

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 9

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** FEBRUARY 22, 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. We're here this morning for a continuation of
4 the trial in this matter. Will the parties state
5 their appearances for the record, please.

6 ATTORNEY KRATZ: I will, Judge. Once
7 again -- Good morning, Judge. Once again, the State
8 appears by Special Prosecutors Kratz, Fallon and
9 Gahn.

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

13 THE COURT: Thank you. I believe when we
14 left off yesterday the State was conducting direct
15 examination of Mr. Kucharski.

16 ATTORNEY KRATZ: We were, Judge, and we'll
17 recall him at this time.

18 THE COURT: You may do so.

19 **DEPUTY DANIEL KUCHARSKI**, called as a
20 witness herein, having been first duly sworn, was
21 examined and testified as follows:

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

24 THE WITNESS: Daniel Kucharski,
25 K-u-c-h-a-r-s-k-i.

DIRECT EXAMINATION CONTD

BY ATTORNEY KRATZ:

Q. Deputy Kucharski, good morning and welcome back.
We left off yesterday morning discussing a search
of Mr. Avery's garage on the sixth of November;
do you remember those conversations and
questions?

A. Yes, I do.

Q. Yesterday afternoon you described for the jury
the location and seizure of some .22 caliber
shell casings on the floor; do you recall that?

A. Yes.

Q. I have handed you what's been marked for
identification as Exhibit 220. I ask you to tell
the jury what that is, please.

A. That's a photo of the box and the shell casings
that I recovered from the scene. I put the shell
casings into the box; I brought the box into the
scene.

Q. After shell casings were found and recovered,
they are brought to the Sheriff's Department and
photographed; is that right?

A. Yes.

Q. And that's what Exhibit 220 is, it's a photograph
of those shell casings?

1 A. Yes.

2 Q. Now, Deputy Kucharski, you didn't perform any
3 kind of examination; in other words, you don't
4 have the qualifications to examine the shell
5 casings for distinctive markings, or tool marks,
6 or anything like that?

7 A. That's correct. I don't have that expertise.

8 Q. That happened by somebody else or somebody other
9 than you?

10 A. If it happened, yes.

11 Q. All right. Deputy Kucharski, the next area of
12 inquiry inside of the garage has to do with a
13 vehicle, or actually two vehicles, that were in
14 the garage when you got there on November 6th; do
15 you recall any vehicles being on the -- or in the
16 garage?

17 A. There was a Suzuki Samurai in the garage and also
18 a snowmobile.

19 Q. Exhibit 230, which I'm showing you and showing
20 the jury as well, tell the jury what it is that
21 we're looking at.

22 A. This is the rear of the Suzuki Samurai that was
23 inside the garage.

24 Q. And at least Exhibit No. 230, you can see the
25 garage door, that is, that it's backed in or

1 facing, if you will, what would be the main
2 garage door; is that right?

3 A. Correct. This picture is taken from the back of
4 the garage, on the south, facing north, towards
5 the large overhead door.

6 Q. Tell us what Exhibit 231 is, please.

7 A. 231 is a picture of the Suzuki. And also in the
8 foreground is the snowmobile, this would be taken
9 more from the northeast corner of the garage.

10 Q. And, once again, both the Suzuki Samurai and the
11 snowmobile seem to be facing outward, that is,
12 towards the main overhead garage door; is that
13 right?

14 A. That's correct.

15 Q. Once again, Deputy Kucharski, as with these other
16 photos that have been identified, does this
17 appear the same or similar as what you observed
18 on the 6th of November of 2005?

19 A. Yes, it does.

20 Q. You spoke yesterday about some other stuff being
21 in the garage. And so the jury can -- excuse
22 me -- so the jury can see a better depiction of
23 the rest of the inside of the garage as it looked
24 in November, we are going to be showing you some
25 other photographs.

1 ATTORNEY KRATZ: I do want to alert counsel
2 that Exhibit 236 is very similar to a photograph
3 which has already been received, which is
4 Exhibit 120. It looks a lot a like, I just wanted
5 to show you that. It's going to be the same type of
6 angle.

7 Q. (By Attorney Kratz)~ Nonetheless, let me show you
8 what is first marked as Exhibit 232. Tell us
9 what we're looking at, if you could.

10 A. This would be the rear of the garage, south side,
11 taken from looks like kind of the center of the
12 garage.

13 Q. The south side would be the back wall of the
14 garage; is that right?

15 A. Correct. Back wall, there's no doors or anything
16 on that wall.

17 Q. Now, those items that you see in the picture, not
18 only of the larger items, meaning the tool box or
19 the compressor or the refrigerator freezer or
20 other large items, but even the smaller items on
21 the workbench or on top of some of those other
22 things, on the 6th of November, were all of those
23 items removed, or taken out, or thoroughly
24 searched?

25 A. They weren't removed on the 6th, that wasn't the

1 depth of the search that we did on the 6th.
2 Things weren't taken out of place, or out of the
3 garage, or anything. It was more of a looking
4 into for obvious things.

5 Q. All right. What's Exhibit No. 232, please --
6 excuse me 233?

7 A. 233 would be another picture of the rear of the
8 garage, more towards the west corner of it.

9 Q. This looks more of a straight back view; is that
10 right?

11 A. Correct.

12 Q. You can see the John Deere tractor and still see
13 the upright toolbox in this shot; is that right?

14 A. Correct.

15 Q. What is Exhibit No. 234?

16 A. 234 would be a picture of the west side of the
17 garage. That would be the side with the service
18 door, all the way up towards the front.

19 Q. Now, that side of the garage and as we're looking
20 at Exhibit No. 234, appears to be the most
21 cluttered, for lack of a better term; is that a
22 fair representation?

23 A. Yes, it was actually -- it's hard to see the
24 depth, but it was actually several feet of
25 clutter there.

1 Q. And, once again, Deputy Kucharski, were all of
2 those items removed and thoroughly searched or
3 was this still more of a general search?

4 A. More of a general search. Those items weren't
5 all removed.

6 Q. What is Exhibit 235, please?

7 A. 235 is that west wall, again, to the north,
8 showing that service door.

9 Q. And what do you mean by service door?

10 A. You have got the main overhead door for the
11 garage. And then I would call it a service door,
12 just a regular turn the knob and open the door of
13 your garage.

14 Q. This would be, ostensibly, the front right corner
15 of the garage; is that right?

16 A. Correct.

17 Q. Finally, again, at an angle very similar to
18 Exhibit No. 120, but this is Exhibit 236; can you
19 tell us you what that is, please.

20 A. This is the east side of the garage, next to the
21 Suzuki, from the north facing the back of it.

22 Q. So we see the Suzuki facing us. On the very
23 right edge of this picture, you see the left
24 wall, or what would be the east wall of the
25 garage, and then the junk or stuff in between; is

1 that right?

2 A. Correct.

3 Q. Now, Deputy Kucharski, the garage itself, we saw
4 a picture yesterday of the interior of the
5 garage, or I guess what could best be described
6 as a picture from the threshold of the garage
7 looking at the floor and looking at some other
8 things that were inside; do you recall that
9 picture?

10 A. Yes.

11 Q. Did you also have occasion to take a look at and,
12 in fact, photograph some -- some of the floor,
13 some of the concrete floor of the garage?

14 A. Yes, as we entered the garage, the first things
15 we saw were the shell casings. And we also
16 immediately found, in that same general area, we
17 found reddish brown stains on the concrete, that
18 we believed to be possibly blood.

19 Q. All right. Before we get into what you thought
20 was blood and the collection of those items,
21 first just want you to describe the floor.

22 A. The floor was a concrete floor, dirty with normal
23 garage materials on it, that you would think,
24 miscellaneous fluid stains on it; scrape marks
25 from the snowmobile being pulled in and out, you

1 could tell that. The floor did have a -- The
2 concrete did have a crack in it, running north
3 and south, pretty much the full length of the
4 slab.

5 Q. Let's first look at Exhibit No. 237. Do you see
6 that picture in front of you?

7 A. Yes, I do.

8 Q. And as I place it on the large screen, tell the
9 jury what we are looking at here, please.

10 A. This is at the threshold of the overhead door.
11 We're looking at the, with the snowmobile
12 removed, that west bay of the garage.

13 Q. You described for us before a crack that
14 basically runs the entire length of the garage,
15 from generally a north to south direction, can
16 you point that out with the laser pointer,
17 please.

18 A. This would be the overhead door, where the
19 overhead door starts, you can see the crack here.
20 And it runs south, almost the whole slab of the
21 garage.

22 Q. All right. You talked about some fluids, or what
23 I guess on this exhibit looks like darker areas
24 on the floor, could you just describe those or
25 point those out for the jury, please.

1 A. Correct. There is a fluid stain here. Also over
2 on the west side, by the clutter, there's fluid
3 stains and older stains here that have been
4 dried, another stain here.

5 Q. What's photo number 238, please?

6 ATTORNEY BUTING: You want to just note for
7 the record what he is ...

8 ATTORNEY KRATZ: I'm sorry, Judge, the
9 record should reflect that with the laser pointer,
10 this witness had pointed out what looks like some
11 kind of fluid stains on the concrete floor. There
12 isn't a particular area of the floor; in other
13 words, it's both to the left and to the right and
14 actually to the center of this exhibit, but they are
15 markedly darker in color than what the other floor
16 might be, or what's at least depicted in this image.

17 ATTORNEY BUTING: Why don't you just point
18 to those again and I will note where it is on the
19 photo you are. You did one or two at a time, do the
20 first one.

21 THE WITNESS: Sure.

22 ATTORNEY BUTING: The record should reflect
23 he's pointing to a darker stain area which appears
24 to be near the left front wheel of the Suzuki
25 Samurai as it's parked. He's also pointing to

1 another one on the right side of the photograph,
2 upper right corner near a red cooler, with some
3 thermos type mugs or something. And a lighter
4 colored gray, more in the lower center of the
5 photograph.

6 ATTORNEY KRATZ: That's sounds accurate,
7 Judge.

8 THE COURT: All right. The Court will
9 accept that characterization.

10 Q. (By Attorney Kratz)~ What's photo 238, please?

11 A. 238 is another picture of the garage floor, more
12 towards the center of the floor.

13 Q. Now, these different angles, just so we are clear
14 for the jury, as you were taking these photos,
15 did you understand the significance of either
16 some of the items that were being depicted, or
17 some of the stains that you were taking photos
18 of?

19 A. Well, some of the stains, obviously, if it's
20 something that we believed was blood, that would
21 be something important. If it was something that
22 we thought was transmission fluid, we wouldn't
23 think that would be important.

24 Q. All right. But you took pictures of the whole
25 floor, basically; is that right?

1 A. Correct. Correct.

2 Q. What's Exhibit 239, please?

3 A. 239 is another picture of the floor, more towards
4 the rear of the Suzuki. I think in this one we
5 were really trying to get the scrape marks from
6 the sled.

7 Q. What's a sled?

8 A. I'm sorry, a snowmobile that was in there.

9 Q. On this photo, you can see visible scratch or
10 scrape marks right into the concrete itself; is
11 that right?

12 A. That's correct.

13 Q. What's Exhibit 240, please?

14 A. 240 is a photo from the -- would be the south
15 side of the garage facing out towards the
16 overhead door, again, of the floor in that area.
17 We get a better look at the cracks, actually
18 seeing cracks that are running east and west
19 also.

20 Q. This photo also depicts some of those
21 discolorations or stains as well as the scratch
22 and scrape marks?

23 A. Correct.

24 Q. Now, you mentioned, Deputy Kucharski, that there
25 were some items of interest that you wished to

1 take a closer look at and did some more
2 investigation or inspection of, can you describe
3 those for the jury, please.

4 A. Well, the blood spots that we -- probable blood
5 spots that we saw, we photographed those and
6 collected those with swabs.

7 Q. All right. Let's talk about the swabbing process
8 before we show you the photos. What does
9 swabbing blood spots mean?

10 A. It comes in a kit from the State. I open up the
11 kit, it's a sealed kit. We take the swab out of
12 the kit; the swab is in a sealed package. You
13 open up the swab and you have -- in the package
14 comes a small sealed bottle of distilled water.

15 You put a couple of drops of distilled
16 water onto the swab. And then you take the swab
17 and you rub it on the suspected spot. And you
18 have got a special container to dry it and house
19 it, put it back in there. Put everything back
20 together and everything back into the kit and
21 that kit gets put into evidence.

22 Q. What kind of stains did you swab, please. I want
23 to know what they visually looked like.

24 A. They were reddish brown in color. They were
25 dried at that time. They were circular in

1 pattern. They were smaller, I would say some
2 place from dime size up to quarter size.

3 Q. During this process, that is, during the
4 identification of what you thought were blood
5 spots, did you use some more of these evidence
6 tents that we saw yesterday?

7 A. That's correct. As we identified the spots that
8 we were going to take swabs of, we put the tents
9 by the spots.

10 Q. If you look at that first photograph,
11 Exhibit 241, tell us what that is, please.

12 A. This is an overall picture of the area where we
13 found the suspected blood spots showing the
14 tents.

15 Q. I will show the jury now Exhibit 241. And if you
16 could use your laser pointer, tell us what it is
17 that we're looking at, please.

18 A. These would be the blood spots here, pointed out
19 next to the tent.

20 Q. What I see are photo -- or tents, one through
21 eight; is that right?

22 A. That's correct.

23 Q. What does that mean, why did you use eight
24 different tents?

25 A. That was identifying eight separate areas that we

1 were going to swab.

2 Q. And, in fact, was that done?

3 A. Yes, it was.

4 Q. What's Exhibit 242?

5 A. 242 is a closer up photo of 4, 5, 6, 7, and 8
6 tents and the blood spots -- suspected blood
7 spots next to them.

8 Q. As we look at Exhibit No. 242, and actually since
9 it's a digital photo, I'm able to zoom in to tent
10 number six, as an example; do you remember this,
11 these spots and this image in particular and what
12 is it that we're looking at?

13 A. You can see a few spots here to the left of the
14 tent. And then also some type of pattern in the
15 suspected blood spot there.

16 Q. Now, those stains, whatever they were, these were
17 collected all by the same method, that is, by
18 using what's called swabs, or these -- it's a
19 large Q-tip is what it looks like; is that right?

20 A. Yes.

21 Q. What's Exhibit 243, please?

22 A. 243 is a closer up picture of tents 4, 5, and 6
23 and the corresponding blood spots, suspected
24 blood spots there.

25 Q. Again, these were all on the floor of what was

1 later to be determined to be Mr. Avery's garage;
2 is that right?

3 A. That's correct.

4 Q. What is Exhibit 244?

5 A. 244 is a closer up picture of tent 7 and 8 and
6 the suspected blood spots there.

7 Q. And we'll just take a look at that. In this
8 photo, you note a -- or I note, anyway, what
9 looks like a piece of paper, a chart indicating
10 some kind of a ruler or measuring device, as well
11 as a color pallet. Can you tell us what that is
12 and what it's used for.

13 A. That's something that we brought into the scene.
14 That's a scale, basically, something that if that
15 was going to be attempted to be processed,
16 that -- that transfer there, that pattern would
17 have been processed. They would have needed a
18 scale, so they can blow up the picture and
19 process it. That's why we added it on that
20 picture.

21 Q. On the 6th of November, did you have any -- This
22 is just the first full day of searching, did you
23 have any idea of the significance of any of these
24 spot or patterns?

25 A. No, we were just generally looking for items that

1 jumped out at us. No one sent us looking for .22
2 long rifle shell casings. They sent us looking
3 for patterns of anything. It was just a general
4 search.

5 Q. Deputy, we're not going to open these exhibits
6 since it contains biohazardous materials, but we
7 are going to show you --

8 ATTORNEY BUTING: Objection, to that
9 characterization. I don't believe one of these
10 is -- First of all, assumes facts not in evidence as
11 to whether there is any biohazard on any of these
12 items, but certainly not all of them.

13 THE COURT: The objection is sustained.
14 We'll do it item by item.

15 ATTORNEY KRATZ: All right. We have
16 Mr. Wiegert here to assist. I'm asking that
17 Exhibits 252, I think it's through 261, be showed
18 too, your Honor.

19 INVESTIGATOR WIEGERT: 252 through 261?

20 ATTORNEY KRATZ: Mm-hmm. I think so. The
21 swabs, if that's what they are. All right.
22 Mr. Wiegert, please, if Mr. Buting can see those
23 before you show them.

24 INVESTIGATOR WIEGERT: Sure.

25 Q. (By Attorney Kratz)~ While they are looking at

1 the exhibits, if I can ask you just a couple of
2 procedural questions. After obtaining samples of
3 these swabs, or any kind of evidence, can you
4 tell the jury what happens to that after you are
5 done with it.

6 A. Well, immediately after it's sealed, it's put in
7 a package. It's sealed. We close up packages
8 with evidence tape; it's a tamper resistance
9 tape. What it is, is a very thin tape; if you
10 try and open it, it tears very quickly, so you
11 can tell that it's been tampered with. We
12 initialed the tape so we know that someone didn't
13 pull the tape off and put a new piece on. It's
14 our initials on it. And depending on how -- what
15 the circumstances are, they stay in your
16 possession until you -- until we enter them into
17 the evidence storage at the sheriff's department.

18 Q. Mr. Kucharski, Mr. Buting has been kind enough to
19 allow me to refer to these as a group of
20 exhibits. We will show you now what are Exhibits
21 252 through 261; can you identify those?

22 A. Yes, these are the packages that we put the swabs
23 in for the suspected blood that we collected in
24 Steven Avery's garage.

25 Q. And you identify -- or can you identify those

1 packages themselves?

2 A. The evidence tags I filled out myself, the -- it
3 has been opened. It looks like by the State
4 Crime Lab.

5 Q. Let me just stop you, that's my next question.
6 You don't actually analyze the material or you
7 don't do any kind of forensic analysis on these
8 things, you just collect them; is that right?

9 A. Correct. Once we collect them, then, that's all
10 our expertise is in, collecting them.

11 Q. Exhibit 252, however, through 261 appears to not
12 only all bear your initials and evidence tape,
13 but what you believe are those 10 separate swabs
14 that were taken from Mr. Avery's floor?

15 A. Yes.

16 Q. Garage floor; is that right?

17 A. Yes.

18 Q. All right.

19 ATTORNEY KRATZ: You can put them back.

20 Thank you.

21 Q. (By Attorney Kratz)~ Yesterday, Deputy
22 Kucharski --

23 ATTORNEY KRATZ: If you could stay up there
24 Mr. Wiegert, I would appreciate it.

25 Q. (By Attorney Kratz)~ Yesterday, you saw a

1 exhibit, it was 228, an exhibit of some hanging
2 wires. We're showing that you to now; do you
3 remember that?

4 A. Yes, I do.

5 Q. You also saw a second exhibit, what we have now
6 come to know are evidence photos. This is
7 Exhibit No. 229; do you recognize that?

8 A. Yes, I do.

9 Q. All right. Mr. Wiegert is going to hand you an
10 exhibit which is identified as No. 249.

11 ATTORNEY KRATZ: If you can find that
12 Mr. Wiegert.

13 Q. (By Attorney Kratz)~ It is a tagged exhibit, if
14 you could tell the jury what Exhibit 249 is,
15 please.

16 A. These are the electrical wires that were hanging
17 on the rafters in Steven Avery's garage on the
18 6th when we were in their searching.

19 Q. The same questions as far as the collection and
20 the tagging of those, that was a process that you
21 yourself completed; is that correct? Or is that
22 something that other officers complete as the
23 week goes on?

24 A. We did not collect these out of the garage. They
25 stayed in the garage after we completed our

1 search.

2 Q. Okay. But the identification, at least you're
3 looking at those, those appear to be the same as
4 when you saw them; is that right?

5 A. That's correct.

6 ATTORNEY KRATZ: We'll deal with their
7 admissibility, just for the record, Judge, perhaps
8 during the break. But Mr. Wiegert you can put them
9 back on the cart.

10 Q. (By Attorney Kratz)~ Now, Investigator -- excuse
11 me -- Deputy Kucharski, how long did this search
12 take, if you recall?

13 A. I don't remember the exact times; it took several
14 hours.

15 Q. On the 6th of November, were there other law
16 enforcement officers, other than your search
17 team, on the Avery property?

18 A. Yes, there were other search teams.

19 Q. And do you know, or did you have an intimate
20 knowledge of what everybody else was doing?

21 A. No, not at all.

22 Q. I'm going to show you again, Exhibit No. 227.
23 You may have mentioned this yesterday, but you
24 said that this looks different, or at least
25 there's one thing missing from when you first saw

1 it?

2 A. Correct. This is a picture of after we removed
3 the snowmobile from next to the Suzuki.

4 Q. Will you tell the jury why you removed the
5 snowmobile?

6 A. We wanted to look underneath and get a better
7 look underneath the tracks and the skis to see if
8 there was any other possible evidence underneath
9 it.

10 Q. Let me ask you, Deputy Kucharski, and there's a
11 specific question for this, see this green
12 compressor on the back wall?

13 A. Yes, I do.

14 Q. On the 5th of -- excuse me -- the 6th of
15 November, was that compressor ever taken out?
16 Was it ever removed and was a thorough search of
17 that area ever completed?

18 A. It wasn't removed. It was just a general search.
19 It was never removed or looked behind, anything
20 like that.

21 Q. All right. After the search of this garage, can
22 you tell us where you went, please.

23 A. After the search of this garage, I was called
24 over behind the garage and to the east to assist
25 in the loading of some burn barrels and tagging

1 the burn barrels for evidence.

2 Q. After the processing or the loading of those burn
3 barrels, where did you guys go then?

4 A. After they were taken away and custody was turned
5 over, we went to -- we were assigned to search
6 Barb Janda's house, which would be the residence
7 due east of the garage.

8 Q. Mr. Wiegert is going to hand you, before we get
9 too far from the garage search, a one last
10 exhibit from the garage, Exhibit No. 250.

11 ATTORNEY KRATZ: Record should reflect,
12 Judge, that Mr. Wiegert is opening the evidence bag
13 with a cutting device.

14 Q. (By Attorney Kratz)~ Now, although the bag itself
15 is marked as the exhibit, I'm interested in
16 what's inside of it; if you could tell the jury
17 what that is.

18 A. These are the .22 long rifle shell casings that
19 we recovered.

20 Q. All right. And, again, you did not examine those
21 further; in other words, you weren't the one to
22 look for any markings, or scratches, or the
23 striations on those; is that correct?

24 A. That's correct.

25 ATTORNEY KRATZ: Thank you, Mr. Wiegert.

1 You can put them back on the cart.

2 ATTORNEY BUTING: Which exhibit is that,
3 again?

4 ATTORNEY KRATZ: 250.

5 ATTORNEY BUTING: Is that all 10 or 11
6 together?

7 ATTORNEY KRATZ: I think they are all in
8 there. You can look at them. It's the whole pill
9 box full of them.

10 ATTORNEY BUTING: We'll let the witness
11 tell us.

12 Q. (By Attorney Kratz)~ Would you count the number
13 of shell casings that's in the box, please.

14 A. These have been repackaged in there in and they
15 are in little glassine envelopes, presumably by
16 whomever processed them. There's three in one
17 package and eight in the another package.

18 Q. That's 11 shell casings?

19 A. Yes.

20 Q. All right. Thank you. I think you left off with
21 the burn barrels, after that was completed where
22 did you guys go?

23 A. I don't remember if it was after or before, we
24 did a search around the garage area. And
25 sometime in there we attempted to search a area

1 behind the garage, myself and Dep -- Investigator
2 Remiker attempted to search a burn pit, what was
3 later described as, but we were unable to because
4 there was a dog there.

5 Q. A dog where?

6 A. There was a dog tied up behind the garage and its
7 chain was long enough to get to us if we were
8 trying to search that area.

9 Q. And where was this area?

10 A. This was behind the garage, behind Steven Avery's
11 garage.

12 Q. I will orient the jury here. I will show you
13 what's been received as Exhibit No. 111; it's a
14 computer animated representation of that area; do
15 your recognize that?

16 A. Yes.

17 Q. What is it that we're looking at?

18 A. That's the rear of the garage that we searched
19 and that's the burn pit area that Detective
20 Remiker and myself attempted to search.

21 Q. Could you show the jurors where you walked and
22 how it was that you were unable to get to that
23 area?

24 A. Well, this was the area that we were attempting
25 to search and this is a doghouse here behind the

1 garage. And the dog pretty much had free rein of
2 this area. The dog was not letting us into that
3 area.

