yes.

22 Q Okay. This particular green SUV that you say you
23 recall seeing leaving the Avery property, did you
24 see it come in?

25 A No.

1 Q Was that a vehicle that you -- that you did see
2 everyday or was that a -- a different one you'd
3 never seen before?

4 A Different one.

5 Q But do you recall ever seeing it before there?

6 A Nope.

7 Q All right. That's all.

8 THE COURT: All right. Witness is excused.
9 Defense may call its next witness.

10 ATTORNEY STRANG: Next -- next up, Your
11 Honor, is, um, Roland Johnson.

12 THE CLERK: Raise your right hand.

13 **ROLAND JOHNSON,**

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

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

18 THE WITNESS: Pardon?

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

21 THE WITNESS: My name is Roland Johnson.
22 The last name, J-o-h-n-s-o-n.

23 **DIRECT EXAMINATION**

24 BY ATTORNEY BUTING:

25 Q Okay. Sir, you're going to have to talk into the

1 microphone a little bit, okay?

2 A Okay.

3 Q Um, let me just adjust it for you. I think it
4 might work better if it's right about like that.
5 Okay?

6 A Okay.

7 Q All right. Thank you. Um, Mr. Johnson, uh, are
8 you employed?

9 A No. I'm retired.

10 Q And what did you use to do?

11 A I was a tool and diemaker.

12 Q Okay. Can you tell me where you live now? What
13 community?

14 A I live in Jackson, Wisconsin. Washington County.

15 Q Do you own any property in Manitowoc County?

16 A Yes. I own that one acre of land in the back of
17 Averys. I bought that at least 30 years ago.

18 Q Okay. Well, let's -- let's get into that a
19 little bit. Do you know any of the Averys?

20 A I know all of them.

21 Q Okay. Do you know -- Well, who's the first one
22 you came to know?

23 A Allen. Allen.

24 Q And how did that come about?

25 A I own -- or operated a bar in Manitowoc County and I

1 leased it. I didn't own it. And I met him at the
2 bar, and I was talking to him, got to know him fairly
3 well, and he -- I knew him, his brothers. I know
4 Delores. I know the whole family.

5 Q Okay. And from this relationship that grew out
6 of your acquaintance there, um, did you come at
7 some point to have some connection with the
8 property that Allen Avery owned?

9 A Yes. Allen rented that property in the back corner.
10 It was set up for a trailer with a well and septic
11 tank, and it was vacant, so he rented it to me after
12 I left the tavern. I had to have a place to go to.

13 Q You said it was just like a vacant pad?

14 A That's all it was was a vacant pad. Concrete slab.
15 And it had a well and a septic tank. At one time it
16 must have been used.

17 Q All right. Um, did you -- So did you do that?
18 Did you -- Did you go to that area?

19 A Yes. I moved my trailer up there, rented it from him
20 for a period of time. Eventually bought it from him.

21 Q All right. Just a minute. I'm going to try and
22 find a photograph to show you. I'm going to show
23 you -- Actually, I'm going to put it up on the
24 screen, if you -- Well, I'll let you look at them
25 first. Do you recognize Exhibit 39 and Exhibit

1 46?

2 A That is my trailer and that is my garage.

3 Q Okay. Now, you say that you -- you moved the --

4 the trailer -- I need the remote. I'm putting up

5 on the screen, uh, Exhibit 39. Is this the

6 trailer that you --

7 A Yes, that is my trailer.

8 Q You still own it?

9 A Yes, I do.

10 Q And are you the one who put it on that -- on its

11 current prop -- uh, parcel?

12 A Yes, I am.

13 Q Do you know when that was?

14 A Uh, probably '78 or '79.

15 Q Okay. And then showing you Exhibit 46, that is

16 what?

17 A That is my garage.

18 Q And was that there when you got there?

19 A No. We built that. Allen and I built that one.

20 Q Allen and you? All right. Um, so did you own

21 it, or were you leasing it, or how did it work?

22 A I was leasing it at the time.

23 Q And for how long did that --

24 A That was a period of maybe four or five years.

25 Q And then what happened?

1 A Then he offered -- I asked him a number of times
2 during that time if I could buy it. Finally, he
3 decided I could buy it.

4 Q And buy what?

5 A The lot that I was on. Instead of leasing it.

6 Q Okay. And so what -- What did you actually end
7 up buying? How much?

8 A I bought one acre of land in that back corner.

9 Q And do you know when that was?

10 A Not exactly. I don't remember anymore.

11 Q Okay. Well, would it have been in the '80's, or
12 the '70's, or...

13 A It would have definitely been in the '80's somewhere.

14 Q All right. I'm going to show you a -- a diagram,
15 Exhibit, uh, 111, see if that -- if you recognize
16 or can orient yourself with that?

17 A Yes.

18 Q Okay. And let me put it up on the screen and
19 let's talk about it for a moment. This is the
20 computer rendering that we -- we talked about
21 here quite a bit. Uh, do you see that round
22 brown area behind the garage?

23 A Yes, I do.

24 Q Um, is there such a place in real life as well?

25 A Yes, there is.

1 Q And how did that come to be?

2 A I was planning on building that garage longer, and I

3 got fill to level off the land to the same height as

4 the existing garage so I could just pour another slab

5 and extend that garage length.

6 Q Okay. So you -- you had that mound of dirt

7 put -- put there yourself?

8 A Yes, I did.

9 Q Do you know when that was?

10 A At least ten years ago. If not, more.

11 Q All right. So, now, you were going to extend the

12 garage but never did for some reason?

13 A Well, I wasn't living up there and it wasn't a urgent

14 need at the moment. So I just kind of put it off

15 time to time.

16 Q Okay. All right. So how long -- did -- or did

17 you -- You said you bought it. Did you actually

18 live in the trailer?

19 A Yes, I did. I lived there for at least ten years.

20 Q And can you tell me approximately when that was?

21 A Well, I would say approximately from '78 'til '88.

22 Q All right. And then what happened?

23 A I was working in, uh, Two Rivers, and I checked out

24 the wages in Milwaukee, and the wages doubled, so I

25 just opted to go back to Milwaukee and keep this

1 place as a weekend getaway.

2 Q Okay. So you switched jobs down in -- Where were
3 you working up here?

4 A I was working at Paragon Electric in Two Rivers.

5 Q Uh, is it still there?

6 A No, it's not.

7 Q Okay. And so you went down to Milwaukee to
8 change jobs?

9 A That's right. I went to Milwaukee. The wages were
10 so much higher. They were doubled or better than
11 what I was making here. So I went to Milwaukee.

12 Q Okay. And did you buy a house there?

13 A I had a house down there that I was renting out. And
14 I just told them that I'd like to move back in.
15 They'd have to find a house.

16 Q Okay. And so after you moved to Milwaukee -- You
17 say it was in '88?

18 A About 1988.

19 Q Okay. Did you, uh, continue to own this trailer
20 and this little one-acre plot?

21 A I owned that continuously from the time I bought it
22 from them 'til the present.

23 Q So you still own it?

24 A I still own it.

25 Q Okay. After you moved to Milwaukee, did you --

1 you said that you had it for a weekend getaway.

2 Did you come up and visit it?

3 A When I lived in the Milwaukee area, I came up every
4 weekend, because where I lived in Milwaukee was a
5 little too noisy to suit me on weekends.

6 Q All right. Let me ask you, um, did there come a
7 time when you rented it out -- when you stopped
8 coming as frequently?

9 A Uh, it was probably about '97 or '98 had to quit
10 coming out every weekend.

11 Q All right.

12 A It -- I moved to a quieter area where I'm now living,
13 and I didn't have to come up here as often. The
14 place was basically empty most of -- not of
15 furnishings -- but of people most of the time.

16 Q Okay. Was it furnished, though, even when no one
17 was in it?

18 A Yes, it was. It was something that I could get to on
19 a weekend or a week or whatever I wanted to stay up
20 here.

21 Q Okay. Um, did there come a time when you allowed
22 someone else to live in the trailer?

23 A Yes. A friend of mine asked if she could have a
24 friend of hers move in and use it temporarily. And I
25 agreed to this.

1 Q And who was that person that you allowed to move
2 in temporarily?

3 A It was Jodi Tikowsky (phonetic) or something.

4 Q Stachowski? Is that --

5 A That's the name.

6 Q All right. And what was -- Can you tell me when
7 that was?

8 A Probably 2003, 2004, someplace in that general time
9 limit.

10 Q Okay. And what was your arrangement? Did she
11 pay rent or how was it arranged?

12 A No. She was basically being tossed out of anything
13 other than her car, and I had the house, so the
14 friend of mine, who knows her quite well, asked if
15 she could move in. And I said, yes.

16 Q And so that was it? She didn't have to pay a
17 thing or...

18 A She -- all she had to do was cut the grass and clean
19 the house up.

20 Q Okay. Do you know Steven Avery?

21 A I know him very well.

22 Q Okay. And did there come a time when, uh, he was
23 released from prison that you recall?

24 A Yes. That was probably, what, 2002? I offered him
25 the place to stay at first, and he said he didn't

1 need it. He was going to stay with his parents.

2 Q Okay. So, initially, then, the -- the -- the
3 trailer was being occupied, to your knowledge, by
4 Jodi Stachowski?

5 A Correct. She was -- To the best of my knowledge, she
6 was supposed to be living in there. And I never said
7 that she had to live alone. And I'm not quite that
8 way.

