

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 26

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** MARCH 17, 2007

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

11 **APPEARANCES:**

12 KENNETH R. KRATZ
Special Prosecutor
13 On behalf of the State of Wisconsin.

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

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

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

20 STEVEN A. AVERY
Defendant
21 Appeared in person.

22 * * * * *

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

1 THE COURT: At this time we're on the
2 record, outside the presence of the jury, in the
3 case of State of Wisconsin vs. Steven Avery, Case
4 No. 05 CF 381. Will the parties present please
5 identify themselves for the record.

6 ATTORNEY KRATZ: The State appears by Ken
7 Kratz and Tom Fallon as Special Prosecutors, Judge.

8 ATTORNEY BUTING: Steven Avery is here in
9 person, your Honor, Jerome Buting and Dean Strang on
10 his behalf.

11 THE COURT: All right. I will indicate
12 we're in the courtroom, outside the presence of the
13 jury at this time to address a written request that
14 was received from the jury; specifically, the
15 request reads as follows:

16 Your Honor, we would like to have the
17 testimony shown or read to us from Sherry Culhane
18 on Monday, February 26, on her DNA results on
19 Exhibit 164. Exhibit 154 (sic) is a .22 caliber
20 rifle. After the Court received that request, I
21 first summoned the attorneys for both sides to
22 chambers, to have a look at it.

23 We, then, had the court reporter
24 research the minutes or her testimony that was
25 taken down on Monday, February 26, from Ms

1 Culhane. I have received pieces of her testimony
2 in three separate parts from that day, listed as
3 pages -- or part of page 32, part of page 34, of
4 what I believe is the morning transcript. And
5 then page 8 and part of page 9 from the afternoon
6 transcript.

7 (Court reporter note: After completing
8 the transcription of February 26, 2007, Trial Day
9 11, the page numbers are 33, 34, 115, 116, 117.)

10 Those portions of the transcript have
11 been shared with counsel. And it's my
12 understanding that counsel for both parties are
13 asking that I read to the jury all of the
14 testimony from the pages I have just referred to.

15 Mr. Strang, is that correct, on behalf
16 of the defendant?

17 ATTORNEY STRANG: Yes.

18 THE COURT: And, Mr. Kratz?

19 ATTORNEY KRATZ: Judge, it's Exhibit 164, I
20 believe you said 154. But 164 is a photograph of
21 the .22 caliber rifle. We have all assumed that the
22 testing, which results find its way in Exhibit 313,
23 that the jury is asking about the testing of the
24 item itself.

25 The rifle itself is Exhibit 247, but we

1 have been able, I think the Court and counsel, to
2 ascertain that they are asking about the results
3 from the item itself, since the exhibit number is
4 the photograph and wouldn't, of course, have DNA
5 results. But we do agree with the Court that
6 those portions of those four pages should be
7 read.

8 THE COURT: Actually, the distinction you
9 may have just made raises a question in the Court's
10 mind. And that is, I'm wondering if we shouldn't,
11 before we bring the juror in -- the jurors in and
12 read this to them, ask them for a clarification to
13 make sure that the exhibit we're talking about is
14 the exhibit they are referencing in their note,
15 since they reference it by a number rather than an
16 exhibit.

17 ATTORNEY STRANG: They just have
18 photographs, your Honor, back there, so --

19 THE COURT: Okay.

20 ATTORNEY STRANG: -- I think it's pretty
21 clear.

22 THE COURT: Well, does the State feel
23 there's a need?

24 ATTORNEY KRATZ: I think they want the item
25 itself, Judge.

1 THE COURT: All right. Well, let me ask
2 this, should I clarify, before we begin, that the
3 Court and the parties assume that they are referring
4 to a photograph of a .22 caliber rifle?

5 ATTORNEY STRANG: Sure.

6 ATTORNEY KRATZ: And perhaps, Judge, that
7 the item itself is Exhibit 247. They are certainly
8 always free, then, to ask additional questions.

9 THE COURT: Mr. Strang.

10 ATTORNEY STRANG: That's fine.

11 THE COURT: Okay.

12 ATTORNEY STRANG: Just clarify or make
13 certain.

14 THE COURT: All right. Anything else
15 before we bring the jurors in? We'll bring the jury
16 in at this time?

17 (Jury present.)

