

STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
BRANCH 1

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STATE OF WISCONSIN,

PLAINTIFF,

JURY TRIAL

TRIAL - DAY 6

vs.

Case No. 05 CF 381

STEVEN A. AVERY,

DEFENDANT.

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**DATE:** FEBRUARY 19, 2007

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

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

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

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

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

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

STEVEN A. AVERY  
Defendant  
Appeared in person.

**TRANSCRIPT OF PROCEEDINGS**

Reported by Diane Tesheneck, RPR

Official Court Reporter

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

5 ATTORNEY KRATZ: Your Honor, the State once  
6 again appears by Calumet County District Attorney  
7 Ken Kratz, Assistant Attorney General Tom Fallon and  
8 Assistant District Attorney Norm Gahn, appearing as  
9 special prosecutors.

10 ATTORNEY BUTING: Good morning, your Honor.  
11 Attorney Jerome Buting and Dean Strang appearing  
12 with Mr. Steven Avery this morning.

13 THE COURT: Very well. At this time the  
14 State may resume the presentation of its case.  
15 Mr. Fallon.

16 ATTORNEY FALLON: Yes, good morning. Thank  
17 you.

18 THE COURT: You may call your first  
19 witness.

20 ATTORNEY FALLON: State at this time would  
21 call John Ertl.

22 THE CLERK: Please raise your right hand.

23 **JOHN ERTL**, called as a witness herein,  
24 having been first duly sworn, was examined and  
25 testified as follows:

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

4 THE WITNESS: My name is John Ertl. Last  
5 name is spelled E-r-t-l.

6 **DIRECT EXAMINATION**

7 BY ATTORNEY FALLON:

8 Q. How are you employed?

9 A. I work for the State Crime Laboratory in Madison.  
10 I'm a forensic scientist. I work for the DNA  
11 Analysis Unit and I also do crime scene evidence  
12 location, recovery, and collection.

13 Q. How long have you been employed with the  
14 Wisconsin State Crime Lab in Madison?

15 A. I began there in January of 2000.

16 Q. Had you had any previous employment as a Crime  
17 Lab analyst prior to that?

18 A. My first job as a forensic scientist was with the  
19 State Crime Laboratory in Milwaukee. I started  
20 there in '97. I moved from there, after about a  
21 year and a half, to the State Laboratory in  
22 Austin, Texas. And then I moved to the Madison  
23 Laboratory in 2000.

24 Q. As a DNA analyst, what do you do for them,  
25 generally?

1 A. I examine evidence collected at crime scenes.  
2 And whether we have collected it or the police  
3 agency has collected it, it's brought to the  
4 laboratory for analysis. So I will look for  
5 biological materials and I will attempt to  
6 extract DNA from them and type the DNA, get a  
7 genetic profile.

8 Then we take samples from known  
9 individuals; it's usually a blood sample or a  
10 swab from inside your cheek. Extract the DNA  
11 from that; get the genetic profile; match up the  
12 profiles, if I can; determine whether or not the  
13 DNA from the crime scene item stains is the same  
14 as, or different than, the DNA from known  
15 individuals.

16 Q. Mr. Ertl, what other roles or duties have you  
17 been assigned or volunteered to perform for the  
18 Crime Lab?

19 A. Well, in addition to my -- my major role as a DNA  
20 analyst at the laboratory, we have a volunteer  
21 system where we do crime scene -- process crime  
22 scenes. So if any agency in the State feels  
23 uncomfortable or needs help or assistance that we  
24 can offer, whether it's just a phone call, get  
25 some advice, or whether we actually go to the

1 scene and help them, we'll go. We'll document  
2 the scene, photographs. We'll do sketches. But  
3 our main job is to find the evidence and collect  
4 it and bring it back to the laboratory.

5 Q. Is there a name for that particular unit or task  
6 that you perform?

7 A. That's the Field Response Team.

8 Q. How long have you been a member of the Field  
9 Response Unit?

10 A. About six months after I arrived at the  
11 laboratory. So, it was about June of 2000, I  
12 began going out with them on field responses.  
13 Prior to that, I had also done field response  
14 work in the Texas lab.

15 I began training as a crime scene  
16 photographer at the Madison Laboratory and I  
17 completed that training in about December of  
18 2000. But during that whole time, since about  
19 June of 2000, I have been going out to crime  
20 scenes with the Madison teams.

21 Q. Let's talk a little bit about your education,  
22 Mr. Ertl. Do you have --I take it you have an  
23 undergraduate degree.

24 A. Undergraduate degree in chemistry from the  
25 University of Wisconsin, Parkside. That's in

1 Kenosha.

2 Q. Do you have any graduate degrees?

3 A. Graduate degree from the same institution; that's  
4 in molecular biology.

5 Q. All right. When did you receive that degree?

6 A. The undergraduate degree, I completed in '84 and  
7 the master's degree I completed in '92.

8 Q. Now, generally, again, returning to your work  
9 with the Field Response Unit; what kinds of cases  
10 does the Field Response Unit become involved in?

11 A. Generally, it's any case where the agency is  
12 uncomfortable, number one, whether they don't  
13 have the experience or whatever. Generally  
14 involved in some sort of homicide. Could be  
15 bones found in the woods, you know. Might not be  
16 a homicide, may be a missing person. Might be an  
17 accidental shooting, hunter shooting, that sort  
18 of thing. We get involved. But it's at the  
19 request of the agency where it's happening and  
20 that they would request us to come and help.

21 Q. Well, that was my next question. Generally,  
22 then, how does one request the services of the  
23 Field Response Unit from the Crime Laboratory?

24 A. The agency just calls the laboratory and requests  
25 that the Field Response Unit come and help. And

1           that's basically how we get involved.

2   Q.   All right.  So assuming there is a request and it  
3       involves some type of death?

4   A.   Generally, yes.

5   Q.   All right.  Are there any other types of cases  
6       that the Field Response Unit may become involved  
7       in?

8   A.   I have done several where it was just -- it was a  
9       missing persons case, the person had gone  
10      missing.  And they didn't know whether they were  
11      dead or alive, but they had some reason to  
12      believe there might be some evidence in a  
13      particular place.

14                   And in both of those instances I'm  
15      thinking about, one was in Milwaukee and one was  
16      in Menasha, they were quite old, the person had  
17      gone missing.  And then much later, years later  
18      even, you know, they get some idea, well, he was  
19      in the basement and I saw him shot, somebody  
20      telling him this; or the landlord remembers there  
21      being blood on the wall when a tenant moved out  
22      25 years prior.  So we go and look under the  
23      paint, see if we can find any blood.

24                   But, generally, there's a body involved.  
25      They know someone has been killed.  It's more --



1 more immediate than a missing person.

2 Q. All right. All right. Mr. Ertl, I would like to  
3 direct your attention to Saturday, November 5th,  
4 2005, and ask, how did you become involved in  
5 this particular case?

6 A. It was a Saturday, so I wasn't at work, but I was  
7 on call. So the Manitowoc County Sheriff's  
8 Department called the laboratory number and our  
9 answering service forwarded the call to me. And  
10 it was Detective Dave Remiker, asked that --

11 Well, he explained to me that he had a  
12 missing persons case out of Calumet County they  
13 were getting involved with, but the vehicle  
14 belonging to that person had been located in  
15 Manitowoc County. And he would like for the lab  
16 to come and look at the area around the vehicle  
17 and to recover the vehicle and bring it back to  
18 the laboratory.

19 Q. About what time did you receive that call or did  
20 you make contact with Detective Remiker?

21 A. That was around noon on Saturday.

22 Q. All right. Did you subsequently respond?

23 A. Yes.

24 Q. About what time did you leave Madison?

25 A. It was about 1:15 p.m. I had contacted the

1           photographer to take with me and we have a field  
2           response vehicle, looks like a ugly colored  
3           yellow ambulance, and we headed for Manitowoc  
4           County.

5       Q.   Who, if anyone, assisted you in this initial  
6           response?

7       A.   My photographer for that was Guang Zhang?

8       Q.   And for the benefit of everyone, could you spell  
9           Mr. Guang Zhang's name?

10      A.   It's G-u-a-n-g Z-h-a-n-g.

11      Q.   Thank you.   Approximately what time did you  
12           arrive at the location?

13      A.   It was about 4:00 p.m.

14      Q.   And who did you meet at that location?

15      A.   I was looking for a Detective Remiker and that he  
16           escorted me to an area near a fire truck where  
17           they had a canopy out --

18                       (Court reporter couldn't hear.)

19      A.   A canopy off the side of a fire truck.   And it  
20           was a kind of a stormy day and it was windy and  
21           loud.   And I was introduced to Investigator Mark  
22           Wiegert, Calumet County Sheriff's Department; and  
23           also, Special Agent Tom Fassbender of the  
24           Wisconsin Department of Criminal Investigation.  
25           And those two were my main contact people

1           throughout the rest of my involvement at the  
2           scene.

3       Q.   Did you at all, briefly, meet Detective Remiker?

4       A.   I believe I did.

5       Q.   All right. But your direction came from  
6           Investigator Wiegert and Agent Fassbender?

7       A.   Yes.

8       Q.   All right. After you checked in with them, what  
9           did you do?

10      A.   They were at the end of the road leading into the  
11           salvage yard. And the -- that RAV4 vehicle, the  
12           victim's vehicle, had been located maybe a  
13           quarter mile into the salvage yard, down an  
14           embankment.

15                   And so they got somebody to lead us down  
16           to a flattened area that was just in front of a  
17           pond and there was a car crusher nearby. But it  
18           was quite an open gravelly area and we were able  
19           to park there. And then we proceeded on foot.

20      Q.   I'm going to stop you right there, if I may, and  
21           this might assist. I would like to direct your  
22           attention to the screen and show you what has  
23           been received as Exhibit 86.

24      A.   That's an aerial view.

25      Q.   All right. I'm going to have my colleague hand

1           you a laser pointer here. And that may be of  
2           some assistance to you. And if you could, then,  
3           briefly describe, first of all, where the fire  
4           truck with the canopy was and then your general  
5           direction.

6   A.    I don't want to get the court reporter. Okay.  
7           So, right there is where the fire truck was.

8   Q.    Let the record reflect the witness is directing a  
9           laser pointer to the lower left hand corner of  
10          Exhibit 86.

11                 ATTORNEY BUTING: No, objection.

12                 THE COURT: Record will so reflect.

13                 ATTORNEY FALLON: Thank you.

14   Q.    (By Attorney Fallon)~ And from there, sir, where  
15           did you proceed?

16   A.    Down this road. And this is the flat area where  
17           we parked.

18   Q.    All right.

19                 ATTORNEY FALLON: May the record reflect  
20           the witness has directed the laser pointer to the  
21           area immediately to the right of the area previously  
22           identified as the car crusher.

23                 ATTORNEY BUTING: No objection.

24                 THE COURT: The record will reflect that as  
25           well.

1 Q. (By Attorney Fallon)~ All right. Now, when you  
2 went to that area you described as the flat area,  
3 Mr. Ertl, what did you do from there?

4 A. We then proceeded on foot down this kind of  
5 grassy, overgrown gravel and dirt road. And this  
6 is the pond. Goes around the pond and you can  
7 sort of see cars lined up along the edge of the  
8 road that goes around the pond. Right about  
9 there, a little more than half way down to the  
10 pond there was a --

11 Q. I'm going to show you a close up there. Just so  
12 you know, sir, this exhibit, as previously  
13 identified, was taken after the car was removed.

14 A. All right.

15 Q. But for purposes of illustrating the area and the  
16 path you took, if you would now demonstrate with  
17 the pointer what you did?

18 A. All right. So this is the flat level area.  
19 That's the car crusher. We proceeded down this  
20 road to right there.

21 Q. All right. Thank you.

22 A. There's a red vehicle and two white vehicles.  
23 The RAV4 was a blue vehicle, was parked parallel  
24 to the red vehicle. Its nose was facing this  
25 direction.

1                   ATTORNEY FALLON: And the record should  
2 reflect he directly pointed to a westerly direction.

3                   THE COURT: The record will so reflect.

4 Q. (By Attorney Fallon)~ All right. Very well.  
5 Thank you, Mr. Ertl. If you would please, then,  
6 describe further the line of cars and the  
7 particular Toyota RAV4 that you examined or first  
8 observed.

9 A. Okay. These cars parked along here were kind of  
10 older looking, the paint was faded; they looked  
11 like they belonged there in the salvage yard.  
12 The RAV4 looked a little different, it was shiny.  
13 And it had an old Rambler hood leaned up against  
14 the back panel. It had a piece of plywood up  
15 against the front end, on the side.

16                   It had several tree branches up against  
17 the back. Had a cardboard box sitting on the  
18 hood. And had quite a large 12 to 15 foot tall  
19 tree that kind of looked like it had been ripped  
20 out of the ground, still had roots attached, was  
21 leaning up against and over the hood. The other  
22 vehicles there had been parked there and there  
23 were saplings growing up around them. But this  
24 one had detached tree limbs and things around it.

25                   The Rambler hood and some fence posts

1           were leaned up against the car. The other cars  
2           didn't have that sort of stuff around them; the  
3           car was sitting there and there was vegetation  
4           growing up around them. So it looked a little  
5           odd.

6   Q.   All right. And before we go further, tell us  
7           about the weather conditions upon your arrival.

8   A.   When I first got the call at noon, I was informed  
9           that the weather was threatening. It was early  
10          November. It was kind of cold, but it was rain  
11          that we were having. It had rained and they were  
12          afraid that it was going to rain on the vehicle.  
13          I advised them they should cover it in some way,  
14          if they could, because of the rain if there were  
15          fingerprints or anything, handprints in the dust  
16          on the car, that would get rinsed away by the  
17          rain water.

18                 So I believe they had put a tarp over  
19          the vehicle when it did begin to rain and they  
20          had removed the tarp just as we arrived. It  
21          wasn't raining when we arrived, but it was still  
22          dark and cloudy. And during my course of my stay  
23          there that evening, at times it did. We had an  
24          actual thunderstorm. And that flat area, then, I  
25          talked about, I can remember stepping out of the

1 van at one point into a puddle. Not just a  
2 puddle, but the general area where the water was  
3 pretty deep and we had quite a torrent of rain.

4 ATTORNEY FALLON: Let the record reflect  
5 the witness put his hands together and gave us an  
6 apparent estimate of what looked like about 4 to 6  
7 inches of water?

8 A. Two to three.

9 Q. Two to three?

10 A. Inches of standing water.

11 Q. Now, as you arrived to examine this vehicle, was  
12 it raining at that particular point?

13 A. Maybe misting, wasn't really raining.

14 Q. How long before it began to rain, relative to  
15 daylight, darkness?

16 A. I believe it was just after dark that it really  
17 started to pour. The lightening was very  
18 dramatic.

19 Q. All right. Now, directing your attention more  
20 specifically to the Toyota RAV4, what was the  
21 condition of the vehicle itself? Describe it's  
22 appearance. In addition to the camouflage  
23 materials you already talked about, but what else  
24 about the vehicle can you tell us?

25 A. Well, it was newer looking. I examined all the



1 items that were around it. The thought there, if  
2 somebody put them there, they had to have touched  
3 them somehow. You know, the tree branches, there  
4 may have been places where something would snag  
5 on it, might be some clothing fibers.

6 If there was any blood involved, there  
7 might be bloodstains on them. I looked at them  
8 for that sort of material. I didn't find any.  
9 The cardboard box and the Rambler hood, I  
10 thought, had surfaces that maybe would hold  
11 fingerprints if you had touched it with your  
12 fingers. It was a smooth enough surface that it  
13 would hold a latent print. So I decided to  
14 collect those and return those to the laboratory.  
15 And we were going to return the RAV4 to the  
16 laboratory.

17 We couldn't get into the vehicle, all  
18 the doors were locked. So the extent of my  
19 examination of the inside was shining a  
20 flashlight through the windows and just looking  
21 inside.

22 Q. All right. And how much time did you say you  
23 spent looking inside the vehicle with a  
24 flashlight?

25 A. Oh, there were several of us around the vehicle

1 at that time looking inside. Once all the  
2 materials had been removed from around it, that  
3 was pretty much the first time anyone could get,  
4 you know, close enough to peer inside.

5 Q. All right. Let me ask you then, what were you  
6 looking for or attempting to see when you  
7 examined inside the vehicle?

8 A. Well, it was a missing persons case, so the first  
9 thing I wanted to know, was the missing person  
10 inside the missing person's car. And I didn't  
11 see any evidence of that.

12 Q. All right. Now, before we go any further, I  
13 would like to direct your attention to the  
14 screen, again, showing you Exhibit 130 and ask,  
15 does -- does that scene strike any memories with  
16 you?

17 A. Yes, that's me standing there, right there.  
18 That's the RAV4. And that's a bit of a fence  
19 post. That's the Rambler hood. That's a piece  
20 of plywood. This is part of the tree that was  
21 against the front end. And those are bits of the  
22 branches that were against the back end.

23 Q. And who is that in the red coat?

24 A. That's Special Agent Tom Fassbender.

25 Q. And what does he have under his arm?

1 A. I can't quite make that out, kind of looks like  
2 he is holding a tarp?

3 Q. A tarp.

4 ATTORNEY BUTING: What exhibit is that,  
5 counsel?

6 ATTORNEY FALLON: 130.

7 Q. (By Attorney Fallon)~ And the gentleman  
8 immediately behind Investigator Fassbender is  
9 whom?

10 A. That's Guang Zhang. That's my photographer.

11 Q. All right. Thank you. The vehicle, you said you  
12 saw -- you were looking for evidence of a person;  
13 was there anything else you were looking for?

14 A. At that point, not really.

15 Q. Could you describe the ease or difficulty it was  
16 to see in the vehicle when you were working with  
17 the flashlight?

18 A. Well, at that point the glass was wet from the  
19 rain. There was a lot of glare, so you kind of  
20 had to, you know, get the light and not have it  
21 bounce right back in your face. You can see the  
22 front windows are clear, but the back windows  
23 were all tinted, so it was kind of hard to see  
24 through that, to see what was in the back end.

25 Q. How many people were flashing flashlights into

1           the back of that car?

2   A.   I think there were at least two of us, because I

3       was looking through the side and I could see

4       another light moving around inside the vehicle.

5       And there was somebody standing on the opposite

6       side of the car.

7   Q.   Now, as you were -- How much time would you say

8       you spent looking into the vehicle?

9   A.   Oh, probably not more than 5 or 10 minutes.

10  Q.   During that time, did you see any evidence of any

11       blood in the vehicle?

12  A.   No, I didn't.

13  Q.   All right. Were there any license plates affixed

14       to the vehicle?

15  A.   No, the license plates had been removed.

16  Q.   Did you notice whether there was any damage to

17       the vehicle at all?

18  A.   Yes, once we got the debris away from it, there

19       was a scratch behind the Rambler hood. And then

20       this front end had a little bit of collision

21       damage, the lens on the light was cracked or

22       broken and there was some denting to the window.

23  Q.   Did you examine the debris that was on the car

24       for the presence of any trace or biological

25       evidence?

1 A. Yes, I did.

2 Q. And what did you find?

3 A. I didn't see anything that I felt was unusual. I  
4 didn't see any bloodstain. I didn't see any  
5 hairs affixed to anything. I didn't see any  
6 fibers attached to any of it.

7 Q. And for the benefit of all here, could you  
8 briefly explain, what do we mean when we use the  
9 phrase trace evidence?

10 A. Well, trace is a different unit than I worked in.  
11 They are pretty all encompassing. Trace gives  
12 you the idea that it's just a tiny bit of  
13 something.

14 When any two objects are in contact, a  
15 little bit of one transfers to the other. If you  
16 back into a car with your car, you may get a  
17 little bit of the paint from that car onto your  
18 car, and vice versa. That would be trace  
19 evidence, scratch the paint off the car and  
20 collect that.

21 If you're wearing clothes and you are  
22 handling these tree branches, you may snag your  
23 clothes and some of the fibers may get lodged on  
24 the tree branch. That would be trace evidence.

25 Or if one of my hairs comes out, lands

1           on the tree branch, or I get my hair caught in  
2           the tree branch and it pulls some of it out, that  
3           would be trace evidence.

4   Q.   Were any efforts undertaken at that time to  
5           process the vehicle?

6   A.   No.

7   Q.   Why not?

8   A.   No. Well, the weather was threatening and the  
9           best thing we could do is protect it from the  
10          weather at that point and then to get it back to  
11          the laboratory where we could put it in the  
12          garage and we would have all the experts in trace  
13          evidence and blood collection at the lab to do  
14          their jobs.

15   Q.   All right. What efforts did you make to protect  
16          the integrity of this evidence?

17   A.   At that point, I suggested that we get it back to  
18          the laboratory and that we use a covered trailer  
19          to put the vehicle in. The trip to Madison in a  
20          rainstorm traveling at highway speeds would  
21          pretty much scour anything off the outside of the  
22          car. We wanted to put it inside of a trailer, so  
23          I asked for that to be brought to the scene.

24   Q.   And did that, in fact, occur?

25   A.   Yes, it did.

1 Q. Approximately how long did you wait before making  
2 the request for that type of equipment and its  
3 arrival on the scene?

4 A. I believe I made that request pretty early on.  
5 I'm not exactly sure how long it took to get that  
6 to the scene. There was a wrecker truck was  
7 called and that was a separate company, I  
8 believe, that had the trailer. In the meantime,  
9 I got involved with other areas at the salvage  
10 yard.

11 Q. All right. Let's talk about those. While you  
12 waited for the wrecker service to arrive with the  
13 enclosed trailer, what was the first thing that  
14 you did after leaving the SUV?

15 A. There was a team working with a cadaver dog. And  
16 I kind of wanted to get a bigger feel for where I  
17 was. So I kind of hooked up with them. We  
18 proceeded down the road, around the pond, and  
19 then down a steep embankment into, like, a gravel  
20 pit.

21 Q. I'm going to direct your attention again to  
22 Exhibit 86; does that assist you in explaining  
23 what you did?

24 A. Sure. The RAV4 was parked here. We walked down  
25 this way a ways and then down this embankment

1           into this gravel pit area.

2   Q.   How much of a pitch, or a bank, or embankment was  
3       that; in other words, what's the difference in  
4       the terrain as best you can describe.

5   A.   Oh, it was kind of loose footing. So it was kind  
6       of step and slide to get down. Once we were  
7       down, you couldn't see up out the top. It was  
8       maybe a 20 foot embankment.

9   Q.   All right. Was steep or ...

10  A.   It was pretty steep, yeah. It took some effort  
11       to come back up, too.

12  Q.   All right. And after -- So approximately -- At  
13       this particular point, was it still daylight or  
14       had dark set upon the scene?

15  A.   It was getting to be twilight. While we were --  
16       While we were down in here, we could still see  
17       each other pretty well; and the dog, you could  
18       see it working.

19               We didn't stay down here for a real long  
20       time. I came back up, met back up with my  
21       photographer. And then, I believe, we proceeded  
22       back to our van. And then, at some point we were  
23       escorted back up to the command base.

24  Q.   Where was your van parked?

25  A.   In this flat area here.



1                   ATTORNEY FALLON: Let the record reflect,  
2                   he's again pointing to the area to the right of the  
3                   car crusher and somewhat south of that between the  
4                   crusher and the pond.

5                   THE COURT: The record will so reflect.

6                   ATTORNEY FALLON: Thank you.

7                   Q. (By Attorney Fallon)~ Then what did you do, sir?

8                   A. Well, from there we were escorted up to a place  
9                   where there were four burn barrels behind a  
10                  residence.

11                  Q. All right.

12                  A. So back up to the command area and then down this  
13                  road, behind this residence here.

14                  ATTORNEY FALLON: I'm going to ask the  
15                  record reflect that the witness is pointing to the  
16                  area behind the residence previously identified as  
17                  the Janda residence.

18                  ATTORNEY BUTING: No objection.

19                  THE COURT: Very well, the record will  
20                  reflect that.

21                  Q. All right. And --

22                  A. Somewhere back here -- And at this point it was  
23                  completely dark and it was raining.

24                  Q. All right. How much rain or how hard was it  
25                  raining?

1 A. At that point, I think it was a pretty steady,  
2 moderate rain.

3 Q. What happened at that particular location?

4 A. I watched the cadaver dog work around the  
5 barrels. And it had interest in the two of them  
6 to the south. Then there were two more next to  
7 it. I advised, with the rain, you probably want  
8 to cover those with a tarp, prevent whatever is  
9 inside from getting soaked.

10 Q. All right. What occurred next?

11 A. From here, we went back to the command station  
12 and we worked inside of a -- one of the large  
13 shed garages from the salvage yard. It was a  
14 golf cart type vehicle in there and the dogs were  
15 working in there and one of them had hit on the  
16 back end of that.

17 Q. Could you describe that golf cart for us, please.

18 A. It was kind of a cross between an all terrain  
19 vehicle and a golf cart; kind of had -- was more  
20 truck like than a golf cart. Had a canopy over  
21 the top. And sort of like a little pick up truck  
22 bed in the back. There were some stains on the  
23 back. I tested those for the presence of blood.  
24 We have a presumptive test for blood; it doesn't  
25 discriminate human from animal. And it's called

1           phenolphthalein.

2       Q.   And for the benefit of our reporter here, can you  
3           spell phenolphthalein, please.

4       A.   P-H-E-N-Y-L-T-H-A-L-E-I-N (sic).

5           (Witness corrected the spelling off the record.)

6       Q.   And what result, if any, did that testing yield?

7       A.   There were a couple of dark colored stains on the  
8           back end and up on the canopy. And they all  
9           tested negative, indicating it was not blood. We  
10          had the photographer with us and he photographed  
11          that.

12      Q.   And where -- where did you go next?

13      A.   I'm not sure which of those large service garages  
14          it was that we were in, where the golf cart was.  
15          At that point I believe we went back down,  
16          informed that the wrecker had arrived. And we  
17          proceeded back down to the flat area and then  
18          back to the RAV4.

19      Q.   And prior to stopping at the RAV4, had anything  
20          changed in the area, specifically with respect to  
21          the car crusher?

22      A.   At some point, and I'm not sure whether it was  
23          while the wrecker -- before the wrecker -- before  
24          we arrived at the scene where the wrecker was, or  
25          after we had secured the RAV4, but at some point

1           there was talk about a car in the car crusher and  
2           how that was quite unusual. The crusher was  
3           operated by a different outfit, sort of a  
4           portable unit. They bring it into a salvage  
5           yard, crush some cars, kind of like a  
6           subcontractor, but they operated it.

7                   ATTORNEY BUTING: Objection to that; that's  
8           beyond the scope of his knowledge.

9   A.   That was just what I had heard.

10                   ATTORNEY BUTING: He's not going to know  
11          who operates it.

12                   THE COURT: The objection is sustained.

13   Q.   (By Attorney Fallon)~ What -- My point for you,  
14          sir, is what did you do when you examined the  
15          crusher at this particular point?

16   A.   There was a car crushed in the crusher. And the  
17          ramp of the crusher was still on top of the car,  
18          so you could just see the side of a crushed car.  
19          And you could sort of see into where the windows  
20          had been, but you couldn't see much.

21                   So somebody made contact with the people  
22          who knew how to operate the crusher to raise up  
23          the ramp so we could get in and look -- try to  
24          get a better look at the car that was in the  
25          crusher.

1 Q. And did you get a better look?

2 A. Yes, at some point people came and started it up  
3 and raised the ramp. Then we were able to climb  
4 up on top of the car. Still couldn't get a real  
5 good look because the roof of the car was down --  
6 crushed down on top of it too. So I advised if  
7 you want to get inside, you will have to get the  
8 roof and the metal off of there, then you could  
9 see what was actually in the car before it was  
10 crushed.

11 Q. Showing you on the screen what has been received  
12 as Exhibit 66; is that the crusher vehicle that  
13 you have been talking about?

14 A. Yes.

15 Q. And there was a vehicle in that when you arrived?

16 A. Yes.

17 Q. All right. Returning, again, to the RAV4, the  
18 SUV, when the wrecker arrived, what did you do?

19 A. The person with the covered trailer, he had  
20 attached to a pickup truck, he helped direct the  
21 wrecker truck. It was a really large one, looked  
22 like you could probably pull a semi.

23 He backed it down along that road  
24 between the row of cars and the pond. I waited  
25 for them down at the RAV4. The wrecker operator

1           then examined the vehicle, trying to determine  
2           how he was going to best get it of there, because  
3           there was no way they were going to get the  
4           pickup with the trailer in there and along that  
5           narrow road with the pond. So the plan was to  
6           pull the RAV4 out into that flat area near the  
7           crusher and then put it into the trailer there,  
8           where they had room to maneuver.

9                        So the wrecker operator determined that  
10          the RAV4 wasn't just going to roll; it was either  
11          in gear, or it had a parking break on. For  
12          whatever reason, it wouldn't roll on its own  
13          wheels. So he wanted to try to put the vehicle  
14          in neutral and it was locked; he couldn't get in.

15                      So he crawled underneath and tried to  
16          reach the linkage for the transmission; he  
17          couldn't reach that. Then he tried to access  
18          that from under the hood, but the hood release  
19          and everything was also inside. Couldn't pop the  
20          hood.

21                      So what he ended up doing was crawling  
22          underneath and unbolting one of the drive shafts.  
23          It was a four wheel drive vehicle. He unbolted  
24          the drive shaft to the front end.

25                      He then used his lifter from the wrecker

1           to pick up the back wheels and then rolled it on  
2           the front wheels and he pulled it out from around  
3           the pond, into that flattened area where the  
4           trailer was waiting. And then he rolled it up  
5           into the trailer and then we strapped it down  
6           into the trailer.

7    Q.   And who was involved in this project?

8    A.   I was there, the wrecker operator, and the person  
9           that brought the trailer.

10   Q.   Once the vehicle was secured, what did you do?

11   A.   We then prepared -- and I'm not sure if this is  
12           the point where they actually had the ramp raised  
13           now and we then looked at the crushed vehicle in  
14           the crusher, or if that had occurred right prior  
15           to moving the RAV4 out. But at any point, at  
16           some point Tom Fassbender said that we don't need  
17           you any more right now, get the RAV4 back to the  
18           lab.

19   Q.   All right. During your exposure to the SUV, how  
20           many law enforcement officers were in the  
21           immediate vicinity of that vehicle?

