

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 10

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** FEBRUARY 23, 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 are here this morning, outside the presence
4 of the jury, for the continuation of the trial in
5 this matter. Will the parties state their
6 appearances for the record, please.

7 ATTORNEY KRATZ: Good morning, Judge. The
8 State appears by Calumet County District Attorney
9 Ken Kratz, Assistant Attorney General Tom Fallon,
10 Assistant D.A. Norm Gahn, appearing as Special
11 Prosecutors.

12 ATTORNEY STRANG: Good morning. Steven
13 Avery is here in person, and Jerome Buting
14 immediately to his right, and Dean Strang.

15 THE COURT: All right. I met with counsel
16 in chambers this morning before beginning. There
17 are a few matters to take up before we bring in the
18 jury. First of all, during yesterday afternoon's
19 proceedings, in which the Court conducted individual
20 voir dire of a juror, there was a side bar
21 conference during the questioning of the juror and
22 nothing has been put on the record yet about that
23 conference.

24 The Court had previously met with the
25 parties in chambers and the parties asked, before

1 the Court excused the juror, for a chance for a
2 side bar conference in order to request that
3 additional questions be posed to the juror. That
4 conference did, in fact, take place and each of
5 the parties requested that the Court ask some
6 additional open-ended follow-up questions, which
7 I did. Counsel, is that an accurate
8 representation of the side bar conference?
9 Mr. Kratz?

10 ATTORNEY KRATZ: Yes.

11 THE COURT: Mr. Strang?

12 ATTORNEY STRANG: Yes, it is.

13 THE COURT: I also noted, in announcing the
14 Court's decision denying the defense motion to
15 strike the juror, I did not recall, as I went home
16 last evening, whether I expressed the Court's
17 opinion specifically under the criteria of
18 subjective bias and objective bias, as Court's are
19 now required to do. So I wanted to add some points
20 of clarification to the Court's decision.

21 On the question of subjective bias, the
22 Court, first, was satisfied that all of the
23 answers given by the juror during the individual
24 voir dire were credible. The juror indicated
25 that she did not recognize Detective Remiker by

1 name; in fact, his name was listed on the
2 original jury questionnaire that all of the
3 jurors completed. She did not indicate on that
4 questionnaire that she recognized Detective
5 Remiker by his name. She only realized, when she
6 saw him testify that, in fact, he had been the
7 plaintiff in a civil trial in which she sat as a
8 juror approximately seven years ago. She could
9 not recall whether or not he testified in that
10 trial, which the Court does not find to be that
11 unusual, given the passage of time.

12 And what that indicates to the Court is
13 that she could not -- or she did not have a
14 recollection as to whether or not she made any
15 judgments of his credibility because she could
16 not even remember if he testified.

17 The negligence of Detective Remiker was
18 not an issue in that case; apparently it was a
19 rear end collision case involving a couple of
20 other vehicles. So the juror was not required,
21 as part of her duties, to assess negligence that
22 would have involved Detective Remiker. The sole
23 issue with respect to Detective Remiker would
24 have been damages.

25 There was nothing presented to the Court

1 to suggest that the case involved any unusually
2 emotional issues; that is, there does not appear
3 to be any traumatic injuries involved. The
4 juror's most vivid memory of the trial was that
5 it involved an injury to the lower left lumbar
6 region. She seemed to remember that more than a
7 lot of other details.

8 And, in conclusion, the juror said
9 nothing about the case would cause her to give
10 Detective Remiker's testimony any more or less
11 weight in this case. She expressed no doubts
12 about that fact and the Court finds her
13 explanation to be credible and reasonable.

14 On the issue of objective bias, the law
15 is that the focus of the inquiry into objective
16 bias is not upon the individual prospective
17 jurors, or in this case, the individual juror's
18 state of mind, but rather upon whether a
19 reasonable person, in the individual juror's
20 position, could be impartial. That is, even if
21 the juror says she can be impartial, there can be
22 situations in which a reasonable person would
23 have trouble doing that, and the court system
24 does not ask it.

25 In this case, the Court is satisfied

1 that there's nothing about the facts that have
2 been presented to the Court to suggest that a
3 reasonable person could not be objectively
4 biased. There's been a significant passage of
5 time since the last trial. As the Court has
6 already indicated, the juror knew Detective
7 Remiker only as a party in the case, not in any
8 other capacity.

9 And the passage of time had been such
10 that she did not even remember his name when
11 filling out the questionnaire. She has no
12 recollection as to whether or not he testified,
13 and that tells the Court that while he may or may
14 not have testified in the case, there's no
15 indications that any recollection of his
16 credibility is present in her mind.

17 As I indicated earlier, his negligence
18 was not an issue in the case and the injuries
19 were not particularly traumatic or emotional,
20 such that a juror in this juror's position could
21 not be expected to be able to put aside any
22 opinions from the case. For those reasons, the
23 Court is satisfied that the juror should be
24 permitted to stay on the jury.

25 There's one last item for the Court to

1 take up before we proceed to hear from the
2 parties, and that is, I have informed the
3 attorneys earlier this morning that the Court was
4 notified earlier this morning that a close family
5 member of one of the jurors apparently died
6 overnight. The family member resides in another
7 state and the juror has requested permission to
8 leave the State to attend the funeral.

9 The Court finds that that is a very
10 reasonable request. I'm not going to give the
11 name of the juror on the record, because I don't
12 even know if all the immediate family members
13 have yet been notified. But given the fact that
14 travel is required to a state in a far part of
15 the country, the juror could not reasonably be
16 expected to come back with even a one day absence
17 for postponing the trial and the Court has
18 decided that it's necessary that the juror be
19 excused. Counsel, does either party disagree
20 with that determination?

21 ATTORNEY KRATZ: Not by the State, Judge.

22 THE COURT: Mr. Strang.

23 ATTORNEY STRANG: No, we agree that the
24 juror with the family tragedy ought to be excused
25 and we continue to believe that the juror who served

1 on Detective Remiker's jury also should be excused
2 for the reasons we explained yesterday.

3 THE COURT: And your objection is duly
4 noted for the record.

5 Before we bring in the jury, then, the
6 Court has also been informed that I believe the
7 defense has a matter it wishes to take up before
8 we bring the jurors in.

9 ATTORNEY STRANG: We do. Thank you, your
10 Honor. I renew at this time the earlier motions to
11 suppress that Mr. Avery pursued with respect to
12 execution of the search warrants as -- in so far as
13 they affected his privacy interests.

14 And I'm particularly concerned here this
15 morning with his own trailer, his residence, the
16 detached garage that consistently has been
17 identified in this trial as Steven Avery's
18 garage, and the area behind it described as the
19 burn area, as well as the burn barrel in the
20 front, again, consistently described in this
21 trial as associated with Steven Avery's house.
22 All of these areas were what -- or within what
23 Mr. Kratz rightly described yesterday, in
24 passing, as the curtilage of Steven Avery's
25 residence.

1 And I renew the motion on both Fourth
2 Amendment grounds under the United States
3 Constitution and on State Constitutional grounds,
4 reliance specifically on Article 1, Section 11,
5 of the Wisconsin Constitution. Because the
6 evidence adduced to date in the trial casts a new
7 light, or adds some additional relevant fact --
8 relevant facts on the reasonableness of the
9 searches between November 5 and November 12th,
10 2005.

11 The protective sweeps, or the initial
12 two entries, very brief entries on November 5,
13 are not at issue. We aren't challenging those,
14 neither have we ever challenged the consent
15 search on November 4 and, again, don't challenge
16 that today.

17 But the search of Mr. Avery's private
18 areas beginning at about 7:30 p.m. on Saturday,
19 November 5, 2005, and then every search after
20 that time appear unreasonable, not just for the
21 reasons we explored at length this summer in the
22 evidentiary hearings, but for additional reasons
23 developed here at trial.

24 The State's witnesses, first, have
25 described the searches of the house trailer and

1 the garage, in specific, as starting with sort of
2 general searches -- I'm making no effort to
3 repeat verbatim any particular witness'
4 testimony, but I'm synthesizing the testimony as
5 I have heard it. Sort of general or quicker,
6 less thorough searches, initially, and then
7 proceeding a matter of days later to what's been
8 described here repeatedly has a thorough search.

9 Typically, I think the witnesses have
10 ascribed the thorough search of the house trailer
11 and the garage to November 8, although, there may
12 be some disagreement among the witnesses on
13 whether November 6 or November 7, November 8, or
14 November 9 are the thorough search of the house
15 trailer and the garage.

16 Now that's, of course, in some conflict
17 with the testimony that the Court took in July
18 and August, 2006, where searchers testified that,
19 with each search they seized all of the relevant
20 items and searched the entire area to be
21 searched.

22 But, you know, moving past the
23 inconsistency, if we accept on its face the
24 testimony adduced here in trial, we have an
25 approach to searching a citizen's most private

1 places, his home, his garage, his yard, within
2 the curtilage, and excluding him for many days
3 from his home. We have an approach that suggests
4 that somehow the Fourth Amendment and the
5 correlative provision of the Wisconsin
6 Constitution allow sort of warm up searches,
7 calisthenics, dry runs.

8 And I -- You know, we're at the right
9 time of the year for Cactus League exhibition
10 games, if this were baseball, but it's not. It's
11 searching and seizing people's private effects
12 and people's private places. And I know of no
13 theory of reasonableness of a search under either
14 the Federal or State Constitutional provisions
15 that allows for this sort of warm-up exercise, or
16 moving from the general to the thorough with
17 repeated entries over a span of days.

18 This gets to sound, as a matter of fact,
19 if we just look at the reasonableness
20 requirement, just the touchstone, as I understand
21 it, of the Fourth Amendment, this gets to sound
22 and awful lot like the Writs of Assistance of the
23 18th Century, that caused people living over here
24 in the New World to resent and ultimately rise up
25 against the British Monarch and his agents in

1 what was then the American Colonies. Sort of a
2 roving, we'll get around to it when we're good
3 and ready or when we feel like it, approach to
4 rummaging through someone's private places and
5 private effects.

6 I don't think it's reasonable. And the
7 record here, at great length, has laid out why.
8 So, in addition to the reasons we argued earlier,
9 this is a first further reason on which I ask the
10 Court to suppress everything taken from
11 Mr. Avery's house, his garage, the burn area or
12 the burn barrel, beginning at about 7:30 p.m. on
13 Saturday November 5, 2005. And suppressing as
14 well the visual impressions of searching agents
15 in those places, testimony about that, and
16 evidence derived from observations, or from items
17 seized, during the searches I have described.

18 Second, we have further testimony that I
19 think sheds light on the motion earlier heard and
20 communicated under *Franks* against *Delaware*. It
21 is now clear, from a fuller record at this trial,
22 that search warrants were obtained from Judge Fox
23 at about 3:10 in the afternoon on November 5,
24 2005. And maybe I shouldn't be using plural, at
25 least a search warrant relevant to here.

1 With the application, saying that the
2 affiant believed there was probable cause to
3 believe that evidence of several crimes would be
4 found, murder, sexual assault, I think false
5 imprisonment was on the list, I think theft was
6 on the list. There may have been a fifth crime,
7 I don't know.

8 But what I do know is that the evidence
9 we have heard here is that the State's witnesses,
10 at least, insist that nobody knew of any blood in
11 the Toyota, nobody had opened the Toyota, nobody
12 had found anything more than the Toyota concealed
13 under trees and branches and rubbish, old car
14 parts.

15 And that's where the factual knowledge
16 related to Ms Halbach's disappearance or fate
17 stood at the time the State applied for that
18 search warrant and Judge Fox issued it on
19 November 5, 2005; at least the factual basis as
20 it relates to the places on the Avery property as
21 to which Mr. Avery really has a privacy interest.

22 So I think the fuller record here adds
23 to the record the Court has before it on the
24 **Franks** issue, and that's the second additional
25 basis for the motion to suppress that I'm now

1 renewing. I have described before the relief
2 that we seek here, just a few moments ago, and
3 it's the same specific items, impressions, and
4 derivative evidence that I wish suppressed on
5 that second basis.

6 Third, and finally, there's newly
7 adduced evidence that bears on the search of the
8 burn area. Here, let me concede,
9 parenthetically, that we have not heard all of
10 the testimony yet about the search of the burn
11 area and seizure of items in that area. I think
12 as to the other searches that I have discussed
13 here this morning, I think we have heard all, or
14 almost all, of the testimony that the State will
15 present bearing on Fourth Amendment or search and
16 seizure issues.

17 But we heard enough about the dog and
18 the burn area to say this, the reason given for
19 not searching the burn area, pursuant to this
20 search warrant, earlier than November 8, which I
21 think is when the evidence will show, or has
22 shown, that a search of the burn area finally
23 began, is that there was a dog, on a chain, and
24 that the dog -- the dog's chain allowed it to
25 roam the entire burn area and to -- presumably to

1 scare off searchers.

2 Now, the record is replete with evidence
3 about how successful a whole group of law
4 enforcement agencies were in excluding the public
5 from the metes and bounds of this roughly 40 acre
6 parcel for about a week, a week or eight days.
7 We have security people at the four corners. We
8 have got a, you know, a command -- two command
9 stations. We have got a check in point out at
10 Avery Road and Highway 147.

11 We have complete law enforcement control
12 over this property, on this record, for that
13 time. We have people on the property who are
14 trained to handle dogs. And it's not reasonable,
15 as a matter of searching and seizing, with that
16 kind of law enforcement control of the property,
17 to say that one dog kept us from searching an
18 area covered by the warrant.

19 Presumably the dog was fed during the
20 three days that passed, under law enforcement
21 control, before the burn area was searched.
22 Presumably the dog was given water during that
23 time. And indeed, even if none of the people
24 there were capable of handling one dog and
25 getting the dog out of the area, we have got

1 testimony here that a family member, namely Bobby
2 Dassey, who lived on the property, from which the
3 public and all family members were excluded, was
4 able to retrieve his dog, with the assistance of
5 law enforcement officers.

6 So it was feasible to get a dog to a
7 family member, or to someone, presumably, was
8 familiar to the dog and could handle the dog.
9 This was something that the police demonstrated
10 they could do, before November 8.

11 They were in contact with the Averys, as
12 the record shows, the Jandas, the Dasseys, during
13 that time. Indeed, Mr. Avery himself was
14 interviewed, up in Crivitz, by law enforcement
15 officials, at some length on November 5 and
16 November 6.

17 Earl Avery was on the property for at
18 least some time while law enforcement officers
19 were there, shortly after 11 o'clock. I don't
20 know when Earl Avery was removed from the
21 property, but we know from the record at trial
22 that he was there at least for a time.

23 So it's really just not reasonable to
24 say that one dog kept this army of law
25 enforcement officers from searching the burn area

1 for three days or more. And that's the third
2 plank upon which I renew the suppression motion.
3 There, the relief I seek is the suppression of
4 observations made upon a search or examination of
5 the burn area and items seized in the burn area,
6 or within the area that fell within the range of
7 the dogs reach.

8 THE COURT: All right. Before I hear from
9 the State, the one question I had was, I thought at
10 the time of the original motion the defense conceded
11 that the search, which started at 7:30 on the 5th,
12 would have been the execution of the warrant, that
13 the initial sweep searches were just cursory
14 searches that were not the execution of the warrant,
15 but I understand from what you have said today that
16 that position has changed.

17 ATTORNEY STRANG: I didn't -- I don't mean
18 to change the position, and I'm sorry if I did that.
19 And I -- Let me sort of get back to trying to recall
20 how we argued this sequence. I think there are -- I
21 think there are two initial sweeps of Mr. Avery's
22 home, the first without a dog, and the second even
23 shorter and with a dog. So, yes, I think the Court
24 is right, the 7:30 search would be the first
25 execution of the search warrant. And that was not

1 unreasonably delayed from, you know, in terms of the
2 passage of time between the execution of the warrant
3 and beginning that search.

4 So, I do -- I don't mean to change my
5 position, and I think the Court is right that
6 this squares up better as the first search --
7 well, the 7:30 p.m. to 10:05 p.m. search on
8 November 5 being an execution of the warrant.

9 Now, the second plank that I raised,
10 **Franks**, of course, would affect even that search.
11 But the first point that I made here, the warm up
12 or Cactus League exhibition searches, would not
13 affect that first search of the home.

14 And the third argument I made, about the
15 dog, has no bearing on the trailer that was
16 searched on Saturday night, between 7:30 and 10,
17 because nobody -- nobody has said the dog
18 affected that search.

19 THE COURT: All right. The **Franks** argument
20 you mentioned, clarify again for me briefly what --
21 or how that argument has been affected by the course
22 of the trial, as supplementing your original
23 argument.

24 ATTORNEY STRANG: Sure. I explained what
25 we now have as a matter of testimony as the

1 collective knowledge of law enforcement about the
2 Toyota. We also have law enforcement people saying
3 that, you know, at about the time the Toyota was
4 discovered and the hours immediately after, they had
5 dark suspicions. They suspected the worst. You
6 know, they were gearing up for a criminal
7 investigation. But they still viewed this as a
8 missing persons investigation and still hoped to
9 find Ms Halbach alive.

10 And, indeed, it's that hope, or that
11 expectation, that makes reasonable at all, the
12 protective sweeps. At least on an emergency
13 doctrine argument, which I understand the State
14 to rely on as justification for, for example,
15 taking dogs through places after an initial sweep
16 through.

17 So the testimony here is consistent with
18 the actions of the officers in that they are
19 pursuing a missing persons investigation, at
20 least through the first two quick searches of
21 Mr. Avery's house and garage on November 5.
22 That's really -- That's inconsistent with the
23 claim that, you know, you ought to give us a
24 warrant and let us go search, because we are
25 going to find evidence of a murder, and a sexual

1 assault, and theft, false imprisonment, if that
2 was the other crime. The search warrant
3 applications and search warrant, of course, are a
4 matter of record and the Court can take notice of
5 those.

6 THE COURT: All right. Who will be
7 responding for the State? Mr. Fallon.

8 ATTORNEY FALLON: Good morning. Thank you,
9 I will be responding for the State. Naturally, we
10 have a different view of the evidence adduced to
11 this point in the trial. And quite frankly, would
12 offer the opinion at the outset that the arguments
13 made during the July and August hearing, in
14 particular the August argument on the 10th, followed
15 up with the brief, has not necessarily been
16 substantiated, but I would say overwhelmingly
17 supported, and the reasonableness of the searches
18 engaged has been demonstrated to a degree that
19 should remove not only a reasonable doubt but any
20 doubt.

21 I begin with this point, I have heard
22 nothing in the record so far that establishes the
23 defendant's right of standing to challenge the
24 search of anything on that 40 acre parcel,
25 outside of his trailer or garage, that includes

1 the burn barrel and the burn pit.

2 Case law clearly says that although
3 items such as the burn pit and its location may
4 well be within the curtilage, which is a somewhat
5 arcane term from the common law which has
6 relatively fallen out of use in Fourth Amendment
7 analysis these days, but it still has some
8 benefit for purposes of claiming an argument.

9 The law is quite clear that while
10 something may be within what had traditionally
11 been perceived as a curtilage, does not
12 automatically establish that one has standing to
13 object to a search of that particular item. So
14 nothing in the record has changed that.

15 Secondly, there's been no evidence
16 whatsoever that there was any joint venture or
17 agency relationship established between the
18 volunteer searchers and law enforcement. It was
19 their entry into the property that commenced the
20 investigation.

21 Third, it's quite clear, and there's
22 been no evidence to the contrary, in fact, even
23 more evidence now, that there was consent for the
24 original entry by the searchers as well.

25 Fourth, the theory upon which the State

1 proceeded at the time of the motion, and
2 continues until this very day, is that this was
3 one continuous search. There was no violation of
4 the one warrant, one search principle originally
5 argued, and continued to be argued today.

6 In that context, a warrant was in fact
7 obtained, as counsel notes, at approximately
8 3:10, Saturday, November 5th. They returned to
9 the property at 3:25 to commence execution of the
10 warrant. And as counsel has conceded under the
11 Court's questioning, there were two original
12 entries in the concept of a sweep, actually just
13 looking for a person or a body of Teresa Halbach,
14 and/or any other civilian or family member who
15 ought not to be present, should be located. So
16 that was the dual purpose of those searches. I
17 think that's conceded.

18 And as the Court notes, there was an
19 execution of the -- The commencement of the
20 execution of the full search at 7:30 that
21 evening. But before we get into the details, let
22 us not lose sight of several critical facts
23 omitted from counsel's argument.

24 And this is where the testimony at the
25 trial does nothing but enhance, not detract, from

1 the findings the Court made in August, and the
2 arguments the State made then and in its written
3 submission thereafter. The area to be searched
4 was a 40 acre crime scene. It had 3800 to 4,000
5 cars. I believe the testimony is there was 11 to
6 15 buildings. Included in that number were four
7 residences.

8 We heard from one witness in this case,
9 admittedly through lengthy cross-examination by
10 the defense, which only highlighted the testimony
11 of Special Agent Fassbender back in August and
12 again during this trial, that there was an awful
13 lot going on, not only within the 40 acre parcel,
14 but within the surrounding areas, most notably
15 the two or three gravel pits owned by the
16 Radandts.

17 As Mr. Ertl explained, they had a number
18 of sites to investigate, both on the property --
19 the 40 acre site and other, including this
20 potential burial site, other areas in the gravel
21 pits, and the surrounding, which admittedly took
22 resources away from the attempted search, or from
23 the ongoing search at the property. So those
24 facts must be kept clearly in perspective.

25 Again, there's a safety issue, there was

1 a weather issue that delayed the onset of the
2 search. There were limited number of officers
3 that first day. More and more officers arrived
4 to assist in executing the search warrant signed
5 by Judge Fox.

6 So it's within that backdrop that we now
7 begin to clearly scrutinize and examine both the
8 evidence introduced then, during this trial, and
9 the arguments of counsel.

10 As reflected by the testimony of the
11 officers and those who supported him -- and when
12 I say the officers, I'm talking specifically of
13 Special Agent Fassbender, who was coordinating,
14 along with Investigator Wiegert, this
15 investigation. It's quite clear that there were
16 a number of teams, in a number of places, being
17 searched simultaneously.

18 This wasn't just four guys who were
19 going from one place to the next. There were
20 several search teams involving the Crime Lab,
21 involving Manitowoc Police Department, involving
22 some members of the Manitowoc Sheriff's Office,
23 the Calumet County Sheriff's Office, the
24 Department of Justice, Division of Criminal
25 Investigation.

1 As indicating, the search started out in
2 a funneling effort, a sweep looking for persons
3 and bodies on the property, and then slowly
4 funneled down into more specific evidentiary
5 searches, in support of a missing person/criminal
6 investigation. And I will elaborate on that in a
7 moment.

8 But I did want to make this particular
9 point first, again, as a legal backdrop to the
10 factual backdrop just provided. Article 1,
11 Section 11 of the Wisconsin Constitution, has
12 been and continues until this very day, to be
13 interpreted the same way as any attack or as any
14 interpretation of the Fourth Amendment to the
15 United States Constitution. And our case law has
16 consistently held that.

17 And while I compliment counsel on his
18 argument of raising a State Constitutional basis
19 or challenge, for now, the law in terms of
20 interpreting, applying, and assessing that
21 challenge, the analysis is the same under the
22 Fourth Amendment to the United States
23 Constitution and under Article 1, Section 11, of
24 the Wisconsin Constitution.

25 As such, the touchtone for the Court's

1 analysis is reasonableness. So within those two,
2 that factual backdrop and the legal backdrop, we
3 examine the searches.

4 Now, counsel seeks to suppress a number
5 of items, conveniently not designating those
6 items. But let's look at the evidence that was
7 taken during that first search. First search is
8 conceded, so there's nothing that was taken out
9 of her (sic) home on Saturday night, which is
10 subject to the suppression motion in the first
11 place. So in effect, with respect to the home,
12 the only items of evidentiary -- that jump in my
13 head right now, based on the testimony, are the
14 weapons seized on Sunday, and the key, and a few
15 other miscellaneous items on Tuesday.

16 Now, in examining the searches on those
17 particular days, what do we have. We have a
18 specific description, those weapons were observed
19 on Saturday night during the search, they were
20 looking for other biological trace evidence to
21 show the existence, or non-existence, of Teresa
22 Halbach within that residence, anything that
23 would show or connect her to the particular case.

24 The weapons were observed. They were
25 seized the next day, hey, go get those weapons,

1 after all, we do have an individual with a felony
2 record. They are in constructive possession,
3 that's evidence of a crime, take that. So they
4 were sent back in, as part. They were observed
5 there, but they had other duties that night. It
6 was 7:30. There was a torrential rainfall going
7 on. And they were looking, at that time, for
8 evidence of a missing person/criminal
9 investigation. In other words, her missing
10 person could very well be the result of a crime.

11 And while we're on that point, let's
12 make this abundantly clear, nowhere is it said,
13 and counsel cites no case, because there is no
14 case for the proposition that on the one hand we
15 have a missing person, and then you draw a line
16 in the sand and say, oh, well, you crossed the
17 line, now you are in a crime.

