

1 STATE OF WISCONSIN CIRCUIT COURT MANITOWOC COUNTY

2 STATE OF WISCONSIN,

3 Plaintiff,

4 -vs-

TRANSCRIPT OF DAY 3 OF

5 STEVEN A. AVERY,

12-PERSON JURY TRIAL

6 Defendant.

Case No. 05-CF-381

7 PATRICK L. WILLIS
8 JUDGE PRESIDING

9 APPEARANCES:

10 ATTY. KENNETH R. KRATZ, Special
11 Prosecutor, from Calumet County,
12 Wisconsin, ATTY. THOMAS FALLON,
13 from State of Wisconsin Attorney
General's Office, and ATTY.
NORMAN GAHN, from Milwaukee
County, appearing on behalf of
the Plaintiff.

14 ATTY. JEROME F. BUTING, of the
15 firm, Buting & Williams, of
16 Brookfield, Wisconsin, and ATTY.
17 DEAN A. STRANG, of the firm,
Hurley, Hurish, & Stanton, of
Madison, Wisconsin, appearing on
behalf of the Defendant.

18
19
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21 Date of Proceedings: February 14, 2007
22
23
24 Steven J. Platkowski
25 Court Reporter

MANITOWOC COUNTY
CIRCUIT COURT
FEB 14 2007
2007 J 14 2007

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1 (Proceedings commenced at approximately 9:00 a.m.)

2 THE CLERK: All rise.

3 THE COURT: You may be seated. At this time
4 the Court once again calls the case of State of
5 Wisconsin versus Steven Avery, case 05-CF-381.

6 Would the parties state their appearances for the
7 record?

8 MR. KRATZ: Is the sound system not on?

9 THE COURT: Nope. It's not on at all?

10 MR. KRATZ: No.

11 THE COURT: Okay. It's on now. Terrific.
12 Mr. Kratz, appearances for the State?

13 MR. KRATZ: Your Honor, the State appears by
14 Calumet County District Attorney Ken Kratz,
15 appearing as special prosecutor. Also appearing in
16 this case is Mr. Fallon, Assistant Attorney General,
17 and Mr. Gahn, Assistant District Attorney from
18 Milwaukee County.

19 MR. BUTING: Good morning, your Honor.
20 Attorney Jerome Buting, and Attorney Dean Strang,
21 appearing with Mr. Avery, who is present.

22 THE COURT: All right. Mr. Kratz, are you
23 going to call your next witness?

24 MR. KRATZ: I don't know if this is working,
25 Judge.

1 THE COURT: Does that help at all? Check
2 the plug under the desk.

3 (At which time the sound system started
4 working after the electric cord for the microphone
5 was plugged into a different outlet under the
6 District Attorney's table.)

7 MR. KRATZ: That is probably going to be a
8 little loud. But the State calls Nicole Sturm,
9 Judge.

10 THE CLERK: If you would raise your right
11 hand?

12 NICOLE STURM, being first duly sworn on oath
13 to tell the truth, the whole truth, and nothing but
14 the truth, testified as follows:

15 THE CLERK: Please state your full name and
16 spell your last name please.

17 THE WITNESS: Nicole Sturm, S-T-U-R-M.

18 DIRECT EXAMINATION BY MR. KRATZ:

19 Q Good morning, Ms. Sturm. Thank you for coming
20 this morning. Let me first ask you if you know a woman
21 by the name of Pam Sturm?

22 A Yes.

23 Q Who is Pam?

24 A She is my mother.

25 Q And were you with Pam on the morning hours of

1 November fifth of 2005?

2 A Yes, I was.

3 Q Would you tell the jury where you went that

4 morning please?

5 A We first went to Teresa's house, to enter the

6 search, to become volunteers for the search.

7 Q All right. Thereafter, Ms. Sturm, did you

8 accompany your mother to a property which is

9 known as the Avery Auto Salvage Yard?

10 A Yes, I did.

11 Q And after arriving at that scene, we understand

12 from your mother that you received, you and she,

13 that is, received permission to search for the

14 vehicle on that property; is that correct?

15 A Yes. We received permission from Earl Avery.

16 Q Tell the jury, as best you can remember, what

17 efforts you made to search for Teresa's car that

18 morning?

19 A We started out heading toward the south of the auto

20 salvage yard. We went through, looking inside

21 vehicles, looking for anything that we could

22 distinguish, anything to do with Teresa, whether it

23 be Teresa herself, or any articles that would be "as

24 to her".

25 Q Sometime just before 10:30 that morning, I

1 understand you found something; is that right?

2 A Yes, my mom indicated that she found a RAV-4 Toyota
3 vehicle that didn't exactly match the description on
4 the search form that we had, but looked very
5 similar, and was distinguishing because it was
6 covered up with auto salvage materials, as well as
7 branches. So, she definitely called me over, and I
8 went running.

9 Q All right. When you ran toward your mother's
10 location, can you tell the jury what you saw
11 please?

12 A I saw a blueish green RAV-4 with salvage parts up
13 against it, and branches over the top and on other
14 areas, definitely a vehicle that looked like someone
15 was trying to hide.

16 Q Now, there is an exhibit which has been marked in
17 this case and received as Exhibit Number 31. I
18 direct your attention to the large screen here
19 to your right, and ask if that, in fact, is the
20 vehicle that you saw that morning?

21 A Yes, that is the vehicle.

22 Q Now, your mother explained --

23 MR. BUTING: Objection, counsel is leading
24 the witness by saying "your mother did this, your
25 mother did that". She should be asked open-ended

1 questions, and let the witness explain what she saw
2 and what she did.

3 THE COURT: I will sustain the objection to
4 the form of the question.

5 MR. KRATZ: That's fine, Judge.

6 BY MR. KRATZ:

7 Q Ms. Sturm, who took the photographs of these
8 vehicles?

9 A I took the photographs.

10 Q And, other than taking the photographs, can you
11 tell the jury what else you did around that
12 vehicle?

13 A With a tissue, I checked all four doors to see if
14 any of the doors were open. They were all locked.
15 So, none of the four doors were open. I also used
16 my cell phone to call the Sheriff's Office.

17 Q Can you describe this "tissue" a little bit
18 better?

19 A Sure. Because it was a cold November day, I brought
20 tons of tissues with me, because my nose was
21 running, and "what not". I had clean tissues within
22 my pockets. My mom stated, "Please use -- I don't
23 want to disturb anything, so please use your shirt
24 sleeve, or whatever you have to avoid touching the
25 vehicle. I thought I better, that I had clean

1 tissues in my pocket, so I used that. I did check
2 all four doors to see if anything was open. They
3 were all locked.

4 Q Ms. Sturm, you did have occasion to look inside of
5 this; correct.

6 A Yes, I did look in at every angle, and saw a Wild
7 Cherry Pepsi in the front, and a bottle of Aquafina,
8 but I didn't see Teresa, or anything that I could
9 identify that it was definitely Teresa's vehicle at
10 that point.

11 Q Could you describe the lighting conditions inside
12 of the vehicle please?

13 A Well, the area that the vehicle is in, you can see
14 there are trees, and "what not". It was a rather
15 cloudy day. It was definitely dark. You couldn't
16 visably see. We did not have flashlights to be able
17 to intricately look at details within the vehicle.

18 Q Did you check for a vehicle identification
19 number?

20 A Yes, I did look. I didn't know exactly where they
21 were located. So, it did take a little while to
22 locate the VIN number. But we did find the VIN
23 number on the driver's side, near the windshield.
24 It was a black interior, and a black dashboard, but
25 also the metal that the VIN number was on was black

1 metal, as well. It was a little difficult to
2 actually read the VIN number, as well as the fact
3 that I am a little bit short, so I had to try to
4 reach over the top of the vehicle to read the VIN
5 number, without touching the vehicle, or actually
6 touching or rubbing up against the vehicle.

7 Q After the telephone call was made to law
8 enforcement authorities, where did you go?

9 A I stayed right near my mom, right near the vehicle,
10 and, after law enforcement was contacted, we moved a
11 little bit away from this vehicle, but we kept our
12 eyes on the vehicle at all times, just to make sure
13 that no one else was coming. We didn't want to draw
14 attention to ourselves, in case someone would come
15 after us, because we did find the vehicle.

16 Q Was there any fixed object or any place that you
17 were standing, while you waited for law
18 enforcement to arrive?

19 A We were near a car crusher, the machinery that
20 crushes cars in the salvage yard.

21 Q While you were waiting for law enforcement,
22 did any individuals approach that vehicle?

23 A No. No one was near the vehicle.

24 Q How long was it before law enforcement arrived, if
25 you can remember?

1 A I would say approximately 20 minutes, at the most.

2 Q After law enforcement's arrival, can you tell us

3 what you did please?

4 A When law enforcement arrived, we pointed to where

5 the vehicle was, and we stayed on the scene to be

6 able to give statements.

7 Q When law enforcement arrived, where were you

8 looking, and what were you doing?

9 A We stayed right near the car crusher area, and we

10 were waiting for the actual identification that it

11 was Teresa's vehicle, and for them to come back and

12 identify it as Teresa's vehicle, because at that

13 point in time we still were unaware, if it was her

14 vehicle or not.

15 Q When law enforcement arrived, were you also

16 watching the vehicle?

17 A Yes, we kept our eyes on the vehicle at all times.

18 Q Did anybody enter the vehicle?

19 A No one entered the vehicle.

20 Q Did anybody touch the vehicle, that you saw?

21 A No one touched the vehicle.

22 Q Ms. Sturm, did you know the difference between the

23 Manitowoc County Sheriff's Deputies and the

24 Calumet County Sheriff's Deputies?

25 A Yes, they did identify themselves, with their names

1 and which department they were from.

2 Q Do you know which department was the first to
3 arrive on the scene?

4 A The first to arrive on the scene was Manitowoc
5 County. However, they had an officer that stood
6 near the vehicle and did not touch the vehicle. He
7 did not really approach the vehicle. He just "stood
8 guard", to make sure it was not touched until
9 Calumet County did arrive.

10 Q About how long after Manitowoc's arrival did
11 Calumet arrive?

12 A Just a few minutes. They were right behind.

13 Q After the Calumet County officers arrived, did you
14 continue to watch the vehicle?

15 A Yes, we did.

16 Q Once again, Ms. Sturm, did anybody either
17 approach, touch the vehicle, or enter the vehicle,
18 while you were there?

19 A No. No one touched the vehicle, or entered the
20 vehicle while we were there.

21 Q How long were you there before you actually
22 left that scene?

23 A We were there until like noon or "12:30-ish" before
24 we left the scene. So, two hours, or two and a half
25 hours.

1 Q In that two hours that you were there, or two
2 and a half hours that you were there, that entire
3 time, did you see anybody enter or touch that
4 vehicle?

5 A No. No one entered or touched the vehicle.

6 Q Ms. Sturm, you mentioned that you had checked the
7 four doors. What four doors are you talking
8 about?

9 A The driver's side, front and passenger doors, and
10 the actual passenger, front and back.

11 Q All four were locked?

12 A All four were locked.

13 Q Were you asked to give either a verbal or a
14 written statement to law enforcement that day?

15 A Yes, I gave a written statement to law enforcement.

16 Q Did you tell law enforcement that you checked the
17 doors and they were locked?

18 A Yes, and I indicated that I did use a tissue, that I
19 didn't use my bare hands to check the doors.

20 MR. KRATZ: I believe that's all I have.

21 Thank you.

22 THE COURT: Mr. Buting?

23 MR. BUTING: Thank you, your Honor.

24 CROSS EXAMINATION BY MR. BUTING:

25 Q Good morning, ma'am?

1 A Good morning.

2 Q Now, you talked about when you first arrived, that
3 you began looking through some vehicles before
4 your mom discovered this SUV; is that right?

5 A That's correct.

6 Q And, in fact, before you did that, were you there
7 when she asked permission, or did you ask
8 permission yourself of anybody who appeared to be
9 on the property?

10 A I wasn't there when my mom asked Earl Avery for
11 permission to search the property.

12 Q And he gave permission; right? Freely?

13 A Yes, he gave permission.

14 Q Is there some reason you look at them every time
15 you answer, other than looking at me?

16 A No.

17 Q Have you been told to do that by somebody from the
18 District Attorney's office?

19 A No.

20 Q Did you prepare for your testimony today?

21 A No, I did not.

22 Q Okay. So, he gave you permission; right?

23 A Yes. He gave us permission.

24 Q Did you get his name?

25 A Yes.

1 Q What was it?

2 A Earl.

3 Q Okay. He didn't hesitate to give you permission

4 to check anywhere you wanted; right?

5 A No, he did not hesitate.

6 Q Okay. It didn't appear as if he had anything to

7 hide from you?

8 A No.

9 Q Okay.

10 A Not to my knowledge.

11 Q You said as you were going through the beginning

12 vehicles, you were looking for either Teresa, or

13 any articles that would appear to be

14 hers; right?

15 A Correct.

16 Q So, you were looking carefully inside each

17 vehicle, not just looking at the outside of the

18 vehicles; right?

19 A We were trying to glance into the vehicles, and look

20 anywhere that was open. Some of the trunks were

21 open.

22 Q Did you open any doors?

23 A No.

24 Q You never opened up any doors of the other

25 vehicles?

1 A No.

2 Q Okay. But you were looking inside those vehicles,
3 even though they are were not, obviously, not
4 Teresa's vehicle; right?

5 A No, they didn't fit the description of Teresa's
6 vehicle.

7 Q I understand. Even though they didn't fit the
8 description, you were looking inside those
9 vehicles, as well, to see if you could see
10 anything; right?

11 A Correct.

12 Q Anything like "Teresa herself"; right? Her body?

13 A Correct.

14 Q Or anything that would look like hers?

15 A Correct.

16 Q Okay. Then, when you got to the RAV-4, your mom
17 was not sure if it was the same one or not?

18 A Correct.

19 Q And so you were looking inside that vehicle to
20 see, again, if there was anything that would
21 indicate to you any articles of Teresa's?

22 A Correct.

23 Q Okay. So, you were looking carefully inside
24 there, because you were trying at that point
25 to make some determination of whether that was,

1 really was Teresa's vehicle; right?

2 A I was looking for things like the license plate, or
3 anything that we could look at, that we had
4 information about, to be able to identify if the
5 vehicle was hers, or not.

6 Q Or anything, any writing that might have her name
7 on it; right?

8 A Yeah.

9 Q Any personal effects that you could use to help
10 you identify that vehicle was actually Teresa's;
11 right?

12 A Correct.

13 Q So, it was important to look inside the vehicle,
14 not just at the outside; right?

15 A Correct.

16 Q You saw no blood whatsoever, did you?

17 A It was a dark, or "very dark" interior.

18 Q Ma'am, did you see any blood?

19 MR. KRATZ: Judge, I will object as
20 "argumentative". She is trying to answer the
21 question. If it's not "yes" or "no", she should be
22 able to explain.

23 THE COURT: That is a "yes" or "no"
24 question. If the explanation is not sufficient on
25 cross, you can ask it on redirect.

1 MR. KRATZ: I will do that, Judge.

2 BY MR. BUTING:

3 Q So, "yes" or "no"? Did you see any blood?

4 A No.

5 Q You didn't have a flashlight with you, you said;

6 right?

7 A No. I said I did not have a flashlight, yes.

8 Q Nevertheless, we are talking about a Saturday

9 morning; right? It was daylight?

10 A Correct.

11 Q In fact, it was 10:30 in the morning, something

12 like that?

13 A Correct.

14 Q It was not raining?

15 A No, it was not raining.

16 Q It was not terribly dark? It was a typical cloudy

17 November day, at 10:30 in the morning; right?

18 A It was a cloudy day at 10:30 in the morning.

19 Q Okay. And the trees that you mentioned were

20 around it, none of the trees had leaves on them,

21 did they?

22 A No, but it was a very brushy area with trees, versus

23 the other flat area that we were looking at, where

24 there was nothing blocking the other vehicles.

25 Q All right. Now, you knew that, in fact, your

1 mother warned you that it was important that you
2 not touch the vehicle, the RAV-4 that you found;
3 right?

4 A Correct.

5 Q You were doing your best not to alter the scene;
6 correct?

7 A Correct.

8 Q And not only did you not want to touch the
9 vehicle, you didn't want to touch any of the
10 branches, or debris, or anything else up against
11 it either, did you?

12 A Not with my bare hands, no.

13 Q Okay. The only thing you ever touched, even with
14 a tissue, were the door handles; is that right?

15 A To reach one of the door handles, I did have to pull
16 back, I believe it was a salvage part, to be able to
17 reach the door handle. I did that with the tissue,
18 as well.

19 Q All right. So, did you move something that was
20 against the vehicle itself?

21 A I just took the tissue and pulled it back, so I
22 would be able to reach the door handle.

23 Q That would be the hood, that was propped up
24 against it?

25 A I would have to see the picture to identify it.

1 MR. BUTING: Would you put up Exhibit 30,
2 Counsel?

3 (At which time Exhibit 30 was shown on the
4 big screen in the courtroom.)

5 BY MR. BUTING:

6 Q I think that is it, right there up on the screen?

7 A Yes.

8 Q Okay. It was some salvage part, that in order for
9 to you get at the door handle on that right rear
10 door, you had to move that panel?

11 A I did not necessarily physically move it. I just
12 pulled it back and checked the door.

13 Q And reached over?

14 A Right.

15 MR. BUTING: Okay. Let's go to Exhibit 29
16 please.

17 (At which time, Exhibit 29 was shown in the
18 courtroom on the big screen.)

19 BY MR. BUTING:

20 Q Do you see Exhibit 29 up there?

21 A Yes.

22 Q That is a photo of the rear of the RAV-4?

23 A Yes.

24 Q And there is a door handle on that door too;
25 correct?

1 A Correct.

2 Q You didn't check that one, to see if it was
3 locked, did you?

4 A No, I did not.

5 MR. BUTING: And if you could go to Exhibit
6 33 please? Thank you.

7 (At which time Exhibit 33 was shown in the
8 courtroom on the big screen.)

9 BY MR. BUTING:

10 Q Thank you. That is a picture -- By the way, you
11 are the one who took all of these pictures?

12 A That's correct.

13 Q Okay. That is a picture of -- It shows sort of
14 the driver's side area of the RAV-4; right?

15 A Correct.

16 Q There is sort of a walkway, or a walk area I
17 suppose, between the RAV-4 and this red vehicle,
18 whatever it is?

19 A Correct.

20 Q By the way, just so we're clear, this RAV-4 was
21 found up along the ridge area, of the border of
22 the property; right?

23 A I wouldn't know whether it was the border.

24 Q Okay. Well, there is a single row of cars up
25 along that area; right?

1 A Correct.

2 Q And there they were all sort of "bumper to
3 bumper", lined up like you would parallel park a
4 bunch of cars along a street; is that correct?

5 A Correct.

6 Q This was the only one that was sort of "double
7 parked", where it was next to, or where it was
8 "two by two"; right?

9 A I don't recall at this time if it was the only one
10 that was doubled parked.

11 Q Okay. But it was the only one with any kind of
12 debris piled on it; right?

13 A Correct.

14 Q It was the only one with any kind of branches
15 piled on it; correct?

16 A Correct.

17 Q You said to us that it was obvious that it
18 appeared that somebody was trying to conceal it;
19 is that correct?

20 A Correct.

21 Q In that sense then, that made it very different
22 than any of the other vehicles; right?

23 A It made us suspicious, yes.

24 Q It made it stand out, the fact that it was,
25 because it was the only one that was covered like

1 that; right?

2 A That, and the fact that it was similar to the
3 description of the vehicle that was Teresa's.

4 Q Okay. So, it was not so concealed that you
5 couldn't tell what it was when you got near it;
6 right?

7 A Can you rephrase that?

8 Q It was not so covered up with items that, when you
9 got anywhere near it, that you were unable to
10 determine it was even a RAV-4, was it?

11 A No, I could tell it was a RAV-4.

12 Q Okay. So, it was just sitting there, for anyone
13 to find, who would be looking through the salvage
14 area; right?

15 A If you were on foot searching, yes.

16 Q Okay. Now, from Exhibit 33, you said that you
17 you were trying to get the VIN number off of the
18 vehicle; right?

19 A Correct.

20 Q And the VIN number, for this particular vehicle,
21 in fact, or for most, I think, are, it's on the
22 dash, kind of at the very end of the windshield,
23 kind of down by the windshield wipers; is that
24 correct?

25 A That was where we were looking on this vehicle, yes.

1 Q I don't know if you knew that before, but you
2 learned it that day; is that correct?

3 A Yes.

4 Q You were told by the officers, that your mom was
5 talking to on the phone, that is where you should
6 direct your attention?

