

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 23

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** MARCH 14, 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 (Individual voir dire of Juror Laura Barber.)

2 THE COURT: In a trial like this, whenever
3 the Court gets any information, the Court is
4 obligated to follow it up and that's what we're
5 doing this morning.

6 MS BARBER: Okay.

7 THE COURT: There was a report that was
8 received yesterday, that was passed on to me
9 yesterday, involving a citizen providing information
10 about a juror. And that's what I'm going to be
11 talking to you about.

12 MS BARBER: Okay.

13 THE COURT: The incident happened at the --
14 or reported was at the Manitowoc Eagle's Club on
15 Friday, March 2nd, which would be the Friday before
16 this past Friday.

17 MS BARBER: All right.

18 THE COURT: For a fish fry, I think, in the
19 evening. First, were you there?

20 MS BARBER: Yes, I was.

21 THE COURT: Okay. Can you tell me who you
22 were there with?

23 MS BARBER: My mother and my husband.

24 THE COURT: Okay. And do you know about
25 what time you were there, like from when until when,

1 say approximately?

2 MS BARBER: I'm going to guess 5:30 to
3 9.

4 THE COURT: Okay. During the time that you
5 were there, would you have said anything to anyone
6 that would have given them the impression that you
7 are a juror in this case?

8 MS BARBER: No, I didn't. A lot of
9 them, that I belong to the auxiliary with, knew I
10 was on, but they -- they don't question me about
11 things.

12 THE COURT: Okay.

13 MS BARBER: They do know I am a juror
14 and they make comments like, I wouldn't want to
15 be in your shoes.

16 THE COURT: Okay.

17 MS BARBER: And I just shrug my
18 shoulders and say, I can't say anything.

19 THE COURT: Okay. Was anything said to you
20 or was there any mention that you heard from anyone
21 at the Eagle's Club that evening involving the guilt
22 or innocence of the defendant in this case?

23 MS BARBER: I have to think about that.
24 I don't recall anybody saying something to me
25 because I -- I have my own opinions. I don't

1 want to listen to anybody else. And no matter
2 what they say, I don't listen to them.

3 THE COURT: Okay. Did you discuss the case
4 at the Eagle's Club with anyone that evening?

5 MS BARBER: No, I didn't.

6 THE COURT: Did you give any opinions or
7 say anything about your feelings about the case so
8 far?

9 MS BARBER: No. And that's -- I just
10 refuse to, because I don't -- I don't want
11 somebody telling me what to think.

12 THE COURT: Okay. Can you think of
13 anything that was said or that happened that night
14 that -- that would have led a citizen to report
15 something?

16 MS BARBER: Honestly, I don't. We go
17 for fish. I have a couple old fashions. We sit
18 upstairs in the bar afterward for a couple hours.
19 And I don't -- I don't make it a known thing that
20 this is what I'm doing.

21 THE COURT: Okay. You are saying, though,
22 that there are other -- there were other people
23 there who may have known you were a juror.

24 MS BARBER: Right.

25 THE COURT: And may have said something?

1 MS BARBER: Exactly. I don't know who
2 they were.

3 THE COURT: Okay.

4 MS BARBER: They talk amongst
5 themselves. I really don't listen. I have made
6 it a point that I don't want to have any
7 influence.

8 THE COURT: Okay.

9 MS BARBER: However, you want to take
10 that, that's fine, but I don't -- I don't want
11 somebody telling me how to think. And I have
12 always been that way.

13 THE COURT: Okay. Thank you. I'm going to
14 have you step outside with the sheriff.

15 MS BARBER: Sure.

16 THE COURT: Counsel, anything else that you
17 would like asked?

18 ATTORNEY STRANG: I think I caught this,
19 but we were clear that it was the Manitowoc Eagle's
20 Club?

21 ATTORNEY BUTING: Yes.

22 ATTORNEY STRANG: I thought so, but.

23 THE COURT: Otherwise we'll retreat to
24 chambers.

25 ATTORNEY FALLON: Did you want to ask her

1 point blank the question, it's been pointed out this
2 comment was attributed to someone meeting your
3 description. That's the only question left, if you
4 think you circumstantially have to.

5 ATTORNEY KRATZ: Does she know this woman?
6 But then you out the reporter.

7 THE COURT: I don't think the woman claimed
8 that she knew the juror.

9 ATTORNEY KRATZ: I think we can do this in
10 chambers.

11 THE COURT: All right. Let's go off the
12 record at this time.

13 (Individual voir dire concluded.)

14 (Jury not present.)

15 THE COURT: At this time the Court calls
16 State of Wisconsin vs. Steven Avery, Case No. 05 CF
17 381. We're here today for a continuation of the
18 trial, specifically, final instructions and closing
19 arguments. Will the parties state their appearances
20 for the record, please.

21 ATTORNEY KRATZ: Good morning, Judge. The
22 State of Wisconsin appears by Calumet County
23 District Attorney Ken Kratz. Also Tom Fallon and
24 Norm Gahn, all appearing as Special Prosecutors.

25 ATTORNEY STRANG: Steven Avery appears in

1 person, Jerome Buting and Dean Strang on his behalf.

2 THE COURT: Before we bring in the jury,
3 after the formal instruction conference yesterday
4 afternoon I prepared a proposed final set of jury
5 instructions. I also provided a copy of the final
6 draft to each of the attorney's before we left
7 yesterday. Mr. Kratz, are the instructions as
8 proposed acceptable to the State?

9 ATTORNEY KRATZ: They are, Judge.

10 THE COURT: And, Mr. Strang, subject to the
11 requested instructions of the defense the Court did
12 not give, do they, the instructions as submitted,
13 reflect your understanding?

14 ATTORNEY STRANG: The instructions, as
15 tendered to us this morning, do reflect our
16 understanding of the resolution, the jury
17 instruction conference, and what we understood the
18 Court would say to the jurors.

19 THE COURT: Very well. Does either party
20 have anything else before we bring the jury out?

21 ATTORNEY KRATZ: Not the State, your Honor.

22 ATTORNEY STRANG: (Shakes head negatively.)

23 THE COURT: All right. We'll bring in the
24 jurors at this time.

25 (Jury present.)

1 THE COURT: You may be seated. Members of
2 the jury, at this time the Court is going to read
3 the final instructions to you. We'll then proceed
4 to closing arguments of the parties.

5 Mr. Ward, I'm going to ask you if you
6 can take these instructions and provide one set
7 to each member of the jury.

8 ATTORNEY STRANG: Your Honor, maybe we can
9 have just a very brief side bar.

10 THE COURT: Okay.

11 (Side bar taken.)

12 THE COURT: All right. Members of the jury
13 you may follow along with the Court if you wish.
14 Members of the jury, the Court will now instruct you
15 upon the principles of law which you are to follow
16 in considering the evidence and in reaching your
17 verdict.

18 It is your duty to follow all of these
19 instructions. Regardless of any opinion you may
20 have about what the law is or ought to be, you
21 must base your verdict on the law I give you in
22 these instructions, apply that law to the facts
23 in the case which have been properly proven by
24 the evidence. Consider only the evidence
25 received during this trial and the law as given

1 to you by these instructions, and from these
2 alone, guided by your soundest reason and best
3 judgment, reach your verdict.

4 If any member of the jury has an
5 impression of my opinion as to whether the
6 defendant is guilty or not guilty, disregard that
7 impression entirely and decide the issues of fact
8 solely as you view the evidence. You the jury
9 are the sole judges of the facts and the Court is
10 the judge of the law only.

11 Evidence is, first, the sworn testimony
12 of witnesses, both on direct and
13 cross-examination, regardless of who called the
14 witness.

15 Second, the exhibits the Court has
16 received, whether or not an exhibit goes to the
17 jury room.

18 Third, any facts or testimony to which
19 the lawyers have agreed or stipulated or which
20 the Court has directed you to find.

21 Anything you may have seen or heard
22 outside the courtroom is not evidence. You are
23 to decide the case solely on the evidence offered
24 and received at trial.

25 The defendant in this case is charged

1 with three counts. A fourth count of false
2 imprisonment has been dismissed. The
3 instructions for the three remaining counts have
4 been modified somewhat from the opening
5 instructions given to you at the beginning of the
6 trial to conform to the evidence introduced at
7 trial.

8 The first count of the Information in
9 this case charges that: Steven Avery, on Monday,
10 October, 31, 2005, at 12932 Avery Road, Town of
11 Gibson, Manitowoc, Wisconsin, did cause the death
12 of Teresa M. Halbach, with intent to kill that
13 person, contrary to Section 940.01 (1)(a) of the
14 Wisconsin Statutes.

15 To this charge, the defendant has
16 entered a plea of not guilty, which means the
17 State must prove every element of the offense
18 charged beyond a reasonable doubt.

19 First degree intentional homicide, as
20 defined in Section 940.01 of the Criminal Code of
21 Wisconsin, is committed by one who causes the
22 death of another human being with intent to kill
23 that person or another.

24 Before you may find the defendant guilty
25 of first degree intentional homicide, the State

1 must prove, by evidence which satisfies you,
2 beyond a reasonable doubt, that the following two
3 elements were present:

4 One, the defendant caused the death of
5 Teresa Halbach. Cause means that the defendant's
6 act was a substantial factor in producing the
7 death.

8 Two, the defendant acted with the intent
9 to kill Teresa Halbach.

10 Intent to kill means that the defendant
11 had the mental purpose to take the life of
12 another human being or was aware that his conduct
13 was practically certain to cause the death of
14 another human being.

15 While the law requires that the
16 defendant acted with intent to kill, it does not
17 require that the intent exist for any particular
18 length of time before the act is committed. The
19 act need not be brooded over, considered, or
20 reflected upon for a week, a day, an hour, or
21 even for a minute. There need not be any
22 appreciable time between the formation of the
23 intent and the act. The intent to kill may be
24 formed at any time before the act, including the
25 instant before the act, and must continue to

1 exist at the time of the act.

2 You cannot look into a person's mind to
3 find intent. Intent to kill must be found, if
4 found at all, from the defendant's acts, words,
5 and statements, if any, and from all the facts
6 and circumstances in this case bearing upon
7 intent.

8 Intent should not be confused with
9 motive. While proof of intent is necessary to a
10 conviction, proof of motive is not. Motive
11 refers to a person's reason for doing something.
12 While motive or lack of motive is relevant and
13 may be shown as a circumstance to aid in
14 establishing the guilt or innocence of a
15 defendant, the State is not required to prove
16 motive on the part of a defendant in order to
17 convict. Evidence of motive does not by itself
18 establish guilt. You should give it the weight
19 you believe it deserves under all the
20 circumstances.

21 If you are satisfied, beyond a
22 reasonable doubt, that the defendant caused the
23 death of Teresa Halbach, with the intent to kill,
24 you should find the defendant guilty of first
25 degree intentional homicide.

1 If you are not so satisfied, you must
2 find the defendant not guilty.

3 The second count of the Information
4 charges that: Steven Avery, between Monday,
5 October 31, 2005, and Friday, November 4, 2005,
6 at a 12932 Avery Road, Manitowoc County,
7 Wisconsin, did mutilate, disfigure, or dismember
8 a corpse with the intent to conceal a crime,
9 contrary to Section 940.11 (1), 939.50 (3)((f) of
10 the Wisconsin Statutes.

11 To this charge, the defendant has also
12 entered a plea of not guilty, which means the
13 State must prove every element of the offense
14 charged beyond a reasonable doubt.

15 Mutilating a corpse, as defined in
16 Section 940.11 (1) of the Criminal Code of
17 Wisconsin, is violated by one who mutilates a
18 corpse with intent to conceal a crime or avoid
19 apprehension, prosecution, or conviction for a
20 crime.

21 Before you may find the defendant guilty
22 of this offense, the State must prove, by
23 evidence which satisfies you, beyond a reasonable
24 doubt, that the following two elements were
25 present:

1 One, Steven Avery mutilated the corpse
2 of Teresa Halbach.

3 Two, in mutilating the corpse of Teresa
4 Halbach, Steven Avery acted with the intent to
5 conceal a crime.

6 This requires that the defendant acted
7 with the purpose to conceal a crime.

8 You cannot look into a person's mind to
9 find out intent. Intent must be found, if found
10 at all, from the defendant's acts, words and
11 statements, if any, and from all the facts and
12 circumstances in this case bearing upon intent.

13 If you are satisfied, beyond a
14 reasonable doubt, that both elements of this
15 offense have been proved, you should find the
16 defendant guilty.

17 If you are not so satisfied, you must
18 find the defendant not guilty.

19 The defendant's theory of defense on the
20 charges of first degree intentional homicide and
21 mutilation of a corpse is that another person or
22 persons tried to frame him for the murder of
23 Teresa Halbach and the burning of her body. If
24 the facts introduced in support of the
25 defendant's theory raise a reasonable doubt in

1 your mind, or if you otherwise find that a
2 reasonable doubt arises from the evidence, then
3 you must find the defendant not guilty of the
4 charges.

5 The third count of the Information
6 charges that: Steven Avery, on Saturday,
7 November 5, 2005, at 12932 Avery Road, Manitowoc
8 County, Wisconsin, did possess a firearm
9 subsequent to the conviction for the felony or
10 other crime, as specified in sub. (1)(a) or (b),
11 contrary to Section 941.29 (2)(a), and 939.50
12 (3)(g) of the Wisconsin Statutes.

13 To this charge, the defendant has also
14 entered a plea of not guilty, which means the
15 State must prove every element of the offense
16 charged, beyond a reasonable doubt.

17 Section 941.29 of the Criminal Code of
18 Wisconsin is violated by a person who possesses a
19 firearm, if that person has been convicted of a
20 felony.

21 Before you may find the defendant guilty
22 of this offense, the State must prove, by
23 evidence which satisfies you, beyond a reasonable
24 doubt, that the following two elements were
25 present:

1 One, the defendant possessed a firearm.
2 Firearm means a weapon which acts by the force of
3 gun powder. It is not necessary that the firearm
4 was loaded or capable of being fired.

5 Possess means that the defendant
6 knowingly had actual physical control of a
7 firearm.

8 An item is also in a person's possession
9 if it is in an area over which the person has
10 control and the person intends to exercise
11 control over the item. It is not required that a
12 person own an item in order to possess it. What
13 is required is that the person exercise control
14 over the item.

15 Two, the defendant had been convicted of
16 a felony before November 5, 2005.

17 The parties have agreed that Steven
18 Avery was convicted of a felony before
19 November 5, 2005, and you must accept this as
20 conclusively proved.

21 If you are satisfied, beyond a
22 reasonable doubt, that both elements of this
23 offense have been proved, you should find the
24 defendant guilty.

25 If you are not so satisfied, you must

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find the defendant not guilty.

In reaching your verdict, examine the evidence with care and caution. Act with judgment, reason, and prudence.

Defendants are not required to prove their innocence. The law presumes every person charged with the commission of an offense to be innocent. This presumption requires a finding of not guilty, unless in your deliberations you find it is overcome by evidence which satisfies you, beyond a reasonable doubt, that the defendant is guilty.

The burden of establishing every fact necessary to constitute guilt is upon the State. Before you can return a verdict of guilty, the evidence must satisfy you, beyond a reasonable doubt, that the defendant is guilty.

If you can reconcile the evidence upon any reasonable hypothesis, consistent with the defendant's innocence, you should do so and return a verdict of not guilty.

The term reasonable doubt means a doubt based upon reason and common sense. It is a doubt for which a reason can be given, arising from a fair and rational consideration of the

1 evidence or lack of evidence. It means such a
2 doubt as would cause a person of ordinary
3 prudence to pause or hesitate when called upon to
4 act in the most important affairs of life.

5 A reasonable doubt is not a doubt which
6 is based on mere guesswork or speculation. A
7 doubt which arises merely from sympathy or from
8 fear to return a verdict of guilt is not a
9 reasonable doubt. A reasonable doubt is not a
10 doubt such as may be used to escape the
11 responsibility of a decision.

12 While it is your duty to give the
13 defendant the benefit of every reasonable doubt,
14 you are not to search for doubt. You are to
15 search for the truth.

16 An Information is nothing more than a
17 written formal accusation against the defendant
18 charging the commission of one or more criminal
19 acts. You are not to consider it as evidence
20 against the defendant in any way. It does not
21 raise any inference of guilt.

22 Disregard entirely any question that the
23 Court did not allow to be answered. Do not guess
24 at what the witness' answer might have been. If
25 the question itself suggested that certain

1 information might be true, ignore the suggestion
2 and do not consider it as evidence.

3 Attorneys for each side have the right
4 and the duty to object to what they consider are
5 improper questions asked of witnesses and to the
6 admission of other evidence which they believe is
7 not properly admissible. You may not draw any
8 conclusions from the fact an objection was made.

9 By allowing testimony or other evidence
10 to be received over the objection of counsel, the
11 Court is not indicating any opinion about the
12 evidence. The jurors are the judges of the
13 credibility of the witnesses and the weight of
14 the evidence.

15 During the trial the Court has ordered
16 certain testimony to be stricken. Disregard all
17 stricken testimony.

18 An exhibit becomes evidence only when
19 received by the Court. An exhibit marked for
20 identification and not received is not evidence.
21 An exhibit received is evidence whether or not it
22 goes to the jury room.

23 You will not have a copy of the written
24 transcript of the trial testimony available for
25 use during your deliberations. You may ask to

1 have specific portions of the testimony read to
2 you. You must continue to rely primarily on your
3 memory of the evidence and the testimony
4 introduced during the trial.

5 Remarks of the attorneys are not
6 evidence. If the remarks suggested certain facts
7 not in evidence, disregard the suggestion.

8 Consider carefully the closing arguments
9 of the attorneys, but their arguments and
10 conclusions and opinions are not evidence. Draw
11 your own conclusions from the evidence and decide
12 upon your verdict according to the evidence,
13 under the instructions given to you by the Court.

14 It is not necessary that every fact be
15 proved directly by a witness or an exhibit. A
16 fact may be proved indirectly by circumstantial
17 evidence. Circumstantial evidence is evidence
18 from which a jury may logically find other facts,
19 according to common knowledge and experience.
20 Circumstantial evidence is not necessarily better
21 or worse than direct evidence. Either type of
22 evidence can prove a fact.

23 Whether evidence is direct or
24 circumstantial, it must satisfy you, beyond a
25 reasonable doubt, that the defendant committed

1 the offense before you may find the defendant
2 guilty.

3 The State has introduced evidence of
4 statements which it claims were made by the
5 defendant. It is for you to determine how much
6 weight, if any, to give to each statement.

7 In evaluating each statement, you must
8 determine three things:

9 Whether the statement was actually made
10 by the defendant. Only so much of a statement as
11 was actually made by a person may be considered
12 as evidence.

13 Whether the statement was accurately
14 restated here at trial.

15 Whether the statement, or any part of
16 it, ought to be believed.

17 You may also consider the consistency or
18 inconsistency with any other statements made by
19 the defendant.

20 You should consider the facts and
21 circumstances surrounding the making of each
22 statement, along with all the evidence, in
23 determining how much weight, if any, a statement
24 deserves.

25 The weight of evidence does not depend

1 on the number of witnesses on each side. You may
2 find that the testimony of one witness is
3 entitled to greater weight than that of another
4 witness or even of several other witnesses.

5 In weighing the evidence, you may take
6 into account matters of your common knowledge and
7 your observations and experience in the affairs
8 of life.

9 Ordinarily, a witness may testify only
10 about facts. However, a witness with expertise
11 in a particular field may give an opinion in that
12 field.

13 You should consider the qualifications
14 and credibility of the expert, the facts upon
15 which the opinion is based, and the reasons given
16 for the opinion.

17 Opinion evidence was received to help
18 you reach a conclusion. However, you are not
19 bound by any expert's opinion. You may give as
20 much or as little weight to the opinion of any
21 expert as you conclude it is entitled to receive.

22 In resolving conflicts in expert
23 testimony, weigh the different expert opinions
24 against each other. Also consider the
25 qualifications and credibility of the experts and

1 the facts supporting their opinions.

2 During the trial, an expert witness was
3 told to assume certain facts and then was asked
4 for an opinion, based on that assumption. This
5 is called a hypothetical question.

6 The opinion does not establish the truth
7 of the facts upon which it is based. Consider
8 the opinion only if you believe the assumed facts
9 upon which it is based have been proved. If you
10 find the facts stated in the hypothetical
11 question have not been proved, then the opinion
12 based on those facts should not be given any
13 weight.

14 It is the duty of the jury to scrutinize
15 and to weigh the testimony of the witnesses and
16 to determine the effect of the evidence as a
17 whole. You are the sole judges of the
18 credibility, that is, the believability of the
19 witnesses and of the weight to be given to their
20 testimony.

21 In determining the credibility of each
22 witness, and the weight you give to the testimony
23 of each witness, consider these factors:

24 Whether the witness has an interest or
25 lack of interest in the result of this trial.

1 The witness' conduct, appearance, and
2 demeanor on the witness stand.

3 The clearness, or lack of clearness of
4 the witness' recollections.

5 The opportunity the witness had for
6 observing and for knowing the matters the witness
7 testified about.

8 The reasonableness of the witness'
9 testimony.

10 The apparent intelligence of the
11 witness.

12 Bias or prejudice, if any has been
13 shown.

14 Consistency or inconsistency with any
15 prior statements of the witness.

16 Possible motives for falsifying
17 testimony.

18 And all other facts and circumstances
19 during the trial which tend either to support or
20 to discredit the testimony.

21 Then give to the testimony of each
22 witness the weight you believe it should receive.

23 There is no magic way for you to
24 evaluate the testimony; instead, you should use
25 your common sense and experience. In everyday

1 life, you determine for yourselves the
2 reliability of things people say to you. You
3 should do the same thing here.

4 A defendant in a criminal case has the
5 absolute constitutional right not to testify.

6 The defendant's decision not to testify
7 must not be considered by you in any manner and
8 must not influence your verdict in any manner.

9 Now, at this time the closing
10 instructions will not be given until after the
11 closing arguments have been completed.

12 We're going to take a very short break,
13 not our normal morning break, at this time, to
14 allow the parties to get ready to present their
15 closing arguments.

16 I will continue to remind you not to
17 discuss this case until you have heard all the
18 closing arguments and the Court orders that you
19 begin deliberating.

20 (Jury not present.)

21 THE COURT: You may be seated.

22 ATTORNEY BUTING: Judge, one thing that
23 might be helpful just to explain to the jury so they
24 have some idea how the day will proceed, that the
25 State goes first, then the defense, and then the

1 State, actually, has a follow-up rebuttal.

2 Otherwise they may be unclear on how that works.

3 THE COURT: Any objection from the State?

4 ATTORNEY KRATZ: No.

5 THE COURT: I should indicate during the
6 side bar, requested by the defense -- Well,
7 Mr. Strang, I will let you reiterate what you told
8 the court.

9 ATTORNEY STRANG: I asked for a side bar
10 shortly before instructions began, but after written
11 instructions had been distributed to the jurors. I
12 raised my concern simply that I did not think the
13 jurors should have written instructions in their
14 hands or with them at their chairs during closing
15 arguments; although, I certainly agree they should
16 have a copy of the written instructions during
17 deliberations.

18 As I understand, without objection from
19 Mr. Kratz on behalf of the State, the Court
20 agreed to collect the written instructions again
21 at this point, from the jurors, and redistribute
22 them again after the jury is sworn to begin
23 deliberations.

24 THE COURT: Mr. Kratz?

25 ATTORNEY KRATZ: That's fine.

1 THE COURT: I'm just -- If I understand, I
2 was told what the parties were requesting; I don't
3 remember the part about ordering them being
4 collected. My concern is this, I generally
5 instruct, before closing arguments and hand out the
6 instructions because sometimes the attorneys in
7 their closing argument wish to refer to specific
8 instructions.

9 I don't know if either of you intend to
10 do that, but if you do, I generally allow --
11 first of all, I allow the attorneys to invite the
12 jurors to flip to a page so that the jurors can
13 follow along with what the attorney is reading
14 and not have to take the attorney's word for it
15 that that is the instruction.

16 Let me suggest this, I could tell the
17 jurors, when they come back for closing
18 arguments, to set the instructions down under
19 their chair and only refer to them if one side or
20 another, in its closing argument, invites them
21 to. Does that address your concern?

22 ATTORNEY STRANG: I think it would. It had
23 been our plan simply to put an instruction up on the
24 ELMO if we intended to use much of it, but I think
25 what the Court is proposing would do the same thing.

1 The concern here is for the same reason we don't
2 allow jurors to take notes during the closing
3 arguments, we don't want divided attention.

4 THE COURT: Mr. Kratz.

5 ATTORNEY KRATZ: That's fine.

6 THE COURT: All right. Well, I also, as a
7 practical matter, don't want them to misplace
8 theirs. I don't think they have written their names
9 on them. I will do this, I will instruct them to
10 place the instructions on the floor and not pick
11 them up to look at them during closings, unless the
12 attorney making the closing invites them to.

13 ATTORNEY STRANG: I'm going to duck out for
14 two minutes, if we have two minutes.

15 THE COURT: All right. We'll do that.
16 We'll take a couple quick minutes before we start.

17 (Brief recess taken.)

18 (Jury present.)

19 THE COURT: Members of the jury, before we
20 get started, I have a couple of announcements for
21 you. First, with respect to the format, in closing
22 arguments the State, because the State has the
23 burden of proof, goes first. We will, I believe,
24 take a break sometime this morning, in the middle of
25 the State's closing argument. The defense, then,

1 gets a chance to make its closing argument. And the
2 State has a final chance to make argument in
3 rebuttal, after they have heard what the defense
4 argument is.

5 The other thing is, I'm going to ask you
6 at this time to take your copy of the closing
7 instructions -- the jury instructions, if you
8 brought them out, set them on the floor upside
9 down. We do this to make sure that everybody is
10 paying attention to the closing arguments.

11 The attorneys are permitted, if they
12 wish, to make reference to the jury instructions
13 in their closings. If they ask you to take a
14 look at any instruction, you may pick them up at
15 that point, otherwise set them down. I believe
16 nobody has pens or notebooks, correct, because
17 you are not permitted to take notes during
18 closing arguments. With that, Mr. Kratz, you may
19 proceed.

20 ATTORNEY KRATZ: Thank you, Judge. I don't
21 know how the volume is on this mike.

22 THE COURT: Do you know if you are number
23 seven or eight?

24 ATTORNEY STRANG: Eight.

25 ATTORNEY KRATZ: I guess I'm eight, Judge.

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THE COURT: Okay.

ATTORNEY KRATZ: Can everybody hear me okay? Is that all right? Thank you. Then, I will begin. May it please the Court. Let me start ladies and gentlemen by thanking you for the time and attention that you have given to this very important case for the last five weeks.

This is an important duty. It's an important duty not just for the 12 of you that are going to decide the case, but for really all of Manitowoc County. You are representatives of the citizens of Manitowoc County.

And I'm going to be highlighting some of the facts in this case that the State believes was important. The last thing I'm going to do is reiterate -- or try to reiterate all of the facts, all the evidence that has been presented. I don't think you want to hear lawyers any more talking for you incessantly or hours upon hours. But there are some important parts of this case.

We start with why are we here. It would be a natural thought process for a jury to think, you know, we have been sitting here for five weeks, there must be a reason. There's got to be a reason why, for five weeks, we have had to

1 listen to over 500 exhibits, something
2 approaching 60 witnesses, and there must be a
3 conflict. There must be a controversy that has
4 to be tried in this case.

5 We're here because Steven Avery pled not
6 guilty. We're here because Mr. Avery has a
7 constitutionally protective right to be tried
8 when he pleads not guilty, like anybody else who
9 pleads not guilty. There hasn't been any
10 question and I don't want you to sit in that jury
11 box and think that there is any question about
12 who is responsible for the death and the
13 mutilation of Teresa Halbach.

14 The fact that we have been here five
15 weeks is because it's my duty, it's my job, to
16 prove all the elements of the offenses for which
17 Mr. Avery is charged. Not because there are
18 questions. And I start by saying that for, I
19 think, obvious reasons. Because as jurors, you
20 must be thinking, or you would naturally be
21 thinking, that there's got to be two sides to
22 this. And as the State and as we, I think, have
23 presented in this case, all of the evidence
24 points to one person. That's the one person
25 being responsible.

1 I'm going to argue at the conclusion of
2 this case who that one person is. I bet you can
3 guess who I'm going to suggest was -- was
4 responsible. But, again, please keep, before any
5 of the evidence I talk about, please keep that in
6 mind, that we're here because that man pled not
7 guilty and because that man is entitled to a
8 trial.

