

STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

JURY TRIAL
TRIAL DAY 2

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: APRIL 17, 2007

BEFORE: HON. JEROME L. FOX
Circuit Court Judge

APPEARANCES:

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

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

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

MARK R. FREMGEN
Attorney at Law
On behalf of the defendant.

RAYMOND L. EDELSTEIN
Attorney at Law
On behalf of the defendant.

BRENDAN R. DASSEY
Defendant
Appeared in person.

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Reported by Jennifer K. Hau, RPR

Official Court Reporter

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1 (Reconvened at 8:34 a.m.)

2 THE COURT: Morning counsel.

3 ATTORNEY KRATZ: Morning.

4 THE COURT: We're going to resume State vs.
5 Dassey, 06 CF 88. Uh, Mr. Kratz.

6 ATTORNEY KRATZ: Thank you, Judge. The
7 State appears by Calumet County District Attorney
8 Ken Kratz. The, um, uh, State also appears by
9 Assistant District Attorney -- Excuse me.
10 Assistant, uh, Attorney General Tom Fallon,
11 Assistant District Attorney Norm Gahn also
12 appearing as special prosecutors.

13 ATTORNEY FREMGEN: Attorney Mark Fremgen
14 appears with Attorney Ray Edelstein, and the
15 defendant appears personally.

16 THE COURT: You may call your first
17 witness.

18 ATTORNEY KRATZ: Thank you, Judge. The
19 State will call Bill Tyson to the stand.

20 THE CLERK: Please raise your right hand.

21 **WILLIAM TYSON,**
22 called as a witness herein, having been first duly
23 sworn, was examined and testified as follows:

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

1 THE WITNESS: William Tyson, T-y-s-o-n.

2 **DIRECT EXAMINATION**

3 BY ATTORNEY KRATZ:

4 Q Mr. Tyson, please tell the jury how you're
5 employed?

6 A I am a patrol sergeant with the Calumet County
7 Sheriff's Department.

8 Q If you'd speak up just a little bit, we'd
9 appreciate it. How long have you been employed
10 with the Calumet County Sheriff's Department?

11 A I've been employed with the Sheriff's Department for
12 15 years approximately.

13 Q And could you describe, please, for the jury your
14 general duties with the Sheriff's Department?

15 A Currently, like I said, I'm a patrol sergeant, so I
16 supervise -- I'm the immediate supervisor for the
17 patrol staff. Um, prior to that I was a road
18 officer.

19 Q Um --

20 A My responsibilities as road officer were to respond
21 to call to service, things like that. I did have
22 specialized training as an evidence technician, um,
23 back in 1994, which I processed crime scenes, things
24 of that nature.

25 Q The specialized training, and I assume your

1 experience in, um, being an evidence tech, um,
2 what more, specifically, does that entail, if you
3 could tell the jury?

4 A The specialized training, um, re -- respond to a
5 crime scene. You know, certain officers can do that
6 if they have this specialized training. You take --
7 you look for pieces of evidence. Um, you can collect
8 the evidence, take it back, process the evidence
9 looking for fingerprints, DNA evidence, things of
10 that nature.

11 Q Were you employed in that capacity on the 5th of
12 November, 2005?

13 A Yes.

14 Q And on the 5th of November, 2005, were you asked
15 to, uh, respond to a scene known as the Avery
16 Salvage Yard?

17 A Yes.

18 Q Could you tell the jury, please, what were your
19 first duties upon your arrival at that scene?

20 COURT REPORTER: Mr. Kratz, one moment
21 please.

22 (Wherein break was taken to fix a
23 technical problem.)

24 COURT REPORTER: Let's try it again.
25 You can continue where you left off.

1 ATTORNEY KRATZ: If I can remember.

2 Q (By Attorney Kratz) Uh, your first duties on
3 your arrival at the scene, if you could describe
4 that for the jury?

5 A Sure. Um, upon arriving at the scene, I was directed
6 to the lower portion of the junkyard area where
7 Teresa's vehicle was located. Uh, my
8 responsibilities were to maintain security around the
9 area where her vehicle was located.

10 Q Thereafter, um, Sergeant Tyson, because of your
11 evidence technician training, were you assigned
12 with other officers and put into what's called a
13 search team?

14 A Yes. Um, upon arriving at the command center, after
15 clearing from Teresa's vehicle, I was assigned with
16 three deputies from the Manitowoc County Sheriff's
17 Department, um, Andrew Colborn, Detective Dave
18 Remiker, and, uh, Investigator or Detective Jim Lenk.

19 Q And that first, uh, evening, that is, the 5th of
20 November, were you assigned to search a
21 particular building or residence upon that
22 property?

23 A We were instructed to execute the search warrant at
24 Steven Avery's trailer.

25 Q And did you do so?

1 A Yes.

2 Q Now, the trailer, itself, uh, Sergeant Tyson,
3 has, um, several rooms as I understand. Uh, if
4 you could just briefly describe the layout of the
5 trailer for us, I'd appreciate it?

6 A Um, when you walk into the main entrance, you're
7 walking into the living room area. Um, directly off
8 of the living room would be the kitchen. You go down
9 a hallway, uh, there's a bedroom, and there's a
10 bathroom, and then there's the -- the final bedroom
11 at the end of the trailer.

12 Q Sergeant, I'm going to have you look at an
13 exhibit that's already been received. This is
14 Exhibit No. 72 in this case. Um, be so kind,
15 please, as to take, uh, the laser pointer, which
16 has been provided, and a little bit more in
17 detail describe the layout of Mr. Avery's
18 trailer?

19 A This area right here would be the kitchen area. And
20 this area here was the living room area. And this
21 would be the hallway. We got the first bedroom here.
22 The bathroom would be right about here. And this
23 would be Steve's bedroom back in the corner.

24 Q And on the 5th of November, were you asked to
25 complete a search of the entire residence?

1 A Yes.

2 Q Can you describe the, uh, thoroughness or the
3 scope of that particular search, if you can
4 recall?

5 A Um, the first search that was conducted was a quick
6 search of the -- the residence looking for anything
7 obvious. Any signs of Teresa, anything that would
8 lead us in any direction, um, to go on. At that time
9 we were unsure of what we had exactly.

10 Q I'm going to hand you, uh, several photos that
11 will assist in describing your search efforts.
12 Um, we're going to start with the living room,
13 uh, area of, um, Mr. Avery's residence. You've
14 been handed Exhibit No. 79. Can you tell us what
15 that is, please?

16 A This would be a photograph of the computer area in
17 the corner of the living room.

18 Q And did you, with the assistance of other search
19 team members, um, search this particular area of
20 Mr. Avery's living room?

21 A Yes.

22 Q Have you look at the next Exhibit, please.
23 Exhibit No. 80. Tell us what we're looking at
24 here?

25 A Be a photograph of the *AutoTrader Magazine*.

1 Q And, if you recall, could you tell the jury where
2 this particular exhibit -- or this particular
3 item was found on that computer desk?

4 A This one, I believe, Detective Dave Remiker located
5 and it was sitting on top of the desk. The computer
6 desk in the living room.

7 Q Exhibit No. 81, also from *AutoTrader*, can you
8 tell us what that is, please?

9 A This would be a photograph of a bill of sale through
10 *AutoTrader Magazine*.

11 Q And as we look at the large screen, in the lower
12 left-hand corner of this document, actually has
13 the *AutoTrader Magazine* logo; isn't that, uh,
14 correct?

15 A Yes.

16 Q Now, Sergeant Tyson, so that the jury has a
17 better understanding of the, um, methodology, or
18 how law enforcement performs these searches, uh,
19 do different officers have different
20 responsibilities when, um, a -- a search, not
21 only of a residence, but any kind of search is
22 undertaken?

23 A Yes. For example, on this evening my
24 responsibilities were to document what the officers
25 were doing. Um, taking notes after the evidence was

1 collected, take custody of the evidence, and, you
2 know, secure it. So that was my responsibilities.
3 The other officers were searching different areas.
4 You know, I was keeping a -- a watch on them to see
5 what they were finding, documenting the exact minute
6 when something was located, where it was located,
7 things of that nature.

8 Q When these searches, uh, occur, because of the
9 possibility of DNA, or other kinds of trace
10 evidence, uh, do searching officers wear some
11 kind of protective items or gloves?

12 A Yes. All the officers that were in the trailer that
13 I was with had gloves on. Um, and they would change
14 the gloves routinely with, um, each new item that we
15 were looking at, or whatever, so nothing would be
16 contaminated.

17 Q If you could explain that? Just -- just take a
18 moment and explain that a little bit more. If
19 something is handled, you said that, uh, you
20 would then change into a different pair of
21 gloves. Um, why does that occur? Why are you
22 trained that that occurs?

23 A Well, for example, uh, you find a piece of evidence,
24 you may not know exactly what's on it, be it any type
25 of DNA, blood, or anything like that, you pick it up,

1 um, if you don't, you pick up something else, you're
2 going to transfer what you've just had on that item
3 onto a different piece of evidence, and it's
4 contaminated at that point, because now you can no
5 longer say that that -- did that item have the blood
6 on it already or did not? Um, and if you didn't
7 change your gloves, you can't say, um, because you've
8 now transferred it and you contaminated new evidence.

9 Q I don't know if I asked you, and perhaps it's
10 obvious by this particular picture, uh, but where
11 was this bill of sale found within the residence?

12 A Uh, this one, I believe, was found on the -- or in a
13 drawer on -- in the computer desk.

14 Q All right. In the same living room area near the
15 *AutoTrader Magazine* that we've, uh, previously
16 seen; is that right?

17 A Yes.

18 Q Let's move, if we can, to the bedroom area. That
19 is, the master bedroom. Bedroom of Steven Avery.
20 Could you describe, first, um, the size of that
21 bedroom? Then describe the search efforts that
22 occurred in there?

23 A It's a rather small bedroom. Um, you got the queen
24 size bed, I believe, is in the middle of the room.
25 Uh, he had a walkway just to walk around and get to

1 the other side. Then there was closets up against
2 the wall. So it was a smaller room.

3 Um, and when we entered that room, we
4 had, um -- like Sergeant Colborn, he concentrated
5 his efforts on one side, Detective Remiker and,
6 uh, Detective Lenk searched the other area, and I
7 stood pretty much in the doorway watching what
8 was going on, documenting, uh, what was located.

9 Q Now, this is the very first night of the search.
10 Uh, is it fair to say that, uh, you and other law
11 enforcement officers were unaware of what had
12 happened to Teresa Halbach at that time?

13 A That's correct. We didn't know exactly what we had
14 at that time.

15 Q Did you specifically know what you were looking
16 for?

17 A No. We were looking for anything that might lead us
18 in a direction, any clue, any type of evidence.

19 Q All right. I'm showing you now what's been
20 marked as Exhibit No. 82. Describe what that is
21 for the jury, please?

22 A This would be a photograph of, um, the headboard area
23 of Steven Avery's bed.

24 Q Now, a bed -- or on top of, or above, uh,
25 Mr. Avery's bed, uh, could you tell the jury what

1 you observed on the 5th of November?

2 A It's kind of cut off on the photo, but up on top
3 there is a -- right above the bed there was a gun
4 rack, um, which housed two firearms, and there were
5 two long, um, barreled firearms in the gun rack
6 directly above the bed.

7 Q All right. I think we have a better picture of
8 the gun rack, itself, which is Exhibit No. 83.
9 We will move to that. Tell us what we're looking
10 at here?

11 A That is the photo of the gun rack that was, um,
12 directly above the bed.

13 Q All right. Now, at this early search, at this
14 early stage, were those firearms, um, confiscated
15 or seized by you and other officers?

16 A On the night of the 5th, those firearms were not
17 seized. We knew we had opportunity to come back. So
18 those firearms were not taken at that time.

19 Q All right. And that concept, the concept of
20 knowing that you were going to be able to come
21 back or that other law enforcement officers were
22 going to be able to come back, could you describe
23 that a little bit more for the jury?

24 A Well, the scene, itself, um, you know, the whole
25 area, the junkyard, we didn't know exactly where we

1 would be directing our resources. Um, so we knew we
2 had a lot of work to do. This is a very large area.
3 We could not humanly get this done within one
4 evening. Um, so we knew we were going to be there --
5 how long, exactly, we didn't know. But, um, we -- we
6 knew we would be back the next day for sure.

7 Q It turned out to be almost eight days; is that
8 right?

9 A Correct.

10 Q On this particular gun rack, that is, the gun
11 rack in Mr. Avery's, uh, bedroom, how many long
12 guns, that is, how many rifles, were located on
13 that gun rack, if you recall?

14 A There were two.

15 Q The rifle on top, uh -- I'm going to show you a
16 photograph that is Exhibit No. 86. Do you
17 recognize that?

18 A Okay. It appears to be one of the firearms that was
19 located in the gun rack in the bedroom.

20 Q And just so this jury understands, and they'll
21 hear from another witness, but, uh, it wasn't
22 you, but a different officer, actually, on the
23 next day, that seized this weapon; is that right?

24 A That's correct.

25 Q The other, um, weapon, uh, Exhibit No. 87? Tell

1 us what that is, please?

2 A Be a photograph of a muzzleloader. I believe this
3 was the other firearm that was in the gun rack.

4 Q All right. Mr. Tyson, um, within the bedroom,
5 uh, itself, uh, did you, during the search, and
6 your fellow law enforcement officers, uh, locate
7 any items or obvious items that would be capable
8 of restraint? That is, uh, capable of
9 restraining another person?

10 A Yes. Um, Sergeant Colborn located a set of handcuffs
11 and a set of leg irons.

12 Q I'm going to show you what's been, uh, marked as
13 Exhibit No. 84. Tell us what we're looking at,
14 please?

15 A Be a photograph of the handcuffs that were found in
16 Steven Avery's bedroom.

17 Q Do you remember, and can you describe for the
18 jury, from what location those handcuffs were
19 recovered?

20 A I have in my report that it was taken from a
21 nightstand, which was directly next to the desk. Uh,
22 that nightstand has now become known as the bookcase.
23 Um, Sergeant Colborn located the handcuffs and the
24 leg irons in that bookcase, which was right next to
25 the desk.

1 Q All right. You had mentioned some leg irons as
2 well. I'll have you look at Exhibit No. 85.
3 Tell us what, uh -- what this is, please?
4 A It'd be a photograph of those leg irons.
5 Q Do you know what, uh, the handcuffs and leg irons
6 found in Mr. Avery's bedroom were made of?
7 A They're your standard, uh, steel, um, handcuffs and
8 leg irons.
9 Q I show you what's been, uh, marked as Exhibit No.
10 91. The item, itself. Uh, tell the jury what it
11 is we're looking at?
12 A It's a standard set of, um, the iron handcuffs.
13 Q And, uh, are those the handcuffs? And do they
14 look the same and similar today as when they were
15 recovered and seized from Mr. Avery's bedroom on
16 the 5th of November?
17 A Yes.
18 Q I show you Exhibit No. 92. Tell the jury what
19 those are, please?
20 A Set of, um, iron leg irons.
21 Q Once again, uh, Exhibit No. 92, do those look the
22 same or similar, uh, as the day that they were
23 received and recovered from Mr. Avery's bedroom?
24 A Yes.
25 ATTORNEY KRATZ: Thank you, Mr. Wiegert.

1 Q (By Attorney Kratz) Now, Mr. Tyson, the, um,
2 search effort, you said, lasted several days?
3 Were you involved, uh, throughout the entire week
4 in these search efforts?

5 A For most of the days, I was on the property. Um, we
6 were searching other residences, uh, outbuildings,
7 um, areas of land, junked cars, automobiles that were
8 parked in certain areas. Um, so my responsibilities
9 were with other officers throughout the week, but we
10 were doing searches of different residences and areas
11 on the property.

12 Q I'm going to show you -- I think in front of you,
13 you have an exhibit, uh, Exhibit No. 88. Could
14 you look at that, uh, exhibit, please, and tell
15 us what it is?

16 A Evidence photograph of a bleach bottle.

17 Q And do you recognize this particular piece of
18 evidence?

19 A Yes.

20 Q How is it that you recognize it?

21 A This evidence was collected, I believe, on March 1.
22 Um, we were executing another search warrant on the
23 property, and this bottle was taken out of the
24 bathroom/laundry area of Steven Avery's, uh,
25 residence.

1 Q I know that we're jumping ahead a little bit to
2 March 1. Do you understand that search warrant
3 to have been authorized by a judge, uh, after a
4 statement was given by this defendant, Brendan
5 Dassey?
6 A Yes.
7 Q Were you, specifically, looking for a bleach
8 bottle at that time?
9 A Yes. We were given numerous specific items to be
10 looking for. Um, we did the search warrant looking
11 for specifics this time, compared to the time prior.
12 Q Mr. Wiegert's going to hand you Exhibit No. 93.
13 The -- Perhaps, uh, tell the jury what that is,
14 please?
15 A That would be the bleach bottle taken from the
16 bathroom/laundry area of Steven Avery's residence.
17 Q So it was within his trailer, that is, within his
18 bathroom, that this bleach bottle was found; is
19 that right?
20 A That's my understanding. Yes.
21 Q Do you recall, Sergeant Tyson, whether the bleach
22 bottle, uh, was full at the time that you
23 recovered it? Or is -- or that it was recovered?
24 A Okay. Like I said, um, Deputy Riemer collected it.
25 My understanding was is that it was empty at the time

1 of collection.

2 Q All right. Just to go back for just a moment
3 about the concept of search teams on the 1st of
4 March, uh, that is, after, uh, Mr. Dassey's
5 statement was made, after a search warrant was
6 authorized, was a search team put together for
7 the trailer of Mr. Avery again?

8 A Yes. I was assigned with Deputy Rick Riemer and
9 Investigator Wendy Baldwin. Uh, we were sent back
10 into the trailer to execute that warrant.

11 Q All right. Move ahead just a couple of days to
12 the, um, 9th -- Wednesday, the 9th of November,
13 um, you were employed on that day?

14 A Yes.

15 Q And could you tell the jury, please, what your
16 duties were on the 9th of November? This is
17 2005. I'm sorry.

18 A Okay. I'm trying to think back. Um --

19 Q If I ask you a more specific question, would
20 that --

21 A Could you, please?

22 Q -- help you? Sure. Uh, were you involved at all
23 in this case in, um, collecting what are called
24 exemplars or standards?

25 A Yes.

1 Q And could you tell us, uh, how you were involved
2 in that process?

3 A On the 9th, I was directed by, um, Agent Fassbender
4 and Investigator Wiegert, was told my responsibility
5 would be to go to the Aurora Medical Clinic in Two
6 Rivers. Uh, I was informed that search warrants were
7 going to be executed on members of the Avery family,
8 and that they'd be brought to the Aurora Clinic where
9 a physical examination would be done, DNA exemplars
10 would be taken, and my responsibility was to
11 document, photograph, and collect any of the
12 exemplars that were taken by the medical
13 professionals.

14 Q Were one of the individuals brought to the Aurora
15 medical facility, uh, Steven Avery?

16 A Yes.

17 Q Did you have occasion to participate in and
18 document a physical examination of Mr. Avery on
19 the 9th of November?

20 A Yes.

21 Q And during that physical examination, did you
22 note any, um, specific, uh, uh, uh, injury or the
23 remnants of any injury at that time?

24 A Yes. Um, his -- it was his middle finger on the
25 right hand. He had a deep laceration.

1 Q I'm showing you what's been, uh, marked as
2 Exhibit No. 89. Tell us what we're looking at,
3 please?

4 A Yeah. That would be the finger, uh, showing the --
5 the cut to the finger with a scale, uh, for
6 measurement purposes.

7 Q This was a photograph that you took?

8 A Yes.

9 Q Recognizing that you are not a, uh, uh -- a
10 medical professional -- I assume you're not --

11 A Correct.

12 Q -- from what I know of you Sergeant Tyson, but
13 the, uh, observations that you made, uh, and the
14 photograph that is a depiction of that injury,
15 that appear to be a significant or a deep cut to
16 you?

17 A Yes.

18 Q Later that week, in just general terms, could you
19 describe for the jury what your responsibilities
20 were at the Avery salvage property?

21 A At the end of the week we were completing our
22 searches, and, um, my responsibilities were to assist
23 where needed. I was also requested to videotape the
24 entire property. Um, inside the residences, the
25 whole area, to show exactly how we were leaving the

1 property, and to give an idea of what this crime
2 scene all entailed.

3 Q The last series of inquiry I believe I have for
4 you, Sergeant Tyson, is after, um, a statement
5 was received by Mr. Dassey --

6 ATTORNEY FREMGEN: Objection, Judge. At
7 this point there's been no evidence of any
8 statement in the record.

9 THE COURT: Response?

10 ATTORNEY KRATZ: I could ask him if he
11 knows of the statement by Mr. Dassey. It isn't
12 for -- isn't the statement, itself. It's just is
13 to establish what this, uh, writer did. It
14 certainly isn't hearsay, Judge.

15 THE COURT: Well, why don't you try to lay
16 a foundation, then, for the question.

17 ATTORNEY KRATZ: All right.

18 Q (By Attorney Kratz) Sergeant Tyson, have you
19 been involved in this investigation, that is, the
20 investigation which included Mr. Avery and
21 Mr. Dassey, throughout the entire process?

22 A Yes.

23 Q Uh, were you aware that Mr. Brendan Dassey
24 provided a statement to law enforcement
25 officials? Specifically, Investigator Wiegert

1 and Special Agent Fassbender?

2 A Yes.

3 Q Did you know the date on which that statement was
4 given?

5 A I know it was at the end of February. Maybe the
6 28th. March 1. In that area.

7 Q Thereafter -- Sometime thereafter, were you asked
8 to, um, attempt to obtain, uh, some evidence from
9 a area of, uh, Teresa Halbach's SUV?

10 A Yes.

11 Q Could you describe that process for the jury,
12 please?

13 A Sure. Deputy Jeremy Hawkins is also an evidence
14 technician within the Department. He assisted in the
15 processing of a lot of the evidence that we did
16 collect. On April 3 we were requested to go to where
17 we had stored Teresa's vehicle. Uh, Investigator
18 Wiegert and Agent Fassbender had requested that we do
19 DNA swabs of both door handles, interior and
20 exterior, as well as the hood latch to the vehicle,
21 and the battery cables, um, under the hood.

22 Q Directing your attention to the hood latch, and
23 now I'm going to have you look at, uh, Exhibit
24 No. 90, tell us what it is that we're looking at,
25 please?

1 A This would be a photograph of the hood latch to
2 Teresa's vehicle.

3 Q And so a jury, um, member, or all jury members
4 understand, uh, what is a hood latch?

5 A It secures the hood to the vehicle. Locks it in.

6 Q All right. Um, on my vehicle, or at least on
7 most vehicles, there's a -- a release or a button
8 on the inside of the -- the vehicle. Are you
9 familiar with those?

10 A Yes.

11 Q But is there another safety feature or an
12 additional latch that's usually on a hood?

13 A Yes. And that would be the hood latch.

14 Q All right. Did you, again, personally swab, uh,
15 or, uh, collect possible DNA material from Teresa
16 Halbach's hood latch?

17 A Yes, I did.

18 Q Would you describe for the jury that process
19 please? How was that done?

20 A Sure. When you swab for any type of DNA evidence,
21 you have a cotton tip applicator, kind of like a big
22 Q-tip. Um, you have distilled water. And the tip is
23 sterile as well. So you're taking it from a fresh
24 package.

25 Um, you take your distilled water, you

1 would -- not touching the cotton tip applicator,
2 but you would drop two to three drops of this
3 water onto the cotton tip applicator. You then
4 take that applicator and swab the area in which
5 you were interested in.

6 Q Could you point to the large screen, please, and
7 tell the jury where it was that you swabbed?
8 That is, what area of the hood latch was, um,
9 swabbed by this applicator?

10 A Sure. This area right in here.

11 Q I'm going to have Mr. Wiegert show you, uh,
12 what's been marked for identification as Exhibit
13 No. 94. Because it contains biological material,
14 I'm not going to have you open it, but I would
15 ask you, if you're able to, identify Exhibit No.
16 94?

17 A Yes. It's got, um, the evidence tag on that I
18 personally wrote out, and it states it contains the
19 swab containing possible DNA evidence.

20 Q From?

21 A From the hood latch of Teresa's vehicle.

22 ATTORNEY KRATZ: If I could have just a
23 moment, Judge? Judge, I would move the admission
24 of exhibits, I think it's 79 through 94, at this
25 time, and I have no further questions of Sergeant

1 Tyson. Thank you.

2 THE COURT: Any objection, Counsel?

3 ATTORNEY FREMGEN: What was No. 90?

4 THE COURT: Number 90 is a photo of a hood
5 latch of the, uh, Halbach vehicle.

6 ATTORNEY FREMGEN: No objection.

7 THE COURT: All right. They're received.

8 Cross?

9 **CROSS-EXAMINATION**

10 BY ATTORNEY FREMGEN:

11 Q Officer, you indicated that you are currently in
12 a position of -- like a supervisory role with the
13 Sheriff's Department?

14 A That's correct.

15 Q And you indicated that you had been trained back
16 in 1984 as an evidence tech?

17 A Nineteen ninety-four. Correct.

18 Q Nineteen ninety-four?

19 A Yes.

20 Q Okay. Have you had any, uh, follow-up training
21 or primers since 1994?

22 A Maybe in 1995, '96, '97, in the early stages, um,
23 some updates. Photography, things like that. But,
24 no, most of my training now would consist of
25 supervisory training.

1 Q Between 1994 and now, did the, uh -- was the
2 majority of your duties or your responsibilities
3 involving evidence tech, or evidence collecting,
4 or was it general police duties?

5 A The majority of my responsibilities are general
6 police duties. Uh, if we have a crime that occurred
7 in the county, um, I could be dispatched to that.
8 You know, there's five officers in our Department at
9 that time that were evidence technicians. If I was
10 on duty, or even if I was not on duty, I could get a
11 call at my house to come out to process that scene.
12 So if we had a crime, yeah, we would have to respond
13 to it.

14 Q Did this training consist of a couple of classes
15 at the Fox Valley Tech, or like a week-long
16 training somewhere?

17 A It was a week-long training class held by Mike
18 Campbell. He was an officer to the Milwaukee Police
19 Department. He put on the training. I think it was
20 at Lakeshore Technical College, and it was -- I
21 believe it was one full week.

22 Q So something locally?

23 A Yes.

24 Q Now, your first duty involved in this
25 investigation was, uh, my understanding, um, to

1 secure the RAV 4; is that correct?

2 A Correct.

3 Q Did you do any processing of any evidence at the
4 scene of the RAV 4?

5 A No, I did not.

6 Q I -- I don't want minimize your role, it's --
7 but, essentially, you just stood watch of the
8 vehicle?

9 A Correct. Initially, I was -- you know, make sure
10 nobody got near the vehicle, nobody touched the
11 vehicle. Uh, due to inclement weather -- We had a
12 storm that was approaching. Um, Agent Fassbender was
13 on location with, I think, other DCI officers, and,
14 you know, we were taking measures to make sure that
15 no evidence that was possibly on the exterior of the
16 vehicle would be destroyed with the incoming storm.

17 So they had, um, gone and gotten a tarp
18 and very carefully, uh, tried to protect the
19 vehicle from the elements that were approaching
20 as there was a mist in the air, rain was coming.
21 Um, so they were doing that type of stuff.

22 Q Once your role as security or securing the, uh --
23 the vehicle was completed, were you involved in
24 processing any of that scene?

25 A With the RAV 4?

1 Q Correct.

2 A No, I was not.

3 Q So -- so the next role or duty within this

4 investigation would have been when you were

5 assigned to a search team to search the trailer

6 of Steven Avery?

7 A There were a few things I did prior to the execution

8 of the search warrant at Steve's trailer. Um, you

9 know, we had K-9s on the property that were searching

10 the area. So when the K-9 handler showed up, I

11 directed officers to go with the K-9 officers that

12 were there with their dogs, and, um, documented times

13 of arriving on scene, time they completed, who they

14 were with, what areas they searched, things like

15 that.

16 Q You didn't just sit around? You're doing work?

17 A Yes.

18 Q Okay. But your next specialized task would have

19 been to assist in the search of the Steven Avery

20 trailer?

21 A That'd be correct.

22 Q How many searches of that trailer were you

23 involved in?

24 A One search that night. I was sent back in, I

25 believe, on the 7th of November, um, to get a serial

1 number and a model number off of a computer.

2 Technically, that would be a search. So -- But that

3 was our only responsibilities that day was to get the

4 serial number off the computer and the model number

5 for Investigator Wiegert.

6 Q Prior to entering the, uh, trailer when you did

7 the initial search, not -- not the second one

8 when you went through it to get some model

9 numbers, did you -- you indicated that your role

10 was essentially to oversee, watch, and take

11 notes?

12 A Yes.

13 Q Did you first go through, videotape or photograph

14 the entire residence, to memorialize what it

15 looked like prior to the scene? To -- to the

16 search?

17 A Yes. Um, for example, um, Detective Remiker had a

18 digital camera and Sergeant Colborn had a 35mm

19 evidence camera. Both of them, before we even

20 started anything, photographed the entire interior of

21 the residence before any searching had begun.

22 Q Now, you indicated this is kind of a small

23 trailer?

24 A Yes.

25 Q Would it be fair to say that it would be best in

1 the small setting to have as few people in there?

2 A Yes..

3 Q And -- and do you think that you had too many,
4 not enough, just enough searchers of the
5 residence?

6 A I found it to be adequate. You know, it was hard in
7 certain areas because it was small and confined. Um,
8 but we were, you know, in hallways, in -- in rooms,
9 and, um, it was adequate, I would say.

10 Q When they did the search, since your were,
11 obviously, you indicated, trying to monitor or
12 take notes of each individual -- other three
13 individuals searching, did they -- did you
14 basically go through it methodically one room at
15 a time, or did everyone just go off on their own
16 and you'd tried to follow them around?

17 A Well, we started out in Steve's bedroom. Um, after a
18 period of time, you know, like, Lieutenant Lenk had
19 told me, he said, I'm going to start just looking in
20 the bathroom for anything obvious. So I relocated my
21 position into the hallway. I could see, um,
22 Investigator Lenk, I could see Sergeant Colborn, um,
23 on this side of the -- the bedroom. I would -- could
24 watch Lieutenant Lenk. He was in the bathroom. But
25 it was confined to that area. Nobody was allowed to

1 just wander about the residence, you know.

2 Q So there were times when they were in two
3 different rooms? A bathroom and a bedroom --

4 A Yes.

5 Q -- for instance? You commented, um, that it's
6 important to change the gloves as items are
7 handled?

8 A Yes.

9 Q Is it just any item or just items that have
10 evidentiary value?

11 A We look at it, you know, on scene. Um, we're looking
12 for major evidence, things like that. We're not
13 going to touch one thing and then change gloves every
14 single time we touch something. But if it's
15 evidentiary in nature, we suspect it might be
16 evidentiary in nature, yes.