7 A After searching elsewhere on the vehicle, yes.

8 Q Okay. By the way, that VIN is stamped?

9 It's in the dash, in black, right there in black
10 metal?

11 A Correct.

12 Q The VIN itself is a black number, just kind of
13 raised?

14 A Correct.

15 Q Or recessed, bumps, something like that; right?
16 So, to see it, you have to get pretty close, don't
17 you?

18 A Within, you know, eyesight, yes.

19 Q In order to do that, you have to walk around to --
20 Where did you walk along, from the rear? Did you
21 approach it from the rear, or did you approach it
22 from the front?

23 A I don't recall that at this time, which way I
24 approached the vehicle, to check the VIN number.

25 Q Can you get to it either way?

1 A (Pause)

2 Q I mean, could you come around to the front, and
3 lean over, and look from there? Or did you have
4 to go around the rear, and come up alongside
5 of the vehicle, in order to get to the front?

6 A I don't recall at this time.

7 Q Okay. That's fair. Now, you said you waited
8 around 20 minutes or so, before the first officers
9 arrived?

10 A Approximately 20 minutes.

11 Q But during that time you had retreated over near
12 where the crusher was?

13 A Yes, correct.

14 Q That is what, about 900 feet, or a thousand feet
15 away, or something like that?

16 A I can only make an approximation. I would say it
17 would probably be, by blocks, maybe four blocks,
18 city blocks.

19 Q Okay. Then the first to arrive were the Manitowoc
20 officers?

21 A That's correct.

22 Q And did you see a Manitowoc officer walk up toward
23 the vehicle?

24 A Correct.

25 Q More than one?

1 A I recall one officer --
2 Q Okay.
3 A -- approaching the vehicle.
4 Q How many Manitowoc officers arrived first?
5 A (Pause)
6 Q One or two?
7 A I don't recall the exact number of officers that
8 arrived.
9 Q Several?
10 A I made contact with the one officer, and I remember
11 the other officer walked to the vehicle.
12 Q Well, you were watching carefully, you said, to
13 see what was going on; right?
14 A Correct.
15 Q Were you watching because you were concerned that
16 the police might somehow plant something in that
17 vehicle?
18 A No.
19 Q That thought never occurred to you, did it?
20 A No.
21 Q Of course not. So, your only concern was if
22 anybody other than police officers would come to
23 the scene of the RAV-4 and disturb it in any way;
24 right? That was your focus?
25 A That, and the focus that we needed to make sure it

1 was her vehicle.

2 Q Sure. So, once the Manitowoc police officers
3 arrived, you were put at ease a little bit, that
4 at least some law enforcement was there; correct?

5 A I wouldn't say we were "put at ease".

6 Q Well, you were no longer alone at this strange
7 auto salvage yard, with other people milling
8 about; correct?

9 A Correct.

10 Q Now, there was law enforcement there; right?

11 A Correct.

12 Q And they had guns; right?

13 A I would assume they had their guns.

14 Q So, your real interest at that point was if this
15 was really Teresa's car? That is what you were
16 concerned about?

17 A Correct.

18 Q And at some point did one of the officers come
19 back and tell you that? One of the Manitowoc
20 officers?

21 A I don't recall if it was a Manitowoc officer, or
22 Calumet, at that time.

23 Q Okay. How long was it before the Calumet
24 officers arrived on the scene, if you know?

25 A I can only make an approximation. I would say it

1 was a few minutes.

2 Q Okay. How many of them arrived?

3 A I don't recall the exact number of officers that

4 arrived.

5 Q Were they in marked squads? Or unmarked squads?

6 A I don't recall if it was unmarked or marked.

7 Q Were they uniformed? Or not uniformed?

8 A The detective that I spoke to was an un-uniformed

9 officer.

10 Q "Un-uniformed", did you say?

11 A Yeah.

12 Q Plain clothes? Did you see any marked Calumet

13 squads arrive there in the area of the RAV-4?

14 A I don't recall if it was marked or unmarked.

15 Q So, you don't know whether any officers that were

16 coming or going were Manitowoc or Calumet; right?

17 A Not unless they identified themselves. The plain

18 clothes detective identified himself as Calumet.

19 Q So, the one detective identified himself; right?

20 A Yes.

21 Q And the others didn't? Or they did?

22 A I did not have direct contact with all of the

23 officers who arrived at the scene.

24 Q So, you don't recall if they were marked cars, and

25 you don't remember seeing any Calumet uniforms?

1 You don't know if the officers who arrived were
2 from Calumet or Manitowoc; right?

3 A They don't have distinguishing uniforms. They were
4 all brown.

5 Q So, they were just "police officers"; right?

6 A Correct.

7 Q But at some point, I believe, on direct, you said
8 that you did see some -- Well, let me go back and
9 ask it this way: Did you see any Manitowoc
10 uniformed officers at the scene?

11 A As I said, I didn't distinguish based on their
12 uniforms. They are all brown. So, at that point in
13 time, the people that I spoke to had identified
14 themselves as Manitowoc, or Calumet. But I didn't
15 speak with every officer that was there.

16 Q When you say "the people that you spoke to", it
17 was one person that you spoke to; right?

18 A No, I spoke to both Manitowoc and Calumet County
19 officers.

20 Q You did?

21 A Correct.

22 Q Maybe I am misunderstanding. I apologize. Were
23 they wearing uniforms? Or plain clothes?

24 A Plain-clothes detectives.

25 Q So, you talked to two plain-clothes detectives?

1 One said he was from Manitowoc, and one said he
2 was from Calumet?

3 A That's right.

4 Q So, you saw somebody that was uniformed approach
5 the RAV-4 or not?

6 A A uniformed officer did approach the RAV-4.

7 Q Okay. Did you ever see somebody that you could
8 readily discern was a Calumet County officer, as
9 opposed to a Manitowoc officer, come up and
10 relieve the Manitowoc officer, who was near the
11 RAV-4?

12 A I couldn't discern whether they were Manitowoc or
13 Calumet.

14 Q Okay. So, you don't know if or when any Calumet
15 officers took over responsibility for that RAV-4
16 itself, do you?

17 A No.

18 Q You said you were there at the property, the Avery
19 salvage property until about noon or 12:30?

20 A That's correct.

21 Q But before that time, you and your mother had
22 sort of retreated from the car crusher area,
23 farther north, over toward the entryway, didn't
24 you?

25 A No, we stayed near the car crusher area.

1 Q So, you stayed near the car crusher, when you
2 gave your statements?

3 A Yes.

4 Q And the entire time you were on that property,
5 you were just right near the car crusher?

6 A Yes.

7 Q You never went anywhere else further away to talk
8 with officers by any other vehicles?

9 A By what vehicles?

10 Q By any other vehicles, on any other area of the
11 lot?

12 A No.

13 Q You were standing next to your mother the whole
14 time?

15 A Yes.

16 Q Okay. Now, Ms. Sturm, have you ever locked
17 yourself out of your car?

18 A Yes.

19 Q Did you call the police to help you get in?

20 A No.

21 Q Do you know anybody else who has?

22 A No.

23 Q Do you know, if you needed to, if you couldn't find
24 anyone else to get your keys, to get into your
25 vehicle, you could call a police officer, and

1 he would help you get into your vehicle; right?

2 A I called a locksmith.

3 Q Okay. But do you know you could call an
4 officer? Many times people do call officers for
5 that purpose?

6 A No. When it happened to me, I called the locksmith.

7 MR. BUTING: Okay. Thank you. No further
8 questions.

9 THE COURT: Mr. Kratz?

10 REDIRECT EXAMINATION BY MR. KRATZ:

11 Q Ms. Sturm, the defense attorney had asked you
12 about looking in the vehicle, and whether you
13 could see inside the vehicle. Do you remember
14 those questions?

15 A Yes.

16 Q Was it easy to see into those windows?

17 A No, it was not easy.

18 Q I will have you take a look at Exhibit 33,
19 although we will be looking at some others. Is
20 there anything different about the rear windows,
21 than the front driver's windows?

22 A The rear windows had a tint to them, and, as you can
23 see from the picture here, as I'm sure other people
24 have done, there is glare in the windows. So, if
25 you really wanted to see inside, and if you weren't

1 concerned about not trying to disrupt the scene at
2 all, you would have to cup your hands over the
3 vehicle, to make sure you were blocking out the
4 glare, and the shadows, which we didn't do.

5 Q You did not do?

6 A No.

7 Q I will show you Exhibit number 30, and ask you to
8 describe the tint on the back windows?

9 A The rear and back windows were darkly tinted. The
10 front windshield and the driver's and passenger's
11 doors were not. So, once again, you can see there
12 is definitely a "glare".

13 Q Ms. Sturm, whether the officers were Calumet
14 County or Manitowoc County, did any officer
15 approach that vehicle?

16 A No officer touched the vehicle while we were
17 present.

18 Q Did you see any officer pull out a device, or try
19 to pry open the door, or anything like that, while
20 you were there?

21 A No.

22 Q If that would have happened, would you have
23 seen it?

24 A Yes, definitely.

25 MR. KRATZ: Okay. That's all I have of Ms.

1 Sturm.

2 MR. BUTING: Nothing further.

3 THE COURT: Very well, you are excused.

4 MR. KRATZ: The State will call Bobby Dassey

5 to the stand.

6 BOBBY DASSEY, being first duly sworn on oath
7 to tell the truth, the whole truth, and nothing but
8 the truth, testified as follows:

9 THE CLERK: State your full name and spell
10 your last name please.

11 THE WITNESS: Bobby Dassey, D-A-S-S-E-Y.

12 DIRECT EXAMINATION BY MR. KRATZ:

13 Q Mr. Dassey, how old are you?

14 A 20.

15 Q Can you tell us where you live please?

16 A Right outside of Michicot on Avery Road.

17 Q Do you know the defendant, Steven Avery?

18 A Yes, he is my uncle.

19 Q You have to speak up just a little bit please?

20 A Yes, he is my uncle.

21 Q Is he in the courtroom here at this time?

22 A Yes, he is.

23 Q Would you point him out for the record, and tell
24 the Judge where he is seated?

25 A Right over there, to my right.

1 Q Sitting next to his two attorneys?

2 A Yes.

3 MR. KRATZ: Judge, I would ask the record to
4 reflect the defendant's identification.

5 THE COURT: The record will reflect the
6 witness identified Mr. Avery.

7 BY MR. KRATZ:

8 Q Mr. Dassey, do you know where, at least during the
9 fall of 2005, prior to November fifth, where your
10 uncle lived?

11 A Yes. He lived right next door to us.

12 Q I will ask you to describe the kind of residence
13 that, first of all, that you live in?

14 A We live in, I would say, a mobile home, a
15 three-bedroom house, mobile home.

16 Q On October thirty-first, 2005, who all lived in
17 your home?

18 A My mom, my step-dad, and my two younger brothers.

19 Q What were the names of your younger brothers?

20 A Blaine and Brendan.

21 Q Blaine and Brandon?

22 A Brendan.

23 Q Bobby, do you recall October thirty-first of 2005?

24 A Yes.

25 Q Could you tell the jury if you were employed

1 at that time?

2 A Yes, I was. I worked at Fischer Hamilton's, third
3 shift.

4 Q What time would you start work on any day?

5 A I would start at ten at night and work until six in
6 the morning.

7 Q On October thirty-first of 2005, could you tell
8 the jury if you were home during the daytime
9 hours?

10 A Yes, I was.

11 Q And how late, or how long were you home until?

12 A I was home until 2:30 that day.

13 Q What were you doing before 2:30?

14 A I was sleeping.

15 Q When you say "2:30", are you talking about the
16 afternoon or morning?

17 A In the afternoon.

18 Q To your knowledge, Bobby, was anybody else at home
19 with you?

20 A No.

21 Q Do you remember anything unusual that happened at
22 about 2:30 that afternoon?

23 A A vehicle had drove up, and started taking pictures
24 of the van.

25 Q All right. Let's back up just a minute. Were you

1 still sleeping? Or did you wake up?

2 A I was up by 2:30, yeah.

3 Q At 2:30, did you see something?

4 A Yes.

5 Q What did you see?

6 A I seen a vehicle pull up in our driveway.

7 Q Do you recall which window you were looking from?

8 A Through the front window, in front of the kitchen
9 table.

10 Q Bobby, could you describe that vehicle for the
11 jury please?

12 A It was a light green SUV, like a "teal" color.

13 Q How do you know that it was about 2:30 in the
14 afternoon?

15 A Because I was going hunting that night, so that was
16 the time I wanted to get up. I got up at "two".

17 Q All right. From which way did this blue or teal
18 SUV drive in, as you were looking out the window?

19 A Toward the west it would be.

20 Q Can you tell the jury please from which
21 direction your uncle's trailer is from your house?

22 A The west.

23 Q Did you know what kind of SUV it was?

24 A Not at the time.

25 Q All right. After seeing that vehicle driving up

1 the roadway, tell the jury what you saw then?

2 A I seen Teresa Halbach get out of the vehicle, and

3 started taking pictures.

4 Q What was she taking pictures of?

5 A A maroon van.

6 Q A what?

7 A A maroon van.

8 Q Can you tell us about this vehicle? Where was it

9 parked?

10 A It was parked right in front of our house.

11 Q Now you told this jury it was Teresa Halbach that

12 had taken the pictures. How do you know that?

13 A Now, I know that. At the time, I didn't.

14 Q What did this woman look like?

15 A She was about maybe five-eight. She had brown,

16 shorter-like hair. She had a black coat on, that

17 went past the hips.

18 Q Was she wearing pants, or a skirt?

19 A She was wearing pants.

20 Q Now, about this van, what can you tell the jury

21 about that van?

22 A It was a 1989 Plymouth Voyager. It had lots of

23 miles on it. It was my mom's van. She had it for

24 a couple of years. I don't know really much more

25 about it.

1 Q All right. As you were looking out the window,
2 you said that you saw a woman taking pictures.
3 Can you describe that please?

4 A Well, I seen her take one picture of the front of
5 the van. Then I went in and took a shower.

6 Q Okay. After seeing her taking some pictures, did
7 you see her do anything else?

8 A She started -- Before I got in the shower, she
9 actually started walking over to Steven's trailer.

10 Q You could see that from your location?

11 A Yeah. Through the window, yeah.

12 Q You said, "walking toward Steven's trailer". What
13 does that mean?

14 A She walked toward it, to the door.

15 Q How close to the door did she get, before you
16 stopped watching?

17 A Maybe 25 yards.

18 Q Did you see her enter your uncle's trailer?

19 A No.

20 Q Why not?

21 A Because I wanted to take a shower. I didn't pay no
22 attention to it.

23 Q All right. Was there anybody with her at that
24 time?

25 A No.

1 Q Was there anybody outside, or making contact with
2 her, outside by the vehicle?

3 A No.

4 Q After seeing this woman walking toward your Uncle
5 Steven's trailer, did you ever see this woman
6 again?

7 A No.

8 Q How long was it that you were in the shower? Do
9 you remember?

10 A Maybe three minutes, or four minutes.

11 Q Okay. What did you do then?

12 A Got dressed, and left, to go hunting.

13 Q Now, when you left to go hunting, did you have a
14 vehicle on the premises?

15 A Yes.

16 Q Can you tell the jury what kind of vehicle it was?

17 A A black Chevy Blazer.

18 Q Where was that parked?

19 A It was parked right between the house and the
20 garage.

21 Q About what time do you think you left to go
22 hunting?

23 A Probably twenty to three, quarter to three.

24 Q Quarter to three? Bobby, how do you know that
25 was the time? Why is that time important as it

1 relates to hunting?

2 A Well, that is when the deer start moving. They go
3 on their feeding patterns then.

4 Q Pardon?

5 A They go on their feeding patterns then.

6 Q Where did you go hunting that day?

7 A It was actually maybe two miles up the road from my
8 house.

9 Q What kind of hunting was it?

10 A Deer hunting. Bow hunting.

11 Q Mr. Dassey, when you walked out to your vehicle
12 to go bow hunting, did you notice if that teal or
13 blue SUV was still in the driveway?

14 A Yes, it was.

15 Q It was?

16 A Yes.

17 Q Did you see Ms. Halbach?

18 A No.

19 Q Did you see any signs of her at all?

20 A Nope.

21 Q What did you do then?

22 A I proceeded to leave. I got in my vehicle and I
23 left.

24 Q Did you hunt that day?

25 A Yes.

1 Q Did you get anything that day?

2 A No. I seen two deer. I didn't get anything, no.

3 Q All right. After deer hunting, what did you do?

4 A Came home, and I laid down, and I went to sleep

5 again.

6 Q What time did you get home? Do you recall?

7 A It was "five-ish".

8 Q Now, when you drove back home at about five

9 o'clock in the afternoon, was Ms. Halbach's

10 vehicle still visible?

11 A No.

12 Q What did you do when you got home?

13 A I watched TV for a little bit, then I went to bed.

14 Q Did you go to sleep?

15 A Yes.

16 Q How long did you sleep?

17 A Probably three hours.

18 Q Let me back up just a few minutes, Bobby. At any

19 time during the morning or early afternoon hours,

20 did you receive any phone calls at your residence?

21 A No. Not that I am aware of.

22 Q Why don't you tell us what that means, "not that

23 you are aware of"?

24 A I am a real deep sleeper. When I sleep, I don't

25 hear nothing.

1 Q If the phone rings, would you have heard it?

2 A No.

3 Q After getting up that afternoon, did you check for
4 any messages, or check the answering machine?

5 A No.

6 Q Now, you mentioned that, while you were home that
7 day, you didn't think anybody was home when you
8 got up and when you left. After you went bow
9 hunting, was anybody home at that time?

10 A No.

11 Q Are you familiar with your brothers' schedules,
12 that is, your brothers that were at school?

13 A Yes.

14 Q What brothers went to school at that time?

15 A Blaine and Brendan.

16 Q Are you familiar with when Blaine and Brendan
17 usually got home from school?

18 A They usually got home at quarter to four.

19 Q That would be 3:45?

20 A 3:45, yeah.

21 Q So, about an hour after you would have left to go
22 deer hunting?

23 A Yes.

24 Q When you got home at about five o'clock, Bobby,
25 were Blaine and Brendan home?

1 A I can't recall.

2 Q All right. Now, you have a fourth brother, or a
3 third brother; is that correct?

4 A Yes.

5 Q What is his name?

6 A His name is Brian.

7 Q Do you know where Brian was at the time?

8 A He was at work.

9 Q Now, was Brian living at your home at the time
10 too?

11 A No.

12 Q Where was Brian staying at the time?

13 A He lived in Manitowoc with his girlfriend.

14 Q What is your mother's name?

15 A Barb.

16 Q And is Barb related to Mr. Avery, if you know?

17 A Yes.

18 Q How?

19 A Sister. Brother and sister.

20 Q When you got up and went bow hunting, and left for
21 bow hunting, was your mother home at that time?

22 A No, she was at work.

23 Q When you got home from deer hunting, was your
24 mother home yet?

25 A No.

1 Q Do you recall your mom coming home, or seeing
2 her that night?

3 A When I got up at nine o'clock, I seen her.

4 Q All right. I think I asked this, Bobby. I'm
5 sorry. But what time did you start work?

6 A I started work at ten.

7 Q Ten p.m.?

8 A Yep, ten p.m.

9 Q Where is the place that you work? What city is it
10 located in?

11 A Two Rivers.

12 Q Bobby, the rest of that week, after the
13 thirty-first of October, do you recall the rest of
14 that week?

15 A Some of it.

16 Q That weekend, that Friday and Saturday, the fourth
17 and fifth, did other family members go somewhere
18 that weekend?

19 A Yeah, they went up north.

20 Q What does "up north" mean?

21 A Up to Crivitz.

22 Q Do you know what is up in Crivitz?

23 A My grandpa has a cabin up there.

24 Q Do you know what family members went up north that
25 weekend?

1 A Steven, Brendan went, and Brian went, and my grandma
2 and grandpa were up there.

3 Q Steven, Brendan, and Brian? You didn't go?

4 A Nope.

5 Q Do you remember why you didn't go?

6 A I had to work that Sunday night.

7 Q Let's go back to the thirty-first, your work
8 schedule. You said that you worked at ten
9 o'clock; is that right?

10 A Yes.

11 Q Do you remember what time you left home for work?

12 A Probably about 9:30.

13 Q At 9:30 p.m. on the thirty-first of October, did
14 you see anything when you left your house?

15 A Not that I recall.

16 Q Did you see anything by your uncle's?

17 A I didn't even look.

18 Q Now, that weekend, the Saturday, the fifth of
19 November, do you recall that day at all?

20 A No.

21 Q Do you remember something being found on the Avery
22 property that Saturday?

23 A Her vehicle.

24 Q That is the day I'm talking about. Do you now
25 remember that day?

1 A Not really.

2 Q All right. Do you remember where you were when
3 that vehicle was found?

4 A I was by my friend's house.

5 Q What is your friend's first name?

6 A Mike.

7 Q How were you notified, if you remember, that
8 Teresa's vehicle was found on the Avery property?

9 A The TV and my mom.

10 Q Now, Bobby, at the time, back on the thirty-first
11 of October, did you have any pets?

12 A Yes, I had just got a black lab. She was two months
13 old.

14 Q Was that an "inside", or "outside" dog?

15 A Inside dog.

16 Q On the thirty-first of October, when you went
17 hunting, did you take your dog with you?

18 A No.

19 Q When you went to your friend Mike's house on
20 Saturday, the fifth, did you take your black lab
21 with you?

22 A No.

23 Q Were you able to get back home on the fifth of
24 November?

25 A No.

1 Q Tell us why not?

2 A They had the road all blocked off. They wouldn't
3 let anybody in there.

4 Q Who is "they"?

5 A The police officers.

6 Q How about your dog? What happened to your black
7 lab?

8 A I had to wait, like, three hours, in order to get
9 her.

10 Q In order to get her?

11 A Yeah.

12 Q How did you get her?

13 A I had to give my statement and everything. Then the
14 investigator went in and got her.

15 Q They got your dog for you?

16 A Basically, yeah.

17 Q Now, Bobby, on the third of November, that would
18 be a Thursday, I believe, do you recall having a
19 conversation with your Uncle Steven regarding a
20 body?