22   A.   When I first arrived, I would guess three to  
23           four. There was always one standing away from  
24           it. And the person was there just to make sure  
25           that no one who didn't belong there was there.

1           That was like the security guy. When I first  
2           arrived, they were removing the tarp; I think  
3           there were three or four there. Tom was there  
4           with me; my photographer; there was another --  
5   Q.    You mentioned Tom?  
6   A.    Tom Fassbender.  
7   Q.    Agent Fassbender who is seated here?  
8   A.    Yes.  
9   Q.    All right.  
10  A.    And I don't know all the people involved.  
11  Q.    All right. And how about after your tour of the  
12        general area. You came back to the area where  
13        the SUV was; were there officers, then, present  
14        as well?  
15  A.    The one on guard was still there.  
16  Q.    Same person?  
17  A.    That I don't know.  
18  Q.    Okay. Approximately what time did you leave the  
19        scene that Saturday night?  
20  A.    I believe it was about quarter to nine.  
21  Q.    What time did you arrive in Madison?  
22  A.    It was about 1:15 a.m.  
23  Q.    And what time did you finish securing the RAV4?  
24  A.    It was about 2:00 a.m.  
25  Q.    All right. And where was the vehicle secured?



1 A. In the garage at the Crime Laboratory in Madison.

2 Q. Did you need the assistance of any other

3 professional help to secure the vehicle?

4 A. Yes.

5 Q. Tell us about that?

6 A. When we arrived in Madison, I called the local

7 wrecker company to come and do the opposite of

8 what the wrecker had done at the scene in

9 Manitowoc, to lift up the back end, pull the

10 vehicle out of the trailer, and then put it into

11 the garage, because the back wheels were still

12 locked.

13 Q. Directing your attention to Sunday, November 6,

14 were your services again requested in this

15 investigation?

16 A. Yes. About 9:00 a.m., Special Agent Tom

17 Fassbender called me and requested that we come

18 up to the salvage yard again. And at that point

19 they hadn't any specific area they wanted our

20 assistance, they just wanted our general

21 assistance to be available in case they came

22 acrossed anything.

23 Q. Okay. Did you then make plans to travel to the

24 salvage yard?

25 A. Yes.

1 Q. And what time did you, in fact, go to the salvage  
2 yard?

3 A. We left Madison, I think it was just before noon.

4 Q. And what time did you arrive at the salvage yard?

5 A. I believe it was around 3:30.

6 Q. When you arrived at the scene, with whom did you  
7 meet?

8 A. Investigator Wiegert and Special Agent  
9 Fassbender.

10 Q. What assignments were you asked to perform?

11 A. Well, we were told of three areas where cadaver  
12 dogs had been interested. One of them was on the  
13 east side of Avery Road, at the corner with 147;  
14 there was a gravel yard, gravel quarry. And  
15 there was a maybe 30 foot tall mound of gravel  
16 and sand. And about 6 to 8 feet up the pile, the  
17 dog got excited about something. They said they  
18 would put an orange flag there. And they had  
19 seen a pinkish substance. So that was one place.

20 The dogs were also interested in two  
21 wrecked vehicles that were parked on the  
22 perimeter of that pond, near where the RAV 4 had  
23 been.

24 And then they talked about the burning  
25 barrels that I had seen the night before. The

1 dogs were interested in those. We began working  
2 at the gravel yard.

3 Q. All right. And was anything of significance, in  
4 your determination, found at that gravel yard  
5 location?

6 A. We found some reddish staining on some pieces of  
7 gravel. They tested presumptive positive for the  
8 presence of blood. We located a pinkish  
9 substance, perhaps three quarters of an inch in  
10 largest dimension, looked like flesh.

11 We found another piece of material about  
12 the same size; it was reddish and white in color.  
13 Both of those items also tested presumptive  
14 positive for the presence of blood.

15 We collected those. And then we  
16 proceeded to excavate that area under where those  
17 materials had been. So we dug 4 to 6 feet of  
18 gravel out of that area and placed it on a tarp,  
19 shovel by shovel, looking to see if we could find  
20 anything more. And we worked until dark; it was  
21 about 5:00.

22 Q. And did you find anything else?

23 A. We didn't find anything more.

24 Q. Was there any evidence whatsoever that that was  
25 any kind of burial site, or any wrongdoing had

1           occurred there?

2       A.   Other than the presence of possibly blood and  
3           some flesh. And at that point we didn't know if  
4           it was animal or human. And collected it and  
5           didn't find any more. That was the extent of it.

6       Q.   And that's because the test does not distinguish  
7           between human or animal?

8       A.   That's correct.

9       Q.   Okay. And after completing that particular task,  
10          what was your next assignment or task on the  
11          agenda?

12      A.   At that point we were asked to go in and look at  
13          Steven Avery's residence. It had previously been  
14          examined by others and things had been taken. So  
15          at that point we just went in and we were asked  
16          to look for any evidence of blood spatter  
17          patterns.

18                   It's one thing to find blood, a blood  
19          stain, that can tell you some information. But  
20          we were looking more for patterns of bloodstain.  
21          If you cut your finger and do this, the blood  
22          will come off your finger and leave little specks  
23          in a line and you can tell something about how  
24          that blood came to be in little specks in a line.

25                   ATTORNEY BUTING: Can the record reflect

1           when he said, do this, he was moving his index  
2           finger sort of out to the side and kind of flicking  
3           it?

4                     ATTORNEY FALLON: That's fine.

5                     THE COURT: That's an accurate reflection  
6           of the actions he took.

7   Q.    (By Attorney Fallon)~ Did you find any evidence  
8           of bloodstain pattern?

9   A.    No, we didn't.

10   Q.   Now, what, if anything, did you find in your  
11          examination of the residence that Sunday evening?

12   A.   We found some bloodstains on both entry doors and  
13          on the floor of the vanity and in the sink in the  
14          bathroom.

15   Q.   What equipment were you utilizing as you examined  
16          his residence that evening?

17   A.   We used flashlights with white light and blue  
18          light. The blue light helps to give contrast to  
19          the blood, makes it turn black so it helps to see  
20          blood. And we used white light to see the  
21          reddish color of blood.

22   Q.   Who was assisting you in this task?

23   A.   I was with Guang Zhang, the photographer. And  
24          also Chuck Cates. When we returned on Sunday,  
25          there were three of us.

1 Q. What was the next -- Approximately what time did  
2 you wrap up your examination of the defendant's  
3 residence?

4 A. I believe we were in there until about 5:30.

5 Q. When you start at the residence, was it dark or  
6 still light out?

7 A. We were losing light. When we left the gravel  
8 yard, it was not productive to be looking for  
9 things without supplemental lighting. And  
10 flashlights and a large gravel pile and  
11 shoveling, that wasn't productive anymore. By  
12 the time we left the residence, it was completely  
13 dark, 5:30.

14 Q. After -- Just so that we're clear, you mentioned  
15 Mr. Zhang's name before. Mr. Cates accompanied  
16 you on this trip?

17 A. Yes.

18 Q. Just so that we're clear, who was Mr. Cates  
19 again?

20 A. He is another member of the field response crew.  
21 His normal duties involve fingerprint work.  
22 That's his specialty. He was also, at that time,  
23 the field response training coordinator.

24 Q. After examining the defendant's residence, what  
25 was the next task you performed that Sunday

1           evening?

2    A.    May I look at my notes to refresh my memory  
3           there?

4    Q.    If need be, sure.

5    A.    Okay.  After we looked at the residence, then we  
6           moved on to the two vehicles that the cadaver  
7           dogs were interested in, down near the pond.  One  
8           of the agencies had set up some very impressive  
9           lighting down there, so we were able to examine  
10          those vehicles even though it was dark outside.

11                 We found apparent blood staining in both  
12          vehicles.  We collected those bloodstains.  We  
13          did not do fingerprint analysis -- or we did not  
14          process the vehicles for latent prints at that  
15          time because it was starting to form dew on them.  
16          And the way we look for fingerprints is to take a  
17          fine powder with a feather brush and dust  
18          acrossed.  And if it's wet, that just does not  
19          work.  So we just left that for a later time  
20          after it dried off again.

21   Q.    And these vehicles, what were they?

22   A.    One was a gold colored Honda and one was a silver  
23          colored Renault.

24   Q.    Do you know if they had any prominent roll in  
25          this case after your examination?

1 A. I do not know.

2 Q. Very well. Directing your attention, then, to

3 Monday, November 7th, 2005, did you again

4 participate in processing of the salvage yard?

5 A. Arrangements on Sunday evening were that we would

6 meet up with a Jeremy Hawkins here in Chilton at

7 the Calumet County Sheriff's service garage. The

8 four burn barrels had been transported to the

9 service garage and we were to examine those.

10 Q. And did you start examining the burn barrels?

11 A. Yes. Approximately 8:00 a.m., we met with Jeremy

12 Hawkins. He let us into the garage, got us into

13 the trailer where the burn barrels were. Got

14 them out into the garage. Set up our sifting

15 equipment and bit by bit went through the

16 contents of the barrels, sifting, looking for any

17 kind of bones, teeth, hair, any metallic type

18 items.

19 Q. Did you find any of that evidence?

20 A. There was. In each barrel examined we collected

21 a box full of that sort of material.

22 Q. All right. Now, was that task at all interrupted

23 on Monday?

24 A. Yes. Just after we had our lunch break and we

25 had just started sifting the barrels again,



1        around 12:30, we were requested to return to the  
2        area near the scene. Some volunteer searchers  
3        had discovered in some area -- a forested area  
4        with some disturbed soil. They were thinking  
5        this could be a potential burial site. So we  
6        proceeded to that location. It's just west of  
7        the salvage yard, at the end of Kuss road.

8    Q.    What did you find when you arrived at that  
9        location?

10   A.    We were taken out into the woods a little bit and  
11        was indeed an area with disturbed soil. To me it  
12        didn't look like a grave site. It looked more  
13        like a rotten stump to me, where the wood had  
14        just turned into like humus. There were no  
15        plants growing up through it really. So it was a  
16        barren spot. So it kind of looked like it was  
17        disturbed.

18                The normal grasses and moss and stuff  
19        growing in the area around it weren't here, so it  
20        did look odd. There was some whitish colored  
21        plastic sticking up out of the ground in sort of  
22        a perimeter, maybe 3 feet in diameter. The  
23        plastic to me looked like it was decomposing,  
24        getting brittle and just flaking off on to the  
25        ground, on its own. Those little flakes were

1           still there right under the plastic.

2       Q.    What does that signify with respect to the age of  
3           that plastic and that particular site?

4       A.    Well, the fact that little bits were directly  
5           below the plastic that was sticking out of the  
6           ground indicated to me that it hadn't been  
7           disturbed recently and that that plastic had been  
8           there for quite some time.

9       Q.    Perhaps years?

10      A.    Perhaps.

11      Q.    So your conclusion, with respect to the  
12           possibility of any type of burial site, was what?

13      A.    Well, at that point I was also informed that they  
14           had been working a blood hound with a scent  
15           from --

16                   ATTORNEY BUTING:  Objection as to hearsay  
17           at this point.

18                   ATTORNEY FALLON:  That's fine.

19      Q.    (By Attorney Fallon)~ Mr. Ertl, just in terms of  
20           based on all the knowledge you had available to  
21           you, and in particular your examination of this  
22           location; what did you conclude regarding the  
23           possibility, or no possibility, of a burial site?

24      A.    My preliminary indication was that this was not a  
25           burial site.

1 Q. Approximately how long did your examination of  
2 that particular site take?

3 A. Well, the first thing, they wanted to get  
4 permission from whoever owned that property.  
5 They needed to figure out who owned that  
6 property. They got written permission from that  
7 person. Guang and I, then, went in and  
8 photographed the area.

9 We sent Chuck back, then, to the salvage  
10 yard, to do the latent fingerprint processing on  
11 the two vehicles from the night before. This is  
12 about 3:00 in the afternoon. So it was dry,  
13 wasn't raining at that point. So we sent him out  
14 to do that.

15 A warrant was then obtained for the  
16 burial area, to search that. And then I began  
17 the excavate this humus like material, moving it  
18 on to a tarp, digging down. I dug down a little  
19 ways and the white plastic perimeter was actually  
20 underneath all of that humus material on the flip  
21 side of the white plastic, was the label peat  
22 moss. It was an old bail of peat moss.

23 Under that plastic was the remnants of  
24 an old wooden pallet that was decomposing into  
25 the soil. I picked the pieces of wood out, dug

1 down into the soil a little bit and ran into  
2 roots, fine root mat from the surrounding plants  
3 was well under the entire peat bag.

4 And where there were little slits, small  
5 perforations in the peat bag, there were little  
6 shoots starting to come up through it. So,  
7 again, indicating to me that this area had not  
8 recently been disturbed.

9 I then dug down past the roots and  
10 looked at the soil layering. It looked like it,  
11 again, had not been disturbed. But at that point  
12 I concluded this was not a burial site.

13 Q. I'm going to have the screen project Exhibit 84  
14 for us and ask if you recognize that general  
15 vicinity, and in particular drawing your  
16 attention to the top of the photograph displayed  
17 there; does that look familiar to you?

18 A. I can't orient to that.

19 Q. Okay.

20 A. I know there were some ponds, but I had never  
21 gotten to the ponds.

22 ATTORNEY BUTING: I have no objection if  
23 counsel points out the locations that you are  
24 referring to and see if he can identify it that way.

25 ATTORNEY FALLON: It's not necessary.

1           Thanks for the offer.

2                   ATTORNEY BUTING:   Okay.

3   A.    Okay.  I see something I recognize.

4   Q.    What do you recognize?  Take your pointer and  
5       tell us what you recognize.

6   A.    This is the residence of Steven Avery.

7   Q.    Right.

8   A.    This is the garage.  And this is the road to the  
9       command center.  And this is a field.  And I  
10       didn't walk that field myself, but I was informed  
11       somebody had.

12                   ATTORNEY BUTING:  Objection, hearsay.

13   A.    Looks like that's the --

14                   THE COURT:  Hold on a second.

15                   ATTORNEY BUTING:  "I was informed", he  
16       should avoid that.

17   A.    Okay.

18                   ATTORNEY FALLON:  It's just his way of  
19       explaining how he got from point A to point B.  It's  
20       not offered for the truth of the matter.  It's just  
21       the effect on the listener as he investigated, did  
22       his job.

23                   THE COURT:  Based on what he said, I can't  
24       tell if it's hearsay or not because I don't know the  
25       purpose for which it's being offered.  So I reserve

1 ruling at this point. Mr. Fallon, you may proceed.

2 Q. (By Attorney Fallon)~ All right. Mr. Ertl, if  
3 you would just confine your opinions and -- or  
4 your observations to what you saw and what you  
5 did. Again, you were explaining your orientation  
6 to Exhibit 84.

7 A. I had been here, Steven Avery's residence, and I  
8 was here, if that is the end of Kuss Road.

9 Q. All right.

10 A. I was not in this area here.

11 Q. Okay.

12 A. We drove around on the highway to get here.

13 Q. So that the top of the exhibit that you pointed  
14 to, the end of Kuss Road, is that where this  
15 examination took place, generally?

16 A. Yeah. The suspected burial site was in this  
17 wooded area just to the left.

18 Q. So the record should reflect that he's directing  
19 a laser pointer to the area immediately to the  
20 left of the cul-de-sac identified as Kuss Road?

21 ATTORNEY BUTING: No objection.

22 THE COURT: Record will so reflect.

23 ATTORNEY FALLON: Thank you.

24 Q. (By Attorney Fallon)~ When you finished the  
25 examination of that particular area, did you

1           still have daylight or was it dark?

2   A.   No, it was about 4 -- or 5:45 and it was dark at  
3       that point.

4   Q.   And when you completed the examination of that  
5       area; what did you do?

6   A.   We went back to the Calumet County Sheriff's  
7       Department and continued the sifting of the burn  
8       barrels. We worked on that until about 9:30 that  
9       night.

10   Q.   Okay. And directing your attention, again, then,  
11       to Tuesday, November 8, did you resume work with  
12       respect to the burn barrels?

13   A.   Yes.

14   Q.   What time did you start that day?

15   A.   8:00 a.m.

16   Q.   All right.

17   A.   We finished up with the burn barrels about  
18       quarter to 11.

19   Q.   And how many barrels did you, in fact, examine  
20       that day?

21   A.   Three. There were two from the original four.  
22       And then there was a fifth barrel that had been  
23       recovered and brought to the garage.

24   Q.   Tell us about the fifth barrel, would you please.

25   A.   We were informed that it had come from --

1                   ATTORNEY BUTING:  Objection again, hearsay.

2                   ATTORNEY FALLON:  One second.

3       Q.    (By Attorney Fallon)~ Mr. Ertl, all I want you to  
4           do is describe the fifth barrel?

5       A.    Okay.

6       Q.    Don't tell us what you know about the barrel,  
7           just what you saw and what you did with the  
8           barrel.  All right.

9       A.    It looked very much like the first four barrels.  
10           It was a steel 55 gallon drum, with the top cut  
11           off, apparently to burn things in.  The fifth  
12           barrel didn't have much in the way of unburned  
13           material in it, where as the other ones had.

14                   This one had a car wheel and what looked  
15           to be the remnants of a tire; the steel cords  
16           wrapped around the wheel on top of the barrel,  
17           inside the barrel.  We took that out and there  
18           was mostly just ash and debris.

19                   We began sifting that and we recovered  
20           what looked like electronic components, little  
21           circuit boards, a couple of which had the  
22           Motorola M emblem on them, that we could see  
23           that.  And several of those type of things were  
24           found in the sifting.  There was also what looked  
25           like to be remnants of batteries, that sort of



1           thing. We collected all that material.

2       Q.   And what did you do with it?

3       A.   Well, as with all the materials we collected,  
4           they were eventually turned over to Calumet  
5           County Sheriff's Department.

6       Q.   I will have my colleague show you exhibit marked,  
7           I believe, 156; do you recognize that?

8       A.   It looks like the fifth burn barrel, based on the  
9           lack of any other materials, besides mostly burnt  
10          materials. And you can sort of identify the  
11          square corners of what looked like the circuit  
12          boards being recovered from there.

13      Q.   Okay. I'm showing you the exhibit on the screen  
14          right now. In terms of the contents, as you  
15          began to sift the barrel; did those contents look  
16          very similar to that?

17      A.   Yeah.

18      Q.   And with respect to those contents, can you  
19          identify anything in the exhibit that you  
20          recognize?

21      A.   From the photograph, I can't really identify  
22          anything they look like.

23      Q.   All right.

24      A.   But they have square corners, but -- like the  
25          things we collected out of the barrel.

1 Q. Okay.

2 A. The right shape and size.

3 Q. There's another close up there, in terms of this

4 particular photograph. And, again, just for the

5 general idea, is that how the barrel looked when

6 you began the sifting process that you just told

7 us about?

8 A. Yes.

9 Q. All right. Very well. Thank you. After you

10 finished examining the barrel, the fifth barrel,

11 what did you do next?

12 A. We then returned to the salvage yard.

13 Q. What did you do when you returned to the salvage

14 yard?

15 A. At that point we were directed to one of the

16 wrecked vehicles in the yard. We were told that

17 one of the searchers had found vehicle license

18 plates within the vehicle. They had taken them

19 out. They had been folded or rolled in such a

20 way that he couldn't read the number on the

21 plate. So he unrolled it or unfolded it and was

22 able to read the plate. And it was the license

23 plate number for the RAV4 vehicle.

24 Q. So what did you and the rest of your team do with

25 respect to the vehicle?

1 A. We went over and photographed the position of the  
2 vehicle, the surrounding area. We examined the  
3 inside of the vehicle, we processed it for latent  
4 prints. And we collected the license plates.

5 Q. All right. And what was the next task that you  
6 were asked to perform that day?

7 A. Well, Guang Zhang and I left that immediate area  
8 to take some general overall photographs of the  
9 salvage yard, while Chuck was doing the latent  
10 print processing on that vehicle. When we  
11 arrived back, we were requested -- We had the  
12 request for the use of our sifting equipment.  
13 There was a burn pit behind the garage that they  
14 wanted to use our sifting equipment on.

15 Q. And who was asking for your assistance, and in  
16 particular, your sifting equipment?

17 A. That was Special Agent Tom Sturdivant.

18 Q. Can you describe this sifting equipment for us?

19 A. It's three aluminum poles to hook together to  
20 form a tripod, stands about 6 feet tall. There  
21 are chains coming down from the center top of the  
22 tripod to which we attach an aluminum frame, so  
23 it kind of can swing within the tripod. And on  
24 that aluminum frame, we can put different size  
25 mesh. You put the materials on top of the mesh

1           and you can use a trowel, or a broom, or just  
2           shaking, whatever works best for the material.

3                       And then the particles or bits that  
4           won't fall through the screen, you can collect  
5           and examine. The bits that fell through the  
6           screen, we put a tarp under there and saved those  
7           for later analysis, if needed.

8   Q.   Do you use different types of screens?

9   A.   In this case, I believe we used two different  
10       types of screens.

11   Q.   And approximately what time did you begin to  
12       assist with the sifting of the material from the  
13       burn pit.

14   A.   That was about 3:00 p.m.

15   Q.   All right. And generally, would you describe for  
16       us how you worked the particular scene there?

17   A.   There were -- In addition to Tom Sturdivant there  
18       were some other uniformed officers present at the  
19       scene. Our team got our sifting equipment, set  
20       it up. And I have had some experience with  
21       excavating grave sites before so I knew how to  
22       dig into the material we wanted to sift without  
23       bashing it up and ruining it.

24                       So we have a small square nosed, flat  
25       shovel. And the ground under the ash in this

1 area was very hard and packed. And so I moved  
2 material onto the shovel, onto the sifter. The  
3 other officers and Chuck Cates were there picking  
4 through the materials. Quite often they would  
5 ask me, does this look like a bone. I said, if  
6 there's any question, put it in the box. So we  
7 collected a lot of material from that --

8 Q. All right.

9 A. -- sifting.

10 Q. Tell us about your experience, in terms of  
11 excavating a particular site like this?

12 A. Earlier that summer, we had had a case where it  
13 was a homicide and the body had been attempted to  
14 be burned in a fire ring. It wasn't a complete  
15 destruction of the body and then pieces of it had  
16 been buried. So I had, earlier that summer, been  
17 involved with excavating the ash material in that  
18 pit and also with the excavation of the burial  
19 site. And I had previously done at least two  
20 other just straight burial sites, without burning  
21 involved. Tom Sturdivant indicated to me that he  
22 had been also involved in some burn where victims  
23 had been burned.

24 Q. In terms of your experience, then, how --  
25 describe for us how the material was actually

1           taken from the pit and what efforts you made so  
2           as not to unduly disturb the site or to damage  
3           any of the material that you were removing. Tell  
4           us how you managed that.

5       A.   Well, we used the flat shovel to slide underneath  
6           it on the hard ground to collect things. We also  
7           used a mason's trowel to gently excavate --  
8           excavate and loosen the material and then place  
9           it onto the screen. And at that point we had  
10          additional mason's trowels and whisk brooms  
11          available to move the material to let the smaller  
12          materials fall through the screen and then you  
13          could examine the material that remained on top  
14          of the screen.

15       Q.   All right. Who actually did the shovel work, as  
16           it were, and who did the actual picking through  
17           what was placed in the sifter?

18       A.   I believe I did most of the shovel work. My  
19           photographer also did some shoveling. I don't  
20           recall anyone else doing shovel work.

21       Q.   And did you have -- or were you aided with lights  
22           to conduct this task on that?

23       A.   No, we didn't have any lights.

24       Q.   What time did you --

25       A.   We used flashlights.

1 Q. Thank you. What time did you cease that work?

2 A. It was about 5 p.m.

3 Q. I would like to show you Exhibit No. 50. With  
4 the exception of the presence of the dog, I think  
5 previously identified as Bear, is that a true and  
6 accurate portrayal of the pit?

7 A. Yeah. This is the area where we excavated that  
8 grayish colored material and sifted it.

9 Q. May the record reflect the witness has identified  
10 a darkened gray area he used, which is depicted  
11 in the bottom part of Exhibit 50.

12 THE COURT: Does the defense agree?

13 ATTORNEY BUTING: Yes.

14 THE COURT: Very well, the record will so  
15 reflect.

16 Q. (By Attorney Fallon)~ To whom were the items  
17 given that were recovered from this sifting  
18 process on Tuesday evening?

19 A. To the Calumet County Sheriff's Department  
20 evidence technicians.

21 Q. Do you recall any non-biological material of  
22 interest that you may have seen that Tuesday  
23 evening during the process?

24 A. There were some metallic items present also.  
25 Maybe -- I don't recall specifically, but things

1           like zipper pulls, snaps, rivets. Certainly  
2           there was a lot of the cording from tires  
3           present. There was a large -- looked like this  
4           bench seat from a vehicle that had been burned.

5       Q.   We're going to zoom out on Exhibit 50 here. When  
6           it became dark and you ceased operations on the  
7           burn pit; what did you do next?

8       A.   At that point, we turned over all the evidence  
9           that we had collected thus far to the Calumet  
10          County Sheriff's Department. We were preparing  
11          to leave the scene. But before we left, it was  
12          requested that we do a luminol treatment of a  
13          couple of residences on the property. Luminol is  
14          a --

15      Q.   Let me stop you there and ask those questions, if  
16           I may. First of all, what is luminol?

17      A.   Like phenolphthalein, luminol is a chemical test  
18           that reacts with blood. It's more sensitive than  
19           phenolphthalein. It can detect blood that you  
20           can't see, if it's been washed or diluted, or if  
21           the specks are so small you can't really notice  
22           them, Luminol will allow you to see them.

23      Q.   How do you spell luminol, please?

24      A.   L-u-m-i-n-o-l.

25      Q.   And how did it work?



1 A. You need to have the area you are treating dark.  
2 When luminol is sprayed onto a bloodstain, it  
3 gives off light so it glows. Anything that's  
4 glowing here in the dark, we circle with a piece  
5 of chalk and then go back with the lights on;  
6 look at the areas we have circled, to see if we  
7 can see anything. And then attempt to swab that  
8 area and test it again with phenolphthalein.

9 Phenolphthalein is also presumptive for  
10 blood. It's more specific than luminol. Some  
11 things will react with luminol such as a copper  
12 penny, the lead seals we use. Bleach reacts very  
13 strongly with luminol. Those sorts of things,  
14 cleaning reagents, chemicals.

15 Q. What types of cleaning -- Did you say reagents?

16 A. I did say reagents.

17 Q. What type of -- First of all, what is a reagent?

18 A. You buy a bottle of Bo Peep Ammonia -- Reagent is  
19 a word that we use in the laboratory to mean some  
20 sort of concoction that you come up with for some  
21 specific use.

22 Q. Okay.

23 A. Something you put on your sink to clean with.

24 Q. I was going to say, can you give us a common  
25 every day example of a reagent.

1 A. Clorox Bleach.

2 Q. Okay. You were saying -- You were about to

3 explain more on the reagents.

4 A. So luminol is more sensitive, but it's less

5 specific than phenolphthalein. So if it glows

6 with luminol, then we would want to go back and

7 retest that area with phenolphthalein, it's more

8 specific. To be useful for later analysis, we

9 would want it to be phenolphthalein positive.

10 Q. Now, which residences were you asked to conduct

11 this luminol process?

12 A. Steven Avery's and Charles Avery's.

13 Q. And this was Tuesday evening?

14 A. Yes.

15 Q. All right. And let's start with Steven Avery's

16 residence, what if anything did you find there

17 that had previously not been examined, or

18 determined, or observed?

19 A. There were some visible bloodstains on the couch

20 that we had previously not found, that we found

21 with luminol. Other than that, there was nothing

22 that we hadn't already seen.

23 Q. And when you found these stains on the couch

24 react to the luminol, what did you do?

25 A. Circled them with chalk, then we looked at them.

1           They were obviously red brown color, but within  
2           the pattern of the couch material, we hadn't seen  
3           them previously. So we took cuttings of the  
4           couch material and collected the stains.

5       Q.   And how about with respect to Charles Avery's  
6           residence, what if anything did you find there?

7       A.   Again, we found bloodstains on the couch.

8       Q.   And what did you do?

9       A.   We cut the fabric to collect the stain.

10      Q.   Approximately what time did you conclude your  
11           investigative work that evening?

12      A.   Well, the luminol went on from about 5:30 till  
13           9:30, but in between Steven's residence and  
14           Charles' residence, we also did the garage next  
15           to Steven's residence.

16      Q.   I was going to ask about that. So what did you  
17           do inside the garage?

18      A.   We had been informed that others had been there  
19           before us; there were chalk circles on the floor  
20           already. We luminoled, made our own chalk  
21           circles, found one spot that was confirmed  
22           positive with phenolphthalein, but we were  
23           informed that that had already been collected.  
24           There was another area that wasn't just a spot on  
25           the floor, it was more of a smear.

1 Q. Can you describe this smear in greater detail.

2 A. Roughly 3 to 4 foot diameter area. Faintly  
3 glowing under the luminol. No specific spots or  
4 stains. Couldn't see anything with the lights  
5 on. Just swabbed several places where the  
6 luminol had been reacting, tested with  
7 phenolphthalein and did not get a reaction with  
8 the phenolphthalein.

9 Q. All right. So this is that large area you were  
10 talking about?

11 A. Yes.

12 Q. So what did that tell you, as a forensic  
13 scientist, about that large area and its reaction  
14 to luminol but did not react to the more specific  
15 phenolphthalein test?

16 A. Well, there was something that had been spread  
17 out in a large area that was reacting. I don't  
18 know what. And what cross reacts, cleaning  
19 chemicals dilute blood, would react, but it may  
20 not show up with phenolphthalein if it was  
21 diluted enough. So there was really nothing for  
22 us to collect from there.

23 Q. All right. Now, as you think about that  
24 particular garage examination, do you have a  
25 picture in your mind as to approximately where in

1           the garage this larger spot which reacted to the  
2           luminol was?

3    A.    Yes, I do.

4    Q.    And tell us about that.

5    A.    As you face the garage, there was a large  
6           overhead door. There was a smaller entry door to  
7           the right of that. We went in through that door.  
8           Immediately in front of you was an inaccessible  
9           area because of the amount of stuff that was in  
10          the garage, you know, parts of whatever, I don't  
11          know what. And the first stall to the left of  
12          the main door was a snowmobile. And then in the  
13          further stall away from that door was a small SUV  
14          type vehicle.