4 Q. All right. Why not, what was the dog acting
5 like?

6 A. Basically, the dog was vicious. It came at us,
7 barked. I actually stood by with my weapon drawn
8 as Detective Remiker attempted to get into there.

9 Q. To search that area with that behavior of that
10 dog, what were your options at that point?

11 A. We -- After our attempts, we pretty much seen, we
12 had to get the dog out of there some way if we
13 were going to search it. There was no way to
14 search it with that dog there.

15 Q. So you chose not to search it?

16 A. Correct.

17 Q. Did you destroy the doing or kill the dog?

18 A. No, we didn't want to do that.

19 Q. Where did you go then?

20 A. We -- I was sent to tag the burn barrels. And
21 then after the burn barrels, we were sent to
22 search Barb Janda's house.

23 Q. We heard from Detective Remiker yesterday about a
24 answering machine, or a message that was on an
25 answering machine; were you present while that

1 was played in the residence?

2 A. Yes, I listened to the tape as it was played.

3 Q. After completing the search of Barb Janda's
4 trailer, where did you go?

5 A. After that, searching that trailer, we were given
6 the assignment to pick up several items, specific
7 items, in Steven Avery's trailer.

8 Q. And what specific items were you asked to
9 retrieve from Mr. Avery's trailer?

10 A. We were sent there to retrieve two firearms;
11 bedding out of a middle bedroom, or spare
12 bedroom; a vacuum cleaner, I believe that's it.

13 Q. Mr. Wiegert is going to hand you what's been
14 marked as Exhibit 247, once he puts new gloves
15 on. Mr. Kucharski, when looking at Exhibit and
16 Tag No. 247 -- and as Mr. Wiegert holds it up and
17 shows us -- tell us, what is Exhibit 247?

18 A. This is the Glenfield Model 60, semi-automatic
19 rifle that we took out of Steven Avery's bedroom.

20 Q. Where was it found in his bedroom?

21 A. It was above his bed, hanging on a gun rack, that
22 would be the north wall of his bedroom, above
23 his -- above the headboard of the bed.

24 Q. Now, you pointed yesterday to a couple of areas
25 on the gun, I think one was the -- Was that you

1 or was that a different -- different witness?

2 A. This is the first I have seen the weapon in
3 court.

4 Q. Okay. I'm sorry, that was a different witness,
5 then, that's fine. Was there another firearm
6 that was retrieved?

7 ATTORNEY KRATZ: You can put that back,
8 Investigator. Thank you.

9 Q. (By Attorney Kratz)~ Was there another firearm
10 that was retrieved from the bedroom?

11 A. Yes, we also retrieved a Connecticut Valley Arms
12 Hawkin Model, .50 caliber muzzleloading rifle.

13 Q. Mr. Wiegert is going to show you what's been
14 marked for identification as Exhibit No. 248.
15 Tell us what that is, please.

16 A. That is the rifle that we took out of Steven
17 Avery's bedroom. Again, it was in the rifle rack
18 above the bed. Also noted in my report the
19 masking tape with the handwritten name on it, of
20 Steve, that was on the weapon when we found it.

21 Q. And the masking tape with the name Steve,
22 S-t-e-v-e; is that right?

23 A. That's correct.

24 Q. And that you left on. And do you recall that
25 being on that weapon when you first observed it

1 in the bedroom; is that right?

2 A. That's correct.

3 ATTORNEY KRATZ: You can put it back,
4 Investigator.

5 Q. (By Attorney Kratz)~ You told us that -- or maybe
6 you didn't. I apologize, I'm confusing you with
7 perhaps another witness. How long did this visit
8 to Mr. Avery's trailer take?

9 A. This didn't take very long. We were sent there
10 to specifically pick up these items. We just did
11 a quick sweep of the residence, located the
12 items, tagged the items, and returned to the
13 Command Post. Less than a half an hour, I would
14 think.

15 Q. You had a specific purpose to go in there?

16 A. Correct.

17 Q. Deputy Kucharski, do you recall where your next
18 search or visit was to the Avery property that
19 day?

20 A. We -- I don't remember if it was next, but we --
21 we searched the Ford F350 that was parked outside
22 of Steven Avery's garage. I believe we also went
23 into Charles Avery's trailer that day. I don't
24 remember which one was which.

25 Q. All right. Do you remember going into any other

1 buildings, any business buildings that day?

2 A. On the 6th, we also would have searched what I
3 would call the new shop building. It was a metal
4 building that was on the property had a type of
5 automotive shop in it and offices.

6 Q. Within this shop building -- By the way what kind
7 of -- what kind of a building did that appear to
8 be?

9 A. It was a metal building, kind of like you would
10 call a pole building, I guess; warehouse type.

11 Q. I have handed you what's been marked as Exhibit
12 No. 245 and ask if you found this within the shop
13 building?

14 A. Yes. In one of the offices, this was posted.

15 Q. On one of the walls, there appears to be a
16 missing persons poster; is that right?

17 A. That's correct.

18 Q. Appear to be Ms Halbach's missing persons poster?

19 A. That is correct.

20 Q. Deputy Kucharski, after the seizure of all of
21 these items, and after the packaging and whatever
22 processing that you might have done, what were
23 your duties later that day?

24 A. Well, after all the searching was concluded, all
25 the evidence that had been taken was brought back

1 to the sheriff's department and then entered into
2 evidence storage.

3 Q. Now, we have heard a little bit about that
4 process, but just generally, what does putting
5 something into evidence storage entail?

6 A. Normally, we have a evidence room in the basement
7 that we put -- we, as in the road deputies or
8 whomever collects the evidence, puts the evidence
9 into a locker. We take the key out of that
10 locker and we place it into a drop box. That's
11 the only key for that locker that I know of.

12 It goes into the drop box. And, then,
13 when the evidence custodian has time to enter
14 that into his storage, in the evidence room,
15 actual evidence room, he opens -- he has the key
16 to open the drop box. He takes the key for our
17 locker, takes the evidence out of there and
18 enters it into storage.

19 For this case, though, it was so many
20 things we were putting into evidence, we had too
21 many things for our locker. So the actual
22 evidence custodian was there and he was taking
23 things -- a lot of the things, directly into his
24 evidence storage.

25 Q. The next day, Deputy Kucharski, that would be on

1 Monday, the 7th of November, were you asked to
2 return to the property?

3 A. Yes, I was.

4 Q. And were you assigned a specific search team on
5 that day?

6 A. No, on the 7th I worked alone.

7 Q. Okay. Do you remember what you did on the 7th?

8 A. I was sent to specifically pick up a few items.
9 I remember a rifle out of Charles Avery's
10 residence. I took some more weapons out of a
11 vehicle that was parked near the new shop
12 building.

13 Q. The next day, on the 8th, Tuesday, the 8th of
14 November, did you return to the Avery salvage
15 property?

16 A. Yes, I did.

17 Q. And on that date, were you assigned a search
18 team?

19 A. Yes, on that date I was searching with Lieutenant
20 Lenk and Sergeant Colborn.

21 Q. Do you remember where the three of you went to
22 search that day?

23 A. We searched several places including we were sent
24 to Steven Avery's trailer to do a thorough
25 search.

1 Q. During that thorough search, did you have
2 occasion to search the bedroom of Mr. Avery's
3 trailer?

4 A. Yes, we did.

5 Q. And we have heard about a lot of that search, but
6 I'm specifically going to direct your attention
7 to the key and the finding of the key in that
8 bedroom. Do you recall how that occurred?

9 A. Yes, I do.

10 Q. Why don't you tell the jury how that occurred,
11 please.

12 A. We were concluding the search in the bedroom.
13 We, as Lieutenant Lenk, Sergeant Colborn and I.
14 I was mostly doing the photographing, and logging
15 in and packaging of evidence. However, I did
16 search the nightstand. I was sitting on the bed
17 and the nightstand was right there, so when I had
18 time between my duties, I would search the
19 nightstand. We were just wrapping up the search
20 and Lieutenant Lenk left the room to get some
21 more boxes for some of the things that we were
22 taking into evidence.

23 Sergeant Colborn was searching --
24 finishing up his search of an area on the east
25 wall, next to the bookcase. And I was sitting on

1 the bed near the nightstand. Lieutenant Lenk
2 came back into the room, stopped at the doorway,
3 pointed at the floor, just a couple of feet away
4 from where my feet were sitting on the floor, and
5 said there was a key there.

6 Q. I'm going to show you, just as you describe this,
7 Exhibit No. 210, ask if this image looks familiar
8 to you?

9 A. That's the key, that's where the key was sitting
10 when we found it.

11 Q. How far was this key away from you as you were
12 sitting on the bed?

13 A. Just a of couple feet.

14 Q. Had you seen that key, either before Lieutenant
15 Lenk left the room, or at any time actually prior
16 to Lieutenant Lenk's return?

17 A. No, I did not.

18 Q. Now, when Lieutenant Lenk said, there's a key,
19 where was he standing when he said that.

20 A. He was standing in the doorway.

21 Q. Had he gotten to that area yet when he said that?

22 A. No.

23 Q. I'm just going to ask you, Deputy Kucharski, were
24 you surprised to see that on the floor?

25 A. Yes.

1 Q. What happened after you saw that key on the
2 floor?

3 A. Lieutenant Lenk pointed out the key; we all
4 looked at it. We all decided it was a Toyota
5 emblem on it. Stopped all searching. I had
6 everybody stop the searching. Immediately took a
7 photograph of it. I had taken my gloves off to
8 finish up my -- tough to write and take pictures
9 with the rubber gloves on. So I had taken the
10 gloves off, so I put on a fresh pair of gloves. I
11 took out a new evidence bag out of the --

12 Q. Let me just stop you. A fresh pair of gloves,
13 does that mean that it had touched any other
14 pieces of evidence in that room?

15 A. No, it did not. It came directly out of the
16 package.

17 Q. All right. So you put fresh gloves on, what did
18 you do then?

19 A. I took a new evidence bag out of the stack of
20 bags, picked up the key with the -- with my
21 gloved hand, put it into the new evidence bag and
22 then I contacted the Command Post.

23 Q. Deputy Kucharski, the jury has already seen the
24 actual key, itself, but I'm going to show you
25 something that's been marked as Exhibit 219, can

1 you tell us what that is, please.

2 A. That's the key that we found on the 8th.

3 Q. Photograph, isn't it?

4 A. Sorry, that's a photograph of the key.

5 Q. Okay. As you look at No. 219, so we don't have
6 to pass the key itself around, is that one of
7 those evidence pictures that's taken after it's
8 received?

9 A. Correct.

10 Q. You said that you had contacted members of the
11 Command Post; do you recall who came to that
12 location?

13 A. Special Investigator Fassbender and Investigator
14 Wiegert came to the Avery trailer. I showed them
15 the key. They said that they would be sending a
16 special agent back to take custody of the key.

17 Q. All right. The next photo that I'm going to show
18 you, Deputy Kucharski, is photograph number 246;
19 I want you to tell us what that is, please.

20 A. This is a photo of some of the ammunition that we
21 took out of Steven Avery's bedroom.

22 Q. And now that the jury can see Exhibit 246, does
23 it say on the box of ammunition what caliber of
24 ammunition that is?

25 A. Yes, it does. It's .22 long rifle ammunition.

1 Q. And just -- you said, I think, that you are
2 familiar with firearms; is that right?

3 A. Yes, I am.

4 ATTORNEY KRATZ: Excuse me, just one
5 moment, Judge.

6 Q. (By Attorney Kratz)~ Is this the kind of bullet
7 that would fit into the .22 caliber rifle that
8 you previously identified as Exhibit 247?

9 A. Yes, it is.

10 Q. After completing the search of the Avery bedroom,
11 was the rest of the trailer thoroughly searched
12 as well?

13 A. Yes. We were -- We searched the rest of the
14 trailer thoroughly and then we -- also assigned
15 to specifically take into evidence some of the
16 computer and computer storage devices.

17 Q. All right. Deputy Kucharski, I'm going to ask
18 you, based upon your positioning a couple of feet
19 away from that key; did you believe that either
20 Lieutenant Lenk or Sergeant Colborn had an
21 opportunity, out of your eyesight to place, or
22 what's called plant, that key there?

23 A. No, they did not.

24 Q. How can you be so sure?

25 A. Well, first of all they would have had to have

1 the key. I think the only person that would have
2 had the key would be the person that killed
3 Teresa --

4 ATTORNEY BUTING: Objection, speculation.

5 THE COURT: Sustained.

6 ATTORNEY BUTING: Move to strike.

7 THE COURT: Court will order the answer
8 stricken.

9 Q. (By Attorney Kratz)~ I want you to limit your
10 comments to your observations. What about your
11 observations do you believe it was impossible or
12 improbable for them to plant that key?

13 A. My actual observations, I would have to say
14 that -- that it could be possible, as in I was
15 doing other things. I was taking photographs. I
16 was searching the nightstand. So, if we're just
17 limiting it to if it was possible that they could
18 do it without me seeing it, I would say, yes, I
19 guess it is possible.

20 Q. All right. And is that in the sense of anything
21 is possible?

22 A. That's in the sense of it's possible aliens put
23 it there, I guess.

24 Q. All right. And in that regard, though, Deputy
25 Kucharski, while you were working with these

1 gentlemen that week, in fact, you worked with
2 them more than one day, didn't you?

3 A. Yes.

4 Q. Is there anything that either led up to that
5 moment, or anything from that moment forward that
6 caused you any concern, either about their
7 integrity as law enforcement officers, or about
8 the performance of their duties out at the scene?

9 A. No.

10 Q. After that particular moment, that is, after the
11 key was found, were you continued to be assigned
12 to Lieutenant Lenk and Sergeant Colborn; in other
13 words, did you have further responsibilities that
14 day?

15 A. Yes.

16 Q. Did you perform any other of what you are now
17 calling thorough searches that day?

18 A. Yes. We made a thorough search of Charles
19 Avery's trailer.

20 Q. Now, the kind of search and, again, we have
21 talked about different kinds of searches, but
22 could you describe the search of Charles Avery's
23 trailer?

24 A. I would believe that would be the most thorough
25 search that we did. I think we attempted to look

1 in every place in Charles Avery's trailer. We
2 actually even went underneath the trailer. We
3 went into the -- I wouldn't call it an attic, but
4 on the top of the trailer there's a -- some type
5 of crawl space. Sergeant Colborn actually
6 crawled up in there.

7 Q. You weren't targeting or limiting your search
8 efforts to just Steven Avery's trailer; is that
9 right?

10 A. That's correct.

11 Q. At the conclusion of that day, Deputy, that is,
12 on the 8th, did you once again return to the
13 sheriff's department and enter or log in all of
14 this evidence?

15 A. Yes, I did.

16 ATTORNEY KRATZ: Judge, I will be moving at
17 this time to admit, not only the physical evidence
18 but the photographs that have been identified by
19 this witness. I can list those if --

20 ATTORNEY BUTING: I object to --

21 ATTORNEY KRATZ: -- Court or counsel want
22 me to.

23 ATTORNEY BUTING: The only one I object to
24 is the wire which this witness testified he did not
25 collect.

1 ATTORNEY KRATZ: I didn't intend to offer
2 that through this witness, Judge.

3 ATTORNEY BUTING: Just one moment, then.

4 THE COURT: Can we clarify what number that
5 particular exhibit is.

6 ATTORNEY KRATZ: Sure, that was Exhibit
7 No. 249. That was the only one that we haven't
8 offered, your Honor.

9 ATTORNEY BUTING: What is -- What are 251
10 and 236?

11 ATTORNEY KRATZ: 251 was not identified by
12 this witness.

13 ATTORNEY BUTING: Okay.

14 ATTORNEY KRATZ: That will be a different
15 -- different matter.

16 ATTORNEY BUTING: 236?

17 ATTORNEY KRATZ: 236 is a photograph, one
18 of the photos of the inside of the garage.

19 (Court reporter couldn't hear.)

20 ATTORNEY KRATZ: Photograph of the garage
21 is 236.

22 THE COURT: Mr. Kratz, can you list the
23 exhibit numbers of the exhibits that you are seeking
24 the admission of?

25 ATTORNEY BUTING: That's probably a good

1 way to do that.

2 ATTORNEY KRATZ: I can certainly try.

3 THE COURT: You can say, like 241 through
4 250, or whatever. You don't have to identify them
5 all individually, but specify the numbers.

6 ATTORNEY KRATZ: I think I'm able to do
7 that. I think it's Exhibit No. 221 is what I'm
8 starting with and it goes through -- goes through
9 261, with the exceptions, your Honor, of 251, and
10 249.

11 ATTORNEY BUTING: No objection to that,
12 then.

13 THE COURT: All right. Exhibits 221
14 through 261, with the exception of Exhibits 249 and
15 251 are admitted.

16 ATTORNEY KRATZ: Thank you, Judge.

17 THE COURT: Mr. Buting.

18 ATTORNEY BUTING: Yes.

19 **CROSS-EXAMINATION**

20 BY ATTORNEY BUTING:

21 Q. Good morning, Deputy.

22 A. Good morning.

23 Q. We have a lot to cover here. Let me maybe start
24 towards the end here. When you were asked by Mr.
25 Kratz if it was possible that Lenk or Colborn

1 could have planted, let's say the key, without
2 your seeing them, your answer was possible,
3 right?

4 A. That's correct.

5 Q. And it wasn't -- There weren't any aliens in the
6 room, right?

7 A. Not that I know of.

8 Q. So your later comment about it being possible in
9 the same way that aliens are possible, really
10 isn't a fair characterization of what you meant,
11 is it?

12 A. Are you asking my opinion on ...

13 Q. I'm asking you to characterize your answer. When
14 you said it's possible, you didn't mean that it
15 was possible in the same sense that aliens are
16 possible, did you?

17 A. I don't understand.

18 Q. All right. Let me try it this way. You were a
19 collections officer, evidence collections
20 officer?

21 A. Yes.

22 Q. That was part of your role?

23 A. Yes.

24 Q. You also were documenting?

25 A. Yes.

1 Q. And photographing?

2 A. Yes.

3 Q. Taking gloves off, putting gloves on?

4 A. Yes.

5 Q. And, in addition to that, you were a searcher?

6 A. Yes.

7 Q. You actually opened drawers or took things out

8 yourself?

9 A. Yes.

10 Q. And in the process of doing that, you looked at

11 the items that you would take out, right?

12 A. Yes.

13 Q. And your attention and your focus would be on

14 those items, right?

15 A. Yes.

16 Q. And you were not told at the beginning of that

17 shift, that your function was to be a watchdog

18 for Mr. Lenk and Mr. Colborn, were you?

19 A. That's correct.

20 Q. You were not told to keep your eyes on those two

21 officers at all times?

22 A. Correct.

23 Q. In fact, this was a lieutenant and a sergeant,

24 right?

25 A. Yes.

1 Q. Both of whom clearly out rank you, right?

2 A. No.

3 Q. You were a deputy?

4 A. They weren't in my chain of command; I work for
5 the Calumet County Sheriff's Department.

6 Q. Okay. In terms of officer rank, they out ranked
7 you though, right?

8 A. They held a higher rank in Manitowoc's --

9 Q. Okay.

10 A. -- Sheriff's Department, yes.

11 Q. And did you ever know them before?

12 A. Never met them before.

13 Q. Never met them before, okay. But you knew their
14 rank?

15 A. Yes.

16 ATTORNEY KRATZ: And I'm going to object as
17 irrelevant. And so does General Schwartzkopf, but
18 that has nothing to do with this witness.

19 ATTORNEY BUTING: This is
20 cross-examination.

21 THE COURT: This is cross, I will give him
22 a little latitude.

23 Q. You knew their rank?

24 A. Yes.

25 Q. Sergeant and lieutenant.

1 A. Yes.

2 Q. And I take it that it never occurred to you that
3 a fellow law enforcement officer would do
4 something like plant evidence, did it; on that
5 day, in that room?

6 A. No.

7 Q. That was not on your radar, was it?

8 A. No.

9 Q. You were not watching Lenk and Colborn to be sure
10 that they did not plant evidence, right?

11 A. That's correct.

12 Q. What we do know is, that when you came into that
13 bedroom the first time, there was no key on the
14 floor, was there?

15 A. That's correct.

16 Q. And you had been in that bedroom searching with
17 Lenk and Colborn for about an hour, close to an
18 hour, by the time that key was discovered, right?

19 A. Approximately, yes.

20 Q. Three people in that little bedroom, right?

21 A. Yes.

22 Q. And Colborn and Lenk were both searching the desk
23 and bookcase in that area, right?

24 A. Yes.

25 Q. The two of them --

1 ATTORNEY BUTING: I think I will put up
2 that ELMO photo again.

3 Q. (By Attorney Buting)~ I'm showing you Exhibit --
4 I'm sorry -- 104, which is now up on the screen;
5 do you recognize that?

6 A. Appears to be some type of model of the bedroom
7 in Steven Avery's residence.

8 Q. All right. And it's missing a lot of items
9 though, right?

10 A. Looks like just the furniture, and the walls and
11 windows and that type of thing is missing.

12 Q. But over in the -- what would be the top right
13 photo -- or corner of this photo, there's a desk
14 and a chair, right?

15 A. Yes.

16 Q. And a bookcase with some sort of vertical slots?

17 A. Yes.

18 Q. And there were lots of things on and in those
19 items, right, at that time?

20 A. Yes.

21 Q. We're talking November 8th?

22 A. Yes.

23 Q. And that's the area that both Lieutenant Lenk and
24 Sergeant Colborn were searching, among others?

25 A. Among others, yes.

1 Q. But during that one hour, they were searching in
2 that area, right?

3 A. Yes.

4 Q. (By Attorney Buting)~ Do you remember the key
5 picture, Exhibit No. -- Do you have the
6 photograph up here with the key on the floor?

7 A. Oh, on the floor, I don't think so.

8 ATTORNEY STRANG: It's 210.

9 ATTORNEY BUTING: 210.

10 Q. (By Attorney Buting)~ Showing you 210, again, up
11 on the screen, that's what you were looking at
12 earlier and that's -- you took this photo, didn't
13 you?

14 A. Yes, I did.

15 Q. And that's exactly the way the key looked when
16 you first saw it?

17 A. That's correct.

18 Q. And there's also an evidence -- some sort of like
19 an -- looks to me like a grocery bag, but a brown
20 corrugated sack or something like that, right?

21 A. Correct, in the foreground.

22 Q. And was that there when Lieutenant Lenk left the
23 room or did he bring that back in with him?

24 A. He didn't bring it back in with him. I don't
25 remember it's exact placement as he left the

1 room.

2 Q. All right. And you were actually very nearby
3 searching the nightstand?

4 A. Yes, my feet would have been just on the other
5 side of that -- that paper bag.

6 Q. And so bear with me for a minute, I don't know if
7 my shadow can be on here, but -- so you were
8 turned like this with your back to where the key
9 is, searching the nightstand, weren't you?

10 A. No.

11 Q. You were seated on the bed doing it then, right.

12 A. Yes.

13 Q. But your body is turned so that this key is
14 slightly behind you or over your shoulder?

15 A. No.

16 Q. Well, do you see the nightstand in there?

17 A. No.

18 Q. The nightstand is off -- off the screen
19 altogether, isn't it?

20 A. Yes.

21 Q. So if you are able to reach the nightstand, you
22 have got to be over here somewhere, to the left
23 side of this photo? Or were your feet hanging
24 over in top of the bag?

25 A. No, they were just on the other side of the bag.

1 My feet were actually pointing directly towards
2 the key. It was sitting there and the nightstand
3 would have been to my left hand, the key would
4 have been directly in front of me.

5 Q. Okay. Well, but you didn't see the key?

6 A. That's correct.

7 Q. The key was right, smack, dab in front of you and
8 you didn't see it until Lenk pointed it out to
9 you?

10 A. That's correct.

11 Q. And yet you immediately recognized this key as
12 something of importance, right?

13 A. As soon as we saw it was a Toyota key, yes.

14 Q. Now, sometime earlier than that --

15 ATTORNEY BUTING: I don't know, Judge, do
16 you want to take a break yet?

17 THE COURT: I was going to let you finish
18 this line of questioning, then take a break.

19 ATTORNEY BUTING: Why don't we take a
20 break, because I may want to do something; and I
21 would consider that before.

