

1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 6

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** FEBRUARY 19, 2007

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

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

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

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

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

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

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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

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

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

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

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

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

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

22 THE CLERK: Please raise your right hand.

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

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

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

6 **DIRECT EXAMINATION**

7 BY ATTORNEY FALLON:

8 Q. How are you employed?

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

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

15 A. I began there in January of 2000.

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

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

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

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

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

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

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

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

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

7 A. That's the Field Response Team.

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

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

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

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

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

1 Kenosha.

2 Q. Do you have any graduate degrees?

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

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

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

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

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

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

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

1 that's basically how we get involved.

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

4 A. Generally, yes.

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

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

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

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

1 more immediate than a missing person.

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

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

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

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

21 A. That was around noon on Saturday.

22 Q. All right. Did you subsequently respond?

23 A. Yes.

24 Q. About what time did you leave Madison?

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

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

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

7 A. My photographer for that was Guang Zhang?

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

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

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

13 A. It was about 4:00 p.m.

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

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

18 (Court reporter couldn't hear.)

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

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

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

4 A. I believe I did.

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

7 A. Yes.

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

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

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

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

24 A. That's an aerial view.

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

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

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

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

11 ATTORNEY BUTING: No, objection.

12 THE COURT: Record will so reflect.

13 ATTORNEY FALLON: Thank you.

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

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

18 Q. All right.

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

23 ATTORNEY BUTING: No objection.

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

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

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

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

14 A. All right.

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

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

21 Q. All right. Thank you.

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

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

3 THE COURT: The record will so reflect.

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

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

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

25 The Rambler hood and some fence posts

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

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

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

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

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

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

8 A. Two to three.

9 Q. Two to three?

10 A. Inches of standing water.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 A. That's Special Agent Tom Fassbender.

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

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

3 Q. A tarp.

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

6 ATTORNEY FALLON: 130.

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

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

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

14 A. At that point, not really.

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

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

25 Q. How many people were flashing flashlights into

1 the back of that car?

2 A. I think there were at least two of us, because I
3 was looking through the side and I could see
4 another light moving around inside the vehicle.
5 And there was somebody standing on the opposite
6 side of the car.

7 Q. Now, as you were -- How much time would you say
8 you spent looking into the vehicle?

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

10 Q. During that time, did you see any evidence of any
11 blood in the vehicle?

12 A. No, I didn't.

13 Q. All right. Were there any license plates affixed
14 to the vehicle?

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

16 Q. Did you notice whether there was any damage to
17 the vehicle at all?

18 A. Yes, once we got the debris away from it, there
19 was a scratch behind the Rambler hood. And then
20 this front end had a little bit of collision
21 damage, the lens on the light was cracked or
22 broken and there was some denting to the window.

23 Q. Did you examine the debris that was on the car
24 for the presence of any trace or biological
25 evidence?

1 A. Yes, I did.

2 Q. And what did you find?

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

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

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

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

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

25 Or if one of my hairs comes out, lands

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

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

6 A. No.

7 Q. Why not?

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

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

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

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

25 A. Yes, it did.

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

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

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

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

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

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

1 into this gravel pit area.

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

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

9 Q. All right. Was steep or ...

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

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

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

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

24 Q. Where was your van parked?

25 A. In this flat area here.

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

5 THE COURT: The record will so reflect.

6 ATTORNEY FALLON: Thank you.

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

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

11 Q. All right.

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

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

18 ATTORNEY BUTING: No objection.

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

21 Q. All right. And --

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

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

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

3 Q. What happened at that particular location?

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

10 Q. All right. What occurred next?

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

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

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

1 phenolphthalein.

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

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

5 (Witness corrected the spelling off the record.)

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

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

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

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

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

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

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

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

9 A. That was just what I had heard.

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

12 THE COURT: The objection is sustained.

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

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

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

1 Q. And did you get a better look?

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

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

14 A. Yes.

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

16 A. Yes.

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

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

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

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

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

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

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

25 He then used his lifter from the wrecker

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

7 Q. And who was involved in this project?

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

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

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

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

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

1 That was like the security guy. When I first
2 arrived, they were removing the tarp; I think
3 there were three or four there. Tom was there
4 with me; my photographer; there was another --

5 Q. You mentioned Tom?

6 A. Tom Fassbender.

7 Q. Agent Fassbender who is seated here?

8 A. Yes.

9 Q. All right.

10 A. And I don't know all the people involved.

11 Q. All right. And how about after your tour of the
12 general area. You came back to the area where
13 the SUV was; were there officers, then, present
14 as well?

15 A. The one on guard was still there.

16 Q. Same person?

17 A. That I don't know.

18 Q. Okay. Approximately what time did you leave the
19 scene that Saturday night?

20 A. I believe it was about quarter to nine.

21 Q. What time did you arrive in Madison?

22 A. It was about 1:15 a.m.

23 Q. And what time did you finish securing the RAV4?

24 A. It was about 2:00 a.m.

25 Q. All right. And where was the vehicle secured?

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

2 Q. Did you need the assistance of any other
3 professional help to secure the vehicle?

4 A. Yes.

5 Q. Tell us about that?

6 A. When we arrived in Madison, I called the local
7 wrecker company to come and do the opposite of
8 what the wrecker had done at the scene in
9 Manitowoc, to lift up the back end, pull the
10 vehicle out of the trailer, and then put it into
11 the garage, because the back wheels were still
12 locked.

13 Q. Directing your attention to Sunday, November 6,
14 were your services again requested in this
15 investigation?

16 A. Yes. About 9:00 a.m., Special Agent Tom
17 Fassbender called me and requested that we come
18 up to the salvage yard again. And at that point
19 they hadn't any specific area they wanted our
20 assistance, they just wanted our general
21 assistance to be available in case they came
22 acrossed anything.

23 Q. Okay. Did you then make plans to travel to the
24 salvage yard?

25 A. Yes.

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

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

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

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

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

8 A. Investigator Wiegert and Special Agent
9 Fassbender.

10 Q. What assignments were you asked to perform?

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

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

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

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

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

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

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

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

22 Q. And did you find anything else?

23 A. We didn't find anything more.

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

1 occurred there?

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

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

8 A. That's correct.

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

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

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

25 ATTORNEY BUTING: Can the record reflect

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

4 ATTORNEY FALLON: That's fine.

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

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

9 A. No, we didn't.

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

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

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

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

22 Q. Who was assisting you in this task?

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

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

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

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

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

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

17 A. Yes.

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

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

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

1 evening?

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

4 Q. If need be, sure.

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

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

21 Q. And these vehicles, what were they?

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

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

1 A. I do not know.

2 Q. Very well. Directing your attention, then, to
3 Monday, November 7th, 2005, did you again
4 participate in processing of the salvage yard?

5 A. Arrangements on Sunday evening were that we would
6 meet up with a Jeremy Hawkins here in Chilton at
7 the Calumet County Sheriff's service garage. The
8 four burn barrels had been transported to the
9 service garage and we were to examine those.

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

11 A. Yes. Approximately 8:00 a.m., we met with Jeremy
12 Hawkins. He let us into the garage, got us into
13 the trailer where the burn barrels were. Got
14 them out into the garage. Set up our sifting
15 equipment and bit by bit went through the
16 contents of the barrels, sifting, looking for any
17 kind of bones, teeth, hair, any metallic type
18 items.

19 Q. Did you find any of that evidence?

20 A. There was. In each barrel examined we collected
21 a box full of that sort of material.

22 Q. All right. Now, was that task at all interrupted
23 on Monday?

24 A. Yes. Just after we had our lunch break and we
25 had just started sifting the barrels again,

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

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

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

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

1 still there right under the plastic.

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

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

9 Q. Perhaps years?

10 A. Perhaps.

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

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

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

18 ATTORNEY FALLON: That's fine.

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

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

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

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

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

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

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

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

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

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

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

18 A. I can't orient to that.

19 Q. Okay.

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

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

25 ATTORNEY FALLON: It's not necessary.

1 Thanks for the offer.

2 ATTORNEY BUTING: Okay.

3 A. Okay. I see something I recognize.

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

6 A. This is the residence of Steven Avery.

7 Q. Right.

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

12 ATTORNEY BUTING: Objection, hearsay.

13 A. Looks like that's the --

14 THE COURT: Hold on a second.

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

17 A. Okay.

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

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

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

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

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

9 Q. All right.

10 A. I was not in this area here.

11 Q. Okay.

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

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

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

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

21 ATTORNEY BUTING: No objection.

22 THE COURT: Record will so reflect.

23 ATTORNEY FALLON: Thank you.

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

1 still have daylight or was it dark?

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

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

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

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

13 A. Yes.

14 Q. What time did you start that day?

15 A. 8:00 a.m.

16 Q. All right.

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

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

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

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

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

1 ATTORNEY BUTING: Objection again, hearsay.

2 ATTORNEY FALLON: One second.

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

5 A. Okay.

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

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

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

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

1 thing. We collected all that material.

2 Q. And what did you do with it?

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

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

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

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

17 A. Yeah.

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

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

23 Q. All right.

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

1 Q. Okay.

2 A. The right shape and size.

3 Q. There's another close up there, in terms of this
4 particular photograph. And, again, just for the
5 general idea, is that how the barrel looked when
6 you began the sifting process that you just told
7 us about?

8 A. Yes.

9 Q. All right. Very well. Thank you. After you
10 finished examining the barrel, the fifth barrel,
11 what did you do next?

12 A. We then returned to the salvage yard.

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

15 A. At that point we were directed to one of the
16 wrecked vehicles in the yard. We were told that
17 one of the searchers had found vehicle license
18 plates within the vehicle. They had taken them
19 out. They had been folded or rolled in such a
20 way that he couldn't read the number on the
21 plate. So he unrolled it or unfolded it and was
22 able to read the plate. And it was the license
23 plate number for the RAV4 vehicle.

24 Q. So what did you and the rest of your team do with
25 respect to the vehicle?

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

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

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

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

17 A. That was Special Agent Tom Sturdivant.

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

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

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

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

8 Q. Do you use different types of screens?

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

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

14 A. That was about 3:00 p.m.

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

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

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

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

8 Q. All right.

9 A. -- sifting.

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

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

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

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

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

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

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

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

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

24 Q. What time did you --

25 A. We used flashlights.

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

2 A. It was about 5 p.m.

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

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

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

12 THE COURT: Does the defense agree?

13 ATTORNEY BUTING: Yes.

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

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

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

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

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

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

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

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

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

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

23 Q. How do you spell luminol, please?

24 A. L-u-m-i-n-o-l.

25 Q. And how did it work?

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

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

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

16 A. I did say reagents.

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

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

22 Q. Okay.

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

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

1 A. Clorox Bleach.

2 Q. Okay. You were saying -- You were about to
3 explain more on the reagents.

4 A. So luminol is more sensitive, but it's less
5 specific than phenolphthalein. So if it glows
6 with luminol, then we would want to go back and
7 retest that area with phenolphthalein, it's more
8 specific. To be useful for later analysis, we
9 would want it to be phenolphthalein positive.

10 Q. Now, which residences were you asked to conduct
11 this luminol process?

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

13 Q. And this was Tuesday evening?

14 A. Yes.

15 Q. All right. And let's start with Steven Avery's
16 residence, what if anything did you find there
17 that had previously not been examined, or
18 determined, or observed?

19 A. There were some visible bloodstains on the couch
20 that we had previously not found, that we found
21 with luminol. Other than that, there was nothing
22 that we hadn't already seen.

23 Q. And when you found these stains on the couch
24 react to the luminol, what did you do?

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

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

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

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

8 Q. And what did you do?

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

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

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

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

18 A. We had been informed that others had been there
19 before us; there were chalk circles on the floor
20 already. We luminoled, made our own chalk
21 circles, found one spot that was confirmed
22 positive with phenolphthalein, but we were
23 informed that that had already been collected.

24 There was another area that wasn't just a spot on
25 the floor, it was more of a smear.

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

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

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

11 A. Yes.

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

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

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

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

3 A. Yes, I do.

4 Q. And tell us about that.

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

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

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

1 larger spot?

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

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

8 A. Yes.

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

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

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

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

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

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

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

1 A. Right.

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

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

6 ATTORNEY FALLON: Very well.

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

9 A. Three to four foot diameter.

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

11 A. It was irregularly shaped.

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

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

17 THE COURT: Okay.

18 THE WITNESS: Edge to edge.

19 THE COURT: Okay.

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

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

1 area.

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

5 THE COURT: Excuse me, Mr. Fallon.

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

8 THE COURT: Very well.

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

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

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

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

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

19 A. That was the last.

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

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

1 break. Thank you.

2 (Jury not present.)

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

5 ATTORNEY KRATZ: Thank you.

6 (Recess taken.)

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

10 ATTORNEY BUTING: Thank you, your Honor.

11 **CROSS-EXAMINATION**

12 BY ATTORNEY BUTING:

13 Q. Good morning, Mr. Ertl.

14 A. Good morning.

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

20 A. Yes.

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

24 A. That's right.

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

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

3 A. Yes.

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

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

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

15 A. Chemistry.

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

18 A. Correct.

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

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

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

1 A. Yes.

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

4 A. Yes.

5 Q. How long was that?

6 A. About a year.

7 Q. And why did you leave that job?

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

11 Q. Okay.

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

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

17 A. Correct.

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

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

25 Q. Some of what you do?

1 A. Yes.

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

4 A. Right.

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

9 A. Right.

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

13 A. Yes.

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

16 A. Yes.

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

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

22 Q. I see. I see.

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

25 Q. Sure.

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

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

5 A. Texas Crime Laboratory.

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

8 A. Right.

9 Q. And then you moved back to Milwaukee?

10 A. Yes.

11 Q. Or to Madison, or where?

12 A. To Madison.

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

16 A. Yes.

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

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

22 Q. All right.

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

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

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

12 A. Yes.

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

16 A. Yes.

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

19 A. Yes.

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

22 A. Yes.

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

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

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

7 A. That's correct.

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

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

12 THE COURT: Sustained.

13 ATTORNEY FALLON: Ask that it be stricken.

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

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

18 A. Yes.

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

20 A. Yes.

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

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

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

25 A. Correct.

1 Q. Include blood, semen, saliva?

2 A. Yes.

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

4 people would do ADO typing of blood and that sort

5 of thing?

6 A. That's correct.

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

8 A. That's also correct.

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

10 be able to use these presumptive tests for blood?

11 A. Yes.

12 Q. Like phenolphthalein, right?

13 A. Yes.

14 Q. Or luminol?

15 A. Yes.

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

17 consider a presumptive test for blood?

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

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

20 agents that its not specific to blood?

21 A. That's correct.

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

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

24 the real presumptive tests for blood?

25 A. That's correct.

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

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

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

14 ATTORNEY FALLON: Objection, speculation
15 and relevance.

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

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

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

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

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

8 A. Yes.

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

15 A. Yes, there is.

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

20 A. I believe that's a possibility.

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

1 A. That's true.

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

7 A. That's true.

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

12 A. Yes, it is.

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

15 A. I would agree.

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

20 A. That's correct.

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

23 A. In regards to computers usually.

24 Q. Okay.

25 A. I guess.

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

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

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

13 A. Right.

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

17 A. Possibly.

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

20 A. That's also possible.

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

23 A. Yes.

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

25 A. Yes.

1 Q. Any lab?

2 A. Yup.

3 Q. All crime labs have that risk and reality that
4 materials, test materials, do sometimes become
5 contaminated, correct?

6 A. That's correct.

7 Q. And, in fact, that's something that's of such
8 concern to your lab that you -- you keep a record
9 of such contamination incident, whenever it's
10 discovered?

11 A. Yes.

12 Q. What's that called?

13 A. Contamination log.

14 Q. Okay. And that relates to incidents where the
15 contamination has been able to be discovered by
16 the scientist who's working on it, right?

17 A. That's right.

18 Q. If some contamination occurs in your lab, though,
19 and it's not discovered by the analyst, there is
20 no record of that, right?

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

22 Q. All right. Now, sir, you mentioned that you
23 were, on November 4th or 5th, I'm going to direct
24 your attention to that, the first day, you said
25 your answering service got a call; did you

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

3 A. Yes, I called him back.

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

6 ATTORNEY FALLON: Objection, hearsay.

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

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

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

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

22 A. I believe so.

23 Q. Are you sure of that?

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

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

2 A. -- at the scene.

3 Q. I'm sorry.

4 A. I will make notations as I do things throughout
5 the day and I will note the time.

6 Q. Sure. Take your time and refresh your
7 recollection, if you will, please.

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

9 Q. All right. And the first place you went, though,
10 was to the Command Post. I think you described
11 it as a firetruck with a canopy over it.

12 A. Yeah.

13 Q. And was that down at sort of the entrance to this
14 salvage yard area where there were some -- some
15 business buildings and that sort of thing?

16 A. It was just before that.

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

18 A. Yes.

19 Q. Right down along Avery Road?

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

21 Q. Okay. And you spoke with Mr. Wiegert and
22 Mr. Fassbender, right?

23 A. Yes.

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

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

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

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

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

15 A. Yes.

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

20 A. Fifteen minutes to a half an hour.

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

23 A. That's correct.

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

1 ATTORNEY KRATZ: I have been unplugged.

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

4 ATTORNEY KRATZ: Can you use the ELMO?

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

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

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

15 Q. Okay.

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

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

21 A. No, I don't.

22 Q. All right.

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

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

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

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

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

17 A. Yes.

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

21 A. Yes.

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

24 A. Yes.

25 Q. So you actually moved the Rambler hood away

1 completely?

2 A. Yes.

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

7 A. Yes.

8 Q. The branches were uncovered?

9 A. (No verbal response.)

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

12 THE COURT: Sure.

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

19 A. Yes, I do.

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

22 A. No.

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

24 A. No.

25 ATTORNEY BUTING: Counsel, could you just

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

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

7 A. Yes.

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

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

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

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

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

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

3 A. Yes.

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

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

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

11 A. Right.

12 Q. When was that?

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

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

15 A. Yes.

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

18 A. Yes.

19 Q. Do you know when that started?

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

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

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

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

3 A. Yeah.

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

7 A. Yes.

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

12 A. That is correct.

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

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

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

19 A. Yes, he does.

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

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

25 Q. All right.

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

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

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

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

8 A. Willing.

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

12 A. I don't believe so.

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

17 A. Yes.

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

19 A. Yes.

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

24 A. He could have.

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

1 A. In molecular biology.

2 Q. Okay. And years of experience as a Crime Lab
3 field response analyst, right?

4 A. Yes.

5 Q. And instead, Mr. Fassbender had you going around
6 and taking photographs and looking through
7 garbage; isn't that right?