9 Cases are decided on facts, at least
10 from the State's perspective. We don't present
11 speculation. We don't ask you to perform
12 guesswork when deciding what happens. You know
13 the funny thing about facts is facts are
14 stubborn. Facts don't change. You can twist
15 them and you can beat them up, you can try to
16 massage, if you will, the facts, but facts don't
17 change.

18 The facts in this case, as presented,
19 and as I will present to you, are very much so
20 uncontested, uncontroverted, at least most of the
21 facts in this case are uncontroverted. But my
22 job is going to be to take you through what I
23 think are the important facts of this case, why
24 we think we have proved the case, beyond a
25 reasonable doubt, against Steven Avery. And I

1 intend do that.

2 The first fact that I would like to talk
3 about is a starting point in the case. Now,
4 every case has a starting point. When you think
5 about a case this big, and by now you realize and
6 you have heard just how big of a case this is.
7 You have heard that the Crime Lab received the
8 most submissions ever in the history of the
9 Wisconsin State Crime Lab, that more law
10 enforcement officers were used in this case, from
11 an investigative standpoint, than any other case.

12 But what does that mean. Try and put
13 that in perspective in -- in kind of an
14 historical perspective. That means that this is
15 a pretty darn big case. And when a case is that
16 big, the natural tendency is to try to look at
17 the big picture, and to try to absorb it all, if
18 you can. But I'm not going to do that.

19 I want you to pick one particular point
20 in time. I want to start the presentation that I
21 have with one moment in time. Now, we could have
22 started any number of moments. There's been what
23 we call watershed moments, real important moments
24 in the case when Teresa Halbach was shot, when
25 she was murdered. That's a particularly

1 important moment.

2 We could start with the moment or with
3 the visual or with the image of that man, Steven
4 Avery, standing outside of a big bonfire, with
5 flames over the roof, or at least over the garage
6 roof, and the silhouette of Steven Avery, with
7 the bonfire in the background and the
8 observations made by some witnesses.

9 Can you all picture that? Can you
10 picture that as a moment, as a moment in time?
11 And that moment, by the way, although dramatic
12 and although important, should tell the whole
13 story. That moment of Steven Avery, after the
14 murder was committed, of Steven Avery tending the
15 fire, of Steven Avery disposing of and mutilating
16 the body of 25 year old Teresa Halbach. That
17 would be a good place to start.

18 But I'm not going to start there. I'm
19 going to start somewhere else. I'm going to
20 start with the Toyota RAV4. The Toyota RAV4,
21 which was owned by Teresa Halbach, which was
22 discovered on the 5th of November, at the Avery
23 Salvage Property, is less dramatic, it's a less
24 dramatic place to start, than those other moments
25 in time that I talked about. But it's equally

1 important.

2 Because the discovery of that RAV4, the
3 discovery of Teresa Halbach's vehicle, changed
4 the course of not only this case, but the clues
5 and the secrets found in that vehicle changed the
6 lives of everybody in this room. Look around,
7 everybody.

8 The clues found in that vehicle, on the
9 5th of November, changed everybody's lives, yours
10 included. Your lives will never be the same,
11 ours won't, families won't. That moment is
12 particularly important. And that is where we're
13 going to begin.

14 This woman, Pam Sturm, of the 60
15 witnesses -- by the way, I'm going to be helping
16 you remember some of these faces as we go along.
17 I don't expect you to remember 60 people and what
18 they look like. And when I talk about witnesses,
19 I'm going to try to help the jury with some
20 photos to jog your memories.

21 But on the 5th of November, Pam Sturm
22 and Ryan Hillegas had a conversation. They had a
23 conversation about where should Pam search for
24 Teresa's vehicle. And, importantly, in that
25 conversation, they decided to search the Avery

1 salvage property, the last place where Teresa
2 Halbach was seen alive.

3 Now, as I mentioned, this case
4 dramatically changes at that moment. This
5 changes from a missing persons investigation to
6 where something horribly bad has happened to
7 Teresa Halbach.

8 It's also the first opportunity that we
9 hear where we talk about law enforcement bias.
10 And we have heard that a lot from the defense,
11 throughout this case. But the perception or the
12 finding of the vehicle on the Avery property, in
13 fact, the very decision to look for this vehicle
14 on the Avery property, should tell you something.
15 What should it tell you?

16 Well, if Pam Sturm and Ryan Hillegas can
17 figure it out. If Pam Sturm and Ryan Hillegas,
18 when they talk to each other, say to themselves,
19 you know what, common sense would tell us that
20 the first place that we should look for Teresa
21 was the last place that she was seen alive, that
22 should put a lot of the defense suggestion of law
23 enforcement bias by Mr. Fassbender and
24 Mr. Wiegert, into perspective.

25 Because you don't have to be Sherlock

1 Holmes to figure out that that's where the
2 investigation should start. Pam and Ryan figured
3 that out, when Pam Sturm decided, let's go look
4 at the Avery property for this particular
5 vehicle.

6 Now, we also remember that Pam's
7 daughter, Nikole, went with her. Nikole,
8 importantly, did some things at the scene. She
9 took the photograph. She realized that the doors
10 were locked. She realized that it was too dark
11 to see inside, or to see any blood inside. She
12 realized that there were no plates on the
13 vehicle. But, importantly, both ladies never
14 took their eyes off of that vehicle until the law
15 enforcements arrived.

16 Now, photographs that were taken from
17 Pam are important; they are important in this
18 case. It was a camera lent to them by Scott
19 Bloedorn, as we understand. But what we do find
20 is that there were obvious attempts to obscure
21 the view of this car. There's no question that
22 this car was found by the car crusher.

23 Doesn't take a great leap of
24 interpretation to suggest that Steven Avery
25 intended to crush this car. But you don't have

1 to make that finding in this case. I'm just
2 saying that parenthetically for you. In other
3 words, that where it was located was not an
4 accident. There was no accident where Teresa
5 Halbach's vehicle was located.

6 Think also, if you will, about how
7 important this particular event was, finding this
8 car. Pam Sturm described it as divine
9 intervention, or words to that effect, that it
10 was the hand of God, I think was the term that
11 she said, as to where we should look at the 4,000
12 cars that were on this property. Pam Sturm
13 looked in that one place. She never would have
14 gotten through all those cars.

15 But on that Saturday morning, or going
16 into that Saturday afternoon, think of what would
17 have happened if this car wouldn't have been
18 found. Think about what would have happened if
19 this car was crushed, like the other 54 crushed
20 cars that were there. Think of what would happen
21 if the law enforcement officials wouldn't have
22 known that this car was there and this car would
23 have secretly been taken off the property and the
24 blood wouldn't have been found, both Teresa's
25 blood and Steven's blood.

1 Think how close he got to getting away
2 with that. Pam Sturm doesn't find this car, this
3 case doesn't change at that moment, we may not be
4 standing here today. All right. And that's why
5 that's the important place to start in this case.
6 That's why the investigation changes so
7 dramatically upon the recovery -- excuse me --
8 and observation of this particular car. All
9 right. That's the first fact.

10 Usually, when I would talk to a jury, I
11 wouldn't be concerned with things like security
12 issues, but part of the prosecution's job, not
13 only is to present my case, but to dispel any
14 defense suggestions that they have made in this
15 case. I'm not going to identify what the defense
16 has told you is evidence in the case, because
17 evidence has a meaning. Evidence suggests that
18 there were witnesses that said things about it or
19 that there were witnesses that agreed with the
20 questions that the defense gave.

21 Remember evidence in the case -- excuse
22 me -- evidence is the answers that witnesses
23 give. Evidence aren't the questions that
24 Mr. Buting or Mr. Strang asked. I know this is a
25 little bit of a diversion, but I'm the

1 prosecutor, I get to do this. The questions of
2 witnesses, did you plant evidence in this case,
3 and when witnesses consistently indicate that,
4 no, sir, I did not, that's the evidence.

5 The evidence is the answer. The
6 evidence isn't the question. Okay. So keep that
7 in mind as not only I go through my closing
8 argument, but as the defense may stand before you
9 and may suggest to you theories, or speculation,
10 or supposition, or maybe what questions they
11 might have asked. But you are also collectively
12 going to have to remember what the answers were,
13 because it's the answers that are the evidence,
14 not the question.

15 Scene security. Scene security was
16 talked to you by several witnesses. I'm not
17 going to spend a great deal of time, but we know
18 that law enforcement early on, number one, knew
19 the significance of this SUV; number two, knew
20 the -- at least perception of Manitowoc County
21 being involved in the case. But as importantly,
22 number three, knew the importance of something
23 called scene security, of making sure that nobody
24 was allowed to have access to that car. Nobody
25 was going to tamper with the SUV after it had

1 been located.

2 We first heard from Deputy Pete
3 O'Connor. Deputy O'Connor was the perimeter
4 security guy. Deputy O'Connor, as you recall,
5 and as we come right off of Highway 147, was
6 stationed right at the entrance to the Avery
7 salvage property. Importantly, I guess, not only
8 did he note the people that were leaving and that
9 he stopped, but that Sergeant Orth was the first
10 one to arrive.

11 And as you might expect, we then called
12 those officers in order of arrival on the scene.
13 When Sergeant Orth said that he got there about
14 10:59 a.m., that he talked to both of the Sturms,
15 that they were very upset, that they were visibly
16 upset, and they should be, the Sturms knew at
17 that time the significance of what they had
18 found. They knew about their cousin. They knew
19 about where this case was going and where it was
20 going to lead.

21 And Sergeant Orth testified that his
22 job, when he was on the Avery salvage property,
23 was to protect that particular vehicle. All
24 right. It's called scene security. That's a
25 fancy word for guarding a piece of property, or

1 maintaining the integrity of a piece of evidence
2 in a case. And we heard that he was, really,
3 just a few feet, what would be to the east of the
4 SUV that was located.

5 Remember also, though, that other
6 witnesses, including the Sturms, including some
7 other supervisors, including Calumet County, when
8 they arrive, they never take their eyes off of
9 that particular vehicle. And Sergeant Orth was
10 one of those. Remember his testimony, he said, I
11 didn't take my eyes off that vehicle. Nobody
12 entered that vehicle. Nobody tampered with that
13 vehicle.

14 We even called witnesses like Lieutenant
15 Todd Hermann who, at the time, provided short
16 breaks for Sergeant Orth. We do that for
17 something called chain of custody, to make sure
18 that even for those couple of minute gaps and
19 Sergeant Orth said, even when I was taking a
20 little break in the staging area, I could
21 still -- I could still see the car. But, again,
22 under the category of lead prosecutor, crossing
23 all of my T's, I wanted you to know, and wanted
24 to make sure that you knew that all the witnesses
25 were called.

1 We heard from Detective Dave Remiker,
2 several times in the case. But Detective
3 Remiker, who was involved early on, Detective
4 Remiker was, I guess, the lead investigative
5 individual from Manitowoc County, both in the
6 missing persons part of the case, and also in
7 these early stages Detective Remiker, we heard,
8 confirmed the VIN. Remember, confirmed that this
9 was, in fact, Teresa Halbach's car. And you will
10 remember everything that Detective Remiker said
11 to you about that case.

12 But I want you to think back and I want
13 you to remember Detective Remiker looking. I
14 want you to remember how Detective Remiker told
15 you about scene security. This is a detective, a
16 young detective, but a good detective, a guy who
17 knows his job. A guy who, on the scene, knew the
18 importance of scene security.

19 Detective Remiker looked at you, without
20 apology, didn't bat an eye, and he told you,
21 nobody entered that vehicle. Remember that?
22 Remember when Detective Remiker told all of you,
23 all of the jurors, that nobody entered that
24 vehicle, because it was so important. Because
25 the integrity, the perception about this case,

1 making sure that nobody was going to tamper with,
2 at that time, his evidence, was an important
3 factor to Detective Remiker.

4 And when you look at his credibility --
5 This is the first opportunity I will have to talk
6 about credibility of witnesses. It's not
7 something -- and the judge has instructed you --
8 not something that you do just as a juror. We do
9 it everyday.

10 When we listen to lawyers, or when we
11 listen to people who are trying to sell us
12 something, car salesmen, as an example. We weigh
13 their credibility. All right. The car salesman
14 comes up and tells you that this little baby was
15 only driven on Sunday, by a little old lady to
16 church. You might weigh some of those factors
17 into that particular salesman. What's he trying
18 to sell me and why is he trying to sell me that?
19 Does he have any interest in the outcome of what
20 he's saying? Does he have some kind of a bias or
21 does he have some kind of a prejudice?

22 And, of course he does. And you weigh
23 those kind of factors, not just how they say it,
24 but whether or not they have those -- those
25 influences. You do the same thing as -- it's a

1 little more formalized, but you do the same thing
2 as a juror. It's not just what they say, it's
3 how they say it and were they in a position to
4 know the things that they are talking to you
5 about.

6 And my suggestion to you, my argument to
7 you, as the lead prosecutor, when the guy who's
8 in charge of the case points to you and looks at
9 you, without apology and emphatically says,
10 nobody, nobody entered that vehicle, and nobody
11 tampered with that vehicle, that's something that
12 you should give great credibility and great
13 weight to.

14 We finish what's called the chain of
15 custody, or the transfer of -- from Manitowoc to
16 Calumet County, with Sergeant Tyson. You have
17 heard from Sergeant Bill Tyson who completes, if
18 you will, the chain; that is, who watched the
19 vehicle and who took over. And about 3:00, and
20 at least from 3:00 on, we learned, then, that
21 Calumet County takes over.

22 Calumet County takes over, then, with
23 not just perimeter security, but takes over
24 security of the SUV, of that particular part of
25 the scene. It's the transfer of management

1 control about this case, that's why Calumet
2 County and DCI got involved. Let me just spend a
3 couple minutes about that.

4 Manitowoc County sheriff's deputies were
5 never, never, precluded from being involved in
6 this case. The resources of Manitowoc County law
7 enforcement officers was critical, was crucial.
8 Mr. Fassbender never apologized for that.

9 And think about why. Because we're in
10 Manitowoc County. It's the Manitowoc County
11 sheriff's deputies that are going to know if we
12 need a wrecker, where are we going to go. If we
13 need some tarps, where are we going to go. If we
14 need some ropes, where are we going to go. If we
15 need some bodies, to do some searching, if we
16 need trained evidence techs, it's a logical place
17 to find them. And that's why Manitowoc County
18 remained involved in this case.

19 You heard the testimony from
20 Mr. Fassbender, that it was the management
21 decisions, that it was the control decisions,
22 over this particular investigation, that was
23 removed from Manitowoc County. Never, ever,
24 ever, the resources. Never that we couldn't, or
25 shouldn't, use Manitowoc County law enforcement

1 officers. All right.

2 I hope you all understand that. I hope
3 you understand the difference, then, between
4 decision making, how a case should be directed,
5 and whether or not a Manitowoc County law
6 enforcement officer should have been used in this
7 case.

8 All right. Fact number three, the
9 vehicle is locked. We learned at this time the
10 weather is worsening, it's getting dark. The
11 Crime Lab is called in. And so our third
12 uncontested fact, my third fact that I want you
13 to consider when deciding this entire case, is
14 something called a recovery process. The SUV
15 recovery.

16 And for the first time, I guess, we
17 learn, and it's the first example of the
18 diversity of agencies that are involved in this
19 investigative effort, this largest criminal
20 investigation, that we have talked about, of the
21 resources that need to be allocated.

22 We have civilian searchers, like canine
23 handlers. We have law enforcement officers, like
24 from DCI and Calumet County. We have scientists
25 that are brought in, like people from the Crime

1 Lab. We have, as you heard, other civilians
2 brought in to help, like the wrecker operator,
3 and the tow truck driver, and the driver of the
4 trailer in this recovery effort.

5 But this is a good place to really kind
6 of get your mind around the expanse of this
7 investigation. And remember, we're an hour into
8 it. We're only an hour into the investigation
9 and already the resources are being called in,
10 because the enormity of this investigative effort
11 is so, so apparent to everybody.

12 I told you on my opening statement about
13 what I called a four legged hero. That may have
14 overstated Brutus a little bit, but Brutus is
15 certainly a qualified asset that you should be
16 considering in this case. Brutus hit on the SUV.
17 All right. And if the officers didn't have
18 enough suspicion before that particular moment,
19 all right, that should have been, and was, in
20 fact, a very important part of this case.

21 Because Brutus hitting on the SUV, told
22 the handler, told Julie Cramer, who you have
23 heard from, one very important thing, that either
24 a dead body was still in that particular SUV, or
25 a dead body had been in that SUV. This is

1 another changing moment. It's another time in
2 this investigation where very important, the
3 investigation changes and becomes much more of a
4 criminal investigation, that of a missing person
5 investigation.

6 We heard about Brutus' search that he
7 did, real methodical kind of search. As I was
8 thinking about it, even though Brutus is a dog,
9 Brutus approached that search much like our law
10 enforcement officers, very methodically, very
11 professionally, and came up with the same kinds
12 of results that our other officers have in this
13 case, as well.

14 One of the two lead investigators, Tom
15 Fassbender, from the Division of Criminal
16 Investigation, talked to you about the agencies
17 that were involved. I will talk to you about
18 that a little bit later. But mentioned something
19 called resource allocation, putting the teams
20 together for searching all the different
21 properties.

22 That first night, Mr. Fassbender clearly
23 was in charge of deciding who's going to go into
24 what house and why those people were going to do
25 that. And talked about the search plan. Talked

1 about why Steven Avery was a person of interest.
2 Gave you that obvious answer that everybody is
3 giving you, is because Steven Avery was the last
4 person to see Teresa alive.

5 And Mr. Fassbender knew, that first
6 afternoon, what an overwhelming task this was.
7 He knew what an overwhelming job the coordination
8 of this largest investigative effort was going to
9 include. And, again, without apology, without
10 apology, Mr. Fassbender told you at that early
11 stage, all the early clues pointed to one man.

12 They pointed to one person, even early
13 on. Who's the last person to see her alive?
14 Where was the vehicle that was found? Was there
15 an attempt by Mr. Avery to lure, or to invite, if
16 you want to use a more polite term, this woman
17 onto the property? It all pointed to one person.

18 And although Investigator Fassbender
19 said that, he had other irons in the fire, he was
20 looking at other individuals, he was looking at
21 other family members, he was looking at possibly
22 old boyfriends, or people that might have had
23 contact with Teresa, or who else she might have
24 seen that day, Mr. Zipperer, or Mrs. Zipperer, or
25 Mr. Schmitz, or where she might have been going.

1 And all those things are important. And
2 a law enforcement officer does all those things.
3 But law enforcement officers aren't stupid
4 either. Law enforcement officers understand that
5 when you have limited resources, when there is
6 just so many officers to go around, you better
7 direct your resources to where this thing is
8 likely going.

9 And that night the likely place that
10 this was going was towards Steven Avery. And so
11 a team was put together to search Steven Avery's
12 trailer, that very first night, on the 5th,
13 subject to a search warrant. Getting ahead of
14 myself just a little bit.

15 I apologize, because we're still talking
16 about the recovery of the SUV. The scientist,
17 Mr. Ertl, who himself is a DNA analyst, that's
18 what he does during the day. But on weekends,
19 like many other Crime Lab employees, Mr. Ertl
20 volunteers to go on field responses. He
21 volunteers to go to crime scenes and look at
22 evidence and things just like this.

23 So Mr. Ertl, gave his opinion, gave his
24 expertise to, and opinions to, Mr. Fassbender.
25 Made the decision that because the weather was

1 becoming progressively worse, I think Mr. Ertl
2 used the term dramatic weather had occurred on
3 the evening of the 5th, after he had got there.
4 Mr. Ertl verified, if you remember, and
5 importantly, verified that the vehicle was
6 locked, that all the doors were locked in the
7 vehicle. And decided that although they were
8 going to process the outside of the vehicle, that
9 the real processing of this car was going to take
10 place in Madison.

11 But the SUV was going to be transported,
12 as it was, to a more pristine type of location,
13 to a place where the climate could be controlled
14 and where they could control the processing of
15 the vehicle. Mr. Ertl also told you that this
16 vehicle was obviously obscured, or attempted to
17 be obscured, you couldn't see it from, as an
18 example, an airplane. Mr. Drumm told you that
19 they couldn't see a car like that from an
20 airplane when they did their air search a day or
21 two before.

22 Mr. Ertl also told you, and if you
23 remember, we'll go to a picture of Mr. Ertl
24 who is standing right here with Mr. Fassbender
25 and some other -- one other Crime Lab person.

1 Mr. Ertl told you that, right on the other side,
2 see this, right on the other side of the SUV,
3 running all the way along this ridge, was this
4 berm. Mr. Ertl talked about this being 15 to
5 20 feet high.

6 Remember he talked about walking over
7 that particular berm where he -- after he got to
8 the top of it, kind of slid down, or gravity kind
9 of assisted this going down the other side of
10 that berm. That is important, or it may be for
11 you, important, when deciding whether or not
12 somebody knew to put this car here.

13 It certainly couldn't be driven in from
14 the south. That's the point. All right. The
15 point is that it couldn't be driven into that
16 property unless somebody knew that property,
17 unless who ever put that car there, knew how to
18 get the car into this location. Again, it's near
19 the car crusher. It's near a place where other
20 cars are to be crushed. It's near cars that have
21 been crushed. The 54 cars that we talked about.

22 But Mr. Ertl's job, primary job, at this
23 location, is to process the outside of the
24 vehicle. But then to get a wrecker, to get a tow
25 assembly set up, and to put this on an enclosed

1 trailer and take to it Madison for processing.
2 And so we move to our next uncontested fact, fact
3 number four. We move our investigation to
4 Madison.

5 ATTORNEY STRANG: Your Honor, excuse me.
6 Excuse me, Mr. Kratz. I think it's unwise and
7 improper to be describing facts necessarily as
8 uncontested.

9 THE COURT: Mr. Kratz.

10 ATTORNEY KRATZ: Well, however unwise it
11 may be, this is argument, Judge. And if the jury
12 decides that they are, in fact, contested, they can
13 make that conclusion as well.

14 THE COURT: All right. Members of the
15 jury, I think I will simply remind you about one of
16 the instructions that you read and that is that the
17 closing arguments are just that, arguments. They
18 are not facts. You should take anything that is
19 said by either party as argument.

20 The fact, for example, that one side
21 said something is uncontested, may not
22 necessarily make it so. It depends on your
23 interpretation of the evidence. And the other
24 side will also have a chance to respond in its
25 argument. Mr. Kratz, you may proceed.

1 ATTORNEY KRATZ: Thank you, Judge. And the
2 Judge is absolutely right and Mr. Strang is
3 absolutely right. And if you remember one of them,
4 one of the defense attorneys putting on some
5 evidence that this car wasn't taken to Madison for
6 processing, then you should adopt that. You should
7 adopt your memory. I'm calling it uncontested as an
8 argument. I'm saying because we haven't heard any
9 evidence to the contrary, we haven't heard any
10 answers from a witness to the contrary, that's why
11 I'm characterizing this as uncontested. But as I
12 mentioned --

13 ATTORNEY STRANG: I would like to be heard
14 about that, at an appropriate time, as if now.

15 THE COURT: I'm sorry, I didn't hear the
16 last part of your comment.

17 ATTORNEY STRANG: I would like to be heard
18 about that at an appropriate time, as if now.

19 THE COURT: Very well. You may proceed,
20 Mr. Kratz.

21 ATTORNEY KRATZ: The evidence in this case
22 was that this particular SUV was taken to Madison,
23 that it was taken to a garage in Madison. It was
24 taken to the Crime Lab, where this vehicle could be
25 processed. And we heard from Mr. Groffy and Ms

1 Culhane, and Mr. Riddle. And, in fact, we heard and
2 we'll talk about a fourth individual, Mr. Stahlke,
3 about the processing or the looking at this vehicle
4 in a more controlled environment.

5 Mr. Groffy testified that after the
6 vehicle was initially looked at, that when the
7 vehicle was open, that Mr. Groffy started
8 photographing. But, importantly, photographing
9 from the outside of the vehicle, not from the
10 inside. And that's why his testimony included
11 that he photographed both on the 6th, that's
12 Sunday, and also on the 7th.

13 Because on the 6th, Mr. Groffy testified
14 that he photographed from the outside of the
15 vehicle, that he could photograph things where he
16 didn't have to crawl into the vehicle, because he
17 couldn't get the inside shots yet. Didn't want
18 to contaminate the inside of the vehicle and
19 waited for the vehicle to be what's called
20 processed, by the lead individual who was in
21 charge of processing the car. And that was
22 Sherry Culhane.

23 Now, Ms Culhane has lots and lots of
24 involvement in this particular case. Ms Culhane,
25 you heard, was the unit leader or the unit head

1 of the DNA Section of the Madison Crime Lab. And
2 she was chosen or she assigned herself the
3 responsibility of this case. And it was the unit
4 head, the head of the DNA section who, herself,
5 processed this particular vehicle.

6 Ms Culhane, as you heard testimony, took
7 some swabs, took some samples of the interior of
8 the vehicle. It's more than just the four
9 pictures that I'm putting up before you, but the
10 swabs of around the ignition area, the swabs of
11 the seats -- excuse me -- the cuttings, as she
12 cut out portions of the seat, I believe the
13 testimony was. Swabs of the CD case, swabs of
14 the back door, and also on the interior of the --
15 what's called the cargo area of the SUV.

16 The defense will have an opportunity to
17 present a argument in this case. We heard some
18 questions of some law enforcement officers, about
19 planting evidence. We didn't hear anything about
20 how an officer might plant a stain like this,
21 what's called by Mr. Stahlke, a contact stain,
22 which common sense would tell you requires active
23 bleeding. How stains which require gravity, that
24 is, which require dripping kinds of actions might
25 be planted, how smear or movement kinds of stains

1 might be planted as well.

2 Now, I say that, again, not for my
3 argument, not at this particular time telling you
4 what the evidence has shown, or is going to show,
5 but I am interested to hear theories of how these
6 things might have actually happened. Mr. Avery's
7 blood is in six different places in this vehicle.
8 Other DNA, that is, without blood being visible,
9 is in yet another, that would be the hood latch
10 on this particular vehicle.

11 And so the sheer volume, the sheer
12 numbers of places, made this quite a job. Made
13 this processing or the recovery of this evidence
14 quite important, indeed.

15 We heard from Mr. Riddle, who is
16 primarily a fingerprint guy. And although he
17 didn't obtain any identifiable prints, at least
18 those that were suitable for comparison,
19 Mr. Riddle also had the responsibility of
20 inventorying the car. Mr. Riddle told you about
21 what that means, to inventory a vehicle. And
22 it's the little things that he found, the little
23 things within the inventory that become so
24 important.

25 Things like the blue lanyard, that was

1 given from Katie Halbach to her sister Teresa.
2 You saw Katie, with the assistance of, I think it
3 was Mr. Wiegert, actually fitting the key
4 assembly, or what's called the fob, right onto
5 this particular lanyard that was given to Teresa.

6 And I had a sense, and I'm allowed to,
7 and I will argue to you, that that showed where
8 this case fits together. Fits together just like
9 the fob and just like the lanyard that was given.

10 Now, Nick Stahlke, I told you I was
11 going the talk about, and I'm going to add a
12 little bit of Mr. Stahlke's testimony in at this
13 point, because although an analysis was given, it
14 does fit also into the processing of the vehicle
15 when Mr. Stahlke talked about the blood that was
16 found in the back of the RAV4.

17 This area right here, where Mr. Stahlke
18 said that that was a very identifiable impression
19 to him. Sadly, this is a impression, or an
20 impression, of a individual whose head, whose
21 hair, is soaked with blood. And it leaves an
22 impression. It leaves a stamp, if you will. And
23 you can see that and you may get a chance even to
24 see some photos, close up photos, when you
25 deliberate in this case.

1 But the point of Mr. Stahlke's testimony
2 was that, how Ms Halbach was laying in the back,
3 that her hair was blood soaked, becomes real
4 important, obviously. Because what we're going
5 to hear about gunshots to the head, what we're
6 going to hear about where Ms Halbach was placed
7 thereafter, when it ties in with Brutus hitting
8 on this particular vehicle, as an individual was
9 either bleeding, or was deceased in this
10 particular SUV, again, becomes very, very
11 important.

12 Mr. Stahlke also told you the difference
13 between contact and transfer kinds of stains,
14 which Mr. Avery -- the blood attributed to
15 Mr. Avery suggests impact, or what's called
16 projected blood, as if an individual was thrown
17 into the back of the SUV. That was on the back
18 gate, that Mr Stahlke talked about. We'll show
19 you some pictures about that, as if the blood is
20 splattering, or is actually in movement as it
21 hits the side of, or the back gate of, the SUV.