17 Q Is -- is it possible for DNA to be transferred,
18 though, from touching some items that might have
19 DNA that maybe you didn't find to have
20 evidentiary value, and then touching something
21 that you end up seizing?

22 A Sure.

23 Q And that could have happened? You don't know
24 that?

25 A In something specific?

1 Q I'm just asking in general.

2 A Oh, sure.

3 Q If you're not changing your gloves every time you

4 touch something, that could happen?

5 A Right.

6 Q If --

7 A Right. It's not something that you're looking at to

8 be evidentiary, you move onto the next item. Sure.

9 Q But each time you found a -- an important item,

10 you would change your gloves?

11 A The officers would, yeah. I wasn't specifically

12 handling the evidence that night.

13 Q I'm sorry. I meant -- I guess I meant

14 colloquially with you --

15 A Yes.

16 Q -- all.

17 A Yes.

18 Q The other three?

19 A Sure.

20 Q Okay. Now -- And, again, you're testifying about

21 what some of the other officers found. One of

22 the officers found the handcuffs, and I'm -- I'm

23 going to imagine that -- maybe I'm -- didn't hear

24 you say it, and the leg irons together in the

25 bookshelf?

1 A Yes.

2 Q Okay. Were they just lying on the bookshelf?

3 A I did not see the location inside the shelf. I was

4 standing to the side. He pulled them out and was

5 showing me what he was locating. I was documenting.

6 So where, exactly? Um, they were -- they were on top

7 of each other? Or right next to each other? That I

8 do not know.

9 Q Let me ask you this, if you know the answer, why

10 did you take the handcuffs and the leg irons?

11 A The deputies at that time thought it was potentially

12 something that could be evidentiary.

13 Q But you left the guns?

14 A The guns were left in the gun rack.

15 Q You didn't think that guns might be evidentiary?

16 A We figured they probably would, but looking at the

17 circumference of what we were supposed to do, um,

18 they left them.

19 Q When the bleach bottle was -- Now, this was in a

20 separate search; correct? When --

21 A Yes.

22 Q -- you found that bleach bottle?

23 A Yes.

24 Q Excuse me. Did you -- Again, your role at that

25 time was the same as before? To document and

1 monitor?

2 A That warrant I was more involved with the actual
3 searching. Investigator Baldwin was more the one
4 assigned to documenting and note taking.

5 Q So you would have been the one who actually
6 physically collected the bot -- bleach bottle?

7 A I was not. Um, Officer Riemer was the one who
8 actually seized it.

9 Q And, again, you're wearing gloves --

10 A Yes.

11 Q -- at this time? Um, did you process that to
12 determine if there were any fingerprints on it?

13 Or is that somebody else's job?

14 A That was also my responsibility at a later time.
15 Deputy Hawkins and myself were assigned to the duties
16 of processing what we had collected from the scene.
17 So, yes, that bottle was processed.

18 Q Okay. So when you process it and try to extract
19 fingerprints, then is that sent off to the Crime
20 Lab for, uh, some sort of, uh, review to
21 determine whether or not it matches anyone?

22 A Our focus for the bleach bottle was not so much
23 fingerprints. Because it was in, uh, Steve's
24 trailer, uh, we assumed his fingerprints would be on
25 it. We were looking more for any type of DNA

1 evidence, um, blood, or anything like that.

2 Q But you didn't check to see if someone else's

3 fingerprints were on it?

4 A We did not check it for fingerprints. We were

5 specifically looking for DNA.

6 Q When you were -- You were involved, you

7 indicated, with the second time the RAV 4 was

8 processed. And I guess I shouldn't say second.

9 It may have been processed a number of times. As

10 far as your involvement, you were involved the

11 first time with securing the RAV 4 --

12 A Yes.

13 Q -- correct? And the second time with obtaining

14 some, uh, uh, swabs of the hood latch?

15 A Correct.

16 Q Do you know how many times the vehicle had been

17 opened and closed in between those two times?

18 A It came from the Crime Lab. Um, it was secured in

19 the storage facility. I don't know exactly the

20 answer to that question, no.

21 Q So you don't know what the Crime Lab did to the

22 vehicle?

23 A I have no idea what the Crime Lab did to that

24 vehicle.

25 Q And when you swabbed the latch, the only -- you

1 indicated you swabbed the -- looks like it -- the
2 hood was down, the part that you would -- would
3 be facing towards the ground; correct?

4 A Yeah. The part that you would commonly use your
5 finger to pull up on to unlatch the hood -- the hood.

6 Q Did you swab just above the -- the latch as well?
7 Or just that lower portion of the latch?

8 A I believe I did the lower part and I did all the way
9 around that. Just did the entire latch, itself.

10 Q Okay. So the entire latch?

11 A Yeah.

12 Q Did you, uh, swab the interior release? Hood
13 release.

14 A No, I did not.

15 Q Was it because you weren't told to or didn't
16 think about doing it?

17 A Um, we weren't instructed to do that. I don't know
18 what was done before that. Um, our focus was the
19 hood latch and other specific areas.

20 Q Was it just one swab that you --

21 A Yes.

22 Q Okay. So you didn't have to change your gloves
23 then?

24 A I changed gloves from the time that I swabbed the
25 door handles to the time that I went and did the hood

1 latch.

2 Q When you opened the -- the hood latch, did you
3 change gloves before you swabbed or you used the
4 same gloves that you, uh, opened the hood latch?

5 A I think it was one process. You know, I probably
6 released it, had the cotton applicator, and
7 immediately did the swabbing of the hood latch.

8 Q Thank you.

9 ATTORNEY FREMGEN: Nothing else, Judge.

10 THE COURT: Any redirect, Counsel?

11 ATTORNEY KRATZ: That's all for this
12 witness. Thank you.

13 THE COURT: You may step down.

14 ATTORNEY KRATZ: State would call Agent
15 Kevin Heimerl to the stand.

16 THE CLERK: Please raise your right hand.

17 **KEVIN HEIMERL,**

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

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

22 THE WITNESS: Kevin Heimerl, H-e-i-m-e-r-l.

23 **DIRECT EXAMINATION**

24 BY ATTORNEY KRATZ:

25 Q Good morning, Mr. Heimerl. Could you tell the

1 jury, please, how you're employed?

2 A I'm employed with the Wisconsin Department of
3 Justice, Division of Criminal Investigation.

4 Q And what are your duties with the Department of
5 Justice?

6 A I'm assigned to the Arson Bureau. It's -- My primary
7 assignment is to investigate fires. Um, but my
8 duties also include assisting other bureaus within
9 our agency in other types of investigations.

10 Q In that second regard, that is, assisting other
11 agencies, were you asked on, um, November 5 and,
12 uh, times after November 5, 2005 to assist in the
13 investigation surrounding the death of Teresa
14 Halbach?

15 A Yes, I was.

16 Q Tell the jury, please, how you first became
17 involved in this investigation?

18 A On, uh, Sunday, I believe it was November 6, I was
19 contacted at my residence, um, by Special Agent
20 Fassbender, I believe, and was asked to respond to
21 Manitowoc County to assist with the investigation,
22 which I did. And I arrived in the early morning
23 hours.

24 Q How was it that you first assisted in the
25 investigation?

1 A I responded to the command post on Avery Road, uh,
2 and met with Special Agent Fassbender, and
3 Investigator Wiegert, and other investigators. Uh,
4 received a briefing, um, as to what information had
5 been obtained at that point, what some of the goals
6 of the investigation were, and some of the activities
7 that were taking place at the scene. I was then --
8 My initial assignment was to respond into the city of
9 Manitowoc to conduct an interview with a citizen.

10 Q Agent Heimerl, of the seven or eight days of
11 that, officers were involved in the, uh, search
12 of -- at least the initial search of the Avery
13 salvage property, how many of those days were you
14 involved in those efforts?

15 A I was involved in the, uh, initial investigation at
16 the scene for approximately the first week. Um, the
17 majority of my time was spent conducting a
18 neighborhood canvass, uh, of the area.

19 Q What is a neighborhood canvass?

20 A A neighborhood canvass is simply, um, going out and
21 trying to make personal face to face contact with all
22 individuals that reside in the immediate vicinity of
23 the crime, um, or people that may work at businesses
24 or locations in the immediate vicinity, um, and
25 interviewing them and asking them if they have made

1 any observations, seen or heard anything that they
2 feel, or that investigators feel, may be somehow
3 related to the investigation.

4 Q Directing your attention, then, to, um, the 7th,
5 that would be Monday, the 7th of November, were
6 you involved in, and did you participate in,
7 search efforts of the Avery salvage property?

8 A Yes. I was assigned to, um, assist with the recovery
9 of some evidence.

10 Q Describe for the -- Well, I'm going to have you
11 look at, uh, a photograph, Exhibit No. 95. Tell
12 the jury what it is that Exhibit No. 95 is?

13 A It's a photograph of a steel burn barrel. It was
14 found in the, uh, front yard area of Steven Avery's
15 residence.

16 Q And could you tell me where the burn barrel was
17 located, please?

18 A The gravel driveway that you, um, see in the
19 background behind the barrel, uh, is the access
20 roadway, or a driveway to provide access to Steven
21 Avery's trailer and his detached garage. This barrel
22 is north of that driveway, um, and Steven Avery's
23 trailer and garage are south of the driveway and to
24 the right of the barrel as you're looking at the
25 photograph.

1 Q Before you're completed, uh, Agent Heimerl, we'll
2 look at some, um, computer-generated images. But
3 as long as we're on, uh, this photo, uh, could
4 you tell us, uh, what it is that we're looking at
5 and what's located outside of, uh, this
6 particular barrel? You might have a laser
7 pointer up there if that's going to help you.

8 A Is it most convenient if I use the pointer?

9 Q I think -- Yeah.

10 A Uh, to the right of the barrel is, uh, a steel rim
11 from a motor vehicle tire or wheel.

12 Q Did you have occasion, after, um, this particular
13 burn barrel was turned over for your processing,
14 to view the interior of the barrel?

15 A Yes, I did.

16 Q Okay. I'm going to show you what's been marked
17 as Exhibit No. 96. Tell us what, uh, we're
18 looking at, please?

19 A It's a photograph of the interior of the barrel, um,
20 obviously looking down through the open top of it,
21 um, and burned debris and so forth inside the barrel.

22 Q Now, when you looked into the interior of the
23 burn barrel, uh, just through your training and
24 experience as a law enforcement officer, and
25 especially with your arson, um, training and

1 experience, were you able to, uh, make any
2 conclusions or identifications at that time?

3 A When I looked into the barrel, um, and without
4 disturbing anything, I -- it was a -- apparent that,
5 um, all of the material in the barrel had been
6 involved in a fire. That a fire had occurred in the
7 barrel. Um, but I did recognize, um, non-combustible
8 items, metal objects, and what appeared to be
9 possibly glass objects inside the barrel within this
10 debris.

11 In particular, um, I observed one item
12 that appeared to be, um, a panel or a cover for a
13 Motorola electronic device.

14 Q After making these observations, uh, Agent
15 Heimerl, what did you do?

16 A I fully documented, uh, this scene through
17 photographs, um, and, ultimately, the barrel and its
18 contents were turned over to the custody of evidence
19 technicians that were assisting with the
20 investigation.

21 Q Um, sometime later, that is, uh, sometime after
22 the 7th of November, were you involved in further
23 processing of this barrel? Or was, in fact,
24 that, um, assignment given to somebody else?

25 A Uh, that assignment was given to others, um, besides

1 myself. I was not involved in that process.

2 Q You are familiar, are you not, with the
3 processing of the barrel and what was found
4 inside of it?

5 A Yes, I am.

6 Q I'm going to have you look at Exhibit No. 97.
7 Show that to the jury. Tell us what it is that
8 we're looking at, please?

9 A This is a photograph of, uh, components for three
10 electronic devices that were ultimately recovered
11 from that burn barrel, um, either by, uh, Crime Lab
12 analysts with the Wisconsin State Crime Lab, or, um,
13 the Federal Bureau of Investigation.

14 Q So these items were examined by, not only our
15 State Crime Lab, but also were sent to Virginia
16 to the FBI; is that right?

17 A That's my understanding, yes.

18 Q And Exhibit No. 97 is the totality, that is, all
19 of the, uh, electronics as laid out on a table
20 from your understanding; is that right?

21 A That's correct.

22 Q I'm going to jump ahead, uh, just a minute and
23 hand you what's been marked as Exhibit No. 115.
24 Tell us what Exhibit No. 115 is, please?

25 A This is a report, a two-page report, of examination

1 completed by, uh, Mr. Curtis Thomas of the Federal
2 Bureau of Investigation's laboratory. He is in a
3 unit assigned to the Cryptographic and Electronic
4 Analysis.

5 Q All right. Do you know what that means?

6 A Well, from the title, I, uh, can surmise that it
7 involves the analysis of electronic devices and, uh,
8 other things.

9 Q All right.

10 A That's not my specialty.

11 Q In that regard, though, and, um, in, uh, your
12 review of Exhibit No. 115, the FBI report, was
13 Mr. Thomas able to positively identify these
14 electronic components that are, um, uh, shown in
15 the photograph in Exhibit No. 97? .

16 A Yes, he was.

17 Q Uh, we'll talk about the individual, um, uh,
18 findings through some other photos, but, uh, if
19 you could tell the jury, uh, what Mr. Thomas'
20 findings were?

21 A Mr. Thomas was able to conclude that the components,
22 um, depicted in the photograph, all came from the
23 three electronic devices, which he was able to
24 identify as a Canon A310 PowerShot digital camera, a
25 Motorola RAZR cellular telephone, and a Palm Zire 31

1 PDA.

2 Q Let's go through those, uh, one at a time then.
3 I'm going to show you Exhibit No. 98. Tell us
4 what we're looking at, please?

5 A This is a closer photograph of one of those
6 components, which happens to be the front cover plate
7 for a Motorola cellular telephone.

8 Q And just so the jury understands, these are
9 close-up photographs of the items that were
10 recovered, processed, and eventually identified
11 from that burn barrel outside of Mr. Avery's, uh,
12 trailer; is that correct?

13 A That is correct.

14 Q Uh, the FBI was able to compare some of these
15 components to what a new, or a, uh, identical
16 model Motorola V3 RAZR phone looked like? Is
17 that your understanding?

18 A Yes.

19 Q I show you what's been received -- excuse me --
20 marked as Exhibit No., um, 99. Tell us what that
21 is, please?

22 A This is a photograph of two components. The one on
23 the left being the same component we saw in the
24 previous exhibit, the front cover plate for that
25 Motorola RAZR cellular telephone, and it's next to an

1 exemplar telephone of the same, uh, brand and model.

2 Q All right. Basically, to show the jury where
3 that component comes from on a, uh, a -- a
4 non-damaged or non-burned phone; is that right?

5 A Correct.

6 Q Exhibit 100?

7 A Again, this is another comparison photograph, um, of
8 the damaged component that was recovered from the
9 burn barrel next to an exemplar of the Motorola RAZR
10 phone.

11 Q These were -- To your understanding, they're
12 prepared by the FBI; is that right?

13 A Correct.

14 Q And, finally, uh, Exhibit No. 101?

15 A Again, this is a demon -- a demonstration photo with
16 the, uh, component on the left being the fire
17 damaged, um, keypad plate, if you will, for the
18 corresponding, um, Motorola cellular phone. Again,
19 the object on the left was recovered from the burn
20 barrel.

21 Q This same process, that is, the identification
22 process, occurred with the, um, camera that was
23 recovered from Mr. Avery's burn barrel? That is,
24 the Canon, uh, PowerShot A310? I think you
25 testified to that. But I'm going to show you

1 Exhibit No. 102. Tell us what we're looking at,
2 please?

3 A That is a photograph of one of the components for
4 that Canon A310 PowerShot digital camera, and, uh,
5 the etched or, um, embossed wording, uh, is visible
6 and it identifies it as a PowerShot A310.

7 Q As I zoom in, you probably don't have to be an
8 expert to do this, but you can see it says
9 PowerShot A310; is that right?

10 A That's correct.

11 Q Agent Heimerl, throughout the, um, search of this
12 property, um, and throughout, uh, the
13 investigation, were you asked on occasion to
14 assist in post-recovery analysis? That is,
15 analysis of items that had been recovered from
16 the Avery property?

17 A Yes, I was.

18 Q Specifically, the -- what's been, um, referred to
19 as the burn area or the burn pit behind
20 Mr. Avery's garage, were you at some point asked
21 to assist in the sorting or sifting process, uh,
22 of those items?

23 A Yes, I was.

24 Q Could you describe that process for the jury,
25 please?

1 A During the initial week of the on-scene
2 investigation, other investigators recovered a large
3 amount of burned debris and material from locations
4 on the Avery property. Specifically, um, a large
5 burn pit or burn area directly behind Steven Avery's
6 residence, um, and, it's my understanding, as well as
7 other areas where burned debris had been found.

8 Um, in addition to that, several burn
9 barrels, to include the one from the front yard
10 of Steven Avery's residence, were recovered from
11 the scene, and removed from the scene, and all of
12 this material was initially taken to the Calumet
13 County Sheriff's Department.

14 Subsequent to that, the burned debris
15 and material, um, underwent a very detailed
16 examination to attempt to recover any other
17 potential evidence from that material.

18 Q What kind of evidence was, uh, law enforcement
19 looking for at that time?

20 A We, myself and other investigators, were looking for,
21 number one, any, um, items that we readily recognized
22 or believed could be human remains. Uh, other
23 materials that we felt may have, um, been related to
24 clothing or electronic devices. Um, we were looking
25 for potential weapons, um, bullet fragments, bullet

1 casings, any items that we felt may be relevant to
2 the death of Teresa Halbach.

3 Q This process, this sifting and sorting process,
4 um, I'm just going to show you Exhibit, uh, No.
5 103. First of all, tell us what it is that we're
6 looking at?

7 A This is a photograph that was taken in the basement
8 of the Wisconsin State Crime Lab in Madison.

9 Q And what, uh -- what does it depict? And if you
10 need to use the laser pointer, go ahead.

11 A This de -- depicts, um, basically, the process or the
12 system, um, that we implemented to begin examining
13 this debris. And this examination occurred over the
14 course of four days. The first two days in Madison
15 at this location, and the following two days in April
16 of 2006 at the Sheriff's Department in Calumet
17 County.

18 And, uh, what we had, um -- The -- the
19 individuals in this photograph include
20 Investigator Wiegert, myself, Special Agent
21 Pevytoe, and, I believe, uh, the individual in
22 the back may be, uh, Special Agent Holmes or
23 Special Agent Sielehr with DCI, but on this
24 occasion in Madison what we did was we happened
25 to utilize, um, sections of scaffolding, that

1 happened to be in the basement, because of
2 certain rem -- remodeling that was occurring, and
3 they proved to be very suitable for our process.

4 We would raise the scaffold planking or
5 table, if you will, to approximately waist to
6 chest -- chest height, so it made it, uh, more
7 conducive to standing and working, um, in close
8 eyesight. They were covered with tarps. We had
9 supplemental lighting.

10 And the process included bringing a
11 small quantity of debris onto the table in front
12 of you, and utilizing a variety of tools or
13 instruments, such as wooden skewers, or wooden
14 picks, um, maybe putty knives or brushes. We
15 would very thinly and finely layer out the -- the
16 debris, and this debris includes soil, um, and
17 sand, and burned ash and non-burned, or, um,
18 burned non-combustible items.

19 We would layer it out and sift it, if --
20 if you will, but not with sifting screens, but,
21 visually, examine it very closely and pick out
22 items that we felt may be human remains, bone
23 material, uh, potentially dental remains, and
24 other non-cumbustible items, metal items that
25 were left behind in attempt to determine what

1 they were, and if they were relevant to what we
2 were looking for.

3 Q Do you know an individual by the name of
4 Dr. Leslie Eisenberg?

5 A Yes, I do.

6 Q Who is that?

7 A Dr. Eisenberg is a forensic anthropologist with the
8 state of Wisconsin.

9 Q Is Dr. Eisenberg involved in this process?

10 A Yes, she was.

11 Q Could you describe -- and we'll hear from
12 Dr. Eisenberg later this week -- but can you
13 describe how she may have been involved in
14 overseeing this process with law enforcement?

15 A She was present with us on the first day in December
16 of 2005 in Madison at the Crime Laboratory, and was
17 involved in, uh, the planning, if you will, and the
18 im -- implementation of this process and assisted
19 alongside of us in going through the same procedure.

20 Um, and if an investigator were to
21 recover an item that they felt was potentially,
22 uh, bone fragments, she was there and available
23 to make a better determination if it was or if it
24 was not.

25 Q You talked about, uh, bone and other items of

1 evidentiary value. Did those include any metal
2 items?

3 A Yes.

4 Q And could you describe that for the jury, please?

5 A There were numerous metal items that were found among
6 this debris, and that included, uh, ammunition
7 casings, um, miscellaneous items of steel, um, steel
8 belting from tires. Um, in particular, I recall
9 there was a zipper pull recovered. There were
10 clothing rivets recovered. Batteries. Um, quite a
11 wide variety of materials.

12 Q The clothing rivets, uh, specifically -- I'm
13 going to show you Exhibit No. 104. Ask you to
14 tell the jury what it is that we're looking at?

15 A This is a close-up photograph of a clothing rivet,
16 which is identified, um, through stamping on the head
17 of the rivet with the name Daisy Fuentes.

18 Q Were you involved in the recovery of any of these
19 Daisy Fuentes clothing rivets from, uh, this
20 sifting process?

21 A Yes, I was.

22 Q Are you aware of how many Daisy Fuentes rivets
23 were recovered throughout the entire process?

24 A There were five of these same rivets recovered.

25 Q I'm going to have Mr. Wiegert show you, uh, just

1 as an example, what's been marked as Exhibit No.
2 112. Ask you to tell the jury what that is,
3 please?

4 A This is one of those rivets, as identified in this
5 photograph, that was recovered from that burned
6 debris.

7 Q Repackage it. Thank you. Mr., uh -- Or Agent
8 Heimerl, on March 1 of 2006, were you made aware
9 of the application and receipt of a search
10 warrant for not only the residence, but the
11 garage of Steven Avery?

12 A Yes, I was.

13 Q Tell the jury how, if at all, you were involved
14 in the execution of that search warrant?

15 A On the afternoon of March 1, or in the morning hours,
16 I was contacted by Special Agent Fassbender, and
17 informed that additional information had been
18 gathered or gained through the ongoing investigation,
19 uh, which included statements from Brendan Dassey,
20 and as a result of those statements, investigators,
21 um, sought and received a search warrant to return to
22 Steven Avery's residence and garage to look for and
23 potentially collect any additional evidence that
24 investigators felt may be present as a result of this
25 new information.

1 Q Could you first describe for the jury an overview
2 of the garage? What was it that you saw upon
3 your arrival on the 1st of March? And, by the,
4 way, this was, uh, later -- uh, later on? Early
5 evening? That is, after Mr. Dassey made his
6 statement? Is that your understanding?

7 A That's correct. Uh, investigators arrived at the
8 property in the late afternoon hours. I believe
9 approximately 4 to 4:30 p.m. Um, the investigators
10 were divided into two separate teams, if you will.

11 Uh, one team was responsible for
12 conducting the search of Steven Avery's
13 residence. The second team, which I was a part
14 of, was assigned to conduct the search of the
15 detached garage.

16 When we arrived, um, initially, I
17 photographed the exterior of the garage. I noted
18 that the personnel door, um, the walk-through
19 door on the north side of the garage, was locked
20 with a padlock. We made arrangements to make
21 entry into the garage by cutting that padlock.

22 When that was completed, uh, the first
23 thing that was done was the interior of the
24 garage was videotaped. Um, on that day there
25 was, uh, snow on the ground. A relatively good

1 quantity of snow. The overhead garage door was
2 ultimately opened. Um, there was a passenger
3 vehicle that was found parked inside the garage.

4 And after the videotaping was completed,
5 I then, um, conducted photography of the entire
6 interior of the garage, uh, just documenting in
7 an overview fashion of the -- what the interior
8 of the garage looked like.

9 We then, basically, um -- four
10 investigators that were present, uh, which
11 included myself, Investigator John Dederling from
12 Calumet County, Investigator Gary Steier of
13 Calumet County, um, and, eventually, Detective
14 Dave Remiker of Manitowoc County, assumed, um,
15 general responsibilities as working as this -- as
16 this team, and came up with a -- a plan, if you
17 will, uh, or objectives as to how we were going
18 to go about searching the garage.

19 Q I'm going to show you Exhibit No. 105, and ask
20 you if you can describe what it is that we're
21 looking at here?

22 A This is a photograph of the interior of Steven
23 Avery's garage, obviously with the overhead garage
24 door open. Uh, as I took this photograph, I was
25 standing north of the front of the garage in front of

1 the overhead garage door. This was taken at a point
2 in the evening in which we had done a cursory search,
3 if you will, of the interior of the garage, looking
4 for any readily recognizable items of evidence that
5 we knew, based on Brendan Dassey's statements, that
6 we should be looking for.

7 Some of those had been ad -- identified.
8 Um, the vehicle has been removed at the, uh, time
9 of this photograph, and we have identified with
10 some of these yellow photographic markers,
11 numbered markers, um, the location of some items
12 of evidence that had been found to that point.

13 Q Had you been informed, and was one of the items
14 that you were looking for in this, uh, garage,
15 uh, a item of, uh, paint thinner?

16 A Yes.

17 Q Let me show you what's been marked as Exhibit No.
18 106. Ask you if you can tell me what we're
19 looking at here, please?

20 A This is a photograph of a plastic bottle or jug of
21 paint thinner that was found on the workbench at the
22 rear or south side of the garage in a central area of
23 the south wall.

24 Q Was another specific item that you were looking
25 for and, uh, included, um, in Mr. Dassey's

1 statement, something called a roller creeper?

2 A Yes.

3 Q And can you tell the jury, and those jurors that
4 may not know what that is, what is a roller
5 creeper?

6 A I don't have much experience in the automotive work,
7 but I understand a roller creeper is a piece of
8 equipment that, um, if you will, is a bench, a padded
9 bench often, um, that rests on wheels to allow a
10 person to lay on their back on this bench and roll
11 themselves underneath a motor vehicle so they can
12 conduct work on the under -- underside of the
13 vehicle.

14 Q Were you able to locate a roller creeper within
15 Mr. Avery's garage?

16 A Yes, we did.

17 Q Let me show you what has been marked as Exhibit
18 No. 107. Tell us what we're looking at, please?

19 A That is a photograph of a roller creeper with the
20 name, uh, labeled on the face of it as a Black Jack
21 brand creeper. This was found in this location which
22 is, um, in the central area of the south wall,
23 basically in the middle of the garage, all the way at
24 the rear of the garage.

25 Q Just so that before I leave this photo, just to

1 the right of the roller creeper is a green object
2 that has some wheels on it. Do you know what
3 that is?

4 A Yes, I do.

5 Q What is that?

6 A The green cylindrical object, uh, behind and to the
7 right of the creeper is an air compressor, and it has
8 numerous additional miscellaneous items stacked on
9 top of it.

10 Q Now, the -- I'm going to go back to Exhibit No.
11 105. When we look at the stuff in that garage
12 during the 1st and 2nd of March, were each of
13 those items removed and thoroughly searched?

14 A Yes, but not -- I don't know if re -- removed is, um,
15 a term I would use. We did not physically remove
16 them from the garage. But --

17 Q They -- They are moved?

18 A Yes. Our course of action, uh, beginning on March 1,
19 um, was to physically, visually examine virtually
20 every item within that garage, um, looking for any
21 potential relevance to the investigation based on the
22 statements we had received from Brendan Dassey. Um,
23 examining these items to determine if we could see
24 any visible biological evidence or other forms of
25 trace evidence.

1 And in doing so, we began at the -- in
2 this photograph, the front left corner, which
3 would have been in the, uh, northeast corner of
4 the garage, and we proceeded south along the east
5 wall picking up and moving every object. And in
6 most cases, there were multiple objects stacked
7 on top of, say, a snowmobile or a shelf. Each
8 item was picked up, moved, turned over, examined,
9 and set aside. And we'd move onto the next
10 object.

11 We proceeded south along the east wall
12 to the corner, and then along the south wall, um,
13 from left to right in this photograph, and,
14 ultimately, finishing on the following day,
15 March 2, coming up along the west wall.

16 Q Agent Heimerl, once again, based upon statements
17 of Mr. Dassey, uh, were you looking for, and did
18 the search warrant authorize, a search for
19 bullets or bullet fragments?

20 A Yes, it did, and we were looking for those items.

21 Q I'm going to have you, before I leave this, uh --
22 this photograph, point out for the jury, uh,
23 what's called Evidence Tent No. 9. Could you
24 tell the jury where that's located?

25 A No. 9 is located just behind -- The white is the

1 snowbank on the outside of the garage. And just
2 behind there, in the right half of the photograph, is
3 Marker No. 9.

4 Q I show you, now, what has been marked as Exhibit
5 No. 108. Tell the jury what we're looking at,
6 please?

7 A This is a photograph, again, of, uh, evidence, or
8 Photo Identification Marker No. 9, taken from
9 standing above it. You can see a crack in the
10 concrete traveling right underneath the marker. Just
11 in front of that marker edge, right where the cursor
12 is now, there's a small, cylindrical, gray object
13 that was ultimately recovered and found to be a
14 bullet, or a portion of a bullet.

15 Q Mr. Wiegert just handed you, also, uh, what's now
16 been, uh, marked as Exhibit No. 114. It's a -- a
17 package, and although it, uh, contains, um, an
18 item of evidentiary value with a biological, or
19 potentially biological, material on it, and I'm
20 not going to ask you to open it, can you tell us
21 what Exhibit 114 is?

22 A This is identified as a bullet fragment, and the date
23 for the recovery is 3/1/06.

24 Q Is this the bullet fragment that is depicted in
25 Exhibit No. 108, uh, next to, uh, Exhibit -- Tent

1 No. 9?

2 A I believe it to be, yes.

3 Q Agent Heimerl, I'm now going to show you what has
4 been marked for identification as Exhibit No.
5 109. Tell us what that is, please?

6 A This is a photograph that was taken on March 2, the
7 second day of our search. From the previous
8 photograph of the overview of the garage that we
9 looked at, um, directly at the back of the garage in
10 the central area of that south wall, we saw the Black
11 Jack creeper and the green air compressor.

12 In that previous photograph, the green
13 air compressor was directly adjacent to the left
14 side of a large rolling tool chest, which we see
15 in the upper right corner of this photograph.
16 The air compressor, and all of the materials were
17 stacked on top, have obviously been removed for
18 this photograph, and Marker No. 23 identifies a
19 bullet which was found under that air compressor
20 near that back wall in the garage.