9 Q All right. Did you at some time learn that --
10 that someone else was -- had moved in with her?

11 A Yes. After a period of time, I found out that Steve
12 had moved in with her.

13 Q Okay. Now, the furnishings in the trailer, who
14 owned those?

15 A As of the last time I looked, 90 percent of them I
16 owned. The only thing I didn't own was computer,
17 computer desk, and a bedroom -- bedroom set that was
18 in the main bedroom.

19 Q Okay. So you owned, like, the liv -- the living
20 room furniture and --

21 A That was mine. Except for that, uh, computer desk
22 that's -- that's up there. Or was up there. That
23 was new. That was added after. After I let them use
24 the house.

25 Q All right. I'm going to show you some

1 photographs that have been marked as exhibits
2 already and have you tell us about them if you
3 can. Can you tell me the first, um -- How many
4 bedrooms is this trailer?

5 A It's a two-bedroom trailer. A master bedroom and a
6 much smaller one.

7 Q All right. I'm going to show you a -- just
8 another one of these computer schematics and see
9 if this is familiar to you. Is that the layout,
10 more or less, of your trailer?

11 A Yes, it is.

12 Q And the deck around it? Did you build that deck
13 too?

14 A I built that, yes.

15 Q Okay. And you say that almost all of furnishings
16 in that trailer, even today, are yours?

17 A Yeah. Everything except that bed that's set in
18 there. My bed is the one that's in the other room.
19 That's the one I had in there. And that computer
20 desk in the living room is not mine.

21 Q Okay. There's a laser pointer here that you can
22 turn on and -- and point at some things. I guess
23 you have to hold the button in when you point.

24 A Okay.

25 Q If you could just show us, when you say, that

1 bed, and this bed, which bed are you talking
2 about?

3 A The bed over there is not mine. This bedroom is the
4 one that I had in that bedroom. This computer desk
5 here, right in here, that's not mine.

6 Q Okay. When you lived there, what bedroom did you
7 sleep in?

8 A I slept in that bedroom.

9 Q Okay. And when Jodi moved in, did she move any
10 furniture into that room?

11 A After she was there, she moved that bed in there. As
12 far as I know, that's her bedroom set.

13 Q Okay. And then she moved yours into --

14 A Into this room right here.

15 Q The smaller one? Okay.

16 A And there wasn't much room to move around the bed in
17 that bedroom.

18 Q Okay. All right. I'm going to show you
19 another -- a last exhibit, just for the record is
20 No. 101, does this item in Exhibit 167 that's on
21 the screen now look -- look familiar to you, sir?

22 A Yes. It's the gun rack I had on the wall in the
23 master bedroom.

24 Q Okay. Did you put it there?

25 A I put it there.

1 Q I'm going to show you Exhibit -- Exhibit 165.
2 Does that look familiar to you? I recognize it's
3 not in front of -- the actual item isn't in front
4 of you, but...
5 A I had a black powder rifle up there, but this one
6 looks like it's got two triggers on.
7 Q Okay. And what about this one?
8 A That looks like the Marlin .22 that I had up there.
9 Q Let me actually show you that exhibit for a
10 moment. This is Exhibit 247.
11 A That is my gun. I can remember it by the scratch
12 back here.
13 Q Okay. You're sure of that?
14 A I am sure of that now.
15 Q And when did you purchase this gun?
16 A Prior to 1977, or '76 I know for sure. I don't know
17 exactly when, but I'm positive I bought it at Fleet
18 Farm.
19 Q Okay. And where did you keep it when you lived
20 there?
21 A On the gun rack that was on the wall in the bedroom.
22 That, with the black powder rifle, were the two guns
23 that were sitting up there.
24 Q Okay. And did you -- Did you ever use that gun
25 on the property?

1 A Many times. Many, many times.

2 Q Have you ever fired that gun?

3 A I fired that gun at chipmunks, and I fired that gun
4 at targets all over the lot. I mean, I could have
5 been standing back end of the lot, down by -- far end
6 of the lot. I fired it all over the yard. I fired
7 it off the deck.

8 Q All right. What would you be shooting at?

9 A De -- Depending on -- more often than not, targets.
10 But targets of opportunity were gophers.

11 Q Gophers? Okay. Um, were there any -- Let me
12 direct your attention to the garage area, okay?
13 Did you ever fire that gun in the area of the
14 garage?

15 A I fired it all around the garage. I fired it all
16 around the lot. There, again, mostly for gophers.
17 It was fired many times.

18 Q Was there a gopher somewhere near the garage
19 or...

20 A Several of them. The whole yard was full of them.

21 Q That's -- Um, well, what would happen to the
22 shells?

23 A Basically, they'd be ejected. No matter where I was,
24 that's where they were ejected and that's where they
25 stayed.

1 Q So they would just fall on the ground?

2 A Yes, they would.

3 Q Did you pick them up?

4 A No, I did not.

5 Q Why not?

6 A Why? They're only a little .22 shell. There's no

7 value in them. They are not worth picking up.

8 They're small enough that they don't hurt anything.

9 I just left them. In fact, if you take a metal

10 detector and go over the yard, you'll probably find

11 many of them out there.

12 Q All right. Would that be true near the garage as

13 well?

14 A Anyplace on that lot, on that acre, it would be true.

15 Q All right. Did you ever fire the gun in the

16 garage?

17 A Not that I recall. I, basically, don't believe in

18 guns in a -- in a building.

19 Q Sure. I understand. But how close do you think

20 you ever were to -- to the garage when you'd be

21 shooting it?

22 A Right at the garage door opening.

23 Q Why?

24 A The main door. Here, again, gophers. I had a hole

25 under that door about that big, and I don't know how

1 far the tunnel went in, but I fired in -- into that
2 hole many times.

3 Q And that hole is where in relation to the garage?

4 A Right -- Basically, on the left-hand side of the main
5 garage door. The, um, opening garage door.

6 Q All right. I just want to verify that. I'll
7 show you Exhibit 101. Show me, approximately,
8 where these -- this gopher hole was?

9 A Approximately right in front of that truck. Right by
10 the edge of the door.

11 Q All right. Can you give me any kind of estimate
12 of how many times you would have -- well -- would
13 have fired that gun in front of you on that ac --
14 that one-acre parcel?

15 A Maybe five or six bricks, which are 500 in a brick,
16 25, 3,000 times.

17 Q Speaking of br -- of bricks, what kind of
18 ammunition did that gun use?

19 A Used .22 long rifle.

20 Q Did you buy that kind of ammunition while you
21 were there?

22 A While I was there, lot of it.

23 Q Okay. Now, you -- you left the gun there while
24 you rented it out to -- to --

25 A Yes, I did. Most of the furnishings and stuff were

1 mine, and I kind of figured if I'd come up on a
2 weekend and wanted to use it for any reason or come
3 up there, it was there.

4 Q All right.

5 A If I brought it down where I live now -- I live in
6 the city -- no use for a gun at all.

7 Q Okay. Do you know whether there was any ammo
8 that you also had in the --

9 A I could not say. I know for a fact there was
10 absolutely nothing for the black powder. For this, I
11 don't know if I had any laying around up there or
12 not. I could not tell you.

13 Q Okay. When do you think was the -- the last time
14 you would have been up on that property your --
15 yourself shooting the gun?

16 A Hm. Well, maybe --

17 THE COURT: Let's, uh -- Let's hold it
18 right there. We're going to take a break at this
19 time.

20 ATTORNEY BUTING: Okay. That's good.

21 THE COURT: Take our afternoon break.

22 ATTORNEY BUTING: Sure.

23 THE COURT: And we'll resume in 15
24 minutes.

25 (Jurors out at 2:57 p.m.)

1 THE COURT: All right. We'll come back at
2 quarter after three.

3 ATTORNEY BUTING: All right.

4 (Reconvened at 3:17 p.m.)

5 THE COURT: You may be seated. And, uh,
6 Mr. Buting, you may resume.

7 ATTORNEY BUTING: Thank you, Judge.

8 Q (By Attorney Buting) Okay. Mr. Johnson, you
9 were talking about the, um -- the -- the times
10 that you would fire that .22. By the way,
11 what -- what kind of .22 is it again?

12 A It's a long rifle. The gun is a Marlin.

13 Q All right. Do you know what model?

14 A It's a Glenfield. It was the cheapest one -- rifle
15 that you could buy, actually, at the time I bought
16 it.

17 Q Um, I think you said that around 1997 you
18 stopped -- you didn't come up as frequently to
19 the property?

20 A That's correct. No, '99.

21 Q Ninety-nine. What happened in '99?

22 A I bought my house where I'm at now. And I remember
23 exactly, it was October -- or, uh -- yeah, October
24 13, 1999. And it was a Friday the 13th. That's the
25 only reason I can remember that day.

1 Q Okay. Did you -- What happened to your house in
2 Milwaukee?

3 A It was flooded twice in a two-year period, and I
4 could not repair the house. The city of Milwaukee
5 ended up having to buy it.

