

STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 1

STATE OF WISCONSIN,

PLAINTIFF,

JURY TRIAL

TRIAL - DAY 18

vs.

Case No. 05 CF 381

STEVEN A. AVERY,

DEFENDANT.

DATE: MARCH 7, 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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(Jury present.)

THE COURT: At this time the Court calls State of Wisconsin vs. Steven Avery, Case No. 05 CF 381. We're here this morning for a continuation of the trial in this matter. Will the parties state their appearances for the record, please.

ATTORNEY FALLON: Good morning, your Honor, may it please the Court, the State appears by Assistant Attorney General Tom Fallon, District Attorney Ken Kratz, and Assistant District Attorney Norm Gahn as special prosecutors for Manitowoc County.

ATTORNEY BUTING: Good morning, your Honor. Attorneys Jerome Buting and Dean Strang appear with Mr. Avery, the defendant.

THE COURT: All right. I will indicate for the record, this morning, as usual, I met with counsel in chambers, before we began, to discuss the agenda for today. Is there anything either party wishes to address on the record, outside of the presence of the jury before we bring the jurors in?

ATTORNEY FALLON: Nothing, at this time, from the State.

ATTORNEY BUTING: No, your Honor.

THE COURT: Very well, we'll bring the

1 jurors in at this time.

2 (Jury present.)

3 THE COURT: You may be seated. And,
4 Mr. Fallon, are you going to be questioning the
5 State's first witness?

6 ATTORNEY FALLON: I am, thank you.

7 THE COURT: You may call your witness.

8 ATTORNEY FALLON: State would call Special
9 Agent Rod Pevytoe.

10 **SPECIAL AGENT RODNEY PEVYTOE**, called as
11 a witness herein, having been first duly sworn,
12 was examined and testified as follows:

13 THE CLERK: Please be seated.

14 THE WITNESS: Thank you.

15 THE CLERK: Please state your name and
16 spell your last name for the record.

17 THE WITNESS: My name is Rodney Pevytoe,
18 P-e-v-y-t-o-e.

19 **DIRECT EXAMINATION**

20 BY ATTORNEY FALLON:

21 Q. What do you do for a living?

22 A. I'm a Special Agent with the Wisconsin Department
23 of Justice, the Division of Criminal
24 Investigation. I'm assigned to work in the arson
25 bureau of that unit.

1 Q. And how long have you been employed for the
2 Division of Criminal Investigation, Wisconsin
3 Department of Justice?

4 A. It should be 27 years next week.

5 Q. How long have you been a law enforcement officer?

6 A. Over 30 years.

7 Q. And prior to joining the Department of Justice,
8 what law enforcement experience have you had?

9 A. I was a reserve deputy with the Marathon County
10 Sheriff's Department --

11 COURT REPORTER: I'm sorry, Judge, I
12 can't hear the witness.

13 THE COURT: You'll have to get a little
14 closer to the microphone.

15 COURT REPORTER: Could you repeat that,
16 please.

17 A. I was a reserve deputy with the Marathon County
18 Sheriff's Department in Wausau, Wisconsin.

19 Q. How long have you been assigned to the Arson
20 Bureau?

21 A. It will be 25 years next week.

22 Q. What types of cases does the Arson Bureau involve
23 themselves in?

24 A. Our primary emphasis is the investigation of
25 fires and explosions that occur in the State of

1 Wisconsin, determine their cause and assist in
2 further follow up criminal investigation, if it
3 is warranted.

4 Q. Approximately how many fire investigations have
5 you been involved in in your years of experience
6 in the Arson Bureau?

7 A. I don't have an exact number, but I can say it's
8 easily in excess of 800.

9 Q. Of those investigations, do you have an idea for
10 us approximately how many of them involved a
11 death?

12 A. The best estimate I could give you is
13 approximately 100 individual incidents. And some
14 of those would involve multiple fatalities.

15 Q. How does the Arson Bureau typically get involved
16 in a case?

17 A. When there is a fire or an explosion, we'll
18 receive a request from either a fire chief or a
19 law enforcement official to come there and work
20 with them in making determination as to the
21 events that occurred there and assist them in
22 further investigation, if warranted.

23 Q. And where are you currently based?

24 A. I work out of northern Wisconsin, near Eagle
25 River.

1 Q. Tell us about your educational background. Do
2 you hold a bachelor's degree?

3 A. Yes, I do. I have a bachelor's degree in
4 criminal justice from the University of Wisconsin
5 in Oshkosh.

6 Q. And approximately when did you receive that
7 degree?

8 A. 1978.

9 Q. Do you hold any certifications as a law
10 enforcement officer?

11 A. Yes, I do. I'm a certified law enforcement
12 officer in the State of Wisconsin.

13 Q. And do you belong to any particular associations
14 which are pertinent to the field of fire
15 investigation?

16 A. Yes, I'm a member of the International
17 Association of Arson Investigators in Wisconsin
18 Chapter, as well as in the International Chapter.
19 And I currently serve on the Board of Directors
20 for the International Association.

21 Q. And approximately how long have you been
22 associated with the International Association of
23 Arson Investigators?

24 A. Be 25 years next week.

25 Q. Do you have any estimate as to approximately how

1 many members, worldwide, are in this
2 International Association?

3 A. I believe that the total is somewhere between 7
4 and 8,000 right now.

5 Q. Are there any certifications that are awarded or
6 provided in conjunction with membership in the
7 International Association of Arson Investigators?

8 A. The International Association of Arson
9 Investigators has a certified fire investigator
10 program. You don't have to be a member of that
11 association to earn that accreditation, but they
12 do have a program to certify a level of
13 competency in fire investigators.

14 Q. All right. Have you received such a
15 certification from this association?

16 A. Yes, sir.

17 Q. And how long have you held such a certification?

18 A. I believe it's 22 years now.

19 Q. Are you currently still certified by the
20 association?

21 A. Yes.

22 Q. And do you continue to receive training in arson
23 investigation or fire investigations and
24 explosions?

25 A. Yes, I do. It's an ongoing basis always.

1 Q. As a result of your 25 years experience and
2 training and certifications, are you familiar
3 with the concepts of cause and origin of fire?

4 A. Yes.

5 Q. Are you capable of recognizing possible human
6 remains which have been damaged by fire as a
7 result of your training and experience?

8 A. Yes, sir.

9 Q. Are you familiar with the concept of accelerants
10 and their role in the cause and origin of fire?

11 A. Yes.

12 Q. Briefly, what is an accelerant?

13 A. An accelerant is typically either a fuel or an
14 oxidizer -- oxidizer that's added to the
15 combustion process to enhance it. Most of the
16 time we think of it as ignitable liquids, but
17 it's not necessarily always that.

18 Q. All right. What are some of the other forms that
19 an accelerant may take?

20 A. Well, in a solid or in a gaseous form.

21 Q. All right. Directing your attention to this
22 particular case, how did you get involved in this
23 investigation?

24 A. Well, on November 9th of 2005, I received a
25 telephone call. I was working on a case in

1 northern Wisconsin. And during that telephone
2 conversation, I was requested to come down to
3 Manitowoc to assist in the investigation of the
4 scene.

5 Q. And that -- November 9th would have been a
6 Wednesday; is that correct?

7 A. That's correct.

8 Q. And approximately what time did you arrive on
9 scene?

10 A. I'm not sure of the exact time, but I'm going to
11 estimate it was approximately mid-afternoon.

12 Q. And when you arrived, what was the first thing
13 you did in conjunction with this case?

14 A. Well, there was a security checkpoint, so I
15 checked in with a officer that was manning that.
16 And then I went over to a command area, if you
17 will, and I spoke to Special Agent Fassbender,
18 who was the leader of that. And then I was
19 introduced to Detective Wiegert, who was also
20 working on that.

21 Q. After this briefing and introduction, what first
22 investigative step, if any, did you take on that
23 day?

24 A. Just more or less got a tour of the whole
25 situation there, in order to make an assessment

1 of any potential needs that would be required for
2 further investigation on my part.

3 Q. As part of this initial tour, did you have an
4 opportunity to observe the area which has
5 previously been identified as the burn pit,
6 behind the residence of the defendant?

7 A. Yes, I did.

8 Q. Tell us your initial observations.

9 A. Well, what was described as the burn pit, is in
10 back of a car or automobile garage there. It was
11 a raised area of soil that had an indentation in
12 it. That indentation, approximately four feet
13 wide, maybe five feet deep, into that soil, or
14 mound, or plateau area. And it had some darkened
15 residue at the base of that. It had been covered
16 up with a tarp prior to my arrival.

17 Q. And did you attempt or begin any processing of
18 that area on Wednesday afternoon, November 9th?

19 A. No, I didn't feel that the weather or the
20 resources allowed it at that time.

21 Q. Did you conduct any other investigative activity
22 on that day?

23 A. No, other than just getting familiar with the
24 scene and making an assessment of the needs.

25 Q. All right. Directing your attention, then, to

1 Thursday, November 10th, in the morning, what was
2 the first investigative task that you undertook?

3 A. Well, the first thing I did on Thursday was
4 actually come here to Chilton to the sheriff's
5 department and I went and met with Deputy Riemer
6 of the Calumet County Sheriff's Department. And
7 myself, along with Special Agent Tom Sturtivant,
8 we did a re-examination of some char material
9 that had been previously removed from the burn
10 pit area.

11 Q. All right. And tell us about that particular
12 examination?

13 A. Well, in that examination, we set up some clean
14 tarps under -- or brand new tarps underneath,
15 elevated the debris so we could get very close to
16 it and look at it, put some very bright lights on
17 it to try to identify as much as we could and
18 then began a systematic process of evaluating the
19 material, going through it in an attempt to
20 identify potential evidentiary items that may be
21 in there.

22 Q. Did you locate any potential items of evidentiary
23 significance in your examination of the debris?

24 A. Yes, sir.

25 Q. And tell us about that?

1 A. Well, I encountered numerous items that I
2 suspected were bone fragmentation. I also
3 recovered something that I believed was part of a
4 tooth. And then a couple other items that were a
5 darkened mass roughly the size of, let's say, a
6 golf ball, maybe a little bit larger, that I felt
7 was charred muscle tissue.

8 Q. And what did do you with these materials that you
9 suspected to have evidentiary significance?

10 A. Deputy Riemer from the sheriff's department was
11 present with me and he was directly adjacent to
12 me. So, when we recovered items, I literally
13 just took them from my hand and put -- handed it
14 over to him.

15 Q. Approximately how long did this process take?

16 A. Until about midday.

17 Q. And during this process, were you assisted by
18 anyone other than Special Agent Sturtivant and
19 Deputy Riemer?

20 A. No.

21 Q. After completing your examination of this debris,
22 what was the next step, investigative step, that
23 you took in this case?

24 A. I went back out to the Avery property.

25 Q. Can you estimate for us your approximate arrival

1 time at the Avery property?

2 A. I believe it was the early part of the afternoon
3 on Thursday.

4 Q. All right. Upon your arrival at the property,
5 what task did you undertake?

6 A. Well, after checking in with everybody there and
7 going through the security procedures, I met with
8 other agents from the Arson Bureau there. They
9 went about some different tasks at the property
10 and then myself, and Special Agent Mike Rindt,
11 and Special Agent Jim Sielehr, we conducted a
12 re-examination of the burn pit area.

13 Q. All right. And what role did Special Agent Rindt
14 fulfill on this particular day with respect to
15 the burn pit?

16 A. Well, his initial role was to do some photography
17 of the scene. And then once that was completed,
18 or as part of that ongoing process, he did assist
19 in the examination and so did Special Agent
20 Sielehr.

21 Q. And what did do you when you arrived at the pit?

22 A. Well, the first thing we did is we documented
23 with photographs. And then there were some
24 evidence technicians from the City of Manitowoc
25 Police Department there, so I asked them to do a

1 grid search of the perimeter of that raised soil
2 area.

3 And there were three of them there, so
4 what I had them do in the grid search is, they
5 walk, literally, shoulder to shoulder. And they
6 were to go in a crisscross pattern, one
7 direction, then going perpendicular to it later.
8 They were supposed to walk through the grass. If
9 they saw anything that seemed out of place or
10 they didn't understand, they were just supposed
11 to mark it and not handle it.

12 I gave them some flags that would be
13 like you see for utility companies, a little flag
14 on a wire. And they would highlight those areas
15 and they would be looked at by Deputy Riemer.
16 And if it was potential evidence, he would be
17 taking it from that perimeter area, so to speak.

18 Q. Now, with respect to the actual burn pit itself,
19 what did you do there?

20 A. Well, maybe to back up a little bit, we didn't
21 start with the burn pit. The next step after
22 doing that perimeter search was to do the
23 elevated part of the sand area, which was larger
24 than the pit area. And then the pit was the last
25 part of the examination process, if you will.

1 Q. All right. Tell us about that.

2 A. Okay. Well, the first thing that we did when we
3 looked at that elevated area, after some
4 photography of it, is I established a path to
5 walk in, walked into the area, noticed some areas
6 that had some debris that had some potential
7 interest, that was up above. And I marked those
8 with flags. I exited in the same route that I
9 entered.

10 And then we developed a plan where the
11 three of us would begin to enter from the edge of
12 it; in other words, going from the grass and
13 working our way into the pit, from the far side
14 of the soil, the farthest distance from the burn
15 pit, and we would start to pick up evidentiary
16 items.

17 The first thing we encountered was a dog
18 house there. So I crawled into the dog house to
19 see if there was any evidence there. We moved it
20 out of the way. We eventually found, I think the
21 roof came off of it. So we examined the dog
22 house, the chain, a few other things that were
23 there, to see if there was anything that -- of
24 particular interest in that area. And then we
25 continued to progress throughout the soil.

1 Q. Did you find any interest in and around the dog
2 house?

3 A. Not in what I expected to be human remains, but
4 we were in the process of taking everything that
5 was there to ensure for it's preservation.

6 Q. After examining the dog house and the elevated
7 dirt pile, how did you proceed?

8 A. Once we completed that elevated area, we then
9 proceeded into this depression that's been called
10 the burn pit. I divided that pit in half,
11 visually, east and west. And we moved in from
12 its perimeter, the edge of it, on our hands and
13 knees and moved through that, and removing items
14 that we suspected would be evidence. And
15 eventually removed all of the ash, there was like
16 a caked, baked on layer of the top soil right
17 there. Actually crumbled that and sifted all the
18 debris and then preserved and removed all of that
19 from the same.

20 Q. All right. Tell us about the material that you
21 found as you began to examine the burn pit.

22 A. Well, there was this heavy layer of black --
23 blackened soil. It kind of had an oily residue.
24 There was some heavy black, dark charred
25 material. Didn't look like cellulose or wood

1 type charring, although there was some there.

2 There were some different remains of --
3 I think there was like a couple hinges, and like
4 different metal parts that we would encounter in
5 that process. And also we found some things that
6 we suspected were some potential bone
7 fragmentation.

8 Q. And tell us about some of the other items; did
9 you find any wire, for instance?

10 A. Yes, just off to the side of the burn pit there
11 was a large ball of intertwined wire that was
12 present. And then there was also the metal
13 remains of what I thought was the -- like a back
14 seat of a SUV type vehicle that had been removed
15 and that also was burned.

16 Q. All right. And tell us, was there anything
17 noteworthy about the balls of wire that you found
18 in conjunction with your examination of the pit
19 area?

20 A. Yes, the wire is consistent with what I have seen
21 in the past in other fires. And it's the wire
22 that remains after steel belted radial tires are
23 burned. So we had this large groupings of oval
24 shaped wires, so to speak, that were all
25 entwined. And in examining those, I noticed that

1 there was some bone fragmentation entangled in
2 the wires, so we attempted to photograph that and
3 recover those items also. And eventually took
4 the whole tangled wires and that rear car seat
5 that I had mentioned.

6 Q. All right. In your fire investigative
7 experience, can you tell us whether steel belted
8 radial tires, do they burn?

9 A. Yes.

10 Q. And is rubber considered an accelerant?

11 A. It can be. It certainly has -- When we look at
12 materials, we judge it by the amount of heat
13 energy it releases. And in my definition, tires
14 being introduced to a fire greatly enhances its
15 ability to burn. It releases a lot more heat
16 energy into it and I believe that tires can be
17 used as a form to accelerate a fire.

18 Q. All right. Now, why did you take the rear seat
19 of the vehicle; why was that of some particular
20 interest to you?

21 A. Well, first of all, because it was there. And it
22 was in the crime scene area, so we removed that.
23 And, also, I didn't know if it would be matched
24 up to a vehicle later on. And, also, the seat
25 itself may have had some impact on the way the

1 fire burned. The foam rubber on the seat, once
2 the seat covering is removed in a combustion
3 process, the foam rubber also burns with great
4 intensity.

5 Q. All right. Approximately how long did the
6 processing of this area take?

7 A. Several hours because we went into the hours of
8 darkness that day. I wanted to -- Once we
9 initiated the process, I wanted to complete it.
10 So we brought in a generator and some large --
11 several sets of large floodlights to illuminate
12 the area. It might have been as late as 9,
13 10:00, when we were completed.

14 Q. Okay. With the -- With the items that you
15 suspected of evidentiary value, what -- what did
16 you do with those items which were collected from
17 this area?

18 A. Deputy Riemer was, again, accompanying us in this
19 examination. His role was to take any items that
20 we seized as evidence and, then, he was the
21 evidence custodian for that process.

22 Q. All right. Upon completion of your work on
23 Thursday, November 10th, did you return to the
24 area on Friday, November 11th?

25 A. I did.

1 Q. What were your tasks to perform on Friday,
2 November 11th?

3 A. Well, there were some other areas at the property
4 that needed some examination and evaluation.

5 Q. And what areas were those?

6 A. There were several spots. The first one was an
7 aluminum smelter that was part of the junkyard
8 operation. There was an outdoor wood boiler at
9 the property that we looked at.

10 And then there were several areas, there
11 was a campfire pit in a backyard of one property.
12 And some other areas where some debris had just
13 been discarded at different times; we were
14 looking at that.

15 Q. Well, let's take those one at a time and let's
16 begin with the boiler area. Tell us about that.

17 A. This wood boiler is a commercially made outdoor
18 wood boiler that's used as a -- either a
19 supplemental or primary heat source for a
20 residence, or in this case, the commercial area.

21 It's a large self-standing unit and has
22 a large door. You open it up and if you were to
23 use it, you would ignite a fire in there, it
24 would heat water and then the water would be
25 circulated for the heating process in a remote

1 location.

2 Q. All right. And tell us your external visual
3 observations as to the condition of this boiler.

4 A. Well, the boiler, first of all, was cold. It
5 wasn't warm, did not give the appearance of
6 having been used at any time in the recent past.
7 In fact, on the smoke stack of the boiler, there
8 was a five gallon bucket over the top of it, I
9 assume to keep rain water from getting into it at
10 some point.

11 We then opened the door into the
12 combustion chamber and it was filled with paper
13 products that were unburned, as if items had been
14 placed in there in the past. So as part of our
15 examination process, we removed that unburned
16 paper, looked through it, and then eventually
17 removed all the ash that was in the bottom of it,
18 and looked through it. And, then, as the final
19 step, I partially crawled into it to -- with a
20 flashlight, to examine the area as best I could.

21 Q. I'm going to have Special Agent Fassbender
22 provide you some photographs for your
23 examination.

24 A. Thank you.

25 Q. I believe you are first examining, is it

1 Exhibit 381?

2 A. Yes, State's Exhibit 381 is a photograph.

3 Q. I'm sorry, is that 3-8 or 4-8-1? I'm sorry.

4 A. Oh, I'm sorry, yes, it's Exhibit 4-8-1. It's

5 Case 381, so my confusion, I apologize.

6 Q. Is that the boiler that you examined on Friday,

7 November 11th?

8 A. Yes.

9 Q. Does that appear to be a true and accurate

10 depiction of how it appeared to you when you

11 examined it on that day?

12 A. It does.

13 Q. All right. Directing your attention to the large

14 screen projection of that exhibit, does that

15 accurately reflect the exhibit itself?

16 A. It does.

17 Q. All right. Now, you mentioned something about a

18 bucket, is that depicted in the picture?

19 A. Yes, you can see a stainless steel smoke stack on

20 the boiler. And at the top of it, there's a

21 white, I assume it's a five gallon size, plastic

22 bucket covering that.

23 Q. All right. Upon making the observation of this

24 particular boiler, what was the next step in your

25 investigative process?

1 A. Well, we took some additional photographs and
2 then we began to look into the combustion
3 chamber.

4 Q. All right. If your -- If your attention then
5 would be directed to the next photograph,
6 Exhibit 482 is it?

7 A. Correct, 482, is an accurate depiction of the
8 scene when I saw it. And that photograph is
9 actually just a close up, more so of the
10 chimney --

11 Q. All right.

12 A. -- on this unit.

13 Q. Now, again, who was assisting you in the
14 investigative process on this particular date?

15 A. Special Agent Rindt was.

16 Q. All right. Next exhibit, please, 483, I believe.

17 A. Yes, State's Exhibit 483 is a photograph that is
18 an accurate prediction -- presentation of the
19 boiler unit when we opened up the door.

20 Q. All right.

21 A. And that shows the unburned paper products that
22 we found in there initially.

23 Q. Upon your examination of the inside of this
24 boiler, what did you do?

25 A. We removed these paper products and examined

1 them.

2 Q. All right. And next exhibit, please, 484.

3 A. State's Exhibit 484 is an accurate depiction of
4 the side of the wood boiler.

5 Q. Exhibit 485.

6 A. State's Exhibit 485 is a photograph we took and
7 that is an accurate depiction of the boiler unit
8 after we removed the ash from the bottom of it.
9 It's a gray cellulose type ash.

10 Q. All right. Tell us about the removal of the ash
11 from the boiler?

12 A. We employed a systematic process where we would
13 remove it and examine it as we were placing it
14 down onto this tarp. Photo editor doesn't look
15 like it's showing the whole bottom of the
16 photograph, at least in this depiction. There.

17 Q. All right. Why did you remove the ash?

18 A. To examine it.

19 Q. And what did you note, you said something about
20 the cellulite content of the ash?

21 ATTORNEY STRANG: Cellulose.

22 Q. (By Attorney Fallon)~ Cellulose, excuse me. What
23 did you mean by that?

24 A. Well, if you noticed, the ash is very gray in
25 color, much like you might get from the bottom of

1 a fireplace after you use it for a long time.
2 And this gray, very fine ash is typical of what I
3 have seen from wood products that are burned in a
4 relatively complete combustion process.

5 Q. Now, with respect to that ash, was that at all
6 similar to any of the ash you found in your
7 investigation of the burn pit area?

8 A. No, the ash from the burn pit was very dark black
9 in color and almost more granular in nature.
10 This was very, almost powder, something like a
11 talcum powder almost type consistency, if you
12 will.

13 Q. All right. Your next photograph is exhibit?

14 A. State's Exhibit 486. And that would be a
15 photograph and that depicts the internal part of
16 that burn chamber on the wood boiler. And I
17 believe you have it sideways, the left hand side
18 would be the top of it.

19 Q. The left hand side is the top?

20 A. Yes.

21 Q. All right.

22 A. Rotate it clockwise. And that photograph there
23 would be -- that's the inside of the boiler unit
24 after we have removed the ashen remains. And
25 that gray area is the bottom where the combustion

1 takes place. And so we removed that and then
2 that's where I eventually got partially into and
3 used a flashlight to examine and see if there was
4 anything that we missed in there.

5 Q. And in terms of your investigation of the boiler,
6 did you find anything of evidentiary significance
7 in your opinion?

8 A. No.

9 Q. All right. What do you have for your next
10 exhibit, 480?

11 A. I see some photographs of the smelter unit.

12 Q. All right. And is that where your investigation
13 took you next?

14 A. Actually, we did the smelter before we did the
15 wood boiler, but ...

16 Q. All right. Tell us about your investigation of
17 the smelter.

18 A. This smelter unit was kind of an addition onto
19 part of one of the buildings. It was just a
20 partially enclosed area. And it was an LP gas
21 fueled unit and it appeared, by the stock piles
22 of stuff there, it was used to melt aluminum
23 components from the automobile salvage area and
24 eventually render down into ingots at some point.

25 (Court reporter asked him to repeat.)

1 A. Into an ingot form.

2 Q. By the way, how did it come to pass that you were
3 examining the boiler and now this smelter?

4 A. I was requested to do so by Special Agent
5 Fassbender.

6 Q. And when you investigated the smelter, who
7 assisted you in this particular process?

8 A. Again, Mike Rindt, who is a special agent with
9 the Department of Justice, was with me.

10 Q. And what -- The next exhibit you have there, with
11 respect to the smelter, is Exhibit 480?

12 A. Well, I do have 145. I don't know if that's --

13 Q. That's fine, 145. Do you recognize Exhibit 145,
14 we're putting that on the screen; it's already
15 been received.

16 A. All right. State's Exhibit 145 is that smelter
17 unit that I previously described. You can see
18 some of the aluminum material in the background.
19 And the very center of the photograph, the
20 heavily oxidized unit, is the smelter.

21 Q. All right. And what's your next photograph?

22 A. 487.

23 Q. 487. And Exhibit 487 depicts what?

24 A. That's a depiction of the back of the smelter
25 unit. It shows where the fuel lines that feed

1 that unit are. And there's a couple blower
2 motors.

3 Q. All right. And the next exhibit?

4 A. 488.

5 Q. 488. And what is depicted in Exhibit 488?

6 A. That is the area where the material is introduced
7 and melted.

8 Q. All right. How was this picture obtained?

9 A. If you look in the bottom left hand corner, you
10 see my foot there. In order to look at this
11 smelter unit, I crawled up on top of it and was
12 standing over it, looked down into this melting
13 area, if you will. And I had Special Agent Rindt
14 hand me the camera. So, I'm standing on top of
15 it, looking straight down into this melting area,
16 or melting pot of the smelter.

17 Q. All right. Next exhibit, please.

18 A. Exhibit 489, it's again, another photograph of
19 part of that melting pot, if you will, of the
20 smelter. This one shows three beer cans in it
21 that are unmelted.

22 Q. Again, was this particular photograph taken by
23 yourself when you were on top of the smelter?

24 A. It is.

25 Q. Next exhibit?

1 A. 490.

2 Q. And again --

3 A. Exhibit 490 is another photograph that I took

4 looking down into the melting pot of the smelter.

5 Q. All right. Next?

6 A. 491 is similar.

7 Q. This is another close up of that?

8 A. Yeah, at one point I reached down and moved some

9 things around to see -- you can see there's some

10 like slag in the bottom and some heavy oxidized

11 pieces of metal, so. Because there were areas

12 that were kind of out of direct view of up and

13 down so I had to lean at different angles to take

14 the photograph and did it that way.

15 Q. All right. And I note there are a couple of what

16 appear to be pipes on one of the walls to the

17 melting chamber; do you know what those are?

18 A. Yeah, if you look at the top of that photograph,

19 that would correspond to those blower motors that

20 we saw in the previous exhibit and that would be

21 where they are forcing air into that area.

22 Q. And your next photograph?

23 A. My next one is 493. And this is a depiction of

24 the smelter. It's from the opposite side as the

25 very first exhibit we looked at.

1 Q. And your next?

2 A. Next one would be 494. And that's kind of into
3 the entrance of where the smelter was and it
4 shows a stockpile of, again, what I believe to be
5 aluminum automobile parts. I assume would be for
6 future operation and melt down.

7 Q. And your last exhibit?

8 A. Final photograph is 494 -- excuse me -- 495. And
9 that's a photograph taken from a distance looking
10 out to the smelter and you also see the LP tank
11 that fuels that process.

12 Q. All right. Did you make written documentation of
13 your investigation regarding the boiler and the
14 smelter?

15 A. I wrote a report on the boiler and I forgot to
16 write a report on the smelter.

17 Q. All right. Who assisted you in -- Let me ask you
18 this, was there anyone else assisting you, other
19 than Special Agent Rindt, in your examination of
20 the boiler and the smelter?

21 A. No, Mike Rindt, was the one that was with me both
22 times.

23 Q. In terms of your investigation of the smelter,
24 did you find anything of any evidentiary
25 significance?

1 A. We removed no items of evidence from there.

2 Q. In your opinion, did it appear to have been
3 recently used?

4 A. Not at all.

5 Q. After your examination of the boiler and the
6 smelter, what other investigative tasks did you
7 perform that Friday, November 11?

8 A. There was a -- Just so we maybe separate for the
9 sake of definition, there was a campfire pit in
10 back of the Janda property and Special Agent
11 Rindt and I went over and examined the contents
12 of that area.

13 Q. And did you find any items of evidentiary
14 significance in that?

15 A. We took some items from there, just on the
16 potential that they could be evidence of
17 something. They were men's clothing that were
18 unburned, heavily soiled with like grease and
19 oil.

20 Q. Did you examine any other general debris area on
21 that Friday afternoon?

22 A. One other area was examined.

23 Q. What was that?

24 A. On the back of the defendant's property, at the
25 very rear of the property, there was a sharp

1 depression that went into what looked like an old
2 quarry area, sand pit. Down on that hillside
3 there was some just debris that was located by
4 searchers. And they asked us to look at that
5 debris just in potential that it could have been
6 something of significance to the investigation.

7 Q. All right. I'm going to have Exhibit 86
8 displayed in a zoomed in mode and ask if that
9 might assist you in showing us where you examined
10 this other debris pile?

11 A. This other debris pile that I'm just referring to
12 would be -- This is the burn pit at the Avery
13 property and the debris pile, this is actually a
14 slope down that goes towards these automobiles.
15 And it was on the slope, right in this area, that
16 those items were discarded and we examined them.

17 Q. Did you find anything of evidentiary significance
18 in the examination of that debris pile?

19 A. No, sir.

20 Q. Directing your attention, then, to Saturday,
21 November 12th, did you continue to assist in this
22 investigation on that day?

23 A. I did.

24 Q. And on Saturday, November 12th, who assisted you,
25 if anyone?

1 A. Special Agent Ronald Evan was with me at a couple
2 points.

3 Q. And did you have the opportunity to examine other
4 potential debris locations on that day?

5 A. Yes, sir, we did.

6 Q. And what areas -- Did you come to examine an area
7 that's been referred to as the Radandt deer camp?

8 A. Yes, sir.

9 Q. And tell us about your examination of that area.

10 A. There were a couple burn barrels there. And we
11 went there with the intent of examining those to
12 see if there were any items that could be of
13 significance. So we went through that and the
14 immediate area around that.

15 Q. And did you find any items of evidentiary
16 significance there?

17 A. As I recall, there was one unburned bone. It
18 looked like a steak bone that was there, but we
19 did take that, just in the possibility that it
20 could be important.

21 Q. Now, was there another location for one of the
22 Radandt Sand and Gravel operation that you
23 examined some debris?

24 A. I don't recall. I believe it was right at the
25 trailer, there was a burn barrel there. And it

1 was around that area that we were looking.

2 Q. Okay. In terms of your investigation of these
3 areas and items, you indicate you didn't require
4 -- excuse me -- you did recover some men's
5 clothing. If you found anything you thought of
6 significance, who was your contact with the
7 Calumet Sheriff's Office for receipt of any
8 information you determined of evidentiary
9 significance?