21 Q I show you, now, Exhibit No. 110. Tell us what
22 we're looking at here, please?

23 A This is a close-up photograph of that same Marker No.
24 23. Also, in the photograph, is a -- a scale or a
25 ruler. Between the number four and number five on

1 the ruler, just above the edge of the ruler, is a
2 round object which is the bullet that was located
3 underneath the air compressor.

4 Q By the way, this bullet, uh, that it was next to
5 Tent No. 23, and also the bullet next to Tent No.
6 9, uh, were those recovered by your, um, evidence
7 recovery team and, thereafter, sent to the
8 Wisconsin State Crime Laboratory for further
9 analysis?

10 A Yes, they were.

11 Q Just to complete the discussion of this
12 particular bullet, um, I'm going to show you
13 photograph 111, ask if you're able to identify
14 that? And Mr. Wiegert's going to also hand you
15 Exhibit No. 113 to assist you in describing
16 photograph 111 as well.

17 A The photograph is a -- a photograph of the same
18 object, evidence bag that I'm holding, uh, Evidence
19 Tag No. 8623, which identifies the contents as a
20 bullet fragment that was collected on March 2, 2006.

21 Q And so that the record is clear, the photo, uh,
22 of the bullet fragment, what the jury is looking
23 at on their screen, is, uh, Exhibit No. 111. The
24 package, itself, the bullet, itself, if you will,
25 is Exhibit No. 113. Is that your understanding?

1 A Yes.

2 Q I'm just going to take a moment to show you a
3 couple of exhibits. This is Exhibit 77 that has
4 already been received. It's a computer-generated
5 image created by Trooper Tim Austin. Um, does
6 this exhibit assist you, or will it assist you,
7 in describing for the jury where those two
8 bullets were found?

9 A Yes.

10 Q Why don't you take your laser pointer and tell
11 the jury?

12 A The first bullet that I described, which was in the
13 crack of the concrete, is in the area of the No. 9
14 marker in the foreground of the garage. The second
15 bullet -- bullet that we just discussed, No. 23
16 marker, was found at the rear, or south side of the
17 garage, directly next to the tool chest. Um, I
18 believe the black rectangular object here is meant to
19 depict the location of the creeper. What is not
20 identified in that photograph is the location or the
21 presence of the green air compressor.

22 Q And the last, uh, exhibit that I want to show you
23 has been received as Exhibit No. 67. Does this
24 contain the, um, burn barrel, and will this
25 assist you in describing where that was recovered

1 and processed by you?

2 A Yes.

3 Q Would you just describe that for us, please?

4 A This is, uh, Steven Avery's trailer. His detached
5 garage. Here's the gravel roadway that I described
6 earlier. And this is the burn barrel that was
7 ultimately recovered that contained the burned
8 electronic components.

9 Q Contained the, um, Motorola, um, V3 RAZR phone,
10 the Canon PowerShot A310 camera, and the Palm
11 Zire 31 PDA. Is that your understanding?

12 A That's correct.

13 Q And, again, that is verified and, um, positively
14 identified by FBI and also Mr. Thomas; is that
15 right?

16 A Correct.

17 ATTORNEY KRATZ: With that, Judge, I'm
18 going to move the admissions of Exhibits 95
19 through 114, and I have no further questions of
20 Agent Heimerl.

21 THE COURT: All right. Is there any
22 objection to these exhibits?

23 ATTORNEY FREMGEN: No, Judge.

24 THE COURT: Since there are none, the
25 exhibits will be received. I think, uh, this is an

1 appropriate time to take a morning break. We'll
2 take a 15-minute recess.

3 (Recess had at 10:04 a.m.)

4 (Reconvened at 10:29 a.m.)

5 THE COURT: I think we've reached the point
6 where this witness is set for cross-examination.
7 Mr. Fremgen?

8 ATTORNEY FREMGEN: Judge, I think the
9 State wanted to -- Did -- Didn't you want to
10 include 115 in that offer?

11 ATTORNEY KRATZ: We did.

12 THE COURT: Right. Uh, no objection to
13 115?

14 ATTORNEY FREMGEN: No.

15 THE COURT: Received. Go ahead,
16 Mr. Fremgen.

17 ATTORNEY FREMGEN: Thank you.

18 **CROSS-EXAMINATION**

19 BY ATTORNEY FREMGEN:

20 Q Agent Heimerl; correct?

21 A That's correct. Yes. Thank you.

22 Q Okay. You were testifying about the burn barrel
23 in your direct, and I have what's up -- Uh,
24 well -- I have up on the screen, again, uh,
25 what's been marked as State's Exhibit No. 80 --

1 or 95? It's a photograph of that burn barrel; is
2 that correct?

3 A That's correct.

4 Q You can see it from there?

5 A Yes, sir.

6 Q Okay. Now this is the barrel you indicated that
7 you first did a visual observation without going
8 into the barrel, itself, and noted metal and
9 glass within the debris?

10 A Yes, I did.

11 Q And you -- I think you indicated you also,
12 visually, identified the Motorola cell phone?

13 A I could see that component. That cover piece with
14 the very distinctive Motorola "M" on it. And that
15 was on top of the debris. I could see that.

16 Q Okay. Now, looking at that burn barrel, the
17 location is approximately in front of the Avery
18 trailer? Or, I guess, if you want to say, kind
19 of a triangular, uh, angle from the trailer and
20 the garage; correct?

21 A That's correct. It's almost, um, due north of the
22 garage and northeast of the trailer.

23 Q So that would be that opening -- the gar -- the
24 actual main entrance of the garage?

25 A Correct.

1 Q On the barrel, did -- Can you see from where
2 you're at, or do you have the picture in front of
3 you?
4 A Both. Correct.
5 Q Okay. Does it appear to have bullet holes in the
6 barrel? I know you're not an expert on -- I'm
7 not asking about your expertise in the area of --
8 of, uh, firearms or ammunition, but you're an
9 off -- you're an agent; correct?
10 A Yes, I am.
11 Q You've fired a firearm?
12 A Yes, I have.
13 Q Familiar with what a bullet hole might look like?
14 A Yes.
15 Q Does it appear that -- like it has bullet holes
16 in the barrel?
17 A All I can say is that there are circular penetrations
18 in the barrel.
19 Q Okay. And I don't need you to go any further if
20 you don't have ability to tell whether or not
21 that's from a bullet or something else. It's
22 a -- but appears to have some sort of circular
23 indentation in the side?
24 A Yes.
25 Q Now, in the burn area, you actually found shell

1 casings; correct?

2 A In the material that came from the burn pit to the

3 burn area, yes, there were ammunition --

4 Q Did you find -- I'm sorry.

5 A There were am -- ammunition casings found.

6 Q Did you find the same in -- when you sifted

7 through the barrel?

8 A I did not, um, examine the debris from the barrel.

9 From this barrel.

10 Q So someone else sifted through the burn barrel?

11 A That's correct.

12 Q Your observations were just visual?

13 A Of what?

14 Q The burn barrel.

15 A That's correct.

16 Q When you sifted, did you -- through the burn

17 area, now. We're beyond the burn barrel. Did

18 you actually set up the procedure for sifting

19 through that burn area?

20 A I did not. It was, uh, um -- Special Agent Pevytoe

21 had an idea in his mind as to what procedure he

22 wanted to follow. He presented that to those of us

23 that were there, and we all agreed that that was a --

24 appeared to be a sound and good procedure to follow.

25 Q Now, you indicate that your primary expertise

1 with the -- with the DCI would be in arson
2 investigations?

3 A That's correct.

4 Q So you're familiar with going through, um,
5 charred remains like, for instance, buildings?

6 A Correct.

7 Q Um, would a burn area like this be unusual for
8 you in your investigation experi -- or, uh,
9 experience?

10 A Uh, no, it wouldn't. In fact, I've participated in
11 examinations of, um, burn areas or burn pit areas, if
12 you will, on at least one other occasion looking for,
13 um, similar types of evidence.

14 Q When you set up the investigation, or the actual
15 sifting, then, through this burn area, did you
16 set it up where you, uh, indicated some sort of
17 grid-like, um, procedure so you could identify
18 what location items had been taken out of, or
19 boxed, when you were digging out and putting it
20 into something to take back to the Crime Lab?

21 A You maybe misunderstood, only because it was not -- I
22 don't think I was asked earlier, but to clarify, when
23 the material, and burn debris, and soil, and material
24 was removed from the burn pit, and initial
25 examinations were conducted at the burn pit, I was

1 not present and involved in it. I was -- at that
2 time, during that first week, was involved in the
3 neighborhood canvass aspect.

4 Q Okay.

5 A The examination of the debris that I testified under
6 direct exam, um, was conducted after all of the
7 material had been removed from the Avery property in,
8 um, various containers and brought to the Crime
9 Laboratory. That's where that examination was
10 completed.

11 Q So your in -- sifting involvement would have been
12 at the Crime Lab?

13 A At the Crime Lab and at Calumet County Sheriff's
14 Department. Yes.

15 Q In regards to your involvement with this
16 investigation, were you aware of what type of
17 sifting or -- or the procedure that went on
18 actually at the burn area?

19 A No, I was not.

20 Q When you went through the items that were taken
21 to the Crime Lab, were they in separate boxes?
22 Or how -- Actu -- How were they stored and -- and
23 transported to the Crime Lab?

24 A When we examined the debris at the Crime Lab, it was,
25 um -- on the first two dates, December 19 and 20 of

1 2005, the majority of that material I -- I recall
2 came out of large tarps. Um, the material had been
3 placed on large tarps, and then secured or taped
4 closed. If you'd take, say, a bedsheet and bring the
5 corners up, twist it, and turn it, and secure it with
6 tape, that's how it was brought to the Crime Lab.

7 Um, on the second occasion, in April of
8 2006, the majority of the debris that we examined
9 on that occasion was in individual five-gallon
10 plastic buckets.

11 Q Okay. Were they labeled as to where they were
12 taken from the -- from the burn area or the burn
13 pit?

14 A I know that they were labeled. The -- the buckets,
15 in particular, and the tarps, for that matter, I
16 believe, were labeled as to where they were collected
17 from, but I was not involved in the actual collection
18 of that material.

19 Q Were you involved later in the process of
20 organizing that in some sort of a -- a diagram of
21 where each items were found within the burn pit,
22 itself?

23 A No.

24 Q So you wouldn't have no idea where items might
25 have been located in the burn pit?

1 A No.

2 Q Are you aware of whether every item that was in
3 that burn pit was brought to the Crime Lab and --
4 and reviewed by you or your -- your crew of -- of
5 techs?

6 A I believe that -- It's my understanding that all of
7 the material that was removed, all burned and soil
8 material that was removed from the Avery property,
9 was examined by an investigator over the course of
10 those four days, as well as prior to that.

11 I believe, uh, Special Agent Pevytoe had
12 done some examinations with other agents. I say
13 that because I know that it was our goal to
14 visually examine and go through all of the debris
15 that came out of the burn pit, as well as other
16 areas, as I alluded to, stated was in the
17 buckets. And when that was finished, when we
18 went through all of that material, it was my
19 understanding everything had been done.

20 Q Did you receive, or do you recall, as one item
21 that was brought to the Crime Lab, uh, the, uh --
22 a burned out van seat?

23 A I -- I was not involved in the examination of that.

24 Q Okay. So you didn't personally investigate or
25 review that, uh, van seat?

1 A No, I did not.

2 Q Do you recall, though, if it was actually at the
3 Crime Lab when your, um -- your team was
4 reviewing the -- going through the sift -- or
5 sifting through the burn area buckets to
6 determine if there were bones or, I think you
7 mentioned, metal objects?

8 A I don't know if it was there or not.

9 Q When you were sifting through -- You -- You --
10 You indicated that at some times there were a
11 forensic anthropologist there to assist in
12 determining whether something might be a suspect
13 bone fragment or -- or something that she might
14 be interested in looking at; correct?

15 A Correct.

16 Q As the, uh, Crime Lab technicians, including
17 yourself, went through and sifted, you're going
18 through dirt; correct?

19 A It's dirt and then ash.

20 Q Were you using anything like a brush or a water
21 bottle to clean off items that you thought were
22 suspected evidence?

23 A I'm sorry, you said a brush and a what?

24 Q A brush or some sort of a -- like a water, uh,
25 jar, squeeze water -- to squee -- to clean the

1 item off?

2 A No, we did not use any water rinsing. Um, and,
3 basically, it came down to the preference of the
4 investigator as to if they preferred to use it
5 just -- uh, do this process just with their hands, or
6 if they preferred to use a -- a wooden skewer, or a
7 pick, um, or if they wished to use a brush, or a
8 putty knife. It's personal preference, but some of
9 those instruments were used.

10 Q Okay. No one -- You know, this may sound silly,
11 no one was told, go ahead, blow on it, get rid of
12 the -- the dust or the dirt?

13 A No.

14 Q Okay. That could potentially contaminate that
15 with that investigator's saliva; correct?

16 A I believe that's a potential.

17 Q So you guys sat down and talked about what
18 procedures you're going to take in sifting
19 through these, um, buckets and -- and the bags of
20 debris taken from the area before you actually
21 started, uh -- the, uh, sifting?

22 A Correct.

23 Q You mentioned that you were involved on the team
24 on approximately March 1, or maybe it was on
25 March 1, 2006, in the Avery garage?

1 A Yes, it was March 1 and 2.

2 Q And 2nd. And I believe you indicated that you --

3 the search, itself, was somewhat methodical? One

4 person went in and videotaped the garage first?

5 A Correct.

6 Q Um, and then -- How many were on your team

7 searching?

8 A On March 1 it was, uh, four. Four individuals. And

9 on March 2, uh, one additional, Agent Roswell, joined

10 us.

11 Q Did you videotape the actual search, itself?

12 A No.

13 Q Just the before and after?

14 A Correct.

15 Q When you went through the search, you indicated

16 that you started from one corner of the garage

17 and worked your way in a horseshoe around to the

18 other; correct?

19 A That's correct.

20 Q When you -- When you first went through the

21 garage --

22 ATTORNEY FREMGEN: And if I could ask

23 the State to put up -- I believe it's Exhibit

24 105. The photo of the garage.

25 Q (By Attorney Fremgen) Do you have State's

1 Exhibit 105 before you?

2 A Yes, I do.

3 Q And, again, this is, uh, Steven Avery's garage;

4 correct? On March 1, 2006?

5 A Correct.

6 Q And this a view after you have opened the garage

7 door? The -- the -- the main overhead door?

8 A Correct.

9 Q Was there a vehicle in the garage when you first

10 arrived there to search the garage?

11 A Yes, there was.

12 Q And you had to remove the -- the vehicle?

13 A Yes.

14 Q How did you get it -- Did you drive it? Push it

15 out?

16 A A tow truck.

17 Q Okay. When -- Was there someone in the garage

18 watching in case car knocked over a shell casing

19 or moved some item of debris within the garage?

20 Just to make note of that?

21 A Yes. We were present in the garage as it was being

22 removed, but, um, vehicle was parked in the garage

23 similar to the way any of us parked a vehicle in the

24 garage. It did not come into contact with anything

25 else as it's being moved.

1 Q Okay.

2 A And removed from the garage. So I don't believe that

3 was a concern.

4 Q You -- You noticed on the picture -- Again,

5 it's -- I believe it's Exhibit is 1-0 -- 105.

6 You refer to them as tents or evidence tents?

7 Those are those little cones or numbered cones?

8 A They -- Various terms. They could be marking

9 evidence, or they could just be, uh, for -- for

10 photographic ref -- uh, reference.

11 Q Okay. Some of those don't -- Well, let me ask

12 you this: When the -- when the car was in the

13 garage, you can -- you can see in the picture

14 there seems to be a tire track?

15 A Yes, I see that.

16 Q Like a white tire track in the middle?

17 A Yes.

18 Q That's where the -- the -- that, uh, Suzuki was?

19 A I -- I don't know that because the vehicle that we

20 removed was not a Suzuki.

21 Q Oh. I'm sorry. Whatever the vehicle was that

22 was in the garage, that's where that was?

23 A It was in that area. In the large open area. If you

24 see the -- if I can point to the --

25 Q Sure.

1 A -- black object right here, this is an engine hoist.
2 The vehicle was here to the left of it in the open
3 bay.

4 Q Okay. So there was some items that you located
5 and marked with those yellow tags that weren't
6 covered by the vehicle; correct?

7 A I don't know if I understand your question, sir.

8 Q They weren't concealed. The vehicle wasn't on
9 top of any -- some of the items that you -- you
10 note in this picture; correct?

11 A I -- I still don't know if I can answer that. And
12 I -- I --

13 Q Let me ask it a third way. Maybe that will --
14 I'll try a third way. Could you see some of the
15 items when you walked into the garage originally?
16 The videotape? The items I mean would be the
17 ones that you've marked with these yellow cones
18 or tents?

19 A Some of these yellow markers, specifically the ones
20 around the back of the garage, are next to circles
21 that are drawn on the concrete floor, and the reason
22 some of these, in particular No. 10, appears to be
23 where the car would have been, if I can explain how
24 this occurred, after we entered the garage and
25 videotaped the interior, did a cursory search, we had

1 identified the presence of the Black Jack creeper, we
2 had identified the presence of some paint thinner
3 jugs, and other things that we believed were items
4 that we were going to collect.

5 We also became aware of some of these
6 circles that were on the floor. It was my
7 understanding, I was informed, that those had
8 been placed on the floor by Crime Lab personnel
9 during a previous search, and identified areas
10 that may have, uh, luminesced from luminol.

11 So we identified those just for
12 identification purposes that they are here. At
13 that point, um, we then removed the vehicle, and
14 I felt as long as the vehicle was out of the way,
15 let's take a photograph of where our markers are.
16 And that's why some of these markers, in
17 particular, as I said, No. 10, is under the
18 vehicle.

19 Q Okay. Thank you. That clarifies that. So when
20 you did your search on March 1 and into March 2,
21 the only two items, I think -- well, that you
22 testified -- correct me if I'm wrong -- that you
23 would have -- would have been new, would be No. 9
24 and No. 23, the one underneath the compressor
25 that, as of yet, in this picture, isn't marked?

1 A I'm sorry? That would have been new?

2 Q Would have been new items that came to your --

3 You know, you said -- you mentioned that someone

4 else came through and searched previously;

5 correct?

6 A In November of 2005.

7 Q And they circled some areas on the ground and on

8 the pavement in the driveway -- in the garage;

9 correct?

10 A Correct.

11 Q And you noted those circles; correct?

12 A Correct.

13 Q And you put the little marking next to those

14 little white circles?

15 A Correct.

16 Q That wasn't something that you just found;

17 correct? It was some -- some subject or some

18 item that previous search team thought was of

19 interest; correct?

20 A Well, to answer your question the way you -- you

21 stated it, it was something that, yes, I did just

22 find, because this is the first occasion I had been

23 in the garage. I saw that there were circles, and I

24 was informed that those circles had been placed by

25 Crime Lab personnel to identify areas that had

1 reacted through luminol. So for the sake of
2 photographic documentation, we placed markers next to
3 those. That does not mean that we specifically
4 collected an item of evidence from, say, Marker No. 3
5 or Marker No. 4.

6 Q Which items did you actually, specifically,
7 remove an item of, uh, evidentiary value then?

8 A Well, this photograph was taken in the early evening
9 hours of March 1, and there was a great deal of
10 searching that took place after this photograph was
11 taken, and many items of evidence were collected
12 after this photograph was taken.

13 As each individual item of evidence was
14 found, or something was identified that we felt
15 was going to be an item of evidence and we were
16 going to collect it, we would place an -- an
17 evidence photographic marker next to it,
18 photograph it, measure it, and collect it. So
19 there are many numbers that come after the
20 highest number in this photograph.

21 Q You mentioned there was a prior Crime Lab taper,
22 or Crime Lab technician, that came through, made
23 those circles, where you noted had been positive
24 for the luminol testing; correct?

25 A That's what I was told.

1 Q What you were told? So someone else went through
2 the garage before you'd gone through the garage
3 on March 1?

4 A That's correct.

5 Q And No. 9 on the picture, uh, notes, apparently,
6 a bullet fragment that you found; correct?

7 A Correct.

8 Q And it's in a crack in the pavement of the -- the
9 garage floor?

10 A Correct.

11 Q Okay. So -- so I would assume, correct me if I'm
12 wrong, that someone missed that the first time?

13 A I don't know as if I -- I can assume that. All I can
14 say is that on March 1 I happened to be walking in
15 the garage, and I stopped, and I looked down, and I
16 saw the gray object that struck me as being similar
17 in color to the lead from a bullet, which -- which
18 caused me to examine it closer.

19 Q Just walking into the garage you saw it and made
20 note of it?

21 A Yes. In fact, several other investigators had
22 already been into the garage. I happened to be in
23 this front corner of the garage looking with a
24 flashlight at the floor in the early stage of the
25 search, and looked down, and, as I said, I saw a

1 light gray-colored object that -- I knew in my mind
2 that we need to be looking for bullets. That looks
3 to be the color of lead from a bullet.

4 Q Did you process -- And what I mean by that is,
5 did you take uh, uh, swabs of -- of the bullet,
6 for instance, and the creeper, while you were in
7 the garage?

8 A No, we did not.

9 Q Did -- So no one in your team actually swabbed
10 any of those items to determine if there was any
11 potential DNA evidence?

12 A Not on the items as stated, no.

13 Q I'm sorry. I didn't hear.

14 A Not on the items that you just stated, no.

15 Q Okay. Any item -- any items in the -- the garage
16 that you did that to?

17 A The swabs were collected on the 2nd, yes.

18 Q What were the swabs collected? What -- what
19 items were swabbed?

20 A The red tool chest at the back of the garage was
21 swabbed.

22 Q Any reason why you didn't swab the creeper?

23 A Uh, we -- we need to make a decision. Are we going
24 to try and collect any visible stains here in the
25 field? Or is it more practical to collect this

1 object in its entirety as a whole, if it is portable,
2 can we package it sufficiently and protect any
3 evidence that may be on it, and transfer it to the
4 Crime Lab? And that's what we chose to do.

5 Q So you actually did transport the entire creeper
6 to the Crime Lab?

7 A I did not. It was collected and packaged and removed
8 from the garage. And any further analysis or testing
9 at the Crime Lab became someone else's
10 responsibility.

11 Q Someone in your team packaged the creeper;
12 correct?

13 A Yes. It was removed from the garage, and it was
14 collected and packaged for transport away from there.

15 ATTORNEY FREMGEN: I have nothing else.

16 THE COURT: Redirect?

17 **REDIRECT EXAMINATION**

18 BY ATTORNEY KRATZ:

19 Q Mr. Fremgen suggests that law enforcement
20 officers may have missed something before March
21 1. Isn't it true that it wasn't until March 1
22 that law enforcement was even told that Teresa
23 Halbach was shot in the garage --

24 A That's correct.

25 Q -- that you (inaudible.)

1 A That's correct.

2 Q And that was by the defendant, Mr. Dassey; is
3 that right?

4 A Correct.

5 ATTORNEY KRATZ: That's all I've got,
6 Judge. Thank you.

7 ATTORNEY FREMGEN: Just --

8 THE COURT: You may step down.

9 ATTORNEY FREMGEN: -- one moment, Judge.
10 Nothing more, Judge. Thank you.

11 THE COURT: You may step down.

12 ATTORNEY KRATZ: State would call Dan
13 Kucharski to the stand, please.

14 THE CLERK: Please raise your right
15 hand.

16 **DANIEL KUCHARSKI,**

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

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

21 THE WITNESS: Daniel J. Kucharski,
22 K-u-c-h-a-r-s-k-i.

23 **DIRECT EXAMINATION**

24 BY ATTORNEY KRATZ:

25 Q Mr. Kucharski, how are you employed?

1 A I'm employed by the Calumet County Sheriff's Office.

2 Q How long have you been on the -- a police
3 officer?

4 A I've been with Calumet County for about four years,
5 and two years before that with another agency.

6 Q What are your current duties with Calumet County?

7 A I'm a patrol deputy with the additional duties as an
8 evidence tech and armor for the county.

9 Q Were you asked, Deputy Kucharski, to assist in,
10 uh, search and other investigative efforts
11 regarding the death of Teresa Halbach?

12 A Yes, I was.

13 Q I'm going to move, um, right ahead to your
14 specific areas of, uh, involvement, specifically,
15 to Sunday, the 6th of November. Were you asked
16 to proceed to what's now known as the Avery
17 salvage property?

18 A Yes, I was.

19 Q What were your duties on the 6th of, uh,
20 November?

21 A I was assigned a -- a search team that included, uh,
22 Lieutenant Lenk, Sergeant Colborn, and Detective
23 Remiker. We were given, uh, several areas on the
24 property to search different times of the day.

25 Q Speak up just a little bit. I'm sure we would

1 appreciate it. Uh, do you have, and did you
2 have, prior to the 6th of November, any specific
3 training and experience as an evidence
4 technician?

5 A Yes. I went through the two-week evidence technician
6 school at Fox Valley Technical College.

7 Q On the 6th of November, uh, were you asked, and
8 did you, in fact, perform a search of the, uh,
9 detached garage of Steven Avery?

10 A Yes, I did.

11 Q Could you describe on that early stage, that is,
12 just in the first full day of searching of that
13 property, describe what it was that you were
14 looking for in that garage?

15 A Basically, myself and my team were sent to the, uh,
16 garage for a general search. We were looking for
17 general, um, items that made a point as to a crime
18 that had been committed. Um, nothing specific at
19 that time were we looking for.

20 Q And, in fact, on that, uh, early date, uh, did
21 you have, um, a detailed or a solid understanding
22 what it was you were looking for?

23 A Not at all. There was very little guidance. Um, as
24 the facts would roll in, we would get, uh, more
25 specific things. As the days went past, we'd get

1 more specific things to search for and to collect.
2 Uh, that was my first day of actual evidence
3 collecting and searching, um, very general.

4 Q All right. I've got some photographs that will
5 assist. I show you what's marked as Exhibit 116.
6 Tell the jury what this is, please?

7 A This is a photo of the inside of the garage that, uh,
8 we searched on that Sunday. So it would be towards
9 the, um -- the front or overhead door looking back
10 towards the, um, southeast corner of the garage.

11 Q There are two large objects, two vehicles, if you
12 will, that are depicted in this particular
13 photograph. Could you describe those for the
14 jury, please?

15 A It's a Suzuki Samurai automobile and a, um, Ski-doo
16 Mach 1, um, snowmobile.

17 Q And is this photograph taken and does it
18 accurately depict how Mr. Avery's garage looked,
19 uh, on the 6th of November?

20 A Yes, it does.

21 Q The back of this photograph you see a, uh -- a
22 Black Jack creeper?

23 A Yes.

24 Q And I've zoomed in a little bit, uh, to that.
25 You can see it on the -- the large screen. Um,

1 on the 6th of November, did you have any
2 indication that that Black Jack creeper may, in
3 fact, have any evidentiary value?

4 A No. Nothing stood out.

5 Q Did you have a general impression of this garage
6 when you first walked into it? Can you give the,
7 uh, jury kind of a flavor of it?

8 A I would say it was a typical garage on the messy
9 side. Um, the west side of the garage was piled up
10 with types of, um, uh, machinery, junk, um, things
11 like that, several feet deep on that west side.

12 Um, along the back of the garage, that
13 would be the south side of the garage, was --
14 also had equipment and junk on it. Not quite as
15 deep as that -- that west side.

16 Then on the east side of the garage,
17 into the garage, there's also a pile of junk.
18 Um, the floor was a typical garage floor with,
19 uh, stains on it, dirt.

20 Q At some point was that snowmobile removed from
21 the garage?

22 A Yes. At one point, uh, towards the end of our
23 searching, we wanted to see -- look underneath the
24 snowmobile, so we removed it from the garage.

25 Q All right. And, again, since this was a -- a

1 relatively cursory search, did you believe that
2 you or other law enforcement officers would have
3 an opportunity to go back into this garage and
4 re-search it if you need -- needed today?

5 A Yes. As -- as more information came in, more
6 specific information came in, we would go back to
7 places that we had -- had already searched looking
8 for specific things.

9 Q I'm showing you Exhibit No. 117 now. It's on the
10 large screen. Is this a photograph after the
11 snowmobile's been removed?

12 A Yes.

13 Q Could you, uh, describe some -- And I think you
14 have a laser pointer up there. Describe some,
15 um, landmarks or specific, uh, areas that you
16 observed on the 6th of November?

17 A Well, after we, um, removed the snowmobile, we could
18 see more clearly, um, the -- a crack running, uh --
19 be north and south, and one east and west. Uh, these
20 are the scratches made by the, uh, snowmobile pulling
21 in and out of the, uh, um, um, garage. There were
22 scratches already on the floor before we pulled it
23 out, because they obviously had to get it in there
24 somehow. Um, that's what we saw when we pulled the
25 snowmobile out.

1 Q All right. There's a riding, uh, lawnmower?
2 Looks like a John Deere lawnmower to the right;
3 is that right?
4 A Towards the back here in this area. Riding
5 lawnmower.
6 Q Large red tool chest? Show us that?
7 A Stand-up tool chest in the center area here towards
8 the back wall.
9 Q Next to that tool chest, on the 6th, I can see a,
10 uh -- a green air compressor. Do you see that in
11 the photograph?
12 A It's dark, but it's right here, the green air
13 compressor on the floor next to the tool chest.
14 Q Now, for the jury's benefit, were, um, many or,
15 in fact, any of those items removed? And did you
16 search behind or under them? Or was it that
17 thorough of a search on the 6th?
18 A It was a general search. We -- You know, on the most
19 detailed search, we would have pulled everything out
20 of the garage. We, obviously, didn't do that. Um,
21 the only thing we pulled out was the -- the sled, um,
22 because we couldn't see underneath it, uh, readily,
23 and it was out in the open anyways. We didn't take
24 out any of the things along the back wall or the side
25 walls.

1 Q All right. The floor of this, uh, garage you had
2 described briefly, but I'm going to show you
3 Exhibit No. 118. Tell us what we're looking at
4 here, please?

5 A It's little bit closer view of the, uh, floor after
6 the snowmobile had been pulled out.

7 Q During your search of the garage, did you have
8 occasion to, uh, find any, um, what are referred
9 to as shell casings?

10 A Yes. We found, located and collected several .22
11 caliber long rifle shell casings.

12 Q I'm showing you what's been marked as Exhibit No.
13 119. Tell the jury what we're looking at here,
14 please?

15 A This is one of the shell casings that we found in
16 place on the floor of the garage on the date we
17 searched it.

18 Q All right. Did you take a photograph of more
19 than one shell casing?

20 A We photographed more than one shell casing. We took
21 as many photographs of the shell casings that we
22 could. Some were behind things that we couldn't
23 readily photograph. We collected those and, uh, put
24 them altogether into a box.

25 Q If you remember, Deputy Kucharski, on the 6th of

1 November, uh, can you remember, and can you tell
2 the jury, how many shell casings were recovered
3 from that garage?

4 A There were either 10 or 11 shell casings recovered.

5 Q In fact, now I'm going to show you Exhibit No.
6 120, I believe. Tell us what we're looking at
7 here, please?

8 A This is the pill box that I put the, um, shell
9 casings in, photographed, um, after it had been
10 entered into evidence.