22 THE COURT: All right. Members of the
23 jury, we'll take our morning break at this time. I
24 will remind you, again, not to discuss the case in
25 any fashion during the break.

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(Jury not present.)

THE COURT: You may be seated.

ATTORNEY BUTING: I don't have anything else for the record. I just want to look through the exhibits before I show them to this officer.

THE COURT: Very well, we'll report back in 15 minutes.

(Recess taken.)

(Jury present.)

THE COURT: At this time, Mr. Buting, you may resume your cross as soon as we get a witness.

CROSS-EXAMINATION CONTD

BY ATTORNEY BUTING:

Q. All right. Deputy, we were talking about this key when we left off. And if I understand -- and I'm not sure if it was in your testimony -- but if I understand your report, just before Lieutenant Lenk left the room, he and Sergeant Colborn were searching that cabinet that's displayed here on the screen, right next to the key, right?

A. Yes, before he left the room, they were searching -- Lieutenant Lenk was assisting Sergeant Colborn move it around and stuff.

Q. And Lieutenant Lenk was about one foot from you

1 when he was doing that, right?

2 A. Yes.

3 Q. So his body would have been between you and this
4 particular area?

5 A. Yes.

6 Q. All right. And you guys talked, after it was
7 found, like, geez, where did that come from,
8 right?

9 A. Yes.

10 Q. Did you examine the back of this bookcase cabinet
11 at that time?

12 A. Not directly after it was found. After it was
13 found, I was pretty much married to it and I
14 stayed with it until Special Agent Joy took it.
15 And then we went back into the bedroom and
16 completed a search. We took a look at that
17 cabinet and tried to figure out where it came
18 from.

19 Q. Did you seize the cabinet at that time?

20 A. No, we did not.

21 Q. You didn't do that for like another month, right?

22 A. I never did.

23 Q. You didn't have anything to do with that. Well,
24 let me show you a photo. I'm going to tell you
25 that it's not the same day. Apparently you

1 didn't take any photographs that same day of what
2 the back of this cabinet looked like, did you?

3 A. No, I did not.

4 Q. But you theorized, between you and Lenk and
5 Colborn, that perhaps the key had fallen out of
6 the rear panel of this cabinet?

7 A. Well, we had several theories.

8 Q. Let's talk one at a time.

9 A. Okay. Yes, one of the theories was it came out
10 of the back of the cabinet. That's what we
11 decided was the most likely.

12 Q. All right. You also theorized that maybe there
13 was a hidden compartment or something, in the
14 cabinet?

15 A. No, we didn't find any hidden compartment.

16 Q. Oh, you looked, right, you looked for any hidden
17 compartments?

18 A. Not me personally, no.

19 Q. Well, when you say, we didn't find any, how do
20 you know that you didn't find any?

21 A. Lieutenant Lenk and Sergeant Colborn looked.

22 Q. Okay.

23 A. While I was there.

24 Q. And while they were there, they didn't find any
25 hidden cabinets, or compartments in that cabinet?

1 A. Correct.

2 Q. And another theory was that perhaps it had been
3 underneath, somehow caught up underneath the
4 cabinet, right?

5 A. Yes.

6 Q. And that was ultimately discarded and you guys
7 settled on this theory, that somehow the key just
8 managed to get around, through that gap?

9 A. In my mind, it was a general, that it came from
10 this -- this cabinet. We also -- There was some
11 thought of in a door area, there was something on
12 the wall, that it possibly could have come from
13 there. But it was pretty quickly dismissed.

14 Q. Right. Because there is a outlet right next to
15 it and a electrical cord, right?

16 A. Right. That's not what I was talking about on
17 the wall. Something higher up on the wall.

18 Q. All right.

19 A. You know, several feet off the floor, there was,
20 but it was pretty obvious that it couldn't have
21 come from there.

22 Q. Okay. So then, your theory that you came up with
23 on that day, to explain why no one had found this
24 key, was that -- And, by the way, the cabinet was
25 up against -- pretty close to up against the

1 wall, right? Wasn't sitting out 3 inches or so,
2 was it?

3 A. It wasn't sitting out noticeably. I can't really
4 say as how close it was to the wall, but it
5 wasn't -- it wasn't a foot away from the wall?

6 Q. Okay. So, at any rate, I don't know if I need
7 these gloves, but since I saw Detective Wiegert
8 use them, I will use them as well. The theory
9 was, then, that this key and the cloth fob and
10 the plastic buckle, somehow managed to come out
11 that back corner, walk around the side, and lay
12 like that, right?

13 ATTORNEY KRATZ: Object, Judge, that's a
14 mischaracterization of the evidence.

15 THE COURT: Well, that's up to the witness
16 to answer. I will allow the question.

17 A. As we were searching that bookshelf, the
18 bookshelf was --

19 Q. Let me just -- Hold on.

20 A. -- pulled away --

21 ATTORNEY KRATZ: Objection. He asked for
22 an explanation.

23 ATTORNEY BUTING: I asked if that was his
24 theory; he can say yes or no. And then we'll go
25 from there. This is cross-examination.

1 THE COURT: No, I'm going to allow him to
2 give his answer.

3 ATTORNEY BUTING: Okay. Go ahead.

4 A. The bookcase was pulled away, turned, searched,
5 and it was reasonable that while it was turned
6 away it fell into that area.

7 Q. But this key --

8 ATTORNEY BUTING: Can I show this to the
9 jury?

10 THE COURT: Yes.

11 ATTORNEY BUTING: Is there some reason
12 we're keeping gloves on with this, that the jury
13 can't just handle it themselves or ...

14 THE COURT: From what my understanding is
15 there may be, but --

16 ATTORNEY BUTING: All right. We'll deal
17 with that if need be. I will hold it up so
18 everybody can see it. Okay.

19 Q. (By Attorney Buting)~ You didn't hear it hit the
20 floor, whenever it got there, right?

21 A. Correct, the floor is carpeted.

22 ATTORNEY BUTING: Well, can I drop it on
23 the floor here, or do we not want to do that?

24 ATTORNEY KRATZ: What are we doing, Judge?

25 ATTORNEY BUTING: We're testing --

1 ATTORNEY KRATZ: Is this an experiment in
2 front of the jury? If it is, then we need to
3 replicate the conditions. I object to any
4 experimentation at this time.

5 ATTORNEY BUTING: That's fine. We'll hold
6 off on that. The bookcase hasn't come in, so I
7 don't know if they intend to introduce it or not,
8 but it's not here.

9 Q. In any event, you did not hear it hit the floor,
10 carpet or otherwise?

11 A. Correct.

12 Q. And as you, not Lieutenant Lenk and Colborn, but
13 as you were sitting there, thinking, my gosh, how
14 did this key get here, one of the theories that
15 did not occur to you was that Lieutenant Lenk or
16 Colborn perhaps put it there, was it?

17 A. Did not occur to me, no.

18 Q. But as you testified before, because you were
19 busy and occupied with other duties, it is
20 possible that that might have happened without
21 you seeing it, isn't it?

22 A. Possible.

23 Q. Thank you. The electrical wire that we saw a
24 photograph of and that you saw a picture of as
25 well, right?

1 A. Yes, I saw a photograph.

2 Q. You know what we're talking about?

3 A. Yes.

4 Q. It was up on the rafters?

5 A. Yes.

6 Q. Are you a hunter?

7 A. Yes.

8 Q. Do you hunt for deer?

9 A. Yes.

10 Q. Are you familiar with what people do when they
11 catch a deer and bring it home.

12 ATTORNEY KRATZ: I'm going to object,
13 Judge, assuming a fact not in evidence. I suspect
14 Mr. Avery is not a deer hunter. If he is, we have
15 got some other issue.

16 THE COURT: Well, he may or may not be, but
17 I'm going to allow the question.

18 Q. (By Attorney Buting)~ Do you typically hang a
19 deer in a garage after you have done something to
20 it, dressed it, gutted it?

21 A. We hang it outside.

22 Q. Okay. But you know that some people do hang a
23 deer in the garage, right?

24 A. I would assume.

25 Q. In fact, there was a deer in the neighboring

1 garage that very day?

2 A. Yes.

3 ATTORNEY KRATZ: Objection, irrelevant.

4 ATTORNEY BUTING: It's completely relevant.

5 ATTORNEY KRATZ: Brendan Dassey can be a
6 deer hunter, Steven Avery can't.

7 ATTORNEY BUTING: If we're going to argue
8 this in front of the jury, I think that's a problem.

9 THE COURT: I'm overruling the objection.

10 Q. (By Attorney Buting)~ There was a deer hung from
11 the rafters in the garage right next door, right?

12 A. Yes.

13 Q. And so you don't know whether this wire was used
14 to hang deer in that garage, on some occasions,
15 either, do you?

16 A. I don't know what the wire was used for.

17 Q. Do you know whether wire was ever sent to the
18 Crime Lab for any kind of test?

19 A. I don't know.

20 Q. Okay. I suspect we'll hear, if it was.

21 ATTORNEY KRATZ: I ask that that be
22 stricken, Judge.

23 THE COURT: The Court will order that that
24 remark be stricken, the jury is instructed to
25 disregard it.

1 Q. (By Attorney Buting)~ Okay. We looked at a few
2 photographs of the garage. Let me move to the
3 garage for a minute. Were you taking the
4 photographs?

5 A. I took photographs.

6 Q. All right. Did you take any photographs before,
7 before anything had been moved out of that
8 garage, completely as is?

9 A. I took a lot of photographs, I would have to go
10 through my photo line up to see if I did.

11 Q. None come to mind, do they?

12 A. No.

13 Q. And so, we don't really have a complete
14 photographic record of what Mr. Avery's garage
15 actually looked like with all of the items in,
16 before anything was moved out, correct?

17 A. I'm not sure.

18 Q. You said it was pretty cluttered, right?

19 A. Yes.

20 Q. Not a whole lot of room in there even when you
21 got there, right? For instance, Exhibit 231
22 shows the snowmobile and the Suzuki Samurai?

23 A. Yes.

24 Q. Together. We can't see what's to the right of
25 the snowmobile, though, right, in this photo?

1 A. Correct.

2 Q. Do you know what an engine hoist is?

3 A. Yes.

4 Q. Have you ever seen one before?

5 A. Yes.

6 Q. I show you what's been marked --

7 ATTORNEY BUTING: Actually, I will show it
8 to counsel first, I'm sorry.

9 Q. (By Attorney Buting)~ I'm just going to show you,
10 I'm not going to have you identify these. I'm
11 just going to -- but for the record, I will say
12 it's Exhibit 262 and 263. You said you are
13 familiar with what an engine hoist looks like,
14 right?

15 A. Yes.

16 Q. Can you just tell me whether or not that large
17 black item is an engine hoist?

18 A. That is an engine hoist as I know it.

19 Q. Now, just so we're clear, this photograph was not
20 taken in November; this was taken later in March,
21 right?

22 A. I have no idea when this photo was taken.

23 Q. Does the garage look familiar to you, though?

24 A. It's Steven Avery's garage, yes.

25 Q. Okay. And in it is a large hoist?

1 A. Yes.

2 Q. Where in the garage was it on November? Right as
3 you walk in; do you recall it?

4 A. I don't recall.

5 Q. Do you recall that this was behind the tractor as
6 you walk into the garage?

7 A. No, I don't recall.

8 Q. Is it possible that it was?

9 A. Yes.

10 Q. All right. Because we don't have a picture of
11 that area to the immediate right, before items
12 start getting moved in and out of the garage,
13 correct?

14 A. Yes. Yes, we do.

15 Q. We do?

16 A. The only item we removed was the snowmobile.

17 Q. Okay.

18 A. Besides the items that we collected for evidence.

19 Q. We looked through these photographs of the
20 tent -- little tent things, a little quickly the
21 first time around. I just want to go through
22 them with you again for a moment. You mentioned
23 items one through eight, I think, along the right
24 side of the photo, right?

25 A. Yes.

1 Q. There's another item, No. 16 down here, a little
2 tent?

3 A. Yes.

4 Q. What was that?

5 A. I don't recall.

6 Q. And do you see that crack that begins from where
7 item 16 is and runs, what would be north/south,
8 along the left side of the photograph?

9 A. Yes.

10 Q. That's the crack that you were saying was the big
11 crack, that went the full length of the garage,
12 right?

13 A. Approximately.

14 Q. And you're down on your hands and knees, or
15 squatting or something, in order to find these
16 little bloodstains, aren't you?

17 A. The bloodstains were pretty evident. No one --

18 Q. Well, you get down --

19 A. -- was down on their hands and knees --

20 Q. You get down in a squat position --

21 COURT REPORTER: I'm sorry, you're going
22 to have to talk one at a time. No one was down
23 on their hands and knees?

24 A. Not that I saw, it was a dirty floor.

25 Q. Okay. But you would have to squat down, at least

1 squat down in order to make your circles and put
2 your tents and all that stuff, right?

3 A. Yes.

4 Q. So you are getting your face within just a couple
5 of feet or so from the floor?

6 A. Yes.

7 Q. And you are looking for any evidence, at that
8 time, of a possible homicide, aren't you?

9 A. We were -- There was a general search. We were
10 looking for evidence that stood out. Didn't have
11 anything specific at that time that we were
12 looking for.

13 Q. Well, Officer, you picked up some shells, right?

14 A. Yes.

15 Q. And you thought that maybe those were relevant,
16 right?

17 A. Yes.

18 Q. And that they may, in fact, be -- have possibly
19 been involved with a homicide, that's why you
20 took them, isn't it?

21 A. Yes.

22 Q. So you were looking for evidence of a homicide?

23 A. Yes.

24 Q. Including shells, right?

25 A. Yes.

1 Q. And any bullet's that you might come across,
2 right?

3 A. Yes.

4 Q. And you are also, at the same time, looking for
5 bloodstains on the floor, which can be very
6 small, dime or smaller, right?

7 A. Yes.

8 Q. And you are looking all along this crack,
9 virtually every area that is open floor in this
10 whole area, you are looking for bloodstains, or
11 anything that might be evidence of a homicide,
12 right?

13 A. Yes.

14 Q. Pointing now to the left lower side of this
15 photograph, where there's a crack; did you see a
16 bullet on November 6th, 2005?

17 A. No.

18 Q. Because if you had, you would have collected it,
19 wouldn't you?

20 A. Yes.

21 Q. That would have been extremely important
22 evidence, right?

23 A. Yes.

24 Q. And you did not?

25 A. I did not see it, a bullet there.

1 Q. Who else was searching with you?

2 A. On the 6th, in the garage, was Lieutenant Lenk,
3 Sergeant Colborn and Detective Remiker.

4 Q. So four of you, in that garage, right?

5 A. Yes.

6 Q. And none of you found a bullet, or bullet
7 fragment, did you?

8 A. That's correct.

9 Q. Now, let's look at Exhibit 243 for a moment.

10 A. Counsel, kind of zoomed in on it before, so let
11 me do that with the ELMO.

12 Q. Actually, looks to me like it may be slightly
13 different, but you mentioned that there were two
14 little areas that you thought might be
15 bloodstains there?

16 A. Correct, there's spots and then it appears to be
17 some type of pattern.

18 Q. Do you have the laser up there?

19 A. Yes.

20 Q. Could you point to where those two are exactly.

21 A. The two that the tent for six was identifying
22 were these spots and this is the pattern.

23 Q. So when you use your swab, did you swab them
24 separately or did you swab this one, put it in a
25 bag or whatever, swab, what, this one, put it in

1 a bag, what did you do?

2 A. I wasn't taking the swabs.

3 Q. Oh, you weren't?

4 A. No.

5 Q. Who was?

6 A. Detective Remiker, Lieutenant Lenk, and Sergeant
7 Colborn were taking the swabs, or giving them to
8 me, and I was packaging them.

9 Q. All right. You were watching, you were seeing
10 how it was done, right?

11 A. Yes.

12 Q. So you don't know, or do you, whether this swab
13 from No. 6 pertains to this spot, this spot, this
14 spot, or this big blotch, do you?

15 A. No.

16 Q. If they thought they were separate items, they
17 probably would have swabbed them separately;
18 would that be the procedure?

19 A. Well, the procedure that we decided -- that I
20 decided, we had several drops of blood and
21 patterns. You normally take several swabs of
22 them. And we decided to take many swabs of them,
23 pretty much as many as we could. I had a limited
24 amount of swabs in my kit, so we used what we
25 had, but we took many swabs from there.

1 Q. Okay. But just so we're clear here, when you
2 said, I think it was items one through eight that
3 were swabs of possible blood, you didn't know it
4 was blood, just possible?

5 A. Correct.

6 Q. And we entered a whole bunch of these exhibits
7 together, they all say -- I will let you look at
8 a couple of them. I think they are all pretty
9 much the same. Well, maybe not, let me look
10 here. I'm going to show you Exhibit 659, which
11 is one of these little paper bags, take a look at
12 that for a moment, would you, please?

13 A. Yes.

14 Q. And that says -- description of it is -- Well,
15 why don't you just read it?

16 A. Test/control, possible blood drop.

17 Q. Okay. So control, what does that mean; do you
18 know?

19 A. Yes. When we're trained, there is some debate
20 right now as to whether a control is even
21 necessary. When I was in school, they said that
22 it was basically up to us. A control would be --
23 You have the suspected spot, and then a control
24 would be a relatively uncontaminated area. The
25 reasoning behind it is -- I think the reasoning

1 behind it is to try and pick up any type of
2 contaminates that may be in that area besides
3 suspected blood, but, again, it was something
4 that they said was optional at this point in
5 time.

6 Q. Who was telling you it was optional?

7 A. The trainers at Fox Valley Technical College.

8 Q. When did they tell you it was optional, when you
9 were there, or since?

10 A. When I went to school in 2005.

11 Q. Okay. So, this exhibit in front of you, Exhibit
12 259, does that have more than one swab in it, or
13 should it?

14 A. Yes.

15 Q. Just what two, three, five, or do we have any way
16 of knowing?

17 A. Open it up.

18 Q. Well, I mean is it practice to put in more than
19 one swab in each little bag.

20 A. Inside the bag, they are in separate containers.

21 Q. Okay. So there could be more than one swab in
22 each one of these bags?

23 A. Yes.

24 Q. And the fact that there is a control taken, there
25 should be, right?

1 A. Correct.

2 Q. Looking at 651, read what that says, please.

3 A. It says test/control and then control is crossed
4 out, and then continues, possible blood drop.

5 Q. So, with control being crossed out, does that
6 mean there is no control, most likely, in this
7 one?

8 A. I would assume so.

9 ATTORNEY KRATZ: What exhibit was that, you
10 said 600 something?

11 ATTORNEY BUTING: 6 -- I'm sorry, it's 255,
12 the tag number is 651.

13 Q. (By Attorney Buting)~ And, actually, this is your
14 handwriting, isn't it?

15 A. No, that's not my handwriting.

16 Q. Doesn't it say Officer Kucharski on it?

17 A. Yes, it does.

18 Q. I'm sorry, Kucharski?

19 A. Yes.

20 Q. All right. You didn't fill this out, but it has
21 your name on it?

22 A. That's correct.

23 Q. Okay. Do you know who did?

24 A. No, I don't.

25 Q. Hmm. All right. You don't know who sealed it

1 either?

2 A. I would have to look at the package to see if
3 there's initials on it.

4 Q. Well, probably not important, so let's move on.
5 Let me just clear up a couple things here. When
6 you do these swabs and you're looking for
7 possible areas of blood, do you do a
8 phenolphthalein test? Do you know what that is?

9 A. I'm thinking that's some type of presumptive
10 test.

11 Q. Correct. And do you do those -- Did you do those
12 on this day?

13 A. I think we -- at the beginning we may have done
14 one, just to make sure that what we were looking
15 at was blood. I'm not positive on that, though.

16 Q. All right. So you may not have. But in any
17 event, you are picking out spots on the garage
18 floor that may or may not be blood, right?

19 A. Correct.

20 Q. Because you mentioned that there's a number of
21 big areas of fluid and that sort of thing, like
22 you often find on garage floors, right?

23 A. Correct.

24 Q. And like this exhibit right there -- I'm going to
25 put up a different one to show a little bit

1 more -- perhaps the untrained eye -- had a lot of
2 red spots just above the exhibit or the evidence
3 tent number six, correct?

4 A. Correct.

5 Q. But that's not blood is it?

6 A. I don't know.

7 Q. Well, did you swab it?

8 A. I don't know.

9 Q. Have you ever seen transmission fluid?

10 A. Yes.

11 Q. Have you ever seen it stain a floor?

12 A. Yes.

13 Q. Is transmission fluid red?

14 A. Reddish brown tinge if I remember, yes.

15 Q. Okay. And there were literally -- there's lots
16 of stains like this particular red one in that
17 garage; is that fair to say?

18 A. I didn't hear, a lot of scenes --

19 Q. A lot of stains like this, these reddish?

20 A. Yes.

21 Q. Sort of brighter red stains?

22 A. Yes.

23 Q. You're looking more for dark brownish red, right,
24 when you are looking for blood?

25 A. Yes.

1 Q. And this -- Let me just go back for one minute.
2 You mentioned right under the six, there's
3 almost, there's what's commonly called a contact
4 type of a stain, right there, right? Shows a
5 little bit of a pattern?

6 A. Yes, it's some type of pattern.

7 Q. Did you ever make a determination of what that
8 was?

9 A. I'm not trained in blood patterns.

10 Q. Well, did that look like a blood pattern to you?

11 A. It's a pattern.

12 Q. Looks like some sort of a -- something contacted
13 it with, circles, like a footprint perhaps?

14 A. Something like that.

15 Q. And, similarly, No. 8 -- I'm sorry, this is
16 Exhibit No. 244, by the tent. You have that
17 little measuring stick or whatever next to some
18 sort of a contact pattern there, right?

19 A. Some kind of pattern, yes.

20 Q. You never -- Do you have any information as to
21 whether that was ever identified as anything of
22 relevance?

23 A. I don't know.

24 Q. Okay. Could have been just, again, totally
25 unrelated to anything in this case, as far as you

1 know?

2 A. I don't know if it was related or unrelated.

3 Q. All right. Exhibit 245 is the missing poster for
4 Teresa Halbach that you found in the office of
5 the Avery property, right?

6 A. I found it -- We found it in one of the offices
7 of what I call the new shop building.

8 Q. Well, this isn't going to do what I want it to do
9 so I'm going to just show it to you instead.
10 Actually, I think we have one of these better.
11 Okay.

12 Okay. Again, I'm going to just show you
13 Exhibit 10, which has already been identified and
14 introduced as an exhibit. That's a color version
15 of the same thing we just saw on the prior
16 exhibit, right?

17 A. Yes.

18 Q. And it has information about the missing woman,
19 right?

20 A. Yes.

21 Q. And also about her vehicle, does it not?

22 A. Yes, it does.

23 Q. And does it have a license plate on there?

24 A. Yes, it does.

25 Q. SW William 582?

1 A. SWH-582.

2 Q. SWH, okay.

3 A. H as in Henry.

4 Q. And how would you say that if you are calling in
5 a license number; what's your code for those
6 letters?

7 A. S, Sam, W, William, H, Henry.

8 Q. Okay. And it also has the year of the vehicle,
9 does it not?

10 A. Yes, it does.

11 Q. 1999?

12 A. Yes.

13 Q. All right. So if you had this information ahead
14 of time, would there be any reason for you to
15 have to call into your department to ask them to
16 identify the owner of SWH-582?

17 ATTORNEY KRATZ: Objection, Judge, calls
18 for speculation, especially with this witness.

19 THE COURT: I'm going to sustain the
20 objection.

21 Q. (By Attorney Buting)~ Now, you said you are not a
22 blood pattern expert, right?

23 A. That's correct.

24 Q. But you have been to the academy and you have had
25 training, correct?

1 A. I don't think I have been to any academy.

2 Q. I'm sorry, Fox Valley, you mentioned?

3 A. I went to evidence school there, yes.

4 Q. Okay. And have you ever been at any -- you have
5 been at a number of crime scenes I assume,
6 correct?

7 A. Yes.

8 Q. Including ones where there are shootings?

9 A. No, I have not been to a shooting crime scene
10 that I can remember.

11 Q. Okay. But part of your evidence collection
12 training, were you taught about how to collect
13 evidence from the scene of a shooting?