8 ATTORNEY FALLON: Objection, argumentative.

9 THE COURT: Sustained, to the form of the
10 question.

11 Q. (By Attorney Buting)~ In any event, no one asked
12 you to go into Mr. Avery's house or garage that
13 first night, November 5, 2005?

14 A. That's true.

15 Q. And while it was raining very hard, you obviously
16 couldn't do much outside?

17 A. Right. We were basically waiting for the wrecker
18 crew and trailer to arrive.

19 Q. So you had time to kill. And rather than use you
20 to search Mr. Avery's residence, they directed
21 you to a golf cart, right?

22 A. Yes.

23 Q. And I think there was something -- oh, there were
24 some burn barrels, right?

25 A. Correct.

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

5 A. Yes.

6 Q. Business building?

7 A. Yes.

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

10 A. Correct.

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

16 A. That's correct.

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

19 A. Yes, it did.

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

23 A. Yes.

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

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

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

6 A. I didn't know that.

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

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

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

13 A. Yes.

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

17 A. Yes.

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

21 A. No, I don't.

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

25 A. That's correct.

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

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

8 Q. Okay.

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

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

13 A. Okay.

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

16 A. Yes.

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

19 A. That's correct.

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

23 A. No.

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

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

2 A. Yes.

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

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

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

12 ATTORNEY KRATZ: Maybe 86, counsel.

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

17 ATTORNEY KRATZ: 91 is a diagram.

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

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

24 A. Okay. I have got it.

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

1 to on this photograph?

2 A. Yes.

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

4 A. It was right about in there.

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

9 A. Yes, it was a quarry.

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

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

14 ATTORNEY FALLON: I believe that's correct.

15 ATTORNEY BUTING: That's fine.

16 THE COURT: Parties agree?

17 ATTORNEY KRATZ: Yes.

18 THE COURT: Very well.

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

23 A. Right.

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

1 sort, right?

2 A. Yes.

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

5 A. Right.

6 Q. And to your knowledge, did that, whatever you
7 found over there, eventually have anything at all
8 to do with this case?

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

11 Q. Okay. So you don't know whether that turned out
12 to be flesh and blood that had anything to do
13 with this case or not?

14 A. No, I don't.

15 Q. Okay. Well, we'll deal with it later, then.
16 Then you also, then, after you had finished those
17 three tasks, the other two being searching two
18 other vehicles nearby where the RAV was; is that
19 right?

20 A. Well, the three tasks they had in mind for us
21 when we arrived weren't the three tasks we
22 actually completed that day.

23 Q. Okay. So you didn't actually do the vehicles
24 that day?

25 A. We did do the vehicles.

1 Q. All right.

2 A. We did the gravel quarry, then we went into
3 Steven Avery's residence, and then we did the
4 vehicles.

5 Q. So the third task, being the burn barrels, you
6 didn't get to that day?

7 A. Right.

8 Q. So instead they called you into Mr. Avery's
9 residence for some sort of blood spatter
10 examination, right?

11 A. Correct.

12 Q. Now, I notice on your statement of
13 qualifications, you actually had some blood
14 spatter analysis training, right?

15 A. Yes.

16 Q. Are you one of the people that's presented by the
17 lab, to courts and juries, to testify about blood
18 spatter analysis?

19 A. No, I'm not.

20 Q. Someone else in your lab does that?

21 A. Yes.

22 Q. But you have general knowledge that -- that there
23 -- as you demonstrated before, that if someone
24 has a cut and they flip their finger, the drops
25 will fly off, right?

1 A. Yes.

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

4 A. Yes.

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

7 A. Correct.

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

10 A. Correct.

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

13 A. Correct.

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

20 A. Correct.

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

23 A. Correct.

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

1 A. Correct.

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

7 A. Correct.

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

10 A. Correct.

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

18 A. Yes.

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

21 A. No, I did not.

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

24 A. That's correct.

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

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

3 A. Right.

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

6 A. Just bloodstains. No recognizable patterns.

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

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

12 Q. Okay. One spot?

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

15 Q. Okay.

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

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

20 A. Not just one, but several.

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

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

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

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

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

6 A. Yes.

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

11 A. No, not all of them.

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

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

15 Q. The one on the floor?

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

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

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

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

25 A. That was later.

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

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

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

9 A. Yes.

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

12 A. Yes.

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

15 A. No, I didn't.

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

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

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

23 A. That's correct.

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

1 A. Sure.

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

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

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

10 A. Yes.

11 Q. Such as a car key?

12 A. Sure.

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

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

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

20 A. Yeah.

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

23 A. Correct.

24 Q. And his specialty is fingerprints?

25 A. Yes.

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

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

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

8 A. Correct.

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

12 A. Yes.

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

16 A. Okay.

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

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

21 Q. Right. Okay.

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

24 Q. Sure.

25 A. -- and release another lever.

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

4 A. Right.

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

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

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

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

14 ATTORNEY KRATZ: Not the Crime Lab one?

15 ATTORNEY BUTING: Is there a rear view one?

16 ATTORNEY KRATZ: Absolutely, 135.

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

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

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

24 Q. All right.

25 ATTORNEY BUTING: This one is taken at

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

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

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

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

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

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

13 A. Correct.

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

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

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

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

1 the glove and then seep through the glove.

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

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

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

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

16 THE COURT: Sustained.

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

19 A. Yes.

20 Q. And you take photographs of those?

21 A. Yes.

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

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

1 see any fingerprints.

2 Q. And did Mr. Cates process the vehicle at all for
3 any kind of fingerprints?

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

6 Q. Okay. So there was no fingerprint processing
7 done of the vehicle at the scene, right?

8 A. That's correct.

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

10 A. Correct.

11 Q. All right. Well, we'll talk with those people
12 later. Going back to Sunday, you mentioned that
13 Mr. Cates was with you and you said something
14 about these two other vehicles, near the pond,
15 that he processed the fingerprints; do you recall
16 that?

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

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

20 A. There was dew on it.

21 Q. Okay. But there was some bloodstains in the
22 other two vehicles?

23 A. Yes.

24 Q. And these are the two vehicles that were junk
25 salvage vehicles, right?

1 A. Yes.

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

4 A. I assume so, yes.

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

7 A. That's correct.

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

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

16 Q. Totally unrelated to this case?

17 A. Correct.

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

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

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

24 A. Yes.

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

1 A. Yes.

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

5 A. That's right.

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

9 A. Right.

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

13 A. Right.

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

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

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

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

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

24 A. Yes.

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

1 your van?

2 A. Yes.

3 Q. Yes?

4 A. Yes.

5 Q. Okay. Not something you brought specifically for
6 this case?

7 A. No.

8 Q. And then the next day, November 8th, you started
9 off back at the sheriff's department, right?

10 A. Yes.

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

12 A. Yes.

13 Q. These barrels, where were they kept?

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

16 Q. And when you got there, was there -- were they in
17 any kind of container or were they just sitting
18 out in the garage?

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

21 Q. That's the day before?

22 A. Right.

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

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

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

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

6 A. Detached garage.

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

9 A. (No verbal response.)

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

12 A. Yes.

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

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

17 Q. He is the main guy, right?

18 A. I believe so.

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

20 A. No, I did not.

21 Q. Or 6th?

22 A. No.

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

1 A. Correct.

2 Q. And the photograph, I think is still in front of
3 you, that you discussed before, that's the --
4 that's a photograph you took before searching it?

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

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

7 A. I don't know.

8 Q. Did you take photographs of it before you started
9 searching?

10 A. No.

11 Q. Why not?

12 A. Because it had been removed from where it had
13 been, transported, and then our goal was to sift
14 it and recover what --

15 (Court reporter couldn't hear.)

16 A. Our goal there was to sift the contents. Any
17 documentation of the barrels at the scene, that's
18 -- that was done by somebody else.

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

21 A. No, I don't know. I was presented this this
22 morning and asked if that looked like the fifth
23 barrel, and it does to me.

24 Q. All right. But in terms of it -- it's -- what it
25 looked like out there on the scene; have you seen

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

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

7 Q. Right.

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

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

13 A. Right.

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

16 A. No.

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

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

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

24 A. No, did not examine it.

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

1 scene photography, right?

2 A. Yes.

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

6 A. Right.

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

12 A. Correct.

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

17 A. Correct.

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

20 A. Sure.

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

24 A. Yes.

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

1 A. Correct.

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

5 A. Correct.

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

8 A. That's correct.

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

14 A. Yes.

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

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

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

24 THE COURT: All right.

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

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

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

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

9 A. Correct.

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

15 A. Correct.

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

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

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

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

1 complete scene processing.

2 Q. Okay. So, more typically, if you are called to
3 the scene to process ev -- potential evidence,
4 you are able to do so from start to finish,
5 right?

6 A. I would say the majority of cases, when we arrive
7 at the scene, we are given over control and we
8 take the lead.

9 Q. Okay.

10 A. And process it according to the way we would
11 normally process.

12 Q. Okay. And Mr. Fassbender didn't let you do that
13 in this case, did he?

14 A. In this case, I don't believe that would have
15 been possible, due to the size of the scene.

16 Q. Sure, but -- Because of the 40 acres or whatever?

17 A. Yes.

18 Q. But with regard to this, Mr. Avery's residence,
19 Mr. Fassbender didn't let you do that, right?

20 A. He didn't request that we do that?

21 Q. By the time you went into Mr. Avery's residence,
22 it was clear someone else had already been
23 through it, right?

24 A. Yes.

25 Q. And with regard to Mr. Avery's garage, or

1 detached garage next to his residence,
2 Mr. Fassbender didn't allow you to do that
3 complete scene processing there either, did he?

4 ATTORNEY FALLON: Objection to the use of
5 didn't allow. The question is -- it's improper as
6 to --

7 ATTORNEY BUTING: I will rephrase.

8 THE COURT: Thank you.

9 Q. (By Attorney Buting)~ He didn't ask you to do
10 that?

11 A. He did not.

12 Q. Okay. And, likewise, with this burn area, by the
13 time you arrived, it was impossible for you to do
14 a complete scene processing because someone else
15 had been altering it, right?

16 A. Correct.

17 ATTORNEY BUTING: Judge, I have a lot to go
18 yet; we may want to take a break?

19 THE COURT: All right. We'll take our
20 lunch break at this time. Members of the jury,
21 again, do not discuss this case during your lunch
22 hour and we'll see you after lunch.

23 (Jury not present.)

24 THE COURT: We're now outside the presence
25 of the jury. You may be seated. I will indicate,

1 for the record, there was a request by the defense
2 for a side bar earlier and that was for the purpose
3 of raising an issue as to whether or not the defense
4 had all of the pages from this witness' report.
5 It's my understanding the parties are going to
6 explore that issue over the noon hour?

7 ATTORNEY STRANG: It's not really even an
8 issue your Honor. I suspect that the State doesn't
9 have the last 14 pages either, because otherwise we
10 would. If it turns out that we both have them
11 already, that's fine. There is no issue. I don't
12 expect these will affect the cross-examination or
13 that there's been any tendency to hamper the
14 cross-examination if, in fact, we don't have -- it's
15 just the last 14 pages of the Crime Lab evidence log
16 form.

17 THE COURT: All right. And I also asked if
18 -- I had Exhibit 89 as I was coming back in here.
19 Along those lines, counsel, there was a question
20 raised late last week as to whether Exhibit 89 had
21 been admitted, I checked with the court reporter
22 from Wednesday and he indicated toward the end of
23 the day, I think the Court asked if all the exhibits
24 that had been marked were to be admitted and there
25 was no objection from the parties.

1 But it's -- My recollection is that this
2 may not be the only exhibit that's been marked,
3 but was not intended by the parties to be
4 admitted. So I would ask, over the noon hour, if
5 you could go over your list of exhibits and make
6 sure we determine whether or not there were any
7 other exhibits that had been listed as admitted
8 but were not intended by the parties to be
9 admitted. I think Exhibit 89 here may be one of
10 those. We'll deal with that at the end of the
11 day. Anything else before we break for lunch?

12 ATTORNEY STRANG: I think the State
13 prepared an order for your Honor's signature on
14 personnel records that we have requested. That
15 order is in acceptable form to the defense.

16 THE COURT: All right. Let's resume at
17 1:15.

18 (Noon recess taken.)

19 (Jury present.)

20 THE COURT: At this time, Mr. Buting, you
21 may resume your cross-examination.

22 ATTORNEY BUTING: Thank you, your Honor.

23 **CROSS-EXAMINATION CONTD**

24 BY ATTORNEY BUTING:

25 Q. All right. Mr. Ertl, I'm not exactly sure where

1 we left off, but let's talk about luminol for a
2 minute?

3 A. All right.

4 Q. Luminol is this substance that reacts to a number
5 of different things besides just blood, right?

6 A. That's correct.

7 Q. Other kinds of chemicals, you mentioned cleaning
8 agents, bleach reacts real highly to that, very
9 strong?

10 A. Yes.

11 Q. Which means very bright?

12 A. Bright and fast, yes.

13 Q. Okay. What about other kinds of things,
14 transmission fluid perhaps, oils, things of that
15 nature?

16 A. I know it reacts with some metals, copper and
17 lead in particular. Transmission fluid might
18 have some metals ground into it, so it's
19 possible.

20 Q. Okay. Maybe it would not be as strong a
21 reaction, maybe some -- a faint reaction,
22 something like that?

23 A. Perhaps.

24 Q. Okay.

25 A. I'm not sure.

1 Q. And this is a garage -- Let's go to the garage
2 floor for a minute, where you said you had a
3 faint reaction in this little area, 3 X 4 area.
4 A. Right.
5 Q. Not a real bright, quick reaction like you get
6 with bleach, for instance?
7 A. Right.
8 Q. And the area, then, you then sampled and tested
9 with phenolphthalein, after that, right?
10 A. That's correct.
11 Q. You turn the lights and then you used these very
12 sensitive phenolphthalein tests to see if there's
13 any possible blood?
14 A. Correct.
15 Q. And that would be human or animal, right?
16 A. That's correct.
17 Q. And that particular area, you didn't find any --
18 any kind of blood reaction at all?
19 A. That's correct.
20 Q. But there were some other samples of blood that
21 had been recovered earlier, as far as you could
22 tell?
23 A. That's what I was told.
24 Q. And do you know, did you ever find out what the
25 results of those blood -- whose blood it was or

1 wasn't?

2 A. No.

3 Q. That comes later, not part of your

4 responsibilities; is that right?

5 A. That's correct.

6 Q. Okay. All right. Let me switch and talk with

7 you for a few minutes about the burn pit, okay.

8 You talked about some experience that you had

9 being called out to the woods to look at bones or

10 something of that nature?

11 A. There had been a couple of burial sites and one

12 in particular earlier that year that it involved

13 burning.

14 Q. Okay. And so you're -- you have enough

15 experience to be able to recognize bones?

16 A. Yes.

17 Q. Not necessarily distinguish human bone from

18 animal bone, but you can kind of tell what's bone

19 and what's rock and that sort of thing?

20 A. Yeah, I could -- maybe not all kinds of rock, but

21 bone from say plant materials, piece of bark.

22 Q. Bone from -- you mean you can distinguish bone

23 from plant materials or bark?

24 A. I have a -- as you pointed out, I have a

25 background in plant biology, so I feel

1 comfortable with plant materials versus bone, but
2 not so comfortable distinguishing, say, some
3 limestone versus a piece of bone.

4 Q. Okay. And, you know, you are not actually a
5 forensic anthropologist?

6 A. No, I'm not.

7 Q. Did -- To your knowledge, did Mr. Fassbender call
8 a forensic anthropologist out to the scene of the
9 burn pit?

10 A. Not to my knowledge.

11 Q. Or Mr. Wiegert?

12 A. No, not to my knowledge.

13 Q. Okay. Now, you talked about excavating this site
14 a little bit. Do you know how a possible bone
15 site is supposed to be searched by, you know,
16 what an archaeologist or forensic archaeologist
17 or anthropologist would do?

18 ATTORNEY FALLON: Objection, compound
19 question, which is it?

20 Q. (By Attorney Buting)~ Archeologist.

21 A. I have no training in archaeology. We do
22 excavate burial sites differently than we
23 excavated this ash pile.

24 Q. Okay. And when you do that, one of the very
25 first things you do is make sure that you

1 documented, with photographs, before the site has
2 been altered, right?

3 A. That would be the first step.

4 Q. And that, in fact, you take numerous photographs,
5 throughout the process, documenting it before,
6 during and after, right?

7 A. Quite often, yes.

8 Q. And that you -- The proper way is to sort of
9 establish a contamination path, let's call it, an
10 area outside of the area that you think might be
11 worthy of excavation, where you are allowed to
12 walk back and forth and back and forth and not
13 worry about contaminating anything; is that
14 right?

15 A. Well, that's generally true with most crime scene
16 items.

17 Q. All right.

18 A. You want to limit the access to the site in some
19 way.

20 Q. Okay. But when it comes to excavating one of
21 these sites where there might be a burial site,
22 for instance?

23 A. Yes.

24 Q. You divide it up into -- either with string, or
25 something, you ideally would have four posts

1 outlining the area with strings and then dividing
2 it up into various squares or quadrants; are you
3 familiar with that?

4 A. I'm familiar with that, in my little knowledge of
5 archaeology, I have seen that done. I have
6 worked with forensic anthropologists at burial
7 sites and they have not done that.

8 Q. All right. But one of the things, when you do
9 that is, you work from the outside in. In other
10 words, from where the outer edge is, where your
11 path is, you work your way -- the outer edges
12 first and then you work your way into the center
13 so that you can do the entire area?

14 A. Well, usually with a burial site, your first goal
15 is to define the extent of the hole. So, once
16 you have defined the perimeter, then you work
17 outside of that and dig down alongside of where
18 you think the burial site actually is. And then
19 you excavate from down and sides and underneath
20 to the core --

21 Q. Okay.

22 A. -- to where the body would be.

23 Q. Sort of outside, into the middle, right?

24 A. Correct.

25 Q. Generally. And when you do recover an item, in

1 the course of that excavation, it's important
2 that you make note of exactly where in that --
3 within that perimeter area you find that bone or
4 that item, right?

5 A. In my past experience, we would, if the body is
6 intact, we would locate where the head is, where
7 the shoulders, the joint, and the hands would be,
8 where the hips are, the knees, and the feet, just
9 to get the orientation of the body in the grave.

10 Q. Okay. Now, at this site, you didn't have a
11 perimeter with a containment path around it,
12 right? I mean, it was being worked on by the
13 time you got there, right?

14 A. Well, it wasn't a burial, per se, so it wasn't a
15 great perimeter; there was a scooped out area of
16 dirt with ashes.