18 Probable cause is defined as something
19 that would excite an honest belief in the minds
20 of an officer that perhaps a crime or criminal
21 activity is afoot. That's the basis to get a
22 probable cause determination.

23 Now, it's quite clear that many missing
24 person cases may very well fall into that
25 category. Missing person concepts and probable

1 cause for a crime overlap, frequently overlap.
2 And there is a large difference between probable
3 cause in a missing person case and proof beyond a
4 reasonable doubt that the missing person is
5 missing because of a crime.

6 So let's not confuse the concepts. They
7 overlap. They are clear. Sometimes they have
8 two operating different spheres entirely, but
9 frequently they overlap. And in the analysis of
10 the searches underway here, there was nothing
11 that was unreasonable in the steps taken by
12 Investigators Wiegert and Fassbender in directing
13 the searches here.

14 With respect to the garage, the first
15 entry to the garage was on Sunday. So I'm still
16 waiting for the argument as to why anything that
17 was taken, including the shell casings and the
18 other material on the search of the garage on
19 Sunday morning, is subject to the search, subject
20 to suppression.

21 It's their first enter, other than the
22 sweep that occurred the day before looking to see
23 if there is the person or the body of Teresa
24 Halbach, or the person or a body of somebody else
25 who shouldn't be there.

1 Now, let's further examine, again,
2 returning briefly to the burn pit and the burn
3 barrel argument. I can think of no other act
4 that is quite so clearly supportive of the
5 concept of abandoned property than the act of
6 throwing something in a fire and burning it.

7 The burn barrel is clearly -- anything
8 in that barrel is subject to search by any person
9 driving up and down that driveway. That's
10 clearly evidence of property discarded, unwanted,
11 and thrown away.

12 The quintessential act of abandonment is
13 burning it, consuming it, chopping it up, what
14 have you. The same can be said for the burn pit
15 as well. Anything in there is abandoned
16 property. It is burned. It's evidence of the
17 owner or the possessor, the constructive
18 possessor of that property has shown his intent
19 to discard it and not care about it. It burned.

20 With respect, again, to the searches of
21 this particular property, I would also point out
22 that the original warrant signed by Judge Fox on
23 Saturday, November 5th, was renewed on Wednesday,
24 the 9th, I believe, as the evidence in the motion
25 hearing was, some time late that afternoon,

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memory strikes me, about 4:00.

And the warrant was reused for the follow-up entries on Thursday, Friday, and Saturday, most notably by Mr. Austin of the State Patrol, Agent Fassbender, and one or two others as they were doing their final go through the premises, and Mr. Austin was taking his copious measurements that we have heard quite a bit about. So, clearly, there's nothing to undermine the inevitable discovery argument that the State made as a fall or drop back position.

Finally, there's one argument that we didn't make earlier that we could make now since the motion is renewed, and that is, I think you also have a good faith belief, as exhibited by the officers, in reliance on a warrant that was issued by Judge Fox, that probable cause was established and then the warrant was reissued. And I would submit to the Court that they had no obligation to reissue that warrant, but just as a safety precaution, they went back to the judge, renewed the warrant, with additional information that had been discovered during those days.

And that takes me, by the way, to another analysis on the reasonableness component,

1 is that each day, each hour, additional
2 information became available to the officers that
3 justified continuous operations here that say,
4 well, we have got to go back in. Let's look at
5 that. We just got this call from the Crime Lab,
6 we have got presumptive positive for blood here
7 in the SUV, better go back and look for that.
8 Better go back in there and luminol Mr. Avery's
9 trailer and Charles Avery's trailer, and the
10 other places, to see if there is any blood
11 evidence there.

12 Each hour passed, more information
13 became, probable cause was not only enhanced, it
14 was increased, justifying continued searches and
15 continued investigation by law enforcement
16 officers, further support of the one warrant and
17 one continuous search, which was under way.

18 Now, with respect to this **Franks**
19 argument, again, I find that rather disingenuous.
20 Again, nothing has been shown here to show a
21 false or material statement that was false that
22 was introduced or established by virtue of the
23 testimony, that hadn't already previously been
24 discussed.

25 The only argument is the concept of

1 while the missing crime and missing person and a
2 missing -- missing person and a criminal
3 investigation analysis. And I think we have
4 already discussed how they overlap.

5 But there's nothing that has been
6 introduced, to this point in the trial, that
7 suggests that there was any material or false
8 statement or any reckless disregard for the truth
9 by the affiants of that warrant or the
10 information provided them, that being Detective
11 Remiker and Investigator Wiegert.

12 Again, I'm still waiting for the
13 standing to be established by the defense as to
14 how they are going to search or complain about
15 searching the SUV of Teresa Halbach. Again,
16 there is no basis upon which the defense can
17 challenge the search, the seizure of that SUV, or
18 any of the evidence obtained therein.

19 Next, again, returning to the burn area
20 and the interesting analysis for the dog
21 argument. While one may be trained to handle a
22 bloodhound, one may be trained to handle a human
23 remains detection dog, commonly referred to as a
24 cadaver dog, doesn't mean that one is established
25 and trained to handle all kinds of situations.

1 And we all know, from our common sense, that
2 there are many people who are good with animals,
3 some are very professional, some do it for a
4 living, many of us are casual pet owners, some
5 are not.

6 Well, regardless of that, there are
7 animals out there who have such character and
8 demeanor that it doesn't really matter much, for
9 the professional. And the fact that one may be
10 well trained to handle a bloodhound, or human
11 scent detection, or human remains detection, is
12 of no consequence and of no meaning here, doesn't
13 help us at all.

14 Finally, I think it's very important to
15 note that the -- that the evidentiary
16 significance, as it were, to this burn pit area,
17 wasn't determined at all until Tuesday afternoon.
18 There was no need to remove or do anything with
19 the dog. In fact, we credit Deputy Kucharski for
20 exercising common sense in not shooting the dog
21 when they wanted to search it. They waited.
22 They finally did have somebody remove the dog
23 when the evidentiary significance of the burn pit
24 became clear.

25 The fact that Bobby Dassey was allowed

1 to return to get his puppy is an entirely
2 different concept than the junkyard dog in the
3 back of the yard, who lives outside, and a fully
4 grown adult animal and a puppy, in terms of their
5 care, and responsibility, and their needs,
6 etcetera. That's an argument without any merit
7 whatsoever. I don't even need to go further.

8 So, again, what is it that they are
9 asking to suppress. The guns were seized, as I
10 said, on Sunday. There was the shell casings and
11 some blood spatter on the first search of the
12 garage. Where's the challenge to the
13 significance of that? How is that in violation
14 of the warrant? It was their first entry.
15 Again, there's not much at issue. And what is at
16 issue, there is no basis whatsoever, in fact or
17 law, to suppress that evidence. So we would ask
18 the Court to affirm its previous ruling. Thank
19 you.

20 THE COURT: All right. I'm not going to
21 hear further from the parties on the issue at this
22 time. As Mr. Strang indicated, I think we haven't
23 heard all the evidence that may come in yet with
24 respect to the burn pit. I will give the parties an
25 opportunity to argue further later. I'm not going

1 to decide it from the bench at this time.

2 Before we bring the jury in I'm going to
3 take a quick five minute break, and I mean no
4 more than five minutes. I'm going to ask the
5 bailiffs to keep Mr. Avery here. We'll be back
6 out in a few minutes and bring in the jury.

7 (Recess taken.)

8 (Jury present.)

9 THE COURT: Mr. Kratz, at this time you may
10 call the State's first witness this morning.

11 ATTORNEY KRATZ: Thank you, Judge, the
12 State will call Katie Halbach to the stand.

13 ATTORNEY STRANG: Your Honor, may we just
14 take a procedural moment at side bar.

15 THE COURT: Yes.

16 THE CLERK: Raise your right hand.

17 **KATIE HALBACH**, called as a witness
18 herein, having been first duly sworn, was
19 examined and testified as follows:

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

22 THE WITNESS: Katie Halbach, H-a-l-b-a-c-h.

23 **DIRECT EXAMINATION**

24 BY ATTORNEY KRATZ:

25 Q. Katie, how old are you?

1 A. I'm 15.

2 Q. I'm sorry?

3 A. 15.

4 Q. And do you go to school?

5 A. Yup.

6 Q. What grade are you in?

7 A. I'm a sophomore.

8 Q. In what community do you live? What city do you

9 live in?

10 A. I live in Hilbert, Wisconsin.

11 Q. And who do you live with, Katie?

12 A. I live with my family, Tom and Karen Halbach, and

13 my sister, Kelly Halbach.

14 Q. All right. Before October 31st of 2005, did you

15 have another sister?

16 A. Yes.

17 Q. Tell the jury who that was, please?

18 A. It was Teresa Halbach.

19 Q. Let me show you a picture of what has been

20 received as Exhibit #1, tell us who that is?

21 A. That would be my sister, Teresa Halbach.

22 Q. Katie, can you describe your relationship with

23 your sister? Where did she live, first of all?

24 A. Um, first, she lived in Green Bay, when she went

25 to college. Then, later, she moved next door to

1 us.

2 Q. Okay. When she lived next door to you, did you
3 have occasion to meet with her, or see her a lot?

4 A. Yeah, she would come over sometimes and hang out
5 with us, or sometimes on the weekend, me and
6 Kelly would go over to her house.

7 Q. All right. Who's Kelly?

8 A. She's my little sister.

9 Q. How much younger is Kelly than you?

10 A. She's two years younger than me.

11 Q. And how much older was Teresa than you?

12 A. She was 11 years older than me.

13 Q. As sisters, and especially as sisters who lived
14 literally next door to each other, what kind of
15 things would you guys do when you hung out
16 together?

17 A. We would watch movies, or watch TV, or like play
18 card games, or just hang out.

19 Q. All right. Let me ask you, Katie, like most
20 sisters, would you ever talk about shopping, or
21 clothes, or things like that?

22 A. Yes.

23 Q. Did you ever go shopping with your sister,
24 Teresa?

25 A. Yes.

1 Q. And were you aware of the clothes that Teresa
2 wore?

3 A. Yes.

4 Q. I'm going to specifically ask you about Teresa's
5 blue jeans, okay? Let me first ask you, Katie,
6 if you were aware of any specific pairs of blue
7 jeans that Teresa owned that she had at her
8 house?

9 A. Well, she had a lot of Weatherly (phonetic) jeans
10 just because she really liked their jeans and I
11 know she had a pair of Daisy Fuentes jeans.

12 Q. Let me stop you there. How do you know that she
13 had a pair of Daisy Fuentes jeans?

14 A. Well, one day she showed me a new pair of jeans
15 she had. And I noticed that the brand was Daisy
16 Fuentes. And I knew that Daisy Fuentes was an
17 older person, so I told Teresa that she has old
18 person jeans.

19 Q. As those of us that are my age, do you think
20 Daisy Fuentes is a older person; is that what you
21 told her?

22 A. Well, she's not old, but she's not young.

23 Q. But you commented, in fact, you teased your
24 sister about wearing an old person's jeans; isn't
25 that right?

1 A. Yes.

2 Q. After your sister's disappearance, and after you
3 learned that your sister had died, did you have
4 occasion to go back to her house and look through
5 some of her stuff?

6 A. Yes, we did.

7 Q. When you looked through her stuff, Katie, did you
8 find her Daisy Fuentes jeans?

9 A. We did not.

10 Q. Sometime during this investigation, were you
11 asked to join, or accompany, a police officer, I
12 think it was Officer Fassbender, in trying to
13 find that pair of jeans, or trying to find a pair
14 that was just like those jeans?

15 A. I did.

16 Q. Where did you go to get those?

17 A. We went to Kohls.

18 Q. And do you know if Kohl's Department Store is a
19 place that carries Daisy Fuentes jeans?

20 A. Yes, they do.

21 Q. Do you know if Daisy Fuentes jeans are carried
22 anywhere other than Kohl's?

23 A. I do not know.

24 Q. Katie, I have handed you what's been marked as
25 Exhibit No. 288. Can you tell the jury what that

1 is, please?

2 A. They are a pair of Daisy Fuentes jeans.

3 Q. And have you seen those before?

4 A. Yes, I have.

5 Q. Tell the jury how you have seen those before?

6 A. I went with Mr. Fassbender to Kohl's one day and

7 he asked me to pick out a pair of Daisy Fuentes

8 jeans that I thought Teresa would have worn.

9 Q. The same style, the same brand; is that right?

10 A. Yes.

11 Q. Did you try to also pick out the same size that

12 she would have worn?

13 A. Yes, I did.

14 Q. Why don't you hold those up and show the jury. I

15 want you to hold up and show the jury the front

16 and the back of those jeans, if you would, okay.

17 Now, on the back pocket of those jeans, there's

18 some stitching; do you see that?

19 A. Yes.

20 Q. Do you know what that stitching is called on the

21 back pocket?

22 A. No, I don't.

23 Q. Okay. Katie, let me ask you, do you know what

24 holds a pair of jeans together?

25 A. Rivets maybe.

1 Q. Okay. When looking at Exhibit No. 288, does --
2 do those jeans have rivets?

3 A. Yes, they do.

4 Q. And on those jeans, do those rivets say anything?

5 A. They say Daisy Fuentes.

6 Q. Mr. Wiegert is going to grab those from you, as I
7 ask you one or two other questions. Do you know
8 when the last time when you saw Teresa wearing
9 her Daisy Fuentes jeans was?

10 A. I don't remember.

11 Q. Do you remember what size jeans your sister,
12 Teresa, wore?

13 A. She probably would have worn anywhere between
14 like a five or an eight.

15 Q. Some clothes, I don't know much about girls
16 clothes, but they run different sizes; is that
17 right?

18 A. Yeah, depends on like the store, whatever.

19 Q. I'm going to have Mr. Wiegert turn on a machine
20 which is called an ELMO machine. Mr. Fallon is
21 going to help him as well.

22 ATTORNEY KRATZ: You can probably zoom in a
23 little bit more, too.

24 Q. (By Attorney Kratz)~ Katie, is that one of those
25 rivets that you saw?

1 A. Yes, it is.

2 Q. What does it say on it?

3 A. Daisy Fuentes.

4 ATTORNEY KRATZ: Thank you, Mr. Wiegert.

5 Q. (By Attorney Kratz)~ Katie, the other thing that
6 I want to talk to you about is an exhibit that I
7 have handed you. It's blue, in front of you. I
8 think it's Exhibit No. 287. Have you ever seen
9 that before?

10 A. Yes, I have.

11 Q. And unwrap that, please, and show it to the jury
12 and tell the jury what it is.

13 A. It's a blue lanyard.

14 Q. Does it say anything on it?

15 A. It says Air National Guard.

16 Q. Katie, does that look familiar to you?

17 A. Yes, it does.

18 Q. And how does that look familiar?

19 A. I was at the EAA convention two summers ago, and
20 I was at an exhibition building. And it was the
21 Air National Guard had like a little stand, and
22 they had free lanyards and I picked it up.

23 Q. Now, a lanyard -- or at least that part of the
24 lanyard, and I'm going to show you a picture of
25 it here, there are two pictures in front of you,

1 let's just identify those real quickly. Do you
2 see those pictures in front of you?

3 A. Yes.

4 Q. Can you look at Exhibit No. 285, and tell me if
5 that's what we're looking at up on the big
6 screen?

7 A. Yes, it is.

8 Q. That lanyard that you got at the Air National
9 Guard, was there another part that went with it?

10 A. Yes, there was a little clip that clipped on, on
11 the end.

12 Q. Do you know what went on that little clip?

13 A. A key chain.

14 Q. Now, a couple summers ago, Katie, when you picked
15 up that -- that lanyard and that key chain, did
16 you give that to anybody?

17 A. I gave it to my older sister, Teresa.

18 Q. Let's look at the next picture. Okay. That's
19 Exhibit No. 286, do you see that picture?

20 A. Yes.

21 Q. Tell the jury what that is, please?

22 A. It is a picture of the lanyard and the connecting
23 piece that was with it.

24 Q. I'm going to show the jury, now, Exhibit No. 286.
25 Do you recognize the piece -- or the other piece

1 of the lanyard, the thing that's called the fob?

2 Do you know that that's called a fob?

3 A. Yeah.

4 Q. All right. Do you recognize that?

5 A. Yes, I do.

6 Q. And what is that?

7 A. It's the little connecting piece with the key
8 chain and a key on it.

9 Q. All right. Mr. Wiegert is finally going to hand
10 you an exhibit.

11 ATTORNEY KRATZ: What's the exhibit number,
12 Mr. Wiegert?

13 DETECTIVE WIEGERT: 211.

14 ATTORNEY KRATZ: All right. I'm going to
15 ask Mr. Wiegert if he would be so kind as to, if it
16 will, if those items could be placed together.

17 Q. (By Attorney Kratz)~ Now, Katie, just touching
18 the lanyard; that is, just touching the blue
19 area, which would be to your left, could you hold
20 up that entire key for us, please. Hold it up
21 nice and high so we can see it. Is that
22 lanyard -- or does that fob fit into that
23 lanyard?

24 A. Yes, it does.

25 Q. And does that look the same as when you gave it

1 to your big sister, Teresa?

2 A. It does.

3 ATTORNEY KRATZ: I would move the admission
4 of Exhibits 287, 288, 285 and 286 at this time. And
5 I have no further questions.

6 THE COURT: Any objection?

7 ATTORNEY STRANG: I don't think so. I
8 missed 285, though.

9 THE COURT: That is a photo, I believe, of
10 the lanyard, without the key fob.

11 ATTORNEY STRANG: Thank you, no objection
12 to any of those four.

13 THE COURT: Very well, those exhibits are
14 admitted. Mr. Strang, are you going to be doing the
15 questioning?

16 ATTORNEY STRANG: I am. Thank you.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY STRANG:

19 Q. And good morning. I'm going to call you Ms
20 Halbach.

21 A. Okay.

22 Q. Because we don't know each other and we're in a
23 formal sort of place, okay? And I'm Mr. Strang,
24 you probably figured that out long ago.

25 The jeans, Exhibit 288, now when guys

1 buy jeans, typically, it's by waist size and then
2 an inseam -- yeah, an inseam length. And --
3 Okay. And these things look like they just have
4 a Size 6.

5 A. Yeah.

6 Q. Okay. When -- I don't know if you can answer
7 this, give it a whirl. When women, or for that
8 matter, girls, buy blue jeans like these Daisy
9 Fuentes jeans, does the leg always just come in
10 one length?

11 A. Sometimes there could be a 6 short, 6 regular,
12 and a 6 long.

13 Q. Okay. And do you know what your sister, Teresa,
14 wore in terms of a short, regular, or long?

15 A. Probably a regular.

16 Q. Okay. And, then, sometimes, then, you know, if
17 it's you, or another woman, or girl, do you have
18 to hem the pants or change the length of them?

19 A. Sure.

20 Q. Because there's just the three sizes,
21 basically --

22 A. Yeah.

23 Q. -- of length, in the leg?

24 A. Yeah.

25 Q. Okay. And you don't know whether on the Daisy

1 Fuentes jeans Teresa had to either roll up the
2 pants leg, or hem it, or something?

3 A. No, I don't know.

4 Q. Okay. So, you showed us the rivets. What --
5 What do you close the waist with on these jeans?

6 A. A button.

7 Q. Does that kind of look like -- more or less, like
8 the rivet, except a little bit bigger.

9 A. Yeah.

10 Q. Okay. It seems to be metal; does that seem
11 right?

12 A. Yeah.

13 Q. Is that the button you just described?

14 A. Yeah.

15 Q. Okay. What -- Did you ever see Teresa use the
16 lanyard you bought her?

17 A. Yes, I did.

18 Q. Did she keep any other keys on there?

19 A. I'm not sure.

20 Q. One way or the other?

21 A. She might have, I don't know.

22 Q. Do you know, did she -- did your sister, Teresa,
23 typically carry a purse when she was going
24 somewhere in her car?

25 A. I believe she did.

1 Q. But you don't know where she carried keys or other
2 things that might go on a key chain?

3 A. No, I don't.

4 Q. Ms Halbach, do you have any -- any memory at all
5 of about how long ago you would have seen this
6 pair of old person's jeans, you know, the pair of
7 Daisy Fuentes jeans that you actually saw Teresa
8 have?

9 A. Um, it was probably more recent because it was
10 fresh in my memory.

11 Q. Mm-hmm. But you didn't -- I mean, you don't
12 remember now what year, or what time of year,
13 that kind of thing.

14 A. No, I don't.

15 Q. I assume at the time it didn't make a big
16 impression on you, this was just a new pair of
17 jeans or something?

18 A. Yeah.

19 Q. Okay. You weren't with Teresa when she bought
20 them?

21 A. I wasn't.

22 ATTORNEY STRANG: Okay. That's all the
23 questions I'm going to ask you. Thanks.

24 ATTORNEY KRATZ: I have got nothing
25 further, Judge. Thank you.

1 THE COURT: Very well, you are excused.

2 And, Mr. Kratz, you may call your next witness.

3 ATTORNEY KRATZ: Actually, it's Mr. Gahn.

4 THE COURT: Sorry, Mr. Gahn.

5 ATTORNEY GAHN: Thank you, your Honor.

6 State would call Ron Groffy to the stand.

7 THE CLERK: Raise your right hand.

8 **RONALD L. GROFFY**, called as a witness

9 herein, having been first duly sworn, was

10 examined and testified as follows:

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

13 THE WITNESS: My name is Ronald, middle
14 initial L. Groffy, G-r-o-f-f-y.

15 **DIRECT EXAMINATION**

16 BY ATTORNEY GAHN:

17 Q. Are you how employed, sir?

18 A. I'm employed as a forensic scientist with the
19 Wisconsin Department of Justice, Crime Laboratory
20 Bureau, stationed in Madison, Wisconsin. My
21 working title is Forensic Imaging Specialist.

22 Q. And how long have you been employed at the
23 Wisconsin State Crime Lab?

24 A. I have been with the Crime Lab for about 32
25 years.

1 Q. And what are your duties, currently, at the Crime
2 Lab?

3 A. My primary duty is the technical unit leader for
4 the Forensic Imaging Unit and responsibility
5 includes administration of the unit,
6 photographing evidence that may be brought into
7 the laboratory, and also doing whatever imaging
8 analysis might be requested of our unit.

9 Q. And could you explain, or describe for the jury,
10 exactly what is a Forensic Scientist Imaging
11 Specialist.

12 A. Again, as I previously stated, my duty is to
13 examine photographic evidence, take pictures of
14 evidence that is submitted to the laboratory,
15 evidence that may be used as part of analysis.
16 There might be things on evidence that needs to
17 be imaged before other analysts, also, or
18 scientists can look at it. That's our primary
19 duty.

20 THE COURT: Excuse me, Mr. Groffy, can you
21 move the microphone over closer?

22 THE WITNESS: Sorry, your Honor.

23 THE COURT: That's good.

24 THE WITNESS: Okay. I don't think it likes
25 me.

1 Q. (By Attorney Gahn)~ Mr. Groffy, on November 6 of
2 2005, did you take photographs of a 1999 Toyota
3 RAV4 that belonged to Teresa Halbach?

4 A. Yes, I did.

5 Q. And where did you take those photographs?

6 A. That would have been at the Wisconsin State --

7 THE COURT: Mr. Groffy, you can move it
8 over closer. The feedback was because I had the
9 volume turned up to high.

10 THE WITNESS: Is this better, your Honor?

11 THE COURT: Go ahead.

12 A. That would have been at the Wisconsin State Crime
13 Lab located in Madison, Wisconsin.

14 Q. And also on November 8, 2005, did you take
15 photographs of a blue 1993 Pontiac Grand Am that
16 belonged to Steven Avery?

17 A. That is correct, I did.

18 Q. And what I'm going to ask now is for Mr. Fallon
19 to bring up to you a pack of photographs.
20 Mr. Groffy, if you would just quickly look
21 through those photographs and tell me when you
22 are finished looking at each one of them.

23 A. I'm done, sir.

24 Q. And did you take those photographs?

25 A. Yes, I did.

1 Q. And as you look at those photographs today, do
2 they accurately portray the condition of both of
3 those vehicles as you photographed them back in
4 November of 2005?

5 A. Yes, they do.

6 Q. Mr. Groffy, on the back of each of those
7 photographs, there's an exhibit number. They are
8 sequentially numbered Exhibit 289 through 305. I
9 would like you to take the top photograph, which
10 would be Exhibit 289. And I'm going to ask you
11 to describe what that photograph is of. And
12 please tell the jury that, and then we're going
13 to show that -- well, here it is up on the
14 screen. Describe what that photograph is,
15 please.

16 A. State's Exhibit 289 is the exterior view of the
17 RAV4 from the driver's side of the vehicle.

18 Q. And that photograph that you have in your hand,
19 that's the same photograph that is up on this big
20 screen?

21 A. That is correct.

22 Q. Sir, will you please take the next photograph and
23 describe that. Tell us what the exhibit number
24 is and describe it for the jury.

25 A. That's State's Exhibit 290. That is the front

1 interior portion of the RAV4 looking from the
2 driver's side of the vehicle.