11 Q And as you sit here, are you able to tell the
12 jury, and can you count, how many shell casings
13 are in that pill box?

14 A I count 10 -- uh, I count 11 in this photograph.

15 Q All right. And, again, those were recovered from
16 inside the garage on the garage floor; is that
17 right?

18 A That's correct.

19 Q What exhibit, uh, was that that you were just
20 handed?

21 A (No verbal response.)

22 THE CLERK: One twenty-eight.

23 ATTORNEY KRATZ: One twenty-eight?

24 Q (By Attorney Kratz) I'm sorry. We've handed you
25 what's been marked as, uh, Exhibit 128. Tell us

1 what that is, please?

2 A It appears to be the -- the box with the .22 shell
3 casings.

4 Q All right. After you recovered those shell
5 casings, do you know what happened to them?

6 A After I sealed them in the package and put them into
7 the, uh, paper bag and enter those into evidence at
8 the Calumet County Sheriff's Department, and I left
9 it in the care and custody of the, uh, evidence
10 custodian.

11 Q Now, you didn't perform any analysis on those
12 shell casings? In other words, you aren't
13 qualified to compare, uh, shell casings to
14 specific firearms, are you?

15 A Correct. I just collected them. I didn't do any
16 analysis on them.

17 Q Is it fair to say that that is a -- a discipline
18 or a science that is left to somebody with
19 greater expertise than you have?

20 A Yes.

21 Q Deputy Kucharski, after the, uh, garage was
22 searched in relatively general fashion, do you
23 recall, um, what other searches were performed on
24 the 6th of November?

25 A Only the searches that my team did. Um, directly

1 after we finished up with the, uh, search of the
2 garage, I was called over to a area behind the, uh,
3 Janda residence to take some burn barrels, um, that
4 were waiting to be loaded up and taken -- entered
5 into evidence.

6 Um, after that, I was given the
7 assignment --

8 Q Let me just stop you there. I'm going to show
9 you what's been marked as Exhibit No. 121. Tell
10 us what we're looking at here, please?

11 A Those are the burn barrels that I tagged, and they
12 were lowered onto a trailer that you can see the ramp
13 on there, and they were taken.

14 Q After the search of the, um, burn barrels or --
15 excuse me -- the recovery of, uh, the Janda and,
16 uh -- That's Mr. Dassey's residence as well? Is
17 that your understanding?

18 A I -- I don't know.

19 Q Okay. You knew that it was Barb Janda's --

20 A Yes.

21 Q -- trailer?

22 A That's how it was referred to.

23 Q After the recovery of those burn barrels, um,
24 what were you asked to do?

25 A We were sent to the, uh, Janda residence to, um,

1 search it.

2 Q And did you, in fact, search that residence?

3 A Yes, we did. Uh, again, this was a general search.

4 Um, not looking for anything in specific.

5 Q During the search of, uh, the Janda trailer, did

6 you have occasion to observe and recover a, um --

7 a phone message that was found on, um, the

8 answering machine of the Janda residence?

9 A Yes. One of the first things that we did when we

10 entered the residence is, uh, Detective Remiker

11 played the phone message while we were all standing

12 around. Uh, he recorded it. Um, and then we

13 commenced searching the rest of the, uh, residence.

14 Q Direct your attention to the photos in front of

15 you. Exhibit No. 123, and now being shown on the

16 large screen for the jurors, what are we looking

17 at?

18 A This is a photo of the phone and answering machine

19 that was in the, uh, Janda residence.

20 Q Did -- And you indicated that you had occasion to

21 listen to, uh, at least one of those phone

22 messages; is that correct?

23 A Yes.

24 Q Did an individual on that phone message identify

25 herself?

1 A Yes. We listened to the message that, uh, the female
2 caller, uh, identified herself as Teresa.

3 ATTORNEY KRATZ: At this time, Judge,
4 assuming this works, I will ask the Court for
5 permission to play that particular phone message.
6 We do have the, uh, phone message, uh, reduced to
7 a -- an audio CD as well that I will then ask to
8 have marked, and then I'll place into evidence at
9 that time.

10 THE COURT: Any objection, Counsel?

11 ATTORNEY FREMGEN: No, Judge.

12 THE COURT: All right. Go ahead.

13 (Wherein attempt is made to play phone
14 message.)

15 ATTORNEY KRATZ: We should try this
16 maybe one more time. Apologize. Do it the old
17 fashioned way, Judge. See how this works. Let's
18 try it again.

19 THE COURT: Counsel, do you have other
20 questions to ask of Mr. Kuchar -- Kucharski?
21 Maybe you'll want to --

22 ATTORNEY KRATZ: Thank you, Judge. We
23 will --

24 THE COURT: -- give another shot at this
25 later on.

1 ATTORNEY KRATZ: We will come back to
2 this a little bit later.

3 Q (By Attorney Kratz) Investigator Kucharski --
4 or, excuse me -- Deputy Kucharski, after the, um,
5 phone call was, um, recovered from you, uh, what
6 were your other search efforts that day?

7 A After we finished with the, uh, Janda house, we were
8 also assigned to, uh, search, um, the shop buildings,
9 um, and then, ultimately, assigned to search the, um,
10 pickup truck that was parked outside of Steven
11 Avery's garage.

12 Q Deputy Kucharski, did you have occasion to, um,
13 recover any firearms that day?

14 A Yes. We were also sent to the, uh, Steven Avery
15 trailer to specifically pick up, um, firearms that
16 were in the trailer, a, uh, vacuum cleaner that was
17 in the trailer, and bedding from a spare bedroom that
18 was in the trailer.

19 Q And could you tell the jury, please, uh, what
20 firearm, if any -- or firearms, if any, were
21 recovered from Mr. Avery's trailer?

22 A Inside of, uh, Steven Avery's bedroom, we found,
23 above the bed in a, um, gun rack, two rifles. One
24 was a Connecticut Valley Arms Hawkin-type .50 caliber
25 muzzleloader. Um, the other was a .22 caliber

1 Glenfield Model 60 semi-automatic rifle.

2 Q I'm showing you a, uh, photo that has already
3 been received, uh, into evidence in this case as
4 Exhibit No. 86. Do you recognize that
5 photograph?

6 A Yes. It's a photo of the rifle. The .22 caliber
7 semi-automatic rifle.

8 Q We're going to actually have marked, uh, Deputy
9 Kucharski, and show you -- It's Exhibit -- I'm
10 showing you what's been marked as Exhibit No.
11 129. Tell the jury what that is, please?

12 A This is the rifle that, uh, I collected out of Steven
13 Avery's bedroom. The .22 caliber semi-automatic
14 rifle.

15 Q Now, are you familiar with a firearm --
16 Specifically, do you have some working
17 familiarity with this particular firearm?

18 A I am the armor for the, uh, county, so I have been to
19 several schools, uh, trained in maintenance and
20 identification of weapons. Yes, I know how this
21 rifle works.

22 Q All right. When you describe a rifle as a
23 semi-automatic rifle, and, specifically, Exhibit
24 No. 129, can you tell us what that means, please?

25 A A semi-automatic is referring to the action of the

1 rifle. This rifle is -- has a tubular magazine.
2 Below the magazine with the, uh -- the -- the
3 ammunition for it. After it's loaded, every time you
4 pull the trigger, one round will be fired. The next
5 round will be automatically cycled into the chamber,
6 and then with every succeeding pull of the trigger
7 you get one round.

8 Q I don't know if you know this answer, uh, Deputy
9 Kucharski, but does this particular weapon, this
10 .22 caliber semi-automatic rifle, uh, contain
11 several, um, bullets within its, what's called,
12 magazine?

13 A Inside the magazine to this particular model,
14 depending on when it was made, is somewhere between
15 14 and 17 rounds you can put in the tubular magazine.

16 Q All right. So before stopping to reload, an
17 individual could shoot, uh, 14 to 17 rounds of
18 ammunition through it? Is that what your
19 testimony is?

20 A Yes.

21 Q Where was that, uh, rifle seized from,
22 specifically?

23 A This was in Steven Avery's bedroom inside the trailer
24 on the wall in a gun rack above his bed.

25 ATTORNEY KRATZ: Could you --

1 Investigator Wiegert, thank you.

2 Q (By Attorney Kratz) Deputy Kucharski, upon a,
3 um, search of Mr. Avery's residence, do you have
4 occasion to, uh, seize or remove any cleaning,
5 uh, equipment?

6 A On the 6th, we were specifically sent in to, um, take
7 a vacuum, and, then, on the 8th, when we went back to
8 do a thorough search of the residence, we, um,
9 collected as evidence a Bissell carpet cleaner.

10 Q I'm going to show you a photograph, Exhibit No.
11 124. It's on the large screen. Can you tell us
12 what that is, please?

13 A That is the Bissell carpet cleaner that we, um, took
14 into evidence on the 8th.

15 Q Do you remember where that was received from?

16 A I think it was in the hallway, um, living room
17 portion.

18 Q Investigator Wiegert is actually going to show
19 you that item.

20 ATTORNEY KRATZ: Roberta, what number is
21 that?

22 THE CLERK: Exhibit 130.

23 Q (By Attorney Kratz) I'm showing you what's been
24 marked as Exhibit No. 130. Tell the jury what
25 that is, please?

1 A That is the Bissell carpet cleaner that, uh, we took
2 from the residence on the 8th.

3 Q All right. Thank you. If I can just go back.
4 Uh, I believe it was on the 6th you talked about,
5 a -- maybe it was the 7th -- a searching an
6 office area or another building within the, uh,
7 Avery compound; is that right?

8 A On the 6th and the 7th, um -- On the 6th was more --
9 more of a general search of the office buildings, on
10 the, uh, property there. On the 7th, I also went
11 into some of the buildings to specifically take some
12 items.

13 Q I'm going to show you Exhibit No. 122. It's a
14 photograph. Can you tell us what we're looking
15 at, please?

16 A This is a photograph of -- on the inside of one of
17 the office buildings. That's kind of like a, uh -- a
18 customer counter, I believe. And that's, uh, with a
19 endangered/missing poster for Teresa Halbach.

20 Q Directing your attention, now, to the 8th of
21 November, were you asked to perform a more
22 thorough search of the residence of Steven Avery?

23 A On the 8th, um, myself, Lieutenant Lenk, and Sergeant
24 Colborn were sent back to the Steven Avery residence
25 to, uh, specifically take several items, and then

1 complete a thorough search of the residence.

2 Q On the 8th, uh, did you have occasion to find any

3 ammunition? Specifically, any .22 caliber long

4 rifle ammunition from the bedroom of Steven

5 Avery?

6 A Yes, we did. We located and collected .22 caliber

7 long rifle ammunition from the bedroom.

8 Q An evidence photograph of that was taken. I'm

9 going to direct your attention to Exhibit 125.

10 Could you tell us what that is, please?

11 A That is a photo of the .22 caliber ammunition that

12 was taken from the bedroom.

13 Q Also, on the 8th, did you have occasion to find

14 and recover, uh, a key?

15 A Yes. On the 8th we recovered a Toyota key in the

16 bedroom of Steven Avery.

17 Q ~~I show you what's been marked as Exhibit No. 127.~~

18 Excuse me, 126. Could you tell us what Exhibit

19 No. 126 is, please?

20 A It's a photograph that I took of the key as it was

21 found in the bedroom.

22 Q Who collected this key?

23 A I did.

24 Q And how was it collected, please?

25 A I collected the key by taking new gloves out of a

1 package that I brought into the residence to do the
2 searching with. Put the key into a new paper bag,
3 sealed the paper bag, and it was in my possession
4 until it left with Special Agent Joy to the Crime
5 Lab.

6 Q A photograph of that key was, uh, later taken by,
7 um, evidence technicians at the Sheriff's
8 Department. I'm showing you Exhibit No. 127.
9 Can you tell us what that is, please?

10 A That's another photograph of the key that we located
11 and took into evidence out of Steven's Avery's, uh,
12 bedroom.

13 Q Just so the jury's clear, this is what's commonly
14 referred to as a -- an evidence photo? That is,
15 after it's been collected; is that right?

16 A That's correct.

17 Q And the last thing we're going to show you,
18 Exhibit No. 131, and tell the jury what that is,
19 please?

20 A That is the key that we found in the -- Steven
21 Avery's bedroom.

22 Q Now, on the end of the key is a blue, um, what's
23 called a key fob. Something that would be
24 attached or go into a -- a lanyard. Is that your
25 understanding?

1 A Yes. A female end of the key fob is attached to the
2 key.

3 Q As depicted, that is, the key it, itself, with
4 the fob, um, and the key chain, is that how it
5 was recovered? And does it look the same or
6 similar, uh, as Mr. Wiegert is holding it, as it
7 did when you recovered it on the 8th of November
8 from Mr. Avery's bedroom?

9 A Yes, it looks the same.

10 ATTORNEY KRATZ: With, uh, my
11 reservation, Judge, for, uh, replaying that
12 exhibit, once a -- and probably after lunch when
13 the, uh, technical, uh, problems are resolved --
14 and moving the admission of Exhibits 116 through
15 131, I have no further questions of this witness.
16 Thank you.

17 THE COURT: Any objections to the exhibits,
18 Counsel?

19 ATTORNEY FREMGEN: One thirty-one?

20 THE COURT: Yes.

21 ATTORNEY KRATZ: One thirty-one.

22 ATTORNEY FREMGEN: One thirty-one was --

23 ATTORNEY KRATZ: The key, itself.

24 THE COURT: The actual key.

25 ATTORNEY FREMGEN: No. That's fine.

1 That's fine, Judge.

2 THE COURT: All right. They're received.

3 You may cross.

4 CROSS-EXAMINATION

5 BY ATTORNEY EDELSTEIN:

6 Q Deputy, good morning.

7 A Good morning.

8 Q I'm sorry. Is that better?

9 A Yes.

10 Q Okay. All right. So you -- you work for Cal
11 County? You've been over there four years;
12 right?

13 A Yes.

14 Q And where were you, specifically, before that?

15 A Oconto Police Department.

16 Q Okay. Do you have a, uh, four-year degree in
17 Police Science?

18 A I have a two-year degree in Police Science.

19 Q From?

20 A Um, Green Bay. From, uh, uh, Northeast Wisconsin
21 Technical College.

22 Q Okay. Other than the training you described, uh,
23 the two-week training at Fox Valley, do you have
24 any other formal training, uh, through
25 educational entities for purposes of, uh, being

1 qualified on evidence collection?

2 A No.

3 Q Now, I noticed in response to Mr. Kratz, when you
4 were questioned about firearms collected, you
5 were very quick to state that you took that .22
6 out of Steven Avery's trailer; correct?

7 A I took the .22 out of the trailer, yes.

8 Q Okay. I think the question he asked you, though,
9 with your involvement, um, was a little broader
10 than that. And the truth of the matter is you
11 picked up a lot of firearms from the Avery
12 property; didn't you?

13 A Two firearms out of the Steven Avery trailer, and
14 many other firearms off the property.

15 Q Okay. So the two from the trailer certainly
16 weren't the only firearms that were picked up?

17 A That's correct.

18 Q As a matter of fact, there was at least one other
19 .22; right?

20 A Yes.

21 Q Any particular reason you can think of, when
22 Mr. Kratz asked you about firearms you picked up,
23 you didn't mention the others?

24 A We were speaking about the Steven Avery trailer. I
25 don't think we went into the searches, uh, on the

1 other pieces of property and weapons.

2 Q Deputy, I may have misunderstood Mr. Kratz's
3 question, but I understood him to ask you about
4 any firearms. But now that you've cleared that
5 up, you acknowledge that there -- there were
6 other firearms and there was at least one other
7 .22?

8 A Yes.

9 Q Okay. The .22 Glenfield, you indicated that it
10 holds between 14 and 17 rounds; correct?

11 A I believe so, yes.

12 Q Well, upon what do you believe that?

13 A Um, records, um, from the Marlin Company. They
14 changed the, uh, configuration of the magazine at a
15 certain period during the manufacture. Um, the only
16 real way to tell exactly how many it holds is to
17 actually load it. I don't know if it's been modified
18 or anything like that.

19 Q You didn't -- Well, you -- you looked at it I
20 assume?

21 A Yes.

22 Q You're fairly adept with firearms?

23 A I didn't examine it. I didn't take it apart at all.

24 Q Well, certainly by way of appearance, there
25 wasn't anything obvious that would indicate that

1 the magazine had been modified, was there?

2 A Nothing overly, no.

3 Q So your 14 to 17, this a guesstimate?

4 A Yes.

5 Q You never actually checked it?

6 A No.

7 Q Okay. In order to load that particular firearm,
8 the individual cartridges, the shells,
9 themselves, have to be individually handled;
10 correct?

11 A Yes.

12 Q Okay. And, basically, they slide down the tube
13 and then it's fed via a spring?

14 A Well, there is a -- there is a speed loading device
15 that they have on the market you can put into another
16 device, and then that fits into the tube, and then
17 they all drop in there, so I guess, individually, it
18 depends if you had that extra device or not.

19 Q Well, not to quibble with you, Deputy, but in
20 order to load the speed loader, you're going to
21 still have to handle each one of them separately,
22 aren't you?

23 A To put them into the speed loader, yes.

24 Q So whether you load the thing directly, without
25 the benefit of a speed loader, or you utilize a

1 speed loader, someone is going to have to handle
2 each and every shell that ultimately ends up in
3 the tubular magazine of the rifle?

4 A Yes.

5 Q All right. Now, you recovered, I believe you
6 said, uh, 11 shell casings from the garage?

7 A Yes.

8 Q In various states of condition? Is that a fair
9 statement?

10 A Yes.

11 Q Okay. Did you personally pick each and every one
12 of them up?

13 A No, I did not.

14 Q So you can't tell us how they were handled prior
15 to you getting your hands on them, so to speak?

16 A ~~Everyone was wearing gloves as we were searching.~~
17 ~~Um, that's about the only thing that I could tell you~~
18 ~~about how they were handled.~~

19 Q But you didn't sit there and observe each and
20 every casing being picked up?

21 A Correct.

22 Q All right. So you don't know if they were picked
23 up using any type of device, or they were picked
24 up using, um, uh, hands or gloved hands, or
25 anything like that?

1 A That's correct.

2 Q Prior to the shell casings being removed from the
3 garage -- I assume you were in the garage, and,
4 essentially, everybody said, well, gee, I found
5 one, they bring them over to you. Is that what
6 happened?

7 A I found one, we'd, um, attempt to photograph it if it
8 was out in the open. Circle it. Put a tent there.
9 Um, after, um, the point reached there where we
10 didn't find any more, okay, collect them all up.

11 Q At some point did you remove each and every item
12 from the garage?

13 A No, I did not.

14 Q Did you or anyone else document the precise
15 location within the garage of each of the shell
16 casings you did leave the garage with?

17 A Only the photographs.

18 Q Okay. So there were no measurements, for
19 example, that a shell casing was "X" distance
20 from the rear wall, or so many feet from another
21 wall?

22 A That's correct.

23 Q Deputy, you testified about, uh, finding what's
24 depicted in the photograph on display -- and for
25 the record it's the -- described as the CCI, uh,

1 .22s; correct?

2 A Yes.

3 Q When you -- Are you the individual who located

4 that?

5 A Um, that was located in -- in Steven Avery's bedroom.

6 Um, Sergeant Colborn was searching that area of the,

7 uh, bedroom. That would be the desk area.

8 Q So I guess the answer to my question is, no, you

9 were not the one who actually located it?

10 A Correct.

11 Q You took the picture?

12 A No.

13 Q Did you become, uh, the custodian of that box?

14 A Yes.

15 Q And that was on which day?

16 A The 8th.

17 Q Of November?

18 A Yes.

19 Q When it was -- Who -- Who gave it to you? Who

20 gave you the box?

21 A I don't know.

22 Q When it was given to you, was the top open or

23 closed?

24 A I don't remember -- If it was given to me, if it was

25 pointed out to me and I picked it up, I don't

1 remember if the box was open or closed.

2 Q Did you ever -- The -- the top of that will slide

3 in order to open; correct?

4 A Yes.

5 Q Did you at anytime open it or close it to your

6 memory?

7 A No.

8 Q When you received it, how did -- if at all -- did

9 you package it?

10 A We took the ammunition out of that, um, bedroom and

11 placed it all into one bag. A grocery bag.

12 Q Okay. Are you telling us that you removed each

13 and every cartridge from that particular

14 container and put it in a grocery sack?

15 A No.

16 Q You left the thing in one piece with them in

17 place; correct?

18 A Yes.

19 Q And then put it in the sack?

20 A Yes.

21 Q All right. So you didn't handle, or to your

22 knowledge nobody else handled, the individual

23 shells?

24 A Correct.

25 Q What about the outside? How was the outside of

1 that preserved for purposes of, um, testing or
2 trying to lift any fingerprints off that?

3 A It wasn't preserved for fingerprint evidence.

4 Q You're a trained evidence technician, are you
5 not?

6 A Yes.

7 Q You've already seized a firearm, including a .22,
8 from that residence; correct?

9 A Yes.

10 Q Don't you think it would be important to try to
11 determine who, if anybody, has handled that
12 particular box?

13 A Not at the time.

14 Q Didn't Agent Fassbender specifically tell you, go
15 back into Steven Avery's trailer and get that
16 .22?

17 A Among other things, yes.

18 Q Well, now, as an officer, particularly one who's
19 trained in evidence collection, can you explain
20 to me why you did not think it was critical, in
21 light of the fact that Fassbender instructed you,
22 specifically, to go get that .22 rifle, and
23 you've come across a box of .22s, not to preserve
24 it in such a fashion as would allow for
25 fingerprint processing?

1 A Out of all the items that, uh, myself and my team
2 collected, probably into the hundreds of items, I
3 only remember one item that we preserved for
4 fingerprint evidence.

5 Q That doesn't really answer my question. I didn't
6 ask you how many items you picked up. I just
7 want to know why you didn't think it was
8 important, particularly in light of the fact that
9 the lead investigator, Fassbender, tells you to
10 go get the .22 rifle, and you come across .22
11 shells in a plastic case, that you didn't think
12 it was important to preserve it in a fashion
13 which would allow the processing for
14 fingerprints?

15 A I don't have an answer.

16 Q Did you not think that was important to be
17 preserved in such a fashion as to allow the
18 lifting of prints?

19 ATTORNEY KRATZ: Objection. Both
20 argumentative and irrelevant. If Mr. Edelstein
21 is saying somebody other than Steven Avery
22 handled this, it becomes relevant. Otherwise,
23 it's not relevant, Judge.

24 THE COURT: I agree. Move on,
25 Mr. Edelstein. And, for the record, we're talking

1 here, I believe, about Exhibit 125.

2 Q (By Attorney Edelstein) You didn't examine --
3 Did you examine any of the individual cartridges
4 in there to determine what type of bullet was
5 contained in the box?

6 A No.

7 Q Did you, or any member of your search team, while
8 you were in the garage, or anytime after you
9 collected the 11 shell casings, um, perform any
10 swabbing on there so as to allow for the
11 processing of DNA evidence?

12 A On the shell casings?

13 Q Correct.

14 A No.

15 Q Do you know if that was ever done by anybody
16 involved in the investigation?

17 A I don't know.

18 Q Did you, or any member of your search team
19 assigned to perform the search in the garage,
20 following the receipt of the shell casings, do
21 anything in an attempt to, um, preserve them in
22 such a fashion as would allow the lifting of
23 fingerprints?

24 A No.

25 Q Now, you were there first in the garage on the

1 6th; is that right?

2 A That's correct.

3 Q You didn't find any bullets in any cracks on that

4 day?

5 A No, I did not.

6 Q You didn't find any on the 8th; correct?

7 A That's correct.

8 Q What about underneath the compressor? Did you

9 find any bullets or bullet fragments on the 6th

10 or the 8th?

11 A No, I did not.

12 Q You first testified that when you went in, when

13 you -- You characterize it as a general search

14 and that you weren't looking for anything

15 specific?

16 A Yes.

17 Q ~~What are you searching for un -- under what you~~

18 describe as a general search?

19 A Anything that stood out. Um, any type of evidence

20 that stood out.

21 Q Prior to going in there on the 6th, were you

22 advised by Fassbender or anyone else to look for

23 any spec -- particular items?

24 A Not that I recall, no.

25 Q Before you went in there with the search team,

1 uh, were you briefed by the agent in charge at
2 the command center?

3 A No. I was getting most of my orders from, uh,
4 Lieutenant Bowe or Lieutenant Sippel, and they were
5 getting it from the, uh, investigators in charge or
6 someone else.

7 Q So before you went in on the 6th, did you even go
8 down there? To the command center?

9 A Yes. I would check in at the command center, um,
10 before each assignment to get the -- or after each
11 assignment and at the beginning of each day to get
12 the next assignment.

13 Q Now, the bedding that you picked up that you
14 testified about on direct, that was from Steve
15 Avery's trailer; correct?

16 A Yes.

17 Q Specifically, what did the bedding consist of?
18 Let -- Let me do it this way. Was there a
19 pillowcase?

20 A I don't remember.

21 Q Was there a, um, quilt or any sort of blanket you
22 took?

23 A I took several sets of bedding off of the property
24 and I don't remember exactly what was in each set.

25 Q Do you recall, specifically, what you took off of

1 the bed at the time you were there?

2 A No. That's what I'm referring to.

3 Q Well, did all the bedding that you took come off

4 of the bed? Or did it come from -- for example,

5 from a closet or some sort of storage container?

6 A All of the bedding that I took came off of a bed.

7 Q Are you aware of any other bedding that was

8 removed that you did not take or that somebody

9 else took?

10 A I'm not aware of.

11 Q As to any of the bedding that you may have

12 taken -- Well, first of all, let's establish the

13 date. What date did you do that?

14 A I took bedding on the 6th of November. I took

15 bedding on the 8th of November.

16 Q From the same bed?

17 A No.

18 Q How many beds were in the trailer?

19 A Two.

20 Q On the 6th, which bed did you take it from?

21 A On the 6th, I took the bedding from the spare bedroom

22 in Steven Avery's trailer.

23 Q I take it, then, on the 8th, you took it from the

24 bed in the -- what's been described as Steve's

25 bedroom?

1 A Yes.

2 Q And you don't have a specific recollection of the
3 individual items on either date?

4 A Correct.

5 Q Just generally described as bedding?

6 A Correct.

7 Q On the 8th, you took the Bissell carpet cleaner?

8 A Yes.

9 Q On the 6th, you took the vacuum cleaner?

10 A Yes.

11 Q Did you take the vacuum, itself, or did you just
12 take the bag?

13 A The vacuum, itself.

14 Q And you understood that to be important because
15 of the potential for obtaining evidentiary clues?
16 For example, hair?

17 A ~~No. At that time I was instructed to pick it up.~~

18 Q Did you have an -- Again, you're try -- During
19 the course of your training as an evidence tech,
20 in addition to the techniques that you're taught
21 about preserving the integrity of the object, I
22 assume you learn a little something about why the
23 object might have some relevancy in a criminal
24 investigation? Is that a fair statement?

25 A Yes.

1 Q And you're not going to argue with me if I say
2 taking the vacuum cleaner would be important,
3 because sometimes fiber evidence is contained in
4 those bags? You know that, don't you?

5 A Why it was taken you'd have to ask the person that
6 instructed me to take it.

7 Q So you have no opinion as to why it would be
8 important to take it?

9 A My opinion would be, yes, probably for some type of,
10 uh, um, trace evidence.

11 Q Okay. Did you -- Were you instructed to remove
12 any carpeting from Steve Avery's trailer?

13 A No, I wasn't.

14 Q Did you remove any?

15 A No, I wasn't -- didn't.

16 Q Did you remove any carpet from any of the -- the
17 other locations you visited during the course of
18 your participation in the investigation?

19 A Not that I remember.

20 Q Well, that's something you would remember, isn't
21 that? If you cut out a piece of carpet and
22 turned it over to somebody for evidentiary
23 purposes, isn't it?

24 A I didn't cut out any carpet.

25 Q Well, you -- you just said you didn't remember.

1 But now you remember that you didn't; right?

2 A I remember I didn't cut out any carpet. Um, if I
3 picked up carpet, um, slim possibility, but I -- I
4 don't remember it.

5 Q As to the items you did collect, did you
6 regularly turn them over to the same individual
7 from the lab?

8 A I never turned over any items to any lab personnel.

9 Q Did you turn over the items you did collect to
10 the same individual?

11 A Yes.

12 Q And who was that?

13 A Deputy Hawkins.

14 Q So everything you picked up, from bedding, the
15 shell casings, carpet stuff, the cleaner stuff,
16 the bullets, all of that went over to Hawkins?

17 A Yes.

18 Q All right. That's all. Thank you.

19 THE COURT: Any redirect, Counsel?

20 ATTORNEY KRATZ: Just, uh, one question.

21 **REDIRECT EXAMINATION**

22 BY ATTORNEY KRATZ:

23 Q Mr. Edelstein asked you what you knew, and who
24 told you, or why you might have, uh, searched the
25 garage. On the 6th, the day that you did search

1 the garage, the 6th of November, were you told
2 that anybody had yet made any statements about
3 Teresa Halbach being shot in that garage?

4 ATTORNEY EDELSTEIN: And I object. And
5 call for a hearsay answer.

6 THE COURT: I think it's a fair
7 question. Overruled.

8 THE WITNESS: No, I did not.

9 Q (By Attorney Kratz) If you would have been told
10 that Brendan Dassey, or Steven Avery, or somebody
11 else would have made a statement that Teresa
12 Halbach would have been shot in that garage,
13 would you have done a different kind of search on
14 the 6th?

15 A Absolutely. Uh, when information like that comes in,
16 that helps to direct your search.

17 ATTORNEY KRATZ: With the indulgence of
18 the Court, Judge, I'm going to try this again.
19 If it doesn't work, we'll have to wait until
20 after lunch. I think Mr. Fremgen's helped me,
21 Judge.

22 ATTORNEY FREMGEN: Can you say that for
23 the record?

24 (Wherein phone message is played.)

25 "Hello. This is Teresa with *AutoTrader*

1 Magazine. I'm the photographer, and just giving
2 you a call to let you know that I could come out
3 there today, um, in the afternoon. It would --
4 will probably be around two o'clock or even a
5 little later. But, um, if you could please give
6 me a call back and let me know if that will work
7 for you, because I don't have your address or
8 anything, so I can't stop by without getting
9 the -- a call back from you. And my cell phone
10 is 737-4731. Again, it's Teresa, 920-737-4731.
11 Thank you."

12 ATTORNEY KRATZ: Once again, Judge, we
13 will have that marked as an exhibit. Uh, I will
14 offer that, uh, to the Court.

15 Q (By Attorney Kratz) My last question, is that,
16 in fact, uh, Deputy Kucharski, the message that
17 you heard from the Janda residence when you
18 searched it on the 6th of November?