17 Q. Right.

18 A. So the ashes was our perimeter.

19 Q. Okay. But somebody would use the shovel -- you
20 said mostly you, but sometimes others -- and dig
21 up a portion, then bring it over to be sifted,
22 right?

23 A. Right.

24 Q. And this area, the whole area that was excavated,
25 was about how big?

1 A. Probably roughly the size of this table I'm
2 sitting at.

3 Q. And nobody -- When you would bring over a shovel
4 here or shovel there, nobody made or kept track
5 of where exactly in that -- I guess we should
6 identify it for the record. The area is what,
7 maybe 5 X 4?

8 A. 5 X 4 feet, yeah.

9 Q. Okay. Nobody made or kept track of where, within
10 that area, any particular suspected bone may have
11 been, right?

12 A. No.

13 Q. And if any -- any suspected bone was found
14 outside of that area, nobody made specific note
15 of just where, outside of that area, that came
16 from either, did they?

17 ATTORNEY FALLON: Objection, calls for
18 hearsay knowledge. And it's non-specific as well in
19 term of who, what, and where.

20 THE COURT: Well, as far as hearsay, I
21 understand you to be questioning this witness -- I'm
22 assuming he's asking the witness, based on his own
23 knowledge. What was the remainder of your
24 objection?

25 ATTORNEY FALLON: It's non-specific in

1 terms of what was found where, when, by whom. If
2 he's asking the witness what he may have done and
3 what he may have documented, that's certainly
4 appropriate. But what anyone else may have found,
5 done, or documented is ...

6 THE COURT: I will ask you to rephrase the
7 question for clarification.

8 Q. (By Attorney Buting)~ All right. I guess the
9 point here is that various items of suspected
10 bone were brought to you to be sifted. I mean
11 various areas of dirt, or whatever, were brought
12 to you to be sifted, and then suspected bone
13 fragments were found, right?

14 A. Correct.

15 Q. But to your knowledge, neither you nor anyone
16 else would specifically identify where in this
17 area that particular piece of bone came from?

18 A. No. Everything that was collected in this area
19 was placed together in a box.

20 Q. This area being that 4 X 5 feet ...

21 A. 4 X 5 foot ash pile was placed together in a box,
22 just as we had done with the burn barrels.

23 Q. And did you find anything -- Did you sift
24 anything outside of that pit area, on the grass,
25 or farther over above where the dog was in that

1 picture, on the mound, or anything like that?

2 A. No, we were restricted to the ash pile.

3 Q. Okay. And you just worked on it that one
4 evening?

5 A. Yes.

6 Q. You didn't come back the next day to do any
7 further work?

8 A. No, that was the last day I was there.

9 Q. And that was done, actually, at night, you said?

10 A. Well, we worked up until it got dark.

11 Q. Was it daylight when you got there?

12 A. It was approximately from 3:00 p.m. to 5:00 p.m.

13 Q. Okay. So it was daylight for part of it and then
14 you kept working until it got too dark?

15 A. Got too dark.

16 Q. And you went walking around the -- during your --
17 your -- how many days was it there, three days,
18 four days?

19 A. Saturday, and came back for Sunday, Monday,
20 Tuesday.

21 Q. Okay. So during your four days there, you walked
22 around different areas and looked at different
23 buildings on the 40 acre property, right?

24 A. Yes.

25 Q. Testified to that. Did Mr. Fassbender or

1 Mr. Wiegert ever escort you to a aluminum smelter
2 on the property?

3 A. No.

4 Q. You never saw the smelter on the property at all,
5 did you?

6 A. No, I didn't.

7 Q. And you are the one who has the experience
8 finding bones, right?

9 A. I have some, yes.

10 Q. So if somebody had brought you over to the
11 smelter, you would have been able to look
12 carefully, with your experience, to see whether
13 there was any evidence, fragments of bones, or
14 whatever, in or around that smelter area,
15 couldn't you?

16 A. I don't know much about aluminum smelters. If
17 there were something to look at, I could have
18 looked at it.

19 Q. Okay. But you did not, because no one escorted
20 you there, no one showed you the smelter?

21 A. I didn't know anything about an aluminum smelter.

22 Q. What about a big wood furnace?

23 A. No, I don't know anything about that.

24 Q. Never looked inside of a wood furnace that was on
25 the property, to see if there was evidence of

1 bone, or --

2 A. No, I did not.

3 Q. -- zippers, pulls, anything like that?

4 A. No.

5 ATTORNEY BUTING: All right. Thank you
6 very much, sir.

7 THE COURT: Any redirect?

8 ATTORNEY FALLON: Yes, Judge. Thank you.

9 **REDIRECT EXAMINATION**

10 BY ATTORNEY FALLON:

11 Q. Couple of points, Mr. Ertl. First of off --
12 First all -- First of all, I would like to ask
13 you about this question, relative to the
14 transportation of the SUV. Counsel asked you if
15 you could have remained and helped with other
16 searches, instead of going with the vehicle to
17 Madison. What is the protocol, what is the
18 recommended procedure for the Crime Lab analyst
19 when there are two of you there with a critical
20 piece of evidence like the SUV?

21 A. Well, I was asked if we could get the vehicle
22 back to the laboratory and asked to see if I
23 could expedite getting work done on it, prior to
24 Monday morning.

25 Q. Who asked you to do that?

1 A. It was either Investigator Wiegert or Special
2 Agent Fassbender.

3 Q. All right. Now, in terms of transportation of a
4 key piece of evidence like that, is there a
5 concern on the part of the analyst that the
6 evidence be transported safely?

7 A. Well, definitely. I wanted it enclosed. It is
8 now in my custody. We could have turned it over
9 to Calumet County and they could have taken
10 custody and dealt with getting to it to the
11 laboratory.

12 Q. But you took control of the SUV, correct?

13 A. Correct.

14 Q. All right. And to ensure that it was safely
15 transported to the Crime Lab, without incident,
16 took two of you to do it?

17 A. Correct.

18 Q. All right. Now, counsel asked you a couple of
19 hypotheticals about the presence of a certain
20 Toyota key and the possibility of DNA on that
21 key. Well, Mr. Ertl, we have person number one
22 who's the owner of the key; person number two who
23 does not own the key, but at some point obtains
24 possession of the key. And during the course of
25 obtaining possession of the key, actively bleeds

1 on the key, wipes the bleed off the key.

2 It's not entirely unexpected that you
3 would find the DNA profile of the person who
4 possessed the key and who wiped the blood off the
5 key, that's not an unusual finding, would it not?

6 A. Well, in that situation, you would have two
7 activities promoting finding the second person
8 rather than the first person. If you bleed on
9 the key, now you are supplying a large quantity
10 of your own DNA. And even if the other person's
11 DNA is there, you may mask them because now you
12 have actual bodily fluids rather than stray skin
13 cells.

14 So there's more DNA in blood than I
15 would expect to find from something that had been
16 touched. So you could cover over the other DNA.
17 And if you then wiped it off, now you are
18 physically removing potentially all the DNA
19 that's present, the first person and the second
20 person.

21 Q. And if the second person, not the original owner
22 of the key, had possession of that key for four
23 days, one would expect that you are most likely
24 going to find the profile of the person who last
25 possessed the key; isn't that true?

1 A. As you explained it, I would expect, yes, to find
2 the second persons.

3 Q. And it would not be unusual at all to find no
4 other DNA profile on that key, would it?

5 A. No, that would be not unusual.

6 Q. In fact, the likelihood of that occurring is
7 enhanced by the fact that person number two
8 actually had possession of the key for say four
9 days at a minimum?

10 A. The longer the time you would expect more contact
11 more possibility for DNA being deposited.

12 Q. Now, let's talk a little bit about this
13 contamination issue. The fact that certain bits
14 of evidence can become "contaminated", is not all
15 that unusual is it?

16 A. The fact that it can happen?

17 Q. Yes.

18 A. It is not unusual and it is expected and we take
19 precautions to prevent that.

20 Q. And, as a matter fact, contamination can occur,
21 as counsel said, during the collection of the
22 evidence, during the transport of the evidence,
23 and during the analysis of the evidence, as I
24 understood your answer; is that correct?

25 A. Yes.

1 Q. All right. Well, it's also possible that
2 contamination of a crime scene could occur before
3 law enforcement even arrives?

4 A. Correct.

5 Q. And, as a matter of fact, in your experience,
6 it's not unusual at all for perpetrators of
7 crimes to take efforts to alter crime scenes, is
8 it?

9 A. That's quite common to -- to see attempts being
10 made to clean up.

11 Q. All right. And what types of efforts have you
12 seen certain suspects undertake to clean up, as
13 you say, a crime scene?

14 ATTORNEY BUTING: Objection, now we're
15 getting too far afield of this case.

16 ATTORNEY FALLON: I disagree heartily,
17 counsel went down this road, we're entitled to
18 respond.

19 THE COURT: I'll give you a little
20 latitude.

21 Q. (By Attorney Fallon)~ Continue.

22 A. I have seen cases where it was a shooting in a
23 carpeted area, we saw some of the blood spatter
24 pattern we talked about previously, up on the
25 ceiling, on some of the furniture. And there was

1 absolutely no apparent blood on the carpeting.
2 So we saw a fine, hard to see mist of blood. And
3 you would expect to see, then, something on the
4 carpeting, if someone had been shot there. There
5 was a Rug Doctor sitting next to it, this area.
6 They had rented the Rug Doctor and shampooed the
7 carpet. When we ripped up the carpet, a large
8 blood pool, on the floor under the carpeting, had
9 soaked into the padding. So they had obviously
10 attempted to clean the blood pool from the
11 shooting.

12 Q. And is it possible to clean up blood with certain
13 reagents such as bleach?

14 A. Yes. Bleach is very effective. We use bleach in
15 the laboratory to clean our work areas. It
16 actually destroys DNA. Destroys the blood. It
17 decontaminates it. It's very useful for that.

18 Q. All right. Now, another thing about this
19 contamination issue, just so we're clear; does
20 contamination transform one person's DNA profile
21 into that of another?

22 A. It cannot change a DNA profile. It can hide a
23 DNA profile, though.

24 Q. So what you would have, then, is a mixture?

25 A. You could have a mixture, or you could fail to

1 see the first person, if the second person
2 deposited a much greater quantity of DNA.

3 Q. But it's still interpretable, is it not?

4 A. Yeah, you would see DNA types and you would be
5 able to interpret them.

6 Q. So, I take it it's still possible, then, to have
7 reliable findings, notwithstanding that type of
8 contamination?

9 A. It's possible.

10 Q. Now, returning, again, to the question counsel
11 asked about actively bleeding; if a suspect was
12 actively bleeding and entered a vehicle, you
13 would expect to find an impact bloodstain, would
14 you not; that would not be uncommon?

15 A. If they were actively bleeding and blood was
16 dripping from them, then an impact stain would be
17 the blood falling off of the person and gravity
18 pulling it to the floor and hitting, that would
19 be the impact.

20 Q. All right. And what is a contact stain?

21 A. That's where I'm bleeding, have blood on an item,
22 and the item touches another item. And now I
23 leave some blood on the second item.

24 Q. And you would expect to find that as well, if a
25 person was actively bleeding and had been in a

1 particular vehicle that was -- that is now
2 undergoing an examination?

3 A. If they had touched something with a bloodied up
4 hand or whatever, then you would expect some
5 transfer of blood.

6 Q. Even if it was just a cut on the finger?

7 A. Sure.

8 Q. Is it possible -- Well, before I get there, what
9 is -- are you familiar with a phrase called a
10 transfer stain?

11 A. Well, that's a transfer of blood from one item to
12 another --

13 Q. So --

14 A. -- by contact.

15 Q. -- you are thinking that contact and transfer is
16 one in the same concept?

17 A. Yes. And I am not a blood spatter pattern
18 expert. I have just -- I have been to some
19 training. I am able to recognize it when I see
20 it, but I don't interpret it. So I don't know
21 all the specific jargon about swipes and wipes;
22 and contacts and transfers; high impact,
23 immediate impact, and low impact castoff. I'm
24 familiar with the terms, but I couldn't
25 necessarily tell you that that's a transfer not a

1 contact, or a swipe not a wipe.

2 Q. Well, returning, again, to our example of the
3 person one and person number two and person one
4 being the owner of the key and person two being
5 the last one to possess the key. Well, if person
6 number two had been actively bleeding, entered a
7 vehicle holding the ignition key in their right
8 hand and then attempted to start the vehicle, it
9 would not be unusual at all to find a contact
10 stain near the ignition in that vehicle?

11 ATTORNEY BUTING: Objection to the
12 characterization of not unusual. There's no factual
13 distinction as to how that would occur.

14 THE COURT: I will sustain the objection
15 based on the form of the question.

16 Q. (By Attorney Fallon)~ Would you expect to find a
17 contact stain on the ignition?

18 A. If the person were bleeding with their right
19 hand --

20 Q. A cut on the --

21 A. -- operating a key with the right hand and trying
22 to start the ignition, I wouldn't think it would
23 be unusual at all to find blood on the key and on
24 the ignition.

25 (Court reporter couldn't hear.)

1 A. And on the ignition.

2 Q. Now, counsel asked you a series of questions and
3 I want to talk a little bit more about this blood
4 spatter issue. You can have a crime scene, and
5 let's just take something like a stabbing, in
6 which there was blood at the scene; are you
7 always going to find evidence of a blood spatter
8 stain?

9 A. No, it would depend on circumstances?

10 Q. What types of circumstances?

11 A. I can think of a case, not too long ago, where a
12 woman had been stabbed in her bed and there was,
13 you know, the blankets and the comforter over her
14 and was stabbed through that, repeatedly, and yet
15 there was no evidence of blood in the room, other
16 than bleeding out of her.

17 And the idea was that the knife going
18 through the bedding and then being pulled out
19 again, it wiped off the blood. It went in, came
20 out, came out clean. And so there was no chance
21 for the blood to fly off the knife and end up on
22 the ceiling or on the floor. So it was a very
23 clean scene. All the blood was contained just to
24 the bedding and to the victim and under the
25 sheets.

1 Q. And if you wanted to further cover up the crime,
2 then you could certainly burn all the bedding,
3 couldn't you?

4 A. Certainly.

5 Q. So in effect, then, it is possible to clean up a
6 crime scene?

7 A. Most certainly. Most crime scenes do get cleaned
8 up and people continue to live in them, the
9 houses or whatever.

10 Q. But it would be -- Is it possible, based on your
11 training and experience, for instance, to have a
12 pool of blood and, say, on a garage floor, have
13 it cleaned up to such an extent that you would
14 not get a reaction to a phenolphthalein test?

15 A. Well, knowing what I know, I could probably do
16 it. Bleach would be a good thing, some sort of
17 peroxide would be a good way to get rid of the
18 red color. The bleach would destroy the blood
19 and the DNA.

20 Q. So it's possible?

21 A. It's possible, yes.

22 ATTORNEY FALLON: Your witness.

23 THE COURT: Mr. Buting.

24 ATTORNEY BUTING: Sure.

25 **RE-CROSS-EXAMINATION**

1 BY ATTORNEY BUTING:

2 Q. This other case you mentioned, where the
3 gentleman -- find it on my notes for a second,
4 please. Yeah, where there was a shooting, body
5 on the carpet or something and you were surprised
6 that there was no evidence of blood on the
7 carpet?

8 A. Correct.

9 Q. But that was explained because the Rug Doctor Was
10 there, right?

11 A. Right.

12 Q. But there was blood on the ceiling.

13 A. Correct.

14 Q. And blood on the wall?

15 A. Yes.

16 Q. And when you rip up the carpet, there's a pool of
17 blood underneath the carpet, right?

18 A. That's right.

19 Q. So cleaning a carpet, blood soaks through fabrics
20 pretty well, doesn't it?

21 A. Yes.

22 Q. So, in that instance, whatever the gentleman or
23 defendant did, was not good enough. He didn't
24 rip up the carpet and clean the pad underneath
25 it, right?

1 A. Right.

2 Q. Now, in this case, are you aware that they ripped
3 all the carpet out and the pad out of Mr. Avery's
4 house?

5 A. I didn't know that.

6 Q. Okay. So you don't know what's -- whether the
7 carpet and the pad and all that was tested for
8 blood in his house or not?

9 A. I don't know.

10 Q. Okay. Well, we'll get to that later. But in any
11 event, you did not see any blood spatter on his
12 ceiling, right?

13 A. That's correct.

14 Q. Or on the walls of the bedroom?

15 A. That's correct.

16 Q. And the walls are paneling, right?

17 A. I believe so.

18 Q. Are you aware that they ripped the paneling out
19 of -- off the walls and took all that out to the
20 Crime Lab too?

21 A. No, I wasn't aware of that either.

22 Q. That came later in the case and you weren't
23 involved in that; is that right?

24 A. Right.

25 Q. Okay. You also told us a story about the guy who

1 apparently stabbed some woman on the mattress and
2 there was no cast off because he was stabbing her
3 through the bedding, right?

4 A. Correct.

5 Q. In other words blankets and comforter on top of
6 the body as it's being stabbed --

7 A. Correct.

8 Q. -- right? But -- And so in that instance, there
9 wasn't cast off blood that would hit the ceiling,
10 or walls, or other objects in the room; is that
11 what you are saying?

12 A. That's correct.

13 Q. But, I assume the person did bleed down into the
14 mattress, right?

15 A. Yes.

16 Q. And there was a blood soaked mattress in that
17 case, wasn't there?

18 A. Yes.

19 Q. And Mr. Fallon asked you if someone would be able
20 to get rid of that evidence in that instance by
21 burning the bedding, right?

22 A. That's correct.

23 Q. Any evidence that a mattress was burned in this
24 case?

25 A. Not that I recall.

1 Q. Did you see any bed springs in the burn pit?
2 A. No.
3 Q. Or in the burn barrel?
4 A. No.
5 Q. In fact, when you went to the Avery's bedroom
6 there was a mattress there, wasn't there?
7 A. There was.
8 Q. And a box spring?
9 A. Yes.
10 Q. And there was no bloodstain on it was there?
11 A. No, there wasn't.
12 Q. Are you familiar with any of the studies of the
13 transfer of trace DNA from one's fingers to
14 objects they pick up?
15 A. Yes.
16 Q. Are you familiar with Dr. Lee's reports, study?
17 A. Not in particular.
18 Q. Okay. Trace isn't really your specialty?
19 A. No.
20 Q. So you are not aware of whether they have done
21 tests that have -- that have determined what the
22 likelihood is of the person number one's DNA
23 still being on it when person number two handles
24 it; is that right?
25 A. I do know that it varies from person to person,

1 how much DNA you deposit on things.