22 We talked about passive bleeding.
23 Again, those attributed to Mr. Avery; that is,
24 the back passenger seat and also on the front
25 seats where there's droplets, where there's

1 active bleeding that's going on.

2 Mr. Stahlke also testified, if you
3 recall, that upon his expert opinion, his opinion
4 as a blood spatter expert, and he does this for a
5 living, that this particular stain by the
6 ignition is absolutely consistent with somebody
7 with a cut to the outside of the right hand and
8 turning an ignition, this transfer -- contact
9 transfer stain was absolutely consistent.

10 Now, the Judge promised you a break and
11 you are going to get one right after fact number
12 five. So I want you to know that I'm not just
13 going to drone on and on. I'm going to provide
14 you a break after this next section. Because you
15 probably, since you have been sitting for about
16 45 minutes now, probably not more than an hour
17 should go by before you get a break.

18 Fact number five, we go back to the
19 salvage yard. Fact number five becomes a
20 critical or critically important piece of
21 evidence, the State is referring to as
22 Mr. Avery's burn barrel. And we have heard about
23 the discovery, and the recovery, and the
24 processing of this burn barrel. But all of the
25 aspects of this particular burn barrel, again,

1 become very, very important.

2 It is important because of the obvious
3 evidentiary value that we have had. But it's
4 also obvious -- or excuse me -- it's also
5 important for what we haven't heard. What we
6 haven't heard about explanations, if you will,
7 about how some of this evidence gets in there.
8 But, again, I'm jumping ahead, I will talk about
9 that in just a moment.

10 Deputy Siders was the individual that
11 you heard found or discovered the burn barrel on
12 a sweep of an adjoining property of Mr. Avery's
13 on Monday, the 7th of November. Deputy Siders
14 finds the burn barrel with a tire, with the tire
15 rim being inside of the vehicle (sic). And he,
16 as you recall, takes the tire rim out.

17 Tires, again, you have heard by later
18 witnesses, are accelerants. They can be used to
19 keep a fire going, to keep it certainly going hot
20 enough to destroy, or what should be, destroy
21 most of the things that it comes in contact with.

22 Deputy Siders, we hear, turns over
23 responsibility for the photography and the taking
24 control of this piece of evidence to Special
25 Agent Kevin Heimerl. Mr. Heimerl takes some

1 pictures of the inside. But even Deputy Siders
2 told you, upon looking in the burn barrel, it was
3 obvious that a Motorola cellphone was inside
4 there, because you could see the M, the very
5 distinctive M from inside of the burn barrel.

6 Mr. Ertl, again, another one of his
7 responsibilities, later, I think it was at the
8 Calumet County Sheriff's Department, processed
9 the contents of this burn barrel, which was
10 anywhere between a third and a half full. But
11 Mr. Ertl didn't identify those components. He
12 doesn't identify the obvious electronics that are
13 found within. He leaves that to the FBI.

14 Now, Mr. Thomas, although a very young
15 looking individual, is in fact an expert, here to
16 provide you with expert testimony. These
17 components were sent to Virginia. And these
18 components, we heard, were all laid out and were
19 all identified by Mr. Thomas.

20 When you look at these pictures and you
21 look at the kinds of things that didn't burn, and
22 when I asked Mr. Thomas, what are we looking at
23 here, what's left over, what didn't burn,
24 Mr. Thomas mentioned that the metal didn't burn.
25 He mentioned that the glass didn't burn. And I

1 said, well, what does that leave. I asked him
2 the question, what components aren't here, what
3 aren't we looking at.

4 Mr. Thomas told you plastic. He said it
5 was the plastic components of the camera, and of
6 the cellphone, and of the PDA, the personal data
7 assistant, that we're missing from this
8 constellation of things.

9 Mr. Thomas was able to positively
10 identify three specific things, obviously, the
11 cellphone. He talked to you about the large
12 circuit board for the PDA, the Palm Pilot type
13 thing, and also the components for the digital
14 camera, the Canon A310. Didn't just say it was
15 any camera, said it was a Canon A310 digital
16 camera.

17 I showed you a blow up of this
18 particular exterior of that camera. And it says,
19 you know, PowerShot A310 on it, so you probably
20 don't have to be an expert to determine what kind
21 of camera that was. Not surprisingly, the State
22 tied this up as well, as you might expect. We
23 meticulously, I think, matched the recovered
24 items and showed you that Teresa Halbach owned
25 all of those items. So at least the three items

1 that Mr. Thomas was able to positively identify.

2 Teresa owned a Motorola V3 RAZR
3 cellphone. She owned a PowerShot A310 digital
4 camera and she owned a Palm Zire 31 PDA. We saw
5 the boxes that Teresa had kept her or had
6 purchased her Palm Pilot. The box that *Auto*
7 *Trader* had given her her digital camera in, the
8 Canon PowerShot A310. And you also heard
9 testimony about Teresa owning the Motorola RAZR
10 cellphone, which is a very common kind of cell
11 phone.

12 But Steven Avery's burn barrel becomes
13 important, not just for what is found in it, but
14 what witnesses, what other citizens, what other
15 people on the property saw on the 31st. One of
16 those people is Blaine Dassey, is the nephew of
17 Steven Avery.

18 And when considering credibility, you
19 can consider a young man like this sitting in
20 front of his uncle and having to testify against
21 his uncle, and doing the best job that he can,
22 and telling you that he is generally scared of
23 his Uncle Steve, but does the best he can in
24 telling you that he and Brendan Dassey, his
25 brother, get off the bus, sometime between 3:40

1 and 3:45, everyday.

2 That on this day, on Halloween, he
3 remembers particularly, while walking home, while
4 coming down their dirt road towards their house,
5 that he saw his Uncle Steve walking from his
6 trailer and putting a bag, a white bag is what he
7 described, a white plastic bag, into an already
8 burning burn barrel. Okay.

9 So by 3:45 or 3:50 in the afternoon, the
10 State is arguing, Mr. Avery is already getting
11 rid of Teresa Halbach's stuff. The electronics,
12 the phone, the PDA, the digital camera are
13 already being disposed of, they are already being
14 destroyed at that time.

15 Mr. Dassey, importantly, also testified,
16 and please remember this, before our break,
17 Mr. Dassey testified that the Suzuki and the
18 snowmobile that you see pictures of inside of the
19 garage, on the 31st of October, weren't in the
20 garage, remember that. They weren't inside of
21 the garage as the picture shows. But the 31st,
22 the Suzuki and the snowmobile are on the side of
23 the garage, leaving this garage opened, at least
24 opened to the point where something else can fit
25 into that particular garage.

1 Brings us to our next witness, who's
2 Mr. Fabian. Mr. Fabian is Earl Avery's friend,
3 that they were rabbit hunting. Mr. Fabian told
4 you that he parked the golf cart, that the burn
5 barrel was already burning, that he smelled the
6 distinct odor of plastic burning at the time,
7 that the smoke was so bad that, although parked
8 in a golf cart to the south or next to the burn
9 barrel, eventually he had to move this golf cart
10 because the smell of burning plastic and the
11 smoke was getting so bad.

12 Mr. Fabian also tells you, at that time,
13 just before dark, he places that just before
14 dark, when the rabbit hunt was just about
15 completed, that Mr. Avery's garage was closed.
16 He couldn't see what was inside of the garage.
17 There isn't any SUV any more. There is nothing
18 to be seen. The garage is closed, but the Suzuki
19 and the snowmobile are on the side of the garage.
20 All right.

21 So I have given you five so far, five
22 pieces of evidence, five pieces of crucial
23 evidence of the evidence that the State believes
24 is necessary to prove this case, beyond a
25 reasonable doubt.

1 When you return, after whatever break
2 the Judge may give you, I will conclude, then,
3 with the other pieces of evidence and instruct
4 you, or at least argue to you, what I believe
5 that you should do, after considering all these
6 pieces of evidence.

7 It's a good time for a break, Judge.
8 Thank you.

9 THE COURT: All right. Members of the
10 jury, what we're going to do is this, we're going to
11 take a break of 10 minutes or so, at this time, then
12 come back and have the State complete its closing
13 argument. I have informed the lunch people to bring
14 in lunch at quarter to one. So, because we will be
15 eating lunch later than normal, if you want to have
16 a snack during the break, go ahead and do so.

17 And, again, I will remind you not to
18 begin discussing anything about this case until
19 all the closing arguments have been given and
20 until I tell you to begin deliberating. You are
21 excused at this time.

22 (Jury not present.)

23 THE COURT: You may be seated. Mr. Strang,
24 you have something you wish to place on the record
25 at this time?

1 ATTORNEY STRANG: I do. Thank you. I
2 initially interrupted Mr. Kratz's argument,
3 reluctantly, and trying to be polite and somewhat
4 circumspect about my comment that it was unwise and
5 improper to describe facts as uncontested. I waited
6 until we got to the PowerPoint slide that said fact
7 number four, and by my recollection, that was the
8 fourth time that the -- counsel for the State
9 returned to the theme of an uncontested fact.

10 As I say, I was trying to be
11 circumspect, but the concern, of course, was that
12 this comes too close to commenting on the
13 decision of the defendant not to take the stand.
14 Or, for that matter, not to offer witnesses that
15 he did not.

16 Mr. Kratz, in responding to my
17 interruption and objection, I think made the
18 problem substantially worse. I don't have
19 committed to memory, we could go back to the
20 court reporter's notes if we need to, but the
21 rejoinder from counsel for the State was that,
22 you know, if you remember a witness being called,
23 or if you remember someone saying this didn't
24 happen, something to that effect, well, then
25 that's fine, but, of course, the suggestion was

1 that the witness was not called and no one did
2 speak up to contest the fact.

3 Doesn't warrant a mistrial, but comes
4 way too close to commenting on the Fifth
5 Amendment privilege not to testify and I think
6 warrants some curative step, either by counsel
7 himself, or by the Court, or both.

8 THE COURT: Mr. Kratz.

9 ATTORNEY KRATZ: That's absurd, Judge. I
10 get to, on closing argument, suggest that Mr. Strang
11 is going to place a theory of defense into play in
12 this case. There's absolutely no evidence that
13 would suggest that. If there are facts that I
14 believe have not been contested, either by
15 cross-examination, or are not contested through the
16 defense calling its own witnesses, that's fair game
17 for me to comment upon.

18 I have not, and I will not, comment on
19 Mr. Avery's decision not to take the stand. I
20 understand and the jury has been instructed that
21 the defense, or the defendant, I guess, is how
22 the instruction reads, has no burden in this
23 case, but certainly if something is not
24 contested, if there is a fact that I believe has
25 been proven and is an important part of the

1 State's theory of the prosecution and there
2 hasn't been a challenge, at least through
3 evidence in the case, I feel very much so
4 entitled to comment upon that.

5 THE COURT: Anything else, Mr. Strang?

6 ATTORNEY STRANG: Well, it's certainly fair
7 game to argue what the State, or for that matter the
8 defense, thinks the evidence shows. It's fair game
9 to argue -- a little bit more dangerous for the
10 State, I suppose -- but fair game to argue what the
11 evidence does not show, draw conclusions from the
12 evidence.

13 But describing something as uncontested
14 or, you know, we could go to other cases, this
15 word hasn't been chosen here, but we could go to
16 other cases where un-rebutted or unchallenged
17 comes, I think, way too close to commenting, not
18 on the strength of the evidence, or the
19 conclusions, affirmatively, the State wants
20 drawn, but on the decision of the defendant not
21 to testify to something himself, or not to call a
22 witness on a point. And I don't think the
23 suggestion was absurd at all. But that's at
24 least for this Court, in the first instance, to
25 decide.

1 THE COURT: All right. The note I took
2 down at the time the objection was made that the
3 specific alleged fact involved I believe had
4 something to do with the vehicle being transported
5 to Madison for inspection. Frankly, that wasn't
6 something that struck a chord in my mind that
7 somehow there was any relationship with the
8 defendant's decision not testify.

9 I appreciate the fact defense counsel
10 has alerted the Court to that possibility. I
11 agree that the -- there is the potential, when
12 you start using the approach that's been used as
13 far as undisputed facts, I can see where it could
14 lead to that. I do not know what the rest of the
15 State's argument is going to be.

16 At least based on what I have heard so
17 far, I do not believe it relates in any way to
18 any suggestion to the jury that somehow they
19 should take the defendant's failure to testify
20 into account in evaluating the State's evidence,
21 based on the facts that have been discussed.

22 ATTORNEY STRANG: And I -- I want to add, I
23 will -- I will go one step further, I agree with the
24 Court that the particular fact described, where
25 actually Mr. Kratz quite acceptably is using fact

1 number one, and fact number two, fact number three,
2 really, to describe a constellation of facts around
3 some single event, I agree that -- and I haven't
4 moved for a mistrial -- that this was not a topic on
5 which a juror would say, boy, the one who probably
6 has the best knowledge about that is Mr. Avery. And
7 that's something exclusively within Mr. Avery's
8 knowledge.

9 I agree and I will go the one step
10 further and say that facts one, two, and three,
11 similarly, were not matters that immediately
12 would suggest whether the defendant is in the
13 best position to know. I used the term,
14 initially, unwise and incorrect, because I wanted
15 to alert counsel and the Court, that if, you
16 know, we could get to a point where this would
17 become a real serious concern.

18 Unfortunately, the response made the
19 concern more immediate. Still not rising to the
20 level of requiring a mistrial, in my view, and
21 perhaps the Court's admonition now will be
22 enough, but I -- if -- if we go much further down
23 there, I will be heard again.

24 THE COURT: I'm assuming that both parties
25 are aware there are permissible and impermissible

1 ways of suggesting the same thing. If the State
2 says there's no evidence in the record to show this
3 or that, then that's generally okay. But if the
4 argument relates to something that might implicate
5 the defendant's decision not to testify, and the
6 language, whatever it may be, is construed as
7 something that somehow the defense should have
8 produced, then that danger arises.

9 I'm assuming that all counsel for the
10 State understand that. I haven't heard that yet.
11 And I'm trusting, Mr. Kratz, we're not going to
12 have to go there.

13 ATTORNEY KRATZ: Except on the planting
14 issue, Judge, where the defense has affirmatively
15 put that into play. The State didn't. And as to,
16 have we heard anything about planting, I do intend
17 to go into that. And that may be on rebuttal. I
18 may wait to see what the defense does. And with the
19 Court's comments, I may, in fact, do that.

20 But I at least want the Court to
21 understand that since the defense has asked for
22 the theory of defense, and since the defense has
23 intended, throughout this trial, to discuss
24 planting of evidence as its theory, I think my
25 comment on the lack of evidence, at least on that

1 issue, without mentioning Mr. Avery, without
2 mentioning his decision to testify or not, is
3 certainly fair game in my argument, or whether I
4 choose to do it now, or whether I choose to do it
5 in my rebuttal.

6 ATTORNEY STRANG: Well, and you'll know
7 when we get there. I simply would point out now
8 that planting and being framed is not an affirmative
9 defense. It's not something on which a defendant
10 has a burden of production or going forward, let
11 alone a burden of persuasion. So this would be
12 different if the defense here were self-defense, or
13 involuntary intoxication, something like that, it's
14 an affirmative defense.

15 I, too, trust counsel is aware of the
16 boundaries and now I have elaborated my concerns.
17 But I do want to be clear, the defense that's
18 been presented here is not an affirmative
19 defense. So we'll ...

20 THE COURT: All right. I'm sure, now that
21 the matter has been brought to the parties'
22 attention and the parties will be careful about it.
23 We'll take a break at this time. I guess we will be
24 resuming in 10 minutes. The jury gets a little
25 longer.

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(Recess taken.)

THE COURT: Mr. Kratz, I understand you are now on mike seven.

ATTORNEY KRATZ: I am. I switched mikes, Judge, they couldn't hear in the back, so. I don't think the jury was having a problem hearing.

THE COURT: All right. You may resume.

ATTORNEY KRATZ: I appreciate it. Thank you, Judge.

Fact number six, we talked about the instrumentality of the murder and here we talk about the .22 caliber rifle. Remember both the felon in possession of a firearm charge, the instruction that was given to you, it's not ownership of the weapon, it is possession of. You heard the Judge give you the instruction that it is the exercise of control, especially in an area where an individual would have control of that weapon becomes important.

Mr. Johnson, although a entertaining fellow, also provided important information for the jurors that he certainly knew of the .22 caliber rifle, owned the black powder rifle as well, and knew that they were hanging just a few feet above Mr. Avery's bed. Also knew of the

1 ammunition. We have seen photographs and we have
2 actually seen these rifles.

3 Let me just tell you, and this goes to
4 Count 3, and this, interestingly, might be the
5 last time I talk about possession of a firearm by
6 a felon. You are to, and you must, consider the
7 fact that the defendant was previously convicted
8 of a felony that element has been proved and
9 we're now just responsible to prove to you
10 whether or not he possessed those firearms.

11 Either of these weapons are rifles,
12 either of these weapons qualify as weapons for
13 possession of a firearm. We were -- of course,
14 claim in this case that the .22 caliber Marlin
15 not just was, what's called constructively
16 possessed, that is, over an area of which
17 Mr. Avery had control, but we will actually be
18 arguing to you that Mr. Avery handled, held that
19 weapon in his hands, when Ms Halbach was killed.

20 Some quick testimony, or at least a
21 review of some testimony on these issues.

22 Mr. Tyson, although he didn't seize the guns,
23 observed the guns that first night, on the 5th.
24 Mr. Kucharski is the gentleman who actually
25 seized the weapons on the 6th.

1 So there was some further evidence about
2 the dogs demeanor being vicious, and that is
3 further testament as to why the burn pit, or the
4 burn area, wasn't searched before it was.

5 Mr. Austin was kind enough to provide
6 us -- the trooper reconstruction expert was kind
7 enough to provide us with some diagrams and
8 things that have helped us throughout this case.
9 And I think they have been very helpful to the
10 jury.

11 Deputy Kucharski also, however, found 11
12 shell casings in the garage on the 6th of
13 November; obviously, in plain view, obviously
14 something that you should consider.

15 When we move to March, though, when we
16 move to March 1st and 2nd, when there's been
17 additional search warrants being executed on --
18 in Mr. Avery's garage, an important discovery
19 occurs, that you heard about. And that is, two
20 separate bullets, a bullet up in front here where
21 we have tent number nine, and a bullet underneath
22 this compressor, actually having to move these
23 items by tent number 23, which is the bullet
24 which later we'll find has Teresa's DNA on it.

25 Remember the different kind of search

1 that this is in March, compared to November when
2 the agents and the officers talked about taking
3 all of this junk and moving it one by one, one
4 piece by one piece, and doing that kind of
5 search. In March, the officers, pursuant to
6 their search warrant, did, in fact, just that.

7 Mr. Newhouse, we heard from the firearms
8 expert. I think the kind of expert that you
9 might hope and expect to find, from the Crime
10 Lab, talking about shell casing matches and also
11 bullet matches, at least the bullet that had
12 Teresa's DNA on it.

13 All of these photos and all this
14 evidence is in evidence in this case. The
15 bullets that were taken from Mr. Avery's bedroom,
16 you will be able to see, no pun intended, bear
17 the same letter as those that were identified by
18 Mr. Newhouse. That is, as having been shot from
19 that specific gun, that is, the Marlin Glenfield
20 .22 hanging over Mr. Avery's bed. That's
21 important, that's important stuff, that the shell
22 casings that are found in this case are from that
23 very same weapon.

24 We heard about the bullet analysis as
25 well, the bullet with the DNA is from that very

1 same weapon. And interestingly and importantly,
2 Mr. Newhouse tells you, to the exclusion of all
3 other weapons. All right. That's the kind of
4 identification that these experts can do, at
5 least the ballistics and firearms experts. And
6 so the .22 caliber bullet is an important fact.

7 Fact number seven, some background
8 information. We will hear, or I'm sure -- I'm
9 sorry, you have heard about the prior *Auto Trader*
10 contacts, that is, prior contacts, the history
11 between Steve and Teresa. You heard from Mr.
12 Pearce, that she and Mr. Pearce had talked about
13 Ms Halbach already having gone to the Avery
14 property, something of the nature of, you are not
15 going to believe whose photos we were taking.
16 And you heard the testimony of Mr. Pearce about
17 his reminder not to -- generally, reminder not to
18 go into people's homes, or not to have that kind
19 of contact with them.

20 Ms Pliszka talked about the history,
21 knowing about the history. Ms Pliszka is from
22 *Auto Trader*; she's the receptionist. And the
23 important part, at least for this part of our
24 argument, is that that photographer, Ms Halbach,
25 had been there on a number of occasions before.

1 And when Mr. Avery called at 8:12 on the
2 31st of October, he asked for that same
3 photographer. Although, he didn't use the name
4 Teresa, asked for that same female photographer
5 that had been out there before. Again, although
6 using a different name, although using the name
7 B. Yanda, he specifically was asking for Teresa
8 to come out.

9 You heard from the supervisor of *Auto*
10 *Trader*, Ms Schuster, that Ms Halbach had taken
11 six prior photos at the Avery salvage property.
12 And we put these six photos, early on, into the
13 case, into evidence. You can note on most of the
14 photos, just how close they are in proximity to
15 Mr. Avery's trailer.

16 These photos, as you heard, were taken,
17 the first on June 20th, and the last on October
18 10th, of 2005. I think the inference that you
19 also may want to draw on as you think weeks ahead
20 from the presentation of this evidence is, after
21 these photos are taken, after a car goes into
22 *Auto Trader Magazine*, what's done with it.

23 You can actually answer that question by
24 some of the other photos that I showed you.
25 What's done with these cars doesn't do Mr. Avery

1 any good, or whoever is selling a car, any good,
2 to leave these items back by Mr. Avery's garage,
3 or back by his trailer.

4 But after the *Auto Trader* picture is
5 taken, these items are put up on the corner, what
6 is called the corner by the business property.
7 We know that because of Ms Buchner, Lisa Buchner,
8 when she testified in this case, that she
9 testified that she saw a woman taking pictures of
10 cars that were for sale. And, in fact, we
11 pointed out these two vehicles, the Grand Prix
12 and the Blazer, that Ms Halbach had earlier, or
13 just within the last month or six weeks had taken
14 photographs of.

15 And, so, when a photo is taken, when it
16 goes into the *Auto Trader*, and when it has to be
17 sold, it makes sense to put those vehicles up in
18 a place where people will see them. People that
19 are coming into the auto salvage business, people
20 that will drive by, as you remember the overall
21 view of this property, that will drive by those
22 vehicles and might naturally get out and take a
23 picture and they might want to buy that kind of
24 vehicle.

25 Now, we have also heard, and I will

1 argue, importantly, that the van that Ms Halbach
2 took a picture of, remained in exactly the same
3 location, remained there from the 31st, when Ms
4 Halbach took the picture, at least through the
5 5th, when the officers took control of the scene.

6 Now, I'm going to argue and you should
7 ask yourself why, you should ask yourself why,
8 what inference can I draw by that. I will argue
9 that the inference is that Mr. Avery knows that
10 the van is not going in the *Auto Trader Magazine*.
11 Mr. Avery knows that that picture is never going
12 to make it to *Auto Trader*, because he's taken the
13 camera and he's burned it. He's put it into the
14 burn barrel.

15 There is no reason to move the van from
16 its original location near Mr. Avery's property,
17 up towards where the other cars that are for sale
18 on this property. Again, has inferences that you
19 can draw, or that you don't have to draw, but,
20 again, I'm arguing that it's something that you
21 may want to consider, again, to reconcile Ms
22 Buchner's testimony, what she had given.

23 Fact number eight, we're able to piece
24 together some of the history of Teresa for the
25 31st. It's what's called a timeline for Teresa

1 Halbach. And we were able to do that through all
2 of these particular witnesses.

3 Ms Pliszka, of course, the 8:12 call for
4 Mr. Avery triggers Ms Pliszka's 9:46 voice
5 message call to Teresa. Remember Ms Pliszka's
6 testimony, again, this is hard, because it's five
7 weeks ago. Her testimony was, she left the voice
8 mail that there's a person who wants you to come
9 out and do a shoot. There is a phone number
10 that's been left.

11 You will hear later on in my
12 presentation, that at 11:43, Ms Halbach calls
13 that number. It's the voice message that we hear
14 to B. Yanda, to Barb Yanda's house saying, I'm
15 able to come out today and to take that -- to
16 take that call. But it's this 9:46 call, when
17 we're setting the timeline for Teresa, where was
18 she, excuse me, at all these times that become
19 important.

20 The most, probably, important thing that
21 Ms Pliszka talks about is the call at 2:27, the
22 call to Teresa, which is verified through the
23 phone records that she did receive a telephone
24 call at 2:27, from *Auto Trader Magazine*. That
25 telephone call from Ms Pliszka, to Ms Halbach, is

1 not so important for talking about
2 trick-or-treating and the things that Dawn
3 Pliszka said that they were talking about, but
4 what came from Teresa's side of that
5 conversation.

6 Remember the testimony from Dawn Pliszka
7 that Teresa said, I'm on my way to the Avery's.
8 All right. I'm on my way to the Avery's. So at
9 2:27, this is the best, at least from a timeline
10 standpoint, the best opportunity for you to put
11 these things into place and to determine what
12 time was it that Teresa arrived.

13 Mr. Remiker, an investigator in this
14 case, testified that, upon searching the
15 residence of Barb Yanda, he came across this
16 particular voice mail: Hello. This is Teresa
17 with *Auto Trader Magazine*, the photographer. And
18 I'm just giving you a call to let you know that I
19 can come out there today, in the afternoon. And
20 it will probably be around 2:00 or, you know, a
21 little later. If you could, please, give me a
22 call back and let me know if that will work for
23 you, because I don't have your address or
24 anything. So I can't stop by without getting a
25 call back from you. And my cellphone is

1 737-4731. Again, that's Teresa, 920-737-4731.

2 Thank you.

3 Other than the obvious impact that that
4 call has, it has substantial evidentiary value.
5 That call from Teresa talks about when she's
6 coming out to the property. The call from Teresa
7 says it will be some time after 2:00, or even
8 around 2:30, which turns out to be almost exactly
9 correct.

10 But she also indicates that, because of
11 the name that was given, because of the number
12 that was called, she doesn't know how to get
13 there because she hasn't been there. Well,
14 that's not true. That's not true, because if
15 Steven Avery would have given his name, Teresa
16 Halbach wouldn't have had to say, I don't know
17 how to get there, or I haven't been out to the
18 property before.

19 And so the purpose what I argued, or at
20 least what I -- the opening statement that I
21 gave, was that Mr. Avery lured Ms Halbach out to
22 the property, I think is a valid inference for
23 you to draw. But more importantly, it's the
24 timing, more importantly it's when Teresa says
25 through this voice mail message, when it is that

1 she's planning to come to that location.

2 Mr. Schmitz, at 1:30, testified, we put
3 the rest of the timeline together for you. So at
4 1:30 we know Teresa is out at the Schmitz
5 property. We know that she's wearing a light
6 colored or a white shirt, a waist length jacket.
7 We know she's wearing jeans. We know she's there
8 for 10 minutes. She leaves an *Auto Trader* book
9 and she leaves a receipt.

10 Right after she is done with Mr.
11 Schmitz, she goes to the Zipperer residence,
12 sometime between 2:00 and 2:30. In fact, you
13 will note from the calls and the testimony later
14 from the cellphone people, that at 2:12 a call is
15 made to the Zipperer residence. You heard some
16 reference to that.

17 It may have been lost in some of the
18 other testimony, about Teresa being lost and on
19 her way. But Teresa finds her way there. And we
20 know that about 2:15 or so, she does her photo
21 shoot at the Zipperer's. We also -- excuse me --
22 We also know, just like the Schmitz photo shoot,
23 just like every other photo shoot that you have
24 heard testimony about, that it lasts 10 minutes.
25 She leaves an *Auto Trader* book. She leaves a

1 receipt, which is actually called a bill of sale.
2 These things are particularly important.

3 You will see testimony later, or you
4 will see exhibits later, that were seized from
5 Mr. Avery on the 5th, that exactly the same *Auto*
6 *Trader Magazine* is found on his computer.
7 Exactly the same kind of bill of sale is found.
8 So the significance, or the habit, if you will,
9 of these contacts, become critically important.