14 A. I think it was more general. I don't think they
15 specifically said this is what you do at a
16 shooting scene.

17 Q. Well, for instance, we looked at a number of
18 these exhibits, No. 234 being -- First, I want to
19 direct your attention to -- this one you said was
20 of the west wall of the garage?

21 A. That's correct.

22 Q. The wall right as you come in the door, the
23 service door?

24 A. Correct. Coming in the service door, it would be
25 to your right.

1 Q. And you mentioned that there's even -- this is
2 even more cluttered with junk than it looks like
3 here because it's really quite deep.

4 A. It's hard to tell the depth in this photo, yes.

5 Q. It really fills up probably 4 feet from the wall,
6 or more?

7 A. I would approximate 4 feet, sure.

8 Q. Okay. Lots of items there. Also, Exhibit 233,
9 which shows kind of part of the right -- that
10 would be the southwest corner and then the
11 southern wall of the garage, right.

12 A. Yes.

13 Q. You can't actually see the corner, but you can
14 see stuff is piled all the way out that far?

15 A. Correct.

16 Q. And also the big John Deere tractor?

17 A. Yes.

18 Q. So there really was not very much open floor
19 space in that garage when you walked in; isn't
20 that true?

21 A. I guess approximately maybe -- do you want me to
22 approximate the size of this space?

23 Q. Well, we probably have it to the half inch on our
24 computer animation, but why don't you just tell
25 us what you think the overall interior size of

1 the garage is?

2 A. Of the entire garage, it's a typical two car
3 garage, you know. And then that west side is
4 like a storage area where you have got 4 or
5 5 feet of storage inside your 2 car garage.

6 Q. And the east bay of the garage was completely
7 filled except for maybe a couple of feet behind
8 the Suzuki Samurai, is that fair?

9 A. You could walk around the Suzuki on all sides.

10 Q. But the Suzuki largely filled up that west --
11 that east bay, correct?

12 A. Yes, it filled up the east bay.

13 Q. But the Suzuki, because it's a smaller SUV, there
14 is -- was some space behind it --

15 A. Yes.

16 Q. -- that was open?

17 A. Yes.

18 Q. And then there's a snowmobile next to it in the
19 west bay, right?

20 A. In the center portion of the west bay, yes.

21 Q. And then there's a tractor, so there's -- really,
22 the only open space in that whole garage was sort
23 of maybe 3 or 4 feet in the east bay, going back
24 towards the rear?

25 A. Yes, a portion of the east bay that wasn't taken

1 up by the snowmobile was open.

2 Q. And then right next to that open area is all of
3 this clutter, many, many items, right?

4 A. To the west of it, yes.

5 Q. Many, many items that would be difficult to wipe
6 clean of any blood spots, if there was any blood
7 spatter, isn't that right?

8 ATTORNEY KRATZ: Objection, calls for
9 speculation and he said he wasn't an expert in that
10 field?

11 THE COURT: Sustained.

12 Q. (By Attorney Buting)~ Did you see any little
13 spots of blood all over things?

14 A. Just on the floor.

15 Q. Just on the floor. And those looked like drops,
16 right, I mean, not like -- Well, strike that, you
17 are not a blood spatter, I won't ask you.

18 Of course, if you had seen anything that
19 looked like blood spots on any of the items
20 surrounding that confined open area, you
21 certainly would have made note of that, wouldn't
22 you?

23 A. Yes.

24 Q. And you did not make note of it?

25 A. Correct.

1 Q. Let me ask you just briefly, after you were done
2 with the garage, you went -- you and Remiker went
3 around to the -- attempted to go around to the
4 rear of the garage?

5 A. I'm not positive on when, exactly, we did that,
6 if it was before or after I take the burning
7 barrels.

8 Q. But it was sometime after the garage had been
9 searched; is that your recollection?

10 A. Correct, we were finishing up the garage and we
11 took a look around the outside along with the
12 inside.

13 Q. Okay. And you said that you were unable to
14 approach because this dog was barking?

15 A. Barking and coming at us, yes.

16 Q. Okay. And you knew the dog would have to be
17 removed in order to search that area?

18 A. Yes.

19 Q. And this is November 6th, right?

20 A. Yes.

21 Q. Let me move back to the prior day, November 5th.

22 A. Yes.

23 Q. One of your duties was actually working with dog
24 handlers, wasn't it?

25 A. Yes.

1 Q. In fact, you spent almost your entire duty at the
2 Avery property on November 5th, going around with
3 dog handlers?

4 A. Yes.

5 Q. And dogs?

6 A. Yes.

7 Q. And dog handlers are experts at handling dogs,
8 right, to your knowledge?

9 A. I would assume they are experts at handling their
10 dogs.

11 Q. All right. Did you ask any of those dog handlers
12 to come and remove that dog from behind the rear
13 of Mr. Avery's garage so you could search that
14 area?

15 A. We actually -- That night, we came up that berm
16 there, in the -- from the area that the cars were
17 stored, with the dog handler. And the dog was on
18 top and it was barking. And I don't remember if
19 I decided, or if she decided, that she didn't
20 want her dog being distracted by the other dog so
21 we stayed away from that area.

22 Q. You are talking about the previous night, now,
23 November 5th, right?

24 A. That was the 5th, yeah.

25 Q. Okay. So did you -- Knowing that and having seen

1 that dog, behind Mr. Avery's garage on the 5th,
2 did you make any effort to have one of these dog
3 handlers, or someone else, remove the dog?

4 A. No. No.

5 Q. How about the 6th, didn't do that either?

6 A. Absolutely not.

7 Q. Let me move to the firearm shells for a moment.

8 You testified here today that you, on November
9 6th, seized 10 or 11 shells, correct?

10 A. Yes.

11 Q. You testified before in this case, though,
12 haven't you, at a preliminary hearing?

13 A. Yes.

14 Q. You were under oath then, right?

15 A. Yes.

16 Q. Just as you are today?

17 A. Yes.

18 Q. Do you recall testifying on that occasion that
19 you seized 10 shells?

20 A. Yes.

21 Q. Never said 10 or 11, did you?

22 A. Correct.

23 Q. And, in fact, the item -- the exhibit that was
24 shown to you, which is marked as Exhibit 250,
25 this is the one that -- the bag that has the

1 little pill box with shells in it, right?

2 A. Yes.

3 Q. And we had you count how many shells were in
4 there, earlier, correct?

5 A. Yes.

6 Q. Eleven is what you came up with?

7 A. Yes.

8 Q. You don't know how they got in this bag, these
9 two glassine bags?

10 A. No, I don't.

11 Q. But one has three and one has eight?

12 A. Yes.

13 Q. If, in fact, you seized 10 shells from the garage
14 and we have 11 in this pill box, how do you
15 explain that, or can you?

16 A. In my report, I put that we took 10 shell casings
17 from the garage. On the evidence sheet, I put 10
18 shell casings from the garage. When I reviewed
19 the photos there were 11. I miscounted.

20 (Exhibit marked for identification.)

21 Q. You said you reviewed the photos and you counted
22 11.

23 A. Correct.

24 Q. You told us earlier that you didn't take photos
25 of all the shells; do you recall that?

1 A. Correct.

2 Q. Because some of them were under items and so you
3 couldn't photograph them in their location.

4 A. Correct.

5 Q. You actually moved -- lifted up items in the
6 garage, some of that junk in order to find some
7 of those shells?

8 A. I didn't lift anything up. It would have been
9 Lieutenant Lenk, Sergeant Remiker or -- Detective
10 Remiker or Sergeant Colborn.

11 Q. Okay. One of the four of you actually had to
12 move some of that junk in order to find the
13 shells; they were not all laying out in the open
14 somewhere?

15 A. They weren't all laying out in the open. I can't
16 really testify to what they did. I don't know if
17 it was inside of something or --

18 Q. Okay.

19 A. -- if it was underneath or what.

20 Q. All right. But in any event, you don't have
21 photographs that show 11 shells, do you?

22 A. Just this photo here, Exhibit 220.

23 Q. All right. Now, I'm showing you Exhibit 264, will
24 you look at that for a moment and identify that.

25 A. This is the evidence property document that I

1 filled out -- a copy of it that I filled out for,
2 among other things, the .22 long rifle casings
3 that we collected.

4 Q. All right. And it has got these swabs of these
5 garage stains, unknown stains, right?

6 A. Correct.

7 Q. And it has also got item No. 11, it says 10 .22
8 LR empty casings from garage floor, correct?

9 A. Yes.

10 Q. Now, underneath that is item 12?

11 A. Yes.

12 Q. That says 1 .22 empty case?

13 A. No.

14 Q. What does it say?

15 A. 223 empty case.

16 Q. Oh, so that's a completely different type of
17 bullet or --

18 A. Case.

19 Q. -- shell?

20 A. Yes.

21 Q. Okay.

22 A. That's a Remington 223.

23 Q. So that was -- that could not explain why there's
24 11; is that what you are telling me?

25 A. Right.

1 Q. Couldn't be that those were mixed up?

2 A. Not in the package, but I'm thinking that's where
3 it got -- that it was mixed up that it's between
4 10 and another one, the 11. I think that's where
5 it got mixed up, not the actual cases got mixed
6 up, just the number of count.

7 Q. Well, Exhibit 220, which you identified earlier
8 as a box that has some -- do you know when that
9 photograph was taken?

10 A. No, I don't.

11 Q. Do you know whether that was before or after it
12 went to the Crime Lab?

13 A. I don't know when it was taken.

14 Q. All right. So you didn't open it? I mean, this
15 used to be, if this was evidence that was seized
16 at the garage, I assume that it would have been
17 in one of these nice little bags all sealed up
18 with tape, right?

19 A. Yes. Well, it was in the box, for sure, sealed
20 -- the box was sealed. I don't remember if I put
21 it in another.

22 Q. Okay. So the box could have been a box like
23 this, that was inside the paper bag that has a
24 seal on it, right?

25 A. Correct.

1 Q. But there's no tape on that particular box, that
2 we can see, right?

3 A. No, it's been opened.

4 Q. That's what we're referring to, correct?

5 A. That's the picture, yes.

6 Q. And did you ever amend your report to indicate
7 that there were 11 casings instead of 10?

8 A. No, I didn't.

9 Q. Did you ever amend that property inventory sheet
10 which we just marked as exhibit --

11 A. 264.

12 Q. -- 264?

13 A. No, I did not.

14 Q. And, in fact, you came to the conclusion that,
15 oh, maybe there really were 11 instead of 10,
16 when somebody showed you this exhibit that's now
17 on the screen; isn't that right?

18 A. Yes.

19 Q. Somebody else who had opened the evidence after
20 you?

21 A. I don't know who opened the evidence.

22 Q. Who showed you this photograph?

23 A. District Attorney Kratz.

24 Q. And that's when you determined that you had
25 miscounted and that there were really 11 instead

1 of 10, right?

2 A. Yes.

3 Q. Okay. This rifle, you indicated that you have
4 some expertise of sorts because you are a -- work
5 for the armory?

6 A. I'm the armorer for the county.

7 Q. Okay. This item here that's the .22, marked as
8 Exhibit 247; it's a pretty common firearm,
9 wouldn't you say?

10 A. Yes.

11 Q. It's pretty cheap?

12 A. Yes, relatively, I don't think too many guns are
13 cheap any more.

14 Q. Well, maybe between 100 and \$200, something like
15 that.

16 A. I would have to look up what the price is.

17 Q. Buy it at Wal-Mart, or places like that?

18 A. I believe Wal-Mart stopped selling guns now. I
19 don't know what they used to carry or do carry.

20 Q. But it's the kind of gun that many people have?

21 A. Yes.

22 Q. Many. It's a standard cheap .22?

23 A. Yes.

24 Q. Used for hunting rabbits, things like that?

25 A. Used for a lot of things, yes.

1 Q. In fact, you found another one, very similar to
2 that, on the Avery property; did you not?
3 A. Yes, I did.
4 Q. And that one was also a Marlin Model 60SS .22
5 caliber, semi-automatic rifle, found in the --
6 you found a Marlin Model 60SS .22 caliber
7 semi-automatic rifle in another residence?
8 A. Yes.
9 Q. Sort of next to a refrigerator?
10 A. Yes, I thought I heard you, the exact rifle,
11 there are some differences between the rifles.
12 Q. But they are similar?
13 A. Yes.
14 Q. Same class, certainly?
15 A. Same model.
16 Q. Same model even. Okay. Do you remember where
17 you got that?
18 A. That was out of Charles Avery's residence.
19 Q. Also known as Chuck?
20 A. Chuck, yes.
21 Q. Did you test that rifle to see if it had been
22 recently fired?
23 A. That's beyond my scope of expertise.
24 Q. Did you test this rifle --
25 A. That's beyond my --

1 Q. -- from Mr. Avery's residence?

2 A. That's beyond my scope of expertise.

3 Q. Are you aware of whether anybody tested it, to

4 see if it had been recently fired?

5 A. No, I'm not aware.

6 Q. And you also found some .22 rifles in the Janda

7 trailer right next to Mr. Avery, didn't you?

8 A. We found weapons in the Janda trailer; I don't

9 remember exactly which ones were where. I seized

10 quite a few weapons out of Chuck Avery's, Steven

11 Avery's, the Janda's, shop building, vehicles

12 that were there. But placing all the other ones,

13 I don't know.

14 Q. When you say weapons, these are basically hunting

15 rifles?

16 A. Firearms.

17 Q. Basically rifles?

18 A. Rifles, shotguns, pistols.

19 Q. All right. But the majority appeared to be the

20 kind people would use to hunt?

21 A. Some, yes.

22 Q. Okay. And the ammunition that you identified --

23 Do you still have that photograph up there, or

24 did I take it away from you?

25 A. I have Exhibit 246 of the .22 long rifle

1 ammunition.

2 Q. That's also very common ammunition, right?

3 A. Yes.

4 Q. It fits in any .22?

5 A. No.

6 Q. Any .22 long rifle?

7 A. Yes.

8 Q. And would have fit in any of those other .22 long
9 rifles that you seized on the Avery general 40
10 acre property?

11 A. Yes.

12 Q. And the two rifles that are introduced here in
13 court that are sitting over on this evidence
14 table, the muzzleloader and the .22 long rifle;
15 those are the only two firearms that you found in
16 Mr. -- in the trailer in which Mr. Avery resided,
17 right?

18 A. Yes.

19 Q. Do you know who owns that trailer?

20 A. I don't know who owns the trailer.

21 Q. Do you know who owns those firearms?

22 ATTORNEY KRATZ: Objection, irrelevant,
23 your Honor, possession not ownership.

24 ATTORNEY BUTING: Ownership goes to
25 possession as well.

1 THE COURT: I will allow the question.

2 Q. (By Attorney Buting)~ Do you know who owns --

3 THE COURT: There's a difference between
4 determinative and relevance.

5 ATTORNEY KRATZ: Correct. Hearsay, Judge.

6 THE COURT: That's too early for that; the
7 question is, if he knows.

8 ATTORNEY BUTING: Yeah.

9 Q. (By Attorney Buting)~ Do you know who owns those
10 firearms?

11 A. I would have to assume; I don't know.

12 Q. You don't know?

13 A. Correct.

14 Q. You are assuming just because you found them in
15 that trailer?

16 A. I assume Steven Avery owns them because they were
17 found in his bedroom, because the one has tape on
18 it that says the name Steve.

19 Q. Tape on it, kind of like a neon sign, right here,
20 Steve, right?

21 A. Yes.

22 Q. Pretty obvious, isn't it?

23 A. Yes.

24 ATTORNEY BUTING: Thank you. That's all I
25 have.

1 THE COURT: Any redirect?

2 ATTORNEY KRATZ: Not of this witness,
3 Judge, thank you.

4 THE COURT: All right. The witness is
5 excused.

6 ATTORNEY BUTING: I would move -- No, I'm
7 not moving it yet, sorry.

8 THE COURT: Okay. It's 10 to 12, I don't
9 know if it pays to get into another witness at this
10 time.

11 ATTORNEY BUTING: I would -- I'm sorry,
12 your Honor, but the property inventory sheet up
13 there, I would move that into evidence; the other
14 two photographs, I'm withholding for the moment.

15 THE COURT: 264?

16 ATTORNEY BUTING: 264.

17 THE COURT: Any objection?

18 ATTORNEY KRATZ: No, Judge. But I -- I
19 wanted to remind the Court there was maybe something
20 before lunch that we might want to put on the record
21 unless we were going to do that after.

22 THE COURT: I don't remember if it was
23 before or after; I thought it was after. Maybe I'm
24 mistaken. Does either party have anything they wish
25 to put on the record, outside the presence of the

1 jury, before lunch.

2 ATTORNEY BUTING: No, your Honor.

3 THE COURT: I'm going to take that as a no
4 for now.

5 ATTORNEY KRATZ: Other than there would be
6 something right after lunch.

7 THE COURT: Yes. All right. Members of
8 the jury, we were going to take our lunch break a
9 few minutes early today. I will remind you not to
10 discuss the case among yourselves in any fashion
11 during the lunch break.

12 There may be an item we have to take up
13 outside of the jury's presence immediately after
14 lunch, so I can't promise you exactly when we'll
15 be resuming. But we'll let you know as soon as
16 we're ready. You are excused for lunch at this
17 time.

18 (Jury not present.)

19 THE COURT: You may be seated. Counsel,
20 I'm going to ask you to report back to chambers a
21 little before 1:00, to let me know what your plans
22 are after lunch.

23 ATTORNEY KRATZ: That's fine, thank you.

24 THE COURT: All right.

25 (Noon recess taken.)

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(Jury not present.)

THE COURT: At this time we're on the record, outside the presence of the jury. We're going to begin by taking up a matter which was brought to the Court's attention yesterday; that is, the Court received a note from the jury bailiff that one of the jurors raised a question indicating that, after Deputy Remiker testified, the juror realized that the juror did not know him by name, but had been a juror in a jury trial some years ago in which Detective Remiker was involved, and conscientiously raised the question whether that was a problem in this case.

I presented the note to the attorneys. And at this time, before taking further action, the Court wishes to hear the position of the parties on this matter. Mr. Kratz, I will allow you to go first -- or excuse me -- Mr. Fallon.

ATTORNEY FALLON: Thank you. Good afternoon, Judge. The appearances of the State are Ken Kratz and Tom Fallon, Special Prosecutors. Our position on this, after having been made aware of this, is that the Court individually question the juror regarding her specific knowledge and recollection of the events involving that lawsuit.

1 Most notably, what, if anything, she
2 remembers of the suit; what, if anything, she
3 remembers of the length of the trial, the number
4 of witnesses; more importantly, what, if
5 anything, she remembers regarding Detective
6 Remiker's involvement in the suit, whether he
7 testified in the suit, whether she was called
8 upon, in her capacity as a juror, to evaluate his
9 credibility in that case, and if so, to what
10 extent and what circumstances.

11 Based on the information that we have,
12 it was a case that centered on damages received
13 by Mr. Remiker while in the performance of his
14 duties, apparently he was in a squad car and was
15 rear-ended by another driver. So the question of
16 liability was not prominent in that particular
17 case and rather was a question of damages.

18 So if that is in fact the case, I think
19 we should question the juror to see what, if
20 anything, she remembers; and what, if any,
21 conclusions or opinions that she reached then
22 that she may have now, in terms of being called
23 upon to evaluate the credibility of Detective
24 Remiker in this case.

25 And most importantly, whether or not any

1 information, or opinions, or knowledge that she
2 would have gained from the lawsuit filed in 1999
3 would have any impact in her ability to perform
4 her required duties as a juror in this particular
5 case.

6 I think it would be premature to excuse
7 her for cause at this particular point, without
8 more information being made available to the
9 Court and the parties to make an informed
10 assessment. And it may turn out that she has to
11 be excused, and that would be fine with the
12 State. But our position is that there should be
13 a more adequate record made before that measure
14 is indeed selected. Thank you.

15 THE COURT: Mr. Strang.

16 ATTORNEY STRANG: Thank you, your Honor. I
17 would like to start with the easiest points first.
18 First, the juror did the right thing in bringing
19 this to the Court's attention with a note to the
20 bailiff.

21 Second, I have no information that the
22 juror's mistake about knowing Detective Remiker
23 was anything other than an innocent mistake, that
24 she didn't recognize the name at the time,
25 recognize the face when she saw him here. Again,

1 I have no reason to question the good faith of
2 the juror through the voir dire process or
3 filling out the jury questionnaire.

4 Those two easier points made, I think
5 that the right thing for the Court to do is to
6 excuse Ms Temme, and I say that for several
7 reasons. One, again, the easiest point first,
8 we're almost two solid weeks of testimony into
9 the trial, probably somewhere near a halfway
10 point, certainly of the State's case, I would
11 think. And we have four alternate jurors, four
12 extra jurors.

13 So the cost to the parties or the Court
14 of discharging any one juror seems not very high,
15 at least if we play the probabilities on how many
16 alternates we really would need. We have got
17 four spare jurors at the moment.

18 Second, the problem this presents is a
19 first for me. And although we have not had a
20 chance to do any serious research on it, I would
21 be surprised if we found much in the reported
22 case law in Wisconsin, or in any other
23 jurisdiction, that gave a whole lot of guidance
24 here.

25 But the way I see it, is this. We have

1 a juror here who doesn't just know a witness in
2 the case from outside of the courtroom, we have a
3 juror who knows a witness in this case from
4 filling a very special role in an earlier case,
5 in which that witness also filled a special role.

6 And by that I mean, the juror here is,
7 in fact, and will be told, that she is a judge in
8 this case, a judge of the facts; as important a
9 judicial role as your Honor's, although in a
10 separate realm. She also filled that role in an
11 earlier case as a juror.

12 This is a role that many citizens go
13 their entire life and never get to fill. And
14 others, once, twice, maybe three times, in a
15 lifetime, serve as a juror in our system. So
16 it's an atypical role, and a serious one, and one
17 that involves some artificiality in weighing
18 evidence, in weighing the credibility of human
19 beings who testify in a courtroom.

20 One has to set aside what one knows, or
21 thinks she knows, about facts from outside the
22 courtroom. One has to follow specific
23 instructions in how to weigh credibility. And
24 one has to weigh credibility collaboratively with
25 11 other judges of the facts.

1 So it's a very specialized, as I say,
2 role that she's filled, as to Detective Remiker,
3 in the past. He too had a special role. He was
4 not just a witness, or a visitor to the courtroom
5 whom she may have met during the trial, he was
6 both witness and a party, as I understand, in the
7 earlier lawsuit. He probably testified.

8 In ordinary life, at the diner, or at a
9 dinner party, or at school, wherever we may meet
10 people, we don't put one another under oath to
11 engage in conversation and to decide what we
12 believe and what we don't, of what someone else
13 tells us.

14 And, of course, if you are a witness in
15 a trial, you are under oath. If you are a party,
16 as well, almost unavoidably your credibility is
17 at stake and you have an interest, certainly, in
18 the outcome of the litigation. That's why I say,
19 almost unavoidably, your credibility is at stake.

20 So both have had special roles. And
21 while in day-to-day discourse we might have a
22 positive initial impression of a casual
23 acquaintance and come to change our mind about
24 that when we get an incite or glimpse into
25 character that causes us to question the initial

1 good impression we had, or vice versa, this
2 happens in everyday life.

3 As a juror, or a judge of the facts,
4 this juror has committed her judgment to the
5 credibility, to assessing the credibility of a
6 witness here, based on his role as a sworn
7 witness and a party on an earlier proceeding. It
8 is human nature for any judge, including one, a
9 judge of the law who wears a black robe, to be
10 reluctant to reconsider or set aside judgments
11 one's made.

12 Wisconsin law recognizes this in a very,
13 I concede, a loosely analogous way when, for
14 example, if a case is reversed and remanded by an
15 appellate court, sent back to a trial court, my
16 recollection of Wisconsin law is that the parties
17 have a renewed or revived right to substitute
18 on the judge of the law who first heard that case
19 and now has had his or her judgment vacated or
20 reversed and remanded.

21 That has to be a tacit recognition that,
22 in the special role of judging, it is harder to
23 set aside a considered judgment drawn from sworn
24 testimony and under the well-crafted and
25 instructed rules by which judges of the facts

1 decide credibility of witnesses, and ultimately
2 decide facts in a case.

3 So I think that this is such an unlikely
4 task for a juror to be able to undertake; that
5 is, to set aside, not just what do I know
6 casually about this witness in this trial, but to
7 set aside my experience with that witness as a
8 sworn witness in an earlier lawsuit of which I
9 was a judge of the facts.

