

STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 1

STATE OF WISCONSIN,

PLAINTIFF,

JURY TRIAL

TRIAL - DAY 12

vs.

Case No. 05 CF 381

STEVEN A. AVERY,

DEFENDANT.

DATE: FEBRUARY 27, 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. We're here this morning, outside the presence
4 of the jury at this time, for a continuation of the
5 trial in this matter. Will the parties state their
6 appearances for the record, please.

7 ATTORNEY KRATZ: State appears by Special
8 Prosecutors Ken Kratz, Norm Gahn, and Tom Fallon,
9 your Honor.

10 ATTORNEY BUTING: Good morning, your Honor.
11 Attorneys Jerome Buting and Dean Strang appearing on
12 behalf of Mr. Avery, who is present.

13 THE COURT: All right. And I understand,
14 Mr. Buting, that you wish to be heard outside the
15 presence of the jury before we commence
16 cross-examination of the State's last witness.

17 ATTORNEY BUTING: I do, Judge. At this
18 time I'm making a motion to suppress and to move to
19 strike any of the testimony and evidence regarding
20 the results of the bullet fragment FL that was
21 testified to about yesterday. The reasons are, I'm
22 renewing the motion that I filed in this court
23 entitled Defendant's Motion to Assure Fair Forensic
24 Testing, which was filed on March 6 of 2006.

25 In that motion I, ironically, or maybe

1 not so ironically, predicted that there would be
2 potential of contamination and complete
3 consumption of evidence that would potentially
4 hamper the defense ability to get a fair trial
5 and to be able to meet the State's evidence.

6 The motion was filed on March 9th. The
7 State replied, ironically, arguing that the State
8 Crime Lab was unlike other Crime Labs that I had
9 cited from other parts of the country that had
10 had problems with contamination or outright
11 fraud. The State replied arguing that there's no
12 evidence of any contamination history or record
13 in the State of Wisconsin's Crime Lab and that
14 having a defense expert present, again
15 ironically, would make a -- would increase the
16 risk for contamination.

17 Now, here we hear that the State Crime
18 Lab brought in new trainees, which increased the
19 risk of contamination, during that critical test.
20 When we could have very easily had a defense
21 expert also there and observing, at a minimum, if
22 she was going to use up all the sample and
23 thereby prevent the defense from retesting it
24 itself.

25 The motion was heard on March 17th,

1 2006, and that's before that bullet even arrived
2 at the Crime Lab. Now we hear, two weeks later,
3 two to three weeks later, Ms Culhane does this
4 extraction on the bullet, uses it all up,
5 contaminates the testing process, and we have no
6 recourse other than relying on cross-examination
7 to try and point out those mistakes.

8 The -- In the motion hearing, which we
9 heard on -- which was heard on March 17th,
10 Mr. Gahn made a point of saying -- one of the
11 things we had talked about is that our expert had
12 in prior cases been able -- particularly in
13 Illinois Crime Lab -- been able to be present
14 when there is an instance of sort of a one time
15 test where there is not going to be enough for
16 both sides to later test.

17 And Mr. Gahn says, in all candor -- I'm
18 quoting from the transcript -- In all candor, I
19 will admit to the Court I have heard of cases
20 where that is done, or there is an agreement
21 between the defense and the prosecution to send
22 the item for independent testing. But those
23 generally are cases where there's one critical
24 piece of evidence and there will be total
25 consumption of that evidence.

1 Skipping down a little bit. Where it's
2 just one piece of evidence that could be
3 inculpatory or exculpatory and the defendant has
4 no other comparable means of getting that
5 evidence analyzed.

6 Clearly, Mr. Gahn was on notice that if
7 that situation arise -- arose in this case, and
8 that a critical piece of evidence was going to be
9 completely consumed by the State's tests, that
10 some effort should have been made to assure fair
11 forensic testing, which is what we ask for in our
12 motion. Instead, we heard what happened
13 yesterday. The Crime Lab analyst consumed the
14 entire sample and denied us the opportunity for a
15 retest, which all along Mr. Gahn has been arguing
16 is the solution, you know, just retest. We're
17 happy to have you retest.

18 But we can't retest when there's been an
19 extraction that's contaminated and that was made
20 clear yesterday. So, the Court, by the way,
21 also, in its decision, made a point of noting
22 that the Court was not aware that our State Crime
23 Lab has been involved in incidents of mistakes,
24 and contamination, things of that sort, unlike
25 other crime labs.

1 Now, it turns out that the State knew,
2 back then, that the Crime Lab was keeping a
3 contamination log. And they knew that, at least
4 by then, there was probably 75 incidents that
5 they had recorded of contamination. And that
6 wasn't disclosed to the Court or to the defense.
7 It was only -- In fact that wasn't disclosed even
8 in our original discovery request for the bench
9 notes and lab sheets and all of that stuff. We
10 had to make a separate independent request for a
11 contamination log, if one existed, before we got
12 that information.

13 So I think the decision that the Court
14 made in March was based on faulty information. I
15 think the State should bear the penalty for that.
16 I think that shows bad faith, both in the failure
17 to disclose that there was a history of
18 contamination at the time we made this motion and
19 argument, and bad faith in that, even after it
20 was made clear to the Court that the defense had
21 concerns about a single one shot test that would
22 consume everything, the State, nevertheless, went
23 ahead and did that and did it while training
24 somebody, resulting in a contamination.

25 So, for all those reasons, I think the

1 Court doesn't have to decide this today, but I
2 want to put it on the record today. For all
3 those reasons I am renewing my motion and asking
4 that the test results be suppressed, that the
5 jury be instructed accordingly, and we can decide
6 this at a later date, but certainly, obviously,
7 before the case is sent to the jury.

8 THE COURT: Who's going to be responding
9 for the State?

10 ATTORNEY GAHN: I will, your Honor. I
11 would ask to be given some time to reply to this.
12 Just hearing this now, I need to review the
13 transcripts and review the motions that were filed.

14 THE COURT: All right. Very well. The
15 Court will then take the renewal of the motion under
16 advisement at this time and give the State a chance
17 to reply later. I will just make some notes here.

18 Anything else before we bring out the
19 jury? If not, we can bring the jurors at this
20 time.

21 (Jury present.)

22 THE COURT: You may be seated. Members of
23 the jury, we did have a matter to take up on the
24 record outside the presence of the jury before
25 starting today. That has now been completed. At

1 this point, we'll have Mr. Stahlke return to the
2 witness stand and the defense may begin its cross.

3 THE CLERK: Please raise your right hand.

4 **NICK STAHLKE**, called as a witness
5 herein, having been first duly sworn, was
6 examined and testified as follows:

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

9 THE WITNESS: Nick Stahlke, Stahlke is
10 spelled, S-t-a-h-l-k-e.

11 **CROSS-EXAMINATION**

12 BY ATTORNEY STRANG:

13 Q. Good morning, Mr. Stahlke.

14 A. Good morning.

15 Q. I have got your curriculum vitae, fancy word for
16 resume, with me and it looks to me that you have
17 had what we might agree is broad experience as a
18 forensic analyst?

19 A. That's correct.

20 Q. Before you went into work at crime laboratories
21 or forensic analysis, you spent several years as
22 a pharmacy technician?

23 A. Correct.

24 Q. Got a basic familiarity with pharmaceuticals and
25 controlled substances?

1 A. Yes.

2 Q. Your first job as a forensic analyst was for the
3 State of Idaho?

4 A. That's correct.

5 Q. Hence, the work you described doing teaching at
6 the Northern Idaho college.

7 A. That's correct.

8 Q. You did a broad range of forensic analysis with
9 the State of Idaho?

10 A. The State of Idaho has criminalists and
11 criminalists are basically generalists, they have
12 more than one specific duty in a crime lab.

13 Q. Maybe not quite close enough to the mike there,
14 but the word is criminalist?

15 A. Correct.

16 Q. Okay. So, and as you say, sort of a general
17 range of forensic analytic tasks that would be
18 assigned to a criminalist, generally?

19 A. Correct.

20 Q. Wisconsin specializes a little bit more than
21 that, correct?

22 A. That's true.

23 Q. But you became what is called a principal
24 criminalist for the State of Idaho?

25 A. Yes, I did.

1 Q. Meaning you had obtained some experience across a
2 range of forensic topics.

3 A. Yes.

4 Q. And got a promotion, in effect?

5 A. That's correct.

6 Q. When you joined the Wisconsin State Crime
7 Laboratory, drug identification was your first
8 area of work?

9 A. Yes, that's true.

10 Q. Drug identification, we don't need to do a lot on
11 this, but what -- what that means is that in
12 cases where someone is charged with possessing or
13 distributing illegal drugs, what we call
14 controlled substances, you would be the one who
15 would analyze an unknown white powder, let's say,
16 and give an opinion on whether that contained,
17 for example, cocaine?

18 A. That's correct.

19 Q. Or whether a leafy green material contained
20 marijuana or the active chemical in marijuana?

21 A. Also correct.

22 Q. And after a stint doing that sort of drug
23 identification work, you moved in to what are
24 called questioned documents in your line of work?

25 A. That's correct.

1 Q. A questioned document would be what we might
2 think of sort of in every day life as handwriting
3 analysis?

4 A. That's right.

5 Q. So in a case where someone was alleged to have
6 forged a check, let's say, you might compare the
7 handwriting on the allegedly forged check to some
8 known handwriting of the checking account holder?

9 A. Or a suspect in the case, yes, that's correct.

10 Q. And or a suspect in the case, correct. And
11 render an opinion on whether the handwriting
12 looked to be more like the suspects or more like
13 the innocent account holder, for example?

14 A. Correct.

15 Q. That's been -- That sort of examination of
16 questioned documents has been the largest or
17 longest area of your work for the Wisconsin State
18 Crime Laboratory?

19 A. On a full-time basis, yes, that's true.

20 Q. Something like oh, gosh, what are you going on,
21 13 years now of that?

22 A. Just under 12, I believe.

23 Q. Okay. 1994, thereabouts?

24 A. '94 is when I started my two year training. It's
25 basically an apprenticeship program. So, it was

1 two years of that before I could actually examine
2 the actual cases and questioned documents. So I
3 have been working cases independently since '96,
4 under 12 years.

5 Q. And then somewhere along the line you picked up
6 some training and experience in blood spatter?

7 A. Yes, I did.

8 Q. Or blood patterns, bloodstain patterns?

9 A. Correct.

10 Q. Now, here in this case, you weren't called on to
11 look at questioned documents, I assume, right?

12 A. No, that's correct.

13 Q. You weren't called on to look at drug
14 identification?

15 A. That's correct.

16 Q. But your bloodstain experience and knowledge was
17 called upon?

18 A. Yes, it was.

19 Q. Now, in approaching potential bloodstain and
20 bloodstain pattern evidence, this is closeup,
21 eyeball sort of examination, as a starting point?

22 A. Yes, it does take some close examination.

23 Q. You don't do this, in other words, typically from
24 photographs, if you have access to the actual
25 object to be examined?

1 A. Look -- We look at photographs only when we do
2 not have the item to actually examine.

3 Q. Right. And this will require, as I say, sort of
4 close work, at least at times, getting up
5 literally close to a stain or suspected stain?

6 A. Yes.

7 Q. Now, in doing that, you have a concern, not
8 specific to any case, but in general, good
9 practice would suggest a concern that you not
10 contaminate the bloodstain, or suspected
11 bloodstain, you may be examining?

12 A. Yes, that's true.

13 Q. Further, on any given object, blood staining the
14 object may be only one of the possible trace
15 types of evidence available on the object,
16 correct?

17 A. Sure.

18 Q. All right. There may be fingerprints, on some
19 objects, true?

20 A. Yes, that's true.

21 Q. Or may be DNA?

22 A. Also true.

23 Q. Any number of possible things that could be on
24 the object as well as the stains that are of
25 interest to you?

1 A. Yes.

2 Q. So you take precautions to try to reduce the risk
3 that you would accidentally, unintentionally,
4 contaminate the surface or the object, the area
5 you are examining?

6 A. Our goal is not to contaminate the scene, no.

7 Q. Among the precautions you take are wearing the
8 latex gloves you described?

9 A. Correct.

10 Q. And this sort of thing over here?

11 A. Yes.

12 Q. Surgical type gloves. You also wear a lab coat
13 or smock?

14 A. Correct.

15 Q. Do you wear a face mask?

16 A. Not always, no.

17 Q. All right. Booties?

18 A. When in a scene, yes.

19 Q. When at an actual suspected crime scene?

20 A. Correct.

21 Q. Okay. And these things, then, tend to keep you
22 from inadvertently transferring anything from
23 your body, so to speak, to the scene or the
24 surface you are examining up close?

25 A. That, as well as transferring something from the

1 scene onto our bodies, correct.

2 Q. That's exactly where I was going, actually.

3 A. Correct.

4 Q. And I'm glad you brought that up, because the

5 second purpose, then, is that you don't want to

6 be contaminated either.

7 A. Correct.

8 Q. Correct? And it would not be uncommon, at a

9 crime scene, for you to be walking into an area

10 where there may be unknown hazards?

11 A. Correct.

12 Q. I'm not talking about hazards from an armed

13 person, presumably law enforcement officers sweep

14 and secure a crime scene before you would arrive?

15 A. Yes, they do.

16 Q. But there maybe what you could call biohazards?

17 A. Correct.

18 Q. Viruses, conceivably?

19 A. Yes.

20 Q. I mean, you, in particular, are working in close

21 proximity to blood?

22 A. Correct.

23 Q. Blood from unknown sources?

24 A. Correct.

25 Q. So things like Hepatitis C, or HIV, you know, any

1 number of possible biohazards are something you
2 have to be aware of?

3 A. Yes.

4 Q. There may be other dangerous chemicals or what
5 have you at a given scene?

6 A. That's possible.

7 Q. And one of the things that is true about your
8 work is, you are coming in dealing with a range
9 of possible unknowns and trying to make some of
10 them known?

11 A. Yes.

12 Q. You are trying to recover evidence and assign
13 some meaning to it, if you can?

14 A. Yes.

15 Q. So the protective clothing and gear you wear is
16 designed both to reduce the likelihood that you
17 would contaminate the scene and to reduce the
18 likelihood that you would be contaminated by the
19 scene?

20 A. That's correct.

21 Q. Now, blood in specific, sometimes is present in
22 very minute quantities?

23 A. Yes, it is.

24 Q. For example, you described yesterday, and I
25 don't -- I don't have these available to show you

1 on the screen, unless I really need to bother
2 Mr. Kratz, I won't, but you showed us what you
3 described as some impact staining on the rear
4 cargo door of the Toyota RAV4 here?

5 A. Correct.

6 Q. Some of those spots, of course, were visible to
7 the eye, particularly when we zoom in on the
8 photograph, correct?

9 A. Yes.

10 Q. But -- but even those, many of them are just very
11 small, sort of pinpoint specks of blood, correct?

12 A. Many of them were, yes.

13 Q. And when you have blood being flung, or cast off,
14 so that it has an impact with a surface, these
15 can be very small droplets, some of them?

16 A. Yes, they may.

17 Q. Some are larger?

18 A. Absolutely.

19 Q. But in looking at a surface like the cargo door,
20 you are aware of the quite real possibility that
21 there actually are small specks of blood, too
22 small for you to see?

23 A. The stains that are not visible to the eye would
24 not necessarily have any significance to the
25 pattern.

1 Q. But they may be there?

2 A. There may be.

3 Q. Particularly, let's again talk about these sort
4 of impact stains. Your experience, or from your
5 experience, you know that if, for example, a
6 bloody head, somebody with blood in their hair,
7 if the hair is being flung and droplets are being
8 cast off, you may get a range of size of those
9 droplets?

10 A. Yes.

11 Q. Right down to droplets so small that you wouldn't
12 see them unaided with the human eye?

13 A. We would look at any stains with magnification,
14 if necessary. But I don't know of any, I have no
15 experience with the stains that are not visible,
16 unless they are -- they have been -- there have
17 been removed, either through washing, or wiping,
18 and then those would be considered latent stains
19 and those stains, then we can visualize through
20 the use of other chemicals.

21 Q. Well, let's, before we get to other chemicals,
22 and I will, let's go back, remember the CD case?

23 A. Yes.

24 Q. I don't have an exhibit number on the CD case.

25 ATTORNEY STRANG: Is that something you

1 have here, Mr. Kratz?

2 ATTORNEY KRATZ: Yes, 92.

3 ATTORNEY STRANG: Terrific. Is that
4 something you could pop up there?

5 Q. (By Attorney Strang)~ Let's go back to Exhibit
6 292, with Mr. Kratz's help. What you told us
7 about yesterday is that we could see part of the
8 stain there?

9 A. Correct.

10 Q. You still have your laser pointer?

11 A. No, I do not.

12 Q. I don't know that you will need it. But you told
13 the ladies and gentlemen in the jury box to your
14 left, yesterday, that something like 50 percent
15 of the surface area of that CD case was covered
16 in blood?

17 A. My recollection is that a large portion of this
18 CD case had a light coat of what appeared to be
19 red brown stains.

20 Q. All right. Now, if we don't see those, we don't
21 see 50 percent of that CD case covered in a light
22 coat of red brown stains, that's because the
23 stains are very small?

24 A. No, in fact, in this particular case, it was more
25 of a wipe pattern or a smearing of that -- of

1 blood on that -- the rest of that CD case. That
2 is not observable on this photo. So, in other
3 words, it's a very light coat of what appeared to
4 be a red brown stain.

5 Q. And if that were not observable to the naked eye,
6 but you suspected it, or wondered about it for
7 some reason, you have at least one chemical that
8 will assist you in seeing something you otherwise
9 might not see, true?

10 A. Correct.

11 Q. Luminol would be the typical chemical?

12 A. Yes.

13 Q. That's just something you spray on and then
14 observe under ultraviolet light?

15 A. No, it's a chemu -- chemalum -- chemiluminescence
16 that gives a light, faint, yellowish-green glow
17 in complete darkness, so you don't need
18 additional mechanical help.

19 Q. Okay. But you do need darkness?

20 A. That's correct.

21 Q. And then you will see this glowing where the
22 naked eye may not pick up blood?

23 A. Correct.

24 Q. Luminol, of course, is not specific for blood?

25 A. No, it is not.

1 Q. Bird droppings and a number of other things will
2 luminesce with luminol, correct?

3 A. Yes, there are other things that will give it a
4 false positive, yes.

5 Q. But what it does is, it signals you to look
6 harder, or do a little bit more examination of
7 the surface?

8 A. Typically we use luminol only as a last resort
9 when we feel that there was some attempt to clean
10 up some blood. So, in a particular examination,
11 when we're initially looking for bloodstains, we
12 won't use luminol as long as we can visibly see
13 them.

14 Q. You did not use luminol in examining the Toyota?

15 A. That's correct.

16 Q. At any time?

17 A. Not that I know of, no.

18 Q. That you know, or on any part of the Toyota?

19 A. Correct.

20 Q. That is, you saw no indication that anybody had
21 tried to clean up, or wipe away, bloodstains?

22 A. Well, there was enough visible blood that
23 wouldn't require that we use the luminol in
24 this -- for the examination of this vehicle.

25 Q. You also saw no evidence that anyone tried to

1 clean up or wipe away bloodstains?

2 A. I can't say that that's necessarily true. The
3 amount of blood that was on the molding, or the
4 side of that back storage area would indicate
5 that there should have been additional stains on
6 the carpeting that I did not see.

7 Q. And are you here telling us that someone cleaned
8 up the carpet in the rear cargo area?

9 A. There's a possibility of that, but I have no --
10 there's nothing that indicates that occurred.

11 Q. Nothing at all that indicates that occurred, is
12 there?

13 A. Only the fact that there -- the lack of a lot of
14 staining on the carpeting area would indicate
15 there is a possibility that there may have been
16 some attempts to clean up the blood.

17 Q. All right. And do you think it would have been
18 easier to clean up carpeting in the rear cargo
19 area, so that no blood was visible, than it would
20 have been to wipe plainly visible blood off the
21 plastic wheel well?

22 A. That would make sense, yes.

23 Q. Easier to clean the carpet?

24 A. No, I would say that if you are making attempts
25 to clean all the blood in a particular scene, or

1 a vehicle, you would -- you would try to clean up
2 all the blood and not just those areas that are
3 on carpeting.

4 Q. You mean, the plastic -- That was sort of a
5 plastic composite, the wheel well cover on the
6 inside of the cargo area --

7 A. Correct.

8 Q. -- correct? That presumably could have been
9 wiped off, with a rag, a towel, a paper towel,
10 something?

11 A. Right, it could have.

12 Q. The carpet would have taken something that would
13 get into an absorptive surface, like carpet?

14 A. I don't understand your question.

15 Q. Some sort of cleaning solvent or something to get
16 in -- I mean the carpet was an absorptive
17 surface.

18 A. Yes, it was.

19 Q. All right. And, in any event, you have no idea
20 at all whether anyone tried to clean blood off
21 the carpet in the cargo area or not?

22 A. No, I do not.

23 Q. No idea whether anyone tried to clean blood from
24 any other surface in the car?

25 A. No obvious evidence of that.

1 Q. What you do know is that the total blood you saw
2 inside the car, forward of the rear cargo area --
3 okay, so I'm talking about the passenger
4 compartment of the car, if you will?

5 A. Okay.

6 Q. The total blood you saw there was, you know, if
7 we could somehow put it in a little jar, was a
8 tiny quantity of blood?

9 A. If you try to quantitate the amount of -- the
10 number of stains you could get from a small
11 amount of blood, it can be a large number of
12 actual stains.

13 Q. From a very small amount of blood?

14 A. That's correct.

15 Q. And you have no way to give us an accurate
16 quantity of the blood that made the stains you
17 observed in the passenger compartment of the car?

18 A. About the only thing I can tell you is that a
19 natural stain would -- or a drop of blood
20 contains about a .05 milliliters.

21 Q. And do you think .05 milliliters could have made
22 every stain you observed in the passenger
23 compartment of that car?

24 A. No.

25 Q. Twice that?

1 A. It would have been much more than that.

2 Q. And what do you mean by much more?

3 A. It probably would have been -- If you want me to

4 quantitate the amount of blood that was required

5 to use those -- or produce those stains, I would

6 have to guess between one and two milliliters.

7 Q. One and two milliliters?

8 A. Correct.

9 Q. Okay. That's a guess?

10 A. That's a guess.

11 Q. But based on your experience?

12 A. Yes.

13 Q. And your training?

14 A. Right.

15 Q. You -- You did, at various places in the

16 passenger compartment --

17 ATTORNEY STRANG: We can take that down

18 now. We can probably take that photo, Exhibit 292

19 down now, if you want.

20 Q. (By Attorney Strang)~ Just to be clear here,

21 Mr. Buting reminds me, when you say one to

22 two milliliters of blood, you are not including

23 the blood staining in the cargo area?

24 A. That's correct.

25 Q. So just the passenger seats forward to the

1 ignition area?

2 A. That's correct.

3 Q. All right. Now, you did do some phenolphthalein
4 testing?

5 A. I did not, no.

6 Q. Did you see that done by someone?

7 A. Yes.

8 Q. All right. Done in your presence?

9 A. Correct.

10 Q. And what does phenolphthalein testing involve,
11 physically, what is one doing when testing with
12 phenolphthalein?

13 A. Physically, you use a -- typically a cotton tip
14 applicator and collect a small portion of what
15 you think is a probable blood stain. You then
16 add a drop of phenolphthalein and a drop of
17 hydrogen peroxide within the oxidation process,
18 or reduction process, and with that, then, the
19 combination of those chemicals you see a color
20 change, a pinkish purple color.

21 Q. Right, on the head of the swab?

22 A. Correct, for positives -- probable positives.

23 Q. And you are adding the phenolphthalein and the
24 peroxide with an eye dropper or something like
25 that?

1 A. Correct.

2 Q. So this process, again, requires actually getting
3 up to the stain and swabbing part of it with a
4 swab?

5 A. Yes.

6 Q. Did you physically have to get into the car here
7 to examine the bloodstains you have described;
8 and let's start, again, with the passenger
9 compartment, forward of the rear cargo area?

10 A. I did not have to crawl into the vehicle; I had
11 to lean into the vehicle in order to see some of
12 the stains, yes.

13 Q. All right. For example, which stains did you
14 have to lean in to see?

15 A. The stains on the front of the passenger
16 driver -- excuse me -- the driver's front seat
17 and the passenger's front seat and also to get a
18 good look at the stain just underneath the
19 ignition, I had to lean in and look around the
20 steering wheel in order to see it.

21 Q. In leaning in, you took care to prop yourself at
22 places where you did not see any bloodstain?

23 A. That's correct.

24 Q. And, of course, you had the latex gloves on?

25 A. And coveralls, yes.

1 Q. Now, eventually, you discovered that either one
2 or both battery cables were disconnected?

3 A. Correct.

4 Q. Under the hood?

5 A. That's true.

6 Q. You were the one who opened the hood?

7 A. Yes.

8 Q. Which required releasing a lever inside, near the
9 driver's left leg?

10 A. Yes.

11 Q. And then popping the hood latch when that
12 appeared through the grill, at the front of the
13 car?

14 A. Correct.

15 Q. Lifted the hood, propped it up with the metal
16 rod, and looked at the battery posts?

17 A. Correct.

18 Q. One or both of those was disconnected?

19 A. If I recall, they both were disconnected, but I
20 know for sure one was.

21 Q. And the one that we saw in the photo yesterday, I
22 saw some reddish or reddish brown discoloration
23 on or near the battery post?

24 A. Correct.

25 Q. Was that something you tested?

1 A. No.

2 Q. That, you decided, was not suspected blood?

3 A. Well, I believe there was actually a

4 phenolphthalein test done on that, but there was

5 no -- it was not positive.

6 Q. Okay. So whatever that was, wasn't blood.

7 A. Correct.

8 Q. Now, you were still wearing the same latex gloves

9 when you opened the hood?