10 Ms Schadrie, again, although providing
11 some confusing testimony that had to be cleared
12 up by a Mr. Zimmerman, later, at least provided
13 the records, at least provided what has been
14 received as Exhibit No. 361, the cellphone
15 records for Teresa Halbach.

16 Ms Schadrie provides some important
17 parts of this particular record. Specifically,
18 at 11:43, that was the call to Barb Janda's that
19 you heard about. The answering machine call that
20 was made.

21 You have heard about the call from -- at
22 2:27, from Ms Pliszka, I'm on my way to the
23 Avery's. And we have heard about -- or the
24 records reflect this last call at 2:41.

25 Now, the testimony, you have to next

1 turn to the testimony of Mr. Zimmerman, Exhibit
2 No. 372. And although that call starts at 2:41,
3 it's a voice mail. And on page two of document
4 372, page two of this exhibit, we learned,
5 importantly, this incoming call to Teresa is
6 never retrieved. It's never retrieved by Teresa.
7 All right.

8 Look at Teresa, how many times she
9 checks her voice mail. Mike Halbach talked about
10 Teresa Halbach being very conscientious about
11 checking her voice mail. And after, sometime
12 after her visit, assuming she wasn't harmed or
13 killed by Mr. Avery, you would have expected her
14 to check her voice mail.

15 Mr. Zimmerman also cleared it up and
16 said that after 2:41, on the 31st, this
17 particular cellphone, the cellphone of our
18 victim, Ms Halbach, was out of service. Wasn't
19 used after that particular point.

20 Remember the testimony that by 3:30 a
21 bag of something is being placed in the burn
22 barrel where this particular phone is later
23 found. It all starts to make sense now. It all
24 starts to be put together. Again, the
25 combination of observations of Blaine Dassey,

1 combination of phone records, combination of
2 explanation of voice mails, combination of
3 testimony from Mike Halbach.

4 You put all of that together and it
5 paints the picture for you. It provides the
6 timeline for you, for Teresa Halbach, not just
7 what happens to her phone, but by inference, what
8 happens to her, and when, when it's happening to
9 her. All right.

10 We talked more about the timeline and we
11 heard from Bobby Dassey, again, in the same kind
12 of a position to be -- his credibility to be
13 weighed by you, but is an eyewitness. Again, an
14 eyewitness without any bias. It is a individual
15 that deserves to be given a lot of credit.
16 Because sometime between 2:30 and 2:45 he sees
17 Teresa Halbach. He sees her taking photographs.
18 He sees her finishing the photo shoot. And he
19 sees her walking up towards Uncle Steve's
20 trailer.

21 Now, we heard about taking a shower.
22 And we heard about him leaving for hunting. That
23 all becomes important and becomes more important
24 when, after leaving for hunting, he sees Teresa's
25 SUV still parked next to the van, next to his

1 mom's van that's for sale, but Teresa is nowhere
2 to be found. All right.

3 If this event, if a photo shoot is only
4 supposed to take between five and 10 minutes, and
5 you see the habit, and you see that that's how
6 long that it does take, this is a longer period
7 of time. Teresa, although we don't know, that
8 is, we don't have an eyewitness seeing her going
9 into Mr. Avery's trailer, that's the inference
10 that the State is asking you to draw. She's
11 walking towards the trailer. She's walking
12 towards Mr. Avery's property, after doing the
13 photo shoot.

14 Mr. Dassey is looking out this window, a
15 clear view, sees the pictures being taken of the
16 SUV, a clear pathway, and that as she walks
17 towards Mr. Avery's, that's the last Ms Halbach
18 is seen. That's the last she's seen alive. All
19 right. So that's the timeline. That's the
20 pathway, if you will, towards what happens to Ms
21 Halbach.

22 Now, the State has done the same thing
23 with Mr. Avery's timeline; that is, through
24 conversations and through observations, the same
25 thing with Mr. Avery, from the other side of the

1 coin, if you will, what's Mr. Avery doing on the
2 31st of October.

3 We hear, at least, at 8:12, Mr. Avery is
4 making a call asking for that same female
5 photographer to come out and visit him at his
6 property; although, he uses a different -- a
7 different name. And from a timing standpoint,
8 although we don't have Mr. Avery on the phone, we
9 do have Teresa on the phone.

10 But Ms Dohrwardt helps, from that
11 perspective. Ms Dohrwardt, who is a witness for
12 Cellcom, Mr. Avery's cell provider, provided you
13 with those records and provided you with
14 testimony of those records. She's a tech support
15 person. She's a technical individual who can
16 tell you more about those calls. Told you about
17 the 8:12 call, but also these two important calls
18 to Teresa Halbach's cellphone, using what's
19 called the *67, or blocked feature, where the
20 recipient of that call can't tell who it is
21 that's calling.

22 The State is calling the 4:35 call a
23 alibi call, if you will. After her phone is
24 already burned. After Mr. Avery knows that the
25 phone is out of service, which is reflected in

1 what you saw, not only by Mr. Zimmerman's
2 testimony, but by also -- by the records there's
3 no reason to call her phone. He knows where her
4 phone is.

5 Mr. Avery knows where Teresa's phone is,
6 but Mr. Avery is also -- has the ability to think
7 ahead, has the ability to know that these phone
8 records may, in fact, be gleaned, or may, in
9 fact, be reviewed at some point in the future.
10 And so, although he doesn't block, because there
11 is no reason to block the 4:35 call, he still
12 calls Teresa Halbach. And you can see, or you
13 can ask for those records if you need to.

14 The rest of the application, or putting
15 together of Mr. Avery's timeline comes from
16 eyewitnesses, comes from people like Blaine
17 Dassey, at 3:45, seeing him in the burn barrel
18 (sic). You have to skip ahead, I guess, to about
19 11:00, when he sees that image that I talked
20 about, where he sees this large fire behind Uncle
21 Steve's garage. Again, the date of the fire, the
22 time of the fire, becomes ever so important.

23 There shouldn't be any question, at
24 least, any more, at this time, regarding the
25 place of the investigation, or the direction of

1 the investigation. Blaine certainly adds to
2 that.

3 Mr. Fabian provides nothing other than
4 around at dusk, plastic is being burned and he
5 sees that.

6 But Mr. Tadych, who at the time was the
7 boyfriend, is now the husband, of Barb Janda,
8 provides testimony that between 7:00 and
9 7:30, the fire is already going. Mr. Avery
10 already has a large fire. Again, the testimony
11 was flames above the garage roof, already has a
12 big fire going at that particular time.

13 The State will argue and we'll ask you
14 to adopt the inference, that between 7:30 and
15 7:45, Teresa Halbach is already killed. We know
16 that because Mr. Avery is planning to, or in the
17 process, after dark, which is between 7:30 and
18 7:45, of destroying, mutilating and burning her
19 body.

20 Fact number 10, although the fire is
21 included in the aspect of the timeline for
22 Mr. Avery, I have made Item No. 10 or fact number
23 10, it's own fact. These two witnesses, again, I
24 just wanted to reiterate, from Mr. Tadych, in a
25 position of where he is parked, remember his

1 testimony, that he was parked in the circle drive
2 and could clearly see the fire at the time. And
3 the same thing from Blaine Dassey at 11:00, after
4 he gets back from trick-or-treating, there isn't
5 any obstruction to the view of that particular
6 fire.

7 Remember the later evidence, as to the
8 amount of time that's necessary to destroy, or to
9 cremate a body. This is going to come later,
10 from some experts in the testimony, or at least
11 when we talk about that later. But at or about
12 1600 degrees, which actually was the defense
13 expert, Mr. Fairgrieve, when talking about BTUs
14 and 300,000 BTUs per average tire.

15 That's the amount of heat that's thrown
16 off by a tire. Plenty of fuel, plenty of solid
17 fuel to burn, or incinerate, or cremate a human
18 body, that that would take between an hour and a
19 half and two and a half hours, at that 1600
20 degree level. If it starts at, the very latest,
21 7:30 or 7:45, and it's still going at 11:00,
22 that's plenty of time. That's an amount of time,
23 through the timeline, and through the fire, and
24 through a combination of witnesses, for you, the
25 jury, to conclude that, in fact, that body was

1 incinerated, was mutilated, was cremated. As a
2 way, and for the reason, to hide a crime that had
3 already been committed. The crime is obvious,
4 it's a crime of homicide.

5 After the burning event, we ask
6 ourselves what's left, what's in the burn area.
7 And we talk now about some highly specialized
8 experts. We talked about, and we hear from,
9 Mr. Sturdivant, who's an arson investigator who
10 found the zipper, which I guess is important.

11 But more importantly, he found the
12 bones, the small bone fragments intertwined, or
13 mixed in with the steel belt from tires. All
14 right. The bones being intertwined and mixed in
15 is the State's, or one of the State's, strongest
16 argument for this being the primary burn site.

17 Mr. Sturdivant also talked about the dog
18 being vicious. This particular picture, I think
19 it's Exhibit No. 50, is probably all you need to
20 see. It's all you need to know as to why
21 officers were reluctant to kind of check out and
22 investigate this particular area.

23 This dog, whose name is Bear, we heard,
24 who's a German Shepherd, we heard being described
25 as vicious, who Deputy Kucharski said the only

1 way they could get by that dog was to destroy or
2 to kill the dog. Certainly was guarding or had
3 access to this entire area. Not only does the
4 testimony prove that, but this particular photo,
5 before any excavation, before any processing,
6 which is obvious has been done, has occurred.

7 Mr. Ertl, we heard, was the first Crime
8 Lab person with Mr. Sturdivant to get, on the
9 8th, to that burn area. And, importantly, we
10 heard about the careful processing, that he did
11 his best. Although a shovel was used, it wasn't
12 a, I think the word, the term "scoop and swoop",
13 wasn't that at all. It was very carefully done
14 to recover what the agents could at the time in
15 order to get those items to the Crime Lab, to
16 determine, first of all, are they human;
17 secondly, are they female; and, thirdly, do they
18 belong to our victim.

19 We need to know those things, obviously,
20 at the time. And photographs that were shown to
21 Mr. Ertl, and as you have seen these photographs,
22 the car seat that was used as additional fuel in
23 this case. The tires you will see, a hose, and
24 you will see rakes, and you will see shovels, and
25 other instrumentalities, what I call, at least,

1 are instrumentalities of mutilation, that is,
2 tending the fire, or without being particularly
3 insensitive, chopping up the remains of the body
4 as it's being burned, to make sure that a total
5 consumption occurs in these cases. You will be
6 able to see some of those exhibits to show that
7 that was in fact done.

8 Mr. Pevytoe, we hear later, DCR -- DCI
9 agent who, on the 10th, takes over the processing
10 of the burn area, does a more detailed
11 examination; here's where we hear the word
12 excavation, does a couple of things. First of
13 all, we hear that on the 9th and 10th he talks to
14 the anthropologist. He talks to Leslie
15 Eisenberg. He gets some information from Ms
16 Eisenberg as to the processing of the scene.

17 Mr. Pevytoe, as you heard, however, also
18 recalled that the bone fragments were intertwined
19 with the steel belts and, I believe, rendered
20 similar opinions as to the primary burn site.
21 Mr. Pevytoe also eliminates other burn locations.
22 Mr. Pevytoe's opinion about the smelter and about
23 the wood burner, whatever that may have had to do
24 with, on another part of the property, looked in
25 both, crawled up in, put his hands in, moved

1 things around. Didn't find any human remains.
2 Didn't find anything at all that would suggest
3 that that was a primary burn area.

4 And so who's involved, of the
5 individuals that law enforcement is supposed to
6 focus on, who's involved in the mutilation
7 process, who's involved in covering up the
8 homicide. Again, common sense should come into
9 play here, you don't leave that on the steps when
10 you walk into the courtroom. When the burn area
11 is directly behind Mr. Avery's garage, when it's
12 only a few feet from Mr. Avery's trailer, that's
13 the kind of common sense that you should and can
14 use in this case. Again, the evidence keeps
15 pointing only to one individual.

16 Additional processing after the fact,
17 that is, after the items are recovered, occur by
18 DCI agents and Ms Eisenberg, the anthropologist,
19 the doctor. Here is Mr. Heimerl, they find five
20 of the six Daisy Fuentes rivets.

21 Demonstratively, we had these jeans purchased for
22 you so that you can look at where the Daisy
23 Fuentes rivets are located.

24 These are rivets that hold blue jeans,
25 dress type blue jeans that Katie Halbach

1 indicated not only was the kind of blue jeans
2 that Ms Halbach owned, but after Ms Halbach's
3 death, remember, weren't there. They looked for
4 them, those are the pair of jeans, that is, the
5 Daisy Fuentes jeans, are the ones that are gone.

6 So what does that mean, five rivets are
7 found that say Daisy Fuentes on it. They are
8 mixed in with the human fragments. The
9 inference, of course, is that those jeans, the
10 clothing of Ms Halbach, are burned at exactly the
11 same time. There is a picture of Katie.

12 And, again, the credibility that her
13 testimony should be given, I think, is very, very
14 high. They are sisters. Katie knows the kind of
15 clothes. She knew, in fact, made fun of these
16 being old person jeans that her sister had
17 purchased, showed them when she purchased the
18 Daisy Fuentes jeans, would know, and, in fact,
19 was asked to and did look for those jeans, they
20 were missing.

21 We also need to identify the remains.
22 We need to identify who is the person that was
23 burned, who is this individual. We have heard
24 testimony that it was just one person, that it's
25 only talking about one person. But we still have

1 to, although, we can guess I suppose, or
2 speculate, that it's Teresa Halbach. We have to
3 show you, through evidence, that it's Teresa
4 Halbach.

5 We first do that through Dr. Donald
6 Simley. Mr. Simley, although unwilling because
7 of his scientist nature, make 100 percent match,
8 used these words, it's as close to a positive
9 match as you can get, using one tooth.

10 Dr. Simley talked about tooth No. 31, from Ms
11 Halbach's dentist, Dr. Krupka, having been
12 received.

13 Here's a blow up of that particular
14 tooth. And here is an x-ray of this particular
15 structure that was recovered from the burn area,
16 the fragmented and delicate, what Dr. Eisenberg
17 talked about were, dental structures. You can
18 look for yourself as to the similarities,
19 Dr. Simley's used in disaster relief efforts and
20 disaster kind of identifications and I think can
21 help you with that particular process.

22 The charred remains, one piece of bone
23 and tissue was recovered. One piece. One piece
24 was not completely burned up, was not completely
25 charred, to the point where a nuclear

1 identification by Ms Culhane could be made.

2 And although she made a partial profile,
3 that is, in 7 -- they are called loci -- 7 of the
4 13 areas that all labs look for to make a
5 positive match, 7 out of 7 match was made. She
6 gave you the frequency number, if you recall,
7 that being one in a billion, that's with a B,
8 that an individual would randomly have this --
9 this DNA.

10 So the State believes, and the State
11 argues, that there isn't any question that it is,
12 in fact, Teresa Halbach, and her bones, and her
13 remains, and her teeth, that are recovered just a
14 few feet behind Mr. Avery's garage and trailer.

15 Leslie Eisenberg, the State argues, is
16 an amazing expert, an amazing person, one of only
17 a handful of Board Certified Forensic
18 Anthropologists in the entire country. She
19 happens to live here in Wisconsin.

20 Leslie Eisenberg, you heard, was brought
21 on early in the case. And she says a lot about
22 this case and says a lot about what is important.
23 Her expertise, again, she talks about being one
24 of these people that goes to disaster scenes and
25 helps make these identifications.

1 But she didn't just look at some
2 pictures or some reports, she was actually
3 involved in the sifting and the sorting of these
4 bones. She was handling these bones. You could
5 tell how fragile they were, how very delicate
6 some of the dental structures was.

7 She was able to identify these bones as
8 having come from an adult female, no older than
9 age 35, believing -- or excuse me, finds these
10 entrance wounds, that we'll talk about in just a
11 minute, that happened before the burning episode.

12 Dr. Eisenberg testified there was a
13 clear attempt to obscure the identity of an
14 individual. By the way, that's evidence, that's
15 an opinion, that's important to the mutilation
16 count. All right.

17 Obstructing or obscuring the identity
18 for the purpose of covering up a crime, is the
19 essence of mutilation of a corpse. And that was
20 the testimony of Dr. Eisenberg.

21 Importantly, though, Dr. Eisenberg,
22 because she saw all of these bones, because she
23 was involved for such a long period of time, was
24 able to render the opinion that the primary burn
25 area, the primary burn site was behind

1 Mr. Avery's garage. And, again, talked about, or
2 commented on the great take -- care taken by
3 arson agents in the recovery of these bones.

4 Dr. Eisenberg goes through the labor
5 intensive method of the recovery of these
6 particles and pieces of bone, puts them together
7 again, as to the face, as to some of the other
8 areas of Ms Halbach and then able, again, with
9 the assistance of Mr. Austin, is able to show you
10 just from where those pieces come, on diagrams,
11 or on skeletons, or on diagrams -- excuse me --
12 of human skeletons.

13 What she also tells you, is that every
14 bone, at least a part of every major bone group
15 has been recovered from the burn area, from that
16 which is behind Steven Avery's garage. And
17 that's this exhibit up on -- up on the right.
18 All of those bones, or at least portions of
19 everyone of those bones identified, comes from
20 Mr. Avery's burn area. We hear about the -- what
21 she calls defects or damage to an area, just
22 above Ms Halbach's left ear, to that just behind
23 and to the left of Ms Halbach's skull as well.

24 Judge, I will have to alert you that I
25 do probably have perhaps a half an hour or so of

1 my closing left to give. I know that we got a
2 late start. I know that lunch was being brought
3 at this time. I'm happy to give it afterwards, I
4 don't have any problem with that, but I wanted to
5 give the Court at least an opportunity --

6 THE COURT: All right. I don't want it to
7 go too long, after all, it is supposed to be lunch
8 and I think we're going to keep it that way.

9 So, members of the jury, we're going to
10 take a break at this time. We'll resume at 1:30.
11 We're going to take a little shorter than normal
12 lunch break. We'll come back, have the State
13 finish its closing argument and then hear from
14 the defense.

15 Again, I will remind you, the case is
16 not over, do not begin discussing the case at
17 this time. You are excused.

18 (Jury not present.)

19 THE COURT: You may be seated. Counsel,
20 let's prepare to resume promptly, then, at 1:30
21 because I don't want to keep the jury too late with
22 closing argument.

23 ATTORNEY BUTING: Judge, just so you know,
24 after Mr. Kratz finishes, I'm going to need a little
25 bit of time to set up some exhibits.

1 THE COURT: I'm sure you will, and you will
2 get it.

3 ATTORNEY BUTING: All right.

4 (Noon recess taken.)

5 (Jury present.)

6 THE COURT: And, Mr. Kratz, at this time
7 you may resume.

8 ATTORNEY KRATZ: Thank you, Judge. Is the
9 volume okay with the Court; I assume it's okay.

10 We're going to break one rule today
11 never give an important speech after lunch it's a
12 difficult thing to do. I will try to get through
13 the rest of my closing in a manner that makes the
14 most sense. And I beg your indulgence as to how
15 important this is, to allow me to talk about our
16 remaining several facts.

17 Dr. Eisenberg, just to review our
18 transition, talked about two gunshot wounds to
19 the head of Teresa Halbach. Remember her
20 testimony, that it was before burning, that this
21 was a pre-burning event, gunshot events. She
22 knows exactly where. That speaks to
23 Dr. Eisenberg's quality, as far as an
24 anthropologist, forensic anthropologist, at that,
25 and to something I think that you should give,

1 obviously, great weight to. Our next important
2 fact, what I believe, although Dr. Eisenberg was
3 a extremely important witness, may well be the
4 State's most important scientific evidence.

5 And that's the DNA part of the case.
6 Sherry Culhane from the Crime Lab was the State's
7 DNA expert. And you learned what DNA was. You
8 learned that it was a genetic fingerprint and,
9 importantly, you learned that it is in every
10 fluid in our bodies, in every tissue in our
11 bodies.

12 And it's the same, that is, it never
13 changes. Never changes, not only throughout our
14 body, but never changes throughout our lives and
15 so DNA is stubborn as well. I talked about the
16 fact that it's stubborn; DNA is stubborn in that
17 sense in that it doesn't change.

18 Sherry Culhane, the Crime Lab analyst, a
19 great deal was said about her. And, again, you
20 are going to have to weigh the credibility of Ms
21 Culhane. Either Ms Culhane doesn't know what
22 she's talking about, or Ms Culhane is a very
23 talented scientist, very talented DNA expert.

24 Ms Culhane, I will remind you her
25 testimony, was in 2003, the analyst that tested

1 the single sample, the single hair that
2 exonerated Mr. Avery. That Ms Culhane's talent
3 in examining one hair was able, quite properly
4 to, through DNA evidence, because it's so
5 stubborn, because it's so reliable, was able to,
6 this woman was able to have Mr. Avery released,
7 with the other parts of that case as well. But
8 the analyst was, in fact, Ms Culhane.

9 She testified in this case, however,
10 that she received samples, that it was the most
11 samples ever sent to the Crime Lab for analysis.
12 It was the most DNA requests, 180, ever made to a
13 single analyst, on a single case.

14 And despite their backlog, you heard how
15 Ms analyst -- excuse me, how Ms Culhane set aside
16 her other work and got results, quality results,
17 to the State, to the investigators, in a time
18 when it mattered; in a time when the officers
19 needed to know whose DNA matched; whether we're
20 talking about female blood or male blood; and in
21 a time when Mr. Fassbender and Mr. Wiegert could
22 refocus or direct their investigation. That's
23 important.

24 It's important in a case like this and,
25 actually, it's reassuring to know that our Crime

1 Lab, our Wisconsin Crime Lab, we can take pride
2 in. We can take pride in the fact that such an
3 important case and an important investigative
4 responsibility and need was met, by Ms Culhane.

5 Again, she processed the vehicle,
6 starting on the 7th, developed DNA profiles, as
7 you heard on, not all 180 samples, I don't mean
8 to mislead at all. But she received 180 and
9 developed many, many, many profiles, all the
10 exemplars, all of the evidence samples in this
11 case, and then compared the profiles of the
12 evidence samples to what are called known
13 samples, or exemplars. We're going to go through
14 her findings because they are so critically
15 important in this case and, again, the State will
16 argue that this is a very talented lab analyst.

17 Again, she's the head of the unit.
18 She's the head of the DNA Unit for the Wisconsin
19 Crime Lab in Madison. Her experience should
20 speak for itself and, certainly, the quality work
21 that she had done within human boundaries should
22 speak as well.

23 We first start with Teresa, start with
24 Teresa Halbach's DNA. And what we start with is
25 a known sample, her Pap smear. You heard about,

1 at Bellin Health, that Ms Halbach, a couple years
2 ago, had a Pap smear done and that was used as
3 the standard they need because we don't have a
4 live person to take a cheek, or a buccal swab
5 from, or even a blood sample from. We need
6 something that we know is Teresa Halbach. And
7 the best sample, you heard, was this Pap smear
8 and this analysis and profile is developed.

9 All of these different markers, as you
10 heard, are different places on a strand of DNA
11 that analysts are trained to look. And they, in
12 fact, do look for and assign values, or actually
13 the machine that's used assigns values at each of
14 those places. And what's important, and what you
15 heard Mr. Gahn ask Ms Culhane to explain for you,
16 as best that we can understand, is that all of
17 these different locations, there are a whole
18 bunch of different profiles that are possible.
19 You heard, at least some examples of, at the
20 D3S13 location, you know, how many variations.
21 This is a 16/18 profile, but how many
22 possibilities are there.

23 And I'm not going to reiterate all of
24 that testimony because you took good notes about
25 that, I'm sure. But what's important is that

1 each of these is different. They are unique to
2 an individual, or at least this entire profile is
3 unique to an individual. In other words, there's
4 one, absent identical twins, which didn't come up
5 in this case and isn't part of this case, I add
6 that just out of intellectual integrity, but
7 other than identical twins, no two people share
8 the same DNA profile.

9 No two people, not brothers, not son and
10 daughter, nobody shares the same nuclear DNA
11 profile. And that's why it's so important.
12 That's why it is so discriminating, as far as who
13 does this belong to. You can take known samples,
14 then, and you can test them about -- or with
15 evidence samples. All right.

16 So the evidence samples of, in this
17 case, Exhibit A, those are all of the different
18 evidence samples, including the swabs that were
19 taken from the back of the RAV4, the back
20 tailgate, and the actual door itself that
21 Mr. Stahlke talked about the flying blood, the
22 blood spatter analysis, the saliva or the swab
23 taken from the Pepsi can. That's all evidence
24 that Ms Culhane developed and, again, compared to
25 this known -- excuse me, this known sample.

1 And so all of those blood samples, and
2 A-14 is the Pepsi can, they all developed exactly
3 the same. It's called a full profile, this isn't
4 the seven out of seven partial profile. At all
5 15 different locations a pattern, a analysis, is
6 developed for these unknown -- these unknown
7 samples.

8 And as Ms Culhane talked about, for all
9 the different bloodstains and Pepsi can, she was
10 able to compare, as you can, the results from the
11 RAV4 samples, to the known Pap smear, to Teresa
12 Halbach. And it is a perfect match, 15 out of 15
13 exactly, exactly a perfect match.

14 The blood or bullet fragment, which is
15 recovered on the 2nd, same thing is done with
16 that, you heard about the extraction process of
17 having to wash the DNA off of the bullet, but it
18 was able to provide a profile by which a match
19 can be made, or an attempted match can be made.

20 Remember that bullet that was found by
21 Mr. Heimerl, later processed and later developed.
22 And Ms Culhane, then, is able to make that
23 comparison. And although the item has, in two
24 separate locations, one of the values or the
25 spikes, it is not at all inconsistent with the

1 results. And so Ms Culhane says that is
2 insignificant as far as -- as the match.

3 Now, as you have heard, there is, not in
4 the bullet, not in the bullet extract itself, not
5 in the evidence, but in a control sample, in a --
6 what I understand to be a tube of some solution,
7 water, some saline, something, that's supposed to
8 have nothing on it, Ms Culhane's own DNA shows up
9 on that particular run, on that particular
10 sample. And she called that, quite
11 appropriately, contamination.

12 And that's a hard word for jurors, I
13 believe, at least I argue, to understand. But as
14 Mr. Gahn and Ms Culhane talked about
15 contamination, that that's expected, especially
16 in cases with this kind of volume. It's happened
17 89 separate times, unfortunately. This is one of
18 the cases that it happened.

19 But because it wasn't on the bullet,
20 because it wasn't on the piece of evidence
21 itself, Ms Culhane testified, and you can believe
22 her or not, but this expert witness testified
23 that it does nothing for the comparison purposes.
24 It does nothing to diminish whether or not Teresa
25 Halbach's DNA is on that bullet.

1 And stated another way, the fact that
2 Sherry's DNA is on some water or some control
3 somewhere should not, and in fact in this case,
4 did not, keep from you, the jurors, the fact
5 finders in the case, whether or not Teresa
6 Halbach's DNA is on the bullet. All right.

7 That's important evidence. You would
8 want to know that. You would want to know
9 whether or not Teresa Halbach's DNA is on this
10 bullet, this bullet that's found in the garage,
11 in Steven Avery's garage, is Teresa's DNA.

12 And as Ms Culhane said, there isn't
13 anything that can change one person's DNA into
14 another. There is no process, there is no
15 trickery, there's nothing that can go on that can
16 convert, if you will, somebody else's, in this
17 case Sherry's, DNA, into Teresa's. Teresa's DNA
18 is on the bullet.

19 It is your decision and your duty to
20 decide how much, how little, weight, to give to
21 the contamination on the control sample, again, a
22 sample that has nothing to do with this
23 particular bullet. Again, another match.

24 And the frequency, and what we're
25 talking about with all of these matches, and not

1 just these, but also the seven out of seven that
2 we talked about before, although one in a
3 billion, the frequency of all of these blood and
4 saliva matches for our victim, for Teresa, is you
5 would expect to find that DNA profile that we
6 just saw, at random, one time in every 416
7 quadrillion times in the Caucasian population.

8 Well, that's a number that's so big that
9 many of us, most of us, don't really have a good
10 concept about. It's a lot, it's a lot of zeros.
11 Okay. And it is a number that you can call that
12 an exact match. All right. An exact match.

13 When we talked about 6 billion people or
14 so in the world, 6 billion only, and this is a
15 quadrillion, lots and lots more. We're going to
16 talk about quintillions next. But we're talking
17 about such big numbers that it is absolutely --
18 has no impact on the results.