6 Q Okay. Did you, then, um -- Once you moved to --
7 You say you're in Jackson?

8 A That's correct.

9 Q How frequently would you come up to the
10 property -- the one-acre property over on Avery
11 Road?

12 A Uh, basically, often enough to cut the grass and keep
13 it looking halfways decent. After that, '99.

14 Q All right.

15 A It wasn't weekly like it was before, but it was often
16 enough to keep it trimmed up a little bit.

17 Q Sure. Now, when, uh -- After Jodi Stachowski
18 moved in -- You said that was 2003?

19 A I think about 2003, 2004. Must have been 2004, not
20 2003.

21 Q Okay. After she moved in, did you continue to
22 come up to --

23 A I'd come up to visit her a number of times, yes, but
24 not -- not over -- Well, a couple times I stayed
25 overnight. I slept on the couch in the living room.

1 Q All right. And so when do you think was the last
2 time that you would have fired that .22 Marlin
3 that we had in front of you a little while ago?
4 A Probably -- It was definitely before Jodi moved in.
5 Q So sometime before 2003 or 4?
6 A Yeah.
7 Q After she moved in, you weren't in the -- uh,
8 you -- you never fired the gun again?
9 A Not up there, no. I didn't take it with me. I never
10 fired the gun again, after.
11 Q And to your knowledge, where did the gun -- where
12 was the gun after Jodi moved in?
13 A It was hanging on the wall on that gun rack in the
14 bedroom.
15 Q With the -- the -- the muzzleloader? The black
16 powder --
17 A Correct.
18 Q The -- After you -- After the police released the
19 property back to you, um, what condition did you
20 observe that it was in?
21 A The place was pretty much in complete shambles.
22 Panel was pulled off the wall. All the traps were
23 taken out the sinks. Toilet was broke out. The two
24 doors are damaged. One is completely broke and has
25 to be replaced. Garage door was broken, has to be

1 replaced. The carpeting was cut up. Couch was --
2 pieces were cut off, and it was my mother's couch,
3 which can't be replaced. And --

4 Q All right. Let me ask you about the carpeting
5 for a minute. The carpeting inside the
6 trailer --

7 A Yes.

8 Q -- um, how long had that been there?

9 A About a year. Before Jodi.

10 Q A year before Jodi?

11 A Yeah.

12 Q All right. So maybe a couple years before the
13 police search of the --

14 A Yes. As I said, it probably was used carpeting. It
15 was in excellent condition and I had somebody install
16 it.

17 Q All right. I'm going to show you a few more
18 exhibits. There's an item that we had some
19 discussion about in this trial. It's depicted in
20 Exhibit 168. If you could take a look at that
21 and tell me whether you recognize that?

22 A Yes, I recognize that. That's mine.

23 Q And what is it?

24 A It's a World War II model record cabinet for record
25 albums.

1 Q Now --

2 A That's why they're divided as such. You could stack
3 three albums in each one of the sections, and flat
4 records went on top.

5 Q I see. Now, it's been referred to here by some
6 people as a bookcase.

7 A Well, it's not a bookcase. But that's what it's been
8 referred to I guess.

9 Q All right. But -- but you refer to it as a -- a
10 record album --

11 A That's what it is.

12 Q -- cabinet?

13 A And it was bought in World War II. I remember that.

14 Q Okay.

15 A I was too young to be in it, but I remember what it
16 was.

17 Q I'm showing you Exhibit 169, which is sort of
18 a -- a closeup of the rear of that furniture
19 item? Um, we had some testimony that that back
20 panel was -- was loose. Did you ever see it that
21 way?

22 A I do not recall seeing it that way.

23 Q Okay. You had -- Had you checked it recently or
24 looked at it?

25 A I just looked at where it was at. I haven't looked

1 at that, specifically, because of -- it was no real
2 treasure.

3 Q Okay. I show you Exhibit 37. That's your
4 trailer?

5 A Yes, it is.

6 Q In the foreground, kind of surrounded by some
7 yellow police tape, is an item. Can you tell us
8 what that is?

9 A That's my burn barrel for burning up the paper and
10 garbage around the area.

11 Q You put it there?

12 A I did.

13 Q And did you use it?

14 A Yes, I did.

15 Q How often?

16 A Probably every time I came up there.

17 Q What sort of things would you burn there?

18 A Oil bottles, oil filters, paper garbage, and stuff
19 that comes, for the most part, in the mail, and bags
20 and stuff from the grocery store.

21 Q Was that -- Did you have a garbage pickup?

22 A No, you don't have a garbage pickup. You can go over
23 to the dump, but I never -- never went to the dump.

24 Q So what would you do with your regular household
25 garbage that would accumulate?

1 A Burn it in that barrel.

2 Q All right. Did you ever have any bigger fires

3 than -- other than --

4 A Occasionally, I would have cuttings and weeds and

5 stuff that I would burn, but it was basically just a

6 little bit further -- closer to those trees.

7 Q Out in the front here?

8 A Yes.

9 Q Did you ever burn anything back behind the

10 garage?

11 A No, I didn't.

12 Q Wasn't an area that you used for that --

13 A Not for burning.

14 Q Okay. Did you ever burn any tires?

15 A Only in the front here.

16 Q Okay. Now -- That's not going to work. The

17 barrel appears to be rusty. Um, was it new when

18 you bought it?

19 A When I put it there, it was new, but after the first

20 time you burn it, it's, you know, rust overnight.

21 You get that barrel hot and it will rust.

22 Q How do you know that?

23 A I'm a tool and diemaker. I have an idea what metal

24 does.

25 Q Okay. Showing you Exhibit 145. Can you

1 recognize this?

2 A Yes, I do.

3 Q What is it, sir?

4 A It's a aluminum melting smelter at Mr. Avery's

5 property.

6 Q Did you ever see anyone operating that smelter?

7 A Yes, I did.

8 Q And who would -- Who?

9 A Allen has --

10 ATTORNEY KRATZ: Judge --

11 A -- operated it.

12 ATTORNEY KRATZ: Judge, objection,

13 unless we establish a time frame, please.

14 Otherwise it's just not relevant to this case.

15 ATTORNEY BUTING: It's foundation.

16 THE COURT: Well, I think a time frame can

17 be used for foundation. I'll sustain the objection.

18 Q (By Attorney Buting) Um, well, tell us, first,

19 how often do you think you saw someone operating

20 this smelter?

21 A Three, four times for sure.

22 Q Okay. And when you think was the last time you

23 saw it?

24 A I honestly couldn't even give you a -- a date. I was

25 up there, and I remember Allen burning -- melting

1 down transmission housings and various other things,
2 but I can't tell you what -- when it was.

3 Q The, uh -- To me, as I see this, it looks kind of
4 rusted. Would you agree?

5 A It's definitely rusted. But anytime you put high
6 heat on metal, it'll rust.

7 Q Does it -- When you saw it being operated, did
8 it, uh, look like that either while it was being
9 used or -- or shortly thereafter?

10 A Shortly after. But while it's being used, it's
11 almost red hot.

12 Q Really? The whole --

13 A Yeah.

14 Q The whole outside panels?

15 A It will get real close to red.

16 Q And then how soon after that does it -- would it
17 have -- would it turn into a condition similar to
18 this?

19 A Probably overnight.

20 Q Really? As you see this smelter in its current
21 condition, did that look consistent with the
22 smelter that -- as -- how the smelter would
23 appear to you shortly after you saw someone using
24 it?

25 ATTORNEY KRATZ: Objection. Irrelevant,

1 Your Honor.

2 THE WITNESS: Yeah.

3 THE COURT: Uh, just a minute. Stop a
4 minute.

5 THE WITNESS: Okay.

6 THE COURT: Um, I -- I'm going to
7 sustain the objection.

8 Q (By Attorney Buting) As you look at the smelter
9 in -- in this picture, is there any -- does this
10 picture -- I'm sorry. Does -- does the condition
11 of the smelter tell you anything about how
12 recently or how long ago it had been used before
13 this photograph was taken?

14 A Not at all.

15 Q Why not?

16 A I would imagine if you go there right this instant it
17 would probably look the same way. I do not see
18 anything that could tell me when it was used before
19 or after. Nothing tells me that.

20 Q And what -- and what about the con -- the rust
21 condition? Doesn't that look -- tell you
22 anything?

23 A Not a bit.

24 Q Could that smelter have been used a few days
25 before that?

1 ATTORNEY FALLON: Objection.

2 Speculation.

3 ATTORNEY KRATZ: Objection.

4 Speculation, Judge.

5 THE WITNESS: It's -- it's --

6 THE COURT: Sus -- sus -- Sustained. The
7 objection's sustained.

8 Q (By Attorney Buting) All right. Thank you, sir.

9 ATTORNEY BUTING: That's all I have.

10 THE COURT: Mr. Fallon or Mr. Kratz?

11 ATTORNEY KRATZ: Yes. Janet, could you
12 get me, uh, Exhibit 248, please, while I start
13 my -- It's the other gun that we haven't seen
14 yet.

15 **CROSS-EXAMINATION**

16 BY ATTORNEY KRATZ:

17 Q Good afternoon, Mr. Johnson. How are you?

18 A Hello. I'm fine, thank you.

19 Q Mr. Johnson, prior to the 31st of October of
20 2005, when had you last seen your friend, Steven
21 Avery?

22 A I don't know. It was probably a month before, maybe.
23 I do not know for sure. I can't recall any reason
24 that I would have been out there.

25 Q Was it a month before?

1 A Could have been.

2 Q Do you remember, Mr. Johnson, being interviewed
3 by law enforcement officers in this case?

4 A Yes, I do.

5 Q And do you remember being interviewed on February
6 6 of 2006?

7 A Yes. That was at my house in Jackson.

8 Q Okay. At that time, Mr., uh, Johnson, do you
9 remember telling law enforcement officers that
10 you must have seen Steven Avery just prior to
11 October 31 of 2005?