3 Q. And is that photograph the same photograph that
4 we have up on the big screen?

5 A. Yes, it is.

6 Q. And please continue.

7 A. State's Exhibit 291 is a photograph of the
8 interior of the RAV4 looking at part of the
9 driver's side, I guess you would call it,
10 instrument panel, near the ignition switch.

11 Q. And is this photograph -- is that photograph
12 represented up on the big screen?

13 A. Yes, it is.

14 Q. Mr. Groffy, I would like to ask you, is there
15 anything about this photograph that you did any
16 further processing of this vehicle with?

17 A. Yes, the area that shows the red stain, I did a
18 presumptive test on that area.

19 Q. And what is a presumptive test?

20 A. This is a presumptive test for the presence of
21 blood. It's known as phenolphthalein.

22 Q. Could you describe a little more for the jurors
23 just how that stain appeared to you.

24 A. It was a reddish color stain on the dash.

25 Q. You did the presumptive test for blood?

1 A. Yes, I did.

2 Q. I'm sorry, sir, what were the results for that?

3 A. It was positive.

4 Q. Next exhibit, please.

5 A. State's Exhibit 292, that is some items that were
6 discovered on the front passenger seat of the
7 RAV4.

8 Q. And is that photograph represented on the big
9 screen?

10 A. Yes. It is.

11 Q. Next exhibit, sir.

12 A. State's Exhibit 293, that is a view, again, of
13 the front passenger area, looking through the
14 front passenger door, of the seat and the floor
15 area and part of the dash.

16 Q. And, again, where were these photographs taken?

17 A. At the Wisconsin State Crime Lab in Madison.

18 Q. And is the photograph that you just described
19 accurately represented up here on the big screen?

20 A. Yes, it is.

21 Q. The next exhibit, please.

22 A. This would be State's Exhibit 294. This is the
23 frame area of the RAV4 toward the passenger side,
24 backseat.

25 Q. And what was the purpose of taking this

1 photograph?

2 A. This was to show a reddish stain that was on that
3 frame area.

4 Q. When you were taking these photographs, was
5 anyone suggesting areas of the RAV4 for you to
6 take photographs of?

7 A. Yes, in this particular area, I was actually
8 directed to make this photograph by our blood
9 stain pattern analyst, Nick Stahlke.

10 Q. Mr. Groffy, I'm going to ask Mr. Fallon here or
11 Mr. Kratz perhaps, to bring up a laser pointer.
12 I would like you to just point out to the jury
13 this area that the blood spatter expert,
14 Mr. Stahlke, wanted you to photograph.

15 A. It would have been approximately in this area
16 right here.

17 Q. And, again, could you just describe for the
18 jurors where exactly is that located?

19 A. That was on the passenger side of the vehicle,
20 toward the rear seat.

21 Q. Okay. And the next line, please?

22 A. That would be State's Exhibit 295, that's a view
23 looking into the cargo area of the RAV4, toward
24 the passenger side of the cargo area.

25 Q. And did anyone direct you to take this

1 photograph.

2 A. This particular photograph would have been taken
3 as part of our standard overall photographs of
4 the vehicle. At a later time, I was also told by
5 Nick Stahlke, again, to get some medium -- what
6 we call medium using and close up extra
7 photographs of those areas also.

8 Q. Why, what was in the back of this cargo area of
9 the RAV4 that you wanted photographed?

10 A. There appeared to be stain patterns that
11 contained blood and he was interested in
12 recording the pattern information.

13 Q. Could you take the laser point and point out
14 those areas.

15 A. That would have been approximately in this area
16 here. And then later on, there was also some
17 area in here that he had me photograph.

18 Q. Did you do any presumptive testing in this area
19 of the vehicle?

20 A. Yes, I also did a presumptive test in
21 approximately this area and the test was
22 positive.

23 Q. And positive for what, sir?

24 A. For blood.

25 Q. Next exhibit.

1 A. This would be State's Exhibit 296. This is a
2 closer view of that stained area in the back
3 cargo portion of the RAV4, behind the passenger
4 seat, passenger's rear seat, excuse me.

5 Q. And is this the area that you stated that you did
6 a presumptive test for blood?

7 A. Yes, that's correct, sir.

8 Q. Next photograph, please.

9 A. This would be State's Exhibit 297. This, again,
10 is another -- a closer view of that stained area
11 within the cargo portion area of the RAV4, behind
12 the rear seat.

13 Q. And could you just describe for the jurors, when
14 you looked at this stain, what did you observe?
15 What was the condition of the stain?

16 A. It was pretty much what you see on the
17 photograph. It was reddish in color, it appeared
18 to be over a -- an area of that particular rear
19 quarter panel.

20 Q. Next exhibit, please.

21 A. This would be Exhibit 298. This is the molding
22 and the metal frame area as you opened the cargo
23 door of the RAV4. Where the carpeting ends
24 toward the back of the cargo area, that's the
25 molding. And, again, the metal trim area and we

1 were documenting some reddish stains that are on
2 that molding.

3 Q. Could you take the laser pointer, and just point
4 out to the jurors these reddish stains that you
5 were documenting in this photograph.

6 A. I believe the areas of interest were right about
7 in here.

8 Q. Next exhibit, please.

9 A. This would be State's Exhibit 299. This is the
10 interior portion of the rear cargo door. Okay.
11 The panel that's on that cargo door. And, again,
12 we were photographing this to show stain
13 patterns.

14 Q. And, again, could you take the laser pointer and
15 just point out those stained areas that you were
16 trying to document?

17 A. Yes, there's some over here, and I believe there
18 were a few over here.

19 Q. Next exhibit, please.

20 A. This would be Exhibit 300. This is a more of
21 what we would consider an overall view of the
22 whole cargo area of the RAV4.

23 Q. And could you point out for the jurors, again,
24 that area that you did your presumptive test for
25 blood?

1 A. Yes, it would have been approximately in this
2 area here.

3 Q. Next exhibit, please.

4 A. This would be State's Exhibit 301. This would be
5 the driver's side of the cargo area of the panel
6 and the portion of the floor and the rear seat.

7 Q. Next exhibit, please?

8 A. State's Exhibit 302, this is showing that the
9 battery cable was disconnected from the battery.

10 Q. And on which vehicle is this photograph?

11 A. This is on the RAV4.

12 Q. Next exhibit.

13 A. This would be State's Exhibit 303. This is of
14 the Grand Am, which was our Item B. This is the
15 front of the Grand Am, showing the condition of
16 the vehicle.

17 Q. And this is the vehicle that belongs to Steven
18 Avery?

19 A. That is correct.

20 Q. And the next slide, please.

21 A. This would be State's Exhibit 304, this is a view
22 from the passenger side of that Grand Am showing
23 the passenger seat, the front dash, the floor,
24 and part of the counsel area.

25 Q. And would you go on to the final exhibit.

1 A. Yes, sir. And that would be State's Exhibit 305.
2 This is just a closer view of that middle console
3 area in the front seat. The gear shift knob and
4 some of the surfaces of that console area.

5 Q. Was there any particular reason to take this
6 photograph?

7 A. If I remember correctly, I believe Nick Stahlke
8 wanted me to show some stains that were located
9 near or on, that -- or that he perceived to be
10 stains.

11 Q. All right.

12 ATTORNEY GAHN: Thank you. That's all I
13 have.

14 THE COURT: Mr. Buting.

15 ATTORNEY BUTING: Thank you, Judge.

16 **CROSS-EXAMINATION**

17 BY ATTORNEY BUTING:

18 Q. Good morning, Mr. Groffy.

19 A. Good morning, sir.

20 Q. I won't be very long with you, but just bear with
21 me one moment. We'll mark a few other exhibits.
22 I will put these up here for the moment and then
23 I'll get right back to them. Let me just start,
24 though, you said that your -- these photographs
25 were taken on November 6th, right?

1 A. Some of them were, that's correct, sir.

2 Q. And that was a Sunday, correct?

3 A. That is correct, sir.

4 Q. Now, you actually were called in some time early
5 on Sunday, right?

6 A. My supervisor called me approximately mid-morning
7 and asked if I could come in and assist --

8 Q. Okay.

9 A. -- that's correct.

10 Q. You don't normally work on Sundays?

11 A. Normally, no. No, I do not.

12 Q. Okay. It was your understanding, though, that
13 this Toyota RAV4 had arrived at your Wisconsin --
14 I'm sorry -- Madison Lab sometime very, very late
15 the night before, Saturday night, early morning,
16 Sunday?

17 A. I don't know that for sure, sir.

18 Q. Okay. Well, when she called you in, your
19 supervisor, would that be Lucy Meier?

20 A. That's correct.

21 Q. Did she tell you that this had just arrived and
22 that you were going to be one of the first people
23 to see it?

24 A. She had conveyed to me that they had received a
25 vehicle at the laboratory for processing. And

1 she was wondering if I could come in and assist
2 and do the photography on the vehicle.

3 Q. Okay. And when you arrived, it was parked in the
4 garage that was displayed in that first
5 photograph.

6 A. That's correct.

7 Q. And when you approached, the -- were the doors
8 standing open or were they closed?

9 A. The doors to the vehicle, sir?

10 Q. Yes.

11 A. The doors to the vehicle were closed.

12 Q. Okay. Did you have gloves on as you approached
13 the vehicle?

14 A. As I approached the vehicle?

15 Q. Yes.

16 A. Not as I approached the vehicle, no. There's a
17 large area around the vehicle.

18 Q. Okay. At some point you touched portions of the
19 vehicle, though, right?

20 A. That is correct, I did.

21 Q. And before you did that, you put gloves on?

22 A. I put a laboratory coat on and gloves, that's
23 correct, sir.

24 Q. Okay. And did you, with your gloved hands, try
25 the driver's door handle?

1 A. Yes, I did.

2 Q. It was locked or unlocked?

3 A. The driver's door was unlocked when I got there.

4 Q. Okay. The other doors were locked?

5 A. Yes, the other doors were locked.

6 Q. And that would be actually four more doors,
7 correct, including the rear?

8 A. That's correct, four doors.

9 Q. Now, if I understand, what you did was, by
10 opening the driver's side door, you were able to
11 sort of reach over and, with your gloves, unlock
12 the front passenger side door first, right?

13 A. That's correct, I did that.

14 Q. And then from that location, that position on
15 either side, front and passenger, you were able
16 to easily reach around and unlock the rear driver
17 and passenger side doors.

18 A. That's correct, I unlocked those doors.

19 Q. And then you were able to open all four of those
20 doors, wide open, for taking pictures and what
21 not?

22 A. That is absolutely correct.

23 Q. And that's how it got to the appearance that we
24 see in those photographs that you showed earlier,
25 taking pictures of the side, the front, and the

1 rear side passenger and driver's side doors?

2 A. That's correct.

3 Q. And then you, and another individual by the name
4 of Steve Harrington, he was also there.

5 A. That's correct, Steve was also there at that
6 time.

7 Q. He's another forensic scientist with the Crime
8 Lab?

9 A. He is currently retired.

10 Q. Okay. But was he employed then?

11 A. At that time he was employed, yes, sir.

12 Q. Okay. And the two of you then did this
13 presumptive test for blood?

14 A. That is not correct. I did the presumptive test
15 for the blood.

16 Q. Okay. Was that a phenolphthalein test or was
17 that some other test?

18 A. That is what we called a phenolphthalein test.

19 Q. Okay. So is it specific for human and animal, or
20 just any kind of blood?

21 A. I do not have that knowledge, sir.

22 Q. Okay. But, you did get a positive on the
23 ignition stain and that larger area that you
24 mentioned over in the cargo area, kind of on the
25 passenger side?

1 A. That's correct I had a positive test for those
2 two areas.

3 Q. Those are the only two areas that you tested,
4 though?

5 A. That is correct.

6 Q. Did you do any other tests that day or take any
7 other pictures?

8 A. My activities were limited to photographing the
9 exterior portions of the RAV4. And then the
10 interior portions that we could get photographs
11 of without actually having to go inside the
12 vehicle and get those pictures before other
13 analysts could have a chance at processing the
14 vehicle.

15 Q. Okay. And then a decision was made with you and
16 your supervisor, Lucy Meier, not to process the
17 Toyota any more that day and that you would
18 instead wait until morning when the forensic DNA
19 analyst and other types of people would be
20 normally working; is that right?

21 A. That is correct.

22 Q. Okay. The photographs that you displayed,
23 though, do you still have those up in front of
24 you?

25 A. Which ones are you referring to sir?

1 Q. All the ones that you introduced --

2 A. Yes, I do.

3 Q. -- on direct. Okay. With the exception of the
4 ones of the Pontiac Grand Am; I'm not directing
5 your attention to those right now at all. But
6 with respect to the RAV4 pictures, do you know,
7 were all of those taken on November 6th, or were
8 some of them also taken on the 8th? And if so,
9 do you know which ones were on the 6th and which
10 ones were on the 8th? That's my question.

11 A. This may take a moment.

12 Q. That's fine.

13 A. I believe I'm ready.

14 Q. Okay. Could you just tell us which ones, if any,
15 were taken on the 6th?

16 A. That would be State's Exhibit 289, 290, 292, and
17 293, of the ones that I have.

18 Q. Okay. With Mr. Gahn's indulgence, I'm going to
19 use -- I have got duplicates of those exhibits,
20 they are just larger. So I'm going to use those
21 on the ELMO. So this is 290, right?

22 A. I believe --

23 Q. 289?

24 A. 289, that's correct.

25 Q. 290 is that picture of the -- sort of looking in

1 the driver's door, across to the passenger side,
2 with the passenger door open?

3 A. That's correct.

4 Q. 291 was not one of them you said, right?

5 A. That's not one that I have here with me. Hang on
6 a second, sir. That's correct that is not one of
7 them.

8 Q. So what was the next one you mentioned?

9 A. 292.

10 Q. Okay. That's this one here?

11 A. That's correct.

12 Q. And that's looking in at the front passenger
13 seat, right?

14 A. That is correct.

15 Q. Shows a black case of some sort, a Aquafina
16 bottle and some other nail polish or something,
17 right?

18 A. Yes.

19 Q. Okay. And then, I'm sorry, was there just one
20 more?

21 A. 293.

22 Q. That's really the same direction, it's just
23 farther back, right?

24 A. That's also correct.

25 Q. Looking through the passenger door, front

1 passenger door. Is that it?

2 A. That would be it for that date, of these pictures
3 that I have, sir.

4 Q. Okay. So then, I just want to clarify something
5 here. Turning your attention to No. 300, which
6 is this kind of overall view of the cargo area?

7 A. Yes, sir.

8 Q. This shows very little in there, in the --
9 basically shows an empty cargo area, with the
10 exception of a crumpled piece of paper of some
11 sort and what looks like a parking light lens
12 assembly or something?

13 A. That could be, yes.

14 Q. Did you notice whether there were ever more items
15 in the rear of this area, or was it always, when
16 you first saw it, did it look like this?

17 A. When I opened up the cargo door and took this
18 photograph, that was what was in the back of that
19 vehicle, sir.

20 Q. Okay. Did you ever see any other items in this
21 -- or maybe let's turn to the rear seat. Do you
22 have a picture of that looking in? I don't know
23 if you do. Do you ever recall finding other
24 stuff in the interior of this RAV4, other than
25 the few items, loose items that we seem to see

1 here in this photograph and in Exhibit 293?

2 A. I did not physically process the vehicle, sir.

3 All I did was photograph it. Other analysts

4 might have, but I did not.

5 Q. Okay. So you don't know whether, for instance,

6 there was any cardboard boxes, or other soda

7 bottles, or clothing items, or anything like that

8 found in the vehicle?

9 A. If I saw them, I don't recall it.

10 Q. And would you have -- would you have been asked

11 to take photographs of any of those kinds of

12 items before they had been removed or touched in

13 anyway?

14 A. I may or may not have been, it would have been at

15 the discretion of the analyst processing the

16 vehicle whether or not they wanted that

17 photographed.

18 Q. Okay. And to your recollection today, do you

19 recall seeing any other pictures that you may

20 have, that you didn't bring with you today, that

21 would show those items?

22 A. I have contact sheets of all the photographs that

23 I took of the vehicle, but I would have to look

24 at those.

25 Q. Okay. You don't have any recollection right now

1 of that, though?

2 A. No, I do not.

3 Q. All right. Just a couple more things. There's
4 three new exhibits that I have given you; would
5 you take a look at those. Oh, by the way, just
6 so we're clear, all of the other photographs that
7 we didn't discuss as having been taken on
8 November 6; were those taken on November 8th?

9 A. They would have been taken on November 7th and
10 8th.

11 Q. Okay. Two days.

12 A. Yes.

13 Q. All right. Can you identify Exhibit 306, 7 and
14 8.

15 A. State's Exhibit 3-0-6, 306, is the front of the
16 vehicle, the bumper area where there is the
17 headlight and it appears to be a missing light
18 fixture.

19 Q. Okay. I will put these up in a moment. Go ahead
20 and identify all three of those. And you took
21 these photographs?

22 A. That is correct, sir. This is State's Exhibit
23 307. This is an overall photograph of the back of
24 the RAV4.

25 Q. Okay.

1 A. This is State's Exhibit 308. This is a view
2 primarily of, I guess you would call it the wheel
3 cover of the spare tire that's on the back of the
4 RAV4.

5 Q. Okay. Let me just quickly put this up on the
6 screen. The first one you mentioned was, this
7 would be the driver's side bumper, front bumper,
8 appears to have some damage to it?

9 A. That is correct, sir.

10 Q. And that's the parking, running light assembly
11 that's missing?

12 A. If that's the correct terminology, yes.

13 Q. Okay. And do you know if that item that we saw
14 in the rear cargo area is from here or not?

15 A. I do not know that, sir.

16 Q. Okay. And then this was the -- No. 307 is the
17 sort of wide shot of the rear of the vehicle?

18 A. That is correct.

19 Q. Would you just please indicate with the pointer
20 where the cargo -- rear cargo door handle is to
21 open the door. If you can use that laser
22 pointer.

23 A. If I remember correctly, I believe it's right in
24 this area here.

25 Q. Let the witness reflect -- or the record should

1 indicate that the witness is pointing to what
2 looks to be the far left side of the cargo door,
3 over by the taillight assembly.

4 THE COURT: The record will so reflect.

5 Q. (By Attorney Buting)~ And we'll zoom in on that
6 just so it's a little clearer. It's also next to
7 what looks like a dealer sticker that says
8 LeMieux Green Bay?

9 A. That's correct, sir.

10 Q. And does that look like that's where the key goes
11 in, as well?

12 A. I believe that's the position where the key was
13 put in, yes.

14 Q. Okay. Now, showing you the last one, 308, this
15 is a closer up view of what we were just looking
16 at, so I don't have to have it zoomed as much.
17 That's the wheel cover you are talking about?

18 A. That is correct.

19 Q. I notice it looks kind of dusty; is that because
20 it had already been fingerprinted by the
21 fingerprint people?

22 A. No, this is the condition that we received the
23 vehicle in. It is -- One of my duties is to
24 photographically document this before it is
25 processed. So that would have been the condition

1 that the RAV4 was received at the laboratory.

2 Q. Are you entirely sure about that? Let me just
3 direct your attention to the far left side there,
4 above the RAV4. Do you see, isn't that some sort
5 of a sticker, oblong white sticker up there?

6 A. Yes, that appears to be one of the scales that we
7 used for denoting where fingerprints are.

8 Q. Okay. So, it appears, then, that perhaps the
9 fingerprint people had already been through here,
10 or at least looked at some of the vehicles?

11 A. When this particular photograph was taken, yes.

12 Q. Okay. So that looks -- Is that the sort of thing
13 that people -- the fingerprint people put on when
14 they find what they think might be a usable or a
15 latent print, fingerprint or palm print?

16 A. They usually use those stickers to identify areas
17 that they want us to photograph.

18 Q. Okay. Do you know if you took a closer up
19 picture of that particular area?

20 A. I did take some photographs of fingerprints that
21 were on the RAV4, at the direction of forensic
22 scientist, Michael Riddle. So those negatives
23 would probably be in his possession.

24 Q. Okay. And when you take those, those are just
25 negatives, you don't print them out like this?

1 A. No, our common procedure is that we put them on
2 photographic film and then we also supply a
3 negative to the examiner to work off of.

4 Q. Okay. And on the wheel cover, this -- do you see
5 some markings that almost look like fingers,
6 there and there, that is, on the upper surface of
7 that wheel cover of the RAV4?

8 A. One of reasons I took a photograph similar to
9 that before it was dusted for fingerprints was
10 because I did observe what looked like to be two
11 handprints on that wheel cover.

12 Q. Okay. And then a little bit lower on that, there
13 also appears to be some other sort of markings.
14 I don't know if you can describe what those are
15 at all. Do those appear to be handprints to you
16 as well or no?

17 A. That I don't know, sir.

18 Q. Okay. But you don't believe -- I mean, you
19 believe this is the way it actually looked
20 without adding any kind of fingerprint dust to
21 it?

22 A. That is correct, sir.

23 Q. That being the wheel cover, right?

24 A. That is correct.

25 Q. Okay. Did you happen to notice, as you were

1 taking photographs of this portion of the cargo
2 door where the door handle is and the key goes
3 in, it looks like on this prior photograph I
4 don't see that little scale you mentioned?

5 A. It doesn't appear to be in that photograph, no,
6 sir.

7 Q. Okay. Did you happen to notice, though, as you
8 were taking those close up photos of the
9 negatives that you said you gave to Mr. Riddle;
10 did you happen to notice whether there was
11 anything that appeared to be a blood stain in
12 that area?

13 A. I don't recall.

14 Q. Okay. Do you recall Mr. Riddle directing your
15 attention to anything, saying, hey, let's take a
16 picture of this, this looks like this might be a
17 blood stain of some sort or a dark reddish type
18 stain?

19 A. I don't recall that conversation. No, I don't.

20 Q. Okay. All right. Now, last area of questioning
21 is, you also took some measurements of the
22 vehicle, correct?

23 A. That is correct, I did.

24 Q. And those measurements were done at the request
25 of Mr. Fassbender, who is sitting in court today,

1 right?

2 A. That is also correct.

3 Q. You were in phone contact with him when he was
4 out at the scene, up in the Mishicot area?

5 A. I don't know if he was at the scene when he
6 contacted me, but ...

7 Q. Okay.

8 A. But he did contact me by phone.

9 Q. Okay. And he suggested that you take some seat
10 measurements of the, I guess the front driver's
11 seat, right?

12 A. That's correct.

13 Q. Let's just see if those -- if that area -- maybe
14 I have it up there. And those seat measurements
15 are done sometimes just to -- just to document
16 before anybody touches -- touches it, to see just
17 how close up or how far back that driver's seat
18 is, right?

19 A. That is correct, sir.

20 Q. All right. Showing Exhibit 290 to you, I believe
21 it's up on the screen. As I understand it, you
22 take -- you don't actually see the break pedal
23 here, but what you do is, you measure from the
24 break pedal up to the front curvature of the
25 driver's seat?

1 A. Yes. In this particular case, that is one of the
2 measurements that I took.

3 Q. And you came up with 18 inches, right?

4 A. Yes, I did.

5 Q. You also measure from the floor, directly down
6 underneath the front of the seat, right up to the
7 top curvature of the seat and take that
8 measurement as well?

9 A. I wouldn't say underneath the seat, but it would
10 have been on the same plain as the front of the
11 seat to the floor.

12 Q. Okay. And so that would give you the seat height
13 off of the floor?

14 A. The approximate height, yes.

15 Q. And in this instance you got 12 and a half
16 inches, right?

17 A. That's correct.

18 Q. And then you also measure from the center of the
19 steering wheel to the back of the driver's seat,
20 the seat back?

21 A. That's correct, I also did that.

22 Q. And in this instance, you got 23 and a quarter
23 inches?

24 A. That is correct.

25 Q. And that's without adjusting the angle of the

1 seat back, tilting it forward or ... That's
2 leaving it the way it was, right?

3 A. That's with the seat in the position as we
4 received it; that is correct.

5 Q. Okay. And then you also, in addition to taking
6 those measurements, at some point, I guess just
7 so I'm clear, this was actually on November 8th,
8 right?

9 A. Yes.

10 Q. So this was after the vehicle had been processed
11 for DNA, right?

12 A. I believe Ms Culhane had finished her
13 examinations at that point.

14 Q. So it was okay for you to lean inside of it and,
15 you know, touch things at that point, right?

16 A. Yes, but we still wore the appropriate clothing.

17 Q. Okay. But then you actually sat inside, in the
18 driver's seat, in the position that it was,
19 correct?

20 A. Yes, we did that.

21 Q. And you did that and you are 5 foot 11, right?

22 A. Yes, that's pretty close.

23 Q. And you found that it was very uncomfortable,
24 cramped, for you, with the seat in that position,
25 right?

1 A. That's correct, it was a very tight fit for me.

2 Q. Your knees hit the console when you tried to

3 break, for instance?

4 A. Yes.

5 Q. And you also had Mr. Nick Stahlke, your blood

6 spatter guy, do that?