19 A Yes, it is.

20 ATTORNEY KRATZ: That's all I've got,
21 Judge. Thank you.

22 THE COURT: All right. Any cross related
23 to that?

24 ATTORNEY EDELSTEIN: Uh, just very
25 briefly, Your Honor. Uh, this is not,

1 necessarily, as to this last item that Mr. Kratz
2 just dealt with, but, uh, in response to his
3 other question.

4 **RECROSS-EXAMINATION**

5 BY ATTORNEY EDELSTEIN:

6 Q Officer, if you did not know that Brendan
7 Dassidly -- Dassey had allegedly given
8 information that Ms. Halbach had been shot in
9 that garage, can you explain to me why you took
10 the .22 shells from the trailer, as well as the
11 .22 rifle?

12 A The .22 rifle was taken from the trailer on
13 instructions from supervisor. The ammunition was
14 taken from the trailer on a different date from
15 instructions by a supervisor.

16 ~~ATTORNEY EDELSTEIN: That's all.~~

17 ~~ATTORNEY KRATZ: One other question.~~

18 **RE-REDIRECT EXAMINATION**

19 BY ATTORNEY KRATZ:

20 Q Steven Avery was a convicted felon at the time
21 and couldn't possess a weapon. That's true;
22 isn't it?

23 A Yes, it is.

24 Q And it's another reason to take the gun -- to
25 take the weapon that --

1 ATTORNEY EDELSTEIN: Your Honor, I

2 object. It's leading. Suggestive.

3 THE COURT: It's leading. Suggestive.

4 ATTORNEY EDELSTEIN: It's irrelevant.

5 THE COURT: It's -- it's --

6 ATTORNEY KRATZ: It's not irrelevant at
7 all, Judge.

8 THE COURT: I -- Counsel?

9 ATTORNEY KRATZ: He said it was
10 irrelevant, Judge. It was cer -- certainly not.

11 THE COURT: I -- It was leading and
12 suggestive. It was not irrelevant.

13 ATTORNEY KRATZ: That's all I have.
14 Thank you, Judge.

15 THE COURT: All right. You may step down.
16 We will adjourn for the lunch hour. Um, Mr. Kratz,
17 you have more witnesses today? What time do you
18 expect your first witness to be here for this
19 afternoon?

20 ATTORNEY KRATZ: We can certainly begin,
21 uh, anytime after 1:00 if the Court wants to.

22 THE COURT: How about 1:00?

23 ATTORNEY KRATZ: That sounds perfect.

24 THE COURT: All right. We'll be back,
25 then, at 1:00. Again, I remind you, ladies and

1 gentlemen, not to speak about this case or anything
2 connected with it.

3 (Recess had at 11:54 a.m.)

4 (Reconvened at 1:01 p.m.)

5 THE COURT: Good afternoon. I think we're
6 ready to proceed. Mr. Kratz.

7 ATTORNEY FALLON: Good afternoon. Um,
8 I'll be handling this afternoon's witnesses.
9 State will commence, uh, testimony this afternoon
10 with, uh, Dr. John Ertl.

11 THE COURT: All right.

12 THE CLERK: Please raise your right hand.

13 **JOHN ERTL,**
14 called as a witness herein, having been first duly
15 sworn, was examined and testified as follows:

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

18 THE WITNESS: My name is John Ertl,
19 J-o-h-n E-r-t-l.

20 **DIRECT EXAMINATION**

21 BY ATTORNEY FALLON:

22 Q How are you employed, sir?

23 A I work for the State Crime Laboratory in Madison.

24 Q And how long have you worked for the State Crime
25 Laboratory in Madison?

1 A Since January of 2000.

2 Q What do you do for them?

3 A I am chiefly a DNA analyst in the DNA Analysis Unit.

4 I'm also involved with the Crime Scene Response Team.

5 Q What does the Crime, uh, Lab Response Team do?

6 A Uh, we offer assistance to, uh, law enforcement

7 agencies in the processing and collecting of evidence

8 at crime scenes. And, typically, it would -- it will

9 involve a homicide.

10 Q Typically, what does a team consist of? This

11 response team?

12 A Um, well, it can -- it can be as little as answering

13 a phone call and answering some questions that you

14 might have. Um, if -- if we actually respond to the

15 scene, we typically take two people. One person to

16 take notes and interact with the agency, the other

17 one is chiefly a photographer.

18 Q And do the, uh -- is this, uh, response team also

19 known as a Field Response Unit?

20 A Uh, that's what it says on the side of the van that

21 we drive around, yes.

22 Q All right. And, uh, typically, do some of these

23 response teams, uh -- do they include more than

24 two people on occasion?

25 A Uh, yes. Typically -- typically, the minimum would

1 be two. Uh, three is more usual. Um, for very
2 involved cases, sometimes will take as many as four.

3 Q Now, you indicated your role, typically, when
4 you're not doing field response, is that as an
5 analyst?

6 A Right. In the DNA Unit.

7 Q And, uh, when these field response teams are put
8 together, are there other, um, disciplines
9 reflected in the makeup of the team?

10 A Uh, yes. The -- the team isn't so much made up of
11 people from specific units for specific tasks at the
12 scene. Rather, it's a volunteer unit that people
13 from the entire lab feel that they can contribute to
14 it, and -- and then we go on the rotational basis
15 for -- to be on call. And I just happened to be on
16 call when this call came in.

17 Q How long have you been a member of the Field
18 Response Unit?

19 A Since 2002.

20 Q Approximately how many crime scenes have you had
21 an opportunity to respond to as a member of the
22 Field Response Unit?

23 A I would -- It's a guess. I would guess, um, maybe 20
24 to 30.

25 Q Well, before we get into the particular, uh,

1 details of your response in this case, let's find
2 out a little bit about yourself, Doctor. Would
3 you, first of all, tell us about your educational
4 background?

5 A First of all, I'm -- I'm a mister. I'm not a doctor.
6 I have a Master's Degree in molecular biology, uh,
7 University of Wisconsin-Parkside. That's where my
8 Bachelor's Degree in chemistry was from as well.

9 Q Uh, and when did you receive that again?

10 A Um, Bachelor's Degree was in 1984 and Master's Degree
11 in 1992.

12 Q And from which institution did you receive your
13 Master's Degree?

14 A The University of Wisconsin at Parkside.

15 Q And when did you receive that particular degree?

16 A In 1992.

17 Q After receiving that degree, what pursuit did
18 you, um, follow in terms of your education or job
19 training?

20 A I -- I obtained that degree while I was working at
21 the University as a research specialist in a plant in
22 molecular biology laboratory. Um, after I left the
23 University, I went and worked for Abbott Laboratories
24 in Waukegan, Illinois for awhile, where I worked on
25 diagnostic acetates using DNA techniques. Uh, from

1 there, I moved to the State Crime Laboratory in
2 Milwaukee where I was trained as a serologist and a
3 DNA analyst.

4 Q From -- from what time period did you work in
5 Milwaukee?

6 A From 1997, in March, until about November of 1998.

7 Q And what occurred in November of '98? Where did
8 you move next?

9 A I moved down to Austin, Texas, and I worked for a
10 short time at the M. D. Anderson Cancer Research
11 Center In Smithville. And then I moved to the State
12 Crime Laboratory. It's called the Department of
13 Public Safety Crime Laboratory in Austin, Texas.

14 Q And how long did you work for the Texas State
15 Crime Lab?

16 A Until December of 1999. And then I moved back to
17 Madison to work at the laboratory in Madison.

18 Q Very well. What are, um -- Again, returning to
19 your job experiences as a -- particularly as a
20 member of the Field Response Unit, what types of
21 cases does the Field Response Unit usually get
22 called in on?

23 A Usually, it's a homicide. Um, missing persons are
24 also something we get involved in. Um, we get calls
25 anytime the agency has any question about anything.

1 How should they collect a certain item of evidence.
2 We do -- usually don't respond unless it's -- it's
3 bigger than that. Usually -- usually, we respond to
4 the smaller agencies. The County Sheriff's
5 Departments. Um, generally, we don't respond to the
6 larger cities because they have their own crime scene
7 response people.

8 Q All right. Let's direct your attention, then,
9 uh, to this particular case, Mr. Ertl. On
10 Saturday, November 5, 2005, were you called to
11 assist in the investigation of the missing
12 person, Teresa Halbach?

13 A Yes, I was.

14 Q Tell us how you became involved?

15 A Well, it was around noon on Saturday, and I received
16 a call from the -- it's called the Time Control
17 System. They're the people who take the laboratory
18 phone calls while we're not actually at the
19 laboratory. And he directed me to call, um,
20 Manitowoc County and to ask for a Detective Dave
21 Remiker. And so I did that.

22 And he indicated that they were, um,
23 working on a missing persons case out of Calumet
24 County, and the vehicle from the missing person
25 had been located in a salvage yard in Manitowoc

1 County. And it looked as if it had been
2 concealed in some way. There were things around
3 it and they were -- were looking for assistance
4 in recovering the vehicle.

5 Q All right. What did you do?

6 A I talked with him about it. Um, he indicated that
7 the weather was threatening, and for a vehicle, if --
8 if it's out in the weather, that could jeopardize
9 any, uh, fingerprint evidence, could jeopardize any
10 biological evidence that may be on the outside of the
11 vehicle. I suggested that they get it covered if
12 they could.

13 And I contacted, um, my director, told
14 him about it, and he indicated to me that I
15 should go up and help out with that.

16 Q Did you, in fact, then, eventually leave Madison
17 to help out?

18 A Yes.

19 Q Approximately what time did you leave Madison?

20 A It was about 1:15 p.m. that same day.

21 Q Who, if anyone, accompanied you on this response?

22 A Yes, um, Mr. Guang Zhang, Z-h-a-n-g.

23 Q All right.

24 A He was the photographer and I was the team leader.

25 Q Anyone else accompanied you for this initial

1 response?

2 A No, just the two of us.

3 Q What time did you arrive, um, at the salvage
4 yard?

5 A Bel -- I believe it was around 4 p.m.

6 Q What happened when you arrived? What did you do
7 first?

8 A Well, there were several road blocks that we had to
9 pass through. And we finally got to a checkpoint
10 where our names were taken, and then we were directed
11 up to a place where there was some firetrucks, and
12 some canopies laid out, or coming off the firetrucks,
13 and told to look there for the people who were in
14 charge. And we found, um, Tom Fassbender and Mark
15 Wiegert. And they seemed to be the ones to talk to,
16 and they filled us in on what they knew so far, and,
17 um, we were directed down to where the vehicle was.

18 Q All right. Let's start there, then, uh, your
19 first assignment, if you will. When you arrived
20 at the location where the vehicle was found,
21 first of all, describe for us the general area
22 where the SUV was located?

23 A Well, it was -- it was a auto salvage yard, so there
24 were row after row after row of salvaged vehicles or
25 junked vehicles. Um, they directed us down to a flat

1 area where we drove the van to park and there was a
2 car crusher nearby. There was also a -- a water --
3 storm water retaining pond nearby, and there was a --
4 a little -- sort of a dirt roadway that went around
5 the pond, and the roadway was lined with vehicles,
6 and in the row of vehicles there was the, uh,
7 bluish/green RAV 4.

8 Q All right. Describe -- Describe the vehicle in
9 greater detail for us, would you please?

10 A Well, it was -- it was a newer looking vehicle. It
11 didn't have any license plates on it. And it was, as
12 was conveyed to me, that it -- it kind of looked like
13 it had been hidden in some way. There was a -- a
14 Rambler hood leaning up against the back end of it.

15 Q Uh, and I'm going to stop you right there and
16 ~~direct your attention to Exhibit 26, which~~
17 ~~appears to be leaning up against the table.~~ Does
18 that look like the hood?

19 A Yes, it does.

20 Q All right. Continue.

21 A Uh, there were tree branches and/or small trees piled
22 on and against it, and there was a cardboard box on
23 the hood. There was a piece of plywood up against
24 one of the front tires, and some fence posts with
25 fencing attached to them, some wire fencing, um,

1 leaned up against the vehicle as well.

2 Uh, the other vehicles in the area
3 looked older than this one. This one looked like
4 the newest of the bunch, and they didn't have
5 things leaned up against them. They had trees
6 and brush growing around them, but there was
7 nothing put around them.

8 Q Was there anything unusual about the trees or the
9 brush that you observed leaning against the SUV?

10 A Well, this was in November, so there weren't --
11 weren't any leaves or anything on it. But these
12 trees and brush didn't have any bark on them either.
13 And, um, some of the trees had bits of the roots
14 still coming out of the base of them as if they'd
15 been pulled from the ground, rather than sawed off.

16 Q All right. Was the roof of the, uh, vehicle
17 covered or obstructed with any items that you
18 recall?

19 A Uh, not that I recall. No.

20 Q All right. Now, you described something about
21 the weather. Initially, upon your observation of
22 the -- of the vehicle, describe the weather
23 conditions at that point in time?

24 A It was overcast.

25 Q When you first approached, was it still daylight?

1 Dusk? Or dark?

2 A It was -- It was going on 4:30 in November, and it
3 wasn't quite dusk. I would think.

4 Q All right. Now, at some point did the weather
5 change that evening?

6 A Um, yes. We didn't -- We left that evening around
7 quarter to ten, and at some point it did pour, and
8 there was quite a lightening storm.

9 Q All right. When you arrived, was the vehicle
10 covered in a tarp at that particular point?

11 A I never saw the vehicle covered in a tarp.

12 Q Okay. Approximately how long were you there
13 before the weather changed to the extent that it
14 began to rain?

15 A I believe within an hour of us arriving, it was sort
16 of on and off showers.

17 Q All right. What plans did you make to secure the
18 vehicle for its ultimate transport?

19 A Well, I asked that a trailer be secured to put the
20 vehicle in for transport back to the Madison
21 Laboratory.

22 Q Now, did that occur immediately or did that
23 involve the passage of some time before it could
24 be arranged to transport the vehicle?

25 A It -- It did take some time. Um, they also needed

1 to -- to bring a wrecker truck into the yard to -- to
2 move the vehicle from its, uh, position to a place
3 where they could load it onto the trailer.

4 And I believe those two things, the
5 wrecker and the trailer, arrived pretty much
6 simultaneously. Maybe an hour-and-a-half, two
7 hours. I'm not sure.

8 Q Your best estimate as to the time that the SUV
9 was loaded onto the, uh -- the -- the wrecker and
10 moved from the scene, about what time was that?

11 A I would guess 7:30 to 8:00.

12 Q All right. Could it have been later?

13 A Possibly.

14 Q All right. Could it have been as late as 8:30 or
15 9:00?

16 A Well, I checked the time when we left. I think it
17 was about quarter 'til ten, so that -- that is a
18 possibility, yes.

19 Q All right. Now, while you were awaiting for the
20 arrival of the equipment to secure the vehicle
21 and move it to Madison, did you have an
22 opportunity to examine, as it were, the SUV more
23 closely?

24 A Yes, I did.

25 Q Can you tell us, um, a -- about the vehicle,

1 itself? For instance, um, you mentioned
2 something about the absence of license plates.
3 What else did you note about the vehicle?

4 A Um, it -- The doors were locked. We couldn't gain
5 access to it. And we looked through the glass with
6 flashlights to see what we could see inside and it
7 looked relatively clean inside.

8 Um, there was some minor damage to the
9 vehicle. I believe there was a dent located
10 behind the Rambler hood on the right rear quarter
11 panel. And I believe the left front signal lamp,
12 the plastic that covers that, was cracked and
13 broken.

14 Q How were you able to determine that the doors of
15 the vehicle were locked?

16 A We tried to get in -- inside the vehicle. So we
17 tried the doors.

18 Q While you were waiting for the, uh, wrecker and
19 other equipment, did you also have an opportunity
20 to examine the debris that surrounded the car for
21 the possibility of any trace or biological
22 evidence?

23 A Yes, I did.

24 Q Tell us about that, please?

25 A Well, the first thing I did, was I directed the

1 photographer to -- to photograph the vehicle as it
2 was when we arrived. Um, I then looked at the debris
3 and those items which I felt may hold a fingerprint,
4 that did have a certain texture to them. Um, the
5 Rambler hood and the cardboard box were pulled away
6 from the vehicle, and we had transported those to the
7 Madison Lab, as well, along with the vehicle.

8 I examined all the brush and the plywood
9 and fence posts, etc., looking for any signs of
10 biological materials or fibers that may have
11 caught on them, attached themselves to them. Um,
12 and I didn't notice anything that I could collect
13 from that.

14 Q So, in other words, you found no trace or
15 biological evidence on any of those items?

16 A No, I did not.

17 Q ~~Okay. I take it there was a decision made not to~~
18 process, or further examine might be the better
19 term, the SUV at the scene; is that correct?

20 A Um, I don't believe it was much of a -- The -- the
21 decision, yes, that was made. But that -- I mean,
22 in -- in threatening weather, the -- the first order
23 is to -- to preserve and protect the evidence and not
24 to begin processing it.

25 Q All right.

1 A And out in the middle of a junkyard is not the ideal
2 situation to process a vehicle anyway. You can --
3 want to get it back to the laboratory where we have
4 the proper tools and lighting and controlled
5 conditions where we can look at it properly.

6 Q Describe for us, if you would, um, how the
7 vehicle was actually transported to Madison?

8 A A -- a large wrecker truck was needed to get -- get
9 the vehicle out from behind the pond. Uh, it was a
10 four-wheel drive vehicle, and it was -- all the
11 wheels were locked, so they couldn't roll it out.
12 Um, so attempts were made to put it in neutral to see
13 if the parking brake was on or -- or not, and we
14 couldn't get inside.

15 The tow truck guy attempted to get under
16 the hood to get access to the transmission
17 linkage to disconnect that, and he couldn't get
18 the hood open. Uh, he ended up crawling
19 underneath and unbolting one of the driveshafts.
20 He then lifted the back end of the vehicle, which
21 still had the driveshaft attached, and rolled it
22 out on the front wheels into the clear area where
23 the car crusher was located.

24 He then used his truck to maneuver the
25 vehicle, the RAV 4 vehicle, into a large covered

1 trailer, and it was secured into that with, I
2 believe, floor straps, and then the trailer was
3 closed up.

4 And then Guang Zhang, my photographer,
5 rode with the driver back to Madison. They
6 followed me, and I drove the -- my van back.

7 Q So once the vehicle was loaded on the trailer,
8 was it exposed at all to the elements?

9 A No, it wasn't.

10 Q However, prior to getting it onto the vehicle,
11 had it been exposed to the rain?

12 A Yes, it did.

13 Q And it had been raining for awhile before you
14 were able to finally secure it and get it onto
15 the, um -- the wrecker and the enclosed trailer?

16 A Yes, it had.

17 Q All right. Um, you indicated, uh, your
18 colleague, Mr. Zhang, he rode with the driver,
19 did you say?

20 A Yes, he did.

21 Q All right. And what did you do at that time?

22 A I drove the Field Response Unit back to Madison.

23 Q Your best estimate as to your approximate arrival
24 time at the Crime Lab in Madison?

25 A I believe it was just after 1 a.m.

1 Q So that would have been Sunday morning, the 6th
2 of --
3 A November.
4 Q -- November. All right. Did there come a time
5 where your services were requested again by Agent
6 Fassbender or others, uh, to return to the
7 salvage yard and assist in executing the search
8 warrant that was underway?
9 A Yes.
10 Q All right. And, um, in addition to the Saturday
11 work that you've just described, how many other
12 days did you participate in the search of the
13 salvage yard and other duties associated with
14 this case?
15 A We returned to the salvage yard on Sunday afternoon.
16 We worked through Sunday evening. We stayed over
17 Sunday night. We worked all day Monday. Stayed over
18 Monday night. Worked all day Tuesday. Stayed over
19 Tuesday night. And returned back to the lab on
20 Wednesday morning.
21 Q I'm going to direct your attention, if I may, to
22 your services on, um, Tuesday, November 8. What
23 were the duties that you were particularly
24 assigned to do on Tuesday, November 8?
25 A Uh, we started in the morning at the Calumet County

1 Sheriff's Department Service Garage in Chilton. Um,
2 four -- Actually, five burn barrels from the salvage
3 yard had been taken there, and we had set up a
4 sifting station. We were sifting through the burned
5 debris of those burn barrels. On Tuesday morning, we
6 finished that up with, I believe, the fourth and
7 fifth barrels.

8 Q All right. Would it be fair to say you had
9 started that particular task the day before?
10 Monday?

11 A I believe we started it even before that, although it
12 got interrupted several times.

13 Q Because of other duties that you were assigned?

14 A Yes.

15 Q All right. So you finished up the processing of
16 the burn barrels?

17 A Yes.

18 Q All right. If you would, tell us about the
19 processing of the last barrel? Barrel No. 5?
20 Would you describe, um, that for us, please?

21 A All right. Um, Barrel No. 5, I believe, was, uh,
22 different than the other barrels in that the contents
23 were -- were mostly ash. The other barrels had a lot
24 of partially burned materials, lot of food-type items
25 wrapped in foil. You could recognize corn on the

1 cob, and potatoes, and fish, and chicken, and
2 whatnot.

3 This one was a little different than
4 that. It was -- had a lot of, uh, coiled wires
5 in it that we had seen, um, kind of reminiscent
6 of a burnt tire. Uh, there was the rim of a
7 tire, or a wheel sitting on top of the ash. But
8 under that, everything else was pretty much ash.

9 And we sifted that and found things that
10 looked like they were electronic components. Um,
11 some of them had, um, the Mot -- Motorola "M"
12 clearly on them. Um, things that looked like --
13 sort of like burnt batteries. Things you could
14 identify as a battery. Um, that sort of thing.
15 Whereas, we hadn't found those sorts of things in
16 the other barrels.

17 Q All right. Approximately how deep was the ash in
18 Barrel No. 5 that you began to sift and process?

19 A I would guess it -- it was a quarter to a third of
20 the barrel. And these were 55-gallon drums. They
21 stand about three-and-a-half feet tall. So there's
22 probably a foot-and-a-half of ash in it.

23 Q All right. And tell us how you went about
24 processing that barrel? In other words, how did
25 you go about it? Did you shovel it out? Reach

1 in? Sift through with your hands? Tell us about
2 the process?

3 A Uh, well, we start by just picking through with your
4 hands, and in placing handfuls or -- I think we had
5 small mason's trowels as well. Scoopfuls of the
6 material onto a tripod and screen setup that we have.
7 And you move the material around on the screen. The
8 small particles fall out, and then you can examine
9 the larger pieces of things. And that's how we
10 worked through the barrels.

11 Q All right. About what time did you finish that
12 task of processing, um, the barrel?

13 A I believe we finished, um, somewhere in the ten
14 o'clock hour.

15 Q All right. Now, was there anyone who assisted
16 you in this sifting process?

17 A Uh, yes. The photographer that I had taken on
18 Sunday, or on Saturday, the initial response, came
19 along with me, and we had a third person as well.

20 Q And who was your third person?

21 A It was Chuck Cates.

22 Q All right. And what does Mr. Cates, um -- What
23 was his role, if any, in the process on the
24 succeeding days? Particularly this day, November
25 8?

1 A Um, he -- he was just there to help.

2 Q All right.

3 A He didn't have any specific role.

4 Q Was there anyone from the Calumet County

5 Sheriff's Department present?

6 A Um, there was. I -- I believe there were different

7 people on and off, but the -- the main contact person

8 there was, uh, Jeremy Hawkins.

9 Q And, uh, to whom did you provide anything that

10 you deemed of evidentiary significance?

11 A Uh, we were collecting all the evidence as we went

12 along from the different locations where we were

13 searching.

14 Q Right.

15 A We packaged it, and we -- then we -- at some point we

16 turned it all over to the Calumet County Sheriff's

17 Department.

18 Q All right. With respect to the, uh, burn barrel

19 components, were they turned over to Officer

20 Hawkins?

21 A I don't believe so.

22 Q All right. Do you recall which one of the

23 officers?

24 A No. I don't recall which one. There was two or

25 three of them --

1 Q All right.

2 A -- at one point, inventoried all the materials we had
3 collected at that point, and we turned it over to
4 them.

5 Q Okay. Very good. After you completed
6 processing, um, the burn barrel, what was the
7 next assignment that you were given on that day?

8 A Uh, we returned to the salvage yard, and they had
9 just located the license plates from the RAV 4
10 vehicle. And so we went over and photographed that
11 area, photographed the vehicle that they had been
12 found in. And then we searched that area, and there
13 was a -- a camper -- a trailer camper nearby, and I
14 searched that.

15 Q All right. And, um, after you processed the --
16 the location where the license plates were
17 found -- By the way, did you examine those
18 plates? Or did look at them, I should say?

19 A I was involved in -- in packaging them, yes.

20 Q All right. Tell us about that?

21 A Um, Chuck Cates was assigned to, uh, process the
22 vehicle for fingerprints. In -- in his former role
23 at the lab, he was a fingerprint analyst. Um, at
24 this time he was the field response coordinator.
25 That was his chief duty. So he was processing the

1 plates.

2 Uh, when the plates were found, they
3 were sort of rolled or crumpled up so you
4 couldn't read them. Uh, the person who had found
5 them, was reported, had opened them up enough to
6 be able to read them and know which ones they
7 were. That they had belonged to the RAV 4. Um,
8 he then reportedly placed them back where he had
9 found them as best he could.

10 Q Right.

11 A Um, Chuck, then, looked at them for any obvious
12 fingerprints on them.

13 Q Okay.

14 A I don't believe he processed them with powder or
15 anything. Just looked at them. We then placed them
16 into a pistol box and secured them with zip tags.

17 Q All right.

18 A And then secured the box.

19 Q And the box was given to whom? Do you recall?

20 A At that very moment it was placed in our field
21 response van.

22 Q Very good. What was the next assignment or --
23 uh, that you, um, participated in?

24 A Around 3 p.m., uh, we were -- got a request to use
25 our sifting equipment. They had found an area, a --

1 a burn pit type area, behind the garage next to
2 Steven Avery's trailer. And they had been looking in
3 there and they wanted to use our sifters. We had
4 previously loaned them out for another assignment in
5 the gravel yard, and so they had asked for them
6 again.

7 And at that moment we didn't have
8 anything else to do, so we went along with them
9 to help sift. And it was a -- maybe a
10 four-by-six foot area on the ground. A small
11 depression behind the garage. And it looked like
12 it had been -- uh, some fire going on there.
13 There looked like a lot of the remains of burnt
14 tires, there was the frame from some sort of car
15 seat, and some ash on the ground.

16 The ground below the ash looked like it
17 had the consistency of baked clay. Like a
18 ceramic. It was hard. It wasn't like -- like
19 you'd expect the ground to be after thunder
20 storms a few days earlier. So it looked like a
21 burn area. And we sifted that, just as we had
22 been sifting the -- the burn barrel contents.

23 Q All right.

24 A Put it on the screen.

25 Q We'll get into a little more detail in just a

1 second here. We're going to have one, uh,
2 photograph, um, marked to assist you in talking
3 about this, um, matter.
4 (Exhibit No. 132 marked for identification.)
5 Q Officer Wiegert is handing you a photograph.
6 Would you identify that for us, please? First,
7 of all, tell us what the exhibit number is?
8 A Exhibit 132.
9 Q Thank you. What is Exhibit 132?
10 A It's a photograph showing the -- the burn area behind
11 the garage. You can't see the garage in the photo,
12 but you can see the -- the frame from the -- the car
13 seat. There's one tire there, and some tools on the
14 ground, and some flags in the ground.
15 Q All right. Um, we have it now projected on our
16 screen. Is, uh, what is projected, is that
17 Exhibit 132?
18 A Um, that one's cropped more than this one is, but,
19 otherwise, yes.
20 Q All right.
21 A The center area of this photo was on the screen.
22 Q How about the larger screen over here to your
23 left?
24 A Well, this one shows -- You can see it better.
25 There's a red building behind that tank. That

1 doesn't show up well here. You can see the windows
2 on the photograph.

3 Q Very good. Is that the, uh -- How about, uh, a
4 zoomed out? Is that --

5 A Yes.

6 Q -- more accurate?

7 A That looks like the photograph.

8 Q All right. And who participated in the
9 processing of this, um, burn pit?

10 A Uh, the three of us assisted, and, uh, the person in
11 charge with that area was Tom Sturdivant, Special
12 Agent, with the Division of Criminal Investigations.

13 Q All right. And, um, tell us how you proceeded
14 to, um, uh, process that pit?

15 A Uh, there were also additional officers present who
16 assisted in the sifting process. Uh, I was the one
17 who shoveled the -- the materials from the -- the
18 ground up to the sifting platform, and then there
19 were probably four, five, or six of us standing
20 around the sifter at anytime, um, collecting things
21 and placing them in boxes. We sifted through all the
22 ash and material that was in that area.

23 Q Now, if you would, um -- If you would, um,
24 describe for us exactly how the shovel was used
25 to, uh, remove debris and other materials from

1 this pit, and, uh -- and brought to the sifter?

2 Tell us about how that was, uh, conducted?

3 A Okay. On the photograph there, we set the sifter up,
4 it would be just, um, past those red flags, and just
5 past the end of that, uh, um, frame from that car
6 seat. Um, the shovel we used was one that we carried
7 with us for this purpose. Um, the sifter we usually
8 use is for exhuming gravesites. So we'll shovel out
9 the material and sift through it looking for bones or
10 bullets or whatever from a gravesite.

11 Uh, in this case, we had, uh, very hard
12 ground on top of which was maybe from zero to six
13 inches of ashen material. It's a flat blade
14 shovel, sort of like a garden spade, and that was
15 used to -- sort of like a dustpan to scoop up the
16 ash, and then I stood up, turned around, and took
17 a step, and set it on the screen. And then
18 the -- the people around the screen would pick
19 through it. The smaller material would fall
20 through the screen onto a tarp, and the larger
21 materials they would collect and put in a box.

22 Q All right. What efforts did you undertake to
23 ensure that you wouldn't damage or create any
24 harm to any of the debris that was being
25 recovered from the pit?

1 A Well, it was done carefully. I -- I guess that's
2 what I can say. Um, we didn't look real hard at the
3 materials we were collecting. Um, my advice to the
4 people around -- around the, uh, sifter was, if
5 you're not sure, just put it in the box. Uh, someone
6 else will figure that out later what it is. Um, so
7 we didn't spend time picking at the things that we
8 were collecting.

9 Um, the shovel -- We had a hard surface.
10 It's just pick up the ash with it. I mean, it
11 wasn't like we had to dig and -- and put your
12 foot on it and push down and dig or anything. It
13 wasn't necessary. So it -- it was a pretty
14 gentle process.

15 Q Tell us about the sifting part of the process?

16 A Um, it's a -- sort of like hardware cloth, and we
17 carry it -- three different grades of it. I think
18 there's a half-inch mesh, a quarter-inch mesh, and an
19 eighth-inch mesh, and we put this material through
20 the quarter-in -- quarter-inch mesh.