10 I think it's so unlikely that a juror
11 will do that successfully, excuse me, that this
12 presents a question of objective bias. The
13 closest case we have in Wisconsin clearly is
14 ***State v. Kiernan***, K-i-e-r-n-a-n, 227 Wis. 2d,
15 736, a Wisconsin Supreme Court decision of about
16 7 or 8 years vintage, 1999, affirming a Court of
17 Appeals decision which I think was reported at
18 226 -- or 221 Wis. 2d, 126.

19 It's not a perfect match, but there we
20 had jurors in trial number two who had rejected
21 the defense presented in trial number one, by the
22 same lawyer, and it was to be the very same
23 defense in the second trial, both of them being
24 operating while intoxicated cases.

25 As I understand ***Kiernan***, the trial judge

1 in trial number two refused to strike for cause
2 jurors who had served in trial number one and
3 rejected the same lawyer's presentation of the
4 same defense.

5 That was held to be a matter that made
6 the jurors objectively biased in trial number
7 two. And the judgment was set aside by the Court
8 of Appeals; and then the Court of Appeals, in
9 turn, affirmed by the Supreme Court, as I
10 understand the history of the case.

11 Again, not a perfect match. Trial
12 number one and trial number two were very close
13 in time, in **Kiernan**; here we have a period of
14 six, seven years between trials. But, in some
15 ways, this is a stronger case for objective bias
16 because we're talking about the same witness in
17 trial number one and in trial number two and a
18 witness whose credibility clearly was at stake in
19 trial number one and clearly will be at stake in
20 trial two, here.

21 Detective Remiker is a member of
22 Manitowoc County Sheriff's Department. He is a
23 detective. He was actively involved in this
24 investigation. He may have been the most
25 prolific report writer among the entire Manitowoc

1 County Sheriff's Department retinue.

2 He works directly for, and is supervised
3 by, Lieutenant James Lenk, a critical figure in
4 this case. And he was -- he, that is, Detective
5 Remiker -- was involved and testified to most of
6 the significant searches in which physical
7 evidence that the State has introduced, and will
8 continue to seek to introduce, was seized and
9 gathered.

10 Moreover, Detective Remiker was one of
11 just two law enforcement officers who have
12 testified to date, in this trial, to statements
13 of the accused. And indeed there were only three
14 witnesses who have offered any statements of the
15 accused, if my memory serves; one, a citizen,
16 Bobby Dassey, and then two law enforcement
17 officers, Sergeant Colborn and Detective Remiker.

18 So his credibility is important here,
19 probably quite important. Of the witnesses so
20 far, the voice of Detective Remiker is the only
21 witness voice these jurors heard in either
22 parties opening statement, and that was in mine,
23 when I played part of what is now Exhibit 126.

24 He's an important witness. Because I
25 think the issue primarily is objective bias, it

1 makes no sense, in the view of the defense, to
2 question the juror. If the issue were subjective
3 bias, then the juror's answers would be
4 dispositive, in all likelihood, unless the Court
5 had reason to question the voracity of the juror,
6 by demeanor or statements.

7 But when the question is objective bias,
8 as the scheme in Wisconsin for juror
9 qualification is broken down, then it really
10 doesn't matter if the juror denies a subjective
11 bias. With objective bias we say, no, from a
12 reasonable person's vantage point, this would not
13 be considered an unbiased juror.

14 So, while with an objective bias issue
15 we don't gain anything by questioning a juror, we
16 certainly do put something at risk if we do that
17 and the juror has not been excused. The things
18 at risk are this, as I see:

19 (A) Because we are mid-trial, we risk
20 meddling, in a subtle way, with the deliberate
21 process of this juror and potentially with the
22 entire jury. Because this juror specifically
23 will be instructed to set aside both her prior
24 experience with Detective Remiker, in a virtually
25 identical role, sworn as a witness, and that she

1 may not discuss with the other 11 jurors, if
2 she's among the 12 who deliberate in this case,
3 what she knows of, or brings to the courtroom of,
4 Detective Remiker.

5 Now, it's one thing to extract that kind
6 of a process in voir dire, before a jury is
7 sworn. It is quite another, I think, mid-trial,
8 with a sworn jury, and a member of that sworn
9 jury, to start parsing what can and cannot be
10 considered in deliberating on the credibility of
11 the witness.

12 Now, understand me clearly, if she were
13 to remain a member of this jury, she would have
14 to be told that she cannot consider Detective
15 Remiker's earlier role and that she cannot share
16 that with these jurors, in this case. She would
17 have to be told that.

18 But the likelihood that she understands
19 that and that that doesn't chill her deliberative
20 -- her proper deliberative process, or affect the
21 deliberative process of the jury as a whole, it
22 seems to me is low, or questionable. So there
23 is, at least, that risk, (A), as I say.

24 (B) The risk of doing this is that, the
25 fact that she's been pulled out, singled out,

1 will either be understood by the jury or
2 understood by her, and as being singled out, and
3 as an instance that resulted in her being put
4 under some special instructions that the other
5 jurors are not under, and that -- that presents
6 its own obvious problems, I think.

7 So, I think for -- for all of the
8 reasons I have explained, this is not something
9 the Court ought to undertake; that is,
10 questioning the juror is not something the Court
11 ought undertake. I also think that, on these
12 circumstances, there is, at this point, on the
13 information we have, reason to find objective
14 bias and that the juror ought to be relieved of
15 her further duties, with the thanks of the Court
16 and the parties because, again, she's done the
17 right thing by reporting to the Court the
18 problem. And that's -- that's the view of
19 counsel for Mr. Avery.

20 THE COURT: All right. Well, I'm going to
21 make a couple comments at this time. First of all,
22 with respect to the supply of alternate jurors we
23 have; it's true that we still have four jurors more
24 than we need to deliberate. But we also have a case
25 which is receiving a great deal of publicity.

1 Jurors can be inadvertently exposed to
2 things that they should not hear, that could
3 result in disqualification. And the Court does
4 not feel at this point, being less than halfway
5 through the trial, that we have so many extra
6 jurors that we can easily dispose of them.

7 With respect to the issue of
8 individually voir diring a juror in a situation
9 like this, I believe that's exactly what the
10 appeals courts expect a trial court to do in this
11 type of a situation.

12 For the Court to, at this time, say that
13 this juror should be disqualified on grounds of
14 objective bias, I would be having to make a lot
15 of assumptions about things that may or may not
16 exist. The only thing the Court knows at this
17 point is that the juror apparently was involved
18 in a civil case six to seven years ago, in which
19 the witness was a party.

20 I don't believe, based on the standards
21 of objective bias as they have developed in the
22 courts over recent years, that I can say on that
23 fact alone, no reasonable person in this juror's
24 position could be a fair and impartial juror in
25 this case. It may be, based on answers to

1 further questions, that that's the situation, but
2 I cannot find that at this point in the
3 proceedings.

4 The juror was conscientious enough to
5 raise the issue on the juror's own initiative and
6 I am very reluctant to, on what would amount
7 essentially to speculation, determine that
8 without questioning the juror, the juror should
9 be excused for cause on objective bias grounds at
10 this stage in the proceedings.

11 So I do believe it is necessary to
12 conduct an individual voir dire of this
13 particular juror. For that reason, the Court is
14 going to take a short break in the proceedings at
15 this time. I have alerted the news media,
16 through their representative, yesterday, of the
17 possibility that a portion of today's proceedings
18 would not be open to cameras and audio and video
19 coverage, for essentially the same reason as the
20 Court handled things that way when we went
21 through individual voir dire.

22 Where a juror's name can be known, where
23 a juror's voice can be heard, those things are
24 entitled not to be carried over the airways and
25 I'm going to, therefore, at this point, take a

1 short break to make sure that there's no audio
2 and video coverage of the proceedings going on.

3 I will indicate that the court
4 proceedings themselves will be open. The public
5 and members of the media are more than welcome to
6 be present in the courtroom. But the Court will
7 not be allowing camera coverage of the individual
8 voir dire, or any audio coverage in any fashion.
9 Mr. Fallon.

10 ATTORNEY FALLON: Yes. On behalf of the
11 State, I think it would be the Court's intention and
12 the defense as well, if you would kindly ask the
13 media not to reference the juror by name in their
14 reporting of this matter.

15 THE COURT: That is the next item that I'm
16 addressing and I'm making that request, that the
17 media -- and the media has been pretty good and
18 responsible in that regard in not identifying jurors
19 by name. I'm sure they will honor the request in
20 this case.

21 In order to give the media an
22 opportunity to be prepared for this short portion
23 of the trial, we'll take a short break at this
24 time and check with the media room to make sure
25 everything is in order. We will resume in

1 probably five minutes or less.

2 (Recess taken.)

3 THE COURT: At this time, we are back on
4 the record, outside the presence of the jury. I
5 will indicate that during the break I spoke to a
6 representative of the media to make sure that this
7 individual voir dire portion of the proceedings was
8 not being televised or the audio portion being
9 broadcast in any way.

10 I will indicate for the record that I
11 did speak to an attorney for one of the media
12 representatives over the noon hour to explain the
13 reason for this brief portion of the trial not
14 being accessible to audio and video coverage.
15 And I believe the explanation was to the
16 attorney's satisfaction, since I have not heard
17 anything back.

18 I also indicated to the media
19 representative that I would grant their request
20 to take a short break after the questioning of
21 the juror is completed so that the media can get
22 their equipment back up and ready to go again.

23 At this point, I will -- Oh, I should
24 also indicate for the record that I met with
25 counsel in chambers over the noon hour and

1 informed counsel of the questions the Court would
2 be asking of the juror and took suggestions from
3 counsel as to additional questions to ask. At
4 this point, we'll have the juror brought in.

5 (Juror present.)

6 THE COURT: You may be seated. I was going
7 to invite you to sit in the front row, but I see you
8 feel at home where you are.

9 Ms Temme, the Court has received a note
10 from the bailiff with the question that you
11 raised yesterday regarding Deputy Remiker. And,
12 first of all, I want to thank you for your
13 conscientiousness in raising this issue for the
14 Court.

15 And at this time I would like to ask you
16 a few questions in order to determine if the
17 issue that you raised poses a problem in your
18 service as a juror. At the outset, I want to let
19 you know that for this portion of the
20 proceedings, because I'm going to be questioning
21 you, the cameras have been turned off. This
22 portion of the proceedings is not being carried
23 on the air, or on the internet, or anywhere else;
24 although, the proceeding is, like all court
25 proceedings, open to the public.

1 As I understand the note I received from
2 the bailiff, you, before the start of the trial,
3 did not recall David Remiker by name, but when
4 you saw him testify, you recognized him as a
5 party in a civil trial for which you served as a
6 juror a number of years ago; is that correct?

7 MS TEMME: Correct.

8 THE COURT: And I did take the opportunity
9 to look up his name on CCAP, I believe the trial
10 involved was a civil trial that occurred in the year
11 2000; does that sound correct?

12 MS TEMME: Correct.

13 THE COURT: Okay. And it's also my
14 understanding that you brought this matter to the
15 bailiff's attention at the break we took during
16 Detective Remiker's testimony.

17 MS TEMME: Right.

18 THE COURT: Have you discussed your
19 concerns with any other members of the jury; that
20 is, this issue?

21 MS TEMME: No.

22 THE COURT: You have not. Okay. I'm going
23 to preface the next series of questions by making
24 clear that I am not going to be asking you for, and
25 I do not want you to say, anything about your

1 impressions of Mr. Remiker's testimony in this case.
2 I'm simply asking information about the previous
3 case that you referred to, in the note I received
4 from the bailiff.

5 Do you remember whether or not
6 Mr. Remiker testified in that case? Did he
7 testify as a witness?

8 MS TEMME: I don't remember.

9 THE COURT: Okay. As I understand it, he
10 was the plaintiff in the case, the person asking for
11 damages?

12 MS TEMME: Correct.

13 THE COURT: And the jury awarded him some
14 damages; is that correct?

15 MS TEMME: Correct.

16 THE COURT: Did you vote with the majority
17 in that jury verdict; do you remember?

18 MS TEMME: Yes.

19 THE COURT: Do you remember how long the
20 trial was, approximately?

21 MS TEMME: I believe it was one week.

22 THE COURT: One week?

23 MS TEMME: Approximately one week.

24 THE COURT: And do you recall anything, for
25 example, about the number of witnesses in the case?

1 MS TEMME: No, I don't.

2 THE COURT: Okay. And if I understand it
3 correctly, you can't say for sure whether or not
4 Mr. Remiker actually testified in the case?

5 MS TEMME: I can't remember. I can't
6 say for sure.

7 THE COURT: Would your experience as a
8 juror in that case cause you to give any more or
9 less weight to his testimony in this case?

10 MS TEMME: No.

11 THE COURT: You indicated that you have not
12 discussed this matter with any other members of the
13 jury; is that correct?

14 MS TEMME: Yes.

15 THE COURT: Will you be able, during the
16 remainder of this trial, including deliberations,
17 not to tell any other members of the jury about this
18 tie you have with Mr. Remiker?

19 MS TEMME: Of course.

20 THE COURT: Counsel, it's my understanding
21 that the parties may request a side bar at this
22 point.

23 (Side bar taken.)

24 THE COURT: Ms Temme, I would like to ask
25 you just a few follow-up questions. You have told

1 me some of the things that you didn't remember about
2 the case; can you tell me what you do remember about
3 it, other than the fact that Mr. Remiker was a
4 plaintiff?

5 MS TEMME: What I remember about it is a
6 lot of discussion about the lower left lumbar of
7 the back, and that it involved an accident down
8 on the I-system with a couple of other vehicles.
9 That's about it.

10 THE COURT: Do you remember anything about
11 the witnesses who testified at the trial?

12 MS TEMME: I don't.

13 THE COURT: Do you remember, at the
14 conclusion of the trial, how you felt about it?

15 MS TEMME: I felt that the plaintiff
16 should receive some monetary value for the
17 problems he was having.

18 THE COURT: Okay. Do you remember anything
19 about the amount of damages that was awarded?

20 MS TEMME: I'm guessing, but I think it
21 was medical bills and maybe like \$100,000.

22 THE COURT: Do you remember if you were in
23 agreement, or not, with the amount of damages that
24 were awarded?

25 MS TEMME: I was in agreement.

1 THE COURT: Is there anything else you can
2 tell us that you remember about your experience as a
3 juror in that case?

4 MS TEMME: I listened to the information
5 from both sides. I know there was a lot of
6 medical information provided. I think that's why
7 I remember the lower left lumbar of the back
8 information. But, it was a good experience.

9 THE COURT: Is there anything at all about
10 your experience as a juror in that case that you
11 feel could have any affect whatsoever on your
12 service as a juror in this case?

13 MS TEMME: No.

14 THE COURT: Okay. Thank you. I'm going to
15 excuse you at this time.

16 (Juror not present.)

17 THE COURT: I forgot one last thing I was
18 going to talk to her about, so I'm going to have the
19 bailiff bring her back out.

20 (Juror present.)

21 THE COURT: You may be seated. Ms Temme,
22 one thing I forgot, that I wanted to tell you, and
23 it sounds like you followed it so far, but I want to
24 make sure that you do not discuss either the fact
25 that you were on a juror (sic) in that case, or any

1 of the questions I asked you here, or any of the
2 answers you gave, with any other member of the jury
3 in this case.

4 MS TEMME: Of course.

5 THE COURT: Okay. Very well. You are
6 excused now.

7 (Juror not present.)

8 THE COURT: All right. Counsel, we're
9 going to take a very short break at this time for me
10 to give the media the break I promised them. And,
11 then, in five minutes, we'll go back on the record,
12 outside the presence of the jury.

13 (Recess taken.)

14 THE COURT: At this time, we are back on
15 the record, outside the presence of the jury. I
16 will hear from the parties at this time concerning
17 their position on the juror, following the voir
18 dire. Mr. Fallon.

19 ATTORNEY FALLON: Yes, thank you, Judge.
20 Quite frankly, we were not surprised by any of the
21 answers obtained from the juror here. I have
22 extensive notes from the jury selection process in
23 terms of the information that we obtained from her
24 and many notes regarding her demeanor.

25 She was questioned about her prior jury

1 experience. She said at that time it was a -- a
2 interesting, good experience, much like she
3 described it today. She just strikes me as an
4 individual who doesn't take things -- I should
5 say, she takes them as she sees them, or as she
6 finds them. And I think it's important to
7 highlight the fact that, here it is 2007 and this
8 trial was at least six years ago, perhaps close
9 to seven years ago, and when asked about what
10 does she remember about the case, I found it
11 rather telling that all she could focus and
12 clearly remember was the lower left lumbar, as
13 being a point of interest to the particular trial
14 at hand.

15 And, if she doesn't recall, equally
16 important, whether Mr. Remiker, in that case,
17 testified, I think that's also a telling fact.
18 Because ordinarily you would expect the plaintiff
19 in a civil case and, quite frankly, I wouldn't be
20 surprised if further review suggests that
21 Detective Remiker did testify.

22 But she doesn't have a clear
23 recollection of that particular incident or his
24 testimony, or any -- or anything else about the
25 case other than the injury to the lower left

1 lumbar and how significant or severe it was.

2 While some may argue that thousands of
3 dollars in special damages for medical bills and
4 perhaps \$100,000, or maybe she's thinking 100,000
5 total, for all the other injuries associated for
6 an accident like that, is not an overwhelming
7 amount of money.

8 She indicated she voted in favor,
9 thought the plaintiff carried the day. But there
10 was nothing about the particular process, or the
11 deliberation, or the evaluation of the testimony,
12 of the evidence and all of that, which is of
13 critical interest to us here today, that suggests
14 that she couldn't perform that same function
15 today.

16 And more importantly, there was no
17 indication in any of the information provided by
18 her that she would not be able to perform that
19 function today, in this case, in setting aside or
20 disregarding any of what occurred in 2000. And I
21 think that's the critical fact here, is there a
22 chance or a likelihood -- I don't mean a chance,
23 but I mean a realistic likelihood, a realistic
24 chance that something about that case would
25 interfere or cause her to unduly sway the

1 evaluation and the credib -- the evaluation of
2 the credibility of Detective Remiker. And we saw
3 no indication of that in this particular voir
4 dire of the juror.

5 So we're not bringing a motion for
6 cause. I don't think there's a sufficient basis
7 to strike for cause on objective bias, because
8 she happened to be a juror in a case six years
9 ago. And the fact that one of the witnesses in
10 this particular case was the plaintiff, again,
11 doesn't seem to be that significant a point or a
12 fact with this juror. Again, as I said, there's
13 nothing that we learned today that would
14 seriously cause us to suggest that she could not
15 perform the duties in this case. So we do not
16 have an objection.

17 THE COURT: Mr. Strang.

18 ATTORNEY STRANG: The defense moves to
19 strike the juror for cause. We adhere to all of my
20 earlier comments and I will add now, after hearing
21 the juror, something on subjective bias and
22 something more on objective bias. The Court, of
23 course, has the province of assessing the juror's
24 credibility and demeanor.

25 I thought it worthy of note that the

1 juror, who is middle-aged -- that's going to get
2 me in trouble with someone, but she certainly is
3 a young person, not an elderly person -- and is
4 describing a trial that, let's assume, happened
5 in 2000 -- if it happened in 2000, it's really
6 not so long ago, that's the year that President
7 Bush first was elected, that's not a long time
8 ago -- and professes here today not to remember,
9 one way or the other, whether the plaintiff in
10 the lawsuit was a witness at some point, during
11 what she's thinks was about a one week trial;
12 it's worth raising, just as a -- as a subjective
13 matter. But I continue to see this primarily as
14 a matter of objective bias.

15 And what I can add, to my comments
16 earlier, is just the exclamation point that, when
17 we have sitting in this jury, at a time when we
18 have ample extra jurors and opportunity to err on
19 the side of caution, when we have someone sitting
20 as a juror, who previously has voted to award
21 \$100,000 to a witness in this case, there is not
22 the reasonable appearance of impartiality and
23 fairness. That just simply doesn't look fair.

24 So, if the Court can -- concludes that
25 subjectively she's not biased, I think there's a

1 real objective bias concern here, and that she
2 ought to be relieved of further duty as a juror
3 in this case.

4 THE COURT: All right. First of all, with
5 respect to the Court's findings in this matter, I
6 find this particular juror to be very credible for a
7 number of reasons. Probably goes back to my
8 recollection of her answers during individual voir
9 dire, which I agree with the State, were similar to
10 what I heard today.

11 She certainly didn't have to alert the
12 Court to the fact that she had been on a jury
13 involving one of the witnesses, seven years ago.
14 I have given no instructions to the jurors that
15 would require them to report that type of
16 information, at least specifically.

17 I have instructed them that if they are
18 exposed to any reports or communications from
19 other parties they should report it, but she did
20 it on her own and I believe she did so
21 conscientiously. Given that fact, I find no
22 reason she would have to be untruthful when she
23 tells the Court today that she simply has no
24 recollection of remembering that Mr. Remiker
25 testified at the trial during which she served as

1 a juror.

2 That's not the same as saying that she
3 believes he did not testify, she simply doesn't
4 remember. If she doesn't remember that he
5 testified, there doesn't appear to be a serious
6 danger that somehow, because she found him
7 credible as a witness in that trial, she will be
8 more likely to find him credible as a witness in
9 this trial. She doesn't even have a recollection
10 of him testifying.

11 Her most vivid recollections of that
12 trial are related more to the injuries, the fact
13 she feels that the person, as a plaintiff, was
14 injured and was entitled to damages and she went
15 along with an award that was given by the rest of
16 the jurors in that case.

17 She indicated to the Court that she did
18 not believe her experience as a juror in that
19 case would have any impact on her ability to be
20 fair and impartial in this case and I'm not aware
21 of any information that would call that into
22 question.

23 In terms of objective bias, the question
24 boils down to whether a reasonable person, in the
25 individual juror's position, could be impartial.

1 That is, I have to ask, could somebody be
2 impartial in her position. The defense suggests
3 that the mere fact that she was on a jury that
4 awarded this witness, approximately seven years
5 ago, a verdict in a civil case, I mean, she can't
6 be partial in this case.

7 She didn't remember the individual's
8 name at the time of original individual voir
9 dire. And I saw nothing in her demeanor to
10 suggest that she was somehow favorably inclined
11 toward Detective Remiker because he was the
12 plaintiff in that prior suit. It appears she
13 simply participated in the award because she
14 thought the plaintiff in that case was entitled
15 to the award.

16 I just don't see anything nor any reason
17 why someone who was a juror in a case six or
18 seven years ago would, of necessity, be unable to
19 be fair and impartial in a case such as this.
20 She's an intelligent person, I think she can
21 separate and tell the difference between the two
22 and I don't think, more importantly, that there's
23 any particular motivation, simply because she
24 participated in a civil trial that long ago, any
25 objective reason why she should be more or less

1 inclined to believe him in his testimony in this
2 case. So the Court is going to deny the motion
3 to strike this juror for cause.

4 Counsel, is there anything else to take
5 up before we bring in the jury and resume with
6 the next witness?

7 ATTORNEY KRATZ: Just one matter, Judge.
8 The next witness, like some law enforcement officers
9 that come before the Court, is a member of a Metro
10 Drug Unit, as part of his responsibilities and is
11 actively involved in undercover narcotics
12 investigations. He has asked this Court, although
13 we believe that his audio poses no threat to either
14 himself or his investigations, that the Court direct
15 that video of this officer not be taken.

16 He is a relatively short officer. I
17 have spoken to Mr. Buting about that and,
18 obviously, audio of this officer will be
19 permitted, but pursuant to statute, Judge, I
20 believe the Court has the authority and I would
21 ask for this officer, and I think in the case,
22 this officer alone, that videotape not be taken
23 of his testimony.

24 THE COURT: Mr. Buting.

25 ATTORNEY BUTING: I have no problem with

1 that; that's fine.

2 THE COURT: I assume that it's sufficient
3 if I simply direct the camera man to just focus on
4 the attorneys, or the board, or something else, that
5 they just be instructed not to show the camera on
6 the witness.

7 ATTORNEY KRATZ: Anything else, Judge, that
8 would be just fine.

9 THE COURT: All right. I think that should
10 be sufficient to most narrowly meet the State's
11 request, while still allowing for the public
12 coverage of this trial. So, Mr. Camera Man, I
13 assume you can follow that directive. And although
14 I can't make eye contact with who is ever behind the
15 glass, I will ask the same of the camera man in the
16 media room. Is that you?