2 Q. Okay. But, in fact, when using the hypothetical
3 Mr. Fallon had, person number two is handling the
4 key after person number one, the more common
5 finding would be two people's DNA, wouldn't it?

6 A. If they were each just handling.

7 Q. Okay. Any evidence of blood on the key in this
8 case, that you are aware of?

9 A. I know nothing of the key; I didn't ever see the
10 key.

11 Q. Okay. And you said you were looking for blood,
12 but you knew this was -- by then, by the time you
13 went into the house, you knew that there was a
14 Toyota RAV4 that had been seized and taken to the
15 Crime Lab, right?

16 A. Yes.

17 Q. So if you had walked in that bedroom and seen,
18 right in plain view, a car key that looked like a
19 Toyota car key, you would have made note of that,
20 wouldn't you?

21 ATTORNEY FALLON: Objection, beyond the
22 scope of redirect.

23 ATTORNEY BUTING: You talked about the key.

24 ATTORNEY FALLON: Not in that context.

25 THE COURT: I'm going to sustain the

1 objection.

2 ATTORNEY BUTING: All right.

3 THE COURT: I think that question has
4 already been asked and answered, as well.

5 ATTORNEY BUTING: Okay. That's all I have.
6 Thank you, sir.

7 THE COURT: All right. The witness is
8 excused. Mr. Fallon, you can call the next witness.

9 ATTORNEY FALLON: We will move Exhibit 156
10 into evidence, please.

11 THE COURT: Any objection?

12 ATTORNEY BUTING: I'm sorry, which one is
13 that -- I have no objection to that. And I would
14 move Exhibit 159, 160 in as well.

15 ATTORNEY FALLON: 159 is the statement of
16 qualifications.

17 ATTORNEY BUTING: Correct.

18 ATTORNEY FALLON: And 160 was the emails.
19 I don't have any objection.

20 THE COURT: All right. Those exhibits are
21 all admitted.

22 Jurors, if you want to stand up and
23 stretch a minute before we hear our next witness,
24 you may. And those of you in the audience, if
25 you wish, you may.

1 County Sheriff's Department on the 7th of
2 November, 2005?

3 A. Yes, I was.

4 Q. Could you tell us, please, what your areas of
5 responsibility were that day?

6 A. Myself, along with Sergeant Scott Senglaub,
7 Deputy Mike Bushman, and Sergeant Jason Jost
8 responded to 12930 Avery Road, would be the Avery
9 Salvage Yard, to assist Calumet County Sheriff's
10 Department searching the property.

11 Q. I'm guessing our court reporter would like you to
12 slow down a little bit too.

13 A. Okay.

14 Q. If you could do that, I would appreciate that.
15 What were your responsibilities upon arrival at
16 that scene?

17 A. We were to make contact with the officer in
18 charge at the scene to get the daily duties.

19 Q. Okay. Were you given a specific job that day?

20 A. Yes.

21 Q. What was that?

22 A. We were informed by the OIC to get in search
23 groups.

24 Q. By the what?

25 A. Officer in charge.

1 Q. All right.

2 A. To get into a search group. The search group I
3 was in was search group A. Our team leader of
4 that search group was Deputy Mike Bushman of the
5 Manitowoc County Sheriff's Department.

6 We were to search the property west of
7 the Avery residence along White Cedar Road and
8 property north of the Avery residence, this would
9 be a corn field just north of Avery property.

10 Q. It's that open field that I'm most concerned
11 about today, Deputy. I'm going to direct your
12 attention to the large screen.

13 ATTORNEY KRATZ: This is Exhibit No. 85,
14 counsel.

15 Q. (By Attorney Kratz)~ Are you able to orient
16 yourself as you look at that location?

17 A. Yes.

18 Q. There's a laser pointer that's right in front of
19 you, Deputy Siders. If you take that laser
20 pointer, please, and first tell me whether or not
21 you and other search team members, on the 7th of
22 November, did, in fact, search that open field
23 north of the Avery salvage property?

24 A. Yes, the team I was in, we searched starting here
25 and worked our way across.

1 Q. All right. And you are pointing, what would be
2 just north of the road that travels basically
3 east and west, which would be on the north edge
4 of the Avery salvage property itself; is that
5 accurate?

6 A. Correct.

7 Q. Let me ask you, Deputy Siders, were you given
8 specific instruction as to what you were looking
9 for?

10 A. Yes, we were basically looking for any type of
11 clothing, whether it be a shirt, pants, shoes,
12 any kind of object such as a cell phone, a
13 camera, or even possibly a body.

14 Q. So at that time, that is, as of the 7th of
15 November, a body or any human remains had not yet
16 been found; is that correct?

17 A. That's correct.

18 Q. While searching in the area north of the Avery
19 property, had you, yourself, made any discovery?

20 A. Yes, I did.

21 Q. And can you tell the jury what that was, please?

22 A. When we started to search the corn field or the
23 field north of that property, I came across a
24 burning barrel which was in my section of
25 searching. I walked up to the burning barrel and

1 I looked inside, at which time I saw a metal rim
2 with wires wrapped around it. It appeared to be
3 a vehicle rim with the remains of a -- steel
4 belts from a rubber tire.

5 Q. Deputy Siders, Exhibit No. 37, which has already
6 been introduced into evidence in this case, it is
7 now being shown on the screen, can you tell us
8 what we're looking at here, please?

9 A. Yeah, this burning barrel right there is the one
10 that I approached. And I looked inside and saw
11 the metal rim inside.

12 Q. All right. As we look at Exhibit No. 37, as we
13 look at that burn barrel, can you describe for
14 the jury a little bit more specifically where
15 your team had been searching?

16 A. Okay. My team had been searching starting from
17 -- there's a road here, starting from back behind
18 here and was working toward the burning barrel.
19 I was positioned right along this area here. And
20 the rest of the team was in a line, going across
21 to the north.

22 Q. Now, you told the jury that upon approach of this
23 burning barrel, that you looked inside; is that
24 right?

25 A. Correct.

1 Q. And I think you mentioned something about a rim;
2 what -- what is that?

3 A. It appeared to me to be like a vehicle rim, or
4 like maybe a trailer rim to some type of vehicle.

5 Q. I'm going to show you what's already been
6 introduced as Exhibit No. 51; can you tell us
7 what we're looking at here?

8 A. This object here is what I observed lying on top,
9 inside the burning barrel.

10 Q. All right. I see that the rim is outside of the
11 burn barrel in this photograph; can you tell me,
12 if you know, who removed the rim from inside the
13 burn barrel?

14 A. Yes. I removed the rim from inside the barrel.

15 Q. Okay. And when you looked inside of that burn
16 barrel, can you tell us what you saw, please.

17 A. Inside the burn barrel I saw a lot of ashes and I
18 saw a lot of burnt, melted plastic parts. As I
19 looked closer at these plastic parts, it appeared
20 to be parts of a cell phone that were actually
21 melted inside the burning barrel.

22 Q. Before I show the rest of those pictures, there's
23 one other photo, just to orient us a little bit
24 better. In the back of Exhibit No. 51, and now
25 what we're looking at is Exhibit 59; do you see a

1 maroon S -- or excuse me, a maroon van?

2 A. Yes.

3 Q. Was that van there when you found the burn barrel
4 and removed the rim from inside of it?

5 A. I can't recall if it was or not.

6 Q. Okay. Your observations were directed towards
7 the inside; is that right?

8 A. Yes.

9 THE COURT: Deputy, actually, you can stay
10 that distance from the microphone, I will just turn
11 your volume down --

12 THE WITNESS: Okay.

13 THE COURT: -- if it's too loud.

14 Q. (By Attorney Kratz)~ The first exhibit that I
15 placed in front of you has already been
16 introduced as an exhibit. Can you tell us what
17 number that is, please.

18 A. It's Exhibit 156.

19 Q. I'm sorry?

20 A. 156.

21 Q. Tell us what that is.

22 A. This here is the inside of the burn barrel. This
23 is what I would actually have been looking at
24 when I lifted the rim out of the burn barrel.

25 Q. Okay. You talked about seeing some items inside

1 of there, does Exhibit 156 look the same, or
2 similar, as it did on the 7th of November as you
3 looked inside that burn barrel?

4 A. Yes, it does.

5 Q. There's three other exhibits in front of you.
6 Why don't you grab them, one at a time, tell me
7 what exhibit number they are and what it is that
8 you are looking at.

9 A. Next exhibit would be 154; again, this would be
10 the plastic remains I was looking at inside the
11 burning barrel. Parts to a cell phone.

12 Q. All right. Deputy Sider, take a look at the
13 large screen; is that Exhibit 154?

14 A. Yes, it is.

15 Q. And, again, that's the same exhibit that's in
16 front of you; is that correct?

17 A. Yes, it is.

18 Q. Tell me what the next exhibit in front of you is,
19 please.

20 A. Exhibit 155.

21 Q. And what is that?

22 A. Again, that's looking inside the burning barrel
23 at the parts that I located belonging to a cell
24 phone.

25 Q. We're now going to show the jury Exhibit 155;

1 again, is that the same as the exhibit that's in
2 front of you?

3 A. Yes, it is.

4 Q. Now, Deputy Siders, you mentioned that you could
5 tell, just on your observation, that at least one
6 of the electronic components that you were
7 looking at in the bottom of this burn barrel, you
8 believed to be a cell phone; is that right?

9 A. Yes.

10 Q. How did you know that?

11 A. Closer look at the piece of plastic, I note -- I
12 notice an M emblem on the cell phone. This M
13 emblem as known to me to be a Motorola emblem for
14 the company of Motorola.

15 Q. All right. There's one more exhibit in front of
16 you, tell me what that is, please.

17 A. Exhibit 157.

18 Q. And what is that?

19 A. That's also looking inside of the burning barrel,
20 looking at parts -- parts of a camera.

21 Q. All right.

22 A. Excuse me, cell phone.

23 Q. These four exhibits, and now that the jury is
24 looking at 157, these four exhibits are really
25 pretty much the same, different degrees of

1 magnification or angle, but is that fair?

2 A. That's correct.

3 Q. Now, Deputy Siders, after witnessing or
4 discovering this burn barrel, were other law
5 enforcement officers summoned to that location?

6 A. Yes, they were.

7 Q. Do you know if -- or let me just ask you this, do
8 you know agents from what's known as the Division
9 of Criminal Investigation?

10 A. Yes.

11 Q. The scene, that is, the burn barrel itself, was
12 that scene maintained by you; in other words, did
13 you make sure that, at least while you were
14 there, nobody fooled around with the stuff that
15 was inside of it, or tampered with the evidence?

16 A. That's correct, I maintained custody of the
17 barrel.

18 Q. And was there anybody from the Division of
19 Criminal Investigation that you turned over
20 custody of that burn barrel to?

21 A. Yes, there was.

22 Q. Who was that?

23 A. Kevin Heimerl.

24 Q. Kevin Heimerl?

25 A. Correct.

1 Q. Now, were you in charge of either seizing, that
2 is, securing the burn barrel, or later searching
3 its contents?

4 A. No, I was not.

5 Q. That was turned over to somebody else; is that
6 right?

7 A. Correct.

8 Q. All right.

9 ATTORNEY KRATZ: With the offer of those
10 four photographs, Judge, that's all the questions I
11 have of this witness. Thank you.

12 ATTORNEY STRANG: I have no objection to, I
13 think they were 154, 155, 156 already is in, and
14 then 157.

15 THE COURT: All right. The remaining
16 exhibits, then, will be admitted.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY STRANG:

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. Let's go back, if we could, to Exhibit 51. When
22 you folks were assigned to start looking through
23 the farm field north of the Avery property your
24 assignment also included part of the Avery
25 property?

1 A. Yes.

2 Q. So this was, really, the very beginning of the
3 search of the field to the north?

4 A. Yes, this would be at the beginning of the search
5 of the field.

6 ATTORNEY STRANG: Now, that's actually not
7 the one I thought. Where was the picture right
8 before, which had the burning barrel from a greater
9 distance, with the trailer in the background. I'm
10 sorry. What is the one you showed right before?

11 ATTORNEY BUTING: Thirty-seven.

12 ATTORNEY STRANG: Thirty seven, that's it.
13 There it is.

14 Q. (By Attorney Strang)~ Now, that red trailer in
15 the back, that's Steven Avery's house?

16 A. Correct.

17 Q. This burn barrel, it's a little hard to tell from
18 here, but the burn barrel looks like it's sort of
19 sitting right out in the open, in a grassy area?

20 A. Correct.

21 Q. But -- Although we can't see the blue, doublewide
22 that would be to the left off this photo, there
23 is another house there; do you remember that?

24 A. Yes. Correct.

25 Q. House trailer. The burn barrel would be closer

1 to the red trailer than to the other trailer?

2 A. I don't know the distance. I didn't measure the
3 burning barrel from either trailer; I couldn't
4 answer that.

5 Q. You know, I know you didn't measure it, but no
6 recollection of which one, to the eyeball, it
7 looked closer to?

8 A. I couldn't tell.

9 Q. Okay. But in any event, it's sort of sitting
10 right off the gravel road, essentially becomes a
11 driveway into the garage.

12 A. Correct.

13 Q. When you walked up and you looked down and you
14 see this rim in there, you were able to just
15 reach in and pull the rim out?

16 A. Yes.

17 Q. That's a heavy enough item, you -- even you had
18 to use two hands?

19 A. Yes.

20 Q. What looked to you like maybe the remains of a
21 steel belted radial, was that intertwined with the
22 rim?

23 A. Yes.

24 Q. So that came out with the rim?

25 A. Yes.

1 Q. You set that down, did the whole assembly look to
2 you like somebody might simply have burned an
3 entire tire and wheel assembly?

4 A. Yes.

5 Q. Once you then had the rim and the belt out, you
6 noticed that these things were rusty?

7 A. What was rusty, the rim or --

8 Q. The rim.

9 A. Yes.

10 Q. If there was a steel belted radial, whatever the
11 wiring was?

12 A. Yes.

13 Q. That was rusty?

14 A. Yes.

15 Q. All right. And then looked in there, and one
16 thing we can't tell from -- or I can't tell, at
17 least from Exhibits 154 through 157 in front of
18 you, is how -- about how deep does it look like
19 the ash and crud at the bottom of that can was?

20 A. If you could bring up a closer view of that
21 burning barrel.

22 Q. Sure, we'll go back to the one I thought I
23 wanted, 51; how is that?

24 A. Okay. It's not an exact measurement; my
25 estimation would have been that the top of the

1 rim would have been sitting right around there.

2 Q. So -- So maybe, roughly, two thirds of that
3 barrel would have been full of ash and other
4 material?

5 A. Correct.

6 Q. You were able to reach in easily, had -- had you
7 wanted to, and you could have touched these
8 melted cell phone parts that you saw?

9 A. You would have to actually lean -- probably lean
10 over to touch the ...

11 Q. Okay. But they were probably above the -- my
12 vocabulary is going to fail me now, but the
13 crease -- ridge or crease, the higher ridge or
14 crease on the barrel?

15 A. I would say that the parts were probably -- give
16 you another estimation -- right around this area
17 there.

18 Q. Okay.

19 A. They weren't at the bottom, they were more,
20 somewhere right in here.

21 Q. All right. So if those -- those ridges roughly
22 divide this barrel into thirds, give or take, the
23 barrel was about two thirds full of this junk and
24 ash?

25 A. Correct.

1 Q. But the cell phone parts you saw, were lying on
2 top --

3 A. Correct.

4 Q. -- of the other junk and ash? In looking in
5 there, did it look to you as if a sort of crust
6 had formed over the ash in the barrel?

7 A. The ash was more -- It had rained heavily, so it
8 was kind of like a muck --

9 Q. Mm-hmm.

10 A. -- type of ash. I couldn't say that there was
11 actually a film, I just noted that it was all wet
12 and damp.

13 Q. It had the look of ashes after they had been
14 rained on --

15 A. Correct.

16 Q. -- and then begun to dry?

17 A. Yes.

18 Q. I mean, they still would have been mucky --

19 A. Yeah.

20 Q. -- but you know the look I'm talking about, where
21 eventually, as it dries, appear almost a crust on
22 the ash?

23 A. Correct.

24 Q. The cell phone pieces were atop that?

25 A. Kind of not -- or kind of mixed in with the ash,

1 they weren't just, like, laying on top. They
2 were kind of mixed in.

3 Q. Because it still looked mucky to you?

4 A. Correct.

5 Q. The entire time you spent at that barrel before,
6 let's say -- say, boy, that looks like the
7 Motorola emblem, or the insignia for Motorola,
8 the entire time was give or take, roughly, how
9 long?

10 A. That I stood there to observe that?

11 Q. Yeah, before you said, boy, I think I see the
12 Motorola emblem.

13 A. I don't know, approximately four to five minutes,
14 just looking at it.

15 Q. Just looking at it?

16 A. Yes.

17 Q. But not touching things?

18 A. I didn't touch anything in there.

19 Q. But 4 to 5 minutes is a long time, actually, if
20 you just -- I mean, if we were to stand silent
21 for 4 to 5 minutes, it would seem like an
22 eternity, but you think it may have been that
23 long?

24 A. Give or take.

25 Q. And then you called somebody else over?

1 A. Yes, I did.

2 Q. Was there anything -- other than being burned,
3 was there anything obscured about the Motorola
4 emblem?

5 A. Other than that it was melted plastic.

6 Q. Right. And all of this, as the photos showed,
7 sort of takes on a -- various shades of gray.

8 A. Correct.

9 Q. Maybe we could go back to -- Was there one in
10 particular there where you can see that Motorola
11 emblem?

12 A. I'm not going to be able to tell with these
13 photographs here; it's just not that clear.

14 Q. So, the photographs, you cannot see a Motorola
15 emblem?

16 A. No, I can't.

17 Q. But you were able to, with the naked eye,
18 standing over this?

19 A. Correct.

20 Q. The six, now going on seven years, I guess, that
21 you have been with the Manitowoc County Sheriff's
22 Department, have you been on the Dive Team the
23 entire time?

24 A. I have been on the Dive Team for the last three
25 years.

1 Q. Did you do any diving here?

2 A. No, I did not.

3 Q. Weren't asked to participate in any of the dives?

4 A. No, we were not.

5 Q. Do you know who did the dives?

6 A. I believe it was Outagamie Sheriff's Department
7 Dive Team.

8 Q. Did you say, gosh, you know, I'm -- I'm a member
9 of a dive team and my department has one; did you
10 volunteer to do that?