21 So one scoopful at a time is placed onto
22 the mesh, and the mesh is probably, uh,
23 three-foot by three-and-a-half-foot rectangular
24 area, and then the five people would, with their
25 gloved hands, uh, I believe some of them had, uh,

1 a mason's trowel, it's about this big, triangular
2 metal-shaped object with a handle, to move the --
3 the ash on the screen, spread it out, and then
4 you can sort of tap the screen and it sort of
5 jiggles the material, and the -- the finer
6 particles fall through.

7 Q All right. Did you, or any of your team who
8 participated in this process, recognize any of
9 the debris as human remains?

10 A We recognized it as remains for sure. Uh, there were
11 things that looked like teeth. Things that looked
12 like bone. Um, nothing bigger than the palm of my
13 hand, and -- but whether it was human remains or not,
14 we weren't sure.

15 Q Most of the items were very small?

16 A Yes, they were.

17 Q All right. Approximately how long did this
18 process last?

19 A Well, they had asked for the sifter for about 3 p.m.,
20 and we worked until it got dark. It was just after
21 five. So about two hours.

22 Q All right. And what did you do at the scene as
23 you wrapped up this, um, processing for that
24 evening?

25 A Well, once we had sifted all the materials, then we

1 had what was collected in boxes. We packaged that
2 up. That was eventually turned over to Calumet
3 County. The -- the material that was fallen through
4 the screen onto the tarp was also saved, and Tom
5 Sturdivant took care of that. And we just cleaned up
6 the sifter and put it away, and then we proceeded
7 onto our next task.

8 Q How was the, um, material preserved that had
9 fallen through the screen?

10 A It was fallen through onto a tarp, and it's my
11 understanding that Tom Sturdivant was going to keep
12 that. How he did that, I -- I don't know.

13 Q All right. In other words, you, uh, left that
14 scene before the -- the complete wrap-up, as it
15 were, had undertaken?

16 A Yes.

17 Q Was undertaken? All right. What was the next
18 assignment, then, that you performed, um, on this
19 day, Tuesday, November 8?

20 A Uh, we were then asked to -- to do some luminol
21 testing on a couple of residences. Uh, Steven
22 Avery's residence, Chuck Avery's residence, and the
23 garage next to Steven Avery's residence.

24 Q All right. Let me stop you there. And if you
25 would be so kind as to explain to us, first of

1 all, what luminol is, and then, uh -- Well, we'll
2 start with that. What is luminol?

3 A Okay. Uh, luminol's a chemical that, when it comes
4 in contact with blood, will glow. So we use it to
5 find traces of usually highly diluted blood or very
6 small blood amounts. Uh, if there's larger amounts
7 of blood, or whatever, they're usually pretty obvious
8 because blood has a -- a distinctive color.

9 Um, we had already searched the Avery
10 residence for -- looking for a bloodstain pattern
11 and we hadn't found any. We had found blood
12 staining, but nothing -- nothing that would
13 indicate a pattern. Um, there had been talk
14 about luminolling the, uh, residence earlier in
15 the week. I had recommended that that be your
16 last -- the last thing you do in attempt to find
17 blood.

18 Um, this treatment with luminol will
19 leave a luminol residue, and then you don't
20 want -- really want to be, uh, going in there and
21 doing other things after you've luminolled. And
22 treatment with luminol should come after a
23 thorough visual search. It shouldn't be your
24 first attempt.

25 Q All right.

1 A So we went in and luminolled the residence. We
2 found, um, just a couple of stains on the couch that
3 we had missed visually. Um, we then luminolled the
4 garage and we found a lot of luminol reactive stains
5 in the garage that we couldn't confirm with another
6 test.

7 Q All right. Let me stop you there and ask: You
8 indi -- uh, you told us just a few moments ago
9 that luminol reacts to blood?

10 A Yes.

11 Q Let me ask this: Does luminol chemically react
12 with substances other than blood?

13 A Yes, it does.

14 Q What substances will the luminol react to?

15 A It -- it reacts with, actually, quite a few different
16 substances. Um, uh, one thing would be a shiny
17 penny, is what we quite often use as a positive to
18 make sure the luminol's working okay. If the penny
19 glows, the luminol's working. It's actually the iron
20 in the heat molecule in the blood that the luminol's
21 reacting with.

22 So pennies, copper, lead. Um, I've
23 never seen it with a -- with rusty iron-type
24 stains, but it's reported that it might. Um,
25 the -- the big thing that we see quite often is

1 cleaning reagents that have some sort of bleach
2 in them. It reacts quite vigorously with that.

3 Q Of all the substance -- Of all the substances
4 that you mentioned, uh, the blood, the, uh -- the
5 copper, iron, and bleach, which are the
6 substances -- which substances did the luminol
7 react most vigorously to?

8 A Well, with the bleach, but depending on the
9 concentration of -- of the bleach.

10 Q All right. Does it react with, um, gasoline or
11 paint thinner?

12 A No, it doesn't.

13 Q All right. Okay. Let's return, then, back to
14 the garage. You indicated there were several
15 spots where you had luminol reactions. Let's
16 pick it up there and have you tell us about it,
17 please?

18 A Most of the spots looked like -- sort of like a maybe
19 inch, inch-and-a-half diameter circle. Uh, when you
20 do this, the glowing that comes from the luminol
21 reaction is -- is very weak. So you always want to
22 do it in complete darkness if possible.

23 And what you do is use a spritz bottle.
24 You spray an area, and you have a piece of chalk
25 in your other hand, if anything glows, you circle

1 it. And you work through an area, and then you
2 go back and sample those areas you've circled
3 with chalk, and do another more specific test for
4 blood. It's called phenolphthalein. And if it
5 reacts with the phenolphthalein, that's an
6 indication that there may be enough material
7 there to do DNA on, and then you would collect
8 that.

9 Uh, in the garage, uh, only one area,
10 was right behind the vehicle that's on the screen
11 there, was confirmed with phenolphthalein.

12 Q You're referring to, uh, Exhibit 76 now, which
13 is, um, depicted on the screens?

14 A Yes.

15 Q All right. And, um, I believe there's a laser
16 pointer, uh, right there in front of you. Um,
17 first of all, let's start with the -- If you
18 could use that, um, computer animation, which is
19 reflected in Exhibit 76, and, um, probably easier
20 to point to the larger screen, point out the spot
21 where you did have one positive reaction to
22 phenolphthalein?

23 A You actually can't -- I can't point to it because
24 it -- it's right below the bump -- back bumper of
25 that vehicle --

1 Q All right.

2 A -- on the floor.

3 Q Okay.

4 A And there were other people there, and when we turned

5 the lights back on and started checking the stains

6 that we had circled in chalk, they said, yes, we --

7 we had found that earlier visually. We have

8 collected that one. So we didn't collect that.

9 Q All right. Because it had already been

10 processed --

11 A It had already --

12 Q -- by others?

13 A -- been collected.

14 Q All right. Now, you indicated that there were

15 several spots. Um, if you can recall, uh,

16 approximately -- Um, using this same diagram, if

17 you would just briefly point us -- point to

18 several of those spots where you did get luminol

19 reactions, um, which did not test positive for

20 phenolphthalein?

21 A I can't point to any specifically.

22 Q All right.

23 A There were just small spots here and there. Sort of

24 a random distribution. Not a lot by the door. Not a

25 lot by the -- the snowmobile. Uh, there was -- there

1 was one area that did stand out.

2 Q All right. What area was that?

3 A It was behind this tractor lawnmower here, and it --
4 it wasn't just a -- a small spot. It's a -- maybe
5 a -- a -- a three-by-three or three-by-four foot area
6 that was more of a smeary diffuse reaction with the
7 luminol. The light was coming from, seemingly,
8 everywhere, not just this little spot.

9 Q Would that be something like a three-by-four foot
10 oval? Was it a circular shape? Square-shaped?
11 Or any particular --

12 A Well --

13 Q -- irregular?

14 A It sort of went up into the debris here. So that
15 would have been the extent of it. And then coming
16 out sort of, um, maybe oval on the open side.

17 Q All right. When you made that observation, what
18 did you do?

19 A We marked off the area in chalk and we saw the -- the
20 luminescence. Then, later, we went back with the --
21 and swabbed it, tried to confirm the presence of
22 blood with phenolphthalein, and we could not.

23 Q All right. Just one moment. After you made the
24 observation with respect to this larger area that
25 reacted to the luminol, what did you do?

1 A After I made the observation?

2 Q Yes.

3 A Well, upon seeing it, we marked off the perimeter

4 with chalk.

5 Q All right. And you tried the phenolphthalein

6 test?

7 A Tried the phenolphthalein test.

8 Q Did you report your findings to any of the law

9 enforcement officers?

10 A Well, there were some in there with us.

11 Q Do you recall who, um, might have been with you

12 that night?

13 A I do not recall their names.

14 Q All right.

15 A They had been in there previously. They were the

16 ones who told us that the stain behind the -- the

17 vehicle had already been collected.

18 Q I see. All right. Your best estimate,

19 approximately how many spots reacted to the

20 luminol in that garage area?

21 A I would guess, um, a dozen.

22 Q All right. Now, the -- You talked about the one

23 large spot. The remaining spots, can you give us

24 a range as to their varying size?

25 A I would say they were all inch-ish. Inch or

1 inch-and-a-half diameter. Smaller.

2 Q All right. All 11 were in that inch to
3 inch-and-a-half range?

4 A Yes.

5 Q All right.

6 ATTORNEY FALLON: I would move into
7 intro -- uh, evidence the one, uh, exhibit, 1 --
8 132, and, uh -- the photograph, and tender the
9 witness for cross-examination.

10 THE COURT: Any objection to reception of
11 132?

12 ATTORNEY FREMGEN: No, Judge.

13 THE COURT: It is received. You may cross.

14 **CROSS-EXAMINATION**

15 BY ATTORNEY FREMGEN:

16 Q Uh, Mr. Ertl, were you referring to any notes
17 while you were testifying?

18 A Yes, I was.

19 Q I notice you're looking down.

20 A Okay.

21 Q That -- that's all right. You needed to
22 refresh -- It's been several years since -- or
23 year-and-a-half since --

24 A Year-and-a-half. And he's asking for times so...

25 Q Did you want to be accurate?

1 A Yes.

2 Q And these are the same notes you previously
3 provided to the State?

4 A The notes I'm staring at right here are not --

5 Q So these are --

6 A -- notes --

7 Q -- just some handwritten notes? Maybe summary of
8 the notes you previously provided to the --

9 A Yes.

10 Q -- State?

11 A Notes that I've been jotting down while I've been
12 waiting to come on.

13 Q That's fine. Okay. When you were called to the
14 scene, this would be the first time, November 5,
15 um, essentially your involvement on November 5
16 was to deal with the RAV 4; is that correct?

17 A That's correct.

18 Q And you indicated that you attempted to enter
19 into the RAV 4, but unable to do so?

20 A Correct.

21 Q So there's no way you could have been able to
22 process anything within the vehicle?

23 A No. We wanted to just open the door and look inside.

24 Q Was your intent to process any of the vehicle,
25 itself, when you were called?

1 A No. Just to -- They had indicated it had been
2 obscured with things. So the intent was to check out
3 what those things were, look at them, and then to
4 bring back to the lab anything that we -- we thought
5 was inform -- going to be useful.

6 Q Well, you noted that you were aware that the
7 weather was going to turn, and -- Well, it's
8 going to rain later?

9 A Yes.

10 Q And this was, uh, a -- probably a project you
11 needed to get done before the vehicle, itself,
12 got rained on?

13 A Ideally, yes.

14 Q Was -- And was there a tarp being utilized at
15 that point to hopefully keep the rain from the
16 vehicle?

17 A I was told that they had covered it with a tarp and
18 that they were removing it once they knew we would --
19 had arrived on the scene.

20 Q Okay.

21 A And they also told me that there had been some debris
22 on the roof that got pulled off when they pulled the
23 tarp down.

24 Q Did you, uh -- a -- and, again, you -- you're --
25 indicated that your intent wasn't necessarily to

1 process the vehicle, but noting that it was going
2 to rain, uh, did you consider maybe we should
3 process the out -- the exterior to some extent to
4 avoid losing potential evidence?

5 A No. Uh, my hope was that we could get it inside of a
6 trailer before it rained.

7 Q Now, you did remove the -- some of the items that
8 were up against the vehicle; correct?

9 A Correct.

10 Q And you did that with some sort of methodology?
11 You didn't just -- Let's rip them all away from
12 the car? One at a time you removed them?

13 A Correct.

14 Q In fact, you indicated you wanted to look at, uh,
15 further, the hood and -- and the cardboard box,
16 since there -- I'm going to assume -- may be some
17 sort of trace evidence on -- on those items?

18 A I thought that if any of the items would hold a
19 fingerprint, those would be the ones.

20 Q Now, you had in -- indicated -- And I -- I -- And
21 I just want to cross -- Or maybe I didn't
22 understand you correctly. When, uh, Attorney
23 Fallon asked you if there was any trace ev --
24 evidence that you were able to find, you
25 indicated, no?

1 A Correct.

2 Q But you hadn't yet processed the hood or the
3 cardboard box; correct?

4 A No. I was going to collect those items. Those would
5 be examined back at the lab.

6 Q So they may have had trace evidence? You had no
7 idea?

8 A Right.

9 Q That was sent back to the lab. Let the lab look
10 at those?

11 A Correct.

12 Q You were talking about some of the debris?

13 A Right.

14 Q The branches?

15 A Right.

16 Q Now, obviously, the vehicle didn't just come out
17 of the sky and drop right into that spot;
18 correct?

19 A Correct.

20 Q I think we can assume that, though no one saw
21 that? So it had to get there somehow?

22 A Correct.

23 Q Did you -- In processing the scene, you indicated
24 you were looking around for trace evidence
25 outside the vehicle? Did you try to make a

1 determination of how it got there?

2 A I did. I looked from where the tires were resting
3 towards the front. It didn't -- didn't seem that
4 that would have been a possibility because there was
5 another vehicle in front of it.

6 Um, looking towards the back is probably
7 the direction it came in from. I tried to look
8 for tread marks. Uh, it was a grassy area, and
9 below that was hard-packed gravel. And I wasn't
10 able to -- to even see the tire prints from the
11 vehicle, which, I would assume, had to have been
12 there.

13 Q Okay. Did you go any distance away from the
14 vehicle, um, to try to trace potentially some of
15 the path to see if there might be additional
16 trace evidence you could find?

17 A I didn't get very far. It -- it seems pretty futile
18 in that I couldn't even see the -- any -- any
19 indication from beneath the tire. Uh, I did look
20 around. There were some areas were a little bit more
21 clearer and, perhaps, a puddle had been there and it
22 was more of a -- a smoother surface.

23 Uh, I -- I didn't see any footwear
24 impressions. I didn't see any tire track
25 impressions that I could discern.

1 Q And -- and footwear impressions, you would
2 assume, again, because it didn't magically
3 appear, whoever brought the vehicle there would
4 have to have maybe left on foot?

5 A Correct.

6 Q But unable to find anything that would assist you
7 in that?

8 A Correct. There were some footwear impressions on --
9 on top of the vehicle next to the -- the RAV 4. I
10 was -- I was told that those were from the officers
11 who had been removing the tarp.

12 Q So you -- you don't know if there were any, uh --
13 Strike that. On November 8, you indicated you
14 were involved with two processes in -- of -- of
15 sifting debris, um -- or sifting ash, excuse me.
16 One was in the barrels; correct?

17 A Correct.

18 Q And one was assisting with the, uh -- the burn
19 area or the burn pit; correct?

20 A That's' correct.

21 Q As to the burn barrels, um, you indicated that
22 the process was essentially going in there with
23 either handfuls or taking a --

24 A Trowel.

25 Q A -- a -- What was it?

1 A Trowel.

2 Q A trowel? Okay. And that was consistent among
3 all of the individuals assisting in the -- the
4 burn barrel sifting?

5 A Yes.

6 Q Did each person have their own separate barrel?
7 Did you go barrel by barrel?

8 A We went barrel by barrel.

9 Q So you didn't have teams off on their own doing
10 it? That was together? You're doing it one
11 after the other?

12 A Right.

13 Q Is --

14 A There were three of us doing that.

15 Q Okay. All -- Was -- Wasn't you didn't have a lot
16 of people to help anyways?

17 A No.

18 Q And took -- You said it took you some time over
19 three days because you were called to other
20 spots?

21 A Yes.

22 Q Now, you indicated at times you would take some
23 of the larger items out by hand?

24 A Yes.

25 Q And then you would scoop out a -- a layer of ash?

1 A Yes.

2 Q Did you try to take it by layers?

3 A Well, it's a barrel. You -- you pretty much have to

4 work down, so, yeah, we would go bit by bit.

5 Q Well, what I mean is, you know, it is -- like you

6 say, it's a barrel, and you could go with one

7 full layer, or you could just keep scooping down

8 in the middle and off to the sides? Kind of

9 haphazardly?

10 A No, we -- we'd try to work down. So then we --

11 Q You tried to do it somewhat organized? Logical?

12 A Well, I mean, what's on top is -- is -- that's what

13 you take. You know, try to dig to the bottom leaving

14 the top.

15 Q Well, now, you -- you said this was a pretty

16 full, or three-quarters, or two-thirds full

17 barrel?

18 A Well, the fifth barrel was a -- like, one-quarter to

19 one-third full.

20 Q Okay. And you don't know how many times these

21 barrels had been used over the last, let's say,

22 several months?

23 A No idea.

24 Q Could have been used 10, 15 times, potentially?

25 Or just once?

1 A I have no idea.

2 Q So you don't know when items were burned in the
3 barrel; right?

4 A No, I don't.

5 Q Could you tell by going down layer by layer
6 versus just scooping away through the barrel?

7 A If you assume that the person doing the burning never
8 mixes the contents, then I would -- I would guess,
9 yes, you could determine which was burned last. That
10 would be the closest to the top.

11 Q Was -- was that something you thought about that
12 maybe that would be important to note? Or felt
13 wasn't necessary?

14 A Um, at that point, no. We -- When we collected, we
15 collected everything from a given barrel together.

16 Q Okay. In regards to the license plate, you
17 indicated that you processed the license plate.
18 That's the term you used. What do you mean by
19 processed the license plate?

20 A No. I would -- I said that the -- the fingerprint
21 analyst, who was with us, was given the task to
22 process the vehicle. He examined the license plate,
23 but I don't believe he processed them at the scene.

24 Q So if I were to say, using it in that context,
25 processing, you would assume processing would be

1 use the -- the powder to extract the potential
2 extract? The potential fingerprint; correct?

3 A Correct.

4 Q But he didn't do that?

5 A He did that with the vehicle. He did not do that
6 with the license plate.

7 Q Okay. And do you know what happened to the
8 license plate?

9 A I packaged it in a pistol box, sealed it, and turned
10 it over to Calumet County.

11 Q So you don't know if it made its way to the Crime
12 Lab, eventually?

13 A I don't know.

14 Q That's not your job?

15 A No.

16 Q In regards to the burn pit, were -- were you
17 keeping track of where you were scooping items of
18 ash from the pit as far as what point in the pit?
19 For instance, if you gridded out the pit?

20 A No. Um, the -- the pit was most accessible from the
21 position where we set up the tripod. It was level
22 with the -- the surroundings there. Um, it was sort
23 of a depression compared to the -- the other three
24 sites. So we began at the accessible area and worked
25 our way towards the inaccessible area.

1 Q So where an item was located wasn't as important
2 as whether there was potential evidential value
3 to anything that was found in that pit?
4 A Correct.
5 Q Did you -- When you indicate -- And, again, maybe
6 you didn't do this part. Uh, when you packaged
7 what was sifted from the burn pit, did it go to
8 the Crime Lab from there?
9 A I don't know.
10 Q You weren't in that -- involved in that process?
11 A No, I wasn't.
12 Q Were you involved in the process -- involved, uh,
13 in regards to the car seat that was found? Was
14 that taken to the Crime Lab as far as you know?
15 A I don't believe so. I don't know.
16 Q Okay. You testified in regards to luminol. Now,
17 that can react with human or animal blood;
18 correct?
19 A Yes.
20 Q So, for instance, hypothetically, if someone were
21 skinning a deer in the garage, and cleaned up
22 afterwards, it might react to luminol?
23 A That's true.
24 Q You -- You commented that oftentimes it's a way
25 to detect diluted blood? Or -- Is that correct?

1 A Yes.

2 Q By that you mean if someone, for instance, had

3 washed, for instance, the gar -- the garage

4 floor, possibly find blood, that wouldn't be

5 readily, uh, uh, noticeable to the naked eye?

6 A That is correct.

7 Q And that could be with anything? Not just the --

8 a garage floor? You could do that with a table,

9 for instance?

10 A Yes.

11 Q Clothing?

12 A Yes.

13 Q Okay. Did you do the luminol spray on the entire

14 garage floor?

15 A No. Some of the garage floor wasn't accessible due

16 to the presence of a lot of stuff.

17 Q Okay. Anything that was exposed, though, you

18 were able to spray the luminol on?

19 A Yes. And we did go underneath the vehicle there,

20 because we could spray under it and see what was

21 there -- going on in there. We did not go under the

22 snowmobile or the tractor.

23 Q Did -- You did indicate that it would also react

24 to lead?

25 A Yes.

1 Q Potentially?

2 A Potentially.

3 Q So, hypothetically, a lead bullet may end up

4 if -- might react to a luminol spray with that

5 glow?

6 A Yeah, it's possible.

7 Q In -- In the picture, um, behind the lawnmower,

8 is where you indicated was that three-by-four

9 foot area that seemed to be entirely in the

10 glow --

11 A Yes.

12 Q -- of luminol?

13 A Yes.

14 Q To the right of that seems to be lot of items.

15 Boxes, etc.?

16 A Yes.

17 Q Did you spray luminol there as well, since it

18 was -- abutted that area you found?

19 A Maybe a foot, foot-and-a-half above the floor. But

20 we didn't -- We didn't -- You couldn't access that

21 area to move into it. It was packed full. We didn't

22 attempt to clear it, or to look behind it, or to

23 examine those items.

24 Q But the boxes, themselves, show that the items

25 that were stacked up there you were able to

1 spray?

2 A To some extent.

3 Q Were you able -- Did you receive any positive,
4 uh, um, results, uh, from any of those items that
5 you might have sprayed?

6 A I don't believe so.

7 Q Okay. Nothing further. Thank you.

8 THE COURT: Any redirect, Counsel?

9 ATTORNEY FALLON: None. Thank you.

10 THE COURT: You may step down.

11 THE WITNESS: Thank you.

12 THE COURT: Your --

13 ATTORNEY FALLON: State --

14 THE COURT: -- next --

15 ATTORNEY FALLON: State would call

16 William Newhouse.

17 THE CLERK: Please raise your right hand.

18 **WILLIAM NEWHOUSE,**

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

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

23 THE WITNESS: It's William L. Newhouse.

24 And then it's N-e-w-h-o-u-s-e.

25 **DIRECT EXAMINATION**

1 BY ATTORNEY FALLON:

2 Q How are you employed?

3 A I'm employed as a firearms and toolmark examiner in
4 the Wisconsin State Crime Laboratory in Madison,
5 Wisconsin.

6 Q What does a firearms and toolmarks examiner do?

7 A In general terms, uh, we're asked to examine physical
8 evidence that's been recovered in the course of some
9 kind of a criminal investigation, answer questions
10 about that evidence, whether or not it's pertinent to
11 the investigation, and then, of course, report about
12 those examinations in our findings.

13 A little more specifically, as a
14 firearms and toolmark examiner, most of the
15 physical evidence that I examine is going to be
16 related to the firing of a gun. So I'm going to
17 be looking at guns, of course, I'll examine
18 bullets, cartridge casings. I do gunpowder
19 residue examinations and -- and studies, uh, just
20 trying to answer questions about how that
21 evidence relates to that particular criminal
22 investigation.

23 Q All right. How is that you are involved in this
24 case, Mr. Newhouse?

25 A Well, there were a -- a number of items of evidence

1 recovered in the course of -- of this homicide
2 investigation that were, uh, submitted to the
3 laboratory for analysis. Uh, several of those were
4 firearms related.

5 Q All right. How many examinations, uh, in total
6 did you do for the investigators in this case?

7 A There was a rifle that was submitted. Uh, there
8 were, I think, 11 cartridge casings -- fired
9 cartridge casings -- and two bullets that were all
10 submitted for my examination.

11 Q All right. And, um, before we have you explain
12 your findings, let's, uh, find out a little bit
13 about yourself. I'm going to have, um,
14 Investigator Wiegert, uh, hand you Exhibit 133.
15 And what is Exhibit 133, please?

16 A Exhibit 133 is a curriculum vitae. It's a
17 description of my training, my background, my work
18 experience.

19 Q All right. And, um, I believe there is one, um,
20 typo that we may have to clarify regarding the
21 time spent at the, uh, California Department of
22 Justice in -- in terms of your years there --

23 A Um --

24 Q -- versus Kansas City experience?

25 A There were a -- there were a couple of typos that --

1 that I had noted. Uh, in California, I was there, as
2 it indicates, from 1972, uh, to, actually, 1981, and,
3 um -- and then I went to Montana in 1981. Was there
4 until 1998. And then in Kansas City from 1988 until
5 I came to, uh, Wisconsin in September of 2002.

6 Q All right. Um, first of all, um, do you have an
7 undergraduate degree, sir?

8 A I do.

9 Q And, um, what is your degree in?

10 A I have a Bachelor of Science Degree in physics.

11 Q Um, from what university?

12 A From Purdue University.

13 Q Um, did you pursue, um, graduate courses beyond
14 that?

15 A I took some graduate courses after I received my
16 Bachelor of Science Degree. Uh, some of those were
17 in physics.

18 Q All right. And, um, in terms of, uh, your
19 experience as a firearms and toolmark examiner,
20 where did you begin your career?

21 A Um, I accepted a position with the California
22 Department of Justice in the Sacramento Laboratory in
23 August of 1972. Didn't really get acquainted with
24 firearms and toolmarks immediately. I was trained in
25 a couple of other areas of the laboratory, um, until

1 about 19 -- I think the fall of 1973, when I took
2 a -- a course, taught by one of the examiners there
3 in the laboratory, that dealt with kind of the
4 history of firearms and toolmark identification, and
5 how it related to criminal justice.

6 And then in the fall of -- of 1974, I
7 went through the training program that they had
8 in place in the Sacramento Laboratory at that
9 time for firearms and toolmark examiners. It was
10 a two-and-a-half or three-month program as I
11 recall. Um, I completed that successfully, and
12 in January of 1975, was asked to take, um, a
13 course that dealt with the theory of
14 identification, um, how is it we can look at a
15 bullet, or a cartridge casing, or any kind of
16 toolmark, and really answer questions about what
17 tool or what weapon caused the markings that we
18 observed on those items.

19 Uh, completed that course successfully.
20 I think the next week I was over in San Mateo
21 Crime -- Crime Laboratory on another three-day
22 course that dealt with ammunition problems and
23 automatic weapons.

24 And then having completed that series of
25 courses in May of 1975, I was assigned to the

1 firearms and toolmark section of the Sacramento
2 Laboratory. And until I left there, I was
3 responsible for most of the firearms and oth --
4 and toolmark case work that left that laboratory.
5 There were other examiners that could do that
6 kind of work, and did. I worked in there full
7 time until I left there and went to, um, the
8 Montana State Crime Laboratory in -- I think it
9 was January, 1981.

10 Q All right. In terms of, uh, your California
11 experience, in particular the Sacramento Lab, how
12 many other examiners did you work with in that
13 lab?

14 A Um, there were probably, anytime there, three or four
15 other examiners -- um, we called -- they're called
16 criminalists in California -- uh, who were trained
17 and capable of doing firearms cases.

18 Uh, most of them did not do those full
19 time. They did them as they encountered them in
20 their work in other kinds of disciplines in the
21 laboratory. Uh, but I was the -- for that
22 period, the single examiner who worked full time
23 in the -- in the, uh, fire -- firearms and
24 toolmark section.

25 Q All right. And, um, after you left California,

1 what was your, next, um, uh, experience?

2 A I went to the Montana State Crime Laboratory, uh,
3 that was in January of 1981, and become -- became
4 that state's firearms and toolmark examiner.

5 Q All right. And then, um, you mentioned something
6 about, uh, Kansas City, Missouri? Tell us about
7 that?

8 A In November of 19 -- Is that right? Uh, November, I
9 think, of 1988, um, I accepted a position in the --
10 the Kansas City Police Department Crime Laboratory in
11 Kansas City, Missouri, as one of four firearms
12 examiners in that laboratory.

13 Q And I believe you indicated you, uh, came to
14 Wisconsin in September, 2000?

15 A Um, I think it was 2002.

16 Q All right.

17 A Yes.

18 Q And, um, you are based in the Madison office?

19 A Yes.

20 Q All right. And, um, do you have any estimate for
21 us as to approximately how many times you've been
22 asked to come to a court of law and render expert
23 opinion regarding firearms identification?

24 A Um, I know it's been more than 300 times in the
25 course of the 30-some years that I've -- I've been

1 doing the work.

2 Q All right. Um, are you a member of any
3 professional associations or affiliations that
4 you find, uh, useful and practical in the field
5 of, uh, firearms identification?

6 A Yes, I am.

7 Q Tell us about those, please?

8 A I'm a member of the Association of Firearms and
9 Toolmark Examiners. Um, it is the -- the single
10 professional organization, international
11 organization, for a firearms and toolmark examiner,
12 um, that is focused, specifically, on that area of
13 forensics.

14 Q All right. From time to time, have you taken any
15 courses to maintain, um, currency in the
16 literature and in the science of firearms
17 identification?

18 A Um, there are couple of things that we can do. Uh,
19 in terms of formal courses, while I was in Montana,
20 um, I had the opportunity to go to the FBI Academy.
21 I took and completed a week-long course there that
22 dealt with specialized techniques in firearms
23 identification.

24 Um, beyond that, a -- attending the --
25 the -- the AFTE, or the -- the Association of

1 Firearms and Toolmark Examiners meetings. Uh,
2 those are training seminars. A lot of it, of
3 course -- Most of it is papers and research being
4 presented to those of us who attend. And I've
5 gotten to do that of and on over the years as
6 well.

7 Q All right. Very well. Let's begin, then. First
8 of all, tell us what firearms identification is
9 or involves?

10 A Um, well, as I said, I'm examining evidence that's
11 been recovered in -- in -- in investigations or
12 crimes that involve the shooting of a firearm.
13 Clearly, I'm going to be involved with firearms, be
14 examining firearms. I'm test-firing them in the
15 laboratory, uh, determining whether they function or
16 don't function, or whether they've been altered.