21 A Yes.

22 Q Could you tell us what your Uncle Steven told you
23 that day?

24 A Well, my buddy, Mike, was over too, and he asked us,
25 it sounded like he was joking, honestly, he asked us

1 if we wanted to help get rid of a body.

2 Q Your Uncle Steven asked you if you wanted to help
3 get rid of a body?

4 A Yeah.

5 Q What was your response?

6 A "No".

7 Q Bobby, are you familiar with a Suzuki Samurai, a
8 gray Suzuki Samurai?

9 A Yes.

10 Q Where was that vehicle please?

11 A That was in Steven's garage. He was going to fix it
12 up.

13 Q On the thirty-first of October, do you recall
14 where that Suzuki Samurai was?

15 A I don't even know.

16 Q Do you remember, generally, where it was parked?

17 A No.

18 Q If you don't know, that's fine.

19 A I don't know.

20 Q All right. Bobby, have you ever seen a fire, like
21 a bonfire, by your Uncle Steven's?

22 A Yes.

23 Q Do you remember the last time you saw a bonfire by
24 your Uncle Steven's?

25 A Maybe two weeks before that, before this all

1 happened.

2 Q There is -- Let me just ask you: Is there some
3 place where your Uncle Steven would have fires?

4 A Yes, right behind his garage.

5 Q Can you describe that area for us?

6 A It was just a mound of gravel that he, basically,
7 burned stuff on.

8 MR. KRATZ: If I could have a moment with
9 counsel, Judge?

10 (At which time Mr. Kratz consulted with
11 other counsel about some photographs.)

12 BY MR. KRATZ:

13 Q Bobby, we have had some photographs marked. I
14 will have you identify some of these, in fact,
15 all of them, to help the jury understand what we
16 are talking about. The first exhibit I want you
17 to take a look at is Exhibit Number 37. Can
18 you tell us what that is please?

19 (While the witness was looking at the
20 exhibit, and before he began his answer, Mr.
21 Strang made the following statement.)

22 MR. STRANG: While he is doing that, your
23 Honor, I have a concern that I want noted now, and
24 that I would like the raise outside of the jury's
25 presence, between the direct and cross of Mr.

1 Dassey.

2 THE COURT: Are you saying you would like to
3 raise it out of the jury's presence now? Or later?

4 MR. STRANG: No, not now. If we can take
5 that up between the direct and the cross, that would
6 be fine.

7 THE COURT: Very well.

8 BY MR. KRATZ:

9 Q Tell us what Exhibit 37 is please?

10 A That is Steven's trailer.

11 Q Steven --

12 A -- Avery's trailer.

13 (At which time Exhibit 37 was shown in the
14 courtroom on the big screen.)

15 Q I will let the jury now see Exhibit 37. Can you
16 tell us kind of what else is shown there? What
17 are we looking at?

18 A Well, the red thing is Steven's trailer. The garage
19 is to the left. That is his truck sitting there,
20 and that is his burning barrel right in front of the
house.

21 MR. KRATZ: If I could have one moment,
22 Judge?

23 (At which time Mr. Kratz had a brief
24 discussion with Mr. Strang, in low tones, off the
25

1 record, out of the hearing of everyone else in the
2 courtroom.)

3 BY MR. KRATZ:

4 Q I will give you a laser pointer. There is a
5 button there. Using the laser pointer, again,
6 Bobby, can you show us where Steven's trailer is?

7 A Steven's trailer is right there.

8 Q Okay. You mentioned a burning barrel?

9 A The burning barrel would be right there.

10 Q Whose burning barrel is that?

11 A That would be Steven's burning barrel.

12 Q Where is Steven's garage?

13 A Right there.

14 Q All right. The next exhibit is number 38. Can
15 you tell us what that is please?

16 A (Pause).

17 Q It's in front of the next picture, 38?

18 A Just another picture of Steven's trailer and his
19 garage.

20 Q It's a little different angle; is that right?

21 A Yes.

22 Q I will now let the jury look at Exhibit 38.

23 Tell us what we are looking at please?

24 A Basically, just looking at Steven's trailer again,
25 and his garage, and his truck.

1 Q What is Exhibit 39 please?

2 A It's a closer shot of Steven's trailer.

3 Q Now we're letting the jury see Exhibit 39. Where

4 would Steven's main entrance be? How do you get

5 in the trailer?

6 A Through the door right by the step right there.

7 Q The record will reflect that you are pointing to

8 the entrance furthest to the right of this

9 trailer; is that correct?

10 A Yes.

11 Q Does the photograph help you, or could you

12 describe for the jury about how close Ms. Halbach

13 was to that trailer, when you stopped watching her

14 approach?

15 A She was probably right about there.

16 Q Looking which way?

17 A Toward the trailer, west.

18 Q Exhibit 40 is the next exhibit. Would you

19 describe what that is please?

20 A Just a closer view of Steven's front door.

21 Q That is the door we were talking about?

22 MR. KRATZ: We lost our batteries here,

23 Judge.

24 (The photographs which had been shown on the

25 large screen in the courtroom, were not able to be

1 seen, until new batteries could be installed in the
2 remote control device.)

3 BY MR. KRATZ:

4 Q While we are getting new batteries for our remote
5 control, I will ask you some other questions,
6 Bobby. First of all, how often would your Uncle
7 Steven have fires at his property?

8 A Maybe one or two every month.

9 Q You mentioned that Steven -- Or you identified, at
10 least, Steven's garage. Who uses Steven's garage?

11 A Steven does.

12 Q Does anybody else have access to it?

13 A At that time, no.

14 Q All right. Even though the batteries are not
15 changed yet, or they are kind of going bad, we
16 will do the best we can until we get some new
17 ones. This is Exhibit 40, that you have
18 identified. What are we looking at here?

19 A That is Steven's front door, the main entrance.

20 Q There is what looks like a deck that goes around
21 the trailer. Can you explain that please?

22 A Yes, it is basically a deck that runs around the
23 whole trailer. He has got a little "plateau" at the
24 end.

25 Q All right. Do you see the next picture in front

1 of you, Exhibit 41?

2 A Yes.

3 Q Can you tell us what that is please?

4 A That is just a picture of the door to the far left

5 of the trailer.

6 Q All right. We are now letting the jury look at

7 Exhibit 41. Again, what are we looking at?

8 A That is just another door to Steven's trailer.

9 Q Now, on the left there, the left-most edge of

10 Exhibit Number 41, is that the door that you are

11 talking about?

12 A Yes.

13 Q Do you know where that door goes?

14 A It goes into the hallway of the trailer, closest to

15 the bedroom in the back.

16 Q Have you been in Steven's trailer before?

17 A Yes.

18 Q On the thirty-first of October, did you have

19 keys to Steven's trailer?

20 A No.

21 Q Do you know if anyone else from your home had

22 keys to his trailer?

23 A No.

24 Q No, "you don't know"? Or, no, "they didn't"?

25 A No one did.

1 Q All right. The next exhibit in front of you is
2 Exhibit 42. Tell us what that is?
3 A This is a picture of the back of Steven's trailer.
4 Q Do you want to take the laser pointer, now that
5 the jury can see Exhibit 42? Why don't you tell
6 us what we are looking at?
7 A This is the back side. This side faces north. That
8 is the back of Steven's trailer. That is his pool.
9 Q Now, there is a back patio door on that trailer?
10 A Yes.
11 Q Can you show us that please?
12 A That would be right there.
13 MR. KRATZ: Just so the record is clear,
14 Judge, he is pointing at what would be just about
15 the very middle of the trailer.
16 BY MR. KRATZ:
17 Q That is the patio door; is that correct, Bobby?
18 A Yes.
19 Q What kind of pool is that?
20 A Just a pool that is like four feet deep.
21 Q Okay. Exhibit 43 is the next exhibit in front of
22 you. Can you tell us what that is?
23 A Just another view of the back of Steven's trailer.
24 Q Now we will let the jury take a look. It's a
25 different angle, pretty much the same as Exhibit

1 42?

2 A Yes.

3 Q Which way have we moved around? Or the camera?

4 A Which way?

5 Q Yeah.

6 A It has moved to the right, south.

7 Q Exhibit 43 shows Steven's back patio door?

8 A Yes.

9 Q Could you show us that please?

10 A Right there.

11 Q Now, behind Steven's trailer, Exhibit -- Excuse

12 me. Behind Steven's garage, did Steven have a

13 dog house?

14 A Yes.

15 Q Does Exhibit 43 show that?

16 A Yes.

17 Q If you could point out the dog house for us

18 please?

19 A Right there.

20 Q Directly behind the dog house, what is that area?

21 A That would be the burning pit.

22 Q You had mentioned, Bobby, before about seeing the

23 fires at Steven's. Where on this property did you

24 see those fires?

25 A Right there.

1 Q Directly behind this garage?

2 A Yes.

3 Q The next exhibit that we are asking you to

4 identify is Exhibit 44. Tell us what that is

5 please?

6 A This is another shot of Steven's house and the

7 garage.

8 Q Now the jury can see Exhibit 44. What are we

9 looking at?

10 A Basically, you are looking at Steven's trailer

11 again, the garage, and the dog house, and his truck.

12 Again, right there is where he had his burning pit.

13 Q His burning pit?

14 A Yeah.

15 Q Now, this exhibit, that is Exhibit 44, do you know

16 about where this was taken from?

17 A This actually was taken right in front of our house.

18 Q Is this east, or west, or north, or south of

19 Steven's trailer? Do you know?

20 A It would be east.

21 Q Okay. The next exhibit is Exhibit 45. Can you

22 tell us what that is please?

23 A That is a picture of Steven's garage.

24 Q Again, now that the jury can see Exhibit Number

25 45, why don't you take the laser pointer and

1 tell us what we are looking at?

2 A Basically, that is just Steven's garage again, and

3 his truck. That is the door he mainly used to the

4 garage.

5 Q That is what? You have to speak up.

6 A That is the door he mainly used for the garage.

7 Q Kind of a service door?

8 A Yeah.

9 Q All right. The next exhibit is Number 46. Can

10 you tell us what that is please?

11 A Another picture of Steven's garage.

12 Q All right. Exhibit 46, now that the jury can

13 see it, again, can you explain what we are looking

14 at?

15 A Just another picture of Steven's garage.

16 Q Is the service door open, or closed?

17 A It's open.

18 Q That burning pit, or burn area, can you tell us

19 where that is on this picture?

20 A It would be right there, where that white gravel is.

21 Q Right behind the garage?

22 A Yes.

23 Q What is Exhibit 47?

24 A A picture of Steven's burning pit.

25 Q All right. Now that the jury can see Exhibit 47,

1 why don't you tell us what we are looking at?
2 A You are just looking at Steven's burning pit,
3 directly behind the garage.
4 Q Do you recognize anything else in this picture?
5 A There is a seat.
6 Q What do you mean, "a seat"?
7 A From a vehicle, right there, and his trailer is
8 there. The dog coop is there.
9 Q Bobby, had you seen that seat out by there by your
10 Uncle Steven's house?
11 A Not that I recall.
12 Q Now on Exhibit Number 47, if you can show us, more
13 specifically, where the burning happened, where
14 the burn area is?
15 A Right around there.
16 Q There is a blackened area, which would be just
17 west and just right of the car seat. Is that the
18 place that you are pointing?
19 A Yes.
20 Q What is the next exhibit?
21 A The picture directly behind Steven's garage.
22 Q That is Exhibit 48; is that right?
23 A Yes.
24 Q Now that the jury can see Exhibit 48, tell us what
25 we're looking at?

1 A Basically, the back of Steven's trailer. There is
2 the dog coop again. That is where his burning pit
3 would be.

4 Q The dog "what"?

5 A The dog "coop".

6 Q The dog coop, C-O-O-P?

7 A Yeah, or dog house.

8 Q Where is Steven's garage?

9 A Right there.

10 Q That is the building to the very right of the
11 exhibit; is that correct?

12 A Yes.

13 Q Where is Steven's trailer?

14 A Right there.

15 Q So, the red building, just to the west; is that
16 correct?

17 A Yes.

18 Q Again, where is the burn area?

19 A This is partially shown in the picture, to the far
20 south of the picture.

21 Q The next exhibit is Number 49. Tell the jury
22 what this is please?

23 A Another picture of behind Steven's garage.

24 Q Now that the jury can see Exhibit 49, would you
25 again tell us what we are looking at?

1 A Just looking at the same picture as before, that dog
2 house, the garage, his trailer. That is where the
3 burning pit would be.
4 Q What is the next exhibit, 50?
5 A A picture of the burning pit, just at a different
6 angle.
7 Q There is something else in this picture, as well;
8 is that correct?
9 A Yes.
10 Q What is that?
11 A That is his dog.
12 Q Do you know the name of that dog?
13 A His name is "Bear".
14 Q "Bear"?
15 A Yes.
16 Q Whose dog was that?
17 A Steven's.
18 Q Pointing to Exhibit 50, can you show us the area
19 where things were burned?
20 A Right there.
21 Q That would be directly in front of the dog?
22 A Yes.
23 Q Can you tell us about "Bear"? Would the animal,
24 the dog of Steven Avery, usually be an inside dog
25 or an outside dog?

1 A Outside dog.

2 Q Do you know how long Bear's chain was, where

3 Bear would be able to wander?

4 A Fifteen feet.

5 Q Okay. Now in the back of this picture, the

6 background of Exhibit 50, do you see any vehicles?

7 A Yes.

8 Q What do you see?

9 A The maroon Plymouth Voyager.

10 Q Can you point that out?

11 A Yes, right there.

12 Q That car is not far, or just to the right of the

13 garage?

14 A Yes.

15 Q That is the same vehicle you saw Teresa Halbach

16 taking photos of?

17 A Yes.

18 Q I don't know if you are able to answer this,

19 Bobby, but I will ask you. What was Bear's

20 personality, or demeanor like, if you know? Do

21 you know what I'm asking you?

22 A He was really calm.

23 Q The next picture is Exhibit 51. What is that

24 please?

25 A That is a picture of Steven's burn barrel.

1 Q Where was this burn barrel located?
2 A Northwest of Steven's trailer.
3 Q In the background of that picture, you also see
4 a vehicle; is that correct?
5 A Yes.
6 Q What vehicle is that?
7 A That is the Plymouth Voyager again.
8 Q You also see a road between the burn barrel and
9 the vehicle; is that correct?
10 A Yes.
11 Q Can you describe that road for us please?
12 A That would be the driveway leading down to Steven's
13 trailer.
14 Q Now, Mr. Dassey, does Exhibit 51 help you, or
15 could you help explain or show the jury where you
16 saw Ms. Halbach walking, before you took your
17 shower?
18 A She was walking right about there, walked right
19 through there.
20 Q Walking in a westerly direction toward Steven's?
21 A Yes.
22 Q The next exhibit is Exhibit 52. Tell us what that
23 is please?
24 A That would be a picture of our burning barrels.
25 Q What do you mean "our burning barrels"?

1 A My mom's burning barrels.

2 Q How many were there?

3 A Three.

4 Q Are you sure?

5 A I don't know. I thought there was three.

6 Q Okay. Where were the burn barrels located?

7 A In our back yard, right behind our garage.

8 Q And this picture has some people in it. Do you
9 know who those people are?

10 A No.

11 Q Now, to the left, or behind the burn barrels are
12 some vehicles. Do you know how far away those
13 are? In other words, how close to your property
14 we are looking at?

15 A (Pause)

16 Q That's a bad question. Let me try it again. The
17 burn barrels, how close were they to the edge of
18 what would be your mom's property?

19 A 25 yards, or 30 yards.

20 Q The next exhibit is Exhibit 53. This is going to
21 look familiar, but what is that?

22 A Just another view of Steven's trailer.

23 Q From a little different angle; is that right?

24 A Yes.

25 Q What is Exhibit 54?

1 A That is a picture of our house, my mom's house.

2 Q Let's talk about that a little bit, now that the

3 jury can see Exhibit 54. Please take the laser

4 pointer and tell them what they are looking at?

5 A This is, basically, my mom's house. That is our

6 golf cart.

7 Q Your what?

8 A Our golf cart.

9 Q Okay.

10 A This would be the side of the house to the

11 farthest west. The burning barrels would be right

12 back there. You can't see them on there.

13 Q Could you tell us, or show us in this picture, the

14 window that you were looking out when you watched

15 Ms. Halbach?

16 A That window right there.

17 Q Okay. And I know that the vehicle for sale is not

18 shown on this picture, but which direction was it?

19 Can you kind of show us?

20 A It would be right over there.

21 Q To the right, off screen?

22 A Yes.

23 Q The next exhibit is Exhibit 55, can you tell us

24 what that would be?

25 A That would be my mom's answering machine.

1 Q Where was that located?
2 A In our living room.
3 Q Again, now that the jury is able to see Exhibit
4 55, what kind of answering machine was it? Do you
5 know?
6 A No.
7 Q Is there a phone that went with it?
8 A Yes.
9 Q Where did the phone go?
10 A I don't know.
11 Q But, what I mean is, was the phone placed on
12 a cradle, or something, on this phone?
13 A Yes.
14 Q Where is that?
15 A It's not on there.
16 Q Okay. Had you ever used that answering machine?
17 A No, I don't use it at all.
18 Q Have you ever retrieved a message from that
19 answering machine?
20 A Yes.
21 Q How do you retrieve a message from it?
22 A You just hit "play".
23 Q The next exhibit for the jury is Exhibit 56.
24 Have you ever seen that before?
25 A Yes. That would be my grandmother's.

1 THE COURT: Just a second. I think, Mr.
2 Kratz, it's 10:30. I think we will take our morning
3 break.

4 MR. KRATZ: We can certainly do that, Judge.

5 THE COURT: I will remind you, again,
6 members of the jury, not to discuss the case at any
7 time during the course of the trial, including
8 during any breaks. We will see you in 15 minutes.

9 (At which time the jury left the courtroom.
10 Then the following proceedings continued immediately
11 in the courtroom, out of the presence of the jury.)

12 THE COURT: You may be seated. Mr. Kratz,
13 did you have something first?

14 MR. KRATZ: Yes. Since there are several
15 photos, I believe we have received a stipulation as
16 to their admissibility. I understand that each
17 should be shown one at a time, but I think the Court
18 knows the technological limitations that we are
19 having, trying to toggle through this remote
20 control, so that only one is shown at a time, or
21 only after Mr. Dassey identifies what it is.

22 I'm wondering if there is a better way, or
23 if there is an opportunity that we may show these in
24 a more efficient fashion, perhaps one photo after
25 another, without having to go to a blue screen every

1 time.

2 I can certainly do that. It's Mr. Strang's
3 call. I understand that, Judge. This is simply a
4 request to make it a little easier for the jury to
5 watch these, and look at these exhibits, which I
6 believe had been stipulated as to their
7 admissibility.

8 THE COURT: Mr. Strang?

9 MR. STRANG: I think we should continue to
10 do it this way. There is a concern, or I imagine
11 there are many witnesses, who will have as many
12 photographs to go through. The concern is not the
13 authenticity of the photographs, or their
14 admissibility, but rather the kind of things that
15 appear on the screen.

16 When Mr. Kratz has the lap top on his desk,
17 he can stop the projecting of them up there before
18 one exhibit has been selected, and, you know, this
19 is just a good method to do it, because we may get
20 some photographs where, for some reason or not, they
21 ought not to be published to the jury, whether
22 because the witness can't identify it, or whatever
23 reason.

24 THE COURT: All right.

25 MR. KRATZ: That's fine. All I can do is

1 ask, Judge. I understand.