17 REPORTER: No, I'm a reporter, but I'm
18 standing up and I would like to make a record to
19 the Court. Our attorney from WISN-TV, Attorney
20 Flynn, has left a message in the back for the
21 Court, he would like to be heard on this issue.

22 THE COURT: On this issue here?

23 REPORTER: Yes, involving the DCI agent.

24 THE COURT: Oh. Okay. Well, we'll take a
25 short break and I will take the phone call in

1 chambers and see if anything further is necessary.

2 REPORTER: Thank you.

3 (Recess taken.)

4 (Jury not present.)

5 THE COURT: At this time, I will indicate
6 for the record, and we're outside the presence of
7 the jury, I spoke to Attorney Matthew Flynn, who
8 represents WISN in Milwaukee. I believe his call
9 was prompted in anticipation of the Court completely
10 prohibiting coverage of the trial during the
11 testimony of the next witness.

12 When I explained to him that I felt the
13 needs of the media and the needs of the Court
14 could be accommodated by allowing the proceedings
15 to continue to be televised during the testimony
16 of the next witness, but simply instructing the
17 camera man not to show his face, Mr. Flynn
18 indicated that was satisfactory to he and his
19 client. So that's what the Court will do.

20 I have received a nod from the camera
21 man that he understands the instructions. And
22 with that, we'll bring in the jury at this time
23 and then allow the State to call its next
24 witness.

25 ATTORNEY KRATZ: That's fine. Thank you,

1 Judge.

2 (Jury present.)

3 THE COURT: You may be seated. Members of
4 the jury, before we begin, I just want you to rest
5 assured that the attorneys and I did not take a
6 three hour lunch today. We had a number of matters
7 to address, that had to be addressed, outside the
8 presence of the jury. I believe we are ready to go
9 now and at this time we're going to have the State
10 call its next witness.

11 ATTORNEY KRATZ: Thank you, Judge. The
12 State will call Gary Steier to the stand. I have
13 two exhibits, Janet.

14 THE CLERK: Raise your right hand.

15 **SPECIAL INVESTIGATOR GARY STEIER**, called
16 as a witness herein, having been first duly
17 sworn, was examined and testified as follows:

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

20 THE WITNESS: Gary Steier, S-t-e-i-e-r.

21 **DIRECT EXAMINATION**

22 BY ATTORNEY KRATZ:

23 Q. Mr. Steier, how are you employed?

24 A. I'm a special investigator with the Calumet
25 County Sheriff's Department.

1 Q. Do you also have special responsibilities with a
2 multi-jurisdictional organization?

3 A. Yes, I do.

4 Q. Could you describe that just briefly, please.

5 A. I'm assigned to the four county drug unit, Lake
6 Winnebago Drug Unit.

7 Q. With Calumet County, what are your
8 responsibilities?

9 A. Special investigator position is 50 percent
10 investigations, 50 percent Lake Winnebago Area
11 Metropolitan Enforcement Drug Group Unit.
12 Investigations into the four counties around Lake
13 Winnebago, as far as drug investigations and then
14 50 percent other investigations pertaining (sic)
15 into Calumet County.

16 Q. Mr. Steier, in your general investigative
17 responsibilities, were you asked, on November 5th
18 of 2005, to proceed to the Avery Salvage Yard?

19 A. Yes, I was.

20 Q. And that first evening, that is, on the 5th of
21 November, did you actively participate in the
22 first search, what we have come to know as a
23 sweep of several residences on the property?

24 A. Yes.

25 Q. Can you describe that just briefly for us,

1 please.

2 A. Myself and Detective Remiker were assigned to
3 execute the search warrant on Steven Avery's
4 property, specifically looking for Teresa
5 Halbach. I believe we were the two investigators
6 that entered the residence and did an initial
7 sweep looking for Teresa Halbach.

8 Q. As I understand, Investigator Steier, that
9 through the rest of that week, that is, between
10 the 5th and the 12th of November, you were
11 actively involved in other search as well as
12 investigative efforts in this case?

13 A. Yes.

14 Q. In fact, Investigator Steier, after the
15 completion of that first weeks worth of
16 investigation, you continued to be asked to
17 perform investigative functions in this case; is
18 that true?

19 A. Yes.

20 Q. I will now direct your attention to March 1st and
21 2nd of 2006, ask if you were once again asked to
22 participate or cooperate in investigative
23 efforts.

24 A. Yes.

25 Q. Could you tell the jury, on March 1st and 2nd,

1 what you were asked to do.

2 A. On March 1st and 2nd, I was asked to be the
3 evidence custodian for the search warrant, when
4 it was executed; more particularly, to the garage
5 of the residence of Steven Avery.

6 Q. Directing your attention, first, to March 1st,
7 what were your responsibilities in searching
8 Steven Avery's garage?

9 A. My responsibilities were to collect -- or make
10 sure that the evidence collected in the garage
11 was packaged; had a officer who discovered the --
12 or who had collected the items and had dated
13 that, a date and time that that item was
14 collected; and that all the evidence was taken
15 out of the garage; and made sure that the chain
16 of custody was intact.

17 Q. Do you know a agent with the Division of Criminal
18 Investigation named Kevin Heimerl?

19 A. Yes.

20 Q. Was he also involved in both search and
21 collection efforts on March 1st and 2nd?

22 A. Yes, he was.

23 Q. On March 1st, Investigator Steier, upon a search
24 of the garage of Steven Avery, was any particular
25 item of interest located?

1 A. There were several items that were collected that
2 were of interest. Two of the items were bullet
3 fragments collected inside the garage.

4 Q. These are the bullet fragments that I'm going to
5 ask you, at least for the next several questions,
6 direct your attention on March 1st, that is, the
7 first day of a two day search project or
8 procedure. Could you tell us how that fragment
9 was located and what you personally did after
10 that fragment was located.

11 A. Day 1 of the search warrant, a bullet fragment
12 was located. The item was located by Agent
13 Heimerl and was collected by myself. Day 2 of
14 the search warrant, a second bullet fragment was
15 also located by Agent Heimerl and was collected
16 by Detective Remiker.

17 ATTORNEY BUTING: Judge, just so the record
18 is clear, as to the actions of Agent Heimerl, he's
19 going to be testifying. It would be hearsay, that's
20 why I'm not objecting, because he is coming.

21 THE COURT: All right. Thank you.

22 ATTORNEY KRATZ: He will be our next
23 witness. And thank you, counsel.

24 Q. (By Attorney Kratz)~ I'm showing you what has
25 been marked for identification as Exhibit No. 276

1 and 277, are you able to identify or recognize
2 those exhibits?

3 A. Yes, the exhibit with the plastic bag with
4 initials GS was collected by myself.

5 Q. That's 276?

6 A. That's correct.

7 Q. And was that found on the first day or the second
8 day?

9 A. It was found on March 1st.

10 Q. Okay. Do you remember, generally, within the
11 garage, where that bullet fragment was located?

12 A. Would be in the northwest corner of the garage.

13 Q. I'm going to show you, Investigator, what has
14 been previously received as Exhibit No. 108, ask
15 if this computer diagram assists you in
16 describing to the jury where this bullet fragment
17 was found?

18 A. The evidence photograph marker No. 9.

19 Q. As far as the collection, packaging, and then
20 taking control of that first bullet fragment,
21 could you explain once again, for the jury, who
22 it was that found the fragment, which I'm sure
23 we'll hear about, but, then, who both packaged
24 and took control of?

25 A. The bullet fragment, Exhibit 276, in the paper

1 bag, was located by Agent Heimerl and collected
2 by myself. All the photography, photographs
3 inside the trailer, were done by Agent Heimerl.

4 Q. You mean inside the garage?

5 A. I'm sorry, inside the garage, yes.

6 Q. Just so the jury knows, there was another search
7 going on inside of Mr. Avery's trailer at the
8 same time; is that right?

9 A. That's correct. We were divided into teams, a
10 team of five. We were assigned the garage and a
11 diff -- another team was assigned inside the
12 trailer at the same time.

13 Q. Okay. Now, the next day, that is, on March 2nd,
14 directing your attention to Exhibit No. 277,
15 where was that found?

16 A. That would have been located on the evidence
17 photograph, tent marker 23A.

18 Q. After it's detection, again, which we're going to
19 hear about in just a couple minutes, what
20 happened with that bullet fragment?

21 A. The bullet was turned over to me, from Detective
22 Remiker.

23 Q. After taking custody, I understand on two
24 separate days, but of each of these items of
25 evidence, could you describe for the jury what

1 was done with them; what happened after you
2 retained possession of them?

3 A. The items were packaged or were collected in a
4 package and turned over to me and then evidence
5 tape surrounding the package was placed on the
6 item collected. And then from there, the items
7 were transported to a trailer, which was housing
8 the other items that were collected from the
9 same.

10 ATTORNEY KRATZ: I think it's 125,
11 Mr. Fallon.

12 Q. (By Attorney Kratz)~ Finally, Investigator
13 Steier, were you familiar with a log, that is, a
14 check in and check out procedure or document that
15 was being utilized on those days?

16 A. I was aware that there was a log being taken of
17 our entry and exit times in and out of the garage
18 and the surrounding area.

19 Q. Now, the garage and the surrounding area, are
20 those the same logs or the same kind of place?

21 A. Day 1, the log reflected inside the trailer --
22 inside -- I'm sorry, inside the garage. Day 2,
23 reflected the garage and the evidence tape, which
24 was just outside the garage.

25 Q. All right. Either on March 1st or March 2nd, had

1 you witnessed either Lieutenant James Lenk or
2 Sergeant Andrew Colborn, come inside of the
3 garage itself?

4 A. No.

5 Q. If either Lieutenant Lenk or Sergeant Colborn had
6 come inside of the garage, is that something that
7 you would have noticed?

8 A. Probably, it was only five or six of us inside
9 the garage at that time.

10 Q. All right. And, Mr. Fallon, as soon as he finds
11 it, is going to show you the actual log.

12 ATTORNEY KRATZ: Is it 125, counsel; is
13 that the right log?

14 ATTORNEY FALLON: There's three
15 possibilities, counsel, 125, 147 and 146.

16 ATTORNEY KRATZ: Perhaps Mr. Buting can ...

17 Q. (By Attorney Kratz)~ We're going to show you what
18 has been marked as Exhibit 146 and 147. First of
19 all, I will ask if you recognize those documents?

20 A. I have not seen these particular documents, no.

21 Q. Well, then, what I'm going to do is go by your
22 independent recollection. Do you know if
23 Lieutenant Lenk had, on either day, come inside
24 of the outer perimeter, that is, the outer check
25 in area?

1 A. To answer your question, the Day 1, no Lieutenant
2 Lenk did not enter the garage area. I believe
3 these records are for the trailer not for the
4 garage.

5 Q. All right. But what I'm asking, though, is do
6 you know if, on either day, Lieutenant Lenk
7 entered the -- what would be the outer perimeter,
8 not the garage itself, but was he in the general
9 vicinity of those search efforts?

10 A. Yes. On Day 2, he was near the tape line of the
11 evidence, but not inside the garage.

12 Q. All right. And I guess that's the point that I'm
13 asking you. Although inside of the -- where the
14 general public couldn't get, he wasn't in the
15 garage itself; is that your testimony?

16 A. Yes.

17 Q. At any time, Investigator Steier, did you see
18 Lieutenant Lenk provide any other officer who may
19 have come into the garage with any kind of
20 evidence or anything to secrete, or to plant, or
21 to hide in there?

22 A. No.

23 Q. My last question is, if that would have happened,
24 is that something that you would have seen?

25 A. I probably would have noticed something unusual,

1 but to answer the question, I don't know if I
2 would have actually been able to determine that.

3 Q. We have now found Exhibit No. 125, which, in
4 fact, is that outer perimeter log. Is that
5 something that you do recognize?

6 A. Yes.

7 Q. And you notice Lieutenant Lenk's name on that
8 outer perimeter log; is that correct? It's on
9 page one.

10 A. Yes.

11 Q. All right.

12 A. For March 2nd.

13 ATTORNEY KRATZ: And recognizing, Judge,
14 that we are going to hear about the discovery and
15 photography of Exhibits No. 276 and 77, I still
16 will, at this time, move their admission.

17 THE COURT: Any objection?

18 ATTORNEY BUTING: No.

19 THE COURT: All right. Those exhibits are
20 admitted.

21 ATTORNEY KRATZ: That's all I have of this
22 witness. Thank you, Judge.

23 THE COURT: All right. You are excused,
24 sir.

25 ATTORNEY BUTING: No.

1 THE COURT: Oh, sorry, jumping the gun.

2 ATTORNEY BUTING: Not so fast.

3 THE COURT: Okay.

4 ATTORNEY BUTING: Okay.

5 **CROSS-EXAMINATION**

6 BY ATTORNEY BUTING:

7 Q. I'm sorry, is it detective or investigator?

8 A. Investigator.

9 Q. Okay. Investigator Steier, your involvement, you
10 had some involvement in this case, back in
11 November, November of '05?

12 A. Yes.

13 Q. During that week when it first started, right?

14 A. Yes.

15 Q. And you work for Calumet Sheriff's Department,
16 right?

17 A. Yes.

18 Q. And I'm sure that you were aware that on the
19 very, very first day, November 5th of 2005, the
20 Manitowoc County Sheriff's Department had decided
21 to turn over this investigation to Calumet,
22 right?

23 A. That's correct.

24 Q. Because of this possible conflict of interest
25 over the fact that Mr. Avery, here, was suing

1 Manitowoc County, right?

2 A. That's correct.

3 Q. And, then, after the property was held for that
4 week, November 5th to the 12th, Manitowoc didn't
5 really have much else to do in this case
6 investigation, to your knowledge, did they,
7 initially?

8 A. After that, no, not that I believe so.

9 Q. So, it was primarily Calumet, represented by
10 Mr. Wiegert, who's not here at the moment, and
11 DCI, led by Mr. Fassbender who were running the
12 investigation of the case, as far as you knew?

13 A. Yes.

14 Q. Okay. So four months go by, and now we're up to
15 March 1st, 4 months when Manitowoc County had
16 really had nothing to do with this case; would
17 that be fair?

18 A. Yes.

19 Q. Suddenly there's another search warrant at
20 Mr. Avery's trailer and garage and we see
21 Manitowoc back in the case; isn't that right?

22 A. As far as I know, yes.

23 Q. You have all the logs up there with you or just
24 one?

25 A. I just have the second, I believe.

1 ATTORNEY BUTING: Okay. Let me have that
2 one, please.

3 Q. (By Attorney Buting)~ Now, the first day, this
4 was actually sort of a two day search of those
5 properties, right, 1st and 2nd?

6 A. Yes, that's correct.

7 Q. And somebody with your department maintained
8 overall security of that scene, during that time?

9 A. Yes.

10 Q. 24 hours?

11 A. Mm-hmm.

12 Q. Sorry, we're talking over each other here. And
13 those people who maintained security of the
14 scene, do you know whether they were Manitowoc or
15 Calumet?

16 A. They were Calumet.

17 Q. All right. And they were maintaining a log of
18 people who would come and go from the property
19 during this two day search, right?

20 A. Yes.

21 Q. And that's what Exhibit 147 is, if you would take
22 a look at that. It appears to be a log that was
23 being kept by one of your colleagues, of
24 everybody that came and went, right?

25 A. Yes.

1 Q. Okay. And do you see Detective Lenk's name? To
2 make it easier for you, direct your attention to
3 the bottom of the page, Lieutenant Lenk, I
4 believe that ...

5 A. Yes, I do.

6 Q. It shows Lieutenant Lenk arriving at 1810, right?

7 A. That's correct.

8 Q. And there does not appear to be a similar log
9 like this other one that's Exhibit 125, that's
10 dated March 2nd; have you seen one like this for
11 March 1st?

12 A. Yes, there is a --

13 Q. Okay.

14 A. -- log like this for March 1st.

15 Q. Okay. So maybe we just haven't found it.
16 Exhibit 125 is a different kind of a log; it's
17 more specific to location on that property, would
18 that be fair?

19 A. Yes.

20 Q. It specifically says garage and roped off --
21 roped off area or something, right?

22 A. Yes.

23 Q. And do you see Lieutenant Lenk's name on that?

24 A. Yes.

25 Q. Do you actually remember him being there?

1 A. I do.

2 Q. Do you remember him passing out food and drinks?
3 Yes or no?

4 A. No.

5 Q. He wouldn't do that, he's a lieutenant, right?

6 A. He may have been passing out food or drinks, I
7 just can't recall at this time.

8 Q. Okay. Do you know who asked Manitowoc County to
9 rejoin this investigation on March 1st and 2nd?

10 ATTORNEY KRATZ: Objection, irrelevant,
11 Judge.

12 THE COURT: Mr. Buting.

13 ATTORNEY BUTING: I think it's directly
14 relevant; it's been a central part of this case.

15 ATTORNEY KRATZ: Is there still a conflict
16 on March 1st and 2nd, that's my objection, your
17 Honor.

18 THE COURT: Well, he can ask him if he
19 knows. I will allow it.

20 Q. Do you know?

21 A. Could you repeat the question?

22 Q. You may not know, that's fine. But I'm just
23 asking if you know who asked -- Well, let me ask
24 you this, who asked you to come and be the
25 evidence custodian?

1 A. Investigator Mark Wiegert.

2 Q. Okay. Do you know whether Mr. Wiegert or
3 Mr. Fassbender invited Manitowoc County back into
4 this investigation, so that they would be at the
5 scene of this search of Mr. Avery's trailer and
6 garage on March 1st and 2nd?

7 A. Do I know that they asked Manitowoc County?

8 Q. Do you know who asked them?

9 A. Do I know who specifically, no.

10 Q. Okay. But Mr. Wiegert and Mr. Fassbender, as far
11 as you know, were the leaders of the
12 investigation, still at that time?

13 A. That's correct.

14 Q. And Mr. Kratz asked if you were -- if you noted
15 Sergeant Colborn or Lieutenant Lenk in the garage
16 area itself. You didn't at that time have any
17 particular concern about the fairness or
18 objectivity of either of those two officers, did
19 you?

20 A. No, I did not.

21 Q. As of March 1st and 2nd, you didn't know, or did
22 you, that Lieutenant Lenk had been deposed as a
23 witness in the Avery lawsuit?

24 A. No, I did not know that at that time.

25 Q. So there was nothing about those two officers

1 that would have put you on guard, or to watch
2 out, make sure they don't do something like plant
3 evidence, right?

4 A. That's correct.

5 ATTORNEY BUTING: That's all I have of this
6 witness, thank you.

7 THE COURT: Mr. Kratz, any redirect?

8 ATTORNEY KRATZ: Not of this witness,
9 Judge.

10 THE COURT: All right. Very well, the
11 witness is now excused. Mr. Kratz, you may call
12 your next witness.

13 ATTORNEY KRATZ: Thank you, Judge. And
14 just for the record, we're not asking for any
15 special indulgence from this point forward from the
16 media and I will call Mr. Kevin Heimerl to the
17 stand.

18 THE COURT: Thank you.

19 THE CLERK: If you would raise your right
20 hand.

21 **SPECIAL AGENT KEVIN HEIMERL**, called as a
22 witness herein, having been first duly sworn, was
23 examined and testified as follows:

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

1 THE WITNESS: Kevin Heimerl, H-e-i-m-e-r-l.

2 DIRECT EXAMINATION

3 BY ATTORNEY KRATZ:

4 Q. Mr. Heimerl, how are you employed, sir?

5 A. I'm a special agent with the Wisconsin Department
6 of Justice, Division of Criminal Investigation.

7 Q. How long have been a special agent?

8 A. Three years.

9 Q. Prior to that employment responsibility, did you
10 have other law enforcement experience?

11 A. Yes, sir.

12 Q. Could you describe that for the jury, please.

13 A. I worked for the Columbia County Sheriff's
14 Department for approximately 14 years. I began
15 as a non-sworn jailer and dispatcher for
16 approximately one and a half years, then worked
17 in a uniform patrol deputy sworn position for
18 approximately one and a half years. And I, then,
19 was promoted to a detective investigator position
20 for the remainder of 11 to 12 years.

21 Q. During November of 2005, did you work for the
22 Division of Criminal Investigation?

23 A. Yes, I did.

24 Q. And is one of your colleagues, Special Agent
25 Fassbender?

1 A. Yes.

2 Q. Sometime after the 5th of November, 2005, were
3 you asked to participate in an investigation at
4 the Avery salvage property?

5 A. Yes, I was.

6 Q. And let's start with an overview, first of all,
7 what days were it that you were actually on that
8 property, if you recall, that week?

9 A. I was initially assigned to assist with the
10 investigation on Sunday, November 6th, I believe
11 it was. And I remained active and involved in
12 the initial investigation there at the scene for
13 approximately the first week.

14 Q. All right. Were there specific responsibilities
15 that you were given, and if so, who were those
16 directed to you by?

17 A. Yes, I was given assignments and responsibilities
18 by the lead investigator, Special Agent
19 Fassbender, or Detective Wiegert.

20 Q. The first day that you were there, I think you
21 said was Sunday, the 6th of November, could you
22 tell the jury what your responsibilities were
23 that day.

24 A. My first assignment was to follow up on an
25 investigative lead. And I traveled into the city

1 of Manitowoc to interview a citizen regarding a
2 previous contact that citizen had had with Teresa
3 Halbach.

4 Q. Now, I think you are the first law enforcement
5 officer that we have heard about that was
6 actually doing interviews of people off site; in
7 other words, off the Avery property. Was that a
8 responsibility, or series of responsibilities,
9 that you were aware that other law enforcement
10 officials had, as well as you?

11 A. Yes, I was aware that other investigators were
12 doing interviews elsewhere.

13 Q. Are you familiar with the term neighborhood
14 canvas?

15 A. Yes, I am.

16 Q. What does that mean?

17 A. Neighborhood canvas is something that is quite
18 often done in investigations of all magnitude, if
19 you will. And it essentially involves contacting
20 all individuals who reside in homes, or work in
21 businesses, within the immediate vicinity of the
22 crime. To make contact with all of those people
23 and interview them to see if they had information
24 that may be relevant to the investigation or may
25 assist in the investigation.

1 Q. During that first week of involvement in this
2 investigation, were many of your responsibilities
3 involving those kinds of interviews, the
4 neighborhood canvasses?

5 A. Yes, it was.

6 Q. Agent Heimerl, I am going to direct your
7 attention to Monday, the 7th of November, and ask
8 if you were on the Avery property on the 7th?

9 A. Yes, I was.

10 Q. On the 7th of November, do you recall having
11 contact with and actually taking control of a
12 burn barrel located outside of Mr. Avery's
13 trailer?

14 A. Yes, I do.

15 Q. Let me show you what's been received as Exhibit
16 51; can you tell us what we're looking at here,
17 please.

18 A. That is a steel burn barrel.

19 Q. Does this look familiar to you?

20 A. Yes, it does.

21 Q. What steel burn barrel is this?

22 A. This is a steel burn barrel that is essentially
23 in the front yard of Steven Avery's trailer.

24 Q. After initially being discovered, were you asked
25 to take control of, or begin, what's commonly

1 referred to as the processing of this piece of
2 evidence?

3 A. Yes.

4 Q. Describe what that entailed for the jury, please.

5 A. At the time, I was present at the Command Post
6 and was contacted by Agent Fassbender and
7 informed that a burn barrel in front of Steven
8 Avery's residence had been found to potentially
9 contain items of evidence. Myself and Special
10 Agent James Sielehr were assigned to walk down to
11 the trailer, meet with the law enforcement
12 officers that had discovered it, and to begin --
13 basically to secure it and to begin documenting.

14 Q. All right. Now, evidence this burn barrel
15 included eventually was taken off site or to a
16 central repository, or a central place where it
17 was held; is that your understanding?

18 A. Yes.

19 Q. Do you know where evidence in this case, after it
20 was taken off site, was retained?

21 A. I believe it was either transferred to the
22 Calumet County Sheriff's Department; in some
23 instances, I believe that some items went
24 directly to the State Crime Lab. I do not
25 specifically know where this one went.

1 Q. All right. Agent Heimerl, were you also, later
2 in the week, made aware of an area behind
3 Mr. Avery's garage, which has been referred to as
4 a burn area, or a burn pit?