12 A Yes, I do, because he had a cut on his hand.

13 Q Who's he?

14 A Steve.

15 Q Can you describe that cut for us, please?

16 A I can't even -- It's not uncommon to have your hands
17 cut in the junkyard, but I can't -- it was across --
18 it was a pretty nasty gash.

19 Q Across which finger? Do you remember?

20 A I think it was across the knuckle or the hand. I
21 can't swear to it.

22 ATTORNEY BUTING: Record should reflect
23 the witness was pointing to the, um -- Do that
24 again, sir?

25 ATTORNEY KRATZ: Well, no, I asked him

1 which finger.

2 Q (By Attorney Kratz) Do you know which finger,
3 Mr. Johnson?

4 A I think it was acrossed -- right acrossed the, what,
5 index finger?

6 ATTORNEY BUTING: All right. Record
7 should reflect --

8 THE WITNESS: It was --

9 ATTORNEY BUTING: -- he's --

10 THE WITNESS: -- a jagged-looking cut.

11 ATTORNEY BUTING: Sir, just one moment.
12 The record should reflect that he's pointing to
13 the -- the back or side of his hands, right near
14 the knuckles. And it, um --

15 THE COURT: I can't see his hand. Is that
16 a fair characterization, Counsel?

17 ATTORNEY KRATZ: I -- I suspect, Judge,
18 that's what Mr. Johnson today is saying.

19 THE COURT: All right. The record will so
20 reflect.

21 Q (By Attorney Kratz) Mr. Johnson, I'm going to
22 show you what's been marked for -- and, in fact,
23 received for identification, as Exhibit No. 193.
24 Do you see that?

25 A Yeah.

1 Q You know what that is?

2 A It's a cut finger.

3 Q Do you know whose finger that is?

4 A Not really. I can't see a face so I couldn't tell

5 you, but I can assume.

6 Q Does that -- Does that cut look, uh, the same or

7 similar as the cut that you described --

8 A Yes, it does.

9 Q -- to law enforcement? Mr. Johnson, you're going

10 to have to wait until I finish an -- asking --

11 A Oh.

12 Q -- my question. Otherwise, this young lady here

13 is going to get angry with one of us and it will

14 probably be me. Okay? Do you remember, uh,

15 seeing, a -- seeing a cut that looked just like

16 that on Mr. Avery's hand; is that right?

17 A A gash of that type, yes.

18 Q Do you remember telling law enforcement that you

19 saw that just before October 31 of 2005?

20 A I think I do. I remember the nasty-looking cut.

21 That's all I can say. I thought it should have been

22 stitched.

23 Q Mr. Johnson, I'm going to have Mr. Fassbender

24 hand you, um, what has been received as Exhibit

25 No. 248 and have you take a look at that firearm

1 and tell the jury if you recognize it?

2 A If it's got a wooden ramrod, it's mine.

3 Q Well, first take a look at Exhibit No. 248. Tell

4 us what that is, please?

5 A That is a firearm. A black powder gun.

6 Q All right. Um, have you ever seen this gun

7 before?

8 A I seen one. If it isn't the same one, it's almost

9 identically the same.

10 Q All right. Do you -- do you feel comfortable

11 handling that weapon? Or would you prefer

12 that -- that somebody else -- I want you to look

13 at both sides of it just to -- to make sure. Um,

14 you -- you feel comfortable in handling a -- a

15 weapon, I assume?

16 A (Unintelligible.)

17 Q In looking at both sides of Exhibit No. 248, do

18 you recognize that gun and have you ever seen it

19 before?

20 A Yes, I did. And now I remember. Yes, I have. That

21 was my gun.

22 Q That is. Okay. And despite having the -- It's

23 got two triggers?

24 A It's got a -- a safety device.

25 Q All right.

1 A The most I fired out of it was about 20 rounds.
2 Twenty rounds.

3 Q All right. And I'll have that taken from you.
4 So that, and the .22 caliber Marlin, were both
5 in --

6 A Those were the two guns I had. Oops.

7 Q They were both in the master bedroom; is that
8 right? Yes?

9 A Correct.

10 Q When was the last time that you saw that,
11 Mr. Johnson?

12 A Whenever I went up there -- Jodi was living there. I
13 know that. I can't tell you what year it was. 2004?

14 Q All right. Do you know if your friend, Steve,
15 was living with Jodi at that time?

16 A By that time, yes, I did.

17 Q And so when Steve Avery was living in that
18 trailer, including in that bedroom, did you see
19 that firearm and the .22 firearm in his bedroom?

20 A I can't honestly say if I did or not, because I
21 didn't go in the bedroom at that time.

22 Q You talked about something that was called a
23 brick of ammunition. Can you describe that
24 again?

25 A It's a package of ten boxes of .22 shells.

1 Q And how many shells are in each box?

2 A Fifty in each one. There's 500 rounds in a brick.

3 Q Now, are those boxes, uh, cardboard?

4 A Yes.

5 Q And all of the ammunition, at least for the

6 .22 caliber Marlin that you owned, uh, came in

7 this brick form? Is that your testimony?

8 A That's the way I bought it. It was cheaper.

9 Q You never bought, uh, .22 caliber ammunition in

10 plastic boxes?

11 A I might have from time to time. Depends on how the

12 brick came.

13 Q All right.

14 A I don't even remember. I just went to the store and

15 bought it.

16 Q All right. So as you sit here today, you don't

17 know what kind of .22 caliber ammunition you may

18 have had in the trailer?

19 A I have no idea what brands they were. They would

20 have been several different kinds.

21 Q My question, though, is do you believe that they

22 were in these 50, uh --

23 A Yes.

24 Q -- cartridge -- They were in these 50 cartridge

25 cardboard boxes?

1 A Cardboard or plastic --

2 Q All right.

3 A -- yes.

4 Q And if I understand this correctly, then, the

5 cardboard or plastic box would be grouped

6 together and you buy them in bulk, basically; is

7 that right?

8 A You'd buy them in a packaged up in the shape of a

9 brick.

10 Q All right. I show you, Mr. Johnson, what's been

11 received as Exhibit No. 246. Ask if you

12 recognize what that is, please?

13 A It's a box of shells out of the brick.

14 Q All right. And is this --

15 A And they're .22 long rifles.

16 Q And is this the kind of shell that you had in the

17 trailer at least the last time that you were

18 there?

19 A Probably is. Very, very likely.

20 Q Now, the brand of .22 long rifle shell, it says,

21 CCI. Do you know what that stands for?

22 A I don't remember, but I bought it for my .357. I

23 bought it for a .22 caliber pistol that I had. And I

24 used it -- The pistol and the rifle used the same

25 ammunition.

1 Q And that would be a .22 long rifle -- These are
2 hollow point, uh --
3 A Yes.
4 Q -- bullets; is that right?
5 A Right.
6 Q Are you familiar at all with ammunition? Do you
7 know what a hollow point bullet is?
8 A Yes. It's one that will fragment over and expand.
9 Q In fact, when it, uh, enters whatever the target
10 is, uh, whether it's a -- an animal or something
11 else, it's intended to create more damage; is
12 that --
13 A Correct.
14 Q -- correct? On -- on the -- would be the end of
15 these shells, um, you see a, uh -- a logo -- a --
16 a -- a letter C. You see that?
17 A Yes, I do.
18 Q That how you remember those shells looking?
19 A I bought so many shells I can't honestly tell you
20 what they look like.
21 Q I understand. All right. Do you know what a
22 rimfire --
23 A Yes, I do.
24 Q If I could just finish asking the question. You
25 know what a rimfire, uh, shell is?

1 A Yes, I do.

2 Q And what is that, sir?

3 A It is one that will fire anyplace along the rim as
4 opposed to having a firing pin for a primer.

5 Q So different kind of bullets, uh, ignite or
6 operate in different kind of ways? Is -- is that
7 your understanding?

8 A That's my understanding.

9 Q And .22 caliber shells are unique, as I
10 understand, or at least are typical for having
11 this rimfire, uh, uh, capacity; is -- is that
12 true?

13 A As far as I know, it's true.

14 Q Uh, larger caliber, um, bullets, uh -- Your .357,
15 as an example, uh, you're talking about a
16 handgun; is that right?

17 A Yes.

18 Q And .357 is just a different caliber? It's a
19 much larger caliber than a .22?

20 A Correct.

21 Q That .357 bullet, as an example, would -- on the
22 end of the bullet, if I can just show this again,
23 where I'm pointing here, instead of -- of it
24 being relatively flat, would have a -- a primer
25 in the center of the bullet; is that -- is that

1 correct?

2 A That's correct.

3 Q Now, you mentioned to Mr. -- Mr. Buting on his
4 direct examination that although you shot this
5 weapon, uh, around or near the garage, that you
6 never shot it inside of the garage. Is that
7 still your testimony?

8 A That is part of my testimony. I don't believe in
9 guns in a building.

10 Q All right. And, in fact, Mr. Johnson, uh, at
11 least the last time that you were there, last
12 time that you were in the garage, did you ever
13 notice any .22 caliber shell casings inside of
14 the garage?

15 A Not that I recall.

16 Q Well, if you would have seen a .22 caliber shell
17 casing inside of the garage, is that something
18 that you think that you would have remembered?