2 THE COURT: Mr. Strang, was there something
3 else you wished to take up?

4 MR. STRANG: There was. There is the matter
5 that I raised, and noted that I wanted it recorded,
6 that I had raised the matter, but it could wait for
7 our break to raise it. I wanted to do some checking
8 through the discovery too, before I did it.

9 My recollection of Bobby Dassey's testimony
10 was that he said that on Thursday, November 3, 2005,
11 in the presence of Bobby Dassey, and his friend,
12 Mike -- he didn't identify him further than as
13 "Mike" -- that Steven Avery asked if they wanted to
14 help get rid of a body, or "the body". I'm not
15 clear. I didn't write this down better.

16 But at the time Bobby said that he thought
17 Steve was joking about that, and it was shortly
18 after that testimony that I interjected briefly, as
19 I did.

20 We have no written summary of an interview
21 of Bobby Dassey, in which that statement is recited.
22 So, the immediate concern was disclosure of oral
23 statements of the defendant, that the State intends
24 to use at trial, I think, under Section
25 971.23(1)(b).

1 We do have a Calumet County Sheriff's
2 Department report of a contact with Michael
3 Osmunson, O-S-M-U-N-S-O-N, where, for counsel's
4 benefit, and the Court's, is page 259 of the Calumet
5 County Sheriff's Department report. That report,
6 which is not an interview of Bobby Dassey, recites a
7 statement of this Michael Osmunson, that he and
8 Bobby were inside the Dassey garage, when Steven
9 came over, and he goes on from there.

10 I think probably here, the best thing for
11 me to do is, what I will do is just read this for
12 the Court's benefit now, and make this a Court
13 Exhibit, page 259 of the report. The first chance I
14 get, we will make a copy of it. I will read the
15 relevant paragraph in its entirety.

16 "Michael indicated the only time he had been
17 at the Avery property between 10-31-05 and 11-14-05
18 was on Thursday, 11-10-05. He stated he and Bobby
19 were inside the Dassey garage when Steven came over.
20 Michael indicated he was aware Steven was one of the
21 last people to see the missing girl, and jokingly
22 asked Steven if Steven had her (the missing girl) in
23 a closet. At this point Steven asked Michael if
24 Michael wanted to "help bury the body", and they
25 laughed about this together. Michael stated he had

1 just learned about the missing girl on the Tuesday
2 prior to that. He once again indicated he thought
3 Steven might have been the last one to see the
4 missing girl." End of the relevant paragraph.

5 Although the following one sentence
6 paragraph says, "According to Michael, Steven stated
7 people go missing all the time and this girl may
8 have left, or may, quote, "have left for Mexico."
9 Period, close quote.

10 Now, although we have been told that Bobby
11 is in the garage at the same time, there is no
12 indication that Bobby overhears the statement.
13 Moreover, there was a different context for the
14 statement laid out here than what Bobby gave. That
15 is, Michael himself is joking with Steven, jesting
16 with him about having the girl in the closet. This
17 is clearly a joking response to the jest.

18 We have "help bury the body", instead of
19 "help get rid of the body". But, most significant
20 of all, this conversation clearly takes place on
21 Thursday, November tenth, 2005, not Thursday,
22 November 3, 2005. And Michael Osmunson says he had
23 just learned about the missing girl on the Tuesday
24 prior to that. Well, that has to be Tuesday,
25 November eighth, because on November 1, no one had

1 reported Teresa Halbach missing.

2 I was not concerned about Michael Osmunson
3 being a witness in this case. Why? Because Steven
4 Avery was arrested on November 9, 2005, and he has
5 been continuously in custody since then, and was not
6 in the Dassey garage, or Janda garage, or anyone
7 else's garage, on Thursday, November 10, 2005.

8 Now we have a different witness, to whom
9 this statement has never been attributed, of which
10 we have no summary identifying him as someone who
11 overheard the statement, or identifying a statement,
12 as having been Bobby Dassey, as the individual
13 identified, or critically identifying the statement
14 as having been made on November 3, as a time when
15 Steven Avery was not in custody, was at home, or in
16 the salvage yard property, and the implication is
17 this may have been before Teresa Halbach even is
18 reported missing.

19 In large part, that implication arises
20 because we didn't have the joke that was made to
21 Steven Avery as the precursor of this. So, what
22 I'm left with is this jury having heard testimony
23 from the first blood relative of Mr. Avery to
24 testify here, his nephew and next-door neighbor,
25 that amounts to a confession of a crime, and under

1 the circumstances, although, technically, because
2 Bobby is listed in the report of contact with
3 Michael Osmunson, technically, the discovery statute
4 here may have been complied with. I have not looked
5 at the case law under the discovery statutes, but,
6 setting that aside, this comes as an unfair
7 surprise.

8 It's materially different than the summary
9 or the statement of which we have been given notice.
10 There is no way to unwind this from the juror's
11 minds. It has enormous unfair prejudicial impact.
12 I can think of no remedy, short of asking for a
13 mistrial, on the introduction of this testimony by
14 the State on the direct examination of Bobby Dassey,
15 without having been invited by the defense, or the
16 defense otherwise having opened the door, or done
17 anything to which you could say this would be an
18 invited response.

19 I move, therefore, for a mistrial on the
20 grounds I have explained.

21 THE COURT: Mr. Kratz?

22 MR. KRATZ: Well, Judge, after Mr. Strang
23 concedes that the discovery statute was complied
24 with, or I guess in his words, "may very well have
25 been complied with", I will leave the legal analysis

1 to the Court. A summary of this conversation was
2 provided, and although it appears that this Michael
3 fellow got the Thursday wrong, as far as being the
4 third versus the tenth, because Mr. Strang is
5 correct, that as of the tenth, Steven Avery was in
6 custody.

7 This witness did testify consistently with
8 what the story was, that he believed his Uncle
9 Steven was joking, that it was said in a joking
10 manner, and, if Mr. Strang wishes to inquire as to
11 the context of it, he may do so on cross
12 examination. That is what cross examination is for.

13 It certainly does not rise to the level of
14 material that requires a mistrial. We would ask
15 that the Court not do that.

16 THE COURT: Before I go back to Mr. Strang,
17 did I understand that the State indicated they gave
18 that to the defense, not only the Michael Osmunson
19 statement, but also information that Mr. Dassey
20 would testify as he did today? I thought that is
21 what I heard you start to say.

22 MR. KRATZ: No, he got it from -- He got
23 page 259, with all of the other discovery, including
24 Mr. Dassey's. I don't know if the conversation is
25 included in Mr. Dassey's report, but it was in Mr.

1 Osmunson's on page 259.

2 MR. STRANG: This page 259 is the only
3 notice I had of any discovery, any conversation, of
4 anything at all in any form. Indeed, I had asked
5 for any statements of Bobby Dassey. I see no
6 mention of a Mike, or Michael, or Michael Osmunson,
7 anywhere in the report itself, that concerns what
8 Bobby Dassey had to say. So, there, I will tell you
9 this caught me completely unaware.

10 THE COURT: Mr. Kratz, I guess I am not
11 sure, what was the State expecting, that Mr. Dassey
12 was going to testify to a different date today, to
13 the tenth, rather than the third?

14 MR. KRATZ: I don't understand the question,
15 Judge. It was the third. This witness testified
16 that this conversation with Mike, because Steven was
17 not in custody then, this witness testified it was
18 on the third.

19 THE COURT: Right. But it's my
20 understanding, from what I have been told, and you
21 folks have the benefit of that here, I have not seen
22 the report, that is the report from Mr. Osmunson,
23 that indicated the conversation took place on the
24 tenth.

25 MR. KRATZ: We will probably have to get

1 page 259. I don't have that in here. Perhaps I can
2 make a better record about that. Perhaps the Court
3 can read all of page 259.

4 MR. STRANG: Mr. Buting, I think, can go
5 across the hall to the Clerk's office, and get
6 copies of page 259 for everyone, including the
7 Court, and counsel for the State.

8 THE COURT: All right. We will take our
9 break. Somebody can have the document brought back
10 to my chambers. I will take a look at it.

11 MR. KRATZ: That's fine. Thank you.

12 (After a short recess, the following
13 proceedings took place in the courtroom, outside of
14 the presence of the jury.)

15 THE COURT: You may be seated. Is there
16 anything further from either party concerning the
17 defense motion?

18 MR. STRANG: I have one thing to add, Your
19 Honor. This is because this is serious, and I want
20 to get it right. I did not say this until I double-
21 checked on the break.

22 But the further reason that I was not
23 concerned, and set aside the possibility of the
24 Osmunson statement, or the oral statement of the
25 defendant, through Osmunson coming in, is that the

1 State does not list Michael Osmunson on their
2 witness list. Neither did the defense. His name,
3 nowhere, appears on either party's witness list, and
4 what we have here then, on reviewing this, is a
5 materially different statement, made at an entirely
6 different time, and impossible to have been made on
7 the day that Mr. Osmunson says it was made that day.

8 So, it's not entirely consistent, in the
9 sense that he expresses no uncertainty about it
10 having been November tenth, Thursday, and says that
11 is because he had learned of Teresa Halbach being
12 missing on the preceding Tuesday, which only could
13 mean not earlier than Tuesday, November eighth, as
14 the Court notes. On that record, I can stand.

15 THE COURT: Mr. Kratz?

16 MR. KRATZ: Thank you, Judge. First of all,
17 the Court needs to note there was no violation, at
18 least a statutory discovery violation. The fact
19 that Mr. Strang indicates the impossibility of
20 November tenth, '05, as being the date of this
21 conversation, actually plays in the State's favor,
22 and does beg the question: Why the defense is
23 claiming surprise?

24 Why didn't they do something with this
25 statement? The defense had this information

1 available to them. If the context, and the subject
2 matter, and if the dates are wrong, there are many
3 remedies available to the defense. They could have
4 interviewed Osmunson, and apparently have chosen not
5 to. They certainly have had access to Bobby Dassey,
6 and the entire Dassey family, and I don't know if
7 Mr. Strang has indicated, or is representing that
8 they did not interview Bobby Dassey, but that, I
9 think, should be part of the record, as well.

10 Secondly, and next, it's important to note,
11 the jury is not going to be misled at all in this
12 case. A mistrial is reserved, as this Court knows,
13 in serious cases of prosecutorial misconduct, or
14 breach, or when some other remedy is not going to be
15 available. Given the fact there is no violation, no
16 discovery violation, certainly a mistrial is not at
17 all appropriate.

18 Let me offer, if there are concerns that the
19 Court still has, if the Court believes that, on
20 cross-examination, cannot be dealt with, Mr. Strang
21 still has available to him, either: To interview
22 Mr. Dassey, if the Court wants to grant a brief
23 continuance. Or to have Mr. Dassey come back, to
24 shore this up. Or interview Mr. Osmunson. Or to
25 secure Mr. Osmunson's appearance.

1 But the notice of the conversation was
2 provided. The fact that defense did nothing with
3 it, the fact that defense failed to interview, or
4 failed to appreciate, even if every belief was that
5 it was in a joking manner, the poor joke, that the
6 off-color remark that Mr. Avery apparently made,
7 regarding the remains of Ms. Halbach, I think that
8 is something perhaps that the defense should have
9 done. But it's not something the Court should
10 attribute to the State. Nor should a mistrial be
11 the remedy that the Court chooses in this case.
12 That is all I have, Judge. Thank you.

13 THE COURT: Mr. Strang?

14 MR. STRANG: First, we have not interviewed
15 Bobby Dassey. Second, the report, which the Court
16 now has a copy of, and I ask to be made part of the
17 court record as a Court Exhibit, again, is that he,
18 Michael, and Bobby were inside the Dassey garage,
19 but, from that point forward, describes this as a
20 conversation between Michael and Steven.

21 So, the remedy here is not to repeat this
22 statement, again and again in front of the jury, or
23 call another witness to change the date. The remedy
24 here is a mistrial, or something that effectively
25 would erase this testimony from the jury's

1 consideration, because, again, it's a materially
2 different statement, under different circumstances,
3 on a different date. That has an all-together
4 different meaning, and it becomes something a killer
5 would have done, as we sit here.

6 As the statement was presented to us, it was
7 impossible to have been made. It was false on its
8 face. So, if there were a remedy, short of a
9 mistrial, and I don't think that there is. But if
10 there were a remedy, short of that, it would be
11 something like the Court instructing the members of
12 the jury that testimony was given concerning a
13 statement that Mr. Avery supposedly made to Bobby
14 and Mike, his friend, on November 3, and that the
15 statement was not made, the testimony was false.

16 It was not made, and the testimony about it
17 was false, and at that point, the Court, I think, if
18 it were going to adopt a remedy, short of a
19 mistrial, would roll into it, with that instruction,
20 and connect it with the Falsus in Uno Instruction,
21 about Bobby Dassey's testimony, inviting, but not
22 instructing the jury that it may disregard, as
23 false, all of Bobby Dassey's testimony because of
24 his false testimony on this point.

25 I don't know if that would suffice, but

1 that comes much closer to a remedy than repeating
2 it, and, you know, remaking the statement over and
3 over, again, on cross examination, or with another
4 witness, in front of the jury.

5 I don't have case law at hand, on whether
6 the page 259 of the Calumet County Sheriff's
7 Department report, technically, suffices under
8 Section 971.23(1)(b) or not. I'm assuming here, for
9 the sake of argument, because we are told that Bobby
10 is somewhere in the garage when the statement
11 purportedly is made, I'm assuming, for the sake of
12 argument, that the State is just on the right side
13 of the line on discovery.

14 But, I have also laid out the practical
15 problems, and a good argument could be made, and I
16 will make it, if there is case law to support it, a
17 good argument can be made that the statement
18 testified to here is so materially different in
19 date, time, and content, than the statement of which
20 we were given notice, that they are not the same
21 oral statement. But, in any event, I don't think
22 the Court has to resolve that. The damages and the
23 problems are clear, and are serious.

24 THE COURT: All right. The starting point
25 here is the discovery statute, Section 971.23(1)(b).

1 That statute requires that the prosecution provide
2 to the defense a written summary of all oral
3 statements of the defendant. That would be
4 statements of Mr. Avery, which the District Attorney
5 plans to use in the course of the trial, and the
6 names of witnesses, who the defendant made the oral
7 statements to.

8 In this case, the Court is satisfied that,
9 at least, literally, that statute has been complied
10 with, that the disputed testimony involves a
11 statement attributed to the defendant, and there is
12 no dispute that the discovery information provided
13 by the State to the defense included information
14 indicating that both Mr. Osmunson and Bobby Dassey
15 were present at the time the defendant made the
16 statement.

17 What is different is the date on which the
18 statement was made, and as noted by defense counsel
19 in his argument, that can have a significant
20 difference here, because it can affect the
21 credibility of the statements themselves.

22 I would note at the outset that, in terms of
23 assessing the problems presented to the defense
24 here, both from page 259 which was presented to the
25 Court, and based on the testimony of Mr. Dassey,

1 both of the witnesses to the defendant's statement
2 indicated that they thought he was just joking at
3 the time. That is another element in which the
4 information provided to the defense and the
5 testimony given today on the witness stand are
6 consistent with each other.

7 I do agree that I would not fault the
8 defense, saying they didn't take the opportunity to
9 simply follow up on the information on page 259,
10 because by reading page 259, they would have been
11 led to believe that the information contained could
12 have been easily attacked, on the basis the
13 defendant could not have made that statement on
14 November tenth.

15 But they did have information to suggest the
16 statement was made. It's not unusual for a witness
17 to be mistaken about dates.

18 In the Court's opinion, I think that the
19 defense is entitled to some consideration in the
20 form of having an adequate opportunity to prepare to
21 cross examine the witness about the statement that
22 was made today.

23 I don't believe, first of all, there was,
24 strictly speaking, a violation. And, secondly,
25 given the nature of the testimony, that the

1 statement was made in jest, it would not rise to the
2 level of something that would warrant the granting
3 of a mistrial.

4 The Court would be inclined to grant the
5 defense an opportunity, first of all, to cross
6 examine the witness, in an attempt to attack the
7 statement today, if the defense wishes. The Court
8 will also require the State to make the witness
9 available for the defense to consult at a later
10 date, if the defense feels it needs additional time
11 in which to prepare to cross examine the witness on
12 this issue.

13 The Court may also consider giving an
14 instruction to the jury at some later point, if it
15 is deemed to be warranted. But I think it's
16 premature at this stage to speculate as to whether
17 or not such an instruction may be required, or what
18 the content of such an instructions might be.

19 So, I am giving the defense an alternative
20 opportunity. You are free to cross examine the
21 witness today. You are free to also, if you cross
22 examine him today, to have him brought back at a
23 later date, after you have had more time to digest
24 the testimony today. You can also postpone your
25 cross examination of the witness, if you wish.

1 MR. STRANG: I understand the Court's
2 rulings. Those are three choices that present some
3 complicated weighing for us to do. I guess, as a
4 first step, what I would like to do is have 30
5 minutes, or something, to talk with Mr. Buting about
6 that.

7 And I would like at this point the Court to,
8 until Mr. Dassey has completed whatever testimony he
9 is going to give in this case, I would like the
10 Court to order that the State, and any agent of the
11 State, including members of the Calumet County
12 Sheriff's Department, or either of the two lead
13 investigators, or anyone acting on their behalf,
14 not discuss with Bobby Dassey any aspect of his
15 testimony, have no contact with him about his
16 testimony actually given already, or anticipated
17 further, on direct or cross examination.

18 So, in other words, I would like him
19 sequestered. That agents of the State would include
20 the District Attorney's office, anyone involved on
21 the prosecution's side of the case, or acting at the
22 prosecution's direction, and I also will not talk to
23 Mr. Dassey either, without approaching the Court,
24 and telling the Court and counsel that we intend, or
25 we are asking to be able to interview him, while his

1 testimony is ongoing, in the sense that he has not
2 been released from his appearance here.

3 But I would like to, at a minimum, to
4 "freeze the frame", so to speak, where it is, and to
5 start with, like I said, I think 30 minutes for Mr.
6 Bunting and I to talk about which, of the three
7 options the Court has afforded us immediately, we
8 best should choose in representing Steven Avery.

9 THE COURT: Mr. Kratz?

10 MR. KRATZ: I do have a suggestion, Judge.
11 My direct examination of Bobby, as the Court may
12 have already predicted, will be concluded with Bobby
13 identifying the balance of the photos that are in
14 front of him. I don't intend to ask him any other
15 questions. That seems to be seamless enough that it
16 would allow Mr. Strang an opportunity over the lunch
17 hour.

18 Perhaps the Court could even grant a
19 little extension over the lunch hour for the defense
20 to discuss their strategy, so the jury could at
21 least hear the rest of the direct testimony, which
22 is just the identification of the other photographs
23 and exhibits. I think that would be fair for Mr.
24 Strang, to give him an opportunity to discuss that.

25 MR. STRANG: Well, if it's really just

1 finishing identifying the photographs, and there is
2 no summary or windup at the end, then that is a
3 reasonable suggestion. I think we could, if I could
4 get 90 minutes for lunch today, Mr. Buting and I
5 could incorporate the discussion, I'm suggesting we
6 need to have, over the lunch hour. So, I don't have
7 any quarrel, if I understand Bobby Dassey really
8 does end on direct examination, when the last
9 photograph is identified and explained.

10 MR. KRATZ: Counsel has just reminded me,
11 Judge, that if, during the course of Bobby's
12 identification of some photographs, he says
13 something, I may ask a clarifying question. That
14 may raise some areas of inquiry.

15 So, although my intent is to ask about these
16 photographs, and what is depicted in them, it's
17 possible that it could go into other areas of
18 information, on the property and the like. But I
19 don't envision, certainly don't envision revisiting
20 this "statement issue". But I was just trying to
21 come up with a suggestion that could at least
22 complete the direct examination before lunch.

23 MR. STRANG: Perhaps it would be useful to
24 know, your Honor, how many photographs we have left
25 to go, and about what time the prosecution expects

1 its continued direct examination will consume.

2 THE COURT: Mr. Kratz?

3 MR. KRATZ: I think we have 20 pictures
4 left, Judge. I think the questions will be what you
5 heard so far, is what we are looking at.

6 THE COURT: Why don't we finish up on that
7 and take a lunch break at that point?

8 MR. STRANG: And I do I think I would like a
9 ruling about -- I know I would like a ruling on my
10 request that Mr. Dassey, at this point, until a
11 further order of the Court, not be questioned in any
12 way by any agent of the State.

13 He will have to have some incidental contact
14 with Julie Leverenz, who is the Victim-Witness
15 Coordinator from the Calumet County District
16 Attorney's Office. I odn't have any practical
17 objection to that, "When does he need to back?", or
18 whatever.

19 THE COURT: Any objection from the State?

20 MR. KRATZ: No.

21 THE COURT: All right. The Court will order
22 that no attorney or representative of either side
23 have any contact with Mr. Dassey until his testimony
24 is completed. And the Victim-Witness Coordinator is
25 not to discuss any aspect of his testimony with him.