10 A. The same latex gloves that I put on prior to

11 opening the hood?

12 Q. Yes.

13 A. Yes.

14 Q. Okay. One of the things -- You know, in going

15 back now, when you are doing your visual

16 examination of the car, okay; one of the things

17 you were aware of was the possibility of latent

18 fingerprints?

19 A. Correct.

20 Q. A latent fingerprint is a fingerprint that is

21 left on a surface?

22 A. It's a fingerprint that is not visible to the

23 naked eye until after it's been actually raised

24 through some type of a process.

25 Q. And you were aware that this car was processed

1 for fingerprints?

2 A. It was in the process of being examined for

3 fingerprints, as I was looking at it, yes.

4 Q. And this was Mr. Riddle?

5 A. Correct.

6 Q. Mike Riddle --

7 A. From our lab.

8 Q. -- from your lab?

9 A. Yes.

10 Q. So he and you are working on the Toyota

11 simultaneously?

12 A. That's my recollection, yes.

13 Q. And what he does is examine the car and treat it

14 with some substance to try to make, as you say,

15 these latent or invisible fingerprints appear to

16 the naked eye?

17 A. There's a number of processes that the

18 identification uses to do that, yes.

19 Q. And you may have had some experience with that as

20 a criminalist in Idaho, but that's not your field

21 today?

22 A. That's correct.

23 Q. Did you -- Were you able to see, though, as you

24 did your walk around of the car, or spent your

25 time around that car, whether Mr. Riddle raised

1 latent fingerprints on the top of the spare tire
2 wheel cover, outside the rear cargo door?

3 A. I don't recall.

4 Q. One way or the other?

5 A. No.

6 Q. You do remember him, in circling the car and
7 processing it for latent prints?

8 A. I know that he was present while I was working on
9 the vehicle.

10 Q. One of the things that -- One of the limitations
11 on what you do is, in assessing a bloodstain, if
12 the blood is dry, at least, you ordinarily cannot
13 give an opinion on when the bloodstain was left?

14 A. Not absolutely, no.

15 Q. Can't give an age of the bloodstain?

16 A. I can give a feeling, as far as the age of the
17 bloodstains, because the bloodstains change in
18 color after a period of time.

19 Q. But that's, as you say, a feeling?

20 A. Well, there's some basis for it, as far as -- I
21 don't have any examples of it, but the longer a
22 stain is exposed to the atmosphere, the darker
23 that stain becomes. So, if you have a bright red
24 stain you are examining, you can have a good
25 assurance that that stain is rather fresh.

1 Q. At some point, the darkening stops?

2 A. At some point, yes, it does.

3 Q. And beyond that point?

4 A. Then you have no feel for the time.

5 Q. Right.

6 A. Correct.

7 Q. And when -- when, approximately, does the

8 darkening of a bloodstain stop?

9 A. I don't know the exact absolutes on that.

10 Q. Are we talking days?

11 A. Probably more like weeks -- weeks. It has a lot

12 to do with the environmental conditions as well.

13 Q. You, here, made no effort to determine the age of

14 any stain that you saw in the Toyota?

15 A. There was no requirement for that.

16 Q. You made no effort to determine the age of the

17 stain you saw in the Pontiac Grand Am, for that

18 matter?

19 A. No, there was no requirement. These stains were

20 rather fresh looking.

21 Q. You say rather fresh looking, they were dry?

22 A. Correct.

23 Q. They were reddish brown?

24 A. Reddish, yes. And we use reddish brown as a

25 general term. They were probably more red than

1 brown.

2 Q. None of them bright red?

3 A. That's correct.

4 Q. The other -- I guess another thing that you can't
5 say in examining a bloodstain is, when it's a
6 contact or transfer stain, you are not able to
7 say what surface with blood touched the clean
8 surface without blood, with any reliability?

9 A. Without any reliability. There's rare occasions
10 that you may be able to determine that, a fabric
11 impression would leave an impression that appears
12 to have the -- the weave of the fabric that
13 touched that surface. But, otherwise, you might
14 be able to get the transfer, or the -- of a -- or
15 the outline of a weapon, like on a -- if somebody
16 is wiping the blood off of a knife blade, you
17 might be able to see the outline of that knife
18 blade. But it is only consistent with that
19 object coming in contact, because you can't
20 necessarily identify it completely.

21 Q. Right. And let's use an even better example.
22 When you get it, every once in awhile, at a crime
23 scene, you will actually get a fingerprint or a
24 thumbprint that's left in blood?

25 A. You will have some ridge detail in blood, yes.

1 Q. All right. So, in that circumstance, you either
2 can tell that it was the bleeding finger, or at
3 least that somebody put a finger in fresh, wet
4 blood?

5 A. It would be the surface of a -- the ridge -- the
6 area that contains ridge detail has contacted the
7 surface, yes.

8 Q. So, again, either that finger, thumb, whatever,
9 is bleeding, or it's not, but it contacts the
10 fresh blood?

11 A. I guess I don't understand your question.

12 Q. If there's a bloody fingerprint, okay?

13 A. Mm-hmm.

14 Q. Either the finger that left it is itself
15 bleeding --

16 A. Oh.

17 Q. -- right? Or the finger is not, but the finger
18 is put into wet, fresh blood?

19 A. It would be the blood transferred from that
20 particular finger. So that finger either is
21 bleeding, in your case, or it has contacted blood
22 and then transferred it onto another surface.

23 Q. You didn't see any bloody fingerprints here?

24 A. I don't recall seeing any, no.

25 Q. No. And if what you see is a -- what you called

1 a passive drop, passive stain, that could be a
2 drop of blood from some part of a person's body
3 that's bleeding?

4 A. Correct.

5 Q. It could be a drop of blood from sort of eye
6 dropper that's used for phenolphthalein?

7 A. It could be, yes.

8 Q. It could be a drop of blood from a pipette?

9 A. Well, yes, it could be.

10 Q. Could be a drop of blood from anything that's
11 capable of producing a drop that gravity will
12 call -- cause to fall to the surface?

13 A. Yes.

14 Q. Likewise, when you see a swipe, that could be
15 from a bloody elbow, a bloody finger, correct?

16 A. It's a bloody object, anyway, that has blood on
17 its surface and is moving across an unstained
18 surface.

19 Q. So, again, whether that's part of a person's
20 body, or a Q-tip, or a stick of wood, or anything
21 else that's a bloody surface and moves across the
22 clean surface, you can't say?

23 A. Well, if it was the difference -- if you are
24 trying to distinguish between a Q-tip and a -- an
25 elbow, let's say, there's a -- you are looking at

1 a much difference in surface area that would have
2 caused such a stain.

3 Q. Sure. But, by the same token, if it's the tip of
4 a pinkey and it's about the same as the tip of a
5 swab, you wouldn't necessarily be able to tell
6 the difference between what left the contact or
7 the swipe?

8 A. Not necessarily.

9 Q. Now, if a person were actively bleeding, the term
10 you used yesterday, a person were actively
11 bleeding, from a hand, okay, and had contact with
12 this car in various places; ignition, door
13 threshold, whatever, you might well see
14 fingerprints, wouldn't you?

15 A. No, not necessarily.

16 Q. Not necessarily, but you might expect to see
17 fingerprints?

18 A. I wouldn't -- I have no expectation to see
19 fingerprints from somebody that is just actively
20 bleeding. In fact --

21 Q. Including if there's --

22 A. I don't know that I have ever seen -- been to a
23 scene where there's been active bleeding or
24 passive drops in the same scene, seeing bloody
25 foot -- bloody fingerprints.

1 Q. All right. But you described more than passive
2 bleeding, haven't you, in that passenger
3 compartment of this car?

4 A. Oh, there's contact stains and passive bleeding
5 as well, yes.

6 Q. Right. The contact stain, which is what you
7 called it, over the ignition area, for example?

8 A. Below the ignition, yes.

9 Q. That was not what you called passive bleeding?

10 A. No. No.

11 Q. That was actual contact?

12 A. Correct.

13 Q. And if someone was actively bleeding enough so
14 that the surface of his skin rubbed against the
15 surface of the car and left that contact stain,
16 then you might be at risk of leaving a
17 fingerprint in the car as well?

18 A. I would not have any expectations of a
19 fingerprint left there, depending on the
20 orientation of the cut. If the cut is on the
21 backside of a hand, or on the elbow, I wouldn't
22 expect that that person that is, then, actively
23 bleeding, leaving bloody fingerprints.

24 Q. Sure, understood. But, when you see -- If you
25 assume that a contact stain is left by someone

1 who is actively bleeding, one of the things you
2 can say, is that the person may not have had a
3 glove on, or something covering the active source
4 of bleeding, correct?

5 A. That's probably true.

6 Q. All right. So there may not have been a bandaid?

7 A. Correct.

8 Q. Or a bandage?

9 A. Correct.

10 Q. There may not have been a glove?

11 A. Probably not.

12 Q. All right. There also could have been a glove,
13 correct?

14 A. If he is bleeding profusely, there is a
15 possibility that the glove has a hole in it or a
16 cut in it and they are bleeding through the
17 glove.

18 Q. Or just soaks through the glove?

19 A. Sure.

20 Q. But now we're talking about probably profuse
21 bleeding, as you say?

22 A. More than likely.

23 Q. Now, tell us what blood you found on the exterior
24 door handles of the Toyota?

25 A. I did not find any blood on the exterior door

1 handles.

2 Q. Tell us about the blood you found on the interior

3 door handles?

4 A. I did not find any blood on the interior door

5 handles.

6 Q. How about the blood you found on the steering

7 wheel?

8 A. I did not observe any blood on the steering

9 wheel.

10 Q. Did you look?

11 A. Yes.

12 Q. No blood at all on that steering wheel?

13 A. I didn't see any visible blood on there, no.

14 Q. See any blood on the gear shift lever?

15 A. I don't recall that I did, no.

16 Q. This was an automatic transmission Toyota, as you

17 remember?

18 A. Right.

19 Q. So there's a lever somewhere in the center

20 console?

21 A. Yes.

22 Q. With something that one has to squeeze to take

23 the vehicle out of park?

24 A. Correct.

25 Q. You examined that closely?

1 A. Yes.

2 Q. Saw no sign of blood?

3 A. Not that I recall, nothing observable or visible.

4 Q. When you're examining a pattern of blood

5 staining, this is -- this is something that

6 requires some judgment; is that fair?

7 A. Yes.

8 Q. Because it's a matter of interpretation?

9 A. Correct.

10 Q. I mean, you are typically not fortunate enough to

11 have a videotape of what actually happened to

12 leave bloodstain patterns at a scene?

13 A. Not at a scene, no.

14 Q. So one is sort of reconstructing, based on

15 judgment?

16 A. Based on training and experience, yes.

17 Q. Right, training, experience, judgment?

18 A. Right.

19 Q. And trying, then, to interpret what you are

20 seeing or may be seeing?

21 A. That's true.

22 Q. There is a subjective quality to this in the end?

23 A. The subjectivity of the examination of

24 bloodstains is only from -- from -- based on --

25 based upon your experience and training.

1 Q. One has to start with examining bloodstains
2 somewhere; you described a 40 hour course
3 required?

4 A. Right.

5 Q. So, if for example, I were to enroll in a 40 hour
6 course in bloodstain analysis, that might be one
7 full week out of my life?

8 A. Yes.

9 Q. Eight hours of classroom time for five days?

10 A. Correct.

11 Q. And after that I, conceivably, could be
12 accredited as a bloodstain examiner?

13 A. Yes, that's true.

14 Q. But you wouldn't -- As someone in a supervisory
15 position at the State Crime Lab, wouldn't
16 necessarily send me out to a crime scene, alone,
17 to do bloodstain analysis the following Monday,
18 would you?

19 A. That's correct.

20 Q. You would want me to get some on-the-job
21 experience?

22 A. Yes.

23 Q. Tagging along behind more experienced bloodstain
24 pattern analysts?

25 A. Yes.

1 Q. And that would go on for some period of time
2 before I was flying solo?

3 A. Correct.

4 Q. And if -- if after a year, if I was an apt pupil,
5 I was able to be out on my own, examining
6 bloodstain patterns, would that seem about a
7 reasonable sort of progression in, let's say, the
8 Wisconsin State Crime Laboratory?

9 A. I suppose that's an adequate amount of time.

10 Q. Okay. But then if we checked in with me five
11 years later, and I had been doing bloodstain
12 pattern analysis all five years, you would expect
13 me to have more experience at the end of five
14 years?

15 A. True.

16 Q. And perhaps, then, better interpretive skills?

17 A. True.

18 Q. More experience with seeing a wider variety of
19 staining?

20 A. Yes.

21 Q. So, you know, we could go on, but it's --
22 experience plays a large part in the judgments or
23 interpretations that you ultimately reach?

24 A. Correct.

25 Q. Now, even there, you -- you were very careful on

1 direct examination to use the term "consistent
2 with"; did I recall that correctly?
3 A. When it comes to the contact stains?
4 Q. Yes.
5 A. And also the paths of stains.
6 Q. Yes. And the patterns that you see?
7 A. That's correct.
8 Q. So, for example, although the -- one of the
9 stains in the cargo area, now, on the wheel well,
10 you describe as sort of a classic hair contact or
11 transfer stain?
12 A. Yes.
13 Q. Again, what you are telling us is, that's
14 consistent, what you saw was consistent with a
15 hair contact or transfer stain?
16 A. That's correct.
17 Q. When something is consistent with something else,
18 it's a possibility that cannot be excluded?
19 A. That's right.
20 Q. And some of these things, like for example a hair
21 transfer stain, you personally have enough
22 experience to say, I'm quite confident that this
23 was bloody hair that left that transfer stain?
24 A. Yes.
25 Q. Other transfer stains may be -- what's the word I

1 want -- more generic, if you will?

2 A. That's a good term.

3 Q. Less classic?

4 A. Right.

5 Q. And what you can say there is, well, that would

6 be consistent with, for example, a bloody finger

7 being swiped acrossed a surface just, I mean,

8 just to pick an example?

9 A. That's a possibility, yes.

10 Q. But you could not, and would not, say that it is

11 consistent only with a bloody finger being swiped

12 across --

13 A. No --

14 Q. -- a surface?

15 A. -- I would not.

16 Q. There are other explanations that also may be

17 consistent with the appearance of such a contact

18 stain?

19 A. There can be, yes.

20 Q. You, in your line of work, avoid assigning

21 probabilities to the one, or two, or three, or

22 more different consistent explanations with the

23 source of a stain?

24 A. I don't know that you can establish a

25 probability.

1 Q. So you don't try?

2 A. Correct.

3 Q. Now --

4 A. The only thing I can say, is when I use

5 consistent, it's probably more likely that that

6 stain was caused by a certain action.

7 Q. All right. But, again, you can't get into

8 specifics often, whether it's an elbow, whether

9 it's a finger, whether it's whatever?

10 A. Correct.

11 Q. Okay.

12 A. I mean you can exclude certain things. If you're

13 talking about a very small stain, you can see

14 that the pattern goes from left to right and it

15 doesn't get any larger, then you can narrow it

16 down to a smaller item rather than a larger item.

17 Q. Right. All right. And that's -- And that's --

18 Some of this gets to be fairly common sense?

19 A. Absolutely.

20 Q. If it's the sort of stain you have described,

21 this is probably not someone who's had their

22 jugular vein cut?

23 A. Correct.

24 Q. There are, though -- You can, though, sort of

25 rule out some stain patterns and say that a stain

1 pattern you see is inconsistent with something,
2 correct?

3 A. You certainly may be able to do that, yes.

4 Q. You're familiar with something called high
5 velocity spatter?

6 A. Yes, I am.

7 Q. High velocity spatter typically would be the
8 spatter you get from a bullet passing through a
9 human being, an animal, something that has blood?

10 A. High velocity impact spatter is consistent with
11 gunshot wounds.

12 Q. There are also things called low velocity
13 spatter?

14 A. Correct.

15 Q. And give us the classic example with which that
16 would be consistent.

17 A. Passive drop falling to the surface.

18 Q. Okay.

19 A. Generated only -- Only caused -- Only influenced
20 by gravity. So it would be a drop separating
21 from the end of a finger and impacting the
22 surface, that would be a low velocity stain.

23 Q. What would you -- What would you typically
24 describe a stain as if you had, let's say, a
25 knife stabbing someone in the back and being

1 taken out and struck into the back over and over
2 again?

3 A. Stabbings are -- I have seen between medium to
4 high velocity impact stains caused from a
5 stabbing and it really has a lot to do with the
6 vigorous stabbing of that victim.

7 Q. In this Toyota, and I will include the rear cargo
8 area, you saw nothing that you would describe as
9 high velocity spatter?

10 A. No, that's correct.

11 Q. Did you see any medium velocity spatter?

12 A. Yes, I would say the stains that were on the rear
13 door, cargo door, surface would be defined as
14 medium velocity spatter.

15 Q. Again, from maybe a body in motion and blood sort
16 of splaying off the body?

17 A. That's correct.

18 Q. All right. As to the stains against the
19 passenger side wheel well in the cargo
20 compartment?

21 A. Okay.

22 Q. Which included the classic hair transfer that you
23 described?

24 A. Yes.

25 Q. That's probably the stain area where you have the

1 greatest confidence about the probable source of
2 the pattern?

3 A. As far as the pattern that -- yes, that's -- I
4 would have a better, or a good feel for the
5 source of that stain, yes.

6 Q. Right. Even there, you are not able to venture
7 an opinion on whether the person who left that,
8 with the bloody hair, was alive or dead at the
9 time?

10 A. No, I could not determine whether or not that
11 person was alive or dead.

12 Q. Are you -- Are you actually part of the Field
13 Response Team, or do you just coordinate it? I
14 wasn't clear at the beginning of your testimony
15 yesterday.

16 A. No, I'm the coordinator, but I also serve as a
17 team leader as well.

18 Q. So you will go out into the field and respond if
19 asked?

20 A. Yes, that's true.

21 Q. You were not asked to respond to the Avery Auto
22 Salvage property?

23 A. No, I was not on call at that particular time.

24 Q. Never went to that property yourself?

25 A. No, I did not.

1 Q. Your first work on this case was on Monday,
2 November 7th?

3 A. Yes.

4 Q. Right in the garage at the Crime Lab in Madison?

5 A. That's correct.

6 Q. Had you come -- Had you been asked, you would
7 have come to the Avery Salvage scene?

8 A. I don't know that I would have been allowed to,
9 no.

10 Q. Because you weren't on call then?

11 A. Correct.

12 Q. All right. But as you come here now, you have no
13 way of knowing, for example, where on the Avery
14 property this Toyota supposedly first was seen?

15 A. No clue.

16 Q. No clue how far away from where the Toyota was
17 supposed to have been, any bone fragments may
18 have been found?

19 A. No, I do not.

20 Q. You do know enough to say that, once those
21 battery cables were disconnected, the key to the
22 Toyota wouldn't have done you any good in
23 starting the car?

24 A. That's true.

25 Q. Unless you reconnected the battery cables?

1 A. Correct.

2 ATTORNEY STRANG: That's all I have. Thank
3 you.

4 THE WITNESS: You're welcome.

5 THE COURT: Mr. Gahn, any redirect.

6 ATTORNEY GAHN: Just one moment, your
7 Honor. No questions, your Honor.

8 THE COURT: All right. The witness is
9 excused. And the State may call it's next witness.

10 ATTORNEY KRATZ: State would call Blaine
11 Dassey to the stand, Judge.

12 THE CLERK: Please raise your right hand.

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

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

18 THE WITNESS: My name is Blaine Dassey.

19 ATTORNEY KRATZ: Blaine, you don't have to
20 be quite as close to the microphone as you are, so
21 just sit back and relax and testify from there.

22 **DIRECT EXAMINATION**

23 BY ATTORNEY KRATZ:

24 Q. How old are you Blaine?

25 A. 18.

1 Q. Do you go to school?

2 A. Yes.

3 Q. Could you tell the jury where you go to school,

4 please.

5 A. Mishicot High School.

6 Q. Have you gone to Mishicot High School your entire

7 high school career?

8 A. No.

9 Q. Last year, that is, in 2005, can you tell the

10 jury what school you went to then?

11 A. Reedsville.

12 Q. Blaine, I'm going to direct your attention to

13 October 31st, Halloween of 2005, ask if you

14 remember that day?

15 A. Yes.

16 Q. Can you tell the jury where you were living then?

17 A. Avery Road.

18 Q. Okay. You don't have to give me the exact

19 address, but who did you live there with?

20 A. My mom and my step-dad.

21 Q. Okay. Now, this Avery Road property, can you

22 kind of describe this property for us?

23 A. It's a salvage yard.

24 Q. All right. I'm going to put on the screen to

25 help you, an exhibit that's already been

1 received. It's called Exhibit No. 25. When you
2 look at that exhibit, Blaine, does that help you?
3 Do you recognize that exhibit?

4 A. Yes.

5 Q. Tell the jury what that is, please.

6 A. That's a salvage yard.

7 Q. And is that the salvage yard that you lived at on
8 October 31st of 2005?

9 A. Yes.

10 Q. All right. Now, Blaine, do you recognize, when
11 you look at that picture, and I know that it's
12 from an airplane, but do you recognize what house
13 you live in?

14 A. Yes.

15 Q. I'm going to give you something called a laser
16 pointer; have you ever held one of these before?

17 A. Yeah.

18 Q. Just push that button right there, okay.

19 A. Okay.

20 Q. Blaine, I want you to take the laser pointer and
21 I want you to circle or point on the exhibit, for
22 the jury, what your house is; if you can -- if
23 you can tell us?

24 A. Right there.

25 Q. All right. And you are pointing to a property,

1 and I think it is uncontested that that's the
2 Barb Janda trailer; is that right?

3 A. Yes.

4 Q. All right. Now, Blaine, on the 31st of October,
5 did you go to school that day?

6 A. Yes.

7 Q. And could you tell the jury how you get to, and
8 how you get home, from school?

9 A. The bus.

10 Q. What kind of bus is this?

11 A. School bus.

12 Q. And looking, again, at Exhibit No. 25, can you
13 tell me where the school bus picks you up?

14 A. At the end of the road, right there.

15 Q. You are pointing to an intersection, or the end
16 of what would be Avery Road, just up near the
17 office building and your grandparents trailer; is
18 that right?

19 A. Yes.

20 Q. In the afternoon, after school is over, how do
21 you get home?

22 A. The school bus.

23 Q. And can you tell me where the school bus drops
24 you off, please?

25 A. At the intersection, at the end of the road, by

1 my grandma's house, right there.

2 Q. Same place?

3 A. Mm-hmm.

4 Q. You have to say yes or no.

5 A. Yes.

6 Q. Now, your trailer is a little bit west, or a

7 little bit further down from that intersection;

8 do you know why the bus picks you up and drops

9 you off up near your grandma's trailer?

10 A. I'm not sure.

11 Q. They just do?

12 A. Yeah.

13 Q. Blaine, how do you get to and from the bus from

14 your house?

15 A. I walk down the road.

16 Q. Okay. Now, back in October of 2005, was there

17 somebody else in your house who also went to

18 school with you?

19 A. Yes.

20 Q. Who was that?

21 A. Brendan.

22 Q. And who's Brendan?

23 A. My brother.

24 Q. At Mishicot School, Blaine, do you know about

25 what time school lets out?

1 A. 3:05.

2 Q. And after school lets out, and I'm going to

3 specifically ask you about October 31st of 2005;

4 do you remember what time you came home that day?

5 A. 3:40.

6 Q. 3:40? That's 20 to 4 in the afternoon; is that

7 right?

8 A. Yup.

9 Q. You have to answer out loud?

10 A. Yes.

11 Q. Do you remember coming home that day, Blaine?

12 A. Yes.

13 Q. And could you tell the jury how you got home that

14 day?

15 A. The school bus.

16 Q. And did anybody come home on the school bus with

17 you?

18 A. Yes, Brendan.

19 Q. After you and Brendan got home, at about 3:40,

20 can you tell the jury what you did, please?

21 A. We walked down the road.

22 Q. And why don't you use your laser pointer again

23 and tell the jury, when you walked down the road,

24 where did you walk?

25 A. Down here, right there.

1 Q. Okay. Just so the record is clear, you are
2 pointing that you are walking in what would be a
3 westerly direction from where the bus dropped you
4 off down to your trailer; is that right, Blaine?

5 A. Yes.

6 Q. Blaine, as you were -- Let me just stop, let me
7 go back and ask a couple of follow-up questions
8 first. First of all, is there anybody else, any
9 other people that live on this property, or that
10 did, at the end of October of 2005?

11 A. No.

12 Q. There's nobody else that lived on this property?

13 A. Oh, yeah. Yeah.

14 Q. Are you a little nervous this morning?

15 A. Yeah, I am.

16 Q. That's fine. Tell me who lived on -- Who lived
17 on this property -- Who else, other than you,
18 lived on this property at that time?

19 A. On our property?

20 Q. Well, anywhere on the Avery property itself,
21 anywhere on the salvage yard?

22 A. Me, my brother, Bobby, Brian, Brendan.

23 Q. Let me just stop you right there. Bobby, and
24 Brian, and Brendan, who are they?

25 A. Those are my brothers.

1 Q. And are any of them older than you, or any of
2 them younger than you?

3 A. Yes, Bobby and Brian are older and Brendan
4 younger.

5 Q. Okay. And at that time, you know the day I'm
6 talking about, don't you?

7 A. Yes.

8 Q. At that time, you said that Brendan went to
9 school?

10 A. Yes.

11 Q. Do you know what Bobby did at that time?

12 A. No.

13 Q. Do you know if he was working, or if he was going
14 to school, or something like that?

15 A. I'm not sure.

16 Q. How about your other brother, Brian; do you know
17 what he was doing at the time?

18 A. No.

19 Q. Okay. Did anybody else -- And in that trailer
20 that you pointed to, you talked about your mom,
21 what's her name?