10 A. That would be Deputy Riemer.

11 Q. Now, in your examination of the burn barrels, I
12 think you said your first task in this -- Well,
13 let me ask you, did you have an opportunity to
14 investigate or to examine some burn barrels as
15 part of this?

16 A. Yes, on Saturday, the 12th, I believe it was.
17 When I was done at the fire pit at the Avery
18 property, I came back over to the Sheriff's
19 Department and there were several 50 gallon
20 barrels that they asked us to go through.

21 Q. All right. And tell us about those burn barrels.

22 A. Those barrels were here at the Sheriff's
23 Department here in Chilton and Special Agent Evan
24 and I, along with Deputy Riemer, went to an area
25 and Deputy Riemer would produce a 50 gallon

1 barrel and its contents and we would conduct an
2 examination of it. If we found anything that we
3 suspected would be potential evidentiary value,
4 we separated that from the barrel. The barrels
5 were being retained for evidence. But we
6 separated out things that might have been
7 important and set them aside and gave them
8 directly to Deputy Riemer for preservation.

9 Q. Now, of those barrels, how many of them did you
10 actually find anything that had some potential
11 evidentiary significance?

12 A. I think only one barrel. We recovered some bone
13 fragments at the time.

14 Q. Now, those bone fragments which were recovered,
15 how did those bone fragments compare with the
16 fragments that you found that were sifted from
17 the burn pit itself; was there anything distinct
18 in your mind about the condition of those
19 fragments or the size of those fragments compared
20 to those in the burn pit debris?

21 A. Yes, the fragmentation that I was finding from
22 the burn pit was very small. Much of it was --
23 in some cases was the size of half of your little
24 fingernail, if you will. Most of the bones were
25 very fragmented in there. Where the bones that

1 were recovered from that barrel on Saturday, the
2 burn barrel, they were of larger mass.

3 Q. All right. In your examination of materials from
4 the burn barrel, did you find anything such as
5 rivets, or grommets, or any other articles of
6 clothing?

7 A. No.

8 Q. In terms of your examination of the -- of the
9 items from the burn pit itself, did you find
10 evidence of clothing such as rivets, or grommets,
11 or things?

12 A. Yes.

13 Q. Tell us about that.

14 A. Well, during this process of the burn pit debris,
15 we looked at several things that were small, bone
16 fragments, couple dental fragments, as well as I
17 recall, at a later date in the examination where
18 we were going through it, if you will, in a very
19 fine dedicated manner to look for small items, we
20 recovered a couple brass colored rivets that --
21 like what you might see on a pair of blue jeans
22 or jean type clothing.

23 Q. All right. And when did that occur?

24 A. That was in December.

25 Q. And where?

1 A. At the State Crime Laboratory in Madison.

2 Q. And who if -- And who else participated in the
3 investigation of the debris on that day?

4 A. There were numerous people there. Dr. Eisenberg
5 was there for a while, myself, Special Agent
6 Heimerl. I believe Special Agent Rindt was
7 there. At one point Special Agent Fassbender and
8 Inspector Wiegert were there. There were a
9 couple people that were there for part of the
10 process, because it took multiple days to go
11 through that.

12 Q. All right.

13 ATTORNEY FALLON: Your Honor, at this time
14 I would move into evidence Exhibits, I believe 481
15 through 495. Apparently we marked Exhibit 492 and
16 that's just a re-mark of I think it was 145, so
17 rather than duplicate the evidence, we'll just go
18 with Exhibit 145, I believe it was.

19 ATTORNEY STRANG: Counsel is correct on the
20 duplication and I have no objection to any of the
21 tendered exhibits.

22 ATTORNEY FALLON: And we would pass the
23 witness for cross-examination.

24 THE COURT: Very well. The exhibits are
25 admitted. Mr. Strang.

1 ATTORNEY STRANG: Thank you.

2 **CROSS-EXAMINATION**

3 BY ATTORNEY STRANG:

4 Q. Mr. Pevytoe, good morning.

5 A. Good morning.

6 Q. You -- You have a quarter century's training in
7 arson investigation sounds?

8 A. Yes, sir.

9 Q. And, really, no training at all in archaeology?

10 A. You know, as part of the process of investigating
11 fire scenes, especially in fatal fires, and we
12 cover that. We duplicate a process that's much
13 used by anthropologists. So in classes that I
14 have had, we talk about the process that might be
15 employed and how it actually compares to what an
16 anthropologist or an archaeologist might do in a
17 grave dig.

18 Q. Right, in a burial site recovery.

19 A. Correct, and they are very similar at times.

20 Q. But in terms of training in archaeology as a
21 field, that's not something you have pursued?

22 A. No, I'm not an archaeologist, I'm a fire
23 investigator, sir.

24 Q. Not an anthropologist?

25 A. No.

1 Q. There are --

2 A. Took some classes in college in anthropology, but

3 I don't profess to have any extreme knowledge in

4 that area.

5 Q. Okay. There are some system similarities,

6 though, in the burn site recovery or -- I'm

7 sorry -- burial site recovery that might be used

8 in an arson investigation and in archaeology, as

9 you say?

10 A. Correct.

11 Q. Now, in an arson that results in fatalities, one

12 or more deaths you -- you typically, in going

13 into the burned area, would find the remains sort

14 of where they fell?

15 A. Well, in most cases. Sometimes they are moved,

16 in order to preserve them, by firefighters, or

17 something from damage.

18 Q. Yes, either moved accidentally by firefighters in

19 the course of trying to extinguish the fire?

20 A. Correct. Or intentionally.

21 Q. Or intentionally, again, to try to preserve the

22 remains for arson investigators later?

23 A. Or if there is a question of a life, not being

24 able to see correctly, obviously, they may remove

25 a body.

1 Q. Right. There may be emergency efforts?

2 A. Correct.

3 Q. Obviously, to preserve life?

4 A. Right.

5 Q. But, typically, in your experience as an arson

6 investigator, in the instances where the body has

7 been moved at all, that's been by responding

8 emergency personnel?

9 A. Well, I did have -- I recall one case that comes

10 to mind where I had some individuals that were

11 murdered and they were moved. And then they were

12 burned again. And then they were moved again.

13 So I had some where a defendant or a perpetrator

14 has moved body remains.

15 Q. Okay. Let's go to that. But you will recall

16 that my question started with typically?

17 A. And, typically, you are right.

18 Q. So, you know, as they say, typically, then, the

19 body is in place, untouched, unless responding

20 emergency personnel have had some reason to

21 disturb the body?

22 A. Correct. In most occasions that would be

23 correct.

24 Q. Right. Now you spoke of one instance where there

25 was a murder and then an arson?

1 A. Yes.

2 Q. Okay. And let's take that in order. This is not
3 all that uncommon in your experience, to have a
4 murder occur and then somebody set a fire to try
5 to conceal the fact of the murder?

6 A. Well, I don't know what we say is common. It is
7 certainly a possibility that people would use
8 fire to conceal evidence of a homicide or
9 something like that. Fortunately, I don't run
10 into it as a common place thing.

11 Q. If I didn't say, I meant to say, it's not
12 uncommon. You have had the experience in
13 investigating arsons that you concluded were set
14 to conceal a crime?

15 A. Correct.

16 Q. Often that crime would be a murder?

17 A. Yes.

18 Q. In these instances that you have investigated?

19 A. There have been times, yes.

20 Q. Okay. And you described one prior experience
21 where your investigation concluded that there had
22 been a murder, and arson, and then burned bodies
23 were moved in some fashion, again?

24 A. Correct.

25 Q. And re-burned?

1 A. Well, they were murdered, moved, burned, and then
2 the incinerated remains were buried partially.
3 And some were left at the original site and some
4 were buried.

5 Q. Okay. That was one case, in 25 years?

6 A. Correct. And involved five victims, but yes.

7 Q. And in that -- On that occasion, where the
8 incinerator remains were removed and buried,
9 okay, are you with me?

10 A. Mm-hmm.

11 Q. You found the majority of the incinerated remains
12 in the burial site?

13 A. Correct. They were the large pieces, because it
14 wasn't a very good incineration process.

15 Q. And smaller pieces were left behind at what you
16 suspected as the original burn site?

17 A. Correct.

18 Q. Less noticeable pieces, other than to a trained
19 arson investigator?

20 A. I would say that's a fair statement.

21 Q. That is, you have experience, unfortunately, I
22 guess, or perhaps fortunately as a law
23 enforcement matter, of having learned to
24 recognize charred human remains?

25 A. Yes.

1 Q. Remains that might not appear to be human at all
2 to my eyes, or to someone without your
3 experience?

4 A. That's correct.

5 Q. That is, for example, charred muscle tissue looks
6 not much at all like muscle when it's been burned
7 and dried and what you could call desiccated?

8 A. Probably, yes.

9 Q. All right. So your eye picks up smaller remains
10 that an untrained eye may not perceive as human
11 remains at all?

12 A. That's possible, yes.

13 Q. You don't, though, hold yourself out as someone
14 with expertise in cremation, I take it?

15 A. I guess it depends on your definition of an
16 expert. I do have education, somewhat, in
17 cremations. I have gone and observed them and
18 did some studies on because of my position in the
19 arson bureau.

20 Q. And when you say cremations, we're talking about
21 a human body?

22 A. Correct, in a commercial application.
23 Incineration is what I consider to be something
24 that's done in the field.

25 Q. Okay. And so you had some training in commercial

1 cremation. You have obviously had job experience
2 in what you were describing as incineration.

3 A. Yes. And education there. So I had education
4 and experience in both.

5 Q. You know that in a commercial creation, the
6 cremation will be accomplished in an enclosed
7 container or burn chamber?

8 A. Within our culture, yes. There's other cultures
9 that don't do it that way. But within North
10 America, that's typical.

11 Q. Sure. And that's a fair qualification, but let's
12 use North America as the cultural setting here,
13 not India, for example?

14 A. Correct.

15 Q. Typically here, a commercial cremation would
16 happen in an enclosed combustion chamber?

17 A. In a retort, it's called.

18 Q. Yes. And by retort, you mean a closed chamber?

19 A. Correct.

20 Q. All right. That allows for more intense heating
21 in the sense that the heat is captured by the
22 retort, or the enclosed chamber?

23 A. Well, the heat levels were probably the same. It
24 allows for better efficiency of the use of the
25 heat.

1 Q. And a cremation chamber typically would be fed by
2 accelerant, in some fashion.

3 A. Natural gas is the most common fuel product.

4 Q. With lines going into the chamber, correct?

5 A. Depends on the manufacturer of the retort. But
6 there are several avenues that the gas is
7 introduced into there.

8 Q. And then for combustion, you also need air to be
9 introduced into the chamber?

10 A. That's correct.

11 Q. Much, in this very general sense, a little bit
12 like the aluminum smelter you described for us
13 here this morning?

14 A. And adding air to it or what?

15 Q. Yes, I think you pointed out two pipes in one of
16 the photographs of the aluminum smelter that you
17 described as being attached to blower motors?

18 A. Correct.

19 Q. That was to introduce air into the -- the -- what
20 you call the melting pot of the aluminum smelter?

21 A. That's what it looked like they were used for.

22 Q. And then you also saw that there were LP gas or
23 liquid propane gas feeds into the smelter?

24 A. Yes.

25 Q. With the LP gas tank, 500 gallon, thousand

1 gallon, whatever it was, outside?

2 A. Correct.

3 Q. And so, you know, in that sense, the aluminum
4 smelter also was enclosed -- an enclosed
5 combustion area, when used?

6 A. Just partially enclosed, I think the top was open
7 because that's how I could take the photograph.

8 Q. Right. But it wasn't burning when you took the
9 photographs?

10 A. That's correct.

11 Q. And you would expect, in operation, one would
12 close the top?

13 A. Well, it appears it could have been left open at
14 times because there was some scorching to the
15 area a little bit, but it certainly could have
16 been covered at times.

17 Q. Okay. I mean, at least the manufactured design
18 would allow the top to be closed during
19 combustion?

20 A. It looked like it. I didn't operate the furnace
21 so I don't know if there was any switches to
22 prevent or whatever, but it had a cover that
23 could be used. At what point, I don't know.

24 Q. Okay. Fair enough. And do you have a sense of
25 the commercially common or standard temperature

1 at which, again, a commercial cremation is
2 conducted in North American culture?

3 A. Yes, most retorts are going to operate 16 to
4 1800 degrees. The temperature is going to vary
5 because at some points there's fluctuations,
6 depending on the fuel and when the body ignites
7 and becomes part of the of the fuel mass and then
8 there's a cool down process, but it's a general
9 operating range at times.

10 Q. Very good. 16 to 1800 Fahrenheit?

11 A. Correct. I'm sorry.

12 Q. Now, the -- let's -- I'm going to take you now and
13 talk for a little bit about the burn area behind
14 Steven Avery's garage.

15 A. Okay. The burn pit?

16 Q. Well, I'm going to talk about the larger area,
17 because I think you -- you distinguished,
18 somewhat, the area that was a pit or an
19 indentation --

20 A. Correct.

21 Q. -- from the overall area?

22 A. Yes.

23 Q. Your -- Your first call on this case came on
24 November 9?

25 A. Correct.

1 Q. A Wednesday, I think?

2 A. Yes.

3 Q. One of the things you were told that you were
4 being called because some suspected burnt bone
5 fragments had been found the day before?

6 A. I believe so, yes.

7 Q. And there had been some work at that burn area
8 including the indentation, you were told, the day
9 before, on November 8?

10 A. Correct.

11 Q. But, now, your expertise was being sought as an
12 arson investigator?

13 A. As a scene investigator, yes. And I believe also
14 because of the -- some expertise in looking for
15 bone fragmentation.

16 Q. Very well. You actually began that process on
17 November 10?

18 A. Correct.

19 Q. About, you know, give or take, two days after you
20 understood bone fragments first had been
21 discovered in the area?

22 A. That's right.

23 Q. You did not have an opportunity to photograph the
24 overall burn area, if you will, behind Steven
25 Avery's garage, before initial recovery efforts

1 had been made?

2 A. That's correct, I did not.

3 Q. You had an opportunity to photograph it after and

4 before you began any work, correct?

5 A. That's correct.

6 Q. All right. And you set up something of a

7 contamination path --

8 A. Yes.

9 Q. -- if you will?

10 A. That would be my typical procedure to do, just

11 out of habit.

12 Q. Habit in training?

13 A. That's just my habit. In fire investigation, we

14 emphasize a systematic process of evaluation.

15 And I try to continue that over into other things

16 I might be called upon. And that's just part of

17 my personal systematic process.

18 Q. And what the path does for you, in addition, you

19 know, to being routine and systematic, is it

20 allows you to keep to a minimum the amount of

21 earth you are tramping on?

22 A. Correct.

23 Q. So you are reducing, at least, the risk that you

24 will be stepping on, breaking, disturbing,

25 destroying, things that may turn out to be of

1 interest later?

2 A. Correct.

3 Q. And then you -- then you sort of worked from the
4 outside in?

5 A. Correct.

6 Q. You -- You -- And here I'm going to use a royal
7 view, in the sense that I think is it Rindt and
8 Sielehr who are with you on the 10th?

9 A. Yes, sir.

10 Q. At the burn area behind the garage?

11 A. Yes, sir.

12 Q. All right. So the three of you start well
13 outside this indentation area?

14 A. Correct.

15 Q. And examine the area, I would say, east of the
16 indentation, but on the overall, was a sandy sort
17 of mound you described?

18 A. Yeah, if you think of it in the -- as in the
19 sense of a plateau, we examined all of the sand
20 area, except for the pit, in one process, or the
21 indentation where the combustion was -- had taken
22 place.

23 Q. Okay. You don't have to buy into this and you
24 can tell it's February and what I have on my
25 mind, but in some ways, this area looked like a

1 large pitcher's mound with an indentation or a
2 notch in it?

3 A. A large pitcher's mound in it.

4 Q. Right, yes. A very large pitcher's mound, but,
5 roundish in general shape?

6 A. I actually had the impression that it might have
7 been a future building site, like it was a pad
8 that you might eventually put up a building or
9 garage on. But that's just the impression I had
10 from looking at it.

11 Q. Sure, but -- And it was roundish, in general?

12 A. Yeah.

13 Q. And -- And raised in elevation, other than the
14 indentation that you have described?

15 A. That's correct.

16 Q. So you -- you -- you examined the east sort of
17 area of that burn area, we'll call it that?

18 A. You are going to have to forgive me, I don't know
19 the compass direction as well. I think as far as
20 geographical items, I think we started by the dog
21 house --

22 Q. Okay.

23 A. -- and worked our way towards this depression of
24 the burn pit.

25 ATTORNEY STRANG: You know, it may be

1 helpful, we have all seen this quite a bit, but it
2 may be helpful just to pop up an overhead. That's
3 great, that will work just fine.

4 Q. (By Attorney Strang)~ This is a computer
5 generated --

6 A. Sure, I recognize it.

7 Q. -- schematic, okay. Now, counsel -- counsel can
8 object if he thinks I'm wrong, but I think we
9 have established that north is up --

10 A. North is up, okay.

11 Q. -- on Exhibit 109, which is now up on the screen
12 for you.

13 A. All right.

14 Q. Okay. So if you will accept that?

15 A. I trust you for that, sir.

16 Q. Okay. This is a pretty good schematic of the
17 area you have described.

18 A. Yes.

19 Q. All right. The dog house, then, would be
20 generally to the north at about an
21 11:00 position, if we used the round area?

22 A. Correct.

23 Q. And that's -- that's where you started?

24 A. Correct, we started up -- if you use your
25 terminology, the 11:00 position, worked our way

1 in to where we could get centered and then the
2 three of us advanced, we would say directly
3 south, towards the burn pit, and parallel. Each
4 of us spread out and covering an area and
5 overlapping.

6 Q. So, one of you west, one of you north and
7 central, and one of you east?

8 A. That would be correct.

9 Q. All right. And then just worked slowly to the
10 south?

11 A. Correct.

12 Q. All right. You found nothing of any interest in
13 this case in the dog house?

14 A. No.

15 Q. You did find some suspected bone fragments as you
16 worked, though, south along the west, the
17 central, and the eastern areas of that burn area?

18 A. Well, not really. And let me explain. When I
19 first did this initial walk in, I was standing
20 up. And throughout that area, there were -- I
21 could see in that elevated pit area, the
22 pitcher's mound area, as you described it, sir,
23 there were some small lengthy pieces of kind of a
24 chalk white material which looked very consistent
25 with bone fragmentation and it was scattered

1 throughout this upper portion.

2 However, as I started to get on my hands
3 and knees and pick it up in that layer process, I
4 actually realized that it was burned insulation
5 from some jumper cables that were entwined in the
6 dog's leash. And this burned insulation, with
7 the dog having moved around, it had fragmented
8 that burned insulation, which had a coloration
9 similar to bone, but on closer examination, we
10 could see it was synthetic material.

11 So we picked it up saying that just in
12 the event that we could miss one single bone
13 fragment somewhere in there, let's pick up every
14 thing so we have it and we'll let Dr. Eisenberg
15 sort it out. But in the reality of it, I don't
16 think we found any bone fragmentation in the
17 elevated area when it really came down to it.

18 Q. At least on the 10th?

19 A. Correct.

20 Q. When you were out there working?

21 A. Right, we didn't see anything up in that top
22 part.

23 Q. Now, have you worked with Dr. Leslie Eisenberg
24 before?

25 A. Yes.

1 Q. Did you call her on the 10th and say, we could
2 use you up here?

3 A. No, I spoke to her on -- I don't know if I spoke
4 to her on the 9th also. Either the 9th or 10th I
5 had several conversations with her.

6 Q. By telephone?

7 A. Correct, by cellphone.

8 Q. And you did not ask her to come to the scene?

9 A. No, I was describing the scene to her, indicated
10 that the area where the mass of the bones in the
11 burn pit had already been examined and excavated
12 and we opted not to do it at that point.

13 Q. The mass of the bones, were those excavated by
14 you?

15 A. No, this was in the first examination on the burn
16 pit, would be those items that I examined at the
17 sheriff's department on the 10th, in the morning,
18 that had been taken out in the first examination.

19 Q. Which -- Which is from this area, this is the
20 indentation area you described?

21 A. Yes, sir.

22 Q. So this was gone by the time you even got to the
23 scene?

24 A. That's right.

25 Q. What's this, if you know, intended to represent?

1 A. I assume that's that ball of wire.

2 Q. Is that about where you saw it?

3 A. Yes, I recall them being to the right, in that

4 area. There was a mass of wire, probably about,

5 you know, I'm just going to estimate, so big

6 around. Well, the size of a passenger car's

7 tire, but there was a mass of multiple tires

8 there entwined.

9 Q. It looked to you like more than one tire?

10 A. Oh, certainly.

11 Q. Okay. But all on the same area?

12 A. Well, no there were fragments of wires in the

13 burn pit also. So, there were broken pieces of

14 steel belted radials in the burn pit. And this

15 was the one accumulation in entirety there.

16 Q. All right. By the burn pit, the gray area?

17 A. Gray or black it looked like to me.

18 Q. Okay.

19 A. But in the burn pit there was short lengths of

20 fragmented wire. When you burn these tires, the

21 rapid oxidation of fire also compromises the

22 steel. And in some cases they can be, with

23 mechanical force, broken. And you find pieces of

24 the steel belts in the pit.

25 Q. Fair enough. And those -- those -- those broken

1 pieces in the pit, though, were by far the
2 smaller quantity?

3 A. Yes, the mass was that ball.

4 Q. Right. And that mass, if from more than one
5 tire, at least was all intermingled?

6 A. Correct. That's what it appeared to be.

7 Q. These are, you presume steel, since they come
8 from steel belted radials?

9 A. Yes.

10 Q. They had a highly oxidized appearance, though, to
11 your eye?

12 A. Correct, which is consistent when they burn.

13 Q. Yes, and by oxidized, I mean rusty.

14 A. Correct. Fire is a process of rapid oxidation,
15 so frequently we see iron or steel that's been
16 exposed to fire, rusting quickly.

17 Q. Yes, and that's where I was going. Fire actually
18 increases the rate of oxidation?

19 A. By its definition it is, yes.

20 Q. Because it's -- fire goes because of oxygen.

21 A. Fire is a rapid self-sustaining oxidation
22 accompanied by the evolution of heat and light in
23 varying intensity.

24 Q. So, in very common parlance, you will get more
25 rapid rusting when iron or steel are submitted to

1 or subjected to fire?

2 A. Many times, yes.

3 Q. To your eye, this mass of rusty, steel wires from
4 the tires, appeared to have bone fragment
5 intermingled with them?

6 A. Correct.

7 Q. You could draw to conclusion from that about how
8 the bone fragments came to be intermingled in the
9 wires?

10 A. That's correct. They were entwined in there to
11 the point where I actually had to physically, so
12 to speak, separate and try to recover. They
13 weren't right on the surface easily removed. But
14 they were into the depth of the wire at times.

15 Q. And you can think of possibilities of how that
16 might have happened, one would be that a body had
17 been atop a -- an intact tire at the time that
18 both were burned?

19 A. That's one possibility.

20 Q. That's one possibility. Another possibility
21 would be that the tires already had been burned
22 at some earlier time and a body was atop that
23 layer? That's the second possibility?

24 A. That's a possibility.

25 Q. A third possibility would be that bone fragments,

1 after the body was burned, not on top of the
2 wires, bone fragments could have been moved into
3 the wires or tossed into the wires, somehow
4 disturbed, so that they were introduced into the
5 wire mesh you have described?

6 A. That's a possibility, yes.

7 Q. And we probably could go on, but the reality is,
8 you can't narrow down to any one of the
9 possibilities we could identify?

10 A. That's correct.

11 Q. Neither could you assign a time frame within
12 which the rusty steel wires that you saw were
13 burned?

14 A. That's correct.

15 Q. You could not assign a time frame within which
16 the bone fragments, or suspected bone fragments
17 you saw, were burned?

18 A. Correct.

19 Q. This area was cool, wet, even cold, when you
20 examined it on November 10th?

21 A. Yes, sir.

22 Q. And just -- just to be clear, the burn pit, or
23 the gray or black area itself, had been excavated
24 before you got to it?

25 A. Correct.

1 Q. By others?

2 A. Yeah, best said, the loose ash was removed from
3 that area.

4 Q. And so you -- you and Rindt and Sielehr, I don't
5 mean disrespect, but it's Special Agents, all of
6 you, found nothing you thought was human in the
7 brown or sandy area here?

8 A. That would be correct, sir.

9 Q. Likewise, you found nothing you thought was human
10 in the grass around the perimeter that you
11 described asking deputies to comb in a grid
12 fashion?

13 A. Correct.

14 Q. Now, by grid fashion, you don't mean that you
15 actually laid out a string grid?

16 A. No, their search pattern was to go shoulder to
17 shoulder and walk north south and then they
18 walked east west over the same area, after they
19 completed it, so that they are crossing it twice.
20 And we call that a grid search pattern.

21 Q. And did they place any of those little flags?

22 A. Yes.

23 Q. They did? Did you examine those things, then,
24 with Deputy Riemer?

25 A. Some of them, I believe we did. Most of it

1 really was not related debris.

2 Q. Right.

3 A. But we asked them and said, if it wasn't a blade
4 of grass, mark it, we'll search -- sort it out.

5 Q. Decided none of it was of evidentiary value?

6 A. I think Deputy Riemer would have to say what he
7 took or didn't. But there might have been a few
8 pieces that we took just to make sure.

9 Q. Okay. But there, again, the grass area,
10 especially south of the burn area as I'm calling
11 it, that also had been examined and things had
12 been recovered, it was your understanding, on
13 November 8 or 9?

14 A. November 8, I believe it was, yes.

15 Q. You described, later in December, I'm going to
16 relate this to the burn area, going through
17 debris from that burn area, I think it was in the
18 Crime Laboratory, you said?

19 A. Correct.

20 Q. Is that right, in December of 2005?

21 A. Yes, sir.

22 Q. Did you go through debris in the Crime Laboratory
23 in December, 2005, from areas other than this
24 area behind the garage?

25 A. Yes.

1 Q. That included one of the burn barrels from behind
2 the Janda property?

3 A. I believe -- Yeah, I believe we did some
4 examination of burn barrels. At that time I
5 don't know where the barrels are, I just know
6 that it's barrel, shall we say, Barrel A, or B,
7 or whatever, but --

8 Q. Right.

9 A. -- we examined multiple things over the course of
10 several days.

11 Q. Do you remember whether you went through debris
12 from what we've called here the quarry pile? And
13 if that doesn't make any sense to you, because
14 you weren't here --

15 A. You're right, that doesn't make any sense to me.

16 Q. Okay. We have identified a -- or had identified
17 for us a site that was, oh, I don't know,
18 somewhere southwest of the Avery property
19 altogether, in or near the Radandt property to
20 the south?

21 A. Okay.

22 Q. Is that a site you went to?

23 A. At one time on Thursday, maybe on Friday, I went
24 to multiple sites, not to examine them, but to
25 check on the welfare of my fellow agents who were

1 doing those sites. So I didn't participate in
2 those areas, but it's possible I may have stopped
3 and asked if they needed some water, or
4 assistance, or special tools to complete their
5 job.

6 Q. All right. I'm just going to -- I'm going to pop
7 up here the -- an Exhibit 402 and see if --
8 this -- now this is just a schematic diagram.

9 A. Okay.

10 Q. All right. But, again, north is still up in
11 this, to get you oriented.

12 A. I believe you.

13 Q. And you see the little -- there's a little box
14 there that shows the Avery residence and the
15 garage area?

16 A. Okay.

17 Q. Okay. So the little red utility flag symbol, as
18 you described earlier, that's the -- what's been
19 described here as the quarry pile site. Do you
20 recall now whether you got down there?

21 A. I couldn't tell you. It's entirely possible I
22 may have stopped to just check on my agents, but
23 I can tell you that I did not search that area.
24 If that's -- I looked at one site Saturday
25 morning, briefly, but I don't believe that's the

1 same site that's being depicted here.

2 Q. And you never searched here?

3 A. Not to my knowledge, no.

4 Q. Neither do you know whether you looked in the
5 Crime Lab garage at debris from that site?

6 A. We looked at a lot of debris at the Crime Lab.
7 Some of the debris had rocks in it. Whether
8 that's specifically that one, I don't know. At
9 that time we're just saying this is Item A, Item
10 B, and we're searching it. Nobody had said this
11 is the quarry site, as you described it now. So
12 I can't tell you if I searched that or not.

13 Q. Sure. What you can say is that in going through
14 this debris very carefully on the tarp, one of
15 the things you were looking for were rivets.

16 A. Well, any artifacts of clothing, and rivets would
17 be part of that.

18 Q. Fair enough. Did you personally find any rivets?

19 A. I think there were two found and I think Kevin
20 Heimerl found one. I thought I found one, or
21 Kevin and I were next to each other and we saw
22 one. So, yes.

23 Q. Whether you found it directly or not, you got an
24 eyeball on at least a couple of rivets, if I
25 understand?

1 A. Sure, because I remember we cleaned them off and
2 got a magnifying glass to try to read it.

3 Q. All right. These were brass.

4 A. They were brass colored.

5 Q. Brass colored, okay. You have no idea what the
6 actual metal was?

7 A. No, a lot of times that's just a wash surface on
8 there and not -- the surface color is not typical
9 of it's parent metal.

10 Q. Sure. Okay. But whether a magnet was helpful or
11 not, you don't know, but in any event that was
12 the process --

13 A. Well, I had used magnets on there. When we did
14 that examination, I have a real large, foot long
15 oval shaped magnet that we passed over that area
16 first to remove sometimes those broken wires from
17 the steel belted radials --

18 Q. Sure.

19 A. -- and other things. The rivets weren't found in
20 that process, they were actually found visually,
21 so I don't believe it was a ferrous metal.

22 Q. Right. If these things -- if these things
23 weren't ferrous iron or steel, they aren't going
24 to attach to the magnet?

25 A. That would be correct.

1 Q. But you looked very carefully through the debris
2 and were able to find two or three rivets that
3 you were aware?

4 A. Yeah, I thought it was two, but.

5 Q. Okay. You also were looking for the larger
6 button that there might be as a waistband closure
7 on a pair of pants?

8 A. Well, we were going to look for any type of
9 artifacts that we could find.

10 Q. From clothing, period?

11 A. Clothing or human remains.

12 Q. You found no larger, brass colored button from,
13 you know, a blue jean closure at the waistband?

14 A. Not that I recall.

15 Q. Is that something you think you would recall?

16 A. Well, if I found it, I would have, yeah.

17 THE COURT: Mr. Strang, can you tell me how
18 long you think you might need yet?

19 ATTORNEY STRANG: I have a ways to go and
20 this would be a fine time to break.

21 THE COURT: All right. Let's take our
22 morning break at this time. Members of the jury, do
23 not discuss the case or this morning's testimony
24 during the break and we'll resume when the break is
25 over.

1 (Jury not present.)

2 THE COURT: You may be seated. Counsel,
3 see you in 15 minutes.

4 ATTORNEY STRANG: All right. Thank you.

5 (Recess taken.)