18 THE COURT: You may be seated. Members of
19 the jury, the Court has received your written
20 request to have some testimony read to you,
21 specifically, the request for testimony from Sherry
22 Culhane on Monday, February 26, on her DNA results
23 on Exhibit 164.

24 It's the Court's understanding that you
25 are referring to the rifle that was introduced as

1 Exhibit 247 that is pictured in Exhibit 164. The
2 testimony has been transcribed; it's in,
3 actually, three separate portions of testimony
4 that was given by Ms Culhane on that date and I
5 will read each of those excerpts to you at this
6 time. The answers are all given as part of
7 cross-examination by Attorney Buting, for the
8 defense.

9 The first excerpt reads as follows:

10 Question: As well as the license plates
11 from the RAV4 and to check the .22 caliber gun,
12 Item DD, for any indication of the victim's blood
13 on the barrel, right?

14 Answer: Yes.

15 Question: And also to swab the trigger
16 guard area to compare with Steven Avery?

17 Answer: Correct.

18 And shortly thereafter, the following
19 exchange:

20 Question: And you checked the Item DD,
21 .22 caliber gun; that's a rifle, right?

22 Answer: Yes.

23 Question: You looked for any blood of
24 the victim on the barrel, right?

25 Answer: Correct.

1 Question: You found no DNA of Teresa
2 Halbach on that barrel?

3 Answer: Correct.

4 Question: You looked at the trigger
5 guard as well, not just the trigger guard, but
6 the trigger itself?

7 Answer: Yes.

8 Question: You swabbed both, right?

9 Answer: Yes.

10 Question: And you found no DNA of
11 Mr. Avery, right?

12 Answer: Correct.

13 Then a bit later, the following exchange
14 took place.

15 Question: Now, you also looked, or
16 asked to look, we saw that message earlier, at
17 the -- at .22 rifle swabs that were taken from
18 it, right?

19 Answer: Yes.

20 Question: And the purpose there was not
21 to see if you would find Teresa Halbach's DNA,
22 but to see if you would find Mr. Avery's DNA,
23 right?

24 Answer: Was that item DD?

25 Question: Yes.

1 Answer: I believe I was requested to
2 look for possible blood on the barrel part and
3 DNA from the trigger area.

4 Question: And you found neither,
5 correct?

6 Answer: That's correct.

7 Question: You did not find Mr. Avery's
8 DNA on that weapon anywhere, did you?

9 Answer: On the trigger guard is the
10 only place I swabbed, but, no, I didn't.

11 Question: And you did not find Teresa
12 Halbach's DNA anywhere on the barrel either?

13 Answer: Correct.

14 Question: Are you familiar with
15 close -- close, almost contact-type shootings?

16 Answer: I don't know what you mean by
17 that.

18 Question: Are you familiar with the
19 term blow back?

20 Answer: Yes.

21 Question: You know that if someone
22 shoots another human being with a gun, that's
23 very close to them, there may be blow back
24 spatter of blood onto that weapon?

25 Answer: I assume that's possible.

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Question: Well, that's what you were looking for?

Answer: I was simply looking for bloodstains, yes.

Question: On the barrel?

Answer: Correct.

Question: And you found none?

Answer: Correct.

THE COURT: And that represents the testimony in response to your question. At this time the Court will excuse you to resume your deliberations.

(Jury not present.)

THE COURT: Counsel, you may be seated. Anything else while we're on the record?

ATTORNEY STRANG: No, your Honor.

ATTORNEY KRATZ: No.

THE COURT: Very well.

(Court in recess, jury deliberating.)

1 STATE OF WISCONSIN)
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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 11th day of January, 2008.