22 A. Barb Janda.

23 Q. Barb Janda?

24 A. Tadych, now.

25 Q. I'm going to show you an exhibit. It's a

1 photograph. It's No. 354, that's in front of you
2 right now. Can you tell us what that is, please?

3 A. That's my mom.

4 Q. First of all, is that a photograph?

5 A. Yes.

6 Q. And who's it a photograph of?

7 A. Barb Janda, or Tadych.

8 Q. I'm going to let the jury look at that picture.

9 ATTORNEY BUTING: What's the exhibit
10 number?

11 ATTORNEY KRATZ: 354.

12 Q. If you want to look on the back of the exhibit,
13 you can see the number on it. Why don't you do
14 that. Do you see that that's Exhibit 354?

15 A. Yup.

16 Q. All right. And the picture on the big screen, is
17 that a picture of your mom, Barb?

18 A. Yes.

19 Q. Now, you were starting to tell us that there were
20 other people who lived at the Avery salvage
21 property at that time?

22 A. Yes.

23 Q. Who else lived there then?

24 A. My grandpa and my grandma.

25 Q. Okay. Let's talk about them. Do you know their

1 names?

2 A. Yes.

3 Q. What are their names?

4 A. Allen Avery and Delores Avery.

5 Q. The exhibit on your right is Exhibit 350, 3-5-0,

6 can you tell the jury who that is, please?

7 A. That's my grandpa, Allen Avery.

8 Q. I'm going to show the jury a larger picture of

9 that; that's your grandpa Allen; is that right?

10 A. Yes.

11 Q. And who lives with Allen?

12 A. Delores.

13 Q. And who's Delores?

14 A. That's my grandma.

15 Q. And Exhibit 351 that's next to you, do you see

16 her picture, too?

17 A. Yes.

18 Q. And I'm going to show you Exhibit 351; is that a

19 picture of your grandma?

20 A. Yes.

21 Q. Now, Blaine, before we finish the description of

22 your family, do you have any uncles?

23 A. Yes.

24 Q. And who are your uncles?

25 A. Earl Avery, Chuck Avery, and Steven Avery.

1 Q. I'm going to, first, hand you a picture that's
2 Exhibit 353. You mentioned your uncle, Earl, is
3 that a picture of your Uncle Earl?

4 A. Yes.

5 Q. And I'm showing the jury that big picture; is
6 that the picture in front of you?

7 A. Yes.

8 Q. Okay.

9 ATTORNEY STRANG: Your Honor, I have no
10 objection to the photos of the other family members,
11 but as Steven Avery is sitting right here, I don't
12 know if we need a photograph of him.

13 THE COURT: Mr. Kratz.

14 ATTORNEY KRATZ: I need a photo of him for
15 later in the trial, Judge. And so this is the best
16 witness to identify that photo.

17 THE COURT: All right. I will allow it.

18 ATTORNEY KRATZ: Thank you, Judge.

19 Q. (By Attorney Kratz)~ Who's -- Who's the next
20 picture that you have in front of you?

21 A. Chuckie.

22 Q. Chuckie, who's Chuckie?

23 A. He's my uncle.

24 Q. And that is Exhibit No. 352; is that right?

25 A. Yes.

1 Q. I'm showing the jury and is that a picture of
2 your Uncle Chuck?

3 A. Yes.

4 Q. The last picture in front of you is Exhibit No.
5 349. Tell us what that is, please.

6 A. That's Steven Avery.

7 Q. Now that the jury sees that picture; is that your
8 Uncle Steve?

9 A. Yes.

10 Q. That's also the person, as Mr. Strang pointed
11 out, that is sitting at counsel table, who is
12 sitting in the courtroom today; is that right?

13 A. Yes.

14 Q. Now, Blaine, you talked about getting home at
15 about 3:40 p.m.; do you get home at the same time
16 every day?

17 A. Yes.

18 Q. That day, that is, Halloween of 2005, did you
19 have some plans that night?

20 A. Yes.

21 Q. Could you tell the jury what your plans were that
22 night?

23 A. My plans were to go trick or treating with my
24 friend.

25 Q. And who is your friend?

1 A. Jason Crisco (phonetic).
2 (Court reporter couldn't hear.)
3 A. Jason Crisco.
4 Q. Jason. Did you go trick or treating with your
5 friend Jason that night?
6 A. Yes.
7 Q. And do you remember, after you got home sometime
8 after 3:40 p.m., do you remember what time you
9 left the house to go trick or treating?
10 A. Yes.
11 Q. What time was that?
12 A. About 5:25, 5:30.
13 Q. 5:25 p.m.?
14 A. Yes.
15 Q. How did you leave the house, or how did you leave
16 the property; do you remember?
17 A. I walked up the road.
18 Q. Did somebody pick you up?
19 A. Yes.
20 Q. Who was that?
21 A. Carmen Weinsch.
22 Q. Who is that?
23 A. She's my friend's mom.
24 Q. Okay. And did you go trick or treating that
25 night?

1 A. Yes.

2 Q. And so from 5:25 p.m. until some other time, were
3 you gone; that is, were you off the property?

4 A. Yes.

5 Q. Do you remember what time you got home that
6 night?

7 A. 11.

8 Q. I'm sorry?

9 A. 11.

10 Q. 11:00 p.m.?

11 A. Yes.

12 Q. Let me back up a little bit. And I apologize for
13 kind of jumping around. But you talked about
14 your Uncle Steve; do you know if he lives on that
15 property as well?

16 A. Yes.

17 Q. Can you tell me, on October 31st, that is, on
18 Halloween of 2005, where he lived?

19 A. He lived in that trailer house.

20 Q. How close to your house did he live?

21 A. Like, right next to us.

22 Q. All right. I will give you a picture that's
23 going to help, I think. You already looked at
24 this, it's Exhibit No. 25. Can you show us,
25 again, where you live, show us your trailer?

1 A. Right there.

2 Q. And the laser pointer is pointing at the Janda
3 trailer. And where does your Uncle Steve live?

4 A. Right there.

5 Q. Be the trailer that would be directly to the west
6 of you; is that right?

7 A. Yes.

8 Q. Now, on the 31st of October, as you were
9 approaching your house, as you got off the bus,
10 and you said you were walking down towards your
11 house; did you see anything as you were walking
12 towards your house?

13 A. Yes.

14 Q. Can you tell the jury what you saw, please.

15 A. I seen Steven Avery bringing a plastic bag to the
16 burning barrel.

17 Q. What burn barrel are you talking about?

18 A. The one, the burn barrel.

19 Q. Whose burn barrel?

20 A. Steven's.

21 Q. I'm going to show you what's been admitted in
22 evidence as Exhibit No. 114, which is a computer
23 drawing. It's a view that -- or a angle that
24 might help you. Do you think this will help you
25 explain to the jury what you saw?

1 A. Yes.

2 Q. Okay. As you are walking towards your house, use

3 the laser pointer, tell the jury what you saw,

4 please.

5 A. Okay. I seen Steven walking this way and he

6 threw the plastic bag into there, the burn

7 barrel.

8 Q. Okay. Did you see what kind of plastic bag he

9 threw into the burning barrel?

10 A. No.

11 Q. Did you see how big the bag was?

12 A. No.

13 Q. Did you see what was going on inside the burning

14 barrel; in other words, did you see that it was

15 burning in there.

16 A. Yes.

17 Q. Tell the jury what you saw about it that it was

18 burning. Describe that for them.

19 A. There was smoke and flames coming out of the

20 burning barrel.

21 Q. About what time was this that you saw that?

22 A. About 3:46, 7.

23 Q. Okay. It was right after you got off the bus; is

24 that right?

25 A. Yes.

1 Q. Now, when your Uncle Steve put a bag, or put
2 something into that burning barrel, that was
3 actively burning at the time; did you have any
4 conversation with him?

5 A. No.

6 Q. Now, I'm going to have you look at this
7 particular drawing or this particular exhibit,
8 114; did you see anything else as you were at,
9 about quarter to 4, walking towards your house?

10 A. No.

11 Q. About what time do you think that you got into
12 your house?

13 A. Roughly 3:50.

14 Q. Okay. From 3:50, until you left to go trick or
15 treating, sometime a little after 5:00, can you
16 tell the jury what you did that day?

17 A. I was on the computer.

18 Q. Did you leave your trailer at all that day?

19 A. No.

20 Q. I mean, until you went trick or treating?

21 A. No.

22 Q. Do you remember who else was home that day?

23 A. Yes.

24 Q. Who is that?

25 A. Brendan.

1 Q. Were you doing anything with Brendan that
2 afternoon?

3 A. No.

4 Q. Do you know what Brendan was doing while you were
5 home, between 10 to 4 and a little after 5:00
6 that day?

7 A. Yes, he was playing video games.

8 Q. Okay. So at least until 5:00, Brendan was still
9 at home; is that right?

10 A. Yes.

11 Q. Now, when you saw your Uncle Steve burning in his
12 burning barrel; did you see what kind of smoke
13 was coming out of there, or did you know what he
14 was burning in his burning barrel?

15 A. No.

16 Q. All right. You told this jury that you went
17 trick or treating with your friend and his mom
18 picked you up; is that right?

19 A. Yes.

20 Q. How did you get home from your mom's (sic) that
21 day?

22 A. His mom's?

23 Q. How did you get home from your friend's house
24 that day?

25 A. Oh, Carmen drove me.

1 Q. Carmen?

2 A. Yeah.

3 Q. Is that your friend's mom, still?

4 A. Yes.

5 Q. And can you remind us, again, about what time you

6 got home?

7 A. About 11.

8 Q. Okay. Now at 11:00, when you got home, Blaine;

9 do you remember walking to your house?

10 A. Yes.

11 Q. And when you walked to your house, did you see

12 anything over by your Uncle Steve's house?

13 A. Yes.

14 Q. Tell the jury what you saw at your Uncle Steve's

15 house, at about 11:00 that night?

16 A. I seen Steven Avery sitting there watching the

17 fire.

18 Q. Watching what?

19 A. Watching the fire, the bonfire.

20 Q. There was a bonfire at your Uncle Steve's?

21 A. Yes.

22 Q. Can you tell the jury where that bonfire was,

23 please.

24 A. Behind the garage.

25 Q. Why don't you look at Exhibit No. 114. Can you

1 point on Exhibit 114 where you saw that fire that
2 night?

3 A. Right there.

4 ATTORNEY KRATZ: We'll have the record
5 reflect, Judge, that the defendant -- excuse me --
6 that the witness is pointing directly to the south,
7 or just behind the garage area of the diagram in
8 Exhibit 114?

9 THE COURT: The record will so reflect.

10 Q. (By Attorney Kratz)~ Blaine, tell the jury how
11 big that fire was.

12 A. It was about 4 or 5 feet.

13 Q. What was 4 to 5 feet?

14 A. The flames.

15 Q. So 5 foot flames you could see at 11:00 at night;
16 is that right?

17 A. Yes.

18 Q. Now, how did you know that it was your Uncle
19 Steve out there; did you see him?

20 A. No.

21 Q. Okay. What did you see out there?

22 A. I just seen a person.

23 Q. Did you know who that person was?

24 A. No.

25 Q. How many people did you see back by that fire?

1 A. Just one.

2 Q. Blaine, the friend that you went with, his name
3 is what, Jason?

4 A. Yes.

5 Q. Is that right? His mom's name was Carmen?

6 A. Yes.

7 Q. Do you know where she dropped you off that night
8 to come home?

9 A. Yes.

10 Q. Where did she drop you off?

11 A. At the end of the driveway.

12 Q. Same place that the bus drops you off?

13 A. Yes.

14 Q. When you started walking, or when you walked
15 toward your house that night, at about 11:00,
16 when was the first time that you saw these
17 flames, or when you saw what you described as a
18 bonfire behind Steve's garage?

19 A. I seen the flames when I left, to go trick or
20 treating.

21 Q. Okay. That's two different times, let me just
22 stop you there. I'm talking about when you came
23 home?

24 A. Oh.

25 Q. When -- How close were you before you could see

1 the flames?

2 A. I don't know.

3 Q. Let's go back to just before you left, or as you

4 were leaving to go trick or treating, I think you

5 are now going to tell the jury that you saw

6 something else; is that what you are saying to

7 us?

8 A. No. What?

9 Q. Before you left, or as you left to go trick or

10 treating --

11 A. Yeah.

12 Q. -- did you see anything else by your uncle

13 Steve's?

14 A. No.

15 Q. All right. When was the first time that you saw

16 that fire?

17 A. When I came home.

18 Q. So you didn't see it before you left?

19 A. No.

20 Q. The first time you saw it was at about 11:00; is

21 that right?

22 A. Yes.

23 Q. I just want you to be sure about your testimony;

24 is that true?

25 A. Yes.

1 Q. Okay. Good. Now, the flames, or what was
2 creating these 5 foot high flames; could you see
3 them clearly? I mean, could you see them behind
4 the garage?

5 A. Yes.

6 Q. Could you see anything that was on the fire, or
7 that -- what was in the bonfire?

8 A. No.

9 Q. Did you go back behind your Uncle Steve's garage
10 and see what the bonfire was all about that
11 night?

12 A. No.

13 Q. Blaine, I have a couple other questions. Before
14 testifying in here, in court today, before being
15 asked to come to court, do you remember being
16 interviewed by members of police, that is a law
17 enforcement officer?

18 A. Yes.

19 Q. And when you were interviewed by the police; do
20 you remember the police asking you who you saw
21 back by the fire?

22 A. Yes.

23 Q. Do you remember what you told the police?

24 A. Yes.

25 Q. What did you tell them?

1 A. I said Steven Avery.

2 Q. Now, you know your Uncle Steven; is that right?

3 A. Yes.

4 Q. Let me ask you, Blaine, are you a little nervous

5 testifying in front of your Uncle Steven today?

6 A. Not really.

7 Q. All right. The next day -- Well, let me go back,

8 just before that night ends, when you got home at

9 about 11:00; what did you do?

10 A. I went into the house and I fell asleep.

11 Q. Okay. Do you have a bedroom inside of this

12 house?

13 A. Yes.

14 Q. And does anybody stay with you in your bedroom?

15 A. Yes.

16 Q. Who is that?

17 A. Brendan. Brendan, my brother.

18 Q. All right. About what time did you go to bed

19 that night?

20 A. At 11.

21 Q. Okay. So, right when you got home?

22 A. Yes.

23 Q. When you got home that night, at 11:00; do you

24 remember talking to anybody that night?

25 A. No.

1 Q. Do you remember seeing your brother, Brendan,
2 that night?

3 A. No.

4 Q. If Brendan would have been in your bedroom with
5 you; do you think you would have seen him?

6 A. Yes.

7 Q. And did you see him in the bedroom?

8 A. I don't remember.

9 Q. Okay. Blaine, I'm going to show you a couple
10 other pictures here.

11 THE COURT: Mr. Kratz, can you tell me
12 about how much time you have got left?

13 ATTORNEY KRATZ: Five minutes, Judge.

14 THE COURT: I think we're going to take our
15 break at this time. Members of the jury, I'm going
16 to remind you not to discuss the case at all during
17 the break. And we'll resume in about 15 minutes.

18 (Jury not present.)

19 THE COURT: All right. Counsel, let's be
20 back at 11:00.

21 ATTORNEY KRATZ: Thank you, Judge.

22 (Recess taken.)

23 THE COURT: Mr. Kratz, you may resume.

24 **DIRECT EXAMINATION CONTD**

25 BY ATTORNEY KRATZ:

1 Q. Blaine, when you got home that day, on
2 October 31st, on Halloween night, and you walked
3 with your brother to your house, was there
4 anybody else that was with you, anybody else that
5 walked with you?

6 A. No.

7 Q. I'm going to show you what's been marked for
8 identification -- excuse me -- has been received
9 as Exhibit No. 230, ask if you recognize that
10 vehicle at all?

11 A. Yes.

12 Q. What is that vehicle?

13 A. A Suzuki.

14 Q. A what?

15 A. A Suzuki.

16 Q. A Suzuki. Do you know whose vehicle that is?

17 A. My grandpa's. I think that is.

18 Q. Now, as you look at this picture, do you know
19 where this picture is taken? Do you know where
20 the Suzuki is being stored here?

21 A. In Steven's garage.

22 Q. All right. Let me ask you something, Blaine.
23 When you walked home on the 31st of October,
24 towards your house, did you see where your Uncle
25 Steve had the Suzuki parked that day?

1 ATTORNEY STRANG: Could we get a time
2 frame?

3 ATTORNEY KRATZ: I can do that, Judge.

4 THE COURT: Okay.

5 Q. (By Attorney Kratz)~ At about 3:45 p.m., did you
6 see where this Suzuki was parked that day?

7 A. Yes.

8 Q. Tell the jury where that was, please?

9 A. It was on the right side, outside of the garage.

10 Q. On the outside of the garage?

11 A. Yes.

12 Q. I'm going to show you now what's been received as
13 another exhibit, to help you. It's Exhibit No.
14 98, it's a diagram, kind of a diagram with both
15 residences. Do you see where it says Steven
16 Avery's residence?

17 A. Yes.

18 Q. And the Janda/Dassey residence; do you see that?

19 A. Yes.

20 Q. Will this diagram -- Well, first of all, do you
21 recognize these two properties?

22 A. Yes.

23 Q. And, again, show the jury where it is that you
24 lived?

25 A. Right there.

1 Q. You are pointing to the Dassey/Janda residence;
2 is that right?

3 A. Yes.

4 Q. And show the jury where Steven Avery lived at the
5 time?

6 A. Right there.

7 Q. You are pointing to a trailer which is called the
8 Steven Avery residence; is that right?

9 A. Yes.

10 Q. Now, when you walked home, or walked from the bus
11 to your house, you told the jury that you saw the
12 Suzuki parked outside; is that right?

13 A. Yes.

14 Q. Can you point to the diagram and tell the jury
15 where you saw that Suzuki parked that day?

16 A. Right there.

17 Q. And you are pointing to the outside of what would
18 be Steven Avery's garage, just to the left side,
19 as you look at the diagram; is that right?

20 A. Yes.

21 Q. Did you notice any other things, or any other
22 vehicles, out there, when you walked home that
23 day?

24 A. There was a snowmobile.

25 Q. Do you know whose snowmobile was outside?

1 A. Yes, Steven's.

2 Q. Where was the snowmobile parked, if you remember?

3 A. In back -- In the back of the -- or behind the

4 Suzuki.

5 Q. Can you show us where that would be, please.

6 A. Like, right there.

7 Q. So, near or right next to the Suzuki, on the left

8 side, or on the outside, of the garage; is that

9 right?

10 A. Yes.

11 Q. Now, I'm just asking you about your observations,

12 Blaine, I don't know -- I don't care who you

13 talked to, or what somebody might have said, but

14 just what you saw with your own eyes, okay?

15 A. Okay.

16 Q. Do you remember seeing, with your own eyes, or

17 remembering your own observations, whether or not

18 that Suzuki and that snowmobile were moved

19 somewhere else, at some point after the 31st of

20 October?

21 A. I'm not sure, no.

22 Q. Okay. You just remember the 31st, that they were

23 next to the garage; is that right?

24 A. Yes.

25 Q. Let me finally go back to one other diagram that

1 we have been looking at, Exhibit 114, kind of
2 shows us an overview. Can you, again, point to
3 the burn barrel of Steve Avery, where you saw him
4 burning?

5 A. Right there.

6 Q. Now, can you describe for the jury the smoke or
7 anything else that you saw coming out of that
8 burn barrel when you got home that day?

9 ATTORNEY STRANG: Asked and answered,
10 twice.

11 ATTORNEY KRATZ: I want him to describe, if
12 he can, I want to know if he can describe the color,
13 or if there were flames, or more descriptive of what
14 he saw, Judge. That has not been answered.

15 ATTORNEY STRANG: It's been asked and
16 answered, twice.

17 THE COURT: I know the question has been
18 answered if there was something coming out of it. I
19 don't remember if there was a request for a
20 description, so I will allow the question.

21 Q. (By Attorney Kratz)~ If you remember, Blaine, do
22 you remember anything coming out of that burn
23 barrel?

24 A. Yeah, white smoke.

25 ATTORNEY KRATZ: All right. Judge, I will

1 move the admission of Exhibits 349 through 354. And
2 I don't have any further questions of Blaine at this
3 time.

4 THE COURT: Any objection to the exhibits?

5 ATTORNEY STRANG: Ask the Court to reserve
6 on 350. No objection to the others.

7 THE COURT: All right. The Court will
8 receive the others, reserve ruling on Exhibit 350.
9 Which exhibit was 350?

10 ATTORNEY STRANG: I'm sorry, 349.

11 THE COURT: 349.

12 ATTORNEY STRANG: My mistake.

13 THE COURT: That's the photo of Steven
14 Avery.

15 ATTORNEY STRANG: Yes.

16 THE COURT: All right. The Court will
17 allow the rest of them and reserve ruling on 349.

18 **CROSS-EXAMINATION**

19 BY ATTORNEY STRANG:

20 Q. Good morning.

21 A. Good morning.

22 Q. I'm going to call you Mr. Dassey, even though you
23 -- I guess you are 18 now, you turned 18?

24 A. Yes.

25 Q. Since this is a little bit of a formal place; do

1 you mind if I address you as Mr. Dassey?

2 A. Yes.

3 Q. Yes, you do mind?

4 A. Or no.

5 Q. All right. Mr. Dassey, you have been approached

6 by the police a number of times, I think, since

7 October 31, 2005, haven't you?

8 A. Yes.

9 Q. Started probably a week later, on November 7?

10 A. Yes.

11 Q. And on November 11?

12 A. Yes.

13 Q. November 15?

14 A. Yes.

15 Q. And times after that, right?

16 A. Yes.

17 Q. Right up through today, when you talked to

18 Mr. Fassbender during the break?

19 A. Yes.

20 Q. And the police have asked you the same questions

21 over, and over, and over, about October 31,

22 haven't they?

23 A. Yes.

24 Q. You give them an answer?

25 A. Yes.

1 Q. And if they don't like the answer, they ask you
2 again?

3 A. Yes.

4 Q. Now, at the time, on Halloween, 2005, there was
5 nothing really special about that day, to you,
6 other than that it was Halloween, right?

7 A. Yes.

8 Q. I mean, you had plans to go trick or treating?

9 A. Mm-hmm.

10 Q. But no big deal about October 31, 2005, other
11 than that, right?

12 A. No.

13 Q. All right. It was another school day, was a
14 Monday?

15 A. Yes.

16 Q. Every day you get picked up by the bus at about
17 the same time in the morning, for school?

18 A. Yes.

19 Q. In fact, probably like any other kid in high
20 school, you know just how long you can stall
21 before going out the door?

22 A. Yes.

23 Q. All right. So you know that the bus comes
24 between 7:08 and 7:13 in the morning, right?

25 A. Yes.

1 Q. All right. And the school -- The bell letting
2 you out of school happens at the same time every
3 day?

4 A. Yes.

5 Q. 3:05 in the afternoon?

6 A. Yes.

7 Q. School bus is there?

8 A. Yes.

9 Q. Back -- Back in October, 2005, you had sort of a
10 nice female bus driver?

11 A. Yes.

12 Q. She was the same bus driver every day?

13 A. Yes.

14 Q. And then every day she takes the same route home,
15 dropping kids off?

16 A. Yes.

17 Q. So you know that -- you know, almost to the
18 minute, roughly, when you get off the bus every
19 day, right?

20 A. Yes.

21 Q. You get off the bus every day with Brendan,
22 assuming he's not sick or something?

23 A. Yeah.

24 Q. Now, that's why you are really pretty sure that
25 you got off this bus at about 3:40, something

1 like that?

2 A. Yes.

3 Q. On Halloween, 2005?

4 A. Yes.

5 Q. You and Brendan walked down the road together and

6 you both go into your house?

7 A. Yes.

8 Q. You remember, because you were asked just a week

9 later, that when you walked in, Bobby was home?

10 A. Yes.

11 Q. Bobby was sleeping.

12 A. Yes.

13 Q. Bobby was not out deer hunting?

14 A. Yes.

15 Q. You and Brendan woke Bobby up?

16 A. Yes.

17 Q. You remember doing that?

18 A. Yeah.

19 Q. And then you kind of hung out and you were on the

20 computer until it was time to go trick or

21 treating?

22 A. Yes.

23 Q. Brendan was there?

24 A. Yes.

25 Q. He stayed in the house playing video games?

1 A. Yes.

2 Q. The whole time you were there working on the
3 computer, he was playing video games?

4 A. Yeah.

5 Q. You guys have the computer and the video games in
6 the same room?

7 A. Yes.

8 Q. Bobby, at some point, left, or do you remember?

9 A. I'm not sure. I don't remember.

10 Q. Okay. But he wasn't out deer hunting; he was in
11 bed sleeping, when you got home?

12 A. Yes.

13 Q. Now, you, then, go off trick or treating at, you
14 said 5:25 or 5:30, you thought, something like
15 that?

16 A. Yes.

17 Q. But before then, Brendan hasn't left to go get
18 mail for anybody?

19 A. No.

20 Q. You go trick or treating, Brendan does not go
21 with you?

22 A. No.

23 Q. So -- But when you went trick or treating, 5:25,
24 5:30, whatever it was; it's getting dark?

25 A. Yes.

1 Q. Or dark already?

2 A. Yes.

3 Q. Okay. You are going into Two Rivers, I think?

4 A. Yes.

5 Q. I'm pronouncing that wrong, I know. It's more

6 like Two Rivers?

7 A. Two Rivers.

8 Q. All right. And so you are walking all the way up

9 that driveway to where Carmen is going to pick

10 you up, where the bus turns around?

11 A. Yes.

12 Q. Now, whether it was when you were walking down

13 that driveway from the bus, or when you are

14 walking back up to get in the car with Carmen and

15 go trick or treating; did you hear any woman, any

16 young woman's voice screaming for her life?

17 A. No.

18 Q. Do you hear any gunshots?

19 A. No.

20 Q. If you had heard gunshots, or someone screaming

21 for their life, that's something you would

22 remember?