15                 This smeared area was, if you walk in  
16                 the door, move a little bit to the left around  
17                 that material, between the material that's on the  
18                 floor and the snowmobile and then walk straight  
19                 back toward the back wall until you run into the  
20                 clutter. It was right in that area in the corner  
21                 of the clutter, at the rear of the snowmobile.

22   Q.    All right. I'm going to have my colleague show  
23           you what has been received as Exhibit 107. Is  
24           Exhibit 107, would that be of some assistance to  
25           you in pointing out the general location of this

1 larger spot?

2 A. There's less clutter than I remember there being  
3 but, yes, the vehicle, the snowmobile and some  
4 amount of clutter is there.

5 Q. All right. Is it sufficient for purposes of  
6 giving you -- giving all of us here a general  
7 location of that?

8 A. Yes.

9 Q. All right. I will have that projected on the  
10 screen then. Showing Exhibit 107, you have the  
11 laser pointer.

12 A. To the rear of this tractor, to the rear of the  
13 snowmobile.

14 Q. So you are pointing -- the record will reflect  
15 the witness is taking the laser pointer and  
16 pointing to the area immediately in front of the  
17 green tractor and to the right and behind the  
18 snowmobile. Would that be accurate, Mr. Ertl?

19 ATTORNEY BUTING: I would not agree with  
20 that.

21 THE COURT: Is that to the front or the  
22 rear of the tractor?

23 ATTORNEY BUTING: You are pointing to the  
24 rear of the tractor?

25 Q. (By Attorney Fallon)~ The rear of the tractor?

1 A. Right.

2 ATTORNEY BUTING: Okay. An area just to  
3 the rear of the green tractor would be accurate.

4 THE COURT: All right. The record will so  
5 reflect.

6 ATTORNEY FALLON: Very well.

7 Q. (By Attorney Fallon)~ And, again, would you give  
8 us an approximate size of this box?

9 A. Three to four foot diameter.

10 Q. Was it circular in shape or oddly shaped?

11 A. It was irregularly shaped.

12 THE COURT: Excuse me. For clarification,  
13 when you say 3 to 4 feet do you mean 3 to 4 feet in  
14 diameter, or radius, or what?

15 ATTORNEY FALLON: I think he said 3 to 4  
16 foot diameter.

17 THE COURT: Okay.

18 THE WITNESS: Edge to edge.

19 THE COURT: Okay.

20 Q. (By Attorney Fallon)~ Now, is there -- is there a  
21 longer measurement that you could somehow use; I  
22 know you said a diameter suggests to us across of  
23 3 to 4 feet. Is there a general length  
24 measurement that you can estimate for us, or not?

25 A. No, I didn't use a measuring tape to measure this

1 area.

2 Q. All right. After completing your examination of  
3 the two residences and the garage with the  
4 luminol process, what did you do then?

5 THE COURT: Excuse me, Mr. Fallon.

6 ATTORNEY FALLON: Two questions and I'm  
7 done.

8 THE COURT: Very well.

9 Q. (By Attorney Fallon)~ What did you do?

10 A. We had collected the cuttings from the couches in  
11 both residences, turned those over to Calumet  
12 County. And then talked with Investigator  
13 Wiegert and Special Agent Fassbender and were  
14 released from the scene.

15 Q. About what time did you clear the scene?

16 A. It was about 9:30 p.m.

17 Q. Very well. Were you called back at all or was  
18 that your last trip?

19 A. That was the last.

20 ATTORNEY FALLON: Thank you. We have no  
21 further questions for the witness.

22 THE COURT: Very well. Members of the  
23 jury, at this time we'll take our morning break. I  
24 will remind you as usual that you are not to discuss  
25 the case or this morning's testimony during the



1 break. Thank you.

2 (Jury not present.)

3 THE COURT: Counsel, then, please report  
4 back at 10 minutes to 11.

5 ATTORNEY KRATZ: Thank you.

6 (Recess taken.)

7 THE COURT: At this time we're back on the  
8 record, Mr. Buting, you may commence your  
9 cross-examination.

10 ATTORNEY BUTING: Thank you, your Honor.

11 **CROSS-EXAMINATION**

12 BY ATTORNEY BUTING:

13 Q. Good morning, Mr. Ertl.

14 A. Good morning.

15 Q. You have an interesting background and what I  
16 would like to do is introduce your curriculum  
17 vitae or -- I'm not sure exactly what you call  
18 it, statement of qualifications. See if you can  
19 identify that for us.

20 A. Yes.

21 Q. That's Exhibit 159 and that is a statement of  
22 your qualifications, your training and  
23 experience; is that right?

24 A. That's right.

25 Q. Okay. I will leave it here in case you need to

1 refresh your recollection on it. And by the way,  
2 you were referring to some notes --

3 A. Yes.

4 Q. -- you mentioned that you -- Could I see those  
5 please so that I may -- Just show me what it was  
6 you were refreshing your recollection with.

7 A. I have my case notes, I believe you have those,  
8 my reports. And this is a sheet I just wrote up  
9 last night while I was --

10 Q. Okay. Thank you. If I can just take these with  
11 me for a few minutes and I will leave that with  
12 you there. Now, in terms of education, I'm not  
13 sure that we got the degree out; you are actually  
14 -- you have a bachelor of science in ...

15 A. Chemistry.

16 Q. Chemistry, okay. And then you also have a  
17 master's in applied molecular biology, right?

18 A. Correct.

19 Q. So it seems like you were on your way to a career  
20 as a -- in fact, some of your articles in there  
21 look like you were on a career to be a plant  
22 biologist of some sort, career path originally?

23 A. I spent a lot of time doing that, yes.

24 Q. In fact, you were a researcher for 10 years with  
25 UW Parkside, right?

1 A. Yes.

2 Q. And then you worked at Abbott Labs for a period  
3 of time?

4 A. Yes.

5 Q. How long was that?

6 A. About a year.

7 Q. And why did you leave that job?

8 A. I got a call from the Crime Laboratory in  
9 Milwaukee; they had an opening and wanted to know  
10 if I was interested, and I was.

11 Q. Okay.

12 A. I had applied for a Milwaukee job at the same  
13 time as Abbott, but didn't hear back from them.

14 Q. Okay. So you at some point decided to change  
15 from being a researcher to being an actual  
16 forensic scientist?

17 A. Correct.

18 Q. Okay. And so, in essence, with your field  
19 response kind of duties -- I'm sure I'm  
20 oversimplifying this, but you are sort of like  
21 those guys on CSI who come to the scene and look  
22 for evidence, right?

23 A. Yeah, those guys are portraying what -- some of  
24 what I do.

25 Q. Some of what you do?

1 A. Yes.

2 Q. You are the guy that goes there and finds  
3 whatever?

4 A. Right.

5 Q. Okay. Now, I do want to ask about a couple of  
6 things, though. Apparently your forensic science  
7 career got interrupted when you went to Texas for  
8 a period of time?

9 A. Right.

10 Q. You went from the Milwaukee Crime Lab to M.D.  
11 Anderson, which is a world renowned cancer  
12 treatment and research facility?

13 A. Yes.

14 Q. And you kind of got back into that field for a  
15 short while?

16 A. Yes.

17 Q. Why is that, you just didn't like the forensics  
18 field in Milwaukee?

19 A. No, I had got engaged to a woman who dearly  
20 wanted to move to Texas and I went along with  
21 that.

22 Q. I see. I see.

23 A. The M.D. Anderson job was the job -- first job I  
24 could get that I was qualified for down there.

25 Q. Sure.

1 A. The Crime Laboratory job then came about three  
2 months thereafter.

3 Q. And you are talking about the Texas Crime  
4 Laboratory?

5 A. Texas Crime Laboratory.

6 Q. And you were there for about -- what, not quite a  
7 year, 10 months, or something?

8 A. Right.

9 Q. And then you moved back to Milwaukee?

10 A. Yes.

11 Q. Or to Madison, or where?

12 A. To Madison.

13 Q. Okay. And that's when you got your job -- your  
14 current job with the Crime Lab in the Madison  
15 unit?

16 A. Yes.

17 Q. Okay. Now, during that period of time when you  
18 have been a forensic scientist, did you have  
19 training in how to go to a scene, properly  
20 collect, mark, preserve evidence?

21 A. We had on-the-job training in Texas.

22 Q. All right.

23 A. I attended scenes in Texas. When I got back to  
24 Madison, I again attended scenes. I went through  
25 the State Crime Laboratory's Evidence Technician

1 School where the fleet put on a school to train  
2 law enforcement officers how to collect evidence  
3 at the scene, properly process the scene, collect  
4 the evidence. And then let them know what we're  
5 interested in as far as getting it back to the  
6 laboratory, how to properly package it and seal  
7 it.

8 Q. So would it be fair to say, then, that you view  
9 yourself and your employer, the Wisconsin Crime  
10 Lab, view yourself as a highly skilled,  
11 competent, evidence collector at the scene?

12 A. Yes.

13 Q. All right. One of the things I noticed on your  
14 qualifications, a course you took was called  
15 courtroom testimony techniques?

16 A. Yes.

17 Q. And that's where you are taught how to properly  
18 present yourself, right?

19 A. Yes.

20 Q. How to look at the jury when you are giving  
21 answers?

22 A. Yes.

23 Q. I'm not saying anything is wrong with that, it's  
24 just specialized, that's training that you get as  
25 part of your job?

1 A. Right. Coming to court is part of my job. I  
2 have had training at that -- on that.

3 Q. Training that ordinary people, citizens who get  
4 up here, usually wouldn't know, to turn and look  
5 at the jury and answer questions and stuff like  
6 that?

7 A. That's correct.

8 Q. Unless they are coached to do so by somebody,  
9 right?

10 ATTORNEY FALLON: Objection to the term,  
11 coached to do so.

12 THE COURT: Sustained.

13 ATTORNEY FALLON: Ask that it be stricken.

14 THE COURT: Court will order that it be  
15 stricken from the document.

16 Q. (By Attorney Buting)~ Your current title is  
17 senior forensic scientist; is that right?

18 A. Yes.

19 Q. Okay. And you do a lot of DNA testing?

20 A. Yes.

21 Q. The unit you are attached to is a serology unit?

22 A. That's an historical name, yes.

23 Q. Okay. Serology, meaning a broader range of  
24 bodily fluid testings, right?

25 A. Correct.

1 Q. Include blood, semen, saliva?

2 A. Yes.

3 Q. And in the old days, before DNA, that's where

4 people would do ADO typing of blood and that sort

5 of thing?

6 A. That's correct.

7 Q. That's not done so much any more in your lab?

8 A. That's also correct.

9 Q. All right. But it does include some training to

10 be able to use these presumptive tests for blood?

11 A. Yes.

12 Q. Like phenolphthalein, right?

13 A. Yes.

14 Q. Or luminol?

15 A. Yes.

16 Q. And, actually, luminol is not what you would

17 consider a presumptive test for blood?

18 A. It's an aid in identifying the location of blood.

19 Q. Okay. But it also identifies so many other

20 agents that its not specific to blood?

21 A. That's correct.

22 Q. It's really just something to help you visualize

23 some areas so that you can then later go and do

24 the real presumptive tests for blood?

25 A. That's correct.



1 Q. Okay. Now, in your training and your experience  
2 with evidence collection, would you agree that  
3 it's important that -- that if you are collecting  
4 evidence at the scene that you have an objective,  
5 disinterested status with regard to that crime  
6 scene?

7 A. Yeah. As a scientist, that's typically the way  
8 we like to think of ourselves.

9 Q. Sure. So you wouldn't want somebody who has got  
10 some personal involvement with the suspect even,  
11 to be going to the suspect's house, that could  
12 taint whatever objectivity you might otherwise  
13 have when you collect evidence; is that right?

14 ATTORNEY FALLON: Objection, speculation  
15 and relevance.

16 THE COURT: I'm going to sustain the  
17 objection.

18 Q. (By Attorney Buting)~ Let me ask it this way, as  
19 part of your training and your experience with  
20 the Crime Lab collecting evidence, are there any  
21 kind of rules that say only disinterested parties  
22 should collect evidence at a scene?

23 A. I think there are -- I don't know if there are  
24 formal rules, but there are sort of informal  
25 rules. I have not ever had it come up with, in

1        regards to a scene, but cases that are submitted  
2        to the laboratory, if an analyst happens to know  
3        the suspect, or the victim, or even their  
4        relatives, they will excuse themselves and ask  
5        not to be involved in that case.

6    Q.    Sure. And that's just -- that's just common  
7        practice, custom and practice in your lab, right?

8    A.    Yes.

9    Q.    And with regard to collection of scene material,  
10        biological type material, that may have DNA in  
11        them, there's a very specialized -- well, I  
12        shouldn't say that -- but there is a specialized  
13        training to go through -- that people go through  
14        in order to collect that kind of evidence?

15   A.    Yes, there is.

16   Q.    DNA evidence, although it's very helpful to  
17        scientists, it also has the drawback that it's  
18        very sensitive and potentially contamination can  
19        affect the results, right?

20   A.    I believe that's a possibility.

21   Q.    Okay. And, for instance, you know how DNA  
22        processing works, but one of the things that's so  
23        good about DNA is that you can get profiles from  
24        very tiny, little amounts of DNA that may be left  
25        at a scene, right?

1 A. That's true.

2 Q. And the way that's done is, you take what  
3 otherwise would be a very tiny amount and then  
4 it's amplified, it's multiplied, through this  
5 process in the lab, to the point where it's  
6 testable, correct?

7 A. That's true.

8 Q. And so when it's in that very small stage, or  
9 status, if it's contaminated in some way, then  
10 the contaminate is multiplied along with it,  
11 right?

12 A. Yes, it is.

13 Q. So that has a great potential, then, to give you  
14 unreliable results if that would happen?

15 A. I would agree.

16 Q. And should that happen, should some evidence come  
17 to your lab that's been contaminated at the  
18 scene, you wouldn't necessarily know that when  
19 you do the test, right?

20 A. That's correct.

21 Q. And so, have you heard of a phrase, garbage in,  
22 garbage out, from a science perspective?

23 A. In regards to computers usually.

24 Q. Okay.

25 A. I guess.

1 Q. But in your field that would also apply to  
2 whatever is brought to your lab for DNA testing;  
3 if it's contaminated at the beginning, the  
4 results will also be contaminated, or I should  
5 say, unreliable?

6 A. Yes. Nothing that we do at the lab is going to  
7 decontaminate it.

8 Q. All right. Thank you. And, in fact, in your  
9 lab, then, there is another risk, items may be  
10 contaminated at the scene when they are  
11 collected, if they are not collected properly,  
12 right?

13 A. Right.

14 Q. They may be contaminated at some point from that  
15 -- from the scene until they reach your lab,  
16 conceivably?

17 A. Possibly.

18 Q. And then there is also the risk of contamination  
19 of an item once it gets to your lab, right?

20 A. That's also possible.

21 Q. In fact, during the test process, contamination  
22 may occur in your lab?

23 A. Yes.

24 Q. And, in fact, does occur in your lab?

25 A. Yes.

1 Q. Any lab?

2 A. Yup.

3 Q. All crime labs have that risk and reality that

4 materials, test materials, do sometimes become

5 contaminated, correct?

6 A. That's correct.

7 Q. And, in fact, that's something that's of such

8 concern to your lab that you -- you keep a record

9 of such contamination incident, whenever it's

10 discovered?

11 A. Yes.

12 Q. What's that called?

13 A. Contamination log.

14 Q. Okay. And that relates to incidents where the

15 contamination has been able to be discovered by

16 the scientist who's working on it, right?

17 A. That's right.

18 Q. If some contamination occurs in your lab, though,

19 and it's not discovered by the analyst, there is

20 no record of that, right?

21 A. There's no knowledge and no record, right.

22 Q. All right. Now, sir, you mentioned that you

23 were, on November 4th or 5th, I'm going to direct

24 your attention to that, the first day, you said

25 your answering service got a call; did you

1           actually speak directly, yourself, with Detective  
2           Remiker?

3       A.    Yes, I called him back.

4       Q.    Okay. And he gave you what information at that  
5           point?

6                   ATTORNEY FALLON:  Objection, hearsay.

7                   ATTORNEY BUTING:  Not for the truth of the  
8           matter, simply to establish what his perspective  
9           was.

10                   THE COURT:  I think before I can rule on  
11           the objection, I have to hear the answer to know the  
12           nature for which it's being offered.

13       A.    He told me his name, what agency he was with,  
14           that he was working in conjunction with another  
15           agency and with the state agency and that he was  
16           requesting our assistance with regard to a  
17           missing persons case. And he told me the  
18           location of the place and he told me who owned  
19           the property.

20       Q.    And then you said you -- by the time you arrived,  
21           it was about 4:00?

22       A.    I believe so.

23       Q.    Are you sure of that?

24       A.    I'm not real good at keeping track of time in my  
25           head and you now have my notes on times at the --

1 Q. I will give those back to you, sir.

2 A. -- at the scene.

3 Q. I'm sorry.

4 A. I will make notations as I do things throughout

5 the day and I will note the time.

6 Q. Sure. Take your time and refresh your

7 recollection, if you will, please.

8 A. Yes. Arrived at the scene at 4:00 p.m.

9 Q. All right. And the first place you went, though,

10 was to the Command Post. I think you described

11 it as a firetruck with a canopy over it.

12 A. Yeah.

13 Q. And was that down at sort of the entrance to this

14 salvage yard area where there were some -- some

15 business buildings and that sort of thing?

16 A. It was just before that.

17 Q. Before you even got to that you said?

18 A. Yes.

19 Q. Right down along Avery Road?

20 A. I would say where Avery Road first forked.

21 Q. Okay. And you spoke with Mr. Wiegert and

22 Mr. Fassbender, right?

23 A. Yes.

24 Q. Was anybody else briefing you at that point?

25 A. Not really briefing me, but when we first

1 arrived, you know, you go through a checkpoint,  
2 tell them who you are, who's in the vehicle with  
3 you. And they record that. And then you are  
4 directed to go down the road to where you see the  
5 firetruck.

6 And then someone met us there. I don't  
7 know who. I told them who I was with, who I was  
8 looking for at that point, Detective Remiker.  
9 And then I was directed to under the canopy, next  
10 to the firetruck. I was introduced to  
11 Investigator Wiegert and Tom Fassbender at that  
12 point, but there were many other people present.

13 Q. Sure. And then did you go down from that point,  
14 directly to where the RAV4 had been located?

15 A. Yes.

16 Q. So how long would you say you spend -- how long  
17 would it take from when you got there at 4:00,  
18 until you got to the spot where the RAV4 was, 15  
19 minutes maybe.

20 A. Fifteen minutes to a half an hour.

21 Q. Okay. And when you got there, the RAV4 was no  
22 longer covered with a tarp?

23 A. That's correct.

24 ATTORNEY BUTING: Counsel, could you please  
25 put up that photograph?



1                   ATTORNEY KRATZ: I have been unplugged.

2                   ATTORNEY BUTING: We're still not set up,  
3                   right?

4                   ATTORNEY KRATZ: Can you use the ELMO?

5                   ATTORNEY BUTING: No, I would like to use  
6                   this, please.

7   Q.    (By Attorney Buting)~ You are sure, though, that  
8           the vehicle was not covered with a tarp when you  
9           first arrived?

10   A.   They were in the process of removing the tarp.  
11           The tarp was present. I was told that some of  
12           the branches that were now lying on the ground  
13           had been on top of the vehicle, but fell off when  
14           they had pulled the tarp.

15   Q.    Okay.

16   A.    But I don't believe I was present for the  
17           unveiling.

18   Q.    You don't recall ever seeing the vehicle  
19           completely enclosed, covered with this tinted  
20           tarp thing?

21   A.    No, I don't.

22   Q.    All right.

23                   THE COURT: Members of the jury, at this  
24           time I should let you know that the technical  
25           problems we have been experiencing are not the

1 result of any actions by either party to this action  
2 and I'm told that, hopefully over the noon hour,  
3 they are going to be addressed and things will be  
4 cleaned up.

5 ATTORNEY BUTING: We hope. I believe 144  
6 exhibit. I don't know if you have it marked yet, 80  
7 or 81 would do fine.

8 Q. (By Attorney Buting)~ All right. We'll come back  
9 to this in a minute. He's going to have to  
10 reboot the thing and get us in a position where  
11 you can to look at this photo. So I will move  
12 on. We'll come right back to that in a few  
13 minutes.

14 You, I believe, said that you took some  
15 photographs that we saw, right, one of the first  
16 things you did was take photographs?

17 A. Yes.

18 Q. And looked at the debris and things that were  
19 piled up against it, to see if there might be any  
20 biological evidence you could collect?

21 A. Yes.

22 Q. And did you remove those -- that debris at that  
23 point?

24 A. Yes.

25 Q. So you actually moved the Rambler hood away

1           completely?

2    A.    Yes.

3    Q.    And that fence post, we'll show you in just a  
4           moment, but we have seen it many times already,  
5           that sort of fence post that's leaning up against  
6           the right of the car, that was pulled away?

7    A.    Yes.

8    Q.    The branches were uncovered?

9    A.    (No verbal response.)

10                   ATTORNEY BUTING:   Could we have a quick  
11           side bar, your Honor?

12                   THE COURT:   Sure.

13   Q.    (By Attorney Buting)~ All right.  Mr. Ertl,  
14           during the break we were able to get this exhibit  
15           that we saw yesterday, Exhibit 143, up on the  
16           screen for you.  Do you see this area in the  
17           center of the screen where there appears to be  
18           something covered by a tarp?

19   A.    Yes, I do.

20   Q.    Did the RAV4 look like that to you when you first  
21           arrived?

22   A.    No.

23   Q.    You never saw it in that condition at all?

24   A.    No.

25                   ATTORNEY BUTING:   Counsel, could you just

1 minimize it back to the desktop and then show us,  
2 again, the electronic signature for that, please.

3 Q. Can you see that counsel has put his cursor over  
4 this photograph now. I don't know if you can  
5 read that, it says date picture taken, 11/5/2005,  
6 at 4:16 p.m.?

7 A. Yes.

8 Q. All right. Now, it's your testimony that you got  
9 to the scene of this RAV4 right around 4:16 or  
10 4:15 p.m., right?

11 A. I arrived on the scene around 4 p.m., 15 minutes  
12 to a half hour later we were escorted down to the  
13 RAV4.

14 Q. Well, if it was 4:15 when you got to the RAV4,  
15 then the date or the time stamp on this  
16 particular photograph is either an error or your  
17 memory is an error, right, because it wasn't like  
18 that when you got there?

19 A. Well, I gave you a window of time. I'm not  
20 saying I arrived at 4:15; I do not know that. I  
21 estimated, roughly 15 minutes to a half an hour,  
22 talking with the investigators under the canopy.  
23 I don't have a record of exactly when we  
24 proceeded to the RAV 4.

25 Q. All right. And you -- you mentioned that it was

1           sort of misting at that point, but it wasn't  
2           really raining very hard, or at all?

3    A.    Yes.

4    Q.    Had it -- Did it appear that it had been raining  
5           before you got there?

6    A.    It seemed to have been; there were puddles.

7    Q.    All right. So you -- Tell me for a minute, maybe  
8           I misunderstood the sequence here. At some point  
9           you talked about it being lightening and very  
10          dramatic, I think were your terms?

11   A.    Right.

12   Q.    When was that?

13   A.    That was near the time we were leaving.

14   Q.    So more like 8:00 or 8:30, something like that?

15   A.    Yes.

16   Q.    But at some point before that, was it also  
17          raining while you were there?

18   A.    Yes.

19   Q.    Do you know when that started?

20   A.    I didn't keep track of the weather.

21   Q.    I think you said just after dark it began to  
22          pour?

23   A.    I remember it was raining pretty steady while we  
24          were looking at the burn barrels. It was dark  
25          out.

1 Q. All right. And just after dark at that time of  
2 year would have been 5:30?

3 A. Yeah.

4 Q. All right. So when that was going on and it was  
5 raining, the tarp -- I'm sorry -- the vehicle was  
6 untented, uncovered?

7 A. Yes.

8 Q. And you didn't stay, you testified you did not  
9 stay with the RAV4 that entire time you were at  
10 the scene, you moved around to different  
11 locations, right?

12 A. That is correct.

13 Q. Your partner, Mr. Zhang, is that how it's  
14 pronounced?

15 A. It's pronounced many ways. I say Zhang. He says  
16 more like Zhang.

17 Q. Zhang, okay. Does Mr. Zhang also have field  
18 response training?

19 A. Yes, he does.

20 Q. Does he also have training in collection of  
21 evidence?

22 A. I believe he does. He's been at the lab much  
23 longer than I have. He's been on field response  
24 much longer than I have.

25 Q. All right.

1 A. I don't know the extent of his training.

2 Q. In fact, his responsibilities are more field  
3 response than yours typically are, right?

4 A. No, he's a toxicologist normally.

5 Q. Oh, I see. So the way it works for field  
6 response is, they take different people from  
7 different units who are ...

8 A. Willing.

9 Q. Willing. All right. Anybody ask you to go in  
10 Steven Avery's residence that first night,  
11 November 5th?

12 A. I don't believe so.

13 Q. You and your partner, Mr. Zhang, would certainly  
14 have been a qualified evidence collection team to  
15 go into Mr. Avery's residence, wouldn't you, that  
16 night?

17 A. Yes.

18 Q. This is Saturday, November 5th, correct?

19 A. Yes.

20 Q. And so there's no reason why Mr. Fassbender  
21 couldn't have used you and Mr. Zhang to search  
22 Mr. Avery's residence on Saturday night instead  
23 of the people that he did use, right?

24 A. He could have.

25 Q. And you actually have a master's degree, right?

1 A. In molecular biology.

2 Q. Okay. And years of experience as a Crime Lab

3 field response analyst, right?

4 A. Yes.

5 Q. And instead, Mr. Fassbender had you going around

6 and taking photographs and looking through

7 garbage; isn't that right?

8 ATTORNEY FALLON: Objection, argumentative.

9 THE COURT: Sustained, to the form of the

10 question.

11 Q. (By Attorney Buting)~ In any event, no one asked

12 you to go into Mr. Avery's house or garage that

13 first night, November 5, 2005?

14 A. That's true.

15 Q. And while it was raining very hard, you obviously

16 couldn't do much outside?

17 A. Right. We were basically waiting for the wrecker

18 crew and trailer to arrive.

19 Q. So you had time to kill. And rather than use you

20 to search Mr. Avery's residence, they directed

21 you to a golf cart, right?

22 A. Yes.

23 Q. And I think there was something -- oh, there were

24 some burn barrels, right?

25 A. Correct.



1 Q. And by the way, that golf cart, I just want to  
2 make it clear, you -- that was in a completely  
3 different building, you mentioned a shed or  
4 something?

5 A. Yes.

6 Q. Business building?

7 A. Yes.

8 Q. And these dark stains that you found, you did  
9 test, and they proved not to be blood, right?

10 A. Correct.

11 Q. Sometimes on something that may be reddish brown  
12 in color, may look to the human eye as possible  
13 blood, but when you later test it with one of  
14 your presumptive tests, you find out otherwise,  
15 right?

16 A. That's correct.

17 Q. And that happened a number of times in this  
18 particular case?

19 A. Yes, it did.

20 Q. And when you went back to the scene with the  
21 wrecker, after that was completed, around 8:30 I  
22 think you said?

23 A. Yes.

24 Q. Mr. Fassbender told you that your services  
25 weren't needed any more, for that night, right?

1 A. It wasn't immediately thereafter but, yes,  
2 eventually around 8:45.

3 Q. He didn't tell you that there was a search  
4 ongoing right that moment in Mr. Avery's  
5 residence, did he?

6 A. I didn't know that.

7 Q. Didn't ask you to go assist the people that he  
8 selected to do the search of Mr. Avery's  
9 residence, did he?

10 A. No, he didn't ask that.

11 Q. Okay. And you certainly would have been  
12 available, right, you testified to that?

13 A. Yes.

14 Q. You also mentioned that when you got to the area  
15 of the RAV, there were some other officers or  
16 other people around?

17 A. Yes.

18 Q. But you don't know what the circumstances of the  
19 access to that RAV was before you arrived on the  
20 scene, right?

21 A. No, I don't.

22 Q. That's not something in your knowledge, so you  
23 don't know, really, what if anything happened to  
24 that RAV before you arrived, at 4:15 or so?

25 A. That's correct.

1 Q. Okay. Now, Sunday, November 6th, is when you  
2 arrived -- you went all the way back to Madison  
3 the prior night, and it's about a four hour  
4 drive; is that right?

5 A. It's about a three and a half hour drive, but the  
6 drive back, due to the reaction of the trailer,  
7 we weren't able to go over 50 miles per hour.

8 Q. Okay.

9 A. So took closer to four and a half hours to get  
10 back.

11 Q. All right. But, actually, I'm -- I'm on Sunday  
12 now, when you are coming back.

13 A. Okay.

14 Q. So you drove up and you got back to the Avery  
15 Salvage yard about 3:15 or 3:30 you said?

16 A. Yes.

17 Q. And there were three areas that they wanted you  
18 to look at when you first got there, right?

19 A. That's correct.

20 Q. And none of those three, when you first arrived,  
21 included Mr. Avery's residence, or the detached  
22 garage next to Mr. Avery's residence, did it?

23 A. No.

24 Q. Instead they sent you off to this quarry, a  
25 gravel -- I don't know what you want to call it

1           -- to the east of Avery Road, right?

2     A.    Yes.

3                   ATTORNEY BUTING:  I don't know if we have a  
4     photograph of that layout, maybe we could identify  
5     where this is.  Counsel, do you know if you have one  
6     of those areas?

7                   ATTORNEY KRATZ:  I don't know what you are  
8     asking for.

9                   ATTORNEY BUTING:  An aerial photograph far  
10    enough out to show this east of the Avery Road area.  
11    Actually, let me see the book.

12                   ATTORNEY KRATZ:  Maybe 86, counsel.

13                   ATTORNEY BUTING:  I don't think 86 goes out  
14    far enough, but we could try that.  Let's see.  How  
15    about 85, put that one up.  Or even better, 91, 91  
16    shows it I think.