6 THE COURT: Mr. Strang, you may resume.

7 ATTORNEY STRANG: Thank you.

8 **CROSS-EXAMINATION CONTD.**

9 Q. We were in the basement of the Crime Lab
10 somewhere, when we left off, maybe it wasn't the
11 basement, but it was the Crime Lab?

12 A. All right.

13 Q. You were going through materials in different
14 places on tarps. And if one of those was -- one
15 of those items or areas that you were examining
16 on the tarps was from a burn barrel behind the
17 Janda house, you wouldn't know that other than by
18 the property tag number or whatever it was that
19 identified that -- that debris?

20 A. Correct.

21 Q. You had no opportunity to see the burn barrels
22 behind the Janda house before they were
23 disturbed?

24 A. Correct.

25 Q. But you did testify on direct examination that

1 there -- you saw suspected bone fragments from a
2 burn barrel behind the Janda house, later?

3 A. I believe my testimony was, is that if you are
4 referring to the examination of Saturday the
5 12th, that we examined some barrels, whether that
6 barrel was from behind the Janda house or not,
7 but one of the barrels we looked at, there was
8 some bone material in it.

9 Q. You looked at a total of four barrels or was it
10 more?

11 A. Four sounds correct.

12 Q. What you are sure of is that only one of them had
13 bone material in it?

14 A. Yes.

15 Q. That bone material -- And it's Saturday,
16 November 12, and we're in the Calumet County
17 Sheriff's Office now, correct?

18 A. Yes.

19 Q. Examining material there?

20 A. Mm-hmm, yes.

21 Q. So the barrels have been transported, somehow, to
22 the Calumet County Sheriff's Office, obviously?

23 A. Correct.

24 Q. There has been a sifting process?

25 A. By myself, or previous, or?

1 Q. If you know?

2 A. I don't know what happened to them. All I can
3 tell you is that when I got there the barrels
4 were there, we removed the contents and went
5 through them.

6 Q. Did you actually remove the contents from the
7 barrel?

8 A. Yes.

9 Q. Okay. Did you sift at that point?

10 A. Much of that debris was too big to sift. Our
11 screens are quarter inch in size so.

12 Q. Okay.

13 A. In -- I don't think any of it could have been
14 sifted, the debris was so massive.

15 Q. Would it have been on tarps on the floor?

16 A. Correct. We would lay a clean tarp down and then
17 go through it. And then I think we would wrap
18 all the material up from the barrel in that clean
19 tarp and then place that into the barrel as a way
20 of making sure that we were recovering everything
21 we looked at.

22 Q. Okay. In spreading the material from the barrel
23 onto the tarps, you did this with caution?

24 A. Yes.

25 Q. I mean, you know, to avoid further breakage of

1 whatever might be in there?

2 A. Yes, some of the stuff, you know, at least

3 initially, I believe the tarp -- the barrel was

4 upright and we were just hand removing it, so to

5 speak.

6 Q. Okay. Again --

7 A. Yes, yeah.

8 Q. Again, for good cautious handling?

9 A. Correct.

10 Q. Spread it out on the tarps, carefully?

11 A. Yes.

12 Q. And the things that you identified as possible

13 bone fragment from one of the barrels, you

14 thought, in general, looked larger than, in

15 general, the suspected bone fragments from the

16 burn pit behind the garage had looked?

17 A. Correct.

18 Q. Now, obviously there's some variation in size in

19 both -- in bone fragments from both places?

20 A. Correct.

21 Q. And these aren't uniformly sized pieces by any

22 means?

23 A. No, you're correct on that.

24 Q. But taking it on the whole, it looked to you like

25 most of the fragments from the barrel were a bit

1 larger than most of the fragments from the burn
2 area?

3 A. Well, from the barrel, as you are describing it,
4 there were only a few bones recovered. I don't
5 know the exact number. It might have been four,
6 or three, something like that. It was certainly
7 single digit numbers. From the burn pit, there
8 were, you know, tens of hundreds found of small
9 fragmentation, and probably by the end, in the
10 high hundreds of small fragments.

11 Q. Well, and we have had Dr. Eisenberg, so we have
12 got, you know, a better sense of what she
13 eventually identified as human as opposed to
14 nonhuman bone. So I don't need to try to get
15 numbers out of you.

16 A. Okay.

17 Q. Okay. But in general, little bit bigger bone
18 fragments from the barrel than from the burn
19 area?

20 A. Yeah, they were noticeably larger.

21 Q. Burned in both cases?

22 A. I believe, yeah, they looked like they had some
23 thermal exposure.

24 Q. You have had experience, obviously, as an arson
25 investigator, with burnt human bone?

1 A. Yes.

2 Q. From sort of light burning on through complete
3 incineration?

4 A. Yes.

5 Q. You know that as burn -- as bone, human bone,
6 becomes progressively more burned or charred, it
7 becomes fragile?

8 A. Yes, and it shrinks and you get some spiral
9 fracturing of it as you go.

10 Q. Right. It shrinks because you are losing
11 moisture?

12 A. Right. The fire dehydrates the body process as
13 part of that incineration.

14 Q. Exactly. And so you will get some spiral
15 fracturing of the bone, all on its own?

16 A. Correct. And some shrinkage of the bone.

17 Q. Which again causes breakage?

18 A. Yes.

19 Q. But beyond that, once the fire is out, you know
20 that those pieces are fragile once burned or
21 calcined?

22 A. Right.

23 Q. Part of the reason for the care with the
24 contamination paths, and getting down on hands
25 and knees, and the grid system of recovery?

1 A. That would be one of the reasons for doing it in
2 that manner, yes.

3 Q. The bones, in general, which you saw in the burn
4 area, looked like they had been subjected to
5 additional breakage, to which the bones in the
6 burn barrel had not?

7 A. There were smaller fragmentations so, yes.

8 Q. The work that you did in the burn area,
9 ultimately -- not ultimately -- but later, after
10 you had gone through for all items of possible
11 evidence you could see, it included actually
12 removing that pitcher's mound, so to speak?

13 A. Yeah, other agents did that. But, yes, that soil
14 area was examined.

15 Q. Examined in the sense of a backhoe was brought in
16 or a skidster or something?

17 A. I didn't participate in that, but, yeah there was
18 a -- a skidster or bobcat type excavator that was
19 used.

20 Q. Okay. Sort of this stuff was dug out, gathered
21 somewhere for further examination?

22 A. Correct. Where we had removed all of the foreign
23 debris from the area, then that area was exhumed
24 to see if there was anything intermed (sic) in
25 the soil.

1 Q. Did -- Did you later have a chance to participate
2 in the examination of all of that soil?

3 A. I didn't, other agents did.

4 Q. All right. You don't know what, if anything, was
5 found in that?

6 A. I wasn't there. I was examining these other
7 areas on Friday. A couple times I did come back
8 to that area to talk to them to see if they
9 needed additional resources. But I wasn't an
10 active participant in that.

11 Q. All right. And so this area you described as
12 really looking like a possible future
13 construction site, you know, something like a pad
14 that a building might have contemplated, that
15 area just gets swept clean, essentially.

16 A. Yes, it was exhumed and examined and then
17 deposited elsewhere.

18 Q. You were asked, and I don't remember, I think it
19 was the 11th of November, which would have been a
20 Friday, you were asked by Special Agent
21 Fassbender to look at some other sites on the
22 general Avery salvage property?

23 A. Correct.

24 Q. One of them was where debris had been dumped
25 down, sort of off the south edge of the yard,

1 behind Steven Avery's house, into what has also
2 been called the pit here where the cars were
3 stored?

4 A. Correct. As I showed you in the one exhibit,
5 that area, yes.

6 Q. That just turned out to be junk of no interest?

7 A. Correct.

8 Q. Another area was the wood furnace?

9 A. Correct.

10 Q. Now, does the 11th sound -- am I recalling your
11 testimony right, that this was the 11th.

12 A. Yes, the Friday the 11th.

13 Q. All right. So about 11 days, 12 days, after you
14 understand that Ms Halbach had been to the Avery
15 property to take photographs of a van.

16 A. Correct.

17 Q. At that time you found the wood furnace cold to
18 the touch?

19 A. Yes, it was.

20 Q. All right. This was obviously the first third of
21 November?

22 A. Correct.

23 Q. It had been sleeting and raining and doing all
24 kinds of things at various times during the 11 or
25 12 days?

1 A. That's what I understand. It didn't do that
2 while I was there, but it was cold a couple times
3 while I was there.

4 Q. It wouldn't surprise you that a furnace would be
5 cold to the touch if it hadn't been used in a
6 day, or two, or whatever?

7 A. You know, I guess the one thing with that unit,
8 it holds multiple gallons of water. And I would
9 think that that water would retain heat well
10 after the fire was out, for a period of time. At
11 that time, I don't know, but I think if it had
12 been used in the recent past it still might have
13 had some temperature in it because of the size of
14 that boiler and the amount of water it would have
15 contained.

16 Q. In the water?

17 A. Correct, in the water chamber, that's the
18 principle it works on.

19 Q. And the water chamber is where?

20 A. It surrounds the combustion chamber.

21 Q. Okay. And that your understanding was, it was
22 used to heat some of the commercial buildings for
23 the business?

24 A. I think so. It has underground lines, so I
25 didn't follow to what they went to, but.

1 Q. But whether the heat was on in the pole barns, or
2 whatever buildings it was intended to heat?

3 A. That I don't know.

4 Q. The smelter also was cold to the touch?

5 A. Correct.

6 Q. Or, you know, ambient temperature, so to speak?

7 A. Yeah, it didn't seem to have an unusual
8 temperature.

9 Q. Right. By ambient temperature, I mean, just to
10 the touch it was consistent with what the air
11 was?

12 A. It seemed so, I didn't take its temperature, but.

13 Q. I understand, I understand you didn't take its
14 temperature, but about how -- Let's back up just
15 a minute. You simply forgot to make a report
16 about the smelter, didn't you?

17 A. Correct, I should have added a couple sentences
18 to one report or made a special report. We made
19 a photo log and took the photos, but it was a
20 mistake on my part.

21 Q. And I'm not here to beat you up about that.

22 A. Thank you.

23 Q. In fact, I'm trying to throw you a line a little
24 bit, in the sense that I'm going to --
25 necessarily you are going to have to go off your

1 memory --

2 A. Okay.

3 Q. -- on the smelter here, other than the

4 photographs --

5 A. All right.

6 Q. -- which are similar if you want to take a look

7 at them. Okay. Actually, maybe we will. this

8 area in the -- this one will do as well as

9 anything. Which one is that?

10 A. This is Exhibit No. 490.

11 Q. Okay.

12 A. This exhibit is one of those that I took looking

13 down into the melting pot, if you will.

14 Q. Yeah, that was --

15 A. The smelter.

16 Q. By the melting pot, we could call it the chamber?

17 A. Sure.

18 Q. We could call it the combustion area?

19 A. Sure. It's where the metal and the heat come

20 together to form a liquid.

21 Q. Right. Exactly, where it's intended to melt

22 aluminum, right?

23 A. Appears to be so.

24 Q. So it appeared. And you saw transmissions and

25 parts like that stacked up outside the smelter

1 building?

2 A. Correct.

3 Q. Transmissions are aluminum?

4 A. I believe that they are.

5 Q. They looked aluminum to you, in any event. And
6 this -- this chamber, you stood on top and took a
7 photograph down into it?

8 A. That's correct.

9 Q. Correct? About how high up was that -- was the
10 edge on which you were standing?

11 A. You know, I'm not real sure. It was -- It took
12 me something to climb up onto it and that's why I
13 asked Mike Rindt, the special agent with me, to
14 hand me the camera, so I'm going to estimate it
15 was 4 and a half to 5 feet.

16 Q. Let's go at it this way, from your observation in
17 the smelter, did that -- did the open top that
18 you are looking down into, did that appear to be
19 the way at which one would, you know, toss in the
20 things you wanted to melt?

21 A. Yes, it looks like the product would be
22 introduced through the top area.

23 Q. So, however high it was, it was not so high that
24 someone couldn't, you know, sort of throw the
25 transmission in, or whatever aluminum?

1 A. I don't know how they use it, but it looks like
2 things could be loaded into the top, yes.

3 Q. All right. And then they melt and they run out,
4 channeled, the molten aluminum runs out channels
5 into ingot molds?

6 A. Correct.

7 Q. When the ingot's cool and then you can recycle
8 and sell it to an aluminum recycler?

9 A. I assume so, yes.

10 Q. Yeah. All right. And that chamber itself, on
11 the melting pot as you called it, in Exhibit 490,
12 give me a sense of the dimensions of that?

13 A. I'm not really sure. The opening on the top is
14 smaller than the actual melting chamber.

15 Q. Okay.

16 A. As we noted from the photographs. I would hate
17 to be inaccurate here, because I'm just going
18 from memory from almost two years ago or a year
19 and a half ago, 24 by 24, somewhere in that
20 neighborhood. And that's, you know, shall we use
21 the term, guesstimate?

22 Q. Yeah. Sure. And that's why I threw you the
23 lifeline, you didn't write a report, you are
24 going by memory. But a guesstimate would be
25 2 feet by 2 feet, something like that?

1 A. Yeah, I would say in that general neighborhood.
2 Could be 20 inches, it could be 26 inches, but.

3 Q. Fair enough. I mean, we're in the ballpark?

4 A. Yeah.

5 Q. Okay. And, roughly, again, a cubicle in shape?

6 A. Yes.

7 Q. Or cubic, whatever the word is?

8 A. Square, square opening on top.

9 Q. Although the chamber itself was larger than the
10 opening, per se?

11 A. Yes, there was some extension off to the sides
12 that I had tipped to look into.

13 Q. All right. So if in fact this thing was, you
14 know, useful for melting an automobile
15 transmission, whether it's 24 inches, or 20
16 inches, or 26 inches, or whatever the heck it is,
17 it is large enough to get an automobile
18 transmission into, to your eye?

19 A. Or at least a portion of it and then it would
20 melt into that area.

21 Q. You never climbed down into the melting pot?

22 A. I stuck my head down in there and reached around,
23 but I did not physically step into it.

24 Q. That sort of answers, I think, the question, but
25 I will nail it down. So there was no close

1 examination of the debris, or the -- whatever,
2 the slag, or melted contents at the bottom of
3 that chamber?

4 A. No, I bent over and looked in there, because of
5 not being able to see, and used a flashlight and
6 actually examined it. So I got my head close to
7 it, so I could see the best and looked into that
8 area. And then I physically disrupted the bottom
9 of it with my hand so I was within arms reach --

10 Q. Okay.

11 A. -- in order to see if there was any debris that
12 was covered by this aluminum or slag that was on
13 top. Or there's some old rusted metal in there.

14 Q. Then you took nothing out of interest?

15 A. Correct.

16 Q. I'm going to look at my notes just for a moment
17 and see that I covered what I wanted to cover
18 with you. If you will bear with me.

19 A. Sure.

20 Q. The only thing I over looked was the car seat
21 back out at the burn barrel?

22 A. Yes.

23 Q. Okay. Your guess was that this may have been
24 from an SUV?

25 A. It didn't look like a car seat. It -- I thought

1 it was like a bolt in backseat of like an older
2 SUV, bus seat type thing. It was more tubular
3 steel and construction.

4 Q. All right. But you have no idea, really, in the
5 end, what car this would have come from or
6 vehicle this would have come from?

7 A. That's correct.

8 Q. How old the vehicle would have been?

9 A. I have no idea.

10 Q. You are just trying to give us an idea of the
11 appearance?

12 A. Correct.

13 Q. Okay. This thing was burned?

14 A. Yes.

15 Q. It was sitting outside of the actual indented
16 burn pit or indentation?

17 A. On the 11th, when I examined it, it was off to
18 the side.

19 Q. Up sort of on the elevated area?

20 A. Yeah, adjacent to the pit, to the right, as I was
21 facing the north.

22 Q. The areas adjacent to the pit, or the
23 indentation, did not look as if they had been
24 used to burn anything, did they?

25 A. No.

1 Q. This was gravel and sand showing no signs of ash
2 or other burning?

3 A. Correct.

4 Q. So you have no idea how the -- whether it was
5 agents who put the seat there or how that came to
6 be adjacent to the burn area?

7 A. That's correct. I can only tell you it was there
8 when I examined it.

9 Q. It, too, was rusty?

10 A. Yes, it was oxidized.

11 Q. But, again, that could have happened very quickly
12 in the fire?

13 A. Yes.

14 Q. Or it could have happened with the elements over
15 a longer period of time?

16 A. That I don't know, because a lot of times
17 those -- those items have a surface coating on
18 them that inhibits the rust --

19 Q. Okay.

20 A. -- by it's appearance. And I also recall that
21 there was a seat belt buckle found, that would
22 look like it would be consistent with a car seat.

23 Q. Mm-hmm. Sure.

24 A. That buckle had the nylon web burned off of it.
25 So I was under the distinct impression that that

1 car seat, or vehicle seat, had been burned.

2 Q. So am I. I mean it was missing all the padding?

3 A. Right.

4 Q. Right. I mean, it was just down to the metal?

5 A. Correct.

6 Q. But -- But, again, whether -- whether it was

7 burned and then left out in the elements and

8 that, you know, the process of being in the

9 elements after being burned account for all the

10 rust, or whether it was just rapid oxidation from

11 being burned, you are not in a position to tell

12 us?

13 A. That's correct. I mean, the fire makes it happen

14 quicker, but it actually rusts after the fire.

15 Q. Okay. Fair enough. See, we -- we don't -- we

16 don't have any idea when this seat was burned?

17 A. No, I just know that it was burned.

18 Q. Right. And we can say it probably wasn't burned

19 where -- where it sat when you saw it?

20 A. Correct.

21 Q. You didn't see any bone fragments, or anything of

22 interest, sort of intermingled into the

23 components of that seat?

24 A. That's correct.

25 Q. The springs or anything like that?

1 A. I did not.

2 Q. So what was of interest was that it was a car
3 seat?

4 A. Correct.

5 ATTORNEY STRANG: That's all I have.
6 Thanks.

7 THE COURT: Mr. Fallon, any redirect?

8 ATTORNEY FALLON: Just a couple questions.
9 Thank you.

10 **REDIRECT EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q. Counsel asked you some questions regarding the
13 spool of left over radial -- steel belted radial
14 tire?

15 A. Yes.

16 Q. And is it possible, from the condition in which
17 you examined it, that one other scenario is that
18 it had been -- could have been raked out of a
19 fire?

20 A. Yes, that's another one of the possibilities of
21 how the bone and the mass of the wires got
22 together as they are, through attending of the
23 fire.

24 Q. And I wanted to have you elaborate a little
25 further on another point counsel raised, and that

1 is, eventually there was a bobcat that was used
2 to excavate the site entirely?

3 A. Correct.

4 Q. Specifically, so that we're clear, that did not
5 happen on November 10th; is that correct?

6 A. That's correct, it happened on the 11th.

7 Q. On the 11th. And prior to doing that, you
8 mentioned something about after all the items
9 were removed from the pit?

10 A. Correct.

11 Q. And what was the surface of the ground like, at
12 that point, after all of the loose debris and
13 everything was removed?

14 A. In the bottom of the burn pit?

15 Q. Yes.

16 A. In the bottom of the burn pit, it was a real --
17 it had an appearance, I guess you could call it
18 like blacktop, but it was very crusty and black
19 and thick mass that came off as if it had been
20 adhered to. It's consistent of what I have seen
21 in fires like that. And we broke that apart to
22 make sure, some of it was soil, some of it was
23 burnt remains of what appeared to be tire
24 products in there.

25 Q. All right. Well, that was my next question, that

1 crusted surface, like, is that consistent with
2 the residue left over from tires burning?

3 A. It's similar to what I have seen in that same
4 situation, yes.

5 Q. All right. And did you remove that layer of
6 soil?

7 A. Yes.

8 Q. All right. And I take it, it was only after
9 that, then, after all the other items of
10 evidentiary significance were removed, that an
11 excavation occurred, on Friday, the 11th?

12 A. That's correct.

13 Q. All right. Are fires -- excuse me -- Are tires
14 considered an accelerant?

15 A. I guess it would depend on the method that it's
16 used. It certainly can be used to accelerate, as
17 a good fuel, into a fire scene. So you hear of
18 people using it to set brush piles on fire, as
19 the initial igniter, because it burns with great
20 intensity for a given period of time. So,
21 depending on it's use, yes, I would say it's an
22 accelerant.

23 Q. It would be a solid accelerant rather than
24 liquid?

25 A. In it's original form and then it converts during

1 the fire process.

2 Q. Because it's primarily an oil based product?

3 A. Correct.

4 Q. All right. Now, in your investigation of the
5 materials, did you come across any evidence of
6 any other liquid accelerant?

7 A. There was a couple jugs that had like a black oil
8 in it, but what its role in it or not, I don't
9 know.

10 Q. You don't know if that played any part at all in
11 -- in -- in the fire itself?

12 A. That's correct.

13 Q. Okay. You mentioned something about tires, do
14 they give off a lot of energy when they burn?

15 A. Yes, they are a very good source of energy, heat
16 energy.

17 Q. Do you have any idea?

18 A. Well, the one pound of tire gives you roughly
19 15,000 BTUs of energy. The average passenger
20 tire, according to the tire manufacturers, think
21 it's about 20 pounds. So depending on the
22 orientation and a few other things, you are
23 looking at about 300,000 BTUs per tire.

24 Q. Do all tires have steel belt -- are they all
25 steel belted radials or are there different types

1 of tires that wouldn't have steel belts in them?

2 A. There are different tires. A lot of times
3 trailer tires, are smaller tires for utility
4 vehicles, won't have steel belts. There's also
5 bias ply tires which don't have a steel belt in
6 it. So we see the steel wires there as the
7 remains of steel belted tires, but in those other
8 types of belts -- or tires, when they are burned,
9 we basically just see the black ash, like we saw
10 in the bottom of this pit remains.

11 Q. Are they also considered like a possible solid
12 accelerant, even though they don't have any steel
13 in them?

14 A. Correct, they are a very good fuel.

15 ATTORNEY FALLON: That's all. Thank you.

16 THE COURT: Mr. Strang.

17 **RECROSS-EXAMINATION**

18 BY ATTORNEY STRANG:

19 Q. I think, probably, we can agree, counsel
20 misspoke, at least in the tires that you and I
21 are familiar with, they are not primarily oil or
22 petroleum based, but primarily rubber based,
23 aren't they.

24 A. Well, I think they are synthetic rubbers, I don't
25 recall the exact breakdown, there's multiple

1 compounds in there.

2 Q. Okay. You are not an expert here to tell us
3 about the composition of tires?

4 A. No, I have information data about it that I use
5 as a resource, but I'm not into tire
6 manufacturing.

7 Q. They can be used as an accelerant in a fire,
8 growing in the same way that I suppose crumpled
9 newspaper can be used?

10 A. Well, it can be, but I think a tire is better
11 because the tire, in its solid format, burns with
12 great intensity for a longer period of time than
13 crumpled newspaper.

14 Q. Sure.

15 A. So it's giving off a lot of energy in a
16 concentrated area over a given period of time,
17 much longer than paper, so I would consider it to
18 be a much better product for that purpose.

19 Q. Right. And so would I, you know, newspaper burns
20 pretty quickly. But the idea is when you say
21 accelerant here, this is something used to get a
22 fire going?

23 A. Or to enhance its combustion process.

24 Q. All right. And you -- you -- you have acquired
25 your knowledge about the BTUs generated by a tire

1 through your professional training?

2 A. Correct.

3 Q. You have, just in the same way, I guess, you have
4 acquired knowledge about other possible
5 components of other accelerants in a fire?

6 A. Correct.

7 Q. This isn't knowledge you came to the job, a
8 quarter century ago, with?

9 A. No, I don't think so.

10 ATTORNEY STRANG: That's all I have.

11 THE COURT: All right. The witness is
12 excused.

13 THE WITNESS: Thank you, your Honor.

14 THE COURT: Were there any exhibits that --
15 introduced that this witness -- that either party is
16 requesting admission of?

17 ATTORNEY FALLON: I think we moved into
18 evidence the photographs, without objection, as I
19 understand it.

20 THE COURT: They are all in already, very
21 well. The State may call it's next witness.

22 ATTORNEY FALLON: State would call Mike
23 Riddle.

24 THE CLERK: Please raise your right hand.

25 **MICHAEL RIDDLE**, called as a witness

1 herein, having been first duly sworn, was
2 examined and testified as follows:

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

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

6 **DIRECT EXAMINATION**

7 BY ATTORNEY FALLON:

8 Q. What do you do for a living?

9 A. I work at the Wisconsin State Crime Lab in
10 Madison where I'm a latent fingerprint and
11 footwear examiner.

12 Q. And I'm sorry, I didn't hear the end of it?

13 A. Latent fingerprint and footwear examiner for the
14 Wisconsin State Crime Lab in Madison.

15 Q. And how long have you been employed at the
16 Wisconsin State Crime Laboratory?

17 A. About 14 and a half years.

18 Q. Do you have any prior experience in the field of
19 fingerprinting, palm print analysis, elsewhere?

20 A. Yes, I started in Mississippi in about 1988. I
21 started in fingerprints there and worked there
22 for several years and came up here in 1992.

23 Q. And what are your official duties; in other
24 words, in your current role as an examiner, what
25 is it that you do?

1 A. I receive evidence from agencies to be processed
2 for the presence of latent fingerprints. We
3 process the evidence and the prints are obtained.
4 We compare the prints to standard fingerprint
5 cards. If identifications are made, whether they
6 are made or not, we report on our findings and at
7 times are required to also testify in court as to
8 our findings.

9 Q. Have you received any specialized training to
10 assist you in performing these duties?

11 A. Yes, I have. When I first started in 1988, I
12 worked under a certified examiner for three
13 years, received almost 300 hours of training
14 through the FBI Academy in Quantico. And at the
15 end of a three year internship, I tested with the
16 International Association For Identification for
17 my certification, which I passed the test and
18 have been certified ever since.

19 Q. All right. Any estimate as to how many
20 fingerprints or palm prints you have been asked
21 to examine in your career as an examiner?

22 A. Literally hundreds of thousands.

23 Q. Now, you mentioned this -- an organization, tell
24 us about this organization that you mentioned.

25 A. The International Association For Identification

1 certifies people in many different disciplines.
2 One of them is including fingerprints, footwear,
3 crime scene. They are an organization that not
4 only certifies us, but has yearly conferences and
5 educational conferences. We attend different
6 meetings.

7 Q. You mentioned something about a certification,
8 tell us about that.

9 A. The certification process with the IAI is -- I
10 think it's twofold. If you have a college
11 degree, you have to internship for three years.
12 I believe that's the way it is. It may have
13 changed since I took it. But for me it was three
14 years.

15 With a high school diploma, I think you
16 can be certified with eight years under a
17 certified examiner, before you are even eligible
18 to take that test. You have to pass a test that
19 is, I think, three phase. There's the latent
20 print test. You have to show where you testified
21 in court successfully. You have to prepare a
22 court chart and have that approved by them. And
23 then there's also a written test on top of that.
24 You have to pass all these phases before you can
25 become certified.

1 Q. And how long have you held this certification?

2 A. Since 1991.

3 Q. What kind of equipment do you normally use as an
4 examiner?

5 A. Well, in processing through latent prints, we use
6 several types of methods. We use super glue
7 chambers, where we fume evidence and try to
8 develop --

9 (Court reporter couldn't hear.)

10 A. Yeah, super glue fuming chambers. And we'll
11 place the evidence in these chambers and fume
12 them to develop latent prints. And then take it
13 a step farther and add dye stains and look at
14 them under laser lights and try to look at the
15 real fingerprints that may not be visible even
16 with the super glue. Then we use magnetic powder
17 or regular powder, use different methods of
18 lifting them also.

19 Q. Is there a substance that's called ninhydrin?

20 A. Yes, there is.

21 Q. And what is that?

22 A. Ninhydrin is used on porous surfaces such as
23 cardboard and paper. It reacts with amino acids
24 in the fingerprints, turns purple, leaving a
25 pattern of ridge detail behind. We have to use

1 that on porous items because it doesn't work well
2 with powders or super glue.

3 Q. Now, have you had occasion to identify persons by
4 comparing latent fingerprints or palm prints with
5 their own ink fingerprints or palm prints?

6 A. Yes, I have.

7 Q. Any estimate as to approximately how often that's
8 occurred?

9 A. I probably make several identifications on a
10 weekly basis.

11 Q. All right. Now, have you had -- been called upon
12 to express opinions in courts of law regarding
13 your findings on identification or the lack of an
14 identification?

15 A. Yes, I have.

16 Q. And approximately how often have you been asked
17 to render such opinions in a court of law?

18 A. I don't know the exact number here in Wisconsin,
19 probably between 40 and 50 times. In
20 Mississippi, was probably closer to 150, 200
21 times.

22 Q. Now, you used the term, and I thought it might be
23 a good idea at this point to define some of these
24 terms, lets begin with, what is an inked print?

25 A. An inked print is when a thin layer of printer's

1 ink is rolled across the top of the surfaces of
2 the ridges of your fingers. And the fingers are
3 rolled out on a white receiving surface such as a
4 fingerprint card, leaving a lasting impression of
5 the fingerprint detail.

6 Q. Is an inked print, is that also sometimes
7 referred to as a standard?

8 A. Yes, it is. That's what they are.

9 Q. And what do we mean by that?

10 A. A standard print is where it's a known print.
11 It's a print that we know who it is. We have
12 inked the fingers. We rolled the fingers out.
13 And we have identified the person who these
14 fingerprints were taken. That would be the
15 standard.

16 Q. And what is a latent print?

17 A. Latent print is also known as a crime scene print
18 or a hidden or invisible print. These are
19 typically found at a crime scene by the use of
20 powder. They have to be brought out and
21 developed with powders or chemicals.

22 Q. And is there such a thing, I have heard expressed
23 a patent print?

24 A. Yes, there is.

25 Q. What is that?

1 A. A patent print is a visible print, a print that
2 you can see that is left in maybe blood, or
3 grease, or dirt. Doesn't have to be developed or
4 brought out.

5 Q. Are there different distinguishing
6 characteristics of a fingerprint or a palm print
7 that makes identification possible?

8 A. Yes, in the fingers, you usually start out with
9 different pattern types; loops, swirls, and
10 arches. But these don't fully distinguish
11 between people, because everybody has some of
12 these patterns in their hands. But we have
13 individual characteristics within the pattern
14 area, such as ending ridges, dots, islands. The
15 placement of those individual characteristics in
16 the pattern area, compared to the standard print,
17 is what makes them unique.

18 Q. Are fingerprints specific to each individual?

19 A. Yes, they are.

20 Q. In your experience, have you ever found two
21 people with identical fingerprints?

22 A. No, I have not.

23 Q. Just generally, what are the basic factors that
24 you would use in analysis of fingerprints, to
25 determine identification?

1 A. First thing I would look at is pattern type. If
2 I'm looking at a latent print, it's a loop, and a
3 standard, it's an arch, I can eliminate it
4 automatically. If the pattern type is the same,
5 then I look for the individual characteristics
6 within that pattern area. If I were to find an
7 ending ridge in a certain part of a latent print
8 in identification, I would expect to find that
9 same ending ridge following in the print
10 standard.