7 A. Yes, Nick also did that because he's smaller in

8 stature than I am.

9 Q. He's about five-seven?

10 A. About five-seven and a half, round it off,

11 five-seven.

12 Q. And -- just one moment. I won't ask you for

13 Mr. Stahlke's characterization of whether he

14 could fit or not, but did you see him sit in?

15 A. Yes, I did.

16 Q. Did it look like his foot or his knee was also

17 hitting the console at all?

18 A. He conveyed to me --

19 Q. No, don't.

20 A. Oh, I'm sorry.

21 Q. Don't tell me what he conveyed, that would be

22 hearsay, we'll deal with that, just what you

23 could observe.

24 A. It appeared to me that it was also a close fit

25 for Mr. Stahlke.

1 Q. All right.

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

4 THE WITNESS: You're welcome.

5 THE COURT: Mr. Gahn, any redirect?

6 ATTORNEY GAHN: No, your Honor.

7 THE COURT: Very well, the witness is
8 excused. We started with the witnesses a little
9 late this morning, so we'll take our morning break
10 at this time and try to make it about 10 minutes.

11 ATTORNEY GAHN: Your Honor, before the jury
12 leaves, I would like to move in the Exhibits 289 to
13 305, photographs.

14 THE COURT: Any objection?

15 ATTORNEY BUTING: No, objection. I also
16 would like to move in exhibits 306, 7, and 8, which
17 I'm returning.

18 THE COURT: Any objection from the State?

19 ATTORNEY GAHN: No, your Honor.

20 THE COURT: Very well, all of those
21 exhibits are admitted. Members of the jury, I will
22 remind you again not to discuss this matter with
23 yourselves during the break and we'll see you in
24 about 10 minutes.

25 (Recess taken.)

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(Jury present.)

THE COURT: Who will be calling the next witness for the State?

ATTORNEY GAHN: I will, your Honor.

THE COURT: Mr. Gahn, you may call your next witness.

ATTORNEY GAHN: State would call Sherry Culhane.

SHERRY CULHANE, called as a witness herein, having been first duly sworn, was examined and testified as follows:

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

THE WITNESS: Sherry Culhane, last name, C-u-l-h-a-n-e.

DIRECT EXAMINATION

BY ATTORNEY GAHN:

Q. Ms Culhane, what is your occupation?

A. I work as a Forensic Scientist in the DNA Unit, a Technical Unit Leader in the DNA Unit at the Wisconsin State Crime Laboratory in Madison.

Q. And how long have you been employed with the State Crime Laboratory in Madison?

A. 23 years.

Q. And could you expand a little bit more on what

1 your duties and responsibilities are at the Crime
2 Lab.

3 A. As a Forensic Scientist in the DNA Section, I'm
4 primarily responsible for the examination of
5 physical evidence for the presence of biological
6 material. We examine these items of evidence and
7 try and identify the biological material and
8 develop DNA profiles from those samples.

9 We're also submitted reference samples
10 from specific individuals. And, again, we
11 attempt to develop DNA profiles from those
12 samples and simply compare the two to see if a
13 specific person could or could not be the source
14 of the evidence sample.

15 In addition to those duties, I also have
16 technical leader responsibilities. And those
17 include things like training new analysts,
18 monitoring our quality control procedures,
19 monitoring proficiency tests of the analyst. I'm
20 also responsible for any new techniques, new
21 equipment that is brought on line at the
22 laboratory, for signing off on those procedures
23 and making sure that they are tested properly.

24 And I'm also responsible for case flow,
25 making sure that we meet court dates, our cases

1 are prioritized, and we get them out in a timely
2 fashion.

3 Q. And how many people work in the DNA Unit at the
4 Madison Crime Lab?

5 A. Currently we have 10 trained analysts.

6 Q. And how long have you been conducting DNA
7 testing?

8 A. Since 1996.

9 Q. And is your full workday solely devoted to DNA
10 analysis?

11 A. Yes, it is.

12 Q. And can you tell us approximately how many DNA
13 tests have you, yourself, run?

14 A. Since 1996, a conservative estimate would be
15 around 5,000.

16 Q. And what education do you have that qualifies you
17 to perform DNA testing?

18 A. I have a bachelor of science degree in biology.
19 My training program in 1996, the original
20 training program, consisted of a series of
21 lectures, written tests, written exams, that were
22 all specifically related to the DNA typing
23 process.

24 I have also had course work in molecular
25 biology, statistics and biochemistry class at the

1 UW Madison. I have also attended numerous
2 schools and work shops that are specifically
3 related to DNA typing methods and interpretation
4 of those results.

5 Q. How long does it take to become qualified to
6 become a DNA analyst?

7 A. It depends on the experience of the person
8 training, but anywhere from nine months to a
9 year.

10 Q. And do you have hands-on training during this
11 training period?

12 A. Yes.

13 Q. And could you describe that a little bit for the
14 jurors.

15 A. Part of the training process is to run many,
16 many, many samples through the system from start
17 to finish. Those samples are processed exactly
18 as you do case work. And those samples are
19 interpreted by the trainee in exactly the same
20 way.

21 Q. Who makes the decision when you are capable to
22 perform case work analysis?

23 A. In my case, it was the person who trained me,
24 which was my supervisor, Marie Verielle. I make
25 that decision in training new analysts.

1 Q. And what role do professional societies and
2 organizations play in the science of DNA
3 technology?

4 A. The primary reason for those organizations is for
5 scientists to get together and basically exchange
6 information. All of those professional meetings
7 are -- there's an agenda, there are people who
8 present information about new technologies, about
9 new instrumentation. It's also a place for
10 scientists to get together and discuss problems
11 that they have had, how they solved those
12 problems. So it's a really good forum for
13 exchange of information.

14 Q. And on a regular basis, do you read scientific
15 literature in the area of DNA typing?

16 A. Yes, I do.

17 Q. And why do you do that?

18 A. For basically the same reason we go to
19 professional meetings, to keep up with new
20 technologies that are coming along, and to find
21 out any new information that we need.

22 Q. Ms Culhane, have you testified before in court?

23 A. Yes, I have.

24 Q. How many times?

25 A. Ninety-one times.

1 Q. And have you ever qualified in court as an expert
2 in DNA identification testing?

3 A. Yes, I have.

4 Q. And how many times?

5 A. Thirty-one.

6 Q. Has the court ever rejected you as an expert in
7 DNA identification testing?

8 A. No.

9 ATTORNEY GAHN: I'm going to ask if --
10 Mr. Wiegert, would you please obtain Exhibit No. 309
11 and hand that to Ms Culhane.

12 Q. Would you identify that document, please.

13 A. This is a copy of my curriculum vitae, which has
14 all of the classes and educational background
15 that I have.

16 Q. And, basically, does that summarize the
17 qualifications that we have talked about thus
18 far?

19 A. Yes.

20 Q. At this point, I would like to talk a little bit
21 about DNA itself and just what it stands for. We
22 have prepared a power point presentation, a
23 number of slides. Have you seen them before?

24 A. Yes, I have.

25 Q. And will they assist you in your testimony today

1 in front of this jury?

2 A. Yes.

3 Q. Okay. Ms Culhane, will you just take a moment
4 and explain to the jurors what DNA stands for and
5 what it is?

6 A. DNA stands for deoxyribonucleic acid. And,
7 basically, it's the information storage system of
8 the cell. It's the way the cells in your body
9 store information. This slide is a short segment
10 of DNA. And it illustrates the fact that DNA is
11 composed of smaller units that are strung
12 together in a specific order. The order of those
13 units is what determines the information and how
14 that information is stored.

15 Q. Could you tell us about some of the
16 characteristics of DNA and how it is inherited?

17 A. The easiest way to think of DNA is to compare it
18 to a blueprint. Just like when you are building
19 a house or a building, you have a blueprint that
20 gives you all the information that you need, all
21 the components that are necessary to build that
22 house or that building.

23 DNA is exactly the same way except it's
24 on a cellular level. All the information that
25 your cells need to function, to produce proteins,

1 and enzymes, all the things that make your body
2 work, that information is contained in the DNA.

3 And you can see here, this structure is
4 referred to as a gene. That information is
5 stored in these structures referred to as genes.
6 From the time of conception, all the way through
7 your life, your DNA is responsible for the
8 cellular development. It's responsible for how
9 your cells develop. And many of our physical
10 characteristics such as eye color, hair color,
11 predisposition to certain diseases, all of those
12 things are controlled by the information in your
13 DNA.

14 Forensically, we are more interested in
15 the portions of DNA that really do not function
16 as a gene. They don't really do anything.
17 Scientists aren't sure why they are there. And
18 in the forensic application, there's a huge
19 amount of variation within those portions of DNA.
20 And so that's what we're really interested in.

21 DNA is inherited from your biological
22 parents. You receive 50 percent from your mother
23 and 50 percent from your father. And you,
24 consequently, pass on 50 percent of your DNA to
25 your offspring. And these regions of DNA that

1 we're interested in forensically are inherited in
2 exactly the same way.

3 Q. Now, Ms Culhane, you have used the word
4 forensically a number of times, and in a forensic
5 context. Would you explain to the jurors what
6 you mean when you say in a forensic science
7 capacity.

8 A. The word forensic is simply applying science to
9 matters of law. So it's applying scientific
10 principles to matters of law.

11 Q. And is it fair to say that the scientific
12 underpinnings that you have just described are
13 the reason why you can make DNA comparisons in
14 your laboratory?

15 A. Yes, it is.

16 Q. I would like to just return now to what goes on
17 in your laboratory and ask you, when you are
18 performing DNA testing, is there a specific or
19 particular protocol that you follow?

20 A. Yes, it is.

21 Q. And what is a protocol, please explain that?

22 A. A protocol is a detailed description of every
23 step in the process of DNA testing. The protocol
24 has all the components that you need for the
25 reactions to work properly, all of the parameters

1 for your instrumentation. All of that
2 information is contained in the protocol. In our
3 protocols, we also have interpretation guidelines
4 that set up parameters and rules by which we
5 interpret our results.

6 Q. Does your protocol cover every step from the
7 receipt of evidence, through the testing process,
8 to the writing of reports in a DNA case?

9 A. Yes, it does.

10 Q. And has your protocol been approved by any
11 outside agency or organization?

12 A. Our protocols are reviewed during the process of
13 accreditation. Our laboratory is an accredited
14 lab and during that process our protocols are
15 reviewed and examined by the auditors.

16 ATTORNEY GAHN: And I'm going to ask,
17 Detective Wiegert, if you would just obtain
18 Exhibit 310 and would you, please, hand that to Ms
19 Culhane.

20 Q. And you have now, in your hand, what has been
21 marked as Exhibit 310. Would you please tell the
22 jurors what that is?

23 A. This is a copy of the protocols that we're
24 currently using in the laboratory.

25 Q. And is it that protocol that you follow in

1 performing the tests in this case that you are
2 about to testify about today?

3 A. Yes.

4 Q. Do you and other members in your lab undergo
5 what's called proficiency testing?

6 A. Yes, we do.

7 Q. Would you describe that for the jurors and tell
8 them what proficiency testing is.

9 A. A proficiency test is designed to evaluate a
10 laboratory system as well as individual analysts.
11 The proficiency tests are designed to mimic
12 actual case work samples. We purchase our
13 proficiency tests from an outside company called
14 Collaborative. And we're required to perform
15 those tests, each analyst, twice a year.

16 Most of the proficiency tests come to
17 the laboratory, we treat them just like case
18 samples. We take notes on them, we make
19 documentation, and treat them just like a case.
20 And most of them consist of two reference
21 standards from a victim and a suspect, and two
22 samples that are designed to mimic forensic
23 samples. So they may be blood samples, they may
24 be semen samples, they may be saliva samples, or
25 they may be a combination, a mixture of those

1 samples.

2 When we look at those samples, we do
3 preliminary tests and presumptive tests on them,
4 to determine what type of fluid they are. And we
5 develop DNA profiles from them. We also develop
6 DNA profiles from our reference standards and
7 compare the two just like we would in an actual
8 case, and we make interpretations.

9 All of those types are recorded and sent
10 back to the company. And then, after a period of
11 time, we receive documentation back from the
12 company whether we passed or whether we got all
13 the types correct or not.

14 Q. Now, I believe you stated that -- you said the
15 company name is Collaborative?

16 A. That is correct.

17 Q. And is that an outside agency, outside the State
18 of Wisconsin?

19 A. Yes, it's a company that provides proficiency
20 tests to many labs all across the country.

21 Q. And they have no affiliation with the Madison
22 Crime Lab except to provide tests for you?

23 A. That's correct.

24 Q. And have you -- Well, let me ask you this, what
25 are the results of all the proficiency tests that

1 you have taken?

2 A. They have all been correct.

3 Q. In other words, you passed all of your
4 proficiency tests?

5 A. Yes.

6 Q. And what does it mean to say that a laboratory is
7 accredited?

8 A. The specific type of accreditation that we have
9 in the forensic lab is a certificate of
10 accreditation by the laboratory accreditation
11 board of ASCLD. ASCLD stands for the American
12 Society of Crime Lab Directors. And it's a group
13 of Crime Lab directors from all over the country
14 that come into your laboratory and audit that
15 laboratory once a year. I'm sorry, once every
16 five years.

17 This is a voluntary program. And it's
18 available to forensic labs who are doing case
19 work. So the laboratory agrees to go through
20 this accreditation process and these individuals
21 come in and audit every aspect of your
22 laboratory.

23 They look at -- Before they get to our
24 laboratory they have all of our protocols and all
25 of our procedures. So before they get there,

1 they know what we should be doing. So when they
2 come into the lab, they check everything from
3 security, to the physical layout of the lab, to
4 evidence handling, sealing of evidence, and how
5 the evidence is tracked through the system.

6 And then, anywhere from one to two
7 auditors are assigned to each section in the lab.
8 And they look through things like proficiency
9 tests, quality control documentation. They pull
10 case -- actual case files, and look through, make
11 sure we're documenting everything correctly and
12 that we're interpreting things according to our
13 protocol.

14 Q. Has the Madison Crime Lab undergone this
15 accreditation process?

16 A. Yes.

17 Q. How long ago was that?

18 A. The last time we went through accreditation was
19 in May of 2006.

20 Q. And did this ASCLD or outside organization, did
21 they accredit the Madison Crime Lab?

22 A. Yes.

23 Q. And when you say that you are accredited, is
24 accreditation -- is that an indicator of the
25 quality of work that a laboratory does?

1 A. In my opinion, it is. What it does is, when
2 these auditors come in, they use an audit
3 document that is authored by the FBI. And that
4 document contains specific standards that a
5 forensic lab must adhere to if they are going to
6 do case work.

7 So it ensures the quality of the work.
8 It ensures that you are following accepted
9 protocols in the community, and that your
10 interpretations are correct. So, yes, in my
11 opinion, I believe it does.

12 Q. And besides the five year accreditation process,
13 are there any other inspections, shall we say, or
14 audits, that happen at your Crime Lab?

15 A. Yes, and as part of the accreditation, DNA
16 Section is required to be accredited by an
17 outside individual from another Crime Lab once
18 every two years. And it's usually a team of
19 anywhere from two to three individuals from other
20 crime labs that come into the lab and really
21 audit many of the same things as the ASCLD
22 auditors.

23 They look at case jackets. They look at
24 all of our documentation. They look at our
25 interpretations and our protocols and make sure

1 we're doing everything like we should. In
2 addition to that, we do an internal audit. The
3 Madison Lab goes -- sends people to the Milwaukee
4 Lab, and they send people to our lab, to do an
5 internal audit of many of the same things. So
6 the DNA Section is essentially audited by
7 someone, once a year.

8 Q. Does the Madison Crime Lab do DNA testing solely
9 for law enforcement and for the prosecution?

10 A. By state statute we are required to provide
11 services for authorized submitters. Authorized
12 submitters are defined as law enforcement
13 agencies, or District Attorney's Offices.
14 However, defendants can request testing to be
15 done that has to go through the District
16 Attorney's Office, or it has to be through a
17 court order.

18 Q. When you use the words, defendants can request
19 this, are you referring to convicted offenders,
20 perhaps people who are serving time in prison,
21 can they request DNA testing?

22 A. Anyone can request DNA testing as long as they go
23 through the proper channels and as long as they
24 have a court order that tells us we have to do
25 it.

1 Q. Are you familiar with the Innocence Project --

2 A. Yes, I am.

3 Q. -- which is run out of the University of

4 Wisconsin Law School in Madison?

5 A. Yes, I am.

6 Q. Can you tell the jurors about that a little bit.

7 A. The Innocence Project, as I understand it, is a
8 group of law students at the UW Law School in
9 Madison and they review post-conviction cases for
10 the possibility of reexamining evidence, or
11 perhaps it's new evidence that's come along, or
12 it is evidence that technology wasn't available
13 at the original conviction and now technology of
14 some sort is available and that evidence can be
15 retested.

16 Q. And do they ever request testing from the Madison
17 Crime Lab?

18 A. Yes.

19 Q. Have you, yourself, ever performed any DNA
20 testing for the Innocence Project on behalf of a
21 convicted person?

22 A. Yes.

23 Q. The jury has been informed that Mr. Steven Avery
24 was convicted of an offense in 1985, and he went
25 to prison for that offense; are you aware of

1 that?

2 A. Yes.

3 Q. Did some time come in the year 2003 when you were
4 asked to review that case and look at the
5 evidence again?

6 A. Yes, it was.

7 Q. And were you asked to perform any type of DNA
8 testing in that case?

9 A. Yes.

10 Q. And it was your -- Was it your understanding that
11 Mr. Avery had maintained his innocence in that
12 1985 case?

13 A. Yes.

14 Q. Do you remember exactly what were the evidentiary
15 items that you examined in that case?

16 A. Yes, I do.

17 Q. Could you tell the jury about those?

18 A. In that case I examined 11 pubic hairs that were
19 taken from a victim's pubic hair combings. Those
20 were taken in a sexual assault case to recover
21 any hairs that had been transferred during
22 contact.

23 There were 11 pubic hairs -- yeah, 11
24 pubic hairs. And I attempted DNA analysis on all
25 11. Only two of those hairs gave me a DNA

1 profile. In a hair sample, we're actually
2 looking at the root portion of the hair with
3 cells attached to it.

4 Two of those hairs gave me results. One
5 hair was from a male, one hair was from a female.
6 The hair from the male was entered into the CODIS
7 System and hit on an individual.

8 Q. Now, you are going to have to explain for the
9 jurors a little bit. What do you mean by the
10 CODIS System and what do you mean by hit on an
11 individual?

12 A. The CODIS System is a data base of DNA profiles
13 that is maintained by the FBI. Forensic labs
14 contribute samples, evidence samples, to these
15 data bases. They are also a data base of
16 convicted offenders. And anyone who has been
17 convicted of a felony, it's different rules in
18 different states, has to submit samples to this
19 data base.

20 So, when we have an evidence sample,
21 it's entered into the data base, and it's
22 searched against this index. And in this case,
23 that male profile was entered into that system
24 and searched.

25 Q. And what was the result of that search?

1 A. It hit on another individual.

2 Q. When you say another individual, you mean someone
3 other than Steven Avery?

4 A. That's correct.

5 Q. And you, yourself, performed this testing?

6 A. Yes, I did.

7 Q. And because of the testing that you performed,
8 and because of the search of the CODIS data bank,
9 what happened to Mr. Avery?

10 A. I believe he was freed from prison.

11 Q. And that was because of the testing that you did?

12 A. Correct.

13 Q. Basically, did you follow the same protocol that
14 you did in testing that case, testing the 1985
15 case, that you followed in this case?

16 A. Yes, I did.

17 Q. Did you basically follow the same steps and
18 procedures in the DNA testing?

19 A. Yes.

20 Q. What is it meant in terms -- the terms called
21 quality control and quality assurance in a
22 laboratory?

23 A. The term quality assurance refers to system-wide
24 or lab-wide measures that are in place to assure
25 the quality of the work that's put out. Quality

1 control refers to everyday routine checks that we
2 do on things like our equipment, our balances,
3 our instrumentation, our reagents.

4 Everything that is used that is critical
5 to the process of DNA typing, we do quality
6 control checks to make sure that they are working
7 properly, that they are calibrated, and that they
8 are performing the way that the manufacturers
9 tell us they are going to perform. That's what
10 is referred to as quality control.

11 Q. And are quality control measures, as you just
12 described, in place and implemented in the
13 Madison State Crime Lab?

14 A. Yes, they are.

15 Q. And are they described in the protocol that you
16 just identified?

17 A. Yes.

18 Q. Now, I would like to shift out of the laboratory
19 just for a moment. And I would like to ask you
20 to describe for the jury where DNA is found in
21 the human body. And we'll put up this slide.

22 A. This slide illustrates many of the sources that
23 we find biological evidence. When we're
24 developing a profile, any cell in the body that
25 has a nucleus, the center portion of the cell,

1 has DNA in it. So, what we're looking for is
2 nucleated cells to develop a profile. Blood,
3 semen, and saliva are probably our most common
4 types of biological evidence.

5 If we're looking at a blood sample,
6 we're looking at the white blood cells, because
7 that's where the nucleus is.

8 If we're looking at a semen sample,
9 we're trying to determine whether the DNA is in a
10 sperm cell.

11 In a saliva sample, there is really
12 nothing in saliva except the cells that are in
13 your mouth that are sloughed off in your saliva.
14 And that's where the source of DNA is in a saliva
15 sample.

16 The same with urine, cells that are
17 sloughed in the process of urination, those would
18 be our source of DNA in that sample.

19 Hair, the type of DNA testing that we're
20 doing is referred to as nuclear DNA. And it's --
21 again, it's only present in cells with a nucleus.
22 In the hair, the only place we can find that are
23 cells that may be attached to the root of the
24 hair.

25 Teeth, the portion of the tooth that you

1 would find DNA would be in the pulp, the soft
2 portion of the tooth.

3 And the last two, bone and tissue, both
4 of those, what you are looking for is cells. In
5 a bone, it's usually the center portion of the
6 bone, and any part of the tissue that has
7 nucleated cells would be a very good source of
8 DNA.

9 Q. You talked about cells that are sloughed off, I
10 believe you said. Can skin cells be sloughed off
11 and can you obtain DNA from them?

12 A. Yes.

13 Q. Could you just talk about that a bit and tell the
14 jurors how those profiles can be determined.

15 A. During the process of the day, usually when you
16 are touching things, you are sloughing off cells
17 and your body is making new cells all the time.
18 Some individuals slough off or shed more cells
19 than other individuals.

20 So, in the process of touching things
21 you are, in some instances, leaving your DNA
22 behind. We can develop profiles from that DNA if
23 the quantity is sufficient and the levels are
24 high enough for our systems to detect.

25 Q. In a person's body, is the DNA the same from

1 whatever biological fluid or tissue it comes
2 from?

3 A. Yes, it is.

4 Q. Now, the jurors have heard testimony about buccal
5 swabs being taken. Can you just briefly remind
6 them what a buccal swab is?

7 A. A buccal swab, we use as a standard. And it's
8 the swabbing of the inside of the cheek. So, you
9 take a cotton swab and swab the inside of the
10 cheek. And those cells are a source of DNA. And
11 that's what we use as a standard in some cases.

12 Q. And when a buccal swab is obtained, you can get,
13 through the testing process, a DNA profile from
14 that, correct?

15 A. Correct.

16 Q. The DNA profile that you would get from a buccal
17 swab, can you compare that profile to a DNA
18 profile that perhaps you obtained from a
19 biological substance at a crime scene?

20 A. Yes.

21 Q. And does the technology allow you to make
22 comparisons?

23 A. Yes, it does.

24 Q. And does the technology allow you to determine
25 whether a particular person was the source of the

1 DNA that was at that crime scene?

2 A. Yes.

3 Q. And is there a typing process that you use at the
4 Madison Crime Lab to make those determinations
5 and comparisons that we just talked about?

6 A. Yes. The current technology that we're using is
7 referred to as STR typing.

8 Q. And could you tell the jurors a little bit about
9 the DNA STR testing technique and the
10 characteristics involved?

11 A. STR typing is a PCR based system that allows us
12 to specifically amplify, or make a lot of copies,
13 of specific target regions of DNA. These target
14 regions of DNA are referred to as STR markers, or
15 genetic markers. And they are interspersed
16 throughout all of your DNA.

17 The actual process that we use to make
18 all these copies that I'm talking about, is
19 referred to as PCR. And that's the basis for
20 this entire system. It allows us to copy these
21 specific pieces of DNA to get a profile. When we
22 develop a final profile that characterizes our
23 stain, we look at 15 different target regions
24 like this all throughout your DNA. So the final
25 profile reflects the types at all 15 different

1 locations on the DNA.

2 Q. Now, this technology that you used to date, this
3 PCR STR typing, how long have you been using that
4 at the Madison Crime Lab?

5 A. Since 1999.

6 Q. And before using this technology, or going online
7 with it, did you do anything to make sure that
8 you can do this technology in your laboratory?