17                   ATTORNEY KRATZ:  91 is a diagram.

18                   ATTORNEY BUTING:  92.  91 is a -- I will  
19    show you.

20    Q.    (By Attorney Buting)~ All right.  We have got  
21    Exhibit 91 on the screen.  If you could just  
22    orient yourself for a moment, with that, if you  
23    can.

24    A.    Okay.  I have got it.

25    Q.    Is this the gravel area that you were first sent

1 to on this photograph?

2 A. Yes.

3 Q. Could you please point at it with the pointer?

4 A. It was right about in there.

5 Q. Okay. Record should reflect left side -- upper  
6 left quarter of the screen is being pointed at.  
7 And it's a -- looks like a whole excavated block  
8 almost?

9 A. Yes, it was a quarry.

10 ATTORNEY FALLON: Your Honor, if counsel is  
11 willing, I believe it will be or we could stipulate  
12 that it will be identified as Michels' Quarry.

13 ATTORNEY BUTING: Michels, M-i-c-h-e-l-s.

14 ATTORNEY FALLON: I believe that's correct.

15 ATTORNEY BUTING: That's fine.

16 THE COURT: Parties agree?

17 ATTORNEY KRATZ: Yes.

18 THE COURT: Very well.

19 Q. (By Attorney Buting)~ All right. And then at  
20 this -- there was some searcher had apparently  
21 been there before because there was a -- was it  
22 an orange flag or something?

23 A. Right.

24 Q. And you began working that and you found  
25 something did test positive for blood of some

1           sort, right?

2   A.    Yes.

3   Q.    Again, you didn't know whether it was animal or

4           human?

5   A.    Right.

6   Q.    And to your knowledge, did that, whatever you

7           found over there, eventually have anything at all

8           to do with this case?

9   A.    I don't know what happened to that sample after I

10          collected it.

11   Q.    Okay.  So you don't know whether that turned out

12          to be flesh and blood that had anything to do

13          with this case or not?

14   A.    No, I don't.

15   Q.    Okay.  Well, we'll deal with it later, then.

16          Then you also, then, after you had finished those

17          three tasks, the other two being searching two

18          other vehicles nearby where the RAV was; is that

19          right?

20   A.    Well, the three tasks they had in mind for us

21          when we arrived weren't the three tasks we

22          actually completed that day.

23   Q.    Okay.  So you didn't actually do the vehicles

24          that day?

25   A.    We did do the vehicles.

1 Q. All right.

2 A. We did the gravel quarry, then we went into

3 Steven Avery's residence, and then we did the

4 vehicles.

5 Q. So the third task, being the burn barrels, you

6 didn't get to that day?

7 A. Right.

8 Q. So instead they called you into Mr. Avery's

9 residence for some sort of blood spatter

10 examination, right?

11 A. Correct.

12 Q. Now, I notice on your statement of

13 qualifications, you actually had some blood

14 spatter analysis training, right?

15 A. Yes.

16 Q. Are you one of the people that's presented by the

17 lab, to courts and juries, to testify about blood

18 spatter analysis?

19 A. No, I'm not.

20 Q. Someone else in your lab does that?

21 A. Yes.

22 Q. But you have general knowledge that -- that there

23 -- as you demonstrated before, that if someone

24 has a cut and they flip their finger, the drops

25 will fly off, right?

1 A. Yes.

2 Q. And, likewise, you have been to a number of  
3 homicide scenes, right?

4 A. Yes.

5 Q. And often times blood spatter is present at the  
6 scene?

7 A. Correct.

8 Q. And there's such a thing as high velocity blood  
9 spatter, right?

10 A. Correct.

11 Q. And that's something that's often found when  
12 someone is shot, with a gun --

13 A. Correct.

14 Q. -- right? The speed of the bullet, without being  
15 too graphic here, but causes blood to fly off at  
16 a high velocity when it hits a wall, or ceiling,  
17 or whatever, an object, it leaves a pattern that  
18 can be distinguished from other types of spatter,  
19 right?

20 A. Correct.

21 Q. And when you went to Mr. Avery's residence, you  
22 saw no such high velocity spatter, right?

23 A. Correct.

24 Q. And when you looked in his garage, you saw no  
25 high velocity blood spatter, right?



1 A. Correct.

2 Q. And, then, there's also other types of spatter,  
3 lower velocity, like if someone -- if there's a  
4 beating and someone is bleeding, you know, head  
5 jerking back and forth, something like that,  
6 right?

7 A. Correct.

8 Q. And then there's also something called cast off  
9 spatter, right?

10 A. Correct.

11 Q. And that would occur if somebody is taking a  
12 knife, if someone is, let's say, laying on a  
13 mattress, a victim is laying on a mattress, a  
14 victim is laying on a mattress and being stabbed  
15 repeatedly with a knife, as they come up and  
16 down, the knife may cast off blood spatter,  
17 right?

18 A. Yes.

19 Q. And you saw no evidence of that in Mr. Avery's  
20 residence, did you?

21 A. No, I did not.

22 Q. And you saw no evidence of that in Mr. Avery's  
23 garage either, did you?

24 A. That's correct.

25 Q. And none of this low velocity stuff that I talked

1           about that can be from when someone is being  
2           beaten either?

3    A.    Right.

4    Q.    No blood spatter at all in Mr. Avery's residence,  
5           of any kind?

6    A.    Just bloodstains.  No recognizable patterns.

7    Q.    Right.  And those bloodstains were scattered,  
8           more isolated, right?

9    A.    There were a grouping in the bathroom and then  
10          the entry door directly across the hallway from  
11          the bathroom.

12   Q.    Okay.  One spot?

13   A.    I would say the other one on the other door would  
14          have been more isolated from those.

15   Q.    Okay.

16   A.    And the ones on the couch were near the second  
17          entry.

18   Q.    But, for instance, the ones in the bathroom,  
19          there's one on the floor, right?

20   A.    Not just one, but several.

21   Q.    Okay.  And also one on the sink?

22   A.    Some in the sink, some on the vanity.

23   Q.    All right.  Consistent with somebody who may have  
24          cut their finger or cut themselves shaving in a  
25          bathroom?

1 A. Possibly. The ones on the floor and the vanity  
2 looked like they had been diluted down with  
3 water. So, yeah, cut yourself and then cleaned  
4 up.

5 Q. Okay. But still there, where you could see them?

6 A. Yes.

7 Q. In fact, it was obvious to you that somehow you  
8 were informed that all of those had been sampled  
9 prior to your arrival on Sunday evening,  
10 November 6th?

11 A. No, not all of them.

12 Q. Okay. Some of them had apparently, though,  
13 right?

14 A. The ones on the entry door in the bathroom had.

15 Q. The one on the floor?

16 A. None in the bathroom had been sampled yet.

17 Q. Okay. All right. So you identified the ones in  
18 the bathroom that had not yet been identified,  
19 but the other ones had been identified and  
20 sampled before?

21 A. Except for the ones on the couch and the second  
22 entry door.

23 Q. Well, the ones on the couch you didn't notice  
24 that night, I thought it was ...

25 A. That was later.

1 Q. We're just talking about Sunday night for now,  
2 okay.

3 A. Okay. So the ones on the entry door across from  
4 the bathroom had been sampled previously. The  
5 one on the other entry door and the ones in the  
6 bathroom had not.

7 Q. Okay. So you went to the entry door of  
8 Mr. Avery's bedroom and looked at that --

9 A. Yes.

10 Q. -- that area? Did you actually go inside of his  
11 bedroom?

12 A. Yes.

13 Q. Did you see a Toyota key sitting on the floor in  
14 plain view?

15 A. No, I didn't.

16 Q. Did you see a key anywhere in that bedroom on the  
17 night of November 6th?

18 A. I don't recall seeing any keys. I wasn't looking  
19 for keys.

20 Q. You talked about trace evidence as being things  
21 like fibers and hairs and those sorts of things,  
22 right?

23 A. That's correct.

24 Q. Trace evidence can also, occasionally, be left  
25 just by handling something, correct?

1 A. Sure.

2 Q. If you know? If you are not -- if it's beyond  
3 your qualifications just please tell me.

4 A. Well, you could consider DNA as trace evidence  
5 and that can be left by just handling items.

6 Q. And, particularly, if somebody uses an item  
7 daily, one would expect handling something daily  
8 that there would be their DNA left on there,  
9 right?

10 A. Yes.

11 Q. Such as a car key?

12 A. Sure.

13 Q. Somebody who had had a car key for five or six  
14 years, handling it every single day, if you were  
15 to test that in your lab, you would likely find  
16 their DNA, wouldn't you?

17 A. I would think that would be a good possibility.

18 Q. Unless somebody had wiped it off, cleaned it up  
19 in some way, before you got to it, right?

20 A. Yeah.

21 Q. Okay. Now, you mentioned that Mr. Cates was with  
22 you, also on Sunday evening, correct?

23 A. Correct.

24 Q. And his specialty is fingerprints?

25 A. Yes.

1 Q. Was he asked to look in Mr. Avery's residence to  
2 see if there were any fingerprints of note?

3 A. No, we were sent in mostly to look for blood  
4 spatter pattern. But as a fingerprint analyst,  
5 when he sees a fingerprint, he will look at it.

6 Q. If someone is wearing gloves, they may not leave  
7 fingerprints, right?

8 A. Correct.

9 Q. But if someone is wearing -- is not wearing  
10 gloves, they might very well leave fingerprints  
11 when they touch items, right?

12 A. Yes.

13 Q. And for instance, let's go to the RAV4 a minute  
14 and imagine that this is the hood, this desk  
15 right in front of you. All right.

16 A. Okay.

17 Q. To open a hood such as the RAV4, which you know  
18 how to do that, right?

19 A. Well, if it's like my car, you have to pull a  
20 lever inside the vehicle --

21 Q. Right. Okay.

22 A. -- that releases it a little bit. Then you have  
23 to reach in under the hood --

24 Q. Sure.

25 A. -- and release another lever.

1 Q. So then you release another lever and then your  
2 fingers in some way come in contact with the hood  
3 as you lift it, right?

4 A. Right.

5 Q. And let's talk about the tailgate of this RAV4 a  
6 moment, okay? You looked at that carefully?

7 ATTORNEY BUTING: Do you want to put up  
8 that exhibit for me for a moment, please. It's  
9 Exhibit 29.

10 ATTORNEY KRATZ: You want the one Mr. Ertl  
11 looked at, or you want the one Ms Sturm looked at?

12 ATTORNEY BUTING: Twenty-nine, I think, is  
13 Sturm's.

14 ATTORNEY KRATZ: Not the Crime Lab one?

15 ATTORNEY BUTING: Is there a rear view one?

16 ATTORNEY KRATZ: Absolutely, 135.

17 ATTORNEY BUTING: That's fine. That would  
18 do.

19 Q. (By Attorney Buting)~ Can you locate the handle  
20 or the lever that one would use to open that rear  
21 tailgate door?

22 A. I'm not real familiar with that vehicle, I would  
23 assume ...

24 Q. All right.

25 ATTORNEY BUTING: This one is taken at

1 night, if we might look at 29, please, counsel.

2 Q. (By Attorney Buting)~ Does that give you a little  
3 bit better view?

4 A. I can see the lock there. I would imagine it's  
5 built into that area.

6 Q. And so if somebody is going to open that tailgate  
7 door, they have to put their hands right near the  
8 lock lever and in some way pull it open with  
9 their fingers, right?

10 A. That would be the way I would do it.

11 Q. And if they are not wearing gloves, they might  
12 leave fingerprints, correct?

13 A. Correct.

14 Q. If they are wearing gloves, they might not leave  
15 fingerprints, or would not, right?

16 A. Depending on the type of glove, you can get some  
17 surgical gloves where fingerprints do pass  
18 through.

19 Q. All right. But if you are wearing gloves, you  
20 are also not bleeding all over the place, are  
21 you, if the bleeding -- If you have got a cut on  
22 your finger and you are wearing gloves inside of  
23 that vehicle, you are not going to be dripping  
24 blood into the vehicle, are you?

25 A. If the -- If you are not bleeding enough to soak



1 the glove and then seep through the glove.

2 Q. Sure. If you're bleeding that much, it would be  
3 obvious, you would have blood on the steering  
4 wheel and everything, right?

5 A. It's hard to say. I don't know the extent of the  
6 bleeding. It would depend what you would touch.

7 Q. Well, if you were bleeding and not wearing  
8 gloves, inside the vehicle, you would also be  
9 touching and operating things like the steering  
10 wheel and the -- whatever else you might be  
11 touching, the door, the door handle, that sort of  
12 thing, right?

13 ATTORNEY FALLON: Objection, highly  
14 speculative. There's just too many variables  
15 unaccounted for in that hypothetical.

16 THE COURT: Sustained.

17 Q. (By Attorney Buting)~ You have seen cases where  
18 people do leave fingerprints, right?

19 A. Yes.

20 Q. And you take photographs of those?

21 A. Yes.

22 Q. Did you take any photographs, or see any  
23 fingerprints anywhere inside this vehicle?

24 A. I only looked inside the vehicle, through the  
25 glass, with a flashlight, at night. I did not

1           see any fingerprints.

2   Q.   And did Mr. Cates process the vehicle at all for

3           any kind of fingerprints?

4   A.   Mr. Cates wasn't at the scene when the vehicle

5           was at the scene.

6   Q.   Okay. So there was no fingerprint processing

7           done of the vehicle at the scene, right?

8   A.   That's correct.

9   Q.   That would have occurred later, at the Crime Lab?

10   A.   Correct.

11   Q.   All right. Well, we'll talk with those people

12           later. Going back to Sunday, you mentioned that

13           Mr. Cates was with you and you said something

14           about these two other vehicles, near the pond,

15           that he processed the fingerprints; do you recall

16           that?

17   A.   He did not process them on Sunday; he processed

18           them later.

19   Q.   Oh, that's right, you said there was dew on it?

20   A.   There was dew on it.

21   Q.   Okay. But there was some bloodstains in the

22           other two vehicles?

23   A.   Yes.

24   Q.   And these are the two vehicles that were junk

25           salvage vehicles, right?

1 A. Yes.

2 Q. Many of which get there because they have been in  
3 automobile accidents, right?

4 A. I assume so, yes.

5 Q. Where sometimes people are injured and bleeding,  
6 right?

7 A. That's correct.

8 Q. So that might, in fact, account for the blood  
9 that was in those other two vehicles, right?

10 A. Yeah. I got that impression when -- just  
11 thinking about the number of sites the cadaver  
12 dogs were interested in and then thinking about  
13 this as a salvage yard and some of these vehicles  
14 were probably in accidents and they have may have  
15 been -- blood put in them at that point.

16 Q. Totally unrelated to this case?

17 A. Correct.

18 Q. And to your knowledge, did the -- did anything  
19 that Mr. Cates found, either blood or  
20 fingerprints, on those other two vehicles, have  
21 anything at all to do with this case?

22 A. To my knowledge, I do not know.

23 Q. Okay. Now, November 7th, that's a Monday, right?

24 A. Yes.

25 Q. Did you stay overnight in the area, I assume?

1 A. Yes.

2 Q. So you weren't back at the lab, you don't know  
3 what was going on with the RAV4 that was at the  
4 lab?

5 A. That's right.

6 Q. Okay. You started doing -- Did you actually  
7 complete the burn barrels? No, you started them,  
8 then got interrupted?

9 A. Right.

10 Q. And then you went off to this -- turned out to be  
11 nothing, but at the time you thought might be a  
12 possible burial site, right?

13 A. Right.

14 Q. And that took up a good part of your day, sounds  
15 like?

16 A. Correct, from about 12:30 to quarter to 6.

17 Q. Okay. So did you do anything else later that  
18 evening, then?

19 A. We went back to the garage in Chilton and  
20 continued sifting the barrels.

21 Q. Now, by sifting the barrels, are you talking  
22 about using that same contraption you mentioned  
23 earlier?

24 A. Yes.

25 Q. Is that something you always have with you, in

1           your van?

2    A.    Yes.

3    Q.    Yes?

4    A.    Yes.

5    Q.    Okay.  Not something you brought specifically for

6           this case?

7    A.    No.

8    Q.    And then the next day, November 8th, you started

9           off back at the sheriff's department, right?

10   A.    Yes.

11   Q.    We're talking about here in Chilton?

12   A.    Yes.

13   Q.    These barrels, where were they kept?

14   A.    In the service garage behind the sheriff's

15           department.

16   Q.    And when you got there, was there -- were they in

17           any kind of container or were they just sitting

18           out in the garage?

19   A.    When we first arrived they were in an enclosed

20           trailer.

21   Q.    That's the day before?

22   A.    Right.

23   Q.    And was that sealed with any kind of evidence

24           tape?

25   A.    I believe the door to the garage had been sealed

1           with evidence tape. And the trailer had a  
2           padlock on it. I don't recall if that had  
3           evidence tape on it or not.

4       Q.   And there's no other door to the garage from the  
5           interior; this is a detached garage?

6       A.   Detached garage.

7       Q.   Okay. And the gentleman that you said was  
8           helping you was Jeremy Hawkins; is that right?

9       A.   (No verbal response.)

10      Q.   And to your knowledge is -- he is employed with  
11           Calumet County Sheriff's Department, right?

12      A.   Yes.

13      Q.   And to your knowledge, he is certainly qualified  
14           to be evidence collection specialist, right?

15      A.   I believe he presented himself as their evidence  
16           caretaker.

17      Q.   He is the main guy, right?

18      A.   I believe so.

19      Q.   Did you see him out at the scene on November 5th?

20      A.   No, I did not.

21      Q.   Or 6th?

22      A.   No.

23      Q.   All right. This fifth barrel that you examined  
24           was on the morning of Tuesday, November 8,  
25           correct?

1 A. Correct.

2 Q. And the photograph, I think is still in front of

3 you, that you discussed before, that's the --

4 that's a photograph you took before searching it?

5 A. No, we didn't take that photograph.

6 Q. Who took that photograph; do you know?

7 A. I don't know.

8 Q. Did you take photographs of it before you started

9 searching?

10 A. No.

11 Q. Why not?

12 A. Because it had been removed from where it had

13 been, transported, and then our goal was to sift

14 it and recover what --

15 (Court reporter couldn't hear.)

16 A. Our goal there was to sift the contents. Any

17 documentation of the barrels at the scene, that's

18 -- that was done by somebody else.

19 Q. It may or may not be the way it looked, you don't

20 know?

21 A. No, I don't know. I was presented this this

22 morning and asked if that looked like the fifth

23 barrel, and it does to me.

24 Q. All right. But in terms of it -- it's -- what it

25 looked like out there on the scene; have you seen

1           -- have you ever seen a photograph that shows  
2           that?

3    A.   He showed me several photographs, one of them was  
4           further away and it had the wheel that was in the  
5           barrel when I saw it, because this photograph  
6           doesn't have the wheel in it.

7    Q.   Right.

8    A.   So I asked about the wheel.  He said, oh, yeah,  
9           there's another photograph that shows the wheel.  
10           They took the wheel, out looked inside.

11   Q.   And that photograph shows the wheel on the  
12           ground, next to it, right?

13   A.   Right.

14   Q.   All right.  So you were never brought to the  
15           scene of wherever that burn barrel was, yourself?

16   A.   No.

17   Q.   So, you never actually saw it, you know, in situ,  
18           so to speak, wherever it was located, and that's  
19           why you didn't take photographs of it?

20   A.   Well, they -- I recall that there was a burn  
21           barrel on the driveway and that's where I was  
22           told this one had been.

23   Q.   But you didn't go up and examine it?

24   A.   No, did not examine it.

25   Q.   The -- One of the things you say that you do is



1 scene photography, right?

2 A. Yes.

3 Q. And, generally, that's supposed to be one of the  
4 first things that's done at the scene before  
5 anybody starts searching, right?

6 A. Right.

7 Q. So, for instance, had you been asked to go into  
8 Mr. Avery's residence on the night of  
9 November 5th, very first thing you would have  
10 done, before anybody looks anywhere, is take  
11 photographs, right?

12 A. Correct.

13 Q. And had you been asked to go into Mr. Avery's  
14 garage first, the very first thing you would have  
15 done would be to take photographs showing exactly  
16 what it looked like, right?

17 A. Correct.

18 Q. Before there's any kind of markings, or chalk  
19 circles, or anything like that, right?

20 A. Sure.

21 Q. You want to get a nice good photograph that  
22 really captures everything that's in there, all  
23 the junk that you mentioned?

24 A. Yes.

25 Q. And the location of all the items, right?

1 A. Correct.

2 Q. And only then, after you photographed and  
3 documented the scene, do you start moving things  
4 around, collecting, whatever?

5 A. Correct.

6 Q. Because once you do that, you have altered the  
7 scene?

8 A. That's correct.

9 Q. And when you were called over to this burn area,  
10 behind the garage, you didn't take any  
11 photographs then either, did you? And that's  
12 because the scene had been altered before you  
13 arrived; isn't that right?

14 A. Yes.

15 Q. And, in fact, you expressed concern at one point,  
16 to the investigators in this case, that you had  
17 been unable to make a more thorough record  
18 because you were not used for the complete scene  
19 processing; isn't that right?

20 ATTORNEY FALLON: Objection to the term  
21 concern; it's speculation.

22 ATTORNEY BUTING: All right. We'll get  
23 more specific then.

24 THE COURT: All right.

25 Q. (By Attorney Buting)~ Mr. Ertl, showing you

1 Exhibit No. 160, can you identify that, please.

2 A. It's an email to and from Tom Fassbender and  
3 myself. He emailed me and I replied to him.

4 Q. All right. And in this email, I don't know that  
5 we need to put it up on the ELMO, you are  
6 explaining why you did not take photographs of  
7 either the burn pit area or where the license  
8 plate vehicle was; is that right?

9 A. Correct.

10 Q. And in that you -- you state, in regards to the  
11 burn pit, our involvement began with a request to  
12 use our sifting equipment; the scene had  
13 obviously been altered at that point; is that  
14 right?

15 A. Correct.

16 Q. And, then, would you go on and read the next  
17 sentence, please. Read it out loud.

18 A. I'm trying to find it; I was not following along,  
19 I was recollecting.

20 Q. Second paragraph on the top there, had we.

21 A. Had we been working any of these scenes from  
22 start to finish, there would likely have been  
23 more thorough photo records, done by us.  
24 However, under the circumstances, we were merely  
25 able to provide technical assistance rather than

1 complete scene processing.

2 Q. Okay. So, more typically, if you are called to  
3 the scene to process ev -- potential evidence,  
4 you are able to do so from start to finish,  
5 right?

6 A. I would say the majority of cases, when we arrive  
7 at the scene, we are given over control and we  
8 take the lead.

9 Q. Okay.

10 A. And process it according to the way we would  
11 normally process.

12 Q. Okay. And Mr. Fassbender didn't let you do that  
13 in this case, did he?

14 A. In this case, I don't believe that would have  
15 been possible, due to the size of the scene.

16 Q. Sure, but -- Because of the 40 acres or whatever?

17 A. Yes.

18 Q. But with regard to this, Mr. Avery's residence,  
19 Mr. Fassbender didn't let you do that, right?

20 A. He didn't request that we do that?

21 Q. By the time you went into Mr. Avery's residence,  
22 it was clear someone else had already been  
23 through it, right?

24 A. Yes.

25 Q. And with regard to Mr. Avery's garage, or

1 detached garage next to his residence,  
2 Mr. Fassbender didn't allow you to do that  
3 complete scene processing there either, did he?

4 ATTORNEY FALLON: Objection to the use of  
5 didn't allow. The question is -- it's improper as  
6 to --

7 ATTORNEY BUTING: I will rephrase.

8 THE COURT: Thank you.

9 Q. (By Attorney Buting)~ He didn't ask you to do  
10 that?

11 A. He did not.

12 Q. Okay. And, likewise, with this burn area, by the  
13 time you arrived, it was impossible for you to do  
14 a complete scene processing because someone else  
15 had been altering it, right?

16 A. Correct.

17 ATTORNEY BUTING: Judge, I have a lot to go  
18 yet; we may want to take a break?

19 THE COURT: All right. We'll take our  
20 lunch break at this time. Members of the jury,  
21 again, do not discuss this case during your lunch  
22 hour and we'll see you after lunch.

23 (Jury not present.)

24 THE COURT: We're now outside the presence  
25 of the jury. You may be seated. I will indicate,

1       for the record, there was a request by the defense  
2       for a side bar earlier and that was for the purpose  
3       of raising an issue as to whether or not the defense  
4       had all of the pages from this witness' report.  
5       It's my understanding the parties are going to  
6       explore that issue over the noon hour?

7               ATTORNEY STRANG:  It's not really even an  
8       issue your Honor.  I suspect that the State doesn't  
9       have the last 14 pages either, because otherwise we  
10      would.  If it turns out that we both have them  
11      already, that's fine.  There is no issue.  I don't  
12      expect these will affect the cross-examination or  
13      that there's been any tendency to hamper the  
14      cross-examination if, in fact, we don't have -- it's  
15      just the last 14 pages of the Crime Lab evidence log  
16      form.

17             THE COURT:  All right.  And I also asked if  
18      -- I had Exhibit 89 as I was coming back in here.  
19      Along those lines, counsel, there was a question  
20      raised late last week as to whether Exhibit 89 had  
21      been admitted, I checked with the court reporter  
22      from Wednesday and he indicated toward the end of  
23      the day, I think the Court asked if all the exhibits  
24      that had been marked were to be admitted and there  
25      was no objection from the parties.

1                   But it's -- My recollection is that this  
2                   may not be the only exhibit that's been marked,  
3                   but was not intended by the parties to be  
4                   admitted. So I would ask, over the noon hour, if  
5                   you could go over your list of exhibits and make  
6                   sure we determine whether or not there were any  
7                   other exhibits that had been listed as admitted  
8                   but were not intended by the parties to be  
9                   admitted. I think Exhibit 89 here may be one of  
10                  those. We'll deal with that at the end of the  
11                  day. Anything else before we break for lunch?

12                  ATTORNEY STRANG: I think the State  
13                  prepared an order for your Honor's signature on  
14                  personnel records that we have requested. That  
15                  order is in acceptable form to the defense.

16                  THE COURT: All right. Let's resume at  
17                  1:15.

18                               (Noon recess taken.)

19                               (Jury present.)

20                  THE COURT: At this time, Mr. Buting, you  
21                  may resume your cross-examination.

22                  ATTORNEY BUTING: Thank you, your Honor.

23                               **CROSS-EXAMINATION CONTD**

24                  BY ATTORNEY BUTING:

25                  Q. All right. Mr. Ertl, I'm not exactly sure where

1           we left off, but let's talk about luminol for a  
2           minute?

3    A.    All right.

4    Q.    Luminol is this substance that reacts to a number  
5           of different things besides just blood, right?

6    A.    That's correct.

7    Q.    Other kinds of chemicals, you mentioned cleaning  
8           agents, bleach reacts real highly to that, very  
9           strong?

10   A.    Yes.

11   Q.    Which means very bright?

12   A.    Bright and fast, yes.

13   Q.    Okay.  What about other kinds of things,  
14           transmission fluid perhaps, oils, things of that  
15           nature?

16   A.    I know it reacts with some metals, copper and  
17           lead in particular.  Transmission fluid might  
18           have some metals ground into it, so it's  
19           possible.

20   Q.    Okay.  Maybe it would not be as strong a  
21           reaction, maybe some -- a faint reaction,  
22           something like that?

23   A.    Perhaps.

24   Q.    Okay.

25   A.    I'm not sure.



1 Q. And this is a garage -- Let's go to the garage  
2 floor for a minute, where you said you had a  
3 faint reaction in this little area, 3 X 4 area.  
4 A. Right.  
5 Q. Not a real bright, quick reaction like you get  
6 with bleach, for instance?  
7 A. Right.  
8 Q. And the area, then, you then sampled and tested  
9 with phenolphthalein, after that, right?  
10 A. That's correct.  
11 Q. You turn the lights and then you used these very  
12 sensitive phenolphthalein tests to see if there's  
13 any possible blood?  
14 A. Correct.  
15 Q. And that would be human or animal, right?  
16 A. That's correct.  
17 Q. And that particular area, you didn't find any --  
18 any kind of blood reaction at all?  
19 A. That's correct.  
20 Q. But there were some other samples of blood that  
21 had been recovered earlier, as far as you could  
22 tell?  
23 A. That's what I was told.  
24 Q. And do you know, did you ever find out what the  
25 results of those blood -- whose blood it was or

1           wasn't?

2    A.    No.

3    Q.    That comes later, not part of your

4           responsibilities; is that right?

5    A.    That's correct.

6    Q.    Okay. All right. Let me switch and talk with

7           you for a few minutes about the burn pit, okay.

8           You talked about some experience that you had

9           being called out to the woods to look at bones or

10          something of that nature?

11   A.    There had been a couple of burial sites and one

12          in particular earlier that year that it involved

13          burning.

14   Q.    Okay. And so you're -- you have enough

15          experience to be able to recognize bones?

16   A.    Yes.

17   Q.    Not necessarily distinguish human bone from

18          animal bone, but you can kind of tell what's bone

19          and what's rock and that sort of thing?

20   A.    Yeah, I could -- maybe not all kinds of rock, but

21          bone from say plant materials, piece of bark.

22   Q.    Bone from -- you mean you can distinguish bone

23          from plant materials or bark?

24   A.    I have a -- as you pointed out, I have a

25          background in plant biology, so I feel

1 comfortable with plant materials versus bone, but  
2 not so comfortable distinguishing, say, some  
3 limestone versus a piece of bone.

4 Q. Okay. And, you know, you are not actually a  
5 forensic anthropologist?

6 A. No, I'm not.

7 Q. Did -- To your knowledge, did Mr. Fassbender call  
8 a forensic anthropologist out to the scene of the  
9 burn pit?

10 A. Not to my knowledge.

11 Q. Or Mr. Wiegert?

12 A. No, not to my knowledge.

13 Q. Okay. Now, you talked about excavating this site  
14 a little bit. Do you know how a possible bone  
15 site is supposed to be searched by, you know,  
16 what an archaeologist or forensic archaeologist  
17 or anthropologist would do?