11 Q. Now, is it possible -- Well, let me first ask,
12 what kind of surfaces are you generally called
13 upon to examine and look for the presence of
14 latent fingerprints?

15 A. All kinds of surfaces. Some of them are good,
16 some of them aren't very good.

17 Q. All right. And in your experience, what are some
18 of the areas, or if I can use the phrase richest
19 area, and which one is likely to find a latent
20 print suitable for examination?

21 A. Hard, smooth surfaces are best. Rough surfaces
22 are more difficult. Some porous surfaces, such
23 as paper, is also very good. Some porous
24 surfaces such as styrofoam are very bad. It
25 depends upon the nature of the surface and the

1 condition of a person's skin as to how -- latent
2 prints and how good they are.

3 Q. And does the presence or absence of perspiration
4 from an individual, is that a factor that is
5 known to contribute whether or not a print is
6 actually left behind?

7 A. Yes, a person with normally dry hands is probably
8 less likely to leave latent prints than would be
9 somebody with oily skin or very sweaty hands.

10 Q. All right. And directing your attention to this
11 particular case, how did you first become
12 involved in this investigation?

13 A. Well, I came to work on November 7th, on a Monday
14 morning, and I was informed by my unit leader
15 that a vehicle had been brought in in relation to
16 this case and I was assigned to process the
17 vehicle for the presence of latent finger and/or
18 palm prints and also to inventory the contents of
19 the vehicle.

20 Q. And that vehicle was a Toyota RAV4?

21 A. That's correct.

22 Q. Let's begin with your inventory and proceed from
23 there. First of all, tell us, what is an
24 inventory?

25 A. Inventory is just a itemization of everything we

1 find within the vehicle. What I did in this case
2 is I started with the front seat passenger side
3 and I inventoried everything that was in there.
4 Front seat driver side, middle console. I put
5 the vehicle into quadrants and inventoried each
6 one individually.

7 Q. All right. During the course of your inventory,
8 did you find a compact flashcard?

9 A. Yes, I did.

10 Q. Cargo area?

11 A. Yes, I did.

12 Q. All right. I'm going to have Investigator
13 Fassbender show you an exhibit.

14 (Exhibit 496 marked for identification.)

15 SPECIAL AGENT FASSBENDER: 496.

16 ATTORNEY FALLON: Thank you.

17 Q. (By Attorney Fallon)~ Agent Fassbender is showing
18 you what has been marked for identification
19 purposes as Exhibit 496; do you recognize it?

20 A. Yes, I do.

21 Q. What is Exhibit 496?

22 A. It is a Verbatim compact flash memory card with
23 the name Teresa on it.

24 Q. All right. And from what location in the vehicle
25 was that flash card obtained?

1 A. It was in the rear of the vehicle, in the cargo
2 area, behind the left passenger seat in the rear.

3 Q. All right. I'm going to have my colleague show
4 Exhibit 300 on the screen. Do you see the
5 presence of this flash card, Exhibit 496; is that
6 present --

7 A. Yes, it is.

8 Q. -- in the picture depicted in Exhibit 300?

9 A. Yes, it is.

10 Q. I believe there is a laser pointer to your
11 immediate right there; do you think you could
12 point that out for us, please?

13 A. Be right there.

14 Q. All right. Thank you. During the course of your
15 inventorying of the vehicle here in question, did
16 you find a compact disk carrying case?

17 A. Yes, I did.

18 Q. And where was the compact disk carrying case
19 located?

20 A. I believe that was in the front passenger side
21 area.

22 Q. All right. I'm having counsel show you exhibit,
23 what appears to be 292; do you recognize that?

24 A. Yes, I do.

25 Q. And is that the compact disk carrying case that

1 you inventoried in this particular case?

2 A. Yes, it is.

3 Q. And is that the location in which you first
4 observed it when you began your inventory?

5 A. Yes, I did.

6 Q. And, finally, during the course of your inventory
7 of the contents of this vehicle, did you find an
8 Air National Guard lanyard?

9 A. Yes, I did.

10 Q. All right. I'm going to have Exhibit 287
11 displayed to you at this time; do you recognize
12 that exhibit?

13 A. Yes, I do.

14 Q. And is that the Air National Guard lanyard that
15 you observed in the RAV4 vehicle?

16 A. Yes, it is.

17 Q. And if you recall, can you tell us the
18 approximate location of that lanyard?

19 A. Yes, it was in the center console between the
20 driver's -- front driver's seat and the front
21 passenger seat.

22 Q. I'm going to have Exhibit 293 displayed on the
23 screen for you. If you would take your pointer
24 and tell us the approximate location of that, if
25 you can, with the use of this exhibit.

1 A. It would be in the center console right in there.

2 Q. I see there are a bottle of Aquafina water and

3 some other items?

4 A. That's correct.

5 Q. And you are pointing to the area between the two

6 seats?

7 A. That's correct.

8 Q. Thank you. How long did the processing of the

9 vehicle -- your part of the processing of this

10 vehicle take?

11 A. I worked on the vehicle for most of that day and

12 the part of the next.

13 Q. And during -- Specifically to -- directing your

14 attention to November 8th, did you have occasion

15 to examine a wheel cover?

16 A. Yes, I did.

17 Q. And did you examine it for the possibility of

18 fingerprint analysis?

19 A. Yes, I did.

20 Q. Tell us about that.

21 A. The wheel cover on the back of it had

22 impressions, for fingerprint impressions. You

23 can see them on the top of it, but it was so

24 dirty that actually there weren't any impressions

25 left behind. It was more of the take away. If

1 you have a really dirty surface and you touch it
2 with your fingers, there's no way you can leave
3 the impression behind, but you are picking all
4 the dirt up and that's where the impressions are.
5 You are taking it away, you are not putting it
6 down.

7 Q. I'm showing you Exhibit 308, does that look
8 familiar to you?

9 A. Yes, it does.

10 Q. And I note, prominently on the top of the wheel
11 cover there, there appears some smudge marks that
12 actually look like fingerprints?

13 A. That's correct.

14 Q. All right. Tell us exactly what we're looking
15 at.

16 A. If you see this, you can tell that this is all
17 real dirty. This is just covered with road grime
18 and you can see what appears to be fingerprint
19 impressions here and down here, where somebody
20 put a right and left hand on here.

21 Unfortunately, when we processed, there's no
22 ridge detail to develop because most of this is
23 just dirt and it lifted up and there was -- no
24 latent prints were put down. The other ones that
25 were visible would be down here at the bottom,

1 but as you can see, these are basically smears,
2 no ridge detail in any one of those.

3 Q. So is that what you mean by this concept of a
4 take away?

5 A. That's correct.

6 Q. In other words, whatever was there was removed by
7 the hands; in fact, it could even have been
8 gloves that caused that?

9 A. That's correct.

10 Q. All right. Now, we're on this concept of
11 fingerprint analysis, did you process the vehicle
12 for possible fingerprint analysis?

13 A. Yes, I did.

14 Q. And in terms of your specific recollection here,
15 did you -- you processed the vehicle as a whole,
16 I take it?

17 A. That's correct.

18 Q. And outside?

19 A. Outside an inside, yes.

20 Q. All right. And in terms of the items that you
21 examined in -- Well, let's start with the outside
22 of the car. Were you able to develop any prints
23 that were useful or suitable for follow up
24 examination?

25 A. Yes, I was.

1 Q. And approximately how many prints did you locate,
2 suitable for examination?

3 A. I believe there was a total of eight areas where
4 there was prints that were suitable for
5 comparison.

6 Q. All right. In terms of the interior of the
7 vehicle, did you examine any of the items you
8 inventoried for the presence of latent prints?

9 A. Yes, I did.

10 Q. And give us a ballpark idea of approximately how
11 many items or the nature and type of items you
12 looked at.

13 A. I looked at the three Aquafina bottles. I also
14 processed a granola wrapper that was found in the
15 back of the vehicle, the CD case was also
16 processed. And several other items that ...

17 Q. A blinker light, lug wrench?

18 A. A blinker light kit, lug wrench.

19 Q. In addition to the wheel cover you just told us
20 about?

21 A. That's correct.

22 Q. During the course of your analysis, did you also
23 examine the license plates?

24 A. Yes, I did.

25 Q. And the license plates that you examined, were

1 you able to identify anything suitable on either
2 plate for purposes of subsequent analysis?

3 A. No, I was not.

4 Q. Now, in an effort to make an identification or
5 something to compare it to, you would need
6 standards; is that correct?

7 A. That's correct.

8 Q. In your effort to identify anyone as being the --
9 having put those prints on the items that you
10 were able to identify, what standards did you
11 have available to you; do you recall?

12 A. I don't recall the whole list of them. I know I
13 had Steven Avery's. I had a lot of the Avery
14 family's. I believe the wrecker drivers
15 submitted standards also.

16 Q. So if I were to read you a list of names, would
17 you recognize and be able to tell us as to
18 whether or not you had standards or compar --
19 from these individuals to assist you in your --
20 conducting your analysis?

21 A. Yes.

22 Q. All right. Allen Avery?

23 A. Yes, I did.

24 Q. Steven Avery?

25 A. Yes.

1 Q. Charles Avery?
2 A. Yes.
3 Q. Earl Avery?
4 A. Yes, I did.
5 Q. Delores Avery?
6 A. Yes.
7 Q. Bobby Dassey?
8 A. Yes.
9 Q. Brian Dassey?
10 A. Yes.
11 Q. Brendan Dassey?
12 A. Yes.
13 Q. Barb Janda?
14 A. Yes.
15 Q. Scott Bloedorn?
16 A. Yes.
17 Q. James Lenk?
18 A. Yes -- Not to the vehicle.
19 Q. Not to the vehicle. But eventually those -- you
20 had those prints as well?
21 A. That's correct.
22 Q. And Andrew Colborn?
23 A. That's correct.
24 Q. All right. Let's start with the vehicle. With
25 respect to the prints that you had and you

1 indicated you had 8 latent prints from the Toyota
2 itself?

3 A. That's correct.

4 Q. That were suitable for analysis. Were any
5 identifications effective?

6 A. No.

7 Q. How about the Sunbelt crunchy granola bar
8 wrapper, were there any identifications effected
9 in your comparison of that print with any of the
10 standards submitted?

11 A. No, there were not.

12 Q. The bottle of Aquafina water, were any
13 identifications effected there?

14 A. No, they were not.

15 Q. On the black CD carrying case, were any
16 identifications effective from that analysis?

17 A. No, sir.

18 Q. On the partially full bottle of Aquafina water,
19 were any identifications effective?

20 A. No, sir.

21 Q. At some point was a headboard from a bed
22 submitted to you for fingerprint analysis?

23 A. Yes, it was.

24 Q. And that headboard was represented to you as
25 having come from the residence of Steven Avery;

1 is that correct?

2 A. That's correct.

3 Q. All right. Was there an identification effective

4 there?

5 A. Yes, there was.

6 Q. And what was that?

7 A. I believe it was the right little fingerprint of

8 Steven Avery.

9 Q. Were any other fingerprint identifications

10 effected with respect to that item?

11 A. No, there were not.

12 Q. All right. At some point were you asked, during

13 the course of this investigation, to examine a

14 letter which was directed to the Manitowoc County

15 Sheriff's Office?

16 A. Yes, I was.

17 Q. Were you able to develop any latent prints from

18 that letter which were suitable for analysis or

19 comparison?

20 A. No, I was not.

21 Q. So it would be fair to say that no identification

22 could be effected from that examination?

23 A. That's correct.

24 Q. All right. At some point -- Recently, were you

25 asked to examine a cardboard box reputedly to

1 have contained a vial of blood?

2 A. That's correct, I was.

3 Q. All right. Did you examine any prints from that
4 box?

5 A. Yes, I did.

6 Q. And so that we're clear, where did you obtain the
7 prints from?

8 A. I obtained the prints, I believe, from Calumet
9 County Sheriff's Office, the standards.

10 Q. That would have been from Deputy Hawkins?

11 A. That's correct.

12 Q. All right. And you used those standards and you
13 made a comparison to prints of whom?

14 A. Lenk, and I can't remember. I can check my
15 notes.

16 Q. Sure, please.

17 A. Andrew Colborn and James Lenk.

18 Q. All right. With respect to your analysis of the
19 cardboard box, and the prints lifted from that
20 box, were any identifications effected?

21 A. No there were not.

22 Q. I'm going to show you Exhibit 473. And in the
23 background, does that look like the box that
24 you -- First of all, let me just ask, that's a
25 poor question. Let me back up before I go there,

1 I misspoke. Did you also examine a blood vial?

2 A. Yes, I did.

3 Q. All right. And, again, directing your attention
4 to Exhibit 473, does that look like the vial
5 which you were asked to examine in this
6 particular case?

7 A. Yes, it does.

8 Q. All right. How did the vial come to your
9 attention?

10 A. Came to my attention, I believe it was sent by
11 Jeremy Hawkins also from Calumet County?

12 Q. And had that vial previously been to the FBI for
13 some type of analysis, upon your receipt of it?

14 A. As far as I know it had, yes.

15 Q. All right. And were you able to process the vial
16 for any latent prints for examination?

17 A. Yes, I did.

18 Q. All right. Were any prints located on the vial?

19 A. There was some very faint ridge detail, but
20 nothing suitable for comparison was developed.

21 Q. So you weren't able to identify that ridge
22 detail, wasn't sufficient for identification
23 purposes?

24 A. That's correct.

25 ATTORNEY FALLON: Your Honor this might be

1 a good point to break for lunch.

2 THE COURT: All right. Members of the
3 jury, we'll break for lunch at this time and resume
4 at 1:00. I remind you not to discuss the case
5 during the lunch hour.

6 (Jury not present.)

7 THE COURT: You may be seated. Counsel,
8 then, I will see you back at 1:00.

9 ATTORNEY FALLON: All right. Thank you.

10 (Recess taken.)

11 (Jury present.)

12 THE COURT: Mr. Fallon, at this time you
13 may resume your direct examination.

14 ATTORNEY FALLON: Yes, thank you, Judge. I
15 see that we have the exhibit available. I would
16 like to ask Special Agent Fassbender to obtain the
17 exhibit for the vial of blood.

18 **DIRECT EXAMINATION CONTD.**

19 BY ATTORNEY FALLON:

20 Q. Mr. Riddle, I'm having Special Agent Fassbender
21 show you what has been received in evidence as
22 Exhibit 478. Do you recognize that item?

23 A. Yes, I do.

24 Q. And what is 478?

25 A. That's the container holding the vial of blood.

1 Q. All right. And are there some crime lab tape
2 markings on the outside exterior of that exhibit?

3 A. Yes, there is. I sealed this myself, and there's
4 my initials and date it was sealed right there.

5 Q. All right. And what is the date of the seal on
6 that?

7 A. February 26th of this year.

8 Q. All right. And Agent Fassbender would lift the
9 tube out. Do you recognize the contents of the
10 exhibit?

11 A. Yes, I do.

12 Q. And did you examine the vial which is contained
13 inside that exhibit?

14 A. Yes, I did.

15 Q. All right. And that is the item which you
16 attempted to process the prints from; is that
17 correct?

18 A. That's correct.

19 Q. And as I understand it, you said there was just
20 one ridge print?

21 A. There was very, very faint ridge detail that was
22 unsuitable for comparison, on the tube.

23 Q. So no identification could be effected?

24 A. No.

25 ATTORNEY FALLON: I will pass the witness

1 for cross-examination.

2 THE COURT: Mr. Buting.

3 ATTORNEY BUTING: Thank you, Judge.

4 **CROSS-EXAMINATION**

5 BY ATTORNEY BUTING:

6 Q. Good afternoon, Mr. Riddle.

7 A. Good afternoon.

8 Q. You have been a fingerprint examiner for, now,
9 how many years?

10 A. 19 years.

11 Q. 19 years. And about 14 of it, I think, was with
12 Wisconsin?

13 A. It will be 15 years in August, yes, sir.

14 Q. Okay. And in that capacity are you often called
15 to the scene of alleged crime or offense?

16 A. I have been on field response in the past, not
17 for the last three years, however.

18 Q. Typically you are just -- you just receive items
19 that are brought to you by the law enforcement
20 authorities?

21 A. That's correct.

22 Q. Okay. And is it in your experience that officers
23 would tend to bring items that they think are
24 important to their investigation?

25 A. Yes, that's correct.

1 Q. Items that they think might help identify who a
2 suspect is?

3 A. That's correct.

4 Q. Sometimes completely unknown person they don't
5 have any idea and they are just looking to see if
6 you can link somebody up?

7 A. That's correct.

8 Q. Some of those items might be, let's say,
9 something that's a suspected murder weapon in a
10 homicide case, right?

11 A. That's correct.

12 Q. Like a knife that they think might have been
13 used?

14 A. That's correct.

15 Q. Or a firearm that they think might have been
16 used?

17 A. That's correct.

18 Q. Did you have the opportunity to look at a .22
19 Marlin rifle, for fingerprints in this case?

20 A. I don't believe so, no.

21 Q. You never had one of these officers from the
22 State submit a .22 Marlin rifle for your analysis
23 to see if you could find any fingerprints?

24 A. No, they did not.

25 Q. Hmm. How about any bullet cartridges or shell

1 cases, did you ever get any of those?

2 A. I didn't receive any of those items, no, sir.

3 Q. Do you know -- Do you know anything about

4 firearms yourself?

5 A. Very little, some.

6 Q. Do you know how you have to load a .22 with

7 shells, cartridges?

8 A. Are you referring to a rifle or a revolver?

9 Q. Rifle.

10 A. Depending on the type of rifle, whether it's bolt

11 action or semiautomatic, there is a big

12 difference.

13 Q. Okay. So, if it's a semi-automatic, there's like

14 a little cartridge, or a little tube that goes in

15 underneath the barrel?

16 A. That's correct.

17 Q. And in order to fire it, one has to pickup

18 cartridges, which are fairly small, about an inch

19 and a half or so, right?

20 A. That's correct.

21 Q. And in doing that, then they have to load them

22 one, by one, by one into a tube.

23 A. That's correct.

24 Q. And have you ever been able to -- Have you ever

25 examined any cartridge cases before?

1 A. Yes, I have.

2 Q. Have you ever been able to find any kind of
3 fingerprints on them?

4 A. Very seldom but, yes, I have.

5 Q. Okay.

6 A. Not on a .22, though, sir.

7 Q. But you didn't in this case?

8 A. No, sir.

9 Q. No one even gave you cartridges to look at in
10 this case?

11 A. That's correct.

12 Q. While we're on the subject of important items
13 that maybe law enforcement might give you to look
14 at, how about if they find what they believe is
15 some personal item of a victim, in the bedroom of
16 a suspect, is that something they might want to
17 bring to you or you might be asked to look for
18 fingerprints?

19 A. I would assume so, yes.

20 Q. Any officer ever bring you a Toyota car key to
21 look at?

22 A. No, they did not.

23 Q. The -- Let me move ahead for a minute and then I
24 will go back to the RAV4. I'm going to show you
25 what's marked as Exhibit 497. Put your glasses

1 on, see if you can identify that for me, please.

2 A. That's a report that I issued on December 5th of

3 2006, with the results of the Item KT, letter to

4 the Manitowoc Sheriff's Office that I had

5 processed for prints.

6 Q. Okay. Before we talk about that any more, just

7 so no one is confused, there's some -- this isn't

8 an original of yours, right?

9 A. No, it is not.

10 Q. This is a copy of this. Some numbering at the

11 bottom that says State 1-9371, sort of a Bate

12 stamp kind of a thing? That's not normally on

13 your report, right?

14 A. No, it is not.

15 Q. Something that we have got that helps us, but

16 otherwise does this appear to be a accurate copy

17 of the report that you prepared?

18 A. Yes, it does.

19 Q. And attached to it, would you tell me what's

20 attached to this?

21 A. That's a copy of my handwritten notes.

22 Q. Okay. And keep going, what's attached to that?

23 A. It's a copy of a letter that was submitted, Item

24 KT.

25 Q. Okay. Let me put this up on the ELMO, so we can

1 talk about it that way.

2 ATTORNEY FALLON: Your Honor, I would like
3 to be heard on this, I think there's a hearsay
4 objection and a relevance objection that need to be
5 made.

6 THE COURT: The Court will excuse the
7 jurors for a few minutes to hear the motion.

8 (Jury not present.)

9 THE COURT: You may be seated. Mr. Fallon.

10 ATTORNEY FALLON: Yes, Judge. If counsel
11 is intending on displaying the actual cryptic letter
12 here, which was the subject of a -- an attempted
13 identification, which by the way was requested by
14 the defense, I have reason to object on grounds of
15 relevance, hearsay, lack of foundation, and what
16 have you, with respect to an anonymous letter sent
17 to the Sheriff's Department. So, I don't see any
18 relevance primarily, but it is also hearsay and
19 unidentified document.

20 THE COURT: The parties have the advantage
21 of me because I don't know what the letter is.

22 ATTORNEY BUTING: Sure. Let me show it to
23 the Court. Do we want to excuse the witness at all?

24 ATTORNEY FALLON: I don't see how that
25 would make any difference.

1 ATTORNEY BUTING: Okay. I just wanted to
2 bring it up. Well, Judge, the -- obviously the
3 document isn't offered for the truth of the matter
4 alleged in there, but it is -- it was brought up on
5 direct. I think under cross I can examine the
6 expert about his evaluation of the document. The
7 timing of how and when it was submitted is actually
8 already in the record. But it obviously goes to the
9 fact that this was just found, if the Court recalls
10 from an earlier witness, I believe, in the property
11 room a whole year after it had been received and
12 nothing had been done with it, goes to the
13 investigative bias, tunnel vision argument we have
14 been making for the last month. So for those
15 reasons it's certainly relevant and obviously it's
16 something that this witness -- this expert was asked
17 to examine, so it's relevant in that regard as well.

18 ATTORNEY FALLON: Your Honor, if I may
19 reply to that. The only reason this exhibit was
20 introduced is because counsel brought it up on
21 cross-examination of Investigator Fassbender, about
22 two weeks ago. It doesn't have any particular
23 relevance to this case whatsoever, other than it's
24 another rule out, another exclusion.

25 And by the way, I would also point out

1 that any attempt to discussion or display of the
2 writings of the particular exhibit go to, I think
3 are in violation of the Court's pre-trial ruling
4 suggesting some other unknown culprit committed
5 this particular offense. Again, it's an
6 anonymous letter, unaccounted for. So it's of
7 marginal relevance.

8 ATTORNEY BUTING: Judge, let me respond to
9 that. It doesn't go to any -- it's not, if you are
10 talking about third party liability, there is no
11 name on that, nobody that's particularly being
12 alleged. For all that matter, it could have been,
13 you know, it could be arguing that the defendant did
14 it. But the point of the matter is, it was a --
15 obviously, in our view, a very important tip that --
16 that may or may not have been acted on properly as
17 part of their investigative bias. So that's the
18 relevance.

19 THE COURT: Maybe the parties can refresh
20 my memory, I have a vague recollection of the
21 subject matter of the document; has the letter been
22 introduced as an exhibit?

23 ATTORNEY FALLON: No, that's it. It was
24 brought up in cross-examination of Special Agent
25 Fassbender on the first Friday of this trial, I

1 believe that is the 9th, if memory serves me.
2 Again, it was all -- that was the point -- that was
3 the time to cross-examine, if any.

4 ATTORNEY BUTING: Well, there was
5 cross-examination.

6 ATTORNEY FALLON: And here -- here's the
7 point, the probative value of showing that to the
8 jury is minimal, at best. It's the confusion, waste
9 of time, let's follow another dead end somewhere, is
10 the whole point of that. The time for
11 cross-examining, the time to make the point of
12 investigative bias, which was attempted and arguably
13 made or not, that's a subject for closing argument,
14 was in the investigation and cross-examination of
15 Special Agent Fassbender, when he said, well, we
16 ruled it out, or we just heard testimony from
17 Pevytoe, ruling it out.

18 ATTORNEY BUTING: Judge, first of all, how
19 can it not be relevant when there is a letter that
20 says the body was burned in the smelter at 3:00 a.m.
21 on Friday morn. It can't be more relevant than what
22 all the testimony we have heard about the body in
23 this case and the whole question of whether it's
24 location at Mr. Avery's -- behind Mr. Avery's
25 garage, was its original location or not is central

1 to this case and will continue to be central.

2 ATTORNEY FALLON: So, now he's arguing that
3 it's offered for the truth of the matter as it
4 affects the investigation?

5 ATTORNEY BUTING: No, but it's a tip that
6 was not followed on by the law enforcement agents in
7 this case because it did not fit their theory that
8 the body was burned behind Mr. Avery's garage.
9 And -- And the failure to do anything with this for
10 a whole year, supports that defense.

11 ATTORNEY FALLON: Then let counsel make
12 that argument in closing argument, based on the
13 evidence its exhibited.

14 THE COURT: If -- If Mr. Fassbender -- And
15 I have to say, this trial has now gone on long
16 enough, I don't have all the previous testimony
17 committed to memory. This letter was brought up to
18 Mr. Fassbender when he was examined and he said, we
19 didn't pursue it, is that --

20 ATTORNEY FALLON: He said they ruled it out
21 because we had already ruled out the smelter as
22 having any part of this particular case.

23 THE COURT: Okay.

24 ATTORNEY FALLON: He's already got the
25 evidence in to make the argument he wants to make.

1 ATTORNEY BUTING: No, because the -- I
2 don't know if we do or not, but I don't recall the
3 exact testimony myself right now. But, look, just
4 because they ruled it out, doesn't mean it's no
5 longer relevant. That's a central part of this
6 trial. That's a matter that the jury can decide,
7 whether or not this is just another piece of the
8 puzzle that, if we're going to use their analogy, a
9 piece of the puzzle that shows, time and time again,
10 they ignore anything that doesn't fit the State's
11 theory.

12 ATTORNEY FALLON: Are we now going to hear
13 testimony that the smelter was the source of
14 combustion of the remains of Teresa Halbach from,
15 presumably, Dr. Fairgrieve. We would certainly like
16 to know that. And I --

17 ATTORNEY BUTING: You have seen his report.

18 ATTORNEY FALLON: Well, counsel, we have
19 seen no report from Dr. Fairgrieve. We have seen a
20 rendition of what he might or might not say.

21 ATTORNEY BUTING: I'm sorry, that's what I
22 meant, you have seen a summary of what he says, and
23 the smelter is mentioned.

24 THE COURT: Maybe you can help me out,
25 what's he going to say?

1 ATTORNEY BUTING: I don't want to repeat at
2 this point, it's in the Court's file. I can't
3 restate it better than what we did in our summary.
4 But there are -- the evidence is clear that there
5 are multiple burn sites on that Avery property
6 alone, not to mention other sites outside of that
7 property. This was not reasonably considered. This
8 was dismissed as a possible site, despite the fact
9 that they are getting anonymous tips about it. And
10 more than anonymous tips that we haven't heard about
11 yet.

12 But, again, it shows investigative bias.
13 And it's clearly within the scope of direct. He
14 was asked about a letter that he -- that was sent
15 to the Manitowoc County Sheriff's Office and that
16 he did fingerprints on. If they didn't want it
17 in, it should never have been brought out. Now
18 the jury hears there's some letter, who knows
19 what it is.

20 ATTORNEY FALLON: Well, counsel, then you
21 shouldn't have asked the question on
22 cross-examination of Agent Fassbender, over
23 objection of the State.

24 ATTORNEY BUTING: Well, we wanted it,
25 you're the ones that don't.

1 ATTORNEY FALLON: Obviously they want it,
2 Judge, because they want to use it for this truth of
3 the matter asserted.

4 ATTORNEY BUTING: No.

5 THE COURT: All right. Here's my ruling.
6 To the extent that the -- and I'm basing this, I
7 guess, on the recollection of the testimony the
8 parties are providing me. To the extent -- First of
9 all with respect to the letter itself, it's not
10 admissible for the truth of the matter asserted, but
11 I believe I did admiss -- admit it for the purpose
12 which I understand -- or not admit the letter, but
13 allow the question about it, not for the truth of
14 the matter asserted, but based on the proposition
15 advanced by the defense, which was that it was an
16 example of a lead that the State chose not to
17 follow.

18 The State has its own -- gave its own
19 explanation, I believe, for it, if I'm
20 understanding you correctly, Mr. Fallon. Again,
21 I don't remember Mr. Fassbender's explanation,
22 but both parties are telling me that this came in
23 and that it was the subject of questioning of
24 Mr. Fassbender.

25 ATTORNEY FALLON: Correct.

1 THE COURT: To the extent that point has
2 gotten in, that point has already been made. Since
3 Fassbender indicated it was not pursued of
4 necessity, the State didn't choose to send it to
5 this witness, and I'm not sure what -- what would be
6 added at this point by admitting it. Because to put
7 it up on the screen now raises the danger that the
8 jury will take it for the truth of the matter
9 asserted.

10 ATTORNEY BUTING: Judge, it's been talked
11 about. Now, the witness, on direct, was told that
12 he looked at a letter, the jury doesn't know what it
13 is, they brought it up, it's left hanging there, the
14 jury is going to, if anything, speculate about what
15 that letter is, whether it somehow relates to
16 Mr. Avery or not. And the fact his report shows
17 that it was a whole year until this was even sent to
18 be examined.

19 THE COURT: All right. This is a
20 fingerprint expert.

21 ATTORNEY BUTING: I understand.

22 THE COURT: As I understand this report, he
23 didn't find any usable fingerprints on the letter,
24 so what -- what is his testimony going to add to the
25 point that the Court has already been allowed to be

1 made with respect during Ms Fassbender's testimony.

2 ATTORNEY BUTING: I don't recall that we
3 have gotten the details out in Mr. Fassbender's
4 testimony. He didn't -- As I recall, he didn't
5 admit that he had even seen it. This witness has
6 seen it. He said, I think he indicated that he
7 didn't recognize it, didn't know what it was, other
8 than the defense wanted it sent for fingerprints a
9 year after the arrest of Mr. Avery, when we found it
10 in the property room.

11 THE COURT: Well, if there's a theory for
12 the defense to get this letter in, it may -- there
13 may be a way to get it in through another witness,
14 but this is a fingerprint expert. The only
15 testimony he would have to offer is that he didn't
16 find any fingerprints on the document and I don't
17 think this is an appropriate way to get the document
18 in.

19 ATTORNEY BUTING: All right. Then, for
20 this purposes then, I would like to just finish with
21 him on this point, and let the jury know that when
22 he received the letter, at least establish the date,
23 that it was not until December of '06. We're not
24 showing it, we'll work on the other issue later.

25 THE COURT: All right. I'm not sure I

1 understand what you are looking to do.

2 ATTORNEY BUTING: Finish up my questioning
3 on this issue, with him, by pointing out this
4 letter, without showing it, was not sent to him
5 until December of '06.

6 THE COURT: Okay. So, in front of the
7 jury, that a letter was sent to him. You can
8 identify this as a handwritten letter dated
9 whatever, or whenever it was received. Any
10 objection from the State?

11 ATTORNEY FALLON: If he wants to have it
12 identified as the letter examined with respect to
13 his December 5th report, that's fine.

14 THE COURT: Very well. That's permissible.

15 ATTORNEY BUTING: All right.

16 THE COURT: The jurors can be brought back
17 in. You may be seated.

18 (Jury present.)