11 A. No, I did not.

12 Q. Why not?

13 A. We weren't asked to. Our dive team was usually
14 requested by either our sheriff or another
15 outside agency to assist with a dive; if we're
16 not asked, we don't dive.

17 Q. And in this situation, the people running the
18 search looked over across Lake Winnebago, to the
19 top of Lake Winnebago, to the Outagamie County
20 Sheriff's Department?

21 A. That's what I can guess. They were the ones that
22 contacted them.

23 ATTORNEY STRANG: That's all I have.

24 THE COURT: Any redirect?

25 ATTORNEY KRATZ: Not of this witness,

1 Judge, no.

2 THE COURT: Very well, the witness is
3 excused.

4 ATTORNEY KRATZ: Could we approach just
5 briefly, Judge.

6 THE COURT: Sure.

7 (Side bar taken.)

8 ATTORNEY KRATZ: I'm going to call Bill
9 Tyson to the stand.

10 THE CLERK: Please raise your right hand.

11 **SERGEANT WILLIAM TYSON**, called as a
12 witness herein, having been first duly sworn, was
13 examined and testified as follows:

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

16 THE WITNESS: William Tyson, T-y-s-o-n.

17 **DIRECT EXAMINATION**

18 BY ATTORNEY KRATZ:

19 Q. Mr. Tyson, how are you employed?

20 A. I am a sergeant with the patrol staff with the
21 Calumet County Sheriff's Department.

22 Q. As a sergeant with Calumet County, were you asked
23 to assist in search efforts at what's now called
24 the Avery Salvage Yard?

25 A. Yes.

1 Q. How was it that you were called out in this case?

2 A. It was on November 5th. It was approximately 20
3 after 1 in the afternoon. I received a telephone
4 call at my residence from the Calumet County
5 Dispatch Center. They informed me that Teresa
6 Halbach's vehicle was located at the Avery
7 property and that my assistance was needed at the
8 property.

9 Q. I'm sorry, Sergeant Tyson, you said that you were
10 called out at your home. Let me ask you, as a
11 member of the Calumet County Sheriff's
12 Department, had you been made aware, before that
13 date, of Ms Halbach's disappearance?

14 A. Yes, being the patrol sergeant, I do the shift
15 brief things and things like that. I know our
16 department did take a phone call, I believe it
17 was early days of November, where the information
18 was that Corporal Leslie Lemieux had taken a
19 complaint of a missing person, that being Teresa
20 Halbach.

21 So we were told to look for her, also
22 her vehicle, and the plate number that belonged
23 on her vehicle. Prior to me getting that call on
24 Saturday, the 5th, yes, I was aware of the fact
25 that our agency, as well as other agencies, were

1 looking for her and her vehicle.

2 Q. Sergeant Tyson, after getting the call at home,
3 where did you proceed to?

4 A. I responded to the Sheriff's Department. I was
5 standing by at the Sheriff's Department waiting
6 for another deputy that was in route, also, to
7 the Sheriff's Department, to arrive. I waited at
8 the Sheriff's Department until she arrived. Upon
9 her arrival, we did proceed over to the Avery
10 property.

11 Q. Now, together with being a patrol sergeant, do
12 have any other areas of specialization within the
13 Calumet County Sheriff's Department?

14 A. Yes, back in 1994 I was promoted from a
15 corrections officer to a patrolman; along with
16 that I was sent to an evidence technician school
17 in 1994. So throughout the years of 1994 until
18 March of 2005, I would respond to crime scenes in
19 the county, to process the crime scenes. Those
20 were, you know, some of my responsibilities.

21 Q. Okay. About what time did you arrive at the
22 Avery salvage property, if you remember?

23 A. If I recall correctly, I think it was quarter to
24 3 in the afternoon.

25 Q. Upon arrival at the Avery salvage property, do

1 you recall what your first duty was?

2 A. I was met by Investigator Wiegert and Steier.
3 They directed me to go down into the junkyard
4 area and made contact with officers down in that
5 area.

6 I proceeded down into the junkyard area
7 where I met with several law enforcement officers
8 that were down there. And they were keeping a
9 crime scene log. I did introduce myself and I
10 was talking with them briefly and was instructed
11 to relieve a deputy that was standing by Teresa
12 Halbach's vehicle.

13 Q. All right. We have heard testimony from several
14 Manitowoc County Sheriff's deputies as to being
15 first on the scene. Do you recall what
16 department, that is, from what agency you were
17 asked to relieve what's now known as the scene
18 security?

19 A. It was a Manitowoc County sheriff's deputy that
20 was standing by the vehicle when I arrived.

21 Q. All right. To your knowledge, Deputy Tyson, were
22 you the first Calumet County officer -- I guess,
23 to state it more succinctly, were you the
24 individual who relieved Manitowoc County from
25 scene security responsibilities?

1 A. Yeah, my understanding is, I was the first
2 Calumet County deputy to take custody of the
3 vehicle.

4 Q. All right. At some point -- and I don't expect
5 you were involved in this decision, but at some
6 point were you made aware that security for the
7 RAV4 and for that general area of the Avery
8 property was to be either coordinated or taken
9 over by Calumet County?

10 A. Yes.

11 Q. I'm going to show you what's been received as
12 Exhibit No. 86. There is a laser pointer in
13 front of you. Could you tell the jurors, if you
14 remember, about what time it was that you took
15 over security of the RAV4, or security of that
16 area of the scene?

17 A. According to the crime scene log, when I checked
18 in with them, it was 5 minutes to 3, I believe.

19 Q. Can you show us about where this transition took
20 place and where were you standing that you took
21 over security of this area?

22 A. On the display over here?

23 Q. Sure.

24 A. All right.

25 Q. Do you need me to zoom in a little?

1 A. Maybe just a little bit, I'm sorry.

2 Q. I'm sorry. Let me -- I think -- I think even
3 defense counsel would agree that the lower left
4 hand corner now of this exhibit is what we have
5 now known as the car crusher. There's a pond
6 that's just about in the middle of the exhibit.
7 Does that orient you to the scene?

8 A. If the car crusher is right down there --

9 Q. Yes.

10 A. -- I think that would be going down the hill.
11 And it would be right about in this area over
12 here, I believe, is where I was requested to
13 stand by with the vehicle.

14 Q. How close to the vehicle were you standing; do
15 you recall?

16 A. Within a foot or two, just that I was not
17 touching it, brushing up against it, but standing
18 right there.

19 Q. Now, I'm going to fast forward just a minute and
20 I think you will see why, but later on that day,
21 were you given other responsibilities at that
22 crime scene location?

23 A. Yes.

24 Q. Any time between taking over security of the RAV4
25 and the time that you were relieved to perform

1 other duties, did you see any individuals, any
2 police officers, or any citizens, either tamper
3 with or enter this RAV4?

4 A. No. Several officers did come close to it,
5 because of the weather conditions; it had gotten
6 really dark, there was a mist in the area. Our
7 concern was, any evidence that could be on the
8 exterior of the vehicle. An agent, later
9 identified as Agent Fassbender, was concerned
10 about that as well. A tarp was located in an
11 attempt to protect it from the elements, from the
12 incoming storm. But extreme care -- and I mean
13 extreme care -- was used to make sure no officer
14 touched it, or even the tarp touched the vehicle.

15 Q. And that was one of your responsibilities?

16 A. Yes.

17 Q. Sergeant Tyson, do you know what a search warrant
18 is?

19 A. Yes.

20 Q. And sometime that afternoon, were you made
21 aware that a search warrant for the Avery
22 property itself, for the vehicles there on, the
23 residences, and the outbuildings, had been
24 obtained by a Manitowoc County judge?

25 A. Yes.

1 Q. Were you made aware that the search warrant
2 needed to be executed, that is, that searches had
3 to be performed that day?

4 A. Yes.

5 Q. In that regard, Sergeant Tyson, were you asked to
6 assist in any of those searches?

7 A. Yes.

8 Q. Who asked you or directed you to assist in those
9 searches?

10 A. The decisions were being made by Investigator
11 Wiegert from the Sheriff's Department in Calumet
12 and DCI Agent Fassbender. They informed me,
13 after everything was sorted through, and figured
14 out which teams were going to go where, they told
15 me I should go with Manitowoc County Sheriff's
16 Department over to Steven Avery's residence.

17 Q. Now, Sergeant Tyson, prior to being assigned to
18 this team, this search team, had anybody on the
19 scene asked you or discussed with you your levels
20 of expertise in evidence collection or
21 processing?

22 A. Investigator Wiegert is fully aware of, I guess,
23 my experience. He just informed me that I would
24 be requested to go with them to execute the
25 search warrant.

1 Q. All right. Now, you said that you were teamed up
2 with, or that you joined other officers; do you
3 remember who was in your team?

4 A. Yes, it was Lieutenant Jim Lenk, from the
5 Manitowoc County Sheriff's Department; Sergeant
6 Andy Colborn, from the Manitowoc County Sheriff's
7 Department; and Detective Dave Remiker, from the
8 Manitowoc County Sheriff's Department.

9 Q. Was there any discussion about what each of your
10 responsibilities were going to be and, I guess,
11 more specifically, was there a discussion about
12 who was in charge of this team?

13 A. It was told to me that no Manitowoc County deputy
14 should be alone on the property. Investigator
15 Wiegert told me my responsibility would be to go
16 with them into the Steve Avery trailer and to
17 document what they were doing, take notes, and if
18 evidence was seized by them, to take custody of
19 all the evidence at the end of the search
20 warrant.

21 Q. Do you know why a Calumet County deputy was put
22 in charge of the custody of any physical evidence
23 that might be obtained.

24 A. It was told to me that Investigator Wiegert would
25 be the lead investigator and that the

1 investigation was turned over to Calumet County
2 versus Manitowoc County.

3 Q. All right. Going into that scene, that is, going
4 into that first search effort that you did, was
5 that made clear to you?

6 A. Yes.

7 Q. And from your knowledge, or were you present, was
8 that made clear to the other members of your
9 team?

10 A. Yeah, there was no misunderstanding as far as who
11 was taking custody. There was no discussions, no
12 arguments, I should say, from anybody that I was
13 with. It was clear understanding of what was to
14 happen.

15 Q. All right. Were there other search efforts going
16 on, or were you made aware of other search
17 efforts in this entire location at the same time
18 that you and this team had been developed?

19 A. My understanding was there was a number of things
20 that were going on at the same time. You know,
21 our team was just designated to go down to
22 Steven's trailer, but there were other officers
23 being assigned different duties as well. What
24 those were, I really don't know. My
25 responsibility was my team and where we were

1 going to be going.

2 Q. Now, the kind of search that you were asked to
3 perform, were you given direction about that?

4 A. I guess I wouldn't really say direction; we were
5 to execute the search warrant. And talking with
6 the Manitowoc officers, it was more of a quick,
7 anything in the obvious, let's go through the
8 residence, see if we can find Teresa; anything to
9 do with Teresa, anything at all. But that's kind
10 of how the first search, I would classify it as.

11 Q. Let me ask you this, Sergeant Tyson, did you have
12 an understanding that either you or other police
13 officers would be reentering this residence?

14 A. Yes, it was commonly known that this was a scene
15 that was going to be held. And, you know, it was
16 7, I think 7:30 when we went through the front
17 door of Steven's residence and --

18 (Court reporter couldn't hear.)

19 A. I guess I'm not sure what was I -- where was I
20 going. I started with we were heading down to
21 the Steve Avery trailer.

22 Q. Right.

23 A. Right. It was raining out. It was pouring. We
24 were all drenched. But we got inside the
25 trailer. You know, it was 7:30 in the afternoon.

1 And, you know, the search had started at quarter
2 to 8. And it was a quick search, you know. We
3 were out of there within three hours.

4 Q. Now, for 16 people that have never probably done
5 a search, or excuse me, search warrant, you just
6 called a three hour search a quick search. Could
7 you explain that to the jury, what -- what's
8 quick about a three hour search?

9 A. Not knowing a lot of the information that was
10 later learned, you know, we're looking at this
11 whole area. Where is the crime scene? What
12 is -- is there a location exactly on the
13 property.

14 So when we're going through the house,
15 we're looking for things that are obvious to us,
16 any blood or anything like that. So to say that
17 you can search someone's bedroom within 30
18 minutes, okay, well, that's a quick search. And
19 you are talking the closet areas; you are talking
20 desk draws; you are talking under the bed. You
21 are talking a whole area.

22 And if you are looking for things in
23 specific, you know, that would mean, basically,
24 you would have to go through the closet, every
25 article of clothing removed, through the pockets.

1 It's going to take you a whole lot longer than
2 that to say that you thoroughly -- did a thorough
3 search.

4 Q. Let me ask you then, Sergeant Tyson, have you
5 been involved in thorough searches, searches that
6 you were looking for smaller items of evidence,
7 or trace evidence, or things like that before in
8 your career?

9 A. Yes. Working in the drug unit, you know, execute
10 search warrants, you are looking for a small pipe
11 or something, you have to be very thorough. You
12 have to go into areas where something like that
13 small could be. So it's a very detailed, very
14 thorough search when you are dealing with like
15 drug materials and things like that.

16 Q. And that first search, that is, the first search
17 that you and Lieutenant Lenk and Sergeant Colborn
18 and Detective Remiker did, would you have
19 considered that a thorough search, one of these
20 thorough searches that you are describing?

21 A. No. Like I said, half hour to go through a
22 bedroom and be out of that whole residence within
23 two and a half to three hours, that's a quick
24 search.

25 Q. All right. We're going to go through each of the

1 specific rooms that were searched by you that
2 evening.

3 ATTORNEY KRATZ: Judge, if you would like
4 me to do that I can, otherwise this might be a good
5 time to break.

6 THE COURT: Sounds like this might be a
7 good time to take our afternoon break, so we will do
8 so. Members of the jury, again, do not discuss the
9 case while you are on your break. We'll resume at 5
10 minutes to 3.

11 ATTORNEY KRATZ: Thank you.

12 (Jury not present.)

13 THE COURT: Counsel, you are going to get
14 some exhibits marked during the break?

15 ATTORNEY KRATZ: Yes, I would like to do
16 that, so it works a little quicker.

17 THE COURT: If it takes a little longer, it
18 takes a little longer, but I told the clerk you
19 would be doing it.

20 ATTORNEY KRATZ: Thank you.

21 (Recess taken.)

22 THE COURT: Mr. Kratz, you may continue
23 with your direct examination.

24 ATTORNEY KRATZ: Thank you, Judge.

25 DIRECT EXAMINATION CONTD

1 Q. Sergeant Tyson, you mentioned that you had gone
2 into the Avery trailer to commence a search of
3 that property; did all four team members enter
4 the residence at the same time.

5 A. Yes.

6 Q. Now, you mentioned that you were in charge of
7 both documentation as well as seizure or
8 collection of property; is that a fair
9 representation?

10 A. Yes. After it was collected, it would be turned
11 over to me for transport back to our facility.

12 Q. Before an item was recovered, were you called to
13 the location where it may have been found.

14 A. Yes, for example, when they were searching the
15 bedroom, if Sergeant Colborn located something,
16 he would immediately draw my attention, I'm
17 standing right there. So I could see what they
18 were doing. If he found something, I could see
19 that he found it. And I would document the exact
20 time that he found it and, you know, and then it
21 was seized.

22 Q. What was the first room that you searched?

23 A. After the photography of the inside of the
24 residence was complete, the decision was made to
25 start in the south bedroom. And that was later

1 identified as Steven Avery's bedroom.

2 Q. You mentioned after the photography was complete,
3 it sounds like something first happened before
4 the search; is that right?

5 A. Yeah. Upon entry into the residence, Sergeant
6 Colborn had a 35 mm camera and Detective Remiker
7 had a digital camera. And they just -- once we
8 got in there, they just began photographing each
9 of the rooms. And every room inside the trailer
10 was photographed. After that was finished, then
11 the decision was made to start the search in
12 Steven's bedroom.

13 Q. Did you accompany them through that search?

14 A. Yes.

15 Q. Did you enter the bedroom as well?

16 A. Yes.

17 Q. Could you describe this bedroom for us, please.

18 A. Sure. You walk in through the doorway.
19 Immediately to the right there was a night stand
20 and then the bed. Straight ahead of that, to the
21 left, there was a small bookcase, a desk. There
22 was windows on the back wall. You go along the
23 bed, there was a dresser in the corner and the
24 closets were up against the opposite wall from
25 where the door was.

1 Q. How large was this bedroom?

2 A. Rather small bedroom, actually.

3 Q. Four grown men were in this room; is that right?

4 A. Yes.

5 Q. Describe that for the jury, if you can.

6 A. Well, as we walked in, Detective Remiker and
7 Lieutenant Lenk, they said, well, because it was
8 a small confined area, we're going to start over
9 on the side where the closet sat. We will start
10 going through that stuff.

11 Sergeant Colborn concentrated his search
12 on the book shelf and the desk on the opposite
13 side of the room. So the bed was in the middle,
14 two on that side, two on this side. I'm standing
15 directly inside the doorway, watching what they
16 were doing.

17 Q. Were they in constant view of you?

18 A. Yes.

19 Q. All right. Let's talk about some of the things
20 that were observed in the bed -- excuse me -- in
21 the bedroom. First exhibit I'm going to ask you
22 to take a look at is Exhibit No. 163. Can you
23 tell us what that is, please.

24 A. The very first picture here?

25 Q. Yes.

1 A. Okay. This would be a view of Steven Avery's
2 bed.

3 Q. Go ahead.

4 A. This is a view of Steven Avery's bed and the
5 night stand directly next to the bed.

6 ATTORNEY KRATZ: And just so the -- the
7 record is clear, unless something unusual occurs or
8 is alerted, your Honor, by counsel, so that this
9 witness doesn't have to talk about evidence twice,
10 Mr. Strang has been kind enough to allow the item to
11 be projected at the same time as the witness
12 testifies about it, so I appreciate that very much.

13 THE COURT: All right. Is that correct,
14 Mr. Strang?

15 ATTORNEY STRANG: Yes, it's actually
16 Mr. Buting.

17 THE COURT: Mr. Buting.

18 ATTORNEY BUTING: That's correct.

19 ATTORNEY KRATZ: Oh, I'm sorry.

20 Q. (By Attorney Kratz)~ Sergeant Tyson, the bed in
21 Steven Avery's bedroom, the exhibit that is 163,
22 looks like it has some bedding on it; is that
23 correct?

24 A. Yes.

25 Q. And there seems to be something above the bed,

1 can you tell what you that is.

2 A. Directly above the bed was a gun rack, and it did
3 house two long barreled firearms inside the
4 mounting brackets.