18 ATTORNEY FALLON: Objection, compound  
19 question, which is it?

20 Q. (By Attorney Buting)~ Archeologist.

21 A. I have no training in archaeology. We do  
22 excavate burial sites differently than we  
23 excavated this ash pile.

24 Q. Okay. And when you do that, one of the very  
25 first things you do is make sure that you

1           documented, with photographs, before the site has  
2           been altered, right?

3    A.    That would be the first step.

4    Q.    And that, in fact, you take numerous photographs,  
5           throughout the process, documenting it before,  
6           during and after, right?

7    A.    Quite often, yes.

8    Q.    And that you -- The proper way is to sort of  
9           establish a contamination path, let's call it, an  
10          area outside of the area that you think might be  
11          worthy of excavation, where you are allowed to  
12          walk back and forth and back and forth and not  
13          worry about contaminating anything; is that  
14          right?

15   A.    Well, that's generally true with most crime scene  
16          items.

17   Q.    All right.

18   A.    You want to limit the access to the site in some  
19          way.

20   Q.    Okay. But when it comes to excavating one of  
21          these sites where there might be a burial site,  
22          for instance?

23   A.    Yes.

24   Q.    You divide it up into -- either with string, or  
25          something, you ideally would have four posts

1       outlining the area with strings and then dividing  
2       it up into various squares or quadrants; are you  
3       familiar with that?

4    A.   I'm familiar with that, in my little knowledge of  
5       archaeology, I have seen that done. I have  
6       worked with forensic anthropologists at burial  
7       sites and they have not done that.

8    Q.   All right. But one of the things, when you do  
9       that is, you work from the outside in. In other  
10       words, from where the outer edge is, where your  
11       path is, you work your way -- the outer edges  
12       first and then you work your way into the center  
13       so that you can do the entire area?

14   A.   Well, usually with a burial site, your first goal  
15       is to define the extent of the hole. So, once  
16       you have defined the perimeter, then you work  
17       outside of that and dig down alongside of where  
18       you think the burial site actually is. And then  
19       you excavate from down and sides and underneath  
20       to the core --

21   Q.   Okay.

22   A.   -- to where the body would be.

23   Q.   Sort of outside, into the middle, right?

24   A.   Correct.

25   Q.   Generally. And when you do recover an item, in

1           the course of that excavation, it's important  
2           that you make note of exactly where in that --  
3           within that perimeter area you find that bone or  
4           that item, right?

5   A.   In my past experience, we would, if the body is  
6           intact, we would locate where the head is, where  
7           the shoulders, the joint, and the hands would be,  
8           where the hips are, the knees, and the feet, just  
9           to get the orientation of the body in the grave.

10  Q.   Okay. Now, at this site, you didn't have a  
11           perimeter with a containment path around it,  
12           right? I mean, it was being worked on by the  
13           time you got there, right?

14  A.   Well, it wasn't a burial, per se, so it wasn't a  
15           great perimeter; there was a scooped out area of  
16           dirt with ashes.

17  Q.   Right.

18  A.   So the ashes was our perimeter.

19  Q.   Okay. But somebody would use the shovel -- you  
20           said mostly you, but sometimes others -- and dig  
21           up a portion, then bring it over to be sifted,  
22           right?

23  A.   Right.

24  Q.   And this area, the whole area that was excavated,  
25           was about how big?

1 A. Probably roughly the size of this table I'm  
2 sitting at.

3 Q. And nobody -- When you would bring over a shovel  
4 here or shovel there, nobody made or kept track  
5 of where exactly in that -- I guess we should  
6 identify it for the record. The area is what,  
7 maybe 5 X 4?

8 A. 5 X 4 feet, yeah.

9 Q. Okay. Nobody made or kept track of where, within  
10 that area, any particular suspected bone may have  
11 been, right?

12 A. No.

13 Q. And if any -- any suspected bone was found  
14 outside of that area, nobody made specific note  
15 of just where, outside of that area, that came  
16 from either, did they?

17 ATTORNEY FALLON: Objection, calls for  
18 hearsay knowledge. And it's non-specific as well in  
19 term of who, what, and where.

20 THE COURT: Well, as far as hearsay, I  
21 understand you to be questioning this witness -- I'm  
22 assuming he's asking the witness, based on his own  
23 knowledge. What was the remainder of your  
24 objection?

25 ATTORNEY FALLON: It's non-specific in

1 terms of what was found where, when, by whom. If  
2 he's asking the witness what he may have done and  
3 what he may have documented, that's certainly  
4 appropriate. But what anyone else may have found,  
5 done, or documented is ...

6 THE COURT: I will ask you to rephrase the  
7 question for clarification.

8 Q. (By Attorney Buting)~ All right. I guess the  
9 point here is that various items of suspected  
10 bone were brought to you to be sifted. I mean  
11 various areas of dirt, or whatever, were brought  
12 to you to be sifted, and then suspected bone  
13 fragments were found, right?

14 A. Correct.

15 Q. But to your knowledge, neither you nor anyone  
16 else would specifically identify where in this  
17 area that particular piece of bone came from?

18 A. No. Everything that was collected in this area  
19 was placed together in a box.

20 Q. This area being that 4 X 5 feet ...

21 A. 4 X 5 foot ash pile was placed together in a box,  
22 just as we had done with the burn barrels.

23 Q. And did you find anything -- Did you sift  
24 anything outside of that pit area, on the grass,  
25 or farther over above where the dog was in that



1 picture, on the mound, or anything like that?

2 A. No, we were restricted to the ash pile.

3 Q. Okay. And you just worked on it that one

4 evening?

5 A. Yes.

6 Q. You didn't come back the next day to do any

7 further work?

8 A. No, that was the last day I was there.

9 Q. And that was done, actually, at night, you said?

10 A. Well, we worked up until it got dark.

11 Q. Was it daylight when you got there?

12 A. It was approximately from 3:00 p.m. to 5:00 p.m.

13 Q. Okay. So it was daylight for part of it and then

14 you kept working until it got too dark?

15 A. Got too dark.

16 Q. And you went walking around the -- during your --

17 your -- how many days was it there, three days,

18 four days?

19 A. Saturday, and came back for Sunday, Monday,

20 Tuesday.

21 Q. Okay. So during your four days there, you walked

22 around different areas and looked at different

23 buildings on the 40 acre property, right?

24 A. Yes.

25 Q. Testified to that. Did Mr. Fassbender or

1           Mr. Wiegert ever escort you to a aluminum smelter  
2           on the property?

3    A.    No.

4    Q.    You never saw the smelter on the property at all,  
5           did you?

6    A.    No, I didn't.

7    Q.    And you are the one who has the experience  
8           finding bones, right?

9    A.    I have some, yes.

10   Q.    So if somebody had brought you over to the  
11          smelter, you would have been able to look  
12          carefully, with your experience, to see whether  
13          there was any evidence, fragments of bones, or  
14          whatever, in or around that smelter area,  
15          couldn't you?

16   A.    I don't know much about aluminum smelters.  If  
17          there were something to look at, I could have  
18          looked at it.

19   Q.    Okay.  But you did not, because no one escorted  
20          you there, no one showed you the smelter?

21   A.    I didn't know anything about an aluminum smelter.

22   Q.    What about a big wood furnace?

23   A.    No, I don't know anything about that.

24   Q.    Never looked inside of a wood furnace that was on  
25          the property, to see if there was evidence of

1 bone, or --

2 A. No, I did not.

3 Q. -- zippers, pulls, anything like that?

4 A. No.

5 ATTORNEY BUTING: All right. Thank you  
6 very much, sir.

7 THE COURT: Any redirect?

8 ATTORNEY FALLON: Yes, Judge. Thank you.

9 **REDIRECT EXAMINATION**

10 BY ATTORNEY FALLON:

11 Q. Couple of points, Mr. Ertl. First of off --  
12 First all -- First of all, I would like to ask  
13 you about this question, relative to the  
14 transportation of the SUV. Counsel asked you if  
15 you could have remained and helped with other  
16 searches, instead of going with the vehicle to  
17 Madison. What is the protocol, what is the  
18 recommended procedure for the Crime Lab analyst  
19 when there are two of you there with a critical  
20 piece of evidence like the SUV?

21 A. Well, I was asked if we could get the vehicle  
22 back to the laboratory and asked to see if I  
23 could expedite getting work done on it, prior to  
24 Monday morning.

25 Q. Who asked you to do that?

1 A. It was either Investigator Wiegert or Special  
2 Agent Fassbender.

3 Q. All right. Now, in terms of transportation of a  
4 key piece of evidence like that, is there a  
5 concern on the part of the analyst that the  
6 evidence be transported safely?

7 A. Well, definitely. I wanted it enclosed. It is  
8 now in my custody. We could have turned it over  
9 to Calumet County and they could have taken  
10 custody and dealt with getting to it to the  
11 laboratory.

12 Q. But you took control of the SUV, correct?

13 A. Correct.

14 Q. All right. And to ensure that it was safely  
15 transported to the Crime Lab, without incident,  
16 took two of you to do it?

17 A. Correct.

18 Q. All right. Now, counsel asked you a couple of  
19 hypotheticals about the presence of a certain  
20 Toyota key and the possibility of DNA on that  
21 key. Well, Mr. Ertl, we have person number one  
22 who's the owner of the key; person number two who  
23 does not own the key, but at some point obtains  
24 possession of the key. And during the course of  
25 obtaining possession of the key, actively bleeds

1           on the key, wipes the bleed off the key.

2                   It's not entirely unexpected that you  
3           would find the DNA profile of the person who  
4           possessed the key and who wiped the blood off the  
5           key, that's not an unusual finding, would it not?

6   A.   Well, in that situation, you would have two  
7           activities promoting finding the second person  
8           rather than the first person.  If you bleed on  
9           the key, now you are supplying a large quantity  
10          of your own DNA.  And even if the other person's  
11          DNA is there, you may mask them because now you  
12          have actual bodily fluids rather than stray skin  
13          cells.

14                   So there's more DNA in blood than I  
15          would expect to find from something that had been  
16          touched.  So you could cover over the other DNA.  
17          And if you then wiped it off, now you are  
18          physically removing potentially all the DNA  
19          that's present, the first person and the second  
20          person.

21   Q.   And if the second person, not the original owner  
22          of the key, had possession of that key for four  
23          days, one would expect that you are most likely  
24          going to find the profile of the person who last  
25          possessed the key; isn't that true?

1 A. As you explained it, I would expect, yes, to find  
2 the second persons.

3 Q. And it would not be unusual at all to find no  
4 other DNA profile on that key, would it?

5 A. No, that would be not unusual.

6 Q. In fact, the likelihood of that occurring is  
7 enhanced by the fact that person number two  
8 actually had possession of the key for say four  
9 days at a minimum?

10 A. The longer the time you would expect more contact  
11 more possibility for DNA being deposited.

12 Q. Now, let's talk a little bit about this  
13 contamination issue. The fact that certain bits  
14 of evidence can become "contaminated", is not all  
15 that unusual is it?

16 A. The fact that it can happen?

17 Q. Yes.

18 A. It is not unusual and it is expected and we take  
19 precautions to prevent that.

20 Q. And, as a matter fact, contamination can occur,  
21 as counsel said, during the collection of the  
22 evidence, during the transport of the evidence,  
23 and during the analysis of the evidence, as I  
24 understood your answer; is that correct?

25 A. Yes.

1 Q. All right. Well, it's also possible that  
2 contamination of a crime scene could occur before  
3 law enforcement even arrives?

4 A. Correct.

5 Q. And, as a matter of fact, in your experience,  
6 it's not unusual at all for perpetrators of  
7 crimes to take efforts to alter crime scenes, is  
8 it?

9 A. That's quite common to -- to see attempts being  
10 made to clean up.

11 Q. All right. And what types of efforts have you  
12 seen certain suspects undertake to clean up, as  
13 you say, a crime scene?

14 ATTORNEY BUTING: Objection, now we're  
15 getting too far afield of this case.

16 ATTORNEY FALLON: I disagree heartily,  
17 counsel went down this road, we're entitled to  
18 respond.

19 THE COURT: I'll give you a little  
20 latitude.

21 Q. (By Attorney Fallon)~ Continue.

22 A. I have seen cases where it was a shooting in a  
23 carpeted area, we saw some of the blood spatter  
24 pattern we talked about previously, up on the  
25 ceiling, on some of the furniture. And there was

1           absolutely no apparent blood on the carpeting.  
2           So we saw a fine, hard to see mist of blood. And  
3           you would expect to see, then, something on the  
4           carpeting, if someone had been shot there. There  
5           was a Rug Doctor sitting next to it, this area.  
6           They had rented the Rug Doctor and shampooed the  
7           carpet. When we ripped up the carpet, a large  
8           blood pool, on the floor under the carpeting, had  
9           soaked into the padding. So they had obviously  
10          attempted to clean the blood pool from the  
11          shooting.

12       Q.   And is it possible to clean up blood with certain  
13           reagents such as bleach?

14       A.   Yes. Bleach is very effective. We use bleach in  
15           the laboratory to clean our work areas. It  
16           actually destroys DNA. Destroys the blood. It  
17           decontaminates it. It's very useful for that.

18       Q.   All right. Now, another thing about this  
19           contamination issue, just so we're clear; does  
20           contamination transform one person's DNA profile  
21           into that of another?

22       A.   It cannot change a DNA profile. It can hide a  
23           DNA profile, though.

24       Q.   So what you would have, then, is a mixture?

25       A.   You could have a mixture, or you could fail to



1           see the first person, if the second person  
2           deposited a much greater quantity of DNA.

3       Q.    But it's still interpretable, is it not?

4       A.    Yeah, you would see DNA types and you would be  
5           able to interpret them.

6       Q.    So, I take it it's still possible, then, to have  
7           reliable findings, notwithstanding that type of  
8           contamination?

9       A.    It's possible.

10      Q.    Now, returning, again, to the question counsel  
11           asked about actively bleeding; if a suspect was  
12           actively bleeding and entered a vehicle, you  
13           would expect to find an impact bloodstain, would  
14           you not; that would not be uncommon?

15      A.    If they were actively bleeding and blood was  
16           dripping from them, then an impact stain would be  
17           the blood falling off of the person and gravity  
18           pulling it to the floor and hitting, that would  
19           be the impact.

20      Q.    All right.  And what is a contact stain?

21      A.    That's where I'm bleeding, have blood on an item,  
22           and the item touches another item.  And now I  
23           leave some blood on the second item.

24      Q.    And you would expect to find that as well, if a  
25           person was actively bleeding and had been in a

1           particular vehicle that was -- that is now  
2           undergoing an examination?

3       A.    If they had touched something with a bloodied up  
4           hand or whatever, then you would expect some  
5           transfer of blood.

6       Q.    Even if it was just a cut on the finger?

7       A.    Sure.

8       Q.    Is it possible -- Well, before I get there, what  
9           is -- are you familiar with a phrase called a  
10          transfer stain?

11      A.    Well, that's a transfer of blood from one item to  
12          another --

13      Q.    So --

14      A.    -- by contact.

15      Q.    -- you are thinking that contact and transfer is  
16          one in the same concept?

17      A.    Yes.  And I am not a blood spatter pattern  
18          expert.  I have just -- I have been to some  
19          training.  I am able to recognize it when I see  
20          it, but I don't interpret it.  So I don't know  
21          all the specific jargon about swipes and wipes;  
22          and contacts and transfers; high impact,  
23          immediate impact, and low impact castoff.  I'm  
24          familiar with the terms, but I couldn't  
25          necessarily tell you that that's a transfer not a

1 contact, or a swipe not a wipe.

2 Q. Well, returning, again, to our example of the  
3 person one and person number two and person one  
4 being the owner of the key and person two being  
5 the last one to possess the key. Well, if person  
6 number two had been actively bleeding, entered a  
7 vehicle holding the ignition key in their right  
8 hand and then attempted to start the vehicle, it  
9 would not be unusual at all to find a contact  
10 stain near the ignition in that vehicle?

11 ATTORNEY BUTING: Objection to the  
12 characterization of not unusual. There's no factual  
13 distinction as to how that would occur.

14 THE COURT: I will sustain the objection  
15 based on the form of the question.

16 Q. (By Attorney Fallon)~ Would you expect to find a  
17 contact stain on the ignition?

18 A. If the person were bleeding with their right  
19 hand --

20 Q. A cut on the --

21 A. -- operating a key with the right hand and trying  
22 to start the ignition, I wouldn't think it would  
23 be unusual at all to find blood on the key and on  
24 the ignition.

25 (Court reporter couldn't hear.)

1 A. And on the ignition.

2 Q. Now, counsel asked you a series of questions and  
3 I want to talk a little bit more about this blood  
4 spatter issue. You can have a crime scene, and  
5 let's just take something like a stabbing, in  
6 which there was blood at the scene; are you  
7 always going to find evidence of a blood spatter  
8 stain?

9 A. No, it would depend on circumstances?

10 Q. What types of circumstances?

11 A. I can think of a case, not too long ago, where a  
12 woman had been stabbed in her bed and there was,  
13 you know, the blankets and the comforter over her  
14 and was stabbed through that, repeatedly, and yet  
15 there was no evidence of blood in the room, other  
16 than bleeding out of her.

17 And the idea was that the knife going  
18 through the bedding and then being pulled out  
19 again, it wiped off the blood. It went in, came  
20 out, came out clean. And so there was no chance  
21 for the blood to fly off the knife and end up on  
22 the ceiling or on the floor. So it was a very  
23 clean scene. All the blood was contained just to  
24 the bedding and to the victim and under the  
25 sheets.

1 Q. And if you wanted to further cover up the crime,  
2 then you could certainly burn all the bedding,  
3 couldn't you?

4 A. Certainly.

5 Q. So in effect, then, it is possible to clean up a  
6 crime scene?

7 A. Most certainly. Most crime scenes do get cleaned  
8 up and people continue to live in them, the  
9 houses or whatever.

10 Q. But it would be -- Is it possible, based on your  
11 training and experience, for instance, to have a  
12 pool of blood and, say, on a garage floor, have  
13 it cleaned up to such an extent that you would  
14 not get a reaction to a phenolphthalein test?

15 A. Well, knowing what I know, I could probably do  
16 it. Bleach would be a good thing, some sort of  
17 peroxide would be a good way to get rid of the  
18 red color. The bleach would destroy the blood  
19 and the DNA.

20 Q. So it's possible?

21 A. It's possible, yes.

22 ATTORNEY FALLON: Your witness.

23 THE COURT: Mr. Buting.

24 ATTORNEY BUTING: Sure.

25 **RE CROSS-EXAMINATION**

1 BY ATTORNEY BUTING:

2 Q. This other case you mentioned, where the  
3 gentleman -- find it on my notes for a second,  
4 please. Yeah, where there was a shooting, body  
5 on the carpet or something and you were surprised  
6 that there was no evidence of blood on the  
7 carpet?

8 A. Correct.

9 Q. But that was explained because the Rug Doctor Was  
10 there, right?

11 A. Right.

12 Q. But there was blood on the ceiling.

13 A. Correct.

14 Q. And blood on the wall?

15 A. Yes.

16 Q. And when you rip up the carpet, there's a pool of  
17 blood underneath the carpet, right?

18 A. That's right.

19 Q. So cleaning a carpet, blood soaks through fabrics  
20 pretty well, doesn't it?

21 A. Yes.

22 Q. So, in that instance, whatever the gentleman or  
23 defendant did, was not good enough. He didn't  
24 rip up the carpet and clean the pad underneath  
25 it, right?

1 A. Right.

2 Q. Now, in this case, are you aware that they ripped  
3 all the carpet out and the pad out of Mr. Avery's  
4 house?

5 A. I didn't know that.

6 Q. Okay. So you don't know what's -- whether the  
7 carpet and the pad and all that was tested for  
8 blood in his house or not?

9 A. I don't know.

10 Q. Okay. Well, we'll get to that later. But in any  
11 event, you did not see any blood spatter on his  
12 ceiling, right?

13 A. That's correct.

14 Q. Or on the walls of the bedroom?

15 A. That's correct.

16 Q. And the walls are paneling, right?

17 A. I believe so.

18 Q. Are you aware that they ripped the paneling out  
19 of -- off the walls and took all that out to the  
20 Crime Lab too?

21 A. No, I wasn't aware of that either.

22 Q. That came later in the case and you weren't  
23 involved in that; is that right?

24 A. Right.

25 Q. Okay. You also told us a story about the guy who

1           apparently stabbed some woman on the mattress and  
2           there was no cast off because he was stabbing her  
3           through the bedding, right?

4   A.    Correct.

5   Q.    In other words blankets and comforter on top of  
6           the body as it's being stabbed --

7   A.    Correct.

8   Q.    -- right? But -- And so in that instance, there  
9           wasn't cast off blood that would hit the ceiling,  
10          or walls, or other objects in the room; is that  
11          what you are saying?

12   A.    That's correct.

13   Q.    But, I assume the person did bleed down into the  
14          mattress, right?

15   A.    Yes.

16   Q.    And there was a blood soaked mattress in that  
17          case, wasn't there?

18   A.    Yes.

19   Q.    And Mr. Fallon asked you if someone would be able  
20          to get rid of that evidence in that instance by  
21          burning the bedding, right?

22   A.    That's correct.

23   Q.    Any evidence that a mattress was burned in this  
24          case?

25   A.    Not that I recall.



1 Q. Did you see any bed springs in the burn pit?  
2 A. No.  
3 Q. Or in the burn barrel?  
4 A. No.  
5 Q. In fact, when you went to the Avery's bedroom  
6 there was a mattress there, wasn't there?  
7 A. There was.  
8 Q. And a box spring?  
9 A. Yes.  
10 Q. And there was no bloodstain on it was there?  
11 A. No, there wasn't.  
12 Q. Are you familiar with any of the studies of the  
13 transfer of trace DNA from one's fingers to  
14 objects they pick up?  
15 A. Yes.  
16 Q. Are you familiar with Dr. Lee's reports, study?  
17 A. Not in particular.  
18 Q. Okay. Trace isn't really your specialty?  
19 A. No.  
20 Q. So you are not aware of whether they have done  
21 tests that have -- that have determined what the  
22 likelihood is of the person number one's DNA  
23 still being on it when person number two handles  
24 it; is that right?  
25 A. I do know that it varies from person to person,

1           how much DNA you deposit on things.

2       Q.    Okay.  But, in fact, when using the hypothetical  
3           Mr. Fallon had, person number two is handling the  
4           key after person number one, the more common  
5           finding would be two people's DNA, wouldn't it?

6       A.    If they were each just handling.

7       Q.    Okay.  Any evidence of blood on the key in this  
8           case, that you are aware of?

9       A.    I know nothing of the key; I didn't ever see the  
10          key.

11      Q.    Okay.  And you said you were looking for blood,  
12          but you knew this was -- by then, by the time you  
13          went into the house, you knew that there was a  
14          Toyota RAV4 that had been seized and taken to the  
15          Crime Lab, right?

16      A.    Yes.

17      Q.    So if you had walked in that bedroom and seen,  
18          right in plain view, a car key that looked like a  
19          Toyota car key, you would have made note of that,  
20          wouldn't you?

21                   ATTORNEY FALLON:  Objection, beyond the  
22          scope of redirect.

23                   ATTORNEY BUTING:  You talked about the key.

24                   ATTORNEY FALLON:  Not in that context.

25                   THE COURT:  I'm going to sustain the

1 objection.

2 ATTORNEY BUTING: All right.

3 THE COURT: I think that question has  
4 already been asked and answered, as well.

5 ATTORNEY BUTING: Okay. That's all I have.  
6 Thank you, sir.

7 THE COURT: All right. The witness is  
8 excused. Mr. Fallon, you can call the next witness.

9 ATTORNEY FALLON: We will move Exhibit 156  
10 into evidence, please.

11 THE COURT: Any objection?

12 ATTORNEY BUTING: I'm sorry, which one is  
13 that -- I have no objection to that. And I would  
14 move Exhibit 159, 160 in as well.

15 ATTORNEY FALLON: 159 is the statement of  
16 qualifications.

17 ATTORNEY BUTING: Correct.

18 ATTORNEY FALLON: And 160 was the emails.  
19 I don't have any objection.

20 THE COURT: All right. Those exhibits are  
21 all admitted.

22 Jurors, if you want to stand up and  
23 stretch a minute before we hear our next witness,  
24 you may. And those of you in the audience, if  
25 you wish, you may.

1                   ATTORNEY KRATZ: State will call Dave  
2                   Siders to the stand.

3                   **DEPUTY DAVID SIDERS**, called as a witness  
4                   herein, having been first duly sworn, was  
5                   examined and testified as follows:

6                   THE CLERK: Please state your name and  
7                   spell your last name for the record.

8                   THE WITNESS: David Siders, S-i-d-e-r-s.

9                   ATTORNEY KRATZ: If you could back up just  
10                  about an inch from the microphone, Mr. Siders, I'm  
11                  sure we would appreciate that.

12                   **DIRECT EXAMINATION**

13                  BY ATTORNEY KRATZ:

14                  Q. Could you tell us how you are employed, sir?

15                  A. I'm employed with the Manitowoc County Sheriff's  
16                  Department, Patrol Division.

17                  Q. And how long have you been so employed?

18                  A. Employed six years, Manitowoc County Sheriff's  
19                  Department.

20                  Q. What are your duties with Manitowoc County?

21                  A. I'm assigned to the Patrol Division; along with  
22                  evidence technician; assigned to the Manitowoc  
23                  County SOS team, would be the Swat Team; along  
24                  with the Manitowoc County Dive Team.

25                  Q. Mr. Siders, were you employed with the Manitowoc

1 County Sheriff's Department on the 7th of  
2 November, 2005?

3 A. Yes, I was.

4 Q. Could you tell us, please, what your areas of  
5 responsibility were that day?

6 A. Myself, along with Sergeant Scott Senglau,   
7 Deputy Mike Bushman, and Sergeant Jason Jost  
8 responded to 12930 Avery Road, would be the Avery  
9 Salvage Yard, to assist Calumet County Sheriff's  
10 Department searching the property.

11 Q. I'm guessing our court reporter would like you to  
12 slow down a little bit too.

13 A. Okay.

14 Q. If you could do that, I would appreciate that.  
15 What were your responsibilities upon arrival at  
16 that scene?

17 A. We were to make contact with the officer in  
18 charge at the scene to get the daily duties.

19 Q. Okay. Were you given a specific job that day?

20 A. Yes.

21 Q. What was that?

22 A. We were informed by the OIC to get in search  
23 groups.

24 Q. By the what?

25 A. Officer in charge.

1 Q. All right.

2 A. To get into a search group. The search group I  
3 was in was search group A. Our team leader of  
4 that search group was Deputy Mike Bushman of the  
5 Manitowoc County Sheriff's Department.

6 We were to search the property west of  
7 the Avery residence along White Cedar Road and  
8 property north of the Avery residence, this would  
9 be a corn field just north of Avery property.

10 Q. It's that open field that I'm most concerned  
11 about today, Deputy. I'm going to direct your  
12 attention to the large screen.

13 ATTORNEY KRATZ: This is Exhibit No. 85,  
14 counsel.

15 Q. (By Attorney Kratz)~ Are you able to orient  
16 yourself as you look at that location?

17 A. Yes.

18 Q. There's a laser pointer that's right in front of  
19 you, Deputy Siders. If you take that laser  
20 pointer, please, and first tell me whether or not  
21 you and other search team members, on the 7th of  
22 November, did, in fact, search that open field  
23 north of the Avery salvage property?

24 A. Yes, the team I was in, we searched starting here  
25 and worked our way across.

1 Q. All right. And you are pointing, what would be  
2 just north of the road that travels basically  
3 east and west, which would be on the north edge  
4 of the Avery salvage property itself; is that  
5 accurate?

6 A. Correct.

7 Q. Let me ask you, Deputy Siders, were you given  
8 specific instruction as to what you were looking  
9 for?

10 A. Yes, we were basically looking for any type of  
11 clothing, whether it be a shirt, pants, shoes,  
12 any kind of object such as a cell phone, a  
13 camera, or even possibly a body.

14 Q. So at that time, that is, as of the 7th of  
15 November, a body or any human remains had not yet  
16 been found; is that correct?

17 A. That's correct.

18 Q. While searching in the area north of the Avery  
19 property, had you, yourself, made any discovery?

20 A. Yes, I did.

21 Q. And can you tell the jury what that was, please?

22 A. When we started to search the corn field or the  
23 field north of that property, I came across a  
24 burning barrel which was in my section of  
25 searching. I walked up to the burning barrel and

1 I looked inside, at which time I saw a metal rim  
2 with wires wrapped around it. It appeared to be  
3 a vehicle rim with the remains of a -- steel  
4 belts from a rubber tire.

5 Q. Deputy Siders, Exhibit No. 37, which has already  
6 been introduced into evidence in this case, it is  
7 now being shown on the screen, can you tell us  
8 what we're looking at here, please?

9 A. Yeah, this burning barrel right there is the one  
10 that I approached. And I looked inside and saw  
11 the metal rim inside.

12 Q. All right. As we look at Exhibit No. 37, as we  
13 look at that burn barrel, can you describe for  
14 the jury a little bit more specifically where  
15 your team had been searching?

16 A. Okay. My team had been searching starting from  
17 -- there's a road here, starting from back behind  
18 here and was working toward the burning barrel.  
19 I was positioned right along this area here. And  
20 the rest of the team was in a line, going across  
21 to the north.

22 Q. Now, you told the jury that upon approach of this  
23 burning barrel, that you looked inside; is that  
24 right?

25 A. Correct.



1 Q. And I think you mentioned something about a rim;  
2 what -- what is that?

3 A. It appeared to me to be like a vehicle rim, or  
4 like maybe a trailer rim to some type of vehicle.

5 Q. I'm going to show you what's already been  
6 introduced as Exhibit No. 51; can you tell us  
7 what we're looking at here?

8 A. This object here is what I observed lying on top,  
9 inside the burning barrel.

10 Q. All right. I see that the rim is outside of the  
11 burn barrel in this photograph; can you tell me,  
12 if you know, who removed the rim from inside the  
13 burn barrel?

14 A. Yes. I removed the rim from inside the barrel.

15 Q. Okay. And when you looked inside of that burn  
16 barrel, can you tell us what you saw, please.

17 A. Inside the burn barrel I saw a lot of ashes and I  
18 saw a lot of burnt, melted plastic parts. As I  
19 looked closer at these plastic parts, it appeared  
20 to be parts of a cell phone that were actually  
21 melted inside the burning barrel.