19 But more than that, what does this mean?
20 What does -- what does finding Teresa Halbach's
21 DNA mean, in this case? And where was it found?
22 Because DNA can't change, because DNA is so
23 stubborn, because DNA is what DNA is, I told you
24 at the opening statement, that I'm going to
25 reiterate now, that Teresa Halbach cries out to

1 you, the jurors, at this case. And it tells you
2 to listen and to look.

3 Teresa Halbach, by her DNA and where
4 it's found, is telling you a story. She's
5 telling you, this is where I was. She's telling
6 you, this is what happened to me. She's telling
7 you, this is how I was killed. She's telling
8 you, this is how this person tried to hide me and
9 where they tried to hide me.

10 And it's the kind of evidence, it's the
11 kind of powerful evidence that you can't ignore.
12 I told you at the opening statement and I'm
13 telling you now, that Teresa Halbach left this
14 evidence for you to see, and left this evidence
15 for you to hear, to hear about this evidence.
16 And I simply hope that this evidence has that
17 impact, that you can see where she was; you can
18 see where her body was placed; you can see how
19 she was killed, in this case; not through
20 speculation, not through guesswork, but by
21 scientific evidence.

22 Mr. Avery's DNA is also collected. And
23 the stubbornness about DNA applies to Mr. Avery's
24 DNA, just like it does to a victim of a crime.
25 Blood that's left behind, in this case, is

1 evidence; it's evidence against Mr. Avery. It's
2 important evidence, very, very important evidence
3 because DNA doesn't forget.

4 DNA kinds of evidence can't be confused,
5 it can't be tricked on cross-examination. DNA
6 evidence is what it is. And only through human
7 failure, failure to collect it properly, or
8 failure to analyze it properly, or failure on my
9 part to explain it properly to the jury, is the
10 limitation of DNA evidence.

11 Because the DNA evidence in this case is
12 incredibly powerful. You heard testimony that
13 Mr. Avery had a cut to his hand. Had a cut to
14 the outside of his right hand, what we're calling
15 the source of Mr. Avery's blood. This is how
16 Mr. Avery leaves those six different blood
17 samples within the SUV.

18 And from a prosecutor's standpoint, it's
19 fortunate to have that kind of evidence. It's
20 fortunate to be able to stand up here and tell a
21 story, to be able to tell you that story from
22 Steven Avery. Because just like the victim, just
23 like Ms Halbach's DNA telling you, here is where
24 I was, and here's what happened to me, and here's
25 how I was killed, Mr. Avery's blood tells a story

1 as well.

2 Now, we don't have the same kind of
3 standards used for Mr. Avery. We have what's
4 called a buccal swab, a cheek -- kind of a Q-tip
5 that's placed in his cheek. By the way, this is
6 the same kind of test Ms Culhane said was used in
7 Mr. Avery's exoneration, a buccal swab. You saw
8 that they were still sealed in the Manitowoc
9 County Sheriff's Department, after they were
10 used, analyzed and sent back.

11 But the Crime Lab never had Mr. Avery's
12 blood sample, it was all used through, as you
13 hear it is now days, through buccal swabs,
14 through standards. And the standard for
15 Mr. Avery, just like for Ms Halbach, is developed
16 at all 15 of these different locations that are
17 called loci, for Mr. Avery.

18 So what Ms Halbach (sic) does, then, is
19 she does test samples of different swabs, or
20 different swatches, or different things that
21 there are to analyze. She develops DNA profiles
22 for the hood latch. And you are able to see,
23 then, that the -- although not blood, no visible
24 blood available, you heard about from handling a
25 hood latch or a piece of metal, that depending

1 how much your hands sweat, skin cells and other
2 manners of DNA can be transferred onto a hood
3 latch.

4 Well, it was, in this case. On this
5 hood latch, Mr. Avery's DNA, on the Teresa
6 Halbach SUV. Reaching underneath the hood, is
7 Mr. Avery's DNA; an exact, perfect profile of
8 Mr. Avery's DNA, that does not include, at least
9 visibly, his blood.

10 Well, the same kind of analysis is done
11 on this Toyota key. And you will see the
12 analysis, the Toyota key, the evidence is
13 analyzed. And you will see that right down the
14 line, all 15 places, it's a perfect match for
15 that of Steven Avery. And, again, you heard that
16 by handling a key and, importantly, the last
17 person to handle the key is the most likely
18 source of the DNA that's going to be found on
19 that particular piece of evidence.

20 That was the testimony, that was the
21 testimony in this case. Mr. Avery was the last
22 person to handle this key. This key is the key
23 for Teresa Halbach's vehicle. This key, found in
24 Mr. Avery's bedroom, has a full, a complete, a 15
25 out of 15 match for Mr. Avery's DNA. That is

1 significant evidence.

2 We then talk about the blood and the
3 other stains that are found within the SUV. The
4 other five places in the front part: The
5 driver's seat; front console; the ignition area;
6 which is perhaps the most damning of all of the
7 DNA that's found; passenger seat; and the CD
8 case.

9 Now, each of these locations, Ms Culhane
10 is able to develop a profile on, a full 15 out of
11 15 profile, on these bloodstains. So these
12 aren't small bloodstains. These aren't one
13 microliter as you heard later in the trial about.
14 These are large bloodstains, a drop, as you
15 heard, one droplet of blood is 50 microliters.
16 And so these stains, although we do have a one
17 droplet stain of Teresa's, all of these stains
18 are much, much larger than that.

19 So, in the front, that is, from the
20 front seats forward, five different bloodstains
21 left by Mr. Avery in Teresa Halbach's vehicle.
22 Again, we're pointing to one person being
23 responsible for Ms Halbach's death.

24 In the rear, that is, on the rear
25 passenger door, that bloodstain is left. And we

1 hear that it is, in fact, Steven Avery's; again,
2 a perfect match for Steven Avery.

3 Now, each stain, Ms Culhane testified,
4 she's able to develop a frequency. Again, how
5 likely is it in the Caucasian population that you
6 would find, randomly, that exact DNA profile.
7 And she said one in four quintillion. Okay.

8 This is a number that is absolutely
9 huge. People can't even really picture how much
10 a billion is, finding a billion, one thing in a
11 billion. Finding one thing in a billion is -- is
12 hard enough, but I'm going to take 45 seconds and
13 I'm going to tell you what a billion is. All
14 right.

15 To get to a billion, you first have to
16 know what one out of a hundred is. Pick up 1
17 white marble and think of 99 black marbles. Can
18 you picture that? You put them together, and if
19 you randomly drew the one white marble out, it
20 would be one out of a hundred. Well, if you take
21 five times that, you're 1 out of 500, 1 white
22 marble in 5 -- 499, 500, if you will, black
23 marbles.

24 Would be like a shovelful or a coal
25 shovelful of marbles and you kind of throw them

1 out onto the floor. One of them is going to be
2 white and the other 500 are going to be black.
3 And that's 1 out of 500 black marbles. Okay.
4 You can kind of picture 1 out of 500.

5 A billion is such a big number, that if
6 every day, let's say you had a reservoir of black
7 marbles and you had one white marble in there.
8 All right. And every hour, every hour, of every
9 day, you took your coal shovel and you got out
10 500 marbles and you threw them onto the floor and
11 you said, is there a white marble there. To
12 randomly look for that match. And you don't see
13 it.

14 And then the next hour comes and you do
15 the same thing. Every hour of every day. Let's
16 say that you had the time to do that and you had
17 a big enough reservoir, here's how big a billion
18 is. To find one white marble out of a billion,
19 you would have to do this 500 marble exercise
20 every hour, of every day. And you would expect,
21 at random, you would expect, at random, to find
22 that white marble -- are you ready for this --
23 right about the time that Thomas Jefferson was
24 signing the Declaration of Independence. If you
25 did it every hour, of every day, 500 marbles

1 each, that's how often you would have to go to
2 get to a billion, to get to one out of a billion,
3 one white marble out of a billion black marbles.

4 That's a partial profile that we're
5 talking about. That's the numbers that we're
6 talking about, you need to visualize something.
7 Well, four quintillion, four quintillion, a
8 quintillion -- I hope you get this -- a
9 quintillion is a million billion, it's a million
10 times more than what I just talked about. A
11 million times you would have to do that with the
12 black marbles going back to the time of the late
13 1700s. So one in four quintillion, I need you to
14 appreciate the size that we're talking about, the
15 frequency that we're talking about here. All
16 right.

17 So when Sherry Culhane talks about when
18 we randomly see that same profile, one out of
19 four quintillion times, I hope that at least is a
20 way, something that you can visualize, as to how
21 big of a number that we're talking about.

22 That leads me to beyond a reasonable
23 doubt. Beyond a reasonable doubt is what do we,
24 the State of Wisconsin, have the obligation to
25 prove in this case. The judge has already

1 instructed you that a reasonable doubt is a doubt
2 for which a reason can be given, from a fair and
3 rational consideration of the evidence.

4 That means, a fair and rational
5 consideration of all of the evidence. Not just
6 some of it, but considering all of the evidence,
7 do we have a reasonable doubt in this case.
8 Doesn't mean beyond all doubt, in other words,
9 from a percentage standpoint, doesn't mean a
10 hundred percent, because the human system that we
11 have, it's a human justice system. My burden,
12 which I fully accept, in proving the defendant
13 guilty, beyond a reasonable doubt, is something
14 that I think, clearly, all of the evidence points
15 to in the case.

16 I told you at the beginning of the case
17 that there were agencies that were involved.
18 Mr. Fassbender talked about DCI and Calumet
19 County Sheriff's Department and Manitowoc County
20 Sheriff's Department and Manitowoc Police
21 Department, Marinette County, and Two Rivers
22 Police Department, New Holstein Police
23 Department, Brillion Police Department, Kiel
24 Police Department, Manitowoc Sheriff, and FBI,
25 and State Patrol, and all the volunteer

1 firefighters and everybody else pitched in in
2 this case, who did their professional job to find
3 out what happened to Teresa Halbach.

4 Law enforcement looked at the
5 possibilities, looked at all of the possibilities
6 that were presented to them, submitted results.
7 They didn't know what the results were going to
8 be. They didn't know the evidence was going to
9 come back to Steven Avery, but it did.

10 They didn't know that the bones were
11 going to come back as matching Teresa Halbach's
12 DNA, but it did. And so when they submit
13 evidence, again, they are not looking for a
14 particular answer, they are just seeing where the
15 answers come. And in this case, as I mentioned,
16 it's all been directed towards one person.

17 This 25 year old person that I called an
18 amazing young lady, this 25 year old lady was
19 murdered. That's real. All right. That's real
20 for family, and it's real for friends, and it's
21 real for Teresa Halbach. And I'm able to argue
22 to you what that means.

23 I'm able to argue to you that that means
24 that Teresa Halbach's dreams, and that her
25 potential and her future aspirations were snuffed

1 out by one act, and by one act from one person;
2 her chance to be loved and her chance to love,
3 and -- on the 31st of October.

4 Tom Pearce described this young woman as
5 somebody that he saw great potential in. I think
6 he said the words that she was really going to be
7 someone. I think there's a lot of people in this
8 room who might argue that she already was
9 someone. She already was someone that was very
10 accomplished and somebody that obviously is very
11 missed.

12 And that brings me to my last fact,
13 brings me to fact number 13, how was Teresa
14 Halbach killed. The manner and cause of death
15 was provided to you by three witnesses.
16 Dr. Eisenberg, Mr. Olson, and Dr. Jentzen. And
17 they all are in concert, they all agree, with how
18 this 25 year old woman was killed.

19 Dr. Eisenberg testified about those
20 cranial fragments showing entrance defects,
21 again, suggesting gunshot wounds to the parietal
22 and the occipital region -- regions. The
23 beveling was prior to the burning. The manner of
24 death she described as homicidal violence. I
25 think Dr. Eisenberg, in her own anthropological

1 way, explained to all of you, well, she didn't
2 just jump into the fire, it was homicidal
3 violence that caused her death.

4 Dr. Eisenberg was able to show you and
5 tell you, through photographs, that the -- this
6 particular bone piece, we wouldn't know it was
7 right above the left ear, but this is a piece of
8 the parietal bone that's right above the left
9 ear, that shows the characteristic sign of an
10 entrance bullet wound. And this particular
11 defect that is shown, again, that we wouldn't
12 know, is the occipital region of the skull, that
13 Teresa was also shot in the back of the head with
14 a .22 caliber gun.

15 Mr. Olson, our trace metals expert,
16 talks about instrumentality. That is, what are
17 these defects caused by. And Mr. Olson,
18 importantly, talked about lead deposits, talked
19 about bullets, and bullets having 99 percent
20 lead, but was able to show you x-rays of these
21 defects that we talked about, the x-rays of the
22 parietal region, where these things that light up
23 are actually particles of lead, which are
24 characteristic of a bullet, a bullet entering the
25 skull of an individual. And there's many more of

1 them, actually, back in the occipital area, many
2 more of these lead particles that he -- the
3 elemental analysis, and found, in fact, that
4 these were lead.

5 And, finally, Dr. Jeffrey Jentzen, an
6 expert, perhaps the expert, in the State of
7 Wisconsin, the medical examiner for Milwaukee
8 County Wisconsin, hundreds of gunshot wounds he
9 reviews. He was asked by Mr. Gahn to review this
10 case and see if he could render an opinion as to
11 both the manner and the cause of death.

12 Dr. Jentzen didn't have any question at
13 all about either one, that there was a gunshot
14 wound to the parietal region, agreeing with
15 Dr. Eisenberg it was a gunshot wound to the back
16 of the head. Manner of death is homicide. Cause
17 of death is gunshot.

18 There's three charges that you are going
19 to need to consider in this case: Homicide,
20 first-degree intentional homicide; mutilation of
21 a corpse; and the felon in possession. And it's
22 the State's obligation to prove to you several
23 things with those. They are called elements, but
24 what we really have to prove is what, and when,
25 and how, and, finally, who.

1 What is clear, that a homicide and
2 mutilation occurred. When, the 31st of October,
3 sometime after 2:45 p.m., when Ms Halbach makes
4 contact at the Avery salvage property. How, the
5 doctors and the trace metals and other experts
6 tell you, by gunshot.

7 And, so, when it comes down to the role
8 of the jury, when it comes down to you as the
9 trier of fact, searching for the truth, not
10 speculating, not searching for doubt, but
11 searching for the truth, it's that last answer.
12 It's the who, that you have to decide.

13 And you have got to decide whether or
14 not the State has satisfied you, beyond a
15 reasonable doubt, who killed Teresa Halbach.
16 Again, based upon the facts, based upon the
17 evidence, not based upon speculation.

18 I told you when I first stood up before
19 you this morning, there was no question, no
20 question at least from the State's perspective,
21 who was responsible. And despite having been
22 here for five weeks, I'm hopeful at this time
23 that you are able to agree with the State of
24 Wisconsin that all of the evidence, all of the
25 evidence, points to only one person. All the

1 circumstantial evidence, all the scientific
2 evidence, all the direct evidence, points to one
3 individual.

4 The law enforcement officers have done
5 their duty. All of the citizen searchers and
6 citizens that helped have done theirs. The
7 prosecution team, I believe, has set forth a very
8 methodical, very compelling case. And so we're
9 finally asking you, the citizens -- the jurors in
10 this case, the citizens of Manitowoc County, to
11 return verdicts of guilty, as it is your duty to
12 do so.

13 That's all I have, Judge, thank you.

14 THE COURT: Members of the jury, we're
15 going to take a 10 minute break at this time to give
16 the defense a chance to get ready for its closing
17 argument. Again, do not begin your deliberations at
18 this time. We'll call you back in as soon as we're
19 ready. I anticipate it being about 10 minutes.

20 (Jury not present.)

21 THE COURT: You may be seated.

22 ATTORNEY BUTING: Maybe a little bit longer
23 than 10 minutes, I have to get these exhibits
24 together.

25 THE COURT: All right. I will come back at

1 2:25 and see how you are doing.

2 (Recess taken.)

3 (Jury present.)

4 THE COURT: Mr. Buting, at this time you
5 may begin the defense closing.

6 ATTORNEY BUTING: Thank you, Judge. Good
7 afternoon, ladies and gentlemen. This is the first
8 time I have actually had a chance to talk to you. I
9 have sort of been talking at you as we walk by the
10 witnesses for 6, 5 weeks, whatever. And I'm
11 really -- I feel honored and privileged to do so,
12 just as I am honored and privileged to defend
13 Mr. Steven Avery here, in this very, very serious
14 case.

15 Let me make one thing very clear, right
16 here at the outset. We do not and have never
17 claimed that the police killed Teresa Halbach.
18 But in that respect they have that in common with
19 Steven Avery. However, the person or persons who
20 did kill Teresa, knew exactly who the police
21 would really want to blame for this crime.

22 And they were aided in that respect, by
23 widespread media publicity as early as Friday
24 morning, November 4th, the very morning after the
25 day she was first reported. Widespread publicity

1 that identified Mr. Steven Avery as one of the
2 last people known to have seen her. And because
3 of who he is, that drew even more media attention
4 than perhaps it might other wise have. And the
5 focus was on Mr. Avery, rather than one of the
6 other customers that she saw that day.

7 And this was the very same Steven Avery
8 who was suing the Manitowoc County and the
9 Sheriff's Department, with a lawsuit asking for a
10 whole lot of money, for the wrongful conviction
11 and all the years in prison that he spent, from a
12 1985 wrongful conviction.

13 I believe that when the Manitowoc
14 officers saw this, they very badly wanted to
15 believe that he was guilty and that this was
16 their way out. And that from that point forward,
17 that they had this investigative bias, focused on
18 Steven Avery, that was, then, skillfully
19 exploited by the real perpetrator of this crime.

20 Now, from the very beginning, Steven
21 Avery has proclaimed his innocence in this case.
22 He told that -- everybody that had a camera,
23 anybody who talked to him, that he was not
24 guilty, and that he was being framed. That the
25 police planted his blood.

1 And I want you to think for just a
2 moment how difficult a situation you would be in
3 if that had occurred to you. How, after all of
4 this evidence comes out, and police, who better
5 than anyone else would know how to plant
6 evidence, how you would get back the presumption
7 of innocence. How do you go about trying to get
8 the community, and ultimately a jury such as you,
9 to believe in our system of justice, to believe
10 that in America you are presumed innocent, unless
11 the State, which has the entire burden of proof,
12 can prove you guilty, beyond a reasonable doubt.

13 What would you do? Remember, this
14 morning and five weeks ago, you promised that you
15 would do that, despite all of the pre-trial
16 publicity you may have been exposed to and may or
17 may not have retained. You promised each of us
18 and the Court, and the Judge instructed you
19 today, that you must presume Mr. Avery innocent,
20 and that you must hold the State to the burden of
21 proof, beyond a reasonable doubt. We will talk a
22 little bit more about that later, but I want you
23 to keep that in mind. Because as you go through
24 this evidence, you have to apply that, because
25 that is your sworn duty.

1 Now, we have offered a theory of
2 defense. And that's what it is, it's a theory.
3 Because if someone frames you, you are obviously
4 not there to see how, exactly, it happened;
5 where, how, when, the kinds of things that
6 Mr. Kratz is going to argue we haven't presented.
7 There is no videotape showing how this was done.
8 There's no cop who, in a *Perry Mason* moment,
9 breaks down on the witness stand and says, yes, I
10 did it, I did it, you got me. This is real life,
11 that doesn't happen.

12 You are entitled to reasonable
13 inferences, however, and we're entitled to the
14 inferences that can be drawn from circumstantial
15 evidence, just as much as they are. And so you
16 ask yourself, what would it look like, what would
17 it look like, what would a case look like if
18 somebody was being framed.

19 And we're going to do that for a little
20 bit now. And I think when you do, you are going
21 to see that it would look a lot like this case.
22 You would look first and you would see, well,
23 what about the lack of evidence, in areas that
24 you would expect there to be evidence. And,
25 then, you would look at the areas where there

1 appears to be evidence linking the person to the
2 crime and ask yourself why does all of that
3 evidence appear suspicious or unreliable.

4 And we're going to go back and forth on
5 that a little bit, but those are the two main
6 areas I want to talk about first. Evidence
7 that's not there, that should be. And evidence
8 that is there that appears suspicious or
9 unexplained. And let me turn to that first.

10 In fact, let me turn to what probably
11 is, at least on its face, the most damning piece
12 of evidence in this case, and that is, Teresa
13 Halbach's remains, found in the burn pit, outside
14 Mr. Avery's garage, trailer, whatever.

15 We'll look at the -- what the evidence
16 shows first. We know that not all of her remains
17 have ever been found. I believe Dr. Eisenberg
18 said only 40 percent of her skeletal remains.
19 We're not talking the rest, obviously, that you
20 would expect might be gone, but skeletal remains,
21 only 40 percent. Not because the other 60
22 percent gets burned up. No expert has ever come
23 into this court and said fire would consume bone
24 completely.

25 What fire does, according to these

1 experts, is it goes through these phases of
2 charred to ultimately calcined -- calcinated, I
3 believe the word was. Sixty percent of it is
4 missing. All right. That's -- That's peculiar
5 to begin with. But, then --

6 Well, before I move off that, there's
7 something else that's missing and that is,
8 Mr. Kratz points out, well, the jeans, we found
9 these rivets in this pair of jeans here. But
10 they only found five of six, assuming that these
11 are the same jeans, and these are just a
12 representative example. But what did they not
13 find, the biggest item of all, the button that
14 closes the waist.

15 They have got magnets they are using
16 through all this dirt. They are the sifting
17 through every thing and they don't find this
18 button anywhere. They don't find her house keys
19 anywhere, her work keys anywhere. They find one
20 single key, which we'll certainly talk about.

21 But most importantly, all the experts
22 agree, these bones were moved. And I have got to
23 tell you, we have been here, now, for five weeks
24 and we have still not heard any explanation from
25 this side about how that happens.

1 In fact, we haven't heard any
2 explanation about a lot of things. We have heard
3 manner and cause of death, but that's not really
4 how Teresa Halbach was killed, or even where
5 Teresa Halbach was killed.

6 Unfortunately, from my standpoint on
7 this point anyway, the State gets to go last.
8 This is called sandbagging. This is where we
9 don't get to respond to the theory or the
10 argument that they have been harboring all this
11 time and haven't told you folks either. So they
12 are going to get up here after Mr. Strang and I
13 are done and they are going to say, hey, this is
14 the explanation, take our word for it. And we
15 don't -- of course, don't have a chance to
16 respond.

17 Well, I'm going to trust that between
18 the 12 of you, ultimately 12, you will be able to
19 answer those questions that they raise. You will
20 be able to pick apart, as well as I can, whatever
21 theory they come up with, because we have not
22 heard any yet.

23 The bones were moved. The question is,
24 were they moved to Mr. Avery's burn pit, or were
25 they moved from Mr. Avery's burn pit. The State

1 would have you believe that the original site of
2 burning was the burn pit, behind his garage. But
3 they have offered no explanation for why bones,
4 human bones, would be found in the Janda burn
5 barrel, some 150 feet, or whatever it is, away,
6 in the other yard.

7 And Dr. Eisenberg told you -- By the
8 way -- I can't believe I forgot this -- there's a
9 third site. There's actually three different
10 sites where human, or possible suspected human
11 bones were found. Clearly identified human bones
12 were found in the burn pit. And clearly
13 undisputed human bones were found in the burn
14 barrel.

15 But there's also this mysterious quarry
16 site, a quarter mile or so away that -- You will
17 have to forgive me, but I'm not as
18 technologically savvy as Mr. Kratz, and so we're
19 going to be using the ELMO instead of a laptop.
20 But this is -- this is the map that was shown to
21 you. This is the diagram that was created by
22 Mr. Austin, with the assistance of Dr. Eisenberg.

23 This flag down here, is the third site,
24 where pelvic bones were found, according to
25 Dr. Eisenberg. They were sent to the FBI to do

1 mito-typing (phonetic). We did a stipulation
2 that nothing could be determined from them. But
3 what she said was, all three locations where
4 bones were found, or possible human bones in the
5 case of the quarry, were all burned to the same
6 degree, same amount of calcination.

7 So there is a similarity here that
8 continues forward through all of them. And, very
9 important, no evidence of more than one body. I
10 don't even know if there are other bodies missing
11 in Manitowoc County, or people missing, but in
12 this instance, Dr. Eisenberg concluded, and
13 Dr. Fairgrieve agreed, no evidence of more than
14 one body. So we have got these bones in three
15 different locations.

16 Now, curiously, you have never seen a
17 photograph of what this site looks like, or what
18 the bones looked like, and neither have I. And
19 neither has, I assume, any of the prosecution
20 team because, for some curious reason, no
21 photographs were taken of that site.

22 The method of recovery in this case was
23 not skillfully done, as Mr. Kratz tried to argue,
24 by these experienced arson experts. This
25 investigation needed a forensic anthropologist to

1 be called to that scene, before anything was
2 touched. And Dr. Fairgrieve explained why.

3 Dr. Eisenberg admitted that by the time
4 she got the bones, she was unable to determine
5 some important information about its location,
6 how it was sited. And not only was nobody called
7 to the scene, but no photographs.

8 Have you seen one photograph of any of
9 those bones in the burn pit, in this location,
10 before it's picked up? One photograph? No, you
11 see boxes of bones, tables where they are thrown
12 out. You don't see them in their site. And
13 Dr. Fairgrieve explained to you why that's
14 important, especially important, if you're going
15 to try and answer the question of, was that the
16 burn site.

17 Dr. Fairgrieve is probably the expert in
18 the world, or at least in this North America, on
19 the forensic identification and interpretation of
20 cremains, much more experienced than
21 Dr. Eisenberg in this area. I don't have a
22 problem with Dr. Eisenberg; she's a fine person,
23 and a fine anthropologist.

24 But Dr. Fairgrieve has much more
25 experience in the field, dealing with cremains.

1 He's written a book that's coming out soon. He's
2 worked for the Crown all of his life. This is
3 the first case he's ever testified for the
4 defense. So this is not some paid defense expert
5 that we have just brought in here to try and --
6 try and do a smoke screen or something.

7 This is a world renown expert. And what
8 he says is, he's had a lot of cases, or he's been
9 called in and that very question has been
10 presented, the bones were moved, where is the
11 original site. Was it over here, or was it where
12 the bones were found.

13 Dr. Eisenberg says, you have to listen
14 carefully to her opinion, she concluded -- First
15 of all, she could not rule out other possible
16 burn sites, but her opinion was that it was most
17 likely the original site was behind the garage.
18 And that was based on the fact that most of the
19 bones that were recovered were found in that
20 location, that she would have expected more
21 breakage, and that she found a lot of small
22 delicate type of bones in that area, and so,
23 therefore, she concludes this must be where the
24 burn took place.

25 But Dr. Fairgrieve told you, that from

1 his own case experience, real world case
2 experiences, he has found the tiniest bones in
3 the human body, the little bones in your middle
4 ear. He has found those moved into the secondary
5 site, not at the original burn site.

6 And he told you something else that,
7 frankly, just makes common sense. In his
8 experience, where the majority of the bones are
9 found, that's the location where the bones were
10 moved to. Why? Why does that make common sense?
11 Because if you're -- if for whatever reason you
12 are trying to disguise the original site where
13 the burn took place, and you are going to plant
14 them, or put them some place else, of course you
15 are going to move as many of them as you can to
16 the second location. That makes common sense.
17 It would make perfect sense. And it fits with
18 Dr. Fairgrieve's own real case experience.

19 The other thing Dr. Fairgrieve said is
20 that, had an expert been called to the scene, a
21 real forensic anthropologist, you can determine
22 things about that. I believe he talked about a
23 case where he was able to tell that this was the
24 first, the original spot of burning, because
25 there was some anatomically connected bones.

1 Even though burned, they are close together,
2 anatomically, so you can tell that's where they
3 were burned. If you moved them, they would fall
4 apart and they would be rearranged.

5 Unfortunately, Dr. Fairgrieve, again, he
6 didn't go out on a limb. He said, I cannot tell
7 you for certain, where the original burn site is,
8 nobody can, because of the collection effort.

9 And I'm not faulting these officers,
10 there's nothing deliberate going on here. They
11 probably never encountered a case like this
12 before. And what they should have probably done
13 is just put a tarp over it. Instead, Agent
14 Sturdivant recalls -- I think it took five hours
15 before Mr. Ertl to come to the scene. And it's
16 already starting to get towards dark, 3:00, 3:30
17 or something. So they're hurriedly trying to get
18 as much as they can, working up to dark, until it
19 gets too dark, without light.