5 Q. Can you describe those firearms for us, please.

6 A. They were long guns. They weren't hand guns.
7 They were long guns. I didn't walk up and remove
8 them or physically check them out or anything,
9 but I could see that they were firearms up on the
10 wall.

11 Q. All right. Did you later come to have either a
12 closer inspection, or to become familiar with
13 those guns?

14 A. I never personally looked at the firearms after
15 they were collected. They weren't collected that
16 evening with the officers that I was with. There
17 was a different officer, I believe, that
18 collected those firearms.

19 Q. What were the guns on?

20 A. The gun rack, they were hanging on the wall.

21 Q. And Exhibit No. 166, which is actually a little
22 bit of a gap, if you would set 164 and 5 to the
23 side, I would appreciate it; 166 is being
24 projected, can you tell us what that is, please.

25 A. That was the gun rack that was hanging directly

1 above the bed.

2 Q. Also going to have Investigator Wiegert help me
3 through this process since there's lots of
4 evidence to show the jury. Investigator Wiegert
5 is going to hand you what's been marked for
6 identification as Exhibit 196; can you show that
7 and tell the jury what that is, please.

8 A. This is the gun rack that was mounted on the wall
9 directly above the headboard of Steven's bed.

10 Q. And, again, were those the -- was that the rack
11 in which those two long guns were located?

12 A. Yes.

13 Q. And the last photo I want you to look at is
14 Exhibit 167. It's in front of you and now the
15 jury can see that. Can you tell us what 167 is?

16 A. Looks like it's the same gun rack that's in front
17 of me right now.

18 Q. Just an evidence photo that is taken here at the
19 sheriff's department?

20 A. Yes.

21 ATTORNEY KRATZ: Set that over there.

22 Thank you, Investigator.

23 Q. (By Attorney Kratz)~ In this bedroom, did you
24 notice other pieces of furniture?

25 A. There was the bookcase; there was the desk; there

1 was a dresser.

2 Q. Okay. Let's do these one at time. First, the
3 bookcase, and I'm going to do this in two
4 different areas of inquiry. As an evidence
5 technician, were you not only responsible to
6 observe items on the 5th of November, but did you
7 later return to Mr. Avery's residence with the --
8 with a search warrant to seize this very item.

9 A. Yeah, I believe that was December 9th.

10 Q. The first thing I'm going to have you do is look
11 at Exhibit 166, which is on the board -- I'm
12 sorry, 168, which is on the wall here, tell the
13 jury what that is, please.

14 A. That's the bookcase that was up against the wall
15 as you walked into the bedroom. It was the very
16 first piece of furniture, I believe, on the
17 floor. It was sitting right next to the desk,
18 which was in the corner.

19 Q. You said that was seized at some time?

20 A. Yes.

21 Q. When was that?

22 A. That particular piece, I believe, was seized on
23 December 9th.

24 Q. All right. And were you involved in the seizure
25 of it; in other words, did you go to the Avery

1 residence and take possession of this piece of
2 furniture?

3 A. Yes, C.I. Agent Fassbender, myself, and there
4 was, I think, two more agents from the Department
5 of Criminal Investigations. We did go out there
6 on the 9th and did seize that particular piece of
7 evidence.

8 Q. Now, Sergeant Tyson, there's going to be some
9 testimony, I expect, in the next couple of days
10 about this but, did you have occasion to make
11 observations at Mr. Avery's bedroom of the back
12 panel or the rear of this particular piece of
13 furniture?

14 ATTORNEY BUTING: Objection as to time of
15 these observations, it's unclear.

16 ATTORNEY KRATZ: I can -- I can ask
17 specifically when, Judge.

18 THE COURT: Very well.

19 Q. (By Attorney Kratz)~ On the 9th of December, did
20 you have occasion to observe the back panel of
21 this piece of evidence?

22 A. Yes. We got into the bedroom to seize it. I did
23 photograph it prior to seizing it. I did a side
24 view, front view. And the side view, you can see
25 the backing of it was coming out, the nails were

1 protruding from the backing of the cabinet.

2 Q. You said that you took a photo of that. In fact,
3 Exhibit 169, is that a photo of that back panel?

4 A. It appears to be that, yes.

5 Q. If you take your laser pointer, please, and tell
6 the jury what it is that we're looking at.

7 A. This here would be the backing to the bookcase.
8 And you can see the distance here where it's
9 pulled away from the back of the bookcase.

10 Q. Now prior to taking this particular photo and
11 prior to making that observation, in fact, did
12 you in any way manipulate this piece of
13 furniture, or pull the panel out, or anything
14 like that?

15 A. No, we didn't touch the back of it at all, didn't
16 even move it. I just started photographing it
17 prior to collecting it.

18 Q. I notice in the bedroom that there was a night
19 stand. I'm showing you Exhibit No. 170, does
20 that show a picture of the night stand?

21 A. Yes, it's right there.

22 Q. And after having been seized, was an evidence
23 photo taken; in other words, at the sheriff's
24 department of that night stand, Exhibit 171?

25 ATTORNEY BUTING: Objection, as to the

1 timing of all this. If he could maybe -- if we're
2 going back and forth with those from November, to
3 December, or later, I think we should identify when
4 these are taken.

5 THE COURT: I agree.

6 Q. (By Attorney Kratz)~ Do you know when this photo
7 was taken, No. 171?

8 A. I don't know the exact date. The person that
9 assisted me with the evidence, his name is Deputy
10 Jeremy Hawkins, he was responsible for all the
11 photography. So I did assist him, but the exact
12 date, I would have to refer back to my report.

13 ATTORNEY KRATZ: I think, Judge, this is
14 the only item that wasn't seized on that day, from
15 what I see after that. Let me just see if there's
16 going to be an objection to this one.

17 Q. (By Attorney Kratz)~ Sergeant Tyson, do you know
18 when the night stand -- when this piece of
19 furniture was seized?

20 A. I believe that was after the search warrant on
21 March 1st or 2nd.

22 Q. Of 2006?

23 A. Correct.

24 Q. This bedroom of Steven Avery --

25 ATTORNEY BUTING: Counsel, could we just --

1 the prior photograph, could we, please, just get a
2 date as to when that was taken. You showed the
3 night stand in the room.

4 ATTORNEY KRATZ: Sure.

5 Q. (By Attorney Kratz)~ The night stand in the room,
6 did that look the same or similar as it did on
7 the 5th of November? The prior picture, that
8 would be Exhibit No. 170?

9 ATTORNEY BUTING: Can you put that up?

10 ATTORNEY KRATZ: If I could, I would.
11 There you go.

12 Q. (By Attorney Kratz)~ That's Exhibit 170, does
13 that look the same or similar as it did when you
14 first searched it on the 5th of November?

15 A. Yes, it's in the same location, looks about the
16 same.

17 Q. All right. Mr. Avery's bedroom carpeted, or have
18 a rug, or hardwood floors, or what kind of
19 flooring was that?

20 A. It was carpeted.

21 Q. I'm going to show you Exhibit No. 172, ask you to
22 take a look at the carpeting. Does that look the
23 same or similar as the carpeting did on
24 November 5th?

25 A. Yes.

1 Q. Sergeant Tyson, Exhibit 172, do you know when
2 that picture was taken?

3 A. That picture would have had to have been taken
4 after December 9th, because the bookcase is not
5 there. So that would have had to have been
6 March 1st.

7 Q. And as far as law enforcement involvement, that
8 was, as far as you were concerned, December 9th,
9 you folks were there; is that right?

10 A. Yes.

11 Q. And March 1st, were you also the individual that
12 was in charge of the evidence collection and
13 technician responsibility inside of Mr. Avery's
14 trailer?

15 A. Yes.

16 Q. So it's your understanding that this photo, that
17 is 172, was taken on March 1st?

18 A. I said it would have to be after December 9th,
19 so, yeah, next time we were there was, I believe,
20 March 1st.

21 Q. And the question, at least for this photo is, did
22 the carpet look the same on November 5th and
23 December 9th and March 1st?

24 A. Yeah, looks to be the same carpeting that was in
25 the room in November of 2005 as it was March of

1 2006.

2 Q. While searching Mr. Avery's bedroom, were there
3 any items of restraint that were found?

4 A. Yes. Sergeant Colborn located leg shackles and
5 handcuffs.

6 Q. Did -- Were those items seized?

7 A. Yes.

8 Q. Let me first show you what's been marked as
9 Exhibit No. 204. Tell the jury what that is,
10 please.

11 A. Appears to be the handcuffs that would have been
12 seized by Sergeant Colborn on November 5th, 2005.

13 Q. Did you see where these items were seized from?

14 A. If I recall correctly, Sergeant Colborn found
15 them in the bookcase in Steven's bedroom.

16 Q. All right. You said that there was another item
17 of restraint that was found as well?

18 A. Yes, leg irons.

19 Q. Let me show you what's been marked for
20 identification as Exhibit No. 203; tell the jury
21 what that is, please.

22 A. That would be the leg irons that were also found
23 by Sergeant Colborn. And I believe they were
24 found in the same location as the handcuffs, in
25 this bookcase in his bedroom.

1 Q. All right. Sergeant Tyson, after their seizure,
2 and so that we don't have to bring these items
3 into court, do you know if photographs were
4 taken, that is, evidence photographs were taken
5 of these two items?

6 A. Yes.

7 Q. I show you Exhibit No. 173, ask if you recognize
8 that photograph.

9 A. It would be an evidence photograph. I know that
10 because of the white paper in the background.
11 All the evidence that we took care of at the
12 sheriff's department we used freezer paper and
13 that would be consistent with what I see.

14 Q. Of the handcuffs?

15 A. Yes.

16 Q. And 174, what is that?

17 A. That would be the leg irons.

18 Q. Anything else seized that first evening from
19 Mr. Avery's bedroom, as far as you recall?

20 A. Yes.

21 Q. Well, let -- let me just -- let me just
22 specifically ask about -- about something called
23 identifiers. This is more of a search term and
24 please bear with my clumsy question. But are
25 efforts made to identify whether or not a certain

1 person lives in a particular residence when you
2 search it?

3 A. Yes. When we search residences, you have to show
4 that a person lives in that residence. So we
5 look for any piece of mail that would have the
6 person's name, along with their mailing address;
7 could be a magazine, could be a phone bill, could
8 be any kind of correspondence you get through the
9 mail with your address on it.

10 Q. Investigator Wiegert is going to hand you what's
11 been marked Exhibit No. 200, I need you to tell
12 the jury what Exhibit 200 is, please.

13 A. It's a University of Wisconsin Law School
14 envelope addressed to Steven Avery at 12390 Avery
15 Road, Two Rivers, Wisconsin.

16 Q. Was that the residence that you were searching on
17 the 5th of November?

18 A. Yes.

19 ATTORNEY BUTING: I'm sorry, what's the
20 number, exhibit number?

21 INVESTIGATOR WIEGERT: The exhibit
22 number is 200.

23 ATTORNEY KRATZ: Oh, 200?

24 ATTORNEY BUTING: Is that just an envelope?

25 A. That would be the correct address for Steven,

1 12932, or something like that. So that envelope
2 right there, I think would have the Avery --
3 maybe his mother and father's address on it, but
4 it was found inside the trailer.

5 Q. All right. But it had Steven's name on it and
6 found inside the trailer?

7 A. Yes.

8 Q. After searching the bedroom, what was the next
9 room that the four of you searched?

10 A. The bathroom.

11 Q. And could you tell the jury what, if anything,
12 was found in the bathroom?

13 A. Sure. There was a blood -- possible bloodstain
14 on the linoleum floor that Sergeant Colborn had
15 located. Just back up a little bit here, because
16 as they were working in Steven's bedroom,
17 Lieutenant Lenk and Detective Remiker were
18 finishing up with what they had to do. Sergeant
19 Colborn was finding all the stuff that we have
20 just seen.

21 Lieutenant Lenk told me he was going to
22 leave the bedroom and go into the bathroom, just
23 to see what was in the bathroom. So I
24 repositioned myself into the hallway. I could
25 see Detective Remiker and Sergeant Colborn; I

1 could also see Investigator Lenk in the bathroom.

2 Q. As the individual documenting what was now a
3 transition from one room to the other, you were
4 in a position to see both; is that right?

5 A. Yes.

6 Q. The bathroom, can you tell us where it is
7 located, compared to the bedroom.

8 A. The very next room. If you were to walk out of
9 the bedroom, go out in the hallway a couple feet,
10 if that, and it's right there.

11 Q. The hallway that you positioned yourself in,
12 would you be able to see both rooms?

13 A. Yes.

14 Q. Tell me what, if anything, was found in the
15 bathroom?

16 A. The possible blood spot on the linoleum floor, as
17 I said, was found by Sergeant Colborn. He
18 photographed it and it was collected with a swab.

19 Q. Collected with a swab, well, let's talk about
20 that a little bit. As an evidence tech, what
21 does collection of something like a blood spot
22 entail?

23 A. Because it's dried, and it's on the floor, what
24 you do is you can use distilled water and use a
25 sterile swab, which is evidence material that we

1 get. You know, they are sealed, you open them
2 up, take the distilled water, you drop two to
3 three drops on the cotton applicator at the end
4 of the swab. And then you take that swab and you
5 go into the blood stain itself and you are able
6 to pick up the bloodstain by just dampening the
7 end of the sterile swab.

8 Q. Was that done once or more than once in the
9 trailer?

10 A. There were several swabs that we took inside the
11 trailer.

12 Q. By the way, Sergeant Tyson, does that process,
13 that is, the collection of blood or other fluids,
14 does that take some training or experience on an
15 evidence tech's part?

16 A. Yes. You have to know certain things. For
17 example, if you have got the distilled water
18 applicator, it cannot touch the cotton swab. You
19 cannot make contact with it. If so, the swab is
20 no good, your bottle of distilled, throw it in
21 the garbage. It's useless at that point. So you
22 have to have a little bit of training and know
23 exactly what you are doing to avoid possibly
24 tainting the swab.

25 Q. All right. After searching the bathroom, where

1 did you folks go?

2 A. The bathroom was being searched by Lieutenant
3 Lenk and the bedroom was being completed by
4 Sergeant Colborn and Detective Remiker. I had
5 noticed some spots on the door directly behind
6 me, which was an interior/exterior door to go out
7 of the residence. So I drew the attention to
8 Detective Remiker and Sergeant Colborn,
9 Investigator Lenk, to that area. And they did
10 concentrate their efforts, then, photographing
11 the door. And swabs were taken of some of the
12 stains that were on that door as well.

13 Q. What did you do then?

14 A. After that was done, the search then continued
15 and they entered the bedroom, which was the only
16 other bedroom in the residence. And that would
17 be located between the living room and the
18 bathroom.

19 Q. That would be called the -- what bedroom did you
20 call that?

21 A. We referred to it as the spare bedroom. It was
22 used more for -- wasn't being slept in, I guess
23 you could say, more of a storage room, but there
24 was a bed in the room.

25 Q. All right. After that room was searched and

1 processed, what room was next?

2 A. Then it was the living room.

3 Q. Were there any items, prominent items of

4 furniture in the living room?

5 A. You got your couch and then there was a computer

6 desk in the room.

7 Q. I'm going to direct your attention to Exhibit

8 No. 175, can you tell us what that is, please.

9 A. That's the computer desk area in the living room.

10 Q. Now, there's a lot to look at in Exhibit 175, can

11 you just generally orient us to what we are

12 looking at, please, using the laser pointer.

13 A. Sure. He's got his television, box on top of

14 there, and here you got your computer, printer.

15 Q. Speak up a little bit.

16 A. I'm sorry. You have got the television right

17 here. Then you got your computer monitor,

18 printer. Okay. I think the tower was down

19 underneath it on the floor.

20 Q. All right. I'm going to hand you what's been

21 marked for identification as Exhibit No. 198;

22 show that to the jury and tell them what that is.

23 A. That's a pocket size notebook. Detective Remiker

24 had located this item, was in one of the drawers

25 inside the desk. He had pulled it out, opened it

1 up to the second page and this is what he saw.

2 Q. This has already been introduced as Exhibit 148,
3 let me just get to that. Tell us what that
4 reads.

5 A. It's 920-737-4731.

6 Q. And that's in what color ink, if you know?

7 A. Green.

8 Q. And black ink, is there something else written on
9 there?

10 A. Right below that, in black ink, are the words,
11 back to patio door.

12 Q. Did you become aware of whose phone number that
13 was?

14 A. Yes. Detective Remiker stated he immediately
15 recognized that number to be the cell number for
16 Teresa Halbach. After he told me that, I said,
17 yeah, that does look familiar. It is, that is
18 the number.

19 Q. And then a photograph of that having been taken
20 at the sheriff's department, that's Exhibit
21 No. 176, I believe; can you tell us what that is,
22 please.

23 A. That's exactly what you saw. That's an evidence
24 photo taken at the sheriff's department.

25 Q. I'm going to hand you now what's been -- Well, we

1 might as well get these two out of the way,
2 Exhibit 197 and 199. Tell the jury what those
3 are, please.

4 A. Two pocket notebooks.

5 Q. Also seized from the computer desk area?

6 A. I believe that would be correct.

7 Q. Sergeant Tyson --

8 ATTORNEY BUTING: Wait, slow down, can you
9 identify that?

10 ATTORNEY KRATZ: I'm sorry.

11 Q. (By Attorney Kratz)~ They are two different
12 colors, which color is 199?

13 A. The red one would be 199, the green one being
14 197.

15 Q. All right. Thank you, very much. I will have
16 Investigator Wiegert hand you what's been marked
17 as Exhibit 194; can you tell us what that is,
18 please.

19 A. That's a for sale sign that was found by
20 Detective Remiker in the desk that was located in
21 the living room.

22 Q. Can you show us the for sale sign. Is there
23 something written on the back?

24 A. On the back there is an address of 3302 Zander
25 Road. And directly underneath it, once again,

1 shows telephone number 920-737-4731, which
2 Detective Remiker once again said, that's Teresa
3 Halbach's number.

4 Q. Exhibit 149, which I'm showing now, is already
5 part of the case and has been admitted into
6 evidence. I'm now showing you what's Exhibit
7 177; what is that?

8 A. Looks like a scene photograph taken by either
9 Colborn or Remiker. And, obviously, I think it
10 was pulled out a little bit so you can see what
11 it was, but I think it was in further. I think
12 it was just pulled out and photographed it, to
13 show that it was found there.

14 Q. And Exhibit 178, is that a picture of what we saw
15 was the front of the for sale sign?

16 A. Yes.

17 Q. And 179, would be the back; is that right?

18 A. That's correct.

19 Q. Once again, 737-4731 was Teresa Halbach's
20 telephone number; is that right?

21 A. Yes.

22 Q. Now, without going into any details at all, was
23 it readily apparent to you what the address 3302
24 Zander Road was?