Diane Tesheneck, RPR
Official Court Reporter

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.22 [6] 2/19 3/21 5/4 6/11 6/21 7/17 .22 caliber [3] 3/21 5/4 6/21		F
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2		Halbach [1] 7/2 Halbach's [2] 7/21 8/12 hereby [1] 10/6 Hon [1] 1/9 Honor [4] 2/9 2/16 4/18 9/16 human [1] 8/22
2007 [2] 1/8 3/8 2008 [1] 10/15 247 [3] 3/25 5/7 6/1 26 [5] 1/4 2/18 2/25 3/8 5/22		I
3		I'm [1] 4/10 identify [1] 2/5 in [18] indicate [1] 2/11 indication [1] 6/12 introduced [1] 5/25 item [7] 3/24 4/3 4/24 5/7 6/12 6/20 7/24 itself [6] 3/24 3/25 4/3 4/25 5/7 7/6
313 [1] 3/22 32 [1] 3/3 33 [1] 3/9 34 [2] 3/3 3/9 381 [2] 1/5 2/4		J
A	D	January [1] 10/15 JEROME [2] 1/18 2/9 Judge [5] 1/10 2/7 3/19 4/25 5/6 juror [1] 4/11 jurors [2] 4/11 5/15 jury [11]
ability [1] 10/14 actually [2] 4/8 6/3 additional [1] 5/8 address [1] 2/13 afternoon [1] 3/5 agree [1] 4/5 almost [1] 8/15 always [1] 5/8 another [1] 8/22 Answer [20] answers [1] 6/6 Anything [2] 5/14 9/15 anywhere [2] 8/8 8/12 APPEARANCES [1] 1/11 Appeared [1] 1/21 appears [1] 2/6 area [2] 6/16 8/3 ascertain [1] 4/2 asked [1] 7/16 asking [3] 3/13 3/23 4/2 assisted [1] 10/10 assume [2] 5/3 8/25 assumed [1] 3/21 Attorney [3] 1/16 1/18 6/7 attorneys [1] 2/21 AVERY [6] 1/6 1/20 2/3 2/8 6/16 7/11 Avery's [2] 7/22 8/7	date [2] 1/8 6/4 Dated [1] 10/15 day [4] 1/4 3/2 3/8 10/15 DD [3] 6/12 6/20 7/24 DEAN [2] 1/16 2/9 defendant [5] 1/7 1/17 1/19 1/20 3/16 defense [1] 6/8 deliberating [1] 9/19 deliberations [1] 9/12 Diane [3] 1/24 10/4 10/19 distinction [1] 4/8 DNA [10] 2/18 4/4 5/22 7/1 7/10 7/21 7/22 8/3 8/8 8/12 down [1] 2/25	K
B	E	Ken [1] 2/6 KENNETH [1] 1/12 knowledge [1] 10/14 KRATZ [3] 1/12 2/7 3/18
back [3] 4/18 8/19 8/23 barrel [6] 6/13 6/24 7/2 8/2 8/12 9/5 before [4] 1/9 4/11 5/2 5/15 begin [1] 5/2 behalf [6] 1/13 1/15 1/17 1/19 2/10 3/15 being [1] 8/22 believe [3] 3/4 3/20 8/1 best [1] 10/13	each [1] 6/5 earlier [1] 7/16 either [1] 8/12 else [2] 5/14 9/15 examination [1] 6/7 excerpt [1] 6/9 excerpts [1] 6/5 exchange [2] 6/19 7/13 excuse [1] 9/11 exhibit [13] Exhibit 164 [4] 2/19 3/19 5/23 6/1 Exhibit 247 [2] 5/7 6/1	L
		later [1] 7/13 Law [2] 1/16 1/18 license [1] 6/10 listed [1] 3/2 looked [3] 6/23 7/4 7/15 looking [2] 9/2 9/3
		M
		machine [1] 10/10 made [1] 4/9 make [2] 4/13 5/12 MANITOWOC [2] 1/1 10/2 MARCH [1] 1/8 matter [2] 10/7 10/13 mean [1] 8/16