1 With that, I believe we can bring the jury back
2 in and complete the direct examination of Mr.
3 Dassey.

4 MR. KRATZ: The record should reflect that I
5 have instructed the Victim-Witness Coordinator as to
6 what to do.

7 THE COURT: Thank you.

8 (The jury was brought back to the courtroom,
9 and the following proceedings continued in the
10 courtroom, in the presence of the jury.)

11 THE COURT: You may be seated.

12 Mr. Kratz, at this time you may resume your
13 direct examination.

14 MR. KRATZ: Thank you.

15 BY MR. KRATZ:

16 Q Bobby, we left off on Exhibit Number 56, that was
17 in front of you. I think you started to tell us
18 what Exhibit 56 was. Can you tell us again
19 please?

20 A That is my Grandma's house.

21 Q Now that the jury can see exhibit 56, where is
22 your Grandma's house located in relationship to
23 you?

24 A To the east.

25 Q Okay. We will see an overview, or at least the

1 jury has. But how far down that road is your
2 Grandma's trailer located? Do you know?
3 A Maybe six tenth's of a mile.
4 Q And then they have a road, or more of a "long
5 driveway"; is that correct?
6 A Yes, it is a long driveway.
7 Q The next exhibit is Number 57. Can you tell us
8 what that is please?
9 A It's another picture of my Grandma's house.
10 Q From a different angle?
11 A Yes.
12 Q And, again, now that the jury can see Exhibit
13 number 57, how are we looking at her trailer?
14 A That would be, if you are coming into the driveway,
15 that would be the east side of it, the northeast
16 side of it.
17 Q So, if you are coming from the main road, on
18 Highway 147, you are coming toward the end of it?
19 A Yes. That would be the front.
20 Q What is the next exhibit, Exhibit 58?
21 A That is the office area, inside the shop, of the
22 salvage yard.
23 Q Now, as I get that picture up, if I can, in fact,
24 do that, you are talking about the shop?
25 A Where they do all of their business. Where they fix

1 the cars.

2 Q On the Avery Salvage property, this is other than
3 just residences; is that correct?

4 A Yes.

5 Q Do you know how many other buildings there are,
6 other than residences?

7 A Three.

8 Q Exhibit Number 58, is that one of them?

9 A Yes.

10 Q The main office area, if somebody did business
11 with the salvage place, he would come into this
12 room here?

13 A Yes.

14 Q All right. Tell us what Exhibit 59 is?

15 A Just another picture of the Plymouth Voyager van.

16 Q Now, Exhibit 59, where was that taken from? Do
17 you know?

18 A From the driveway.

19 Q Do you still have the laser pointer up there?

20 A Yes.

21 Q Can you show us with the laser pointer where your
22 mother's and your home would be located in
23 relationship to this picture?

24 A It would on this side of the picture.

25 Q The left side?

1 A Yes.

2 Q And that is the maroon van, again, the van that
3 you saw Teresa taking pictures of?

4 A Yes.

5 MR. STRANG: Objection, asked and answered.
6 The testimony is getting cumulative, Your Honor.

7 THE COURT: Mr. Kratz?

8 MR. KRATZ: Judge, although I understand I
9 have asked the questions, these are all different
10 angles. They will have a use later in the trial. I
11 suspect, with this picture, that is
12 self-explanatory.

13 THE COURT: I will allow the one question,
14 to put the picture in context.

15 BY MR. KRATZ:

16 Q That was the vehicle that Teresa was taking a
17 picture of?

18 A Yes.

19 Q All right. The next exhibit is Exhibit Number 60?

20 A That is another picture of the van, just a different
21 angle.

22 Q What we are showing on the screen is Exhibit 60?

23 MR. STRANG: Objection, cumulative and a
24 waste of time, under Section 904.03.

25 THE COURT: Are you referring to the

1 description of the photo, or the photo itself?

2 MR. STRANG: The photo and the description
3 of it.

4 THE COURT: It's my understanding at this
5 time we are going through these photos because they
6 may be used later. It's a bit difficult for the
7 Court to say, in advance, that a photo may be a
8 waste of time, since I don't know the purpose for
9 which it may be used. So, I'm not going to rule on
10 the objection for now.

11 MR. KRATZ: All right.

12 BY MR. KRATZ:

13 Q Exhibit 61?

14 A Another picture of the van at a different angle.

15 Q What is in the background of Exhibit 61?

16 A My mom's house.

17 Q When looking at Exhibit 61, could you again point
18 out the picture, or, excuse me, the window that
19 you looked out and watched things from?

20 A It would be that window there.

21 Q The left-most window on the trailer; is that
22 correct?

23 A Yes.

24 Q Exhibit 62 is the front of -- What is that?

25 A That would be Steven's car.

1 Q What kind of car is that?

2 A Pontiac Grand Am.

3 Q You mentioned that Steven had a truck, as well?

4 A Yes.

5 Q We saw that in a previous picture; is that

6 correct?

7 A Yes.

8 Q This blue car, that Grand Am, is, obviously, a

9 different vehicle. Did Steven drive this car?

10 A Yes.

11 Q What is Exhibit 63?

12 A That would be the yard's flatbed, the salvage yard

13 flatbed.

14 Q What is a flatbed, for those of us, who don't

15 know?

16 A For hauling cars, for picking up cars.

17 MR. STRANG: Your Honor, I would like to be

18 heard briefly at side bar, if I may?

19 THE COURT: Very well.

20 (At which time a bench conference was held

21 off the record, in low tones, between the Court and

22 the attorneys, out of the hearing of everyone else

23 in the courtroom.)

24 BY MR. KRATZ:

25 Q What is the next picture of, in front of you,

1 Exhibit 64?

2 A The would be my Grandma's golf golf.

3 Q Your Grandma's what?

4 A Golf cart.

5 Q And, again, on the large screen, that is a

6 representation of the photo that is in front of

7 you?

8 A Yes.

9 Q Do you know where that golf cart was normally

10 kept?

11 A In her garage.

12 Q What is Exhibit 65?

13 A My mom's golf cart.

14 Q Again, directing your attention to the large

15 screen, where was that normally kept?

16 A Mostly outside.

17 Q Outside of what?

18 A Our house.

19 Q The next photo is Exhibit 66. Can you tell us

20 what that is?

21 A That would be the car crusher.

22 Q Where on the property was that located? Do you

23 know?

24 A Down in the pit.

25 Q What does "down in the pit" mean?

1 A It would actually be on the east side of the pit,
2 the far side.

3 Q The east side of the property?

4 A Yes.

5 Q Bobby, did you ever operate this piece of
6 equipment?

7 A No.

8 Q Okay. I think he have this on a couple of
9 different angles, but can you tell us about
10 Exhibit 67?

11 A Just the front view of the crusher, again.

12 Q Actually, I am not even going to post these to the
13 jury. Just tell me we what it is.

14 A Just a front view of the crusher.

15 Q And 68?

16 A A back view of the crusher.

17 Q And Exhibit 69?

18 A A picture of the whole background.

19 Q Of the pit that you were talking about?

20 A Yes.

21 Q Okay. I will show this one. Tell us what we are
22 looking at here.

23 A There is the far east side of the property.

24 Q Can you show us, with the laser pointer, the
25 crusher please?

1 A The crusher is right there.

2 Q Is there a body of water, or a pond, right there?

3 A Yes. That would be right around there.

4 Q Now, do you know what is on the other side of that

5 pond?

6 A Just an embankment.

7 Q Are there vehicles on the other side?

8 A There is, a little lower, and there is the

9 embankment.

10 Q Could you show us that, with your laser pointer,

11 what you are talking about?

12 A There is the embankment, and there is the road that

13 runs on this side of the pond.

14 Q Okay. What is Exhibit 70?

15 A Crushed cars.

16 Q Had you seen any crushed cars on the property?

17 A No.

18 Q You were not involved in the business at all?

19 A No.

20 Q What is the next picture, number 71?

21 A A picture of tires.

22 Q And what are picture 71, the tires, or where were

23 they located?

24 A Just north of the crusher.

25 Q What is Exhibit 72?

1 A A pile of tires.

2 Q Do you know where those tires were located?

3 A That is just southwest of Steven's trailer, in the
4 back corner.

5 Q Exhibit 73, what is that?

6 A Just the Avery Salvage sign.

7 Q Where was that sign located, now that the jury is
8 seeing it on Exhibit 73?

9 A At the end of Avery's Road.

10 Q What does Avery Road connect with?

11 A Highway 147.

12 Q So, this sign, that is on Exhibit 73, would be at
13 that intersection; is that correct?

14 A Yes.

15 Q The next exhibit is Exhibit 74. What is that?

16 A Just an overview of the salvage yard.

17 Q Can you describe that any further?

18 A Directly south from Steven's trailer.

19 MR. KRATZ: I think this will be the last
20 picture I will show. There are some others up
21 there.

22 THE COURT: All right.

23 BY MR. KRATZ:

24 Q Exhibit 74, what are you looking at?

25 A This is maybe half of the salvage yard, with cars.

1 Q Those vehicles are located throughout the salvage
2 property?

3 A Yes.

4 Q And, in fact, what is Exhibit 75?

5 A More pictures of cars in the junk yard.

6 Q And Exhibit 76?

7 A Just another picture of an overview of the yard.

8 Q And 77?

9 A The same thing, another picture of the overview.

10 Q More junk cars?

11 A Yes.

12 Q More junk cars? Finally, Exhibit 78, in front of
13 you?

14 A More junk cars.

15 MR. KRATZ: With that, Judge, I will move
16 admission of Exhibits 37 through 78, as identified
17 by Mr. Dassey.

18 THE COURT: Mr. Strang?

19 MR. STRANG: Number 70, I think he said he
20 has never seen these crushed cars before. So, I
21 don't think that we even got to the relevancy of
22 number 70. I think many of the others are
23 cumulative. But as a practical matter, some of
24 that we can address later. I don't have any
25 questions about their authenticity.

1 THE COURT: All right. The Court will at
2 this time allow all of the exhibits in, except for
3 Exhibit 70, based upon laying a foundation.

4 THE COURT: Mr. Kratz, do you have any
5 further questions for this witness?

6 MR. KRATZ: No, not at this time, Judge.

7 THE COURT: All right. Members of the jury,
8 counsel and I have a few things to take up before we
9 continue. So, we are going to take a break at this
10 time, early for lunch, and resume at one o'clock.
11 Again, I will remind you not to discuss the case in
12 any fashion during the break.

13 (The jury left the courtroom. The following
14 proceedings continued in the courtroom, outside of
15 the presence of the jury.)

16 THE COURT: You may be seated. We are now
17 outside of the presence of the jury. Mr. Strang,
18 you requested a brief side bar during the witness'
19 testimony. Did you wish to put that on the record?

20 MR. BUTING: Yes, I do. We had two
21 photographs identified and published to the jury.
22 These were, by my notes, numbers 22 and 63, in which
23 obvious police crime-scene evidence yellow tape is
24 wrapped around, first, what was identified as Mr.
25 Avery's Grand Am, and, secondly, the witness

1 identified a flatbed truck. The implication of the
2 evidence tape, obviously, is that there is something
3 of evidentiary value, inculpatory presumably, since
4 the State is offering these, and it appears to be
5 police tape.

6 That is an unfair implication as to both the
7 Grand Am and the flatbed truck. I cannot imagine
8 what the probative value of the photographs of these
9 two vehicles is. In any event, certainly the State
10 has photographs of the Grand Am, without evidence
11 tape, or other suggestions there is something to be
12 preserved, or something incriminating, or
13 inculpatory, about it.

14 So, I think those ought not come in, for
15 those reasons. That is a much longer version of
16 what I said at the side bar, but that was the issue
17 I was raising at side bar, off the record, and I
18 will note that, although I am aware, under State
19 versus Miniero, M-I-N-I-E-R-O, and other cases, the
20 Appellate Courts of the State are not fond at all of
21 off-the-record side bars, I'm the one who requested
22 the side bar, and I knew that it would be off the
23 record. So, I will try to make clear, what I think
24 I said, and the side bar, then immediately, has to
25 be on the record, but I appreciate the Court giving

1 me a chance now to elaborate much further on the
2 issue I raised in summary at side bar.

3 THE COURT: All right. I will say the Court
4 is aware, we have been admonished by the Appeals
5 Courts to avoid side bars, whenever possible, and
6 whenever one is held, to make a record of it. I try
7 to remember to do that, as best I can.

8 Mr. Kratz, any response to the defense's
9 concern about the two exhibits?

10 MR. KRATZ: Just briefly, Judge. Those
11 items were, in fact, as soon as both of them were
12 inspected, one of them, the blue Pontiac was
13 processed, and the items therein tested by the
14 Wisconsin State Crime Laboratory, and a DNA profile
15 was developed from within, the fact that Steven
16 Avery's blood is near the console of that vehicle,
17 as well as in Ms. Halbach's vehicle, the State
18 intends to include in evidence in this case.

19 Especially, if the defense intends to pursue
20 their "planting of Mr. Avery's blood" evidence, and
21 the Court, I'm sure, on its own, can surmise the
22 argument that the State may make, if, in fact,
23 "planting evidence" is going to continue to be
24 advanced in this case.

25 The negative evidence, that is, the lack of

1 evidence in the flatbed, has similar evidentiary
2 value, and whether the State intends to argue
3 directly the implication of negative evidence, or
4 just the fact that the State looked, the fact that
5 the State, in fact, did a thorough investigation,
6 all has at least some relevance in this case, and
7 the showing of these two photographs are not, in and
8 of themselves, prejudicial.

9 They will both be referred to later in this
10 trial, and at this time I think it's proper for the
11 Court to not reject or exclude those photographs as
12 exhibits. Thank you.

13 THE COURT: All right. I'm satisfied that,
14 at least at this stage of the trial, both of the
15 photos offered have at least the potential for
16 probative value, for the reasons stated. Among
17 other things, the thoroughness of the State's
18 investigation can be put into play later in this
19 case.

20 I do have one question, however. Does the
21 State have photos of either the Pontiac Grand Am or
22 the flatbed, that doesn't have evidence tape
23 involved?

24 MR. KRATZ: I can check, Judge. I don't
25 know that we have the flatbed. The Grand Am, we may

1 have photos at the crime lab, and that is something
2 that I can certainly inquire into. But these were
3 the first photos. I don't know that evidence tape,
4 in and of themselves, since the jury will hear they
5 were processed, is anything prejudicial at all. But
6 I will check for the Court.

7 THE COURT: All right. Let's have the
8 parties report back at one o'clock. Then the first
9 order of business will be hearing from the defense?

10 MR. STRANG: Yeah. I would like a little
11 more time than one o'clock. If I could get 90
12 minutes, I think that would be enough.

13 THE COURT: All right. We will give you
14 until 1:15.

15 MR. STRANG: Okay.

16 (After the noon recess, the following
17 proceedings resumed in the courtroom, outside of the
18 presence of the jury.)

19 THE COURT: You may be seated. At this time
20 we're back on the record, outside of the presence of
21 the jury. I will indicate for the record that I met
22 with counsel briefly in chambers before we began.
23 It's my understanding, I believe that we have an
24 agreement on how we are going to proceed this
25 afternoon, and that involves, specifically, taking a

1 witness out of order. Is that correct, counsel?

2 MR. KRATZ: The state understands, Your
3 Honor, that the defense has asked for an opportunity
4 to defer its cross examination of Bobby Dassey until
5 the beginning of court tomorrow. We understand that
6 the State, excuse me, the defense, wishes an
7 opportunity to interview Mr. Dassey sometime yet
8 this afternoon, and the State is prepared to call
9 Trooper Austin, and have him present his testimony
10 before the cross-examination begins, which, as I
11 understand, the defense has asked for leave to
12 commence that tomorrow morning.

13 THE COURT: Mr. Strang?

14 MR. STRANG: I had suggested in chambers
15 that our conclusion and the defense's statement was
16 that we did need to interview Bobby Dassey before
17 cross examining him, and that we wish to cross
18 examine him only once, so as not to draw undue
19 attention to him, or to any part of his testimony.
20 Because that is an interview that is of
21 unpredictable length, and will take us in different
22 possible directions, some of which I can predict as
23 possibilities, and I'm not sure I can predict all of
24 the possibilities, I had asked that we have the
25 balance of the day to do that, and that we start

1 tomorrow morning with the cross examination of Bobby
2 Dassey, so that, for the jury, this just flows
3 sequentially, and, you know, the fact that the Court
4 had to resolve some issues is all the jury would
5 know.

6 In chambers, as I understood the Court, it
7 was unwilling to adjourn for the afternoon and start
8 up again tomorrow morning. I object to taking
9 another witness, out of order, because I expect
10 that, as I understand this trial, then Bobby Dassey
11 will be the only witness, whose cross examination
12 did not immediately follow in order with his direct
13 examination. That is, it was broken up by another
14 witness.

15 The Court, of course, controls the mode and
16 the order of the interrogation of witnesses. But
17 this does tend to highlight him, and also it leaves
18 us attending to Trooper Austin, which that time
19 probably would be better used and should be used in
20 interviewing Bobby Dassey, and adjusting the cross
21 examination of Bobby Dassey.

22 Accordingly, doing a one-and-a-half, or
23 one-hour witness, is better than having no time to
24 interview Bobby Dassey at all, to be sure. But I
25 don't think this is an adequate remedy, and as I

1 forecasted in chambers, and won't repeat here, there
2 are a number of possible issues that we may need to
3 visit or revisit, depending on the results of the
4 conversation with Bobby Dassey.

5 But, in any event, I do ask the Court then
6 to exempt us, or to carve an exception for Mr.
7 Buting, and myself, and our defense investigator,
8 this afternoon, so that we can talk to Bobby Dassey
9 here, during the midst of his testimony, so to
10 speak.

11 But we would ask that the Court's earlier
12 order remain in place, for agents of the State,
13 other than Ms. Leverenz, who, of course, as a
14 practical matter, has to have some communication
15 with Bobby Dassey about the Court's schedule and
16 plans.

17 THE COURT: Mr. Kratz?

18 MR. KRATZ: Thank you, Judge. As the Court
19 know, in chambers it was the State's request that
20 the defense proceed directly with cross examination.
21 I will have an exhibit marked for the Court, which I
22 alerted the Court, and reminded counsel that they
23 already had in their possession, pages 516 and 517
24 of the Sheriff's Department discovery, which is now
25 a second place within the material that Mr. Strang

1 already had, which alerted the defense counsel to
2 the substance of, and the surrounding circumstances
3 of the interview that Mr. Dassey mentioned in his
4 direct testimony.

5 To suggest to this Court, at this time, that
6 it was not until this very moment that the defense
7 realized the significance of Bobby Dassey, when they
8 have known for well over a year that Bobby Dassey
9 was the last person, other than their client, to see
10 Ms. Halbach alive, and walking toward Mr. Avery's
11 trailer, to suggest it's only now that they believe
12 it important to interview Mr. Dassey, the State
13 believes to be disingenuous.

14 That notwithstanding, Your Honor, we
15 understand why the defense has made this request.
16 We do disagree that, after Mr. Strang and Mr. Buting
17 have an opportunity to interview Mr. Dassey, that
18 the State should somehow be prohibited or precluded
19 from, ourselves, interviewing or speaking with Mr.
20 Dassey. That is a separate issue, of course.

21 And with that exhibit now having been
22 provided to the Court, we don't believe that we have
23 any further need to make any further record on this
24 issue. Thank you, Judge.

25 MR. STRANG: I acknowledge that I have had

1 in my possession pages 516 and 517 of the Calumet
2 County Sheriff's Department report. It's not well
3 over a year, of course, because Mr. Buting and I
4 have first entered our appearances less than a year
5 ago in this case. But we have had those, that
6 report, and those two pages, for months, and, in any
7 event, I wish that the question of the interviewing
8 of Bobby Dassey were as easy as whether he is
9 important or not.

10 That is not the question. There are a whole
11 lot of other dynamics at work here, such as the
12 availability of witnesses, and the allocation of
13 resources, and some of those things. We don't need
14 to rehash all of the arguments about why the defense
15 had wanted a trial date later than February 5, 2007.
16 But it's not all that easy.

17 I can say, and should say, that we have not
18 interviewed Bobby Dassey at any time, and we hope to
19 be able to do that today. And the issue, in the
20 end, I think under Section 971.23(1)(b) comes down
21 to the meaning of "witness", and whether here we
22 were provided notice by the State that Bobby Dassey
23 will be a witness to testify to the oral statement
24 at issue, materially different as it is from Mr.
25 Osmunson's rendition, and some differences from the

1 second-hand rendition from another witness, in pages
2 516 and 517, in just recounting to a law enforcement
3 agent what Bobby Dassey supposedly said to him,
4 about what Steven Avery said, in Bobby Dassey's
5 presence.