17 Additionally, we recover bullets and
18 cartridge casings, um, from scenes, from
19 autopsies, and there is always the question, when
20 we have a gun recovered, of whether that bullet
21 or the cartridge casing, if it's recovered, have
22 been fired from the particular gun that was
23 recovered.

24 In those cases where we might not have a
25 gun recovered, I answer other questions. Was

1 there only one gun involved in this shooting?
2 Was there more than one gun involved in this
3 shooting? Those questions are all answered by
4 examinations of the bullets and cartridge
5 casings, and, where possible, the test-firing of
6 the weapon in the laboratory.

7 Finally, the other area of -- of
8 firearms and toolmarks that I'm involved in, is
9 involved with gunpowder residues, answering
10 questions about distances, where I can, uh,
11 between a victim and the muzzle of the weapon
12 when it was fired.

13 Q All right. Well, let's begin, I think, by
14 defining some terms, um, for many of us who may
15 not be all that familiar with firearms. Um,
16 first of all, tell us, what is a cartridge?

17 A Um, if you're going to fire a gun, you have to load
18 the cartridge into the weapon, and the cartridge is
19 designed for the particular weapon in which it's
20 going to be fired.

21 Usually a cartridge consists of, say,
22 four components. One of them is going to be the
23 projectile or the -- or the bullet. Um,
24 sometimes it's called a slug.

25 Uh, one component will be the cartridge

1 casing, in which the bullet is mounted.

2 Another component is the gunpowder.
3 When the cartridge fires, it's the gunpowder
4 inside the cartridge that explodes, and that's
5 what forces the bullet out of the barrel of the
6 weapon, and, of course, down range and in the
7 direction that the weapon is pointed.

8 The last component, the most modern
9 ammunition, is going to be something called a
10 primer. And this is just a -- another compound,
11 not dissimilar to gunpowder, but chemically
12 different. That is, very shock sensitive. And
13 that when struck by a part of the gun designed to
14 strike the cartridge, will cause the -- the
15 primer to explode, set the gunpowder on fire,
16 essentially cause that to explode, and then we
17 have a gun firing.

18 Q All right. How is a cartridge then fired from a
19 weapon?

20 A Well, you're going to -- going to have to load the
21 cartridge in one manner or another into the -- a
22 particular part of the weapon. Uh, you're going to
23 have to cock the weapon, or arm it, and this is all
24 defined by how that weapon is designed.

25 And then, to actually fire the

1 cartridge, assuming the gun's working properly,
2 you have to generally pull the trigger. And
3 pulling that trigger causes a part of the gun to
4 strike the cartridge and causes the cartridge,
5 then, to explode and the bullet to be fired.

6 Q All right. Where does the, um -- the firing
7 pin -- or how does that figure into the actual
8 firing of the cartridge?

9 A Well, that part of the gun that actually strikes the
10 cartridge and causes it to fire is what we call a --
11 a firing pin. In certain weapons it might be called
12 a striker. Essentially, what it is, is a piece of
13 metal that, when the trigger is pulled, is released
14 and allowed to strike the cartridge.

15 Q What happens to a, uh -- the cartridge? Or, uh,
16 perhaps, a better way of asking it is what
17 happens to the bullet which is mounted in the,
18 uh, casing or the cartridge once the weapon is
19 fired?

20 A Well, the bullet, which initially is mounted in the
21 cartridge, is propelled by the gases created by the
22 explosion of the gunpowder, is propelled down the
23 barrel of the weapon, and, of course, whatever
24 direction the gun's pointed at is the direction that
25 the bullet is going to be projected.

1 Q All right. Generally, what happens to the
2 cartridge, itself, once the bullet is expelled?

3 A Once you fired your cartridge, you now have -- and
4 the bullet's on its way -- you have left in the gun
5 the cartridge casing. What happens to the cartridge
6 casing after you fired the gun is -- is determined by
7 how that weapon is designed.

8 In a semi-automatic weapon, whether a
9 handgun, or a rifle, or a shotgun, that cartridge
10 casing is going to be extracted and ejected from
11 the weapon. Out of the weapon and onto the
12 ground.

13 Um, if it's a revolver, certain other
14 kinds of handguns, the cartridge may stay --
15 cartridge casing may remain in the weapon, and
16 then you may have to actually extract it from the
17 weapon manually.

18 Q Now, there's some other terms and phrases that I
19 think are bandied about quite a bit in, um,
20 mainstream media and television. And these are
21 terms called lands and grooves. Do you recognize
22 those terms and, if so, tell us what they are?

23 A Yeah. Um, if you look down the barrel of -- of any
24 modern weapon, with the exception of a shotgun, uh,
25 what you'll notice is that there are grooves in the

1 barrel. And we're talking about the inside of the
2 barrel, and the barrel of the weapon is just a tube,
3 and inside that barrel, they -- they've -- in the
4 manufacture of the barrel, they've put these grooves
5 in there.

6 You probably also notice that they are
7 twisted as you look down there. We call those
8 grooves, of course, "grooves". We call the areas
9 between the grooves in the barrel, lands. That's
10 l-a-n-d-s. I'm not sure where the term ever came
11 from and never heard a really good story for it.

12 When I'm looking at bullets, what I see
13 are land and groove impressions, but they're
14 created by contact between the bullet and the
15 inside of the barrel of that weapon.

16 Q Given that, what, um -- how a cartridge is
17 filed -- or -- or, excuse me, how a cartridge is
18 fired in a weapon, and these lands and grooves,
19 what is it that makes the actual identification,
20 for instance, of, uh -- of a bullet as having
21 been fired by a particular gun possible?

22 A Well, what makes it possible, ultimately, is the
23 manufacturing process used to create the -- the
24 barrel of the gun, um, in the case of a bullet, or
25 other parts of the weapon that come into contact with

1 the cartridge casing.

2 Uh, if I'm asked to determine whether a
3 bullet was fired from a particular gun, the way
4 I'm going to do that, eventually, is by putting a
5 test-fired bullet, one I fired in the laboratory
6 from that gun, and one that I know has been
7 marked only by the barrel of that gun, I'm going
8 to put that bullet under the microscope, I'm
9 going to examine those test-fired bullets, and
10 what I'm going to look for are patterns of
11 scratches, or what we call in the -- in the field
12 are stria. These are engravings on the side of
13 the bullet that are created by microscopic
14 defects inside the barrel of the weapon.

15 When the bullet passes through that
16 barrel, it's coming into contact with those
17 defects and they're leaving patterns of scratches
18 or stria on the surface of the bullet. I have to
19 be able to determine or -- or do -- or con --
20 conclude that, in fact, all the test-fired
21 bullets that I'm seeing from that gun are
22 creating the same pattern of markings.

23 Having done that, I then know what to
24 look for on the bullet that's been recovered in a
25 crime, and maybe a bullet that's been recovered

1 in a autopsy, or may have been taken out of a
2 tree in a shooting. But I'm going to look at
3 that bullet. I'm going to look for those same
4 patterns of stria on the surface of that bullet,
5 and if I see those patterns, if I can be assured
6 with my examination the patterns I do see are the
7 kind of thing I expect to see on any bullet fired
8 from that specific gun, then I can conclude that
9 the bullet that was recovered in the shooting was
10 fired from that particular gun. Until I see
11 these patterns, and I see them reproducing, I
12 can't come to any conclusion at all about that.

13 Q Very well. Let's talk about your findings in
14 this case. Um, first, I'm going to have
15 Investigator, uh, Wiegert, uh, show you, I

16 believe, what is marked for -- or had been
17 received into evidence as Exhibit No. 128, and
18 ask if you, um, first of all, can examine that
19 item and tell us if you recognize it?

20 A Yes, I do.

21 Q And what is Exhibit 128?

22 A Well, Exhibit 128 is, um, a paper bag, now opened,
23 that -- that contained, um, a box. Um, all of these
24 are marked in some way or another so that I could
25 recognize them later. Within the box are -- I

1 believe, is 11 fired cartridge casings that were
2 submitted in the course of this investigation.

3 Q All right. Now, we're, uh, showing a projection
4 now of that item. Is that what you're examining?
5 I believe it's, uh, Exhibit 120 is being depicted
6 on the screen?

7 A Yes, it is. At this point, when I concluded my
8 examinations, I put the cartridge casings in small
9 plastic bags. When that photograph was taken, they,
10 obviously, were not in those plastic bags.

11 Q All right. And, um, as part of your first
12 examination in this case, um, were you also asked
13 to examine a .22 caliber rifle?

14 A Yes, I was.

15 Q All right. I'm going to have Investigator
16 Wiegert show you Exhibit 129. Do you recognize
17 Exhibit 129?

18 A I do.

19 Q What is 129?

20 A Um, Exhibit 129 is a -- a .22 caliber rifle. It's
21 manufactured by Marlin Firearms Company. The model
22 of rifle is a -- a Glenfield Model 60. Uh, this
23 happens to be a semi-automatic rifle. I -- I can
24 recognize it because of the -- the sticker I placed
25 on it that -- with the appropriate information and by

1 the serial number on the weapon.

2 Q All right. And, um, just so that we're clear,
3 um, what kind of examination did you do
4 reference, um, that rifle and the, um, uh,
5 cartridges which are, uh, contained in Exhibit
6 128?

7 A Um, well, the first thing that I did with Exhibit
8 129, um, because I knew I was going to test-fire the
9 weapon, was to -- to give it an examination, uh,
10 checking the function of the weapon, checking the
11 condition of the gun, uh, documenting and writing
12 down information about the weapon, the serial number,
13 manufacturer, and so on.

14 Uh, and I wanted to make sure that the
15 gun was working, first of all, and, secondly, I
16 wanted to make sure that it was safe to -- to
17 fire the weapon, because I knew this was
18 something I wanted to do, and because I'm going
19 to want bullets and cartridge casings that I know
20 have been fired in this gun.

21 So having completed that series of
22 examinations, the next thing I did was to obtain
23 those test fires to determine what ammunition to
24 fire in the weapon, fire it in the laboratory,
25 and then recover the cartridge casings and

1 bullets.

2 Q All right. Tell us about the procedure you then
3 employed for test-firing. What did you do? What
4 was the first step?

5 A Uh, well, as I said, I -- I simply wrote down various
6 information about the weapon, marked the weapon for
7 later identification. Uh, one of the examinations
8 that's -- that's, of course, important to do, is just
9 to look down the barrel of the weapon, after, of
10 course, I've determined it's not loaded, and to
11 determine -- make sure there's no obstruction in the
12 barrel. Occasionally, the bullets don't get out of
13 the barrels of weapons, and -- and, uh, that's not
14 a -- a safe way to fire a weapon. So I did perform
15 that examination.

16 I, essentially, determined that this gun
17 was functioning, and at that point, as I expected
18 it to, and saw no problems with the weapon in
19 terms of -- of safety, um, I then would have
20 test-fired rounds, cartridges in the weapon, and,
21 in fact, test-fired three of them.

22 Q All right. How did you test-fire them?

23 A Um, this weapon loads cartridges -- or you load
24 cartridges in it, in a tube on the -- just a sec,
25 it's stuck -- on the bottom of the barrel. That's

1 this tube right here. Uh, you drop the cartridges in
2 this slot here, and then put the tube back in the --
3 in position.

4 And then to actually fire this weapon,
5 had it ammunition in it, I'd pull this back.
6 This is called a bolt. Let it drop. That action
7 pushes the cartridge into this part of the
8 weapon, called the chamber. It also cocks the
9 weapon. That means if I pull the trigger now, it
10 would fire, assuming I had a cartridge in there.

11 This, by the way, for those of you that
12 aren't familiar with weapons, is the barrel of
13 the gun. I described to some -- in some detail
14 what that is. So to fire the weapon, I pull the
15 trigger, that click you heard was the snap of
16 the -- the striker, or the firing pin in this
17 weapon, and had there been a cartridge in it, it
18 would have fired at that moment.

19 Q Uh, is there any way, from just looking at it,
20 to, um, tell what the magazine capacity is in
21 that weapon?

22 A Um --

23 Q Or do they vary?

24 A No. The only way to do that, and I did not do that
25 with this gun, um, is to actually put a number of

1 cartridges in it, see how many it would hold. I
2 could have looked it up in some magazine or something
3 and determined the same thing, but it would hold, I
4 would assume, anywhere from -- from 10 to 15
5 cartridges.

6 Q All right. Now, um, first question, then, uh,
7 were you able to determine that that weapon, um,
8 fired and functioned properly?

9 A Yes, I was.

10 Q All right.

11 A And it does.

12 Q And, um, in order to fire it, I would imagine you
13 would have to have some ammunition?

14 A Yes.

15 Q And what ammunition did you select for your
16 test-fire?

17 A Well, the -- one of the things that's important in my
18 examinations is to make sure I'm firing the same kind
19 of ammunition that was submitted. That was
20 recovered. In other words, I examined the cartridge
21 casings in Exhibit 128. I determined that those
22 are -- are CCI manufactured cartridges, uh, .22 long
23 rifle, and so that's what I fired in the rifle. I
24 obtained three of these cartridges from a collection
25 I have at the laboratory and fired those three

1 cartridges in this weapon.

2 Q All right. And what -- what are those fired into
3 so that you can, um, check both the cartridge and
4 the bullets?

5 A I have a -- a water tank in the laboratory, about,
6 uh, nine feet long, probably three-and-a-half foot
7 deep, and a couple of feet wide. And I can fire
8 through a tube in that -- in that, um, essentially
9 big box of water. I can fire my weapons into that.
10 The water slows the bullets down. They simply drop
11 to the bottom. The cartridge casings are, in this
12 case, ejected from the weapon and caught in a trap
13 that I have on the front of the -- of the water tank.

14 Q All right. Now, with respect to, um, your
15 examination, were you able to, um, determine
16 whether those cartridge casings, which were
17 submitted to you, had actually been fired from
18 that rifle that you now hold in your hand?
19 Exhibit 1, uh, 29?

20 A Yes, I was.

21 Q Um, and what opinion did you reach, sir?

22 A I was able to determine that all 11 of these
23 cartridge casings in Exhibit 128 had been fired in
24 this rifle.

25 Q All right. And do you hold that opinion to a

1 reasonable degree of scientific certainty?

2 A I do.

3 Q Very well. Now, did there come a time where you
4 were asked to perform a second examination of
5 evidence involving that very same rifle? Exhibit
6 129?

7 A Yes.

8 ATTORNEY FALLON: Um, let me then ask,
9 um, if I could have, uh, Investigator Wiegert,
10 um, bring Exhibits 114 and 113 to your attention?

11 Q (By Attorney Fallon) Let's begin with Exhibit,
12 uh, 114. I believe it's Item FK? Crime Lab
13 designation; is that correct?

14 A That's correct.

15 Q All right. Um, tell us about Exhibit 114,
16 please?

17 A Um, well, Exhibit 114, uh, was a -- again, a paper
18 bag, inside of which was a -- is a bullet or bullet
19 fragment. Um, it's a bullet that -- that's in very
20 bad shape. Uh, some of it missing. Um, that was
21 what I was asked to examine. I was asked to answer
22 the -- the same question, really, I answered with the
23 cartridge casings, uh, and that was whether this
24 bullet was fired in this weapon or whether I can say
25 it was or not.

1 Q All right. Tell me about the condition of that
2 particular bullet? Uh, Item FK? Exhibit 114?

3 A Item Fk -- Um, the first thing I do with these items
4 is to examine them microscopically. Um, I want to
5 define and determine what I can about the kind of gun
6 that fired this, based on the characteristics of the
7 bullet that remained.

8 Uh, for example, I can look at a bullet
9 and determine the caliber of the bullet. Uh, in
10 this case, I can look at this bullet and tell you
11 that this is a .22 caliber bullet. I know
12 because -- be -- because of my familiarity with
13 guns, that then it had to have been fired from a
14 gun that's a .22 caliber gun. And that means
15 that the -- the bore diameter of that barrel has
16 to be .22 inches, approximately.

17 There are other class characteristics or
18 other design features of the gun in which a
19 bullet is fired that are transferred to that
20 bullet. And the other one of those that I was
21 able to look at, and is present on -- on this
22 bullet, at least in part, were the land and
23 groove impressions. The bullet's in very bad
24 condition. I examined it. Uh, some of the land
25 and groove impressions on this had been

1 obliterated, um, by its contact with something
2 hard, or passage through something hard.

3 But, nonetheless, with Item FK, um, I
4 was able to determine that there are eight
5 remaining land and groove impressions on this
6 bullet in Exhibit 114, and that they had what I
7 would call a right-hand twist. That is, the gun
8 from which they were fired, those -- those
9 grooves in that barrel were twisted clockwise
10 when they were created.

11 So after I've examined this bullet, I
12 know it was fired from something manufactured
13 with -- in a .22 caliber, and it was fired from a
14 gun whose barrel had 16 land and groove
15 impressions. There were 8 remaining. There were
16 16 originally. And I can determine that from the
17 8 that remained on that -- that bullet.

18 Q What did that bullet look like? I mean, did it
19 look like a bullet when it was submitted to you?

20 A Um, to me it looked like a bullet, but I'm used to
21 looking at bullets that have -- that have struck
22 things, that have been -- been broken up into pieces
23 or smashed up. Uh, it may not look like a bullet to
24 somebody who's not familiar with them. Uh, it does
25 have the characteristics of a bullet. It's lead.

1 That's fairly easy to determine. And it's -- it's
2 coated with a copper coating, and that's what they do
3 with -- in particular, with .22 caliber bullets.

4 So I was satisfied, after my microscopic
5 examination, that that's exactly what I had, was
6 a .22 caliber bullet.

7 Q All right. But if one did not have, say, the,
8 uh, assistance of, uh, your training, and
9 experience, and a microscope, to the untrained
10 eye, what would -- what would -- what did it
11 possibly look like?

12 A It really look -- looks like a chunk of metal. Um,
13 it might not look like anything more than that to
14 somebody who isn't used to seeing these kinds of
15 things.

16 Q All right. Um, would the, uh -- the head of a
17 roofing nail be a fair description?

18 A Well, maybe in terms of size. Uh, again, it would
19 look different from that.

20 Q All right. What conclusions, if any, were you
21 able to reach with respect to, um, um, Item FK,
22 Exhibit 114, uh, relative to, uh, the firearm in
23 question here? Uh, Exhibit 129?

24 A Um, I was limited in my conclusions to what I could
25 tell based on the class characteristics that are

1 there. All I can say about, uh, this Item 114, is
2 that it's a .22 caliber bullet, that it was fired
3 from a gun manufactured with 16 lands and grooves,
4 and a right-hand twist in the barrel of the gun.

5 I cannot be specific of what -- about
6 what gun that was. For example, whether,
7 specifically, it was fired from this particular
8 rifle. Because of those microscopic markings
9 that I've described as having been scratched in
10 the surface of bullets by barrels, are not
11 present there anymore. They've been obliterated
12 by its -- its contact, or passage through, with
13 whatever it struck.

14 Q So, in -- in effect, you're saying there -- it
15 just lacks sufficient individual characteristics
16 beyond those general ones of the lands and
17 grooves and 8 out of the 16 twists? Other than
18 that, that's what you got?

19 A Exactly.

20 Q All right. Very good. Let's move on, then, to,
21 um, Exhibit 113, Item FL. Did you have an
22 opportunity to examine that particular item?

23 A I did.

24 Q Um, first of all, then, uh, for our benefit, uh,
25 what is I -- Item FL, Exhibit, uh, 113?

1 A Well, Exhibit 113 is a second bullet. Again, I went
2 through the same examination process. In this case,
3 again, I'm able to determine that it's a -- a
4 .22 caliber bullet. Uh, in this case, I have 11 of
5 the 16 original land and groove impressions that were
6 transferred to this bullet when it was fired from the
7 gun from which it was fired.

8 Um, I also, uh -- didn't mention on the
9 other bullet -- but I also weighed the bullet,
10 which can be helpful in -- in determining the
11 caliber and so on.

12 Um, and, additionally, on this bullet,
13 on Exhibit 113, I do have the microscopic detail,
14 the stria and scratches on the surface of the
15 bullet, that I can relate back to a particular
16 weapon. I can compare it to test fires from a
17 particular weapon.

18 Q All right. And, um, as such, were you able to
19 make any determination as to whether, um, Item
20 FL, uh, that's the Crime Lab designation, and
21 Exhibit 113, were, uh -- was fired from Exhibit
22 129, the Marlin Glenfield 60 .22 caliber rifle?

23 A Yes, I was.

24 Q And what, uh, conclusion did you reach, sir?

25 A I was able to determine that -- that this bullet in

1 Exhibit 113 was fired from this particular Marlin
2 rifle.

3 Q All right. Um, and do you hold that opinion to a
4 reasonable degree of scientific certainty?

5 A I do.

6 Q And how is that you're, uh -- Well, let's follow
7 that up with, is it to the exclusion of any other
8 rifle that that bullet was fired from?

9 A It is.

10 Q Why is that?

11 A Um, when I examined the test fires from this rifle,
12 um, I'm sorry, Exhibit 129, um, when I looked at
13 those bullets under the microscope, I found that I
14 was seeing patterns of scratches or stria reproducing
15 on each of the test fires. There's always
16 differences, not all there on every bullet test-fired
17 from that rifle, but I was able to determine that I
18 could expect to see certain patterns of these
19 markings.

20 More importantly, when I put Exhibit 113
21 under the microscope and compared it directly to
22 my test fires, I was able to demonstrate that I
23 had the same patterns on the test fires that I
24 had on this bullet in Exhibit 113.

25 And, in fact, it was enough markings

1 that I was able to determine that I had more
2 agreement in these kinds of stria, and these
3 patterns of stria, than I ever would expect to
4 see from two bullets that were not fired from the
5 same gun. We have to be able to satisfy that
6 kind of -- of correlation that we expect to see
7 in bullets not fired from guns, same gun.

8 The fact of the matter was, in this
9 case, the patterns, the amount of agreement and
10 correlation that I see, and saw, on this bullet,
11 when I compared it to test fires, was enough for
12 me to be able to conclude that it had been fired
13 from this Marlin rifle, and could have been fired
14 in none other.

15 Q All right. I'm having Investigator Wiegert, uh,
16 show you Exhibits 134, 135. Do you recognize
17 them?

18 A I do.

19 Q And what are Exhibit 134 and 135?

20 A Well, Exhibit 134 is a report that I wrote, uh,
21 describing the evidence I looked at and the findings
22 or conclusions to which I came. Uh, this report is
23 dated February 21 of 2006, and, in particular, it
24 describes the examination and comparison of the
25 cartridge casings that I looked at and related to or

1 determined were fired in that rifle in Exhibit 129.

2 The other report, Exhibit 135, is dated
3 May 10 of 2006. This is the description of the
4 bullets that I looked at, uh, in Exhibits 113 and
5 114, uh, and describes my findings with regard to
6 whether they were or were not fired from the
7 rifle in 129.

8 Q All right. And are those the official reports
9 that you filed in this particular case?

10 A Yes, they are.

11 ATTORNEY FALLON: Your Honor, subject to
12 the receipt of those last two exhibits, 134 and
13 135, I would tender the witness for
14 cross-examination.

15 THE COURT: All right. Cross, Counsel?

16 **CROSS-EXAMINATION**

17 BY ATTORNEY EDELSTEIN:

18 Q Good afternoon, Mr. Newhouse. You've been at it
19 for a good while, haven't you?

20 A A little while.

21 Q Okay. Um, I'm not going to take issue with your
22 qualifications. I think it's pretty obvious that
23 you've had plenty of experience in the training.
24 I do want to ask you a little bit about the FBI
25 program. Um, I believe you said you spent about

1 a week out there?

2 A That's true. Yes.

3 Q Did you spend any time, in connection with your
4 visit to the firearm and toolmark section of the
5 FBI Lab, with the metallurgy section?

6 A No, I do not.

7 Q Do -- You know they have a metallurgy section?

8 A Yes.

9 Q Does Wisconsin have a metallurgy section?

10 A Um, no.

11 Q All right. Well, let me ask you this: Given the
12 fact that you received the empty cartridges, and
13 you were able to identify the manufacturer as
14 CCI, did you make any attempt beyond the
15 identification of the manufacturer to determine
16 which specie, if you will, of CCI .22 caliber
17 cartridge, turned into, or was the originating
18 source, of your FK, um, and FL?

19 A Um, no, there was no other association that I
20 attempted to make between the cartridge casings and
21 the bullets.

22 Q Uh, CCI, just like a lot of manufacturers, they
23 make a multitude of .22 caliber bullets; right?

24 A They do.

25 Q Okay. They vary by weight; correct?

1 A Yes.

2 Q They vary by, uh, size? And by that I mean long,
3 short; correct?

4 A Uh, essentially by weight, but -- and by length, yes.

5 Q Well, but that's related to the relative, um,
6 power, if you will, of any given cartridge,
7 because of the amount of powder?

8 A Uh, yes. Uh --

9 Q Okay. What -- what I'm getting at, Mr. Newhouse,
10 just to get down to the point here, the
11 test-firings that you made in order to get a
12 clean bullet, to be able to do the microscopic
13 examination, the CCI bullets that you took from
14 your stock, you cannot tell us that they are, in
15 fact, the same CCI type which resulted in what
16 you've labeled FL and FK? Is that a fair
17 statement?

18 A Um, I -- That's all going to revolve around what you
19 mean by type. The -- the fact of the matter is they
20 are the same type. That doesn't mean there are not
21 differences between what I test-fired and what we
22 have in 113 and 114.

23 Q Well, let's go backwards. Can you tell me
24 precisely what stock number, for example, CCI
25 test-fire bullets you used?

1 A No.

2 Q Can you tell me what Stock No. F-- assuming

3 they're CCI -- FK and FL were?

4 A No, I cannot.

5 Q All right. You undertook no efforts, and correct

6 me if I'm wrong, to have any comparison done

7 between FK and FL as they relate to one another

8 with respect to the metallurgy composition of

9 those shells; correct? Or those --

10 A That's correct.

11 Q -- bullets? And, Mr. Newhouse, let me ask you

12 this: Wa -- was there submitted to you, for any,

13 um, examination, a box of CCI, uh, .22s?

14 A None that I'm aware of, no. None that I examined,

15 certainly.

16 Q When things get submitted for you to examine,

17 they get a number, and everything has one

18 particular number for -- for your file purposes;

19 right?

20 A That's correct.

21 Q Okay. And you've had a chance to look at your

22 records in anticipation of your testimony?

23 A Yes.

24 Q If a box of .22 shells were submitted to you for

25 examination in connection with this case, it

1 would be reflected in those records; right?

2 A If I examined it, yes.

3 Q Well --

4 A My --

5 Q Exam --

6 A -- point -- My point is that it's possible a box of

7 ammunition could have been submitted that I didn't

8 see.

9 Q Submitted to the lab?

10 A Yes.

11 Q Doesn't mean it made it to you?

12 A Correct.

13 Q But the bottom line, again, is nothing was

14 submitted to you?

15 A That's correct.

16 Q Okay. So if there were some shells recovered

17 from a particular crime scene, um, you undertook

18 no efforts to compare your FK, your FL, to

19 anything else that was submitted; correct?

20 A That's correct.

21 Q All right. I believe you testified that either

22 FK or FL, uh, had charasteris -- characteristics

23 of a coated bullet?

24 A Yes. They both did.

25 Q They both did? Okay. Copper?

1 A I'm sorry, what?

2 Q Copper?

3 A Uh, I would presume of copper, copper ac -- copper
4 alloy, the more likely.

5 Q Okay. You didn't undertake any test to
6 determine?

7 A None.

8 Q All right.

9 A No.

10 Q So from your testimony, we know that FK was fired
11 in that particular rifle you've examined?

12 A It was the one that I designated FL.

13 Q Oh, I'm sorry, FL. Okay. FL being the one with
14 19.7 grains remaining?

15 A Yes. I believe that's correct.

16 Q And when I say, remaining, you can't tell this
17 jury how many grains it may have originated with,
18 can you?

19 A Uh, no.

20 Q All right.

21 A I cannot.

22 Q And the same would be true on FK as far as
23 weight?

24 A I could only guess. I wouldn't be able to determine,
25 specifically, no.

1 Q And that's because the manufacturers vary the
2 weights of the bullet; right?
3 A Yep. That's correct.
4 Q So FL, you're satisfied, came out of that gun?
5 A That's correct.
6 Q FK, we can't really say? Can't say the same
7 thing, certainly?
8 A That's correct.
9 Q Okay. And, certainly, you absolutely cannot say
10 what or who caused either FK, or FL for that
11 matter, arguing they both maybe came out of
12 there, caused them to be projected through the
13 barrel of that rifle?
14 A No, I cannot.
15 Q You have nothing by way of your examination,
16 whatsoever, to suggest that it was fired at
17 anytime by this defendant; correct?
18 A That's correct.
19 Q Okay. That's really out of your bailiwick;
20 right?
21 A Yes, it is.
22 Q All right. That's all. Thank you.

23 THE COURT: Any redirect, Counsel?

24 ATTORNEY FALLON: One clarification.

25 **REDIRECT EXAMINATION**

1 BY ATTORNEY FALLON:

2 Q Um, I take it it is possible that Item FK,
3 Exhibit 114, was discharged by the weapon, 129?
4 At -- at least it's the same general
5 characteristics?

6 A Yes, it is possible.

7 Q But beyond that, you cannot say for any degree of
8 certainty?

9 A That's right.

10 Q Okay. That's fine. Thank you.

11 ATTORNEY EDELSTEIN: Judge, just some
12 real quick follow-up.

13 **RECROSS-EXAMINATION**

14 BY ATTORNEY EDELSTEIN:

15 Q When you say, it could be, isn't it just as
16 likely, Mr. Newhouse, that that one that, um,
17 Counsel just referred to, FK, could not have been
18 fired from that gun?

19 A I simply can't say. And that's what that means.

20 Q Thank you. That's all.

21 THE COURT: All right. You may step down.

22 THE WITNESS: Thank you.

23 THE COURT: Uh, I think we'll take a recess
24 now for about 15 minutes. Counsel, if I could see
25 you for just a couple of minutes?

1 ATTORNEY FALLON: Sure.

2 (Recess had at 2:57 p.m.)

3 (Reconvened at 3:20 p.m.)

4 THE COURT: Before, uh -- Before -- Oops.

5 Before proceeding, I'd like to remind the media that
6 the trial administration order says that during
7 recesses, the camera should not be operating, and in
8 this -- during this past recess, it was, so I'd
9 appreciate it if you could, uh, look a little bit
10 more closely at that. All right. Uh, gentlemen?
11 Are you ready to proceed, Mr. Fallon?

12 ATTORNEY FALLON: Yes. State would call
13 Kenneth Olson.

14 THE COURT: Is it your plan that Mr. Olson
15 will be your last witness this afternoon?

16 ATTORNEY FALLON: Yes.

17 THE CLERK: Raise your right hand, please.

18 **KENNETH OLSON,**

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

21 THE CLERK: Be seated. State your name and
22 spell your last name for the record, please?

23 THE WITNESS: Kenneth B. Olson, O-l-s-o-n.

24 **DIRECT EXAMINATION**

25 BY ATTORNEY FALLON:

1 Q How are you employed?

2 A I'm a forensic scientist at the State Crime

3 Laboratory in Madison.

4 Q And how long, um, have you been employed in that

5 cap -- uh, in that capacity?