25 A. No.

1 Q. Sergeant, I'm now going to hand you what's been
2 marked for identification as Exhibit 202, ask if
3 you can tell us what that is, please.

4 A. It's an Auto Trader Magazine.

5 Q. Where was that found?

6 A. Detective Remiker located this on top of the
7 computer desk in the living room.

8 Q. Is it opened to a particular page?

9 A. Yes, page 114.

10 Q. And does that have any significance or does it
11 just happened to be open to that page?

12 A. I guess I'm not exactly sure what the
13 significance is.

14 Q. That's fine. The -- Exhibit No. 150, this is
15 already in evidence, is this how that particular
16 Auto Trader looked on the computer desk?

17 A. I believe that's -- yeah, that's the scene
18 photograph.

19 Q. And Exhibit 180 -- By the way was there more than
20 one Auto Trader Magazine on that desk?

21 A. I believe there were a couple.

22 Q. All right. Is Exhibit 180 one of those pictures?

23 A. Yes.

24 Q. And, finally, Exhibit 181, we talked about some
25 scene -- or excuse me, evidence photos; is that

1 181?

2 A. Yes, that would be an evidence photo.

3 Q. And I'll have Investigator Wiegert hand you
4 Exhibit No. 201, tell us what this was and where
5 was it found, please.

6 A. Number 201 is a bill of sale for Auto Trader
7 Magazine. I believe this was found by Detective
8 Remiker and this was also either on or in the
9 computer desk. I'm not exactly sure.

10 Q. I'm going to show you Exhibit No. 182, is that a
11 photo of that bill of sale on the desk?

12 A. Yes.

13 Q. Exhibit 151, already in evidence, does that look
14 like one of those evidence photos, again?

15 A. Yes.

16 Q. Sergeant Tyson, about what time of night was it
17 that this is getting to be; in other words, when
18 you got through the bedroom and the bathroom, and
19 through the living room, about what time were
20 those rooms all completed?

21 A. It was approaching the 10:00 hour at night.

22 Q. Investigator Wiegert is now going to hand you
23 what's been marked as Exhibit No. 195; and ask
24 you to identify that, if you can.

25 A. It's a bleach bottle.

1 Q. And have you seen that before?

2 A. Looks like possibly the one that was in the
3 bathroom up on a shelf.

4 Q. Whose bathroom and whose shelf?

5 A. I'm sorry, Steve Avery's bathroom, on a shelf.

6 Q. All right. We'll talk about evidence photos
7 again so we don't have to lug these things into
8 the courtroom. I'm showing you what's been
9 marked as Exhibit 183. Tell us what that is,
10 please.

11 A. It's a evidence photo of the bleach bottle.

12 Q. What's Exhibit No. 184?

13 A. The carpet cleaner.

14 Q. Have you seen that before?

15 A. I did. I believe this was in that spare bedroom
16 in Steven's residence.

17 Q. And after being seized, was a photo taken of that
18 at the sheriff's department?

19 A. Yes, that would be an evidence photo right here.

20 Q. 184; is that right?

21 A. Yes.

22 Q. Just to complete the next six pictures, although
23 we talked about them, these photos were a little
24 bit out of order. We talked about some blood
25 spots in the bathroom. I just want to show the

1 jury some pictures of those, tell them about
2 Exhibit 185, please.

3 A. Exhibit 185 appeared to be the linoleum floor in
4 the bathroom. And see a dried stain on the
5 floor, right there.

6 Q. Was that one of those spots that was swabbed or
7 collected from what you talked about?

8 A. Yeah, I believe Detective Remiker did swab that
9 stain.

10 Q. We'll hear from him later in this case, but you
11 were present when all that processing was going
12 on?

13 A. Yes.

14 Q. What's Exhibit 186?

15 A. 186 looks like it's a close up of the same stain.

16 Q. All right. And 187?

17 A. Looks like there's some stains on the -- if
18 that's the door? I'm not exactly sure. Looks
19 like some stains on a dark colored surface.

20 Q. I tell you what I'll do, I will save that for
21 Detective Remiker. Does that sound like a good
22 idea?

23 A. Yeah.

24 Q. All right. And you talked about those
25 identifiers before. I show you Exhibit 188, tell

1 us what that is, please.

2 A. This would be the letter that was inside of the
3 envelope that you saw, which wears the
4 identifiers from the University of Wisconsin Law
5 School, addressed to Steven Avery.

6 Q. Exhibit 189?

7 A. Also an envelope showing the address of
8 Mr. Avery, but being 12930.

9 Q. Does that look like it's taken at the scene?

10 A. Yes.

11 Q. Now, looks like somebody is wearing gloves in
12 that scene, maybe describe that for the jury.
13 What's that for?

14 A. All of us that were inside the residence, before
15 you even make entry, you put gloves on your hands
16 as to try not to leave any of your stuff behind,
17 is what it's called. You don't want to be
18 touching things with, you know, your bare hands.
19 So you wear gloves to make sure you are not
20 tainting the scene.

21 Q. And, finally, we have been talking about evidence
22 photos, Exhibit No. 190, what is that?

23 A. This would be the envelope from the University of
24 Wisconsin Madison Law School, addressed to Steven
25 Avery.

1 Q. All right. Now, at any time during the search,
2 at least when you entered the search sometime --
3 about what time was it that you entered, I'm
4 sorry?

5 A. We entered his residence, it was 7:30 p.m.

6 Q. And from 7:30 p.m. until you left the
7 residence -- What time did you leave?

8 A. We left at 10:05 p.m.

9 Q. Any time between 7:30 and 10:05, did either you,
10 Detective Remiker, Lieutenant Lenk, or Sergeant
11 Colborn ever leave that residence?

12 A. No.

13 Q. At any time during the search of the residence on
14 the 5th of November, did Lieutenant Lenk,
15 Sergeant Colborn, or Detective Remiker, ever take
16 any items of property from that location?

17 A. No, they may have assisted carrying the stuff out
18 at the end of the evening to place it in
19 Detective Remiker's squad; I was with them. So
20 they may have assisted carrying stuff out,
21 putting it in the backseat, but it was with me.
22 And they did give me a ride back up to the
23 Command Post and I personally unloaded all the
24 objects and put them in my squad car.

25 Q. What the record hasn't reflected and what the

1 jury hasn't seen, each one of these evidence
2 items were in a sealed bag; is that right?

3 A. Yes. Lieutenant Lenk had -- was in charge of
4 putting everything inside the bags, so they were
5 secured, each individual piece. Those items were
6 then taken out to the squad and turned over to me
7 to be taken to the sheriff's department.

8 Q. All right. Sergeant Tyson, I'm going to direct
9 your attention -- this is a little bit out of
10 order, but since it's next on my photo list,
11 that's where I'm going. On April 3rd of 2006,
12 were you asked to make contact with Teresa
13 Halbach's RAV4 vehicle?

14 A. Yes.

15 Q. Can you tell the jury the purpose of that
16 contact, please.

17 A. Sure. Investigator Wiegert and Agent Fassbender
18 requested that Deputy Hawkins and myself go out
19 to where Teresa's vehicle was. They wished for
20 us to do DNA swabs of the driver's door, the
21 passenger door. They wanted a swab done of the
22 hood latch to the vehicle, as well as the battery
23 cables under the hood.

24 Q. All right. And DNA swabs, what exactly is that;
25 what are you talking about?

1 A. Pretty much the same as swabbing for blood, only
2 you can't see anything. You are looking for any
3 type of DNA, be it skin cells, or any kind of
4 sweat, you know, anything that's DNA.

5 So what we're doing is kind of the same
6 procedure. We're taking distilled water,
7 dropping it on the end of the cotton swabs. And
8 you just swab the area to hopefully pick up DNA,
9 if it's there.

10 Q. Okay. We're going to hear from the analyst that
11 is on the other side of that process, but did
12 you, in fact, do that on the 3rd of April?

13 A. Yes.

14 Q. We're going to have Investigator Wiegert have
15 marked, actually, a package. I'm not going to
16 have it opened, but we'll have the package
17 marked.

18 (Exhibit No. 205 marked for identification.)

19 ATTORNEY KRATZ: What's the number?

20 INVESTIGATOR WIEGERT: 205.

21 Q. (By Attorney Kratz)~ He's going to hand you
22 Exhibit No. 205, can you tell us what that is,
23 please.

24 A. Number 205 is the actual swab containing possible
25 DNA evidence that was taken from the hood latch

1 of Teresa Halbach's vehicle on April 3rd.

2 Q. Can you tell us where a hood latch is, especially
3 on a RAV4?

4 A. It's right underneath the hood itself. You pop
5 the hood latch thing inside and you have to undo
6 it.

7 Q. Pop the hood latch thing inside, that sounds like
8 a law enforcement term. What are talking about?

9 A. You have to go inside the vehicle to release the
10 hood latch so you can get in to manipulate the
11 actual hood latch lever to get the hood open.

12 Q. I'm going to show you Exhibit No. 191; tell us
13 what we're looking at here.

14 A. Looks like the front of Teresa Halbach's vehicle.

15 Q. And 192 is a close up of something; what is that?

16 A. The hood latch.

17 Q. And using your laser pointer, can you tell the
18 jury what you did on April 3rd with exhibit -- or
19 what's depicted on Exhibit 192.

20 A. Sure. This area right here would be the
21 releasing mechanism for the hood latch. So what
22 I had done is took my swab, placed some distilled
23 water on it, and I swabbed the front and back of
24 this piece right here.

25 Q. Now, to get at that particular release lever or

1 that latch, how do you do that?

2 A. You had to go into the vehicle, pull the release.

3 And once the hood goes up a little bit, you are

4 able to get in there and make the hood go up.

5 Q. To get in where?

6 A. To that area.

7 Q. Do you have to reach inside of something?

8 A. Yes, you have to go in between the hood and the

9 frame to release the lever and make the hood go

10 up.

11 Q. What time did you finish your search

12 of Mr. Avery's trailer?

13 A. On November 5th?

14 Q. Yes, I'm sorry?

15 A. 10:05 p.m.

16 Q. And after 10:05 p.m., then, were you given any

17 further responsibilities at the Avery salvage

18 property?

19 A. After I cleared, we went back to the command

20 center. I off loaded all the evidence that was

21 seized out of Steven's trailer, secured it into

22 my squad car, made contact with Agent Fassbender

23 and Investigator Wiegert, and told to transport

24 it back to the sheriff's department and to be

25 back at the scene the next morning for further

1 instructions.

2 Q. Kind of a long day?

3 A. Yes.

4 Q. The next day, that is, Sunday, the 6th of
5 November, Sergeant Tyson, did you return to that
6 scene?

7 A. Yes.

8 Q. And what were your duties on the 6th of November?

9 A. On the 6th of November, I made contact with
10 Investigator Wiegert and Agent Fassbender. My
11 responsibilities on the 6th, I was teamed up with
12 Detective Sergeant Brian Swetlik, Detective Jeff
13 Tech, and Patrol Officer Rob Block from the city
14 of Manitowoc Police Department. Our duties that
15 day were to search a trailer that had not been
16 searched yet. They didn't believe anybody lived
17 in it, it was more for housing vehicle -- vehicle
18 parts and things like that, so.

19 Q. I'm sorry to interrupt you, Sergeant, but these
20 three city of Manitowoc officers, did they have
21 any specialized training that you knew?

22 A. Yes. Rob Block was a patrol officer with the
23 city of Manitowoc. He was an evidence technician
24 and Jeff Tech was a detective and Brian Swetlik
25 was also a sergeant detective.

1 Q. By the way, I don't think we mentioned this, but
2 do lieutenant Lenk, Sergeant Colborn and
3 Detective Remiker have any specialized training
4 that you know of?

5 A. Detective Remiker I know for sure did; he had all
6 the evidence supplies consistent with being an
7 evidence technician.

8 Q. And the others, we'll wait till they testify to
9 their qualifications; is that right?

10 A. (No verbal response.)

11 Q. Okay. On the 6th, then, matched up with these
12 other evidence techs, what were you asked to
13 search on the 6th?

14 A. Was the trailer that was situated between Barb
15 Janda's residence and Steven's parents'
16 residence. We did go into that trailer. It was
17 relatively quick because there was nothing of
18 evidentiary value that we could see inside the
19 trailer.

20 We were then requested to concentrate
21 our efforts in the fenced in areas of the Avery
22 property; check the outbuildings, there were I
23 think three different buildings; look for any
24 possible evidence in those outbuildings. And,
25 then, the final thing was -- to do was to execute

1 the search warrant in Delores and Al Avery, their
2 residence.

3 Q. Did you do anything else on the 6th?

4 A. I believe it was the outbuildings and the search
5 warrant at Steven's mother and father's
6 residence.

7 Q. And although we hear about a lot of people doing
8 a lot of things in a lot of different places, is
9 there anything that you can note for the jury
10 that had any substantial evidentiary value found
11 in any of those searches?

12 A. There was nothing -- nothing that was found to be
13 of evidentiary value.

14 ATTORNEY BUTING: Objection as to the form
15 of the question, is he talking about searches that
16 he was involved in?

17 ATTORNEY KRATZ: Yes, just him, sorry.

18 ATTORNEY BUTING: Okay.

19 Q. (By Attorney Kratz)~ And we're not going to waste
20 any more time on the 6th, let's move to the 7th,
21 ask what your responsibilities were that day?

22 A. The morning of the 7th, I was paired back up
23 again with Sergeant Colborn and Lieutenant Lenk.
24 We were originally assigned, first thing was to
25 go down to a maroon colored van, which was parked

1 outside of Barb Janda's residence.

2 I was informed that that van was the van
3 that Teresa Halbach had come onto the property to
4 photograph. What was requested of us was to take
5 a look inside the van to see if we could find
6 anything of evidentiary value inside the van or
7 outside the van.

8 We did search the van, found nothing of
9 evidentiary value. I did collect a belt and that
10 was seized as possible evidence. And so, the van
11 itself didn't provide nothing of evidentiary
12 value.

13 Q. Before we leave that topic, I'm going to show you
14 a photograph, already been admitted, Exhibit
15 No. 59. Tell us what we're looking at here,
16 please.

17 A. Here we have got Steven's trailer, the garage.
18 Here is the van that I was just talking about.
19 And Barb Janda's residence, this would be her
20 driveway right here.

21 Q. We talked about searching a van with Lieutenant
22 Lenk, does Exhibit No. 59 document that exact
23 activity, or don't you know?

24 A. I'm sorry, what was the question.

25 Q. You talked about searching this van with

1 Lieutenant Lenk, does Exhibit 59 document that?

2 A. Yes, this shows the van, shows the door being
3 open; there's me and there's Mr. Lenk.

4 Q. All right. What were your next duties on the
5 7th?

6 A. After we were finished with that, it was my
7 understanding, although I didn't see it,
8 apparently the fire departments had been called
9 out to the scene. They were going through the
10 junkyard, I think the day before, using their
11 equipment to pry open all the trunks on all the
12 vehicles in the junkyard.

13 So on the morning of the 7th, our
14 responsibility was to find any remaining vehicles
15 that did not have the trunk popped by the fire
16 department. And if we located those vehicles,
17 our responsibility was to open the trunk areas of
18 all those vehicles.

19 Q. Who did you do that with?

20 A. Lieutenant Lenk and Sergeant Colborn.

21 Q. Did you do all those things?

22 A. Yes. We found numerous vehicles that were not
23 taken care of, so we did use crowbars, wherever
24 necessary, to get them trunk lids open.

25 Q. Did you find anything in any of those vehicles?

1 A. No.

2 Q. By the way, the three of you didn't plant any
3 blood while you were doing that, did you?

4 A. No.

5 Q. All right. What else did the three of you do
6 that day?

7 A. I'm trying to think. After, I think we did all
8 the trunks, we were then requested to go through
9 the houses and collect firearms from any of the
10 houses that still had firearms in them. So we
11 started -- I think I was told that Steven's
12 firearms were collected already, so we started at
13 Barb Janda's residence and we just started
14 collecting all the firearms that were inside the
15 residence.

16 Q. Do you know about how long that project took?

17 A. There were quite a few firearms. It took a long
18 time to document all the different firearms
19 inside the bedroom area.

20 Q. In whose residences did you go to collect the
21 firearms?

22 A. We were in Barb Janda's residence pretty much the
23 whole day.

24 Q. All right. Were you asked, on the 7th, to
25 perform any duties with Mr. Avery's computer?

1 A. Yeah, I believe it was the morning hours,
2 Investigator Wiegert telephoned me and asked me
3 to make entry into Steven Avery's residence. He
4 told me that he did need the serial numbers, make
5 and model off of the computer that was sitting on
6 the computer desk in the living room.

7 Sergeant Colborn, myself, and Lieutenant
8 Lenk did make entry and we were in there for all
9 of about 3 or 4 minutes, I believe. I telephoned
10 Investigator Wiegert with the information he
11 needed and we immediately left the residence.

12 Q. Lieutenant Lenk and Colborn -- I'm sorry, did you
13 say that they were both with you?

14 A. I believe all three of us were together.

15 Q. Did they leave your location at all at that time?

16 A. No.

17 Q. And then you left?

18 A. Yes, went back to, I believe, Barb Janda's to
19 finish with the firearms.

20 Q. I'm going to hurry just a little bit with you
21 Sergeant Tyson so that we can get through, at
22 least your direct testimony for the day. Let me
23 just move forward to the 8th of November, that
24 would be on Tuesday, were you on site at all that
25 day?

1 A. I didn't go out to the scene on the morning hours
2 of the 8th. My responsibilities were at the
3 Calumet County Sheriff's Department, taking care
4 of all the evidence that had been collected over
5 the course of the past two days. Forms had to be
6 filled out, property tags assigned, that evidence
7 to be secured for the evidence custodian, so he
8 could move them to his location and free up some
9 of the lockers that I was currently taking up
10 with all the stuff that I had downstairs. So
11 that was a lot of my day.

12 I did clear from there and did respond
13 back out to, I think the Avery property, just to
14 see if I was needed in some other capacity. I
15 think there were some officers that were
16 collecting burn barrels. I know I probably
17 assisted with picking up one or two, helping them
18 get them on trailers and things like that. But
19 that was the extent of my involvement on the 8th.

20 Q. All right. Are you familiar with something
21 called a buccal swab?

22 A. Yes.

23 Q. What is that?

24 A. It's a swab that's taken by a medical
25 professional. And how it's taken is, it's a long

1 cotton applicator and it's put inside the
2 person's cheek and rubbed back and forth
3 collecting skin cells, I believe, off of the
4 inside of that person's mouth.