9 A. Yes, we did.

10 Q. And what did you do?

11 A. We go through a process referred to as
12 validation. And that simply means that any time
13 we are adding a new technology or new procedure,
14 we have to make sure that it performs like we
15 think it will.

16 So we -- Same goes for a new piece of
17 equipment. We always have to validate and prove
18 that it performs like we think it does. So it
19 goes through a very lengthy testing process. We
20 test the sensitivity. We test the reagents, all
21 the components that are used in the reaction.

22 We test whether it is appropriate for
23 forensic use, whether -- A lot of our samples are
24 very small samples and very compromised samples.
25 They may be degraded. And those types of samples

1 are what we use in the forensic -- or what we
2 have in the forensic setting. So we have to make
3 sure that all of these techniques we're using are
4 appropriate for those types of samples.

5 Q. This DNA testing that you do at the Madison Crime
6 Lab, is this used in other fields besides
7 criminal cases?

8 A. Yes, it is.

9 Q. Could you explain some of those for the jurors.

10 A. The basis of STR typing, like I said, is the PCR
11 reaction. And PCR is used in many, many
12 different applications. It's used in the medical
13 community to diagnose diseases. It's used for
14 medical research. It is used to detect genetic
15 diseases or predisposition to certain diseases.

16 It's also used in anthropology to type
17 very old remains or old artifacts.

18 It's also used for mass disasters such
19 as Katrina, 911, all of those types of disasters.
20 It's used to identify individuals that may have
21 been involved in that.

22 So it has many, many applications. The
23 basic reaction, the system we're working with,
24 has many different other applications besides
25 forensics.

1 ATTORNEY GAHN: Your Honor, I don't know
2 what your preference would be, but I'm about to
3 enter an area that I would not like to break up.
4 And it probably would go about 20 minutes. And
5 we're getting close to the results in this case. We
6 could do that and take a late lunch or would you
7 prefer to break now?

8 THE COURT: Well, is there a consensus on
9 the jury? Would you like to break now or continue.
10 Continue? All right. Seems to be a consensus to
11 continue.

12 ATTORNEY GAHN: Thank you.

13 Q. All right. Ms Culhane, are there -- there are
14 certain procedures or steps in the DNA STR typing
15 process?

16 A. Yes, there are.

17 Q. Would you explain these to the jurors.

18 A. This shows all of the different steps that are
19 involved from start to finish, how we come up
20 with a DNA profile. The first thing we need to
21 do -- and all of these steps are -- each sample
22 is treated to all these steps. So, in other
23 words, our evidence samples and our reference
24 samples that are taken from specific individuals,
25 are processed in exactly the same way.

1 The first step we need to do is extract
2 DNA. We need to remove DNA from the sample,
3 whether it's a reference sample, or an evidence
4 sample. We need to get it out, extract it, and
5 remove it. And then we need to find out how much
6 DNA we have. And the next step is what does
7 that.

8 And that's referred to as quantitation.
9 We need to quantitate, or find out what the
10 concentration of DNA is in our sample. Some
11 samples have lots of DNA. Some samples have very
12 small amounts of DNA. And that's important
13 information for us to have.

14 The next step of the process is known as
15 amplification. And remember, I was talking about
16 all of these different target regions that we
17 make copies of and that we amplify. This is the
18 process by which we do that. We take our sample
19 and we subject it to amplification. And all of
20 these different fragments of DNA are amplified so
21 that in the end we have a sample with all of our
22 fragments and lots of DNA to look at.

23 The next step is to develop a DNA
24 profile and to interpret that. When we interpret
25 DNA profiles, we have an evidence sample and we

1 have a reference sample. And our interpretation
2 involves deciding whether the person who the
3 reference sample is from could or could not be
4 the source of the evidence sample. And that's
5 the basis of our interpretation.

6 If that person -- If the DNA profile
7 from the evidence sample is different from the
8 reference sample, that would be considered an
9 exclusion and that person is excluded as the
10 source of that evidence DNA. If the evidence
11 profile matches or is consistent with the
12 reference sample from a person, then we can say
13 that person could be the source of that DNA. So
14 that's what we refer to as interpretation.

15 If we have an exclusion, we're finished,
16 that's the end of it. But if we have an
17 inclusion, if we include someone as the source of
18 the DNA, then we have to determine how common or
19 how rare that type is in the population. And
20 that's the last part of our process, is a
21 statistical analysis to tell us how common or how
22 rare that evidence profile is in the general
23 population.

24 Q. Now, you have talked about a reference sample and
25 an evidence sample. When you are talking about a

1 reference sample, is that like the buccal swabs
2 you described that they take from the cheek of an
3 individual?

4 A. Yes, it is.

5 Q. And it would be that reference sample that you
6 would make comparisons with the crime scene
7 samples?

8 A. That's correct.

9 Q. Now, suppose that you have, in the laboratory, a
10 suspect's reference sample, say this buccal swab,
11 and you have an evidentiary sample. Will you --
12 and I'm going to look here now at the extraction
13 step, the first step, do you extract them at the
14 same time?

15 A. No, we don't.

16 Q. And why not?

17 A. We always try to keep those samples separate
18 during extraction. And the primary reason is to
19 avoid contamination, or switching of samples, the
20 contamination of the evidence sample with the
21 reference sample.

22 Q. And after you have completed a sampling, or the
23 extraction, or one case, is there anything you do
24 to your work area in between cases or the
25 instruments that you use in the DNA process?

1 A. Yes, we clean down all of our instruments, our
2 bench tops, all of the scissors, the forceps,
3 pipettes, everything we use, with bleach. And we
4 do that several times a day. We do that in
5 between cases. We clean our forceps and our
6 instruments, our scissors.

7 Anything we're touching the items of
8 evidence with is done between each item of
9 evidence. That way it allows us to make sure
10 that we're not cross-contaminating samples, one
11 with the other. So all of our scissors, and our
12 forceps, everything that touches the evidence is
13 cleaned in between each piece of evidence.

14 Q. And do you wear any special type of clothing to
15 protect against any type of contamination of
16 samples?

17 A. Well, we always wear gloves. Any time we're
18 touching anything, we wear gloves. And we wear
19 lab coats and safety goggles.

20 Q. And when you perform -- Let me ask you, and I
21 want to look at the extraction and the
22 amplification, those two steps, step one, the
23 extraction, step three, the amplification, are
24 those steps performed in the same area or
25 location?

1 A. No, they are not.

2 Q. And would you explain to the jurors why you keep
3 those steps separate.

4 A. Our extraction procedures are set up and done at
5 our lab bench. The amplification process is done
6 in a completely different room. The reason is
7 because once you amplify those target regions of
8 DNA, there's a lot of DNA in that sample. And
9 it's a perfect template to amplify more DNA. So
10 it's very important to keep that DNA confined
11 into your amplification rooms and not let it get
12 out into the general lab space.

13 So everything that goes into that
14 amplification room, stays in there. All the test
15 tubes, and all the equipment, everything stays in
16 there. If it has to be brought out, it's cleaned
17 down with bleach. So, once it goes into that
18 room, it stays in there.

19 Q. Now, you say you cleaned down these rooms, or
20 your work station with bleach; why do you use
21 bleach?

22 A. Because it basically chews up the DNA and it
23 destroys the DNA into a form where we can't get a
24 type from it.

25 Q. When you perform these steps, are any type of

1 controls used with the performance of each step?

2 A. Yes.

3 Q. Would you describe what -- First of all, what is
4 a control?

5 A. Controls are samples that we run along with our
6 evidence samples and our reference samples. And
7 we have several different kinds of controls. And
8 each one of these controls serves a different
9 purpose.

10 The purpose of the controls, depending
11 on what they are, is to, one, make sure that our
12 system is working correctly. And, two, to make
13 sure that we can monitor any contamination that
14 might be introduced into the sample or into the
15 evidence, during the process.

16 Q. Would you describe for the jury what you in the
17 forensic community, the science community, refer
18 to as contamination. What is contamination?

19 A. In the laboratory, obviously we can't control any
20 evidence until it comes into the lab. Once it's
21 into the laboratory, we have many steps that try
22 and minimize the chance of contamination. When
23 we use the word contamination, we are referring
24 to the unintentional introduction of DNA into a
25 sample or into a control.

1 Q. And what steps do you take to deal with the
2 possibility of contamination?

3 A. As you mentioned earlier, separating standards
4 from evidence samples is one. We make sure that
5 when we are opening the top -- opening our tubes
6 that have DNA in them, we spin them down first in
7 a centrifuge so that all the liquid on the top of
8 the tube goes to the bottom. We use special
9 sterilized tips when we're pipetting and removing
10 liquid to make sure it's clean. We autoclave all
11 of our reagents to make sure our reagents are
12 clean and free of DNA. All of these steps are
13 taken in order to minimize that risk.

14 Q. If contamination were to occur, does that
15 necessarily mean you cannot interpret a DNA
16 profile?

17 A. Not necessarily, it depends on what it is.

18 Q. Do you maintain a log of instances of
19 contamination in your laboratory.

20 A. Yes, we do.

21 Q. And why do you maintain that log?

22 A. We maintain that log to -- it helps us
23 troubleshoot in a lot of instances to find out
24 where the contamination came from, where it was
25 introduced, and what we can do to solve the

1 problem.

2 We have a data -- We have a list of
3 everybody's DNA type in the laboratory so all the
4 analysts know what their DNA type is. So it
5 allows us, if we see any contamination, to see
6 what the source of it is. Sometimes we can't
7 determine the source of it. Sometimes it's very
8 easy to see the source of the contamination.

9 We can also tell if we have DNA that may
10 have been introduced from the manufacturer, may
11 have been introduced into our reagents. So the
12 contamination log is a learning tool. And it
13 helps us determine where that contamination may
14 have come from.

15 Q. Do you know, do all laboratories maintain
16 contamination logs?

17 A. All accredited laboratories are required to
18 maintain a contamination log. As far as -- And
19 like I said, yes, we have one. And ours is
20 because of as a learning tool and also because
21 we're required by accreditation.

22 Q. Ms Culhane, do you know -- and I'm going to give
23 you the date of January 1st of 2001 -- since
24 January 1st of 2001, how many instances of
25 contamination have you logged at the Madison

1 Crime Laboratory?

2 A. I believe it was 89.

3 Q. And that's been since January 1st of 2001?

4 A. Correct.

5 Q. I would like to also ask you, do you know how
6 many samples of DNA you have processed at the
7 Madison Crime Lab during that same period of
8 time, January 1st, 2001, to the present?

9 A. A conservative estimate would be a little over
10 50,000.

11 Q. And of those 50 -- over 50,000 cases, samples,
12 that you have analyzed, you have documented 89
13 instances of contamination?

14 A. Correct.

15 Q. And how many analysts do you have working at any
16 given time in the DNA unit?

17 A. Anywhere from 8 to 12.

18 Q. And are those 89 instances of contamination over
19 the past five years spread out among those
20 analysts?

21 A. Yes, they are.

22 Q. I would like to go back just a little bit before
23 the date of January 1st of 2001. I think you
24 stated that you went online with this DNA STR
25 testing methodology in 1999, did you say?

1 A. Yes.

2 Q. Can you tell the jurors how many samples of DNA,
3 using this technology, that you have tested at
4 the Madison Crime Lab, since going online?

5 A. Again, this is an estimate, but a conservative
6 estimate would be a little over 60,000.

7 Q. And the last step in your DNA STR typing steps is
8 the statistical analysis. How do you go about
9 determining this statistic to determine how rare
10 or how common a particular profile would be in
11 the population?

12 A. We use a data base that is maintained by the FBI.
13 And that data base tells us the frequency of each
14 one of these types in the entire DNA profile.
15 So, by looking at that data base, we can
16 determine the frequency of the entire profile in
17 the general population.

18 Q. And why is this important?

19 A. Because this -- If you have a match between an
20 individual and an evidence sample, and it occurs
21 in 50 percent of the population, that's not very
22 discriminating. That includes a lot of people.
23 But if you have a match between an evidence
24 sample and a reference sample, and it occurs one
25 out of a trillion people, that's a very

1 discriminating match. And the statistical
2 analysis allows us to do that, to tell whether we
3 have a very common match, or whether we have a
4 very rare match.

5 ATTORNEY GAHN: Your Honor, we're sort of
6 on the cusp here of getting into the results of this
7 case. And this may be a good time to break for
8 lunch.

9 ATTORNEY BUTING: Your Honor?

10 THE COURT: Yes.

11 ATTORNEY BUTING: Why don't we do something
12 else. I don't believe Mr. Gahn has actually offered
13 Ms Culhane as an expert yet. And I have no
14 objection to that, subject to my cross of her
15 qualifications, perhaps doing that now, if you like.

16 THE COURT: Mr. Gahn.

17 ATTORNEY GAHN: I have no objection.

18 THE COURT: All right. So you don't object
19 to her being qualified as a witness.

20 ATTORNEY BUTING: I don't, no. She's been
21 testifying at length already. I think it's just an
22 oversight probably.

23 THE COURT: All right. I did make a note,
24 I was wondering when that was going to be asked.
25 But I will, then, based on the representations of

1 the parties, accept this witness as an expert in the
2 field of DNA testing.

3 ATTORNEY BUTING: Thank you, Judge.

4 THE COURT: All right. Members of the
5 jury, at this time we'll take our lunch break.
6 Let's plan on resuming at 1:15. Again, do not
7 discuss the case or anything about it during your
8 lunch break.

9 (Jury not present.)

10 THE COURT: You may be seated. Counsel, I
11 don't think we have anything else to take up before
12 resuming this witness at 1:15, correct?

13 ATTORNEY BUTING: Correct.

14 THE COURT: Very well, we'll see you at
15 1:15.

16 (Noon recess taken.)

17 THE COURT: Mr. Gahn, at this point you may
18 resume your direct examination.

19 ATTORNEY GAHN: Thank you, your Honor.

20 **DIRECT EXAMINATION CONTD.**

21 BY ATTORNEY GAHN:

22 Q. Ms Culhane, would you describe for the jury what
23 procedures your Crime Lab has in place for the
24 documentation and processing of evidence that is
25 brought to your lab for analysis?

1 A. When evidence is brought into the lab for
2 analysis, whether it's through the mail or
3 directly from an officer, we have individuals
4 known as evidence specialists who take that
5 evidence into the lab. They check to make sure
6 it is packaged properly, that it's sealed
7 properly. And then they give an item designation
8 and a case designation to each piece of evidence.

9 We have a computerized tracking system
10 in the laboratory that works on a bar code system
11 and a bar code is printed that identifies that
12 piece of evidence as belonging to a specific case
13 with a number and it also gives it a item
14 designation.

15 Q. When you perform testing on items or evidence
16 that is brought to you by the law enforcement
17 agency, do you create some type of case file?

18 A. Yes, we do.

19 Q. And do you have that file with you today?

20 A. Yes.

21 Q. Do you need it with you to testify today in this
22 matter?

23 A. Yes, I do.

24 Q. And does that file indicate whether you received
25 evidence in the case of State of Wisconsin vs.

1 Steven Avery?

2 A. Yes.

3 Q. And does your file indicate what items and how
4 many items of evidence were brought to the State
5 Crime Lab for testing?

6 A. Yes, it does.

7 Q. Can you tell the jury approximately how many
8 submissions of evidence came to the Crime Lab as
9 a whole, not just specific to the DNA Unit but to
10 the whole Crime Lab, for examination and
11 analysis?

12 A. I believe there was around 345.

13 Q. And what other units are there at the Crime Lab
14 besides DNA that would be examining this type of
15 evidence?

16 A. We have a full service lab in the Madison Lab and
17 we have a section that does fingerprints for
18 identification. We have an imaging unit that
19 takes photographs. We have a firearms section.
20 We have a trace section. We have a drug analysis
21 section, and a document section.

22 Q. And, specifically, for the DNA Unit, how many
23 items, how many submissions were sent to you in
24 this case at the DNA Unit?

25 A. 180.

1 Q. Is that normal for a case?

2 A. No, that's very large.

3 Q. For you, yourself, is this the largest number of
4 submissions you have ever encountered in a case?

5 A. Yes, it is.

6 Q. And how about for the Crime Lab as a whole, were
7 the submissions of 345 or 46 items the largest
8 number of submissions the crime lab has received
9 for one case?

10 A. I believe so.

11 Q. Now, did you perform DNA testing on all 180 of
12 those submissions to you?

13 A. No, I did not.

14 Q. Tell the jurors what you do when an item of
15 evidence is submitted to you; what's the first
16 thing you do?

17 A. The first thing we do is a visual examination of
18 the item. We're looking, as I stated earlier,
19 for a biological material. And a lot depends on
20 what type of case it is. So, we basically make a
21 visual examination of the item.

22 We take notes and we document the
23 packaging of the item, what the item looked like,
24 and exactly what we did. Depending on what
25 biological material we're looking for, we have

1 what's referred to as a presumptive test, or
2 preliminary test.

3 And these tests give us a good
4 indication of what kind of biological fluid that
5 we're looking for. We perform these preliminary
6 or presumptive tests on the evidence, or on the
7 stain. And from that point we make decisions as
8 to which direction we should go, whether we
9 should continue with the analysis to take it to
10 the final step, which is DNA, or do we stop.

11 If we do a visual exam and there is no
12 indication of a biological material, and it's not
13 an item that was submitted specifically to be
14 examined for touch, DNA that's left by touching,
15 then that's the end of our analysis. If the
16 presumptive test that we do for whatever
17 biological fluid we're looking for is negative,
18 then that's also the end of our analysis.

19 Q. Did you conduct presumptive tests on any of these
20 180 submissions to you?

21 A. Yes, I did.

22 Q. Basically, Ms Culhane, what were you looking for
23 in this case?

24 A. The bulk of the evidence in this case I was
25 looking for bloodstains.

1 Q. Do you know how many submissions of this evidence
2 that you submitted to presumptive tests for
3 blood?

4 A. Yes.

5 Q. Tell me.

6 A. 41.

7 Q. And did you get positives in those presumptive
8 tests?

9 A. Yes, they were all positives.

10 Q. What -- How do you decide what to test and how to
11 test it?

12 A. A lot depends on the piece of evidence it is, the
13 results of our presumptive testing and, also, we
14 have information as to what the alleged incidents
15 are. Police officers and law enforcement that
16 submit items of evidence will request certain
17 testing based on whether they believe the item
18 we're looking for is probative, whether it's
19 going to provide information or not. So that
20 plays into the decision that we make as to what
21 type of analysis and how far to go.

22 Q. So you rely upon the investigators in the field
23 and what they are finding; is that correct?

24 A. Correct.

25 Q. And they will make recommendations to you on the

1 probative value of a particular piece of
2 evidence?

3 A. Yes.

4 Q. Do they ever ask you to prioritize an item of
5 evidence and put it at the top of the list for
6 testing?

7 A. Yes.

8 Q. And why does that happen?

9 A. A lot of times we're not really sure. That's
10 information that they have. They may want
11 results on a particular item of evidence sooner
12 than the additional items of evidence. Usually
13 it's prioritized based on what is the most
14 probative and what is most important to their
15 investigation.

16 Q. Now, you have spoken a number of times about
17 standards and about reference samples. And once
18 again, so the jury is clear, what is a standard?

19 A. A standard is a known sample from a specific
20 individual. And in most cases we request buccal
21 swabs, which is the swabbing of the inside of the
22 cheek, because that's a rich source of DNA. So
23 the inside of someone's cheek is swabbed and that
24 sample is used as a reference for their DNA
25 types.

1 Q. Now, these are called, also, reference samples?

2 A. Yes.

3 Q. Are they sometimes called exemplars?

4 A. Yes.

5 Q. Did you receive standards in this case for
6 testing?

7 A. Yes, I did.

8 ATTORNEY GAHN: I'm going to ask Detective
9 Wiegert if he would bring up to you standards that
10 were received and I'm going to ask you to identify
11 them for the jury.

12 DETECTIVE WIEGERT: Which number?

13 ATTORNEY GAHN: Exhibits 317 through 325,
14 please.

15 Q. Ms Culhane, I'm going to ask you to look at those
16 exhibits and tell the jury what the exhibit
17 number is, and if you can, identify from whom the
18 standard is from.

19 A. The first one is Exhibit No. 319, item --
20 laboratory item designation KL. It's buccal
21 swabs from Barb Janda. And I received this in
22 the laboratory. I have markings, my initials and
23 dates, that I received this.

24 Q. Thank you.

25 A. Exhibit No. 320, item designation -- lab item

1 designation KM, buccal swabs from Bobby Dassey.
2 And, again, these have markings, my initials, and
3 the date. My markings are on this packaging.

4 Exhibit 321, Crime Lab number -- or item
5 designation KN, buccal swabs from Earl Avery.
6 And, again, my markings are on here with my
7 initials.

8 Exhibit 322, Crime Lab item designation
9 KO. These are buccal swabs from Charles Avery.
10 And, again, my markings and initials are on the
11 -- this is the bar code that we put on it when it
12 comes into the laboratory, with the case number
13 and the item designation.

14 ATTORNEY BUTING: The record should reflect
15 the witness was pointing to -- it's a yellow label,
16 is it not?

17 THE WITNESS: Yes.

18 ATTORNEY BUTING: Bar code.

19 THE WITNESS: Yes.

20 A. Exhibit 323, Crime Lab item designation KP, and
21 these are buccal swabs from Delores Avery.

22 Exhibit No. 324, item designation BU,
23 and these are buccal swabs from Steven Avery.
24 And, again, my initials and markings are on the
25 packaging.

1 Exhibit No. 251, Crime Lab item
2 designation EM. And, again, my initials and
3 markings are on the packaging.

4 ATTORNEY GAHN: And, Detective Wiegert, if
5 you could find Exhibits 317 and 318. These would be
6 the buccal swabs of Allen and Brian Dassey -- I'm
7 sorry, Allen Avery and Brian Dassey.

8 THE COURT: I'm sorry, did we hear what 251
9 was?

10 ATTORNEY BUTING: She didn't finish
11 identifying 251. You just said the designation EM.

12 THE WITNESS: Oh, I'm sorry, I apologize.
13 These are buccal swabs from Brendan Dassey.

14 DETECTIVE WIEGERT: This is 318, you
15 want 317 as well?

16 ATTORNEY GAHN: Correct.

17 Q. Would you identify what's been handed to you as
18 Exhibit 318?

19 A. These are buccal swabs, item designation BS, from
20 Brian Dassey.

21 ATTORNEY GAHN: We're also looking,
22 Detective Wiegert, for Exhibit 325.

23 Q. While he is looking for that, Ms Culhane, you
24 state that they contain what's called a item
25 designation number; what is that number?

1 A. That's a number that we assign to that item when
2 it comes into the laboratory. We start with a
3 case with item designation A and then we go
4 through the alphabet. And so that is the item
5 designation that we assign the item.

6 Q. And would you please identify that exhibit.

7 A. This is Exhibit 317, Crime Lab item designation
8 AY, and these are buccal swabs from Allen Avery.
9 And, again, my markings and initials are on the
10 packaging.

11 This is marked as Exhibit 325, item
12 designation from the Crime Lab as EF. And this
13 is a slide holder that contains Pap smear from
14 Teresa Halbach. And, again, my initials are on
15 the packaging.

16 ATTORNEY GAHN: And, your Honor, I might
17 add that I believe there is a stipulation as to the
18 Pap smear for Teresa Halbach, that that was taken at
19 the Bellin Hospital in Green Bay, Wisconsin, in the
20 year 2002.

21 THE COURT: Is that correct, Mr. Buting?

22 ATTORNEY BUTING: That is correct.

23 THE COURT: Very well. The Court will
24 accept that stipulation.

25 Q. Now, Ms Culhane, did you develop DNA profiles

1 from each of these standards that you just
2 identified?

3 A. Yes, I did.

4 Q. And did you compare the DNA profiles from the
5 standards with DNA profiles that you developed
6 from evidentiary samples in this case?

7 A. Yes.

8 Q. Now, did you issue reports in this case?

9 A. Yes, I did.

10 Q. How many reports did you issue?

11 A. Five.

12 ATTORNEY GAHN: I would ask Detective
13 Wiegert to bring you Exhibits 311 through 315.

14 Q. I would ask you to identify each of those
15 exhibits and tell the jury what they contain.

16 A. Exhibit 311 is a copy of the first report that I
17 wrote in the Crime Lab and the findings as of
18 that point in time. Exhibit 312 --

19 Q. I'm sorry, could you please -- did you give the
20 date of that?

21 A. I'm sorry, no, that was issued on November 14,
22 2005.

23 The second report is listed as
24 Exhibit 312, that was issued on December 5th,
25 2005. And that was additional testing and my

1 results of that testing.

2 Third report is a marked as Exhibit 313,
3 it was issued on March 31st, 2006. And, again,
4 it contains the findings in this group of
5 analysis.

6 The fourth report is marked as Exhibit
7 314. It was issued May 8th of 2006. And this is
8 a copy of my report.

9 The final report is marked as Exhibit
10 315, and it was issued December 4th, 2006.

11 Q. Now, do each of those reports have your findings
12 and conclusions that you came to after completing
13 your DNA testing?