5 A. I was told of it.

6 Q. The questions that I have of you, though, were
7 after processing, that is, after that burn area
8 was processed by agents of DCI Crime Lab and
9 others, in the weeks thereafter, were you asked
10 to assist in examination of the contents of that
11 particular burn area?

12 A. Yes, I was.

13 Q. So that the jury knows what we're talking about
14 and, although a little bit out of order, we'll be
15 hearing from witnesses about this, but do you
16 recognize Exhibit No. 47?

17 A. I have seen that photograph before, yes.

18 Q. Now, the items seized therefrom, in other words
19 the items that were recovered from this burn
20 area, you mentioned that you participated in
21 examination of; could you tell us where that
22 occurred, please.

23 A. Yes, it occurred on two separate occasions. The
24 first occasion was at the Wisconsin State Crime
25 Laboratory in Madison. And the second occasion,

1 that occurred here at the Calumet County
2 Sheriff's Department.

3 Q. Could you describe, just generally, and, again,
4 we're going to hear more specifically about this,
5 but to get your part of the case in, for lack of
6 a better term, can you describe, generally, what
7 you did or what you were asked to do, in that
8 examination?

9 A. Yes, myself and several other investigators were
10 given the assignment or the responsibility to
11 examine all of the debris that was removed from
12 the burn area or the burn pit. And that debris
13 was collected by other investigators and was
14 packaged and, ultimately, brought to the State
15 Crime Laboratory in Madison.

16 There we set up a processing station, if
17 you will, which simply involved table top
18 platforms that were covered with tarps. We had
19 all of this loose debris, material, that was a
20 mixture of soil and ash and burned items.

21 We would take a quantity of it and place
22 it on the table in front of you, on the tarp, and
23 using various instruments, begin sifting through
24 it and layering it out very thinly in front of
25 you and visually examining the material,

1 attempting to locate any items that you feel may
2 be items of evidence, such as human remains, bone
3 material, items of metal that you feel may, in
4 some way, shape, or form, be related as an item
5 of evidence.

6 Q. Let me ask you, Agent Heimerl, as part of your
7 law enforcement training, in addition to general
8 investigative training, do you have any specific
9 or specialized training in areas of arson or
10 arson investigations?

11 A. Yes, I do.

12 Q. Can you just, generally, tell us about that
13 training or experience, please.

14 A. My assignment at the Department of Justice, DCI,
15 is in the Arson Bureau. My primary assignment is
16 to conduct fire arson investigations. And I have
17 received rather extensive training through --
18 both at local, state, and national levels, in
19 fire investigation aspects and determining the
20 origin and cause of fire incidents.

21 But that also includes fatal fire
22 investigations. I believe that some of the --
23 probably the most important experience or
24 training that I have received has been on the job
25 training, if you will, in processing fire death

1 scenes, where people have perished in fires. Our
2 office is frequently called to fatal fire
3 investigations and we often have to recover human
4 remains from fire scenes.

5 Q. All right. So you are familiar with this
6 process, it's term I call sifting and sorting,
7 but that's a clumsy term, but is that, generally,
8 part of the process of what you engaged in in
9 this case?

10 A. Yes, it is. And you are exactly right, there are
11 different terms to use. And in some cases
12 sifting is actually done with sifting screens.
13 In this case, we did not use the sifting screens,
14 but it was more just a thin layering out and a
15 visual examination. If an item strikes you as
16 possibly being something that you may need to
17 collect. It's maybe brushed clean, or cleaner,
18 to remove some of the debris that's attached to
19 it, to allow for a better examination.

20 Q. During this examination process -- and by the
21 way, I would ask you to look at some of the
22 photographs that are in front of you. I want you
23 to first find Exhibit 273; it is one of the last
24 pictures, I think, that we have given you. Tell
25 me if you recognize that, please.

1 A. Yes, I do.

2 Q. What is that?

3 A. This is a photograph of several individuals, to
4 include Investigator Wiegert, myself; I recognize
5 Special Agent Rodney Pevytoe. And this was taken
6 in the basement of the State Crime Laboratory, as
7 we were going through this processing of this
8 debris.

9 Q. The processing, or the sifting or sorting
10 activity, is that a quick process, or does that
11 take a lot of time? Is it time intensive?

12 A. It is very time and labor intensive. It is a
13 very tedious process. It cannot be done quickly,
14 otherwise you miss things, because it's all being
15 done visually.

16 And in this instance, this task was
17 completed over the course of four full days.

18 Q. Do you know if that was under the direction or
19 supervision of any other professionals, any
20 degreed professionals?

21 A. Yes.

22 Q. Who is that, do you know?

23 A. Dr. Leslie Eisenberg, a forensic anthropologist
24 for the State of Wisconsin was present on two of
25 the days. And in my -- in my opinion, Special

1 Agent Pevytoe, is one of the leaders in this
2 field --

3 ATTORNEY BUTING: Objection to that.

4 A. -- who was present as well.

5 ATTORNEY KRATZ: We'll actually hear from
6 him and his qualifications, later in the trial,
7 Judge, but I appreciate the objection.

8 THE COURT: I'll sustain the objection with
9 respect to the comment about the individual's
10 qualifications.

11 ATTORNEY KRATZ: Thank you, Judge.

12 ATTORNEY BUTING: Move to strike.

13 THE COURT: And I move to strike that
14 portion of the answer.

15 ATTORNEY KRATZ: That's fine. Thank you.

16 Q. (By Attorney Kratz)~ I'm showing you Exhibit 274,
17 just another photo of the same event. What is
18 this that we're looking at here?

19 A. Again, this is a similar process occurring;
20 however, I believe this occasion is probably in
21 April of 2006 here at Calumet County Sheriff's
22 Department.

23 Q. All right. I will go back to the other exhibit
24 then, since it included you -- or at least a
25 photo of you. You said during this process you

1 look for not only items of human remains, bone
2 fragments, to be specific, but also non-human
3 items; is that correct?

4 A. Correct.

5 Q. During this sifting and sorting process, did you
6 individually detect and observe any of these
7 non-human items that were within those burn area
8 remains, or materials that were collected?

9 A. Yes, I did.

10 Q. Could you -- Do you have an independent
11 recollection of what it is that you found?

12 A. Yes.

13 Q. Could you tell the jury about that, please.

14 A. As I look at this photograph, if I could explain
15 further, I see an object, a black rectangular
16 object, which is a magnet. And one of the tools
17 that we used in this process as well was a
18 magnet, to move it through the debris, to pull
19 out all non-combustible metal objects. We would
20 then remove all of those items from the magnet
21 and visually examine those items, looking for
22 additional items that may be --

23 (Court reporter couldn't hear.)

24 THE WITNESS: I'm sorry.

25 INVESTIGATOR WIEGERT: I just got one

1 more bag to open and I'll be done with that
2 noise. Sorry.

3 THE COURT: Let's do the bag first and then
4 we'll continue.

5 INVESTIGATOR WIEGERT: Okay.

6 Q. Go ahead.

7 A. Yes, all of the metallic objects that stuck to
8 the magnet were then removed and they were
9 visually examined to determine if they were
10 potentially of evidentiary value.

11 Q. Now, these metallic items, or at least some of
12 the items that you found, were you able to
13 visually identify them; in other words, to
14 visually make a determination of what these items
15 were?

16 A. Yes.

17 Q. Could you describe the kinds of items that you
18 found, please.

19 A. Well, there were many different types and variety
20 of metal objects, but to include hardware:
21 Screws, nails, wires, many wires from what
22 appeared to be from tires. We found rivets,
23 clothing rivets, normally associated with denim
24 jeans.

25 I believe that we were able to find and

1 identify teeth from a zipper, ammunition casings,
2 shell casings, a large variety of different types
3 of objects.

4 Q. The items that were associated with clothing, the
5 clothing rivets and the zippers, or parts of the
6 zippers, were these metallic items mixed within
7 the human remains, or the other items that you
8 were examining?

9 A. Yes.

10 ATTORNEY KRATZ: Mr. Wiegert, have we
11 marked that exhibit?

12 (Exhibit No. 279 marked for identification.)

13 INVESTIGATOR WIEGERT: Just working on
14 it, it will take just two seconds here.

15 ATTORNEY KRATZ: Show it to Mr. Buting
16 first, please.

17 INVESTIGATOR WIEGERT: 279.

18 Q. (By Attorney Kratz)~ Mr. Wiegert is going to hand
19 you what's been marked for identification as
20 Exhibit No. 279. Tell us what that is, please.

21 A. That appears to be a clothing rivet, similar to
22 what I described that you would find on a pair of
23 denim pants, for instance.

24 Q. And was this clothing rivet that was identified,
25 easily identified, or at least identified with

1 writing right on the rivet?

2 A. Yes.

3 Q. And what does the rivet say?

4 A. The rivet is stamped Daisy Fuentes.

5 Q. I'm going to ask you to look at Exhibit No. 275,
6 ask if you recognize that photo?

7 A. Yes, I do.

8 Q. What is that?

9 A. This is a photograph of one of those very rivets
10 that has been cleaned and brushed to remove the
11 debris.

12 Q. Now that we're showing the jury, are you able to
13 read the inscription on that clothing rivet?

14 A. Yes.

15 Q. What does it say?

16 A. It says Daisey Fuentes.

17 Q. At least 275 actually shows the inscription, or
18 lettering, Daisy Fuentes, in two different
19 places, one on either side of the rivet; is that
20 a fair characterization?

21 A. Yes, sir.

22 Q. Now, Mr. Heimerl, these non-human remains, or
23 these metallic items, after they were sorted,
24 were they removed from the -- what were thought
25 to be human remains?

1 A. Yes.

2 Q. Do you know what was done with them then?

3 A. If I recall correctly, there were metallic
4 objects that would be found that investigators
5 felt relatively confident were not going to be
6 items of evidence, whether they were wires from a
7 tire, those would -- we would collect those
8 separately and place them back into a plastic bag
9 and it would then be returned into the original
10 container that the material was contained in.

11 Q. I see. Were some items that investigators
12 believed had specific evidentiary value removed
13 or separately packaged?

14 A. Yes, sir.

15 Q. And would something like Exhibit No. 275, or 274,
16 the actual item -- or excuse me, 279, the actual
17 item itself, the rivet, would be one of those
18 items that would be separately packaged?

19 A. Yes.

20 Q. How many law enforcement individuals do you
21 believe were involved in this sorting or sifting
22 process, that you were personally accompanied?

23 A. Over the course of the first two days, in
24 Madison, I believe there was approximately eight
25 or nine. On the second two days, here in

1 Chilton, I believe there was a similar number.

2 Q. All right.

3 ATTORNEY KRATZ: That's all for this
4 witness. I meant the investigator, and not you,
5 Judge. I'm sorry.

6 Q. (By Attorney Kratz)~ Mr. Heimerl, do you recall
7 also being asked to participate in investigative
8 efforts on March 1st and 2nd of 2006?

9 A. Yes, I do.

10 Q. And tell the -- tell the jurors, if you would,
11 what it was that you were asked to do on those
12 two days.

13 A. I was asked to assist with the search of Steven
14 Avery's garage.

15 Q. And did you, in fact, assist in that process?

16 A. Yes, I did.

17 Q. Could you tell the jury what your role in that
18 search project was, please.

19 A. I worked with several other investigators. We
20 worked as a team to search the garage -- I'm
21 sorry, initially to document the garage through
22 photographs and video; and to search the entire
23 garage and contents for any additional items of
24 potential evidence; to document the location of
25 those items through photography and measurements;

1 and to package, label and preserve those items of
2 evidence for ultimate retention by the Calumet
3 County Sheriff's Department.

4 Q. And did you do that on the 1st and 2nd?

5 A. Yes, we did.

6 Q. Steven Avery's property, or at least his
7 curtilage, includes a trailer and a garage; is
8 that your understanding?

9 A. Yes.

10 Q. And in which of those buildings did you have
11 responsibility?

12 A. In the detached garage.

13 Q. Let's talk about that search effort, or March 1st
14 and 2nd, the search of the garage. First of all,
15 could you describe the interior of the garage;
16 how did it look to you?

17 A. It was very cluttered, with a large amount of
18 miscellaneous property, a lot of it associated
19 with automobile repair and just general garage
20 storage items. It was not clean. It was quite
21 dusty.

22 Q. Who performed the photography on the inside of
23 the garage on that two day search?

24 A. I did.

25 Q. I'm going to have you take a look at an item in

1 front of you, Exhibit 265, tell the jury what
2 that is, please.

3 A. This is a photograph that I took on the evening
4 of March 1st, after certain items of evidence had
5 been found, or areas on the floor had been
6 documented with a grease pencil and then
7 subsequently labeled with these photo markers.
8 And this is a general overview photograph of the
9 interior of the garage, standing, which you can
10 see outside the open overhead garage door.

11 Q. And the very foreground, what is that we see
12 that's white?

13 A. A snow bank.

14 Q. All right. So this is actually taken outside the
15 threshold of the garage itself; is that fair?

16 A. Correct.

17 Q. Now, these yellow markers, again, what
18 significance, if any, do those have, at least in
19 this photo?

20 A. The yellow markers in the rear of the garage,
21 were placed near white circles that were on the
22 concrete floor when we entered the garage on that
23 day. I believe that they were as a result of a
24 previous search.

25 And additional -- some of those

1 additional markers were identifying areas that we
2 felt may be areas of potential further
3 examination, based on an evidence process that
4 was completed under dark.

5 And finally, one additional evidence
6 marker in the foreground was identifying the
7 location of a specific item of evidence. That
8 had already been found when this photograph was
9 taken.

10 Q. We will talk about that in just a minute. There
11 are some other photos I just want you to identify
12 and we will talk about them. What's Exhibit 266,
13 please.

14 A. That is a photograph of a Blackjack brand
15 creeper. A piece of equipment normally used by
16 someone who wants to work under a automobile.

17 Q. To the immediate right of the creeper, do you see
18 a piece of equipment?

19 A. Yes, I do.

20 Q. And do you know what that piece of equipment is?

21 A. The green cylindrical item with the wheel, I
22 assume you are referring to, is an air
23 compressor.

24 Q. We'll talk about that much more in just a moment,
25 but tell us what Exhibit 267 is, please.

1 A. That's a photograph of a plastic jug with the
2 label identifying it as paint thinner.

3 Q. As part of this search, were you asked to
4 identify either cleaning products or items of --
5 or having properties that could mask or destroy
6 evidence?

7 A. Yes.

8 Q. And were paint thinner and bleach and other
9 reagents like that the type of items that you
10 were asked to identify and photograph?

11 A. Yes.

12 Q. What's Exhibit 268? Oh, before we get to that --
13 I'm sorry. You had mentioned previously that
14 there was a tent, or an evidence tent number or a
15 marker that was closer in the foreground in
16 Exhibit 265, and I rudely interrupted you, but
17 let's go back to 265. What marker was it that
18 you were talking about?

19 A. Marker No. 9.

20 Q. Describe, if you will, for the jurors, what, if
21 anything, was found at or near marker No. 9?

22 A. In that location, we found a -- what appeared to
23 be a flattened or -- a flattened bullet.

24 Q. Could you tell the jury from where that was
25 found; do you recall how it was found?

1 A. Yes. This was on the evening of March 1st, after
2 we had made entry into the garage. The
3 videotaping had been completed, I believe. I had
4 -- I'm sorry -- done initial overall photography
5 in the interior of the garage. And we then spent
6 some time just kind of walking around the garage,
7 looking for anything that we saw that stood out,
8 things that we knew that we were going to collect
9 as evidence.

10 I was standing in the garage and I
11 looked down at the floor, in front of me there
12 was a crack in the concrete, and I observed this
13 round, gray object that resembled a -- like the
14 head of a roofing nail.

15 Q. I'm going to have you take a look at Exhibit No.
16 268; tell the jury what we're looking at here,
17 please.

18 A. That is the crack in the concrete with what
19 ultimately was found to be a bullet. It's the
20 round gray object directly in front of the front
21 edge of the photo marker.

22 Q. Is Exhibit No. 268 similar to how you found what
23 you believed to be a bullet fragment near tent
24 no. 9?

25 A. Yes.

1 Q. I assume tent no. 9 was placed there after you
2 found this?

3 A. Yes.

4 Q. In other words, you didn't just get lucky and put
5 the tent marker there, did you?

6 A. No.

7 Q. I'm going to show you a closer version of that
8 Exhibit 269; what are we looking at, please?

9 A. As you just stated, it's a close up view of the
10 same photograph from 268, it, again, depicts that
11 bullet fragment in that crack in the concrete.

12 Q. Using the laser pointer that you have with you,
13 Investigator Heimerl, could you show the jury
14 where the bullet fragment is at what we are
15 looking at?

16 A. That would be it right here.

17 Q. That fragment appears to be within a crack in the
18 concrete; am I viewing that correctly?

19 A. Yes.

20 Q. What was done, if you recall, to process or
21 collect that item of evidence?

22 A. We took measurements to document it's physical
23 location within the garage. And it was then
24 collected or packaged by Investigator Steier.

25 Q. I'm going to go back to Exhibit No. 266. We can

1 just look on the large screen, that's fine. This
2 green compressor that we're viewing here, on the
3 next day, that is, on March 2nd of 2006; did you
4 and other investigators begin or continue the
5 process of actually moving items within this
6 garage?

7 A. Yes.

8 Q. And so that I can allow you to completely explain
9 that process, describe this search, how thorough
10 was this search of this garage?

11 A. If you recall from the first photograph, the
12 overview photograph of the interior of the
13 garage, the majority of the contents of the
14 garage was around the exterior perimeter of the
15 garage, along the walls.

16 And that included a couple of
17 snowmobiles, which would then have multiple tools
18 and boxes and items just stacked on top of the
19 snowmobile. And there were chests, their were
20 containers, their were large items of equipment.

21 And basically started in the northeast
22 corner of the garage and began to remove items,
23 look at them, turn them over, look inside them,
24 examine them visually to see if there was any
25 obvious sign of some type of potential trace

1 evidence on them, or biological evidence.

2 And it would be set down, out of the
3 way. We would move to the next item, whether it
4 was large or small, whether it was a box. If it
5 was a box you would open the box and remove
6 everything from it. And it was a very slow
7 process. And we worked south along the east wall
8 and continued around until we finished the
9 garage, late in the day on the 2nd.

10 Q. Looking, again, at Exhibit No. 265, are you
11 telling this jury that every one of those items,
12 in fact, around the entire perimeter and, in
13 fact, in the middle of the garage, was handled by
14 law enforcement and examined?

15 A. Virtually every item, yes.

16 Q. Let's go back, then, to item 266. During this
17 process then and, specifically, on the second
18 day, the 2nd of March, you were again involved in
19 search of this garage?

20 A. Yes.

21 Q. And during those efforts, that is, on the second;
22 did you generally have the same searching
23 responsibilities that you did on the first?

24 A. What do you mean by searching responsibilities,
25 my responsibilities?

1 Q. Yeah. Were you still the guy taking the photos?

2 A. Yeah. Yes.

3 Q. All right. And, also, were you actively
4 searching, were you one of the investigators
5 who's actively searching for items of evidence?

6 A. Yes.

7 Q. On the 2nd of March, then, and specifically
8 looking at Exhibit No. 266, did you find any
9 items of evidence that was noteworthy?

10 A. I'm sorry, that was noteworthy?

11 Q. That you believed was noteworthy. As you look at
12 this picture, did you find anything near that
13 compressor that you thought was interesting?

14 A. Yes.

15 Q. Tell the jury about that.

16 A. We had been processing this garage, searching
17 this garage. As you look at this photograph, we
18 approached the compressor from its left. And it
19 was a large object. As we reached this area, I
20 had to get onto my hands and my knees in front of
21 the compressor and utilized a flashlight to look
22 under the compressor. And I found -- I saw what
23 appeared to be a bullet.

24 Q. What did you do then?

25 A. I told the other investigators that I may have

1 found a bullet.

2 Q. What happened then?

3 A. We then removed, basically from the top down, we
4 unstacked the things and items that were on top
5 of the air compressor, pulled the air compressor
6 out so that we could adequately document and
7 photograph what we found.

8 Q. Before I move on to other photos, I want to
9 orient the jury, that red item immediately to the
10 right and to the right edge of Exhibit 266; do
11 you know what that is?

12 A. Yes, I do.

13 Q. What is that?

14 A. That is the edge of a large upright tool chest.

15 Q. After the compressor was removed and all the
16 items thereon, was that tool chest moved at all?
17 That you recall.

18 A. I don't recall that we needed to move it.

19 Q. Okay. Let's look at Exhibit No. 270, please.
20 Tell us what we're looking at here.

21 A. This is generally a medium view photograph of
22 what was ultimately identified with marker no.
23 23, as the bullet that was found underneath the
24 air compressor.

25 Q. Can you identify the individuals in this

1 photograph, please.

2 A. The individual on the left is Detective Dave
3 Remiker, from Manitowoc County Sheriff's
4 Department.

5 Q. Do you know who is kneeling on the right?

6 A. I would have to guess, but I do not know
7 specifically.

8 Q. All right. Well, it can only be one of a couple
9 people; is that right?

10 A. Right.

11 Q. I mean, you don't have to -- You would still have
12 to guess who it was?

13 A. I believe that it's Investigator Dederling.

14 Q. We see a yellow tent, exhibit tent no. 23. I
15 have actually zoomed into that area. Tell the
16 jury what we're looking at here, please.

17 A. As I stated, this is after the air compressor has
18 been removed. The linear object here is a metal
19 photographic scale. And right in this area it's
20 very difficult to pick out in this photograph,
21 but the bullet was right between the tent and the
22 scale.

23 Q. Now, as the tent -- the evidence tent is placed
24 near the bullet, was the bullet moved at all?

25 A. No.

1 Q. This photography was done before any manipulation
2 or movement of the bullet?

3 A. That's correct.

4 Q. I'm going to show you a better photo,
5 Exhibit 271; tell me what that is, please.

6 A. That is a closer view of that bullet, in the same
7 location.

8 Q. Can you take your laser pointer and show the jury
9 what we're looking at.

10 A. The laser pointer is on the end of the bullet.

11 Q. Once again, Exhibit 271, that photograph, does
12 that depict the bullet in the same or similar
13 view as you saw it on the 2nd of March?

14 A. Yes.

15 Q. Actually, I'm going to leave that Exhibit up for
16 just a minute. When you observed this particular
17 item, did it appear to be a full, that is, an
18 intact bullet or a bullet fragment?

19 A. I guess that depends on what a person were to
20 consider a bullet fragment. That being, if a
21 very tiny part of that bullet has come off of the
22 main bullet, is the main bullet then a fragment.
23 I considered this -- When I recognized this and
24 looked at this, I recognized it as what appeared
25 to be a nearly intact bullet.

1 Q. So it was something other than just a little chip
2 of a bullet.

3 A. Exactly.

4 Q. Investigator, was care taken to process and
5 recover this bullet?

6 A. Yes.

7 Q. And tell the jury what care was taken to do that?

8 A. Well, it was handled only to the amount -- or to
9 the degree to which it needed to be handled. As
10 much as I myself wanted to pick it up and
11 visually examine it, it wasn't done. It was
12 picked up, I believe, with tweezers and placed
13 into a box and sealed.

14 Q. Now, are you familiar with a term called DNA?

15 A. Yes, sir.

16 Q. At that time, in processing of evidence, were you
17 familiar with the process by which DNA could be
18 extracted, especially from items such as bullet
19 fragments?

20 A. Yes.

21 Q. Was care taken not destroy or eliminate whatever
22 DNA might be on this bullet?

23 A. Yes.

24 Q. As I understand from the last witness, after this
25 bullet was packaged, it was provided to

1 Investigator Steier, from Calumet County, for
2 transport and receipt into evidence; is that your
3 understanding?

4 A. Yes, it is.

5 Q. I feel compelled to ask these next two questions
6 and so I will. At any time, inside of that
7 garage, on the 2nd, or even on the 1st, did you
8 see an individual by the name of James Lenk?

9 A. No.

10 Q. At any time on the 1st or on the 2nd, did you see
11 an individual by the name of Andrew Colborn?

12 A. No.

13 Q. By the way, do you know those people, and if they
14 were in that garage or rummaging around or
15 placing something in that garage, would you have
16 seen it?