6 So, I think we have got a record. I have
7 made, and I will renew the mistrial motion, and the
8 request for lesser relief, with the least-favored
9 alternative being given the afternoon here to attend
10 just to Bobby Dassey, and resuming the trial with
11 the jury tomorrow morning, with Bobby Dassey's
12 cross-examination.

13 I understand the Court has ruled on that. I
14 just wanted to make our position clear.

15 THE COURT: All right. First of all, the
16 Court has already denied the motion for a mistrial,
17 and I have heard nothing to make me change that.
18 Since the matter was brought up on the record this
19 morning, the State has presented the Court with
20 another piece of discovery, which makes reference a
21 little more directly to the statement that was the
22 subject of the defense motion here.

23 Given the fact, never the less, that the
24 witness himself, in his own statements, apparently,
25 did not make reference to the information contained

1 in the other two documents, that highlighted the
2 witness' exposure to this alleged statement on the
3 part of the defendant, I agree that the defendant
4 should be permitted some time to explore this issue
5 and to interview the witness.

6 I have not been presented a reason why
7 such an interview should require hours of
8 preparation, since the defense has had the
9 opportunity to interview this witness for as long as
10 this case has been pending. There is only one
11 narrow issue, specifically, the witness' testimony
12 as to one statement on the part of the defendant,
13 that gives rise to the need for another interview.

14 I'm confident, if we break a little earlier
15 today, and the defense has an opportunity to
16 interview the witness, that should be sufficient to
17 address any problem that may exist.

18 I do agree, under the circumstances, that
19 the defense should have the right to interview Mr.
20 Dassey first. But, under the circumstances, I see
21 no reason to prohibit any representative of the
22 State from interviewing Mr. Dassey later.

23 Again, for those reasons that have been
24 stated earlier, we are talking about one fairly
25 narrow statement here, that is referenced in at

1 least two different spots in the discovery that was
2 admittedly provided to the defense. I think the
3 remedy the Court has ordered should be sufficient to
4 address this issue.

5 Likewise, I don't believe -- The Court will
6 simply inform the jury, for the convenience of the
7 parties and the witnesses, we are going to hear from
8 Officer Austin, and the cross examination of Mr.
9 Dassey will be completed tomorrow morning. That
10 happens on a fairly routine basis in many trials for
11 a variety of reasons, and the Court has never known
12 that to be something that is likely to influence the
13 jury in any way.

14 So, at this time we will bring the jurors
15 back in. Then, Mr. Kratz, you can call your
16 witness.

17 MR. KRATZ: Thank you

18 THE COURT: What was the exhibit number of
19 pages 516 and 517?

20 THE CLERK: Exhibit 89.

21 THE COURT: Okay.

22 MR. STRANG: Don't we have another issue?

23 THE COURT: There is another issue that I
24 will take up tomorrow morning. I don't believe it
25 was required to be taken up now.

1 MR. STRANG: Okay.

2 MR. KRATZ: Judge, regarding Mr. Austin, I
3 told the Court that Mr. Austin intends to explain
4 his process through a power point demonstration,
5 which, after we're concluded, I will mark and make
6 part of the record. I do have a hard copy for the
7 Court to follow along. I have provided Mr. Buting
8 and Mr. Strang with a copy, as well, so they can
9 follow along.

10 And, finally, as I alerted the Court, later
11 in this trial, some of these computer images may be,
12 in fact, referred to in a small sub-set of these
13 images. I also have some four-by-six images made to
14 complete the record. I will provide those and have
15 those marked, as well, to be identified by this
16 witness, at the conclusion of his testimony.

17 But I will give the Court and the Clerk the
18 exhibits here, and the Court can follow along with
19 the power point demonstration, as well.

20 We are prepared to proceed then.

21 THE COURT: Very well.

22 (At which time the jury came into the
23 courtroom. The following proceeding continued in
24 the courtroom, in the presence of the jury.)

25 THE COURT: You may be seated. Members of

1 the jury, for reasons relating to availability of
2 witnesses, we are going to take a witness out of
3 order at this time. The defense will be conducting
4 its cross examination of Mr. Dassey tomorrow
5 morning, and the State is going to call another
6 witness at this time.

7 Mr. Kratz?

8 MR. KRATZ: We will call Trooper Tim Austin
9 at this time.

10 TIMOTHY AUSTIN, being first duly sworn on
11 oath to tell the truth, the whole truth, and nothing
12 but the truth, testified as follows:

13 THE CLERK: State your full name and spell
14 your last name please.

15 THE WITNESS: My name is Timothy Austin,
16 A-U-S-T-I-N.

17 DIRECT EXAMINATION BY MR. KRATZ:

18 Q Mr. Austin, how are you employed?

19 A I am employed as a trooper with the Wisconsin State
20 Patrol. I'm assigned to the Wisconsin State Patrol
21 Academy, to the Technical Reconstruction Unit.

22 Q Can you tell us what the Technical Reconstruction
23 Unit is?

24 A The Technical Reconstruction Unit is a specialized
25 unit, if you will, of persons that work with crash

1 reconstructions and crime scene reconstructions for
2 the Division of the State Patrol.

3 Q Could you briefly set forth your education,
4 training, and experience in the areas of scene
5 modeling?

6 A Yes, sir. I have been trained and certified as an
7 instructor in the field of forensic diagramming,
8 which includes the use of computer-aided drafting or
9 drawing software, and a Geodimeter, which is,
10 basically, an electronic surveying device for
11 collecting measurements.

12 Q Now, Trooper Austin, we will be referring to the
13 large screen here in the courtroom. This is what
14 is known as a "power point presentation", or PC
15 presentation software. Could you, first of all,
16 just tell the jury what we will be looking at
17 during your testimony, and how this was created?

18 A Yes. To assist with my testimony, under the
19 direction of Mr. Kratz, I created a power point
20 presentation. What you will see is a series of
21 slides that will help to bring us through the
22 forensic mapping project that I did in this
23 particular case. You will see some images in two
24 dimensions, and some three-dimensional computer
25 scenes that I generated.

- 1 Q All right. What is forensic mapping?
- 2 A Forensic mapping is the science, if you will, of
3 collecting measurements at a crash or crime scene,
4 and then putting them together later, in either a
5 two-dimensional diagram or three-dimensional models.
6 Such was my objective in this particular case, to
7 collect measurements at the given property, and
8 later to bring those measurements into the office to
9 create two-dimensional diagrams and some
10 three-dimensional models.
- 11 Q Specifically, Trooper Austin, on November fifth of
12 2005, were you asked to proceed to, and did you,
13 in fact, proceed to a property known as the Avery
14 Salvage Yard?
- 15 A Yes. On November fifth of 2005, I was requested by
16 local law enforcement to go to the Avery property in
17 Manitowoc County for the purpose of forensic
18 mapping.
- 19 Q How long were you at that property?
- 20 A The forensic mapping activities went from November
21 fifth through November twelfth of that year.
- 22 Q You mentioned, I think, earlier that this forensic
23 mapping process requires the taking of
24 measurements. Can you describe that process, and
25 how many measurements were involved?

1 A Yes. As I said before, we utilized an electronic
2 measuring device, in addition to recording some
3 measurements by hand, with tape measures, if you
4 will. But the bulk of the measurements were taken
5 using an electronic device known as the Geodimeter,
6 G-E-O-D-I-M-E-T-E-R, or the total station. In
7 total, we documented over 4100 measurements at the
8 Avery property.

9 Q Tell us about the "total station" process please?

10 A Certainly. The total station, as I said before, is
11 an electronic device composed of an electronic
12 distance measuring system, which essentially
13 measures distance, distance from the total station
14 to a given evidentiary point. It also has a
15 theodolite, which measures angles. It also has a
16 data collector and a prism.

17 Q Just for the record, and for the reporter's
18 benefit, a hard copy of this will be provided for
19 the spellings of everything you said. This is
20 a picture of the Geodimeter; is that correct?

21 A Yes.

22 Q And those other devices that are used to create
23 these measurements are included within the total
24 station package itself; is that correct?

25 A Yes, that is correct. Hence, the name, "total

1 station". It measures not just angles. Like a
2 transit would, it also measures distance, and that
3 is because we have a Theodolite and a distance
4 measuring system in there. We have a total package,
5 or, hence, a "total station".

6 Q I'm sure Mr. Platkowski would like you to slow
7 down just a little more. That would be terrific.
8 Can you tell us about the information storage and
9 retrieval?

10 A Certainly. Again, what the total station does is
11 measures the distance and angles to a particular
12 location. For example, if I were measuring an item
13 of evidentiary value where Mr. Kratz is, I would ask
14 him to hold the prism over that item of evidentiary
15 value. The total station would recognize the angle
16 to Mr. Kratz, both horizontally and vertically. It
17 would then measure the distance. What it will
18 document is that particular point's location in 3-D
19 space. In other words, along an X-axis, a Y-axis,
20 and a Z-axis, based on where the total station is
21 located. If there is another point on the other
22 side of the courtroom, it would do the same thing,
23 distance and angle to that particular point. It
24 stores that data in an on-board data collector,
25 which you see in the lower pictures.

1 Q Is that basically a computer?

2 A Yes, it is, and it does convert these horizontal and

3 vertical angles to X, Y, and Z coordinates, for

4 later retrieval.

5 Q All right. Let's talk about the total station's

6 accuracy. Can you tell the jury: Just how

7 accurate is this process?

8 A This particular total station has a maximum angular

9 error or induced error from instruments of three

10 seconds. So, what that means, as I said before, it

11 measures in angles. If I take a circle, that circle

12 is divided into 360 degrees. Each degree is divided

13 into 60 minutes. Each minute is divided into 60

14 seconds. So, this particular instrument is accurate

15 to within three of those seconds.

16 Mr. Kratz, at this particular scene, the

17 longest shot distance was about 1200 feet. If I

18 calculate it out mathematically, that means our

19 maximum error induced by the instrument is less than

20 a half inch.

21 Q All right. Let's talk about the location, the

22 Avery salvage property itself. I have put your

23 next slide on the screen, and feel free to use

24 the laser pointer, or whatever you may need, to

25 explain or describe for this jury please the

1 mapping locations?

2 A In this slide I put an aerial photograph of the
3 Avery property. The purpose of this was to show
4 that we had actually forensically mapped out this
5 entire location. That is, everything that you see
6 here on the screen was mapped out, using that
7 Geodimeter total station.

8 This second slide, Mr. Kratz, shows us a
9 different view, another aerial photograph of the
10 same property. This time we have changed it, so
11 north is to the left side of the screen, and in the
12 box is where it shows the Avery salvage property.
13 That map was created, and I put this slide up
14 because, in addition to mapping the Avery salvage
15 property, we also completed some forensic mapping at
16 what is best described as the "deer camp".

17 I was not privy as to who owns the deer
18 camp. I know it's an unrelated person. We did
19 forensic mapping at this location too, and also a
20 cul-de-sac at the end of Kuss Road. The areas we
21 mapped were somewhat considerable in terms of
22 geographic location, if you will.

23 Q Are you familiar with a term called "CAD" drawing?
24 A Yes, sir.
25 Q From a two-dimensional stand point, describe that

1 for the jury please?

2 A What Mr. Kratz is referring to as "CAD", is
3 "computer-aided drawing". In addition, we are doing
4 all of our diagraming on the computer, and we refer
5 to two-dimensional drawings. What that is is an
6 orthogonal view, meaning looking from the top
7 straight down. That is how most of the Avery
8 property was diagramed, so that when you look at the
9 computer drawing, it's essentially as if you were
10 way above that scene, looking straight down at it.

11 What that allows you to do is take specific
12 locations and "zoom in on it", if you will, to look
13 at those locations in detail.

14 Q Let's look at some of the two-dimensional
15 drawings. What are we looking at now?

16 MR. KRATZ: By the way, Judge, I will, as
17 we go through this, I will refer to the hard copy.
18 This will be the bottom of page 7, just so the
19 record is clear, as this witness testifies.

20 BY MR. KRATZ:

21 Q Go ahead, Mr. Austin.

22 A What we are looking at here is that two-dimensional
23 CAD drawing that was created, showing the Avery
24 property that we saw in the aerial photographs, and,
25 again, we have the ability to zoom in on specific

1 areas, if we wanted to see the details of a
2 different location in that entire over-all salvage
3 property.

4 Q Were you able, with your total station measuring,
5 are you able to tell the jury the perimeter, if
6 you will, in distances?

7 A Yes. Not directly with the total station, Mr.
8 Kratz. However, once we bring it into the computer
9 environment, we can take measurements to be able to
10 determine the extent of that. In this case here, I
11 want to say the "rough measurements", because the
12 property is not perfectly square. But north and
13 south, the measurement is approximately 1260 feet,
14 and east and west, the measurement is approximately
15 1300 feet. That comes out to be just under 40
16 acres.

17 Q All right. Let's talk about some of the
18 two-dimensional views that you created then. This
19 image, again, which would be on the bottom of page
20 8, is the entire Avery property; is that correct?

21 A Yes, sir. And I will put this image back in here
22 again to show you that we're going to zoom in, if
23 you will, on certain sections on those
24 two-dimensional diagrams. So, with this portion of
25 that drawing, we are now going to look at the

1 two-dimensional drawing, which shows the
2 northeastern corner of the property. In that
3 northeastern corner of the property are the business
4 buildings, if you will, for the Avery Salvage Yard.

5 What we are looking at here, sir, there are
6 blue-colored buildings down here, is the main
7 business or main shop. There are also some other
8 storage locations. This would be private residences
9 located here.

10 Q Were you also asked to do a two-dimensional view
11 of where Theresa Halbach's vehicle was located?

12 A Yes. The scene we were just at, was at the
13 northeastern corner. We are now going to go down,
14 where you see a yellow box, to the southeastern
15 corner of the property. The very first night of
16 forensic mapping, the RAV-4 was there. Therefore,
17 we did, forensically, map its location, and a
18 two-dimensional diagram was generated, and we can
19 zoom in on that area on the two-dimensional diagram,
20 to see that location.

21 Q Then on the top of page 11 now, the screen that
22 the jury is viewing, why don't you tell us what we
23 are looking at?

24 A What we are looking at here are details of that
25 southeastern corner of the property, and what we see

1 here is the RAV-4, that Mr. Kratz has asked me
2 about, positioned here. Now, we did, actually,
3 using the total station, locate pieces of wood or
4 other debris that was leaning up against or on top
5 of the vehicle. That is why you see, in this
6 two-dimensional drawing, there are some items on
7 that view of the car.

8 Q Were you asked to determine the location and the
9 distance between the RAV-4 and a fixed object
10 which is known as a "car crusher"?

11 A Yes. To assist with that, I will put the aerial
12 photo back on, to, again, show that. The RAV-4 was
13 located down there in this location, and the vehicle
14 crusher is located where you now see the yellow
15 square. If you look at the CAD drawing of this, we
16 can see where the vehicle crusher is related to the
17 position of the RAV-4. Now, if I take a direct, "as
18 the crow flies", measurement, if you will, from the
19 RAV-4 straight across, and there is a pond area
20 here, but straight across to the vehicle crusher is
21 about 380 feet away.

22 Q Again, for the jury, when you say about 380 feet
23 away, you can actually tell them within a half
24 inch how far away that is, can't you?

25 A If you were to ask me, Mr. Kratz, specific

1 locations, say this spot on the RAV-4 to this spot
2 on the crusher, we could get very accurate. I
3 rounded this off to the nearest foot, just because
4 I'm taking an approximate position on the RAV-4 to
5 an arbitrary position on the vehicle crusher.

6 Q Were you also asked to do two-dimensional views of
7 the area closer to Steven Avery's residence
8 itself?

9 A Yes, sir. Mr. Kratz, if we move from the vehicle
10 crusher here to the northwestern area of the salvage
11 yard, there are two private residences in that area,
12 one belonging to Mr. Avery, and we can, again, on
13 the two-dimensional drawings, zoom in, if you will,
14 on this location to view a scaled scenic
15 representation of that area.

16 Q On the top of page 14 then is our first
17 two-dimensional view. Why don't you show us what
18 you are looking at?

19 A Again, the northwestern portion of that property,
20 what we are seeing here is a private residence.
21 This would be Mr. Avery's residence. There is a
22 garage next to it, and a little further east is
23 another private residence and garage.

24 Q I think you may have testified, just in passing,
25 but so the jury understands, were you personally

1 involved in taking all of these measurements?

2 A Yes, sir.

3 Q How many measurements did you take?

4 A For the Avery salvage property, there are over 4100

5 measurements that were documented.

6 Q How long were you there? How many days?

7 A It would be November fifth through the twelfth,

8 about a week. This slide, Mr. Kratz, shows that

9 two-dimensional CAD drawing of the Avery salvage

10 yard, and I have highlighted or labeled, if you

11 will, these areas that we just saw details of, the

12 location of the RAV-4 in the southeastern corner,

13 the vehicle crusher, the business office we saw

14 first in the northeastern corner, and in the

15 northwest, this is Mr. Avery's residence.

16 Q Were you asked to determine some distances for

17 us?

18 A Yes, I was asked to determine some general

19 distances. Again, as we saw earlier, these are

20 point-to-point measurements. They do not account

21 for the fact that we could not really walk from the

22 business office to the RAV-4. There are some

23 obstructions in here. But if you took a direct

24 measurement, you would see it's about almost 1100

25 feet from the RAV-4 to the business office.

1 Q I will just move forward a couple of slides,
2 because the last slide, the slide on the bottom of
3 page 16, shows all of those measurements. Why
4 don't you go head, Mr. Austin, and tell us what
5 all of those measurements are?

6 A Yes, sir. The other measurements I added on here,
7 like the distance from the RAV-4 to Mr. Avery's
8 residence, again straight across the property, is
9 approximately 1480 feet. The distance back from Mr.
10 Avery's residence to the business office is about
11 1100 feet.

12 For the final measurement, what I did is
13 take the "driving distance", if you would, if we
14 were to go from Mr. Avery's residence, drive around,
15 and come around from the eastern portion of the
16 property, down to the RAV-4 location, would be about
17 2600 feet of distance.

18 I have to add, Mr. Kratz, this doesn't
19 account for changes in "grade". In other words, the
20 Avery property is not just a flat surface. There
21 are some elevations in there. That doesn't account
22 for traveling down a hill, or traveling up a hill.
23 So, the actual distance might be slightly greater
24 than 2600 feet.

25 Q How far is that in miles?

1 A Well, a mile is 5,280 feet, so this would be close
2 to a half mile.

3 Q Now, these two-dimensional views, the charts or
4 the diagrams, if you will, have been used in
5 trials. But are you able, with this software, are
6 you able, with your training and experience, to
7 convert these measurements, and to convert
8 these two-dimensional images into more
9 three-dimensional scenes or models?

10 A Yes. As I mentioned before, the total station
11 actually records measurements in 3-D space, that is
12 not just our flat X and Y axis, but also a Z axis,
13 up and down, so we can come up with the elevations,
14 or the height of specific objects, which was done in
15 this case using a different software package.

16 Q Let's talk about that software.

17 A The software package utilized is known as Forensic
18 3-D. It's a computer-aided drawing program. It's
19 powered by a CAD engine called Rhinoceros. It's
20 typically used in the marine industry, and the
21 jewelry-design industry.

22 What this does is allows a user to actually
23 draw in 3-D space. With the three-dimensional
24 drawings, it allows us to better understand, as I
25 wrote up here, the spacial and geometrical

1 relationships between objects. In other words, we
2 are not just looking straight down, and it's
3 something where we can examine another vantage point
4 or perspective.

5 Q So the jury understands, eventually where we are
6 going, I know I'm fast-forwarding, and we will get
7 there, but will this allow us to go through an
8 animation, to actually do a tour or walk-through
9 of various locations?

10 A Yes. As we work our way through enough of the
11 slides I have here, we will eventually get to using
12 the software to create an animation or walk-through,
13 if you will, of the physical scene.

14 Q All right. Let's talk about assigning texture
15 maps?

16 A With the software package, the user utilizes a
17 process called texture mapping to create a drawing
18 like the one you see here. What that means is, if I
19 create a three-dimensional model from this software,
20 I can apply a texture to that, to make it more
21 realistic looking, if you will.

22 In this case, for example, what was done is
23 a photograph was taken of the siding of Mr. Avery's
24 residence. Using that photograph of the siding, it
25 was pasted onto a three-dimensional model, so that

1 actual siding is what you see in this model that was
2 rendered.

3 Now, when we look at things such as grass or
4 wood, that was taken from a personal library that I
5 had, if you will. That way, I can make something
6 look similar to grass or look similar to wood. But
7 there are certain aspects of this property that the
8 texture mapping was done by using the actual
9 photographs that we had of the siding of the
10 residence, the siding of the garage, the floor in
11 the bathroom, and the floor in the bedroom.