23 A. Yes.

24 Q. All right. And one thing that the police asked

25 you over and over, if you did remember, is

1 whether you saw a fire that day?

2 A. Yes.

3 Q. Do you remember that?

4 A. Yes.

5 Q. They asked you that the first time they talked to
6 you on November 7, didn't they?

7 A. Yes.

8 Q. Which was the next Monday, right?

9 A. Yes.

10 Q. And you told them there was no fire, you didn't
11 see a fire, that's what you told them on
12 November 7, isn't it?

13 A. No.

14 Q. Well --

15 ATTORNEY KRATZ: I will need to be heard
16 outside the presence of the jury, Judge.

17 THE COURT: All right. Members of the
18 jury, we'll take a short break at this time.

19 (Jury not present.)

20 ATTORNEY STRANG: We also should excuse the
21 witness.

22 THE COURT: You may be seated. And the
23 witness will be excused out in the hallway.
24 Mr. Kratz.

25 ATTORNEY KRATZ: This is at least the

1 second time, and probably more than that, that a
2 witness in this case is going to be impeached with
3 somebody else's exhibit; that is, to be shown a
4 police report or an exhibit from somebody other than
5 the witness themselves, other than the declarant,
6 and that is hearsay.

7 If the attempt here is to refresh
8 recollection, then you can do that with the
9 witness' own statement. If the attempt is to
10 impeach the witness, then you can ask, did you
11 tell Investigator Fassbender, or whoever, such
12 and such. If they say no, then the procedure is
13 to call Investigator Fassbender to impeach, with
14 a prior inconsistent statement.

15 But using this procedure, to show a
16 witness a police report, a document that this
17 witness did not author and presumably has no
18 ability to determine its reliability or
19 authenticity, I think is improper. I have made
20 this objection before in this trial, Judge, and I
21 raise it again, because it appears that the same
22 procedure is being attempted at this time.

23 THE COURT: Mr. Strang.

24 ATTORNEY STRANG: Well, first of all, if I
25 understand the objection, the document I'm intending

1 to show him is an interview of Blaine Dassey. It is
2 not an interview of someone else. And I intend to
3 show it to him and ask him if that refreshes his
4 recollection.

5 If it does not refresh his recollection
6 about what he said, then I intend to ask him, and
7 I can read it verbatim, did you tell, you know,
8 two agents of the Division of Criminal
9 Investigation, on November 7, that there was not
10 any bonfire.

11 If he denies it and, you know, if at
12 first doesn't have his recollection refreshed and
13 then if he denies saying it, yes, you know,
14 eventually, I suppose, we would have to perfect
15 the impeachment by calling one of the reporting
16 agents or one of the agents present. But there
17 is nothing in the world wrong with showing this
18 to him to refresh his recollection, or ask him to
19 tell me whether the agent's got it wrong.

20 THE COURT: Mr. Kratz.

21 ATTORNEY KRATZ: I disagree, Judge. I
22 think he can be shown his statement. If there's a
23 written statement that this witness generated,
24 perfectly -- perfectly reasonable to show him his
25 own statement.

1 That happened with Ms Zipperer, show her
2 her statement, does that refresh your
3 recollection, she can say yes or no. But to show
4 a police report from a collateral source, from a
5 third party, and asking if this refreshes a
6 person's recollection, when they didn't create
7 it, is absolutely improper and is hearsay.

8 ATTORNEY STRANG: 906.12 allows the use of
9 anything that may refresh recollection. And
10 certainly a report of a law enforcement interview
11 with the very person falls well within the term of
12 anything.

13 THE COURT: Well, doesn't the first step
14 have to be to ask the witness if looking at the
15 document would refresh the witness' recollection.

16 ATTORNEY STRANG: I can do that, sure.

17 THE COURT: And what if he says no?

18 ATTORNEY STRANG: Well, then, I will --
19 then, I will ask him if he said it.

20 THE COURT: Do we know whether or not the
21 witness has ever seen this document before?

22 ATTORNEY STRANG: I have -- I have no idea.
23 Now, if Mr. Kratz is suggesting that there's a
24 handwritten statement from Blaine Dassey, then I
25 should look again.

1 ATTORNEY KRATZ: No, I said if there was,
2 he could use it as in Mrs. Zipperer's refreshing
3 recollection.

4 THE COURT: So there's not a statement of
5 this witness.

6 ATTORNEY KRATZ: That's correct. No
7 handwritten statement.

8 THE COURT: What is the State's authority
9 for the proposition that a witness' recollection can
10 only be refreshed by looking at a statement of the
11 witness, him or herself.

12 ATTORNEY STRANG: Well, 906.12 starts with,
13 if a witness uses a writing to refresh the memory
14 for the purpose of testifying, an adverse party is
15 entitled to have it produced at the hearing. That's
16 not what we're talking about here, Judge.

17 This witness hasn't said, there's some
18 writing that can refresh my recollection, there's
19 some business records, there's some document that
20 I know of that exists in the world that can
21 refresh my recollection. That's 906.12.

22 THE COURT: Maybe I'm missing something
23 here, but I'm not sure the parties disagree.
24 Mr. Strang asked the witness if looking at a police
25 report, a police interview with the witness, would

1 refresh the witness' recollection. The witness may
2 say yes or no.

3 It's possible the witness may remember
4 that somebody was taking notes and maybe looking
5 at the document would refresh the recollection,
6 in which case the document doesn't get introduced
7 as evidence, but the witness can look at it. If
8 the witness says, no, I don't think that would
9 refresh my recollection, then Mr. Strang doesn't
10 get to show it to the witness and moves on to the
11 next question.

12 ATTORNEY STRANG: Well, then we go to
13 906.13 and I ask him -- he gets an opportunity to
14 admit or deny that he made the statement, and then
15 impeachment would be perfected by calling someone
16 else who was present or heard it.

17 THE COURT: You mean you would call
18 Mr. Fassbender or someone else later?

19 ATTORNEY STRANG: It wasn't Mr. Fassbender,
20 but --

21 THE COURT: Whoever.

22 ATTORNEY STRANG: Right. Someone who was
23 present, one of the two authors of the report,
24 hopefully.

25 THE COURT: All right. Well, let's -- If

1 there is an objection to that, it's an objection for
2 a later time, I believe. All right. It seems to me
3 that Mr. Strang can ask the witness whether or not
4 reviewing the report, if he knows of its existence,
5 would refresh his recollection.

6 If it does, the witness can look at it.
7 Doesn't mean the report becomes evidence. If
8 not, then, Mr. Strang moves on to the next
9 question. Let's bring the jurors back in.

10 (Jury present.)

11 THE COURT: You may be seated. Mr. Strang,
12 you may proceed.

13 ATTORNEY STRANG: Thank you.

14 Q. (By Attorney Strang)~ Let's go back where we were
15 when we left off. Do you suppose that if you
16 looked at a police report from your November 7,
17 that first interview with some agents, that it
18 might help you remember today, what you told them
19 then?

20 A. Yes.

21 Q. I have marked this with an exhibit number for
22 you; it's Exhibit 355. It's a DCI report. The
23 only page numbers here are ones that I have
24 added, but I'm going to show you the sixth page.

25 THE COURT: Mr. Strang, I'm going to ask

1 that you show Mr. Kratz which page you are going to
2 be looking at.

3 ATTORNEY STRANG: Sure. Absolutely. All
4 the pages are unnumbered, it's the sixth page of the
5 report. And specifically, counsel, I'm going to be
6 inviting him to look at the second paragraph on page
7 six.

8 Q. (By Attorney Strang)~ So now I will show it to
9 you. You can look at anything you want in here,
10 but I thought that that second paragraph right
11 there might help refresh your recollection. Now,
12 don't read it out loud, just read it to yourself
13 and see if that helps you remember. Is that any
14 help?

15 A. Yeah.

16 Q. Okay. Now, on Monday, November 7, 2005, when the
17 officers asked you --

18 THE COURT: Just a second, Mr. Strang, can
19 you pick up the document.

20 ATTORNEY STRANG: I would be happy to,
21 sure.

22 Q. So, Monday, November 7, Monday after Halloween,
23 when the officers asked you if there was any
24 bonfires last week, you told them there was not;
25 is that right?

1 A. Yeah.

2 Q. And you said you would know if there was a
3 bonfire because you always like to have bonfires.

4 A. Yes.

5 Q. Steve would have bonfires back in that burn area,
6 occasionally?

7 A. No.

8 Q. Didn't Steve have fires in his burn area once in
9 a while?

10 A. Which burn area?

11 Q. Behind the garage that you were telling Mr. Kratz
12 about?

13 A. No.

14 Q. Never any bonfires back there? No?

15 A. No.

16 Q. Just this one time?

17 A. Yes.

18 Q. Didn't Steve invite you later that week to bring
19 some friends over for a bonfire?

20 A. Yes.

21 Q. But that never happened?

22 A. No.

23 Q. Your friends didn't want to come?

24 A. No.

25 Q. But Steve, when I say Steve, your Uncle Steve,

1 made the invitation to you to bring other kids,
2 other high school students over, right?

3 A. Yes.

4 Q. Invitation that, had it been accepted, would have
5 had a bunch of kids standing around that burn
6 area?

7 A. Yes.

8 Q. Maybe poking around in the fire?

9 A. Yes.

10 Q. Or watching it for some hours?

11 A. Yes.

12 Q. And you didn't tell the police on November 7
13 anything about any fire in this burn barrel
14 either, did you?

15 A. Yes.

16 Q. Yes, you did tell them about a fire in the burn
17 barrel?

18 A. Yes.

19 Q. Do you think that would be in the report or maybe
20 they forgot that?

21 A. I don't know.

22 Q. Okay. You do remember eventually telling the
23 police about a fire in the burn barrel, right?

24 A. Yes.

25 Q. Was that the second or third time they asked you

1 about it?

2 A. Yes.

3 Q. Not the first time they asked you?

4 A. No.

5 Q. Now, sometimes when Steve has a fire, he burns
6 wood, you know that?

7 A. Yes.

8 Q. Sometimes he burns tires?

9 A. Yes.

10 Q. And you guys all have burn barrels out by your
11 houses?

12 A. Yes.

13 Q. When you were interviewed on November 7, 2005,
14 you told the police that you actually hadn't seen
15 Steve, your Uncle Steve, at all when you walked
16 down the lane from the school bus to your house,
17 didn't you?

18 A. No.

19 Q. We'll go back to Exhibit 355 again. And now I'm
20 going to be going to page four. And I will show
21 you that again; do you think that might refresh
22 your recollection, again, about whether you were
23 asked if you saw Steve at all when you were
24 walking home from school and what you told the
25 police on November 7?

1 A. Yes.

2 Q. Now, Mr. Dassey, around page four of that same
3 exhibit, 355, look at anything you like but,
4 again, the second paragraph on the page is the
5 one that I thought might help refresh your
6 recollection. Does that help?

7 A. Yes.

8 Q. I will take it back from you, no cheat sheets.
9 Now that you have had a chance to refresh your
10 recollection about what you told the police, it's
11 true that they had asked you if anything happened
12 between 3:30 and 5 on that Halloween afternoon
13 and you said that nothing happened, right?

14 A. Yes.

15 Q. And they asked you specifically if you saw Steve
16 during that time period and you said that you did
17 not?

18 A. Yes.

19 Q. And you also were asked if Steve had asked you to
20 help move this Suzuki or the snowmobile and you
21 said, no, he hadn't asked you to help move the
22 Suzuki or the snowmobile, right?

23 A. Yes.

24 Q. And you told them that was something you would
25 remember if Steve had asked you?

1 A. Yes.

2 Q. So, same thing happened again on Friday,
3 November 11, same sort of questions from the
4 police, weren't there?

5 A. Yes.

6 Q. And, again, you told them that you did not see a
7 fire in a burn barrel, or Steve with a white
8 plastic bag; that's what you told the police that
9 Friday, November 11, right?

10 A. Yes.

11 Q. And finally, then, on the 15th of November, they
12 came back and they asked you again and that's --
13 that's when you said you saw Steve putting a
14 white plastic bag in the burn barrel; is that
15 right?

16 A. Yes.

17 Q. Now, if you saw Steve put a white plastic bag in
18 his burn barrel on Halloween, as you told the
19 police, then, on November 15, that's what 15, 16
20 days later?

21 A. Yes.

22 Q. Something -- something memorable about seeing
23 your uncle put trash out in the burn barrel?

24 A. Yeah.

25 Q. Really?

1 A. Yes.

2 Q. He doesn't put trash in the burn barrel?

3 A. Yes, he does.

4 Q. Okay. No special reason you would have been

5 paying attention to that on Halloween, is there?

6 A. No.

7 Q. No. And when you were asked by Mr. Kratz, you

8 said, yeah, I think that was at 3:46 or 3:47

9 p.m.; do you remember saying that?

10 A. Yes.

11 Q. No special reason you would have remembered today

12 whether Mr. Avery put a white bag of trash in his

13 burn barrel at 3:46 or 3:47 p.m., is there?

14 A. No.

15 Q. Now, this -- this Suzuki, you were not asked to

16 help move the Suzuki or the snowmobile around?

17 A. No.

18 Q. No. And that Suzuki actually had been outside

19 Steve's garage for a week or two before

20 Halloween, right?

21 A. Yes.

22 Q. Do you remember, Mr. Dassey, being interviewed by

23 the police, oh, I don't know, I guess the third

24 time, that November 15 interview; do you remember

25 that interview taking place in a restaurant?

1 A. Yes.

2 Q. The Cedar Ridge Restaurant?

3 A. Yes.

4 Q. Over in Maribel, near you?

5 A. Yes.

6 Q. Okay. Was your mom there for that?

7 A. Yes.

8 Q. Just you and your mom?

9 A. Yup.

10 Q. And then a couple of officers or agents?

11 A. Yes.

12 Q. And did you guys sit across the table from the

13 agents, in the restaurant?

14 A. Yes.

15 Q. Did there come a time in that discussion between

16 you and your mom and the agents, when the agents

17 sort of got in your face a little bit?

18 A. Yes.

19 Q. What were they doing to get in your face?

20 A. They were arguing.

21 Q. They were arguing?

22 A. Yes.

23 Q. They raised their voices?

24 A. Yes.

25 Q. They got angry?

1 A. Yes.

2 Q. They accused you guys of not accepting that Steve
3 was guilty, didn't they?

4 A. Yes.

5 Q. They accused you of embarrassing yourselves by
6 believing in your uncle, didn't they?

7 A. Yes.

8 Q. They tried to convince you that Steven Avery was
9 guilty, didn't they?

10 A. Yes.

11 Q. And they got loud about it, at the restaurant?

12 A. Yes.

13 Q. And then they stomped off and left you there,
14 when you wouldn't turn on your uncle, didn't
15 they?

16 A. Yes.

17 Q. And that was back in November 15 of 2005.

18 A. Yes.

19 ATTORNEY STRANG: That's all I have.

20 **REDIRECT EXAMINATION**

21 BY ATTORNEY KRATZ:

22 Q. Blaine, at that November 15 meeting, before they
23 stomped off, did they tell you to tell the truth?

24 A. Yes.

25 Q. Were they upset at you because they thought that

1 you weren't being honest with them and telling
2 the truth?

3 A. No.

4 Q. During that day, during the 15th, as Mr. Strang
5 has mentioned, do you recall telling the police
6 officers that, in fact, you did see your Uncle
7 Steven burning in his burn barrel, putting this
8 white plastic bag in there?

9 A. Yes.

10 Q. Do you recall at that same interview, telling
11 these same officers, that you saw a fire, a
12 bonfire the night of the 31st of October?

13 A. Yes.

14 Q. And is that the time that you identified that it
15 was your Uncle Steven, and Steven alone, that you
16 saw standing by the fire?

17 A. Yes.

18 Q. How old were you at the time, Blaine?

19 A. 17.

20 Q. And as a 17 year old young boy, was there a lot
21 going on in your household at the time?

22 A. Yes.

23 Q. Was there a lot of pressure being put on you by
24 family members on what to say or what not to say?

25 A. No.

1 Q. Was there any pressure, or did you have any
2 concerns about your Uncle Steven at that time?

3 A. No.

4 Q. Do you recall telling investigators that you were
5 scared of your Uncle Steven, that's the word you
6 used, scared; do you remember saying that?

7 A. Yes.

8 Q. Yes?

9 A. Yes.

10 Q. What were you scared about with your Uncle
11 Steven; why were you afraid to tell the truth
12 about your Uncle Steven?

13 ATTORNEY STRANG: Object to the State's
14 testimony, argumentative.

15 ATTORNEY KRATZ: I can rephrase, Judge.

16 Q. (By Attorney Kratz)~ What were you scared about
17 with your Uncle Steven?

18 A. Because he used to boss us around.

19 Q. Who's us?

20 A. Me and my brothers.

21 Q. Were you afraid what your Uncle Steven might do
22 to you if you told the statement or testified
23 against him?

24 A. No.

25 Q. You were just generally scared of him?

1 A. Yes.

2 Q. All right, Blaine, that's all I have for you.

3 ATTORNEY KRATZ: Thank you, Judge.

4 THE COURT: Mr. Strang.

5 **RECROSS-EXAMINATION**

6 BY ATTORNEY STRANG:

7 Q. Well, Mr. Dassey, when you -- when you finally
8 told the police on November 15 that there was
9 this bonfire going and you saw it when you came
10 home from trick or treating?

11 A. Yes.

12 Q. As Mr. Kratz said, you said you saw only one
13 person there?

14 A. Yes.

15 Q. You went in your house?

16 A. Yes.

17 Q. And you told them, too, that you remembered
18 seeing Brendan and that you talked with Brendan
19 about trick or treating, in your house, when you
20 got home, didn't you?

21 A. Yes.

22 Q. And then you went to bed?

23 A. Yes.

24 ATTORNEY STRANG: That's all I have.

25 THE COURT: All right. This witness is

1 excused.

2 ATTORNEY KRATZ: State will call Bob Fabian
3 to the stand, your Honor.

4 THE CLERK: Raise your right hand.

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

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

10 THE WITNESS: Robert Fabian, F-a-b-i-a-n.

11 **DIRECT EXAMINATION**

12 BY ATTORNEY KRATZ:

13 Q. Mr. Fabian, do you know the defendant, Steven
14 Avery?

15 A. Yes, I do.

16 Q. He's the gentleman seated in the courtroom next
17 to his lawyers; is that right?

18 A. That's correct.

19 Q. On October 31st of 2005, do you remember seeing
20 Mr. Avery?

21 A. Yes, I do.

22 Q. Now, do you know any of the other members of the
23 Avery family?

24 A. Yes, I do.

25 Q. And is there one of the Avery's that you know

1 better than the others?

2 A. Probably Earl.

3 Q. Who is Earl Avery?

4 A. Would be Steven's brother.

5 Q. On October 31st of 2005, do you recall being with

6 Earl Avery that day?

7 A. Yes, I do.

8 Q. Now, are Earl and you friends?

9 A. Yes.

10 Q. On the 31st of October, that would be Halloween;

11 is that right?

12 A. That's correct.

13 Q. On that date, were you and Earl doing something

14 together?

15 A. Yes, we went rabbit hunting.

16 Q. And where did you go rabbit hunting?

17 A. In the junkyard.

18 Q. By the junkyard, are you referring to the Avery

19 Salvage Yard?

20 A. That's correct.

21 Q. And was there a mode of transportation or a way

22 that you were getting around the junkyard while

23 you and Earl were rabbit hunting?

24 A. Yes, we were using a golf cart.

25 Q. Do you know whose golf cart that was?

1 A. I believe Mrs. Avery.

2 Q. You mean Delores?

3 A. Yes, correct.

4 Q. Earl's mom?

5 A. Yes.

6 Q. When did you begin rabbit hunting that day; do

7 you remember?

8 A. I believe I got there, it was about 10 to 5

9 quarter to 5, something like that.

10 Q. All right. Do you know about what time it gets

11 dark or got dark around the 31st of October?

12 A. I do remember when I got home it was like quarter

13 to 6.

14 Q. Was it getting dark or was it dark by about

15 quarter to 6?

16 A. I believe it was, yes.

17 Q. Just before getting dark, or just before your

18 rabbit hunt was completed, did you find your way

19 up towards Steven Avery's trailer?

20 A. Yes, we did.

21 Q. I'm going to show you an exhibit which has been

22 received. It's No. 114. It's a computer

23 animation, a drawing, but will this exhibit help

24 you describe or explain the rest of your

25 testimony?

1 A. I believe so.

2 Q. Do you recognize that general area?

3 A. Yes, I do.

4 Q. What is that area, generally?

5 A. Steven Avery's residence.

6 Q. All right. Now, do you see both a burn barrel

7 there, a garage, a trailer, and a reddish maroon

8 either Voyager or Caravan?

9 A. Yes, I do.

10 Q. All right. Now, on the 31st, that is, on

11 October 31st of '05, did that area generally look

12 like that?

13 A. Somewhat, yes.

14 Q. Were there some differences on the 31st of

15 October?

16 A. Yes, I believe there was a snowmobile trailer

17 hooked up to the truck. And I don't believe the

18 garage doors were open. And I don't remember the

19 van sitting there.

20 Q. All right. Let's talk about each of those things

21 individually. First of all, let me talk about

22 the garage door itself. About what time -- If

23 you can place, as best you can recall, about what

24 time were you in that general vicinity?

25 A. I would say maybe 20 after 5.

1 Q. This is p.m.?

2 A. Correct.

3 Q. And at 5:20 p.m., did you have occasion to look

4 at Mr. Avery's garage door?

5 A. I didn't specifically look at it, but it was

6 closed, I believe, at the time.

7 Q. All right. With the garage door being closed,

8 were you able to see what was in the garage door

9 at the time?

10 A. No.

11 Q. There's some other things on this diagram,

12 specifically the burn barrel; do you remember

13 that barrel on the 31st of October?

14 A. Yes, I do.

15 Q. Tell the jury what you remember about that burn

16 barrel at about 5:20 p.m. on the 31st of October?

17 A. When me and Earl had pulled up on the golf cart,

18 we had stopped in between the house and the

19 garage. And the smoke from the burn barrel was

20 blowing right in my face. So I told Earl to move

21 ahead.

22 Q. You have got a laser pointer right in front of

23 you. I don't know if you know how to work that

24 thing. There's a button on it. If you can point

25 that at the exhibit. First of all, point out the

1 burn barrel; what are you talking about?

2 A. Right there.

3 Q. All right. You and Earl were both on the golf

4 cart?

5 A. That's correct.

6 Q. Where were you parked at first with the golf

7 cart?

8 A. When we had pulled up, we had came from this

9 direction, and we had pulled up in here,

10 somewhere up in here.

11 Q. You are pointing to an area which is still on

12 what would be the driveway area, but just south

13 of, or south-ish, of the burn barrel; is that an

14 accurate description?

15 A. That is correct.

16 ATTORNEY STRANG: From the east to the

17 west, I think the witness was showing.

18 ATTORNEY KRATZ: Yes, I'm sorry.

19 Q. (By Attorney Kratz)~ You were pointing from the

20 east to the west?

21 A. Yes.

22 Q. Towards Steven's trailer?

23 A. Correct.

24 Q. Did you actually stop in the golf cart? Did you

25 have -- Did the golf cart come to a complete

1 stop?

2 A. Yes, we had stopped. And that's when the smoke

3 was blowing in my face.

4 Q. Okay. Let's talk about the smoke and where was

5 it coming from?

6 A. It was coming from the burn barrel.

7 Q. Can you show us again where that was coming from?

8 A. Over there, it was coming from there and coming

9 this way.

10 Q. All right. Describe for the jury, as best that

11 you can remember, if you can remember, at about

12 5:20 p.m.; what was the smoke like?

13 A. It was kind of a heavier smoke. And it smelled

14 like plastic. It didn't smell like regular

15 garbage.

16 Q. Well, let's talk about that a little bit. Have

17 you smelled plastic, or plastic components being

18 burned before?

19 A. As a kid growing up in the country, yes, I burned

20 a lot of garbage.

21 Q. All right. Is it your testimony that burning

22 plastic smells different than just regular

23 burning garbage?

24 A. That's correct.

25 Q. And what did you smell that day?

1 A. It was plastic.

2 Q. Now, did you ever get out of the golf cart and
3 look in the burn barrel and see what kind of
4 plastic things were burning in there?

5 A. No, I did not.

6 Q. When you stopped the golf cart up towards
7 Steven's trailer, did you actually have occasion
8 to see Steven Avery?

9 A. Yes, we did.

10 Q. And can you describe where you saw him, or where
11 he was coming from?

12 A. The first we had seen him is, we were pulling up
13 here, on the golf cart, we were not stopped yet.
14 And he had came out of the door of the house, and
15 come down the steps, and was headed towards the
16 garage.

17 Q. All right. Did he make it all the way to the
18 garage?

19 A. No, he did not.

20 Q. What happened then?

21 A. I believe Earl asked him what he was doing, and
22 he came walking over to the golf cart.

23 Q. Did you have a conversation with him at that
24 time?

25 A. Yes.

1 Q. All right. How long were you in the golf cart?
2 How long was this smoke coming toward you at the
3 time?

4 A. The smoke was only bothering me for a few seconds
5 or so, and I had told Earl to pull ahead, made
6 him pull ahead so it wouldn't bother me. So
7 that's when he had pulled ahead.

8 Q. Mr. Fabian, could you describe, I know you said
9 it was 20 after 5, but could you describe the
10 lighting conditions; what time of day was it?
11 How close was it getting towards dusk?

12 A. It was getting towards dark, getting relatively
13 hard to kind of see already.

14 Q. All right.

15 ATTORNEY KRATZ: Good enough. That's all I
16 have for this witness, Judge. Thank you.

17 THE COURT: I think at this point we'll
18 take our lunch break and start back with
19 cross-examination after lunch. We'll resume at
20 1:00. Members of the jury, I will remind you again
21 not to discuss the case in any fashion over the
22 lunch break. You are excused at this time.