19 THE COURT: Mr. Buting, you may proceed.

20 ATTORNEY BUTING: Sure.

21 Q. (By Attorney Buting)~ Okay. Mr. Riddle, again
22 showing you Exhibit 497, if you could just tell
23 us -- Well, let me do it -- Let me lead you
24 through it. This was a letter that was sent to
25 Manitowoc Sheriff's Department, as far as you

1 knew?

2 A. As far as this goes.

3 Q. Okay. And it was a handwritten letter, do you
4 know if there was anything about the date that it
5 was received, in the information you received?

6 A. Not that I received, no.

7 Q. Okay. Well, then, tell us when it was that you
8 received it and when it was you were asked to
9 do -- to test it for latent fingerprints?

10 A. I received this piece of evidence on December the
11 4th, of 2006, completed the work on December the
12 5th.

13 Q. Okay. So, a year after -- actually 13 months
14 after you were first brought into the case to
15 look at the RAV4 at the Crime Lab?

16 A. That's correct.

17 Q. Okay. The box, the cardboard box that contained
18 a vial of blood that you also looked at?

19 A. Yes.

20 Q. That was in -- when was it that you were asked to
21 look at that?

22 A. I believe that was just last week.

23 Q. Last week, okay. If you could check and be sure.

24 A. Actually, it was a couple weeks ago, February
25 the 19th, is when I issued the report on that.

1 Q. All right. And is that true also for the blood
2 vial itself; is that when you examined it?

3 A. The blood vial came in a couple days later, about
4 a week later, actually. I completed that report
5 on February the 26th.

6 Q. All right. Now, I noticed when you picked up the
7 lanyard in your direct testimony, you put on some
8 gloves before you did that?

9 A. That's correct.

10 Q. That's sort of a normal thing officers are taught
11 to do before they handle evidence, right?

12 A. That's correct.

13 Q. Because you know if you put on gloves, you are
14 not going to leave fingerprints, right?

15 Typically, with the right kind of gloves?

16 A. That's correct.

17 Q. And that's like second nature to a police
18 officer, right?

19 A. Yes, sir.

20 Q. So, really it would be very unusual for you to
21 find police officers' fingerprints on an
22 important item of evidence in a case?

23 ATTORNEY FALLON: Speculation.

24 A. Usually --

25 THE COURT: I think he can answer it.

1 ATTORNEY BUTING: Okay.

2 A. Occasionally there are slip ups where I have
3 identified officers fingerprints on items of
4 evidence, but for the most part they are very
5 careful about wearing gloves and not leaving
6 prints.

7 Q. All right. We went through a list of items.

8 (Exhibit 498 marked for identification.)

9 Q. We went through a list of items that earlier on
10 you looked at in, like, I believe November of
11 '05, on direct exam; do you recall that?

12 A. Are you referring to the inventory of the
13 vehicle?

14 Q. Yeah, but I'm going to limit it; I'm going to
15 narrow it down to just a few items, okay?

16 A. Okay.

17 Q. Just so we're clear, maybe I missed it, but it
18 was actually November 7th of 2005 when you were
19 first brought in at the Crime Lab?

20 A. That's correct.

21 Q. And at that time, the vehicle was -- the RAV4,
22 Toyota RAV4, was still at the garage of the Crime
23 Lab, right?

24 A. That's correct.

25 Q. And that was helpful to you because you have --

1 you've got decent lighting, and photographic
2 equipment with you, and all of that, right?

3 A. That's correct. We have photographers that take
4 our pictures for us there.

5 Q. Okay. I'm showing you Exhibit 498, could you
6 just identify that, please?

7 A. That's a report issued on December 7 of 2005.
8 Some of the items involved the RAV4 itself and
9 some items recovered from it that I processed for
10 fingerprints.

11 Q. Okay. Now, a number of those items that you
12 processed, you actually did find fingerprints
13 suitable for comparison, correct?

14 A. That's correct.

15 Q. Let's talk about those items for a moment. You
16 found suitable prints on the RAV4 itself, right?

17 A. That's correct.

18 Q. We'll get into where in a moment, but you also
19 found suitable prints on this crunchy granola bar
20 wrapper?

21 A. That's correct.

22 Q. And the bottle of Aquafina water?

23 A. That's correct.

24 Q. Were those both found in the front seat?

25 A. I believe the crunchy granola wrapper was found

1 in the rear of the vehicle, in the cargo area.

2 Q. Okay. Just so we're clear, you actually did the
3 search of that vehicle at that time as well,
4 right?

5 A. That's correct.

6 Q. And you made -- you made note of where you found
7 all of these items, including the lanyard, for
8 instance?

9 A. That's correct.

10 Q. Okay. And you also found and identified a print
11 suitable for comparison on the CD case, a black
12 plastic CD case?

13 A. Yes, that's correct.

14 Q. And on another partially full bottle of Aquafina;
15 is that right?

16 A. That's correct.

17 Q. So two of the three bottles of water, you were
18 able to find a suitable print?

19 A. Yes, sir.

20 Q. Okay. Now, let's talk about the RAV4 itself for
21 a moment. You mentioned the wheel cover on the
22 rear cargo gate had, I guess these patent or
23 patent prints, correct?

24 A. They were more take-aways than prints. A patent
25 print would be -- to me would be a fingerprint

1 that was visible --

2 Q. Okay. I'm sorry.

3 (Court reporter couldn't hear.)

4 A. The areas on the wheel cover are actually void
5 areas, that are in the shape of a hand print, but
6 there are actually no prints there.

7 Q. Okay. So this was something that -- These
8 were -- I'm using the wrong term. These were
9 just looking like fingers, prints, but there was
10 not -- no ridge detail?

11 A. That's correct.

12 Q. All right. Let's put up Exhibit 307 for a moment
13 here. And, actually, I'm going to put up the
14 other -- I'm going to put up Exhibit 308 first
15 and talk about that, that's a closer up picture
16 of the rear tailgate of the RAV4, right?

17 A. Yes, sir.

18 Q. Okay. And these sort of finger markings up here
19 on the top and the bottom are what you refer to
20 as take-aways, that you couldn't get a ridge
21 detail?

22 A. That's correct.

23 Q. But you did find some fingerprints that were
24 suitable, for identification purposes, on the
25 rear of this vehicle?

1 A. Yes, I did.

2 Q. Okay. And one of which is in this photograph.

3 Do you have the laser pointer with you; could you

4 point where it is?

5 A. Yes. You can't actually see the fingerprint.

6 What you are looking at here is the scale and

7 this points to where the fingerprint is for our

8 photographer, so he can take a picture of it. So

9 it would be right in front of that scale.

10 Q. Okay. Now, if I understand how this worked, you

11 found -- There was a number of places where you

12 found some prints that were suitable for

13 identification, but they didn't lift off of the

14 surface in that fashion, right?

15 A. No, they did not. None of the lifts I made were

16 suitable for comparison.

17 Q. Okay. But, there were fingerprints that you

18 found left on the vehicle that could be preserved

19 in another way, right?

20 A. That's correct.

21 Q. And that is where your photographer comes and

22 takes a close up photograph of the print that

23 shows a ridge detail, right?

24 A. That's correct.

25 Q. And it's actually done in sort of a negative

1 fashion?

2 A. That's the way I prefer it. I prefer them to
3 take the photograph and give me the negative, so
4 I can put it on a light box, where the light
5 shines through the back of it, makes the print
6 easier to see for me.

7 Q. Okay. And those are actually better sometimes
8 for identification purposes than the kind that
9 actually lift off with a piece of tape or
10 something, right?

11 A. It can be, yes.

12 Q. Okay. Could you use the pointer, laser pointer,
13 and let's talk about where you found these prints
14 that were suitable for comparison on this
15 vehicle, okay?

16 A. Okay. We had the one, I don't see the tag right
17 now, but the one right here, and most of the
18 other ones, actually came from this area right
19 here and a little farther around this side. I
20 think there was another one, can't see it in this
21 particular picture, but it's going to be around
22 the front of the vehicle. And then there is one
23 on an inside window.

24 Q. Okay. We'll talk --

25 A. I think a total of eight locations.

1 Q. Okay. We'll talk about those in a minute. There
2 were eight locations?

3 A. I believe so, yes.

4 Q. Okay. And if my recollection is correct, you
5 gave them numbers; I don't know if you recall
6 what the actual numbers are?

7 A. Yes, they were 8 -- inside of 825 -- and those
8 were eight latent lifts.

9 Q. Okay. But you found one -- right where we saw on
10 the earlier closeup, one right next to where the
11 key goes in for the cargo gate?

12 A. That's correct.

13 Q. And then three along this pillar to the left side
14 that goes above the taillight assembly?

15 A. That's correct.

16 Q. And then a fifth one was over on the other side,
17 sort of in shadows, on the other side of the
18 wheel cover?

19 A. That's correct.

20 Q. Okay. Now, I'm going to switch to Exhibit 289.
21 This is just a side shot of the vehicle. I don't
22 have a front shot, unfortunately. But the other
23 three that you found, if I'm correct, one of them
24 was in the -- one of them was actually on the
25 inside passenger window, right on this side of

1 the vehicle, wasn't it?

2 A. That's correct, it was.

3 Q. On the inside, right?

4 A. On the inside, yes.

5 Q. And another one was on the inside of the

6 passenger window of the rear window, on the other

7 side, on the passenger side, right?

8 A. Correct, yes, sir.

9 Q. And that was six and seven. And then the eighth

10 one was actually found on the hood?

11 A. That's correct.

12 Q. As if somebody would open a hood, might touch it

13 and leave a fingerprint?

14 A. That's correct.

15 Q. And you compared those fingerprints to the

16 fingerprints standard of Mr. Steven Avery?

17 A. Yes, I did.

18 Q. And they did not match, correct?

19 A. No, they did not, that's correct.

20 Q. And you went through a list of other people that

21 you -- other people's standards that you compared

22 to these unknown fingerprints. But am I correct

23 that you did not, and have not, as of today, ever

24 compared fingerprint standards from Lieutenant

25 James Lenk or Sergeant Andrew Colborn to any of

1 those fingerprints from the RAV4?

2 A. No, I did not.

3 Q. I am correct, you did not, right?

4 A. I did not, you are right.

5 Q. And still have not?

6 A. No.

7 Q. No one has asked you to do that?

8 A. No, they have not.

9 Q. Also, absent from that list of people who
10 Mr. Fallon ran down with you, of standards that
11 you compared, you did not compare any
12 fingerprints of Mr. Scott Tadych, T-a-d-y-c-h,
13 did you?

14 A. No, I did not.

15 ATTORNEY FALLON: Objection, relevance.

16 THE COURT: Sustained.

17 ATTORNEY FALLON: Ask that the answer be
18 stricken.

19 THE COURT: Court will order the answer to
20 that question be stricken.

21 Q. (By Attorney Buting)~ The standards that you
22 listed on direct are the only ones you got to
23 compare to these eight unknown fingerprints on
24 the RAV4?

25 A. That's correct.

1 Q. Were there also some palm prints found?

2 A. Yes, sir, there was. One of those eight
3 locations did contain a palm print.

4 Q. Okay. And you got actual palm print standards
5 from all of those people as well?

6 A. That's correct.

7 Q. And you did find a fingerprint of Mr. Avery's
8 that matched a fingerprint -- or latent that was
9 left or found on -- as reported to you, on a
10 headboard, right?

11 A. That's correct.

12 Q. Do you know where that headboard came from?

13 A. I was informed it came from Mr. Avery's bedroom.

14 Q. All right. So finding an owner's or occupant's
15 fingerprint on one's own headboard, would not be
16 that surprising, would it?

17 A. It would be expected.

18 ATTORNEY BUTING: All right. That's all I
19 have of this witness.

20 THE COURT: Any redirect?

21 ATTORNEY FALLON: Just a few questions.

22 **REDIRECT EXAMINATION**

23 BY ATTORNEY FALLON:

24 Q. Do you have any standards from Teresa Halbach to
25 assist you in making any comparisons?

1 A. No, I did not.

2 Q. And as a fingerprint examiner, would you trust,
3 if someone were to bring you a box of her
4 belongings, and say, well, her prints are
5 probably on there? As an examiner, would you use
6 that in making a comparison?

7 A. If they were to bring me --

8 Q. In other words -- Let me ask it, it's a poorly
9 worded question. What do you need for a standard
10 to assure yourself that you are making an
11 accurate comparison and subsequent
12 identification?

13 A. I would need a standard fingerprint card that was
14 received by that individual and we know that the
15 prints on that card were hers.

16 Q. All right. And if an item has been processed for
17 the presence of DNA, in other words swabbed, are
18 you likely to find any kind of prints suitable
19 for comparison after that has been done?

20 A. Not on the areas that were swabbed, no.

21 Q. And that would include a key?

22 A. That's correct.

23 Q. A gun?

24 A. That's correct.

25 ATTORNEY FALLON: Nothing else. Thank you.

1 ATTORNEY BUTING: Just a couple quick
2 follow-up there.

3 RECROSS-EXAMINATION

4 BY ATTORNEY BUTING:

5 Q. Do you have any information that -- that -- You
6 know what a .22 rifle looks like, right?

7 A. That's correct, sir, I do, yes.

8 Q. Okay. Has a long wooden stock, right?

9 A. Yes.

10 Q. That would be a good place maybe to find
11 fingerprints.

12 A. Depends on the condition of the wood, stocks
13 usually aren't that great for that.

14 Q. Okay. But, you know, top of the barrel, lots of
15 places on a rifle that might have suitable
16 prints, right?

17 A. That's correct.

18 Q. Do you have any information that anybody from the
19 DNA unit swabbed the complete surface all the
20 way, top, one end to the other, of that rifle?

21 A. I couldn't say what areas were swabbed, sir.

22 Q. Okay. And any areas that weren't swabbed, might
23 well have been suitable for you to look for
24 fingerprints?

25 A. That's a possibility, yes, sir.

1 ATTORNEY BUTING: Thank you, nothing else.

2 THE COURT: Very well, the witness is
3 excused.

4 ATTORNEY BUTING: Judge, I would move the
5 exhibits for the purposes stated.

6 THE COURT: Any objection?

7 ATTORNEY FALLON: As I see, 498, and 497,
8 is that it?

9 ATTORNEY BUTING: I believe so.

10 ATTORNEY FALLON: With respect to 497, only
11 for the -- well, for the purposes discussed, fine.

12 ATTORNEY BUTING: Right.

13 ATTORNEY FALLON: And for 498, that's fine.

14 THE COURT: Very well, 497 and 498 are
15 admitted.

16 ATTORNEY BUTING: Thank you.

17 THE COURT: Do I understand the State's
18 next witness is going to be appearing by telephone?

19 ATTORNEY KRATZ: Yes.

20 THE COURT: Members of the jury, I'm going
21 to give you a short break, hopefully short, so you
22 don't have to sit here while we're making
23 arrangements for the telephone. We'll call you back
24 as soon as we're ready.

25 (Jury not present.)

1 THE COURT: You may be seated. Mr. Kratz,
2 do you have the number to call?

3 ATTORNEY KRATZ: That would help. Yes, I
4 do, 817 -- We'll do this quietly.

5 (Off the record.)

6 THE COURT: Counsel, do I understand that
7 the relevant exhibits that are going to be the
8 subject of testimony, the witness has?

9 ATTORNEY BUTING: That's correct and they
10 are already exhibits that have been introduced here.

11 ATTORNEY KRATZ: Already admitted and he
12 has both of them already marked, Judge.

13 THE COURT: All right. Who is the witness?
14 Mr. Zimmerman, this is Judge Willis, can you hear
15 me?

16 THE WITNESS: Yes, Judge.

17 THE COURT: All right. We're outside the
18 presence of the jury at this time. In a few
19 minutes, we'll bring them in. I will let
20 Mr. Kratz -- Mr. Kratz, are you going to be doing
21 the examination?

22 ATTORNEY KRATZ: I will. Perhaps the
23 volume could be just a little louder.

24 THE COURT: I will let Mr. Kratz call you
25 as a witness and we'll let you know when we're

1 ready.

2 ATTORNEY KRATZ: Mr. Zimmerman, can you
3 hear me, okay? Mr. Zimmerman?

4 THE COURT: I don't think your microphone
5 is on.

6 ATTORNEY KRATZ: Mr. Zimmerman, can you
7 hear me, okay?

8 THE WITNESS: Yes, I heard that all just
9 fine.

10 ATTORNEY KRATZ: Okay. Thank you.

11 THE COURT: Mr. Zimmerman, can we hear you
12 again? Are you there?

13 THE WITNESS: Yes, I'm here.

14 THE COURT: All right. Why don't you talk
15 consistently for a few minutes while we adjust the
16 volume here. You can tell us how the weather is
17 there.

18 THE WITNESS: Well, today the weather is
19 fairly cool and mild. It's approximately 50 degrees
20 outside right now.

21 THE COURT: All right. When you are giving
22 your testimony, I'm going to ask you to speak
23 perhaps even a little closer into your phone or talk
24 a little louder if you are as close as you can get.
25 We can hear you here, but not quite as loud as

1 everybody else.

2 THE WITNESS: All right.

3 THE COURT: All right. Are we ready to
4 bring in the jury?

5 ATTORNEY KRATZ: We are, Judge, yes.

6 THE COURT: Very well, we'll bring in the
7 jury.

8 (Jury present.)

9 THE COURT: You may be seated. At this
10 time the jury is back in the courtroom. Mr. Kratz,
11 you may call your next witness.

12 ATTORNEY KRATZ: Thank you, Judge. Via
13 telephone, your Honor, we're going to be calling a
14 gentleman by the name of Tony Zimmerman.
15 Mr. Zimmerman, are you able to hear us okay?

16 THE WITNESS: Yes, I am.

17 ATTORNEY KRATZ: Mr. Zimmerman, I'm sure
18 the Clerk is going to ask you to raise your right
19 hand.

20 THE COURT: I will take care of that at
21 this time.

22 ATTORNEY KRATZ: I'm sorry, Judge.

23 THE COURT: Mr. Zimmerman, this is Judge
24 Willis. I'm going to ask you to raise your right
25 hand at this time; do you have it raised?

1 THE WITNESS: Yes, I do, Judge.

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

5 THE COURT: Would you please state your
6 full name and spell your last name for the record.

7 THE WITNESS: Anthony Joseph Zimmerman,
8 last name Z-i-m-m-e-r-m-a-n.

9 THE COURT: Mr. Kratz, you may proceed.

10 ATTORNEY KRATZ: Thank you.

11 **DIRECT EXAMINATION**

12 BY ATTORNEY KRATZ:

13 Q. Mr. Zimmerman, please do your best to speak up
14 nice and loudly and right into the phone so we
15 can all hear you, sir. How is it that you are
16 employed?

17 A. I am employed with Cingular Wireless.

18 Q. And how are you employed, sir?

19 A. You mean my job title?

20 Q. Your job title, yes.

21 A. I'm a network engineer.

22 Q. Are you currently working in any specific
23 departments within Cingular.

24 A. The department I work in, I am responsible for
25 technical support on our voice --

1 (Court reporter couldn't hear.)

2 Q. On your voice mail platform?

3 A. That's correct.

4 Q. There were some questions earlier in this trial,
5 actually a couple of weeks ago, regarding some
6 voice mails that had been received; were you
7 asked to appear today, either in person or by
8 phone, to clear up some of those questions about
9 voice mails?

10 A. Yes.

11 Q. First of all, Mr. Zimmerman, how long have you
12 been employed in that capacity?

13 A. In this capacity, I have been working for eight
14 years.

15 Q. And what are your general duties as in the voice
16 mail platform or as a network engineer?

17 A. Primarily responsible for ensuring our voice mail
18 systems are running without errors and providing
19 voice mail service to our customers.

20 Q. As part of that occupation, Mr. Zimmerman, are
21 you called upon from time to time to review
22 records regularly kept by Cingular?

23 A. Yes, I am.

24 Q. And in reviewing those records, specifically some
25 of those records as they relate to voice mail,

1 are you able to offer either opinions or
2 explanations about what some of the terminology
3 means in those records?

4 A. Yes, I am.

5 Q. Sometime prior to your testimony, Mr. Zimmerman,
6 you were provided with a couple of exhibits that
7 have already been introduced into evidence in
8 this case. One is Exhibit No. 361 and one is
9 Exhibit No. 372, do you have both of those
10 exhibits in front of you at this time?

11 A. I have Exhibit 361 and I have -- I believe I have
12 Exhibit 372; although, it's not marked as such.

13 Q. All right. We'll talk about 372 in just a
14 minute. I'm going to have my colleague, Mr.
15 Fallon, for the benefit of the jurors and
16 everybody in the court, put up Exhibit No. 361.
17 This is a Cingular document that has previously
18 been referred to and, in fact -- and, in fact,
19 was already received.

20 ATTORNEY KRATZ: And just for the record,
21 Judge, as this is a document that includes telephone
22 numbers, we would very much appreciate that the
23 media not film at least this particular document.

24 THE COURT: I think the -- I don't think
25 the camera is aimed at the screen. Is there a

1 camera man back there? I guess it's really not
2 aimed at the screen since there is nobody manning
3 the camera. It doesn't seem to be aimed that way,
4 so I think we'll be okay.

5 Q. (By Attorney Kratz)~ Mr. Zimmerman, this
6 subscriber activity report, do you recognize this
7 exhibit, 361?

8 A. Yes, I recognize it.

9 Q. All right. Now, as a network engineer in the
10 technical support area, Mr. Zimmerman, have you
11 been asked not only to review this particular
12 report, but other reports that deal with the
13 telephone -- or excuse me, the wireless usage of
14 a young woman by the name of Teresa Halbach?

15 A. Yes, I have been.

16 Q. Let me first ask you, Mr. Zimmerman, after
17 October 31st, 2005, at or about 2:27 -- excuse
18 me, 2:41 p.m., have you been able to determine
19 whether or not there was any what's called
20 activity, regarding Ms Halbach's cellular
21 account?

22 A. I have not been able to determine whether there
23 was any activity on that account.

24 Q. All right. The question that I have of you, and
25 I asked it in a negative way, so let me come

1 right out and ask you, was there any activity in
2 Ms Halbach's account after that time?

3 A. Not from the mobile itself, no, there was no
4 activity.

5 Q. All right. Now, is there anyway, Mr. Zimmerman,
6 from you, that is from technical support or as a
7 network engineer, to do determine why that might
8 be; in other words, although you can tell us that
9 there was no activity, are you able, just by
10 looking at records, to determine why a particular
11 account may be inactive?

12 A. Because there was no billing activity taking
13 place.

14 Q. All right. As an example, Mr. Zimmerman, if this
15 particular telephone, the cellphone of Ms
16 Halbach, had been used, even for something like
17 checking a voice mail account, would that be an
18 activity that you, through your review of the
19 records, would have been able to see?

20 A. Yes, that's correct.

21 Q. And, again, after -- sometime after 2:20 --
22 excuse me, 2:21 p.m. -- excuse me, 2:41 p.m., on
23 the 31st of October, it's your testimony that
24 there was no such activity; is that correct?

25 A. That is correct.

1 Q. All right. Next, Mr. Zimmerman, like to clear up
2 one last area and that is Exhibit No. 372. You
3 said that you may not know it as such, or at
4 least as a document that is marked as a exhibit,
5 or a State's exhibit, but do you have in front of
6 you a four page document which identifies various
7 voice mails that, again, are specifically related
8 to Teresa Halbach's account?

9 A. Yes, I have this document in front of me.

10 Q. And I would just ask you, as we discuss this, I
11 would ask you to consider that four page document
12 as Exhibit No. 372 if, in fact, we refer to it as
13 such; are you able to do that for us?

14 A. Yes, I am.

15 Q. All right. Thank you.

16 ATTORNEY KRATZ: Mr. Fallon, if you would
17 be so kind as to zoom into any of the messages; it
18 doesn't make any difference to me.

19 Q. (By Attorney Kratz)~ Let's just look at message
20 No. 2, the second message down, at least on our
21 screen. Mr. Zimmerman, on page number one of
22 that exhibit, do you see something called message
23 number two?

24 A. Yes, I see it.

25 Q. Now, within that message, or within the details

1 of that message, there is some jargon that is
2 used that I would ask you to tell our jurors what
3 it means. First of all, when something says
4 received, do you see where -- where you see that
5 the message or the voice mail was received?

6 A. Yes, I see that.

7 Q. Could you describe for the jurors, what does it
8 mean to, at least on this document, that a voice
9 mail was received?

10 A. That is the time and date stamp that the message
11 was recorded into the voice mailbox and the voice
12 mail system.

13 Q. When it says 11/2/2005, is that the date that a
14 voice mail for Ms Halbach was actually received
15 into her voice mailbox?

16 A. Yes, that's correct.

17 Q. And what does 14:28 mean?

18 A. That correlates to 2:28 p.m. in the afternoon.

19 Q. All right. Is there anything within that detail
20 of that message, or, in fact, any of the 18
21 messages that we are going to see in Exhibit No.
22 372, that describes for you the time or date when
23 that message may have been retrieved by somebody?

24 A. There is no such data in this report.

25 Q. Now, there are two other terms that I would ask

1 you to identify for us. First of all, what is an
2 unopened message?

3 A. It is simply a message that has not been saved.
4 And one can draw the conclusion that it was
5 either listened to or skipped while the playback
6 was taking place.

7 Q. And once again, when a message is not saved, that
8 is, whether it's been listened to or skipped, or
9 not, does that tell us anything about when that
10 message might have been retrieved or listened to?

11 A. No, that does not tell us anything about that.

12 ATTORNEY KRATZ: Ask Mr. Fallon to turn to
13 page two, if he would, about two thirds of the way
14 down the page.

15 Q. And, Mr. Zimmerman, I ask you to look at that as
16 well. It appears to say number of unopened
17 messages, eight; do you see that?

18 A. Yes, I see that.

19 Q. Can you describe for jury what that means?

20 A. That is the total count of messages that are
21 marked unopened, that have not been saved in the
22 mailbox.

23 Q. Now, other than unopened messages, there is
24 something that is called an old message; is that
25 correct?

1 A. That's correct.

2 Q. What is an old message?

3 A. And old message refers to a message that had been
4 saved in the mailbox.

5 Q. If a message has been saved in the mailbox, are
6 you able, as a network engineer in the technical
7 support area, able to render an opinion as to
8 whether that has physically been listened to?

9 A. It has. Yes, I can render an opinion that it has
10 been listened to, at least partially and most
11 likely entirely.

12 Q. All right. And is there a manual or some human
13 component to that which requires that message to
14 be saved?

15 A. Yes, there is, one must interact via the keys on
16 their handset or telephone.

17 ATTORNEY KRATZ: I would ask Mr. Fallon to
18 turn to the last page, that's page four of this
19 exhibit. That's Exhibit No. 372.

20 Q. Ask you, also, Mr. Zimmerman, to look at that on
21 page four, ask if you can tell us how many old
22 messages was there that were related to Ms
23 Halbach's voice mail?

24 A. There are 10.

25 Q. Of those 10 retrieved or saved messages, is there

1 any way for your company, and for you, as it's
2 representative and network engineer, to tell this
3 jury when those messages may have been listened
4 to?

5 A. I cannot determine when exactly these messages
6 were listened to, no.

7 Q. Mr. Zimmerman, with a Cingular voice mail
8 account, is it possible to retrieve or listen to
9 a voice message remotely, that is, from a phone
10 other than the cellphone for which that voice
11 mail attaches to?

12 A. Yes, that is possible.

13 Q. Could you tell the jury how that works, please?

14 A. Well, someone can call either the mobile number
15 itself from, say a land line telephone, as the
16 voice message begins playing the greeting, one
17 can interrupt that greeting with a key press and
18 enter that mailbox's password and gain full
19 access to the mailbox just as if they were the
20 subscriber.

21 Q. So if --

22 A. I'm sorry.

23 Q. Go ahead.

24 A. Besides calling the mobile number itself, they
25 can also call the voice mail system number, there

1 is a phone number associated with the voice mail
2 system, and that will simply place them into a
3 generic greeting, in which they can enter the
4 mobile 10 digit number to access the mailbox that
5 way.

6 Q. So if I understand correctly, if somebody wanted
7 to access Ms Halbach's voice messages, remotely
8 that is, using a phone other than Ms police
9 Halbach's cellphone, they could do so either by
10 calling her phone number and putting in a pass
11 word; is that right?

12 A. That's correct.

13 Q. Or they could call the Cingular system itself and
14 enter a -- what would be a 10 digit number, as
15 well as the password number; is that correct?

16 A. That is correct.

17 Q. And, once again, if somebody knew the password,
18 if somebody knew or figured out a password for
19 this particular cellphone account, it wouldn't
20 necessarily have to be the owner or holder of
21 that account to retrieve those; is that fair?

22 A. That's correct.

23 ATTORNEY KRATZ: I think that clears up
24 those two areas and those few questions. Thank you,
25 very much, Mr. Zimmerman, and I will pass the

1 witness, Judge.

2 THE COURT: All right. Mr. Zimmerman, just
3 a second, I want to ask, are the members of the jury
4 able to hear okay? I had maintenance turn the fan
5 off; hopefully we won't have trouble breathing, but
6 I think for the duration of this witness' testimony,
7 it works better, Mr. Buting.

8 ATTORNEY BUTING: Yes, thank you, Judge.

9 **CROSS-EXAMINATION**

10 BY ATTORNEY BUTING:

11 Q. Mr. Zimmerman, can you hear me?

12 A. Yes, I can.

13 Q. Good afternoon, this is Jerome Buting. I'm one
14 of the defense attorneys for Mr. Avery, who's on
15 trial here today, okay?

16 A. Okay.

17 Q. If you could explain for me a couple of things, I
18 would appreciate it. First of all, when one
19 calls into a voice mail account like this one --

20 ATTORNEY BUTING: Mr. Fallon, could you put
21 that last page back up again, please?

22 Q. (By Attorney Buting)~ When one calls into the
23 voice mail and you get a message that says you
24 have, I don't know, 18 messages holding; is that
25 how it works?

1 A. It usually plays the number of messages you have
2 that are new.

3 Q. Okay. So the very first messages that come on
4 are the most recent messages; is that right?

5 A. That's correct.

6 Q. And if somebody hasn't checked their phone for a
7 while and 18 messages have built up into the
8 system, when you start listening to it, the first
9 time, does it play the most recent messages first
10 and go in reverse order, chronologically?

11 A. It will play the oldest message first.

12 Q. Okay. So it will start off with number one and
13 go, chronologically, up to 18; is that right?

14 A. Yes.

15 Q. So, in turning to Exhibit No. 372 for a moment,
16 to page two -- We're just putting it up on the
17 screen, bear with us. Okay. So on page two,
18 about two thirds of the way down, it says
19 incoming old messages; do you see that?

20 A. Yes, I do.

21 Q. And the date of that is October 31 of 2005, at
22 1:54 p.m., right?

23 A. The date for that particular message, that's just
24 below the heading, yes, that's correct.

25 Q. So if one was to call in after all of these 18

1 messages had built up, into the account, this
2 would be the first one that would play; is that
3 right?