12 Q All right. What areas were you asked to do
13 three-dimensional modeling in?

14 A Although the entire property, again, was
15 forensically mapped, the three-dimensional modeling
16 was done in the northwestern area, as that area is
17 the area of the two residences that we have
18 discussed earlier.

19 Q The first scene model is from the bottom of page
20 19. Why don't you walk us through this
21 briefly?

22 A What we are looking at here is an overview of the
23 entire area that was done in three dimensions. For
24 what we are seeing here, north would be to the
25 bottom of the image. In other words, we are looking

1 to the south, and on the right-hand side we see Mr.
2 Avery's residence. We see the garage next to that,
3 and we have to talk about these other residences
4 too, private residences here, and then the garage
5 and the vehicles and the other items that were in
6 place when the forensic mapping was completed.

7 Q You talked about Mr. Avery's residence, and I
8 think you also mentioned this residence. Do you
9 know what that is?

10 A This residence that we are seeing on the left side
11 of the screen, which would be to the east, is the
12 residence of, I believe, Barb Janda, and Mr. Dassey.
13 Here we have that previous slide that we showed,
14 with a box around that, and next we have essentially
15 zoomed in, if you will, or moved closer, to get a
16 close-up view of that Janda-Dassey residence.

17 Q Is this view the front of that residence?

18 A Yes. This would be the front of that residence.
19 Again, we are at "north", looking south. What is
20 nice about using the forensic or three-dimensional
21 models here, we can actually take that and go around
22 to view the back side. We are not limited just to
23 certain views of this location.

24 Q Let me ask you, Trooper Austin, the advantage,
25 recognizing it's not a photograph, but is the

1 advantage of incident scene mapping that it does
2 allow perspective, or views, that perhaps the
3 naked eye can't see?

4 A Yes. The first part of the question is very
5 important. These are not photographs. These are
6 again, scene models that were created and compiled
7 based on the measurements taken at the scene. But
8 where they are advantageous, we can change the views
9 and change the perspective.

10 This one, for example, I don't know how high
11 up the camera is in the air, probably somewhere
12 around 50 to 75 feet. But, obviously, it's not a
13 view that I could take or obtain from being out
14 there at the scene.

15 Q What are we looking at now?

16 A As I stated before, with these models, we can
17 actually change our location to gain a different
18 perspective. In this case, we moved behind the
19 Janda-Dassey residence just to get a good look at
20 the back side of that house, to see the geometric
21 relationships of objects there.

22 Q We are talking about the Janda property. Were you
23 also asked to do a scene model for the Avery
24 property, and what is called the curtilage, the
25 area around it, as well?

1 A Yes. Just as we did with the Janda property, we can
2 do the same thing with the Mr. Avery's residence,
3 over on the west side. What you are seeing here is
4 another view of the larger model, where we are
5 zooming in on Mr. Avery's residence. Just as we did
6 previously, we can move around to the back side, to
7 view the spacial relationships there. So, again,
8 the advantage is that we can take any particular
9 view or perspective we want, to look at it, and see
10 that, using the three-dimensional models.

11 Q Now, these are exterior views, that is, on the
12 outside of the property. Were you asked to, in
13 effect, do the same process inside of the
14 buildings?

15 A Yes, that is correct. Exterior models were created
16 of Mr. Avery's residence and the garage next to it.
17 It's the same process that I did for the exteriors.
18 Most of the measurements that we talked about were
19 taken inside the residence. What I can do with this
20 software is actually go in closer on that residence,
21 fade in or out, or remove the roof, so that we can
22 see all of the various rooms inside the residence.
23 Again, it's a view that we could not have through
24 normal photographs of the buildings.

25 Q At the bottom of page 24, the first interior scene

1 model, why don't you tell us what we are looking
2 at?

3 A This particular model shows Mr. Avery's residence,
4 and, again, what we have done here, the roof was
5 hidden, which allows us to gain a perspective of how
6 the house is laid out, where these various rooms are
7 in relationship to each other, and where some of the
8 main pieces of furniture that were measured are
9 located.

10 Q Are you able, and can you, in fact, take specific
11 rooms and give us better views of a particular
12 room?

13 A Yes. Actually all of the rooms to the one side I
14 had originally created images showing the interiors
15 of the rooms. For example, in this case, we can
16 look at the back bedroom, which you can see outlined
17 here in yellow. We can zoom in closer from another
18 angle to gain a perspective of how that particular
19 room is laid out.

20 Q What I'm showing you is the bottom of page 25.
21 Is that the layout, or more details of the images
22 of Mr. Avery's master bedroom, or what you called
23 the back bedroom?

24 A Yes. However, I wouldn't say "more details" because
25 it's the same model that we saw before. All we have

1 done is changed our perspective, moved a little
2 closer, to see the objects that were placed in the
3 room. It's not necessarily any more detailed. It's
4 just that we have moved to a new perspective. We
5 can now see the spacial relationships of the objects
6 in that location.

7 Q You said you were asked to do the same interior
8 modeling with the garage? Can you tell us about
9 that?

10 A Yes, sir. The exact same process was utilized with
11 the garage. However, these measurements here were
12 also documented using that total station, and when
13 this was mapped, we picked out the main or the
14 larger items that were in the garage to place them
15 into the model, and what you are seeing here is an
16 overview of the garage with the roof removed, so we
17 can see what is in that garage.

18 Q On March first and second of 2006, additional
19 information was brought to your attention, and the
20 prosecution then, that is, myself, Mr. Gahn, and
21 Mr. Fallon, asked you to include or create some
22 additional images; is that correct?

23 A Yes, that is correct, Mr. Kratz. Additional
24 measurements were recorded by other law enforcement
25 officers in March of 2006, and I was asked to

1 include two of those evidentiary items in the scale
2 model, and those items were denoted by what is
3 described as being "evidence markers".

4 So, to help show those locations, using
5 their measurements, I placed the evidence markers in
6 the model, so that we can see where the items were
7 positioned.

8 Q Now, so that the jury understands the later use of
9 these in the coming weeks, this image we are
10 looking at, from the bottom of page 27, although
11 not a photograph, does provide, again, a
12 perspective that the naked eye cannot see; is that
13 correct?

14 A That's correct, Mr. Kratz, because, if you recall, a
15 few slides ago, as you showed what was in the
16 garage, there was a Suzuki Samurai in this position,
17 and in the middle there is a snowmobile in this
18 particular view. That Suzuki Samurai and the
19 snowmobile were removed. That was done by me with
20 the intention of being better able to view the
21 locations of these items of evidentiary value.

22 In addition, we see one marked as 23A.
23 Previous to this slide, there was an air compressor
24 over that particular location. To help to be able
25 to see that location better, I hid or "turned off",

1 if you will, that air compressor, so you don't see
2 it in this particular view.

3 Q Now, you have made a point before to distinguish
4 between these models and photography. Your
5 next slide attempts to describe that distinction a
6 little bit further. Why don't you go ahead and do
7 that?

8 A Yes. Again, as in the previous question from Mr.
9 Kratz, he asked me if these were photographs. They
10 are not photographs. They should not be taken as
11 being photographs. What they are, are
12 three-dimensional models.

13 All that a photograph is going to show you
14 is the scene as it was observed when the picture was
15 taken. In the models, what you are seeing is a
16 scaled geometric perspective, where we can remove
17 the roof. We can hide the air compressor, or gain
18 different views to better see particular items.

19 Q All right. The next area I would like you to
20 discuss is an area behind the garage of Mr.
21 Avery's. Were you asked to provide some modeling
22 of that?

23 A Yes. As we did with the two houses, we can take a
24 particular area. In this case, you see, again, a
25 yellow box showing an area behind the garage. We

1 can, essentially, zoom in, or change our perspective
2 to see what some of the items are behind that
3 garage.

4 Q Again, this is an image, which is at the bottom of
5 page 29. Do those include observations not only
6 that you made, but measurements that you were
7 involved in taking sometime between the fifth and
8 the twelfth of November?

9 A Yes. This particular slide shows some items behind
10 Mr. Avery's garage, that were based on measurements
11 that were recorded by me or other observations.

12 Q Now, you said we were able to kind of shift
13 things around to get different perspectives, and
14 the top of page 30 and 31 are examples of that; is
15 that correct?

16 A Yes. What we have done is essentially stayed in the
17 same area, but we have shifted our "camera", if you
18 will, or our position, so you can gain another
19 perspective, or another view of the items located
20 behind the garage.

21 Q Were you asked, Mr. Austin, to provide the jury
22 with some perspective between the areas behind Mr.
23 Avery's garage and some of the back yard areas of
24 the Janda property?

25 A Yes, I actually moved over the location from that

1 area about behind the garage to this area behind the
2 Janda-Dassey residence. Again, it was the same
3 thing we have seen before. We can shift our
4 perspective, and our view, to show this location
5 behind that particular residence. This view here is
6 one that is an elevated view, looking to the -- This
7 would be the northwest, and we see not just the area
8 behind the Janda-Dassey property, but also Mr.
9 Avery's residence, further into the image.

10 Q Once again, were you asked to create the same
11 separate angle, if you will, or separate
12 perspective about what would be the north of Mr.
13 Avery's property?

14 A Yes. If I move our focal point, if you will, to
15 this particular location, that is being shown on
16 this screen, we can gain yet another perspective
17 showing the northern areas, if you will, the areas
18 in front of Mr. Avery's residence.

19 Q Can you show us -- This is the top of page 33.
20 What are we looking at here?

21 A What you are looking at is the view looking from the
22 north to the southwest, and we see Mr. Avery's
23 residence here, and the garage that we looked at
24 previously. Up, from the main portion of the image,
25 we are seeing a Dodge Caravan, and there was also a

1 burn barrel positioned over here.

2 Q Finally, Trooper Austin, were you asked to provide
3 some additional measurements in this quadrant, or
4 this area of the property?

5 A Yes. I was asked to provide some measurements to
6 gain an understanding of the distances here. What
7 you are seeing in this view is that
8 three-dimensional model, but we are looking straight
9 down on it. Again, the original view is very
10 similar to the two-dimensional drawings we saw
11 previously.

12 But this helps us to better show the
13 measurements, and the measurements that we have in
14 here also is the distance from the main entrance of
15 Mr. Avery's residence to the burn barrel. That is
16 approximately 106 feet, and the measurements taken
17 from the burn area behind the garage to some burn
18 barrels behind the Janda-Dassey residence were a
19 distance of about 236 feet.

20 Q It's your understanding, or at least your
21 directions came from the prosecution, to explain
22 or to indicate those measurements for the jury on
23 this diagram; is that correct?

24 A Yes, that's correct.

25 Q The last area of inquiry, Mr. Austin, has to do

1 with skeletal models. Although they are clearly
2 not within your area of expertise, and you will
3 not be testifying about these models, would you
4 tell the jury at least what you were asked to
5 do and how this may come into play later in this
6 trial?

7 A I was asked to assist the forensic anthropologist,
8 Dr. Leslie Eisenberg, in the creation of models of a
9 human skeleton, to help identify the location of
10 various bones. Now, to accomplish this, I met with
11 Dr. Eisenberg, and worked with her, directly under
12 her supervision, to create the models as to these
13 bone locations.

14 The initial skeletal model I obtained from
15 the FBI in Quantico, Virginia. I took that model's
16 texture, and as I said before, with the property, I
17 made it look more of a bony texture, if you will,
18 and under Dr. Eisenberg's supervision, again, I
19 created various models showing that human skeleton,
20 and I saw some of the bones on it.

21 (Plaintiff's Exhibits 91 through 116 marked
22 for identification.)

23 Q Trooper Austin, as I have asked you before, and
24 with the witnesses that will come after you, that
25 are going to be using your animation, or, excuse

1 me, your skeletal and scene models, have you been
2 asked to create 4 by 6 prints of the models?

3 A Yes, I was asked to create that for most of the
4 images that we saw on the power point, to create 4
5 by 6 prints of these renditions; yes.

6 Q The first image that I have for you is, I think,
7 Exhibit 91; is that correct?

8 A Yes, sir.

9 Q And it goes through image, or, excuse me, Exhibit
10 116?

11 A Yes, sir.

12 Q Exhibit 91, if you can just take a moment,
13 through Exhibit 116, are those the scene model
14 images, both being included in your power point,
15 and that you created as part of this total station
16 project?

17 A Yes, sir, with the exception of, there are several
18 aerial photographs that were utilized in my initial
19 report that are shown here. Those are not scene
20 models. They are photographs taken from aircraft.

21 Q Those are actually identical to some that were
22 already received from other law enforcement? Is
23 that your understanding?

24 A Yes, sir.

25 MR. KRATZ: I would move admission of

1 Exhibits 91 through 116.

2 MR. STRANG: No objection.

3 THE COURT: Those exhibits are admitted.

4 BY MR. KRATZ:

5 Q Then, Trooper Austin, we are going to move on to
6 your animation. That is the culmination of all of
7 these scene models. Tell the jury please how this
8 animation was created?

9 A The intention here was to create an overview or a
10 walk-through of the scene from the models that we
11 saw previously. Now, to create motion, what we have
12 is a series of these images. In fact, it shows 30
13 of them per second to show or to make it appear as
14 if we're moving through that scene. To create the
15 animation, that I believe we're about to see, over
16 5,250 pictures were brought together at 30 per
17 second to move us through the location in question.
18 I saved these and made a DVD, which was turned over
19 to Mr. Kratz.

20 (Plaintiff's Exhibit 117 marked for
21 identification.)

22 Q What we are going to show then, Trooper Austin,
23 is Exhibit Number 117, which I believe is the
24 animation that you are referring to. I would ask
25 that during the presentation of this animation

1 that you not interrupt, that you remain silent,
2 and I will ask you just a few follow-up questions
3 after that?

4 A I understand.

5 MR. KRATZ: If I may, Judge, the only thing
6 left in my direct examination was the playing of the
7 animation.

8 (The animation CD was attempted to be
9 played, but the equipment did not work properly, and
10 the CD was not able to be shown.)

11 MR. KRATZ: It appears that it won't play on
12 this laptop. With my apologies to Mr. Strang, if he
13 could begin his cross examination. Then if I could
14 play it at the end, I would appreciate that.
15 Otherwise, I have no further questions of this
16 witness.

17 THE COURT: Mr. Strang, are you in agreement
18 with that procedure?

19 MR. BUTING: Why are we playing the
20 animation at all?

21 THE COURT: Mr. Kratz, is that something
22 that the State intends to use later in the trial?
23 So, you need some foundation, to get it accepted?

24 MR. KRATZ: This is actually, Judge, to
25 assist the jury in understanding the relationship of

1 these objects. I did intend to play it now. If you
2 want to take just a couple of minutes for a break,
3 we can certainly have that set up, and I can play it
4 now.

5 MR. STRANG: I don't mind starting my cross.
6 I think we will see the animation later. We have
7 had the foundation for it. I don't know that we
8 need to play it now. I can begin my cross.

9 THE COURT: Very well.

10 CROSS EXAMINATION BY MR. STRANG:

11 Q Good afternoon.

12 A Good afternoon, sir.

13 Q I will turn my "mike" on. How is that? All
14 right. So, on November 5 you get to the Avery
15 Salvage Yard; right?

16 A Yes, sir.

17 Q And one of the first orders of business is to map
18 the area around the Toyota RAV-4?

19 A Yes. The first place we mapped was around the
20 RAV-4.

21 Q All right. That involved taking the little prism,
22 and going up, and putting that on or over certain
23 objects around the Toyota?

24 A Yes, sir. Yes, that's correct.

25 Q Did it also involve putting the little prism,

1 sometimes sticking it in a certain area on the
2 Toyota, or over it directly?

3 A Over it directly. Not directly on that particular
4 item.

5 Q Okay. And then somebody else stood somewhere else
6 with the "total station", as you call it, and it
7 shined the little laser and bounced it back to the
8 prism; is that correct?

9 A Yes.

10 Q And so this was a two-person process?

11 A Yes, it is a two-man operation.

12 Q And you took a number of measurements around the
13 Toyota?

14 A Yes.

15 Q And objects around it?

16 A Yes.

17 Q Then a number of measurements of the Toyota
18 itself?

19 A The Toyota itself, we would have had four
20 measurements.

21 Q Just the four corners?

22 A No, when we map the location of vehicles, we utilize
23 the position of the wheels. We can get data showing
24 us later the exact size of a particular vehicle, for
25 axle 1 and axle 2.

1 Q Okay. Then what you do is you later give the
2 computer some information about the model of the
3 vehicle?

4 A No, I will look up that elsewhere, to get the
5 dimensions. I will use the dimensions to draw the
6 vehicle. I don't tell the computer, "It's this
7 particular vehicle", and it draws it. I have to do
8 a little research to get some information about it.

9 Q Then the computer fills in a "Toyota", in effect?

10 A Either I draw that, or I use an existing Toyota, and
11 specify which items to fill in. There is a lot more
12 manual work than there is that the computer does by
13 itself.

14 Q All right. The point is, what you are doing here
15 is, you have already said this, but let's explore
16 it a little bit. There is no camera involved
17 in any of this; correct?

18 A No.

19 Q Not an old-fashioned camera, or a digital camera?

20 A No camera.

21 Q There are a couple of prisms and a laser?

22 A Yes.

23 Q And you have a computer that calculates angles and
24 distances?

25 A The total station does that.

1 Q Then at your desk top, you probably have a laptop
2 computer, something sort of like this; right?
3 A Yes, I use a computer.
4 Q And you can open various files, and the computer
5 allows you to add a color?
6 A Yes.
7 Q And a texture?
8 A Yes.
9 Q And to pick standard sorts of objects that might
10 be included?
11 A Yes.
12 Q Like a tree?
13 A Yes.
14 Q Your computer even has a little file you can open
15 up and pick the type of tree you want?
16 A That's correct.
17 Q Whether it has leaves, or does not have leaves?
18 A I can pick the global season, yes.
19 Q You can turn the sun on?
20 A That's correct, I can.
21 Q You can turn the sun off?
22 A Yes.
23 Q If you want to put the sun in the northern sky, on
24 November 5, or the northern hemisphere, you can do
25 that?

1 A Yes, I could.

2 Q You could put it in the eastern sky, if that is
3 where you felt like putting it?

4 A Yes.

5 Q You could have the sun rise in the west, if that
6 was your choice on a given day; is that correct?

7 A If it was my intention to change science, yes, I
8 could move the sun.

9 Q Okay. So, what we have got here is a model;
10 right?

11 A Yes, a three-dimensional model, yes.

12 Q Actually, it's a two-dimensional model; right, that
13 looks three-dimensional, by the use of
14 perspective? Everything I saw was projected on
15 this surface? Am I right?

16 A Well, the screen, yes, is two-dimensional.

17 Q Right. The model itself looks three-dimensional,
18 by the use of perspective?

19 A Well, it's not a physical model, like the cups here.
20 I can't bring it in to you. It's a computer model,
21 but I'm drawing it in 3-D space, and assigning it to
22 an X and Y axis, but I don't have a physical axis to
23 give you.

24 Q In that sense, it's not three-dimensional? It's
25 two-dimensional, but by using the vanishing point

1 and the principles of perspective, we can give it
2 the illusion of three-dimensional space on a flat
3 screen?

4 A It's difficult for me to follow you. We do our work
5 in 3-D, but you could say the same is true of
6 photography, that photography is two-dimensional.

7 Q Sure.

8 A If that is what you are saying, I will agree with
9 you.

10 Q When you say you do your work in three-dimensions,
11 you are not actually building a model, in any
12 event? I mean that you didn't use something like
13 this box for Barb Janda's trailer, I assume?

14 A No, it's not a physical stick-built model, if you
15 will, or plastic model. It's a virtual computer
16 environment.

17 Q Okay. Got it. Now, we are in the virtual
18 environment. Let's go back to what you and I both
19 agree is two-dimensional space. Okay? We will go
20 to what you call your orthogonal views. Got me?

21 A Sure. Orthogonal.

22 Q "Looking straight down", in other words?

23 A Yes.

24 Q Orthogonal is a fancy, \$64 word, for looking
25 straight down at something?

1 been of evidentiary value in surrounding quarries.

2 Those were not done by me, but I have knowledge of
3 that.

4 Q That is -- These maps were -- Mapping coordinates
5 were provided to you; correct?

6 A I do have GPS coordinates for other items, yes, I
7 do.

8 Q All right. Let's back up. Probably half of
9 our jury knows what "GPS" is. The other half
10 doesn't. That is "Global Positioning Satellite"?

11 A That's correct. The other instrument uses a total
12 station also, but that also utilizes a GPS, global
13 positioning satellite system. Those were specific,
14 I believe, 11 or 12 points out in the quarries
15 identified by the search teams.

16 Q And someone else did that mapping, I understand,
17 using a different technology?

18 A Yes, sir. That is correct.

19 Q Using actually satellites that have
20 geo-synchronized orbits; is that correct?

21 A Yes.

22 Q To use a fancy term, that allows anybody who gets
23 access to the system to know where you are, by
24 degrees of latitude and longitude, down to a
25 matter of seconds anywhere on the globe?