23 (Jury not present.)

24 THE COURT: You may be seated. Counsel, I
25 just want to check the agenda for this afternoon.

1 Mr. Kratz.

2 ATTORNEY KRATZ: Yes.

3 THE COURT: Who's on your witness list for
4 this afternoon?

5 ATTORNEY KRATZ: After Mr. Tadych, Judge,
6 we do have the two telephone records custodians.
7 Excuse me. We also have available two law
8 enforcement officials who searched what we now know
9 as the burn area. So we can proceed with any of
10 those. Because the records custodians are
11 relatively short. And they have come here today, I
12 would like to put in those records and their
13 testimony. And so if I had a preference in order, I
14 would call Mr. Tadych, the two records custodians,
15 and then we would move on to the burn area search.

16 THE COURT: Mr. Strang.

17 ATTORNEY STRANG: Probably we would be
18 better off discussing scheduling off the record.
19 Would that make sense?

20 THE COURT: All right. We'll go off the
21 record at this time.

22 (Noon recess taken.)

23 (Jury present.)

24 THE COURT: Mr. Strang, you may begin your
25 cross-examination of the witness.

CROSS-EXAMINATION

BY ATTORNEY STRANG:

Q. The following afternoon, you get to the Avery
Salvage property to see your friend, Earl, at
about 4:45, 4:50?

A. That's correct.

Q. Quarter to 5, 10 to 5, something like that?

A. Yeah.

Q. The two of you are planning in advance to do some
rabbit hunting?

A. I think I showed up unannounced.

Q. Showed up with a rifle though, to do some
hunting?

A. Correct.

Q. Earl had a rifle to do some hunting?

A. I believe he was working at the time when I
arrived.

Q. I'm sorry?

A. He was working at the time I arrived.

Q. Mm-hmm.

A. Which would have been at closing time.

Q. But he also participated in the rabbit hunt?

A. Correct.

Q. That required a rifle?

A. Yes, I believe.

1 Q. You weren't snaring rabbits?

2 A. No.

3 Q. Or trying to shoot them with a bow and arrow?

4 A. No.

5 Q. Okay. The two of you then do that, and I take it

6 you have to break off rabbit hunting before it's

7 dark out?

8 A. Correct.

9 Q. You have to be able to see the rabbit?

10 A. Correct.

11 Q. The time over at -- near Steven Avery's trailer,

12 then, is as darkness is approaching?

13 A. That's correct.

14 Q. You are nearing the end of your hunt?

15 A. That is correct.

16 Q. It has taken you about 15 minutes to drive from

17 your house to the Avery Salvage Yard?

18 A. Approximately 15.

19 Q. It will take you about 15 minutes to get back,

20 give or take?

21 A. That's correct.

22 Q. And you think you are back by quarter to 6?

23 A. That's correct.

24 Q. That is, back at your house?

25 A. At my house, yes.

1 Q. What's your -- What's your rabbit gun?

2 A. I have a .22.

3 Q. Okay. Standard sort of small game gun?

4 A. Yes.

5 Q. Did you guys get any rabbits that day?

6 A. No, we did not.

7 Q. The smoke that you smell near the burn barrel,

8 you are in the path of it for a few seconds?

9 A. That's correct.

10 Q. You get out of the path of it?

11 A. That's correct.

12 Q. You know that from living in the country

13 yourself, that burn barrels are for burning

14 garbage, typically?

15 A. Yes.

16 Q. Garbage may include plastic milk cartons?

17 A. That's correct.

18 Q. Plastic cartons from other things from the

19 grocery store?

20 A. That's correct?

21 Q. Maybe a plastic garbage bag itself?

22 A. That's correct.

23 Q. All kinds of plastic items that may be in

24 garbage, when you are burning it?

25 A. Yes.

1 Q. You didn't look in the burn barrel?

2 A. No, I did not.

3 Q. You noticed that the barrel was already burning,

4 obviously?

5 A. Yes.

6 Q. Didn't see anybody put anything in the burn

7 barrel?

8 A. No, I didn't.

9 Q. Saw at the side that there was -- Well, let me

10 ask you, you didn't smell a tire burning?

11 A. No.

12 Q. You know the smell of a burning rubber tire?

13 A. Yes.

14 Q. Didn't see heavy black smoke coming out?

15 A. No.

16 Q. All right. Didn't see a tire or a rim assembly

17 lying next to the burn barrel either?

18 A. No, not that I recall.

19 Q. You certainly saw no larger fire going in a burn

20 area?

21 A. No, I did not.

22 Q. Didn't hear any screaming?

23 A. No, I did not.

24 Q. Didn't hear any gunshots coming from that area?

25 A. No, I did not.

1 ATTORNEY STRANG: That's all I have. Thank
2 you.

3 THE COURT: Any redirect?

4 ATTORNEY KRATZ: Not of this witness,
5 Judge.

6 THE COURT: Very well. You are excused.

7 THE WITNESS: Thank you.

8 ATTORNEY KRATZ: State would call Scott
9 Tadych to the stand.

10 THE CLERK: Please raise your right hand.

11 **SCOTT TADYCH**, called as a witness
12 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: Scott Tadych, T-a-d-y-c-h.

17 **DIRECT EXAMINATION**

18 BY ATTORNEY KRATZ:

19 Q. Mr. Tadych, I'm going to ask you some questions
20 regarding October, 2005. Let me first ask if you
21 remember that particular day?

22 A. Yes.

23 Q. And can you tell the jury how is it that you
24 remember that day, how that day sticks out in
25 your mind?

1 A. Um, it was the fire that I remember the most of
2 that day.

3 Q. You said the fire that you remember most, can you
4 tell the jury what fire you are talking about?

5 A. The fire by Steven's trailer.

6 Q. Let's back up just a little bit. Sometime on the
7 31st, that afternoon of the 31st of October,
8 2005, do you remember what you were doing?

9 A. Yes.

10 Q. Could you tell the jury what you did that
11 afternoon, please.

12 A. That afternoon -- or that morning, I was up by my
13 mother, she had surgery. Then I left her and I
14 went to the woods hunting. I went to my trailer
15 and then I went to the woods hunting.

16 Q. What kind of hunting did you do that day, Mr.
17 Tadych?

18 A. Archery hunting. Bow hunting, archery.

19 Q. About what time was it that you got out into the
20 woods, or that you got to your deer hunting
21 stand?

22 A. About 3:00.

23 Q. On your way to deer hunting, that would be just
24 before 3:00 p.m., did you observe anybody on the
25 roadway?

1 A. Yes, I did.

2 Q. Could you tell the jury who you saw on the
3 roadway before 3:00 that afternoon?

4 A. I saw Bobby Dassey on Highway 147.

5 Q. Which way were you going and which way was Bobby
6 going, if you recall?

7 A. I was going west and he was going east.

8 Q. Where is it, Mr. Tadych, that you hunt, or at
9 least that day, where was it that you were going
10 hunting?

11 A. In Kewaunee.

12 Q. Now, at that time, that is on the 31st of
13 October, of 2005, did you know anybody who lived
14 on what is known as the Avery Salvage Property?

15 A. Yes, I did.

16 Q. Who did you know on that property?

17 A. Everybody that lived there.

18 Q. Okay. Is there anybody there that you knew
19 better than somebody else?

20 A. Barb Janda, I guess.

21 Q. All right. Well, who is Barb Janda now to you?

22 A. My wife.

23 Q. I suspect you weren't married to anybody else on
24 that property?

25 A. No.

1 Q. All right. I'm going to show you what's been
2 marked for and received as Exhibit No. 98. It's
3 a computer generated diagram; do you recognize
4 this area of the Avery Salvage Property?

5 A. Yes.

6 Q. And will this diagram assist you in describing
7 for the jury what you saw that afternoon and
8 early that evening?

9 A. Yes.

10 Q. Mr. Tadych, after your hunt was completed, about
11 what time was that?

12 A. About 5, 10 after 5 or so, 5:00, whenever dark
13 was.

14 Q. Do you remember if you had gotten anything that
15 day?

16 A. No.

17 Q. At 10 after 5, or sometime after 5:00 p.m., tell
18 the jury where you went, please.

19 A. I went back to the Janda's residence, the Dassey
20 residence, to pick up Barb to go back to Green
21 Bay to see my mother.

22 Q. All right. Do you remember what kind of surgery
23 your mother had that day?

24 A. She had back surgery.

25 Q. Barb, at that time, Barb Janda, what was your

1 relationship with her?

2 A. We were friends, I guess.

3 Q. All right. Were you dating at the time?

4 A. Yes.

5 Q. Do you remember about what time you got to Barb

6 Janda's house to pick her up that night?

7 A. Which time? What do you mean, after 5:00?

8 Q. Well, after you went hunting; did you stop?

9 A. Yes, I did.

10 Q. Was Barb home?

11 A. Yup.

12 Q. Do you remember, did she have work at that time?

13 Was she employed?

14 A. Yes, she was working.

15 Q. About what time was it that you got to her house,

16 if you remember?

17 A. Between 5 and quarter after, quarter after 5, 5,

18 something like that, around in there.

19 Q. Sometime around 5:15 then, when you got to her

20 house -- By the way, what kind of a vehicle were

21 you driving; do you recall?

22 A. A green Ford Ranger.

23 Q. When you got to her vehicle in the green Ford

24 Ranger, can you tell us where you parked?

25 A. When I got to her home?

1 Q. Yeah. Mr. Fassbender is going to give you a
2 laser pointer to help you describe for the jury
3 where you parked.
4 A. Right about there.
5 Q. And you are pointing which would be just to the
6 west --
7 A. Yup.
8 Q. -- of a purplish vehicle in what would be a
9 circle driveway; is that right?
10 A. Yup.
11 Q. And that's on Exhibit No. 98. Mr. Tadych, when
12 you parked that vehicle there sometime at about
13 5:15 p.m.; did you notice anything, or observe
14 anything unusual around that property? If you
15 recall, if not, we'll move on.
16 A. I don't recall at that time.
17 Q. Did you pick up Barb then?
18 A. Yes, I did.
19 Q. And where did you guys go?
20 A. Back to Green Bay.
21 Q. Did you visit your mother in the hospital?
22 A. Yes.
23 Q. How long did that visit last; do you recall?
24 A. I was up there until probably -- I don't know,
25 7:30, quarter after 7, 7:30.

1 Q. Sometime after 7:30 p.m., then, did you return to
2 the Janda property?

3 A. Yes, I did.

4 Q. And were you still with Barb at the time?

5 A. Yes, I was.

6 Q. When you got back to the Janda property, was it
7 light out or dark out --

8 A. It was dark.

9 Q. -- at the time? Okay. Mr. Tadych, I'm going to
10 have to remind you to wait until my questions are
11 done so that the court reporter can write it all
12 down; is that okay?

13 A. Fine.

14 Q. All right. When you got back -- By the way, why
15 did you go back to the Janda property at that
16 time?

17 A. To drop Barb off at her house.

18 Q. And can you tell the jury why, please.

19 A. Drop her off at the house?

20 Q. Yes.

21 A. That's where she lived, I was going home.

22 Q. Were you going to see her later that night?

23 A. Yes, I was.

24 Q. So why did you stop at Barb's house?

25 A. To drop her off so she can get her vehicle.

1 Q. All right. In dropping Barb off so she could get
2 her vehicle, can you tell us where you parked at
3 that time?

4 A. Right about -- I come in and I parked right about
5 there.

6 Q. And if you can just use the laser point and tell
7 us from which way did you come in; do you
8 remember?

9 A. (Witness demonstrating.)

10 Q. All right. There's a purplish vehicle in front
11 of the residence; was that purple vehicle in that
12 circle driveway when you got there on the 31st?

13 A. I don't remember.

14 Q. But you came in from what would be a generally
15 easterly direction, you were generally going
16 west; is that right?

17 A. Yes.

18 Q. Did you park your vehicle?

19 A. Just long enough for her to get out of my
20 vehicle.

21 Q. And who is her?

22 A. Barb Janda.

23 Q. Did Barb get out of your vehicle?

24 A. Yes, she did.

25 Q. Where did Barb go, if you saw her?

1 A. She went towards the house.

2 Q. Towards whose house?

3 A. To her house.

4 Q. All right. At the time that you dropped Barb

5 off, do you know about what time it was?

6 A. 7:30, quarter to 8, something like that.

7 Q. About 7:30 to 7:45 p.m., did you notice anything

8 unusual around the property at that time?

9 A. Yes, I did.

10 Q. Could you tell the jury what you saw at that

11 time, please.

12 A. I saw a big fire.

13 Q. Can you tell the jury where you saw the fire,

14 please.

15 A. Right there.

16 Q. You are pointing to an area just south of the

17 garage known as the Steven Avery garage; is that

18 right?

19 A. Yeah.

20 Q. Could you describe that fire for us, Mr. Tadych.

21 A. It was a big fire. It was bigger than normal.

22 Q. That's got a couple aspects to it. I'm going to

23 go one at time. First of all, you said that it

24 was a fire; did you see flames?

25 A. Yes, I did see flames.

1 Q. Did you notice if anybody was standing in the
2 area or around the fire? Did you notice somebody
3 back there?

4 A. Yes, I did.

5 Q. Do you know the defendant, Steven Avery?

6 A. Yes, I do.

7 Q. And did you see Steven Avery standing next to or
8 near that fire?

9 A. Yes, I did.

10 Q. Did you see what Steven Avery was doing at the
11 time?

12 A. Standing there, standing by the fire.

13 Q. All right. Are you able to estimate, from your
14 observations, how high or how tall the flames
15 were as you were watching there about 7:45?

16 A. They were almost as tall as the garage.

17 Q. All right. So --

18 A. Eight, ten feet. I don't know, ten feet maybe,
19 ten feet tall the flames were.

20 Q. It was a big fire?

21 A. It was a big fire.

22 Q. All right. Did you ever get out of your vehicle
23 at that time?

24 A. No, I did not.

25 Q. Did you ever approach the fire, or approach

1 Mr. Avery at that time?

2 A. No, I didn't.

3 Q. Where did you go then, Mr. Tadych?

4 A. I went back to where I was living at the time,

5 the trailer house on 147.

6 Q. I'm sorry, could you tell us what community that

7 was.

8 A. Mishicot.

9 Q. About how far away was your trailer from your

10 girlfriend Barb's trailer?

11 A. About 2-miles, 2 miles away.

12 Q. Sometime shortly after you got to your house,

13 that is sometime -- By the way, when did you get

14 to your house?

15 A. About quarter to 8.

16 Q. Okay. Do you know if it was before 8:00 or --

17 A. Before 8:00.

18 Q. -- how do you remember that?

19 A. Because I wanted to go home and watch a TV show.

20 Q. Which show did you want to go watch?

21 A. It was *Prison Break*, actually.

22 Q. Started at 8:00?

23 A. Yeah, it did.

24 Q. Did you get home before the show started?

25 A. Yes, I did.

1 Q. Sometime shortly after you got home, Mr. Tadych,
2 were you joined at your house by anybody?

3 A. Barb Janda.

4 Q. Do you know about what time Barb got to your
5 house?

6 A. I don't recall what time she got there, but it
7 was shortly after.

8 Q. Do you remember that night how long Barb stayed
9 at your house or how long she visited?

10 A. A couple hours, she was there.

11 Q. Did she spend the evening or did she leave to go
12 home at some point?

13 A. She left and went home.

14 Q. And do you have an estimate, as you think back,
15 as to when she left?

16 A. About 10:30, 11:00.

17 Q. That's your best estimate as you sit here today?

18 A. Yes.

19 ATTORNEY KRATZ: I think that's all I have,
20 Mr. Tadych. Thank you, sir.

21 THE COURT: Mr. Strang.

22 **CROSS-EXAMINATION**

23 BY ATTORNEY STRANG:

24 Q. Mr. Tadych, you remember October 31, 2005,
25 because you skipped work entirely that day?

1 A. I did not skip work, I took vacation that day to
2 go be with my mother.

3 Q. That is, you were not at work.

4 A. Right, I wasn't at work.

5 Q. I didn't mean to suggest it was unexcused, but
6 you did not go to work on October 31?

7 A. No, I didn't.

8 Q. You went to Green Bay to see your mother?

9 A. Yes, I did.

10 Q. She had recently had surgery, you say?

11 A. Yes.

12 Q. Other than your mother, who would have seen you
13 on October 31st before you say Bobby Dassey saw
14 you as the two of you drive past one another on
15 Highway 147?

16 A. Nobody, just -- I went from the hospital to my
17 trailer.

18 Q. Now, you got home from the hospital at about 3:15
19 that afternoon, you say, to your home?

20 A. No.

21 Q. When do you tell us today you got home from the
22 hospital?

23 A. I got home from the hospital -- for the first
24 time I got home from the hospital was between
25 2:30 and quarter to 3.

1 Q. And that's your recollection today, oh, 15, 16
2 months after the events?

3 A. Yes.

4 Q. All right. You remember talking to a couple of
5 law enforcement officers about this back on
6 November 29, 2005?

7 A. Yes.

8 Q. And do you remember what you told them then about
9 when you got home from the hospital?

10 A. Which time are you asking me, first time or
11 second time?

12 Q. November 29, the first time you talked to them.

13 A. No, I don't recall.

14 Q. Do you suppose that reviewing a report one of
15 them prepared might help refresh your
16 recollection about that?

17 A. It might.

18 (Exhibit No. 356 marked for identification.)

19 Q. I show you Exhibit 356, which is a Division of
20 Criminal Investigation Report, and invite you to
21 look at Page 3. The second paragraph may be the
22 most helpful in refreshing your recollection, but
23 you are welcome to read to yourself any or all of
24 that report.

25 THE COURT: I think the witness is done,

1 Mr. Strang.

2 ATTORNEY STRANG: Very well.

3 Q. (By Attorney Strang)~ Did that help refresh your
4 recollection?

5 A. Yeah, it did.

6 Q. Did you tell the police on November 29 that you
7 arrived home at 3:15.

8 A. I may have.

9 Q. Well, do you remember telling them that or not?

10 A. No, I don't remember telling them that. It's
11 been such a long time.

12 Q. Do you think that maybe back on November 29 your
13 recollection was a little better than it is
14 today --

15 A. Yup.

16 Q. -- about events happening at that point, just one
17 month earlier?

18 A. What was that, sir?

19 Q. Do you think maybe your recollection back on
20 November 29, 2005, was maybe a little better than
21 it is today?

22 A. Yes.

23 Q. It was just one month after the events in
24 question at that point?

25 A. Right.

1 Q. Now, you then -- you get home, you very quickly
2 get ready to go off deer hunting?

3 A. Yes.

4 Q. You are going to drive west from your home to go
5 deer hunting?

6 A. Yes.

7 Q. Down Highway 147?

8 A. Yes.

9 Q. It's a 15 minute drive or something like that to
10 your hunting spot?

11 A. Approximately, yeah.

12 Q. And this is when, on your way to hunting is when
13 you see Bobby Dassey?

14 A. Correct.

15 Q. He's going east in the other direction on Highway
16 147?

17 A. Correct.

18 Q. Now, Highway 147 at that point, if you know,
19 is -- what's the speed limit?

20 A. Speed limit on 147?

21 Q. Yeah, if you know?

22 A. 55.

23 Q. 55. All right. And the two of you, obviously,
24 are going in different directions?

25 A. Yes.

1 Q. And so you pass each other and you are later able
2 to tell the police that Bobby was going deer
3 hunting?

4 A. Yes.

5 Q. How did you know that?

6 A. How do I know that is because Bobby Dassey was
7 going to the trailer where I live to hunt behind
8 it.

9 Q. Let me understand, he's going to hunt deer right
10 behind your trailer?

11 A. Yes.

12 Q. But you don't hunt deer right behind your
13 trailer?

14 A. Occasionally, yes.

15 Q. And when did he tell you about this hunting trip
16 that he planned right behind your trailer?

17 A. I don't recall him telling me. He had permission
18 from the landlord to hunt there.

19 Q. So you figured since you saw him driving east on
20 Highway 147 he must be going hunting?

21 A. Yes.

22 Q. Anybody else see you going west on 147 to go
23 hunting, so far as you know?

24 A. Bobby Dassey.

25 Q. Uh-huh, and had you told him that you were going

1 hunting?

2 A. No.

3 Q. How would he have known that you were going
4 hunting?

5 A. Because I was in my camouflage clothes.

6 ATTORNEY KRATZ: Objection, irrelevant,
7 Judge.

8 THE COURT: I'm going to overrule the
9 objection.

10 Q. (By Attorney Strang)~ You were in your camouflage
11 coat?

12 A. Yes.

13 Q. In your green Ford Ranger?

14 A. Yup.

15 Q. Passing one another at 55 miles an hour?

16 A. Nope. Where I passed Bobby I probably was only
17 doing maybe 25 miles an hour tops. He was
18 slowing down to turn in my driveway and I was
19 driving up 147.

20 Q. I see. And so you surmise that he would have
21 known you were going deer hunting because he
22 would have seen you in your camouflage clothing?

23 A. Yes.

24 Q. Did you go hunting with anybody that day?

25 A. No.

1 Q. I want to go back just a moment, because this was
2 my mistake, November 29, 2005, was not the first
3 time you spoke to law enforcement officers about
4 Halloween, was it?

5 A. I don't recall.

6 Q. Does November 10 sound more like the first time?

7 A. Yeah, that sounds more like it.

8 Q. Okay. About 10 days, 11 days after Halloween?

9 A. Yes.

10 Q. Correct? And on that occasion, you also told the
11 police that you arrived home from seeing your
12 mother in Green Bay at 3:15, true?

13 A. True.

14 Q. Now, if I understood your testimony here today,
15 you get back to Barb Janda's home at about 5:15,
16 something like that?

17 A. Yes.

18 Q. This is a home that she, at that point, shares
19 with her four sons?

20 A. Yes.

21 Q. You see, at that point, Steven Avery, and Barb
22 Janda, and one of the Dassey boys, standing
23 outside talking?

24 A. I don't recall them standing outside. I don't
25 recall seeing anybody at that time besides Barb.

1 Q. All right. And is it your testimony today that
2 you don't recall seeing a fire in that burn area
3 there behind --

4 A. Oh, I seen a fire there.

5 Q. Oh, you did see the fire there?

6 A. Oh, yeah.

7 Q. At 5:15?

8 A. I don't recall seeing a fire at 5:15.

9 Q. All right. When do you tell us today you first
10 recall seeing the fire --

11 A. I first --

12 Q. -- in the burn area --

13 A. I first remember seeing the fire --

14 THE COURT: Mr. Tadych, let Mr. Strang
15 finish his question first.

16 Q. (By Attorney Strang)~ Fire, burn area, behind
17 garage. Today, when did you tell us you first
18 saw that fire?

19 A. I really remember first seeing it the second time
20 I was there.

21 Q. Well, would it help to look at Exhibit 356 again
22 to see what you told the police on November 29th?

23 ATTORNEY KRATZ: Objection, your Honor, he
24 hasn't claimed any lack of memory.

25 Q. Do you recall telling the police, on November 29,

1 that you saw a fire burning in the area behind
2 Steve's garage between 5:15 and 5:30 --

3 THE COURT: Just a minute, you can ask him
4 the question, but let's pull the exhibit away.

5 ATTORNEY STRANG: Okay.

6 Q. Do you recall telling the police, the officers,
7 that between 5:15 and 5:30, on October 31, 2005,
8 you saw two people standing around a fire that
9 was burning in the area behind Steven's garage.

10 A. That was the second time I seen him standing,
11 when I came back. I don't recall --

12 Q. You don't recall telling the police you saw that
13 between 5:15 and 5:30?

14 A. Not that -- No, I don't recall.

15 Q. All right.

16 A. I seen it the second time.

17 Q. Well, take a look, again, at Exhibit 356. That's
18 not the one I want.

19 (Exhibit No. 357 marked for identification.)

20 Q. I show you Exhibit 357, a DCI report, interview
21 with you that occurred on November 29, 2005.
22 Again, look at any part of it you like. The
23 third paragraph on that page may be the most
24 helpful in refreshing your recollection. All
25 done? Having looked at that, does that refresh

1 your recollection about what you told the police
2 on November 29?

3 A. Yes, it does.

4 Q. Did you tell the police on November 29, that
5 between 5:15 and 5:30 p.m. you saw two people
6 standing around a fire burning in the area behind
7 Steven's garage?

8 A. Yes, I did.

9 Q. Memory fresher then than it is today?

10 A. What was that, sir?

11 Q. Is your memory fresher today or was it fresher
12 back on November 29, 2005?

13 A. Fresher back on the 29th of November.

14 Q. And is that the -- If I understood you today, you
15 are telling us that when you see the fire later,
16 sometime after 7:30, you think the flames were
17 almost as high as the garage, maybe 8 to 10 feet?

18 A. Yeah.

19 Q. Was November 29 also the day that you told the
20 police that the flames were at least 3 feet high,
21 at least that high?

22 A. Must have.

23 Q. Whenever you saw this fire, and however many
24 times you saw it, you smelled nothing strange
25 coming from the fire?

1 A. No.

2 Q. You heard no one screaming?

3 A. No.

4 Q. You heard no gunshots?

5 A. No.

6 Q. You didn't see Mr. Avery trying to conceal

7 himself in any way?

8 A. No.

9 Q. Especially at 7:15, 7:30, when you drove up, you

10 would have driven up the driveway, with your

11 headlights on?

12 A. Yes.

13 Q. After dark, right?

14 A. Yes.

15 Q. And as you drove west down this lane, as I

16 understand your testimony, then you swung into

17 the driveway this way?

18 A. No, the other way.

19 Q. Came in this way?

20 A. Yes.

21 Q. But parked over here?

22 A. Yes.

23 Q. All right. So you would have had your headlights

24 on until you parked the car and turned it off?