4 A. That's not totally correct, no. Would you like
5 me to expand on that?

6 Q. Sure.

7 A. If there are new messages in the account, those
8 new messages will play in chronological order,
9 starting with the oldest message. Now, if there
10 are no new messages in the mailbox, then it will
11 begin playing the skipped or unopened messages
12 first.

13 Q. From the oldest to the most recent?

14 A. Yes, that's correct.

15 Q. Maybe you need to define for us what you mean by
16 new messages, if there's new messages received?
17 What does that mean?

18 A. A new message would be one that has not been
19 listened to at all.

20 Q. Okay. So, taking this account and these records,
21 if all 18 of these messages built up into the
22 account, without any of them having been listened
23 to, when one first called to access that account,
24 would it start at this message that we're looking
25 at on page 2 that says October 31, of 2005, at

1 1:54 p.m.?

2 A. Yes, I believe that's the oldest message in the
3 mailbox, so, yes, that would be accurate.

4 Q. Okay. And, then, from this record, you can tell
5 that someone did listen to that message, right?

6 A. That's correct, yes.

7 Q. And as well as, if you follow with me on this
8 document, message two, message three, turning the
9 page to page three of the document, all of those
10 up to the last one on page four --

11 ATTORNEY BUTING: Can you turn to that one,
12 Dean?

13 Q. And, sir, if you would turn to the last page,
14 this is the last one, message number 10, that
15 appears to be categorized as an old message; is
16 that right?

17 A. That's right.

18 Q. And the date and time of this one is
19 November 2nd, 2005, at 8:05 a.m.; is that right?

20 A. That's correct.

21 Q. So, from this record, then, does it appear to you
22 that 10 messages were opened and listened to, or
23 at least partially listened to, as you said,
24 between October 31st, that first one we looked
25 at, and this 10th one on November 2nd, at 8:05?

1 A. I can't determine when they were listened to, or
2 saved, based on these records.

3 Q. I understand. I'm not asking you that. What I'm
4 asking you is, is it clear from these records,
5 though, that those first 10 messages, in
6 chronological order, were opened and listened to?

7 A. Yes. Yes, that is apparent.

8 Q. Okay. And, then, turning to page one, again, of
9 this exhibit, to message number one, on this
10 exhibit for the next -- on page one and two,
11 there's a series of -- a sequence of eight
12 messages that appear to be under this category
13 that says incoming unopened messages; do you see
14 that?

15 A. Yes, I see that.

16 Q. Do I understand, then, that incoming unopened
17 means they have not been listened to?

18 A. No. No, they are actually marked in the system
19 as having been listened to, but not saved.

20 Q. And how would that be? How do you listen to it
21 and not save it?

22 A. And you simply don't interact with the handset.
23 You don't interact. You don't press any keys,
24 the save key, you don't press the save key, and
25 it will stay in this date. You can press say,

1 for instance, a pound key, to skip the message,
2 but listen to the next one, but as long as you
3 don't save them, they will stay in this date,
4 after listening to them.

5 Q. Okay. So when it says unopened messages, it
6 doesn't necessarily mean that they weren't
7 listened to at all?

8 A. No, it simply means that they have not been
9 saved.

10 Q. Okay. And can you tell that they have been
11 listened to?

12 A. At least partially. They have been marked as
13 listened to in the system, but if one message was
14 to begin playing and the skip key was pressed,
15 that would also mark it as having been listened
16 to, in the system.

17 Q. Okay. So how does this differ from the opened
18 messages?

19 A. The opened messages have been saved. The saved
20 key has been pressed, after listening to the
21 message in its entirety, or at least partially,
22 which marks the message as saved, also known as
23 hold.

24 Q. Okay.

25 (Court reporter couldn't hear.)

1 Q. Hold. And I'm trying to get clear the difference
2 here then. So these eight messages that are
3 marked as incoming unopened messages, it's your
4 testimony that they -- that someone did open them
5 and listen to them, at least partially, and then
6 either let them play all the way through and not
7 interact and save, or push some button that skips
8 to the next before they're completed?

9 A. Yes, that is my testimony.

10 Q. Okay. And when you do that, they are
11 automatically saved as incoming, unopened
12 messages.

13 A. Yes, they stay in the mailbox as -- as incoming
14 unopened messages.

15 Q. Okay. And, then, when one listens to them, and
16 at the end of each message, chooses to push a
17 button to save them, that's when they get
18 reclassified as incoming opened messages; do I
19 have that right?

20 A. They are actually classified as incoming old
21 messages.

22 Q. All right. Then, from this document, can we
23 determine, then, that the -- in chronological
24 order, the first 10 messages were opened and
25 saved, each one, manually, by pushing a button,

1 beginning on October 31st; is that right?

2 A. Yes.

3 Q. But the next eight were listened to or skipped,
4 but not saved.

5 A. That's correct.

6 Q. Okay. Thank you, very much. That's very
7 helpful. Can you tell from this -- from these
8 records, whether or not someone listened to any
9 voice mails and then erased them?

10 A. I cannot tell from this record that that has been
11 done, no.

12 Q. And can you tell, from her account, what the
13 capacity for messages would be before you get a
14 message that says mailbox is full?

15 A. There is a way to tell that on an active voice
16 mailbox via a different report. This report does
17 not show that information.

18 Q. Okay. From your experience, your years in the
19 business, if you look at these -- By the way, let
20 me go back for a second. Is the capacity
21 determined by, like the length of the call, or
22 the number of the calls?

23 A. It is considered -- There are limitations placed
24 on both the length of each message and, also, the
25 number of messages that can be stored in the

1 mailbox.

2 Q. Okay. And the length of these messages are also
3 indicated on this report, right? Each message
4 has a -- third line down from the top says audio,
5 colon, and then a number with parentheses (SEC),
6 like seconds?

7 A. Yes, that's correct.

8 Q. So, for instance, on page number one, message
9 number one, under unopened, where it says audio,
10 69 seconds, that means it was a 69 second phone
11 call?

12 A. That's correct.

13 Q. Okay. Looking, if you would, for a moment, then,
14 at the length of all of these calls combined
15 together, with a number being 18, do you have an
16 opinion about whether or not this would fill up
17 the capacity of this subscriber's voice mailbox,
18 these messages?

19 A. This appears that it would not have filled up the
20 full capacity of the mailbox.

21 Q. All right. And, so, if one was getting a message
22 on November 3rd, when calling this particular
23 phone number, that said mailbox full, would that
24 indicate to you that perhaps some messages that
25 we now -- or that some messages had been erased

1 that are not reflected on this Exhibit No. 372?

2 A. Well, if somebody heard that recording, that the
3 mailbox was full, on November 3rd, then I would
4 say, yes, at least one or more messages had to
5 have been removed before the new message at the
6 stop of this document was received.

7 Q. Okay. And there's no way to tell what date or
8 time in this sequence that message or messages
9 might have been, that was erased?

10 A. There is no way to determine that from this
11 record, no.

12 Q. Okay. And is there also no way to tell what
13 time, I assume, if someone called in, what time
14 it would have been erased?

15 A. Not from this record, no.

16 Q. I have just got a couple of other questions that
17 I don't know that you can answer or not, but they
18 have to do with trying to access one's account,
19 such as this one, online; are you familiar with
20 that process at all?

21 A. From the internet?

22 Q. Correct. From your cingularwireless.com?

23 A. From our company website, I'm not aware of a
24 function we have that allows that.

25 Q. Maybe it's not the company website, but are you

1 aware that customers can go online and access
2 their accounts and find out, you know, the call
3 activity, what their last phone calls were?

4 A. Yes, I am familiar with that feature.

5 Q. Okay. And to do that, does one have to have a
6 user name and a password set up?

7 A. Yeah. In order to access your billing account
8 records, yes.

9 Q. But if you have that information, a user name and
10 a password, you can then access the billing
11 records, which would give you, for instance, the
12 most recent call activity on that account; is
13 that right?

14 A. Yes, that's correct.

15 Q. If you don't have -- If you have the password,
16 but you don't have the user name, you are not
17 going to be able to access that account?

18 A. If you are unable to correctly put in the user
19 name, yes, that's correct, you will not be able
20 to access it.

21 Q. Okay. So you have to know both the user name and
22 the password to be able to access the account?

23 A. Yes.

24 Q. And the password for that account, online, may or
25 may not be the same as the password one enters to

1 access their voice mail account?

2 A. I believe that's true; however, I'm not
3 100 percent familiar with our online account
4 security --

5 Q. Okay.

6 A. -- requirement.

7 Q. All right. So, you don't know, for instance,
8 whether an online password requires numbers and
9 letters, whereas the phone, probably just
10 numbers?

11 A. That's correct, yes.

12 Q. Okay.

13 ATTORNEY BUTING: All right. Thank you
14 very much, sir. That's all I have.

15 THE COURT: Mr. Kratz, any redirect?

16 ATTORNEY KRATZ: No. Mr. Zimmerman has
17 been very helpful. Thank you, that's all the
18 questions I have.

19 THE COURT: Okay. Thank you,
20 Mr. Zimmerman, you may hang up at this time.

21 THE WITNESS: All right. Thank you.

22 ATTORNEY BUTING: Thank you, sir.

23 ATTORNEY KRATZ: One very brief witness,
24 Judge. It's very well right at this time, if I
25 could call him.

1 THE COURT: All right. We'll take one more
2 witness, then, before the break.

3 ATTORNEY KRATZ: We would recall Mike
4 Halbach to the stand, your Honor.

5 MICHAEL DANIEL HALBACH, called as a
6 witness 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 Michael Daniel Halbach, H-a-l-b-a-c-h.

11 DIRECT EXAMINATION

12 BY ATTORNEY KRATZ:

13 Q. And, Mike, please, remind the jurors how it is
14 that you know Teresa Halbach?

15 A. Teresa is my sister.

16 Q. And how are you employed, Mr. Halbach?

17 A. I work for the Green Bay Packers, in the Video
18 Department as a video assistant.

19 Q. As a video assistant with the Green Bay Packers,
20 are you -- or have you been provided with a
21 cellphone from the Green Bay Packers?

22 A. Yes, I have.

23 Q. Mike, upon learning of your sister's
24 disappearance, or that she was missing, did you
25 take any steps to try to ascertain where she was,

1 including trying to access her voice mail
2 messages?

3 A. Yes, I did.

4 Q. When did you do that, Mike?

5 A. My mom had called me that Thursday, November 3rd,
6 that afternoon, about Teresa, and wondering if I
7 knew where she was. And I didn't. So I had a
8 feeling that I might know her voice mail
9 password, because my mom had said that she had
10 tried calling and Teresa's in box was full.

11 So I guess what I was interested in was,
12 why it was full, or when the first new message
13 was from, was received in her in box. And so,
14 you know, that's why I did call her voice mail.

15 Q. And you said that you had called that on the 3rd
16 of November?

17 A. That's correct.

18 Q. Do you recall making that call, Mike?

19 A. I do.

20 Q. And were you able to accurately guess her
21 password?

22 A. Yes, it wasn't very difficult.

23 Q. Okay. How did you do that?

24 A. I had a feeling what it was, because of -- from
25 previous testimony, I said I did some website

1 design for her and her password for that included
2 her birthday, the month and day. And that was
3 successful in getting into her voice mail.

4 Q. She used her birth date as her password?

5 A. Yes.

6 Q. Mike, when you called your sister's voice mail on
7 the 3rd of November, do you recall what message
8 you first got? Now, I don't want to talk about
9 the messages that -- that were retrieved, but the
10 automated message; do you remember what that
11 said?

12 A. It just told me how many new voice mail messages
13 there were.

14 Q. Do you have a recollection of how many there
15 were?

16 A. I know that there were 18.

17 Q. So some automated voice said 18 new messages, or
18 something like that?

19 A. Correct.

20 Q. Did you listen to at least some of those messages
21 that day?

22 A. I did.

23 Q. Did you listen to all of them?

24 A. I believe that I did.

25 Q. Okay. Did you save some of them, or save all of

1 them, or skip them, or tell the jury what you
2 did?

3 A. Like I said, what was important to me was, I knew
4 that the first new voice mail message was from
5 Monday afternoon some time. So after hearing
6 that I was, you know, extremely worried just
7 because she checks her voice mail, you know, a
8 number of times every day. You know, she carries
9 her cellphone with her all the time. So that --
10 I mean, I was worried about that. So then I
11 listened to the first few messages, or I ended up
12 listening to all the messages, but as I listened
13 to the first half or so, I would save them when I
14 was done with them. And then we started -- or I
15 started to get into messages that were, you know,
16 later in the week, Tuesday night, Wednesday. And
17 at that point the messages just, you know, didn't
18 tell me anything about where Teresa was, just --
19 it was a lot of stuff about work and friends
20 calling about, you know, what they were going to
21 do that weekend. So I did begin to skip them.
22 But, yeah, I do believe I listened to at least
23 parts of all 18 messages. But I did not save --
24 I must have saved half of them.

25 Q. And the verification that it was you, in fact, on

1 the 3rd of November, that afternoon, that
2 accessed her voice mail; were you able to verify
3 that through the Green Bay Packers and through
4 their telephone records that could verify or
5 remind you that that was the time and date that
6 you accessed that voice mail?

7 A. I was able to, yes.

8 Q. All right.

9 ATTORNEY KRATZ: For this issue, that's all
10 I have of this witness, Judge. Thank you.

11 THE COURT: Any cross?

12 ATTORNEY BUTING: Very brief, Judge.

13 THE COURT: Go ahead.

14 **CROSS-EXAMINATION**

15 BY ATTORNEY BUTING:

16 Q. Mr. Halbach, did you -- as you listened to these
17 messages, you said you saved some and didn't save
18 the rest. You just kind of let them play and
19 skip through, hear a little bit and skip through
20 it; is that your recollection?

21 A. Right.

22 Q. Did you erase any of the messages?

23 A. I don't believe I erased any messages.

24 ATTORNEY BUTING: All right. Thank you.

25 THE COURT: Very well, you are excused.

1 All right. Members of the jury, we'll take our
2 afternoon break at this time. I will remind you,
3 again, not to discuss the case. And we'll see you
4 when the break is over.

5 (Jury not present.)

6 THE COURT: Counsel, we'll see you in 15
7 minutes then.

8 ATTORNEY BUTING: Thank you, Judge.

9 (Recess taken.)

10 (Jury not present.)

11 THE COURT: At this time we're back on the
12 record, outside the presence of the jury. Counsel,
13 is the State ready to call another witness?

14 ATTORNEY KRATZ: I am, Judge. I wanted to
15 place one thing on the record. In criminal cases,
16 Judge, it is permissible for testimony to be taken
17 by telephone. It does require, however, the
18 acquiescence of the defense. And the defendant, I
19 understood from Mr. Strang, prior to calling
20 Mr. Zimmerman, that, in fact, that procedure, for
21 the limited purpose of Mr. Zimmerman, was agreed to.
22 I simply wanted to make a record of that before the
23 close of this case.

24 THE COURT: All right. Mr. Strang.

25 ATTORNEY STRANG: Yes, Mr. Kratz is exactly

1 right. We discussed this before Mr. Zimmerman
2 testified. Given the nature of this witness, the
3 purpose of his testimony, the manner in which his
4 testimony was taken by telephone, we think
5 adequately satisfies both state and federal
6 constitutional rights to confrontation. We agreed
7 to the procedure, acquiesced in that, and have no
8 objection to it as it happened, as to that witness,
9 of course.

10 THE COURT: All right. And I should
11 indicate, the Court had been told in chambers
12 earlier that the parties had the agreement. I
13 probably should have put something on the record
14 before we had the witness testify, but the --
15 counsel let me know before the witness did testify
16 that they would be putting something on the record.

17 ATTORNEY STRANG: Right. It was discussed
18 before the witness testified.

19 ATTORNEY KRATZ: And the last matter that I
20 had for the record, Judge, yesterday, so that
21 Mr. LeBeau could find his way back to Virginia, or
22 do his travels, rather than calling Investigator
23 Wiegert, who would have packaged, and part of his
24 testimony would have included the packaging of the
25 vial of blood, which of course would have more

1 appropriately, or at least chronologically, had been
2 taken yesterday, the defense had agreed to taking
3 Dr. LeBeau out of order to accommodate that
4 schedule. I don't think that we need to tell the
5 jury that Investigator Wiegert, who is our next
6 witness, is taken out of order. I'm simply
7 explaining that for the jury that that was an
8 agreement between ourselves and Mr. Strang and
9 Mr. Buting.

10 THE COURT: Explaining it for the Court?

11 ATTORNEY KRATZ: I'm sorry?

12 THE COURT: You said you were explaining it
13 for the jury, you don't intend to tell the jury.

14 ATTORNEY KRATZ: I don't, Judge, I wanted
15 to place that on the record because this is a
16 witness who would normally have been called
17 yesterday, but with the acquiescence, once again,
18 and approval of Mr. Strang, we had agreed to call
19 Mr. Wiegert today and we intend to do that next.

20 THE COURT: Mr. Strang.

21 ATTORNEY STRANG: For the convenience of
22 Mr. LeBeau and for the State, Mr. Buting and I had
23 agreed yesterday that Mr. Wiegert could be taken out
24 of order, just as is happening. There is no
25 objection at all to it and there is no need for the

1 jury to be party to that agreement.

2 THE COURT: Very well. In terms of
3 scheduling, I know, again, from chambers, and the
4 Court has been meeting with the attorneys regularly
5 before we get started just to have some idea about
6 what the testimony for the day will be. Does the
7 defense intend to cross-examine Mr. Wiegert just on
8 the transmittal issue, or more broadly than that, I
9 know there was some discussion that he might be
10 called as part of the defense case?

11 ATTORNEY STRANG: No. I think, at least
12 the anticipation is, that we will just cover on
13 cross-examination here all that we have. I expect
14 to be able to finish that comfortably by 4:30, or
15 quite possibly before 4:30. And, you know, it could
16 happen that we recall him in the defense case, but
17 I'm not anticipating that at the moment.

18 THE COURT: Very well. We'll bring the
19 jury out at this time.

20 (Jury present.)

21 THE COURT: You may be seated. Mr. Kratz,
22 at this time you may call your next witness.

23 ATTORNEY KRATZ: Thank you. State will
24 call Mark Wiegert to the stand.

25 **INVESTIGATOR MARK WIEGERT**, called as a

1 witness herein, having been first duly sworn, was
2 examined and testified as follows:

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

5 THE WITNESS: Mark Wiegert, W-i-e-g-e-r-t.

6 **DIRECT EXAMINATION**

7 BY ATTORNEY KRATZ:

8 Q. Mr. Wiegert, tell us how you are employed,
9 please.

10 A. I'm an investigator with the Calumet County
11 Sheriff's Department.

12 Q. How long have you been a law enforcement officer?

13 A. All total, about 15 years, 14 with the Calumet
14 County Sheriff's Department.

15 Q. How long have you been an investigator?

16 A. Around five years, going on five years.

17 Q. And what are your general duties as a Calumet
18 County investigator?

19 A. We investigate all types of crimes from,
20 obviously the worst homicide, to burglaries,
21 thefts, sexual assaults, various nature of
22 things.

23 Q. So you have general investigative
24 responsibilities?

25 A. I do.

1 Q. With that occupation and with those duties,
2 sometime in early November of 2005, were you
3 informed of a missing persons investigation?

4 A. Yes, actually. On November 3rd our department
5 received a call from the Halbach family
6 indicating that they had some concerns about
7 their daughter and that she possibly was missing.
8 They did not know where she was. I did not take
9 the original call, one of our road deputies did
10 and then contacted me.

11 Q. Were you in charge of or what's known as the lead
12 investigator in that missing persons
13 investigation?

14 A. Yes, I was the one who received the call from the
15 road deputy. So at that point I was the lead
16 investigator on it, correct.

17 Q. Now, we have heard a great deal of testimony
18 about how that case developed thereafter. Let me
19 just ask you, though, if you remember the early
20 days of the missing persons investigation, that
21 is, the 3rd and 4th of November?

22 A. Yes, I do, in fact.

23 Q. Tell the jury, if you would, just the general
24 areas of investigative responsibility of those
25 first couple of days; in other words, what kinds

1 of leads were you following up on?

2 A. Well, any time you get a missing person
3 complaint, your first 24 to 48 hours are very
4 important, as we all know from watching TV. But
5 the first night when we initially got the phone
6 call, I initially met with the road officer who
7 had previously been at the Halbach residence or
8 had telephoned them. I'm not clear if she had
9 went there or telephoned them.

10 When she came in by me, she had already
11 talked to the Halbach's briefly. And then we
12 both went up to Teresa's residence where we met
13 with Karen and Tom Halbach, which would be
14 Teresa's parents. We also met with several of
15 her friends who had shown up at that time, and
16 also her roommate.

17 We did some brief interviews, basically,
18 to find out where she might have gone, if there
19 was any reasons, if there had been any
20 depression, any medication issues, anything like
21 that. We talked to the family. We talked to
22 Mr. Bloedorn, who would be the roommate. We
23 talked to a lot of friends who had arrived there.

24 We had also received a printout of some
25 phone calls, correction, a phone bill that --

1 Teresa's phone bill actually. So we had taken
2 that and tried to do some reverse directory
3 things to find out who some phone calls had been
4 made to. We also contacted *Auto Trader* because
5 we knew that she had worked for *Auto Trader*. And
6 they had given us some information, some
7 appointments that she was supposed to have on the
8 31st.

9 So we started following up on those type
10 of things on that Thursday night. We went as
11 long as we could on Thursday night, which I think
12 we worked till probably 11:30, maybe midnight or
13 so. We decided that we would meet back first
14 thing on Friday morning. I think we actually
15 came in early, around 7:00 in the morning.

16 That morning we sat down, myself, two
17 other investigators, and the sheriff, actually.
18 We sat down and put together kind of what we knew
19 at that point and decided that we would start
20 doing some interviews?

21 Q. Let me just stop you there, Investigator, because
22 I'm quite certain Mr. Strang would prefer I do
23 this more by question and answer. The 4th, that
24 is, the Friday, the 4th of November, did your
25 missing persons investigation continue?

1 A. Yes, it did.

2 Q. All right. And we have heard some of the details
3 of that missing persons investigation, but so
4 that I can move to the area of concern for why
5 you are being called at this moment as a witness,
6 the next day, that is, the 5th of November, were
7 you informed of and, in fact, did you participate
8 in a phone call from a Pam Sturm?

9 A. I did. You probably heard the phone call
10 earlier, in testimony. But we had received a
11 phone call at around 10:29 in the morning on that
12 Saturday from Pam Sturm, who had indicated that
13 she had located a vehicle matching the
14 description of Teresa's vehicle.

15 Q. Now, so that this jury understands, prior to that
16 phone call and, in fact, the prior 48 hours at
17 least, had you been in contact with Manitowoc
18 County authorities, specifically, a Detective
19 Dave Remiker?

20 A. Yes, among other people, I had been asking him to
21 do some things for us. We were out doing some
22 things, depending where the jurisdiction lied,
23 that's correct.

24 Q. On the 5th, then, on the morning of the 5th,
25 understanding that Ms Halbach -- or what was

1 suspected to be Ms Halbach's vehicle, was found
2 on the Avery salvage property itself, did you
3 agree to meet Detective Remiker and other law
4 enforcement officials out at that location?

5 A. Yes, actually, after we had gotten a phone call,
6 I had phoned Detective Remiker to let him know
7 that we had just received information that
8 Teresa's vehicle was possibly found.

9 So I immediately called Detective
10 Remiker, obviously, because it's in Manitowoc
11 County. I told Detective Remiker what I knew at
12 that time and told him that he probably should
13 get out there as soon as possible and that we
14 would be on our way out there to assist him in
15 any way we could.

16 Q. All right. Now, as we have heard for the last
17 four weeks, investigative efforts continued from
18 the 5th of November, really, up through mid
19 February of this year, 2007; is that correct?

20 A. Absolutely, yes.

21 Q. And as you sit here today, Investigator Wiegert,
22 if an investigative lead, or if there was
23 something relevant in this case, would you act
24 upon that, even during the trial?

25 A. I would, or I would have somebody else do it for

1 me, yes.

2 Q. Let's talk about blood planting, all right? Were
3 you aware, or let me ask it this way, when, if
4 ever, were you first made aware that the defense,
5 that is, somebody to my left, would have alleged
6 or was going to allege that there was going to be
7 a law enforcement officer involved in planting
8 some evidence in this case?

9 A. Specifically, in December of '06, we had gotten
10 word that Mr. Avery had indicated that the blood
11 had been planted by two specific officers.

12 Q. All right. Let's -- Let's -- Let's back up a
13 little bit. The planting of evidence and the
14 planting of a specific blood vial, do you
15 understand that to be two different issues?

16 A. Yes, sir.

17 Q. All right. Let's break that into its -- its
18 components then. When were you first informed
19 that a vial of Steven Avery's blood existed
20 anywhere within the confines of Manitowoc County?

21 A. Again, that would have been back in December of
22 '06 is when I first was made aware of that.

23 Q. Now, before December of '06, were you asked to
24 check into that very possibility?

25 A. Absolutely. We, as part of the investigation

1 and, again, as you had indicated before, the
2 defense had made some -- there were some comments
3 made about planting issues. So we did the best
4 we could at that time. We searched in all the
5 places which you would logically think that there
6 might be some DNA, blood, things like that.

7 I believe it was the April of '06, I had
8 contacted Detective Remiker at Manitowoc County
9 and said, this is what I'm hearing, what I need
10 you to do is check your evidence at the sheriff's
11 department, tell me, do you have any type of
12 blood, DNA, things like that.

13 Detective Remiker reported back to me.
14 He indicated that they had fingernail scrapings,
15 hair samples, and DNA swabs, from Mr. Avery. And
16 as you know, the DNA swabs have already been
17 introduced here. He had indicated DNA swabs were
18 still sealed by the Crime Lab.

19 ATTORNEY STRANG: This is hearsay, your
20 Honor, objection.

21 ATTORNEY KRATZ: It's not -- If
22 investigative bias is, in fact, still going to be
23 part of the defense in this case, Judge, it is not
24 for the truth of the matter, but for what this lead
25 investigator did in response to that.

1 THE COURT: As I understand it, it's being
2 offered to explain why the officer acted as he did,
3 not because of the truth of the matter. He can
4 testify as to his understanding of what the state of
5 the facts were. At some point, I suppose that there
6 may be more detail than is necessary but, generally,
7 I will allow him to answer the question.

8 Q. (By Attorney Kratz)~ And I will just ask you,
9 Investigator, if you can withhold saying what
10 somebody else might have been said; in other
11 words, quoting another officer, we would very
12 much appreciate that. But what you learned, is
13 what I'm interested in.

14 A. Sure.

15 Q. All right. Were you able, then, to determine,
16 back in April of 2006, that Manitowoc County,
17 that is, the law enforcement officials within
18 Manitowoc County, did not, in fact, have Steven
19 Avery's blood?

20 A. Yes, they did not have Steven Avery's blood.

21 Q. Were you asked, and were you able to verify that
22 any other DNA sample, like a buccal swab that we
23 have heard about, the Q-tip swab, that they were
24 in the possession of Manitowoc, were in a sealed,
25 that is, in a non-contaminated, pristine, if you

1 will, form?

2 ATTORNEY STRANG: This, again, it's not
3 relevant if it's not for the truth. So there's
4 hearsay and confrontation objections.

5 THE COURT: Well, at this point I'm going
6 to sustain the objection on the ground the question
7 is leading. For the purpose for which the Court
8 understands it's being offered, I don't believe it's
9 irrelevant.

10 Q. (By Attorney Kratz)~ All right. Could you tell
11 me, regarding buccal swabs, what, if anything,
12 you were able to determine?

13 A. I determined that there were buccal swabs at the
14 custody of Manitowoc County Sheriff's Department,
15 located in their evidence room, and that those
16 buccal swabs were packaged and sealed.

17 ATTORNEY STRANG: Same objection.

18 THE COURT: I think the witness has to
19 testify in terms of his understanding, rather than
20 what he learned. I'm not sure, Mr. Strang, if that
21 addresses your objection or not.

22 ATTORNEY STRANG: It would. That's right,
23 as long as it's clear that he's relying on
24 information given to him by others and we're just
25 learning this to explain why Investigator Wiegert,

1 then, acts on what others are telling him.

2 THE COURT: And I think taking into account
3 the validity of Mr. Strang's objection, I will
4 instruct the jury at this point, that the answers
5 this witness is giving are relevant to the extent
6 they deal with his motivation for acting as he did,
7 not for the truth of any of the information which
8 may have been passed on to him.

9 ATTORNEY KRATZ: Thank you, Judge.

10 THE COURT: Mr. Strang, does that address
11 your concern?

12 ATTORNEY STRANG: Yes, for the moment it
13 does. Thank you.

14 THE COURT: All right. Mr. Kratz, you may
15 proceed.

16 ATTORNEY KRATZ: Thank you.

17 Q. (By Attorney Kratz)~ The same inquiry, or the
18 same satisfaction to yourself and the prosecution
19 team, were you asked to determine whether any DNA
20 samples were in the custody of the Wisconsin
21 State Crime Lab?

22 A. I was.

23 Q. And were you able -- were you able to make that
24 determination?

25 A. Yes, I did contact the State Crime Lab. And we

1 actually spoke with, I believe it was Sherry
2 Culhane, and she informed me and indicated to me
3 that they did not have any blood from Steven
4 Avery, at the Crime Lab.

5 Q. All right. Satisfying yourself that law
6 enforcement didn't have any blood, that the Crime
7 Lab didn't have any blood -- By the way, did you
8 inquire, or make any other inquiries, about
9 Steven Avery's blood, of anyone?

10 A. I don't know that I made any other inquiries at
11 that point.

12 Q. Okay. Let me ask you, Investigator Wiegert, at
13 that point in the investigation, this is April of
14 '06, or the spring of '06, who were the law
15 enforcement agencies heading up or leading this
16 investigation?

17 A. The Calumet County Sheriff's Department and the
18 Department of Criminal Investigation.

19 Q. At that time, in the spring of '06, did you have
20 any reason to believe that there was a vial of
21 Steven Avery's blood, or any biological material,
22 within the Clerk of Court's Office in Manitowoc
23 County?

24 A. No, I would have no way of knowing that. I don't
25 routinely check Clerk of Court's Offices for

1 substances such as that. I mean, to my
2 knowledge, at that time, it would be stored
3 somewhere in another facility, like a law
4 enforcement facility, for several reasons. It's
5 biological hazard, number one. I wouldn't think
6 that would just be where it was.

7 Q. Then, back to my original question, when was the
8 first time that you were informed that the
9 Manitowoc County Clerk of Court's Office had a
10 vial of blood in their possession or control?

11 A. On or about December 13th or 14th of 2006.

12 Q. All right. After being informed of the existence
13 of a blood vial in Manitowoc County, in the Clerk
14 of Court's Office, were you asked to investigate
15 the facts and circumstances regarding that blood
16 vial?

17 A. Yes, we were.

18 Q. Were you asked, Investigator Wiegert, and, in
19 fact, did you determine who had access to the
20 Manitowoc Clerk of Court's Office, including who
21 had the keys, who had the codes to the entrance
22 doors; generally, in fact, not just generally
23 but, specifically, who had access to that
24 particular file?