1 A Yes, that's correct, sir.

2 Q All right. And the purpose of taking these GPS
3 measurements was to provide them to you for your
4 forensic mapping project?

5 A Yes. Should they become necessary later for
6 mapping, we had it available to us, if such was
7 needed.

8 Q I will show you figure 50 from your report. Okay.
9 I will put that up here. But first I will just
10 ask you: That is your figure 50?

11 A Yes.

12 Q That is a page of your report, labeled figure 50?
13 You have seen it before?

14 A Yes.

15 Q Indeed, you made it; is that correct?

16 A Yes, sir, I did.

17 Q All right. Now, that is up on the little gizmo
18 called an "Elmo". Tell us what you see. Tell us
19 what you have in your figure 50?

20 A This is a map, I believe from Microsoft Streets, or
21 maybe from Delorme Atlas. I would have to see what
22 program I used. It shows the roads in the vicinity
23 of the Avery property. What I have done here, I
24 indicated with a red box the approximate location of
25 the Avery Salvage Yard, and the approximate location

1 of Steven Avery's residence. There is also a
2 reference to GPS coordinates, which I believe is for
3 the surrounding quarry.

4 Q Okay. And you put in a little red flag?

5 A Yes. What I did, in this mapping program, I gave
6 it the GPS coordinates, and it gave me a little red
7 flag, that is seen on the screen in that particular
8 location. Then, using Microsoft Word, I generated
9 my report. I labeled that flag as being those
10 particular GPS coordinates.

11 Q Okay. You gave the jury a little lesson before
12 about degrees, minutes, and seconds. If I read
13 the coordinates that you have given us here, or
14 not given by you, but which were included here, we
15 have longitudinal 44 degrees north; right?

16 A Yes.

17 Q In the northern hemisphere; right?

18 A Yes.

19 Q And 14 minutes right?

20 A Yes.

21 Q And 51 seconds?

22 A Yes, sir.

23 Q And a latitude of 87 degrees west?

24 A Yes, sir.

25 Q West of the Greenwich Mean line?

1 A That is my understanding, sir.

2 Q 41 minutes and 51 seconds?

3 A Yes, sir.

4 Q Okay. And you got only one of these areas, but
5 did I understand you, that you actually were
6 provided 11 or 12 specific GPS sites, GPS
7 coordinates outside of the Avery Salvage Yard
8 property?

9 A This one that you are showing is not one of the ones
10 that was provided to me by the GPS mapping team.
11 This is one that was provided to me when I was
12 working with Dr. Eisenberg. So I don't want any
13 confusion, or to imply or suggest to you this is
14 from the team that used the GPS total station.

15 Q Okay. Thank you. I didn't understand that. I
16 don't want any confusion either. So this is one
17 you got from or with Dr. Eisenberg?

18 A Yes.

19 Q But there were 11 or 12 other GPS coordinates?

20 A From that other team, yes. When the search teams
21 located things they thought could be "something",
22 those were indicated to me.

23 Q Something of interest?

24 A Yes.

25 Q Okay. Do you have any way of knowing, as you sit

1 here today, what the distance is from the red flag
2 site, or the site represented by the red flag
3 here, to either the salvage yard or Mr. Avery's
4 residence?

5 A I do not. But if you would like me to, I can
6 certainly figure it out for you.

7 Q I will bet you can. (Laughing) If anything, I bet
8 you can. Is that a lot of trouble?

9 A No. If you want to bring me back later, I can
10 certainly give you that number.

11 Q I don't know if I will or not. But do you have a
12 sense at all, as of now, just ball-parking?

13 A No, I don't. I wouldn't feel comfortable.

14 Q Okay. Fine. North is "up" in this figure?

15 A Yes, sir.

16 Q Okay. So, the flag looks like it is southwest,
17 essentially, of the Avery Salvage property?

18 A Yes.

19 Q Now, let's go back to what we are calling the
20 three-dimensional or perspective images that give
21 us the illusion of depth and height and width.

22 Q Okay. The virtual environment of three dimensions
23 on those, you couldn't possibly map with your
24 total station and its prism stick, every little
25 item that a photograph might pick up; correct?

1 A No, sir.

2 Q It's just a matter -- I guess you could,
3 possibly, but there it becomes an issue of time
4 and manpower resources; right?

5 A Yes, I agree.

6 Q And how did the decision get made on what things
7 to map and what not to map?

8 A I can give you a particular location, in reference
9 to the garage, for example, I really didn't have
10 guidance. With the garage, I picked, or at least I
11 wrote in my report, a page of the larger items that
12 were there.

13 In terms of the interior of the house, I was
14 told "main pieces of furniture", bed, dresser, desk,
15 that type of thing.

16 Q And once you have mapped them, things can be
17 taken out, so to speak, just "phew" (sound
18 effect noise) out of the computer model?

19 A Yes. They can be hidden, or as I said, "turned
20 off", so we no longer see it in that model.

21 Q You gave one example of the air compressor in the
22 garage. Do you remember that?

23 A Yes. The thing is, Mr. Strang, there are layers
24 over objects, separate layers. We can, essentially,
25 turn off one layer, so we don't see it in our model.

1 That was done in the garage with the air compressor,
2 the Suzuki Samurai, and the snowmobile.

3 Q Okay. "Now it's here. Now it's not." That is a
4 matter of a few strokes or clicks of a mouse --

5 A Yes.

6 Q -- for you? I think I have it. Who gives you
7 directions as to what actual items that were
8 present should be included in the model and what
9 are not?

10 A Guidance was given from the lead team of
11 investigators for the prosecution.

12 Q They wanted the compressor out, so you took it
13 out?

14 A Yes.

15 Q They wanted the Samurai in, so you left the
16 Samurai in?

17 A Yes.

18 Q Okay. Now, I will show you a photograph. I don't
19 think that we have seen this before. I will ask
20 if you recognize it?

21 A It's very possible that I may have taken this
22 photograph. This appears to be the southeastern
23 area of the salvage yard, the location where the
24 RAV-4 was located. It appears that is either in the
25 process of covering or uncovering it, with the large

1 blue tarp.

2 Q Very good. Whether you took it or not, you
3 recognize the photograph?

4 A Yes.

5 Q There is a good old-fashioned photograph, this
6 photo?

7 A Yes.

8 MR. STRANG: I will mark this as an exhibit.

9 (Exhibit 118 marked for identification)

10 BY MR. STRANG:

11 Q It's now Exhibit 118. I would like to let the
12 jury see it. Okay. That is the tarp over the
13 Toyota RAV-4?

14 A Yes, that is my recollection that night, that the
15 vehicle was covered.

16 Q So, what we are seeing under the blue tarp is the
17 car right where it was when you arrived on
18 November 5?

19 A Yes.

20 Q And are we looking, generally, "toward the car
21 crusher", or "from the car crusher"?

22 A In this position, sir, we are looking to the west.
23 The car crusher would be off to our right and
24 perhaps slightly behind us to the northeast.

25 Q Okay. So the car crusher is back off this way?

1 If we are standing here, snapping the picture,
2 back off behind us?

3 A No. It would be more to our right. If we are
4 looking straight at that photograph, as we're
5 looking straight to the west, it's not far to the
6 right, just slightly behind. That is the direction
7 the crusher would be.

8 Q All right. What we would see is, there is a whole
9 lot of trees, it looks like, and underbrush, and
10 that kind of thing, that extends along this line
11 of cars?

12 A Yes. There are some smaller, if you will, "trees",
13 kind of along the other side of the pond. The pond
14 would be off to our right also.

15 Q Okay. We are up on a ridge, if you will, above
16 the pond?

17 A Yes. The pond is pretty -- set down pretty low.
18 So we're higher in elevation than the pond.

19 Q There is actually sort of a berm here, behind to
20 the left of the Toyota and that line of cars; is
21 that correct?

22 A Yes. You can actually see that in the photograph
23 there. I'm just pointing to the berm. Over on the
24 opposite side of this begins some of the quarry type
25 property.

1 Q To the south of the Avery property?

2 A Yes. South would be to our left in this particular
3 image.

4 Q All right. So, when, for example, you mapped the
5 area around the Toyota and the car crusher in the
6 southeastern corner of the property, and created
7 models of it, you simply omitted most or all
8 of the trees that we see in the photographs of the
9 area?

10 A I, actually, perhaps -- I don't want to be a
11 stickler on verbiage. I didn't create models. We
12 have the two-dimensional orthogonal diagrams, but
13 "models" usually refers to the three-dimensional
14 model, for which we use the prism of the total
15 station to essentially trace the exterior of the
16 tree line. So each individual tree was not
17 collected. But we do see on the two-dimensional
18 view just what that width would be, as far as we can
19 go to the trees.

20 Q Okay. I think you essentially outlined the area
21 where there would be trees?

22 A Correct. Just to better explain that, if I may. If
23 the walls on the sides of the courtroom were the
24 trees, I would probably take a point in the back and
25 a point in the front just to show that is the tree

1 line, as opposed to every individual tree.

2 Q And where you did that, let's see. We are looking
3 at one of your orthogonal views of the rear area
4 we have been discussing?

5 A Yes.

6 Q All right. What you have shown us is some
7 representation of the trees to the south?

8 A Yes. That is the best way to describe the squiggly
9 line that you just referred to. That would have
10 been taken along that south tree line that you are
11 referring to now. If you look just north of that,
12 there is another squiggly line that is tougher to
13 see.

14 Q This image right here that I'm referring to?

15 A Right. That would be the edge of the other trees
16 there.

17 Q It's very faint, but you are saying you provided
18 some line indicating there were trees along there?

19 A Yes. It might be better if I had the color version
20 of this. The ground, if you will, I believe is two
21 separate colors here, which helps us to observe that
22 difference. But that is how the mapping was done
23 also on the eastern side here, along the tree line.
24 That is another tall berm there.

25 Q But if one were standing on the crusher in the

1 spot where the arrow comes down, you would get the
2 impression, from this orthogonal diagram, you may
3 be able to see straight to at least the car that
4 seems to intersect the line of sight in front of
5 the Toyota. This would look like a line of sight
6 on your drawing; correct?

7 A That was not my intention at all, Mr. Strang. I
8 just wanted to show the distance from the RAV-4 to
9 the crusher.

10 Q Absolutely. I understand that was not your
11 intention. I understand. In fact, my point
12 is: This would not represent the line of sight;
13 correct?

14 A No. I don't -- I would have to go back and look at
15 the other photographs to see how thick the tree line
16 is. I don't want to infer that I could see the
17 RAV-4 from the crusher, which is 380 feet. There
18 are smaller trees that you would have to look
19 through. I just don't know.

20 Q So, there is no way to know, because, really,
21 other than showing a squiggly line, you left out
22 the trees and underbrush and anything else in the
23 way?

24 A That's correct, I did.

25 Q Okay. Was this the only car, if you will, on the

1 north side of that line, or near the north tree
2 line?

3 A Based on looking at the diagram, it appears that it
4 was. I would like to go back and review the
5 photographs, but I don't recall leaving out any
6 vehicles on here that were, specifically, mapped.
7 Just to point out these areas over here, these are
8 all of the vehicles over here. Obviously, we didn't
9 map any of those. We just traced around that row of
10 cars.

11 But down in this area, I believe I mapped
12 out the location of all of the vehicles here, except
13 where you see where we have this pattern again.

14 Q Blank spots, so to speak?

15 A Yeah. They appear to be blank here.

16 Q Again, I'm not a witness. I don't have a perfect
17 memory. I am not just saying I think you left
18 any cars out. I don't think you did either. But
19 I just wondered if you had a recollection, if that
20 was, in fact the only car on the north side of
21 that little lane?

22 A I can't -- Just looking at the drawing, I would say
23 it was the only car right there.

24 Q Okay.

25 A I would feel more comfortable referring to some of

1 the photographs, but I believe that is it.

2 Q Mr. Buting just indicated there appears to be a
3 second car, kind of hidden by the label of the
4 RAV-4?

5 A Yes, there is.

6 Q Okay. All right. If we were going to get a
7 real line of sight, we would really want to use
8 photographs, not something that you and your
9 computer generated?

10 A If we wanted to look at this and say: Could you see
11 the RAV-4 from the crusher? No, this, right now, in
12 this form, is probably not the best medium to use.
13 If you wanted to see: What is the distance? That
14 is why I had it here.

15 Q As the crow flies?

16 A Right.

17 Q I will not pester Mr. Kratz to go back to the power
18 point presentation, but I will just use my black
19 and white copy of the sheet that you folks
20 provided me.

21 A What page are you on, sir?

22 Q 27, at the bottom.

23 THE COURT: Mr. Strang, just for break
24 purposes, do you know how much time you have left?

25 MR. STRANG: Five minutes, something like

1 that.

2 THE COURT: Mr. Kratz, what about the State?

3 MR. KRATZ: My presentation is about a
4 minute and a half, Judge.

5 THE COURT: All right. Members of the jury,
6 after we are done with this portion of the
7 proceedings today, we are going to let you go early.
8 That why I kept it going. But if you want a break
9 now, you can have a break now.

10 THE JURY: No.

11 THE COURT: I see heads nodding "No", so we
12 will plunge ahead. All right. Mr. Strang?

13 BY MR. STRANG:

14 Q All right. Our jury has already seen a slide of
15 this, that garage, sort of; right?

16 A Yes. This is my model of the garage.

17 Q And what you have done for us is help us make
18 believe that the garage had no roof?

19 A I don't like the words "make believe", but, yes.
20 The roof was removed so we could see inside the
21 garage.

22 Q Then we can also see it as if we were hovering 20
23 or 30 feet up, something like that, whatever this
24 is?

25 A Yes.

1 Q Taller than any of us?

2 A Yes.

3 Q Okay. And this is a pretty clean looking

4 garage, the model; is that correct?

5 A Yes.

6 Q You have got a view of a John Deere tractor?

7 A Yes, it is.

8 Q And it's a vivid, electric green in color; is that

9 correct?

10 A Yes.

11 Q But if people look at the garage, the John Deere

12 tractor is there? If we look at an actual picture

13 of the garage, we see the John Deere tractor?

14 A Yes.

15 Q With some other things; right?

16 A Yes.

17 Q A whole lot of clutter?

18 A Yes. A snowmobile is in there. There is a table

19 with the items in the back. I know we are seeing a

20 lot more clutter in the actual scene or the

21 photograph than we have seen in the model, but we

22 have two different purposes for this too.

23 Q Okay. Is this thing down here the seat, and then

24 the wind screen of one of the snowmobiles?

25 A Yes.

1 Q Does the photograph show the garage as you
2 actually saw it the week of November 5 to November
3 12?

4 A Yes, it does.

5 Q And how about this? Does that take us to the
6 other side of the garage, the east side of the
7 garage?

8 A Yes, that shows the east wall of the garage. We see
9 a snowmobile, some tables. There is a freezer back
10 over here too. That is how I recall the garage.

11 Q There is a snowmobile under there somewhere?

12 A Yeah. Do you see this green stripe here? That is
13 the wind screen that you saw on the other one.

14 Q Okay. What is the gray thing on the right side of
15 the photo?

16 A Are you referring to this here, sir?

17 Q Yes?

18 A That is the Suzuki Samurai.

19 Q All right. That is the garage as it actually
20 looked to you November 5 through November 12?

21 A Yes, that is how I recall the garage.

22 Q Let's look at the south wall of the garage, or
23 part of the south wall. That is how it looked to
24 you, November 5 through November 12?

25 A Yes, it does. Again, I see a tool chest, the air

1 compressor we talked about before. There is a
2 weeder, with a waste basket. That definitely fits,
3 my recollection of the garage.

4 Q So, if you use the laser pointer, the air
5 compressor is gone?

6 A It's this green item down here near the center of
7 the photograph.

8 Q That thing that you took out of the photo is the
9 little evidence tent that said "23-A"?

10 A Yes, I did.

11 Q Now, the photograph, actually, you can see pretty
12 well under the compressor in the photograph, can't
13 you?

14 A Yes.

15 Q That is one of the few places in the garage that
16 appears not to be cluttered?

17 A With the exception we cannot see behind the wheel.
18 I can see some flooring under it from this view.

19 MR. STRANG: All right. I'm going to mark
20 the photographs that you have just shown us and then
21 I'm done.

22 (Exhibits 119 through 121 marked for
23 identification.)

24 BY MR. STRANG:

25 Q Okay. Real quick, just so the record is clear,

1 I'm doing them in the same order I just showed
2 them to you. Exhibit 119 has the John Deere
3 tractor in it; is that correct?

4 A Yes, it does.

5 Q Exhibit 120 is the side of the garage with the
6 snowmobile that you pointed out and part of the
7 gray Samurai?

8 A Yes.

9 Q And Exhibit 121 is the south part, the south wall
10 of the garage, with the air compressor?

11 A Yes, sir.

12 MR. STRANG: Okay. I move the exhibits that
13 have been offered with Mr. Austin, Your Honor, and
14 that's all I have.

15 THE COURT: Any objection to the exhibits?

16 MR. KRATZ: No.

17 THE COURT: Very well. The exhibits are
18 admitted. Mr. Kratz?

19 (At which time Mr. Kratz made an attempt to
20 show the video presentation to the jury again, but
21 it was not successful.)

22 MR. KRATZ: Judge, we seem destined to not
23 have this work today. We will put it in through
24 another witness. I will have this animation marked,
25 however, and if it is received without objection,

1 then I have no further questions of this witness.
2 Thank you.

3 THE COURT: All right. Mr. Strang?

4 MR. STRANG: That's fine. We can mark it
5 and I think it can be received for purposes of
6 today.

7 THE COURT: Very well. The Court will order
8 it received, but not admitted. Is that it, counsel?

9 MR. STRANG: Yes, I think, for now.

10 THE COURT: All right. Members of the jury,
11 that is all the jury work we have for you today. So
12 I'm excusing you for today.

13 Before we do that, I will remind you that
14 the Court has previously ordered that you do not
15 watch the local news on television, or listen to the
16 local news on the radio, or read the newspaper,
17 unless you have someone first remove any articles
18 related to the case from the newspaper. In addition
19 to videos, internet web sites, or web logs, which
20 includes any information about the case.

21 If you are involuntarily exposed to any
22 information about the case from any source, please
23 take steps to immediately avoid any further
24 exposure.

25 With that, you are excused for today.

1 (At which time the jury left the courtroom
2 for the day. The following proceedings continued in
3 the courtroom, outside of the presence of the jury,
4 with the attorneys and the defendant being present.)

5 THE COURT: You may be seated. Counsel, is
6 there anything to put on the record before we
7 conclude today?

8 MR. STRANG: What exhibit number did you
9 give the animation?

10 MR. KRATZ: The animation was Exhibit 117.
11 Judge, we did offer that, but the power point
12 itself, although the hard copy was previously
13 marked, I alerted the Court that I was going to ask
14 that the actual disk be received. For purposes of
15 the record, that is Exhibit 122, and I will offer
16 that at this time.

17 THE COURT: Are there any exhibits, that
18 either party may move admission for, that we should
19 address at this time?

20 MR. KRATZ: I have moved all of them, Judge.
21 I think they have been authenticated and identified.

22 MR. STRANG: I think we have addressed all
23 of them. I know I moved Exhibits 118 through 121,
24 and those were admitted. My notes suggest that Mr.
25 Kratz has moved his exhibits, and the Court has

1 ruled on everything that he discussed or has shown
2 today.

3 MR. FALLON: Can I ask the Clerk what
4 Exhibit 90 was?

5 THE REPORTER: Is this on the record? I
6 don't know who is speaking right now.

7 MR. KRATZ: That's Mr. Fallon.

8 THE REPORTER: Okay. Thank you.

9 THE CLERK: Mr. Austin's report is Exhibit
10 90, and the power point is Exhibit 122.

11 MR. FALLON: Okay.

12 THE COURT: Mr. Kratz, has the State moved
13 admission of the animation disk?

14 MR. KRATZ: Yes.

15 THE COURT: I think that was viewed in the
16 motion hearing before we started. Does the defense
17 agree that can be admitted? That was the thing they
18 didn't get to work today. But I believe it
19 previously has been shown in court as part of a
20 motion hearing.

21 MR. STRANG: Right. That is Exhibit 117.
22 It was offered and received. I don't think that it
23 was admitted yet, because nobody identified it or
24 has seen it. Isn't that Exhibit 117?

25 MR. KRATZ: Yes.

1 THE COURT: I take it, authentication is not
2 going to be a problem. So, it will be admitted when
3 it is viewed in front of the jury.

4 MR. STRANG: Right.

5 THE COURT: All right. Very well. Anything
6 else today? If not, I would like to see counsel for
7 just a couple minutes in chambers before you leave.

8 (Proceedings concluded for the day.)

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