25 A. I didn't shut my car off.

1 Q. Had the headlights on the entire time?

2 A. Yes.

3 Q. Now, if I understood you as well, today, you have

4 told us that Barb came to your house a little

5 later that evening?

6 A. Correct.

7 Q. You dropped her off, right, she goes in the

8 house?

9 A. I don't know what she did.

10 Q. You dropped her off, you presume she went in the

11 house?

12 A. Yes.

13 Q. And then shortly later, she appears at your

14 house?

15 A. Correct.

16 Q. Barb, by the way, at that time, was married to

17 your cousin, Tom Janda?

18 A. Correct.

19 Q. You know, separated or whatever?

20 A. Yes.

21 Q. But the name Janda comes from your cousin, Tom

22 Janda?

23 A. You are absolutely right.

24 Q. Okay. And so she comes to your house and the two

25 of you are going to watch television?

1 A. Correct.

2 Q. You remember specifically that you wanted to

3 watch a show called "Prison Break"?

4 A. Correct.

5 Q. Is that something you were recording on the VCR?

6 A. No.

7 Q. Or TiVo, something like that?

8 A. No.

9 Q. You were going to actually watch it as it was

10 broadcast?

11 A. Yes.

12 Q. Which is why you think you got home at 8:00?

13 A. That's exactly why I wanted to be home.

14 Q. Now, she stays, the two of you watch that show?

15 A. Correct.

16 Q. You have a memory of watching that show?

17 A. Yup.

18 Q. And then your recollection, as you told us today,

19 is that she leaves somewhere around 10:30 or 11?

20 A. Correct.

21 Q. You are quite sure that she leaves and goes home?

22 A. Yes.

23 Q. Well, you talked with the police yet a third

24 time, I guess at least, didn't you, after

25 November 29?

1 A. I may have.

2 Q. March 30, 2006, does that sound about right?

3 A. Could be.

4 Q. And Investigator John Dederling from the Calumet
5 County Sheriff's Department?

6 A. Could be.

7 Q. Do you recall telling Investigator Dederling that
8 Barb spent the night at your residence and did
9 not go home, and that you knew she did go
10 directly to work, from your residence, to your
11 knowledge?

12 A. I don't recall that.

13 Q. You don't recall that. Okay. Do you think
14 reviewing Investigator Dederling's report might
15 help refresh your recollection about that?

16 A. I'm sure it will.

17 (Exhibit No. 358 marked for identification.)

18 Q. It is -- I will show you Exhibit 358,
19 Investigator Dederling's report of his interview
20 with you on March 30, 2006. Read to yourself any
21 part of it you like. The very bottom on the
22 first page may be most helpful.

23 THE COURT: Are you done, Mr. Tadych?

24 THE WITNESS: Yes.

25 THE COURT: I believe he's ready.

1 Q. (By Attorney Strang)~ All done? Does that help
2 refresh your recollection?

3 A. Yeah, I guess.

4 Q. About what you told Investigator Dederling?

5 A. Yes.

6 Q. Did you tell Investigator Dederling, on March 30,
7 that Barb spent the night at your residence and
8 did not go home; Barb did go directly to work
9 from your residence to your knowledge?

10 A. Yes, I did.

11 Q. Barb works an early morning shift, at least at
12 that time?

13 A. Yes.

14 Q. Until sometime in the mid afternoon?

15 A. Yes.

16 Q. Sometime around the time that you talked to
17 Investigator Dederling, on the occasion you just
18 described, were you trying to sell one of the
19 Dassey boy's .22's to a man named Jay Mathison
20 (phonetic) at work?

21 A. No.

22 Q. You weren't? And you are sure, though, that you
23 watched the show *Prison Break* starting at
24 8:00 p.m. on Monday, October 31, 2005?

25 A. Am I sure?

1 Q. Yeah.
2 A. Yup.
3 Q. Are as you sure of that --
4 A. Maybe not.
5 Q. --as you are of anything you testified --
6 A. Maybe not.
7 Q. -- here?
8 A. But I'm sure that's what I went home to watch.
9 Q. Okay. You are sure it was 8:00?
10 A. Yeah.
11 Q. As sure as you are --
12 A. I'm sure it's 8:00.
13 Q. Are you as sure of that as you are of anything
14 you testified to here today?
15 A. I guess not. I don't know.

16 ATTORNEY STRANG: That's all I have.

17 THE COURT: Mr. Kratz, anything else?

18 **REDIRECT EXAMINATION**

19 BY ATTORNEY KRATZ:

20 Q. Mr. Tadych, Mr. Strang asked if your recollection
21 was clearer earlier --
22 A. It was clearer earlier.
23 Q. You really are going to have to wait until I --
24 A. Sorry.
25 Q. -- finish the question. Whether your

1 recollection was clearer, that is, as you got
2 closer or were earlier in time, specifically
3 November of 2005.

4 A. Yes.

5 Q. Do you remember both of your first two interviews
6 with law enforcement?

7 A. I remember the first two.

8 Q. And do you remember in both of those interviews
9 telling law enforcement officers that Barb left
10 your house sometime between 11:00 p.m. or
11 midnight and went home those nights?

12 A. Yes, I assumed she went home. I thought she did.

13 ATTORNEY KRATZ: That's all I have of
14 Mr. Tadych. Thank you.

15 THE COURT: All right. The witness is
16 excused. You may call your next witness, Mr. Kratz.

17 ATTORNEY KRATZ: Call Bobbie Dohrwardt to
18 the stand. Could I have just a minute with
19 Mr. Strang, Judge?

20 THE COURT: Sure. Excuse me, counsel, I
21 think the witness is standing right behind you.

22 THE CLERK: Raise your right hand.

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

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

3 THE WITNESS: My name is Bobbie Dohrwardt,
4 D-o-h-r-w-a-r-d-t.

5 (Exhibit No. 359 and 360 marked for identification.)

6 **DIRECT EXAMINATION**

7 BY ATTORNEY KRATZ:

8 Q. I'm sorry for the delay, Ms Dohrwardt. Can you
9 tell the jury, please, how are you employed?

10 A. I work for Cellcom.

11 Q. And what is Cellcom?

12 A. Cellcom is a wireless carrier, local to northeast
13 Wisconsin.

14 Q. Ms Dohrwardt, have you been asked and have you
15 reviewed cellular telephone records for a
16 subscriber by the name of Steven Avery, or
17 Avery's Salvage -- Auto Salvage for the dates on
18 and around October 31st, 2005?

19 A. Yes, sir.

20 Q. Let me ask you, Ms Dohrwardt, are -- in your
21 employment with Cellcom, are you what is known as
22 one of the custodians of the business records for
23 that business?

24 A. Yes, I am.

25 Q. Generally, what do you do for Cellcom?

1 A. I am the team leader for Technical Support
2 Department.

3 Q. And as team leader, are you able to review, and
4 to the extent that, at least in general terms,
5 we're going to ask you questions; are you able to
6 interpret cellular telephone records that you
7 have been asked to look at?

8 A. Yes, sir.

9 ATTORNEY KRATZ: The Court has asked,
10 Judge, and I think Mr. Strang will agree, that we
11 not use telephone records in this instance -- excuse
12 me -- telephone numbers in this instance. And Ms
13 Dohrwardt will be referring, then, to subscriber
14 names rather than numbers. And, please, Mr. Strang,
15 if there's an issue, stop and we can either approach
16 the bench or we can approach the witness at that
17 time. Does that sound fair, Judge?

18 ATTORNEY STRANG: Your Honor, this actually
19 will be Mr. Buting's witness, but we did have an
20 agreement, we do have an agreement, that for
21 purposes of this trial, we'll not identify specific
22 telephone numbers at least without conferring
23 further.

24 THE COURT: Very well.

25 BY ATTORNEY KRATZ:

1 Q. Ms Dohrwardt, the first document that you have in
2 front of you, which is actually quite small
3 print, I would ask you to identify that document
4 number for me, please; what exhibit number is it?
5 A. Exhibit 359.
6 Q. And could you tell the jury, please, what
7 Exhibit 359 is?
8 A. It is a call record that I produced.
9 Q. And was this the call record, again, for both
10 incoming and outgoing telephone calls for the
11 cellular telephone records for Steven Avery?
12 A. Yes.
13 Q. Again, do these include calls on October 31st of
14 2005?
15 A. Yes.
16 Q. If I ask you at a specific time and if you have
17 another record next to you, which I think is
18 Exhibit No. 360, please feel free to refer to
19 that if that will assist you; does that sound
20 okay?
21 A. Fine.
22 Q. Let me ask you, then, Ms Dohrwardt, at 8:12 a.m.
23 on October 35 (sic), 2005, was a cellular
24 telephone call placed from that cellular
25 telephone of Steven Avery?

1 A. Yes.

2 Q. And again, referring to Exhibit No. 360, since

3 that will refer to subscriber names rather than

4 numbers, could you tell us who that call went to,

5 please?

6 A. That call was to *Auto Trader*.

7 Q. And how long or what was the duration of that

8 call?

9 A. Two minutes, forty-seven seconds.

10 Q. I would next ask you to review a outgoing

11 telephone call at 2:24 p.m.; do you note that

12 calling having been made?

13 A. Yes.

14 Q. And again, referring to Exhibit No. 360 and

15 Exhibit 359, in conjunction, are you able to tell

16 who that telephone call was made to?

17 A. To Teresa Halbach.

18 Q. What is the duration of that call?

19 A. Seven seconds.

20 Q. Now, Ms Dohrwardt, I'm going to ask you about a

21 specific cellular telephone feature, which is

22 called the *67 feature; are you familiar with

23 that?

24 A. Yes.

25 Q. Could you explain that to the jury; what is a *67

1 feature?

2 A. It is a remote feature activation that will allow
3 the outbound number to be blocked or restricted
4 on the terminating end.

5 Q. If the individual on the receiving end had, let's
6 say, caller ID, you may have a better term than
7 that, but if they had what we all know as caller
8 ID, would they be able to see who the call is
9 being made from?

10 A. No, it would appear as blocked, or restricted,
11 private, something like that.

12 Q. And next, Ms Dohrwardt, I'm going to ask you to
13 review those records, again, Exhibit 359 and 360.
14 Ask, at 2:35 p.m., if another call, outgoing
15 call, was attempted from the cellphone of
16 Mr. Steven Avery?

17 A. Yes.

18 Q. And who was that call placed to?

19 A. Teresa Halbach.

20 Q. Is there a duration or was that a completed call?

21 A. There was no duration.

22 Q. All right. Now, both the 2:24 call and the 2:35
23 call, do your records reflect that any specific
24 call feature was used on those two calls?

25 A. Yes.

1 Q. Which call feature was used?

2 A. The *67 blocking feature.

3 Q. At 4:35 p.m., Ms Dohrwardt, does another outgoing

4 call appear on those records?

5 A. Yes.

6 Q. Who was that call made to?

7 A. Teresa Halbach.

8 Q. And is there a duration noted on that call?

9 A. No duration.

10 Q. So duration would be zero?

11 A. Zero.

12 Q. All right. At 5:57 p.m., do your records reflect

13 another call being made?

14 A. Yes.

15 Q. And who was that call made to?

16 A. Charles Avery.

17 Q. And can you describe for the jury the duration of

18 that call?

19 A. Five minutes, twenty-three seconds.

20 Q. Finally, Ms Dohrwardt, at 9:20 p.m., do your

21 records reflect a final outgoing call that day?

22 A. Yes.

23 Q. And who is that call made to?

24 A. Barb Janda.

25 Q. And is there a call duration associated with that

1 call?

2 A. Zero.

3 Q. Now, we have talked about Exhibit No. 359 being
4 your records, that is, the records of Cellcom;
5 does Exhibit No. 360 appear to be, legal term is
6 a summary exhibit, of what you have testified to
7 here today?

8 A. Yes.

9 Q. And do the numbers or times of the calls, type of
10 call, and call durations, all appear consistent
11 with not only the records in 359, but also with
12 what you have testified here today?

13 A. Yes.

14 ATTORNEY KRATZ: With that, then, Judge, I
15 will move the admission of Exhibits 359,
16 provisionally 360, and maybe an additional
17 stipulation with that exhibit. But I don't believe
18 I have any further questions of Ms Dohrwardt at this
19 time. Thank you.

20 THE COURT: Any objection to the exhibits?

21 ATTORNEY BUTING: No objection.

22 THE COURT: All right. The exhibits are
23 received.

24 ATTORNEY BUTING: Can we approach, your
25 Honor?

1 THE COURT: Sure.

2 (Side bar taken.)

3 THE COURT: All right. Members of the
4 jury, we're going to take our afternoon break at
5 this time. We'll resume in about 15 minutes.

6 (Jury not present.)

7 THE COURT: All right. We'll resume in 15
8 minutes.

9 (Recess taken.)

10 (Jury present.)

11 THE COURT: Mr. Buting, you may proceed.

12 ATTORNEY BUTING: Thank you, your Honor.

13 **CROSS-EXAMINATION**

14 BY ATTORNEY BUTING:

15 Q. Good afternoon, Ms Dohrwardt. Just a couple
16 quick questions, first, and then I'm going to
17 return to these exhibits that you have been
18 referring to. All right?

19 A. All right.

20 Q. This *67 feature, that's actually available on
21 other lines as well, land lines, right?

22 A. Right.

23 Q. And that's something that the caller uses if they
24 would want to not allow the receiving party to
25 see what that phone number they are calling from

1 is, right?

2 A. Right.

3 Q. But it doesn't remove it from your phone bill; it

4 still shows up on the customer's own phone bill,

5 right?

6 A. Right.

7 Q. Okay. So it's not like it's a call that becomes

8 invisible if you use *67, it is still in your own

9 records, the customer's own calling records would

10 show the phone number, that the phone call was

11 made, right?

12 A. Are you referring to Cellcom, how they bill, or

13 another carrier?

14 Q. Just in general, if you get an itemized bill, it

15 will be on there as an outgoing call, right?

16 A. Cellcom only bills for answered calls, with

17 duration.

18 Q. All right.

19 A. So --

20 Q. So if it was answered, if you use the *67 call to

21 somebody and it's answered, it will show up on

22 your bill as an outgoing call?

23 A. Yes --

24 Q. Okay.

25 A. -- but it would not show the restriction.

1 Q. Pardon?

2 A. It would not -- It would not separate from --

3 Q. Sure, it will be on there, though?

4 A. Right.

5 Q. Okay. So, Mr. Avery's bill would show he made a

6 phone call to Teresa Halbach, each one of those

7 times, whether or not the *67 feature is used,

8 correct?

9 A. If it was answered and there was duration, yes.

10 Q. Sure. Okay. Well, let's go into that little

11 issue that you just brought up, answered or not.

12 Do you have 360 -- Exhibit 360 in front of you?

13 A. Yes.

14 Q. And then, I'm going to put this up on the ELMO

15 because this is testing the limits of my eyes.

16 Exhibit 359, that's the basis really of your

17 testimony today, your knowledge, right?

18 A. Right.

19 Q. Exhibit 360 was not prepared by you, though,

20 right?

21 A. Right.

22 Q. That was prepared by the prosecutor, just as sort

23 of a summary exhibit of what your testimony would

24 be?

25 A. Right.

1 Q. Okay. If you don't mind, I'm going to take both
2 of these away from you for a moment and I'm going
3 to put them up on the screen. Okay?

4 A. All right.

5 THE COURT: Counsel, one thing, weren't we
6 trying to avoid the numbers? Are you going to show
7 the telephone numbers on the screen?

8 ATTORNEY KRATZ: Yes, I would prefer,
9 Judge, that only 360 be put up on the screen.

10 ATTORNEY BUTING: There is no other way,
11 Judge. If you want to order the cameras not to --

12 THE COURT: All right. I will ask the
13 television cameras in the courtroom, then, not to
14 show the screen while the telephone numbers are on
15 there. That would be Exhibit 359?

16 ATTORNEY BUTING: That is correct.

17 THE COURT: Okay. Or Exhibit 360, when
18 it's back to the names, if the television cameras
19 wish to show the screen, they can. Which one are
20 you doing first, Mr. Buting?

21 ATTORNEY BUTING: I'm going to do 359
22 first.

23 THE COURT: All right. 359.

24 Q. I just want to show you first, make sure we know
25 what we're talking about here; 359, which has

1 this very small font because you are trying to
2 get -- whoever printed it is getting a long line
3 of columns onto a little 8 1/2 X 11 piece of
4 paper, right?

5 A. Correct. Actually both pages, side by side,
6 would be the entire record.

7 Q. Oh, it actually goes out two full pages, you're
8 right.

9 A. Correct.

10 Q. Okay. All right. I'm going to zoom in here,
11 first column -- Well, it has a number -- like a
12 sequential number of the phone call for this
13 particular record, right? Seventy, seventy-one,
14 seventy-two?

15 A. Right.

16 Q. The next column is seize date and time. Now, if
17 I understand what that is, is when someone makes
18 a call and it gets connected to one of the cell
19 towers, the time begins running, right?

20 A. Correct.

21 Q. That's -- The call is seized, whether or not it
22 goes on beyond that, right?

23 A. Correct.

24 Q. And then, if you look at the fourth one up from
25 the bottom; do you see the number here, 14:35?

1 A. Yes.

2 Q. That is a time, right?

3 A. Right.

4 Q. That is, 2:35, right?

5 A. Right.

6 Q. And the third one up from the bottom is 16:35,
7 which actually is 4:35 p.m., correct?

8 A. Right.

9 Q. Okay. Now, and the one right above -- I'm sorry,
10 I should have started with this one, the fifth --
11 the sixth one -- or fifth one up from the bottom,
12 14:24, this call that's placed by Mr. Avery's
13 cell at -- I hate these military time. I'm
14 sorry. 14:24 is 2:24 p.m., right?

15 A. Right.

16 Q. That's call number 61?

17 A. Eighty-one.

18 Q. Eighty-one. Okay. I should have blown it up
19 more. If we follow along here, the next column
20 is the answer date and time, right?

21 A. Right.

22 Q. And then the next one over is the release date
23 and time, right?

24 A. Right.

25 Q. And then the answer -- the next column is the

1 answer indicator column, right?

2 A. Right.

3 Q. And that call says answered in that column,

4 doesn't it?

5 A. It does.

6 Q. And the call right below it, which is the one

7 that was made at 2:35 p.m., says not answered,

8 correct?

9 A. Correct.

10 Q. And the call at 4:35 p.m., to Ms Halbach's phone,

11 also says answered, correct?

12 A. Yes.

13 Q. Now, we're going to have to remember the order of

14 these, because I have got to turn to the next

15 page. And I don't think you have numbers on

16 there. So, let's look at, first, call number

17 83, which is the third one up from the bottom

18 okay?

19 A. All right.

20 Q. That's the call that was made at 4:35 p.m. from

21 Mr. Avery's cellphone to Teresa Halbach, right?

22 Still with me?

23 A. Yes.

24 Q. The one that says answered over here in that --

25 in that column. I'm going to turn to the last

1 page, because of this exhibit. Because the last
2 columns -- almost the last columns of this
3 exhibit give us the duration of the phone call,
4 right?

5 A. Right.

6 Q. And if we look, then, at the third to the bottom
7 call -- line here, the call from Mr. Avery's
8 phone at 4:35 p.m. on October 31st, to Teresa
9 Halbach's phone, has a seized duration of 62
10 seconds, right?

11 A. Sixty-two hundredths of a minute.

12 Q. Oh, okay.

13 A. Three one.

14 Q. And it does not have a duration of zero, does it?

15 A. It does not.

16 THE COURT: Is that the third one up or the
17 fourth one up?

18 ATTORNEY BUTING: This is the third one up.
19 Do you want to see the first page again?

20 THE COURT: Yeah.

21 ATTORNEY BUTING: Okay.

22 THE COURT: Okay. So it's the 4:35 call
23 you are talking about?

24 ATTORNEY BUTING: 4:35 call.

25 THE COURT: Okay.

1 ATTORNEY BUTING: Is the third one up.

2 THE COURT: Very well.

3 Q. (By Attorney Buting)~ And would you agree with me
4 that this exhibit shows that it has a duration, a
5 seized duration of 62, 062, and a call duration
6 of .18?

7 A. I do.

8 Q. Okay. And the next one above it has a duration
9 of zero?

10 A. Right.

11 Q. And the one above that has a duration of .12?

12 A. Correct.

13 Q. And back to the first page, the one directly
14 above the 4:35 call that we were talking about,
15 is the one that's made at 14:35, or 2:35 p.m.,
16 that's the one that says it's not answered?

17 A. Right. There's more to these calls, though.

18 Q. And that one is clearly not answered at all?

19 A. Not answered. And the release cause shows the
20 calling party hung up before anything answered
21 the call, voice mail or a person.

22 Q. Okay. The one above it, though, at 2:24 p.m., is
23 answered, right?

24 A. Yes. But, again, I can't say by a person or by
25 voice mail.

1 Q. All right. So we don't know whether the call
2 goes -- These records don't tell us whether the
3 call goes into voice mail or whether it's
4 answered by a live person?

5 A. If it was a Cellcom customer, I could see that,
6 but not when it's another carrier.

7 Q. All right. And let me just go back to this call,
8 you also testified about a call at 5 -- or your
9 Exhibit 360 refers to a call to Charles Avery at
10 5:57 p.m., that would be the second to the last
11 row, right?

12 A. Right.

13 Q. Seventeen fifty-seven. and that one is answered,
14 right?

15 A. Right.

16 Q. And your Exhibit 360 says the duration was 5
17 minutes and 23 seconds. This exhibit says 538?

18 A. It says 5.38 minutes.

19 Q. Okay. So you divide that into -- you do a
20 calculation and figure out that .38 minutes is 23
21 seconds; is that how you did it?

22 A. Right.

23 Q. Well, in the call above it, it says point -- it
24 says 0.18, you said the duration is zero on this
25 Exhibit 360. It's really not zero, is it?

1 A. The call duration is, yes.

2 Q. Call duration says 0.18, correct?

3 A. Well, I'm confused on which call we're on now.

4 Q. The third from the bottom, where it says, we have
5 established is, the call at 4:35 p.m. from Mr.
6 Avery's call to Teresa Halbach's?

7 A. That would be 11 seconds.

8 Q. So this exhibit, then, 360, is wrong?

9 ATTORNEY KRATZ: Judge, I'm going to object
10 as argumentative. She clearly wanted to explain it;
11 Mr. Buting hasn't let her.

12 ATTORNEY BUTING: We're going to that right
13 this moment.

14 ATTORNEY KRATZ: Well, then don't call it
15 wrong.

16 THE COURT: All right. I -- That question,
17 to me, allows an answer, so you can explain --

18 ATTORNEY KRATZ: Thank you, Judge.

19 THE COURT: -- your answer.

20 A. Answered, as far as an answered call, being able
21 to tell if it was answered actually by a phone or
22 by voice mail, unable to tell that. And the
23 durations on Exhibit 360, since I have a seized
24 duration and call duration, both columns on my
25 report; I'm not sure which -- which of those

1 numbers was taken for 360, to say that it was
2 right or wrong.

3 Q. All right. Well, what we have just established
4 now, though, today, is that the call that was
5 made from Mr. Avery's cellphone to Teresa
6 Halbach's cellphone, at 4:35 p.m., according to
7 your records in Exhibit 359, Cellcom records, is
8 marked as answered, right?

9 A. Correct.

10 Q. And has a duration, not of zero, but of 11
11 seconds, right?

12 A. Correct.

13 Q. And, similarly -- Well, that's okay. We'll leave
14 it with that. So, would you suggest that we
15 correct Exhibit 360 so that in that last column,
16 where it says duration, on that call to Teresa
17 Halbach, that it actually say 11 seconds instead
18 of duration zero?

19 ATTORNEY KRATZ: Objection, Judge, it's a
20 mischaracterization.

21 THE COURT: Well, I'm going to let her
22 explain -- or answer the question.

23 A. Looking at that specific call, something did have
24 answer with the call.

25 Q. Okay.

1 A. Whether, again, I can't say a phone or a voice
2 mail system, either would cause that result. But
3 the connection was up for 11 seconds.

4 Q. So then why does Exhibit 360 say duration zero?

5 A. I don't know if that's because of how the other
6 carrier shows whether it was answered or not.
7 And how -- I can't explain how their records
8 work, how these numbers came to be.

9 Q. All right. Well, if this Exhibit 360 is being
10 introduced through you, presumably it's based on
11 your knowledge of Cellcom's records --

12 A. Correct.

13 Q. Or is it?

14 A. Well, I just saw this for the first time today,
15 so I apologize, I did not see that particular
16 call.

17 THE COURT: Just for the Court's
18 clarification; did you prepare Exhibit 360?

19 THE WITNESS: No.

20 ATTORNEY BUTING: Okay.

21 Q. (By Attorney Buting)~ I'm not trying to beat up
22 on you, ma'am, I'm just trying to clarify. I
23 understand that you didn't prepare 360. What I'm
24 asking you is, now, looking at the record
25 yourself, from your own records; would you

1 suggest that perhaps that Exhibit 360 in front of
2 you be amended, if not corrected, amended to show
3 on the duration column, 11 seconds?

4 A. Yes.

5 ATTORNEY STRANG: Thank you. That's all I
6 have.

7 ATTORNEY KRATZ: Let me ask --

8 THE COURT: Mr. Kratz.

9 **REDIRECT EXAMINATION**

10 BY ATTORNEY KRATZ:

11 Q. Ms Dohrwardt, if you reviewed, as you have in
12 this case, other records, that is, records other
13 than records from Cellcom, would you be able to
14 give the jury a full explanation of what happened
15 with that call at 4:35?

16 A. I don't understand the question.

17 Q. Are there other records that you have reviewed,
18 regarding that specific call at 4:35 p.m., that
19 better explains what happened with that call,
20 other than your Cellcom records?

21 A. Yes.

22 Q. What other records --

23 ATTORNEY BUTING: Judge, let me object. If
24 she's not testifying from her own records, she's
25 unable to authenticate or explain someone else's

1 records. This witness -- If another witness can do
2 that, fine. This witness, as I understand it, is
3 qualified to interpret Cellcom records and she's
4 done that.