19 A Not really.

20 Q All right. How come?

21 A As I said, I fired outside the garage door, and I
22 pointed to the area, and if the door was open, shells
23 could have land in there as well as out.

24 Q All right. How far in the garage you think those
25 shells would have landed if you fired outside the

1 garage?

2 A I have no real idea.

3 Q Well, let me show you some pictures and ask you

4 some questions. First of all, I'm going to show

5 you Exhibit No. 221. Do you know what we're

6 looking at here?

7 A .22 shell.

8 Q And I suspect just from this photo you can't tell

9 me where that was taken, can you?

10 A I cannot.

11 Q All right. In the garage, Mr. Johnson, had --

12 there was, um, stuff?

13 A Understatement.

14 Q That's a nice way of putting it. I'm showing you

15 Exhibit No. 232. Some of the stuff is, uh,

16 exhibited in this photo; is that right?

17 A Yes, it is.

18 Q Uh, you'll see a -- a red -- larger red tool box.

19 That was yours; right?

20 A Correct.

21 Q You'll see a -- next to that a green air

22 compressor? You see that?

23 A Yes. That's mine.

24 Q That's yours as well? And to the right of the

25 red tool box, do you see, uh, at least the, uh,

1 edge of a gray workbench?

2 A Yes, I see what appears to be a workbench or
3 whatever.

4 Q Well, I -- I'm going to ask you about your
5 recollection. Do you recall seeing those items
6 there the last time that you were in the garage?

7 A Yes.

8 Q In fact, all of those items, and most of the
9 things that we see in this picture --

10 ATTORNEY BUTING: Your Honor, ob -- can
11 I just ask Counsel to clarify the last time? I
12 mean, he's been -- he's probably been in the
13 garage. He still owns it. He's probably been in
14 there recently, so you might want to give that
15 time frame.

16 THE COURT: There should be clarification
17 as to time.

18 ATTORNEY KRATZ: I'd be happy to do
19 that.

20 Q (By Attorney Kratz) The last time prior to
21 October of 2005 that you were in the garage, uh,
22 did you see those items in there?

23 A Yes, I did.

24 Q Do you remember, Mr. Johnson, you saying that you
25 had, or remembering now, that you had seen your

1 friend, Steven, before or just before the 31st of
2 October? Do you remember why it was that you
3 were talking to him?

4 A No. I'm trying to think of it. I was trying to
5 think of it after --

6 Q All right. You don't --

7 A Any reason for it.

8 Q You don't remember why you were visiting him --

9 A Not really.

10 Q -- that fall, huh? You had, uh, spoke -- or
11 answered some questions from Mr. Buting about the
12 rear area of the garage. Let me just grab a
13 photo here. I think it was your testimony that
14 you hadn't burned anything behind the garage?

15 A I had not burned anything behind the garage.

16 Q Showing you what's been received as Exhibit No.
17 47. Show you what appears to be a, uh -- a
18 charred or burned area. First of all, uh, do you
19 see that in the large screen?

20 A I see it, yes.

21 Q Uh, is that, um, an area that you ever burned in?

22 A No, it is not.

23 Q Now you see, also, in this photograph, a -- a
24 shovel and some other items; is that right?

25 A Yes, I do.

1 Q Have you ever seen that shovel before?

2 A It was in the garage.

3 Q Whose shovel was it?

4 A Mine.

5 Q Now, let me ask you, Mr. Johnson, and -- and I
6 may already know because of the -- the kind of
7 person that you are, but would you have left, uh,
8 your shovel or your tools just laying out in the
9 yard like this?

10 ATTORNEY BUTING: Objection.

11 A No, they would have been back in the garage.

12 ATTORNEY BUTING: Objection.

13 Irrelevant.

14 THE COURT: Um, based on the phra --
15 phrasing of the question, I'll sustain the
16 objection.

17 Q (By Attorney Kratz) The last time that you were
18 at your property, had you ever left, uh, any
19 tools, including a shovel like that, in the
20 condition that you see in Exhibit No. 47?

21 A No, I wouldn't have.

22 Q Mr. Johnson, you had identified a -- a burn
23 barrel, um, in front of the garage. Excuse me,
24 in front of, uh, the trailer. This is another
25 view of it. It's Exhibit No. 51. Uh, does that

1 look like your burn barrel?

2 A It could very well be, yeah. I can't say that it's
3 definitely mine because all barrels look pretty much
4 alike.

5 Q I understand. Let's go to a -- a view I think
6 that's -- I think Exhibit 37 is -- is the one
7 that he had been talking about. Is that now a --
8 look like your burn barrel?

9 A Yes, it does.

10 Q Now, when you talked to the jury, or at least
11 when you testified on direct examination, you
12 called it my burn barrel; is that right?

13 A That is correct.

14 Q When's the last time you burned anything in your
15 burn barrel?

16 A Probably just after Jodi came in, because I had
17 plastic oil bottles and oil filters, which you can't
18 get rid of.

19 Q Do you know what month or year that was?

20 A Well, if she moved in in 2004, might be closer to the
21 fall of the year.

22 Q Fall of 2004? It's fair to -- I'm sorry. When
23 (unintelligible.)

24 A I would think it was 2004. I said after Jodi moved
25 in. It wasn't when the two of them were together. I

1 might have left some stuff up there for them to burn
2 for me, but that would have been the last time I
3 burned.

4 Q It's fair, then, Mr. Johnson, that at least after
5 2004, whether it was Steven Avery or Jodi
6 Stachowski, other individuals may have burned in
7 that barrel?

8 A Correct.

9 Q In fact, do you know that to be the case?

10 A No.

11 Q You just know the last time you burned in it was
12 in '04?

13 A Yes.

14 Q All right. Did you ever burn a -- Let me first
15 ask the -- the foundation question. Do you know
16 what a digital camera is?

17 A Yes, I do.

18 Q And have you ever owned a digital camera?

19 A No, I have not.

20 Q Have you ever burned a digital camera in this
21 burn barrel?

22 A No, I have not.

23 Q Do you know -- Do you know what a cell phone is?

24 A Yes, I do.

25 Q Do you own a cell phone?

1 A No, I don't.

2 Q Have you ever burned a cell phone in this burn
3 barrel?

4 A I have not.

5 Q By the way, Mr. Johnson, this, um -- this burn
6 barrel, does it appear to be in about the same
7 position, at least relative position, as compared
8 to the garage and the trailer as when you left
9 this lot?

10 A It was moved there. Originally, I lived closer to
11 the garage, and they moved it up there, and I used
12 it, or Jodi started moving it up there because it was
13 making too much smoke in the trailer.

14 Q All right. Let me ask the question a little
15 differently. Exhibit No. 37, looking at that
16 burn barrel, does that look like the last place
17 that you had seen that burn barrel?

18 A Yes, it does.

19 Q That's all I have. Thank you very much, sir.

20 THE COURT: Mr. Buting, anything else?

21 ATTORNEY BUTING: Yes.

22 **REDIRECT EXAMINATION**

23 BY ATTORNEY BUTING:

24 Q Mr. Johnson, uh, Mr. Kratz reminded you that the
25 police spoke to you in February?

1 A I don't know what month it was, but I know they spoke
2 to me.

3 Q And you recall that because it was in your --

4 A They parked in my driveway in Jackson. They pulled
5 up into the driveway, and I looked, and what's a
6 squad car doing here? Or it appeared to be a squad
7 car.

8 Q All right. At any rate, was that the first time
9 that you had spoken to any police officers about
10 this --

11 A Yes --

12 Q -- incident?

13 A -- about that. It's the first time that I can recall
14 speaking to police officers about it. And I was kind
15 of surprised that they didn't act sooner.

16 Q So that was like three months later?

17 A It was a considerable period. If it was February, I
18 can't remember the month, because I -- I know it was
19 a long period of time after what was said was done.

20 Q Sure.

21 A It seemed like a long time before they came to see
22 me.

23 Q And by that time there had been, um, reports on
24 the television about the charge against
25 Mr. Avery?

1 A I've heard the charges about him, but I didn't talk
2 to anybody about them. I didn't know anybody.

3 Q No. That's fine. I -- I'm just saying, by the
4 time they came to talk to you, you knew something
5 about --

6 A Oh, yes, I did, by that time.

7 Q Sure. Okay. And, um, when they asked you about
8 when you were last up there to see, uh, Mr. --
9 Um, let -- let me clear this up first. Mr. Kratz
10 keeps saying that when you went up to see your
11 friend, Steven Avery, is that why you would go
12 visit the property?

13 A That's part of the reason I'd go and see him. I
14 wouldn't have to have a reason to go up there.

15 Q Okay. Who -- who's the -- Of the Averys, who are
16 you the closest to?

17 A I would say Allen.

18 Q Okay. So would you go up to see Allen,
19 primarily, and then see --

20 A I'd look at my trailer, and go up to see Allen, some
21 of my other friends in the area, too.

22 Q Okay. Um, and if you told the police that you
23 thought you were up to -- to see the trailer area
24 sometime just prior to -- or prior to Halloween,
25 2005, what kind of a time frame were you thinking

1 of or what did you have in mind?

2 A I almost think about within a month of Halloween.

3 Q Okay. So you didn't mean just the -- the week

4 before or --

5 A No, I didn't mean the week before. It could have

6 been, but I don't know.

7 Q And in all the times that you would visit the

8 Averys, um, was it unusual to see cuts on their

9 hands?