22 Q. Before I show the rest of those pictures, there's  
23 one other photo, just to orient us a little bit  
24 better. In the back of Exhibit No. 51, and now  
25 what we're looking at is Exhibit 59; do you see a

1 maroon S -- or excuse me, a maroon van?

2 A. Yes.

3 Q. Was that van there when you found the burn barrel  
4 and removed the rim from inside of it?

5 A. I can't recall if it was or not.

6 Q. Okay. Your observations were directed towards  
7 the inside; is that right?

8 A. Yes.

9 THE COURT: Deputy, actually, you can stay  
10 that distance from the microphone, I will just turn  
11 your volume down --

12 THE WITNESS: Okay.

13 THE COURT: -- if it's too loud.

14 Q. (By Attorney Kratz)~ The first exhibit that I  
15 placed in front of you has already been  
16 introduced as an exhibit. Can you tell us what  
17 number that is, please.

18 A. It's Exhibit 156.

19 Q. I'm sorry?

20 A. 156.

21 Q. Tell us what that is.

22 A. This here is the inside of the burn barrel. This  
23 is what I would actually have been looking at  
24 when I lifted the rim out of the burn barrel.

25 Q. Okay. You talked about seeing some items inside

1 of there, does Exhibit 156 look the same, or  
2 similar, as it did on the 7th of November as you  
3 looked inside that burn barrel?

4 A. Yes, it does.

5 Q. There's three other exhibits in front of you.  
6 Why don't you grab them, one at a time, tell me  
7 what exhibit number they are and what it is that  
8 you are looking at.

9 A. Next exhibit would be 154; again, this would be  
10 the plastic remains I was looking at inside the  
11 burning barrel. Parts to a cell phone.

12 Q. All right. Deputy Sider, take a look at the  
13 large screen; is that Exhibit 154?

14 A. Yes, it is.

15 Q. And, again, that's the same exhibit that's in  
16 front of you; is that correct?

17 A. Yes, it is.

18 Q. Tell me what the next exhibit in front of you is,  
19 please.

20 A. Exhibit 155.

21 Q. And what is that?

22 A. Again, that's looking inside the burning barrel  
23 at the parts that I located belonging to a cell  
24 phone.

25 Q. We're now going to show the jury Exhibit 155;

1           again, is that the same as the exhibit that's in  
2           front of you?

3    A.    Yes, it is.

4    Q.    Now, Deputy Siders, you mentioned that you could  
5           tell, just on your observation, that at least one  
6           of the electronic components that you were  
7           looking at in the bottom of this burn barrel, you  
8           believed to be a cell phone; is that right?

9    A.    Yes.

10   Q.    How did you know that?

11   A.    Closer look at the piece of plastic, I note -- I  
12           notice an M emblem on the cell phone. This M  
13           emblem as known to me to be a Motorola emblem for  
14           the company of Motorola.

15   Q.    All right. There's one more exhibit in front of  
16           you, tell me what that is, please.

17   A.    Exhibit 157.

18   Q.    And what is that?

19   A.    That's also looking inside of the burning barrel,  
20           looking at parts -- parts of a camera.

21   Q.    All right.

22   A.    Excuse me, cell phone.

23   Q.    These four exhibits, and now that the jury is  
24           looking at 157, these four exhibits are really  
25           pretty much the same, different degrees of

1           magnification or angle, but is that fair?

2   A.   That's correct.

3   Q.   Now, Deputy Siders, after witnessing or

4       discovering this burn barrel, were other law

5       enforcement officers summoned to that location?

6   A.   Yes, they were.

7   Q.   Do you know if -- or let me just ask you this, do

8       you know agents from what's known as the Division

9       of Criminal Investigation?

10  A.   Yes.

11  Q.   The scene, that is, the burn barrel itself, was

12       that scene maintained by you; in other words, did

13       you make sure that, at least while you were

14       there, nobody fooled around with the stuff that

15       was inside of it, or tampered with the evidence?

16  A.   That's correct, I maintained custody of the

17       barrel.

18  Q.   And was there anybody from the Division of

19       Criminal Investigation that you turned over

20       custody of that burn barrel to?

21  A.   Yes, there was.

22  Q.   Who was that?

23  A.   Kevin Heimerl.

24  Q.   Kevin Heimerl?

25  A.   Correct.

1 Q. Now, were you in charge of either seizing, that  
2 is, securing the burn barrel, or later searching  
3 its contents?

4 A. No, I was not.

5 Q. That was turned over to somebody else; is that  
6 right?

7 A. Correct.

8 Q. All right.

9 ATTORNEY KRATZ: With the offer of those  
10 four photographs, Judge, that's all the questions I  
11 have of this witness. Thank you.

12 ATTORNEY STRANG: I have no objection to, I  
13 think they were 154, 155, 156 already is in, and  
14 then 157.

15 THE COURT: All right. The remaining  
16 exhibits, then, will be admitted.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY STRANG:

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. Let's go back, if we could, to Exhibit 51. When  
22 you folks were assigned to start looking through  
23 the farm field north of the Avery property your  
24 assignment also included part of the Avery  
25 property?

1 A. Yes.

2 Q. So this was, really, the very beginning of the  
3 search of the field to the north?

4 A. Yes, this would be at the beginning of the search  
5 of the field.

6 ATTORNEY STRANG: Now, that's actually not  
7 the one I thought. Where was the picture right  
8 before, which had the burning barrel from a greater  
9 distance, with the trailer in the background. I'm  
10 sorry. What is the one you showed right before?

11 ATTORNEY BUTING: Thirty-seven.

12 ATTORNEY STRANG: Thirty seven, that's it.  
13 There it is.

14 Q. (By Attorney Strang)~ Now, that red trailer in  
15 the back, that's Steven Avery's house?

16 A. Correct.

17 Q. This burn barrel, it's a little hard to tell from  
18 here, but the burn barrel looks like it's sort of  
19 sitting right out in the open, in a grassy area?

20 A. Correct.

21 Q. But -- Although we can't see the blue, doublewide  
22 that would be to the left off this photo, there  
23 is another house there; do you remember that?

24 A. Yes. Correct.

25 Q. House trailer. The burn barrel would be closer

1           to the red trailer than to the other trailer?

2    A.    I don't know the distance.  I didn't measure the

3           burning barrel from either trailer; I couldn't

4           answer that.

5    Q.    You know, I know you didn't measure it, but no

6           recollection of which one, to the eyeball, it

7           looked closer to?

8    A.    I couldn't tell.

9    Q.    Okay.  But in any event, it's sort of sitting

10          right off the gravel road, essentially becomes a

11          driveway into the garage.

12   A.    Correct.

13   Q.    When you walked up and you looked down and you

14          see this rim in there, you were able to just

15          reach in and pull the rim out?

16   A.    Yes.

17   Q.    That's a heavy enough item, you -- even you had

18          to use two hands?

19   A.    Yes.

20   Q.    What looked to you like maybe the remains of a

21          steel belted radial, was that intertwined with the

22          rim?

23   A.    Yes.

24   Q.    So that came out with the rim?

25   A.    Yes.



1 Q. You set that down, did the whole assembly look to  
2 you like somebody might simply have burned an  
3 entire tire and wheel assembly?

4 A. Yes.

5 Q. Once you then had the rim and the belt out, you  
6 noticed that these things were rusty?

7 A. What was rusty, the rim or --

8 Q. The rim.

9 A. Yes.

10 Q. If there was a steel belted radial, whatever the  
11 wiring was?

12 A. Yes.

13 Q. That was rusty?

14 A. Yes.

15 Q. All right. And then looked in there, and one  
16 thing we can't tell from -- or I can't tell, at  
17 least from Exhibits 154 through 157 in front of  
18 you, is how -- about how deep does it look like  
19 the ash and crud at the bottom of that can was?

20 A. If you could bring up a closer view of that  
21 burning barrel.

22 Q. Sure, we'll go back to the one I thought I  
23 wanted, 51; how is that?

24 A. Okay. It's not an exact measurement; my  
25 estimation would have been that the top of the

1 rim would have been sitting right around there.

2 Q. So -- So maybe, roughly, two thirds of that

3 barrel would have been full of ash and other

4 material?

5 A. Correct.

6 Q. You were able to reach in easily, had -- had you

7 wanted to, and you could have touched these

8 melted cell phone parts that you saw?

9 A. You would have to actually lean -- probably lean

10 over to touch the ...

11 Q. Okay. But they were probably above the -- my

12 vocabulary is going to fail me now, but the

13 crease -- ridge or crease, the higher ridge or

14 crease on the barrel?

15 A. I would say that the parts were probably -- give

16 you another estimation -- right around this area

17 there.

18 Q. Okay.

19 A. They weren't at the bottom, they were more,

20 somewhere right in here.

21 Q. All right. So if those -- those ridges roughly

22 divide this barrel into thirds, give or take, the

23 barrel was about two thirds full of this junk and

24 ash?

25 A. Correct.

1 Q. But the cell phone parts you saw, were lying on  
2 top --

3 A. Correct.

4 Q. -- of the other junk and ash? In looking in  
5 there, did it look to you as if a sort of crust  
6 had formed over the ash in the barrel?

7 A. The ash was more -- It had rained heavily, so it  
8 was kind of like a muck --

9 Q. Mm-hmm.

10 A. -- type of ash. I couldn't say that there was  
11 actually a film, I just noted that it was all wet  
12 and damp.

13 Q. It had the look of ashes after they had been  
14 rained on --

15 A. Correct.

16 Q. -- and then begun to dry?

17 A. Yes.

18 Q. I mean, they still would have been mucky --

19 A. Yeah.

20 Q. -- but you know the look I'm talking about, where  
21 eventually, as it dries, appear almost a crust on  
22 the ash?

23 A. Correct.

24 Q. The cell phone pieces were atop that?

25 A. Kind of not -- or kind of mixed in with the ash,

1           they weren't just, like, laying on top. They  
2           were kind of mixed in.

3   Q.    Because it still looked mucky to you?

4   A.    Correct.

5   Q.    The entire time you spent at that barrel before,  
6           let's say -- say, boy, that looks like the  
7           Motorola emblem, or the insignia for Motorola,  
8           the entire time was give or take, roughly, how  
9           long?

10  A.    That I stood there to observe that?

11  Q.    Yeah, before you said, boy, I think I see the  
12        Motorola emblem.

13  A.    I don't know, approximately four to five minutes,  
14        just looking at it.

15  Q.    Just looking at it?

16  A.    Yes.

17  Q.    But not touching things?

18  A.    I didn't touch anything in there.

19  Q.    But 4 to 5 minutes is a long time, actually, if  
20        you just -- I mean, if we were to stand silent  
21        for 4 to 5 minutes, it would seem like an  
22        eternity, but you think it may have been that  
23        long?

24  A.    Give or take.

25  Q.    And then you called somebody else over?

1 A. Yes, I did.

2 Q. Was there anything -- other than being burned,  
3 was there anything obscured about the Motorola  
4 emblem?

5 A. Other than that it was melted plastic.

6 Q. Right. And all of this, as the photos showed,  
7 sort of takes on a -- various shades of gray.

8 A. Correct.

9 Q. Maybe we could go back to -- Was there one in  
10 particular there where you can see that Motorola  
11 emblem?

12 A. I'm not going to be able to tell with these  
13 photographs here; it's just not that clear.

14 Q. So, the photographs, you cannot see a Motorola  
15 emblem?

16 A. No, I can't.

17 Q. But you were able to, with the naked eye,  
18 standing over this?

19 A. Correct.

20 Q. The six, now going on seven years, I guess, that  
21 you have been with the Manitowoc County Sheriff's  
22 Department, have you been on the Dive Team the  
23 entire time?

24 A. I have been on the Dive Team for the last three  
25 years.

1 Q. Did you do any diving here?

2 A. No, I did not.

3 Q. Weren't asked to participate in any of the dives?

4 A. No, we were not.

5 Q. Do you know who did the dives?

6 A. I believe it was Outagamie Sheriff's Department

7 Dive Team.

8 Q. Did you say, gosh, you know, I'm -- I'm a member

9 of a dive team and my department has one; did you

10 volunteer to do that?

11 A. No, I did not.

12 Q. Why not?

13 A. We weren't asked to. Our dive team was usually

14 requested by either our sheriff or another

15 outside agency to assist with a dive; if we're

16 not asked, we don't dive.

17 Q. And in this situation, the people running the

18 search looked over across Lake Winnebago, to the

19 top of Lake Winnebago, to the Outagamie County

20 Sheriff's Department?

21 A. That's what I can guess. They were the ones that

22 contacted them.

23 ATTORNEY STRANG: That's all I have.

24 THE COURT: Any redirect?

25 ATTORNEY KRATZ: Not of this witness,

1 Judge, no.

2 THE COURT: Very well, the witness is  
3 excused.

4 ATTORNEY KRATZ: Could we approach just  
5 briefly, Judge.

6 THE COURT: Sure.

7 (Side bar taken.)

8 ATTORNEY KRATZ: I'm going to call Bill  
9 Tyson to the stand.

10 THE CLERK: Please raise your right hand.

11 **SERGEANT WILLIAM TYSON**, called as a  
12 witness herein, having been first duly sworn, was  
13 examined and testified as follows:

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

16 THE WITNESS: William Tyson, T-y-s-o-n.

17 **DIRECT EXAMINATION**

18 BY ATTORNEY KRATZ:

19 Q. Mr. Tyson, how are you employed?

20 A. I am a sergeant with the patrol staff with the  
21 Calumet County Sheriff's Department.

22 Q. As a sergeant with Calumet County, were you asked  
23 to assist in search efforts at what's now called  
24 the Avery Salvage Yard?

25 A. Yes.

1 Q. How was it that you were called out in this case?

2 A. It was on November 5th. It was approximately 20  
3 after 1 in the afternoon. I received a telephone  
4 call at my residence from the Calumet County  
5 Dispatch Center. They informed me that Teresa  
6 Halbach's vehicle was located at the Avery  
7 property and that my assistance was needed at the  
8 property.

9 Q. I'm sorry, Sergeant Tyson, you said that you were  
10 called out at your home. Let me ask you, as a  
11 member of the Calumet County Sheriff's  
12 Department, had you been made aware, before that  
13 date, of Ms Halbach's disappearance?

14 A. Yes, being the patrol sergeant, I do the shift  
15 brief things and things like that. I know our  
16 department did take a phone call, I believe it  
17 was early days of November, where the information  
18 was that Corporal Leslie Lemieux had taken a  
19 complaint of a missing person, that being Teresa  
20 Halbach.

21 So we were told to look for her, also  
22 her vehicle, and the plate number that belonged  
23 on her vehicle. Prior to me getting that call on  
24 Saturday, the 5th, yes, I was aware of the fact  
25 that our agency, as well as other agencies, were



1 looking for her and her vehicle.

2 Q. Sergeant Tyson, after getting the call at home,  
3 where did you proceed to?

4 A. I responded to the Sheriff's Department. I was  
5 standing by at the Sheriff's Department waiting  
6 for another deputy that was in route, also, to  
7 the Sheriff's Department, to arrive. I waited at  
8 the Sheriff's Department until she arrived. Upon  
9 her arrival, we did proceed over to the Avery  
10 property.

11 Q. Now, together with being a patrol sergeant, do  
12 have any other areas of specialization within the  
13 Calumet County Sheriff's Department?

14 A. Yes, back in 1994 I was promoted from a  
15 corrections officer to a patrolman; along with  
16 that I was sent to an evidence technician school  
17 in 1994. So throughout the years of 1994 until  
18 March of 2005, I would respond to crime scenes in  
19 the county, to process the crime scenes. Those  
20 were, you know, some of my responsibilities.

21 Q. Okay. About what time did you arrive at the  
22 Avery salvage property, if you remember?

23 A. If I recall correctly, I think it was quarter to  
24 3 in the afternoon.

25 Q. Upon arrival at the Avery salvage property, do

1           you recall what your first duty was?

2       A.    I was met by Investigator Wiegert and Steier.  
3           They directed me to go down into the junkyard  
4           area and made contact with officers down in that  
5           area.

6                       I proceeded down into the junkyard area  
7           where I met with several law enforcement officers  
8           that were down there. And they were keeping a  
9           crime scene log. I did introduce myself and I  
10          was talking with them briefly and was instructed  
11          to relieve a deputy that was standing by Teresa  
12          Halbach's vehicle.

13       Q.   All right. We have heard testimony from several  
14           Manitowoc County Sheriff's deputies as to being  
15           first on the scene. Do you recall what  
16           department, that is, from what agency you were  
17           asked to relieve what's now known as the scene  
18           security?

19       A.   It was a Manitowoc County sheriff's deputy that  
20           was standing by the vehicle when I arrived.

21       Q.   All right. To your knowledge, Deputy Tyson, were  
22           you the first Calumet County officer -- I guess,  
23           to state it more succinctly, were you the  
24           individual who relieved Manitowoc County from  
25           scene security responsibilities?

1 A. Yeah, my understanding is, I was the first  
2 Calumet County deputy to take custody of the  
3 vehicle.

4 Q. All right. At some point -- and I don't expect  
5 you were involved in this decision, but at some  
6 point were you made aware that security for the  
7 RAV4 and for that general area of the Avery  
8 property was to be either coordinated or taken  
9 over by Calumet County?

10 A. Yes.

11 Q. I'm going to show you what's been received as  
12 Exhibit No. 86. There is a laser pointer in  
13 front of you. Could you tell the jurors, if you  
14 remember, about what time it was that you took  
15 over security of the RAV4, or security of that  
16 area of the scene?

17 A. According to the crime scene log, when I checked  
18 in with them, it was 5 minutes to 3, I believe.

19 Q. Can you show us about where this transition took  
20 place and where were you standing that you took  
21 over security of this area?

22 A. On the display over here?

23 Q. Sure.

24 A. All right.

25 Q. Do you need me to zoom in a little?

1 A. Maybe just a little bit, I'm sorry.

2 Q. I'm sorry. Let me -- I think -- I think even  
3 defense counsel would agree that the lower left  
4 hand corner now of this exhibit is what we have  
5 now known as the car crusher. There's a pond  
6 that's just about in the middle of the exhibit.  
7 Does that orient you to the scene?

8 A. If the car crusher is right down there --

9 Q. Yes.

10 A. -- I think that would be going down the hill.  
11 And it would be right about in this area over  
12 here, I believe, is where I was requested to  
13 stand by with the vehicle.

14 Q. How close to the vehicle were you standing; do  
15 you recall?

16 A. Within a foot or two, just that I was not  
17 touching it, brushing up against it, but standing  
18 right there.

19 Q. Now, I'm going to fast forward just a minute and  
20 I think you will see why, but later on that day,  
21 were you given other responsibilities at that  
22 crime scene location?

23 A. Yes.

24 Q. Any time between taking over security of the RAV4  
25 and the time that you were relieved to perform

1       other duties, did you see any individuals, any  
2       police officers, or any citizens, either tamper  
3       with or enter this RAV4?

4       A.   No.   Several officers did come close to it,  
5       because of the weather conditions; it had gotten  
6       really dark, there was a mist in the area.   Our  
7       concern was, any evidence that could be on the  
8       exterior of the vehicle.   An agent, later  
9       identified as Agent Fassbender, was concerned  
10      about that as well.   A tarp was located in an  
11      attempt to protect it from the elements, from the  
12      incoming storm.   But extreme care -- and I mean  
13      extreme care -- was used to make sure no officer  
14      touched it, or even the tarp touched the vehicle.

15     Q.   And that was one of your responsibilities?

16     A.   Yes.

17     Q.   Sergeant Tyson, do you know what a search warrant  
18      is?

19     A.   Yes.

20     Q.   And sometime that afternoon, were you made  
21      aware that a search warrant for the Avery  
22      property itself, for the vehicles there on, the  
23      residences, and the outbuildings, had been  
24      obtained by a Manitowoc County judge?

25     A.   Yes.

1 Q. Were you made aware that the search warrant  
2 needed to be executed, that is, that searches had  
3 to be performed that day?

4 A. Yes.

5 Q. In that regard, Sergeant Tyson, were you asked to  
6 assist in any of those searches?

7 A. Yes.

8 Q. Who asked you or directed you to assist in those  
9 searches?

10 A. The decisions were being made by Investigator  
11 Wiegert from the Sheriff's Department in Calumet  
12 and DCI Agent Fassbender. They informed me,  
13 after everything was sorted through, and figured  
14 out which teams were going to go where, they told  
15 me I should go with Manitowoc County Sheriff's  
16 Department over to Steven Avery's residence.

17 Q. Now, Sergeant Tyson, prior to being assigned to  
18 this team, this search team, had anybody on the  
19 scene asked you or discussed with you your levels  
20 of expertise in evidence collection or  
21 processing?

22 A. Investigator Wiegert is fully aware of, I guess,  
23 my experience. He just informed me that I would  
24 be requested to go with them to execute the  
25 search warrant.

1 Q. All right. Now, you said that you were teamed up  
2 with, or that you joined other officers; do you  
3 remember who was in your team?

4 A. Yes, it was Lieutenant Jim Lenk, from the  
5 Manitowoc County Sheriff's Department; Sergeant  
6 Andy Colborn, from the Manitowoc County Sheriff's  
7 Department; and Detective Dave Remiker, from the  
8 Manitowoc County Sheriff's Department.

9 Q. Was there any discussion about what each of your  
10 responsibilities were going to be and, I guess,  
11 more specifically, was there a discussion about  
12 who was in charge of this team?

13 A. It was told to me that no Manitowoc County deputy  
14 should be alone on the property. Investigator  
15 Wiegert told me my responsibility would be to go  
16 with them into the Steve Avery trailer and to  
17 document what they were doing, take notes, and if  
18 evidence was seized by them, to take custody of  
19 all the evidence at the end of the search  
20 warrant.

21 Q. Do you know why a Calumet County deputy was put  
22 in charge of the custody of any physical evidence  
23 that might be obtained.

24 A. It was told to me that Investigator Wiegert would  
25 be the lead investigator and that the

1 investigation was turned over to Calumet County  
2 versus Manitowoc County.

3 Q. All right. Going into that scene, that is, going  
4 into that first search effort that you did, was  
5 that made clear to you?

6 A. Yes.

7 Q. And from your knowledge, or were you present, was  
8 that made clear to the other members of your  
9 team?

10 A. Yeah, there was no misunderstanding as far as who  
11 was taking custody. There was no discussions, no  
12 arguments, I should say, from anybody that I was  
13 with. It was clear understanding of what was to  
14 happen.

15 Q. All right. Were there other search efforts going  
16 on, or were you made aware of other search  
17 efforts in this entire location at the same time  
18 that you and this team had been developed?

19 A. My understanding was there was a number of things  
20 that were going on at the same time. You know,  
21 our team was just designated to go down to  
22 Steven's trailer, but there were other officers  
23 being assigned different duties as well. What  
24 those were, I really don't know. My  
25 responsibility was my team and where we were



1           going to be going.

2       Q.   Now, the kind of search that you were asked to  
3           perform, were you given direction about that?

4       A.   I guess I wouldn't really say direction; we were  
5           to execute the search warrant. And talking with  
6           the Manitowoc officers, it was more of a quick,  
7           anything in the obvious, let's go through the  
8           residence, see if we can find Teresa; anything to  
9           do with Teresa, anything at all. But that's kind  
10          of how the first search, I would classify it as.

11      Q.   Let me ask you this, Sergeant Tyson, did you have  
12          an understanding that either you or other police  
13          officers would be reentering this residence?

14      A.   Yes, it was commonly known that this was a scene  
15          that was going to be held. And, you know, it was  
16          7, I think 7:30 when we went through the front  
17          door of Steven's residence and --

18                       (Court reporter couldn't hear.)

19      A.   I guess I'm not sure what was I -- where was I  
20          going. I started with we were heading down to  
21          the Steve Avery trailer.

22      Q.   Right.

23      A.   Right. It was raining out. It was pouring. We  
24          were all drenched. But we got inside the  
25          trailer. You know, it was 7:30 in the afternoon.

1           And, you know, the search had started at quarter  
2           to 8. And it was a quick search, you know. We  
3           were out of there within three hours.

4   Q.   Now, for 16 people that have never probably done  
5           a search, or excuse me, search warrant, you just  
6           called a three hour search a quick search. Could  
7           you explain that to the jury, what -- what's  
8           quick about a three hour search?

9   A.   Not knowing a lot of the information that was  
10          later learned, you know, we're looking at this  
11          whole area. Where is the crime scene? What  
12          is -- is there a location exactly on the  
13          property.

14                 So when we're going through the house,  
15          we're looking for things that are obvious to us,  
16          any blood or anything like that. So to say that  
17          you can search someone's bedroom within 30  
18          minutes, okay, well, that's a quick search. And  
19          you are talking the closet areas; you are talking  
20          desk draws; you are talking under the bed. You  
21          are talking a whole area.

22                 And if you are looking for things in  
23          specific, you know, that would mean, basically,  
24          you would have to go through the closet, every  
25          article of clothing removed, through the pockets.

1           It's going to take you a whole lot longer than  
2           that to say that you thoroughly -- did a thorough  
3           search.

4   Q.   Let me ask you then, Sergeant Tyson, have you  
5           been involved in thorough searches, searches that  
6           you were looking for smaller items of evidence,  
7           or trace evidence, or things like that before in  
8           your career?

9   A.   Yes.   Working in the drug unit, you know, execute  
10          search warrants, you are looking for a small pipe  
11          or something, you have to be very thorough.  You  
12          have to go into areas where something like that  
13          small could be.  So it's a very detailed, very  
14          thorough search when you are dealing with like  
15          drug materials and things like that.

16  Q.   And that first search, that is, the first search  
17          that you and Lieutenant Lenk and Sergeant Colborn  
18          and Detective Remiker did, would you have  
19          considered that a thorough search, one of these  
20          thorough searches that you are describing?

21  A.   No.  Like I said, half hour to go through a  
22          bedroom and be out of that whole residence within  
23          two and a half to three hours, that's a quick  
24          search.

25  Q.   All right.  We're going to go through each of the

1 specific rooms that were searched by you that  
2 evening.

3 ATTORNEY KRATZ: Judge, if you would like  
4 me to do that I can, otherwise this might be a good  
5 time to break.

6 THE COURT: Sounds like this might be a  
7 good time to take our afternoon break, so we will do  
8 so. Members of the jury, again, do not discuss the  
9 case while you are on your break. We'll resume at 5  
10 minutes to 3.

11 ATTORNEY KRATZ: Thank you.

12 (Jury not present.)

13 THE COURT: Counsel, you are going to get  
14 some exhibits marked during the break?

15 ATTORNEY KRATZ: Yes, I would like to do  
16 that, so it works a little quicker.

17 THE COURT: If it takes a little longer, it  
18 takes a little longer, but I told the clerk you  
19 would be doing it.

20 ATTORNEY KRATZ: Thank you.

21 (Recess taken.)

22 THE COURT: Mr. Kratz, you may continue  
23 with your direct examination.

24 ATTORNEY KRATZ: Thank you, Judge.

25 DIRECT EXAMINATION CONTD

1 Q. Sergeant Tyson, you mentioned that you had gone  
2 into the Avery trailer to commence a search of  
3 that property; did all four team members enter  
4 the residence at the same time.

5 A. Yes.

6 Q. Now, you mentioned that you were in charge of  
7 both documentation as well as seizure or  
8 collection of property; is that a fair  
9 representation?

10 A. Yes. After it was collected, it would be turned  
11 over to me for transport back to our facility.

12 Q. Before an item was recovered, were you called to  
13 the location where it may have been found.

14 A. Yes, for example, when they were searching the  
15 bedroom, if Sergeant Colborn located something,  
16 he would immediately draw my attention, I'm  
17 standing right there. So I could see what they  
18 were doing. If he found something, I could see  
19 that he found it. And I would document the exact  
20 time that he found it and, you know, and then it  
21 was seized.

22 Q. What was the first room that you searched?

23 A. After the photography of the inside of the  
24 residence was complete, the decision was made to  
25 start in the south bedroom. And that was later

1 identified as Steven Avery's bedroom.

2 Q. You mentioned after the photography was complete,  
3 it sounds like something first happened before  
4 the search; is that right?

5 A. Yeah. Upon entry into the residence, Sergeant  
6 Colborn had a 35 mm camera and Detective Remiker  
7 had a digital camera. And they just -- once we  
8 got in there, they just began photographing each  
9 of the rooms. And every room inside the trailer  
10 was photographed. After that was finished, then  
11 the decision was made to start the search in  
12 Steven's bedroom.

13 Q. Did you accompany them through that search?

14 A. Yes.

15 Q. Did you enter the bedroom as well?

16 A. Yes.

17 Q. Could you describe this bedroom for us, please.

18 A. Sure. You walk in through the doorway.  
19 Immediately to the right there was a night stand  
20 and then the bed. Straight ahead of that, to the  
21 left, there was a small bookcase, a desk. There  
22 was windows on the back wall. You go along the  
23 bed, there was a dresser in the corner and the  
24 closets were up against the opposite wall from  
25 where the door was.

1 Q. How large was this bedroom?

2 A. Rather small bedroom, actually.

3 Q. Four grown men were in this room; is that right?

4 A. Yes.

5 Q. Describe that for the jury, if you can.

6 A. Well, as we walked in, Detective Remiker and  
7 Lieutenant Lenk, they said, well, because it was  
8 a small confined area, we're going to start over  
9 on the side where the closet sat. We will start  
10 going through that stuff.

11 Sergeant Colborn concentrated his search  
12 on the book shelf and the desk on the opposite  
13 side of the room. So the bed was in the middle,  
14 two on that side, two on this side. I'm standing  
15 directly inside the doorway, watching what they  
16 were doing.

17 Q. Were they in constant view of you?

18 A. Yes.

19 Q. All right. Let's talk about some of the things  
20 that were observed in the bed -- excuse me -- in  
21 the bedroom. First exhibit I'm going to ask you  
22 to take a look at is Exhibit No. 163. Can you  
23 tell us what that is, please.