5 ATTORNEY KRATZ: Let's ask her, Judge.

6 THE COURT: Yeah, we don't know yet whether
7 she -- I mean, in a sense, both of you are right.
8 She hasn't been qualified yet, but I can't say for
9 sure that she won't be qualified. So, Mr. Kratz,
10 you may proceed.

11 ATTORNEY KRATZ: Thank you, Judge.

12 (Exhibit No. 361 marked for identification.)

13 ATTORNEY KRATZ: Is 359 still floating
14 around somewhere?

15 ATTORNEY BUTING: Did I grab it?

16 Q. (By Attorney Kratz)~ Ms Dohrwardt, I have now
17 handed you what has been marked for
18 identification purposes as Exhibit No. 361 have
19 you seen that document before?

20 A. Yes.

21 Q. In providing the information for Exhibit No. 360,
22 the summary exhibit, which as Mr. Buting
23 correctly indicates, is an exhibit created as a
24 summary of voluminous information, did you look
25 at Exhibit 361 and assist in the interpretation

1 of those records, together with your records, of
2 Exhibit 359?

3 THE COURT: Just a second, before we go
4 further, I think we should identify what Exhibit 361
5 is.

6 ATTORNEY KRATZ: I would be happy to do
7 that, Judge.

8 Q. (By Attorney Kratz)~ What is Exhibit No. 361?

9 A. Exhibit 361 is a type of call record activity
10 from Cingular.

11 Q. And do you know what Cingular is?

12 A. They are another cellphone provider.

13 Q. And do you know -- do you know if the Cingular
14 wireless records that are contained in
15 Exhibit 361 tell the other side of the story, for
16 lack of a better term, for what the caller
17 records from 359 tell?

18 ATTORNEY BUTING: Objection, she's still
19 not been qualified to be able to interpret these
20 records.

21 THE COURT: I assume that she's in the
22 process of being qualified. You may be right, maybe
23 she won't be qualified, but I think this is a
24 foundational question, as I understand it.

25 A. These records have a lot of the same information

1 that ours -- that Cellcom records have, but a lot
2 that we don't. They are missing a lot that our
3 records have.

4 So you can't see, on the calls at these
5 particular times, who actually the calling number
6 was on those; where ours show inbound and
7 outbound. But these do show communication
8 between the phone and the network; durations;
9 outbound numbers, if they were dialed. And
10 that's it. That's all that's on these records.

11 Q. Exhibit 361 also shows something called a tower
12 site, or a tower designation; is that correct?

13 A. Correct.

14 Q. Now, let's go back to the qualification, your
15 qualifications; as technical research team
16 leader, as in fact the manager of tech support
17 for Cellcom, are you familiar with interpreting
18 that kind of data and that kind of information?

19 A. Yes.

20 Q. In fact, you do that every day?

21 A. Correct.

22 ATTORNEY BUTING: Which kind of data are we
23 referring to? The question is not clear.

24 THE COURT: She has to be qualified to
25 interpret the -- Exhibit 361, the records from a

1 competitor.

2 ATTORNEY KRATZ: I understand that, Judge.

3 THE COURT: That's where you are going?

4 ATTORNEY KRATZ: Yes.

5 Q. (By Attorney Kratz)~ Are you asked to interpret
6 information -- And the specific column that I'm
7 interested in is cell designation and cell site
8 information. Are you asked to interpret that
9 kind of information every day?

10 A. Yes.

11 Q. And, specifically, as you look at Exhibit
12 No. 331, are you able --

13 THE COURT: 361?

14 ATTORNEY KRATZ: 361, I'm sorry, Judge.

15 Q. (By Attorney Kratz)~ Ms Dohrwardt, are you able,
16 in looking at Exhibit No. 361, to provide
17 assistance, to provide an explanation as to a
18 call made at 4:35 p.m. on March 31st of 2005?
19 I'm sorry, 4:35 p.m.

20 A. What I can --

21 Q. October 31st, I'm sorry.

22 A. What I can say about these records is that
23 communication between the phone and some cell
24 site, which I can't convert, because I don't have
25 a chart to tell what these numbers mean, as far

1 as what cell site, but they clearly show that
2 there's communication between the phone and a
3 site, for every call up until that call. And
4 then there's no further communication with that
5 phone and any cell site after that time.

6 Q. Based upon your training, based upon -- I assume
7 you have been doing this for a while?

8 A. Yes.

9 Q. How long have you been doing this?

10 A. Four and a half years.

11 Q. And are you trained to interpret and provide
12 opinions on data such as in Exhibit 361?

13 A. I have not been trained in other carriers records
14 and how they pull them, but being how similar
15 that they are, I feel comfortable with what I'm
16 looking at.

17 Q. All right. Ms Dohrwardt, recognizing it is
18 Cingular and not Cellcom, recognizing that
19 difference, okay, which is I think what you
20 testified about?

21 A. Yes.

22 Q. Are you able -- I'm not going to ask yet for your
23 opinion, but are you able, looking at those
24 records, at Exhibit No. 361, to provide an
25 opinion as to whether that particular call had a

1 duration, that is, as to whether that was a
2 completed call, that is, completed with a human
3 being on the other end of the line?

4 A. There is no cell site on that call, but there is
5 the duration matching --

6 ATTORNEY BUTING: Objection, your Honor.

7 ATTORNEY KRATZ: I'm just asking, yes or
8 no, if you are able to render that opinion.

9 THE WITNESS: Oh, yes.

10 ATTORNEY KRATZ: Judge, I don't know if
11 Mr. -- and I want to give Mr. Buting an opportunity
12 to voir dire. I am going to ask that opinion, but
13 if there's --

14 THE COURT: Well, let me ask this, do you
15 have a Cingular person coming in.

16 ATTORNEY BUTING: Yeah, why don't we do it
17 then?

18 THE COURT: Is there going to be a witness
19 from Cingular?

20 ATTORNEY KRATZ: Yes, Judge, but I want to
21 be heard. This -- We can't -- If this witness is
22 qualified, I think I'm entitled to ask her that
23 question.

24 ATTORNEY BUTING: Well, he's asking for an
25 expert opinion now, she's not just a custodian. If

1 there's a witness available, let's just move on.

2 THE COURT: She's indicated that it's not
3 her company and they don't have all the information
4 on the form; however, she's also said she's
5 qualified to interpret this particular information.
6 And I believe, under our rules for expert witnesses,
7 I believe that's sufficient, so I'm going to let her
8 do it.

9 Q. (By Attorney Kratz)~ Did you understand my
10 question?

11 ATTORNEY BUTING: Your Honor, there's been
12 no disclosure --

13 (Court reporter couldn't hear.)

14 ATTORNEY BUTING: There's been no
15 disclosure of her report, then, under 971.23, if
16 she's (sic) now going to convert this witness, a
17 custodian, into an expert.

18 ATTORNEY KRATZ: She's just interpreting
19 the data, Judge. And I don't know that she's issued
20 a report, or written report, on this. In fact, I'm
21 quite sure she hasn't.

22 ATTORNEY BUTING: Or any summary of her
23 opinions that are anticipated to be presented. We
24 have been through this before.

25 THE COURT: All right. Let's save it for

1 the next witness. Your -- Your -- As I understand
2 it, your summary exhibit is a compilation of
3 information that you anticipate eliciting from more
4 than one witness, correct.

5 ATTORNEY KRATZ: Yes. And it's from two
6 witnesses, Judge. This witness is necessary to
7 complete Exhibit 360.

8 THE COURT: As is the next witness.

9 ATTORNEY KRATZ: I understand that, but the
10 suggestion that is now left before this jury, is
11 that it's somehow an error. And with this witness,
12 I can clear that up. She's qualified to do that and
13 I'm asking for leave to do that. If the Court is
14 saying no, then we'll move on.

15 THE COURT: I don't agree with your
16 characterization. I think what it -- the only
17 conclusion it draws at this stage, Exhibit 360 is
18 incomplete, because it's a compilation of
19 information you are going to be eliciting from two
20 separate witnesses. So let's limit this witness to
21 what the witness has to say about Cellcom. And then
22 you be can go back to Exhibit 360 when you bring in
23 the Cingular witness.

24 ATTORNEY KRATZ: I will, at this time,
25 Judge, not ask this witness any questions. I'm

1 alerting counsel and the Court that I may recall
2 this witness after our next witness.

3 THE COURT: Fair enough. Any more
4 questions, Mr. Buting?

5 ATTORNEY BUTING: No, I don't believe so,
6 all the questions were regarding the other witness,
7 so we'll wait for the witness.

8 THE COURT: All right. You are excused at
9 this time. And the State may call it's next
10 witness.

11 ATTORNEY KRATZ: Thank you, Judge. We'll
12 call Laura Schadrie to the stand.

13 (Exhibit No. 362 marked for identification.)

14 THE CLERK: Please raise your right hand.

15 **LAURA SCHADRIE**, called as a witness
16 herein, having been first duly sworn, was
17 examined and testified as follows:

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

20 THE WITNESS: Laura Schadrie,
21 S-c-h-a-d-r-i-e.

22 **DIRECT EXAMINATION**

23 BY ATTORNEY KRATZ:

24 Q. Ms Schadrie, what is your occupation?

25 A. I am manager of a Cingular store.

1 Q. Where is your business located? Where is your
2 home office?

3 A. Home office is located in Atlanta, Georgia.

4 Q. Where are you physically located?

5 A. Fond du lac, Wisconsin.

6 Q. All right. Ms Schadrie, as a manager --
7 Cingular, by the way, is a wireless phone
8 service; is that correct?

9 A. Yes.

10 Q. Ms Schadrie, as a manager, as a person in
11 management for Cingular, are you familiar with,
12 and have you been asked to review, various
13 cellular phone records, specifically for a
14 Cingular customer by the name of Teresa Halbach?

15 A. Yes.

16 Q. Ms Schadrie, were you asked to review those
17 records and calls placed, both incoming and
18 outgoing calls, for October 31st, 2005, for that
19 Cingular customer?

20 A. Yes.

21 Q. And prior to coming to court this afternoon, have
22 you, in fact, reviewed those business records?

23 A. Yes.

24 Q. Are you what's called a custodian of those
25 records?

1 A. Yes.

2 Q. Ms Schadrie, I'm going to have you look in front
3 of you at -- I believe it's Exhibit 361; do you
4 recognize those records?

5 A. Yes.

6 Q. What is Exhibit No. 361?

7 A. It is the call records for -- that I have
8 reviewed.

9 Q. Now, I understand that, and so that the Court is
10 clear about your last answer, you have been asked
11 not to discuss or broadcast any specific
12 telephone numbers in this case; is that right?

13 A. Yes.

14 Q. Because of that, there are two other documents in
15 front of you, one is Exhibit No. 360 and I think
16 is Exhibit 362; do you see those?

17 A. Yes.

18 Q. Ms Schadrie, are you able, in reviewing Exhibit
19 No. 361 and in conjunction with 362, at least as
20 that relates to names rather than telephone
21 numbers, of providing this jury with a summary of
22 telephone calls, both incoming and outgoing, from
23 Teresa Halbach's cellular records dated
24 October 31, 2005?

25 A. Yes.

1 Q. I'm first going to ask you to look at a telephone
2 call at 9:46 a.m. And, again, feel free to
3 compare and to use both documents if they will
4 assist you. I'm going to ask you first of all if
5 that was an incoming or an outgoing call?
6 A. That was incoming call.
7 Q. And who was that received from?
8 A. *Auto Trader*.
9 Q. Time of the call?
10 A. Thirty-three seconds.
11 Q. And you're meaning the duration of the call; is
12 that right?
13 A. Yes.
14 Q. All right. And just so the jury understands,
15 those records wouldn't provide you with any
16 detail as to the content of the call, or what it
17 was about, or anything like that; is that right?
18 A. Right.
19 Q. Just the time of the call and the duration of the
20 call and who it may be from, at least a telephone
21 number or a name; is that right?
22 A. Yes.
23 Q. All right. Second call I'm going to ask you to
24 refer to is a call at 11:04 a.m.; do you see that
25 call?

1 A. Yes.

2 Q. Was that incoming or outgoing?

3 A. That was an outgoing call.

4 Q. And who was that call to?

5 A. Voice mail.

6 Q. And how long was that call?

7 A. 1 minute and 55 seconds.

8 Q. The next call I'm going to ask you to describe is

9 a call at 11:27 a.m.; do you see that?

10 A. Yes.

11 Q. And was that incoming or outgoing?

12 A. That was an outgoing call.

13 Q. And who is that to?

14 A. Voice mail.

15 Q. And how long was that call?

16 A. 2 minutes and 55 -- 2 minutes and 56 seconds.

17 Q. All right. Now, when you talk about voice mail,

18 those of us in the courtroom and those jurors

19 that don't have voice mail, what is a voice mail?

20 A. A voice mail is when a caller leaves you a

21 message if you are not able to answer your phone

22 call, and when you would call your voice mail to

23 retrieve any of your unheard messages.

24 Q. Okay. Next call I'm going to ask you to refer to

25 is at 11:43 a.m.; do you see that?

1 A. Yes.

2 Q. Is that incoming or outgoing?

3 A. That was an outgoing call.

4 Q. And who is that too?

5 A. Barb Janda.

6 Q. And how long was that call?

7 A. 1 minute and 5 seconds.

8 Q. Next call I'm going to ask you to identify is at

9 12:39 p.m.; was that incoming or outgoing?

10 A. That was an outgoing call.

11 Q. And to whom?

12 A. That was to voice mail.

13 Q. And what was the duration of that call?

14 A. Thirty-three seconds.

15 Q. The next call I'm going to have you identify is

16 at 12:51 p.m. First of all, was that incoming or

17 outgoing?

18 A. That was an outgoing call.

19 Q. From -- Or to whom, I'm sorry?

20 A. Steven Schmitz.

21 Q. And for how long was that call duration?

22 A. Forty-six seconds.

23 Q. Do you see another call at 2:12 p.m.?

24 A. Yes.

25 Q. And was that incoming or outgoing?

1 A. That was an outgoing call.
2 Q. To whom?
3 A. George Zipperer.
4 Q. And how long was that call?
5 A. 1 minute and 9 seconds?
6 Q. Next call is at 2:13 p.m., can you describe that
7 for me, please.
8 A. That was an outgoing call to voice mail.
9 Q. And how long did that take?
10 A. Thirty-seven seconds.
11 Q. Now, do you see a call at 2:24 p.m.?
12 A. Yes.
13 Q. And do you know if that was incoming or outgoing?
14 A. That was an incoming call.
15 Q. Now, are you able, from your records, to
16 determine who it was from?
17 A. No.
18 Q. And how long was that call?
19 A. Eight seconds.
20 Q. Next call I'm going to have you identify is at
21 2:27 p.m.; do you see that?
22 A. Yes.
23 Q. And was that incoming or outgoing?
24 A. That was an incoming call.
25 Q. And from whom?

1 A. Auto Trader.

2 Q. And how long was that call?

3 A. Four minutes and forty-five seconds.

4 Q. And, finally, I'm going to have you refer to a

5 call at 4:35 p.m.; do you see that?

6 A. Yes.

7 Q. Was that incoming or outgoing?

8 A. That was an incoming call.

9 Q. And from whom?

10 A. Steven Avery.

11 Q. And what was the duration of that call?

12 A. Thirteen seconds.

13 Q. Now, your -- The summary exhibit, that is,

14 Exhibit No. 362, does that set forth the type of

15 calls, who they were sent or received from, the

16 time of the call, and the duration, as you have

17 testified here in court?

18 A. Yes.

19 Q. And have you looked back, however, at Exhibit No.

20 361, those are your Cingular records themselves;

21 is that right?

22 A. Yes.

23 Q. I want you to look at the column that deals with

24 cell site information, or where a call may -- may

25 be placed off of, or what's called hit off of; do

1 you see that column?

2 A. Yes.

3 Q. All right. Specifically, the call at 4:35 p.m.,

4 do you see that call on your records, 361?

5 A. Yes.

6 Q. Now, does the call at 3 -- at 4:35 p.m., does

7 that appear to have been a completed call,

8 meaning, did that call hit off of any cell sites

9 that your records reflect?

10 A. I don't know.

11 Q. Does it show on the exhibit whether or not it hit

12 off of any cell sites?

13 A. No.

14 Q. No it doesn't, or no it didn't?

15 A. It doesn't show that it hit any cell site.

16 Q. Okay. Now, as a manager, are you required, or do

17 you perform any technical research, or provide

18 any technical opinions for Cingular?

19 A. No.

20 Q. Are there tech people, in other words, are there

21 technicians or people in your Technical Research

22 Department that do that kind of thing and render

23 those kinds of opinions?

24 A. Yes.

25 Q. So you are here today just as the custodian of

1 these records; is that right?

2 A. Yes.

3 ATTORNEY KRATZ: With that, Judge, at least
4 with Ms Schadrie, that's all the questions I have.
5 I would move the admission of 361 and 362 at this
6 time.

7 THE COURT: Any objection?

8 ATTORNEY BUTING: Yes, but I would like to
9 be heard outside the jury as to the summary of those
10 only. But we can hold off on that and do the cross.

11 THE COURT: By summary exhibits, we're
12 talking 360 and 362.

13 ATTORNEY BUTING: Yes.

14 THE COURT: Very well. Other exhibits are
15 okay?

16 ATTORNEY BUTING: 361 and 359, I have no
17 objection.

18 THE COURT: Okay. Those are admitted. And
19 Mr. Buting, you may commence your cross.

20 ATTORNEY BUTING: Thank you.

21 **CROSS-EXAMINATION**

22 BY ATTORNEY BUTING:

23 Q. Good afternoon, ma'am.

24 A. Hi.

25 Q. Do you still have the exhibits in front of you

1 there?

2 A. Yes.

3 Q. 361 has a call on it, call No. 7, that's

4 4:35 p.m., right?

5 A. Yes.

6 Q. Doesn't actually have a number, in the column it

7 says dial number, there's nothing listed there,

8 right?

9 A. Yes. Correct.

10 Q. And that's true of a lot of these calls that are

11 on this particular exhibit, right?

12 A. Yes.

13 Q. But anyway, in this one, it does show that a

14 duration is 13 seconds, correct?

15 A. Yes.

16 Q. It's not zero, right?

17 A. Right.

18 Q. Okay. And you can't tell from this whether the

19 call went into voice mail or not? Possible?

20 A. Right.

21 Q. Okay. And just so we're clear, Exhibit 362

22 that's in front of you, the summary exhibit, does

23 not include all of the calls that were made to

24 and from Teresa Halbach's phone on October 31st,

25 does it?

1 A. Right.

2 Q. And, in fact, if you look at Exhibit 361, there
3 is a call at 2:41 p.m., that has a duration of 1
4 minute and 20 seconds, correct?

5 A. Yes.

6 Q. And that does show a cell site, right?

7 A. Yes.

8 ATTORNEY KRATZ: Judge, I'm going to object
9 as irrelevant, unless Mr. Buting wants to admit that
10 there is a relevance that it shows a cell site in
11 there.

12 ATTORNEY BUTING: I'm just pointing out
13 what's on the record at this point.

14 THE COURT: Does it have any relevance?

15 ATTORNEY BUTING: Well, how about this
16 relevance, it's the last phone call on Teresa
17 Halbach's record that shows an actual cell site
18 location. I think that's pretty relevant.

19 ATTORNEY KRATZ: I will absolutely
20 stipulate to that, Judge, that's the last call that
21 ever made it to Ms Halbach, that's right.

22 ATTORNEY BUTING: I'm not stipulating to
23 that. I'm just saying it's the last one with a cell
24 site on it.

25 THE COURT: I'm gathering from what you are

1 saying -- both saying, that at least it has some
2 relevance, so I'm going to allow the question.

3 Q. (By Attorney Buting)~ So, for instance, the 2:41
4 calls says a minute and 20 seconds duration,
5 right?

6 A. Yes.

7 Q. And these records don't tell us, if I understand,
8 whether or not a phone call gets sent into voice
9 mail or not?

10 A. Correct.

11 Q. And there's also a call -- I'm just going to --
12 this may be compound, but I will ask it any way.
13 There was a call at 1:52 p.m., right?

14 A. Yes.

15 Q. That's not on Exhibit 362, correct?

16 A. Correct.

17 Q. There was a call at 12:45 p.m., right?

18 A. Yes.

19 Q. It's not on Exhibit 362, right?

20 A. Correct.

21 Q. And neither of those calls show the number that
22 it's coming from?

23 A. Correct.

24 Q. There's another one at 12:29 p.m., correct?

25 A. Correct.

1 Q. And all three of those last numbers I mentioned
2 are incoming calls?

3 A. Yes.

4 Q. You can tell that because an outcoming call -- or
5 outgoing call from her phone would have the phone
6 number that's dialed?

7 A. Right.

8 Q. So, for instance, that last actually dialed
9 number that's reflected on here is at 2:13 p.m.,
10 that is on Exhibit 362, and that has a long
11 number, that apparently is the voice mail?

12 A. Yes.

13 Q. Which is actually a 4-1-4 number?

14 A. Yes.

15 Q. Okay. Is there anything in this exhibit, No.
16 361, that tells you the names of these people
17 that you testified to, that are on Exhibit 362?

18 A. No.

19 Q. So, when you said, for instance, a phone call to
20 George Zipperer at 2:12, that is not actually
21 reflected on 361, is it?

22 A. Correct.

23 Q. And you didn't prepare 362, did you?

24 A. No.

25 Q. And the phone call that you mentioned that 362

1 says was to Steven Schmitz, you can't tell that
2 from your record, Exhibit 361, either, can you?

3 A. Correct.

4 Q. And even the call to Barb Janda at 11:43 a.m.
5 reflected on 362, you cannot tell that from your
6 own records, 361?

7 A. Correct.

8 Q. All right. Let's talk about voice mail for a
9 minute, you are familiar with that, right.

10 A. Yes.

11 Q. If somebody wants to call their own voice mail,
12 from their own Cingular phone; do they have to
13 enter a password?

14 A. No.

15 Q. So you just push some buttons and it goes
16 automatically?

17 A. Correct.

18 Q. Okay. If somebody wants to call voice mail from
19 a land line, though, say the owner of a cellphone
20 is trying to pick up their messages on a land
21 line, they would have to enter some password,
22 right?

23 A. Yes.

24 Q. And when one does that, if you are on a land line
25 or -- I will broaden that a little bit, whether

1 you are calling for a land line or your own
2 cellphone, when you call in it will tell you --
3 give you a message, you have five new messages,
4 something like that, right?

5 A. Yes.

6 Q. And then you push a button and you listen to all
7 five of those messages, right?

8 A. Yes.

9 Q. Once you do that, in your records, those are
10 considered opened and listened to. They are
11 still on your system, but they are considered
12 opened and read, right?

13 A. Yes.

14 Q. If there are phone messages in your voice mail
15 that you don't open and read, they are reflected
16 in your records as unopened?

17 A. Yes.

18 Q. So, if your records show that on a certain date,
19 let's say, we'll just pick a date, November 5th
20 of 2005, okay. If your records were to show that
21 messages were opened all the way up to that date,
22 on Teresa Halbach's phone, that would mean that
23 somebody had listened to those voice messages?

24 ATTORNEY KRATZ: Objection, speculation,
25 Judge.

1 ATTORNEY BUTING: I guess she can answer
2 it.

3 ATTORNEY KRATZ: I haven't heard a
4 foundation, perhaps he could lay some foundation
5 with this witness.

6 THE COURT: All right. That's fair.

7 Q. (By Attorney Buting)~ You understand Cingular
8 records, right?

9 A. Yes.

10 Q. You understand Cingular's voice mail process,
11 right?

12 A. Yes.

13 Q. And you understand how they mark messages,
14 incoming opened, or incoming unopened, right?

15 A. Yes.

16 Q. And incoming old, you know what that means as
17 well, right?

18 A. Yes.

19 Q. Incoming old would mean messages that have been
20 already listened to and are still on the system?

21 A. Right.

22 Q. Incoming unopened would be messages that are on
23 the system that no one has ever listened to?

24 A. Right.

25 Q. All right. And then incoming new would be a

1 brand new message that's come in, probably the
2 most recent one, right?

3 A. Correct.

4 Q. If --

5 ATTORNEY KRATZ: Judge, I would like to be
6 heard outside the presence of the jury, please.

7 THE COURT: All right. At this time the
8 Court will excuse the members of the jury.

9 (Jury not present.)

10 THE COURT: We'll excuse the witness from
11 the courtroom as well. You can step out in the
12 hallway.

13 (Witness not present.)

14 ATTORNEY BUTING: Judge, actually --

15 THE COURT: All right. I believe the jury
16 and the witness are both out of the courtroom at
17 this time.

18 ATTORNEY BUTING: Actually, I think we
19 might need this witness to be able to make this
20 argument, but. What is Mr. Kratz's objection?

21 THE COURT: Mr. Kratz.

22 ATTORNEY KRATZ: These are voice mail
23 messages that were retrieved, I think it's clear,
24 and I think Mr. Buting knows, from family members of
25 Teresa Halbach, after she was missing on the second,

1 or third, or something like that. And Mr. Buting's
2 position, if his theory of defense is that Teresa
3 Halbach is alive on the 2nd of November, we're
4 entitled to know that. We're entitled to notice of
5 that. That's my objection, is that it's irrelevant.
6 He is about to show her some retrieved voice mails
7 on the 2nd. It absolutely is meant to mislead this
8 jury and I want an offer of proof, Judge.

9 THE COURT: Mr. Buting.

10 ATTORNEY BUTING: There's no -- Mr. Kratz
11 may draw the conclusion that because messages are
12 opened as of November 2nd that means that Teresa
13 Halbach was alive on that date, I don't. And I
14 don't think the jury needs to either, but I do
15 intend to introduce records that show that her voice
16 mail was picked up at 8 a.m. on November 2nd and
17 that she was not reported missing for 36 hours more.
18 Somebody listened to her messages, waited 36 hours
19 before she was reported missing.