20 It's not that they deliberately
21 destroyed the evidence at the scene, but by
22 moving it without the kind of knowledge -- Well,
23 you have seen archaeologists on TV and in movies,
24 you know how they do it, how they move very
25 carefully with brushes. They want to make sure

1 that they can determine exactly where the
2 location of these bones are. Because, if they
3 are not in any kind of anatomical connection,
4 that tells you something.

5 So, Dr. Fairgrieve -- I'm sorry --
6 Dr. Eisenberg tells us that these bones were
7 found in the burn barrel. Zoom in first so you
8 can read the top. This is Exhibit 401. Evidence
9 Tag 7964, she told you was bones recovered from
10 one of the four Janda burn barrels that were
11 located.

12 She finds long bone shafts, metacarpal
13 fragments, vertebral -- vertebral fragments, and
14 a scapula fragment. And the helpful little
15 diagram here describes where you would find these
16 in your body. Now, obviously these are scattered
17 all over ones skeleton. It's not like somebody
18 dismembers an arm and burns that in the burn
19 barrel and you would expect to find only those
20 items. These were scattered and we'll talk about
21 why in just one second.

22 I think this was -- This is Exhibit 402,
23 the pelvic bones that were found in the quarry.
24 Now, again, possible, I'm not going to overstate
25 here. She was not conclusively able to determine

1 that they were human, but they were all burned to
2 the same degree. And she certainly could not
3 rule it out.

4 What explanation is there for finding
5 scattered bones of Teresa Halbach in the burn
6 barrel and in the burn pit. I'm going to propose
7 one possible theory, there could be others. You
8 may come up with others on your own. But I want
9 to show you, first, one of the instructions the
10 judge read you that's in your packet.

11 Focusing here on the reasonable
12 hypothesis. If you can reconcile the evidence
13 upon any reasonable hypothesis, consistent with
14 the defendant's innocence, you should do so and
15 return a verdict of not guilty.

16 I suggest that a reasonable hypothesis
17 is that somebody else burned Teresa Halbach's
18 body elsewhere, maybe in the quarry, maybe
19 somewhere else. And then they used that burn
20 barrel that was found on the Janda's property as
21 a container to transport the remains, as many as
22 they could scoop in, to Mr. Avery's backyard.

23 And they dump it in the burn pit, or
24 scatter it about, whichever, think that they've
25 got it all, turn it back over. And think about

1 how heavy these burn barrels are, you are not
2 going to be able to lift them up and turn them
3 upside down as easily as you would be tipping
4 them over. And they inadvertently leave a few
5 behind. This is most likely happening in the
6 dark.

7 And the barrel gets, then, placed over
8 on the Janda property, along with the other three
9 that were there, and so there's four barrels
10 found. That explains why there's scattered bones
11 from all over, skeleton, found in the barrel.
12 Explains why most of them are there in
13 Mr. Avery's. And explains why any would be found
14 in the burn barrel at all.

15 If Mr. Avery wanted to get rid of the
16 bones, from his burn area, he would not put a
17 scattered few in someone else's burn barrel and
18 leave all the rest behind. That's not making
19 sense. It doesn't make sense. No one would do
20 that.

21 One other little interesting bit of
22 testimony that almost slid by me, actually, was
23 Mr. Dassey, Bobby Dassey's testimony. Sometimes
24 the truth comes out in little dribs and drabs
25 when people aren't expecting it. And on direct

1 examination, as Mr. Kratz, I believe it was, was
2 trying to lead Mr. Dassey through a number of
3 photographs.

4 He asks him about the burn barrels that
5 your mom has out back. And Bobby says, we have
6 three. And then they try to correct him, and
7 he's like, I thought we had three. And yet four
8 are found on November 5th.

9 Where did that fourth one come from? I
10 submit it was the transport item used, perhaps
11 picked up, used to transport the bones and then
12 placed over where the others would -- where the
13 others were.

14 Let me tell you something about who
15 another possible suspect is. It may not, but
16 it's a reasonable hypothesis to explain the bones
17 the way they are. Now, when you realize -- The
18 reason I'm spending some time on this, is when
19 you realize that this is what may have happened
20 here, then you realize why it's so important.

21 Because if that body was burned
22 elsewhere and then moved and dumped on
23 Mr. Avery's burn pit, then Steven Avery is not
24 guilty, plain and simple. Because no one would
25 burn a body somewhere else and then move the

1 remains and dump them in your own backyard. No
2 one would do that.

3 Now, that's why the State has gone to
4 such trouble avoiding the fact that the bones
5 were moved, that's why you heard nothing about it
6 here. Because it does not fit with their theory
7 that Avery is guilty. They know that if you come
8 to believe that there is reasonable doubt about
9 whether those bones were moved to Mr. Avery's
10 backyard, then you are going to find him not
11 guilty.

12 You have to find him not guilty. Even
13 if, in the end, you aren't completely satisfied
14 how it occurred. Because although we offer you a
15 theory of defense, that does not mean that we
16 take on the burden of proof. The State has the
17 burden of proof. They have to answer the
18 questions that come to your mind, beyond a
19 reasonable doubt.

20 If someone is framed, they are not going
21 to be there. They are not going to see how
22 exactly it is done, but this is consistent with
23 the evidence, I submit.

24 Now, let's turn from the evidence that
25 appears to be incriminating, but is suspicious.

1 Let me turn for a moment to some of the evidence
2 that is lacking, that you would expect to find,
3 if Mr. Avery was really guilty.

4 There was blood identified in the RAV4,
5 that is, Mr. Avery's. And I don't know why,
6 frankly, we went through this exercise in
7 statistics in figuring out what a billion means,
8 when we're not, we've never challenged that. We
9 don't challenge that -- whether his profile --
10 when they come in and they say this is his blood,
11 this is not his blood, or whatever, there is no
12 dispute on that.

13 The question is, how did that blood get
14 there. And as you think, again, what a case
15 would look like if someone is framed, this is
16 very important as well. Because in the RAV4,
17 they find five, ultimately six stains, I believe,
18 which they theorize must have come from an
19 actively bleeding person, which means, the person
20 was not wearing gloves, and yet, they find no
21 fingerprints.

22 Why, because fingerprints are very
23 difficult to plant. Can't say it's never been
24 done, but it's extremely difficult to plant
25 someone's fingerprints. Much easier to plant

1 someone's blood, if you can get ahold of some.

2 So that right there is peculiar.

3 Now, is it because he wiped off his
4 fingerprints, took the time to wipe off all his
5 fingerprints, but missed the blood. Come on,
6 that doesn't make sense at all. Besides, we know
7 that there are eight unidentified fingerprints,
8 at this moment, that were found on that vehicle,
9 including some very incriminating locations.

10 I went through it with Mr. Riddle.
11 Right on the back rear cargo door of the RAV4 --
12 which of course I don't have -- right where you
13 would expect, if somebody is opening that door to
14 put a body in, they are going to find your
15 fingerprints, if you're not wearing gloves. And
16 if you're bleeding you're not wearing gloves.
17 You can't be. You can't have it both ways.

18 I would also point out, Dr. --
19 Mr. Riddle, I asked him, well, you took the
20 fingerprint standards of Lieutenant Lenk and
21 Sergeant Colborn. You know what the defense here
22 is. You know what we have been accusing them of
23 for the last month or more. Did they ask you to
24 compare these unidentified latents that were
25 found on Teresa Halbach's vehicle with Sergeant

1 Colborn or Lieutenant Lenk's standards, to see if
2 you could rule them out, or match. The answer,
3 no. Why, because they don't want you to know.

4 You cannot open this vehicle without
5 touching that latch. And this is where he said
6 he found them, the fingerprints. There, there,
7 and there. Riddle also found them on the hood.
8 Isn't that interesting. He says the lifting up
9 of the hood has been a big part of the State's
10 case. No one has compared those to Lenk and
11 Colborn.

12 The other thing that's kind of curious
13 is that no one at the scene sees any blood in the
14 vehicle. Granted it's -- part of the windows are
15 tinted, and it's -- but it's not dark. This
16 vehicle was found at 10:30, 11:00 a.m. in the
17 morning, on a Saturday.

18 And I believe Mr. -- or Special Agent
19 Fassbender, I believe he was the one, that says
20 he came with his flashlight. Maybe that was
21 Ertl. Was looking 5 or 10 minutes inside that
22 vehicle and didn't see any blood. Now, maybe you
23 won't see the blood on the black CD case, but if
24 indeed the vehicle is locked, you might want to
25 be looking inside to see if there's a key,

1 wouldn't you think.

2 You are going to be shining your
3 flashlight right there to see if maybe the key is
4 in the ignition, no one sees this rather peculiar
5 looking bloodstain that looks sort of like you
6 might get if you take a Q-tip and dab it.
7 Doesn't look consistent with the State's theory,
8 as I understand it.

9 And then you look at maybe the most
10 obvious lack of evidence. And that is the
11 complete lack of any blood or DNA of Teresa
12 Halbach anywhere inside Mr. Avery's entire
13 trailer and you heard what the police did with
14 that trailer. They peeled off the paneling, they
15 ripped up the carpeting.

16 You heard Mr. Ertl talk about how in one
17 instance he was familiar with, the suspect had
18 cleaned up the carpet with carpet cleaner and it
19 wasn't noticeable. When they peeled the carpet
20 back, it had soaked through to the pad. Well,
21 the police were at least smart enough to look for
22 that.

23 Here no blood on that pad. No blood on
24 the carpet. No bloody bedding. Admittedly, you
25 could burn the bedding, sure. You could get rid

1 of the bedding. But no blood on the mattress.
2 And there's no evidence that there was any change
3 in the mattress. And there's no evidence that
4 any mattress or box springs or any of that was
5 burned.

6 No blood spatter on the walls or the
7 ceiling. No bloody trail of a body being carried
8 out of that bedroom into the garage or into the
9 burn pit. Nothing on the carpet. Nothing on the
10 back stoop, the deck, anywhere. No scratches on
11 the headboard. No rope fibers on the headboard.
12 Nothing that would indicate somebody restrained,
13 struggling for their life, was murdered in that
14 bedroom.

15 Why am I telling you this? The State is
16 now saying he was -- I believe they are trying to
17 argue that she was killed in the garage, although
18 that's still not clear either. Why do I care
19 about the bedroom, because the Judge has told you
20 that you bring your common experiences too, you
21 can rely on those common experiences. And one of
22 the common experiences that you have all,
23 unfortunately, been exposed to, was the pre-trial
24 publicity in this case.

25 ATTORNEY KRATZ: Judge, I'm going to

1 interpose an objection. He is commenting on
2 pre-trial or out of court statements, whether by
3 counsel or by other witnesses. That is absolutely
4 improper. That is not a common experience that they
5 bring to the courtroom.

6 THE COURT: All right. Just a second, I'm
7 going to excuse the jury for a couple minutes.

8 (Jury not present.)

9 THE COURT: You may be seated.

10 ATTORNEY BUTING: Judge, I'm actually
11 bringing this up only to show them, and my next
12 explanation would be how important it is not to leap
13 to a quick judgment and why it's so important that
14 they disregard all of that kind of information they
15 may have heard before and focus on the evidence in
16 this case. That's where I'm going with this.

17 THE COURT: Okay. I wasn't sure from the
18 introduction comment if you were going to refer to
19 any information that was not introduced as evidence.
20 As I understand it, you are telling me you are not.

21 ATTORNEY BUTING: That's correct. That's
22 all I intend to say about it.

23 THE COURT: Mr. Kratz.

24 ATTORNEY KRATZ: When he starts with,
25 unfortunately, you were exposed to information, he

1 is pre-supposing, first of all, that they know that.

2 Secondly, Mr. Strang and Mr. Buting, in
3 jury selection, referred in great detail to out
4 of court statements in this particular case.

5 But, third, and most importantly, the
6 jury has already been instructed not to consider
7 anything that was outside the courtroom. So to
8 highlight some -- something they may have heard
9 on the news, or something earlier, is absolutely
10 improper and I'm suggesting that Mr. Buting knows
11 that.

12 ATTORNEY BUTING: I disagree. This jury
13 was exposed to false, misleading information for
14 months. And it's not until they came into this
15 courtroom that they heard the other side. That's
16 the point -- this is the best example I can think of
17 on why a case has to be decided and tried in the
18 courtroom.

19 The Court's instructed them. We talked
20 about it in voir dire. We couldn't ignore the
21 fact that at least three of these jurors who are
22 sitting here today came in saying, I think he's
23 guilty. They promised to put it aside, but
24 that's all I'm doing is reminding them of that.

25 THE COURT: One of the problems, as I

1 recall, is that the jurors, and I don't have each
2 individual juror's answer committed to memory, but
3 it's my understanding that they were exposed to
4 pre-trial publicity in varying degrees. For the
5 most part we wound up with jurors who weren't as
6 exposed to the publicity as some others. But I also
7 agree that we do not have a jury composed completely
8 of people who were not exposed to any pre-trial
9 publicity.

10 I'm a little concerned that, even the
11 reference to publicity, for the same reasons I
12 expressed as one of the reasons for dismissing
13 the false imprisonment charge is, references to
14 it could possibly lead the jurors to talking
15 about it in deliberations and that's something
16 that I don't think we want.

17 ATTORNEY BUTING: I agree. And that's as
18 far as I was going with it. I wasn't going to draw
19 any more references to it, other than to remind them
20 how I think this is the best example, now that they
21 have been through the process, to understand why it
22 is so important for them to only judge the case on
23 the facts, not speculating.

24 THE COURT: All right. I'm going to ask
25 you -- you can refer to speculation, but I'm going

1 to ask you to phrase it in some other way that
2 doesn't involve referring to pre-trial publicity, in
3 order to avoid the problems with it.

4 ATTORNEY BUTING: That's fine. I will just
5 finish by saying, that this case is an example of
6 why you can't leap to quick judgments and why you
7 should base your decision on the evidence in court.

8 THE COURT: That's fine. Anything else,
9 Mr. Kratz?

10 ATTORNEY KRATZ: I'm not sure how to
11 un-ring that bell, Judge.

12 ATTORNEY BUTING: Well, I wish I could
13 un-ring it too.

14 THE COURT: Both parties have made
15 arguments about un-ringing bells. I don't think the
16 comments that have been made thus far get us
17 significantly into that problem to require
18 corrective action. So as long as there's not going
19 to be a reference -- any further reference to any
20 pre-trial publicity, lets bring the jurors back and
21 allow Mr. Buting to continue.

22 ATTORNEY BUTING: Thank you.

23 (Jury present.)

24 THE COURT: You may be seated. Members of
25 the jury, we're hoping that our sound problems are

1 related to a bad battery, so the battery is being
2 replaced. In a minute, we'll resume.

3 ATTORNEY BUTING: All right. Where were
4 we. What I think this case is, is a good example of
5 why it is so important that people not leap to quick
6 judgments about a case, maybe decide something
7 that's based -- that's not based on the evidence you
8 hear in court. You promised, and I'm confident you
9 all will decide this case based only on the evidence
10 you have heard in court, and this case is a good
11 example why.

12 Let's look at what else evidence -- what
13 other evidence is lacking. Now, if the State's
14 theory is that she was shot in the garage, where
15 is her blood? None of her blood is found in that
16 garage.

17 We have heard testimony about high
18 velocity blood spatter that comes when someone is
19 shot from a bullet. There's none on the floor.
20 Maybe even more important, there's none on any of
21 all that -- any of that clutter that you saw.
22 When it's high velocity spatter, it can go
23 anywhere.

24 How would Mr. Avery be able to clean up
25 everything, not just on a floor, but every little

1 item. Because, remember, at least in March, they
2 picked up and handled every single, and examined
3 every piece of evidence. Every cooler, every
4 box, every can, every piece of junk that we all
5 have in our garage, they looked at. And that's
6 where you would expect to find spatter that no
7 one would be able to clean up, even if they tried
8 to clean up.

9 Now, is there evidence that he did clean
10 up at all? Well, his blood was found in the
11 garage. Why is that? If he's cleaning up, how
12 is it that his blood is found there. Is he able
13 to see a blood spot and say, oh, that's Teresa
14 Halbach's blood. Oh, that's mine, I can leave
15 mine, I will just clean up hers. Come on.

16 They have you believe that -- I'm
17 assuming he's going to get up here and say, this
18 is what happened because, of course, we haven't
19 heard it yet, that the bottle of bleach is so
20 incriminating. I don't know anybody who doesn't
21 have a bottle of a bleach somewhere in their
22 house. And an important part is, it was in his
23 house. They say it's in his bathroom, what they
24 didn't tell you until I got up and cross-examined
25 them, is that the bathroom is the laundry room.

1 So even there they try and mislead you into
2 thinking something means more than it does. A
3 bottle of bleach found in ones laundry room means
4 nothing. And it means nothing in this case.

5 And, by the way, if the theory is that
6 there's no blood of Teresa Halbach anywhere on
7 the floor of that garage, is that because he is
8 such a good cleaner, then why are there 10, 11
9 .22 shells laying all over the floor right in the
10 open. Don't you think if they are going to go to
11 the trouble of cleaning up the blood, after you
12 kill somebody, that maybe you might pick up the
13 shells that are right out there in plain view for
14 the police to find. Don't you think that would
15 be what you would do?

16 So those are some examples of the kind
17 of evidence, that if someone is being framed, you
18 might expect to find -- you might expect to find
19 lacking, because it doesn't fit with the reality
20 of what would have happened if the crime actually
21 occurred as the State apparently alleges.

22 We talked about one piece of
23 incriminating evidence and how that looked
24 suspicious. Let's look at maybe the biggest,
25 most glaring suspicious piece of evidence in this

1 case. The magic key, Exhibit A, in this theory
2 that the police planted evidence in this case.

3 Because if you believe that those police
4 officers put that key in his room, that they are
5 capable of planting that kind of evidence to try
6 and link him, then why not plant -- why couldn't
7 they have also planted blood. If they go to that
8 extent that they -- that they plant Teresa
9 Halbach's key in his bedroom to try and convict
10 him, then that's it, it's over, case over,
11 because you can't rely on anything else they have
12 given you.

13 Now, let's look at this key. First of
14 all, why would he bring the key in his house and
15 put it in his own bedroom. Why would you do
16 that? If you still got the vehicle, and you
17 still wanted somehow to use the key, to drive it
18 some place -- by the way, why would you want to
19 disconnect the battery, if you're still going to
20 use the key? What good does the key do if the
21 battery is disconnected? So that's a disconnect,
22 no pun intended here.

23 But why wouldn't you just leave the key
24 in the car? Why wouldn't you hide the key under
25 the -- neath the car, or somewhere where you know

1 it is? Why would you bring an incriminating item
2 like that into your own bedroom, especially since
3 you know, as of November 3rd, when Sergeant
4 Colborn comes to visit him, and November 4th,
5 when Lieutenant Lenk and Detective Remiker come
6 to visit him and all the television cameras are
7 there, that you are a person of interest, right?
8 You are not going to put the key in your bedroom.
9 Doesn't make sense.

10 And, then, the key is not found until
11 the 7th search of that trailer. You already had
12 four grown men in that little trailer. I'm
13 sorry, in that little bedroom they had four men,
14 for three hours, on Saturday night, November 5th.
15 And they come in here and they try to tell you
16 that's not really a thorough search. Three hours
17 in a little bedroom with four men, is not enough
18 time to do a thorough search? Who are they
19 trying to kid here.

20 And, then, it's not until November 8th,
21 when they have been in the bedroom, again, with
22 three men: Lenk, and Colborn, and Kucharski,
23 it's another hour or more before they find it
24 then. There's a common theme, by the way, that
25 we've been hearing in this case, whenever

1 something is mysteriously found much, much later
2 when it should have been, but earlier searches
3 didn't count, those were just cursory searches,
4 three hours cursory searches.

5 This computer rendering of the bedroom
6 is helpful just to show you how small this
7 bedroom is. How long does it take four men to go
8 through a closet, a dresser that's over here, a
9 desk and a bookcase, or World War II record album
10 holder, whatever it is. Seven entries.

11 Now, I submit that the reason it wasn't
12 found in the first entry is because there was a
13 watchdog along, Sergeant Tyson. The one thing
14 that they did was, they say it's okay to use
15 these Manitowoc officers for searches because
16 we're going to have a Calumet person there with
17 them to make sure nothing goes wrong.

18 Sergeant Tyson admitted he had never
19 been in a situation before where he had been told
20 to keep an eye on those guys, your fellow cops,
21 keep an eye on them. What are you doing putting
22 those three men into the person of interest, he's
23 a suspect in their eyes, what are you doing
24 putting three cops who have that kind of
25 potential conflict in that person's bedroom, that

1 you need to have another officer from another
2 agency watching over them, babysitting them.
3 That is absurd.

4 Lenk and Colborn volunteered for that
5 duty and they volunteered for a reason. But in
6 the first search Sergeant Tyson did his job. I
7 believe it when he says that he watched them. He
8 looked like a watchdog. He was watching them
9 like a hawk and he wasn't searching. That's
10 important too. They were doing the searching and
11 he was just doing the collecting. So the
12 opportunity wasn't there for Lenk or Colborn to
13 plant the key.

14 And then they are in there again, very
15 briefly the next day, again, with Tyson. Note
16 that each entry they are -- they are -- each time
17 they go in there, they were with Tyson, except
18 for November 8th and they go in with Deputy
19 Kucharski, who tried to make light of it by
20 saying that, you know, the possibility of
21 planting is about as likely as aliens coming down
22 and planting it.

23 But he had to admit, he was not told to
24 watch those officers. He was there with Lenk and
25 Colborn. He's told to search and that's what

1 he's doing, he's doing his job. And he's sitting
2 on the bed, after one hour. In fact, I think he
3 said he was getting almost done and took off his
4 gloves. He's sitting here, going through this
5 drawer.

6 Lieutenant Lenk is right here with his
7 back to him, like this, crouched down on the
8 floor, so he's not going see what's going on.
9 Lenk gets up, walks out the door, comes back in a
10 minute later, oh, my gosh, look at that, there's
11 a key. Low and behold, it's in plain view.

12 And so they come up with this theory,
13 this absolutely preposterous theory on how this
14 magic key, that no one ever finds before,
15 suddenly appears in plain view, out of this
16 bookcase. They find it right there, where those
17 slippers are. Right like that.

18 And how does it happen, well, they
19 decide, maybe they help the back of this cabinet
20 a little bit, but they decide that somehow this
21 key must be secreted in this cabinet, by Mr.
22 Avery, in his own bedroom, with everybody looking
23 at him, and that it somehow magically fell out
24 this -- this gap, bounces off the wall. And by
25 the way, we're talking about key, fob, and

1 plastic clip. Somehow bounces off the wall,
2 turns around the corner and lands, what is it 90
3 degrees from where it should be, where it would
4 have fallen.

5 Now, here is something else. I want you
6 to contrast what the State -- what kind of
7 evidence the State has given you. In this case,
8 we have been presented with a wooden gun rack, as
9 an Exhibit No. 196. This has really been
10 important in this case, hasn't it, this wooden
11 gun rack. It's meaningless. They have got --
12 And we have a got a photograph of it too. We
13 have the real thing and the photograph. What do
14 you need this for? Why do need this for? Why is
15 this in evidence. This is totally irrelevant.
16 They have pictures to show the guns are on the
17 wall, okay.

18 We have got a photograph of an empty
19 box. And we have got the box right here. We
20 have got a photograph of another empty box, and
21 we have got the empty box here too. What did
22 they give you on this bookcase, that, a
23 photograph. Where is the bookcase? Where is the
24 bookcase? Don't you think that's a little more
25 important in this case than that wooden gun rack.

1 They don't want you experimenting with
2 that bookcase and this key, because they know you
3 will see that it is incredibly improbable that
4 this key is going to find it's way out, the key,
5 the ring, the cloth fob, the plastic clip, and
6 not get hung up on anything. It's going to
7 bounce around like they say it will. So you ask
8 yourself why you haven't seen that, right there
9 in the property room. Nice picture of it.

10 ATTORNEY KRATZ: Judge, I'm going to
11 interpose an objection. Counsel is suggesting that
12 only the State could have introduced that, instead
13 of the defense.

14 ATTORNEY BUTING: State's burden.

15 THE COURT: I'm over --

16 ATTORNEY KRATZ: He's suggesting only the
17 State.

18 THE COURT: This is closing argument, the
19 objection is overruled.

20 ATTORNEY BUTING: While we're at it, while
21 we're talking about candor with the jury, I don't
22 know if you recall, but I do, in the opening
23 statements, these nice PowerPoint presentations that
24 Mr. Kratz has prepared, one of them he puts up there
25 in his opening statement and he shows this tailgate.

1 Puts up a nice PowerPoint slide showing the rear of
2 the vehicle like this.

3 And he's going through where Mr. Avery's
4 blood, DNA, was found on Teresa Halbach's
5 vehicle. And he's got one of his nice slick
6 arrows pointing right here with a circle. I see
7 that and I think, my gosh, I have been working on
8 this case for months, did I miss that; how could
9 I miss that the client's blood is supposedly on
10 the back tailgate. Well, when I looked more
11 carefully, and as we heard from Sherry Culhane,
12 he was wrong. There was no blood of Mr. Avery
13 ever found on the rear of that vehicle on the
14 tailgate. Now, Mr. Kratz is human, we all make
15 mistakes; I have certainly made plenty here. But
16 that's a pretty big mistake.

17 The key, also, by the way, has no blood.
18 Remember, she swabbed it and the stains were
19 clean and it only has his DNA. And, frankly,
20 counsel misspoke when he said, it's always the
21 last person -- when you are talking about trace
22 DNA from the fingers, it's always the last person
23 that touches it that's going to be on there, not
24 what the testimony was as I recall it. Testimony
25 was, the last person may have more of it, but you

1 are going to find a multiple, most likely, at
2 least two people. Particularly when it's an item
3 like a key that someone handles every day and
4 deposits their own DNA on.

5 And, finally, before we take a break
6 here, the source of Mr. Avery's DNA in his house
7 is plentiful. Toothbrushes, razors, all kind of
8 personal items in ones home, if Mr. Lenk and
9 Mr. Colborn wanted to put Mr. Avery's DNA on that
10 key, that was easily available. It doesn't have
11 Mr. Avery's fingerprints on the key; doesn't have
12 any of Teresa Halbach's DNA on the key.

13 Keep in mind, also, when you think about
14 the evidence that's lacking and evidence that's
15 suspicious, you came into this case, and as I
16 recall seeing up there on the PowerPoint slides,
17 there were four charges, now there's three.
18 Think about that, while we take our break. Is
19 this okay, your Honor?

20 THE COURT: Yes. All right. Members of
21 the jury, we'll take a break at this time. Again,
22 do not begin your discussions of the case until all
23 the arguments have been completed and the Court
24 submits the case to you. You are excused.

25 (Jury not present.)

1 THE COURT: Counsel, can I see you briefly
2 in chambers at the start of the break.

3 ATTORNEY BUTING: Sure.

4 (Recess taken.)

5 (Jury present.)

6 THE COURT: Members of the jury, before we
7 resume, I can report to you that I met with counsel
8 during the break. I just wanted to give you some
9 idea about where we were going from here. But we
10 are probably going to go late today in order to
11 finish the closing arguments of the parties. There
12 isn't going to be any time to begin deliberations
13 today.

14 After the closings are finished, we will
15 take a brief break to identify the alternate
16 jurors who will not be deliberating and then we
17 will adjourn for the day and begin deliberations
18 tomorrow morning. We are going to take breaks,
19 probably at faster intervals than normal, to keep
20 you fresh enough to follow the closing arguments,
21 but closing arguments will be what we will
22 complete today. Mr. Buting, you may resume.

23 ATTORNEY BUTING: Thank you, Judge. Before
24 I leave the magic key for a minute, I just want to
25 make sure I was clear enough that, again, this is

1 her car key, that obviously she used every single
2 day. It was Teresa Halbach's key.

3 And I believe Ms Culhane said she
4 swabbed all the way around that whole plastic
5 holder, all the way around it. Not just along
6 one edge of it. And yet she found none of Teresa
7 Halbach's DNA, not a shred of it. And found only
8 Mr. Avery's DNA, as if somehow the key had been
9 wiped clean and his DNA was placed on it. He
10 certainly is not going to do that. He's not
11 going to wipe off her DNA and leave his behind.

12 And as to the bookcase, why it's not
13 here, think about, again, it's their theory, that
14 this key could have found it's way magically out
15 of that bookcase and into its position. Their
16 burden of proof in the entire case, and also
17 their theory to explain to you how this very
18 unusual key materializes out of nowhere and yet
19 it is not here.