24 A. The very first picture here?

25 Q. Yes.

1 A. Okay. This would be a view of Steven Avery's  
2 bed.

3 Q. Go ahead.

4 A. This is a view of Steven Avery's bed and the  
5 night stand directly next to the bed.

6 ATTORNEY KRATZ: And just so the -- the  
7 record is clear, unless something unusual occurs or  
8 is alerted, your Honor, by counsel, so that this  
9 witness doesn't have to talk about evidence twice,  
10 Mr. Strang has been kind enough to allow the item to  
11 be projected at the same time as the witness  
12 testifies about it, so I appreciate that very much.

13 THE COURT: All right. Is that correct,  
14 Mr. Strang?

15 ATTORNEY STRANG: Yes, it's actually  
16 Mr. Buting.

17 THE COURT: Mr. Buting.

18 ATTORNEY BUTING: That's correct.

19 ATTORNEY KRATZ: Oh, I'm sorry.

20 Q. (By Attorney Kratz)~ Sergeant Tyson, the bed in  
21 Steven Avery's bedroom, the exhibit that is 163,  
22 looks like it has some bedding on it; is that  
23 correct?

24 A. Yes.

25 Q. And there seems to be something above the bed,



1           can you tell what you that is.

2   A.   Directly above the bed was a gun rack, and it did  
3       house two long barreled firearms inside the  
4       mounting brackets.

5   Q.   Can you describe those firearms for us, please.

6   A.   They were long guns.  They weren't hand guns.  
7       They were long guns.  I didn't walk up and remove  
8       them or physically check them out or anything,  
9       but I could see that they were firearms up on the  
10      wall.

11  Q.   All right.  Did you later come to have either a  
12      closer inspection, or to become familiar with  
13      those guns?

14  A.   I never personally looked at the firearms after  
15      they were collected.  They weren't collected that  
16      evening with the officers that I was with.  There  
17      was a different officer, I believe, that  
18      collected those firearms.

19  Q.   What were the guns on?

20  A.   The gun rack, they were hanging on the wall.

21  Q.   And Exhibit No. 166, which is actually a little  
22      bit of a gap, if you would set 164 and 5 to the  
23      side, I would appreciate it; 166 is being  
24      projected, can you tell us what that is, please.

25  A.   That was the gun rack that was hanging directly

1           above the bed.

2       Q.   Also going to have Investigator Wiegert help me  
3           through this process since there's lots of  
4           evidence to show the jury.  Investigator Wiegert  
5           is going to hand you what's been marked for  
6           identification as Exhibit 196; can you show that  
7           and tell the jury what that is, please.

8       A.   This is the gun rack that was mounted on the wall  
9           directly above the headboard of Steven's bed.

10      Q.   And, again, were those the -- was that the rack  
11           in which those two long guns were located?

12      A.   Yes.

13      Q.   And the last photo I want you to look at is  
14           Exhibit 167.  It's in front of you and now the  
15           jury can see that.  Can you tell us what 167 is?

16      A.   Looks like it's the same gun rack that's in front  
17           of me right now.

18      Q.   Just an evidence photo that is taken here at the  
19           sheriff's department?

20      A.   Yes.

21                   ATTORNEY KRATZ:  Set that over there.

22           Thank you, Investigator.

23      Q.   (By Attorney Kratz)~ In this bedroom, did you  
24           notice other pieces of furniture?

25      A.   There was the bookcase; there was the desk; there

1           was a dresser.

2       Q.    Okay.  Let's do these one at time.  First, the  
3           bookcase, and I'm going to do this in two  
4           different areas of inquiry.  As an evidence  
5           technician, were you not only responsible to  
6           observe items on the 5th of November, but did you  
7           later return to Mr. Avery's residence with the --  
8           with a search warrant to seize this very item.

9       A.    Yeah, I believe that was December 9th.

10      Q.    The first thing I'm going to have you do is look  
11           at Exhibit 166, which is on the board -- I'm  
12           sorry, 168, which is on the wall here, tell the  
13           jury what that is, please.

14      A.    That's the bookcase that was up against the wall  
15           as you walked into the bedroom.  It was the very  
16           first piece of furniture, I believe, on the  
17           floor.  It was sitting right next to the desk,  
18           which was in the corner.

19      Q.    You said that was seized at some time?

20      A.    Yes.

21      Q.    When was that?

22      A.    That particular piece, I believe, was seized on  
23           December 9th.

24      Q.    All right.  And were you involved in the seizure  
25           of it; in other words, did you go to the Avery

1 residence and take possession of this piece of  
2 furniture?

3 A. Yes, C.I. Agent Fassbender, myself, and there  
4 was, I think, two more agents from the Department  
5 of Criminal Investigations. We did go out there  
6 on the 9th and did seize that particular piece of  
7 evidence.

8 Q. Now, Sergeant Tyson, there's going to be some  
9 testimony, I expect, in the next couple of days  
10 about this but, did you have occasion to make  
11 observations at Mr. Avery's bedroom of the back  
12 panel or the rear of this particular piece of  
13 furniture?

14 ATTORNEY BUTING: Objection as to time of  
15 these observations, it's unclear.

16 ATTORNEY KRATZ: I can -- I can ask  
17 specifically when, Judge.

18 THE COURT: Very well.

19 Q. (By Attorney Kratz)~ On the 9th of December, did  
20 you have occasion to observe the back panel of  
21 this piece of evidence?

22 A. Yes. We got into the bedroom to seize it. I did  
23 photograph it prior to seizing it. I did a side  
24 view, front view. And the side view, you can see  
25 the backing of it was coming out, the nails were

1 protruding from the backing of the cabinet.

2 Q. You said that you took a photo of that. In fact,  
3 Exhibit 169, is that a photo of that back panel?

4 A. It appears to be that, yes.

5 Q. If you take your laser pointer, please, and tell  
6 the jury what it is that we're looking at.

7 A. This here would be the backing to the bookcase.  
8 And you can see the distance here where it's  
9 pulled away from the back of the bookcase.

10 Q. Now prior to taking this particular photo and  
11 prior to making that observation, in fact, did  
12 you in any way manipulate this piece of  
13 furniture, or pull the panel out, or anything  
14 like that?

15 A. No, we didn't touch the back of it at all, didn't  
16 even move it. I just started photographing it  
17 prior to collecting it.

18 Q. I notice in the bedroom that there was a night  
19 stand. I'm showing you Exhibit No. 170, does  
20 that show a picture of the night stand?

21 A. Yes, it's right there.

22 Q. And after having been seized, was an evidence  
23 photo taken; in other words, at the sheriff's  
24 department of that night stand, Exhibit 171?

25 ATTORNEY BUTING: Objection, as to the

1 timing of all this. If he could maybe -- if we're  
2 going back and forth with those from November, to  
3 December, or later, I think we should identify when  
4 these are taken.

5 THE COURT: I agree.

6 Q. (By Attorney Kratz)~ Do you know when this photo  
7 was taken, No. 171?

8 A. I don't know the exact date. The person that  
9 assisted me with the evidence, his name is Deputy  
10 Jeremy Hawkins, he was responsible for all the  
11 photography. So I did assist him, but the exact  
12 date, I would have to refer back to my report.

13 ATTORNEY KRATZ: I think, Judge, this is  
14 the only item that wasn't seized on that day, from  
15 what I see after that. Let me just see if there's  
16 going to be an objection to this one.

17 Q. (By Attorney Kratz)~ Sergeant Tyson, do you know  
18 when the night stand -- when this piece of  
19 furniture was seized?

20 A. I believe that was after the search warrant on  
21 March 1st or 2nd.

22 Q. Of 2006?

23 A. Correct.

24 Q. This bedroom of Steven Avery --

25 ATTORNEY BUTING: Counsel, could we just --

1           the prior photograph, could we, please, just get a  
2           date as to when that was taken. You showed the  
3           night stand in the room.

4                    ATTORNEY KRATZ: Sure.

5   Q.    (By Attorney Kratz)~ The night stand in the room,  
6           did that look the same or similar as it did on  
7           the 5th of November? The prior picture, that  
8           would be Exhibit No. 170?

9                    ATTORNEY BUTING: Can you put that up?

10                   ATTORNEY KRATZ: If I could, I would.  
11           There you go.

12   Q.    (By Attorney Kratz)~ That's Exhibit 170, does  
13           that look the same or similar as it did when you  
14           first searched it on the 5th of November?

15   A.    Yes, it's in the same location, looks about the  
16           same.

17   Q.    All right. Mr. Avery's bedroom carpeted, or have  
18           a rug, or hardwood floors, or what kind of  
19           flooring was that?

20   A.    It was carpeted.

21   Q.    I'm going to show you Exhibit No. 172, ask you to  
22           take a look at the carpeting. Does that look the  
23           same or similar as the carpeting did on  
24           November 5th?

25   A.    Yes.

1 Q. Sergeant Tyson, Exhibit 172, do you know when  
2 that picture was taken?

3 A. That picture would have had to have been taken  
4 after December 9th, because the bookcase is not  
5 there. So that would have had to have been  
6 March 1st.

7 Q. And as far as law enforcement involvement, that  
8 was, as far as you were concerned, December 9th,  
9 you folks were there; is that right?

10 A. Yes.

11 Q. And March 1st, were you also the individual that  
12 was in charge of the evidence collection and  
13 technician responsibility inside of Mr. Avery's  
14 trailer?

15 A. Yes.

16 Q. So it's your understanding that this photo, that  
17 is 172, was taken on March 1st?

18 A. I said it would have to be after December 9th,  
19 so, yeah, next time we were there was, I believe,  
20 March 1st.

21 Q. And the question, at least for this photo is, did  
22 the carpet look the same on November 5th and  
23 December 9th and March 1st?

24 A. Yeah, looks to be the same carpeting that was in  
25 the room in November of 2005 as it was March of



1           2006.

2       Q.   While searching Mr. Avery's bedroom, were there  
3           any items of restraint that were found?

4       A.   Yes.   Sergeant Colborn located leg shackles and  
5           handcuffs.

6       Q.   Did -- Were those items seized?

7       A.   Yes.

8       Q.   Let me first show you what's been marked as  
9           Exhibit No. 204.   Tell the jury what that is,  
10          please.

11      A.   Appears to be the handcuffs that would have been  
12          seized by Sergeant Colborn on November 5th, 2005.

13      Q.   Did you see where these items were seized from?

14      A.   If I recall correctly, Sergeant Colborn found  
15          them in the bookcase in Steven's bedroom.

16      Q.   All right.   You said that there was another item  
17          of restraint that was found as well?

18      A.   Yes, leg irons.

19      Q.   Let me show you what's been marked for  
20          identification as Exhibit No. 203; tell the jury  
21          what that is, please.

22      A.   That would be the leg irons that were also found  
23          by Sergeant Colborn.   And I believe they were  
24          found in the same location as the handcuffs, in  
25          this bookcase in his bedroom.

1 Q. All right. Sergeant Tyson, after their seizure,  
2 and so that we don't have to bring these items  
3 into court, do you know if photographs were  
4 taken, that is, evidence photographs were taken  
5 of these two items?

6 A. Yes.

7 Q. I show you Exhibit No. 173, ask if you recognize  
8 that photograph.

9 A. It would be an evidence photograph. I know that  
10 because of the white paper in the background.  
11 All the evidence that we took care of at the  
12 sheriff's department we used freezer paper and  
13 that would be consistent with what I see.

14 Q. Of the handcuffs?

15 A. Yes.

16 Q. And 174, what is that?

17 A. That would be the leg irons.

18 Q. Anything else seized that first evening from  
19 Mr. Avery's bedroom, as far as you recall?

20 A. Yes.

21 Q. Well, let -- let me just -- let me just  
22 specifically ask about -- about something called  
23 identifiers. This is more of a search term and  
24 please bear with my clumsy question. But are  
25 efforts made to identify whether or not a certain

1 person lives in a particular residence when you  
2 search it?

3 A. Yes. When we search residences, you have to show  
4 that a person lives in that residence. So we  
5 look for any piece of mail that would have the  
6 person's name, along with their mailing address;  
7 could be a magazine, could be a phone bill, could  
8 be any kind of correspondence you get through the  
9 mail with your address on it.

10 Q. Investigator Wiegert is going to hand you what's  
11 been marked Exhibit No. 200, I need you to tell  
12 the jury what Exhibit 200 is, please.

13 A. It's a University of Wisconsin Law School  
14 envelope addressed to Steven Avery at 12390 Avery  
15 Road, Two Rivers, Wisconsin.

16 Q. Was that the residence that you were searching on  
17 the 5th of November?

18 A. Yes.

19 ATTORNEY BUTING: I'm sorry, what's the  
20 number, exhibit number?

21 INVESTIGATOR WIEGERT: The exhibit  
22 number is 200.

23 ATTORNEY KRATZ: Oh, 200?

24 ATTORNEY BUTING: Is that just an envelope?

25 A. That would be the correct address for Steven,

1           12932, or something like that. So that envelope  
2           right there, I think would have the Avery --  
3           maybe his mother and father's address on it, but  
4           it was found inside the trailer.

5   Q.   All right. But it had Steven's name on it and  
6           found inside the trailer?

7   A.   Yes.

8   Q.   After searching the bedroom, what was the next  
9           room that the four of you searched?

10  A.   The bathroom.

11  Q.   And could you tell the jury what, if anything,  
12           was found in the bathroom?

13  A.   Sure. There was a blood -- possible bloodstain  
14           on the linoleum floor that Sergeant Colborn had  
15           located. Just back up a little bit here, because  
16           as they were working in Steven's bedroom,  
17           Lieutenant Lenk and Detective Remiker were  
18           finishing up with what they had to do. Sergeant  
19           Colborn was finding all the stuff that we have  
20           just seen.

21               Lieutenant Lenk told me he was going to  
22           leave the bedroom and go into the bathroom, just  
23           to see what was in the bathroom. So I  
24           repositioned myself into the hallway. I could  
25           see Detective Remiker and Sergeant Colborn; I

1           could also see Investigator Lenk in the bathroom.

2   Q.   As the individual documenting what was now a  
3       transition from one room to the other, you were  
4       in a position to see both; is that right?

5   A.   Yes.

6   Q.   The bathroom, can you tell us where it is  
7       located, compared to the bedroom.

8   A.   The very next room. If you were to walk out of  
9       the bedroom, go out in the hallway a couple feet,  
10      if that, and it's right there.

11   Q.   The hallway that you positioned yourself in,  
12      would you be able to see both rooms?

13   A.   Yes.

14   Q.   Tell me what, if anything, was found in the  
15      bathroom?

16   A.   The possible blood spot on the linoleum floor, as  
17      I said, was found by Sergeant Colborn. He  
18      photographed it and it was collected with a swab.

19   Q.   Collected with a swab, well, let's talk about  
20      that a little bit. As an evidence tech, what  
21      does collection of something like a blood spot  
22      entail?

23   A.   Because it's dried, and it's on the floor, what  
24      you do is you can use distilled water and use a  
25      sterile swab, which is evidence material that we

1           get. You know, they are sealed, you open them  
2           up, take the distilled water, you drop two to  
3           three drops on the cotton applicator at the end  
4           of the swab. And then you take that swab and you  
5           go into the blood stain itself and you are able  
6           to pick up the bloodstain by just dampening the  
7           end of the sterile swab.

8   Q.   Was that done once or more than once in the  
9           trailer?

10   A.   There were several swabs that we took inside the  
11           trailer.

12   Q.   By the way, Sergeant Tyson, does that process,  
13           that is, the collection of blood or other fluids,  
14           does that take some training or experience on an  
15           evidence tech's part?

16   A.   Yes. You have to know certain things. For  
17           example, if you have got the distilled water  
18           applicator, it cannot touch the cotton swab. You  
19           cannot make contact with it. If so, the swab is  
20           no good, your bottle of distilled, throw it in  
21           the garbage. It's useless at that point. So you  
22           have to have a little bit of training and know  
23           exactly what you are doing to avoid possibly  
24           tainting the swab.

25   Q.   All right. After searching the bathroom, where

1           did you folks go?

2       A.    The bathroom was being searched by Lieutenant  
3           Lenk and the bedroom was being completed by  
4           Sergeant Colborn and Detective Remiker. I had  
5           noticed some spots on the door directly behind  
6           me, which was an interior/exterior door to go out  
7           of the residence. So I drew the attention to  
8           Detective Remiker and Sergeant Colborn,  
9           Investigator Lenk, to that area. And they did  
10          concentrate their efforts, then, photographing  
11          the door. And swabs were taken of some of the  
12          stains that were on that door as well.

13       Q.   What did you do then?

14       A.   After that was done, the search then continued  
15           and they entered the bedroom, which was the only  
16           other bedroom in the residence. And that would  
17           be located between the living room and the  
18           bathroom.

19       Q.   That would be called the -- what bedroom did you  
20           call that?

21       A.   We referred to it as the spare bedroom. It was  
22           used more for -- wasn't being slept in, I guess  
23           you could say, more of a storage room, but there  
24           was a bed in the room.

25       Q.   All right. After that room was searched and

1           processed, what room was next?

2   A.   Then it was the living room.

3   Q.   Were there any items, prominent items of

4           furniture in the living room?

5   A.   You got your couch and then there was a computer

6           desk in the room.

7   Q.   I'm going to direct your attention to Exhibit

8           No. 175, can you tell us what that is, please.

9   A.   That's the computer desk area in the living room.

10   Q.   Now, there's a lot to look at in Exhibit 175, can

11           you just generally orient us to what we are

12           looking at, please, using the laser pointer.

13   A.   Sure. He's got his television, box on top of

14           there, and here you got your computer, printer.

15   Q.   Speak up a little bit.

16   A.   I'm sorry. You have got the television right

17           here. Then you got your computer monitor,

18           printer. Okay. I think the tower was down

19           underneath it on the floor.

20   Q.   All right. I'm going to hand you what's been

21           marked for identification as Exhibit No. 198;

22           show that to the jury and tell them what that is.

23   A.   That's a pocket size notebook. Detective Remiker

24           had located this item, was in one of the drawers

25           inside the desk. He had pulled it out, opened it



1 up to the second page and this is what he saw.

2 Q. This has already been introduced as Exhibit 148,

3 let me just get to that. Tell us what that

4 reads.

5 A. It's 920-737-4731.

6 Q. And that's in what color ink, if you know?

7 A. Green.

8 Q. And black ink, is there something else written on

9 there?

10 A. Right below that, in black ink, are the words,

11 back to patio door.

12 Q. Did you become aware of whose phone number that

13 was?

14 A. Yes. Detective Remiker stated he immediately

15 recognized that number to be the cell number for

16 Teresa Halbach. After he told me that, I said,

17 yeah, that does look familiar. It is, that is

18 the number.

19 Q. And then a photograph of that having been taken

20 at the sheriff's department, that's Exhibit

21 No. 176, I believe; can you tell us what that is,

22 please.

23 A. That's exactly what you saw. That's an evidence

24 photo taken at the sheriff's department.

25 Q. I'm going to hand you now what's been -- Well, we

1           might as well get these two out of the way,  
2           Exhibit 197 and 199. Tell the jury what those  
3           are, please.

4   A.   Two pocket notebooks.

5   Q.   Also seized from the computer desk area?

6   A.   I believe that would be correct.

7   Q.   Sergeant Tyson --

8                   ATTORNEY BUTING: Wait, slow down, can you  
9           identify that?

10                   ATTORNEY KRATZ: I'm sorry.

11   Q.   (By Attorney Kratz)~ They are two different  
12        colors, which color is 199?

13   A.   The red one would be 199, the green one being  
14        197.

15   Q.   All right. Thank you, very much. I will have  
16        Investigator Wiegert hand you what's been marked  
17        as Exhibit 194; can you tell us what that is,  
18        please.

19   A.   That's a for sale sign that was found by  
20        Detective Remiker in the desk that was located in  
21        the living room.

22   Q.   Can you show us the for sale sign. Is there  
23        something written on the back?

24   A.   On the back there is an address of 3302 Zander  
25        Road. And directly underneath it, once again,

1 shows telephone number 920-737-4731, which  
2 Detective Remiker once again said, that's Teresa  
3 Halbach's number.

4 Q. Exhibit 149, which I'm showing now, is already  
5 part of the case and has been admitted into  
6 evidence. I'm now showing you what's Exhibit  
7 177; what is that?

8 A. Looks like a scene photograph taken by either  
9 Colborn or Remiker. And, obviously, I think it  
10 was pulled out a little bit so you can see what  
11 it was, but I think it was in further. I think  
12 it was just pulled out and photographed it, to  
13 show that it was found there.

14 Q. And Exhibit 178, is that a picture of what we saw  
15 was the front of the for sale sign?

16 A. Yes.

17 Q. And 179, would be the back; is that right?

18 A. That's correct.

19 Q. Once again, 737-4731 was Teresa Halbach's  
20 telephone number; is that right?

21 A. Yes.

22 Q. Now, without going into any details at all, was  
23 it readily apparent to you what the address 3302  
24 Zander Road was?

25 A. No.

1 Q. Sergeant, I'm now going to hand you what's been  
2 marked for identification as Exhibit 202, ask if  
3 you can tell us what that is, please.

4 A. It's an Auto Trader Magazine.

5 Q. Where was that found?

6 A. Detective Remiker located this on top of the  
7 computer desk in the living room.

8 Q. Is it opened to a particular page?

9 A. Yes, page 114.

10 Q. And does that have any significance or does it  
11 just happened to be open to that page?

12 A. I guess I'm not exactly sure what the  
13 significance is.

14 Q. That's fine. The -- Exhibit No. 150, this is  
15 already in evidence, is this how that particular  
16 Auto Trader looked on the computer desk?

17 A. I believe that's -- yeah, that's the scene  
18 photograph.

19 Q. And Exhibit 180 -- By the way was there more than  
20 one Auto Trader Magazine on that desk?

21 A. I believe there were a couple.

22 Q. All right. Is Exhibit 180 one of those pictures?

23 A. Yes.

24 Q. And, finally, Exhibit 181, we talked about some  
25 scene -- or excuse me, evidence photos; is that

1           181?

2   A.   Yes, that would be an evidence photo.

3   Q.   And I'll have Investigator Wiegert hand you

4       Exhibit No. 201, tell us what this was and where

5       was it found, please.

6   A.   Number 201 is a bill of sale for Auto Trader

7       Magazine. I believe this was found by Detective

8       Remiker and this was also either on or in the

9       computer desk. I'm not exactly sure.

10  Q.   I'm going to show you Exhibit No. 182, is that a

11       photo of that bill of sale on the desk?

12  A.   Yes.

13  Q.   Exhibit 151, already in evidence, does that look

14       like one of those evidence photos, again?

15  A.   Yes.

16  Q.   Sergeant Tyson, about what time of night was it

17       that this is getting to be; in other words, when

18       you got through the bedroom and the bathroom, and

19       through the living room, about what time were

20       those rooms all completed?

21  A.   It was approaching the 10:00 hour at night.

22  Q.   Investigator Wiegert is now going to hand you

23       what's been marked as Exhibit No. 195; and ask

24       you to identify that, if you can.

25  A.   It's a bleach bottle.

1 Q. And have you seen that before?

2 A. Looks like possibly the one that was in the

3 bathroom up on a shelf.

4 Q. Whose bathroom and whose shelf?

5 A. I'm sorry, Steve Avery's bathroom, on a shelf.

6 Q. All right. We'll talk about evidence photos

7 again so we don't have to lug these things into

8 the courtroom. I'm showing you what's been

9 marked as Exhibit 183. Tell us what that is,

10 please.

11 A. It's a evidence photo of the bleach bottle.

12 Q. What's Exhibit No. 184?

13 A. The carpet cleaner.

14 Q. Have you seen that before?

15 A. I did. I believe this was in that spare bedroom

16 in Steven's residence.

17 Q. And after being seized, was a photo taken of that

18 at the sheriff's department?

19 A. Yes, that would be an evidence photo right here.

20 Q. 184; is that right?

21 A. Yes.

22 Q. Just to complete the next six pictures, although

23 we talked about them, these photos were a little

24 bit out of order. We talked about some blood

25 spots in the bathroom. I just want to show the

1 jury some pictures of those, tell them about  
2 Exhibit 185, please.

3 A. Exhibit 185 appeared to be the linoleum floor in  
4 the bathroom. And see a dried stain on the  
5 floor, right there.

6 Q. Was that one of those spots that was swabbed or  
7 collected from what you talked about?

8 A. Yeah, I believe Detective Remiker did swab that  
9 stain.

10 Q. We'll hear from him later in this case, but you  
11 were present when all that processing was going  
12 on?

13 A. Yes.

14 Q. What's Exhibit 186?

15 A. 186 looks like it's a close up of the same stain.

16 Q. All right. And 187?

17 A. Looks like there's some stains on the -- if  
18 that's the door? I'm not exactly sure. Looks  
19 like some stains on a dark colored surface.

20 Q. I tell you what I'll do, I will save that for  
21 Detective Remiker. Does that sound like a good  
22 idea?

23 A. Yeah.

24 Q. All right. And you talked about those  
25 identifiers before. I show you Exhibit 188, tell

1           us what that is, please.

2       A.    This would be the letter that was inside of the  
3            envelope that you saw, which wears the  
4            identifiers from the University of Wisconsin Law  
5            School, addressed to Steven Avery.

6       Q.    Exhibit 189?

7       A.    Also an envelope showing the address of  
8            Mr. Avery, but being 12930.

9       Q.    Does that look like it's taken at the scene?

10      A.    Yes.

11      Q.    Now, looks like somebody is wearing gloves in  
12            that scene, maybe describe that for the jury.  
13            What's that for?

14      A.    All of us that were inside the residence, before  
15            you even make entry, you put gloves on your hands  
16            as to try not to leave any of your stuff behind,  
17            is what it's called. You don't want to be  
18            touching things with, you know, your bare hands.  
19            So you wear gloves to make sure you are not  
20            tainting the scene.

21      Q.    And, finally, we have been talking about evidence  
22            photos, Exhibit No. 190, what is that?

23      A.    This would be the envelope from the University of  
24            Wisconsin Madison Law School, addressed to Steven  
25            Avery.



1 Q. All right. Now, at any time during the search,  
2 at least when you entered the search sometime --  
3 about what time was it that you entered, I'm  
4 sorry?

5 A. We entered his residence, it was 7:30 p.m.

6 Q. And from 7:30 p.m. until you left the  
7 residence -- What time did you leave?

8 A. We left at 10:05 p.m.

9 Q. Any time between 7:30 and 10:05, did either you,  
10 Detective Remiker, Lieutenant Lenk, or Sergeant  
11 Colborn ever leave that residence?

12 A. No.

13 Q. At any time during the search of the residence on  
14 the 5th of November, did Lieutenant Lenk,  
15 Sergeant Colborn, or Detective Remiker, ever take  
16 any items of property from that location?

17 A. No, they may have assisted carrying the stuff out  
18 at the end of the evening to place it in  
19 Detective Remiker's squad; I was with them. So  
20 they may have assisted carrying stuff out,  
21 putting it in the backseat, but it was with me.  
22 And they did give me a ride back up to the  
23 Command Post and I personally unloaded all the  
24 objects and put them in my squad car.

25 Q. What the record hasn't reflected and what the

1 jury hasn't seen, each one of these evidence  
2 items were in a sealed bag; is that right?

3 A. Yes. Lieutenant Lenk had -- was in charge of  
4 putting everything inside the bags, so they were  
5 secured, each individual piece. Those items were  
6 then taken out to the squad and turned over to me  
7 to be taken to the sheriff's department.

8 Q. All right. Sergeant Tyson, I'm going to direct  
9 your attention -- this is a little bit out of  
10 order, but since it's next on my photo list,  
11 that's where I'm going. On April 3rd of 2006,  
12 were you asked to make contact with Teresa  
13 Halbach's RAV4 vehicle?

14 A. Yes.

15 Q. Can you tell the jury the purpose of that  
16 contact, please.

17 A. Sure. Investigator Wiegert and Agent Fassbender  
18 requested that Deputy Hawkins and myself go out  
19 to where Teresa's vehicle was. They wished for  
20 us to do DNA swabs of the driver's door, the  
21 passenger door. They wanted a swab done of the  
22 hood latch to the vehicle, as well as the battery  
23 cables under the hood.

24 Q. All right. And DNA swabs, what exactly is that;  
25 what are you talking about?

1 A. Pretty much the same as swabbing for blood, only  
2 you can't see anything. You are looking for any  
3 type of DNA, be it skin cells, or any kind of  
4 sweat, you know, anything that's DNA.

5 So what we're doing is kind of the same  
6 procedure. We're taking distilled water,  
7 dropping it on the end of the cotton swabs. And  
8 you just swab the area to hopefully pick up DNA,  
9 if it's there.

10 Q. Okay. We're going to hear from the analyst that  
11 is on the other side of that process, but did  
12 you, in fact, do that on the 3rd of April?

13 A. Yes.

14 Q. We're going to have Investigator Wiegert have  
15 marked, actually, a package. I'm not going to  
16 have it opened, but we'll have the package  
17 marked.

18 (Exhibit No. 205 marked for identification.)

19 ATTORNEY KRATZ: What's the number?

20 INVESTIGATOR WIEGERT: 205.

21 Q. (By Attorney Kratz)~ He's going to hand you  
22 Exhibit No. 205, can you tell us what that is,  
23 please.

24 A. Number 205 is the actual swab containing possible  
25 DNA evidence that was taken from the hood latch

1 of Teresa Halbach's vehicle on April 3rd.

2 Q. Can you tell us where a hood latch is, especially  
3 on a RAV4?

4 A. It's right underneath the hood itself. You pop  
5 the hood latch thing inside and you have to undo  
6 it.

7 Q. Pop the hood latch thing inside, that sounds like  
8 a law enforcement term. What are talking about?

9 A. You have to go inside the vehicle to release the  
10 hood latch so you can get in to manipulate the  
11 actual hood latch lever to get the hood open.

12 Q. I'm going to show you Exhibit No. 191; tell us  
13 what we're looking at here.

14 A. Looks like the front of Teresa Halbach's vehicle.

15 Q. And 192 is a close up of something; what is that?

16 A. The hood latch.

17 Q. And using your laser pointer, can you tell the  
18 jury what you did on April 3rd with exhibit -- or  
19 what's depicted on Exhibit 192.