10 A It's not unusual to see cuts on anybody up there. In

11 a junkyard, wrenches slip easy.

12 Q Would that include Chuck?

13 A Chuck would have cuts.

14 Q Earl?

15 A Earl.

16 Q Allen?

17 A All of them.

18 Q Okay. Did, uh -- The -- the -- the photograph

19 that Mr. Kratz put up for you, um, as I

20 understand it, you said that the -- the gash that

21 you saw, or recall Steven Avery having, was

22 similar to that?

23 A It was a wide open cut like that. That -- that's

24 what I was referring to.

25 Q But you described it when you motioned you to --

1 you --

2 A I said that's where I thought it was. I can't
3 remember for sure. I had no real reason to -- to
4 think anything more about a cut in a junkyard.

5 Q Okay. And so the photograph that Mr. Avery
6 showed you may not have been the -- the cut that
7 you discussed with the police?

8 A It is possible that it's not the same cut. I don't
9 know.

10 Q Okay. You didn't make particular note of that
11 when you saw it?

12 A There was no reason to.

13 Q And they were talking to you how much after
14 the -- the, uh, event?

15 A When the police were talking to me?

16 Q When they were asking you about this cut? This
17 was several months?

18 A Yes. And I don't even recall exactly where he was
19 cut at that time, but I do know he had a cut.

20 Q Okay. That's all I have. Thank you, sir.

21 ATTORNEY KRATZ: Nothing else, Judge.
22 Thank you.

23 THE COURT: Very well. The witness is
24 excused. The, uh, defense may call its next
25 witness.

1 ATTORNEY STRANG: Next witness is, uh --
2 if this is working -- is Debra Kakatsch.

3 THE CLERK: Raise your right hand.

4 **DEBRA KAKATSCH,**
5 called as a witness herein, having been first duly
6 sworn, was examined and testified as follows:

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

9 THE WITNESS: My name is Debra Kakatsch,
10 and it's spelled D-e-b-r-a, and the last name is
11 K-a-k-a-t-s-c-h.

12 **DIRECT EXAMINATION**

13 BY ATTORNEY STRANG:

14 Q Good afternoon.

15 A Good afternoon.

16 Q How are you employed, Ms. Kakatsch?

17 A I'm employed as the Manitowoc County Coroner.

18 Q How long have you been the Manitowoc County
19 Coroner?

20 A Uh, I'm going into my 15th year and, also, I was, uh,
21 chief deputy two years before that.

22 Q So what -- what does that mean you started?

23 A As coroner?

24 Q Or as chief deputy?

25 A Uh, chief deputy, '91-'92. Coroner started '93.

1 Q Okay. What -- what sort of, um, work background
2 did you have before becoming the chief deputy
3 coroner?

4 A Um, my background was primarily nursing at that time.
5 I worked in several different areas. I was an
6 obstetrical nurse and delivered babies. Sometimes
7 doctor always didn't get there. Uh, also worked in a
8 nursing home, taught childbirth education. Uh,
9 chemotherapy. Worked in the emergency room. Uh,
10 intensive care area.

11 Q Um, when you first started nursing, what sort of
12 nursing certification, if any, did you have?

13 A In the beginning --

14 Q Yes.

15 A -- of my nursing career? Uh, I became, um, certified
16 in obstetrics in my earlier years.

17 Q And was -- I know there are different types of
18 nursing and just different certifications. Did
19 you have any of those initially?

20 A Well, uh, to be a nurse, you need to have a license
21 under the state of Wisconsin. Um, but then I went on
22 to be certified in other areas.

23 Q What was your first license as a nurse?

24 A Licensed Practical Nurse.

25 Q Did you continue your education in the field of

1 nursing after becoming a licensed practical --
2 practical nurse?

3 A Yes, I went back to school for a registered nurse.

4 Q And did you eventually get the RN?

5 A Yes, I did.

6 Q Or registered nurse?

7 A Yes, I did, 1980.

8 Q Do you have any schooling beyond the registered
9 nurse, uh, status?

10 A Yes, I do.

11 Q What's that?

12 A Um, I went back to school and, uh, I got a Bachelor's
13 Degree in management. And then I also went back to
14 school for a paralegal degree. And then I went back
15 to school for, uh, a police science degree. Not a
16 full degree, but at that time I was looking for, um,
17 more classes to help me do my job as a, uh, coroner
18 and also in other fields that I was pursuing later
19 on. But, uh, it helped me quite a bit in, um, my
20 coroner work. And -- and by doing that I got
21 involved in teaching some things, too.

22 Q Have you had any spec -- any training specific to
23 your work as the, uh, coroner?

24 A Yes, I have. Um, I have taken, uh, numerous other
25 trainings, um, such as, uh, anthropology,

1 autopsy-type, um, courses. I've been in a number of
2 autopsies, signed permits for a number of those. Um,
3 oh, DNA. I've taken a couple of Dr. Henry Lee's
4 courses. I don't know if you're familiar with him.
5 Um, Dr. Michael Bodden. I've taken some courses from
6 Dr. --

7 Q These --

8 A -- Bodden.

9 Q These are well-known medical examiners --

10 A Yeah.

11 Q -- from --

12 A Yes.

13 Q -- Connecticut in Dr. Lee's case, um, and
14 Pennsylvania in Dr. Bodden's case?

15 A Yes.

16 Q Okay.

17 A Um, and I felt I -- I learned a lot specifically from
18 getting training from those particular people. So,
19 um, then I try to keep on that -- keep up on that
20 training, uh, every year with whatever comes along
21 that best fits the scope of my job to do it better.

22 Q Do you have any certifications, um, connected to
23 your work as coroner?

24 A Yes, I do. I'm certified as a forensic nurse.

25 Q What does that mean?

1 A Forensic nurse deals more with the -- the
2 investigation part of nursing and the medical field,
3 and, uh, to do that I had to submit numerous types of
4 educational things that I attended, and, then, uh, I
5 also had to take an advanced condensed program and
6 then write an exam.

7 Q Okay. Uh, and other than forensic nursing, um,
8 have we covered your certifications?

9 A I also got certification as, um, Homeland Security,
10 which deals with, uh, the medical field death
11 investigation, disaster-type situations, death
12 investigations.

13 Q When you say, "Homeland Security", the United
14 States Department of Homeland Security?

15 A Uh, well, it's through our organization, the American
16 College of Forensic Examiners, so --

17 Q All right. Um, in addition to the American
18 College of Forensic Examiners, do you belong to
19 any professional associations?

20 A Yes. I belong to the Wisconsin Coroners Medical
21 Examiners Association, the Forensic Nurses
22 Association. I used to belong to the Homicide
23 Investigators Association.

24 Q All right. Now, what -- what is the position of
25 coroner, um, in, uh -- in Wisconsin?

1 A In Wisconsin it, uh, revolves around death
2 investigations and it can -- the types of deaths we
3 get involved in are, um, homicides, suicides, traffic
4 accidents, industrial deaths. Um, sometimes if there
5 would be a, uh, death in police custody or in jail,
6 or bodies found, remains found, um, drug deaths,
7 emergency room deaths, drug reactions. There's many
8 things we get involved in that the State requires us
9 to investigate.

10 Q All of them in -- involve, unfortunately, someone
11 dying?

12 A Yes.

13 Q Okay. And how do you -- how do you -- how do you
14 get this job of coroner?

15 A Coroner's elected.

16 Q What -- what's the current term?

17 A The current term is four-year term now. It -- it had
18 been two years.

19 Q Okay. And, uh, when you say "elected" is that
20 a -- a municipal position? A county position? A
21 state position? What --

22 A It's a county position.

23 Q All right. Um, does -- does your work as
24 coroner, uh, involve a duty to determine manner
25 of death? Uh, at least in some instances of a

1 sudden death?

2 A Well, that's our job everyday.

3 Q Now, but -- but if a death happens, let's say, in
4 a hospital or a nursing home, would you be
5 involved, typically, in that?

6 A Sometimes we are. It depends. Um, let's say, for
7 example, a person has a hip fracture and they're in
8 the nursing home, those we have to accept as a case.
9 If someone's choked, if someone's had a drug
10 reaction, we have to accept those as case as well.

11 Q So how would we -- how would we describe simply
12 for the jury what sort of deaths become the
13 coroner's business and what don't?

14 A Well, it -- it would fit under the criteria of what I
15 explained. If there's some kind of accidental
16 nature, suicide nature, homicide nature to it, um,
17 undetermined nature, um, we have to get involved.

18 Q Okay. In other words, if it's -- if -- if it's
19 natural causes, you might not be involved?

20 A We may still be involved because you may not know the
21 death is a natural death until you completed whatever
22 you need to do to arrive at that determination.

23 Q Okay. But, I guess, if I understand you, you
24 won't be involved in every natural death if a
25 doctor has attended --

1 A No. No.

2 Q Okay. Um, do you have the -- the power to sign
3 and issue a death certificate?

4 A That's our job everyday, yes.

5 Q Do you have any statutory or, you know, duties
6 under law, to, um, uh, control the disposition of
7 human remains?

8 A Yes.

9 Q What -- what are those?

10 A Um, well, particularly where I get involved, um, with
11 disposition is unclaimed bodies, bodies that are not
12 identified. We have to provide indigent burial if we
13 don't find anybody to claim that body.

14 Q All right. Did you, um, in November of 2005, uh,
15 come to learn of some suspected human bones found
16 on or near what we call the Avery property in
17 Manitowoc County?