6 A Approximately 27 years.

7 Q What type of, uh, forensic science do you

8 practice at the Crime Lab?

9 A My main duties at the Crime Laboratory is in the area

10 of trace evidence examination. I examine a variety

11 of materials; paint, glass, fibers, plastics, metals,

12 um, anything that needs chemical identification or

13 comparison, um, that doesn't fit into drugs,

14 toxicology, or DNA.

15 Q All right. And how long have you been actively

16 engaged in the trace evidence, uh, field?

17 A My -- The whole time that I've been employed at the

18 laboratory.

19 Q All right. Have you ever been a member of -- for

20 instance, of, uh, the Field Response Unit for the

21 Crime Lab?

22 A Yes. I was an active member of our field response

23 program for 24 years.

24 Q All right. Um, are you a current member?

25 A I kind of fill in as needed.

1 Q All right. How is it that you became involved in
2 this particular case?

3 A I was asked to examine, um, several items that were
4 recovered during the investigation of this case. Um,
5 items from a burning barrel, uh, and some, uh,
6 charred bones.

7 Q All right. Um, and, in particular, your reason
8 for being here today is to provide us the, uh,
9 results of your examinations?

10 A That's correct.

11 Q All right. Um, before we do so, um, I'd like to
12 find out a little bit about your, um -- your
13 background. I'm going to have Exhibit, um, 136,
14 uh, given to you by Investigator Wiegert. Do you
15 recognize Exhibit 136?

16 A Yes, I do.

17 Q What is Exhibit 136?

18 A Exhibit 136 is a statement of my qualifications.

19 Q And, uh, did you prepare that exhibit?

20 A Yes, I did.

21 Q All right. Well, first of all, let's talk about
22 your, uh, educational, um, experience. First of
23 all, do you have an undergraduate degree?

24 A Yes, I do.

25 Q And from which institution?

1 A I have a Bachelor of Science Degree from the
2 University of Wisconsin at Superior with a major in
3 chemistry.

4 Q All right. Uh, have you received any, uh, post,
5 um, uh, graduate experience at all in -- or
6 courses of that ilk?

7 A I took a couple, um, um, Master's of Business
8 Administration courses.

9 Q Very good. And what particular, uh,
10 on-the-job-training have you received to assist
11 you in performing the tests that you, uh,
12 currently perform for the Crime Lab?

13 A Since being employed at the Crime Laboratory in the
14 area of trace evidence, I did a three-year
15 apprenticeship-type activity, learning the different
16 aspects of trace evidence. So I had extensive
17 on-the-job-training, and the laboratory sent me to
18 several schools over those training years in all the
19 different areas that I do analysis, um, with the
20 different types of instruments that we use to the
21 different types of evidence that we handle.

22 Q All right. Um, are there any particular, um,
23 associations or organizations that you belong to,
24 either for training purposes or for professional
25 development?

1 A Yes. Relating to forensic science, I'm a member of
2 the Midwest Association of Forensic Scientists. I'm
3 also a member of the Association for Crime Scene
4 Reconstruction, and a member of the International
5 Association of Blood Stain Pattern Analysts.

6 Q All right. And do you regularly a -- attend
7 trainings in these areas of specialization to
8 maintain, uh, current familiarity with the
9 research and the literature and general crime
10 scene processing requirements?

11 A As often as -- as I can.

12 Q All right. Um, when did you first become
13 involved in this case? What was your first, um,
14 assigned task?

15 A The first evidence that I examined in this case, um,
16 I received some items from a burning barrel on
17 December 1, 2005.

18 Q What kind of items did you examine from a burn
19 barrel?

20 A The items were submitted in -- in -- I, um, put the
21 materials out on a -- an exam table, and I found, um,
22 items of -- of -- uh, from a cell phone. Um, it was
23 a Motorola -- Motorola cell phone. You could tell
24 that the -- um, just visually, the material -- it
25 was, um, consistent with, uh, a cell phone, flip

1 phone, and I found, um, charred remains of a -- a
2 Canon Sure Shot A310 camera, and then some other
3 electrical components and, uh, some batteries.

4 Q All right. Um, did you recommend any additional
5 or further forensic work on that material that
6 you, yourself, were unable to, um, uh -- to
7 conduct?

8 A I was asked if I could get any information from the
9 cell phone or the components of the camera. And I
10 informed the investigators that, um, our laboratory's
11 not equipped to do that type of analysis. Um, I'm
12 basically one that can examine things either visually
13 or microscopically, and give them investigative
14 leads. So if they needed a more in detailed
15 analysis, they would have to send that to, uh,
16 another laboratory or the FBI.

17 Q All right. After examining the contents of the,
18 uh -- the burn barrel, what was the next, um,
19 matter, uh, which concerned your, uh, expertise?

20 A In February of 2006, I was asked to examine some
21 skull fragments, some charred skull fragments from a
22 burning pit. Um, specifically, uh, they wanted me to
23 examine, uh, an entrance, uh, defect into that skull
24 fragment.

25 Q All right. And describe the skull fragment that

1 you were asked to examine?

2 A The skull fragment was, um, a small, um,
3 approximately two inches in -- in diameter, um, piece
4 of charred skull that had a hole in it, and that hole
5 had some beveling on the outer surface, and it -- and
6 it had some, um -- some beveling or concave
7 appearance on the inside of the -- the bone fragment.

8 Q All right. I'm showing investigate -- uh, having
9 Investigator Wiegert show you a photograph. Um,
10 what exhibit number is that, please?

11 A Exhibit 140 is a photograph of that cranial skull
12 fragment that I examined that had the beveling, um,
13 and the -- can't think of the term -- the concave,
14 uh, nature of the -- of the bone.

15 ATTORNEY FREMGEN: Judge, at this point

16 I don't know if I necessarily have an objection,
17 but I -- I suppose I'd like some more foundation
18 from this witness. He's referring to it as a
19 cranial or a skull fragment. I don't think the
20 expert has -- Well, I don't think he has an
21 expertise to say what type of bone this is other
22 than, someone told me it might have been a
23 cranial bone.

24 I -- I know he mentioned charred bones
25 when he was talking about what he reviewed, and

1 now it's referred to as cranial bone. If there
2 could be some more foundation as to how he knows
3 what that is.

4 ATTORNEY FALLON: That's where I'm going
5 next.

6 ATTORNEY FREMGEN: Okay.

7 THE COURT: All right.

8 ATTORNEY FREMGEN: Thank you.

9 Q (By Attorney Fremgen) Um, from whom did you
10 receive these items for purposes of, uh,
11 analysis?

12 A These items were, uh, originated from, uh, Dr. Leslie
13 Eisenberg, um, an anthropologist with the State
14 Historical Society.

15 Q All right. And, um, did the -- the items that
16 you examined, they did receive a Crime Lab
17 designation; is that correct?

18 A Yes, they did.

19 Q All right. And, um, first of all, tell us about
20 the -- the items that were -- how they were
21 originally submitted to you in their packaging?
22 Would you describe that for us, please?

23 A Could I refer to my notes to that?

24 Q Sure.

25 A This particular item in Exhibit 140, uh, was received

1 in a box, um, from DCI, and Item EJ, which is that,
2 um, bone fragment there, um, was received in, uh,
3 three sealed plastic Ziplock bags. Uh, one was
4 labeled cranial refits with suspected entrance
5 deficit. The second one was labeled cranial refits,
6 and the third one was labeled cranial refits. Um, I
7 was only interested in the suspected entrance defect
8 in that one, uh, uh, skull fragment.

9 Q All right. And, um, again, um, from whom were
10 those, um, uh, items received?

11 A EJ and EK were submitted by Special Agents -- Special
12 Agent James Holmes, uh, Division of Criminal
13 Investigation.

14 Q That's correct. Now, you mentioned something
15 about Dr. Eisenberg? Were there indications or
16 markings on the materials indicating that she had
17 previously examined those items?

18 A Yes. Those were, um, her markings, her initials.

19 Q All right. And her labeling?

20 A Yes.

21 Q All right. Very well. With respect to, um -- Of
22 the items that you examined, you -- you indicated
23 you only examined one item?

24 A Of -- of the two that were submitted, Item EJ and
25 A -- uh, EK, I only examined the one, uh, fragment

1 from Item EK. Or EJ, excuse me.

2 Q All right. And the item -- and the other items
3 were -- how were they labeled?

4 A The other item was a sealed plastic bag with bone --
5 bone fragments labeled cranial, slash, face, slash,
6 dental.

7 Q All right. And was there any indication of a
8 suspected entrance defect on Item EK?

9 A No, there was not.

10 Q All right. Let's begin, then, with, um, Item EJ.
11 Specifically, how did you begin your analysis of
12 that item?

13 A Um, first thing I did was just examine, um, that, uh,
14 skull fragment, uh, under my normal stereo microscope
15 to see what the surfaces looked like, to see if I
16 could see any, um, metallic metal present. Um, I
17 then, um, mounted the item on a -- a scanning
18 electron microscope that uses energy disbursed x-rays
19 to do elemental analysis on the areas, and I was
20 specifically interested in the areas, um, around
21 the -- the entrance defect, both on the -- on the
22 inner surface and on the, um -- on the inward
23 beveling.

24 Q All right. And, um, what was the condition of
25 the fragment that you examined?

1 A It was heavily charred. Um, and it was -- and it was
2 brittle.

3 Q All right. And did you take any special
4 precautions in handling the matter, um, prior to
5 subjecting it to testing?

6 A Just, uh, handled with, uh, gloves and was gentle
7 with it.

8 Q All right. And subsequent to your, um,
9 examination of that item, did you receive other
10 fragments from Dr. Eisenberg, uh, to examine?

11 A In November, um -- November 17, 2006, um, I received,
12 uh, two other, uh, charred cranial pieces from
13 Dr. Eisenberg.

14 Q All right. And what were those items designated?

15 A Those items were designated Item KQ and KR.

16 Q All right. And describe, um, if you would, uh,
17 Item KQ in a little more detail, would you,
18 please?

19 A Item KQ was a smaller bone fragment than Item EJ. It
20 also had an entrance defect present. And what, uh,
21 was interesting from Dr. Eisenberg's standpoint,
22 and -- and my standpoint, was the x-rays of that item
23 showed some tiny little bright spots present in the
24 x-ray, which usually means there's some type of dense
25 metal there.

1 Q All right. I'm going to show you one more
2 photograph, 137. Do you recognize that?

3 A Yes. Exhibit 137 is the outer surface of Item KQ,
4 uh, showing the entrance defect with the beveled
5 edge.

6 Q All right. And, um, you mentioned something also
7 about, um, some x-rays. I'm going to have two
8 more exhibits, uh, provided to you, uh, 138 and
9 139. Beginning with, uh, 138, do you recognize
10 138?

11 A Exhibit 138 appears to be a x-ray image of Item EJ,
12 the, um, first skull fragment that I examined.

13 Q All right. I'm showing the inner surface. All
14 right? And, uh, now, you mentioned, uh, before,
15 we -- Well, yeah. All right. Let's go to the
16 next one. Exhibit, uh, one thirty --

17 A Nine?

18 Q -- nine. And directing your attention to the
19 piece in the upper left-hand corner, uh, of that
20 exhibit, do you recognize that?

21 A Yes, I do.

22 Q All right. And is, um -- What is that?

23 A Uh, Exhibit 139, uh, is a x-ray image of eight, um,
24 bone fragments. And, specifically, the one in the
25 upper left-hand corner, which has an entrance defect,

1 shows some bright spots right on the edge of that
2 entrance defect, both on the beveled edge, uh, and
3 inside of the beveling.

4 Q All right. Now, that, um, looks different than
5 Item 137. Um, and if you can explain to us, um,
6 the apparent difference?

7 A One thirty-seven, um, shows this smaller bone
8 fragment with the entrance defect, um, attached to,
9 uh, some more bone fragments. And that attachment
10 is, uh, done after these x-rays were taken, um, when
11 Dr. Eisenberg was putting together the pieces to try
12 to, um, put the bone fragments back together to what
13 they originally were.

14 Q Hence, the designation cranial refit?

15 A Correct.

16 Q All right. Well, um, let's start, then, with
17 the, um, exhibit, uh, with the, um -- the -- the
18 x-ray of the last one, 138?

19 A One thirty-nine?

20 Q Oh, 139, I'm sorry. There we go. All right.
21 Now, directing your attention to the -- the
22 zoomed-in picture of 139, what are we -- If
23 you'd -- I believe there's a laser pointer to,
24 uh -- right next to your material there. And you
25 can either use the large screen over here, or one

1 of those. It might be easier to use the large
2 screen. Um, what are we looking at with the,
3 um -- the area that seems to fluoresce there?

4 A I was interested in these bright particles here, and
5 focused my scanning electron microscope on those
6 areas.

7 Q All right. And with respect to those areas, what
8 were you able to, um, determine?

9 A I was able to determine what elements were present,
10 um, on that -- on that area that I was examining.

11 Q All right. And, um, similarly, I'm going to back
12 up to Exhibit 138 now, the, um, previous one, and
13 ask you, on this particular one, on a zoomed-in,
14 uh, picture of that, there appears to be,
15 likewise, some fluorescing material there?

16 A There is one bright particle there. Um, I did not
17 have access to this x-ray when I was doing my
18 analysis. So I focused my attention in this area
19 here and this area in here.

20 Q All right. And, um, were you able to, uh, make
21 any determination as to what these substances
22 were, uh, along that ridgeline that you've just
23 identified?

24 A Most of the -- the -- The strongest elements that I
25 found in these areas were calcium and phosphorus,

1 which are the elements of bone. Um, but in the upper
2 area, in this area, I did detect, uh, traces of
3 elemental lead.

4 Q All right. When we say "traces of elemental
5 lead", what do you mean?

6 A Like I mentioned, um, the strongest elements that
7 were present in that area were calcium and
8 phosphorus, and those are the -- the main elements of
9 bone. Um, and I would suspect to see them, since I'm
10 looking at a -- a -- a sample of -- of bone.

11 Um, but I was also interested in seeing
12 if I could detect any lead, um, because this
13 entrance defect interested me from a science
14 standpoint that that was, indeed, a bullet hole,
15 that I would be looking for any traces of lead
16 metal.

17 Q All right. And how many different locations
18 along that area did you examine?

19 A I examined three areas in here and found elemental
20 lead. And I examined four areas over here and I did
21 not detect any elemental lead.

22 Q All right. Did you examine any other, um,
23 aspects of this particular item to determine
24 whether there was any trace of elemental lead
25 elsewhere on the, um, exhibit?

1 A Yes, I did.

2 Q Tell us about that?

3 A I purposely went to an area away from that entrance
4 defect, uh, to get a background or a control sample
5 of what elements I would suspect or would think to
6 find in that area. And in that area, that control
7 area, a -- away from that entrance defect, I did not
8 detect any presence of elemental lead.

9 Q So in -- in terms -- As a scientist, having
10 looked at a control area, and now having that
11 knowledge, and comparing it with the area near
12 the defect, what does that suggest to you or what
13 does that tell you?

14 A That tells me that if I'm seeing lead in that
15 entrance defect, that a source of that could be a
16 bullet.

17 Q All right. How many control areas did you
18 utilize?

19 A I believe I took four, uh, control areas away from
20 that entrance defect.

21 Q All right. Very good. In your experience, um --
22 Well, let me also ask, have you had any firearms
23 training as part of your, uh, Crime Lab training?

24 A Yes, I -- I do.

25 Q And tell us about that?

1 A For about a year and two or three months in the year
2 2000, I did some cross-training in the Firearms Unit,
3 um, examining guns, preparing guns for destruction,
4 um, test firing guns, recovering the bullets, doing
5 bullet comparisons, cartridge case comparisons.

6 Q All right. Very good. I want to, um, move onto
7 the, um -- Well, before I do, let me ask you this
8 question: With respect to Item EJ, based on your
9 findings of traces of elemental lead, uh, your,
10 uh, Crime Lab training, is -- is that defend --
11 uh, defect that you observed on that item
12 consistent with having been caused by a
13 high-speed projectile?

14 A Yes, it is.

15 Q Um, and why is that? What is it about the defect
16 and your findings that, um, lead you to that
17 conclusion?

18 A From my experience in crime scenes and field
19 response, uh, pending autopsies, and giving training
20 to law enforcement, that when, um, something --
21 something is shot with a bullet in the skull, you get
22 this type of beveling on the surface from where the
23 bullet impacts, and then you have that concave
24 beveling on the inside surface that, uh, is very, um,
25 characteristic of a high-speed projectile, including

1 bullets.

2 Q All right. Very good. Let's, um, move onto, um,
3 the item, um, KQ, and I think we have that as
4 Exhibit 139?

5 A That's correct.

6 Q All right. Again, we're focusing in on the, um,
7 piece of the upper left-hand corner of this
8 exhibit. Tell us about your examination of this
9 particular fragment?

10 A I did have a photograph of this x-ray when I was
11 doing my analysis of this item, and I focused my
12 analysis in the area here. I took four samples. One
13 here, two, three and four. Um --

14 Q All right. And, um, with respect to those
15 particular four areas, what did you find?

16 A In areas one and two, the two strongest elements were
17 calcium and phosphorus. Uh, and then the third
18 strongest element in that area was -- was elemental
19 lead. Uh, Item -- areas three and four, the
20 strongest, um, element present was lead on those two
21 areas.

22 Q All right. And, um, likewise, uh, comparatively
23 speaking, was there more or less lead associated
24 with, um, Item KQ, Exhibit 139, than with Item
25 EJ, Exhibit 137?

1 A There was considerably more lead in this particular
2 bone fragment, KQ, than there was in Item EJ.

3 Q Um, likewise, with respect to this particular
4 item, did -- did you test other areas of the
5 fragment? In other words, did you develop
6 control areas from which to make comparisons?

7 A Yes, I did.

8 Q Tell us about that?

9 A Like in the previous item, I went to an area away
10 from the defect and, um, did not detect any lead
11 present in tho -- in those areas.

12 Q All right. And so what did that tell you or
13 signify to you relative to your findings of, uh,
14 lead in -- in -- in and around the area perceived
15 to be the defect?

16 A That finding lead in the area of this entrance
17 defect, associated with bright spots that are
18 consistent with very dense metal that -- that --
19 containing mainly lead, that it could have come from
20 a bullet.

21 Q All right. Is the, um -- on microscopic
22 examination, is that defect area, which you
23 identified as having traces of lead present,
24 or -- or be more than traces of el -- actual
25 elemental lead present -- is that consistent

1 with, um, a -- a -- a defect caused by a
2 high-speed projectile?

3 A Yes, it is.

4 Q All right. And why is that?

5 A As I mentioned earlier, that type of defect, um,
6 striking hard bone, causes the beveling effects on
7 the out -- outside and on the inside surfaces that is
8 consistent with a high-speed projectile, such as a
9 bullet.

10 Q On this -- On this particular item, did you do
11 both the inside and the outside?

12 A Yes, I did.

13 Q First of all, so we're all clear, what do you
14 mean inside and outside? Are we referring to the
15 defect beveled area? Or what are we referring
16 to?

17 A I'm referring to the in -- inner surface of the skull
18 versus the outer surface. What we're -- What we see
19 in this exhibit, this is the inner surface here. So
20 this is the inner beveling of that defect. And I did
21 look at the other side, the, um, outside surface.

22 Q All right. And with respect to the outer -- the
23 other outside area, what did you find relative to
24 the presence or absence of lead?

25 A In the area inside of that bevel, I was able to

1 detect elemental lead on the -- the beveling on the
2 outside surface.

3 Q All right. Similarly, did you employ that same
4 control technique on this, um -- outside, as you
5 did on the inside area?

6 A Yes, I did.

7 Q All right. And what did that, if anything,
8 indicate to you?

9 A I did not detect any lead, uh, in my control area.

10 Q Is it fair to say, then, that the only traces, or
11 presence, actually, of lead were in and around
12 the area identified as this defect?

13 A From what I examined, yes.

14 Q All right. All right. Mr. Olson, the opinion
15 that, um, Item EJ, the first one we examined, had
16 traces of elemental lead, uh, associated with it,
17 do you hold that opinion to a reasonable degree
18 of scientific certainty?

19 A Yes, I do.

20 Q Um, with respect to the item given Crime Lab
21 designation KQ, uh, do you hold the opinion to a
22 reasonable degree of scientific certainty that
23 Item KQ, uh, contained elemental lead in and
24 around that defect area?

25 A Yes, I do.

1 ATTORNEY FALLON: Subject to the receipt
2 of the four exhibits, one -- Or, excuse me, five.
3 The, uh, CV, 136 through 140, we, uh, move those
4 into evidence, and tender the witness for
5 cross-examination.

6 THE COURT: Yeah. My sheet shows that, uh,
7 132 through 135 had not yet been offered.

8 ATTORNEY FALLON: Oh. Well, then I
9 would make a motion that they be received as
10 well.

11 THE COURT: Any objection, gentlemen, to
12 either of those motions?

13 ATTORNEY FREMGEN: Judge, we reserve --
14 Ask -- ask the Court to reserve ruling on those
15 at this time. I wish to be heard on a few of
16 those.

17 THE COURT: All right. Cross.

18 **CROSS-EXAMINATION**

19 BY ATTORNEY FREMGEN:

20 Q Doctor, I -- I noticed -- And you did ask, uh,
21 Attorney Fallon if you could refer to your notes.
22 Um, I understand it's been about 12 or 15 months
23 since you evaluated these items? Completed --

24 A I --

25 Q -- your reports?

1 A I evaluated in December of '05, February of '06,
2 April of '06, and November of '06.

3 Q So it would be difficult for you, from the top of
4 your head, to know everything that you wrote in
5 your reports, or recall everything you wrote in
6 your reports?

7 A Well, I tried to prepare today to be able to not
8 refer to them, but some of the specific questions I
9 asked to review my notes.

10 Q And that's fine. You, um, had indicated -- And,
11 actually, I only have a few questions for you.
12 So, hopefully, we'll make it easier for you.
13 You'd indicated that when you reviewed, uh --
14 when you tested the areas of -- on EJ, I think in
15 your notes you refer to them as -- there's one,
16 two, three, and four, five, six? That's the
17 outer edges of that bevel area?

18 A That's correct.

19 Q That you noted the -- the presence of calcium and
20 phosphorus? Which you've testified is consistent
21 with bone?

22 A Correct.

23 Q And lead? Which wouldn't normally be -- be
24 consistent with a human bone?

25 A I'm not aware of finding that large a concentrations

1 in human bone.

2 Q There's small concentrations of lead in the human
3 body, but not in bone like that; correct?

4 A Not that I'm able to detect.

5 Q Now -- And -- and your assumption is that it
6 might be from some sort of a lead projectile? In
7 fact, you said bullet?

8 A Yes.

9 Q Um, are you aware of what items were in the fire
10 pit, or in this -- where -- where -- this burning
11 pit, that might have maybe contributed to the
12 lead presence?

13 A I knew there were tires. That's about the limit of
14 my knowledge.

15 Q Okay. Could -- could -- Well, it -- could have
16 something in the fire, had it been lead,
17 contributed to these deposits?

18 A It's possible, but it would have to be a relatively
19 pure sample.

20 Q Did you note any copper in any of these -- in
21 your evaluation?

22 A No, I did not.

23 Q You did note other elements? Including zinc,
24 magnesium, aluminum?

25 A That's correct.

1 Q So, uh, just to be correct, on -- on your direct,
2 it wasn't just calcium, phosphorus, and lead, but
3 at least three or four more other elements?

4 A That's correct.

5 Q And would that be normal to find in the human
6 bone?

7 A I have limited, um, um, opportunities to examine bone
8 fragments, but on the samples that I did examine, I
9 was not surprised with the elements I was seeing
10 there.

11 Q When you also, uh, did your control samples,
12 similar type of elements would show up?

13 A Yes.

14 Q And, again, not a surprise to you?

15 A That's correct.

16 Q Your control was only on one other area of the
17 bone fragments you -- provided to you?

18 A Every surface that I examined, um, like if it was the
19 inner surface of one of the bones, I would do a
20 control on the inner surface. If I examined the --
21 the entrance on the outer surface, I would do a
22 control on that same outer surface.

23 Q And you did that for every fragment that you
24 received?

25 A Yes, I did.

1 Q You also received a -- a headboard?
2 A Yes, I did.
3 Q And -- and you had an opportunity to examine it
4 to determine if there were any rope fibers;
5 correct?
6 A That's what I was requested to examine, to see if I
7 could find any rope fibers attached to the headboard.
8 Q So you're directed to look for this?
9 A That's correct.
10 Q And you did, uh, an actual -- a visual
11 examination; correct?
12 A Visual with some microscopic exam.
13 Q So the first step would be to visually observe
14 the item?
15 A That's correct.
16 Q And when you visually observed the item, you
17 noted no rope fibers; correct?
18 A That's correct.
19 Q Uh, and then, of course, the microscopic
20 evaluation would be because our eyes aren't that
21 great; right?
22 A A magnification helps in the area of trace evidence.
23 Q And, obviously, that's your training? And you
24 know that the next step would be to try to take a
25 closer look; correct?

1 A That's correct.

2 Q And in order to do so, you used some sort of an
3 adhesive tape to -- to pull up what might be on
4 the surface of that, uh, wooden spindle on the
5 headboard?

6 A Yes.

7 Q That's one -- one technique for looking for
8 fibers is by using a tape lift to take a, um --
9 not too strong of an adhesive, um, but just to
10 tape lift, like a lint remover type lift, and
11 then examine what fibers were recovered from
12 that? You don't want to pull off the surface,
13 itself?

14 A That's correct.

15 Q And so with that, you were able to then, uh,
16 place it onto some -- uh, some sort of a slide?

17 A Actually, I placed it on a plastic backing, and then
18 I can examine that under the microscope, and if I see
19 something of interest, I can put a little cut in that
20 plastic and, with a solvent, remove all the fibers
21 I'm interested in.

22 Q Did you note any fibers?

23 A Yes.

24 Q Were they rope fibers?

25 A Uh, they were not consistent with rope fibers.

1 Q You noted some cotton fibers?

2 A That's correct.

3 Q Okay. I have nothing else. Thank you, Doctor.

4 THE COURT: Any redirect?

5 ATTORNEY FALLON: Yes.

6 **REDIRECT EXAMINATION**

7 BY ATTORNEY FALLON:

8 Q Was it, um -- Is it, uh, expected or unusual for
9 you not to find any rope fibers given the -- the
10 material you examined?

11 A In my experience, um, smooth surfaces, like spindles
12 on a headboard, are not your best surface for
13 snagging fibers. Um, if there was, uh, slivers, a
14 nail, or something that could snag, uh, rope fibers,
15 that would be a better method for depositing fibers,
16 um, on a surface.

17 Q All right. Now, did you find something --
18 anything else on that -- that headboard?

19 A Yes. On one of the spindles there was a thin,
20 plastic film that I removed and analyzed, and
21 identified it as polypropylene.

22 Q What are some of the uses of polypropylene is?

23 A Um, polypropylene, um, is used in garments, it's
24 used, um, uh, as plastic containers, um, it -- it is
25 also used in rope manufacturing.

1 ATTORNEY FALLON: No further questions.
2 ATTORNEY FREMGEN: No, Judge.
3 THE COURT: All right. You may step down.
4 THE WITNESS: Thank you, Your Honor.
5 THE COURT: You're welcome. Any further
6 witnesses this afternoon?
7 ATTORNEY FALLON: We do not have any
8 this afternoon, Judge. We went a little more
9 quickly than anticipated.
10 THE COURT: All right. Uh, Mr. Fremgen,
11 you want to be heard on some of these exhibits?
12 I'll excuse the jury for the afternoon and we can
13 talk about the exhibits.
14 Ladies and gentlemen, you are done for
15 this afternoon. We'll see you tomorrow at 8:30.
16 Again, I remind you, don't talk about this among
17 yourselves or anyone else. Have a good night.
18 (Jurors out at 3:59 p.m.)
19 THE COURT: All right. Be seated. At
20 issue are Exhibits 132 through, and including,
21 140. You, Mr. Fremgen, or Mr. Edelstein, have --
22 have objections to one or the other of those?
23 ATTORNEY FREMGEN: Judge, I have no
24 objections to Exhibit 132, and 137 through 140.
25 My objections are, specifically, to 133 and 136.

1 They're curriculum vitae of the two witnesses. I
2 don't believe that that is evidence. I'm not
3 entirely sure why they were even, um, marked.
4 These witnesses were testifying already about
5 their expertise and their backgrounds. For
6 the -- for those two, that's the reason I have an
7 objection.

8 THE COURT: All right. You want to be
9 heard on that?

10 ATTORNEY FALLON: Just -- They're just
11 part of the record.

12 THE COURT: Uh, yeah. They can be
13 received. They're not -- They're not going to be
14 published to the jury or anything of that sort,
15 so...

16 ATTORNEY FREMGEN: And if that's the
17 ruling of the Court, then I would have the same
18 as to 134 and 135, and -- and, simply, if it gets
19 to the point of what the jury wants to see, we
20 want to be heard on that, because, technically,
21 those are reports. Technically, they're hearsay
22 reports. Um, the witnesses have already
23 testified. And it should be the recollection of
24 the witnesses at the time of jury deliberations,
25 not what the reports say.

1 THE COURT: Yeah, I understand. I --
2 I -- I will receive all of them subject to, uh,
3 the reservation of -- of hearing what gets
4 published or what goes back, if anything, to the
5 jury.

6 ATTORNEY FALLON: All right. That's
7 fine. That's -- that's all we would ask.

8 THE COURT: Okay. Uh, anything else?

9 ATTORNEY FREMGEN: No, Judge.

10 THE COURT: All right. Uh, we'll meet in
11 my chambers in about ten minutes?

12 ATTORNEY FALLON: Sure.

13 THE COURT: We're adjourned until tomorrow
14 at 8:30 then.

15 (Court stands adjourned at 4:01 p.m.)
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1 STATE OF WISCONSIN)
2)SS.
3 COUNTY OF MANITOWOC)
4

5 I, Jennifer K. Hau, Official Court
6 Reporter for Circuit Court Branch 3 and the State
7 of Wisconsin, do hereby certify that I reported
8 the foregoing matter and that the foregoing
9 transcript has been carefully prepared by me with
10 my computerized stenographic notes as taken by me
11 in machine shorthand, and by computer-assisted
12 transcription thereafter transcribed, and that it
13 is a true and correct transcript of the
14 proceedings had in said matter to the best of my
15 knowledge and ability.

16 Dated this 11th day of December 2007.
17

18 Jennifer K. Hau
19 Jennifer K. Hau, RPR
20 Official Court Reporter
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