25 ATTORNEY STRANG: This goes well beyond any

1 relevant purpose and is both -- presents both
2 hearsay and confrontational problems here. There
3 would be no other reason for offering this other
4 than to suggest the truth.

5 THE COURT: Mr. Kratz?

6 ATTORNEY KRATZ: I may agree, that's not
7 relevant, at least after yesterday, but if this is
8 still going to be part of the defense, this is
9 clearly relevant to the facts in this particular
10 case.

11 THE COURT: I'm going to sustain the
12 objection. I don't know that this witness is the
13 one to answer that. I'm going to sustain the
14 objection.

15 Q. (By Attorney Kratz)~ All right. Let me jump
16 ahead, then, Investigator Wiegert. Sometime in
17 mid December, were you, for the first time,
18 invited to actually view this vial of blood?

19 A. Yes, on December, I want to say 14th, I went to
20 the courthouse with people from the prosecution
21 side and several members of the defense. And
22 that was the first time I viewed that blood.

23 Q. And we saw a videotape, I don't know if it was
24 yesterday or the day before, that the defense had
25 showed, did that accurately depict the opening of

1 that particular packaging and the first time that
2 you saw that vial?

3 A. Yes, it did.

4 Q. Investigator Wiegert, sometime thereafter, were
5 you asked by the prosecution team, after a court
6 order had been issued, to actually package up, or
7 take that vial of blood and do something with it?

8 A. Yes, pursuant to the Court's order, I went to the
9 Clerk's Office in Manitowoc, at the courthouse.
10 I believe that was on February 5th, my
11 recollection, of this year. I was -- I then
12 provided the Clerk with the copy that the Court
13 had provided me, for release of the blood vial.
14 I took the blood vial into my possession and
15 transported it back here to Calumet County
16 Sheriff's Department.

17 Q. Now, February 5th of this year, just to put this
18 in perspective, is the same time that this trial
19 was starting; is that your understanding?

20 A. Yes.

21 Q. All right. Investigator Wiegert, as you are
22 putting your gloves on, you can do two things at
23 once, I'm going to have you look at the large
24 screen, Exhibit 471, which has already been
25 admitted in this case, is a photograph; do you

1 recognize that?

2 A. Yes, I do.

3 Q. What is that?

4 A. That's a picture that was taken, I can't say when
5 the picture was taken, probably one of the ones
6 that I took on -- in December, actually, when we
7 first opened that blood vial package, would be my
8 guess.

9 Q. When you saw that blood vial, as was shown in the
10 videotape, did the 10 year old vial of blood
11 still appear to be in non-coagulated, or in
12 liquid form?

13 A. Yes, we actually -- as you seen in the video
14 yesterday, we actually took the styrofoam box and
15 moved it back and forth and you could see the
16 blood actually move in there.

17 Q. All right. Moving on to February 5th, tell the
18 jury what you did?

19 A. On February 5th, when I picked the blood vial up,
20 and I transported it back here to the Sheriff's
21 Department, I took it down to our evidence room
22 where I un-packaged it from that package. And I
23 took the vial out and the vial was placed,
24 actually, into this red container that you see
25 right here. Inside this red container there is

1 another glass container. I first put it inside
2 that glass container and then it went inside this
3 red container. Then it was sealed, evidence
4 taped by me, and initialed by me.

5 Q. Now, Dr. LeBeau, I think, testified about that
6 particular exhibit and that that's a kind of
7 packaging that you, even in law enforcement,
8 don't typically see, is that right?

9 A. No, this was actually provided to us by the FBI,
10 the red packaging here.

11 Q. All right.

12 THE COURT: Mr. Kratz, I think the exhibit
13 number should be placed on the record.

14 ATTORNEY KRATZ: Right.

15 Q. (By Attorney Kratz)~ Is that Exhibit 478?

16 A. It is.

17 Q. Were you informed then, Investigator, that at
18 some point, at least at some point after
19 February 5th, that the FBI, the federal law
20 enforcement investigative body, was going to
21 attempt to do some analysis of that vial of
22 blood?

23 A. Yes, if I could just step back a second. On
24 February 5th, I was the one that turned this over
25 to the FBI. And then we did learn that they

1 would be attempting to do some testing for us.

2 Q. All right. And you were in court yesterday, you
3 heard the results of that testing; is that right?

4 A. Absolutely, I did.

5 Q. Now, notwithstanding the possibility of getting
6 some results from the FBI, had you and
7 Investigator Fassbender, as lead investigators,
8 performed another or a parallel investigation as
9 to the allegations of planting, specifically, by
10 Lieutenant Lenk and Sergeant Colborn?

11 A. Absolutely. I mean, I felt -- I can't speak for
12 Mr. Fassbender, but I felt it was our duty, that
13 we had to do everything we could to find out, one
14 way or another, whether it was true or it wasn't
15 true. And we did do that.

16 Q. And, yesterday, there was a scientific opinion
17 that was offered, without going into the
18 investigative efforts that you did, was that
19 investigation completed, your parallel
20 investigation?

21 A. To the best that we could, yes.

22 Q. You said that you packaged that vial yourself and
23 you provided it to the FBI. Could you just
24 explain, just briefly, and I'm almost finished
25 with you, Investigator, but just briefly, the

1 transmittal protocol, that is, how evidence gets
2 from you, in this case, to the FBI?

3 A. Sure. What we do is we contact the most local
4 FBI office. In our case here, that is the Green
5 Bay office. And in order for something to be
6 submitted to their lab, it has got to go through
7 the local office.

8 Things actually go from the local
9 office, in this case, Green Bay. They have to go
10 from there to Milwaukee, and there they are --
11 put their own labels on, it's packaged and things
12 like that in Milwaukee, and then it goes out to
13 Virginia. That's the only way we're allowed to
14 submit things, through that chain.

15 So what I did is, I had turned it over
16 to an agent by the name of Agent Hammond, from
17 Green Bay. And then I believe it went to
18 Milwaukee from there.

19 ATTORNEY KRATZ: For this purpose, Judge,
20 that is all the questions I have of Mr. Wiegert.
21 Thank you.

22 THE COURT: Very well, Mr. Strang, are you
23 going to be doing the cross?

24 ATTORNEY STRANG: I am.

25 **CROSS-EXAMINATION**

1 BY ATTORNEY STRANG:

2 Q. Judge, I just have a couple questions. I

3 thought -- I don't usually like to do this,

4 but --

5 A. Do I keep these on?

6 Q. I'm not going to tell a guy how to dress, do as

7 you please. Usually I would start at my own

8 place, but I just thought, I was curious with the

9 last couple questions you were asked. Are you

10 saying that under the rules of the FBI you

11 weren't allowed to send that directly to the lab?

12 A. That's my understanding, that I can't send it

13 directly to Virginia.

14 Q. Okay. So you had to give it to an FBI agent in

15 Green Bay?

16 A. Who was the closest agent, correct.

17 Q. Right.

18 A. To transport down.

19 Q. Closest, what they call a resident office?

20 A. Yes.

21 Q. And then he wasn't allowed to send it to the lab,

22 he had to send it to the Milwaukee office --

23 A. Yes.

24 Q. -- of the FBI?

25 A. I'm sorry. My understanding is that they do the

1 packaging in Milwaukee and things go out from
2 there.

3 Q. All right.

4 A. So Milwaukee is probably the regional office.

5 Q. Okay. So the FBI Green Bay sent it to FBI
6 Milwaukee and they repackaged it in some fashion
7 then. Were the Milwaukee people allowed to send
8 it to the lab?

9 A. It did go to the lab from Milwaukee.

10 Q. Any idea how long this all took?

11 A. I can tell you it made it to Milwaukee the same
12 day I turned it over to the agent. From there, I
13 have no knowledge of that.

14 Q. You prevailed on the FBI agent in Green Bay to
15 drive it right down to Milwaukee?

16 A. Yes, sir.

17 Q. All right. Let's go back, because you are the
18 initial lead investigator, as you said, in this
19 case, obviously, and then sort of split your
20 duties as lead investigator with Mr. Fassbender?

21 A. That's correct.

22 Q. And is it -- If we call you a case agent on this
23 case, is that a term you are familiar with?

24 A. You can call me that, sure.

25 Q. Okay. I mean, is that a term you use?

1 A. Generally not a term that we use.

2 Q. Lead investigator?

3 A. That's probably.

4 Q. That works for me, so.

5 A. Sure.

6 Q. So the two of you shared those duties because

7 this was a larger investigation?

8 A. Yes, sir.

9 Q. But you had it first, in the sense that the

10 person who took the call, she wasn't in the

11 business of investigation. She wasn't in your

12 Investigation Bureau, so she quite properly

13 referred it to an investigator?

14 A. That was correct, she was a road officer.

15 Q. You actually went out to Teresa Halbach's home

16 that very first evening, I don't know, I don't

17 remember now, I'm not sure it really matters, but

18 6, 6:30, something like that?

19 A. Somewhere in that area, yes.

20 Q. Met with Halbach family members, as you said, and

21 friends?

22 A. That's correct.

23 Q. Now, this was, at that point, a missing persons

24 investigation and a missing persons

25 investigation, I guess, only at that point.

1 A. Yes.

2 Q. You were able to, I guess not you personally, but

3 you watched others gain access to the Cingular

4 account on the website that we have heard about?

5 A. Don't know that I watched them, I know I was

6 provided with a printout that they had gotten off

7 the computer.

8 Q. Okay. All right. Did you personally try to call

9 Teresa's cellphone?

10 A. I did, as well as I believe the initial officer

11 had tried calling before me. But, yes, I did.

12 Q. Okay. And may not have been the only officer who

13 did that?

14 A. Probably not.

15 Q. Did you get a message that Ms Halbach's voice

16 mailbox was full when you called?

17 A. Trying to recall the exact -- I got the

18 impression it was full. And I don't remember

19 what it says, but I had the impression that it

20 was full, yes. I don't exactly remember the

21 verbiage that it says --

22 Q. Right. Okay.

23 A. -- but, yeah.

24 Q. The understanding you came away with was that it

25 was -- the mailbox was full?

1 A. I believe so, yes.

2 Q. Did you -- Do you think you made that call the
3 evening of November 3, that first night?

4 A. I think I did, to the best of my recollection.

5 Q. You didn't listen to any voice mail messages?

6 A. I did not.

7 Q. You certainly didn't erase any voice mail
8 messages?

9 A. I did not.

10 Q. Okay. Now, what -- what did happen is, while you
11 were still at Ms Halbach's home, you got a call
12 from Lieutenant James Lenk?

13 A. Eventually I did, however, there were some things
14 that happened before that. I had made the
15 initial call to Manitowoc County.

16 Q. Talked with Sergeant Colborn and Detective
17 Remiker, I'm not sure which order?

18 A. Initially, I called dispatch. They had Sergeant
19 Colborn call me back. And then later that
20 evening, I believe, I probably spoke with Remiker
21 and Lenk, later that evening.

22 Q. Okay. And it was Lenk who called you?

23 A. Yes, he did call me.

24 Q. You -- You know, just sort of get this out of the
25 way. You, at that point, had no idea that Mr.

1 Lenk and Mr. Colborn had had their depositions
2 taken in the civil lawsuit that Steven Avery had
3 brought?

4 A. No, I would have no reason to know that.

5 Q. And you didn't learn that until some time last
6 summer, summer of '06 probably?

7 A. Yes, that's correct.

8 Q. Now, one of the things you were doing that first
9 night, November 3, was trying to, you know, get a
10 handle on who were the close people in Ms
11 Halbach's life, so to speak?

12 A. Well, among other things, we wanted to know,
13 obviously, who her friends were and what kind of
14 family she had. Because I didn't know Teresa --

15 Q. Sure.

16 A. -- at that time. Didn't know her family at the
17 time. So I wanted to know who her family was,
18 who her friends were, among other things, like
19 where she might have went, you know, follow the
20 last 24 hours, something like that.

21 Q. Exactly, who would be likely to hear from her
22 frequently, what her circle of friends was, what
23 her business circle was, that kind of --

24 A. That's correct.

25 Q. -- thing? And what you try to do in a missing

1 persons investigation is figure out where we
2 think, you know, as best as we can find out,
3 where do we think this person was last seen and
4 last heard from and then let's try to work from
5 there?

6 A. That's true. It's more of a process of
7 elimination --

8 Q. Sure.

9 A. -- than anything, at that point when you have
10 some -- You're a broad perspective at this time
11 and you hope to narrow that down.

12 Q. Okay. And, so, in addition to family members and
13 friends, you learned something about her business
14 life, if you will, Tom Pearce and the photography
15 business?

16 A. Yeah, I had learned -- I'm not sure when I
17 learned it, but I learned, eventually, that she
18 had a business up in Green Bay, a photography
19 business in Green Bay.

20 Q. And then the *Auto Trader* freelance work --

21 A. Yes.

22 Q. -- or part time commission work that she did?

23 A. Right.

24 Q. Okay. And, then, you know, sort of her social
25 circle, which would include, obviously, family

1 members, with a close family like this, and also
2 friends who aren't family members.

3 A. Yes.

4 Q. She had a roommate, Scott Bloedorn?

5 A. That's correct.

6 Q. You were interested in learning whether these
7 were just people sharing a house or whether there
8 was some romantic linkage between the two of
9 them?

10 A. I wouldn't say initially. Initially, we were
11 concerned about where she might be. It wasn't my
12 concern, initially.

13 Q. Sure. But, I don't mean necessarily initially,
14 but sort of in the early steps, one would try to
15 ascertain, does this person have a boyfriend or,
16 you know, who is close --

17 A. Sure.

18 Q. -- to her?

19 A. Absolutely.

20 Q. So that -- that was something you pursued a
21 little bit as to Mr. Bloedorn, what's the nature
22 of his relationship as a roommate?

23 A. Sure.

24 Q. You learned about another fellow named Bradley
25 Czech, that first night, I think that's

1 C-z-e-c-h? Is that --

2 A. I believe that's correct.

3 Q. Okay. He was an acquaintance of Ms Halbach, you

4 learned that evening?

5 A. Yes.

6 Q. Pursued whether there was a romantic --

7 A. I guess I have to step back for a second. I

8 don't think it was that evening, I think it was

9 the next day.

10 Q. Okay. Fair enough.

11 A. My recollection.

12 Q. You know, and I'm -- if it's easier for you, we

13 can work with November 3 and November 4 together?

14 A. That's fine.

15 Q. Okay. Early on?

16 A. Sure.

17 Q. While this was a missing persons investigation.

18 So you learned about Mr. Czech?

19 A. Yes.

20 Q. Okay. And were you able to, you know, learn what

21 his connection was to Ms Halbach, at least in the

22 early stages of this investigation?

23 A. I determined that it was both a business and a

24 personal relationship.

25 Q. All right. And did you take any steps to pursue

1 that -- that aspect of the investigation further?

2 A. I spoke with Mr. Czech, if that's what you are
3 asking, yes.

4 Q. Okay. And that was early on?

5 A. I believe that was on Friday, the 4th.

6 Q. Would that have been the last time, to your
7 knowledge as the case agent, that an interview
8 was pursued with Mr. Czech?

9 A. You know, without reviewing 1,080 some pages of
10 just my reports, by mine I mean Calumet County
11 reports, I'm not willing to say that.

12 Q. And that's just --

13 A. That's just Calumet's reports. There's probably
14 6, 7, 800 of DCI reports, so I haven't memorized
15 them all.

16 Q. No, neither have I. And let's sort of pause on
17 that, and just to give this jury some
18 understanding of, you know, of the basic police
19 work here. When you say your reports, the way
20 the Calumet County Sheriff's Office works is that
21 you folks really just sort of run a continuous
22 flow of reports, with one reporting officer
23 adding on, essentially, to the foot of the
24 previous reporting officer's report?

25 A. No, I wouldn't classify it that way. I would say

1 numerically we do. I mean, if I have five pages
2 of report and another detective comes in on the
3 same case, it may start at number six --

4 Q. Right.

5 A. -- but his is not included in my report. His is
6 a separate report, obviously.

7 Q. Yes, that's exactly right, but the page number is
8 sequential?

9 A. Yes.

10 Q. So, when you say the Calumet County Sheriff's
11 Office report here is about 1,080 pages,
12 that's -- that's what it is, pretty close to
13 that, right up today?

14 A. Yeah, I would say it's in that range.

15 Q. And some of that you have actually authored, some
16 of that others have authored.

17 A. Certainly.

18 Q. But it just runs sequentially?

19 A. Numbers, yes.

20 Q. Right. And so there's just a huge amount of
21 preparation of basic police reports that's gone
22 on in this case, in your department?

23 A. Absolutely.

24 Q. You have heard me cross-examine others about the
25 purpose of police reports and, you know --

1 A. Yes.

2 Q. -- the training that goes into that. And I'm not
3 going to repeat that, but that's what you folks
4 have done?

5 A. Yes.

6 Q. And, then, the DCI, Mr. Fassbender and others
7 working for the DCI, have done sort of a parallel
8 reporting process, correct?

9 A. They have done their own reporting process. I
10 guess you could call it parallel, sure.

11 Q. Right. And they number their reports in sequence
12 rather than paginating them in sequence. But
13 it's the same idea that it's -- it's a whole run
14 of hundreds of pages of reports?

15 A. Yes.

16 Q. And so, at least as you sit here today, I guess
17 what you can say is that Bradley Czech, you sort
18 of talked to him and sort of set him aside pretty
19 early on in the investigation, so to speak?

20 A. Well, if I could preface that answer, we talked
21 to a lot of friends and acquaintances in a two
22 day period, among other investigative things we
23 were doing.

24 Q. Right.

25 A. Doesn't mean they were included, excluded, at any

1 point. It just means we got basic information
2 and we could always come back to those people if
3 we needed to do that, for whatever reason.

4 Q. Right. Basic information, name, date of birth,
5 address, phone number, how do we find this
6 person?

7 A. Probably a little more than that. Have you seen
8 Teresa? When was the --

9 Q. Right.

10 A. -- last time you saw Teresa --

11 Q. I know.

12 A. -- things like that.

13 Q. I'm just saying as a starting point.

14 A. Certainly.

15 Q. You get the information so you can come back to
16 them.

17 A. Yes, sir.

18 Q. And then it's, what's your relationship, have you
19 seen her, when did you last talk to her, that
20 kind of stuff?

21 A. Correct.

22 Q. Okay. And so Czech and Bloedorn fell into that
23 category early on and then you had that in case
24 you needed to go back to it.

25 A. Yes. And, actually, I know, again, I can't say

1 for sure Czech, but I know Bloedorn had been
2 talked to another time --

3 Q. Mm-hmm.

4 A. -- things like that, during the course of this.
5 But you are correct, but that's how we do every
6 missing persons complaint.

7 Q. Okay. And in this one, as you work back, you
8 learned that Ms Halbach had some plans, actually,
9 for Saturday night, October 29, the Saturday
10 before?

11 A. I believe so.

12 Q. Halloween party or something like that?

13 A. My recollection, yeah, there was a holiday party
14 type. I think maybe in Green Bay, but I don't
15 recall without reviewing that report.

16 Q. Right. And that's my recollection too. And as I
17 sit here thinking of all these reports you talked
18 about, I can't think of anyone who she was seeing
19 at that party, from whom you have ever heard?

20 A. Again, without going back and looking at all the
21 reports, I can't think of anybody offhand.

22 Q. Who popped up and said, hey, I saw her Saturday
23 night at the party?

24 A. Again, when I think back on it, there was a
25 multitude of people, not only that we contacted,

1 that contacted us and said, this is when I saw
2 her last, or this is when I saw her last. I
3 can't say, specifically, anybody told me they saw
4 her at the Halloween party, offhand.

5 Q. Yeah. No. And I -- Look, I would tell you if I
6 knew that and I'm suggesting I don't. So, at
7 least presently, your recollection is the same.

8 A. My recollection is that, without looking at the
9 report, I can't say nobody told me that, but I
10 don't recall anybody telling me that at this very
11 moment.

12 Q. Right. And, now, we have heard how early on in
13 the investigation you learned that there were to
14 be appointments at the Zipperer's and the Avery's
15 or somebody at the Avery --

16 A. Yes.

17 Q. -- property? And Mr. Colborn goes out to the
18 Avery property that very night, November 3rd?

19 A. She actually had, that we knew of, three
20 appointments that day. And we sent an officer
21 to -- actually, I made a phone call to the police
22 in our county --

23 Q. Right.

24 A. -- and then requested Manitowoc County to look at
25 the other two residents because it was in their

1 jurisdiction. And I also told them, eventually,
2 that I would send a detective over to assist them
3 with that.

4 Q. All right. So three, three and a half weeks ago,
5 actually, the fellow in your county, we heard
6 from Steven Schmitz?

7 A. Yes.

8 Q. And, then, the Zipperer residence was in
9 Manitowoc County; the Avery residence was in
10 Manitowoc County?

11 A. Yes.

12 Q. And this is how the name Steven Avery first gets
13 attached to the missing persons investigation?

14 A. Yes.

15 Q. You -- And I don't -- I don't -- I'm not now
16 suggesting that this happened right away on
17 November 3, or November 4, I don't think it did,
18 but one of the things you learned is that Mr.
19 Avery had a girlfriend at that time named Jodi
20 Stachowski.

21 A. That's correct.

22 Q. You learned that she was serving a jail sentence
23 right then?

24 A. Actually, I think I learned that several days
25 after this all started. But at one point in this

1 investigation, certainly --

2 Q. Right. Yeah.

3 A. -- I learned that.

4 Q. And I want to make that clear, I'm sure we're
5 well -- we're some days after November 4th at
6 this point, correct?

7 A. Correct.

8 Q. Okay. And you learned that Ms Stachowski was
9 doing a jail sentence at that point, in Manitowoc
10 County?

11 A. Yes.

12 Q. And you knew, because of your -- I guess, now, 15
13 years in law enforcement and 13 plus then, that
14 phone calls out of a jail are tape recorded?

15 A. I know ours were and our system is only a few
16 years old. I had no knowledge if Manitowoc's
17 were at that point or not.

18 Q. But you -- you -- you did learn, you came to
19 learn, as part of your investigation, that Ms
20 Stachowski's phone calls out of the Manitowoc
21 County jail were on tape?

22 A. Certainly.

23 Q. So you could go back and say to yourself, I
24 wonder if she made any calls on October 31, 2005;
25 specifically, I wonder if she called Mr. Avery?

1 A. You are asking me if we went back and looked?

2 Q. Yes.

3 A. Yes, we did.

4 Q. You -- You did and you found out that there were

5 two telephone calls from Ms Stachowski in the

6 jail, to Mr. Avery, the evening of October 31,

7 2005?

8 A. That is correct.

9 Q. You had a chance to listen to those?

10 A. I have.

11 Q. I mean, you personally?

12 A. I have.

13 Q. One of them you recall as being at 5:36 p.m.?

14 A. I can tell you there were two calls. I don't

15 want to say what time they were because I don't

16 recall what time they actually were made, but.

17 Q. You don't have any reason to disagree that the

18 first one was at 5:36 p.m.?

19 A. I will take your word for it. I know it was

20 earlier in the evening somewhere, but I can't say

21 what time.

22 Q. Subject to me being wrong, okay?

23 A. Sure.

24 Q. Does 8:57 p.m. sound about right for the second

25 phone call?

1 A. I know it was several hours after the first one.

2 Q. Okay. And those calls had to go to a land line,

3 so to speak, correct, from the jail?

4 A. Yes.

5 Q. Because you have to call collect from a jail?

6 A. Yes.

7 Q. And you can't call collect to a cellphone?

8 A. Some jails you can use calling cards; I don't

9 know if Manitowoc is set up that way, but.

10 Q. In any event --

11 A. One of the ways, you either have to use a calling

12 card or call collect.

13 Q. And, specifically, you were able to learn that

14 these calls were made to Mr. Avery's land line,

15 if that's the right word for your phone in your

16 house?

17 A. Yes, that's correct.

18 Q. Each one was about 15 minutes long?

19 A. I believe so, because I think that's as long as

20 those calls can go at Manitowoc.

21 Q. Okay. So you -- So you got to listen to those

22 and confirm -- And I'm not -- I don't -- I don't

23 get to put in anything Mr. Avery said, and I'm

24 not trying to, okay? But, you were able to say,

25 that's Steven Avery's voice and that's Jodi

1 Stachowski's voice on these two phone calls?

2 A. Yeah. I mean, I recognized the number,
3 certainly, that was called to Mr. Avery -- excuse
4 me, certainly that the number that Mr. Avery
5 picked up from, you know, the number from the
6 phone call. And, eventually, I recognized his
7 girlfriend's voice, after meeting with her on
8 other occasions, certainly.

9 Q. And you know Mr. Avery's voice, at least as you
10 sit here today, you know his voice, as well?

11 A. Certainly, yes.

12 Q. And now, on November 5, it's Saturday, and the
13 car gets found, and you folks go out to the Avery
14 property. And you are sort of off and running at
15 that point. One of the -- One of the assignments
16 you had, or you undertook, that afternoon, on
17 Saturday, November 5, was to be the one to
18 actually go and seek out a search warrant?

19 A. Yes.

20 Q. And this was to be a search warrant for the Avery
21 property in general, correct?

22 A. Yes.

23 Q. But it also identified a couple of specific homes
24 on the Avery property that, particularly, you
25 wanted to search?

1 A. I believe so. I don't recall what at all that
2 identified, but.

3 Q. And here, I tell you what, I don't know that I
4 even need to mark this, but I'm just -- I'm going
5 to give it to you because --

6 A. Sure.

7 Q. -- you can look at it.

8 A. Thank you.

9 Q. What I have handed you, at this point unmarked --

10 ATTORNEY STRANG: And, your Honor, if the
11 Court wants it marked with an exhibit number, I'm
12 happy to do that.

13 Q. (By Attorney Strang)~ -- but I just thought it
14 might help refresh your recollection to see the
15 affidavit, the search warrant. That's what I
16 have given you, right?

17 A. Yes.

18 Q. And it's got your signature on the second page?

19 A. Certainly.

20 Q. It's dated Mar -- November 5, I'm sorry, 2005?

21 A. Yes.

22 Q. And when you want a court, or a judge of a court,
23 to give you a search warrant, which is just
24 judicial permission to search a place or a
25 person, you have to apply for that warrant in

1 front of the judge, true?

2 A. Yes.

3 Q. And the application is called an affidavit, at
4 least typically?

5 A. Yes.

6 Q. And affidavit meaning because it's actually sworn
7 on -- on under oath.

8 A. That's correct.

9 Q. So you were the person who swore out the
10 affidavit here?

11 A. I did.

12 Q. You got it about 3:00 in the afternoon, from a
13 Manitowoc judge?

14 A. I actually think it was about 3:25.

15 Q. Okay. Good enough. We're talking about the same
16 search warrant?

17 A. Sure. Yes.

18 Q. And now that you have it, I think the --
19 Paragraph 4, you give your first description of a
20 specific home or residence that you want to
21 search, and that's Steven Avery's trailer home,
22 true?

23 A. Yes.

24 Q. Then, if you continue on in Paragraph 4, you
25 also, specifically, next describe Barb Janda's

1 trailer home?

2 A. Yes.

3 Q. And then you go on to say, and, you know, the
4 whole 40 acre parcel we want to search as well,
5 and that has a number of other buildings and
6 places to be searched?

7 A. It talks about the 40 acres, describes the
8 property.

9 Q. Right.

10 A. Talks about the outbuildings, the vehicles.

11 Q. And by -- by 3:25 p.m, that Saturday, what you
12 were saying under oath, to Judge Fox, was that
13 you believed that Teresa Halbach was the victim
14 of crimes, including among others, homicide?

15 ATTORNEY KRATZ: Objection, Judge, it's a
16 vague question and it's also misleading, did not
17 include the requisite legal standard in which
18 applications are presented to a Court.

19 ATTORNEY STRANG: Well, I can --

20 ATTORNEY KRATZ: Far different than what we
21 are doing here in trial, Judge.

22 ATTORNEY STRANG: No, I -- And that's -- If
23 that's the only concern, let's deal with that, you
24 and I, pretty easily. Okay?

25 Q. (By Attorney Strang)~ To get a search warrant,

1 you have to show something called probable cause.

2 A. Yes.

3 Q. Which is not proof beyond a reasonable doubt?

4 A. That's correct, something lower than that.

5 Q. It's -- Not getting into a legal lecture, it's
6 essentially a good reason, a reasonable basis, to
7 search a place or a person?

8 A. I would agree.

9 Q. Okay. And so what you are -- the actual
10 language, what you say in your affidavit, in
11 Paragraph 7, is you're saying you're affiant,
12 which is a formal way of saying to a judge, me,
13 I. Right? And you are describing yourself as
14 the affiant?

15 A. Yes.

16 Q. Okay. Affiant just being someone who makes out
17 an affidavit?

18 A. You are correct.

19 Q. So you are saying that you believe that, based
20 upon Teresa's lack of contact with her employer
21 and family members, and her vehicle being
22 abandoned at the Avery Auto Salvage Yard, that
23 Teresa Halbach is the victim of a crime,
24 including, but not limited to, and then you start
25 with homicide?

1 A. Are you asking me, that's what it says?

2 Q. Yes.

3 A. That's what it says.

4 Q. Right. And that's what you told Judge Fox in an

5 effort just to establish probable cause?

6 A. That's correct.

7 Q. Okay. So, I mean, in other words, at this point,

8 although you don't know for sure, you think you

9 have got probable cause by 3:25 on Saturday

10 afternoon, to believe that there's actual

11 criminal activity up to and including homicide,

12 and this is not just a missing persons

13 investigation?

14 A. I know it's out of character for Teresa not to be

15 home. I know it's out of character for Teresa's

16 vehicle to show up on the Avery property, to be

17 concealed on the Avery property.

18 Q. Sure.

19 A. Absolutely.

20 Q. So the answer to my question is yes?

21 A. Yes.

22 Q. Okay. Now, I want to -- I want to cover some

23 things, I guess in a summary way, Investigator

24 Wiegert, drawing on your deep familiarity with

25 this investigation as one of two lead

1 investigators.

2 A. Sure.

3 Q. All right. You know that during the course of

4 the investigation, up to today, you have not --

5 you collectively now, I mean investigators --

6 have not recovered anything identified as Teresa

7 Halbach's purse?

8 A. No, I don't know that.

9 Q. Did you -- Did you find a purse at her home?

10 A. No, but testimony from other witnesses, you know,

11 there was buckles, things like that, which could

12 have come from a purse. I don't know if we

13 collected anything from the purse or not.

14 Q. Yeah.

15 A. I can't say we haven't.

16 Q. Okay.

17 A. Very possible we have.

18 Q. I was trying to be careful with the question. I

19 mean, you're not -- you don't know that you've

20 recovered her purse?

21 A. I don't know if we have or if we haven't.

22 Q. Okay. You -- You -- You are aware that a Toyota

23 key was recovered?

24 A. Absolutely.

25 Q. Was found?

1 A. Mm-hmm.

2 Q. Mr. Lenk said he found that key or was the first
3 to see it?

4 A. Mr. Lenk found the key, yes.

5 Q. And you have no other keys that you've found in
6 the course of this investigation, other than any
7 you may have seen at Ms Halbach's own house?