M	reference [1] 4/15 referencing [1] 4/14 referred [1] 3/14 referring [2] 5/3 5/25 reported [2] 1/24 10/6 reporter [5] 1/25 2/23 3/7 10/5 10/19 represents [1] 9/9 request [5] 2/13 2/15 2/20 5/20 5/21 requested [1] 8/1 research [1] 2/24 response [1] 9/10 results [5] 2/18 3/22 4/2 4/5 5/22 resume [1] 9/11 rifle [7] 2/20 3/21 3/25 5/4 5/25 6/21 7/17 right [10] 2/11 5/1 5/14 6/13 6/21 6/24 7/8 7/11 7/18 7/23 RPR [2] 1/24 10/19	took [1] 7/14 transcribed [2] 6/2 10/11 transcript [6] 1/23 3/4 3/6 3/10 10/8 10/12 transcription [2] 3/8 10/11 TRIAL [3] 1/4 1/4 3/8 trigger [6] 6/15 7/4 7/5 7/6 8/3 8/9 true [1] 10/12 type [1] 8/15	
N	need [1] 4/23 neither [1] 8/4 none [1] 9/7 note [2] 3/7 4/14 notes [1] 10/9 number [2] 4/3 4/15 numbers [1] 3/9	U understanding [2] 3/12 5/24	
O	Official [3] 1/25 10/4 10/19 only [1] 8/10 onto [1] 8/24 outside [2] 2/2 2/12	V very [2] 8/23 9/18 victim [1] 6/24 victim's [1] 6/12	
P	page [5] 3/3 3/3 3/5 3/5 3/9 pages [3] 3/3 3/14 4/6 part [5] 3/3 3/3 3/5 6/6 8/2 parties [3] 2/4 3/12 5/3 parts [1] 3/2 Patrick [1] 1/9 perhaps [1] 5/6 person [2] 1/21 2/9 photograph [3] 3/20 4/4 5/4 photographs [1] 4/18 pictured [1] 6/1 pieces [1] 3/1 place [2] 7/14 8/10 PLAINTIFF [1] 1/4 plates [1] 6/10 please [1] 2/4 portions [3] 3/10 4/6 6/3 possible [2] 8/2 8/25 prepared [1] 10/8 presence [2] 2/2 2/12 present [3] 2/4 5/17 9/13 pretty [1] 4/20 proceedings [2] 1/23 10/13 Prosecutor [2] 1/12 1/14 Prosecutors [1] 2/7 purpose [1] 7/20	W want [1] 4/24 way [1] 3/22 we [10] 2/16 2/23 3/21 3/25 4/5 4/10 4/11 5/2 5/15 7/16 We'll [1] 5/15 we're [4] 2/1 2/12 4/13 9/15 weapon [2] 8/8 8/24 while [1] 9/15 Willis [1] 1/9 WISCONSIN [7] 1/1 1/3 1/13 1/15 2/3 10/1 10/6 wondering [1] 4/10 wouldn't [1] 4/4 written [2] 2/13 5/19	
Q	question [22] questions [1] 5/8		
R	raises [1] 4/9 rather [1] 4/15 RAV4 [1] 6/11 read [6] 2/17 3/13 4/7 4/12 5/20 6/5 reads [2] 2/15 6/9 received [4] 2/14 2/20 3/1 5/19 recess [1] 9/19 record [3] 2/2 2/5 9/15	S said [2] 3/20 10/13 saw [1] 7/16 seated [2] 5/18 9/14 separate [2] 3/2 6/3 shared [1] 3/11 Sherry [2] 2/17 5/21 shootings [1] 8/15 shoots [1] 8/22 shorthand [1] 10/10 shortly [1] 6/18 should [2] 4/6 5/2 shouldn't [1] 4/10 shown [1] 2/17 sic [1] 2/19 sides [1] 2/21 simply [1] 9/3 since [2] 4/3 4/15 someone [1] 8/21 spatter [1] 8/24 Special [3] 1/12 1/14 2/7 specifically [2] 2/14 5/21 ss [1] 10/1 STATE [9] 1/1 1/3 1/13 1/15 2/3 2/6 4/22 10/1 10/5 stenographic [1] 10/9 STEVEN [5] 1/6 1/20 2/3 2/8 6/16 STRANG [4] 1/16 2/9 3/15 5/9 summoned [1] 2/21 swab [1] 6/15 swabbed [2] 7/8 8/10 swabs [1] 7/17	
	T taken [3] 2/25 7/17 10/9 talking [1] 4/13 Teresa [3] 7/1 7/21 8/11 term [1] 8/19 Tesheneck [3] 1/24 10/4 10/19 testimony [9] 2/17 2/24 3/1 3/14 5/20 5/21 6/2 6/3 9/10 testing [2] 3/22 3/23 their [1] 4/14 themselves [1] 2/5 there's [1] 4/23 thereafter [2] 6/18 10/11 think [3] 4/1 4/20 4/24 THOMAS [1] 1/14 those [4] 3/10 4/6 4/6 6/5 three [2] 3/2 6/3 time [5] 2/1 2/13 5/16 6/6 9/11 Tom [1] 2/7		