14 A. Yes. Yes, they do.

15 Q. And do those reports describe the comparisons
16 that you made between the DNA profiles developed
17 from the standards compared to the DNA profiles
18 developed from the crime scene samples?

19 A. Yes, they do.

20 Q. I'm going to show you what has been marked as
21 Exhibit 298 -- I'm sorry -- 289, and previously
22 identified as the 1999 Toyota RAV4 of Teresa
23 Halbach. Do you recognize that?

24 A. Yes, I do.

25 Q. When was the first time you saw that vehicle?

1 A. On November 7th of 2005. And when I first saw
2 the vehicle it was in the garage bay at the
3 Wisconsin State Crime Laboratory.

4 Q. And what action did you take at that time?

5 A. I was assigned to this case to process the case,
6 to process the car for biological materials.

7 Q. How did you go about processing the vehicle and
8 tell the jurors, like what did you do first and
9 then next in your process?

10 A. The first step processing a vehicle, or any item
11 of evidence, is like I said before, is to do a
12 visual examination. When I saw the vehicle, it
13 had already been photographed, the doors were
14 open. I looked inside the car and it was obvious
15 there were numerous reddish brown stains that
16 were consistent with the appearance of blood.

17 I began to go through and sample each
18 one of these areas of staining and take notes and
19 document where the stains were, and what my
20 preliminary tests indicated. I performed
21 preliminary tests of all the stains that were --
22 the appearance of bloodstains, reddish-brown
23 stains. And, again, I sub-designated each one of
24 these stains. The item designation of the
25 vehicle was item A. And as I recovered stains

1 from that, I numbered them A-1, A-2, until I
2 recovered the number of stains.

3 ATTORNEY GAHN: I'm also going to ask that
4 Detective Wiegert bring you what has been marked as
5 Exhibit 326. I'm also going to ask Detective
6 Wiegert if he would open that envelope and remove
7 the contents and hand that to Ms Culhane, or show it
8 to her.

9 A. It's marked as Exhibit 326. This is the first
10 thing that I recovered from the vehicle and it's
11 my item designation A-1.

12 Q. And how can you tell that?

13 A. I have -- This is the coin envelope that I placed
14 the swabbing of the stain into. And my markings,
15 my initials and date is on it.

16 Q. And that envelope contains the actual swab that
17 you took?

18 A. Yes.

19 Q. And you state that you gave that Crime Lab item
20 designation number A-1; is that correct?

21 A. Yes.

22 ATTORNEY GAHN: And I'm going to ask
23 Mr. Fallon if he would bring you what has been
24 marked as Exhibit 296.

25 Q. And ask you if you recognize that photograph?

1 A. Yes, I do.

2 Q. And what is it?

3 A. This is a large reddish-brown stain in the rear
4 cargo area of the vehicle. And this is where I
5 sampled for presumptive test, which was positive
6 for blood. And then I sampled additional
7 staining to continue with DNA typing.

8 Q. Do you have the laser pointer up there?

9 A. Yes, I do.

10 Q. Just point to the area of where you did your
11 presumptive test for blood?

12 A. The presumptive test, and then very close to
13 that, I sampled my actual sample that I tested
14 for DNA.

15 Q. And would you describe for the jurors exactly how
16 you did the presumptive test?

17 A. Presumptive test is a color test. And it
18 basically reacts positively with blood. I took a
19 cotton swab, moistened it with sterile water. I
20 swabbed just a tiny bit of the stain and I put
21 reagents on it. If it's blood, it turns bright
22 red -- or pink, bright pink. And a negative
23 reaction is no color change. So that I performed
24 on this stain.

25 Because it was positive, it gave me a

1 good indication that this was probably a
2 bloodstain. So from that point I sampled the
3 stain that I was actually going to do my typing
4 from.

5 Q. And tell the jurors how you sampled that.

6 A. I took another clean cotton swab, put sterile
7 water on it, and basically just removed some of
8 the stain onto the cotton swab and then allowed
9 it to air dry.

10 Q. And then what did you do with that cotton swab?

11 A. I put it in -- I had a -- In the space where I
12 was working, I have a test tube rack. And I had
13 a test tube and I put the swab in there and
14 allowed it to air dry.

15 ATTORNEY GAHN: I would ask Detective
16 Wiegert, if you would remove the standards from the
17 desk in front of Ms Culhane, and also you can bring
18 back item A-1 exhibit.

19 Q. And could you also describe for the jurors as how
20 this stain appeared to you and the general size
21 of the stain. Can you do that?

22 A. It was a reddish-brown stain, probably about that
23 big.

24 Q. And you are -- May the record reflect --

25 A. Six inches.

1 Q. -- you're holding your hands about 6 inches --

2 A. Six inches.

3 Q. -- apart? Was this a large stain that you
4 sampled?

5 A. Comparatively speaking, most of the other
6 reddish-brown stains were much smaller than that.

7 ATTORNEY GAHN: Now, I would ask Detective
8 Wiegert to bring you what has been marked as Exhibit
9 327.

10 Your Honor, I had a talk with defense
11 counsel, Mr. Buting, before we resumed this
12 afternoon, and I have opened up the first
13 exhibit, which was Exhibit 326, and Ms Culhane
14 identified the coin envelope that had her swab in
15 it. We have a number of swabs for her to
16 identify. And Mr. Buting is not going to require
17 us to open every envelope and pull it out and
18 identify it with her initials. If something
19 comes up, they are here, we can open them. But I
20 believe that's the understanding that we have.

21 ATTORNEY BUTING: That is correct, your
22 Honor.

23 THE COURT: Very well.

24 Q. (By Attorney Gahn)~ Ms Culhane, you have in front
25 of you what has been marked as Exhibit 327. And

1 does that envelope contain -- can you tell what
2 item designation number is contained in that
3 envelope?

4 A. Yes, Item A-2.

5 Q. A-2. And can you tell the jurors where it was
6 that you collected the swab in A-2 from.

7 A. It was collected from the plastic panel across
8 the back cargo area of the vehicle. Like when
9 you are stepping up into the cargo area, there is
10 a plastic strip there. And A-2 was collected
11 from that plastic strip?

12 ATTORNEY GAHN: Mr. Fallon is going to show
13 you an exhibit which has been marked as Exhibit 298.

14 Q. I would like you to examine that. And also tell
15 the jurors whether that photograph is depicted on
16 the large screen as well.

17 A. Yes, this is a photograph of the swabbing I took,
18 A-2. And it was actually located in this area
19 here.

20 ATTORNEY GAHN: I would ask if Detective
21 Wiegert would bring to you what has been marked as
22 Exhibit 328.

23 Q. I will ask you, Ms, Culhane if you can identify
24 Exhibit 328?

25 A. Yes, the item designation is A-4.

1 Q. And what is A-4?

2 A. That's a swabbing that was recovered from this
3 area here, this metal around the frame of the
4 opening of the cargo door area.

5 Q. And prior to swabbing those areas, did you also
6 do presumptive tests?

7 A. Yes, I did.

8 Q. And what were the results of your presumptive
9 tests on those two stains?

10 A. Both A-2 and A-4 were positive.

11 Q. For what?

12 A. For blood.

13 ATTORNEY GAHN: I'm going to ask Detective
14 Wiegert if he would bring you Exhibit 329.

15 Q. Could you identify that exhibit, please.

16 A. This is item designation A-3.

17 Q. What is that?

18 A. This is a cotton swab from a reddish-brown stain
19 that was taken from the inside surface of the
20 rear cargo door.

21 ATTORNEY GAHN: Mr. Fallon is going to
22 bring you a photograph marked as Exhibit 209.

23 Q. And I will ask if you can -- if you recognize
24 that. And tell the jurors whether that
25 photograph is depicted on the large screen.

1 A. Yes, I do. This is the photograph I'm holding
2 here, A-3, was recovered from this area here.

3 Q. And did you also perform a presumptive test on
4 A-3?

5 A. Yes, I did.

6 Q. And what were the results of that test?

7 A. It was positive for blood.

8 Q. And similar to item designation No. A-1, did you
9 take additional swabbings from A-2, A-4, and A-3?

10 A. Yes, I did.

11 Q. And what did you do with those?

12 A. Those were taken in exactly the same manner that
13 I took A-1. I took a cotton swab and moistened
14 it with sterile water, and I swabbed a portion of
15 the stain and put it in a rack so it could dry,
16 air dry.

17 Q. And what was the purpose of taking the swabs;
18 were you going to be conducting any further
19 testing?

20 A. Yes. My intention was to attempt to develop a
21 DNA profile from those samples.

22 ATTORNEY GAHN: I'm going to ask Detective
23 Wiegert if he would bring you Exhibit 330. I'm also
24 going to ask, Detective Wiegert, if you will open
25 that bag.

1 Q. Ms Culhane, I'm going to ask you to handle this
2 item. Would you like some gloves for that?

3 A. Yes, please.

4 ATTORNEY GAHN: I'm sorry, Detective
5 Wiegert.

6 DETECTIVE WIEGERT: That's all right.

7 Q. Can you identify that item?

8 A. This is item designation A-14. And this was a
9 Pepsi can that was recovered from the cup holder
10 by the front driver's side of the RAV4.

11 ATTORNEY GAHN: I'm going to ask Mr. Fallon
12 if he would bring you a photograph that has been
13 marked as Exhibit 293.

14 Q. And I'm going to ask you to tell the jury whether
15 that photograph is depicted on the large screen.

16 A. Yes, it is.

17 Q. And can you use the laser pointer and show the
18 jurors where you found that Pepsi can.

19 A. Right here.

20 Q. And you, yourself, found this Pepsi can there,
21 correct?

22 A. That's correct.

23 Q. And what did you do to process that can? Will
24 you explain that and show the jurors.

25 A. I collected this can with the intention of

1 developing a profile, to see if I could determine
2 who may have drank out of the can. There is no
3 visible staining on the can, so what I did was, I
4 took a cotton swab, a sterile cotton swab, just
5 like I did in all the other stains, except in
6 this particular case I was only swabbing a
7 particular area, not necessarily a stain. And I
8 swabbed around the opening here where your mouth
9 would touch if you drank out of this can.

10 Q. And just for the record, that exhibit is more
11 properly described as a Wild Cherry Pepsi can?

12 A. Yes, sir.

13 Q. And you didn't do any presumptive tests on that?

14 A. No, I didn't.

15 Q. And why not?

16 A. There were no visual indications that there were
17 blood stains of any kind.

18 Q. And what did do with the swabs that you took from
19 the Wild Cherry Pepsi can?

20 A. I also put them in a rack, and allowed them to
21 air dry, and eventually developed a DNA profile
22 from that.

23 ATTORNEY GAHN: I would ask, Detective
24 Wiegert, if you could remove those items from that
25 area. Detective Wiegert, I would ask you if you

1 would please take to Ms Culhane Exhibit 331 and
2 Exhibit 332. And I'm also going to ask Mr. Fallon
3 if he will bring you a photograph which has been
4 marked as Exhibit 292.

5 Q. Firstly, can you tell us what Exhibit 331 is?

6 A. Yes, it's a -- my item designation A-9.

7 Q. And what is A-9?

8 A. It's a cutting that was taken from this area of
9 the front passenger seat, of a reddish-brown
10 stain.

11 Q. And did you tell us what Exhibit 332 is?

12 A. 332 is my item designation A-10 and that was a
13 reddish-brown stain that I recovered here from a
14 CD case in the front passenger seat.

15 Q. Now, you stated that A-9 was a cutting; how does
16 a cutting differ from a swab?

17 A. Any time we have a biological material on a hard
18 surface like glass, or wood, or that can, the
19 best way to recover the most amount of DNA is to
20 swab it with a cotton swab. If we have a stain
21 that appears to be a reddish-brown stain like
22 blood, or any biological material that's on
23 fabric, we simply cut that stain completely out.

24 Q. And what did you do with the cutting and the
25 swab? I'm sorry, back up. Referring now to Item

1 A-10, which is Exhibit 332; what is that?

2 A. That was the swab from the CD case, right here.

3 Q. And describe for the jurors what you observed on
4 that CD case?

5 A. There was a reddish-brown stain on the case. I
6 performed a presumptive positive, or presumptive
7 test and got positive results. And, therefore, I
8 sampled a portion of that stain to be further
9 tested for DNA.

10 ATTORNEY GAHN: I would ask that Detective
11 Wiegert would bring you Exhibits 333 and 335.

12 Q. And can you identify what Exhibit 333 is.

13 A. Yes, this is my item designation A-6.

14 Q. And can you identify 335?

15 A. It's my item designation as A-7.

16 ATTORNEY GAHN: And I'm going to ask
17 Mr. Fallon to bring you a photograph that has been
18 marked Exhibit 290.

19 Q. And ask you if this photograph is depicted on the
20 large screen?

21 A. Yes, it is.

22 Q. And would you tell the jurors what Item A-6 is,
23 which is Exhibit 333?

24 A. That's a cutting of a stain that was taken from
25 this area. It's a stain on -- actually the

1 fabric of the front driver's seat.

2 Q. And can you show the jurors what A-7 is and where
3 you obtained it.

4 A. A-7 were some reddish-brown crust that I found
5 here on the floor beside the console.

6 Q. And did you perform any presumptive test on each
7 of those samples?

8 A. Yes, I did.

9 Q. And what test did you perform?

10 A. I performed a preliminary test for blood. Both
11 of them were positive. So, therefore, I took the
12 cutting of A-6 from here and I removed the blood
13 crust of A-7 from this area.

14 Q. And what did you do with those?

15 A. The cutting I put in a coin envelope and sealed
16 it up. And the blood crust I put into a tube, a
17 small plastic tube and sealed that and put that
18 in a coin envelope.

19 ATTORNEY GAHN: I'm going to ask Detective
20 Wiegert if he would bring you Exhibit 334. And I'm
21 going to ask Mr. Fallon to bring you a photograph
22 that has been marked as Exhibit 294.

23 Q. And I ask you if Exhibit 294 is the photograph
24 that is depicted on the large screen?

25 A. Yes, it is.

1 Q. And can you identify what Exhibit 334 is?

2 A. It's my item designation A-12 and that was this
3 reddish-brown stain here that I sampled. It's on
4 the metal door frame between -- on the passenger
5 side, between the backseat and the cargo area.

6 Q. And did you conduct any presumptive tests on that
7 stain?

8 A. Yes, I did. I tested -- preliminary test for
9 blood and it was positive.

10 Q. And then what did you do?

11 A. I, again, sampled that in a clean cotton swab
12 with sterile water. And I took another portion
13 of the stain, I let it air dry. And that's what
14 I used for my DNA analysis.

15 ATTORNEY GAHN: I'm going to ask Detective
16 Wiegert to bring you Exhibit 336. And I'm going to
17 ask Mr. Fallon to bring you a photograph that has
18 been marked as Exhibit 291.

19 Q. And I ask you if Exhibit 291 is the photograph
20 that is depicted on the large screen?

21 A. Yes, it is.

22 Q. And will you identify for the jurors what exhibit
23 336 is?

24 A. It's my item designation A-8. And it was a
25 sample that I recovered from this reddish-brown

1 stain here, right by the ignition.

2 Q. Did you conduct a presumptive test for blood on
3 that stain?

4 A. Yes, I did, and it was positive.

5 Q. Then, after you conducted your presumptive test,
6 what did you do?

7 A. I sampled another portion of that stain on
8 another cotton swab and that's what I retained
9 for my DNA testing.

10 Q. And after you collected all these stains, then
11 what did you do with them?

12 A. I processed the car down in the garage area of
13 our laboratory. We have like a work space, a
14 work bench there. And that's where I had all of
15 my samples set up. When I was completed
16 processing the car, those were taken to my work
17 bench and the cotton swabs were put into small
18 coin envelopes to keep them until I began my
19 analysis on them.

20 Q. And when you say begin your analysis, are you
21 talking about the DNA testing procedures?

22 A. Yes, I am.

23 Q. In other words, you are going to begin those five
24 steps that you described to the jurors before
25 lunch?

1 A. Correct.

2 ATTORNEY GAHN: I would ask if Detective
3 Wiegert would bring you Exhibit 325. It's the Pap
4 smear of Teresa Halbach.

5 Q. Now, we have already identified that exhibit as
6 the Pap smear of Teresa Halbach; is that correct?

7 A. Yes.

8 Q. What is a Pap smear?

9 A. As I understand it, it is a sample of cells from
10 a woman's cervix. It is used for medical testing
11 to check for abnormal cells.

12 Q. And where would the DNA come from in a Pap smear?

13 A. As I stated earlier, any cell that -- any
14 nucleated cell is going to have DNA. So any of
15 the cells from the Pap smear, cervical area,
16 tissue cells, it will come from the nucleus of
17 those epithelial cells that are on that smear.

18 Q. Now, using the DNA technology that you described
19 before lunch time, did you develop a DNA profile
20 for Teresa Halbach, from that Pap smear?

21 A. Yes, I did.

22 Q. And I'm going to ask you, if according to your
23 reports, does the slide we will put up next
24 display your results?

25 A. Yes, it does.

1 Q. I would like you to take the laser pointer and at
2 this point explain to the jurors exactly what
3 they are looking at.

4 A. This series of numbers and letters on this side
5 are referred to as genetic markers. And all of
6 this information pinpoints where those genetic
7 markers are found throughout your DNA. Earlier I
8 talked about the target regions of DNA that are
9 amplified, and we make a whole lot of copies of
10 them.

11 This is what I was referring to. We
12 looked at 15 different target areas of DNA that
13 are amplified. These numbers on the right side
14 are the types at each one of those locations. So
15 for instance, at D3S1358, Teresa Halbach's type
16 is a 16 18.

17 Q. Are there other possible types at that genetic
18 location of D3S1358?

19 A. Yes.

20 Q. Do you know how many different types there are at
21 that location?

22 A. Not exactly, but probably something like 11 to
23 20.

24 Q. Can you compare, for the jurors, when you talk
25 about types, how these would be like ABO types?

1 A. These types are actually the different fragment
2 sizes, those different target sizes that we
3 amplified. The ABO system is a type of genetic
4 marker, but the discriminating power of ABO
5 systems, which is what we used many years ago, is
6 much less than the discriminating power of the
7 combined -- all of these combined types.

8 Q. Now, you previously testified that you collected
9 your swab A-1 from the rear cargo area --

10 A. Yes.

11 Q. -- of the RAV4; is that correct?

12 A. Yes.

13 Q. Can we go to the next one, please. And, again,
14 please show the jurors where you collected your
15 A-1 from.

16 A. In this area right here.

17 Q. And that was a blood stain that tested positive
18 in this presumptive test, correct?

19 A. Right.

20 Q. You also testified that you collected swab A-2
21 from across the panel of the rear cargo area.
22 Show the jurors, again, where that was.

23 A. Yes, that was right in this area here.

24 Q. And you also testified that you collected your
25 swab A-4 from the metal frame. Show the jurors

1 where that was.

2 A. Right along here.

3 Q. And you also testified that you collected A-3
4 from the cargo door itself; is that correct?

5 A. Yes.

6 Q. And can you show the jurors where that is?

7 A. Right here.

8 Q. And, again, all of these stains, you had a
9 presumptive positive test for blood?

10 A. That's correct.

11 Q. And you also testified that you collected a swab
12 from the Wild Cherry Pepsi can which you labeled
13 at A-14; is that correct?

14 A. Yes, right here.

15 Q. And, again, show the jurors. Thank you. Now,
16 did you develop DNA profiles from each of these
17 swabs?

18 A. Yes, I did.

19 Q. And according to the reports that you have, does
20 the following slide correctly depict your
21 results?

22 A. Yes, it does.

23 Q. And, again, would you explain to the jurors what
24 this slide shows.

25 A. Again, these are the genetic markers, these are

1 the 15 different markers we're looking at. And
2 these are the types that were developed from each
3 one of these evidence samples.

4 Q. And each one of those evidence samples came from
5 the RAV4 of Teresa Halbach, correct?

6 A. Correct.

7 Q. Now, can you tell whether this particular DNA
8 profile is from a male or a female?

9 A. Yes.

10 Q. How can you do that?

11 A. This marker here, referred to as amylogen, is a
12 gender marker. If you are female, you are only
13 going to have an X chromosome. If you are a
14 male, you will have a X and a Y chromosome.

15 Q. So this profile is from a female?

16 A. Correct.

17 Q. I notice that after genetic marker D7SA20 there
18 is an 11?

19 A. Correct.

20 Q. Why is there only one number there?

21 A. As I stated earlier, these genetic markers are
22 independently inherited, just like genes. So you
23 inherit 50 percent from your mom and 50 percent
24 from your dad. Now, the fact that this is an 11
25 means that she is a homozygote at this marker.

1 And that means she got the same type from her mom
2 and the same type from her dad. At D-3 there are
3 two markers. This is referred to as a
4 heterozygote. And she received one from her mom
5 and one from her dad.

6 Q. And this DNA profile that you developed from the
7 cuttings and the swabs from the RAV4, did you
8 compare that profile to the DNA profile that you
9 developed from Teresa Halbach's Pap smear?

10 A. Yes, I did.

11 Q. And according to your reports, does this slide
12 correctly display your findings?

13 A. Yes, sir, it does.

14 Q. Would you please point out to the jurors your
15 findings and conclusions?

16 A. Again, these are all the genetic markers. And
17 you can see that the types from the evidence
18 samples are consistent with the types from the
19 Pap smear of Teresa Halbach. So at this genetic
20 marker, the evidence sample is 16 18, Teresa is
21 16 18. At this marker it's 69.3, Teresa is a
22 69.3. And all of these markers are consistent
23 with the ones from Teresa Halbach.

24 Q. And did you calculate a statistic to determine
25 how rare or how common this particular DNA

1 profile would be in the population?

2 A. Yes, I did.

3 Q. And I'm going to show you a slide and ask you if
4 this correctly depicts the statistical analysis
5 that you performed?

6 A. Yes, it does.

7 Q. And would you explain to the jurors what this
8 slide means.

9 A. Remember earlier I said that we do a statistical
10 analysis when we have a match between an evidence
11 sample and a reference sample. If we have an
12 exclusion, we're finished, that's the end of it.
13 But if you have a match between an evidence
14 sample and a reference sample, then you have to
15 determine how common or how rare that match -- or
16 I mean that profile from the evidence sample is
17 in the population.

18 This first number here tells me that the
19 probability of finding someone in the Caucasian
20 population, some unrelated, random person that
21 has the same profile as the evidence sample, the
22 probability of that is 1 person in 416
23 quadrillion in the Caucasian population, 1 person
24 in 642 quadrillion in the African-American
25 population, 1 person in 641 quadrillion in the

1 southeastern Hispanic population, and 1 person in
2 1 quintillion in the southwestern Hispanic
3 population.

4 Q. And why do you look at these different
5 populations when you are estimating the frequency
6 of these genetic markers?

7 A. When we are calculating and estimating these
8 frequencies, we use a data base that's maintained
9 by the FBI. And that data base has samples from
10 individuals in these four different population
11 groups. This slide illustrates that even though
12 the rarity of the profile is different, in these
13 four population groups, there's not a lot of
14 difference between population groups. There are
15 some differences, but this profile is extremely
16 rare across all four populations.

17 Q. What does this number -- What do these numbers
18 mean, Ms Culhane?

19 A. This number means that the probability of finding
20 a person, random person, unrelated, in the
21 population, that has the same profile as the
22 evidence sample, is 1 person in 416 quadrillion.

23 Q. Do you have an opinion, to a reasonable degree of
24 scientific certainty, whether Teresa Halbach is
25 the source of the blood that you found on A-1,

1 A-2, A-3 and A-4, and the source of the
2 biological fluid on the Wild Cherry Pepsi can?

3 A. Yes, I do.

4 Q. And what is that opinion?

5 A. That Teresa Halbach is the source of the DNA from
6 those items.

7 ATTORNEY GAHN: I'm going to ask Detective
8 Wiegert to bring you what has been marked as Exhibit
9 337.

10 Q. Again, I have spoken with defense counsel before
11 we began this afternoon and, Ms Culhane, does
12 that container, which is Exhibit 337, contain
13 some charred remains that you examined in this
14 case?

15 A. Yes, it does.

16 Q. And did you assign a Crime Lab designation number
17 to that?

18 A. Yes, I did.

19 Q. What is that?

20 A. Item BZ.

21 Q. And I'm going to ask you to look on the slide on
22 the big screen. And what is contained in that
23 box there in front of you, which is Exhibit 337,
24 is this the piece of charred remains that you
25 examined?

1 A. Yes, it is.

2 Q. And when did you receive this; do you know?

3 A. I can refer to my notes.

4 Q. Please.

5 THE COURT: Do we have a number for the
6 photo exhibit?

7 ATTORNEY GAHN: Your Honor, we don't have
8 that with us, but you will get one.

9 A. Item BZ was taken into the laboratory on November
10 11th, 2005.

11 Q. And was this -- When you examined this, was this
12 a combination of bone and tissue?

13 A. It appeared to be, yes.

14 Q. And what is shown on the big screen here, which
15 we will later get an exhibit for and mark it, is
16 that the bone and tissue fragment sample that you
17 examined?