17 A. Yes.

18 ATTORNEY KRATZ: I will move the admission,
19 Judge, of exhibits -- I will have to -- I will have
20 to identify them or ask the clerk, the photographs
21 and the physical evidence that has been marked and
22 identified by this witness and Investigator Steier.
23 And I will pass the witness to Mr. Buting.

24 THE COURT: All right.

25 ATTORNEY BUTING: Do we have 272 and 278?

1 You don't have that, do you?

2 THE CLERK: No.

3 ATTORNEY BUTING: Okay.

4 THE COURT: You're moving which exhibits,
5 Mr. Kratz?

6 ATTORNEY KRATZ: I'm moving everything
7 that's been identified. Let me just have this
8 witness look at 272, since he has that right in
9 front of him.

10 Q. (By Attorney Kratz)~ It's just a photograph; can
11 you tell us what 272 is.

12 A. By the tag, it's identified as number 19, a
13 bullet fragment.

14 Q. The actual item of that is actually, I think,
15 right in front of you; is that right? It's an
16 evidence tech photo; is that right?

17 A. Yes, it is.

18 Q. And do you have Exhibit 278?

19 ATTORNEY BUTING: Just so the record is
20 clear, your Honor, there's also a number FL or
21 identification in yellow, FL, in the center of that.
22 Would you agree?

23 ATTORNEY KRATZ: Yes, that's a Crime Lab
24 designation, Judge.

25 THE COURT: It is.

1 ATTORNEY KRATZ: And 278 has not been
2 offered or identified. With that exception, I would
3 move the rest of the exhibits, your Honor.

4 THE COURT: Any objection?

5 THE WITNESS: No objection.

6 THE COURT: All right. Mr. Buting, how
7 long do you think you are looking for?

8 ATTORNEY BUTING: I'm hoping we can finish
9 at 4:30. But if the jurors want to stretch for a
10 moment, that's ...

11 THE COURT: All right. Let's do this,
12 let's take a 10 minute break. If we have to go a
13 little past 4:30, we will, since we got a little
14 late start today, but we'll finish up with this
15 witness.

16 ATTORNEY KRATZ: That's fine.

17 THE COURT: Let's give everybody a break.

18 (Recess taken.)

19 THE COURT: All right. Mr. Buting, at this
20 time you may begin your cross-examination.

21 ATTORNEY BUTING: Thank you, Judge.

22 **CROSS-EXAMINATION**

23 BY ATTORNEY BUTING:

24 Q. Agent Heimerl, you first became involved in this
25 Avery investigation on November 6th; is that

1 right?

2 A. Yes, on Sunday.

3 Q. Sunday.

4 A. November 6th.

5 Q. And I appreciate your professionalism, because
6 you must have done close to 50 reports, I would
7 say; does that sound about right?

8 A. I believe so.

9 Q. You were out investigating, doing this
10 canvassing, this neighborhood canvas, on the 6th,
11 7th, maybe even part of the 8th; does that sound
12 right?

13 A. Yes. And it continued for a few days afterwards.

14 Q. Okay. And in the process of doing that you
15 interviewed -- you are going around to all the
16 surrounding properties and interviewing door to
17 door, basically, everybody, to see if they heard
18 anything, saw anything, that kind of
19 investigation, right?

20 A. Correct.

21 Q. You did come to the scene, the Avery property
22 scene, though, on the 7th, as I recall your
23 testimony, right?

24 A. Yes.

25 Q. And that's when you took custody, or did you just

1 examine this burn barrel that we saw up on the
2 screen awhile ago?

3 A. I did not take custody -- custody of it; I
4 photographed it.

5 Q. All right. At any time on the 6th, 7th, 8th, or
6 any time after that, actually; did anyone ask you
7 to participate in a search of Mr. Avery's
8 residence?

9 A. No.

10 Q. Or garage?

11 A. No.

12 Q. You work for DCI?

13 A. Correct.

14 Q. Have you ever met Mr. Avery before that day?

15 A. I'm sorry?

16 Q. Did you ever meet Mr. Avery before November 6th?

17 A. Never.

18 Q. Have any contact with him at all?

19 A. Never.

20 Q. Not involved in his lawsuit?

21 A. No, sir.

22 Q. Completely independent and objective, right?

23 A. Correct.

24 Q. And you are very well trained in searches of
25 scenes, for evidence collection, correct?

1 A. Yes.

2 Q. All right. Now, I know that you -- if I
3 understood correctly, you did not actually see
4 the interior of Mr. Avery's garage on
5 November 5th, 6th, or any of those days when you
6 were there in November?

7 A. That's correct.

8 Q. I'm going to first have you identify Exhibit 262
9 and 263. These were kind of left hanging from
10 the prior witness. Do you recognize those?

11 A. Yes, I do.

12 Q. And are those photographs that you took on
13 March 1st or 2nd?

14 A. Yes, they are.

15 Q. And they show the -- the interior of the garage,
16 pretty much as you found it when you first got
17 there?

18 A. That's correct.

19 Q. Okay. These are interior shots that you are
20 already standing, looks like inside the garage,
21 and you don't have the full view, right?

22 A. Correct.

23 Q. I'm going to use the ELMO. I don't have as much
24 digital stuff, I'm afraid. All right. Thank
25 you, very much. We'll go through this quickly,

1 but I just want you to identify, so the jury can
2 see what it is you are identifying. This is a
3 photograph of Mr. Avery's -- or the detached
4 garage on March 1st or 2nd, probably March 1st,
5 right?

6 A. Yes.

7 Q. And there's a vehicle in there, some sort of an
8 automobile. And it's not in one of the later
9 photographs you were shown, right?

10 A. Correct.

11 Q. And, then, what's that large item in the front of
12 it.

13 A. That is an engine hoist.

14 Q. Okay. And that's something that you use to be
15 able to lift up a full engine, right out of a
16 car, or into it, right?

17 A. I believe so.

18 Q. That was 263. And now I'm showing you 262, just
19 a little bit of a different view, but the -- also
20 inside of his garage on March 1st, showing the
21 automobile and that large hoist, right?

22 A. Correct.

23 Q. Okay. Actually, I think I will just do it right
24 here from the ELMO, since you identified them
25 already. I want to show you some photographs

1 quickly, from November, that were taken by
2 somebody else, that are in evidence. So I just
3 want you to -- I don't know if you had an
4 opportunity to look at these before, but the
5 first one is Exhibit 232; do you recognize that
6 as the same garage?

7 A. It appears to be, yes.

8 Q. All right. Do you see an engine hoist anywhere
9 in this photograph? I should say, the same
10 engine hoist that we saw in those March
11 photographs; do you see one here?

12 A. No, but this photograph does not depict the
13 entire garage.

14 Q. I understand. Let's look through some more.
15 Does that appear to be the same garage?

16 A. Yes, sir.

17 Q. Now, there's a Suzuki Samurai that's been
18 identified that's in there and also a snowmobile,
19 right?

20 A. Yes.

21 Q. And neither one of those vehicles were in the
22 garage when you came on March 1st?

23 A. Correct.

24 Q. They were both gone and there was some kind of a
25 maroon sedan, right?

1 A. Correct.

2 Q. And, again, any engine hoist that you see?

3 A. Not in this photograph, no.

4 Q. How about in -- Oh, I showed you that one. How
5 about in 233? Look like the same garage?

6 A. Yes.

7 Q. No engine hoist?

8 A. Not in this photograph.

9 Q. How about this one?

10 A. Again, it appears to be the same garage.

11 Q. No engine hoist visible?

12 A. Not visible in this photograph.

13 Q. And that last one was 234. 235, do you recognize
14 the entrance service door there?

15 A. Yes, I do.

16 Q. No engine hoist in that one?

17 A. Not visible in the photograph.

18 Q. Or in 236, which appears to be the east wall?

19 A. That's correct, not visible.

20 Q. Okay. And just one more, 241, appear to be the
21 same garage, no engine hoist, would you agree?

22 A. Yes, I would agree. Little bit dark but.

23 Q. Okay. So from those pictures alone, would you
24 agree with me that the scene had been altered
25 between November and March 1st when you came.

1 A. Yes.

2 Q. Now, you did a very nice professional job of
3 taking measurements of everything that was found,
4 right, everything you had anything to do with?

5 A. Yes, we took measurements of the items of
6 evidence that were collected.

7 Q. All right. And very thorough measurements, for
8 instance, the tent 23, that marker there, 23, you
9 measured as 8' 9" west of the east wall; 12' --
10 actually later changed to 12", that was a typo --
11 12" north of the south wall, right?

12 A. Correct.

13 Q. So you did a very nice job of measuring where
14 every item was found by coordinating its distance
15 from one wall to the next, right?

16 A. That's what we did, yes.

17 Q. And that's how you have been trained to
18 investigate a crime scene, potential crime scene,
19 right?

20 A. Well, that's one of the methods to use.

21 Q. All right. Problem is, you came four months
22 later, after the scene had been altered, right?

23 A. I was there four months later, yes.

24 Q. So none of these measurements tell us where any
25 of these items were on November 5th, 2005; isn't

1 that right?

2 A. That's correct.

3 Q. Including the location of that bullet, number 23,
4 that you showed, right?

5 A. Correct. The measurements that we took were of
6 the location of the bullet on March 2nd.

7 Q. All right. You also were looking for, I believe,
8 Mr. Kratz said, any agents of -- reagents, I
9 guess was the term, that could in some way
10 destroy or damage that evidence, right?

11 A. Correct.

12 Q. And he mentioned specifically paint thinner or
13 bleach, right?

14 A. Correct.

15 Q. And there was a photograph of a bleach bottle,
16 which I don't see here. Do you still have that
17 up there?

18 A. I only have one photograph here.

19 Q. Oh, I have got it, sorry. I'm showing you 267.
20 This is actually a paint thinner bottle, I'm
21 sorry. So you found no bleach any where in the
22 garage?

23 A. At this time, I don't recall if we found bleach
24 or not.

25 Q. Well, do you need to refresh your recollection

1 with anything or ...

2 A. Yes, the report that was completed concerning the
3 garage search would refresh my memory.

4 Q. Okay. Now, you didn't actually prepare a report
5 of that search, right, of your own?

6 A. I did a very brief report regarding the fact that
7 I photographed the garage during the course of
8 this search.

9 Q. Okay. All right. But Investigator Steier was
10 the one who was documenting the times and, you
11 know, he was kind of following along with you
12 when you were doing those searches, right?

13 A. Correct.

14 Q. I'm not going to mark this, but it's page 702 and
15 708, through 708. If you would just take a
16 moment maybe this will refresh your recollection
17 as to whether there was any bleach in the garage.

18 A. I'm completed, sir.

19 Q. Did you see any entry of any recovery of bleach?

20 A. No, I did not.

21 Q. Okay. But you did find this paint thinner.

22 Would you agree with me that this paint thinner
23 appears to be an older bottle, not a brand newly
24 purchased item?

25 A. Well, that bottle is dirty; I guess I can't

1 comment as to its age.

2 Q. Nothing about it that looks like it was just
3 bought and used a few days before it was -- the
4 search?

5 A. I guess that would depend on what kind of
6 conditions it would be used in.

7 Q. All right.

8 A. It appears as though it's quite dirty.

9 Q. Okay. We'll stick with that. And, finally,
10 paint thinner, in someone's garage, is not at all
11 unusual, is it?

12 A. I would say that is not unusual.

13 Q. It's a very common item that many people have and
14 use around the house, especially in a garage;
15 wouldn't you agree?

16 A. Yes.

17 Q. Exhibit 265, this is a photograph that you took,
18 very helpful photograph, now that is taken after
19 the maroon automobile was removed?

20 A. Yes, sir.

21 Q. Were any other items moved before that photograph
22 was taken, to your knowledge?

23 A. Did you say moved or removed?

24 Q. I'm sorry. Were any other items moved on that
25 day, March 1st, before that photograph was taken,

1 other than just taking the car out?

2 A. Will you step to the side, please.

3 Q. I'm sorry.

4 A. In an early photograph, specifically the previous
5 photograph of the paint thinner, I know in the
6 foreground of that photograph, the yellow
7 stepladder was present and that is in the back
8 right corner directly in front of the ceiling
9 mounted furnace. But I don't see it in this
10 photograph. So it may have been moved out of the
11 way or collapsed and leaned somewhere so that we
12 could collect the paint thinner.

13 Q. All right. But I guess my point is, this
14 photograph was -- was taken largely before you --
15 you altered the scene as you saw it. And other
16 than putting these items, these markers there,
17 for -- for items already found, or were these
18 some of the ones that you found? Perhaps I have
19 this wrong. Was this taken later, during the
20 search?

21 A. This was taken on the evening of March 1st.

22 Q. Okay.

23 A. Obviously after the vehicle was removed. And it
24 was taken after, I believe, the first initial few
25 items of evidence had been found.

1 Q. I see. Yeah, there's a 9, a 10, and an 11 in
2 there that wasn't there before?

3 A. Correct.

4 Q. Okay. I'm going to show you that right now.
5 Exhibit 284 and 282. I'm sorry, 283, can you
6 identify those?

7 A. Yes, I can.

8 Q. And what are they?

9 A. I believe that's 283.

10 Q. It is, yes.

11 A. It's a photograph of evidence -- or I'm sorry
12 photographic marker No. 10, in the crack in the
13 concrete in front of it is what was later found
14 to be a shell casing.

15 Q. All right.

16 A. 284 is photo marker No. 11. And directly in
17 front of the front edge of that, again, is a
18 shell casing.

19 Q. All right. Now, I'm going to put these up here
20 for a moment, but if you could, first, use your
21 laser pointer and show us, on the exhibit that's
22 on the screen, where 9, 10, and 11 are.

23 A. There's 9, 10, and 11.

24 Q. Showing you 283, that is a close up view of where
25 No. 10 is -- or what you found in No. 10?

1 A. Correct.

2 Q. Pretty obvious shell casing, empty shell casings
3 laying right there in the open, in the crack?

4 A. I don't know if I would say it's obvious.

5 Q. Well --

6 A. It's a relatively small shell casing as far as
7 shell casings go and ...

8 Q. Let me ask you this, if you searched this garage
9 before and found 11, or 10, shell casings, do you
10 think you would have found this one, given its
11 location?

12 ATTORNEY KRATZ: Objection, speculation,
13 Judge. And I would ask him to show the picture of
14 how it looked on the 5th, so we can see the Suzuki
15 Samurai right over this location.

16 THE COURT: I will sustain the objection.

17 Q. (By Attorney Buting)~ So Exhibit No. 265, counsel
18 is correct, we haven't had any testimony about
19 whether the Samurai was ever moved during their
20 search so we'll move on. That is No. 10, it
21 appears to be in the eastern bay of the garage,
22 correct?

23 A. Marker No. 10?

24 Q. Yes.

25 A. Yes.

1 Q. Now, let's move over to marker No. 11; do you see
2 where that is?

3 A. Yes, I do.

4 Q. Pretty much right in your pathway as you walk
5 into -- through the service door; would you
6 agree?

7 A. Well, it's at the edge of the pathway.

8 Q. Okay. Let's look at a close up of that one.
9 Now, there's another shell, empty shell, right?

10 A. Yes, sir.

11 Q. Just laying right out in the open, not in a
12 crack, just sitting right on the surface of the
13 concrete, right?

14 A. Yes.

15 Q. Now, that was either not there on November 5th,
16 or somebody completely missed a shell sitting
17 right out in the open, because it's not in any of
18 the other photographs?

19 ATTORNEY KRATZ: Objection, speculation,
20 and there would be other explanations.

21 THE COURT: Sustained, I think that's a
22 question for the jury.

23 Q. (By Attorney Buting)~ Well, would this be an
24 indication that perhaps -- another indication
25 that the scene had been altered from November, if

1 you're finding a shell casing pretty much right
2 out in the open of this garage?

3 A. I don't know if I can draw that conclusion
4 because I don't know the condition of the scene
5 in November; I was never in the garage, so.

6 Q. No. 9, that snow bank is kind of hiding it, but
7 would you agree with me that it's pretty much
8 right in the middle of the opening to the -- to
9 that bay of the garage, right? Do you want me to
10 zoom back out?

11 A. No, that's okay. What are you referring to as
12 that bay?

13 Q. Well, this is a two car garage, we would be
14 referring to an east bay and a west bay. This
15 would be the west bay of the garage. And it's
16 really just a couple feet or so inside the big
17 overhead garage door?

18 A. Correct.

19 Q. And the close up that you showed of this, I will
20 do the not the close up one, 268. This isn't so
21 good on the ELMO. This is the other bullet that
22 you found, in the garage, the only other bullet,
23 correct?

24 A. Correct.

25 Q. You found just these two bullets, No. 9 and No.

1 23?

2 A. Correct.

3 Q. And this one you found just walking around, but
4 still in the early stages of the search, after
5 you had taken photographs of everything, just
6 kind of walking around and looking down and there
7 you see this, right?

8 A. Yes.

9 Q. You weren't on your hands and knees?

10 A. No, I was not.

11 Q. Okay. Now, this very thorough search also
12 included a jackhammer, didn't it?

13 A. I don't understand your question, sir.

14 Q. The search of the garage, on March 1st or 2nd,
15 included the use of a jackhammer?

16 A. Yes, the use of a jackhammer, correct.

17 Q. I'm sorry I was maybe not clear. And what they
18 actually did with that jackhammer was to remove
19 an entire area, 15 feet or so, where the crack
20 runs north and south down the middle of that
21 eastern most bay of the garage, right?

22 A. Correct.

23 Q. And all of those pieces of concrete were broken
24 into sort of chunks all the way down the line,
25 right?

1 A. Correct.

2 Q. They were all collected?

3 A. Correct.

4 Q. And they were all preserved?

5 A. Correct.

6 Q. For testing, if possible?

7 A. Yes.

8 Q. To your knowledge, were they sent to the Crime
9 Lab?

10 A. I do not know.

11 Q. Okay. All right. Just a couple of other quick
12 things. You showed us the rivet that you had
13 found through the processing, not the sifting,
14 but the stirring up of materials on -- you
15 mentioned two occasions, right?

16 A. Correct.

17 Q. Do you remember those dates? I don't know that
18 we ever established that.

19 A. Yes, December 19 and 20, of 2000 --

20 Q. Five?

21 A. Five. Thank you. Occurred in Madison. And the
22 Chilton dates were April 10 and 11, of 2006.

23 Q. Okay. And the materials that you were going
24 through on both days were -- was debris that had
25 been removed from the so-called burn pit area; is

1 that right?

2 A. Yes. And, actually, I believe it was the burn
3 pit as well as other areas from around the
4 property where burned debris had been found.

5 Q. Okay. But all in that same general area and not
6 a burn barrel or anything; you weren't mixing the
7 two together?

8 A. No, the burn barrel was searched on those
9 dates -- or on one of those dates in Madison, but
10 I was not involved in the search of the burn
11 barrel.

12 Q. Okay. But as far as the burn pit area goes and
13 the immediate surrounding vicinity, all that
14 debris that you went through, you said you found
15 a rivet?

16 A. I'm sorry?

17 Q. You say you found a clothing rivet; how many?

18 A. I believe there were five rivets found.

19 Q. Okay. You did not find a button, the clasp of a
20 big button that you use to button your jeans at
21 the waist, did you?

22 A. I know from reviewing evidence documents and
23 reports regarding that, that there were items
24 found that were described as close snaps, but I
25 don't specifically recall that they were --

1 Q. Right.

2 A. -- what you were referring to.

3 Q. Okay. Well, for instance, you mentioned the
4 rivet that says Daisy Fuentes, sort of stamped
5 into it, a brand name of some sort, right?

6 A. Yes, sir.

7 Q. You have never seen a button that would be used
8 to clasp the waist of a pair of jeans or denim
9 that says Daisy Fuentes on it, did you?

10 A. I don't recall seeing that, no.

11 Q. And that's through your entire search of the burn
12 pit area, right?

13 A. Well, the material that came from that burn pit
14 area.

15 Q. That's what I mean, yes. Okay. And, finally,
16 you mentioned that investigators basically
17 handled, picked up, looked at, and moved every
18 single -- almost every single item in that
19 garage, if not every single item?

20 A. Yes, almost every item there.

21 Q. March 1st and March 2nd, right?

22 A. Yes, sir.

23 Q. And though not one single piece of those items,
24 not one single item, showed any evidence of any
25 blood spatter, did it? Or did they?

1 A. To my knowledge, as to what conclusions could be
2 drawn at the end of March 2nd, no. But I know
3 that additional items of evidence removed from
4 that garage were sent to the laboratory and I may
5 not be privy to that.

6 Q. You may not be privy to that.

7 A. Correct.

8 Q. But, as far as you know, no physical items showed
9 evidence of blood spatter; do you know what blood
10 spatter is?

11 A. Yes, I do.

12 Q. Do you know what high velocity blood spatter is?

13 A. Yes.

14 Q. That's what we get when someone is shot with a
15 bullet?

16 A. Correct.

17 Q. And you saw no evidence of it at this scene at
18 all, did you?

19 A. No.

20 ATTORNEY BUTING: Thank you, very much,
21 sir.

22 THE COURT: Mr. Kratz?

23 ATTORNEY KRATZ: Just one area of
24 follow-up.

25 **REDIRECT EXAMINATION**

1 BY ATTORNEY KRATZ:

2 Q. Because we have heard that this was a two day
3 search, do you know if that garage had been
4 secured between Day 1, that is, the 1st of March
5 and Day 2, the 2nd of March?

6 A. Are you saying over the evening hours between our
7 two day search?

8 Q. Yes.

9 A. Yes, I do.

10 Q. And how was that secured, do you remember?

11 A. It was secured with a padlock.

12 Q. Is that a picture of the padlock, the locked
13 garage, between the 1st and 2nd of March?

14 A. Well, that's either the picture of the padlock on
15 the morning that we arrived, on March 2nd, or
16 it's a picture of the padlock that we found on
17 the garage on March 1st, when we arrived to do
18 the search.

19 Q. In any event, the garage was secured; in other
20 words, people couldn't just walk in and out of
21 the garage in between those two days; is that
22 right?

23 A. That's correct.

24 ATTORNEY KRATZ: That's all I have of Mr.
25 Heimerl for today, Judge.

1 ATTORNEY BUTING: Just one last follow-up,
2 then.

3 **RECROSS-EXAMINATION**

4 BY ATTORNEY BUTING:

5 Q. With regard to the security of the garage and who
6 could have come and gone, Mr. Avery certainly
7 couldn't have been one of those who came and went
8 into that garage, right?

9 A. When, sir?

10 Q. Well, let's just -- we'll just talk about it.
11 Mr. Avery was arrested in November of 2005,
12 right?

13 A. That's my understanding and that's why I asked
14 you to clarify the dates.

15 Q. And you understand that he was in jail
16 continuously from that date, at least through
17 March 1st and 2nd, right?

18 A. That's my understanding.

19 Q. So anybody who may have been in and out of that
20 garage during that time period, could not have
21 been Steven Avery?

22 A. That's what I would conclude.

23 ATTORNEY BUTING: Thank you.

24 THE COURT: All right. The witness is
25 excused for the day. Members of the jury, that

1 concludes our proceedings today. I will remind you
2 again at this time that you are not to discuss the
3 case with anyone, watch any news media accounts
4 about it, or discuss it with anyone in any way. You
5 are excused for today. We'll see you tomorrow
6 morning.

7 ATTORNEY BUTING: Your Honor, I always
8 forget to move the exhibits. Could I move in the
9 last two exhibits?

10 THE COURT: Any objection?

11 ATTORNEY KRATZ: No. That's fine.

12 THE COURT: Those exhibits are admitted.
13 They are numbers ...

14 ATTORNEY BUTING: 283 and 284.

15 THE COURT: Very well.

16 ATTORNEY BUTING: Thank you.

17 ATTORNEY KRATZ: I keep promising, Judge,
18 to ask for an accounting of what exhibits aren't in
19 yet. Perhaps the Clerk, then tomorrow morning,
20 first thing, we can discuss that, make sure that
21 they're all in.

22 THE COURT: All right. We'll do that then.

23 ATTORNEY BUTING: Judge, as long as
24 everybody is still here, could we -- I guess 262 and
25 263 were marked and not admitted earlier. I had

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this witness identify them. Now I would like to
move them as well.

THE COURT: 262 and 263?

ATTORNEY BUTING: Those are photographs
with the engine hoist, that he took in March.

ATTORNEY KRATZ: That's fine.

THE COURT: Okay. Those two exhibits are
admitted.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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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 November, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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