5 Q. Do you know what a buccal swab is used for?

6 A. DNA identification.

7 Q. Do you know what an exemplar is, a DNA exemplar?

8 A. Probably a known DNA substance.

9 Q. All right. On the Wednesday, the 9th of
10 November, were you asked to assist medical
11 professionals in obtaining what are called DNA
12 exemplars, or known DNA samples, from Steven
13 Avery and some other Avery family members?

14 A. Yes.

15 Q. Did you do that on that day?

16 A. Yes.

17 Q. Now, were you just asked, and were there search
18 warrants just for Steven Avery's DNA, or were
19 there others that were involved as well?

20 A. There were others. In the morning of the 9th, I
21 think Agent Fassbender and Investigator Wiegert,
22 they told me that they needed me to go up to the
23 Aurora Medical Clinic in Two Rivers. They
24 explained that there were search warrants for
25 Steven Avery, Bobby Dassey, Chuck Avery, Earl

1 Avery, Delores Avery, Barb Janda.

2 They said each would be transported to
3 the Aurora Clinic in Two Rivers and then my
4 responsibility would be to photograph any
5 injuries that they may have had and to collect
6 all buccal swabs taken by the registered nurse.

7 Q. Did you do that?

8 A. Yes.

9 Q. Regarding Steven Avery, the defendant, do you see
10 him seated in the courtroom here today?

11 A. Yes.

12 Q. Were you present, Sergeant Tyson, when a physical
13 examination was performed of Steven Avery on the
14 9th of November?

15 A. Yes.

16 Q. And were you able to observe any injuries,
17 specifically any injuries to Mr. Avery's right
18 hand?

19 A. Yes.

20 Q. I'm going to show you what's been marked for
21 identification as Exhibit No. 193, tell us what
22 that is, please.

23 A. We were measuring the cut here to his finger,
24 right there. That's just a close up.

25 Q. Was this photo taken by you; is that right?

1 A. Yes.

2 Q. Who was assisting you in that process?

3 A. Fay Fritsch, she would be the registered nurse at
4 Aurora Medical Clinic; and the Medical Director
5 Dr. Laura Vogel-Schwartz, was also present in the
6 room, and I think the two investigators assigned
7 to Mr. Avery were also present.

8 Q. I'm sure we'll hear from Ms Fritsch, but do you
9 recall where this cut, that is, that we're seeing
10 on Exhibit 193, was located?

11 A. Looks like it's his middle finger.

12 Q. Okay. We see it here in the photos, but was it
13 visible to you to the naked eye?

14 A. Yes.

15 Q. Sergeant Tyson, the next day, that is, on the
16 10th of November, do you recall if you had any
17 responsibilities in this investigation?

18 A. On the 10th, I believe I responded out to the
19 Avery property. State patrol, I think, had
20 hundreds of state patrol officers canvassing the
21 quarries and the surrounding area. I was sent
22 out when they found something, down in the quarry
23 areas, just to see if I could identify what it
24 was. Nothing of evidentiary value was found.

25 Q. All right. On the 12th, then, that would be

1 Saturday, were you asked to perform one final
2 responsibility at that location?

3 A. Yeah. Sheriff Jerry Pagel instructed me to grab
4 a camcorner -- camcorder and to go through every
5 single residence on the property to show the
6 condition of which we were leaving the property
7 before we released the scene back to the family.

8 Q. Did you do that?

9 A. Yes, I was with corrections officer Larry
10 Schroeder at that time.

11 Q. Very briefly, Sergeant Tyson, we talked about the
12 9th of December and the execution of a search
13 warrant where you seized a bookcase; did you also
14 return to the Avery property on March 1st and 2nd
15 of 2006?

16 A. Yes.

17 Q. Did you participate in the execution of yet
18 another search warrant at the Avery residence,
19 that is, his trailer?

20 A. Yes.

21 Q. During March 1st and 2nd who was in charge of the
22 evidence documentation and seizure inside of
23 Mr. Avery's trailer?

24 A. We had Investigator Wendy Baldwin taking notes
25 and Patrolman Rick Reimer was an evidence

1 technician in our department, him and myself were
2 doing most of the searching. She was documenting
3 all evidence that was recovered by Deputy Reimer
4 and taken out to the secured trailer, which was
5 parked in the driveway.

6 Q. All right. My last area of inquiry, Sergeant
7 Tyson, has to do with human remains or other
8 kinds of materials; were you asked to
9 participate, not only with other law enforcement
10 officers, but with a forensic anthropologist in
11 sifting and sorting some ashes and remains?

12 A. Yes. On December 20th of 2005, I did go down to
13 the Wisconsin Crime Lab with Investigator
14 Dederling to assist numerous Department Of
15 Correction -- or Department of Criminal
16 Investigation agents there. Deputy Reimer was
17 there and we sorted through contents of burn
18 barrels. And I think later in April, the
19 following year, I think we had -- April 11th, I
20 believe it was, I did assist at the sheriff's
21 department and the Wisconsin Crime Lab was at our
22 facility. We had stations out in the garage
23 behind our department and we had gone through a
24 lot of materials, burnt.

25 Q. Sergeant Tyson, on November 5th of 2005, and in

1 fact, that entire week that you worked
2 specifically with Lieutenant Lenk and Sergeant
3 Colborn, did you witness anything, from either
4 one of those law enforcement professionals, that
5 in any way questioned either their reliability or
6 their ability to perform their law enforcement
7 duties on that scene?

8 A. No.

9 ATTORNEY KRATZ: Judge, I am going to move
10 for the admissions of Exhibit 163 through 205, with
11 the exceptions of Exhibit 164, 165, 187, and I think
12 that's it. Those were the three that this officer
13 was unable to identify. The rest I believe he has
14 and would move their admission at this time.

15 THE COURT: Any objection to the admission
16 of those exhibits?

17 ATTORNEY BUTING: No objection.

18 THE COURT: All right. The exhibits
19 listed, then, by Mr. Kratz will be admitted.
20 Mr. Kratz, do you have any further questions of the
21 witness?

22 ATTORNEY KRATZ: No.

23 THE COURT: Members of the jury, we have
24 got a few things to take up with counsel before
25 leaving today, so I think given that, it's probably

1 a little late to get into cross-examination. So at
2 this time I'm going to excuse you for today. I will
3 remind you not to discuss this case with anyone else
4 at any point during the trial and do not watch any
5 news accounts of the case. You are excused for
6 today. We'll see you tomorrow morning.

7 (Jury not present.)

8 THE COURT: You may be seated. Officer
9 Tyson you are excused.

10 Counsel, I had mentioned earlier this
11 morning that there was at least one exhibit,
12 Exhibit 89, that I believe the parties both felt
13 had not been admitted but the clerk's records
14 show that it had been and based on the
15 information I got from the court reporter, it
16 appears it may have been inadvertently marked as
17 admitted in conjunction with a number of other
18 exhibits at the end of the day back on the 14th.
19 First of all, let's address Exhibit 89; do I
20 understand that -- am I correct that both parties
21 feel that this exhibit was introduced but not
22 admitted?

23 ATTORNEY STRANG: Is that pages 515 and 516
24 of the --

25 THE COURT: Correct.

1 ATTORNEY STRANG: -- Calumet county
2 Sheriff's --

3 THE COURT: Yes.

4 ATTORNEY STRANG: -- Department report?
5 Yes, that was intended only as a Court's exhibit,
6 not -- not for evidentiary consideration of the
7 jury.

8 THE COURT: Mr. Kratz.

9 ATTORNEY KRATZ: It would certainly never
10 be considered by the jury, Judge, and was meant, as
11 I understood, to complete the record.

12 THE COURT: All right. The Court will
13 treat it as such and direct that the record shows
14 that it has not been admitted into evidence.

15 Counsel, are there any other exhibits
16 that either party believes fall into this
17 category, that is, that they have been shown as
18 being admitted but parties -- neither party
19 requested there admission.

20 ATTORNEY KRATZ: I have one that's just --
21 or two that are just the opposite, Judge. If I may,
22 I'm showing the Court now Exhibit 161. There were
23 two photographs that Agent Fassbender identified.
24 One is Exhibit 161 and the next is Exhibit 162, that
25 I asked the Clerk to please mark, and for whatever

1 reason that didn't occur.

2 I assured the Court that I would have
3 them marked and put into evidence. I had moved
4 them at the time, but these are the two
5 photographs that go along with Mr. Buting's
6 submissions. They have now been marked and I now
7 show them once again to remind the Court and
8 counsel, Exhibits 161, 162. I will tender them
9 and offer them at this time.

10 THE COURT: Mr. Strang.

11 ATTORNEY STRANG: These we think were the
12 two photographs used by Mr. Kratz on his redirect
13 examination of Special Agent Fassbender. I believe
14 we recreated that as best we can. They are out of
15 order. I don't know how they were described, if at
16 all, by exhibit number on redirect examination. But
17 we just -- when we talked about this, Nos. 161 and
18 162 were the next two available exhibit numbers, so
19 we agreed to give them those numbers. And as we
20 recall, they relate back to the redirect examination
21 of Mr. Fassbender.

22 ATTORNEY KRATZ: That's correct, Judge.

23 THE COURT: All right. And are these a
24 couple of -- they were slides for which photos
25 weren't readily available at the time?

1 ATTORNEY KRATZ: That's exactly correct,
2 Judge.

3 THE COURT: I believe I recall those. All
4 right. Any objection to their admission today?

5 ATTORNEY STRANG: No.

6 THE COURT: Very well. 161 and 162 will be
7 deemed admitted. Are there any other items that
8 need clarification?

9 ATTORNEY STRANG: Well, maybe. The only
10 two I came up with and I don't know if they are
11 received or not received, but Exhibit No. 70, I
12 think, was tendered to a witness. It's a photo of
13 crushed cars, but as I recall the witness must not
14 have been able to identify it, or there was a
15 foundation objection. I don't think that one was,
16 or has been, admitted yet.

17 ATTORNEY KRATZ: I think that's No. 70.

18 THE CLERK: We have that one as denied.

19 ATTORNEY KRATZ: That one, Mr. -- Bobby
20 Dassey could not identify that. We're going to put
21 that in through another officer later on in the
22 trial, Judge.

23 THE COURT: All right. So as of this point
24 it's been marked and neither party is asking for its
25 admission at this time?

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ATTORNEY KRATZ: Not yet.

THE COURT: The State is anticipating asking that it be admitted at a later date.

ATTORNEY KRATZ: Yes.

ATTORNEY STRANG: Right.

THE COURT: All right.

ATTORNEY STRANG: And then, Exhibit 28, which is a written statement of JoEllen Zipperer, I have labeled as used only to refresh recollection, so that -- that would not be -- it would be marked, but not offered and received.

THE COURT: That one is shown as being received.

ATTORNEY STRANG: Should have been marked only.

THE COURT: My recollection is that that was marked but not received.

ATTORNEY FALLON: I'm not sure that's the case, your Honor.

THE COURT: That was a statement of Mrs. Zipperer?

ATTORNEY KRATZ: It was, Judge, if you remember, it had to do with the time that Teresa was out there.

THE COURT: Okay.

1 ATTORNEY KRATZ: The statement had said
2 between 2:00 and 2:30, as she in fact read from
3 that. She said that now refreshes -- that's a
4 better estimate of the time that she was out there.
5 In fact, it is a much more recorded recollection
6 than that, that was just used to refresh
7 recollection. And it undoubtedly is not going to go
8 back to the jury, because I'm sure you are not going
9 to send written statements back, but it was offered
10 and it should be received.

11 ATTORNEY STRANG: I don't think so, whether
12 it's a -- something used to refresh recollection
13 under Section 906.12, or whether it's actually a
14 past recollection recorded, under 908.03 (5) maybe,
15 if memory serves. I think either way it doesn't --
16 the document doesn't come into evidence. What does
17 is the testimony either refreshed recollection, or
18 the reading of the past recollection recorded.

19 THE COURT: I think it can only get in if
20 she's unable to refresh her memory from it. But
21 which is not what I understood her testimony to be.

22 ATTORNEY STRANG: Correct. If she was
23 unable to, it could come in as a prior inconsistent
24 statement under 906.13, or conceivably --

25 THE COURT: Yeah, 908.03 (5) says a record

1 concerning a matter about which a witness once had
2 knowledge but now has insufficient recollection to
3 enable the witness to testify fully and accurately,
4 but if it refreshed her memory, then it doesn't fall
5 into that one.

6 ATTORNEY STRANG: Right.

7 ATTORNEY KRATZ: I'm never going to ask
8 that it go to the jury, so this is just fine.

9 ATTORNEY STRANG: That's fine, from this
10 standpoint.

11 ATTORNEY KRATZ: That's just fine.

12 THE COURT: My recollection is that it was
13 marked, but I don't remember it being admitted. And
14 my suspicion is that it may have been marked as
15 admitted under one of these globals, does anybody
16 have any objection to admitting a whole bunch of
17 exhibits.

18 ATTORNEY STRANG: And the real issue is it
19 oughtn't go to the jury. And since the State has
20 conceded that, you know, again, this becomes a bit
21 academic.

22 ATTORNEY KRATZ: Marked, but not received,
23 is just fine.

24 THE COURT: Yeah, at this point, I don't
25 think it should be received.

1 ATTORNEY KRATZ: That's fine.

2 THE COURT: Is that it for the exhibits?

3 THE CLERK: I have just a couple more.

4 This is a day when I wasn't here, but there was --
5 there were two photos, 87 and 88, that were marked
6 but nothing was ever said about them.

7 ATTORNEY STRANG: And I don't even have
8 those written down. So I'm wondering if they were
9 ever even identified by a witness.

10 THE CLERK: I think they were regarding the
11 Avery property. There was a whole line of photos
12 marked. Janet just has a big arrow drawn through
13 them.

14 ATTORNEY STRANG: Certainly was a series of
15 aerial shots from 79 on.

16 ATTORNEY KRATZ: Eighty-seven and
17 eighty-eight, Judge, were two that Lieutenant Bowe
18 was unable to identify. And like other exhibits in
19 that category, I intend to show them to another
20 witness who's actually in those pictures and I will
21 be putting them in through them. So they are marked
22 but not received.

23 THE COURT: So they are properly noted as
24 not received at this point.

25 THE CLERK: And then there's just one --

1 I'm sorry -- there's just one other section, 142
2 through 151, which were from Friday. And I know a
3 lot of those were duplicates from today. There's a
4 sign in sign out log, car crusher check point,
5 photos of the RAV4, the aluminum smelter photo, some
6 more sign in sheets.

7 THE COURT: Those have been marked but not
8 yet admitted.

9 THE CLERK: Right.

10 THE COURT: And I believe the State still
11 has witnesses to come that will identify those?

12 ATTORNEY KRATZ: I offered 148, 149, 150
13 and 151 at the time. And if you haven't, Mr. Tyson
14 just looked at those and they are the same.

15 ATTORNEY STRANG: There's no objection to
16 the admission of Exhibits 142 through 151 inclusive.

17 THE COURT: All right. So the Court will
18 order those admitted then?

19 ATTORNEY KRATZ: Yes, we don't have any
20 objection.

21 THE CLERK: I just have one more photo
22 marked as 158, that was ...

23 ATTORNEY KRATZ: That will get in through
24 Mr. Heimerl, actually, who is yet to come.

25 THE CLERK: That's it.

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THE COURT: Marked but not admitted.

I also want to note for the record that this afternoon there were two side bar conferences. The first one was at about 2:19. Mr. Kratz asked the Court at that time, I think, to take a break in order to permit the marking of a series of exhibits that were introduced through Officer Tyson and I indicated I preferred to proceed with more testimony before the break. That was the extent of what happened then. Counsel, is that your understanding, or recollection of what the side bar was?

ATTORNEY KRATZ: Yes.

ATTORNEY STRANG: That's mine too.

THE COURT: And then there was a second one after the break this afternoon when counsel approached and raised some issues with the Court concerning some objections Mr. Buting had made before that about photos being discussed without dates attributed to them. And I indicated to the parties that if there was any dispute about the date a photo was taken, that the defense had a right to have that information presented to the jury so that the jury could fully assess the probative value of whatever was in the photo. And I believe that was

1 the extent of that side bar.

2 ATTORNEY KRATZ: That's right, Judge, and
3 -- and I think from that point forward I did that
4 and it was a legitimate point and I hope I covered
5 it from that point.

6 THE COURT: Mr. Buting, is that your
7 recollection?

8 ATTORNEY BUTING: That is correct, Judge.

9 THE COURT: Very well. Is there anything
10 else that either party wishes to take up today
11 outside the presence of the jury before we resume
12 tomorrow?

13 ATTORNEY BUTING: Has the Court had any
14 response to the other matter that was ...

15 THE COURT: Oh, not yet.

16 ATTORNEY STRANG: I'm looking for one
17 exhibit, 189, your Honor.

18 ATTORNEY KRATZ: It's a photo of an
19 envelope. That should be in here.

20 ATTORNEY STRANG: Is the envelope itself
21 something?

22 ATTORNEY KRATZ: That's on the desk, that's
23 two something.

24 ATTORNEY STRANG: That's a different
25 envelope.

1 ATTORNEY FALLON: 189 was the envelope.

2 ATTORNEY KRATZ: It's a photo of an
3 envelope.

4 ATTORNEY STRANG: The photo I'm talking
5 about is Federal Defender Services of Wisconsin.

6 ATTORNEY KRATZ: I understand that. It's a
7 photo of the envelope.

8 ATTORNEY BUTING: So the actual envelope is
9 not here.

10 ATTORNEY KRATZ: We aren't offering --

11 THE COURT: Just a second. Diane.

12 COURT REPORTER: Yes.

13 THE COURT: We're off the record right now.
14 I'm not going to ask you to try to follow that.

15 (Off record discussion.)

16 THE COURT: All right. Let's go back on
17 the record. Mr. Strang, you raised a question about
18 Exhibit 189.

19 ATTORNEY STRANG: I did. And I just was
20 curious about the postmark date of that letter,
21 because it's from Federal Defender Services of
22 Wisconsin, which I had run for five years, was one
23 of the three offices that I ran. But I don't know
24 why it would be an issue in any event, but the
25 postmark is about two months after I left that

1 office. So I just can't imagine that there's any --
2 any issue.

3 THE COURT: All right. Anything further
4 today?

5 ATTORNEY KRATZ: Just that I think,
6 briefly, we need to meet in chambers. We may have
7 something in our office.

8 THE COURT: All right. We'll see you in a
9 few minutes.

10 ATTORNEY KRATZ: Thank you.

11 (Proceedings concluded.)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 7th day of 11, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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