18 A. Yes, it is.

19 Q. How did you go about processing this for DNA?

20 A. Because this sample was compromised, it had been
21 subjected to -- appeared to be subjected to
22 intense heat, I needed to find an area that I
23 felt was the least damaged. So I chose a portion
24 of the tissue, which I believe was in this area
25 here, close to the bone. And sampled a portion

1 of that to continue my extractions and to
2 continue my typing.

3 Q. Were you able to develop a DNA profile from this
4 piece of charred remains?

5 A. Yes, I was.

6 Q. And according to your reports, does the next
7 slide correctly display your findings of your
8 test?

9 A. Yes, it does.

10 Q. Would you explain to the jurors what this is.

11 A. Again, these are the genetic markers that we're
12 looking at. And these are the types. You will
13 notice here there are no numbers at these
14 positions, these markers. And the reason is
15 because this was a fairly degraded sample of DNA.
16 DNA is a very stable molecule; however, it breaks
17 down and is degraded and broken up into pieces by
18 several things, heat being one, sunlight,
19 nucleases in the environment that chew it up.

20 But this was obviously a sample that had
21 been subjected to intense heat. And so,
22 therefore, on these fragments, these STR markers,
23 which are fairly large, the fragments -- there
24 was not enough DNA at those positions to develop
25 a type.

1 Q. Did you compare this partial profile with the DNA
2 profile that you obtained from the Pap smear of
3 Teresa Halbach?

4 A. Yes, I did.

5 Q. And does this slide accurately depict your
6 findings?

7 A. Yes.

8 Q. And would you please explain what your findings
9 were, to the jury?

10 A. In the -- At the marker positions where I did get
11 results, these types are consistent with Teresa.
12 Obviously, I don't know what the types are here
13 because there were no results. But for
14 everything else, all the types that I actually
15 developed, they were consistent with Teresa
16 Halbach.

17 Q. Now, you stated previously, when you made your
18 comparisons to Teresa Halbach's DNA profile with
19 the samples of blood that you found in the RAV4,
20 you were able to determine that Teresa Halbach
21 was the source of that blood; is that correct?

22 A. Yes.

23 Q. Can you say that in this case?

24 A. No.

25 Q. Why not?

1 A. This was a partial profile. When we have a
2 partial profile, we can only do a statistical
3 interpretation on the markers that we have
4 results for. In order to get very large numbers
5 and very rare profiles, what gives us those large
6 numbers is results, at all 15 different markers.
7 When we have less than that, then the frequency
8 of that profile becomes a little more common than
9 it would if it was a complete profile.

10 Q. Were you able to develop a statistic to tell you
11 how rare or how common the DNA profile on Item
12 BZ, the charred remains, would be in the
13 population?

14 A. Yes, I was.

15 Q. And does the next slide depict the frequency in
16 the population of the DNA profile on the charred
17 remains?

18 A. Yes.

19 Q. And would you explain to the jury these numbers
20 and what they mean.

21 A. This calculation was done exactly like the
22 calculation from the blood stains. The
23 difference is, this was not a full profile, it
24 was only a partial profile. So if you do a
25 statistical analysis of the types that you got,

1 and calculated the frequency of those types, the
2 probability of another random, unrelated person,
3 in the population, having the profile, the
4 partial profile of the remains, is 1 person in
5 1 billion in the Caucasian population, 1 person
6 in 2 billion in the African/American population,
7 1 person in 2 billion in the southeastern
8 Hispanic population; and 1 person in 3 billion in
9 the southwestern Hispanic population.

10 Q. And, again, can you break this down for the
11 jurors, exactly what that number, one billion,
12 would mean, as it relates to this DNA profile
13 from the charred remains?

14 A. That is the frequency that that partial profile,
15 those results at just the markers that I got
16 results from, the frequency of that partial
17 profile, that is the frequency that it occurs in
18 the population.

19 Q. Are there a billion people in the State of
20 Wisconsin?

21 A. I don't believe so.

22 ATTORNEY GAHN: Your Honor, I have now what
23 has been a photograph that has been marked as
24 Exhibit 338. I will ask Mr. Fallon if he will give
25 that to Ms Culhane.

1 Q. And Ms Culhane, would you look at that
2 photograph, and is that a photograph of the piece
3 of charred remains that we previously put up on
4 the large screen.

5 A. Yes, it is.

6 ATTORNEY GAHN: I would ask if Detective
7 Wiegert would bring you Exhibit 237 -- I'm sorry,
8 277. This would be the bullet fragment.

9 Q. And can you identify that exhibit that's in front
10 of you, Ms Culhane?

11 A. Yes, this is Crime Lab item designation FL. And
12 it is a lead bullet fragment. My initials and
13 markings are on the packaging.

14 Q. And can you tell when you received that exhibit?

15 A. That came into the laboratory on May 16 -- I'm
16 sorry, March 16th, 2006, and I took custody on
17 March 28th, 2006.

18 Q. And how did you process that bullet?

19 A. The first thing I did was, just like every item
20 of evidence, it was a visual examination. There
21 was nothing visual on the fragment. There didn't
22 appear to be any stain. So in order to remove
23 any residual DNA that might have been on the
24 bullet, I washed it. I put it in a test tube and
25 washed it with some buffer that we use to extract

1 the DNA. And the washing of that bullet, the
2 washing liquid is what I performed the rest of my
3 procedure on.

4 Q. And were you able to develop a DNA profile from
5 that washing on Item FL, the bullet?

6 A. Yes.

7 Q. And according to your reports, does the next
8 slide correctly display your findings?

9 A. Yes, it does.

10 Q. And would you please explain your results to the
11 jurors?

12 A. Again, I was looking at all of these. These are
13 the different markers. And these are the types
14 at each one of these markers. You will notice at
15 D-16 and at TPOX I am -- there's an asterisk
16 there. That indicates that there was a visible
17 peak there which represents a type. But it was
18 below our parameters for including that in the
19 final analysis. So it -- I'm missing a peak here
20 and a peak at TPOX.

21 Q. And did you compare this profile that you
22 obtained from the bullet fragment with the DNA
23 profile you obtained from the Pap smear of Teresa
24 Halbach?

25 A. Yes, I did.

1 Q. And according to your reports, does this slide
2 correctly display your findings?

3 A. Yes, it does.

4 Q. And would you explain them to the jury.

5 A. The profile from the bullet is consistent with
6 all of the types from Teresa Halbach. You will
7 notice at D16 she's missing the 13 type, and at
8 TPOX she is missing the 10 type. And, again,
9 those peaks were visible, but they were below our
10 threshold for calling those types.

11 Q. Did that have any impact on your match criteria
12 in this interpretation?

13 A. The impact is that I cannot use the information,
14 the frequencies at this marker, and at this
15 marker, to figure out my final frequency. In
16 other words, I had to calculate the frequencies
17 at all of the other markers except D16 and TPOX.

18 Q. But nothing about those two asterisks that you
19 have on your -- on the chart here excluded Teresa
20 Halbach as being on the bullet?

21 A. That's correct.

22 Q. Did this match differ in any way from the
23 previous matches that you called?

24 A. Yes, it did.

25 Q. And could you explain to the jury what happened.

1 A. During the extraction of this item of evidence,
2 as I talked about earlier, we set up controls
3 that we run with all of our samples. When we
4 begin an extraction, whether it is an evidence
5 sample or a reference sample, when we begin the
6 extraction, we begin what's called a manipulation
7 control. And it's, basically, a negative blank
8 control. And it helps us monitor if any
9 unintentional DNA is introduced into the sample
10 or into the process.

11 In this particular case, there was a
12 trace amount of -- a trace amount of DNA showed
13 up in the quantitation portion where I had to
14 quantitate and find out how much DNA I had.
15 There was a trace amount of DNA in the negative
16 control. I took the profile to completion and I
17 developed the profile on it. And the profile in
18 the negative control turned out to be consistent
19 with my own DNA type.

20 Q. What did that mean?

21 A. That means that during the extraction procedure I
22 inadvertently introduced my own DNA into the
23 negative control.

24 Q. Did that have any impact on your interpretation
25 of your results?

1 A. It did not have any impact as far as the profile
2 from the evidence sample. It's just the fact
3 that I introduced my own DNA into the
4 manipulation control.

5 Q. Were there any other profiles developed on the
6 bullet besides Teresa Halbach?

7 A. No.

8 Q. Was Teresa Halbach's profile the only profile
9 that you found on that bullet?

10 A. Yes.

11 Q. Were there any mixtures?

12 A. No.

13 Q. And your profile was found where?

14 A. In the negative control, which should have had
15 just reagents in it. It should not have had any
16 DNA at all in it.

17 Q. And how do you think your DNA profile got into
18 that control?

19 A. I believe my DNA profile was introduced during
20 the extraction procedure when I was talking. At
21 the time when I was setting up these samples, I
22 was training two analysts, newer analysts, in the
23 lab. And they were watching me. This sample was
24 not an average sample, simply because we handled
25 it a little different. It wasn't a swabbing and

1 it wasn't a cutting. The washing part of it was
2 a little bit different than what we usually do.

3 So I was explaining to them what I was
4 doing and as I was setting it up. And
5 apparently -- I felt as if I was far enough away
6 from my workbench not to introduce my DNA, but
7 apparently I was incorrect.

8 Q. Now, your DNA did not come up on the bullet, did
9 it?

10 A. No.

11 Q. It only was in the control?

12 A. That's correct.

13 Q. Do you have an opinion, to a reasonable degree of
14 scientific certainty, whether Teresa Halbach is
15 the source of the DNA on Item FL, the bullet?

16 A. Yes.

17 Q. And what is that opinion?

18 A. I believe she is the source of the DNA on that
19 bullet.

20 ATTORNEY GAHN: I would ask if Detective
21 Wiegert would, please, bring to Ms Culhane what's
22 been marked as Exhibit 324, and this would be the
23 buccal swab of Steven Avery.

24 Your Honor, before I go any further, I
25 think we have some considerable more testimony

1 for the rest of these samples. Would you like to
2 break now?

3 THE COURT: I think we'll go another 15
4 minutes to kind of split the afternoon equally in
5 two.

6 ATTORNEY GAHN: Okay.

7 Q. (By Attorney Gahn)~ Detective Wiegert has brought
8 you what has been marked as Exhibit 324, and that
9 is what you identified as the buccal swab of
10 Steven Avery?

11 A. Yes.

12 Q. And once again, that's what's called a standard,
13 correct?

14 A. Correct.

15 Q. And what are standards used for?

16 A. As reference samples to compare to the evidence
17 samples.

18 Q. Using the DNA testing procedures that you
19 described this morning, did you develop a DNA
20 profile from the buccal swab of Steven Avery?

21 A. Yes, I did.

22 Q. And does the next slide correctly depict the DNA
23 profile that you developed from Steven Avery's
24 buccal swab?

25 A. Yes, it does.

1 Q. And would you describe for the jurors your
2 findings?

3 A. These are the same genetic markers that I
4 examined when I looked at the evidence samples
5 and the standard from Teresa Halbach. And,
6 again, at each one of these markers, Steven
7 Avery's sample had a specific type. The
8 amelogenin marker is XY, which is different from
9 Teresa because this is a male individual. And he
10 has the X and Y chromosome.

11 Q. We heard testimony yesterday that a number of
12 swabs were taken from the garage floor of Steven
13 Avery. And did you receive, at the Crime Lab,
14 swabs that were taken from the garage floor of
15 Steven Avery's garage?

16 A. Yes, I did.

17 Q. And did you assign Crime Lab designation numbers
18 G, I1, J, K, O, and P to six of the swabs from
19 the stains on the garage floor of Steven Avery's
20 garage?

21 A. Yes, I did.

22 Q. And did you test those swabs from Steven Avery's
23 garage floor --

24 A. Yes.

25 Q. -- for a DNA profile? And did you obtain a DNA

1 profile?

2 A. Yes, I did.

3 Q. And does the next slide correctly show the DNA
4 profile that you obtained from the six swabs of
5 blood from the garage floor?

6 A. Yes, it does. And, again, you can see that the
7 types are consistent throughout all of the
8 markers that we looked at.

9 Q. Now, did you receive other items? We have had
10 testimony in this case that blood stains from the
11 sink or the vanity in the residence of Steven
12 Avery were taken and sent to the Crime Lab; do
13 you recall that?

14 A. Yes.

15 Q. And do you recall submitting those to DNA
16 testing?

17 A. Yes.

18 Q. And did you develop a profile from those
19 submissions?

20 A. Yes, I did.

21 Q. And what was the profile you developed?

22 A. It was consistent with Steven Avery's profile.

23 Q. And I'm going to show you the next slide. And
24 this has been identified as the Grand Am, the
25 1993 Grand Am owned by Steven Avery. Did you

1 also examine this at your Crime Lab?

2 A. Yes, I did.

3 Q. And on the next slide, can you point out to the
4 jurors, did you locate any bloodstains in that
5 vehicle?

6 A. Yes, there were bloodstains on the gear shaft
7 here and along the console.

8 Q. And did you do presumptive tests on those
9 bloodstains?

10 A. Yes, I did.

11 Q. And did you eventually do DNA testing on those
12 bloodstains?

13 A. Yes.

14 Q. And what were your results?

15 A. The types were consistent with Steven Avery.

16 Q. We had testimony a few days ago that there was a
17 swab taken of the release lever of the hood latch
18 of Teresa Halbach's RAV4. That was identified as
19 Exhibit 205.

20 ATTORNEY GAHN: Will you find that exhibit,
21 please, Detective Wiegert.

22 Q. Can you identify that exhibit, Ms Culhane?

23 A. Yes, this is our item designation ID, and it has
24 our laboratory bar code item designation and my
25 initial and date on it.

1 Q. And that contains a swab from the hood latch of
2 Teresa Halbach's RAV4?

3 A. Yes.

4 Q. And did you perform DNA testing on that hood
5 latch --

6 A. Yes.

7 Q. -- swab? Do you recall, when you looked at the
8 swab, did you notice any condition to it, as far
9 as color?

10 A. It was discolored, but it did not have the
11 appearance -- it was not a reddish-brown
12 discoloration consistent with blood.

13 Q. So it did not appear to have blood on the swab?

14 A. Correct.

15 Q. But you proceeded with DNA testing on the swab,
16 nevertheless?

17 A. Yes.

18 Q. And did you develop a profile from the swab of
19 the hood latch of Teresa Halbach's RAV4?

20 A. Yes, I did.

21 Q. And I'm going to show you the next slide and ask
22 you, do your notes and your records reflect these
23 as your findings?

24 A. Yes, they do.

25 Q. Could you explain what your findings were to the

1 jury.

2 A. Looking at the same genetic markers, these are
3 the types that were developed from the swab that
4 was reportedly taken from the hood latch of the
5 RAV4.

6 Q. And this is what you would call a full profile;
7 is that correct?

8 A. Yes.

9 Q. What does that mean when you say it is a full,
10 complete profile?

11 A. A full profile indicates that you have gotten
12 results at all 15 different markers that we look
13 at. If this was a partial profile, such as in
14 the charred remains, I would be missing types at
15 some of these markers.

16 Q. Did you compare this profile that you found on
17 the swab of the hood latch of Teresa Halbach's
18 RAV4 with the DNA profile that you developed from
19 the buccal swab of Steven Avery?

20 A. Yes, I did.

21 Q. And does this next slide correctly display your
22 findings?

23 A. Yes, it does.

24 Q. And would you please describe your findings to
25 the jurors?

1 A. At each one of the markers, the types from the
2 swabbing on the hood latch were consistent with
3 the types from Steven Avery's buccal swab. If
4 you look at all the numbers for all of the
5 markers, they are consistent with the entire
6 profile.

7 Q. Now, you testified before that you received a
8 number of standards at the Crime Lab, did you?

9 A. Yes.

10 Q. In other words, you received buccal swabs from
11 Allen Avery, Brian Dassey, Brendan Dassey, Barb
12 Janda, Bobby Dassey, Earl Avery, Chuck Avery and
13 Delores; is that correct?

14 A. Yes.

15 THE COURT: Mr. Gahn, excuse me, after you
16 wrap up this portion of the hood latch, I think
17 we'll take our break.

18 ATTORNEY GAHN: Yes, your Honor. Fine.
19 Thank you.

20 Q. (By Attorney Gahn)~ Did you develop DNA profiles
21 from all those standards of reference samples?

22 A. Yes, I did.

23 Q. When you would come up with a profile from an
24 evidentiary item like the hood latch, did you
25 compare the profile from the hood latch with all

1 the other standards?

2 A. Yes, I did.

3 Q. And what were the results?

4 A. They were inconsistent. The profile from the
5 hood latch was not consistent with any of the
6 other standards that I examined.

7 Q. But the profile from the hood latch matches
8 Steven Avery?

9 A. That's correct.

10 Q. And do you have an opinion, to a reasonable
11 degree of scientific certainty, whether the DNA
12 profile that you developed from the swab of the
13 hood latch of Teresa Halbach's RAV4, that Steven
14 Avery is the source of that profile?

15 A. Yes.

16 Q. And what is that opinion?

17 A. That he is the source of that profile.

18 ATTORNEY GAHN: Thank you.

19 THE COURT: All right. Thank you. Members
20 of the jury, we're going to take our afternoon break
21 at this time. We'll resume a little before 3:00. I
22 will remind you, again, not to discuss the case at
23 any time during the break.

24 (Jury not present.)

25 THE COURT: Counsel, let's report back a

1 little before 3:00.

2 (Recess taken.)

3 THE COURT: Counsel, before we bring the
4 jury back in, I just wanted to get some idea of the
5 agenda for the rest of the day. Mr. Gahn, how long
6 do you think you will be with direct?

7 ATTORNEY GAHN: I think at least a half
8 hour, possibly 40, 45 minutes. But I don't think
9 not before a half hour, I don't believe.

10 THE COURT: All right. And, Mr. Buting, I
11 take it you may well not complete your
12 cross-examination, but you wish to get started?

13 ATTORNEY BUTING: I wouldn't even come
14 close to completing the examination. Normally, I
15 guess I wouldn't mind starting and finishing it if
16 it was the next day, but I think with a whole break
17 of a weekend, it might be easier, if the Court
18 didn't mind ending a little early today, if we would
19 just start fresh with cross on Monday morning.

20 THE COURT: Okay. Before I answer that,
21 does the State have any shorter, quicker witnesses.

22 ATTORNEY KRATZ: I'm finding out right now,
23 Judge. We have some examination with Mrs. Halbach,
24 Karen Halbach, that we would be happy to put in
25 today.

1 ATTORNEY BUTING: Could we approach for a
2 moment, please.

3 THE COURT: Go ahead.

4 (Side bar taken.)

5 THE COURT: All right. Before we go back,
6 I should announce we just had a side bar conference
7 and I think the feeling is that if the direct
8 examination ends a little early today, we'll
9 probably simply let the jury go home a little early.

10 There was a side bar earlier this
11 morning where counsel asked the Court if the
12 other jurors knew why one of the jurors was
13 missing today. And the answer to that is, yes,
14 they learned that this morning when they were
15 leaving on the bus. And that was the purpose for
16 that brief side bar we had earlier today. All
17 right. At this point we'll bring in the jury.

18 (Jury present.)

19 THE COURT: You may be seated. And,
20 Mr. Gahn, you may resume your direct examination of
21 the witness.

22 ATTORNEY GAHN: Thank you, your Honor.

23 **DIRECT EXAMINATION CONTD.**

24 ATTORNEY GAHN: I would ask if Detective
25 Wiegert could retrieve Exhibit 211, which is the

1 Toyota key. Please take that to Ms Culhane.

2 BY ATTORNEY GAHN:

3 Q. We have presented you with an exhibit that has
4 previously been marked as Exhibit 211, and
5 previously identified as a Toyota key that was
6 found in Steven Avery's residence. And I ask
7 you, do you recognize that key?

8 A. Yes, I do.

9 Q. And how do you recognize that key?

10 A. It's the Toyota key that I examined. There was a
11 -- This is the same keyring that it was attached
12 to.

13 Q. We also have, on the next slide, a photograph
14 that -- is that key that you have in front of
15 you, Exhibit 211, the key that is in this
16 photograph?

17 A. Yes, it is.

18 Q. There is also another item in that photograph,
19 and does that help you identify the key?

20 A. Yes, it does.

21 Q. And, please, explain that to the jury.

22 A. This is the packaging that the key was brought to
23 the laboratory in. Again, this is our bar code
24 tracking system in the laboratory. And this is
25 our item designation C, and my initials, and the

1 date.

2 Q. I'm going to show you what has been marked as
3 Exhibit 316 and ask you if this photograph, which
4 you are being shown, is the photograph that is
5 depicted on the large screen?

6 A. Yes, it is.

7 Q. And now, I would like to go to the next slide.
8 And this is a slide of the key that you have in
9 front of you; is that correct?

10 A. It appears to be, yes.

11 Q. When you received this key, how did you process
12 it, Ms Culhane?

13 A. I received the key. It was in a sealed brown
14 paper bag. I opened it up. I had gloves on.
15 And I held the metal part of the key in one hand
16 and I swabbed the black -- I should show you up
17 here -- this black rubberized part of the key,
18 with a sterile cotton swab. And I did it in very
19 much the same way that I swabbed the Pepsi can
20 that we looked at earlier.

21 At this point, there were no visible
22 indications of any staining, so I was primarily
23 interested to see if I could recover DNA that had
24 been left behind by possibly touching. So I
25 swabbed all of the surfaces, the front and back,

1 and the edges of the key, and that's what I did
2 my analysis on.

3 Q. After you did the swabbing of the key, did you do
4 anything else with the key?

5 A. Yes, I did.

6 Q. Please explain to the jurors what you do with the
7 key.

8 A. I took the key to see if it fit the vehicle. So
9 I put the key into the ignition. I still had, of
10 course, gloves on, during this entire process. I
11 put the key into the ignition and turned the
12 ignition. It did turn the ignition, but it did
13 not crank the car. And I later learned that that
14 was because, I believe, the battery had been
15 disconnected. But it did actually turn
16 completely over. I also locked, I believe it was
17 the front driver's side door, and used the key to
18 unlock the door.

19 Q. The buccal swab that you took of this key, did
20 you submit that to DNA testing?

21 A. Yes, I did.

22 Q. And were you able to develop a profile from the
23 swabbing of Item C, the key to Teresa Halbach's
24 car?

25 A. Yes.

1 Q. And does this slide clearly and correctly show
2 your findings?

3 A. Yes, it does.

4 Q. Would you explain to the jury your findings.

5 A. Again, we looked at the same 15 markers. And at
6 each one of these markers I developed a type.
7 And that is the profile that characterizes the
8 swabbing that I took from the key.

9 Q. And, again, this profile that you developed from
10 the key, is that a profile that came from a male
11 individual?

12 A. Yes, it is. And that's -- We have an X and a Y
13 chromosome which indicate the male individual.

14 Q. And did you compare the profile that you
15 developed from your swabbing of this key with the
16 DNA profile that you developed from the buccal
17 swab of Steven Avery?

18 A. Yes, I did.

19 Q. And does this next slide correctly show your
20 findings?

21 A. Yes, it does.

22 Q. And, again, would you explain your findings to
23 the jury.

24 A. The same 15 markers, these are the types at each
25 one of these markers. And you can see at every

1 type, the type from the evidence -- or the
2 profile from the evidence sample is consistent
3 with the profile from Steven Avery.

4 Q. And, again, Ms Culhane, the profile that you
5 developed from Item C, the key, is that what you
6 refer to as a full, complete DNA profile?

7 A. Yes.

8 Q. And why is that, again?

9 A. Because we have types at each one of these
10 markers. There are types present at each one of
11 the markers.

12 Q. And, again, did you compare this profile with the
13 DNA profiles that you developed from all the
14 standards that were submitted in this case?

15 A. Yes, I did.

16 Q. In other words, did you compare the DNA profile
17 that you found on Item C with the DNA profile
18 from the buccal swab of Allen Avery?

19 A. Yes.

20 Q. And Brian Dassey?

21 A. Yes.

22 Q. And Brendan Dassey?

23 A. Yes.

24 Q. And Barb Janda?

25 A. Yes.

1 Q. And Bobby Dassey?

2 A. Yes.

3 Q. And Earl Avery?

4 A. Yes.

5 Q. And Chuck Avery?

6 A. Yes.

7 Q. And Delores Avery?

8 A. Yes, I did.

9 Q. And did the DNA profile that you developed from
10 Item C, the key, match any of those standards?

11 A. No, it did not.

12 ATTORNEY GAHN: At this time, I'm going to
13 ask Detective Wiegert if he can, please, retrieve
14 for me the photograph of the RAV4 -- I'm looking for
15 the photograph, I'll give you a exhibit number in
16 just one second -- Exhibit 290, 294, 291, and 292,
17 please.