20 That's relevant and this jury has a
21 right to know it. And this witness will
22 establish that through this exhibit that I am
23 about to introduce.

24 ATTORNEY KRATZ: I'm thrilled to hear how
25 that's relevant, Judge. I'm thrilled to hear how,

1 if Teresa's brother waited 24 hours to report her
2 missing, how that has anything to do with whether
3 Mr. --

4 (Attorneys and Court talking over each other.)

5 THE COURT: I'm not sure --

6 ATTORNEY KRATZ: -- whether --

7 THE COURT: -- you will have to explain the
8 relevance to me.

9 ATTORNEY BUTING: Somebody --

10 (Court reporter stops them.)

11 ATTORNEY BUTING: I'm sorry.

12 ATTORNEY KRATZ: I would like to know how,
13 whether her brother waiting 24 hours to report her
14 missing, has anything to do with a fact in
15 consequence, that is, whether Mr. Avery killed
16 Teresa Halbach.

17 ATTORNEY BUTING: Okay. Judge, what we
18 have heard, at the very beginning of this trial, is
19 that nobody reported this young woman missing until
20 about 5:00 p.m. on Thursday, November 3rd. In fact,
21 nobody even started calling each other, or friends
22 about it, until sometime in the afternoon, I think 1
23 or 2:00 was the testimony from Mr. Pierce, of
24 November 3rd.

25 Somebody listened to Teresa Halbach's

1 messages. They are opened, from October 31st
2 through November 2nd, at 8:00 a.m. This witness
3 has established that you have to have a password
4 to be able to do that. Somebody with a password
5 listened to her phone messages and yet no steps
6 were taken, no other references.

7 I'm not saying it's her brother; I don't
8 know who it is. But I do know that the police
9 have had this report in their custody and it's
10 another example of the police investigative bias
11 by their failure to follow up on this. There's a
12 lot of unanswered questions about what was
13 happening in Teresa Halbach's life in those last
14 few days, and why there is this kind of a delayed
15 report. And here we have evidence that should
16 have directed their investigation further and
17 it's pretty obvious now, to hear Mr. Kratz, that
18 it wasn't done.

19 THE COURT: Mr. Kratz.

20 ATTORNEY KRATZ: I invite the Court to also
21 look at 904.03. If there is any -- any probative
22 value, it is substantially outweighed by the danger
23 of unfair prejudice. But also, more than that, the
24 danger of confusion of this jury to the real issues
25 in this case.

1 If, in fact, Mr. Buting is suggesting,
2 which I think is the only reason for this, that
3 Ms Halbach may not have perished on the 31st of
4 October, that it doesn't go to law enforcement
5 bias, since Mr. Buting can't tie this up with law
6 enforcement, 904.03, if nothing else, Judge,
7 should exclude this particular evidence.

8 THE COURT: I don't recall if there was
9 testimony earlier about someone retrieving her phone
10 messages earlier or not. Has there been any
11 testimony about that in the record?

12 ATTORNEY BUTING: There was testimony that
13 someone retrieved her messages on the evening of
14 November 3rd.

15 ATTORNEY KRATZ: They got a phone bill to
16 look at who she called on the 3rd.

17 ATTORNEY BUTING: I believe somebody
18 listened to the messages, but they didn't --

19 ATTORNEY KRATZ: That may be.

20 ATTORNEY BUTING: There is no confusion,
21 there is no unfair prejudice. I don't see any way
22 the State is prejudiced by this. This is just
23 simply a phone record that will attempt to establish
24 something that was going on with this phone, in a
25 very, very critical period of time for this trial,

1 which is between October 31st and November 5th when
2 her car was found, or November 3rd, when she was
3 found missing.

4 ATTORNEY KRATZ: How does that help this
5 jury decide who killed her? That's what the jury is
6 here to do, Judge.

7 ATTORNEY BUTING: Because unless the State
8 is prepared to establish that Mr. Avery had her
9 password, then he's not the one who is listening to
10 her messages on Wednesday November 2nd at 8:00 a.m.

11 ATTORNEY KRATZ: You said --

12 ATTORNEY BUTING: Somebody who knew her,
13 somebody who may have had a motive that he doesn't
14 have and somebody who may have had opportunity, was
15 doing that.

16 ATTORNEY KRATZ: Sounds like --

17 ATTORNEY BUTING: I'm not suggesting
18 that --

19 ATTORNEY KRATZ: -- third party liability,
20 Judge.

21 ATTORNEY BUTING: -- she was still alive.

22 ATTORNEY KRATZ: That's what it sounds
23 like.

24 THE COURT: I don't --

25 ATTORNEY BUTING: No, but I'm saying -- I

1 mean, I'm not going to argue that part to the jury,
2 because that's what the Court says we're not going
3 to do. But as far as what's relevant is, the police
4 have had this report and the police have not
5 followed up to find out what's up here.

6 Who was accessing Teresa Halbach's phone
7 mail on November 2nd, at 8 a.m. Either she was
8 alive and doing it herself, or somebody who had a
9 password to her voice mail was doing it. It's
10 got to be one or the two.

11 And I have a right to introduce this to
12 the jury as a another example of how the focus
13 was all on Mr. Avery. And they knew Mr. Avery
14 didn't have the password. So -- And their theory
15 is, that he's already destroyed the phone.

16 So, again, this is an investigative lead
17 that could be critical, that the State has --
18 prosecution and police have not followed up. And
19 the jury has a right to see that, it's part of
20 this defense. I obviously will limit -- we're
21 not going to get into motive -- I will limit it
22 to that.

23 THE COURT: Does the State know who
24 accessed the voice mail?

25 ATTORNEY KRATZ: I suppose we -- If there

1 was an inkling that Mr. Buting was going to suggest
2 that Ms Halbach was alive at that time, this is
3 something that could have been looked into
4 investigatively. That's another thing that we can
5 do, if the defense is, once again, changing its
6 theory.

7 ATTORNEY BUTING: This is not changing
8 theory at all. This fits perfectly to show that
9 they have not followed up this investigative lead,
10 because this investigative lead points elsewhere
11 than Mr. Avery. Doesn't fit with their theory. And
12 here we are in the middle of the trial and it hasn't
13 been investigated. The jury has a right to know
14 that.

15 THE COURT: All right. I'm, I guess,
16 having trouble tying it's relevance or probative
17 value. I'm not going to allow it at this time. But
18 I'm not going to automatically exclude it either. I
19 want a little time to think about it. It will give
20 some -- the State some time to see if they have an
21 explanation for who listened to it, or under what
22 circumstances someone listened to it. But I'm --
23 It's -- I'm having trouble seeing the apparent
24 relevance of it at this stage of the trial.

25 Let's bring the jurors back in. Do I

1 take it that you have another technical person
2 from Cingular who's going to be testifying?

3 ATTORNEY KRATZ: No, that's what -- that's
4 what Ms Dohrwardt was for, Judge. She's that
5 technical person who is able to testify about the
6 cell sites and about there was no cell site that
7 this hit off of and explain what that means, the
8 significance of that.

9 THE COURT: All right.

10 (Jury present.)

11 THE COURT: You may be seated. Mr. Buting,
12 you may continue.

13 BY ATTORNEY BUTING:

14 Q. Just a couple of other questions I need to ask
15 you. Does the -- Are you familiar with the
16 Cingular wireless dot com access site?

17 A. Yes.

18 Q. A customer can go online and access information
19 about their account?

20 A. Yes.

21 Q. To do that, you type in the website, when you get
22 to the website you have to put in a user name and
23 a password, right?

24 A. Right. You have to first set up the account.

25 Q. Okay. So in order to access those records, you

1 would have to -- someone would have to know the
2 user name and password, right?

3 A. Yes.

4 Q. And before you can find out, online, whose
5 making -- or what calls someone has been making
6 on a particular Cingular account, you would have
7 to get past that screen?

8 A. Yes.

9 Q. That requires a user name and a password?

10 A. Yes.

11 Q. There is no other way for me, or anyone else, to
12 find out who you have been calling on your
13 account, as an example?

14 A. Right.

15 Q. And in Teresa Halbach's case, the focus here,
16 since I don't know if it's a different type of
17 account, but to your knowledge, for one to access
18 Teresa Halbach's wireless account and find out
19 who was calling her or who she called on October
20 31st, one would have to enter a user name and a
21 password?

22 A. Yes.

23 Q. Okay. All right. Maybe I better put this up on
24 the ELMO so the jury can follow.

25 ATTORNEY BUTING: I just put an exhibit

1 back up on the Elmo again, Judge, that's got
2 numbers.

3 THE COURT: It has phone numbers. Is that
4 going to be the first one you put up there?

5 ATTORNEY STRANG: Yes, that will be the
6 first one.

7 THE COURT: All right. Then the TV camera
8 is instructed not to show the screen for this next
9 exhibit.

10 Q. (By Attorney Buting)~ Exhibit 361 is -- is now on
11 the screen, correct? Is that correct, ma'am?

12 A. Yes.

13 Q. Okay. I'm sorry. And this is the report that --
14 this is the record that you were testifying
15 about, on direct, as to information on Teresa
16 Halbach's wireless account?

17 A. Yes.

18 Q. I'm going to zoom it in a little bit because it's
19 hard to see here, but, for instance, in the --
20 what would be the second column, its says call
21 date, call time, it's got dialed number,
22 duration, etcetera, right?

23 A. Yes.

24 Q. Okay. And this column that says dialed number
25 has a lot of blanks in between the numbers. It

1 has got some numbers there and there are some
2 that are blank, right?

3 A. Yes.

4 Q. And even the numbers that are there don't give a
5 name, right?

6 A. Right.

7 Q. So this document doesn't really tell you who made
8 a call, for instance, at 12:29:08 p.m. that
9 lasted 40 seconds?

10 A. Correct.

11 Q. And this document doesn't tell you whose number
12 is 755-8715, does it?

13 A. Correct.

14 Q. So Exhibit 362, where it says sent and received
15 and has a whole lot of names in it, how did you
16 get those names; how did you tie those names to
17 any of these numbers, or to any of these calls, I
18 should say, since some of them don't even have
19 numbers?

20 ATTORNEY KRATZ: Judge, that's a summary
21 exhibit, this witness did not create. I think
22 that's been established.

23 THE COURT: I'm going to excuse the jury
24 again for a couple of minutes here. The witness may
25 stay.

1 ATTORNEY BUTING: I -- Do I take that down
2 or leave it up?

3 THE COURT: You can leave it up.

4 (Jury not present.)

5 THE COURT: You may be seated. Counsel,
6 maybe I'm missing something here, but if the parties
7 agreed to have exhibits that only had names and not
8 numbers, I guess I don't understand the significance
9 of questions that are asking why these exhibits show
10 numbers and not names.

11 ATTORNEY BUTING: Judge, let me clarify. I
12 misspoke when I mentioned the one that's up there
13 that has the 755 number. My question is as to the
14 ones that are blank, where there is no phone number,
15 some of which are on this exhibit, I believe.

16 THE COURT: I understand that, I wasn't
17 second guessing that. But this is not the first
18 time we have had some questions about why the
19 summary exhibit show names, but the phone records
20 show only numbers. And I think it's unfair to
21 suggest to the jury that there's anything untoward
22 about that if the parties have agreed that they want
23 the summary exhibits to show names and not numbers.

24 ATTORNEY KRATZ: The Court directed us to
25 do this and that's why this exhibit was created. We

1 were in chambers and the defense agreed. There's
2 not a stipulation, that's great. Let us know.

3 ATTORNEY BUTING: Bear with me, just one
4 moment, your Honor. Judge, I think we have this
5 worked out, I apologize. The summary exhibit
6 includes phone numbers from other records and other
7 exhibits, that have already been introduced, this
8 witness doesn't know that.

9 I just want to clarify, through this
10 witness, that the absence of numbers on this
11 exhibit, where it says dialed, numbers in. That
12 doesn't, for instance, mean that it's a *67 call
13 or anything like that. The absence of those
14 numbers is just because, as I understand, they
15 are not Cingular customers; is that right?

16 THE WITNESS: The absence of the numbers
17 dialed? You mean, are you talking about like on --

18 ATTORNEY BUTING: Yeah.

19 THE WITNESS: Just the missing numbers?

20 ATTORNEY BUTING: Right.

21 THE WITNESS: Those would be *67, or
22 incoming calls.

23 ATTORNEY BUTING: Oh, so --

24 THE WITNESS: In our records, incoming
25 calls are not shown.

1 ATTORNEY BUTING: Unless they are a
2 Cingular person; if they are a Cingular person do
3 they show up on incoming?
4 THE WITNESS: No.
5 ATTORNEY BUTING: Oh.
6 THE WITNESS: No incoming calls show on the
7 records, just the outgoing calls.
8 ATTORNEY BUTING: *67 or otherwise?
9 THE WITNESS: Right.
10 ATTORNEY BUTING: Okay. We'll just clarify
11 that point for the jury --
12 THE COURT: Right.
13 ATTORNEY BUTING: -- and we'll also
14 explain.
15 THE COURT: I think counsel should explain
16 to the jurors that those summary exhibits have names
17 and not numbers because the parties agreed that's
18 how it's going to be done. Now, if there's -- if
19 there's any disagreement about a number matching a
20 name, that's a separate issue, but assuming that
21 there's no disagreement about that, I think that
22 should be clarified for the jury.
23 ATTORNEY KRATZ: I would appreciate it.
24 Thank you.
25 THE COURT: Who wants to do it?

1 ATTORNEY STRANG: We will.

2 THE COURT: Very well. All right. Let's
3 bring the jurors back in.

4 (Jury present.)

5 THE COURT: You may be seated. Members of
6 the jury, I apologize for the extra exercise we have
7 been giving you this afternoon. There was an issue
8 about the use of telephone numbers and the names of
9 the person -- persons associated with those numbers.
10 And I believe the attorneys wish to put a
11 stipulation on the record for you.

12 ATTORNEY BUTING: Judge, we have agreed
13 that the summary exhibits, which would be 362 and
14 360, would not include phone numbers of the persons
15 called, or calling in, for privacy reasons. And
16 they would be -- the summary exhibits would be
17 substituted with the names of the parties.

18 And having had some discussion now, we
19 clarified that the -- this witness doesn't
20 actually know all the information that's on 362,
21 because some of that information comes from other
22 exhibits. So that explains some of the confusion
23 that we were having.

24 THE COURT: All right. Mr. Kratz.

25 ATTORNEY KRATZ: Judge, I just wanted to

1 include in that stipulation that the Court and the
2 attorneys had been asked to substitute what would
3 have been phone numbers for names. Exhibits No. 360
4 and 362 were created by the State, at the suggestion
5 of the Court and the acquiescence of the defense.

6 We believed those to be, and still
7 believe them to be accurate reflections of not
8 only the type of calls, the times, and the
9 durations of the calls. If there continues to be
10 any questions about that, we will call other
11 witnesses to explain them.

12 But with Mr. Buting's acknowledgement
13 that there was a confusion, at least with this
14 witness and perhaps with others, we hope that
15 that explanation for the jury suffices and that
16 360 and 362 can be admitted as Exhibits, as if
17 approved as summary exhibits. And if there are
18 any further questions, those can certainly be
19 asked, but certainly there shouldn't be any
20 further question as to the authenticity or
21 accuracy of these two exhibits.

22 ATTORNEY BUTING: Judge, just so we're
23 clear, we are stipulating as to the sent/received
24 column, the names that are there. We still do
25 dispute, because the exhibits are inconsistent as to

1 the 4:35 p.m. phone call, one of which says the
2 duration is zero seconds and another exhibit says 13
3 seconds.

4 So with that, otherwise, we don't have a
5 problem with these two exhibits.

6 ATTORNEY KRATZ: I understand that. And we
7 may recall that witness --

8 ATTORNEY BUTING: Okay.

9 ATTORNEY KRATZ: -- just to explain that
10 one call, Judge.

11 THE COURT: Very well. Mr. Buting, do you
12 have further questions?

13 ATTORNEY BUTING: Just one or two last
14 ones.

15 Q. (By Attorney Buting)~ Exhibit 361, which is still
16 on the screen here, just so we're clear, the
17 dialed number column there that has some phone
18 numbers and also has some blanks --

19 A. Yes.

20 Q. The ones that are blank are not blank because
21 somebody uses the *67 necessarily, right?

22 A. Correct.

23 Q. Those are simply all incoming calls of any sort.
24 Cingular doesn't print out the phone numbers?

25 A. Correct.

1 Q. All right.

2 ATTORNEY BUTING: That's all I have.

3 THE COURT: All right. Anything else from
4 the State?

5 ATTORNEY KRATZ: Not of this witness. I
6 will recall Ms Dohrwardt.

7 THE COURT: This witness -- You are
8 excused. And then we'll allow the State to recall
9 Ms Dohrwardt.

10 You may be seated. And, Ms Dohrwardt,
11 you are still under oath. Mr. Kratz.

12 ATTORNEY KRATZ: Thank you.

13 **DIRECT EXAMINATION**

14 BY ATTORNEY KRATZ:

15 Q. Ms Dohrwardt, the exhibit that is now being
16 shown, Exhibit No. 361, you see a column that's
17 called Icell, do you see that?

18 A. Yes.

19 Q. Do you know what that column represents?

20 A. I don't know for a fact, but by cell and the
21 numbers, I would interpret that to be cell site
22 numbers.

23 Q. All right. So the jury --

24 ATTORNEY BUTING: Objection, your Honor, if
25 she doesn't know, she doesn't know.

1 THE COURT: Mr. Kratz.

2 ATTORNEY KRATZ: I can ask her what cell
3 site numbers are and how she believes that column
4 relates to that, Judge. I would be happy to do
5 that, or I can call somebody from the Department of
6 Justice. We can do it either way.

7 THE COURT: Well, you may ask additional
8 foundation questions if you believe it will help.

9 ATTORNEY KRATZ: I do.

10 Q. (By Attorney Kratz)~ Ms Dohrwardt, what are cell
11 sites?

12 A. Those would be towers and sectors of towers.
13 Ours are numbered, one tower could have up to six
14 different numbers.

15 Q. On a cellular telephone is used, how does that
16 cellular telephone communicate with a cell tower?

17 A. By registration.

18 Q. Does that happen --

19 A. There are certain events that cause registration.

20 Q. Why don't you explain that for us, if you can.

21 A. When a phone is powered on, it creates
22 registration; when it makes or receives a call,
23 it will show registration; sends or receives a
24 message, it will show registration. And when
25 it's powered down, physically powered down, that

1 would be the last registration and it would show
2 at that time that it was physically powered off.

3 Q. And what can physically power off a telephone or
4 a cellphone?

5 A. For where I'm talking, it would be holding the
6 power button.

7 Q. Okay. If a cellular phone is no longer operable,
8 that is, if a cellular telephone is somehow
9 destroyed, will it show that it is somehow off,
10 or powered down, or will it continue to bounce
11 off of or hit off of a cell tower?

12 A. No, it will no longer have a registration.

13 Q. And if a cellphone no longer has a registration,
14 that's two questions. First of all, can you
15 still send a call, like a voice mail message, to
16 that particular cellphone?

17 A. Yes.

18 Q. Physically, however, if it is no longer in
19 service, if it's destroyed, as an example; could
20 you physically answer or communicate with that
21 cellphone?

22 A. No.

23 Q. And do you know or do you have an opinion as to
24 how that may be reflected in cell records,
25 specifically in record No. 361?

1 A. I believe that the numbers in the Icell column do
2 represent cell site numbers, that represent the
3 cell site for each of those calls. And that at a
4 point there is no longer any communication with
5 the phone for the subsequent calls.

6 ATTORNEY KRATZ: Mr. Fallon can move that a
7 little bit to the left.

8 Q. Are you able --

9 ATTORNEY KRATZ: To the left, Mr. Fallon,
10 there you go, and up a little bit. The other way
11 Mr. Fallon. If I could see the cell site, there we
12 go.

13 Q. (By Attorney Kratz)~ Are you able, now looking at
14 Exhibit 361, to see at which time is the last
15 telephone call regarding this particular phone,
16 Ms Halbach's phone, that actually was hitting or
17 using a cell tower?

18 A. That would be the 2:41 p.m. call.

19 Q. After 2:41 p.m., on the 31st of October, has Ms
20 Halbach's phone ever again, as this exhibit shows
21 you, receive or send a phone message?

22 A. No.

23 Q. So the 4:35 call, specifically, do you see that
24 on there?

25 A. Yes.

1 Q. Says 13 seconds; is that right?

2 A. Yes.

3 Q. But do you see a cell tower that's associated

4 with that?

5 A. No.

6 Q. What does that tell you?

7 A. That tells me that that duration was spent in

8 voice mail.

9 Q. That it wasn't -- Does it tell you whether or not

10 it was physically answered?

11 A. It could not have been. There's no cell site

12 communicating with the phone for that call.

13 Q. So if a cell call doesn't physically ever bounce

14 off a tower, it can't physically ever be

15 answered; is that what you are saying?

16 A. Correct.

17 Q. And is that the 4:35 call that is shown in

18 Exhibit No. 361?

19 A. Yes.

20 Q. And, in fact, every call thereafter, that phone

21 never bounces off a cell site, does it?

22 A. Correct. There's no registration.

23 ATTORNEY KRATZ: That's all I have got,

24 Judge. Thank you.

25 THE COURT: Mr. Buting.

1 ATTORNEY BUTING: Just a couple of points
2 of clarification. Sorry, I'm an idiot on this
3 stuff, bear with me.

4 **CROSS-EXAMINATION**

5 BY ATTORNEY BUTING:

6 Q. You said that when the phone is powered down,
7 there is no registration, right?

8 A. There is an event that shows --

9 Q. Okay.

10 A. -- that it's physically powered down. And that
11 we would see in the switch.

12 Q. But you can't tell that from these records?

13 A. No.

14 Q. Okay. And if someone calls you when your phone
15 is powered down, it goes into -- their phone
16 still pings off some sort of tower, right?

17 A. Who's theirs?

18 Q. The calling party.

19 A. The calling party calling a powered down phone?

20 Q. Sure.

21 A. Yes.

22 Q. It still goes to a tower?

23 A. The calling phone, yes.

24 Q. And then that tower, what, searches for the
25 other -- for the receiving phone? If it doesn't

1 find it, it goes to voice mail, is that how it
2 works?

3 A. It depends on whether you're same carrier or not
4 same carrier, that you are calling.

5 Q. So, here it was a phone call from your carrier
6 that goes to a tower trying to reach a phone
7 that's not answering it, or not picking it up,
8 will it go to that voice -- to that other
9 carrier's voice mail, or how does that work?

10 A. The other carrier switch would have conditions or
11 triggers that, certain conditions are met, send
12 the call to voice mail, such as no answer after
13 25 seconds.

14 Q. Okay.

15 A. It knows the phone is powered off and then it
16 would send it immediately to voice mail, not --

17 Q. Okay.

18 A. -- 13 seconds typically.

19 Q. Okay. So this -- your best estimate is this
20 probably went to voice mail?

21 A. Right.

22 Q. As did the other ones after that?

23 A. Right.

24 Q. And the only way then to retrieve those messages
25 if -- let's say if the phone was destroyed,

1 somebody would have to be calling in on a land
2 line and using and accessing that through a
3 password?

4 A. Right. From any other phone, you can access
5 voice mail.

6 Q. With a password?

7 A. With a password?

8 ATTORNEY BUTING: All right. Thank you.

9 THE COURT: Anything else?

10 ATTORNEY KRATZ: No, Judge. I didn't know
11 if -- if those four exhibits have been received. I
12 believe they have, but if not, I would offer them at
13 this time.

14 THE COURT: Any objection at this time?

15 ATTORNEY BUTING: Yes, we can talk about --
16 We do have an objection to summary exhibits, but I
17 think we can probably work that out with counsel,
18 during a break.

19 THE COURT: All right. I'm going to excuse
20 the witness at this time. And members of the jury,
21 I'm going to excuse you for the day as well.
22 Remember not to discuss the case among yourselves or
23 with anyone else. And make sure not to watch any
24 news media accounts of the case. We will see you
25 tomorrow morning at the normal time.

1 (Jury not present.)

2 THE COURT: You may be seated. We're still
3 on the record here. Counsel, with 360 and 362, are
4 you referring to the phone numbers that the defense
5 may want to add to the exhibits, or something else?

6 ATTORNEY STRANG: What we would like to do
7 is, I think talk to the State about modifying the
8 exhibits. They may well agree. Just, you know, to
9 include the information that -- that we want on and
10 have elicited.

11 There's no reason the jury would have to
12 know that the exhibit has been modified. The
13 jury hasn't seen 360 or 362. Assuming we can
14 reach an agreement with the State, as I expect we
15 will, then we would not have an objection to the
16 admission of 360 or 362 and the jury can see them
17 at that point.

18 THE COURT: All right. Well, let's make
19 sure to take that up first thing tomorrow morning.
20 I would like to meet briefly with counsel in
21 chambers before you leave today.

22 ATTORNEY KRATZ: Just, Judge, if I can just
23 complete the record. 360 and 362 were both shown by
24 Mr. Buting, to the jury. I promised the Court I
25 wouldn't show them until we made any changes that

1 there was going to be. I suspect none of them are
2 going to pick up on that. And I don't have any
3 objection to Mr. Buting and Mr. Strang and I trying
4 to refine those exhibits. And if the Court has no
5 objection and Madam Clerk doesn't as well and we can
6 come to some agreement, we'll simply substitute
7 those exhibits.

8 ATTORNEY STRANG: I stand corrected,
9 Mr. Buting says he did briefly swipe them past, but
10 we'll see what we can work out.

11 THE COURT: All right.

12 (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 21st day of November, 2007.
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19 _____
Diane Tesheneck, RPR
20 Official Court Reporter
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