18 A Yes, I did.

19 Q How did you learn about that?

20 A From television.

21 Q And, um, had you had any -- any prior involvement
22 in the investigation into Teresa Halbach's
23 disappearance?

24 A Could you repeat that?

25 Q Had you -- Before you saw this on the

1 television --

2 A Uh-huh.

3 Q -- did you have any prior involvement into the
4 investigation of Teresa Halbach's --

5 A No.

6 Q -- disappearance? Okay. Um, but, again, I
7 guess, it would be a death that would trigger the
8 coroner's involvement?

9 A Yes.

10 Q What did you do after you saw on television, uh,
11 something about the discovery of possible human
12 remains?

13 A Well, I got a few phone calls, uh, and particularly
14 from my deputies, as to what the plan of action would
15 be when --

16 Q Okay. I'm going to interrupt you just a moment.
17 I'm sorry. How many deputy coroners do you have?

18 A Uh, at that time I believe it was six.

19 Q Okay. I'm sorry I -- I interrupted.

20 ATTORNEY GAHN: Your Honor, I -- I'm --
21 I'm sorry, Your Honor. I think we need to be
22 heard outside the presence of the jury.

23 THE COURT: All right. At this time the
24 Court will excuse the jurors for a few minutes.

25 (Jurors out at 4:08 p.m.)

1 THE COURT: You may be seated.

2 ATTORNEY GAHN: I believe it would be
3 better if the witness were to leave the
4 courtroom.

5 THE COURT: All right. Ms. Kakatsch, we'll
6 excuse you from the courtroom at this time.
7 Mr. Gahn?

8 ATTORNEY GAHN: Yes, um, I guess we're
9 at a loss here. We don't know what is going --
10 happening here. We've received no discovery. I
11 see that the witness has a folder in front of
12 her. Um, looks like two folders. Um, I don't
13 know if she's going to be asked to render any
14 type of opinion. I don't know if this is --
15 involves the lawsuit that was pending at the
16 time.

17 But, more importantly, on, um, just
18 January 19 of 2007, uh, one of our agents,
19 Special Agent Heimerl, um, spoke with the
20 coroner, and at that point she stated that, uh,
21 she was not aware of being on the list as a
22 potential defense witness. She stated she did
23 not know why she would be called as a witness.
24 She stated that she does not know what type of
25 testimony may be needed from her as a defense

1 witness as she felt she had no relevant
2 information.

3 So I guess, under the rules of
4 discovery, we would like to know exactly what
5 documents the defense has, what they plan to
6 elicit from this witness. Uh, we just, um, have
7 no idea.

8 THE COURT: Mr. Strang?

9 ATTORNEY STRANG: I have no documents
10 from the witness. Never have. Um, because she
11 brought the files, I asked her to bring them in,
12 anticipating that maybe the State would want to
13 see them. Um, there's no discovery I have that's
14 to be turned over. She is not an expert witness.
15 She's purely a fact witness.

16 I understand I -- I asked some questions
17 about her background, but simply by way of
18 establishing who she is and why she has the job
19 of coroner. She was, of course, listed on our
20 witness list, uh, timely filed. Um, and, um, I
21 guess they could have interviewed -- they could
22 have interviewed her, um, as I have.

23 Um, she will, um, testify, um, to the
24 response that she began, in her capacity as the
25 Manitowoc County Coroner, um, in her efforts,

1 then, to obtain access to human remains, uh, how
2 those were rebuffed by, um -- specifically by
3 Investigator Mark Wiegert, as the person with
4 whom she recalls having contact, um, and then she
5 was later, um, told that, uh, she was not to get
6 involved, um, by the unusual, she will say,
7 intervention of the Manitowoc County Executive
8 and, later, the Corporation Counsel. Uh, and in
9 the end, she was prevented from discharging her
10 statutory duties as coroner.

11 ATTORNEY GAHN: And I would ask what is
12 the relevancy of this? Um, the Manitowoc County
13 Corporation Counsel, is my understanding, wanted
14 to remove all Manitowoc County officials from
15 this investigation. Um, it was a prudent, wise
16 move on their part.

17 And to come in now, because, perhaps,
18 some disgruntled Manitowoc County employee, uh,
19 didn't like that decision? I don't see the
20 relevancy at all in this.

21 ATTORNEY STRANG: Well, it probably
22 would have been prudent to remove all Manitowoc
23 County officials from the investigation. But
24 we've heard for a month just exactly how that
25 wasn't done with the Manitowoc County Sheriff's

1 Department. And, unlike the Sheriff's
2 Department, neither Ms. Kakatsch, nor the office
3 of coroner, nor anyone in the coroner's office,
4 had any prior involvement in Steven Avery's civil
5 lawsuit. Um, hadn't been deposed, hadn't been
6 interviewed, had no statutory responsibilities
7 for the 1985 crime.

8 And, um, yet, her office alone,
9 apparently, among Manitowoc County law
10 enforcement offices, uh, was walled off entirely,
11 uh, from performing, uh, legal duties, lawful
12 duties in connection with discovery of human
13 remains.

14 THE COURT: Assuming she was walled off,
15 what's the relevance of that for purposes of this
16 trial?

17 ATTORNEY STRANG: This -- this goes
18 directly to investigative bias and decisions to
19 prefer the involvement of certain Manitowoc
20 County officials and not other Manitowoc County
21 officials even when there were statutory duties,
22 uh, to be performed in connection with a death.

23 ATTORNEY GAHN: Your Honor, now, I
24 guess, the Corporation Counsel of Manitowoc
25 County is involved in the bias in this case. Um,

1 I don't see any relevance at all. But if -- if
2 Your Honor sees some shred of, uh, relevance,
3 then I would ask the Court to give a, um,
4 analysis under 904.03 as this is just, uh -- the
5 probative value is just so low that it just, um,
6 is outweighed by the, uh -- the prejudice this
7 could cause, the confusion of issues with the
8 jury, and -- and waste of time for the jury also.

9 ATTORNEY STRANG: Well, if there's -- if
10 there's any 9-0-4-0-3 concern, I guess that would
11 um -- and turning to the Milwaukee County Medical
12 Examiner a year after this death, uh, when he had
13 no involvement at the scene, uh, rather than
14 having the local official whose job it was to
15 investigate a suspicious death, to sign a death
16 certificate, to determine manner of death, the
17 State -- the State's put all of that, uh, in play
18 with Dr. Jentzen and even trying to use an
19 anthropologist for that. Here's the official
20 under Wisconsin law whose duty it is to do
21 exactly these things, and in her county she was
22 prevented from discharging that duty.

23 THE COURT: What -- what would be her
24 competence to perform this duty considering the
25 other plain state people that we've heard from?

1 ATTORNEY STRANG: Well, unlike the
2 State, she will testify that she immediately
3 contacted a forensic pathologist with whom she's
4 worked before and immediately contacted a
5 forensic anthropologist with whom she's worked
6 before, and told them, come to the scene. We've
7 got work to do at the scene, uh, there, as part
8 of a death investigation.

9 But there, again, relevance in how the
10 recovery of bones could have been done so that a
11 more useful assessment of -- of where the body
12 was burned, uh, where remains were found and how
13 they were distributed might have been done had
14 she been allowed to do her job.

15 THE COURT: Well, this may be relevant or
16 have probative value as it relates to a turf war,
17 but I -- I'm failing to see the -- the probative
18 value of it for purposes of this case. I think it
19 has much more potential to mislead the jury, um, and
20 I -- I don't see how anything the coroner would have
21 done, um, would have somehow contributed to a less
22 biased investigation in this matter.

23 ATTORNEY STRANG: Well, I think
24 preferring one Manitowoc County office to another
25 Manitowoc County office in itself, here, Your

1 Honor, bears on investigative bias. It goes
2 directly to the issue of consistency, if you
3 will, and inconsistency that reflects a
4 particular bias. This jury is entitled to see it
5 and, uh, rule upon.

6 THE COURT: I've already given the defense
7 quite a bit of latitude. I've allowed reference to
8 the lawsuit, uh, the fact that, uh, Lenk and
9 Colborn, uh, gave their depositions. I think the
10 Court has granted the defendants, uh, adequate means
11 to make the point as it relates to bias.

12 But the, um -- this witness has nothing
13 to do with the Sheriff's Department. The
14 decisions of Manitowoc County officials, uh, not
15 to become involved that started with the, um --
16 the district attorney, and, uh, whether Manitowoc
17 County higher officials made the right decision
18 or the wrong decision, for purposes of this
19 criminal case, uh, I fail to see any measurable
20 probative value and I think the State's objection
21 is well taken.

22 ATTORNEY STRANG: I think there's also
23 probative value more narrowly in showing this
24 jury that a forensic anthropologist could have
25 been there, could have been at the scene and

1 involved in the recovery, um, had the law
2 enforcement people followed the usual lawful
3 routine of notifying the county coroner upon
4 discovery of suspected human remains. Um, that
5 could have happened here, and the normal steps
6 contemplated by Wisconsin Statutes been taken
7 here.

8 Um, so I would -- I would tender, uh,
9 that as relevant, uh, as well, uh, Your Honor.
10 Uh, there will be testimony in the defense case
11 about, um, destruction of bodies by thermal
12 injury or cremation, uh, about what could have
13 been learned if this site had been properly
14 preserved and recovered, and this is, uh,
15 foundation in part for that testimony as well.