8 A. We found a lot of keys.

9 Q. And, specifically, linked to Ms Halbach?

10 A. None that we could specifically link to her, but
11 we did find a lot of keys.

12 Q. That turned out to be not connected to Teresa
13 Halbach?

14 A. I wouldn't say that. I don't know if they are or
15 not. To the best of our ability, we tried to
16 determine if they were or not, and we haven't
17 been able to determine that to this date --

18 Q. All right.

19 A. -- what they are.

20 Q. I mean, that is, you tried them in her front
21 door, or in her business, the lock on the door of
22 her business?

23 A. There were some keys that we had recovered that
24 we had actually taken to -- I believe it was
25 where she coached volleyball at her church, and

1 attempted to use them there and they did not
2 work.

3 Q. They did not work?

4 A. That's correct.

5 Q. Didn't find a key that worked in the front door
6 of her house?

7 A. Not yet, no.

8 Q. Or in her business?

9 A. No.

10 Q. The -- One of the men that you later were able to
11 confirm that she visited and took a photograph of
12 a car he had for sale, on October 31st, was this
13 Steve Schmitz, whom we spoke about a few minutes
14 ago?

15 A. Yes.

16 Q. Mr. Schmitz, you learned, wrote a check for the
17 *Auto Trader* services?

18 A. I would have to see that report. I don't know
19 how he paid. I think you are right. I recall
20 seeing a check from him.

21 Q. Yeah, I think he actually testified --

22 A. That's possible.

23 Q. -- to that. That's a check that you never found?

24 A. Could you be more specific, never found, period?

25 Q. It never turned up?

1 A. Not to my knowledge.

2 Q. And you -- you -- you checked into this, so to

3 speak, and found out that the check was never

4 negotiated.

5 A. I believe, actually, now that you are talking

6 about, he had stopped payment on that check, I

7 think was his testimony, I believe.

8 Q. And you learned that no one ever presented the

9 check for payment, or tried to cash the check?

10 A. Not that we have been made aware of.

11 Q. At some point early on, and when I say early on I

12 mean in 2005, you were aware of an anonymous

13 letter being found at the Green Bay Post Office,

14 addressed to the Manitowoc sheriff?

15 A. Yes.

16 Q. You have heard testimony about that, I think a

17 little bit today, with Mr. Riddle?

18 A. That's correct.

19 Q. That's a letter you saw at the time?

20 A. No, I did not see it at the time.

21 Q. You didn't?

22 A. I have seen it since.

23 Q. Okay.

24 A. But when it was brought back, I did not see it,

25 no.

1 Q. This was Exhibit 497. I will show you exhibit
2 497.

3 A. Sure.

4 Q. Specifically, the -- three and four pages; it's a
5 five page exhibit. When, roughly, at least, was
6 the first time you saw that letter?

7 A. I know that I heard that this letter was at the
8 Green Bay Post Office. As a matter of fact, I
9 think I made arrangements with one of our
10 detectives to eventually get up there and pick it
11 up. I think, if memory serves me correctly, we
12 had Green Bay Police Department secure it for us.

13 Q. So you are involved in assigning somebody to go
14 get the letter --

15 A. Right.

16 Q. -- and bring it back?

17 A. But I can't tell you exactly when I saw it; I
18 don't recall.

19 Q. Would it have been shortly after it came back to
20 the Calumet County Sheriff's Office?

21 A. Again, I know I have seen it. I don't know
22 exactly when, because commonly when things come
23 back, if the officer needs to put that into a
24 short term storage, then I don't have access to
25 that. So I probably didn't see it that very day,

1 would be my guess.

2 Q. You do know that later in 2006 you saw it in the
3 property room at -- at your sheriff's office?

4 A. Yes.

5 Q. You are not aware of anything having been pursued
6 on the letter between the first time you saw it
7 and, then, the next time you saw it in 2006, in
8 the property room?

9 A. Well, again, I don't know dates, but I would
10 disagree with you. There were things pursued
11 about it.

12 Q. Oh. And what did you pursue on the letter?

13 A. I think the -- one of the DCI agents testified
14 this morning that they had looked into the
15 smelter and determined that it had nothing to do
16 with this case.

17 Q. Well, actually, you know, and I was here to, and
18 the jury will -- you are speaking about
19 Mr. Pevytoe?

20 A. Yes, that's correct.

21 Q. Okay. So we'll let the jury decide what they
22 heard, but I think what he said is he looked in,
23 felt around, and took -- took nothing, saw
24 nothing of evidentiary value and took nothing
25 from inside the smelter?

1 ATTORNEY KRATZ: I think that's a
2 mischaracterization. I know we're getting into what
3 the jury remembers. And I'm just interposing that
4 objection. Because he did testify as to whether or
5 not it was recently used or not.

6 THE COURT: I think he's asking the witness
7 if that's the witness' recollection.

8 ATTORNEY KRATZ: Okay.

9 Q. (By Attorney Strang)~ And we can -- we can step
10 off that because what another witness says is
11 really not the point here.

12 A. Sure.

13 Q. Other than Mr. Pevytoe looking at the aluminum
14 smelter, doing what he described himself, in the
15 same chair you're in, is there anything else you
16 did in pursuit of the letter marked as Exhibit
17 497, before sending it to Mr. Riddle in 2006?

18 A. No, I don't know what else could have been done
19 with it.

20 Q. Did you -- Did you personally ever see the
21 aluminum smelter, during the week, roughly, that
22 you were out at the Avery property, November 5
23 through November 12, 2005?

24 A. I don't believe so. And if I saw it, I probably
25 wouldn't have known what it was, so.

1 Q. You didn't make a point of going to the smelter?

2 A. No, I did not.

3 Q. I'm going to ask you to stick, for the time

4 being, during that same week --

5 A. Sure.

6 Q. -- while you are spending, basically all or most

7 of your waking hours out at the Avery property

8 that week, right?

9 A. That's correct, yes.

10 Q. You learned on Saturday, November 5, that one of

11 the human remains dogs had alerted strongly on or

12 neither the Janda burn barrels?

13 A. As well as by Teresa's vehicle, yes.

14 Q. Right. And there had been other alerts, for that

15 matter, down in the pit, or in cars near the

16 vehicle, near the Toyota?

17 A. Sure.

18 Q. But there was -- You learned there was a strong

19 alert near one of the Janda burn barrels, or that

20 area?

21 A. I know that there was an alert. I can't say if

22 it was strong or not. I don't have any knowledge

23 of how the dog actually alerts, for the most

24 part. I know there was an alert, I can tell you

25 that.

1 Q. You learned -- You learned that some burnt bone
2 fragments later were found in one of the barrels?

3 A. Yes.

4 Q. You also were aware that there were several sites
5 off the Avery property, but in that, you know, in
6 that general part of the world, where possible
7 bone fragments were found and looked at?

8 A. I know there were other sites, you would maybe
9 want to call dumping areas, where maybe something
10 was there that resembled, and I will give you an
11 example, there was a gravel pit where one of
12 these searchers had found what they thought might
13 be a foot and it turned out to be a piece of
14 insulation that was burned. So there were a lot
15 of those false things that were going on,
16 certainly.

17 Q. Well, and not all of them -- not all of them
18 false, in the sense that --

19 A. I think the vast majority were.

20 Q. Okay. And then there were several, one, for
21 example, was in the Michel's Quarry to the east
22 of the Avery property.

23 A. I'm aware of one that I can say that the doctor
24 had said that there was possible human bone, or
25 bone, that was there, but that's the one I'm

1 aware of.

2 Q. East -- Is this the one east of the Avery
3 property or the one southwest?

4 A. I don't recall which one it was.

5 Q. Okay. But at least one of them resulted in bone
6 fragments, human or nonhuman, but bone fragments
7 and other debris, if you will, being sent to
8 Dr. Leslie Eisenberg?

9 A. Yes, and to my recollection, she determined she
10 didn't know for sure what it was, human or
11 nonhuman.

12 Q. And, again, we have her testimony to rely on for
13 that --

14 A. Absolutely.

15 Q. -- rather than your recollection or mine?

16 A. Certainly.

17 Q. But that -- that at least -- Do you remember that
18 being the site that was southwest of the Avery
19 property?

20 A. My recollection of it is, the map you showed
21 today. Now, if that was exactly the one, I would
22 not be able to tell you that.

23 Q. You personally never went there?

24 A. No, I did not.

25 Q. You were involved, if I recall correctly, because

1 I think you were in one of the pictures, in the
2 search on tarps, through debris in -- at the
3 Crime Lab in December of 2005?

4 A. Yes, I was present, I think for one day of that,
5 yes.

6 Q. That was a two day project in December of 2005
7 and then two more days, but I think back in the
8 Calumet Sheriff's Office in March of 2006; does
9 that sound right?

10 A. Sounds pretty close to it, yes.

11 Q. You were -- You were involved only in one day and
12 then in December at the Crime Lab?

13 A. I was involved in a day at the Crime Lab and I
14 would say maybe a day back here, later on in that
15 year.

16 Q. Okay. One of the reasons for that was to be
17 combing through, looking for pieces of metal, or
18 other, I guess bone fragments would have been of
19 interest, anything that might look important, or
20 possibly important, in going through that debris?

21 A. Yes, absolutely.

22 Q. At least two rivets were found in that debris?

23 A. Five rivets.

24 Q. Five total?

25 A. Yes, at this date we have -- to this date we have

1 five rivets identified as Daisy Fuentes rivets.

2 Q. Okay. And that's why it's useful to have you as

3 a lead investigator here, so.

4 A. Thank you.

5 Q. No, I mean you have -- but you have got -- you

6 have got sort of the overview of things?

7 A. Yes, I would, probably better than some other

8 people, yes.

9 Q. Right. So five Daisy Fuentes rivets, no Daisy

10 Fuentes button, metal button?

11 A. Five rivets, a zipper; no, I don't believe we

12 ever found, if you are talking about the main

13 button?

14 Q. Yeah, on a pair of jeans?

15 A. I don't believe we ever recovered that. And

16 there were some eyelets that looked like they

17 came from shoes, actually, that were recovered.

18 Q. Okay. And the zipper was not something that said

19 Daisy Fuentes?

20 A. No, my recollection, it had the initials YKK on

21 it.

22 Q. Mine too, or something like very close to that.

23 I think it was YKK too, that's my recollection

24 too, which you learned is a very large zipper

25 manufacturer?

1 A. Sure. Yes.

2 Q. So that -- that zipper, you never were able to

3 link to any special pair of jeans, or coat, or

4 any other garment?

5 A. I can tell you it matches the one on the jeans

6 which we had brought into court, same holes, same

7 letters, everything, that I can tell you.

8 Q. But, again, it's sort of -- it's a large zipper

9 manufacturer, which makes lots and lots of sort

10 of generic zippers.

11 A. The initials on there, yes. Whether the holes

12 are in the same place on all pants, I don't have

13 that.

14 Q. Right. Okay. Same week, one of the places you

15 did personally get to, was Steven Avery's garage?

16 A. I know I had been down to the garage that week we

17 were out there, yes. I don't know what day for

18 sure, I wouldn't be able to tell you that.

19 Q. I could probably show you a report, although, I'm

20 not -- I'm not sure you and I would really have

21 any dispute over this. If I suggested to you

22 that November 12 is the day you folks pulled up

23 stakes --

24 A. Sure.

25 Q. -- and stopped --

1 A. Yes.

2 Q. -- and you ended that search, so to speak, of the
3 whole property?

4 A. Yes, we did.

5 Q. You and Mr. Fassbender did a final sort of walk
6 through on at least some of the sites on that
7 property?

8 A. As best we could. We felt it was our
9 responsibility to know the condition of it when
10 we left, because we were the lead agents on that
11 case, that's correct.

12 Q. You knew that earlier in the week, I say the
13 week, I mean this seven or eight day period you
14 folks were out there, that shell casings had been
15 found in the garage, on the floor?

16 A. I know there were some found. I don't know what
17 day but, yes, had to be earlier than the 12th,
18 correct.

19 Q. Turns out to be 11 brass shell casings?

20 A. Yes.

21 Q. .22 caliber?

22 A. Yes.

23 Q. You -- You had told investigators, people
24 involved in actually searching the garage, in
25 your role as a lead investigator, you had told

1 folks, in essence, where there are cartridge
2 shells there may be bullets?

3 A. Did I specifically tell somebody that, no.

4 Q. You understood that they would be looking for
5 bullets?

6 A. I can't testify to what they understood. They
7 were to look for all sorts of evidence. Would
8 that be included in there, if they knew what they
9 were looking for, yeah, I'm sure.

10 Q. Well, did you try to assign people who you
11 thought knew what they were looking for?

12 A. I would think I would know what I'm looking for,
13 but I wouldn't know what a spent bullet would
14 look like.

15 Q. I guess my question is, did you -- did you try to
16 assign people who you thought would know what
17 they were looking for?

18 A. I assigned people that I trusted, as evidence
19 technicians, to do the job.

20 Q. All right. And you would expect, if they had
21 recognized a bullet, or a fragment of bullet, in
22 the garage, you would have expected somebody to
23 have said this may be important enough to pick
24 up?

25 A. If they, in fact, had saw it and recognized what

1 it was, absolutely, I'm sure they would have.

2 Q. All right. And you were satisfied, by the time
3 you did that final walk through with
4 Mr. Fassbender, that the garage had been searched
5 as thoroughly as reasonably possible?

6 A. I was satisfied that the people who were
7 searching the garage had did the best job they
8 could, under the circumstances.

9 Q. Did a walk through yourself, saw nothing that you
10 recognized as being possibly important as
11 evidence?

12 A. I don't know if I did a walk through the garage.
13 I went down to the garage. I know I walked into
14 the house trailer. I can't say that -- I don't
15 believe I did walk through the garage, to the
16 best of my recollection.

17 Q. Okay. But you were satisfied that where the
18 searching productively could have been done, had
19 been done by that time?

20 A. To the best of their ability at the time, I'm
21 sure, yeah.

22 Q. Yeah. And I mean, and let's be clear, I mean,
23 ultimately, it was -- it was a law enforcement
24 decision on when to turn this property back over
25 to the Avery family, right?

1 A. It certainly was. And if I -- Do I wish I could
2 have had another three weeks to move everything
3 out of every garage, and every air compressor,
4 every refrigerator, go through every part of that
5 salvage yard, with a fine tooth comb, I would
6 love to have, but it's not feasible.

7 Q. All right. So you made the decision, that
8 Saturday morning, November 12, was the day?

9 A. Yes, because, you know, for several reasons, we
10 did the best we could in that time period. The
11 Avery's had a business to run. We had already
12 put them out for a week. And it was a hard
13 decision to make, to be honest with you.

14 Q. Was that a business that at some point you, in a
15 moment -- in an unguarded moment, said you wanted
16 to shut down?

17 A. No, I don't ever remember saying that.

18 Q. Now, in any event, you knew that when you turned
19 the property back over to the people who lived
20 and worked there, you would lose control over the
21 property, that's obvious?

22 A. Certainly.

23 Q. Law enforcement would?

24 A. Yes.

25 Q. People would come and go as they pleased?

1 A. I would think that -- I don't know if people come
2 and go as they please. The Avery's would assume
3 back their responsibility for their residences
4 and business.

5 Q. Right. And customers would come to the business?

6 A. I'm sure.

7 Q. People would live in their houses, use their
8 garages, that kind of stuff?

9 A. Yes, sir.

10 Q. Two of the people -- I don't know that you
11 personally had contact with either one, you may
12 have, I don't know. But two of the people whom
13 investigators working under your joint direction
14 with Mr. Fassbender met and had contact with that
15 week, were Bobby Dassey and Scott Tadych?

16 A. Could you ask the question again, I'm not sure
17 what you are asking?

18 Q. Got pretty long. Someone, during the week you
19 were out searching the Avery property, had
20 contact with Bobby Dassey and Scott Tadych?

21 A. I believe so. I know somebody had contact with
22 Bobby on Saturday already.

23 Q. Saturday, the 5th, the first Saturday?

24 A. That's correct, yes.

25 Q. You personally didn't have any contact, that you

1 remember, with Bobby Dassey or Scott Tadych, that
2 week?

3 A. Not to my recollection, no. I don't believe I
4 personally have. But I know that there was
5 another investigator who actually talked to Bobby
6 from our department. That I know, but I don't
7 know about Mr. Tadych.

8 Q. Okay. Now, you did learn, in the course of your
9 work as a lead investigator here, that Bobby and
10 Scott each sort of were the only one who could
11 say the other was going deer hunting the
12 afternoon of October 31?

13 A. No, I don't know that that's true, that I can say
14 that they were the only ones who knew they were
15 going deer hunting. No, I can't say that. I
16 know they passed each other on the road, if
17 that's what you're asking.

18 Q. Right.

19 A. That I know.

20 Q. I mean, Bobby said, I passed Scott. Scott said,
21 yeah, I passed Bobby. And each says I'm going
22 deer hunting, and the other guy is going deer
23 hunting; that you knew?

24 A. I know they passed each other on the road. I
25 know they were going hunting, yes.

1 Q. Or that that's what they said?

2 A. Yes.

3 Q. Did you -- you, also, I guess, learned that

4 Mr. Tadych had not gone to work on October 31?

5 A. Did I know that? Is that what you're --

6 Q. Yeah. Did you learn that during the course of

7 your investigation?

8 A. I learned that he had been to visit his mother in

9 the hospital, in Green Bay. Yeah, I did hear

10 that.

11 Q. That that's what he said?

12 A. Yes.

13 Q. Anybody ever check out, you know, check whether

14 the mother in fact was in the hospital, or had an

15 operation?

16 A. I don't believe so. I just know that people

17 had -- that we eventually asked Barb the same

18 thing. And Barb had -- which is his girlfriend,

19 or wife, now.

20 Q. Right, girlfriend, then.

21 A. She had verified that that's where he was. And

22 she, eventually, I believe, went up there with

23 him, to my recollection.

24 Q. She goes up for an evening trip?

25 A. I believe she said so, yes.

1 Q. Right. Okay. Anyone ever ask Bobby why, if he
2 was going deer hunting, he would have taken a
3 shower right before going deer hunting?

4 A. Again, I didn't interview Bobby, so I wouldn't be
5 able to answer that.

6 Q. You don't remember whether he was --

7 A. I don't know if anybody asked him why he took a
8 shower. No, I don't.

9 Q. Let's move forward, then. The next time you are
10 on the Avery property is about four months later,
11 March, 2006, at least on to search?

12 A. Yes, certainly.

13 Q. Another search warrant?

14 A. That's correct.

15 Q. And we're talking about the first two days of
16 March, 2006?

17 A. I believe it was the first and second of March,
18 we were back out there.

19 Q. Now, this was a more focused search, if you will,
20 in terms of the actual physical area you were
21 searching?

22 A. Yes, we had developed new information on the case
23 and we acted on that information.

24 Q. And what you were searching this time was Steven
25 Avery's garage and Steven Avery's trailer. And

1 then I think probably the Janda house as well,
2 correct?

3 A. We had a search warrant, again, based on new
4 information that was learned in the case, for
5 Mr. Avery's trailer and Mr. Avery's garage. And
6 Barb Janda, I don't recall what her new last name
7 is. I will refer to her as Janda, at the time,
8 had given us verbal permission to enter her
9 house. I think we might have even had written
10 permission from her. So that wasn't included in
11 the search warrant, but she had given us
12 permission --

13 Q. Okay.

14 A. -- to go in there.

15 Q. The point is, we're not -- this isn't a search of
16 the whole 40 acres again, this is some specific
17 areas that were in the northwest corner?

18 A. For specific areas spelled out in the search
19 warrant, which was granted to us.

20 Q. Now, by -- by that time, four months into the
21 investigation, essentially, did you have
22 sufficient evidence technicians available to you,
23 in the Calumet Sheriff's Office and the DCI, to
24 conduct the search of Mr. Avery's garage and the
25 search of his trailer, in March, 2006?

1 A. I probably can't answer that yes or no. I would
2 probably have to expound on that a little bit.

3 Q. Well, who invited the Manitowoc County Sheriff's
4 Department back to help in that search?

5 A. Matter of fact, I notified Manitowoc County
6 Sheriff's Department because it is in their
7 jurisdiction and I feel it's my duty that they
8 know that we're going out to the Avery property.

9 Q. Okay. And that's certainly courteous, but who
10 invited Manitowoc County Sheriff's personnel to
11 help search and collect evidence in the garage
12 and the trailer, in March, 2006.

13 A. I believe that we utilized Detective Remiker and
14 it was a joint decision between Mr. Fassbender
15 and myself. And I stand by that decision.

16 Q. Okay. Was Detective Remiker the only Manitowoc
17 officer, to your knowledge, that you used --

18 A. Searching?

19 Q. -- in the March search?

20 A. If you're talking about the physical searching?

21 Q. Yes.

22 A. That is my recollection, yes.

23 Q. Now, let's -- let's move forward, finally, to the
24 blood vial --

25 A. Sure.

1 Q. -- sitting there in front of you. In fact, you
2 knew, just from watching TV, I guess, back in
3 November of 2005, that Mr. Avery, personally, was
4 saying, you know, if my blood is in the Toyota,
5 someone must have put it there, words to that
6 affect?

7 A. You know, something to that affect. Again, I
8 couldn't say but, yeah, there was something to
9 that affect, where he would talk about planting
10 it or something, I recall.

11 Q. Yeah. Sure. And, in fact, you were standing
12 probably closer to Mr. Kratz than I'm standing to
13 you, at a news conference, in November of 2005,
14 where you heard Mr. Kratz --

15 ATTORNEY KRATZ: Objection, it's
16 irrelevant. My comments in this case are
17 irrelevant.

18 ATTORNEY STRANG: I'm not at all sure they
19 are, given the direct examination here.

20 THE COURT: I'm going to sustain the
21 objection.

22 Q. (By Attorney Strang)~ You were aware of the
23 agents of the State, back in November of 2005,
24 publicly ridiculing the claim that law
25 enforcement officers would be walking around with

1 vials of Mr. Avery's DNA? You were aware of that
2 weren't you?

3 A. Yeah, absolutely.

4 Q. Okay.

5 A. I agree with that.

6 Q. But you also know that a Clerk of Court's Office
7 is a public office, right?

8 A. It's open, the lobby is open to the public.

9 Q. Right.

10 A. That's true.

11 Q. It keeps public records?

12 A. Yes.

13 Q. Court records?

14 A. Mm-hmm.

15 Q. These are available to be looked at for the
16 asking, for any member of the public who comes to
17 the counter at the Clerk's Office?

18 A. I assume so, yes.

19 Q. And you know that, I mean, there's a Clerk of
20 Court's Office right across the hall in this
21 building; isn't there?

22 A. Yes.

23 Q. Sure. And you, as a law enforcement officer,
24 interact with the Clerk's Office from time to
25 time?

1 A. No, I can honestly say, in my 14 years here,
2 other than when I'm on the stand in the court
3 office, I don't interact with the Clerk of
4 Court's.

5 Q. Don't you file returns for search warrants?

6 A. That's about the only thing I do, from the front
7 window, yes. I mean, that's my -- If you are
8 saying that's interaction, yes, you are correct.
9 That would be the extent of my interaction.

10 Q. I should not use 69 cent words but, I mean, you
11 know, you go there yourself to file a return for
12 a search warrant?

13 A. Yes, that would be the extent of my interaction.

14 Q. Okay. And you were aware, from very near the
15 beginning of this investigation, that Mr. Avery
16 had this lawsuit pending against Manitowoc
17 County?

18 A. Certainly I was aware of that, yes.

19 Q. For the wrongful imprisonment?

20 A. Against Manitowoc County, certainly.

21 Q. Right. Against Manitowoc County. But as I
22 understand you, in pursuing this, look for, you
23 know, gee, does Manitowoc County have his DNA
24 somewhere, neither you, nor anyone under your
25 direction, ever just went to the Clerk of Court's

1 Office to look at the old case file?

2 A. I did not. And I would never think of looking in
3 a case file for blood. And I don't know that
4 anybody else probably would either, unless they
5 had some knowledge of it being there.

6 Q. Okay. We didn't have knowledge of it being
7 there, but we looked, and that's how you found
8 out, right?

9 A. I would think you would probably have more
10 knowledge of it being Mr. Avery's attorney, than
11 I would. Because, obviously, he knew this blood
12 was drawn.

13 ATTORNEY KRATZ: I'm going to interpose an
14 objection, that's providing testimony.

15 THE COURT: Yeah, I don't think this line
16 of questioning is proper. I'm going to sustain the
17 objection.

18 ATTORNEY KRATZ: Ask that be stricken,
19 Mr. Strang's testimony or comment.

20 THE COURT: We'll strike the question, the
21 comment, and the answer. The Court will order that
22 it be stricken.

23 Q. (By Attorney Strang)~ You did not, in any event,
24 go to the Clerk's Office until after receiving
25 notice that the defense had found this box that

1 we have seen?

2 A. Yes, sir, that's correct.

3 Q. All right. And, then, as you said before, you
4 were one of a group of people, from the
5 prosecution and the defense, who were there when
6 the box, the styrofoam box was opened?

7 A. Yes, I was.

8 Q. In fact, I was about the only person who wasn't
9 there?

10 A. Yes. I think Mr. Buting was there, I believe.

11 Q. All right. And I'm going to -- We have already
12 played part of, or we played all of Exhibit 470.
13 And I just want to go back to part of that.

14 THE COURT: Let's take a stretch break
15 while he's doing that. Just in terms of timing, how
16 long are you looking at?

17 ATTORNEY STRANG: Another 90 seconds.

18 THE COURT: Okay. Go ahead.

19 Q. (By Attorney Strang)~ All right. We're going to
20 do it this way, come on over.

21 A. Sure.

22 Q. What I have got is Exhibit 470 here. Now, the
23 jury can't see this, but look upside down, this
24 is the blood vial that you saw when you guys went
25 and looked and videotaped this?

1 A. Yes, sir.

2 Q. Okay. What does that say right there, on the

3 manufacturer label?

4 A. There's some numbers and it says EXP March '90

5 something, I can't say.

6 Q. March '96?

7 A. '96 or '98, I can't tell.

8 Q. Okay. You can go back, you are not miked. Same

9 tube, right? Inside here?

10 A. I believe so, I would need to look at it.

11 Q. Sure.

12 A. Looks like the same tube.

13 Q. Yeah. Now somebody has written initials over

14 that last digit, but EXP is -- you recognize that

15 as a common abbreviation for expiration, right?

16 ATTORNEY KRATZ: Objection, speculation,

17 Judge. I don't know that he has a foundation for

18 that on a purple-topped tube.

19 THE COURT: There would have to be a

20 foundation for the witness to answer the question.

21 Q. (By Attorney Strang)~ Did you ever buy Advil, or

22 Pepto-Bismol, or anything at the grocery store,

23 that has an expiration date?

24 ATTORNEY KRATZ: I'm sorry, Judge, I am

25 going to interpose an objection. I don't know that

1 that applies to this case.

2 THE COURT: I agree, I don't think it would
3 be that simple to lay a foundation for this witness
4 to be qualified to answer.

5 Q. In any event, what you see is EXP and then a
6 space and then March '96 or '98, whatever the
7 last digit is?

8 A. Yeah, nine something, along with a lot of other
9 writing, but that's one of the things.

10 Q. Somebody has written initials on that now, right?

11 A. Initials, Steven Avery's name. There's a lot of
12 writing on this tube.

13 Q. Okay. All right. You can pop it back in there.

14 ATTORNEY STRANG: That's all I have.

15 THE COURT: Any redirect?

16 ATTORNEY KRATZ: No, not for this witness.

17 THE COURT: Very well, the witness is
18 excused. Do we have any exhibits that require
19 action?

20 THE CLERK: 496 from the State, that was
21 the flash card.

22 ATTORNEY KRATZ: We would offer that,
23 Judge. Actually, before the close of the case
24 wanted to have an accounting of things but, that not
25 withstanding, we do know that the flash card we are

1 moving.

2 THE COURT: Any objection?

3 ATTORNEY STRANG: There is no objection to
4 Exhibit 496.

5 THE COURT: Very well, that exhibit is
6 admitted. Mr. Kratz, anything from State before we
7 adjourn for today?

8 ATTORNEY KRATZ: Not for -- from the State,
9 for today, Judge. There is something outside the
10 presence of the jury I would like to address with
11 the Court, but nothing further at this time.

12 THE COURT: Is it something that requires
13 the jury to come back?

14 ATTORNEY KRATZ: Not today, Judge.

15 ATTORNEY STRANG: We can just take a brief
16 side bar.

17 ATTORNEY KRATZ: Side bar.

18 THE COURT: Okay.

19 ATTORNEY STRANG: Deal with that.

20 THE COURT: Okay. We'll do that.

21 (Side bar taken.)

22 THE COURT: All right. The record will
23 reflect that I just met with the attorneys to talk
24 about a stipulation, which I understand I'm going to
25 be hearing in a minute, before we send the jury home

1 for the day. Mr. Kratz.

2 ATTORNEY KRATZ: Thank you, Judge. Your
3 Honor, subject to the State offering and the Court
4 ruling on exhibits, which I believe -- or which the
5 State believes will be appropriately part of the
6 record in the State's case-in-chief, at this time
7 the State intends to rest.

8 THE COURT: Okay. And those are exhibits
9 that have already been marked, correct?

10 ATTORNEY KRATZ: That's right, Judge.

11 THE COURT: But the State may be requesting
12 the admission of some exhibits that have not been
13 admitted yet, and subject to that, the State is
14 resting?

15 ATTORNEY KRATZ: That's right, Judge.

16 THE COURT: First, Mr. Strang, does the
17 defense have any objection to that procedure?

18 ATTORNEY STRANG: We do not. We understand
19 that the State has rested and that there may be some
20 housekeeping to do on exhibits already marked and
21 identified in the State's case-in-chief. No
22 objection to that.

23 THE COURT: And I further understand that
24 the parties are requesting the Court to consider
25 matters outside the presence of the jury, which

1 would result in not needing the jury until tomorrow
2 afternoon; is that correct?

3 ATTORNEY STRANG: Yes.

4 THE COURT: Mr. Kratz.

5 ATTORNEY KRATZ: Unless they object, Judge,
6 yes.

7 THE COURT: Members of the jury, I'm not
8 going to ask you if you would like to sit around all
9 morning tomorrow before we get started. So let's do
10 this, how about if we have you meet at the normal
11 location for the bus at 12:30 tomorrow and we'll
12 bring you back for a session just tomorrow
13 afternoon.

14 I probably should have asked, I don't
15 know the transportation arrangements for the
16 morning, does that pose a problem for any member
17 of the jury? Very well. Then, Robbie, I will
18 ask you to notify the bus people of that change.
19 And you are excused for today. I will remind
20 you, again, not to discuss the matter or look at
21 anything on TV, radio, or any other media. And
22 we'll see you tomorrow, sometime around 1:15 or
23 so.

24 (Jury not present.)

25 THE COURT: You may be seated. Counsel,

1 then, I would like to see you in chambers for just a
2 couple minutes before you leave today.

3 (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 2nd day of January, 2008.
16
17
18

19 _____
Diane Tesheneck, RPR
20 Official Court Reporter
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25