20 All right. Now, let's look at another
21 piece of evidence that initially appears,
22 certainly incriminating, but as you look more
23 closely, looks more and more suspicious. And
24 that is, Mr. Avery's blood in the RAV4.

25 Keep in mind that we're talking about a

1 very little amount of blood here. Mr. Kratz
2 maybe confused you when he made it seem like
3 there was a lot. Yeah, there's not one
4 microliter, but we're talking very small amounts
5 of blood. As a matter of fact, the photographs
6 that were taken by Mr. Groffy, before any swabs
7 were taken, before any of the blood is wiped off.
8 This is the front seat, I can barely see
9 anything, unless that -- if that's the spot of
10 blood, right there, that's awfully small,
11 particularly when you are talking about fabric.

12 The CD case, can't even find any blood,
13 can't see any blood. I believe Mr. Stahlke must
14 have misspoke when he said it seemed like it was
15 covered, that there was lots of blood on it.

16 The FBI guy who looked at it, the swabs,
17 we'll talk about that, Mr. -- Dr. LeBeau, later.
18 But he showed you pictures of those swabs and
19 there was hardly any blood on it. In fact, they
20 looked gray, like fingerprint dust, or something.

21 So, really, we have this and this, which
22 Mr. Stahlke says is consistent with active
23 bleeding. It is also consistent with active
24 planting. So when I first saw this, I thought,
25 you know, what is the source of Mr. Avery's

1 blood.

2 Well, we have heard about how his -- he
3 had blood in the bathroom. And so I looked at
4 these pictures, these were pictures that I
5 believe either Detective Remiker or Sergeant
6 Colborn testified that they went around and took
7 on Saturday night, at the apartment, before there
8 was any kind of seizures of swabs.

9 The first thing you do when you go in is
10 you take pictures and then you start collecting
11 evidence. Well, you look at this particular
12 swab, we'll do a close up on it. It's an awful
13 odd looking blood drop, with a little whole in
14 the middle, as if somebody would dab a Q-tip in
15 it, that was my first thought.

16 And, then, the blood vial. And I offer
17 that -- and we have offered that as a possible
18 source of the blood that's found, Mr. Avery's
19 blood that's found in the RAV4. It was in a
20 public office, in an unsecured area; not in a
21 vault where they keep locked up exhibits only;
22 not down in the basement where they normally keep
23 old files; but in that battered old cardboard box
24 that we saw sitting in the Clerk's Office,
25 because it was -- there were so many requests to

1 see it, from the media and the public, that that
2 made it more convenient.

3 They kept no good log back then, of
4 people who were asking to see files, see any
5 file, that one not withstanding. The clerk, Ms
6 Zigmunt, later tightened that up in, I think it
7 was October of '06, this past year. Now
8 everybody has to sign in before they can look at
9 any file. But back then she admitted that the
10 deputy clerks would be more casual about it. And
11 who would you be more casual about making someone
12 sign in than a police officer, who you would
13 normally trust.

14 So there would certainly be no reason
15 for these clerks to take note or think that some
16 police officer, Lieutenant Colborn, or Sergeant
17 Colborn, I'm sorry, Lieutenant Lenk or Sergeant
18 Colborn, would have any nefarious intent by
19 looking at Mr. Avery's file. And that area of
20 the file where it's kept is sort of screened off
21 from the rest of the unit.

22 And probably more likely, though, is the
23 after hours access that the deputies have. The
24 Manitowoc Sheriff's Department is responsible for
25 security in the courthouse so, understandably,

1 they have master keys that fit all the doors.
2 And how difficult, really, would it be for
3 someone like Lieutenant Lenk or Sergeant Colborn,
4 veteran officers, to come in after hours, or on
5 Saturday morning, and get what they needed. I
6 submit it would be not difficult at all.

7 Now, Mr. Kratz, I can hear him now, he's
8 going to get up here and say, where is the
9 evidence. This is all speculation. Where is the
10 evidence. As if he would expect anybody who was
11 being framed to have a videotape of the officer
12 taking the vial of blood and planting it.

13 Or as if he expects one of these police
14 officers, in front of everybody, under oath, on
15 streaming video on the internet, to admit, oh,
16 yes, of course, I took the blood and planted it.
17 Yes, I would admit that if I did it. Sure, I
18 would go away to federal prison probably but,
19 yeah, rather than lie under oath, I would rather
20 go to prison than admit that.

21 Come on. This is real life. It's not
22 TV. You can't expect a *Perry Mason* moment where
23 you're going to get somebody to admit, to you
24 guys, and everyone else in the world, that they
25 did this.

1 So what do we have, though. We have
2 reasonable inferences that can be drawn and
3 circumstantial evidence, just like they do.

4 The box, you have seen the video, I'm
5 not going to go through all that again, but I
6 want to just remind you, show you the box.
7 Evidence tape is very clearly cut, opened, and
8 the box is resealed with nothing but a piece of
9 scotch tape.

10 This one may show up a little better.
11 Inside the box was the styrofoam container, and
12 it was opened by all of us together, which also
13 had -- which also had evidence tape sealing it,
14 right along here. And on the video, you could
15 see very clearly that that was slit, as if by a
16 razor or scissors, or something sharp. So that
17 one would easily open this sort of clam shell
18 styrofoam container, and there is the vial of
19 blood.

20 The vial of blood has a hole, what
21 appeared to be any way, a hole in the middle,
22 right there, which is where professionals would
23 gain access to the blood, if they need it. But
24 this vial has something more, as even Dr. LeBeau
25 admitted. This vial has blood in between the

1 rubber stopper and the glass, so that the experts
2 who use these things all time, could say, even
3 Dr. LeBeau, I believe is the one, who said this
4 vial, clearly the top had clearly been taken off.

5 So, there's evidence that the box was
6 unsecured and the top had been removed at some
7 point. And the blood is still liquid. Can't
8 really show you it in there, the way they have
9 got it encapsulated in yet another glass tube.
10 You can't really see it, but you did see, I
11 think, in the video, as it was rocked back and
12 forth, the blood was still liquid and, therefore,
13 easily available to plant. And we're only
14 talking about a few drops. That's all that's
15 necessary to leave the amount of blood that they
16 found in that RAV4, a few drops, that's all.

17 Now, Lieutenant Lenk, whose name keeps
18 coming up at every important part of this case,
19 had reason to know that that blood of Mr. Avery's
20 was sitting in the courthouse. Because he was
21 the evidence tech -- the whole head of the
22 evidence department for Manitowoc. And he signs,
23 in 2000 -- what's the date here -- 2002,
24 September, he signed Exhibit 214, as the
25 transmitting, or submitting officer to submit

1 these items to the Crime Lab.

2 Now, I'm not trying to mislead you here,
3 these items do not include the vial that we're
4 talking about. But they clearly show that these
5 came from exhibits held by the court since the
6 end of the trial. And yet Lieutenant Lenk would
7 have you believe, in his testimony, that he had
8 no idea that that 1985 court file had any kind of
9 exhibits like that in there.

10 The one thing they did look for
11 fingerprints on, they looked for Lenk and
12 Colborn's fingerprints on the blood vial. No
13 surprise there. Second nature with cops when
14 they handle anything like that, a biological
15 piece of evidence, they are going to put their
16 gloves on. So, okay, they look there, don't find
17 any. But, again, they're looking for something
18 that they know isn't going to be there in the
19 first place, and trying to present that as if it
20 means something.

21 So then there's the question of the
22 opportunity to plant blood. And that's why we
23 heard all this testimony about the scene and
24 whether it was secure or not secure. Well, keep
25 in mind that that sheriff's department, even

1 though their bosses said, within 45 minutes of
2 getting there, that we're turning over this
3 investigation to Calumet, the one item, the one
4 item on that 40 acre property that they knew was
5 important, the main piece of evidence, was that
6 RAV4.

7 And they kept their officers in control
8 of it for four hours. Talk about the fox
9 guarding the hen house here, ladies and
10 gentlemen. Come on. Is that just a coincidence,
11 or is that Lenk and Colborn having some influence
12 here?

13 How carefully was it being watched?
14 Mr. Kratz told you that it was being maintained
15 very securely and carefully. Well, we heard that
16 until Special Agent Fassbender arrived at 2:25,
17 there was no log at all of who was coming and
18 going, looking at this main piece of evidence
19 that they knew about.

20 They rely on two civilians, Nikole and
21 Pamela Sturm, to be their watch dogs, so they can
22 see from this crusher, distance 369 feet, I think
23 it was, Mr. Austin measured. And, you know, I
24 don't fault the Sturms. I mean, its revision is
25 history, for them to say that they were watching

1 that carefully the whole time they were there,
2 that far away, to make sure nobody, even a police
3 officer, approached.

4 Why would they care. Once they knew it
5 was Teresa's vehicle, you know, the sad news that
6 it was, that's where their attention would be
7 drawn. They weren't watching this to see who
8 approached the RAV4.

9 And there was a tarp over the RAV4, for,
10 now, we find out, for an hour apparently,
11 according to the digital signatures that we can
12 find on digital photographs. And a tarp that's
13 built up in such a way that it's practically a
14 tent. That's not the best picture, but from a
15 distance, this large tented over object, being
16 very careful not to have the tarp touch the
17 sides, with a nice little opening here.

18 Now, maybe that's not when it was
19 planted, but it's certainly an opportunity.
20 Probably more likely is that it's getting dark,
21 and while the officer -- I don't believe, by the
22 way, that there was any testimony that Mr. -- or
23 Sergeant Orth was seated where Mr. Kratz said he
24 was. But even not withstanding that, what we did
25 hear was that there's other means of ingress and

1 egress to that property.

2 Sergeant Orth testified that while the
3 officers were somewhere in this area, remember
4 this picture was taken after the vehicle had been
5 removed, but that there's -- there's ways in and
6 out from the west. I will show you in a moment,
7 if I can find the overhead.

8 A little farther up, one can see the --
9 how the roads down here, we have lots of ways to
10 get in and put that -- First of all, for someone
11 to plant the vehicle. And, secondly, for anyone
12 to approach it while it's there. And an even
13 more distant shot that shows all the ways in to
14 this plot of land.

15 So while maybe directly to the south of
16 that berm it is not immediately accessible,
17 there's all these other ways in from here, or
18 from here. When somebody who knows the area,
19 perhaps someone who's been a patrol sergeant for
20 many years, knows the county like the back of his
21 hand, is going to know how to get to that RAV4.

22 Then we have this whole question of
23 whether the vehicle is locked or not. Well, the
24 Sturms said they thought it was locked, but then
25 when they were questioned more carefully it turns

1 out that Nikole didn't check the rear tailgate.
2 She checked it with her sleeve, the other four
3 doors, but not the rear tailgate.

4 If it was locked, by the way, who do you
5 go to when you lock your keys out. Most of the
6 time you go to call the cops. Who better knows
7 how to open up a car, quickly, than police? So
8 the fact that it was or wasn't locked isn't
9 crucial in this case, in my estimation.

10 But on this evidence, it's not entirely
11 clear, when it gets to the Crime Lab, it really
12 is locked. You will have to rely on your memory
13 for that, but I think the record is unclear,
14 frankly.

15 There is also, I want to point out, all
16 you would have to open, by the way, are two
17 doors, to put the blood where it was found. The
18 driver's side, you can reach everything in that
19 front seat and that one rear passenger door. So
20 you wouldn't have to have them all open and
21 sitting in the car in order to do this.

22 And then we have the interesting
23 circumstance of Lieutenant Lenk and his behavior
24 on November 5th and since then, in which he
25 testified, in a prior hearing in this case.

1 Lieutenant Lenk is the only officer, the only
2 witness in this case who was -- who has lied
3 under oath. He gave sworn testimony one day that
4 he didn't get to this site until 6:30 or 7:00,
5 when it is getting dark, but came in front of you
6 today and says, again, under oath, that it was
7 2:00.

8 Well, what happened in the interim? He
9 forgot about the logs. And when you look at the
10 logs, he signs out, but he never signs in.
11 Fassbender had those logs starting at 2:25. So
12 lo and behold, Lenk now appears on the scene at
13 2:00, to explain why he never logged in. Because
14 otherwise the alternative is, he comes at 6:30 or
15 7:00 and evades the guard that's doing the log.
16 That doesn't look good either.

17 So ask yourself, what evidence there is,
18 what inferences you can draw from a witness who
19 gives two different versions, under oath, about a
20 critical point like this. His whereabouts, by
21 the way, that entire day, he never writes a
22 report.

23 So, I also expect, again, because they
24 get to go last, I'm having to anticipate, and you
25 may have to answer some other questions that they

1 raise. But I expect that they are going to say
2 this would have to be this complicated wide
3 ranging conspiracy in order to frame Mr. Avery.
4 Not true. Not true at all. This could be done
5 by two officers, really one officer, the one
6 officer who keeps coming up, Lieutenant Lenk,
7 whose name is on the evidence transmittal from
8 the 1985 case, just a couple years earlier.

9 Lieutenant Lenk, who shows up on
10 November 5th without logging in. Lieutenant
11 Lenk, who finds the magic key. Lieutenant Lenk,
12 who four months later, four months after
13 Manitowoc no longer is needed, with no legitimate
14 reason, is back at that scene on March 1st and
15 what's found the next day, the magic bullet,
16 which we'll talk about in a moment.

17 Actually, let's talk about it now.
18 Again, every time they try and -- Every time they
19 find something that they should have found
20 before, it was because, oh, that prior search was
21 just for a missing person. We signed a search
22 warrant affidavit in which we said we were
23 looking for evidence of a homicide. But, oh, we
24 were just looking for a missing person, we didn't
25 know what we were looking for.

1 They are in that garage on November 6th,
2 for an hour and 47 minutes, three officers. They
3 find 10 or 11 shell casings, but they found -- if
4 they saw a bullet, don't you think they would
5 pick up that bullet? Don't you think that might
6 be important?

7 Now, where was it found? Right smack
8 dab in the middle, one of them. This is the
9 March 1st photo, but No. 9, right as you walk in
10 the door, the main overhead door, it's sitting
11 right there in a crack. Now, to you and I, that
12 may not look like much, but to an officer who's
13 looking for -- if they found .22 shell
14 cartridges, is going to be looking for a bullet,
15 that's going to be pretty obvious. But it's not
16 found until March 1st. And then the other, most
17 important one, is found back here, up against the
18 wall.

19 Now, one or two things had to happen,
20 either they missed it, during the first search,
21 or the scene had been altered between the first
22 search and March 1st. And, in fact, we know
23 that's what happened. We had the officers
24 identify, look at this, there's a different car
25 in there, there's this big engine hoist.

1 Mr. Avery wasn't altering it, but other people in
2 his family obviously had access, someone's car
3 was parked in there. Things probably moved
4 around, who knows.

5 But then we have testimony from Rollie
6 Johnson, about his many gofer hunts. He says
7 that if you go out there now, when the snow
8 melts, you will find his .22 shells all over the
9 place, including right -- most likely in that
10 garage. His gun, his .22 and, yeah, those shell
11 casings were fired in that .22, from that .22,
12 you can tell that because of the way the pin
13 hits.

14 But, according to Mr. Johnson, his --
15 the remnants of his firings, even years from now,
16 are probably still there. Especially if you
17 think about that, the Item FL, No. 23 that's
18 under the air compressor. That probably hasn't
19 been moved in years. Who knows how long that
20 bullet had been there.

21 It didn't have Teresa Halbach's DNA on
22 it, which we will talk about it in a moment. And
23 that bullet is probably totally irrelevant to
24 this case. Just one of many residues left over
25 from Mr. Johnson's target practices and whatnot.

1 I'm not sure it was entirely clear, so I
2 just want to go over with you and make sure it's
3 clear. The shell casings, we have two bullets
4 and 11 shell casings. The shell casings,
5 Mr. Newhouse was able to identify, came from that
6 gun, but he can't say that the bullet, the
7 ultimate bullet, FL, came from any of those shell
8 casings. And he can't say that Mr. Avery, for
9 that matter, ever handled any of them because
10 nobody did any fingerprints of them.

11 And, then, the second bullet, the one
12 they showed you that's down in the crack, that
13 was designated as Item FK, Mr. Newhouse said he
14 could not match to the gun, the .22 caliber
15 Glenfield Marlin that was found in Mr. Avery's
16 bedroom. He said that all he could say was that
17 it would come from a class -- gun of a similar
18 class, which I think included even a pistol that
19 we talked about, with a different brand name.

20 But we know, that on that very property,
21 the Avery 40 acre salvage yard area, there were
22 other, at least one other, maybe two, .22
23 Glenfield Marlin rifles. In Bobby Dassey's
24 bedroom, is one of them, exactly the same model,
25 one of the most common models in the world.

1 So, even Mr. Newhouse couldn't say
2 whether that bullet had any connection at all to
3 this case, or to Teresa Halbach, or even to the
4 gun that was found in Mr. Avery's bedroom, Rollie
5 Johnson's gun. He did say, however, that that
6 one item, under the air compressor, came from
7 that gun and no other.

8 And when I questioned that, how reliable
9 is that degree of science anyway. We're talking
10 about these eyeball comparisons to these --
11 comparison microscopes. It sounds very much like
12 the hair comparison analysis that had been
13 discredited years ago. And I predict this
14 so-called science is the next to go.

15 But at any rate, he was very defensive
16 about his field, perhaps understandably, but when
17 he wouldn't even admit that DNA is more objective
18 than this comparison thing he does, you got to
19 wonder. And, you also got to wonder why he
20 didn't show you the photos of the comparison of
21 the bullets, side by side, and neither did the
22 State.

23 He didn't want you to see those
24 comparison's, Mr. Newhouse, because he was afraid
25 when you looked at them you would see what I saw,

1 which is there's a lot of differences between
2 those two fields of view. And that his opinion,
3 that it came -- that they are one in the same,
4 they came from the same rifle, is questionable.

5 But, putting all that aside for a
6 second, even if he is correct, that that Item FL
7 that was fired from the .22 rifle that was
8 found -- Rollie Johnson's rifle, found in
9 Mr. Avery's bedroom, that still doesn't mean it's
10 connected to this case with any relevance.

11 Look at first, Mr. Olson, who does the
12 lead analysis from the fragments of the cranium
13 bones that he found. He said it's 99 percent
14 lead. Well, Mr. Newhouse, in his notes, and I
15 talked to him about this as well, he made a point
16 that this -- Remember he talked about the two
17 kind of bullets, some which are lead and some
18 which were coated.

19 And this one, I believe he said, was
20 coated with copper coating. Both of these
21 bullets -- fragments that he found, were coated
22 with copper. Where's the copper? I asked
23 Newhouse, did you -- did you try and compare that
24 -- the lead, little pieces of lead that he saw in
25 those x-rays, with the type of lead that's in

1 Item FL. And he said, no, he wasn't asked to.

2 So without some kind of connection
3 between Teresa Halbach and that bullet, the
4 bullet has no relevance in this case. It's just
5 a random fragment, that's found in an old garage,
6 that means nothing.

7 And so we come to Sherry Culhane. Now,
8 you know, one of the odd things about trying a
9 case with this kind of publicity, where other
10 people can watch at home, or wherever, is that
11 you get some feedback about how you do. Some of
12 it not so good. And some people told me maybe I
13 was a little hard on Sherry Culhane.

14 And if you think that, you know, I
15 apologize if I offended anybody with my
16 cross-examination of her, but I ask you not to
17 hold it against Mr. Avery. Because I have a job
18 to do and as an advocate, I need to point out, if
19 someone goes over the line and goes too far, you
20 have to understand it.

21 Now, I don't have a problem with almost
22 everything that Sherry Culhane did in this case,
23 and I said so. I haven't been up here disputing
24 her statistical calculation. I haven't disputed
25 any of her -- the Power Points where she's lining

1 up the profile of one to the next.

2 And it's true that she did help
3 exonerate Mr. Avery in 2003, although she sat on
4 it for a year and he spent an extra year in
5 prison, she did exonerate him by finding an
6 exclusion and then a match to Mr. Gregory Allen.
7 And we appreciate that. And I didn't mean to not
8 appreciate that.

9 But I also pointed out, it's not like
10 she's a defense witness either. She helped
11 convict him in 1985, with this now discredited
12 science of hair comparison analysis, where she
13 rendered opinions to jurors just like yourself.
14 So most of what she did in this case was fine; in
15 fact, it was more than fine. Because it really
16 excluded Mr. Avery from -- either Teresa Halbach
17 from all these items, or Mr. Avery from the other
18 items. Really the other way around, she's
19 looking for Teresa Halbach's DNA in incriminating
20 places. And she doesn't find it.

21 So I can imagine how frustrating it
22 might be when you get a phone message that tells
23 you this, early on, try to put her in his house
24 or garage. Now, this is not blind testing, by
25 any means. These agents are telling Ms Culhane

1 what they want. And this is November 11th.

2 Well, here it is, she's working on this
3 bullet fragment now, in March. And she still has
4 not found one item that links Teresa Halbach to
5 Mr. Avery's house or garage. So she's got to
6 feel some pressure. This is the biggest case of
7 her career. The biggest case the Crime Lab has
8 ever had: 380 items, 180, I think, submitted just
9 to her unit.

10 It's almost five months late and nothing
11 has been found. So when she gets this last
12 bullet fragment, she recognizes, I think she
13 said, it's a probative piece of evidence. She
14 knew what it was. And when she gets this
15 contaminated test, the pressure is on for her to
16 go way out on a limb, farther than she's ever
17 gone in her life. Never before has she ever
18 asked to deviate from a protocol to make an
19 inclusion, until this case.

20 Now, she probably convinced herself that
21 it's okay because it's just in the control, who
22 cares. There's no evidence that the bullet is
23 contaminated, right? Well, we talked about that,
24 what controls are, and why they have them, and
25 how you can find contamination in controls very

1 easily, because if a control has anything but
2 zero DNA, it's been contaminated.

3 What you can't tell is when a piece of
4 evidence shows up with someone's DNA, you can't
5 tell whether it's there because it has been
6 contaminated or not. And so what you do is, you
7 run a control. And the protocol says, if that
8 control is contaminated, you toss it out, and
9 that's the end of it. Because they know, from
10 their own tests, that there's cross contamination
11 that can occur from one evidence item to the
12 next. And they can never rule it out if there's
13 a contaminated control.

14 So where is Teresa Halbach's DNA coming
15 from? Ms Culhane says, she's theorizing and she
16 thinks, well, maybe -- maybe I'm talking too much
17 or I'm too close to the bench and that that's how
18 her DNA got on there. But in truth, she doesn't
19 know how her DNA got on there.

20 And what we do know is, that Teresa
21 Halbach's DNA was right there at her bench, right
22 underneath the same bench that she's working on,
23 is her storage area. We talked about the central
24 storage area for evidence. She checked it out in
25 November. She never put it back until mid April,

1 I think it was.

2 And all that while, she's got Teresa
3 Halbach's DNA, from the RAV4, in the cargo area,
4 sitting right there on her bench. That's a bad
5 practice right there. But when you get a
6 contaminated control, you can't tell how and
7 whether Teresa Halbach's DNA ended up there in
8 the same extraction mechanism that she's doing or
9 not. You just can't tell.

10 And their own logs, their own
11 contamination logs that I introduced, talk about
12 how difficult it is. We went through it. I
13 won't go through it again with you. But there
14 are instances in here where it specifically says,
15 evidence from one case has been contaminated into
16 another.

17 And they look and they try and figure
18 out why, corrective measures. And they can't
19 figure it out. They can't figure it out. So how
20 are we supposed to figure it out? How are you
21 supposed to figure it out? You can't. And
22 that's why the protocol says, you toss it out and
23 you do it over.

24 Only she had a problem, because she had
25 used it all up. She took a chance, rather than

1 trying to swab it, to put it in this buffer and
2 dissolve it all. And she had a one shot, one
3 chance with this DNA test. And when it came back
4 contaminated, she was kind of stuck, you know,
5 this was probative.

6 And so she went out on that limb and
7 said, I'm asking for a deviation from the
8 protocol. We're going to call this Teresa
9 Halbach's DNA. And why is that so important?
10 Why -- Why do we know that it's unreliable? What
11 else is there to tell us, maybe, that it's an
12 unreliable conclusion? It's the only place. All
13 these other items, it's the only thing that's
14 ever come up with Teresa Halbach's DNA.

15 You people look a little bit tired,
16 anybody want to stretch for a moment? Would you
17 like to get up and stretch? Is that okay, Judge?

18 THE COURT: That's a good idea.

19 ATTORNEY BUTING: All right. Let me --
20 There's one other area, though, where -- that we
21 have to talk about, that Mr. Avery's DNA is found
22 on. And that's the hood latch. But that's the most
23 easy -- easiest to understand, really, because --
24 First of all, note that it's not found until month's
25 later, which means that it wasn't found in the first

1 sweep of the car that Sherry Culhane does.

2 And who followed Sherry Culhane into
3 that vehicle, who's the next person? The first
4 thing they do is DNA, so that no one is
5 contaminating anything. Next one to come in is
6 Mr. Stahlke, the blood spatter guy.

7 He admits he is leaning in, he's got his
8 hands in there. He's touching. And I think he's
9 even -- I don't remember if he admits actually
10 touching the blood itself, but he's certainly all
11 over the area where it was, with his gloves.

12 And then someone asked him to get the
13 odometer reading. So he turns the key and
14 there's nothing. So he realizes maybe the
15 battery is dead. He comes around to the hood,
16 and he said, he didn't change his gloves. And he
17 opens the hood and, then, of course, sees the
18 battery is disconnected. And they have to do
19 something else to get the odometer reading.

20 But that's -- that's the problem with
21 DNA, it's so easily translated -- or transferred
22 in the environment. That's why you are supposed
23 to peel off your gloves. And he didn't.

24 Let's move on to some of the other
25 aspects of this case that are really peculiar.

1 How about a complete lack of any motive for
2 Mr. Avery to kill Teresa Halbach. Why would he
3 kill Teresa Halbach? It's a man who's wrongly
4 incarcerated, spent years in prison. Gets out,
5 has a good lawsuit pending; he's going to get a
6 whole lot of money, in all likelihood. Why would
7 he kill somebody? That makes no sense.

8 First thing that leaps out at you when
9 you heard about this charge, maybe more peculiar,
10 is why Teresa Halbach? Why kill some woman that
11 just comes over and takes pictures of your car
12 four or five times? Why her?

13 And just quickly, this theory that
14 somehow he was luring her over by using the name
15 B. Janda, is completely bogus, because the very
16 same day, one of the other customers did the same
17 thing. You give the name of the owner. Mr. -- I
18 may have it backyards, Mr. Schmitz, I believe,
19 called for -- Mr. Sippel called and left
20 Mr. Schmitz's name because he's the owner and he
21 was the one who was going to be there when the
22 car was looked at.

23 If he is really going to plan to kill
24 Teresa Halbach, specifically, why not just call
25 her on the cell phone? Why leave a paper trail?

1 Why call the office, you know, leave your
2 address, Avery Road? I mean, hello, Avery Road,
3 doesn't take a rocket scientist to trace it back
4 to him.

5 And where was she killed? In the
6 garage? We still don't know, from the State's
7 theory. But think about this, maybe he's got
8 some explanation he's going to come up with here,
9 but if she's killed in the garage and she's
10 burned in the burn pit, what's she doing in the
11 back of the RAV4?

12 He put's her into the cargo area of the
13 RAV4 so he can drive 20 feet around the other
14 side of the building to take her out and put her
15 into the burn pit? Makes no sense at all. It's
16 another reason to suspect that that burn pit is
17 not the original site of burning, because her
18 body was very clearly inside that rear of that
19 RAV4.

20 Why burn the phone, and the camcorder,
21 and the -- or I'm sorry, the camera, and the palm
22 pilot? Why burn those items in your own burn
23 barrel? You are surrounded by quarries. You are
24 out in a rural area. You have got 4,000 junk
25 cars. You have crushed cars you can put it in.

1 Why do you burn it? What's the point?
2 Get rid of it. It's easy to get rid of. Toss it
3 in one of the ponds. Bury it. No one is going
4 to find pieces of metal. Especially, again, if
5 after November 3rd and 4th, it's obvious, the
6 police are looking at you.

7 Mr. Kratz says, the location of that car
8 tells us it was going to be crushed. And think
9 what would have happened if that car -- if
10 Patricia Sturm had not found that car on Saturday
11 afternoon, that car would have been crushed and
12 we would have lost that evidence forever.