18 Q. Ms Culhane, would you find Exhibit 290.

19 A. 290?

20 Q. 290.

21 A. No, I have 291, 292 and 294.

22 Q. Do you have that?

23 A. Yes, I do.

24 Q. And I apologize for the delay here. Is that
25 photograph depicted on the large screen here?

1 A. Yes, it is.

2 Q. Now, you previously testified that you took
3 cuttings which you identified as Item A-6 from
4 the RAV4?

5 A. Correct.

6 Q. Can you show the jurors where it was you took the
7 cuttings?

8 A. In the front driver's seat, right about here.

9 Q. And those were the cuttings of a stain that you
10 had tested for blood with the presumptive test?

11 A. Yes.

12 Q. And I also believe that you testified earlier
13 that you collected your Item No. A-7 from the
14 center console area of the RAV for, would you
15 point that out to where that was for the jurors.

16 A. Right along the floor here by the console.

17 Q. Okay. And did you perform DNA testing on those
18 two evidentiary samples?

19 A. Yes, I did.

20 Q. And did you develop a DNA profile for the blood
21 stain on Item A-6?

22 A. Yes, I did.

23 Q. And according to your reports, does the next
24 slide correctly depict the DNA findings?

25 A. Yes, it does.

1 Q. And, again, would you explain those to the
2 jurors.

3 A. Again, these are the same 15 markers and these
4 are the types at each one of these markers that
5 were developed from the cutting of the stain in
6 the driver's seat of the RAV4.

7 Q. And, again, is this what you consider to be a
8 complete full DNA profile?

9 A. Yes.

10 Q. And did you also compare this profile to the DNA
11 profile that you developed from the buccal swab
12 of Steven Avery?

13 A. Yes, I did.

14 Q. And does this slide correctly display your
15 findings?

16 A. Yes, it does.

17 Q. And would you explain your findings to the jury?

18 A. Again, this is the profile developed from the
19 evidence sample. You can tell it's from a male
20 individual. All of the types are consistent with
21 each one of the types, at each marker, from the
22 reference standard of Steven Avery.

23 Q. And the DNA profile that you found in Item A-6,
24 the bloodstain, did you compare that to the other
25 standards that you received at the lab?

1 A. Yes, I did.

2 Q. And how did this profile compare to the other
3 standards?

4 A. It was not consistent with any of the other
5 standards that I examined.

6 Q. It was only consistent with the DNA profile of
7 Mr. Steven Avery?

8 A. That's correct.

9 Q. Did you develop a DNA profile from your Item No.
10 A-7, which were the blood crusts by the center
11 console?

12 A. Yes.

13 Q. And does the following slide show your findings?

14 A. Yes, it does.

15 Q. And would you explain those to the jurors.

16 A. Again, at each genetic marker, these are the
17 types. At D-5, this asterisk here indicates that
18 there was a peak there, a visible peak, but it
19 was below the parameters of our system. So that
20 would not be included in the statistical
21 interpretation of this sample -- of this profile.

22 Q. Now, that's only not included in the statistical
23 analysis, correct?

24 A. Correct.

25 Q. Now, the fact that that asterisk was there, did

1 not have any impact in your interpretation of
2 this profile as it compared to Steven Avery, did
3 it?

4 A. No.

5 Q. And did you compare this profile to Steven
6 Avery's profile?

7 A. Yes, I did.

8 Q. And does this slide correctly show your findings?

9 A. Yes, it does. And, again, you can see that the
10 profile is consistent with Steven Avery at every
11 genetic marker.

12 Q. Do you have an opinion, to a reasonable degree of
13 scientific certainty, whether Steven Avery is the
14 source of the blood stain on Item A-6, which was
15 the stain found on the driver's passenger seat?

16 A. Yes, I do.

17 Q. And what is that opinion?

18 A. That Steven Avery is the source of that profile.

19 Q. And do you have an opinion, to a reasonable
20 degree of scientific certainty, whether Steven
21 Avery is the source of the DNA profile that you
22 found on Item A-7, the blood crusts by the center
23 console?

24 A. Yes, I do.

25 Q. And what is that opinion?

1 A. That Steven Avery is consistent with that
2 profile.

3 Q. Do you have Exhibit 293 in front of you?

4 A. No, I'm sorry, I don't.

5 Q. I'm sorry. Do you have that now?

6 A. Yes.

7 Q. Is that photograph the same photograph that is up
8 on the big screen?

9 A. Yes, it is.

10 Q. Now, you previously testified that you collected
11 a cutting which you identified as Item A-9 of a
12 bloodstain from the front passenger seat of
13 Teresa Halbach's RAV4. Can you show the jurors
14 where that cutting was, once more.

15 A. Yes, right in this area here.

16 Q. And did you perform a DNA test on that cutting?

17 A. Yes, I did.

18 Q. And according to your reports, does the following
19 slide correctly display your results?

20 A. Yes, it does.

21 Q. Could you explain them to the jurors.

22 A. These are the exact same markers that we looked
23 at in each sample. And, again, there are types
24 at each one of these markers, and XY depicting a
25 male individual.

1 Q. And, again, is this what you call a complete full
2 profile?

3 A. Yes, it is.

4 Q. And did you compare the profile that you
5 developed from the bloodstain from the front
6 passenger seat of Teresa Halbach's car with the
7 DNA profile that you obtained from the buccal
8 swab of Steven Avery?

9 A. Yes, I did.

10 Q. And does this next slide show your findings?

11 A. Yes, it does.

12 Q. And would you explain them to the jury, too,
13 please.

14 A. This is the profile developed from the cutting in
15 the passenger -- the front passenger seat. And
16 this is the profile from Steven Avery's buccal
17 swab. And you can see it's consistent at all of
18 the 15 genetic markers.

19 Q. Do you have an opinion, to a reasonable degree of
20 scientific certainty, whether Steven Avery is the
21 source of the bloodstain that was found on Item 9
22 on the front passenger seat of Teresa Halbach's
23 RAV4?

24 A. Yes, I do.

25 Q. And what is that opinion?

1 A. That Steven Avery is the source of that stain,
2 A-9.

3 Q. All right. Now, you also previously testified
4 that you collected the swab from what was Item
5 A-10, that is the CD case that was on the front
6 seat of Teresa Halbach's car, correct?

7 A. Yes.

8 Q. And did you develop a DNA profile from the blood
9 stain on the CD case?

10 A. Yes, I did.

11 Q. And does the next slide correctly show your
12 findings?

13 A. Yes, it does.

14 Q. Did you compare this profile with the profile
15 that you developed from the buccal swab of Steven
16 Avery?

17 A. Yes, I did.

18 Q. And does this next slide correctly show your
19 findings according to your reports?

20 A. Yes, it does. Again, you can see all of the
21 types are exactly the same through all the
22 genetic markers.

23 Q. And do you have an opinion, to a reasonable
24 degree of scientific certainty, whether Steven
25 Avery is the source of the blood that you found

1 on the CD case in Teresa Halbach's SUV?

2 A. Yes, I believe he is the source of the blood
3 stain, Item A-10.

4 Q. Ms Culhane, do you have Exhibit 294 in front of
5 you?

6 A. Yes, I do.

7 Q. And does that photograph -- is that depicted on
8 the large screen here?

9 A. Yes, it is.

10 Q. Now, you previously testified that you collected
11 a bloodstain from the paneling of the rear
12 passenger door. And would you point out to the
13 jurors, one more time, where that bloodstain was?

14 A. This area right here.

15 Q. Yes. And you designated that as Crime Lab
16 designation Item A-12; is that correct?

17 A. Yes.

18 Q. And did you perform DNA testing on Item A-12?

19 A. Yes, I did.

20 Q. And did you develop a DNA profile from the
21 testing of that bloodstain?

22 A. Yes, I did.

23 Q. And does the next slide correctly show your
24 findings?

25 A. Yes, it does.

1 Q. And, again, did you compare the profile, the DNA
2 profile that you developed from the bloodstain on
3 the rear passenger door of Teresa Halbach's RAV4,
4 with the DNA profile that you obtained from the
5 buccal swab of Steven Avery?

6 A. Yes, I did.

7 Q. And does this slide correctly show your findings?

8 A. Yes, it does. And, again, you can see, at each
9 one of the markers, the types are consistent.

10 Q. I would ask you if you have in front of you
11 Exhibit 291.

12 A. Yes, I do.

13 Q. And is that photograph shown on the big screen
14 now?

15 A. Yes, it is.

16 Q. Now, you previously testified that you collected
17 this bloodstain on the dashboard of Teresa
18 Halbach's RAV4, by the ignition switch; is that
19 correct?

20 A. Yes.

21 Q. And this -- you did a presumptive test for blood
22 on that stain?

23 A. Yes, I did.

24 Q. And did you perform DNA testing on this
25 bloodstain in Teresa Halbach's vehicle?

1 A. Yes.

2 Q. And did you develop a DNA profile from that
3 bloodstain?

4 A. Yes, I did.

5 Q. And does this next slide correctly show your
6 findings?

7 A. Yes, it does.

8 Q. And did you compare the DNA profile from that
9 bloodstain with the DNA profile of Steven Avery?

10 A. Yes, I did.

11 Q. And does this next slide show your results?

12 A. Yes, it does.

13 Q. And, again, would you explain what those were to
14 the jury.

15 A. This is the profile from A-8, which is the stain
16 by the ignition. And this is the profile from
17 Steven Avery's buccal swab. And you can see at
18 each one of the markers, the types are
19 consistent.

20 Q. And, once again, is this what you consider a full
21 complete DNA profile?

22 A. Yes, it is.

23 Q. And the DNA profile that you developed from Item
24 A-8, the blood stain found near the ignition of
25 Teresa Halbach's SUV, did you compare that

1 profile with the profiles that you developed from
2 all the other standards in this case?

3 A. Yes, I did.

4 Q. And what were your results?

5 A. It was not consistent with any of the other
6 standards.

7 Q. It was only consistent with the DNA profile of
8 Steven Avery?

9 A. Correct.

10 Q. Did you arrive at a statistical number for this
11 profile that would reflect how often, or how
12 rare, or how common, this profile would be in the
13 population?

14 A. Yes, I did.

15 Q. And I would ask if this slide correctly displays
16 that statistic?

17 A. Yes, it does.

18 Q. And could you explain to the jurors what that
19 statistic is?

20 A. This number tells me that the probability of
21 another unrelated, random person in the
22 population, having the same profile as the
23 evidence samples that we just talked about, is 1
24 person in 4 quintillion in the Caucasian
25 population, 1 person in 898 quintillion in the

1 African/American population, 1 person in 25
2 quintillion in the southeastern Hispanic
3 population, and 1 person in 123 quintillion in
4 the southwestern Hispanic population.

5 Q. And does that statistic also apply to the other
6 bloodstains that you found in the RAV4 that were
7 attributable to Steven Avery?

8 A. Yes, it does.

9 Q. Do you have an opinion, to a reasonable degree of
10 scientific certainty, whether Steven Avery is the
11 source of the bloodstain found on the dashboard
12 by the ignition in Teresa Halbach's RAV4?

13 A. Yes.

14 Q. And what is that opinion?

15 A. My opinion is that Steven Avery is the source of
16 that stain.

17 ATTORNEY GAHN: That's all I have. Thank
18 you, your Honor.

19 THE COURT: Counsel, will you approach,
20 please.

21 ATTORNEY BUTING: Sure.

22 (Side bar taken.)

23 THE COURT: All right. Members of the
24 jury, at this time, since we kept you late
25 yesterday, we're going to give you a break today.

1 The cross-examination is going to take more time
2 than we have left today, so we're going to adjourn.
3 I do have a notice, the weekend notice, to read to
4 you. It's going to be a repetition of some
5 information you have heard thus far, and also some
6 new information.

7 As I previously informed you, the
8 Court's decision not to sequester the jury during
9 the trial is dependent on the jurors not
10 listening to, watching, or reading any news
11 accounts of the case, nor discussing it with
12 anyone, including members of your family, or
13 other jurors.

14 For these reasons, it is vital that you
15 continue not to listen to any conversation about
16 this case. Do not read any newspaper or internet
17 reports, or listen to any news accounts on the
18 radio or television about the trial.

19 To assure that you are not exposed to
20 any improper media coverage, the Court has
21 ordered that, for the duration of the trial, you
22 do not watch the local news on television, do not
23 listen to the local news on the radio, and do not
24 read the newspaper, unless you first have someone
25 remove articles about the case.

1 In addition, do not visit any internet
2 websites or web logs, which include any
3 information about the case. The Court
4 understands that some of you may be working at
5 places of employment during the weekend. Do not
6 discuss the case with any employers, employees,
7 or patrons. Do not volunteer your status as a
8 juror to anyone.

9 If anyone attempts to discuss this case
10 with you, politely but firmly notify them that
11 you are prohibited from discussing the case in
12 any way. If you are involuntarily exposed to any
13 information about the case, from any source, take
14 steps to immediately avoid any further exposure.

15 Should you be exposed to any reports or
16 communications from any source concerning the
17 case during the trial, or should you become aware
18 of anything you believe may affect your ability
19 to serve as a juror, you should not discuss your
20 concerns with any other jurors, or anyone else,
21 but should report any such concerns to the jury
22 bailiff immediately.

23 Now, we have received some reports of
24 stormy winter weather this weekend. Based on the
25 latest information the Court has, whatever we get

1 should be over by Sunday. But in the event that
2 weather would cause a postponement of Monday's
3 proceedings, you will be called by the jury clerk
4 sometime before 8:00 p.m. on Sunday evening. If
5 you do not receive a call, it means that Court is
6 scheduled to go on as normal on Monday.

7 Finally, I wanted to let you know that
8 since the Court is prohibiting you from watching
9 any news accounts, or learning anything about the
10 case through the news media, at the conclusion of
11 the trial, each of you will receive a DVD that
12 has a summary of news accounts of the trial as
13 it's gone on. I do that so in the event you are
14 curious about that type of thing, you are not
15 tempted to violate the order I have issued now,
16 but you will have a chance to see it when the
17 trial is over.

18 And with those admonitions and
19 information about Monday's proceedings, you are
20 excused for the weekend.

21 (Jury not present.)

22 THE COURT: You may be seated. Ms Culhane,
23 you may step down, if you wish.

24 ATTORNEY BUTING: Before she does --

25 THE COURT: Oh.

1 ATTORNEY BUTING: I'm sorry. Before she
2 does, maybe we could just -- since she testified
3 about the contamination log that goes back to 2001,
4 I don't know if she -- if you brought it with you
5 today, but if she could be instructed to bring that
6 with her Monday, or if Mr. Gahn has a copy already,
7 he could give it to me. I only have one that goes
8 back to 2004.

9 THE COURT: Mr. Gahn.

10 ATTORNEY GAHN: That is fine. We'll
11 produce that, yes.

12 THE COURT: That's something that can be
13 produced, very well.

14 ATTORNEY BUTING: And you have the rest of
15 the file, I think, with you and you would bring it
16 on Monday?

17 MS CULHANE: Yes.

18 ATTORNEY BUTING: All the bench sheets and
19 what not.

20 THE COURT: All right. I believe there
21 were a couple other matters the parties wanted to
22 address before we adjourn today.

23 ATTORNEY GAHN: At this time, your Honor,
24 the State would like to move in some exhibits. I
25 would like to move in Exhibit 309, which is the CV

1 of Sherry Culhane; Exhibit 310, the protocol for the
2 Crime Lab; Exhibits 311, 312, 313, 314, and 315,
3 which are the five Crime Lab reports.

4 Also, I move in Exhibit 316, which is
5 the photograph of the key. And I would move in
6 Exhibits -- Exhibit 317, buccal swab of Allen
7 Avery; 318, buccal swab of Brian Dassey; 251, if
8 it's not moved in already, buccal swab of Brendan
9 Dassey; 319, buccal swab of Barb Janda; 320,
10 buccal swab of Bobby Dassey; 321, buccal swab of
11 Earl Avery; 322, buccal swab of Chuck Avery, 323,
12 buccal swab of Delores Avery; 324, buccal swab of
13 Steven Avery; and 325, the Pap smear for Teresa
14 Halbach.

15 I would also move in Exhibit 326, which
16 is the bloodstain A-1; 327, blood stain A-2; 328,
17 bloodstain A-4; 329, bloodstain A-3; and 330,
18 bloodstain -- I'm sorry, 330 is A-14, the Wild
19 Cherry Pepsi can; Exhibit 331, which is
20 bloodstain A-9; 332, bloodstain A-10; 333,
21 bloodstain A-6; 335, bloodstain A-7; 334,
22 bloodstain A-12; 336, bloodstain A-8; Exhibit 337
23 the bone and tissue material; Exhibit 277 -- I'm
24 sorry, that is already in, that's the bullet
25 fragment. And I think -- Exhibit 338, which is a

1 photograph of the bone and tissue.

2 I would like to move in Exhibit 339,
3 which is a CD Rom of the power point presentation
4 that we used during the testimony. And also a
5 printout, which is Exhibit 340, of the power
6 point -- the slides in the power point
7 demonstration. I would move those into evidence
8 at this time.

9 And I would further ask that
10 Exhibit 337, which is the bone and tissue, that
11 we be allowed to remove that from the courtroom
12 and allow Deputy Wiegert to return that to the
13 Sheriff's Department to be kept in the freezer.

14 ATTORNEY BUTING: Couple of things, 316,
15 did we have that one? Did you miss that one?

16 ATTORNEY GAHN: If not, I would move in
17 316, which is the photograph -- which is the
18 photograph of the key with the bag.

19 ATTORNEY BUTING: Okay. I have no
20 objection to any of those exhibits coming into the
21 record. I have no objection to the 337, charred
22 remains, bone and tissue, being withdrawn to be
23 properly stored.

24 I do want to make clear, though, as to
25 the five reports, 311 through 315, that I'm

1 not -- by not objecting to them going into the
2 record, I'm not suggesting that I think they
3 should be sent to the jury for any part of their
4 deliberations. So, with that limitation, I have
5 no objection to their admission.

6 THE COURT: Very well. The Court will
7 order those exhibits admitted. As long as we have
8 got some time left today, do we have an inventory of
9 the exhibits that have been marked but not admitted,
10 and is everyone in agreement?

11 ATTORNEY KRATZ: Yes, I would like us to do
12 that, Judge. And those that have been identified
13 and not offered, the State intends to do that at
14 this time. Janet, are you able to tell us which
15 ones have not been offered?

16 THE CLERK: There was an Exhibit 187 that I
17 don't think has been even offered at this point. I
18 don't know what it even is. It was by the State.

19 ATTORNEY KRATZ: That has not been offered
20 yet?

21 THE CLERK: Right.

22 ATTORNEY KRATZ: That's some bloodstains on
23 a door. It's a photograph that has not yet been
24 offered, and I don't offer it at this time.

25 THE CLERK: For the defense, Exhibits 206,

1 207, which are two photos.

2 ATTORNEY BUTING: I thought those were
3 received and offered at the end of the day; if not,
4 I would move them in.

5 ATTORNEY KRATZ: We have no objection, it's
6 of the vanity and of the washing machine. We have
7 no objection to those photos.

8 THE COURT: All right. 206 and 207 will
9 then be admitted.

10 THE CLERK: For the State, 208, 209, 210.

11 ATTORNEY KRATZ: Those are the three photos
12 of the cabinet, the bookcase. Those have been
13 referred to numerous occasions, identified by
14 several witnesses, I would offer 208, 209, and 210.

15 ATTORNEY BUTING: No objection.

16 THE COURT: Those exhibits are admitted.

17 THE CLERK: Defense, a copy of the
18 statement of Sergeant Colborn, 213.

19 ATTORNEY KRATZ: 213?

20 ATTORNEY BUTING: No, we don't offer that,
21 that was simply to be identified for refreshing his
22 recollection, I believe.

23 THE CLERK: And I think that's the same
24 thing with 216, copy of the report of Investigator
25 Wiegert.

1 ATTORNEY BUTING: Yes, same for that.

2 THE CLERK: Then 219 and 220, two
3 photographs, one of the key.

4 ATTORNEY KRATZ: Yes, we'll offer both.
5 219 is a photograph of the key, 220 is a photograph
6 of shell casings in a box, both of which were
7 identified by Deputy Kucharski. We would offer
8 both.

9 THE COURT: Any objection?

10 ATTORNEY BUTING: As the photographs of the
11 box, I'm not sure he identified them, but I guess
12 maybe he did, but he qualified it as he wasn't sure
13 when it was taken. So with that limitation, yes,
14 they can be received.

15 THE COURT: All right. Those exhibits are
16 received.

17 ATTORNEY BUTING: Could we just go back,
18 though, for a minute, to 214 and 15; were those
19 admitted already?

20 THE CLERK: I have -- Oh, I have 214
21 admitted, the transmittal.

22 ATTORNEY BUTING: Yes.

23 THE CLERK: 215, I don't have.

24 ATTORNEY BUTING: Okay. 215, we did not
25 offer, so it should not be admitted. 217, I don't

1 have marked on here either way.

2 THE CLERK: That one also has not been
3 offered.

4 ATTORNEY KRATZ: We did have that
5 identified by Mr. Lenk, that was a picture of the
6 scanner on top of Mr. Avery's bar in his living
7 room. That was identified and we would ask that it
8 be received.

9 ATTORNEY BUTING: No objection.

10 THE COURT: All right. That exhibit is
11 received.

12 THE CLERK: 249, I go to next, but I don't
13 believe that's been offered, that's the electrical
14 cord.

15 ATTORNEY KRATZ: 249, that's correct, and
16 that has not been offered yet, Judge, nor is it
17 going to be at this time.

18 THE COURT: All right.

19 THE CLERK: Then Exhibits 278, 280, 81 and
20 82 have all been marked and not referred to yet.

21 ATTORNEY KRATZ: I don't even know what
22 they are.

23 THE CLERK: They were in the paper bags. I
24 don't know what they were either.

25 ATTORNEY KRATZ: 278, 280, and 281?

1 THE CLERK: And 282. They were marked
2 yesterday.

3 ATTORNEY KRATZ: And I have blanks in my
4 list. So I don't know what they are. We can check
5 before the next session, Judge. That's fine.

6 THE CLERK: 279 was the rivet.

7 ATTORNEY KRATZ: 279?

8 THE CLERK: I have a series of photographs
9 starting at 289 through probably 309, that have not
10 been -- 308 -- have not the been offered or
11 received.

12 ATTORNEY KRATZ: Mr. Gahn just did that.
13 Those are the photos that were referred to by Ms
14 Culhane, identified by Mr. Groffy this morning, up
15 through 305 at least.

16 THE COURT: Have those been offered?

17 ATTORNEY KRATZ: Yes.

18 ATTORNEY BUTING: I believe they were.
19 That was the photographs with Mr. Groffy this
20 morning, right before lunch.

21 THE CLERK: Okay.

22 ATTORNEY BUTING: Certainly, if we
23 haven't--

24 THE COURT: So those are received?

25 ATTORNEY BUTING: I think right before

1 lunch we did move them in.

2 THE COURT: All right. Those are in.

3 ATTORNEY KRATZ: That should be it, Judge,
4 that's my list.

5 ATTORNEY BUTING: Counsel, is there a
6 photograph associated with those electrical wires.
7 I believe that there was something.

8 ATTORNEY KRATZ: There's two.

9 ATTORNEY BUTING: Two?

10 ATTORNEY KRATZ: One is what Mr. Kucharski
11 identified that he saw at the scene, that's been
12 received. And one is what we have been referring to
13 as an evidence photo. And although that was
14 identified and received, I have no objection should
15 counsel want that withdrawn at this time. And until
16 and unless we put in the actual exhibit, that that
17 can be withdrawn at this time. That seems to make
18 the most sense, Judge.

19 ATTORNEY BUTING: Do you know which photo,
20 227 and 228?

21 THE CLERK: I have 228 and 229.

22 ATTORNEY BUTING: 228 and 229. All right.
23 Let's leave them as is for now. I will probably
24 refer to them with Ms Culhane, and then as I
25 anticipate, when she's unable to link them up in any

1 way, then we'll probably move to have them
2 withdrawn.

3 ATTORNEY KRATZ: I'm not suggesting another
4 witness isn't going to eventually get those in. We
5 haven't offered them.

6 THE COURT: So at this point they have been
7 marked. They are not in.

8 ATTORNEY KRATZ: That's right.

9 ATTORNEY BUTING: Okay.

10 THE COURT: Is there anything else that
11 either party wishes to take up today?

12 ATTORNEY BUTING: I don't think so.

13 ATTORNEY KRATZ: Judge, just a moment.

14 ATTORNEY BUTING: Is there a phone number
15 we could call on Sunday evening? We don't have to
16 say it on the record, I'm just saying ...

17 THE COURT: We have a number we can give
18 you before you leave today that you can call.

19 ATTORNEY BUTING: Okay. Great. Thank you.

20 THE COURT: Actually, let's do this. I
21 think I have an email list for all of you. If I
22 just emailed it to you, will that do it?

23 ATTORNEY BUTING: That would be great.

24 ATTORNEY KRATZ: Sure.

25 THE COURT: Let's do that.

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ATTORNEY BUTING: Okay.

THE COURT: All right. If there's nothing further, we're adjourned for today.

(End of proceedings.)

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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