16 THE COURT: Well, if we hear some testimony
17 from a defense expert that creates some relevance
18 I'm not aware of right now, Ms. Kakatsch could
19 always, I suppose, be recalled. But, again, uh,
20 if -- if the reason that the coroner was told to
21 stay off the case was because of fear of a conflict,
22 uh, whether there was any or not, um, I -- I -- I
23 don't believe that the -- the probative value of
24 such evidence, uh, is very great.

25 And I'm -- I'm more worried about

1 creating confusion for the jury when I think the
2 real issue, as -- as I understand it, on the bias
3 issue from the defense has been the, uh, bias,
4 specifically, of Officers Lenk and Colborn, and I
5 think the Court has, uh, allowed, uh, the defense
6 to present a great deal of evidence with regard
7 to that issue.

8 Uh, but I think to further bring the
9 coroner involved, I -- I -- I just think, uh,
10 it's too dangerous to confuse issues when weighed
11 against -- against the probative value.

12 ATTORNEY STRANG: I understand the
13 Court's ruling. I -- I respectfully, uh, suggest
14 that the bias of any witness called by the State
15 is a relevant area of exploration. It's not
16 collateral to the issue and, specifically, this
17 would be -- this witness had telephonic contact,
18 she will say, with Investigator Mark Wiegert, uh,
19 who's been identified as one of the two lead
20 investigators on the case and who testified, um,
21 yesterday.

22 So -- but -- but, again, I -- I -- I
23 recognize the rulings that the Court has made and
24 the rulings allowed us on the bias of Mr. Lenk
25 and Mr. Colborn, but the bias of any state

1 witness is relevant, particularly somebody who
2 has a role like Mr. Wiegert, uh, did here.

3 Um, if -- if -- if the Court's ruling is
4 to stand, what I would simply propose to do is to
5 make a verbal, uh, offer of proof. Proffer her
6 testimony. I can do that in three or four or
7 five minutes just by running through my -- the
8 outline for my direct examination.

9 THE COURT: Anything from the State?

10 ATTORNEY GAHN: No, Your Honor.

11 THE COURT: Well, I -- I -- Maybe I'm
12 missing something. I don't recall any questioning
13 about Ms. uh -- Detective Wiegert in this regard.
14 I'm -- I'm only basing my ruling on what I know. If
15 you want to put something on the record as to what
16 you, uh, would intend to prove, and if, uh, further
17 witnesses from the -- the defense, uh, believes you
18 should ask the Court to reconsider its decision, I
19 will. I'm making my decision based on what I know
20 now.

21 ATTORNEY STRANG: Well, and I'll -- I'll
22 make an offer of proof of what I would expect to
23 elicit from Ms. Kakatsch.

24 THE COURT: Go ahead.

25 ATTORNEY STRANG: Um, I left off with

1 asking her, essentially, how did she learn that
2 suspected human bones, uh, had been discovered on
3 the Avery property. She said she learned by
4 television.

5 Uh, she -- I would -- I expect that she
6 would then testify that her response was to talk
7 to one or more of her deputy coroners. That she
8 then called, um, a forensic pathologist named
9 Dr. Doug Kelly, who at that time worked, uh,
10 with -- although she's not sure -- he was
11 actually employed by the Waukesha County Medical
12 Examiner's Office. He's no longer there. I
13 believe he's the Fond du Lac County Medical
14 Examiner today.

15 Um, she also asked Dr. Kelly to arrange
16 the services of Patrick J. Schoebel,
17 S-c-h-o-e-b-e-l, whom she refers to as P.J., uh,
18 a forensic anthropologist with whom she had
19 worked in the past.

20 I further expect that she would testify
21 that she then contacted, um, investigators at the
22 scene, um, asked why she had not been called.
23 Um, made arrangements to come to the scene, uh,
24 on the 9th of November. Uh, was put off, um, in
25 two or three telephone conversations with

1 Mr. Wiegert. First told, essentially, that he
2 had to check. Uh, next told that her services
3 weren't needed.

4 Um, she has notes that document those
5 conversations. And I'm just giving the general
6 gist of them. Uh, she was not, in the end,
7 allowed on the scene. Uh, she did not have a
8 chance to determine the cause or the manner of
9 death. Um, to her knowledge, neither Dr. Doug
10 Kelly nor Patrick J. Schoebel, um, reported to
11 the scene.

12 She did receive, on the 9th or 10th of
13 November, a phone call from Dan Fischer, who she
14 identifies as the County Executive of Manitowoc
15 County, uh, telling her, in essence, that there
16 was a conflict of interest and she ought not push
17 to be involved.

18 Uh, she disagreed with that. She would
19 say that it was very unusual for her to get a
20 phone call from the County Executive at all. She
21 later received a phone call from a -- from a
22 Steven Rollins, the Manitowoc County Corporation
23 Counsel. Actually, who I -- I know has written
24 the Court here on this case recently. Uh, he,
25 too, advised that she should not be involved

1 because of a conflict.

2 She protested that she and her office
3 had nothing to do with the civil lawsuit that
4 Mr. Avery had brought. Had no involvement in it
5 whatsoever, um, but realized that she was meeting
6 firm resistance.

7 And she, then, contacted the Calumet
8 County, uh, Medical Examiner. I believe he is in
9 Calumet County. A gentleman named -- she would
10 say his name, Mike Klaser. I think that's
11 K-l-a-s-e-r. She contacted him just because
12 somebody had to fulfill the obligations of the
13 coroner. And, as a matter of good faith and
14 doing what she could to discharge her duties, um,
15 she thought the next best thing she could do was
16 to contact the medical examiner in the county
17 that employed the, um, uh, investigator from the
18 Sheriff's Department with whom she was having,
19 uh, contact.

20 And, finally, she would explain that she
21 had no involvement at anytime with Steven Avery's
22 civil lawsuit. She wasn't deposed. She wasn't
23 interviewed by either side. So nobody had any
24 contact with her at all, um, in relation to the,
25 uh, civil lawsuit against Manitowoc County.

1 So that's, uh -- that's, in a nutshell,
2 or in -- in skeleton form, the, uh, testimony I
3 expect that she could offer and that I think is
4 relevant for these as I explained it.

5 THE COURT: Anything else from the State?

6 ATTORNEY GAHN: No, Your Honor.

7 THE COURT: All right. Based on that, uh,
8 testimony, um, I think it's summarized, is that her
9 inability to participate in the case was based on a
10 directive from the County Executive at the time and
11 the Manitowoc County Corporation Counsel. If memory
12 serves me right, may have been involved in the
13 initial decision to turn investigation over to
14 Calumet County, but I'm not -- I don't trust my
15 memory anymore. I know the district attorney was
16 there. I don't remember if the corporation counsel
17 was involved or not.

18 Uh, but at any rate, whether they made
19 the right decision or the wrong decision, uh, it
20 seems to me it was based on the effort of some
21 higher officials in Manitowoc County not to
22 create or further, if you will, from the defense
23 perspective, the appearance of a -- of a, uh,
24 conflict of interest. And, um, I -- I don't
25 perceive how pulling a Manitowoc County person

1 off would somehow add to any bias on any part
2 when the purpose for making the decision was to
3 avoid the creation of bias.

4 And whether that's right or wrong, the
5 probative value of that decision, uh, is so
6 minimal to the facts in this case, which is a
7 criminal case, uh, that I don't believe the
8 evidence has much probative value. Um, and for
9 that reason the Court is not going to allow it.
10 I believe it would tend to confuse the issues in
11 this case. Uh, and Mr. Strang's objection is
12 noted on the record and his offer of proof.

13 ATTORNEY STRANG: Right. It's -- it's
14 bias. It's a double standard that's employed, in
15 our view by, um, uh, the people running
16 investigation, including those who testified as
17 witnesses here, or were involved in it.

18 THE COURT: All right. I think we
19 should, um, bring the jury in and tell them
20 they're going to be excused for the day and then
21 we'll resume tomorrow morning.

22 ATTORNEY STRANG: Very well.

23 THE COURT: Bring the jurors in at this
24 time.

25 (Jurors in at 4:29 p.m.)

1 THE COURT: You may be seated. Uh, members
2 of the jury, it's 4:30, so we're going to conclude
3 our proceedings for today. Uh, I will remind you,
4 uh, again, when you go home, don't discuss the case
5 with anyone, don't discussed it among your --
6 discuss it among yourselves, and be sure not to, uh,
7 expose yourself to any media accounts about the
8 case. We will see you tomorrow morning, uh, at the
9 normal time.

10 (Jurors out at 4:30 p.m.)

11 THE COURT: You may be seated. And then
12 Counsel will, um -- I'd appreciate it tomorrow
13 morning if you can, uh, meet with the Court about
14 quarter to nine to give me an idea of what's going
15 to be going on.

16 ATTORNEY GAHN: Could we meet for a few
17 minutes in chambers, uh, tonight, Your Honor?

18 THE COURT: Now? Sure.

19 ATTORNEY GAHN: Thank you.

20 THE COURT: See you in a couple minutes.

21 (Wherein Court stands adjourned at 4:31 p.m.)
22
23
24
25

1 STATE OF WISCONSIN)
)SS.
2 COUNTY OF MANITOWOC)
3

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this ____ day of _____, 2007.
16
17
18

19 _____
Jennifer K. Hau, RPR
20 Official Court Reporter
21
22
23
24
25