13 Well, ask yourself, why wasn't it
14 crushed, already? You got a crusher, I mean, you
15 got a crusher on your property. You got -- 54
16 cars are crushed there. It's obviously used all
17 the time. Why isn't it already crushed on
18 November 5th, especially if you know the cops are
19 looking at you? Common sense.

20 And why try and build this complicated
21 outdoor fire to get rid of a body, when you have
22 got something like this on your property, that
23 can melt aluminum to liquid. Big enough, easily,
24 to do the job you need, if that's what you are
25 going to do. You would use that. But, of

1 course, that doesn't fit with the State's theory,
2 because if you did use the smelter, you wouldn't
3 move the bones back on your property.

4 All right. Let me talk about the FBI,
5 Dr. LeBeau. I suggest he is not a credible
6 witness. And more importantly, the test, for
7 what it was used, for the opinions that were
8 given, is not credible for that.

9 He gets the award for the most absurd
10 expert opinion of anybody that's come into this
11 courtroom and this trial. When he says, I can
12 conclude to a reasonable degree of scientific
13 evidence, that when I test those three items, and
14 don't find EDTA, these other three items that I
15 never bothered to test, they don't have EDTA
16 either.

17 How can you ever make that kind of
18 conclusion? That tells you how sloppy he is with
19 his opinions, how willing he is to give them what
20 they want.

21 Compare his testimony to Dr. Janine
22 Arvizu, who was forthright, not dogmatic. She
23 gave Mr. -- Dr. LeBeau his due. She agreed with
24 him when he was right and pointed out where he
25 was wrong.

1 She said that this protocol is fine,
2 perhaps, the test, if EDTA is, in fact, present.
3 But to then use it beyond that and say that the
4 absence of it, the absence of EDTA by doing this
5 test proves it's not there, goes too far. It
6 even goes beyond the scope of the protocol
7 itself.

8 Because the protocol says that this
9 procedure allows for the screening and
10 confirmation of EDTA in the suspected bloodstain.
11 Doesn't say that you can then conclude, if you
12 don't get it, that's it's not there. And the
13 reason why is -- it took Dr. Arvizu to figure
14 out, I certainly couldn't -- it's this whole idea
15 of limit of detection.

16 The test that he did, injecting
17 something right into the -- into this instrument,
18 this whatever it was, MS/MS thing, that's easy.
19 I mean, yeah, you are going to get a low -- you
20 know, you are going to be able to get a low limit
21 of detection because it's pure, put right into
22 there.

23 It's the extraction process, where you
24 are taking something out of the fabric or a swab,
25 diluting it, extracting it and going through that

1 whole process of filtering, that it becomes more
2 difficult. Your level of detection is now much
3 higher.

4 In addition, the protocol was rushed.
5 Think about that. Think about how this whole
6 thing came about. The FBI has not tested for
7 EDTA in 10 years, since the O.J. Simpson case.
8 His explanation is, because no one asked. Think
9 about that. Why do you think no one asked?

10 First of all, we can't ask for it, as
11 the defense, the defense bar. Only the
12 prosecution can ask for it. What did they do in
13 that case? They screwed it up. They found EDTA
14 and later argued, whether they were right or
15 wrong, we will never know, later claimed, oh,
16 that was just a carryover from a different
17 sample. Well, the jury was told that there was
18 EDTA in that case, look what happened.

19 What prosecutor is going to trust them
20 to do this same kind of test and not screw up
21 their case? This prosecution team. Because they
22 were desperate to try and do something to
23 discredit the defense of planting, whatever it
24 took.

25 And, so, when it normally takes three to

1 four months to develop one of these protocols,
2 they suddenly come up with one in two weeks. And
3 they are testing it and validating it and
4 actually doing the test samples before, as
5 Dr. Arvizu said, before they even got their
6 results of their own competency tests from this
7 procedure.

8 So why is the FBI involved in this case
9 at all? Again, this shows credibility, a lack of
10 it. They try to say, oh, we're concerned about
11 police misconduct. We want our public officials
12 to be truthful. And if there's some officer who
13 is planting, we want to know about it.

14 Well, I asked them, what investigation
15 did you start? Where is the grand jury? What's
16 the U.S. attorney doing? Is there even any
17 investigator on the case from the whole FBI,
18 that's talked to any witness? No.

19 All they have got is this lab that's
20 asked to do this new protocol and here's what
21 they are told. Purpose of this request is to
22 establish the presence of EDTA in the vial of
23 blood, thereby eliminating the allegation that
24 this vial was used to plant evidence. That's it.
25 It's not to find out whether these cops are

1 corrupt. It's to eliminate the defense. So are
2 we surprised at the results? I'm certainly not.

3 The real reason the FBI got involved in
4 this case is because Mr. Avery had the audacity,
5 and, you know, this is what I'm going to hear,
6 probably, how dare he accuse these fine officers
7 and besmirch their reputations.

8 And when that happens, they circle the
9 wagons. Cops, when they get accused of
10 misconduct, they circle the wagons. That's the
11 code of silence, or that's the bond they have.
12 And that's why Calumet and DCI were so quick to
13 jump on the bandwagon, when Lenk and Colborn were
14 professing they did nothing wrong. They had
15 nothing to do with this. And Lenk and Colborn
16 probably counted on that.

17 Quickly, a couple of other peculiar
18 things about the timeline. The -- Bobby Dassey
19 says that he sees Teresa Halbach at 2:45, he
20 leaves at three, and the vehicle is still there,
21 something like that. He has no good way of
22 verifying the time, but he tells the officer,
23 talk to Scott Tadych -- Tadych, he can tell you
24 precisely, is the word he used, precisely what
25 time it was.

1 Well, how does he know that Tadych can
2 tell precisely what time it was that he
3 supposedly is being seen, unless the two of them
4 maybe got together, talked about a story they had
5 come up with.

6 Remember, those two people, unlike
7 anybody else that was asked about an alibi and
8 maybe weren't, but those two people alibied
9 themselves. Without each other, there is no
10 alibi for either one of them. Nobody sees Dassey
11 go hunting in the woods. Taking a shower, by the
12 way, before he goes off hunting, like his Irish
13 Spring soap is going to help attract deer. Come
14 on.

15 And he goes there so that -- he wants to
16 get there before dusk, because that's when the
17 deer feed. I'm not a hunter, but we know what
18 time he left and came home. It was well before
19 dusk, he is home at 5. That doesn't make sense.

20 More importantly, Lisa Buchner, the
21 school bus driver, is a completely disinterested
22 party and she does have a reason to know the
23 time, precisely, because she has got a regular
24 route that she drives, 3:30 to 3:40 every day.
25 School lets out 3:05. She's drives, drops the

1 people off. She's dropping those Dassey boys off
2 at that time.

3 What does she say? She says she saw a
4 woman taking pictures of a van. Now, how many
5 women are out there taking pictures of a van at
6 that same time period. She's honest and says I
7 don't remember if it was Monday, the 31st,
8 Tuesday, the 1st, or Wednesday, November 2nd.
9 That's what she tells Investigator Wiegert on
10 November 7th, just one week afterwards now, when
11 it's fresh in mind.

12 And she's so concerned about it, she
13 went to the barricades on November 5th and said,
14 hey, I think I saw her. I think I saw her. I
15 don't remember what day but, you know. That's
16 what she describes, this woman taking pictures.
17 The State, 16, 17 months later, is able to
18 confuse her, and say, well, yeah, maybe it was a
19 week earlier, maybe it was a couple weeks
20 earlier, but that's not what she said when it was
21 fresh in her mind.

22 The State will argue that the location
23 wasn't right. She said she saw someone taking --
24 she saw her taking the pictures of something down
25 around the turn around circle. And it's true,

1 that's not where Barb Janda's car was, or this
2 van was. It was up the road a ways. Well,
3 either she's mistaken about that or -- and I
4 submit this is a very real possibility -- she is
5 doing a hustle shot, because she's been flagged
6 down on her way out and asked to take another
7 picture. By who?

8 We know it's happened before. We have
9 evidence. Angela Schuster said, just a few weeks
10 earlier, Tom Janda had flagged her down and taken
11 a hustle shot, on the way out.

12 And John Leurquin, the propane driver,
13 yeah, he's not as certain, but he does
14 corroborate Lisa Buchner in that he sees this
15 green SUV around the same time. He doesn't know
16 who's driving, and maybe it wasn't Teresa Halbach
17 at that point. This person who was hustling a
18 shot perhaps, was driving away with. But he
19 recalled it because it was different, wasn't the
20 usual regular vehicles that he always sees.

21 So when the State tells you that Bobby
22 Dassey is this credible witness, who's the last
23 person to see Teresa Halbach alive, maybe he's
24 right, if he's the killer. Or Scott Tadych, his
25 only alibi. He tells him --

1 ATTORNEY KRATZ: Judge, I'm sorry, I'm
2 going to interpose an objection on third party
3 liability. I would like to be heard.

4 ATTORNEY BUTING: I will rephrase that. I
5 will withdraw that.

6 ATTORNEY KRATZ: I don't want it rephrased,
7 I want to be heard.

8 THE COURT: I'm going to let Mr. Buting
9 finish up, then I will hear your objection.

10 ATTORNEY KRATZ: Thank you, Judge.

11 ATTORNEY BUTING: Police, when they
12 interview Mr. Dassey, just accept his story,
13 unquestioning -- unquestioningly. And they accept
14 Mr. Tadych's story. They don't go check out his
15 alibi for later, where he says he is visiting his
16 mother at the hospital. Well, where is the proof of
17 that?

18 Why do you believe him, especially when
19 he tells you that, when he comes back, he sees
20 this fire, and then he knows what time it is
21 because he leaves around 7:45, he wants to get
22 home so he can watch *Prison Break*. *Prison Break*,
23 at 8:00, in Wisconsin. Did they check that out
24 to see what time it comes on?

25 Do you still want to be heard or?

1 THE COURT: You can continue.

2 ATTORNEY BUTING: All right. I will talk
3 briefly about the other, since Mr. Kratz said that
4 these -- Mr. Fassbender and Wiegert were
5 investigating, parallel, these other suspects,
6 including the boyfriends, ex-boyfriends, whatever,
7 but look at what they did. They admit that, yeah,
8 sure, Mr. Avery may be a suspect or a person of
9 interest because we know he was one of the people
10 who saw her on the last day.

11 But who else saw her on the last day,
12 George Zipperer, and look how he behaved. Mr.
13 Avery says, come on in, very cooperative.
14 Zipperer is belligerent. But we didn't know
15 that.

16 Hillegas, former boyfriend, no alibi,
17 didn't even ask him.

18 Male roommate, Mr. Bloedorn, who doesn't
19 report her missing for four days. What's up with
20 that? Don't ask him for an alibi. Where was he?

21 Bradley Czech, male friend with a little
22 bit more personal relationship with her, perhaps.
23 Again, no alibis checked.

24 Mr. Pearce, an employer who never
25 bothers to report her missing, for four days.

1 All of these roles that these people
2 play, the officers admitted would normally, in a
3 normal missing person or homicide investigation,
4 be considered possible suspects that you would at
5 least look at and check out, but not here.

6 And what about all the other people on
7 the Avery property on October 31st? What's up
8 with that? Where are their alibis? Customers
9 and other people who work and live there.

10 And, interestingly, going quickly back
11 to this hustle shot for a minute, I asked, you
12 know, you think maybe -- well, of course, if she
13 was flagged down, there wouldn't be any record in
14 her palm pilot.

15 But if it was a different kind of hustle
16 shot that she was on her way to go do, the FBI
17 technician, or whatever, that came here and
18 talked about the electronics, said that he might
19 have been able to recover that kind of data from
20 the palm pilot, but wasn't asked to. They were
21 concerned about him trying to prove that it was
22 Teresa Halbach's palm pilot, not what was on it.

23 And, then, there's what I consider the
24 mysterious part of Teresa Halbach's life. And I
25 mean no disrespect to the Halbach's family,

1 whatsoever, when I say this. But Teresa had her
2 own private life. We know that. She had at
3 least three circles of friends, I think it was
4 described: Her family, people that she worked
5 with in the community, marketing and whatnot, and
6 the Green Bay friends.

7 And apparently they didn't intersect
8 very much. Because she's missing for four days
9 before anyone reports it. And maybe most
10 interestingly is, we know that on Saturday night
11 she was out, with somebody, or she was -- I can't
12 say she was out with somebody, but we know that
13 she went out, some Halloween party somewhere,
14 bar, wherever, in Green Bay area is what
15 Mr. Hillegas, I think, said he thought, or maybe
16 Mike Halbach.

17 And yet, despite all those fliers that
18 were sent around, all over the state, thousands
19 of them, not one person has come forward to say I
20 was with her Saturday night. Something is weird
21 about that. Especially when you combine it -- I
22 believe Mr. Pearce, I may be misquoting him, but
23 I believe he, at one point, had some thought that
24 maybe she had met somebody on the weekend and
25 that's where she was and why she wasn't showing

1 up.

2 But then we have the weird thing about
3 the voice mail. Why did the police not follow up
4 on this. We were not confused about these
5 records, but I'm glad that Mr. Zimmerman was able
6 to enlighten us, that the messages that are on
7 this exhibit, 372, 18 of them, would not
8 constitute a full mailbox. He said that very
9 clearly.

10 And what he said was, when I asked him
11 if this -- if this persons account was sending
12 out a message when you called, that said mailbox
13 is full, would something more have to be on it
14 than what's on these records. And he said, yes.
15 And he said that, yes, that meant something had
16 to have been erased. Something on her voice mail
17 was erased by somebody.

18 And to do that, you would have to have
19 her password. And I'm not at all accusing the
20 Halbachs of that. But somebody else close, that
21 had her password, and for some reason thought it
22 necessary to erase a message. What was so
23 important on her voice mail, or perhaps so
24 incriminating on her voice mail, that would
25 necessitate somebody, close enough to her that

1 has her password, erasing one or more messages.

2 These are all reasonable doubts, ladies
3 and gentlemen. These are all questions that
4 police and law enforcement ignored, because it
5 points away from Steven Avery, who wouldn't have
6 had her password and points to someone else.

7 Mr. Strang will finish up and give you a
8 little bigger picture in a moment, but I'm
9 confident that you are going to find more than
10 reasonable doubt and find Mr. Avery not guilty.
11 Thank you.

12 THE COURT: All right. Members of the
13 jury, we're going to take a break at this time. I'm
14 going to talk to the attorneys about scheduling.
15 Again, do not discuss this matter during the break.
16 We'll call you back shortly.

17 (Jury not present.)

18 THE COURT: You may be seated. First of
19 all, Mr. Kratz, I will hear your objection at this
20 time.

21 ATTORNEY KRATZ: Thank you, Judge. This
22 Court has entered numerous pre-trial rulings for
23 which Mr. Buting was a party. One of those
24 pre-trial rulings prohibited any reference to a
25 possible third party, that is, a killer, other than

1 Brendan Dassey, without advance ruling of the Court.
2 This Court entered a written order, as I recall, as
3 to that matter.

4 Mr. Buting, in front of this jury,
5 indicated that maybe Bobby Dassey is the killer.
6 There's two things that I ask the Court to
7 entertain: First of all, inquire of Mr. Buting
8 whether that was an intentional violation of the
9 Court's previous ruling; that is, whether he
10 recalled the Court's previous ruling as to third
11 party liability and whether or not Mr. Buting was
12 fishing for a mistrial.

13 And if not, that is, if the Court is
14 unwilling or otherwise able to make its own
15 ruling as to intentional versus negligent
16 reference to Bobby Dassey, we are asking for an
17 admonishment in front of the jury as to the
18 nature; that is, that it intentionally or
19 purposely violated a pre-trial ruling of this
20 Court.

21 Certainly earlier, in Mr. Buting's
22 testimony, when referring to the burn barrels
23 with Bobby Dassey, he had referred to Bobby
24 Dassey as a possible other suspect. However, it
25 wasn't as blatant in calling Bobby Dassey the

1 killer.

2 And I don't know whether Mr. Buting
3 thinks that he's entitled, because he's
4 representing Mr. Avery, to play by a separate set
5 of rules, or to ignore pre-trial rulings of the
6 Court, and it certainly does call for an
7 admonishment and I would suggest it calls for a
8 colloquy, with the Court, as to whether this was
9 an intentional violation of a previous Court
10 order.

11 I would note that, Judge, both Dassey
12 and Tadych were specifically ruled out in the
13 pre-trial rule or the pre-trial order.

14 THE COURT: Mr. Buting.

15 ATTORNEY BUTING: Judge, I'm aware of the
16 pre-trial ruling. I don't believe I exceeded the
17 Court's ruling. When you are doing closing
18 arguments, of course, sometimes you say things
19 differently than you intend. If I did, I certainly,
20 I think, brought it back within the realm of
21 investigative bias, which was the primary point that
22 we're trying to make and throughout this case.

23 But maybe more importantly, the Court's
24 ruling was that we were not allowed to present
25 any evidence, extrinsic evidence, of a third

1 party. But I don't know that that included that
2 we couldn't argue reasonable inferences from what
3 the evidence presented.

4 I don't think I was -- I wasn't even
5 intending to go that far, quite frankly. I was
6 trying to keep a little farther back from that.
7 But I don't think that under *Denny* there's --
8 what they're talking about is presenting evidence
9 trying to point the finger at somebody else.
10 Reasonable inferences, I think, is another matter
11 and I think it's reasonable inference from the
12 evidence.

13 THE COURT: Mr. Kratz.

14 ATTORNEY KRATZ: No further argument,
15 Judge.

16 THE COURT: All right. I'm taking a look
17 at my order, after a 14 page decision, the order is
18 that the defense is precluded from offering any
19 direct evidence to a third party, other than Brendan
20 Dassey participated in the commission of the crimes
21 as charged in the Amended Information. I don't
22 recall that I was asked to place a limit on closing
23 argument. I think there is a differentiation
24 between the two.

25 I don't know how I would have ruled on

1 it, frankly, had I had one, because I don't know
2 that the *Denny* case specifically addresses the
3 issue. I don't know that another case
4 specifically addresses the issue.

5 But my recollection is, and the wording
6 of my order is, that it was directed to the
7 introduction of evidence. I'm not sure that the
8 Court can prevent the defense from arguing
9 inferences on the evidence as it was presented.
10 The State gets a chance to respond in rebuttal.

11 I don't know. I will hear further from
12 the State if you wish, Mr. Kratz, but I'm looking
13 at my order and it only relates to direct
14 evidence. I don't know that I can rely on that
15 order to address your concerns.

16 ATTORNEY KRATZ: If the Court excludes
17 evidence of third party liability, and there's no
18 evidence in the record, how does Mr. Buting think
19 that he can comment on that evidence, or lack of
20 evidence. He can't. I mean, it absolutely flies in
21 the face of the third party liability court order.

22 In other words, Judge, to be precluded
23 from presenting any evidence, but then to be
24 allowed to stand up in front of this jury and say
25 maybe Bobby Dassey is the killer, how could we

1 possibly have notice to either predict that, or
2 to present evidence that -- that might suggest
3 differently. That absolutely flies in the face
4 of the -- if not the words of the order,
5 certainly the intent of that order.

6 THE COURT: Mr. Buting.

7 ATTORNEY BUTING: Well, Judge, as the Court
8 I think has made clear, Mr. Avery, by his not guilty
9 plea, means he isn't the killer, so somebody else
10 has to be. What I was trying to do was simply point
11 out all of the other avenues that the police could
12 have examined and didn't.

13 And I think in the context, overall, of
14 every -- everything else that I have argued in
15 the argument, I think I'm within that. And I
16 don't think there is anything close to a
17 violation of the Court's order barring any kind
18 of direct evidence.

19 Again, it wasn't even my intent to go
20 outside the realm of investigative bias, failure
21 to look at suspects. But if I did, I think in
22 the overall context of the whole argument we have
23 been making throughout this case, I think the
24 jury is not going to be confused and it's going
25 to be clear that that's the purpose for which

1 it's being offered.

2 THE COURT: I -- I don't know, without
3 doing some research, the answer to the question the
4 State is raising here; that is, whether the logical
5 inference from a **Denny** decision that denies the
6 right to introduce evidence provide -- or prevents
7 the defense from arguing on the basis of evidence
8 that was presented, that there's third party
9 liability.

10 Let me suggest this, as I understand
11 what Mr. Buting is saying, he is saying, I may
12 have gotten carried away in the way I worded it.
13 My purpose in making the references was not to
14 suggest that there was evidence in the record
15 that any of these parties committed the crime,
16 but rather that the State did not sufficiently
17 investigate other parties.

18 We're still going to be hearing from
19 Mr. Strang. If Mr. Strang, at the beginning of
20 his argument, clarifies that point for the jury,
21 is that sufficient to address the State's
22 concerns?

23 ATTORNEY KRATZ: We would ask for an
24 admonishment. If that's the Court's ruling,
25 however, that the Court believes that that is a more

1 appropriate resolution of the case, I understand
2 that that's the Court's order.

3 THE COURT: Here's what I am going to do.
4 I'm going to give Mr. Strang a chance to do that
5 when he makes his argument, to clarify it, assuming,
6 Mr. Strang, that you feel the way your co-counsel
7 does about what the intention was.

8 ATTORNEY STRANG: Yeah, I -- More to the
9 point, I have to apologize, I was shortening my
10 closing argument --

11 THE COURT: Don't worry about it, because
12 that's something I'm going to discuss with the
13 parties in chambers. The juror's eyes are starting
14 to glass over. We're looking at your closing, plus
15 rebuttal from the State, I don't think it's fair to
16 the jurors to keep them here as long as that may
17 take.

18 I think both parties will be better
19 served if we come back tomorrow, when the jurors
20 are fresh. I do think, however, it's necessary
21 to address the alternate juror issue, and I'm
22 going to talk with the parties about that, in
23 chambers, before we come back.

24 ATTORNEY STRANG: Do we want to just
25 address, in chambers, what it is I should say, or

1 consider saying? I'm sorry, I just missed that.

2 THE COURT: You will have the evening to
3 think about that.

4 ATTORNEY STRANG: Okay.

5 THE COURT: I'm going to go off the record
6 right now. I will see counsel in chambers for a
7 short conference.

8 (Recess taken.)

9 THE COURT: I will indicate for the record,
10 I met with counsel in chambers and I indicated that,
11 based on the time of day and the fact we have got
12 part of defense argument, plus State rebuttal left,
13 I was concerned that the jurors, certainly by the
14 time we got to the State's rebuttal, would be too
15 tired to appreciate what was being said.

16 The Court has an interest in making sure
17 that the jurors have an opportunity to digest,
18 understand and comprehend the arguments that are
19 given. And while at the start of today, it would
20 have been my preference to complete closing
21 arguments today, sometimes justice takes more
22 time than we plan on in the morning.

23 So what I'm going to do, when the jurors
24 come back, is adjourn for the day. The Court is
25 going to begin the -- because we're as far into

1 closing arguments as we are, I'm going to begin
2 the sequestration process and the jurors will be
3 staying in a hotel tonight. It's my
4 understanding that the parties have a stipulation
5 to propose to the Court concerning the -- at
6 least two of the three alternate jurors.
7 Mr. Strang.

8 ATTORNEY STRANG: We do, your Honor. And I
9 would be happy to take a first stab at the
10 agreement, as I understand it, between the parties.
11 I will preface that by saying that I have explained
12 this agreement to Mr. Avery and I think it's
13 entirely acceptable to him. It's not complicated.
14 We had enough time to talk about it. And I'm
15 satisfied that he both understands and approves the
16 agreement that I will try to articulate now, late in
17 the day.

18 In short, the parties have agreed that
19 each will have an extra peremptory strike, in
20 effect, to be exercised here in the ordinary
21 manner of exercising peremptory strikes. That
22 will remove 2 of the 15 jurors that we presently
23 have, leaving 13, which would be 12 and 1
24 alternate.

25 And, of course, whether the Court keeps

1 an alternate, or how to handle the designation of
2 an alternate, and then what to do with an
3 alternate, is the Court's prerogative and not the
4 parties. But as I understand the agreement here,
5 for purposes of the record, it does encompass one
6 extra peremptory strike for each party, to be
7 exercised now.

8 THE COURT: Mr. Kratz.

9 ATTORNEY KRATZ: For today's purposes,
10 Judge, that is the scope of our agreement, that each
11 party intends to exercise an additional peremptory
12 strike this afternoon.

13 THE COURT: Okay. And this is in lieu of
14 drawing the names of the jurors out by lot, which
15 would be the process contemplated by the statute, in
16 the absence of agreement by the parties.

17 ATTORNEY STRANG: It is, your Honor, from
18 the defense advantage point.

19 THE COURT: Mr. Kratz.

20 ATTORNEY KRATZ: That's my understanding,
21 Judge.

22 THE COURT: And, Mr. Avery, it's correct
23 that you have discussed this with your counsel and
24 you are in agreement with this procedure.

25 THE DEFENDANT: Yes, I am.

1 THE COURT: Thank you. Anything else
2 before we bring the jurors back in?

3 ATTORNEY KRATZ: If I could have just a
4 moment with counsel, your Honor.

5 THE COURT: Go ahead.

6 ATTORNEY KRATZ: We're all set, Judge.

7 THE COURT: All right. You can bring the
8 jury in.

9 (Jury present.)

10 THE COURT: You may be seated. Members of
11 the jury, I understand I told you an hour and a half
12 or two hours ago or so, I don't remember when, that
13 we were going to attempt to complete closing
14 arguments this evening. In light of the point that
15 we're at in the proceedings now, I am concerned that
16 fatigue might be a factor that prevents you, as
17 jurors, from giving the attention that is deserved
18 for the closing arguments.

19 So what we're going to do is adjourn for
20 today and resume the completion of closing
21 arguments tomorrow morning. As I told you at the
22 beginning of the trial, we started out, initially
23 we had four extra jurors, we are now down to
24 three. Because of the fact we're this close to
25 the end of the trial, and I don't want to require

1 the extra jurors to participate longer than is
2 necessary, we have decided that we're going to
3 excuse two of the three extra jurors today.

4 The parties have agreed to a procedure
5 whereby each of the parties will exercise one --
6 will exercise a peremptory strike. If you recall
7 back at the time of initial jury selection,
8 that's how we got from 30 down to 16. So they
9 are going to do that today.

10 When they are done, the strikes will be
11 shown to me. I will identify the two jurors that
12 the parties have selected. I will meet with
13 those two jurors before excusing you today, as is
14 my practice any time alternate jurors are
15 excused.

16 For the 13 of you who are remaining,
17 because of the fact we are well into closing
18 arguments, we are going to begin sequestration
19 this evening. We have hotel accommodations for
20 you. We have dinner arranged for you. And you
21 can decide, when you get on the bus, I guess,
22 whether you want to check in at the hotel first
23 or go to dinner first. But because of the fact
24 we're at this late stage of the proceedings,
25 that's how we're going to handle things.

1 At this time I think the Clerk has a
2 sheet and we will allow the parties to make their
3 stipulated peremptory strike.

4 ATTORNEY KRATZ: Judge, could Mr. Strang
5 and I approach, just very briefly.

6 THE COURT: Yes.

7 (Side bar taken.)

8 THE COURT: Counsel, raised an issue for me
9 that I believe has been dealt with through the media
10 coordinator, but I will address it on the record,
11 since it was raised. And that is, there was some
12 conversation about whether the excused jurors would
13 be available to the media.

14 I'm not going to allow that at this time
15 until a verdict is reached at this case. It is
16 unlikely, but not impossible, that the jurors
17 could be called back. And for that reason I'm
18 not going to have the excused jurors available to
19 the media until a verdict is reached in this
20 case.

21 All right. Based on the information on
22 the sheet, the excused jurors are Terri Temme and
23 Laura Barber. I will meet with Ms Barber and Ms
24 Temme before we leave today. And I am going to
25 excuse the remainder of the jury at this time.

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I will remind the rest of you, again,
that as usual, you are not to discuss the case.
It's especially important, even though you have
heard some of the closing arguments, you cannot
begin your deliberations until all the closing
arguments have been made. So make sure you do
not discuss the case.

The televisions and radios have already
been disconnected in your hotel room, so
hopefully between the lack of available media and
supervision by the sheriff's deputies, that won't
be a problem. But, again, do not discuss the
case, in any fashion, until the Court excuses you
to begin deliberations tomorrow. The 13 people
who are still on the jury are excused at this
time.

(Jury not present.)

ATTORNEY STRANG: Your Honor, maybe just
one -- another quick moment at side bar.

THE COURT: Okay.

(Side bar taken.)

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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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 22nd day of January, 2008.

Diane Tesheneck, RPR
Official Court Reporter

A		
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