20 A. Sure. This area right here would be the  
21 releasing mechanism for the hood latch. So what  
22 I had done is took my swab, placed some distilled  
23 water on it, and I swabbed the front and back of  
24 this piece right here.

25 Q. Now, to get at that particular release lever or

1           that latch, how do you do that?

2       A.    You had to go into the vehicle, pull the release.

3           And once the hood goes up a little bit, you are

4           able to get in there and make the hood go up.

5       Q.    To get in where?

6       A.    To that area.

7       Q.    Do you have to reach inside of something?

8       A.    Yes, you have to go in between the hood and the

9           frame to release the lever and make the hood go

10          up.

11      Q.    What time did you finish your search

12          of Mr. Avery's trailer?

13      A.    On November 5th?

14      Q.    Yes, I'm sorry?

15      A.    10:05 p.m.

16      Q.    And after 10:05 p.m., then, were you given any

17          further responsibilities at the Avery salvage

18          property?

19      A.    After I cleared, we went back to the command

20          center. I off loaded all the evidence that was

21          seized out of Steven's trailer, secured it into

22          my squad car, made contact with Agent Fassbender

23          and Investigator Wiegert, and told to transport

24          it back to the sheriff's department and to be

25          back at the scene the next morning for further

1 instructions.

2 Q. Kind of a long day?

3 A. Yes.

4 Q. The next day, that is, Sunday, the 6th of  
5 November, Sergeant Tyson, did you return to that  
6 scene?

7 A. Yes.

8 Q. And what were your duties on the 6th of November?

9 A. On the 6th of November, I made contact with  
10 Investigator Wiegert and Agent Fassbender. My  
11 responsibilities on the 6th, I was teamed up with  
12 Detective Sergeant Brian Swetlik, Detective Jeff  
13 Tech, and Patrol Officer Rob Block from the city  
14 of Manitowoc Police Department. Our duties that  
15 day were to search a trailer that had not been  
16 searched yet. They didn't believe anybody lived  
17 in it, it was more for housing vehicle -- vehicle  
18 parts and things like that, so.

19 Q. I'm sorry to interrupt you, Sergeant, but these  
20 three city of Manitowoc officers, did they have  
21 any specialized training that you knew?

22 A. Yes. Rob Block was a patrol officer with the  
23 city of Manitowoc. He was an evidence technician  
24 and Jeff Tech was a detective and Brian Swetlik  
25 was also a sergeant detective.

1 Q. By the way, I don't think we mentioned this, but  
2 do lieutenant Lenk, Sergeant Colborn and  
3 Detective Remiker have any specialized training  
4 that you know of?

5 A. Detective Remiker I know for sure did; he had all  
6 the evidence supplies consistent with being an  
7 evidence technician.

8 Q. And the others, we'll wait till they testify to  
9 their qualifications; is that right?

10 A. (No verbal response.)

11 Q. Okay. On the 6th, then, matched up with these  
12 other evidence techs, what were you asked to  
13 search on the 6th?

14 A. Was the trailer that was situated between Barb  
15 Janda's residence and Steven's parents'  
16 residence. We did go into that trailer. It was  
17 relatively quick because there was nothing of  
18 evidentiary value that we could see inside the  
19 trailer.

20 We were then requested to concentrate  
21 our efforts in the fenced in areas of the Avery  
22 property; check the outbuildings, there were I  
23 think three different buildings; look for any  
24 possible evidence in those outbuildings. And,  
25 then, the final thing was -- to do was to execute

1 the search warrant in Delores and Al Avery, their  
2 residence.

3 Q. Did you do anything else on the 6th?

4 A. I believe it was the outbuildings and the search  
5 warrant at Steven's mother and father's  
6 residence.

7 Q. And although we hear about a lot of people doing  
8 a lot of things in a lot of different places, is  
9 there anything that you can note for the jury  
10 that had any substantial evidentiary value found  
11 in any of those searches?

12 A. There was nothing -- nothing that was found to be  
13 of evidentiary value.

14 ATTORNEY BUTING: Objection as to the form  
15 of the question, is he talking about searches that  
16 he was involved in?

17 ATTORNEY KRATZ: Yes, just him, sorry.

18 ATTORNEY BUTING: Okay.

19 Q. (By Attorney Kratz)~ And we're not going to waste  
20 any more time on the 6th, let's move to the 7th,  
21 ask what your responsibilities were that day?

22 A. The morning of the 7th, I was paired back up  
23 again with Sergeant Colborn and Lieutenant Lenk.  
24 We were originally assigned, first thing was to  
25 go down to a maroon colored van, which was parked



1 outside of Barb Janda's residence.

2 I was informed that that van was the van  
3 that Teresa Halbach had come onto the property to  
4 photograph. What was requested of us was to take  
5 a look inside the van to see if we could find  
6 anything of evidentiary value inside the van or  
7 outside the van.

8 We did search the van, found nothing of  
9 evidentiary value. I did collect a belt and that  
10 was seized as possible evidence. And so, the van  
11 itself didn't provide nothing of evidentiary  
12 value.

13 Q. Before we leave that topic, I'm going to show you  
14 a photograph, already been admitted, Exhibit  
15 No. 59. Tell us what we're looking at here,  
16 please.

17 A. Here we have got Steven's trailer, the garage.  
18 Here is the van that I was just talking about.  
19 And Barb Janda's residence, this would be her  
20 driveway right here.

21 Q. We talked about searching a van with Lieutenant  
22 Lenk, does Exhibit No. 59 document that exact  
23 activity, or don't you know?

24 A. I'm sorry, what was the question.

25 Q. You talked about searching this van with

1 Lieutenant Lenk, does Exhibit 59 document that?

2 A. Yes, this shows the van, shows the door being  
3 open; there's me and there's Mr. Lenk.

4 Q. All right. What were your next duties on the  
5 7th?

6 A. After we were finished with that, it was my  
7 understanding, although I didn't see it,  
8 apparently the fire departments had been called  
9 out to the scene. They were going through the  
10 junkyard, I think the day before, using their  
11 equipment to pry open all the trunks on all the  
12 vehicles in the junkyard.

13 So on the morning of the 7th, our  
14 responsibility was to find any remaining vehicles  
15 that did not have the trunk popped by the fire  
16 department. And if we located those vehicles,  
17 our responsibility was to open the trunk areas of  
18 all those vehicles.

19 Q. Who did you do that with?

20 A. Lieutenant Lenk and Sergeant Colborn.

21 Q. Did you do all those things?

22 A. Yes. We found numerous vehicles that were not  
23 taken care of, so we did use crowbars, wherever  
24 necessary, to get them trunk lids open.

25 Q. Did you find anything in any of those vehicles?

1 A. No.

2 Q. By the way, the three of you didn't plant any  
3 blood while you were doing that, did you?

4 A. No.

5 Q. All right. What else did the three of you do  
6 that day?

7 A. I'm trying to think. After, I think we did all  
8 the trunks, we were then requested to go through  
9 the houses and collect firearms from any of the  
10 houses that still had firearms in them. So we  
11 started -- I think I was told that Steven's  
12 firearms were collected already, so we started at  
13 Barb Janda's residence and we just started  
14 collecting all the firearms that were inside the  
15 residence.

16 Q. Do you know about how long that project took?

17 A. There were quite a few firearms. It took a long  
18 time to document all the different firearms  
19 inside the bedroom area.

20 Q. In whose residences did you go to collect the  
21 firearms?

22 A. We were in Barb Janda's residence pretty much the  
23 whole day.

24 Q. All right. Were you asked, on the 7th, to  
25 perform any duties with Mr. Avery's computer?

1 A. Yeah, I believe it was the morning hours,  
2 Investigator Wiegert telephoned me and asked me  
3 to make entry into Steven Avery's residence. He  
4 told me that he did need the serial numbers, make  
5 and model off of the computer that was sitting on  
6 the computer desk in the living room.

7 Sergeant Colborn, myself, and Lieutenant  
8 Lenk did make entry and we were in there for all  
9 of about 3 or 4 minutes, I believe. I telephoned  
10 Investigator Wiegert with the information he  
11 needed and we immediately left the residence.

12 Q. Lieutenant Lenk and Colborn -- I'm sorry, did you  
13 say that they were both with you?

14 A. I believe all three of us were together.

15 Q. Did they leave your location at all at that time?

16 A. No.

17 Q. And then you left?

18 A. Yes, went back to, I believe, Barb Janda's to  
19 finish with the firearms.

20 Q. I'm going to hurry just a little bit with you  
21 Sergeant Tyson so that we can get through, at  
22 least your direct testimony for the day. Let me  
23 just move forward to the 8th of November, that  
24 would be on Tuesday, were you on site at all that  
25 day?

1 A. I didn't go out to the scene on the morning hours  
2 of the 8th. My responsibilities were at the  
3 Calumet County Sheriff's Department, taking care  
4 of all the evidence that had been collected over  
5 the course of the past two days. Forms had to be  
6 filled out, property tags assigned, that evidence  
7 to be secured for the evidence custodian, so he  
8 could move them to his location and free up some  
9 of the lockers that I was currently taking up  
10 with all the stuff that I had downstairs. So  
11 that was a lot of my day.

12 I did clear from there and did respond  
13 back out to, I think the Avery property, just to  
14 see if I was needed in some other capacity. I  
15 think there were some officers that were  
16 collecting burn barrels. I know I probably  
17 assisted with picking up one or two, helping them  
18 get them on trailers and things like that. But  
19 that was the extent of my involvement on the 8th.

20 Q. All right. Are you familiar with something  
21 called a buccal swab?

22 A. Yes.

23 Q. What is that?

24 A. It's a swab that's taken by a medical  
25 professional. And how it's taken is, it's a long

1 cotton applicator and it's put inside the  
2 person's cheek and rubbed back and forth  
3 collecting skin cells, I believe, off of the  
4 inside of that person's mouth.

5 Q. Do you know what a buccal swab is used for?  
6 A. DNA identification.

7 Q. Do you know what an exemplar is, a DNA exemplar?  
8 A. Probably a known DNA substance.

9 Q. All right. On the Wednesday, the 9th of  
10 November, were you asked to assist medical  
11 professionals in obtaining what are called DNA  
12 exemplars, or known DNA samples, from Steven  
13 Avery and some other Avery family members?  
14 A. Yes.

15 Q. Did you do that on that day?  
16 A. Yes.

17 Q. Now, were you just asked, and were there search  
18 warrants just for Steven Avery's DNA, or were  
19 there others that were involved as well?  
20 A. There were others. In the morning of the 9th, I  
21 think Agent Fassbender and Investigator Wiegert,  
22 they told me that they needed me to go up to the  
23 Aurora Medical Clinic in Two Rivers. They  
24 explained that there were search warrants for  
25 Steven Avery, Bobby Dassey, Chuck Avery, Earl

1 Avery, Delores Avery, Barb Janda.

2 They said each would be transported to  
3 the Aurora Clinic in Two Rivers and then my  
4 responsibility would be to photograph any  
5 injuries that they may have had and to collect  
6 all buccal swabs taken by the registered nurse.

7 Q. Did you do that?

8 A. Yes.

9 Q. Regarding Steven Avery, the defendant, do you see  
10 him seated in the courtroom here today?

11 A. Yes.

12 Q. Were you present, Sergeant Tyson, when a physical  
13 examination was performed of Steven Avery on the  
14 9th of November?

15 A. Yes.

16 Q. And were you able to observe any injuries,  
17 specifically any injuries to Mr. Avery's right  
18 hand?

19 A. Yes.

20 Q. I'm going to show you what's been marked for  
21 identification as Exhibit No. 193, tell us what  
22 that is, please.

23 A. We were measuring the cut here to his finger,  
24 right there. That's just a close up.

25 Q. Was this photo taken by you; is that right?

1 A. Yes.

2 Q. Who was assisting you in that process?

3 A. Fay Fritsch, she would be the registered nurse at

4 Aurora Medical Clinic; and the Medical Director

5 Dr. Laura Vogel-Schwartz, was also present in the

6 room, and I think the two investigators assigned

7 to Mr. Avery were also present.

8 Q. I'm sure we'll hear from Ms Fritsch, but do you

9 recall where this cut, that is, that we're seeing

10 on Exhibit 193, was located?

11 A. Looks like it's his middle finger.

12 Q. Okay. We see it here in the photos, but was it

13 visible to you to the naked eye?

14 A. Yes.

15 Q. Sergeant Tyson, the next day, that is, on the

16 10th of November, do you recall if you had any

17 responsibilities in this investigation?

18 A. On the 10th, I believe I responded out to the

19 Avery property. State patrol, I think, had

20 hundreds of state patrol officers canvassing the

21 quarries and the surrounding area. I was sent

22 out when they found something, down in the quarry

23 areas, just to see if I could identify what it

24 was. Nothing of evidentiary value was found.

25 Q. All right. On the 12th, then, that would be



1           Saturday, were you asked to perform one final  
2           responsibility at that location?

3       A.    Yeah.  Sheriff Jerry Pagel instructed me to grab  
4           a camcorner -- camcorder and to go through every  
5           single residence on the property to show the  
6           condition of which we were leaving the property  
7           before we released the scene back to the family.

8       Q.    Did you do that?

9       A.    Yes, I was with corrections officer Larry  
10          Schroeder at that time.

11      Q.    Very briefly, Sergeant Tyson, we talked about the  
12          9th of December and the execution of a search  
13          warrant where you seized a bookcase; did you also  
14          return to the Avery property on March 1st and 2nd  
15          of 2006?

16      A.    Yes.

17      Q.    Did you participate in the execution of yet  
18          another search warrant at the Avery residence,  
19          that is, his trailer?

20      A.    Yes.

21      Q.    During March 1st and 2nd who was in charge of the  
22          evidence documentation and seizure inside of  
23          Mr. Avery's trailer?

24      A.    We had Investigator Wendy Baldwin taking notes  
25          and Patrolman Rick Reimer was an evidence

1 technician in our department, him and myself were  
2 doing most of the searching. She was documenting  
3 all evidence that was recovered by Deputy Reimer  
4 and taken out to the secured trailer, which was  
5 parked in the driveway.

6 Q. All right. My last area of inquiry, Sergeant  
7 Tyson, has to do with human remains or other  
8 kinds of materials; were you asked to  
9 participate, not only with other law enforcement  
10 officers, but with a forensic anthropologist in  
11 sifting and sorting some ashes and remains?

12 A. Yes. On December 20th of 2005, I did go down to  
13 the Wisconsin Crime Lab with Investigator  
14 Dederling to assist numerous Department Of  
15 Correction -- or Department of Criminal  
16 Investigation agents there. Deputy Reimer was  
17 there and we sorted through contents of burn  
18 barrels. And I think later in April, the  
19 following year, I think we had -- April 11th, I  
20 believe it was, I did assist at the sheriff's  
21 department and the Wisconsin Crime Lab was at our  
22 facility. We had stations out in the garage  
23 behind our department and we had gone through a  
24 lot of materials, burnt.

25 Q. Sergeant Tyson, on November 5th of 2005, and in

1 fact, that entire week that you worked  
2 specifically with Lieutenant Lenk and Sergeant  
3 Colborn, did you witness anything, from either  
4 one of those law enforcement professionals, that  
5 in any way questioned either their reliability or  
6 their ability to perform their law enforcement  
7 duties on that scene?

8 A. No.

9 ATTORNEY KRATZ: Judge, I am going to move  
10 for the admissions of Exhibit 163 through 205, with  
11 the exceptions of Exhibit 164, 165, 187, and I think  
12 that's it. Those were the three that this officer  
13 was unable to identify. The rest I believe he has  
14 and would move their admission at this time.

15 THE COURT: Any objection to the admission  
16 of those exhibits?

17 ATTORNEY BUTING: No objection.

18 THE COURT: All right. The exhibits  
19 listed, then, by Mr. Kratz will be admitted.  
20 Mr. Kratz, do you have any further questions of the  
21 witness?

22 ATTORNEY KRATZ: No.

23 THE COURT: Members of the jury, we have  
24 got a few things to take up with counsel before  
25 leaving today, so I think given that, it's probably

1 a little late to get into cross-examination. So at  
2 this time I'm going to excuse you for today. I will  
3 remind you not to discuss this case with anyone else  
4 at any point during the trial and do not watch any  
5 news accounts of the case. You are excused for  
6 today. We'll see you tomorrow morning.

7 (Jury not present.)

8 THE COURT: You may be seated. Officer  
9 Tyson you are excused.

10 Counsel, I had mentioned earlier this  
11 morning that there was at least one exhibit,  
12 Exhibit 89, that I believe the parties both felt  
13 had not been admitted but the clerk's records  
14 show that it had been and based on the  
15 information I got from the court reporter, it  
16 appears it may have been in advertently marked as  
17 admitted in conjunction with a number of other  
18 exhibits at the end of the day back on the 14th.  
19 First of all, let's address Exhibit 89; do I  
20 understand that -- am I correct that both parties  
21 feel that this exhibit was introduced but not  
22 admitted?

23 ATTORNEY STRANG: Is that pages 515 and 516  
24 of the --

25 THE COURT: Correct.

1                   ATTORNEY STRANG:  -- Calumet county  
2                   Sheriff's --

3                   THE COURT:  Yes.

4                   ATTORNEY STRANG:  -- Department report?  
5                   Yes, that was intended only as a Court's exhibit,  
6                   not -- not for evidentiary consideration of the  
7                   jury.

8                   THE COURT:  Mr. Kratz.

9                   ATTORNEY KRATZ:  It would certainly never  
10                  be considered by the jury, Judge, and was meant, as  
11                  I understood, to complete the record.

12                  THE COURT:  All right.  The Court will  
13                  treat it as such and direct that the record shows  
14                  that it has not been admitted into evidence.

15                  Counsel, are there any other exhibits  
16                  that either party believes fall into this  
17                  category, that is, that they have been shown as  
18                  being admitted but parties -- neither party  
19                  requested there admission.

20                  ATTORNEY KRATZ:  I have one that's just --  
21                  or two that are just the opposite, Judge.  If I may,  
22                  I'm showing the Court now Exhibit 161.  There were  
23                  two photographs that Agent Fassbender identified.  
24                  One is Exhibit 161 and the next is Exhibit 162, that  
25                  I asked the Clerk to please mark, and for whatever

1 reason that didn't occur.

2 I assured the Court that I would have  
3 them marked and put into evidence. I had moved  
4 them at the time, but these are the two  
5 photographs that go along with Mr. Buting's  
6 submissions. They have now been marked and I now  
7 show them once again to remind the Court and  
8 counsel, Exhibits 161, 162. I will tender them  
9 and offer them at this time.

10 THE COURT: Mr. Strang.

11 ATTORNEY STRANG: These we think were the  
12 two photographs used by Mr. Kratz on his redirect  
13 examination of Special Agent Fassbender. I believe  
14 we recreated that as best we can. They are out of  
15 order. I don't know how they were described, if at  
16 all, by exhibit number on redirect examination. But  
17 we just -- when we talked about this, Nos. 161 and  
18 162 were the next two available exhibit numbers, so  
19 we agreed to give them those numbers. And as we  
20 recall, they relate back to the redirect examination  
21 of Mr. Fassbender.

22 ATTORNEY KRATZ: That's correct, Judge.

23 THE COURT: All right. And are these a  
24 couple of -- they were slides for which photos  
25 weren't readily available at the time?

1                   ATTORNEY KRATZ: That's exactly correct,  
2                   Judge.

3                   THE COURT: I believe I recall those. All  
4                   right. Any objection to their admission today?

5                   ATTORNEY STRANG: No.

6                   THE COURT: Very well. 161 and 162 will be  
7                   deemed admitted. Are there any other items that  
8                   need clarification?

9                   ATTORNEY STRANG: Well, maybe. The only  
10                  two I came up with and I don't know if they are  
11                  received or not received, but Exhibit No. 70, I  
12                  think, was tendered to a witness. It's a photo of  
13                  crushed cars, but as I recall the witness must not  
14                  have been able to identify it, or there was a  
15                  foundation objection. I don't think that one was,  
16                  or has been, admitted yet.

17                  ATTORNEY KRATZ: I think that's No. 70.

18                  THE CLERK: We have that one as denied.

19                  ATTORNEY KRATZ: That one, Mr. -- Bobby  
20                  Dassey could not identify that. We're going to put  
21                  that in through another officer later on in the  
22                  trial, Judge.

23                  THE COURT: All right. So as of this point  
24                  it's been marked and neither party is asking for its  
25                  admission at this time?

1                   ATTORNEY KRATZ: Not yet.

2                   THE COURT: The State is anticipating  
3 asking that it be admitted at a later date.

4                   ATTORNEY KRATZ: Yes.

5                   ATTORNEY STRANG: Right.

6                   THE COURT: All right.

7                   ATTORNEY STRANG: And then, Exhibit 28,  
8 which is a written statement of JoEllen Zipperer, I  
9 have labeled as used only to refresh recollection,  
10 so that -- that would not be -- it would be marked,  
11 but not offered and received.

12                  THE COURT: That one is shown as being  
13 received.

14                  ATTORNEY STRANG: Should have been marked  
15 only.

16                  THE COURT: My recollection is that that  
17 was marked but not received.

18                  ATTORNEY FALLON: I'm not sure that's the  
19 case, your Honor.

20                  THE COURT: That was a statement of  
21 Mrs. Zipperer?

22                  ATTORNEY KRATZ: It was, Judge, if you  
23 remember, it had to do with the time that Teresa was  
24 out there.

25                  THE COURT: Okay.



1                   ATTORNEY KRATZ: The statement had said  
2                   between 2:00 and 2:30, as she in fact read from  
3                   that. She said that now refreshes -- that's a  
4                   better estimate of the time that she was out there.  
5                   In fact, it is a much more recorded recollection  
6                   than that, that was just used to refresh  
7                   recollection. And it undoubtedly is not going to go  
8                   back to the jury, because I'm sure you are not going  
9                   to send written statements back, but it was offered  
10                  and it should be received.

11                  ATTORNEY STRANG: I don't think so, whether  
12                  it's a -- something used to refresh recollection  
13                  under Section 906.12, or whether it's actually a  
14                  past recollection recorded, under 908.03 (5) maybe,  
15                  if memory serves. I think either way it doesn't --  
16                  the document doesn't come into evidence. What does  
17                  is the testimony either refreshed recollection, or  
18                  the reading of the past recollection recorded.

19                  THE COURT: I think it can only get in if  
20                  she's unable to refresh her memory from it. But  
21                  which is not what I understood her testimony to be.

22                  ATTORNEY STRANG: Correct. If she was  
23                  unable to, it could come in as a prior inconsistent  
24                  statement under 906.13, or conceivably --

25                  THE COURT: Yeah, 908.03 (5) says a record

1           concerning a matter about which a witness once had  
2           knowledge but now has insufficient recollection to  
3           enable the witness to testify fully and accurately,  
4           but if it refreshed her memory, then it doesn't fall  
5           into that one.

6                   ATTORNEY STRANG:   Right.

7                   ATTORNEY KRATZ:   I'm never going to ask  
8           that it go to the jury, so this is just fine.

9                   ATTORNEY STRANG:   That's fine, from this  
10          standpoint.

11                   ATTORNEY KRATZ:   That's just fine.

12                   THE COURT:   My recollection is that it was  
13          marked, but I don't remember it being admitted.   And  
14          my suspicion is that it may have been marked as  
15          admitted under one of these globals, does anybody  
16          have any objection to admitting a whole bunch of  
17          exhibits.

18                   ATTORNEY STRANG:   And the real issue is it  
19          oughtn't go to the jury.   And since the State has  
20          conceded that, you know, again, this becomes a bit  
21          academic.

22                   ATTORNEY KRATZ:   Marked, but not received,  
23          is just fine.

24                   THE COURT:   Yeah, at this point, I don't  
25          think it should be received.

1                   ATTORNEY KRATZ: That's fine.

2                   THE COURT: Is that it for the exhibits?

3                   THE CLERK: I have just a couple more.

4                   This is a day when I wasn't here, but there was --  
5                   there were two photos, 87 and 88, that were marked  
6                   but nothing was ever said about them.

7                   ATTORNEY STRANG: And I don't even have  
8                   those written down. So I'm wondering if they were  
9                   ever even identified by a witness.

10                  THE CLERK: I think they were regarding the  
11                  Avery property. There was a whole line of photos  
12                  marked. Janet just has a big arrow drawn through  
13                  them.

14                  ATTORNEY STRANG: Certainly was a series of  
15                  aerial shots from 79 on.

16                  ATTORNEY KRATZ: Eighty-seven and  
17                  eighty-eight, Judge, were two that Lieutenant Bowe  
18                  was unable to identify. And like other exhibits in  
19                  that category, I intend to show them to another  
20                  witness who's actually in those pictures and I will  
21                  be putting them in through them. So they are marked  
22                  but not received.

23                  THE COURT: So they are properly noted as  
24                  not received at this point.

25                  THE CLERK: And then there's just one --

1 I'm sorry -- there's just one other section, 142  
2 through 151, which were from Friday. And I know a  
3 lot of those were duplicates from today. There's a  
4 sign in sign out log, car crusher check point,  
5 photos of the RAV4, the aluminum smelter photo, some  
6 more sign in sheets.

7 THE COURT: Those have been marked but not  
8 yet admitted.

9 THE CLERK: Right.

10 THE COURT: And I believe the State still  
11 has witnesses to come that will identify those?

12 ATTORNEY KRATZ: I offered 148, 149, 150  
13 and 151 at the time. And if you haven't, Mr. Tyson  
14 just looked at those and they are the same.

15 ATTORNEY STRANG: There's no objection to  
16 the admission of Exhibits 142 through 151 inclusive.

17 THE COURT: All right. So the Court will  
18 order those admitted then?

19 ATTORNEY KRATZ: Yes, we don't have any  
20 objection.

21 THE CLERK: I just have one more photo  
22 marked as 158, that was ...

23 ATTORNEY KRATZ: That will get in through  
24 Mr. Heimerl, actually, who is yet to come.

25 THE CLERK: That's it.

1 THE COURT: Marked but not admitted.

2 I also want to note for the record that  
3 this afternoon there were two side bar  
4 conferences. The first one was at about 2:19.  
5 Mr. Kratz asked the Court at that time, I think,  
6 to take a break in order to permit the marking of  
7 a series of exhibits that were introduced through  
8 Officer Tyson and I indicated I preferred to  
9 proceed with more testimony before the break.  
10 That was the extent of what happened then.  
11 Counsel, is that your understanding, or  
12 recollection of what the side bar was?

13 ATTORNEY KRATZ: Yes.

14 ATTORNEY STRANG: That's mine too.

15 THE COURT: And then there was a second one  
16 after the break this afternoon when counsel  
17 approached and raised some issues with the Court  
18 concerning some objections Mr. Buting had made  
19 before that about photos being discussed without  
20 dates attributed to them. And I indicated to the  
21 parties that if there was any dispute about the date  
22 a photo was taken, that the defense had a right to  
23 have that information presented to the jury so that  
24 the jury could fully assess the probative value of  
25 whatever was in the photo. And I believe that was

1           the extent of that side bar.

2                   ATTORNEY KRATZ: That's right, Judge, and  
3           -- and I think from that point forward I did that  
4           and it was a legitimate point and I hope I covered  
5           it from that point.

6                   THE COURT: Mr. Buting, is that your  
7           recollection?

8                   ATTORNEY BUTING: That is correct, Judge.

9                   THE COURT: Very well. Is there anything  
10          else that either party wishes to take up today  
11          outside the presence of the jury before we resume  
12          tomorrow?

13                   ATTORNEY BUTING: Has the Court had any  
14          response to the other matter that was ...

15                   THE COURT: Oh, not yet.

16                   ATTORNEY STRANG: I'm looking for one  
17          exhibit, 189, your Honor.

18                   ATTORNEY KRATZ: It's a photo of an  
19          envelope. That should be in here.

20                   ATTORNEY STRANG: Is the envelope itself  
21          something?

22                   ATTORNEY KRATZ: That's on the desk, that's  
23          two something.

24                   ATTORNEY STRANG: That's a different  
25          envelope.

1                   ATTORNEY FALLON: 189 was the envelope.

2                   ATTORNEY KRATZ: It's a photo of an  
3 envelope.

4                   ATTORNEY STRANG: The photo I'm talking  
5 about is Federal Defender Services of Wisconsin.

6                   ATTORNEY KRATZ: I understand that. It's a  
7 photo of the envelope.

8                   ATTORNEY BUTING: So the actual envelope is  
9 not here.

10                  ATTORNEY KRATZ: We aren't offering --

11                  THE COURT: Just a second. Diane.

12                  COURT REPORTER: Yes.

13                  THE COURT: We're off the record right now.  
14 I'm not going to ask you to try to follow that.

15                  (Off record discussion.)

16                  THE COURT: All right. Let's go back on  
17 the record. Mr. Strang, you raised a question about  
18 Exhibit 189.

19                  ATTORNEY STRANG: I did. And I just was  
20 curious about the postmark date of that letter,  
21 because it's from Federal Defender Services of  
22 Wisconsin, which I had run for five years, was one  
23 of the three offices that I ran. But I don't know  
24 why it would be an issue in any event, but the  
25 postmark is about two months after I left that

1 office. So I just can't imagine that there's any --  
2 any issue.

3 THE COURT: All right. Anything further  
4 today?

5 ATTORNEY KRATZ: Just that I think,  
6 briefly, we need to meet in chambers. We may have  
7 something in our office.

8 THE COURT: All right. We'll see you in a  
9 few minutes.

10 ATTORNEY KRATZ: Thank you.

11 (Proceedings concluded.)

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1 STATE OF WISCONSIN )  
 )ss  
2 COUNTY OF MANITOWOC )  
3

4 I, Diane Tesheneck, Official Court  
5 Reporter for Circuit Court Branch 1 and the State  
6 of Wisconsin, do hereby certify that I reported  
7 the foregoing matter and that the foregoing  
8 transcript has been carefully prepared by me with  
9 my computerized stenographic notes as taken by me  
10 in machine shorthand, and by computer-assisted  
11 transcription thereafter transcribed, and that it  
12 is a true and correct transcript of the  
13 proceedings had in said matter to the best of my  
14 knowledge and ability.

15 Dated this 7th day of 11, 2007.  
16  
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19 \_\_\_\_\_  
Diane Tesheneck, RPR  
20 Official Court Reporter  
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